

## Article 5

# High Risk Erosion Areas Overlay Zoning District

## Township of Alabaster Rural Zoning Ordinance

Adopted November 2006

and Amended in 2013

by the

Alabaster Township Board of Trustees

## **Article 5: High Risk Erosion Areas Overlay Zoning District**

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### **Section 501. Purpose and Intent**

It is the purpose of this Article to prevent the placement of structures in areas designated as high risk erosion consistent with the Shorelands Protection and Management Act, Public Act 245 of 1970, as amended. The standards and requirements contained in this Ordinance, and zoning map, are intended to further the purposes of *Part 323*, Shorelands Protection and Management, of the Natural Resources and Environmental Protection Act, Public Act 451 of 1994, as amended. It is furthermore, the intent of this ordinance to:

- A. Establish minimum required setbacks for principal and accessory structures, which, based on erosion studies prepared by the Department of Natural Resources, will reduce property loss and damage.
- B. Minimize the economic hardships that individuals and the Township of Alabaster may face in the case of property loss due to erosion.
- C. Protect public health and safety from effects of shoreland erosion.
- D. Protect water and beach quality.
- E. Preserve bluff vegetation in order to help stabilize bluffs and slow erosion.
- F. Provide for the administration of this ordinance and to determine the powers and duties of the Zoning Board of Appeals as relates to this section.
- G. Prescribe penalties for any violation of the provisions of this ordinance.

### **Section 502. Area Affected and Boundaries**

The boundaries of those stretches of shoreland affected by this ordinance shall be consistent with the affected properties described herein. This area is shown on the official Township High Risk Zoning Map, which is hereby made part of this ordinance. A copy of the Zoning Map and text is filed in the office of the Township of Alabaster and the County Clerk. The area extends landward from the ordinary high water mark to the required setback line for permanent structures. Over time the setback line is not a fixed line. It moves landward as erosion continues.

For the purpose of this ordinance, the minimum required setback distance shall be measured landward from the bluff line and shall be construed as running parallel to the bluff line. In the event the bluff line recedes (moves landward), the setback line of the high risk erosion area shall also be construed as to have moved landward a distance equal to the bluff line recession.

The boundaries of the high-risk erosion areas coincide with the descriptions in the shoreland erosion studies of the Michigan Department of Environmental Quality and are described as follows:

- A. HIGH-RISK EROSION AREA A - The northern end of the high risk erosion area lies at the intersection of Townline Road and the shoreline at the Tawas Township-Alabaster Township Boundary.

The southern end of the high-risk erosion area is in Section 1, T21N, R7E, lying 1,965 feet south of the intersection of Townline Road extended, and the shoreline.

- B. HIGH-RISK EROSION AREA B - The northern end of this high-risk erosion area is in Section 1, T21N, R7E, lying 2,780 feet north of the intersection of the Section 2 and Section 11 line, being T21N, R7E, and the shoreline.

The southern end of the high-risk erosion area lies at the intersection of Section 2 and Section 1, T21N, R7E, and the shoreline.

- C. HIGH-RISK EROSION AREA C - The northern end of this area is in Section 11, T21N, R7E, lying 500 feet south of the intersection of Section 2 and Section 11, T21N, R7E, and the shoreline.

The southern end of this area is in Section 11, T21N, R7E, and lying 2,690 feet south of the intersection of Sections 2 and 11, T21N, R7E, and the shoreline.

- D. HIGH-RISK EROSION AREA D - The northern end of this area is in Section 11, T21N, R7E, lying 1,120 feet north of the intersection of Section 11 and Section 14, T21N, R7E, and the shoreline.

The southern end is in Section 14, T21N, R7E, lying 3,260 feet south of the intersection of Section 11 and Section 14 line, T21N, R7E, and the shoreline.

- E. HIGH-RISK EROSION AREA E - The northern end of this area is in Section 23, T21N, R7E, lying 205 feet (measured along the shoreline) south of the intersection of Section 23 and Section 26, T21N, R7E, and the shoreline.

The southern end of the high-risk erosion area is in Section 34, T21N, R7E, lying 2,369 feet (measured along the shoreline) south of the intersection of Section 26 and Section 35, T21N, R7E, and the shoreline.

The exact locations of the boundaries are indicated on aerial photographs on file with the Michigan Department of Environmental Quality in Lansing, MI.

