

TOWN OF LENOX SCENIC MOUNTAIN ACT

(Adopted by Annual Town Meeting May 2, 1975 and as amended at Special Town Meeting December 18, 1985.)

Regulations under Massachusetts General Laws, Chapter 131, Section 39A, the
Berkshire Scenic Mountains Act – Regulations & Map Approved by the Selectmen -September 12, 2007 &
Regulations & Map Approved the Department of Conservation & Recreation – January 29, 2008

PREAMBLE

Activities that alter the natural characteristics of mountaintops and steep slopes may irreversibly change these environmentally sensitive areas. Excavation, construction, clearing, and fill may be visible for many miles. Destruction of the natural ground cover can result in severe erosion. Alteration of mountainsides increases the likelihood of uncontrolled runoff. Steep, rocky slopes impede adequate sewage disposal. Aquifer recharge areas are usually located at elevations higher than the valley floors, and can be polluted by mountainside alteration.

The intent of these regulations is to review Owner applications to conduct activities with the goal of avoiding or minimizing or mitigating the impact of proposed activities. The intent of these regulations is not to prohibit construction, nor to hinder farmers or gardeners in their normal pursuits, or landowners in the normal maintenance of their properties.

If a mountain, a steep slope, or a ridgeline is to be altered, the regulations that follow provide both protection for the regulated scenic areas and due process for those who propose changes. The Conservation Commission carries responsibility for these regulations.

1.0 GENERAL PROVISIONS

1.1 Authority.

The Conservation Commission of the Town of Lenox, having been designated as hearing authority under General Laws Chapter 131, Section 39A in a vote at Town Meeting 1985, promulgates these regulations pursuant to the authority granted to it.

1.2 Purpose of the Regulations

The purposes of the regulations are:

- a. to protect watershed resources;
- b. to preserve the natural scenic qualities of the mountain region.

These regulations create a consistent process and clarify the provisions of the Act by establishing standard definitions and procedures.

A true copy:

Attest:

Marie L. Duby
Town Clerk

1.3 Implementation of the Regulations

The Act and these regulations shall take effect when the following events have occurred:

1. The text and map describing boundaries for the mountain regions have been approved by a two-thirds vote of the Select Board,
2. The Commissioner of the Department of Conservation and Recreation has approved the text and the map,
3. The text and map delineating the boundaries of the mountain regions subject to regulation have been filed with the Town Clerk, recorded in the Registry of Deeds, and sent to the Commissioner as specified in the Act.

1.4 Statement of Jurisdiction

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

The areas in the map include the following:

- a. All areas above 1400 feet (426.7 meters) in elevation;
- b. All areas below 1400 feet (426.7 meters) in elevation where any portion of the project is located on a steep slope, as defined in Section 2.31.

Adopted by the Lenox Board of Selectmen on September 12, 2007.

2.0 DEFINITIONS

2.1 Abutter is any landowner, as determined by the most recent Assessor's records, whose land is within 300 feet of the property line that is the subject of the Request for Determination or the Notice of Intent including land which lies directly across any street or road from said property.

2.2 Alteration 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, rock, or aggregate material of any kind in excess of 20 cubic yards;
- b. changing of pre-existing drainage characteristics, sedimentation patterns and flow patterns;
- c. drainage or disturbance of existing watercourses or water table;

d. substantial change in topographic or scenic features;

e. erection of any building or structure with a footprint square footage in excess of 500 square feet or a height in excess of 22 feet between maximum existing ground elevation within the footprint and the ridge;

f. dumping or discharging of any material except where it is necessary to stockpile materials to conduct the project;

g. removal or destruction of plant life, including clearing of trees in a ground area of more than 5,000 square feet;

h. construction and/or paving of any new road or parking lot greater than 800 square feet.

2.3 Bona fide purchaser for value without notice 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.

2.4 Certificate of Compliance a form issued by Conservation Commission that establishes all conditions set forth in the Order of Conditions have been met.

