

Adopted June 20, 2011

**Regulations adopted by the Mansfield Conservation Commission pursuant to the Town of
Mansfield General Bylaw Chapter 15**

General Rules and Regulations

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GENERAL RULES AND REGULATIONS

1. Authority, Purpose, Effective Dates

Authority The Town of Mansfield Conservation Commission promulgates these regulations under the authority granted to it under the Town of Mansfield Wetland Protection Bylaw (“Bylaw”), Chapter 15 of the Mansfield Town Code. These regulations will complement the Bylaw, may be amended as necessary, and shall have the force of law upon their effective date.

Purpose The Bylaw sets forth a public review and decision making process by which activities affecting Resource Areas Subject to Protection Under the Bylaw are to be regulated to ensure the protection of wetland values, including but not limited to those wetland values enumerated in Section (2)(2.1) of the Bylaw. Wetland values protected under the Bylaw are: public water supply; private water supply; groundwater quality and quantity; surface water quality and quantity, including ponds, lakes and reservoirs in the Town of Mansfield; flood control; erosion and sediment control; storm damage prevention; prevention of groundwater and surface water pollution; agriculture, aquaculture, fisheries and shellfish; wildlife and wildlife habitat; recreation; aesthetics; and, historic values.

The purpose of these regulations is to define and clarify the Bylaw process by establishing definitions, uniform procedures, and performance standards by which the Mansfield Conservation Commission shall carry out its responsibilities under the Bylaw, by which the Conservation Commission regulates activities within Resource Areas Subject to Protection Under the Bylaw, and activities in adjacent areas which may effect the functions of those Resource Areas.

Effective Date These regulations shall be effective upon the date of adoption by the Mansfield Conservation Commission. Amendments to these Rules and Regulations shall be filed with the Town Clerk. The provisions of these regulations shall apply to all applicants for Determinations and/or Permits for work filed after that date.

2. Jurisdiction, No Disturb Zone, Definitions

Jurisdiction

(1) Resource Areas Subject to Protection Under the Bylaw The Bylaw protects all areas defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131 §40), and protects additional areas, which are collectively known as the “Resource Areas Subject to Protection Under the Bylaw”, or “Bylaw Resource Areas”.

The Resource Areas Subject to Protection under the Bylaw are:

- (a) Any beach, reservoir, lake or pond, of any size;
- (b) Any perennial or intermittent river, stream or creek;

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- (c) Any bank, the upper boundary of which is defined as the first observable break in the slope or the mean annual flood level, whichever is lower, and the lower boundary of which is defined as the mean annual low flow level;
- (d) Any land under water bodies and waterways;
- (e) Any certified vernal pool;
- (f) Any vegetated wetlands including wet meadows, bogs, or swamps;
- (g) Any land subject to flooding or inundation by groundwater or surface water;
- (h) Lands within 100 feet of any of the Areas Subject to Protection Under the Bylaw, also known as the "100-foot Buffer Zone";
- (i) Lands within 100 feet of any certified vernal pool;
- (j) Lands within 100 feet of any wetland identified by the State as Estimated Habitats of Rare Wildlife.

(2) Activities Subject to Regulation Under the Bylaw The Conservation Commission shall regulate the following activities or work within the Town of Mansfield:

- (a) Any activity proposed or undertaken that constitutes removing, filling, altering, dredging, or building upon any Bylaw Resource Area enumerated in Rules and Regulations Section 2.(1)(a) through (k);
- (b) Any activity connected with the construction, maintenance, repair, or replacement of a subsurface sewage disposal system subject to Subsurface Disposal of Sanitary Sewage (Title V, 310 C.M.R. 15.00), where any component thereof is within any Bylaw Resource Area as enumerated in Rules and Regulations Section 2.(1)(a) through (k), due to the potential of contamination of ground and/or surface waters from system effluent;
- (c) Any work outside of a Bylaw Resource Area which will impact a Resource Area Subject to Protection Under the Bylaw, as enumerated in Rules and Regulations Section 2.(1)(a) through (k).

Nothing herein shall preclude the Conservation Commission from taking appropriate enforcement action against activities occurring outside of the Town of Mansfield that alter a Resource Area Subject to Protection Under the Bylaw within the Town of Mansfield.

No Disturb Zone The Commission finds that the uniform provision of an undisturbed buffer width of 25-feet (No Disturb Zone) will serve to insulate wetland resource areas from adverse impacts stemming from development elsewhere in the buffer zone. No activity except those exempt under Bylaw Section 2.2 or Bylaw Section 2.5 shall be allowed within 25 feet of a resource area. In any instance where the scope or nature of the project is likely to require a greater spatial offset to the wetland resource areas, the Commission reserves the right to increase the No Disturb Zone width to 50-feet.

