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HOUSE BILL NO. 2407

Offered January 20, 1997

A BILL to amend and reenact §§ 28.2-1302 and 28.2-1403 of the Code of Virginia, relating to emergency permits for wetlands and primary coastal sand dunes.

Patrons—Murphy; Senator: Chichester

Referred to Committee on Chesapeake and Its Tributaries

Be it enacted by the General Assembly of Virginia:**1. That §§ 28.2-1302 and 28.2-1403 of the Code of Virginia are amended and reenacted as follows:**

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

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

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

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60 (Nyssa aquatica), dock (Rumex spp.), yellow pond lily (Nuphar sp.), marsh fleabane (Pluchea
61 purpurascens), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens
62 sp.), smartweed (Polygonum sp.), arrowhead (Sagittaria spp.), sweet flag (Acorus calamus), water hemp
63 (Amaranthus cannabinus), reed grass (Phragmites communis), or switch grass (Panicum virgatum).

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

75 "Wetlands" means both vegetated and nonvegetated wetlands.

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

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

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

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

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

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

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

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

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

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

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

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

100 11. The normal maintenance of manmade drainage ditches, provided that no additional wetlands are
101 covered. This subdivision does not authorize the construction of any drainage ditch.

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

106 B. The permit application shall include the following: the name and address of the applicant; a
107 detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale,
108 showing the area of wetlands directly affected, the location of the proposed work thereon, the area of
109 existing and proposed fill and excavation, the location, width, depth and length of any proposed channel
110 and disposal area, and the location of all existing and proposed structures, sewage collection and
111 treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including
112 those on adjacent uplands; a description of the type of equipment to be used and the means of
113 equipment access to the activity site; the names and addresses of owners of record of adjacent land and
114 known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an
115 estimate of cost; the primary purpose of the project; any secondary purposes of the project, including
116 further projects; the public benefit to be derived from the proposed project; a complete description of
117 measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion
118 date of the proposed work, project, or structure; and such additional materials and documentation as the
119 wetlands board may require.

120 C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by
121 the applicable governing body with due regard for the services to be rendered, including the time, skill,

and administrator's expense involved.

D. An owner of noncommercial property may commence construction of shoreline protection structures, without regard to the requirement of § 4 A, when all of the following conditions have been met:

1. There has been a damaging storm that has produced erosion rates greater than those established for the county, city, town, or area by the Shoreline Erosion Advisory Service;

2. Another storm with significant damage potential has been projected by the National Oceanic and Atmospheric Administration's (NOAA) weather service for the forecast period;

3. There has been damage to real property from the major storm as defined in subdivision 1 of § 4 D or damage to real property within fifty feet of the shoreline is likely due to the NOAA storm projections as defined in subdivision 2 of § 4 D;

4. The proposed structure, and its placement, meet regulatory guidelines and would likely have been authorized by the approval agencies;

5. The chairman of the local wetlands board, and one representative each of the Marine Resources Commission and the Virginia Institute for Marine Science have met with the property owner at the site of the proposed structure and determined that the preceding conditions have been met and the proposed structure is considered to be in accord with regulatory guidelines and would likely have received approval through the public review process under § 4 A; and

6. The property owner signs a document in which he agrees to submit an after-the-fact joint permit application for the proposed structures to the Commission within ten days and acknowledges in writing that the placement of structures is (i) at his own risk, and (ii) subject to (a) all wetlands regulations and guidelines, (b) final decisions by the approval authorities on the after-the-fact application, and (c) any conditions such bodies may impose, including, but not limited to, required modifications in, or removal of, the structure, or other compliance actions.

§ 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 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.

183 The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and
184 conditions set forth in the application.

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

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

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

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

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

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

195 1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public
196 and private detriment.

197 2. The proposed development conforms with the 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 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13
200 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

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

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

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

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

211 § 28.2-1403. Certain counties, cities and towns authorized to adopt coastal primary sand dune
212 ordinance.