2.5 Clearing is cutting or otherwise removing 50% or more of canopy coverage of trees.

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

2.7 Commission is the Lenox Conservation Commission.

2.8 Commissioner is the Commissioner of the Massachusetts Department of Conservation and Recreation.

2.9 Department is the Massachusetts Department of Conservation and Recreation in the Executive Office of Environmental Affairs.

2.10 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. 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.

2.11 Determination of Applicability is a written finding by the 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.

2.12 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.

2.13 Excavation is the disturbance of any material to lower the surface or create a cavity of any kind, either temporarily or permanently of any area subject to these regulations; however, shall not apply to percolation tests which fall under requirements of 310 CRM 15.000 Subsurface Disposal of Sanitary Sewage (Title V) and implementation of the Lenox Board of Health.

2.14 Farming-agricultural use is the raising of animals, including but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals and supporting activities; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals, as defined in General Laws 61A, Section 1, as amended. Also horticultural uses, the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs; or when primarily and directly used in raising forest products under a program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop; or when primarily, directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products, as defined in General Laws, Chapter 61A, Section 2, as amended.

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

2.16 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.

2.17 Form definitions;

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

2.18 Hearing Authority shall mean the Commission.

2.19 Mapped mountain regions are those areas within the town, which are subject to the provisions of the Act and are designated on the map referred to in these regulations.

2.20 Notice of Intent is a written description of any proposed regulated activity to be performed in the mapped mountain regions, as submitted to the Commission. It shall be submitted on Form C 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 the activity shall be performed, modified, regulated, forbidden or otherwise controlled to protect the interests in the Act. It shall be made and issued on Form D of these regulations.

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

2.23 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.

2.24 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.

2.25 Regulated Activities shall mean the removal, filling, excavation or other alterations of land within mountain regions regulated herein, as defined in Section 1.4, 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; changes in topographic features or substantial destruction of vegetation.

2.26 Removal is the act or process of taking away any type of material that has been excavated or severed from any area subject to these regulations.

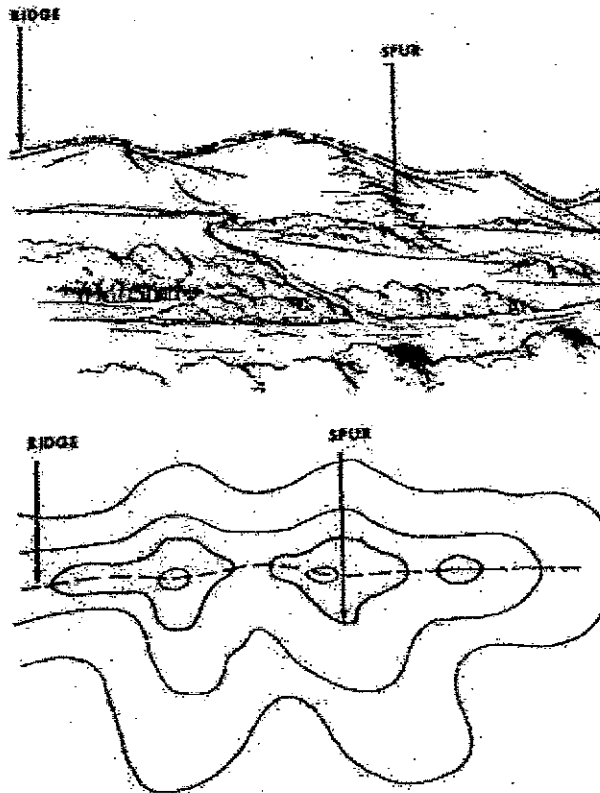
2.27 Request for Determination of Applicability is a written request made by any person to the Commission for a determination as to whether or not the proposed work is significant enough that it requires the filing of a more detailed Notice of Intent. It shall be submitted on Form A. See 4.0 below for requirements.

2.28 Ridgeline, as in the illustration following, for the purpose of the Scenic Mountain regulation, is the ground surface, not the tops of the trees, along the top of a mountain.

A ridgeline is the high line of the topography that divides a watershed. Water flows in different directions down from this line. Drainage basins or watershed shall be

the Housatonic River and the small-scale drainage systems of local water carrying features such as lakes and perennial streams

The ridgeline may slope up or down as it connects peaks of different elevations.



