

TOWN OF TEWKSBURY CONSERVATION COMMISSION REGULATIONS

A. Authority

These regulations are promulgated under the authority of the Home Rule Amendment, Article LXXXIX (89), of the amendments of the Constitution of Massachusetts, and shall be effective upon the fulfillment of all legal requirements for their effectiveness.

B. Purposes

1. These regulations are adopted in accordance with the provisions of the Tewksbury Conservation Commission, ("Commission") and to improve communications, efficiency and consistency in project review, to reduce delay in responses by the Commission, and to reduce post-application redesign by the applicant.
2. The laws applicable to these and regulations include, but may not be limited to, are:
 - a. The Massachusetts Wetlands Protection Act ("MWPA"), MGL c.131, s.40, and its regulations, codified at 310 CMR 10.00;
 - b. The TWPBL:
 - c. Applicable portions of Tewksbury's Zoning Bylaw and Rules and Regulations promulgated by the Board of Appeals, Planning Board and Board of Selectmen;
 - d. Applicable portions of the Rules and Regulations of the Tewksbury Board of Health;
 - e. The Massachusetts Environmental Policy Act (MEPA), MGL c.30, s.61 through 62h, and its regulations, codified at 301 CMR 11.00;
 - f. MGL c.91, Waterways.
3. Applicants are presumed to be familiar with the above referenced laws. Copies of applicable Town by-laws may be obtained from the Tewksbury Department of Public Works and/or the Town Clerk. Massachusetts' Department of Environmental Protection (DEP) Regulations regarding Wetlands Protection (310 CMR 10.00), and Waterways, as well as MEPA Regulations (301 CMR 11.00), may be obtained from the Commonwealth's Printing Office in the State House in Boston.

4. The Commission will provide guidance on the above laws upon request. Such guidance, however, shall not be considered legal advice and shall not be binding upon the Commission or the Town. The applicant is fully responsible for determining what the applicable law is and its requirements.

C. General Provisions

1. Review of submittals would be expedited if ten (10) copies were made of all materials supplied to the Commission.
2. Correspondence and/or submittals should be addressed to:

TEWKSBURY CONSERVATION COMMISSION
999 WHIPPLE ROAD
TEWKSBURY, MA 01876

Formal submittals sent to the Commission by U.S. Postal Service should be by certified mail. Alternately, they may be hand delivered to the Commission office, where they should be time and date stamped.

3. Filing fees required for applications under the MWPA are determined by the State. Currently there is a fee schedule that is dependent upon the nature of the project and of the filing. A portion of the fee is due the State and a portion is due the Commission. A check for the Commission's portion of this filing fee is to be made payable to the Town of Tewksbury and is required at the time of the filing.

There are currently no fees for first time filings under the TWPBL. In cases where the Commission has denied a filing and the DEP issues a Superseding Order of Conditions requiring plan revisions, the Applicant may re-file a new application under the TWPBL for approval of the revised project. A filing fee equal to the original MWPA filing fee will be required for this re-filing. A check is to be made payable to the Town of Tewksbury and is required at the time of filing.

The Commission reserves the right to institute a fee schedule for first time filings under the TWPBL. The Commission will assist an applicant in fee determination upon request

4. Unified forms for filing under both the MWPA and under TWPBL are available from the Commission. Alternatively, the State forms may be utilized provided their headings are modified to include "Tewksbury Wetlands Protection Bylaw".
5. The public hearing held under the provisions of MGL C.131 S.40 shall serve simultaneously as the hearing under the TWPBL.

