

TOWN OF TEWKSBURY
1009 MAIN STREET
TEWKSBURY, MASSACHUSETTS 01876
DEPARTMENT OF COMMUNITY DEVELOPMENT

TOWN OF TEWKSBURY
WETLAND PROTECTION REGULATIONS

LAST UPDATED: SEPTEMBER 2023



TABLE OF CONTENTS

1.0	Purpose	1
2.0	Definitions	1
3.0	Jurisdiction	4
4.0	Exemptions.....	4
5.0	Performance Standards.....	8
6.0	Waiver.....	10
7.0	Project Applications and Requests.....	10
8.0	Fees.....	12
9.0	Notice and Hearings.....	14
10.0	Permits and Conditions	15
11.0	Coordination with Other Boards.....	18
12.0	Modifications	18
13.0	Registry of Deeds	18
14.0	Certificate of Compliance	19
15.0	Enforcement	20
16.0	Burden of Proof	21
17.0	Relation to the Wetlands Protection Act.....	21
18.0	Performance Guarantee.....	21
19.0	Appeal.....	22
20.0	Rules and Regulatory Amendments	22
21.0	Penalties.....	22
22.0	Severability.....	23

1.0 Purpose

The purpose of the Tewksbury Wetland Protection Regulations (TWPR) is to effectuate the purposes of the Tewksbury Wetland Protection Bylaw (TWPB or the “Bylaw”) and to, at a minimum, reiterate the terms defined in the Bylaw, define additional terms not inconsistent with the Bylaw, impose filing and consultant fees, and establish performance standards for work within Buffer Zone and Resource Areas.

2.0 Definitions

The following definitions shall apply in the interpretation and implementation of the TWPR. Except as otherwise provided herein or in the Bylaw, the definitions of terms shall be as set forth in the Wetland Protection Act, M.G.L. Chapter 131 Section 40 (i.e., the “Act”) and the regulations thereunder (310 CMR 10.00).

Abutter: means the owner of any property – including owners of land directly opposite on any public or private street or way, in addition to properties in another municipality or across a body of water – any portions of which lies within 100 feet radially from the Project Locus.

Alter: includes, without limitation, the following activities, whether temporary or permanent, when taken to, upon or within, or when they affect Resource Areas protected by the Bylaw:

- (1) Removing, excavating, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (2) Changing pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- (3) Draining or otherwise disturbing the ground or surface water level or water table;
- (4) Dumping, discharging, or filling with any material which may degrade water quality;
- (5) Placing or removing of fill or other material, which would alter the elevation or land surface;
- (6) Driving piles, erecting or repairing buildings (residential or commercial) or structures that causes soil disturbance;
- (7) Placing of obstructions in water, whether or not they interfere with the flow of water;
- (8) Changing water temperature, biochemical oxygen demand, or any other physical, biological, or chemical characteristics of the water;
- (9) Destroying plant life, including cutting trees and shrubs;
- (10) Conducting any work or activity which may cause or tend to contribute to pollution of any body of water or groundwater;

- (11) Applying pesticides or herbicides;
- (12) Any activities, changes or work which cause alteration of wildlife habitat; and
- (13) Any activities, changes or works which pollute or cause displacement of any body of water or groundwater.
- (14) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by the Bylaw.

Buffer Zone: means the land located within 200 feet from the outer boundary of any potential or certified Vernal Pools and the land located within 100 feet from the outer boundary of any:

- (1) Bordering freshwater wetlands, isolated freshwater wetlands, wet meadows, marshes, swaps, or bogs;
- (2) Intermittent streams, brooks, and creeks;
- (3) Ponds and lakes; and
- (4) Banks

Commission: means the Tewksbury Conservation Commission.

Department: means the Massachusetts Department of Environmental Protection (DEP).

Person: means an entity which includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, a municipality, and any other legal entity, its legal representatives, agents or assigns.

Limited Project: means specific activities described in 310 CMR 10.53(3) through 310 CMR 10.53(8).

No Build Zone: means that portion of the Buffer Zone up gradient of the No Disturb Zone and extending to a line fifty feet (50') from the edge of those Resource Areas included within the definition of Buffer Zone.

No Disturb Zone: means that portion of the Buffer Zone which extends twenty-five feet (25') from the edge of those Resource Areas included within the definition of the Buffer Zone.

