

TOWN OF SHEFFIELD

Conservation Commission

Regulations under Massachusetts General Laws, Chapter 131, Section 39A, Berkshire County;
Watershed Resources; Natural Scenic Qualities - commonly called the “Berkshire Scenic Mountains Act”
(the “Act”)

Act Accepted by Annual Town Meeting May 12, 1975

Regulations and Map and Text Approved by Sheffield Conservation Commission, July 10, 2023

Map and Text Approved by Sheffield Select Board, _____, 2023

Map and Text Approved by Massachusetts Department of Conservation and Recreation, _____,
2023

PREAMBLE

The Scenic Mountain Act is concerned with two aspects of Sheffield’s scenic landscape: any mountain elevation at or above 900 feet and any steep slope, that is any slope averaging fifteen percent (15%) grade or greater over a horizontal distance of two hundred (200) feet.

Human activities that alter the natural characteristics of mountains and steep slopes may irreversibly change these environmentally sensitive areas. Activities such as an excavation, construction, clearing, and filling may be visible for many miles. Likewise, the destruction of natural ground covers and trees may result in severe erosion. All these activities may increase the likelihood of uncontrolled runoff, impede adequate sewage disposal, negatively impact important aquifer recharge areas, and pollute downhill resources to cite a few potential unintended outcomes.

The intent of these regulations (“Sheffield Scenic Mountain Act Regulations” or “Regulations”) is to

- enable the Conservation Commission’s review of such proposed activities that could affect Sheffield’s mountainsides and steep slopes and
- guide landowners in performing such activities to avoid, minimize or mitigate the impact of proposed activities.

These Regulations are not intended to prohibit construction or other alteration activities, nor to hinder farmers, landowners, or gardeners in their normal pursuits or in the normal maintenance of their properties.

If a mountain, a steep slope, or a ridgeline is to be altered, these Regulations provide both protection for the regulated scenic mountain areas and due process for those who propose changes.

1.0 GENERAL PROVISIONS

1.1 Authority

The Sheffield Conservation Commission has responsibility under Massachusetts General Law C. 131, §39A for promulgating, administering, and enforcing these Regulations, which take effect when (1) the Conservation Commission has approved the Regulations and Map and Text delineating the boundaries of the Mountain Regions and Steep Slope areas, “Town of Sheffield, Scenic Mountain Act Mapped Mountain Regions and Steep Slopes”; (2) this Map and Text has been approved by a two-thirds vote of the Select Board; (3) the Commissioner of the Department of Conservation and Recreation (DCR) has approved this Map and Text; and (4) the approved Map and Text is filed with the Town Clerk, recorded in the Southern Berkshire Registry of Deeds, and sent to the Commissioner, as specified in the Act.

1.2 Jurisdiction

These Regulations apply to the areas delineated on the approved Map and Text entitled “Town of Sheffield, Scenic Mountain Act Mapped Mountain Regions and Steep Slopes” (the “Approved Map and Text”) and include:

1. All areas at or above 900 feet (274.32 meters) in elevation above sea level; and
2. All areas below 900 feet (274.32 meters) in elevation above sea level where any portion of a proposed Activity is located on a Steep Slope, as defined in §2.52.

2.0 DEFINITIONS

The following definitions shall apply in the interpretation and implementation of these Regulations:

- 2.1. Abutter: any landowner, as determined by the Assessors department, where any portion of their land is within three hundred (300) feet of the property line of an proposed Activity subject to the Regulations, including land which lies directly across any street, road, way, or waterway from said property.
- 2.2. Act: the Berkshire County, Watershed Resources, Natural Scenic Qualities Act, Massachusetts General Laws C. 131, §39A, as amended.
- 2.3. Activity: any Removal, Filling, Excavation, or other Alteration of any land situated within the delineations shown on the Approved Map that is covered by these Regulations and not specifically exempt from these Regulations. The term Activity may mean either the singular or the plural.
- 2.4. Activity subject to MGL C. 131, §40: any Activity subject to a valid, enforceable Order of Conditions or positive determination of applicability issued under the Wetlands Protection Act (WPA).
- 2.5. Activity of Minimum Impact: an Activity affecting (i) less than 2,500 square feet of surface ground area and/or (ii) any structure to be erected that is less than one story in height or less than fifteen (15) feet in height, as measured from the average ground plane surrounding the structure to the highest point of the proposed building or structure, not including a chimney.
- 2.6. Aerial Coverage: the ground area equivalent of the tree canopy in full leaf.
- 2.7. Alter or Alteration: includes, but is not limited to, one or more of the following Activities proposed or to occur within any areas in the Approved Map:

