

Middlesex County Board of Supervisors



At a regular meeting of the Middlesex County Board of Supervisors held on November 8, 2023 at 7:00 p.m. in the Board Room of the Historic Courthouse, Saluda, Virginia: On a motion duly made by Supervisor Harris, and seconded by Supervisor Williams, the following Ordinance was adopted by the following vote:

Lud H. Kimbrough, III	Aye
Wayne H. Jessie, Sr.	Aye
Reginald A. Williams, Sr.	Aye
Don R. Harris	Aye
Hartfield District	VACANT

AN ORDINANCE AMENDING THE COASTAL PRIMARY SAND DUNE ZONING ORDINANCE

WHEREAS, pursuant to Virginia Code Section 28.2-1403, coastal primary sand dune zoning ordinances are to be amended, effective January 1, 2024, to: (1) reflect the name change of the Virginia Department of Game and Inland Fisheries to the Virginia Department of Wildlife Resources; (2) reflect changes in the rules and regulations for publishing the public notices for hearings to be held by the wetlands board; and (3) provide a copy of such notice to the Virginia Marine Resource Commission for submittal to the Virginia Regulatory Town Hall; and

WHEREAS, a duly advertised public hearing was held on November 8, 2023 to receive public comment regarding this ordinance amendment; and

NOW, THEREFORE, BE IT ORDAINED by the Middlesex County Board of Supervisors this 8th day of November 2023, that the Middlesex County Code of Ordinances, Section 2 of Appendix E, entitled Middlesex County Coastal Primary Sand Dune Zoning Ordinance adopted January 18, 2011, is hereby amended and reenacted as follows:

Section 1. The governing body of Middlesex County, 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.

Section 2. As used in this ordinance, unless the context requires 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 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 that is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from 10 percent or greater to less than 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.

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

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

Section 4.

- 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 Section 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.

Section 5. All applications, maps, and documents submitted shall be open for public inspection at the Middlesex County Office of Community Development and Planning.

Section 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 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 board shall also (i) cause notice of the hearing to be published at least once in the seven days prior to such hearing in a newspaper of general circulation in this county; (ii) post a notice of the hearing on its website at least 14 days prior to such hearing; and (iii) provide a copy of such notice to the Commission for submittal to the Virginia Regulatory Town Hall. The costs of publication shall be paid by the applicant. In the event that the board submits a correct and timely notice for publication and the newspaper fails to publish the notice or publishes the notice incorrectly, the board shall be deemed to have met the notice requirements of this subsection so long as the notice is published in the next available edition of such newspaper.

Section 7.

- 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 30 days of the hearing. If the board fails to act within that time, the applications 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 Middlesex County Office of Community Development and Planning.

Section 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.

Section 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.

Section 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.

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

Section 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.

Section 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.

Section 14. This ordinance, adopted this 8th day of November 2023, shall be in full force and effect on January 1, 2024.

A Copy Teste:



Matthew L. Walker, Clerk