**Section 503. Setback Requirements from Bluff Line**

Within the boundaries of the high risk erosion areas established by this Ordinance, no permanent structure shall be located between the ordinary high water mark and the line defining the required setback distance indicated in Table 1 that follows:

- A. The required setback distance provided for in this ordinance shall be measured in a landward direction as a distance horizontal from and perpendicular to the bluff line at the closest point to the existing or proposed principal structure. For each high risk erosion area described in the above section, Area Affected and Boundaries, the required setback for any principal structure shall be as follows:

Table 1 Permanent Structure Setbacks		
Designated High Risk Erosion Area	Required Setback Distance for Small Readily Moveable Structures (30 year)	Required Setback Distance for all Other Structures (60 year)
Area A	60 feet	100 feet
Area B	35 feet	65 feet
Area C	40 feet	85 feet
Area D	35 feet	70 feet
Area E	70 feet	125 feet

- B. Modification of the Required Setback Distance. A person who can document with acceptable engineering studies an annual average recession rate that differs from the Department of Environmental Quality recession rate data may be granted a modification of the setback requirement for principal structures by the Zoning Board of Appeals. Prior to any modification of the required setback distance, the applicant's engineering studies shall be sent to the Department of Environmental Quality, who shall report to the Zoning

Board of Appeals on the accuracy of the applicant's studies. The Zoning Board of Appeals shall only act upon requests for modifications of the setback requirement after a determination has been made on the validity of the applicant's data by the Department of Environmental Quality and only after the Zoning Board of Appeals has determined that such modification would not violate the spirit and intent of this ordinance.

**Section 504. General Provisions**

- A. The erection, relocation or reconstruction of a principal structure on any lot or parcel which, in whole or part, falls within the area affected by the Ordinance shall only be initiated upon receipt of a zoning permit from the Zoning Administrator, pursuant to the following section, Administration, Article 10, Section 1003.
- B. No lot or parcel shall hereafter be created, subdivided or otherwise established without sufficient depth to accommodate a principal structure in accord with the requirements of this ordinance. Hereafter, all principal structures erected, and all structural alterations or relocation of existing permanent structures shall be in accord with the requirements of this ordinance.
- C. The erection, installation, movement, or enlargement of an accessory structure or a permanent structure on a parcel, any part of which falls within the area affected by this ordinance (within a high risk erosion area), shall be initiated only after a permit has been issued by the Zoning Administrator of the Township of Alabaster. An easily moveable structure is exempt from these requirements.
- D. The permit application shall contain all of the following information:
  - 1. A legal description of the property.
  - 2. A description of the proposed accessory and/or permanent structure.
  - 3. A sketch of the proposed site to scale, which shows the location of the proposed accessory and/or permanent structure in relation to the location of the property lines and prominent features.
  - 4. The signature, phone and address of the applicant in full.
  - 5. Description of proposed site access.
  - 6. Any existing or proposed shore protection devices. A separate permit unrelated to this ordinance is needed from the Department of Environmental Quality for all such devices.

7. Proposed or existing location of utility lines, easements and/or rights-of-way.
  8. Verification that the County (District) Health Department and other state and federal permits, as appropriate, have been applied for or obtained for the property.
  9. Proof of property ownership (if the owner is not the applicant, then the legal interest in the land possessed by the applicant shall be revealed).
  10. Inventory of significant existing on-site vegetation by general type and location.
- E. A permit application to erect, install, or move a permanent structure in a designated high risk erosion area shall be approved if the proposed permanent structure meets or exceeds all of the following requirements:
1. The proposed permanent structure or addition is landward of the required setback line (see the previous section on Setback Requirements from Bluff Line, Table 1).
  2. Small permanent structures that are erected, installed, or moved into the area between the setback line and a distance twice the required setback distance shall be readily moveable structures, except for those small permanent structures located on parcels that do not have access of sufficient width and acceptable grade to allow for relocation.
  3. A permanent structure shall not be erected, installed, or moved lakeward of the setback line in a high risk erosion area without a special exception as provided by the following section, Exceptions on Nonconforming Parcels, Article 5.
  4. The proposed permanent structure, meets the requirements of other applicable state laws.
  5. Review and approval of the design of small permanent structures shall be made to ensure the building is a readily moveable structure.
- F. A permit application to make an addition to an existing permanent structure in a designated high risk erosion area shall be approved if the addition meets or exceeds the required setback distance and all other requirements of this ordinance for the district in which it is located.
- G. Accessory or appurtenant structures shall not have a permanent foundation, shall be less than two hundred twenty-five (225) square feet, shall not be more than ten feet (10') in height and may be used for picnicking or storage of recreational or lawn equipment. The structure shall not be used as a residential facility. An accessory structure is exempt from

the setback requirements for a permanent structure. Permitted accessory structures that are placed in high risk erosion areas shall be removed prior to erosion damage.

