

GENERAL BY-LAWS

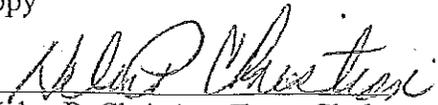
MANSFIELD, MASSACHUSETTS



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A True Copy

Attest:


Helen P. Christian, Town Clerk

CHAPTER FIFTEEN

CONSERVATION COMMISSION RULES AND REGULATIONS

TOWN OF MANSFIELD WETLAND PROTECTION BYLAW

Amended
1999

SECTION 1: PURPOSE AND AUTHORITY

The purpose of this bylaw is to protect the wetlands, related water resources, and adjacent land areas in the Town of Mansfield by controlling activities deemed by the Conservation Commission likely to have a significant impact, or cumulative effect, upon wetland values, including, but not limited to, the following: protection of public or private water supplies and groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution control, protection of fisheries and wildlife habitat, and preservation of open space [collectively, and hereinafter, "the wetland values", protected by this bylaw]. This bylaw is adopted under the Home rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, and is independent of the Wetlands Protection Act, MGL Chapter 131, Section 40, and any regulations applicable to such Act.

SECTION 2: JURISDICTION

2.1 Except as permitted by the Conservation Commission, or as provided for in this bylaw, no person shall remove, fill, dredge, build upon, or alter in any other way, the following wetland resource areas: any freshwater wetland, marsh, swamp, bog, or wet meadow [hereinafter "bordering vegetated wetland" or "bvw"]; any lake or pond, river or stream [hereinafter waterbody or waterway]; a any bank, beach, or other type of edge adjacent to, or land under, said waterbodies or waterways, any flood zone, as shown on the federal flood maps, or determined by other engineering methodology, associated with said waterbodies or waterways; any vernal pools certified by the State; any isolated wetland area larger than 5,000 sq. ft. and/or any area defined as Isolated Land Subject to Flooding [ISLF] under the Wetland Protection Act; wetland which is identified by the State as the habitat site of a state-listed species [collectively, and hereinafter, the "resource areas"]; or any land within 100 feet from the edge of any of the above referenced resource areas [hereinafter the "buffer zone"].

2.2 This bylaw shall not apply to the following activities:

1. Emergency projects necessary for the protection of the health or safety of the residents of the Town of Mansfield.
2. Maintenance, repair, or replacement, without substantial enlargement, of existing structures and facilities used to provide public [electric, gas, water, sewage, rail transport, and telecommunication] services, and existing public ways and associated drainage facilities, provided that the Commission is notified prior to the initiation of said work.
3. Normal maintenance or improvement of land in existing agricultural use.
4. Normal maintenance, repair, replacement, or improvement to any existing private residential property or components, including, but not limited to: fences, hedges, gardens, lawns, retaining or stone walls, patios, lamp posts, flag poles, or mailboxes. Project proponents must thoroughly check with the Commission or its agent for applicability.

2.3 To insure that the resource areas are protected, and the wetland values are preserved for all of the residents of the Town, the Commission is empowered to deny permission for any alteration of any resource area if, in the judgment of the Commission, such denial is necessary for the protection of the identified wetland values. Due consideration shall be given to possible effects of the proposed work on all of the wetland values listed in this bylaw.

2.4 To provide minimum protection for the wetland values and resource areas, no activity, unless permitted in Section 2.5, shall be allowed within 25 feet of any resource area [hereinafter "the no disturb zone"]. Further, the Commission reserves the right to prohibit, or significantly condition, through the issuance of an Order of Conditions, work between 25-50 feet away from any resource area. In determining whether to prohibit or condition work within this area, the Commission will take into account factors including, but not limited to, the slope of the adjacent areas, the existing and proposed drainage patterns, the type of the proposed adjacent land use and its potential for creating long-term impacts on the resource areas and the wetland values.

Amended: 2010

2.5: : The following activities may be permitted within 25' of a resource area: the creation of wetland replacement or mitigation areas, installment of drainage outfalls, grading work associated with additions to existing single-family homes, work on existing commercial or industrial facilities that does not increase the impervious area and has a positive impact to the resource area and its function and value, the maintenance and construction of trails, resource improvement projects, such as the cleaning of streams or the creation of park areas. These exceptions will be reviewed on a case by case basis.