The Fifty Foot Set Back consists of no buildings, no work, no structures and no alteration.

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Definitions Except as otherwise provided herein, the definition of terms in these Rules and Regulations shall be as set forth in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131 §40) and its Regulations (310 C.M.R. 10.00).

3. Signage

To maintain the perpetual integrity of the No Disturb Zone and to ensure that there will be no encroachments into this zone by the applicant or future owners of the property, the Commission may require permanent signs be placed in the buffer at the applicant's expense. These markers shall be weather resistant. The Commission shall determine their number, size and location.

4. Plan Requirements

(1) Original Plans Plans must accompany any submitted Request for Determination of Applicability (RDA) or Notice of Intent (NOI). Submissions without plans will not be accepted. Non-compliance with the preceding shall constitute due cause for an application to be considered incomplete and subject to denial.

Plans must be to a scale appropriate to show 100 feet around the entire subject property. All Bylaw Resource Areas within 100 feet and Riverfront Areas within 200 feet of the subject property must be shown and labeled on the plan.

Plans must include:

- (a) A location map, north arrow, scale bar, and legend.
- (b) Any existing site conditions, including but not limited to:
 1. Elevation contours at 2-foot interval;
 2. Vegetation, including wooded areas, open space and landscaping;
 3. Footprint of any existing structure(s) and impervious area(s), including but not limited to buildings, patios, decks, sheds, driveways, sidewalks, pools, wells, utilities, septic system, and drainage structures natural and/or manmade.
- (c) The following boundaries of Bylaw Resource Areas must be shown on the plans when applicable:
 1. Any beach, reservoir, lake or pond, of any size;
 2. Any perennial or intermittent river, stream or creek, and its associated mean annual flood level;
 3. Any bank;
 4. Any vernal pool;
 5. Any vegetated wetlands including wet meadows, bogs, or swamps;
 6. Any land subject to flooding or inundation by groundwater or surface water;
 7. Lands within 100 feet of any of the Areas Subject to Protection Under the Bylaw, as set forth in Bylaw Section (2)(2.1), also known as the "Bylaw 100-foot Buffer Zone", or "Buffer Zone";
 8. Lands within 25 feet of any of the Areas Subject to Protection Under the Bylaw, as set forth in Bylaw Section (2)(2.4), also known as the "No Disturb Zone";
 9. Lands within 100 feet of any vernal pool;

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10. Lands within 200 feet of any perennial river, known as "Riverfront Area"; and,
11. Lands within 100 feet of any wetland identified by the State as Estimated or Priority Habitats.

These boundaries must be color coded as follows:

Green – BVW line

Yellow – 100-foot Buffer Zone

Orange – 50-foot Buffer Zone and 25-foot No Disturb Zone

Dark Blue – Perennial Streams and Rivers

Light Blue – Intermittent Streams.

- (d) Any proposed site work, including but not limited to:
 1. Proposed elevation contours at 2-foot interval. The amount of earth removal or fill shall be noted on the plan.
 2. Any ground disturbance including vegetation removal and proposed landscaping.
 3. Footprint of any proposed structure(s) and impervious area(s), including but not limited to buildings, patios, decks, sheds, driveways, sidewalks, pools, wells, utilities, septic system, and drainage structures natural and/or manmade.
 4. Proposed building roof run-off management (Ex. Drywells).
 5. Proposed retaining walls and/or other structures designed to control erosion and sedimentation. A cross-section of proposed retaining walls must be provided.
 6. Any proposed alteration which physically alters drainage patterns, topography and/or vegetation should be depicted on the plans, and the square footage of alteration for each affected Bylaw Resource Area shall be noted on the plan.
 7. The proposed limits of work, including erosion control (hay bales, silt fence, silt sacs, waddles, etc.) and construction fencing.
- (e) All plans for work on properties with a dock must include the Massachusetts DEP 310 CMR 9.00, Chapter 91 Waterways License number on the plan.
- (f) All computations, calculations, maps and/or drawings shall be signed and stamped by a registered, professional engineer or land surveyor. All wetland, bank, and vernal pool restoration and/or replication must be designed and include plans stamped by a registered, Professional Wetland Scientist or Biologist.

(2) Changes in Submitted Plans If at any time after a Determination of Applicability or Order of Conditions has been issued there is a change in the proposed activity the applicant must submit information on the proposed changes and their potential impacts on the interests identified in the Bylaw. The Commission must be notified in writing five (5) days prior to a public hearing on the proposed changes. Failure to do so will result in rescheduling the hearing to the next scheduled meeting of the Commission.

