

Zoning Ordinance  
Of the  
Town of Boothbay



**Adopted November 3, 2020**  
**Amended May 6, 2024**



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## **Section 1. General Provisions**

**1.1 Title** This ordinance shall be known and may be cited as the “Zoning Ordinance of the Town of Boothbay” (hereinafter “Ordinance”).

**1.2 Effective Date** This Ordinance shall be effective upon adoption by the Town Meeting and repeals and replaces the Zoning Ordinance of the Town of Boothbay adopted on November 7, 2007, as amended.

**1.3 Purpose** The purpose of this Ordinance is to ensure that development and the use of the land and the resources of the Town of Boothbay are consistent with the 2015 Comprehensive Plan.

**1.3.1** This Ordinance provides information so that property owners, potential property owners, and persons considering a development, subdivision, or use can determine what will be allowed and what will be required for approval by defining where specific uses and activities are permitted, the standards that must be met, and how approval may be obtained .

**1.3.2** The Ordinance recognizes the rights of property owners to enjoy the use and occupancy of their property consistent with the orderly development of the Town of Boothbay and the rights of neighboring property owners. Nothing in this Ordinance shall limit or restrict the rights of a person to bring legal or equitable action to prevent or mitigate personal injury or property damage arising out of a nuisance or other condition resulting from the use or occupancy of property.

**1.4 Conflict with Other Ordinances** Except as provided in Section 1.2 above, this Ordinance shall not be construed to repeal any other existing Town ordinances or regulations. Where a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation or statute, the more restrictive provision shall control unless otherwise specifically provided for in this Ordinance.

**1.5 Validity and Severability** Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

**1.6 Availability** A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be available at the Town Office for use or for purchase at a reasonable cost. Notice of availability of this Ordinance shall be posted in the Town Office.

**1.7 Changes and Amendments** This Ordinance may be amended by a majority vote of the legislative body of the Town at a duly called Town Meeting. Amendments to this Ordinance may be considered following petition, recommendation of the Planning Board, or by majority action of the Board of Selectmen. Prior to requesting adoption, proposed amendments shall be submitted to a public hearing to be held by the Planning Board in accordance with 30-A M.R.S. § 4352.<sup>1</sup> Copies of proposed

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<sup>1</sup> All Title, Chapter, and Section (“§”) references are to Maine Revised Statutes (M.R.S.), as may be amended from time to time.

amendments shall be posted and made available in accordance with the Town of Boothbay Administrative Code

**1.7.1** Notice of proposed changes to the Ordinance shall be provided as set forth in 30-A M.R.S. § 4352 and 38 M.R.S. § 438-A.

**1.7.2** Changes or amendments to the regulations for the use of land or structures in the portion of the Shoreland Overlay Zone subject to the state Mandatory Shoreland Zoning Act, including any structure built on, over, or abutting a dock, wharf, or pier, or other structure extending or located beyond the high-water line of areas affected by tidal action, a great pond, a stream, watershed tributary stream, outlet stream from any freshwater wetland or within a wetland, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the amendments, attested and signed by the Town Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on any amendment within 45 days of his or her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted within the 45 day period shall be governed by the terms of the amendment if such amendment is approved by the Commissioner.

**1.8 Land Use Objectives** The following land use objectives from the 2015 Comprehensive Plan are intended to guide the Town in the implementation of this Ordinance. These objectives provide a general policy framework for the specific Ordinance regulations.

**1.8.1** Encourage the preservation of designated resource conservation areas to retain the natural resource and scenic values of these areas.

**1.8.2** Preserve the rural nature of the designated rural areas of the community where there are large contiguous, undeveloped areas while accommodating traditional rural uses and small-scale nonresidential uses.

**1.8.3** Encourage the preservation of significant open space throughout the community in accordance with a community-wide open space plan.

**1.8.4** Encourage the development of a range of types and prices of housing to meet the needs of a diverse population.

**1.8.5** Encourage the majority of new development to occur in designated growth areas, and to a lesser extent, in limited growth areas as identified in the Future Land Use Plan.

**1.8.6** Carefully manage and limit use and development of land in the watersheds of Adams Pond and Knickerbocker Lakes and in the vicinity of the former water supply wells for East Boothbay to protect the sources of supply for the public water system.

**1.8.7** Carefully manage development especially in coastal residential areas and in former gravel pits to protect both the quality and quantity of the groundwater.

**1.8.8** Reinforce the role of the area surrounding the Common as the community and service center for the Town and encourage its evolution to a pedestrian

focused New England-style town center with additional residential activity.

- 1.8.9** Manage development in the Route 27 corridor to improve the visual environment of the corridor while accommodating good quality development and improving vehicular safety and flow in this area.
- 1.8.10** Promote manufacturing and similar uses in the industrial park area.
- 1.8.11** Maintain the scenic character of the northern end of the Route 27 corridor from Hardwick Road to the town line and the portion of the Route 96 corridor from the town line to East Boothbay village while allowing well planned development.
- 1.8.12** Reinforce the character of East Boothbay as a mixed-use, marine village while accommodating limited expansion of traditional marine industries.
- 1.8.13** Accommodate a wide range of traditional rural and small-scale nonresidential activities in identified rural areas while maintaining the rural, open character of these areas.
- 1.8.14** Protect the ability of nonresidential uses that were established prior to the Town having zoning or that have been legally established to expand and modernize as the Town's land use regulations are updated.





## **Section 2. Definitions**

**2.1 Rules of Construction** In this Ordinance, the terms or words listed below shall be interpreted as follows:

The word “person” includes a firm, association, organization, partnership, trust, company or corporation as well as an individual; the present tense includes the future tense; the singular includes the plural and the plural includes the singular; the word “used” or “occupied” includes the words “intended,” “designed,” or “arranged” to be “used” or “occupied”; and the word “lot” includes the words “plot” or “parcel”.

**2.2 Definitions** In this Ordinance, the terms listed below shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed. Words not defined in this section have their customary meanings as set forth in the most recent edition of: (1) Black’s Law Dictionary, or (2) Merriam-Webster’s Unabridged Dictionary. If there is uncertainty as to the meaning of any word or term used in this Ordinance, the Board of Appeals shall determine the meaning following the procedures for an administrative appeal. In determining if a use or activity conforms to a definition, the Code Enforcement Officer, Planning Board, or Board of Appeals may be guided by the most recent edition of the North American Industry Classification System (NAICS).

**Abutter:** The owner of a parcel or lot of abutting land as shown in the assessment records of the Town of Boothbay.

**Abutting Land:** Real estate that shares a common boundary, or portion of a boundary even if only at a point, with land on which a development or other regulated activity is proposed or land that is the subject of an official Town action or review. Land that is located directly across a road is considered to be abutting land for the purposes of this Ordinance.

**Accessory Dwelling Unit:** A self-contained dwelling unit located within, attached to, or detached from a single-family dwelling unit located on the same parcel of land and that meets the performance standards of Section 11.1.

**Accessory Structure:** A structure that is incidental and subordinate to the principal structure. A deck or similar extension of the Principal Structure or a garage attached to the Principal Structure by a roof or a common wall is considered part of the Principal Structure.

**Accessory Use:** A use that is incidental and subordinate to the principal use.

**Adult-Use Marijuana Establishment:** A marijuana cultivation facility, marijuana products manufacturing facility, a marijuana testing facility, or a marijuana store licensed by the State of Maine under Title 28-B M.R.S. Chapter 1.

**Marijuana Cultivation Facility:** A facility licensed by the State of Maine to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to products manufacturing facilities, to marijuana stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores.

**Marijuana Products Manufacturing Facility:** A facility licensed by the State of Maine to purchase adult use marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package adult use marijuana and adult use marijuana products; and to sell adult use marijuana and adult use marijuana products to marijuana stores and to other products manufacturing facilities.

**Marijuana Store:** A facility licensed by the State of Maine to purchase adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, to purchase adult use marijuana and adult use marijuana products from a products manufacturing facility and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

**Marijuana Testing Facility:** A facility licensed by the State of Maine to develop, research and test marijuana, marijuana products and other substances.

**Affordable Housing Development:**

- A. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford 51% or more of the units in the development without spending more than 30% of the household's monthly income on housing costs; and
- B. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford 51% or more of the units in the development without spending more than 30% of the household's monthly income on housing costs.
- C. For purposes of this definition, "housing costs" include, but are not limited to:
  - 1. For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and
  - 2. For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

**Aggrieved Party:** An owner of land whose property is directly or indirectly affected by the granting or denial of a permit, approval or variance under this Ordinance; a person whose land abuts land for which a permit, approval or variance has been granted; or any other person or group of people who have suffered particularized injury as a result of the granting or denial of such permit, approval or variance.

**Agricultural Packaging and Storage:** Any or all steps of preparing agricultural products for sale or other distribution. This includes, but is not limited to, wrapping, boxing and storage.

**Agricultural Product:** Any of the following items:

- A. Fresh fruit, fresh produce or a fresh horticultural or agronomic commodity and products made from that fresh fruit, fresh produce or fresh horticultural or agronomic commodity;
- B. Trees and wreaths used for decorative purposes;
- C. Maple syrup; or
- D. A food product made from an animal raised for the purpose of providing food or from the products of that animal.

**Agricultural Product Processing:** The preparation for market or other commercial use of agricultural products.

**Agriculture:** The cultivation and tillage of the soil as a livelihood, including dairying; the raising of livestock, freshwater fish, fur-bearing animals or poultry; producing, cultivating, growing and harvesting fruit, produce or floricultural or horticultural commodities; or any practices on a farm that are incident to or in conjunction with these farming operations. Agriculture does not include animal breeding or care, kennels, or forest management and timber harvesting activities.

**Alcoholic Beverage Production Establishment:** A facility for the production, distribution and accessory retail sales of alcoholic beverages, including, but not limited, to beer and ale, wine, and distilled spirits, including facilities such as tasting and function rooms for the consumption of beverages produced on the premises.

**Alteration:** Any change in the use of a building or modification in construction or change in the structural members of a structure, such as bearing walls, columns, beams or girders.

**Amusement Park:** A commercial facility utilizing powered apparatus, such as Ferris wheels, water slides and similar devices.

**Animal Breeding or Care:** The keeping or raising of five (5) or more animals of the same kind over 6 months old for breeding, hunting, show, training, field trials and exhibition purposes. The standards for this use shall also apply to the boarding of horses. Short term boarding of cats and dogs shall be in accordance with standards for kennels. The keeping of cows, sheep and other hoofed or domesticated animals shall be in accordance with standards for agriculture. The raising of one litter of kittens or puppies within a 12-month period alone does not constitute animal breeding or care.

**Applicant:** An individual, firm, association, organization, partnership, trust, company or corporation with standing to submit an application for land use activity.

**Approving Authority:** The Code Enforcement Officer, Planning Board or Board of Appeals as specified.

**Aquaculture:** The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species. Only the support facilities on land shall be subject to the requirements of this Ordinance.

**Area Median Income:** The midpoint of a region's income distribution calculated on an annual basis by the U.S. Department of Housing & Urban Development.

**Arterial:** A road functionally classified by the Maine Department of Transportation as a major or minor arterial.

**Attached Dwelling Unit:** Connected by a shared wall to the principal structure or having physically connected finished spaces.

**Automobile and Recreational Vehicle Sales & Service:** Any building or premises where automobiles or other motor vehicles are sold or offered for sale and where repair and maintenance services are provided.

**Automobile Graveyard:** A yard, field or other area as defined in Title 30-A M.R.S. § 3752 used to store three (3) or more unregistered or uninspected motor vehicles , or parts of such vehicles (see Junkyard).

A. Does not include any area used for temporary storage by an establishment or place of business that is primarily engaged in doing auto body repair work to make repairs to render a motor vehicle serviceable.

B. Includes an area used for automobile dismantling, salvage and recycling operations (see Automobile Recycling Business).

**Automobile Recycling Business:** The business premises of a person who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles as defined in Title 30-A M.R.S. § 3752 (see Junkyard).

**Automobile Repair:** A business for the repair of automobiles and other motor vehicles, including body shops.

**Automobile Service Station:** Any business or premises that sells gasoline or other vehicle fuels, oil and related products to the motoring public. This may include repairs, washing and lubrication, but shall not include bodywork, painting or dismantling.

**Basal Area:** The area of cross-section of a tree trunk 4½ feet above ground level and inclusive of bark.

**Base Density:** The maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements in this Ordinance.

**Basement:** Any portion of a structure with a floor-to-ceiling height of six (6) feet or more and having more than fifty (50) percent of its volume below the existing ground level.

**Bed and Breakfast:** An establishment that provides overnight accommodations to transients in a maximum of eight (8) guest rooms, that has a residential character, and conforms to the performance standards of Section 11.4.

**Billboard:** See Sign, Billboard.

**Boat Launching Facility:** A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

**Botanical Garden:** A facility that is owned by a public or private nonprofit entity that is primarily used for the display and conservation of plants, including related botanical education and research activities. A botanical garden may include the following types of facilities provided that such facilities are accessory to the primary function of the botanical garden: gardens, visitor centers, education facilities, research facilities, greenhouses, conservatories, plant maintenance and propagation facilities, trails, docks, concessions (including eating facilities and gift shops), meeting rooms, and parking and other transportation facilities.

**Buffer for Water Supply Protection:** An undeveloped land area with sufficient plant life to control storm water runoff and limit the export of phosphorus.

**Buffer, Forest:** A buffer that has a well distributed stand of trees with essentially complete canopy cover that has an undisturbed layer of duff covering the mineral soil.

**Buffer, Meadow:** A buffer that has a dense cover of grasses or a combination of grasses and shrubs or trees.

**Buffer, Mixed Meadow and Forest:** A buffer that is a combination of forest and meadow buffer.

**Buffer, Non-wooded:** An area having a dense and complete cover of vegetation, including shrubs, trees, grass, and other plants.

**Buffer, Visual:** A visual screen consisting of conifers, deciduous trees and hedges, natural vegetation that is indigenous to the area, fences, walls, berms and mounds.

**Buffer, Wooded:** A naturally wooded area, including an undisturbed organic layer.

**Buildable Lot Area:** The specified portion of a lot where development is allowed. In determining such area of a lot, the following shall be excluded:

- A. The area included in the required setbacks;
- B. The area within coastal wetlands;
- C. Land that is situated below the high-water line of any great pond, stream, outlet stream or freshwater wetland;
- D. Areas with a sustained slope of greater than 15% over a contiguous area of more than one thousand (1,000) square feet;
- E. Land that is part of a right-of-way, or easement, including utility easements; and
- F. Land that is located within a Special Flood Hazard Area as depicted on the current version of the Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency unless the applicant shows proof through the submittal of materials prepared by a Registered Land Surveyor that show that the property in question lies at least two feet above the base flood elevation shown on the FIRM. The elevation of filled or manmade land shall not be considered.

**Building:** Any structure having a roof or partial roof supported by columns or walls used or intended to be used for the shelter or enclosure of people, animals or objects regardless of the materials of which it is constructed.

**Building, Accessory:** See Accessory Structure.

**Building Inspector:** The Building Inspector of the Town of Boothbay also referred to as the Code Enforcement Officer.

**Building, Principal:** See Structure, Principal.

**Business Services:** A business or organization, such as call centers, advertising services, and payroll services, that primarily provides services to other businesses or organizations rather than to consumers. A business service may provide incidental service to individual consumers.

**Camp:** A facility that provides a combination of programs and facilities primarily for the purpose of providing a supervised outdoor group experience with social, recreational, spiritual, and/or educational objectives for children as well as adults that is used for five (5) or more consecutive days during one or more seasons of the year.

**Campground:** Any area or tract of land to accommodate two or more parties in temporary living quarters, including, but not limited to, tents, recreational vehicles or other shelters. May include facilities for the disposal of human wastes from recreational vehicles not occupying a campsite.

**Campsite:** A designated parcel within a campground that is designed and posted as a site for occupancy by an individual, family unit or group using one recreational vehicle or tent.

**Canopy, Tree:** The more or less continuous cover formed by tree crowns in a wooded area.

**Car Wash:** An area of land or a structure with machine- or hand-operated facilities used principally for the cleaning, washing, polishing, or waxing of motor vehicles as a business.

**Cemetery:** A place for the interment of the remains of deceased people. Does not include family burial grounds that are allowed by 13 M.R.S. § 1142.

**Centrally Managed Water System:** A water system that provides water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year as regulated by 10-144 C.M.R. Ch. 231, *Rules Relating to Drinking Water*. This water system may be privately owned.

**Changeable Display Sign:** An on-premises sign created, designed, manufactured or modified in such a way that its message may be electronically, digitally or mechanically altered by the complete substitution or replacement of one display by another on each side.

**Chimney:** A stand-alone or enclosed flue, pipe or vent incorporated into a building to passively facilitate exhaust of gasses. Chimneys incorporating fans, blowers or similar equipment external to the building and chimneys that are not structurally part of the building subject to the structure height standards.

**Church:** A place of worship or religious activity, including administrative, educational and social activities that are accessory to the primary assembly use.

**Club:** An association of people organized for a common purpose but not including any group organized primarily to render a service that is customarily carried on as a business.

**Coastal Wetland:** All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a saltwater or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**Code Enforcement Officer:** A person appointed by the Board of Selectmen to administer and enforce this Ordinance. Reference to the Code Enforcement Officer may be construed to include Building Inspector, Plumbing Inspector, Electrical Inspector and the like, where applicable.

**Commercial Fishing Activities:** Activities directly related to commercial fishing and those commercial activities commonly associated with or supportive of commercial fishing, such as sale of fuel; manufacture or sale of ice, bait and nets; and the sale, installation or repair of boats, engines and other equipment commonly used on boats. Only individuals and businesses providing these services to others for compensation shall be subject to the provisions of this Ordinance. The construction of boats as a principal occupation is a manufacturing use when determining where the use may be conducted, unless it conforms to the standards of home occupation, in which case it shall be treated as a home occupation in determining where the use may be conducted.

**Commercial Use:** The use of lands or structures, other than a home occupation, the intent and result of which activity is the production of income from the buying and selling of goods or services, exclusive of rental of residential buildings or dwelling units.

**Communications Tower:** Any structure used to facilitate broadcasting, receiving or sending and receiving information by electromagnetic waves except when used for private ham radio or satellite dish antenna.

**Community Center:** A building that provides a meeting place for local, non-profit community organizations on a regular basis, including accessory facilities for recreational or social activities.

**Community Living Arrangement:** A housing facility as defined by Title 30-A M.R.S. § 4357-A for eight (8) or fewer people with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement is deemed a one family use of property.

**Comparable Sewer System:** Any subsurface wastewater disposal system that discharges over 2,000 gallons of wastewater per day as regulated by 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

**Comprehensive Plan:** A document or interrelated documents consistent with 30-A M.R.S. § 4326(1)-(4), including the strategies for an implementation program which

are consistent with the goals and guidelines established pursuant to Title 30-A Chapter 187 Subchapter II.

**Conditional Use:** A use permitted on a lot subject to certain conditions not generally applicable to other lots located in that zoning district.

**Conference/Convention Center:** A facility with or without overnight accommodations that provides facilities for conventions and meetings and similar activities, including facilities for meals.

**Conforming:** A parcel, building, structure, use of land, or portion thereof, which complies with all the applicable provisions of this Ordinance.

**Construction and Property Maintenance Services:** A business or organization that provides construction and/or property maintenance services, including facilities for administrative activities, fabrication of materials related to the service and the inside and outside storage of material, equipment and vehicles related to the service provided. An office of a contractor or tradesman that involves only administrative and marketing activities and does not include the storage of materials, equipment or vehicles is a business and professional office.

**Cooking or Eating Facilities:** One or more of any of the following: oven; convection oven; stove; stove top; grill; microwave oven or similar appliance; 240 volt electrical outlet; gas line(s) to serve any cooking appliance; kitchen sink; cabinets commonly used for the storage of food, kitchen equipment and/or utensils; refrigerator in excess of 5 cubic feet; and/or dishwasher.

**Cross-Sectional Area of a Stream Channel** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): The cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

**Day:** For enforcement purposes, a day is any portion of a twenty-four (24) hour period commencing at midnight.

**Day Care Facility:** Any location in which an individual, business or organization maintains or otherwise carries out for consideration, a regular program that provides care and protection for three (3) to twelve (12) children under the age of thirteen (13) for any part of a day. A day care facility includes a state licensed nursery school with twelve (12) or fewer participants in each session.

**Day Care Center:** Any location in which an individual, business or organization maintains or otherwise carries out for consideration, a regular program that provides care and protection for more than twelve (12) children under the age of thirteen (13) for any part of a day. A day care center includes a state licensed nursery school with more than twelve (12) participants in any session.



**DBH** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): The diameter of a standing tree measured four and one half (4½) feet from ground level.

**Deck:** A structure attached or adjacent to a building elevated above the surface of the ground that does not have a permanent roof but may have a railing, awning or other covering.

***De minimis*:** Trifling; minimal. So insignificant that it may be overlooked in deciding an issue.

***De novo* Review:** A review that looks at the substantive issues afresh, undertakes its own credibility determinations, evaluates the evidence presented, and draws its own conclusions.

**Density Requirements:** The maximum number of dwelling units allowed on a lot, subject to dimensional requirements.

**Designated Growth Area:** An area that is designated in the Town of Boothbay's Comprehensive Plan as suitable for orderly residential, commercial, or industrial development, or any combination of those types of development, and into which most development projected over ten (10) years is directed.

**Developable Lot Area:** The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and minus areas beneath roads serving more than two lots.

**Developed Area:** In determining the developed area of a lot, the following areas shall be included:

- A. The foot-print of buildings on the ground or the first floor square footage, whichever is greater.
- B. Within the Buildable Area:
  - 1. Driveways and parking areas.
  - 2. Impervious and non-vegetated areas, including, but not limited to, walkways and patios.  
  
Areas created using waffle pavers and other semi-impervious surfaces shall be considered non-vegetated surfaces, even if the surface is covered by grass or other similar vegetation.
  - 3. Naturally occurring impervious area, such as ledge outcrops, shall not be included in developed area.

**Development:** The alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

**Dimensional Requirements:** Numerical standards setting minimum requirements for conforming lots, as more particularly defined in Section 7 of this Ordinance, as may be amended or recodified.

**Disability:** Any incapacitation, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

**Disability Variance:** A variance granted by the Board of Appeals in accordance with Section 12.5.3.

**Discharge:** Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping onto the land or into the water or ambient air.

**Disruption of Shoreline Integrity** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): The alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

**Distance:** The horizontal or vertical separation of two points.

**District:** Shall mean zoning district when used to indicate one of the areas into which the Town is separated for land use regulation.

**Docks, Piers, Wharves, Bridges and Other Structures and Uses Extending Over or Beyond the High-Water Line or Within a Wetland – Temporary:** Structures that remain in or over the water for less than 7 months in any period of 12 months.

**Docks, Piers, Wharves, Bridges and Other Structures and Uses Extending Over or Beyond the High-Water Line or Within a Wetland – Permanent:** Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

**Drainage System:** One or more artificial ditches, tile drains, or similar devices that collect surface runoff or ground water and convey it to a point of discharge.

**Driveway:** A vehicular access-way serving no more than two lots or two dwelling units.

**Duplex:** *See* Dwelling, Two Family.

**Dwelling, Multifamily:** A building or portion thereof containing 3 or more dwelling units that are entirely separated except for access to the outside or to a common basement.

**Dwelling, One Family:** A detached building or Mobile Home designed or intended to be used exclusively for residential occupancy by one family only and containing only one dwelling unit. A one-family dwelling may include an accessory apartment. This term does not exclude home occupations that conform to the standards set forth in Section 11.10.

**Dwelling, Townhouse:** A multifamily dwelling containing not more than six (6) dwelling units in which the dwelling units are arranged side-by-side so that each dwelling unit has a direct entrance to the outside and no dwelling unit is located so that it is under or over another dwelling unit.

**Dwelling, Two Family:** A detached building where not more than two dwelling units are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common basement.

**Dwelling in a Mixed-Use Building:** A dwelling unit that is located in a building that contains nonresidential uses (not including home occupations or home businesses).

**Dwelling Unit:** One or more rooms physically arranged so as to create an independent housekeeping establishment which, through sale, lease, or other permission of the owner is intended for occupancy by one family with separate toilets and facilities for bathing, cooking or eating, and sleeping exclusively for the use of the family. The term shall include single-family and multifamily housing, mobile homes and rental units that contain cooking or eating, sleeping, and toilet facilities regardless of the time-period rented or occupied.

**Educational Facility:** Any public, private, or parochial, profit or non-profit school for students of any age.

**Emergency Operations:** Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

**Employee Housing:** A residential facility that provides housing for employees of local businesses. The accommodations may be in dwelling units, suites or dormitories.

**Essential Services:** Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal wastewater lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

**Existing Dwelling Unit:** A dwelling unit in existence on a lot at the time of submission of a permit application to build additional units on that lot.

**Expansion of a Structure:** *See* Structure Expansion.

**Expansion of Use:** The addition of one or more months to a use's operating season; or the use of more floor area of a structure or ground area devoted to a particular use.

**Family:** One or more individuals living together as a single housekeeping unit and occupying a single dwelling unit. A family is not a group occupying a boarding, lodging or rooming house or a hotel/motel.

**Farm Stand:** A structure used to display and store agricultural products or from which they are sold. A farm stand does not include mobile vendors.

**Farming:** See Agriculture.

**Farmland:** Any tract or tracts of land used for commercial farming:

- A. That consists of 5 or more contiguous acres;
- B. That has produced a gross income averaging no less than 300 dollars per acre for three 3 or more of the previous 6 calendar years; and

That includes only the land on which the crop is produced.

Farmland does not include land used for woodlots, Christmas tree production, homes, farm buildings, roads, pastures, lawns or any area covered with noncrop-vegetation that borders abutting land.

**Fill:** Sand, gravel, earth or other natural materials of any composition whatsoever placed or deposited by humans.

**Financial Institution:** Banks, savings and loan associations, and credit unions.

**Firewood Processing:** The commercial storage, sawing, chipping, splitting, compacting and related activities associated with producing of combustible wood products for sale. Firewood processing for one's personal use and associated incidental sale is an accessory use to the principle residential use.

**Fisheries:** The process or occupation of taking fish or other sea products.

**Flea Market/Tent Sale:** The sale of items normally associated with yard sales where the sale occurs more than seven (7) consecutive days or more than four (4) times in a calendar year.

**Flood Fringe:** That portion of the floodplain outside the floodway.

**Floodplain:** The land that has been or may be hereafter covered by floodwater during the regional flood. The floodplain includes the floodway and flood fringe.

**Floodway:** The channel of a water course and the adjacent land areas that must be reserved in order to discharge the 100 year flood without cumulatively increasing the water surface elevation by more than one (1) foot in height.

**Floor Area:** The sum of the horizontal area of the floor(s) of a structure enclosed by exterior walls.

**Footprint:** The entire area of ground covered by the structure(s) on a lot, including, but not limited to, cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

**Forest Management Activities** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

**Forest Management Plan** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): A site-specific document signed by a professional forester outlining proposed activities to ensure compliance with performance standards and regeneration requirements established pursuant to this Ordinance.

**Forest Stand** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

**Forested Wetland:** A freshwater wetland dominated by woody vegetation that is twenty 20 feet tall or taller.

**Forester, Professional** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): A forester licensed under Title 32 M.R.S. Chapter 76.

**Foundation:** The supporting substructure of a building or other structure, including, but not limited to, basements, slabs, frostwalls, or other base consisting of concrete, block, brick, wood or similar material.

**Freshwater Wetland:** Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

Of ten (10) or more contiguous acres; or of less than ten (10) contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of ten (10) acres; and

Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

**Frontage:** The length of a straight line measured between the intersections of the side lot lines and a public or private way, right-of-way or a shoreline.

**Functionally Water-Dependent Uses:** Those uses that require, for their primary purpose, location on submerged lands or require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing; fish-related storage and retail and wholesale fish marketing facilities; waterfront dock and port facilities; shipyards and boat building facilities; marinas; navigation aids; basins and channel, shoreline structures necessary for erosion control purposes; industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site; and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

**Funeral Home:** An establishment that provides for the preparation of deceased people for burial and/or cremation and the holding of services related thereto. A funeral home does not include a crematory.

**Gambling:** Any activity so defined by state or local regulation except fund raising activities conducted by churches, places of worship, veterans, service and nonprofit organizations and state lotteries.

**Garage Sale:** See Yard Sale.

**Great Pond:** Any inland body of water which in a natural state has a surface area in excess of ten (10) acres and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres. An artificially formed or increased inland body of water completely surrounded by land held by a single owner is not subject to the regulations for great ponds.

**Great Pond Classified GPA:** Any great pond classified GPA, pursuant to 38 M.R.S. § 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

**Ground Cover:** Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**Harvest Area** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than ten (10) acres within the area affected by a harvest

**Hazardous Material/Matter:** Substances identified under 38 M.R.S. § 1319 that present a present or potential danger to the people of the State or to its natural environment when deposited on land or discharged on or into waters of the State or ambient air.

**Hazard Tree:** A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

**Height of a Structure:** See Structure Height.

**High-Water Line (Non-Tidal Waters):** That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with great ponds that support non-

forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the great pond during the period of normal high-water are considered part of the great pond. (Same as Normal High-Water Line)

**Highest Annual Tide:** The maximum extent of tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service.

**Home Business:** Any activity preformed for pecuniary gain in a dwelling unit, or other structure accessory to a dwelling unit, or directed from a dwelling unit by one or more residents of that dwelling unit, that conforms to all requirements of Section **11.10**.

**Home Occupation:** Occupations including, but not limited to, computer/fax/typewriter worker, investor advice and service, tele-communicator, and dressmaker, that are conducted solely by occupants of the dwelling, have minimal customer traffic and use no process or equipment that could alter the residential character of the property or adversely affect neighboring property owners.

**Hospital:** A facility that provides in-patient care under the supervision of a medical professional. A hospital may include out-patient medical treatment and accommodations for short-term stays and may include provisions for longer-term rehabilitation of patients but shall not provide nursing home or extended care services.

**Hotel/Motel:** A facility that provides transient housing that is not a bed and breakfast or an inn.

**Increase in Nonconformity of a Structure:** Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity, such as reduction in lot line or shoreline setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity.

**Individual Private Campsite:** An area of land which is not associated with a campground, but which is developed for repeated camping by one group only, not to exceed 10 individuals and which involves site improvements which may include, but not be limited to, a gravel pad, parking area, fire place, or tent platform.

**Indoor Theater:** A building where an audience may view movies or live performances of plays, music, dance and similar presentations.

**Industrial:** The assembling, fabrication, finishing, manufacturing, packaging or processing of goods other than agricultural products, or the extraction of minerals.

**Inn:** An establishment that provides overnight accommodations to transients in a maximum of fifteen (15) guest rooms and conforms to the performance standards of Section **11.12**.

**Institutional:** A non-profit or quasi-public use, or institution, such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

**Junkyard:** Except as this term may otherwise be defined by State law in 30-A M.R.S. § 3752, a junkyard shall mean any activity that meets the definition of Automobile Graveyards or Automobile Recycling Business or any yard, field or other area used to store:

- A. Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture;
- B. Discarded, scrap and junked lumber; and
- C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material.

**Kennel:** A commercial establishment for the boarding of household pets for not more than thirty (30) days.

**Kiosk:** A small non-residential structure for educational, scientific, or nature interpretation purposes.

**Laboratory, Research Facility:** A commercial or nonprofit facility that undertakes research in the social, natural or marine sciences or that conducts testing of a professional or technical nature. Such a facility may include housing for employees or seasonal workers.

**Landfill:** An area set aside for the disposal of trash and garbage by burying it under layers of earth.

**Large Scale Developments:** Development regulated by Title 38 M.R.S. Subchapter 1, Article 6, Site Location of Development.

**Laundromat:** A commercial establishment for the washing and drying of personal clothes and household goods in machines located on the premises, including related services, such as wash/dry/fold, dry cleaning, alterations, and rental of formal wear or similar clothing.

**Library:** An establishment that provides for the enlightenment of the community through the provision of information to the public, including activities such as the lending of books, printed materials, and electronic media, educational programs, and electronic access to information.

**Limited Use – Very Small-Scale:** A use that occupies a maximum of five hundred (500) square feet of floor area in a building and that has a maximum of three (3) off-street parking spaces to serve the use.

**Limited Use – Small-Scale:** A use that occupies a maximum of one thousand (1,000) square feet of floor area in a building and that has a maximum of five (5) off-street parking spaces to serve the use.

**Limited Use – Medium-Scale:** A use that occupies a maximum of two thousand (2,000) square feet of floor area in a building and that has a maximum of ten (10) off-street parking spaces to serve the use and that has a maximum of ten thousand (10,000) square feet of impervious surface associated with the use.



**Limited Use – Large-Scale:** A use that occupies a maximum of four thousand (4,000) square feet of floor area in a building and that has a maximum of twenty (20) off-street parking spaces to serve the use and that has a maximum of twenty thousand (20,000) square feet of impervious surface associated with the use.

**Limited Use – Very Large-Scale:** A use that occupies a maximum of ten thousand (10,000) square feet of floor area in a building and that has a maximum of fifty (50) off-street parking spaces to serve the use and that has a maximum of fifty thousand (50,000) square feet of impervious surface associated with the use.

**Local Ordinance or Regulation:** Any municipal ordinance or regulation, portion of an ordinance or regulation, or amendments thereto, adopted by the Town of Boothbay.

**Lodging House:** A house where lodgings are rented, but does not include:

- A. A house where lodgings are rented to fewer than five (5) lodgers;
- B. The dormitories of charitable, educational or philanthropic institutions; or
- C. The emergency use of private dwelling houses at the time of conventions or similar public gatherings.

The term lodger does not include people within the second degree of kindred to the person operating the lodging house.

**Logo:** A symbol or design used by a business as a means of identifying its products or services.

**Lot:** An area of land in single ownership, or single lease-hold, regardless of the dates or sources of acquisition thereof and regardless of the buildings and uses existing thereon, having definite boundaries established by recorded plan or deed.

**Lot Coverage:** The areas included in the definition of developed area within the entire lot.

**Lot Depth:** The average distance between the front lot line and the rear lot line of a lot measured within the lot boundaries.

**Lot Lines:** A property boundary line other than a shoreline of any parcel held in single or separate ownership: Except that where any portion of the property boundary line extends into or beyond a public way, the property line shall be deemed to be the public way right-of-way line. When a lot is adjacent to the ocean and does not extend beyond the Highest Annual Tide (HAT) line, the HAT line shall be considered a lot line for determining lot area and lot coverage.

**Lot of Record:** A lot that exists as shown on a subdivision plan approved by the Planning Board or a deed as shown or described in the records of the Lincoln County Registry of Deeds.

**Lot Width:** The average distance between the side lot lines of a lot measured within the lot boundaries.

**Manufacturing:** The making of goods and articles by hand or machinery, including assembly, fabrication, finishing, packaging and processing.

**Marina:** A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

**Maritime Activities:** The repair, loading and unloading of boats, chandlery and other activities designed and intended to facilitate maritime trade. Only individuals and businesses providing these services to others for compensation shall be subject to the provisions of this Ordinance. The construction of boats as a principal occupation is a manufacturing use when determining where the use may be conducted, unless it conforms to the standards of home occupation, in which case it shall be treated as a home occupation in determining where the use may be conducted. The storage of boats is a storage facility use when determining where the use may be conducted.

**Market Value:** The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Medical Facility:** An establishment that is not part of a professional office that provides out-patient medical treatment and care, such as an urgent care facility, x-ray or scanning facility, medical laboratory, physical therapy facility, or dispensary. A medical facility does not include facilities involving adult use marijuana as defined by state law.

**Mineral Exploration:** Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition. Excludes test pits for wells and wastewater disposal systems.

**Mineral Extraction:** Any operation that removes within any twelve (12) month period more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and transports the removed product from the lot on which the extraction site is located.

**Miniature Golf:** A novelty golf game usually played with a putter on a course having tunnels, bridges, sharp corners and other obstacles around, over or under which the ball must be guided.

**Minimum Lot Width:** The closest distance between the side lot lines of a lot. When only two lot lines extend into the Shoreland Overlay Zone, both lot lines shall be considered to be side lot lines.

**Mobile Home:** A residential dwelling unit as defined in 10 M.R.S. § 9081.

**Mobile Home Park:** A parcel of land under unified ownership approved by the Town of Boothbay for the placement of three (3) or more manufactured homes.

**Mobile Home Park Lot:** The area of land on which an individual home is situated within a mobile home park and which is reserved for use by the occupants of that home.

**Multi-Unit Residential:** A residential structure containing three (3) or more residential dwelling units.

**Municipal Services:** Shall include all providers used in connection with the provision of services to the general public. These include, but are not limited to, water and sewer.

**Museum:** A facility or establishment dedicated to the acquisition, conservation, study, exhibition and educational interpretation of objects having artistic, historic, cultural, natural, or scientific value, but not including uses in which the primary purpose of the establishment is the sale of objects to the public.

**Native:** Indigenous to the local forests.

**Neighborhood Store:** A retail store of less than one thousand six hundred (1,600) square feet of selling space serving the residents in the immediate vicinity with items commonly found in a grocery or drug store for use off premise but not including the sale of gasoline.

**Noise:** A sound of any kind, especially when loud, confused, or indistinct.

**Nonconforming Condition:** A nonconforming lot, structure or use which is allowed solely because it was in lawful existence prior to the adoption of this update of the Zoning Ordinance on November 3, 2020 or any subsequent amendment to this ordinance.

**Nonconforming Lot:** A single lot of record which does not meet the area, frontage, or width requirements of the district in which it is located and which was in lawful existence prior to the adoption of this update of the Zoning Ordinance on November 3, 2020 or any subsequent amendment to this ordinance.

**Nonconforming Structure:** A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage or footprint, but which is allowed solely because it was in lawful existence prior to the adoption of this update of the Zoning Ordinance on November 3, 2020 or any subsequent amendment to this ordinance.

**Nonconforming Use:** Use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence prior to the adoption of this update of the Zoning Ordinance on November 3, 2020 or any subsequent amendment to this ordinance.

**Non-Native Invasive Species of Vegetation:** Species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

**Normal Maintenance and Repair:** General activities which do not involve structural alterations or structural repairs to the structure. These activities may include activities such as but not limited to the replacement of windows, doors, siding, roof decking/sheathing, and decking.

**Office, Business and Professional:** The place of business of doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance

businesses, psychiatrists, counselors, and the like or in which a business conducts its administrative, financial or clerical operations. This definition includes banks and other financial services, government offices and offices of providers of municipal services.

**Open Space Development:** A form of development that allows a subdivision design in which individual lot sizes and setbacks are reduced in exchange for the creation of common open space and recreation areas, the preservation of environmentally sensitive areas, agriculture and silviculture and the reduction in the size of road and utility systems.

**Outlet Stream:** Any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

**Parcel:** See Tract or Parcel of Land.

**Parish House:** A building accessory to a place of worship used primarily by the worshippers. Does not include residential uses.

**Parking Area:** An open area, other than a street or other public way, used for the parking of motor vehicles and available for public or private use, whether for a fee or as a service or privilege for clients, customers, suppliers or residents.

**Parking Facility:** Any land or any interest in land, structure or portions of structures, and improvements on land or structures intended for the off-street parking of motor vehicles by the public as the principal use of the lot or structure. Any such structure may be either single or multi-level and either at, above or below the surface. This term also includes:

- A. Facilities incident to the operation of those properties for the parking of motor vehicles, including, without limitation, ancillary waiting rooms, lockers, space for concessions, stores and offices, terminal facilities for trucks and buses, facilities for servicing motor vehicles and for the sale of gasoline, oil and other accessories, and all facilities appurtenant to these incident operations; and
- B. All property, rights, easements and interests relating to the facility that are considered necessary for the construction or operation of the facility.

**Parks and Recreation:** Non-commercially operated recreational facilities open to the general public, including, but not limited to, playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, swimming pools, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities. The term shall not include campgrounds, or commercial amusement and recreational facilities.

**Patio:** A level area adjacent to a dwelling unit constructed of stone, cement or other material located at ground level, with no railing or other structure above the level of the ground. The term shall not include driveways or sidewalks/walkways.

**Permitted Use:** Any use allowed in a zoning district or a portion thereof and subject to the restrictions applicable to that district.

**Person:** An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

**Personal Services:** A business or organization, such as barbers, stylists, manicurists, counselors and therapists that provides services directly to an individual consumer at the place of operation of the business or organization. Personal services can include the incidental retail sale of products and goods that are related to the service provided.

**Piers, docks, wharves, bridges and other structures and uses** extended over or beyond the normal high-water line or within a wetland:

**Temporary:** Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

**Permanent:** Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

**Pond:** Any inland body of water that is not a great pond, stream, outlet stream or tributary stream. An artificially formed inland body of water completely surrounded by land held by one owner is not subject to the regulations for ponds.

**Potable:** Safe for drinking as defined by the U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and Health Advisories Table and Maine's interim drinking water standards for six different perfluoroalkyl and polyfluoroalkyl substances (PFAS), Resolve 2021 Chapter 82, Resolve, *To Protect Consumers of Public Drinking Water by Establishing maximum Contaminant Level for Certain Substances and Contaminants*.

**Principal Structure:** A structure other than one which is used for purposes wholly incidental or accessory to the use of another structure or use on the same lot.

**Principal Use:** A use which is the main use on the same lot.

**Printing:** An establishment that provides duplicating services using photocopy, blueprint, or offset printing equipment, including collating of booklets and reports.

**Private Way:** A way privately owned and maintained over which the owner may restrict use or passage.

**Prohibited Use:** A use that is not allowed in a zoning district or a portion thereof.

**Public Easement:** An easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to May 4, 1982. "Private ways" created pursuant to 23 M.R.S. §§ 3001 and 3004 prior to May 4, 1982 are public easements.

**Public Facility:** Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a government body or public entity.

**Public Utility:** Any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, communication facilities, transportation or water to the public.

**Public Way:** A way owned or maintained by the State, or a municipality, over which the general public has a right to pass.

**Real Estate:** Land and structures attached to it.

**Recent Floodplain Soils:** The following soil series as described and identified by the National Cooperative Soil Survey:

Alluvial	Charles	Cornish	Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa	Podunk	Rumney	Saco
Suncook	Sunday	Winooski			

**Recreational Facility:** A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat-launching facilities.

**Recreational Facility – Indoor:** Any commercial indoor recreational use, including, but not limited to, video arcades, pool halls, bowling alleys, pinball arcades, gyms, health clubs and swimming pools. Does not include Indoor Theaters.

**Recreational Facility – Outdoor:** Any commercial outdoor recreational use, including, but not limited to, golf courses, tennis courts, riding stables, swimming pools, or ice skating rinks, but not including campgrounds, drive-in theaters, race tracks, water slides or miniature golf.

**Recreational Vehicle:** A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more people, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

**Recycling Operation (Recycling Center):** A facility in which recoverable resources, such as vegetation, newspapers, glassware, plastics and metal cans, are collected, stored, flattened, crushed, bundled or processed for shipment.

**Replacement System:** A subsurface wastewater disposal system intended to replace:

An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure; or

Any existing overboard wastewater discharge.

**Residential Care Facility:** A facility that provides long-term housing for adult residents and handicapped or other individuals who need ongoing residential care together with a program of supportive services for the residents. A facility may also provide medical supervision and care. A residential care facility includes, but is not limited to, facilities that are commonly referred to as assisted living, boarding care, congregate housing, Alzheimer's or memory care, nursing homes, long-term care, skilled-nursing

care, and rehabilitation facilities. Facilities that provide housing but that do not provide a program of supportive services are not residential care facilities.

**Residential Use:** Accessory dwelling units; one family, two family and multifamily dwellings; lodging houses; and retirement facilities. This term includes home occupations that conform to the standards set forth in Section **11.10**.

**Residual Basal Area** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): The average of the basal area of trees remaining on a harvested site.

**Residual Stand** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): A stand of trees remaining in the forest following timber harvesting and related activities

**Restaurant:** An establishment whose principal business is to prepare food to be served to and consumed by the public, and where drinks may be served as accessory to the principal use. Includes tea rooms.

**Restrictive Covenant:** A provision in a deed, or other covenant conveying real property, restricting the use of the land.

**Re-Subdivision:** The further division or relocation of lot lines of any lot or lots within any subdivision previously made and approved or recorded according to law, or the alteration of any streets or the establishment of any new streets with any subdivision previously made and approved or recorded according to law. Does not include conveyance so as to combine existing lots by deed or other instrument.

**Retail Business:** A business establishment engaged in the sale, rental, or lease of goods to the ultimate consumer for direct use or consumption and not for resale.

**Retail Fuel Distributor:** A business establishment engaged in the sale of products for the heating of homes or for cooking to the ultimate consumer for direct use or consumption and not for resale.

**Right-of-Way:** All public or private roads and streets, state and federal highways, private ways, public easements, and public land reservations for the purpose of public access, including utility rights-of-way.

**Riprap:** Rocks, irregularly shaped, and at least 6 inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes not to exceed two (2) units horizontal to one (1) unit vertical.

**River:** A free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty-five (25) square miles to its mouth. Standards for coastal wetland apply to land abutting the Cross, Damariscotta and Sheepscot Rivers.

**Road:** A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles. This definition does not include a driveway as defined.

**Roadside Stand:** A structure used to display and store products or from which they are sold. Does not include Farm Stand.

**Roof Sign:** See Sign, Roof.

**Salt Marsh:** Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed

**Salt Meadow:** Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

**Sapling:** A tree species that is less than two (2) inches in diameter at four and one half (4½) feet above ground level.

**Sawmill:** A site where trees, logs and other wood pieces are processed by cutting or chipping.

**Seasonal Dwelling:** A dwelling which existed on December 31, 1981, and which was not used as a principal or year-round residence during the period from 1977 to 1981. Evidence of use as a principal or year-round residence includes, but is not limited to:

- A. The listing of that dwelling as an occupant's legal residence for the purpose of:
  - 1. Voting.
  - 2. Filing a state tax return.
  - 3. Automobile registration; and
- B. The occupancy of that dwelling for a period exceeding seven (7) months in any calendar year.

