

General Rules and Regulations of the Town of Mansfield Wetland Protection Bylaw

Adopted February 24, 2014

Amended March 17, 2014

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 (the “Commission”) promulgates these General Rules and Regulations (the “Regulations”) under the authority granted to it under Section 4.1 of the Town of Mansfield Wetland Protection Bylaw (the Bylaw), Chapter 15 of the Town of Mansfield General By-laws. These Regulations will complement the Bylaw, may be amended as necessary, and shall have the force of law.

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 those wetland values enumerated in Section 1 of the By-law. Wetland values protected under the Bylaw are:

- 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,
- preservation of open space.

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

Effective Date These Regulations shall be effective upon the date of adoption by vote of the Commission. Amendments to these Regulations shall be filed with the Town Clerk. The provisions of these Regulations shall apply to all applications 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. Resource Areas Subject to Protection Under the Bylaw include all areas defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131 §40), and 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 any:

- bordering freshwater wetland, marsh, swamp, bog, or wet meadow (hereinafter, “bordering vegetated wetland” or “bvw”),
- lake or pond,
- river or stream (hereinafter “waterbody” or “waterway”),

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- bank, beach, or other type of edge adjacent to, or land under, said waterbodies or waterways,
- flood zone, as shown on the federal flood maps or determined by other generally accepted engineering methodology, associated with said waterbodies or waterways,
- vernal pools certified by the State,
- 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, and
- any land within 100 feet of the edge of any of the above referenced resource areas [hereinafter, the “buffer zone”].

(2) Activities Subject to Regulation Under the Bylaw

The 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;
- (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 due to the potential of contamination of ground and/or surface waters from system effluent;
- (c) Any work outside of a Bylaw Resource Area or buffer zone which has altered a Resource Area Subject to Protection Under the Bylaw.

Nothing herein shall preclude the Conservation Commission from taking appropriate enforcement action concerning unpermitted activity occurring outside of the Town of Mansfield that has altered a Resource Area Subject to Protection Under the Bylaw within the Town of Mansfield.

No Disturb Zone

Pursuant to Section 2.4 of the Bylaw, the Commission finds that the uniform provision of an undisturbed buffer width of 25-feet (No Disturb Zone) will serve to insulate Bylaw Resource Areas from adverse impacts stemming from activity elsewhere in the buffer zone. No activity except those exempt under Bylaw Section 2.2 or allowed pursuant to Bylaw Section 2.5 shall be allowed within 25 feet of a Bylaw 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 of a Bylaw Resource Area as authorized pursuant to Section 2.4 of the Bylaw.

Definitions

Except as otherwise provided herein, the definition of terms in these 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). The following terms shall be defined as follows for purposes of application of the Bylaw and these Regulations;

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Addition: anything added that extends the roofline and/or foot print of a building, including without limitation a sunroom, family room, garage, bedroom, etc. and/or anything that is added as a separate structure, including without limitation a patio, spa, garage, shed or pool;

Bank, lower boundary: the mean annual low flow level;

Bank, upper boundary: the first observable break in the slope or the mean annual flood level, whichever is higher;

Disturbed land: land determined by the Commission to be modified of natural, native vegetation and/or topography.

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 to be placed in the No Disturb Zone at the applicant's expense. These signs shall be weather resistant. The Commission shall determine their number, size and location.

4. Hearing Process When Other Mansfield Board Approvals are Needed

Though a Commission public hearing on a project may commence before other applicable Town boards/commissions/departments have permitted the project, written proof of such boards/commissions/departments approval of the project, according to the plans previously submitted to the Commission as part of the Request for Determination of Applicability, Abbreviated Notice of Resource Area Delineation (“ANRAD”), or Notice of Intent, must be provided before any hearing is closed and a permit is issued by the Commission.

5. 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). Rare Species 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 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

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to every project that arises in all 351 towns and cities in the Commonwealth. The NHESP maps provide a legal presumption that the state-listed species exists in that area.