Person: means an entity which includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, a municipality, and any other legal entity, its legal representatives, agents or assigns.

Ponds:

- (1) Shall include any substantially open body of fresh water with a surface area observed or recorded, within ten years prior to the date of application, of at least 5,000 square feet. Ponds may be either naturally occurring or man-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. For the purposes of this definition, extended drought shall be defined at 310 CMR 10.00 as it may be amended.
- (2) Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds: swimming pools or other impervious man-made basins.

Project Locus: means the property boundaries of the lot(s) on which an applicant proposes to perform an activity subject to the Tewksbury Wetland Protection Bylaw, or in the case of a Notice of Intent application proposing work within a public roadway or easement, Project Locus shall mean the spatial extent of proposed activities that meet the definition of Alter herein within said roadway or easement.

Rare Species: means, without limitations, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.

Quorum: A majority of the Commission members in office.

Resource Areas: include any natural or created bordering/isolated freshwater wetlands, marshes, wet meadows, bogs, swamps, lakes, ponds (natural or created), rivers, streams, banks, vernal pools, land under water in each resource area, Riverfront Area, and Bordering/Isolated Land Subject to Flooding. Note that section 18.04.040(5) of the Bylaw shall be deferred to regarding whether a stormwater management system by itself may constitute a jurisdictional Resource Area or Buffer Zone.

Resource Area Values: include public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values deemed important to the community.

Structure: shall mean a combination of materials assembled at a fixed location to give support or shelter such as a building, house, barn, garage, or shed. The word "Structure" shall be construed, where the context requires, as though followed by the words "or part or parts thereof". However, in reference to the No Build Zone, "Structure" shall not include fences, retaining walls, decks, patios, lawn furniture, children's toys such as sandboxes and swing-sets, rip-rapped areas, driveways, parking areas, or the like. Additionally, sheds and gazebos shall not be included in the definition of "Structure" in reference to the No Build Zone provided that they have a floor area of 120 square feet or less. This definition is not meant to be extended to how the term "Structure" is used for agricultural exemptions in Section 18.04.040 of the Bylaw.

Town: means the Town of Tewksbury, Massachusetts.

Vernal Pools: means a confined depression which provides habitat for vernal pool species, whether or not certified by the Massachusetts Natural Heritage program. Vernal pool species are those vertebrate and invertebrate species listed in the January 1991 edition of Massachusetts Audubon Society's "A Citizen's Step-by-Step guide to Protecting Vernal Pools". In addition to the scientific definitions found in the regulations, any confined basin or depression not occurring in existing lawns or driveways that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contain at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife, and regardless of whether the site is contained within another resource area shall be defined as a Vernal Pool. The adjacent upland buffer zone resource area for Vernal Pools shall extend 200 feet outward from the mean annual high-water line defining the depression.

3.0 Jurisdiction

No person shall alter, dredge, fill, degrade, discharge into, and/or remove the following local Resource Areas within the Town except as permitted by the Commission:

- (1) Any bordering freshwater wetlands, isolated freshwater wetlands, wet meadows, marshes, swaps, bogs, intermittent streams, brooks, creeks, ponds, lakes, and bank, in addition to lands within 100-feet of said Resource Areas;
- (2) Vernal Pools, in addition to lands within 200-feet of this Resource Area;
- (3) Riverfront Area;
- (4) Land Under Waterbodies and Waterways; and
- (5) Bordering and Isolated Land Subject to Flooding;

4.0 Exemptions

- (1) Provided that written notice with suitable plans and a project narrative (if applicable) has been received and reviewed by the Commission prior to the commencement of work, the application and permit otherwise required by the Bylaw and the TWPR shall not be required for:
 - (a) Maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located building (residential/ commercial) or facility used in the service of the public to provide electric, gas, water, sewer, telephone or other telecommunication services, provided said work utilizes the best practical measures to avoid or minimize impacts to Resource Areas outside the footprint of said structure or facility; and

- (b) Mosquito control projects when performed by the Commonwealth or political subdivision thereof.
- (2) The jurisdiction of the Bylaw and the TWPR shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.
- (3) 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:
 - (1) Accessory structures such as decks, sheds, porches, gazebos, patios, above-ground pools, and basement bulkheads;

- (2) The installation of a ramp for compliance with accessibility requirements;
- (3) 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:
- (1) Removal of diseased or damaged trees or branches that pose an immediate and substantial threat to driver safety from falling into the roadway;
 - (2) Removal of shrubbery or branches to maintain clear guardrails; such removal shall extend no further than six feet from the rear of the guardrail;
 - (3) 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
 - (4) 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.

