

# TOWN OF RICHMOND

Act Accepted by Town Meeting

April 26, 1976

Regulations and Map Approved by the Selectmen

October 18, 2000

Regulations and Map Approved by the Massachusetts Dept. of Environmental Management

March 28, 2001

Effective on April 5, 2001

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

### 1. GENERAL PROVISIONS

#### 1.1 Authority

The Conservation Commission, having been designated as hearing authority under M.G.L. Ch. 131, Sec. 39A at the Annual Town Meeting on April 26, 1976, 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 uniformity of procedures and to help 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 of the Department of Environmental Management 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.

### 2. DEFINITIONS

2.1 Abutter means the owner of land abutting the proposed activity and any other landowner 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. Also, the Conservation Commission may, at its own discretion, direct that public notices be provided to property owners across a body of water, as with any other abutter.

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 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 Aerial coverage is the ground area equivalent of the canopy in full leaf.

2.5 Alter includes, but is not limited to, one or more of the following actions taken within the mapped mountain regions:

a. removal, filling, excavation, or dredging of soil, sand, gravel, or aggregate material of any kind;

b. changing of pre-existing drainage characteristics, sedimentation patterns and flow patterns;

c. disturbance of existing drainage, water courses or water table;

d. substantial change in topographic features;

e. erection of any building or structure with a footprint square footage in excess of 500 square feet;

f. dumping or discharging of any material;

g. removal or destruction of plant life, including clear cutting of trees in excess of 2,500 square feet of ground area in the aggregate, excluding the maintenance of woodlots for personal use;

h. paving of any road or parking lot larger than 500 square feet.

Alternatives analysis means an examination and investigation

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 these Regulations. An area subject to the Act shall be synonymous with "mapped mountain region."

2.7 Bona fide purchaser of land is a buyer for value who has not been informed verbally or in writing, or had actual knowledge, that activities have been done on the purchased property in violation of the Act.

2.8 Clearing is cutting or otherwise removing fifty (50) percent or more of aerial coverage of vegetation.

2.9 Commencement of activity is commencement of physical work on the premises, not merely surveying or site testing.

2.10 Compliance with the Forest Cutting Practices Act shall be demonstrated by submission to the Conservation Commission of a copy of a permit issued under that act.

2.11 Commissioner is the Commissioner of the Department of **Conservation and Recreation**.

**Cumulative means increasing in effect by successive additions and the Commission may consider the cumulative effects of prior alterations on a property or on contiguous properties in common ownership.**

2.12 Department is the Department of **Conservation and Recreation**.

2.13 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.

2.14 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.

2.15 Erosion is the wearing away of soil or other material caused by the action of wind or water.

2.16 Excavate is removal of any material that lowers the surface or creates a cavity of any kind, either temporarily or permanently, in any area subject to the Act.

2.17 Fill is the placing of any material that raises, either temporarily or permanently, the elevation of any area subject to the Act.

2.18 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.

2.19 Hearing Authority shall mean the Conservation Commission.

2.20 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. A mapped mountain region shall be synonymous with an "area subject to regulation under the Act." Mapped Mountain Regions shall include the following:

- any area 1,400 feet elevation or above
- any area between 1,300 feet and 1,400 feet in elevation that has a slope of fifteen (15) percent or more

2.21 Notice of Intent is a written 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 Form D of these regulations.

2.22 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 an area subject to regulation under the Act. It shall be made on Form F of these regulations.

2.23 Owner of land is the person appearing as the owner of record at the Berkshire Middle District Registry of Deeds.

2.24 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 the 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 23B, 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.

2.25 Person includes any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, the commonwealth or 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.

2.26 Person aggrieved is a person 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.

2.27 Preservation of natural scenic qualities is the protection of existing aesthetic and/or historic features of the environment, as determined by the Conservation Commission.

2.28 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 or surface water supply, public or private; erosion; flooding; substantial changes in topographic features or substantial destruction of vegetation.

2.29 Remove is the act or process of taking away any type of material that changes the elevation, either temporarily or permanently, of any area subject to regulation under the Act.

2.30 Significant is that which is important and of consequence, as determined by the Conservation Commission.

2.31 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.

2.32 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 hearing authority.

2.33 Topographic features comprise the configuration of the land's surface including its relief and relative elevation.

2.34 Vegetation is the plant life or total plant cover of a given area, including but not limited to grass, shrubs and trees.