2.29 Scenic shall be defined as applying to vistas, open space, woodlands, fields, meadows and agricultural lands that contribute to preserving the natural scenic qualities of the environment.

2.30 Slope is the measurement of a continuous change in elevation divided by the horizontal distance in which the change takes place, expressed as a percentage.

2.31 Steep slopes are defined as areas with slopes averaging 15% or greater over a horizontal distance of 200 feet. Steep slopes shall be measured by transects spaced a minimum of 35 feet apart along the base of the slope. A box 35 feet x 200 feet defines the area of a steep slope.

2.32 Significant means what is of importance and of consequence as determined by the Commission.

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

2.34 Tree Canopy coverage is the horizontal area covered by the foliage of a tree in full vegetation.

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

2.36 Vista Pruning is the selective thinning of tree branches or mowing and removal of understory brush, to establish a specific "window" to improve visibility. Vista Pruning does not include the cutting of trees over 4 inches in diameter.

2.37 Watershed is a region or area within which all water drains ultimately to a particular watercourse or body of water.

3.0 PERFORMANCE STANDARDS

3.1 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 meet the following additional standards.

3.2 In considering any application for work, within the mapped mountain regions, the Commission shall make the following presumptions:

- a. Man-made protuberances above ridgelines damage natural scenic qualities;
- b. Clearing of contiguous, regulated 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, damage to water quality, and degrades scenic qualities.

3.3 The presumptions in 3.2 above may be rebutted by the applicant upon submission of a preponderance of the evidence to the satisfaction of the Conservation Commission that:

- a. one or more of the presumptions does not apply to the site of the proposed work, which would result in the Commission issuing the applicant a Negative Determination of Applicability; or
- b. 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, which would result in the Commission issuing the applicant, if applicable a Negative Determination of Applicability, or an Order of Conditions.

3.4 Drainage

3.41 General Conditions for Site Design and Construction of all projects.

- 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 6.6 following. The applicant shall demonstrate to the Conservation Commission that the selected BMP's are appropriate for the project.
- d. Site work on all projects should be designed to:
 - i) minimize the amount of land disturbance;
 - ii) retain natural vegetation where possible;
 - iii) use existing and newly planted trees and shrubs as a vegetative buffer to minimize visual impact of new buildings when viewed from off-site roads;
 - iv) avoid cutting or substantial thinning of trees along ridgelines or creating a "notch" in the tree line along a mountain top;
 - v) minimize the amount of impervious surfaces and maximize the use of permeable materials such as porous pavement in parking areas;
 - vi) disperse site drainage as much as possible;
 - vii) avoid concentrating storm water runoff and discharging it at one point;
 - viii) avoid discharging drainage onto steep slopes;
 - ix) utilize open vegetated or rock-lined drainage swales wherever possible;
 - x) minimize the use of piped drainage systems;
 - xi) provide for stabilized drainage outlets, aprons, stilling basins, or similar scour protection measures where drainage discharges onto the ground.
- 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%.

3.42 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 of 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 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 a 25-year design storm compared to pre-development conditions.

3.5 Septic systems

3.51 Any septic system that is to be constructed in compliance with requirements of 310 CMR 15.000 *Subsurface Disposal of Sanitary Sewage (Title V)*, or more stringent local board of health requirements, proposed within the regulated areas described herein shall be presumed to protect the interest identified herein. The construction impact around the system shall be the subject of regulation.

3.52 Any emergency septic system repairs need only the oversight of the Board of Health.

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

4.0 REQUEST FOR DETERMINATION OF APPLICABILITY

4.1 Any person who believes that the Act does not apply to a particular area or proposed work for one or more of the reasons listed below, or that the proposed work is not likely to have a significant adverse impact on watershed resources or natural scenic qualities, may submit a written Request for Determination of

Applicability to the Conservation Commission at Town Hall for any of the following reasons:

- a. Land is not within the mountain regions regulated under the Act; or
- b. Proposed work is exempt under the Act; or
- c. Proposed work is not an alteration as listed in 2.2; or
- d. Proposed work includes appropriate mitigation measures so the work will not have a significant adverse impact on watershed resources or natural scenic qualities.