- (4) The application and permit required by the Bylaw shall not be required for emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, and provided that all the following conditions are met:
- (a) Written notice has been given to the Commission prior to the commencement of work or within twenty-four (24) hours after commencement. In cases determined by the Commission to be extreme emergencies, verbal notice to be provided within five (5) business days;
 - (b) The Commission or its agent certifies the work as an emergency project;
 - (c) The work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and
 - (d) Within twenty-one (21) days of commencement of an emergency project, the Commission may require an application for permit provided in the Bylaw.

Upon failure to meet these conditions, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

- (5) Notwithstanding Section 3.0, stormwater management systems designed, constructed, installed, operated, maintained, and/or improved in accordance with the *Stormwater Management Policy (1996)* or 310 CMR 10.05(6)(k) through (q) do not by themselves constitute Resource Areas or Buffer Zone under the Bylaw, provided that:

- (a) The system was designed, constructed, installed, and/or improved on or after November 18, 1996; and
- (b) If the system was constructed in a Resource Area or Buffer Zone, the system was designed, constructed, and installed in accordance with all applicable provisions of the Bylaw.

If this citation is applicable to a proposed project, the applicant has the burden of proving that a subject stormwater management system meets the requirements outlined in Section 4.0(5) of this regulation.

5.0 Performance Standards

- (1) The following standards apply to the Buffer Zone identified in the TWPB:

- (a) No Disturb Zone: Except as otherwise provided under the TWPB and the regulations promulgated herein, no activity is permitted within 25-feet of the delineated edge of

Resource Areas that are incorporated into the definition of Buffer Zone. Prohibited activities include, but are not limited to, grading, landscaping, vegetation clearing, cutting, filling excavating, road construction, and driveway construction. This standard has been adopted because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from extension of lawns, depositing/dumping of yard waste, over grading, siltation, deposition of construction debris, unregulated filling, and clearing of vegetation, all of which is prohibited.

- (b) No Build Zone: Unless otherwise provided under the TWPB herein, no Structures are allowed to be built within 50-feet of the delineated edge of Resource Areas that are incorporated into the definition of Buffer Zone with the following exceptions:
- i. The cumulative area of Structures encroaching or within the No Build Zone of a lot is allowed to be no more than 10% of the area representative of the No Build Zone within the lot where encroachment is proposed.
 - ii. Where the cumulative encroachment of Structures within a lot's No Build Zone is greater than 10% of the area representative of the No Build Zone within the lot where encroachment is proposed, the Commission may approve of said encroachment provided that:
 1. Buffer Zone within the lot is enhanced and/or restored at a minimum ratio in square feet of 1:1 and a maximum ratio in square feet of 2:1 of Buffer Zone enhancement/restoration to areas encroaching into the lot's No Build Zone which exceeds the 10% threshold outlined in Section 18.04.050(b)(ii). Restoration efforts may include the removal of debris or invasive species. Buffer Zone enhancement shall include appropriate plantings of native tree, shrub, and/or herbaceous species that shall remain unaltered in perpetuity.
 2. For projects approved by the Commission under Section 18.04.050(b)(ii)(1), the Commission shall require that these areas of enhancement/restoration shall remain unaltered in perpetuity. Said requirement can be incorporated into a permit issued by the Commission and/or included as an ongoing condition upon issuance of a Certificate of Compliance.
- (2) The performance standards for Resource Areas described within the Bylaw and the TWPR shall be consistent with the performance standards described within the Act's regulations (310 CMR 10.00), with the following exceptions and/or considerations:
- (a) Isolated wetlands, wet meadows, marshes, swaps, or bogs, which are protected under the TWPB but not necessarily the Act, shall have the same performance standards described within the Act under "Bordering Vegetated Wetlands" (310 CMR 10.55(4)).