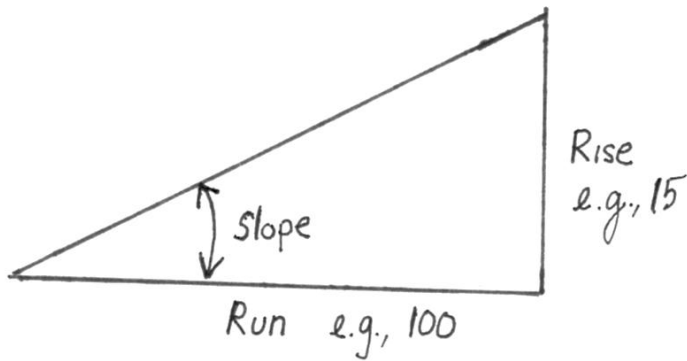
- 1) Removal, Filling, Excavation, or Dredging of soil, sand, gravel, rock, or aggregate material of any kind;
- 2) changing pre-existing drainage characteristics, sedimentation patterns and flow patterns;
- 3) disturbance of existing drainage, watercourses, or water table;
- 4) substantial change in topographic or Scenic features;
- 5) erection of any new building or structure with a footprint in excess of five-hundred (500) square feet or of a height in excess of one story or fifteen (15) feet between the maximum existing ground elevation within the proposed footprint and the highest point of the proposed building or structure;
- 6) modification of any existing building or structure that increases its footprint by more than five-hundred (500) square feet or increases the height of any portion of the building or structure in excess of one story or of fifteen (15) feet between the maximum existing ground elevation within the proposed footprint and the highest point of the proposed building or structure;
- 7) change in an existing structure that results in a significant natural Scenic impact;
- 8) dumping or discharging of any material; however, the temporary stockpiling of materials to conduct an Activity may be provided in an Order of Conditions;
- 9) clearing one-quarter ($\frac{1}{4}$) acre or more of ground area in the aggregate;
- 10) removal or destruction of plant life, including clearing of trees, of a ground area in the aggregate two thousand five hundred (2,500) square feet or more; however, the Regulations exclude the maintenance of woodlots for non-commercial use; or
- 11) construction and/or paving of any new road or parking lot comprising five hundred (500) or more square feet.

- 2.8. Alteration to an Existing Structure: exempt under the Regulations are the maintenance, repair, reconstruction, replacement, or enlargement of an existing lawfully located and constructed structure that is not of a Substantial nature or change in the use, where such change is in accordance with Sheffield's Zoning By-Laws.
- 2.9. Applicant: the person giving Notice of Intent to conduct any Activity under these Regulations. The Applicant may or may not be the Owner(s) of the property on which Activity is proposed, but in all events the Owner(s) of such property bear(s) responsibility for adherence to these Regulations, irrespective of any advice that the Owner / Applicant's representatives (including Applicants, contractors and subcontractors) have or have not made or will or will not make regarding these Regulations.
- 2.10. Approved Map Regions: as defined in §1.2, elevations at or above 900 feet above sea level and Steep Slopes.
- 2.11. Blasting: use of any explosive device to remove rock or otherwise Alter the existing landscape..
- 2.12. Bona Fide Purchaser for value without notice: a buyer for value who has not been informed, verbally or in writing by the seller, or had no actual knowledge, that an Activity had been done on the purchased property in violation of the Regulations.

- 2.13. Certificate of Compliance: SMA Form E-2 issued by the Conservation Commission stating that all conditions set forth in an issued Order of Conditions have been met.
- 2.14. Clean Fill: soil material used to fill in a depression or hole in the ground or to create mounds that artificially change the grade or elevation of real property. The term “clean” implies that the soil material is eco-friendly and free of any toxic substances, hazardous materials, or invasive species.
- 2.15. Clearing: cutting or otherwise removing fifty percent (50%) or more of canopy coverage of vegetation in a given area.
- 2.16. Commencement of Activity: commencement of Alteration work on any property subject to these Regulations. Exemptions are listed in §3.0.
- 2.17. Commission: the Sheffield Conservation Commission, which has responsibility for the administration and enforcement of the Regulations; The Commission is also the hearing authority as specified in the Act.
- 2.18. Commissioner: the Commissioner of the Massachusetts Department of Conservation and Recreation.
- 2.19. Compliance with the Forest Cutting Practices Act: as demonstrated by submission to the Commission of a permit copy issued under that Act.
- 2.20. Cumulative: increasing in effect by successive additions; the Commission may consider the cumulative effects of prior alterations on a property or on contiguous properties, whether or not in common ownership, under these Regulations.
- 2.21. Day: all time periods of ten days or less, as specified in MGL C. 131 §39A and these Regulations, shall be computed using business days only, Monday through Friday, excluding Saturday, Sunday and legal holidays. All other time periods shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday, or legal holiday, in which case the last day shall be the next following business day.
- 2.22. Department: the Massachusetts Department of Conservation and Recreation in the Executive Office of Energy and Environmental Affairs (DCR).
- 2.23. Determination of Applicability: a decision issued by the Commission on SMA Form B as to whether the land and proposed Activity shall or shall not require the filing of a Notice of Intent under these Regulations.
- 2.24. Dredge: to unearth, clean, deepen or widen by scooping, suction or other Excavation method.
- 2.25. Environmental Impact statement: 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.
- 2.26. Erosion: the wearing away of soil or other earth material caused by the action of wind or water.
- 2.27. Excavation: the disturbance of any material to lower the surface or create a cavity of any kind, either temporarily or permanently to any area subject to the Regulations; however, percolation tests (which fall under 310 CMR 15.000 Subsurface Disposal of Sanitary Sewage (Title V)) are exempt.

