

SENATE BILL NO. 1160

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 24, 2023)

(Patron Prior to Substitute--Senator Stuart)

A BILL to amend and reenact §§ 28.2-606, 28.2-1302, and 28.2-1403 of the Code of Virginia, relating to
Marine Resources Commission and local wetlands boards; permit applications; public notice.

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-606, 28.2-1302, and 28.2-1403 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-606. Notice of application.

A. Notice of the application shall be posted by the Commission for not less than 30 days on its website and the Virginia Regulatory Town Hall website. The Commission shall provide by registered or certified mail written notice of its receipt of the application to (i) the mailing address of the holder of a current lease for any oyster planting ground that is contiguous to the ground applied for, and (ii) the last known address, as shown on the current real estate tax assessment book or records, of the owner of any riparian property located within 200 feet of the ground applied for. The provision of notice to the governing board of an association for a common interest community as defined in § 54.1-2345 shall be deemed adequate to notify all associated unit owners or lot owners.

B. The Commission shall publish notice of the application at least once ~~a week for two consecutive weeks~~ in a newspaper of general circulation in the area in which the ground applied for lies. In the event that the Commission submits a correct and timely notice for publication and the newspaper fails to publish the notice or publishes the notice incorrectly, the Commission shall be deemed to have met the notice requirements of this section so long as the notice is published in the next available edition of such newspaper.

26 C. Notice provided pursuant to this section shall invite and provide information about the
27 submission of written comments on the application. The cost of the notice required by this section shall
28 be borne by the applicant.

29 **§ 28.2-1302. Adoption of wetlands zoning ordinance; terms of ordinance.**

30 Any county, city or town may adopt the following ordinance, which, after ~~October~~ January 1, 1992
31 2024, shall serve as the only wetlands zoning ordinance under which any wetlands board is authorized to
32 operate. Any county, city, or town ~~which~~ that has adopted the ordinance prior to ~~October~~ January 1, 1992
33 2024, shall amend the ordinance to conform it to the ordinance contained herein by ~~October~~ January 1,
34 ~~1992~~ 2024.

35 Wetlands Zoning Ordinance

36 § 1. The governing body of _____, acting pursuant to Chapter 13 (§ 28.2-1300 et seq.) of Title
37 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of wetlands.

38 § 2. As used in this ordinance, unless the context requires a different meaning:

39 "Back Bay and its tributaries" means the following, as shown on the United States Geological
40 Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the
41 Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal
42 Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters
43 connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black
44 Gut; and all coves, ponds, and natural waterways adjacent to or connecting with the above-named bodies
45 of water.

46 "Commission" means the Virginia Marine Resources Commission.

47 "Commissioner" means the Commissioner of Marine Resources.

48 "Governmental activity" means any of the services provided by this _____. (county, city, or town)
49 to its citizens for the purpose of maintaining this _____ (county, city, or town), including but not limited to
50 such services as constructing, repairing, and maintaining roads; providing sewage facilities and street
51 lights; supplying and treating water; and constructing public buildings.

52 "Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and
53 between mean low water and mean high water, including those unvegetated areas of Back Bay and its
54 tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides
55 but not hurricane or tropical storm tides.

56 "North Landing River and its tributaries" means the following, as shown on the United States
57 Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River
58 from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake
59 and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge;
60 and all named and unnamed streams, creeks, and rivers flowing into the North Landing River and the
61 Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocaty River west
62 of Blackwater Road, Blackwater River west of its forks located at a point approximately 6400 feet due
63 west of the point where Blackwater Road crosses the Blackwater River at the village of Blackwater, and
64 Millbank Creek west of Blackwater Road.

65 "Person" means any individual, corporation, partnership, association, company, business, trust,
66 joint venture, or other legal entity.

67 "Vegetated wetlands" means lands lying between and contiguous to mean low water and an
68 elevation above mean low water equal to the factor one and one-half times the mean tide range at the site
69 of the proposed project in the county, city, or town in question, and upon which is growing any of the
70 following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass
71 (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender
72 (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle
73 (*Myrica* sp.), sea oxeye (*Borrichia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia*
74 *cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania*
75 *aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern
76 wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush
77 (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo
78 (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea*

79 purpurascens), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens*
 80 sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp
 81 (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

82 "Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing
 83 River and its tributaries" means all marshes subject to flooding by normal and wind tides but not hurricane
 84 or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass
 85 (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh
 86 elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum
 87 (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice
 88 cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis*
 89 sp.), cattail (*Typha* spp.), three-square (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.),
 90 yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*),
 91 beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass
 92 (*Phragmites communis*), or switch grass (*Panicum virgatum*).

