

Chapter 14. Coastal Primary Sand Dunes and Beaches.

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Article 1. General Provisions.

§ 28.2-1400. Definitions.

A. As used in this chapter, 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 manmade 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 (*Ammophilla breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostylis* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). For purposes of this chapter, *“coastal primary sand dune”* or *“dune”* shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage.

“Coastal primacy sand dune zoning ordinance” means the ordinance set forth in § 28.2-1403.

“County or city” means the governing body of the county or city.

“Governmental activity” means any of the services provided by Commonwealth or a county or city 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.

B. Although separately defined in subsection A of this section, the terms *“coastal primary sand dune,”* *“dune,”* and *“beach,”* when used in this chapter, shall be interchangeable. (1980, c. 660, §§ 62.1-13.21, 62.1-13.22; 1984, c. 556; 1985, c. 589; 1987, c. 499; 1989, c. 342; 1992, c. 836.)

Effective date. - Title 28.2 is effective October 1, 1992.

§ 28.2-1401. Powers and duties of Commission.

A. The Commission may receive gifts, grants, bequests, and devises of coastal primary sand dunes, beaches, and money which shall be held for the uses prescribed by the donor, grantor, or testator and in accordance with the provisions of this chapter.

B. The Commission shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. Whenever practical, the Commission shall accommodate necessary economic development in a manner consistent with the protection of these features. The Commission shall manage any coastal primary sand dunes and beaches it receives so as to maximize their ecological value.

C. In order to perform its duties under this section and to assist counties and cities in regulating coastal primary sand dunes and beaches, the Commission shall, with the advice and assistance of the Virginia Institute of Marine Science, promulgate guidelines which describe the consequences of use of these dunes and beaches.

D. In developing guidelines or regulations under this chapter, the Commission shall consult with all affected state agencies. Consistent with other legal rights, consideration shall be given to the importance of coastal primary sand dunes with their unique physiographic features which, in their natural state, serve as protective barriers from the effects of flooding and erosion caused by coastal storms, thereby protecting life and property; provide an essential source of natural sand replenishment for beaches and an important natural habitat for coastal fauna; and enhance the scenic and recreational attractiveness of Virginia's coastal area. (1972, c. 711, § 62.1-13.17; 1980, c. 660, §§ 62.1-13.21, 62.1-13.24; 1984, c. 556; 1989, c. 342; 1992, c. 836.)

§ 28.2-1402. (Effective until July 1, 1993) Exemptions.

A. Nothing in this chapter shall affect any project or development (i) for which a valid building permit or final site plan approval was issued prior to July 1, 1980; (ii) which, if no building permit is required for such project, including a locally approved mining operation, was commenced prior to July 1, 1980, and certified as exempt by the Commission or appropriate wetlands board; or (iii) which was approved by the governing body of any county or city pursuant to any local ordinance whose principal purpose was the review of development in coastal primary sand dunes prior to July 1, 1980. Nothing in this section excludes from regulation any activity which expands or enlarges a project already in existence or under construction.

B. The Virginia Beach Wetlands Board shall make an ongoing determination in the Sandbridge Beach subdivision of the area bounded on the north by Dam Neck Naval Base, on the west by Sandfiddler Road, and on the south by White Cap Lane, to determine which structures or properties are in clear and imminent danger from erosion and storm damage due to severe wave action or storm surge. The owners of structures or properties so defined shall not be prohibited from erecting and maintaining protective bulkheads or other equivalent

structural improvements of a type, size, and configuration approved by the Virginia Beach Wetlands Board. The Virginia Beach Wetlands Board shall not impose arbitrary or unreasonable conditions upon its approval of any such bulkhead or other structural improvement but shall maintain a continuing responsibility to ensure that each bulkhead or structural improvement constructed under the authority of this section is maintained in a condition which is safe, structurally sound, and otherwise in conformity with the reasonable conditions imposed by the Virginia Beach Wetlands Board. At the time the application is submitted, the applicant shall consent in writing to any subsequent construction which may occur whereby an adjacent property owner desires to tie in a bulkhead at no additional cost with that bulkhead proposed by the applicant. Such consent shall be considered a waiver of property line defenses relating to the bulkhead line.

C. This section shall expire on July 1, 1993. (1980, c. 660, § 62.1-13.28; 1987, c. 499; 1988, c. 740; 1991, c. 114; 1992, c. 836.)

