

**TOWN OF LEE
SCENIC MOUNTAINS REGULATIONS**

Act Accepted by Town Meeting
May 10, 2001

Map Approved by the Selectmen
March 14, 2006

Regulations and Map Approved by the Massachusetts Dept. of Conservation and Recreation
July 21, 2008

Regulations Filed in Registry of Deed and Effective on October 24, 2008

**REGULATIONS UNDER THE BERKSHIRE SCENIC MOUNTAINS ACT
MASSACHUSETTS GENERAL LAWS CHAPTER 131, SECTION 39A**

1. GENERAL PROVISIONS

1.1 Authority

The Conservation Commission, of the Town of Lee, having been designated as hearing authority under M.G.L. Ch. 131, Sec. 39A at the Annual Town Meeting on May 10, 2001 promulgates these regulations pursuant to the authority granted it under said Act.

1.2 Purpose of Law

The purpose of the law is to regulate removal, filling, excavation, clearing of vegetation or other alteration of land within mountain regions designated by the town which is likely to have a significant adverse effect on watershed resources or natural scenic qualities because of the pollution or diminution of ground or surface water supply, public or private; erosion; flooding; substantial changes in topographic features; or substantial destruction of vegetation.

1.3 Purpose of Regulations

These regulations are promulgated to create uniform procedures and to clarify the provisions of the Act by establishing standard definitions and procedures. They, and the Act, shall take effect when the following events have happened: The regulations have been approved by the Commissioner and a map and text delineating the boundaries of the mountain regions subject to regulation have been adopted by the Board of Selectmen and recorded in the Berkshire Middle District Registry of Deeds as specified in the Act.

1.4 Statement of Jurisdiction

These regulations apply to the areas delineated in the Town of Lee and shown on the approved map entitled “Town of Lee, Scenic Mountain Act Mapped Mountain Regions.”

1.5 General Outline of the Mapped Mountain Regions:

The areas of the town which are subject to the provisions of the Berkshire Scenic Mountain Act (M.G.L. Ch. 131, Section 39A) are defined by the map and text adopted for that purpose by the Lee Board of Selectmen. In general, and subject to the exemptions specified in section 11 below, these areas include land in three “regions” of town as shown on the map and described below. Each region has two zones – Zone 1 is the Base Elevation above which all land in the region is regulated; Zone 2 is any area within 30 Meters (about 98 feet) vertically below Zone 1 and that has steep slopes as defined herein. In some areas, the Zone 1 Base Elevation line is defined as a setback or offset from a street or other physical feature as described below. Zone 2 in these areas is measured as being 100 feet horizontally beyond (lower than) Zone 1. (Note: Lines that are parallel to roads are measured from the nearest edge of the right of way of the road as of the date this regulation becomes effective.)

<u>Region</u>	<u>Zone 1 Elevation</u> <u>Meters (Feet)</u>	<u>Zone 2 Elevation</u> <u>Meters (Feet)</u>
“A”	300 M (984 Ft)	270 M (886 Ft)
“B”	360 M (1181 Ft)	330 M (1083 Ft)
“C”	390 M (1280 Ft)	360 M (1181 Ft)

Region “A” is located in the southwest corner of the town and includes portions of Beartown State Forest. Nearby roads include Willow Street, Pine Street, Beartown Mountain Road, Meadow Street, and Fernside Road. Zone 1 follows contour elevation 300 Meters from the Stockbridge Town Line in a general easterly direction, crossing Beartown Mountain Road, and continuing easterly and southeasterly generally parallel to and uphill from Meadow Street and Fernside Road to the intersection of the Tyringham town line.

Region “B” is located in the southeasterly corner of the town and includes the Goose Pond area and Appalachian Trail Corridor. Nearby roads include Tyringham Road, Cape Street (Route 20), and Mass. Turnpike. Forest Street, Antelope Drive, and the Leisure Lee development are mostly within this region. Zone 1 follows contour elevation 360 Meters from the Tyringham Town Line northerly and easterly, crossing Forest Street and intersecting with Antelope Drive (the Leisure Lee entrance road). Zone 1 then continues easterly in a line parallel to and 300 feet southerly of the rights of way of Cape Street (Rt. 20) and the Mass. Turnpike to the intersection of the Becket Town Line.

Region "C" is located in the northeasterly corner of the town and includes large areas of October Mountain State Forest and Town Water Supply lands. Zone 1 begins at the Becket town line northerly of the Mass. Turnpike and Rt. 20 at the intersection of the centerline of the existing power transmission lines, and then continues westerly along the power lines to the intersection of a line 300 feet northerly of and parallel to the right of way of Mass. Pike, which it follows westerly to the centerline of Chestnut Street. Zone 1 then follows the centerline of Chestnut Street northerly to Zone 1 Contour Elevation 390 Meters, and follows this contour westerly past the existing gravel pit to the centerline of the power transmission lines. Zone 1 then follows the centerline of the power lines northerly to a line 150 feet northerly of and parallel to the right of way of Washington Mountain Road. Zone 1 runs easterly in the 150 foot offset line until it intersects with Zone 1 Contour Elevation 390 Meters, and continues northerly along the 390 Meter contour to the town line near the corner of Lenox and Becket.

