



The Mount Vernon Council of Citizens Associations, Inc.

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

<http://www.mvcca.org>

Supervisor Dan Storck
2511 Parkers Lane
Alexandria, VA 22308

Dear Supervisor Storck.

Dec 28, 2023

The MVCCA's General Council unanimously approved the attached resolution regarding living shorelines and the wetlands board. Our members are seeking your support to enact our request.

Regards,
Katherine Ward

Katherine Ward
Cochair
MVCCA

Attached: MOUNT VERNON COUNCIL OF CITIZENS' ASSOCIATIONS (MVCCA) RESOLUTION (E&R & P&Z) 2023-J03 CHANGE VIRGINIA'S LIVING SHORELINES LAW

MOUNT VERNON COUNCIL OF CITIZENS' ASSOCIATIONS (MVCCA) RESOLUTION (E&R & P&Z)
2023-J03 TO CHANGE VIRGINIA'S LIVING SHORELINES LAW

WHEREAS, the MVCCA has described to our elected leaders many concerns with the 2020 living shorelines law in resolutions during 2022 dated January 26, July 27, and September 13;

WHEREAS, Virginia law does not provide requirements for tidal waterfront property owners to maintain existing shoreline stabilization structures so that they do not release soils into waterways and the 2020 law discourages waterfront property owners from submitting a permit application to fix shoreline stabilization structures;

WHEREAS, the 2020 law established living shorelines as the preferred alternative for shoreline stabilization with no constraints on the decisions of a local Wetlands Board or the Virginia Marine Resources Commission that would avoid a takings without compensation, which is prohibited under the 5th and 14th Amendments to the U.S. Constitution;

WHEREAS, the MVCCA has advocated for HB 739, which would: 1) provide a process that provides waterfront property owners notice of a shoreline stabilization structure that needs repair and require that repair following notice and 2) remove the provisions of the law that encourage the takings of property without compensation in violation of the 5th¹ and 14th² Amendments to the U.S. Constitution;

WHEREAS, the current law directs consideration of environmental, economic, and public and private benefit and detriment, but there is no transparent balancing of these considerations, and impacts to the property owner are often lost in the permit review process;

WHEREAS, Mount Vernon waterfront property owners believe that some decisions by the Fairfax County Wetlands Board are unreasonable (e.g., requiring the creation of wetlands where there were none before); and

¹ 5th Amendment: No person shall be ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. In *Armstrong v. United States* (1960), the Supreme Court wrote: "The Fifth Amendment's [Takings Clause] . . . was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." (See: <https://constitutioncenter.org/the-constitution/amendments/amendment-v/clauses/634>)

² 14th Amendment: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (See: <https://www.law.cornell.edu/constitution/amendmentxiv>)

WHEREAS, the Fairfax County Wetlands Board will benefit from including at least some board members who own waterfront property with a shoreline stabilization structure and have practical experience in maintaining a shoreline stabilization structure.

THEREFORE, BE IT RESOLVED THAT the MVCCA urges our elected leaders to adopt HB 739, which has been introduced by Delegate Paul Krizek;

BE IT FURTHER RESOLVED THAT the MVCCA urges that the Wetland Board Guidance be clarified to address the need for permitting for the maintenance of existing structures and that said guidance shall be coordinated with Senator Scott Surovell and Delegate Paul Krizek; and

BE IT FINALLY RESOLVED THAT the MVCCA urges the Board of Supervisors to appoint some members to the Wetlands Board who are tidal waterfront property owners having a shoreline stabilization structure on their properties and who have practical experience in shoreline stabilization structures, maintenance responsibilities and cost.

APPROVED BY THE MVCCA GENERAL COUNCIL ON DECEMBER 20, 2023