93 "Wetlands" means both vegetated and nonvegetated wetlands.

94 "Wetlands board" or "board" means a board created pursuant to § 28.2-1303 of the Code of
 95 Virginia.

96 § 3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:

97 1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters,
 98 fences, duckblinds, wildlife management shelters, footbridges, observation decks, and shelters and other
 99 similar structures, provided that such structures are so constructed on pilings as to permit the reasonably
 100 unobstructed flow of the tide and preserve the natural contour of the wetlands;

101 2. The cultivation and harvesting of shellfish, and worms for bait;

102 3. Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting,
 103 fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting
 104 preserves, provided that no structure shall be constructed except as permitted in subdivision 1 of this
 105 section;

106 4. Other outdoor recreational activities, provided they do not impair the natural functions or alter
107 the natural contour of the wetlands;

108 5. Grazing, haying, and cultivating and harvesting agricultural, forestry, or horticultural products;

109 6. Conservation, repletion, and research activities of the Commission, the Virginia Institute of
110 Marine Science, the Department of Wildlife Resources and other conservation-related agencies;

111 7. The construction or maintenance of aids to navigation—~~which~~ that are authorized by
112 governmental authority;

113 8. Emergency measures decreed by any duly appointed health officer of a governmental
114 subdivision acting to protect the public health;

115 9. The normal maintenance and repair of, or addition to, presently existing roads, highways,
116 railroad beds, or facilities abutting on or crossing wetlands, provided that no waterway is altered and no
117 additional wetlands are covered;

118 10. Governmental activity in wetlands owned or leased by the Commonwealth or a political
119 subdivision thereof;

120 11. The normal maintenance of man-made drainage ditches, provided that no additional wetlands
121 are covered. This subdivision does not authorize the construction of any drainage ditch; and

122 12. The construction of living shoreline projects authorized pursuant to a general permit developed
123 under subsection B of § 28.2-104.1.

124 § 4. A. Any person who desires to use or develop any wetland within this _____ (county, city, or
125 town), other than for the purpose of conducting the activities specified in § 3 of this ordinance, shall first
126 file an application for a permit directly with the wetlands board or with the Commission.

127 B. The permit application shall include the following: the name and address of the applicant; a
128 detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale, showing
129 the area of wetlands directly affected, the location of the proposed work thereon, the area of existing and
130 proposed fill and excavation, the location, width, depth, and length of any proposed channel and disposal
131 area, and the location of all existing and proposed structures, sewage collection and treatment facilities,
132 utility installations, roadways, and other related appurtenances or facilities, including those on adjacent

133 uplands; a statement indicating whether use of a living shoreline as defined in § 28.2-104.1 for a shoreline
134 management practice is not suitable, including reasons for the determination; a description of the type of
135 equipment to be used and the means of equipment access to the activity site; the names and addresses of
136 owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of
137 whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary
138 purposes of the project, including further projects; the public benefit to be derived from the proposed
139 project; a complete description of measures to be taken during and after the alteration to reduce detrimental
140 offsite effects; the completion date of the proposed work, project, or structure; and such additional
141 materials and documentation as the wetlands board may require.

142 C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set
143 by the applicable governing body with due regard for the services to be rendered, including the time, skill,
144 and administrator's expense involved.

145 § 5. All applications, maps, and documents submitted shall be open for public inspection at the
146 office designated by the applicable governing body and specified in the ~~advertisement~~ public notice for
147 public hearing required under § 6 of this ordinance.

148 § 6. Not later than 60 days after receipt of a complete application, the wetlands board shall hold a
149 public hearing on the application. The applicant, local governing body, Commissioner, owner of record
150 of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the
151 wetlands in question, the Virginia Institute of Marine Science, the Department of Wildlife Resources, the
152 State Water Control Board, the Department of Transportation, and any governmental agency expressing
153 an interest in the application shall be notified of the hearing. The Commission or board shall mail or email
154 these notices not less than 20 days prior to the date set for the hearing. The ~~wetlands~~ board shall also (i)
155 cause notice of the hearing to be published at least ~~once a week for two weeks~~ in the seven days prior to
156 such hearing in a newspaper of general circulation in this _____ (county, city, or town); (ii) post a notice
157 of the hearing on its website at least 14 days prior to such hearing; and (iii) provide a copy of such notice
158 to the Commission for submittal to the Virginia Regulatory Town Hall. The published notice shall specify
159 the place or places within this _____ (county, city, or town) where copies of the application may be

160 examined. The costs of publication shall be paid by the applicant. In the event that the board submits a
161 correct and timely notice for publication and the newspaper fails to publish the notice or publishes the
162 notice incorrectly, the board shall be deemed to have met the notice requirements of this subsection so
163 long as the notice is published in the next available edition of such newspaper.

