

Written Statement of Larry J. Zaragoza, D.Env.
Before the House Agriculture Chesapeake and Natural Resources
Chesapeake Subcommittee Committee
In Support of House Bill 739
January 24, 2022

I request your support for House Bill 739. The passage of the law arising from Senate Bill 776 in 2020 fundamentally changes the permitting process to establish a living shoreline as the preferred alternative for all shoreline stabilization unless the best available science shows that living shorelines are not suitable. Should a permit applicant seek to retain their existing sea wall they will likely need to obtain one or more experts to address issues like developing a best available science justification. The law arising from Senate Bill 776 allows local wetlands board or the Virginia Marine Resources Commission (VMRC) to consider many site specific conditions but does not include the impacts to the property owner. The process is highly subjective and it does not appear to be possible to predict the outcome of a permit application to maintain or replace an existing sea wall.

VMRC staff, Fairfax County staff, Fairfax County Wetlands Board members, and publications (see attached list) are consistent in their conclusion that as a result of the law arising from Senate Bill 776, a property owner may no longer be permitted to repair or maintain their sea wall and be required to install a living shoreline.

The law arising from Senate Bill 776 has impacts on waterfront property owners. First, the law makes the process of requesting a permit for anything other than a living shoreline very difficult to challenge and expensive. Second, if a property owner is denied a request to repair or maintain their sea wall, then they will lose at least part of their yard to a living shoreline and must bear the expense of creating the living shoreline. These costs can easily total hundreds of thousands of dollars, as they include the costs of experts and engineers. The law resulting from Senate Bill 776 also has another unintended consequence in that it

also results in a taking without compensation for property owners who want to retain their shoreline stabilization structure (which could be either a sea wall or rip rap) and their request is denied. Unless House Bill 739 or a similar bill is adopted, I expect that the litigation over the law arising from Senate Bill 776 and resentment from many voters.

During the November 9, 2021 meeting of the Fairfax County Board of Supervisors, Chairman Jeffrey McKay, expressed frustration with the General Assembly over this bill because Fairfax County officials were not consulted before adopting. The Board is in the process of reviewing House Bill 739, which addresses the concerns raised by Senate Bill 776 and at least one Board member will be discussing this bill with its sponsor, Delegate Paul Krizek. The concern for the impact to property owners has triggered a resolution from the Mount Vernon Council of Citizens' Associations to the Fairfax County Board of Supervisors as the Board was in the process of adopting an ordinance and update to the Comprehensive Plan to conform to this new law. The Mount Vernon Council of Citizens' Associations will be considering a resolution supporting House Bill 739 on Wednesday night.

By way of background, I am a waterfront property owner with a sea wall, which is required as a part of our homeowner association bylaws. We bought our property in part because we enjoy the water and associated wildlife. I worked for the Environmental Protection Agency for over 42 years where I sought to bring community groups, those responsible for pollution and others together to support cleanups and redevelopment. In my community, I volunteer in a variety of areas to protect the environment at the local and regional level.

In closing, I believe laws should be coordinated with local governments, have widespread public support, and respect property rights. As such, I ask for your support for House Bill 739 to correct the unintended impacts to property owners.

Articles describing the how the law arising from Senate Bill 776 has changed the permitting process for shoreline stabilization

Williams Mullen. (Henry R. "Speaker" Pollard, V). 7/22/2021. Revised Tidal Wetlands Guidelines for Virginia: A New Mandate for Living Shoreline Use and Sea Level Rise Adaptation. <https://www.williamsmullen.com/news/revised-tidal-wetlands-guidelines-virginia-new-mandate-living-shoreline-use-and-sea-level-rise>

Waterfront Law, July 27, 2020. Virginia Chooses Living Shorelines To Protect Against Erosion <https://www.waterfrontpropertylaw.com/blog/posts/living-shorelines-to-protect-against-erosion/>

Waterfront Law. October 20, 2020. The Virginia Marine Resources Commission's Implementation Of The Living Shoreline Requirement In SB776. <https://www.waterfrontpropertylaw.com/blog/posts/vmrc-implementation-of-living-shoreline-requirement/>

Vandenter Black LLP, Attorneys at Law. 6/26/2020. Virginia Prioritizes “Living Shorelines” for Shoreline Development and Management. <https://vanblacklaw.com/blogs/environmental-law-monitor/virginia-prioritizes-living-shorelines-for-shoreline-development-and-management/>

Martindale. June 26, 2020. Virginia Prioritizes “Living Shorelines” For Shoreline Development and Management. Joseph Romero member at Vandenter Black, LLP. https://www.martindale.com/legal-news/article_vandenter-black-llp_2529036.htm