

23104030D

## SENATE BILL NO. 1160

Offered January 11, 2023

Prefiled January 10, 2023

A *BILL to amend and reenact §§ 28.2-606, 28.2-1302, 28.2-1403, and 28.2-1408.2 of the Code of Virginia, relating to Marine Resources Commission and local wetlands boards; permit applications; public notice.*

Patrons—Stuart and Reeves

Referred to Committee on Agriculture, Conservation and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 28.2-606, 28.2-1302, 28.2-1403, and 28.2-1408.2 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.~~

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

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

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

**Wetlands Zoning Ordinance**

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

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

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

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

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

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

"North Landing River and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at

INTRODUCED

SB1160

59 Great Bridge; and all named and unnamed streams, creeks, and rivers flowing into the North Landing  
60 River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road,  
61 Pocatoy River west of Blackwater Road, Blackwater River west of its forks located at a point  
62 approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at  
63 the village of Blackwater, and Millbank Creek west of Blackwater Road.

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

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

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

92 "Wetlands" means both vegetated and nonvegetated wetlands.

93 "Wetlands board" or "board" means a board created pursuant to § 28.2-1303 of the Code of Virginia.  
94 § 3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:

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

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

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

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

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

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

108 7. The construction or maintenance of aids to navigation ~~which~~ *that* are authorized by governmental  
109 authority;

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

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

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

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

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

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

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale, showing the area of wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill and excavation, the location, width, depth, and length of any proposed channel and disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a statement indicating whether use of a living shoreline as defined in § 28.2-104.1 for a shoreline management practice is not suitable, including reasons for the determination; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

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

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

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

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

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

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

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

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

182 conditions set forth in the application.

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

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

192 1. The testimony of any person in support of or in opposition to the permit application;

193 2. The impact of the proposed development on the public health, safety, and welfare; and

194 3. The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of  
195 Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

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

197 1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public  
198 and private detriment.

199 2. The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of  
200 Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

201 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13  
202 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

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

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

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

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

213 **§ 28.2-1403. Certain counties, cities, and towns authorized to adopt coastal primary sand dune**  
214 **ordinance.**

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

231 Coastal Primary Sand Dune Zoning Ordinance

232 § 1. The governing body of \_\_\_\_\_, acting pursuant to Chapter 14 (§ 28.2-1400 et seq.) of Title  
233 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of coastal  
234 primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such  
235 references shall also include beaches.

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

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

243 "Coastal primary sand dune" or "dune" means a mound of unconsolidated sandy soil ~~which~~ *that* is

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

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale, showing the area of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and excavation, the location, width, depth, and length of any disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose

of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

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

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

§ 6. Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the Department of Wildlife Resources, the State Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The *Commission* or board shall mail or email these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also ~~cause (i) post a notice of the hearing to be published at least once a week for two weeks on its website at least 14 days prior to such hearing in a newspaper of general circulation in this \_\_\_\_\_ (county, city or town) and (ii) provide a copy to the Commission for submittal to the Virginia Regulatory Town Hall. The costs of publication shall be paid by the applicant.~~

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

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

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

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

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

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

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

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

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

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.
2. The proposed development conforms with the standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

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

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

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

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

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

#### **§ 28.2-1408.2. Exemptions.**

A. Notwithstanding the requirements of § 28.2-1408 or any other provision of this Code, the Virginia Beach Wetlands Board shall make an ongoing determination in the Sandbridge Beach Subdivision to determine which structures or properties are in clear and imminent danger from erosion and storm damage due to severe wave action or storm surge. The owners of such structures or properties shall not be prohibited from erecting and maintaining protective bulkheads or other equivalent structural improvements of the type, size, and configuration as approved by the Virginia Beach Wetlands Board. As used in this section, "Sandbridge Beach Subdivision" means the area that is bounded on the north by Dam Neck Naval Base, on the west by Sandpiper Road, and on the south by Little Island Park.

The Virginia Beach Wetlands Board shall not impose arbitrary or unreasonable conditions upon its approval of any such bulkhead or other structural improvement. The Virginia Beach Wetlands Board shall maintain a continuing responsibility to ensure that each bulkhead or structural improvement constructed under the authority of this section is maintained in a condition that is safe, structurally sound, and otherwise in conformity with the conditions imposed by the Virginia Beach Wetlands Board.