- (b) Notwithstanding anything to the contrary provided herein regarding performance standards for permanently altered isolated/bordering wetlands, wet meadows, marshes, swaps, or bogs, the Commission may require a ratio of up to 2:1 for wetland replication area to the area of permanently altered wetlands, as part of how a project may be permitted by the Commission which proposes permanent loss of wetlands.
- (3) 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).

6.0 Waiver

- (1) The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in the TWPB/TWPR, provided that:
 - (a) the Commission finds in writing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations;
 - (b) that avoidance, minimization, and mitigation have been employed to the maximum extent feasible; and
 - (c) that the waiver is necessary to accommodate an overriding public interest, or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.
- (2) The Commission may waive the dimensional requirements of the No Disturb Zone and the No Build Zone where the Commission specifically finds, after the applicant has presented sufficient proof, that literal enforcement of the provision would involve demonstrated substantial hardship to an applicant, the applicant has demonstrated that no practicable alternative exists to comply with the No Disturb Zone and No Build Zone setbacks, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the TWPB. The applicant has the burden of proof regarding whether their proposed project satisfies the requirements of this waiver.

7.0 Project Applications and Requests

- (1) Any person desiring to know whether a proposed activity or specific area is subject to the TWPB, or whether a proposed activity will alter Resource Areas (regardless of whether the activity is proposed in a Resource Area or Buffer Zone), may in writing submit a Request for Determination of Applicability (RDA).
- (2) Unless otherwise stated herein, activities within Resource Areas or Buffer Zone that will alter or affect Resource Areas shall require a Notice of Intent (NOI) application to be submitted to the Commission.

- (3) An Abbreviated Notice of Resource Area Delineation (ANRAD) application may be filed, in writing, to the Commission to confirm the boundaries of Resource Areas within a particular location of interest.
- (4) No activities altering Buffer Zone or Resource Areas shall commence without receiving and complying with a permit or determination issued pursuant to the TWPB and the TWPR, unless the activity is exempt in accordance with Section 4.0.
- (5) 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 regulations promulgated thereunder.
- (6) 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.
- (7) An applicant may request, in writing, to extend their existing non-expired permit or determination in accordance with Section 10.0 of the TWPR.
- (8) Refer to Section 10.0 for information regarding Requests to Amend an OOC.
- (9) Upon completion of a project managed under a OOC issued by the Commission, the applicant shall immediately request in writing a Certificate of Compliance (COC) from the Commission in accordance with Section 14.0 of the TWPR.
- (10) The Commission may accept the application, plans, and requests under the TWPB/TWPR any corresponding application, plans, and requests filed under the Act and associated regulations (310 CMR 10.00).

8.0 Fees

- (1) At the time of an application, the applicant shall pay a filing fee in accordance with the below Filing Fee Table. The fee shall be in the form of a check payable to the “Town of Tewksbury” and submitted to the Commission’s office simultaneously with the filing of the application. The fees listed below are in addition to that required by the Act and 310 CMR 10.00.

Application Type	Local Filing Fee
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)

Fees shall be in the form of a check made payable to "The Town of Tewksbury"

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

(2) The Commission, in accordance with M.G.L. Ch. 44 §53G and the TWPR herein, may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists, or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission and the Commission’s Agent. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and DEP of such a decision in writing.

The applicant may appeal the selection of an outside consultant to the selectboard, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

9.0 Notice and Hearings

- (1) Any person filing a NOI or ANRAD with the Conservation Commission at the same time shall give written notice thereof, by hand delivery, certificate of mailing, and/or certified mail (return receipt requested), to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors within 100-feet radially of the Project Locus. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. Notice to abutters shall be made at least seven business days prior to the public hearing for the application. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission verifying that all applicable abutters were appropriately notified in accordance with the TWPB. Said affidavit, in addition to copies of mailing receipts from abutter notifications obtained by the person filing the application, shall be provided to the Commission before the public hearing for the application.
- (2) The Commission shall conduct a public hearing on any NOI or ANRAD application with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing within 21 days from receipt of a completed NOI or ANRAD application unless an extension is authorized in writing by the applicant and the public hearing shall be advertised in accordance with M.G.L. c. 39, § 23B. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in Section 18.04.100.
- (3) Within 21 days after the date of receipt of the Request for a Determination of Applicability, the Commission shall issue a Determination of Applicability (DOA). Notice of the time and place of the public meeting at which the Determination will be made shall be given by the Commission at the expense of the person making the request not less than five business days prior to such meeting, by publication in a newspaper of general circulation in the city or town in which the land is located, and by mailing a notice to the person making the request, the owner, the board of health, and the planning board of said city or town. Notice shall also be given in accordance with the open meeting law, M.G.L. c. 39, § 23B. The DOA shall be signed by a majority of the Commission.

