



# TOWN OF WEST NEWBURY

## CONSERVATION COMMISSION

381 Main Street, West Newbury, Mass. 01985

TEL: 978-363-1100 x126 EMAIL: [conservation@wnewbury.org](mailto:conservation@wnewbury.org)

## Notice of Intent (NOI) Filing Instructions, Checklist, and Outline of Complete NOI Permitting Process

- It is highly recommended that you obtain the services of a professional wetland scientist, consultant, engineer, and/or land surveyor to assist you with preparing the Notice of Intent filing.
- Notice of Intent filings require submittal of a plan certified by a registered professional engineer or land surveyor.
- Incomplete filings may be rejected by the West Newbury Conservation Commission.
- To learn more about resource areas and buffer zones protected and regulated under the state's Wetlands Protection Act and the performance standards work in these areas are held to refer to [M.G.L. Chapter 131 Section 40 \(the "Act"\)](#) and [310 CMR 10.00](#), the Regulations promulgated under the Act.
- If you have any questions or require any additional information, please contact the Conservation Agent by phone at 978-363-1100 x126 or by email at [conservation@wnewbury.org](mailto:conservation@wnewbury.org).

### Complete WPA Form 3 and Prepare Associated Documents

1. Download and complete the Notice of Intent - WPA Form 3 from the Massachusetts Department of Environmental Protection (MA DEP) website: <https://www.mass.gov/how-to/wpa-form-3-wetlands-notice-of-intent>. Alternatively, there are instructions at the above link to file the WPA Form 3 electronically with the state.
  - ☐ Ensure that all instructions are followed when completing the form.
  - ☐ Ensure that all required agencies are notified as required per the WPA Form 3 and associated instructions.
2. Prepare and/or obtain the following items that are required to be submitted as part of your NOI filing:
  - a. ☐ USGS or other map of the area (along with a narrative description, if necessary) containing sufficient information for the Conservation Commission and MA DEP to locate the site.
  - b. ☐ Plans identifying the location of proposed activities (including creation of a Bordering Vegetated Wetland (BVW) replication area or other mitigating measure) relative to the boundaries of each affected resource area.
    - Plans must be certified by a registered professional engineer or land surveyor.
    - Plans should be of adequate size, scale, and detail to completely and accurately describe the site, resource area boundaries, and proposed work. The following guidelines are provided to encourage uniformity:

*Sheet Size*

      - Maximum 24" x 36"
      - If more than one sheet is required to describe the proposed work, provide an additional sheet indexing all other sheets and showing a

general composite of all work proposed within the Buffer Zone and areas subject to protection under the Act.

*Scale*

- Not more than 1" = 50'
- All plans should display graphical scales.

*Title Block*

- Included on all plans
- Located at the lower right-hand corner, oriented to be read from the bottom when bound at the left margin
- Include original date plus additional space to reference the title and dates of revised plans.

- c. ☐ Identify the method for BVW and other resource area boundary delineations (MA DEP BVW Field Data Form(s), Determination of Applicability, Order of Resource Area Delineation, etc.), and attach documentation of the methodology.
- d. ☐ Attach proof of mailing for Natural Heritage and Endangered Species Program, if needed.
- e. ☐ Attach proof of mailing for Massachusetts Division of Marine Fisheries, if needed.
- f. ☐ Attach NOI Wetland Fee Transmittal Form
- g. ☐ Attach Stormwater Report, if needed.
- h. ☐ Attach the certified list of abutters within 100' of the property (additional information can be found in the next section of this document).
- i. ☐ Attach a copy of the letter sent to the abutters (additional information can be found in the next section of this document).
- j. ☐ In addition to the state filing fees, The West Newbury Conservation Commission requires additional filing fees paid to the Town when submitting a Notice of Intent. Please refer to the [local fee schedule](#) to determine the local filing fee paid to the Town.
- k. ☐ The applicant should also be prepared to pay a fee to the Newburyport Daily News to publish notice of the NOI filing and public hearing (see Number 10 below for more information).