1.6 Relationship to other required Permits:

The following activities requiring other permits shall be permitted subject to regulation under The Scenic Mountains Regulations:

- a. Any project requiring a Special Permit or Variance as required by the Zoning By-Laws of the Town of Lee:
- b. Creation of reasonable infrastructure for residential projects including but not limited to: roadways, driveways, drainage structures, water, sewer, electric, telephone, and cable TV distributions systems above or below ground;
- c. Any subdivision that requires approval under the Massachusetts Subdivision control Law, M.G.L. Ch. 41.
- d. Construction of new, expanded or replacement on-site septic system or well.

2. DEFINITIONS

- 2.1 Abutter means the owner of land, as determined by the most recent Assessors' records, which abuts the property line hosting the proposed activity and any other land within three hundred (300) feet of the proposed activity or one hundred (100) feet from the boundary of the property hosting the activity, whichever is farther. Abutter includes land which lies directly across any street or road from the said property.
- 2.2 Activity is any removal, filling, excavation, clearing or other alteration of any land situated within the mapped mountain region which is not specifically exempt from the provisions of this Act.
- 2.3 Activity subject to M.G.L. Ch. 131, Sec. 40 (Mass. Wetlands Protection Act) which is exempt under this act, is any activity subject to a valid and enforceable Order of Conditions or positive Determination of Applicability issued under the Wetlands Protection Act.

- 2.4 Alter or Alteration includes, but is not limited to, one or more of the following activities within the mapped mountain regions, which is not otherwise exempted:
- a. removal, filling, excavation, blasting, or dredging of soil, or blasting sand, gravel, rock, or aggregate material of any kind;
 - b. changing of pre-existing drainage characteristics, sedimentation patterns or flow patterns;
 - c. disturbance of existing drainage, water courses or water table;
 - d. substantial change in topographic features;
 - e. erection, alteration or demolition of any building or structure requiring a building permit; (small structures less than 120 s.f. that do not require a building permit are exempted)
 - f. dumping or discharging of any material, except where necessary to temporarily stockpile materials to conduct the project, such as loam, mulch, gravel, lumber, etc.
 - g. removal or destruction of plant life, including clearing of trees in excess of ¼ acre (10,890 sq. ft.) of aerial coverage in the aggregate,
 - h. Construction and/or paving of any new road, driveway or parking lot larger than 500 square feet.
- 2.5 Aerial coverage is the ground area equivalent of the tree canopy in full leaf.
- 2.6 Area subject to regulation under the Act is an area within the Town which is subject to the provisions of the Act and is designated on the map referred to in the Regulations. An area subject to the Act shall be synonymous with “mapped mountain region.”
- 2.7 Blasting use of any explosive devices to remove rock.
- 2.8 Bona fide purchaser of land without notice is a buyer for value who has not been informed verbally or in writing or who had no actual knowledge that activities have been done on the purchased property in violation of the Act or these regulations.

- 2.9 Certificate of Compliance is a form issued by Conservation Commission that establishes all conditions set forth in the Order of Conditions have been met.
- 2.10 Clearing is cutting or otherwise removing fifty (50) percent or more of aerial coverage of trees.
- 2.11 Commencement of activity is commencement of physical work on the premises, and does not include surveying or site testing.
- 2.12 Commission is the Lee Conservation Commission.
- 2.13 Commissioner is the Commissioner of the Department.
- 2.14 Compliance with the Forest Cutting Practices Act shall be demonstrated by submission to the Conservation Commission of a copy of a permit issued in accordance with that Act.
- 2.15 Day. All time periods of ten days or less specified in M.G.L. c. 131 Section 39A and these regulations shall be computed using business days only, Monday through Friday, excluding Saturday, Sunday and legal holidays. All other time periods shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday, or legal holiday, in which case the last day shall be the next business day following.
- 2.16 Department is the Massachusetts Department of Conservation and Recreation or its successors.
- 2.17 Determination of Applicability is a written finding by the Conservation Commission as to whether the land or proposed activity shall or shall not require the filing of a Notice of Intent under the Act. It shall be made on Form B of these regulations.
- 2.18 Environmental Impact Statement is a full scale Environmental Impact Statement issued under the National Environmental Policy Act or a full scale Environmental Impact Report issued under the Massachusetts Environmental Policy Act.
- 2.19 Excavation is the disturbance of any material to lower the surface or create a cavity of any kind, either temporarily or permanently.
- 2.20 Filling is the placing of any material that raises, either temporarily or permanently the elevation of any area subject to the Act.
- 2.21 Flooding is a local, temporary inundation, or a rise in the surface of a body of water, however caused, such that it covers land not usually under water.