**Seedling:** A young tree species that is less than four and one half (4½) feet in height above ground level.

**Septic System:** See Subsurface Wastewater Disposal System.

**Service Drop:** Any utility line extension which does not cross or run beneath any portion of a great pond, stream, and outlet stream or beneath a wetland provided that:

- A. In the case of electric service:
  - 1. The placement of wires or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
  - 2. The total length of the extension is less than one thousand (1,000) feet.
- B. In the case of cable and telephone service:
  - 1. The extension, regardless of length, will be made by the installation of optical fiber, cable, or wires to existing utility poles, or



2. The extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

**Setback:** The required distance:

- A. Between any regulated structure, object or use and any other regulated structure, object or use; and
- B. Between any regulated structure, object or use and any physically or legally occurring entity, including, but not limited to, lot lines, roads and the high-water line of a great pond, stream, outlet stream, tributary stream or upland edge of a wetland.

**Sex Related Businesses:** Any business offering, selling or displaying sex or sexual related objects. Includes, but is not limited to, pornographic shops, adult book, video or movie stores, massage parlors, strip-tease clubs, and topless bars or restaurants.

**Shopping Center:** Any concentration of two or more retail stores or service establishments under one ownership or management containing a total of twenty-five thousand (25,000) square feet or more of floor area in all buildings.

**Shore Frontage:** The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

**Sign:** Any structure, display, logo, device or representation which is designed or used to advertise or call attention to anything, person, business, activity or place and is visible from any public way. It does not include the flag, pennant or insignia of any nation, state or town that is displayed separately from any other message or graphic. Whenever dimensions of a sign are specified, they shall include frames.

**Sign, Billboard:** A structure designed, intended or used for advertising a product, property, business, entertainment, service, amusement or the like which is not located on the lot where the business or matter advertised is available or occurs. An off-premise Official Business Directional Sign allowed under state regulations is not considered a billboard.

**Sign, Roof:** A sign located upon or over a roof of a structure.

**Sign, Temporary:** A sign or advertising display designed, intended to be displayed or displayed for a period of not more than thirty (30) days.

**Sign, Wall:** A sign that is attached parallel to the exterior surface of a structure.

**Signs, Multiple:** A group of signs clustered together in a single structure or compositional unit.

**Single Family Dwelling:** See Dwelling, One Family.

**Skid Road or Skid Trail** (Related to Town regulated timber harvesting in the WRP and WPO Districts): A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

**Slash** (Related to Town regulated timber harvesting in the WRP and WPO Districts): The residue, e.g., treetops and branches, left on the ground after a timber harvest.

**Sludge:** Non-hazardous solid, semisolid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or wet process air pollution control facility or any other waste having similar characteristics and effect. The term does not include industrial discharges that are point sources subject to permits under the federal Clean Water Act, 33 U.S.C. § 1342, as may be amended from time to time.

**Small Engine and Lawn/Garden Equipment Repair & Sales:** Any building or premises where small engines and/or equipment powered by small engines are sold or offered for sale or where they are repaired or maintained. A small engine is an engine that typically powers equipment, including, but not limited to, lawn mowers, garden tractors, chain saws, weed trimmers and tillers.

**Solar Energy:** Electromagnetic energy transmitted from the sun (solar radiation).

**Solar Energy Conversion System:** A solar energy conversion system that converts solar energy to electric or thermal energy. Facility size is measured by calculating the square footage of solar panels at maximum tilt on the ground below.

**Start of Construction or Operation:**

- A. For a permit or approval involving the construction of a structure with a foundation, start of construction means the completion of the structure's foundation and a cap for water tightness.
- B. For a permit or approval involving a structure without a foundation or a permit or approval not involving a structure, start of construction means the completion of at least twenty-five (25) percent of the cost of the work for which the permit or approval has been secured.
- C. In the case of a subdivision, start of construction means the completion of at least twenty-five (25) percent of the cost of the proposed improvements within the subdivision, including, without limitation, site work, road installation, and utility installation; provided that if the subdivision consists of individual lots to be sold or leased, the cost to construct structures on the lots shall not be included in the cost of the proposed improvements.

**Storm-Damaged Tree:** A tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.

**Stream:** A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition, highest resolution version of a the national hydrography dataset available from the United States Geological Survey 7.5 minute series topographic on the website of the United States Geological Survey or the national map, or if not available, a 15 minute series topographic map, to the point where the body of water/stream becomes a river or flows to where the stream meets a portion of another water body or wetland within the Shoreland Overlay District. When a stream meets the portion of a water body or wetland within the Shoreland Overlay District and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

**Street:** See Road.

**Storage Facility/Structure:** A commercial structure or area for the storage of items by the public, including, but not limited to, personal property, boats and other water craft.

**Structure:** Anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of people, animals, goods or property of any kind, together with or anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in 30-A M.R.S. § 4201(5); geothermal heat exchange wells as defined in 32 M.R.S. § 4700-E(3-C); or wells or water wells as defined in 32 M.R.S. § 4700-E(8).

**Structure Expansion:** An increase in the floor area, height or volume of a structure, including all extensions, including, but not limited to, attached decks, garages, porches and greenhouses.

**Structure Height:** The vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

**Structure Volume:** The volume of all living areas of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

**Subdivision:** This term shall be the same as defined in Title 30-A M.R.S. §§ 4401(4) & 4402. For the current definition, see the Code Enforcement Officer.

**Subsurface Wastewater Disposal System:** Any system designed to dispose of waste or wastewater on or beneath the surface of the earth; including, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S. § 414, any surface waste water disposal system, or any municipal waste water treatment system.

**Sustained Slope:** A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Temporary or Temporary Use:** Any period of time or use not to exceed thirty (30) consecutive days, except as applies to piers and other structures and uses extending over or beyond the high-water line or within a wetland.

**Temporary Business Housing:** A dwelling unit provided as a convenience for the owners, employees, contractors, and customers of a business.

**Terminal for Bulk Oil and Gas:** A premises where oil and gas products used for domestic or commercial heating, cooking and similar purposes are stored and from which they are distributed to the ultimate consumers or to retail or wholesale business.

Does not include oil and gas products used for manufacturing or industrial purposes or for fueling of boats in a marina.

**Tidal Water:** All waters affected by tidal action during the highest annual tide.

**Timber Harvesting** (Related only to Town regulated timber harvesting in the WRP and WPO Districts): The cutting and removal of timber for the primary purpose of selling or processing forest products. “Timber harvesting” does not include the cutting or removal of vegetation when associated with any other land use activities.

**Tract or Parcel of Land:** All contiguous land in the same ownership provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of the land on both sides of the road after September 22, 1971.

**Transportation Terminal:** A place for taking-on or discharging of passengers.

**Tree:** A woody perennial plant with a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4½) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity.

**Tributary Stream:** A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term “stream” as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the Shoreland Overlay District.

**Trucking Distribution Terminal (Truck Terminal):** A building or area in which items brought in by truck are sorted or stored before reshipment. The terminal facility may include storage areas for trucks, and buildings or areas for the repair of trucks associated with the terminal.

**Upland Edge of a Wetland:** The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and spring highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller.

**Use:** The purpose for which land or a structure is arranged, designed or intended, or for which either land or a structure is maintained or occupied. This includes, but is not limited to, activities on the land such as clearing of vegetation and timber harvesting.

**Variance:** Permission to depart from the literal requirements of a development or use regulation of this Ordinance upon approval of the Board of Appeals.

**Vegetation:** All live trees, shrubs, and other plants, including, without limitation, trees both over and under four (4) inches in diameter, measured at four and one half (4½) feet above ground level.

**Velocity Zone:** An area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

**Veterinary Hospital (or Clinic):** A building used for the diagnosis, care and treatment of ailing or injured animals that may include overnight accommodations. The overnight boarding of healthy animals shall be considered a kennel.

**Volume of a Structure:** *See* Structure Volume.

**Waiver:** Permission to depart from the literal requirements of a development or use regulation of this Ordinance upon approval of the Planning Board.

**Wall Sign:** *See* Signs, Wall.

**Warehousing:** The storage, deposit, or stocking of merchandise or commodities in a structure or room, or on the premise, but not including boats or other marine-related equipment and gear.

**Waste:** The by-products resulting from a process other than the products for which the process is implemented. This includes, but is not limited to; saw dust, welding rods, animal dung, uneaten food and other household waste, grass clippings, tree limbs and other vegetation, building and construction debris, and wastewater. The term excludes sludge.

**Waste Transfer Facility:** A building or area in which waste is sorted, processed or stored for reshipment. *See* Recycling Operations.

**Water Body:** Any great pond, river or stream.

**Water Crossing:** Any project extending from one bank to the opposite bank of a stream, outlet stream, tributary stream or wetland whether under, through, or over the water or wetland. Such projects include, but may not be limited to, roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

**Watershed Tributary Stream:** A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically to Adams Pond or Knickerbocker Lake.

**Wetland:** A freshwater or coastal wetland.

**Wind Turbine:** A structure for the generation of energy through the rotation of blades or vanes moved by the movement of air.

**Wholesale Business:** A business establishment engaged in the bulk sale of goods or materials, not manufactured or processed on the premises.

**Windfirm** (Related to Town regulated timber harvesting in the WRP and WPO Districts): The ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

**Wood Processing:** The processing of wood by cutting, planing, compressing, splitting, gluing and veneer production except for firewood processing.

**Woody Vegetation:** Live trees or woody, non-herbaceous shrubs.

**Yard:** An unoccupied space, open to the sky, on the same lot with a structure.

**Yard Sale:** See Town of Boothbay Administrative Code.

### **Section 3. General Administrative and Enforcement Provisions**

**3.1 Objectives** The Town's objectives with respect to administering and enforcing the land use standards of this Ordinance are:

- 3.1.1** To assure that the state and local regulations governing land use, wastewater disposal and development are administered in a fair and even-handed manner;
- 3.1.2** To assure that the Town is aware of all new development and construction activity in all areas of the Town and that requests for approvals are acted upon in a timely manner; and
- 3.1.3** To assure that all development and construction is carried out in accordance with the applicable codes and regulations and requirements for project approval.

**3.2 Authorization Required** No person shall engage in any development, subdivision, or use requiring either a permit or approval from the Code Enforcement Officer, Planning Board or Board of Appeals, as applicable; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use without first obtaining the required permit or approval.

#### **3.3 Responsibilities**

**3.3.1 Code Enforcement Officer** The Code Enforcement Officer shall be the reviewing authority and shall approve, approve with conditions or deny:

- 3.3.1.1** Any request for development or use classified as requiring Code Enforcement Officer review and approval in accordance with Section 5.2.2.2, and
- 3.3.1.2** Any request for development or use that is not specifically the responsibility of the Planning Board or the Board of Appeals.

#### **3.3.2 Planning Board**

- 3.3.2.1** The Town shall maintain a Planning Board in accordance with the provisions of State law and the Town of Boothbay Administrative Code.
- 3.3.2.2** The Planning Board shall be the reviewing authority of all applications for development, subdivision and use classified as requiring Planning Board review and approval in accordance with Section 5.2.2.2.

**3.3.3 Board of Appeals** The Town shall maintain a Board of Appeals in accordance with the provisions of 30-A M.R.S. § 4353.

- 3.3.3.1** The Board of Appeals shall hear appeals from decisions or actions of the Code Enforcement Officer and the Planning Board, requests for variances, and requests for interpretations of boundaries of Zoning Districts, Overlay Zones and areas within the Shoreland Overlay Zone.
  - 3.3.3.1.1** A decision of the Planning Board relative to a subdivision application can only be appealed to Superior Court.

#### **3.4 Enforcement**

**3.4.1** Any property or use existing in violation of the provisions of this Ordinance shall be deemed to be a nuisance.

**3.4.2 Code Enforcement Officer** It shall be the duty of the Code Enforcement

Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer finds that any development, subdivision or use requiring approval under this Ordinance is taking place without such approval or where approval has been obtained but a provision of this Ordinance or any condition of the application approval is being violated, he or she shall notify, in writing, the person responsible for such violation and the property owner. The notification shall indicate the nature of the violation; and order action necessary to correct the violation. Actions ordered may include: discontinuance of illegal use of land or structures or work being done, removal of illegal structures, and abatement of nuisance conditions.

**3.4.2.1** The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to land use permits or approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

**3.4.2.2** A copy of any notice of violation issued shall be provided to the Board of Selectmen and be maintained by the Code Enforcement Officer as a permanent record. Any notice of violation may be appealed to the Board of Appeals.

**3.4.3 Legal Actions** When any order of the Code Enforcement Officer pursuant to Section 3.4.2 does not result in the correction or abatement of the violation or nuisance condition and such order has become final or a timely appeal has not been taken, the Board of Selectmen, upon notice from the Code Enforcement Officer, may institute, and in the Shoreland Overlay Zone shall institute unless the Board determines that the order of the Code Enforcement officer is in error, any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Boothbay.

**3.4.3.1** The Board of Selectmen is hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by the Code Enforcement Officer; and there is no evidence that the owner acted in bad faith; or unless the removal of the structure or use will result in a threat or hazard to public health and safety, or will result in substantial environmental damage.

**3.4.4 Fines** Any person, firm, or corporation, including, but not limited to, a landowner, the landowner's agent, a contractor, or the occupant of any building or premises, who violates any of the provisions of this Ordinance shall be liable for fines as provided for by State law, 30-A M.R.S. § 4452. Each day such a violation is permitted to exist after notification shall constitute a separate offense.

### **3.5 Planning Board Organization**

**3.5.1 Organization and Voting** The Planning Board shall consist of five (5)



members and two (2) alternate members. In the absence of a member(s), the alternate members present shall vote in the order of appointment.

**3.5.1.1 Quorum** Three (3) voting members of the Planning Board shall constitute a quorum.

**3.5.1.2 Majority Vote** The concurring vote of at least three (3) members/alternate members of the Planning Board shall be necessary to approve or approve with conditions an application.

### **3.6 Board of Appeals Organization**

**3.6.1 Organization and Voting** The Board of Appeals shall consist of five (5) members and two (2) alternate members. In the absence of a member(s), the alternate members present shall vote in the order of appointment.

**3.6.1.1 Quorum** Three (3) voting members of the Board of Appeals shall constitute a quorum.

**3.6.1.2 Majority Vote** The concurring vote of at least three (3) members/alternate members of the Board of Appeals shall be necessary to approve or approve with conditions an application.



## **Section 4. Permit and Approval Requirements**

**4.1 Authorization Required** No person shall engage in any development, subdivision, or use requiring either a permit or approval from the Code Enforcement Officer, Planning Board or Board of Appeals, as applicable; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use without first obtaining the required permit or approval. The following sections outline the permits and/or approvals required for various activities.

**4.2 Code Enforcement Officer Permits and Approvals** The Code Enforcement Officer shall be the reviewing authority and shall approve, approve with conditions or deny:

**4.2.1** Any request for development or use classified in accordance with the provisions of Section 5.2.2.2 as requiring Code Enforcement Officer review and approval;

**4.2.2** Any request for development or use that is not specifically the responsibility of the Planning Board or the Board of Appeals; and

**4.2.3** Any other activity where the approval of the Code Enforcement Officer is required by this Ordinance.

**4.3 Planning Board Approvals** The Planning Board shall be the reviewing authority and shall approve, approve with conditions or deny:

**4.3.1** Any request for development or use classified in accordance with the provisions of Section 5.2.2.2 as requiring subdivision review and approval;

**4.3.2** Any request for development or use classified in accordance with the provisions of Section 5.2.2.2 as requiring mobile home park review and approval;

**4.3.3** Any request for development or use classified in accordance with the provisions of Section 5.2.2.2 as requiring site plan review and approval;

**4.3.4** Any request for development or use classified in accordance with the provisions of Section 5.2.2.2 as requiring Planning Board review and approval;

**4.3.5** The construction of any new driveways or roads in the RP District, WRP District or WRP-27 District even if no other Planning Board approval is required;

**4.3.6** The installation of a permanent dock on non-tidal waters (see Section 7.5.17.4.1.7);

**4.3.7** The removal of vegetation in the SO District to stabilize a shoreline (see Section 7.5.17.4.1.10); and

**4.3.8** Any other activity where the approval of the Planning Board is required by this Ordinance.

**4.4 Coordination of Multiple Approvals** When a project or development activity requires that the applicant obtained Town approvals from more than one entity, the following rules shall guide the coordination of the review and approval process:

**4.4.1** If the activity requires a variance or other approval from the Board of Appeals, the Planning Board and/or the Code Enforcement Officer shall not approve the activity or issue any permits for the activity until the Board of Appeals has granted the variance or other approval.

**4.4.2** If the activity requires the approval of the Planning Board, the Code Enforcement Officer shall not approve the activity or issue any permits for the activity until the Planning Board has granted the approval.

**4.4.3** If the activity requires multiple permits or approvals from the same entity, the entity may consider the applications for the permits or approvals concurrently.

**4.5 Conformance with Conditions of Approval** If the Planning Board or Board of Appeals imposes conditions of approval on the approval of an application or the granting of a variance, the Code Enforcement Officer shall be responsible for assuring that the conditions are met. The Code Enforcement Officer may either require that a condition of approval is satisfied prior to the issues of a permit for the activity or may include stipulations or conditions in the permit to assure compliance.

**4.6 Coordination with State and/or Federal Approvals** If an activity requires an approval or permit from a state or federal agency, no approval by the Planning Board shall occur unless the applicant has obtained the necessary state or federal approval or permit or the approval of the application by the Planning Board is conditioned upon the applicant obtaining the necessary state or federal approval. If the approval by the Planning Board is conditioned on approval by a state or federal agency, the approval by the state or federal agency must be for the specific activities and improvements approved by the Planning Board; if any other agency imposes any more stringent conditions on the applicant or if the any other agency's conditions of approval in any way impact the Planning Board's substantive review criteria, the applicant is required to return to the Portland Planning Board for review and approval of an amended approval. The Code Enforcement Officer shall not issue a permit for the activity until all necessary state and/or federal permits and approvals have been obtained.

## **Section 5. Permit and Development Review Requirements**

### **5.1 General Permit Requirements**

#### **5.1.1 Permit Requirements**

A permit from the Code Enforcement Officer or the Local Plumbing Inspector and/or the approval of the Planning Board is required for all of the following activities:

- 5.1.1.1** The construction, alteration, enlargement, or moving of any building, structure, or sign.
- 5.1.1.2** An expansion of a nonconforming use or structure.
- 5.1.1.3** Conversion of an existing building from one use to another use.
- 5.1.1.4** The establishment of a new or expanded land use activity that is listed in the Land Use Table in Section 7 as requiring a permit or approval.
- 5.1.1.5** The installation of internal plumbing and/or a subsurface wastewater disposal system.
- 5.1.1.6** Any development within the regulated floodplain pursuant to this Ordinance.
- 5.1.1.7** Activities or development within the Shoreland Overlay District pursuant to this Ordinance that are listed in the Land Use Table in Section 7 as requiring a permit or approval.

#### **5.1.2 Permits Not Required**

Permits are not required for the following:

- 5.1.2.1** An “allowed” use as indicated in the Land Use Table in Section 7.
- 5.1.2.2** The normal repair and maintenance of any structure.

#### **5.1.3 Permits and Approvals Required Prior to Development**

A permit or approval must be obtained from the Code Enforcement Officer or Planning Board as appropriate for all activities listed in Section **5.1.1** prior to the start of any development, construction, site work or commencement of a land use activity.

#### **5.1.4 Permits Issued After Appropriate Review**

All permits shall be obtained from the Code Enforcement Officer after meeting the appropriate review requirements established in Section **5.2** (General Review Requirements).

- 5.1.4.1** The applicant must obtain a permit from the Code Enforcement Officer within one year from the date the Planning Board approved a Minor Development or Site Plan Review application. If a permit is not obtained within one year of approval, the approval shall be null and void unless extended by vote of the Planning Board.

#### **5.1.5 Plumbing and Subsurface Wastewater Permits**

An internal plumbing permit and a subsurface wastewater disposal permit must be obtained for all land use and construction activities or the applicant shall submit a statement to the Code Enforcement Officer indicating that the structure for which the application is made does not require an internal plumbing or subsurface wastewater permit as per State law or regulation. Activities served by the public sewer system are not required to obtain a subsurface wastewater disposal permit.

#### **5.1.6 Expiration of Permit or Approval**

A permit or approval secured under the provisions of this Ordinance shall expire if the work or change is not commenced within one year of the date on which the permit or approval is granted, and if the work or change is not substantially completed within two (2) years of the date of the permit or approval. The Code Enforcement Officer or the Planning Board may allow a one year extension of a permit or approval if the property owner requests it for good reason. If a permit or approval lapses, the applicant shall be required to obtain a new permit or approval, including any required review for any expired permit or approval.

#### **5.1.7 Permit Fees**

A non-refundable permit fee and review fee established by the Board of Selectmen shall be paid.

#### **5.1.8 General Permit Requirements**

**5.1.8.1** An application for a permit or approval shall be submitted to the Code Enforcement Officer on the applicable forms provided by the Town.

**5.1.8.2** All applications shall be signed by the owner(s) of the property; a person with right, title, or interest in the property; or a duly authorized agent of the property owner, and such signature shall certify that the information is complete and correct.

**5.1.8.3** The applicant shall have the burden of proving that the proposed activity is in conformity with the purposes and provisions of this Ordinance.

**5.1.8.4** An application for a permit or approval by the Planning Board shall be approved and the related permits issued only if the application is deemed complete and has been reviewed and fully complies with all the provisions of this Ordinance.

**5.1.8.5** A permit shall be issued only if the applicant demonstrates that any conditions of a Planning Board approval for the project have been met or that provisions for complying with any conditions of approval are incorporated into the permit.

**5.1.8.6** If a performance guarantee is required as part of the approval of the project, a permit shall be issued only when the applicant provides written evidence that the performance guarantee has been established and is acceptable in amount and form to the Town Manager.

**5.1.8.7** All decisions and applicable conditions pertaining to an application shall be stated in writing.

**5.1.8.8** Applications for permits and approvals and all related plans and drawings shall be maintained as a permanent record by the Code Enforcement Officer or his/her designee.

**5.1.8.9** A person issued a permit for construction pursuant to this Ordinance shall have a copy of the permit posted in a visible location at the site while the work authorized by the permit is performed.

## **5.2 Development Review Requirements**

### **5.2.1 Purpose**

This ordinance establishes varying provisions for the review of development and other land use activities. The purpose of the different review processes established by this Ordinance is to provide a level of Town review that is proportionate to the anticipated impact of a particular proposed land use upon the community and the requirements of State law. Therefore, the level of each review is based on the type and scale of proposed activity and its location in Boothbay.

### **5.2.2 Classification of Projects for Review**

The ordinance establishes five categories for the review of land use activities. This section establishes the process for determining which category of review shall apply to each proposed activity.

**5.2.2.1** Prior to submitting an application for review, the applicant and/or his/her representative is required to meet with the Code Enforcement Officer to discuss the project, the review process, and the potential classification of the project. This meeting shall be informational and no binding decisions shall be made at this meeting. At this meeting, the applicant shall provide the Code Enforcement Officer with information on the location of the project, the proposed use of the property, and proposed development activities.

**5.2.2.2** Upon receipt of an application, the Code Enforcement Officer shall review the application and shall classify the project as subject to:

**5.2.2.2.1** Site Plan Review

**5.2.2.2.2** Minor Development Review

**5.2.2.2.3** Code Enforcement Officer Review

**5.2.2.2.4** Subdivision Review

**5.2.2.2.5** Mobile Home Park Review

**5.2.2.3** If the application involves a use or activity that is designated as Permitted with Review in the Land Use Table in Section 7, the Code Enforcement Officer shall assign the project to the appropriate level of review based on the following criteria:

#### **5.2.2.3.1 Activities Subject to Site Plan Review**

Land use activities that are designated as Permitted with Review in the Land Use Table in Section 7 and that meet any one of the following criteria

shall be reviewed in accordance with the General Review Procedures of Section 5.3 and the Site Plan Review procedures and approval criteria of Section 5.4. The proposed activity shall be combined with any other development or activity on the parcel in the previous five (5) years in determining if any of the criteria are met:

- 5.2.2.3.1.1** The modification of an existing nonresidential building to convert the use of the building to a multi-family dwelling with more than five (5) dwelling units; or
- 5.2.2.3.1.2** An expansion of an existing nonresidential building that increases the floor area of the building by more than five thousand (5,000) square feet; or
- 5.2.2.3.1.3** A change to a developed site that increases the amount of impervious surface by more than twenty thousand (20,000) square feet; or
- 5.2.2.3.1.4** The construction of more than twenty thousand (20,000) square feet of impervious surface; or
- 5.2.2.3.1.5** The construction of a non-residential building with more than five thousand (5,000) square feet of floor area; or
- 5.2.2.3.1.6** The construction of multi-family housing or a residential care facility with more than five (5) dwelling units or more than ten (10) beds if the facility does not have dwelling units; or
- 5.2.2.3.1.7** Any activity that disturbs more than forty thousand (40,000) square feet of land; or
- 5.2.2.3.1.8** Any activity in the watersheds of Adams Pond or Knickerbocker Lake that creates more than two thousand five hundred (2,500) square feet of floor area or five thousand (5,000) square feet of impervious surface or that disturbs more than ten thousand (10,000) square feet of land or that is subject to site plan review based on the requirements of the Water Reservoirs Protection, Water Reservoirs Protection – Route 27 or Watershed Protection Overlay Districts.
- 5.2.2.3.1.9** The construction, expansion, or modification of a ground-mounted solar energy conversion system in excess of 4,200 sq. ft. of total area.

#### **5.2.2.3.2 Activities Subject to Minor Development Review**

Land use activities that are designated as Permitted with Review in the Land Use Table in Section 7 that do not meet the criteria for Site Plan Review and that meet any of the following criteria shall be reviewed in accordance with the General Review Procedures of Section 5.3 and the Minor Development Review procedures and approval criteria of Section 5.4. The proposed activity shall be combined with any other development or



activity on the parcel in the previous five (5) years in determining if any of the criteria are met:

- 5.2.2.3.2.1** The modification of an existing nonresidential building to convert the use of the building to a multi-family dwelling with five (5) or fewer dwelling units; or
- 5.2.2.3.2.2** An expansion of an existing nonresidential building that increases the floor area of the building by more than two hundred fifty (250) square feet or more than ten (10) percent of the pre-existing floor area, whichever is greater, but not more than five thousand (5,000) square feet; or
- 5.2.2.3.2.3** A change to a developed site that increases the amount of impervious surface by more than one thousand (1000) square feet or more than ten (10) percent of the pre-existing impervious surface area, whichever is greater, but not more than twenty thousand (20,000) square feet; or
- 5.2.2.3.2.4** The construction of not more than twenty thousand (20,000) square feet of impervious surface; or
- 5.2.2.3.2.5** The construction of a non-residential building with not more than five thousand (5,000) square feet of floor area; or
- 5.2.2.3.2.6** The construction of multi-family housing or a residential care facility with five (5) or fewer dwelling units or ten (10) or fewer beds if the facility does not have dwelling units; or
- 5.2.2.3.2.7** Any activity that disturbs more than twenty thousand (20,000) square feet of land; or
- 5.2.2.3.2.8** Any activity subject to review that is located on a lot that abuts a lot that is used for a single-family or two-family dwelling as of the date the application is filed with the Code Enforcement Officer; or
- 5.2.2.3.2.9** Any activity in the watersheds of Adams Pond or Knickerbocker Lake that creates more five hundred (500) square feet of floor area or one thousand (1,000) square feet of impervious surface or that disturbs more than two thousand (2,000) square feet of land or that is subject to Minor Development Review based on the requirements of the Water Reservoirs Protection or Watershed Protection Overlay Districts; or
- 5.2.2.3.2.10** The change of use of an existing building that does not increase the size of the building or the amount of impervious surface on the lot if the new use will increase the intensity of use of the property based on any one of the following:
  - 5.2.2.3.2.10.1** An increase in the number of peak hour vehicle trips based on the ITE Trip Generation Manual;

**5.2.2.3.2.10.2** An increase in the amount of sewage generated based on the Maine State Plumbing Code;

**5.2.2.3.2.10.3** Operation of the new use between 10:00 p.m. and 7:00 a.m.;

**5.2.2.3.2.10.4** The installation of new exterior lighting, or

**5.2.2.3.2.11** Any project involving the construction or installation of a permanent wharf or weir.

#### **5.2.2.4 Activities Subject to Code Enforcement Officer Review**

Land use activities that: (1) are designated as Code Enforcement Officer Review in the Land Use Table in Section 7, or (2) are designated as Permitted with Review in the Land Use Table in Section 7 and that do not meet the criteria for either Site Plan Review or Minor Development Review shall be reviewed by the Code Enforcement Officer in accordance with the General Review Procedures of Section 5.3 and the Code Enforcement Officer Review procedures and approval criteria of Section 5.5. The proposed activity shall be combined with any other development or activity on the parcel in the previous five (5) years in determining if any of the criteria are met.

**5.2.2.4.1** In classifying projects for review, the Code Enforcement Officer may review the following:

**5.2.2.4.1.1** The modification of an existing residential building to create one (1) additional dwelling unit; or

**5.2.2.4.1.2** The modification of an existing nonresidential building to convert the use of the building to a single-family or two-family dwelling; or

**5.2.2.4.1.3** The change of use of an existing nonresidential building to another nonresidential use that is Permitted with Review that does not increase the size of the building or the amount of impervious surface on the lot and that does not trigger Minor Development Review under Section 5.2.2.3.2.10; or

**5.2.2.4.1.4** An expansion of an existing nonresidential building that does not increase the floor area of the building by more than two hundred fifty (250) square feet or ten (10) percent of the pre-existing floor area whichever is greater; or

**5.2.2.4.1.5** An change to a developed site that does not increase the amount of impervious surface by more than one thousand (1,000) square feet or ten (10) percent of the pre-existing impervious surface area whichever is greater; or

**5.2.2.4.1.6** Any other activity that is designated as Permitted with Review in the Land Use Table that does not trigger Site Plan Review or Minor Development Review.

**5.2.2.4.2** If the Code Enforcement Officer determines that the complexity of the application or the need for the opportunity for public involvement in the review exists, s/he may classify the application as requiring Minor Development Review in accordance with Section **5.2.2.3.2**.

**5.2.2.5 Activities Subject to Subdivision Review**

Any proposal to divide land that creates a subdivision as defined in Section 2 shall be reviewed in accordance with the General Review Procedures of Section **5.3** and the Subdivision Review procedures and approval criteria of Section **5.6**.

**5.2.2.6 Activities Subject to Mobile Home Park Review**

Any proposal to develop land that creates a mobile home park as defined in Section 2 shall be reviewed in accordance with the General Review Procedures of Section **5.3** and the Mobile Home Park Review procedures and approval criteria of Section **5.7**.

**5.3 General Review Procedures Applicable to All Applications**

**5.3.1 Optional Preapplication Planning Board Meeting** If the proposal will involve review by the Planning Board, the property owner or potential applicant may request to be placed on the agenda for a Planning Board meeting for an informal discussion of the proposed activities, how those activities are treated by this Ordinance, review of the applicable review requirements and the material that must be submitted, and the timing of the review process. This meeting is to informally discuss the proposal and applicable requirements and does not constitute a substantive review for the purposes of State law. No decisions about the proposal or binding commitments shall be made at this meeting.

**5.3.2 Mandatory Preapplication Activities** Land use activities that involve Site Plan Review, Minor Development Review, Subdivision Review or Mobile Home Park Review by the Planning Board may be subject to preapplication requirements in addition to the required meeting with the Code Enforcement Officer that must be fulfilled prior to the submission of a formal application. The required preapplication activities are set forth in the following sections.

**5.3.3 Application Submission** All applications for development review and permits shall be submitted to the Code Enforcement Officer. The application shall be in writing on forms provided by the Town and shall include the information required by the review procedures for the type of review being requested.

**5.3.3.1** The application shall be signed by the owner(s) of the property or their authorized representative certifying that the information contained in the application is complete and correct. If the person signing the application is not the owner of the property, the application must contain a form authorizing the person filing the application to act on the owner's behalf.

**5.3.3.2** The application shall include the appropriate application fee in such amount as the Board of Selectmen has established.

**5.3.4 Taxes** The Code Enforcement Officer shall accept an application only if s/he determines that all taxes and accounts payable to the Town are current:

**5.3.4.1** The applicant's real and personal property taxes, plus any and all other accounts of the applicant payable to the Town, have been paid in full.

**5.3.4.2** Real and personal property taxes for the property to be developed or used have been paid in full.

**5.3.4.3** The requirement that all taxes and accounts be paid prior to making an application may be:

**5.3.4.3.1** Satisfied by the execution of an agreement with the Town Manager for their payment in full under such terms and conditions as the Town Manager may deem advisable, provided that payment in full is made in or within 12 months from the date of said agreement; or

**5.3.4.3.2** Waived in whole or in part by the Board of Selectmen upon good cause shown and upon such terms and conditions as are agreeable to the applicant. The Board of Selectmen's decision in this regard shall be final, subject only to an appeal by an aggrieved party to Superior Court.

**5.3.5 Outstanding Violations** The Code Enforcement Officer shall accept an application only if s/he finds that there is no outstanding notice of violation duly applicable to the applicant or to the property:

**5.3.5.1** This limitation shall not apply to a notice of violation issued by the Code Enforcement Officer if:

**5.3.5.1.1** The notice of violation has been appealed to the Board of Appeals within the required time period;

**5.3.5.1.2** The appeal is pending before the Board of Appeals or a reviewing court; or

**5.3.5.1.3** The application is making a good faith effort to comply with the decision of the Board of Appeals or a reviewing court.

**5.3.5.2** This limitation shall not apply to a notice of violation duly issued by any State or federal environmental agency relating to the property that is the subject of the application if:

**5.3.5.2.1** There is an appeal of the notice of violation pending before the State or federal environmental agency or a reviewing court; or

**5.3.5.2.2** The decision of the State or federal environmental agency or a reviewing court has not been fully complied with but no further action will be taken by the issuing agency.

**5.3.6 Completeness Review** The Code Enforcement Officer shall be responsible for reviewing all applications submitted for development review or permits to determine if the application meets the applicable submission requirements.

**5.3.6.1 Applications for Code Enforcement Officer Review** Within fourteen (14) days of receiving an application, the Code Enforcement Officer shall

determine if the application is complete and notify the applicant in writing that the application is complete, or if the application is incomplete, the specified additional material needed to make the application complete. The applicant shall be responsible for submitting any incomplete information to the Code Enforcement Officer. The Code Enforcement Officer shall not process the application until s/he determines that the application is complete.

#### **5.3.6.2 Applications that Require Review by the Planning Board**

**5.3.6.2.1** Within fourteen (14) days of receiving an application for Site Plan Review, Minor Development Review, Subdivision Review or Mobile Home Park Review, the Code Enforcement Officer shall review the application and tentatively determine if the application is complete. If the Code Enforcement Officer determines that the application is incomplete, s/he shall notify the applicant that the application is not complete and identify the specified additional material needed to make the application complete. The applicant shall be responsible for submitting any additional information to the Code Enforcement Officer. The Code Enforcement Officer shall repeat this process until s/he tentatively determines that the application is complete or that written waivers have been requested for any missing information.

**5.3.6.2.2** After determining that the application is complete, the Code Enforcement Officer shall place the application on the agenda of the next scheduled Planning Board meeting, subject to meeting all the public hearing notice and application submittal requirements.

**5.3.6.2.3** At the first meeting that the Planning Board considers the application, the Planning Board shall review the application for completeness and shall act on any requests for waivers of the submission requirements. If the Planning Board finds that the information is incomplete or if the Planning Board denies any waivers, the Planning Board shall identify the additional information that the applicant must provide for the application to be considered complete. The Planning Board shall not consider the merits of an application until it determines that the application is complete.

**5.3.6.3 Waivers of Submission Requirements** The Code Enforcement Officer or Planning Board may, for good cause shown and only upon the written request of an applicant specifically stating the reasons therefor, waive any of the application submission requirements set forth in Sections **5.3**, **5.4**, **5.5**, **5.6**, and **5.7**, provided such waiver will not unduly restrict the review process. The Code Enforcement Officer or Planning Board may condition such a waiver on the applicant's compliance with alternative requirements. Good cause may include the Code Enforcement Officer's or Planning Board's finding that particular submissions are inapplicable, unnecessary, or inappropriate for a complete review. Notwithstanding the waiver of a submission requirement, the Code Enforcement Officer or Planning Board may, at any later point in the review process, rescind such waiver if it appears that the submission

previously waived is necessary for an adequate review. A request for a submission previously waived shall not affect the pending status of an application.

**5.3.6.4 Information Required for All Applications** All applications for development review or permits must contain all of the following information:

**5.3.6.4.1** The name, mailing address, email address, and phone number of the owner of the property.

**5.3.6.4.2** The name, mailing address, email address, and phone number of the applicant if different than the owner of the property.

**5.3.6.4.3** The name, mailing address, email address, and phone number of all professionals involved in the preparation of the application and related plans and documents.

**5.3.6.4.4** The location of the property, including the street address and Tax Map and Lot number(s).

**5.3.6.4.5** The land use district(s) within which the proposed activity is located. If the lot is located within more than one district, an accurate scaled map showing the location of the zoning district boundaries.

**5.3.6.4.6** Verification of the owner or applicant's right, title and interest in the property. If the person submitting the application is not the owner of the property, the application must contain a form authorizing the person filing the application to act on the owner's behalf.

**5.3.6.4.7** A written description of the proposed development or construction activities for which approval is being sought. The description should set out the proposed use of the property, the size of proposed buildings and improvements, and the nature of all construction and development activities.

**5.3.6.5 Public Notice of Planning Board Reviews** The following notice procedures apply to the Planning Board's consideration of Minor Development Reviews, Site Plan Reviews, Subdivision Reviews and Mobile Home Park Reviews. All meetings to consider these reviews shall be public meetings notice of which shall be provided as follows:

**5.3.6.5.1** The Code Enforcement Officer shall notify the following by U. S. Postal Service first class mail of the first meeting of the Planning Board at which an application will be considered:

**5.3.6.5.1.1** The applicant and the owner of the property where a development or use is proposed;

**5.3.6.5.1.2** Owners as listed by the Boothbay Tax Assessor of property within 100 feet of any property line of a proposed development or use;

**5.3.6.5.1.3** The Boothbay Region Water District if a proposed land use project is within the Well Head Protection District or the Watershed Protection Overlay Zone;

**5.3.6.5.1.4** The Boothbay Harbor or Edgecomb Town Clerk and Planning Board if the proposed development or use abuts or includes any portion of said municipalities.

**5.3.6.5.2** The notification shall be at least seven (7) days before the first Planning Board meeting at which the application is considered and include:

**5.3.6.5.2.1** The date, time and place of the first public hearing on the application, and

**5.3.6.5.2.2** The location and a general description of the proposed development or use.

**5.3.6.5.3** The Code Enforcement Office or Planning Board may determine that additional property owners should be made aware of the proposed development or use. The applicant shall reimburse the Town for the expense of these additional notifications.

**5.3.6.5.4** Failure to receive notification of a public meeting shall not necessitate another public meeting nor invalidate any action taken by the Planning Board.

**5.3.6.5.5** The Code Enforcement Officer shall publish a notice of the date, time and place of the first meeting to be held on an application at least two times in the Boothbay Register. The first publication of the notice shall be at least seven (7) days before the meeting. In addition, the notice shall be posted in a public place in Boothbay. The notice shall include the location and a general description of the development or use.

### **5.3.7 Reconsideration of Planning Board Actions**

The Planning Board may reconsider any decision reached within forty-five (45) days of the date of the final vote on the application. The request to the Planning Board to reconsider a decision must be filed within ten (10) days of the final vote to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the final vote on the original decision. The Planning Board in reconsidering a prior decision may conduct an additional hearing and receive additional evidence and testimony.

## **5.4 Minor Development Review and Site Plan Review Procedures and Standards**

### **5.4.1 Review and Approval Authority**

The Planning Board is authorized to review and act on all applications for Minor Development Review and Site Plan Review. The Planning Board may act to approve, disapprove, or approve an application with conditions.

### **5.4.2 Review Procedures for Applications Requiring Minor Development Review**

Following the Code Enforcement Officer's tentative determination that the application is complete, the Planning Board shall begin its review of the application.

**5.4.2.1 Initial Consideration by the Planning Board** At the first meeting at which the application is considered, the Planning Board shall review the application material and formally determine whether or not the submission is complete. The Planning Board shall also consider and act on any requests for waivers of the submission requirements. If the application is determined to be incomplete or requested waivers are not granted, the Planning Board shall notify the applicant and Code Enforcement Officer in writing of this finding, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Planning Board until the additional information is submitted to the Code Enforcement Officer. These steps shall be repeated until the application is found to be complete by the Planning Board. The timeframes for the processing of the application shall begin when the Planning Board finds that the application is complete.

**5.4.2.2 On-Site Inspection** The Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted, and investigate the development proposal. The Planning Board may conduct this visit either before or after the first meeting at which the application is considered. The Planning Board may decide not to hold an on-site inspection when the site is snow covered. If an application is pending during a period when there is snow cover, the processing of the application may be suspended until the Planning Board is able to conduct an on-site inspection. Written notice of the on-site inspection shall be provided to all parties.

**5.4.2.3 Planning Board Action** Within forty-five (45) days of determining that the application is complete, the Planning Board shall hold a public hearing on the application. The Planning Board shall take final action on the application within thirty (30) days of the conclusion of the public hearing at which all requested information has been provided, and during which all verbal and written submissions for and against the proposed development or use have been heard. The Planning Board shall act to deny, to approve, or to approve the application with conditions. The Planning Board may impose such conditions as are deemed advisable to assure compliance with the standards of approval. All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.

In issuing its decision, the Planning Board shall make written findings of fact establishing that the activities set forth in the application do or do not meet the standards of approval and other requirements of the Town, including any conditions of approval necessary to comply with the standards. The Planning Board shall notify the applicant in writing of the action of the Planning Board, including the findings of fact, and any conditions of approval. This requirement shall be met through the distribution of a Notice of Decision signed by the Chair of the Planning Board containing the findings of fact and decision of the Planning Board.



**5.4.2.4 Public Hearing** The Planning Board shall hold a public hearing for an application for Minor Development Review. The hearing shall be noticed and advertised in accordance with the provisions of Section **5.3.6.5**.

**5.4.2.5 Final Approval and Filing** Upon completion of the requirements of this section and a vote of approval or approval with one or more conditions by the Planning Board, the application is approved and the site plan shall be signed by a majority of the members of the Planning Board and filed with the Code Enforcement Officer. In addition, the signed Notice of Decision setting forth the findings of fact, including any conditions of approval, shall be recorded in the Lincoln County Registry of Deeds within sixty (60) days of the vote to approve the plan and evidence of such filing contemporaneously provided to the Code Enforcement Officer. Any plan for which a decision document is not filed within sixty (60) days of the date upon which such plan is approved and signed by the Planning Board shall become null and void. Prior to the expiration of the sixty (60) day period, the Planning Board, by vote, may extend the filing period for good cause.

#### **5.4.3 Review Procedures for Applications Requiring Site Plan Review**

**5.4.3.1 Two Step Review Process** Site Plan Review is a two-step process. Step One is the submission and review of a Site Inventory and Analysis. Upon the completion of the review of the Site Inventory and Analysis, the Planning Board will authorize the applicant to proceed to Step Two, the submission of a formal application and supporting documentation. The Town will not accept or process an application for Site Plan Review until a review of the Site Inventory and Analysis has been completed.

##### **5.4.3.2 Step One – Site Inventory and Analysis**

Following the Code Enforcement Officer's tentative determination that the Site Inventory and Analysis submission is complete, the Planning Board shall begin its review of the submission. The review of the Site Inventory and Analysis shall occur at a regular meeting of the Planning Board and shall be an agenda item. Notice of the submission shall be provided in accordance with Section **5.3.6.5**.

**5.4.3.2.1 Consideration of the Site Inventory and Analysis by the Planning Board** At the first meeting at which the Site Inventory and Analysis is considered, the Planning Board shall review the material and formally determine whether or not the submission is complete. The Planning Board shall also consider and act on any requests for waivers of the submission requirements. If the submission is determined to be incomplete or requested waivers are not granted, the Planning Board shall notify the applicant and Code Enforcement Officer in writing of this finding, shall specify the additional materials required to make the Site Inventory and Analysis submission complete and shall advise the applicant that the project will not be considered by the Planning Board until the additional information is submitted to the Code Enforcement Officer. These steps shall be repeated until the submission is found to be

complete by the Planning Board. The timeframes for the processing of the site inventory and analysis shall begin when the Planning Board finds that the submission is complete.

**5.4.3.2.1 Review of the Site Inventory and Analysis** The Planning Board's review of the Site Inventory and Analysis shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board. The Planning Board shall review the submission to determine if the information provides a clear understanding of the lot's characteristics and its potential for use and development. The outcome of the review process shall be a determination by the Planning Board of the issues and constraints that must be addressed in the formal Site Plan Review application. The Planning Board shall also act on any requests for waivers from the submission requirements.

As part of the review of the Site Inventory and Analysis, the Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted and investigate the development proposal. The Planning Board may conduct this visit either before or after the first meeting at which the Site Inventory and Analysis is considered. The Planning Board may decide not to hold an on-site inspection when the site is snow covered. If a review is pending during a period when there is snow cover, the Planning Board may suspend consideration of the submission until the Planning Board is able to conduct an on-site inspection. Written notice of the on-site inspection shall be provided to all parties.

Within sixty (60) days of the finding that the Site Inventory and Analysis submission is complete, the Planning Board shall complete its review of the submission, notify the applicant in writing of the outcome of its review, and, if appropriate, authorize the submission of the formal application. All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.

#### **5.4.3.3 Step Two – Review of the Application**

Following the completion of the review of the Site Inventory and Analysis by the Planning Board and the Code Enforcement Officer's tentative determination that the formal application submission is complete, the Planning Board shall begin its review of the application.

