

# TOWN OF GREAT BARRINGTON CONSERVATION COMMISSION



Regulations Under the Berkshire Scenic Mountains Act  
Massachusetts General Laws, Chapter 131, Section 39A

**November 2006**

## **PREAMBLE**

We live surrounded by scenic mountains. If a mountain or a related erodible watershed is to be altered, the regulations that follow provide protection for the Town's watershed resources, scenic areas in question and due process for those who propose changes.

## **1. GENERAL PROVISIONS**

### **1.1. Authority**

The Conservation Commission of the Town of Great Barrington, having been designated as hearing authority under M.G.L. Ch.131, Sec. 39A in a vote at the annual town meeting on May 5, 1997, promulgates these regulations pursuant to the authority granted to it under said Act.

### **1.2 Purpose of the 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. This shall apply to alterations which are 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 the Regulations**

The purpose of the regulations is to protect scenic highlands and slopes, thereby preventing erosion and safeguarding water resources.

To this end, the regulations aim to create a consistent process and clarify the provisions of the Act by establishing standard definitions and procedures.

1.4 Implementation of the Regulations

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

- The map and text delineating the proposed boundaries have been approved by a two-thirds vote of the Board of Selectmen,
- The regulations have been approved by the Commissioner of the Department of Conservation and Recreation,
- The map and text delineating the boundaries of the mountain regions subject to regulation have been recorded in the Southern Berkshire District Registry of Deeds, as specified in the Act.

**2. DEFINITIONS**

- 2.1 Abutter is any landowner, as determined by the most recent Assessors' records, whose land is within three hundred (300) feet of the property that is the subject of the Request for Determination or the Notice of Intent or whose land lies directly across any street, road, or waterway from the said property.
- 2.2 Act is the Berkshire County; Watershed Resources; Natural Scenic Qualities Act, Massachusetts General Laws Chapter 131, Section 39A, as amended.
- 2.3 Activity is any removal, filling, excavation or other alteration of any land situated within the mapped mountain region which is not specifically exempt from the provisions of this Act.
- 2.4 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, 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 or scenic features;
  - e. erection of any building or structures with a footprint in excess of five hundred (500) square feet, or a height in excess of 20 feet above maximum existing ground elevation;

- f. dumping or discharging of any material;
  - g. removal or destruction of plant life, including clear cutting of trees in a total ground area of more than five hundred (500) square feet;
  - h. construction and/or paving of any new road or parking lot larger than five hundred (500) square feet total
- 2.5 Applicant is the person giving notice of intention to conduct any regulated or non-regulated activity
- 2.6 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.
- 27 Certificate of Compliance a recordable form issued by Conservation Commission that establishes conditions set forth in the Order of Conditions have been met. It shall be made on Form E of these regulations.
- 2.8 Clearing is cutting or otherwise removing fifty per cent (50%) or more of canopy coverage of vegetation.
- 2.9 Commencement of activity is commencement of physical work on the premises, not merely surveying or site testing.
- 2.10 Commission is the Great Barrington Conservation Commission.
- 2.11 Commissioner is the Commissioner of the Massachusetts Department of Conservation and Recreation.
- 2.12 Compliance with the Forest Cutting Practices Act shall be demonstrated by submission to the Commission a copy of the permit issued under that Act.
- 2.13 Department is the Massachusetts Department of Conservation and Recreation in the Executive Office of Environmental Affairs.
- 2.14 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.
- 2.15 Environmental Impact Statement is a full scale statement issued under the National Environmental Policy Act or a full scale Environmental Impact Report issued under the Massachusetts Environmental Policy Act.

- 2.16 Erosion is the wearing away of soil or other earth material, caused by the action of wind or water.
- 2.17 Excavation is the removal of any material to lower the surface or create a cavity of any kind, either temporarily or permanently, in any area subject to the Act.
- 2.18 Filling is the placing of any material that raises, either temporarily or permanently, the elevation of any area subject to the Act.
- 2.19 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.
- 2.20 Form definitions:
- Form A - Preliminary Request for Determination of Applicability/Exemption Determination,
  - Form B - Determination of Applicability
  - Form C - Notice of Intent
  - Form D - Order of Conditions
  - Form E - Certificate of Compliance
  - Form F - Extension Permit
- 2.21 Hearing Authority shall mean the Commission.
- 2.22 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.
- 2.23 Notice of Intent is written description of any proposed regulated activity to be performed in the mapped mountain regions. It shall be submitted to the Commission on Form C of these regulations.
- 2.24 Order of Conditions is a document issued by the 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 on Form D of these regulations.
- 2.25 Owner of Land is the person appearing as the owner of record in the most recent records of the Southern Berkshire Registry of Deeds.
- 2.26 Permits, variances and approvals required by bylaw are 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 and 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 flood plain 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 81 K- 81 GG, 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.

