

INFORMATION: Boston Local Wetlands Ordinance

August 7, 2013

Why do we need a Local Wetlands Ordinance (LWO)?

- Superstorm Sandy and other recent events have shown that coastal cities are vulnerable to the effects of climate change and must be prepared for a future that will bring more frequent and more extensive coastal flooding. If our built environment is not properly designed and protected, flooding can result in water contamination, pollution, permanent damage to buildings and their contents, and danger to people. And if our natural resources are not adequately safeguarded, they can no longer function in ways that are economically and socially valuable to Boston's citizens.
- Given the increased development interest in areas around Boston Harbor, the City needs to ensure that development takes appropriate and cost-effective measures to prepare for the foreseeable effects of climate change to ensure that these areas—and Boston as a whole—remain safe for its residents and visitors as well as economically vibrant for old and new businesses. The LWO, by overseeing the complex relationship between the natural and built environment, will be an important component of this effort.
- Currently, the City of Boston, through the Conservation Commission, regulates activities in coastal and inland wetland resource areas through the Commonwealth's 1972 Wetlands Protection Act (WPA) and accompanying regulations (310 CMR 10). Although the WPA provides for the protection of many wetland resource areas, it does not enable the Commission to protect against the projected effects of climate change.
- Massachusetts municipalities can enact LWOs that provide greater authority to protect more resource areas, protect existing resources to a greater degree, and consider how future conditions will affect resource areas.
- More than half of the 351 cities and towns in Massachusetts have already adopted LWOs. Of the 78 municipalities in the Coastal Zone, Boston is one of only six that have not yet adopted such an ordinance.
- In February of 2013, Mayor Thomas M. Menino asked the Conservation Commission to recommend guiding principles for drafting a Local Wetlands Ordinance that addresses these concerns.

What is the Wetlands Protection Act (WPA)?

- The Commonwealth's WPA (M.G.L. Ch. 131 § 40) recognizes 8 important public values or functions provided by wetlands, water bodies and other wetland resources areas. Collectively known as interests, they are:
 - Protection of public and private water supply
 - Protection of groundwater supply
 - Flood control
 - Storm damage prevention
 - Prevention of pollution
 - Protection of land containing shellfish
 - Protection of fisheries
 - Protection of wildlife habitat
- The WPA protects these values in 12 types of Coastal Resource Areas and 5 types of Inland Resource Areas. Only the Inland Resource Areas (*in italics*) have specific performance standards in the regulations. The Coastal Resource Areas have general standards or none at all.

Coastal Resource Areas		Inland Resource Areas
Land Under Water	Anadromous/Catadromous Fish Runs	<i>Land Under Waterways and Water Bodies</i>
Coastal Beaches	Land Containing Shellfish	<i>Banks</i>
Barrier Beaches	Land Subject to Coastal Storm Flowage/ Land Subject to Tidal Action	<i>Bordering Land Subject to Flooding/Isolated Land Subject to Flooding</i>
Rocky Intertidal Shores	Designated Port Area	<i>Bordering Vegetated Wetlands</i>
Coastal Dunes	Salt Marshes	<i>Riverfront (25 feet)</i>
Coastal Banks	Land Under Salt Ponds	

- Work that removes, fills, dredges, or alters any resource area is regulated to protect the eight interests and values. A permit for this type of work, known as an "Order of Conditions," specifies conditions that must be met before, during, and after completion of the work.

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What might be included in a new Local Wetlands Ordinance?

A LWO is a law that protects wetland resource areas. Regulations are the rules and administrative codes adopted under the authority granted by the ordinance. This current process includes the development of the ordinance only. A separate public process would guide the development of the accompanying regulations if the ordinance is adopted by City Council.

The Conservation Commission was assisted by a steering committee made up of representatives from the private sector, state agencies, and the Conservation Commission to develop the following **Recommended Guiding Principles** for a new Local Wetlands Ordinance:

1. The LWO should explicitly direct that the effects of sea level rise (SLR) be taken into account during review of project impacts on the interests of the Wetlands Protection Act and the Local Wetlands Ordinance.
 - a. Land Subject to Coastal Storm Flowage (LSCSF) should be better defined and mapped to reflect the most recently available data prepared by FEMA.
 - b. A regulated buffer zone to LSCSF, initially based on elevations, should be created to account for current and future SLR. The map of this buffer zone should be periodically reviewed and revised, as necessary by the Commission, as new information and SLR projections become available.
 - c. Performance standards should be developed for projects located within LSCSF and its buffer zone so that proponents can demonstrate that a project will contribute to the protection of the interests of the ordinance (including but not limited to flood control, storm damage prevention, and prevention of pollution) throughout its lifecycle, taking into account potential flooding and expected changes to the intensity and frequency of future storm events.
2. The LWO should protect Recreational Values and Plant Habitat Functions provided by resource areas and their buffer zones.
3. The LWO should protect Vernal Pools, whether or not they are located within another protected resource area. They should be delineated based on the Natural Heritage and Endangered Species Program certification criteria.
4. The LWO should protect Isolated Vegetated Wetlands. They should be identified using the Army Corps of Engineers' criteria.
5. Since work in Buffer Zones can impact resource areas, the LWO should specify that performance standards, design standards and other appropriate measures and safeguards be incorporated into regulations to better protect those resources and the functions and values they provide.
6. The LWO should improve enforcement by giving the City the discretion to issue reasonable fines for violations of the Ordinance, its regulations, and permits or administrative orders issued thereunder through the existing ticketing process (GL c. 40 s. 21D).

What Happens Next?

- The Conservation Commission will decide whether to endorse the above recommended guiding principles at their August 7, 2013 public hearing. If approved, this document will then be submitted to the Mayor.
- The Mayor's Office, with the assistance of the Environment Department, will draft an ordinance and the Mayor will propose it to the City Council.
- If the Council passes the ordinance, the Conservation Commission will develop, adopt and implement supporting regulations, including a map depicting Land Subject to Coastal Storm Flowage and its buffer zone incorporating SLR.

Please send your feedback to stephanie.krue@cityofboston.gov
Information regarding the Local Wetland Ordinance can be found at:
<http://www.cityofboston.gov/environment/Conservation/wetlands.asp>