##### **5.4.3.3.1 Initial Consideration of the Application by the Planning Board**

At the first meeting at which the application is considered, the Planning Board shall review the application material and formally determine whether or not the submission is complete. If the application is determined to be incomplete, the Planning Board shall notify the applicant and Code Enforcement Officer in writing of this finding, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Planning Board until the additional information is submitted to the Code Enforcement

Officer. These steps shall be repeated until the application is found to be complete by the Planning Board. The Planning Board shall also consider and act on any requests for waivers of the submission requirements.

**5.4.3.3.2 On-Site Inspection** The Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted, and investigate the development proposal. The Planning Board may conduct this visit either before or after the first meeting at which the application is considered. The Planning Board may decide not to hold an on-site inspection when the site is snow covered. If an application is pending during a period when there is snow cover, the processing of the application may be suspended until the Planning Board is able to conduct an on-site inspection. Written notice of the on-site inspection shall be provided to all parties.

**5.4.3.3.3 Public Hearing** The Planning Board shall hold a public hearing on the application within forty-five (45) days of determining that the application is complete. The hearing shall be noticed and advertised in accordance with the provisions of Section **5.3.6.5**.

**5.4.3.3.4 Planning Board Action** The Planning Board shall take final action on the application within thirty (30) days of the conclusion of the public hearing at which all requested information has been provided, and during which all verbal and written submissions for and against the proposed development or use have been heard. The Planning Board shall act to deny, to approve, or to approve the application with conditions. The Planning Board may impose such conditions as are deemed advisable to assure compliance with the standards of approval. All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.

In issuing its decision, the Planning Board shall make written findings of fact establishing that the activities set forth in the application do or do not meet the standards of approval and other requirements of the Town, including any conditions of approval necessary to comply with the standards. The Planning Board shall notify the applicant in writing of the action of the Planning Board, including the findings of fact, and any conditions of approval. This requirement shall be met through the distribution of a Notice of Decision signed by the Chair of the Planning Board containing the findings of fact and decision of the Planning Board.

**5.4.3.3.5 Final Approval and Filing** Upon completion of the requirements of this section and a vote of approval or approval with one or more conditions by the Planning Board, the application is approved and the site plan shall be signed by a majority of the members of the Planning Board and filed with the Code Enforcement Officer. In addition, the signed Notice of Decision setting forth the findings of fact, including any conditions of approval, shall be recorded in the Lincoln County Registry of Deeds within sixty (60) days of the vote to approve the plan and

evidence of such filing contemporaneously provided to the Code Enforcement Officer. Any plan for which a decision document is not filed within sixty (60) days of the date upon which such plan is approved and signed by the Planning Board shall become null and void. Prior to the expiration of the sixty (60) day period, the Planning Board, by vote, may extend the filing period for good cause.

#### **5.4.4 Fees**

The applicant for development review by the Planning Board shall be responsible for paying the following fees to the Town for the Town's costs for reviewing the application.

**5.4.4.1 Application Fee** An application for Minor Development Review or Site Plan Review must be accompanied by an application fee. This fee is intended to cover the cost of the Town's administrative processing of the application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee shall be paid to the Code Enforcement Officer prior to consideration of the application, and evidence of payment of the fee shall be included with the application.

**5.4.4.2 Site Inventory and Analysis Review Fee** The submission of a Site Inventory and Analysis must be accompanied by a site inventory and analysis review fee. This fee is intended to cover the cost of the Town's administrative processing of the submission. The fee shall not be refundable. This fee shall be paid to the Code Enforcement Officer, and evidence of payment of the fee shall be included with the submission.

**5.4.4.3 Technical Review Fee** In addition to the application fee and site inventory and analysis review fee, the applicant for Minor Development Review or Site Plan Review may also be required to pay a technical review fee to defray the Town's legal and technical costs of the review of the formal application or the site inventory and analysis. The Planning Board shall review the complexity of the application or submission and the need for outside assistance to review the application or submission and determine if a technical review fee is required. This determination shall occur at the meeting at which the Planning Board determines if the submission is complete. If the Planning Board determines that outside assistance is needed, the Planning Board, with the assistance of the Code Enforcement Officer, shall determine the estimated cost of the review services and the amount of the technical review fee. This fee must be paid to the Code Enforcement Officer prior to the Town retaining the review assistance and shall be deposited in the Development Review Trust Account, which shall be separate and distinct from all other municipal accounts. The Planning Board may suspend processing of the submission and the related time frames for action if the technical review fee is not paid in a timely manner that will allow the Planning Board's review to be completed within the establish time limits.

If the initial fee proves to be insufficient to meet the Town's professional review costs, the Planning Board may assess an additional fee(s) to cover such

professional review costs. Any excess amount deposited with the Town in advance shall be promptly refunded to the applicant after final action on the application. The results of the consultation or peer review for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town and shall remain its property. Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation or peer review results or the outcome of the application. No building permit or certificate of compliance may be issued nor subdivision plat released until all fees assessed hereunder have been paid in full.

The technical review fee may be used by the Planning Board at its discretion to pay reasonable costs incurred by the Town, which relate directly to the review of the submission or application pursuant to the review criteria. Such services may include, but need not be limited to, consulting, engineering or other professional fees, attorney fees, and appraisal fees. The Town shall provide the applicant, upon written request, with an accounting of his or her account and shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs related to the review. Such payment of remaining monies shall be made no later than sixty (60) days after the approval of the application, denial of the application, or approval with condition of the application. Such refund shall be accompanied by a final accounting of expenditures from the fund. The monies in such fund shall not be used by the Planning Board for any enforcement purposes nor shall the applicant be liable for costs incurred by or costs of services contracted for by the Planning Board which exceeds the amount deposited to the trust account unless the applicant has agreed to pay the additional costs prior to their being incurred and the agreement is documented in the project file.

**5.4.4.4 Establishment of Fees** The Board of Selectmen may, from time to time and after consultation with the Planning Board, establish the appropriate application fees, site inventory and analysis review, and technical review fees following posting of the proposed schedule of fees and public hearing.

#### **5.4.5 Submission Requirements**

**5.4.5.1 Applicability** The requirements of this section apply to applications for Minor Development Review and Site Plan Review. Projects or activities that are classified as requiring Site Plan Review must provide, as part of Step One of the review process, the information set forth in Section **5.4.5.2.2** Contents of the Site Inventory and Analysis Submission. As part of Step Two of the review process for Site Plan Review, applications must also include the additional information set forth in Section **5.4.5.2.3** (Additional Information to be Provided as Part of the Formal Application for Site Plan Review).

**5.4.5.2 Site Inventory and Analysis Submission Requirements for Site Plan Review** Step One of projects requiring Site Plan Review is the submission of a Site Inventory and Analysis.

**5.4.5.2.1 Purpose of the Site Inventory and Analysis** The Site Inventory and Analysis is intended to provide both the applicant and the Planning Board and staff with a better understanding of the site and the opportunities and constraints imposed on its use by both the natural and built environment. It is anticipated that this analysis will result in a development plan that reflects the conditions of the lot and that the areas most suitable for the proposed use will be utilized while those that are not suitable or present significant constraints will be avoided to the maximum extent possible. Therefore, the submission requirements provide that the applicant submit basic information about the lot and an analysis of that information.

**5.4.5.2.2 Contents of the Site Inventory and Analysis Submission.** The Site Inventory and Analysis submission must contain, at a minimum, the following information in addition to the general information required by Section 5.3.6.4:

**5.4.5.2.2.1** Four (4) copies of an accurate scale inventory plan of the lot or the portion of the lot proposed for use or development at a scale of not more than one hundred (100) feet to the inch showing as a minimum:

**5.4.5.2.2.1.1** The name of the development, north arrow, date and scale;

**5.4.5.2.2.1.2** The boundaries of the lot;

**5.4.5.2.2.1.3** The relationship of the lot to the surrounding area;

**5.4.5.2.2.1.4** The topography of the lot at an appropriate contour interval depending on the nature of the use and character of the lot (in many instances, submittal of the U.S.G.S. 10' contours will be adequate);

**5.4.5.2.2.1.5** The major natural features of the lot and within one thousand (1,000) feet of the lot, including wetlands, streams, ponds, floodplains, groundwater aquifers, farmland, significant wildlife habitats and fisheries or other important natural features (if none, so state). This information may be based on available, published sources unless the Planning Board determines that field determination is needed to allow review of the opportunities and constraints of the lot.

**5.4.5.2.2.1.6** Existing buildings, structures, or other improvements on the lot (if none, so state);

**5.4.5.2.2.1.7** Existing restrictions or easements on the lot (if none, so state);

**5.4.5.2.2.1.8** The location and size of existing utilities or improvements servicing the lot (if none, so state);

**5.4.5.2.2.1.9** A class B high intensity soil survey if any portion of the

lot is located in a resource protection district or mapped wetland, otherwise a class D medium intensity soil survey.

**5.4.5.2.2.2** Four (4) copies of a site analysis plan at the same scale as the inventory plan (see above) highlighting the opportunities and constraints of the site. This plan should enable the Planning Board to determine: which portions of the lot are unsuitable for development or use; which portions of the lot are unsuitable for on-site sewage disposal if public sewerage is not available; which areas of the lot have development limitations (steep slopes, flat, soil constraints, wetlands, aquifers, wildlife habitat, farmland, fisheries, scenic vistas, floodplains, drainage, etc.) which must be addressed in the development plan; which areas may be subject to off-site conflicts or concerns (i.e., noise, lighting, access, traffic, etc.); and which areas are well suited to the proposed use.

**5.4.5.2.2.3** Ten (10) copies of 11" x 17" reductions of the site inventory plan required by Section **5.4.5.2.2.1** and site analysis plan required by Section **5.4.5.2.2.2** and a narrative describing the existing conditions of the lot, the proposed use and the constraints or opportunities created by the site. This submission should include any traffic studies, utility studies, market studies or other preliminary work that will assist the Planning Board in understanding the site and the proposed use.

**5.4.5.2.2.4** Any requests for waivers from the submission requirements for the formal Site Plan Review application.

### **5.4.5.3 Application Submission Requirements for Both Minor Development Review and Site Plan Review**

All applications for Minor Development Review or Site Plan Review must contain the following exhibits and information in addition to the general information set out in Section **5.3.6.4**, unless specifically waived by the Planning Board:

**5.4.5.3.1** Four (4) sets of one or more maps or drawings and ten (10) copies of written materials containing the information listed below. The maps or drawings must be at a scale sufficient to allow review of the items listed under approval criteria, but in no case shall they be more than one hundred (100) feet to the inch for that portion of the tract of land being proposed for development. The written materials together with 11" x 17" reductions of all maps must be contained in a bound or stapled report:

**5.4.5.3.1.1** The following general information:

**5.4.5.3.1.1.1** The names and addresses of all abutters.

**5.4.5.3.1.1.2** A sketch map showing general location of the lot within the Town based upon a reduction of the tax maps, including the name of the road on which the lot is located.

**5.4.5.3.1.1.3** The boundaries of all contiguous property under the total

or partial control of the owner and/or applicant regardless of whether all or part is being developed at this time.

**5.4.5.3.1.2** The following information about the existing conditions on the lot or portion of the lot proposed for use or development:

**5.4.5.3.1.2.1** Zoning classification(s), including overlay districts, of the property and the location of zoning district boundaries if the property is located in two (2) or more zoning districts or abuts a different district.

**5.4.5.3.1.2.2** The bearings and length of all property lines of the property to be developed and the source of this information. The Planning Board may waive this requirement for a boundary survey when sufficient information is available to establish, on the ground, all property boundaries.

**5.4.5.3.1.2.3** The location of all required building setbacks, yards, and buffers.

**5.4.5.3.1.2.4** The location and size of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property to be developed and on abutting roads or land that may serve the development and an assessment of their adequacy and condition to meet the needs of the proposed use. Appropriate elevations must be provided as necessary to determine the direction of surface water flow.

**5.4.5.3.1.2.5** The location, names, and present widths of existing public and/or private roads and rights-of-way within or adjacent to the proposed development.

**5.4.5.3.1.2.6** The location, dimensions, and ground floor elevation of all existing buildings on the lot.

**5.4.5.3.1.2.7** The location and dimensions of existing driveways, parking and loading areas, walkways, and sidewalks on or immediately adjacent to the lot.

**5.4.5.3.1.2.8** The location of intersecting roads or driveways within two hundred (200) feet of the lot.

**5.4.5.3.1.2.9** The location of open water, drainage courses, wetlands, significant vernal pools, stonewalls, graveyards, fences, stands of trees, farmland, and other important or unique natural areas and site features, including, but not limited to, floodplains, deer wintering areas, significant wildlife habitats, fisheries, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources, together with a description of such features. This information may be based on



available, published sources unless the Planning Board determines that field determination is needed to allow review of the proposal.

**5.4.5.3.1.2.10** The direction of existing surface water drainage across the site.

**5.4.5.3.1.2.11** The location, front view, dimensions, and means of lighting of existing signs.

**5.4.5.3.1.2.12** The location and dimensions of any existing easements and copies of existing covenants or deed restrictions.

**5.4.5.3.1.2.13** The location of the nearest fire hydrant, dry hydrant or other water supply for fire protection.

**5.4.5.3.1.3** The following information about the proposed use and development activity:

**5.4.5.3.1.3.1** The location, dimensions, and ground floor elevation of all proposed buildings or building expansion proposed on the lot.

**5.4.5.3.1.3.2** Estimated demand for water supply and sewage disposal, together with the location and dimensions of all provisions for water supply and wastewater disposal, and evidence of their adequacy for the proposed use, including soils test pit data if on-site sewage disposal is proposed.

**5.4.5.3.1.3.3** The direction of proposed surface water drainage across the site, and from the site, with an assessment of impacts on downstream properties.

**5.4.5.3.1.3.4** Provisions for handling all solid wastes, including hazardous and special wastes, and the location and proposed screening of any on-site collection or storage facilities.

**5.4.5.3.1.3.5** The location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and walkways and any changes in traffic flow onto or off-site.

**5.4.5.3.1.3.6** Proposed landscaping and buffering.

**5.4.5.3.1.3.7** The location, front view, materials, and dimensions of proposed signs.

**5.4.5.3.1.3.8** The location and type of exterior lighting.

**5.4.5.3.1.3.9** The location of all utilities, including fire protection systems.

**5.4.5.3.1.3.10** An estimate of the peak hour and daily traffic to be generated by the project.

**5.4.5.3.1.3.11** Stormwater calculations, erosion and sedimentation control measures, and water quality and/or phosphorous export management provisions, if the project requires a stormwater permit

from the Maine Department of Environmental Protection or if the Planning Board determines that such information is necessary based upon the scale of the project or the existing conditions in the vicinity of the project. If the Planning Board requires any of this information, it shall conform to the requirements for Site Plan Review.

**5.4.5.3.2 Approval Block** Space must be provided on the plan drawing for the signatures of the Planning Board and the date, together with the following words, “Approved: Town of Boothbay Planning Board”.

#### **5.4.5.4 Additional Submission Requirements for Applications for Site Plan Review**

In addition to the information required for all applications as set forth in Section 5.4.5.3, an application for Site Plan Review must contain the following additional information.

**5.4.5.4.1** A narrative and/or plan describing how the proposed development plan relates to the site inventory and analysis.

**5.4.5.4.2** A grading plan showing the existing and proposed topography of the lot at two (2) foot contour intervals or such other interval as the Planning Board may determine.

**5.4.5.4.3** A stormwater drainage plan and erosion control plan/program documenting conformance with the stormwater management and erosion control performance standards of Sections 9.3 and 9.4.

**5.4.5.4.4** A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, communication, and any other utility services to be installed on the lot.

**5.4.5.4.5** A planting schedule keyed to the site plan indicating the general varieties and sizes of trees, shrubs, and other vegetation to be planted on the lot, as well as information pertaining to provisions that will be made to retain and protect existing trees, shrubs, and other vegetation.

**5.4.5.4.6** A traffic impact analysis demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent streets if the project will generate more than fifty (50) peak hour trip ends or have an Average Annual Daily Traffic (AADT) of 200 trips.

**5.4.5.4.7** Written statements from the Boothbay Region Water District as to the adequacy of the water supply in terms of quantity and pressure for both domestic and fire flows, and the Boothbay Harbor Sewer District as to the capacity of the sewer system to accommodate additional wastewater if public water or sewerage will be utilized.

#### **5.4.6 Approval Standards**

The following criteria shall be used by the Planning Board in reviewing applications for Minor Development Review and Site Plan Review and shall serve as

minimum requirements for approval of the application. All applications must demonstrate compliance with each of the basic standards unless conformance with a specific standard is waived by the Planning Board. The Planning Board may waive conformance with an individual standard by formal vote only if the Planning Board finds that the standard is not applicable to the project due to the scale of the project or its location in the Town. Applications for Site Plan Review must also demonstrate compliance with the additional standards. In evaluating compliance with these criteria, the Planning Board shall consider the applicable performance standards of Sections 8, 9, 10 and 11. The Planning Board may also consider innovative or non-traditional approaches and technologies as long as the intent of the criteria is met. In all instances, the burden of proof shall be on the applicant who must produce evidence sufficient to warrant a finding that all applicable criteria have been met.

#### **5.4.6.1 Adequacy of the Road System Providing Vehicular Access to the Site**

##### **5.4.6.1.1 Basic Standard**

Vehicular access to the lot must be on streets or roads which have adequate capacity to safely and efficiently accommodate the additional traffic generated by the development considering the number of trips that will be generated by the project together with any traffic from adjacent uses that will pass through the site and the existing capacity of the streets or roads and the accident history of the roads and intersections.

##### **5.4.6.1.2 Additional Standards**

For developments which generate fifty (50) or more peak hour trip ends based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one (1) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development must function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project must not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Planning Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

A development not meeting this requirement may be approved if the applicant demonstrates that:

**5.4.6.1.2.1** A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard;  
or

**5.4.6.1.2.2** The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the Town.

## **5.4.6.2 Vehicular Access into the Site**

### **5.4.6.2.1 Basic Standard**

Vehicular access to and from the development must be safe. Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.

### **5.4.6.2.2 Additional Standards**

**5.4.6.2.2.1** Any driveway or proposed road must be designed so as to provide the minimum sight distance required according to the Maine Department of Transportation standards, to the maximum extent feasible, as determined by the Planning Board.

**5.4.6.2.2.2** The grade of any proposed drive or street must be not more than  $\pm$  three (3) percent for a minimum of two (2) car lengths, or forty (40) feet, from the intersection.

**5.4.6.2.2.3** Where a lot has frontage on two (2) or more roads, the primary access to and egress from the lot must be provided from the road where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other roads may be allowed if it is safe and does not promote shortcutting through the site.

**5.4.6.2.2.4** Where it is necessary to safeguard against hazards to traffic and/or pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls.

**5.4.6.2.2.5** Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any road.

**5.4.6.2.2.6** The following criteria shall be used to limit the number of driveways serving a proposed project:

**5.4.6.2.2.6.1** No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two (2) way driveway onto a single street or road. Such driveway must be no greater than thirty (30) feet wide.

**5.4.6.2.2.6.2** No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single street or road. The combined width of all accessways must not exceed sixty (60) feet.

## **5.4.6.3 Accessway Location and Spacing**

### **5.4.6.3.1 Basic Standard**

Accessways into or out of the lot must meet the following standards:

**5.4.6.3.1.1** Private entrances/exits must be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the

point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the lot does not allow conformance with this standard.

**5.4.6.3.1.2** Private accessways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.

#### **5.4.6.4 Natural Features**

##### **5.4.6.4 Basic Standard**

The landscape must be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil, and by retaining existing vegetation. Extensive grading and filling must be avoided as far as possible. Projects that propose cuts or fills that change the topography over more than twenty (20) percent of the lot area or cutting or filling that changes the grade more than ten (10) feet in any location on the lot must demonstrate that there is no practical alternative to the proposed cuts and/or fills, including redesign of the proposed development, and that the amount and depths of the cuts and fills is the minimum necessary to reasonably develop the lot.

#### **5.4.6.5 Shoreland Relationship**

##### **5.4.6.5.1 Basic Standards**

The development must conform to the requirements of the Shoreland Overlay District and the Watershed Protection Districts and not adversely affect the water quality or shoreline of any adjacent water body.

#### **5.4.6.6 Floodplain Management**

##### **5.4.6.6.1 Basic Standard**

If any portion of the lot is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the lot must be consistent with the Town's floodplain management provisions.

#### **5.4.6.7 Historic and Archeological Resources**

##### **5.4.6.7.1 Basic Standards**

If any portion of the lot has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including, but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

#### **5.4.6.8 Utilization of the Site**

##### **5.4.6.8.1 Basic Standard**

The plan for the development must reflect the natural capabilities of the site to support development. If a Site Inventory and Analysis was prepared, the

plan must be consistent with that analysis. Buildings, lots, and support facilities must be located in those portions of the lot that have the most suitable conditions for development. Environmentally sensitive areas, including, but not limited to, wetlands, vernal pools, tributary streams, steep slopes greater than twenty (20) percent, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. Natural drainage areas must also be preserved to the maximum extent reasonable. The development must include appropriate measures for protecting these resources, including, but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

#### **5.4.6.9 Building Placement**

##### **5.4.6.9.1 Basic Standards**

**5.4.6.9.1.1** The site design must avoid creating a building surrounded by a parking lot.

**5.4.6.9.1.2** Where two or more buildings are proposed, the buildings should be grouped and linked with sidewalks; tree planting should be used to provide shade and break up the scale of the site.

**5.4.6.9.1.3** Parking areas must be separated from the building by a minimum of five (5) feet unless the Planning Board determines that such a separation is not needed due to the characteristics of the site or the proposed use. Plantings should be provided along the building edge, particularly where building facades consist of long or unbroken walls.

#### **5.4.6.10 Internal Vehicular Circulation**

##### **5.4.6.10.1 Basic Standard**

The layout of the lot must provide for the safe movement of passenger, service, and emergency vehicles through the site.

##### **5.4.6.10.2 Additional Standards**

**5.4.6.10.2.1** Nonresidential projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of WB-40 (wheelbase) vehicles.

**5.4.6.10.2.2** Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

**5.4.6.10.2.3** The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

**5.4.6.10.2.4** All roadways must be designed to harmonize with the

topographic and natural features of the lot insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction. The road network must provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

#### **5.4.6.11 Parking Layout and Design**

##### **5.4.6.11.1 Basic Standards**

**5.4.6.11.1.1** Off-street parking must be provided in accordance with Section 8.1.

**5.4.6.11.1.2** All parking spaces, access drives, and impervious surfaces must be located at least five (5) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces shall be located within five (5) feet of the front property line. Parking lots on adjoining lots may be connected by accessways not exceeding twenty-four (24) feet in width.

**5.4.6.11.1.3** Parking areas for nonresidential uses must be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other vehicles. Double stack parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit.

**5.4.6.11.1.4** Provisions must be made to restrict the “overhang” of parked vehicles when it might restrict traffic flow on adjacent roads, restrict pedestrian or bicycle movement, or damage landscape materials.

#### **5.4.6.12 Pedestrian Access and Sidewalks**

##### **5.4.6.12.1 Basic Standard**

The site plan must provide for safe pedestrian movement within the development.

##### **5.4.6.12.2 Additional Standards**

The site plan shall provide for pedestrian facilities that are appropriate for the type and scale of development. These facilities must connect the major building entrances/exits with parking areas and with sidewalks, if they exist or are planned in the vicinity of the project.

#### **5.4.6.13 Landscaping and Buffering**

##### **5.4.6.13.1 Basic Standard**

Landscaping must be provided as part of site design and buffering must be

installed when required by Section **10.1**. The landscaping must use landscape materials to integrate the various elements on site, preserve and enhance the particular identity of the lot.

#### **5.4.6.14 Stormwater Management**

##### **5.4.6.14.1 Basic Standard**

Adequate provisions must be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan that utilizes Low Impact Development techniques. The provisions for stormwater management must conform to the requirements of Section **9.3**.

#### **5.4.6.15 Erosion Control**

##### **5.4.6.15.1 Basic Standards**

**5.4.6.15.1.1** All building, site, and roadway designs and layouts must harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity is kept to a minimum. Parking lots on sloped sites must be terraced to avoid undue cut and fill, and/or the need for retaining walls. Natural vegetation must be preserved and protected wherever possible.

**5.4.6.15.1.2** Soil erosion and sedimentation of watercourses and water bodies must be minimized by an active program meeting the requirements of Section **9.4** and the Department of Environmental Protection's Maine Erosion and Sediment Control Best Management Practices.

#### **5.4.6.16 Groundwater Protection**

##### **5.4.6.16.1 Basic Standard**

The proposed site development and use must not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems.

##### **5.4.6.16.2 Additional Standard**

Applicants whose projects involve on site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater must demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water contained in the Maine Rules Relating to Drinking Water. If existing water quality contains contaminants in excess of the secondary drinking water standards in the Maine Rules Relating to Drinking Water, that fact shall be disclosed in a note on the plan.

#### **5.4.6.17 Water Supply**

##### **5.4.6.17.1 Basic Standard**



The development must be provided with a system of water supply that provides each use with an adequate supply of water. If the lot is to be served by a public water supply or if it can be reasonably served by a public water supply, the development must be connected to the public system. Any lot that is within two hundred (200) feet as measured along the road of an existing public water main shall be deemed to be able to be served by the public water supply unless the applicant demonstrates that the public supply is inadequate or is prohibitively costly. If the project will be served by public water, the applicant must secure and submit a written statement from the Boothbay Region Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

#### **5.4.6.18 Sewage Disposal**

##### **5.4.6.18.1 Basic Standards**

**5.4.6.18.1.1** The development must be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code.

**5.4.6.18.1.2** All sanitary sewage from new or expanded uses must be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation.

**5.4.6.18.1.3** When two (2) or more lots or buildings in different ownership share the use of a common subsurface wastewater disposal system, the system must be owned and maintained in common by an owners' association. Covenants in the deeds for each lot must require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.

**5.4.6.18.1.4** Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The pretreatment standards shall be determined by the Boothbay Harbor Sewer District.

#### **5.4.6.19 Utilities**

##### **5.4.6.19.1 Basic Standard**

The development must be provided with electrical, telephone, and communication service adequate to meet the anticipated use of the project. New utility lines and facilities must be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service must be placed underground.

#### **5.4.6.20 Solid Waste Management**

##### **5.4.6.20.1 Basic Standard**

The proposed development must provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

#### **5.4.6.21 Storage of Materials**

##### **5.4.6.21.1 Basic Standards**

**5.4.6.21.1.1** Areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public roads.

**5.4.6.21.1.2** Where an area for the outside storage of construction or earth materials or equipment or similar items as part of a commercial or industrial use is located in a yard which abuts a residential or institutional use or a public road, it must be screened by fencing or landscaping in accordance with Section **10.1** or located on a portion of the property that is not seen from a residential or institutional use or a public road.

**5.4.6.21.1.3** All dumpsters or similar large collection receptacles for trash or other wastes must be located on level surfaces which are paved or graveled. Where a dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public road, it must be screened by fencing or landscaping in accordance with Section **10.1**.

#### **5.4.6.22 Other Performance Standards**

##### **5.4.6.22.1 Basic Standard**

In addition to the requirements of this section, a development must conform to all applicable performance standards of Section 8 (General Performance Standards), Section 9 (Environmental Performance Standards), Section 10 (Good Neighbor Performance Standards) and Section 11 (Performance Standards for Specific Uses). In addition a development must conform to any district specific performance standards for the districts, including overlay districts within which it is located.

#### **5.4.6.23 Capacity of the Applicant**

##### **5.4.6.23.1 Basic Standard**

The applicant must demonstrate the financial and technical capacity to carry out the project in accordance with this Ordinance and the approved plan and the ability to provide the financial guarantees provided for in this section.

## **5.5 Code Enforcement Officer Review Procedures and Standards**

### **5.5.1 Review and Approval Authority**

The Code Enforcement Officer is authorized to review and act on all applications for Code Enforcement Officer Review. The Code Enforcement Officer may act to approve, disapprove, or approve an application with conditions.

### **5.5.2 Review Procedures for Applications Requiring Code Enforcement Officer Review**

Following the Code Enforcement Officer's determination that the application is complete, the Code Enforcement Officer shall begin his/her review of the application.

**5.5.2.1 On-Site Inspection** The Code Enforcement Officer may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted, and investigate the development proposal.

**5.5.2.2 Code Enforcement Officer Action** Within thirty (30) days of determining that the application is complete, the Code Enforcement Officer shall take final action on the application. The Code Enforcement Officer shall act to deny, to approve, or to approve the application with conditions. The Code Enforcement Officer may impose such conditions as are deemed advisable to assure compliance with the standards of approval. All time limits provided for in this section may be extended by mutual agreement of the applicant and Code Enforcement Officer.

In issuing its decision, the Code Enforcement Officer shall make a written determination that the activities set forth in the application do or do not meet the standards of approval and other requirements of the Town, including any conditions of approval necessary to comply with the standards. The Code Enforcement Officer shall notify the applicant in writing of its decision.

**5.5.2.3 Notice** If the application is for an activity that is located within the Watershed Protection Overlay (WPO) District or proposes to be serviced by the public water system, the Code Enforcement Officer shall notify the Boothbay Region Water District of the pending application. If the application is for an activity that is located within two hundred (200) feet of a public sewer or proposes to be serviced by the public sewer system, the Code Enforcement Officer shall notify the Boothbay Harbor Sewer District.

**5.5.2.4 Final Approval and Filing** Upon completion of the requirements of this section and approval or approval with one or more conditions by the Code Enforcement Officer, the application is approved and shall be filed in the office of the Code Enforcement Officer.

### **5.5.3 Fees**

The applicant for development review by the Code Enforcement Officer shall be responsible for paying the following fees to the Town for the Town's costs for reviewing the application.

**5.5.3.1 Application Fee** An application for Code Enforcement Officer Review must be accompanied by an application fee. This fee is intended to cover the cost of the Town's administrative processing of the application. The fee shall not be refundable. This application fee shall be paid to the Code Enforcement Officer prior to consideration of the application, and evidence of payment of the fee shall be included with the application.

**5.5.3.2 Technical Review Fee** In addition to the application fee, the applicant for Code Enforcement Officer Review may also be required to pay a technical review fee to defray the Town's legal and technical costs of the review of the application. The Code Enforcement Officer shall review the complexity of the application or submission and the need for outside assistance to review the application and determine if a technical review fee should be required. If the Code Enforcement Officer recommends that a technical review fee be required, s/he shall make that recommendation to the Town Manager. If the Town Manager determines that outside assistance is needed, the Town Manager with the assistance of the Code Enforcement Officer shall determine the estimated cost of the review services and the amount of the technical review fee. This fee must be paid to the Code Enforcement Officer prior to the Town retaining the review assistance and shall be deposited in the Development Review Trust Account, which shall be separate and distinct from all other municipal accounts. The Code Enforcement Officer may suspend processing of the submission and the related time frames for action if the technical review fee is not paid in a timely manner that will allow the review to be completed within the establish time limits.

If the initial fee proves to be insufficient to meet the Town's professional review costs, the Planning Board may assess an additional fee(s) to cover such professional review costs. Any excess amount deposited with the Town in advance shall be promptly refunded to the applicant after final action on the application. The results of the consultation or peer review for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town and shall remain its property. Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation or peer review results or the outcome of the application. No building permit or certificate of compliance may be issued nor subdivision plat released until all fees assessed hereunder have been paid in full.

The technical review fee may be used by the Code Enforcement Officer to pay reasonable costs incurred by the Town, which relate directly to the review of the application pursuant to the review criteria. Such services may include, but need not be limited to, consulting, engineering or other professional fees,

attorney fees, and appraisal fees. The Town shall provide the applicant, upon written request, with an accounting of his or her account and shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs related to the review. Such payment of remaining monies shall be made no later than sixty (60) days after the approval of the application, denial of the application, or approval with condition of the application. Such refund shall be accompanied by a final accounting of expenditures from the fund. The monies in such fund shall not be used for any enforcement purposes nor shall the applicant be liable for costs incurred by or costs of services contracted for by the Town which exceeds the amount deposited to the trust account unless the applicant has agreed to pay the additional costs prior to their being incurred and the agreement is documented in the project file.

**5.5.3.3 Establishment of Fees** The Board of Selectmen may from time to time establish the appropriate application fees and technical review fees following posting of the proposed schedule of fees and public hearing.

#### **5.5.4 Submission Requirements**

**5.5.4.1 Applicability** The requirements of this section apply to applications for Code Enforcement Officer Review.

##### **5.5.4.2 Application Submission Requirements for Code Enforcement Officer Review**

All applications for Code Enforcement Officer Review must contain two (2) copies of written materials plus two (2) sets of one or more maps or drawings containing the information listed in addition to the general information set out in Section **5.3.6.4**, unless specifically waived by the Code Enforcement Officer. The written materials must be contained in a bound or stapled report. The maps or drawings must be at a scale sufficient to allow review of the items listed under approval criteria, but in no case shall they be more than one hundred (100) feet to the inch:

**5.5.4.2.1** The following information about the existing conditions on the lot or portion of the lot proposed for use or development:

**5.5.4.2.1.1** Zoning classification(s), including overlay districts, of the property and the location of zoning district boundaries if the property is located in two (2) or more zoning districts or abuts a different district.

**5.5.4.2.1.2** The bearings and length of all property lines of the property to be developed and the source of this information. The Code Enforcement Officer may waive this requirement for a boundary survey when sufficient information is available to establish, on the ground, all property boundaries.

**5.5.4.2.1.3** The location of all required building setbacks, yards, and buffers.

**5.5.4.2.1.4** The location and size of any existing sewer and water mains,

culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property to be developed and on abutting roads or land that may serve the development and an assessment of their adequacy and condition to meet the needs of the proposed use. Appropriate elevations must be provided as necessary to determine the direction of surface water flow.

**5.5.4.2.1.5** The location, names, and present widths of existing public and/or private roads and rights-of-way within or adjacent to the proposed development.

**5.5.4.2.1.6** The location, dimensions, and ground floor elevation of all existing buildings on the lot.

**5.5.4.2.1.7** The location and dimensions of existing driveways, parking and loading areas, walkways, and sidewalks on or immediately adjacent to the lot.

**5.5.4.2.1.8** The location of intersecting roads or driveways within two hundred (200) feet of the lot.

**5.5.4.2.1.9** The location of open water, drainage courses, wetlands, significant vernal pools, stone walls, graveyards, fences, stands of trees, farmland, and other important or unique natural areas and site features, including, but not limited to, floodplains, deer wintering areas, significant wildlife habitats, fisheries, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources, together with a description of such features. This information may be based on available, published sources unless the Planning Board determines that field determination is needed to allow review of the proposal.

**5.5.4.1.1.10** The direction of existing surface water drainage across the site.

**5.5.4.1.1.11** The location, front view, dimensions, and means of lighting of existing signs.

**5.5.4.1.1.12** The location and dimensions of any existing easements and copies of existing covenants or deed restrictions.

**5.5.4.1.2** The following information about the proposed use and development activity:

**5.5.4.1.2.1** The location, dimensions, and ground floor elevation of all proposed buildings or building expansion.

**5.5.4.1.2.2** Estimated demand for water supply and sewage disposal, together with the location and dimensions of all provisions for water supply and wastewater disposal, and evidence of their adequacy for the

proposed use, including soils test pit data if on-site sewage disposal is proposed.

**5.5.4.1.2.3** The direction of proposed surface water drainage across the site, and from the site, with an assessment of impacts on downstream properties.

**5.5.4.1.2.4** Provisions for handling all solid wastes, including hazardous and special wastes, and the location and proposed screening of any on-site collection or storage facilities.

**5.5.4.1.2.5** The location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and walkways and any changes in traffic flow onto or off-site.

**5.5.4.1.2.6** Proposed landscaping and buffering.

**5.5.4.1.2.7** The location, front view, materials, and dimensions of proposed signs if any new or modified signs are proposed.

**5.5.4.1.2.8** The location and type of exterior lighting if any new or modified exterior lighting is proposed.

**5.5.4.1.2.9** The location of all utilities, including fire protection systems.

**5.5.4.1.2.10** An estimate of the peak hour and daily traffic to be generated by the project.

**5.5.4.1.2.11** A stormwater drainage and erosion control plan/program documenting conformance with the stormwater management and erosion control performance standards of Sections **9.3** and **9.4** if the Code Enforcement Officer determines that such information is necessary based upon the scale of the project or the existing conditions in the vicinity of the project or if the project is located within the Watershed Protection Overlay (WPO) District.

## **5.5.5 Approval Standards**

The Code Enforcement Officer shall use the criteria of Section **5.4.6** in reviewing applications. These standards shall serve as minimum requirements for approval of the application. All applications must demonstrate compliance with each of the basic standards unless conformance with a specific standard is waived by the Code Enforcement Officer. The Code Enforcement Officer may waive conformance with an individual standard if s/he finds that the standard is not applicable to the project due to the scale of the project or its location in the Town. In evaluating compliance with these criteria, the Code Enforcement Officer shall consider the applicable performance standards of Sections 8, 9, 10 and 11.

## **5.6 Subdivision Review Procedures and Standards**

### **5.6.1 Review and Approval Authority**

The Planning Board is authorized to review and act on all applications for Subdivision Review. The Planning Board may act to approve, disapprove, or

approve an application with conditions.

### **5.6.2 Classification of a Subdivision**

The Code Enforcement Officer shall be responsible for provisionally classifying a project as a minor subdivision or a major subdivision. This process will occur in conjunction with the preapplication conference. Within ten (10) business days of the preapplication conference and site inspection, the Code Enforcement Officer shall tentatively classify the subdivision as a minor subdivision or a major subdivision. When the Code Enforcement Officer provisionally classifies a project as a minor or major subdivision, s/he shall notify both the applicant and the Chair of the Planning Board in writing of the classification and the basis for determination. At the first meeting of the Planning Board at which the application is discussed, the Planning Board shall review the Code Enforcement Officer's determination as to the classification of the subdivision and may either confirm or revise the classification based upon the information contained in the formal submission and advise the applicant of this determination. If the Planning Board revises the classification of a project, the processing of the application shall proceed under the revised classification at that meeting and any subsequent meetings of the Planning Board. If the Planning Board reclassifies a project as a major subdivision, processing of the application shall be suspended until the applicant has provided all of the information required for a major subdivision.

Projects and activities subject to subdivision review are classified as minor subdivisions or major subdivisions based upon the criteria of this section. Projects that are classified as minor subdivisions are subject to a simplified application and review process, while major projects are required to provide more information about the activity and its impacts and are subject to a more extensive review process.

**5.6.2.1** Any activity that meets the threshold requirements for Subdivision Review that will result in the creation of four (4) or fewer lots or dwelling units shall be classified as a Minor Subdivision and shall be subject to the procedures and standards for minor subdivisions except as provided for in Section **5.6.2.3** below.

**5.6.2.2** Any activity that meets the threshold requirements for Subdivision Review that will result in the creation of five (5) or more lots or dwelling units shall be classified as a Major Subdivision and shall be subject to the procedures and standards for major subdivisions.

**5.6.2.3** If a minor subdivision has been approved in the preceding five (5) years, any amendment to the approved subdivision or any re-subdivision of land that was part of the approved subdivision shall be classified as a major subdivision if the total number of lots created in any five (5) year period will be five (5) or more.

**5.6.2.4** An amendment to a previously approved and recorded subdivision shall be classified as a Minor Subdivision unless the revised subdivision will result in the creation of five (5) or more lots or is classified as a major



subdivision based on Section **5.6.2.3** above.

### **5.6.3 Contour Interval**

Within ten (10) business days of the tentative classification of the project by the Code Enforcement Officer, the Code Enforcement Officer shall inform the applicant in writing of the required contour interval on the preliminary plan, or final plan in the case of a minor subdivision. The applicant may appeal the Code Enforcement Officer's determination to the Planning Board by filing a written request with the Code Enforcement Officer. This request will be considered by the Planning Board at the next meeting at which the application is considered.

### **5.6.4 Review Procedures for Applications for Minor Subdivision Review**

**5.6.4.1 Submission of Minor Subdivision Plan Application to the Code Enforcement Officer.** Upon completion of the Planning Board's review of the Site Inventory and Analysis, the applicant shall prepare and submit a preliminary plan application for a major subdivision to the Code Enforcement Officer. The application must include the subdivision plan and supporting documentation that meets the submission requirements for a preliminary plan for major subdivision as set forth in Section **5.6.5**. The Code Enforcement Officer shall provide the applicant with a dated, written receipt for the application submission.

**5.6.4.2 Provisional Review of Application by the Code Enforcement Officer.** The Code Enforcement Officer shall review the application for completeness within ten (10) business days of receipt. The Code Enforcement Officer shall provisionally determine that the application is complete only if all of the required information for preliminary plans for a major subdivision set forth in Section **5.6.5** has been submitted or the Planning Board has approved waivers for any required information not provided as part of the Site Inventory and Analysis review. Upon the completion of the application review, the Code Enforcement Officer shall notify the applicant in writing as to whether or not the application is deemed to be provisionally complete. If the application is provisionally complete, the Code Enforcement Officer shall forward the application to the Planning Board and shall schedule it for the next available Planning Board meeting in accordance with the established scheduling procedures for consideration by the Planning Board. The Code Enforcement Officer shall notify abutting property owners of the pending application in accordance with Section **5.3.6.5**. The Code Enforcement Officer shall also hand deliver or mail written notice of the pending application to the Town Manager, Fire Chief, Superintendent of the Boothbay Region Water District, Superintendent of the Boothbay Harbor Sewer District, and other interested parties.

If the Code Enforcement Officer finds that the application is not complete, s/he shall notify the applicant in writing of the additional material that needs to be submitted by the applicant for the application to be provisionally complete and to be considered by the Planning Board. Upon the receipt of additional information, the Code Enforcement Officer shall conduct another

completeness review. This process shall be repeated, if necessary, until the Code Enforcement Officer finds that the application is provisionally complete.

**5.6.4.3 Initial Consideration by the Planning Board** At the first meeting at which the application is considered, the Planning Board shall review the application material and formally determine whether or not the submission is complete. The Planning Board shall also consider and act on any requests for waivers of the submission requirements. If the application is determined to be incomplete or requested waivers are not granted, the Planning Board shall notify the applicant and Code Enforcement Officer in writing of this finding, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Planning Board until the additional information is submitted to the Code Enforcement Officer. These steps shall be repeated until the application is found to be complete by the Planning Board. The timeframes for the processing of the application shall begin when the Planning Board finds that the application is complete.

**5.6.4.4 On-Site Inspection** The Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted, and investigate the development proposal. The Planning Board may conduct this visit either before or after the first meeting at which the application is considered. The Planning Board may decide not to hold an on-site inspection when the site is snow covered. If an application is pending during a period when there is snow cover, the processing of the application may be suspended until the Planning Board is able to conduct an on-site inspection. Written notice of the on-site inspection shall be provided to all parties in accordance with the provisions of Section **5.3.6.5**.

**5.6.4.5 Public Hearing** The Planning Board shall hold a public hearing on an application for approval of a minor subdivision. The hearing shall be noticed and advertised in accordance with the provisions of Section **5.3.6.5**.

**5.6.4.6 Planning Board Action.** Within forty-five (45) days of determining that the application is complete, the Planning Board shall hold a public hearing on the application. The Planning Board shall take final action on said application within thirty (30) days of the public hearing. The Planning Board shall act to deny, to approve, or to approve the application with conditions. The Planning Board may impose such conditions as are deemed advisable to assure compliance with the standards of approval. All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.

If any portion of subdivision is within a Special Flood Hazard Area, the Planning Board shall impose a condition of approval that structures on any lot having a portion of its land within a Special Flood Hazard Area must be constructed in accordance with the floodplain management provisions of the Town.

In issuing its decision, the Planning Board shall make written findings of fact

establishing that the activities set forth in the application do or do not meet the standards of approval and other requirements of the Town, including any conditions of approval necessary to comply with the standards. The Planning Board shall notify the applicant of the action of the Planning Board in writing within five (5) business days of the meeting, including the findings of fact, and any conditions of approval.

**5.6.4.7 Final Approval and Filing** Upon completion of the requirements of this section and a vote of approval or approval with one or more conditions by the majority of the Planning Board, the application is approved. Subsequent to the approval by the Planning Board, the applicant shall submit two paper copies of the subdivision plan to the Code Enforcement Officer in a format acceptable to the Lincoln County Registry of Deeds, one to be recorded at the Lincoln County Registry of Deeds, the other to be filed at the municipal office. The plan shall contain any conditions of approval imposed by the Planning Board. The paper copies shall be embossed and printed with the seal of the individual responsible for preparation of the plan. The approved subdivision plan shall be signed by a majority of the members of the Planning Board and filed with the Code Enforcement Officer. In addition, a signed subdivision plan and decisions document setting forth the findings of fact, including any conditions of approval, shall be recorded by the applicant in the Lincoln County Registry of Deeds within sixty (60) days of the vote to approve the plan and evidence of such filing contemporaneously provided to the Code Enforcement Officer. Any subdivision for which a plan and decision document is not filed within sixty (60) days of the date upon which such plan is approved and signed by the Planning Board shall become null and void. Prior to the expiration of the sixty (60) day period, the Planning Board, by vote, may extend the filing period for good cause.

No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Planning Board and endorsed in writing on the plan, unless the revised final plan is first submitted and the Planning Board approves any modifications. The Planning Board shall make findings that the revised plan meets the criteria of 30-A M.R.S. § 4404 and the standards of these regulations. In the event that a plan is recorded without complying with this requirement, it shall be considered null and void and the Planning Board shall institute proceedings to have the plan stricken from the records of the Lincoln County Registry of Deeds.

**5.6.4.8 Initiation of Construction** Failure to initiate construction of the subdivision within five years of the date of approval and signing of the plan shall render the plan null and void unless the applicant has requested in writing and received an extension from the Planning Board and has provided for the continuation of any performance guarantees for the period of the extension prior to the expiration of the five-year period. Upon determining that a subdivision's approval has expired under this subsection, the Planning Board shall have a notice placed in the Lincoln County Registry of Deeds to that effect.

**5.6.4.9 Municipal Acceptance of Land or Facilities** The approval by the Planning Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the Town of any street, easement, stormwater facility or other open space shown on such plan.