- 2.27 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.
- 2.28 Person aggrieved is a person who has been negatively affected by the Commission's or Department's Order or failure to act.
- 2.29 Preliminary 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 issued on Form B of these regulations.
- 2.30 Preservation of natural scenic qualities is the protection of existing aesthetic and / or historic features of the environment, as determined by the Conservation Commission.
- 2.31 Regulated Activities shall mean the alteration of land within mapped mountain regions, as defined in Section 2.3, 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 or scenic features or destruction of vegetation.
- 2.32 Removal 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.
- 2.33 Request for Exemption Determination is a written request which shall be made by any person who believes that the land in question is not within the boundaries of a mountain region, or that any of the proposed work is subject to an exemption specifically provided for in M.G.L. Chapter 131, Section 39A. It shall be submitted on Form A.
- 2.34 Request for Preliminary Determination of Applicability is a written request which shall be made by any person to the Commission or the Department for a

determination as to whether proposed work is not a regulated activity subject to M.G.L. Chapter 131, Section 39A. It shall be submitted on Form A.

- 2.35 Slope is the measurement in percent of the natural change in elevation as expressed in a ratio of the change in elevation over a measured horizontal distance
- 2.36 Substantial means that which is considerable and important with regard to the essential elements being considered, as determined by the hearing authority.
- 2.37 Topographic features comprise the configuration of the land's surface, including its relief and relative elevation.
- 2.38 Tree Canopy coverage is the horizontal area covered by the foliage of a tree in full vegetation.
- 2.39 Vegetation is the plant life or total plant cover of a given area, including but not limited to grass, ground cover, shrubs and trees.
- 2.40 Vista Pruning is the selective thinning of tree branches or understory shrubs, to establish a specific "window" to improve visibility. Vista Pruning does not include the cutting of trees, and does not include the mowing or removal of understory brush.
- 2.41 Watershed is an area within which water drains to a particular watercourse or body of water.

### **3. PERFORMANCE STANDARDS**

3.1 Applicants seeking approval under these regulations must meet all applicable state standards intended to augment the provisions of M.G.L. Chapter 131, Section 39A and promulgated in the Code of Massachusetts Regulations, 310 CMR 10.25 through 10.35 and 10.37, and 310 CMR 10.54 through 10.60. Said standards are herein incorporated by reference.

- 3.2 In considering any application for work within the mapped and designated mountain regions, the Commission shall make the following presumptions:
  - a. Non-natural or artificial protuberances above ridgelines damage natural scenic qualities;
  - b. Clearing of contiguous 'mountain region' lands totaling one-half (½) acre or more, damages natural scenic qualities and/or causes erosion;
  - c. Alteration of slopes steeper than fifteen percent (15%) causes erosion and promotes flooding and damage to water quality.

#### **4. PRELIMINARY DETERMINATION OF APPLICABILITY**

- 4.1 Any person who proposes to remove, fill, excavate, or alter any land within a mountain region and who believes such proposed work is not a regulated activity may request a preliminary determination by filing, by certified mail, four copies of a written notice thereof with the Commission together with such information or plans as may be necessary to describe in general terms the nature and scope of the proposed activity and its effect upon the watershed and scenic resources intended to be protected by this section; provided, however, that any plans need not be detailed engineering or architectural plans so long as the nature and scope of the proposed activity is reasonably described. No such notice shall be sent before all permits, variances, and approvals required by by-law or ordinance with respect to the proposed activity have been applied for.
- 4.2 Any person who believes that any land is not within the boundaries of a mountain region or that any proposed work is subject to an exemption specifically provided for hereinafter in this section may file with the Commission by certified mail a request for an exemption determination.
- 4.3 Either request shall be made on Form A of these regulations.
- 4.4 Upon receipt of such notice the hearing authority shall designate a file number for such notice and within twenty-one (21) days, shall make a preliminary determination whether the proposed work is a regulated activity, or is exempt.
- 4.5 The Commission shall issue and send to the applicant a written Preliminary Determination of Applicability signed by a majority of the Commission, within twenty-one (21) days following receipt of the request. Copies shall be sent to the owner of the land, if not the applicant, and all persons so requesting. Notice of the determination shall be posted in the customary place of general public notice within one day of the finding. The Determination shall be made on Form B of these regulations.
- 4.6 If the Commission finds that the proposed work is a regulated activity, it shall require the filing of a Notice of Intent and will hold a public hearing as provided in Section 7 of these regulations.
- 4.7 The Commission may rescind an Order issued after a preliminary determination and hold a public hearing as provided in Section 7 of these regulations, if any abutter, or any ten residents of the town where the land is located, file an appeal by certified mail, requesting a hearing within ten (10) days of the issuance of the Determination.

- 4.8 If the Applicant is not notified within fourteen (14) days after an order issues that the hearing authority has rescinded the order, then the applicant may perform the proposed activity.
- 4.9 Any activity shall be limited to what is described in the submittal.