6. Request for Determination of Applicability and/or Notice of Intent filings must provide information on the entire proposed development and not be limited to proposed activity within the resource area and buffer zone. A project that is submitted in phases or in parts will be considered incomplete, and may be cause for denial. All proximate, adjoining, opposing, or contiguous parcels of land under control of the applicant or owner must be identified in the filing. For a subdivision, the entire filed subdivision, and adjoining subdivisions under control of the same owner but not yet built shall be considered the same project.
7. The TWPBL protects certain wetland interests not included under the MWPA. The applicant must provide a statement of the effect of the project on those interests.
8. For projects including construction of any kind, a written statement describing construction methodology, including the type of machinery to be used, access way to the project site, proposed construction time tables, and other information the Commission deems pertinent, shall be submitted.
9. Any hearing may be continued for a reasonable period of time in order to allow the applicant and other parties sufficient time to produce information which the Commission deems necessary to make a decision on the impact of the project. As an alternative to such continuance, or after failure or refusal by the applicant to produce the additional information as requested, the Commission may deny the project.
10. Projects proposing disruption of any area subject to the TWPBL may be required to replicate not only the function of the area to be disturbed, but its physical properties, characteristics, and vegetative cover. Inability to do so, where required, may be cause for denial.
11. Plans, drawings, sketches, and calculations shall be dated and signed by person(s) responsible for their preparation. Calculations shall be independently checked by the applicant or the applicant's representative, with the checker identified. Any calculations done by computer program shall be done by an industry-standard program which shall be identified, or the program and its logic shall be submitted with the calculations.
12. Projects requiring filings under the MEPA Regulations, must have the actions on these filings complete prior to the close of any hearing on a Notice of Intent before the Commission; or the Commission may deny the project on the basis of inadequate project information. A project requiring an Environmental Notification form (ENF) under the MEPA Regulations because it exceeds the MEPA review thresholds relative to areas protected by the Wetlands Regulations (310 CMR 10.00) shall have filed the ENF and completed any actions, including the Environmental Impact Report (EIR), as a result of the filing, prior to the close

of any hearing on a Notice of Intent before the Commission; or the Commission may deny the project on the basis of inadequate project information.

13. The Commission may, for projects requiring approvals from other Town Board's, consult and coordinate project information with the applicable Town Board's prior to the close of any hearing on a Notice of Intent application or the Commission may deny the project on the basis of inadequate project information.
14. Public notices of hearings to be conducted for an applicant are to be advertised in a local newspaper by the applicant. The notice will be given to the applicant by the Commission. Notice shall appear in a local newspaper (5) business days prior to the public hearing, and all abutters including owners of land directly opposite on any public way, abutters to abutters and abutters to the abutters within 300 feet of the property shall be notified by certified mail of the hearing notice, or the Commission may deny an application for lack of completeness.
15. The Commission may, in order to make a decision before issuing a permit, order independent investigation, engineering, hydrogeological, or other review of the filing and/or the site. Selection of a consultant to perform the required work shall be subject to the approval of the Commission.
16. The Commission recognizes that environmental review is necessarily a site-specific process. The Commission intends that applicants have maximum flexibility in design and freedom to employ innovative techniques to minimize adverse environmental impacts on various projects.
17. Determinations of Applicability are valid for a 3 year period from the date of issuance and cannot be extended. If a negative Determination of Applicability has been rendered by the Commission for a particular project, construction must be completed within the 3 year period of applicability to ensure that the determined applicability is still valid.
18. Formal actions by the Commission are under the authority of both the MWPA and the TWPBL. Such actions are usually the same under either authority, but need not be because of different interests and authority granted by each law. Appeals of any Commission decision by the applicant or interested parties must be sought under both authorities: to the DEP under the MWPA and to the Superior Court under the TWPBL.
19. Orders of Conditions and negative Determinations of Applicability must be filed at the appropriate Registry of Deeds, and or Land Court if registered land, in order to be valid Determinations or Orders under the local by-law. An applicant is expected to file either the Determination or Order within the statutory appeal period and must supply the Commission with the particulars of the filing and a copy of the recorded Determination or Order within seven (7) calendar days after recording.

