



February 26, 2021

The Honorable Kumar P. Barve
Environment and Transportation Committee
Room 251, House Office Building
Annapolis, Maryland 21401

Re: House Bill 1135 – Environment - State Wetlands - Piers and Other Improvements

Dear Chairman Barve and Members of the Committee:

The Maryland Department of the Environment (MDE) has reviewed House Bill 1135, entitled Environment - State Wetlands - Piers and Other Improvements and would like to offer a letter of information regarding this legislation.

House Bill 1135 (“HB 1135”) would add a section to Maryland Annotated Code Environment Article § 16-202.1 barring a community association from preventing a homeowner from constructing a pier or other improvement into waters of the state, provided the homeowner had received the requisite approvals from federal, state, and local authorities. The State of Maryland - like all other states - owns the submerged lands beneath the navigable waters within its borders. In Maryland, riparian landowners - whose privately-owned land extends to the mean high-water line - generally have a common-law right of reasonable access to navigable water and, by statute, the right to build a pier out over State-owned submerged lands to provide such access. Those riparian rights, however, have always been subject to the State’s obligation under the public trust doctrine to hold State-owned property for the use of all citizens. Many court cases have supported that the area between mean high water and mean low water, title to which is vested in the State of Maryland, is held for the benefit of the inhabitants of the State.

Currently, State regulations such as COMAR 26.24.01.02, 26.24.02.03, & 26.24.04.02 specifically define riparian owners and identify the criteria for evaluating tidal wetlands licenses or permit applications. Furthermore, Env’t §16-103 already does what this legislation is proposing, “Except as specifically provided in this title, a riparian owner may not be deprived of any right, privilege, or enjoyment of riparian ownership that the riparian owner had prior to July 1, 1970.” In addition, COMAR 26.24.04.02, identifies pier criteria that all piers must conform to and that all pier activities should conform to State, federal, or local land use requirements.

The language of HB 1135 is vague and will likely lead to confusion in application and enforcement. The bill does not address what “approvals” at the federal, state, and local level would need to be attained to override the authority of a community association. Additionally, the term “other improvement” is very broad and could cover a wide range of construction activities that may conflict with the regulatory authority of MDE and/or other agencies (DNR, CAC, BPW, etc.). MDE permit decisions support many goals for maintaining tidal wetlands and their numerous benefits, including recreational fishing, commercial fish and shellfish harvesting, aesthetics, and natural shoreline protection. If MDE lacked the ability to consider these other factors in permit decisions, the benefits of tidal waters and wetlands may

be greatly diminished.

Community associations in waterfront communities sometimes retain ownership of the narrow strip of land between the mean high-water line and the individual waterfront properties; in those cases, the community association, not private property owners, hold the riparian rights along the shoreline. Alternatively, some community associations retain riparian rights through a deed restriction or other instruments. Many deed restrictions/instruments used by community associations have private remedies to address the exact situation governed by HB 1135.

Thank you for your consideration. We will continue to monitor House Bill 1135 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott

cc: The Honorable Brian Chisholm