



Conway Township Planning Commission

Monday, June 12, 2023 | 7:00pm

Conway Township Hall | 8015 N. Fowlerville Road, Fowlerville, Michigan 48836

1. **CALL TO ORDER / PLEDGE**
2. **ROLL CALL**
3. **CALL TO THE PUBLIC**
4. **APPROVAL OF PLANNING COMMISSION MEETING June 12, 2023 AGENDA**
5. **APPROVAL OF THE April 28, 2023 MEETING MINUTES**
6. **APPROVAL OF THE May 8, 2023 MEETING MINUTES**
7. **COMMUNICATIONS**
 - a. Zoning Administrator's Report
 - b. Livingston County Planning Commission Update/Report
8. **PUBLIC HEARING ON PROPOSED AMENDMENT TO THE ZONING ORDINANCE**
 - a. Zoning Ordinance Amendment No. 2023-02: New Article 19, Solar Energy System District and replacement of existing Section 6.26 regarding Solar Energy Systems
9. **OLD BUSINESS**
 - a. Zoning Ordinance Amendment No. 2023-02: Review draft of new Article 19, Solar Energy System District and replacement of existing Section 6.26 regarding Solar Energy Systems
 - b. Shipping Containers [Accessory/Principal Use]
10. **NEW BUSINESS**
 - a. Zoning Ordinance on Windmills Update
 - b. Solid Waste Disposal Areas (Landfills)
 - c. House Bills 4526, 4527, 4528 (Sand/Gravel)
 - d. Senate Bills 152 and 153 (Community Solar)
11. **PLANNING COMMISSION MEMBER DISCUSSION**
12. **2nd CALL TO THE PUBLIC**
13. **ADJOURNMENT**

Any person may speak for up to 3 minutes during the public comment period.

Meeting will be Monday, July 10, 2023



Conway Township Town Hall with Planning Commission Meeting Minutes

Monday, April 28th, 2023 | 7:00pm EST

Conway Township Hall | 8015 N. Fowlerville Road, Fowlerville, MI 48836

Agenda	Items Discussed	Actions to be Taken
Attendees	PC Members Present: Jeff Klein, Meghan Swain-Kuch, Dave Whitt, George Pushies - Ex-Officio, Shawn Morrison, Lucas Curd, and Kayla Poissant Livingston County Planning Commissioner: Dennis Bowdoin Township Attorney: Michael D. Homier	None
Call to Order/Pledge	William Grubb, Township Supervisor, called the Conway Township Town Hall meeting to order at 7:00pm and led the Pledge of Allegiance.	None
Town Hall Discussion	All Planning Commission members were in attendance. Quorum has been met. William Grubb turned over the Town Hall meeting to attorney Michael D. Homier. All Planning Commission members made comments, suggestions, or asked questions throughout the Town Hall meeting.	None
Adjournment	Motion to adjourn at 10:36pm. Motion by G. Pushies. Support by E. Whitt. Motion approved by Township Board.	Motion Approved

Respectfully Submitted:

Approved:

Kayla Poissant,
PC Secretary

Meghan Swain-Kuch,
PC Chair



Conway Township Planning Commission Meeting Minutes

Monday, May 8, 2023 | 7:00pm EST

Conway Township Hall | 8015 N. Fowlerville Road, Fowlerville, MI 48836

Agenda	Items Discussed	Actions to be Taken
Attendees	<p>PC Members Present: Jeff Klein, Dave Whitt, George Pushies - Ex-Officio, Shawn Morrison, Lucas Curd, and Kayla Poissant</p> <p>Absent- Meghan Swain-Kuch</p> <p>Zoning Administrator – Gary Klein</p> <p>Livingston County Planning Commissioner: Dennis Bowdoin</p> <p>Township Attorney: Laura Genovich, Foster Swift (Michael D. Homier’s Legal Partner)</p>	None
Call to Order/Pledge	<p>PC Vice Chair, L. Curd, called the Conway Township Planning Commission meeting to order at 7:00pm and led the Pledge of Allegiance.</p>	None
Approval of Agenda	<p>Motion to accept the meeting agenda as amended for May 8, 2023. Motion by D. Whitt. Support by S. Morrison. Motion Approved.</p>	Motion Approved
Approval of April 2023 Minutes	<p>Motion to accept meeting minutes from April 10th, 2023. Motion by J. Klein. Support by D. Whitt. Motion Approved.</p>	Motion Approved
Call to the Public	<p>None at this time.</p>	None
Communications	<p>a. Zoning Administrator Report: There were two Land Use Permits last month, one (1) pole barn permit, and one (1) foundation. There were also four waivers, two (2) electrical and two (2) rebuilds.</p> <p>b. Livingston County Planning Commission Report: Nothing at this time.</p>	None None
Old Business	<p>a. Zoning Ordinance Amendment No. 2023-02: Review draft of new Article 19, Solar Energy System District and replacement of existing Section 6.26 regarding Solar Energy Systems</p>	

L. Curd stated they the PC just received the updated version of the ordinance today after the Town Hall meeting on 4/28/23. Laura Genovich introduced herself. K. Poissant asked about local fire department training, and if and where that should be placed in the ordinance. L. Genovich stated that it can be placed in the ordinance with the operator of the solar energy system providing training to the local fire department. It was discussed, and then placed into the ordinance to provide emergency response training to the local emergency services departments minimum annually at the site of the solar energy system. K. Poissant also asked about allowing the property owner to retain the utility lines from the solar energy system if the property owner should want to. L. Curd stated the same could be said about grading, since after grading the land could be better than it was before. It was discussed. A section was added to allow for deviations from the decommissioning requirements for property owners with the notice of a public hearing, 300 ft notice to surrounding properties, and approval from the PC. K. Poissant asked about Section 2, and about the open space community. L. Genovich stated that it was just stating where in the ordinance the solar energy system (SES) ordinance is going to be located in the Master Plan.

It was then decided to go through the entire ordinance beginning to end. L. Genovich went through the ordinance by reading out loud for the PC and public, making small clerical adjustments along the way. The ordinance was projected onto the wall of the Town Hall so that the PC and the public could see it, as well as any changes made in real time. Multiple questions and comments were made from the PC during the reading. Some of these included transferability, complaints regarding the SES, signs around the facility, holiday working hours, etc.

L. Genovich then projected the possible location of the overlay district which is east of Marsh Rd. between sections 11 and 12. It is located south of Sober Rd. and north of Morhle Rd. It was discussed that this option is the least impactful to

	<p>surrounding property owners and has approximately 136 acres of land. It was also discussed about the distance to the nearest power lines/transmission lines which are located in Cohoctah. L. Genovich stated that it is on the SES operator to get the permissions for access to the lines, not on the Township. The setbacks were looked at in depth. The setbacks were discussed as being at 750 ft. from the road (Marsh), 150 ft from the drainage lines, and 500 ft from each non-participating property owner. The setbacks are stated as the amount of feet needed from the road, drains, or other properties to the fence line. After the setbacks were placed on the overlay, there was approximately 95-98 acres of usable land. A picture/map will be provided at the Public Hearing which includes the overlay district and setbacks.</p> <p>Motion to set the public hearing to consider recommending approval of an amendment to the Township Zoning Ordinance regulating solar energy systems, including utility-scale solar energy systems on June 12th, 2023 at the Conway Township Hall at 7:00pm. Motion by G. Pushies. Support by J. Klein. Motion Approved.</p> <p>b. Shipping Containers [Accessory/Principal Use]</p> <p>L. Curd stated that the Marion Township version was in the packet.</p> <p>Motion to have the proposed ordinance be sent to Abby Cooper, the Township Attorney, for review and to be placed on next month's agenda. Motion by D. Whitt. Support by K. Poissant. Dissented by G. Pushies. Motion Approved.</p>	<p>Motion Approved</p> <p>Motion Approved</p>
<p>New Business</p>	<p>a. Michigan Tall Structures Act</p> <p>Per D. Bowdoin, the height allowed was changed from 200 ft high to 199 ft high in the act (windmill discussion/ordinance). This was changed due to airports.</p>	<p>None</p>

Commission Discussion	None at this time.	None
Last Call to the Public	<p>Sarah Porter- Thanked the PC for their work tonight.</p> <p>Mike Brown- Asked about the moratorium involving wind energy, and he would like to see some work on the wind energy section because he is concerned about it. He also asked about the number of overlay districts in the Township, and about the section allowing the PC to allow deviations to the decommissioning requirements. He said he wanted to make the PC aware that not just the couple of sections referred to tonight could be changed, but any decommissioning requirements could be changed with the deviation section.</p> <p>Steve Smith- He praised L. Genovich for her work at the meeting. He believes that DTE will push back on the overlay, and it could eventually go through the state. He would recommend the 500 ft setback on non-participating properties and would like to see more on wildlife protection in the ordinance.</p>	None
Adjournment	Motion to adjourn at 9:45pm. Motion by D. Whitt. Support by J. Klein. Motion Approved.	Motion Approved

Respectfully Submitted:

Kayla Poissant,
PC Secretary

Approved:

Meghan Swain-Kuch,
PC Chair

Livingston County Planning Department

Livingston County Planning Connection

304 E. Grand River Ave. , Suite 206
(517) 546-7555
planning@livgov.com

Welcome Martha Haglund, Principal Planner

Martha Haglund is now an official addition to the Livingston County Planning Department! She has volunteered with Livingston County over the past 10 years and is extremely passionate about connecting people and understanding their vision for community. "Providing decision makers with great tools and seeking public input is so important in guiding the vision for our community." She says.

She served on the Howell Township Planning Commission for over 6 years. She helped to preserve parcels for future parks, write community grants and update sidewalk/pathway plans. Here at the county, she'll combine her love of civic engagement & natural area placemaking.

She was also a member of the Howell Parks & Recreation Foundation. "Having access to facilities that support healthy communities really improves our quality of life." She says.



Her background in natural science and planning will provide a unique perspective as Livingston County continues to grow.

B.S. from Grand Valley State University 2009

Masters Degree in Natural Resource Management, from Virginia Tech. 2011

Interests: camping, mountain biking, hiking, crocheting and practicing Spanish

At Fillmore Park: 9.11 Never Forget 5k



Livingston County Veteran Services, First Responders, and Howell Recreation present the first annual 9/11 "Never Forget 5K Trail Run/Walk." Join us at Fillmore County Park on September 16th at 8 am

as we remember those who lost their lives that day, as well as our military veterans and first responders who went into harm's way as a result of the attack.

Saturday, September 16, 2023

8:00 AM 9:00 AM

\$25 per person

For more information and to sign up:

<https://www.howellrecreation.org/events/9115k>



Livingston County Department of Planning

LIVINGSTON COUNTY PLANNING COMMISSION MEETING

Wednesday, May 17, 2023 – 6:30 p.m.

Administration Building, Board of Commissioners Chambers
304 East Grand River, Howell, MI 48843

Please note that this is a hybrid meeting with County Planning Commissioners and staff meeting in-person. Audience participants are welcome to attend in-person or via Zoom by using the meeting link on Page 2 of the agenda.

Agenda

1. Call to Order
2. Pledge of Allegiance to the Flag
3. Roll and Introduction of Guests
4. Approval of Agenda – May 17, 2023
5. Approval of Meeting Minutes – April 19, 2023
6. Call to the Public
7. Zoning Reviews
 - A. Z-19-23 Hamburg Township, Rezoning Sections 14 & 23, Waterfront Residential to Public Private Recreation Facilities
8. Old Business
9. New Business
 - A. Michigan Association of Planning Memberships for PC members.
 - B. Annual Capital Improvements Plan 2024-2029
10. Reports
11. Commissioners Heard and Call to the Public
12. Adjournment

Department Information

Administration Building
304 E. Grand River Avenue
Suite 206
Howell, MI 48843-2323

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(517) 546-7555
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●
Web Site
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APPROVED
LIVINGSTON COUNTY PLANNING
COMMISSION MEETING MINUTES

April 19, 2023
6:30 p.m.
Hybrid In-Person and Virtual Zoom Meeting

Zoom Virtual Meeting Room Meeting ID: 399-700-0062 / Password: LCBOC
<https://zoom.us/j/3997000062?pwd=SUdLYVFFcmozWnFxbm0vcHRjWkVIZz09>

PLANNING COMMISSION			
COMMISSIONERS PRESENT:	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> BILL ANDERSON MATT IKLE DENNIS BOWDOIN MARGARET BURKHOLDER </td> <td style="width: 50%; border: none;"> PAUL FUNK JASON SCHROCK BILL CALL </td> </tr> </table>	BILL ANDERSON MATT IKLE DENNIS BOWDOIN MARGARET BURKHOLDER	PAUL FUNK JASON SCHROCK BILL CALL
BILL ANDERSON MATT IKLE DENNIS BOWDOIN MARGARET BURKHOLDER	PAUL FUNK JASON SCHROCK BILL CALL		
COMMISSIONERS ABSENT:			
STAFF PRESENT:	SCOTT BARB ROB STANFORD		
OTHERS PRESENT:	BRUCE POWELLSON – MARION TOWNSHIP; TROY LANGER – HARTLAND TWP PLANNING DIRECTOR; RICHARD PARKER -MARION TOWNSHIP; MARK MYNSBERGE – MARION TOWNSHIP; PATRICK KEOGH – ACE CIVIL ENGINEERING; KATHLEEN KLINE-HUDSON; MARTHA HAGLUND; ERIN HARMON – IOSCO TWP; JOANN HAAS – COHOCTAH TWP. ZOOM ONLINE: KDC, KELLY, KEN C., TF, ROB PORTER, NORRIS HARDEMAN		

1. **CALL TO ORDER:** Meeting was called to order by Planning Commissioner Anderson at 6:30 PM.
2. **PLEDGE OF ALLEGIANCE TO THE FLAG**
3. **ROLL AND INTRODUCTION OF GUESTS:** None.
4. **APPROVAL OF AGENDA**

Commissioner Action: IT WAS MOVED BY COMMISSIONER ANDERSON TO APPROVE THE AMENDED AGENDA, DATED APRIL 19, 2023, SECONDED BY COMMISSIONER IKLE.
All in favor, motion passed 7-0.

