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DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

JORDAN RIVER NATURAL RIVER ZONING

(By authority conferred on the commission of natural resources by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.51 Definitions.

Rule 1. (1) "Applicant" means a person who requests on proper forms and via proper procedures, a zoning permit, special exception permit or variance.

(2) "Appurtenance" means a structure incidental to a dwelling including, but not limited to, garages, pump houses, wells, sanitary facilities and electrical service lines.

(3) "Commission" means the natural resources commission.

(4) "Director" means the director of the department of natural resources.

(5) "Dwelling" means a building, or portion thereof, which is designed or used exclusively for residential purposes.

(6) "Dwelling, single family" means a detached building designed for or occupied exclusively by 1 family and containing housekeeping facilities.

(7) "Front" means that side of a lot abutting the water's edge of the mainstream or tributary.

(8) "Lot" means a parcel of land occupied or intended to be occupied by 1 dwelling and appurtenances incidental to it, including such open spaces as are arranged and designed to be used in connection with such buildings.

(9) "Natural river district" means the Jordan river natural river district as described in subrule (1) of R 281.53.

(10) "Reforestation" means renewal of vegetative cover by seeding, planting, or transplanting.

(11) "Setback" means the horizontal distance between any portion of a structure and the water's edge, measured at its closest point.

(12) "Structure" means anything constructed, erected or to be moved to or from any premise which is permanently located above, on or below the ground including signs and billboards.

(13) "Zoning administrator" means the administrator of these zoning rules appointed by the natural resources commission.

(14) "Zoning permit" means a standard form issued by the zoning administrator upon application and declaration by the owner or his duly authorized agent approving proposed construction and use of land and buildings and structures thereon.

(15) "Zoning review board" means a group of 3 or more persons appointed by the commission to act upon requests for special exceptions.

History: 1979 AC.

R 281.52 Purpose.

Rule 2. It is the purpose of these rules:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damages due to unwise development patterns within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free flowing conditions, fish and wildlife resources, water quality, scenic and aesthetic qualities and historical and recreational values of the Jordan river and adjoining land.

(c) To prevent flood damages due to interference with natural floodplain characteristics by excluding developments which are vulnerable to flood damages.

(d) To provide for residential and other permitted development that will complement the natural characteristics of the natural river system.

History: 1979 AC.

R 281.53 Boundaries; map; abrogation and other restrictions.

Rule 3. (1) The Jordan river natural river district is that area comprising the Jordan river and its tributaries from its source in section 22, T31N, R5W in Antrim county to Roger's bridge in section 35, T32N, R7W in Charlevoix county and all lands lying within 400 feet of the river's edge.

(2) Certified copies of the Jordan river natural river zoning map shall be displayed in the office of the county register of deeds and in the office of the zoning administrator and shall be filed with the local tax assessing officer and with the state tax commission.

(3) These zoning rules do not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions, nor permit actions prohibited by other statutes or ordinances, including zoning ordinances, applicable to the Jordan river natural river district, except that where these rules impose greater restrictions than found on such easements, covenants, or deeds, the provisions of these rules shall prevail.

History: 1979 AC.

R 281.54 Permitted uses.

Rule 4. The following uses shall be permitted by the owner upon his property within the natural river district, subject to limitations and requirements outlined in these zoning rules, local ordinances and other applicable statutes:

(a) One single family dwelling and appurtenances set back at least 200 feet from the water's edge on a lot at least 150 front feet wide along the mainstream and set back 100 feet with minimum lot width of 150 front feet on the tributaries.

(b) Plats if the minimum setback and lot width requirements in subdivision (a) are met.

(c) Camping and other recreational activities which do not require the construction of permanent facilities.

(d) Operation of watercraft subject to limitations of local ordinances established under authority of Act No. 303 of the Public Acts of 1967, as amended, being SS 281.1001 to 281.1199 of the Michigan Compiled Laws.

(e) Fishing and hunting in compliance with current laws and regulations.

(f) Reforestation.

(g) Normal agricultural activities, if such activities meet the provisions of these rules and the bureau of water management of the department of natural resources determines that such activities do not contribute to stream degradation.

(h) Operation of licensed motor vehicles on dedicated public roads or access roads to private dwellings.

(i) Private footpaths constructed by the landowner of natural materials to facilitate permitted uses.

(j) Private boat docks constructed by the landowner of natural materials and camouflaged into natural surroundings.

(k) Mining and extractive industries beyond 300 feet from the water's edge.

(l) Underground gas and utility lines.

(m) Surface gas and utility lines on lands, or interests in real property continuously owned by the utility from and after January 1, 1971, subject to review and approval by the commission.

(n) Disposal fields and septic tanks in conformance with local county health codes.

(o) Cutting and filling of the land surface except where the high ground water table is within 6 feet of the land surface.

(p) Other uses which are granted permits by the zoning administrator according to R 281.56 and R 281.59.

History: 1979 AC.

R 281.55 Natural vegetation strip.

Rule 5. A strip 100 feet wide on each side of and parallel to the mainstream and 25 feet wide on the tributaries shall be maintained in trees and shrubs or in its natural state, except that dead, diseased, unsafe, or fallen trees may be removed and trees and shrubs, upon approval of the area forester, may be selectively pruned or removed for landscaping purposes or to provide a filtered view of the river.

History: 1979 AC.

R 281.56 Special exception permits.

Rule 6. (1) Special exception permits may be granted to allow uses in the natural river district that are not specifically permitted by R 281.54 where implementation of such uses does not contravene the purposes of these rules as specified in R 281.52.

(2) Application for special exception permits shall be made on forms provided by the zoning administrator.

(3) Upon receiving an application for a special exception permit, the zoning review board at any time prior to rendering a decision thereon shall require the applicant to furnish such of the following information as is deemed necessary by the zoning review board for determining the suitability of the particular site for the proposed use:

(a) A detailed description of the proposed activity or use.

(b) A plan (surface view) showing elevations or contours of the ground, including existing earth fills; generalized vegetative cover map; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, access roads, water supply and sanitary facilities.

(c) Photographs showing existing land uses and vegetation as seen upstream and downstream from the proposed use.

(d) Valley cross sections showing the natural stream channel, streambanks, and high water marks, if any, with indication of locations of proposed developments.

(e) Any other information deemed relevant by the zoning administrator.

(4) Before considering applications, the zoning review board shall give notice by certified mail to all property owners within 500 feet of the proposed use, and to local officials and department of natural resources personnel, including but not limited to: township supervisor, county health officials, county and township zoning officials, soil conservation service, and regional office and natural rivers section of the department of natural resources.

(5) In passing upon applications, the zoning review board shall consider all relevant factors specified in these rules, in the light of the spirit and intent of the purposes as specified in R 281.52.

(6) The zoning review board may require public hearings to be held regarding the application. The zoning review board shall decide on an application within 15 days from receiving the application, except that, where public hearings are held or additional information is required pursuant to subrule (3), it shall render a decision within 15 days of the end of hearings or receipt of the last requested information.

(7) The zoning review board shall attach such conditions to the granting of special exceptions as are necessary to further the purposes of these rules.

(8) A special exception use shall adhere strictly to the terms of the special exception permit.

History: 1979 AC.

R 281.57 Nonconforming uses.

Rule 7. (1) The lawful use of any land or structure existing at the effective date of these rules may be continued, although the use does not conform with these rules.

(2) Repairs and maintenance work required to keep a nonconforming structure or other use, such as a roadway, in sound condition may be made. Remodeling of nonconforming structures within the confines of the existing foundation and elevations shall be permitted.

(3) A special exception permit shall be granted by the zoning review board when a nonconforming building or structure is damaged or destroyed by fire, flood, or other means, and it may be restored if restoration is started within 1 year from the time of damage. Where there are several buildings or structures which are used together by the landowner as a single operating unit, the value of the part destroyed shall be compared to the value of the total operating unit in determining whether 50% of the value has been destroyed. A nonconforming building or structure damaged by more than 50% of its value may be reconstructed or repaired only if all of the following conditions exist:

(a) The land upon which it is situated is not subject to flooding.

(b) Continued use of a nonconforming building or structure would not lead to bank erosion or other material degradation of the river resource.

(c) The continued use conforms with local county health codes and approval is granted by the local county health department.

(4) The use of a nonconforming structure or land may be changed to a use of a like or similar character, or to a use conforming to the rules of the natural river district.

(5) A nonconforming use of any land or structure may not hereinafter be enlarged or extended without the granting of a special exception permit as provided in subrule (3).

(6) An enlargement or extension of a nonconforming use of up to 50% of the land area or the floor area of a residential structure or public accommodation providing overnight facilities not exceeding 12 units may be approved by the zoning review board when the owner submits to the zoning review board a detailed description of the proposed enlargement or extension together with a site plan showing the location of all new structures or uses, and upon a determination that all of the following conditions exist:

(a) The land upon which it is situated is not subject to flooding.

(b) The enlargement or extension of the nonconforming use would not lead to bank erosion or other material degradation of the river resource.

(c) The enlargement or extended use conforms with local county health codes and approval is granted by local county health department.

(d) The enlarged or extended use does not contravene the purposes of these rules as specified in R 281.52.

(7) Substitution of nonconforming structures with new structures may be made, but the granting of a special exception permit is required to ensure that the changed uses will conform as closely as possible to the purposes of these rules as specified in R 281.52.

(8) If a nonconforming use is discontinued for 12 consecutive months, any future use at that site shall conform to these rules.

(9) A property owner may request the zoning review board to certify the existence of a prior nonconforming use on his property, which certification shall be granted where a use meets the criteria of this rule and the common law criteria of nonconforming uses of the state.

History: 1979 AC.

R 281.58 Variances.

Rule 8. (1) An applicant who is denied a zoning permit or a special exception permit shall have a hearing held in accordance with and subject to sections 71 to 87 of Act No. 306 of the Public Acts of 1969, being SS 24.271 to 24.287 of the Michigan Compiled Laws, upon petition thereof filed with the director within 30 days of such denial.

(2) Upon receipt of a petition for a hearing, the director shall set a date for a hearing on the facts and proposed action, and shall appoint a hearing officer to preside at the hearing. The proposed hearing shall be scheduled not more than 4 weeks after receipt of the petition. The hearing officer shall hear the evidence, prepare a record of the proceedings and a proposal for a decision including findings of fact and conclusions of law.

(3) The hearing officer shall give notice of the hearing by certified mail to the persons named in subrule (4) of R 281.56.

(4) The record of the proceedings and proposal for decision shall be transmitted to the commission and shall be served by certified mail on all other parties to the proceedings not more than 3 weeks after completion of the testimony.

(5) A final decision or order of the commission in a contested case shall be made not more than 8 weeks after the date of the hearing and a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney.

(6) The commission shall prepare an official record of hearing in accordance with section 86 of Act No. 306 of the Public Acts of 1969.

(7) The final decision or order of the commission after a hearing is conclusive unless reviewed in accordance with section 87 or sections 101 to 106 of Act No. 306 of the Public Acts of 1969, being SS 24.287 or 24.301 to 24.306 of the Michigan Compiled Laws.

(8) In determining a final decision in a contested case, the commission shall consider:

(a) The economic effect of the subject property weighed in light of the applicant's entire contiguous holdings and not merely the portion within the natural river district. If the subject portion is the remainder of a larger holding, this fact and a description of the title history shall be included in the hearing evidence.

(b) Increase in flood levels and flood damages that may be occasioned by the proposed use at the site and upstream and downstream from the site, water quality consequences and other factors relevant within the terms of these rules.

(c) Cumulative effect upon the natural river district from potential development of holdings in a legal position similar to the applicant's, if variances are requested and granted for these properties.

(d) Reasonable alternatives available to the applicant.

(e) All other factors relevant to the purposes and provisions of these rules.

(9) In weighing the application for a variance, considerations of public health, safety and welfare shall prevail, unless private injury is proved by substantial preponderance of the evidence to be so great as to override the public interest.

(10) A variance shall not be granted where the commission determines that the requested use will pose substantial hazard to life or property rights either public or private.

(11) Where by reason of the narrowness, shallowness or shape of a lot or property at the effective date of these rules, the lot or property cannot accommodate a building because of the required building setback, variances shall be allowed only upon a consideration of the factors prescribed in subrule (8). Such variances shall provide that the structures shall be so placed as to best meet the spirit and objectives of the natural rivers act.

History: 1979 AC.

R 281.59 Administration.

Rule 9. (1) The commission shall appoint a zoning administrator and a zoning review board to act as its agents to enforce these rules including the receiving and processing of applications for zoning permits, special exception permits, petitions for variances, requests for changes, amendments or supplements, as outlined in these rules, or other matters the commission is required to decide.

(2) A person shall not commence excavation, erection, alteration, or repair for any building or structure or commence a land use until an application for a zoning permit has been made, a site inspection has been completed and a zoning permit has been secured from the zoning administrator. Alterations and ordinary maintenance made on dwellings where total cost does not exceed 5% of the market value of the structure in any 12-month period are exempt.

(3) Application for a zoning permit shall be filed in writing with the zoning administrator. There shall be submitted with all applications for zoning permits:

(a) Two copies of a site plan giving accurate dimensions on either a scale drawing or a rough sketch and containing the following information:

(i) Location upon the lot of all existing and proposed structures.

(ii) Existing or intended use of the structures.

(iii) Generalized vegetative cover.

(iv) Lines and dimensions of the lot to be used.

(b) Evidence of ownership of all property affected by the coverage of the permit.

(c) Evidence that all required federal, state, and county licenses or permits have been acquired or that applications have been filed for the same.

(d) Other information as may be required by the zoning administrator.

(4) One copy of both plans and specifications shall be filed and retained by the zoning administrator and the other shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection and issued the zoning permit. To insure that new land uses in the natural river district are in conformance with these rules, the applicant shall display a permit required by these rules face out within 24 hours of its issuance by placing it in a conspicuous place facing the nearest street or roadway and displaying it continuously until the purpose for which issued is completed. Failure to obtain and display a permit is a violation of these rules and subjects each person for whose benefit the permit is required to court action.

History: 1979 AC.

R 281.60 Enforcement.

Rule 10. (1) Buildings erected, razed, altered, moved, or converted or any use of land or premises in violation of these rules are declared to be a nuisance.

(2) Each alleged violation shall be inspected by the zoning administrator who shall order the applicant in writing to correct all conditions found to be in violation of these rules.

(3) Violations of these rules shall be resolved by the appropriate circuit court in accordance with section 13 of Act No. 231 of the Public Acts of 1970, being S 281.773 of the Michigan Compiled Laws.

History: 1979 AC.

R 281.61 Changes; amendments; supplements.

Rule 11. (1) Changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner may be granted where implementation of such changes does not contravene the purposes of these rules as specified in R 281.52.

(2) A local unit of government or a landowner who requests a change, amendment, or supplement to the boundaries or to permitted uses shall have a hearing held in accordance with and subject to sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as prescribed in subrules (2) to (10) of R 281.58.

History: 1979 AC.

DEPARTMENT OF NATURAL RESOURCES

FISHERIES DIVISION

PINE RIVER NATURAL RIVER ZONING

(By authority conferred on the director of the department of natural resources by section 30512 of Part 305 of 1994 PA 451, MCL 324.30512, and Executive Reorganization Order No. 1991-22, MCL 299.13.)

R 281.101 Definitions.

Rule 1. As used in these rules:

- (a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit for a principal use, special use, or variance.
- (b) "Appurtenance" or "accessory building" means a structure that is incidental to a dwelling, including all of the following:
 - (i) Garages.
 - (ii) Residential storage sheds.
 - (iii) Barns and other agricultural storage and livestock structures.
 - (iv) Pump houses.
 - (v) Private access roads.
 - (vi) Electrical service lines.
- (c) "Bluff" means a bank that rises at a slope of 33 degrees or greater from within 10 feet of the river's edge. The crest of the bluff is the first riverward facing area at least 100 feet wide (approximately parallel to the river) that breaks to a slope of less than 18 degrees for a distance away from the river of at least 25 feet.
- (d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of 1972 PA 230, MCL 125.1501 and known as the state construction code act of 1972.
- (e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as required by the provisions of 1972 PA 230, MCL 125.1501.
- (f) "Certificate of zoning compliance" means a standard form which is issued by the zoning administrator upon a determination that the construction and use of land and buildings and structures as provided for by a zoning permit, including the site plan, have been completed and are in compliance with the permit and site plan.
- (g) "Commission" means the natural resources commission.
- (h) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.
- (i) "Director" means the director of the department of natural resources.
- (j) "Enclosed ground floor living area" means the area of the ground covered by a dwelling, including enclosed porches and attached garages, but not including open porches, decks, or patios.
- (k) "Family" means either of the following:
 - (i) An individual or group of 2 or more persons who are related by blood, marriage, or adoption and who, together with foster children, servants of the principal occupants, and not more than 2 additional unrelated persons, are domiciled together as a single domestic housekeeping unit in a dwelling unit.
 - (ii) A collective number of individuals who are domiciled together in 1 dwelling unit, whose relationship is of a continuing non-transient domestic character, and who are cooking and living as a single, nonprofit, housekeeping unit. Any society, club, fraternity, sorority, association, lodge, organization, or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature shall not be considered a family as defined by these rules.
- (l) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen development from the river, to provide for streambank stabilization and erosion control, serve as an aid to the infiltration of surface runoff, and provide cover to shade the water.

The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no mowing or removal of trees, shrubs, or other vegetation.

(m) "Floodplain" means land lying within an identified or documented 100-year floodplain line. Also see subdivision (t) of this rule.

(n) "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge a 100-year flood.

(o) "Front" means that segment of a lot or parcel closest to or abutting the river's edge of the main stream or tributary.

(p) "Front yard" means setback as provided for in R 281.107.

(q) "Home occupation" means a gainful occupation that is traditionally and historically carried on in the home by residents of the dwelling as a use which is clearly incidental and secondary to the use of the home as a dwelling place.

(r) "Home based occupation" means a gainful occupation where business is conducted off-site but equipment such as logging trucks or well drilling rigs are stored at the home site.

(s) "Impervious surface" means a surface, including paved and unpaved driveways, decks, rooftops, roads, patios, swimming pools, and parking lots, that does not allow stormwater to infiltrate into the ground.

(t) "Land that is subject to flooding" means that area of land adjoining the designated portions of a river and its tributaries which will be inundated by a flood which has a 1% chance of occurring or being exceeded in any given year as determined by detailed hydraulic studies that are acceptable to the Michigan department of natural resources or which, in the absence of such detailed floodplain studies, has a history of flooding or is delineated by approximate methods, such as United States geological survey flood-prone area maps or the federal emergency management agency's special flood hazard boundary maps.

(u) "Lot" means a continuous area or acreage of land that can be described for purposes of transfer, sale, lease, rental, or other conveyance.

(v) "Lot area" means the area inside the lot lines.

(w) "Lot, interior" means a lot of record which is located in the natural river district, but which does not have frontage on the river or its designated tributaries.

(x) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules or a lot or parcel which is described by metes and bounds and which has been recorded at the office of the county register of deeds before the effective date of these rules.

(y) "Lot, vacant" means a lot that does not contain a single family dwelling.

(z) "Natural river district" means the Pine river natural river district as described in R 281.105.

(aa) "Ordinary high watermark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

(bb) "Rear yard" means that yard opposite the front yard.

(cc) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.

(dd) "River's edge" means the ordinary high watermark as used in Part 301 of 1994 PA 451, and as defined in subdivision (aa) of this rule.

(ee) "Setback" means the required horizontal distance between any portion of structure and the river's edge, measured at the structure's closest point to the river's edge.

(ff) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains kitchen and bathroom facilities.

(gg) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Part 91 of 1994 PA 451, MCL 282.101.

(hh) "Structure" means anything which is constructed, erected, or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas greater than 24 inches in diameter and other communication structures, fences, and mobile homes. Temporary recreational facilities, including tents, camper trailers, and recreation vehicles, are not considered structures if they are on site fewer than 30 days per year and if they are located

landward of the native vegetation buffer or if the facilities are located on a campsite within a campground that is licensed pursuant to 1978 PA 368 MCL 333.1101, if both the individual campsite and the campground were established before the effective date of these rules.

(ii) "Wetland" means land characterized by the presence of hydric soils or water at a frequency and duration sufficient to support wetland vegetation or aquatic life as defined in Part 303 of 1994 PA 451, MCL 282.101.

(jj) "Zoning administrator" means the administrator of these rules who is appointed by the director.

(kk) "Zoning permit" means a standard form which is issued by the zoning administrator when it is determined that the proposed construction of buildings and structures and the proposed use of land and buildings and structures thereon are in compliance with these rules.

(ll) "Zoning review board" means a group of 7 people which is appointed by the director to act upon requests as provided for by these rules.

History: 2004 AACCS.

R 281.102 Purpose; intent; scope.

Rule 2. (1) The director may, on his or her own motion, implement the intent of Natural Rivers Part 305 of 1994 PA 451, and in the absence of local zoning to protect the Pine river, a designated natural river, promulgates these rules for the following purposes:

(a) To promote the public health, safety, and general welfare; to prevent economic and ecological damage due to misuse, unwise development patterns, overcrowding, and overuse within the natural river district; and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish, aquatic and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Pine river and adjoining land.

(c) To prevent flood damage due to interference with the natural floodplain characteristics by excluding developments which are vulnerable to flood damage and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures that are proposed for location on lands that are unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

(f) To achieve the goals and objectives of the Pine River natural river plan.

(2) It is the general intent of these rules to define terms used and to regulate and restrict lot coverage and use, population distribution and density, and the size and location of all structures by the delineation of permitted uses and development standards so as to promote the purposes identified in this rule. It is further intended to provide for the administration and enforcement of these rules and to provide penalties for their violation.

(3) It is not the intent of these rules to revoke, annul, cancel, or in any way impair or interfere with existing provisions of law, ordinances, or any rules, regulations, or premises or with any private restrictions placed upon property by covenant or deed. However, where such provisions of law are less restrictive than the provisions of Natural Rivers Part 305 of 1994 PA 451, and the rules promulgated thereunder, the provisions of Natural Rivers Part 305 of 1994 PA 451 and the rules promulgated thereunder shall apply.

History: 2004 AACCS.

R 281.103 Construction of language; severability.

Rule 3. (1) All of the following rules of construction apply to these rules:

(a) A "building" or "structure" includes any part thereof.

(b) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."

(c) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(d) The terms "lot" and "parcel" have the same meaning.

- (e) Terms not defined in these rules shall have the meanings customarily assigned to them.
- (2) In any case in which the provisions of these rules are declared by the courts to be unconstitutional or invalid, such ruling shall not affect the validity of the remaining provisions of these rules and to this end the provisions of these rules are declared to be severable.

History: 2004 AACCS.

R 281.104 Lot size and area; subdivision of land; home and home-based occupations; native vegetation buffer; signs; docks; height of structures; river access stairways; dams; impervious surfaces.

Rule 4. (1) Unless otherwise provided in these rules, a lot created after the effective date of these rules shall meet all of the following standards on at least 1 side of the stream that is accessible by a public road or legal easement:

- (a) Have at least 200 feet of river frontage (unless a riverfront "common area" subject to a conservation easement is established, or the parent parcel does not have river frontage, in which case this dimension shall be measured at the point of the parcel closest to the river) and be at least 200 feet wide at the minimum building setback line.

- (b) Contain at least 1/2 acre of existing contiguous upland buildable area (non-wetland, non-floodplain) landward of the minimum building setback line.

- (c) Contain at least 80,000 square feet of area within the Natural River District (any "common area" created or any bottomlands shall not be used in any calculations related to minimum parcel area). If the parent parcel does not have river frontage, and the front line of any newly created parcel is greater than 150 feet from the river's edge at all points, this rule does not apply, and the minimum parcel width will be measured at the front lot line.

- (d) Have sufficient depth to accommodate the required building setbacks pursuant to the standards in R 281.107.

(2) A lot that exists on the effective date of this rule shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrules (3) and (4) of this rule.

(3) Proposed lots which have preliminary plat approval pursuant to 1967 PA 288, MCL 560.101 but which do not meet the dimensional requirements of these rules on their effective date, shall, on final plat approval, be issued a permit subject to the requirements in R 281.109 and R 281.110.

(4) Lots of record which are created before the effective date of these rules and which do not possess sufficient land area or lot width may be used for the purposes described in these rules, subject to the requirements provided for in R 281.109 and R 281.110.

(5) Home occupations and home-based occupations shall conform to all of the following requirements:

- (a) The use of the dwelling unit, or related structure, for a home occupation or home-based occupation shall be clearly incidental and subordinate to its use for residential purposes.

- (b) Equipment or a process shall not be used in a home occupation or home-based occupation if it creates noise, vibration, fumes, odors, or electrical interference that is detectable to the normal senses off the premises.

(6) Within the natural river district, a native vegetation buffer that includes the river and all lands within 100 feet of the ordinary high watermark shall be maintained on each side of the Pine river mainstream and the North Branch Pine river from its confluence with Spalding Creek to its confluence with the East Branch Pine river. A restrictive cutting belt that includes tributaries and all lands within 50 feet of their ordinary high watermarks shall be maintained on each side of all designated tributaries. Trees and shrubs may be pruned over not more than a 50-foot width for a filtered view of the river, but clear cutting in the native vegetation buffer is prohibited. The native vegetation buffer is also subject to all of the following provisions:

- (a) Unsafe trees and noxious plants and shrubs, such as poison ivy and poison sumac, may be removed.

- (b) The selected removal or trimming of trees for forest management practices or disease and insect control, and clearing of vegetation to the minimum width required for public utility primary electric distribution lines and service lines for permitted uses is permitted upon approval of the zoning administrator in consultation with local Conservation District staff, if the activity is in keeping with the goals and objectives of the Natural River Plan.

- (c) Camping other than low-impact tent camping is not permitted in the native vegetation buffer.
- (d) Mowing is prohibited in the native vegetation buffer except in areas that had been maintained in a mowed condition prior to adoption of these rules or to establish a footpath to the river not to exceed 4 feet wide.
- (e) In the Pine river system upstream of the confluence of the North Branch Pine river and the East Branch Pine river and on all tributaries, vegetation in the stream channel may not be disturbed except to alleviate flooding that threatens a dwelling. In the Pine River mainstream downstream of the confluence of the North Branch Pine river and the East Branch Pine river vegetation may be selectively pruned to allow for safe navigation and to alleviate flooding that threatens a dwelling. This may include pruning of a maximum 8-foot wide section of vegetation. Portions of trees, logs, and other natural material imbedded in the stream channel may not be disturbed.
- (f) A boardwalk constructed in conjunction with the footpath described in subdivision (d) of this subrule is permitted upon approval of the zoning administrator if it is placed only in areas that are generally too wet to be traversed without significant disturbance of the soils, the boardwalk and supports are constructed of wood, the boardwalk is not more than 3 feet wide and does not include railings, and the top of the boardwalk is not more than 12 inches above grade.
- (g) All islands in all stream segments are subject to the native vegetation buffer standards.
- (h) A wider native vegetation buffer may be required for certain commercial uses.
- (7) Signs for identification, direction, resource information, regulation of use and those related to permitted uses are allowed. Signs for the sale of products or services are prohibited, unless related to a permitted use, located on the site of the permitted use, not located in the native vegetation buffer and not visible from the river. Illuminated signs are prohibited. Signs may be not more than 2 square feet in area. Exceptions include 1 real estate sign not more than 4 square feet outside the native vegetation buffer, and public agencies' signs not larger than 10 square feet, of rustic design and not attached to vegetation. Some public agency signs may need to be larger to warn of impending danger or for interpretative or historic reasons.
- (8) Private boat docks shall be in compliance with all of the following requirements:
 - (a) Docks shall not be more than 48 square feet in area, with not more than 4 feet of the dock extending over the edge of the river.
 - (b) Docks shall be designed, constructed, and maintained to blend with the natural surroundings. The use of natural, native materials is encouraged.
 - (c) Unless otherwise provided for in these rules, only 1 dock shall be constructed per lot.
- (9) Unless otherwise provided for in these rules, a structure shall not be more than 2 1/2 stories tall, not including a basement, and not more than 35 feet in height measured from the original surface elevation.
- (10) Private river access stairways are permitted upon approval of the zoning administrator if in compliance with all of the following requirements:
 - (a) There is no other safe, feasible access to the river without a stairway.
 - (b) The stairway is low-profile, not more than 4 feet wide and constructed without stairs being recessed into the ground surface unless site and soil conditions dictate that a recessed stairway is more appropriate.
 - (c) There are no landings associated with the stairway unless required by building codes, in which case the landings shall be of the minimum number and size required by building codes.
 - (d) Not more than 1 handrail is associated with the stairway.
 - (e) Only 1 river access stairway is permitted per parcel.
 - (f) The stairway is constructed using natural materials and is located and maintained to blend with the natural surroundings.
- (11) Construction of new dams is prohibited. Reconstruction of a failed dam is permitted under any of the following conditions:
 - (a) Reconstruction of a dam destroyed by a catastrophic event such as flood may be reconstructed.
 - (b) Reconstruction of a dam that failed due to lack of maintenance or other negligence by the owner or operator is prohibited.
 - (c) Reconstruction of a dam that failed due to a catastrophic event shall comply with construction standards in effect at the time of application for replacement.
 - (d) Application for reconstruction shall be received within 1 year of destruction.
 - (e) A reconstructed dam shall be rebuilt with a height not greater than the original dam height.
 - (f) A bottom discharge and fish passage facilities shall be provided for a reconstructed dam where appropriate.

(g) A request for replacement of a dam destroyed by a catastrophic event shall be handled as a variance request for reconstruction of a destroyed, non-conforming structure.

(12) The maximum percentage of impervious surface permitted on a lot is as follows:

(a) For lots with less than 10,000 square feet of area, not more than 35% of the land surface may be covered by impervious surfaces.

(b) For lots with between 10,000 square feet and 40,000 square feet of area, not more than 25% of the land surface may be covered by impervious surfaces.

(c) For lots with between 40,001 square feet and 80,000 square feet of area, not more than 20% of the land surface may be covered by impervious surfaces.

(d) For lots greater than 80,000 square feet of area, not more than 10% of the land surface may be covered by impervious surfaces.

History: 2004 AACs.

R 281.105 Boundaries; interpretation of boundaries; filing of zoning map.

Rule 5. (1) The boundaries of the Pine river natural river district shall be as described in these rules and as depicted on the certified Pine river natural river zoning map. The Pine river natural river zoning district comprises an area that is described as follows:

(a) The Pine river mainstream, from the confluence of the North Branch Pine river and the East Branch Pine river in section 29 of Burdell Twp., T20N, R10W to M-55.

(b) The North Branch Pine river from its easternmost crossing of the north line of section 20 of Clam Lake Twp., T21N, R9W to its confluence with the East Branch of the Pine river. Lands adjacent to the North Branch from its confluence with Spalding Creek to its confluence with the East Branch are subject to mainstream development standards.

(c) Spalding Creek from 46 Road (the south line of section 16 of Cherry Grove Twp., T21N, R10W) to its confluence with the North Branch of the Pine river.

(d) Fairchild Creek from its source in section 24 of Henderson Twp., T21N, R11W to its confluence with the North Branch of the Pine river.

(e) Sixteen Creek from its source in section 2 of Burdell Twp., T20N, R10W to its confluence with the North Branch of the Pine river.

(f) An unnamed stream from the outfall of a dam in section 8 of Burdell Twp., T20N, R10W to its confluence with the Pine river.

(g) The East Branch of the Pine river from the outfall of a lake in section 1 of Burdell Twp., T20N, R10W to its confluence with the North Branch of the Pine river.

(h) The Rose Lake Outlet from its sources at the outfall of Rose Lake in section 3 of Rose Lake Township, T19N, R9W and the outfall of Emery Lake in section 34 of Sherman Twp., T20N, R9W, to its confluence with the East Branch of the Pine river.

(i) Edgett Creek from the west line of section 36 (190th Rd.) in Burdell Twp., T20N, R10W to its confluence with the Rose Lake outlet including both branches of the Diamond Lake outlet from their sources in section 26 of Burdell Twp. to the confluence with Edgett Creek.

(j) An unnamed stream from its source in section 20 of Sherman Twp., T20N, R9W to its confluence with the Rose Lake outlet.

(k) Sprague Creek from the outfall of a pond in the center of section 33 of Burdell Twp., T20N, R10W to its confluence with the Pine river.

(l) Beaver Creek from the north/south centerline of section 11 of LeRoy Twp., T19N, R10W to its confluence with the Pine river.

(m) Little Beaver Creek from the outlet of a large pond in the northeast 1/4 of section 19 of LeRoy Twp., T19N, R10W to its confluence with Beaver Creek.

(n) An unnamed stream from the outfall of the southernmost of two ponds in section 14 of Ellsworth Twp., T19N, R11W to its confluence with the Pine river.

(o) Coe Creek from the outfall of Lake Olga in section 1 of Dover Twp., T20N, R11W to its confluence with the Pine river.

(p) Dyer Creek from the outfall of a small pond in section 13 of Dover Twp., T20N, R11W to its confluence with Coe Creek.

(q) Sellars Creek from its source in section 21 of Dover Twp., T20N, R11W to its confluence with the Pine river.

(r) An unnamed stream from its source in section 20 of Dover Twp., T20N, R11W to its confluence with the Pine river.

(s) An unnamed stream from its source in section 19 of Dover Twp., T20N, R11W to its confluence with the Pine river.

(t) An unnamed stream from its source in section 24 of Newkirk Twp., T20N, R12W to its confluence with the Pine river.

(u) Silver Creek from its source in section 15 of Dover Twp., T20N, R11W to its confluence with the Pine river, including all perennial tributaries from their sources to their confluence with Silver Creek.

(v) An unnamed stream from its source in section 13 of Newkirk Twp., T20N, R12W to its confluence with the Pine river.

(w) An unnamed stream from its source in section 11 of Newkirk Twp., T20N, R12W to its confluence with the Pine river.

(x) An unnamed stream from its source in section 7 of Dover Twp., T20N, R11W to its confluence with the Pine river.

(y) An unnamed stream from its source in section 1 of Newkirk Twp., T20N, R12W to its confluence with the Pine river.

(z) Poplar Creek from its source in section 26 of Henderson Twp., T21N, R11W to its confluence with the Pine river.

(aa) Dowling Creek from its 2 sources in sections 21 and 28 of Henderson Twp., T21N, R11W to its confluence with Poplar Creek.

(bb) Hoxey Creek from its source in section 25 of South Branch Twp., T21N, R12W to its confluence with the Pine river.

(cc) An unnamed Creek from its sources in section 27 and 34 of South Branch Twp., T21N, R12W to its confluence with the Pine river.

(dd) Yates Creek from its source in section 22 of South Branch Twp., T21N, R12W to its confluence with the Pine river.

(ee) All lakes, ponds, impoundments or other surface water bodies not traditionally considered rivers, streams or creeks if they are a contiguous part of the stream segments listed in subdivisions (a) to (dd) of this subrule.

(ff) The lands lying within 400 feet of the river's edge that are enumerated in subdivisions (a) to (ee) of this subrule.

(2) If uncertainty exists with respect to the boundaries of the district as shown on the zoning map, then all of the following provisions shall apply:

(a) Boundaries that are indicated as approximately following the centerline of streets or highways shall be construed to follow the centerline.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following the lot lines.

(c) Boundaries that are indicated as approximately following city, village, township, or county boundaries lines shall be construed as following the city, village, township, or county boundary lines.

(d) Boundaries that are indicated as following railroad lines shall be construed to be midway between the right-of-way lines.

(e) Boundaries that are indicated as following shorelines shall be construed to follow the shorelines, and, in the event of change in the shorelines, shall be construed as moving with the actual shorelines. Boundaries that are indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow the centerline.

(f) Boundaries that are indicated as parallel to or extensions of features indicated in subdivisions (a) to (e) of this subrule shall be so construed. Distances that are not specifically indicated on the official zoning map shall be determined by the scale of the map.

(g) If physical or natural features that exist on the ground are at variance with those shown on the official zoning map or in other circumstances are not covered by the provisions of subdivisions (a) to (f) of this subrule, then the zoning review board shall interpret the district boundaries.

(h) If a portion or all of the district is indicated on the zoning map by a pattern which, for the sake of map clarity, does not cover public rights-of-way, then the district boundaries extend to the center of any public right-of-way.

(3) Certified copies of the Pine river natural river zoning map shall be filed with all of the following entities:

- (a) The state tax commission.
- (b) Local tax assessing officers.
- (c) Township and county clerks.
- (d) County drain commissioners.
- (e) Local building department.
- (f) The natural rivers unit of the Michigan department of natural resources.

History: 2004 AACCS.

R 281.106 Zoning permits; site plans; certificates of zoning compliance.

Rule 6. (1) A building or other structure shall not be erected, moved, added to, or structurally altered, and a land use shall not be commenced, without a zoning permit as specified by these rules and as issued by the zoning administrator. Permits shall not be required for exempt activities as specified in R 281.107. Plans that are submitted when applying for a zoning permit shall contain the necessary information for determining compliance with these rules.

(2) Concurrent with applying for a zoning permit, an applicant shall submit a site plan of the proposed development. The site plan shall include the entire area that is proposed for development. The zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, may require adjustments in the site plan as a condition for approval to ensure that the proposed development meets all standards contained in these rules. Except as otherwise waived by the zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, a site plan shall show and include all of the following, either existing or proposed:

- (a) A site plan drawn to scale, with the scale indicated.
- (b) Property dimensions, including river frontage.
- (c) Size, shape, use, and location of existing and proposed buildings or improvements, including distances to adjacent property boundaries and the river's edge.
- (d) Existing vegetation, including the location and type.
- (e) Adjacent streets and highways.
- (f) Parking areas.
- (g) Cross section drawing showing height of buildings above water level and bluff heights.
- (h) Entrances to public streets.
- (i) Description of the building design, including proposed construction materials.
- (j) Drainage facilities.
- (k) Location and description of the method to dispose of sanitary wastes.
- (l) Proposed landscaping.
- (m) Location of footpaths.
- (n) Signs proposed, including the size, location, and material.
- (o) North arrow.
- (p) Date of drawing.
- (q) Detailed site location map.
- (r) Any additional information required the zoning administrator or zoning review board to carry out the administrator's or board's duties. Examples of such information include the following:
 - (i) Soil types.
 - (ii) Topography.
 - (iii) Building elevations.
 - (iv) Site photographs.
 - (v) Anticipated traffic volumes.
 - (vi) Traffic circulation patterns.
 - (vii) Other pertinent site information.

(3) A building, structure, or lot for which a zoning permit has been issued shall not be occupied, and a use for which a zoning permit has been issued shall not commence, until the zoning administrator has, after final inspection, issued a certificate of zoning compliance that certifies compliance with these

rules. However, the issuance of a certificate of compliance shall not be construed as waiving any provision of these rules. A building that is an accessory to a dwelling shall not require a separate certificate of zoning compliance, but may be included in the certificate of zoning compliance for the dwelling if shown on the site plan and if completed at the same time as the dwelling. A record of all certificates that are issued shall be kept on file in the office of the zoning administrator. Certificates of zoning compliance are for the purposes of these rules and shall not be interpreted as substitutes for certificates of occupancy that are required by local building codes or local zoning permits.

History: 2004 AACS.

R 281.107 Land use and development standards.

Rule 7. (1) Land uses within the natural river district are classified as exempt, principal, or special uses and are described as follows:

(a) Exempt uses are uses which are permitted by right and which are not subject to the receipt of a zoning permit. Exempt uses include all of the following:

(i) Private, noncommercial recreation which does not involve permanent structures, equipment, or other devices, but which includes camping, boating, fishing, hunting, and other similar activities.

(ii) Reforestation and other accepted forest management practices that do not involve permanent structures and that are landward of the native vegetation buffer.

(iii) Agricultural activities, such as plowing, disking and planting of crops, including general and specialized farming such as Christmas tree farms, provided that all new activities occur landward of the native vegetation buffer and provided such uses will not significantly contribute to stream degradation. Construction of any residential and farm-related structures and appurtenances are classified as principal uses (see subrule

(2) of this rule) and are subject to zoning permit requirements. New aquaculture facilities and concentrated animal feeding operations, and expansion of existing aquaculture facilities and concentrated animal feeding operations, are not permitted within the Natural River District without a land use variance. Resumption of prior agricultural uses that were located within the native vegetation buffer but have been discontinued, for example, crop fields that are rotated, may resume if 1 of the following criteria is met:

(A) The cessation of use was within 10 years of resumption of use.

(B) The cessation of use was due to implementation of a management plan written prior to adoption of these rules.

(C) The cessation of use was the result of written agreements with a governmental agency or agencies entered into prior to adoption of these rules.

(D) The cessation of use was the result of written agreements with a governmental agency or agencies entered into after adoption of these rules or ordinances implementing this plan, where the term of cessation of use specified in the agreement is for 10 years or less.

(E) The cessation of use was required or imposed by a governmental agency or agencies.

(iv) The operation of licensed motor vehicles on dedicated public roads or private roads that are designed to provide access to a permitted use.

(v) The off-road operation of emergency and public utility maintenance vehicles, and the operation of motorized or non-motorized wheelchairs by persons with disabilities on footpaths, boardwalks, or other designated trails. Other motorized vehicles may not be operated off the road in the native vegetation buffer as specified in R 281.104.

(vi) Cutting of low growing vegetation in the native vegetation buffer to create a private footpath of not more than 4 feet in width leading to a single point on the river's edge. A boardwalk or other above grade walkway is considered a structure and requires a zoning permit.

(vii) Signs, subject to the provisions of R 281.104.

(viii) A replacement residential water supply well, provided the replacement well is not closer to the river's edge than the well it is replacing and is landward of the native vegetation buffer, and the replaced well is properly abandoned.

(ix) Routine maintenance and repairs of principal uses within the existing foundation and structure, subject to R 281.110.

(x) Satellite dishes that are less than 24 inches in diameter and that are not located in the native vegetation buffer.

(b) Principal uses are uses which are allowed by right, but which require the issuance of zoning permits by the zoning administrator. Principal uses include all of the following:

(i) Single-family dwellings, including detached long-term rental dwellings, if all of the following provisions are complied with:

(A) Only 1 dwelling shall be permitted per parcel unless 1 of the following occurs:

(1) The property owner develops a site plan for the parent parcel showing theoretical property lines for individual lots based on Natural River development standards, and locates any additional residences and appurtenances as if the property were divided into those separate lots.

(2) For each single-family dwelling placed in a cluster-type setting so that the requirements in subdivision (b)(i)(A)(1) are not met, a portion of the parent parcel containing square footage, width, depth and buildable area equal to a newly created separate legal parcel as described in R 281.104 will be made subject to a permanent conservation easement or deed restriction that prohibits construction of any structures within that portion of the parcel, or the development rights to a portion of the parent parcel containing square footage, width, depth and buildable area equal to a newly created separate legal lot or parcel as described in R 281.104 will be sold, donated, or otherwise conveyed in perpetuity to a land conservancy, local unit of government, or the state. The agency acquiring the development rights shall agree in writing to refrain from development of the land in perpetuity.

(B) Building setback for lots shall be not less than 150 feet from the ordinary high watermark on the mainstream and the North Branch Pine river from its confluence with Spalding Creek to its confluence with the East Branch Pine river and not less than 100 feet from the ordinary high watermark on all other designated tributaries, except as described in subdivision

(b)(i)(C) of this rule. On the mainstream and the North Branch Pine river from its confluence with Spalding Creek to its confluence with the East Branch Pine river the setback may be decreased 1 foot for every 1-foot rise in bank height to a minimum distance of 100 feet from the ordinary high water mark. The reduction in setback does not apply until the bank height reaches 25 feet, at which point the reduction in setback is 25 feet. On all other tributaries, the setback may be decreased 1 foot for every 1-foot rise in bank height to a minimum distance of 75 feet from the ordinary high water mark. The reduction in setback does not apply until the bank height reaches 15 feet, at which point the reduction in setback is 15 feet. Structures shall be set back not less than 50 feet from the crest of a bluff on the mainstream and the North Branch Pine river from its confluence with Spalding Creek to its confluence with the East Branch Pine river, and not less than 25 feet from the crest of a bluff on all other designated tributaries. Building shall not take place on land that is subject to flooding or in any wetland area. The natural contour of the face and crest of the bluff shall not be altered. The land between the crest of the bluff and the minimum building setback line shall not be altered except for minor landscaping activities.

(C) If a building setback is in an area of concentrated development and a vacant legal nonconforming parcel is between and adjacent to 2 parcels that contain legal single-family dwellings that do not meet the minimum building setbacks, and the adjacent legal non-conforming single-family dwellings are within 300 feet of each other, then the minimum building set back for a new single-family dwelling on the vacant parcel is the distance from the river of the adjacent single-family dwelling that is farthest from the river's edge or the minimum required width of the native vegetation buffer, whichever is greater, provided the single-family dwelling is not placed on lands that are subject to flooding or in any wetland area. All appurtenances and accessory buildings shall meet the minimum required building setback described in subdivision (b)(i)(B). All structures shall be set back not less than 50 feet from the crest of a bluff on the mainstream and not less than 25 feet from the crest of a bluff on designated tributaries. The natural contour of the face and crest of the bluff shall not be altered. The land between the crest of the bluff and the minimum building setback line shall not be altered except for minor landscaping activities.

(ii) Expansion of a legal nonconforming single-family dwelling subject to the provisions of R 281.110(a)(b).

(iii) Accessory buildings and appurtenances that meet requirements of paragraph (i) of this subdivision.

(iv) One private boat dock per parcel, subject to the provisions of R 281.104.

(v) One private river access stairway per parcel, subject to the provisions of R 281.104.

(vi) Utility lines to service private, single-family dwellings.

(vii) Disposal fields, septic tanks, and outhouses if all of the following provisions are complied with:

(A) The septic tank and disposal field meet local health department standards.

(B) The disposal field shall be located not less than 100 feet from the ordinary high watermark and any surface or subsurface drain that discharges into the Pine river or its designated tributaries, and shall not be located within the 100-year floodplain, a wetland area, or the native vegetation buffer.

(C) The septic tank shall be no closer to the river than the dwelling it serves and shall not be located within the 100-year floodplain or a wetland area.

(D) The bottom of the disposal field shall be at least 4 feet above the seasonal high groundwater table.

(E) An outhouse shall be constructed using a watertight waste containment system that allows waste to be pumped and hauled to an appropriate disposal site, shall be located not less than 100 feet from the ordinary high watermark and any surface or subsurface drain that discharges into the Pine river or its designated tributaries, and shall not be located within the 100-year floodplain, a wetland area, or the native vegetation buffer.

(F) Drywells and earth privies are not permitted unless they are authorized by the local health department, are a minimum of 100 feet from the ordinary high water mark, and the bottom of the pit or seepage bed is at least 4 feet above the seasonal high groundwater table.

(G) An innovative on-site treatment system that results in a higher level of treatment than a conventional system may be located not less than 50 feet from the river's edge on designated tributaries, except the North Branch of the Pine river from the confluence with Spalding Creek to the confluence with the East Branch of the Pine river, provided no part of the system is in a wetland or the 100-year floodplain.

(H) Disposal of sludge from any wastewater treatment system is prohibited in the Natural River District.

(viii) Water supply wells serving exempt, principal, or special uses if the well is landward of the native vegetation buffer described in R 281.104.

(iv) Mining and extracting industries, if all land disturbance, structures, and other activities related to the industry are located more than 300 feet from the ordinary high watermark.

(x) Land divisions, if the minimum standards specified in R 281.104 are met. A zoning permit, special use permit or variance will not be granted for any activity on a parcel that is created after the effective date of these rules if the new parcel does not meet R 281.104. No new parcel will be created that would require reaching the only buildable area by constructing a road/stream crossing.

(xi) Home occupations and home-based occupations, subject to R 281.104.

(xii) Land alteration, such as grading, dredging, and filling of the land surface, except within the native vegetation buffer, on the face or crest of a bluff, or in a wetland or floodplain as defined in R 281.101. Draining wetlands is prohibited. Ponds may be constructed if the pond is not constructed in a wetland or the 100-year floodplain, the pond meets the building setback established for the area, spoils are placed in a non-wetland, non-floodplain area landward of the native vegetation buffer, and the pond is not connected to the river by any surface or subsurface drainage system.

(xiii) Bridges, including any structure of any span length designed to provide a pedestrian or vehicle stream crossing, subject to all the following standards:

(A) All existing bridges that are destroyed by any means, whether on a tributary or mainstream segment, may be replaced. On mainstream segments, destroyed pedestrian bridges may not be replaced with vehicle bridges. Destroyed bridges shall be replaced within 18 months of destruction or the replacement bridge shall be considered to be a new bridge and shall be subject to new bridge standards.

(B) New bridges are not permitted on any parcel that is created after the effective date of these rules.

(C) New bridges of any type are prohibited on mainstream segments.

(D) All replacement bridges on mainstream segments shall span the bankfull channel, have a minimum clearance of 5 feet between the ordinary high water mark and "low steel" (the bottom of the bridge deck and/or deck supports other than abutments), and be a structure with a natural bottom, for example, pipe, box or arch culverts are not permitted.

(E) New pedestrian bridges are permitted on all tributaries provided the lands connected by a new bridge were, at the time of adoption of these rules, and continue to be, collectively owned by 1 person.

(F) New bridges linking properties in separate ownership shall not be permitted except in areas where construction of such a bridge to access a permitted building site will result in less resource damage than construction of another type of permitted access. The exception shall only apply to lots that were created before the effective date of these rules.

(G) Only 1 bridge is permitted to access a portion of land that is otherwise inaccessible from the owner's contiguous property.

(H) Permanent new bridges on tributaries shall span the bankfull channel and be a structure with a natural bottom, for example, pipe, box, or arch culverts are not permitted, and, in the case of

pedestrian bridges, be constructed such that use by any motorized vehicles, including dirt bikes and ATVs are excluded.

(I) Permanent bridges replacing bridges that have natural bottoms on tributaries shall span the bankfull channel and be a structure with a natural bottom, for example, pipe, box or arch culverts are not permitted, and in the case of pedestrian bridges, be constructed such that use by any motorized vehicles, including dirt bikes and ATVs are excluded.

(J) Permanent bridges replacing bridges without natural bottoms on tributaries must span the bankfull channel, and, in the case of pedestrian bridges, be constructed such that use by any motorized vehicles, including dirt bikes and ATVs are excluded.

(K) Temporary vehicle bridges on tributaries for the purpose of access for timber harvest may be permitted provided they are constructed in a manner that minimizes disruption of the stream and are removed immediately after harvesting activities. Disturbed areas in the native vegetation buffer shall be revegetated, any fill placed shall be removed, and the land shall be returned to its original grade as soon as possible after removal of the bridge. Proper erosion/sedimentation control methods shall be used during placement and use of the bridge.

(L) New permanent vehicle bridges on tributaries may be allowed upon receipt of a special use permit.

(xiv) Forest management activities within the native vegetation buffer, subject to the provisions of R 281.104.

(xv) Boardwalks that meet the setback requirements of subrule (2)(C) of this rule and boardwalks associated with a footpath to the river's edge subject to of R 281.104(6).

(c) The Pine river natural river plan and these rules recognize that certain types of residential, recreational, and commercial uses may be appropriate for the natural river district that have not been identified under the exempt and principal uses provisions of this rule. To ensure that such uses do not contravene the goals and objectives of the Pine river natural river plan and these rules, such uses shall be referred to as special uses and shall be subject to the review and approval of the zoning review board. Special uses and their development standards include all of the following:

(i) Detached rental cabins, if all of the following provisions are complied with:

(A) The number of cabins permitted shall be based on the rate of 1 cabin per 200 feet of frontage. Clustering of rental cabins is permitted and encouraged; however, there shall not be more than 1 cabin per 200 feet of river frontage. For each cabin placed in a cluster-type setting, a portion of the parent parcel containing square footage, width, depth, and buildable area equal to a newly created separate legal parcel as described R 281.104 shall be made subject to a permanent conservation easement or deed restriction that prohibits construction of any structures within that portion of the parcel, or the development rights to a portion of the parent parcel containing square footage, width, depth, and buildable area equal to a newly created separate legal lot or parcel as described in R 281.104 will be sold, donated or otherwise conveyed in perpetuity to a land conservancy, local unit of government, or the state. The agency acquiring the development rights shall agree in writing to refrain from development of the land in perpetuity.

(B) The size of each cabin shall not exceed 900 square feet and 1 story in height. The cabin shall not contain sleeping accommodations for more than 8 people.

(C) Each cabin shall be set back a minimum of 200 feet from the ordinary high watermark. All associated buildings and structures shall be located outside of the Natural River District.

(D) Temporary recreational facilities, including tents, camper trailers, and recreational vehicles shall be located outside of the Natural River District.

(E) Each cabin shall be a minimum of 75 feet from the property line of adjacent riverfront properties.

(F) Establishment of vegetative buffers along side or back lot lines may be required for rental cabins that are adjacent to existing residential uses. Buffers shall consist of plant material that is indigenous to the area in a strip at least 20 feet wide composed of deciduous trees interspersed with coniferous trees to be spaced not more than 10 feet apart. Deciduous trees shall be a minimum of 8 feet in height and coniferous trees a minimum of 5 feet in height at the time of planting. The buffer shall also include dense shrubs placed not less than 5 feet apart having a minimum of 3 feet in height when planted. The entire buffer shall be maintained in at least as healthy a condition as when planted.

(G) Docks may be constructed for the private use of occupants of the rental cabins. Permanent and seasonal docks shall comply with the general standards for docks and all of the following provisions:

(1) Docks shall be not larger than 48 square feet, with not more than 4 feet of the dock extending into the water.

(2) Docks may be constructed at the rate of 1 dock per 1000 feet of frontage. If the property in question contains less than 1000 feet of frontage, 1 dock will be permitted

(3) Docks shall be constructed of natural materials that blend with the natural surroundings.

(4) Access to a dock or docks shall be along a single designated footpath not more than 4 feet wide to minimize disruption of the native vegetation buffer.

(5) Any steps or stairs necessary on the stream bank to access the dock shall be constructed without cutting into the ground surface, unless site and soil conditions indicate that a recessed stairway will better meet the goals and objectives of designation.

(ii) Campgrounds, including those with provisions for tents, travel trailers, campers, and motor homes, with associated noncommercial buildings, impervious pads, and utility hookups, if all of the following provisions are complied with:

(A) Campgrounds shall be constructed and maintained in accordance with all applicable state regulations.

(B) Commercial buildings associated with the campground are prohibited in the Natural River District.

(C) All permanent structures shall be at least 200 feet from the river's edge.

(D) Campsites are permitted at a density of not more than 4 sites per acre of land that is located in the Natural River District and landward of the native vegetation buffer.

(E) A 100 foot-wide native vegetation buffer along the river shall be maintained.

(F) Campsites that accommodate wheeled motor vehicles shall be at least 200 feet from the river's edge.

(G) Walk-in campsites shall be landward of the native vegetation buffer.

(H) Docks may be constructed at the rate of 1 dock not larger than 48 square feet for each 200 feet of river frontage, accessed by a single footpath not more than 4 feet wide.

(I) No motorized vehicle access to the river is permitted.

(J) Launching or retrieval of commercial watercraft, other than by registered campers on-site, is prohibited at any newly developed campground.

(iii) Permanent vehicle bridges on tributaries subject to the provisions of R 281.107.

History: 2004 AACCS.

R 281.108 Application and approval; procedures and standards; principal uses and special uses.

Rule 8. (1) An application for a principal use shall be submitted and processed pursuant to all the following procedures:

(a) An application for a principal use shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information:

(i) A completed application form that is signed by the applicant or the applicant's representative.

(ii) A site plan that meets the requirements of R 281.106.

(iii) Evidence of ownership or a legal interest in the property that is affected by the application for a principal use.

(b) Within 21 days of receipt of an application for a principal use, the zoning administrator shall notify the applicant of the need for additional information.

(c) Within 30 days of receipt of a completed application, the zoning administrator shall issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(d) Concurrent with the issuance of a zoning permit, an applicant shall receive a copy of the approved site plan.

(e) Before commencing construction of a principal use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

(f) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of not more than 6 months if conditions pertaining to the issuance of the original permit remain unchanged. An application for an extension shall be made before the permit expires. Any subsequent extensions for a variance approval shall have the written approval of the zoning review board.

(2) An application for a special use permit shall be submitted and processed pursuant to the following procedures:

(a) An application for a special use permit shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information and attachments:

(i) A completed application form that is signed by the applicant or the applicant's representative.

(ii) Eight copies of a site plan that meet the requirements of R 281.106.

(iii) Evidence of ownership or a legal interest in the property that is affected by the application for a special use.

(iv) A list of all property owners, together with their addresses, who are located within 300 feet of the applicant's property that is being considered for a special use.

(b) The application, together with the required attachments, shall be submitted not less than 30 days before the meeting of the zoning review board at which the application is to be considered.

(c) The zoning review board shall conduct at least 1 public hearing and shall require all of the following notifications of such hearing to be made not less than 5, nor more than 15, days before consideration of the special use application:

(i) One notice shall be published in a newspaper that circulates in the township in which the proposal is located.

(ii) Notice shall be sent by first-class mail or personal delivery to the owners of property for which approval is being considered and to all persons who are identified in subdivision (a)(iv) of this subrule.

(iii) Notice shall also be sent to all of the following entities:

(A) The natural rivers unit of the Michigan department of natural resources.

(B) Local tax assessing officials.

(C) Township and county clerks.

(D) Local building inspectors.