## **5. NOTICE OF INTENT**

- 5.1 Any person(s) proposing a regulated activity subject to the Act as specified in section 1.2 of these regulations, shall send to the Commission, by certified mail or hand delivery, 4 copies of a completed Notice of Intent and a filing fee of \$25.00, payable to the Town. The Notice must contain such information as may be reasonably required by regulation to describe the nature and scope of the proposed activities and their effect on the watershed or scenic resources protected under the provisions of the Act. Any Environmental Impact Statements filed with any state or federal agency shall be sufficient information with respect to such activity, for purposes of complying with this section. 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 such Notice of Intent shall be sent before all permits, variances, and approvals required by law or bylaw with respect to the activity have been applied for.
- 5.3 Upon receipt of a Notice of Intent, the Commission shall designate a file number and hold a public hearing as provided in Section 7 of these regulations.
- 5.4 The applicant must submit any additional information reasonable and relevant to the project and the purposes of the statute, if 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. PLANS**

- 6.1 Plans sent with a Notice of Intent shall include the following:
- a. Two locus maps indicating property's location. One shall be an enlarged section of a United States Geological Survey map, and the other shall be a copy of the current Great Barrington Zoning Map. Each shall have an arrow indicating True North;
  - b. Names of all bordering streets, roads, and highways;
  - c. Outline of all watershed areas related to the proposed activity;

- d. Water quality classifications under M.G.L. Ch. 21;
  - e. Environmental data form;
  - f. An “alternatives analysis” demonstrating that no other location on the subject property is suitable for the intended use and will cause less environmental damage;
  - g. Engineering drawings described below.
- 6.2 Engineering drawings should be drawn to a scale in which one inch (1") equals no more than fifty feet (50'), with the title designating the name of the project location and the name(s) of the person(s) preparing the drawings and the date prepared, including all the latest revision dates. The drawings shall be stamped and signed by a registered professional engineer, architect, landscape architect, or registered land surveyor of the Commonwealth, unless the Commission otherwise allows.
- 6.3 Engineering drawings and accompanying documents shall include some or all of the following, as may be applicable to the proposed property and work:
- a. Present and proposed contours of the entire site and affected adjacent areas showing contours at elevation intervals of no more than two (2) feet;
  - b. All brooks, creeks, rivers, streams, ponds, lakes, wetlands, and buffer zones, whether continuous or intermittent, natural or man-made, Regulated by the Great Barrington Town Wetland Bylaw and Massachusetts Wetland Protection Act General Laws 131 Section 40;
  - c. Location, extent and area of all present and proposed paved areas, roads, driveways, and parking areas;
  - d. Location of proposed water retention areas;
  - e. Location of areas to be removed, dredged, filled or otherwise altered in any way;
  - f. Location of underground utilities, rights of way or easements of any kind;
  - g. Soil characteristics in representative portions of the site, including the type of soil found in the building, septic and well sites if applicable. Sampling sites shall be specified;
  - h. Location, extent and area of all existing and proposed structures, including their height and lowest floor elevations thereof;

- i. All calculations necessary to show the effect of the proposed activity on soil and water;
  - j. Cross sections showing slope, bank and bottom treatment of each watercourse to be altered; locations of cross sections shall be specified;
  - k. Location of any spoil areas;
  - l. Existing and proposed water supplies for proposed activities;
  - m. Existing and proposed locations and elevations of cellars or floors, and bottoms of sewage disposal systems and leaching fields together with alternative sites for leaching fields, specifically showing the type to be used;
  - n. Erosion and sedimentation prevention plans for, during and after construction;
  - o. 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;
  - p. Description of the potential impact on natural scenic qualities of the mapped mountain region and specific measures for mitigating those impacts;
  - q. Tree canopy coverage and height relative to proposed structures;
  - r. Areas subject to the 100 year flood, as indicated on maps provided under the National Flood Insurance Program, or other competent authority;
  - s. 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.
- 6.4 Engineering drawings shall also include a profile map showing location of principal features of the site, such as existing stone walls, fences, large trees, and rock outcroppings; a profile drawing of site vegetation and proposed alterations. 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:
1. U.S. Dept. of Agriculture, Soil Conservation Service. Guidelines for Soil and Water Conservation in Urbanizing Areas of Massachusetts, 1975 and subsequent revisions (Available in limited quantities from the Great Barrington Conservation Commission.).
  2. 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)
  3. U.S. Dept. of Agriculture, Soil Conservation Service. Vegetative Practices in site Development: Massachusetts Conservation Guide Volume II, (Available from Berkshire Conservation District)
  4. U.S. Dept. of Agriculture, Soil Conservation Service. Soil Survey of Berkshire County, Massachusetts, February 1988. (Available from Berkshire Conservation District)

## **7. HEARINGS**

- 7.1 The Commission shall hold a public hearing on the proposed activity within twenty-one (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 five (5) days prior to such hearing, by publication in a newspaper of general circulation in the Town of Great Barrington. Applicant shall notify abutters of the hearing by certified mail, return receipt requested, not less than five (5) days prior to such hearing and provide proof of said mailing to the Commission.
- 7.3 The Commission shall deliver by hand, or certified mail, a copy of the published notice to the applicant and to the Board of Health and Planning Board of Great Barrington.
- 7.4 A hearing may be continued by the Commission for good cause provided that notice of continuance to a specific date, time and place is given at the public hearing and does not impose a hardship on the applicant.