5. **APPROVAL OF PLANNING COMMISSION MEETING MINUTES**

Commissioner Action: IT WAS MOVED BY COMMISSIONER IKLE TO APPROVE THE MINUTES, DATED MARCH 15, 2023, SECONDED BY COMMISSIONER BOWDOIN.
All in favor, motion passed 7-0.

6. **CALL TO THE PUBLIC:** None.

7. ZONING REVIEWS:

**A. Z-17-23 HARTLAND TOWNSHIP, TEXT AMENDMENT TO THE ZONING ORDINANCE:
ARTICLE 5 SITE STANDARDS, SECTION 5 VARIOUS LANDSCAPING CHANGES.**

The Hartland Township Planning Commission is proposing to amend several sections of the Township Ordinance that address various components of landscaping. Staff has reviewed the proposed amendments for accuracy and compatibility with the existing ordinance language and offers the following summary for your review.

Township Planning Commission Recommendation: Approval. The Hartland Township held a public hearing on the proposed amendments on March 9, 2023. Meeting minutes have not been completed at time of this writing.

Staff Recommendation: Approval. The proposed landscaping amendments are an appropriate addition to the Township Ordinance.

Commission Discussion: None.

Public Comment: None.

Commission Action:

Commissioner Action: IT WAS MOVED BY COMMISSIONER SCHROCK TO RECOMMEND APPROVAL AS AMENDED, SECONDED BY COMMISSIONER BOWDOIN.

Motion passed: 7-0

B. Z-18-23 MARION TOWNSHIP, CONDITIONAL REZONING, HS HIGHWAY SERVICE DISTRICT TO UR-URBAN RESIDENTIAL DISTRICT, SECTION 2.

Current Zoning: HS Highway Service District

**Proposed Zoning: UR Urban Residential District
Section 2**

Township Master Plan: The Future Land Use plan and map of Marion Township (2021) designates the site as Commercial. The Township Master Plan further describes these area in the following manner (p. 72).

The intent of the Commercial future land use category is to concentrate future commercial uses within the Township Proposed Water/Sewer Boundary and around the highway interchange for ease of transportation access to and from establishments and to serve a regional customer base. Locating future Commercial development adjacent to the interchange and D-19, the major arterial in Marion Township, will minimize traffic congestion, traffic conflict and traffic hazards and will keep nonresidential uses contiguous to the commercial services of the City of Howell. Traffic generated by commercial uses will also benefit from a future paved roadway that will connect D-19 to Peavy Road just south of the interchange.

The Commercial future land use designation encompasses 238 acres of land. The bulk of this land area surrounds the I-96 interchange extending south to Francis Road and west to Peavy Road. It includes land area on both sides of D-19. Another small node of commercial is noted near the southern boundary of the Township, at the northwest corner of the Schafer Road and D-19 intersection where existing commercial is present. Lastly, small commercially designated Township parcels are scattered amongst City of Howell properties along Mason Road and Michigan Avenue.

Developmental densities within the Commercial future land use designation should not exceed one building or structure per one acre. The Commercial future land use category corresponds to the HS Highway Service District of the Marion Township Zoning Ordinance.

Township Planning Commission Recommendation: Approval with Conditions. The Marion Township Planning Commission recommended Approval with Conditions of this Rezoning at its February 28, 2023 Public Hearing.

Staff Recommendation: Approval with Conditions. While the proposed rezoning to Urban Residential is not consistent with the Township Master Plan designation for the subject parcel, it would, however, be generally compatible with the urbanized, residential nature of the immediately surrounding area and would create a more suitable economic and land use solution for this subject site.

Staff would concur with the township Planning Commission recommendation of Approval with Conditions, conditions being those offered by the applicant as provided in Exhibit A of this review.

In addition, staff would highly recommend and encourage the township to consider approving this proposed rezoning with the conditions that it be developed as a Residential Planned Unit Development (PUD) for the reasons stated in the review. A PUD would allow both the applicant and the township with much more flexibility in site development alternatives, given the level of potential undesirable environmental conflicts and concerns also raised in the review.

A very important decision will also need to be made by the Township Board to determine whether to, and how to, compensate the significant loss of both future planned commercial areas as well as solar farm overlay areas that will occur in conjunction with an approval to residential for the subject site.

Commission Discussion: Commissioner Call asked for justification for not following the master plan. Commissioner Funk asked about timing of the project and how it correlates with the community solar energy decision in the Township. Principal Planner Stanford stated that the Township Zoning Administrator informed him that other developments have been presented on this parcel before, as there is a significant amount of land to be lost to potential commercial and/or residential development. Commissioner Bowdoin asked if the proximity of the Howell racetrack is a land use conflict with this potential development and if the solar energy overlay is being eliminated due to this project. Commissioner Funk asked if the subject acreage would be more valuable if it is rezoned to residential. Commissioner Anderson asked about a future paved road connecting D-19 to Peavy Road. Commissioner Funk stated that traffic counts would drive the location of traffic lights and suggest that the Township document the number of new residences. Commissioner Ikle stated that he thought the development would need two points of access.

Public Comment: Pat Keogh with Ace Civil Engineering spoke and gave a brief history of the property that is being considered for rezoning. Mr. Keogh explained that wetlands are an issue on the property from an access standpoint and that is why residential is being pursued rather than commercial, although the applicant has the ability to develop the property as they wish under the current zoning designation. Joanne Haas, Cohoctah Township, asked if they are going to consider other locations if solar becomes less significant. Mark Mynesberge, resident of The Meadows, is in support of the development and would rather see residential instead of another commercial land use. Bruce Powellson, Marion Township, stated there is a bridge being rebuilt on Peavy Road, and that Kettle Road is being used for access to this development and that there needs to be a permanent traffic light at this intersection. The area under consideration was zoned as UR-Urban Residential in the past, and then rezoned to HS-Highway Service. Traffic counts have continued to increase significantly.

Commission Action:

Commissioner Action: IT WAS MOVED BY COMMISSIONER BOWDOIN TO APPROVE WITH CONDITIONS, SECONDED BY COMMISSIONER IKLE.

Motion passed: 7-0

8. **OLD BUSINESS:** None.

9. **NEW BUSINESS:**

A. **WELCOME MARGARET BURKHOLDER, INDUSTRIAL REPRESENTATIVE ON PLANNING COMMISSION:** The Planning Department and Commission welcome Margaret Burkholder to her new position on the Livingston County Planning Commission.

B. **BRIAN PROKUDA CERTIFICATE OF RECOGNITION FOR NINETEEN YEARS OF SERVICE ON THE LIVINGSTON COUNTY PLANNING COMMISSION:** The Planning Department and Commission formally recognize Brian Prokuda for his nineteen years of service on the Livingston County Planning Commission. **(MOVED TO TOP OF AGENDA AS AMENDED).**

10. **REPORTS:** None.

11. **COMMISSIONERS HEARD AND CALL TO THE PUBLIC:** Commissioner Funk asked what the Planning Commission can do about educating the locals on solar energy. Commissioner Bowdoin stated that our local planning commission visits have been helpful in keeping them advised of issues.

12. **ADJOURNMENT:**

Commissioner Action: IT WAS MOVED BY COMMISSIONER IKLE TO ADJOURN THE MEETING AT 8:15 P.M., SECONDED BY COMMISSIONER CALL.

Motion passed: 7-0

Approved

CONWAY TOWNSHIP

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE
TO REGULATE SOLAR ENERGY SYSTEMS**

The Township of Conway ordains:

Section 1. Adoption of New Article 19, Solar Energy System Overlay District

New Article 19, entitled “Solar Energy System Overlay District,” is added to the Zoning Ordinance and reads as follows:

Section 19.01 Purpose and Findings

A. Purpose. The Solar Energy System Overlay District (the “District”) is intended to provide suitable locations for utility-scale solar energy systems that are otherwise authorized under state law and the Township’s Code of Ordinances and Zoning Ordinance to meet a reasonable demonstrated need for this land use in the Township. It is the intent of the Township to permit these systems to the extent a demonstrated need exists for the land use by regulating the siting, design, construction, operation, monitoring, modification, and removal of such systems to protect the public health, safety, and welfare, and to ensure compatibility of land uses in the vicinity of solar energy systems. The Township seeks to preserve its rural character and agricultural heritage. To these ends, the lands included in this District are within reasonable proximity to existing electric power transmission infrastructure.

B. Findings. In establishing this overlay district, the Township of Conway finds as follows:

1. It is necessary and reasonable to permit utility-scale solar energy systems in the Township to the extent that there is a demonstrated need for that land use.
2. Land use for utility-scale solar energy systems beyond a reasonable and legitimate demonstrated need to provide for the Township’s energy needs would have needless adverse effects on surrounding businesses and residences, and be detrimental to the health, safety, welfare, and prosperity of the Township and its residents.
3. The Township wishes to preserve its existing topography and rural character, maintain property values, and protect and preserve the quality and pace of rural life of its residents while preserving the environment and protecting wildlife.
4. Solar Energy Systems can adversely impact the health, safety, welfare, and prosperity of that community, including existing property values, especially when in proximity to farms, forests, and residential properties.
5. Solar Energy Systems shall be carefully managed to reduce the adverse long-term effects such land use can have on the productivity of farmland. See University of Michigan Graham Sustainability Institute & Michigan State University Extension, “Planning & Zoning for Solar Energy Systems.”
6. Several Michigan communities have suffered, or are suffering, from fiscal uncertainty due to litigation and rule changes concerning taxation arising from rural renewable energy production.

7. Conway Township contributes significant storm water runoff into adjacent municipalities because of relative elevations, and therefore the Township values low-impact development to better manage its stormwater runoff.

8. Impervious surfaces such as solar panels channel stormwater runoff, and support posts and trenching are likely to damage drain tiles. Thus, Utility Scale Solar Energy Systems must be carefully sited, designed, and limited in scope.

9. The Township adopts these land use regulations to balance any demonstrated need for utility-scale solar energy systems in the Township with the public, health, and safety impacts identified above.

Section 19.02 Delineation of the Solar Energy System Overlay District

A. The Solar Energy System Overlay District overlays existing zoning districts delineated on the official Conway Township Zoning Map. The boundaries of the Solar Energy System Overlay District are depicted on Map A, incorporated herein by reference, and are generally described as follows:

An area of land consisting of approximately 136 acres, comprised of the following:

1. All of Parcel No. 01-12-100-003;
2. That portion of Parcel No. 01-11-200-002 located south and west of the Conway Cohoctah Union Drain; and
3. A northerly portion of Parcel No. 01-11-400-02, as depicted on Map A, the southern boundary of which is located 1,750 feet north of the Section 11/Section 14 line.

Section 19.03. Permitted Uses.

There are no uses permitted by right in the Solar Energy System Overlay District, other than uses permitted by right in the underlying zoning districts.

Section 19.04. Special Land Uses.

The following uses are permitted following approval by the Planning Commission as a Special Land Use in the Solar Energy System Overlay District as regulated by Article 13 (special land uses) and Article 14 (site plan review).