- (4) The Commission in its discretion may combine its public meeting and/or public hearing under the TWPB or Tewksbury Wetland Protection Regulations (TWPR) with the public meeting and/or public hearing conducted under the Act and 310 CMR 10.00.

10.0 Permits and Conditions

- (1) The following permits are issued by the Conservation Commission: an Order of Conditions (OOC) is issued for a corresponding NOI application, a DOA is issued for a corresponding RDA application, and an Order of Resource Area Delineation (ORAD) is issued for a corresponding ANRAD application.
- (2) As per Section 9.0(3), within 21 days after the date of receipt of the Request for a Determination of Applicability, the Commission shall issue a DOA. The DOA shall represent a written determination by the Commission as to whether a proposed activity or specific area is subject to the Bylaw, or whether a proposed activity will alter Resource Areas (regardless of whether the activity is proposed in a Resource Area or Buffer Zone).
- (3) If the Commission, after a public hearing, determines that the activities which are the subject of a NOI application are likely to have a significant or cumulative effect upon the Resource Area Values protected by the Bylaw, the Commission, within twenty-one (21) days of the close of the hearing, shall issue an OOC that approves or denies the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities. If the Commission issues an OOC approving the proposed activities, the Commission shall impose conditions which the Commission deems necessary or desirable in order to protect the Resource Area Values, and all activities shall be done in accordance with those conditions. A list of standard conditions that may apply to an OOC is provided in Appendix A of these regulations.
- (4) Notwithstanding anything stated within the TWPR herein, the Commission is empowered to deny a NOI application for failure to:
 - (a) Meet the requirements of this TWPB;
 - (b) Submit the necessary information and plans requested by the Commission;
 - (c) Meet the design specifications, performance standards and other requirements in the Commission's regulations;
 - (d) Avoid, minimize, or mitigate unacceptable significant or cumulative effects upon the Resource Area Values protected by the TWPB;
 - (e) Pay all required fees; and/or

- (f) Where the Commission finds no conditions are adequate to protect the Resource Area Values. The Commission shall duly consider any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
- (5) Within twenty-one (21) days of the close of the public hearing for an ANRAD application, the Commission shall issue an ORAD that represents the Commission's determination on whether Resource Areas subject to the ANRAD application have been identified and appropriately delineated, or whether modifications are necessary for the submitted delineations.
- (6) A DOA, OOC, or ORAD issued under the Bylaw shall expire three years from the date of issuance. Upon request, the Commission, in their discretion, may extend the expiration date of said DOA, OOC, or ORAD for one or more periods of up to three years each. The request for an extension shall be made at least 30-days prior to the expiration of the DOA, OOC, or ORAD. Additionally, the applicant may be required to provide the following documentation upon making their request:
- (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.
- (7) In reviewing activities within the Buffer Zone, the Commission shall presume the Buffer Zone is important to the protection of other Resource Areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. This presumption shall apply unless the proponent proves by a preponderance of the credible evidence that either:
- (a) The Buffer Zone does not play a role in the protection of any of the wetland values of the Bylaw or;
 - (b) The activity shall occur in such a manner that any potential adverse environmental impacts on any of the Resource Area Values are avoided.
- (8) In reviewing activities within the Riverfront Area, the Commission shall presume the Riverfront Area is important to all the Resource Area Values unless demonstrated otherwise,

and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of the Bylaw, has proved by a preponderance of the evidence that:

- (a) There is no practicable alternative to the proposed project with less adverse effects; and
 - (b) That such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by the Bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.
- (9) To prevent Resource Area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of Wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.
- (10) The Commission shall presume that all areas meeting the definition of “Vernal Pools” under the Bylaw, including lands within 200-feet of Vernal Pool boundaries, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Act’s regulations.
- (11) For good cause the Commission may revoke any OOC, DOA, or ORAD, or any other order, determination or other decision issued under the Bylaw after a notice to the holder has been provided, in addition to satisfying the same notification requirements for the application of the issued permit being revoked, as set forth in Section 9.0. The holder of the permit being revoked must be notified at least two (2) weeks prior to the public meeting and/or public hearing.
- (12) The Commission in an appropriate case may combine the decision issued under the TWPB/TWPR with the OOC, DOA, or ORAD issued under the Act and the Act’s regulations.
- (13) At the time of a RDA, NOI, or ANRAD application, the applicant or requestor shall pay an application fee in accordance with Section 8.0 and, if necessary, a consultant fee (also in accordance with Section 8.0).
- (14) Where the TWPB states that a DOA, OOC, or ORAD be issued by the Commission, the action to issue said DOA, OOC, or ORAD shall be taken by more than half the members present at a

meeting of at least a quorum. Where the TWPB states that a DOA, OOC, or ORAD be signed by a majority of the Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign, provided they met pursuant to the open meeting law, M.G.L. c. 39, §§ 23A through 23C, when voting on the matter. Where the Bylaw states that the Commission is to receive a request, application, or notice, the Commission shall mean in this context a member of the Commission or an individual designated by the Commission to receive such request, application, or notice.

- (15) To maintain the perpetual integrity of the protected Wetland Resource Areas defined within the TWPB and their associated Buffer Zones, the Commission may include conditions within the OOC or DOA to install permanent signage along the boundaries of said Wetland Resource Areas or within their Buffer Zones (e.g., along the No Disturb Zone or No Build Zone boundary), at the applicant's expense.

11.0 Coordination with Other Boards

- (1) The Commission may solicit the advice and opinions of appropriate boards, departments and Town officials. Each shall be entitled to file written comments and recommendations with the Commission at least three days before the hearing. The Commission shall take these comments and recommendations into account but may not be bound by them. The applicant shall have the right to receive any such comments and recommendations and respond to them at the hearing.

12.0 Modifications

- (1) If the applicant proposes to make significant changes in the Commission's originally approved plans, the applicant shall submit the amended plans to the Commission. The Commission, in its discretion, if it deems the amendments to the plan significant, may require the filing of a new application for permit or an application to amend an existing permit. An application to amend an existing permit follows the same procedures as was necessary for the original permit application.

13.0 Registry of Deeds

- (1) No work proposed in any NOI or ANRAD shall be undertaken until the corresponding OOC or ORAD issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded and furnishes the recording data pertaining thereto. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.
- (2) COCs issued by the Commission must be recorded at the Registry of Deeds or Land Court, whichever is appropriate, by the applicant. Upon failure of the applicant to record the COC, the issuing authority may do so.

14.0 Certificate of Compliance

- (1) Upon completion of a Project managed under a OOC issued by the Commission, the applicant shall immediately request in writing a COC from the Commission. If the activities were completed in accordance with plans stamped by a registered professional architect, landscape architect, civil engineer or land surveyor, a written notice by said professional certifying substantial completion with the plan and setting forth what deviations, if any, exist from the plan shall accompany the request for a COC. The applicant may be required to provide the following documentation upon making their request for a COC:
 - (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
- (2) The Commission, any of its members, or its agent may conduct an inspection to validate the completion of the Project and to determine if the Project substantially complied with the conditions of the OOC. The Commission, in its discretion, may impose conditions on the COC to assure continued operation and maintenance of permanent measures to prevent or control significant or cumulative effect upon the wetland values protected by the Bylaw.
- (3) Within twenty-one (21) days of the receipt of a request for a COC to the Commission, the Commission shall either:
 - a. Issue a COC for the entire project managed under the OOC;
 - b. Issue a COC for portions of the project managed under the OOC; or
 - c. If the Commission determines that, after review and inspection, that the proposed work has not been done in compliance with the corresponding OOC, the Commission may refuse to issue a COC. Said refusal shall be in writing and shall specify the reasons for denial.
- (4) COCs must be recorded at the Registry of Deeds or Land Court in accordance with Section 13.0 of the TWPR.
- (5) The Commission in an appropriate case may combine the issuance of a COC under the TWPB/TWPR with the COC issued under the Wetlands Protection Act and regulations.