4.2 The request shall be made on Form A and submitted by certified mail or by hand delivery to the Conservation Commission at Town Hall. The requests shall include such information or plans as may be necessary to describe in general terms the nature and scope of the proposed activity and any mitigating measures proposed to protect the watershed resources and preserve the natural scenic quality.

Engineering drawings and accompanying documents shall include sufficient information to demonstrate to the satisfaction of the Conservation Commission that the interests of these regulations will be protected.

Plans shall include landscaping, erosion controls, and drainage to show how the proposed work will not adversely affect the interests of these regulations. Any area proposed for removal of vegetation where soil will be exposed for more than 10 days shall be mulched, or otherwise treated, to prevent erosion.

Any activity shall be limited to what is described in the submittal.

4.3 Upon receipt of such notice the hearing authority shall designate a file number for such notice and within 21 days, shall make a determination whether or not the proposed work is a regulated activity.

4.4 The Commission shall send to the applicant a written Preliminary 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 a person other than the owner submitted the Request for Determination of Applicability, a copy shall also be sent to the owner. The Determination shall be made on Form B of these regulations.

4.5 The Commission may rescind a Determination of Applicability issued and require filing of a Notice of Intent if any individual, an owner of abutting land, or any ten residents of the town who has been negatively affected by a Determination of

Applicability where the land is located, file an appeal requesting by certified mail a hearing within ten days of the issuance of the Determination.

4.6 If the Applicant is not notified within 14 days after an Order is issued that the hearing authority has rescinded the order, the applicant may perform the proposed activity.

5.0 NOTICE OF INTENT

5.1 Any persons proposing an activity subject to the Act as specified in section 1.2 of these regulations shall send to the Commission, by certified mail or in-hand delivery, 4 copies of a completed Notice of Intent. A filing fee of \$65.00 payable to the Town of Lenox must accompany the Notice. The date of filing of said notice shall be the date of receipt of a completed filing by the Commission, and all time periods set forth in the Act shall commence from this date. The Notice shall be filled out on Form C of these regulations.

5.2 No Notice of Intent shall be sent before all permits, variances, and approvals required by law or local bylaw with respect to the activity have been applied for. Such permits, variances, and approvals required by local by-law may include, among others, the following:

- a. Zoning variances;
- b. Special permits including comprehensive permit issued under chapter 40B, Sect.20-23;
- c. Gravel removal or mining permits;
- d. any required permit from the Board of Health, such as a Disposal Works Construction permit or Well Construction permit.

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

5.4 The applicant must submit any other reasonable information, relevant to the project, later requested by the Commission. If such information is not submitted, the Commission may, after a public hearing, issue an Order prohibiting the activity.

6.0 Plans

6.1 Plans sent with a Notice of Intent shall include the following:

Two locus maps showing property's location. One shall be an enlarged section of

a United States Geological Survey map or MASS GIS equivalent, and the other shall be a copy of the current Lenox Zoning Map, each showing the location of the property. Each shall have an arrow indicating True North.

6.2 Drawings should be drawn to a scale in which 1" equals no more than 40', with the title designating the name of the project location and the names(s) of the persons preparing the drawings and the date prepared, including all the latest revision dates. The Commission may require drawings to be stamped and signed by a registered professional engineer, architect, landscape architect, or registered land surveyor of the Commonwealth.

6.3 Drawings and accompanying documents shall include sufficient information to demonstrate to the satisfaction of the Conservation Commission that the interests of these regulations will be protected. These drawings and documents shall include some or all, as may be applicable to the proposed property and work, of the following:

- a. Present and proposed contours of the entire work area and affected adjacent areas showing contours at elevation intervals of no more than 2 feet;
- b. All property lines and zoning setbacks;
- c. All brooks, creeks, rivers, streams, ponds, lakes, wetlands, and buffer zones, whether continuous or intermittent, natural or man-made, regulated by the Massachusetts Wetland Protection Act General Laws 131 Section 40 within 200 feet of any work area(s); and or any local bylaws.
- d. Location of major site features, such as existing stone walls, fences, large trees, and rock outcroppings;
- e. Location, extent, and area of all present and proposed paved areas, roads, driveways, and parking areas;
- 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. Soil characteristics within 200 feet of the work area(s) in representative portions of the site, including the type of soil found in building sites. Sampling sites shall be specified;
- j. All existing and proposed structures, including height thereof;
- k. All calculations necessary to show the effect of the proposed activity on soil and water;
- l. Location of any spoils areas;
- m. Existing and proposed water supplies for proposed activities;
- n. Existing and proposed sewage disposal systems, specifically showing the location and type to be used;
- o. Erosion and sedimentation prevention plans for during and after construction;
- p. Description of the potential impact on natural scenic qualities of the

mapped mountain region and specific measures for mitigating those impacts;

q. Proposed alterations, within the work area(s) to existing tree canopy coverage, expressed as a percentage reduction from the existing conditions.

6.4 Engineering drawings shall also include a profile map showing principal features of the site, proposed alterations, and a profile drawing of site vegetation. These profile maps should be drawn from multiple radians from various angles.

6.5 The applicant may submit, or the Commission may require, further information that will assist in the review if deemed necessary by the Commission to determine the effect of the proposed activity on the mapped mountain regions.

6.6 Performance standards and engineering practices acceptable for work to be performed under this Act are contained in the most recent versions of the following:

- a. U.S. Dept. of Agriculture, Soil Conservation Service. Guidelines for Soil and Water Conservation in Urbanizing Areas of Massachusetts,
- b. U.S. Dept. of Agriculture, Soil Conservation Service. Erosion and Sediment Control in Site Development: Massachusetts Conservation Guide Volume I, September, 1983. (Available from Berkshire Conservation District),
- c. U.S. Dept. of Agriculture, Soil Conservation Service. Vegetative Practices in site Development: Massachusetts Conservation Guide Volume II, (Available from Berkshire Conservation District),
- d. U.S. Dept. of Agriculture, Soil Conservation Service. Soil Survey of Berkshire County, Massachusetts, February 1988. (Available from Berkshire Conservation District),
- e. Massachusetts Stormwater Management, DEP, Boston, MA, March 1997, Volume One and Two.

7.0 HEARINGS

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

7.2 Notification of the time and place of the hearing shall be given by the Commission, at the expense of the applicant, not less than 5 days prior to such hearing, by publication in a newspaper of general circulation in the Town of Lenox. Applicant shall notify abutters of the hearing by certified mail, return receipt requested, not less than 10 days prior to such hearing and provide proof of said mailing to the Commission.

7.3 The Commission shall mail, by certified mail, a copy of the published notice to the applicant and to the Board of Health and Planning Board of the town.

7.4 The hearing shall be public, and all interested persons shall be allowed to testify.

7.5 The Commission, with the consent of the applicant, may continue a hearing for good cause provided that notice of continuance to a specific date, time and place is given at the public hearing.

8.0 ORDER OF CONDITIONS

8.1 Within 21 days after the end of the hearing, the Commission shall issue a written Order which may impose reasonable conditions on the proposed activity in an effort to protect watershed resources, or to preserve the natural scenic qualities against any significant adverse effect 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 of the mapped mountain regions. The Order shall be made on Form D of these regulations.

8.2 The Order shall be signed by a majority of the 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. The order shall also be posted, within 1 day of issuance in the hearing authorities' customary place of general public notice.

8.3 Any applicant undertaking an activity regulated by this Section shall record the Order in the Berkshire Middle District Registry of Deeds after the expiration of the ten-day Appeal Period. No activity shall commence until the Order is recorded and the applicant sends a receipt for this recording from the Registry of Deeds by certified mail or hand delivered to the Commission.

8.4 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 on Form F, with the hearing authority prior to the expiration of the existing OOC.

9.0 APPEALS

9.1 An appeal request to the Department may be made in accordance with M.G.L., 131, Sect. 39A, within ten days after the 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.

9.2 Appeal may be initiated by any of the following:

- a. The applicant; or
- b. Any abutter of land upon which the proposed activity would be carried out; or
- c. Any ten residents of the town where such land is located.

