



## TOWN OF TEWKSBURY

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### CONSERVATION COMMISSION

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# Major Differences Between the Proposed Updates to the Tewksbury Wetland Protection Bylaw and the Associated Proposed Regulations:

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- (1) The proposed updates to the Tewksbury Wetland Protection Bylaw defers to the Regulations (i.e., the regulations associated with the proposed updates to the Tewksbury Wetland Protection Bylaw) for what is considered a “minor exempt activity”. The Regulations incorporate more exempt activities, consistent with the Massachusetts Wetland Protection Act (WPA) regulations. These minor exempt activities are further defined in Section 4.0 of the proposed Regulations. The regulatory citation used is provided below:

The following Minor Activities listed below are exempt from regulation under the Bylaw and the TWPR, provided that the work occurs solely within Buffer Zone and/or Riverfront Area, the work is performed in a manner as to reduce the potential for any adverse impacts to Resource Areas during construction, and post-construction measures (if-needed) are implemented to stabilize any disturbed areas. Factors that shall be considered when measuring the potential for adverse impacts to Resource Areas include the extent of the work, the proximity of the proposed work to the Resource Area, the need for erosion controls, and the measures employed to prevent adverse impacts to Resource Areas during and following the work.

- a. Unpaved pedestrian walkways less than 30 inches wide for private use and less than three feet wide for public access on conservation property;
- b. Fencing, provided it will not constitute a barrier to wildlife movement; stonewalls; stacks of cordwood;
- c. Vista pruning, as defined in 310 CMR 10.00, provided the activity is located more than 50-feet from mean annual high water (MAHW) line within Riverfront Area or from any wetland protected under the Bylaw. Vista pruning does not include pruning of landscaped areas;
- d. Plantings of native species of trees, shrubs, or groundcover, but excluding turf lawns;

- e. The conversion of lawn or existing impervious areas to the accessory uses to residential structures listed below. The accessory uses/activities listed below, including associated material staging and stockpiling, shall be located more than 50-feet from MAHW within the Riverfront Area, Bank, or Wetlands, whichever is farther. Appropriate erosion and sediment controls shall also be implemented prior to construction commencing, maintained during construction, and removed once construction has completed and all previously disturbed soils derived from said construction activities have been adequately stabilized:
  - i. Accessory structures such as decks, sheds, porches, gazebos, patios, above-ground pools, and basement bulkheads;
  - ii. The installation of a ramp for compliance with accessibility requirements;
  - iii. The conversion of said accessory structures for single family houses listed above (Section 4.0(3)(e)(1) and (2)) to lawn.
- f. The conversion of impervious to vegetated surfaces, provided erosion and sedimentation controls are implemented during construction;
- g. Activities that are temporary in nature, have negligible impacts, and are necessary for planning and design purposes (e.g., installation of monitoring wells, exploratory borings, sediment sampling and surveying and percolation tests for septic systems provided that Wetland Resource Areas are not crossed for site access);
- h. Installation of directly embedded utility poles and associated anchors, push braces or grounding mats/rods along existing paved or unpaved roadways and private roadways/driveways, and their existing maintained shoulders, or within existing railroad rights-of-way, provided that all work is conducted within ten feet of the road or driveway shoulder and is a minimum of ten feet from the edge of the Bank or Wetlands and as far away from Resource Areas as practicable, with no additional tree clearing or substantial grading within the Buffer Zone, and provided that all vehicles and machinery are located within the roadway surface during work;
- i. Installation of underground utilities (e.g., electric, gas, water) within existing paved or unpaved roadways and private roadways/driveways, provided that all work is conducted within the roadway or driveway and that all trenches are closed at the completion of each workday;
- j. Installation and repair of underground sewer lines within existing paved or unpaved roadways and private roadways/driveways, provided that all work is

conducted within the roadway or driveway and that all trenches are closed at the completion of each workday;

- k. Installation of new equipment within existing or approved electric or gas facilities when such equipment is contained entirely within the developed/disturbed existing fenced yard;
- l. Installation of access road gates at public or private road entrances to existing utility right-of-way access roads, provided that all vehicles and machinery are located within the roadway surface during work;
- m. Removal of existing utility equipment (poles, anchors, lines) along existing or approved roadways or within existing or approved electric, water or gas facilities, provided that all vehicles and machinery are located within the roadway surface during work;
- n. Vegetation cutting for road safety maintenance, limited to the following:
  - i. Removal of diseased or damaged trees or branches that pose an immediate and substantial threat to driver safety from falling into the roadway;
  - ii. Removal of shrubbery or branches to maintain clear guardrails; such removal shall extend no further than six feet from the rear of the guardrail;
  - iii. Removal of shrubbery or branches to maintain sight distances at existing intersections; such removal shall be no farther than five feet beyond the "sight triangles" established according to practices set forth in *American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets, 2011*, 6th edition, and such removal is a minimum of ten feet from a Resource Area, other than Riverfront Area; and
  - iv. Removal of shrubbery, branches, or other vegetation required to maintain the visibility of road signs and signals. Cuttings of shrubs and branches from mature trees will be performed with suitable horticultural equipment and methods that do not further damage the trees. To prevent the possible export of invasive plants, cut vegetation should be chipped and evenly spread on site, provided the chips are spread outside the Buffer Zone, and raked to a depth not to exceed three inches, clear of all drainage ways. Alternatively, all cuttings and slash shall be removed from the site and properly disposed;

