



TOWN HALL

Town of Alford, Conservation Commission **Scenic Mountain Act Information**

Massachusetts Scenic Mountain Act MGL c. 131, § 39a

The Berkshire Scenic Mountain Act, Chapter 131 Section 39A of the Massachusetts General Laws, and the local supporting regulations govern most activities that may alter or damage certain "Mapped Mountain Regions" in the town of Alford described generally as:

- ◆ Any area above 990 feet elevation and more than 300 feet from East Road, West Road, North Egremont road or Green River Road, *or*
- ◆ Any area above 900 feet elevation having a slope of greater than 15%.

The Alford Conservation Commission enforces this state law through local regulations, with a few exceptions involving activities covered by the Forest Cutting Practices Act, the Wetlands Protection Act or that involve energy and communications systems. The town provides forms that shall be used when filing under the Scenic Mountain Act. Three copies of all paperwork must be submitted to the commission. Applicants may appeal the commission's decisions under state law to the Department of Environmental Management (DEM). The regulation of work in or near the mapped mountain regions is accomplished through the following two procedures.

Request for Determination of Applicability

Form A, the Request for Determination of Applicability (RDA), poses a question to the commission: *is the work or area where work is proposed covered under the state law?* If the commission's answer is no, then the applicant may begin the project, assuming that all other permits have been obtained. Upon receipt of an RDA, the commission will schedule a time at a regular monthly meeting to consider the request, and may schedule a site visit if members are not familiar with the area. The landowner or representative of the landowner should plan on attending the meeting and the site visit. A notice of the meeting will be posted at Town Hall and advertised in the Berkshire Eagle. The applicant will be billed for the cost of advertising. There is no other fee for an RDA. If the commission finds that the state law does not apply, which is called a negative determination, then the applicant may proceed and have no further involvement with the commission. If the commission finds that the law does cover the activity - a positive determination - then the applicant will be required to file a Notice of Intent (NOI), Form D.

Notice of Intent

Form D, the Notice of Intent, is a complete application for a permit (called an Order of Conditions) and is filed when an activity will impact a mapped mountain region or an area of steep slope. It may be necessary to obtain professional consulting assistance when filing an NOI in order to be sure that the region is protected from environmental damage. When the commission receives three copies of an NOI, it will schedule a public hearing to consider the project. Abutters of the property will be notified of the hearing in addition to posting notice at Town Hall and advertising in the newspaper. The cost of the legal ad will be billed to the applicant. The commission will issue a file number for the project. There is usually a site visit and the landowner or landowner's representative should plan on attending that as well as the public hearing. There is a \$ 25 filing fee for a Notice of Intent, payable to the Town of Alford. The commission will examine the NOI and supporting documents at the hearing and, 1) may issue an Order of Conditions (O of C), 2) it may reject the NOI and not issue an O of C. or 3) it may ask for additional information or impose conditions not proposed by the applicant. Following the issuance of the O of C by the commission, there is a ten day waiting period during which appeals may be made with the DEM. The applicant must record the O of C at the Southern Berkshire Registry of Deeds in Great Barrington and return the receipt to the commission that verifies the recording. Once the ten day period expires without appeal the project may begin.