Editor's note. - Acts 1992, c. 836, cl. 5 repealed this section effective October 1, 1992. Acts 1992, c. 836 also enacted new Title 28.2, Fisheries and Habitat of the Tidal Waters, effective October 1, 1992. See § 28.2-100 et seq.

Acts 1988, c. 740, which amended this section, provided in cl. 2 that the 1988 act would expire on June 30, 1991. However, Acts 1991, c. 114, cl. 1, effective March 7, 1991, amended Acts 1988, c. 740, cl. 2 so that amendatory provisions of the 1988 act shall expire on July 1, 1993.

Article 2. Coastal Primary Sand Dune Ordinance and Boards.

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

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

Coastal Primary Sand Dune Zoning Ordinance

§ 1. The governing body of _____ 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.

§ 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 manmade 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 (*Ammophilla breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostylis* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). 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.

“Commission” means the Virginia Marine Resources Commission.

“Commissioner” means the Commissioner of Marine Resources.

“County or city” means the governing body of the county or city.

“Governmental activity” means any of the services provided by the Commonwealth or a county or city 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 or city), 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 or city).

§ 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 or city). 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 or city).

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

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

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

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

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

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.
2. The proposed development conforms with the standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.
3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia.

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

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

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

§ 13. No permit granted by a wetlands board shall in any way affect the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity. (1980, c. 660, §§ 62.1-13.21, 62.1-13.25; 1984, c. 556; 1989, c. 342; 1992, c. 836.)

Effective date. - Title 28.2 is effective October 1, 1992.

§ 28.2-1404. Meetings, quorum, rules, etc., of wetlands boards; records and reports.

For the conduct of any wetlands board hearing and the taking of any action, a quorum shall be not less than three members of a five-member board nor less than four members of a seven-member board. The board may make, alter, and rescind rules and forms for its procedures, provided they are consistent with state law and local ordinances. The board keep a full public record of its proceedings and shall submit a report of its activities to the local governing body at least once each year. The board shall forward a copy of each report to the Commission. (1992, c. 836.)

§ 28.2-1405. Local governing body to supply meeting space and services for wetlands board.

Every county or city enacting an ordinance pursuant to this chapter shall supply the board with reasonable meeting space and necessary secretarial, clerical, legal, and consulting serv-

ices. The local governing body is authorized to expend public funds necessary to comply with the provisions of this section. (1992, c. 836.)

Article 3. Permits and Review.

§ 28.2-1406. Permits required for certain activities; issuance of permits by Commission.

A. It shall be unlawful for any person to conduct any activity which would require a permit under a coastal primary sand dune zoning ordinance without such a permit. Until the county or city in which a person proposes to conduct an activity which would require a permit under the ordinance adopts the ordinance, such person shall apply for a permit directly to the Commission. Permit applicants desiring to use or develop dunes or beaches owned by the Commonwealth shall also apply directly to the Commission.

B. The Commission shall process permit applications in accordance with the provisions of the Coastal Primary Sand Dune Zoning Ordinance and the Commissioner shall sign any permit granted; however, the Commission may designate one or more hearing officers who may, in lieu of the Commission, conduct public hearings as required under § 28.2-1403 and thereafter report their findings and recommendations to the Commission. (1972, c. 711, § 62.1-13.9; 1980, c. 660, § 62.1-13.26; 1992, c. 836.)

Effective date. - Title 28.2 is effective October 1, 1992.

Law Review. - For survey of Virginia administrative law for the year 1971-1972, see 58 Va. L. Rev. 1159 (1972). For article, "Virginia Natural Resources Law and the New Virginia Wetlands Act," see 30 Wash. & Lee L. Rev. 19 (1973).

§ 28.2-1407. Administrative procedures.

The Commission may, in conjunction with local wetlands boards and other affected state and federal agencies, develop administrative procedures to expedite the processing of applications for permits required under this chapter. Whenever an application is received by the Commission for a permit over which a local board has jurisdiction under a coastal primary sand dune zoning ordinance, the Commission shall forward a copy of the application to that board within seven days. (1992, c. 836.)

§ 28.2-1408. Standards for use of coastal primary sand dunes.

No permanent alteration of or construction upon any coastal primary sand dune shall take place which would (i) impair the natural functions of the dune, (ii) physically alter the contour of the dune, or (iii) destroy vegetation growing thereon unless the wetlands board or

the Commission, whichever is applicable, determines that there will be no significant adverse ecological impact, or that the granting of a permit is clearly necessary and consistent with the public interest, considering all material factors. (1980, c. 660, § 62.1-13.23; 1992, c. 836.)