- o. Installation, repair, replacement or removal of signs, signals, sign and signal posts and associated supports, braces, anchors, and foundations along existing paved roadways and their shoulders, provided that work is conducted as far from Resource Areas as practicable, and is located a minimum of ten feet from a Resource Area, any excess soil is removed from the project location, and any disturbed soils are stabilized as appropriate.
- p. Pavement repair, resurfacing, and reclamation of existing roadways within the right-of-way configuration provided that the roadway and shoulders are not widened, no staging or stockpiling of materials, all disturbed road shoulders are stabilized within 72 hours of completion of the resurfacing or reclamation, and no work on the drainage system is performed, other than adjustments and/or repairs to respective structures within the roadway.
- q. The repair or replacement of an existing and lawfully located driveway servicing not more than two dwelling units provided that all work remains within the existing limits of the driveway and all surfaces are permanently stabilized within 14 days of final grade.

(2) Under the minor exempt activities section of the Regulations, Section 4.0(3)(e), additional clarification is provided on what constitutes an exempt “accessory use” to residential structures. This regulatory citation is provided below:

The conversion of lawn or existing impervious areas to the accessory uses to residential structures listed below. The accessory uses/activities listed below, including associated material staging and stockpiling, shall be located more than 50-feet from MAHW within the Riverfront Area, Bank, or Wetlands, whichever is farther. Appropriate erosion and sediment controls shall also be implemented prior to construction commencing, maintained during construction, and removed once construction has completed and all previously disturbed soils derived from said construction activities have been adequately stabilized:

- i. Accessory structures such as decks, sheds, porches, gazebos, patios, above-ground pools, and basement bulkheads;
- ii. The installation of a ramp for compliance with accessibility requirements;
- iii. The conversion of said accessory structures for single family houses listed above (Section 4.0(3)(e)(1) and (2)) to lawn.

(3) In Section 5.0, the Regulations state that the Commission may consider permitting certain projects as “Limited Projects” (which allows waivers from Resource Area performance standards at the discretion of the Conservation Commission), in accordance with the WPA regulations. This regulatory citation is provided below:

Provided a proposed project complies with “Limited Project” criteria in accordance with 310 CMR 10.53(3) through 310 CMR 10.53(8), the Conservation Commission may allow waivers from performance standards established under the Act’s regulations and under Section 5.0(2).

- (4) In Section 7.0(6), the Regulations list certain information/documents that the Commission may require to accompany a permit application. This regulatory citation is provided below:

RDA, NOI, and ANRAD applications shall include such information and plans as are deemed necessary by the Commission to describe or confirm the location of nearby Resource Areas, the proposed activities and their effects on jurisdictional areas protected by the TWPB, in addition to information necessary to demonstrate full compliance with the TWPB and the TWPR. Depending on the complexity of the proposed activities and/or the type of application, the Commission may require the following to accompany the application:

- a. A project narrative;
- b. A Site Plan showing the area of proposed activities, nearby Resource Areas and their associated buffer zones, and locations of proposed erosion and sediment controls. The Commission may require that Resource Areas protected under the TWPB are delineated by a qualified wetland/environmental scientist, in which the delineation may be reviewed by a representative of the Commission;
- c. An erosion and sediment control plan, detailing the location, design, implementation, maintenance, and removal of the proposed erosion and sediment controls;
- d. The most recent United States Geological Survey (USGS) topographic map showing the area of the project site at a reasonable scale for the Commission to determine topographic characteristics of the area;
- e. An assessor's map showing the project site;
- f. A Natural Heritage Endangered Species Program (NHESP) map within the area of the project site to determine if the project is within Priority and/or Estimated Habitat;
- g. USGS StreamStats data to provide evidence on whether nearby streams, rivers, brooks, etc. are intermittent or perennial, in accordance with 310 CMR 10.58;
- h. Spatial analysis of the project area which:
  - i. Quantify impacts (temporary and/or permanent) to Buffer Zone and Resource Areas; and

- ii. If the project is within Riverfront Area, determining the amount of Riverfront Area, the amount of degraded land, and the amount of non-degraded land within applicable parcels.
- i. A Stormwater Report containing sufficient information to demonstrate compliance with the Massachusetts Stormwater Standards, if applicable;
- j. Documentation and/or services of third-party consultants at the expense of the applicant, such as engineers, wetlands scientists, wildlife biologists, or other experts, to aid in the review of proposed projects. Refer to Section 8.0 for further discussion on fees imposed on applicants for third-party consultants.