## **8. ORDER OF CONDITIONS**

- 8.1 Within twenty-one (21) days after the close of the hearing, the Commission shall issue a written Order which may impose on the proposed activity such reasonable conditions as may be necessary to protect watershed resources or 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 destruction of vegetation. 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 one day of its issuance in the Commission's customary place of general public notice.
- 8.3 Any applicant undertaking an activity regulated by this Section shall record the Order in The Southern Berkshire District Registry of Deeds. No activity shall commence until the Order is recorded and a receipt for this recording from the Registry of Deeds is sent by the applicant by certified mail or hand delivered to the Commission.
- 8.4 The applicant may request an extension of an Order before it expires. The Commission may grant two extensions of the Order, for a total of no longer than one year. (Note: The Commission will consider an extension of an Order only under circumstances which, in its opinion, are extraordinary). Extensions shall be made on Form F of these regulations.
- 8.5 If an applicant fails to commence the proposed activity within one year following the date of issuance of an Order, and thereafter prosecute diligently such activity to completion, such inaction shall constitute an abandonment of the project and the Commission, after reasonable notice to the applicant, may revoke said Order.

## **9. APPEALS**

- 9.1 A request for appeal may be made to the Department in accordance with M.G.L. Chapter 131, Section 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 twenty-one (21) days after receipt of the Notice of Intent;
  - c. If the Commission holds a hearing but fails to issue an Order within twenty-one (21) days after the hearing.

- 9.2 Appeals may be initiated by any of the following:
- a. The applicant;
  - b. Any person aggrieved by the Order;
  - c. Any abutter of land upon which the proposed activity would be carried out; or
  - d. Any ten (10) residents of the town where such land is located.
- 9.3 The person(s) appealing may request the Department to determine:
- a. If such conditions could be modified or eliminated without any loss of protection; or
  - b. If such conditions should be modified or other reasonable conditions imposed on the proposed activity, in order to protect against any significant adverse effect on watershed resources or natural 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) making the request shall send copies thereof to the Commission by certified mail 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 If the applicant is not notified of a request of the Department within fourteen (14) days after the issuance of an order by the Commission said applicant may conduct any regulated activities in accordance with the terms of the order.
- 9.6 Any Order issued by the Department shall supersede the prior Order of the Commission and all work shall be done in accordance therewith.
- 9.7 A copy of the Superseding Order shall be sent by certified mail to the applicant, to the owner, the Commission, and to the party requesting the order (if not the applicant).
- 9.8 Any action by the Department under this section shall not be considered subject to the provisions of M.G.L. Chapter 30, Sections 61 and 62.
- 9.9 Any person aggrieved by an Order of the Department issued under the provisions of this section may appeal under the provisions of M.G.L. Chapter 30A. Such rights of appeal shall be exclusive.

## **10. CERTIFICATE OF COMPLIANCE**

- 10.1 Upon completion of an activity in compliance with an Order, the applicant may request in writing, a Certificate of Compliance from the agency which issued the Order.
- 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, certifying compliance with the plans, shall accompany the request for a Certificate.
- 10.3 After receipt of the request for a Certificate of Compliance, the Commission may request an on site inspection with the applicant and the Commission.
- 10.4 If any of the work is not in compliance with the Order, the Commission may 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 applicant shall record the Certificate of Compliance in the Southern Berkshire District Registry of Deeds and submit a stamped copy to the Commission which shows the date, book and page of record.

## **11. 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 Act, shall forthwith comply with the Order of Conditions or restore the land to its condition prior to the violation. Failure to do so is in itself a violation of the Act.
- 11.2 The 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 Application, or has not complied with the conditions set forth in the Order.
- 11.4 No revocation shall be made without notice to the applicant of the facts or conduct which warrants the intended revocation, and a hearing at which the applicant is given an opportunity to show compliance with the conditions of 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 (10) residents of the Commonwealth under M.G.L. Chapter 214, Section 7A.
- 11.6 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, as provided in M.G.L. Chapter 131, Section 39A. Each day or portion thereof, of continuing violation shall constitute a separate offense.
- 11.7 The Act shall be enforced by officers of the Executive Office of Environmental Affairs.

## **12. EXEMPTIONS**

- 12.1 The Act does not apply to owners of land who propose to cut forest products on land devoted to forest purposes and who have complied with the provisions of the Forest Cutting Practices Act, M.G.L. Chapter 132, Sections 40-46, inclusive, by obtaining a permit thereunder and which has been submitted to the Commission prior to cutting for review.
- 12.2 The Act does not apply to any activity which is subject to the provisions of the Town of Great Barrington 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.
- 12.3 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); or
  - b. Any activity conducted in connection with construction or maintenance of any electrical, transmission distribution facilities or facilities used in transmission of intelligence by electricity or by telephone or otherwise for which locations in the public ways have been approved by the Selectmen or under M.G.L. Chapter 166, Section 22; or
  - c. Construction or maintenance of any electrical distribution facilities required to serve a building or structure whose construction has been approved under the Act.

- 12.4 The act does not apply to maintenance, repair, reconstruction, replacement or 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 ( $\frac{1}{4}$ ) acre or more of contiguous lands or alteration of the site as defined herein.