(E) State, district, or county health department, when applicable.

(d) In considering a special use application, the zoning review board shall require that all of the following general standards, in addition to those specific standards established for each special use in R 281.107, are satisfied:

(i) That the purposes specified in R 281.102 are accomplished.

(ii) That a compelling reason exists to locate the proposed use within the district boundaries if contiguous property under the same ownership is available outside the district.

(iii) That the proposed use in combination with other existing uses will not be a detriment to the public health, safety, and welfare.

(e) The zoning review board may impose conditions deemed necessary to accomplish the general and specific standards applicable to the proposed use.

(f) The concurring vote of at least 4 of the 7 voting members of the zoning review board shall be required to approve a special use.

(g) A special use that is granted by the zoning review board shall be valid for 1 year from the date of approval. If construction has not, in the opinion of the zoning review board, commenced and proceeded meaningfully at the end of the 1-year period, then the zoning administrator shall notify the applicant, in writing, of the expiration of the special use approval.

(h) If the zoning review board determines that the applicant has failed to comply with any of the requirements of these rules or the approved special use permit, then the board, after a public hearing held in accordance with the provisions of subdivision (c) of this subrule, may revoke any special use approval.

(i) An application for a special use that has been denied by the zoning review board shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, the application is significantly different in scope from the application that was denied or new and significant facts and conditions exist which might result in favorable action upon resubmission.

(j) Concurrent with the issuance of a special use permit, an applicant shall receive a copy of the approved site plan, with conditions, if any.

(k) Before commencing construction of a special use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

History: 2004 AACs.

R 281.109 Variances and variance hearings.

Rule 9. (1) A dimensional variance from any standard established in these rules may be granted by the zoning review board after a public hearing or, in certain instances, by the zoning administrator as provided in subrule (3) of this rule to allow a modification from a standard that establishes an area, yard, height, floor space, frontage, setback, or similar numerical restriction, but only after substantive evidence establishes that there are practical difficulties in complying with these rules. A variance shall be permitted only when it is consistent with the general purposes and intent of these rules.

(2) The zoning review board or zoning administrator shall consider all of the following factors in determining if there are practical difficulties in complying with these rules as specified in subrule (1) of this rule:

- (a) How substantial the variance is in relation to the zoning requirements.
- (b) Whether a substantial change will be effected in the character of the area or a substantial detriment created for adjoining properties.
- (c) Whether the difficulty can be overcome by some feasible method other than a variance.
- (d) Whether, in view of the manner in which the difficulty arose, the interests of justice will be served by allowing the variance.
- (e) Whether the plight of the landowner is due to circumstances which are unique to his or her property and which are not created by the landowner.
- (f) Whether the variance may result in a material adverse effect on the environment.

(3) For the purposes of these rules, the required hearing and review of a variance request by the zoning review board shall be waived for certain minor dimensional variances of principal uses, including legal nonconforming uses. Such variances shall be handled by the zoning administrator, who shall consider the provisions of subrule (2) of this rule in making a determination. The zoning administrator shall prepare a written finding of fact that details the reasons for approval or denial of the minor variance request. Minor variances are defined as reductions in setbacks for uses on any lawful lot that are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures, including decks, porches, and steps.

(4) A land use variance is a land or building use in contravention of any of the use requirements of these rules. The zoning review board may, after a public hearing, grant a variance upon a finding of unnecessary hardship, which may be found upon substantial evidence being submitted that all of the following factors exist:

- (a) The property cannot be used in a manner that is consistent with existing zoning.
- (b) The hardship results from the application of these rules to the applicant's property.
- (c) The hardship of which the applicant complains is suffered by his or her property directly and is not shared by others.

- (d) The hardship is not the result of the applicant's own actions.
- (e) The hardship is peculiar to the applicant's own property.

(5) In determining whether reasonable use may be made of the property as zoned, a reasonable economic return may be considered, but only if the applicant is in compliance with the provisions of subrules (1) to (4) of this rule. Whether any weight shall be given to the economic return factor shall be dependent on a determination that the owner has been deprived of all beneficial use of his or her property under existing zoning.

(6) For a land use variance, the zoning review board shall, after finding that unnecessary hardship exists, also find that, based on adequate evidence, the proposed use meets all of the following conditions:

- (a) The use will be consistent with and in accordance with the general objectives of the Pine river natural river plan.
- (b) The use will be designed, constructed, operated, and maintained consistent with and appropriate in appearance with the existing or intended character of the natural river district and the use will not change the essential character of the natural river district.
- (c) The use will be adequately served by existing essential public facilities and services, such as highways, police and fire protection, drainage structures, refuse disposal, and sanitation facilities, or the persons or agencies that are responsible for the establishment of the proposed use may adequately provide essential services.

(d) The use will not involve uses, activities, processes, materials and equipment, and conditions of operation that will be detrimental to any persons, property, or the environmental quality of the district because of the excessive production of noise, smoke, fumes, glare, or odors or require the outdoor storage of raw materials or discarded materials produced in the use processes.

(e) The use will be consistent with the intent and purposes of these rules.

(f) The use or the structures to be used will not cause an overcrowding of the land or an undue concentration of population that may result in degradation to the river and district.

(g) The use plot area is sufficient, appropriate, and adequate for the use and the reasonable anticipated operation and expansion thereof.

(7) Upon receipt of an application for a variance, the zoning review board shall conduct a hearing on the request, except as provided for in subrule (3) of this rule. The hearing and notice procedure shall follow the procedure established for special use applications by R 281.108. A decision shall be made within 30 days after the final hearing to approve or deny the variance request. The zoning review board shall keep complete and detailed records of all its proceedings, which shall include the minutes of its meetings, findings, and actions taken on each matter heard by it, including the final order. Reasons for the decision shall be in writing. The board shall record the vote of each member on each question. If a member is absent or fails to vote, the board shall indicate such fact. All records shall be open for public inspection. The concurring vote of at least 4 of the 7 voting members of the zoning review board is required to effect a dimensional variance in these rules. The concurring vote of at least 5 of the 7 voting members of the zoning review board is required to grant a land use variance in these rules. If the required concurring vote for approval of a variance is not achieved, the variance is denied.

(8) The zoning review board shall not issue a land use variance when the district allows the use as a special use.

(9) A variance shall create a nonconforming land use, lot, or structure that is subject to the provisions of R 281.110 which regulates continued use.

(10) The zoning review board or the zoning administrator may impose conditions on an applicant before granting a variance. Such conditions shall be in writing. The zoning permit issued for the project for which the variance was approved is not valid until the applicant accepts the conditions in writing.

(11) An application for a variance that has been denied by the zoning review board or zoning administrator shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, the application is significantly different in scope from the application that was denied or new and significant facts and conditions exist which might result in favorable action upon resubmission.

History: 2004 AACS.

R 281.110 Nonconforming uses, lots, and structures.

Rule 10. (1) It is recognized that there exists, within the natural river district, lots, structures, and uses of land and structures which were lawful before these rules were promulgated or amended and which would be prohibited, regulated, or restricted pursuant to the terms of these rules. Legal nonconforming uses, structures, or lots shall continue until they are brought into conformity and, in certain instances, permit the limited expansion of certain legal nonconforming uses and structures.

(2) If the combination of 2 or more contiguous nonconforming vacant lots owned by the same person results in an increase in conformance with the dimensional requirements of these rules, then the lots shall be combined for use, unless the lots are within a plat established before the adoption of these rules wherein more than 50% of the platted lots contain a single-family dwelling.

(3) An application for a zoning permit for a principal use on a legal nonconforming lot of record shall be approved by the zoning administrator if both of the following provisions are complied with:

(a) The principal use complies with these rules, except the minimum lot width and area requirements.

(b) The applicant or owner of the subject lot does not own other contiguous properties when, if combined with the nonconforming lot, would result in increasing the conformity of the lot.

(4) An application for a zoning permit for a principal use on a legal nonconforming lot of record that is not in compliance with subrule (3)(a) and

(b) of this rule shall be treated as a variance pursuant to R 281.109.

(5) Where, on the effective date of these rules, a lawful use of land exists that is made unlawful pursuant to these rules the use may be continued if it remains otherwise lawful, subject to all of the following provisions:

(a) The nonconforming use shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date of these rules without a land use variance. Enlarging, increasing or extending a lawful, nonconforming use shall be treated as a variance pursuant to R 281.109.

(b) The nonconforming use and the structures associated with the nonconforming use shall not be moved, in whole or in part, to any other portion of the lot or parcel that is occupied by such use on the effective date of these rules unless the move would result in a greater degree of conformity with these rules.

(c) If the nonconforming use of land ceases for any reason for a period of 12 months, any subsequent use of the land shall conform to the requirements specified by these rules.

(6) Where a lawful structure exists on the effective date of these rules that is made unlawful pursuant to these rules, the structure may be continued if it remains lawful, subject to all of the following provisions:

(a) The structure may not be expanded or altered in a way that increases its nonconformity, such as expanding toward the river's edge or increasing the height above the maximum height standard. However, the ground floor area, for example, "footprint," of any legal nonconforming single-family dwelling may be increased by up to 50% (or up to 75% if the expansion requires a minor variance) of the existing enclosed ground floor living area cumulative from the date of nonconformance, or to the minimum extent necessary to comply with local standards for minimum legal floor area for dwellings, whichever is greater, through alterations, repairs, and additions, if the increase does not increase the nonconformity of the dwelling. Any alteration of a legal nonconforming dwelling must, to the extent possible, be in compliance with all setback and other building requirements. Any expansion of a lawful, nonconforming dwelling, including addition of additional stories, shall be treated as a variance pursuant to R 281.109 unless it meets the criteria in (10)(6)(b) of this rule.

(b) Expansion of a nonconforming single-family dwelling may be permitted by the zoning administrator, without the need for a variance, if either of the following applies:

(i) Part of the expansion is located within the native vegetation buffer, expansion of the dwelling is to the landward side of the existing structure and is less than a 50% increase in enclosed ground floor living area and the height of the expansion is not greater than the height of the original dwelling, and the expansion is not located in a wetland or the 100-year floodplain.

(ii) The expansion is located completely outside the native vegetation buffer, expansion of the dwelling is not closer to the river than the closest point of the existing dwelling and is less than a 50% increase in enclosed ground floor living area and the height of the expansion is not greater than the height of the original dwelling, and the expansion is not located in a wetland or the 100-year floodplain.

(c) If any legal nonconforming structure is destroyed by any means, except willful destruction by the property owner or his or her agent, to an extent that is more than 50% of twice its assessed evaluation, then restoration of the structure may be permitted by the zoning administrator, without the need for a variance, if all of the following conditions exist:

(i) The structure is not located on land subject to flooding (the 100-year floodplain).

(ii) The presence of the nonconforming structure will not lead to accelerated bank erosion or other material degradation of the river resource and the construction of the structure is approved by the local soil erosion and sedimentation control enforcement agency.

(iii) The restored structure occupies the same enclosed ground floor area, for example, "footprint," and contains the same square footage as the original structure.

(iv) Application for permission to restore a damaged structure is made within 12 months of the time of damage. An extension may be granted if the property is held in probate, an insurance settlement related to the damage is in dispute or a criminal investigation related to the damage is in progress.

(v) If any of the provisions of subdivision (c)(i) to (iv) of this subrule cannot be met, restoration of a destroyed legal nonconforming structure shall require a variance.

(d) If a structure is willfully destroyed by the property owner or his or her agent to an extent that is more than 50% of twice its assessed evaluation, the property owner shall meet the building setback requirement to the greatest extent possible when constructing any new or replacement structure.

(e) If a variance is granted for a new single-family dwelling to replace a single-family dwelling, the new dwelling shall not occupy more than 150% of the enclosed ground floor area of the destroyed dwelling, except that if a minor variance is granted for a new single-family dwelling to replace a single-family

dwelling, the new dwelling shall not occupy more than 175% of the enclosed ground floor area of the destroyed dwelling.

(f) A variance shall not be granted for a new nonconforming structure to replace a destroyed nonconforming structure that would result in the new structure being more nonconforming than the destroyed structure.

(g) The nonconforming structure shall not be moved, in whole or in part, to any other portion of the lot or parcel that is occupied by the structure on the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules. Moving a legal nonconforming structure requires a zoning permit and may require a variance.

History: 2004 AACs.

R 281.111 Zoning administrator and zoning review board; appointment; duties.

Rule 11. (1) The director shall appoint a zoning administrator and zoning review board to act as his or her agents to enforce these rules.

(2) The zoning administrator shall do all of the following:

(a) Provide necessary forms and applications and receive and process applications.

(b) Determine and verify zoning compliance when the applicant's plans are found to conform to these rules.

(c) Conduct site inspections to ensure compliance with these rules.

(d) Pursue resolution of violations of the provisions of these rules.

(e) Issue any authorized permits and certificates of zoning compliance.

(f) Identify and record information relative to nonconformities.

(g) Maintain files of applications, permits, and other relevant documents.

(h) Schedule meetings and hearings for, and provide assistance to, the zoning review board.

(i) Act on minor variances as permitted by provisions of R 281.109.

(3) The zoning review board shall do all of the following:

(a) Adopt rules of procedure that govern the transaction of its business.

(b) Act upon requests for special use permits.

(c) Act on certain dimensional and land use variances pursuant to R 281.109.

(d) Act on the interpretation of the official zoning map pursuant R 281.105.

(4) In establishing the zoning review board, the director shall cooperate with, and seek the advice of, all of the following entities:

a) Affected townships and counties.

b) Conservation districts.

c) Property owners' associations.

d) Other interested local organizations and citizens.

(5) The director shall request that each affected township appoint 1 person to represent its interests on matters within its jurisdiction. The director shall request that each affected county appoint 2 persons to represent its interests on matters within its jurisdiction. One of the 2 persons shall be a county official who works in planning, zoning, public health, soil erosion and sedimentation control, or a related field. The director shall request that each affected conservation district appoint 1 person to represent its interests on matters within its jurisdiction. County, township, and conservation district representatives who are appointed pursuant to this rule shall vote only on those matters within their respective jurisdictions. If affected townships, counties, or conservation districts do not appoint an individual to represent them within 60 days from the request by the director, the director may make appointments on his or her own motion. The director shall appoint 1 local DNR representative and 2 citizens representatives who shall vote on all matters before the board.

(6) In accordance with subrule (5) of this rule, the director shall request that each governmental unit and organization that appoints regular members to the zoning review board also appoint 1 alternate member to represent the governmental unit or organization. The director shall appoint alternates for the local DNR representative and 2 citizens representatives. The alternate member may be called to sit as a regular member in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in

which the regular member has abstained for reasons of conflict of interest. An alternate member who is appointed shall serve in the case until a final decision has been made. An alternate member shall have the same voting rights as a regular member of the zoning review board.

(7) The zoning review board shall hold at least 1 meeting annually for such purposes as adopting or amending rules of procedure, establishing officers, educational purposes, or to conduct any manner of business as provided for by these rules.

History: 2004 AACS.

R 281.112 Appeals; contested cases.

Rule 12. An aggrieved party who contests the decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of 1969 PA 306, MCL 24.201 et seq. and R299.3071 to R 299.3081.

History: 2004 AACS.

R 281.113 Violations; effect; remedies.

Rule 13. (1) After the effective date of these rules, a building or structure or land shall not be used or occupied, and a building or structure or part thereof shall not be erected, constructed, reconstructed, moved, or structurally altered, unless the building, structure, or land is in compliance with these rules. A permit or variance shall not be approved, and action shall not be taken, if approval of the permit or variance or the action taken violates these rules. The director shall not waive any of his or her rights or remedies against any person who violates these rules if the violations were committed in reliance on an authorization erroneously given in violation of any provision of these rules. Any authorized permit, variance, or action that is contrary to these rules is invalid from the date of the authorization.

(2) In addition to all other remedies, the director may institute appropriate action or proceedings to prevent, restrain, correct, or abate rule violations or threatened violations.

History: 2004 AACS.

R 281.114 Boundaries and permitted uses; changes, amendments, and supplements; precedence of local zoning ordinance over rules.

Rule 14. (1) The director may make changes, amendments, and supplements to boundaries and permitted uses requested by a local unit of government or by a landowner following a hearing held pursuant to the provisions of sections 71 to 87 of 1969 PA 306, MCL 24.271 to 24.287, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.102.

(2) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following entities:

- a) The county register of deeds.
- b) Township and county clerks.
- c) The local building inspector.
- d) Local soil erosion and sedimentation control enforcement agencies.
- e) The conservation district.
- f) County drain commissioner.
- g) Zoning review board members.

(3) A local zoning ordinance that meets all of the requirements of Natural Rivers Part 305 of 1994 PA 451, and either 1943 PA 184, MCL 125.271, or 1943 PA 183, MCL 125.101, whichever is applicable, shall take precedence over these rules. If a local zoning ordinance does not meet all of the requirements of Natural Rivers Part 305 of 1994 PA 451, or if the local ordinance becomes inapplicable to the land area encompassed by the Pine river natural river district through court action or for any other

reason, these rules shall apply. A local unit of government may, at any time, request the assistance of the department of natural resources in developing an ordinance that meets the requirements of Natural Rivers Part 305 of 1994 PA 451. The director shall determine if a local ordinance meets all of the requirements of Natural Rivers Part 305 of 1994 PA 451, and shall notify the local unit of government of his or her decision in writing. If the director withdraws his or her approval of a local zoning ordinance, these rules shall apply.

History: 2004 AACCS.

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

BETSIE RIVER NATURAL RIVER ZONING

(By authority conferred on the natural resources commission by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.131 Definitions.

Rule 1. As used in these rules:

(a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit for a principal use, special use, or variance.

(b) "Appurtenance" or "accessory building" means a structure that is incidental to a dwelling, including all of the following:

(i) Garages.

(ii) Residential storage structures.

(iii) Barns and other agricultural storage or livestock structures.

(iv) Pump houses.

(v) Wells.

(vi) Private access roads.

(vii) Sanitary facilities.

(viii) Electrical service lines.

(c) "Bluff" means a steep bank which rises sharply from the river's edge.

(d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.

(e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.

(f) "Certificate of zoning compliance" means a standard form which is issued by the zoning administrator upon a determination that the construction and use of land and buildings and structures as provided for by a zoning permit, including the site plan, have been completed and are in compliance with the permit and site plan.

(g) "Commission" means the natural resources commission.

(h) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.

(i) "Director" means the director of the department of natural resources.

(j) "Family" means either of the following:

(i) An individual or group of 2 or more persons who are related by blood, marriage, or adoption and who, together with foster children, servants of the principal occupants, and not more than 2 additional unrelated persons, are domiciled together as a single, domestic, housekeeping unit in a dwelling unit.

(ii) A collective number of individuals who are domiciled together in 1 dwelling unit, whose relationship is of a continuing nontransient domestic character, and who are cooking and living as a single, nonprofit, housekeeping unit. Any society, club, fraternity, sorority, association, lodge, organization, or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature shall not be considered a family as defined by these rules.

(k) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen development from the river, to provide for streambank stabilization and erosion control, to serve as an aid to the infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.

(l) "Floodplain" means land lying within an identified or documented 100-year floodplain line. Also see subdivision (q) of this rule.

(m) "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge a 100-year flood.

(n) "Front" means that segment of a lot or parcel abutting the river's edge of the main stream or tributary.

(o) "Front yard" means setback as provided for in R 281.137(b)(i)(D).

(p) "Home occupation" means a gainful occupation that is traditionally and historically carried on in the home as a use which is clearly incidental and secondary to the use of the home as a dwelling place.

(q) "Land that is subject to flooding" means that area of land adjoining the designated portions of a river and its tributaries which will be inundated by a flood which has a 1% chance of occurring or being exceeded in any given year as determined by detailed hydraulic studies that are acceptable to the Michigan department of natural resources or which, in the absence of such detailed floodplain studies, has a history of flooding or is delineated by approximate methods, such as United States geological survey flood-prone area maps or the federal emergency management agency's special flood hazard boundary maps.

(r) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.

(s) "Lot area" means the area inside the lot lines.

(t) "Lot, interior" means a lot of record which is located in the natural river district, but which does not have frontage on the river or its designated tributaries.

(u) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules or a lot or parcel which is described by metes and bounds and which has been recorded at the office of the county register of deeds before the effective date of these rules.

(v) "Natural river district" means the Betsie river natural river district as described in the provisions of R 281.135.

(w) "Ordinary high watermark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

(x) "Rear yard" means that yard opposite the front yard.

(y) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.

(z) "River's edge" means the ordinary high watermark as used in the provisions of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (w) of this rule.

(aa) "Setback" means the required horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.

(bb) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.

(cc) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.

(dd) "Structure" means anything which is constructed, erected, or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas and other communication structures, fences, and mobile homes. Temporary recreational facilities, including tents, camper trailers, and recreation vehicles, are not considered structures if they are used less than 30 days per year and if they are located landward of the natural vegetation strip or if the facilities are located on a campsite within a campground that is licensed under the provisions of Act No. 368 of the Public Acts of 1978, as amended, being S333.1101 et seq. of the Michigan Compiled Laws, if both the individual campsite and the campground were established before the effective date of these rules.

(ee) "Zoning administrator" means the administrator of these rules who is appointed by the commission.

(ff) "Zoning permit" means a standard form which is issued by the zoning administrator when it is determined that the proposed construction of buildings and structures and the proposed use of land and buildings and structures thereon are in compliance with all of the provisions of these rules.

(gg) "Zoning review board" means a group of not less than 3, nor more than 7, people which includes not less than 2 local representatives and 1 department of natural resources representative who is familiar with the local area and which is appointed by the commission to act upon requests as provided for by these rules.

History: 1992 AACS.

R 281.132 Purpose; intent; scope.

Rule 2. (1) The commission, on its own motion, to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the Betsie river, a designated natural river, promulgates these zoning rules for the following purposes:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to misuse, unwise development patterns, overcrowding, and overuse within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish, aquatic and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Betsie river and adjoining land.

(c) To prevent flood damage due to interference with the natural floodplain characteristics by excluding developments which are vulnerable to flood damage and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures that are proposed for location on lands which are unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

(f) To achieve the goals and objectives of the Betsie river natural river plan.

(2) It is the general intent of these rules to define terms used and to regulate and restrict lot coverage and use, population distribution and density, and the size and location of all structures by the delineation of permitted uses and development standards so as to promote the purposes identified in this rule. It is further intended to provide for the administration and enforcement of these rules and to provide penalties for their violation.

(3) It is not the intent of these rules to revoke, annul, cancel, or in any way impair or interfere with existing provisions of law, ordinances, or any rules, regulations, or premises or with any private restrictions placed upon property by covenant or deed. However, where such provisions of law are less restrictive than the provisions of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and the rules promulgated thereunder, the provisions of Act No. 231 of the Public Acts of 1970, and the rules promulgated thereunder shall apply.

History: 1992 AACS.

R 281.133 Construction of language; severability.

Rule 3. (1) All of the following rules of construction apply to the text of these rules:

- (a) The particular shall control over the general.
- (b) In the case of any difference of meaning or implication between the text of these rules and any caption or illustration, the text shall control.
- (c) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
- (d) Words used in the present tense shall include the future. Words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- (e) A "building" or "structure" includes any part thereof.
- (f) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."
- (g) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
- (h) Unless the context clearly indicates the contrary, where a regulation involves 2 or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either ... or," the conjunction shall be interpreted as follows:
 - (i) "And" indicates that all of the connected items, conditions, or provisions shall apply.
 - (ii) "Or" indicates that the connected items, conditions, provisions, or events may apply singularly or in any combination.
 - (iii) "Either ... or" indicates that the connected items, conditions, provisions, or events shall apply singularly, but not in combination.
- (i) Terms not defined in these rules shall have the meanings customarily assigned to them.
- (2) In any case in which the provisions of these rules are declared by the courts to be unconstitutional or invalid, such ruling shall not affect the validity of the remaining provisions of these rules and to this end the provisions of these rules are declared to be severable.

History: 1992 AACCS.

R 281.134 Lot size and area; subdivision of land; home occupations; natural vegetation strip; signs; docks; height of structures.

Rule 4. (1) Unless otherwise provided for within these rules, any lot or parcel of property created after the effective date of these rules, or amendments thereto, shall have a minimum area of 50,000 square feet and a minimum average width of 200 feet throughout the length of the lot or parcel. The average lot width shall be based on the average of the combined widths of the front and rear lot lines.

(2) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrules (3) and (4) of this rule.

(3) Proposed lots which have preliminary plat approval pursuant to the provisions of Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on their effective date, shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.139.

(4) Lots of record which are created before the effective date of these rules, or amendments thereto, and which do not possess sufficient land area or lot width may be used for the purposes described within these rules, subject to the requirements provided for in R 281.139.

(5) Home occupations shall conform to both of the following requirements:

(a) The use of the dwelling unit, or related structure, for the home occupation shall be clearly incidental and subordinate to its use for residential purposes. The home occupation shall not occupy more than 30% of the aboveground floor area of the dwelling unit. This requirement shall apply whether the home occupation is contained wholly within the dwelling unit or utilizes a garage.

(b) Equipment or a process shall not be used in a home occupation that is conducted in a single-family dwelling unit or its associated garage if it creates noise, vibration, glare, fumes, odors, or electrical interference that is detectable to the normal senses off the premises and shall not be used in a home occupation that is conducted in other than a single-family dwelling unit or an associated garage if it creates noise, vibration, glare, fumes, odors, or electrical interference that is detectable to the normal senses outside the dwelling unit.

(6) Within the natural river district, not less than a 50-foot restrictive cutting belt shall be maintained on each side of the main stream of the Betsie river and its designated tributaries. Trees and shrubs may be pruned for a filtered view of the river, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to all of the following provisions:

(a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy and poison sumac, may be removed.

(b) The selected removal or trimming of trees for timber harvest, access or woodlot improvements, landscaping, or public utility lines to service private single-family dwellings and other permitted uses is permitted upon approval of the zoning administrator.

(c) Camping is not permitted in the natural vegetation strip.

(7) Signs shall not be visible from the river, except:

(a) "No Trespassing" signs if the signs are not more than 1 square foot in area and are spaced a minimum of 100 feet apart.

(b) One identification sign of rustic design, associated with a canoe livery, campground or rental cabins, which is not more than 6 square feet in area. The sign shall be for the purpose of identification of a designated watercraft landing site and shall be located at the designated landing site.

(c) Signs posted by public agencies to provide for public safety such as warning of impending dangers in the river, or to identify a public access site or campground. Such signs may need to be larger than 6 square feet in area to accomplish their designated purpose. Signs which identify a public access site or campground shall be of rustic design.

(8) Private boat docks shall be in compliance with all of the following requirements:

(a) Docks shall not be more than 4 feet in width and not more than 20 feet in length, with not more than 4 feet of the dock extending over the edge of the river.

(b) Docks shall be designed, constructed, and maintained to blend with the natural surroundings. The use of natural, native materials is encouraged.

(c) Unless provided for within these rules, only 1 dock shall be constructed per lot.

(9) Unless otherwise provided for within these rules, a structure shall not be more than 2 1/2 stories in height, not including a basement.

History: 1992 AACCS.

R 281.135 Boundaries; interpretation of boundaries; filing of zoning map.

Rule 5. (1) The boundaries of the Betsie river natural river district shall be as described in these rules and as depicted on the certified Betsie river natural river zoning map. The Betsie river natural river zoning district comprises an area which is described as follows:

(a) The Betsie river from Grass lake dam in section 2, T25N, R13W, in Benzie county to its mouth at Betsie lake in section 35, T26N, R16W, including Thompsonville pond.

(b) The Little Betsie river from its headwaters in section 24, T25N, R13W, in Benzie county to its confluence with the Betsie river in section 25, T25N, R14W.

(c) Dair creek from its headwaters in section 15, T25N, R14W, in Benzie county to its confluence with the Betsie river in section 19, T25N, R14W.

(d) The lands lying within 400 feet of the river's edge which are enumerated in subdivisions (a) to (c) of this subrule.

(2) Where uncertainty exists with respect to the boundaries of the district as shown on the zoning map, all of the following provisions shall apply:

(a) Boundaries that are indicated as approximately following the centerline of streets or highways shall be construed to follow the centerline.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following the lot lines.

(c) Boundaries that are indicated as approximately following city, village, township, or county boundary lines shall be construed as following the city, village, township, or county boundary lines.

(d) Boundaries that are indicated as following railroad lines shall be construed to be midway between the right-of-way lines.

(e) Boundaries that are indicated as following shorelines shall be construed to follow the shorelines, and, in the event of change in the shorelines, shall be construed as moving with the actual

shorelines. Boundaries that are indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow the centerline.

(f) Boundaries that are indicated as parallel to or extensions of features specified in subdivisions (a) to (e) of this subrule shall be so construed. Distances that are not specifically indicated on the official zoning map shall be determined by the scale of the map.

(g) Where physical or natural features that exist on the ground are at variance with those shown on the official zoning map or in other circumstances are not covered by the provisions of subdivisions (a) to (f) of this subrule, the zoning review board shall interpret the district boundaries.

(h) Insofar as a portion or all of the district may be indicated on the zoning map by a pattern which, for the sake of map clarity, does not cover public rights-of-way, it is intended that the district boundaries do extend to the center of any public right-of-way.

(3) Certified copies of the Betsie river natural river zoning map shall be filed with all of the following entities:

- (a) The state tax commission.
- (b) Local tax assessing officers.
- (c) Township and county clerks.
- (d) The natural rivers unit of the Michigan department of natural resources.

History: 1992 AACs.

R 281.136 Zoning permits; site plans; certificates of zoning compliance.

Rule 6. (1) A building or other structure shall not be erected, moved, added to, or structurally altered, and a land use shall not be commenced, without a zoning permit as specified by these rules and as issued by the zoning administrator. Permits shall not be required for exempt activities as specified in R 281.137(1). Plans that are submitted when applying for a zoning permit shall contain the necessary information for determining compliance with these rules.

(2) Concurrent with applying for a zoning permit, an applicant shall submit a site plan of the proposed development. The site plan shall include the entire area that is proposed for development. The zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, shall have the authority to require adjustments in the site plan as a condition for approval to ensure that the proposed development meets all standards contained in these rules. Except as otherwise waived by the zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, a site plan shall show and include all of the following, either existing or proposed:

- (a) A site plan drawn to scale, with the scale indicated.
- (b) Property dimensions.
- (c) The size, shape, use, and location of existing and proposed buildings or improvements, including distances to adjacent property boundaries and the river's edge.
- (d) Existing vegetation, including the location and type.
- (e) Adjacent streets and highways.
- (f) Parking areas.
- (g) Bluff heights.
- (h) Entrances to public streets.
- (i) A description of the building design, including proposed construction materials.
- (j) Drainage facilities.
- (k) The location and description of the method to dispose of sanitary wastes.
- (l) Proposed landscaping.
- (m) The location of footpaths.
- (n) Signs proposed, including the size, location, and material.
- (o) North arrow.
- (p) Date of drawing.
- (q) Detailed site location map.
- (r) Any additional information deemed by the zoning administrator or zoning review board to be necessary to carry out the administrator's or board's duties. Examples of such information include the following:

- (i) Soil types.
- (ii) Topography.
- (iii) Building elevations.
- (iv) Site photographs.
- (v) Anticipated traffic volumes.
- (vi) Traffic circulation patterns.
- (vii) Other pertinent site information.

(3) A building, structure, or lot for which a zoning permit has been issued shall not be occupied, and a use for which a zoning permit has been issued shall not commence, until the zoning administrator has, after final inspection, issued a certificate of zoning compliance indicating compliance with all of the provisions of these rules. However, the issuance of a certificate of compliance shall not be construed as waiving any provision of these rules. A building that is accessory to a dwelling shall not require a separate certificate of zoning compliance, but may be included in the certificate of zoning compliance for the dwelling if shown on the site plan and if completed at the same time as the dwelling. A record of all certificates that are issued shall be kept on file in the office of the zoning administrator. Certificates of zoning compliance are for the purposes of these rules and shall not be interpreted as substitutes for certificates of occupancy that are required by local building codes.

History: 1992 AACCS.

R 281.137 Land use and development standards.

Rule 7. Land uses within the natural river district are classified as exempt, principal, or special uses and are described as follows:

(a) Exempt uses are uses which are permitted by right and which are not subject to the receipt of a zoning permit. Exempt uses include all of the following:

- (i) Private, noncommercial recreation which does not involve permanent structures, equipment, or other devices, but which includes camping, boating, fishing, hunting, and other similar activities.
- (ii) Reforestation and other accepted forest management practices, subject to the limitations specified in R 281.134(6)(b).

(iii) Agriculture, including general and specialized farming, unless the bureau of environmental protection of the Michigan department of natural resources determines that such use will significantly contribute to stream degradation.

(iv) The operation of licensed motor vehicles on dedicated public roads or private roads that are designed to provide access to a permitted use.

(v) The off-road operation of emergency and public utility maintenance vehicles. The off-road operation of other motorized vehicles is prohibited in the natural vegetation strip as specified in R 281.134(6).

(vi) Private footpaths that are constructed by the landowner of natural materials to facilitate access to permitted uses.

(vii) Signs, subject to the provisions of R 281.134(7).

(b) Principal uses are uses which are allowed by right, but which require the issuance of zoning permits by the zoning administrator. Principal uses include all of the following:

(i) Single-family dwellings, if all of the following provisions are complied with:

(A) Only 1 dwelling shall be permitted per lot of record.

(B) Each lot shall be not less than 50,000 square feet.

(C) The dwelling lot shall have a minimum average width of 200 feet throughout its length.

(D) Building setback for lots, including all appurtenances and accessory buildings, shall be not less than 200 feet from the ordinary high watermark on the main stream and 100 feet on the Little Betsie river and Dair creek. The setback may be decreased 5 feet for every 1 foot of rise in bank height above 5 feet above the ordinary high watermark, to a minimum of 150 feet from the ordinary high watermark on the main stream. Buildings and appurtenances shall be set back not less than 25 feet from the top of a bluff on the noncutting edge of a stream and not less than 50 feet from the top of a bluff on the cutting edge of a stream. Building shall not take place on land that is subject to flooding.

(ii) Accessory buildings that meet the setback requirements of paragraph (i) of this subdivision.

- (iii) A private boat dock.
- (iv) Utility lines to service private, single-family dwellings.
- (v) Disposal fields and septic tanks, if all of the following provisions are complied with:
 - (A) The fields and tanks shall be located not less than 150 feet from the ordinary high watermark.
 - (B) A septic tank or absorption field shall not be located closer than 100 feet to any surface or subsurface drainage system that enters into the Betsie river or its designated tributaries.
 - (C) The bottom of the pit associated with an earth privy shall not be less than 4 feet above the known high groundwater table.
- (vi) Mining and extracting industries, if located not less than 300 feet from the ordinary high watermark.
- (vii) Residential single-family dwelling plats, if the minimum standards specified in paragraph (i) of this subdivision are met.
- (viii) Home occupations.
- (ix) Land alteration, such as grading, dredging, and filling of the land surface, unless the high groundwater table is within 4 feet of the existing natural land surface.
- (c) The Betsie river natural river plan and these rules recognize that certain types of residential, recreational, and commercial uses may be appropriate for the natural river district that have not been identified under the exempt and principal uses provisions of this rule. Such uses may result in intensities of development and use higher than would be anticipated under the exempt and principal uses. To ensure that such uses do not contravene the goals and objectives of the Betsie river natural river plan and these rules such uses shall be referred to as special uses and shall be subject to the review and approval of the zoning review board. Special uses and their development standards include all of the following:
 - (i) Detached rental cabins, if all of the following provisions are complied with:
 - (A) The number of cabins permitted shall be based on the rate of 1 cabin per 200 feet of river frontage. Clustering of rental cabins is encouraged; however, the ratio of 1 cabin per 200 feet of river frontage shall not be exceeded.
 - (B) Each cabin and all associated buildings, structures, or other related devices shall be set back a minimum 200 feet from the ordinary high watermark.
 - (C) Fences and greenbelts may be required by the zoning review board for rental cabins that are adjacent to existing residential uses. Fencing shall be constructed of natural material. Greenbelts shall consist of plant material that is indigenous to the area or as approved by the zoning review board.
 - (D) Boat docks may be erected for the private use of occupants of the rental cabins and their guests. Docks shall be in compliance with the requirements of R 281.134 and both of the following provisions:
 - (1) Docks may be constructed at the rate of 1 dock for each permitted rental cabin.
 - (2) Access to a dock or docks shall be along a single designated footpath to minimize disruption of the natural vegetation strip.
 - (ii) Campgrounds, including tents, travel trailers, campers, and motor homes, with associated noncommercial buildings, cement pads, and utility hookups, if all of the following provisions are complied with:
 - (A) Campgrounds shall be constructed and maintained in accordance with all applicable state regulations.
 - (B) A commercial enterprise shall not be permitted to operate in the campground within the natural river district, except that a convenience goods shopping building that is not more than 1,500 square feet may be provided. The building shall not be more than 1 story in height.
 - (C) Each site and all associated buildings, structures, and other related devices shall be set back a minimum of 200 feet from the ordinary high watermark.
 - (D) Fences and greenbelts may be required by the zoning review board for campgrounds that are adjacent to existing residential uses. Fencing shall be constructed of natural material. Greenbelts shall consist of plant material that is indigenous to the area or as approved by the zoning review board.
 - (E) A camping site shall not have more than 4 sites per acre. Clustering of campsites is encouraged; however, the ratio of 4 sites per acre shall not be exceeded.
 - (F) Boat docks may be erected for the private use of the occupants of the campsites and their guests if both of the following provisions are complied with:
 - (1) The total number of docks shall not be more than 1 dock for each 200 feet of river frontage.

(2) Access to the dock or docks shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

(iii) Canoe, boat, and other watercraft liveries, if all of the following provisions are complied with:

(A) Parked vehicles and off-season canoe and boat storage areas shall not be visible from the river.

(B) Boat docks may be erected at the ratio of 1 dock per 200 feet of river frontage.

(C) Other than the rental of watercraft, other commercial enterprises shall not be permitted to operate.

(D) A rental office which is associated with the operation of the livery and which does not have more than 225 square feet may be constructed. The building shall not be more than 1 story in height.

(E) Access to the dock or docks or place of river entry from the canoe or boat rental office shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

History: 1992 AACCS.

R 281.138 Application and approval; procedures and standards; principal uses and special uses.

Rule 8. (1) An application for a principal use shall be submitted and processed under the following procedures:

(a) An application for a principal use shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information:

(i) A completed application form that is signed by the applicant or the applicant's representative.

(ii) Two copies of a site plan that meets the requirements of R 281.136(2).

(iii) Evidence of ownership or a legal interest in the property that is affected by the application for a principal use.

(b) Within 15 days of receipt of an application for a principal use, the zoning administrator shall notify the applicant of the need for additional information.

(c) Within 30 days of receipt of a completed application, the zoning administrator shall issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(d) Concurrent with the issuance of a zoning permit, an applicant shall receive a copy of the approved site plan.

(e) Before commencing construction of a principal use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

(f) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of not more than 6 months if conditions pertaining to the issuance of the original permit remain unchanged. Application for an extension shall be made before permit expiration. Any subsequent extensions shall have the written approval of the zoning review board.

(2) An application for a special use permit shall be submitted and processed under the following procedures:

(a) An application for a special use permit shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information and attachments:

(i) A completed application form that is signed by the applicant or the applicant's representative.

(ii) Eight copies of a site plan that meets the requirements of R 281.136(2).

(iii) Evidence of ownership or a legal interest in the property that is affected by the application for a special use.

(iv) A list of all property owners, together with their addresses, who are located within 300 feet of the applicant's property which is being considered for a special use.

(b) The application, together with the required attachments, shall be submitted not less than 30 days before the meeting of the zoning review board at which the application is to be considered.

(c) The zoning review board shall conduct at least 1 public hearing and shall require all of the following notifications of such hearing to be made not less than 5, nor more than 15, days before consideration of the special use application:

(i) One notice shall be published in a newspaper that circulates in the township in which the proposal is located.

(ii) Notice shall be sent by first-class mail or personal delivery to the owners of property for which approval is being considered and to all persons who are identified in subdivision (a)(iv) of this subrule.

(iii) Notice shall also be sent to all of the following entities:

(A) The natural rivers unit of the Michigan department of natural resources.

(B) Local tax assessing officials.

(C) Township and county clerks.

(D) Local building inspectors.

(d) In considering a special use application, the zoning review board shall require that all of the following general standards, in addition to those specific standards established for each special use in R 281.137(c), be satisfied:

(i) That the purposes noted in R 281.132 are accomplished.

(ii) That a compelling reason exists to locate the proposed use within the district boundaries if contiguous property under the same ownership is available outside the district.

(iii) That the proposed use in combination with other existing uses will not be a detriment to the public health, safety, and welfare.

(e) The zoning review board may impose conditions deemed necessary to accomplish the general and specific standards applicable to the proposed use.

(f) The concurring vote of a majority of the members of the zoning review board shall be required to approve a special use.

(g) A special use that is granted by the zoning review board shall be valid for 1 year from the date of approval. If construction has not, in the opinion of the zoning review board, commenced and proceeded meaningfully at the end of the 1-year period, the zoning administrator shall notify the applicant, in writing, of the expiration of the special use approval.

(h) If it is determined by the zoning review board that the applicant has failed to comply with any of the requirements of these rules or the approval granted, the board, after a public hearing held in accordance with the provisions of subdivision (c) of this subrule, may revoke any special use approval.

(i) An application for a special use which has been denied by the zoning review board shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, new and significant facts and conditions exist which might result in favorable action upon resubmission.

(j) Concurrent with the issuance of a special use permit, an applicant shall receive a copy of the approved site plan, with conditions, if any.

(k) Before commencing construction of a special use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

History: 1992 AACCS.

R 281.139 Variances and variance hearings.

Rule 9. (1) A dimensional variance from any standard established in these rules may be granted by the zoning review board after a public hearing or in certain instances by the zoning administrator as provided in subrule (3) of this rule to allow a modification of a standard that establishes an area, yard, height, floor space, frontage, setback, or similar numerical restriction, but only after substantive evidence establishes that there are practical difficulties in carrying out the strict letter of these rules. A variance shall be permitted only when it is consistent with the general purposes and intent of these rules.

(2) The zoning review board or zoning administrator shall consider all of the following factors in determining if there are practical difficulties in carrying out the strict letter of these rules as specified in subrule (1) of this rule:

(a) How substantial the variance is in relation to the zoning requirements.

(b) Whether a substantial change will be affected in the character of the area or a substantial detriment created for adjoining properties.

(c) Whether the difficulty can be overcome by some feasible method other than a variance.

(d) Whether, in view of the manner in which the difficulty arose, and considering all of the factors specified in subdivisions (a) to (c) of this subrule, the interests of justice will be served by allowing the variance.

(e) Whether the plight of the landowner is due to circumstances which are unique to his or her property and which are not created by the landowner.

(f) Whether the variance may result in a material adverse effect on the environment.

(3) For the purposes of these rules, the required hearing and review of a variance request by the zoning review board shall be waived for certain minor dimensional variances of principal uses, including legal nonconforming uses. Such variances shall be handled by the zoning administrator, who shall consider the provisions of subrule (2) of this rule in making a determination. The zoning administrator shall prepare a written finding of fact that details the reasons for approval or denial of the minor variance request. Minor variances include the variances specified in the following provisions:

(a) Reductions in setbacks for uses on lawful lots that are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures and any portion thereof, including additions, porches, and steps.

(b) Reductions in setbacks for uses on lawful nonconforming lots, including lots within subdivisions, that are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures and any portion thereof, including additions, porches, and steps. Conditions may be imposed on an applicant before granting a variance. Such conditions shall be in writing and signed by the applicant before the applicant receives a variance.

(4) A land use variance is a land or building use in contravention of any of the use requirements of these rules. The zoning review board may, after a public hearing, grant a variance upon a finding of unnecessary hardship, which may be found upon substantial evidence being submitted that all of the following factors exist:

(a) The property cannot be used in a manner that is consistent with existing zoning.

(b) The hardship results from the application of these rules to the applicant's property.

(c) The hardship of which the applicant complains is suffered by his or her property directly and is not shared by others.

(d) The hardship is not the result of the applicant's own actions.

(e) The hardship is peculiar to the applicant's own property.

(5) In determining whether reasonable use may be made of the property as zoned, a reasonable economic return may be a factor which could be considered, but only if the applicant is in compliance with the provisions of subrules (1) to (4) of this rule. Whether any weight shall be given to the economic return factor shall be dependent on a determination that the owner has been deprived of all beneficial use of his or her property under existing zoning.

(6) The zoning review board shall, after finding that unnecessary hardship exists, also find that, based on adequate evidence, the proposed use meets all of the following conditions:

(a) The use will be consistent with and in accordance with the general objectives of the Betsie river natural river plan.

(b) The use will be designed, constructed, operated, and maintained so as to be consistent with and appropriate in appearance with the existing or intended character of the natural river district and that such use will not change the essential character of the natural river district.

(c) The use will be adequately served by existing essential public facilities and services, such as highways, police and fire protection, drainage structures, refuse disposal, and sanitation facilities, or that the persons or agencies that are responsible for the establishment of the proposed use shall be able to adequately provide any such service.

(d) The use will not involve uses, activities, processes, materials and equipment, and conditions of operation that will be detrimental to any persons, property, or the environmental quality of the district because of the excessive production of noise, smoke, fumes, glare, or odors or require the outdoor storage of raw materials or discarded materials produced in the use processes.

(e) The use will be consistent with the intent and purposes of these rules.

(f) The use or the structures to be used therefor will not cause an overcrowding of the land or an undue concentration of population that will result in degradation to the river and district.

(g) The use plot area is sufficient, appropriate, and adequate for the use and the reasonable anticipated operation and expansion thereof.

(7) Upon receipt of an application for a variance, the zoning review board shall conduct a hearing on the request, except as provided for in subrule (3) of this rule. The hearing and notice procedure shall follow that established for special use applications by the provisions of R 281.138(2)(c). A decision shall be made within 30 days after the hearing to approve or deny the variance request. The zoning review board shall keep complete and detailed records of all its proceedings, which shall include the minutes of its meetings, its findings, and actions taken on each matter heard by it, including the final order. The order shall include the legal description of the property involved. Reasons for the decision shall be stated in writing. The board shall record the vote of each member on each question. If a member is absent or fails to vote, the board shall indicate such fact. All records shall be open for public inspection. The concurring vote of a majority of the members of the zoning review board shall be necessary to effect a dimensional variance in these rules, except that a concurring vote of 2/3 of the members of the board of appeals shall be necessary to grant a land use variance permitted in these rules.

(8) The zoning review board shall not issue a land use variance when the district allows the use as a special use.

(9) The effect of any variance shall be to create a nonconforming land use or structure which shall then be subject to the terms of R 281.140, which regulates continued use.

History: 1992 AACCS.

R 281.140 Nonconforming uses, lots, and structures.

Rule 10. (1) It is recognized that there exists, within the natural river district, lots, structures, and uses of land and structures which were lawful before these rules were promulgated or amended and which would be prohibited, regulated, or restricted under the terms of these rules or future amendments. It is the intent of these rules to permit legal nonconforming uses, structures, or lots to continue until they are brought into conformity and, in certain instances, to permit the limited expansion of certain legal nonconforming uses and structures.

(2) A nonconforming (substandard) lot shall be in compliance with the minimum requirements of the dimensional requirements of these rules, except as such substandard nonconforming lot may be used pursuant to the provisions of R 281.139.

(3) Where, at the effective date of these rules or amendment of these rules, a lawful use of land exists that is made unlawful under the terms of these rules as promulgated or amended, the use may be continued if it remains otherwise lawful, subject to all of the following provisions:

(a) The nonconforming use shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of these rules or amendment of these rules, except in the case of campgrounds, canoe liveries, and rental cabins which do not meet the standards for special uses specified in R 281.137(c). Such lawful nonconforming uses may be expanded if the increased use meets the standards for special uses specified in R 281.137(c). Expansion of a lawful nonconforming use shall be treated as a variance pursuant to the provisions of R 281.139.

(b) The nonconforming use shall not be moved, in whole or in part, to any other portion of the lot or parcel occupied by such use at the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules.

(c) If the nonconforming use of land ceases for any reason for a period of 12 months, any subsequent use of the land shall conform to the requirements specified by these rules.

(4) Where a lawful structure exists at the effective date of these rules or amendment of these rules that is made unlawful under the terms of these rules as promulgated or amended, the structure may be continued if it remains lawful, subject to all of the following provisions:

(a) The structure shall not be enlarged or altered in a way which increases its nonconformity; however, when a single-family dwelling or a structure associated with a campground, a canoe livery, or rental cabins is classified as nonconforming, alterations, repairs, and additions, including accessory buildings, may be erected if the gross floor area of all such alterations, repairs, and additions, including accessory buildings, is not more than 50% of the gross floor area of the nonconforming structure, cumulative from the date of nonconformance to the date of the request if any enlargement to a lawful nonconforming structure, to the extent possible, is in compliance with all setback and other building requirements. Expansion of a lawful, nonconforming structure shall be treated as a variance pursuant to the provisions of R

281.139.

(b) If the nonconforming structure is destroyed by any means to an extent that is more than 50% of its replacement cost, restoration of the structure shall be treated as a variance pursuant to the provisions of R 281.139. In determining whether the structure has been destroyed to an extent that is more than 50% of its replacement cost, the zoning review board or zoning administrator shall use appraised replacement costs, as determined by a qualified individual who is appointed by the zoning review board or zoning administrator, and shall compare the value of the part destroyed to the value of the total operating unit where there are several structures which are used together by the landowner as a single operating unit. The request for restoration of a nonconforming structure which is destroyed to an extent that is more than 50% of its replacement value shall be approved if all of the following conditions exist:

- (i) The land on which the structure is located is not subject to flooding.
 - (ii) The continued use of a nonconforming structure will not lead to accelerated bank erosion or other material degradation of the river resource, and the construction of the structure is approved by the local soil erosion and sedimentation control enforcement agency.
 - (iii) The continued use conforms with local county health codes and is approved by the local county health department.
 - (iv) The continued use conforms with local building codes and is approved by the local building inspector.
 - (v) Restoration of a damaged structure that is approved by the zoning review board or zoning administrator shall be started within 1 year from the time of damage.
- (c) The nonconforming structure shall not be moved, in whole or in part, to any other portion of the lot or parcel that is occupied by the structure at the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules.

History: 1992 AACCS.

R 281.141 Zoning administrator and zoning review board; appointment; duties.

Rule 11. (1) The commission shall appoint a zoning administrator and zoning review board to act as its agents to enforce these rules.

- (2) The zoning administrator shall do all of the following:
- (a) Provide necessary forms and applications and receive and process applications.
 - (b) Determine and verify zoning compliance when the applicant's plans are found to conform with the provisions of these rules.
 - (c) Conduct site inspections to ensure compliance with these rules.
 - (d) Issue any authorized permits and certificates of zoning compliance.
 - (e) Identify and record information relative to nonconformities.
 - (f) Maintain files of applications, permits, and other relevant documents.
 - (g) Schedule meetings and hearings for, and provide assistance to, the zoning review board.
 - (h) Act on variances as permitted by the provisions of R 281.139(3).
- (3) The zoning review board shall do all of the following:
- (a) Adopt rules of procedure that govern the transaction of its business.
 - (b) Act upon requests for special use permits.
 - (c) Act on certain dimensional and land use variances pursuant to the provisions of R 281.139.
 - (d) Act on the interpretation of the official zoning map pursuant to the provisions of R 281.135(2)(g).
- (4) In establishing the zoning review board, the commission shall cooperate with, and seek the advice of, all of the following entities:
- (a) Affected townships and counties.
 - (b) Soil conservation districts.
 - (c) Property owners' associations.
 - (d) Other interested local organizations and citizens.
- (5) The commission shall request each affected township to appoint 1 person to represent its interest on matters within its jurisdiction. The commission shall request each affected county to appoint 2 persons to represent its interests on matters within its jurisdiction. One of the 2

persons shall be a county official who works in planning, zoning, public health, soil erosion and sedimentation control, or a related field. The commission shall request that each affected soil conservation district appoint 1 person to represent its interest on matters within its jurisdiction. Representatives who are appointed pursuant to this rule shall vote only on those matters within their respective jurisdictions. If affected townships, counties, or soil conservation districts do not appoint someone to represent them within 60 days from the request by the commission, the commission may make appointments on its own motion.

(6) In accord with procedures specified in subrule (5) of this rule, the commission shall request that each governmental unit and organization that appoints regular members to the zoning review board also appoint 1 alternate member to represent the governmental unit or organization. The alternate member may be called to sit as a regular member in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. An alternate member who is appointed shall serve in the case until a final decision has been made. An alternate member shall have the same voting rights as a regular member of the zoning review board.

(7) The zoning review board shall hold at least 1 meeting annually for such purposes as adopting or amending rules of procedure, establishing officers, educational purposes, or to conduct any manner of business as provided for by these rules.

History: 1992 AACS.

R 281.142 Appeals; contested cases.

Rule 12. An aggrieved party who contests the decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1992 AACS.

R 281.143 Violations; effect; remedies.

Rule 13. (1) After the effective date of these rules, a building or structure or land shall not be used or occupied, and a building or structure or part thereof shall not be erected, constructed, reconstructed, moved, or structurally altered, unless the building, structure, or land is in compliance with the provisions of these rules. A permit or variance shall not be approved, and action shall not be taken, if approval of the permit or variance or the action taken violates the provisions of these rules. The commission shall not waive any of its rights or remedies against any person who violates these rules if the violations were committed in reliance on an authorization erroneously given in violation of any provision of these rules. Any authorized permit, variance, or action that is contrary to the provisions of these rules is deemed invalid from the date of the authorization.

(2) In addition to all other remedies, the commission may institute appropriate action or proceedings to prevent, restrain, correct, or abate rule violations or threatened violations.

History: 1992 AACS.

R 281.144 Boundaries and permitted uses; changes, amendments, and supplements; precedence of local zoning ordinance over rules.

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner following a hearing held pursuant to the provisions of sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.132.

(2) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following entities:

- (a) The county register of deeds.
- (b) Township and county clerks.
- (c) The local building inspector.
- (d) Local soil erosion and sedimentation control enforcement agencies.
- (e) The soil conservation district.

(3) Upon approval by the director, a local zoning ordinance that meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, Act No. 184 of the Public Acts of 1943, as amended, being S125.271 et seq. of the Michigan Compiled Laws, or Act No. 183 of the Public Acts of 1943, as amended, being S125.101 et seq. of the Michigan Compiled Laws, whichever is applicable, shall take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Betsie river natural river district through court action or for any other reason, these rules shall apply.

History: 1992 AACCS.

R 281.145 Rescission.

Rule 15. R 281.31 to R 281.41 of the Michigan Administrative Code, appearing on pages 828 to 836 of the 1979 Michigan Administrative Code, are rescinded.

History: 1992 AACCS.

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

HURON RIVER NATURAL RIVER ZONING

(By authority conferred on the commission of natural resources by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.151 Definitions.

Rule 1. As used in these rules:

- (a) "Applicant" means a person who requests on proper forms and pursuant to proper procedures, a zoning permit, special exception permit, or variance.
- (b) "Appurtenance" means a structure that is incidental to a dwelling, including, but not limited to, garages, private access roads, pump houses, wells, sanitary facilities, and electrical service lines.
- (c) "Bluff" means a steep bank which rises sharply from the river's edge.
- (d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.
- (e) "Building permit" means a permit that is issued by the appropriate governmental subdivision, as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.
- (f) "Commission" means the natural resources commission.
- (g) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.
- (h) "Director" means the director of the department of natural resources.
- (i) "Family" means either of the following:

- (i) One or more persons who are related by blood, legal adoption, or marriage and who occupy a single-family dwelling unit with not more than 3 other persons.
- (ii) Not more than 5 unrelated persons who occupy a single-family dwelling unit.
- (j) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen developments from the river, to provide for streambank stabilization and erosion control, to serve as an aid to infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.
- (k) "Front" means that side of a lot abutting the river's edge of the mainstream or tributary.
- (l) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.
- (m) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules, or a lot or parcel described by metes and bounds which has been recorded as required by law.
- (n) "Natural river district" means the Huron river natural river district as described in R 281.153(1).
- (o) "Ordinary high-water mark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.
- (p) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.
- (q) "River's edge" means the ordinary high-water mark as used in Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (o) of this rule.
- (r) "Setback" means the horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.
- (s) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.
- (t) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.
- (u) "Structure" means anything that is constructed, erected, or moved to or from any premise which is located above, on, or below the ground, including, but not limited to, roads, signs, billboards, and mobile homes. Temporary recreational facilities, including, but not limited to, tents, camper trailers, and recreation vehicles are not considered structures when used less than 30 days per year and located landward of the natural vegetation strip.
- (v) "Zoning administrator" means the administrator of these rules who is appointed by the natural resources commission.
- (w) "Zoning permit" means a standard form which is issued by the zoning administrator upon a determination that the proposed construction and use of land and buildings and structures thereon is in compliance with all provisions of these rules.
- (x) "Zoning review board" means a group of not less than 5 nor more than 9 people which includes not less than 3 local representatives and 1 department of natural resources representative and which is appointed by the commission to act upon requests for special exceptions.

History: 1981 AACCS.

R 281.152 Purpose.

Rule 2. The commission, on its own motion, in order to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the Huron river, a designated natural river, promulgates these zoning rules whose purposes are as follows:

- (a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to unwise development patterns within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Huron river and adjoining land.