- H. Any substandard lot of record or substandard lot described in a land contract or deed executed or delivered prior to the adoption of this ordinance shall only be used if it meets the requirements of the following section on Exceptions on Nonconforming Parcels, Article 5.
- I. If a permanent structure is relocated, all construction materials, including the entire foundation, shall be removed and properly disposed of according to the terms of a permit issued as part of the moving operation.
- J. After May 1, 1992 the slope and height of a dune or bluff shall not be artificially altered to affect the setback requirement unless the alteration is in compliance with a permit issued pursuant to the provisions of Part 91, Soil Erosion and Sedimentation, of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended and Part 325, Great Lakes Submerged Lands, of the natural Resources and Environmental Protection Act, 1994 PA 451, as amended, if the alteration or fill extends into the waters of the Great Lakes or below the ordinary high water mark elevation.

### **Section 505. Maintenance and Restoration of Nonconforming Structures**

The lawful use of any structure existing at the time in which this ordinance is adopted may continue in the same manner and to the same extent, although the location of the permanent structure does not conform to the provisions of this ordinance. A nonconforming structure shall not be repaired, restored, extended, enlarged or removed except in accord with the requirements that follow.

#### **505.1 Routine Maintenance and Remodeling**

Routine repairs and maintenance work required to keep a nonconforming principal structure in sound condition are permitted. Remodeling of a nonconforming principal structure is permitted as long as the structure is neither enlarged nor extended in a nonconforming manner. Addition of extra stories shall be construed as the expansion of a nonconforming use.

#### **505.2 Enlargements to Nonconforming Structures**

The following exceptions can be made to accommodate enlargements of existing nonconforming structures upon review and approval of the Township of Alabaster Zoning Board of Appeals:

- A. Additions to a readily removable structure that is not in compliance with the required

setback distance of a designated high risk erosion area shall be approved if all of the following provisions are complied with:

1. The existing building with the addition will meet the definition of a readily moveable structure.
  2. The proposed addition does not reduce the permanent structure's distance from the bluff line.
  3. The proposed addition and the existing permanent structure are not less than thirty (30) feet landward of the bluff line.
- B. An addition to an existing small nonconforming permanent structure that is not a readily moveable structure shall be approved if, at the date of construction, the provisions of either item 1. or 2. of this subsection and the provisions of item 3. of this subsection are complied with as follows:
1. The total of all floor space added shall not exceed twenty-five percent (25%) of the foundation size of the permanent structure. The foundation size shall be determined as of the time the permanent structure became nonconforming. When the twenty-five percent (25%) limit on additions (including building up) has been reached, no further additions can be made for the remaining life of the structure. The addition shall not reduce the permanent structure's distance from the bluff line.
  2. The addition shall meet the definition of a readily moveable structure and the addition shall be on the landward side of the original permanent structure. A special exception may only be granted if the property owner, as a condition, agrees to relocate the readily moveable portion of the permanent structure to a location landward of the setback line when so ordered by the Zoning Board of Appeals. The Zoning Board of Appeals may make such an order only when the foundation of the existing structure is undermined by erosion.
  3. The proposed addition and the existing structure are not less than thirty (30) feet landward of the bluff line.

The map included at the end of this Article and titled HIGH RISK EROSION AREAS displays these areas and is approximate only. The official map is maintained by the Clerk of the Township of Alabaster.

### **505.3 Restoration of Nonconforming Structures**

- A. When a nonconforming structure is damaged by a force other than erosion, the Zoning Board of Appeals shall only authorize restoration if the Board determines that the



structure will be restored in compliance with the following standards:

1. The cost of returning the principal structure to its original condition shall be one hundred percent (100%) or less of the structure's pre-catastrophe replacement value. No structure damaged more than one hundred percent (100%) of its pre-catastrophe replacement value shall be restored.
  2. The permanent structure, if rebuilt in its existing location, would be no less than twenty (20) feet landward of the bluff line.
  3. The reconstructed building would be a readily moveable structure.
- B. As a condition for approval of restoration plans, the Zoning Board of Appeals may require:
1. Measures that will aid in stabilizing the bluff other than the construction of erosion control devices.
  2. The use of runoff or soil erosion control techniques to prevent any acceleration of erosion that may occur during restoration of the structure.
  3. The lawful disposal of all debris, including the previous foundation, resulting from the damage or from the restoration of a principal structure (such as construction materials) in a manner such that the debris poses no safety or health hazard.
  4. Other conditions on the restoration of nonconforming principal structures, provided these conditions are consistent with the intent of this Ordinance and consistent with the promotion of public health, safety and welfare.
- C. If a building is more than one hundred percent (100%) destroyed or declared a total loss for insurance purposes, the requirements for new permanent structures shall apply.
- D. Determination of replacement costs: The pre-catastrophe replacement value of repairing damage to a nonconforming structure, excluding contents, damaged by a force other than erosion shall be made on the basis of an appraisal by a qualified individual designated by the Zoning Board of Appeals. The cost for such determination shall be born by the applicant.