**ADDENDUM  
To the Map of  
SCENIC MOUNTAIN REGIONS  
of the  
TOWN OF GREAT BARRINGTON**

The Berkshire Scenic Mountain Act, M.G.L.Ch. 131, Sec. 39A, hereinafter "the Act", directs the Conservation Commission to draft proposed boundaries of mountain regions. While the Act indicates that these regions will generally be areas above the town mean elevation (~ 412 meters), the Act also gives the Conservation Commission the additional latitude to include areas of lower elevation if the Commission determines that doing so is necessary to accomplish the purposes of the Act. The Act also provides the latitude for the Commission to exempt areas above the mean elevation if it determines that regulation of these areas would not serve the purposes of the Act.

Keeping in mind the purposes of the Act, which may be summarized as:

*Protecting watershed resources, from pollution or diminution of ground or surface water, from erosion and from flooding, and ...*

*Preserving natural scenic qualities from substantial changes to topography or substantial destruction of vegetation,*

the Conservation Commission has examined and evaluated the slope, elevation and topographic structure, soil quality, surface water run-off, erosion and flood propensities, scenic viewsapes, and the full range of vegetative cover of the Town of Great Barrington.

The Commission has noted that there are at least twelve topographically elevated structures (hills or mountains) which comprise, often in combination with each other, the various scenic mountainous viewsapes within the Town. These have been numbered on the Scenic Mountain Region Map in roughly clockwise order from Vossburg Hill (#1) in the southwesterly corner of the Town, up and around to Monument Mountain (#7) and Beartown Mountain (#8) on the northern and northeastern edges of Town, and down and around to East Mountain (#10) and the two unnamed hills (#11 and #12) lying between East Mountain and the Housatonic River. All mapping work has been done on the current USGS topographic map of Great Barrington at 1: 25,000 Scale or on large topographic and other planning maps produced for the Town by the Berkshire Regional Planning Commission

Substantial portions of all of these scenic hills or mountains extend well below the mean elevation of Great Barrington and, in most cases, much of the terrain below the mean elevation is as steep as the terrain above. Because of accumulated snow melt and storm run-off from above, areas of steep soils below mean elevation are often more susceptible to erosion and flooding than slopes at higher altitude. Most of the steeper slopes below the town mean elevation are well forested and are more readily accessible from Town

roads and from existing woods management roads. It is reasonable to assume, the Commission believes, that it is precisely these areas below the mean elevation that will feel the pressure first for logging, new road or driveway construction and new residential development.

No two hills or mountains are alike. Each of the twelve mountain regions has differing conditions of existing development and future potential. For these reasons, and for all of the above reasons and purposes, the Conservation Commission has established boundary lines for each individual hill and mountain, in all cases extending below the mean Town elevation and in most cases to approximately the elevation where slope declines to below 15%. These boundary lines reflect the Commission's conviction that in order to adequately protect watershed resources (particularly from erosion on steep slopes) and in order to preserve the existing scenic qualities of these hills and mountains (topography and forest cover) boundaries must be set as a function of existing site conditions, rather than according to a standardized elevation to be applied uniformly across the whole Town.

The Commission has felt strongly from the outset that, where possible, boundary lines should be defined in such a way that they can be located on the ground with minimal engineering or other technical assistance. Whereas a boundary line defined as an elevation can only be found on any given parcel of land by detailed topographic survey, a less costly, less time consuming and more "user friendly" approach is to define boundaries in terms of straight line distances. These distances are measured from or along clearly recognizable landmarks (such as roads, intersections, edge of power R.O.W. s, center lines of streams, shorelines, etc.) much like local zoning maps are defined. This is the approach the Commission has taken in mapping Scenic Mountain Regions.

Finally, the Conservation Commission recognizes that, with experience, it may determine that there are reasons to review and possibly update or revise the Map of Scenic Mountain Regions. In such case, as it has in the past, the Commission would expect to hold public information meetings to receive various points of view and subsequently would submit any proposed changes to the Selectmen for hearing and possible adoption. For the present, the Commission believes that the Map of SCENIC MOUNTAIN REGIONS adequately defines the regions where reasonable regulation can accomplish the purposes of the Act.

**Text Delineating the Boundaries of  
The SCENIC MOUNTAIN REGIONS of the  
TOWN OF GREAT BARRINGTON**

M.G.L. Chapter 131, Section 39A  
BERKSHIRE SCENIC MOUNTAINS ACT

The SCENIC MOUNTAIN REGIONS of the TOWN OF GREAT BARRINGTON consist of twelve hills and mountains shown on the relevant portion of the current USGS Topographic Maps of the Great Barrington Area (1: 25,000 Scale) with boundaries and identification numbers as determined by the Great Barrington Conservation Commission, in approximate numerical and clockwise order, starting generally in the southwestern corner of the Town of Great Barrington, as follows:

**(1) Vossburg Hill** (apparent elevation 309 m)

Boundary is the lines connecting points ABCDA, where...