§ 28.2-1409: Not set out.

Editor's note. - This section, relating to emergency sand grading activities on sand dunes located on the Atlantic Shoreline of Virginia Beach, was enacted by Acts 1984, c. 518, as amended by Acts 1992, c. 836. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 28.2-1410. Commissioner to review all decisions of wetlands boards.

The Commissioner shall review all decisions of wetlands boards and request the Commission to review a decision only when he believes the board failed to fulfill its responsibilities under the coastal primary sand dune zoning ordinance. (1992, c. 836.)

§ 28.2-1411. When Commission to review decision of wetlands board.

A. The Commission shall review a decision of a wetlands board when any of the following events occur:

1. An appeal is taken from the decision by the applicant or by the county or city where the dunes are located.
2. The Commissioner requests the review. In order to make the request, the Commissioner shall notify the board, applicant, and county or city where the dunes are located within ten days of receiving notice of the board's decision.
3. Twenty-five or more freeholders of property within the county or city in which the proposed project is located sign and submit a petition to the Commission requesting the review. The petition shall indicate those specific instances where the petitioners allege that the board failed to fulfill its responsibilities under the coastal primary sand dune zoning ordinance.

B. All requests for review or appeal shall be made within ten days of the date of the board's decision. The Commission shall hear and decide the review or appeal within forty-five days of receiving the request for review or notice of appeal. A continuance may be granted by the Commission on a motion of the applicant, the freeholders specified in subsection A of this section, or the county or city where the dunes are located. (1992, c. 836.)

§ 28.2-1412. Procedure for review; notice of decision.

A. The Commissioner shall cause notice of the review or appeal to be given to the board, the applicant, the county or city where the dunes are located, and where applicable, to the freeholders specified in § 28.2-1411.

B. The Commission shall hear the appeal or conduct the review on the record transmitted by the board to the Commissioner. The Commission may take such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Commission, in its discretion, may receive such other evidence as the ends of justice require.

C. The Commission shall notify the parties of its decision within forty-eight hours of the appeal or review hearing. (1992, c. 836.)

§ 28.2-1413. When Commission to modify, remand or reverse decision of wetlands board.

The Commission shall modify, remand or reverse the decision of the wetlands board if:

1. The wetlands board, in reaching its decision, failed to fulfill its responsibilities under the coastal primary sand dune zoning ordinance; or

2. The substantial rights of the appellant or the applicant have been prejudiced because the findings, conclusions, or decisions of the board are:

- a. In violation of constitutional provisions;
- b. In excess of statutory authority or jurisdiction of the wetlands board;
- c. Made upon unlawful procedure;
- d. Affected by other error of law;
- e. Unsupported by the evidence on the record considered as a whole; or
- f. Arbitrary, capricious, or an abuse of discretion. (1992, c. 836.)

§ 28.2-1414. Time for issuance of permit.

No permit shall be issued until the period within which a request for review or an appeal to the Commission may be made has expired. If a request for review is made or an appeal is noted, no activity for which the permit is required shall be commenced until the Commission has notified the parties of its determination. (1992, c. 836.)

§ 28.2-1415. Judicial review.

An appeal from any Commission decision granting or denying a permit or from any Commission decision on the review of or appeal from a board decision may be taken by the applicant, any of the freeholders specified in subsection A of § 28.2-1411, or by the county or city where the dunes or beaches are located. Judicial review shall be pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). (1992, c. 836.)

Article 4. Enforcement and Penalties.

§ 28.2-1416. Investigations and prosecutions.

The Commission may investigate all projects, whether proposed or ongoing, which alter dunes or beaches. The Commission may prosecute all violations of any order, rule, or regulation of the Commission or of a wetlands board, or violation of any provision of this chapter. Wetlands boards may investigate all projects, whether proposed or ongoing, which alter dunes or beaches located within their jurisdiction. Wetlands boards may prosecute all violations of their orders and any violation of any provision of the coastal primary sand dune zoning ordinance which they administer. (1992, c. 836.)

Effective date. - Title 28.2 is effective October 1, 1992.

§ 28.2-1417. Monitoring, inspections, compliance, and restoration.

A. The Commissioner or board chairman may require a permittee to implement monitoring and reporting procedures they believe are reasonably necessary to ensure compliance with the provisions of the permit and this chapter.