Presumption of Vernal Pool Habitat: If an applicant proposes a project containing a potential vernal pool as indicated on the most recent NHESP maps or if a vernal pool is found on site in preparation for the hearing, the Commission shall presume the possible existence of a vernal pool unless a preponderance of credible evidence has been presented by the applicant at a public hearing demonstrating that the resource area would not qualify as a vernal pool according to the requirements of the certification process as described in the Massachusetts Wetland Protection act. Many indicators of vernal pool habitat are seasonal. The Commission may require an application that may impact a seasonal wetland or vernal pool to contain information collected during or recorded during seasonal periods. Any informal evaluation should be performed by an individual meeting the qualification requirements stated in 310 C.M.R. 10.60 (1)(b).

The requirement for a site visit by the Natural Heritage and Endangered Species Program (NHESP) in Section 2.6 of the Bylaw can be waived in regard to an addition to an existing residential structure 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 in compliance with any applicable local, state and federal permits prior to the effective date of the bylaw, August 3, 1999.

Lands within 100 ft. of a Vernal Pool or habitat site of a State-listed species are likely to be significant to the protection and maintenance of the Bylaw wetland values. In accordance with the Bylaw's fundamental purpose, no project may have a significant adverse impact, either project specific or cumulative on a wetland resource area. Therefore there is a 100 ft. undisturbed buffer zone as required by Section 2.6 of the Bylaw. The burden of proof is on the applicant to prove that the Vernal Pool or wetland area is not a significant habitat area. The Commission has determined that a physical site evaluation is needed to determine whether the Vernal Pool or wetland area is not a significant habitat area. NHESP may perform such a site evaluation, or the applicant may demonstrate 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 as set forth in Section 2.6 of the Bylaw. The Commission may hire a peer review consultant at the applicant's expense to review the applicant's wildlife study or other information submitted by the applicant.

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

Pursuant to Section 2.2.1 of the Bylaw, emergency projects that are exempt from the requirements of the Bylaw include without limitation the following: 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 or there is a current threat of failure and 2) the applicant receives a completed and signed Title 5 Official Inspection Form with an Application for Disposal System Construction Permit (upgrade/repair of components) from the Mansfield Board of Health certifying that the system is currently in failure; and 3) the applicant demonstrates to the Commission through clear and convincing evidence that there is no alternative 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

Pursuant to Section 5.2 of the Bylaw, the Commission may require an applicant to pay reasonable fees for the Commission's costs and expenses to hire any outside expert or other consultant the Commission in its discretion deems necessary to provide peer review of an application and any associated materials. The Commission may in its discretion consider the size, scope and complexity of the proposed project in deciding whether to hire an outside expert or other consultant. The Commission shall deposit such fees in a special account pursuant to M.G.L. Chapter 44, Section 53G. The Commission shall choose the expert or other consultant and outline the scope of work. The decision to hire such an expert or consultant shall require a supermajority vote of the members of the Commission [five votes out of 7 total members]. Only applications that propose direct alteration of a Bylaw Resource Area shall be subject to this Section 7 of the Regulations.

8. Limited Projects

Pursuant to Section 2.7 of the Bylaw, an applicant for a "limited project" 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 in appropriate circumstances may require stricter standards, such as, for example, in an Area of Critical and Environmental Concern (ACEC). If the applicant chooses to not submit any documentation demonstrating how impacts to Bylaw Resource Areas will be minimized, the Commission may 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 and include a signed statement by an individual with at least a masters degree in wildlife biology or ecological science from an accredited college or university, or other competent professional with at least two years experience in wildlife habitat evaluation. The replicated area must reproduce all the values and functions of the original resource as determined by the 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.

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The applicant shall provide an “Environmental Monitor” to oversee all aspects of the replication and provide status reports to the Commission. The Environmental Monitor shall 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.

The applicant shall submit a replication monitoring plan to the Commission. Replication plantings shall be monitored for two (2) growing seasons to ensure the plantings are healthy. Dead or dying plants shall be replaced. The applicant shall submit a report 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 altered.

At a minimum, the top 18 inches of soil from the original wetland(s) must be stored on-site, for reuse as topsoil in the replication area. The top soil and subsoil shall be placed in layers to replicate the stratigraphy that existed in the undisturbed resource 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.

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.