#### **Section 506. Exceptions on Nonconforming Parcels**

The following exceptions, A-B below, can be made to the required setback distance, upon review and approval by the Township of Alabaster Zoning Board of Appeals. Unless otherwise

provided by a previously-approved variance, the minimal requirements for the location of a permanent structure on a nonconforming parcel shall be the following:

- A. To erect, install or move a small readily moveable structure lakeward of the setback line on a nonconforming parcel, compliance with the following conditions must be met:
  - 1. If a sanitary sewer is not used, the septic system, tile field, or other waste-handling system shall be located as far landward as the lakeward edge of the building.
  - 2. The readily moveable structure shall be located as far landward of the bluff line as possible without violating another provision of this ordinance.
  - 3. The readily moveable structure shall be designed and constructed in accordance with proper engineering standards and building moving restrictions applicable to the subject area. Review and approval of the design to ensure that the building is a readily moveable structure shall be completed prior to issuance of any local permits.
  - 4. The readily moveable structure is not less than thirty (30) feet landward of the bluff line and is not located on a lakeward facing slope of sixty percent (60%) or more.
  - 5. The readily moveable structure meets requirements of other applicable state laws.
- B. If a nonconforming parcel does not have access to and from the place where the structure is proposed to be located, but is of sufficient width and acceptable grade to erect or move a readily moveable structure, or if the application is for a large permanent structure on a nonconforming parcel, a special exception shall be granted to utilize a shore protection structure in place of a portion of the required setback distance. The special exception shall be granted only if all of the following provisions are met:
  - 1. If a sanitary sewer is not used, the septic system, tile field, or other waste-handling facility shall be located at least as far landward of the bluff line as the principal building.
  - 2. The permanent structure shall be located landward of the bluff line as far as possible without violating another provision of this ordinance.
  - 3. The shore protection structure shall be designed to meet or exceed a twenty (20) year storm event at the site for small permanent structures and a fifty (50) year storm event at the site for large permanent structures. A professional engineer shall certify that the shore protection structure has been designed and will be constructed in accordance with these standards. If the shore protection structure is constructed in the waters of the Great Lakes or lies below the ordinary high water mark, a permit pursuant to the provisions of Part 353, Great Lakes Submerged Lands of the Natural

Resources and Environmental Protection Act, 1994 PA 451, as amended, shall be obtained for the shore protection structure.

4. The permanent structure shall be a minimum of thirty (30) feet from the shore protection structure. If the bluff or dune is unstable due to height, slope, wind erosion, or groundwater seepage, the Township of Alabaster, with input from the Department of Environmental Quality, may require a setback of more than thirty (30) feet or an engineered bluff stabilization plan, or both. In areas of steep slopes greater than eighteen percent (18%), a greater setback may be necessary to provide access for maintenance equipment and a safe building site.
5. If the application is for a large permanent structure, the Zoning Board of Appeals shall require compliance with both of the following provisions:
  - a. The establishment of an escrow account to maintain the approved shore protection structure or bluff stabilization, or both. The amount required in the escrow account shall be reasonable and based on the project design.
  - b. Notice in the disclosure statement or deed that a portion of the required setback distance has been waived.
6. The proposed permanent structure meets the requirements of other applicable state laws.

#### **Section 507. Setback Exceptions for Approved Shore Protection**

Certain, uncommon exceptions can be made to the required setback distance upon request to the Department of Environmental Quality pursuant to the state law (Part 323, of the Natural Resources and Environmental Protection Act, 1994, P A 451, as amended.) Because such changes are unusual and highly technical, such exceptions are not addressed by the Township of Alabaster Zoning Board of Appeals.

#### **Section 508. Administration**

The following provisions are to be enforced insofar as they are consistent with other provisions of this ordinance. An enforcement officer, the Zoning Administrator, shall be duly appointed by the Township of Alabaster to enforce this ordinance and in addition thereto shall:

- A. Issue a land use permit when, after review of proposed plans and an on-site inspection, it is determined that the proposed placement and design of a structure complies with the requirements of this ordinance.