- 2.28. Exempt Activity: any Activity subject to a valid and enforceable Order of Conditions or positive determination of applicability issued under the Wetlands Protection Act, MGL C. 131, §40 or that is exempted under §3.0.
- 2.29. Filling: the placing of any material that raises, either temporarily or permanently, the elevation of any area subject to the Regulations.
- 2.30. Flooding: 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.
- 2.31. Form Names and Purposes:
- 1) SMA Form A: Request for Determination of Applicability
 - 2) SMA Form B: Determination of Applicability
 - 3) SMA Form C: Notice of Intent
 - 4) SMA Form D: Order of Conditions
 - 5) SMA Form E-1: Request for Certificate of Compliance
 - 6) SMA Form E-2: Certificate of Compliance
 - 7) SMA Form F: Enforcement Order
 - 8) SMA Form G: Extension For Order of Conditions
- 2.32. Hearing Authority: the Sheffield Conservation Commission.
- 2.33. Massachusetts General Law: also written as MGL C. xx, §yy
- 2.34. Notice of Intent: a written description of any proposed Activity to be performed in a delineated portion of the Approved Map and subject to the Regulations, submitted to the Commission on SMA Form C, as required by §2.31.4.
- 2.35. Order of Conditions: a decision issued on SMA Form D 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 of the Act and conform to these Regulations.
- 2.36. Owner: the person(s) listed as the owner(s) of record at the Southern Berkshire Registry of Deeds.
- 2.37. Peer Review: evaluation by a professional(s) authorized by, and acting on behalf of, the Conservation Commission to assess any Form submitted to the Conservation Commission.
- 2.38. Person: 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.
- 2.39. Person(s) Aggrieved: person(s) who has/have been negatively affected by any Conservation Commission's or Department's order or failure to act under the Act or the Regulations.

- 2.40. Preservation of Natural Scenic Qualities: the protection of the existing aesthetic and/or historic features of the environment to minimize potential adverse effects, as authorized by these Regulations.
- 2.41. Regulated Activities: the Removal, Filling, Excavation or other Alteration of land within any of the Approved Map Regions as defined in §2.10.
- 2.42. Regulations: administrative procedures and rules established under the Act, including various forms, permits, approvals and disapprovals contained herein.
- 2.43. Removal: the act or process of taking away any type of material that has been excavated from, severed from, or proposed to change the elevation of – either temporarily or permanently – any area subject to these Regulations.
- 2.44. Request for Determination of Applicability: a written request submitted to the Commission on SMA Form A made by an Owner who seeks to determine whether the land in question is within the Approved Map Regions, or whether any of the proposed Activities are subject to an Exemption as listed in §3.0
- 2.45. Restoration Plan: a approved plan that addresses violations of the Regulations, as described under SMA Form F, Enforcement Order, that seeks to remedy the damage human Activity has caused to an area subject to these Regulations and the Act, which will restore such area to a state closely related to its unaltered state before such human activities.
- 2.46. Ridgeline: the ground surface, not the tops of the trees, along the top of a mountain or hill; the high line of such topography.
- 2.47. Scenic: vistas, open space, woodlands, fields, meadows, and agricultural lands that contribute to preserving the natural scenic qualities of the Town of Sheffield.
- 2.48. Significant: of importance and of consequence as determined by the Commission pursuant to the scope, meaning, and intent of the Act and these Regulations.
- 2.49. Site Plan: a two-dimensional aerial photograph or map document that functions as a readable map of a building site, or site of any Activity subject to these Regulations, providing a clear overview of all property features the Conservation Commission needs to know that will be impacted by the proposed Activity. Site Plans usually include the plot of land and its property lines; directions; setbacks; existing and proposed conditions, including impact on surrounding features and drainage; construction limits, as applicable; surrounding streets; easements, if any; landscape features; setbacks; driveways and parking; utility poles and power lines; fencing; and existing and proposed structures.
- 2.50. Slope: the measurement of a continuous change in elevation divided by the horizontal distance in which the change takes place, expressed as a percentage.