**5.6.4.10 Revisions to Approved Plans**

**5.6.4.10.1 Procedure** An application for a revision to a previously approved plan shall be submitted to the Code Enforcement Officer. The Code Enforcement Officer shall review the application and determine the procedure to be used in revising the plan. Minor changes that do not alter lot lines or the essential nature of the proposal or affect the approval criteria may be approved by the Code Enforcement Officer by written endorsement of the changes on the approved plan. If the revision requires the approval of the Planning Board, the Code Enforcement Officer shall place the application on the agenda of the Planning Board in accordance with the procedures for a Minor Subdivision, unless the change qualifies as a major subdivision.

**5.6.4.10.2 Submissions** The applicant shall submit a copy of the approved plan as well as four (4) paper copies of the proposed revisions in a format acceptable to the Lincoln County Registry of Deeds together with ten (10) 11" x 17" reductions of the revised subdivision plan. The application shall also include the appropriate supporting information to allow the Planning Board to make a determination that the proposed revisions meet the standards of these regulations and the criteria of the statute. The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Lincoln County Registry of Deeds.

**5.6.4.10.3 Scope of Review** The Planning Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

**5.6.5 Minor Subdivision Submissions**

The final plan application for approval of a minor subdivision shall consist of the following items:

**5.6.5.1** A fully executed and signed copy of the application for minor subdivision review (provided by the Town).

**5.6.5.2** A location map drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties and to allow the Planning Board to locate the subdivision within the Town. The location map shall show:

**5.6.5.2.1** Existing subdivisions in the proximity of the proposed subdivision.

**5.6.5.2.2** Locations and names of existing and proposed streets.

**5.6.5.2.3** Boundaries and designations of zoning districts.

**5.6.5.2.4** An outline of the proposed subdivision and any remaining portion of the owner's property if the final plan submitted covers only a portion of the owner's entire contiguous holding.

**5.6.5.3** The required application and development review fees.

**5.6.5.4** A list of abutters and the owners of any other parcel entitled to receive public notice together with their mailing addresses.

**5.6.5.5** The subdivision plan and supporting documentation consisting of four (4) paper copies in a format acceptable to the Lincoln County Registry of Deeds of one or more maps or drawings drawn to a scale of not more than one hundred (100) feet to the inch and ten (10) copies of supporting documentation bound in a single report. Plans shall be no larger than twenty-four (24) by thirty-six (36) inches in size and shall have a margin of two inches outside of the border lines on the left side for binding and a one-inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Planning Board. In addition, ten (10) copies of the plan(s) reduced to a size of eleven (11) by seventeen (17) inches shall be included in the bound report.

**5.6.5.6** The subdivision plan and supporting documentation shall include at least the following information:

**5.6.5.6.1** Proposed name of the subdivision or identifying title, the name of the Town, and the Assessor's map and lot numbers.

**5.6.5.6.2** The names and addresses of the record owner, applicant, and individual or company who or which prepared the plan and adjoining property owners.

**5.6.5.6.3** The date the plan was prepared, north point, and graphic map scale.

**5.6.5.6.4** The zoning district, including overlay districts, in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision.

**5.6.5.6.5** Evidence of right, title, or interest in the property.

**5.6.5.6.6** A copy of the most recently recorded deed for the parcel and a copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.

**5.6.5.6.7** A copy of any deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.

**5.6.5.6.8** A standard boundary survey of the parcel meeting the standards of Chapter 90 Standards of Practice of the rules of the Maine Board of Licensure for Professional Land Surveyors, giving complete descriptive data by bearings and distances, made and certified by a registered land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The plan shall indicate the type of monument found or to be set at each lot corner.

- 5.6.5.6.9** The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, and other essential existing physical features.
- 5.6.5.6.10** The location of all rivers, streams and brooks, coastal and freshwater wetlands, vernal pools, and farmland within or adjacent to the proposed subdivision.
- 5.6.5.6.11** If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the one-hundred-year flood elevation, as depicted on the Town's Flood Insurance Rate Map, shall be delineated on the plan.
- 5.6.5.6.12** Areas within or adjacent to the proposed subdivision which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife. If any portion of the subdivision is located within an area designated as a critical natural area by the Maine Natural Areas Program, the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
- 5.6.5.6.13** Contour lines at the interval specified by the Code Enforcement Officer showing elevations in relation to mean sea level.
- 5.6.5.6.14** The location and size of existing and proposed sewers, water mains, culverts, and drainageways on or adjacent to the property to be subdivided.
- 5.6.5.6.15** The location, names, and present widths of existing roads and highways and existing and proposed easements, building lines, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established. In order to facilitate the addition of the subdivision into the municipal property records, this information shall also be submitted electronically in a format compatible with the Assessor's records.
- 5.6.5.6.16** An indication of the type of sewage disposal to be used in the subdivision:
- 5.6.5.6.16.1** When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Boothbay Harbor Sewer District, stating that the District has the capacity to collect and treat the wastewater, shall be provided.
- 5.6.5.6.16.2** When sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses, prepared by a licensed site evaluator, shall be provided. Test pit logs for all test pits shall be provided. The location of all test pits dug on the site shall be shown on

the subdivision plan or on a map at the same scale as the subdivision plan.

**5.6.5.6.17** An indication of the type of water supply system(s) to be used in the subdivision.

**5.6.5.6.17.1** When water is to be supplied by public water supply, a written statement from the Boothbay Region Water District shall be submitted indicating that there is sufficient supply and pressure for the subdivision and that the District approves the plans for extensions where necessary. Where the District's supply line is to be extended, a written statement from the District approving the design of the extension shall be submitted.

**5.6.5.6.17.2** When water is to be supplied by private wells, evidence of adequate groundwater supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.

**5.6.5.6.18** The width and location of any roads, public improvements or open space shown in the Comprehensive Plan, if any, within the subdivision.

**5.6.5.6.19** The location of any open space to be preserved and a description of proposed improvements and its management.

**5.6.5.6.20** All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers to convey title to the Town of all public open spaces shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the applicant or lot owners are to be maintained, shall be submitted. If open space or other land is to be offered to the Town, written evidence that the Board of Selectmen is satisfied with the legal sufficiency of the written offer to convey title shall be included.

**5.6.5.6.21** The location and method of disposal for land clearing and construction debris.

**5.6.5.7** The Planning Board may require additional information, including, but not limited to, the following, to be submitted where it finds it necessary in order to determine whether the criteria of 30-A M.R.S. § 4404 are met:

**5.6.5.7.1** A hydrogeologic assessment prepared by a certified geologist or registered professional engineer experienced in hydrogeology. The Planning Board may require a hydrogeologic assessment when the subdivision is not served by public sewer and:

**5.6.5.7.1.1** Any part of the subdivision is located over a mapped sand and gravel aquifer;

**5.6.5.7.1.2** The subdivision has an average density of more than one dwelling unit per one hundred thousand (100,000) square feet; or

**5.6.5.7.1.3** In other cases where site considerations or development design

indicates greater potential of adverse impacts on groundwater quality, such as extensive areas of shallow to bedrock soils, open space developments in which the average density is less than one dwelling unit per one hundred thousand (100,000) square feet but the density of the developed portion is in excess of one dwelling unit per eighty thousand (80,000) square feet, or the use of shared or common subsurface wastewater disposal systems.

**5.6.5.7.2** An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.

**5.6.5.7.3** A stormwater management plan prepared by a registered professional engineer in accordance with “Maine Stormwater Best Management Practices Manual” published by the Maine Department of Environmental Protection, March 2016 (or later edition), and the stormwater performance standards of Section **9.3**.

**5.6.5.7.4** An erosion and sedimentation control plan prepared in accordance with “Maine Erosion and Sedimentation Control Best Management Practices” published the Maine Department of Environmental Protection, October 2016 (or later edition), and the erosion and sedimentation control performance standards of Section **9.4**.

**5.6.5.7.5** Street plans meeting the requirements of the Town if the subdivision will involve the construction or extension of a road. The Planning Board may determine the extent of the plans needed based on the scale and type of improvement.

**5.6.5.8** The Planning Board may waive any of the submission requirements, including the additional submission requirements based upon a written request of the applicant. Such request must be made at the time of the initial review of the application for minor developments. A waiver of any submission requirement may be granted only if the Planning Board finds that the information is not required to determine compliance with the approval standards and criteria.

## **5.6.6 Review Procedures for Applications for Major Subdivision Review**

**5.6.6.1 Three Step Review Process.** The review process for a major subdivision is a three step process. Step One is the submission and review of a Site Inventory and Analysis. Upon the completion of the review of the Site Inventory and Analysis, the Planning Board will authorize the applicant to proceed to Step Two, the submission of a formal preliminary application and supporting documentation. The Town will not accept or process an application for preliminary plan review of a major subdivision until a review of the Site Inventory and Analysis has been completed. Following the approval of the



preliminary plan, the Planning Board will authorize the applicant to submit the final plan, Step Three in the process.

#### **5.6.6.2 Step One – Site Inventory and Analysis.**

**5.6.6.2.1 Submission of the Site Inventory and Analysis to the Code Enforcement Officer.** The applicant shall prepare and submit a Site Inventory and Analysis and supporting documentation to the Code Enforcement Officer. The materials must meet the submission requirements set forth in Section **5.6.6**. The Code Enforcement Officer shall provide the applicant with a dated, written receipt for the submission.

**5.6.6.2.2 Provisional Review of the Site Inventory and Analysis by the Code Enforcement Officer.** The Code Enforcement Officer shall review the submission for completeness within ten (10) business days of receipt. The Code Enforcement Officer shall provisionally determine that the submission is complete only if all of the required information set forth in Section **5.6.6** has been submitted or the applicant has requested waivers for any required information not provided and provided information documenting the basis for the waiver request(s). Upon the completion of the review, the Code Enforcement Officer shall notify the applicant in writing as to whether or not the submission is deemed to be provisionally complete. If the submission is provisionally complete, the Code Enforcement Officer shall forward the Site Inventory and Analysis to the Planning Board and shall schedule it for the next available Planning Board meeting in accordance with the established scheduling procedures for consideration by the Planning Board. The Code Enforcement Officer shall provide notice of the pending project in accordance with the provisions of Section **5.3.6.5** of this Ordinance. The Code Enforcement Officer shall also hand deliver or mail written notice of the site inventory and analysis submission to the Town Manager, Fire Chief, Superintendent of the Boothbay Region Water District, Superintendent of the Boothbay Harbor Sewer District, and other interested parties.

If the Code Enforcement Officer finds that the submission is not complete, s/he shall notify the applicant in writing of the additional material that needs to be submitted by the applicant for the Site Inventory and Analysis to be provisionally complete and to be considered by the Planning Board. Upon the receipt of additional information, the Code Enforcement Officer shall conduct another completeness review. This process shall be repeated, if necessary, until the Code Enforcement Officer finds that the submission is provisionally complete.

**5.6.6.2.3 Consideration of the Site Inventory and Analysis by the Planning Board.** At the first meeting at which the site inventory and analysis is considered, the Planning Board shall review the material and formally determine whether or not the submission is complete. The Planning Board shall also consider and act on any requests for waivers of the submission requirements. If the submission is determined to be

incomplete or requested waivers are not granted, the Planning Board shall notify the applicant and Code Enforcement Officer in writing of this finding within five (5) business days of the meeting, shall specify the additional materials required to make the Site Inventory and Analysis submission complete and shall advise the applicant that the project will not be considered by the Planning Board until the additional information is submitted to the Code Enforcement Officer. These steps shall be repeated until the submission is found to be complete by the Planning Board. The timeframes for the processing of the site inventory and analysis shall begin when the Planning Board finds that the submission is complete.

**5.6.6.2.4 Review of the Site Inventory and Analysis.** The Planning Board review of the Site Inventory and Analysis shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board. The Planning Board shall review the submission to determine if the information provides a clear understanding of the lot's characteristics and its potential for subdivision and development. The outcome of the review process shall be a determination by the Planning Board of the issues and constraints that must be addressed in the formal subdivision application. The Planning Board shall also act on any requests for waivers from the application submission requirements.

As part of the review of the Site Inventory and Analysis, the Planning Board may hold an on-site inspection of the site to review the existing conditions, field-verify the information submitted and investigate the development proposal. The Planning Board may conduct this visit either before or after the first meeting at which the application is considered. The Planning Board may postpone the on-site inspection when the site is snow covered and the Planning Board determines that snow cover makes a reasonable assessment of site conditions impossible. If an application is pending during a period when a site walk is delayed due to snow cover, the processing of the application may be suspended until the Planning Board is able to conduct an on-site inspection. Written notice of the on-site inspection shall be provided.

Within sixty (60) days of the finding that the site inventory and analysis submission is complete, the Planning Board shall complete its review of the submission, notify the applicant in writing of the outcome of its review, and, if appropriate, authorize the submission of the formal application. All time limits provided for in this section may be extended by mutual agreement of the applicant and the Planning Board.

### **5.6.6.3 Step Two – Submission of the Preliminary Plan**

**5.6.6.3.1 Submission of Preliminary Plan Application to the Code Enforcement Officer.** Upon completion of the Planning Board's review of the Site Inventory and Analysis, the applicant shall prepare and submit a preliminary plan application for a major subdivision to the Code Enforcement Officer. The application must include the subdivision plan

and supporting documentation that meets the submission requirements for a preliminary plan for major subdivision as set forth in Section **5.6.7**. The Code Enforcement Officer shall provide the applicant with a dated, written receipt for the application submission.

**5.6.6.3.2 Provisional Review of Application by the Code Enforcement**

**Officer.** The Code Enforcement Officer shall review the application for completeness within ten (10) business days of receipt. The Code Enforcement Officer shall provisionally determine that the application is complete only if all of the required information for preliminary plans for a major subdivision set forth in Section **5.6.7** has been submitted or the Planning Board has approved waivers for any required information not provided as part of the Site Inventory and Analysis review. Upon the completion of the application review, the Code Enforcement Officer shall notify the applicant in writing as to whether or not the application is deemed to be provisionally complete. If the application is provisionally complete, the Code Enforcement Officer shall forward the application to the Planning Board and shall schedule it for the next available Planning Board meeting in accordance with the established scheduling procedures for consideration by the Planning Board. The Code Enforcement Officer shall notify abutting property owners of the pending application in accordance with Section **5.3.6.5**. The Code Enforcement Officer shall also hand deliver or mail written notice of the pending application to the Town Manager, Fire Chief, Superintendent of the Boothbay Region Water District, Superintendent of the Boothbay Harbor Sewer District, and other interested parties.

If the Code Enforcement Officer finds that the application is not complete, s/he shall notify the applicant in writing of the additional material that needs to be submitted by the applicant for the application to be provisionally complete and to be considered by the Planning Board. Upon the receipt of additional information, the Code Enforcement Officer shall conduct another completeness review. This process shall be repeated, if necessary, until the Code Enforcement Officer finds that the application is provisionally complete.

**5.6.6.3.3 Initial Consideration of the Application by the Planning Board.**

At the first meeting at which the preliminary plan application is considered, the Planning Board shall review the application material and formally determine whether or not the submission is complete. If the application is determined to be incomplete, the Planning Board shall notify the applicant and Code Enforcement Officer in writing of this finding within five (5) business days of the meeting, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Planning Board until the additional information is submitted to the Code Enforcement Officer. These steps shall be repeated until the application is found to be complete by the Planning Board.

**5.6.6.3.4 On-Site Inspection.** The Planning Board may hold an on-site inspection of the site to review the existing conditions, field-verify the information submitted, and investigate the development proposal. The Planning Board may conduct this visit either before or after the first meeting at which the application is considered. The Planning Board may postpone the on-site inspection when the site is snow covered and the Planning Board determines that snow cover makes a reasonable assessment of site conditions impossible. If an application is pending during a period when a site walk is delayed due to snow cover, the processing of the application may be suspended until the Planning Board is able to conduct an on-site inspection. Written notice of the on-site inspection shall be provided in accordance with the provisions of Section 5.3.6.5.

**5.6.6.3.5 Public Hearing.** The Planning Board shall hold a public hearing on an application for a major subdivision within forty-five (45) days of determining that the application is complete. The public hearing shall be noticed and advertised in accordance with the provisions of Section 5.3.6.5.

**5.6.6.3.6 Planning Board Action.** The Planning Board shall take action on the preliminary plan application within thirty (30) days of the conclusion of the public hearing at which all requested information has been provided, and during which all verbal and written submissions for and against the application have been heard. The Planning Board shall indicate any changes to the preliminary plan that will need to be incorporated into the final plan to meet the approval criteria or questions that will need to be addressed in the final plan submission. All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.

The Planning Board shall notify the applicant and all parties who requested to be notified of the action of the Planning Board with respect to the preliminary plan in writing within five (5) business days of the meeting.

#### **5.6.6.4 Step Three – Submission of the Final Plan**

**5.6.6.4.1 Submission of Final Plan Application to the Code Enforcement Officer.** Upon completion of the review of the preliminary plan, the applicant shall prepare and submit a final plan application for a major subdivision to the Code Enforcement Officer. The application must include the subdivision plan and supporting documentation that meets the submission requirements for a final plan for major subdivision as set forth in Section 5.6.8. The Code Enforcement Officer shall provide the applicant with a dated, written receipt for the application submission.

**5.6.6.4.2 Provisional Review of Application by the Code Enforcement Officer.** The Code Enforcement Officer shall review the application for completeness within ten (10) business days of receipt. The Code

Enforcement Officer shall provisionally determine that the application is complete only if all of the required information for final plans for a major subdivision set forth in Section **5.6.8** has been submitted or the Planning Board has approved waivers for any required information not provided. Upon the completion of the application review, the Code Enforcement Officer shall notify the applicant in writing as to whether or not the application is deemed to be provisionally complete. If the application is provisionally complete, the Code Enforcement Officer shall forward the application to the Planning Board and shall schedule it for the next available Planning Board meeting in accordance with the established scheduling procedures for consideration by the Planning Board. The Code Enforcement Officer shall notify abutting property owners of the pending application in accordance with Section **5.3.6.5**. The Code Enforcement Officer shall also hand deliver or mail written notice of the pending application to the Town Manager, Fire Chief, Superintendent of the Boothbay Region Water District, Superintendent of the Boothbay Harbor Sewer District, and other interested parties.

If the Code Enforcement Officer finds that the application is not complete, s/he shall notify the applicant in writing of the additional material that needs to be submitted by the applicant for the application to be provisionally complete and to be considered by the Planning Board. Upon the receipt of additional information, the Code Enforcement Officer shall conduct another completeness review. This process shall be repeated, if necessary, until the Code Enforcement Officer finds that the application is provisionally complete.

**5.6.6.4.3 Initial Consideration of the Application by the Planning Board.**

At the first meeting at which the final plan application is considered, the Planning Board shall review the application material and formally determine whether or not the submission is complete. If the application is determined to be incomplete, the Planning Board shall notify the applicant and Code Enforcement Officer in writing of this finding within five (5) business days of the meeting, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Planning Board until the additional information is submitted to the Code Enforcement Officer. These steps shall be repeated until the application is found to be complete by the Planning Board.

**5.6.6.4.4 Planning Board Action.** The Planning Board shall take action on the final plan application within sixty (60) days of determining that the application is complete. All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board. In issuing its decision, the Planning Board shall make written findings of fact establishing that the activities set forth in the application do or do not meet the standards of approval and other requirements of the Town, including any conditions of approval necessary to comply with the

standards. The Planning Board shall notify the applicant and all parties who requested to be notified of the action of the Planning Board in writing within five (5) business days of the meeting, including the findings of fact, and any conditions of approval.

If any portion of subdivision is within a Special Flood Hazard Area, the Planning Board shall impose a condition of approval that structures on any lot having a portion of its land within a Special Flood Hazard Area must be constructed in accordance with the floodplain management provisions of the Town's Floodplain Management Ordinance.

**5.6.6.4.5 Final Approval and Filing.** Upon completion of the requirements of this section and a vote of approval or approval with one or more conditions by the majority of the Planning Board, the application is approved. Subsequent to the approval by the Planning Board, the applicant shall submit two paper copies of the subdivision plan in a format acceptable to the Lincoln County Registry of Deeds to the Code Enforcement Officer, one to be recorded at the Lincoln County Registry of Deeds, the other to be filed at the municipal office. The plan shall contain any conditions of approval imposed by the Planning Board. The paper copies shall be embossed and printed with the seal of the individual responsible for preparation of the plan. The approved subdivision plan shall be signed by a majority of the members of the Planning Board and filed with the Code Enforcement Officer. In addition, a signed subdivision plan and decisions document setting forth the findings of fact, including any conditions of approval shall be recorded by the applicant in the Lincoln County Registry of Deeds within sixty (60) days of the vote to approve the plan and evidence of such filing contemporaneously provided to the Code Enforcement Officer. Any plan for which a plan and decision document is not filed within sixty (60) days of the date upon which such plan is approved and signed by the Planning Board shall become null and void. Prior to the expiration of the sixty (60) day period, the Planning Board, by vote, may extend the filing period for good cause.

No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Planning Board and endorsed in writing on the plan, unless the revised final plan is first submitted and the Planning Board approves any modifications. The Planning Board shall make findings that the revised plan meets the criteria of 30-A M.R.S. § 4404. In the event that a plan is recorded without complying with this requirement, it shall be considered null and void and the Planning Board shall institute proceedings to have the plan stricken from the records of the Lincoln County Registry of Deeds.

**5.6.6.4.6 Initiation of Construction.** Failure to initiate significant construction of the subdivision, such as the construction of roads or the installation of utilities, within five years of the date of approval and

signing of the plan shall render the plan null and void unless the applicant has requested in writing and received an extension from the Planning Board and has provided for the continuation of any performance guarantees for the period of the extension prior to the expiration of the five-year period. Upon determining that a subdivision's approval has expired under this subsection, the Planning Board shall have a notice placed in the Lincoln County Registry of Deeds to that effect.

**5.6.6.4.7 Municipal Acceptance of Land or Facilities.** The approval by the Planning Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the Town of any street, easement, or other open space shown on such plan.

#### **5.6.6.4.8 Revisions to Approved Plans**

**5.6.6.4.8.1 Procedure** An application for a revision to a previously approved subdivision plan shall be submitted to the Code Enforcement Officer. The Code Enforcement Officer shall review the application and determine the procedure to be used in revising the plan. Minor changes that do not alter lot lines or the essential nature of the proposal or affect the approval criteria may be approved by the Code Enforcement Officer by written endorsement of the changes on the approved plan. If the revision requires the approval of the Planning Board, the Code Enforcement Officer shall place the application on the agenda of the Planning Board in accordance with the procedures for a Minor Subdivision unless the change qualifies as a major subdivision.

**5.6.6.4.8.2 Submissions** The applicant shall submit a copy of the approved plan as well as four (4) paper copies meeting the requirements of the Lincoln County Registry of Deeds together with ten (10) 11" x 17" reductions of the revised subdivision plan. The application shall also include the appropriate supporting information to allow the Planning Board to make a determination that the proposed revisions meet the standards of these regulations and the criteria of the statute. The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Lincoln County Registry of Deeds.

**5.6.6.4.8.3 Scope of Review** The scope of the Planning Board's review shall be limited to those portions of the plan which are proposed to be changed.

#### **5.6.7 Site Inventory and Analysis Submission Requirements**

**5.6.7.1 Purpose of the Site Inventory and Analysis.** The site inventory and analysis is intended to provide both the applicant and the Planning Board and staff with a better understanding of the site and the opportunities and constraints imposed on its use by both the natural and built environment. It is

anticipated that this analysis will result in a development plan that reflects the conditions of the lot and that the areas most suitable for the proposed use will be utilized while those that are not suitable or present significant constraints will be avoided to the maximum extent possible. Therefore, the submission requirements provide that the applicant submit basic information about the lot and an analysis of that information.

**5.6.7.2 Contents of the Site Inventory and Analysis Submission.** The site inventory and analysis submission must contain, at a minimum, the following information:

**5.6.7.2.1** The names, addresses, and phone numbers of the record owner and the applicant.

**5.6.7.2.2** The names and addresses of all consultants working on the project.

**5.6.7.2.3** Evidence of right, title, or interest in the property.

**5.6.7.2.4** Evidence of payment of the site inventory and analysis fee.

**5.6.7.2.5** Four (4) copies of an accurate scale inventory plan of the lot or the portion of the lot proposed for subdivision at a scale of not more than one hundred (100) feet to the inch showing as a minimum:

**5.6.7.2.5.1** The name of the development, north arrow, date and scale.

**5.6.7.2.5.2** The boundaries of the lot.

**5.6.7.2.5.3** The relationship of the lot to the surrounding area.

**5.6.7.2.5.4** The topography of the lot at an appropriate contour interval depending on the nature of the use and character of the lot (in many instances, submittal of the U.S.G.S. 10' contours will be adequate);

**5.6.7.2.5.5** The major natural features of the lot and within five hundred (500) feet of the lot, including coastal and freshwater wetlands, vernal pools, streams, ponds, floodplains, groundwater aquifers, farmland, significant wildlife habitats and fisheries or other important natural features (if none, so state). This information may be based on available, published sources unless the Planning Board determines that field determination is needed to allow review of the opportunities and constraints of the lot.

**5.6.7.2.5.6** Existing buildings, structures, or other improvements on the lot (if none, so state).

**5.6.7.2.5.7** Existing restrictions or easements on the lot (if none, so state).

**5.6.7.2.5.8** The location and size of existing utilities or improvements servicing the lot (if none, so state).

**5.6.7.2.5.9** A Class D medium intensity soil survey.

**5.6.7.2.6** Four (4) copies of a site analysis plan at the same scale as the inventory plan (see Section **5.6.7.2.5** above) highlighting the opportunities



and constraints of the site. This plan should enable the Planning Board to determine: which portions of the lot are unsuitable for development or use; which portions of the lot are unsuitable for on-site sewage disposal if public sewerage is not available; which areas of the lot have development limitations (steep slopes, flat, soil constraints, wetlands, aquifers, wildlife habitat, farmland, fisheries, scenic vistas, floodplains, drainage, etc.) which must be addressed in the development plan; which areas may be subject to off-site conflicts or concerns (i.e., noise, lighting, traffic, etc.); and which areas are well suited to the proposed use.

**5.6.7.2.7** Ten (10) copies of 11" x 17" reductions of the site inventory plan required by Section **5.6.7.2.5** and the site analysis plan required by Section 5.6.7.2.6 and a narrative describing the existing conditions of the lot, the proposed use and the constraints or opportunities created by the site. This submission should include any traffic studies, utility studies, market studies or other preliminary work that will assist the Planning Board in understanding the site and the proposed use.

**5.6.7.2.8** Any requests for waivers from the submission requirements for the preliminary plan review application.

#### **5.6.8 Preliminary Plan Submission Requirements for a Major Subdivision**

The preliminary plan application for a major subdivision shall consist of the following items:

**5.6.8.1** A fully executed and signed copy of the application for preliminary major subdivision review (provided by the Town).

**5.6.8.2** A location map drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties and to allow the Planning Board to locate the subdivision within the Town. The location map shall show:

**5.6.8.2.1** Existing subdivisions in the proximity of the proposed subdivision.

**5.6.8.2.2** Locations and names of existing and proposed streets.

**5.6.8.2.3** Boundaries and designations of zoning districts.

**5.6.8.2.4** An outline of the proposed subdivision and any remaining portion of the owner's property if the preliminary plan submitted covers only a portion of the owner's entire contiguous holding.

**5.6.8.3** The required application and development review fees.

**5.6.8.4** A list of abutters and the owners of any other parcel entitled to receive public notice together with their mailing addresses.

**5.6.8.5** The preliminary subdivision plan and supporting documentation consisting of four (4) paper copies of one or more maps or drawings drawn to a scale of not more than one hundred (100) feet to the inch and ten (10) copies of supporting documentation bound in a single report. Plans shall be no larger than 24" by 36" in size and shall have a margin of two inches outside of the

border lines on the left side for binding and a one-inch margin outside the border along the remaining sides. In addition, ten (10) copies of the plan(s) reduced to a size of 11" by 17" shall be provided.

**5.6.8.6** The preliminary plan and supporting documentation shall include at least the following information. The Planning Board may require additional information to be submitted where it finds necessary in order to determine whether the criteria of 30-A M.R.S. § 4404 are met.

**5.6.8.6.1** Proposed name of the subdivision and the name of the Town in which it is located, plus the Assessor's map and lot numbers.

**5.6.8.6.2** The names and addresses of the record owner, applicant, and individual or company who or which prepared the plan and adjoining property owners.

**5.6.8.6.3** The date the plan was prepared, north point, and graphic map scale.

**5.6.8.6.4** The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision.

**5.6.8.6.5** Evidence of right, title or interest in the property.

**5.6.8.6.6** A copy of the most recently recorded deed for the parcel and a copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.

**5.6.8.6.7** A copy of any deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.

**5.6.8.6.8** A standard boundary survey of the parcel meeting the standards of Chapter 90 Standards of Practice of the rules of the Maine Board of Licensure for Professional Land Surveyors, giving complete descriptive data by bearings and distances, made and certified by a registered land surveyor. The corners of the parcel shall be located on the ground and marked by monuments.

**5.6.8.6.9** The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, and other essential existing physical features.

**5.6.8.6.10** A Class D medium-intensity soil survey unless the Planning Board determines that a Class B high-intensity survey is needed as a result of the Site Inventory and Analysis.

**5.6.8.6.11** The location of all rivers, streams and brooks, coastal and freshwater wetlands, vernal pools and farmland within or adjacent to the proposed subdivision.

**5.6.8.6.12** If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the one-hundred-year flood elevation, as depicted on the Town's Flood Insurance Rate Map, shall be delineated on the plan.

- 5.6.8.6.13** Areas within or adjacent to the proposed subdivision which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife. If any portion of the subdivision is located within an area designated as a unique natural area by the Maine Natural Areas Program, the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
- 5.6.8.6.14** Contour lines at the interval specified by the Code Enforcement Officer, showing elevations in relation to mean sea level.
- 5.6.8.6.15** The location and size of existing and proposed sewers, water mains, culverts, and drainageways on or adjacent to the property to be subdivided.
- 5.6.8.6.16** The location, names, and present widths of existing roads, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
- 5.6.8.6.17** The location and width of all proposed streets, including a typical cross section of the streets and sidewalks and a preliminary center-line profile.
- 5.6.8.6.18** The proposed lot lines with approximate dimensions and lot areas.
- 5.6.8.6.19** An indication of the type of sewage disposal to be used in the subdivision.
- 5.6.8.6.19.1** When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Boothbay Harbor Sewer District stating that the District has the capacity to collect and treat the wastewater shall be provided.
- 5.6.8.6.19.2** When sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses, prepared by a licensed site evaluator or certified soil scientist, shall be provided. Test pit logs for all test pits shall be provided. The location of all test pits dug on the site shall be shown on the subdivision plan or on a map at the same scale as the subdivision plan.
- 5.6.8.6.20** An indication of the type of water supply system(s) to be used in the subdivision.
- 5.6.8.6.20.1** When water is to be supplied by public water supply, a written statement from the Boothbay Region Water District shall be submitted indicating that there is sufficient capacity for the subdivision and that the District approves the plans for extensions where necessary. Where the District's supply line is to be extended, a written statement from the Fire Chief stating approval of the location of fire hydrants, if any, and a written statement from the District approving the design of the extension shall be submitted.

**5.6.8.6.20.2** When water is to be supplied by private wells, evidence of adequate groundwater supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.

**5.6.8.6.21** Provisions for the collection and management of stormwater in the form of a preliminary drainage plan.

**5.6.8.6.22** The width and location of any streets, public improvements or open space shown upon the Official Map and the Comprehensive Plan, if any, within the subdivision.

**5.6.8.6.23** The location of any open space to be preserved and a description of proposed ownership, improvement and management.

**5.6.8.6.24** All parcels of land proposed to be dedicated to public use and the conditions of such dedication.

**5.6.8.7** The Planning Board may require additional information, including, but not limited to the following, to be submitted where it finds it necessary in order to determine whether the preliminary plan is likely to result in a final plan that meets the criteria of 30-A M.R.S. § 4404:

**5.6.8.7.1** A Class B high-intensity soil survey prepared by a certified soil scientist if the Site Inventory and Analysis identified the need for more detailed soils information. This soils survey may be for only a portion of the site.

**5.6.8.7.2** A hydrogeologic assessment prepared by a certified geologist or registered professional engineer experienced in hydrogeology.

The Planning Board may require a hydrogeologic assessment when the subdivision is not served by public sewer and:

**5.6.8.7.2.1** Any part of the subdivision is located over a mapped sand and gravel aquifer;

**5.6.8.7.2.2** The subdivision has an average density of more than one dwelling unit per one hundred thousand (100,000) square feet; or

**5.6.8.7.2.3** In other cases where site considerations or development design indicates greater potential of adverse impacts on groundwater quality, such as extensive areas of shallow to bedrock soils, open space developments in which the average density is less than one dwelling unit per one hundred thousand (100,000) square feet but the density of the developed portion is in excess of one dwelling unit per eighty thousand (80,000) square feet, or the use of shared or common subsurface wastewater disposal systems.

**5.6.8.7.3** An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that

these sources better reflect local conditions.

**5.6.8.7.4** A traffic impact analysis. The Planning Board may require an analysis for projects involving forty (40) or more parking spaces or projected to generate more than four hundred (400) vehicle trips per day based upon the ITE Trip Generation Manual. The traffic impact analysis shall be prepared by a registered professional engineer with experience in traffic engineering. The analysis shall indicate the expected average daily vehicular trips, peak hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets.

## **5.6.9 Final Plan Submission Requirements for a Major Subdivision**

**5.6.9.1** Within twelve (12) months after the approval of the preliminary plan, the applicant shall submit an application for approval of the final plan. If the application for the final plan is not submitted within twelve (12) months after preliminary plan approval, the Planning Board shall require resubmission of the preliminary plan, except as stipulated below. The final plan shall approximate the layout shown on the preliminary plan, plus any changes required by the Planning Board. If an applicant cannot submit the final plan within twelve (12) months, the applicant may request an extension. Such a request for an extension to the filing deadline shall be submitted, in writing, to the Code Enforcement Officer prior to the expiration of the filing period. In considering the request for an extension, the Planning Board shall make findings that the applicant has made due progress in preparation of the final plan and in pursuing approval of the plans before other agencies and that municipal ordinances or regulations which may impact on the proposed development have not been amended.

**5.6.9.2** Prior to submittal of the final plan application, the following approvals shall be obtained in writing, where applicable, and submitted with the application:

**5.6.9.2.1** Maine Department of Environmental Protection, under the Site Location of Development Act.

**5.6.9.2.2** Maine Department of Environmental Protection, under the Natural Resources Protection Act or if a stormwater management permit or a wastewater discharge license is needed.

**5.6.9.2.3** Maine Department of Human Services, if the applicant proposes to provide a public or community water system.

**5.6.9.2.4** Maine Department of Human Services, if an engineered subsurface wastewater disposal system(s) is to be utilized.

**5.6.9.2.5** United States Army Corps of Engineers, if a permit under § 404 of the Clean Water Act is required.

**5.6.9.3** The final plan application shall consist of the following items:

**5.6.9.3.1** A fully executed and signed copy of the application for final major subdivision review (form provided by the Town).

**5.6.9.3.2** The required application and development review fees.

**5.6.9.3.3** A performance guarantee in accordance assuring the construction of all street, utilities, and other improvements proposed as part of the final subdivision plan.

**5.6.9.3.4** The final subdivision plan and supporting documentation consisting of four (4) paper copies of one or more maps or drawings drawn to a scale of not more than one hundred (100) feet to the inch and ten (10) copies of supporting documentation bound in a single report. Plans shall be no larger than 24" by 36" in size and shall have a margin of two inches outside of the border lines on the left side for binding and a one-inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Planning Board. In addition, ten (10) copies of the plan(s) reduced to a size of 11" by 17" shall be provided.

**5.6.9.4** The final subdivision plan and supporting documentation shall include at least the following information:

**5.6.9.4.1** Proposed name of the subdivision and the name of the Town in which it is located, plus the Assessor's map and lot numbers.

**5.6.9.4.2** The names and addresses of the record owner, applicant, and individual or company who or which prepared the plan.

**5.6.9.4.3** The date the plan was prepared, North point, and graphic map scale.

**5.6.9.4.4** The location of any zoning boundaries affecting the subdivision.

**5.6.9.4.5** If different than those submitted with the preliminary plan, a copy of any proposed deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.

**5.6.9.4.6** The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, and other essential existing physical features.

**5.6.9.4.7** The boundaries of any flood hazard areas and the one-hundred-year flood elevation as depicted on the Town's Flood Insurance Rate Map shall be delineated on the plan.

**5.6.9.4.8** An indication of the type of sewage disposal to be used in the subdivision. When sewage disposal is to be accomplished by connection to the public sewerage system, a written statement from the Boothbay Harbor Sewer District shall be submitted indicating that the District has reviewed and approved the sewerage design.

**5.6.9.4.9** An indication of the type of water supply system(s) to be used in the subdivision. When water is to be supplied by the Boothbay Region Water

District, a written statement from the District shall be submitted indicating that the District has reviewed and approved the water system design together with a written statement from the Fire Chief approving all hydrant locations or other fire protection measures deemed necessary.

**5.6.9.4.10** The location and size of existing and proposed sewers, water mains, culverts, and drainageways on or adjacent to the property to be subdivided.

**5.6.9.4.11** The location, names, and present widths of existing and proposed streets, highways, easements, buildings, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established. The location, bearing and length of street lines, lot lines and parcel boundary lines shall be certified by a registered land surveyor. The original reproducible plan shall be embossed and printed with the seal of the registered land surveyor and be signed by that individual.

**5.6.9.4.12** All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers to convey title to the Town of all public ways and open spaces shown on the plan and copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be maintained shall be submitted. If proposed streets and/or open spaces or other land is to be offered to the Town, written evidence that the Board of Selectmen is satisfied with the legal sufficiency of the written offer to convey title shall be included.

**5.6.9.4.13** Road plans meeting the requirements of the Town.

**5.6.9.4.14** A stormwater management plan prepared by a registered professional engineer in accordance with “Maine Stormwater Best Management Practices Manual” published by the Maine Department of Environmental Protection, March 2016 (or later edition) and the stormwater management performance standards of Section 9.3. The Planning Board may not waive submission of the stormwater management plan unless the proposed subdivision will not involve grading which changes drainage patterns, and the addition of impervious surfaces, such as roofs and driveways, is less than 5% of the area of the subdivision.

**5.6.9.4.15** An erosion and sedimentation control plan prepared in accordance with “Maine Erosion and Sedimentation Control Best Management Practices” published the Maine Department of Environmental Protection, October 2016 (or later edition), and the erosion and sedimentation control performance standards of Section 9.4. The Planning Board may not waive submission of the erosion and sedimentation control plan unless the proposed subdivision will not involve grading which changes drainage patterns, and the addition of impervious surfaces such as roofs and

driveways is less than 5% of the area of the subdivision.

**5.6.9.4.16** If the subdivision requires a stormwater permit from the Maine Department of Environmental Protection, a copy of the DEP application with all supporting materials and the permit shall be provided.

**5.6.9.4.17** The width and location of any streets or public improvements or open space shown upon the Official Map and the Comprehensive Plan, if any, within the subdivision.

**5.6.9.4.18** A list of construction items, with cost estimates, that will be completed by the applicant prior to the sale of lots and evidence that the applicant has financial commitments or resources to cover these costs.

**5.6.9.4.19** The location and method of disposal for land clearing and construction debris.

**5.6.9.4.20** The location of all freshwater wetlands and farmland on the parcel.

#### **5.6.10 Statutory Review Criteria**

State law establishes the criteria that the Planning Board must use in reviewing and approving subdivisions. When reviewing any application for either a minor or major subdivision, the Planning Board must find that the criteria as found in 30-A M.R.S. § 4404 have been met. The State law sets out the following criteria as of 2020 but the Planning Board shall use the current state requirements as they may be amended from time to time even if the revised criteria have not been incorporated into the Town ordinance. In addition to these state criteria, the Planning Board must find that the subdivision will conform to the applicable provisions of Section 8 (General Performance Standards), Section 9 (Environmental Performance Standards), and Section 10 (Good Neighbor Performance Standards).

Before granting approval of a subdivision, the Planning Board must find that the proposed project:

**5.6.10.1 Pollution** Will not result in undue water or air pollution. In making this determination, it shall at least consider:

**5.6.10.1.1** The elevation of the land above sea level and its relation to the flood plains;

**5.6.10.1.2** The nature of soils and subsoils and their ability to adequately support waste disposal;

**5.6.10.1.3** The slope of the land and its effect on effluents;

**5.6.10.1.4** The availability of streams for disposal of effluents; and

**5.6.10.1.5** The applicable State and local health and water resources rules and regulations;

**5.6.10.2 Sufficient Water** Has sufficient water available for the reasonably foreseeable needs of the subdivision;



- 5.6.10.3 Municipal Water Supply** Will not cause an unreasonable burden on an existing water supply, if one is to be used;
- 5.6.10.4 Erosion** Will not cause unreasonable soil erosion or reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;
- 5.6.10.5 Traffic** Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway, located outside the urban compact area of an urban compact municipality as defined by 23 M.R.S. § 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to 23 M.R.S. § 704 and any rules adopted under that section;
- 5.6.10.6 Sewage Disposal** Will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;
- 5.6.10.7 Municipal Solid Waste Disposal** Will not cause an unreasonable burden on the Town's ability to dispose of solid waste if municipal services are to be utilized;
- 5.6.10.8 Aesthetic, Cultural and Natural Values** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the Town, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
- 5.6.10.9 Conformity With Local Ordinances and Plans** Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans;
- 5.6.10.10 Financial and Technical Capacity** The subdivider has adequate financial and technical capacity to meet the standards of this section;
- 5.6.10.11 Surface Waters; Outstanding River Segments** Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38 M.R.S. Chapter 3, subchapter I, article 2-B, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.
- 5.6.10.12 Ground Water** Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;
- 5.6.10.13 Flood Areas** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the applicant shall determine the 100-year flood elevation and flood hazard boundaries

within the subdivision. The proposed subdivision or project plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

**5.6.10.14 Freshwater Wetlands** All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;

**5.6.10.15 Farmland** All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district;

**5.6.10.16 River, Stream or Brook** Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in 38 M.R.S. § 480-B (9);

**5.6.10.17 Storm Water** The proposed subdivision will provide for adequate storm water management;

**5.6.10.18 Spaghetti-Lots Prohibited** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in 38 M.R.S. § 480- B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;

**5.6.10.19 Lake Phosphorus Concentration** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;

**5.6.10.20 Impact on Adjoining Municipality** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located; and

**5.6.10.21 Lands Subject to Liquidation Harvesting** Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S. § 8869(14). If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the Planning Board must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The Planning Board may request technical assistance from the Department of Conservation, Bureau of Forestry to determine whether a rule violation has occurred, or the Planning Board may accept a determination certified by a forester licensed pursuant to Title 32 M.R.S. Chapter 76. If the Bureau agrees to provide assistance, it shall make a

finding and determination as to whether a rule violation has occurred. If the Bureau notifies the Planning Board that it will not provide assistance, the Planning Board may require a subdivision applicant to provide a determination certified by a licensed forester. For the purposes of this subsection, “liquidation harvesting” has the same meaning as in 12 M.R.S. § 8868(6), and “parcel” means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership.

## **5.7 Mobile Home Park Review Procedures and Standards**

### **5.7.1 Review and Approval Authority**

The Planning Board is authorized to review and act on all applications for Mobile Home Park Review. The Planning Board may act to approve, disapprove, or approve an application with conditions.

### **5.7.2 Classification of an Application**

A mobile home park is a subdivision that is developed in accordance with the performance standards for mobile home parks set forth in Section 11.17. The Code Enforcement Officer shall be responsible for provisionally classifying a proposed mobile home park as a minor subdivision or a major subdivision. This process will occur in conjunction with the preapplication conference. Within ten (10) business days of the preapplication conference and site inspection, the Code Enforcement Officer shall tentatively classify the proposed mobile home park as a minor subdivision or a major subdivision. When the Code Enforcement Officer provisionally classifies a project as a minor or major subdivision, s/he shall notify both the applicant and the Chair of the Planning Board in writing of the classification and the basis for determination. At the first meeting of the Planning Board at which the application is discussed, the Planning Board shall review the Code Enforcement Officer’s determination as to the classification of the subdivision and may either confirm or revise the classification based upon the information contained in the formal submission and advise the applicant of this determination. If the Planning Board revises the classification of a project, the processing of the application shall proceed under the revised classification at that meeting and any subsequent meetings of the Planning Board. If the Planning Board reclassifies a project as a major subdivision, processing of the application shall be suspended until the applicant has provided all of the information required for a major subdivision.

Mobile home parks are classified as minor subdivisions or major subdivisions based upon the criteria of this section. Projects that are classified as minor subdivisions are subject to a simplified application and review process while major projects are required to provide more information about the activity and its impacts and are subject to a more extensive review process.

**5.7.2.1** Any application for mobile home park review that will result in the creation of four (4) or fewer lots or dwelling units shall be classified as a Minor Subdivision and shall be subject to the procedures and standards for

minor subdivisions except as provided for in Section **5.7.2.3** below.

**5.7.2.2** Any application for mobile home park review that will result in the creation of five (5) or more lots or dwelling units shall be classified as a Major Subdivision and shall be subject to the procedures and standards for major subdivisions.

**5.7.2.3** If a mobile home park has been approved in the preceding five (5) years, any amendment to the approved plan shall be classified as a major subdivision if the total number of lots created in any five (5) year period will be five (5) or more.

**5.7.2.4** An amendment to a previously approved and recorded mobile home park plan shall be classified as a Minor Subdivision unless the revised plan will result in the creation of five (5) or more lots or is classified as a major subdivision based on Section **5.6.2.3** above.

### **5.7.3 Review Procedures for Applications for Mobile Home Park Review**

**5.7.3.1** Applications for mobile home park review that are classified as minor subdivisions shall be reviewed in accordance with the provisions of Section **5.6.4**.

**5.7.3.2** Applications for mobile home park review that are classified as major subdivisions shall be reviewed in accordance with the provisions of Section **5.6.6**.