164 § 7. A. Approval of a permit application shall require the affirmative vote of three members of a
165 five-member board or four members of a seven-member board.

166 B. The chairman of the board, or in his absence the acting chairman, may administer oaths and
167 compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the
168 hearing may submit a concise written statement of his testimony. The board shall make a record of the
169 proceeding, which shall include the application, any written statements of witnesses, a summary of
170 statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

171 C. The board shall make its determination within 30 days of the hearing. If the board fails to act
172 within that time, the application shall be deemed approved. Within 48 hours of its determination, the board
173 shall notify the applicant and the Commissioner of its determination. If the board fails to make a
174 determination within the 30-day period, it shall promptly notify the applicant and the Commission that the
175 application is deemed approved. For purposes of this section, "act" means taking a vote on the application.
176 If the application receives less than four affirmative votes from a seven-member board or less than three
177 affirmative votes from a five-member board, the permit shall be denied.

178 D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing
179 to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the
180 board. The record shall be open for public inspection at the same office as was designated under § 5 of
181 this ordinance.

182 § 8. The board may require a reasonable bond or letter of credit in an amount and with surety and
183 conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and
184 limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend
185 or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth
186 in the permit or has exceeded the scope of the work described in the application. The board may, after a

187 hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the
188 application.

189 § 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and prevent the
190 despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic
191 development in a manner consistent with wetlands preservation and any standards set by the
192 Commonwealth in addition to those identified in § 28.2-1308 to ensure protection of shorelines and
193 sensitive coastal habitats from sea level rise and coastal hazards, including the provisions of guidelines
194 and minimum standards promulgated by the Commission pursuant to § 28.2-1301 of the Code of Virginia.

195 § 10. A. In deciding whether to grant, grant in modified form, or deny a permit, the board shall
196 consider the following:

- 197 1. The testimony of any person in support of or in opposition to the permit application;
- 198 2. The impact of the proposed development on the public health, safety, and welfare; and
- 199 3. The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code
200 of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

201 B. The board shall grant the permit if all of the following criteria are met:

- 202 1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public
203 and private detriment.
- 204 2. The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code
205 of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.
- 206 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13
207 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

208 C. If the board finds that any of the criteria listed in subsection B of this section are not met, the
209 board shall deny the permit application but allow the applicant to resubmit the application in modified
210 form.

211 § 11. The permit shall be in writing, and signed by the chairman of the board or his authorized
212 representative, ~~and notarized~~. A copy of the permit shall be transmitted to the Commissioner.

213 § 12. No permit shall be granted without an expiration date established by the board. Upon proper
214 application, the board may extend the permit expiration date.

215 § 13. No permit granted by a wetlands board shall in any way affect the applicable zoning and land
216 use ordinances of this _____ (county, city, or town) or the right of any person to seek compensation for
217 any injury in fact incurred by him because of the proposed activity.

218 **§ 28.2-1403. Certain counties, cities, and towns authorized to adopt coastal primary sand**
219 **dune ordinance.**

220 Any of the following counties, cities and towns ~~which~~ that adopt a wetlands zoning ordinance
221 pursuant to § 28.2-1302 may adopt the coastal primary sand dune zoning ordinance ~~which~~ that is set out
222 in this section: the Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax,
223 Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William,
224 Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince
225 William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; ~~and~~ the Cities of Alexandria,
226 Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport
227 News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach and
228 Williamsburg; and the Town of Cape Charles. In the event that a locality has not adopted a wetlands
229 zoning ordinance pursuant to Chapter 13 (§ 28.2-1300 et seq.) or repeals it if already adopted, such locality
230 may adopt or continue to administer the ordinance contained herein provided the locality appoints a
231 wetlands board following the procedure specified in § 28.2-1303. Any county or city ~~which~~ that has
232 adopted the Coastal Primary Sand Dune Zoning Ordinance prior to ~~October 1, 1992~~ January 1, 2024, shall
233 amend the ordinance to conform it to the ordinance contained herein by ~~October 1, 1992~~ January 1, 2024.
234 The following ordinance is the only coastal primary sand dune zoning ordinance under which any board
235 shall operate after ~~October 1, 1992~~ January 1, 2024.

236 Coastal Primary Sand Dune Zoning Ordinance

237 § 1. The governing body of _____, acting pursuant to Chapter 14 (§ 28.2-1400 et seq.) of Title
238 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of coastal primary

239 sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such references shall
240 also include beaches.