20. The Commission may, at its own discretion, require an applicant to place conservation restriction or easement upon an applicant's intended unaltered resource areas, protected under the local TWPBL (e.g., wetlands, water bodies), as a condition in its Order to prevent future alteration to these unaltered resource areas.
21. An Order of Conditions, once it has expired, is no longer valid and construction that impacts upon resources protected under the MWPA or the TWPBL is no permitted. A new Notice of Intent, with its own Order of Conditions, is required for construction to continue.

The Commission may grant an extension of time to a valid Order of Conditions upon written request in sufficient time for the Commission to act, at least 30 days prior to the expiration date, justifying the need for an extension and specifying the reasons construction was not an extension received after the expiration date of an Order will be denied by the Commission.

22. An applicant seeking a Determination of Applicability or an Order of Conditions grants the Commission the right of entry to the property of concern to determine applicable facts and evidence sufficient for the Commission to make a Determination or issue an Order and to check for any non-compliance with the MWPA or TWPBL.

An applicant, by reason of accepting a valid negative Determination of Applicability or a valid Order of Conditions and initiating construction, grants to the Commission an unrestricted right of entry to the property of concern for the purpose of viewing the construction with regard to such negative Determination or Order and to check for any non-compliance with the State law or the TWPBL or the Commission's Order of Conditions including gathering facts and evidence in support of any non-compliance.

23. The Commission, in issuing Orders of Conditions that require wetland replication, will normally require security as permitted by the TWPBL, to assure the successful reestablishment of the lost wetlands. At least 75 percent of the surface of the replication area shall be reestablished with indigenous wetland plant species through two growing seasons and shall be functioning prior to release of said security.
24. Any Order or Conditions issued under TWPBL may be revoked by the Commission for good cause after notice to the holder of the Order, public notice, and public hearing.
25. The Commission may, in its discretion, issue an Order of Conditions under the TWPBL while it has denied an Order under the MWPA. This circumstance would normally occur when the Commission has to procedurally deny an

26. The Commission may, in its discretion, issue an Order of Conditions under the MWPA while it has denied an Order under the TWPBL. This circumstance would normally occur when the Commission has to deny an order under the TWPBL because an interest to be protected under the TWPBL because an interest to be protected under the TWPBL is not adequately protected.
27. The Commission may amend these Regulations at any regular meeting of the Commission by a two thirds vote of the total Commission membership. One week notice shall be given to the entire Commission.

D. Filing Requirements

1. The following items are minimum standards. The applicant may submit, or may be required to submit, additional information and data which will assist in the review and which is deemed necessary to determine the proposed effect on the interests protected by the MWPA or TWPBL. These items are, where applicable, in addition to any requirements of the MWPA or its regulations.
 - a. **SITE PLANS:** Plans shall describe the proposed activity and its effect on the environment. The applicant shall submit a site plan, or plans, at a scale of 1 inch = not more than 50 feet, showing the following items:
 - 1) Existing and proposed contours (in contrasting symbols or line weight) shall be expressed in feet above mean sea level, with intervals no greater than two feet. Date of ground survey, reference datum, and reference bench mark(s) shall be given. All plans shall show true or magnetic north.
 - 2) Within 100 feet of the subject property, the delineation of all wetlands, lands subject to flooding, water bodies, waterways, ditches, creeks, rivers, streams, and ponds, whether natural or manmade, continually or intermittently flowing. Where applicable, the State water quality classifications of waterways are to be given (M.G.L. C.21, Clean Waters Act). The upland boundary of all bordering vegetated wetlands, isolated wetlands, vernal pools, and isolated land subject to flooding shall also be shown. The 100-year flood elevation line and any flood plains showing on the Town's FEMA flood maps shall be shown.
 - 3) The delineation of all applicable buffer zones.