(c) To prevent flood damage due to interference with natural floodplain characteristics by excluding developments which are vulnerable to flood damages and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for residential and other compatible, permitted uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

History: 1981 AACCS.

R 281.153 Boundaries; rules of construction; display and filing of zoning map; effect of zoning rules.

Rule 3. (1) The boundaries of the Huron river natural river district shall be as described in these rules and as depicted on the certified Huron river natural river zoning map. The Huron river natural river district comprises an area which is described as follows:

(a) The mainstream of the Huron river from Kent lake dam downstream to the western edge of section 32 of Hamburg township, Livingston county, excluding Strawberry, Gallagher, Loon, which is also known as Long or Little Gallagher, and the 2 Whitewood lakes; and from John Flook dam downstream to the Scio-Ann Arbor township line in Washtenaw county, excluding the incorporated village of Dexter.

(b) Davis creek, which is also called the southeast branch of the Huron river, Livingston county, Green Oak township, from the outfall of Sandy Bottom lake to its confluence with the Huron river.

(c) Arms creek, Washtenaw county, Webster township, from the confluence of the 2 branches in section 10 to its confluence with the Huron river.

(d) Mill creek, Washtenaw county, Scio township, from Parker road downstream to the incorporated village limits of Dexter.

(e) The lands lying within 400 feet of the river's edge which are enumerated in subdivisions (a) to (d) of this subrule.

(2) Certified copies of the Huron river natural river zoning map shall be filed with the local tax assessing officers and with the state tax commission, and additional display copies shall be provided to local officials in the Huron river area, including all of the following:

(a) County register of deeds.

(b) Zoning administrator of these rules.

(c) Local planning, zoning, and health officials.

(d) Township and county clerks.

(e) Local building inspector.

(f) Local soil erosion and sedimentation control enforcement agencies.

(g) The soil conservation service.

(h) Huron river watershed council.

(3) These zoning rules do not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions applicable to lands within the natural river district, except that if these rules impose greater restrictions than those found on such easements, covenants, or deeds, the provisions of these rules shall prevail.

(4) These zoning rules do not permit actions prohibited by other statutes or ordinances, including zoning ordinances, which are applicable to the natural river district. Therefore, all of the following provisions apply:

(a) All earth-changing activities, other than normal landscaping or maintenance, that are undertaken within 500 feet of a lake or stream are subject to the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.

(b) All dredge and fill activities and construction of permanent structures lying below the ordinary high-water mark are subject to the provisions of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws.

(c) All development and land uses in the Huron river natural river district are subject to the provisions of appropriate local zoning ordinances, health codes, and building codes, including requirements for permits and approvals.

(5) If uncertainty exists with respect to the boundaries indicated on the Huron river natural river zoning map, all of the following rules shall apply:

(a) Boundaries that are indicated as approximately following streets or highways shall be construed to be the center lines of the streets or highways.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following such lot lines.

(c) Boundaries that are indicated as approximately following city, township, or county boundary lines shall be construed as following such city, township, or county boundary lines.

(d) Boundaries that are indicated as approximately following railroad lines shall be construed to be midway between the main tracks.

(e) Boundaries that are indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance therefrom as indicated on the official Huron river natural river zoning map. If no distance is given, the dimension shall be determined by the use of the scale shown on the official Huron river natural river zoning map.

(f) Boundaries that follow the shoreline of a river, stream, lake, or other body of water shall be construed to follow such shoreline and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline. Boundaries that are indicated as approximately following the thread of streams, canals, or other bodies of water shall be construed to follow such threads.

History: 1981 AACCS.

R 281.154 Zoning permits; application; additional requirements.

Rule 4. (1) A person shall not commence excavation, erection, alteration, or repair on a building or structure, or commence a land use, until a zoning permit has been obtained from the zoning administrator. If the alteration or ordinary maintenance made on a dwelling does not change the character of the structure or land use, and if the total cost does not exceed 5% of the market value of the structure in any 12-month period, the owner of the structure or land is exempt from obtaining a zoning permit, but may be required to obtain a local building permit from the appropriate local building inspector.

(2) A written application for a zoning permit shall be filed with the zoning administrator. All of the following information shall be submitted with an application for a zoning permit:

(a) Two copies of a site plan which give accurate dimensions on either a scale drawing or a rough sketch and which contain all of the following information:

(i) The location on the lot of all existing and proposed structures.

(ii) The existing or intended use of the structure.

(iii) The generalized vegetative cover.

(iv) The lines and dimensions of the lot to be used.

(b) Evidence of ownership of all property that is affected by the coverage of the permit.

(c) Evidence that all required federal, state, county, and township licenses or permits have been acquired, or that applications have been filed for the required licenses or permits.

(d) Other information, as required by the zoning administrator, which is necessary to carry out the intent and provisions of these rules.

(3) One copy of both the plans and the specifications shall be filed and retained by the zoning administrator, and the other copy shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued the zoning permit. To insure that new land uses in the natural river district are in conformance with these rules, before beginning construction or commencing a land use, the applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed. Failure to obtain and display a permit is a violation of these rules.

(4) Within 30 days of receipt of a completed application, the zoning administrator shall render a decision to issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(5) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of time not to exceed 6 months. Any subsequent extensions shall have the written approval of the zoning review board.

History: 1981 AACCS.

R 281.155 Subdivision of land; plats with preliminary approval.

Rule 5. (1) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrule (2) of this rule.

(2) Proposed lots which have preliminary plat approval pursuant to Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on their effective date shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.159.

History: 1981 AACCS.

R 281.156 Permitted uses.

Rule 6. (1) The following uses are permitted by the owner upon the owner's property within the natural river district, subject to the limitations and requirements outlined in these zoning rules, local ordinances, and other applicable statutes:

(a) Private camping and other recreational activities which do not require the installation of permanent structures and which are outside of the natural vegetation strip.

(b) The operation of watercraft, subject to the limitations of local ordinances established under the authority of Act No. 303 of the Public Acts of 1967, as amended, being S281.1001 et seq. of the Michigan Compiled Laws.

(c) Fishing and hunting in compliance with existing laws and rules.

(d) Reforestation and other accepted forest management practices, subject to the limitations outlined in R 281.157.

(e) Normal agricultural activities, if the activities meet the requirements of these rules, and if the bureau of environmental protection of the department of natural resources determines that such activities do not contribute to stream degradation.

(f) The operation of licensed motor vehicles on dedicated public roads or access roads to private single-family dwellings.

(g) Off-road operation of emergency and public utility maintenance vehicles.

(h) Private footpaths that are constructed by the landowner of natural materials to facilitate permitted uses.

(2) The following uses are permitted upon prior approval of the zoning administrator:

(a) One single-family dwelling and appurtenances on a lot not less than 150 front-feet wide, subject to the following limitations:

(i) On the designated portion of the mainstream, new buildings and appurtenances shall be required to set back a minimum of 125 feet from the ordinary high-water mark, except that the setback may be decreased 10 feet for every 10-foot rise in bank height to a minimum of 75 feet from the ordinary high-water mark.

(ii) On the sections of Arms, Davis, and Mill creeks within the natural river zoning district, new buildings and appurtenances shall be required to set back a minimum of 50 feet from the ordinary high-water mark.

(iii) New structures shall be set back not less than 50 feet from the top of the bluff on the cutting edges of the river and tributaries, or 25 feet from the top of the bluff on the noncutting edge of the stream.

(iv) Setback shall be not less than 15 feet from side lot lines and not less than 25 feet from the right-of-way of a public road.

(v) New structures shall not be located on land that is subject to flooding.

(b) Plats, if the minimum setbacks and lot width requirements specified in subdivision (a) of this subrule are met.

(c) Private boat docks that are not more than 6 feet in width or 20 feet in length, with not more than 4 feet of the dock extending over the water, if they are designed, constructed, and maintained with indigenous natural materials, and if a permit is issued under the authority of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws.

(d) Mining and extracting industries which are located more than 300 feet from the ordinary high-water mark, if they are constructed and operated pursuant to applicable local ordinances and state laws and rules.

(e) Utility lines to service private single-family dwellings.

(f) Utility transmission lines on lands or interests in real property which are continuously owned by a utility from January 1, 1971, subject to review and approval by the commission.

(g) Disposal fields and septic tanks which are located not less than 125 feet from the ordinary high-water mark or on lands that are not subject to flooding, whichever distance is greater, and which are in conformance with local county health codes and these rules. In addition, a septic tank or absorption field shall not be closer than 50 feet to any surface or subsurface drainage system emptying into the Huron river or its designated tributaries.

(h) Land alteration, such as grading, dredging, and filling of the land surface, unless the high-groundwater table is within 6 feet of the land surface, if the activities meet all of the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws, and Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and if approval is granted by the local soil erosion and sedimentation control enforcement agency and the department of natural resources.

(i) Signs and outdoor advertising devices shall meet all of the following requirements:

(i) They shall be related to permitted uses.

(ii) For residential uses, signs shall not be larger than 1 square foot in area and shall not be posted more than 1 per 100 feet or 1 sign at the upstream and downstream corner of the 1 lot; however, 1 temporary real estate "for sale" sign which does not exceed 4 square feet in area shall be allowed on a parcel of land.

(iii) For commercial uses, 1 sign per establishment which does not exceed 4 square feet is allowed.

(iv) They shall not be illuminated by a neon light or flashing device.

(v) They shall not be attached to a tree or shrub.

(j) Other uses for which an applicant is granted a permit by the zoning administrator pursuant to R 281.158, R 281.159, and R 281.161.

History: 1981 AACS.

R 281.157 Natural vegetation strip.

Rule 7. Within the natural river district, a 50-foot minimum restrictive cutting belt shall be maintained on each side of the mainstream of the Huron river and on Arms, Davis, and Mill creeks. Trees and shrubs may be pruned for a filtered view of the river upon approval of the zoning administrator or the area forester, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to both of the following provisions:

(a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy, poison sumac, and poison oak, may be removed.

(b) Selected removal or trimming of trees for timber harvest, access or woodlot improvement, landscaping, or public utility lines to service private single-family dwellings is permitted upon approval of the area forester or zoning administrator.

History: 1981 AACS.

R 281.158 Special exception permits.

Rule 8. (1) Special exception permits may be granted to allow a use in the natural river district which is specifically permitted by R 281.156, if implementation of that use does not contravene the purposes of these rules as specified in R 281.152.

(2) Application for a special exception permit shall be made on a form provided by the zoning administrator.

(3) Upon reviewing an application for a special exception permit, the zoning review board, at any time before rendering a decision thereon, shall require the applicant to furnish all of the following information which the zoning review board deems necessary for determining the suitability of the particular site for the proposed use:

- (a) A detailed description of the proposed activity or use.
- (b) A surface view plan which gives accurate dimensions on either a scale drawing or a rough sketch and which shows all of the following:
 - (i) Elevations or contours of the ground, including existing earth fills.
 - (ii) Generalized vegetative cover.
 - (iii) The size, location, and spatial arrangement of all proposed and existing structures on the site.
 - (iv) The location and elevations of streets, access roads, and water supply and sanitary facilities.
- (c) Photographs that show existing land uses and vegetation upstream and downstream from the proposed use.
- (d) Valley cross sections that show the natural stream channel, streambanks, high-water marks, flood marks, if known, and locations of proposed developments.
- (e) All other information which is deemed relevant by the zoning administrator and which is necessary to carry out the intent and provisions of these rules.

(4) Before considering applications, the zoning review board shall give notice, by certified mail, to all of the following:

- (a) Property owners whose property is within 500 feet of the proposed use as shown on the current tax assessment rolls.
- (b) The appropriate local officials and department of natural resources personnel, including all of the following:
 - (i) The township supervisor.
 - (ii) The township building inspector.
 - (iii) The county health officer.
 - (iv) The local soil erosion and sedimentation control enforcement agency.
 - (v) County and township planning and zoning officials.
 - (vi) The soil conservation service.
 - (vii) The regional office and natural rivers section of the department of natural resources.
 - (viii) The Huron river watershed council.

(c) Any other interested parties who request that they be notified of such applications in the natural river district.

(5) In reviewing an application, the zoning review board shall consider all of the following:

- (a) All relevant factors specified in these rules in light of the spirit and intent of the purposes specified in R 281.152.
- (b) The economic effect of the subject property weighed in light of the applicant's entire contiguous holdings and not merely the portion within the natural river district. If the subject portion is the remainder of a larger holding, this fact, together with a description of the title history, shall be included in the hearing evidence.
- (c) Increases in flood levels and flood damages that may be occasioned by the proposed use at the site and upstream and downstream from the site, water quality consequences, and other relevant factors within the terms of these rules.
- (d) The cumulative effect upon the natural river district from the potential development of holdings in a legal position similar to the applicant's, if the applicant's request is approved by the zoning review board.
- (e) Reasonable alternatives that are available to the applicant.

(6) In weighing the applicant's request, consideration of public health, safety, and welfare shall prevail, unless private injury is proven by a preponderance of the evidence to be so great as to override the public interest.

(7) A requested use shall not be granted if the zoning review board determines that the requested use poses a substantial hazard to life or to public or private property rights.

(8) The zoning review board may require public hearings to be held regarding the application. The zoning review board shall decide on an application within 30 days after its receipt, except that if public hearings are held or if additional information is required pursuant to subrule (3) of this rule, the zoning review board shall render a decision within 30 days following the hearings or upon receipt of the last requested item of information.

(9) The zoning review board shall attach such conditions to the granting of a special exception permit as are necessary to further the purposes of these rules.

(10) A special exception use shall adhere strictly to the terms of the special exception permit. A special exception permit that does not adhere strictly to the terms of the permit may be revoked by the zoning administrator.

History: 1981 AACCS.

R 281.159 Substandard lots of record.

Rule 9. (1) The zoning administrator, in compliance with the terms of this subrule, shall grant a permit if, because of either of the following circumstances, a proposed structure cannot be erected on a lot of record or a lot described in a deed or land contract executed and delivered before the effective date of this rule:

(a) The lot is of insufficient width, depth, or area.

(b) Physical limitations exist on an existing lot or parcel.

(2) The zoning administrator shall ensure that all structures are located to best meet the objectives and purposes of these rules, the adopted Huron river natural river plan, and Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws.

(3) The zoning administrator shall determine if a proposed structure on a lot of record or on a lot described in a deed or land contract executed and delivered before the effective date of these rules cannot conform to the standards listed in R 281.156(2)(a) and is, therefore, ineligible for consideration for use under R 281.156.

(4) A written application for a zoning permit on a lot of record shall be filed with the zoning administrator. The same information required in R 281.154(2) shall be submitted with an application.

(5) The zoning administrator shall grant a zoning permit for the use of a substandard lot of record only upon a showing of all of the following:

(a) Granting the permit is not contrary to the public interest.

(b) The permit does not allow the establishment of a use not otherwise permitted by these rules.

(c) The permit applies only to the property under the control of the applicant.

(d) The practical difficulties claimed by the applicant are not the result of actions taken by the applicant.

(e) Granting the permit poses no substantial hazard to life or to public or private property rights, secures public safety, and does substantial justice.

(f) Granting the permit will not result in an increase of flood levels or risk of flood damage to other lands.

(g) The lot shall be developed pursuant to department of natural resources requirements under Act No. 245 of the Public Acts of 1929, as amended, being S323.1 et seq. of the Michigan Compiled Laws.

(h) Use of the lot will not significantly impair existing water quality, vegetative cover, fisheries, or wildlife habitat or increase the risk of erosion.

(i) The substandard lot size shall be the minimum dimensional reduction necessary to achieve a reasonable use of the land, after evaluation of alternative dimensional arrangements and permitted land uses available to the applicant, given the peculiar characteristics of the lot and circumstances surrounding the request. Alternatives shall be examined in light of the applicant's entire contiguous holdings and not merely a single lot or the portion within the natural river area. If dimensional requirements may be more nearly met through lot combination of contiguous holdings, the zoning administrator may so require.

(j) The permit provides that no fill shall be placed within the natural vegetation strip and that the approval of both the appropriate county or district health department and the soil erosion and sedimentation control enforcement agency shall be secured.

(k) The permit provides conditions necessary to insure proper development of the substandard lot pursuant to these rules.

(6) A special exception permit is required if a dimensional reduction of more than 50% of any of the standards listed in R 281.156(2)(a) is necessary to achieve reasonable use of the land. The zoning review board shall base its decision upon the standards set forth in R 281.158(5).

(7) The zoning administrator may confer with, and seek the advice of, the zoning review board, personnel of the Michigan department of natural resources, and other federal, state and local officials to determine the possible effects of, and a suitable location for, a proposed structure.

(8) One copy of the plans, specifications, and the zoning permit, with conditions attached, shall be filed and retained by the zoning administrator, and another copy of each shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued a zoning permit.

(9) The applicant may appeal any decision of the zoning administrator or any conditions attached to a zoning permit to the zoning review board.

History: 1981 AACS.

R 281.160 Nonconforming uses.

Rule 10. (1) The lawful use of any land or structure which is in existence on the effective date of these rules may be continued although the use does not conform to these rules.

(2) Routine or normal repairs and maintenance work required to keep a nonconforming structure or other use, such as a roadway, in sound condition are permitted. Remodeling of nonconforming structures within the confines of the existing foundation and elevations is permitted, if the structure is neither enlarged nor extended nor its use changed.

(3) A special exception permit is required for the restoration of a nonconforming building or structure which is damaged or destroyed by more than 50% of its value due to flood, fire, or other means. In determining whether 50% of the value has been destroyed, the zoning review board shall use appraised replacement costs, as determined by a qualified individual appointed by the zoning review board, and shall compare the value of the part destroyed to the value of the total operating unit where there are several buildings or structures which are used together by the landowner as a single operating unit. A request for a permit to restore a nonconforming building or structure damaged or destroyed by more than 50% of its value shall be approved if all of the following conditions exist:

(a) The land on which the building or structure is situated is not subject to flooding.

(b) The continued use of a nonconforming building or structure will not lead to accelerated bank erosion or other material degradation of the river resource, and the use of the building or structure is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The continued use conforms with local county health codes and is approved by the local county health department.

(d) The continued use conforms with local building codes and is approved by the local building inspector.

(e) Restoration of a damaged building or structure, if approved by the zoning review board, shall be started within 1 year from the time of damage.

(4) A nonconforming use may be changed to a use of a like or similar character if the new use more closely conforms to the rules of the natural river district.

(5) A nonconforming use of any land or structure shall not be enlarged or extended without a special exception permit granted upon consideration of the factors outlined in subrule (3) of this rule. An enlargement or extension of a nonconforming use of up to 50% of the land area or the floor area of a residential structure or public accommodation which provides overnight facilities and which does not exceed 12 units may be approved by the zoning review board if the owner submits to the zoning review board a detailed description of the proposed enlargement or extension, together with a site plan showing the location of all new structures or uses, and if the zoning review board determines that all of the following conditions exist:

(a) The land on which the nonconforming use is situated is not subject to flooding.

(b) The enlargement or extension of the nonconforming use does not lead to accelerated bank erosion or other material degradation of the river resource, and the enlargement or extension is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The enlargement or extended use conforms with local county health codes and is approved by the local county health department.

(d) The enlarged or extended use conforms with local building codes and is approved by the local building inspector.

(e) The enlarged or extended use does not contravene the purposes of these rules as specified in R 281.152.

(6) The substitution of a nonconforming use with another nonconforming use may be made if a special-exception permit is granted, based upon consideration of the factors outlined in subrule (5) of this rule, to ensure that the changed use conforms as closely as possible to the purposes of these rules as specified in R 281.152.

(7) If a nonconforming use is discontinued for 12 consecutive months, any future use at that site shall conform to these rules.

(8) A property owner may request the zoning review board to certify the existence of a prior nonconforming use on the owner's property. Certification of a prior nonconforming use shall be granted if the use meets the criteria of this rule and the common law criteria of nonconforming uses of this state.

History: 1981 AACCS.

R 281.161 Appeals; contested cases.

Rule 11. An aggrieved party who contests a decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1981 AACCS.

R 281.162 Zoning administrator and zoning review board; appointment; duties.

Rule 12. The commission shall appoint a zoning administrator and a zoning review board to act as its agents to enforce these rules. The duties of the zoning review board and zoning administrator include, but are not limited to, all of the following:

(a) Receiving and processing applications for zoning permits, special exception permits, petitions for appeals, requests for changes, amendments, and supplements.

(b) Inspecting sites.

(c) Issuing or denying zoning permits as outlined in these rules.

(d) Assisting with other matters requiring a decision by the commission.

History: 1981 AACCS.

R 281.163 Violations.

Rule 13. (1) An alleged violation shall be inspected by the staff of the department and, if it is found that a violation exists, the department shall order the applicant, in writing, to correct all conditions found to be in violation of these rules.

(2) The owner of a building, structure, or land which violates these rules is subject to the provisions of section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws.

History: 1981 AACCS.

R 281.164 Boundaries and permitted uses; changes, amendments, and supplements.

Rule. 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.152.

(2) A local unit of government or a landowner who requests a change, amendment, or supplement to the boundaries or to permitted uses shall have a hearing held pursuant to sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws.

(3) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following:

- (a) The county register of deeds.
- (b) The zoning administrator of these rules.
- (c) Local planning, zoning and health officials.
- (d) Township and county clerks.
- (e) The local building inspector.
- (f) Local soil erosion and sedimentation control enforcement agencies.
- (g) The soil conservation service.
- (h) Public utility companies which provide service to riverfront property owners affected by these rules.
- (i) Huron river watershed council.

(4) Upon approval by the director, a local zoning ordinance which meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, Act No. 184 of the Public Acts of 1943, as amended, being S125.271 et seq. of the Michigan Compiled Laws, or Act No. 183 of the Public Acts of 1943, as amended, being S125.101 et seq. of the Michigan Compiled Laws, whichever is applicable, shall take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Huron river natural river district through court action or for any other reason, these rules shall apply.

History: 1981 AACCS.

DEPARTMENT OF NATURAL RESOURCES

FISHERIES DIVISION

UPPER MANISTEE RIVER NATURAL RIVER ZONING

(By authority conferred on the director of the department of natural resources by section 30512 of Part 305 of 1994 PA 451, MCL 324.30512, and Executive Reorganization Order No. 1991-22, MCL 299.13.)

R 281.171 Definitions.

Rule 1. As used in these rules:

- (a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit for a principal use, special use, or variance.
- (b) "Appurtenance" or "accessory building" means a structure that is incidental to a dwelling, including all of the following:
 - (i) Garages.
 - (ii) Residential storage sheds.
 - (iii) Barns and other agricultural storage and livestock structures.
 - (iv) Pump houses.
 - (v) Private access roads.
 - (vi) Electrical service lines.

(c) "Bluff" means a bank that rises at a slope of 33 degrees or greater from within 10 feet of the river's edge. The crest of the bluff is the first riverward facing area at least 100 feet wide (approximately parallel to the river) that breaks to a slope of less than 18 degrees for a distance away from the river of at least 25 feet.

(d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer 1972 PA 230, MCL 125.1501 and known as the state construction code act of 1972.

(e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as required by 1972 PA 230, MCL 125.1501

(f) "Certificate of zoning compliance" means a standard form which is issued by the zoning administrator upon a determination that the construction and use of land and buildings and structures as provided for by a zoning permit, including the site plan, have been completed and are in compliance with the permit and site plan.

(g) "Commission" means the natural resources commission.

(h) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.

(i) "Director" means the director of the department of natural resources.

(j) "Enclosed ground floor living area" means the area of the ground covered by a dwelling, including enclosed porches and attached garages, but not including open porches, decks, or patios.

(k) "Family" means either of the following:

(i) An individual or group of 2 or more persons who are related by blood, marriage, or adoption and who, together with foster children, servants of the principal occupants, and not more than 2 additional unrelated persons, are domiciled together as a single, domestic, housekeeping unit in a dwelling unit.

(ii) A collective number of individuals who are domiciled together in 1 dwelling unit, whose relationship is of a continuing non-transient domestic character, and who are cooking and living as a single, nonprofit, housekeeping unit. Any society, club, fraternity, sorority, association, lodge, organization, or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature shall not be considered a family as defined by these rules.

(l) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen development from the river, to provide for streambank stabilization and erosion control, serve as an aid to the infiltration of surface runoff, and provide cover to shade the water.

The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no mowing or removal of trees, shrubs or other vegetation.

(m) "Floodplain" means land lying within an identified or documented 100-year floodplain line. Also see subdivision (t) of this rule.

(n) "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge a 100-year flood.

(o) "Front" means that segment of a lot or parcel closest to or abutting the river's edge of the main stream or tributary.

(p) "Front yard" means setback as provided for in R 281.177.

(q) "Home occupation" means a gainful occupation that is traditionally and historically carried on in the home by residents of the dwelling as a use which is clearly incidental and secondary to the use of the home as a dwelling place.

(r) "Home-based occupation" means a gainful occupation where business is conducted off-site but equipment such as logging trucks or well drilling rigs are stored at the home site.

(s) "Impervious surface" means a surface, including paved and unpaved driveways, decks, rooftops, roads, patios, swimming pools and parking lots that does not allow storm water to infiltrate into the ground.

(t) "Land that is subject to flooding" means that area of land adjoining the designated portions of a river and its tributaries which will be inundated by a flood which has a 1% chance of occurring or being exceeded in any given year as determined by detailed hydraulic studies that are acceptable to the Michigan department of natural resources or which, in the absence of such detailed floodplain studies, has a history of flooding or is delineated by approximate methods, such as United States geological survey flood-prone area maps or the federal emergency management agency's special flood hazard boundary maps.

- (u) "Lot" means a continuous area or acreage of land that can be described for purposes of transfer, sale, lease, rental, or other conveyance.
- (v) "Lot area" means the area inside the lot lines.
- (w) "Lot, interior" means a lot of record which is located in the natural river district, but which does not have frontage on the river or its designated tributaries.
- (x) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules or a lot or parcel which is described by metes and bounds and which has been recorded at the office of the county register of deeds before the effective date of these rules.
- (y) "Lot, vacant" means a lot that does not contain a single family dwelling.
- (z) "Natural river district" means the Upper Manistee river natural river district as described in R 281.175.
- (aa) "Ordinary high watermark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.
- (bb) "Rear yard" means that yard opposite the front yard.
- (cc) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.
- (dd) "River's edge" means the ordinary high watermark as used in Part 301 of 1994 PA 451, and as defined in subdivision (aa) of this rule.
- (ee) "Setback" means the required horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.
- (ff) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains kitchen and bathroom facilities.
- (gg) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Part 91 of 1994 PA 451, MCL 282.101.
- (hh) "Structure" means anything which is constructed, erected, or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas greater than 24 inches in diameter and other communication structures, fences, and mobile homes. Temporary recreational facilities, including tents, camper trailers, and recreation vehicles, are not considered structures if they are on site fewer than 30 days per year and if they are located landward of the native vegetation buffer or if the facilities are located on a campsite within a campground that is licensed pursuant to 1978 PA 368, MCL 333.1101, if both the individual campsite and the campground were established before the effective date of these rules.
- (ii) "Wetland" means land characterized by the presence of hydric soils or water at a frequency and duration sufficient to support wetland vegetation or aquatic life as defined in Part 303 of 1994 PA 451, MCL 282.101.
- (jj) "Zoning administrator" means the administrator of these rules who is appointed by the director.
- (kk) "Zoning permit" means a standard form which is issued by the zoning administrator when it is determined that the proposed construction of buildings and structures and the proposed use of land and buildings and structures thereon are in compliance with these rules.
- (ll) "Zoning review board" means a group of 7 people which is appointed by the director to act upon requests as provided for by these rules.

History: 2004 AACCS.

R 281.172 Purpose; intent; scope.

Rule 2. (1) The director, on his or her own motion, to implement the intent of Natural Rivers Part 305 of 1994 PA 451, and in the absence of local zoning to protect the Upper Manistee river, a designated natural river, promulgates these rules for the following purposes:

- (a) To promote the public health, safety, and general welfare; to prevent economic and ecological damage due to misuse, unwise development patterns, overcrowding, and overuse within the natural river

district; and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish, aquatic and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Upper Manistee river and adjoining land.

(c) To prevent flood damage due to interference with the natural floodplain characteristics by excluding developments which are vulnerable to flood damage and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures that are proposed for location on lands that are unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

(f) To achieve the goals and objectives of the Upper Manistee river natural river plan.

(2) It is the general intent of these rules to define terms used and to regulate and restrict lot coverage and use, population distribution and density, and the size and location of all structures by the delineation of permitted uses and development standards so as to promote the purposes identified in this rule. It is further intended to provide for the administration and enforcement of these rules and to provide penalties for their violation.

(3) It is not the intent of these rules to revoke, annul, cancel, or in any way impair or interfere with existing provisions of law, ordinances, or any rules, regulations, or premises or with any private restrictions placed upon property by covenant or deed. However, where such provisions of law are less restrictive than the provisions of Natural Rivers Part 305 of 1994 PA 451, and the rules promulgated thereunder, the provisions of Natural Rivers Part 305 of 1994 PA 451 and the rules promulgated thereunder shall apply.

History: 2004 AACCS.

R 281.173 Construction of language: severability.

Rule 3. (1) All of the following rules of construction apply to the text of these rules:

(a) A "building" or "structure" includes any part thereof.

(b) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."

(c) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(d) The terms "lot" and "parcel" have the same meaning.

(e) Terms not defined in these rules shall have the meanings customarily assigned to them.

(2) In any case in which the provisions of these rules are declared by the courts to be unconstitutional or invalid, such ruling shall not affect the validity of the remaining provisions of these rules and to this end the provisions of these rules are declared to be severable.

History: 2004 AACCS.

R 281.174 Lot size and area; subdivision of land; home and home-based occupations; native vegetation buffer; signs; docks; height of structures; river access stairways; dams; impervious surfaces.

Rule 4. (1) Unless otherwise provided for in these rules, a lot created after the effective date of these rules shall meet all of the following standards on at least 1 side of the stream that is accessible by a public road or legal easement:

(a) Have at least 200 feet of river frontage (unless a riverfront "common area" subject to a conservation easement is established, or the parent parcel does not have river frontage, in which case this dimension shall be measured at the point of the parcel closest to the river) and be at least 200 feet wide at the minimum building setback line.

(b) Contain at least 1/2 acre of existing contiguous upland buildable area (non-wetland, non-floodplain) landward of the minimum building setback line.

(c) Contain at least 80,000 square feet of area within the Natural River District (any "common area" created or any bottomlands shall not be used in any calculations related to minimum parcel area). If the parent parcel does not have river frontage, and the front line of any newly created parcel is greater than 100 feet from the river's edge at all points, this subdivision does not apply, and the minimum parcel width will be measured at the front lot line.

(d) Have sufficient depth to accommodate the required building setbacks pursuant to R 281.177.

(2) A lot that exists on the effective date of this rule shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrules (3) and (4) of this rule.

(3) Proposed lots which have preliminary plat approval pursuant to 1967 PA 288, MCL 560.101, but which do not meet the dimensional requirements of these rules on their effective date, shall, on final plat approval, be issued a permit subject to the requirements in R 281.179 and R 281.180.

(4) Lots of record which are created before the effective date of these rules, and which do not possess sufficient land area or lot width may be used for the purposes described in these rules, subject to the requirements in R 281.179 and R 281.180.

(5) Home occupations and home-based occupations shall conform to all of the following requirements:

(a) The use of the dwelling unit, or related structure, for a home occupation or home-based occupation shall be clearly incidental and subordinate to its use for residential purposes.

(b) Equipment or a process shall not be used in a home occupation or home-based occupation if it creates noise, vibration, fumes, odors, or electrical interference that is detectable to the normal senses off the premises.

(6) Within the natural river district, a native vegetation buffer that includes the river and all lands within 75 feet of the ordinary high watermark shall be maintained on each side of the Upper Manistee river mainstream and all designated tributaries. Trees and shrubs may be pruned over not more than a 50-foot width for a filtered view of the river, but clear cutting in the native vegetation buffer is prohibited. The native vegetation buffer is also subject to all of the following provisions:

(a) Unsafe trees and noxious plants and shrubs, such as poison ivy and poison sumac, may be removed.

(b) The selected removal or trimming of trees for forest management practices or disease and insect control, and clearing of vegetation to the minimum width required for public utility primary electric distribution lines and service lines for permitted uses, is permitted upon approval of the zoning administrator in consultation with local Conservation District staff, if the activity is in keeping with the goals and objectives of the Natural River Plan.

(c) Camping other than low-impact tent camping is not permitted in the native vegetation buffer.

(d) Mowing is prohibited in the native vegetation buffer except in areas that had been maintained in a mowed condition prior to adoption of these rules or to establish a footpath to the river not to exceed 4 feet wide.

(e) In the Manistee River mainstream vegetation may be selectively pruned to allow for safe navigation and to alleviate flooding that threatens a dwelling. This may include pruning of a maximum 8-foot wide section of vegetation. Portions of trees, logs, and other natural material imbedded in the stream channel may not be disturbed.

(f) A boardwalk constructed in conjunction with the footpath described in subdivision (d) of this subrule is permitted upon approval of the zoning administrator if it is placed only in areas that are generally too wet to be traversed without significant disturbance of the soils, the boardwalk and supports are constructed of wood, the boardwalk is not more than 3 feet wide and does not include railings, and the top of the boardwalk is not more than 12 inches above grade.

(g) All islands in all stream segments are subject to the native vegetation buffer standards.

(h) A wider native vegetation buffer may be required for certain commercial uses.

(7) Signs for identification, direction, resource information, regulation of use and those related to permitted uses are allowed. Signs for the sale of products or services are prohibited, unless related to a permitted use, located on the site of the permitted use, not located in the native vegetation buffer and not visible from the river. Illuminated signs are prohibited. Signs may be not more than 2 square feet in area. Exceptions include 1 real estate sign not more than 4 square feet outside the native vegetation buffer, and public agencies' signs not larger than 10 square feet, of rustic design and not attached to vegetation. Some public agency signs may need to be larger to warn of impending danger or for interpretative or historic reasons.

- (8) Private boat docks shall be in compliance with all of the following requirements:
- (a) Docks shall not be more than 48 square feet in area, with not more than 4 feet of the dock extending over the edge of the river.
 - (b) Docks shall be designed, constructed, and maintained to blend with the natural surroundings. The use of natural, native materials is encouraged.
 - (c) Unless otherwise provided for in these rules, only 1 dock shall be constructed per lot.
- (9) Unless otherwise provided in these rules, a structure shall not be more than 2 1/2 stories tall, not including a basement, and not more than 35 feet in height measured from the original surface elevation.
- (10) Private river access stairways are permitted upon approval of the zoning administrator if in compliance with all of the following requirements:
- (a) There is no other safe, feasible access to the river without a stairway.
 - (b) The stairway is low-profile, not more than 4 feet wide and constructed without stairs being recessed into the ground surface unless site and soil conditions dictate that a recessed stairway is more appropriate.
 - (c) There are no landings associated with the stairway unless required by building codes, in which case the landings shall be of the minimum number and size required by building codes.
 - (d) Not more than 1 handrail is associated with the stairway.
 - (e) Only 1 river access stairway is permitted per parcel.
 - (f) The stairway is constructed using natural materials and is located and maintained to blend with the natural surroundings.
- (11) Construction of new dams is prohibited. Reconstruction of a failed dam is permitted under any of the following conditions:
- (a) Reconstruction of a dam destroyed by a catastrophic event such as flood may be reconstructed.
 - (b) Reconstruction of a dam that failed due to lack of maintenance or other negligence by the owner or operator is prohibited.
 - (c) Reconstruction of a dam that failed due to a catastrophic event shall comply with construction standards in effect at the time of application for replacement.
 - (d) Application for reconstruction shall be received within 1 year of destruction.
 - (e) A reconstructed dam shall be rebuilt with a height not greater than the original dam height.
 - (f) A bottom discharge and fish passage facilities shall be provided for a reconstructed dam where appropriate.
 - (g) A request for replacement of a dam destroyed by a catastrophic event shall be handled as a variance request for reconstruction of a destroyed, non-conforming structure.
- (12) The maximum percentage of impervious surface permitted on a lot shall be as follows:
- (a) For lots with less than 10,000 square feet of area, not more than 35% of the land surface may be covered by impervious surfaces.
 - (b) For lots with between 10,000 square feet and 40,000 square feet of area, not more than 25% of the land surface may be covered by impervious surfaces.
 - (c) For lots with between 40,001 square feet and 80,000 square feet of area, not more than 20% of the land surface may be covered by impervious surfaces.
 - (d) For lots greater than 80,000 square feet of area, not more than 10% of the land surface may be covered by impervious surfaces.

History: 2004 AACS.

R 281.175 Boundaries; interpretation of boundaries; filing of zoning map.

Rule 5. (1) The boundaries of the Upper Manistee river natural river district shall be as described in these rules and as depicted on the certified Upper Manistee river natural river zoning map. The Upper Manistee river natural river zoning district comprises an area that is described as follows:

- (a) The Manistee river mainstream from its sources in Sections 1 and 12 of Mancelona Township, T29N, R5W to the Wexford/Missaukee county line.
- (b) Frenchman's Creek from the Lake Elizabeth Dam in section 30 of Hayes Twp., T29N, R4W to its confluence with the Manistee River.
- (c) Lost Lake Outlet from the outfall of Lost Lake in Section 6 of Frederic Township, T28N, R4W to its confluence with the Manistee River.

- (d) An unnamed stream from its source in Section 13 of Blue Lake Township, T28N, R5W to its confluence with the Manistee River.
- (e) Goose Creek from Cameron Bridge Road in section 27 of Blue Lake Twp., T28N, R5W to its confluence with the Manistee River.
- (f) Portage Creek from the control structure near the outfall of Lake Margrethe, section 8 of Grayling Twp., T26N, R4W to its confluence with the Manistee River, including all braided channels.
- (g) All perennial tributaries to Portage Creek from their sources to their confluence with Portage Creek.
- (h) Clear Creek from its source at Boiling Springs in section 28 of Bear Lake Twp., T26N, R5W to its confluence with the Manistee River.
- (i) Black Creek from the outfall of South Black Lake in section 21 of Bear Lake Twp., T27N, R5W to its confluence with the Manistee River, including all braided channels.
- (j) All perennial tributaries to Black Creek from their sources to their confluence with Black Creek.
- (k) Dempsey Creek from its source in section 19 of Bear Lake Twp., T26N, R5W to its confluence with the Manistee River.
- (l) Big Devil Creek from its source in Section 18 of Garfield Township, T25N, R5W to its confluence with the Manistee River.
- (m) Big Cannon Creek from its source in section 5 of Norwich Twp., T24N, R5W to its confluence with the Manistee River.
- (n) The North Branch of the Manistee River from County Road 612 in section 3 of Excelsior Twp., T27N, R6W to its confluence with the Manistee River.
- (o) An unnamed stream from Tower Road in section 25 of Coldsprings Twp., T28N, R6W to its confluence with the North Branch of the Manistee River.
- (p) Morrison Creek from its source in section 28 of Excelsior Township, T27N, R6W to its confluence with the North Branch of the Manistee River.
- (q) Collar Creek from its source in section 33 of Excelsior Township, T27N, R6W to its confluence with Morrison Creek.
- (r) An unnamed stream from its sources in section 26 of Excelsior Township, T27N, R6W to its confluence with Morrison Creek.
- (s) All other perennial tributaries to the North Branch of the Manistee River from their sources to their confluence with the North Branch of the Manistee River.
- (t) Willow Creek from its source in section 14 of Orange Twp., T26N, R7W to its confluence with the Manistee River.
- (u) Pierson Creek from its source in section 12 of Orange Township, T26N, R7W to its confluence with Willow Creek.
- (v) Maple Creek from its source in section 22 of Orange Twp., T26N, R7W to its confluence with the Manistee River.
- (w) Little Cannon Creek from multiple sources in sections 29, 31 and 32 of Garfield Twp., T25N, R6W to its confluence with the Manistee River.
- (x) Silver Creek from its source in section 1 of Pioneer Twp, T24N, R7W to its confluence with Little Cannon Creek.
- (y) Waterhole Creek and all tributaries from their multiple sources in Garfield Township, T25N, R7W to the confluence with the Manistee River.
- (z) Babcock Creek from its sources in section 33 of Garfield Township, T25N, R 7W to its confluence with the Manistee River.
- (aa) Filer Creek from its source in Section 4 of Pioneer Township, T24N, R7W to its confluence with the Manistee River.
- (bb) Nelson Creek from its sources in Section 30 of Garfield Township, T25N, R7W to its confluence with the Manistee River.
- (cc) Spring Creek from its sources in section 22 of Springfield Twp., T25N, R8W to its confluence with the Manistee River.
- (dd) Bourne Creek from its sources in section 29 of Springfield Twp., T25N, R8W to its confluence with the Manistee River.
- (ee) Ham Creek from its source in Section 24 of Bloomfield Twp., T24N, R8W to its confluence with the Manistee River, including two tributaries with sources in Sections 3 and 9.
- (ff) Gravy Creek from its source in section 5 of Bloomfield Twp., T24N, R8W to its confluence with the Manistee River.

(gg) Haynes Creek from its source in section 31 of Springfield Twp., T25N, R8W to its confluence with the Manistee River.

(hh) Hopkins Creek from its source in Section 17 of Forest Twp., T23N, R7W to its confluence with the Manistee River.

(ii) Fisher Creek (a.k.a. "Hopkins Creek" on the USGS topographic map) from its source in section 31 of Springfield Twp., T25N, R8W to its confluence with the Manistee River.

(jj) All lakes, ponds, impoundments or other surface water bodies not traditionally considered rivers, streams or creeks if they are a contiguous part of the stream segments listed in subdivisions (a) to (ii) of this subrule.

(kk) The lands lying within 400 feet of the river's edge that are enumerated in subdivisions (a) to (jj) of this subrule.

(2) If uncertainty exists with respect to the boundaries of the district as shown on the zoning map, then all of the following provisions shall apply:

(a) Boundaries that are indicated as approximately following the centerline of streets or highways shall be construed to follow the centerline.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following the lot lines.

(c) Boundaries that are indicated as approximately following city, village, township, or county boundaries lines shall be construed as following the city, village, township, or county boundary lines.

(d) Boundaries that are indicated as following railroad lines shall be construed to be midway between the right-of-way lines.

(e) Boundaries that are indicated as following shorelines shall be construed to follow the shorelines, and, in the event of change in the shorelines, shall be construed as moving with the actual shorelines. Boundaries that are indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow the centerline.

(f) Boundaries that are indicated as parallel to or extensions of features indicated in subdivisions (a) to (e) of this subrule shall be so construed. Distances that are not specifically indicated on the official zoning map shall be determined by the scale of the map.

(g) If physical or natural features that exist on the ground are at variance with those shown on the official zoning map or in other circumstances are not covered by the provisions of subdivisions (a) to (f) of this subrule, then the zoning review board shall interpret the district boundaries.

(h) Insofar as a portion or all of the district may be indicated on the zoning map by a pattern which, for the sake of map clarity, does not cover public rights-of-way, then the district boundaries extend to the center of any public right-of-way.

(3) Certified copies of the Upper Manistee River natural river zoning map shall be filed with all of the following entities:

(a) The state tax commission.

(b) Local tax assessing officers.

(c) Township and county clerks.

(d) County drain commissioners.

(e) Local building department.

(f) The natural rivers unit of the Michigan department of natural resources.

History: 2004 AACCS.

R 281.176 Zoning permits; site plans; certificates of zoning compliance.

Rule 6. (1) A building or other structure shall not be erected, moved, added to, or structurally altered, and a land use shall not be commenced, without a zoning permit as specified by these rules and as issued by the zoning administrator. Permits shall not be required for exempt activities as specified in R 281.177. Plans that are submitted when applying for a zoning permit shall contain the necessary information for determining compliance with these rules.

(2) Concurrent with applying for a zoning permit, an applicant shall submit a site plan of the proposed development. The site plan shall include the entire area that is proposed for development. The zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, may require adjustments in the site plan as a condition for approval to ensure

that the proposed development meets all standards contained in these rules. Except as otherwise waived by the zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, a site plan shall show and include all of the following, either existing or proposed:

- (a) A site plan drawn to scale, with the scale indicated.
- (b) Property dimensions, including river frontage.
- (c) Size, shape, use, and location of existing and proposed buildings or improvements, including distances to adjacent property boundaries and the river's edge.
- (d) Existing vegetation, including the location and type.
- (e) Adjacent streets and highways.
- (f) Parking areas.
- (g) Cross section drawing showing height of buildings above water level and bluff heights.
- (h) Entrances to public streets.
- (i) A description of the building design, including proposed construction materials.
- (j) Drainage facilities.
- (k) The location and description of the method to dispose of sanitary wastes.
- (l) Proposed landscaping.
- (m) The location of footpaths.
- (n) Signs proposed, including the size, location, and material.
- (o) North arrow.
- (p) Date of drawing.
- (q) Detailed site location map.
- (r) Any additional information required by the zoning administrator or zoning review board to carry out the administrator's or board's duties. Examples of such information include the following:
 - (i) Soil types.
 - (ii) Topography.
 - (iii) Building elevations.
 - (iv) Site photographs.
 - (v) Anticipated traffic volumes.
 - (vi) Traffic circulation patterns.
 - (vii) Other pertinent site information.

(3) A building, structure, or lot for which a zoning permit has been issued shall not be occupied, and a use for which a zoning permit has been issued shall not commence, until the zoning administrator has, after final inspection, issued a certificate of zoning compliance that certifies compliance with these rules. However, the issuance of a certificate of compliance shall not be construed as waiving any provision of these rules. A building that is an accessory to a dwelling shall not require a separate certificate of zoning compliance, but may be included in the certificate of zoning compliance for the dwelling if shown on the site plan and if completed at the same time as the dwelling. A record of all certificates that are issued shall be kept on file in the office of the zoning administrator. Certificates of zoning compliance are for the purposes of these rules and shall not be interpreted as substitutes for certificates of occupancy that are required by local building codes or local zoning permits.

History: 2004 AACS.

R 281.177 Land use and development standards.

Rule 7. (1) Land uses within the natural river district are classified as exempt, principal, or special uses and are described as follows:

- (a) Exempt uses are uses which are permitted by right and which are not subject to the receipt of a zoning permit. Exempt uses include all of the following:
 - (i) Private, noncommercial recreation which does not involve permanent structures, equipment, or other devices, but which includes camping, boating, fishing, hunting, and other similar activities.
 - (ii) Reforestation and other accepted forest management practices that do not involve permanent structures and that are landward of the native vegetation buffer.
 - (iii) Agricultural activities, such as plowing, disking and planting of crops, including general and specialized farming such as Christmas tree farms, provided that all new activities occur landward of

the native vegetation buffer and provided such uses will not significantly contribute to stream degradation. Construction of any residential and farm-related structures and appurtenances are classified as principal uses (see subrule

(b) of this rule) and are subject to zoning permit requirements. New aquaculture facilities and concentrated animal feeding operations, and expansion of existing aquaculture facilities and concentrated animal feeding operations, are not permitted within the Natural River District without a land use variance. Resumption of prior agricultural uses that were located within the native vegetation buffer but have been discontinued, such as crop fields that are rotated, may resume if 1 of the following criteria are met:

(A) The cessation of use was within 10 years of resumption of use.

(B) The cessation of use was due to implementation of a management plan written prior to adoption of these rules.

(C) The cessation of use was the result of written agreements with a governmental agency or agencies entered into prior to adoption of these rules.

(D) The cessation of use was the result of written agreements with a governmental agency or agencies entered into after adoption of these rules or ordinances implementing this plan, where the term of cessation of use specified in the agreement is for 10 years or less.

(E) The cessation of use was required or imposed by a governmental agency or agencies.

(iv) The operation of licensed motor vehicles on dedicated public roads or private roads that are designed to provide access to a permitted use.

(v) The off-road operation of emergency and public utility maintenance vehicles, and the operation of motorized or non-motorized wheelchairs by persons with disabilities on footpaths, boardwalks, or other designated trails. Other motorized vehicles may not be operated off the road in the native vegetation buffer as specified in R 281.174.

(vi) Cutting of low growing vegetation in the native vegetation buffer to create a private footpath of not more than 4 feet in width leading to a single point on the river's edge. A boardwalk or other above grade walkway is considered a structure and requires a zoning permit.

(vii) Signs, subject to the provisions of R 281.174.

(viii) A replacement residential water supply well, provided the replacement well is no closer to the river's edge than the well it is replacing and is landward of the native vegetation buffer, and the replaced well is properly abandoned.

(ix) Routine maintenance and repairs of principal uses within the existing foundation and structure, subject to the provisions of R 281.180.

(x) Satellite dishes that are less than 24 inches in diameter and that are not located in the native vegetation buffer.

(b) Principal uses are uses which are allowed by right, but which require the issuance of zoning permits by the zoning administrator. Principal uses include all of the following:

(i) Single-family dwellings, including detached long-term rental dwellings, if all of the following provisions are complied with:

(A) Only 1 dwelling per parcel unless 1 of the following occurs:

(1) The property owner develops a site plan for the parent parcel showing theoretical property lines for individual lots based on Natural River development standards, and locates any additional residences and appurtenances as if the property were divided into those separate lots.

(2) For each single-family dwelling placed in a cluster-type setting so that the requirements in subdivision (b)(i)(A)(1) are not met, a portion of the parent parcel containing square footage, width, depth and buildable area equal to a newly created separate legal parcel as described in R 281.174

shall be made subject to a permanent conservation easement or deed restriction that prohibits construction of any structures within that portion of the parcel, or the development rights to a portion of the parent parcel containing square footage, width, depth, and buildable area equal to a newly created separate legal lot or parcel as described in R 281.174 shall be sold, donated or otherwise conveyed in perpetuity to a land conservancy, local unit of government, or the state. The agency acquiring the development rights shall agree in writing to refrain from development of the land in perpetuity.

(B) Building setback for lots shall be not less than 100 feet from the ordinary high watermark on the mainstream and other designated tributaries, except as described in subdivision (b)(i)(C) of this rule. Structures shall be set back not less than 50 feet from the crest of a bluff on the mainstream and not less than 25 feet from the crest of a bluff on designated tributaries. No building shall take place on

land that is subject to flooding or in any wetland area. The natural contour of the face and crest of the bluff shall not be altered. The land between the crest of the bluff and the minimum building setback line shall not be altered except for minor landscaping activities.

(C) Building setbacks in areas of concentrated development are as follows: If a vacant legal nonconforming parcel is between and adjacent to 2 parcels that contain legal single-family dwellings that do not meet the minimum building setbacks, and the adjacent legal non-conforming single-family dwellings are within 300 feet of each other, then the minimum building setback for a new single-family dwelling on the vacant parcel is the distance from the river of the adjacent single-family dwelling that is farthest from the river's edge or the minimum required width of the native vegetation buffer, whichever is greater, provided the single-family dwelling is not placed on lands that are subject to flooding or in any wetland area. All appurtenances and accessory buildings shall meet the minimum required building setback described in subdivision (b)(i)(B). All structures shall be set back not less than 50 feet from the crest of a bluff on the mainstream and not less than 25 feet from the crest of a bluff on designated tributaries. The natural contour of the face and crest of the bluff shall not be altered. The land between the crest of the bluff and the minimum building setback line shall not be altered except for minor landscaping activities.

(ii) Expansion of a legal nonconforming single-family dwelling subject to the provisions of R 281.180.

(iii) Accessory buildings and appurtenances that meet requirements of paragraph (i) of this subdivision.

(iv) One private boat dock per parcel, subject to R 281.174.

(v) One private river access stairway per parcel, subject to R 281.174.

(vi) Utility lines to service private, single-family dwellings.

(vii) Disposal fields, septic tanks, and outhouses if all of the following provisions are complied with:

(A) The septic tank and disposal field meet local health department standards.

(B) The disposal fields shall be located not less than 100 feet from the ordinary high watermark and any surface or subsurface drain that discharges into the Upper Manistee River or its designated tributaries, and shall not be located within the 100-year floodplain, a wetland area, or the native vegetation buffer.

(C) The septic tank shall be no closer to the river than the dwelling it serves and shall not be located within the 100-year floodplain or a wetland area.

(D) The bottom of the disposal field shall be at least 4 feet above the seasonal high groundwater table.

(E) An outhouse shall be constructed using a watertight waste containment system which allows waste to be pumped and hauled to an appropriate disposal site, shall be located not less than 100 feet from the ordinary high watermark and any surface or subsurface drain that discharges into the Upper Manistee River or its designated tributaries, and shall not be located within the 100-year floodplain, a wetland area, or the native vegetation buffer.

(F) Drywells and earth privies are not permitted unless they are authorized by the local health department, are a minimum of 100 feet from the ordinary high water mark, and the bottom of the pit or seepage bed is at least 4 feet above the seasonal high groundwater table.

(G) An innovative on-site treatment system that results in a higher level of treatment than a conventional system may be located not less than 75 feet from the river's edge, provided no part of the system is in a wetland or the 100-year floodplain.

(H) Disposal of sludge from any wastewater treatment system is prohibited in the Natural River District.

(viii) Water supply wells serving exempt, principal, or special uses if the well is landward of the native vegetation buffer described in R 281.174.

(ix) Mining and extracting industries, if all land disturbance, structures, and other activities related to the industry are located more than 300 feet from the ordinary high watermark.

(x) Land divisions, if the minimum standards specified in R 281.174 are met. A zoning permit, special use permit or variance will not be granted for any activity on a parcel that is created after the effective date of these rules if the new parcel does not meet all of the standards in R 281.174. No new parcel will be created that would require reaching the only buildable area by constructing a road/stream crossing.

(xi) Home occupations and home-based occupations, subject to the provisions of Rule 4.

(xii) Land alteration, such as grading, dredging, and filling of the land surface, except thin the native vegetation buffer, on the face or crest of a bluff, or in a wetland or floodplain as defined in R 281.171. Draining wetlands is prohibited. Ponds may be constructed if the pond is not constructed in a wetland or the 100-year floodplain, the pond meets the building setback established for the area, spoils are

placed in a non-wetland, non-floodplain area landward of the native vegetation buffer, and the pond is not connected to the river by any surface or subsurface drainage system.

(xiii) Bridges, including any structure of any span length designed to provide a pedestrian or vehicle stream crossing, subject to the following standards:

(A) All existing bridges that are destroyed by any means, whether on a tributary or mainstream segment, may be replaced. On mainstream segments, destroyed pedestrian bridges may not be replaced with vehicle bridges. Destroyed bridges shall be replaced within 18 months of destruction or the replacement bridge shall be considered to be a new bridge and will be subject to new bridge standards.

(B) New bridges are not permitted on any parcel that is created after the effective date of these rules.

(C) New bridges of any type are prohibited on mainstream segments.

(D) All replacement bridges on mainstream segments shall span the bankfull channel, have a minimum clearance of 5 feet between the ordinary high water mark and "low steel" (the bottom of the bridge deck and/or deck supports other than abutments), and be a structure with a natural bottom, for example, pipe, box, or arch culverts are not permitted.

(E) New pedestrian bridges are permitted on all tributaries provided the lands connected by a new bridge were, at the time of adoption of these rules, and continue to be, collectively owned by a single person.

(F) New bridges linking properties in separate ownership shall not be permitted except in areas where construction of such a bridge to access a permitted building site will result in less resource damage than construction of another type of permitted access. The exception shall only apply to lots that were created before the effective date of these rules.

(G) Only 1 bridge is permitted to access a portion of land that is otherwise inaccessible from the owner's contiguous property.

(H) Permanent new bridges on tributaries shall span the bankfull channel and be a structure with a natural bottom, for example, pipe, box or arch culverts are not permitted, and, in the case of pedestrian bridges, be constructed such that use by any motorized vehicles, such as dirt bikes and ATVs, are excluded.

(I) Permanent bridges replacing bridges that have natural bottoms on tributaries shall span the bankfull channel and be a structure with a natural bottom, for example, pipe, box, or arch culverts, are not permitted, and in the case of pedestrian bridges, be constructed such that use by any motorized vehicles, such as dirt bikes and ATVs, are excluded.

(J) Permanent bridges replacing bridges without natural bottoms on tributaries shall span the bankfull channel, and, in the case of pedestrian bridges, be constructed such that use by any motorized vehicles, such as dirt bikes and ATVs, are excluded.

(K) Temporary vehicle bridges on tributaries for the purpose of access for timber harvest may be permitted provided they are constructed in a manner that minimizes disruption of the stream and are removed immediately after harvesting activities. Disturbed areas in the native vegetation buffer shall be re-vegetated, any fill placed shall be removed and the land shall be returned to its original grade as soon as possible after removal of the bridge. Proper erosion/sedimentation control methods shall be used during placement and use of the bridge.

(L) New permanent vehicle bridges on tributaries may be allowed upon receipt of a special use permit.

(xiv) Forest management activities within the native vegetation buffer, subject to the provisions of R 281.174.

(xv) Boardwalks that meet the setback requirements of subrule (2)(C) of this rule and boardwalks associated with a footpath to the river's edge subject to R 281.174(6).