Utility-Scale Solar Energy Systems

Section 2. Amendment of Section 6.01 of the Zoning Ordinance Section

6.01 of the Zoning Ordinance, entitled “Establishment of Districts,” is amended to read as follows:

For purposes of innovative and flexible development, Conway Township has established the following overlay districts:

<u>Overlay District</u>	<u>Article</u>
OS Open Space Community	12
SES Solar Energy System	19

Section 3. Addition of Definitions to Article 2 of the Township Zoning Ordinance

The following definitions are added to Article 2 of the Township Zoning Ordinance, consistent with the existing ordering of definitions in that section:

- A. Building Integrated Photovoltaics (BIVPs): A small, private Solar Energy System that is integrated into the structure of a building, such as solar roof tiles and solar shingles.
- B. Ground Mounted Solar Energy System: A Private or Utility-Scale Solar Energy System that is not attached to or mounted to any roof or exterior wall of any principal or accessory building.
- C. Maximum Tilt: The maximum angle of a solar array (i.e., most vertical position) for capturing solar radiation as compared to the horizon line.
- D. Minimum Tilt: The minimal angle of a solar array (i.e., most horizontal position) for capturing solar radiation as compared to the horizon line.
- E. Private Solar Energy System: A Solar Energy System used exclusively for private purposes and not used for any commercial resale of any energy, except for the sale of surplus electrical energy back to the electrical grid.
- F. Roof or Building Mounted Solar Energy System: A Private Solar Energy System attached to or mounted on any roof or exterior wall of any principal or accessory building, but excluding BIVPs.
- G. Solar Energy System: Any part of a system that collects or stores solar radiation or energy for the purpose of transforming it into any other form of usable energy, including the collection and transfer of heat created by solar energy to any other medium by any means.
- H. Utility-Scale Solar Energy System: A Solar Energy System in which the principal design, purpose, or use is to provide energy to off-site uses or the wholesale or retail sale of generated electricity to any person or entity.
- I. Non-Participating Property: A property that is not subject to a Utility Scale Solar Energy System lease or easement agreement at the time an application is submitted for a Special Land Use for the purposes of constructing a Utility Scale Solar Energy System.
- J. Participating Property: A property that participates in a lease or easement agreement, or other contractual agreement, with or that is owned by an entity submitting a Special Land Use Permit application for the purpose of developing a Utility Scale Solar Energy System.
- K. Owner/Operator: A person or entity that owns or operates a Utility Scale Solar Energy System. "Owner/operator," even when used in the singular, may refer to more than one person or entity if there are multiple owners or operators, or the Utility Scale Solar Energy System is owned and operated by different entities. "Owner/operator" includes any successor to the original owner/operator. "Owner/operator" may or may not be the same as the applicant.

Section 4. Repeal of Existing Section 6.26; Addition of New Section 6.26, entitled "Solar Energy Systems"

The current Section 6.26, entitled "Solar Energy Collectors," is repealed in its entirety. New Section 6.26, entitled "Solar Energy Systems," is added to the Township's Zoning Ordinance and reads as follows:

Section 6.26. Solar Energy Systems.

- A. General Provisions. All Solar Energy Systems are subject to the following requirements:
1. All Solar Energy Systems shall conform to the provisions of this Ordinance and all county, state, and federal regulations and safety requirements, including applicable building codes and applicable industry standards, including those of the American National Standards Institute (ANSI), Underwriter Laboratory (UL), National Electrical Code (NEC), National Fire Protection Association (NFPA), and the most current Michigan Uniform Building Code adopted by the enforcing agencies.
 2. If an applicant, operator, or landowner of a Solar Energy System fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, may revoke any approvals after giving the applicant notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

B. Private Solar Energy Systems.

1. Administrative Review. Except as provided in subsection (d) below, all Private Solar Energy Systems require administrative approval as follows:
 - a. Application to Zoning Administrator. An applicant who seeks to install a Private Solar Energy System shall submit an application to the Zoning Administrator on a form approved by the Township Board.
 - b. Application Requirements. The application shall include:
 1. A site plan depicting setbacks, panel size, and the location of property lines, buildings, fences, greenbelts, and road right of ways. The site plan shall be drawn to scale.
 2. Photographs of the property's existing condition.
 3. Renderings or catalogue cuts of the proposed solar energy equipment.
 4. A certificate of compliance demonstrating that the system has been tested and approved by Underwriters Laboratories (UL) or other approved independent testing agency acceptable to Township.
 5. A copy of the manufacturer's installation directions.
 - c. Zoning Administrator Authority. The Zoning Administrator is authorized to approve, approve with conditions, or deny applications for Private Solar Energy Systems. An aggrieved party may appeal the Zoning Administrator's decision to the Zoning Board of Appeals pursuant to Section 5.04(A) of the Zoning Ordinance.
 - d. Exclusions from Administrative Review. Administrative review is not required for (i) a single solar panel with a total area of less than eight square feet; and (ii) repair and replacement of existing solar energy equipment if there is no expansion of the size or area of the solar energy equipment.

2. Private Solar Energy System BIVPs. Private Solar Energy System BIVPs are permitted as accessory uses in all zoning districts, subject to administrative approval as set forth in this section. A building permit is required for the installation of BIVPs.

3. Roof or Building Mounted Private Solar Energy Systems. Roof or Building Mounted Private Solar Energy Systems are permitted in all zoning districts as an accessory use, subject to administrative approval as set forth in this section and subject to the following requirements:

a. Safety. A Roof or Building Mounted Private Solar Energy System shall be installed, maintained, and used only in accordance with the manufacturer's instructions, and it shall comply with all applicable construction code and electric code including the most current version of the Michigan Uniform Building Code and National Electrical Code adopted by the enforcing agencies.

b. Building Permit. A building permit is required for installation of a Roof or Building Mounted Private Solar Energy System.

c. Maximum Height. No part of the Solar Energy System mounted on a roof is permitted to extend more than five feet beyond the peak of the roof or to exceed the maximum building limitation for the zoning district in which it is located. No part of a Solar Energy System mounted on a roof is to project beyond the eaves of the roof.

d. Location. If the Solar Energy System is mounted on a building in an area other than the roof, no part of the Solar Energy System is permitted to extend beyond the wall on which it is mounted. A Solar Energy System mounted on a building wall may not face an adjacent public right-of-way.

e. Appearance. Roof or Building Mounted Private Solar Energy Systems shall be neutral in color and substantially non-reflective of light.

f. Abandonment. If a Roof or Building Mounted Private Solar Energy System has been abandoned for a period of six months, the property owner shall remove it within three months after the date of abandonment.

g. Nonconforming Buildings. A Roof or Building Mounted Private Solar Energy System installed on a nonconforming building or structure is not considered an expansion of the nonconformity, but it shall meet all height and placement requirements of the zoning district and this section.

h. Inspection. The Zoning Administrator may inspect a Private Solar Energy System for compliance with this ordinance upon providing reasonable notice to the property owner or occupant.

4. Ground Mounted Private Solar Energy Systems. Ground Mounted Private Solar Energy Systems are permitted in all zoning districts as an accessory use, subject to administrative approval as set forth in this section and subject to the following requirements:

a. Safety. A Ground Mounted Private Solar Energy System shall be installed, maintained, and used only in accordance with the manufacturer's instructions, and it shall comply with all applicable construction code and electric code including the most current version of the Michigan Uniform Building Code and National Electrical Code adopted by the enforcing agencies. The Ground Mounted Private Solar Energy System shall be permanently and safely attached to the ground.

b. Building Permit. A building permit is required for installation of a Ground Mounted Private Solar Energy System.

c. Maximum Height. A Ground Mounted Private Solar Energy System shall not exceed the maximum building height for adjacent accessory buildings and shall not exceed 16 feet above the ground when oriented at maximum tilt.

d. Location. A Ground Mounted Private Solar Energy System shall be located in the rear yard or side yard and meet the applicable setback requirements for the zoning district in which it is located.

e. Underground Transmission. All power transmission or other lines, wires, or conduits from a Ground Mounted Private Solar Energy System to any building or other structure shall be located underground. If batteries are used as part of the Ground Mounted Private Solar Energy System, they shall be placed in a secured container or enclosure.

f. Screening. Greenbelt screening is required around any Ground Mounted Private Solar Energy System and around any equipment associated with the system to obscure, to the greatest extent possible, the Solar Energy System from any adjacent residences. The greenbelt shall consist of shrubbery, trees, or other non-invasive plant species that provide a visual screen. In lieu of a planting greenbelt, a decorative fence that is at least 50% opaque (meeting the requirements of this Ordinance applicable to fences) may be used if approved by the Planning Commission.

g. Lot Area Coverage. The area of the Ground Mounted Private Solar Energy System shall not exceed 50% of the square footage of the principal building on the property. If the property is two acres or less in size, a Ground Mounted Private Solar Energy System is not considered an accessory building or structure for purposes of Section 6.06.

h. Appearance. The exterior surfaces of a Ground Mounted Private Solar Energy System shall be generally neutral in color and substantially non-reflective of light.

i. Abandonment. If a Ground Mounted Private Solar Energy System has been abandoned, the property owner shall notify the Township and remove the system within three months after the date of abandonment.

j. Nonconforming Buildings. A Ground Mounted Private Solar Energy System installed on a nonconforming building or structure is not considered an expansion of the nonconformity, but it shall meet all height and placement requirements of the zoning district and this section.

k. Inspection. The Zoning Administrator may inspect a Private Solar Energy System for compliance with this ordinance upon providing reasonable notice to the property owner or occupant.

C. Utility-Scale Solar Energy Systems. Utility-Scale Solar Energy Systems are permitted by Special Land Use approval in the Solar Energy System Overlay District and require a special land use permit under Article 13 and site plan approval under Article 14. Utility-Scale Solar Energy Systems are also subject to the following requirements:

1. Special Land Use Permit Application Requirements. In addition to the requirements of Article 13, the applicant for a Utility-Scale Solar Energy System shall provide the Township with all of the following:

a. Application fee in an amount set by resolution or fee schedule approved by the Township Board.

b. A deposit for an escrow account in an amount set by resolution or fee schedule approved by the Township Board. The escrow account is used to cover all costs and expenses associated with the special land use review and/or approval process, which costs can include, but are not limited

to, review fees of the Township Attorney, Township Planner, and Township Engineer, as well as any reports or studies which the Township anticipates will be required during the review and/or approval process for the application. At any point during the review process, the Township may require that the applicant place additional monies into escrow with the Township if the existing escrowed funds on account with the Township will be insufficient, in the determination of the Township, to cover any remaining costs or expenses with the review and/or approval process. If additional funds are required by the Township to be placed in escrow and the applicant refuses to do so within 14 days after receiving notice, the Township will cease the zoning review and/or approval process until and unless the applicant makes the required escrow deposit. Any escrow amounts in excess of actual cost will be returned to the applicant. An itemized billing of all expenses will be provided to the applicant upon request.

c. A list of all parcel numbers that will be used by the Utility-Scale Solar Energy System; documentation establishing ownership of each parcel; and any and all lease or option agreements, easements, or purchase agreements for the subject parcels, together with any attachments to such agreements or easements.

d. An operations agreement setting forth the operations parameters, the name and contact information of the certified operator, the applicant's inspection protocol, emergency procedures, and general safety documentation.

e. Federal Employer Identification Number for current owner/operator is required at the time of application.

f. A written emergency response plan detailing the applicant's plan for responding to emergencies, including fire emergencies, and analyzing whether adequate resources exist to respond to fires and other emergencies. If adequate resources do not exist, the applicant shall identify its plan for providing those resources. The emergency plan shall include identification of potential hazards to adjacent properties, public roadways, and to the community in general that may be created, as well as plans for immediate cleanup, long-term monitoring, and continued mitigation efforts following an emergency.

g. A written description of the fire suppression system that will be installed, which shall identify the manufacturer of the fire suppression system and generally describe its operations and capacity to extinguish fires.

h. A written description of specialized training and/or equipment necessary for handling fires and/or other emergencies at the Utility Scale Solar Energy System site. The training plan must include, at a minimum, annual emergency response training for local firefighters and other local emergency personnel at the site of the Utility-Scale Solar Energy System.

i. A complete set of photographs, video, and topography map of the entire Participating Property prior to construction.

j. A copy of any power purchase agreement or other written agreement that the applicant has with an electric utility or any agreement or approval for interconnection between the proposed Utility-Scale Solar Energy System and an electric utility or transmission company.

k. A written plan conforming to the requirements of this ordinance for maintaining the subject property, including a plan for maintaining and inspecting drain tiles and addressing stormwater management.

l. A decommissioning and land reclamation plan describing the actions to be taken following the abandonment or discontinuation of the Utility-Scale Solar Energy System, including evidence of proposed commitments with property owners to ensure proper final reclamation, repairs to roads, and other steps necessary to fully remove the Utility-Scale Solar Energy System and restore the subject parcels to as near as possible to the condition the subject parcels were in prior to being used as a Utility-Scale Solar Energy System.