- 4) A delineation of all alterations proposed in, or having an impact on, all areas protected under the MWPA or TWPBL, including buffer zones. All alterations, either permanent or temporary, of each separate resource area should indicate extent of disturbance by square feet or lineal feet, as applicable.
- 5) Existing stone walls, buildings, rock ridges, rock outcroppings, and hiking trails, cartpaths, and walkways.
- 6) Location, extent and area of all existing and proposed structures, roadways, including their names, driveways, paved areas, septic systems, including their reserve area, wells, tanks, swimming pools, drywells, decks, courts, and the like, and utility and other easement and right-of-ways.
- 7) Proposed lowest elevation of cellars or floors, proposed lowest elevation of flooding entry to structure, and proposed building structure location and footprint.
- 8) Existing and proposed location, rim elevation and invert elevation of all catch basins and manholes, drains, culverts, and other drainage structures, including detention/retention basins, immediately upstream and downstream of the site, as well as those on-site. Sizes, shapes and materials of all conduits are to be shown. Headwalls, flared-ends, rip-rap, and similar drainage erosion control structures are to be shown, where applicable, including material specification of the same.
- 9) Details and locations for all temporary and permanent erosion controls proposed, as well as all temporary and permanent easements.
- 10) Proposed permanent pollution control devices on-sites, such as: hooded catch basins, flow dissipators, oil/water separators, or vegetative buffers.
- 11) Cross-Sections showing existing and proposed slope, elevation, bank and bottom conditions of each water course to be altered. Locations of cross-sections shall be specified.
- 12) Proposed location of any fill or excavated material which will be stored on-site.
- 13) The "limit of work" line shall be shown.

- 14) Delineation of applicable water resource protection districts and water supply districts as provided in the Town Zoning By-Laws.
- 15) Locations and identification of all soils test pits, soil borings, and monitoring wells, including pertinent test results and groundwater elevations.
- 16) Existing and proposed location, rim elevation and invert elevation of all manholes, invert elevation of all sewers, immediately upstream and downstream of the site, as well as those on-site. Sizes and materials of all conduits shall be indicated. Location and extent of all treatment and disposal works are to be indicated, as well as appropriate information on connections from collection works to the plant and from the plant to the disposal works.
- 17) As applicable, location(s) and extent of wetland replication area(s). Planting plan for the replication area, as well applicable elevations of base elevations and finished elevations are to be shown.
- 18) As applicable, location(s) and extent of replacement flood storage. Planting plan for the replacement area, as well as all applicable elevations are to be shown.
- 19) Site plan, or other plan, shall show the locus of the site with regard to identifiable Town features, such as named streets and other natural or man-made features.
- 20) Adjoining property lines shall be indicated, including distances, bearings, markers at the perimeter, along with a list of all abutting owners and their property address or identification.
- 21) Outline of any watershed areas related to the proposed activity.

b. **TOWN OF TEWKSBURY MASSACHUSETTS DIGITAL DATA SUBMISSION REQUIREMENTS**

The Town of Tewksbury Digital Data Submission Requirements apply to any site or subdivision plan and infrastructure projects (water/sewer/drainage installation or repair, road rehabilitation and other capital improvements). The applicant, person or entity performing the work shall provide the Town with a digital copy of the final approved plans no earlier than one (1) month before the work is scheduled to commence. A digital copy of the as-built drawings will also be required and these will be submitted no later than six (6) months after project

completion. The digital copy of the final set of approved plans must follow the requirements listed below:

1. All plans and specifications must be submitted on electronic media. Acceptable file formats include: AutoCAD *.dwg, AutoCAD *.dxf, ArcView *.shp, or ArcGIS Geodatabase. The files must be identical to the printed plan and contain all information included on the “as-built” plan is required prior to receiving a Certificate of Completion from Conservation Commission. If plans and specifications are not “Tewksbury GIS Ready” data, as defined below, a \$200.00 fee per submission shall apply.

