

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-08-09

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 10th day of August, 2009:

Present:	Vote:
James H. Burrell	Aye
Stran L. Trout	Aye
Thomas W. Evelyn	Aye
David M. Sparks	Aye
W. R. Davis, Jr.	Aye

Motion was made by Mr. Burrell, which carried 5:0, to adopt the following ordinance:

**AN ORDINANCE ADDING
CHAPTER 82, ARTICLE V, DUNES AND BEACHES**

WHEREAS, the Code of Virginia, § 28.2-1403 provides authority for New Kent County to protect and regulate dunes and beaches through the local Wetlands Board; and

WHEREAS, the dunes and beaches of New Kent County are currently under the regulatory authority of the Virginia Marine Resource Commission (VMRC); and

WHEREAS, the Board of Supervisors wishes to eliminate undue hardships for New Kent citizens needing a permit to use a designated beach or dunes area; and

WHEREAS, the Board of Supervisors finds it rational to authorize the local Wetlands Board to issue permits for use of dunes and beaches and thereby increase the efficiency of the permit process for the citizens of the County;

NOW THEREFORE BE IT ORDAINED this, the 10th day of August, 2009, by the New Kent County Board of Supervisors that Chapter 82, Article V of the New Kent County Code be added by inserting the text below to be effective immediately:

Secs. 82-167--82-180. Reserved

ARTICLE V. SAND DUNE AND BEACHES

DIVISION 1. GENERALLY

§ 82-181. Adoption of division

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

§ 82-182. Definitions

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Beach means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic 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 storm waves), 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.

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 streetlights 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.

§ 82-183. Authorized uses and activities

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.

§ 82-184. Applications, maps, and documents are public records.

All applications, maps, and documents submitted under this division shall be open for public inspection at the office of the county director of planning

§ 82-185. Fulfillment of responsibilities of the board

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.

§ 82-186. Violations; penalties

A. No person shall conduct any activity which would require a permit under this division unless such person has a permit therefore

B. Any person who knowingly, intentionally, negligently, or continually violates any order, rule, or regulation of the wetlands board, or violates any provision of this division, or any provision of a permit granted by the wetlands board, shall be guilty of a class 1 misdemeanor.

C. Upon the petition of the commission or the wetlands board to the county circuit court, when any act occurs or is threatened which is unlawful under this division, the court may enjoin the unlawful act and order the defendant to take any steps necessary to restore, protect, and preserve the wetlands involved. This remedy shall be exclusive of and in addition to any criminal penalty which may be imposed under subsection (B) of this section

Secs. 82-187—82.200. Reserved.

DIVISION 2. PERMIT

§ 82-201. Required; application.

A. Any person who desires to use or alter any coastal primary sand dune within this county, other than for the purpose of conducting the activities specified in § 82-183 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 as provided in appendix a to this Code shall accompany each permit application. The fee shall be set by the board of supervisors 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 Sec 82-161 of 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 Sec 82-161.

§ 82-202. Notice and hearing

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. The costs of publication shall be paid by the applicant.

§ 82-203. Hearing procedures

A. Approval of a permit application shall require the affirmative vote of three members of a five-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 same office as was designated under section 82-184.

§ 82-204. Compliance guarantees; suspension or revocation of permit

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 division, 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.

§ 82-205. Standards for review

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 to 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.

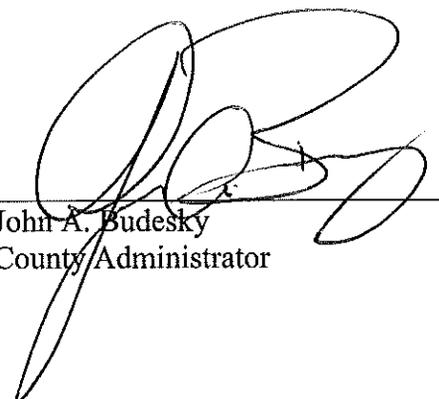
§ 82-206. Permits generally.

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

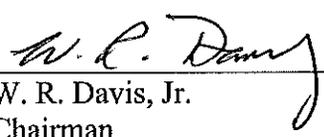
B. No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

C. 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.

(1980, c. 660, §§ 62.1-13.21, 62.1-13.25; 1984, c. 556; 1989, c. 342; 1992, c. 836; 1994, c. 112; 1998, c. 160; 2008, c. 20.)



John A. Budesky
County Administrator



W. R. Davis, Jr.
Chairman