2.22 Forms

- Form A – Request for Determination of Applicability,
- Form B – Determination of Applicability
- Form C – Notice of Intent
- Form D – Abbreviated Notice of Intent
- Form E – Order of Conditions
- Form F – Certificate of Compliance
- Form G – Extension Permit

2.23 Hearing Authority shall mean the Commission.**2.24 Mapped mountain region is an area within the town which is subject to the provisions of the Act and is designated on the map referred to in these Regulations.****2.25 Notice of Intent is a detailed written and/or graphical description of any proposed activity to be performed in a mapped mountain region and that is submitted to the Conservation Commission. It shall be made on the Form provided with these regulations, and includes plans and other attachments.****2.26 Order of Conditions is a document issued by the Conservation Commission or on appeal by the Commissioner, stating ways in which the activity shall be conducted, modified, regulated, forbidden or otherwise controlled to protect the interests of the Act. It shall be made on Form E of these regulations.****2.27 Owner of Land is the person appearing as the owner of record in the most recent records of the tax assessor.****2.28 Permits, variances and approvals required by bylaw or ordinance – The requirement under the Act to obtain or apply for all obtainable permits, variances and approvals required by local bylaw with respect to the proposed activity shall mean only those which are feasible to obtain at the time in Notice of Intent is filed. Permits, variances, and approvals required by local bylaw may include, among others, zoning variances, permits from boards of appeals, permits required under floodplain or wetland zoning bylaws and gravel removal permits. They do not include, among others, building permits under the State Building Code, M.G.L. Chapter 23 B, Section 16, or subdivision control approvals under the State Subdivision Control Law. M.G.L., Chapter 41, Sections 81K-81GG, which are issued by local authorities. When an applicant for a comprehensive permit (under M.G.L., Chapter 40B, Sections 20-23) from a board of appeals has received a determination from the board granting or denying the permit and, in the case of a denial, has appealed to the Housing Appeals**

Committee (established under M.G.L., Chapter 23B, Section 5A), said applicant shall be deemed to have applied for all permits obtainable at the time of filing.

- 2.29 Person includes any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, the Commonwealth or any political subdivision thereof, administrative agency, public or quasi-public corporation or body, authority, or any other legal entity or its legal representative, agents or assigns.
- 2.30 Person aggrieved is the applicant, any individual affected by the order, an owner of abutting land, or any ten residents of the Town affected by the Conservation Commission's Order or failure to act, and such person aggrieved must specify the reasons and facts as to how the person is affected.
- 2.31 Preservation of natural scenic qualities is the protection of the existing features of the environment by regulating activities to minimize potential adverse effects due to pollution or diminution of ground or surface water supply; flooding; substantial changes in topographic features or substantial destruction of vegetation.
- 2.32 Project of Minimum Impact is one that affects less than 2,500 square feet of surface area of the ground and any structure to be erected does not exceed one story in height or more than 18 feet in height measured from the average ground plane surrounding the structure to the highest point of the roof, not including a chimney.. A Project of Minimum Impact is eligible to file an Abbreviated Notice of Intent (Form D) application.
- 2.33 Regulated Activities shall mean the removal, filling, excavation or other alteration of land within mapped mountain regions which are likely to have a significant adverse effect on watershed resources or natural scenic qualities.
- 2.34 Removal is the act or process of taking away any type of material that changes the elevation, either temporarily or permanently, from any area subject to regulation under the Act.
- 2.35 Ridgeline is the ground surface (not the tops of trees) along the top of a hill or mountain, as illustrated in the following figure. The ridgeline may slope up or down as it connects high points of different elevations. Spurs may branch off of ridgelines, and plateaus or hills downslope from the ridgeline may have a similar ridgeline form, but only the upper-most ridgeline is regulated herein.

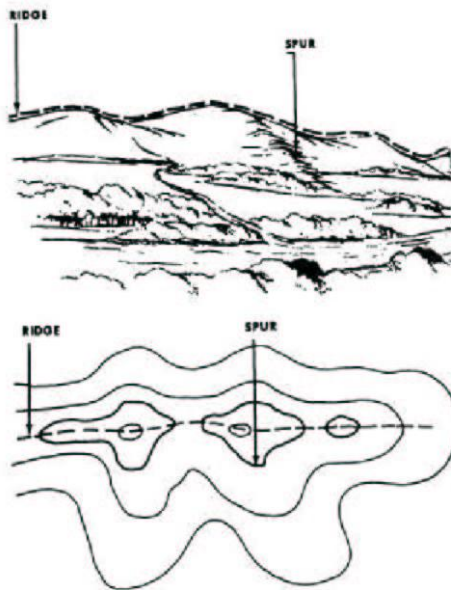


Figure 2.35 Illustrative Elevation and Plan View of Ridgeline

- 2.36 Scenic is the visual characteristic of the natural and/or manmade environment, including but not limited to sweeping vistas, hillsides and mountaintops, open spaces, woodlands, agricultural lands, fields, meadows, streams, ponds, wetlands, groups of buildings, and similar features, when viewed from one or more public locations such as roadways, parks, trails, recreational lands, overlooks, or other public vantage points.
- 2.37 Significant is that which is important and of consequence, as determined by the Commission.
- 2.38 Slope is the measurement in percent of the natural change in elevation as expressed in the ratio of the change in elevation over a measured horizontal distance.
- 2.39 Steep slope is defined as an area with slopes averaging 15% or greater over a horizontal distance of at least 200 feet. An area will be classified as having a Steep Slope if there is any point having an elevation thirty (30) feet higher or lower within a radius of two hundred (200) feet.
- 2.40 Substantial is that which is of considerable worth or value and is important with regard to the essential elements being considered, as determined by the Commission.