**Point A** is 1400 A. westerly of West Sheffield Road and lies in the southerly Town Line;

**Point B** is 1400 A. westerly of West Sheffield Road and 3200 ft. northerly of the southerly Town Line;

**Point C** is 200 ft. westerly of West Sheffield Road and 3200 ft. northerly of the southerly Town Line;

**Point D** is 200 ft. westerly of West Sheffield Road and lies in the southerly Town Line;

**Line CD** runs 200 ft. westerly of and parallel to West Sheffield Road.

**(2) Berkshire Heights** (apparent elevation 306 m)

Boundary is the lines connecting points ABCDEFGHA, where...

**Point A** is 400 ft. northerly of Routes 23 & 41 and 500 ft. easterly of the mean annual high water line at the east-side bank of the Green River;

**Point B** is 500 ft. northerly from the mean annual high water line at the northeast bank of the Green River in the centerline of the unnamed dirt road running through McAllister Park from Haley Road to Hurlburt Road;

**Point C** is in the centerline of the unnamed dirt road running from Haley Road to Hurlburt Road and 400 ft. westerly of Highland Drive;

**Line BC** runs in the centerline of the unnamed dirt road from Haley Road to Hurlburt Road;

**Point D** is 400 ft. westerly and 400 ft. southerly of the intersection of Highland Drive and Pleasant View Drive;

**Point E** is 400 ft. southerly of Pleasant View Drive and 400 ft. westerly of Berkshire Heights Rd.;

**Point F** is 400 ft. westerly of the southerly extension of Berkshire Heights Road and 400 ft. southerly of the present southerly end of Berkshire Heights Road;

**Line CDEF** runs 400 ft. distant from and parallel to Highland Drive, Pleasant View Drive and Berkshire Heights Road, in that order;  
**Point G** is due east of Point F and 400 ft. westerly of West Avenue;  
**Point H** is 400 ft. westerly of West Avenue and 400 ft. northwesterly of Routes 23 & 41;  
**Line HA** runs 400 ft. northwesterly from and parallel to Routes 23 & 41.

**(3) Christian Hill and Mansfield Pond** (apparent elevation 291 m)  
Boundary is the lines connecting points ABCDEFGH, where...

**Point A** is at the northerly end of Knob Lane Extension;  
**Point B** is a point in Knob Lane 700 ft. southwesterly from Point A;  
**Point C** is a point in the center line of Lake Mansfield Road where the counterclockwise arc BC scribed by a radius of 700 ft. intersects;  
**Point D** is at the intersection of Lake Mansfield Road and Fox Run;  
**Line CD** runs in the center line of Lake Mansfield Road;  
**Point E** is in the centerline of Fox Run 800 ft. westerly of Lake Mansfield Road;  
**Point F** is 200 ft. northeasterly from Castle Hill Avenue and 1400 ft. northwesterly from Lake Mansfield Road;  
**Point G** is in the centerline of Lake Mansfield Road 200 ft. from the intersection with Castle Hill Avenue;  
**Point H** is at the intersection of Knob Hill Road and Knob Lane.  
**Line GH** runs in the centerline of Lake Mansfield Road to the intersection with Knob Hill Road and up the center line of Knob Hill Road.

**(4) Unnamed Hill at the extreme south end of Tom Ball Mountain**  
(apparent elevation 300 m)  
Boundary is the lines connecting points ABCD, where...

**Point A** is 800 ft. northwesterly of Division Street and 400 ft. northeasterly of Alford Road;  
**Point B** is in the northerly Town Line 400 ft. northeasterly of Alford Road;  
**Line AB** runs 400 ft. northeasterly of and parallel to Alford Road;  
**Point C** is in the Northerly Town Line 400 ft. westerly of the long curved private road that presently leads to A.I.E.R.  
**Point D** is 400 ft. southwesterly of the private road that presently leads to A.I.E.R. and 800 ft. northwesterly from Division Street.  
**Line CD** runs 400 ft. westerly of and parallel to the private road that presently leads to A.I.E.R.

**(5) Tom Ball Mountain** (apparent elevation 460 m)  
Boundary is the lines connecting points ABCDEFGA, where...

**Point A** is in the center line of Long Pond Brook 400 ft. northwesterly of Division Street;  
**Point B** is 400 ft. northerly of Division Street and 2000 ft. from Point A;  
**Line AB** runs 400 ft. northerly of and parallel to Division Street;  
**Point C** is a stone bound marking a corner in the Town Line adjacent to the private road presently leading to A.I.E.R.  
**Point D** is a Stone Bound in the northwest corner of the Town Line;  
**Point E** is a point in the Town Line 2600 ft. easterly of Point D;  
**Point F** is in the mean annual high water line at the northernmost tip of Long Pond;  
**Point G** is in the centerline of the outlet of Long Pond;  
**Line FG** runs along the mean annual high water line on the westerly shore of Long Pond;  
**Line GA** runs in the centerline of Long Pond Brook.

**(6) Unnamed Hilly Ridge** east of Long Pond Road (apparent elevation 366 m)  
 Boundary is the lines connecting points ABCDA, where...