***Send Notification to Abutters within 100' of the Property***

- 3. Concurrent with the filing of the NOI, the applicant is required to notify abutters in accordance with the provisions of 310 CMR 10.00:
  - a. ☐ The applicant must obtain a certified list of abutters within 100 feet of the subject property from the [West Newbury Assessor's Office](#).
  - b. ☐ The applicant must notify the abutters in writing of the NOI filing at least 7 days before the date of the scheduled public hearing. A template for the notification to abutters can be found at the MA DEP website in section 3 at the following link <https://www.mass.gov/how-to/wpa-form-3-wetlands-notice-of-intent>.
  - c. ☐ The applicant must present either the certified mail receipts or certificate of mailing for all abutters at the beginning of the public hearing.

***Submit the Complete NOI filing - WPA Form 3, Additional Required Documents, and Checks***

- 4. Submit a complete filing to the West Newbury Conservation Commission:
  - a. ☐ 2 hard copies of the completed and signed WPA Form 3.
  - b. ☐ 2 hard copies of all required additional documents as listed in number 2 of this document.
  - c. ☐ 1 digital copy of the completed and signed WPA Form 3 and all required additional

Documents as outlined in the first section of this document.

- d. ☐ A check in the appropriate amount as determined by the local fee schedule made payable to the Town of West Newbury.
- e. ☐ A check for the town's share of the state fees, as determined by the NOI Wetland Fee Transmittal Form, made payable to the Town of West Newbury.
  - i. Hard copies of the complete filing and checks as outlined above can be mailed or hand delivered in person to the Conservation Office:  
Town of West Newbury  
Conservation Commission  
381 Main Street  
West Newbury, MA 01985
  - ii. Digital copies must be submitted via email to [conservation@wnewbury.org](mailto:conservation@wnewbury.org)

**5. Submit to the Massachusetts Department of Environmental Protection, Northeast Regional Office (at the same time submission is made to the town):**

- a. ☐ 1 hard copy of WPA Form 3, all additional documents as listed in number 2 of this document, and copies of the checks submitted to the town and the state paid to the town of West Newbury and to the state.
  - i. Hard copies of the complete filing as outlined above can be mailed to:  
Department of Environmental Protection NERO – Wetlands Division  
150 Presidential Way  
Woburn, MA 01801  
\*Please note this is an updated address as NERO moved out of the former Wilmington location on December 19, 2022\*
  - ii. Please note, no original checks should be sent with the filing that is sent to the Massachusetts Department of Environmental Protection, Northeast Regional Office at the address above.

**6. Submit to the Massachusetts Department of Environmental Protection (at the same time submission is made to the town and regional DEP office):**

- a. ☐ 1 copy of the NOI Wetland Fee Transmittal Form and a check for the state's share of the filing fee as determined by the Wetland Fee Transmittal Form, made payable to the Commonwealth of Massachusetts.
  - i. Hard copies of the NOI Wetland Fee Transmittal Form and checks should be mailed to:  
Department of Environmental Protection  
Box 4062  
Boston, MA 02211

**7. Submit to the property owner, if different than the applicant (at the same time submission is made to the town, regional DEP office, and state DEP mailbox):**

- a. ☐ 1 hard copy of WPA Form 3 and all additional required documents.
- b. ☐ Submission to the property owner must be done by certified mail or hand delivery.

***Next Steps – Scheduling a Public Hearing and Publishing Legal Notice of the Public Hearing***

- 8. The Conservation Agent will review the filing submission for completeness. Any errors or missing documents will be brought to the attention of the applicant and/or their representative and will likely need to be addressed before the Agent can add a public hearing to the Commission's agenda.