- 2.41 Topographic features comprise the configuration of the land's surface including its relief and relative elevation.
- 2.42 Tree Canopy coverage is the horizontal area covered by the foliage of a tree in full vegetation.
- 2.43 Vegetation is the plant life or total plant cover of a given area, including but not limited to grass, ground cover, shrubs and trees.
- 2.44 Vista Pruning is the selective thinning of tree branches or understory shrubs, to establish a specific "window" to improve visibility. Vista Pruning does not include the cutting of trees that would reduce the leaf canopy to less than 90% of the existing aerial coverage of tree canopy.
- 2.45 Watershed is an area within which water drains to a particular watercourse or body of water.

3. REQUEST FOR DETERMINATION OF APPLICABILITY

- 3.1. Any person who believes that the Act does not apply to a particular area or to the proposed work for one or more of the reasons listed below may submit a written Request for Determination of Applicability to the Conservation Commission.

Possible Reasons for Request for Determination:

- a. land is not within the mapped mountain regions; or
- b. proposed work is exempt under the Act; or
- c. proposed work is not removal, filling, excavation or other alteration of land; or
- d. proposed work is not likely to have a significant adverse effect on watershed resources or natural scenic qualities, or
- e. proposed work includes adequate mitigation measures so the work will not have a significant adverse impact on watershed resources or natural scenic qualities.

- 3.2. Three copies of the completed Request for Determination, using Form A with applicable attachments, shall be submitted to the Conservation Commission by certified mail or hand-delivery. The date of filing shall be the date of the next regularly scheduled meeting of the Conservation Commission at which a complete filing is received. The time periods set forth in the Act and in these regulations shall commence from this date.
- 3.3. Plans submitted with the Request for a Determination must reasonably describe the nature and scope of the proposed activity, but need not be detailed engineering or architectural plans. Any activity performed shall be limited to what is described in the plans and application documents as approved.
- 3.4. Upon receipt of a completed Request for Determination, the Conservation Commission shall designate a file number and hold a public meeting on the Request for a Determination of Applicability and send to the applicant a written Determination of Applicability, signed by a majority of the Commission, within 21 days following receipt of the completed request. A copy of the Determination shall be sent to all persons so requesting. If the Request for a Determination was submitted by an agent other than the owner, a copy shall be sent to the owner. The Determination shall be made on Form B of these regulations.
- 3.5. The Conservation Commission may rescind a Determination and hold a public hearing to consider the Request for Determination of Applicability if any owner of land abutting the land upon which the proposed activity is to be conducted or any ten residents of the town where the land is located files an appeal requesting a public hearing on the project. An Appeal shall be made in writing filed within ten days after the issuance of the Determination by certified mail or hand delivery to the Commission at Town Hall.
- 3.6. If an appeal is not filed within 10 days after issuance of the Determination, and if the applicant is not notified of a request for department action within fourteen days, then the applicant may commence to perform the work, if any, permitted by the Determination, but not before fourteen days after issuance.

4. NOTICE OF INTENT

- 4.1. The applicant may meet with the Commission or its representative to discuss which items under Section 7 hereunder are necessary or appropriate for documentation of a proposed project Notice of Intent.
- 4.2. Any Person proposing an activity subject to the Act (unless the Commission has issued a Negative Determination of Applicability allowing the proposed project to proceed) shall send to the Conservation Commission by certified mail or hand delivery two (2) copies of a completed Notice of Intent, including

plans and other required information described below. Each notice must be accompanied by a filing fee of \$25 payable to the town. In addition to the filing fee of \$25, an applicant shall also reimburse the Conservation Commission for the costs for the public notice.

- 4.3. The date of filing of said notice shall be the date of a regular scheduled meeting of the Conservation Commission at which a complete filing is submitted. All time periods set forth in the Act shall commence from this date.
- 4.4. The Notice of Intent shall be filed on Form C of these regulations, unless the applicant chooses to file an Abbreviated Notice of Intent on Form D because the project is one of minimum impact.
- 4.5. No Notice of Intent shall be submitted before all permits, variances, and approvals required by local law or bylaw with respect to the proposed activity have been applied for, in accordance with section 2.28.
 - 4.5.1 If the Conservation Commission rejects a Notice of Intent because of a failure to obtain or apply for all permits, variances and approvals required by local bylaw, it shall specify in writing the permit, variance or approval that has not been applied for. A ruling by the municipal agency within whose jurisdiction the issuance of the permit, variance or approval lies, or by the town counsel concerning the applicability or obtainability of such permit, variance or approval shall be accepted by the Conservation Commission. In the absence of such a ruling, other evidence may be accepted.
- 4.6. Upon receipt of a complete Notice of Intent application, the Conservation Commission shall designate a file number.
- 4.7. The applicant must submit any other information later requested by the Conservation Commission. If such information is not submitted, the Commission may, after public hearing, issue an Order prohibiting the activity. An Environmental Impact Statement or Report, acceptable to the Commission, filed by the applicant for the proposed activity shall be deemed sufficient to comply with the Act.