(c) The Upper Manistee River natural river plan and these rules recognize that certain types of residential, recreational, and commercial uses may be appropriate for the natural river district that have not been identified under the exempt and principal uses provisions of this rule. To ensure that such uses do not contravene the goals and objectives of the Upper Manistee River natural river plan and these rules, such uses shall be referred to as special uses and shall be subject to the review and approval of the zoning review board. Special uses and their development standards include all of the following:

(i) Detached rental cabins, if all of the following provisions are complied with:

(A) The number of cabins permitted shall be based on the rate of 1 cabin per 200 feet of frontage. Clustering of rental cabins is permitted and encouraged; however, there shall not be more than 1 cabin per 200 feet of river frontage. For each cabin placed in a cluster-type setting, a portion of the parent parcel containing square footage, width, depth and buildable area equal to a newly

created separate legal parcel as described in R 281.174 shall be made subject to a permanent conservation easement or deed restriction that prohibits construction of any structures within that portion of the parcel, or the development rights to a portion of the parent parcel containing square footage, width, depth and buildable area equal to a newly created separate legal lot or parcel as described in R 281.174 will be sold, donated, or otherwise conveyed in perpetuity to a land conservancy, local unit of government, or the state. The agency acquiring the development rights shall agree in writing to refrain from development of the land in perpetuity.

(B) The size of each cabin shall not exceed 900 square feet and 1 story in height. The cabin shall not contain sleeping accommodations for more than 8 people.

(C) Each cabin shall be set back a minimum of 200 feet from the ordinary high watermark. All associated buildings and structures shall be located outside of the Natural River District.

(D) Temporary recreational facilities, including tents, camper trailers, and recreational vehicles shall be located outside of the Natural River District.

(E) Each cabin shall be a minimum of 75 feet from the property line of adjacent riverfront properties.

(F) Establishment of vegetative buffers along side or back lot lines may be required for rental cabins that are adjacent to existing residential uses. Buffers shall consist of plant material that is indigenous to the area in a strip at least 20 feet wide composed of deciduous trees interspersed with coniferous trees to be spaced not more than 10 feet apart. Deciduous trees

shall be a minimum of 8 feet in height and coniferous trees a minimum of 5 feet in height at the time of planting. The buffer shall also include dense shrubs placed not less than 5 feet apart having a minimum of 3 feet in height when planted. The entire buffer shall be maintained in at least as healthy a condition as when planted.

(G) Docks may be constructed for the private use of occupants of the rental cabins. Permanent and seasonal docks shall comply with the general standards for docks and all of the following provisions:

(1) Docks shall be not larger than 48 square feet, with not more than 4 feet of the dock extending into the water.

(2) Docks may be constructed at the rate of 1 dock per 1000 feet of frontage. If the property in question contains less than 1000 feet of frontage, 1 dock will be permitted.

(3) Docks shall be constructed of natural materials that blend with the natural surroundings.

(4) Access to a dock or docks shall be along a single designated footpath not more than 4 feet wide to minimize disruption of the native vegetation buffer.

(5) Any steps or stairs necessary on the streambank to access the dock shall be constructed without cutting into the ground surface, unless site and soil conditions indicate that a recessed stairway will better meet the goals and objectives of designation.

(ii) Campgrounds, including those with provisions for tents, travel trailers, campers, and motor homes, with associated noncommercial buildings, impervious pads, and utility hookups, if all of the following provisions are complied with:

(A) Campgrounds shall be constructed and maintained in accordance with all applicable state regulations.

(B) Commercial buildings associated with the campground are prohibited in the Natural River District.

(C) All permanent structures shall be at least 200 feet from the river's edge.

(D) Campsites are permitted at a density of not more than 4 sites per acre of land that is located in the Natural River District and landward of the native vegetation buffer.

(E) A 100 foot-wide native vegetation buffer along the river shall be maintained.

(F) Campsites that accommodate wheeled motor vehicles shall be at least 200 feet from the river's edge.

(G) Walk-in campsites shall be landward of the native vegetation buffer.

(H) Docks may be constructed at the rate of 1 dock not larger than 48 square feet for each 200 feet of river frontage, accessed by a single footpath not more than 4 feet wide.

(I) No motorized vehicle access to the river is permitted.

(J) Launching or retrieval of commercial watercraft, other than by registered campers on-site, is prohibited at any newly developed campground.

(iii) Permanent vehicle bridges on tributaries subject to the provisions of R 281.177.

History: 2004 AACCS.

R 281.178 Application and approval; procedures and standards; principal uses and special uses.

Rule 8. (1) An application for a principal use shall be submitted and processed pursuant to all the following procedures:

(a) An application for a principal use shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information:

- (i) A completed application form that is signed by the applicant or the applicant's representative.
- (ii) A site plan that meets the requirements of R 281.176.
- (iii) Evidence of ownership or a legal interest in the property that is affected by the application for a principal use.

(b) Within 21 days of receipt of an application for a principal use, the zoning administrator shall notify the applicant of the need for additional information.

(c) Within 30 days of receipt of a completed application, the zoning administrator shall issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(d) Concurrent with the issuance of a zoning permit, an applicant shall receive a copy of the approved site plan.

(e) Before commencing construction of a principal use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

(f) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of not more than 6 months if conditions pertaining to the issuance of the original permit remain unchanged. An application for an extension shall be made before the permit expires. Any subsequent extensions for a variance approval shall have the written approval of the zoning review board.

(2) An application for a special use permit shall be submitted and processed pursuant to all the following procedures:

(a) An application for a special use permit shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information and attachments:

- (i) A completed application form that is signed by the applicant or the applicant's representative.
- (ii) Eight copies of a site plan that meets the requirements of R 281.176.
- (iii) Evidence of ownership or a legal interest in the property that is affected by the application for a special use.

(iv) A list of all property owners, together with their addresses, who are located within 300 feet of the applicant's property that is being considered for a special use.

(b) The application, together with the required attachments, shall be submitted not less than 30 days before the meeting of the zoning review board at which the application is to be considered.

(c) The zoning review board shall conduct at least 1 public hearing and shall require all of the following notifications of such hearing to be made not less than 5, nor more than 15, days before consideration of the special use application:

(i) One notice shall be published in a newspaper that circulates in the township in which the proposal is located.

(ii) Notice shall be sent by first-class mail or personal delivery to the owners of property for which approval is being considered and to all persons who are identified in 2(a)(iv) of this subrule.

(iii) Notice shall also be sent to all of the following entities:

- (A) The natural rivers unit of the Michigan department of natural resources.
- (B) Local tax assessing officials.
- (C) Township and county clerks.
- (D) Local building inspectors.
- (E) State, district, or county health department, when applicable.

(d) In considering a special use application, the zoning review board shall require that all of the following general standards, in addition to those specific standards established for each special use in R 281.177 be satisfied:

- (i) That the purposes specified in R 281.172 are accomplished.
- (ii) That a compelling reason exists to locate the proposed use within the district boundaries if contiguous property under the same ownership is available outside the district.
- (iii) That the proposed use in combination with other existing uses will not be a detriment to the public health, safety, and welfare.
- (e) The zoning review board may impose conditions deemed necessary to accomplish the general and specific standards applicable to the proposed use.
- (f) The concurring vote of at least 4 of the 7 voting members of the zoning review board shall be required to approve a special use.
- (g) A special use that is granted by the zoning review board shall be valid for 1 year from the date of approval. If construction has not, in the opinion of the zoning review board, commenced and proceeded meaningfully at the end of the 1-year period, then the zoning administrator shall notify the applicant, in writing, of the expiration of the special use approval.
- (h) If the zoning review board determines that the applicant has failed to comply with any of the requirements of these rules or the approved special use permit, then the board, after a public hearing held in accordance with the provisions of subrule (c) of this rule may revoke any special use approval.
- (i) An application for a special use that has been denied by the zoning review board shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, the application is significantly different in scope from the application that was denied or new and significant facts and conditions exist which may result in favorable action upon resubmission.
- (j) Concurrent with the issuance of a special use permit, an applicant shall receive a copy of the approved site plan, with conditions, if any.
- (k) Before commencing construction of a special use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

History: 2004 AACCS.

R 281.179 Variances and variance hearings.

Rule 9. (1) A dimensional variance from these rules may be granted by the zoning review board after a public hearing or, in certain instances, by the zoning administrator as provided in subrule (3) of this rule to allow a modification from a standard that establishes an area, yard, height, floor space, frontage, setback, or similar numerical restriction, but only after substantive evidence establishes that there are practical difficulties in complying with these rules. A variance shall be permitted only when it is consistent with the general purposes and intent of these rules.

(2) The zoning review board or zoning administrator shall consider all of the following factors in determining if there are practical difficulties in complying with these rules as specified in subrule (1) of this rule:

- (a) How substantial the variance is in relation to the zoning requirements.
- (b) Whether a substantial change will be effected in the character of the area or a substantial detriment created for adjoining properties.
- (c) Whether the difficulty can be overcome by some feasible method other than a variance.
- (d) Whether, in view of the manner in which the difficulty arose, the interests of justice shall be served by allowing the variance.
- (e) Whether the plight of the landowner is due to circumstances which are unique to his or her property and which are not created by the landowner.
- (f) Whether the variance may result in a material adverse effect on the environment.

(3) For the purposes of these rules, the required hearing and review of a variance request by the zoning review board shall be waived for certain minor dimensional variances of principal uses, including legal nonconforming uses. Such variances shall be handled by the zoning administrator, who shall consider the provisions of subrule (2) of this rule in making a

determination. The zoning administrator shall prepare a written finding of fact that details the reasons for approval or denial of the minor variance request. Minor variances are defined as reductions in setbacks for uses on any lawful lot that are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures, including decks, porches, and steps.

(4) A land use variance is a land or building use in contravention of any of the use requirements of these rules. The zoning review board may, after a public hearing, grant a variance upon a finding of unnecessary hardship, which may be found upon substantial evidence being submitted that all of the following factors exist:

- (a) The property cannot be used in a manner that is consistent with existing zoning.
 - (b) The hardship results from the application of these rules to the applicant's property.
 - (c) The hardship of which the applicant complains is suffered by his or her property directly and is not shared by others.
 - (d) The hardship is not the result of the applicant's own actions.
 - (e) The hardship is peculiar to the applicant's own property.
- (5) In determining whether reasonable use may be made of the property as zoned, a reasonable economic return may be a factor that could be considered, but only if the applicant is in compliance with the provisions of subrules

(1) to (4) of this rule. Whether any weight shall be given to the economic return factor shall be dependent on a determination that the owner has been deprived of all beneficial use of his or her property under existing zoning.

(6) For a land use variance, the zoning review board shall, after finding that unnecessary hardship exists, also find that, based on adequate evidence, the proposed use meets all of the following conditions:

- (a) The use will be consistent with and in accordance with the general objectives of the Upper Manistee River natural river plan.
- (b) The use will be designed, constructed, operated, and maintained so as to be consistent with and appropriate in appearance with the existing or intended character of the natural river district and the use will not change the essential character of the natural river district.
- (c) The use will be adequately served by existing essential public facilities and services, such as highways, police and fire protection, drainage structures, refuse disposal, and sanitation facilities, or the persons or agencies that are responsible for the establishment of the proposed use may adequately provide essential services.
- (d) The use will not involve uses, activities, processes, materials and equipment, and conditions of operation that will be detrimental to any persons, property, or the environmental quality of the district because of the excessive production of noise, smoke, fumes, glare, or odors or require the outdoor storage of raw materials or discarded materials produced in the use processes.
- (e) The use will be consistent with the intent and purposes of these rules.
- (f) The use or the structures to be used will not cause an overcrowding of the land or an undue concentration of population that may result in degradation to the river and district.
- (g) The use plot area is sufficient, appropriate, and adequate for the use and the reasonable anticipated operation and expansion thereof.

(7) Upon receipt of an application for a variance, the zoning review board shall conduct a hearing on the request, except as provided in subrule (3) of this rule. The hearing and notice procedure shall follow the procedure established for special use applications by the provisions of R 281.178. A decision shall be made within 30 days after the final hearing to approve or deny the variance request. The zoning review board shall keep complete and detailed records of all its proceedings, which shall include the minutes of its meetings, its findings, and actions taken on each matter heard by it, including the final order. Reasons for the decision shall be in writing. The board shall record the vote of each member on each question. If a member is absent or fails to vote, the board shall indicate such fact. All records shall be open for public inspection. The concurring vote of at least 4 of the 7 voting members of the zoning review board shall be necessary to effect a dimensional variance in these rules. The concurring vote of at least 5 of the 7 voting members of the zoning review board is required to grant a land use variance in these rules. If the required concurring vote for approval of a variance is not achieved, then the variance is considered to be denied.

(8) The zoning review board shall not issue a land use variance when the district allows the use as a special use.

(9) The effect of any variance shall be to create a nonconforming land use, lot, or structure that is then subject to R 281.180, which regulates continued use.

(10) The zoning review board or the zoning administrator may impose conditions on an applicant before granting a variance. Such conditions shall be in writing. The zoning permit issued for the project for which the variance was approved is not valid until the applicant accepts the conditions in writing.

(11) An application for a variance that has been denied by the zoning review board or zoning administrator shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, the application is significantly different in scope from the application that was denied or new and significant facts, and conditions exist which might result in favorable action upon resubmission.

History: 2004 AACCS.

R 281.180 Nonconforming uses, lots, and structures.

Rule 10. (1) It is recognized that there exists, within the natural river district, lots, structures, and uses of land and structures which were lawful before these rules were promulgated or amended and which would be prohibited, regulated, or restricted pursuant to the terms of these rules. Legal nonconforming uses, structures, or lots continue until they are brought into conformity and, in certain instances, permit the limited expansion of certain legal nonconforming uses and structures.

(2) If the combination of 2 or more contiguous nonconforming vacant lots owned by the same person results in an increase in conformance with the dimensional requirements of these rules, then the lots shall be combined for use, unless the lots are within a plat established before the adoption of these rules wherein more than 50% of the platted lots contain a single-family dwelling.

(3) An application for a zoning permit for a principal use on a legal nonconforming lot of record shall be approved by the zoning administrator if both of the following provisions are complied with:

(a) The principal use complies with these rules, except the minimum lot width and area requirements.

(b) The applicant or owner of the subject lot does not own other contiguous properties when, if combined with the nonconforming lot, would result in increasing the conformity of the lot.

(4) An application for a zoning permit for a principal use on a legal nonconforming lot of record that is not in compliance with subrule (3)(a) and

(b) of this rule shall be treated as a variance pursuant to the provisions of R 281.179.

(5) Where, on the effective date of these rules a lawful use of land exists that is made unlawful pursuant to the terms of these rules, the use may be continued if it remains otherwise lawful, subject to all of the following provisions:

(a) The nonconforming use shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date of these rules without a land use variance. Enlarging, increasing or extending

a lawful, nonconforming use shall be treated as a variance pursuant to R 281.179.

(b) The nonconforming use and the structures associated with the nonconforming use shall not be moved, in whole or in part, to any other portion of the lot or parcel that is occupied by such use on the effective date of these rules, unless the move would result in a greater degree of conformity with these rules.

(c) If the nonconforming use of land ceases for any reason for a period of 12 months, any subsequent use of the land shall conform to the requirements specified by these rules.

(6) Where a lawful structure exists on the effective date of these rules or amendment of these rules that is made unlawful pursuant to the terms of these rules, the structure may be continued if it remains lawful, subject to all of the following provisions:

(a) The structure may not be expanded or altered in a way that increases its nonconformity, such as expanding toward the river's edge or increasing the height above the maximum height standard. However, the ground floor area, for example, "footprint," of any legal nonconforming single-family dwelling may be increased by up to 50%, or up to 75% if the expansion requires a minor variance, of the existing enclosed ground floor living area cumulative from the date of nonconformance, or to the minimum extent necessary to comply with local standards for minimum legal floor area for

dwellings, whichever is greater, through alterations, repairs, and additions, if the increase does not increase the nonconformity of the dwelling. Any alteration of a legal nonconforming dwelling must, to the extent possible, be in compliance with all setback and other building requirements. Any expansion of a lawful, nonconforming dwelling, including addition of additional stories, shall be treated as a variance pursuant to the provisions of R 281.179 unless it meets the criteria in subrule 10(6)(b) of this rule.

(b) Expansion of a nonconforming single-family dwelling may be permitted by the zoning administrator, without the need for a variance, if either 1 of the following applies:

(i) When any part of the expansion is located within the native vegetation buffer, expansion of the dwelling is to the landward side of the existing structure and is less than a 50% increase in enclosed ground floor living area and the height of the expansion is not greater than the height of the original dwelling, and the expansion is not located in a wetland or the 100-year floodplain.

(ii) When the expansion is located completely outside the native vegetation buffer, expansion of the dwelling is not closer to the river than the closest point of the existing dwelling and is less than a 50% increase in enclosed ground floor living area and the height of the expansion is not greater than the height of the original dwelling, and the expansion is not located in a wetland or the 100-year floodplain.

(c) If any legal nonconforming structure is destroyed by any means, except willful destruction by the property owner or his or her agent, to an extent that is more than 50% of twice its assessed evaluation, then restoration of the structure may be permitted by the zoning administrator, without the need for a variance, if all of the following conditions exist:

(i) The structure is not located on land subject to flooding (the 100-year floodplain).

(ii) The presence of the nonconforming structure will not lead to accelerated bank erosion or other material degradation of the river resource and the construction of the structure is approved by the local soil erosion and sedimentation control enforcement agency.

(iii) The restored structure occupies the same enclosed ground floor area, for example, "footprint," and contains the same square footage as the original structure.

(iv) Application for permission to restore a damaged structure is made within 12 months of the time of damage. An extension may be granted if the property is held in probate, an insurance settlement related to the damage is in dispute, or a criminal investigation related to the damage is in progress.

(v) If any of the provisions subdivision (c)(i) to (iv) of this subrule cannot be met, restoration of a destroyed legal nonconforming structure will require a variance.

(d) If a structure is willfully destroyed by the property owner or his or her agent to an extent that is more than 50% of twice its assessed evaluation, the property owner shall be required to meet the building setback requirement to the greatest extent possible when constructing any new or replacement structure.

(e) If a variance is granted for a new single-family dwelling to replace a single-family dwelling, the new dwelling shall not occupy more than 150% of the enclosed ground floor area of the destroyed dwelling, except that if a minor variance is granted for a new single-family dwelling to replace a single-family dwelling, the new dwelling shall not occupy more than 175% of the enclosed ground floor area of the destroyed dwelling.

(f) A variance shall not be granted for a new nonconforming structure to replace a destroyed nonconforming structure that would result in the new structure being more nonconforming than the destroyed structure.

(g) The nonconforming structure shall not be moved, in whole or in part, to any other portion of the lot or parcel that is occupied by the structure on the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules. Moving a legal nonconforming structure requires a zoning permit and may require a variance.

History: 2004 AACs.

R 281.181 Zoning administrator and zoning review board; appointment; duties.

Rule 11. (1) The director shall appoint a zoning administrator and zoning review board to act as his or her agents to enforce these rules.

(2) The zoning administrator shall do all of the following:

(a) Provide necessary forms and applications and receive and process applications.

- (b) Determine and verify zoning compliance when the applicant's plans are found to conform to the provisions of these rules.
- (c) Conduct site inspections to ensure compliance with these rules.
- (d) Pursue resolution of violations of the provisions of these rules.
- (e) Issue any authorized permits and certificates of zoning compliance.
- (f) Identify and record information relative to nonconformities.
- (g) Maintain files of applications, permits, and other relevant documents.
- (h) Schedule meetings and hearings for, and provide assistance to, the zoning review board.
- (i) Act on minor variances as permitted by the provisions of R 281.179.
- (3) The zoning review board shall do all of the following:
 - (a) Adopt rules of procedure that govern the transaction of its business.
 - (b) Act upon requests for special use permits.
 - (c) Act on certain dimensional and land use variances pursuant to R 281.179.
 - (d) Act on the interpretation of the official zoning map pursuant to R 281.185.
- (4) In establishing the zoning review board, the director shall cooperate with, and seek the advice of, all of the following entities:
 - (a) Affected townships and counties.
 - (b) Conservation districts.
 - (c) Property owners' associations.
 - (d) Other interested local organizations and citizens.
- (5) The director shall request that each affected township appoint 1 person to represent its interests on matters within its jurisdiction. The director shall request that each affected county appoint 2 persons to represent its interests on matters within its jurisdiction. One of the 2 persons shall be a county official who works in planning, zoning, public health, soil erosion and sedimentation control, or a related field. The director shall request that each affected conservation district appoint 1 person to represent its interests on matters within its jurisdiction. County, township, and conservation district representatives who are appointed pursuant to this rule shall vote only on those matters within their respective jurisdictions. If affected townships, counties, or conservation districts do not appoint an individual to represent them within 60 days from the request by the director, then the director may make appointments on his or her own motion. The director shall appoint 1 local DNR representative and 2 citizens representatives who shall vote on all matters before the board.
- (6) In accordance with subrule (5) of this rule, the director shall request that each governmental unit and organization that appoints regular members to the zoning review board also appoint 1 alternate member to represent the governmental unit or organization. The director shall appoint alternates for the local DNR representative and 2 citizens' representatives. The alternate member may be called to sit as a regular member in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. An alternate member who is appointed shall serve in the case until a final decision has been made. An alternate member shall have the same voting rights as a regular member of the zoning review board.
- (7) The zoning review board shall hold at least 1 meeting annually for such purposes as adopting or amending rules of procedure, establishing officers, educational purposes, or to conduct any manner of business as provided for by these rules.

History: 2004 AACS.

R 281.182 Appeals; contested cases.

Rule 12. An aggrieved party who contests the decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of 1969 PA 306, MCL 24.201, and R 299.3071 to R 299.3081.

History: 2004 AACS.

R 281.183 Violations; effect; remedies.

Rule 13. (1) After the effective date of these rules, a building or structure or land shall not be used or occupied, and a building or structure or part thereof shall not be erected, constructed, reconstructed, moved, or structurally altered, unless the building, structure, or land is in compliance with the provisions of these rules. A permit or variance shall not be approved, and action shall not be taken, if approval of the permit or variance or the action taken violates these rules. The director shall not waive any of his or her rights or remedies against any person who violates these rules if the violations were committed in reliance on an authorization erroneously given in violation of any provision of these rules. Any authorized permit, variance, or action that is contrary to these rules is deemed invalid from the date of the authorization.

(2) In addition to all other remedies, the director may institute appropriate action or proceedings to prevent, restrain, correct, or abate rule violations or threatened violations.

History: 2004 AACCS.

R 281.184 Boundaries and permitted uses; changes, amendments, and supplements; precedence of local zoning ordinance over rules.

Rule 14. (1) The director may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner following a hearing held pursuant to the provisions of sections 71 to 87 of 1969 PA 306, MCL 24.271 to 24.287, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.182.

(2) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following entities:

- (a) The county register of deeds.
- (b) Township and county clerks.
- (c) The local building inspector.
- (d) Local soil erosion and sedimentation control enforcement agencies.
- (e) The conservation district.
- (f) County drain commissioner.
- (g) Zoning review board members.

(3) A local zoning ordinance that meets all of the requirements of Natural Rivers Part 305 of 1994 PA 451, and either 1943 PA 184, MCL, 1943 PA 183, MCL, whichever is applicable, shall take precedence over these rules. If a local zoning ordinance does not meet all of the requirements of Natural Rivers Part 305 of 1994 PA 451, or if the local ordinance becomes inapplicable to the land area encompassed by the Upper Manistee River natural river district through court action or for any other reason, these rules shall apply. A local unit of government may, at any time, request the assistance of the department of natural resources in developing an ordinance that meets the requirements of Natural Rivers Part 305 of 1994 PA 451. The director shall determine if a local ordinance meets all of the requirements of Natural Rivers Part 305 of 1994 PA 451, and shall notify the local unit of government of his or her decision in writing. If the director withdraws his or her approval of a local zoning ordinance, these rules shall apply.

History: 2004 AACCS.

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

ROGUE RIVER NATURAL RIVER ZONING

(By authority conferred on the commission of natural resources by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.201 Definitions.

Rule. 1. As used in these rules:

(a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit, special exception permit, or variance.

(b) "Appurtenance" means a structure incidental to a dwelling, including, but not limited to, garages, private access roads, pump houses, wells, sanitary facilities, and electrical service lines.

(c) "Bluff" means a steep bank which rises sharply from the river's edge.

(d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.

(e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.

(f) "Commission" means the natural resources commission.

(g) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.

(h) "Director" means the director of the department of natural resources.

(i) "Family" means either of the following:

(i) One or more persons who are related by blood, legal adoption, or marriage and who occupy a single-family dwelling unit with not more than 3 other persons.

(ii) Not more than 5 unrelated persons who occupy a single-family dwelling unit.

(j) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen developments from the river, to provide for streambank stabilization and erosion control, to serve as an aid to infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.

(k) "Front" means that side of a lot abutting the river's edge of the mainstream or tributary.

(l) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.

(m) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules, or a lot or parcel described by metes and bounds, which has been recorded as required by law.

(n) "Natural river district" means the Rogue river natural river district as described in R 281.203(1).

(o) "Ordinary high-water mark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

(p) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.

(q) "River's edge" means the ordinary high-water mark as used in Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (o) of this rule.

(r) "Setback" means the horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.

(s) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.

(t) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.

(u) "Structure" means anything that is constructed, erected, or to be moved to or from any premise which is located above, on, or below the ground, including, but not limited to, roads, signs, billboards, and mobile homes. Temporary recreational facilities, including, but not

limited to, tents, camper trailers, and recreation vehicles are not considered structures when used less than 30 days per year and located landward of the natural vegetation strip.

(v) "Zoning administrator" means the administrator of these rules who is appointed by the natural resources commission.

(w) "Zoning permit" means a standard form which is issued by the zoning administrator upon a determination that the proposed use of land and the proposed buildings and structures thereon are in compliance with all provisions of these rules.

(x) "Zoning review board" means a group of not less than 5 nor more than 9 people which includes not less than 3 local representatives and 1 department of natural resources representative and which is appointed by the commission to act upon requests for special exceptions.

History: 1981 AACCS.

R 281.202 Purpose.

Rule 2. The commission, on its own motion, in order to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the designated portions of the Rogue river, a designated natural river, promulgates these rules whose purposes are as follows:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to unwise development patterns within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing conditions, fish and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Rogue river and adjoining land.

(c) To prevent flood damage due to interference with natural floodplain characteristics by excluding developments which are vulnerable to flood damage, and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for residential and other compatible, permitted uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

History: 1981 AACCS.

R 281.203 Boundaries; rules of construction; display and filing of zoning map; effect of zoning rules.

Rule 3. (1) The boundaries of the Rogue river natural river district shall be as described in these rules and as depicted on the certified Rogue river natural river zoning map. The Rogue river natural river district comprises an area which is described as follows:

(a) The mainstream of the Rogue river from 20 mile road, section 14, T10N, R12W, in Kent county downstream to the confluence with the Grand river, Kent county.

(b) Barkley creek from its headwaters downstream to the Rogue river.

(c) Cedar creek from its headwaters downstream to the Rogue river.

(d) Duke creek from its headwaters downstream to the Rogue river.

(e) Rum creek from its headwaters downstream to the Rogue river.

(f) Shaw creek from its headwaters downstream to the Rogue river.

(g) Spring creek from its headwaters downstream to the Rogue river.

(h) Stegman creek from its headwaters downstream to the Rogue river.

(i) The lands lying within 300 feet of the edge of the waters listed in subdivisions (a) to (h) of this subrule.

(2) Certified copies of the Rogue river natural river zoning map shall be filed with the local tax assessing officers and with the state tax commission, and additional display copies shall be provided to local officials in the Rogue river area, including all of the following:

(a) County register of deeds.

(b) Zoning administrator of these rules.

(c) Local planning, zoning, and health officials.

(d) Township and county clerks.

- (e) Local building inspector.
 - (f) Local soil erosion and sedimentation control enforcement agencies.
 - (g) The soil conservation service.
- (3) These zoning rules do not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions applicable to lands within the natural river district, except that if these rules impose greater restrictions than those found on such easements, covenants, or deeds, the provisions of these rules shall prevail.
- (4) These zoning rules do not permit actions prohibited by other statutes or ordinances, including zoning ordinances, which are applicable to the natural river district. Therefore, all of the following provisions apply:
- (a) All earth-changing activities, other than normal landscaping or maintenance, that are undertaken within 500 feet of a lake or stream are subject to the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.
 - (b) All dredge and fill activities and construction of permanent structures lying below the ordinary high-water mark are subject to the provisions of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws.
 - (c) All development and land uses in the Rogue river natural river district are subject to the provisions of appropriate local zoning ordinances, health codes, and building codes, including requirements for permits and approvals.
- (5) If uncertainty exists with respect to the boundaries indicated on the Rogue river natural river zoning map, all of the following rules shall apply:
- (a) Boundaries that are indicated as approximately following streets or highways shall be construed to be the center lines of the streets or highways.
 - (b) Boundaries that are indicated as approximately following lot lines shall be construed as following such lot lines.
 - (c) Boundaries that are indicated as approximately following city, township, or county boundary lines shall be construed as following such city, township, or county boundary lines.
 - (d) Boundaries that are indicated as approximately following railroad lines shall be construed to be midway between the main tracks.
 - (e) Boundaries that are indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance therefrom as indicated on the official Rogue river natural river zoning map. If no distance is given, the dimension shall be determined by the use of the scale shown on the official Rogue river natural river zoning map.
 - (f) Boundaries that are following the shoreline of a river, stream, lake, or other body of water shall be construed to follow such shoreline and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline. Boundaries that are indicated as approximately following the thread of streams, canals, or other bodies of water shall be construed to follow such threads.

History: 1981 AACCS.

R 281.204 Zoning permits; application; additional requirements.

Rule 4. (1) A person shall not commence excavation, erection, alteration, or repair of a building or structure, or commence a land use, until a zoning permit has been obtained from the zoning administrator. If the alterations or ordinary maintenance made on a dwelling does not change the character of the structure or land use, and if the total cost does not exceed 5% of the market value of the structure in any 12-month period, the owner of the structure or land is exempt from obtaining a zoning permit, but may be required to obtain a local building permit from the appropriate local building inspector.

(2) A written application for a zoning permit shall be filed with the zoning administrator. All of the following information shall be submitted with an application for a zoning permit:

- (a) Two copies of a site plan which gives accurate dimensions on either a scale drawing or a rough sketch and which contains all of the following information:
 - (i) The location on the lot of all existing and proposed structures.
 - (ii) The existing or intended use of the structure.
 - (iii) The generalized vegetative cover.

- (iv) The lines and dimensions of the lot to be used.
 - (b) Evidence of ownership of all property that is affected by the coverage of the permit.
 - (c) Evidence that all required federal, state, county, and township licenses or permits have been acquired, or that applications have been filed for the required licenses or permits.
 - (d) Other information as required by the zoning administrator which is necessary to carry out the intent and provisions of these rules.
- (3) One copy of both the plans and the specifications shall be filed and retained by the zoning administrator, and the other copy shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued the zoning permit. To insure that new land uses in the natural river district are in conformance with these rules, before beginning construction or commencing a land use, the applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed. Failure to obtain and display a permit is a violation of these rules.
- (4) Within 30 days of receipt of a completed application, the zoning administrator shall render a decision to issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.
- (5) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of time not to exceed 6 months. Any subsequent extensions shall have the written approval of the zoning review board.

History: 1981 AACS.

R 281.205 Subdivision of land; plats with preliminary approval.

Rule 5. (1) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrule (2) of this rule.

(2) Proposed lots which have preliminary plat approval pursuant to Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on their effective date shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.209.

History: 1981 AACS.

R 281.206 Permitted uses.

Rule 6. (1) The following uses are permitted by the owner upon the owner's property within the natural river district, subject to the limitations and requirements outlined in these zoning rules, local ordinances, and other applicable statutes:

(a) Private camping and other recreational activities which do not require the installation of permanent structures within 150 feet of the designated mainstream and 100 feet of the designated tributaries.

(b) The operation of motorized watercraft, subject to the limitations of local ordinances established under the authority of Act No. 303 of the Public Acts of 1967, as amended, being S281.1001 et seq. of the Michigan Compiled Laws.

(c) Fishing and hunting in compliance with existing laws and rules.

(d) Reforestation and other accepted forest management practices, subject to the limitations outlined in R 281.207.

(e) Normal agricultural activities, if the activities meet the requirements of these rules, and if the bureau of environmental protection of the department of natural resources determines that such activities do not contribute to stream degradation.

(f) The operation of licensed motor vehicles on dedicated public roads or access roads to private single-family dwellings.

- (g) Off-road operation of emergency and public utility maintenance vehicles.
- (2) The following uses are permitted upon approval of the zoning administrator:
- (a) One single-family dwelling and appurtenances on a lot not less than 200 front-feet wide, subject to the following limitations:
- (i) On the designated portions of the mainstream, the setback shall be 150 feet from the river's edge.
 - (ii) On the designated tributaries, the setback shall be 100 feet from the river's edge.
 - (iii) Setback shall be not less than 15 feet from side lot lines and not less than 25 feet from the right-of-way of a public road.
 - (iv) New structures shall not be located on land that is subject to flooding.
 - (v) New structures shall be set back not less than 50 feet from the top of the bluff on the cutting edges of the river and tributaries.
- (b) Plats, if the minimum setback and lot width requirements specified in subdivision (a) of this subrule are met.
- (c) Private boat docks that are not more than 6 feet in width or 20 feet in length, with not more than 4 feet of the dock extending over the water if the docks are designed, constructed, and maintained with indigenous natural materials and if a permit is issued under the authority of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws.
- (d) Mining and extractive industries which are located more than 300 feet from the ordinary high-water mark, if they are constructed and operated pursuant to applicable local ordinances and state laws and rules.
- (e) Utility lines to service private single-family dwellings.
- (f) Utility transmission lines or interests in real property which are continuously owned by a utility from January 1, 1971, subject to review and approval by the commission.
- (g) Disposal fields and septic tanks which are located not less than 100 feet from the water's edge and which are in conformance with local county health codes and the provisions of these rules.
- (h) Land alteration such as grading, dredging and filling of the land surface, unless the high-groundwater table is within 6 feet of the land surface, if the activities meet all of the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws, and Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and if approval is granted by the local soil erosion and sedimentation control enforcement agency and the department of natural resources.
- (i) Signs and outdoor advertising devices shall meet all of the following requirements:
- (i) They shall be related to permitted uses.
 - (ii) They shall be not more than 1 square foot in area for residential uses and not more than 4 square feet in area for any other uses.
 - (iii) They shall not be illuminated by a neon light or flashing device.
 - (iv) They shall not be attached to a tree or shrub.
- (j) Other uses for which an applicant is granted a permit by the zoning administrator pursuant to R 281.208, R 281.209, and R 281.211.

History: 1981 AACS.

R 281.207 Natural vegetation strip.

Rule 7. A 50-foot minimum restricted cutting belt shall be maintained on each side of the Rogue river mainstream. For designated Rogue river tributaries, a 25-foot minimum restricted cutting belt shall be maintained on each side of the tributary. Trees and shrubs may be pruned for a filtered view of the river upon approval of the local zoning administrator or the area forester, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to both of the following provisions:

- (a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy, poison sumac, and poison oak, may be removed.
- (b) Selective removal or trimming of trees for timber harvest, landscaping, or public utility facilities is permitted upon approval of the area forester or local zoning administrator.

History: 1981 AACS.

R 281.208 Special exception permits.

Rule 8. (1) Special exception permits may be granted to allow a use in the natural river district which is not specifically permitted by R 281.206, if implementation of that use does not contravene the purposes of these rules as specified in R 281.202.

(2) Applications for a special exception permit shall be made on a form provided by the zoning administrator.

(3) Upon reviewing an application for a special exception permit, the zoning review board, at any time before rendering a decision thereon, shall require the applicant to furnish all of the following information which the zoning review board deems necessary for determining the suitability of the particular site for the proposed use:

- (a) A detailed description of the proposed activity or use.
- (b) A surface view plan which gives accurate dimensions on either a scale drawing or a rough sketch and which shows all of the following:
 - (i) Elevations or contours of the ground, including existing earth fills.
 - (ii) Generalized vegetative cover.
 - (iii) Size, location and spatial arrangement of all proposed and existing structures on the site.
 - (iv) The location and elevations of streets, access roads, and water supply and sanitary facilities.
- (c) Photographs that show existing land uses and vegetation upstream and downstream from the proposed use.
- (d) Valley cross sections that show the natural stream channel, streambanks, high-water marks, flood marks, if known, and locations of proposed development.
- (e) Other information which is deemed relevant by the zoning administrator, and which is necessary to carry out the intent and provisions of these rules.

(4) Before considering applications, the zoning review board shall give notice, by certified mail, to all of the following:

- (a) Property owners and residents whose property is within 500 feet of the proposed use as shown on the current tax assessment rolls.
- (b) The appropriate local officials and department of natural resources personnel, including all of the following:
 - (i) The township supervisor.
 - (ii) The township building inspector.
 - (iii) The county health officer.
 - (iv) The local soil erosion and sedimentation control enforcement agency.
 - (v) County and township planning and zoning officials.
 - (vi) The soil conservation service.
 - (vii) The regional office and natural rivers section of the department of natural resources.
- (c) Any other interested party who requests that they be notified of such applications in the natural river district.

(5) In reviewing an application, the zoning review board shall consider all of the following:

- (a) All relevant factors specified in these rules in the light of the spirit and intent of the purposes specified in R 281.202.
- (b) The economic effect of the subject property weighed in light of the applicant's entire contiguous holdings and not merely in light of the portion within the natural river district. If the subject portion is the remainder of a larger holding, this fact, together with a description of the title history, shall be included in the hearing evidence.
- (c) Increases in flood level and flood damage that may be occasioned by the proposed use at the site and upstream and downstream from the site, water quality consequences, and other relevant factors within the terms of these rules.
- (d) The cumulative effect upon the natural river district from the potential development of holdings in a legal position similar to the applicant's, if the applicant's request is approved by the zoning review board.
- (e) Reasonable alternatives that are available to the applicant.

(6) In weighing the applicant's request, consideration of public health, safety, and welfare shall prevail, unless private injury is proved by a preponderance of the evidence to be so great as to override the public interest.

(7) A requested use shall not be granted if the zoning review board determines that the requested use poses a substantial hazard to life or to either public or private property rights.

(8) The zoning review board may require public hearings to be held regarding the application. The zoning review board shall decide on an application within 30 days after its receipt, except that if public hearings are held or if additional information is required pursuant to subrule (3) of this rule, the zoning review board shall render a decision within 30 days following the hearings or upon receipt of the last requested item of information.

(9) The zoning review board shall attach such conditions to the granting of a special exception permit as are necessary to further the purposes of these rules.

(10) A special exception use shall adhere strictly to the terms of the special exception permit. A special exception permit that does not adhere strictly to the terms of the permit may be revoked by the zoning administrator.

History: 1981 AACCS.

R 281.209 Substandard lots of record.

Rule 9. (1) The zoning administrator, in compliance with the terms of this subrule, shall grant a permit if, because of either of the following circumstances, a proposed structure cannot be erected on a lot of record or a lot described in a deed or land contract executed and delivered before the effective date of this rule:

(a) The lot is of insufficient width, depth, or area.

(b) Physical limitations exist on an existing lot or parcel.

(2) The zoning administrator shall ensure that all structures are located to best meet the objectives and purposes of these rules, the adopted Rouge river natural river plan, and Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws.

(3) The zoning administrator shall determine if a proposed structure on a lot of record or on a lot described in a deed or land contract executed and delivered before the effective date of these rules cannot conform to the standards listed in R 281.206(2) and is, therefore, ineligible for consideration for use under R 281.206.

(4) A written application for a zoning permit on a lot of record shall be filed with the zoning administrator. The same information required in R 281.204(2) shall be submitted with an application.

(5) The zoning administrator shall grant a zoning permit for the use of a substandard lot of record only upon a showing of all of the following:

(a) Granting the permit is not contrary to the public interest.

(b) The permit does not allow the establishment of a use not otherwise permitted by these rules.

(c) The permit applies only to the property under the control of the applicant.

(d) The practical difficulties claimed by the applicant are not the result of actions taken by the applicant.

(e) Granting the permit poses no substantial hazard to life or to public or private property rights, secures public safety, and does substantial justice.

(f) Granting the permit will not result in an increase of flood levels or risk of flood damage to other lands.

(g) The lot shall be developed pursuant to department of natural resources requirements under Act No. 245 of the Public Acts of 1929, as amended, being S323.1 et seq. of the Michigan Compiled Laws.

(h) Use of the lot will not significantly impair existing water quality, vegetative cover, fisheries, or wildlife habitat or increase the risk of erosion.

(i) The substandard lot size shall be the minimum dimensional reduction necessary to achieve a reasonable use of the land, after evaluation of alternative dimensional arrangements and permitted land uses available to the applicant, given the peculiar characteristics of the lot and circumstances surrounding the request. Alternatives shall be examined in light of the applicant's entire contiguous holdings and not merely a single lot or the portion within the natural river area. If

dimensional requirements may be more nearly met through lot combination of contiguous holdings, the zoning administrator may so require.

(j) The permit provides that no fill shall be placed within the natural vegetation strip and that the approval of both the appropriate county or district health department and the soil erosion and sedimentation control enforcement agency shall be secured.

(k) The permit provides conditions necessary to insure proper development of the substandard lot pursuant to these rules.

(6) A special exception permit is required if a dimensional reduction of more than 50% of any of the standards listed in R 281.206(2)(a) is necessary to achieve reasonable use of the land. The zoning review board shall base its decision upon the standards set forth in R 281.208(5).

(7) The zoning administrator may confer with, and seek the advice of, the zoning review board, personnel of the Michigan department of natural resources, and other federal, state, and local officials to determine the possible effects of, and a suitable location for, a proposed structure.

(8) One copy of the plans, specifications, and the zoning permit, with conditions attached, shall be filed and retained by the zoning administrator, and another copy of each shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued a zoning permit.

(9) The applicant may appeal any decision of the zoning administrator or any conditions attached to a zoning permit to the zoning review board.

History: 1981 AACs.

R 281.210 Nonconforming uses.

Rule 10. (1) The lawful use of any land or structure which is in existence on the effective date of these rules may be continued although the use does not conform with these rules.

(2) Routine or normal repairs and maintenance work required to keep a nonconforming structure or other use, such as a roadway, in sound condition are permitted. Remodeling of nonconforming structures within the confines of the existing foundation and elevations is permitted, if the structure is neither enlarged nor extended, nor its use changed.

(3) A special exception permit is required for the restoration of a nonconforming building or structure which is damaged or destroyed by more than 50% of its value due to flood, fire, or other means. In determining whether 50% of the value has been destroyed, the zoning review board shall use appraised replacement costs, as determined by a qualified individual appointed by the zoning review board, and shall compare the value of the part destroyed to the value of the total operating unit where there are several buildings or structures which are used together by the landowner as a single operating unit. A request for a permit to restore a nonconforming building or structure which is damaged or destroyed by more than 50% of its value shall be approved if all of the following conditions exist:

(a) The land on which the building or structure is situated is not subject to flooding.

(b) The continued use of a nonconforming building or structure will not lead to accelerated bankerosion or other material degradation of the river resource, and the use of the building or structure is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The continued use conforms with local county health codes and is approved by the local county health department.

(d) The continued use conforms with local building codes and is approved by the local building inspector.

(e) Restoration of a damaged building or structure, if approved by the zoning review board, shall be started within 1 year from the time of damage.

(4) A nonconforming use may be changed to a use of a like or similar character, if the new use more closely conforms to the rules of the natural river district.

(5) A nonconforming use of any land or structure shall not be enlarged nor extended without a special exception permit granted upon consideration of the factors outlined in subrule (3) of this rule. An enlargement or extension of a nonconforming use of up to 50% of the land area or the floor area of a residential structure or public accommodation which provides overnight facilities and which does not exceed 12 units may be approved by the zoning review board if the owner submits to the zoning

review board a detailed description of the proposed enlargement or extension, together with a site plan showing the location of all new structures or uses, and if the zoning review board determines that all of the following conditions exist:

- (a) The land on which the nonconforming use is situated is not subject to flooding.
- (b) The enlargement or extension of the nonconforming use does not lead to accelerated bank erosion or other material degradation of the river resource, and the enlargement or extension is approved by the local soil erosion and sedimentation control enforcement agency.
- (c) The enlargement or extended use conforms with local county health codes and is approved by the local county health department.
- (d) The enlarged or extended use conforms with local building codes and is approved by the local building inspector.
- (e) The enlarged or extended use does not contravene the purposes of these rules as specified in R 281.202.
- (6) The substitution of nonconforming structures with new conforming structures may be made if a special exception permit is granted, based on consideration of the factors outlined in subrule (5) of this rule to ensure that the changed use conforms as closely as possible to the purposes of these rules as specified in R 281.202.
- (7) If a nonconforming use is discontinued for 12 consecutive months, any future use at that site shall conform to these rules.
- (8) A property owner may request the zoning review board to certify the existence of a prior nonconforming use on the owner's property. Certification of a prior nonconforming use shall be granted if the use meets the criteria of this rule and the common law criteria of nonconforming uses of this state.

History: 1981 AACCS.

R 281.211 Appeals; contested cases.

Rule 11. An aggrieved party who contests a decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1981 AACCS.

R 281.212 Zoning administrator and zoning review board; appointment; duties.

Rule 12. The commission shall appoint a zoning administrator and a zoning review board to act as its agent to enforce these rules. Their duties shall include, but not be limited to, all of the following:

- (a) The receiving and processing of applications for zoning permits, special exception permits, petitions of appeals, requests for changes, amendments, and supplements.
- (b) The inspecting of sites.
- (c) The issuing or denying of zoning permits, as outlined in these rules.
- (d) Assisting with other matters requiring a decision by the commission.

History: 1981 AACCS.

R 281.213 Violations.

Rule 13. (1) An alleged violation shall be inspected by the staff of the department of natural resources. If it is found that a violation exists, the department shall order the applicant, in writing, to correct all conditions found to be in violation of these rules.

(2) The owner of a building, structure, or land that violates these rules is subject to the provisions of section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws.

History: 1981 AACS.

R 281.214 Boundaries and permitted uses; changes, amendments, and supplements.

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.202.

(2) A local unit of government or a landowner who requests a change, amendment, or supplement to the boundaries or to permitted uses shall have a hearing held pursuant to section 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws.

(3) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following:

- (a) The county register of deeds.
- (b) The zoning administrator of these rules.
- (c) Local planning, zoning, and health officials.
- (d) Township and county clerks.
- (e) Local building inspector.
- (f) Local soil erosion and sedimentation control enforcement agencies.
- (g) The soil conservation service.
- (h) Public utility companies which provide service to riverfront property owners affected by these rules.

(4) Upon approval by the director, a local zoning ordinance which meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and of either Act No. 183 of the Public Acts of 1943, as amended, or Act No. 184 of the Public Acts of 1943, as amended, being S125.201 et seq. and S125.271 et seq. of the Michigan Compiled Laws, whichever is applicable, will take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Rogue river natural river district through court action or by any other reason, these rules shall apply.

History: 1981 AACS.

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

FLAT RIVER NATURAL RIVER ZONING

(By authority conferred on the commission of natural resources by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.221 Definitions.

Rule 1. As used in these rules:

(a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit, special exception permit, or variance.

(b) "Appurtenance" means a structure that is incidental to a dwelling, including, but not limited to, any of the following:

- (i) Garages.
- (ii) Private access roads.
- (iii) Pump houses.
- (iv) Wells.
- (v) Sanitary facilities.
- (vi) Electrical service lines.

- (c) "Bluff" means a steep bank which rises sharply from the river's edge.
- (d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.
- (e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.
- (f) "Commission" means the natural resources commission.
- (g) "Cutting edge of the river" means the edge of the river or stream where the water velocity is such that it may cause soil or streambank erosion.
- (h) "Director" means the director of the department of natural resources.
- (i) "Family" means either of the following:
- (i) One or more persons who are related by blood, legal adoption, or marriage and who occupy a single-family dwelling unit with not more than 3 other persons.
- (ii) Not more than 5 unrelated persons who occupy a single-family dwelling unit.
- (j) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen developments from the river, to provide for streambank stabilization and erosion control, to serve as an aid to infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.
- (k) "Floodplain" means land lying within an identified or documented 100-year floodplain line.
- (l) "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge a 100-year flood.
- (m) "Front" means that side of a lot abutting the river's edge of the mainstream or tributary.
- (n) "Land that is subject to flooding" means that area of land adjoining the designated portions of river and tributaries which will be inundated by a flood which has a 1% chance of occurring or being exceeded in any given year as determined by detailed hydraulic studies which are acceptable to the Michigan department of natural resources or which, in the absence of such detailed floodplain studies, has a history of flooding or is delineated by approximate methods, such as United States geological survey flood prone area maps or the federal emergency management agency's special flood hazard boundary maps.
- (o) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.
- (p) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules, or a lot or parcel described by metes and bounds which has been recorded as required by law.
- (q) "Natural river district" means the Flat river natural river district as described in R 281.223.
- (r) "Ordinary high-water mark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.
- (s) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.
- (t) "River's edge" means the ordinary high-water mark as used in Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (r) of this rule.
- (u) "Setback" means the horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.
- (v) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.
- (w) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.
- (x) "Structure" means anything that is constructed, erected, or moved to or from any premises which is located above, on, or below the ground, including, but not limited to, roads, signs, billboards, and

mobile homes. Temporary recreational facilities, including, but not limited to, tents, camper trailers, and recreation vehicles are not considered structures when used less than 30 days per year and located landward of the natural vegetation strip.

(y) "Zoning administrator" means the administrator of these rules who is appointed by the natural resources commission.

(z) "Zoning permit" means a standard form which is issued by the zoning administrator upon a determination that the proposed construction and use of land and buildings and structures thereon is in compliance with all provisions of these rules.

(aa) "Zoning review board" means a group of not less than 3 nor more than 7 people which includes not less than 2 local representatives and 1 department of natural resources representative and which is appointed by the commission to act upon requests for special exceptions.

History: 1985 AACCS.

R 281.222 Purpose.

Rule 2. The commission, on its own motion, in order to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the Flat river, a designated natural river, promulgates these zoning rules whose purposes are as follows:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to unwise development patterns within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Flat river and adjoining land.

(c) To prevent flood damage due to interference with natural floodplain characteristics by excluding developments which are vulnerable to flood damages and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for residential and other compatible, permitted uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

History: 1985 AACCS.

R 281.223 Boundaries; rules of construction; display and filing of zoning map; effect of zoning rules.

Rule 3. (1) The boundaries of the Flat river natural river district shall be as described in these rules and as depicted on the certified Flat river natural river zoning map. The Flat river natural river zoning district comprises an area which is described as follows:

(a) The mainstream of the Flat river from the Montcalm/Ionia county line to the northern limits of the city of Lowell, excluding those portions which flow through the incorporated city limits of Belding.

(b) Dickerson creek from the Montcalm/Ionia county line to its confluence with the Flat river.

(c) Wabasis creek from Mills avenue, Oakfield township, to the Kent/Montcalm county line.

(d) Coopers creek from Lincoln Lake avenue, Spencer township, to the Kent/Montcalm county line.

(e) Clear creek from Lincoln Lake avenue, Spencer township, to the Kent/Montcalm county line.

(f) The lands lying within 300 feet of the river's edge which are enumerated in subdivisions (a) to (e) of this subrule.

(2) Certified copies of the Flat river natural river zoning map shall be filed with the local tax assessing officers and with the state tax commission, and additional display copies shall be provided to local officials in the Flat river area, including all of the following:

(a) County register of deeds.

(b) Zoning administrator of these rules.

(c) Local planning, zoning, and health officials.

(d) Township and county clerks.

(e) Local building inspector.

(f) Local soil erosion and sedimentation control enforcement agencies.

(g) The soil conservation service.

(h) Soil conservation district.

(i) West Michigan regional planning commission.

(3) These zoning rules do not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions applicable to lands within the natural river district, except that if these rules impose greater restrictions than those found on such easements, covenants, or deeds, the provisions of these rules shall prevail.

(4) These zoning rules do not permit actions prohibited by other statutes or ordinances which are applicable to the natural river district. These include state and federal statutes, rules, and regulations dealing with dredge and fill activities, floodplains and wetlands protection, and soil erosion and sedimentation control and construction in streams, and local zoning ordinances, health codes, and building codes, including requirements for permits and approvals.

(5) If uncertainty exists with respect to the boundaries indicated on the Flat river natural river zoning map, all of the following rules shall apply:

(a) Boundaries that are indicated as approximately following streets or highways shall be construed to be the center lines of the streets or highways.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following such lot lines.

(c) Boundaries that are indicated as approximately following city, township, or county boundary lines shall be construed as following such city, township, or county boundary lines.

(d) Boundaries that are indicated as approximately following railroad lines shall be construed to be midway between the main tracks.

(e) Boundaries that are indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance therefrom as indicated on the official Flat river natural river zoning map. If no distance is given, the dimension shall be determined by the use of the scale shown on the official Flat river natural river zoning map.

(f) Boundaries that follow the shoreline of a river, stream, lake, or other body of water shall be construed to follow such shoreline and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline. Boundaries that are indicated as approximately following the thread of streams, canals, or other bodies of water shall be construed to follow such threads.

History: 1985 AACCS.

R 281.224 Zoning permits; applications; additional requirements.

Rule 4. (1) A person shall not commence excavation, erection, alteration, or repair on a building or structure or commence a land use until a zoning permit has been obtained from the zoning administrator. If the alteration or ordinary maintenance made on a dwelling does not change the character of the structure or land use and does not enlarge or extend the structure or use beyond the confines of the existing foundation or elevation, the owner of the structure or land is exempt from obtaining a zoning permit, but may be required to obtain a local building permit from the appropriate local building inspector.

(2) A zoning permit application shall be filed with the zoning administrator. This application is available from the zoning administrator. All of the following information shall be submitted on or with the application:

(a) Two copies of a site plan which give accurate dimensions on either a scale drawing or a rough sketch and which contain all of the following information:

(i) The location on the lot of all existing and proposed structures.

(ii) The location and general type of trees, shrubs, and other similar vegetation.

(iii) The lines and dimensions of the lot to be used.

(b) The intended use of proposed structures.

(c) Evidence of ownership of all property affected by the coverage of the permit.

(d) Evidence that all required federal, state, county, and township licenses or permits have been acquired or that applications have been filed for the licenses or permits.

(e) Other information, as required by the zoning administrator, which is necessary to carry out the intent and provisions of these rules. The zoning administrator shall notify the applicant of the need for additional information within 15 days of the receipt of an application.

(3) One copy of both site plans and specifications shall be filed and retained by the zoning administrator, and the other copy shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued the zoning permit.

To ensure that new land uses in the natural river district are in conformance with these rules, before beginning construction or commencing a land use, the applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed. Failure to obtain and display a permit is a violation of these rules.

(4) Within 30 days of receipt of a completed application, the zoning administrator shall render a decision to issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(5) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of time not to exceed 6 months. Any subsequent extensions shall have the written approval of the zoning review board.

History: 1985 AACS.

R 281.225 Subdivision of land; plats with preliminary approval.

Rule 5. (1) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrule (2) of this rule.

(2) Proposed lots which have preliminary plat approval pursuant to Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on their effective date shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.229.

History: 1985 AACS.

R 281.226 Permitted uses.

Rule 6. (1) The following uses are permitted by the owner upon the owner's property within the natural river district, subject to the limitations and requirements outlined in these zoning rules, local ordinances, and other applicable statutes:

(a) Private camping and other recreational activities which do not require the installation of permanent structures and which are outside of the natural vegetation strip.

(b) The operation of watercraft, subject to the limitations of local ordinances established under the authority of Act No. 303 of the Public Acts of 1967, as amended, being S281.1001 et seq. of the Michigan Compiled Laws.

(c) Fishing and hunting in compliance with existing laws and rules.

(d) Reforestation and other accepted forest management practices, subject to the limitations outlined in R 281.227.

(e) Acceptable agricultural practices, if the practices meet the requirements of these rules, unless the bureau of environmental protection of the department of natural resources determines that such activities contribute to stream degradation.

(f) The operation of licensed motor vehicles on dedicated public roads or access roads to private single-family dwellings.

(g) Off-road operation of emergency and public utility maintenance vehicles. Operation of other motorized vehicles off-road is prohibited within the natural vegetation strip.

(h) Private footpaths that are constructed by the landowner of natural materials to facilitate permitted uses.

