

March 22, 2022

Via email to: mayor@boston.gov

The Honorable Michelle Wu
Mayor, City of Boston
1 City Hall Square, Suite 500
Boston, MA 02201

Subject: Boston Conservation Commission Wetlands Regulation Process and Phase III Regulations

Dear Mayor Wu:

We are writing regarding the current Conservation Commission process to draft “Phase III” regulations as part of the implementation of the Ordinance Protecting Local Wetlands and Promoting Climate Change Adaptation in the City of Boston (“the Boston Wetlands Ordinance”). Given your leadership on the Boston Wetlands Ordinance and on climate action more broadly, we wanted to provide an update on the process so far and summarize our recommendations for the next phase of rulemaking. Phase III will focus on the critical goals of climate resilience, climate equity, and environmental justice, and it is essential that the Commission centers equity and justice in this process, drafts appropriately rigorous standards, and acts swiftly in implementing this final stage.

Our organizations, collectively and individually, have submitted numerous comment letters to inform both Phase I and Phase II of this process. As Phase III is about to be underway, we summarize here our recommendations for this next stage, which include some of our previous comments which were not fully incorporated into Phase II, but which are crucial to this next phase of the regulations. In brief, the adopted Phase II regulations represented an initial step towards greater protection for wetlands resources and increased climate resilience but fall short of setting sufficiently rigorous and effective climate standards as the ordinance intended. Phase III is an opportunity to remedy this by creating appropriately stringent regulations pertaining to climate resilience. Additionally, Phase III aims to address the provisions of the ordinance relating to climate equity and environmental justice. To effectively do so, this process should prioritize meaningful and equitable stakeholder engagement.

The Phase III regulations are the heart of the Boston Wetlands Ordinance; it was celebrated as a major step forward precisely because of its groundbreaking climate resilience, climate equity, and environmental justice provisions. It is critical that the city invest the necessary resources into this regulatory effort to ensure that robust standards are developed in a timely manner in order to meet the urgent need to build climate resilience throughout Boston in an equitable way, as intended by the ordinance.

We have urged the Commission to consider the following specific recommendations as it undertakes the drafting process for Phase III:

- While the Phase II regulations incorporate consideration of climate risks for projects in the existing floodplain as determined by FEMA (i.e., the land subject to coastal storm flowage resource area), there are no similar requirements for the *future* floodplain—including the near-future floodplain. This next phase of regulations should include performance standards that address increasingly flood-prone areas, in addition to the existing FEMA A and VE zones.
- The Commission should use Coastal Flood Resilience Zones and subdivisions (collectively “CFRZ”) to address the above-referenced need for performance standards in the future floodplain. The performance standards for this new resource area should be appropriately stringent and consider the fact that many structures built today will have a useful life or design life of at least 50 years—necessitating that performance standards for these forward-looking floodplains account for 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 without requiring frequent revisions to the regulations.
- The Commission should look to the state’s efforts to revise Massachusetts Environmental Policy Act (MEPA) requirements to better incorporate equity and environmental justice as a model for the Phase III regulations. The MEPA revisions create heightened requirements for projects in Environmental Justice communities¹
- The Commission should go beyond procedural justice when addressing environmental justice and equity in the Phase III regulations.
- The Commission should work with watershed organizations and other partners to identify appropriate areas for designation as extended riverfront areas—in a highly-developed environment like Boston, extended riverfront areas provide critical ecological protection to the resource areas and flood protection to the local community.

¹ 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,” (last accessed Dec. 20, 2021).

- The Commission should broaden the relatively small Community Advisory Board (CAB) and/or create 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.
- While not formally part of Phase III, the scope of work in this phase should also consider how to allocate funding and resources to achieve and enforce the aims of the Boston Wetlands Ordinance going forward.

We hope you will convey your support for these recommendations to the Commission and ensure that the Commission receives sufficient resources to accomplish the critical task of drafting and finalizing—in a timely manner—the Phase III regulations. Thank you for your work and leadership on climate resilience and environmental justice, and we look forward to engaging in the Phase III processes to come.

Sincerely,

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