- The following are examples that could cause the Agent to deem a submission as incomplete:
    - Failure to complete all required and applicable sections of WPA Form 3;
    - Failure to submit required plans and documents
    - Submission of plans that do not meet the requirements set in section 1 of this document;
    - Failure to pay the local filing fee and/or the town's share of the state's filing fees.
9. When the Conservation Agent has received a complete filing, a public hearing for an upcoming Conservation Commission meeting will be scheduled. If you are planning a timeline for your project, please keep the following in mind:
- The Conservation Commission generally meets the 1<sup>st</sup> and 3<sup>rd</sup> Monday of each month;
  - Due to holidays, meetings are occasionally rescheduled;
  - Please refer to the meeting schedule on the [Conservation Commission website](#) as it includes meeting dates and submission deadline dates for each meeting;
  - A public hearing will not be closed and a permit will not be issued until the MA DEP has issued a DEP File Number for the project.
    - Incomplete filings to the MA DEP and/or failure to submit checks in the correct amount to the appropriate address can cause delays to the issuance of a DEP File Number.
10. Legal Notice of the NOI filing and public hearing will be placed in the Newburyport Daily News by the Agent at the applicant's expense.
- A Legal Notice is required to be published in the Newburyport Daily News at least five days prior to the hearing.
  - The Conservation Agent will prepare the Legal Notice, submit it to the Newburyport Daily News, and the Newburyport Daily News will send a proof for review and contact the applicant or their representative for payment;
  - Please note that the Newburyport Daily News will not publish the Legal Notice until they receive payment.
  - A public hearing can't be held until proper Legal Notice is advertised.

### ***Site Walk and Public Hearing***

#### **11. Site Walk:**

Prior to the public hearing, the Conservation Agent will schedule a site walk. The site walk will likely take place the Wednesday before the scheduled meeting but may be moved to a different day due to scheduling, weather, availability of daylight, and/or tides. At the site walk the Commission will review the site, observe existing site conditions, review the wetlands delineation flagging, and confirm that all resource areas are flagged and flagged correctly.

#### **12. Public Hearing:**

- The applicant or their representative is required to attend all public hearings for the filing.
- If they have not done so prior to the public hearing, the applicant or their representative must present either the certified mail receipts or certificate of mailing for abutter notification at the beginning of the public hearing.
- At the public hearing the Commission will:
  - Open the public hearing;
  - Review the filing and any associated plans and documents;
  - Discuss and ask questions anything observed during the site walk;

- Ask questions about the filing and associated documents to the applicant and/or their representative;
- Ask if the applicant and/or their representative have addressed any comments that the MA DEP may have made;
- Review any letters from NHESP, if applicable;
- Hear any comments by members of the public attending the public hearing or submitted to the Commission prior to the hearing;
- If the Commission requires assistance in its technical review of the filing, the Commission may request a peer review at the applicant's expense (read more about the Commission's policy on hiring outside consultants [here](#)).
- Additional public hearings after the first public hearing may be necessary. If an additional public hearing is needed, the Commission will ask for the applicant's permission to continue the public hearing. Reasons why an additional public hearing may be needed include:
  - The Commission has additional questions or needs additional information that the applicant and / or their representative are unable to answer or provide during the public hearing;
  - Revised plans or documents based on site walk observations or items discussed at the hearing are necessary;
  - MA DEP has provided technical comments that must be addressed;
  - MA DEP has not yet issued a File Number;
  - The Commission is waiting for additional information or decisions from a state agency such as a letter from the state's Natural Heritage and Endangered Species Program (NHESP).

### **13. Closing the Public Hearing and Issuing an Order of Conditions:**

- Once the Commission has all of the information needed, they will close the public hearing.
- After the public hearing is closed, the Commission will vote on whether to issue an Order of Conditions containing the conditions under which the project may proceed and will discuss the conditions with the applicant and/or their representative before issuance.
- If the project is denied the Commission will issue an Order setting out the reasons for the denial.
- The Commission has 21 days from the close of the public hearing to issue the final Order of Conditions.
  - The final Order of Conditions will either permit the proposed work with Conditions that must be adhered to or deny the proposed work if the Commission finds that the work in resource area(s) and or buffer zone(s) can't meet or be conditioned to meet the performance standards set by the [Regulations](#) of the [Wetlands Protection Act](#).