15.0 Enforcement

- (1) No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by the Bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to the Bylaw.
- (2) The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under the Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- (3) The Commission shall have authority to enforce the Bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under G.L. Ch. 40 §21D, and civil and criminal court actions, including those seeking the imposition of municipal liens . Any person who violates provisions of the Bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
- (4) Upon written request of the Commission, the Board of Selectmen, Town Manager and Town Counsel, may take legal action for enforcement under civil law.
- (5) Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.
- (6) Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- (7) For good cause, the Commission may issue a cease-and-desist order, violation notice, or an enforcement order with or without prior notification to the property owner or applicant. The Conservation Administrator, upon informing the Commission Chair, may generate these actions which shall remain in effect until the next regularly scheduled meeting of the Commission. The Commission shall give the property owner or applicant notice of the meeting at least forty-eight (48) hours before convening it. At the meeting the Commission shall vote whether or not to continue the action.
- (8) The Commission may mandate the installation of temporary control measures if there is any danger of adversely affecting the local resource areas. These measures are to remain in effect and be maintained in place until the Commission allows their removal.
- (9) Under conditions of a cease and desist order, violation notice, or an enforcement order, another party may be retained by the Commission to complete the temporary control

measures if the property owner or applicant is unable or unwilling to do the work within a reasonable time as stated in the Commission's order, and if there is an immediate hazard to the local resource areas, wetland values protected by the Bylaw, or public safety. The costs associated with this work shall be borne by the property owner or applicant.

- (10) Any person who purchases, inherits or otherwise acquires land upon which work has been done in violation of the provisions of the Bylaw or in violation of any permit issued pursuant to the Bylaw shall forthwith comply with any order of the Commission and restore such land to its condition prior to any violation; provided, however, that no action, civil or criminal, shall be brought against such person if corrective action commences within six (6) months following the date of acquisition of the land by such person or within the time specified in the Commission's order.

16.0 Burden of Proof

- (1) The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application for permit will not have unacceptable significant or cumulative effect upon the local Resource Areas and Resource Area Values protected by the Bylaw. Failure to provide sufficient evidence to the Commission supporting this burden shall be good cause for the Commission to deny a permit, grant a permit with conditions, or to continue the hearing to another date to enable the applicant or others to present additional evidence. However, if the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such evidence as is then available.

17.0 Relation to the Wetlands Protection Act

- (1) The Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Act and 310 CMR 10.00 thereunder.

18.0 Performance Guarantee

- (1) As part of a OOC issued under the Bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:
 - (a) By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.
 - (b) By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed

and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

- (2) Upon completion of work required in the OOC, security for the performance of which was given by bond, deposit or covenant, or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on terms of release with the Commission.
- (3) Upon the Commission's receipt of request to release a bond, deposit of money, or other negotiable security for the Project, if the Commission determines that Project alterations have not been completed in compliance with the OOC, the Commission shall, within forty-five (45) days, specify to the applicant in writing the details wherein said alterations fail to comply with the OOC. If the Commission determines that said alterations have been completed in compliance with the conditions of the OOC, it shall release the interest of the Town in such bond and return the bond or the deposit to the person who furnished same or release the covenant, if appropriate.

19.0 Appeal

- (1) Any person aggrieved by the OOC or decision of the Commission, whether or not previously a party to the proceeding, may appeal according to the Massachusetts General Laws.

20.0 Rules and Regulatory Amendments

- (1) The rules and regulations of the Commission may be amended from time to time by a majority vote of the Commission. Prior to taking a vote on an amendment, the Commission shall have held a public hearing on the proposed change(s).

21.0 Penalties

- (1) Any person who violates any provision of the Bylaw, the regulations promulgated hereunder, or the permits issued hereunder shall be punished by a fine as specified in the Commission's regulations which shall not exceed \$300 for each offense. The Commission, in their discretion, may consider the following as separate offenses:
 - (a) Each day the violation continues;
 - (b) Each provision of the Bylaw, regulations, or permit violated; and/or
 - (c) Each day the violation alters a local Resource Area.

22.0 Severability

- (1) The invalidity of any section or provision of the Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.

DRAFT

Appendix A: Standard 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.