5. ORDER OF CONDITIONS

- 5.1. Within 21 days after the close of the hearing or a continued hearing, the Conservation Commission shall issue a written Order which may impose conditions on the proposed activity in an effort to prevent pollution of public or private water supply, erosion or flooding, to control changes in topography or destruction of vegetation, and to preserve the natural scenic qualities of the mapped mountain regions. If, in the Commission's opinion, the project cannot

be so conditioned to mitigate the adverse impacts, the Commission shall deny issuance of an Order of Conditions and the work may not proceed. The Order shall be made on Form D of these regulations.

- 5.2. The Order shall be signed by a majority of the Conservation Commission, and a copy thereof shall be sent by certified mail to the applicant, the owner of the land if other than the applicant, and the Department.
- 5.3. Within one day after issuance, a copy of the Order shall be filed with the Town Clerk.
- 5.4. A Request for Review may be made to the Department within ten days after the Conservation Commission has acted or failed to act, as specified in section 9. If the applicant is not notified of a Request for Review by the Department within fourteen days after the issuance of the Order of Conditions, the applicant shall record the Order at the Berkshire Middle District Registry of Deeds. No activity shall commence until after the 14 day Period has elapsed, and the Order has been recorded in the Registry of Deeds and indexed to the subject property, and the receipt for this recording from the Registry of Deeds has been sent by the applicant to the Commission.
- 5.5. The Order of Conditions shall be valid for one year unless extended or revoked in accordance with the provisions of the Act or these regulations. Extension of the OOC requires written application of Form F with the hearing authority prior to the expiration of the existing OOC. The applicant may request an extension of an Order before it expires. The Commission may grant two extensions of the Order, each for a period of no longer than one year. Extensions shall be made on Form F of these regulations.

6. PERFORMANCE STANDARDS

- 6.1. Applicants seeking approval under these regulations must meet all applicable state standards intended to implement the provisions of M.G.L. CH. 131, Section 39A. Said standards are herein incorporated by reference. The Commission further finds that protection of the interests identified in these regulations requires that applicants address compliance with the following additional standards. In considering any application for work, within the mapped mountain regions, the Commission shall make the following presumptions:
 - a. Manmade protuberances above ridgelines damage natural scenic qualities;
 - b. Clearing of contiguous lands totaling one-half (1/2) acre or more damages natural scenic qualities and/or causes erosion;

- c. Alteration of steep slopes causes erosion, promotes flooding, damages water quality, and degrades scenic qualities.
- 6.2. The presumptions listed above may be rebutted by the applicant upon submission of a preponderance of the evidence to the satisfaction of the Conservation Commission that:
 - 6.2.1 one or more of the presumptions does not apply to the site of the proposed work; or
 - 6.2.2 the proposed work will be mitigated in such a way that it will have no unacceptable or significant adverse effects upon the watershed resources or natural scenic qualities.
- 6.3. The Order of Conditions issued by the Commission shall impose conditions on the proposed work to protect the interests of the Act. If any proposed work does not meet the Performance Standards, or any Presumptions are not rebutted to the satisfaction of the Commission, the Commission may deny the project or may require modifications and mitigation measures to achieve the required protections.
- 6.4. Septic systems
 - 6.4.1 Any septic system that is to be constructed in compliance with requirements of 310 CMR 15.000 *Subsurface Disposal of Sanitary Sewage (Title 5)*, or more stringent local board of health requirements, proposed within the regulated areas described herein shall be presumed to protect the interests identified herein, except as noted in subparagraph 6.4.3 below.
 - 6.4.2 Any emergency septic system repairs installed with the approval of the Board of Health does not require advance approval under these Scenic Mountains Regulations, provided the work is limited to the area immediately required for the septic system improvements.
 - 6.4.3 Only the construction impacts of the proposed new or replacement septic system are regulated under these regulations. The location for the proposed new or replacement septic system, to the extent feasible, shall be selected to minimize the amount of clearing and impacts on scenic qualities.

6.5. Drainage**6.5.1 General Conditions for Site Design and Construction of all projects that are subject to an Order of Conditions.**

- a. Construction on any site subject to these regulations shall be managed to control stormwater runoff and to prevent erosion and sedimentation, both during construction and after completion of construction.
- b. The Owner shall operate and maintain all permanent drainage and erosion control measures in good working condition.
- c. Erosion and sedimentation control measures shall be installed at the beginning of site work, and shall be maintained throughout the construction period until the site is stabilized. The measures used shall conform to the Best Management Practices (BMP's) included in the sources listed in Section 6.5.4 following. The applicant shall demonstrate to the Conservation Commission that the selected BMP's are appropriate for the project.
- d. Any area proposed for removal of vegetation where soil will be exposed for more than 14 days shall be mulched or otherwise treated to prevent erosion and sedimentation.
- e. Any culverts such as driveway cross culverts, shall be at least 12" diameter and have a slope of at least 1% with a preferred slope of 2%.