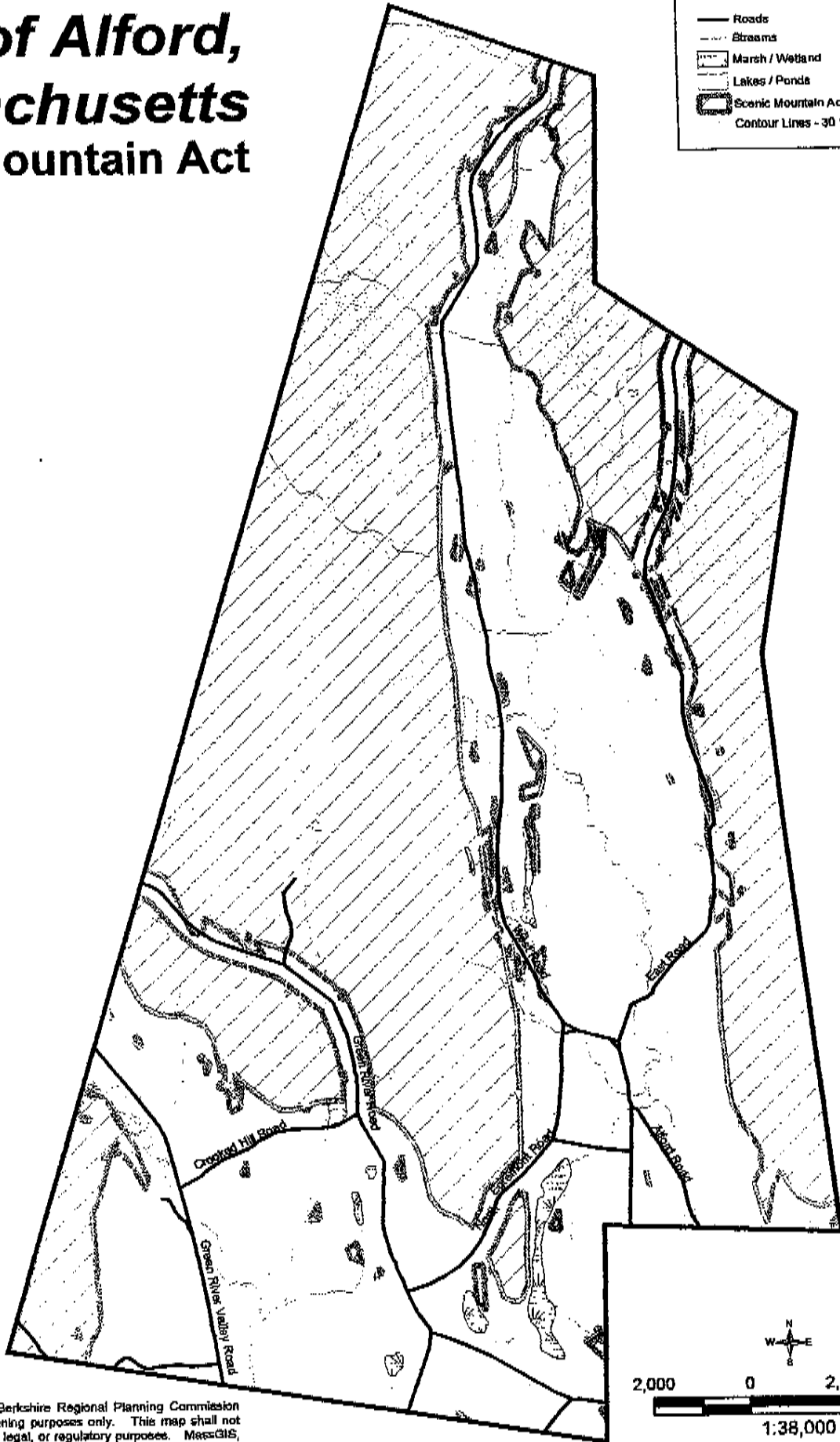
A companion application, Form E, the Abbreviated Notice of Intent, may be used in specific circumstances where the work affects less than 2,500 square feet of surface area and if any proposed structure does not exceed one story. It is a simpler form but the process is the same as for the Form D.

Once a project is complete the applicant must request a Certificate of Compliance (C of C). When the commission issues a C of C the applicant must record the certificate at the registry of deeds and a receipt returned to the commission.

The procedures described in this summary are outlined in detail in the Massachusetts General Law Chapter 131, Section 39A and in the Scenic Mountain Act regulations of the Town of Alford. This information is provided as a courtesy to applicants, and is only a summary of certain provisions of the regulations. This information shall not be considered as legal advice, and the procedures described herein do not relieve the applicant of any requirements of any other law, bylaw regulation or rule. For more information contact the Alford Conservation Commission.

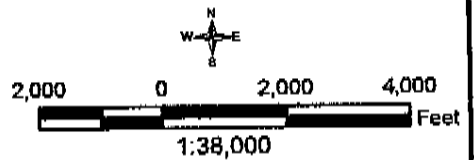
Town of Alford, Massachusetts Scenic Mountain Act

— Roads
 - - - Streams
 [Hatched Box] Marsh / Wetland
 [Dotted Box] Lakes / Ponds
 [Thick Line Box] Scenic Mountain Act Regulated Areas
 Contour Lines - 30 Foot Interval



This map was created by the Berkshire Regional Planning Commission and is intended for general planning purposes only. This map shall not be used for engineering, survey, legal, or regulatory purposes. MassGIS, Massachusetts Highway Department, or BRPC may have supplied portions of this data.

(Towns\ALF\Projects\SMA\ALF_SMA_101201.mxd
October 12, 2001)



Massachusetts State Plane Meters
North American Datum 1983

TOWN OF ALFORD
PROPOSED REGULATIONS UNDER THE BERKSHIRE SCENIC MOUNTAINS ACT
MASSACHUSETTS GENERAL LAWS CHAPTER 131, SECTION 39A

(Conservation Commission October 23, 2001 Draft)

1. GENERAL PROVISIONS

1.1 Authority

The Conservation Commission, having been designated pursuant to M.G.L. ch. 131 §39A, commonly known as the Berkshire Scenic Mountains Act (the "Act"), at the Special Town Meeting of _____, 2001, to carry out the provisions of Act, hereby promulgates these regulations pursuant to the authority granted it under the Act.

