



July 28, 2021

Via email

Michael Parker
Chair, City of Boston Conservation Commission
City Hall Room 709
Boston, MA 02201
cc@boston.gov

RE: A Better City's Comment Letter on Boston's Wetlands Ordinance Phase II Regulations

Chair Parker and distinguished Conservation Commissioners,

On behalf of our 130 member businesses working across sectors in Greater Boston, we would like to provide some initial comments regarding the draft "Phase II" regulations implementing the Ordinance Protecting Local Wetlands and Promoting Climate Change Adaptation in the City of Boston ("Wetlands Ordinance"). We are grateful for the opportunity to provide public comments on these Phase II regulations, and support the Commission's leadership in moving forward with the implementation of this important Wetlands Ordinance in a way that is customized to Boston's urban environment. We have some suggestions for improvements to the Phase II regulatory language that may provide additional clarity regarding implementation and enforcement timelines, regulatory alignment with climate resilience projects, and ensuring that the Wetlands Ordinance is using Boston's best-available flood projection data. We look forward to participating in future hearings and working group sessions regarding regulatory implementation, as appropriate.

A Better City offers the following recommendations to help strengthen the draft Phase II Regulations for the Boston Wetlands Ordinance:

Clarify Implementation & Enforcement Timelines

More clarity as to the implementation and enforcement timelines associated with the Phase II regulations is needed, so that applicants can understand the earliest feasible time of application of these regulations on development projects in Boston. Especially since the timelines for implementation differ from the 60-day effective date for isolated vegetative wetlands, the 14-day effective date for vernal pools, and the 90-day effective date for Land Subject to Coastal Storm Flowage (LSCSF), clarity, consistency, and predictability for regulatory implementation will be vital to ensuring success. Regulations must affirm that projects that have already gone through MEPA regulatory review, Article 80 review, and others, are not suddenly beholden to this new set of regulations immediately upon passage. We suggest that the effective date of the Ordinance's regulations account for the need for local approvals, design time, and neighborhood/community stakeholder engagement, when possible.

Vernal Pools

A Better City supports the definition of vernal pools that aligns with the Wetlands Protection Act. However, we request additional clarity around the anticipated timeline for measuring the impact of development projects on vernal pools in Boston. While the Ordinance references that, "the applicant shall take into consideration the impacts of climate change on Vernal Pool and Vernal Pool Habitat and integrate climate resilience and adaptation strategies to protect the resource area and properties adjacent to said area *for the entire design life* of the project," A Better City suggests more clarity, since design life can be subjective. Instead of "design life" we would suggest the clarification of a 50-year timeline throughout these regulations.



Ensure Alignment with Needed Climate Resilience Projects

As currently drafted, A Better City is concerned that there are some aspects of the draft Phase II regulations that may hinder Boston's ability to implement vital climate resilience projects. The proposed draft Phase II regulations must ensure alignment with other climate resilience policy processes occurring within the City, like the Coastal Flood Resilience Overlay District, and implementation of Climate Ready Boston projects, while also allowing for creative and innovative developers to prioritize climate resilience across their projects.

A Better City recommends further clarity regarding the scope and type of resilience projects that the Commission may approve at their discretion. For example, we recommend that the regulations include a provision allowing the Commission to waive requirements when an Applicant demonstrates no adverse effect on the ability of the resource areas to protect the values of the Ordinance. This would allow the Commission to provide some flexibility in addressing unforeseen consequences and would also provide more opportunity for Applicants to be creative and innovative in their design, while also protecting vital wetlands and critical habitat.

A Better City also recommends that the Wetlands Ordinance Phase II Regulations include provision for flood protection infrastructure like berms, which can include an array of grey, green, and hybrid climate solutions to reduce flooding and increase critical habitat. We are concerned that the draft LSCSF regulatory language will unnecessarily preclude vital flood mitigation strategies in Boston. Sections XVII.E.3 through 5, 11, and 12 do not allow for Applicants to demonstrate "no adverse effect" and also prevent flood mitigation strategies that would involve filling and incorporating berms into areas of the floodplain. The change in these provisions would see some of Boston's most creative and resilient development projects denied permitting.

Use Best-Available Flood Projection Data

Land Subject to Coastal Storm Flowage (LSCSF)

A Better City recommends that the flood maps upon which this Ordinance is based are using the most up-to-date flood projection data available, and that these maps are aligned with the flood projections and planning found within Climate Ready Boston, as well as the Coastal Flood Resiliency Zone, the Inland Flood Resiliency Zone, the Boston Water and Sewer Commission, and additional future resilience regulations that seek to address coastal storm flooding impacts.

It is our understanding that the Ordinance does not *require* the use of FEMA maps as they relate to LSCSF. However, we are concerned that the current draft Phase II regulations do in fact reference FEMA flood maps (which are known to be outdated, based on historic data, and do not adequately incorporate existing flood protection measures), rather than more accurate depictions of current flooding risks in Boston based on most recent data. LSCSF should be focused on areas that would fall within current 100-year flood events and addressed within the Coastal Flood Resilience Zone, which would not preclude the Commission's ability to regulate future 100-year storm events.

Finally, A Better City recommends working with the Boston Water and Sewer Commission to help manage stormwater in the City and to ensure that regulatory language in the Wetlands Ordinance does not prevent us from implementing vital stormwater provisions. In addition to considerations around preventing flood inundation into the City during storm events, the Ordinance must also consider the need for draining of coastal and inland flooding from the City during storm events and extreme precipitation. Coordination of flood maps and relevant stormwater data with the Conservation Commission and the Boston Water and Sewer Commission will be essential in protecting our City, and especially in prioritizing our frontline communities as we address climate risks. Further data from



the Boston Water and Sewer Commission's storm inundation viewer may be helpful in informing the Phase II regulations relevant to LSCSF, in particular.

In conclusion, A Better City applauds the Conservation Commission for their leadership in customizing Wetlands Ordinance regulatory language to the needs of our City, while also considering alignment and coordination with parallel climate policy processes in Greater Boston. We appreciate the opportunity to provide public comment and look forward to working with the Conservation Commission and other stakeholders to ensure that we can have an effective and coordinated implementation of the Boston Wetlands Ordinance moving forward.

Sincerely,

A handwritten signature in black ink, reading 'Rick Dimino'.

Rick Dimino
President & CEO, A Better City