The Commission shall review submitted changes and determine:

- (a) That the changes represent a substantial departure from the original proposal and that the potential impacts of the new proposal on the interests identified in the Bylaw are sufficiently different from those of the original proposal as to require the filing of a new Request for Determination or Notice of Intent; or,

- (b) That the changes involve a substantial departure from the original proposal in only one or two limited respects, and that the Commission will consider amending the original Determination or Order; or,
- (c) That the changes represent an insignificant change in the original proposal and will cause no significant difference in the impact of the activity on the interests identified in the Bylaw, in which case the Applicant may proceed in conformance with those changes.

5. Hearing Process When Other Mansfield Board Approvals are Needed

Though a Conservation Public Hearing on the project may commence before other applicable Town boards/commissions/departments have permitted the project, written proof of such boards/commissions/departments approval of any project, according to the plans previously submitted to the Conservation Commission as part of the Request for Determination of Applicability or Notice of Intent, must be provided before any hearing is closed and a permit is issued.

6. Rare Species Habitat

Rare species shall include without limitation, all vertebrate and invertebrate animals and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP). This habitat includes any wetland identified by the state on the Estimated and Priority Habitat Map or any wetland that has been identified by NHESP as containing state-listed rare species but has not yet been mapped. Evidence of the presence of such species or evidence of likely habitat shall be considered by the Conservation Commission, regardless of whether the site in which they occur has been previously identified by the Division. The Commission may consult with the Division or Natural Heritage and Endangered Species Program, or other authorities as it deems necessary, for guidance and recommendations.

When a rare species is found, NHESP requires a locus map identifying precisely where the species was seen. Using this locus, NHESP estimates where else the rare species may be found based on knowledge of the particular species' habits, migration distances and requirements for feeding, breeding and over-wintering. Therefore, it is not realistic to expect NHESP to respond to every project that arises in all 351 towns and cities in the Commonwealth. The maps provide a legal presumption that the state-listed species exists in that area.

The requirement for a site visit by the Natural Heritage and Endangered Species Program (NHESP) in 2.6 of the bylaw can be waived only under the following conditions: 1) The addition is to an existing residential structure that was in existence prior to the effective date of the Bylaw, (August 3, 1999) and 2) the addition is proposed on land legally disturbed with applicable local, state and federal permits prior to the effective date of the bylaw, August 3, 1999 and 3) the NHESP responds in writing that a site visit is not possible. In this situation, the Conservation Commission shall hire a wildlife consultant of its choosing, to be paid for by the applicant, in order to make a determination as to whether the land is significant to the protection of the Vernal Pool and/or state listed species. The Commission will, at its discretion, and

depending on the facts of each case, determines how comprehensive the wildlife study report shall be.

Notwithstanding provisions 2.4, 2.5 or 2.7 of the Bylaw, no activity associated with the construction of new subdivisions (including but not limited to roadways, drainage or utility systems, septic systems, lawns, driveways, sheds, pools, decks, patios or individual homes etc.) or commercial/industrial projects, shall be performed within 100 feet of any certified Vernal pool and or rare species habitat area as designated on the most recent map prepared by NHESP.

Definitions

Addition shall mean anything added that extends the roofline and/or foot print of a building, included but not limited to a sunroom, family room, garage, bedroom, etc., and/or anything that is added as a separate structure, including but not limited to a patio, spa, garage, shed, pool (in ground and above ground), deck, etc.

Disturbed land is land determined by the Commission to be modified of natural, native vegetation and/or topography, including but not limited to a parking lot, driveway, lawn, non native landscaping, patio, sports court, and/or vegetable/flower garden, etc.

Emergency Projects necessary for the protection of the health and safety of the Residents of Mansfield:

The following emergency projects may be exempt from the requirements of 2.6 of the Bylaw; 1) If an existing structure that was in existence prior to the effective date of the Bylaw (August 3, 1999) has a septic system that is currently in failure and 2) the applicant receives a written statement from the Mansfield Board of Health certifying that the system is currently in failure; and 3) the applicant demonstrates through clear and convincing evidence that there are absolutely no alternatives to placement of a new system outside of the 100 foot buffer of a certified Vernal pool and/or Rare Species habitat. In no case shall the septic system be rebuilt larger than is necessary to adequately service the needs of the existing structure.

7. Consultant Review

If, in the opinion of the Conservation Commission, the proposed project may alter the resource area or the ability of the buffer zone to protect the resource area, the Commission may implement section 5.2 of the Mansfield Wetland Bylaw and hire an outside consultant at the applicant's expense.