### **5.7.4 Submission Requirements for Applications for Mobile Home Park Review**

**5.7.4.1** Applications for mobile home park review that are classified as minor subdivisions shall provide the information set forth in Section **5.6.5**. The application shall demonstrate compliance with the performance standards for mobile home parks in Section **11.17**. The submission requirements of Section **5.6.5** are modified as follows:

**5.7.4.1.1** The subdivision plan shall show the lots on which the manufactured housing units will be located. All lots shall conform to the minimum requirements set forth in the performance standards for mobile home parks in Section **11.17** rather than the requirements for the land use district within which it is located.

**5.7.4.1.2** If the mobile home park will contain any private roads, the road plans required by Section **5.6.5.7.5** shall show the roads designed and constructed in accordance with the performance standards for mobile home parks in Section **11.17** rather than the Town road standards.

**5.7.4.1.3** The application shall contain evidence that the applicant has obtained a license for a Manufactured Housing Community from the Maine Manufactured Housing Board.

**5.7.4.2** Applications for mobile home park review that are classified as major subdivisions shall provide the information set forth in Section **5.6.5** and any additional information required by the Planning Board in accordance with

Section **5.6.7**. The application shall demonstrate compliance with the performance standards for mobile home parks in Section **11.17**. The submission requirements of Section **5.6.5** are modified as follows:

**5.7.4.2.1** The subdivision plan shall show the lots on which the manufactured housing units will be located. All lots shall conform to the minimum requirements set forth in the performance standards for mobile home parks in Section **11.17** rather than the requirements for the land use district within which it is located.

**5.7.4.2.2** If the mobile home park will contain any private roads, the road plans required by Section **5.6.9.4.13** shall show the roads designed and constructed in accordance with the performance standards for mobile home parks in Section **11.17** rather than the Town road standards.

**5.7.4.2.3** The application shall contain evidence that the applicant has obtained a license for a Manufactured Housing Community from the Maine Manufactured Housing Board.

#### **5.7.5 Approval Standards for Applications for Mobile Home Park Review**

In reviewing applications for Mobile Home Park review the Planning Board shall use the statutory review criteria for subdivisions set forth in Section **5.6.10**, including the performance standards for mobile home parks in Section **11.17**.



## **Section 6. Nonconforming Situations**

### **6.1 Purpose**

It is the intent of this Section to promote land use conformities, except that nonconforming conditions that lawfully existed before November 3, 2020 or amendments thereto shall be allowed to continue, subject to the requirements set forth in this Section. Except as otherwise provided in this Section, a nonconforming condition shall not be permitted to become more nonconforming.

### **6.2 General Provisions**

- 6.2.1** The use of land, buildings or structures lawful as of November 3, 2020 or subsequent amendment of this Ordinance may continue although such use does not conform to the provisions of this Ordinance.
- 6.2.2** Nonconforming buildings, structures, lots, and uses may be transferred and the new owner may continue the nonconforming building, structure, lot or use subject to the provisions of this Ordinance.
- 6.2.3** This Ordinance allows the normal upkeep and maintenance of nonconforming uses and structures, including repairs or renovations that do not involve the expansion of the nonconforming use or structure and such other changes in a nonconforming use or structure as federal, state or local building and safety codes may require.
- 6.2.4** Nothing in this Ordinance shall prevent the strengthening or restoring to safe condition any part of any building or structure declared unsafe by the Code Enforcement Officer.

### **6.3 Nonconforming Uses**

- 6.3.1** A nonconforming use which is discontinued for a period of two (2) years may not be resumed. The Planning Board may grant a one (1) year extension of this time limit upon written request of the property owner. After such discontinuation, the use of land, buildings or structures shall thereafter conform to the provisions of this Ordinance.
- 6.3.2** Whenever a nonconforming use is superseded by a permitted use of a structure, or structure and land in combination, the land and structure shall thereafter conform to the provisions of this Ordinance and the nonconforming use may not thereafter be resumed.
- 6.3.3** Any nonconforming use, except nonconforming uses in the Shoreland Overlay District and the Resource Protection District, may be expanded by a total of no more than twenty-five (25) percent of the size or area in nonconforming use. A legally existing commercial or industrial use as of November 3, 2020 that is made nonconforming by the adoption of this Section may be expanded in accordance with the provisions of Section **6.3.5**.
- 6.3.4** An existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the district,

than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section **6.3.4.1**.

**6.3.4.1** In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects of the change in use on public health and safety, traffic, noise, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

**6.3.5** A legally existing commercial or industrial use as of November 3, 2020 except uses located in the Shoreland Overlay District or Resource Protection District that is made nonconforming by the adoption of this Section may be expanded by more than twenty-five (25) percent in accordance with the following provisions:

**6.3.5.1** The total floor area of all structures on the lot may be increased by not more than fifty (50) percent of the floor area existing on November 3, 2020.

**6.3.5.2** The total impervious surface area on the lot may be increased by not more than fifty (50) percent of the impervious surface area existing on November 3, 2020.

**6.3.5.3** If the lot on which the nonconforming use is located is in a residential district or abuts the boundary of an adjacent residential district, a residential buffer strip not less than twenty (20) feet in width and meeting the requirements of Section **10.1.2** shall be established along any property line that abuts a lot with an existing residential use.

**6.3.5.4** If the lot on which the nonconforming use is located is in a mixed-use district or abuts the boundary of an adjacent mixed-use district, a residential buffer strip not less than ten (10) feet in width and meeting the requirements of Section **10.1.2** shall be established along any property line that abuts a lot with an existing residential use.

#### **6.4 Nonconforming Lots of Record**

**6.4.1** A structure or dwelling may be erected on any single nonconforming lot of record existing as of November 3, 2020 or amendment of this Ordinance, provided that such lot shall not be contiguous with any other lot in the same ownership; and shall meet all other provisions of this Ordinance except for lot area, lot width, and shore frontage. Any variance relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

**6.4.2** If two (2) or more contiguous lots of record are in single or joint ownership as of November 3, 2020, or since adoption or amendment of this Ordinance, and if any of these lots do not individually meet the dimensional requirements of this Ordinance, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the



dimensional requirements. This provision shall not apply to lots in approved subdivisions created after September 22, 1971.

**6.4.3** If two (2) or more contiguous lots of record are in single or joint ownership as of November 3, 2020, and if all or part of the lots do not meet the requirements of this Ordinance and if a principal structure exists on each lot, the nonconforming lots may be conveyed separately or together. Any such lots located within the Shoreland Overlay District or Resource Protection District may be conveyed separately only if the lots comply with the State Minimum Lot Size Law (12 M.R.S. §§ 4807-A-4807-D) and the State of Maine Subsurface Wastewater Disposal Rules.

**6.4.4** If two (2) or more principal structures exist on a single lot of record as of November 3, 2020, each may be sold on a separate lot. When such lots are divided, each lot shall be as conforming as possible to the dimensional requirements of this Ordinance and shall meet the laws and rules referenced in Section **6.4.3**.

**6.4.5** A nonconforming lot of record in existence as of November 3, 2020 the effective date of this Ordinance shall not be divided so as to create further nonconformity.

## **6.5 Nonconforming Structures not Located in the Shoreland Overlay District or Resource Protection District**

**6.5.1** Any nonconforming structure may be expanded in conformance with the provisions of this Ordinance and the following:

**6.5.1.1** A nonconforming building may be expanded to the side, rear or front of the property if the proposed expansion is no closer than the existing building setback and is a minimum of five (5) feet from the property boundary line.

**6.5.1.2** The construction or enlargement of a foundation beneath an existing nonconforming building shall not be considered an expansion of the building provided that the new foundation does not extend beyond the exterior dimensions of the building.

**6.5.2** Any nonconforming structure may be replaced within two (2) years when such structure is removed, damaged, or destroyed regardless of the cause. The Planning Board may grant a one (1) year extension of this time limit upon written request of the property owner. Any structure not replaced within this limit shall conform to the provisions of this Ordinance.

**6.5.3** A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board. In making this determination, the Planning Board shall use the criteria set forth in **6.6.3.2**. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

## **6.6 Nonconforming Structures Located in a Shoreland Overlay District or Resource Protection District**

## **6.6.1 General**

**6.6.1.1** A nonconforming structure may be added to or expanded after obtaining a permit in the same manner as a permit for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in conformance with the provisions of this Section.

**6.6.1.2** No structure which is less than the required setback from the normal high-water line of a water body, tributary stream or upland edge of a wetland shall be expanded toward the water body, tributary stream or wetland.

## **6.6.2 Expansion**

**6.6.2.1** Expansion of any portion of a structure within twenty-five (25) feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.

**6.6.2.2** Notwithstanding Section **6.6.2.1** above, if a legally existing nonconforming principal structure is entirely located less than twenty-five (25) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met.

**6.6.2.2.1** The maximum total footprint for the principal structure may not be expanded to a size greater than eight hundred (800) square feet or thirty (30) percent larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than fifteen (15) feet or the height of the existing structure, whichever is greater.

**6.6.2.3** All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met.

**6.6.2.3.1** For structures located less than seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand (1,000) square feet or thirty (30) percent larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than twenty (20) feet or the height of the existing structure, whichever is greater.

**6.6.2.3.2** For structures located less than one hundred (100) feet from the normal high-water line of Adams Pond or Knickerbocker Lakes, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand five hundred (1,500) square feet or thirty (30) percent larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than twenty-five (25) feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Sections **6.6.2.2.1** or **6.6.2.3.1**, above.

**6.6.2.3.3** In addition to the limitations in Sections **6.6.2.3.1** and **6.6.2.3.2**, for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than two hundred fifty (250) feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand five hundred (1,500) square feet or thirty (30) percent larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than twenty-five (25) feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Sections **6.6.2.2.1** or **6.6.2.3.1**, above.

**6.6.2.3.4** An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the Lincoln County Registry of Deeds, within ninety (90) days of approval. The recorded plan must show the existing and proposed footprint of the nonconforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the Shoreland Overlay District boundary and evidence of approval by the municipal review authority.

**6.6.2.4 Foundations.** Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section **6.6.3** Relocation, below.

### **6.6.3 Relocation**

**6.6.3.1** A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board and provided that the applicant demonstrates that the present subsurface wastewater disposal meets the requirements of State law and Subsurface Wastewater Disposal Rules, or that

a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

**6.6.3.2** In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic systems and other on-site soils suitable for septic systems and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Section 7.5.17.4.8. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

**6.6.3.2.1** Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five (5) trees are planted, no one species of tree shall make up more than fifty (50) percent of the number of trees planted. Replanted trees must be planted no further from the water or wetland than the trees that were removed.

**6.6.3.2.2** Other woody and herbaceous vegetation, and ground cover, that is removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be re-established within the setback area. The vegetation and/or ground cover must consist of native vegetation and/or ground cover similar to what was disturbed, destroyed or removed.

**6.6.3.2.3** Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation, which may consist of grasses, shrubs, trees or a combination thereof.

#### **6.6.4 Destruction, Reconstruction or Replacement**

**6.6.4.1** Any nonconforming structure which is located less than the required setback from the normal high-water line of a water body or upland edge of a wetland, and which is removed, damaged or destroyed, regardless of the cause, by more than fifty (50) percent of the market value of the structure before such damage, destruction, or removal as determined by the Planning Board, may be reconstructed or replaced provided that a permit is obtained within two (2) years of the date of said damage, destruction or removal and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purpose of this Ordinance. The Planning Board may grant a one (1) year extension of the time limit for obtaining a permit upon written request of the

property owner. In no case shall a structure be reconstructed or replaced to increase its nonconformity. If the reconstructed or replacement structure is located less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section **6.6.2** as determined by the nonconforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section **6.6.3**.

**6.6.4.2** Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by fifty (50) percent or less of the market value or damaged or destroyed by fifty (50) percent or less of the market value of the structure as determined by the Planning Board, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained within two (2) years of such damage, destruction, or removal, if the nonconforming footprint after the repair or reconstruction is no greater than the floor area or volume before the removal, damage or destruction. The Planning Board may grant a one (1) year extension of this time limit upon written request of the property owner.

**6.6.4.3** In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent, the Planning Board shall consider in addition to the criteria in Section **6.6.3**, the physical condition and type of foundation present, if any.



## **Section 7. Zoning Districts, Zoning Maps, and Standards**

This Section sets out the standards that govern development and the use of land within each of the land use or zoning districts within the Town. The location of the various land use or zoning districts is shown on the Official Zoning Map and the Official Shoreland Zoning Map. The district standards are the core or basic standards with which all activities must comply. In addition to these district standards, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10. Certain uses and activities must also comply with the Performance Standards for Specific Uses of Section 11.

### **7.1 Establishment of Districts**

The Town of Boothbay is divided into the following land use or zoning districts. The land use and development standards for each of these districts are set out in the sections that follow. These standards govern the establishment of new uses and activities as well as the construction and expansion of buildings and related facilities for conforming activities. In some case there are existing uses and buildings that do not conform to these standards. These nonconforming situations are governed by the provisions of Section 6.

#### **7.1.1 Residential Districts**

The following districts primarily allow residential and community uses but some commercial uses are also allowed:

##### **7.1.1.1 Residential District (R)**

##### **7.1.1.2 Coastal Residential District (R-C)**

#### **7.1.2 Mixed Use Districts**

The following districts allow residential, community, and a variety of nonresidential uses:

##### **7.1.2.1 Boothbay Village Center District (BVC)**

##### **7.1.2.2 Boothbay Village Fringe District (BVF)**

##### **7.1.2.3 Boothbay Village Mixed-Use District (BVMU)**

##### **7.1.2.4 East Boothbay Village District (EBV)**

##### **7.1.2.4 Scenic Gateway District (SG)**

##### **7.1.2.5 Rural Mixed-Use District (RMU)**

#### **7.1.3 Commercial – Industrial Districts**

The following districts primarily allow commercial, industrial, and community uses but residential uses are also allowed in some of the districts:

##### **7.1.3.1 Commercial Corridor District (CC)**

##### **7.1.3.2 Manufacturing/Business District (MB)**

##### **7.1.3.3 Marine Commercial District (MC)**

#### **7.1.4 Natural Resource Districts**

The following uses are intended to provide protection for significant natural resources in the community:

**7.1.4.1** Water Reservoirs Protection District – Route 27 (WRP-27)

**7.1.4.2** Water Reservoirs Protection District (WRP)

**7.1.4.3** Wellhead Protection District (WP)

**7.1.4.4** Resource Protection District (RP)

#### **7.1.5 Overlay Districts**

The following districts establish supplemental standards that apply to development and land use activities within the overlay district in addition to the standards of the underlying district:

**7.1.5.1** Shoreland Overlay District (SO)

**7.1.5.2** Watershed Protection Overlay District (WPO)

#### **7.1.6 Contract Zones**

The following special district was established as a contract zone subject to specific standards that apply only to the district:

**7.1.6.1** Bigelow Laboratory Contract Zone (BL)

### **7.2 Location of Districts – Zoning Maps**

The various land use or zoning districts are located and bounded as shown on the Official Zoning Map, entitled “Official Zoning Map of the Town of Boothbay, Maine” dated November 3, 2020, and the Official Shoreland Zoning Map entitled “Official Shoreland Zoning Map of the Town of Boothbay, Maine” dated November 3, 2020 as these maps may be amended from time to time, and on file in the office of the Town Clerk, certified to be true and correct by the attested or conformed signature of the Town Clerk. Additional printed copies of said maps are also available in the Code Enforcement Office. Said maps is hereby incorporated in and made a part of this Ordinance.

**7.2.1** The boundary lines shown on the Official Zoning Map and Official Shoreland Zoning Map are Town lines, property lines, and the centerlines of roads and non-vehicular rights-of-way except where otherwise specifically described.

**7.2.2** Boundaries which are indicated as following shorelines of ponds and saltwater bodies, streams, outlet streams, tributary streams and the upland edge of wetlands shall be construed to follow such shorelines, streams and edges as they exist on the ground. In the event of a natural change in the shoreline, stream or edge, the boundaries shall be construed as moving with the actual shoreline, stream or edge.

**7.2.3** Boundaries indicated as being parallel to, or extensions of, features indicated in Sections **7.2.1** and **7.2.2** shall be so construed.

**7.2.4** The scale of the maps shall determine distances not specifically indicated on the



Official Zoning Map and Official Shoreland Zoning Map.

**7.2.5** Where any textual description of a zoning district is in conflict with the Official Zoning Map or Official Shoreland Zoning Map as to the boundaries of a zoning district, the boundary as shown on the official zoning maps shall be used except for zoning district boundaries that are based on natural resources in which case the provisions of **7.4** apply. However where the textual description of an overlay zone is in conflict with the Official Zoning Map or Official Shoreland Zoning Map as to the location of the overlay district, the boundary in the textual description shall be used.

**7.2.6** The boundary of the Watershed Protection Overlay (WPO) District shall not move as a result of alterations to the topography or drainage patterns unless the boundary change is approved by vote of the Town Meeting.

**7.2.7 Scale of Map.** The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

**7.2.8 Changes to the Official Shoreland Zoning Map.** If amendments, in accordance with Section 1.7, are made in the district boundaries or other matters portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

### **7.3 Uncertainty as to the of Location of Boundaries**

Where physical or cultural features existing on the ground vary from those shown on the official zoning maps, or where other circumstances not covered by Section **7.2** exist, or where there is other uncertainty about the location of a district boundary, the Board of Appeals shall interpret the location of the district boundary. The interpretation of the Board of Appeals shall be the final Town authority as to location of the boundaries.

### **7.4 Boundaries Based on Natural Resources**

Where a zoning district boundary line is intended to be a natural resource, such as a stream, wetland, or watershed divide or a line parallel or offset from such resource, the location of the boundary on the ground shall be determined by the actual physical location of the resource as determined by the Code Enforcement Officer. Where there is uncertainty as to the location of the resource or the district boundary, the Code Enforcement Officer may require an applicant to provide a determination of the location of the resource on the ground to guide the decision of the Code Enforcement Officer. Such determination shall be prepared by a competent professional such as a surveyor, soils scientist, or wetlands scientist, as appropriate.

### **7.5 District Standards**

This section establishes the standards that govern development and the use of land within each of the land use or zoning districts set out in Section **7.1**. The district standards are the core or basic standards with which all activities must comply.

#### **7.5.1 Residential District (R)**

##### **7.5.1.1 PURPOSE (R)**

The Residential District is intended to continue to allow a moderate amount of residential development in these areas together with rural and community uses and a limited amount of nonresidential activity that is compatible with residential uses. New housing can be a variety of types and prices to meet the needs of a diverse population. The standards assure that new developments are well designed so they are positive additions to the community.

#### **7.5.1.2 ALLOWED USES (R)**

The uses allowed in the Residential (R) District are shown in the Table of Land Uses in Section 7.6. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5. A portion of the R District is located within the watersheds of Adams Pond and the Knickerbocker Lakes and is therefore subject to the provisions of the Watershed Protection Overlay (WPO) District. These provisions modify the allowed uses shown in the Table of Land Uses.

#### **7.5.1.3 SPACE AND BULK STANDARDS (R)**

<b>7.5.1.3.1</b>	Minimum developable lot area	40,000 SF
<b>7.5.1.3.2</b>	Minimum net developable lot area per dwelling unit	40,000 SF
<b>7.5.1.3.3</b>	Minimum lot width Within the Shoreland Overlay Zone lot width within 100 feet of the resource Tidal Non-Tidal	150 feet 150 feet residential 200 feet nonresidential 200 feet residential 300 feet nonresidential
<b>7.5.1.3.4</b>	Minimum road setback	State - 50 feet Town - 33 feet Private way - 8 feet from the closest edge of the R-O-W
<b>7.5.1.3.5</b>	Maximum road setback	None
<b>7.5.1.3.6</b>	Minimum side property line setback	20 feet
<b>7.5.1.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.1.3.8</b>	Maximum building height	34 feet
<b>7.5.1.3.9</b>	Maximum non-vegetated surface area Within Shoreland Overlay Zone	30% 20%
<b>7.5.1.3.10</b>	Minimum shoreland setback	Great ponds & associated wetlands - 100 feet Other resources - 75 feet
<b>7.5.1.3.11</b>	Minimum shoreland frontage - tidal	Residential - 150 feet Nonresidential - 200 feet
<b>7.5.1.3.12</b>	Minimum shoreland frontage - non-tidal	Residential - 200 feet

		Nonresidential – 300 feet
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#### **7.5.1.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (R)**

Uses in the R District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.1.4.1** A dwelling unit with one bedroom in a two-family or multifamily dwelling or in a mixed use building shall be considered as two-thirds of a dwelling unit for purposes of the minimum lot area requirements as long as the dwelling unit has less than eight hundred (800) square feet of floor area.

#### **7.5.1.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (R)**

Section 11(Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.1.6 OTHER PERFORMANCE STANDARDS (R)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

#### **7.5.1.7 SHORELAND OVERLAY DISTRICT (R)**

A portion of the R District is subject to the additional requirements of the Shoreland Overlay District.

### **7.5.2 Coastal Residential District (R-C)**

#### **7.5.2.1 PURPOSE (R-C)**

The Coastal Residential District is intended to be an interim land use control that allows limited development in coastal areas until the Town is able to undertake and complete a detailed groundwater study to better understand the capability of these areas to support additional building without adversely impacting both the quality and quantity of the groundwater and revise the ordinances appropriately. The standards allow a moderate amount of residential development in these areas together with rural and community uses and a limited amount of nonresidential activity that is compatible with residential uses. The standards address the management of water use and stormwater to reduce potential impacts on the groundwater.

#### **7.5.2.2 ALLOWED USES (R-C)**

The uses allowed in the Coastal Residential (R-C) District are shown in the Table of Land Uses in Section 7.6. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5.

### 7.5.2.3 SPACE AND BULK STANDARDS (R-C)

<b>7.5.2.3.1</b>	Minimum developable lot area	Existing lots of record and new residential lots that are not part of a subdivision that are used for a single-family home – 60,000 SF  All other lots and uses – see 7.5.2.4.1 and 7.5.2.4.2
<b>7.5.2.3.2</b>	Minimum net developable lot area per dwelling unit	Existing lots of record and new residential lots that are not part of a subdivision that are used for a single-family home– 60,000 SF  All other lots and uses– see 7.5.2.4.1 and 7.5.2.4.2
<b>7.5.2.3.3</b>	Minimum lot width  Within the Shoreland Overlay Zone lot width within 100 feet of the resource  Tidal  Non-Tidal	150 feet  150 feet residential 200 feet nonresidential 200 feet residential 300 feet nonresidential
<b>7.5.2.3.4</b>	Minimum road setback	State - 50 feet Town – 33 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.2.3.5</b>	Maximum road setback	None
<b>7.5.2.3.6</b>	Minimum side property line setback	20 feet
<b>7.5.2.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.2.3.8</b>	Maximum building height	34 feet
<b>7.5.2.3.9</b>	Maximum non-vegetated surface area	20%
<b>7.5.2.3.10</b>	Minimum shoreland setback	Great ponds & associated wetlands – 100 feet  Other resources – 75 feet
<b>7.5.2.3.11</b>	Minimum shoreland frontage - tidal	Residential – 150 feet Nonresidential – 200 feet
<b>7.5.2.3.12</b>	Minimum shoreland frontage – non-tidal	Residential – 200 feet

		Nonresidential – 300 feet
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#### **7.5.2.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (R-C)**

Uses in the R-C District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.2.4.1** Except for single-family homes on existing lots of record or new residential lots that are not part of a subdivision, single-family homes on lots in subdivisions approved after November 3, 2020 and all new or expanded two-family dwellings, multifamily dwellings, or other residential or nonresidential uses that use an on-site water supply for any portion of the year must be located on a lot that has a minimum of thirty thousand (30,000) square feet of net developable lot area for every one hundred (100) gallons per day of sewage flow based on the State of Maine Subsurface Wastewater Disposal Rules.

**7.5.2.4.2** Except for single-family homes on existing lots of record or new residential lots that are not part of a subdivision, single-family homes on lots in subdivisions approved after November 3, 2020 and all new or expanded two-family dwellings or multifamily dwellings or other residential or nonresidential uses that use public water year-round must be located on a lot that has a minimum of forty thousand (40,000) square feet of net developable lot area and a minimum of forty thousand (40,000) square feet of net developable lot area per dwelling unit.

**7.5.2.4.3** A dwelling unit with one bedroom in a two-family or multifamily dwelling or in a mixed use building shall be considered as two-thirds of a dwelling unit for purposes of the minimum lot area requirements as long as the dwelling unit has less than eight hundred (800) square feet of floor area.

**7.5.2.4.4** A new residential or nonresidential use must connect to the public water system (either year-round or seasonal) if a water main with adequate capacity to serve the use is available within three hundred (300) feet of the nearest point on the lot as measured along public or private streets or utility easements.

**7.5.2.4.5** An existing building or use that is located on a lot with less than sixty thousand (60,000) square feet of developable lot area that uses an on-site water supply for any portion of the year cannot be altered in a manner that increases its potential groundwater use. This determination shall be based on the design sewage flows set forth in the State of Maine Subsurface Wastewater Disposal Rules. In assessing the potential use of groundwater, the Code Enforcement Officer or Planning Board may take into account changes that will reduce the existing use of groundwater.

#### **7.5.2.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (R-C)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.2.6 OTHER PERFORMANCE STANDARDS (R-C)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

#### **7.5.2.7 SHORELAND OVERLAY DISTRICT (R-C)**

A portion of the R-C District is subject to the additional requirements of the Shoreland Overlay District.

### **7.5.3 Boothbay Village Center District (BVC)**

#### **7.5.3.1 PURPOSE (BVC)**

The Boothbay Village Center District is intended to facilitate the evolution of the area around the Common and along Route 27 toward Boothbay Harbor into a true community center while enhancing its character as a New England village center. Traffic flow around the Common is improved and facilities for parking and pedestrians and bicyclists are upgraded making this more of a pedestrian area and linking the Common to adjacent residential areas. Boothbay Village Center continues to be the public heart of the community and is increasingly used for community activities. Over time, the buildings in the Village Center are improved and limited new development occurs that reinforces the role of the Common Area as the community center.

#### **7.5.3.2 ALLOWED USES (BVC)**

The uses allowed in the Boothbay Village Center (BVC) District are shown in the Table of Land Uses in Section 7.6. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5. A portion of the BVC District is located within the watersheds of Adams Pond and the Knickerbocker Lakes and is therefore subject to the provisions of the Watershed Protection Overlay (WPO) District. These provisions modify the allowed uses shown in the Table of Land Uses.

#### **7.5.3.3 SPACE AND BULK STANDARDS (BVC)**

<b>7.5.3.3.1</b>	Minimum developable lot area	Residential – 20,000 SF or 6,000 SF with public sewer and year-round public water – Nonresidential –10,000 SF
<b>7.5.3.3.2</b>	Minimum net developable lot area per dwelling unit	20,000 SF or 6,000 SF with public sewer and year-round public water
<b>7.5.3.3.3</b>	Minimum lot width	Residential– 100 feet or 60 feet with public sewer and year-round public water

		Nonresidential – 75 feet
<b>7.5.3.3.4</b>	Minimum road setback	State - 50 feet Town – 33 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.3.3.5</b>	Maximum road setback	The minimum road setback plus 25 feet
<b>7.5.3.3.6</b>	Minimum side property line setback	10 feet
<b>7.5.3.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.3.3.8</b>	Maximum building height	34 feet
<b>7.5.3.3.9</b>	Maximum non-vegetated surface area	60%

#### **7.5.3.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (BVC)**

Uses in the BVC District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.3.4.1** Single-family homes that are served by public sewer and year-round public water may be located on lots with a minimum developable lot area of at least six thousand (6,000) square feet and a minimum of sixty (60) feet of road frontage.

**7.5.3.4.2** Except for one-bedroom units with less than eight hundred (800) square feet of floor area, a dwelling unit in a two-family or multifamily dwelling or in a mixed-use building that is served by public sewer and year-round public water shall be allowed at a density of one dwelling unit per six thousand (6,000) square feet of net developable lot area. A dwelling unit with one bedroom in a two-family or multifamily dwelling or in a mixed use building that is served by public sewer and year-round public water shall be allowed at a density of one dwelling unit per four thousand (4,000) square feet of net developable lot area as long as the dwelling unit has less than eight hundred (800) square feet of floor area.

**7.5.3.4.3** As part of the review of a project, the Planning Board may allow a building to be located further from the front property line if one of the following conditions is met:

**7.5.3.4.3.1** The shape or physical condition of the portion of the parcel close to the road makes construction of the building in this area unreasonable, or

**7.5.3.4.3.2** The new building will be located behind a building that is close to the front property line.

**7.5.3.4.4** New buildings and expansions of existing buildings that increase the floor area by more than fifty (50) percent shall be designed in a manner that reinforces the New England village character of the district. This shall include the use where practical of pitched or shed roofs, traditional siding or materials that simulate traditional siding, and windows with a vertical orientation in which the height exceeds the width of the window.

**7.5.3.4.5** Buildings must be designed so that the main entrance is located and designed to promote pedestrian movement. If there is a sidewalk or other pedestrian way along the frontage of the lot, there must be a pedestrian connection between the sidewalk and the main entrance of the building.

**7.5.3.4.6** The space between the road right-of-way and the front wall of the building must be maintained as a lawn or landscaped area or as a pedestrian environment. No vehicular or service facilities or areas shall be located in this area.

**7.5.3.4.7** Parking and service areas must be located to the side or rear of the principal building. No parking shall be permitted in area in front of the front wall of the principal building for the full width of the lot.

#### **7.5.3.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (BVC)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.3.6 OTHER PERFORMANCE STANDARDS (BVC)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

### **7.5.4 Boothbay Village Fringe District (BVF)**

#### **7.5.4.1 PURPOSE (BVF)**

The Boothbay Village Fringe District is intended to accommodate a variety of housing and compatible non-residential uses that can be served by the public sewer system and year-round public water. While there are constraints to development in this area, the district provides the private sector the opportunity to find creative approaches for developing a limited amount of higher density housing and appropriate commercial uses that are served by public sewerage and year-round public water that is provided at the developer's expense. The new residential areas have a pedestrian-friendly village character. To complement this development, the Town works to enhance pedestrian and bicycle facilities to link this new housing to the Boothbay Village Center.

#### **7.5.4.2 ALLOWED USES (BVF)**

The uses allowed in the Boothbay Village Fringe (BVF) District are shown in the Table of Land Uses in Section 7.6. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5. A portion of the BVF District is located within the watersheds of Adams Pond and the Knickerbocker Lakes and is therefore subject to the provisions of the Watershed Protection Overlay (WPO) District. These provisions modify the allowed uses shown in the Table of Land Uses.



#### **7.5.4.3 SPACE AND BULK STANDARDS (BVF)**

<b>7.5.4.3.1</b>	Minimum developable lot area	Residential – 20,000 SF or 4,000 SF with public sewer and year-round public water – Nonresidential –10,000 SF
<b>7.5.4.3.2</b>	Minimum net developable lot area per dwelling unit	20,000 SF or 4,000 SF with public sewer and year-round public water
<b>7.5.4.3.3</b>	Minimum lot width	Residential – 100 feet or 60 feet with public sewer and year-round public water Nonresidential –100 feet
<b>7.5.4.3.4</b>	Minimum road setback	State - 50 feet Town – 33 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.4.3.5</b>	Maximum road setback	None
<b>7.5.4.3.6</b>	Minimum side property line setback	10 feet
<b>7.5.4.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.4.3.8</b>	Maximum building height	34 feet except 44 feet for structures located on Country Club Road within two hundred fifty (250) feet of Route 27
<b>7.5.4.3.9</b>	Maximum non-vegetated surface area	50%

#### **7.5.4.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (BVF)**

Uses in the BVF District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.4.4.1** The creation of new residential lots fronting on Country Club Road is prohibited unless the Planning Board finds that the size, shape or physical characteristics of the site make this layout the most reasonable alternative. New residential lots should have their road frontage and vehicular access from interior roads when feasible.

**7.5.4.4.2** Single-family homes that are served by public sewer and year-round public water may be located on lots with a minimum developable lot area of at least four thousand (4,000) square feet and a minimum of sixty (60) feet of road frontage.

**7.5.4.4.3** Except for one-bedroom units with less than eight hundred (800) square feet of floor area, a dwelling unit in a two-family or multifamily dwelling or in a mixed-use building that is served by public sewer and year-round public water shall be allowed at a density of one dwelling unit per four thousand (4,000) square feet of net developable lot area. A dwelling unit with one bedroom in a two-family or multifamily dwelling or in a mixed use building that is served by public sewer and year-round public water shall be allowed at a density of one dwelling unit per two thousand five hundred (2,500) square feet of net developable lot area as long as the dwelling unit has less than eight hundred (800) square feet of floor area.

**7.5.4.4.4** Residential subdivisions and developments with multiunit housing should be developed as planned developments.

**7.5.4.4.5** Any new nonresidential use with frontage on Country Club Road must establish and maintain a vegetated buffer strip at least fifteen (15) feet in width along the Country Club Road frontage. The buffer strip shall meet the requirements of Section **10.1.1**.

#### **7.5.4.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (BVF)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.4.6 OTHER PERFORMANCE STANDARDS (BVF)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

### **7.5.5 Boothbay Village Mixed-Use District (BVMU)**

#### **7.5.5.1 PURPOSE (BVMU)**

The Boothbay Village Mixed-Use District is intended to allow the portion of the Route 27 corridor on the northerly approach to the Boothbay Village Center to evolve into an attractive gateway to the Village Center while it continues to be an area with a mix of uses, including auto-orientated uses that are not appropriate in the Village Center. Over time, uses that involve the handling or storage of petroleum or other chemicals are phased out, and the visual environment of this portion of the corridor improves as do provisions for access and stormwater management. Since much of this area has access to the public sewer system and is served by year-round public water, a variety of higher density housing is allowed in master planned residential developments potentially increasing the range of housing options available in Boothbay.

#### **7.5.5.2 ALLOWED USES (BVMU)**

The uses allowed in the Boothbay Village Mixed-Use (BVMU) District are shown in the Table of Land Uses in Section **7.6**. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5. A portion of the BVMU

District is located within the watershed of Adams Pond and is therefore subject to the provisions of the Watershed Protection Overlay (WPO) District. These provisions modify the allowed uses shown in the Table of Land Uses.

#### **7.5.5.3 SPACE AND BULK STANDARDS (BVMU)**

<b>7.5.5.3.1</b>	Minimum developable lot area	Residential – 40,000 SF or 10,000 SF as part of a master planned development in accordance with Sec. 7.5.5.4.1 –  Nonresidential – 20,000 SF or 10,000 SF with public sewer and year-round public water
<b>7.5.5.3.2</b>	Minimum net developable lot area per dwelling unit	40,000 SF or 10,000 SF as part of a master planned development in accordance with Sec. 7.5.5.4.1
<b>7.5.5.3.3</b>	Minimum lot width	100 feet
<b>7.5.5.3.4</b>	Minimum road setback	State - 50 feet Town – 33 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.5.3.5</b>	Maximum road setback	None
<b>7.5.5.3.6</b>	Minimum side property line setback	10 feet
<b>7.5.5.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.5.3.8</b>	Maximum building height	34 feet
<b>7.5.5.3.9</b>	Maximum non-vegetated surface area	20% for residential uses that are not part of a master planned development in accordance with Sec. 7.5.5.4.1 – 40% for nonresidential uses and residential uses that are part of a master planned development in accordance with Sec. 7.5.5.4.1

#### **7.5.5.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (BVMU)**

Uses in the BVMU District must conform to the following standards if applicable in addition to the Space and Bulk Standards:

- 7.5.5.4.1** A property may be developed as a master planned development utilizing the alternative development standards set forth in Section **7.5.5.3** if the project meets all of the following additional requirements and is approved by the Planning Board in accordance with the applicable provisions of Section 5:
- 7.5.5.4.1.1** The master plan addresses the development of a lot or portion of a lot that includes a minimum of five (5) acres or will result in the construction of ten (10) or more dwelling units.
- 7.5.5.4.1.2** The master planned development will be served by the public sewer system.
- 7.5.5.4.1.3** The master planned development will be served by the year-round public water system.
- 7.5.5.4.1.4** The master planned development will be accessed from a public road via a road(s) that meets the road construction and stormwater management standards in effect at the time of approval of the project.
- 7.5.5.4.1.5** The development shall be designed and constructed to limit the export of phosphorous from the area included in the master plan and any new or upgraded roads outside of the area included in the master plan. Phosphorous export shall be limited to the maximum allocation per acre established for Adams Pond in Appendix C Per Acre Phosphorous Allocations for Selected Maine Lakes in Volume II Phosphorous Control Manual of the Maine Stormwater Management Design Manual. The calculation of phosphorous export shall be done in accordance with the procedures for determining phosphorous export in lake watersheds established by the Maine Department of Environmental Protection in the Volume II of the Stormwater Management Design Manual.
- 7.5.5.4.1.6** The project will include a stormwater facility maintenance plan establishing a schedule for the regular inspection of all active stormwater BMPs within the development and for the maintenance and repair of the BMPs to assure that they function as designed.
- 7.5.5.4.1.7** If any portion of the site is proposed to be left as open space to meet the phosphorous export limit, the development approval shall include permanent restrictions on the future use and development of this open space.
- 7.5.5.4.2** A dwelling unit in a master planned development with one bedroom in a two-family or multifamily dwelling or in a mixed use building that is served by public sewer and year-round public water shall be allowed at a density of one dwelling unit per five thousand (5,000) square feet of net developable lot area as long as the dwelling unit has less than eight hundred (800) square feet of floor area.
- 7.5.5.4.3** Any multifamily residential unit or nonresidential use that is served by a subsurface wastewater disposal system shall be limited to a maximum sewage flow of three hundred (300) gallons per day based on the design sewage flows set forth in the State of Maine rules for subsurface wastewater sewage disposal systems.

**7.5.5.4.4** Any new nonresidential use with frontage on Route 27 must establish and maintain a landscaped buffer strip at least ten (10) feet in width along the Route 27 frontage. The buffer strip shall meet the requirements of Section **10.1.1**.

**7.5.5.4.5** Parking for nonresidential uses must be located to the side or rear of the principal building unless the Planning Board finds that this is not a reasonable requirement given the size, shape or physical characteristics of the site. If the Planning Board allows parking in front of the principal building, it must be designed to prevent the need to back into the road.

**7.5.5.4.6** Notwithstanding the allowed uses listed in the Table of Land Uses in Section **7.6**, no new uses shall be permitted in the district that handle or store commercial volumes of materials that have the potential for contaminating the groundwater, including fuels, chemicals, or solvents. For the purpose of this provision, commercial volume shall mean a volume greater than that normally stored or used on a similar sized premise for routine building operation and maintenance.

**7.5.5.4.7** Any existing use that handles or uses commercial volumes of materials that have the potential for contaminating the groundwater, including fuels, chemicals, and solvents must provide for the safe handling and storage of these materials if any enlargement or change in the use is proposed in accordance with the provisions of the Watershed Overlay District.

#### **7.5.5.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (BVMU)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.5.6 OTHER PERFORMANCE STANDARDS (BVMU)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

#### **7.5.5.7 SHORELAND OVERLAY DISTRICT (BVMU)**

A portion of the BVMU District is subject to the additional requirements of the Shoreland Overlay District.

## **7.5.6 East Boothbay Village District (EBV)**

### **7.5.6.1 PURPOSE (EBV)**

The East Boothbay Village District is intended to allow East Boothbay to continue to evolve as a classic marine village with a mix of uses such as residential uses, small-scale retail, office, and service uses, and smaller-scale marine uses. Facilities for pedestrians and bicyclists are upgraded making this more of a pedestrian area and linking East Boothbay to Ocean Point and to the remainder of the peninsula. East Boothbay Village continues to be the heart of the East Boothbay community and is increasingly used for community activities. Over time, the buildings in the Village are improved and limited new development occurs that reinforces the role of the East Boothbay as a traditional marine village while protecting established residential uses.

### **7.5.6.2 ALLOWED USES (EBV)**

The uses allowed in the East Boothbay Village (EBV) District are shown in the Table of Land Uses in Section 7.6. Retail and restaurant uses are allowed only on lots with frontage on Ocean Point Road and School Street. Commercial uses allowed in the district are limited to a maximum of two-thousand five hundred (2,500) square feet of floor area unless the Planning Board determines that a larger occupancy will be compatible with and contribute to a pedestrian focused village environment. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5.

### **7.5.6.3 SPACE AND BULK STANDARDS (EBV)**

<b>7.5.6.3.1</b>	Minimum developable lot area	Residential - 20,000 SF Nonresidential - 20,000 SF
<b>7.5.6.3.2</b>	Minimum net developable lot area per dwelling unit	20,000 SF – See 7.5.6.4.1
<b>7.5.6.3.3</b>	Minimum lot width Within the Shoreland Overlay Zone lot width within 100 feet of the resource	50 feet 100 feet residential
<b>7.5.6.3.4</b>	Minimum road setback	10 feet from property line
<b>7.5.6.3.5</b>	Maximum road setback	See 7.5.6.4.2
<b>7.5.6.3.6</b>	Minimum side property line setback	10 feet
<b>7.5.6.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.6.3.8</b>	Maximum building height	34 feet – the maximum height for marine-related uses may be up to 45 feet in accordance with Sec. 7.5.6.4.8.
<b>7.5.6.3.9</b>	Maximum non-vegetated surface area	40%

	Within the Shoreland Overlay Zone	20%
<b>7.5.6.3.10</b>	Minimum shoreland setback	Great ponds & associated wetlands – 100 feet Other resources – 75 feet
<b>7.5.6.3.11</b>	Minimum shoreland frontage - tidal	Residential – 100 feet Nonresidential – 100 feet
<b>7.5.6.3.12</b>	Minimum shoreland frontage – non-tidal	Residential – 100 feet Nonresidential – 100 feet

#### **7.5.6.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (EBV)**

Uses in the EBV District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.6.4.1** Buildings in existence as of November 3, 2020 may fully utilize the habitable floor area of the building existing as of that date for residential uses or a mixed of residential and commercial uses without needing to meet the minimum lot area requirements of Section **7.5.6.3.1** and Section **7.5.6.3.2** provided that the sewage disposal system conforms to state requirements for the proposed occupancy. In addition the use must meet the parking requirements.

**7.5.6.4.2** New buildings or modifications to existing buildings that increase the floor area by more than fifty (50) percent shall be sited to maintain the established pattern of setbacks existing on the same side of the street for up to three (3) lots in either direction to the extent feasible with the reasonable use of the site.

**7.5.6.4.3** New buildings and expansions of existing buildings that increase the floor area by more than fifty (50) percent shall be designed in a manner that reinforces the New England village character of the district. This shall include the use where practical of pitched or shed roofs, traditional siding or materials that simulate traditional siding and windows with a vertical orientation in which the height exceeds the width of the window.

**7.5.6.4.4** Nonresidential buildings must be designed so that the main entrance is located and designed to promote pedestrian movement. If there is a sidewalk or other pedestrian way along the frontage of the lot, there must be a pedestrian connection between the sidewalk and the main entrance of the building.

**7.5.6.4.5** The space between the road right-of-way and the front wall of the building must be maintained as a lawn or landscaped area or as a pedestrian environment. No vehicular or service facilities or areas shall be located in this area.

**7.5.6.4.6** Parking and service areas must be located to the side or rear of the principal building. No parking shall be permitted in area in front of the front wall of the principal building for the full width of the lot.

**7.5.6.4.7** Any proposal or the establishment or expansion of maritime activities must prepare and submit as part of their application for approval a neighborhood

mitigation plan that documents how the facility will be designed and operated to minimize the adverse impacts on adjacent residential properties. This plan must address traffic and parking, buffering, and nuisance considerations, including noise, exterior lighting, dust and fumes.

**7.5.6.4.8** The maximum building height for a marine-related nonresidential building may exceed thirty-four (34) feet up to a maximum of forty-five (45) feet if all of the following are met:

**7.5.6.4.8.1** The increased height of the building is approved in writing by the Fire Chief; and

**7.5.6.4.8.2** The area of the building above thirty-four (34) feet is not habitable space; and

**7.5.6.4.8.3** The building will setback from all side and rear property lines a minimum of twenty (20) feet.

#### **7.5.6.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (EBV)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.6.6 OTHER PERFORMANCE STANDARDS (EBV)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

#### **7.5.6.7 SHORELAND OVERLAY DISTRICT (EBV)**

A portion of the EBV District is subject to the additional requirements of the Shoreland Overlay District.

### **7.5.7 Scenic Gateway District (SG)**

#### **7.5.7.1 PURPOSE (SG)**

The Scenic Gateway District is intended to manage development in the Route 27 corridor from the Edgecomb town line to the intersection with Hardwick Road so that it continues to be an attractive and scenic entrance to Boothbay and the Boothbay-Boothbay Harbor region while the Route 96 corridor from the Boothbay Harbor town line to the intersection with Ship Builder Lane continues to provide separation between East Boothbay village and the commercial development in Boothbay Harbor and reinforces East Boothbay's image as a traditional coastal village. This corridor continues to be an attractive and scenic entrance to East Boothbay and Ocean Point. The character of these two portions of these corridors continues to appear to be primarily rural and undeveloped. New buildings have a small, rural character and are well set back from the road. A vegetated buffer is maintained along the road to enhance the visual character of the roadway and to soften the appearance of buildings that are visible from the road.



### 7.5.7.2 ALLOWED USES (SG)

The uses allowed in the Scenic Gateway (SG) District are shown in the Table of Land Uses in Section 7.6. Allowed retail, restaurant, office and service uses are limited to a maximum of five thousand (5,000) square feet of floor area unless the Planning Board as part of the approval process determines that a larger building can be designed and sited to maintain the rural, scenic character of the corridor. Allowed uses indicated by footnote 10 in the Table of Land Uses in Section 7.6 are permitted only if they are located a minimum of one hundred (100) feet from the Route 27 or Route 96 right-of-way and are screened from view from the road. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5.