**Point A** is 400 ft. northwesterly of Division Street and 200 ft. easterly of Long Pond Road;  
**Point B** is in the center line of Buttondown Lane 200 ft. easterly of Long Pond Road;  
**Line AB** runs 200 ft. easterly of and parallel to Long Pond Road;  
**Point C** is in the center line of Buttondown Lane 800 ft. westerly of the mean annual high water line of the Williams River;  
**Line BC** runs in the center line of Buttondown Lane;  
**Point D** is 800 ft. westerly of the mean annual high water line of the Williams River and 400 ft. northerly of Division Street;  
**Line CD** runs 800 ft. westerly of and parallel to the mean annual high water line of the Williams River;  
**Line DA** runs 400 ft. northerly of and parallel to Division Street.

**(7) Monument Mountain** (apparent elevation 530 m)  
 Boundary is the lines connecting points ABCDEFGHA, where...

**Point A** is 400 ft. northeasterly of Rt. 183 in the center line of the path of the electrical transmission lines running north-south, easterly of Rt. 183;  
**Point B** is the intersection of the path of the electrical transmission lines running north-south, easterly of Rt. 183, and the northerly Town Line;  
**Point C** is the intersection of the northerly Town Line with the mean annual high water line on the westerly shore of Agawam Swamp;  
**Point D** is the northeasterly corner of the Monument Mountain Reservation of The Trustees of Reservations (TTOR);  
**Point E** is the northern-most corner of the Monument Mountain Reservation immediately adjacent to Rt. 7;  
**Line DE** follows the TTOR property line southerly and easterly;

**Point F** is the southern-most corner of the Monument Mountain Reservation immediately adjacent to Rt. 7;

**Line EF** follows the TTOR property line along its entire frontage on Rt. 7;

**Point G** is along the Monument Mountain Reservation property line from Point F, 400 ft. northwesterly of the unnamed brook arising just westerly of Rt. 7 and running westerly to join with the Housatonic River westerly of Rt. 183 and southerly of Division Street;

**Point H** is 400 ft. northwesterly of the unnamed brook (see brook in Point G, above) and 400 ft. northeasterly of the private road leading from Rt. 183 to the eastern extension of Division Street;

**Line GH** runs 400 ft. northerly of and parallel to the unnamed brook running from the westerly side of Rt. 7 to the Housatonic River (see brook in Point G, above);

**Line HA** runs 400 ft. northeasterly of and parallel to both the private road leading from Rt. 183 to the eastern extension of Division Street and also Rt. 183 itself.

**(8) Beartown Mountain** (apparent elevation 621m)

Boundary is the lines connecting points ABCDEFGHA, where...

**Point A** is 400 ft. northwesterly of the Old Monterey Road and 1200 ft. easterly of Monument Valley Road;

**Point B** is 1200 ft. easterly of Monument Valley Road in the center line of Blue Hill Road;

**Line AB** runs 1200 ft. easterly of and parallel to Monument Valley Road;

**Point C** is 2200 ft. easterly of Monument Valley Road in the center line of Blue Hill Road;

**Line BC** runs in the center line of Blue Hill Road;

**Point D** is 2200 ft. easterly of Monument Valley Road in the center line of Alcott Road;

**Line CD** runs 2200 ft. easterly of and parallel to Monument Valley Road;

**Point E** is in the center line of Alcott Road at the point closest to the boundary of Beartown State Forest, approximately 2800 ft. easterly of Monument Valley Road;

**Line DE** runs in the center line of Alcott Road;

**Point F** is the intersection of Konkapot Brook, which is the boundary of Beartown State Forest, and the northern Town Line;

**Line EF** is the boundary of Beartown State Forest;

**Point G** is the northeastern corner of the Town boundary;

**Point H** is a point on the easterly Town Line 400 ft. northerly of Rt. 23;

**Line GH** follows the easterly Town Line;

**Line HA** runs 400 ft. northerly of and parallel to Rt. 23 and Old Monterey Road.

**(9) Three Mile Hill** (apparent elevation 381m)

Boundary is the lines connecting points ABCDEFGHIA, where...

**Point A** is 400 ft. northerly of Rt. 23 in the centerline of the woods road that runs from Lovers' Lane to Rt. 23;

**Point B** is in the center line of Blue Hill Road at a point 3200 ft. easterly of Route 7;

**Point C** is a point 2500 ft. northwesterly of Point B and 1800 ft. westerly of Route 7;

**Point D** is in the southerly side line of Great Barrington State Forest 1800 ft. easterly of Route 7;

**Point E** is in the northerly sideline of Great Barrington State Forest 400 ft. easterly from Route 7;

**Line DE** runs in the southerly, westerly and northerly boundary lines of Great Barrington State Forest;

**Point F** is 400 ft. easterly of Rt. 7 and 400 ft. southerly of Lovers' Lane;

**Point G** is 400 ft. westerly of the intersection of Monument Valley Road and Stony Brook Road;

**Line FG** runs 400 ft. southerly of and westerly of and parallel to Lovers' Lane and Monument Valley Road, respectively;

**Point H** is 300 ft. westerly of the intersection of Monument Valley Road and Stony Brook Road;

**Point I** is 300 ft. westerly of Monument Valley Road and 300 ft. northerly of Route 23;

**Line HI** runs 300 ft. westerly of and parallel to Monument Valley Road;

**Line IA** runs 300 ft northerly of and parallel to Rt. 23.

**(10) East Rock, East Mt. and Warner Mt. (apparent elevation 543m)**

Boundary is the lines connecting points ABCDEFGHIJKLMA, where...