$$\text{Slope} = \frac{\text{Rise}}{\text{Run}} = \frac{15}{100} = 15\%$$

Illustration of Slope

**Note: Not to Scale
For Illustrative Purposes Only**

- 2.51. Spur: A short, continuous sloping line of higher ground, normally jutting out from the side of a ridge.
- 2.52. Steep Slope: areas with slopes averaging fifteen percent (15%) or greater over a horizontal distance of two hundred (200) feet. Steep Slopes shall be measured by transects spaced a minimum of thirty-five (35) feet apart along the base of the slope.
- 2.53. Substantial: that which is considerable and important with regard to the essential elements being considered, as determined by the Commission.
- 2.54. Topographic Features: the configuration of the land's surface, including its relief and relative elevation.
- 2.55. Tree Canopy Coverage: the horizontal area covered by the foliage of a tree in full vegetation.
- 2.56. Vegetation: the plant life or total plant cover of a given area, including but not limited to grass, ground cover, shrubs, and trees.
- 2.57. Vista Pruning: the selective thinning of tree branches or mowing and removal of under story brush, to establish a specific "window" to improve visibility.
- 2.58. Watershed: a region or area within which all water ultimately drains to a particular watercourse or body of water.
- 2.59. Woodlot: An area of woodland privately maintained as a source of fuel, maple sap, lumber or for recreational purposes.

3.0. EXEMPTIONS

3.1. The Act and these Regulations do not apply to:

- 1) The cutting of forest products on land devoted to forest purposes whose Owners have complied with the provisions of the Forest Cutting Practices Act, MGL C.132 §§40 - 46, inclusive, by obtaining a permit thereunder, and which has been submitted to the Commission for review prior to cutting;
- 2) Any Activity subject to provisions of the Wetlands Protection Act, MGL C.131 §40;
- 3) Any Activity conducted in connection with the construction or maintenance of any facility as defined in MGL C.164 §69G, Manufacture and Sale of Gas and Electricity;
- 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 MGL C.166 §22;
- 5) Construction or maintenance of any electrical distribution facilities required to serve a building or structure whose construction has been approved under MGL C.166;
- 6) Normal use and/or maintenance, repair, reconstruction, replacement, or enlargement that is not of substantial nature, or change in use of any lawfully located and constructed structure, provided that this work does not involve clearing one-quarter ($\frac{1}{4}$) acre or more of contiguous lands or Alteration of the site; or
- 7) Farming, which are agricultural activities as defined in MGL C.61A §2 as amended; however, the creation of new farmlands or expansion of existing farmlands in Approved Map Regions are not exempt.

3.2. Notwithstanding the provisions of MGL C.131 §39A and these Regulations, certain activities are exempted from regulation:

- 1) Maintenance and ordinary repairs, which are not substantial in nature, such examples of which include mowing existing lawn areas, tending existing garden area(s), and repairs to existing structures;
- 2) Vista Pruning, provided the Activity meets the definition in §2.57;
- 3) Plantings of native non-invasive species of trees, shrubs, or ground cover;
- 4) Pruning of landscaped areas;
- 5) Maintenance of woodlots for personal use; and
- 6) Use and maintenance of land in use for agriculture, gardening, landscaping, horticulture, viticulture, or similar Activity on existing residential properties.

4.0 VIOLATIONS AND ENFORCEMENT

4.1. 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 the Act or Regulations or in violation of an issued Order of Conditions shall forthwith comply with the Order of Conditions or restore the land to its condition prior to any violation. Failure to comply with an existing Order of Conditions is itself a violation of the Act and these Regulations.