Pursuant to Section 5.2 of the Bylaw, the Commission may require that a bond be posted by the applicant 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

Pursuant to Section 2.7 of the Bylaw, 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 a resource area.

11. Enforcement

The Commission shall have authority to enforce the Bylaw, these Regulations and permits issued by the Commission thereunder by violation notices, enforcement orders, and civil and criminal court actions.

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Any person who violates any provision of the Bylaw, these Regulations or any condition of a permit issued by the Commission, shall be punished by a penalty of \$50.00 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.

In the event of a violation of the Bylaw, these Regulations, or of any permit issued by the Commission thereunder, the Commission or its agent(s) may issue a violation notice or enforcement order to stop any work or activity that may be regulated under the Bylaw to the land's owner, operator, the applicant if any, or their agent, in hand and/or by certified mail, return receipt requested. Failure of the Commission to issue a violation notice or enforcement order, for any reason, shall not prevent the Commission from pursuing any other remedy at law, or in equity, to restrain violations of the Bylaw, these Regulations or any condition of a permit issued by the Commission, to impose fines and/or to secure compliance with its permits. The Town of Mansfield shall be the beneficiary of all fines imposed on account of the violation of the Bylaw, these Regulations or permits issued by the Commission. Upon the request of the Commission, the Board of Selectmen and Town Counsel may take such legal action as may be necessary to enforce the Bylaw, these Regulations and permits issued by the Commission.

As an alternative to initiating criminal proceedings, the Commission may enforce the Bylaw, these Regulations and permits issued by the Commission pursuant to the noncriminal disposition process set forth in M.G. L. Chapter 40, Section 21D, in which case the enforcing persons shall be the Commission, its agent or a Town of Mansfield police officer, or other officer having police powers and the penalty for each violation shall be \$50.00.

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 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. Application Requirements

No application shall be accepted for filing and no public hearing shall be scheduled unless the application includes the required filing fees and all of the following items. The Commission in

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its discretion may, but is not required to allow any item to be provided by the applicant during the public hearing on an application.

Costs associated with an application:

- The Filing Fee Schedule is attached to and incorporated by reference as part of these Regulations and identified as Addendum 1.
- Costs associated with placing an ad in the local paper* - (must pay the newspaper directly, do not write a check to the Town for this.)

All applications, as well as any additional information (such as revised plans, stormwater calculations, etc.) MUST be filed with the Commission at least 10 business days prior to the public hearing.

In addition, a public hearing on an application will not be held if the following information is not complete:

1. DEP number assigned;
2. If applicable, Natural Heritage and Endangered Species Program (“NHESP”) must be notified and the Commission must have received a response back from NHESP. Please be aware that NHESP has 30 days to respond; .
3. Certified mail return receipt green cards to abutters must be handed in to the Commission’s office/staff before the public hearing.

*Abutter notification:

- The applicant must notify abutters by certified mail;
- The applicant must notify abutters at least 5 business days before the public hearing;
- The applicant must submit green cards to the Commission before the public hearing or the application will not be heard.

Additional information required:

- Final comments by Town Engineer, if any, must be received by the Commission at least two days prior to the public hearing
- Cut off date for placing ads: The application must be received by the Commission 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 is responsible for the cost of the ad - Sun Chronicle will contact the applicant between Wednesday and Friday of the week the ad is placed.
- Septic system location approved by the Board of Health.

Plan Requirements

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

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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: (a) the boundary of a vernal pool shall be 100 ft. from the mean annual boundary. The mean annual boundary of such a depression is the highest observed water surface elevation. When this actual line is not clearly visible, other factors such as stained leaves may be used.
 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:

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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 that requires Chapter 91 approval 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 plans shall be signed and stamped by a registered, professional engineer or land surveyor. All plans shall also be stamped by a professional land surveyor to attest to the accuracy of the existing site conditions and property lines. All wetland, bank, and vernal pool restoration and/or replication plans must be designed by and include a signed statement by an individual meeting the qualification requirements stated in 310 C.M.R. 10.60 (1)(b).

(2) Changes in Submitted Plans

If at any time 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 seven (7) business days prior to a 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.