m. Financial security that meets the requirements of this ordinance.

n. A plan for resolving complaints regarding but not limited to noise, glare, maintenance, and drainage from the public or other property owners concerning the construction and operation of the Utility-Scale Solar Energy System.

o. Identification of and a plan for managing any hazardous waste.

p. A transportation plan for construction and operation phases, including any applicable agreements with the Livingston County Road Commission and Michigan Department of Transportation.

q. An attestation that the applicant and owner of the subject property will indemnify and hold the Township and its officials, elected or appointed, harmless from any costs or liability arising from the approval, installation, construction, maintenance, use, repair, or removal of the Utility-Scale Solar Energy System.

r. A copy of the manufacturer's directions, instruction manual, and specification sheets including any unredacted safety manuals and Safety Data Sheets (SDS), for installing, maintaining, and using the Utility-Scale Solar Energy System.

s. A ground cover vegetation establishment and management plan that complies with this ordinance.

t. Proof of environmental compliance, including compliance with:

i. Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act; (MCL 324.3101 et. seq.);

ii. Part 91, Soil Erosion and Sedimentation Control (MCL 324.9101 et. seq.) and any corresponding County ordinances;

iii. Part 301, Inland Lakes and Streams, (MCL 324.30101 et. seq.);

iv. Part 303, Wetlands (MCL 324.30301 et. seq.);

v. Part 365, Endangered Species Protection (MCL324.36501 et. seq.);

and any other applicable laws and rules in force at the time the application is considered by the Township.

u. Any additional information or documentation requested by the Planning Commission, Township Board, or other Township representative.

v. Insurance. Proof of the owner/operator's public liability insurance shall be provided at the time of application. If the applicant is approved, proof of insurance shall be provided to the Township annually thereafter. The policy shall provide for bodily injury and property damage and shall name

Conway Township and each Participating Property owner as an additional insured. The owner/operator shall insure for liability for the utility scale solar system until removed for at least \$25,000,000 per occurrence to protect the owner/operator, Township, and Participating Property owner. Proof of a current policy is required annually and shall be provided each year to the Township prior to the anniversary date of the Special Land Use Permit.

w. Compliance with the Michigan Uniform Building Code and National Electric Safety Code: Construction of a Utility Solar Energy Facility shall comply with the most current version of the Michigan Uniform Building Code and National Electrical Code adopted by the enforcing agencies as a condition of any Special Land Use Permit under this section.

x. Conceptual plan. A graphical computer generated depiction of how the Utility-Scale Solar Energy System will appear from all directions.

2. Site Plan Application Requirements.

a. Contents of Site Plan. In addition to the requirements in Article 14, the applicant shall, at its expense, provide a detailed application and site plan drafted to a scale of 1" = 200 feet with the following:

1. Location of all proposed structures, panels, equipment, transformers, and substations.
2. Location of all existing structures or dwellings on the parcel and location of all existing structures or dwelling on adjacent Non-Participating Property within 1000 feet of the property lines of any Participating Properties.
3. Depiction of all setbacks, property lines, fences, signs, greenbelts, screening, drain tiles, easements, flood plains, bodies of water, proposed access routes, and road rights of way.
4. Indication of how and where the system will be connected to the power grid.
5. Plan for any land clearing and grading required for the installation and operation of the system.
6. Plan for ground cover establishment and management.
7. Anticipated construction schedule and completion date. As a condition of any special land use or site plan approval, hours of construction shall be limited to Monday through Friday from 7:00 a.m. to 5:00 p.m. with no construction on Saturday, Sunday, or any federally recognized holiday.
8. Sound modeling study including sound isolines extending from the sound sources to the property lines.
9. Any additional studies requested by the Planning Commission, including but not limited to the following:
 - a. Visual Impact Assessment: A technical analysis by a third party qualified professional of the visual impacts of the proposed project, including a description of the project, the existing visual landscape, and important scenic resources, plus visual simulations that show what the project will look like (including proposed landscaping and other screening measures), a description of potential project

impacts, and mitigation measures that would help to reduce the visual impacts created by the project.

b. Environmental Analysis: An analysis by a third-party qualified professional to identify and assess any potential impacts on the natural environment including, but not limited to, removal of trees, wetlands and other fragile ecosystems, wildlife, endangered and threatened species. If required, the analysis will identify all appropriate measures to minimize, eliminate or mitigate adverse impacts identified and show those measures on the site plan, where applicable.

c. Stormwater Study: An analysis by a third-party qualified professional studying the proposed layout of the Utility-Scale Solar Energy System and how the spacing, row separation, and slope affects stormwater infiltration, including calculations for a 100-year rain event. Percolation tests or site-specific soil information shall be provided to demonstrate infiltration on-site without the use of engineered solutions.

d. Glare Study: An analysis by a third-party qualified professional to determine if glare from the Utility-Scale Solar Energy System will be visible from nearby airports, air strips, residences, and roadways. The analysis will consider the changing position of the sun throughout the day and year and its influences on the utility-scale solar energy system.

e. Optional Conceptual Layout Plan. Applicants shall submit an optional conceptual layout plan for review prior to submission of a formal site plan. The conceptual site plan shall be reviewed by the Planning Commission to allow for discussion and feedback.

10. Approvals from Other Agencies. Final site plan approval may be granted only after the applicant receives all required federal, state and local approvals, including any applicable approval by the state historic preservation office. Applicant shall provide copies of all review letters, final approved plans, and reports issued by any other governing agencies to the Township.

11. The site plan must show the existing topographical grades in two-foot intervals and conditions of all Participating Property at the time of application.

12. A baseline soil test including Cation Exchange Capacity (CEC) shall be provided to the township prior to any construction.

13. A written description of how the applicant will address dust control during construction. Such plan shall, at a minimum, consist of water applications at least three times per day unless it has rained in the preceding three hours of the planned application.

14. Water Usage and Cleaning. The applicant shall detail the methodology planned for cleaning the solar panels, frequency, and listing of any and all detergents, surfactants, chemical solutions used for each cleaning, and sources of water used to facilitate panel restoration and maintenance.

3. Application Items as Substantive Requirements. The information, plans, documents, and other items identified as application requirements in this ordinance, including the site plan and special land use permit, are substantive requirements for obtaining approval for a Utility-Scale Solar Energy System. The

Planning Commission is to review the sufficiency of the application materials. If the Planning Commission determines that the substance of any application item is insufficient to protect the public health, safety, and welfare, the Planning Commission shall deny approval on that basis.

4. System and Location Requirements.

a. Utility-Scale Solar Energy Systems are to be located only in the Solar Energy System Overlay District.

b. Utility-Scale Solar Energy Systems shall be ground mounted.

c. Utility-Scale Solar Energy Systems (including all solar panels, structures, equipment, and fencing) shall be set back 500 feet from all Non-Participating Property lines (measured from the parcel line of the Non-Participating Property to the nearest fence line of the Utility-Scale Solar Energy System) and 750 feet from all public road rights-of-way measured from the nearest boundary of the public right-of-way. If a single Utility-Scale Solar Energy System is located on more than one lot, or if the adjacent parcel is owned by the same owner as the property on which the Utility-Scale Solar Energy System is located, then the lot line setbacks of this subsection do not apply to the lot lines shared by those lots.

d. Utility-Scale Solar Energy Systems shall be set back at least 150 feet from the edge of any wetland, shoreline, or drain easement. The Planning Commission may increase this setback requirement if the Planning Commission determines that such a setback is necessary to protect the public health, safety, and welfare.

e. Riparian buffers and filter strips, and where needed, denitrifying bioreactors, may be required and if required must be installed and maintained to the specifications required by the United States Department of Agriculture's Farm Service Agency (USDA/FSA). The buffers and filter strips are intended to reduce or eliminate sediment and nutrient loading of drainage ditches, streams, rivers, lakes, and other nearby waterways. If required, no structures may be placed within the buffer or filter strip areas. Depending upon the topography, soil, and other factors, buffer or filter strips will generally be between 33 feet and 164 feet wide, on both sides of ditches, streams, and other waterways.

f. The height of the Utility-Scale Solar Energy System and any mounts, buildings, accessory structures, and related equipment shall not exceed 16 feet when oriented at maximum tilt. The Planning Commission may allow a height of up to 20 feet if the applicant establishes that the lot is used for grazing by farm animals in a manner that requires increasing the height limit. Lightning rods may exceed 16 feet in height, but they shall be limited to the height necessary to protect the Utility-Scale Solar Energy System from lightning.

g. PV Array Components: PV array components shall be approved by the Institute of Electrical and Electronics Engineers (IEEE), Solar Rating and Certification Corporation (SRCC), Electronic Testing Laboratories (ELL), or other similar certification organization acceptable to the Township.

5. Permits. All required county, state, and federal permits shall be obtained before the Utility-Scale Solar Energy System begins operating.

6. Screening. Greenbelt screening is required around any Utility-Scale Solar Energy System and around any equipment associated with the system to obscure, to the greatest extent possible, the Solar Energy System from all sides and any open views from Non-Participating Property.

- a. Screening shall be installed to obscure the Utility Scale Solar Energy System and shall contain two rows of staggered evergreen trees planted not less than twelve (12) feet apart trunk to trunk, and the two rows shall be no greater than ten (10) feet apart. Any substitution shall be approved in advance by the Planning Commission. No species of any Arborvitae shall be permitted.
- b. Planting shall be at least eight (8) feet tall at time of planting, measured from the top of the root ball to the base of the leader (not including the height of the leader) and reasonably expected to reach a height of ten (10) feet within three (3) growing seasons.
- c. The trees may be trimmed but shall maintain a height of at least eighteen (18) feet.
- d. Evergreen trees shall be Norway Spruce.
- e. Good arboricultural techniques shall be followed with respect to vegetation, including but not limited to, proper pruning, proper fertilizing, and proper mulching, so that the vegetation will reach maturity as soon as practical and will have maximum density in foliage. Dead or diseased vegetation shall be removed and shall be replanted in a manner consistent with this Section at the next appropriate planting time. Each dead or diseased vegetation shall be completely replaced at 50% as determined by the Zoning Administrator. Annual review by a Professional Arborist, paid for by the owner/operator, shall be performed to determine any plant/vegetation replacement necessary to remain in compliance with the ordinance.
- f. Utility-Scale Solar Energy Systems also shall comply with the landscaping standards in Section 6.16 of the Zoning Ordinance.
- g. Front, side, and rear yard screening is required if the Utility-Scale Solar Energy System is adjacent to a non-participating property.

7. Appearance. The exterior surface of the Utility-Scale Solar Energy System shall be generally neutral in color and substantially non-reflective of light.

8. Lighting. Lighting of the Utility-Scale Solar Energy System is limited to the minimum light necessary for safe operation. Illumination from any lighting shall not extend beyond the perimeter of the participating property. The Utility-Scale Solar Energy System shall not produce any glare that is visible to neighboring lots or to persons traveling on public or private roads. Flashing or intermittent lights are prohibited.

9. Security Fencing.

- a. Security fencing may be required by the Planning Commission to be installed around all electrical equipment related to the Utility-Scale Solar Energy System, including any transformers. Fencing shall be at least seven feet tall and be composed of woven agricultural wire. Barbed and razor wire is prohibited.
- b. A containment system shall surround any transformers in case of hazardous waste or oil spills.
- c. Appropriate warning signs shall be posted at safe intervals at the entrance and around the perimeter of the Utility-Scale Solar Energy System.
- d. Gate posts and corner posts shall have a concrete foundation.
- e. Gates shall be the same height and constructed of the same material as the fencing. Access, such as Knox box, shall be provided for emergency responders.

f. The Township may allow or require a fence design to allow for the passage of wildlife upon a finding that adequate access control and visual screening will be preserved.

g. Security fencing is subject to setback requirements. The security fence shall be locked, and a self-locking device shall be used. Lock boxes and keys (may be electronic such as keypad opener, if the passcode is provided to the Township and central dispatch for 911 service) shall be provided at locked entrances for emergency personnel access. Electric fencing is not permitted. A safety plan shall be in place and updated regularly with the local fire department having jurisdiction over the Utility-Scale Solar Energy System.

10. Noise. All sound measurements are to be instantaneous and shall not be averaged. The noise generated by a Utility-Scale Solar Energy System shall not exceed the following limits:

a. 40 dBA Lmax, as measured at the property line, between the hours of 7:00 a.m. and 9:00 p.m.

b. 35 dBA Lmax, as measured at the property line, between the hours of 9:00 p.m. and 7:00 a.m.

c. The owner/operator of the Utility Scale Solar Energy System shall annually provide for a sound analysis or modeling, conducted by an auditory expert chosen by the Township, at the expense of the applicant.