6.5.2 Site work on all projects shall be designed to:

- a. minimize the amount of land disturbance;
- b. retain natural vegetation where possible;
- c. use existing and newly planted trees and shrubs as a vegetative buffer to minimize visual impact of new buildings or substantial changes in topography when viewed from off-site roads;
- d. avoid or minimize cutting or substantial thinning of trees along ridgelines or creating a "notch" in the tree line along a mountain top;
- e. minimize the amount of impervious surfaces and maximize the use of permeable materials such as porous pavement in parking areas;
- f. disperse site drainage as much as possible;
- g. avoid concentrating storm water runoff and discharging it at one point;
- h. avoid discharging drainage onto steep slopes;
- i. utilize open vegetated or rock-lined drainage swales wherever possible;
- j. minimize the use of piped drainage systems;
- k. provide for stabilized drainage outlets, aprons, stilling basins, or similar scour protection measures where drainage discharges onto the ground.

6.5.3 Drainage Requirements for larger projects.

- a. Any construction project subject to these regulations that will disturb a total of one (1.0) acre or more of land surface shall, unless waived by the Conservation Commission, require the submission of hydrologic calculations and plans for storm water mitigation measures designed by a registered professional engineer.
- b. Hydrologic calculations shall be submitted comparing the existing drainage conditions on the site before construction (pre-development condition) with proposed post-development condition and shall include the following design storms: 2-year, 10-year, 25-year, and 100-year intervals. Calculations shall include a description of the methodology used, and a narrative description of the soil conditions, slopes, vegetative cover, and runoff curve numbers for each sub-drainage area affected by the project.
- c. All components of the piped drainage system shall be designed with capacity to handle at least the peak runoff from a 25-year storm in the post-development condition.
- d. Storm water management measures shall be installed so that the post-development project will not increase the peak rate of runoff from the site during the 10-year and 25-year design storms compared to pre-development conditions.

6.5.4 General Guidelines and typical performance standards and engineering practices acceptable for grading, drainage, and erosion and sedimentation control measures to be performed under the Act are contained in the following list and copies of these publications are on file with the Conservation Commission. This list shall not be exclusive, nor construed as prohibiting or discouraging use of new or innovative methods of achieving low impact sustainable development. However, applicants proposing to use alternative Best Management Practices (BMP's) must identify the deviations from the referenced methods and demonstrate to the satisfaction of the Commission that the alternate BMP's are superior.

- a. U.S. Dept. of Agriculture, Soil Conservation Service. Erosion and Sediment Control in Site Development: Massachusetts Conservation Guide Volume I, September 1983.
- b. U.S. Dept. of Agriculture, Soil Conservation Service. Vegetative Practices in Site Development: Massachusetts Conservation Guide, Volume II.
- c. U.S. Dept. of Agriculture, Soil Conservation Service. Soil Survey of Berkshire County, Massachusetts, February 1988.
- d. U.S. Dept. of Agriculture, Soil Conservation Service. Guidelines for Soil and Water Conservation in Urbanizing Areas of Massachusetts.

- e. Massachusetts Stormwater Management, DEP, Boston, MA, March 1997, Volume One and Two.

7. PLANS AND APPLICATION MATERIALS

- 7.1. Plans and other application materials included with the Notice of Intent shall include grading, drainage, landscaping, and erosion controls to demonstrate that the proposed work will not adversely affect the interests of these regulations. Unless otherwise allowed by the Commission, the Plans and other application materials sent with a Notice of Intent shall include the following:
- a. locus map; noting True North and Magnetic North;
 - b. an 8 ½ X 11 color copy of a U.S. Geological Survey Quadrangle Sheet showing the location of the proposed area and Scenic Mountain region; noting North, and graphic scale;
 - c. maps showing Estimated Habitats of Rare Wetland Wildlife, and Priority Habitats of Rare and Endangered Species, as provided by National Heritage;
 - d. all names of nearest roads;
 - e. outline of the watershed areas related to the proposed activity;
 - f. storm drainage system; erosion and sedimentation control measures;
 - g. a written “alternatives analysis” demonstrating that the proposed location and configuration of the intended scope of the proposed project on the subject property is in compliance with these regulations and performance standards, and that the proposed location will not cause more environmental damage than other alternative sites or configurations of the project on the property;
 - h. engineering drawings as listed below;
- 7.2. Engineering drawings to the extent possible should be drawn to a scale no smaller than 1” = 50’, and shall include a graphic scale and north arrow on each plan view, and include a title block with the name of the project, project location, and the name(s) of the persons preparing the drawings and the date prepared, including all the revision dates. Unless the Conservation Commission otherwise decides, the drawings shall be stamped by a registered professional engineer, architect, landscape architect, or registered land surveyor of the Commonwealth.