- (2) The following uses are permitted upon prior approval of the zoning administrator:
- (a) One single-family dwelling and appurtenances on a lot not less than 100 front-feet wide, subject to the following limitations:
 - (i) On all streams within the natural river district, new buildings and appurtenances shall be required to set back a minimum of 100 feet from the ordinary high-water mark, or 25 feet from an identified or documented 100-year floodplain line, whichever results in the greatest distance from the edge of the river.
 - (ii) New buildings and appurtenances shall be set back not less than 50 feet from the top of a bluff.
 - (iii) Setback shall be not less than 15 feet from side lot lines and not less than 25 feet from the right-of-way of a public road.
 - (iv) New structures shall not be located on land that is subject to flooding.
 - (b) Plats, if the minimum setbacks and lot width requirements specified in subdivision (a) of this subrule are met.
 - (c) Private boat docks that do not exceed 4 feet in width or 16 feet in length, with not more than 4 feet of the dock extending from the riverbank, if designed, constructed, and maintained to blend with the natural surroundings, and if a permit is issued under the authority of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws. The use of natural, indigenous materials is encouraged.
 - (d) Mining and extracting industries which are located more than 300 feet from the ordinary high-water mark, if they are constructed and operated pursuant to applicable local ordinances and state laws and rules.
 - (e) Utility lines to service private single-family dwellings.
 - (f) Utility transmission lines on lands or interests in real property which are continuously owned by a utility from January 1, 1971, subject to review and approval by the commission.
 - (g) Disposal fields and septic tanks which are located not less than 100 feet from the ordinary high-water mark or on an identified 100-year floodplain line, whichever distance is greater, and which are in conformance with local county health codes and these rules. In addition, a septic tank or absorption field shall not be closer than 100 feet to any surface or subsurface drainage system emptying into the Flat river or its designated tributaries. The bottom of an earth privy shall not be less than 4 feet above the known high-groundwater table.
 - (h) Land alteration, such as grading, dredging, and filling of the land surface, unless the high-groundwater table is within 4 feet of the land surface, if the activities meet all of the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws, Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, Act No. 203 of the Public Acts of 1979, being S281.701 et seq. of the Michigan Compiled Laws, and Act No. 245 of the Public Acts of 1929, as amended, being S323.1 et seq. of the Michigan Compiled Laws, and if approval is granted by the local soil erosion and sedimentation control enforcement agency and the department of natural resources.
 - (i) Signs and outdoor advertising devices shall meet the following requirements:
 - (i) They shall be related to permitted uses.
 - (ii) For residential uses, they shall not be larger than 1 square foot in area and not posted more than 1 per 100 feet or 1 sign at the upstream and downstream corner of the lot; however, 1 temporary real estate "for sale" sign which does not exceed 4 square feet in area shall be allowed on a parcel of land outside of the natural vegetation strip.
 - (iii) They shall be stationary and with no moving parts.
 - (iv) They shall not be illuminated by a neon light or flashing device.
 - (v) They shall not be attached to a tree or shrub.
 - (j) Other uses for which an applicant is granted a permit by the zoning administrator pursuant to R 281.228, R 281.229, and R 281.230.

History: 1985 AACs.

R 281.227 Natural vegetation strip.

Rule 7. Within the natural river district, a 25-foot minimum restrictive cutting belt shall be maintained on each side of the mainstream of the Flat river and its designated tributaries. Trees and shrubs may be pruned

for a filtered view of the river, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to both of the following provisions:

(a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy, poison sumac, and poison oak, may be removed.

(b) Selected removal or trimming of trees for timber harvest, access or woodlot improvement, landscaping, or public utility lines to service private single-family dwellings is permitted upon approval of the area forester or zoning administrator.

History: 1985 AACCS.

R 281.228 Special exception permits.

Rule 8. (1) Special exception permits may be granted to allow a use in the natural river district which is not specifically permitted by R 281.226 if implementation of that use does not contravene the purposes of these rules as specified in R 281.222.

(2) Application for a special exception permit shall be made on a form provided by the zoning administrator.

(3) Upon reviewing an application for a special exception permit, the zoning review board, at any time before rendering a decision thereon, shall require the applicant to furnish such of the following information which the zoning review board deems necessary for determining the suitability of the particular site for the proposed use:

(a) A detailed description of the proposed activity or use.

(b) A surface view plan which gives accurate dimensions on either a scale drawing or a rough sketch and which shows all of the following:

(i) Elevations or contours of the ground, including existing earth fills.

(ii) Generalized vegetative cover.

(iii) The size, location, and spatial arrangement of all proposed and existing structures on the site.

(iv) The location and elevations of streets, access roads, and water supply and sanitary facilities.

(c) Photographs that show existing land uses and vegetation upstream and downstream from the proposed use.

(d) Valley cross sections that show the natural stream channel, streambanks, high-water marks, flood marks, if known, and locations of proposed developments.

(e) All other information which is deemed relevant by the zoning administrator and which is necessary to carry out the intent and provisions of these rules. The zoning administrator shall notify the applicant of the need for additional information within 15 days of the receipt of an application.

(4) Before considering applications, the zoning review board shall give notice, by certified mail, to all of the following:

(a) Property owners whose property is within 500 feet of the proposed use as shown on the current tax assessment rolls.

(b) The appropriate local officials and department of natural resources personnel, including all of the following:

(i) The township supervisor.

(ii) The township building inspector.

(iii) The county health officer.

(iv) The local soil erosion and sedimentation control enforcement agency.

(v) County and township planning and zoning officials.

(vi) The soil conservation service.

(vii) The regional office and natural rivers section of the department of natural resources.

(viii) Soil conservation district.

- (ix) West Michigan regional planning commission.
- (c) Any other interested parties who request that they be notified of such applications in the natural river district.
- (5) In reviewing an application, the zoning review board shall consider all of the following:
 - (a) All relevant factors specified in these rules in light of the spirit and intent of the purposes specified in R 281.222.
 - (b) The economic effect of the subject property weighed in light of the applicant's entire contiguous holdings and not merely the portion within the natural river district. If the subject portion is the remainder of a larger holding, this fact, together with a description of the title history, shall be included in the hearing evidence.
 - (c) Increases in flood levels and flood damages that may be occasioned by the proposed use at the site and upstream and downstream from the site, water quality consequences, and other relevant factors within the terms of these rules.
 - (d) The cumulative effect upon the natural river district from the potential development of holdings in a legal position similar to the applicant's, if the applicant's request is approved by the zoning review board.
 - (e) Reasonable alternatives that are available to the applicant.
- (6) In weighing the applicant's request, consideration of public health, safety, and welfare shall prevail, unless private injury is proven by a preponderance of the evidence to be so great as to override the public interest.
- (7) A requested use shall not be granted if the zoning review board determines that the requested use poses a substantial hazard to life or to public or private property rights.
- (8) The zoning review board may require public hearings to be held regarding the application. The zoning review board shall decide on an application within 30 days after its receipt, except that if public hearings are held or if additional information is required pursuant to subrule (3) of this rule, the zoning review board shall render a decision within 30 days following the hearings or receipt of the last requested item of information.
- (9) The zoning review board shall attach such conditions to the granting of a special exception permit as are necessary to further the purposes of these rules.
- (10) A special exception use shall adhere strictly to the terms of the special exception permit. A special exception use that does not adhere strictly to the terms of the permit may be revoked by the zoning administrator.

History: 1985 AACCS.

R 281.229 Substandard lots of record.

Rule 9. (1) The zoning administrator, in compliance with the terms of this subrule, shall grant a permit if, because of either of the following circumstances, a proposed structure cannot be erected on a lot of record or a lot described in a deed or land contract executed and delivered before the effective date of this rule:

- (a) The lot is of insufficient width, depth, or area.
 - (b) Physical limitations exist on an existing lot or parcel.
- (2) The zoning administrator shall ensure that all structures are located to best meet the objectives and purposes of these rules, the adopted Flat river natural river plan, and Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws.
- (3) The zoning administrator shall determine if a proposed structure on a lot of record or on a lot described in a deed or land contract executed and delivered before the effective date of these rules cannot conform to the standards listed in R 281.226(2)(a) and is, therefore, ineligible for consideration for use under R 281.226.
- (4) A written application for a zoning permit on a lot of record shall be filed with the zoning administrator. The same information required in R 281.224(2) shall be submitted with an application.
- (5) The zoning administrator shall grant a zoning permit for the use of a substandard lot of record only upon a showing of all of the following:
- (a) Granting the permit is not contrary to the public interest.
 - (b) The permit does not allow the establishment of a use not otherwise permitted by these rules.

- (c) The permit applies only to the property under the control of the applicant.
 - (d) The practical difficulties claimed by the applicant are not the result of actions taken by the applicant.
 - (e) Granting the permit poses no substantial hazard to life or to public or private property rights, secures public safety, and does substantial justice.
 - (f) Granting the permit will not result in an increase of flood levels or risk of flood damage to other lands.
 - (g) The lot shall be developed pursuant to department of natural resources requirements under Act No. 245 of the Public Acts of 1929, as amended, being S323.1 et seq. of the Michigan Compiled Laws.
 - (h) Use of the lot will not significantly impair existing water quality, vegetative cover, fisheries, or wildlife habitat or increase the risk of erosion.
 - (i) The substandard lot size shall be the minimum dimensional reduction necessary to achieve a reasonable use of the land, after evaluation of alternative dimensional arrangements and permitted land uses available to the applicant, given the peculiar characteristics of the lot and circumstances surrounding the request. Alternatives shall be examined in light of the applicant's entire contiguous holdings and not merely a single lot or the portion within the natural river area. If dimensional requirements may be more nearly met through lot combination of contiguous holdings, the zoning administrator may so require.
 - (j) The permit provides that no fill shall be placed within the natural vegetation strip and that the approval of both the appropriate county or district health department and the soil erosion and sedimentation control enforcement agency shall be secured.
 - (k) The permit provides conditions necessary to ensure the proper development of the substandard lot pursuant to these rules.
- (6) A special exception permit is required if a dimensional reduction of more than 50% of any of the standards listed in R 281.226(2)(a) is necessary to achieve a reasonable use of the land. The zoning review board shall base its decision upon the standards set forth in R 281.228(5).
- (7) The zoning administrator may confer with, and seek the advice of, the zoning review board, personnel of the Michigan department of natural resources, and other federal, state, and local officials to determine the possible effects of, and a suitable location for, a proposed structure.
- (8) One copy of the plans, specifications, and the zoning permit, with conditions attached, shall be filed and retained by the zoning administrator, and another copy of each shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued a zoning permit.
- (9) The applicant may appeal any decision of the zoning administrator or any conditions attached to a zoning permit under authority of the provisions of this rule to the zoning review board.

History: 1985 AACCS.

R 281.230 Nonconforming uses.

Rule 10. (1) The lawful use of any land or structure which is in existence on the effective date of these rules may be continued although the use does not conform to these rules.

(2) Routine or normal repairs and maintenance work required to keep a nonconforming structure or other use, such as a roadway, in sound condition are permitted. Remodeling of nonconforming structures within the confines of the existing foundation and elevations is permitted if the structure is neither enlarged nor extended and its use is not changed.

(3) A special exception permit is required for the restoration of a nonconforming building or structure which is damaged or destroyed by more than 50% of its value due to flood, fire, or other means. In determining whether 50% of the value has been destroyed, the zoning review board shall use appraised replacement costs, as determined by a qualified individual appointed by the zoning review board, and shall compare the value of the part destroyed to the value of the total operating unit where there are several buildings or structures which are used together by the landowner as a single operating unit. A request for a permit to restore a nonconforming building or structure damaged or destroyed by more than 50% of its value shall be approved if all of the following conditions exist:

- (a) The land on which the building or structure is situated is not subject to flooding.

(b) The continued use of a nonconforming building or structure will not lead to accelerated bank erosion or other material degradation of the river resource, and the use of the building or structure is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The continued use conforms with local county health codes and is approved by the local county health department.

(d) The continued use conforms with local building codes and is approved by the local building inspector.

(e) Restoration of a damaged building or structure, if approved by the zoning review board, shall be started within 1 year after the time of damage.

(4) A nonconforming use may be changed to a use of a like or similar character if the new use more closely conforms to the rules of the natural river district.

(5) A nonconforming use of any land or structure shall not be enlarged or extended without a special exception permit granted upon consideration of the factors outlined in subrule (3) of this rule. An enlargement or extension of a nonconforming use of up to 50% of the land area or the floor area of a residential structure or public accommodation which provides overnight facilities and which does not exceed 12 units may be approved by the zoning review board if the owner submits to the zoning review board a detailed description of the proposed enlargement or extension, together with a site plan showing the location of all new structures or uses, and if the zoning review board determines that all of the following conditions exist:

(a) The land on which the nonconforming use is situated is not subject to flooding.

(b) The enlargement or extension of the nonconforming use does not lead to accelerated bank erosion or other material degradation of the river resource, and the enlargement or extension is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The enlargement or extended use conforms with local county health codes and is approved by the local county health department.

(d) The enlarged or extended use conforms with local building codes and is approved by the local building inspector.

(e) The enlarged or extended use does not contravene the purposes of these rules as specified in R 281.222.

(6) The substitution of a nonconforming use with another nonconforming use may be made if a special exception permit is granted, based upon consideration of the factors outlined in subrule (5) of this rule, to ensure that the changed use conforms as closely as possible to the purposes of these rules as specified in R 281.222.

(7) If a nonconforming use is discontinued for 12 consecutive months, any future use at that site shall conform to these rules.

(8) A property owner may request the zoning review board to certify the existence of a prior nonconforming use on the owner's property. Certification of a prior nonconforming use shall be granted if the use meets the criteria of this rule and the common law criteria of nonconforming uses of this state.

History: 1985 AACCS.

R 281.231 Appeals; contested cases.

Rule 11. An aggrieved party who contests the decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1985 AACCS.

R 281.232 Zoning administrator and zoning review board; appointment; duties.

Rule 12. (1) The commission shall appoint a zoning administrator and zoning review board to act as its agents to enforce these rules.

(2) The duties of the zoning administrator include, but are not limited to, all of the following:

(a) Receiving and processing applications for zoning permits, special exception permits, petitions for appeals, and requests for changes, amendments, and supplements.

(b) Inspecting sites.

(c) Issuing or denying zoning permits as outlined in these rules.

(d) Assisting with other matters requiring a decision by the commission.

(3) It shall be the duty of the zoning review board to act upon requests for special exception permits. In establishing the zoning review board, the commission shall cooperate with, and seek the advice of, all of the following:

(a) Affected townships and counties.

(b) Soil conservation districts.

(c) Property owners' associations.

(d) Other interested local organizations and citizens.

(4) The commission shall request each affected township to appoint 1 person to represent its interests on matters within its jurisdiction. The commission shall request each affected county to appoint 2 persons to represent its interests on matters within its jurisdiction. One of the 2 persons shall be a county official working in planning, zoning, public health, soil erosion and sedimentation control, or a related field. The commission shall request each affected soil conservation district to appoint 1 person to represent its interests on matters within its jurisdiction. Representatives appointed pursuant to this rule shall vote only on those matters within their respective jurisdictions. If affected townships, counties, or soil conservation districts do not appoint someone to represent them within 60 days from the request by the commission, the commission may make appointments on its own motion.

History: 1985 AACCS.

R 281.233 Violations.

Rule 13. (1) An alleged violation shall be inspected by the staff of the department and, if it is determined that a violation exists, the department shall order the applicant, in writing, to correct all conditions found to be in violation of these rules.

(2) The owner of a building or structure or land which violates these rules is subject to the provisions of section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws.

History: 1985 AACCS.

R 281.234 Boundaries and permitted uses; changes, amendments, and supplements.

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.222.

(2) A local unit of government or a landowner who requests a change, amendment, or supplement to the boundaries or to permitted uses shall have a hearing held pursuant to sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws.

(3) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following:

(a) The county register of deeds.

(b) The zoning administrator of these rules.

(c) Local planning, zoning, and health officials.

(d) Township and county clerks.

(e) The local building inspector.

(f) Local soil erosion and sedimentation control enforcement agencies.

(g) The soil conservation service.

(h) Public utility companies which provide service to riverfront property owners affected by these rules.

(i) Soil conservation district.

(j) West Michigan regional planning commission.

(4) Upon approval by the director, a local zoning ordinance which meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, Act No. 184 of the Public Acts of 1943, as amended, being S125.271 et seq. of the Michigan Compiled Laws, or Act No. 183 of the Public Acts of 1943, as amended, being S125.101 et seq. of the Michigan Compiled Laws, whichever is applicable, shall take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Flat river natural river district through court action or for any other reason, these rules shall apply.

History: 1985 AACCS.

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

BOARDMAN RIVER NATURAL RIVER ZONING

(By authority conferred on the commission of natural resources by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.251 Definitions.

Rule 1. As used in these rules:

- (a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit, special exception permit, or variance.
- (b) "Appurtenance" means a structure that is incidental to a dwelling, including, but not limited to, garages, private access roads, pump houses, wells, sanitary facilities, and electrical service lines.
- (c) "Bluff" means a steep bank which rises sharply from the river's edge.
- (d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.
- (e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.
- (f) "Commission" means the natural resources commission.
- (g) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.
- (h) "Director" means the director of the department of natural resources.
- (i) "Family" means either of the following:
 - (i) One or more persons who are related by blood, legal adoption, or marriage and who occupy a single-family dwelling unit with not more than 3 other persons.
 - (ii) Not more than 5 unrelated persons who occupy a single-family dwelling unit.
- (j) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen developments from the river, to provide for streambank stabilization and erosion control, to serve as an aid to infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.
- (k) "Front" means that side of a lot abutting the river's edge of the mainstream or tributary.
- (l) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.
- (m) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules, or a lot or parcel described by metes and bounds which has been recorded as required by law.

(n) "Natural river district" means the Boardman river natural river district as described in R 281.253(1).

(o) "Ordinary high-water mark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

(p) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.

(q) "River's edge" means the ordinary high-water mark as used in Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (o) of this rule.

(r) "Setback" means the horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.

(s) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.

(t) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.

(u) "Structure" means anything that is constructed, erected, or moved to or from any premise which is located above, on, or below the ground, including, but not limited to, roads, signs, billboards, and mobile homes. Temporary recreational facilities, including, but not limited to, tents, camper trailers, and recreation vehicles are not considered structures when used less than 30 days per year and located landward of the natural vegetation strip.

(v) "Zoning administrator" means the administrator of these rules who is appointed by the natural resources commission.

(w) "Zoning permit" means a standard form which is issued by the zoning administrator upon a determination that the proposed use of land and the proposed construction of buildings and structures thereon are in compliance with all provisions of these rules.

(x) "Zoning review board" means a group of not less than 5 nor more than 9 people which includes not less than 3 local representatives and 1 department of natural resources representative and which is appointed by the commission to act upon requests for special exceptions.

History: 1981 AACS.

R 281.252 Purpose.

Rule 2. The commission, on its own motion, in order to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the Boardman river, a designated natural river, promulgates these zoning rules whose purposes are as follows:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to unwise development patterns within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Boardman river and adjoining land.

(c) To prevent flood damage due to interference with natural floodplain characteristics by excluding developments which are vulnerable to flood damage and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for residential and other compatible, permitted uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

History: 1981 AACS.

R 281.253 Boundaries; rules of construction; display and filing of zoning map; effect of zoning rules.

Rule 3. (1) The boundaries of the Boardman river natural river district shall be as described in these rules and as depicted on the certified Boardman river natural river zoning map. The Boardman river natural river district comprises an area which is described as follows:

- (a) Mainstream of Boardman river above Brown bridge dam to Forks.
- (b) Mainstream of Boardman river from the north boundary of Grand Traverse county property in section 27, T27N, R11W, Garfield township to Brown bridge dam, section 15, T26N, R10W, East Bay township.
- (c) North branch from Forks to U.S. 131 in Kalkaska county.
- (d) South branch from Forks to U.S. 131 in Kalkaska county.
- (e) Beitner creek to Sawyer road in section 8, and south to the south line of section 9, T26N, R11W, Blair township.
- (f) Jackson creek to the south line of section 31, T26N, R10W, Paradise township.
- (g) Swainston creek to the west line of section 8, T25N, R10W, Paradise township.
- (h) Jackson creek to Wood road, section 14, T25N, R10W, Paradise township.
- (i) East creek to Bancroft and Parker creeks, section 36, T26N, R10W, Paradise township.
- (j) Parker creek to the east-west centerline of section 31, T26N, R9W, Union township.
- (k) Bancroft creek to Sparling road, section 7, T25N, R9W, Fife lake township.
- (l) Carpenter creek to county road 660, section 13, T26N, R9W, Union township.
- (m) Twenty-two creek to the east line of section 27, T26N, R9W, Union township.
- (n) Taylor creek to U.S. 131, section 15, T26N, R9W, Boardman township.
- (o) Crofton creek to U.S. 131, section 2, T26N, R8W, Boardman township.
- (p) Failing creek to U.S. 131, section 30, T27N, R7W, Kalkaska township.
- (q) The lands lying within 400 feet of the river's edge which are enumerated in subdivisions (a) to (p) of this subrule.

(2) Certified copies of the Boardman river natural river zoning map shall be filed with the local tax assessing officers and with the state tax commission, and additional display copies shall be provided to local officials in the Boardman river area, including all of the following:

- (a) County register of deeds.
- (b) Zoning administrator of these rules.
- (c) Local planning, zoning, and health officials.
- (d) Township and county clerks.
- (e) Local building inspector.
- (f) Local soil erosion and sedimentation control enforcement agencies.
- (g) The soil conservation service.
- (h) Boardman river advisory council.

(3) These zoning rules do not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions applicable to lands within the natural river district, except that if these rules impose greater restrictions than those found on such easements, covenants, or deeds, the provisions of these rules shall prevail.

(4) These zoning rules do not permit actions prohibited by other statutes or ordinances, including any zoning ordinances, which are applicable to the natural river district. Therefore, all of the following provisions apply:

(a) All earth-changing activities, other than normal landscaping or maintenance, that are undertaken within 500 feet of a lake or stream are subject to the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.

(b) All dredge and fill activities and construction of permanent structures lying below the ordinary high-water mark are subject to the provisions of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws.

(c) All development and land uses in the Boardman river natural river district are subject to the provisions of appropriate local zoning ordinances, health codes, and building codes, including requirements for permits and approvals.

(5) If uncertainty exists with respect to the boundaries indicated on the Boardman river natural river zoning map, all of the following rules shall apply:

(a) Boundaries that are indicated as approximately following streets or highways shall be construed to be the center lines of the streets or highways.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following such lot lines.

(c) Boundaries that are indicated as approximately following city, township, or county boundary lines shall be construed as following such city, township, or county boundary lines.

(d) Boundaries that are indicated as approximately following railroad lines shall be construed to be midway between the main tracks.

(e) Boundaries that are indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance therefrom as indicated on the official Boardman river natural river zoning map. If no distance is given, the dimension shall be determined by the use of the scale shown on the official Boardman river natural river zoning map.

(f) Boundaries that follow the shoreline or a river, stream, lake, or other body of water shall be construed to follow such shoreline and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline. Boundaries that are indicated as approximately following the thread of streams, canals, or other bodies of water shall be construed to follow such threads.

History: 1981 AACCS.

R 281.254 Zoning permits; application; additional requirements.

Rule 4. (1) A person shall not commence excavation, erection, alteration, or repair of a building or structure, or commence a land use, until a zoning permit has been obtained from the zoning administrator. If the alterations or ordinary maintenance made on a dwelling does not change the character of the structure or land use, and if the total cost does not exceed 5% of the market value of the structure in any 12-month period, the owner of the structure or land is exempt from obtaining a zoning permit, but may be required to obtain a local building permit from the appropriate local building inspector.

(2) A written application for a zoning permit shall be filed with the zoning administrator. All of the following information shall be submitted with an application for a zoning permit:

(a) Two copies of a site plan which gives accurate dimensions on either a scale drawing or a rough sketch and which contain all of the following information:

- (i) The location on the lot of all existing and proposed structures.
- (ii) The existing or intended use of the structure.
- (iii) The generalized vegetative cover.
- (iv) The lines and dimensions of the lot to be used.

(b) Evidence of ownership of all property that is affected by the coverage of the permit.

(c) Evidence that all required federal, state, county, and township licenses or permits have been acquired, or that applications have been filed for the required licenses and permits.

(d) Other information as required by the zoning administrator, which is necessary to carry out the intent and provisions of these rules.

(3) One copy of both the plans and the specifications shall be filed and retained by the zoning administrator, and the other copy shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued the zoning permit. To insure that new land uses in the natural river district are in conformance with these rules, before beginning construction or commencing a land use, the applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed. Failure to obtain and display a permit is a violation of these rules.

(4) Within 30 days of receipt of a completed application, the zoning administrator shall render a decision to issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(5) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of time not to exceed 6 months. Any subsequent extensions shall have the written approval of the zoning review board.

History: 1981 AACCS.

R 281.255 Subdivision of land; plats with preliminary approval.

Rule 5. (1) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrule (2) of this rule.

(2) Proposed lots that have preliminary plat approval pursuant to Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on the effective date shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.259.

History: 1981 AACCS.

R 281.256 Permitted uses.

Rule 6. (1) The following uses are permitted by the owner upon the owner's property within the natural river district, subject to the limitations and requirements outlined in these zoning rules, local ordinances, and other applicable statutes:

(a) Private camping and other recreational activities which do not require the installation of permanent structures and which are outside of the natural vegetation strip.

(b) The operation of watercraft, subject to the limitations of local ordinances established under the authority of Act No. 303 of the Public Acts of 1967, as amended, being S281.1001 et seq. of the Michigan Compiled Laws.

(c) Fishing and hunting in compliance with existing laws and rules.

(d) Reforestation and other accepted forest management practices, subject to the limitations outlined in R 281.257.

(e) Normal agricultural activities, if the activities meet the requirements of these rules, and if the bureau of environmental protection of the department of natural resources determines that such activities do not contribute to stream degradation.

(f) The operation of licensed motor vehicles on dedicated public roads or access roads to private single-family dwellings.

(g) Off-road operation of emergency and public utility maintenance vehicles.

(h) Private footpaths that are constructed by the landowner of natural materials to facilitate permitted uses.

(2) The following uses are permitted upon prior approval of the zoning administrator:

(a) One single-family dwelling and appurtenances on a lot not less than 200 front-feet wide and 200 feet deep, subject to the following limitations:

(i) On the mainstream portion of the Boardman river described in R 281.253(1)(a), new buildings and appurtenances shall be required to set back not less than 150 feet from the river's edge.

(ii) On the mainstream portion of the Boardman river and all tributaries described in R 281.253(1)(b) to (p), new buildings and appurtenances shall be required to set back not less than 100 feet from the river's edge.

(iii) New structures shall be set back not less than 50 feet from the top of the bluff on the cutting edges of the river and tributaries, or 25 feet from the top of the bluff on the noncutting edge of the stream.

(iv) Set back shall be not less than 15 feet from side lot lines and not less than 25 feet from the right-of way of a public road.

(v) New structures shall not be located on land that is subject to flooding.

(b) Plats, if the minimum setbacks and lot width requirements specified in subdivision (a) on this subrule are met.

(c) Private boat docks that are not more than 10 feet in length, with none of the dock extending over the water, if they are designed, constructed, and maintained with indigenous natural materials, and if a permit is issued under the authority of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws.

(d) Mining and extracting industries which are located more than 300 feet from the ordinary high-water mark, if they are constructed and operated pursuant to applicable local ordinances and state laws and rules.

(e) Utility lines to service private single-family dwellings.

(f) Utility transmission lines on lands or interests in real property which are continuously owned by a utility from January 1, 1971, subject to review and approval by the commission.

(g) Disposal fields and septic tanks which are located not less than 100 feet from the ordinary high-water mark or on lands that are not subject to flooding, whichever distance is greater, and which are in conformance with local county health codes and these rules. In addition, a septic tank or absorption field shall not be closer than 50 feet to any surface or subsurface drainage system emptying into the Boardman river or its designated tributaries.

(h) Land alteration, such as grading, dredging and filling of the land surface, unless the high-groundwater table is within 6 feet of the land surface, if the activities meet all of the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws, and Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and if approval is granted by the local soil erosion and sedimentation control enforcement agency and the department of natural resources.

(i) Signs and outdoor advertising devices shall meet all of the following requirements:

(i) They shall be related to permitted uses.

(ii) They shall not be more than 1 square foot in area for residential uses and not more than 4 square feet in area for any other uses.

(iii) They shall not be illuminated by a neon light or flashing device.

(iv) They shall not be attached to a tree or shrub.

(j) Other uses for which an applicant is granted a permit by the zoning administrator pursuant to R 281.258, R 281.259, and R 281.261.

History: 1981 AACCS.

R 281.257 Natural vegetation strip.

Rule 7. On that portion of the mainstream described in R 281.253(1)(a), a 75-foot minimum restrictive cutting belt shall be maintained on each side of the stream and on the portion of the mainstream and tributaries described in R 281.253(1)(b) to (p), a 50-foot minimum restrictive cutting belt shall be maintained on each side of the stream. Trees and shrubs may be pruned for a filtered view of the river upon approval of the zoning administrator or the area forester, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to both of the following provisions:

(a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy, poison sumac, and poison oak, may be removed.

(b) Selective removal or trimming of trees for timber harvest, access, woodlot improvement, landscaping, or public utility lines to service private single-family dwellings is permitted upon approval of the area forester or zoning administrator.

History: 1981 AACCS.

R 281.258 Special exception permits.

Rule 8. (1) Special exception permits may be granted to allow a use in the natural river district which is not specifically permitted by R 281.256, if implementation of that use does not contravene the purposes of these rules as specified in R 281.252.

(2) Application for a special exception permit shall be made on a form provided by the zoning administrator.

(3) Upon reviewing an application for a special exception permit, the zoning review board, at any time before rendering a decision thereon, shall require the applicant to furnish all of the following information which the zoning review board deems necessary for determining the suitability of the particular site for the proposed use:

- (a) A detailed description of the proposed activity or use.
 - (b) A surface view plan which gives accurate dimensions on either a scale drawing or a rough sketch and which shows all of the following:
 - (i) Elevations or contours of the ground, including existing earth fills.
 - (ii) Generalized vegetative cover.
 - (iii) Size, location, and spatial arrangement of all proposed and existing structures on the site.
 - (iv) Location and elevation of streets, access roads, and water supply and sanitary facilities.
 - (c) Photographs that show existing land uses and vegetation upstream and downstream from the proposed use.
 - (d) Valley cross sections that show the natural stream channel; streambanks; high-water marks; flood marks, if known; and locations of proposed developments.
 - (e) All other information which is deemed relevant by the zoning administrator and which is necessary to carry out the intent and provisions of these rules.
- (4) Before considering applications, the zoning review board shall give notice, by certified mail, to all of the following:
- (a) Property owners whose property is within 500 feet of the proposed use as shown on the current tax assessment rolls.
 - (b) The appropriate local officials and department of natural resources personnel, including all of the following:
 - (i) The township supervisor.
 - (ii) The township building inspector.
 - (iii) The county health officer.
 - (iv) The local soil erosion and sedimentation control enforcement agency.
 - (v) County and township planning and zoning officials.
 - (vi) The soil conservation service.
 - (vii) The regional office and natural rivers section of the department of natural resources.
 - (viii) Boardman river advisory council.
 - (c) Any other interested parties who request that they be notified of such applications in the natural river district.
- (5) In reviewing an application, the zoning review board shall consider all of the following:
- (a) All relevant factors specified in these rules in light of the spirit and intent of the purposes specified in R 281.252.
 - (b) The economic effect of the subject property weighed in light of the applicant's entire contiguous holdings and not merely the portion within the natural river district. If the subject portion is the remainder of a larger holding, this fact, together with a description of the title history, shall be included in the hearing evidence.
 - (c) Increases in flood levels and flood damage that may be occasioned by the proposed use at the site and upstream and downstream from the site, water quality consequences, and other relevant factors within the terms of these rules.
 - (d) The cumulative effect upon the natural river district from the potential development of holdings in a legal position similar to the applicant's, if the applicant's request is approved by the zoning review board.
 - (e) Reasonable alternatives that are available to the applicant.
- (6) In weighing the applicant's request, consideration of public health, safety, and welfare shall prevail unless private injury is proved by a preponderance of the evidence, to be so great as to override the public interest.
- (7) A requested use shall not be granted if the zoning review board determines that the requested use poses a substantial hazard to life or to public or private property rights.
- (8) The zoning review board may require public hearings to be held regarding the application. The zoning review board shall decide on an application within 30 days after its receipt, except that if public hearings are held or if additional information is required pursuant to subrule (3) of this rule, the zoning review board shall render a decision within 30 days following the hearings or upon receipt of the last requested item of information.
- (9) The zoning review board shall attach such conditions to the granting of a special exception permit as are necessary to further the purposes of these rules.

(10) A special exception use shall adhere strictly to the terms of the special exception permit. A special exception permit that does not adhere strictly to the terms of the permit may be revoked by the zoning administrator.

History: 1981 AACCS.

R 281.259 Substandard lots of record.

Rule 9. (1) The zoning administrator, in compliance with the terms of this subrule, shall grant a permit if, because of either of the following circumstances, a proposed structure cannot be erected on a lot of record or a lot described in a deed or land contract executed and delivered before the effective date of this rule:

- (a) The lot is of insufficient width, depth, or area.
 - (b) Physical limitations exist on an existing lot or parcel.
- (2) The zoning administrator shall ensure that all structures are located to best meet the objectives and purposes of these rules, the adopted Boardman river natural river plan, and Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws.
- (3) The zoning administrator shall determine if a proposed structure on a lot of record or on a lot described in a deed or land contract executed and delivered before the effective date of these rules cannot conform to the standards listed in R 281.256(2)(a) and is, therefore, ineligible for consideration for use under R 281.256.
- (4) A written application for a zoning permit on a lot of record shall be filed with the zoning administrator. The same information required in R 281.254(2) shall be submitted with an application.
- (5) The zoning administrator shall grant a zoning permit for the use of a substandard lot of record only upon a showing of all of the following:
- (a) Granting the permit is not contrary to the public interest.
 - (b) The permit does not allow the establishment of a use not otherwise permitted by these rules.
 - (c) The permit applies only to the property under the control of the applicant.
 - (d) The practical difficulties claimed by the applicant are not the result of actions taken by the applicant.
 - (e) Granting the permit poses no substantial hazard to life or to public or private property rights, secures public safety, and does substantial justice.
 - (f) Granting the permit will not result in an increase of flood levels or risk of flood damage to other lands.
 - (g) The lot shall be developed pursuant to department of natural resources requirements under Act No. 245 of the Public Acts of 1929, as amended, being S323.1 et seq. of the Michigan Compiled Laws.
 - (h) Use of the lot will not significantly impair existing water quality, vegetative cover, fisheries, or wildlife habitat or increase the risk of erosion.
 - (i) The substandard lot size shall be the minimum dimensional reduction necessary to achieve a reasonable use of the land, after evaluation of alternative dimensional arrangements and permitted land uses available to the applicant, given the peculiar characteristics of the lot and circumstances surrounding the request. Alternatives shall be examined in light of the applicant's entire contiguous holdings and not merely a single lot or the portion within the natural river area. If dimensional requirements may be more nearly met through lot combination of contiguous holdings, the zoning administrator may so require.
 - (j) The permit provides that no fill shall be placed within the natural vegetation strip and that the approval of both the appropriate county or district health department and the soil erosion and sedimentation control enforcement agency shall be secured.
 - (k) The permit provides conditions necessary to insure proper development of the substandard lot pursuant to these rules.
- (6) A special exception permit is required if a dimensional reduction of more than 50% of any of the standards listed in R 281.256(2)(a) is necessary to achieve reasonable use of the land. The zoning review board shall base its decision upon the standards set forth in R 281.258(5).
- (7) The zoning administrator may confer with, and seek the advice of, the zoning review board, personnel of the Michigan department of natural resources, and other federal, state, and local officials to determine the possible effects of, and a suitable location for, a proposed structure.

(8) One copy of the plans, specifications, and the zoning permit, with conditions attached, shall be filed and retained by the zoning administrator, and another copy of each shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued a zoning permit.

(9) The applicant may appeal any decision of the zoning administrator or any conditions attached to a zoning permit to the zoning review board.

History: 1981 AACCS.

R 281.260 Nonconforming uses.

Rule 10. (1) The lawful use of any land or structure that is in existence on the effective date of these rules may be continued even though the use does not conform to these rules.

(2) Routine or normal repairs and maintenance work required to keep a nonconforming structure or other use, such as a roadway, in sound condition are permitted. Remodeling of nonconforming structures within the confines of the existing foundation and elevations is permitted if the structure is neither enlarged nor extended nor its use changed.

(3) A special exception permit is required for the restoration of a nonconforming building or structure which is damaged or destroyed by more than 50% of its value due to flood, fire, or other means. In determining whether 50% of the value has been destroyed, the zoning review board shall use appraised replacement costs, as determined by a qualified individual appointed by the zoning review board, and shall compare the value of the part destroyed to the value of the total operating unit where there are several buildings or structures which are used together by the landowner as a single operating unit. A request for a permit to restore a nonconforming building or structure damaged or destroyed by more than 50% of its value shall be approved if all of the following conditions exist:

- (a) The land on which the building or structure is situated is not subject to flooding.
- (b) The continued use of a nonconforming building or structure will not lead to accelerated bank erosion or other material degradation of the river resource, and the use of the building or structure is approved by the local soil erosion and sedimentation control enforcement agency.
- (c) The continued use conforms with local county health codes and is approved by the local county health department.
- (d) The continued use conforms with local building codes and is approved by the local building inspector.
- (e) Restoration of a damaged building or structure, if approved by the zoning review board, shall be started within 1 year from the time of damage.

(4) A nonconforming use may be changed to a use of a like or similar character if the new use more closely conforms to the rules of the natural river district.

(5) A nonconforming use of any land or structure shall not be enlarged or extended without a special exception permit granted upon consideration of the factors outlined in subrule (3) of this rule. An enlargement or extension of a nonconforming use of up to 50% of the land area or the floor area of a residential structure or public accommodation which provides overnight facilities and which does not exceed 12 units may be approved by the zoning review board if the owner submits to the zoning review board a detailed description of the proposed enlargement or extension, together with a site plan showing the location of all new structures or uses, and if the zoning review board determines that all of the following conditions exist:

- (a) The land on which the nonconforming use is situated is not subject to flooding.
- (b) The enlargement or extension of the nonconforming use does not lead to accelerated bank erosion or other material degradation of the river resource, and the enlargement or extension is approved by the local soil erosion and sedimentation control enforcement agency.
- (c) The enlargement or extended use conforms with local county health codes and is approved by the local county health department.
- (d) The enlarged or extended use conforms with local building codes and is approved by the local building inspector.
- (e) The enlarged or extended use does not contravene the purposes of these rules as specified in R 281.252.

(6) The substitution of a nonconforming use with another nonconforming

use may be made if a special exception permit is granted, based upon consideration of the factors outlined in subrule (5) of this rule, to ensure that the changed use conforms as closely as possible to the purposes of these rules as specified in R 281.252.

(7) If a nonconforming use is discontinued for 12 consecutive months, any future use at that site shall conform to these rules.

(8) A property owner may request the zoning review board to certify the existence of a prior nonconforming use on the owner's property. Certification of a prior nonconforming use shall be granted if the use meets the criteria of this rule and the common law criteria of nonconforming uses of this state.

History: 1981 AACCS.

R 281.261 Appeals; contested cases.

Rule 11. An aggrieved party who contests a decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1981 AACCS.

R 281.262 Zoning administrator and zoning review board; appointment; and duties.

Rule 12. The commission shall appoint a zoning administrator and a zoning review board to act as its agents to enforce these rules. The duties of the zoning review board and zoning administrator include, but are not limited to, all of the following:

(a) Receiving and processing applications for zoning permits, special exception permits, petitions for appeals, requests for changes, amendments, and supplements.

(b) Inspecting sites.

(c) Issuing or denying zoning permits as outlined in these rules.

(d) Assisting with other matters requiring a decision by the commission.

History: 1981 AACCS.

R 281.263 Violations.

Rule 13. (1) An alleged violation shall be inspected by the staff of the department of natural resources. If a violation is found, the department shall order the applicant, in writing, to correct all conditions found to be in violation of these rules.

(2) The owner of a building, structure, or land which violates these rules is subject to the provisions of section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws.

History: 1981 AACCS.

R 281.264 Boundaries and permitted uses; changes, amendments, and supplements.

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.252.

(2) A local unit of government or a landowner who requests a change, amendment, or supplement to the boundaries or to permitted uses shall have a hearing held pursuant to sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws.

(3) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following:

- (a) The county register of deeds.
- (b) The zoning administrator of these rules.
- (c) Local planning, zoning, and health officials.
- (d) Township and county clerks.
- (e) The local building inspector.
- (f) Local soil erosion and sedimentation control enforcement agencies.
- (g) The soil conservation service.
- (h) Public utility companies which provide service to riverfront property owners affected by these rules.
- (i) Boardman river advisory council.

(4) Upon approval by the director, a local zoning ordinance which meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, Act No.184 of the Public Acts of 1943, as amended, being S125.271 et seq. of the Michigan Compiled Laws, or Act No. 183 of the Public Acts of 1943, as amended, being S125.201 et seq. of the Michigan Compiled Laws, whichever is applicable, shall take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Boardman river natural river district through court action or for any other reasons these rules shall apply.

History: 1981 AACS.

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

PIGEON RIVER NATURAL RIVER ZONING

(By authority conferred on the commission of natural resources by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.271 Definitions.

Rule 1. As used in these rules:

- (a) "Applicant" means a person who requests on proper forms and pursuant to proper procedures, a zoning permit, special exception permit, or variance.
- (b) "Appurtenance" means a structure that is incidental to a dwelling, including, but not limited to any of the following:
 - (i) Garages.
 - (ii) Private access roads.
 - (iii) Pump houses.
 - (iv) Wells.
 - (v) Sanitary facilities.
 - (vi) Electrical service lines.
- (c) "Bluff" means a steep bank which rises sharply from the river's edge.
- (d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.
- (e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.
- (f) "Commission" means the natural resources commission.
- (g) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.
- (h) "Director" means the director of the department of natural resources.

- (i) "Family" means either of the following:
- (i) One or more persons who are related by blood, legal adoption, or marriage and who occupy a single-family dwelling unit with not more than 3 other persons.
 - (ii) Not more than 5 unrelated persons who occupy a single-family dwelling unit.
- (j) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen developments from the river, to provide for streambank stabilization and erosion control, to serve as an aid to infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.
- (k) "Floodplain" means land lying within an identified or documented 100-year floodplain line.
- (l) "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge a 100-year flood.
- (m) "Front" means that side of a lot abutting the river's edge of the mainstream or tributary.
- (n) "Land that is subject to flooding" means that area of land adjoining the designated portions of river and tributaries which will be inundated by a flood which has a 1% chance of occurring or being exceeded in any given year as determined by detailed hydraulic studies which are acceptable to the Michigan department of natural resources or which, in the absence of such detailed floodplain studies, has a history of flooding or is delineated by approximate methods, such as United States geological survey flood prone area maps or the federal emergency management agency's special flood hazard boundary maps.
- (o) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.
- (p) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules, or a lot or parcel described by metes and bounds which has been recorded as required by law.
- (q) "Natural river district" means the Pigeon river natural river district as described in R 281.273.
- (r) "Ordinary high-water mark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.
- (s) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.
- (t) "River's edge" means the ordinary high-water mark as used in Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (r) of this rule.
- (u) "Setback" means the horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.
- (v) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.
- (w) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.
- (x) "Structure" means anything that is constructed, erected, or moved to or from any premises which is located above, on, or below the ground, including, but not limited to, roads, signs, billboards, and mobile homes. Temporary recreational facilities, including, but not limited to, tents, camper trailers, and recreation vehicles are not considered structures when used less than 30 days per year and located landward of the natural vegetation strip.
- (y) "Zoning administrator" means the administrator of these rules who is appointed by the natural resources commission.
- (z) "Zoning permit" means a standard form which is issued by the zoning administrator upon a determination that the proposed construction and use of land and buildings and structures thereon is in compliance with all provisions of these rules.
- (aa) "Zoning review board" means a group of not less than 3 nor more than 7 people which includes not less than 2 local representatives and 1 department of natural resources representative and which is appointed by the commission to act upon requests for special exceptions.

History: 1985 AACS.

R 281.272 Purpose.

Rule 2. The commission, on its own motion, in order to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the Pigeon river, a designated natural river, promulgates these zoning rules whose purposes are as follows:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to unwise development patterns within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Pigeon river and adjoining land.

(c) To prevent flood damage due to interference with natural floodplain characteristics by excluding developments which are vulnerable to flood damages and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for residential and other compatible, permitted uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

History: 1985 AACS.

R 281.273 Boundaries; rules of construction; display and filing of zoning map; effect of zoning rules.

Rule 3. (1) The boundaries of the Pigeon river natural river district shall be as described in these rules and as depicted on the certified Pigeon river natural river zoning map. The Pigeon river natural river zoning district comprises an area which is described as follows:

(a) The mainstream from the confluence of the Pigeon river mainstream and the South branch, also known as Duck creek, in section 22, T31N, R2W, downstream to the Otsego/Cheboygan county line.

(b) All tributary streams within Otsego county which flow into the Pigeon river from their sources to their confluence with the Pigeon river. Included as a tributary is that portion of the Pigeon river upstream of the confluence with the South branch, also known as Duck creek.

(c) The lands lying within 400 feet of the river's edge which are enumerated in subdivisions (a) and (b) of this subrule.

(2) Certified copies of the Pigeon river natural river zoning map shall be filed with the local tax assessing officers and with the state tax commission, and additional display copies shall be provided to local officials in the Pigeon river area, including all of the following:

(a) County register of deeds.

(b) Zoning administrator of these rules.

(c) Local planning, zoning, and health officials.

(d) Township and county clerks.

(e) Local building inspector.

(f) Local soil erosion and sedimentation control enforcement agencies.

(g) The soil conservation service.

(h) Soil conservation district.

(3) These zoning rules do not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions applicable to lands within the natural river district, except that if these rules impose greater restrictions than those found on such easements, covenants, or deeds, the provisions of these rules shall prevail.

(4) These zoning rules do not permit actions prohibited by other statutes or ordinances which are applicable to the natural river district. These include state and federal statutes, rules, and regulations dealing with dredge and fill activities, floodplains and wetlands protection, and soil erosion and sedimentation control and construction in streams, and local zoning ordinances, health codes, and building codes, including requirements for permits and approvals.

(5) If uncertainty exists with respect to the boundaries indicated on the Pigeon river natural river zoning map, all of the following rules shall apply:

(a) Boundaries that are indicated as approximately following streets or highways shall be construed to be the center lines of the streets or highways.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following such lot lines.

(c) Boundaries that are indicated as approximately following city, township, or county boundary lines shall be construed as following such city, township, or county boundary lines.

(d) Boundaries that are indicated as approximately following railroad lines shall be construed to be midway between the main tracks.

(e) Boundaries that are indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance therefrom as indicated on the official Pigeon river natural river zoning map. If no distance is given, the dimension shall be determined by the use of the scale shown on the official Pigeon river natural river zoning map.

(f) Boundaries that follow the shoreline of a river, stream, lake, or other body of water shall be construed to follow such shoreline and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline. Boundaries that are indicated as approximately following the thread of streams, canals, or other bodies of water shall be construed to follow such threads.

History: 1985 AACCS.

R 281.274 Zoning permits; applications; additional requirements.

Rule 4. (1) A person shall not commence excavation, erection, alteration, or repair on a building or structure or commence a land use until a zoning permit has been obtained from the zoning administrator. If the alteration or ordinary maintenance made on a dwelling does not change the character of the structure or land use and does not enlarge or extend the structure or use beyond the confines of the existing foundation or elevation, the owner of the structure or land is exempt from obtaining a zoning permit, but may be required to obtain a local building permit from the appropriate local building inspector.

(2) A zoning permit application shall be filed with the zoning administrator. This application is available from the zoning administrator. All of the following information shall be submitted on or with the application:

(a) Two copies of a site plan which give accurate dimensions on either a scale drawing or a rough sketch and which contain all of the following information:

(i) The location on the lot of all existing and proposed structures.

(ii) The location and general type of trees, shrubs, and other similar vegetation.

(iii) The lines and dimensions of the lot to be used.

(b) The intended use of proposed structures.

(c) Evidence of ownership of all property affected by the coverage of the permit.

(d) Evidence that all required federal, state, county, and township licenses or permits have been acquired, or that applications have been filed for the licenses or permits.

(e) Other information, as required by the zoning administrator, which is necessary to carry out the intent and provisions of these rules. The zoning administrator shall notify the applicant of the need for additional information within 15 days of the receipt of an application.

(3) One copy of both site plans and specifications shall be filed and retained by the zoning administrator, and the other copy shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued the zoning permit. To ensure that new land uses in the natural river district are in conformance with these rules, before beginning construction or commencing a land use, the applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed. Failure to obtain and display a permit is a violation of these rules.

(4) Within 30 days of receipt of a completed application, the zoning administrator shall render a decision to issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(5) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of time not to exceed 6 months. Any subsequent extensions shall have the written approval of the zoning review board.

History: 1985 AACS.

R 281.275 Subdivision of land; plats with preliminary approval.

Rule 5. (1) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrule (2) of this rule.

(2) Proposed lots which have preliminary plat approval pursuant to Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on their effective date shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.279.

History: 1985 AACS.

R 281.276 Permitted uses.

Rule 6. (1) The following uses are permitted by the owner upon the owner's property within the natural river district, subject to the limitations and requirements outlined in these zoning rules, local ordinances, and other applicable statutes:

(a) Private camping and other recreational activities which do not require the installation of permanent structures and which are outside of the natural vegetation strip.

(b) The operation of watercraft, subject to the limitations of local ordinances established under the authority of Act No. 303 of the Public Acts of 1967, as amended, being S281.1001 et seq. of the Michigan Compiled Laws.

(c) Fishing and hunting in compliance with existing laws and rules.

(d) Reforestation and other accepted forest management practices, subject to the limitations outlined in R 281.277.

(e) Acceptable agricultural practices, if the practices meet the requirements of these rules, unless the bureau of environmental protection of the department of natural resources determines that such activities contribute to stream degradation.

(f) The operation of licensed motor vehicles on dedicated public roads or access roads to private single-family dwellings.

(g) Off-road operation of emergency and public utility maintenance vehicles. Operation of other motorized vehicles off-road is prohibited within the natural vegetation strip.

(h) Private footpaths that are constructed by the landowner of natural materials to facilitate permitted uses.

(2) The following uses are permitted upon prior approval of the zoning administrator:

(a) One single-family dwelling and appurtenances, subject to the following limitations:

(i) On the designated portion of the Pigeon river mainstream, the minimum lot width shall be 200 front-feet wide, and new buildings and appurtenances shall be required to be set back a minimum of 200 feet from the water's edge.

(ii) On all other streams within the natural river district, the minimum lot width shall be 150 front-feet wide, and new buildings and appurtenances shall be required to be set back a minimum of 150 feet from the water's edge.

(iii) New buildings and appurtenances shall be set back not less than 50 feet from the top of a bluff.

(iv) Setback shall be not less than 15 feet from side lot lines and not less than 25 feet from the right-of-way of a public road.

(v) New structures shall not be located on land that is subject to flooding.

(b) Plats, if the minimum setbacks and lot width requirements specified in subdivision (a) of this subrule are met.

(c) Private boat docks, if necessary to provide safe and ecologically sound access for the riparian landowner, if designed, constructed, and maintained to blend with the natural surroundings, and if a permit is issued under the authority of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws. The use of natural, indigenous materials is encouraged.

(d) Mining and extracting industries which are located more than 300 feet from the ordinary high-water mark, if they are constructed and operated pursuant to applicable local ordinances and state laws and rules.

(e) Utility lines to service private single-family dwellings.

(f) Utility transmission lines on lands or interests in real property which are continuously owned by a utility from January 1, 1971, subject to review and approval by the commission.

(g) Disposal fields and septic tanks which are located not less than 150 feet from the ordinary high-water mark and which are in conformance with local county health codes and these rules. In addition, a septic tank or absorption field shall not be closer than 50 feet to any surface or subsurface drainage system emptying into the Pigeon river or its designated tributaries. The bottom of an earth privy shall not be less than 6 feet above the known high-groundwater table.

(h) Land alteration, such as grading, dredging, and filling of the land surface, unless the high-groundwater table is within 6 feet of the land surface, or on land subject to flooding, if the activities meet all of the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws, Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, Act No. 203 of the Public Acts of 1979, being S281.701 et seq. of the Michigan Compiled Laws, and Act No. 245 of the Public Acts of 1929, as amended, being S323.1 et seq. of the Michigan Compiled Laws, and if approval is granted by the local soil erosion and sedimentation control enforcement agency and the department of natural resources.

(i) Signs and outdoor advertising devices shall meet all of the following requirements:

(i) They shall be related to permitted uses.

(ii) They shall not be larger than 1 square foot in area and not posted more than 1 per 100 feet or 1 sign at the upstream and downstream corner of the lot; however, 1 temporary real estate "for sale" sign which does not exceed 4 square feet in area shall be allowed on a parcel of land outside of the natural vegetation strip.

(iii) They shall be stationary and with no moving parts.

(iv) They shall not be illuminated by a neon light or flashing device.

(v) They shall not be attached to a tree or shrub.

(j) Other uses for which an applicant is granted a permit by the zoning administrator pursuant to R 281.278, R 281.279, and R 281.280.

History: 1985 AACS.

R 281.277 Natural vegetation strip.

Rule 7. For the length of the river, a 100-foot deep minimum restrictive cutting belt shall be maintained on each side of the mainstream of the Pigeon river. Along all other streams in the natural river district, a 75-foot deep minimum restrictive cutting belt shall be maintained. Trees and shrubs may be pruned for a filtered view of the river, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to both of the following provisions:

(a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy, poison sumac, and poison oak, may be removed.

(b) Selected removal or trimming of trees for timber harvest, access or woodlot improvement, landscaping, or public utility lines to service private single-family dwellings is permitted upon approval of the area forester or zoning administrator.

History: 1985 AACS.

R 281.278 Special exception permits.

Rule 8. (1) Special exception permits may be granted to allow a use in the natural river district which is not specifically permitted by R 281.276 if implementation of that use does not contravene the purposes of these rules as specified in R 281.272.

(2) Application for a special exception permit shall be made on a form provided by the zoning administrator.

(3) Upon reviewing an application for a special exception permit, the zoning review board, at any time before rendering a decision thereon, shall require the applicant to furnish such of the following information which the zoning review board deems necessary for determining the suitability of the particular site for the proposed use:

(a) A detailed description of the proposed activity or use.

(b) A surface view plan which gives accurate dimensions on either a scale drawing or a rough sketch and which shows all of the following:

(i) Elevations or contours of the ground, including existing earth fills.

(ii) Generalized vegetative cover.

(iii) The size, location, and spatial arrangement of all proposed and existing structures on the site.

(iv) The location and elevations of streets, access roads, and water supply and sanitary facilities.

(c) Photographs that show existing land uses and vegetation upstream and downstream from the proposed use.

(d) Valley cross sections that show the natural stream channel, streambanks, high-water marks, flood marks, if known, and locations of proposed developments.

(e) All other information which is deemed relevant by the zoning administrator and which is necessary to carry out the intent and provisions of these rules. The zoning administrator shall notify the applicant of the need for additional information within 15 days of the receipt of an application.

(4) Before considering applications, the zoning review board shall give notice to all of the following:

(a) Property owners whose property is within 500 feet of the proposed use as shown on the current tax assessment rolls.

(b) The appropriate local officials and department of natural resources personnel, including all of the following:

(i) The township supervisor.

(ii) The township building inspector.

(iii) The county health officer.

(iv) The local soil erosion and sedimentation control enforcement agency.

(v) County and township planning and zoning officials.

(vi) The soil conservation service.

(vii) The regional office and natural rivers section of the department of natural resources.

(viii) Soil conservation district.

(c) Any other interested parties who request that they be notified of such applications in the natural river district.

(5) In reviewing an application, the zoning review board shall consider all of the following:

(a) All relevant factors specified in these rules in light of the spirit and intent of the purposes specified in R 281.272.

(b) The economic effect of the subject property weighed in light of the applicant's entire contiguous holdings and not merely the portion within the natural river district. If the subject portion is the remainder of a larger holding, this fact, together with a description of the title history, shall be included in the hearing evidence.

(c) Increases in flood levels and flood damages that may be occasioned by the proposed use at the site and upstream and downstream from the site, water quality consequences, and other relevant factors within the terms of these rules.

(d) The cumulative effect upon the natural river district from the potential development of holdings in a legal position similar to the applicant's, if the applicant's request is approved by the zoning review board.

(e) Reasonable alternatives that are available to the applicant.

(6) In weighing the applicant's request, consideration of public health, safety, and welfare shall prevail, unless private injury is proven by a preponderance of the evidence to be so great as to override the public interest.

(7) A requested use shall not be granted if the zoning review board determines that the requested use poses a substantial hazard to life or to public or private property rights.

(8) The zoning review board may require public hearings to be held regarding the application. The zoning review board shall decide on an application within 30 days after its receipt, except that if public hearings are held or if additional information is required pursuant to subrule (3) of this rule, the zoning review board shall render a decision within 30 days following the hearings or upon receipt of the last requested item of information.

(9) The zoning review board shall attach such conditions to the granting of a special exception permit as are necessary to further the purposes of these rules.

(10) A special exception use shall adhere strictly to the terms of the special exception permit. A special exception use that does not adhere strictly to the terms of the permit may be revoked by the zoning administrator.

History: 1985 AACCS.

R 281.279 Substandard lots of record.

Rule 9. (1) The zoning administrator, in compliance with the terms of this subrule, shall grant a permit if, because of either of the following circumstances, a proposed structure cannot be erected on a lot of record or a lot described in a deed or land contract executed and delivered before the effective date of this rule:

(a) The lot is of insufficient width, depth, or area.

(b) Physical limitations exist on an existing lot or parcel.

(2) The zoning administrator shall ensure that all structures are located to best meet the objectives and purposes of these rules, the adopted Pigeon river natural river plan, and Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws.

(3) The zoning administrator shall determine if a proposed structure on a lot of record or on a lot described in a deed or land contract executed and delivered before the effective date of these rules cannot conform to the standards listed in R 281.276(2)(a) and is, therefore, ineligible for consideration for use under R 281.276.

(4) A written application for a zoning permit on a lot of record shall be filed with the zoning administrator. The same information required in R 281.274(2) shall be submitted with an application.