Upon submission of an application to the Virginia Beach Wetlands Board pursuant to this section, as a requirement for approval, the applicant must consent in writing to any subsequent construction approved by the Virginia Beach Wetlands Board whereby an adjacent property owner desires to tie in a bulkhead at no additional cost with the bulkhead proposed by the applicant. Such consent shall constitute a waiver of property line defenses relating to the bulkhead line.

B. 1. The Virginia Beach Wetlands Board may develop and adopt, after holding a public hearing, a General Permit for Sand Management and Placement Profiles for properties in the Sandbridge Beach Subdivision. The Virginia Beach Wetlands Board shall ~~publish~~ (i) ~~post a notice of each the hearing at least once a week for two consecutive weeks on its website at least 14 days prior to such hearing in a newspaper having general circulation in Virginia Beach and~~ (ii) ~~provide a copy to the Commission for submittal to the Virginia Regulatory Town Hall.~~

2. The Norfolk Wetlands Board may develop and adopt, after holding a public hearing, a General Permit for Sand Management and Placement Profiles for properties in the City of Norfolk. The Norfolk Wetlands Board shall ~~publish~~ (i) ~~post a notice of each the hearing at least once a week for two consecutive weeks on its website at least 14 days prior to such hearing in a newspaper having general circulation in the City of Norfolk and~~ (ii) ~~provide a copy to the Commission for submittal to the Virginia Regulatory Town Hall.~~

C. Any General Permit for Sand Management and Placement Profiles adopted by a wetlands board pursuant to subsection B shall set forth sand management practices that require owners of real property in the permit area to undertake responsible, cost-effective sand management practices that (i) protect and enhance the value and use of their property and (ii) preserve and protect coastal primary sand dunes and public beaches and prevent their despoliation and destruction. The General Permit for Sand Management and Placement Profiles shall specify all permissible sand management practices, including the manner in which sand removed from these properties shall be transported to and placed upon an appropriate sand placement and spreading zone as may be designated in the Placement Profiles adopted by the wetlands board. The sand shall be in the condition of clean beach sand prior to such transport and placement. A wetlands board may from time to time revise such General Permit for Sand Management and Placement Profiles as appropriate, in accordance with this subsection and subsections B and D.

D. Following adoption of the General Permit for Sand Management and Placement Profiles, the owner of real property in the permit area, or the designee of such owner, may apply for coverage under the applicable General Permit for Sand Management and Placement Profile by submitting a registration statement to the local wetlands board on a form to be developed by the wetlands board requiring the following information: (i) owner's name; (ii) owner's address; (iii) owner's telephone number and email address; (iv) address of property or properties; (v) designee's name, if any; (vi) designee's address; (vii) designee's telephone number and email address; (viii) identification of the applicable Placement Profile for the property; (ix) signature of owner or designee; and (x) date of application. The wetlands board

428 may impose a reasonable fee in connection with processing the registration statement.

429 The wetlands board shall, within 30 days of receipt of a registration statement, notify the owner or  
430 his designee in writing whether the registration statement is approved or disapproved. The wetlands  
431 board's written notice of approval or disapproval may be delivered to the applicant via email at the  
432 email address stated in the registration statement or it may be delivered via United States mail at the  
433 address stated in the registration statement, or both. If the wetlands board fails to notify the applicant in  
434 writing within 30 days of receipt of a registration statement, then the registration statement is deemed  
435 approved. If the registration statement is disapproved, the wetlands board shall provide in its notification  
436 to the applicant a complete statement of the reason for the disapproval. Notwithstanding the  
437 requirements of § 28.2-1408 or any other provision of law, if the registration statement is approved, then  
438 the applicant is authorized to manage sand in accordance with the applicable General Permit for Sand  
439 Management for a period of three years from the date of the application. The approval or disapproval of  
440 a registration statement submitted by an applicant is a decision of the wetlands board that is reviewable  
441 pursuant to § 28.2-1411.