“Tewksbury GIS Ready” data is defined as:

- Data delivered digitally in GIS shapefile or geodatabase format.
 - The data shall be in the NAD 1983 MA State Plane Coordinate System.
 - The data shall be delivered in a way that would create minimal work for the Town staff when they update the GIS system as determined by the Engineering Division.
2. All digital mapping must be delivered in the Massachusetts State Plan Coordinate System with a horizontal datum of NAD83 and a vertical datum of NGVD88. Each plan must include a minimum of one (1) survey-derived (bearings and distances listed) reference to a permanent in-ground feature such as: catch basin, manholes, stone bound, municipal benchmark or other readily identifiable marker. The latitude and longitude of the in-ground feature must be provided with accuracy of plus or minus centimeter.
 3. Each feature must be organized in the CAD or GIS data structure as a separate layer. For example, there must be separate CAD layers for buildings, roads, road centerlines, surface water, wetlands, sewer, water, stormwater, etc. Having all these features in a single CAD layer or GIS file will not be accepted.
 4. All data will be topologically clean, meaning that polygons are closed (no overshoots or undershoots) and lines connect at nodes. Features that naturally connect such as driveways to roads must connect seamlessly. Features under text should not be erased or ‘broken’ in order to make text clearer.

5. Documentation of the data format must be provided with a description of the CAD layer and list of the types of features placed in each layer. Submission of multiple files must also include a list of the files and their purpose.

The data submitted must include documentation on the method used to gather the data, the name of the person(s) responsible for preparing the data, contact information, an estimation of the horizontal and vertical accuracy, and the date of data capture. All media shall be free from any and all defects and viruses, and labeled as to their contents.

c. **DRAINAGE CONSIDERATIONS:** The applicant needs to demonstrate that the following considerations have been attended to:

- 1) Calculations should be supplied for 2, 10, 25, and 100-year intervastorms. Methodology and information sources shall be supplied. (The Soil Conservation Service's method is preferred.) Calculations should show pre-development and post-development conditions for comparative purposes, demonstrating that there is no increase in peak runoff for a 10-year and 100-year frequency basins used in the calculations.
- 2) Drainage should be designed on a 10-year frequency basis for storm drains and retention basins; on the 25-year frequency basis for culverts. Damage potential shall be examined for a 100-year upstream or downstream flooding damage potential. Additionally, the design shall:
 - I. Control runoff at source areas, before concentration, and not only at the point of concentration;
 - II. Use infiltrative techniques wherever possible, including leaching catch basins, porous paving material driveways, and retention basins;
 - III. Employ vegetated wetlands as receivers for drainage from paved areas, rather than water bodies, wherever possible, using appropriate erosion control measures;
 - IV. Use open ditches, where feasible, instead of conduits.
- 3) All projects must show the methods of handling roof, driveway and other paved area runoff.

- 4) A narrative needs to be supplied indicating the nature of compliance of the above items and describing drainage calculations so that the Commission may more easily review the material submitted.
- d. Stream Relocation or Channelization Considerations. Applicant shall provide the following information:
- 1) Existing and proposed carrying capacity of the stream.
 - 2) Stream bottom and bank sediment/soil type, under existing and proposed conditions.
 - 3) Existing and proposed vegetation within stream and on its banks in the area of the proposed project.
 - 4) Water velocities and flow rates at base flow, mean flow, and flood flows.
 - 5) Calculations to demonstrate the velocities will be the same or less after relocation/channelization than before it, and that carrying capacity will not be reduced.
 - 6) Erosion and sediment control during construction and after, until surfaces have stabilized.
 - 7) Information on species and habitat within the stream and mitigation measures to prevent disruptive impact.
 - 8) Proposed time table for construction.
 - 9) Demonstration that relocation/channelization will not change the low flow regime and negatively impact upon existing wetlands.
 - 10) Step-by-step construction procedures referenced to water and soil handling, sediment control, and emergency procedures during any high flow event.

E. Severability

The invalidity of any provision of the Commission Regulations shall not invalidate any other provision hereof.