### 7.5.7.3 SPACE AND BULK STANDARDS (SG)

<b>7.5.7.3.1</b>	Minimum developable lot area	Residential - 40,000 SF – See 7.5.7.4.1 Nonresidential - 80,000 SF –
<b>7.5.7.3.2</b>	Minimum net developable lot area per dwelling unit	40,000 SF – See 7.5.7.4.1
<b>7.5.7.3.3</b>	Minimum lot width Within the Shoreland Overlay Zone lot width within 100 feet of the resource Tidal Non-Tidal	State – 200 feet Other – 100 feet 150 feet residential 200 feet nonresidential 200 feet residential 300 feet nonresidential
<b>7.5.7.3.4</b>	Minimum road setback	State - 75 feet Town – 33 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.7.3.5</b>	Maximum road setback	None
<b>7.5.7.3.6</b>	Minimum side property line setback	Residential - 20 feet Nonresidential 30 feet – See 7.5.7.4.4
<b>7.5.7.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.7.3.8</b>	Maximum building height	34 feet – The maximum height for nonresidential or mixed-use buildings may be up to 45 feet in accordance with Sec. 7.5.7.4.5.

<b>7.5.7.3.9</b>	Maximum non-vegetated surface area	30%
	Within the Shoreland Overlay Zone	20%
<b>7.5.7.3.10</b>	Minimum shoreland setback	Great ponds & associated wetlands – 100 feet
		Other resources – 75 feet
<b>7.5.7.3.11</b>	Minimum shoreland frontage - tidal	Residential – 150 feet
		Nonresidential – 200 feet
<b>7.5.7.3.12</b>	Minimum shoreland frontage – non-tidal	Residential – 200 feet
		Nonresidential – 300 feet

#### **7.5.7.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (SG)**

Uses in the SG District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.7.4.1** New residential lots that are within two hundred (200) feet of the R-O-W of Route 27 must have minimum developable area and developable area per dwelling unit of sixty (60,000) square feet. To compensate for the additional size of these lots, lots created out of the same parent parcel or that are part of the same subdivision and more than two hundred (200) feet from Route 27 can be as small as thirty thousand (30,000) square feet as long as the average lot area for all lots created out of the parent parcel or in the subdivision is at least forty thousand (40,000) square feet.

**7.5.7.4.2** Any new nonresidential use with frontage on Route 27 or Route 96 must establish and maintain a landscaped buffer strip at least fifty (50) feet in width along the Route 27/96 frontage. The buffer strip shall meet the requirements of Section **10.1.1**.

**7.5.7.4.3** Uses identified in **7.6** Table of Land Uses by Note 10 shall comply with the following additional standards:

**7.5.7.4.3.1** All buildings, structures, parking lots, storage areas/facilities and similar improvements shall be located a minimum of one hundred fifty (150) from the centerline of Routes 27 or 96.

**7.5.7.4.3.2** The Planning Board may allow buildings, structures, parking lots, storage areas/facilities or similar improvements to be located closer to Route 27 or Route 196 if it finds that the shape or topography of the lot, existing vegetation, or the presence of existing or proposed building will effectively buffer these improvements from Route 27 or Route 96.

**7.5.7.4.3.3** All improvements shall be located on the lot to minimize their visibility from Route 27 or Route 96.

**7.5.7.4.3.4** If any improvements are or will be visible from Route 27 or Route 96, a natural or landscaped buffer meeting the requirements of **10.1.1** shall be established and maintained.

**7.5.7.4.4** Lots in a residential subdivision approved after November 3, 2020 must have their required lot frontage on a road other than Route 27 or Route 96 unless the Planning Board determines that this is not feasible given the size, shape or physical characteristics of the parcel being subdivided.

**7.5.7.4.5** The minimum side setback for nonresidential uses is thirty (30) feet. If the lot used for nonresidential purposes abuts a lot in residential use, a vegetated buffer strip at least twenty (20) feet in width meeting the requirements of Section **10.1.2** shall be established or maintained adjacent to all residential structures.

**7.5.7.4.6** The maximum building height for a nonresidential or mixed-use building may exceed thirty-four (34) feet up to a maximum of forty-five (45) feet if all of the following are met:

**7.5.7.4.6.1** The increased height of the building is approved in writing by the Fire Chief; and

**7.5.7.4.6.2** The area of the building above thirty-four (34) feet is not habitable space; and

**7.5.7.4.6.3** The building will setback from all side and rear property lines a minimum of forty-five (45) feet.

#### **7.5.7.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (SG)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.7.6 OTHER PERFORMANCE STANDARDS (SG)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

#### **7.5.7.7 SHORELAND OVERLAY DISTRICT (SG)**

A portion of the SG District is subject to the additional requirements of the Shoreland Overlay District.

### **7.5.8 Rural Mixed-Use District (RMU)**

#### **7.5.8.1 PURPOSE (RMU)**

The Rural Mixed-Use District is intended to manage development so that the portions of Boothbay that are away from the coast and the major roads remain primarily open, rural areas with limited development. Small-scale rural and nonresidential enterprises are allowed in these areas over time but are done in a way that maintains the rural landscape.

#### **7.5.8.2 ALLOWED USES (RMU)**

The uses allowed in the Rural Mixed-Use (RMU) District are shown in the Table of Land Uses in Section **7.6**. If the use is allowed in the district, the table also indicates if a

review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5. A portion of the RMU District is located within the watersheds of Adams Pond and the Knickerbocker Lakes and is therefore subject to the provisions of the Watershed Protection Overlay (WPO) District. These provisions modify the allowed uses shown in the Table of Land Uses.

#### **7.5.8.3 SPACE AND BULK STANDARDS (RMU)**

<b>7.5.8.3.1</b>	Minimum developable lot area	Residential-30,000 SF Nonresidential - See 7.5.8.3.1
<b>7.5.8.3.2</b>	Minimum net developable lot area per dwelling unit	25,000 SF
<b>7.5.8.3.3</b>	Minimum lot width Within the Shoreland Overlay Zone lot width within 100 feet of the resource Tidal Non-Tidal	125 feet 150 feet residential 200 feet nonresidential 200 feet residential 300 feet nonresidential
<b>7.5.8.3.4</b>	Minimum road setback	State - 75 feet Town – 60 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.8.3.5</b>	Maximum road setback	None
<b>7.5.8.3.6</b>	Minimum side property line setback	Residential - 20 feet Nonresidential -See 7.5.8.4.3
<b>7.5.8.3.7</b>	Minimum rear property line setback	Residential - 20 feet Nonresidential -See 7.5.8.4.3
<b>7.5.8.3.8</b>	Maximum building height	34 feet
<b>7.5.8.3.9</b>	Maximum non-vegetated surface area Within the Shoreland Overlay Zone	30% 20%
<b>7.5.8.3.10</b>	Minimum shoreland setback	Great ponds & associated wetlands – 100 feet Other resources – 75 feet
<b>7.5.8.3.11</b>	Minimum shoreland frontage - tidal	Residential – 150 feet Nonresidential – 200 feet
<b>7.5.8.3.12</b>	Minimum shoreland frontage – non-tidal	Residential – 200 feet Nonresidential – 300 feet

#### **7.5.8.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (RMU)**

Uses in the RMU District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.8.4.1** A lot that is used for a nonresidential use must have a minimum developable area of twenty thousand (20,000) square feet and conform to the maximum building area requirement of Section 7.5.8.4.2.

**7.5.8.4.2** The floor area of all buildings used for nonresidential purposes shall be less than ten (10) percent of the developable lot area of the lot on which it is located.

**7.5.8.4.3** The side and rear setbacks for buildings used for nonresidential purposes shall be determined by the height of the tallest nonresidential building located within one hundred (100) feet of the property line as follows:

**7.5.8.4.3.1** If the tallest building is less than twenty (20) feet high, the minimum side and rear setbacks are forty (40) feet

**7.5.8.4.3.1** If the tallest building is less than twenty-five (25) feet high, the minimum side and rear setbacks are fifty (50) feet

**7.5.8.4.3.1** If the tallest building is less than thirty (30) feet high, the minimum side and rear setbacks are sixty (60) feet

**7.5.8.4.3.1** If the tallest building is less than thirty-four (34) feet high, the minimum side and rear setbacks are seventy (70) feet

**7.5.8.4.4** The total number of vehicle trips per day in association with a nonresidential use shall not exceed one hundred (100). Trips by vehicles with six (6) or more wheels shall not exceed ten (10) trips per day.

#### **7.5.8.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (RMU)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.8.6 OTHER PERFORMANCE STANDARDS (RMU)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

#### **7.5.8.7 SHORELAND OVERLAY DISTRICT (RMU)**

A portion of the RMU District is subject to the additional requirements of the Shoreland Overlay District.

## **7.5.9 Commercial Corridor District (CC)**

### **7.5.9.1 PURPOSE (CC)**

The Commercial Corridor District is intended to allow this portion of the Route 27 corridor to continue to develop as a commercial center, including larger-scale commercial uses that are not appropriate in other portions of the Route 27 corridor. Over time, the visual environment of this portion of the corridor improves as do provisions for access and stormwater management.

### **7.5.9.2 ALLOWED USES (CC)**

The uses allowed in the Commercial Corridor (CC) District are shown in the Table of Land Uses in Section 7.6. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5. A portion of the CC District is located within the watershed of Adams Pond and is therefore subject to the provisions of the Watershed Protection Overlay (WPO) District. These provisions modify the allowed uses shown in the Table of Land Uses.

### **7.5.9.3 SPACE AND BULK STANDARDS (CC)**

<b>7.5.9.3.1</b>	Minimum developable lot area	40,000 SF
<b>7.5.9.3.2</b>	Minimum net developable lot area per dwelling unit	40,000 SF
<b>7.5.9.3.3</b>	Minimum lot width	100 feet
<b>7.5.9.3.4</b>	Minimum road setback	State - 75 feet Town – 60 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.9.3.5</b>	Maximum road setback	None
<b>7.5.9.3.6</b>	Minimum side property line setback	20 feet
<b>7.5.9.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.9.3.8</b>	Maximum building height	50 feet for any portion of the building that meets all setback requirements 34 feet for any portion of the building that does not meet all setback requirements
<b>7.5.9.3.9</b>	Maximum impervious surface area	60%

### **7.5.9.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (CC)**

Uses in the CC District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.9.4.1** Any new use or development or any activity that expands the floor area of an existing building by more than fifty (50) percent shall establish a landscaped buffer strip along the property line with any public street. The buffer strip shall be a minimum of ten (10) feet in width and shall meet the requirements of Section **10.1.1**.

**7.5.9.4.2** Any non-residential building or use that is on a lot that abuts a lot that is located in a residential or mixed-use district shall maintain a landscaped buffer strip along that property line in accordance with the provisions of Section **10.1.2**. The width of the buffer strip shall be determined by the height of the principal structure closest to the property line. For buildings with a height of twenty (20) feet or less, the width of the buffer strip shall be twenty (20) feet. For buildings taller than twenty (20) feet, the width of the buffer strip shall be the equivalent of the height of the building.

#### **7.5.9.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (CC)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.9.6 OTHER PERFORMANCE STANDARDS (CC)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

### **7.5.10 Manufacturing/Business District (MB)**

#### **7.5.10.1 PURPOSE (MB)**

The Manufacturing/Business District is intended to allow the area in and around the current industrial park to continue to develop as a location for a wide range of nonresidential uses. Over time, the type of businesses located in this area evolves into businesses that provide well-paying jobs while expanding the Town's tax base.

#### **7.5.10.2 ALLOWED USES (MB)**

The uses allowed in the Manufacturing/Business (MB) District are shown in the Table of Land Uses in Section **7.6**. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5. A portion of the MB District is located within the watersheds of Adams Pond and the Knickerbocker Lakes and is therefore subject to the provisions of the Watershed Protection Overlay (WPO) District. These provisions modify the allowed uses shown in the Table of Land Uses.

#### **7.5.10.3 SPACE AND BULK STANDARDS (MB)**

<b>7.5.10.3.1</b>	Minimum developable lot area	20,000 SF with year-round public water and public sewer otherwise 40,000 SF
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<b>7.5.10.3.2</b>	Minimum net developable lot area per dwelling unit	NA
<b>7.5.10.3.3</b>	Minimum lot width	100 feet
<b>7.5.10.3.4</b>	Minimum road setback	State – 75 feet Town – 8 feet from the edge of the R-O-W of the Industrial Park Road otherwise 33 feet for other Town roads  Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.10.3.5</b>	Maximum road setback	None
<b>7.5.10.3.6</b>	Minimum side property line setback	10 feet
<b>7.5.10.3.7</b>	Minimum rear property line setback	10 feet
<b>7.5.10.3.8</b>	Maximum building height	The maximum height of all structures and accessory support equipment shall be 50 feet provided that the building or structure conforms to all setback requirements otherwise 34 feet. This limitation shall not apply to antennas, chimneys and communication towers.
<b>7.5.10.3.9</b>	Maximum impervious surface area	100%

#### **7.5.10.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (MB)**

Uses in the MB District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.10.4.1 Buffers** - Any non-residential building or use that is on a lot that abuts a lot that is located in a residential or mixed-use district shall maintain a landscaped buffer strip at least forty (40) feet in width along that property line in accordance with the provisions of Section **10.1.2**.

**7.5.10.4.2 Educational Facilities** - Educational Facilities shall be limited to vocational training.

**7.5.10.4.3 Function Rooms** - Function Rooms where the use includes the participation of persons other than the owner, employees or customers shall be permitted only as an accessory use.

**7.5.10.4.4 Access to Residential Lots** - Access to residential lots shall not be permitted via Industrial Park Road.



**7.5.10.4.5 Sex Related Businesses** - Sex Related Businesses shall be located at least one thousand (1,000) feet from Route 27 and Pension Ridge Road.

**7.5.10.4.6 Existing Sewage Disposal Facilities** - Existing properties using subsurface wastewater disposal facilities within the MB District shall be connected to a public sewer when the current sewage disposal system fails if the sewer is located within two hundred (200) feet of the lot.

**7.5.10.4.7 Sewage Disposal for New Buildings** - New buildings in the MB District shall connect to the public sewer system if the sewer is located within two hundred (200) feet of the lot.

**7.5.10.4.8 Temporary Business Housing** - The Planning Board may approve the construction of a dwelling unit as an accessory use for short term housing. Temporary Business Housing shall meet the following standards:

**7.5.10.4.8.1** The owners, employees, contractors, and customers of the principal use are the only persons authorized to use the dwelling unit;

**7.5.10.4.8.2** Occupancy shall only occur in connection with a project currently being worked on or during negotiations for a future project;

**7.5.10.4.8.3** Occupancy per use shall be for a maximum of one year or the duration of the project whichever is longer;

**7.5.10.4.8.4** The number of occupants is limited to two adults;

**7.5.10.4.8.5** Only one dwelling unit shall be permitted on a lot;

**7.5.10.4.8.6** The dwelling unit shall not be in a separate structure; and

**7.5.10.4.8.7** Two ways to enter/exit the dwelling unit shall be provided.

#### **7.5.10.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (MB)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.10.6 OTHER PERFORMANCE STANDARDS (MB)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

### **7.5.11 Marine Commercial District (MC)**

#### **7.5.11.1 PURPOSE (MC)**

The Maritime Commercial District continues to support a variety of marine activities that serve as an employment center for the community. As needed, the marine-related uses expand especially along the waterfront south of School Street where the topography allows for this growth without encroaching on the village. If expansion occurs, development is carried out in a manner that effectively buffers it from the adjacent neighborhood.

### 7.5.11.2 ALLOWED USES (MC)

The uses allowed in the Marine Commercial (MC) District are shown in the Table of Land Uses in Section 7.6. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5.

### 7.5.11.3 SPACE AND BULK STANDARDS (MC)

<b>7.5.11.3.1</b>	Minimum developable lot area	Marine and functionally water dependent uses – none Other uses – 20,000 SF
<b>7.5.11.3.2</b>	Minimum net developable lot area per dwelling unit	30,000 SF
<b>7.5.11.3.3</b>	Minimum lot width Within the Shoreland Overlay Zone lot width within 100 feet of the resource Tidal Non-Tidal	50 feet 150 feet residential 200 feet nonresidential 200 feet residential 300 feet nonresidential
<b>7.5.11.3.4</b>	Minimum road setback	State – 25 feet except from Route 96 (see 7.5.11.4.3) Town – 25 feet
<b>7.5.11.3.5</b>	Maximum road setback	See 7.5.11.4.3
<b>7.5.11.3.6</b>	Minimum side property line setback	10 feet (See 7.5.11.4.1 and 7.5.11.4.2)
<b>7.5.11.3.7</b>	Minimum rear property line setback	20 feet (See 7.5.11.4.1 and 7.5.11.4.2)
<b>7.5.11.3.8</b>	Maximum building height	See 7.5.11.4.4
<b>7.5.11.3.9</b>	Maximum non-vegetated surface area	Marine and functionally water dependent use – 70% Other uses – 30%
<b>7.5.11.3.10</b>	Minimum shoreland setback	Marine related activities – None Other activities – 25 feet
<b>7.5.11.3.11</b>	Minimum shoreland frontage - tidal	Residential – 150 feet Nonresidential – 100 feet
<b>7.5.11.3.12</b>	Minimum shoreland frontage – non-tidal	Residential – 150 feet Nonresidential – 200 feet

### 7.5.11.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (MC)

Uses in the MC District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.11.4.1** Any new non-residential building or use including parking, or any expansion of an existing nonresidential building or use that increases the floor area or impervious surface area by more than fifty (50) percent that is on a lot that abuts a lot that is located in a residential or mixed-use district shall maintain a landscaped buffer strip at least forty (40) feet in width along that property line in accordance with the provisions of Section **10.1.2**. The Planning Board may reduce the width of the buffer strip for uses that do not have significant impacts on adjacent properties.

**7.5.11.4.2** Any new or expanded marine use, or any new non-residential building or use including parking, or any expansion of an existing nonresidential building or use that increases the floor area or impervious surface area by more than fifty (50) percent that is on a lot that abuts a lot within the district that is used for residential purposes shall maintain a landscaped buffer strip at least twenty (20) feet in width along that property line in accordance with the provisions of Section **10.1.2**. The Planning Board may reduce the width of the buffer strip for uses that do not have significant impacts on adjacent properties.

**7.5.11.4.3** New buildings or modifications to existing buildings located on lots that front on Route 96 that increase the floor area by more than fifty (50) percent shall be sited to maintain the established pattern of setbacks and height existing on the same side of the street for up to three (3) lots in either direction to the extent feasible with the reasonable use of the site. This requirement shall not apply to marina or maritime activities that require a location close to the shoreline.

**7.5.11.4.4** The maximum height of any structure or portion of a structure located within one hundred (100) feet of the centerline of Route 96 shall be limited to thirty-four (34) feet. The maximum height of structures or portions of structures located more than one hundred (100) feet from the centerline of Route 96 shall be limited to thirty-four (34) feet except for structures used for maritime related businesses. The maximum height for any manufacturing facility for a maritime related business, where access to the water is an operational necessity, shall be seventy-five (75) feet. The maximum height for other maritime related businesses shall be fifty (50) feet. The above height limitations do not apply to chimneys, antennas, and communications towers. Equipment specifically associated with an allowed use may be allowed to exceed the above height limitation with Planning Board approval.

**7.5.11.4.5** Temporary Business Housing - The Planning Board may approve the construction of one or more dwelling unit as an accessory use for short term housing. Temporary Business Housing shall meet the following standards:

**7.5.11.4.5.1** The owners, employees, contractors, and customers of the principal business use are the only persons authorized to use the dwelling units;

**7.5.11.4.5.2** Occupancy shall only occur in connection with a project currently being worked on or during negotiations for a future project;

**7.5.11.4.5.3** Occupancy per use shall be for a maximum of the duration of the project; and

**7.5.11.4.5.4** Two ways to enter/exit each dwelling unit shall be provided.

#### **7.5.11.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (MC)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.11.6 OTHER PERFORMANCE STANDARDS (MC)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

#### **7.5.11.7 SHORELAND OVERLAY DISTRICT (MC)**

A portion of the MC District is subject to the additional requirements of the Shoreland Overlay District.

#### **7.5.12 Reserved**

#### **7.5.13 Water Reservoirs Protection – Route 27 District (WRP-27)**

##### **7.5.13.1 PURPOSE (WRP-27)**

The Water Reservoirs Protection – Route 27 District includes the area on the easterly side of Route 27 that is within five hundred (500) feet of the high water line of Adams Pond or the upland boundary of associated wetlands. The goal of the district is to provide additional protection of nearshore areas to ensure the preservation of both the quality and quantity of the public water supply. The district standards limit development in this area to environmentally compatible uses while allowing for the development of new, small-scale uses and the reuse or redevelopment of existing developed lots provided that the activities meet the performance standards designed to reduce any potential negative impacts on watershed resources.

##### **7.5.13.2 ALLOWED USES (WRP-27)**

The uses allowed in the Water Reservoirs Protection – Route 27 (WRP-27) District are shown in the Table of Land Uses in Section 7.6. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5.

##### **7.5.13.3 SPACE AND BULK STANDARDS (WRP-27)**

<b>7.5.13.3.1</b>	Minimum developable lot area	2 acres except for lots existing as of April 1, 2019
<b>7.5.13.3.2</b>	Minimum net developable lot area per dwelling unit	2 acres

<b>7.5.13.3.3</b>	Minimum lot width	150 feet
<b>7.5.13.3.4</b>	Minimum road setback	State - 50 feet Town – 33 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.13.3.5</b>	Maximum road setback	None
<b>7.5.13.3.6</b>	Minimum side property line setback	20 feet
<b>7.5.13.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.13.3.8</b>	Maximum building height	34 feet.
<b>7.5.13.3.9</b>	Maximum non-vegetated surface area	20% of lot area or as approved by Planning Board in accordance with Sec. 7.5.13.4.3
<b>7.5.13.3.10</b>	Maximum area of lot that can be developed	20%; for existing lots less than one acre the PB may allow a greater percentage in accordance with Sec. 7.5.13.4.3
<b>7.5.13.3.11</b>	Minimum shoreland setback	100 feet (See 7.5.13.4.1)
<b>7.5.13.3.12</b>	Minimum shoreland frontage	NA

#### **7.5.13.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (WRP-27)**

Uses in the WRP-27 District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.13.4.1 Shoreland Setback:** The minimum shoreland setback requirement of 7.5.13.3.13 shall not apply to functionally water dependent fixtures owned and operated by a public utility which by functional necessity must be located closer to the water than the minimum setback otherwise allows. Functionally water-dependent fixtures include, but are not limited to, pumping stations, pumps, vaults, and hydrants and structures housing the same.

**7.5.13.4.2 Roads and Driveways:** New roads and driveways are prohibited except to provide access to permitted uses within the WRP-27 District. Construction of a new road or driveway must be approved by the Planning Board and must comply with the standards of Section 7.5.17.4.4 of the Shoreland Overlay District. The Planning Board shall approve such construction only if it determines that the road or driveway will be set back as far as feasible from all shorelines and will be located and designed to minimize the amount of clearing necessary.

#### **7.5.13.4.3 Maintenance or Increase of Impervious Surface Area:**

**7.5.13.4.3.1** Notwithstanding the provisions of Section 7.5.13.3, the Planning Board shall allow the amount of impervious surface that exists as of

November 3, 2020 that exceeds the applicable limitation to be maintained and to be improved provided the site conforms to the requirements of the WRP-27 District to the extent reasonable. Improvement of existing impervious surface may include the reconfiguration of the location of the impervious surface provided that the total impervious surface area is not increased.

**7.5.13.4.3.2** Notwithstanding the provisions of Section **7.5.13.3**, the Planning Board shall allow the amount of impervious surface on a lot existing as of April 1, 2019 with an area of less than one acre to exceed the twenty percent (20%) limitation if the Planning Board finds that there is no reasonable use of the property with the twenty (20) percent limitation, the property shall be either connected to the public sewer system or served by a subsurface wastewater disposal system that conforms to the requirement of the state subsurface sewage disposal rules in effect at the time of the improvement; and a stormwater management plan meeting the requirements of Section **9.3** has or will be implemented. The goal of the Planning Board in allowing such an increase is to minimize the amount of impervious surface and developed area within the WRPD-27 to the maximum extent feasible. In determining what is a reasonable use of the lot, the Planning Board shall consider site plan alternatives, the size of the lot, the slope of the land, the potential for soil erosion, the location of structures on the property relative to streams and water courses, the use of low impact development best management practices in site development and stormwater management, and the presence of an adequate natural vegetative buffer between developed areas and waterways. The Planning Board shall not authorize an expansion of impermeable surface area of existing uses in the Water Reservoirs Protection – Route 27 District if the total impervious surface area of all lot areas located in the WRPD-27 is greater than twenty (20) percent.

**7.5.13.4.4 Subsurface Wastewater Disposal Systems:** New or replacement subsurface wastewater disposal system shall conform to the following additional requirements:

**7.5.13.4.4.1** No substances other than domestic wastewater shall be discharged to any subsurface waste water disposal system or any other means of on-site sewage disposal.

**7.5.13.4.4.2** Not more than one thousand (1000) gallons per day of sewage shall be discharged to any new subsurface wastewater disposal system.

**7.5.13.4.4.3** If a lot is served by an existing subsurface wastewater disposal system that: (1) is more than twenty-five (25) years old or is of unknown age and the system is located within one hundred (100) feet of the high water line of Adams Pond or the upland edge of any wetland associated with Adams Pond, or (2) is less than twenty-five (25) years old and the system is located within fifty (50) feet of Adams Pond or the upland edge of any wetland associated with Adams Pond, the property owner shall enter into a septic system maintenance agreement with the Town as a condition of receiving any Town permits or approvals for modifications or expansions to the principal

building(s) on the lot. The maintenance agreement shall set forth a schedule for the periodic pumping of the septic tank and maintenance of the system based upon the typical occupancy of the property and shall be approved by the Plumbing Inspector. The property owner shall be responsible for maintaining written records of the required maintenance and shall provide the records to the Plumbing Inspector upon request.

**7.5.13.4.5 Storage of Heating Oil:** The following additional performance standards apply to the storage of heating oil:

**7.5.13.4.5.1** All new heating oil tanks shall be located a minimum of one hundred fifty (150) feet from the high water line of Adams Pond or the upland edge of any wetland associated with Adams Pond and seventy-five (75) feet from any watershed tributary stream. If the size, shape or physical conditions of the lot make it unreasonable to meet these setbacks, the Code Enforcement Officer may, after consultation with the Boothbay Region Water District, allow the tank to be located closer to the resource provided that all components of the system are located as far from the resource as possible given the physical limitations of the lot.

**7.5.13.4.5.2** Any existing single-walled steel heating oil tank that is determined by the Code Enforcement Officer to be more than fifteen (15) years old shall be tested once a year using an ultrasonic inspection test (TankSure or similar) and the results of the test provided to the Code Enforcement Officer and the Boothbay Region Water District. If the testing company, based on the test results, recommends the repair or replacement of the storage tank, the owner of the tank shall repair or replace the tank within one hundred eighty (180 days) of the determination.

**7.5.13.4.6 Storage of Petroleum or Hazardous Liquids:** The storage of petroleum products or other hazardous liquids that are a potential threat to the quality of the public water supply shall occur on an impervious surface. If the storage is more than fifty-five (55) gallons of any material, the storage shall be located within secondary containment with the capacity to hold one hundred (100) percent of the amount of the stored material.

**7.5.13.4.7 Use of Fertilizer:** Fertilizer use within one hundred (100) feet of the high water line of Adams Pond and the upland edge of any wetland associated with Adams Pond and any watershed tributary stream shall be limited to manure or fertilizers containing slow-release nitrogen and zero phosphorous. This limitation shall not apply where there is a naturally vegetated buffer strip adjacent to the resource that meets the water supply buffer requirements and is at least fifty (50) feet in width.

**7.5.13.4.8 Use of Pesticides:** The following additional performance standards apply to the use of pesticides:

**7.5.13.4.8.1** Pesticide use within one hundred (100) feet of the high water line of Adams Pond and the upland edge of any wetland associated with Adams Pond and any watershed tributary stream shall be limited to applications in which

the pesticide(s) is injected directly in the plant or adjacent soil. Broadcast application or spraying within this area is not permitted unless specifically approved in writing by the Code Enforcement Officer and is limited to hand powered methods.

**7.5.13.4.8.2** The standards of the Maine Pesticides Control Board that apply within fifty (50) feet of a water resource shall apply within one hundred (100) feet of the high water line of Adams Pond and the upland edge of any wetland associated with Adams Pond and any watershed tributary stream.

**7.5.13.4.9 Reuse or Redevelopment of an Existing Developed Lot:** The limits on the size and intensity of a use set forth in the Table of Land Uses shall not apply to the reuse or expansion of a building existing as of November 3, 2020 or to the redevelopment of a lot that was improved with one or more buildings and/or structures as of November 3, 2020 provided that all the following requirements are met:

**7.5.13.4.9.1** The total amount of impervious surface area located within the WRP-27 District after the improvement shall be equal to or less than the total impervious surface area existing as of November 3, 2020;

**7.5.13.4.9.2** The property shall be either connected to the public sewer system or served by a subsurface wastewater disposal system that conforms to the requirement of the state subsurface sewage disposal rules in effect at the time of the improvement; and

**7.5.13.4.9.3** A stormwater management plan meeting the requirements of Section 9.3 has or will be implemented.

**7.5.13.4.10 Snow Dumping:** No snow removed from a property located outside of the WRP-27 District shall be dumped on a lot located within the WRP-27 District.

**7.5.13.4.11 Steep Slopes:** New development is not permitted on sites with sustained slopes in excess of twenty (20) percent if the lot is vacant with no principal structure.

#### **7.5.13.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (WRP-27)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.13.6 OTHER PERFORMANCE STANDARDS (WRP-27)**

Activities within the WRP-27 District are subject to the provisions of the Shoreland Overlay (SO) District. Activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10 in addition to the standards of this section.

#### **7.5.13.7 SHORELAND OVERLAY DISTRICT (WRP-27)**

The WRP-27 District is subject to the additional requirements of the Shoreland Overlay District.



## **7.5.14 Water Reservoirs Protection District (WRP)**

### **7.5.14.1 PURPOSE (WRP)**

The Water Reservoirs Protection District includes the area within five hundred feet of the high water line of Adams Pond (portion of 2020 Tax Map U-19) and Knickerbocker Lakes (portion of 2020 Tax Map R-4), the pond to the west of Adams Pond (portion of 2020 Tax Map R-4) and Knickerbocker Lake Marsh (portion of 2020 Tax Map R-4) excluding the area included in the WPR-27 District on the east side of Adams Pond. The goal of the district is to provide additional protection of nearshore areas to ensure the preservation of both the quality and quantity of the public water supply. The district standards limit development in this area to environmentally compatible uses.

### **7.5.14.2 ALLOWED USES (WRP)**

The uses allowed in the Water Reservoirs Protection (WRP) District are shown in the Table of Land Uses in Section 7.6. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5.

### **7.5.14.3 SPACE AND BULK STANDARDS (WRP)**

<b>7.5.14.3.1</b>	Minimum developable lot area	4 acres w/o public sewer, 2 acres w/public sewer, except for lots existing as of April 1, 2019
<b>7.5.14.3.2</b>	Minimum net developable lot area per dwelling unit	4 acres w/o public sewer, 2 acres w/ public sewer
<b>7.5.14.3.3</b>	Minimum lot width Within the Shoreland Overlay Zone lot width within 100 feet of the resource	150 feet 200 feet
<b>7.5.14.3.4</b>	Minimum road setback	State - 50 feet Town – 33 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.14.3.5</b>	Maximum road setback	None
<b>7.5.14.3.6</b>	Minimum side property line setback	20 feet
<b>7.5.14.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.14.3.8</b>	Maximum building height	34 feet
<b>7.5.14.3.9</b>	Maximum non-vegetated surface area  Within the Shoreland Overlay Zone	20% of lot area or as approved by Planning Board in accordance with Sec. 7.5.14.4.3  20%

<b>7.5.14.3.10</b>	Maximum area of lot that can be developed	20%; for existing lots less than one acre the PB may allow a greater percentage in accordance with Sec. 7.5.14.4.3
<b>7.5.14.3.11</b>	Minimum shoreland setback	100 feet (see 7.5.14.4.1)
<b>7.5.14.3.12</b>	Minimum shoreland frontage	200 feet

#### **7.5.14.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (WRP)**

Uses in the WRP District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.14.4.1 Shoreland Setback:** The minimum shoreland setback requirement of Section **7.5.14.3.12** shall not apply to functionally water dependent fixtures owned and operated by a public utility which by functional necessity must be located closer to the water than the minimum setback otherwise allows. Functionally water-dependent fixtures include, but are not limited to, pumping stations, pumps, vaults, and hydrants and structures housing the same.

**7.5.14.4.2 Roads and Driveways:** New roads and driveways are prohibited except to provide access to permitted uses within the WRP District. Construction of a new road or driveway must be approved by the Planning Board and must comply with the standards of Section **7.5.17.4.4** of the Shoreland Overlay District. The Planning Board shall approve such construction only if it determines that the road or driveway will be set back as far as feasible from all shorelines and will be located and designed to minimize the amount of clearing necessary.

#### **7.5.14.4.3 Maintenance or Increase of Impervious Surface Area:**

**7.5.14.4.3.1** Notwithstanding the provisions of Section **7.5.14.3**, the Planning Board shall allow the amount of impervious surface that exists as of November 3, 2020 that exceeds the applicable limitation to be maintained and to be improved provided the site conforms to the requirements of the WRP District to the extent reasonable. Improvement of existing impervious surface may include the reconfiguration of the location of the impervious surface provided that the total impervious surface area is not increased.

**7.5.14.4.3.2** Notwithstanding the provisions of Section **7.5.13.3**, the Planning Board shall allow the amount of impervious surface on a lot existing as of April 1, 2019 with an area of less than one acre to exceed the twenty (20) percent limitation if the Planning Board finds that there is no reasonable use of the property with the twenty (20) percent limitation, the property shall be either connected to the public sewer system or served by a subsurface wastewater disposal system that conforms to the requirement of the state subsurface sewage disposal rules in effect at the time of the improvement; and a stormwater management plan meeting the requirements of Section **9.3** has or will be implemented. The goal of the Planning Board in allowing such an

increase is to minimize the amount of impervious surface and developed area within the WRP District to the maximum extent feasible. In determining what is a reasonable use of the lot, the Planning Board shall consider site plan alternatives, the size of the lot, the slope of the land, the potential for soil erosion, the location of structures on the property relative to streams and water courses, the use of low impact development best management practices in site development and stormwater management, and the presence of an adequate natural vegetative buffer between developed areas and waterways. The Planning Board shall not authorize an expansion of impermeable surface area of existing uses in the Water Reservoirs Protection District if the total impervious surface area of all lot areas located in the WRP District is greater than twenty percent (20%).

**7.5.14.4.5 Subsurface Wastewater Disposal Systems:** New or replacement subsurface wastewater disposal system shall conform to the following additional requirements:

**7.5.14.4.5.1** No substances other than domestic wastewater shall be discharged to any subsurface waste water disposal system or any other means of on-site sewage disposal.

**7.5.14.4.5.2** Not more than one thousand (1000) gallons per day of sewage shall be discharged to any new subsurface wastewater disposal system.

**7.5.14.4.5.3** If a lot is served by an existing subsurface wastewater disposal system that: (1) is more than twenty-five (25) years old or is of unknown age and the system is located within one hundred (100) feet of the high water line of Adams Pond or Knickerbocker Lakes or the upland edge of any wetland associated with Adams Pond or Knickerbocker Lakes, or (2) is less than twenty-five (25) years old and the system is located within fifty (50) feet of Adams Pond or Knickerbocker Lakes or the upland edge of any wetland associated with Adams Pond or Knickerbocker Lakes, the property owner shall enter into a septic system maintenance agreement with the Town as a condition of receiving any Town permits or approvals for modifications or expansions to the principal building(s) on the lot. The maintenance agreement shall set forth a schedule for the periodic pumping of the septic tank and maintenance of the system based upon the typical occupancy of the property and shall be approved by the Plumbing Inspector. The property owner shall be responsible for maintaining written records of the required maintenance and shall provide the records to the Plumbing Inspector upon request.

**7.5.14.4.6 Storage of Heating Oil:** The following additional performance standards apply to the storage of heating oil:

**7.5.13.4.6.1** All new heating oil tanks shall be located a minimum of one hundred fifty (150) feet from the high water line of Adams Pond or Knickerbocker Lakes or the upland edge of any wetland associated with Adams Pond or Knickerbocker Lakes and seventy-five (75) feet from any watershed tributary stream. If the size, shape or physical conditions of the lot make it unreasonable to meet these setbacks, the Code Enforcement Officer may, after

consultation with the Boothbay Region Water District, allow the tank to be located closer to the resource provided that all components of the system are located as far from the resource as possible given the physical limitations of the lot.

**7.5.14.4.6.2** Any existing single-walled steel heating oil tank that is determined by the Code Enforcement Officer to be more than fifteen (15) years old shall be tested once a year using an ultrasonic inspection test (TankSure or similar) and the results of the test provided to the Code Enforcement Officer and the Boothbay Region Water District. If the testing company, based on the test results, recommends the repair or replacement of the storage tank, the owner of the tank shall repair or replace the tank within one hundred eighty (180 days) of the determination.

**7.5.14.4.7 Storage of Petroleum or Hazardous Liquids:** The storage of petroleum products or other hazardous liquids that are a potential threat to the quality of the public water supply shall occur on an impervious surface. If the storage is more than fifty-five (55) gallons of any material, the storage shall be located within secondary containment with the capacity to hold one hundred (100) percent of the amount of the stored material.

**7.5.14.4.8 Use of Fertilizer:** Fertilizer use within one hundred (100) feet of the high water line of Adams Pond or Knickerbocker Lakes and the upland edge of any wetland associated with Adams Pond Lakes or Knickerbocker Lakes and any watershed tributary stream shall be limited to manure or fertilizers containing slow-release nitrogen and zero phosphorous. This limitation shall not apply where there is a naturally vegetated buffer strip adjacent to the resource that meets the water supply buffer requirements and is at least fifty (50) feet in width.

**7.5.14.4.9 Use of Pesticides:** The following additional performance standards apply to the use of pesticides:

**7.5.14.4.9.1** Pesticide use within one hundred (100) feet of the high water line of Adams Pond or Knickerbocker Lakes and the upland edge of any wetland associated with Adams Pond or Knickerbocker Lakes and any watershed tributary stream shall be limited to applications in which the pesticide(s) is injected directly in the plant or adjacent soil. Broadcast application or spraying within this area is not permitted unless specifically approved in writing by the Code Enforcement Officer and is limited to hand powered methods.

**7.5.14.4.9.2** The standards of the Maine Pesticides Control Board that apply within fifty (50) feet of a water resource shall apply within one hundred (100) feet of the high water line of Adams Pond or Knickerbocker Lakes and the upland edge of any wetland associated with Adams Pond or Knickerbocker Lakes and any watershed tributary stream.

**7.5.14.4.10 Snow Dumping:** No snow removed from a property located outside of the WRP District shall be dumped on a lot located within the WRP District.

**7.5.14.4.11 Steep Slopes:** New development is not permitted on sites with sustained slopes in excess of twenty (20) percent if the lot is vacant with no principal structure.

**7.5.14.4.12 Timber Harvesting:** Timber Harvesting is subject to the standards for timber harvesting in the Watershed Protection Overlay (WPO) District and the following additional more restrictive standards:

**7.5.14.4.12.1** Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or watershed tributary stream, or the upland edge of a wetland.

**7.5.14.4.12.1.1** No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a waterbody or watershed tributary stream, or the upland edge of a non-forested wetland larger than ten (10) acres; and

**7.5.14.4.12.1.2** Between fifty (50) feet and two hundred fifty (250) feet, horizontal distance, of the normal high-water line of a waterbody or watershed tributary stream, or the upland edge of a wetland, all slash larger than three (3) inches in diameter must be disposed of in such a manner that no part thereof extends more than four (4) feet above the ground.

**7.5.14.4.12.2** Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained, in accordance with the following:

**7.5.14.4.12.2.1** Harvesting of no more than forty (40) percent of the total volume on each acre of trees four and one half (4½) inches DBH or greater in any ten (10) year period is allowed. Volume may be considered to be equivalent to basal area;

**7.5.14.4.12.2.2** A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,

**7.5.14.4.12.2.3** Within seventy-five (75) feet, horizontal distance, of the normal high-water line of streams, watershed tributary streams and great ponds, and within seventy-five (75) feet, horizontal distance, of the upland edge of a freshwater wetland, there must be no cleared openings in the forest canopy. At distances greater than seventy (75) feet, horizontal distance, of the normal high-water line of a great pond, stream, watershed tributary stream, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings in the forest canopy greater than fourteen thousand (14,000) square feet in the forest canopy. Where such openings exceed ten thousand (10,000) square feet, they must be at least two hundred (200) feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.

#### **7.5.14.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (WRP)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.14.6 OTHER PERFORMANCE STANDARDS (WRP)**

Activities within the WRP District are subject to the provisions of the Shoreland Overlay (SO) District. Activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10 in addition to the standards of this section.

#### **7.5.14.7 SHORELAND OVERLAY DISTRICT (WRP)**

The WRP District is subject to the additional requirements of the Shoreland Overlay District.

### **7.5.15 Wellhead Protection District (WP)**

#### **7.5.15.1 PURPOSE (WP)**

The Wellhead Protection (WP) District includes the area surrounding the former public water supply wells for the East Boothbay Water District that are now owned by the Boothbay Region Water District as a backup source of water supply. The standards of the WP District are intended to assure that this area remains primarily undeveloped and that any new development is limited to uses and activities that will not create a threat of contamination or a significant reduction of the available groundwater.

#### **7.5.15.2 ALLOWED USES (WP)**

The uses allowed in the Wellhead Protection (WP) District are shown in the Table of Land Uses in Section 7.6. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5.

#### **7.5.15.3 SPACE AND BULK STANDARDS (WP)**

<b>7.5.15.3.1</b>	Minimum developable lot area	80,000 square feet
<b>7.5.15.3.2</b>	Minimum net developable lot area per dwelling unit	80,000 square feet
<b>7.5.15.3.3</b>	Minimum lot width	150 feet
	Within the Shoreland Overlay Zone lot width within 100 feet of the resource	200 feet
<b>7.5.15.3.4</b>	Minimum road setback	State - 50 feet Town – 33 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.15.3.5</b>	Maximum road setback	None

<b>7.5.15.3.6</b>	Minimum side property line setback	20 feet
<b>7.5.15.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.15.3.8</b>	Maximum building height	34 feet
<b>7.5.15.3.9</b>	Maximum non-vegetated surface area	20% of lot area
<b>7.5.15.3.10</b>	Maximum area of lot that can be developed	20% of lot area
<b>7.5.15.3.11</b>	Minimum shoreland setback	75 feet
<b>7.5.15.3.12</b>	Minimum shoreland frontage	200 feet

#### **7.5.15.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (WP)**

Uses in the WP District must conform to the following standards in addition to the Space and Bulk Standards:

**7.5.15.4.1 Roads and Driveways:** New roads and driveways are prohibited except to provide access to permitted uses within the WP District. Construction of a new road or driveway must be approved by the Planning Board. The Planning Board shall approve such construction only if it determines that the road or driveway will be set back as far as feasible from the wellheads and will be located and designed to minimize the amount of clearing necessary.

**7.5.15.4.2 Subsurface Wastewater Disposal Systems:** New or replacement subsurface wastewater disposal system shall conform to the following additional requirements:

**7.5.15.4.2.1** No substances other than domestic wastewater shall be discharged to any subsurface waste water disposal system or any other means of on-site sewage disposal.

**7.5.15.4.2.2** Not more than one thousand (1000) gallons per day of sewage shall be discharged to any new subsurface wastewater disposal system.

**7.5.15.4.3 Use of Fertilizer:** Fertilizer use within the WP District shall be limited to manure or fertilizers containing slow-release nitrogen and zero phosphorous.

**7.5.15.4.4 Use of Pesticides:** The use of pesticides within the WP District shall conform to the standards of the Maine Pesticides Control Board that apply to a wellhead protection district.

#### **7.5.15.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (WP)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.15.6 OTHER PERFORMANCE STANDARDS (WP)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

### **7.5.15.7 SHORELAND OVERLAY DISTRICT (WP)**

A portion of the WP District is subject to the additional requirements of the Shoreland Overlay District.

### **7.5.16 Resource Protection District (RP)**

#### **7.5.16.1 PURPOSE (RP)**

The Resource Protection (RP) District is intended to preserve areas with significant natural resource value in a predominantly undeveloped condition while allowing limited use of these areas that is consistent with their natural resource value. These uses include activities such as farming and forestry along with low-intensity recreational uses. The RP District includes the following areas:

Areas within two hundred fifty (250) feet of the upland edge of freshwater wetlands, salt marshes, and wetlands associated with great ponds that are rated “moderate” or “high” value waterfowl and wading bird habitat,

The area within two hundred fifty (250) feet of the upland edge of coastal wetlands associated with Cross River (portions of 2020 Tax Maps R-2, R-3, R-5, and R-6), Wiley Pond (portion of 2020 Tax Map R-3), and Big Meadow (portion of 2020 Tax Maps R-7 and R-8),

The area within the two hundred fifty (250) feet of the upland edges of coastal wetlands on Big Huckleberry Island, Damariscove Island, Fisherman’s Island, Fort Island, Green Island, Inner Ram Island, Little Huckleberry Island, Miles Island, Outer Heron Island, Perch Island, Pumpkin Island, Ram Island, Tibbetts Island, and White Islands #5 and #6,

Areas of two (2) or more contiguous acres with sustained slopes of twenty (20) percent or greater that are not otherwise included in the RP District, and

Areas of two or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland and which are not surficially connected to a pond, stream or watershed tributary stream during the period of normal high water.

#### **7.5.16.2 ALLOWED USES (RP)**

The uses allowed in the Resource Protection (RP) District are shown in the Table of Land Uses in Section 7.6. If the use is allowed in the district, the table also indicates if a review is required for the use. If review is required, the procedures and standards for each type of review are set out in Section 5.