- 4.2. The Commission and its agents, officers, and employees may enter upon privately owned land for the purpose of carrying out the provisions of the Act or Regulations and may issue an Enforcement Order to anyone found in violation of the Regulations.
- 4.3. The Commission may revoke an Order of Conditions and may issue an Enforcement Order if it finds that (i) the Owner / Applicant has/have not complied with the Order of Conditions; (ii) the Owner / Applicant has/have exceeded the scope of the Activity as set forth in the Order of Conditions; or (iii) facts not available or not brought to the attention of the Commission at the time the Order of Conditions was issued warrant such a revocation.
- 4.4. No revocation shall be made without notice to the Owner / Applicant of the facts or conduct that warranted the proposed revocation and the holding of a Public Hearing at which the Owner / Applicant is/are given an opportunity to show compliance with the Order of Conditions.
- 4.5. 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, the Commissioner, the Town, an owner, or occupant of property which may be affected by such violation, or ten (10) or more residents of the Commonwealth under the provisions of MGL C. 214 §7A.
- 4.6. Whoever violates any provisions of these Regulations shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than six (6) months or both as provided in MGL C.131 §39A. Each day, or portion thereof, of continuing violation shall constitute a separate offense.
- 4.7. The Act shall be enforced by officers of the Executive Office of Energy and Environmental Affairs.

5.0 PUBLIC HEARINGS

- 5.1. The Conservation Commission shall undertake a Public Hearing within twenty-one (21) days' receipt of:
 - 1) a Request for Determination of Applicability;
 - 2) a Notice of Intent; and
 - 3) an Order of ConditionsAll interested persons shall be allowed to testify at any such Public Hearing.
- 5.2. Notification of the time and place of the Public Hearing shall be given by the Commission, at the expense of the Owner / Applicant or at the expense of the Person(s) Aggrieved appealing the Commission's Determination of Applicability, not less than five (5) days prior to such Public Hearing by publication in a newspaper of general circulation in the Town of Sheffield.
- 5.3. The Owner / Applicant for a Request for Determination or an Order of Conditions and/or a Notice of Intent shall notify Abutters of the Public Hearing by certified mail, return receipt requested, not less than ten (10) days prior to such Public Hearing, and provide proof of said mailings to the Commission. Abutters lists must be obtained from the Town of Sheffield Assessor's Office.
- 5.4. The Commission shall submit by hand or certified mail, at the expense of the Owner / Applicant, a copy of the published notice to the Owner / Applicant, to the Sheffield Board of Health, and to the Sheffield Planning Board.

- 5.5. The Commission may continue a Public Hearing 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 an undue hardship on the Owner / Applicant.
- 5.6. Within twenty-one (21) days of the close of the Public Hearing, the Commission shall issue a written order, either on Form B or Form D, as applicable, that may impose such reasonable conditions on the Activity as may be necessary to protect against any adverse effect from the Activity pursuant these Regulations.
- 5.7. The order shall be signed by a majority of the Commission members and a copy of such order sent by certified mail to the Owner / Applicant and to the Commissioner. The order shall be posted by the Town Clerk within one (1) day of its issuance in the Commission's customary place for general public notices

6.0 PERFORMANCE STANDARDS

- 6.1. Owners / Applicants seeking approval under these Regulations must meet all applicable state standards of MGL C.131 §39A.
- 6.2. In considering an application, the Commission will make the following presumptions regarding potential damage to the watershed and Scenic resources of the Approved Map Regions and may deny an Activity unless the Owner / Applicant clearly shows such presumptions are not accurate through submitted plans and documentation per §§7.0 and/or 8.0:
 - (1) Man-made or artificial protuberances above Ridgelines damage natural Scenic qualities;
 - (2) Clearing of land in any Approved Map Region totaling one-quarter (1/4) acre or more causes damage to natural Scenic qualities and causes or contributes to erosion; and
 - (3) Alteration of slopes, particularly Steep Slopes, causes erosion, promotes flooding, damages water quality, and degrades Scenic qualities.
- 6.3. The Commission will consider the visual impact of any new or Altered structure when reviewing an application. Factors considered will include, but not be limited to:
 - 1) Color scheme of the structure (muted or natural colors that blend in with the background are preferred);
 - 2) Exterior and interior lighting and whether exterior lighting conforms to Dark Sky standards (see www.darksky.org);
 - 3) Distance from Ridgeline; and
 - 4) Plans to minimize the visual impacts through landscaping.

7.0 REQUEST FOR DETERMINATION OF APPLICABILITY

- 7.1. Any person who proposes to Remove, Fill, Excavate, or Alter any land within the Approved Map Regions shall submit a Request for Determination of Applicability (RDA) to the Commission by filing, by certified mail, six (6) physical copies and one (1) electronic copy of SMA Form A 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 potential impacts upon the watershed and Scenic resources intended to be protected by these Regulations; 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 and demonstrates to the satisfaction of the Commission that the interests and intent of the Regulations will be protected.