1.2 Purpose of the Law

The purpose of the Act is to allow any town in Berkshire County to protect its watershed resources and to preserve the natural scenic qualities of its environment.

1.3 Purpose of these Regulations

The purpose of these regulations is to ensure than any development activity within the designated mountain regions is performed in an environmentally responsible manner. These regulations are meant to define uniform standards and procedures that will minimize the impact of development on soil resources and scenic qualities within the town of Alford.

"Regulated activities" as defined by the Act include the removal, filling, excavation or other alteration of land 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.

1.4 Implementation of these Regulations

The Act and the regulations supporting it shall take effect in Alford upon the completion of the following:

- (i) approval of the regulations by the Commissioner of the Department of Environmental Management;
- (ii) adoption by the Board of Selectmen of the map and text delineating the boundaries of the mountain regions subject to regulation; and
- (iii) recording of that map and text in the Berkshire Southern District Registry of Deeds as specified in the Act.

1.5 General Outline of the Designated Mountain Areas

The actual mountain areas to be regulated will be defined by the map and text adopted for that purpose by the Alford Board of Selectmen. In general, and subject to the exemptions specified in section 11 below, these areas will include all land in town that lies above 990 feet in elevation, or above 900 feet in elevation having a slope of 15% or more, provided that in either case such areas cover an area of one-quarter acre or more as identified on the map. All areas (a) within 300 horizontal (aerial) feet of the centers of East Road, West Road, North Egremont Road, and Green River Road and (b) with slopes less than fifteen percent (15%), shall not be considered to be within the Mountain Area and will thus be exempted from these regulations.

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. The Conservation Commission shall have discretion to direct that public notices be provided to other property owners who may be affected by the activity.

2.2 Activity means any removal, filling, excavation, clearing or other alteration of any land situated within the Mapped Mountain Region provided such activity is not specifically exempt from the provisions of the Act.

2.3 Alter means one or more of the following actions taken within the Mapped Mountain Region:

- 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. disturbing existing drainage, watercourses or water table;
- d. a substantial change in topographic features;
- e. erection of any building or structure;
- f. alteration of an existing structure that increases its footprint by more than 500 square feet;
- g. alteration of an existing structure that significantly increases the height of any portion of the building;

- h. alteration of an existing structure that results in a significant scenic impact;
- i. dumping or discharging of any material;
- j. clearing in excess of one-quarter acre of ground area in the aggregate;
- k. constructing any road or parking area of more than 500 square feet.

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

2.5 Bona fide Purchaser means a buyer of real property for value who does not know or have reason to believe that activities may have been done on the purchased property in violation of the Act.

2.6 Exempt Activity means any activity subject to a valid and enforceable Order of Conditions or positive Determination of Applicability issued under the Wetlands Protection Act, M.G.L. ch. 131 § 40.

2.7 Regulated Area means an area within the town that is subject to the provisions of the Act and is designated on the map referred to in these Regulations. Regulated Area shall be synonymous with "Mapped Mountain Region."

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

2.10 Commencement of activity is commencement of physical work on the property. It does not include merely surveying or site testing the property.

2.11 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.

2.12 Commissioner is the Commissioner of the Department of Environmental Management.

2.12 Department is the Department of Environmental Management.

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 Mapped Mountain Region is an area within the town that is subject to the provisions of the Act and that is designated on the map referred to in these Regulations.

2.20 Notice of Intent is a written description of any proposed activity to be performed in a Mapped Mountain Region that is submitted to the Conservation Commission. It shall be made on Form D of these Regulations.

2.21 Order of Conditions is a document issued by the Conservation Commission, or on appeal by the Commissioner, stating ways in which Activity shall be conducted, modified, regulated, forbidden or otherwise controlled to protect a Regulated Area. It shall be made on Form F of these Regulations.

2.22 Owner is the person appearing as the landowner of record at the Berkshire Southern District Registry of Deeds.

2.23 Permits, variances and approvals required by bylaw or ordinance- means all permits, variances and approvals required by local bylaw with respect to the proposed Activity that 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.

2.24 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.

2.25 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.

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

2.27 Regulated Activities shall mean the removal, filling, excavation or other alteration of land within the Mapped Mountain Region that are likely to have a significant adverse effect on watershed resources or natural scenic qualities or surface water supply, public or private; erosion; flooding; substantial changes in topographic features or substantial destruction of vegetation.

2.28 Bona fide Purchaser means a buyer of real property for value who does not know or have reason to believe that activities may have been done on the purchased property in violation of the Act.

