NEWTOWN CREEK ALLIANCE

December 2, 2019

Vincent Sapienza, P.E
Commissioner
NYC Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373

Sent via email: **ltcp@dep.nyc.gov**

RE: Comments on Department of Environmental Protection's Retained Alternatives Summary for the Citywide/Open Waters CSO Long Term Control Plan

Dear Commissioner Sapienza:

The Newtown Creek Alliance is a community-based organization dedicated to Restoring, Revealing and Revitalizing Newtown Creek. Since 2002 we have worked to restore community health, water quality, habitat, access, and vibrant commerce in and along the waterway. As part of the larger New York & New Jersey Estuary we are compelled to comment on the New York City Department of Environmental Protection's (DEP) Retained Alternatives Summary for the Citywide & East River/Open Waters Combined Sewer Overflow (CSO) Long Term Control Plan (LTCP), published October 15, 2019.

New York City's local waterways are a true asset for our members and their communities across the boroughs. While many pioneering New Yorkers have already taken to the water to kayak, fish or otherwise enjoy recreation on the water, we are not yet able to realize the full potential of these important natural resources due to CSO discharges, the largest ongoing source of pollution in NYC's waterways. While the City has made important progress toward achieving clean water goals, our shared city waters have a long way to go to meet the legal requirements of the Clean Water Act.

We are very concerned that Citywide & East River/Open Waters LTCP, which touches every borough of New York City, will not appropriately address the billions of gallons of CSO which are discharged here every year. In fact, the volume of CSO discharged to certain East River areas is set to increase with the existing approvals of other approved LTCPs, namely Newtown Creek and Bronx River. We firmly believe that city wide levels of CSO need to be drastically reduced in order to achieve a harbor where all residents can safely interact with their local waterway.

Based on the materials presented at the October 2019 Public Meeting and in the Summary of Retained Alternatives document, we have ongoing concerns with respect to DEP's methodology and its failure to address areas in the city where sewage and stormwater pollution will continue to violate state water quality standards for pathogens, dissolved oxygen, nitrogen, floatables, and other pollutants.

I. The Retained Alternatives Summary Does Not Seek Full Compliance with the Relevant Water Quality Standards.

The Retained Alternatives Summary purports to achieve compliance with water quality standards by meeting them only 95% of the time. However, New York State water quality standards for fecal coliform and dissolved oxygen are clear that they must be met 100% of the time. By using this surrogate annual

compliance metric to evaluate for attainment with water quality standards, DEP's goals are set inappropriately low and exclude from its analysis the extreme adverse water quality conditions that characterize large and harmful CSO discharges.

Moreover, DEP relies on meeting these surrogate water quality standards only as they correspond to certain sampling stations, rather than throughout the water bodies. This is a misleading approach that may mask predicted violations in water quality standards in certain areas of the water bodies. This is particularly misleading for embayments and inlets where waters are less likely to be flushed by tidal action and therefore more likely to become and stay contaminated.

II. The Citywide LTCP's "Baseline Conditions" Rely on Future Potential Pollution Controls and Ignore Climate Change.

DEP's use of the term "baseline conditions" in the Retained Alternatives Summary is misleading. In the summary document, "baseline conditions" assumes CSO discharges will be reduced by hundreds of millions of gallons citywide, based on its prediction of future dry weather flows, new capacities at wastewater treatment plants and significant implementation of green infrastructure that may never come to pass. Additionally, the Citywide LTCP relies upon successful implementation of recommended plans from previously-submitted LTCPs for waters that are tributaries to "open waters." Many details of the plans have not been designed yet, especially major grey infrastructure projects such as sewage capture and chlorination infrastructure.

Meanwhile, DEP's baseline fails to address the city's climate change predictions for more frequent and intense precipitation that will overwhelm these new systems. Annual precipitation is expected to increase by 4 to 11 percent by the 2050s. These rainfall estimates must be factored into the final Citywide LTCP.

III. The Retained Alternatives Summary Is Inappropriately Focused Only Bacteria and Dissolved Oxygen.

DEP limits the number of CSO control alternatives included in the assessment by focusing only on bacteria and dissolved oxygen levels. The LTCP must analyze the effectiveness of the selected CSO control alternatives on reducing loadings for the full range of CSO pollutants that cause adverse impacts on receiving water quality, not just pathogens and low dissolved oxygen. The Retained Alternatives Summary is defective because it fails to analyze the impact of the alternatives on floatables or nitrogen, among others.

IV. DEP's Modeling Methodologies May Have Produced Skewed Results and Underrepresented the Pollutant Contamination in Receiving Waters.

DEP employed a number of modeling methodologies, including, daytime-only sampling, avoiding sampling during late summer and early fall, "depth-averaging" modeled dissolved oxygen levels (taking the mean value of multiple depths within the water column), and using inconsistent modeling periods for different data sets. DEP must redo its analysis or justify the decisions it made to perform sampling and modeling in these ways.

V. DEP Should Focus on Usability of Waters as a Metric for a Successful LTCP.

In prior LTCPs, DEP reported its modeling results according to not only the "percentage compliance" with water quality standards, but also the frequency and volume of discharge, pollutant loading, and "time to recover" following a CSO event. This type of analysis focused on usability is a practical way to identify CSO control alternatives that can increase the number of days residents can safely come into contact with the water. In the Retained Alternatives summary, it seems that DEP is using a binary criteria to assess the proposed LTCP alternatives: whether the alternative will wholly cure the water quality impairment or not. This analysis will fail to maximize CSO reductions and improve water quality to the greatest extent.

VI. DEP Must Publish a Final Draft of the Citywide Long Term Control Plan Prior to Submission to DEC to achieve Meaningful Public Participation.

The public meetings hosted by DEP and the summary documents provided omit crucial data necessary for evaluating the Long Term Control Plans. Missing information includes assumptions made, methodologies, modeling inputs and outputs, and references, as well as key milestones and metrics by which to measure them, timelines for program completion, as well as program monitoring and reporting schedules, and enforceability mechanisms. The public needs to be given an opportunity to review the full draft LTCP before it is sent to the State, or we will not be able to provide educated input on the plan.

Thank you for the opportunity to provide public comment on the City's public meetings and Retained Alternatives Summary for the Citywide & Open Waters East River CSO Long Term Control Plan. Please feel free to reach out to us with any questions.

Sincerely,

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CC:
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