213 Any of the following counties, cities and towns which adopt a wetlands zoning ordinance pursuant to
214 § 28.2-1302 may adopt the coastal primary sand dune zoning ordinance which is set out in this section:
215 the Counties of Accomack, Lancaster, Mathews, Northampton and Northumberland and the Cities of
216 Hampton, Norfolk, and Virginia Beach; and the Town of Cape Charles. In the event that a locality has
217 not adopted a wetlands zoning ordinance pursuant to Chapter 13 (§ 28.2-1300 et seq.) or repeals it if
218 already adopted, such locality may adopt or continue to administer the ordinance contained herein
219 provided the locality appoints a wetlands board following the procedure specified in § 28.2-1303. Any
220 county or city which has adopted the Coastal Primary Sand Dune Zoning Ordinance prior to October 1,
221 1992, shall amend the ordinance to conform it to the ordinance contained herein by October 1, 1992.
222 The following ordinance is the only coastal primary sand dune zoning ordinance under which any board
223 shall operate after October 1, 1992.

224 Coastal Primary Sand Dune Zoning Ordinance

225 § 1. The governing body of, acting pursuant to Chapter 14 (§ 28.2-1400 et seq.) of Title
226 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of coastal
227 primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such
228 references shall also include beaches.

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

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

236 "Coastal primary sand dune" or "dune" means a mound of unconsolidated sandy soil which is
237 contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from
238 ten percent or greater to less than ten percent, and upon which is growing any of the following species:
239 American beach grass (*Ammophilla breviligulata*); beach heather (*Hudsonia tometosa*); dune bean
240 (*Strophostylis* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach
241 sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside
242 goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). For purposes of this
243 ordinance, "coastal primary sand dune" shall not include any mound of sand, sandy soil, or dredge spoil
244 deposited by any person for the purpose of temporary storage.

"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.

§ 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, *unless exercising the provisions of § 4 D.*

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.

D. *An owner of noncommercial property may commence construction of shoreline protection structures, without regard to the requirement of § 4 A, when all of the following conditions have been*

306 met:

307 1. There has been a damaging storm that has produced erosion rates greater than those established
308 for the county, city, town, or area by the Shoreline Erosion Advisory Service;

309 2. Another storm with significant damage potential has been projected by the National Oceanic and
310 Atmospheric Administration's (NOAA) weather service for the forecast period;

311 3. There has been damage to real property from the major storm as defined in subdivision 1 of § 4
312 D or damage to real property within fifty feet of the shoreline is likely, due to the NOAA storm
313 projections as defined in subdivision 2 of § 4 D;

314 4. The proposed structure, and its placement, meet regulatory guidelines and would likely have been
315 authorized by the approval agencies;

316 5. The chairman of the local wetlands board, and one representative each of the Marine Resources
317 Commission and the Virginia Institute for Marine Science have met with the property owner at the site
318 of the proposed structure and determined that the preceding conditions have been met and the proposed
319 structure is considered to be in accord with regulatory guidelines and would likely have received
320 approval through the public review process under § 4 A; and

321 6. The property owner signs a document in which he agrees to submit an after-the-fact joint permit
322 application for the proposed structures to the Commission within ten days and acknowledges in writing
323 that the placement of structures is (i) at his own risk, and (ii) subject to (a) all wetlands and primary
324 coastal sand dune regulations and guidelines, (b) final decisions by the approval authorities on the
325 after-the-fact application, and (c) any conditions such bodies may impose, including, but not limited to,
326 required modifications in, or removal of, the structure, or other compliance actions.

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

329 § 6. Not later than sixty days after receipt of a complete application, the wetlands board shall hold a
330 public hearing on the application. The applicant, local governing body, Commissioner, owner of record
331 of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine
332 Science, the Department of Game and Inland Fisheries, the State Water Control

333 Board, the Department of Transportation, and any governmental agency expressing an interest in the
334 application shall be notified of the hearing.

335 The board shall mail these notices not less than twenty days prior to the date set for the hearing. The
336 wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks
337 prior to such hearing in a newspaper of general circulation in this (county, city or town). The
338 costs of publication shall be paid by the applicant.

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

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

347 C. The board shall make its determination within thirty days of the hearing. If the board fails to act
348 within that time, the application shall be deemed approved. Within forty-eight hours of its determination,
349 the board shall notify the applicant and the Commissioner of its determination. If the board fails to
350 make a determination within the thirty-day period, it shall promptly notify the applicant and the
351 Commission that the application is deemed approved.

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

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

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

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

368 consider the following:

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

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

371 3. The proposed development's conformance with standards prescribed in § 28.2-1408 of the Code of
372 Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

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

374 1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public
375 and private detriment.

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

378 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14
379 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia.

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

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

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

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