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SENATE BILL NO. 569

Offered January 9, 2014

A *BILL to amend and reenact §§ 28.2-104.1, 28.2-1302, and 28.2-1403 of the Code of Virginia, relating to living shoreline general permits.*

Patron—Stuart

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-104.1, 28.2-1302, and 28.2-1403 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-104.1. Living shorelines; development of general permit; guidance.

A. As used in this section, unless the context requires a different meaning:

"Living shoreline" means a shoreline management practice that provides erosion control and water quality benefits; protects, restores or enhances natural shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials.

B. The Commission, in cooperation with the Department of Conservation and Recreation, *the Department of Environmental Quality*, and *local wetlands boards*, and with technical assistance from the Virginia Institute of Marine Science, shall establish and implement a general permit regulation that authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines in the Commonwealth. *The regulation shall provide for an expedited permit review process for qualifying living shoreline projects requiring authorization under Chapters 12 (§ 28.2-1200 et seq.), 13 (§ 28.2-1300 et seq.), and 14 (§ 28.2-1400 et seq.).* In developing the general permit, the Commission shall consult with the U.S. Army Corps of Engineers to ensure the minimization of conflicts with federal law and regulation.

C. The Commission, in cooperation with the Department of Conservation and Recreation and with technical assistance from the Virginia Institute of Marine Science, shall develop integrated guidance for the management of tidal shoreline systems to provide a technical basis for the coordination of permit decisions required by any regulatory entity exercising authority over a shoreline management project. The guidance shall:

1. Communicate to stakeholders and regulatory authorities that it is the policy of the Commonwealth to support living shorelines as the preferred alternative for stabilizing tidal shorelines;

2. Identify preferred shoreline management approaches for the shoreline types found in the Commonwealth;

3. Explain the risks and benefits of protection provided by various shoreline system elements associated with each management option; and

4. Recommend procedures to achieve efficiency and effectiveness by the various regulatory entities exercising authority over a shoreline management project.

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

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

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, Shipps 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

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

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

65 "North Landing River and its tributaries" means the following, as shown on the United States
66 Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River
67 from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the
68 Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at
69 Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing
70 River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road,
71 Pocatoy River west of Blackwater Road, Blackwater River west of its forks located at a point
72 approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at
73 the village of Blackwater, and Millbank Creek west of Blackwater Road.

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

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

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

102 "Wetlands" means both vegetated and nonvegetated wetlands.

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

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

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

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

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

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

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

116 6. Conservation, repletion and research activities of the Commission, the Virginia Institute of Marine
117 Science, the Department of Game and Inland Fisheries and other conservation-related agencies;

118 7. The construction or maintenance of aids to navigation which are authorized by governmental
119 authority;

120 8. Emergency measures decreed by any duly appointed health officer of a governmental subdivision

acting to protect the public health;

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

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

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

12. 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 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 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 for public hearing required under § 6 of this ordinance.

§ 6. Not later than sixty 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 Game and Inland Fisheries, the Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in this (county, city, or town). 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 thirty days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within forty-eight 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 thirty-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

182 this ordinance.

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

190 § 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and prevent the
191 despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic
192 development in a manner consistent with wetlands preservation.

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

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

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

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

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

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

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

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

216 **§ 28.2-1403. Certain counties, cities and towns authorized to adopt coastal primary sand dune**
217 **ordinance.**

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

234 Coastal Primary Sand Dune Zoning Ordinance

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

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

240 "Beach" means the shoreline zone comprised of unconsolidated sandy material upon which there is a
241 mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low
242 water line landward to where there is a marked change in either material composition or physiographic
243 form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody

vegetation (usually the effective limit of stormwaves), or the nearest impermeable man-made structure, such as a bulkhead, revetment, or paved road.

"Coastal primary sand dune" or "dune" means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten 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 do not alter the contour of the coastal primary sand dune;

2. The construction and maintenance of observation platforms which are not an integral part of any dwelling and which 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 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 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 Game and Inland Fisheries, and other conservation-related agencies;

10. The construction and maintenance of aids to navigation which 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; and

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 sixty 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 Game and Inland Fisheries, 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 board shall mail these notices not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in this (county, city or town). 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 thirty days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within forty-eight 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 thirty-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

367 Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

368 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14
369 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia.

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

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

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

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