2.6 Notwithstanding the provision of Sections 2.4, 2.5, and 2.7, no activity, associated with the construction of new subdivisions [including roadways, drainage or utility systems, or individual homes] or commercial/industrial projects, shall be performed within 100 feet of any certified Vernal Pool, or any wetland which is identified by the State as the habitat site of a state-listed species. If an addition to an existing residential structure is proposed within 100 feet of a certified Vernal Pool, the Commission will review this activity on a case-by-case basis, and issue conditions necessary to provide for maximum protection to the pool in question, or deny the project if no conditions are satisfactory to protect the pool.

Amended: July 2012:

If the 100-foot radius around such a Vernal pool or wetland area intersects an existing public roadway, then work may be allowed, through an Order of Conditions, by the Commission to occur within the 100-foot radius as long as the proposed work area is on the opposite side of the street from the pool or wetland area. If the State's Natural Heritage Program determines through a site visit that the Vernal Pool or wetland area is not a significant habitat area, or if the applicant demonstrates through a wildlife study performed by a qualified consultant approved by the Commission that the Vernal Pool or wetland area is not a significant habitat area, then the Commission may allow, through an Order of Conditions, activity to occur within 100-feet of said Vernal Pool or wetland area.

2.7 The Commission may permit a project which proposes to alter a resource area as long as the projects meets the definition of a "limited project" as outlined in the DEP wetland regulations (see 310 CMR, section 10.53 (3) of the October 6, 1997 edition, or corresponding section of any future edition]. These proposed projects will also be reviewed on a case-by-case basis.

The Commission may, at its own discretion, require, as part of an Order of Conditions or as one of the Conditions attached to a Determination of Applicability, the applicant to place a Conservation Restriction/Easement upon the resource area(s) and certain areas with the 100 foot buffer zone

SECTION 3: ACTIVITIES WITHIN RESOURCES AREAS AND ADJACENT BUFFER ZONES

It is presumed that work which is proposed to occur within any resource area or within the buffer zone of any resource area has the potential to create significant adverse impacts on the resource area. Therefore, any activity proposed to occur within the resource area or the buffer zone area will require

the filing of a Notice of Intent Application. The Commission may condition the proposed activity to protect the resource area(s), or if no condition exists to protect the area, then the Commission may deny the project. For activity proposed to occur between 50-100 feet away from any resource area [except a Certified Vernal Pool], the applicant may file a Request for Determination of Applicability [RDA]. If a RDA is filed, the Commission may permit, with any necessary conditions, the work based on the plans submitted, or can require the filing of a Notice of Intent.

SECTION 4: ADMINISTRATION

4.1 The Commission may, following a public hearing, adopt Regulations for the administration and enforcement of this bylaw. Until such time that any regulations are in place, the hearing procedures, timeframes, definitions, application requirements, and any other administrative activities contained within the MA Wetlands Protection Act and accompanying DEP Regulations shall apply. All hearings held under this bylaw shall be concurrent with hearings required by the MA Wetlands Protection Act. Failure of the Commission to adopt regulations shall not nullify or invalidate any section or provision of this bylaw. If any section of the regulations is ruled invalid by any court of law, that action shall not invalidate any provisions of this bylaw.

4.2 To clarify any section(s) of this bylaw, the Commission may issue policy advisories.

4.3 For any property for which an application has been made, the Commission, its agents or employees may enter onto said property for the purpose of carrying out its duties under this bylaw.

4.4 The Commission shall conduct public hearings for all applications filed under this bylaw. The provisions of Section 4.1 shall apply for the procedures of the required hearings.

SECTION 5: FEES AND BONDING

Amended: July 2012

Section 5.1:

Fees may be set and amended from time to time by a vote of a majority of the Conservation Commission and approved by the Board of Selectmen. The approved Filing Fee Schedule shall be filed with the Town Clerk.

These fees are in addition to the fees established by Mass. DEP and required under the state Wetlands Protection Act, Chapter 131, Section 40, and any applicable regulations.

5.2 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 votes 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.

SECTION 6: BURDEN OF PROOF

The person filing an application with the commission shall have the burden of proving by a preponderance of credible evidence that the work proposed will not have a significant impact, or adverse cumulative effects, upon the resource area(s) in question and the associated wetland values. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit, or grant a permit with conditions necessary to provide protection for the resource area.

SECTION 7: SEVERABILITY

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.