Access by the applicant to any consultant retained by the Commission under Bylaw Section (5)(5.2) shall only be through the Conservation Office. Questions, inquiries or comments shall be submitted to the Conservation Office in writing, unless at an on-site meeting, and then be provided to the consultant by the Commission. The Commission shall provide a copy of the Consultants response to the applicant.

8. Limited Projects

The applicant is required to minimize any impact to a Resource Area. The Commission may find that the minimum standards are not sufficient, and at its discretion require stricter standards, such as in an Area of Critical and Environmental Concern (ACEC). If the applicant chooses to not submit any documentation demonstrating how impacts to Resource Areas will be minimized, the Commission can deny the project without prejudice due to lack of sufficient information.

9. Resource Replication Requirements

Resource replications must be designed and plans stamped by a registered Professional Wetland Scientist or comparable registered professional. The replicated area must reproduce all the values and functions of the original resource as determined by the Conservation Commission.

Replication areas shall be constructed and planted prior to construction of any structures, during the initial phase of the site development, to provide sufficient time for resource values and function to become established prior to the expiration of the permit. In certain instances, site conditions notwithstanding, the Commission may require that additional values and functions be incorporated into the replication design. In circumstances where replacement of specific functions and values would require substantial amounts of time before being completely replicated (for example, those provided by large mature trees) the Commission may require additional compensation of area functions, values, etc.

An Environmental Monitor shall be hired to oversee all aspects of the replication. The Monitor will be responsible for verification and inspection of erosion control(s), and to oversee the excavation and the construction of the replication area, including ensuring the hydrology of the replication area is sufficient to support a wetland plant community.

A replication monitoring plan is required. Replication plantings shall be monitored for two (2) growing seasons to ensure the plantings are healthy. Dead or dying plants shall be replaced. A report shall be submitted to the Commission as to the health of the replication area at the end of each growing season.

Wetland Replications

Wetland replications must follow the guidelines of the current DEP Inland Wetland Replication Guidelines.

Wetland replications must be at least twice as large as the area of the original resource that will be destroyed.

At a minimum, the top 18 inches of soil from the original wetland(s) must be relocated with soil structure intact, for reuse as topsoil in the replication area. This is intended to preserve plant, invertebrate, and planktonic communities of the wetland, inhibit invasive species and maintain integrity of the original hydric soils.

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Any replication or restoration that creates a resource on abutting properties shall require an easement from the abutting property owner covering the full extension of the resource on that property prior to commencement of the work.

A bond shall be posted that will enable the Commission to complete the replication should the applicant fail to fulfill obligations set forth in the Orders of Conditions.

Criteria for acceptance and approval of replication areas shall be based solely on function and performance as specified in the Order of Conditions, not based on construction 'substantial compliance'.

10. Conservation Restrictions

The Commission, at its discretion, may require the Applicant to place a Conservation Restriction upon the resource area(s) and certain areas within the 100-foot buffer zone to Rare Species Habitat and/or a Certified Vernal Pool.

11. Enforcement

In accordance with the provisions of Massachusetts General Laws, Chapter 40, Sections 21D and 31, as well as every other authority and power that may have been, or may hereafter be conferred upon it, the Town of Mansfield may enforce the provisions of its Wetlands Protection Bylaw, restrain violations thereof, and seek injunctions and judgments to secure compliance with the General Rules and Regulations of the Town of Mansfield Wetland Protection Bylaw.

Any person who violates any provision of this Bylaw, or any conditions of a permit issued to it, shall be subject to a fine of up to \$200.00 per day. Each day, or portion thereof, during which a violation continues, shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. This Bylaw may be enforced pursuant to Massachusetts General Laws, Chapter 40, Section 21D, by a Town of Mansfield police officer, or other officer having police powers.

In the event of a violation of the Wetland Protection Bylaw, these Rules and Regulations, or of any Order issued there under, the Commission or its agent(s) may issue a Notification or Enforcement Order to stop any work or activities that may potentially be regulated under the Bylaw to the owner, the applicant, or their agent, by certified mail, return receipt requested. Failure of the Commission to issue a Notification or Enforcement Order, for any reason, shall not prevent the Town of Mansfield from pursuing any other legal remedy at law, or in equity, to restrain violations by this Bylaw and to secure compliance with its Orders.

The Town of Mansfield shall be the beneficiary of all fines imposed on account of the violation of this Bylaw in order to defray the expense of enforcing the same.

Upon the request of the Commission, the Board of Selectmen and Town Council shall take such legal action as may be necessary to enforce this Bylaw and permits issued pursuant to it.