- B. Issue violation notices requiring compliance within 30 days and initiate any other activities to abate violations as herein authorized.
- C. Maintain permanent and current records of this ordinance, including all permits applied for, issued and denied; maintain the zoning maps and property descriptions; delineate affected areas; maintain records of application for variances, appeals and the decisions on those appeals by the Zoning Board of Appeals.
- D. In the case of denying a zoning permit, the Zoning Administrator shall inform the property owner of the right to appeal and the conditions under which an appeal will be considered. The Zoning Administrator shall further inform the Zoning Board of Appeals and the Department of Environmental Quality at the time an appeal is filed. Written notice of an exception request from the minimum required setback distance shall be given to the Department of Environmental Quality at least fourteen (14) days prior to the hearing before the Zoning Board of Appeals.

**Section 509. Disclaimer of Liability**

The provisions of this ordinance are considered the "minimum" necessary for reducing erosion hazards and property loss for a thirty (30) year period of recession for small permanent structures and a projected sixty (60) year period for large permanent structures or non-readily moveable structures, based upon current engineering and scientific methods of study. Faster or slower rates of erosion may occur. Erosion rates may be increased by natural causes, such as high lake levels or major storms, or by man-made causes, such as the construction of erosion control devices or by increasing the amount of runoff from land. Placing a structure landward of the required setback distance is not a guarantee or warranty of safety from erosion damage. Individual property owners concerned with erosion hazards are encouraged to consult with local building officials and personnel of the Department of Environmental Quality to arrive at site design plans that may use a greater setback to maximize protection from erosion damage.

**Section 510. Relationship to Other Permits**

Approval of a permit does not exempt the applicant from complying with all other relevant statutes, ordinances, rules or regulations.

**Section 511. Interpretation**

In the interpretation and application of this ordinance, all provisions shall be (a) considered as minimum requirements unless so noted, (b) liberally construed in favor of the

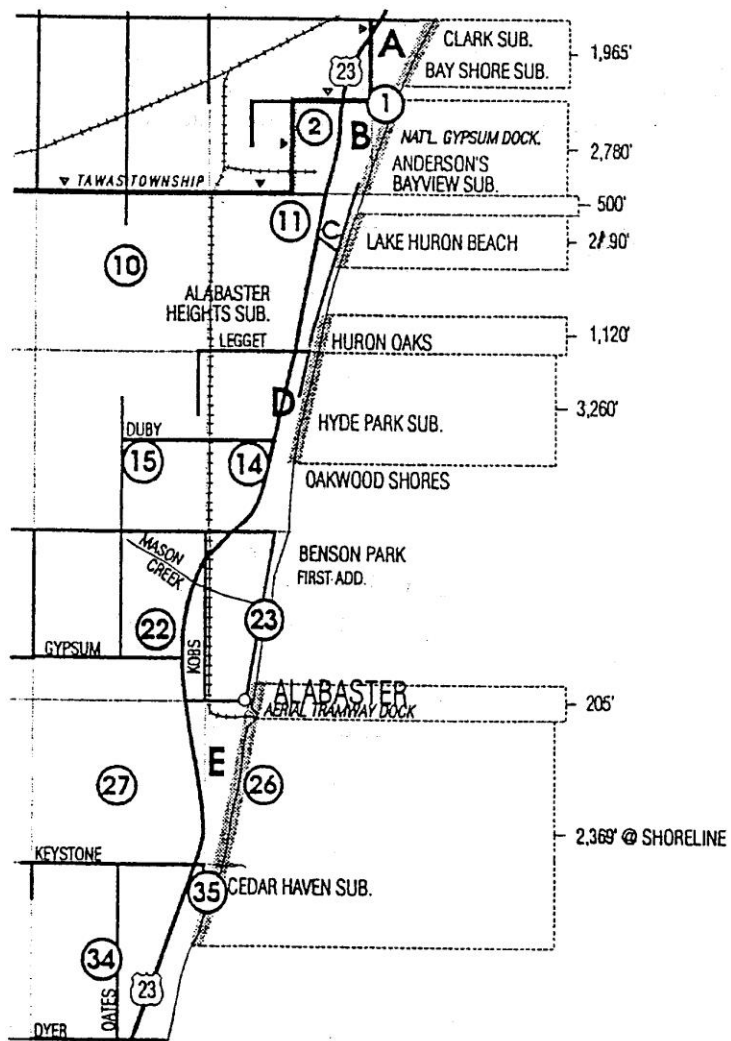
governing body and, (c) deemed neither to limit nor repeal any other powers granted by the State of Michigan.

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Article 5: High Risk Erosion Areas Overlay Zoning District:

**Township of Alabaster**  
Iosco County, Michigan

**High Risk Erosion Areas**



Township of Alabaster Rural Zoning Ordinance: November 13, 2006

Township of Alabaster Rural Zoning Ordinance: December 9, 2013