Reasons why the Regulations may not apply to a particular area or proposed work:

- (1) Land is not within the Approved Map Regions;
 - (2) Proposed Activity is Exempt under the Act and/or these Regulations (see §3.0);
 - (3) Proposed Activity is not an Alteration as described in §2.7;
 - (4) Proposed Activity is not likely to have a significant adverse effect on watershed resources or natural Scenic qualities; or
 - (5) Proposed Activity includes appropriate mitigation measures, so the Activity will not have a significant adverse impact on watershed resources or natural Scenic qualities.
- 7.2. Upon receipt of a Request for Determination of Applicability, the Commission shall designate a file number for such Request and shall hold a Public Hearing as provided in §5.0 within twenty-one (21) days.
- 7.3. If the Commission finds the proposed Activity is exempt from the Regulations, the Commission shall issue and send the Owner / Applicant a written Determination of Applicability on SMA Form B, signed by a majority of the Commission, within ten (10) days following such determination. If the Commission finds that the proposed work is a regulated Activity, it shall issue and send to the Owner / Applicant a written Determination of Applicability, signed by a majority of the Commission, within ten (10) days following such determination, stating that the proposed Activity requires the filing of a Notice of Intent (NOI).
- 7.4. The Commission shall post a notice of its findings in the customary place of general public notice within ten (10) days of making its findings.
- 7.5. The Commission may rescind its Determination of Applicability and hold a Public Hearing pursuant to §5.0 if any owner of abutting land, or if ten (10) or more residents of the Town of Sheffield, as Person(s) Aggrieved, state in writing that they may be negatively affected by a Determination of Applicability. Such a statement must be made by certified mail and delivered to the Commission within ten (10) days of the issuance of a Determination of Applicability.
- 7.6. If the Owner / Applicant is not notified in writing within thirty (30) days after a Determination of Applicability is issued that the Commission has rescinded the Determination, the Owner / Applicant may perform the proposed Activity.

8.0 NOTICE OF INTENT

- 8.1. The Owner / Applicant proposing an Activity shall send to the Commission, by certified mail or in-hand delivery, six (6) physical copies and one (1) electronic copy of a completed Notice of Intent. The Notice of Intent, filed on SMA Form C, should contain information to describe the nature and scope of the proposed Activity and potential impacts on the watershed or Scenic resources protected under the provisions of the Act and these Regulations. The date of filing of a complete Notice of Intent shall be the date of receipt by the Commission, and all time periods set forth in the Regulations shall commence from this date.
- 8.2. Upon receipt of a Notice of Intent, the Commission shall designate a file number and hold a Public Hearing as provided in §5.0.
- 8.3. The Owner / Applicant will submit any other reasonable information relevant to the Activity as requested in writing by the Commission.

9.0 PLANS

- 9.1. The Conservation Commission will require appropriate documentation and plans to assess the proposed Activity and its impacts. As such, the Owner/ Applicant shall provide such information with its Request for Determination of Applicability and/or its Notice of Intent.

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

- 1) A locus map on an enlarged section of a United States Geological Survey (USGS) map showing the property location and showing Estimated Habitats of Rare Wetlands wildlife and Priority Habitats of Rare and Endangered Species, as provided by MassWildlife under the Natural Heritage & Endangered Species Program (“NHESP”) and the Massachusetts Endangered Species Act (MGL C.131A) and having an arrow indicating True North;
 - 2) A Site Plan that includes an outline of all watershed areas related to the proposed Activity; existing and proposed storm drainage systems and erosion and sedimentation control measures; and water quality classifications under MGL C. 21 (collectively, a “Site Plan”);
 - 3) An alternative analysis demonstrating that the proposed Activity is in compliance with these Regulations and that no other location on the subject property is suitable for the Activity and will cause less potential environmental damage; and
 - 4) Engineering drawings.
- 9.2. Plans and Engineering Drawings should be drawn to the scale of one inch (1”) equals no more than forty (40) feet, with titles designating the Activity location, the person(s) preparing the drawings, and the date prepared, including 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.
- 9.3. The Site Plan, Engineering drawings, and accompanying documents will include sufficient information to demonstrate to the satisfaction of the Commission that the interests of these Regulations will be protected. Drawings and documents for a Notice of Intent should include the following, as applicable:
- 1) Present and proposed contours of the entire work area and affected adjacent areas showing contours at elevation intervals of no more than two (2) feet;
 - 2) All property lines and zoning setbacks;
 - 3) All brooks, creeks, rivers, streams, ponds, lakes, wetlands, and buffer zones, whether continuous or intermittent, natural or man-made, regulated by MGL C.131 §40 within two hundred (200) feet of any work area(s);
 - 4) Location of major site features, such as existing stone walls, fences, large trees, and rock outcroppings;
 - 5) Location, extent, and area of all present and proposed paved areas, roads, driveways, and parking areas;
 - 6) Location of proposed water retention areas;
 - 7) Location of areas to be Removed, Excavated, Dredged, Filled, or otherwise Altered;
 - 8) Location of underground utilities, rights of way or easements of any kind;