#### **7.5.16.3 SPACE AND BULK STANDARDS (RP)**

<b>7.5.16.3.1</b>	Minimum developable lot area	80,000 square feet
<b>7.5.16.3.2</b>	Minimum net developable lot area per dwelling unit, including accessory dwelling units	80,000 square feet
<b>7.5.16.3.3</b>	Minimum lot width	150 feet
	Within the Shoreland Overlay Zone lot width within 100 feet of the resource	200 feet



<b>7.5.16.3.4</b>	Minimum road setback	State - 50 feet Town – 33 feet Private way – 8 feet from the closest edge of the R-O-W
<b>7.5.16.3.5</b>	Maximum road setback	None
<b>7.5.16.3.6</b>	Minimum side property line setback	20 feet
<b>7.5.16.3.7</b>	Minimum rear property line setback	20 feet
<b>7.5.16.3.8</b>	Maximum building height	34 feet
<b>7.5.16.3.9</b>	Maximum non-vegetated surface area	20% of lot area
<b>7.5.16.3.10</b>	Maximum area of lot that can be developed	20% of lot area
<b>7.5.16.3.11</b>	Minimum shoreland setback Within the Shoreland Overlay Zone	75 feet 250 feet
<b>7.5.16.3.12</b>	Minimum shoreland frontage	200 feet

#### **7.5.16.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (RP)**

Uses in the RP District must conform to the following standards in addition to the Space and Bulk Standards:

**7.4.16.4.1 Shoreland Performance Standards:** All activities within the RP District are subject to the standards of the Shoreland Overlay District.

**7.4.16.4.2 One Family Dwellings:** New one family dwellings are permitted in the RP District only in accordance with the provisions of this section. The Planning Board may waive the structure setback requirements and approve the construction of a one family residential dwelling in the Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

**7.4.16.4.2.1** There is no location on the property, other than a location within the Resource Protection District, where the dwelling can be built;

**7.4.16.4.2.2** The lot on which the dwelling is proposed is undeveloped and was established and recorded in the Lincoln County Registry of Deeds before November 7, 1989;

**7.4.16.4.2.3** All proposed buildings, wastewater disposal systems and other improvements are:

**7.4.16.4.2.3.1** Located on natural ground slopes of less than twenty (20) percent;

**7.4.16.4.2.3.2** Located outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Insurance Rate Maps;

**7.4.16.4.2.3.3** Elevated, including basements, at least one foot above the 100-year floodplain elevation; and

**7.4.16.4.2.3.4** Otherwise in compliance with any applicable municipal floodplain ordinance.

**7.4.16.4.2.3.4.1** If the floodway is not shown on the Flood Insurance Rate Maps, it is deemed to be one-half the width of the 100-year floodplain.

**7.4.16.4.2.4 Size** The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of one thousand five hundred (1,500) square feet. This limitation shall not be reduced by variance.

**7.4.16.4.2.5** All structures, except functionally water-dependent structures, are set back from all shorelines as far as feasible, but not less than seventy-five (75) feet. In determining what is feasible, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain and its proximity to moderate-value and high-value wetlands rated by the Department of Inland Fisheries and Wildlife.

#### **7.5.16.5 PERFORMANCE STANDARDS FOR SPECIFIC USES (RP)**

Section 11 (Performance Standards for Specific Uses) establishes additional requirements for a group of specific uses. If any of those uses are proposed, the activity must comply with those standards in addition to the standards of this section.

#### **7.5.16.6 OTHER PERFORMANCE STANDARDS (RP)**

In addition to the standards of this section, activities must also comply with the applicable standards of the General Performance Standards of Section 8, the Environmental Performance Standards of Section 9, and the Good Neighbor Performance Standards of Section 10.

### **7.5.17 Shoreland Overlay District (SO)**

#### **7.5.17.1 PURPOSE (SO)**

The Shoreland Overlay District is intended to assure that land use activities and development in close proximity to water bodies and wetlands, including the entire areas within the WRP-27 and WRP Districts and areas within seventy-five (75) feet of watershed tributary streams are carried out in a manner that protects the quality of those resources. To this end, the standards of the district apply an additional set of performance standards to these activities and development.

#### **7.5.17.2 ALLOWED USES (SO)**

The uses, review requirements and size and intensity limitations for the underlying zoning districts shall apply unless the use is specifically prohibited by the following provisions.

#### **7.5.17.3 SPACE AND BULK STANDARDS (SO)**

The space and bulk standards of the underlying zoning district shall apply to land use activities and development within that district.

#### **7.5.17.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (SO)**

Land use activities and development within the Shoreland Overlay (SO) District shall conform to the following additional standards unless the standards of the underlying zoning district and/or the performance standards of Sections 8, 9, 10, and 11 are more restrictive:

##### **7.5.17.4.1 Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland, and Shoreline Stabilization**

**7.5.17.4.1.1** No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage required for the district in which it is located, a second structure may be allowed and may remain as long as the lot is not further divided.

**7.5.17.4.1.2** Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

**7.5.17.4.1.3** The location shall not interfere with existing developed or natural beach areas.

**7.5.17.4.1.4** The facility shall be located so as to minimize adverse effects on fisheries.

**7.5.17.4.1.5** The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six (6) feet for non-commercial uses.

**7.5.17.4.1.6** No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

**7.5.17.4.1.7** New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the *Natural Resources Protection Act*.

**7.5.17.4.1.8** No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

**7.5.17.4.1.9** Except for structures that are part of Maritime Activities, Marinas, or functionally water-dependent uses, structures built on, over or abutting a pier,

wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

**7.5.17.4.1.10** Vegetation may be removed in excess of the standards in **7.5.17.4.6** of this Ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.

**7.5.17.4.1.10.1** When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.

**7.5.17.4.1.10.2** Revegetation must occur in accordance with Section **7.5.17.4.8**.

**7.5.17.4.2 Prohibited Commercial and Industrial Uses.** The following new commercial and industrial uses are prohibited within the SO District adjacent to great ponds classified GPA and streams which flow to great ponds classified GPA:

**7.5.17.4.2.1** Auto washing facilities

**7.5.17.4.2.2** Auto or other vehicle service and/or repair operations, including body shops

**7.5.17.4.2.3** Chemical and bacteriological laboratories

**7.5.17.4.2.4** Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms

**7.5.17.4.2.5** Commercial painting, wood preserving, and furniture stripping

**7.5.17.4.2.6** Dry cleaning establishments

**7.5.17.4.2.7** Electronic circuit assembly

**7.5.17.4.2.8** Laundromats, unless connected to a sanitary sewer

**7.5.17.4.2.9** Metal plating, finishing, or polishing

**7.5.17.4.2.10** Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas

**7.5.17.4.2.11** Photographic processing

**7.5.17.4.2.12** Printing

**7.5.17.4.3 Parking Areas.** Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that parking areas that serve Maritime Activities, Marinas, or functionally

water-dependent uses, shall be set back at least twenty-five (25) feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

**7.5.17.4.4 Roads and Driveways.** The following standards shall apply to the construction of roads and/or driveways and drainage systems; culverts and other related features within the SO District unless there are more restrictive requirements in the underlying district or the performance standards of Sections 8, 9, 10 and 11.

**7.5.17.4.4.1** Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of Adams Pond, Knickerbocker Lakes or any great pond classified GPA and seventy-five (75) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, watershed tributary stream or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

**7.5.17.4.4.1.1** On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

**7.5.17.4.4.1.2** Section **7.5.17.4.4.1** does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section **7.5.17.4.4.1** except for that portion of the road or driveway necessary for direct access to the structure.

**7.5.17.4.4.1.2** Existing public roads may be expanded within the legal road right of way regardless of their setback from a water body, tributary stream or wetland.

**7.5.17.4.4.1.3** New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted

in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

**7.5.17.4.4.1.4** Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for the erosion and sedimentation control performance standard.

**7.5.17.4.4.1.5** Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.

**7.5.17.4.4.1.6** In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

**7.5.17.4.4.1.7** Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

**7.5.17.4.4.1.7.1** Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

<b>Grade (Percent)</b>	<b>Spacing (Feet)</b>
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21 +	40

**7.5.17.4.4.1.7.2** Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.

**7.5.17.4.4.1.7.3** On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.

**7.5.17.4.4.1.7.4** Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

**7.5.17.4.4.1.8** Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning

**7.5.17.4.5 Septic Waste Disposal.** All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the SO District.

**7.5.17.4.6 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting**

**7.5.17.4.6.1** In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending seventy-five (75) feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees. Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

**7.5.17.4.6.2** Except in areas as described in Section **7.5.17.4.6.1**, above, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a Adams Pond, Knickerbocker Lakes or any great pond classified GPA or within a strip extending seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

**7.5.17.4.6.2.1** There shall be no cleared opening greater than two hundred fifty (250) square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a cleared line of sight to the water through the buffer strip is not created.

**7.5.17.4.6.2.2** Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this section, a “well-distributed stand of trees” adjacent to Adams Pond, Knickerbocker Lakes or any great pond classified GPA shall be defined as maintaining a rating score of twenty-

four (24) or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

<b>Diameter of Tree at 4-1/2 feet Above Ground Level (inches)</b>	<b>Points</b>
2 - < 4 in.	1
4 – <8 in.	2
8-< 12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, watershed tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of sixteen (16) per 25-foot by 50-foot rectangular area.

The following shall govern in applying this point system:

**7.5.17.4.6.2.2.1** The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

**7.5.17.4.6.2.2.2** Each successive plot must be adjacent to, but not overlap a previous plot;

**7.5.17.4.6.2.2.3** Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;

**7.5.17.4.6.2.2.4** Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;

**7.5.17.4.6.2.2.5** Where conditions permit, no more than fifty (50) percent of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than twelve (12) inches in diameter.

For the purposes of Section **7.5.17.4.6.2.2** “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until five (5) saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter, measured at four and one half (4½) feet above ground level may be removed in any ten (10) year period.

**7.5.17.4.6.2.3** In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including



leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section **7.5.17.4.6.2**.

**7.5.17.4.6.2.4** Pruning of tree branches, on the bottom 1/3 of the tree is allowed.

**7.5.17.4.6.2.5** In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, dead or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species, unless existing new tree growth is present.

**7.5.17.4.6.2.6** In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section **7.5.17.4.6.2**.

**7.5.17.4.6.3** At distances greater than one hundred (100) feet, horizontal distance, from Adams Pond, Knickerbocker Lakes or any a great pond classified GPA and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, watershed tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured four and one half (4½) feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including, but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, twenty-five (25) percent of the lot area within the Shoreland Overlay District or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the Shoreland Overlay District, including the buffer area, but shall not apply to the Boothbay Village Mixed-Use District, Commercial Corridor District or Marine Commercial District.

**7.5.17.4.6.4** Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.

**7.5.17.4.6.5** Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section **7.5.17.4.6**.

**7.5.17.4.7 Exemptions to Clearing and Vegetation Removal Requirements** The following activities are exempt from the clearing and vegetation removal standards set forth in Section **7.5.17.4.6**, provided that all other applicable requirements of this Ordinance are complied with, and the removal of vegetation is limited to that which is necessary:

**7.5.17.4.7.1** The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this Ordinance, such as, but not limited to, cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section **7.5.17.4.6** apply;

**7.5.17.4.7.2** The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements are not applicable;

**7.5.17.4.7.3** The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;

**7.5.17.4.7.4** The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all agricultural performance standards of Section **11.1** are complied with;

**7.5.17.4.7.5** The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in the Boothbay Village Mixed-Use District, Commercial Corridor District or Marine Commercial District or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S. § 343-E, and that is located along:

**7.5.17.4.7.5.1** A coastal wetland; or

**7.5.17.4.7.5.2** A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S. § 465-A.

**7.5.17.4.7.6** The removal of non-native invasive vegetation species, provided the following minimum requirements are met:

**7.5.17.4.7.6.1** If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;

**7.5.17.4.7.6.2** Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and

**7.5.17.4.7.6.3** If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.

**7.5.17.4.7.7** The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

**7.5.17.4.8 Revegetation Requirements** When revegetation is required in response to violations of the vegetation standards set forth in Section **7.5.17.4.6**, to address the removal of non-native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

**7.5.17.4.8.1** The property owner must submit a revegetation plan, prepared with and signed by a qualified professional that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.

**7.5.17.4.8.2** Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:

**7.5.17.4.8.3** If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.

**7.5.17.4.8.4** Revegetation activities must meet the following requirements for trees and saplings:

**7.5.17.4.8.4.1** All trees and saplings removed must be replaced with native noninvasive species;

**7.5.17.4.8.4.2** Replacement vegetation must at a minimum consist of saplings;

**7.5.17.4.8.4.3** If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;

**7.5.17.4.8.4.4** No one species shall make up fifty (50) percent or more of the number of trees and saplings planted;

**7.5.17.4.8.4.5** If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a

location that effectively reestablishes the screening between the shoreline and structures; and

**7.5.17.4.8.4.6** A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.

**7.5.17.4.8.5** Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:

**7.5.17.4.8.5.1** All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;

**7.5.17.4.8.5.2** Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;

**7.5.17.4.8.5.3** If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;

**7.5.17.4.8.5.4** No one species shall make up fifty (50) percent or more of the number of planted woody vegetation plants; and

**7.5.17.4.8.5.5** Survival of planted woody vegetation and vegetation less than three feet in height must be sufficient to remain in compliance with the standards contained within this Ordinance for a minimum of five (5) years

**7.5.17.4.8.6** Revegetation activities must meet the following requirements for ground vegetation and ground cover:

**7.5.17.4.8.6.1** All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;

**7.5.17.4.8.6.2** Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and

**7.5.17.4.8.6.3** Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this Ordinance for a minimum of five (5) years.

#### **7.5.17.4.9 Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal**

**7.5.17.4.9.1** Hazard trees in the Shoreland Overlay District may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

**7.5.17.4.9.1.1** Within the shoreline buffer established in Section **7.5.17.4.6**, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4½) feet above the ground level. If new

growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.

**7.5.17.4.9.1.2** Outside of the shoreline buffer established in Section **7.5.17.4.6**, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4½) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the Shoreland Overlay District, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4½) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4½) feet above the ground level.

**7.5.17.4.9.1.3** The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.

**7.5.17.4.9.1.4** The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the Shoreland Overlay District.

**7.5.17.4.9.1.5** The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4½) feet above the ground level.

**7.5.17.4.9.2** Storm-damaged trees in the Shoreland Overlay District may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

**7.5.17.4.9.2.1** Within the shoreline buffer established in Section **7.5.17.4.6**, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:

- (i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
- (ii) Stumps from the storm-damaged trees may not be removed;
- (iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and

- (iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.

**7.5.17.4.9.2.2** Outside of the shoreline buffer established in Section **7.5.17.4.6**, if the removal of storm damaged trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4½) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding twenty-five (25) percent of the lot area within the Shoreland Overlay District or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

**7.5.17.4.10 Timber Harvesting** Timber harvesting within the SO District is regulated by the Maine Bureau of Forestry.

**7.5.17.4.11 Stairway for Shoreline Access** No dimensional requirement of this Ordinance shall apply to a single stairway or similar structure to provide shoreline access in areas of steep slopes or unstable soils, provided; that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the high-water line of a great pond, stream, outlet stream, tributary stream, watershed tributary stream or the upland edge of a wetland unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, and that the applicant demonstrates that no reasonable access alternative exists on the property.

**7.5.17.4.12 Storage Shed** On a nonconforming lot of record on which only a residential building exists, and where it is not feasible to place an accessory structure meeting the required shoreline setbacks, the Code Enforcement Officer may issue a permit to place one accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area or eight (8) feet in height, and shall be located as far from the shoreline as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to a shoreline than the principal structure.

## **7.5.18 Watershed Protection Overlay District (WPO)**

### **7.5.18.1 PURPOSE (WPO)**

The Watershed Protection Overlay District is intended to assure that the land use activities and development in the watersheds of Adams Pond and Knickerbocker Lakes preserve the quality and quantity of the public water supply by modifying the allowed uses and development standards in the underlying zoning districts and by imposing additional performance standards that apply throughout the watersheds.

### **7.5.18.2 ALLOWED USES (WPO)**

The uses, review requirements and size limitations for the underlying zoning districts shall apply unless the use, review requirement or size limitation for a specific use in a specific zoning district are modified by the following provisions. If service by the public sewer system is required by the underlying district standards, that requirement is not modified by these provisions. The zoning districts within which each limitation applies are shown in parenthesis:

**7.5.18.2.1** The following uses are not allowed in the WPO District even if they are allowed in the underlying district:

- Commercial Fishing Activities (R,BVMU,RMU,CC,MB)
- Mineral Extraction (RMU,CC,MB)
- Mobile Home Park (R,RMU)
- Adult-Use Marijuana Establishments (CC,MB)
- Amusement Park (CC)
- Auto, Rec. Vehicle Sales & Service (RMU)
- Automobile Repair (RMU,MB)
- Automobile Service Station
- Bus Terminal (CC)
- Campground (R,RMU,CC)
- Car Wash
- Conference/Convention Center (R, BVF,BVMU,CC)
- Hotel/Motel (BVF,BVMU,CC)
- Indoor Theater (BVC,BVF,BVMU,CC)
- Junkyard
- Kennel (RMU,CC)
- Laundromat (BVC,BVF,BVMU,CC)
- Marina (RMU)
- Maritime Activities (R,RMU,CC,MB)
- Parking Facility (BVC,BVF,BVMU,CC,MB)
- Recreational Facility – Indoor (R, BVC,BVF,BVMU,CC)
- Recreational Facility – Outdoor (R,BVF,BVMU,RMU,CC)
- Retail Fuel Distributor (MB)
- Shopping Center (CC)
- Small Engine Repair & Sales (RMU,CC,MB)
- Manufacturing (BVMU,RMU,MB)
- Recycling Operations (BVMU,MB)
- Sawmill (RMU,MB)
- Terminal for Bulk Oil and Gas (CC,MB)
- Trucking Distribution Terminal (MB)
- Warehousing (BVMU,RMU,MB)
- Waste Disposal/Landfill (BVF)
- Waste Transfer Facility (BVF)
- Wholesale Business (RMU,CC,MB)
- Wood Processing (RMU,MB)
- Cemetery (R,BVC,BVF,BVMU,RMU,CC)

**7.5.18.2.2** The following uses are allowed in the WPO District with review but only if connected to the public sewer system:

- Adult Day Care Facility (R,BVC,BVF,BVMU,RMU,CC)
- Dwelling, Multifamily (R,BVC,BVF,BVMU,RMU,CC)
- Dwelling, Townhouse (R,BVC,BVF,BVMU,RMU,CC)
- Dwelling Unit in a Mixed-Use Building (R,BVC,BVF,BVMU,RMU,CC)
- Employee Housing (R,BVC,BVF,BVMU,RMU,CC,MB)
- Lodging House (R,BVC,BVF,BVMU,CC)
- Residential Care Facility (R,RMU)
- Bed & Breakfast (R,BVC,BVF,BVMU,CC)
- Day Care Facility (R,BVC,BVF,BVMU,RMU,CC,MB)
- Day Care Center (R,BVC,BVF,BVMU,RMU,CC,MB)
- Inn (BVC,BVF,BVMU,RMU,CC)

**7.5.18.2.3** The following uses are allowed in the WPO District with review but only if connected to the public sewer system subject to the limits for small-scale limited uses:

- Agricultural Packaging and Storage (R,BVF,BVMU,RMU,CC,MB)
- Agricultural Product Processing (R,BVF,BVMU,RMU,CC,MB)
- Restaurant (R)

**7.5.18.2.4** The following uses are allowed in the WPO District with review but only if connected to the public sewer system subject to the limits for medium-scale limited uses:

- Aquaculture (Land support for) (R,BVMU,RMU,CC,MB)
- Funeral Home (BVF,BVMU,CC)
- Laboratory, Research Facility (BVC,BVF,BVMU,RMU,CC,MB)
- Medical Facilities (BVC,BVF,BVMU,CC)
- Restaurant (BVC,BVF,BVMU,CC,MB)
- Retail Business (BVC,BVF,BVMU,CC,MB)
- Veterinary Hospital (BVF,BVMU,RMU,CC)
- Church, Parish House, Place of Worship (R,BVC,BVF,BVMU,RMU,CC)
- Community Center, Club (R,BVC,BVF,BVMU,CC,)
- Educational Facility (R,BVC,BVF,BVMU,CC)
- Botanical Garden (R,WRP), other than the Coastal Maine Botanical Gardens (*see* Section 7.5.18.2.8 below)
- Library (R,BVC,BVF,BVMU,CC)
- Museum (R,BVC,BVF,BVMU,CC)
- Public Facility (R,BVC,BVF,BVMU,RMU,CC,MB)

**7.5.18.2.5** The following uses are allowed in the WPO District with review subject to the limits for small-scale limited uses:

- Roadside Stand (BVC,BVF,BVMU,RMU,CC)
- Sex Related Business (MB)



**7.5.18.2.6** The following uses are allowed in the WPO District with review subject to the limits for medium-scale limited uses:

- Neighborhood Store (BVC,BVF,BVMU,CC)
- Offices; Business, Professional (BVC,BVF,BVMU,RMU,CC)
- Service Business (BVC,BVF,BVMU,RMU,CC,MB)
- Storage Facility/Structure (BVMU,RMU,MB)
- Firewood Processing (RMU,CC,MB)

**7.5.18.2.7** The following uses are allowed in the WPO District with review by the Code Enforcement Officer:

- Agriculture/Farming (R,BVC,BVF,BVMU,RMU,CC,MB)
- Animal Breeding or Care (R,CC,MB)
- Clearing of Vegetation (R,BVC,BVF,BVMU,RMU,CC,MB)
- Forest Management Activities (R,BVC,BVF,BVMU,RMU,CC,MB)

**7.5.18.2.8** The following uses are allowed in the WPO District with review by the Planning Board:

- Timber Harvesting
- Coastal Maine Botanical Gardens, and all uses, facilities and activities of the Coastal Maine Botanical Gardens in the WPO shall comply with the April 24, 2018 Consent Decree between the Coastal Maine Botanical Gardens and the Town of Boothbay

### **7.5.18.3 SPACE AND BULK STANDARDS (WPO)**

The space and bulk standards of the underlying zoning district shall apply to land use activities and development within that district except as modified by this section:

**7.5.18.3.1** The maximum impervious surface area in the following zoning districts shall be limited as follows:

- |                 |                            |
|-----------------|----------------------------|
| ● R District    | Twenty percent (20%)       |
| ● BVC District  | Fifty percent (50%)        |
| ● BVF District  | Forty percent (40%)        |
| ● BVMU District | Forty percent (40%)        |
| ● CC District   | Sixty percent (60%)        |
| ● MB District   | Seventy-five percent (75%) |

### **7.5.18.4 ZONE SPECIFIC DEVELOPMENT STANDARDS (WPO)**

Land use activities and development within the Watershed Protection Overlay (WPO) District shall conform to the following additional standards unless the standards of the underlying zoning district are more restrictive:

**7.5.18.4.1 Subsurface Wastewater Disposal Systems:** Subsurface wastewater disposal systems shall conform to the following additional requirements:

- 7.5.18.4.1.1** Any activity involving the construction of a new building that has plumbing or the expansion or change of use of an existing building that increases the design sewage flow based on the Maine Subsurface Wastewater Disposal Rules that is located on a lot that is within three hundred (300) feet of a public sewer shall connect to the public sewer.
- 7.5.18.4.1.2** Any existing building or use that is served by a subsurface wastewater disposal system that needs to be replaced and which is located on a lot that is within three hundred (300) feet of a public sewer shall connect to the public sewer.
- 7.5.18.4.1.3** If the use of an existing building served by a subsurface wastewater disposal system changes from one type of use to another or if the design sewage flow based on the Maine Subsurface Wastewater Disposal Rules increases, the sewage disposal system shall conform the requirements of the Maine Subsurface Wastewater Disposal Rules. If the property is served by a sewage disposal system that does not conform to the current state rules, the system must be brought into conformance with the applicable state rules.
- 7.5.18.4.1.4** The treatment tank(s) and disposal field(s) of any new or replacement subsurface wastewater disposal system shall be located a minimum of two hundred (200) feet from the high water line of Adams Pond or Knickerbocker Lakes and the upland edge of any wetland associated with Adams Pond or Knickerbocker Lakes and a minimum of one hundred and fifty (150) feet from any watershed tributary stream. If the size, shape or physical conditions of the lot make it unreasonable to meet these setbacks, the Code Enforcement Officer may, after consultation with the Boothbay Region Water District, allow the facilities to be located closer to the resource provided that all components of the system are located as far from the resource as possible given the physical limitations of the lot.
- 7.5.18.4.1.5** Prior to the start of construction of a new or replacement subsurface wastewater disposal system, the system installer shall provide the Code Enforcement Officer/Plumbing Inspector with at least three (3) business days' notice of the date and time at which work on the system will begin to allow the Code Enforcement Officer to inspect the site prior to construction and to monitor the installation of the system.
- 7.5.18.4.1.6** Any holding tank installed as part of a sewage disposal system shall conform to the state's Subsurface Wastewater Disposal Rules.
- 7.5.18.4.2 Storage of Heating Oil:** The storage of heating oil shall conform to the following requirements:
- 7.5.18.4.2.1** The Code Enforcement Officer and the Boothbay Regional Water District shall be notified at least three (3) business days prior to the installation or replacement of any heating oil tank. In emergency situations involving the replacement of a leaking or failed tank, the Code Enforcement Officer shall be notified prior to the installation of the replacement tank.

- 7.5.18.4.2.2** Any heating oil tank or interconnected system of oil tanks is limited to a maximum capacity of one thousand three hundred twenty (1,320) gallons unless the owner of the tank(s) has a Spill Retention, Control, and Countermeasures (SRCC) Plan that has been approved by the Maine DEP or the U.S. EPA and the approved plan is on file with the Code Enforcement Officer and the Boothbay Fire Department.
- 7.5.18.4.2.3** All new or replacement heating oil tanks shall be double-walled or secondary containment tanks approved by the Maine DEP for use in a wellhead protection district unless the Code Enforcement Officer determines that the physical characteristics of an existing structure do not allow the installation of a tank meeting these requirements.
- 7.5.18.4.2.4** Any new or existing heating oil tank that is located outside of a building or structure must comply with the regulations of Maine Fuel Board for protection against snow and ice damage and must be located on a support system meeting the state requirements.
- 7.5.18.4.3 Water Supply Buffers:** Any land use activity or development that creates more than one thousand (1000) square feet of impervious surface area in any five (5) year period shall conform to the water supply buffer requirements of Section **9.2.1**.
- 7.5.18.4.4 Chlorides Management Plan:** Any nonresidential development or subdivision that creates more than five thousand (5,000) square feet of impervious surface in any five (5) year period shall submit a chlorides management plan as part of the application for the approval of the activity.
- 7.5.18.4.5 Open Space Subdivisions:** Any residential subdivision or modification to an existing residential subdivision that creates five (5) or more lots in any five (5) year period shall be designed and developed as an “Open Space Subdivision” in accordance with the standards of Section **11.8**.
- 7.5.18.4.6 Timber Harvesting:** Timber harvesting within the WPO District is subject to regulation by the Town in accordance with the following standards.
- 7.5.18.4.6.1 Shoreline integrity and sedimentation.** Persons conducting timber harvesting and related activities must avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and watershed tributary stream banks, water body and watershed tributary stream channels, shorelines, and soil lying within water bodies, watershed tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and watershed tributary stream banks, water body and watershed tributary stream channels, shorelines, and soil lying within water bodies, watershed tributary streams and wetlands occurs, such conditions must be immediately corrected.
- 7.5.18.4.6.2 Slash treatment.** Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or watershed tributary stream, or the upland edge of a wetland. This section does not apply to minor, incidental amounts of slash that result from

timber harvesting and related activities otherwise conducted in compliance with this section.

**7.5.18.4.6.2.1** Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than four (4) feet above the ground.

**7.5.18.4.6.3** Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained, in accordance with the following:

**7.5.18.4.6.3.1** Harvesting of no more than fifty (50) percent of the total volume on each acre of trees four and one half (4½) inches DBH or greater in any ten (10) year period is allowed. Volume may be considered to be equivalent to basal area. The Planning Board may allow harvesting to exceed this limitation upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and it adequately protects water quality;

**7.5.18.4.6.3.2** Timber harvesting and related activities must not create single cleared openings in the forest canopy greater than one (1) acre. Where such openings exceed thirty thousand (30,000) square feet, they must be at least one hundred (100) feet, horizontal distance, apart; and,

**7.5.18.4.6.3.3** Harvesting openings in the forest canopy shall not cumulatively exceed twenty-five (25) percent of the forest canopy cover on the lot in any 10-year period.

**7.5.18.4.6.4 Skid trails, yards, and equipment operation.** This requirement applies to the construction, maintenance, and use of skid trails and yards.

**7.5.18.4.6.4.1** Equipment used in timber harvesting and related activities shall not use stream or watershed tributary stream channels as travel routes.

**7.5.18.4.6.4.2** Skid trails and landing yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, watershed tributary stream, or wetland. Upon termination of their use, skid trails and landing yards must be stabilized with the construction of water bars, and by seeding and applying hay, straw, or erosion control mulch, as necessary to prevent sediment and concentrated water flow.

**7.5.18.4.6.4.3** Skid trails must be located on soils that can support skidding equipment and skidding of trees must cease when rains or thaws make soils unable to support equipment. Skid trails must not be located on slopes/grades steeper than twenty (20) percent except when the ground is frozen or when the application of tree branches or other erosion control measures is sufficient for preventing runoff and erosion.

**7.5.18.4.6.4.4 Setbacks**

**7.5.18.4.6.4.4.1** Equipment must be operated to avoid the exposure of mineral soil within seventy-five (75) feet, horizontal distance, of any water body,

watershed tributary stream, or wetland. On slopes of ten (10) percent or greater, the setback for equipment operation must be increased by twenty (20) feet, horizontal distance, plus an additional ten (10) feet, horizontal distance, for each five (5) percent increase in slope above ten (10) percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.

**7.5.18.4.6.4.2** Landing yards must be located a minimum of one hundred (100) feet, horizontal distance, from any water body, watershed tributary stream, or freshwater wetland, unless no other reasonable alternative exists, as determined by the Planning Board and upon clear showing by the licensed professional forester that appropriate techniques will be used to prevent sedimentation of the water body, watershed tributary stream, or freshwater wetland.

**7.5.18.4.6.5 Land Management Roads.** Land management roads, including approaches to crossings of water bodies, watershed tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, watershed tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be retained or established for the full width of the minimum setback requirement as specified below.

**7.5.18.4.6.5.1** Land management roads and associated ditches, excavation, and fill must be set back at least:

**7.5.18.4.6.5.1.1** Two hundred (200) feet, horizontal distance, from the normal high-water line of a great pond;

**7.5.18.4.6.5.1.2** One hundred (100 feet), horizontal distance, from the normal high-water line of streams, watershed tributary streams, and freshwater wetlands;

**7.5.18.4.6.5.2** The minimum two hundred (200) foot setback specified in Section **7.5.18.4.6.5.2.1** above may be reduced to no less than one hundred (100) feet, horizontal distance, and the one hundred (100) foot setback specified in Section **7.5.18.4.6.5.2.2** above may be reduced to no less than twenty-five (25) feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, watershed tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, watershed tributary stream or wetland. Such techniques must prevent any concentrated runoff into the vegetated buffer and the water body, watershed tributary stream, or wetland.

**7.5.18.4.6.5.3** On slopes of ten (10) percent or greater, the land management road setback must be increased by at least twenty (20) feet, horizontal distance, plus an additional ten (10) feet, horizontal distance, for each five (5) percent increase in slope above ten (10) percent.

**7.5.18.4.6.5.4** Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in Section **7.5.18.4.6.5**. Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, watershed tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, watershed tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be immediately corrected.

**7.5.18.4.6.5.5 Road closeout and discontinuance.** Maintenance of the water control installations required in Section **7.5.18.4.6.5.4** must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.

**7.5.18.4.6.5.6 Upgrading existing roads.** Extension or enlargement of presently existing roads must conform to the provisions of this section. Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.

**7.5.18.4.6.5.7 Exception.** Extension or enlargement of presently existing roads need not conform to the setback requirements of Section **7.5.18.4.6.5.1** if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, watershed tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, watershed tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be immediately corrected.

**7.5.18.4.6.5.8 Additional measures.** In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and stream and watershed tributary stream crossings must avoid sedimentation of surface waters.

**7.5.18.4.6.6 Crossings of waterbodies.** Crossings of streams and watershed tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.

**7.5.18.4.6.6.1 Determination of flow.** Provided they are properly applied and used for the circumstances for which they are designed, methods including, but not limited to, the following are acceptable as a means of calculating the ten (10) year and twenty-five (25) year frequency water flows and thereby determining water crossing sizes as required in this section: The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G., *Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals*, U.S. Geological Survey, Water Resources Investigations Report 99-4008 (1999) (45 pp.).

**7.5.18.4.6.6.2 Upgrading existing water crossings.** Extension, replacement or enlargement of presently existing water crossings must conform to the provisions of this section. Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of this section.

**7.5.18.4.6.6.3 Bureau of Forestry Permits and Permit by Rule**

**7.5.18.4.6.6.3.1 Permits.** An application for a permit must be submitted to the Bureau of Forestry at least sixty (60) days prior to the construction of any new permanent crossing or the replacement of a permanent crossing of any waterbody, non-forested freshwater wetland larger than four thousand three hundred (4,300) square feet and any crossing that will not conform to the Bureau's permit by rule standards. An individual permit application is required for each crossing. The permit application must contain all information required by the Bureau, including a description of how negative impacts to the resource will be avoided and minimized to the extent practicable. When granting a permit the Bureau may impose such reasonable terms and conditions as the Bureau considers appropriate in order to satisfy the purpose set forth in its governing statutes and rules.

**7.5.18.4.6.6.3.2 Permit by Rule.** Crossings must conform to standards of this section to qualify for permit by rule. If a crossing does not conform to these standards an application for a full permit must be submitted per Section 7.5.18.4.6.6.3.1, above. A permit by rule must be submitted to the Bureau of Forestry prior to construction, maintenance, alteration, and replacement of permanent crossings of waterbodies subject to a seventy-five (75) foot shoreland area or adjacent shoreland area defined by the Bureau's rules, except all non-forested wetlands greater than four thousand three hundred (4,300) square feet which require a permit as described in Section 7.5.18.4.6.6.3.1. Multiple crossings may be submitted on one permit by rule form. The permit by rule must contain all information required by the Bureau, including:

**7.5.18.4.6.6.3.2.1** a map showing the location of all proposed permanent crossings. Maps must be of sufficient quality and scale for a person unfamiliar with the area to locate the crossing;

**7.5.18.4.6.6.3.2.2** for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and,

**7.5.18.4.6.6.3.2.3** a statement signed by the permit applicant that all temporary and permanent crossing will be constructed, maintained, and closed out in accordance with the requirements of this Ordinance.

**7.5.18.4.6.6.3.3 Exception.** A permit or permit by rule is not required for the repair and maintenance of an existing crossing or for the replacement of an existing crossing, including ancillary crossing installation activities such as excavation and filling, in any protected natural resource area. Repair and maintenance includes but is not limited to the riprapping of side slopes or culvert ends; removing debris and blockages within the crossing structure and at its inlet and outlet; and installing or replacing culvert ends if less than fifty (50) percent of the crossing structure is being replaced. This provision applies as long as:

**7.5.18.4.6.6.3.3.1** Erosion control measures are taken to prevent sedimentation of the water;

**7.5.18.4.6.6.3.3.2** The crossing does not block fish passage for fish in the protected natural resource area;

**7.5.18.4.6.6.3.3.3** For replacement crossings of a stream or brook;

**7.5.18.4.6.6.3.3.3.1** The replacement crossing is designed, installed and maintained to match the natural stream grade to avoid drops or perching; and

**7.5.18.4.6.6.3.3.3.2** As site conditions allow, crossing structures that are not open bottomed are embedded in the stream bottom at least twenty-five (25) percent of the culvert or other structure's diameter, except that a crossing structure does not have to be embedded more than two (2) feet.

**7.5.18.4.6.6.3.3.4** The Bureau of Forestry is notified prior to the activity in accordance with Section **7.5.18.4.6.6.5**.

#### **7.5.18.4.6.6.4 Other Agency Permits.**

**7.5.18.4.6.6.4.1** Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a stream or watershed tributary stream, including crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat, may require a permit from the Department of Environmental Protection, or the US Army Corps of Engineers. When



a permit is required, the crossing is not required to meet the standards of this section provided it conforms with all applicable state and federal requirements and any permit conditions. Written notice of all water crossing construction, maintenance, alteration and replacement activities must be given to the Bureau of Forestry prior to the commencement of such activities. Such notice must contain all information as specified in Section **7.5.18.4.6.6.5** below.

**7.5.18.4.6.6.4.2** Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.

**7.5.18.4.6.6.5 Notice to Bureau of Forestry and Code Enforcement Officer**

Notification to the Bureau of Forestry and Code Enforcement Officer is required prior to construction, maintenance, alteration, and replacement of crossings. Written notice of all temporary and permanent water body crossing construction, maintenance, alteration, and replacement activities must be given to the Bureau and Code Enforcement Officer prior to the commencement of such activities. Multiple crossings may be submitted on one notification form. For each water crossing construction, maintenance, alteration and replacement activity, the applicant will provide the following information to the Bureau and Code Enforcement Officer prior to the commencement of such activities:

**7.5.18.4.6.6.5.1** a map showing the location of all proposed permanent crossings. Maps must be of sufficient quality and scale for a person unfamiliar with the area to locate the crossing;

**7.5.18.4.6.6.5.2** the GPS location of all proposed permanent crossings;

**7.5.18.4.6.6.5.3** for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and

**7.5.18.4.6.6.5.4** a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.

**7.5.18.4.6.6.6 Water crossing standards.** All crossings of streams and watershed tributary streams may be constructed using temporary portable bridge structures, or a bridge or culvert for a land management road or by the construction or placement of a temporary pole ford within watershed tributary streams, provided:

**7.5.18.4.6.6.6.1** concentrated water runoff does not enter the stream or watershed tributary stream;

**7.5.18.4.6.6.6.2** sedimentation of surface waters is avoided;

**7.5.18.4.6.6.6.3** there is no substantial disturbance of the bank, or stream or watershed tributary stream channel;

**7.5.18.4.6.6.6.4** fish passage is not impeded; and,

**7.5.18.4.6.6.6.5** portable bridges are sized according to the requirements of Section **7.5.18.4.6.6.7**, below, so that water flow is not unreasonably impeded.

Subject to **7.5.18.4.6.6.6.1-5** above, skid trail crossings of streams and watershed tributary streams when channels of such streams and watershed tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures. Removal of temporary pole fords must occur immediately upon cessation of use of the crossing.

**7.5.18.4.6.6.7 Bridge and Culvert Sizing.** For crossings of stream and watershed tributary stream channels with a bridge or culvert, the following requirements apply:

**7.5.18.4.6.6.7.1** Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate twenty-five (25) year frequency water flows or with a cross-sectional area at least equal to three (3) times the cross-sectional area of the stream, or watershed tributary stream channel.

**7.5.18.4.6.6.7.2** Temporary bridge and culvert sizes may be smaller than provided in Section **7.5.18.4.6.6.7.1** if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the stream or watershed tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of temporary skidder bridges or other temporary bridging structures.

**7.5.18.4.6.6.7.3** Culverts utilized in stream and watershed tributary stream crossings of land management roads must:

**7.5.18.4.6.6.7.3.1** Be installed at or below stream or tributary stream bed elevation;

**7.5.18.4.6.6.7.3.2** Be seated on firm ground;

**7.5.18.4.6.6.7.3.3** Have soil compacted at least halfway up the side of the culvert;

**7.5.18.4.6.6.7.3.4** Be covered by soil to a minimum depth of one (1) foot or according to the manufacturer's specifications, whichever is greater, and

**7.5.18.4.6.6.7.3.5** Have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.

**7.5.18.4.6.6.7.4** Stream and watershed tributary stream crossings allowed under this section, but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100-year flood event.

**7.5.18.4.6.6.7.5** Skid trail crossings, other than those areas below the normal high water line of water bodies, must avoid freshwater wetlands and must maintain the existing hydrology of such wetlands, unless there are no reasonable alternatives, as determined by the Bureau of Forestry in a written decision prior to construction.

**7.5.18.4.6.6.8 Skid trail closeout.** Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:

**7.5.18.4.6.6.8.1** Bridges installed for stream and watershed tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section **7.5.18.4.6.7.9** below.

**7.5.18.4.6.6.8.2** Stream and watershed tributary stream channels, banks and approaches to crossings of water bodies and watershed tributary streams that were unexpectedly disturbed while crossing must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt.

**7.5.18.4.6.6.9 Land management road closeout.** Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:

**7.5.18.4.6.6.9.1** Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.

**7.5.18.4.6.6.9.2** Water crossing structures must be appropriately sized or dismantled and removed in a manner that avoids sedimentation of the stream or watershed tributary stream.

**7.5.18.4.6.6.9.3** Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:

**7.5.18.4.6.6.9.3.1** it shall be designed to provide an opening sufficient in size and structure to accommodate twenty-five (25) year frequency water flows;

**7.5.18.4.6.6.9.3.2** it shall be designed to provide an opening with a cross-sectional area at least three and a half (3½) times the cross-sectional area of the stream or watershed tributary stream channel; or

**7.5.18.4.6.6.9.3.3** it shall be dismantled and removed in a fashion to avoid sedimentation of the stream or watershed tributary stream.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be immediately corrected.

**7.5.18.4.6.7 Point Source Pollution Control.** Harvesting operations must not unnecessarily release pollutants associated with petroleum use and human waste disposal. The following provisions apply to all timber harvesting operations within the Water Reservoirs Protection District and the Watershed Protection Overlay Zone:

**7.5.18.4.6.7.1 Petroleum Products:** All equipment must be inspected for leaks prior to arrival and for the duration of their use. Inspections must be performed on all hydraulic components, fuel tanks and lines, engine, transmission and axles. Trucks, forwarders, skidders and other equipment that carry petroleum products must have a sufficient number of petroleum sorbent pads to contain a 10-gallon spill per machine on-site.

All petroleum products that are not in machine storage are stored in safe durable containers and removed from the operation site at the completion of each day. Petroleum storage is only allowed in tanks designed, manufactured, inspected, and certified for commercial use. No refueling or equipment servicing is allowed within two hundred (200) feet of a great pond, or within one hundred (100) feet of a stream, watershed tributary stream, or freshwater wetland.

**7.5.18.4.6.8 Definitions.** Unless otherwise provided herein, this section incorporates by reference the definitions contained in the Maine Forest Service Rules Chapter 20, “Forest Regeneration and Clearcutting Standards”, and Chapter 21, “Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas”.

### **7.5.19 Bigelow Laboratory Contract Zone (BL)**

The Bigelow Laboratory Contract Zone is a contract zone established by the Town on May 24, 2006. The zone is an overlay district. The underlying district in the agreement is identified as the General Residential. The underlying zone is now the Residential District. The Contract Zoning Agreement and subsequent amendment(s) are included in the Appendix and incorporated herein as a part of this Ordinance.

## **7.6 Table of Land Uses**

The following table establishes the uses that are allowed in each zoning district. For each use, its status in a particular zone is indicated by one of the following designations:

- **N** means the use is not allowed in that zone
- **Y** means that the use is allowed and does not need a permit
- **C** means that the use is allowed and that it needs review and approval by the Code Enforcement Officer in accordance with Section 5

- **PR** means that the use is allowed and that it needs review and approval. Based on the criteria set out in Section 5 and the specifics of a project, the review could be Site Plan Review, Planning Board Review, or Code Enforcement Officer Review
- **SD** means that the use requires review and approval by the Planning Board under the standards for subdivisions
- **MH** means the use requires review and approval by the Planning Board under the standards for mobile home parks
- **NA** means not applicable

If a use is not specifically listed in the Table of Land Uses and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Table of Land Uses it shall be regulated in the same manner as such use.

The Watershed Protection Overlay (WPO) District is an overlay district that modifies the uses allowed in the districts or portions of districts covered by the overlay. The WPO district overlays all or a portion of the following districts:

- R
- BVC
- BVF
- BVMU
- RMU
- CC
- MB
- WRP-27
- WRP

The modifications to the allowed uses set forth in the following table are listed in Section **7.5.18**. The modifications to the allowed uses listed in Section **7.5.18** supersede the indications in the following table.