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 Ridgeline is defined by the level of the ground, not by the apparent ridgeline (e.g. tops of trees).

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

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

2.34 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, three (3) 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. proposed work is exempt under the Act; or

- b. proposed work is not removal, filling, excavation or alteration of land; or
- c. 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 30 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 Abutter or any ten residents of the Town of Alford 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

4.1 Any person proposing an Activity shall send to the Conservation Commission by certified mail or hand delivery three (3) 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 of Alford, or such other reasonable amount as the Conservation Commission may determine following notice and a public hearing. 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 and under these Regulations 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 1,000 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, an applicant shall also reimburse the town for the costs of the public notice.

4.2 No Notice of Intent shall be sent before all Permits, variances, and approvals required by bylaw or ordinance 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 apply for all Permits, variances and approvals required by bylaw or ordinance, 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 Conservation Commission shall, at the applicant's request, meet with the applicant to discuss whether certain information required under section 5 below may be omitted from the Notice of Intent filing.

4.5 The applicant must submit any other information later requested by the Conservation Commission. If such information is not submitted, the Conservation 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 shall include the following:

- a. locus map;
- b. an 8 1/2 X 11 cut-out or copy 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 drainage areas related to the proposed activity;
- e. pertinent environmental data;
- f. engineering drawings, as described below;
- g. an "alternatives analysis" demonstrating that no other location on the subject property is suitable for the intended use that would cause less erosion or other adverse effect on the watershed or less adverse affect to the natural scenic qualities;

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 determines otherwise, the drawings shall be stamped by a registered professional engineer, architect, landscape architect, or registered land surveyor of the Commonwealth.

5.3 Engineering drawings shall include the following (as applicable):

- 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 or soil survey authority 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. 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 Conservation Commission may require, and the applicant may submit, additional information that may assist in the review of the Notice of Intent.

5.5 Performance standards and engineering practices acceptable for work to be performed under this Act may be revised from time to time by the Conservation following notice and public hearing based on recommendations of the US Soil Conservation Service or other government or private conservation organizations. The present state of the art for standards and practices are contained in the following, copies of which are on file with the Conservation Commission:

- a. U.S. Dept. of Agriculture, Soil Conservation Service. Erosion and Sediment Control in Site Development: Massachusetts Conservation Guide, Volume I, and 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.

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 (5) business days prior to such hearing, by publication in a newspaper of general circulation in the Town of Alford 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 Conservation Commission may determine. The applicant shall notify abutters of the hearing by certified mail not less than 5 business days prior to such hearing or may elect, by writing delivered to the Conservation Commission no less than fifteen days prior to the date of such hearing, to have the Conservation Commission provide such notification, in which case the applicant shall reimburse the Conservation 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 be heard.

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 Conservation 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 Region unless the applicant makes a clear showing to the contrary consistent with practices and procedures enumerated in the resources identified in Section 5.5:

- a. protuberance above visible ridgelines damages natural scenic qualities;
- b. clearing of contiguous lands totaling one quarter (1/4) acre damages natural scenic qualities and causes erosion; and
- c. work on slopes of greater than 15% causes erosion and promotes flooding and affects water quality.

6.6 The Conservation Commission shall consider the visual impact of any new or altered structure when reviewing any application. Factors that will be considered will include, but not be limited to, the following:

- a. color scheme of the structure (muted or natural colors that will blend in with the background are to be preferred)
- b. exterior lighting (including light emanating from within)
- c. distance from the ridgeline and plans to minimize the visual impact of the siting by limbing up existing trees or otherwise using vegetation to screen the structure from view.

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 Region. If the Conservation Commission determines that the project cannot be so conditioned, the Conservation Commission shall not issue an Order and the Activity 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 affected 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 Conservation Commission's customary place of general public notice.

7.4 The applicant shall record the Order at the Berkshire Southern 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.

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 Conservation Commission has issued an Order;
- b. if the Conservation Commission fails to hold a hearing within 21 days after receipt of the Notice of Intent;
- c. if the Conservation 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 abutter; or
- d. any ten residents of Alford.

8.3 The person(s) appealing shall request the Department 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 Conservation 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 or 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 (the "Superceding Order") 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, the Owner (if not the applicant), 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 Conservation 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 Conservation 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 Southern District Registry of Deeds and shall return to the Conservation Commission a receipt of the recording.

9.7 Upon completion of a portion of work under an Order of Conditions, the Conservation 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 Conservation 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 Conservation Commission may, in its discretion, grant two extensions of the Order, each for a period of no longer than one year.; provided, however, that the Commission shall grant a second extension of an Order only under extraordinary circumstances. 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 Wetlands Protection Act, M.G.L. Chapter 131, Section 40, as indicated 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.