241 § 2. As used in this ordinance, unless the context requires a different meaning:

242 "Beach" means the shoreline zone comprised of unconsolidated sandy material upon which there
243 is a mutual interaction of the forces of erosion, sediment transport, and deposition that extends from the
244 low water line landward to where there is a marked change in either material composition or physiographic
245 form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody
246 vegetation (usually the effective limit of stormwaves), or the nearest impermeable man-made structure,
247 such as a bulkhead, revetment, or paved road.

248 "Coastal primary sand dune" or "dune" means a mound of unconsolidated sandy soil ~~which~~ that is
249 contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from
250 ~~ten~~ 10 percent or greater to less than ~~ten~~ 10 percent, and upon which is growing any of the following
251 species: American beach grass (*Ammophila breviligulata*); beach heather (*Hudsonia tomentosa*); dune
252 bean (*Strophostyles* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*);
253 seabeach sandwort (*Honckenya peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*);
254 seaside goldenrod (*Solidago sempervirens*); Japanese sedge or Asiatic sand sedge (*Carex kobomugi*);
255 Virginia pine (*Pinus virginiana*); broom sedge (*Andropogon virginicus*); and short dune grass (*Panicum*
256 *amarum*). For purposes of this ordinance, "coastal primary sand dune" shall not include any mound of
257 sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage, beach
258 replenishment, or beach nourishment, nor shall the slopes of any such mound be used to determine the
259 landward or lateral limits of a coastal primary sand dune.

260 "Commission" means the Virginia Marine Resources Commission.

261 "Commissioner" means the Commissioner of Marine Resources.

262 "County, city and town" means the governing body of the county, city and town.

263 "Governmental activity" means any of the services provided by the Commonwealth or a county,
264 city, or town to its citizens for the purpose of maintaining public facilities, including but not limited to,

265 such services as constructing, repairing, and maintaining roads; providing street lights and sewage
266 facilities; supplying and treating water; and constructing public buildings.

267 "Wetlands board" or "board" means the board created pursuant to § 28.2-1303 of the Code of
268 Virginia.

269 § 3. The following uses of and activities in dunes are authorized if otherwise permitted by law:

270 1. The construction and maintenance of noncommercial walkways—~~which~~ that do not alter the
271 contour of the coastal primary sand dune;

272 2. The construction and maintenance of observation platforms—~~which~~ that are not an integral part
273 of any dwelling and—~~which~~ that do not alter the contour of the coastal primary sand dune;

274 3. The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary
275 sand dunes;

276 4. The placement of sand fences or other material on or adjacent to coastal primary sand dunes for
277 the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the
278 placement of any material—~~which~~ that presents a public health or safety hazard;

279 5. Sand replenishment activities of any private or public concern, provided no sand shall be
280 removed from any coastal primary sand dune unless authorized by lawful permit;

281 6. The normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to
282 control beach erosion—~~which~~ that may abut a coastal primary sand dune;

283 7. The normal maintenance or repair of existing roads, highways, railroad beds, and facilities of
284 the United States, this Commonwealth or any of its counties or cities, or of any person, provided no coastal
285 primary sand dunes are altered;

286 8. Outdoor recreational activities, provided the activities do not alter the natural contour of the
287 coastal primary sand dune or destroy the vegetation growing thereon;

288 9. The conservation and research activities of the Commission, Virginia Institute of Marine
289 Science, Department of Wildlife Resources, and other conservation-related agencies;

290 10. The construction and maintenance of aids to navigation—~~which~~ that are authorized by
291 governmental authority;

292 11. Activities pursuant to any emergency declaration by the governing body of any local
293 government or the Governor of the Commonwealth or any public health officer for the purposes of
294 protecting the public health and safety;

295 12. Governmental activity in coastal primary sand dunes owned or leased by the Commonwealth
296 or a political subdivision thereof; and

297 13. The construction of living shoreline projects authorized pursuant to a general permit developed
298 under subsection B of § 28.2-104.1.

299 § 4. A. Any person who desires to use or alter any coastal primary sand dune within this _____
300 (county, city, or town), other than for the purpose of conducting the activities specified in § 3 of this
301 ordinance, shall first file an application directly with the wetlands board or with the Commission.

302 B. The permit application shall include the following: the name and address of the applicant; a
303 detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale,
304 showing the area of dunes directly affected, the location of the proposed work thereon, the area of any
305 proposed fill and excavation, the location, width, depth, and length of any disposal area, and the location
306 of all existing and proposed structures, sewage collection and treatment facilities, utility installations,
307 roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description
308 of the type of equipment to be used and the means of equipment access to the activity site; the names and
309 addresses of owners of record of adjacent land; an estimate of cost; the primary purpose of the project;
310 any secondary purposes of the project, including further projects; the public benefit to be derived from the
311 proposed project; a complete description of measures to be taken during and after the alteration to reduce
312 detrimental offsite effects; the completion date of the proposed work, project, or structure; and such
313 additional materials and documentation as the wetlands board may require.