7.3. Engineering drawings include the following:

- a. present and proposed contours of the entire work site and affected adjacent areas (generally 2 ft. contours will be satisfactory);
- b. all brooks, creeks, rivers, streams, ponds, lakes and wetlands, whether continuous or intermittent, natural or man-made; regulated by the Massachusetts Wetlands Protection Act General Laws 131 Section 40 within 200 feet of any work area(s);
- c. areas subject to the 100-year flood, as indicated on maps provided under the National Flood Insurance Program or other competent authority;
- d. proposed alteration to waterways, including present and proposed location, elevation and invert of all drains, ditches, culverts and other conductors immediately up and downstream of the site;
- e. location, extent and area of all present and proposed paved areas, roads driveways and parking areas;
- f. location of existing and proposed water retention areas;
- g. location of areas to be removed, dredged, filled or otherwise altered in any way;
- h. location of underground utilities, rights of way or easements of any kind;
- i. locations and elevations of cellars or floors and bottoms of septic systems and leaching fields together with alternative sites for leaching fields;
- j. cross sections showing slope, bank and bottom treatment of each watercourse to be altered; locations of cross sections shall be specified;
- k. soil characteristics in representative portions of the site, including the type of soil found in building sites, site of septic tank and well site, if applicable; sampling sites shall be specified;
- l. maximum ground water elevation at the time of year when the ground water table is at it highest, including dates of measurements, sampling and tests, if any;
- m. information describing the effects of the proposed activity on soil and water;
- n. all property lines and zoning setbacks;

- o. all existing and proposed structures, including height thereof to the highest point of the structures;
 - p. lowest floor elevations of any proposed structures;
 - q. location of any areas on-site where soils or rock are proposed to be excavated for reuse elsewhere (borrow area) and/or excess or unsuitable material will be disposed (spoil area);
 - r. existing and proposed water supplies for proposed activities;
 - s. existing and proposed sewage disposal systems specifically showing the location and type to be used;
 - t. erosion and sedimentation prevention plans for during and after construction;
 - u. description of the potential impact on natural scenic qualities of the mapped mountain region, such as stone walls, fences, rock outcropping and large trees;
 - v. proposed alteration of tree canopy relative to height of proposed structures.
- 7.4. The above requirements are not intended to be a complete and final list of what a plan should show. The applicant may submit, or the Conservation Commission may require, any further information which will assist in the review and which is deemed necessary to determine the effect of the proposed activity on the mapped mountain regions.

8. HEARINGS

- 8.1. The Conservation Commission shall hold a public hearing on the proposed activity within 21 days after receipt of the Notice of Intent at the next regularly scheduled meeting.
- 8.2. Notification of the time and place of the hearing shall be given by the Conservation Commission, at the expense of the applicant, not less than five days prior to such hearing, by publication in a newspaper of general circulation in the County of Berkshire and certified mail or hand delivery a copy of the notice to the applicant, Board of Health, Planning Board and any other board or commission that the Commission may determine. The applicant shall notify abutters of the hearing by certified mail not less than 5 days prior to such hearing (Posting by Town Clerk)

8.3. The hearing shall be open to the public and all interested persons shall be allowed to testify.

8.4. A hearing may be continued for good cause by the Conservation Commission provided that notice of continuance to a specific date is given at the public hearing or, where a specific date is not set at the hearing, publication of the continued hearing is made by the Commission at the expense of the applicant.

9. REQUEST FOR DEPARTMENTAL REVIEW

9.1. A Request for Review may be made to the Department within ten days after the Conservation Commission has acted, or failed to act as follows:

- a. if the Commission has issued an Order;
- b. if the Commission fails to hold a hearing within 21 days after receipt of the Notice of Intent;
- c. if the commission holds a hearing but fails to issue an Order within 21 days after the closing of the hearing.

9.2. A Request for Review may be initiated by any of the following:

- a. the applicant;
- b. any person aggrieved by the Order;
- c. any owner of land abutting the land upon which the proposed activity would be carried out; or
- d. any ten residents of the town where such land is located.

9.3. The person(s) requesting a review may request the Department to determine if other reasonable conditions should be imposed, or if the conditions issued by the Conservation Commission should be modified, in order that the proposed activity will protect the interests and achieve the purposes named in the Act.

9.4. The Request for Review shall be sent by certified mail to the Department within ten days after the Commission has acted or failed to act. At the same time, the person(s) requesting review shall send copies to the Conservation Commission and, if the person(s) requesting review is other than the owner and applicant, to the owner and applicant. Upon receiving a copy of the request for review, the Commission shall within seven days forward a complete copy of the contents of the file on the matter to the Department.

- 9.5. Any Order issued by the Department after a Request for Review shall supersede the prior Order of the Conservation Commission and all work shall be done in accordance therewith.
- 9.6. A copy of the Superseding Order shall be sent to the applicant, to the Conservation Commission, and to the person(s) who requested the review (if not the applicant).
- 9.7. If the applicant is not notified of a Request for Review by the Department within fourteen days after issuance of an Order of Conditions by the Conservation Commission, the applicant may proceed under the Commission Order, but not before.
- 9.8. Any person aggrieved by an Order of the Department may appeal under the provisions of M.G.L. Chapter 30A. Such rights of appeal shall be exclusive.