## ***Order of Conditions (OOC)***

1. The Order of Conditions (OOC) is the Permit the Commission issues to the applicant with a copy sent to the MA DEP and to the property owner if they are different than the applicant. The OOC permits the work in the resource area(s) and or the buffer zones(s) that was approved by the Commission in the Notice of Intent (NOI) filing and contains Conditions that must be followed to allow the work to occur in the least impactful way possible.

- a. ☐ **It is important that the property owner read the entire OOC carefully.**
  - It is the property owner's responsibility to ensure that all work performed complies with the Conditions in the OOC.
  - Failure to comply with the OOC could result in delays to the work in the resource area(s) and or buffer zone(s), fines, and legal action.
- b. ☐ **There is a 10-business day appeal period that begins when the OOC is issued which is the date the OOC is given to the applicant either by certified mail or hand deliverance.**
  - During this 10-day appeal period, no work permitted under the Order of Conditions can occur.
  - The applicant, the property owner, any person aggrieved by the OOC, any owner of land abutting the land subject to the OOC, or any 10 residents of the town in which such land is located, have the right to request the Massachusetts Department of Environmental Protection, Northeast Regional Office to issue a Superseding Order of Conditions.
  - The appeal must be made by certified mail or hand delivery to the MA DEP, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, within 10 business days from the date of issuance of the OOC.
    - The Request for Departmental Action Fee Transmittal Form can be found at the MA DEP website: <https://www.mass.gov/how-to/wpa-form-5-order-of-conditions>
    - A copy of the request sent to the MA DEP must be sent at the same time by certified mail or hand delivery to the Conservation Commission and to the applicant, if they are not the appellant.
- c. ☐ **The OOC is required to be recorded at the [Essex South Registry of Deeds](#).**
  - Before work can start on the project, proof of recording must be provided to the Conservation Agent.
  - Once the OOC is recorded, it will create an encumbrance on the deed / title to the property.
    - The encumbrance of the OOC to the deed / title of the property is only removed when a Certificate of Compliance is recorded.
    - See the section below titled "Certificate of Compliance (COC)" for information on how to obtain a COC.
  - The recorded OOC follows the property, *not* the property owner.
    - Prior to selling or buying a property, any recorded OOC's that do not also have a COC recorded should be addressed through the Commission through a COC request.
- d. ☐ **The OOC is valid for three years from the issuance date.**
- e. ☐ **The OOC is only valid for the work specified in the Order of Conditions and as shown on the approved plans and any other documents approved by the Commission, if applicable.**
  - Changes to the OOC can be requested in writing to the Conservation Commission.

- The Commission will review the requested change(s) during a regularly scheduled meeting.
  - Minor changes may be approved with the above process.
  - Changes that are substantial or create an increased impact to the resource area(s) or buffer zone(s) will require an Amendment to the Final Order of Conditions.
- f. ☐ **The OOC may be extended for an additional one-year period.**
  - Written request to extend the OOC must be made to the Conservation Commission at least 30 days prior to the expiration of the OOC.
    - An expired OOC cannot be extended.
    - Work under an expired OOC in a resource area or buffer zone is not permitted. To bring the project back into compliance with the Wetlands Protection Act, a new filing will need to be submitted to and approved by the Conservation Commission.
- g. ☐ **Issuance of an OOC does not relieve the applicant and/or property owner from complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.**