11. Underground Transmission. All power transmission, communication, or other lines, wires, or conduits from a Utility-Scale Solar Energy System to any building or other structure shall be located underground at a depth that complies with current National Electrical Code standards, except for power switchyards or the area within a substation.

12. Drain Tile Inspections. The Utility-Scale Solar Energy System shall be maintained in working condition at all times while in operation. The owner/operator shall identify and inspect all drain tiles at least once every two years by means of a robotic camera, with the first inspection occurring post construction but before the Utility-Scale Solar Energy System is in operation. The owner/operator shall submit proof of the inspection to the Township. The owner/operator shall repair any damage or failure of the drain tile within 60 days after discovery and submit proof of the repair to the Township. The Township is entitled, but not required, to have a representative present at each inspection or to conduct an independent inspection.

13. Fire Suppression. The Utility-Scale Solar Energy System shall include a fire suppression system that is specifically designed to immediately suppress and extinguish fires in any part of the Solar Energy System, including the panels, electrical equipment, and transformers. The owner/operator shall provide documentation establishing the effectiveness of the fire suppression system and the results of a third-party independent inspection of the fire suppression system.

14. Battery Storage. Commercial grid storage batteries or capacitor banks storing or returning supplemental power to the grid are not permitted in the District. Use of Batteries in commercial applications is only permitted as emergency backup for safety lighting and related computer infrastructures.

15. Inverters shall be set back at least feet from the lot lines of non-participating lots and at least feet from the lot lines of participating lots.

16. Stray Voltage Assessments: No stray voltage originating from a Utility Scale Solar Energy System may be detected on any Participating or Non-Participating property. A preconstruction stray voltage test shall be conducted on all Michigan Department of Agriculture & Rural Development (MDARD) registered livestock facilities located within a one-mile radius of the Participating Properties. The tests shall be

performed by an investigator approved by the Township. A report of the tests shall be provided to the owners of all property included in the study area. The applicant/landowner shall seek written permission from the property owners prior to conducting testing on such owners' property. Applicants/landowners shall not be required to perform testing on property where the owners have refused to grant permission to conduct the testing. The owner of any Participating Property included in the list of project parcels shall not refuse the stray voltage testing if they have a MDARD registered livestock facility on the Participating Property.

17. Ground Cover. The lot on which the Utility-Scale Solar Energy System is located shall be covered with vegetation until decommissioning. To meet this requirement, the lot shall include one or more of the following:

- a. Pollinator Habitat: A site designed to have vegetation that will enhance pollinator populations, including a diversity of flowering plants and wildflowers, and meets a score of 76 or more on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites.
- b. Conservation Cover: A site designed with practices to restore native plants, grasses, and prairie with the aim of protecting specific species or providing specific ecosystem services, such as carbon sequestration or soil health. The site shall be designed in partnership with a conservation organization or approved by the Livingston Conservation District.
- c. Forage/Grazing: Sites that incorporate rotational livestock grazing and forage production as part of a vegetative maintenance plan.
- d. Agrivoltaics: Sites that combine raising crops for food, fiber, or fuel, and generating electricity within the project area to maximize land use.
- e. Ground cover shall be planted within four months of project completion, weather permitting.
- f. Invasive species and noxious weeds are not permitted and shall be removed in a timely manner.

18. Drainage. Drainage on the site shall be maintained in a manner consistent with, or improved upon, existing natural drainage patterns. Any disturbance to drainage or water management practices shall be managed within the property and on-site in order to not negatively impact surrounding properties as a result of the development. This shall be maintained for the duration of the operation and shall be able to be returned to pre-existing conditions following decommissioning. Any existing drainage tiles that are identified on the property shall be shown on the as-built drawings submitted following construction. Prior to the start of construction, any existing drain tile shall be inspected by robotic camera and the imagery submitted to the Township for baseline documentation on tile condition. Any damage shall be repaired, and a report submitted to the landowner and Township. While the facility is in operation, the owner/operator shall reinspect the drain tiles every three years by robotic camera for any damage and shall repair any damage within 60 days of discovery. The owner/operator shall report the inspection, along with any damage and repair, to the Township within 90 days after each three-year deadline. The Township reserves the right to have the Building Inspector or other agent present at the time of repair. Solar panel support structures and/or foundations shall be constructed to preserve any drainage field tile or system.

19. Access Routes. Access drives are subject to the approval of the Livingston County Road Commission to the extent of the Road Commission's jurisdiction. All access drives and roads within the site shall be adequately maintained for emergency vehicle use, including winter maintenance.

20. The owner/operator shall submit an As Built Drawing with dimensions relative to property lines of all new structures including inverters and buried cable both inside and outside fenced areas upon completion and before any power is supplied to the grid. The As Built Drawing shall be a scale of 1" =200 feet.

21. Signs. Signs are permitted but shall comply with Article 17. The lot shall include at least one sign identifying the owner and providing a 24-hour emergency contact telephone number.

22. Emergency Action Plan and Training. Before the Utility Solar Energy System is operational, the owner/operator shall provide the necessary training, equipment, or agreements specified in the application to Township or other emergency personnel.

23. Decommissioning and/or Abandonment.

a. If a Utility-Scale Solar Energy System is abandoned or otherwise non-operational for a period of six months, the owner/operator shall notify the Township and shall remove the system within six months after the date of abandonment. Removal requires receipt of a demolition permit and full restoration of the site in accordance with the provisions of this Ordinance and to the satisfaction of the Zoning Administrator. The site shall be filled and covered with topsoil and restored to a state compatible with the surrounding vegetation. The requirements of this subsection also apply to a Utility-Scale Solar Energy System that is never fully completed or operational if construction has been halted for a period six months.

b. The decommissioning plan shall be written to provide security to the Township for 125% of the cost to remove and dispose of all panels, removal of all wiring, footings, and pilings, (regardless of depth), and restoration of the land to its original condition. The value of decommissioning shall be determined by a third-party financial consultant or engineer selected by the Township and paid for by the developer. The decommissioning security shall be paid in cash to the Township. Once the value of decommissioning is determined, it shall be updated on a periodic basis of not less than every 2 years and additional security shall be required based on the average inflation rate of the preceding 2 years.

c. All abandonment and decommissioning work shall be done when soil is dry.

d. The ground shall be restored to its original topography within three hundred sixty-five (365) days of abandonment or decommissioning. An extension may be granted if a good faith effort has been demonstrated and any delay is not the result of actions or inaction of the owner/operator.

e. If land balancing is required, all topsoil will be saved and spread evenly over balanced area according to the existing topography map provided at the time of application.

f. An annual report shall be provided to the Zoning Administrator showing continuity of operation and shall notify the Zoning Administrator if the use is to cease, prior to decommissioning, or abandonment.

g. Continuing Obligations: Failure to keep any required financial security in full force and effect at all times while a Utility Solar Energy System exists or is in place shall constitute a material and significant violation of the Special Land Use Permit, and this Ordinance, and will subject the Utility Solar Energy System owner/operator (jointly and severally, if more there is more than one owner or operator) to all remedies available to the Township, including any enforcement action, civil action, request for injunctive relief, and revocation of the Special Land Use Permit.

h. The Township shall have the right to seek injunctive relief to effect or complete decommissioning, as well as the right to seek reimbursement from the owner/operator or landowner for decommissioning costs in excess of the amount deposited in escrow and to file a lien against any real property owned by the owner/operator or landowner for the amount of the excess, and to take all steps allowed by law to enforce said lien.

i. At the time of decommissioning, the Planning Commission may allow deviations from the above decommissioning requirements following notice and a public hearing in accordance with Section 103 of the Zoning Enabling Act.

24. Complaint Resolution. Utility Solar Energy Systems shall provide a complaint resolution process, as described below:

a. The site shall have signs posted with contact information to collect complaints related to the Utility Solar Energy System.

b. A log shall be kept by the owner/operator of all complaints received and shall be available to Township officials for review at the Township's request.

c. The owner/operator shall respond to complainants within ten (10) business days and shall provide notification to the Zoning Administrator.

d. Any resolution shall include lawful and reasonable solutions consistent with the Zoning Ordinance, which shall also be provided to the Zoning Administrator.

e. The owner/operator or its assigns reserve the right to adjudicate any claims made against it, including residential claims, in a court of competent jurisdiction. An annual report shall be submitted to the Zoning Administrator and the Township Board that details all complaints received, the status of complaint resolution, and actions taken to mitigate complaints.

25. Maintenance and Repair

a. Each Utility-Scale Solar Energy System shall be kept and maintained in good repair and condition at all times and the site shall be neat, clean, and free of refuse, waste, or unsightly, hazardous, or unsanitary conditions. All solar panels damaged beyond repair or use shall be replaced and removed from the project site within seven (7) days and shall be disposed of off-site in accordance with any state or federal requirements.

b. If the Township Board or Zoning Administrator determines that a Utility Scale Solar Energy System fails to meet the requirements of this Ordinance or the Special Land Use Permit, the Zoning Administrator or Township Board shall provide notice to the owner/operator of the non-compliance, and the owner/operator has 14 days to cure the violation. If the violation is a safety hazard as determined by the Zoning Administrator or Township Board, then the owner and/or operator has 7 days to cure the violation. If the owner and/or operator has not remedied non-compliance issues in the aforementioned time periods, the owner/operator shall immediately shut down the Utility Scale Solar Energy System and shall not operate, start or restart the Utility Scale Solar Energy System until the issues have been resolved. If the owner/operator fails to bring the operation into compliance, the Township may seek relief at law or equity to abate the nuisance and may also issue a municipal civil infraction citation. Each violation for which the owner/operator are deemed responsible shall result in a \$500.00 fine.

c. The owner/operator shall keep a maintenance log on the solar array(s), which shall be available for the Township's review within 48 hours of such request.

d. General Maintenance Bond. At the time of the Special Land Use application, the owner/operator shall submit two (2) third-party contractor bids for construction of all fencing, landscaping, and drainage improvements associated with the utility scale solar energy system. A performance bond in the amount of 125% of the higher bid shall be provided to the Township to ensure completion. The Township may use the bond to complete or repair any landscaping, fencing, or drainage infrastructure (including drain tiles).

26. Extraordinary Events. If the Utility-Scale Solar Energy System experiences a failure, fire, leakage of hazardous materials, personal injury, or other extraordinary or catastrophic event, the owner/operator shall notify the Township within 8 hours.

27. Annual Report. The owner/operator shall submit a report on or before January 1 of each year that includes all of the following:

- a. Amount of electric generation;
- b. Current proof of insurance with the township and Participating Property owner(s) shown as named insured;
- c. Verification of financial security; and
- d. A summary of all complaints, complaint resolutions, and extraordinary events.

Additionally, a representative of the owner/operator shall appear before the Planning Commission annually to report on the Utility-Scale Solar Energy System and address questions or concerns from the Planning Commission.

28. Inspections. The Township may inspect a Utility-Scale Solar Energy System at any time by providing 24 hours advance notice to the owner/operator.

29. Transferability. A special use permit for a Utility-Scale Solar Energy System is transferable to a new owner. The new owner shall register its name, Federal Employer Identification Number, and business address 30 days prior to the transfer date with the Township and shall comply with this Ordinance and all approvals and conditions issued by the Township. In the event of a sale or transfer of ownership and/or operation of the solar facility, the original security bond or escrow shall be maintained throughout the entirety of the process and shall not be altered.

30. Major and Minor Site Plan Amendments.

- a. Major site plan amendments include those listed in Section 14.08(C) and any of the following:
 - 1. Changes of the location of arrays, fencing, buildings, or ancillary equipment by 10 feet or more.
 - 2. Any increase in the height of solar panels.
- b. Minor site plan amendments include those listed in section 14.08(D) and any of the following:
 - 1. Changes of the location of arrays, fencing, buildings, or ancillary equipment by less than 10 feet.

31. Remedies. If an owner/operator fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, shall revoke the special land use permit and site plan approval after giving the owner/operator notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

Section 5. Validity and Severability.

If any portion of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

Section 6. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 7. Effective Date. This Ordinance takes effect seven days after publication as provided by law.

MAP A
OVERLAY DISTRICT BOUNDARIES



88477:00001:7097447-1

TXT#02-20 Amendment

Definitions Section 3.02 ADD

Cargo Containers. Standardized reusable receptacles that are:

1. Originally designed for or used in the parking, shipping, movement or transportation of freight, articles, goods or commodities; and or
2. Originally designed for or capable of being mounted or moved by rail, truck or ship by means of being mounted on a chassis or similar transport “portable site storage containers” having a similar appearance to and similar characteristics of cargo containers.

Portable Temporary Storage Container (PSC): A box-like container typically delivered by truck, used to temporarily store household or other goods and items. A PSC does not include a truck trailer, or other part of a motor vehicle, nor any type of wheeled vehicle or conveyance except when attached to a truck for delivery and removal.