**Point A** is in the southerly Town Line 600 ft. easterly of Brush Hill Rd.;

**Point B** is 600 ft. northeasterly of Brush Hill Road and 400 ft. southerly of the Jeep track extension of East Road;

**Line AB** runs 600 ft. easterly of and parallel to Brush Hill Road;

**Point C** is 400 ft. northeasterly of Quarry Street and 200 ft. easterly of the intersection of Park Street and Hillside Avenue;

**Line BC** runs 400 ft. easterly of and parallel to East Rd. and Quarry St.;

**Point D** is 200 ft. easterly of Hillside Ave. and 200 ft. southerly of Rts. 7&23

**Line CD** runs 200 ft. easterly of and parallel to Hillside Avenue;

**Point E** is 200 ft. southerly of Rt. 23 and 200 ft. westerly of Giddings Street;

**Line DE** runs 200 ft. southerly of and parallel to Rts. 7 & 23;

**Point F** is 800 ft. southerly of Rt. 23 and 200 ft. westerly of the southerly extension of the center line of Giddings Street;

**Point G** is 800 ft. southerly of Rt. 23 in the mean annual high water line on the southwesterly shore of the unnamed pond approximately 1200 ft. westerly of the driveway entrance to Butternut Ski Area;

**Line FG** runs 800 ft. southerly of and parallel to Rt. 23;

**Point H** is in the center line of the stream feeding the unnamed pond (see Point G) 1400 ft. southwesterly of the intersection of Rt. 23 and the Butternut Ski Area driveway;

**Line GH** runs along the mean annual high water line of the unnamed pond and southeasterly along the centerline of the stream feeding the unnamed pond (see Point G);

**Point I** is 200 ft. southerly of Rt. 23 and 1400 ft. easterly of the intersection of Rt. 23 and the Butternut Ski Area driveway

**Line HI** is an arc from Point H to Point I, scribed counterclockwise by a radius measuring 1400 ft. from the intersection of Rt. 23 and the Butternut Ski Area driveway;

**Point J** is 200 ft. southerly of Rt. 23 and 200 ft. westerly of Lake Buel Road;

**Line IJ** runs 200 ft. southerly of and parallel to Rt. 23;

**Point K** is in the center line of the Appalachian Trail 200 ft. southwesterly of Lake Buel Road;

**Line JK** runs 200 ft. southwesterly of and parallel to Lake Buel Road;

**Point L** is in the center line of the Appalachian Trail 800 ft. southwesterly of Lake Buel Road;

**Line KL** runs in the center line of the Appalachian Trail;

**Point M** is in the easterly Town Line 800 ft. southwesterly of Lake Buel Road;

**Line LM** runs 800 ft. southwesterly of and parallel to Lake Buel Road;

**Line MA** runs in the easterly and southerly Town Lines.

**(11) Unnamed Hill** east of the Fairgrounds (apparent elevation 333 m.)

Boundary is the lines connecting points ABCA, where...

**Point A** is 200 ft. easterly of Grove St. and 400 ft. southerly of Pine St.;

**Point B** is 400 ft. westerly of the unimproved road extension of East Rd. and 1900 ft. northeasterly of Brush Hill Rd.;

**Line AB** runs 400 ft. southwesterly of and parallel to Pine St, East Rd. and the Jeep track extension of East Rd.;

**Point C** is the intersection of the southwesterly extension of a line running 200 ft. easterly of and parallel to Grove St. and the mean annual high water line of the Housatonic River;

**Line BC** is approximately 3400 ft. long;

**Line CA** runs 200 ft. southeasterly of and parallel to Grove Street.

**(12) Unnamed Hill** east of East Sheffield Rd. (apparent elevation 339 m)

Boundary is the lines connecting points ABCA, where...

**Point A** is in the southerly Town Line 200 ft. easterly of East Sheffield Rd.;

**Point B** is 200 ft. easterly of East Sheffield Rd. and 400 ft. southerly of Brush Hill Rd.;

**Line AB** runs 200 ft. easterly of and parallel to East Sheffield Road;  
**Point C** is in the southerly Town Line 400 ft. westerly of Brush Hill Rd.;  
**Line BC** runs 400 ft. southeasterly of and parallel to Brush Hill Rd.;  
**Line CA** runs in the southerly Town Line.

NOTE: Unless otherwise noted, lines running in or along roads, unimproved roads, trails or streams run in the apparent centerline. Unless otherwise noted, the intersection of roads, trails or streams will be understood to be the intersection of the two apparent centerlines. Unless otherwise noted, measurements from a roadway or trail are taken from the apparent centerline of that roadway, and, unless otherwise noted, are taken perpendicular to the apparent centerline.

- END -