

December 29, 2021

Via email to: cc@boston.gov

Chair Michael Parker
City of Boston Conservation Commission
City Hall Room 709
Boston, MA 02201

Subject: Comments to Inform Conservation Commission's "Phase II" Wetlands Regulations

Dear Chair Parker and Conservation Commissioners:

Conservation Law Foundation, Charles River Watershed Association, Mystic River Watershed Association, Charles River Conservancy, and Neponset River Watershed Association submit the following comments to inform the Conservation Commission's review of the final "Phase II" regulations implementing the Ordinance Protecting Local Wetlands and Promoting Climate Change Adaptation in the City of Boston ("the Wetlands Ordinance"). While we continue to believe that consideration of climate change impacts should have been incorporated into this phase of the rulemaking, we support the Commission finalizing and promulgating the current draft of the regulations so that it can proceed to drafting "Phase III" regulations as soon as possible.

As the Commission is aware, CLF previously submitted two extensive comment letters on the proposed Phase II regulations in conjunction with Charles River Watershed Association and other local environmental organizations. Since that time, substantial revisions have been made to the draft regulations including several that directly address our feedback. We appreciate the Commission's responsiveness to our concerns and recommendations. The revisions do not, however, address the concerns we raised about the definition of Land Subject to Coastal Storm Flowage (LSCSF) and its failure to consider future climate change impacts.

Following the special hearing on October 27, 2021, CLF staff met with Department of Environment and Conservation Commission staff ("City staff") to discuss these outstanding issues. City staff provided several reasons for bifurcating the regulations addressing climate change and the LSCSF performance standards, including: (1) a concern that project proponents will be confused about the extent of LSCSF if the City's definition differs from the state definition, (2) a desire to have more nuanced performance standards for areas in the future floodplain, especially with regard to temporary uses/structures, and (3) confidence that the 2016

Federal Emergency Management Agency (FEMA) maps for Boston are, or will be upon anticipated revisions, an accurate depiction of the City's present flood risk. While we do not completely agree with the current approach or the City's stated rationale for it, we understand the City's desire to finalize the Phase II regulations so that those performance standards can take effect for new development as soon as possible. We agree that it is beneficial for new development in the LSCSF resource area to be subject to some regulation now, even if regulations for the future floodplain are still forthcoming. We also appreciate that some nuance will be required for performance standards that apply to certain uses in the future floodplain and that beginning that process now would further delay finalization of the LSCSF performance standards.

Now that the Commission is finalizing the "Phase II" regulations, we expect it to expeditiously begin the process of drafting "Phase III" regulations, which will implement the provisions of the ordinance relating to climate change, climate equity and environmental justice, and extended riverfront areas. It is critical that the Phase III regulations be developed and implemented in a timely manner. The Commission is already well behind the anticipated schedule put forth in its "Work Plan for Implementation of Wetlands Ordinance Regulations."¹ Addressing climate change and equity in Conservation Commission review is urgent; we cannot afford further delay.

We urge the Commission to consider the following recommendations as it undertakes the drafting process for this next phase:

- The Commission should ensure that performance standards for the proposed Coastal Flood Resilience Zones and subdivisions (collectively "CFRZ") are appropriately stringent and consider the fact that many structures built today will have a useful life or design life of at least 50 years. Performance standards for these forward-looking floodplains must consider the impacts that a structure will face in the future, not just at the time of construction.
- The Commission should ensure that performance standards for CFRZ are mandatory, not voluntary or advisory.
- The Commission should ensure that the jurisdictional area for CFRZ is developed in a manner that allows it to evolve and be responsive to changes in climate science, preferably without requiring frequent revisions to the regulations.
- The Commission should look to the current state process to revise Massachusetts Environmental Policy Act (MEPA) requirements to better incorporate equity and environmental justice. These revisions will create heightened requirements for

¹ See "Conservation Commission Work Plan for Implementation of Wetlands Ordinance Regulations," <https://www.boston.gov/sites/default/files/file/2020/04/Workplan.pdf> (last accessed Dec. 20, 2021).

projects in Environmental Justice communities and could provide a model for the Commission.²

- The Commission should work with watershed organizations and other partners to identify appropriate areas for designation as extended riverfront areas.
- The Commission should consider broadening the relatively small Community Advisory Board (CAB) or creating opportunities for meaningful engagement with stakeholders beyond this group—including environmental and social justice organizations, housing advocates, and other community-based organizations—throughout the process of developing the Phase III regulations to solicit and respond to feedback as early as possible.
- The Commission should revise its Work Plan to set a realistic timeline for developing and finalizing the Phase III regulations that reflects the urgency of considering climate change and equity in project review and approval.

Sincerely,

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² See generally “MEPA Public Involvement Protocol for Environmental Justice Populations,” <https://www.mass.gov/doc/final-mepa-public-involvement-protocol-for-environmental-justice-populations-effective-date-of-january-1-2022/download> (last accessed Dec. 20, 2021); and “MEPA Interim Protocol for Analysis of Project Impacts on Environmental Justice Populations,” <https://www.mass.gov/doc/final-mepa-interim-protocol-for-analysis-of-project-impacts-on-environmental-justice-populations-effective-date-of-january-1-2022/download> (last accessed Dec. 20, 2021).