(5) Section 8.0 contains the fee schedule for different permit applications:

<b>Application Type</b>	<b>Local Filing Fee</b>
RDA	\$125
NOI Category 1	\$225
NOI Category 2	\$275
NOI Category 3	\$375
NOI Category 4, 5, 6	\$275
ANRAD	15% of Total Required Fee under 310 CMR 10.00 (Including State & Local Contribution) + \$25
Request for COC	\$85
Request to Amend a Permit	15% of Total Required Fee under 310 CMR 10.00 (Including State & Local Contribution) + \$25
Request to Extend a Permit	\$60 (per request)
<p><i>*Fees shall be in the form of a check made payable to "The Town of Tewksbury"*</i></p> <p><i>*NOI Local Filing Fees are applied on a per-activity basis. For example, the construction of two (2) single-family homes would require a \$550 local filing fee, since the construction of each single-family home is an instance of a NOI Category 2 filing*</i></p>	

(6) The Standard Conditions that accompany Orders of Conditions (the name of the permit issued to a corresponding Notice of Intent application) is included as Appendix A. The proposed Regulations state that the list of standard conditions may apply to an Order of Conditions:

Applicable to this Project:	Standard Condition #	Standard Condition:
	1	The Commission hereby designates the Tewksbury Conservation Commission Administrator as its administrative agent, with full powers to administer and enforce this Order of Conditions.
	2	No work shall commence on-site until this Order of Conditions has been recorded with the Registry of Deeds and the 10-day appeal period has lapsed.
	3	Any change(s) in the above described plans which will, or may cause an area subject to protection under M.G.L. Chapter 131 Section 40 and/or the Tewksbury Wetland Protection Bylaw to be altered, or any change(s) in activity subject to regulation under M.G.L. Chapter 131 Section 40 and/or the Tewksbury Wetland Protection Bylaw, shall require the applicant to inquire of the Commission, in writing, whether the changes(s) is significant enough to require the filing of a new Notice of Intent or an Amendment to the existing Order of Conditions.
	4	Prior to the start of work, the contractor and/or representatives of the project shall meet at the site with the Conservation Administrator to develop a mutual understanding of the environmental protection requirements described in the Notice of Intent and Order of Conditions. At the time of this meeting, the Commission Administrator shall also view and approve all erosion and sedimentation control measures required to be installed prior to the beginning of work as proposed in the Notice of Intent, the approved site plans, or specified in the Order of Conditions.
	5	Prior to the start of work, install and maintain sediment controls, which shall include of a properly entrenched silt fence and/or staked compost filter tubes if not already specified in the approved plans or application for the project, around the area of construction as to prevent the deposition of sediment from construction activities into nearby Resource Areas. Sediment controls shall remain in place until all areas of disturbed/loose soil and other erodible materials have been stabilized at the site.
	6	All disturbed or exposed soil surfaces shall be temporarily stabilized with hay, straw, mulch, or other protective covering and/or method approved by the Tewksbury Conservation Administrator.
	7	Members and agents of the Tewksbury Conservation Commission and the Conservation Administrator shall have the right to enter and inspect the premises to evaluate compliance with the conditions stated in this Order and may require the submittal of any data deemed necessary by this Commission for that evaluation.
	8	The developer or contractor responsible for the project's completion shall be notified of, and understand, the requirements of this Order. A copy of this Order shall be on-site while activities regulated by this Order are being performed.

	9	Upon completion of the project, the applicant shall submit with the requirements for a Certificate of Compliance (in accordance with 310 CMR 10.00 and the Tewksbury Wetland Protection Bylaw/Regulations) an As-Built site plan stamped and prepared by a professional land surveyor or professional civil engineer licensed in the state of Massachusetts. The As-Built site plan shall show sufficient spatial, dimensional, and/or topographic information for the completed project.
	10	This Order shall apply to any successor in control or successor in interest of the property described in the Notice of Intent and accompanying plans.
	11	All final topographic grading shall be permanently stabilized.
	12	Commencing with the issuance of the Order, and continuing through the existence of the same, the applicant shall submit to the Conservation Commission a written progress report every four months detailing what work has been completed in or near Resource Areas and what work is anticipated to be completed over the next period, and the status of maintaining any erosion and sediment controls.
	13	Field flags indicating the delineation of Resource Areas, as shown on approved plans for the project, must be maintained for the duration of the project, until a Certificate of Compliance is issued.
	14	Failure to obtain a Certificate of Compliance from the Tewksbury Conservation Commission upon completion of work and prior to expiration of the Order of Conditions may result in the monetary fine of \$100.00, at the discretion of the Conservation Commission.

(7) The proposed Regulations list what materials may be required to provide the Commission if the applicant is making a request to extend an existing permit:

- a. The name and address of the individual or entity making the request;
- b. The name of the applicant in which the final DOA/OOC/ORAD was issued to;
- c. The location of the project;
- d. Registry of Deeds information for the final OOC/ORAD; and
- e. A copy of the final DOA/OOC/ORAD.

(8) The proposed Regulations list what materials may be required to accompany a request for Certificate of Compliance:

- a. The name and address of the individual or entity making the request;
- b. The name of the applicant in which the final OOC was issued to;
- c. The location of the Project;

- d. Registry of Deeds information for the OOC; and
- e. A copy of the final OOC