



The Mount Vernon Council of Citizens Associations, Inc.

P.O. Box 203, Mount Vernon, VA 22121-9998

<http://www.mvcca.org>

Dear Supervisor Storck

July 28, 2022

Your assistance is requested regarding Living Shore Lines legislation. The MVCCA is requesting this support at the request of our many members who live along our many waterways.

We as an organization care deeply about the environment and our members would in no way recommend anything that would negatively impact the waterways in our area. We believe the request to grandfather current riprap and bulkheads is not an unreasonable request.

These citizens believe that the current legislation and Wetlands Boards procedures can and do negatively impact them. Our resolution is attached.

Regards,

Katherine Ward

Katherine Ward
Cochair
MVCCA

Attachment:

MOUNT VERNON COUNCIL OF CITIZENS ' ASSOCIATIONS (MVCCA) E&R 2022-01
RESOLUTION IN SUPPORT OF HOUSE BILL 739 ON LIVING SHORELINES AND
COMMENT ON THE DRAFT WETLAND BOARD GUIDANCE

MOUNT VERNON COUNCIL OF CITIZENS 'ASSOCIATIONS (MVCCA) E&R 2022-01
RESOLUTION IN SUPPORT OF HOUSE BILL 739 ON LIVING SHORELINES AND
COMMENT ON THE DRAFT WETLAND BOARD GUIDANCE

WHEREAS, on January 26, 2022 the MVCCA approved a resolution in support of House Bill 739 on Living Shorelines;

WHEREAS, 1) lacking support from the Fairfax County Board of Supervisors in advance of a January meeting of the Chesapeake Subcommittee and 2) as a result of false/misleading testimony from the Chesapeake Bay Foundation and other environmental representatives, who claimed that property owners are not being impacted as a result of the 2020 legislation, House Bill 739 did not advance beyond the Chesapeake Subcommittee;

WHEREAS, in response to community comment, including the above referenced resolution of the MVCCA, Supervisor Storck asked the Fairfax County Wetlands Board to explore the development of guidance that would consider costs and impacts to property owners as well as provide an applicant knowledge about how they can comply with living shoreline requirements;

WHEREAS, the draft guidance circulated by the Wetlands Board Staff recognizes that a variety of factors, including cost to remove a sea wall and cost to install a living shoreline may be considered in the decision making process, but fails to provide the applicant sufficient information to assess how to comply with requirements enabling them to maintain and repair an existing sea wall or bulkhead;

WHEREAS, the draft guidance does not address either the 1984 Attorney General opinion¹ nor Virginia Institute of Marine Sciences guidance that provide for maintaining sea walls or bulkheads that would not impact wetlands;

WHEREAS, Virginia's 2020 living shorelines legislative update establishes Virginia as the only state among the states within the Chesapeake Bay Watershed that established a framework that results in a taking of property without compensation in violation of the 5th and 14th Amendments to the U.S. Constitution (while Maryland has a preference for living shorelines, it provides exemptions so that property will not be taken without compensation);

WHEREAS, the draft guidance is vague and would permit the Wetlands Board to essentially decide an issue any way they want to, depriving an applicant of knowledge about how they can comply, and this can lead to a decision by a court on appeal of an adverse decision of the wetlands board that the decision was arbitrary and capricious; and

WHEREAS, given the vagueness of the draft guidance, the impacts to waterfront property owners, and the likelihood that a decision to remove an existing sea wall and install a living shoreline will be litigated, it is incumbent on the County to provide clearer guidance that

¹ In 1984 Virginia Attorney General Gerald Baliles affirmed "bulkheads are included within the word "facilities" in § 3(h), and that the normal maintenance, repair or additions to a bulkhead would be permitted under that section if no further wetlands were covered."

explicitly explains how the guidance outlined above will be used to guide decisions by the Fairfax County Wetlands Board.

THEREFORE BE IT RESOLVED that the MVCCA has concluded that the draft Wetlands Board Guidance does not provide the clarity needed to address the concerns associated with the 2020 living shorelines legislation as it continues to deprive an applicant seeking to retain their existing sea wall or bulkhead of knowledge about how they can comply;

BE IT FURTHER RESOLVED that the MVCCA has concluded that the proposed Wetlands Board guidance resulting from the 2020 legislation creates legal vulnerabilities resulting from 1) the vagueness of the guidance, which would allow for an agency or wetlands board to decide an issue any way that they wish so that decisions are arbitrary and capricious and 2) should decisions go against the desires of a property owner who wishes to repair their existing sea wall/bulkhead and is required to install a living shoreline then that decision could lead to a court challenge alleging a taking without compensation.

BE IT FINALLY RESOLVED that the MVCCA requests that members of the Fairfax County delegation to the General Assembly provide a draft of legislation to be introduced during the next legislative session that reflects the changes outlined in House Bill 739 by August 1, so that it can be reviewed by the Fairfax County Board of Supervisors and included in the Board's legislative package.

Passed by the MVCCA General Council July 27,2022