ARTICLE VI: GENERAL PROVISIONS

Section 6.07 Accessory Uses and Structures ADD 13

Accessory buildings, structures and uses are permitted only in connection with and on the same lot with a principal building, structure or use, provided such buildings, structures and uses are incidental to the principal building or use and does not include any activity conducted as a livings quarters, except for farms or other uses otherwise permitted in this Ordinance that may be permitted on a separate lot in conjunction with the permitted activity, and shall be subject to the following regulations:

1.

Zoning districts	Lot Size Based on Gross Lot Area	Maximum Square Footage of all Accessory Structures
All single family residential districts	All parcels equal to or less than 1 acre in size	1,300 square feet
All single family residential districts	All parcels that are greater than 1 acre	These sizes are based on a .030 x parcel size calculation

2. An accessory structure, including carports which are attached to the principal building, shall comply in all respects with the requirements of this ordinance applicable to the principal building. Any covered or roofed structure, as an attachment between the accessory structure or carport and the main building, shall be considered a part of the main building, but shall not be considered habitable floor area.
3. Accessory buildings shall not be erected or allowed in any front yard, except for parcels larger than five acres providing no accessory building or structure is located closer than one hundred feet to the front property line or closer to the front property line than a principal building on any adjacent parcel of land or lot, whichever is greater.
4. Accessory buildings may be allowed in side yards providing they meet the minimum setbacks for the district in which it is located.
5. The maximum height for accessory buildings located on any parcels of land containing one acre of land or less or on any platted subdivision lot or site condominium building site shall not exceed thirty-five feet.

6. Accessory structures shall meet the minimum setbacks for the district in which it is located.
7. No accessory structure shall receive a certificate of zoning compliance prior to the principal structure receiving a certificate of zoning compliance.
8. No accessory structure shall be constructed prior to the approval of land use permit and the issuance of a building permit.
9. Accessory structures under two-hundred (200) square feet do not require a land use permit or building permit **and are limited to three per parcel and must be behind the primary structure and screened from the public right-of-way.** Accessory structures under 200 square feet and with a height no more than ten (10) feet above grade shall maintain a minimum five (5) foot side yard setback & five (5) foot rear yard setback. Accessory structures two-hundred (200) square feet and over and/or more than ten (10) feet above grade must meet the setback requirements of the zoning district in which they are located.
10. In no instance shall any accessory building be located within a dedicated easement right-of-way.
11. An accessory building shall not project within the front yard when it is located on a corner lot except as provided in item 3 above.
12. Accessory structures **greater than two-hundred (200) square feet** shall have a minimum 4:12 roof pitch, except engineered steel structures may have minimum 3:12.
13. **The use of cargo containers for storage shall only be permitted in HS and LI Districts, subject to the following:**
 - a) **Containers shall be restricted to a location behind the front face of the building**
 - b) **Containers shall not be stacked above the height of a single container**
 - c) **Container storage areas that are visible from the public right-of-way or abut residentially zoned or used properties shall be screened in accordance with the standards set forth in this ordinance**

Legislative Analysis



SAND AND GRAVEL MINING

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4526 as introduced
Sponsor: Rep. Pat Outman

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4527 as introduced
Sponsor: Rep. Tyrone Carter

House Bill 4528 as introduced
Sponsor: Rep. Angela Witwer

Committee: Regulatory Reform
Complete to 5-8-23

SUMMARY:

House Bill 4528 would add Part 639 (Sand and Gravel Mining) to the Natural Resources and Environmental Protection Act (NREPA) to prohibit local regulation of sand and gravel mining and trucking and generally require such operations to have a permit from the Department of Environment, Great Lakes, and Energy (EGLE). The bill would prescribe requirements for mining permit applications, their approval or denial, and their amendment or transfer after approval. The bill also would prescribe fees, financial assurance requirements, and reporting requirements and provide sanctions, penalties, and remedies for violation of Part 639 or of a mining permit. House Bill 4526 would add felonies proposed by HB 4528 to the sentencing guidelines provisions of the Code of Criminal Procedure. House Bill 4527 would amend the Michigan Zoning Enabling Act to provide that local zoning ordinances are subject to Part 639 of NREPA and to exclude sand and gravel from provisions that govern zoning related to mines.

House Bill 4528 would add Part 639 to NREPA to regulate the *mining* of *sand and gravel*. EGLE would have to administer and enforce Part 639. The bill states that Part 639 would not limit EGLE's authority to take whatever response activities it determines necessary to protect the environment, natural resources, or the public health, safety, and welfare.

Mining would mean the extraction of sand and gravel and associated activities and operations in the mining area that are involved in bringing *sand and gravel products* to market, including onsite loading, transport, and processing of material.

Sand and gravel would mean sand or gravel that is excavated from natural deposits for commercial, industrial, or construction purposes. The following would not be considered sand and gravel for purposes of Part 639:

- Clay.
- Limestone or limestone products.
- Sand mined for commercial or industrial purposes from sand dune areas regulated under Part 637 of NREPA.
- Earth materials associated with the extraction of ferrous minerals, nonferrous metallic minerals, or coal regulated under Part 631, 632, or 635 of NREPA, respectively. (Ferrous minerals are iron ores. Nonferrous metallic minerals are ores of metals other than iron, such as copper and nickel.)

Sand and gravel products would mean those products produced from the processing of sand and gravel and other materials, including recycled materials and other materials obtained from off-site.

Local preemption and applicability of Part 639

Part 639 would preempt an ordinance, regulation, resolution, policy, practice, or master plan of a governmental authority created by the state constitution or statute or of a city, village, township, or county if either of the following applies:

- It prohibits or regulates mining, including its location and development, or trucking activities related to a sand and gravel mine.
- It duplicates, modifies, extends, revises, contradicts, or conflicts with Part 639.

In addition, a governmental authority created by the state constitution or statute or a city, village, township, or county could not adopt, maintain, or enforce such an ordinance, regulation, resolution, policy, practice, or master plan.

Part 639 would apply to all mining permit applications submitted after the bill's effective date, including applications formerly submitted to any local government described above, notwithstanding the previous administrative or judicial disposition of those mining permit applications.

Notwithstanding the provisions preempting local regulation of sand and gravel mines, Part 639 would not apply to either of the following:

- Mining of a mine with a total sand and gravel deposit of 1.0 million tons or less.
- Mining ***authorized*** before the effective date of the bill.

Authorized would mean that the mining has received each required local permit for mining, zoning approval, or other governmental authorization or that those forms of authorization are not required because the mining is a legal nonconforming use or is not regulated.

However, the owner or ***operator*** of a mine or mining operation described above could choose to be subject to Part 639 by submitting an application to EGLE as described below, in which case Part 639 (and its preemption of the local regulation of sand and gravel mines) would apply.

Operator would mean a person engaged or preparing to engage in mining or reclamation.

Mining permits

Except for ***de minimis extraction*** or activities exempt as described above, a person could not engage in sand and gravel mining except as authorized by a mining permit.

De minimis extraction would mean extraction of sand and gravel that meets either of the following:

- It is conducted by or for a property owner for end use by that owner on that property and not for resale or inclusion in any other commercial product.
- It does not exceed 5,000 cubic yards of sand and gravel during the ***life of the mine***. (As a point of reference, a single cube that is 51 feet long, 51 feet wide, and 51 feet tall would have a volume of about 5,000 cubic yards.)

Life of the mine would mean the period of time from issuance of a mining permit through the completion of reclamation of the mine as required by this part. [**Note:** This term is used elsewhere in Part 639 with this definition. As used here, in reference to a mine that is exempt from the issuance of a mining permit, its meaning is unclear.]

To obtain a mining permit, a person would have to submit to an application to EGLE, in a form and manner prescribed by the department, containing the applicant's name and address and the location of the proposed *mining area* (including a legal description and survey). The application would have to be submitted with at least all of the following:

- An **application fee** of \$5,000, to be deposited into the Sand and Gravel Surveillance Fund described below.
- An **environmental impact assessment** that describes natural and artificial features in the proposed mining area (including plants, animals, hydrology, geology, and baseline conditions) and the potential impact of the proposed mining on those features.
- A **mining and reclamation plan** for the proposed mining operation, as described below.
- **Financial assurance**, as described below.

Mining area would mean an area containing all of the following:

- Land from which material is removed in connection with the production or extraction of sand and gravel by surface or open pit mining methods.
- Land where material from that mining is stored on the surface.
- Land on which processing plants and auxiliary facilities are located.
- Land on which water reservoirs used in mining are located.
- Auxiliary land used in conjunction with mining.

Mining and reclamation plan

A mining and reclamation plan would have to include all of the following:

- A general description of the sand and gravel deposit.
- A general description of the materials, methods, and techniques that will be used for mining.
- The proposed order in which the property will be mined and reclaimed, including any proposed phasing.
- The proposed depth from grade level from which the sand and gravel will be removed.
- Plans for surface overburden removal. (Generally speaking, overburden is the material, such as soil and undesirable rocks, that must be removed to get to the sand and gravel.)
- A soil conservation plan approved by EGLE that includes steps for the conservation of topsoil and considers land use after mining is ended, site conditions, and (to the extent practical) concurrent reclamation and soil conservation.
- Provisions for grading, revegetation, and stabilization that will minimize, to the extent practicable, soil erosion, sedimentation, noise, airborne dust, and public safety concerns. The provisions for grading would have to include at least both of the following:
 - The reclaimed slopes of the banks of the excavation must not be steeper than three feet horizontal to one foot vertical (a 33% grade), measured from the nearest setback line into any area disturbed by mining.
 - Where open water that is deeper than five feet results from mining, the reclaimed slope into the water must not be steeper than five feet horizontal to

one foot vertical (a 20% grade), maintained and extended into the water to a depth of five feet.

- A description of the processing activities that are proposed to be conducted on site to create sand and gravel products, such as washing, screening, crushing, and blending of sand, gravel, and other materials, including recycled materials and other materials obtained from off site.
- A description of the proposed lighting at the mining area.
- A description of measures to be implemented to ensure that the mining does not create dust that exceeds the standards required under an applicable general or individual air permit issued under federal law or under Part 55 (Air Pollution Control) of NREPA.
- With regard to ground vibration, a description of measures to be implemented to ensure that the operation of stationary machinery or equipment does not result in a displacement of more than one tenth of an inch measured anywhere outside the *property line*. (As used in Part 639, *property line* would mean the exterior property line of all contiguous parcels owned or controlled by the operator, including easements, leasehold interests, options to lease or to purchase, and rights of first offer or refusal.)
- A description of all explosives that are intended to be used, stored, or handled on site.
- A description of measures to be implemented to ensure that any blasting activity does not cause any of the following at a residential building:
 - Ground vibration exceeding that set forth in Figure B-1 (“Safe levels of blasting vibrations for houses using a combination of velocity and displacement”) of *Structure Response and Damage Produced by Ground Vibration from Surface Mine Blasting*, Report of Investigations 8507 of the U.S. Department of the Interior, Bureau of Mines (1989).¹
 - Air blast in excess of 133 decibels at any residential dwelling.
 - Unreasonable dust or noise.
- With regard to noise levels, a description of measures to be implemented to ensure that the eight-hour time-weighted average sound pressure levels in decibels measured at the common property line nearest to the area of active mining on a sound level meter using the A-weighting network² does not exceed the greater of the following:
 - 20 A-weighted decibels above background levels.
 - The following levels for adjacent property:
 - 75 A-weighted decibels for property zoned residential.
 - 85 A-weighted decibels for property zoned commercial.
 - 90 A-weighted decibels for property zoned industrial or another zoning classification.
- A description of the loading hours. The bill would require that loading or unloading of customer trucks or trailers be allowed at least from 6 a.m. to 7 p.m., Monday through Friday, and from 6 a.m. to 5 p.m. on Saturday. Additional loading hours could be specifically approved by EGLE or required by state or county contract. All other regulated mining operations would have to be completed within the same hours of loading and unloading, unless specifically approved by the local government. This

¹ See page 73: <https://www.osmre.gov/resources/blasting/docs/USBM/RI8507BlastingVibration1989.pdf>

² A-weighting adjusts the measurement of a sound level made by a technological instrument to more closely approximate how humans perceive the relative loudness of that sound. It skews somewhat toward higher frequencies at the expense of lower ones. It should be noted that some believe that this skewing misrepresents how humans experience certain kinds of noise.

limitation on loading hours would not apply to maintenance operations or to the loading of railroad cars or ships.