12. Snow Disposal

Snow shall not be dumped in any waterbody, including rivers, ponds or wetlands, certified vernal pools, Outstanding Resource Waters, or Areas of Critical Environmental Concern.

Snow shall not be dumped within the Zone II or Interim Wellhead Protection Area (IWPA) of a public water supply well or within 75 feet of a private well, where road salt may contaminate water supplies.

Snow shall not be dumped on DEP-designated high and medium yield aquifers where it may contaminate groundwater.

Snow shall not be dumped on top of storm drain catch basins or in stormwater drainage swales.

Snow shall not be disposed of in areas where trucks may cause shoreline or stream bank damage or erosion.

At the discretion of the Commission, the following protocol shall be implemented to ensure that snow disposal areas do not impact Resource Areas Subject to Protection Under the Bylaw:

- 1) Debris shall be cleared from the disposal area prior to use for snow disposal.
- 2) A silt fence or equivalent barrier shall be placed securely on the down gradient side of the snow disposal area, and shall be maintained in good repair during the entirety of the snow season.
- 3) Debris shall be cleared from the snow disposal site and properly disposed of at the end of the snow season, no later than May 15th.

13) Hiring Outside Consultants

The Commission will on occasion utilize its ability under MGL Chapter 44, section 53G and under section 5.2 of the Mansfield Wetland Bylaw, further defined in section 7 of the Mansfield Conservation Commission bylaw regulations, to hire an outside consultant at the applicant's expense, (see below). The decision to utilize outside consultants will be based on the size, scope and complexity of the proposed project and the limited number of hours available to the Conservation Commission staff.

Section 5.2 of the Mansfield Wetland Bylaw

The Commission is authorized to require any applicant to pay the costs and expenses of any expert or other consultant deemed necessary by the Commission to review and comment on the application and all relevant materials. The Commission shall choose the consultant(s) and outline the scope of work. The vote to require the use of a consultant shall be made by a super majority of the Commission (5 out of 7). Only projects that propose to directly alter any of the outlined resource areas shall be subject to this provision.

For any project that involves the alteration of a resource area, the Commission may require the posting of a bond, separate from the bonding requirements of any other Town Board or Department, to insure the successful completion of the required replication or mitigation procedures.

Pertinent Section of MGL Chapter 53, section 44

Section 53G. Notwithstanding section 53, any city or town that provides by rules promulgated under section 9 or 12 of chapter 40A, section 21 of chapter 40B, section 81Q of chapter 41 or section 31 of chapter 111, or by rules promulgated by a conservation commission established by a city or town under section 8C of chapter 40 when implementing the authority conferred under said section 8C of said chapter 40, section 40 of chapter 131, or under any local wetlands ordinance or by-law, for the imposition of reasonable fees for the employment of outside consultants may deposit such fees in a special account. Such rules shall provide for an administrative appeal from the selection of the outside consultant to the city council or town board of selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by a municipal permit granting board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the city council or the town board of selectmen within one month following the filing of the appeal, the selection made by the municipal permit granting authority shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction of the authorized board or authority without further appropriation; provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest.

14) Requirement for submitting applications to Mansfield Conservation Commission

Costs associated with an application:

- State of Massachusetts Wetland fees
- The Town of Mansfield bylaw fees
- Costs associated with placing an add in the local paper* - must pay the newspaper directly, do not write a check to the town for this

All applications, as well as additional information (such as revised plans, stormwater calculations, etc.) MUST be in the office at least 5 business days prior to the meeting.

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The application will not be heard if the following information is not complete:

1. DEP number assigned
2. If applicable, Natural Heritage and Endangered Species Program must be notified and we must have received a response back. Please be aware that NHESP has 30 days to respond. This meets the performance standards for the state wetland protection regulations.
3. In addition, applicant will be required to comply with section 2.6 of the town of Mansfield wetland bylaw for other performance standards regarding wildlife habitat evaluation.
4. Green cards to abutters must be handed in to office/staff before the meeting.

*Abutter notification:

- Must notify abutters by certified mail.
- Abutters must be notified 5 business days before the meeting
- green cards **MUST** be submitted before the public meeting or the project will not be heard

Additional information required:

- Final comments by Town Engineer, if applicable, must be received two days prior to meeting
- Cut off date for placing ads: The filing must be received no later than the Friday before the ad is to be placed. Ads are placed on the following Wednesday and published the following Monday, 5 business days before the hearing. Applicant will be responsible for the cost of the ad – Sun Chronicle will contact you between Wednesday and Friday of the week the ad is placed.
- Septic system location approved by the Board of Health