2.35 Watershed is an area within which water drains to a particular watercourse or body of water.

### 3. DETERMINATION OF APPLICABILITY

3.1 In order to determine whether or not the Act applies to a particular area or proposed work, eight (8) copies of a Request for a Determination of Applicability (Form A) shall be submitted to the Conservation Commission by certified mail or hand-delivery by a person who believes that the:

- 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 alteration of land; or
- d. proposed work is not likely to have a significant adverse effect on watershed resources or natural scenic qualities.

3.2 The Conservation Commission shall 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 request. Copies shall be sent to all persons so requesting. If the Request for a Determination was submitted by a person other than the owner, a copy shall be sent to the owner. The Determination shall be made on Form B of these regulations.

3.3 Within one day after issuance, the Determination shall be posted by the Conservation Commission in its customary place of general public notice.

3.4 The Conservation Commission may rescind a Determination and require filing of a Notice of Intent 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 file an appeal by requesting by certified mail or hand delivery a hearing within ten days of the issuance of the Determination.

3.5 If an appeal is not filed within 10 days of the issuance of the Determination, then the applicant may perform the work, if any, permitted by the Determination.

3.6 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.

#### 4. NOTICE OF INTENT

The applicant may meet with the Commission or its representative to discuss which items under Paragraph 5 hereunder are appropriate for documentation of a proposed project Notice of Intent.

4.1 Any person proposing an activity subject to the Act shall send to the Conservation Commission by certified mail or hand delivery eight (8) copies of a completed Notice of Intent, including plans described below. Each notice must be accompanied by a filing fee of \$25 payable to the town. The date of filing of said notice shall be the date of receipt of a completed filing by the Conservation Commission, and all time periods set forth in the Act shall commence from this date. The Notice shall be filed on Form D of these regulations, unless the applicant chooses to file an Abbreviated Notice of Intent on Form E because the project is one of minimum impact. A project will qualify as a project of minimum impact if it affects less than 2,500 square

feet of surface area and if any structures to be erected do not exceed one story in height. In addition to the filing fee of \$25, an applicant shall also reimburse the town for the costs of the public notice.

4.2 No such Notice of Intent shall be sent before all permits, variances, and approvals required by law or bylaw with respect to the proposed activity have been applied for.

4.21 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.

4.3 Upon receipt of a Notice of Intent, the Conservation Commission shall designate a file number.

4.4 The applicant must submit any other information later requested by the Conservation Commission. If such information is not submitted, the Commission may, after a 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. PLANS

5.1 Plans sent with a Notice of Intent should include the following:

- a. locus map;
- b. an 8 1/2 X 11 cut-out of a U.S. Geological Survey Quadrangle Sheet showing the location of the proposed area and Scenic Mountain region;
- c. all names of the nearest roads;
- d. outline of the watershed areas related to the proposed activity;
- e. pertinent environmental data;
- f. engineering drawings described below;
- g. an “alternatives analysis” demonstrating that no other location on the subject property is suitable for the intended use and that will cause less environmental damage;

5.2 Engineering drawings to the extent possible should be drawn to 1:50 scale, with the title designating the name of the project location and the name(s) of the persons preparing the drawings and the date prepared, including all the latest 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.

5.3 Engineering drawings should include the following:

- a. present and proposed contours of the entire 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;
- 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 and structures including height thereof;
- f. location of 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 its highest, including dates of measurements, sampling and tests, if any;

- m. all calculations necessary to show the effect of the proposed activity on soil and water;
- n. lowest floor elevations of any proposed structures;
- o. location of any spoil areas;
- p. existing and proposed water supplies for proposed activities;
- q. sewage disposal systems specifically showing the location and type to be used;
- r. erosion and sedimentation prevention plans for during and after construction;
- s. description of the potential impact on natural scenic qualities of the mapped mountain region;
- t. tree canopy relative to height of proposed structures.

5.4 The above recommendations are not intended to be a complete and final presentation as to 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.

5.5 Performance standards and engineering practices acceptable for work to be performed under this Act are contained in the following, copies of which are on file with the Conservation Commission:

1. U.S. Dept. of Agriculture, Soil Conservation Service. Erosion and Sediment Control in Site Development: Massachusetts Conservation Guide Volume I, September, 1983.
2. U.S. Dept. of Agriculture, Soil Conservation Service. Vegetative Practices in Site Development: Massachusetts Conservation Guide, Volume II,
3. U.S. Dept. of Agriculture, Soil Conservation Service. Soil Survey of Berkshire County, Massachusetts, February 1988.

## 6. HEARINGS

6.1 The Conservation Commission shall hold a public hearing on the proposed activity within 21 days after receipt of the Notice of Intent.