(5) The zoning administrator shall grant a zoning permit for the use of a substandard lot of record only upon a showing of all of the following:

(a) Granting the permit is not contrary to the public interest.

(b) The permit does not allow the establishment of a use not otherwise permitted by these rules.

(c) The permit applies only to the property under the control of the applicant.

(d) The practical difficulties claimed by the applicant are not the result of actions taken by the applicant.

(e) Granting the permit poses no substantial hazard to life or to public or private property rights, secures public safety, and does substantial justice.

(f) Granting the permit will not result in an increase of flood levels or risk of flood damage to other lands.

(g) The lot shall be developed pursuant to department of natural resources requirements under Act No. 245 of the Public Acts of 1929, as amended, being S323.1 et seq. of the Michigan Compiled Laws.

(h) Use of the lot will not significantly impair existing water quality, vegetative cover, fisheries, or wildlife habitat or increase the risk of erosion.

(i) The substandard lot size shall be the minimum dimensional reduction necessary to achieve a reasonable use of the land, after evaluation of alternative dimensional arrangements and permitted land uses available to the applicant, given the peculiar characteristics of the lot and circumstances surrounding the request. Alternatives shall be examined in light of the applicant's entire contiguous holdings and not merely a single lot or the portion within the natural river area. If dimensional requirements may be more nearly met through lot combination of contiguous holdings, the zoning administrator may so require.

(j) The permit provides that no fill shall be placed within the natural vegetation strip and that the approval of both the appropriate county or district health department and the soil erosion and sedimentation control enforcement agency shall be secured.

(k) The permit provides conditions necessary to ensure the proper development of the substandard lot pursuant to these rules.

(6) A special exception permit is required if a dimensional reduction of more than 50% of any of the standards listed in R 281.276(2)(a) is necessary to achieve a reasonable use of the land. The zoning review board shall base its decision upon the standards set forth in R 281.278(5).

(7) The zoning administrator may confer with, and seek the advice of, the zoning review board, personnel of the Michigan department of natural resources, and other federal, state, and local officials to determine the possible effects of, and a suitable location for, a proposed structure.

(8) One copy of the plans, specifications, and the zoning permit, with conditions attached, shall be filed and retained by the zoning administrator, and another copy of each shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued a zoning permit.

(9) The applicant may appeal any decision of the zoning administrator or any conditions attached to a zoning permit under authority of the provisions of this rule to the zoning review board.

History: 1985 AACs.

R 281.280 Nonconforming uses.

Rule 10. (1) The lawful use of any land or structure which is in existence on the effective date of these rules may be continued although the use does not conform to these rules.

(2) Routine or normal repairs and maintenance work required to keep a nonconforming structure or other use, such as a roadway, in sound condition are permitted. Remodeling of nonconforming structures within the confines of the existing foundation and elevations is permitted if the structure is neither enlarged nor extended and its use is not changed.

(3) A special exception permit is required for the restoration of a nonconforming building or structure which is damaged or destroyed by more than 50% of its value due to flood, fire, or other means. In determining whether 50% of the value has been destroyed, the zoning review board shall use appraised replacement costs, as determined by a qualified individual appointed by the zoning review board, and shall compare the value of the part destroyed to the value of the total operating unit where there are several buildings or structures which are used together by the landowner as a single operating unit. A request for a permit to restore a nonconforming building or structure damaged or destroyed by more than 50% of its value shall be approved if all of the following conditions exist:

(a) The land on which the building or structure is situated is not subject to flooding.

(b) The continued use of a nonconforming building or structure will not lead to accelerated bank erosion or other material degradation of the river resource, and the use of the building or structure is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The continued use conforms with local county health codes and is approved by the local county health department.

(d) The continued use conforms with local building codes and is approved by the local building inspector.

(e) Restoration of a damaged building or structure, if approved by the zoning review board, shall be started within 1 year after the time of damage.

(4) A nonconforming use may be changed to a use of a like or similar character if the new use more closely conforms to the rules of the natural river district.

(5) A nonconforming use of any land or structure shall not be enlarged or extended without a special exception permit granted upon consideration of the factors outlined in subrule (3) of this rule. An enlargement or extension of a nonconforming use of up to 50% of the floor area of a residential structure may be approved by the zoning review board if the owner submits to the zoning review board a detailed description of the proposed enlargement or extension, together with a site plan showing the location of all new structures or uses, and if the zoning review board determines that all of the following conditions exist:

(a) The land on which the nonconforming use is situated is not subject to flooding.

(b) The enlargement or extension of the nonconforming use does not lead to accelerated bank erosion or other material degradation of the river resource, and the enlargement or extension is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The enlargement or extended use conforms with local county health codes and is approved by the local county health department.

(d) The enlarged or extended use conforms with local building codes and is approved by the local building inspector.

(e) The enlarged or extended use does not contravene the purposes of these rules as specified in R 281.272.

(6) The substitution of a nonconforming use with another nonconforming use may be made if a special exception permit is granted, based upon consideration of the factors outlined in subrule (5) of this rule, to ensure that the changed use conforms as closely as possible to the purposes of these rules as specified in R 281.272.

(7) If a nonconforming use is discontinued for 12 consecutive months, any future use at that site shall conform to these rules.

(8) A property owner may request the zoning review board to certify the existence of a prior nonconforming use on the owner's property. Certification of a prior nonconforming use shall be granted if the use meets the criteria of this rule and the common law criteria of nonconforming uses of this state.

History: 1985 AACS.

R 281.281 Appeals; contested cases.

Rule 11. An aggrieved party who contests the decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1985 AACS.

R 281.282 Zoning administrator and zoning review board; appointment; duties.

Rule 12. (1) The commission shall appoint a zoning administrator and zoning review board to act as its agents to enforce these rules.

(2) The duties of the zoning administrator include, but are not limited to, all of the following:

(a) Receiving and processing applications for zoning permits, special exception permits, petitions for appeals, and requests for changes, amendments, and supplements.

(b) Inspecting sites.

(c) Issuing or denying zoning permits as outlined in these rules.

(d) Assisting with other matters requiring a decision by the commission.

(3) It shall be the duty of the zoning review board to act upon requests for special exception permits. In establishing the zoning review board, the commission shall cooperate with, and seek the advice of, all of the following:

(a) Affected townships and counties.

(b) Soil conservation districts.

(c) Property owners' associations.

(d) Other interested local organizations and citizens.

(4) The commission shall request each affected township to appoint 1 person to represent its interests on matters within its jurisdiction. The commission shall request each affected county to appoint 2 persons to represent its interests on matters within its jurisdiction. One of the 2 persons shall be a county official working in planning, zoning, public health, soil erosion and sedimentation control, or a related field. The commission shall request each affected soil conservation district to appoint 1 person to represent its interests on matters within its jurisdiction. Representatives appointed pursuant to this rule shall vote only on those matters within their respective jurisdictions. If affected townships,

counties, or soil conservation districts do not appoint someone to represent them within 60 days from the request by the commission, the commission may make appointments on its own motion.

History: 1985 AACCS.

R 281.283 Violations.

Rule 13. (1) An alleged violation shall be inspected by the staff of the department and, if it is determined that a violation exists, the department shall order the applicant, in writing, to correct all conditions found to be in violation of these rules.

(2) The owner of a building or structure or land which violates these rules is subject to the provisions of section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws.

History: 1985 AACCS.

R 281.284 Boundaries and permitted uses; changes, amendments, and supplements.

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.272.

(2) A local unit of government or a landowner who requests a change, amendment, or supplement to the boundaries or to permitted uses shall have a hearing held pursuant to sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws.

(3) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following:

- (a) The county register of deeds.
- (b) The zoning administrator of these rules.
- (c) Local planning, zoning, and health officials.
- (d) Township and county clerks.
- (e) The local building inspector.
- (f) Local soil erosion and sedimentation control enforcement agencies.
- (g) The soil conservation service.
- (h) Public utility companies which provide service to riverfront property owners affected by these rules.
- (i) Soil conservation district.

(4) Upon approval by the director, a local zoning ordinance which meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, Act No. 184 of the Public Acts of 1943, as amended, being S125.271 et seq. of the Michigan Compiled Laws, or Act No. 183 of the Public Acts of 1943, as amended, being S125.101 et seq. of the Michigan Compiled Laws, whichever is applicable, shall take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Pigeon river natural river district through court action or for any other reason, these rules shall apply.

History: 1985 AACCS.

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

AU SABLE RIVER NATURAL RIVER ZONING

(By authority conferred on the natural resources commission by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.321 Definitions.

Rule 1. As used in these rules:

(a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit for a principal use, special use, or variance.

(b) "Appurtenance" or "accessory building" means a structure that is incidental to a dwelling, including all of the following:

- (i) Garages.
- (ii) Residential storage sheds or barns.
- (iii) Pump houses.
- (iv) Wells.
- (v) Private access roads.
- (vi) Sanitary facilities.
- (vii) Electrical service lines.

(c) "Bluff" means a steep bank which rises sharply from the river's edge.

(d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.

(e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.

(f) "Certificate of zoning compliance" means a standard form which is issued by the zoning administrator upon a determination that the construction and use of land and buildings and structures as provided for by a zoning permit, including the site plan, have been completed and are in compliance with the permit and site plan.

(g) "Commission" means the natural resources commission.

(h) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.

(i) "Director" means the director of the department of natural resources.

(j) "Family" means either of the following:

(i) An individual or group of 2 or more persons who are related by blood, marriage, or adoption, together with foster children and servants of the principal occupants, with not more than 2 additional unrelated persons, and who are domiciled together as a single, domestic, housekeeping unit in a dwelling unit.

(ii) A collective number of individuals who are domiciled together in 1 dwelling unit, whose relationship is of a continuing nontransient domestic character, and who are cooking and living as a single, nonprofit, housekeeping unit. Any society, club, fraternity, sorority, association, lodge, organization, or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature shall not be considered a family as defined by these rules.

(k) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen development from the river, to provide for streambank stabilization and erosion control, to serve as an aid to infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.

(l) "Floodplain" means land lying within an identified or documented 100-year floodplain line. Also see subdivision (q) of this rule.

(m) "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge a 100-year flood.

(n) "Front" means that segment of a lot or parcel abutting the river's edge of the mainstream or tributary.

- (o) "Front yard" means setback as provided for in R 281.327(2)(a)(iv).
- (p) "Home occupation" means a gainful occupation traditionally and historically carried on in the home as a use clearly incidental and secondary to the use of the home as a dwelling place.
- (q) "Land that is subject to flooding" means that area of land adjoining the designated portions of river and tributaries which will be inundated by a flood which has a 1% chance of occurring or being exceeded in any given year as determined by detailed hydraulic studies which are acceptable to the Michigan department of natural resources or which, in the absence of such detailed floodplain studies, has a history of flooding or is delineated by approximate methods, such as United States geological survey flood-prone area maps or the federal emergency management agency's special flood hazard boundary maps.
- (r) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.
- (s) "Lot area" means the area inside the lot lines.
- (t) "Lot, interior" means a lot of record which is located in the natural river district, but which does not have frontage on the river or designated tributaries.
- (u) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules or a lot or parcel which is described by metes and bounds and which has been recorded at the office of the county register of deeds.
- (v) "Natural river district" means the Au Sable river natural river district as described in the provisions of R 281.325.
- (w) "Ordinary high watermark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.
- (x) "Rear yard" means that yard opposite the front yard and includes the required minimum horizontal distance between any portion of a principal or accessory building and the rear lot line.
- (y) "Reforestation" means the renewal of vegetative cover by seeding, planting or transplanting.
- (z) "River's edge" means the ordinary high watermark as used in the provisions of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (w) of this rule.
- (aa) "Setback" means the required horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.
- (bb) "Side yard" means the required minimum horizontal distance between any portion of a principal or accessory building and the side lot line.
- (cc) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.
- (dd) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.
- (ee) "Structure" means anything that is constructed, erected, or moved to or from any premises which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas and other communication structures, fences, and mobile homes. Temporary recreational facilities, including tents, camper trailers, and recreation vehicles, are not considered structures when used less than 30 days per year and located landward of the natural vegetation strip.
- (ff) "Zoning administrator" means the administrator of these rules who is appointed by the natural resources commission.
- (gg) "Zoning permit" means a standard form which is issued by the zoning administrator when it is determined that the proposed construction of buildings and structures and the proposed use of land and buildings and structures thereon is in compliance with all provisions of these rules.
- (hh) "Zoning review board" means a group of not less than 3, nor more than 7, people which includes not less than 2 local representatives and 1 department of natural resources representative and which is appointed by the commission to act upon requests as provided for by these rules.

History: 1990 AACS.

R 281.322 Purpose; intent; scope.

Rule 2. (1) The commission, on its own motion, in order to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the Au Sable river, a designated natural river, promulgates these zoning rules for the following purposes:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to misuse, unwise development patterns, overcrowding, and overuse within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish, aquatic and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Au Sable river and adjoining land.

(c) To prevent flood damage due to interference with the natural floodplain characteristics by excluding developments which are vulnerable to flood damage and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

(f) To achieve the goals and objectives of the Au Sable river natural river plan.

(2) It is the general intent of these rules to define terms used and to regulate and restrict lot coverage and use, population distribution and density, and the size and location of all structures by the delineation of permitted uses and development standards so as to promote the purposes identified in this rule. It is further intended to provide for the administration and enforcement of these rules and to provide penalties for their violation.

(3) It is not the intent of these rules to revoke, annul, cancel, or in any way impair or interfere with existing provisions of law, ordinances, or any rules, regulations, or premises or with any private restrictions placed upon property by covenant or deed. However, where provisions of law are less restrictive than the provisions of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and the rules promulgated thereunder, the provisions of Act No. 231 of the Public Acts of 1970, and the rules promulgated thereunder shall apply.

History: 1990 AACs.

R 281.323 Construction of language; severability.

Rule 3. (1) All of the following rules of construction apply to the text of these rules:

(a) The particular shall control over the general.

(b) In the case of any difference of meaning or implication between the text of these rules and any caption or illustration, the text shall control.

(c) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.

(d) Words used in the present tense shall include the future. Words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

(e) A "building" or "structure" includes any part thereof.

(f) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."

(g) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(h) Unless the context clearly indicates the contrary, where a regulation involves 2 or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either . . . or," the conjunction shall be interpreted as follows:

(i) "And" indicates that all of the connected items, conditions, or provisions shall apply.

(ii) "Or" indicates that the connected items, conditions, provisions, or events may apply singularly or in any combination.

(iii) "Either . . . or" indicates that the connected items, conditions, provisions, or events shall apply singularly, but not in combination.

(i) Terms not defined in these rules shall have the meanings customarily assigned to them.

(2) In any case in which the provisions of these rules are declared by the courts to be unconstitutional or invalid, such ruling shall not affect the validity of the remaining provisions of these rules and to this end the provisions of these rules are declared to be severable.

History: 1990 AACRS.

R 281.324 Lot size and area; subdivision of land; home occupations; natural vegetation strip; signs; docks.

Rule 4. (1) Unless otherwise provided for within these rules, any lot or parcel of property created after the effective date of these rules, or amendments thereto, shall have a minimum area of 50,000 square feet and a minimum average width of 200 feet throughout the length of the lot or parcel on the Au Sable river main stream, south branch and north branch, and a minimum average width of 150 feet on all other designated tributaries. The average lot width shall be based on the average of the combined widths of the front and rear lot lines.

(2) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrules (3) and (4) of this rule.

(3) Proposed lots which have preliminary plat approval pursuant to the provisions of Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on their effective date, shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.329.

(4) Lots of record which are created before the effective date of these rules, or amendments thereto, and which do not possess sufficient land area or lot width may be used for the purposes described within these rules, subject to the requirements provided for in R 281.329.

(5) Home occupations shall conform to all of the following requirements:

(a) Only members of the immediate family who reside on the premises, plus 1 additional person, may engage in home occupations.

(b) The use of the dwelling unit, or related structure, for the home occupation shall be clearly incidental and subordinate to its use for residential purposes. The home occupation shall not occupy more than 20% of the aboveground floor area of the dwelling unit or 300 square feet, whichever is greater. This requirement shall apply whether the home occupation is contained wholly within the dwelling unit or utilizes a garage.

(c) There shall be no change in the outside appearance of the dwelling or any other visible evidence of the conduct of the home occupation in the dwelling; however, there may be 1 sign which is not more than 2 square feet in area, is non-illuminated, and is mounted against the wall of the dwelling. The home occupation shall be conducted and operated entirely within the confines of the dwelling.

(d) The home occupation shall be operated in its entirety within the principal dwelling unit and attached or detached garage.

(e) Only products produced on the premises by a home occupation may be sold. Only services provided on the premises by a home occupation may be sold. This does not preclude the storage of products not produced on the premises if such storage does not exceed the floor area requirement specified in subdivision (b) of this subrule or contain explosive or highly flammable material.

(f) Traffic shall not be generated by a home occupation in a volume that is more than 20% of the average volume normally expected for the type of dwelling unit to which the home occupation is associated. Average volumes shall be based on current trip generation guidelines as issued in the 1987 edition of the Institute of Transportation Engineers' publication entitled "Trip Generation, fourth edition," which are herein adopted by reference. The guidelines are available for review or purchase from the Land and Water Management Division of the Michigan Department of Natural Resources, P.O. Box 30028, Lansing, Michigan 48909, or may be purchased from the Institute of Transportation Engineers, 525 School Street SW, Suite 410, Washington, DC 20024-2729, at a cost of \$125.00.

(g) Equipment or a process shall not be used in a home occupation if it creates noise, vibration, glare, fumes, odors, or electrical interference off the premises which is detectable to the normal senses and the occupation is conducted in a single-family dwelling unit or its associated

garage or outside the dwelling unit if the occupation is conducted in other than a single-family dwelling unit or its associated garage. Equipment or a process shall not be used if it creates visual or audible interference in any radio or television receivers off the premises or causes fluctuation in line voltage off the premises.

(6) Within the natural river district, a 75-foot minimum restrictive cutting belt shall be maintained on each side of the main stream, south branch and north branch of the Au Sable river, and a 50-foot minimum restrictive cutting belt shall be maintained on each side of all other designated tributaries. Trees and shrubs may be pruned for a filtered view of the river, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to all of the following provisions:

(a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy and poison sumac may be removed

(b) The selected removal or trimming of trees for timber harvest, access or woodlot improvements, landscaping, or public utility lines to service private single-family dwellings and other permitted uses is permitted upon approval of the zoning administrator.

(c) Camping is not permitted in the natural vegetation strip.

(7) In addition to the signage standards specified in R 281.327, all signs shall be in compliance with all of the following provisions:

(a) Be stationary with no moving parts.

(b) Be constructed of natural materials and earth tone colors to blend with the surrounding environment.

(c) Not be attached to trees or shrubs unless the sign is located outside the natural vegetation strip.

(d) Not be illuminated unless it can be demonstrated that illumination is necessary for the purposes of traffic safety or other such purpose, in which case the zoning administrator may approve an illuminated sign.

(8) Private boat docks shall be in conformance with all of the following requirements:

(a) Docks shall not be more than 4 feet in width and 12 feet in length, with not more than 4 feet of the dock extending over the edge of the river.

(b) Docks shall be designed, constructed, and maintained to blend with natural surroundings. The use of natural, native materials is encouraged.

(c) Unless provided for within these rules, only 1 dock shall be constructed per lot.

(d) Where regulations permit multiple docks, such docks may be placed side by side.

History: 1990 AACCS.

R 281.325 Boundaries; interpretation of boundaries; filing of zoning map.

Rule 5. (1) The boundaries of the Au Sable river natural river district shall be as described in these rules and as depicted on the certified Au Sable river natural river zoning map. The Au Sable river natural river zoning district comprises an area which is described as follows:

(a) The Au Sable river from the confluence of Kolka creek and Bradford creek in section 23, T28N, R4W in Crawford county to Loud dam in section 21, T24N, R6E in Iosco county.

(b) Kolka creek from the outfall of Lynn lake in section 26, T29N, R4W in Otsego county to its confluence with Bradford creek in section 23, T28N, R4W in Crawford county.

(c) Bradford creek from the outfall of Big Bradford lake in section 6, T28N, R3W in Crawford county to its confluence with Kolka creek in section 23, T28N, R4W.

(d) East branch, Au Sable river, from the outfall of Barnes lake in section 7, T28N, R2W in Crawford county to its confluence with the Au Sable river in section 8, T26N, R3W.

(e) South branch, Au Sable river, from highway M-76 in section 5, T23N, R1W in Roscommon county to its confluence with the Au Sable river in section 8, T26N, R1W in Crawford county.

(f) Douglas creek from its headwaters in section 16, T25W, R1W in Crawford county to its confluence with the south branch of the Au Sable river in section 18, T25N, R1W.

(g) Thayer creek from its headwaters in section 16, T25N, R2W in Crawford county to its confluence with the south branch of the Au Sable river in section 7, T25N, R1W.

(h) Hudson creek from its headwaters in section 26, T24N, R2W in Roscommon county to its confluence with the south branch of the Au Sable river in section 12, T24N, R2W.

(i) Robinson creek from its headwaters in section 7, T23N, R2W in Roscommon county to its confluence with the south branch of the Au Sable river in section 5, T24N, R2W.

(j) Beaver creek from its headwaters in section 25, T25N, R4W in Crawford county to its confluence with the south branch of the Au Sable river in section 31, T25N, R2W.

(k) East creek from its headwaters in section 13, T24N, R1W in Roscommon county to its confluence with the south branch of the Au Sable river in section 16, T24N, R1W.

(l) South creek from its headwaters in section 35, T24N, R1W in Roscommon county to its confluence with the south branch of the Au Sable river in section 28, T24N, R1W.

(m) North branch, Au Sable river, from Ski Slope drive in section 34, T30N, R3W in Otsego county to its confluence with the Au Sable river in section 1, T26N, R1W in Crawford county.

(n) Turtle creek from the outfall of Turtle lake in section 33, T30N, R2W in Otsego county to its confluence with the north branch of the Au Sable river in section 20, T29N, R2W.

(o) Chub creek from the outfall of Bridge lake in section 23, T29N, R3W in Otsego county to its confluence with the north branch of the Au Sable river in section 20, T29N, R2W.

(p) Big creek from the confluence of the east branch of Big creek and the west branch of Big creek in section 23, T27N, R1W in Crawford county to its confluence with the north branch of the Au Sable river in section 27, T27N, R1W.

(q) West branch, Big creek, from the outfall of Caulkins lake in section 14, T29N, R1W in Otsego county to its confluence with the east branch of Big creek in section 23, T27N, R1W in Crawford county.

(r) Middle branch, Big creek, from the outfall of West Twin lake in section 32, T29N, R1E in Montmorency county to its confluence with the east branch of Big creek in section 13, T27N, R1W in Crawford county.

(s) East branch, Big creek, from the north section line of section 27, T28N, R1E in Oscoda county to its confluence with the west branch of Big creek in section 23, T27N, R1W, in Crawford county.

(t) Big creek from the confluence of the east branch of Big creek and the west branch of Big creek in section 24, T26N, R1E in Oscoda county to its confluence with the Au Sable river in section 1, T26N, R1E.

(u) West branch, Big creek, from its headwaters in section 1, T24N, R1E in Ogemaw county to its confluence with the east branch of Big creek in section 24, T26N, R1E in Oscoda county.

(v) East branch, Big creek, from its headwaters in section 10, T25N, R2E in Oscoda county to its confluence with the west branch of Big creek in section 24, T26N, R1E.

(w) Sohn creek from its headwaters in section 20, T27N, R1E in Oscoda county to its confluence with the Au Sable river in section 4, T26N, R1E.

(x) Beaver creek from the east section line of section 26, T17N, R1E in Oscoda county to its confluence with the Au Sable river in section 3, T26N, R1E.

(y) Wolf creek from its headwaters in section 19, T26N, R3E in Oscoda county to its confluence with the Au Sable river in section 7, T26N, R3E.

(z) Loud creek from its headwaters in section 29, T26N, R3E in Oscoda county to its confluence with the Au Sable river in section 17, T26N, R3E.

(aa) Perry creek from the outfall of Perry lake in section 9, T27N, R3E in Oscoda county to its confluence with the Au Sable river in section 9, T26N, R3E.

(bb) Comins creek from its headwaters in section 27, T27N, R3E in Oscoda county to its confluence with the Au Sable river in section 11, T26N, R3E.

(cc) Glennie creek from its headwaters in section 30, T27N, R4E in Oscoda county to its confluence with the Au Sable river in section 7, T26N, R4E.

(dd) Nine Mile creek from its headwaters in section 28, T26N, R4E in Oscoda county to its confluence with the Au Sable river in section 23, T26N, R4E.

(ee) Blockhouse creek from its headwaters in section 28, T27N, R4E in Oscoda county to its confluence with the Au Sable river in section 20, T26N, R5E, in Alcona county.

(ff) The lands lying within 400 feet of the river's edge which are enumerated in subdivisions (a) to (ee) of this subrule.

(2) Where uncertainty exists with respect to the boundaries of the district as shown on the zoning map, all of the following rules shall apply:

(a) Boundaries indicated as approximately following the centerline of streets or highways shall be construed to follow such centerline.

(b) Boundaries indicated as approximately following lot lines shall be construed as following such lot lines.

(c) Boundaries indicated as approximately following city, village, township, or county boundary lines shall be construed as following such city, village, township, or county boundary lines.

(d) Boundaries indicated as following railroad lines shall be construed to be midway between the right-of-way lines.

(e) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and, in the event of change in the shorelines, shall be construed as moving with the actual shorelines; boundaries indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerline.

(f) Boundaries indicated as parallel to or extensions of features indicated in subdivisions (a) to (e) of this subrule shall be so construed. Distances that are not specifically indicated on the official zoning map shall be determined by the scale of the map.

(g) Where physical or natural features existing on the ground are at variance with those shown on the official zoning map or in other circumstances are not covered by the provisions of subdivisions (a) to (f) of this subrule, the zoning review board shall interpret the district boundaries.

(h) Insofar as a portion of all of the district may be indicated on the zoning map by a pattern which, for the sake of map clarity, does not cover public right-of-way, it is intended that such district boundaries do extend to the center of any public right-of-way.

(3) Certified copies of the Au Sable river natural river zoning map shall be filed with all of the following entities:

(a) The state tax commission.

(b) Local tax assessing officers.

(c) Township and county clerks.

(d) The natural rivers unit of the Michigan department of natural resources.

History: 1990 AACs.

R 281.326 Zoning permits; site plans; certificates of zoning compliance.

Rule 6. (1) A building or other structure shall not be erected, moved, added to, or structurally altered, and a land use shall not be commenced, without a zoning permit as specified by these rules and issued by the zoning administrator. Permits shall not be required for exempt activities as specified in R 281.327(1). Plans submitted in application of a zoning permit shall contain the necessary information for determining compliance with these rules.

(2) Concurrent with applying for a zoning permit, an applicant shall submit a site plan of the proposed development. Such site plan shall include the entire area proposed for development. The zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, shall have the authority to require adjustments in the site plan as a condition for approval if such adjustments are deemed necessary to ensure that the proposed development meets all standards contained in these rules and does not excessively disturb the natural river environment or the general character of the area. Except as otherwise waived by the zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, a site plan shall show and include all of the following, either existing or proposed:

(a) Site plan drawn to scale, with the scale indicated.

(b) Property dimensions.

(c) The size, shape, use, and location of existing and proposed buildings or improvements, including distances to adjacent property boundaries and the river's edge.

(d) Existing vegetation, including the location and type.

(e) Adjacent streets and highways.

(f) Parking areas.

(g) Bluff heights.

(h) Entrances to public streets.

(i) A description of the building design, including proposed construction materials.

(j) Drainage facilities.

- (k) The location and description of the method to dispose of sanitary wastes.
 - (l) Proposed landscaping.
 - (m) The location of footpaths.
 - (n) Signs proposed, including the size, location, and material.
 - (o) North arrow.
 - (p) Date of drawing.
 - (q) Detailed site location map.
 - (r) Any additional information deemed by the zoning administrator or zoning review board to be necessary to carry out the administrator's or board's duties. Examples of such information include the following:
 - (i) Soil types.
 - (ii) Topography.
 - (iii) Building elevations.
 - (iv) Site photographs.
 - (v) Anticipated traffic volumes.
 - (vi) Traffic circulation patterns.
 - (vii) Other pertinent site information.
- (3) A building, structure, lot, or use for which a zoning permit has been issued shall not be occupied or used until the zoning administrator has, after final inspection, issued a certificate of zoning compliance indicating compliance with all of the provisions of these rules. However, the issuance of a certificate of compliance shall not be construed as waiving any provision of these rules. Buildings accessory to dwellings shall not require separate certificates of zoning compliance, but may be included in the certificate of zoning compliance for the dwelling when shown on the site plan and when completed at the same time as such dwellings. A record of all certificates issued shall be kept on file in the office of the zoning administrator. Certificates of zoning compliance are for the purposes of these rules and shall not be interpreted as substitutes for certificates of occupancy required by local building codes.

History: 1990 AACCS.

R 281.327 Land use and development standards.

Rule 7. Land uses within the natural river district are classified as exempt, principal, or special uses and are described as follows:

- (a) Exempt uses are uses permitted by right which are not subject to receipt of a zoning permit. Exempt uses include all of the following:
 - (i) Private, noncommercial recreation which does not involve permanent structures, equipment, or other devices, but which includes camping, boating, fishing, hunting, and other similar activities.
 - (ii) Reforestation and other accepted forest management practices, subject to the limitations outlined in R 281.324(6)(b).
 - (iii) Agriculture, including general and specialized farming, unless the bureau of environmental protection of the Michigan department of natural resources determines that such use will significantly contribute to stream degradation.
 - (iv) The operation of licensed motor vehicles on dedicated public roads or private roads designed to provide access to a permitted use.
 - (v) The off-road operation of emergency and public utility maintenance vehicles. The off-road operation of other motorized vehicles is prohibited in the natural vegetation strip as described in R 281.324(6).
 - (vi) Private footpaths that are constructed by the landowner of natural materials to facilitate access to permitted uses.
 - (vii) Residential identification signs subject to the provisions of R 281.324(7) and provided that both of the following provisions are complied with:
 - (A) Signs shall serve to identify the name of dwelling occupants only and not to advertise a business or service.
 - (B) One sign shall be permitted per lot or parcel, which shall not be more than 1 square foot in area.
 - (viii) Real estate signs, if all the following provisions are complied with:

- (A) A sign shall be of a temporary nature and shall not be more than 4 square feet.
- (B) One sign shall be allowed per parcel, which shall not be located in the natural vegetation strip.
- (C) A sign shall be removed within 14 days of the sale of the advertised parcel.
- (ix) "No Trespassing" signs if such signs are not more than 1 square foot in area and are spaced a minimum of 100 feet apart.
- (b) Principal uses are uses which are allowed by right, but which require the issuance of zoning permits by the zoning administrator. Principal uses include all of the following:
 - (i) Single-family dwellings, if all the following provisions are complied with:
 - (A) Only 1 dwelling shall be permitted per lot of record.
 - (B) Each lot shall be a minimum of 50,000 square feet.
 - (C) A dwelling lot along the Au Sable river main stream, north branch or south branch, shall have a minimum average width of 200 feet throughout its length. A dwelling lot along any other designated tributary shall have a minimum average width of 150 feet throughout its length.
 - (D) Building setback for lots, including all appurtenances and accessory buildings, shall be a minimum of 200 feet from the ordinary high watermark on the main stream, north branch and south branch, and 100 feet on all other designated tributaries. The setback may be decreased 1 foot for every 1 foot rise in bank height to a minimum of 150 feet from the ordinary high watermark on the main stream, north branch and south branch, and to a minimum of 75 feet from the ordinary high watermark on all other designated tributaries. Buildings and appurtenances shall be set back not less than 25 feet from the top of a bluff on the noncutting edge of a stream and not less than 50 feet from the top of a bluff on the cutting edge of a stream. Building shall not take place on land that is subject to flooding.
 - (E) Side yards shall be a minimum of 10 feet from side lot lines.
 - (F) Rear yard setback shall be a minimum of 25 feet from the rear lot line. In many instances, the rear lot line of lots with river frontage will coincide with the right-of-way line of a public or private road.
 - (ii) Accessory buildings that meet the setback requirements of paragraph (i) of this subdivision; however, the rear yard setback may be reduced to 15 feet.
 - (iii) A private boat dock.
 - (iv) Utility lines to service private, single-family dwellings.
 - (v) Disposal fields and septic tanks, if all of the following provisions are complied with:
 - (A) The fields and tanks shall be located not less than 150 feet from the ordinary high watermark.
 - (B) A septic tank or absorption field shall not be located closer than 100 feet to any surface or subsurface drainage system that enters into the Au Sable river or its designated tributaries.
 - (C) The bottom of the pit associated with an earth privy shall not be less than 4 feet above the known high groundwater table.
 - (vi) Mining and extracting industries, if located not less than 300 feet from the ordinary high watermark.
 - (vii) Residential single-family dwelling plats, if the minimum standards specified in paragraph (i) of this subdivision are met.
 - (viii) Home occupations.
 - (ix) Land alteration, such as grading, dredging, and filling of the land surface, unless the high groundwater table is within 4 feet of the existing, natural, land surface.
- (c) The Au Sable river natural river plan and these rules recognize that certain types of residential, recreational, and commercial uses may be appropriate for the natural river district that have not been identified under the exempt and principal uses provisions of this rule. Such uses may result in intensities of development and use higher than to be anticipated under the exempt and principal uses. To ensure that such uses do not contravene the goals and objectives of the Au Sable river natural river plan and these rules, and to ensure compatibility with adjacent uses, such uses shall be referred to as special uses and shall be subject to the review and approval of the zoning review board. Special uses and their development standards include all of the following:
 - (i) Detached rental cabins, if all of the following provisions are complied with:
 - (A) Cabins shall not be operated as motels, but may offer light housekeeping services.
 - (B) The number of cabins permitted shall be based on the rate of 1 cabin per 200 feet of river frontage. Clustering of rental cabins is encouraged; however, the ratio of 1 cabin per 200 feet of river frontage shall not be exceeded.
 - (C) Each cabin and all associated buildings, structures, or other related devices shall be set back a minimum of 40 feet from all property lines and 200 feet from the ordinary high watermark.

(D) Parking for the cabins shall be limited to 2 spaces per cabin and the spaces shall be located to the rear (landward side) of the building.

(E) The exterior of a cabin shall be constructed of natural materials with natural or earth tone colors to blend with the surrounding environment.

(F) Cabins or grounds shall not contain signage within the district, except for directional signage that is not more than 1 square foot in area per sign. Directional signage shall be for the purposes of directing vehicular and pedestrian traffic to cabins and facilities and for identifying individual cabins. Signage shall not be visible from the river.

(G) Boat docks may be erected for the private use of occupants of the rental cabins and their guests. Docks shall be in compliance with the requirements of R 281.324 and both of the following provisions:

(1) Docks may be constructed at the rate of 1 dock for each permitted rental cabin.

(2) Access to a dock or docks shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

(ii) Campgrounds, including tents, travel trailers, campers, and motor homes, with associated noncommercial buildings, cement pads, and utility hookups, if all of the following provisions are complied with:

(A) Campgrounds shall be constructed and maintained in accordance with all applicable state regulations.

(B) Campgrounds shall be a minimum of 10 acres.

(C) A commercial enterprise shall not be permitted to operate in the campground, except that a convenience goods shopping building that is not more than 1,500 square feet may be provided in campgrounds that have more than 140 sites. The exterior of such buildings shall be constructed of natural material. The building shall not be more than 1 story in height.

(D) Each site and all associated buildings, structures, and other related devices shall be set back a minimum of 50 feet from all property lines and 300 feet from the ordinary high watermark.

(E) Fences and greenbelts may be required by the zoning review board for campgrounds that are adjacent to existing residential uses. Fencing shall be constructed of natural material. Greenbelts shall consist of plant material indigenous to the area or as approved by the zoning review board.

(F) Vehicular parking shall be limited to 2 spaces per individual camping site.

(G) A camping site shall not have more than 4 sites per acre.

(H) A campground shall not contain signage within the district, except for directional signage that is not more than 1 square foot in area per sign. Directional signage shall be for the purposes of directing vehicular and pedestrian traffic to camping sites and facilities and for identifying individual campsites. Signage shall not be visible from the river.

(I) Boat docks may be erected for the private use of the occupants of the campsites and their guests if both of the following provisions are complied with:

(1) The total number of docks shall not be more than 1 dock for each 200 feet of river frontage.

(2) Access to the dock or docks shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

(iii) Canoe, boat, and other watercraft liveries, if all of the following provisions are complied with:

(A) Parked vehicles and off-season canoe and boat storage areas shall not be visible from the river.

(B) Boat docks may be erected at the ratio of 1 dock per 200 feet of river frontage.

(C) Other than the rental of canoes and boats, other commercial enterprises shall not be permitted to operate.

(D) A rental office which is associated with the operation of the livery and which does not have more than 225 square feet may be constructed. The exterior of the building shall be constructed of natural material. The building shall not be more than 1 story in height.

(E) Access to the dock or docks or place of river entry from the canoe or boat rental office shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

(F) The livery shall not contain signage within the district, except for directional signage that is not more than 1 square foot in area per sign.

Directional signage shall be for the purpose of directing patrons to parking areas and launch sites. Signage shall not be visible from the river.

History: 1990 AACCS.

R 281.328 Application and approval; procedures and standards; principal uses and special uses.

Rule 8. (1) The application for a principal use shall be submitted and processed under the following procedures:

(a) An application for a principal use shall be made on an application form that is available from the zoning administrator and returned to the zoning administrator. A completed application shall contain all of the following information:

- (i) A completed application form signed by the applicant or the applicant's representative.
- (ii) Two copies of a site plan that meets the requirements of R 281.326(2).
- (iii) Evidence of ownership or legal interest in the property affected by the application for a principal use.

(b) Within 15 days of receipt of an application for a principal use, the zoning administrator shall notify the applicant of the need for additional information.

(c) Within 30 days of receipt of a completed application, the zoning administrator shall issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(d) Concurrent with the issuance of a zoning permit, an applicant shall receive a copy of the approved site plan.

(e) Before commencing construction of a principal use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

(f) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of not more than 6 months if conditions pertaining to the issuance of the original permit remain unchanged. Application for an extension shall be made before permit expiration. Any subsequent extensions shall have the written approval of the zoning review board.

(2) The application for a special use permit shall be submitted and processed under the following procedures:

(a) An application for a special use permit shall be made on an application form that is available from the zoning administrator and returned to the zoning administrator. A completed application shall contain all of the following information and attachments:

- (i) A completed application form signed by the applicant or the applicant's representative.
- (ii) Eight copies of a site plan that meets the requirements of R 281.326(2).
- (iii) Evidence of ownership or legal interest in the property affected by the application for a special use.
- (iv) A list of all property owners, together with their addresses, who are located within 300 feet of the applicant's property which is being considered for a special use.

(b) The application, together with the required attachments, shall be submitted not less than 30 days before the meeting of the zoning review board at which the application is to be considered.

(c) The zoning review board shall conduct at least 1 public hearing and shall require all of the following notifications of such hearing to be made not less than 5, nor more than 15, days before consideration of the special use application:

(i) One notice shall be published in a newspaper which circulates in the township in which the proposal is located.

(ii) Notice shall be sent by first-class mail or personal delivery to the owners of property for which approval is being considered and to all persons identified in subdivision (a)(iv) of this subrule.

(iii) Notice shall also be sent to all of the following entities:

- (A) The natural rivers unit of the Michigan department of natural resources.
- (B) Local tax assessing officials.
- (C) Township and county clerks.
- (D) Local building inspectors.

(d) In considering a special use application, the zoning review board shall require that all of the following general standards, in addition to those specific standards established for each special use in R 281.327(3), be satisfied:

- (i) That the purposes noted in R 281.322 are accomplished.

- (ii) That the proposed special use is compatible with adjacent uses of land and the natural environment and that the capacities of public services and facilities are adequate.
- (iii) That a compelling reason exists to locate the proposed use within the district boundaries if contiguous property under the same ownership is available outside the district.
- (iv) That the proposed use in combination with other existing uses will not be a detriment to the public health, safety, and welfare.
- (e) The zoning review board may impose conditions deemed necessary to accomplish the general and specific standards applicable to the proposed use.
- (f) The concurring vote of a majority of the members of the zoning review board shall be required to approve a special use.
- (g) A special use granted by the zoning review board shall be valid for 1 year from the date of approval. If construction has not, in the opinion of the zoning review board, commenced and proceeded meaningfully at the end of the 1-year period, the zoning administrator shall notify the applicant, in writing, of the expiration of the special use approval.
- (h) If it is determined by the zoning review board that the applicant has failed to comply with any of the requirements of these rules or the approval granted, the board, after a public hearing held in accordance with the provisions of subdivision (c) of this subrule, may revoke any special use approval.
- (i) Any application for a special use which has been denied by the zoning review board shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, new and significant facts and conditions exist which might result in favorable action upon resubmission.
- (j) Concurrent with the issuance of a special use permit, an applicant shall receive a copy of the approved site plan, with conditions, if any.
- (k) Before commencing construction of a special use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was used is completed.

History: 1990 AACCS.

R 281.329 Variances and variance hearings.

Rule 9. (1) A dimensional variance from any standard established in these rules may be granted by the zoning review board, after a public hearing, or in certain instances by the zoning administrator, to allow a modification from such standard establishing area, yard, height, floor space, frontage, setback, or similar numerical restriction, but only after substantive evidence establishes that there are practical difficulties in carrying out the strict letter of these rules. A variance shall be permitted only when it is in harmony with the general purposes and intent of these rules.

(2) The zoning review board or zoning administrator shall consider all of the following factors in determining if there are practical difficulties in carrying out the strict letter of these rules as specified in subrule (1) of this rule:

- (a) How substantial the variance is in relation to the zoning requirements.
- (b) Whether a substantial change will be affected in the character of the area or a substantial detriment created for adjoining properties.
- (c) Whether the difficulty can be overcome by some feasible method other than a variance.
- (d) Whether, in view of the manner in which the difficulty arose, and considering all of the factors specified in subdivisions (a) to (c) of this subrule, the interests of justice will be served by allowing the variance.
- (e) Whether the plight of the landowner is due to circumstances unique to his or her property not created by the landowner.
- (f) Whether the variance may result in a material adverse effect on the environment.

(3) For the purposes of these rules, the required hearing and review of a variance request by the zoning review board shall be waived for certain minor dimensional variances of principal uses, including legal nonconforming uses. Such variances shall be handled by the zoning administrator, who shall consider the provisions of subrule (2) of this rule in making a determination. The zoning administrator shall prepare a written finding of fact detailing the reasons for approval or denial of the minor variance request. Minor variances include any of the following:

(a) Setbacks for uses on lawful lots which are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures and any portion thereof, including additions, porches, and steps.

(b) Setbacks for uses on lawful nonconforming lots, including lots within subdivisions, which are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures and any portion thereof, including additions, porches, and steps. Conditions may be imposed on an applicant before granting a variance. Such conditions shall be in writing and signed by the applicant before the applicant receives a variance.

(4) A land use variance is a land or building use in contravention of any of the use requirements of these rules. The zoning review board may, after a public hearing, in its sole discretion, grant a variance upon a finding of unnecessary hardship, which may be found upon substantial evidence being submitted that all of the following factors are found to exist:

(a) That property cannot be used in a manner consistent with existing zoning.

(b) That the hardship results from the application of these rules to the applicant's property.

(c) That the hardship of which the applicant complains is suffered by his or her property directly and is not shared by others.

(d) That the hardship is not the result of the applicant's own actions.

(e) That the hardship is peculiar to the applicant's own property.

(5) In determining whether reasonable use may be made of the property as zoned, a reasonable economic return may be a factor which could be considered, but only if the applicant is in compliance with the provisions of subrules (1) to (4) of this rule. Whether any weight shall be given to the economic return factor shall be dependent on a determination that the owner has been deprived of all beneficial use of his or her property under existing zoning.

(6) The zoning review board shall, after finding that unnecessary hardship exists, also find that, based on adequate evidence, the proposed use meets all of the following conditions:

(a) The use will be harmonious with and in accordance with the general objectives of the Au Sable river natural river plan.

(b) The use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the general vicinity.

(c) The use will not be hazardous or disturbing to existing or future neighboring uses.

(d) The use will be adequately served by existing essential public facilities and services, such as highways, police and fire protection, drainage structures, refuse disposal, and sanitation facilities, or that the persons or agencies responsible for the establishment of the proposed use shall be able to adequately provide any such service.

(e) The use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the local community.

(f) The use will not involve uses, activities, processes, materials and equipment, and conditions of operation that will be detrimental to any persons, property, the general welfare, or the environmental quality of the district because of the excessive production of traffic, noise, smoke, fumes, glare or odors or require the outdoor storage of raw materials or discarded materials produced in the use processes.

(g) The use will be consistent with the intent and purposes of these rules.

(h) The use or the structures to be used therefor will not cause an overcrowding of the land or an undue concentration of population resulting in degradation to the river and district.

(i) The use plot area is sufficient, appropriate, and adequate for the use and the reasonable anticipated operation and expansion thereof.

(7) Upon receipt of an application for a variance, the zoning review board shall conduct a hearing on the request, except as provided for in subrule (3) of this rule. The hearing and notice procedure shall follow that established for special use applications by the provisions of R 281.328(2)(c). A decision shall be made within 30 days after the hearing to approve or deny the variance request. The zoning review board shall keep complete and detailed records of all its proceedings, which shall include the minutes of its meetings, its findings, and actions taken on each matter heard by it, including the final order. The order shall include the legal description of the property involved. Reasons for the decision shall be stated in writing. The board shall record the vote of each member on each question. If a member is absent or fails to vote, the board shall indicate such fact. All records shall be open for public inspection.

The concurring vote of a majority of the members of the zoning review board shall be necessary to effect a dimensional variance in these rules, except that a concurring vote of 2/3 of the members of the board of appeals shall be necessary to grant a land use variance permitted in these rules.

(8) The zoning review board shall not issue a land use variance when the district allows the use as a special use.

(9) The effect of any variance shall be to create a nonconforming land use or structure which shall then be subject to the terms of R 281.330, which regulates continued use.

History: 1990 AACCS.

R 281.330 Nonconforming uses, lots, and structures.

Rule 10. (1) It is recognized that there exists, within the natural river district, lots, structures, and uses of land and structures which were lawful before these rules were promulgated or amended which would be prohibited, regulated, or restricted under the terms of these rules or future amendments. It is the intent of these rules to permit legal nonconforming uses, structures, or lots to continue until they are brought into conformity and, in certain instances, to permit limited expansion of certain legal nonconforming uses and structures.

(2) Any nonconforming (substandard) lot shall be in compliance with the minimum requirements of the dimensional requirements of these rules, except as such substandard nonconforming lot may be used pursuant to the provisions of R 281.329.

(3) Where, at the effective date of the promulgation or amendment of these rules, a lawful use of land exists that is made unlawful under the terms of these rules as promulgated or amended, such use may be continued if it remains otherwise lawful, subject to all of the following provisions:

(a) Such nonconforming use shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of promulgation or amendment of these rules.

(b) Such nonconforming use shall not be moved, in whole or in part, to any other portion of the lot or parcel occupied by such use at the effective date of promulgation or amendment of these rules, unless such move would result in a greater degree of conformity with these rules.

(c) If such nonconforming use of land ceases for any reason for a period of 12 months, any subsequent use of such land shall conform to the requirements specified by these rules.

(4) Where a lawful structure exists at the effective date of promulgation or amendment of these rules that is made unlawful under the terms of these rules as promulgated or amended, such structure may be continued if it remains lawful, subject to all of the following provisions:

(a) Such structure shall not be enlarged or altered in a way which increases its nonconformity; however, when a single-family dwelling is classified as nonconforming, alterations, repairs, and additions, including accessory buildings, may be erected if the gross floor area of all such alterations, repairs, and additions, including accessory buildings, is not more than 50% of the gross floor area of the nonconforming dwelling, cumulative from the date of nonconformance to the date of the request if any enlargement to a lawful nonconforming structure, to the extent possible, is in compliance with all setback and other building requirements. Expansion of a lawful, nonconforming single-family dwelling shall be handled as a variance pursuant to the provisions of R 281.329.

(b) If such nonconforming structure is destroyed by any means to an extent of more than 60% of its replacement cost, it shall not be reconstructed for its original nonconforming use.

(c) Such nonconforming structure shall not be moved, in whole or in part, to any other portion of the lot or parcel occupied by such structure at the effective date of promulgation or amendment of these rules, unless the move would result in a greater degree of conformity with these rules.

History: 1990 AACCS.

R 281.331 Zoning administrator and zoning review board; appointment; duties.

Rule 11. (1) The commission shall appoint a zoning administrator and zoning review board to act as its agents to enforce these rules.

(2) The duties of the zoning administrator include the following:

(a) Provide necessary forms and applications and receive and process applications.

(b) Determine and verify zoning compliance when the applicant's plans are found to conform with the provisions of these rules.

(c) Conduct site inspections to ensure compliance with these rules.

(d) Issue any authorized permits and certificates of zoning compliance.

(e) Identify and record information relative to nonconformities.

(f) Maintain files of applications, permits, and other relevant documents.

(g) Schedule meetings and hearings for, and provide assistance to, the zoning review board.

(h) Act on variances as permitted by the provisions of R 281.329(3).

(3) The duties of the zoning review board are as follows:

(a) Adopt rules of procedure governing the transaction of its business.

(b) Act upon requests for special use permits.

(c) Act on certain dimensional and land use variances pursuant to the provisions of R 281.329.

(d) Act on the interpretation of the official zoning map pursuant to the provisions of R 281.325(2)(g).

(4) In establishing the zoning review board, the commission shall cooperate with, and seek the advice of, all of the following entities:

(a) Affected townships and counties.

(b) Soil conservation districts.

(c) Property owners' associations.

(d) Other interested local organizations and citizens.

(5) The commission shall request each affected township to appoint 1 person to represent its interest on matters within its jurisdiction. The commission shall request each affected county to appoint 2 persons to represent its interests on matters within its jurisdiction. One of the 2 persons shall be a county official who works in planning, zoning, public health, soil erosion and sedimentation control, or a related field. The commission shall request that each affected soil conservation district appoint 1 person to represent its interest on matters within its jurisdiction. Representatives appointed pursuant to this rule shall vote only on those matters within their respective jurisdictions. If affected townships, counties, or soil conservation districts do not appoint someone to represent them within 60 days from the request by the commission, the commission may make appointments on its own motion.

(6) In accord with procedures specified in subrule (5) of this rule, the commission shall request that each governmental unit and organization appointing regular members to the zoning review board shall also appoint 1 alternate member to represent the governmental unit or organization. The alternate member may be called to sit as a regular member in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the zoning review board.

(7) The zoning review board shall hold at least 1 meeting annually for such purposes as adopting or amending rules of procedure, establishing officers, for educational purposes, or to conduct any manner of business as provided for by these rules.

History: 1990 AACS.

R 281.332 Appeals; contested cases.

Rule 12. An aggrieved party who contests the decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1990 AACCS.

R 281.333 Violations; effect; remedies.

Rule 13. (1) Uses of land and dwellings, buildings, or structures, including tents and trailer coaches, used, erected, altered, razed, or converted in violation of these rules are nuisances per se.

(2) After the effective date of these rules, a building or structure or land shall not be used or occupied, and a building or structure or part thereof shall not be erected, constructed, reconstructed, moved, or structurally altered, unless the building, structure, or land is in compliance with the provisions of these rules. A permit or variance shall not be approved, and action shall not be taken, if approval of the permit or variance or the action taken violates the provisions of these rules. The commission shall not waive any of its rights or remedies against any person who violates these rules if the violations were committed in reliance on an authorization erroneously given in violation of any provisions of these rules. Any permit, variance, or action authorized that is contrary to the provisions of these rules is deemed illegal and invalid from the date of the authorization.

(3) In addition to all other remedies, the commission may institute appropriate action or proceedings to prevent, restrain, correct, or abate violations or threatened violations and it is the duty of the commission to institute such action.

History: 1990 AACCS.

R 281.334 Boundaries and permitted uses; changes, amendments, and supplements; precedence of local zoning ordinance over rules.

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.322.

(2) A local unit of government or a landowner who requests a change, amendment, or supplement to the boundaries or to permitted uses shall have a hearing held pursuant to the provisions of sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws.

(3) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following entities:

- (a) The county register of deeds.
- (b) Township and county clerks.
- (c) The local building inspector.
- (d) Local soil erosion and sedimentation control enforcement agencies.
- (e) The soil conservation district.

(4) Upon approval by the director, a local zoning ordinance which meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, Act No. 184 of the Public Acts of 1943, as amended, being S125.271 et seq. of the Michigan Compiled Laws, or Act No. 183 of the Public Acts of 1943, as amended, being S125.101 et seq. of the Michigan Compiled Laws, whichever is applicable, shall take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Au Sable river natural river district through court action or for any other reason, these rules shall apply.

History: 1990 AACCS.

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

PERE MARQUETTE RIVER NATURAL RIVER ZONING

(By authority conferred on the natural resources commission by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.341 Definitions.

Rule 1. As used in these rules:

(a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit for a principal use, special use, or variance.

(b) "Appurtenance" or "accessory building" means a structure that is incidental to a dwelling, including all of the following:

(i) Garages.

(ii) Residential storage sheds.

(iii) Barns and other agricultural storage and livestock structures.

(iv) Pump houses.

(v) Wells.

(vi) Private access roads.

(vii) Sanitary facilities.

(viii) Electrical service lines.

(c) "Bluff" means a steep bank which rises sharply from the river's edge.

(d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.

(e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.

(f) "Certificate of zoning compliance" means a standard form which is issued by the zoning administrator upon a determination that the construction and use of land and buildings and structures as provided for by a zoning permit, including the site plan, have been completed and are in compliance with the permit and site plan.

(g) "Commission" means the natural resources commission.

(h) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.

(i) "Director" means the director of the department of natural resources.

(j) "Family" means either of the following:

(i) An individual or group of 2 or more persons who are related by blood, marriage, or adoption and who, together with foster children, servants of the principal occupants, and not more than 2 additional unrelated persons, are domiciled together as a single, domestic, housekeeping unit in a dwelling unit.

(ii) A collective number of individuals who are domiciled together in 1 dwelling unit, whose relationship is of a continuing nontransient domestic character, and who are cooking and living as a single, nonprofit, housekeeping unit. Any society, club, fraternity, sorority, association, lodge, organization, or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature shall not be considered a family as defined by these rules.

(k) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen development from the river, to provide for streambank stabilization and erosion control, to serve as an aid to the infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.

(l) "Floodplain" means land lying within an identified or documented 100-year floodplain line. Also see subdivision (q) of this rule.

(m) "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge a 100-year flood.

(n) "Front" means that segment of a lot or parcel abutting the river's edge of the main stream or tributary.

- (o) "Front yard" means setback as provided for in R 281.347(b)(i)(D).
- (p) "Home occupation" means a gainful occupation that is traditionally and historically carried on in the home as a use which is clearly incidental and secondary to the use of the home as a dwelling place.
- (q) "Land that is subject to flooding" means that area of land adjoining the designated portions of a river and its tributaries which will be inundated by a flood which has a 1% chance of occurring or being exceeded in any given year as determined by detailed hydraulic studies that are acceptable to the Michigan department of natural resources or which, in the absence of such detailed floodplain studies, has a history of flooding or is delineated by approximate methods, such as United States geological survey flood-prone area maps or the federal emergency management agency's special flood hazard boundary maps.
- (r) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.
- (s) "Lot area" means the area inside the lot lines.
- (t) "Lot, interior" means a lot of record which is located in the natural river district, but which does not have frontage on the river or its designated tributaries.
- (u) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules or a lot or parcel which is described by metes and bounds and which has been recorded at the office of the county register of deeds before the effective date of these rules.
- (v) "Natural river district" means the Pere Marquette river natural river district as described in the provisions of R 281.345.
- (w) "Ordinary high watermark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.
- (x) "Rear yard" means that yard opposite the front yard.
- (y) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.
- (z) "River's edge" means the ordinary high watermark as used in the provisions of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (w) of this rule.
- (aa) "Setback" means the required horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.
- (bb) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.
- (cc) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.
- (dd) "Structure" means anything which is constructed, erected, or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas and other communication structures, fences, and mobile homes. Temporary recreational facilities, including tents, camper trailers, and recreation vehicles, are not considered structures if they are used less than 30 days per year and if they are located landward of the natural vegetation strip or if the facilities are located on a campsite within a campground that is licensed under the provisions of Act No. 368 of the Public Acts of 1978, as amended, being S333.1101 et seq. of the Michigan Compiled Laws, if both the individual campsite and the campground were established before the effective date of these rules.
- (ee) "Zoning administrator" means the administrator of these rules who is appointed by the commission.
- (ff) "Zoning permit" means a standard form which is issued by the zoning administrator when it is determined that the proposed construction of buildings and structures and the proposed use of land and buildings and structures thereon are in compliance with all of the provisions of these rules.
- (gg) "Zoning review board" means a group of not less than 3, nor more than 7, people which includes not less than 2 local representatives and 1 department of natural resources representative who is familiar with the local area and which is appointed by the commission to act upon requests as provided for by these rules.

History: 1992 AACCS.

R 281.342 Purpose; intent; scope.