- 9) Soil characteristics within two-hundred (200) feet of the work area(s) in representative portions of the site, including the type of soil found in building, septic and well sites; sampling sites shall be specified;
- 10) Location, extent, and area of all existing and proposed structures, including their height and lowest floor elevations;
- 11) Location of any areas on-site where soils or rock are proposed to be Excavated for reuse elsewhere; spoil areas are prohibited;
- 12) All calculations necessary to show the effect of the proposed Activity on soil and water;
- 13) Cross sections showing slope, bank, and bottom treatment of each watercourse to be Altered; locations of cross sections shall be specified;
- 14) Existing and proposed water supplies for proposed activities;
- 15) 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;
- 16) Erosion and sedimentation prevention plans during and after construction;
- 17) 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;
- 18) Description of the potential impact on any and all Approved Map Region's natural Scenic qualities and specific measures for mitigating those impacts;
- 19) Tree canopy coverage and height relative to proposed structures;
- 20) Areas subject to the 100-year flood, as indicated on maps provided under the National Flood Insurance Program, or other competent authority;
- 21) Proposed alterations, within the work area(s) to existing tree canopy coverage, expressed as a percentage reduction from the existing conditions;
- 22) Proposed alterations to waterways, including present and proposed location, elevation and invert of all drains, ditches, culverts, and other conductors immediately upstream and downstream of the site.

9.4. Performance standards and engineering practices acceptable for work to be performed under this Act and Regulations may be revised from time to time by the Commission following notice and a Public Hearing. Common standards and practices 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;
- 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); and

- 5) Massachusetts Stormwater Management, DEP, Boston, MA, March 1997, Volumes One and Two.

10.0. ORDER OF CONDITIONS

- 10.1. For a Notice of Intent, the Commission shall issue a written Order of Conditions on SMA Form D within twenty-one (21) days after the close of the associated Public Hearing. The Order of Conditions may impose reasonable conditions in an effort to protect watershed resources and/or to preserve the natural Scenic qualities against any significant adverse impact pursuant to criteria under the Act and the Regulations. If, in the Commission's opinion, the Activity cannot be so conditioned, the Commission shall issue an Order of Conditions denying the Activity.
- 10.2. The Order of Conditions shall be signed by a majority of the Commission, with a copy sent by certified mail to the Owner / Applicant and to the Department. The Order of Conditions shall also be posted in the Sheffield Town Clerk's office during the appeal period.
- 10.3. The Commission may rescind its Order of Conditions and hold a Public Hearing pursuant to §5.0 if any owner of abutting land, or if ten (10) or more residents of the Town of Sheffield, as Person(s) Aggrieved, state in writing that they may be negatively affected by the Order of Conditions. Such a statement must be made by certified mail and delivered to the Commission within ten (10) days of the issuance of the Order of Conditions.
- 10.4. Any Owner / Applicant undertaking an Activity regulated by these Regulations and approved by the Commission shall record the Order of Conditions in the Southern Berkshire Registry of Deeds after the expiration of the ten-day appeal period. No Activity shall commence until the Order of Conditions is so recorded and the Owner / Applicant sends a receipt for this recording from the Southern Berkshire Registry of Deeds by certified mail or hand delivers it to the Commission.
- 10.5. The Order of Conditions for an approved Activity shall be valid for one (1) year unless extended or revoked in accordance with these Regulations. The Owner / Applicant may request an extension of an Order of Conditions before it expires. The Commission may grant up to two extensions of the Order of Conditions, each for no longer than one (1) year, on SMA Form G. An Order of Conditions denying an Activity shall not expire.
- 10.6. If an Owner / Applicant fails to commence the proposed Activity within one (1) year following the date of issuance of an Order of Conditions and does not seek an extension, such inaction shall constitute an abandonment of the Activity and the Commission's related Order of Conditions will automatically terminate as if the Order of Conditions had been revoked by the Commission.
- 10.7. As part of an Order of Conditions issued under these Regulations, in addition to any security required by any other municipal or state board agency or official, the Commission may require that the performance and observance of the conditions imposed by the Order be secured wholly or in part by:
 - 1) proper bond, deposit of money, negotiable securities, or other undertaking of financial responsibility, determined by the Commission to be sufficient and payable to the Town of Sheffield upon default; and/or
 - 2) a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the Owner of record, running with the land with the benefit to the Town of Sheffield, or designee, whereby the conditions shall be performed and observed before the land may be conveyed.