10. CERTIFICATION OF COMPLIANCE

- 10.1. Upon completion of an activity in compliance with an Order, an applicant may request a Certificate of Compliance from the agency which issued the Order. The request shall be in writing.
- 10.2. When a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect, or land surveyor, a written statement by the aforesaid professional person, certifying compliance with the plans, shall accompany the request for a Certificate. The request for Certificate of Compliance shall be submitted to the Commission prior to the expiration of the Order or Conditions. The request shall indicate if any portion of the work has not been completed, or if there were any deviations from the approved plans and Order of Conditions, and the reasons for such omissions or deviations.
- 10.3. After receipt of the request for a Certificate, the Commission may request an on-site inspection by the applicant and the Commission.
- 10.4. Where the work is not in compliance with the Order, the Commission shall refuse to issue a Certificate, and issue conditions necessary to bring the site into compliance with the Order of Conditions.
- 10.5. The Certificate shall certify in recordable form that the activity described in the Notice of Intent and plans has been completed in accordance with the Order. Any continuing conditions shall be listed on the Certificate of Compliance, and those continuing conditions will remain in effect after the Certificate of Compliance has been recorded. The Certificate of Compliance shall be made on Form E of these regulations.

10.6. The applicant shall record the certificate at the Berkshire Middle District Registry of Deeds, indexed with the subject property, and shall return to the Commission a receipt of the recording.

10.7. Upon completion of a portion of work under an Order of Conditions, the commission may issue a Certificate of Compliance as to that portion, if the applicant so requests.

11. VIOLATIONS AND ENFORCEMENT

11.1. Any person, other than a bona fide purchaser without notice, who purchases or otherwise acquires land upon which an activity has been done in violation of this Act, shall forthwith comply with the Order of Conditions or restore the land to its condition prior to the violation. Failure to do so is in itself a violation of the Act.

11.2. The Conservation Commission, its agents, officers, and employees, may enter upon privately owned land for the purpose of carrying out the provisions of this Act and may issue cease and desist order to anyone found in violation of the Act.

11.3. If an applicant fails to commence work within one year following the date of issuance of an Order, such inaction shall constitute an abandonment of the project, and, pending a public hearing by the commission, the Order of Conditions may be revoked.

11.4. The applicant may request an extension of an order prior to its expiration, which shall otherwise take place one year after issuance. The Commission may, in its discretion, grant two extensions of the Order, each for a period of no longer than one year. (Note: The Commission will consider a second extension of an Order only under circumstances which, in its opinion, are extraordinary.) Extensions shall be made on Form F of these regulations.

11.5. The Conservation Commission may revoke an Order if it finds that the applicant has exceeded the scope of the activity as set forth in the Order or has not complied with the conditions set forth in the Order, or if it determines that facts not available or not brought to its attention at the time the Order was issued warrant such revocation.

11.6. No revocation shall be made without notice to the applicant of the facts or conduct which warrants the intended revocation and a hearing at which the applicant is given an opportunity to present competent evidence.

11.7. Any court having equity jurisdiction may restrain a violation of this section and enter such Orders as it deems necessary to remedy such violations, upon the petition of the Attorney General, the Commissioner, the town, and owner or

occupant of property which may be affected by such violation, or any ten residents of the Commonwealth under General Laws Chapter 214, Section 7A.

11.8. Whoever violates any provisions of the Act shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months or both. Each day or portion thereof of continuing violation shall constitute a separate offense.

11.9. The Act shall be enforced by officers of the Executive Office of Environmental Affairs.

12. EXEMPTIONS

12.1. The Act does not apply to the cutting of forest products on land devoted to forest purposes whose owners have complied with the provisions of the Forest Cutting Practices Act, M.G.L. Chapter 132, by obtaining a permit there under and which has been submitted to the Conservation Commission prior to cutting for review.

12.2. The Act does not apply to any activity on the property which is subject to the provisions of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40. (However, any other activities on the site not subject to approval under the Wetlands Protection Act are still subject to approval under the Scenic Mountains Regulations.)

12.3. The Act does not apply to the following activities:

- a. Any activity conducted in connection with the construction or maintenance of any facility as defined in M.G.L. Chapter 164, Section 69C (Energy Facility Siting Council); or
- b. any activity conducted in connection with construction or maintenance of any electrical, transmission or distribution facilities used in transmission of intelligence by electricity or by telephone or otherwise for which location in the public ways has been approved by the Selectmen or under M.G.L. Chapter 166, Section 22; or
- c. construction or maintenance of any electrical distribution facilities required to serve a building or structure whose construction has been approved under the Act.

12.4. The Act does not apply to:

- a. Normal use and/or maintenance, repair, reconstruction, replacement, or enlargement which is not of a substantial nature, or change in use, of any

lawfully located and constructed structure or use, provided, however, that this work does not involve clearing one quarter (1/4) acre or more of contiguous lands or substantial alteration of the site as defined herein.

- b. Vista pruning, provided the activity conforms to the limitations specified in the definition in Section 2.
- c. Planting of native non-invasive species of trees, shrubs or groundcover.
- d. Maintenance of woodlots for personal use.
- e. Farming, horticulture, viticulture or other bona fide agricultural practices.