Rule 2. (1) The commission, on its own motion, to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the Pere Marquette river, a designated natural river, promulgates these zoning rules for the following purposes:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to misuse, unwise development patterns, overcrowding, and overuse within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish, aquatic and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Pere Marquette river and adjoining land.

(c) To prevent flood damage due to interference with the natural floodplain characteristics by excluding developments which are vulnerable to flood damage and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures that are proposed for location on lands which are unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

(f) To achieve the goals and objectives of the Pere Marquette river natural river plan.

(2) It is the general intent of these rules to define terms used and to regulate and restrict lot coverage and use, population distribution and density, and the size and location of all structures by the delineation of permitted uses and development standards so as to promote the purposes identified in this rule. It is further intended to provide for the administration and enforcement of these rules and to provide penalties for their violation.

(3) It is not the intent of these rules to revoke, annul, cancel, or in any way impair or interfere with existing provisions of law, ordinances, or any rules, regulations, or premises or with any private restrictions placed upon property by covenant or deed. However, where such provisions of law are less restrictive than the provisions of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and the rules promulgated thereunder, the provisions of Act No. 231 of the Public Acts of 1970, and the rules promulgated thereunder shall apply.

History: 1992 AACCS.

R 281.343 Construction of language; severability.

Rule 3. (1) All of the following rules of construction apply to the text of these rules:

(a) The particular shall control over the general.

(b) In the case of any difference of meaning or implication between the text of these rules and any caption or illustration, the text shall control.

(c) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.

(d) Words used in the present tense shall include the future. Words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

(e) A "building" or "structure" includes any part thereof.

(f) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."

(g) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(h) Unless the context clearly indicates the contrary, where a regulation involves 2 or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either . . . or," the conjunction shall be interpreted as follows:

(i) "And" indicates that all of the connected items, conditions, or provisions shall apply.

(ii) "Or" indicates that the connected items, conditions, provisions, or events may apply singularly or in any combination.

(iii) "Either . . . or" indicates that the connected items, conditions, provisions, or events shall apply singularly, but not in combination.

(i) Terms not defined in these rules shall have the meanings customarily assigned to them.

(2) In any case in which the provisions of these rules are declared by the courts to be unconstitutional or invalid, such ruling shall not affect the validity of the remaining provisions of these rules and to this end the provisions of these rules are declared to be severable.

History: 1992 AACCS.

R 281.344 Lot size and area; subdivision of land; home occupations; natural vegetation strip; signs; docks; height of structures.

Rule 4. (1) Unless otherwise provided for within these rules, any lot or parcel of property created after the effective date of these rules, or amendments thereto, shall have a minimum area of 50,000 square feet and a minimum average width of 200 feet throughout the length of the lot or parcel on the Pere Marquette river main stream, big south branch, little south branch, middle branch, and Baldwin river, and a minimum average width of 150 feet on all other designated tributaries. The average lot width shall be based on the average of the combined widths of the front and rear lot lines.

(2) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrules (3) and (4) of this rule.

(3) Proposed lots which have preliminary plat approval pursuant to the provisions of Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on their effective date, shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.349.

(4) Lots of record which are created before the effective date of these rules, or amendments thereto, and which do not possess sufficient land area or lot width may be used for the purposes described within these rules, subject to the requirements provided for in R 281.349.

(5) Home occupations shall conform to both of the following requirements:

(a) The use of the dwelling unit, or related structure, for the home occupation shall be clearly incidental and subordinate to its use for residential purposes. The home occupation shall not occupy more than 30% of the aboveground floor area of the dwelling unit. This requirement shall apply whether the home occupation is contained wholly within the dwelling unit or utilizes a garage.

(b) Equipment or a process shall not be used in a home occupation that is conducted in a single-family dwelling unit or its associated garage if it creates noise, vibration, glare, fumes, odors, or electrical interference that is detectable to the normal senses off the premises and shall not be used in a home occupation that is conducted in other than a single-family dwelling unit or an associated garage if it creates noise, vibration, glare, fumes, odors, or electrical interference that is detectable to the normal senses outside the dwelling unit.

(6) Within the natural river district, not less than a 75-foot restrictive cutting belt shall be maintained on each side of the main stream of the Pere Marquette river main stream, big south branch, little south branch, and Baldwin river, and not less than a 50-foot restrictive cutting belt shall be maintained on each side of all other designated tributaries. Trees and shrubs may be pruned for a filtered view of the river, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to all of the following provisions:

(a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy and poison sumac, may be removed.

(b) The selected removal or trimming of trees for timber harvest, access or woodlot improvements, landscaping, public utility lines to service private single-family dwellings and other permitted uses is permitted upon approval of the zoning administrator.

(c) Camping is not permitted in the natural vegetation strip.

(7) Signs shall not be visible from the river, except:

(a) "No Trespassing" signs if the signs are not more than 1 square foot in area and are spaced a minimum of 100 feet apart.

(b) One identification sign of rustic design, associated with a canoe livery, campground or rental cabins, which is not more than 6 square feet in area. The sign shall be for the purpose of identification of a designated watercraft landing site and shall be located at the designated landing site.

(c) Signs posted by public agencies to provide for public safety such as warning of impending dangers in the river, or to identify a public access site or campground. Such signs may need to be larger than 6 square feet in area to accomplish their designated purpose. Signs which identify a public access site or campground shall be of rustic design.

(8) Private boat docks shall be in compliance with all of the following requirements:

(a) Docks shall not be more than 4 feet in width and not more than 20 feet in length, with not more than 4 feet of the dock extending over the edge of the river.

(b) Docks shall be designed, constructed, and maintained to blend with the natural surroundings. The use of natural, native materials is encouraged.

(c) Unless provided for within these rules, only 1 dock shall be constructed per lot.

(9) Unless otherwise provided for within these rules, a structure shall not be more than 2 1/2 stories in height, not including a basement.

History: 1992 AACCS.

R 281.345 Boundaries; interpretation of boundaries; filing of zoning map.

Rule 5. (1) The boundaries of the Pere Marquette river natural river district shall be as described in these rules and as depicted on the certified Pere Marquette river natural river zoning map. The Pere Marquette river natural river zoning district comprises an area which is described as follows:

(a) The main stream of the Pere Marquette from the junction of the middle branch and the little south branch, commonly known as the "Forks", located in Lake county, to the U.S. 31 highway bridges in Mason county, excluding that portion of the river within the city of Scottville.

(b) Swan creek from Darr road downstream to its confluence with the Pere Marquette river.

(c) Weldon creek from the outfall of Romeo lake downstream to its confluence with the Pere Marquette river.

(d) The big south branch from the confluence of Beaver creek with Winnepesaug creek downstream to its confluence with the Pere Marquette river.

(e) Cedar creek from M-37 downstream to its confluence with the big south branch.

(f) Ruby creek from its source in section 6, township 16 north, range 15 west, downstream to its confluence with the big south branch.

(g) Carr creek, excluding that portion of the stream which branches north in section 14, township 17 north, range 15 west, from north branch road downstream to its confluence with the big south branch.

(h) Sweetwater creek from its source in section 21, township 18 north, range 14 west, downstream to its confluence with the Pere Marquette river.

(i) Kinney creek from the outfall of Wingleton lake in section 31 of township 18 north, range 13 west, downstream to its confluence with the Pere Marquette river.

(j) Danaher creek from the C & O railroad in section 27, township 17 north, range 13 west, downstream to its confluence with the Pere Marquette river.

(k) The Baldwin river, excluding that portion in the village of Baldwin, from the outfall of the widewaters in section 22, township 19 north, range 12 west, downstream to its confluence with the Pere Marquette river.

(l) Cole creek to its confluence with the Baldwin river, including the north branch of Cole creek, from big spring in section 15, township 18 north, range 12 west, downstream to its confluence with the south branch of Cole creek; the south branch of Cole creek from the east line of section 21, township 18 north, range 12 west, downstream to its confluence with the north branch of Cole creek.

(m) Bray creek from the outfall of Bray lake in section 26, township 18 north, range 13 west, downstream to its confluence with the Baldwin river.

(n) Sandborn creek, excluding that portion in the village of Baldwin, from State road downstream to its confluence with the Baldwin river.

(o) Leverentz creek from the outfall of Leverentz lake in section 35, township 18 north, range 13 west, downstream to its confluence with the Baldwin river.

(p) The middle branch from Bonney road downstream to the "Forks."

(q) Blood creek from its source in township 17 north, range 12 west, downstream to its confluence with the middle branch.

(r) The little south branch from U.S. forest service road 5309 where it crosses the stream in section 9, township 15 north, range 12 west, downstream to the "Forks."

(s) McDuffee creek from 13 Mile road, township 16 north, range 12 west, downstream to its confluence with the little south branch.

(t) The Pease creek system, all of which lies in township 18 north, range 12 west, Newaygo county.

(u) The lands lying within 400 feet of the river's edge which are enumerated in subdivisions (a) to (t) of this subrule.

(2) Where uncertainty exists with respect to the boundaries of the district as shown on the zoning map, all of the following provisions shall apply:

(a) Boundaries that are indicated as approximately following the centerline of streets or highways shall be construed to follow the centerline.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following the lot lines.

(c) Boundaries that are indicated as approximately following city, village, township, or county boundary lines shall be construed as following the city, village, township, or county boundary lines.

(d) Boundaries that are indicated as following railroad lines shall be construed to be midway between the right-of-way lines.

(e) Boundaries that are indicated as following shorelines shall be construed to follow the shorelines, and, in the event of change in the shorelines, shall be construed as moving with the actual shorelines. Boundaries that are indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow the centerline.

(f) Boundaries that are indicated as parallel to or extensions of features indicated in subdivisions (a) to (e) of this subrule shall be so construed. Distances that are not specifically indicated on the official zoning map shall be determined by the scale of the map.

(g) Where physical or natural features that exist on the ground are at variance with those shown on the official zoning map or in other circumstances are not covered by the provisions of subdivisions (a) to (f) of this subrule, the zoning review board shall interpret the district boundaries.

(h) Insofar as a portion or all of the district may be indicated on the zoning map by a pattern which, for the sake of map clarity, does not cover public rights-of-way, it is intended that the district boundaries do extend to the center of any public right-of-way.

(3) Certified copies of the Pere Marquette river natural river zoning map shall be filed with all of the following entities:

(a) The state tax commission.

(b) Local tax assessing officers.

(c) Township and county clerks.

(d) The natural rivers unit of the Michigan department of natural resources.

History: 1992 AACS.

R 281.346 Zoning permits; site plans; certificates of zoning compliance.

Rule 6. (1) A building or other structure shall not be erected, moved, added to, or structurally altered, and a land use shall not be commenced, without a zoning permit as specified by these rules and as issued by the zoning administrator. Permits shall not be required for exempt activities as specified in R 281.347(1). Plans that are submitted when applying for a zoning permit shall contain the necessary information for determining compliance with these rules.

(2) Concurrent with applying for a zoning permit, an applicant shall submit a site plan of the proposed development. The site plan shall include the entire area that is proposed for development. The zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, shall have the authority to require adjustments in the site plan as a condition for approval to ensure that the proposed development meets all standards contained in these

rules. Except as otherwise waived by the zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, a site plan shall show and include all of the following, either existing or proposed:

- (a) A site plan drawn to scale, with the scale indicated.
- (b) Property dimensions.
- (c) The size, shape, use, and location of existing and proposed buildings or improvements, including distances to adjacent property boundaries and the river's edge.
- (d) Existing vegetation, including the location and type.
- (e) Adjacent streets and highways.
- (f) Parking areas.
- (g) Bluff heights.
- (h) Entrances to public streets.
- (i) A description of the building design, including proposed construction materials.
- (j) Drainage facilities.
- (k) The location and description of the method to dispose of sanitary wastes.
- (l) Proposed landscaping.
- (m) The location of footpaths.
- (n) Signs proposed, including the size, location, and material.
- (o) North arrow.
- (p) Date of drawing.
- (q) Detailed site location map.
- (r) Any additional information deemed by the zoning administrator or zoning review board to be necessary to carry out the administrator's or board's duties. Examples of such information include the following:
 - (i) Soil types.
 - (ii) Topography.
 - (iii) Building elevations.
 - (iv) Site photographs.
 - (v) Anticipated traffic volumes.
 - (vi) Traffic circulation patterns.
 - (vii) Other pertinent site information.

(3) A building, structure, or lot for which a zoning permit has been issued shall not be occupied, and a use for which a zoning permit has been issued shall not commence, until the zoning administrator has, after final inspection, issued a certificate of zoning compliance that certifies compliance with all of the provisions of these rules. However, the issuance of a certificate of compliance shall not be construed as waiving any provision of these rules. A building that is an accessory to a dwelling shall not require a separate certificate of zoning compliance, but may be included in the certificate of zoning compliance for the dwelling if shown on the site plan and if completed at the same time as the dwelling. A record of all certificates that are issued shall be kept on file in the office of the zoning administrator. Certificates of zoning compliance are for the purposes of these rules and shall not be interpreted as substitutes for certificates of occupancy that are required by local building codes.

History: 1992 AACCS.

R 281.347 Land use and development standards.

Rule 7. Land uses within the natural river district are classified as exempt, principal, or special uses and are described as follows:

- (a) Exempt uses are uses which are permitted by right and which are not subject to the receipt of a zoning permit. Exempt uses include all of the following:
 - (i) Private, noncommercial recreation which does not involve permanent structures, equipment, or other devices, but which includes camping, boating, fishing, hunting, and other similar activities.
 - (ii) Reforestation and other accepted forest management practices, subject to the limitations specified in R 281.344(6)(b).

(iii) Agriculture, including general and specialized farming, unless the bureau of environmental protection of the Michigan department of natural resources determines that such use will significantly contribute to stream degradation.

(iv) The operation of licensed motor vehicles on dedicated public roads or private roads that are designed to provide access to a permitted use.

(v) The off-road operation of emergency and public utility maintenance vehicles. The off-road operation of other motorized vehicles is prohibited in the natural vegetation strip as specified in R 281.344(6).

(vi) Private footpaths that are constructed by the landowner of natural materials to facilitate access to permitted uses.

(vii) Signs, subject to the provisions of R 281.344(7).

(b) Principal uses are uses which are allowed by right, but which require the issuance of zoning permits by the zoning administrator. Principal uses include all of the following:

(i) Single-family dwellings, if all of the following provisions are complied with:

(A) Only 1 dwelling shall be permitted per lot of record.

(B) Each lot shall be not less than 50,000 square feet.

(C) A dwelling lot along the Pere Marquette river main stream, big south branch, little south branch, middle branch, and Baldwin river shall have a minimum average width of 200 feet throughout its length. A dwelling lot along any other designated tributary shall have a minimum average width of 150 feet throughout its length.

(D) Building setback for lots, including all appurtenances and accessory buildings, shall be not less than 150 feet from the ordinary high watermark on the main stream, the big south branch, the little south branch, the middle branch, and the Baldwin river and 100 feet on all other designated tributaries. The setback may be decreased 1 foot for every 1 foot of rise in bank height to a minimum of 100 feet from the ordinary high watermark on the main stream and to a minimum of 75 feet from the ordinary high watermark on all other designated tributaries. Buildings and appurtenances shall be set back not less than 25 feet from the top of a bluff on the noncutting edge of a stream and not less than 50 feet from the top of a bluff on the cutting edge of a stream. Building shall not take place on land that is subject to flooding.

(ii) Accessory buildings that meet the setback requirements of paragraph

(i) of this subdivision.

(iii) A private boat dock.

(iv) Utility lines to service private, single-family dwellings.

(v) Disposal fields and septic tanks, if all of the following provisions are complied with:

(A) The fields and tanks shall be located not less than 150 feet from the ordinary high watermark.

(B) A septic tank or absorption field shall not be located closer than 50 feet to any surface or subsurface drainage system that enters into the Pere Marquette river or its designated tributaries.

(C) The bottom of the pit associated with an earth privy shall not be less than 4 feet above the known high groundwater table.

(vi) Mining and extracting industries, if located not less than 300 feet from the ordinary high watermark.

(vii) Residential single-family dwelling plats, if the minimum standards specified in paragraph (i) of this subdivision are met.

(viii) Home occupations.

(ix) Land alteration, such as grading, dredging, and filling of the land surface, unless the high groundwater table is within 4 feet of the existing natural land surface.

(c) The Pere Marquette river natural river plan and these rules recognize that certain types of residential, recreational, and commercial uses may be appropriate for the natural river district that have not been identified under the exempt and principal uses provisions of this rule. Such uses may result in intensities of development and use higher than would be anticipated under the exempt and principal uses. To ensure that such uses do not contravene the goals and objectives of the Pere Marquette river natural river plan and these rules such uses shall be referred to as special uses and shall be subject to the review and approval of the zoning review board. Special uses and their development standards include all of the following:

(i) Detached rental cabins, if all of the following provisions are complied with:

(A) The number of cabins permitted shall be based on the rate of 1 cabin per 200 feet of river frontage. Clustering of rental cabins is encouraged; however, the ratio of 1 cabin per 200 feet of river frontage shall not be exceeded.

(B) Each cabin and all associated buildings, structures, or other related devices shall be set back a minimum of 200 feet from the ordinary high watermark.

(C) Fences and greenbelts may be required by the zoning review board for rental cabins that are adjacent to existing residential uses. Fencing shall be constructed of natural material. Greenbelts shall consist of plant material that is indigenous to the area or as approved by the zoning review board.

(D) Boat docks may be erected for the private use of occupants of the rental cabins and their guests. Docks shall be in compliance with the requirements of R 281.344 and both of the following provisions:

(1) Docks may be constructed at the rate of 1 dock for each permitted rental cabin.

(2) Access to a dock or docks shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

(ii) Campgrounds, including tents, travel trailers, campers, and motor homes, with associated noncommercial buildings, cement pads, and utility hookups, if all of the following provisions are complied with:

(A) Campgrounds shall be constructed and maintained in accordance with all applicable state regulations.

(B) A commercial enterprise shall not be permitted to operate in the campground within the natural river district, except that a convenience goods shopping building that is not more than 1,500 square feet may be provided. The building shall not be more than 1 story in height.

(C) Each site and all associated buildings, structures, and other related devices shall be set back a minimum of 200 feet from the ordinary high watermark.

(D) Fences and greenbelts may be required by the zoning review board for campgrounds that are adjacent to existing residential uses. Fencing shall be constructed of natural material. Greenbelts shall consist of plant material that is indigenous to the area or as approved by the zoning review board.

(E) A camping site shall not have more than 4 sites per acre. Clustering of campsites is encouraged; however, the ratio of 4 sites per acre shall not be exceeded.

(F) Boat docks may be erected for the private use of the occupants of the campsites and their guests if both of the following provisions are complied with:

(1) The total number of docks shall not be more than 1 dock for each 200 feet of river frontage.

(2) Access to the dock or docks shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

(iii) Canoe, boat, and other watercraft liveries, if all of the following provisions are complied with:

(A) Parked vehicles and off-season canoe and boat storage areas shall not be visible from the river.

(B) Boat docks may be erected at the ratio of 1 dock per 200 feet of river frontage.

(C) Other than the rental of watercraft, other commercial enterprises shall not be permitted to operate.

(D) A rental office which is associated with the operation of the livery and which does not have more than 225 square feet may be constructed. The building shall not be more than 1 story in height.

(E) Access to the dock or docks or place of river entry from the canoe or boat rental office shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

History: 1992 AACCS.

R 281.348 Application and approval; procedures and standards; principal uses and special uses.

Rule 8. (1) An application for a principal use shall be submitted and processed under the following procedures:

(a) An application for a principal use shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information:

(i) A completed application form that is signed by the applicant or the applicant's representative.

(ii) Two copies of a site plan that meets the requirements of R 281.346(2).

(iii) Evidence of ownership or a legal interest in the property that is affected by the application for a principal use.

(b) Within 15 days of receipt of an application for a principal use, the zoning administrator shall notify the applicant of the need for additional information.

(c) Within 30 days of receipt of a completed application, the zoning administrator shall issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(d) Concurrent with the issuance of a zoning permit, an applicant shall receive a copy of the approved site plan.

(e) Before commencing construction of a principal use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

(f) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of not more than 6 months if conditions pertaining to the issuance of the original permit remain unchanged. Application for an extension shall be made before permit expiration. Any subsequent extensions shall have the written approval of the zoning review board.

(2) An application for a special use permit shall be submitted and processed under the following procedures:

(a) An application for a special use permit shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information and attachments:

(i) A completed application form that is signed by the applicant or the applicant's representative.

(ii) Eight copies of a site plan that meets the requirements of R 281.346(2).

(iii) Evidence of ownership or a legal interest in the property that is affected by the application for a special use.

(iv) A list of all property owners, together with their addresses, who are located within 300 feet of the applicant's property which is being considered for a special use.

(b) The application, together with the required attachments, shall be submitted not less than 30 days before the meeting of the zoning review board at which the application is to be considered.

(c) The zoning review board shall conduct at least 1 public hearing and shall require all of the following notifications of such hearing to be made not less than 5, nor more than 15, days before consideration of the special use application:

(i) One notice shall be published in a newspaper that circulates in the township in which the proposal is located.

(ii) Notice shall be sent by first-class mail or personal delivery to the owners of property for which approval is being considered and to all persons who are identified in subdivision (a)(iv) of this subrule.

(iii) Notice shall also be sent to all of the following entities:

(A) The natural rivers unit of the Michigan department of natural resources.

(B) Local tax assessing officials.

(C) Township and county clerks.

(D) Local building inspectors.

(d) In considering a special use application, the zoning review board shall require that all of the following general standards, in addition to those specific standards established for each special use in R 281.347(c), be satisfied:

(i) That the purposes noted in R 281.342 are accomplished.

(ii) That a compelling reason exists to locate the proposed use within the district boundaries if contiguous property under the same ownership is available outside the district.

(iii) That the proposed use in combination with other existing uses will not be a detriment to the public health, safety, and welfare.

(e) The zoning review board may impose conditions deemed necessary to accomplish the general and specific standards applicable to the proposed use.

(f) The concurring vote of a majority of the members of the zoning review board shall be required to approve a special use.

(g) A special use that is granted by the zoning review board shall be valid for 1 year from the date of approval. If construction has not, in the opinion of the zoning review board, commenced and

proceeded meaningfully at the end of the 1-year period, the zoning administrator shall notify the applicant, in writing, of the expiration of the special use approval.

(h) If it is determined by the zoning review board that the applicant has failed to comply with any of the requirements of these rules or the approval granted, the board, after a public hearing held in accordance with the provisions of subdivision (c) of this subrule, may revoke any special use approval.

(i) An application for a special use which has been denied by the zoning review board shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, new and significant facts and conditions exist which might result in favorable action upon resubmission.

(j) Concurrent with the issuance of a special use permit, an applicant shall receive a copy of the approved site plan, with conditions, if any.

(k) Before commencing construction of a special use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

History: 1992 AACCS.

R 281.349 Variances and variance hearings.

Rule 9. (1) A dimensional variance from any standard established in these rules may be granted by the zoning review board after a public hearing or, in certain instances, by the zoning administrator as provided in subrule (3) of this rule to allow a modification from a standard that establishes an area, yard, height, floor space, frontage, setback, or similar numerical restriction, but only after substantive evidence establishes that there are practical difficulties in carrying out the strict letter of these rules. A variance shall be permitted only when it is consistent with the general purposes and intent of these rules.

(2) The zoning review board or zoning administrator shall consider all of the following factors in determining if there are practical difficulties in carrying out the strict letter of these rules as specified in subrule (1) of this rule:

- (a) How substantial the variance is in relation to the zoning requirements.
- (b) Whether a substantial change will be affected in the character of the area or a substantial detriment created for adjoining properties.
- (c) Whether the difficulty can be overcome by some feasible method other than a variance.
- (d) Whether, in view of the manner in which the difficulty arose, and considering all of the factors specified in subdivisions (a) to (c) of this subrule, the interests of justice will be served by allowing the variance.
- (e) Whether the plight of the landowner is due to circumstances which are unique to his or her property and which are not created by the landowner.
- (f) Whether the variance may result in a material adverse effect on the environment.

(3) For the purposes of these rules, the required hearing and review of a variance request by the zoning review board shall be waived for certain minor dimensional variances of principal uses, including legal nonconforming uses. Such variances shall be handled by the zoning administrator, who shall consider the provisions of subrule (2) of this rule in making a determination. The zoning administrator shall prepare a written finding of fact that details the reasons for approval or denial of the minor variance request. Minor variances include the variances specified in the following provisions:

- (a) Reductions in setbacks for uses on lawful lots that are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures and any portion thereof, including additions, porches, and steps.
- (b) Reductions in setbacks for uses on lawful nonconforming lots, including lots within subdivisions, that are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures and any portion thereof, including additions, porches, and steps. Conditions may be imposed on an applicant before granting a variance. Such conditions shall be in writing and signed by the applicant before the applicant receives a variance.

(4) A land use variance is a land or building use in contravention of any of the use requirements of these rules. The zoning review board may, after a public hearing, grant a variance upon a finding of

unnecessary hardship, which may be found upon substantial evidence being submitted that all of the following factors exist:

- (a) The property cannot be used in a manner that is consistent with existing zoning.
 - (b) The hardship results from the application of these rules to the applicant's property.
 - (c) The hardship of which the applicant complains is suffered by his or her property directly and is not shared by others.
 - (d) The hardship is not the result of the applicant's own actions.
 - (e) The hardship is peculiar to the applicant's own property.
- (5) In determining whether reasonable use may be made of the property as zoned, a reasonable economic return may be a factor which could be considered, but only if the applicant is in compliance with the provisions of subrules (1) to (4) of this rule. Whether any weight shall be given to the economic return factor shall be dependent on a determination that the owner has been deprived of all beneficial use of his or her property under existing zoning.
- (6) The zoning review board shall, after finding that unnecessary hardship exists, also find that, based on adequate evidence, the proposed use meets all of the following conditions:
- (a) The use will be consistent with and in accordance with the general objectives of the Pere Marquette river natural river plan.
 - (b) The use will be designed, constructed, operated, and maintained so as to be consistent with and appropriate in appearance with the existing or intended character of the natural river district and that such use will not change the essential character of the natural river district.
 - (c) The use will be adequately served by existing essential public facilities and services, such as highways, police and fire protection, drainage structures, refuse disposal, and sanitation facilities, or that the persons or agencies that are responsible for the establishment of the proposed use shall be able to adequately provide any such service.
 - (d) The use will not involve uses, activities, processes, materials and equipment, and conditions of operation that will be detrimental to any persons, property, or the environmental quality of the district because of the excessive production of noise, smoke, fumes, glare, or odors or require the outdoor storage of raw materials or discarded materials produced in the use processes.
 - (e) The use will be consistent with the intent and purposes of these rules.
 - (f) The use or the structures to be used therefor will not cause an overcrowding of the land or an undue concentration of population that will result in degradation to the river and district.
 - (g) The use plot area is sufficient, appropriate, and adequate for the use and the reasonable anticipated operation and expansion thereof.
- (7) Upon receipt of an application for a variance, the zoning review board shall conduct a hearing on the request, except as provided for in subrule (3) of this rule. The hearing and notice procedure shall follow that established for special use applications by the provisions of R 281.348(2)(c). A decision shall be made within 30 days after the hearing to approve or deny the variance request. The zoning review board shall keep complete and detailed records of all its proceedings, which shall include the minutes of its meetings, its findings, and actions taken on each matter heard by it, including the final order. The order shall include the legal description of the property involved. Reasons for the decision shall be stated in writing. The board shall record the vote of each member on each question. If a member is absent or fails to vote, the board shall indicate such fact. All records shall be open for public inspection. The concurring vote of a majority of the members of the zoning review board shall be necessary to effect a dimensional variance in these rules, except that a concurring vote of 2/3 of the members of the board of appeals shall be necessary to grant a land use variance permitted in these rules.
- (8) The zoning review board shall not issue a land use variance when the district allows the use as a special use.
- (9) The effect of any variance shall be to create a nonconforming land use or structure which shall then be subject to the terms of R 281.350, which regulates continued use.

History: 1992 AACS.

R 281.350 Nonconforming uses, lots, and structures.

Rule 10. (1) It is recognized that there exists, within the natural river district, lots, structures, and uses of land and structures which were lawful before these rules were promulgated or amended and which

would be prohibited, regulated, or restricted under the terms of these rules or future amendments. It is the intent of these rules to permit legal nonconforming uses, structures, or lots to continue until they are brought into conformity and, in certain instances, to permit the limited expansion of certain legal nonconforming uses and structures.

(2) A nonconforming (substandard) lot shall be in compliance with the minimum requirements of the dimensional requirements of these rules, except as such substandard nonconforming lot may be used pursuant to the provisions of R 281.349.

(3) Where, at the effective date of these rules or amendment of these rules, a lawful use of land exists that is made unlawful under the terms of these rules as promulgated or amended, the use may be continued if it remains otherwise lawful, subject to all of the following provisions:

(a) The nonconforming use shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of these rules or amendment of these rules, except in the case of campgrounds, canoe liveries, and rental cabins which do not meet the standards for special uses specified in R 281.347(c). Such legal nonconforming uses may be expanded if the increased use meets the standards for special uses specified in R 281.347(c). Expansion of a lawful, nonconforming use shall be treated as a variance pursuant to the provisions of R 281.349.

(b) The nonconforming use shall not be moved, in whole or in part, to any other portion of the lot or parcel occupied by such use at the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules.

(c) If the nonconforming use of land ceases for any reason for a period of 12 months, any subsequent use of the land shall conform to the requirements specified by these rules.

(4) Where a lawful structure exists at the effective date of these rules or amendment of these rules that is made unlawful under the terms of these rules as promulgated or amended, the structure may be continued if it remains lawful, subject to all of the following provisions:

(a) The structure shall not be enlarged or altered in a way which increases its nonconformity; however, when a single-family dwelling or a structure associated with a campground, a canoe livery, or rental cabins is classified as nonconforming, alterations, repairs, and additions, including accessory buildings, may be erected if the gross floor area of all such alterations, repairs, and additions, including accessory buildings, is not more than 50% of the gross floor area of the nonconforming structure, cumulative from the date of nonconformance to the date of the request if any enlargement to a lawful nonconforming structure, to the extent possible, is in compliance with all setback and other building requirements. Expansion of a lawful, nonconforming structure shall be treated as a variance pursuant to the provisions of R 281.349.

(b) If the nonconforming structure is destroyed by any means to an extent that is more than 50% of its replacement cost, restoration of the structure shall be treated as a variance pursuant to the provisions of R 281.349. In determining whether the structure has been destroyed to an extent that is more than 50% of its replacement cost, the zoning review board or zoning administrator shall use appraised replacement costs, as determined by a qualified individual who is appointed by the zoning review board or zoning administrator, and shall compare the value of the part destroyed to the value of the total operating unit where there are several structures which are used together by the landowner as a single operating unit. The request for restoration of a nonconforming structure which is destroyed to an extent that is more than 50% of its replacement value shall be approved if all of the following conditions exist:

(i) The land on which the building or structure is located is not subject to flooding.

(ii) The continued use of a nonconforming structure will not lead to accelerated bank erosion or other material degradation of the river resource, and the construction of the structure is approved by the local soil erosion and sedimentation control enforcement agency.

(iii) The continued use conforms with local county health codes and is approved by the local county health department.

(iv) The continued use conforms with local building codes and is approved by the local building inspector.

(v) The restoration of a damaged structure that is approved by the zoning review board or zoning administrator shall be started within 1 year from the time of damage.

(c) The nonconforming structure shall not be moved, in whole or in part, to

any other portion of the lot or parcel that is occupied by the structure at the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules.

History: 1992 AACCS.

R 281.351 Zoning administrator and zoning review board; appointment; duties.

Rule 11. (1) The commission shall appoint a zoning administrator and zoning review board to act as its agents to enforce these rules.

(2) The zoning administrator shall do all of the following:

(a) Provide necessary forms and applications and receive and process applications.

(b) Determine and verify zoning compliance when the applicant's plans are found to conform with the provisions of these rules.

(c) Conduct site inspections to ensure compliance with these rules.

(d) Issue any authorized permits and certificates of zoning compliance.

(e) Identify and record information relative to nonconformities.

(f) Maintain files of applications, permits, and other relevant documents.

(g) Schedule meetings and hearings for, and provide assistance to, the zoning review board.

(h) Act on variances as permitted by the provisions of R 281.349(3).

(3) The zoning review board shall do all of the following:

(a) Adopt rules of procedure that govern the transaction of its business.

(b) Act upon requests for special use permits.

(c) Act on certain dimensional and land use variances pursuant to the provisions of R 281.349.

(d) Act on the interpretation of the official zoning map pursuant to the provisions of R 281.345(2)(g).

(4) In establishing the zoning review board, the commission shall cooperate with, and seek the advice of, all of the following entities:

(a) Affected townships and counties.

(b) Soil conservation districts.

(c) Property owners' associations.

(d) Other interested local organizations and citizens.

(5) The commission shall request each affected township to appoint 1 person to represent its interest on matters within its jurisdiction. The commission shall request each affected county to appoint 2 persons to represent its interests on matters within its jurisdiction. One of the 2 persons shall be a county official who works in planning, zoning, public health, soil erosion and sedimentation control, or a related field. The commission shall request that each affected soil conservation district appoint 1 person to represent its interest on matters within its jurisdiction. Representatives who are appointed pursuant to this rule shall vote only on those matters within their respective jurisdictions. If affected townships, counties, or soil conservation districts do not appoint someone to represent them within 60 days from the request by the commission, the commission may make appointments on its own motion.

(6) In accord with procedures specified in subrule (5) of this rule, the commission shall request that each governmental unit and organization that appoints regular members to the zoning review board also appoint 1 alternate member to represent the governmental unit or organization. The alternate member may be called to sit as a regular member in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. An alternate member who is appointed shall serve in the case until a final decision has been made. An alternate member shall have the same voting rights as a regular member of the zoning review board.

(7) The zoning review board shall hold at least 1 meeting annually for such purposes as adopting or amending rules of procedure, establishing officers, educational purposes, or to conduct any manner of business as provided for by these rules.

History: 1992 AACCS.

R 281.352 Appeals; contested cases.

Rule 12. An aggrieved party who contests the decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1992 AACCS.

R 281.353 Violations; effect; remedies.

Rule 13. (1) After the effective date of these rules, a building or structure or land shall not be used or occupied, and a building or structure or part thereof shall not be erected, constructed, reconstructed, moved, or structurally altered, unless the building, structure, or land is in compliance with the provisions of these rules. A permit or variance shall not be approved, and action shall not be taken, if approval of the permit or variance or the action taken violates the provisions of these rules. The commission shall not waive any of its rights or remedies against any person who violates these rules if the violations were committed in reliance on an authorization erroneously given in violation of any provision of these rules. Any authorized permit, variance, or action that is contrary to the provisions of these rules is deemed invalid from the date of the authorization.

(2) In addition to all other remedies, the commission may institute appropriate action or proceedings to prevent, restrain, correct, or abate rule violations or threatened violations.

History: 1992 AACCS.

R 281.354 Boundaries and permitted uses; changes, amendments, and supplements; precedence of local zoning ordinance over rules.

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner following a hearing held pursuant to the provisions of sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.342.

(2) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following entities:

- (a) The county register of deeds.
- (b) Township and county clerks.
- (c) The local building inspector.
- (d) Local soil erosion and sedimentation control enforcement agencies.
- (e) The soil conservation district.

(3) Upon approval by the director, a local zoning ordinance that meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, Act No. 184 of the Public Acts of 1943, as amended, being S125.271 et seq. of the Michigan Compiled Laws, or Act No. 183 of the Public Acts of 1943, as amended, being S125.101 et seq. of the Michigan Compiled Laws, whichever is applicable, shall take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Pere Marquette river natural river district through court action or for any other reason, these rules shall apply.

History: 1992 AACCS.

R 281.355 Rescission.

Rule 15. R 281.101 to R 281.114 of the Michigan Administrative Code, appearing on pages 134 to 144 of the 1981 annual supplement to the 1979 Michigan Administrative Code, are rescinded.

History: 1992 AACCS.

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

RIFLE RIVER NATURAL RIVER ZONING

(By authority conferred on the natural resources commission by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.361 Definitions.

Rule 1. As used in these rules:

(a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit for a principal use, special use, or variance.

(b) "Appurtenance" or "accessory building" means a structure that is incidental to a dwelling, including all of the following:

- (i) Garages.
- (ii) Residential storage sheds.
- (iii) Barns and other agricultural storage or livestock structures.
- (iv) Pump houses.
- (v) Wells.
- (vi) Private access roads.
- (vii) Sanitary facilities.
- (viii) Electrical service lines.

(c) "Bluff" means a steep bank which rises sharply from the river's edge.

(d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.

(e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.

(f) "Certificate of zoning compliance" means a standard form which is issued by the zoning administrator upon a determination that the construction and use of land and buildings and structures as provided for by a zoning permit, including the site plan, have been completed and are in compliance with the permit and site plan.

(g) "Commission" means the natural resources commission.

(h) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.

(i) "Director" means the director of the department of natural resources.

(j) "Family" means either of the following:

(i) An individual or group of 2 or more persons who are related by blood, marriage, or adoption and who, together with foster children, servants of the principal occupants, and not more than 2 additional unrelated persons, are domiciled together as a single, domestic, housekeeping unit in a dwelling unit.

(ii) A collective number of individuals who are domiciled together in 1 dwelling unit, whose relationship is of a continuing nontransient domestic character, and who are cooking and living as a single, nonprofit, housekeeping unit. Any society, club, fraternity, sorority, association,

lodge, organization, or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature shall not be considered a family as defined by these rules.

(k) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen development from the river, to provide for streambank stabilization and erosion control, to serve as an aid to the infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.

(l) "Floodplain" means land lying within an identified or documented 100-year floodplain line. Also see subdivision (q) of this rule.

(m) "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge a 100-year flood.

(n) "Front" means that segment of a lot or parcel abutting the river's edge of the main stream or tributary.

(o) "Front yard" means setback as provided for in R 281.367(b)(i)(D).

(p) "Home occupation" means a gainful occupation that is traditionally and historically carried on in the home as a use which is clearly incidental and secondary to the use of the home as a dwelling place.

(q) "Land that is subject to flooding" means that area of land adjoining the designated portions of a river and its tributaries which will be inundated by a flood which has a 1% chance of occurring or being exceeded in any given year as determined by detailed hydraulic studies that are acceptable to the Michigan department of natural resources or which, in the absence of such detailed floodplain studies, has a history of flooding or is delineated by approximate methods, such as United States geological survey flood-prone area maps or the federal emergency management agency's special flood hazard boundary maps.

(r) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.

(s) "Lot area" means the area inside the lot lines.

(t) "Lot, interior" means a lot of record which is located in the natural river district, but which does not have frontage on the river or its designated tributaries.

(u) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules or a lot or parcel which is described by metes and bounds and which has been recorded at the office of the county register of deeds before the effective date of these rules.

(v) "Natural river district" means the Rifle river natural river district as described in the provisions of R 281.365.

(w) "Ordinary high watermark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

(x) "Rear yard" means that yard opposite the front yard.

(y) "Reforestation" means the renewal of vegetative cover by seeding, planting or transplanting.

(z) "River's edge" means the ordinary high watermark as used in the provisions of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (w) of this rule.

(aa) "Setback" means the required horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.

(bb) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.

(cc) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.

(dd) "Structure" means anything which is constructed, erected, or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas and other communication structures, fences, and mobile homes. Temporary

recreational facilities, including tents, camper trailers, and recreation vehicles, are not considered structures if they are used less than 30 days per year and if they are located landward of the natural vegetation strip or if the facilities are located on a campsite within a campground that is licensed under the provisions of Act No. 368 of the Public Acts of 1978, as amended, being S333.1101 et seq. of the Michigan Compiled Laws, if both the individual campsite and the campground were established before the effective date of these rules.

(ee) "Zoning administrator" means the administrator of these rules who is appointed by the commission.

(ff) "Zoning permit" means a standard form which is issued by the zoning administrator when it is determined that the proposed construction of buildings and structures and the proposed use of land and buildings and structures thereon are in compliance with all of the provisions of these rules.

(gg) "Zoning review board" means a group of not less than 3, nor more than 7, people which includes not less than 2 local representatives and 1 department of natural resources representative who is familiar with the local area and which is appointed by the commission to act upon requests as provided for by these rules.

History: 1992 AACCS.

R 281.362 Purpose; intent; scope.

Rule 2. (1) The commission, on its own motion, to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the Rifle river, a designated natural river, promulgates these zoning rules for the following purposes:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to misuse, unwise development patterns, overcrowding, and overuse within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish, aquatic and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Rifle river and adjoining land.

(c) To prevent flood damage due to interference with the natural floodplain characteristics by excluding developments which are vulnerable to flood damage and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures that are proposed for location on lands which are unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

(f) To achieve the goals and objectives of the Rifle river natural river plan.

(2) It is the general intent of these rules to define terms used and to regulate and restrict lot coverage and use, population distribution and density, and the size and location of all structures by the delineation of permitted uses and development standards so as to promote the purposes identified in this rule. It is further intended to provide for the administration and enforcement of these rules and to provide penalties for their violation.

(3) It is not the intent of these rules to revoke, annul, cancel, or in any way impair or interfere with existing provisions of law, ordinances, or any rules, regulations, or premises or with any private restrictions placed upon property by covenant or deed. However, where such provisions of law are less restrictive than the provisions of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and the rules promulgated thereunder, the provisions of Act No. 231 of the Public Acts of 1970, and the rules promulgated thereunder shall apply.

History: 1992 AACCS.

R 281.363 Construction of language; severability.

Rule 3. (1) All of the following rules of construction apply to the text of these rules:

(a) The particular shall control over the general.

(b) In the case of any difference of meaning or implication between the text of these rules and any caption or illustration, the text shall control.

(c) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.

(d) Words used in the present tense shall include the future. Words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

(e) A "building" or "structure" includes any part thereof.

(f) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."

(g) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(h) Unless the context clearly indicates the contrary, where a regulation involves 2 or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either . . . or," the conjunction shall be interpreted as follows:

(i) "And" indicates that all of the connected items, conditions, or provisions shall apply.

(ii) "Or" indicates that the connected items, conditions, provisions, or events may apply singularly or in any combination.

(iii) "Either . . . or" indicates that the connected items, conditions, provisions, or events shall apply singularly, but not in combination.

(i) Terms not defined in these rules shall have the meanings customarily assigned to them.

(2) In any case in which the provisions of these rules are declared by the courts to be unconstitutional or invalid, such ruling shall not affect the validity of the remaining provisions of these rules and to this end the provisions of these rules are declared to be severable.

History: 1992 AACCS.

R 281.364 Lot size and area; subdivision of land; home occupations; natural vegetation strip; signs; docks; height of structures.

Rule 4. (1) Unless otherwise provided for within these rules, any lot or parcel of property created after the effective date of these rules, or amendments thereto, shall have a minimum area of 50,000 square feet and a minimum average width of 200 feet throughout the length of the lot or parcel on the Rifle river main stream, and a minimum average width of 150 feet on all other designated tributaries. The average lot width shall be based on the average of the combined widths of the front and rear lot lines.

(2) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrules (3) and (4) of this rule.

(3) Proposed lots which have preliminary plat approval pursuant to the provisions of Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on their effective date, shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.369.

(4) Lots of record which are created before the effective date of these rules, or amendments thereto, and which do not possess sufficient land area or lot width may be used for the purposes described within these rules, subject to the requirements provided for in R 281.369.

(5) Home occupations shall conform to both of the following requirements:

(a) The use of the dwelling unit, or related structure, for the home occupation shall be clearly incidental and subordinate to its use for residential purposes. The home occupation shall not occupy more than 30% of the aboveground floor area of the dwelling unit. This requirement shall apply whether the home occupation is contained wholly within the dwelling unit or utilizes a garage.

(b) Equipment or a process shall not be used in a home occupation that is conducted in a single-family dwelling unit or its associated garage if it creates noise, vibration, glare, fumes, odors, or electrical interference that is detectable to the normal senses off the premises and shall not be used in a home occupation that is conducted in other than a single-family dwelling unit or an associated garage if

it creates noise, vibration, glare, fumes, odors, or electrical interference that is detectable to the normal senses outside the dwelling unit.

(6) Within the natural river district, not less than a 75-foot restrictive cutting belt shall be maintained on each side of the main stream of the Rifle river, and a 50-foot minimum restrictive cutting belt shall be maintained on each side of all other designated tributaries. Trees and shrubs may be pruned for a filtered view of the river, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to all of the following provisions:

(a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy and poison sumac, may be removed.

(b) The selected removal or trimming of trees for timber harvest, access or woodlot improvements, landscaping, public utility lines to service private single-family dwellings and other permitted uses is permitted upon approval of the zoning administrator.

(c) Camping is not permitted in the natural vegetation strip.

(7) Signs shall not be visible from the river, except:

(a) "No Trespassing" signs if the signs are not more than 1 square foot in area and are spaced a minimum of 100 feet apart.

(b) One identification sign of rustic design, associated with a canoe livery, campground, or rental cabins, which is not more than 6 square feet in area. The sign shall be for the purpose of identification of a designated watercraft landing site and shall be located at the designated landing site.

(c) Signs posted by public agencies to provide for public safety such as warning of impending dangers in the river, or to identify a public access site or campground. Such signs may need to be larger than 6 square feet in area to accomplish their designated purpose. Signs which identify a public access site or campground shall be of rustic design.

(8) Private boat docks shall be in compliance with all of the following requirements:

(a) Docks shall not be more than 4 feet in width and not more than 12 feet in length, with not more than 4 feet of the dock extending over the edge of the river.

(b) Docks shall be designed, constructed, and maintained to blend with the natural surroundings. The use of natural, native materials is encouraged.

(c) Unless provided for within these rules, only 1 dock shall be constructed per lot.

(9) Unless otherwise provided for within these rules, a structure shall not be more than 2 1/2 stories in height, not including a basement.

History: 1992 AACCS.

R 281.365 Boundaries; interpretation of boundaries; filing of zoning map.

Rule 5. (1) The boundaries of the Rifle river natural river district shall be as described in these rules and as depicted on the certified

Rifle river natural river zoning map. The Rifle river natural river zoning district comprises an area which is described as follows:

(a) The main stream of the Rifle river from and including Mallard pond to the northern city limits of Omer, including all channels of the mainstream, except the old channels leading into and out of Devoe lake.

(b) Gamble creek from Heath road in township 24 north, range 3 east, to Mallard pond in the Rifle river recreation area.

(c) Vaughn creek from Heath road in township 24 north, range 3 east, to its confluence with Gamble creek.

(d) Oyster creek from Oyster road in township 24 north, range 3 east, to its confluence with Mallard pond.

(e) Mayhue creek from the pond in section 28 of township 24 north, range 3 east, to its confluence with Oyster creek.

(f) Houghton creek from Heath road in township 24 north, range 3 east, to its confluence with the Rifle river.

(g) Wilkins creek from Campbell road in township 23 north, range 2 east, to its confluence with the Rifle river.

(h) Prior creek from Morrison road in township 23 north, range 3 east, to its confluence with the Rifle river.

(i) Klacking creek from its source in Foose swamp in township 23 north, range 2 east, to its confluence with the Rifle river.

(j) Little Klacking creek from its source in section 26 of township 23 north, range 2 east, to its confluence with Klacking creek.

(k) Dedrich creek from Gerald Miller road in township 22 north, range 3 east, to its confluence with the Rifle river.

(l) West branch from the outfall of Flowage lake in township 22 north, range 2 east, to its confluence with the Rifle river.

(m) North and south branches of Eddy creek from M-33 in township 21 north, range 3 east, to its confluence with the Rifle river.

(n) Silver creek from Elbow lake road in township 21 north, range 3 east, to its confluence with the Rifle river.

(o) Mansfield creek from Melita road in township 21 north, range 3 east, to its confluence with the Rifle river.

(p) Fritz creek from Fritz road in township 20 north, range 4 east, to its confluence with the Rifle river.

(q) The lands lying within 400 feet of the river's edge which are enumerated in subdivisions (a) to (p) of this subrule.

(2) Where uncertainty exists with respect to the boundaries of the district as shown on the zoning map, all of the following provisions shall apply:

(a) Boundaries that are indicated as approximately following the centerline of streets or highways shall be construed to follow the centerline.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following the lot lines.

(c) Boundaries that are indicated as approximately following city, village, township, or county boundary lines shall be construed as following the city, village, township, or county boundary lines.

(d) Boundaries that are indicated as following railroad lines shall be construed to be midway between the right-of-way lines.

(e) Boundaries that are indicated as following shorelines shall be construed to follow the shorelines, and, in the event of change in the shorelines, shall be construed as moving with the actual shorelines. Boundaries that are indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow the centerline.

(f) Boundaries that are indicated as parallel to or extensions of features specified in subdivisions (a) to (e) of this subrule shall be so construed. Distances that are not specifically indicated on the official zoning map shall be determined by the scale of the map.

(g) Where physical or natural features that exist on the ground are at variance with those shown on the official zoning map or in other circumstances are not covered by the provisions of subdivisions (a) to (f) of this subrule, the zoning review board shall interpret the district boundaries.

(h) Insofar as a portion or all of the district may be indicated on the zoning map by a pattern which, for the sake of map clarity, does not cover public rights-of-way, it is intended that the district boundaries do extend to the center of any public right-of-way.

(3) Certified copies of the Rifle river natural river zoning map shall be filed with all of the following entities:

(a) The state tax commission.

(b) Local tax assessing officers.

(c) Township and county clerks.

(d) The natural rivers unit of the Michigan department of natural resources.

History: 1992 AACS.

R 281.366 Zoning permits; site plans; certificates of zoning compliance.

Rule 6. (1) A building or other structure shall not be erected, moved, added to, or structurally altered, and a land use shall not be commenced, without a zoning permit as specified by these rules and as issued by the zoning administrator. Permits shall not be required for exempt activities as specified in

R281.367(1). Plans that are submitted when applying for a zoning permit shall contain the necessary information for determining compliance with these rules.

(2) Concurrent with applying for a zoning permit, an applicant shall submit a site plan of the proposed development. The site plan shall include the entire area that is proposed for development. The zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, shall have the authority to require adjustments in the site plan as a condition for approval to ensure that the proposed development meets all standards contained in these rules. Except as otherwise waived by the zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, a site plan shall show and include all of the following, either existing or proposed:

- (a) A site plan drawn to scale, with the scale indicated.
- (b) Property dimensions.
- (c) The size, shape, use, and location of existing and proposed buildings or improvements, including distances to adjacent property boundaries and the river's edge.
- (d) Existing vegetation, including the location and type.
- (e) Adjacent streets and highways.
- (f) Parking areas.
- (g) Bluff heights.
- (h) Entrances to public streets.
- (i) A description of the building design, including proposed construction materials.
- (j) Drainage facilities.
- (k) The location and description of the method to dispose of sanitary wastes.
- (l) Proposed landscaping.
- (m) The location of footpaths.
- (n) Signs proposed, including the size, location, and material.
- (o) North arrow.
- (p) Date of drawing.
- (q) Detailed site location map.
- (r) Any additional information deemed by the zoning administrator or zoning review board to be necessary to carry out the administrator's or board's duties. Examples of such information include the following:
 - (i) Soil types.
 - (ii) Topography.
 - (iii) Building elevations.
 - (iv) Site photographs.
 - (v) Anticipated traffic volumes.
 - (vi) Traffic circulation patterns.
 - (vii) Other pertinent site information.

(3) A building, structure, or lot for which a zoning permit has been issued shall not be occupied, and a use for which a zoning permit has been issued shall not commence, until the zoning administrator has, after final inspection, issued a certificate of zoning compliance that certified compliance with all of the provisions of these rules. However, the issuance of a certificate of compliance shall not be construed as waiving any provision of these rules. A building that is accessory to a dwelling shall not require a separate certificate of zoning compliance, but may be included in the certificate of zoning compliance for the dwelling if shown on the site plan and if completed at the same time as the dwellings. A record of all certificates that are issued shall be kept on file in the office of the zoning administrator. Certificates of zoning compliance are for the purposes of these rules and shall not be interpreted as substitutes for certificates of occupancy that are required by local building codes.

History: 1992 AACCS.

R 281.367 Land use and development standards.

Rule 7. Land uses within the natural river district are classified as exempt, principal, or special uses and are described as follows:

(a) Exempt uses are uses which are permitted by right and which are not subject to the receipt of a zoning permit. Exempt uses include all of the following:

(i) Private, noncommercial recreation which does not involve permanent structures, equipment, or other devices, but which includes camping, boating, fishing, hunting, and other similar activities.

(ii) Reforestation and other accepted forest management practices, subject to the limitations specified in R 281.364(6)(b).

(iii) Agriculture, including general and specialized farming, unless the bureau of environmental protection of the Michigan department of natural resources determines that such use will significantly contribute to stream degradation.

(iv) The operation of licensed motor vehicles on dedicated public roads or private roads that are designed to provide access to a permitted use.

(v) The off-road operation of emergency and public utility maintenance vehicles. The off-road operation of other motorized vehicles is prohibited in the natural vegetation strip as specified in R 281.364(6).

(vi) Private footpaths that are constructed by the landowner of natural materials to facilitate access to permitted uses.

(vii) Signs, subject to the provisions of R 281.364(7).

(b) Principal uses are uses which are allowed by right, but which require the issuance of zoning permits by the zoning administrator. Principal uses include all of the following:

(i) Single-family dwellings, if all of the following provisions are complied with:

(A) Only 1 dwelling shall be permitted per lot of record.

(B) Each lot shall be not less than 50,000 square feet.

(C) A dwelling lot along the Rifle river main stream shall have a minimum average width of 200 feet throughout its length. A dwelling lot along any other designated tributary shall have a minimum average width of 150 feet throughout its length.

(D) Building setback for lots, including all appurtenances and accessory buildings, shall be not less than 150 feet from the ordinary high watermark on the main stream and 100 feet on all other designated tributaries. The setback may be decreased 1 foot for every 1 foot of rise in bank height to a minimum of 100 feet from the ordinary high watermark on the main stream and to a minimum of 75 feet from the ordinary high watermark on all other designated tributaries. Buildings and appurtenances shall be set back not less than 25 feet from the top of a bluff on the noncutting edge of a stream and not less than 50 feet from the top of a bluff on the cutting edge of a stream. Building shall not take place on land that is subject to flooding.

(ii) Accessory buildings that meet the setback requirements of paragraph (i) of this subdivision.

(iii) A private boat dock.

(iv) Utility lines to service private, single-family dwellings.

(v) Disposal fields and septic tanks, if all of the following provisions are complied with:

(A) The fields and tanks shall be located not less than 150 feet from the ordinary high watermark.

(B) A septic tank or absorption field shall not be located closer than 50 feet to any surface or subsurface drainage system that enters into the Rifle river or its designated tributaries.

(C) The bottom of the pit associated with an earth privy shall not be less than 4 feet above the known high groundwater table.

(vi) Mining and extracting industries, if located not less than 300 feet from the ordinary high watermark.

(vii) Residential single-family dwelling plats, if the minimum standards specified in paragraph (i) of this subdivision are met.

(viii) Home occupations.

(ix) Land alteration, such as grading, dredging, and filling of the land surface, unless the high groundwater table is within 4 feet of the existing natural land surface.

(c) The Rifle river natural river plan and these rules recognize that certain types of residential, recreational, and commercial uses may be appropriate for the natural river district that have not been identified under the exempt and principal uses provisions of this rule. Such uses may result in intensities of development and use higher than would be anticipated under the exempt and principal uses. To ensure that such uses do not contravene the goals and objectives of the Rifle river natural river

plan and these rules such uses shall be referred to as special uses and shall be subject to the review and approval of the zoning review board. Special uses and their development standards include all of the following:

(i) Detached rental cabins, if all of the following provisions are complied with:

(A) The number of cabins permitted shall be based on the rate of 1 cabin per 200 feet of river frontage. Clustering of rental cabins is encouraged; however, the ratio of 1 cabin per 200 feet of river frontage shall not be exceeded.

(B) Each cabin and all associated buildings, structures, or other related devices shall be set back a minimum of 200 feet from the ordinary high watermark.

(C) Fences and greenbelts may be required by the zoning review board for rental cabins that are adjacent to existing residential uses. Fencing shall be constructed of natural material. Greenbelts shall consist of plant material that is indigenous to the area or as approved by the zoning review board.

(D) Boat docks may be erected for the private use of occupants of the rental cabins and their guests. Docks shall be in compliance with the requirements of R 281.364 and both of the following provisions:

(1) Docks may be constructed at the rate of 1 dock for each permitted rental cabin.

(2) Access to a dock or docks shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

(ii) Campgrounds, including tents, travel trailers, campers, and motor homes, with associated noncommercial buildings, cement pads, and utility hookups, if all of the following provisions are complied with:

(A) Campgrounds shall be constructed and maintained in accordance with all applicable state regulations.

(B) A commercial enterprise shall not be permitted to operate in the campground within the natural river district, except that a convenience goods shopping building that is not more than 1,500 square feet may be provided. The building shall not be more than 1 story in height.

(C) Each site and all associated buildings, structures, and other related devices shall be set back a minimum of 200 feet from the ordinary high watermark.

(D) Fences and greenbelts may be required by the zoning review board for campgrounds that are adjacent to existing residential uses. Fencing shall be constructed of natural material. Greenbelts shall consist of plant material that is indigenous to the area or as approved by the zoning review board.

(E) A camping site shall not have more than 4 sites per acre. Clustering of campsites is encouraged; however, the ratio of 4 sites per acre shall not be exceeded.