Where a bond, deposit, negotiable securities, or other undertaking of financial responsibility is required, the Commission, through the Town Treasurer, may retain such security until the Commission issues a Certificate of Compliance.

11.0. CERTIFICATE OF COMPLIANCE

- 11.1. Upon completion of an Activity in compliance with an issued Order of Conditions, the Owner / Applicant shall submit a Request for Certificate of Compliance on SMA Form E-1 to the Commission.
- 11.2. After receipt of the Request for Certificate of Compliance, the Commission will conduct an on-site inspection of the completed work with the Owner / Applicant, or designee. If any of the work is not in compliance with the Order of Conditions, the Commission shall refuse to issue a Certificate of Compliance until such work meets the requirements of the Order of Conditions.
- 11.3. The Certificate of Compliance, issued on SMA Form E-2, shall certify in recordable form that the Activity has been completed in accordance with the Order of Conditions.
- 11.4. The Owner / Applicant shall record the Certificate of Compliance in the Southern Berkshire Registry of Deeds and submit a stamped copy to the Commission which shows the date, book, and page of record of such recording.

12.0. APPEALS

- 12.1. An appeal request to the Department may be made in accordance with MGL C.131 §39A, within ten (10) days after the Commission has acted, or failed to act, as follows:
 - 1) If the Commission has issued an Order of Conditions;
 - 2) If the Commission has denied a Notice of Intent;
 - 3) If the Commission fails to hold a Public Hearing within twenty-one (21) days after receipt of the Notice of Intent;
 - 4) If the Commission holds a Public Hearing but fails to issue an Order of Conditions within twenty-one (21) days after the close of the Public Hearing.
- 12.2. An appeal may be initiated by any of the following:
 - 1) The Owner / Applicant;
 - 2) Any abutter of the land upon which the proposed Activity would be carried out; or
 - 3) Any ten (10) residents of the Town of Sheffield aggrieved by a decision made by the Conservation Commission under these Regulations.
- 12.3. The person(s) appealing may request the Department to determine:
 - 1) If other reasonable conditions should be imposed on the proposed Activity, or if such conditions should be modified to protect against a significant adverse effect on watershed resources or natural Scenic qualities, or
 - 2) If conditions can be modified or eliminated without any loss of protection against any significant adverse effect on watershed resources or natural Scenic qualities.

- 12.4. The request shall be sent by certified mail to the Department within ten (10) days after the Commission has acted or failed to act. At the same time, the person(s) appealing shall send a copy of such appeal to the Conservation Commission by certified mail and, if the person(s) appealing is not the Owner /Applicant, to the Owner / Applicant. Upon receiving a copy of the appeal request to the Department, the Commission shall within seven (7) days forward the file on the matter to the Department.
- 12.5. If no appeal is made within ten (10) days after issuance of an Order of Conditions by the Commission, the Owner / Applicant may proceed under the Commission's Order of Conditions.
- 12.6. Within ten (10) days after receipt of an appeal, the Department shall notify the Owner /Applicant if the application is not in the proper form or is lacking information necessary to make the determination.
- 12.7. Within twenty-one (21) days after receipt of an appeal, the Department shall make the determination requested and shall issue a written order, signed by the Commissioner, imposing such reasonable conditions as may be necessary to protect the resources described therein, or modifying or eliminating conditions that may reasonably be changed without any loss of the protection of resources described therein. If the Department finds that the matter is of such size or complexity that additional time is needed, the twenty-one (21) day period may, by order, be extended for up to an additional sixty (60) days.
- 12.8. If the Owner / Applicant is not notified of a request of the Department within fourteen (14) days after the issuance of an order by the Commission, the Owner / Applicant may conduct any regulated activities in accordance with the terms of the Order of Conditions issued by the Conservation Commission.
- 12.9. Any order issued by the Department shall supersede the prior Order of Conditions issued by the Commission and all work shall be done in accordance therewith.
- 12.10. A copy of the order issued by the Department shall be sent by certified mail to the Owner / Applicant, the Commission, and the party(ies) who requested the order (if not the Owner / Applicant).
- 12.11. Any action by the Department under this section shall not be considered subject to the provisions of MGL C. 30 §§61 and 62.
- 12.12. Any person aggrieved by an order of the Department issued under the provisions of this section may appeal under the provisions of MGL C. 30A. Such rights of appeal shall be exclusive.

End of Regulations