- A description of the proposed primary haul routes to and from the mining area and a primary road (a county primary road or state trunk line highway as described in 1951 PA 51). The description would have to include any anticipated impact on vehicle and pedestrian safety and on the condition of the haul routes.³
- Plans for reclamation of the mining area after the mining ends, including a description of how reclamation will allow for use of the land after closure.
- Plans for the interim uses of reclaimed areas before the mining ends.
- A description of measures to be implemented to ensure that all mined material disposed of within the mining area or any area to be reclaimed under the permit will not result in an authorized release of pollutants to surface drainage.
- A description of measures to be implemented to ensure that an unauthorized release of pollutants to groundwater will not occur from any material mined, handled, or disposed of in the mining area.
- A description of measures to be implemented to ensure that any existing groundwater contamination will not be exacerbated.
- If a *historical or archaeological resource* is identified in the mining area, an indication of how the resource will be protected or of the mitigation measures that will be performed in compliance with applicable law.
- If threatened or endangered species are identified in the mining area, a description of how they will be protected or of what mitigation measures will be performed, in compliance with the federal Endangered Species Act, Part 365 (Endangered Species Protection) of NREPA, and rules promulgated under those respective laws.
- If required by EGLE when the mining area will present a dangerous condition if left open, a proposal specifying fencing (four-foot-high woven wire farm fence or the equivalent) or other techniques to minimize unauthorized access to the mining area.
- A description of comprehensive general liability insurance covering third-party personal injury and property damage. The bill would require the operator to maintain such insurance through the life of the mine in amounts of at least \$1.0 million per occurrence.

Historical or archaeological resource would mean a structure or site that meets any of the following:

- It is a historic landmark included on the National Register of Historic Places as of the bill's effective date.
- It is listed on the State Register of Historic Sites.
- It is located in a historic district established by a local unit of government under the Local Historic Districts Act and recognized as a historic resource by the local government under that act.

³ For a mining operation that requires the use of a road other than a class A road, EGLE could request that the operator collaborate with the county road commission to determine a route from the mining area to a class A road. The route would have to be reasonably direct in order to accommodate the mining operations and associated trucking operations. [Note: The bill does not define the term "class A road." It is often used to refer to roads that have been designated as "All Season Routes," meaning that they are not subject to seasonal weight restrictions.]

Site plan

A mining and reclamation plan would also have to include a site plan that shows the location of each residential building within 500 feet of the proposed mine; shows the proposed location of buildings, equipment, stockpiles, roads, berms, or other features necessary for mining; and includes provisions for their removal and the reclamation of the area after the mining ends. The site plan would have to comply with all of the following:

- A mining area must be set back at least 50 feet from the nearest public roadway or adjoining property line.
- Equipment used for screening and crushing must be set back as follows:
 - At least 200 feet from the nearest public roadway.
 - At least 300 feet from the nearest adjoining property line.
 - At least 400 feet from the nearest residential building occupied on adjacent property on the date the mining and reclamation plan is submitted to EGLE.
- The site plan must describe the proposed primary routes to be used to transport sand and gravel from the mining area to a primary road, other than for local deliveries.
- The operator must maintain signs on the boundaries of the mining area, spaced up to 200 feet from each other, that say “NO TRESPASSING – MINING AREA.” The bill would further require these signs to face outward.
- Except for screening berms, stockpiles (material, such as overburden, that in the process of mining has been removed from the earth and stored on the surface) must not be more than the higher of either 70 feet above ground surface at the stockpile location or 40 feet above the elevation of the adjoining property at the nearest property line.
- To the extent reasonably practicable, an active mining area must be screened from view from adjoining properties by using overburden to the extent available to construct berms of up to six feet high along adjoining property lines or through another means requested by the applicant and approved by EGLE. Berms visible to the public could be required to be landscaped with grass or trees to the extent reasonably practicable.

Reclamation provisions

The operator would have to conduct reclamation activities in compliance with the approved mining and reclamation plan. Reclamation could be conducted at the same time as the mining to the extent practicable. The operator would have to begin final reclamation of the mining area within one year after mining operations end, unless EGLE approves a longer period, and would have to complete reclamation within the time set forth in the plan. Once begun, final reclamation measures would have to be performed to completion, except that final reclamation could be suspended if the owner or operator resumes exploration or mining.

Mining permit application process

Upon receiving a mining permit application, EGLE would have 14 days to determine whether it is administratively complete (that is, whether it contains all the documents and information required under Part 639). Within that time, EGLE could notify the applicant in writing that the application fee has not been paid or that the application is missing specified information, and the 14-day period would be tolled until the applicant submitted the required payment or information. At the end of the 14-day period, the application would automatically be administratively complete. This determination would not preclude EGLE from requiring additional information from an applicant.

Within 42 days after an administratively complete application was first received, EGLE would have to publish notice of the application in a newspaper of general circulation in the area of the

proposed mine, transmit a copy of it to the applicant and the relevant official of the city, village, or township where the proposed mine will be located, post the notice on its website, make it available at its Lansing and relevant district offices, and transmit a copy of it to anyone else who makes a written request. The notice would have to contain all of the following information:

- The date it was published.
- The name and address of the applicant.
- The location of the proposed mining area.
- A concise description of the applicant's proposed use.
- A concise description of how EGLE will decide whether to grant or deny the application.
- Information on the public comment period and any other means by which interested persons may submit written comments on the application.
- The addresses and phone numbers of the Lansing EGLE office, the EGLE district office in the area of the proposed mine, and the EGLE office where the application itself or more information about it can be obtained and any other relevant documents can be looked at or copied.

The public would have up to 30 days after publication of the notice to submit written comments to EGLE for its consideration in making a final determination on the application. The department could extend this time period for up to 30 more days. The department would be required to retain written comments for at least one year after making a final determination.

If EGLE determines that there is sufficient public interest or that a written comment gives sufficient cause, the department could hold a public hearing in the county where the proposed mine will be located. The department would have to provide notice of the hearing to relevant local units of government from 5 to 28 days before the hearing. EGLE would have to accept written public comment on the application for 15 days after the hearing. At the end of the public comment period, the department would have to summarize the comments and its response to them in a report posted on its website and made available at its Lansing and relevant district offices.

Within 15 days after the end of the public comment period, and not more than 180 days after the application was determined administratively complete, EGLE would have to grant or deny the application.

EGLE would have to grant the application and issue the mining permit if it determines all of the following conditions are met:

- The application and any relevant additional information obtained by EGLE demonstrate that the proposed mining meets the requirements of Part 639.
- The proposed mining will not pollute, impair, or destroy the air, water, or other natural resources or the public trust in them. (The bill provides that, for purposes of these provisions, excavation and removal of sand and gravel and of associated overburden does not, in and of itself, constitute pollution, impairment, or destruction of those natural resources.) In making this determination, EGLE would have to take into account the extent to which other permit determinations and conditions protect those natural resources.
- The reclamation set forth in the mining and reclamation plan is consistent with the master plan of the city, village, or township where the proposed mine will be located

or can be made consistent with the master plan, to the extent the master plan complies with the provisions of Part 639 that preempt and prohibit any local regulation of sand and gravel mining. EGLE would have to modify the proposed reclamation set forth in the mining and reclamation plan as necessary to make the reclamation consistent with the master plan, to the extent the master plan complies with those provisions.

If any of the conditions listed above were not met, EGLE would be required to deny the application. EGLE also could deny an application if the operator were in violation of Part 639, an EGLE order issued under Part 639, or a mining permit, unless the person had either corrected the violation or agreed to do so under an administrative consent agreement with an EGLE-approved compliance schedule. EGLE would have to notify the applicant in writing of the reasons for denial of an application.

The bill provides that terms and conditions set forth in the application and the plan and approved by EGLE are considered incorporated into the mining permit.

The issuance of a mining permit would not amend the municipality's underlying zoning or master plan to the extent that the underlying zoning or master plan complies with the provisions of Part 639 that preempt and prohibit any local regulation of sand and gravel mining.

Mining permit validity, transfer, amendments, and modifications

A mining permit would be valid for the life of the mine, although EGLE could revoke a permit if the operator does not start mining or building facilities within 10 years after the permit is issued.

A mining permit could be transferred if approved by EGLE. The person who would acquire the permit would have to submit a request to EGLE and accept the conditions of the permit and adhere to the requirements of the approved mining and reclamation plan. EGLE could deny a transfer request if the proposed transferee were in violation of Part 639, an EGLE order issued under Part 639, or a mining permit, unless the person had either corrected the violation or agreed to do so under an administrative consent agreement with an EGLE-approved compliance schedule. If EGLE had notified the current operator of a violation of Part 639 or the permit, the permit could not be transferred until the violation was corrected or the proposed transferee had entered into a written agreement with EGLE to correct it.

The operator of a mine could submit a written request to EGLE to amend a mining permit. Upon receiving a request for amendment, EGLE would have to determine whether the amendment is a significant change to the conditions of the mining permit. If it is determined that an amendment *is not* a significant change, EGLE would have to approve it. If the department determines that the amendment *is* a significant change, it could submit the amendment to the same review process as for a mining permit application. EGLE would have to notify the requestor in writing of its reasons for denying an amendment request.

EGLE could grant a modification of the provisions of Part 639 upon a request from an operator if EGLE determines that the modification is not against the public interest. EGLE could provide for public notice and comments and a public hearing in the same manner as for a mining permit application if EGLE determines that the requested modification could have a significant impact on the public health or safety, the environment, or natural resources.

Financial assurance

An operator would have to maintain financial assurance during mining until all reclamation has been completed. The financial assurance would have to consist of a performance bond, surety, escrow, certificate of deposit, irrevocable letter of credit, cash, or other equivalent security, or a combination of these, at the option of the operator and subject to the approval of EGLE. EGLE could waive the financial assurance if the operator annually submits a statement of financial responsibility that demonstrates sufficient financial resources (apart from the proposed mining activity) to satisfy the reclamation requirements under Part 639.

The financial assurance would have to be in the amount, as determined by EGLE, of not less than \$3,000 or more than \$8,000 per acre disturbed and not yet reclaimed, not counting roadways and open water areas that will remain open water after reclamation. An operator would be required to update the amount of financial assurance or statement of financial responsibility to account for any increase in the number of acres disturbed but not yet reclaimed. They would also be allowed to update these figures to account for a decrease in the number of relevant acres.

EGLE could order an operator to suspend mining for failure to maintain financial assurance.

Sales reports and mining surveillance fee

By February 15 of each year, an operator would have to file a report of the number of tons of sand and gravel products sold from each of the operator's mines during the previous calendar year. The operator would have to preserve the records on which the annual report is based for two years, and EGLE could audit them. EGLE could order an operator to suspend mining for failure to properly submit the annual report.

To support its activities under Part 639, EGLE would assess a mining surveillance fee against the sand and gravel products sold by an operator during a calendar year. The fees would be deposited in the Sand and Gravel Surveillance Fund described below. The amount collected could not exceed EGLE's actual costs in implementing Part 639.

The total amount of revenue to be raised in a fiscal year with mining surveillance fees would be determined by subtracting the money in the Sand and Gravel Surveillance Fund carried over to that fiscal year from the amount appropriated for that fiscal year for surveillance, monitoring, administration, and enforcement under Part 639.

EGLE would determine the fee amount per ton by dividing the total amount to be raised by the number of tons of sand and gravel sold in this state by all operators for the previous calendar year. This quotient would be the fee amount per ton—up to a maximum of five cents per ton.

The amount of the mining surveillance fee owed by an operator would be the fee amount per ton times the total number of tons reported by that operator. The operator would have to pay the fee within 30 days after receiving notice. If EGLE receives the fee after the due date, the fee would have to include a penalty of 10%.

The surveillance fee, the annual sales report, and the records the report is based on would be confidential and exempt from disclosure under the Freedom of Information Act (FOIA) except with the written consent of the operator or pursuant to court order.

Sand and Gravel Surveillance Fund

The bill would create the Sand and Gravel Surveillance Fund, into which all application and mining surveillance fees paid under Part 639 would be deposited. The state treasurer could also receive money or other assets from any other source for deposit into the fund. The state treasurer would be responsible for directing the investment of the fund and crediting the interest and earnings from those investments to the fund. Unexpended money in the fund at the close of the fiscal year would remain in the fund and be carried over to the next fiscal year. EGLE would be the administrator of the fund for auditing purposes.

EGLE could spend money from the fund, upon appropriation, only for the actual cost of its surveillance, monitoring, administration, and enforcement activities under Part 639.

Annual plan map

By the first June 1 following issuance of the mining permit, the operator would have to file with EGLE a plan map of the mining area that is drawn to a scale of one inch equals 200 feet and is in the form specified by EGLE. By June 1 of each subsequent year, the operator would have to file a plan map that shows any changes made during the previous calendar year and the portion of the mining area that the operator expects will have active mining in the current calendar year.