(F) Boat docks may be erected for the private use of the occupants of the campsites and their guests if both of the following provisions are complied with:

(1) The total number of docks shall not be more than 1 dock for each 200 feet of river frontage.

(2) Access to the dock or docks shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

(iii) Canoe, boat, and other watercraft liveries, if all of the following provisions are complied with:

(A) Parked vehicles and off-season canoe and boat storage areas shall not be visible from the river.

(B) Boat docks may be erected at the ratio of 1 dock per 200 feet of river frontage.

(C) Other than the rental of watercraft, other commercial enterprises shall not be permitted to operate.

(D) A rental office which is associated with the operation of the livery and which does not have more than 225 square feet may be constructed. The building shall not be more than 1 story in height.

(E) Access to the dock or docks or place of river entry from the canoe or boat rental office shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

History: 1992 AACCS.

R 281.368 Application and approval; procedures and standards; principal uses and special uses.

Rule 8. (1) An application for a principal use shall be submitted and processed under the following procedures:

(a) An application for a principal use shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information:

- (i) A completed application form that is signed by the applicant or the applicant's representative.
- (ii) Two copies of a site plan that meets the requirements of R 281.366(2).
- (iii) Evidence of ownership or a legal interest in the property that is affected by the application for a principal use.

(b) Within 15 days of receipt of an application for a principal use, the zoning administrator shall notify the applicant of the need for additional information.

(c) Within 30 days of receipt of a completed application, the zoning administrator shall issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(d) Concurrent with the issuance of a zoning permit, an applicant shall receive a copy of the approved site plan.

(e) Before commencing construction of a principal use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

(f) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of not more than 6 months if conditions pertaining to the issuance of the original permit remain unchanged. Application for an extensions shall be made before permit expiration. Any subsequent extensions shall have the written approval of the zoning review board.

(2) An application for a special use permit shall be submitted and processed under the following procedures:

(a) An application for a special use permit shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information and attachments:

- (i) A completed application form that is signed by the applicant or the applicant's representative.
- (ii) Eight copies of a site plan that meets the requirements of R 281.366(2).
- (iii) Evidence of ownership or a legal interest in the property that is affected by the application for a special use.
- (iv) A list of all property owners, together with their addresses, who are located within 300 feet of the applicant's property which is being considered for a special use.

(b) The application, together with the required attachments, shall be submitted not less than 30 days before the meeting of the zoning review board at which the application is to be considered.

(c) The zoning review board shall conduct at least 1 public hearing and shall require all of the following notifications of such hearing to be made not less than 5, nor more than 15, days before consideration of the special use application:

(i) One notice shall be published in a newspaper that circulates in the township in which the proposal is located.

(ii) Notice shall be sent by first-class mail or personal delivery to the owners of property for which approval is being considered and to all persons who are identified in subdivision (a)(iv) of this subrule.

(iii) Notice shall also be sent to all of the following entities:

- (A) The natural rivers unit of the Michigan department of natural resources.
- (B) Local tax assessing officials.
- (C) Township and county clerks.
- (D) Local building inspectors.

(d) In considering a special use application, the zoning review board shall require that all of the following general standards, in addition to those specific standards established for each special use in R 281.367(c), be satisfied:

- (i) That the purposes noted in R 281.362 are accomplished.
- (ii) That a compelling reason exists to locate the proposed use within the district boundaries if contiguous property under the same ownership is available outside the district.
- (iii) That the proposed use in combination with other existing uses will not be a detriment to the public health, safety, and welfare.

(e) The zoning review board may impose conditions deemed necessary to accomplish the general and specific standards applicable to the proposed use.

(f) The concurring vote of a majority of the members of the zoning review board shall be required to approve a special use.

(g) A special use that is granted by the zoning review board shall be valid for 1 year from the date of approval. If construction has not, in the opinion of the zoning review board, commenced and proceeded meaningfully at the end of the 1-year period, the zoning administrator shall notify the applicant, in writing, of the expiration of the special use approval.

(h) If it is determined by the zoning review board that the applicant has failed to comply with any of the requirements of these rules or the approval granted, the board, after a public hearing held in accordance with the provisions of subdivision (c) of this subrule, may revoke any special use approval.

(i) An application for a special use which has been denied by the zoning review board shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, new and significant facts and conditions exist which might result in favorable action upon resubmission.

(j) Concurrent with the issuance of a special use permit, an applicant shall receive a copy of the approved site plan, with conditions, if any.

(k) Before commencing construction of a special use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

History: 1992 AACCS.

R 281.369 Variances and variance hearings.

Rule 9. (1) A dimensional variance from any standard established in these rules may be granted by the zoning review board after a public hearing or, in certain instances by the zoning administrator as provided in subrule (3) of this rule to allow a modification from a standard that establishes an area, yard, height, floor space, frontage, setback, or similar numerical restriction, but only after substantive evidence establishes that there are practical difficulties in carrying out the strict letter of these rules. A variance shall be permitted only when it is consistent with the general purposes and intent of these rules.

(2) The zoning review board or zoning administrator shall consider all of the following factors in determining if there are practical difficulties in carrying out the strict letter of these rules as specified in subrule (1) of this rule:

(a) How substantial the variance is in relation to the zoning requirements.

(b) Whether a substantial change will be affected in the character of the area or a substantial detriment created for adjoining properties.

(c) Whether the difficulty can be overcome by some feasible method other than a variance.

(d) Whether, in view of the manner in which the difficulty arose, and considering all of the factors specified in subdivisions (a) to (c) of this subrule, the interests of justice will be served by allowing the variance.

(e) Whether the plight of the landowner is due to circumstances which are unique to his or her property and which are not created by the landowner.

(f) Whether the variance may result in a material adverse effect on the environment.

(3) For the purposes of these rules, the required hearing and review of a variance request by the zoning review board shall be waived for certain minor dimensional variances of principal uses, including legal nonconforming uses. Such variances shall be handled by the zoning administrator, who shall consider the provisions of subrule (2) of this rule in making a determination. The zoning administrator shall prepare a written finding of fact that details the reasons for approval or denial of the minor variance request. Minor variances include the variances specified in the following provisions:

(a) Reductions in setbacks for uses on lawful lots that are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures and any portion thereof, including additions, porches, and steps.

(b) Reductions in setbacks for uses on lawful nonconforming lots, including lots within subdivisions, that are not more than 25% of the normal dimensional requirements. Such uses shall include

principal or accessory buildings or structures and any portion thereof, including additions, porches, and steps. Conditions may be imposed on an applicant before granting a variance. Such conditions shall be in writing and signed by the applicant before the applicant receives a variance.

(4) A land use variance is a land or building use in contravention of any of the use requirements of these rules. The zoning review board may, after a public hearing, grant a variance upon a finding of unnecessary hardship, which may be found upon substantial evidence being submitted that all of the following factors are found to exist:

(a) The property cannot be used in a manner that is consistent with existing zoning.
(b) The hardship results from the application of these rules to the applicant's property.
(c) The hardship of which the applicant complains is suffered by his or her property directly and is not shared by others.

(d) The hardship is not the result of the applicant's own actions.

(e) The hardship is peculiar to the applicant's own property.

(5) In determining whether reasonable use may be made of the property as zoned, a reasonable economic return may be a factor which could be considered, but only if the applicant is in compliance with the provisions of subrules (1) to (4) of this rule. Whether any weight shall be given to the economic return factor shall be dependent on a determination that the owner has been deprived of all beneficial use of his or her property under existing zoning.

(6) The zoning review board shall, after finding that unnecessary hardship exists, also find that, based on adequate evidence, the proposed use meets all of the following conditions:

(a) The use will be consistent with and in accordance with the general objectives of the Rifle river natural river plan.

(b) The use will be designed, constructed, operated, and maintained so as to be consistent with and appropriate in appearance with the existing or intended character of the natural river district and that such use will not change the essential character of the natural river district.

(c) The use will be adequately served by existing essential public facilities and services, such as highways, police and fire protection, drainage structures, refuse disposal, and sanitation facilities, or that the persons or agencies that are responsible for the establishment of the proposed use shall be able to adequately provide any such service.

(d) The use will not involve uses, activities, processes, materials and equipment, and conditions of operation that will be detrimental to any persons, property, or the environmental quality of the district because of the excessive production of noise, smoke, fumes, glare, or odors or require the outdoor storage of raw materials or discarded materials produced in the use processes.

(e) The use will be consistent with the intent and purposes of these rules.

(f) The use or the structures to be used therefor will not cause an overcrowding of the land or an undue concentration of population that will result in degradation to the river and district.

(g) The use plot area is sufficient, appropriate, and adequate for the use and the reasonable anticipated operation and expansion thereof.

(7) Upon receipt of an application for a variance, the zoning review board shall conduct a hearing on the request, except as provided for in subrule (3) of this rule. The hearing and notice procedure shall follow that established for special use applications by the provisions of R 281.368(2)(c). A decision shall be made within 30 days after the hearing to approve or deny the variance request. The zoning review board shall keep complete and detailed records of all its proceedings, which shall include the minutes of its meetings, its findings, and actions taken on each matter heard by it, including the final order. The order shall include the legal description of the property involved. Reasons for the decision shall be stated in writing. The board shall record the vote of each member on each question. If a member is absent or fails to vote, the board shall indicate such fact. All records shall be open for public inspection. The concurring vote of a majority of the members of the zoning review board shall be necessary to effect a dimensional variance in these rules, except that a concurring vote of 2/3 of the members of the board of appeals shall be necessary to grant a land use variance permitted in these rules.

(8) The zoning review board shall not issue a land use variance when the district allows the use as a special use.

(9) The effect of any variance shall be to create a nonconforming land use or structure which shall then be subject to the terms of R 281.370, which regulates continued use.

History: 1992 AACs.

R 281.370 Nonconforming uses, lots, and structures.

Rule 10. (1) It is recognized that there exists, within the natural river district, lots, structures, and uses of land and structures which were lawful before these rules were promulgated or amended and which would be prohibited, regulated, or restricted under the terms of these rules or future amendments. It is the intent of these rules to permit legal nonconforming uses, structures, or lots to continue until they are brought into conformity and, in certain instances, to permit the limited expansion of certain legal nonconforming uses and structures.

(2) A nonconforming (substandard) lot shall be in compliance with the minimum requirements of the dimensional requirements of these rules, except as such substandard nonconforming lot may be used pursuant to the provisions of R 281.369.

(3) Where, at the effective date of these rules or amendment of these rules, a lawful use of land exists that is made unlawful under the terms of these rules as promulgated or amended, the use may be continued if it remains otherwise lawful, subject to all of the following provisions:

(a) The nonconforming use shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of these rules or amendment of these rules, except in the case of campgrounds, canoe liveries, and rental cabins which do not meet the standards for special uses specified in R 281.367(c). Such lawful, nonconforming uses may be expanded if the increased use meets the standards for special uses specified in R 281.367(c). Expansion of a lawful, nonconforming use shall be treated as a variance pursuant to the provisions of R 281.369.

(b) The nonconforming use shall not be moved, in whole or in part, to any other portion of the lot or parcel occupied by such use at the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules.

(c) If the nonconforming use of land ceases for any reason for a period of 12 months, any subsequent use of the land shall conform to the requirements specified by these rules.

(4) Where a lawful structure exists at the effective date of these rules or amendment of these rules that is made unlawful under the terms of these rules as promulgated or amended, the structure may be continued if it remains lawful, subject to all of the following provisions:

(a) The structure shall not be enlarged or altered in a way which increases its nonconformity; however, when a single-family dwelling or a structure associated with a campground, canoe livery, or a rental cabin is classified as nonconforming, alterations, repairs, and additions, including accessory buildings, may be erected if the gross floor area of all such alterations, repairs, and additions, including accessory buildings, is not more than 50% of the gross floor area of the nonconforming structure, cumulative from the date of nonconformance to the date of the request if any enlargement to a lawful nonconforming structure, to the extent possible, is in compliance with all setback and other building requirements. Expansion of a lawful, nonconforming structure shall be treated as a variance pursuant to the provisions of R 281.369.

(b) If the nonconforming structure is destroyed by any means to an extent that is more than 50% of its replacement cost, restoration of the structure shall be treated as a variance pursuant to the provisions of R 281.369. In determining whether the structure has been destroyed to an extent that is more than 50% of its replacement cost, the zoning review board or zoning administrator shall use appraised replacement costs, as determined by a qualified individual who is appointed by the zoning review board or zoning administrator, and shall compare the value of the part destroyed to the value of the total operating unit where there are several structures which are used together by the landowner as a single operating unit. The request for restoration of a nonconforming structure which is destroyed to an extent that is more than 50% of its replacement value shall be approved if all of the following conditions exist:

(i) The land on which the structure is located is not subject to flooding.

(ii) The continued use of the nonconforming structure will not lead to accelerated bank erosion or other material degradation of the river resource, and the construction of the structure is approved by the local soil erosion and sedimentation control enforcement agency.

(iii) The continued use conforms with local county health codes and is approved by the local county health department.

(iv) The continued use conforms with local building codes and is approved by the local building inspector.

(v) The restoration of a damaged structure that is approved by the zoning review board or zoning administrator shall be started within 1 year from the time of the damage.

(c) The nonconforming structure shall not be moved, in whole or in part, to any other portion of the lot or parcel that is occupied by the structure at the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules.

History: 1992 AACCS.

R 281.371 Zoning administrator and zoning review board; appointment; duties.

Rule 11. (1) The commission shall appoint a zoning administrator and zoning review board to act as its agents to enforce these rules.

(2) The zoning administrator shall do all of the following:

(a) Provide necessary forms and applications and receive and process applications.

(b) Determine and verify zoning compliance when the applicant's plans are found to conform with the provisions of these rules.

(c) Conduct site inspections to ensure compliance with these rules.

(d) Issue any authorized permits and certificates of zoning compliance.

(e) Identify and record information relative to nonconformities.

(f) Maintain files of applications, permits, and other relevant documents.

(g) Schedule meetings and hearings for, and provide assistance to, the zoning review board.

(h) Act on variances as permitted by the provisions of R 281.369(3).

(3) The zoning review board shall do all of the following:

(a) Adopt rules of procedure that govern the transaction of its business.

(b) Act upon requests for special use permits.

(c) Act on certain dimensional and land use variances pursuant to the provisions of R 281.369.

(d) Act on the interpretation of the official zoning map pursuant to the provisions of R 281.365(2)(g).

(4) In establishing the zoning review board, the commission shall cooperate with, and seek the advice of, all of the following entities:

(a) Affected townships and counties.

(b) Soil conservation districts.

(c) Property owners' associations.

(d) Other interested local organizations and citizens.

(5) The commission shall request each affected township to appoint 1 person to represent its interest on matters within its jurisdiction. The commission shall request each affected county to appoint 2 persons to represent its interests on matters within its jurisdiction. One of the 2 persons shall be a county official who works in planning, zoning, public health, soil erosion and sedimentation control, or a related field. The commission shall request that each affected soil conservation district appoint 1 person to represent its interest on matters within its jurisdiction. Representatives who are appointed pursuant to this rule shall vote only on those matters within their respective jurisdictions. If affected townships, counties, or soil conservation districts do not appoint someone to represent them within 60 days from the request by the commission, the commission may make appointments on its own motion.

(6) In accord with procedures specified in subrule (5) of this rule, the commission shall request that each governmental unit and organization that appoints regular members to the zoning review board also appoint 1 alternate member to represent the governmental unit or organization. The alternate member may be called to sit as a regular member in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. An alternate member who is appointed shall serve in the case until a final decision has been made. An alternate member shall have the same voting rights as a regular member of the zoning review board.

(7) The zoning review board shall hold at least 1 meeting annually for such purposes as adopting or amending rules of procedure, establishing officers, educational purposes, or to conduct any manner of business as provided for by these rules.

History: 1992 AACCS.

R 281.372 Appeals; contested cases.

Rule 12. An aggrieved party who contests the decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1992 AACS.

R 281.373 Violations; effect; remedies.

Rule 13. (1) After the effective date of these rules, a building or structure or land shall not be used or occupied, and a building or structure or part thereof shall not be erected, constructed, reconstructed, moved, or structurally altered, unless the building, structure, or land is in compliance with the provisions of these rules. A permit or variance shall not be approved, and action shall not be taken, if approval of the permit or variance or the action taken violates the provisions of these rules. The commission shall not waive any of its rights or remedies against any person who violates these rules if the violations were committed in reliance on an authorization erroneously given in violation of any provision of these rules. Any authorized permit, variance, or action that is contrary to the provisions of these rules is deemed invalid from the date of the authorization.

(2) In addition to all other remedies, the commission may institute appropriate action or proceedings to prevent, restrain, correct, or abate rule violations or threatened violations.

History: 1992 AACS.

R 281.374 Boundaries and permitted uses; changes, amendments, and supplements; precedence of local zoning ordinance over rules.

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner following a hearing held pursuant to the provisions of sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.362.

(2) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following entities:

- (a) The county register of deeds.
- (b) Township and county clerks.
- (c) The local building inspector.
- (d) Local soil erosion and sedimentation control enforcement agencies.
- (e) The soil conservation district.

(3) Upon approval by the director, a local zoning ordinance that meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, Act No. 184 of the Public Acts of 1943, as amended, being S125.271 et seq. of the Michigan Compiled Laws, or Act No. 183 of the Public Acts of 1943, as amended, being S125.101 et seq. of the Michigan Compiled Laws, whichever is applicable, shall take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Rifle river natural river district through court action or for any other reason, these rules shall apply.

History: 1992 AACS.

R 281.375 Rescission.

Rule 15. R 281.171 to R 281.184 of the Michigan Administrative Code, appearing on pages 121 to 132 of the 1984 Annual Supplement to the 1979 Michigan Administrative Code, are rescinded.

History: 1992 AACCS.

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

WHITE RIVER NATURAL RIVER ZONING

(By authority conferred on the natural resources commission by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.381 Definitions.

Rule 1. As used in these rules:

(a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit for a principal use, special use, or variance.

(b) "Appurtenance" or "accessory building" means a structure that is incidental to a dwelling, including all of the following:

- (i) Garages.
- (ii) Residential storage sheds.
- (iii) Barns and other agricultural storage and livestock structures.
- (iv) Pump houses.
- (v) Wells.
- (vi) Private access roads.
- (vii) Sanitary facilities.
- (viii) Electrical service lines.

(c) "Bluff" means a steep bank which rises sharply from the river's edge.

(d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.

(e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being S125.1501 et seq. of the Michigan Compiled Laws.

(f) "Certificate of zoning compliance" means a standard form which is issued by the zoning administrator upon a determination that the construction and use of land and buildings and structures as provided for by a zoning permit, including the site plan, have been completed and are in compliance with the permit and site plan.

(g) "Commission" means the natural resources commission.

(h) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.

(i) "Director" means the director of the department of natural resources.

(j) "Family" means either of the following:

(i) An individual or group of 2 or more persons who are related by blood, marriage, or adoption and who, together with foster children, servants of the principal occupants, and not more than 2 additional unrelated persons who are domiciled together as a single, domestic, housekeeping unit in a dwelling unit.

(ii) A collective number of individuals who are domiciled together in 1 dwelling unit, whose relationship is of a continuing nontransient domestic character, and who are cooking and living as a single, nonprofit, housekeeping unit. Any society, club, fraternity, sorority, association, lodge, organization, or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature shall not be considered a family as defined by these rules.

(k) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen development from the river, to provide for streambank stabilization and erosion control, to serve as an aid to the infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.

(l) "Floodplain" means land lying within an identified or documented 100-year floodplain line. Also see subdivision (q) of this rule.

(m) "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge a 100-year flood.

(n) "Front" means that segment of a lot or parcel abutting the river's edge of the main stream or tributary.

(o) "Front yard" means setback as provided for in R 281.387(b)(i)(D).

(p) "Home occupation" means a gainful occupation that is traditionally and historically carried on in the home as a use which is clearly incidental and secondary to the use of the home as a dwelling place.

(q) "Land that is subject to flooding" means that area of land adjoining the designated portions of a river and its tributaries which will be inundated by a flood which has a 1% chance of occurring or being exceeded in any given year as determined by detailed hydraulic studies that are acceptable to the Michigan department of natural resources or which, in the absence of such detailed floodplain studies, has a history of flooding or is delineated by approximate methods, such as United States geological survey flood-prone area maps or the federal emergency management agency's special flood hazard boundary maps.

(r) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.

(s) "Lot area" means the area inside the lot lines.

(t) "Lot, interior" means a lot of record which is located in the natural river district, but which does not have frontage on the river or its designated tributaries.

(u) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules or a lot or parcel which is described by metes and bounds and which has been recorded at the office of the county register of deeds before the effective date of these rules.

(v) "Natural river district" means the White river natural river district as described in the provisions of R 281.385.

(w) "Ordinary high watermark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

(x) "Rear yard" means that yard opposite the front yard.

(y) "Reforestation" means the renewal of vegetative cover by seeding, planting or transplanting.

(z) "River's edge" means the ordinary high watermark as used in the provisions of Act No. 346 of the Public Acts of 1972, being S281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (w) of this rule.

(aa) "Setback" means the required horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.

(bb) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.

(cc) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being S282.101 et seq. of the Michigan Compiled Laws.

(dd) "Structure" means anything which is constructed, erected, or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas and other communication structures, fences, and mobile homes. Temporary recreational facilities, including tents, camper trailers, and recreation vehicles, are not considered structures if they are used less than 30 days per year and if they are located landward of the natural vegetation strip or if the facilities are located on a campsite within a campground that is licensed under

the provisions of Act No. 368 of the Public Acts of 1978, as amended, being S333.1101 et seq. of the Michigan Compiled Laws, if both the individual campsite and the campground were established before the effective date of these rules.

(ee) "Zoning administrator" means the administrator of these rules who is appointed by the commission.

(ff) "Zoning permit" means a standard form which is issued by the zoning administrator when it is determined that the proposed construction of buildings and structures and the proposed use of land and buildings and structures thereon are in compliance with all of the provisions of these rules.

(gg) "Zoning review board" means a group of not less than 3, nor more than 7, people which includes not less than 2 local representatives and 1 department of natural resources representative who is familiar with the local area and which is appointed by the commission to act upon requests as provided for by these rules.

History: 1992 AACS.

R 281.382 Purpose; intent; scope.

Rule 2. (1) The commission, on its own motion, to implement the intent of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the White river, a designated natural river, promulgates these zoning rules for the following purposes:

(a) To promote the public health, safety, and general welfare; to prevent economic and ecological damage due to misuse, unwise development patterns, overcrowding, and overuse within the natural river district; and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish, aquatic and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the White river and adjoining land.

(c) To prevent flood damage due to interference with the natural floodplain characteristics by excluding developments which are vulnerable to flood damage and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures that are proposed for location on lands which are unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

(f) To achieve the goals and objectives of the White river natural river plan.

(2) It is the general intent of these rules to define terms used and to regulate and restrict lot coverage and use, population distribution and density, and the size and location of all structures by the delineation of permitted uses and development standards so as to promote the purposes identified in this rule. It is further intended to provide for the administration and enforcement of these rules and to provide penalties for their violation.

(3) It is not the intent of these rules to revoke, annul, cancel, or in any way impair or interfere with existing provisions of law, ordinances, or any rules, regulations, or premises or with any private restrictions placed upon property by covenant or deed. However, where such provisions of law are less restrictive than the provisions of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, and the rules promulgated thereunder, the provisions of Act No. 231 of the Public Acts of 1970, and the rules promulgated thereunder shall apply.

History: 1992 AACS.

R 281.383 Construction of language; severability.

Rule 3. (1) All of the following rules of construction apply to the text of these rules:

(a) The particular shall control over the general.

(b) In the case of any difference of meaning or implication between the text of these rules and any caption or illustration, the text shall control.

(c) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.

(d) Words used in the present tense shall include the future. Words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

(e) A "building" or "structure" includes any part thereof.

(f) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."

(g) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(h) Unless the context clearly indicates the contrary, where a regulation involves 2 or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either . . . or," the conjunction shall be interpreted as follows:

(i) "And" indicates that all of the connected items, conditions, or provisions shall apply.

(ii) "Or" indicates that the connected items, conditions, provisions, or events may apply singularly or in any combination.

(iii) "Either . . . or" indicates that the connected items, conditions, provisions, or events shall apply singularly, but not in combination.

(i) Terms not defined in these rules shall have the meanings customarily assigned to them.

(2) In any case in which the provisions of these rules are declared by the courts to be unconstitutional or invalid, such ruling shall not affect the validity of the remaining provisions of these rules and to this end the provisions of these rules are declared to be severable.

History: 1992 AACCS.

R 281.384 Lot size and area; subdivision of land; home occupations; natural vegetation strip; signs; docks; height of structures.

Rule 4. (1) Unless otherwise provided for within these rules, any lot or parcel of property created after the effective date of these rules, or amendments thereto, shall have a minimum area of 50,000 square feet and a minimum average width of 200 feet throughout the length of the lot or parcel on the White river main stream and all designated tributaries. The average lot width shall be based on the average of the combined widths of the front and rear lot lines.

(2) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrules (3) and (4) of this rule.

(3) Proposed lots which have preliminary plat approval pursuant to the provisions of Act No. 288 of the Public Acts of 1967, as amended, being S560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on their effective date, shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.389.

(4) Lots of record which are created before the effective date of these rules, or amendments thereto, and which do not possess sufficient land area or lot width may be used for the purposes described within these rules, subject to the requirements provided for in R 281.389.

(5) Home occupations shall conform to both of the following requirements:

(a) The use of the dwelling unit, or related structure, for the home occupation shall be clearly incidental and subordinate to its use for residential purposes. The home occupation shall not occupy more than 30% of the aboveground floor area of the dwelling unit. This requirement shall apply whether the home occupation is contained wholly within the dwelling unit or utilizes a garage.

(b) Equipment or a process shall not be used in a home occupation that is conducted in a single-family dwelling unit or its associated garage if it creates noise, vibration, glare, fumes, odors, or electrical interference that is detectable to the normal senses off the premises and shall not be used in a home occupation that is conducted in other than a single-family dwelling unit or an associated garage if it creates noise, vibration, glare, fumes, odors, or electrical interference that is detectable to the normal senses outside the dwelling unit.

(6) Within the natural river district, not less than a 50-foot restrictive cutting belt shall be maintained on each side of the main stream of the White river and all designated tributaries. Trees and shrubs may be pruned for a filtered view of the river, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to all of the following provisions:

- (a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy and poison sumac, may be removed.
- (b) The selected removal or trimming of trees for timber harvest, access or woodlot improvements, landscaping, public utility lines to service private single-family dwellings and other permitted uses is permitted upon approval of the zoning administrator.
- (c) Camping is not permitted in the natural vegetation strip.
- (7) Signs shall not be visible from the river, except:
 - (a) "No Trespassing" signs if the signs are not more than 1 square foot in area and are spaced a minimum of 100 feet apart.
 - (b) One identification sign of rustic design, associated with a canoe livery, campground or rental cabins, which is not more than 6 square feet in area. The sign shall be for the purpose of identification of a designated watercraft landing site and shall be located at the designated landing site.
 - (c) Signs posted by public agencies to provide for public safety such as warning of impending dangers in the river, or to identify a public access site or campground. Such signs may need to be larger than 6 square feet in area to accomplish their designated purpose. Signs which identify a public access site or campground shall be of rustic design.
- (8) Private boat docks shall be in compliance with all of the following requirements:
 - (a) Docks shall not be more than 4 feet in width and not more than 20 feet in length, with not more than 4 feet of the dock extending over the edge of the river.
 - (b) Docks shall be designed, constructed, and maintained to blend with the natural surroundings. The use of natural, native materials is encouraged.
 - (c) Unless provided for within these rules, only 1 dock shall be constructed per lot.
 - (9) Unless otherwise provided for within these rules, a structure shall not be more than 2 1/2 stories in height, not including a basement.

History: 1992 AACCS.

R 281.385 Boundaries; interpretation of boundaries; filing of zoning map.

Rule 5. (1) The boundaries of the White river natural river district shall be as described in these rules and as depicted on the certified White river natural river zoning map. The White river natural river zoning district comprises an area which is described as follows:

- (a) The main stream of the White river from 8-Mile road, northwest corner of section 28, township 15 north, range 12 west in Newaygo county downstream to US-31, Muskegon county, excluding the following: from the north city limit of White Cloud down to old M-20 west of the city, from the east city limit of Hesperia down to the west city limit and those portions within the city limits of Whitehall and Montague.
- (b) Mullen creek from 6-Mile road downstream to White river.
- (c) Five Mile creek from Pine avenue downstream to White river.
- (d) Flinton creek from Pine avenue downstream to Catalpa avenue.
- (e) Wrights creek from Comstock road downstream to White river.
- (f) Mena creek from Minnie lake dam downstream to White river.
- (g) Martin creek from Warner avenue in section 2, township 14 north, range 13 west, downstream to White river.
- (h) East branch Heald creek from Crosswell road downstream to Martin creek.
- (i) Braton creek from Wilkie road downstream to White river.
- (j) Cushman creek from 192nd avenue downstream to White river.
- (k) Skeels creek from 192nd avenue (Holton Duck Lake road) downstream to White river.
- (l) North branch White river from 197th avenue downstream to White river.
- (m) Robinson creek from Woodrow road downstream to North branch.
- (n) Swinton and Osborn (Cobmoosa) creek from Filmore road downstream to North branch.
- (o) Newman creek from 132nd avenue downstream to North branch.
- (p) Knutson creek from Garfield road downstream to North branch.
- (q) Sand creek from outlet of Dressler lake downstream to White river.
- (r) Carlton creek from Arthur road downstream to White river.
- (s) Mud creek from outlet of Heitman lake downstream to Carlton creek.

- (t) Carleton (Landford) creek from Walsh road downstream to White river.
 - (u) Silver creek from Silver creek road downstream to White river.
 - (v) Cleveland creek from Russell road downstream to White river.
 - (w) The lands lying within 400 feet of the river's edge which are enumerated in subdivisions (a) to (v) of this subrule.
- (2) Where uncertainty exists with respect to the boundaries of the district as shown on the zoning map, all of the following provisions shall apply:
- (a) Boundaries that are indicated as approximately following the centerline of streets or highways shall be construed to follow the centerline.
 - (b) Boundaries that are indicated as approximately following lot lines shall be construed as following the lot lines.
 - (c) Boundaries that are indicated as approximately following city, village, township, or county boundary lines shall be construed as following the city, village, township, or county boundary lines.
 - (d) Boundaries that are indicated as following railroad lines shall be construed to be midway between the right-of-way lines.
 - (e) Boundaries that are indicated as following shorelines shall be construed to follow such shorelines, and, in the event of change in the shorelines, shall be construed as moving with the actual shorelines. Boundaries that are indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerline.
 - (f) Boundaries that are indicated as parallel to or extensions of features specified in subdivisions (a) to (e) of this subrule shall be so construed. Distances that are not specifically indicated on the official zoning map shall be determined by the scale of the map.
 - (g) Where physical or natural features that exist on the ground are at variance with those shown on the official zoning map or in other circumstances are not covered by the provisions of subdivisions (a) to (f) of this subrule, the zoning review board shall interpret the district boundaries.
 - (h) Insofar as a portion or all of the district may be indicated on the zoning map by a pattern which, for the sake of map clarity, does not cover public rights-of-way, it is intended that the district boundaries do extend to the center of any public right-of-way.
- (3) Certified copies of the White river natural river zoning map shall be filed with all of the following entities:
- (a) The state tax commission.
 - (b) Local tax assessing officers.
 - (c) Township and county clerks.
 - (d) The natural rivers unit of the Michigan department of natural resources.

History: 1992 AACCS.

R 281.386 Zoning permits; site plans; certificates of zoning compliance.

Rule 6. (1) A building or other structure shall not be erected, moved, added to, or structurally altered, and a land use shall not be commenced, without a zoning permit as specified by these rules and as issued by the zoning administrator. Permits shall not be required for exempt activities as specified in R 281.387(1). Plans that are submitted when applying for a zoning permit shall contain the necessary information for determining compliance with these rules.

(2) Concurrent with applying for a zoning permit, an applicant shall submit a site plan of the proposed development. The site plan shall include the entire area that is proposed for development. The zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, shall have the authority to require adjustments in the site plan as a condition for approval to ensure that the proposed development meets all standards contained in these rules. Except as otherwise waived by the zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, a site plan shall show and include all of the following, either existing or proposed:

- (a) A site plan drawn to scale, with the scale indicated.
- (b) Property dimensions.

(c) The size, shape, use, and location of existing and proposed building or improvements, including distances to adjacent property boundaries and the river's edge.

(d) Existing vegetation, including the location and type.

(e) Adjacent streets and highways.

(f) Parking areas.

(g) Bluff heights.

(h) Entrances to public streets.

(i) A description of the building design, including proposed construction materials.

(j) Drainage facilities.

(k) The location and description of the method to dispose of sanitary wastes.

(l) Proposed landscaping.

(m) The location of footpaths.

(n) Signs proposed, including the size, location, and material.

(o) North arrow.

(p) Date of drawing.

(q) Detailed site location map.

(r) Any additional information deemed by the zoning administrator or zoning review board to be necessary to carry out the administrator's or board's duties. Examples of such information include the following:

(i) Soil types.

(ii) Topography.

(iii) Building elevations.

(iv) Site photographs.

(v) Anticipated traffic volumes.

(vi) Traffic circulation patterns.

(vii) Other pertinent site information.

(3) A building, structure, or lot for which a zoning permit has been issued shall not be occupied, and a use for which a zoning permit has been issued shall not commence, until the zoning administrator has, after final inspection, issued a certificate of zoning compliance that certifies compliance with all of the provisions of these rules. However, the issuance of a certificate of compliance shall not be construed as waiving any provision of these rules. A building that is accessory to a dwelling shall not require a separate certificate of zoning compliance, but may be included in the certificate of zoning compliance for the dwelling if shown on the site plan and if completed at the same time as the dwelling. A record of all certificates that are issued shall be kept on file in the office of the zoning administrator. Certificates of zoning compliance are for the purposes of these rules and shall not be interpreted as substitutes for certificates of occupancy that are required by local building codes.

History: 1992 AACCS.

R 281.387 Land use and development standards.

Rule 7. Land uses within the natural river district are classified as exempt, principal, or special uses and are described as follows:

(a) Exempt uses are uses which are permitted by right and which are not subject to receipt of a zoning permit. Exempt uses include all of the following:

(i) Private, noncommercial recreation which does not involve permanent structures, equipment, or other devices, but which includes camping, boating, fishing, hunting, and other similar activities.

(ii) Reforestation and other accepted forest management practices, subject to the limitations specified in R 281.384(6)(b).

(iii) Agriculture, including general and specialized farming, unless the bureau of environmental protection of the Michigan department of natural resources determines that such use will significantly contribute to stream degradation.

(iv) The operation of licensed motor vehicles on dedicated public roads or private roads that are designed to provide access to a permitted use.

(v) The off-road operation of emergency and public utility maintenance vehicles. The off-road operation of other motorized vehicles is prohibited in the natural vegetation strip as specified in R 281.384(6).

(vi) Private footpaths that are constructed by the landowner of natural materials to facilitate access to permitted uses.

(vii) Signs, subject to the provisions of R 281.384(7).

(b) Principal uses are uses which are allowed by right, but which require the issuance of zoning permits by the zoning administrator. Principal uses include all of the following:

(i) Single-family dwellings, if all of the following provisions are complied with:

(A) Only 1 dwelling shall be permitted per lot of record.

(B) Each lot shall be not less than 50,000 square feet.

(C) The dwelling lot shall have a minimum average width of 200 feet throughout its length.

(D) Building setback for lots, including all appurtenances and accessory buildings, shall be not less than 150 feet from the ordinary high watermark on the portions of the main stream from 8-mile road, northwest corner of section 28, T15N, R12W, Newaygo county, downstream to Lutes bridge (Baldwin road), T14N, R13W, Newaygo county, and from Podunk bridge between sections 9 and 10, T13N, R15W, Oceana county, downstream to US-31 in Muskegon county. The setback may be decreased 5 feet for every 1 foot of rise in bank height above a minimum of 7 feet above the ordinary high watermark to a minimum of 100 feet. Building setback shall be not less than 100 feet from the ordinary high watermark on the main stream from Lutes bridge (Baldwin road) downstream to Podunk bridge and all designated tributaries. The setback may be decreased 5 feet for every 1 foot of rise in bank height above a minimum of 7 feet above the ordinary high watermark to a minimum of 75 feet. Buildings and appurtenances shall be set back not less than 25 feet from the top of a bluff on the noncutting edge of a stream and not less than 50 feet from the top of a bluff on the cutting edge of a stream. Building shall not take place on land that is subject to flooding.

(ii) Accessory buildings that meet the setback requirements of paragraph (i) of this subdivision.

(iii) A private boat dock.

(iv) Utility lines to service private, single-family dwellings.

(v) Disposal fields and septic tanks, if all of the following provisions are complied with:

(A) The fields and tanks shall be located not less than 100 feet from the ordinary high watermark.

(B) A septic tank or absorption field shall not be located closer than 50 feet to any surface or subsurface drainage system that enters into the White river or its designated tributaries.

(C) The bottom of the pit associated with an earth privy shall not be less than 4 feet above the known high groundwater table.

(vi) Mining and extracting industries, if located not less than 300 feet from the ordinary high watermark.

(vii) Residential single-family dwelling plats, if the minimum standards specified in paragraph (i) of this subdivision are met.

(viii) Home occupations.

(ix) Land alteration, such as grading, dredging, and filling of the land surface, unless the high groundwater table is within 4 feet of the existing natural land surface.

(c) The White river natural river plan and these rules recognize that appropriate for the natural river district that have not been identified under the exempt and principal uses provisions of this rule. Such uses may result in intensities of development and use higher than would be anticipated under the exempt and principal uses. To ensure that such uses do not contravene the goals and objectives of the White river natural river plan and these rules such uses shall be referred to as special uses and shall be subject to the review and approval of the zoning review board. Special uses and their development standards include all of the following:

(i) Detached rental cabins, if all of the following provisions are complied with:

(A) The number of cabins permitted shall be based on the rate of 1 cabin per 200 feet of river frontage. Clustering of rental cabins is encouraged; however, the ratio of 1 cabin per 200 feet of river frontage shall not be exceeded.

(B) Each cabin and all associated buildings, structures, or other related devices shall be set back a minimum of 200 feet from the ordinary high watermark.

(C) Fences and greenbelts may be required by the zoning review board for rental cabins that are adjacent to existing residential uses. Fencing shall be constructed of natural material. Greenbelts shall consist of plant material that is indigenous to the area or as approved by the zoning review board.

(D) Boat docks may be erected for the private use of occupants of the rental cabins and their guests. Docks shall be in compliance with the requirements of R 281.384 and both of the following provisions:

(1) Docks may be constructed at the rate of 1 dock for each permitted rental cabin.

(2) Access to a dock or docks shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

(ii) Campgrounds, including tents, travel trailers, campers, and motor homes, with associated noncommercial buildings, cement pads, and utility hookups, if all of the following provisions are complied with:

(A) Campgrounds shall be constructed and maintained in accordance with all applicable state regulations.

(B) A commercial enterprise shall not be permitted to operate in the campground within the natural river district, except that a convenience goods shopping building that is not more than 1,500 square feet may be provided. The building shall not be more than 1 story in height.

(C) Each site and all associated buildings, structures, and other related devices shall be set back a minimum of 200 feet from the ordinary high watermark.

(D) Fences and greenbelts may be required by the zoning review board for campgrounds that are adjacent to existing residential uses. Fencing shall be constructed of natural material. Greenbelts shall consist of plant material that is indigenous to the area or as approved by the zoning review board.

(E) A camping site shall not have more than 4 sites per acre. Clustering of campsites is encouraged; however, the ratio of 4 sites per acre shall not be exceeded.

(F) Boat docks may be erected for the private use of the occupants of the campsites and their guests if both of the following provisions are complied with:

(1) The total number of docks shall not be more than 1 dock for each 200 feet of river frontage.

(2) Access to the dock or docks shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

(iii) Canoe, boat, and other watercraft liveries, if all of the following provisions are complied with:

(A) Parked vehicles and off-season canoe and boat storage areas shall not be visible from the river.

(B) Boat docks may be erected at the ratio of 1 dock per 200 feet of river frontage.

(C) Other than the rental of watercraft, other commercial enterprises shall not be permitted to operate.

(D) A rental office which is associated with the operation of the livery and which does not have more than 225 square feet may be constructed. The building shall not be more than 1 story in height.

(E) Access to the dock or docks or place of river entry from the canoe or boat rental office shall be along a single designated footpath to minimize disruption of the natural vegetation strip.

History: 1992 AACCS.

R 281.388 Application and approval; procedures and standards; principal uses and special uses.

Rule 8. (1) An application for a principal use shall be submitted and processed under the following procedures:

(a) An application for a principal use shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information:

(i) A completed application form that is signed by the applicant or the applicant's representative.

(ii) Two copies of a site plan that meets the requirements of R 281.386(2).

(iii) Evidence of ownership or a legal interest in the property that is affected by the application for a principal use.

(b) Within 15 days of receipt of an application for a principal use, the zoning administrator shall notify the applicant of the need for additional information.

(c) Within 30 days of receipt of a completed application, the zoning administrator shall issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(d) Concurrent with the issuance of a zoning permit, an applicant shall receive a copy of the approved site plan.

(e) Before commencing construction of a principal use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

(f) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of not more than 6 months if conditions pertaining to the issuance of the original permit remain unchanged. Application for an extension shall be made before permit expiration. Any subsequent extensions shall have the written approval of the zoning review board.

(2) An application for a special use permit shall be submitted and processed under the following procedures:

(a) An application for a special use permit shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information and attachments:

(i) A completed application form that is signed by the applicant or the applicant's representative.

(ii) Eight copies of a site plan that meets the requirements of R 281.386(2).

(iii) Evidence of ownership or a legal interest in the property that is affected by the application for a special use.

(iv) A list of all property owners, together with their addresses, who are located within 300 feet of the applicant's property which is being considered for a special use.

(b) The application, together with the required attachments, shall be submitted not less than 30 days before the meeting of the zoning review board at which the application is to be considered.

(c) The zoning review board shall conduct at least 1 public hearing and shall require all of the following notifications of such hearing to be made not less than 5, nor more than 15, days before consideration of the special use application:

(i) One notice shall be published in a newspaper that circulates in the township in which the proposal is located.

(ii) Notice shall be sent by first-class mail or personal delivery to the owners of property for which approval is being considered and to all persons who are identified in subdivision (a)(iv) of this subrule.

(iii) Notice shall also be sent to all of the following entities:

(A) The natural rivers unit of the Michigan department of natural resources.

(B) Local tax assessing officials.

(C) Township and county clerks.

(D) Local building inspectors.

(d) In considering a special use application, the zoning review board shall require that all of the following general standards, in addition to those specific standards established for each special use in R 281.387(c), be satisfied:

(i) That the purposes noted in R 281.382 are accomplished.

(ii) That a compelling reason exists to locate the proposed use within the district boundaries if contiguous property under the same ownership is available outside the district.

(iii) That the proposed use in combination with other existing uses will not be a detriment to the public health, safety, and welfare.

(e) The zoning review board may impose conditions deemed necessary to accomplish the general and specific standards applicable to the proposed use.

(f) The concurring vote of a majority of the members of the zoning review board shall be required to approve a special use.

(g) A special use that is granted by the zoning review board shall be valid for 1 year from the date of approval. If construction has not, in the opinion of the zoning review board, commenced and proceeded meaningfully at the end of the 1-year period, the zoning administrator shall notify the applicant, in writing, of the expiration of the special use approval.

(h) If it is determined by the zoning review board that the applicant has failed to comply with any of the requirements of these rules or the approval granted, the board, after a public hearing held in accordance with the provisions of subdivision (c) of this subrule, may revoke any special use approval.

(i) An application for a special use which has been denied by the zoning review board shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, new and significant facts and conditions exist which might result in favorable action upon resubmission.

(j) Concurrent with the issuance of a special use permit, an applicant shall receive a copy of the approved site plan, with conditions, if any.

(k) Before commencing construction of a special use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

History: 1992 AACCS.

R 281.389 Variances and variance hearings.

Rule 9. (1) A dimensional variance from any standard established in these rules may be granted by the zoning review board after a public hearing or in certain instances by the zoning administrator as provided in subrule (3) of this rule to allow a modification from a standard that establishes an area, yard, height, floor space, frontage, setback, or similar numerical restriction, but only after substantive evidence establishes that there are practical difficulties in carrying out the strict letter of these rules. A variance shall be permitted only when it is consistent with the general purposes and intent of these rules.

(2) The zoning review board or zoning administrator shall consider all of the following factors in determining if there are practical difficulties in carrying out the strict letter of these rules as specified in subrule (1) of this rule:

- (a) How substantial the variance is in relation to the zoning requirements.
- (b) Whether a substantial change will be affected in the character of the area or a substantial detriment created for adjoining properties.
- (c) Whether the difficulty can be overcome by some feasible method other than a variance.
- (d) Whether, in view of the manner in which the difficulty arose, and considering all of the factors specified in subdivisions (a) to (c) of this subrule, the interests of justice will be served by allowing the variance.

(e) Whether the plight of the landowner is due to circumstances which are unique to his or her property and which are not created by the landowner.

(f) Whether the variance may result in a material adverse effect on the environment.

(3) For the purposes of these rules, the required hearing and review of a variance request by the zoning review board shall be waived for certain minor dimensional variances of principal uses, including legal nonconforming uses. Such variances shall be handled by the zoning administrator, who shall consider the provisions of subrule (2) of this rule in making a determination. The zoning administrator shall prepare a written finding of fact that details the reasons for approval or denial of the minor variance request. Minor variances include the variances specified in the following provisions:

(a) Reductions in setbacks for uses on lawful lots that are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures and any portion thereof, including additions, porches, and steps.

(b) Reductions in setbacks for uses on lawful nonconforming lots, including lots within subdivisions, that are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures and any portion thereof, including additions, porches, and steps. Conditions may be imposed on an applicant before granting a variance. Such conditions shall be in writing and signed by the applicant before the applicant receives a variance.

(4) A land use variance is a land or building use in contravention of any of the use requirements of these rules. The zoning review board may, after a public hearing, grant a variance upon a finding of unnecessary hardship, which may be found upon substantial evidence being submitted that all of the following factors exist:

- (a) The property cannot be used in a manner that is consistent with existing zoning.
- (b) The hardship results from the application of these rules to the applicant's property.
- (c) The hardship of which the applicant complains is suffered by his or her property directly and is not shared by others.

- (d) The hardship is not the result of the applicant's own actions.
- (e) The hardship is peculiar to the applicant's own property.
- (5) In determining whether reasonable use may be made of the property as zoned, a reasonable economic return may be a factor which could be considered, but only if the applicant is in compliance with the provisions of subrules (1) to (4) of this rule. Whether any weight shall be given to the economic return factor shall be dependent on a determination that the owner has been deprived of all beneficial use of his or her property under existing zoning.
- (6) The zoning review board shall, after finding that unnecessary hardship exists, also find that, based on adequate evidence, the proposed use meets all of the following conditions:
 - (a) The use will be consistent with and in accordance with the general objectives of the White river natural river plan.
 - (b) The use will be designed, constructed, operated, and maintained so as to be consistent with and appropriate in appearance with the existing or intended character of the natural river district and that such use will not change the essential character of the natural river district.
 - (c) The use will be adequately served by existing essential public facilities and services, such as highways, police and fire protection, drainage structures, refuse disposal, and sanitation facilities, or that the persons or agencies that are responsible for the establishment of the proposed use shall be able to adequately provide any such service.
 - (d) The use will not involve uses, activities, processes, materials and equipment, and conditions of operation that will be detrimental to any persons, property, or the environmental quality of the district because of the excessive production of noise, smoke, fumes, glare, or odors or require the outdoor storage of raw materials or discarded materials produced in the use processes.
 - (e) The use will be consistent with the intent and purposes of these rules.
 - (f) The use or the structures to be used therefor will not cause an overcrowding of the land or an undue concentration of population that will result in degradation to the river and district.
 - (g) The use plot area is sufficient, appropriate, and adequate for the use and the reasonable anticipated operation and expansion thereof.
- (7) Upon receipt of an application for a variance, the zoning review board shall conduct a hearing on the request, except as provided for in subrule (3) of this rule. The hearing and notice procedure shall follow that established for special use applications by the provisions of R 281.388(2)(c). A decision shall be made within 30 days after the hearing to approve or deny the variance request. The zoning review board shall keep complete and detailed records of all its proceedings, which shall include the minutes of its meetings, its findings, and actions taken on each matter heard by it, including the final order. The order shall include the legal description of the property involved. Reasons for the decision shall be stated in writing. The board shall record the vote of each member on each question. If a member is absent or fails to vote, the board shall indicate such fact. All records shall be open for public inspection. The concurring vote of a majority of the members of the zoning review board shall be necessary to effect a dimensional variance in these rules, except that a concurring vote of 2/3 of the members of the board of appeals shall be necessary to grant a land use variance permitted in these rules.
- (8) The zoning review board shall not issue a land use variance when the district allows the use as a special use.
- (9) The effect of any variance shall be to create a nonconforming land use or structure which shall then be subject to the terms of R 281.390, which regulates continued use.

History: 1992 AACCS.

R 281.390 Nonconforming uses, lots, and structures.

Rule 10. (1) It is recognized that there exists, within the natural river district, lots, structures, and uses of land and structures which were lawful before these rules were promulgated or amended and which would be prohibited, regulated, or restricted under the terms of these rules or future amendments. It is the intent of these rules to permit legal nonconforming uses, structures, or lots to continue until they are brought into conformity and, in certain instances, to permit the limited expansion of certain legal nonconforming uses and structures.

(2) A nonconforming (substandard) lot shall be in compliance with the minimum requirements of the dimensional requirements of these rules, except as such substandard nonconforming lot may be used pursuant to the provisions of R 281.389.

(3) Where, at the effective date of these rules or amendment of these rules, a lawful use of land exists that is made unlawful under the terms of these rules as promulgated or amended, the use may be continued if it remains otherwise lawful, subject to all of the following provisions:

(a) The nonconforming use shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of these rules or amendment of these rules, except in the case of campgrounds, canoe liveries, and rental cabins which do not meet the standards for special uses specified in R 281.387(c). Such lawful nonconforming uses may be expanded if the increased use meets the standards for special uses specified in R 281.387(c). Expansion of a lawful nonconforming use shall be treated as a variance pursuant to the provisions of R 281.389.

(b) The nonconforming use shall not be moved, in whole or in part, to any other portion of the lot or parcel occupied by such use at the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules.

(c) If the nonconforming use of land ceases for any reason for a period of 12 months, any subsequent use of the land shall conform to the requirements specified by these rules.

(4) Where a lawful structure exists at the effective date of these rules or amendment of these rules that is made unlawful under the terms of these rules as promulgated or amended, the structure may be continued if it remains lawful, subject to all of the following provisions:

(a) The structure shall not be enlarged or altered in a way which increases its nonconformity; however, when a single-family dwelling or a structure associated with a campground, a canoe livery, or rental cabins is classified as nonconforming, alterations, repairs, and additions, including accessory buildings, may be erected if the gross floor area of all such alterations, repairs, and additions, including accessory buildings, is not more than 50% of the gross floor area of the nonconforming structure, cumulative from the date of nonconformance to the date of the request if any enlargement to a lawful nonconforming structure, to the extent possible, is in compliance with all setback and other building requirements. Expansion of a lawful, nonconforming structure shall be treated as a variance pursuant to the provisions of R 281.389.

(b) If the nonconforming structure is destroyed by any means to an extent that is more than 50% of its replacement cost, restoration of the structure shall be treated as a variance pursuant to the provisions of R 281.389. In determining whether the structure has been destroyed to an extent that is more than 50% of its replacement cost, the zoning review board or zoning administrator shall use appraised replacement costs, as determined by a qualified individual who is appointed by the zoning review board or zoning administrator, and shall compare the value of the part destroyed to the value of the total operating unit where there are several structures which are used together by the landowner as a single operating unit. The request for restoration of a nonconforming structure which is destroyed to an extent that is more than 50% of its replacement value shall be approved if all of the following conditions exist:

(i) The land on which the structure is located is not subject to flooding.

(ii) The continued use of the nonconforming structure will not lead to accelerated bank erosion or other material degradation of the river resource, and the construction of the structure is approved by the local soil erosion and sedimentation control enforcement agency.

(iii) The continued use conforms with local county health codes and is approved by the local county health department.

(iv) The continued use conforms with local building codes and is approved by the local building inspector.

(v) The restoration of a damaged structure that is approved by the zoning review board or zoning administrator shall be started within 1 year from the time of the damage.

(c) The nonconforming structure shall not be moved, in whole or in part, to any other portion of the lot or parcel that is occupied by the structure at the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules.

History: 1992 AACS.

R 281.391 Zoning administrator and zoning review board; appointment; duties.

Rule 11. (1) The commission shall appoint a zoning administrator and zoning review board to act as its agents to enforce these rules.

(2) The zoning administrator shall do all of the following:

(a) Provide necessary forms and applications and receive and process applications.

(b) Determine and verify zoning compliance when the applicant's plans are found to conform with the provisions of these rules.

(c) Conduct site inspections to ensure compliance with these rules.

(d) Issue any authorized permits and certificates of zoning compliance.

(e) Identify and record information relative to nonconformities.

(f) Maintain files of applications, permits, and other relevant documents.

(g) Schedule meetings and hearings for, and provide assistance to, the zoning review board.

(h) Act on variances as permitted by the provisions of R 281.389(3).

(3) The zoning review board shall do all of the following:

(a) Adopt rules of procedure that govern the transaction of its business.

(b) Act upon requests for special use permits.

(c) Act on certain dimensional and land use variances pursuant to the provisions of R 281.389.

(d) Act on the interpretation of the official zoning map pursuant to the provisions of R 281.385(2)(g).

(4) In establishing the zoning review board, the commission shall cooperate with, and seek the advice of, all of the following entities:

(a) Affected townships and counties.

(b) Soil conservation districts.

(c) Property owners' associations.

(d) Other interested local organizations and citizens.

(5) The commission shall request each affected township to appoint 1 person to represent its interest on matters within its jurisdiction. The commission shall request each affected county to appoint 2 persons to represent its interests on matters within its jurisdiction. One of the 2 persons shall be a county official who works in planning, zoning, public health, soil erosion and sedimentation control, or a related field. The commission shall request that each affected soil conservation district appoint 1 person to represent its interest on matters within its jurisdiction. Representatives who are appointed pursuant to this rule shall vote only on those matters within their respective jurisdictions. If affected townships, counties, or soil conservation districts do not appoint someone to represent them within 60 days from the request by the commission, the commission may make appointments on its own motion.

(6) In accord with procedures specified in subrule (5) of this rule, the commission shall request that each governmental unit and organization that appoints regular members to the zoning review board also appoint 1 alternate member to represent the governmental unit or organization. The alternate member may be called to sit as a regular member in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. An alternate member who is appointed shall serve in the case until a final decision has been made. An alternate member shall have the same voting rights as a regular member of the zoning review board.

(7) The zoning review board shall hold at least 1 meeting annually for such purposes as adopting or amending rules of procedure, establishing officers, educational purposes, or to conduct any manner of business as provided for by these rules.

History: 1992 AACCS.

R 281.392 Appeals; contested cases.

Rule 12. An aggrieved party who contests the decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1992 AACCS.

R 281.393 Violations; effect; remedies.

Rule 13. (1) After the effective date of these rules, a building or structure or land shall not be used or occupied, and a building or structure or part thereof shall not be erected, constructed, reconstructed, moved, or structurally altered, unless the building, structure, or land is in compliance with the provisions of these rules. A permit or variance shall not be approved, and action shall not be taken, if approval of the permit or variance or the action taken violates the provisions of these rules. The commission shall not waive any of its rights or remedies against any person who violates these rules if the violations were committed in reliance on an authorization erroneously given in violation of any provision of these rules. Any authorized permit, variance, or action that is contrary to the provisions of these rules is deemed invalid from the date of the authorization.

(2) In addition to all other remedies, the commission may institute appropriate action or proceedings to prevent, restrain, correct, or abate rule violations or threatened violations.

History: 1992 AACCS.

R 281.394 Boundaries and permitted uses; changes, amendments, and supplements; precedence of local zoning ordinance over rules.

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner following a hearing held pursuant to the provisions of sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.382.

(2) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following entities:

- (a) The county register of deeds.
- (b) Township and county clerks.
- (c) The local building inspector.
- (d) Local soil erosion and sedimentation control enforcement agencies.
- (e) The soil conservation district.

(3) Upon approval by the director, a local zoning ordinance that meets all of the requirements of Act No. 231 of the Public Acts of 1970, being S281.761 et seq. of the Michigan Compiled Laws, Act No. 184 of the Public Acts of 1943, as amended, being S125.271 et seq. of the Michigan Compiled Laws, or Act No. 183 of the Public Acts of 1943, as amended, being S125.101 et seq. of the Michigan Compiled Laws, whichever is applicable, shall take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the White river natural river district through court action or for any other reason, these rules shall apply.

History: 1992 AACCS.

R 281.395 Rescission.

Rule 15. R 281.71 to R 281.82 of the Michigan Administrative Code, appearing on pages 842 to 852 of the 1979 Michigan Administrative Code, are rescinded.

History: 1992 AACCS.