6.2 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 Town of Richmond and by mailing by 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 or may opt to have the Commission provide such notification, for which the applicant shall reimburse the Commission for postage and administrative and clerical costs.

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

6.4 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.

6.5 In considering the application, the Conservation Commission shall make the following presumptions regarding damage to the watershed and scenic resources of the mapped mountain regions and shall accordingly forbid activities, unless the applicant makes a clear showing to the contrary consistent with practices and procedures enumerated in the resources identified in Section 5.5, 1-4:

- a. protuberance above ridge lines damages natural scenic qualities;
- b. clearing of contiguous lands totaling one quarter (1/4) acre damages natural scenic qualities and causes erosion;
- c. work on slopes causes erosion and promotes flooding and damage to water quality;

## 7. ORDER OF CONDITIONS

7.1 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, the Commission shall not issue an Order and the work may not proceed. The Order shall be made on Form F of these regulations.

7.2 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.

7.3 Within one day after issuance, a copy of the Order shall be posted in the Commission's customary place of general public notice.

7.4 The applicant shall record the Order at the Berkshire Middle District Registry of Deeds. No activity shall commence until the Order is recorded, and receipt for this recording from the Registry of Deeds shall be sent by the applicant to the Commission.

#### 7.5 Security for Orders of Conditions

As part of an Order of Conditions issued under these Regulations, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed by the Order be secured wholly or in part by one or more of the methods described below:

1. By proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility, determined by the Commission to be sufficient and payable to the Town of Richmond upon default.
2. By a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land with the benefit to the Town of Richmond, whereby the conditions shall be performed and observed before any lot may be conveyed.

In cases where a bond, deposit, negotiable securities or other undertaking of financial responsibility is required, the Commission may retain such security until the issuance of a partial or final Certificate of Compliance.

### 8. APPEALS

8.1 An appeal 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 hearing.

8.2 Appeals 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.

8.3 The person(s) appealing shall request the Department of Environmental Management to determine if conditions should be imposed on the proposed activity to protect the interests and achieve the purpose named in the Act.

8.4 The appeal 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) appealing shall send copies to the Conservation Commission and, if the person(s) appealing is other than the owner and applicant, to the owner and applicant. Upon receiving a copy of the appeal, the Commission shall within seven days forward a complete copy of the contents of the file on the matter to the Department.

8.5 Any Order issued by the Department on appeal shall supersede the prior Order of the Conservation Commission and all work shall be done in accordance therewith.

8.6 A copy of the Superseding Order shall be sent to the applicant, to the Conservation Commission, and to the person(s) appealing (if not the applicant).

8.7 If no appeal is made within 10 days after issuance of an Order of Conditions by the Conservation Commission, the applicant may proceed under the Commission Order.

8.8 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.

## 9. CERTIFICATION OF COMPLIANCE

9.1 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.

9.2 Where 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.

9.3 After receipt of the request for a Certificate, the Commission may request an on-site inspection by the applicant and the Commission.

9.4 Where the work is not in compliance with the Order, the Commission shall refuse to issue a Certificate.

9.5 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. The Certificate shall be made on Form H of these regulations.

9.6 The applicant shall record the certificate at the Berkshire Middle District Registry of Deeds and shall return to the Commission a receipt of the recording.

9.7 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.

## 10. VIOLATIONS AND ENFORCEMENT

10.1 Any person, other than a bona fide purchaser, 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.

10.2 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.

10.3 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 voided.

10.4 The applicant may request an extension of an order prior to its expiration, which shall otherwise take place two years 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 G of these regulations.

10.5 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.

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

10.7 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 of Environmental Management, the town, an 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.

10.8 Whoever violates any provisions of this Act shall be punished by a fine of 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.

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

## 11. EXEMPTIONS

11.1 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 thereunder and which has been submitted to the Conservation Commission prior to cutting for review.

11.2 The Act does not apply to any activity which is subject to the provisions of the Richmond Wetland Bylaw or the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, as demonstrated by a valid Order of Conditions or positive Determination of Applicability issued under either or both of these.

11.3 The Act does not apply to:

- a. any activity conducted in connection with the construction or maintenance of any facility as defined in M.G.L. Chapter 164, Section 69G (Energy Facility Siting Council);
- 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 to
- c. construction or maintenance of any electrical distribution facilities required to serve a building or structure whose construction has been approved under the Act.

11.4 The Act does not apply to the maintenance, repair, reconstruction, replacement, enlargement which is not of a substantial nature, or change in use, of any lawfully located and constructed structure, provided, however, that this work does not involve clearing one quarter (1/4) acre or more of contiguous lands or alteration of the site as defined herein.