B. The Commissioner or board chairman may require such on-site inspections as he believes are reasonably necessary to determine whether the measures required by the permit are being properly performed, or whether the provisions of this chapter are being violated. Prior to conducting such inspections, the Commissioner or board chairman shall provide notice to the resident owner, occupier, or operator, who shall be given an opportunity to accompany the site inspector. If it is determined that there is a failure to comply with the permit, the Commissioner or board chairman shall serve notice upon the permittee at the address specified in his permit application or by delivery at the site of the permitted activities to the person supervising the activities and designated in the permit to receive the notice. The notice shall describe the measures needed for compliance and the time within which these measures shall be completed. Failure of the person to comply within the specified period is a violation of this section.

C. Upon receipt of a sworn complaint of a substantial violation of this chapter from the designated enforcement officer, the Commissioner or board chairman may, in conjunction with

or subsequent to a notice to comply as specified in subsection B of this section, issue an order requiring all or part of the activities on the site to be stopped until the specified corrective measures have been taken. In the case of an activity not authorized under this chapter or where the alleged permit noncompliance is causing, or is in imminent danger of causing, significant harm to the coastal primary sand dunes protected by this chapter, the order may be issued without regard to whether the person has been issued a notice to comply pursuant to subsection B of this section. Otherwise, the order may be issued only after the permittee has failed to comply with the notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority, permittee, resident owner, occupier, or operator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the Commissioner or board chairman from taking any other action specified in § 28.2-1416.

D. Upon receipt of a sworn complaint of a substantial violation of this chapter from a designated enforcement officer, the Commission or a wetlands board may order that the affected site be restored to predevelopment conditions if the Commission or board finds that restoration is necessary to recover lost resources or to prevent further damage to resources. The order shall specify the restoration necessary and establish a reasonable time for its completion. The order shall be issued only after a hearing with at least thirty days' notice to the affected person of the hearing's time, place, and purpose, and shall become effective immediately upon issuance by the Commission or board. The Commission or board shall require any scientific monitoring plan they believe is necessary to ensure the successful reestablishment of coastal primary sand dunes protected by this chapter and may require that a pre-paid contract acceptable to the Commission or board be in effect for the purpose of carrying out the scientific monitoring plan. The Commission or board may also 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 set forth in the restoration order. The appropriate court, upon petition by the Commission or board, may enforce any such restoration order by injunction, mandamus, or other appropriate remedy. Failure to complete the required restoration is a violation of this chapter.

E. The duties of the Commissioner or the board chairman under this section may be delegated to their respective designees; however, these designees shall not be designated enforcement officers. (1992, c. 836.)

§ 28.2-1418. Violations; penalty.

Any person who knowingly, intentionally, or negligently violates any order, rule, or regulation of the Commission or of a wetlands board, any provision of this chapter or of a coastal primary sand dune zoning ordinance enacted pursuant to this chapter, or any provision of a permit granted pursuant to this chapter is guilty of a Class 1 misdemeanor. Following a conviction, every day the violation continues is a separate offense. (1992, c. 836.)

Cross references. - As to punishment for Class 1 misdemeanors, see § 18.2-11.

§ 28.2-1419. Injunctions.

Upon the petition of the Commission or a wetlands board to the circuit court of the county or city where any act is done or threatened which is unlawful under this chapter, the court may enjoin the unlawful act and order the defendant to take any steps necessary to restore, protect, and preserve the dunes or beaches involved. This remedy shall be exclusive of and in addition to any criminal penalty which may be imposed under § 28.2-1418. (1992, c. 836.)

§ 28.2-1420. Penalties.

A. Without limiting the remedies which may be obtained under this chapter, any person who violates any provision of this chapter or who violates or fails, neglects, or refuses to obey any Commission or wetlands board notice, order, rule, regulation, or permit condition authorized by this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$25,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring dunes or beaches therein, in such a manner as the court may, by order, direct, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

B. Without limiting the remedies which may be obtained under this chapter, and with the consent of any person who has violated any provision of this chapter or who has violated or failed, neglected, or refused to obey any Commission or wetlands board order, rule, regulation, or permit condition authorized by this chapter, the Commission or wetlands board may provide, in an order issued by the Commission or wetlands board against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection A of this section. Civil charges may be in addition to the cost of any restoration ordered by the Commission or a wetlands board. (1990, c. 811, § 62.1-13.27:1; 1992, c. 836.)