9.3 The person(s) appealing may request the Department to determine if other reasonable conditions should be imposed on the proposed activity or if such conditions should be modified in order to protect against a significant adverse effect on watershed resources or natural scenic qualities, or if conditions can be modified or eliminated without any loss of protection against any significant adverse effect on watershed resources or scenic qualities.

9.4 The request 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 thereof to the Commission and, if the person(s) appealing be other than the owner and applicant, to the owner and applicant. Upon receiving a copy of the request, the Commission shall within seven days forward the file on the matter to the Department.

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

9.6 A copy of the Superseding Order shall be sent by Certified Mail to the applicant, the Owner, to the Hearing Authority, and to the party who requested the order if not the applicant.

9.7 If the applicant is not notified of a request of the Department within 14 days after the after issuance of an Order by the Hearing Authority, or upon the issuance of an order by the Department, said applicant may conduct any regulated activities in accordance with the terms of the order, issued by the Hearing Authority.

9.8 Any person aggrieved by an Order of the Department may appeal under the provisions of General Laws Chapter 30A. Such rights of appeal shall be exclusive.

10.0 CERTIFICATE OF COMPLIANCE

10.1 Upon completion of an activity in compliance with an Order, the applicant may request a Certificate of Compliance from the agency that issued the Order. The request shall be in writing.

10.2 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 people, certifying compliance with the plans, shall accompany the request for a Certificate.

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

10.4 If any of the work is not in compliance with the Order, the Commission shall refuse to issue a Certificate.

10.5 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.

10.6 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 E of these regulations.

10.7 The applicant may record the certificate in the appropriate Registry of Deeds.

10.8 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.

11.0 VIOLATIONS AND ENFORCEMENT

11.1 Any person, except a bona fide purchaser for value without notice, who purchases or otherwise acquires land upon which an activity has been done in violation of this MGL Chapter 131, Section 39A or in violation of an order issued under MGL Chapter 131, Section 39A, shall forthwith comply with the order or restore the land to its condition prior to any violation.

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

11.3 The 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.

11.4 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 show compliance with the Order.

11.5 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, Commissioner, 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.

11.6 Whoever violates any provisions of this 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.

11.7 Officers of the Executive Office of Environmental Affairs shall enforce the Act.

12.0 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, General Laws Chapter 132 Sections 40 - 46, by obtaining a permit thereunder and which has been submitted to the Commission for review prior to cutting.

12.2 The Act does not apply to any activity that is subject to the provisions of the the Wetlands Protection Act, MGL Chapter 131, Section 40.

12.3 Any activity conducted in connection with the construction or maintenance of any facility as defined in General Laws Chapter 164, Section 69G Manufacture and Sale of Gas and Electricity.

12.4 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 has been approved by the Select Board or under General Laws Chapter 166, Section 22.

12.5 Construction or maintenance of any electrical distribution facilities required to serve a building or structure whose construction has been approved under the Act.

12.6 Notwithstanding the provisions of MGL Chapter 131, Section 39A and these Regulations, certain activities or areas are exempted from regulation:

- a. Maintenance, and ordinary repairs;

b. Vista pruning, provided the activity meets the definition of 2.36 above;

c. Plantings of native species of trees, shrubs, or groundcover;

d. Pruning of landscaped areas;

e. Farming-agricultural and associated maintenance of farming agricultural lands, such lands being farmed as of the effective date of these regulations, but not the creation of new or expansion of existing farmlands which shall require the filing by the applicant under the SMA.

f. Normal use and maintenance, not substantial enlargement, of land in use for agriculture, gardening, landscaping, or similar activities on existing residential properties.

End of regulations.

Town of Lenox Scenic Mountain Act

Scenic Mountain Act Regulated Areas:

- a) All areas above 426.7 meters (1400 feet) in elevation (shown in red)
- b) All areas below 426.7 meters (1400 feet) in elevation where any portion of the project is located on a steep slope ($\geq 15\%$) (not illustrated on this map)

Regulated Area > 1400 ft



A true copy:

Attest: *Maria L. Dwyer*
Town Clerk