314 C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set
315 by the applicable governing body with due regard for the services to be rendered, including the time, skill,
316 and administrator's expense. No person shall be required to file two separate applications for permits if
317 the proposed project will require permits under this ordinance and Chapter 13 (§ 28.2-1300 et seq.) of

318 Title 28.2 of the Code of Virginia. Under those circumstances, the fee shall be established pursuant to this
319 ordinance.

320 § 5. All applications, maps, and documents submitted shall be open for public inspection at the
321 office of the recording officer of this _____ (county, city or town).

322 § 6. Not later than 60 days after receipt of a complete application, the wetlands board shall hold a
323 public hearing on the application. The applicant, local governing body, Commissioner, owner of record
324 of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science,
325 the Department of Wildlife Resources, the State Water Control Board, the Department of Transportation,
326 and any governmental agency expressing an interest in the application shall be notified of the hearing. The
327 Commission or board shall mail or email these notices not less than 20 days prior to the date set for the
328 hearing. The wetlands board shall also (i) cause notice of the hearing to be published at least once a week
329 for two weeks in the seven days prior to such hearing in a newspaper of general circulation in this
330 _____ (county, city or town); (ii) post a notice of the hearing on its website at least 14 days prior to
331 such hearing; and (iii) provide a copy of such notice to the Commission for submittal to the Virginia
332 Regulatory Town Hall. The costs of publication shall be paid by the applicant. In the event that the board
333 submits a correct and timely notice for publication and the newspaper fails to publish the notice or
334 publishes the notice incorrectly, the board shall be deemed to have met the notice requirements of this
335 subsection so long as the notice is published in the next available edition of such newspaper.

336 § 7. A. Approval of a permit application shall require the affirmative vote of three members of a
337 five-member board or four members of a seven-member board.

338 B. The chairman of the board, or in his absence the acting chairman, may administer oaths and
339 compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each
340 witness at the hearing may submit a concise written statement of his testimony. The board shall make a
341 record of the proceeding, which shall include the application, any written statements of witnesses, a
342 summary of statements of all witnesses, the findings and decision of the board, and the rationale for the
343 decision.

344 C. The board shall make its determination within 30 days of the hearing. If the board fails to act
345 within that time, the application shall be deemed approved. Within 48 hours of its determination, the board
346 shall notify the applicant and the Commissioner of its determination. If the board fails to make a
347 determination within the 30-day period, it shall promptly notify the applicant and the Commission that the
348 application is deemed approved.

349 D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing
350 to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the
351 board. The record shall be open for public inspection at the office of the recording officer of this _____
352 (county, city, or town).

353 § 8. The board may require a reasonable bond or letter of credit in an amount and with surety and
354 conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and
355 limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend
356 or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth
357 in the permit or has exceeded the scope of the work described in the application. The board may, after a
358 hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the
359 application.

360 § 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and protect
361 coastal primary sand dunes and beaches and prevent their despoliation and destruction. However,
362 whenever practical, the board shall accommodate necessary economic development in a manner consistent
363 with the protection of these features.

364 § 10. A. In deciding whether to grant, grant in modified form, or deny a permit, the board shall
365 consider the following:

- 366 1. The testimony of any person in support of or in opposition to the permit application;
- 367 2. The impact of the proposed development on the public health, safety, and welfare; and
- 368 3. The proposed development's conformance with standards prescribed in § 28.2-1408 of the Code
369 of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

370 B. The board shall grant the permit if all of the following criteria are met:

371 1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public
372 and private detriment.

373 2. The proposed development conforms with the standards prescribed in § 28.2-1408 of the Code
374 of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

375 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14
376 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia.

377 C. If the board finds that any of the criteria listed in subsection B of this section are not met, the
378 board shall deny the permit application but allow the applicant to resubmit the application in modified
379 form.

380 § 11. The permit shall be in writing, and signed by the chairman of the board, ~~and notarized~~. A
381 copy of the permit shall be transmitted to the Commissioner.

382 § 12. No permit shall be granted without an expiration date established by the board. Upon proper
383 application, the board may extend the permit expiration date.

384 § 13. No permit granted by a wetlands board shall in any way affect the right of any person to seek
385 compensation for any injury in fact incurred by him because of the permitted activity.

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