## ***Certificate of Compliance (COC)***

1. A Certificate of Compliance (COC) is a document issued by the Conservation Commission that indicates that a permitted project has been completed in substantial compliance with the issued Order of Conditions (OOC). Once the COC is issued and recorded, it removes the encumbrance that the recorded OOC created to the deed to the property title with the Essex South Registry of Deeds.
  - If a project/work was permitted through an OOC and work was never done, a COC can be requested indicating this to remove the encumbrance of the OOC from the deed / title to the property
  - The recorded OOC follows the property, not the property owner. Prior to selling or buying a property, any recorded OOC's that do not also have a recorded COC should be addressed with the Conservation Commission through a COC request.
2. **Prepare and/or obtain the following items that are required to be submitted as part of your COC request:**
  - a. ☐ Download and complete the COC request / WPA Form 8A from the MA DEP website. WPA Form 8A can be found here:  
<https://www.mass.gov/lists/wetlandspermittingforms#certificate-of-compliance->
  - b. ☐ An as-built plan showing all areas within jurisdiction of the Wetlands Protection Act. The as-built plan shall contain the following:
    - A signature from a professional engineer of record certifying that the project is in substantial compliance with the Order of Conditions that was issued;
    - As-built elevations of all drainage ways constructed within 100ft. of any wetland resource area.
    - As-built elevations and grades of all filled or altered wetland resource areas, buffer zones and replicated wetland areas.
    - Distances to all structures within 100ft. of any wetland resource area.
      - The original plan that was submitted with the Notice of Intent filing can be used to create the as-built plan with any changes in the elevations or locations be marked in red and the term "as-built" added to the plan title.
  - c. ☐ The West Newbury Conservation Commission requires a fee paid to the Town for the COC request.
    - The fee is determined by the expiration date of the OOC at the time the COC request is made. Please refer to the [local fee schedule](#) to determine the correct fee.
3. **Submit a Certificate of Compliance request to the West Newbury Conservation Commission:**
  - a. ☐ 2 hard copies of the completed and signed Certificate of Compliance Request, WPA Form 8A.
  - b. ☐ 2 hard copies of the as-built plan as outlined above.
  - c. ☐ 1 digital copy of the completed WPA Form 8A and as-built plan.
  - d. ☐ A check in the appropriate amount as determined by the local fee schedule made payable to the Town of West Newbury.
    - i. Hard copies of the full filing and checks can be mailed or hand delivered in person to the Conservation Office:  
Town of West Newbury  
Conservation Commission  
381 Main Street  
West Newbury, MA 01985
    - ii. Digital copies must be submitted via email to [conservation@wnewbury.org](mailto:conservation@wnewbury.org)



**4. A site walk will be scheduled.**

- The Conservation Agent will schedule a site walk. At the site walk the Conservation Agent will review the site and completed work for compliance with the OOC. The Agent will confirm the as-built plan accurately reflects the site, grading, and locations of any approved construction. The Agent may also take pictures of the site to show the Commissioner's during their meeting.
- If the site and completed construction appears to be in substantial compliance with the OOC and as-built plan, the Agent will add the COC request to the agenda for the Commission's next regularly scheduled meeting.
- If the site and construction are not in substantial compliance with the OOC and as-built plan, the Agent will discuss these discrepancies with the applicant, and their representative if applicable, and the property owner if different from the applicant.
  - The Agent may make suggestions on how to bring the site into compliance and may schedule a future site visit to confirm the site is in compliance and if it is, will proceed to add the COC request to the Commission's meeting agenda.
  - If the Agent believes the site is substantially out of compliance, the Agent may recommend the applicant, and or their representative, attend the next regularly scheduled Conservation Commission meeting to determine the best way to bring the site into compliance.
    - The Commission may require an after the fact NOI filing or Amendment to the OOC filing to bring the site into compliance with the OOC and the Wetlands Protection Act.

**5. A decision will be made at a Conservation Commission Meeting.**

- At their regularly scheduled meeting, the Commission will hear the request for the Certificate of Compliance. The Agent will present observations from the site visit and will make a recommendation to either issue or deny the COC. The Commission will discuss the request and the Agent's observations and will vote to either issue or deny the COC.
- If the request is denied, the Agent will work with the applicant and or their representative to address the Commission's concerns and bring the site into compliance.
- If the request is approved and a COC is issued, the Agent will prepare and issue the COC to the applicant.

**6. Issuance of the COC:**

- After the Commission votes to issue the COC, the Agent will prepare and issue the COC to the applicant.
- The COC may contain ongoing Conditions to protect the resource areas at the property. Please read the COC carefully to determine if ongoing Conditions apply.
- The applicant is required to record the COC at the [Essex South Registry of Deeds](#).
  - Recording the COC will remove the encumbrance of the OOC from the property's deed / title.