



July 27, 2021

Via email

Chair John J. Cronin and Chair Lori A. Ehrlich
Joint Committee on Municipalities and Regional Government
municipalitiescommitteema@gmail.com

Re: H.2198 – An Act Relative to the Protection of Wetlands and Water Resources in Chapter 40B Applications

Dear Chair Cronin, Chair Ehrlich, and Members of the Joint Committee on Municipalities and Regional Government:

Thank you for the opportunity to testify today in support of H.2198, An Act Relative to the Protection of Wetlands and Water Resources in Chapter 40B Applications, on behalf of Charles River Watershed Association (CRWA). CRWA is an advocacy organization working to protect and restore the Charles River and its watershed through science, advocacy, and the law. As you heard during the hearing, this bill would close an important loophole that currently allows some developments to bypass critical environmental protections. I am providing my testimony below for future reference.

We acknowledge that the housing crisis in Massachusetts is dire and addressing it must be a priority. We fully support the development of affordable housing.

In the era of climate change, flooding from heavier, more frequent downpours is impacting more areas and has become more severe. Protecting wetlands and floodplains is one of the best tools we have to mitigate severe flooding and also be more resilient to extreme heat, storms and severe weather, and drought. These resources are also part of the system that feeds our drinking water supplies, helping to sustain baseflows to aquifers and limit migration of pollutants.

State law provides a baseline level of protection for most wetlands, streams, and rivers; however, in many cases, it doesn't go far enough. For that reason, many municipalities across the state have adopted more protective local wetlands bylaws. We at CRWA are actively working with communities in our watershed to enhance local protections for wetland areas because the value of these resources is irreplaceable and their preservation is critical to sustaining a habitable Commonwealth into the future.

Chapter 40B was designed to break down exclusionary zoning practices by allowing developers in towns with less than the statutory minimum of affordable housing to acquire waivers from certain local bylaws. Chapter 40B was not designed to weaken environmental protection, but unfortunately, the provisions allowing for waivers from local bylaws currently extend to local protections for wetlands and water supplies. In practice, this has provided some developers with an economic incentive to target inexpensive, environmentally-sensitive "wet"

properties for 40B development, even though these same properties would otherwise be subject to development restrictions or even undevelopable. In other words, because environmentally-protected land is generally less expensive to acquire, it is more attractive to developers who can use Chapter 40B to obtain waivers from the same restrictions that make the land cheap—putting our most environmentally-sensitive areas at risk.

Exempting 40B projects from standards that protect the environment undermines the work communities are doing on climate resilience, drinking water quality protection, and habitat protection and benefits only the developers who profit from these projects.

Importantly, driving affordable housing towards areas that are vulnerable to flooding and vector borne disease or that may not be able to reliably provide safe drinking water and disposal of wastewater places future residents at risk. We cannot solve the affordable housing crisis by building housing in dangerous and undesirable locations. To do so only further exacerbates existing inequities. On the other hand, protecting floodplains and preserving natural areas directly benefits vulnerable populations and the broader community by mitigating flooding and other climate impacts.

Many critical wetland areas have already been paved over—we cannot afford to lose more. To the extent these areas remain undeveloped, they must be preserved in their natural state, not viewed as “available” land for new development. There is plenty of land that has already been altered available for redevelopment, and those areas should be prioritized for affordable housing. Continuing to sacrifice our most sensitive environmental areas does not help anyone in the long-term. This loophole in 40B should be closed and we should develop affordable housing in ways that protect wetlands and water supplies.

I urge you to report H.2198 favorably out of committee. Thank you for your consideration.

Sincerely,



Heather Miller, Esq.
General Counsel & Policy Director