Annual mining and reclamation report

By June 1 of each year during the life of the mine, the operator would have to file with EGLE a mining and reclamation report containing all of the following:

- A description of the status of mining and reclamation, including at least revised drawings or photographs depicting the progress of mining and reclamation for the previous year.
- A description of the annual financial assurance update described above.
- A list, for the previous calendar year, of incident reports required to be made as described below.

The operator would have to preserve the records underlying the report for two years after it is filed and make them available to EGLE upon request.

Incident reports

If a violation of a mining permit or an incident or act of nature at a mining area creates or could create a threat to the environment, natural resources, public health, or public safety, the operator would have to promptly report the violation, incident, or act of nature to EGLE. The operator would have to preserve records underlying the report for two years and make them available to EGLE upon request.

Contested case hearing

A person aggrieved by either of the following could file a petition with EGLE requesting a contested case hearing under the Administrative Procedures Act:

- The operation of a mine.
- An order, action, or inaction by EGLE under Part 639, including the issuance, denial, termination, revocation, or amendment of a mining permit.

The filing of this petition would be an aggrieved person's sole recourse.

EGLE could reject as untimely a petition filed more than 90 days after the EGLE order, action, or inaction by which the petitioner is aggrieved.

EGLE would have to provide notice by mail of a contested case hearing to the petitioner, the operator or mining permit applicant, and other affected parties.

The circuit court for Ingham County would have exclusive jurisdiction to hear an appeal from a final decision or order made in such a proceeding.

Violations of Part 639 or a mining permit

If EGLE determined that an operator violated Part 639 or a mining permit, it would have to require the operator to correct the violation. If the violation caused an imminent and substantial endangerment to the environment, natural resources, public safety, or public health, EGLE would have to take action necessary to abate or eliminate the endangerment, which could include one or more of the following:

- Revoking the operator's mining permit.
- Issuing an order to the operator to immediately suspend mining.
- Issuing an order to the operator to undertake such other actions as may be necessary to abate or eliminate the endangerment.

If the violation included failure to submit the required annual sales report or maintain the required financial assurance, EGLE could issue an order to the operator to immediately suspend mining.

Before suspending mining, revoking a mining permit, or otherwise preventing the continuation of mining, EGLE would have to give the operator written notice (by certified mail) of the alleged violation, a reasonable period of time to correct the violation, and an opportunity for a contested case hearing conducted by the state geologist.

An order suspending mining activities would remain in effect for the shorter of 10 days or until the endangerment⁴ is eliminated. If the endangerment continued, the state geologist could, after providing an opportunity for a supervisor of reclamation hearing, extend the suspension up to 30 days. The suspension could be extended again by order of the state geologist following an opportunity for a contested case hearing or by an administrative consent agreement. EGLE would have to provide notice of a hearing by certified mail, return receipt requested, at least 10 days before the hearing date, to other interested parties whose notification the state geologist considers necessary and appropriate.

The revocation of a mining permit or suspension of mining as described above would not relieve an operator of the responsibility to complete reclamation, maintain financial assurance, and undertake appropriate measures to protect the environment, natural resources, public health, and public safety.

Failure to take corrective actions

If the operator or a surety under financial assurance provisions failed or neglected to correct a violation of Part 639 or a mining permit or to take corrective actions as specified under an EGLE order, EGLE could, 24 hours after giving written notice, enter the mining area and any

⁴ As used in these provisions, "endangerment" would include the failure to submit the annual sales report or to maintain the required financial assurance.

property necessary to reach the mining area, correct the violation, and remediate any damage to the environment, natural resources, or public health or safety resulting from the violation. The operator and surety would be jointly and severally liable for expenses incurred by EGLE and would have to pay the expenses within 30 days after being notified of the amount. EGLE could bring an action in the circuit court of Ingham County to recover expenses not timely paid.

Complaints alleging violations

EGLE would have to make a record of any complaints it receives alleging a violation of Part 639 or a mining permit and of the allegations in the complaint. If EGLE determined that the person making the complaint provided written evidence sufficient to support the allegations, it would have to notify the operator immediately and provide the operator with a copy of the complaint, the record, and all written evidence.

The operator would have to be given an opportunity to rebut the complaint and any evidence, and EGLE would have to take all necessary steps to confirm the evidence provided by the operator. Upon determining the complaint to have been rebutted, EGLE would have to dismiss the complaint and notify the operator and the person making the complaint. The person who made the complaint would be liable to EGLE for the costs of investigating any subsequent dismissed complaints made by that person concerning the same operator and the same mining operation.

For a complaint that is not dismissed, EGLE would have to do all of the following:

- Not more than five business days after receiving the complaint, conduct an investigation of the mining operation to investigate the allegations. If EGLE thinks the complaint or allegations are highly serious, it would have to inspect the mining operation as quickly as possible.
- Not more than 15 business days after investigation of the complaint, submit a written report of the complaint and investigation results to the operator and the person making the complaint, stating at a minimum whether the investigation identified a violation of Part 639 or a mining permit.

Civil actions

EGLE could request the attorney general to commence a civil action for appropriate relief, including a temporary or permanent injunction, for a violation of Part 639, an order issued under Part 639, or a mining permit. Before requesting the attorney general to commence a civil action, EGLE would have to provide the operator an opportunity for a hearing. (EGLE also would have to provide the operator an opportunity for a contested case hearing before the attorney general commenced a civil action at the attorney general's own initiative.) The circuit court for Ingham County would have exclusive jurisdiction over an action filed under these provisions. The court would have jurisdiction to restrain the violation and require compliance. The court could impose a civil fine of up to \$1,000 per day of violation in addition to injunctive or other appropriate relief.

In addition, the court could impose a civil fine of \$50,000 to \$1.0 million if all of the following conditions were met:

- The court finds that the operator violated Part 639, an order issued under Part 639, or a mining permit.

- The court finds that this violation posed or poses a substantial endangerment to the public health or safety.
- The court determines that the defendant knowingly acted in such a manner as to cause a danger of death or serious bodily injury.
- The court determines that the defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.

The attorney general also could file a civil action to recover the full value of the damages to the state's environment and natural resources and the costs of surveillance and enforcement incurred by the state as a result of the violation.

A civil fine or other civil recovery under the above provisions would be payable to the state and credited to the general fund. The fine or other civil recovery would constitute a lien on any property of any kind owned by the defendant and, if notice of the lien were properly filed or recorded, the lien would be effective and have priority over all other liens and encumbrances filed or recorded on or after the date of judgment. The lien would have to be terminated within 14 days after payment of the fine or other recovery.

Intentional false statements

The bill would provide that a person who intentionally makes a false statement, representation, or certification in a mining permit application, a form pertaining to a mining permit, or a notice or report required by a mining permit, knowing⁵ the statement, representation, or certification to be false, is guilty of a felony punishable for each violation by imprisonment for up to two years or a \$2,500 to \$25,000 fine, or both imprisonment and a fine. For a violation committed after a first conviction under the above provisions, the court would have to impose a fine of \$25,000 to \$50,000 per day of violation.

The court also could impose, in addition to the above penalties, a sentence of imprisonment for up to one year or a fine of up to \$50,000, or both, if all of the following conditions were met:

- The court finds that the violation posed or poses a substantial endangerment to the public health or safety.
- The court determines that the defendant knowingly acted in such a manner as to cause a danger of death or serious bodily injury.
- The court determines that the defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.

The circuit court for Ingham County would have exclusive jurisdiction over any proceedings conducted under the above provisions, except for arraignment or the issuance of a criminal complaint or warrant.

⁵ The bill provides that knowledge possessed by a person other than the defendant could not be attributed to the defendant unless the defendant took substantial affirmative steps to shield himself or herself from the relevant information.

Not a nuisance

A mine or mining would not be a public or private nuisance if a mining permit had been issued for it under Part 639 and it were not determined to be in violation of Part 639 in a civil action as described above. This provision would apply regardless of any of the following:

- A change in the ownership of the mine.
- A change in the size of the mine.
- A change in the type of sand and gravel product being produced.
- A change in the size of the community where the mine is located.
- A change in the land use or occupancy of land within one mile of the mine's boundaries if the mine or mining would not have been a nuisance with respect to the use and occupancy of the land before that change.
- Temporary interruption or cessation of mining.
- Enrollment of the mine or mining or the mine operator in governmental programs.
- Adoption of new mining technology.

Exclusive jurisdiction of the circuit court of Ingham County

In addition to the exclusive jurisdiction of the circuit court for Ingham County for actions and proceedings as described above, the circuit court of Ingham County also would have exclusive jurisdiction over any other claim relating to the issuance of, or operation under, a mining permit applied for or issued under Part 639.

Other Part 639 provisions

After providing reasonable notice to the operator or landowner, EGLE could enter a mining area of a mine permitted or required to be permitted under Part 639 for an investigation and inspection without incurring liability to the operator or landowner.

If mining were suspended for a continuous period of longer than one year, the operator would have to maintain, monitor, and secure the mining area.

An operator would be liable to a city, a village, or the county road commission for damage the operator's trucks cause to a city street, village street, or county road, respectively, that is a haul route between the mining operation and a county primary road or state trunk line highway.

EGLE could promulgate rules to implement Part 639.

Other NREPA amendments

Finally, SB 429 would amend Part 91 (Soil Erosion and Sedimentation Control) of NREPA to provide that Part 91 does not apply to sand and gravel mining conducted under Part 639 as long as the mining and reclamation plan under which the mining is conducted contains soil erosion and sedimentation control provisions and is approved by EGLE.

MCL 324.9115 and proposed MCL 324.63901 et seq.

House Bill 4526 would amend the Code of Criminal Procedure to add the felonies proposed by HB 4528 to the sentencing guidelines. Making a false mining permit statement would be listed as a class G crime against the public trust with a two-year maximum imprisonment, and making a false statement causing endangerment would be a class F crime against the public trust with a maximum imprisonment of three years.

MCL 777.13f

House Bill 4527 would amend the Michigan Zoning Enabling Act to provide that local zoning ordinances are subject to Part 639 of NREPA (House Bill 4528).

In addition, the act currently allows a zoning ordinance to prevent extraction of *natural resources* by mining only if very serious consequences would occur due to the extraction. The bill would specify that *natural resources*, as used in this provision, do not include sand or gravel.

Finally, the act currently provides that the provisions described above do not prohibit reasonable local regulation not preempted by Part 632 (Nonferrous Metallic Mineral Mining) of NREPA concerning hours of operation, blasting hours, noise levels, dust control measures, and traffic. The bill would retain this provision.

MCL 125.3205

The bills are tie-barred and cannot take effect unless all three are enacted.

FISCAL IMPACT:

House Bill 4528 is likely to increase costs and revenues for the Department of Environment, Great Lakes, and Energy by creating a new regulatory process and fee. Under the bill the department would be required to establish an application process to for the right mine sand or gravel under certain conditions. Conventional oversight processes, including application creation, information verification, and enforcement of environmental regulations, are likely to generate additional costs. A \$5,000 application fee would increase departmental revenue to address the aforementioned costs. Applicants would also be required to maintain a financial assurance of \$3,000 to \$8,000 to satisfy reclamation requirements established by EGLE. It is unclear at present how these increased costs and increased revenues will balance; said balance is likely to hinge on the number of applications received each year. Departmental appropriations total \$941.5 million Gross (\$99.3 million GF/GP) and 1,516.0 FTE positions for FY 2022-23.

The bill would authorize the Department of Attorney General (AG) to commence a civil action in response to violations of the bill's requirements. The bill could potentially increase caseloads and personnel work hours for the AG if it takes legal action upon its own initiative or at the request of EGLE. Depending on the extent to which violations occur and the work hours required, the AG could require additional attorneys or support personnel to assist with cases if existing personnel are not able to adequately cover them. The annual FTE cost of an attorney for the AG is approximately \$200,000. If an increase of costs for legal services is not fully supported by ongoing appropriations or from proceeds from civil actions, as would be authorized by section 63917(3) of the bill, the bill may require appropriations of additional state resources to either the AG or EGLE.

In addition, the bill would have an indeterminate fiscal impact on the state and on local units of government that would depend on the number of individuals held responsible for civil fines, the number of days of violation, the number of individuals convicted of felonies, and the number of times individuals were found guilty of offenses. Under the bill, revenue from civil fines would be payable to the state and credited to the state general fund. Felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal

year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

House Bill 4526 is a companion bill to HB 4528 and amends sentencing guidelines to include falsifying an application for a mining permit and falsifying an application for a mining permit that results in endangerment to public health or safety. The bill would not have a direct fiscal impact on the state or on local units of government.

House Bill 4527 is unlikely to affect costs or revenues for the Department of Environment, Great Lakes, and Energy or local governments.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.