### **Legend**

The column headings in the table identify the various land use districts using the following abbreviations:

- **Residential Districts**

R	Residential District
R-C	Coastal Residential District

- **Mixed Use Districts**

BVC	Boothbay Village Center District
BVF	Boothbay Village Fringe District
BVMU	Boothbay Village Mixed-Use District
EBV	East Boothbay Village District

SG            Scenic Gateway District  
RMU        Rural Mixed-Use District

- **Commercial – Industrial Districts**

CC            Commercial Corridor District  
MB           Manufacturing/Business District  
MC           Marine Commercial District

- **Natural Resource Districts**

WRP-27    Water Reservoirs Protection District - Route 27  
WRP        Water Reservoirs Protection District  
WP          Wellhead Protection District  
RP          Resource Protection District

USE/ACTIVITY - DISTRICT	R	R-C	BVC	BVF	BVM U	EBV	SG	RMU	CC	MB	MC	WRP- 27	WRP	WP	RP
<b>RURAL - RESOURCE - AGRICULTURAL USES</b>															
Agricultural Packaging and Storage	PR <sup>1</sup>	N	N	PR	PR <sup>6</sup>	N	PR <sup>10</sup>	PR	PR	C	PR	N	N	N	N
Agricultural Product Processing	PR <sup>1</sup>	N	N	PR	PR <sup>6</sup>	N	PR <sup>10</sup>	PR	PR	C	PR	N	N	N	N
Agriculture/Farming	PR	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	Y
Animal Breeding or Care	PR <sup>3</sup>	N	N	N	N	PR	PR	C	C	C	N	N	N	N	N
Farm Stand	C <sup>1</sup>	C <sup>1</sup>	C	C	C	C <sup>1</sup>	C <sup>2</sup>	C	C	C	C	C <sup>1</sup>	C <sup>1</sup>	N	C
Aquaculture (Land support for)	PR <sup>4</sup>	PR <sup>4</sup>	N	N	PR	PR <sup>4</sup>	PR <sup>10</sup>	PR	PR	C	PR	N	N	PR	PR
Commercial Fishing Activities	PR	PR	N	N	PR	C	C	C	C	C	C	N	N	N	PR
Firewood Processing	N	N	N	N	N	N	PR <sup>10</sup>	PR	PR	PR	N	N	N	N	N
Mineral Extraction	N	N	N	N	N	N	PR <sup>10</sup>	PR	PR	PR	N	N	N	N	N
Timber Harvesting <sup>20</sup>	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	PR	NA	NA
<b>RESIDENTIAL USES</b>															
Accessory <u>Dwelling Unit</u>	C	C	C	C	C	C	C	C	C	N	N	C	C	C	C
Dwelling, Multifamily	PR	PR	PR	PR	PR <sup>6</sup>	PR	PR <sup>10</sup>	PR	PR <sup>6</sup>	N	N	N	N	N	N

Dwelling, One Family	C	C	C	C	C	C	C	C	C	N	N	C	C	C	PR <sup>15</sup>
<b>USE/ACTIVITY - DISTRICT</b>	<b>R</b>	<b>R-C</b>	<b>BVC</b>	<b>BVF</b>	<b>BVM U</b>	<b>EBV</b>	<b>SG</b>	<b>RMU</b>	<b>CC</b>	<b>MB</b>	<b>MC</b>	<b>WRP- 27</b>	<b>WRP</b>	<b>WP</b>	<b>RP</b>
Dwelling, Two Family	C	C	C	C	C	C	C	C	C	N	N	N	N	C	N
Dwelling, Townhouse	PR	PR	PR	PR	PR <sup>6</sup>	PR	PR <sup>10</sup>	PR	PR <sup>6</sup>	N	N	N	N	N	N
Dwelling Unit in a Mixed- Use Building	PR	PR	PR	PR	PR <sup>6</sup>	PR	PR	PR	PR <sup>6</sup>	N	PR	PR	N	N	N
Employee Housing	PR	PR	PR <sup>3</sup>	PR <sup>3</sup>	PR <sup>6</sup>	PR	PR	PR	PR	PR	PR	PR <sup>3,13</sup>	PR <sup>3,13</sup>	PR <sup>3</sup>	N
Lodging House	PR	PR	PR <sup>3</sup>	PR <sup>3</sup>	PR <sup>3,6</sup>	PR <sup>3</sup>	N	N	PR <sup>6</sup>	N	PR	N	N	PR <sup>3</sup>	N
Mobile Home Park	MH	N	N	N	N	N	MH	MH	N	N	N	N	N	N	N
Residential Care Facility	PR <sup>3</sup>	N	PR <sup>6</sup>	PR <sup>6</sup>	PR <sup>6</sup>	PR <sup>3</sup>	PR <sup>4</sup>	PR <sup>4</sup>	PR <sup>6</sup>	N	N	PR <sup>3,6,12</sup>	N	N	N
Temporary Business Housing	N	N	N	N	N	N	N	N	PR	PR	PR	N	N	N	N
<b>COMMERCIAL USES</b>															
Adult-Use Marijuana Establishments	N	N	N	N	N	N	N	N	N	PR	N	N	N	N	N
Amusement Park	N	N	N	N	N	N	N	N	PR	N	N	N	N	N	N
Alcoholic Beverage Production Establishment	N	PR <sup>2</sup>	N	PR	PR <sup>3,6</sup>	N	N	PR	PR	PR	N	N	N	N	N
Auto, Rec. Vehicle Sales & Service	N	N	N	N	N	N	N	PR	PR	N	N	N	N	N	N



Automobile Repair	N	N	N	N	N	N	N	PR	PR	C	N	N	N	N	N
<b>USE/ACTIVITY/ DISTRICT</b>	<b>R</b>	<b>R-C</b>	<b>BVC</b>	<b>BVF</b>	<b>BVM U</b>	<b>EBV</b>	<b>SG</b>	<b>RMU</b>	<b>CC</b>	<b>MB</b>	<b>MC</b>	<b>WRP- 27</b>	<b>WRP</b>	<b>WP</b>	<b>RP</b>
Automobile Service Station	N	N	N	N	N	N	N	N	PR	N	N	N	N	N	N
Bed & Breakfast	PR	PR	PR	PR	PR <sup>6</sup>	PR	PR	PR	PR	N	PR	PR <sup>3, 12</sup>	N	PR	N
Business Services	N	N	PR	PR	PR	PR <sup>4,11</sup>	PR	PR	PR	C	PR <sup>17</sup>	PR	N	N	N
Campground	PR	N	N	PR <sup>17</sup>	N	N	PR <sup>10</sup>	PR	PR	N	N	N	N	N	N
Car Wash	N	N	N	N	N	N	N	N	PR <sup>18</sup>	N	N	N	N	N	N
Conference/Convention Center	PR <sup>5</sup>	PR <sup>5</sup>	N	PR	PR <sup>6</sup>	N	N	N	PR	N	N	N	N	N	N
Construction and Property Management Services	N	N	N	PR	PR	N	PR <sup>10</sup>	PR	PR	C	N	N	N	N	N
Day Care Facility (3-12 children)	PR	PR	PR	C	C	C	C	C	C	C	C	PR <sup>6,12</sup>	N	N	N
Day Care Center (> 12 children)	N	N	N	C <sup>6</sup>	C	C	C	C	C	C <sup>9</sup>	C	N	N	N	N
Flea Market/Tent Sale	N	N	C <sup>8</sup>	N	N	N	N	PR	PR	N	N	N	N	N	N
Funeral Home	N	N	N	PR <sup>6</sup>	PR <sup>6</sup>	N	N	N	PR	N	N	N	N	N	N
Gambling	N	N	N	N	N	N	N	N	N	PR	N	N	N	N	N
Home Occupation	C	C	C	C	C	C	C	C	C	N	C	C	C	C	C
Home Business	PR	PR	PR	PR	PR	PR	PR	PR	PR	N	PR	PR <sup>2,</sup>	PR <sup>1</sup>	PR <sup>1</sup>	N

Hotel/Motel	N	N	N	PR	PR <sup>6</sup>	N	N	N	PR	N	PR	N	N	N	N
<b>USE/ACTIVITY - DISTRICT</b>	<b>R</b>	<b>R-C</b>	<b>BVC</b>	<b>BVF</b>	<b>BVM U</b>	<b>EBV</b>	<b>SG</b>	<b>RMU</b>	<b>CC</b>	<b>MB</b>	<b>MC</b>	<b>WRP- 27</b>	<b>WRP</b>	<b>WP</b>	<b>RP</b>
Indoor Theater	N	N	PR	PR	PR <sup>6</sup>	N	N	N	PR	N	N	N	N	N	N
Inn	N	N	PR	PR	PR <sup>6</sup>	PR	PR	PR	PR	N	N	N	N	N	N
Junkyard	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Kennel	N	N	N	N	N	N	PR <sup>10</sup>	PR	PR	N	N	N	N	N	N
Laboratory, Research Facility	N	N	PR <sup>2</sup>	PR	PR <sup>6</sup>	PR	PR <sup>10</sup>	PR	PR	C	PR	N	N	N	N
Laundromat	N	N	PR <sup>2</sup>	PR	PR <sup>6</sup>	N	N	N	PR	N	N	N	N	N	N
Marina	N	PR	N	N	N	PR	N	PR	N	N	PR	N	N	N	N
Maritime Activities	PR	PR	N	N	N	PR	PR <sup>10</sup>	PR	PR	C	PR	N	N	N	N
Medical Facilities	N	N	PR	PR	PR <sup>6</sup>	PR	N	N	PR	N	PR	PR <sup>2,6,12</sup>	N	N	N
Neighborhood Store	PR <sup>1</sup>	PR <sup>1</sup>	PR	PR	PR	PR	PR	N	PR	N	PR	PR <sup>2,12</sup>	N	N	N
Offices; Business, Professional	PR <sup>2</sup>	PR <sup>2</sup>	PR	PR	PR	PR	PR	PR	PR	C	PR	PR <sup>2,12</sup>	N	N	N
Parking Facility	N	N	PR	PR	PR	PR	N	N	PR	C	PR	N	N	N	N
Personal Services	PR <sup>2</sup>	N	PR	PR	PR	PR <sup>3/11</sup>	PR <sup>4</sup>	PR	PR	N	PR <sup>3,17</sup>	PR	N	N	N
Recreational Facility - Indoor	PR <sup>2</sup>	N	PR	PR	PR <sup>6</sup>	N	PR <sup>10</sup>	N	PR	N	N	N	N	N	N

Recreational Facility - Outdoor	PR <sup>2</sup>	N	N	PR	PR	N	PR <sup>10</sup>	PR	PR	N	N	N	N	N	PR <sup>2</sup>
<b>USE/ACTIVITY - DISTRICT</b>	<b>R</b>	<b>R-C</b>	<b>BVC</b>	<b>BVF</b>	<b>BVM U</b>	<b>EBV</b>	<b>SG</b>	<b>RMU</b>	<b>CC</b>	<b>MB</b>	<b>MC</b>	<b>WRP- 27</b>	<b>WRP</b>	<b>WP</b>	<b>RP</b>
Restaurant	PR <sup>2</sup>	N	PR	PR	PR <sup>6</sup>	PR <sup>4, 11</sup>	PR	N	PR	PR	PR <sup>2</sup>	PR <sup>2,12</sup>	N	N	N
Retail Business	N	N	PR	PR	PR	PR <sup>3, 11</sup>	PR	N	PR	PR	PR <sup>2</sup>	PR <sup>2,12</sup>	N	N	N
Retail Fuel Distributor	N	N	N	N	N	N	N	N	N	PR	N	N	N	N	N
Roadside Stand	C <sup>1</sup>	C <sup>1</sup>	C	C	C	C <sup>1</sup>	C <sup>2</sup>	C	C	N	C	C <sup>1</sup>	C <sup>1</sup>	C	C
Sex Related Business	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N
Shopping Center	N	N	N	N	N	N	N	N	PR	N	N	N	N	N	N
Small Engine & Lawn/Garden Equipment Repair & Sales	N	N	N	N	N	N	PR <sup>10</sup>	PR	PR	C	N	N	N	N	N
Solar energy conversion system, ground mounted ≥ 4,200 sq ft	N	N	N	N	N	N	PR	PR	PR	PR	PR	N	N	N	N
Solar energy conversion system, roof mounted or ground mount < 4,200 sq ft	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Storage Facility/Structure	N	N	N	N	PR	N	PR <sup>7,10</sup>	PR	N	C	N	N	N	N	N

Transportation Terminal	N	N	N	N	N	N	N	N	PR	N	N	N	N	N	N
Veterinary Hospital	N	N	N	PR	PR <sup>6</sup>	N	PR	PR	PR	N	N	N	N	N	N
<b>INDUSTRIAL – MANUFACTURING – DISTRIBUTION USES</b>															
Communications Tower	PR	PR	N	PR	PR	N	PR	PR	PR	PR	PR	PR	PR	N	PR
Manufacturing	N	N	N	N	PR <sup>6</sup>	N	PR <sup>10</sup>	PR	N	C	PR	N	N	N	N
<b>USE/ACTIVITY - DISTRICT</b>	<b>R</b>	<b>R-C</b>	<b>BVC</b>	<b>BVF</b>	<b>BVM U</b>	<b>EBV</b>	<b>SG</b>	<b>RMU</b>	<b>CC</b>	<b>MB</b>	<b>MC</b>	<b>WRP- 27</b>	<b>WRP</b>	<b>WP</b>	<b>RP</b>
Recycling Operations	N	N	N	N	PR <sup>3,6</sup>	N	N	N	N	C	N	N	N	N	N
Sawmill	N	N	N	N	N	N	PR <sup>10</sup>	PR	N	C	N	N	N	N	N
Terminal for Bulk Oil and Gas	N	N	N	N	N	N	N	N	PR	PR	N	N	N	N	N
Trucking Distribution Terminal	N	N	N	N	N	N	N	N	N	C	N	N	N	N	N
Warehousing	N	N	N	N	PR <sup>6</sup>	N	PR <sup>10</sup>	PR	N	C	PR	N	N	N	N
Waste Transfer Facility	N	N	N	PR	N	N	N	N	N	N	N	N	N	N	N
Wholesale Business	N	N	N	N	N	N	PR <sup>10</sup>	PR	PR <sup>7</sup>	C	N	N	N	N	N
Wood Processing	N	N	N	N	N	N	PR <sup>10</sup>	PR	N	C	N	N	N	N	N
<b>INSTITUTIONAL USES</b>															
Botanical Garden	PR <sup>19</sup>	N	N	N	N	N	N	N	N	N	N	N	PR <sup>21</sup>	N	N

Cemetery	PR	N	Y	Y	Y	Y	Y	Y	PR	N	PR	N	N	N	PR
Church, Parish House, Place of Worship	PR	PR	PR	PR	PR <sup>6</sup>	PR	PR	PR	PR	N	PR	N	N	PR	N
Community Center, Club	PR	PR	PR	PR	PR <sup>6</sup>	PR	PR	N	PR	N	N	N	N	N	N
Educational Facility	PR <sup>3,16</sup>	PR <sup>2</sup>	PR	PR	PR <sup>6</sup>	PR <sup>3</sup>	PR	N	PR	PR	PR <sup>17</sup>	N	N	PR	PB <sup>1</sup>
Library	PR <sup>3</sup>	N	PR	PR	PR <sup>6</sup>	PR	N	N	PR	N	N	N	N	N	N
<b>USE/ACTIVITY - DISTRICT</b>	<b>R</b>	<b>R-C</b>	<b>BVC</b>	<b>BVF</b>	<b>BVM U</b>	<b>EBV</b>	<b>SG</b>	<b>RMU</b>	<b>CC</b>	<b>MB</b>	<b>MC</b>	<b>WRP- 27</b>	<b>WRP</b>	<b>WP</b>	<b>RP</b>
Museum	PR <sup>3</sup>	N	PR	PR	PR <sup>6</sup>	PR	N	N	PR	N	N	N	N	N	PR <sup>1</sup>
Public Facility	PR	PR	PR	PR	PR <sup>6</sup>	PR	PR	PR	PR	PR	PR	PR <sup>2,14</sup>	PR <sup>2,14</sup>	PR	PR <sup>2</sup>
Camp	PR	PR	N	N	N	N	PR	PR	N	N	N	N	PR	N	N
Clearing of Vegetation	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	C	C	C	Y
Dock - Temporary	PR	PR	NA	NA	NA	PR	PR	PR	NA	NA	PR	N	PR	PR	PR
Dock - Permanent	PR	PR	NA	NA	NA	PR	PR	PR	NA	NA	PR	N	PR	N	PR
Earth Moving/Filling <50 cubic yards	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Earth Moving/Filling >50 yards	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR
Essential Services	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Forest Management Activities	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	NA	C	C	C	C

Mineral Exploration	N	N	N	N	N	N	Y	Y	Y	Y	NA	N	N	N	N
Individual Private Campsite	C	C	N	Y	N	N	Y <sup>10</sup>	Y	N	N	N	N	N	N	C
Sign	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Wharf/Pier	PR	PR	NA	NA	NA	PR	PR	PR	NA	NA	PR	N	PR	NA	PR
Wind Turbines - Up to 60 feet in height	PR	PR	PR	PR	PR	PR	PR	PR	PR	C	PR	PR	PR	N	PR
Wind Turbines - Over 60 feet in height	N	N	N	PR	N	N	PR <sup>10</sup>	PR	PR	PR	PR	PR	PR	N	N
Use similar to uses “permitted with CEO Review” – C <sup>19</sup>	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Use similar to uses “permitted with review” – PR <sup>19</sup>	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR

### Notes to the Table of Land Uses:

1. Only very small-scale limited uses with less than 500 SF of floor area (see definition for additional requirements)
2. Only very small and small-scale limited uses with less than 1,000 SF of floor area (see definition for additional requirements)
3. Only very small, small and medium-scale limited uses with less than 2,000 SF of floor area (see definition for additional requirements)
4. Only very small, small, medium and larger-scale limited uses with less than 4,000 SF of floor area (see definition for additional requirements)
5. Only as an accessory to an existing nonconforming hotel/motel
6. Allowed only if served by the public sewer system
7. All storage shall occur completely inside of a building
8. Allowed only on the Town Common in accordance with the provisions of the Administrative Code
9. Allowed only as an accessory use to an allowed use
10. Allowed only if the use and development conforms to the Zone Specific Development Standards of Section **7.5.7.4**
11. Only on lots that front on Ocean Point Road or School Street
12. The size and intensity limits shall not apply to the reuse or expansion of an existing building or to the redevelopment of a lot containing one or more buildings as of November 3, 2020 provided that the reuse, expansion or redevelopment meets the standards of Section **7.5.13.4**
13. Allowed as reuse of an existing building only if served by the public sewer system or a subsurface wastewater disposal system meeting current state requirements as of the date of reuse
14. The size and intensity limits do not apply to facilities owned or operated by the Town of Boothbay, the Boothbay Regional Water District or the Boothbay Harbor Sewer District
15. Allowed only in accordance with the performance standards for single-family homes in the RP District.
16. Allowed only if marine related
17. Allowed only if served by the public sewer system and the year-round public water system
18. In determining if a use is similar to an allowed use, the CEO or Planning Board as applicable shall consider the following factors: size and appearance, potential impact on abutting properties, scale of operations, traffic, environmental impacts, and the purpose of the district
19. All uses, facilities and activities of the Coastal Maine Botanical Gardens shall comply with the April 24, 2018 Consent Decree between the Coastal Maine Botanical Gardens and the Town of Boothbay
20. The Town of Boothbay only regulates Timber Harvesting in the WRP and WPO Districts.

21. The only allowed botanical garden is the Coastal Maine Botanical Gardens and all uses, facilities and activities of the Coastal Maine Botanical Gardens shall comply with the April 24, 2018 Consent Decree between the Coastal Maine Botanical Garden and the Town of Boothbay



## **Section 8. General Performance Standards**

The following General Performance Standards apply to all uses of land and structures within the Town of Boothbay.

### **8.1 Parking and Loading Requirements**

Off-street parking shall be required for all new and expanded uses and shall be adequately sized for the proposed use.

#### **8.1.1 General**

**8.1.1.1** Parking areas in the Shoreland Overlay District shall meet the shoreline setback requirements for structures for the district in which such parking areas are located except as provided in Section 7.5.17.4.3.

**8.1.1.2** Off-street parking shall be located on the same lot as the use for which the parking is required unless other arrangements are approved by the Planning Board.

**8.1.1.3** No parking space shall serve more than one use unless the Planning Board finds that it is clearly demonstrated that the shared parking area will substantially meet the intent of the requirements by reason of variation in the probable time of maximum use by patrons or employees of the establishments sharing the parking.

**8.1.1.4** Except for parking for one and two family residential uses, including dwellings in a mobile home park, and home occupations, all parking shall be excluded from the area between the principal building and public and private way(s) unless such parking is provided for in the district standards. This requirement does not apply to parking in the Manufacturing/Business District and the Marine Commercial District.

**8.1.1.5** Parking areas for all uses except for one and two family residential uses and any associated Home Occupations shall be designed so that vehicles can be turned around within the lot and are not required to back into public ways.

**8.1.1.6** Loading facilities shall be located entirely on the same lot as the structure or use to be served. Loading facilities shall be designed so that they do not interfere with customer traffic flows and parking.

**8.1.1.7** Any use that is required to provide more than ten (10) off-street parking spaces shall provide handicapped accessible parking facilities in accordance with the requirements of the Americans with Disability Act (ADA).

**8.1.2 Access Standards for Other Than One and Two Family Residential Uses** Lots shall be designed with a limited number of access points. A maximum of two (2) points of access shall be allowed regardless of the number of businesses served.

**8.1.2.1** The Planning Board may approve variations from this requirement if the lot has more than five hundred (500) feet of road frontage or access from more than one road.

**8.1.2.2** Access points shall be so located as to minimize traffic congestion and to avoid generating traffic on local streets of a primarily residential character.

**8.1.2.3** Provision shall be made for vehicular access in such a manner as to safeguard against hazards to traffic and pedestrians on existing roads and within the lot, to avoid

traffic congestion on any road, and to provide safe and convenient circulation on public roads and within the lot. This may require the provision of turning lanes, traffic directional islands, and traffic controls on existing and proposed public or private roads.

- 8.1.2.4** Access points for commercial uses shall be designed in profile, grading and location to provide the following minimum sight distance, measured in each direction in accordance with the following procedure. The sight distance must be measured from the access (at a point ten (10) feet back from the edge of the travel way) to the centerline of the opposing lane(s), assuming a height of eye of three and a half (3.5) feet and a height of object of four and one quarter (4.25) feet.

Posted Speed in Miles per Hour	Minimum Sight Distance in Feet
20	230
25	300
30	375
35	455
40	540
45	635
50	740

- 8.1.2.4.1** The Planning Board may approve access points with less than the required sight distance if the property owner or applicant can show that no alternative exists and the design, including any proposed improvements, will allow safe use of the intersection or if the primary use of the access will not involve commercial vehicles.

- 8.1.2.5** Entrances and exits shall be clearly identified by the use of entrance and exit signs, curb cuts, and landscaping.

### **8.1.3 Parking Area Standards for Uses Other Than One and Two Family Residential Uses**

- 8.1.3.1** Major interior travel lanes within parking areas shall be designed to allow continuous and uninterrupted traffic movement. Enclosures, such as curbs, fences, walls, and landscaping, shall be used to identify circulation patterns within parking areas and to restrict driving movements diagonally across parking aisles, but not to reduce visibility of on-coming pedestrians and vehicles. Entrance/exits shall be designed to allow adequate stacking in vehicle circulation lanes.

- 8.1.3.2** Access to parking stalls shall not be provided from major interior travel lanes in parking areas with more than fifty (50) spaces.

- 8.1.3.3** Unless specifically approved by the Planning Board, parking areas shall be designed to permit each motor vehicle to proceed to and from the parking space without requiring the moving of any other motor vehicles. This requirement may be

waived by the Planning Board for residential uses in which parking spaces are assigned to specific units.

**8.1.3.4** All parking spaces and access drives shall be at least five (5) feet from any side or rear lot line unless the district standards establish a different requirement. Where development is proposed adjacent to a one or two family residential use, the minimum side and rear yard setback shall be observed for parking spaces and access drives. This area is to be used as a buffer zone and shall be landscaped so as to form a visual barrier.

**8.1.3.5** The minimum size of parking spaces shall conform to the requirements of Section **8.1.3.6** except that at least twenty (20) percent of the spaces shall be a minimum of ten (10) feet wide and twenty (20) feet long unless the Planning Board finds that it is clearly demonstrated that smaller parking spaces are appropriate. The larger spaces shall be identified by appropriate signage or pavement markings.

**8.1.3.6** The layout of parking areas, including the parking stalls and aisles, shall conform to the following Parking Design Standards Table:

**Parking Design Standards Table**

<u>Parking Angle</u>	<u>Stall Width</u>	<u>Skew Width</u>	<u>Stall Depth</u>	<u>Aisle Width</u>
90 <sup>0</sup>	9 - 0	18 - 5	24 - 0	
60 <sup>0</sup>	8 - 6	10 - 5	18 - 0	16 - 0 one way only
45 <sup>0</sup>	8 - 6	12 - 9	17 - 5	12 - 0 one way only

**8.1.3.7** In paved parking areas, painted stripes shall be used to delineate parking stalls. Stripes shall be a minimum of 4 inches in width. Where double lines are used, they shall be separated a minimum of 1 foot on center.

**8.1.3.8** In unpaved parking areas, appropriate markers shall be used to delineate parking stalls.

**8.1.3.9** In parking area using diagonal parking, arrows shall be painted on the pavement to indicate proper traffic flow.

**8.1.3.10** Bumpers or wheel stops shall be provided where overhang of parked cars might restrict traffic flow on adjacent through roads, public ways and interior travel lanes; restrict pedestrian movement on adjacent walkways; or damage landscape materials.

**8.1.3.11** All parking areas and driveways shall have a gravel sub-base at least twelve (12) inches in thickness and a surface layer of two (2) inches of finish gravel or bituminous paving.

**8.1.3.12** Road and driveway surface drainage shall conform to the stormwater performance standards of Section **9.3**. Runoff shall be directed to an unscarified buffer strip and shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

**8.1.4 Minimum Parking Requirements** A minimum of two parking spaces shall be

provided on each tract or parcel of land.

**8.1.4.1** Uses other than one and two family residential shall provide at least one parking space per employee on the largest work shift that does not reside on the property and one space for each dwelling unit, guest room, campsite, boat slip, mooring or office.

**8.1.4.2** The Planning Board may grant waivers to reduce the minimum number of spaces required if the property owner or applicant demonstrates that less parking is needed to serve the activity.

**8.1.4.3** The Planning Board may require additional parking spaces if it determines that the minimum parking provided for in Section **8.1.4.1** are insufficient to meet the parking demand of the activity. In determining the number of additional spaces required, the Planning Board shall use information provided by the applicant on actual parking demand of similar uses or the most recent edition of the Institute of Traffic Engineers Parking Generation Manual.

## **8.2 Traffic and Access Requirements**

Section **8.2** shall apply to all roads, including the roadway, shoulders, curbs, sidewalks, culverts, drainage system and other appurtenances. It shall also apply to driveways where specifically noted. In addition, it shall apply to any improvement or modification of a road external to the development as may be required. Road construction shall conform to good engineering practices and be suitable for the intended usage of the road.

### **8.2.1 General**

**8.2.1.1** Road and driveways within the Shoreland Overlay District shall meet the shoreline setback requirements set forth in Section **7.5.17.4.4.1**.

**8.2.1.2** Approval of an application by the Planning Board shall not be deemed to constitute or be evidence of acceptance by the Town of Boothbay of any road or easement.

**8.2.1.3** Detailed construction drawings showing a plan view, profile, and typical cross-section of any proposed roads shall be required as part of the application as set forth in Section 5.

**8.2.1.4** Roads and driveways shall be designed so as not to create through or “short cut” travel paths.

**8.2.1.5** New roads and driveways in the Resource Protection District are prohibited except as provided for in Section **7.5.17.4.4.1.3**.

**8.2.1.6** The Planning Board, upon recommendation of the Road Commissioner, may approve variations from the road requirements of this section.

**8.2.2 Drainage Standards** Appropriate drainage must be provided for all new or rebuilt roads and driveways in accordance with the stormwater performance standards of Section **9.3**. Drainage provisions for roads in the Shoreland Overlay District shall also conform to the standards of Section **7.5.17.4.4**.

**8.2.2.1** Adequate ditches shall be provided for new and rebuilt roads if no other means are to be used for drainage. When ditches are used, the depth should be approximately twenty-four (24) inches below the center of the road or driveway and should blend

with the terrain of the land. It will be up to the discretion of the Road Commissioner as to what good drainage road requirements are in each case.

**8.2.2.2** Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

**8.2.3 Location Standards** Roads and driveways shall be located so as to avoid wetlands and rare species where feasible and to minimize the need for cuts and fills.

**8.2.3.1** Road and driveway grades shall be not greater than ten (10) percent except for segments of less than two hundred (200) feet.

## **8.2.4 Road Standards**

### **8.2.4.1 General**

**8.2.4.1.1** The center line of the travelway shall be located at the center line of the right-of-way to the extent feasible.

**8.2.4.1.2** Roads shall be constructed to their full width and length as shown on the approved plan. Construction shall be completed to the intersection with an existing or proposed road and to the near lot line of the most distant lot.

**8.2.4.1.3** Roads that are or are proposed to be Town roads shall be paved with bituminous paving in accordance with Section **8.2.4.4**. Roads that are or will be private roads and will not be maintained by the Town may have a gravel surface rather than a paved surface.

**8.2.4.2 Emergency Vehicle Access** If the length of a road (including new roads or extensions of existing roads) from the nearest intersection or fire protection water supply exceeds eight hundred (800) feet, a fire protection service area shall be provided adjacent to the road within eight hundred (800) feet of the intersection or water supply. An additional service area shall be provided for each additional eight hundred (800) feet of road length so that there is less than eight hundred (800) feet between service areas. The service area shall be designed to allow appropriate space for establishing a water transfer facility and turning of fire equipment. The location and design of the service area shall be approved by the Fire Chief. This requirement shall also apply to a private accessway or driveway that is more than eight hundred (800) feet in length from its intersection with the road providing access to the property.

**8.2.4.3 Termination of Roads** New roads and driveways that are an extension of an approved road or whose end is more than two hundred (200) feet from an existing cross road, shall provide a turnaround area at the end of the road or driveway. The turnaround shall be a T or hammerhead turnaround or other turn around approved by the Planning Board. The location and designed of the turnaround shall be reviewed and approved by the Fire Chief. A T or hammerhead turnaround shall provide turning legs that have a travel surface that is not less than eighteen (18) feet in width that extends not less than thirty (30) feet from the edge of the travelway of the road or driveway unless an alternative design is approved by the Planning Board. If it is feasible that the new road could be extended in the future, the plan shall indicate the

portion(s) of the turnaround area beyond the required road Right-of-Way that shall revert to the abutting properties.

**8.2.4.4 Pavement** Roads that are or are proposed to be Town roads shall meet the following paving standards.

**8.2.4.4.1** The minimum standards for the base layer of pavement shall be the Maine Department of Transportation specifications for 19.0mm/D mix with a minimum thickness after compaction of two (2) inches.

**8.2.4.4.2** The minimum standards for the surface layer of pavement shall be the Maine Department of Transportation specifications for 12.5 mm/C mix with a minimum thickness after compaction of one and a half (1½) inches.

**8.2.4.4.3** Where new pavement joins an existing pavement, the existing pavement shall be cut along a smooth line to form a neat, even, vertical joint.

**8.2.4.5 Preparation of Road Base**

**8.2.4.5.1** Before any clearing has started on the right-of-way, the center line and side lines of the new road shall be staked or flagged at fifty (50) foot intervals.

**8.2.4.5.2** Organic materials, soils not suitable for roadways, and rocks and boulders shall be removed to a depth of two (2) feet below the subgrade of the roadway and replaced with material meeting the specifications for gravel aggregate sub-base.

**8.2.4.5.3** Except in a ledge cut, road and driveway banks shall be no steeper than a slope of two and a half (2½) feet horizontal to one (1) foot vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control. Where a cut results in exposed ledge, side slopes no steeper than four (4) feet vertical to one (1) foot horizontal are permitted.

**8.2.4.6 Sub-Base and Base Course**

**8.2.4.6.1** The aggregate sub-base course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other substances with a minimum thickness after compaction of twenty-four (24) inches. The gradation of the part that passes a three (3) inch square mesh sieve shall meet the following grading standard: Aggregate for sub-base shall contain no particles of rock exceeding four (4) inches in any dimension.

**8.2.4.6.2** The aggregate base course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other substances with a minimum thickness after compaction of four (4) inches. The gradation of the part that passes a three (3) inch square mesh sieve shall meet the following grading standard: Aggregate for the base shall contain no particles of rock exceeding two (2) inches in any dimension.

**8.2.4.6.3** Underground utilities shall be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections shall be installed to the edge of the right-of-way prior to paving.

**8.2.4.7 Road Design Standards**

**8.2.4.7.1** The following standards apply to Private Roads:

Minimum Right-of-Way Width		50 feet
Minimum Travelway Width	Access for 1 – 5 lots/units	16 feet
	Access for 6 – 9 lots/units	18 feet
	Access for 10 or more lots/units	20 feet
Roadway Crown		¼ inch per foot
Minimum width of shoulders (each side)		3 feet

**8.2.4.7.2** The following standards apply to roads that are to be considered by the Town of Boothbay for acceptance as Public Roads:

Minimum Right-of-Way Width	50 feet
Minimum Pavement Width	20 feet
Roadway Crown	¼ inch per foot
Minimum width of shoulders (each side)	4 feet

### **8.3 Other Requirements**

#### **8.3.1 Development Next to Registered Farmland**

All development and use of land on a parcel that abuts registered farmland in accordance with Title 7 M.R.S. Chapter 2-B and Title 12 M.R.S. Chapter 6-A shall conform to the requirements of State law to protect registered farmland from incompatible use and inconsistent development except as provided in Section **8.3.1.1**.

**8.3.1.1** The Board of Appeals may grant a variance permitting development or use of land for residential purposes if adherence to the state setback requirements renders a parcel of land unusable for residential purposes in accordance with the provisions of State law. Any variance granted for such a purpose shall be conditioned to provide the maximum feasible setback from the abutting registered farmland.

#### **8.3.2 Construction Standards**

New structures shall meet the following minimum design criteria.

**8.3.2.1** The exterior walls shall be finished with a covering of wood, vinyl, or metal clapboards; wood siding; or wood, asphalt, vinyl, or metal shingles; masonry, brick or stone or other nationally advertised siding materials. Tarred paper or tarred felt or similar substances shall not be used unless completely hidden from view by previously prescribed finished exterior wall covering.

**8.3.2.2** Every chimney shall be constructed of solid masonry units or materials prefabricated or otherwise approved by the National Board of Fire Underwriters.

**8.3.2.3** All newly erected structures that are to be wired shall have an adequate and safe electrical service of at least one hundred (100) amperes and shall be wired in accordance with acceptable industry standards.

**8.3.2.4** All buildings shall be set on masonry foundations in the form of masonry walls at least six (6) inches thick, or masonry posts at least six (6) inches in diameter which in turn rest on ledge or which extend into solid earth for 3½ feet, or a concrete slab at least six (6) inches thick. Foundations for mobile homes in approved mobile home parks are not required to meet these standards. Buildings that do not exceed four hundred (400) square feet are exempt from this requirement.

**8.3.2.5** New commercial construction should be compatible with surrounding properties in terms of formal characteristics, such as height, massing, roof shapes and window proportions. Where existing historic buildings surround new construction, building height and exterior materials shall be harmonious with those of adjacent properties.

### **8.3.3 Cuts and Fills**

The top of a cut or bottom of a fill section shall not be closer than ten (10) feet to an adjoining property, unless otherwise approved by the Planning Board.

**8.3.3.1** Except in a ledge cut, cuts and fills shall be no steeper than a slope of two and a half (2½) feet horizontal to one (1) foot vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control. Where a cut results in exposed ledge, side slopes no steeper than four (4) feet vertical to one (1) foot horizontal are permitted.

### **8.3.4 Lots**

#### **8.3.4.1 General**

**8.3.4.1.1** Lots with multiple frontages are to be avoided whenever feasible. When lots have frontage on two or more right-of-ways, the plan and deed restrictions shall indicate that vehicular access shall be located only on the less-traveled way. The Planning Board may approve variations from this requirement.

**8.3.4.1.2** Any side of a lot abutting a public or private way shall have the lot line in common with the right-of-way of the public or private way.

**8.3.4.1.3** Lot configuration and structure location shall provide for adequate off-street parking and service facilities.

#### **8.3.4.2 Lot Size**

**8.3.4.1** Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

**8.3.4.2** Land beneath roads serving more than two lots shall not be included towards calculating minimum lot area.

**8.3.4.3** Land below the high-water line of great ponds and associated wetlands, streams, outlet streams or the upland edge of other wetlands shall not be included towards calculating minimum lot area.

### **8.3.5 Outdoor Storage**

All outdoor storage facilities for uses other than one and two family dwelling for fuel, chemicals, or industrial wastes, and potentially harmful raw materials, shall be located on impervious pavement, and shall be completely enclosed by an impervious dike high enough to contain the total volume of liquid kept in the storage area, plus the accumulated rainfall of a 25 year storm. This requirement is intended to prevent harmful materials from spilling and seeping into the ground and contaminating the ground water. Storage tanks for “home heating oil” and diesel fuel, not exceeding two hundred seventy-five (275) gallons in size, may be exempted from this requirement provided that there is no seasonal high-water table within four (4) feet of the surface, and that rapidly permeable sandy soils are not involved.



### **8.3.6 Roadside Trees and Walls**

**8.3.6.1** Roadside trees are extremely important to the character of Boothbay. Removal of existing roadside trees shall be minimized, especially along public ways. To minimize the removal of roadside trees, the Planning Board may require that the location of the building, parking lot, or the entrance or exit drive be modified.

**8.3.6.2** Where stone walls exist, the development plan shall minimize any disturbance of the walls to retain the character of country roads.

### **8.3.7 Sanitation**

#### **8.3.7.1 General**

**8.3.7.1.1** New buildings and additions or remodeling of existing buildings designed for human habitation or use requiring new or additional plumbing facilities shall not be occupied anywhere in the Town unless they are connected to the municipal sewer district or equipped with a sewage disposal meeting the requirements of the Maine Plumbing Code and the *Maine Subsurface Wastewater Disposal Rules*. The provisions for sewage disposal must be approved by the Local Plumbing Inspector and/or the Maine Department of Health and Human Services Division of Health Engineering if state approval is required.

**8.3.7.1.2** No wastewater treatment facility that services more than one dwelling unit shall be approved unless such facility is owned jointly by the owners of each dwelling unit.

#### **8.3.7.2 Subsurface Wastewater Disposal**

##### **8.3.7.2.1 General**

**8.3.7.2.1.1** All subsurface waste disposal systems shall be located, designed and installed in accordance with the requirements of the Maine Subsurface Wastewater Disposal Rules.

**8.3.7.2.1.2** Any person transferring property on which a subsurface wastewater disposal system is located shall provide the transferee with a written statement by the transferor as to whether the system has malfunctioned during the one hundred eighty (180) days preceding the date of transfer.

##### **8.3.7.2.2 Inspections**

**8.3.7.2.2.1** The Local Plumbing Inspector must make three (3) inspections of any installation of a subsurface wastewater disposal system as follows:

**8.3.7.2.2.1.1 After site preparation:** An inspection must be made after site preparation to ascertain that the vegetation has been removed in the disposal field area, the area under the disposal field and backfill extensions has been roughened, a transitional horizon has been established, and the erosion and sedimentation control measures are in place.

**8.3.7.2.2.1.2 Prior to covering the system:** An inspection must be made after installation of the systems components, including stone, pipes or proprietary devices, tanks, hay, filter fabric, and fill beneath and beside of the disposal area before back filled is placed above the disposal system components. This

inspection must include any curtain drain, diversion ditches, berms or other measures outlined on the design to improve the function of the system.

**8.3.7.2.2.1.3 Prior to signing off on the permit:** An inspection must be made after the system has been covered with fill and loam to confirm the finished grade elevation, that seed, hay, and mulch have been placed on all disturbed areas, and fill extensions are installed correctly per the Site Evaluator's plan that was permitted.

### **8.3.8 Signs**

**8.3.8.1 Exemptions** For purposes of Section **3.11.20**, the term "sign" shall not include and no permit shall be required for:

**8.3.8.1.1** "FOR SALE", "FOR RENT" and "FOR LEASE" signs that have been placed on the property with the owner's permission for the purpose of advertising that property or item for sale, rent or lease. Permitted signs shall include the small standalone signs normally used by real estate agencies and other signs not over three (3) square feet in area;

**8.3.8.1.2** One or two signs not over three (3) square feet in area that identify the occupants of a residential property;

**8.3.8.1.3** Signs erected or posted and maintained for public safety and welfare or pursuant to any governmental function, law, code, or other regulation;

**8.3.8.1.4** Signs relating to trespassing and hunting, not exceeding two (2) square feet in area; and

**8.3.8.1.5** Brass, or similar metallic material, plaques of a personal nature not exceeding one square foot in area.

**8.3.8.1.6** Wayfinding signs installed in accordance with a community or regional wayfinding sign plan that has been approved by the Board of Selectmen.

### **8.3.8.2 Prohibited Signs**

**8.3.8.2.1** Billboards, streamers, pennants, ribbons, spinners or other similar devices shall not be constructed, posted or erected in any area in Town, except of a temporary nature for a festival or celebration.

**8.3.8.2.2** Flashing signs, roof signs, signs containing moving parts, and signs containing reflective elements that sparkle or twinkle in the sunlight are not permitted. This prohibition shall not apply to electronic changeable display signs permitted in accordance with Section **8.3.8.8**.

**8.3.8.2.3** Signs advertising or identifying a business, organization, occupants or goods or services that is either defunct or no longer located or available on the premises.

**8.3.8.2.4** Signs larger than thirty-two (32) square feet in sign area except in the Resource Protection District where signs are limited to a maximum of six (6) square feet. This limit shall not apply to Directory Signs in the Manufacturing/Business District.

**8.3.8.2.5** Signs, except for a traffic, regulatory, or informational sign, using the words

“STOP”, “CAUTION”, or “DANGER”, or incorporating red, amber, or green lights resembling traffic signals, or resembling “STOP” or “YIELD” signs in shape and color.

**8.3.8.2.6** Internally illuminated signs except as provided in Section **8.3.8.9**.

**8.3.8.2.7** Illuminated signs where the source of illumination is visible beyond the property boundary.

**8.3.8.2.8** More than two signs per premise in the Resource Protection District.

### **8.3.8.3 Placement Standards**

**8.3.8.3.1** No signs other than directional signs allowed in accordance with Section **8.3.8.5** may be located:

**8.3.8.3.1.1** within thirty-three (33) feet of the center line of any public way if the highway/right-of-way is less than sixty-six (66) feet in width;

**8.3.8.3.1.2** within twenty (20) feet from the outside edge of the paved portion of any public way with more than two (2) travel lanes and a total paved width in excess of twenty-four (24) feet; or

**8.3.8.3.1.3** within the full width of the right-of-way of any public way.

**8.3.8.3.2** No person shall erect a sign that is affixed to a utility pole. Only signs that identify the property owner may be affixed to a tree, shrub, rock, or other natural object.

**8.3.8.3.3** Signs shall not be mounted on roofs or extend above the roof line (unless mounted on a parapet wall that extends above the roof line, in which case the sign shall not extend above the top of the parapet).

**8.3.8.3.4** No projecting sign shall extend into a vehicular public way, nor be less than ten (10) feet above a pedestrian way.

**8.3.8.3.5** No sign or supporting framework shall extend to a height above the maximum building height permitted in the district in which it is located except in the Shoreland Overlay District.

**8.3.8.3.5.1** In the Shoreland Overlay District no sign shall extend higher than twenty (20) feet above the ground.

### **8.3.8.4 Nonresidential Signs**

**8.3.8.4.1 General** Signs other than directory signs allowed under Section **8.3.8.4.3** and directional signs allowed under Section **8.3.8.5** shall be placed on the same lot as the nonresidential use or activity, shall not obstruct motorists’ vision on any abutting road or in parking areas, and shall conform to the following standards:

**8.3.8.4.1.1** The longest dimension of any sign shall not be over eight (8) feet.

**8.3.8.4.1.2** One stand-alone sign, visible from each direction, shall be allowed for each road abutting the property. This sign(s) may be a directory sign in accordance with Section **8.3.8.4.3**. Lots with more than three hundred (300) feet of frontage shall be permitted to have a second freestanding sign on that

road.

**8.3.8.4.1.3** No more than two signs relating to activities on the premises shall be permitted for all nonresidential uses in the Shoreland Overlay District.

**8.3.8.4.2 Identification Signs** Two identification signs per lot are permitted. Such signs shall not exceed six (6) square feet with the maximum dimension of three (3) feet.

**8.3.8.4.3 Directory Signs** One freestanding directory sign, visible from each direction, shall be allowed for nonresidential uses in the Boothbay Village Center, Boothbay Village Fringe, Boothbay Village Mixed-Use, East Boothbay Village, Commercial Corridor, and Manufacturing/Business Districts.

**8.3.8.4.3.1** The directory sign shall be of an integrated and uniform design.

**8.3.8.4.3.2** The maximum size of a directory sign shall be thirty-two (32) square feet except in the Manufacturing/Business District and the Shoreland Overlay District. In the Manufacturing Business District the maximum size shall be one hundred forty-four (144) square feet. The maximum size of a directory sign in the Shoreland Overlay District shall be six (6) square feet.

**8.3.8.4.3.3** The maximum size of a sign for individual uses shall be four (4) square feet.

**8.3.8.4.3.4** The directory sign shall be located at the entrance to the lot or development in the vicinity of the road, accessway or driveway providing the primary vehicular access. If the directory sign will be located within the right-of-way of a public road, the location must be approved by the Board of Selectmen.

**8.3.8.4.3.5** Within the Manufacturing/Business District one additional directory sign not exceeding thirty-two (32) square feet in area shall be permitted at each interior road intersection.

**8.3.8.4.3.5.1** The directory sign shall be of an integrated and uniform design.

**8.3.8.4.3.5.2** The maximum size of a sign for individual uses shall be four (4) square feet.

**8.3.8.4.4 Wall Signs** A lot shall have an aggregate area of all wall signs on the lot of not more than one and a half (1½) square feet for each lineal foot of building face parallel to a street lot line, or ten (10) percent of the wall area to which it is attached, whichever is less. Where a lot fronts on more than one street, the maximum aggregate sign area facing each street frontage shall be calculated separately.

**8.3.8.4.4.1** Where two (2) or more wall signs are affixed to one wall, the gross display area shall be the sum total area of all signs.

**8.3.8.4.4.2** Wall signs shall not obscure architectural features of the building, including, but not limited to, arches, sills, mountings, cornices, and transoms.

**8.3.8.4.4.3** No part of a wall sign, including the display surface, shall extend

beyond the ends of the wall on which it is located or more than six (6) inches from the building surface.

**8.3.8.4.4** The size of signs attached to buildings may be increased in area by twenty five (25) percent for every one hundred (100) feet of building setback beyond one hundred (100) feet. The increase may be prorated according to the actual setback distance.

**8.3.8.4.5.** Signs indicating an entrance or exit, or a combined entrance/exit, shall be limited to two (2) at each driveway. Such signs shall contain no advertising material, shall be no more than three (3) square feet in area, and shall not extend higher than three (3) feet above ground level.

#### **8.3.8.5 Off-Premise Directional Signs**

**8.3.8.5.1 General** Off-Premise Directional signs shall be limited to one at each intersection where travelers must change direction from one public way to another to reach a particular business, organization or other nonresidential use to a maximum of four (4) signs within the Town for the nonresidential use.

**8.3.8.5.1.1** Such signs shall be uniform in size and type of lettering and shall conform to the following specifications:

Width	thirty-six (36) inches
Height	eight (8) inches
Letter Height	maximum of four (4) inches
Sign Face	white with black lettering
Rear Face	painted dark green
Material	1/2 inch to 3/4 inch wood board.

**8.3.8.5.1.2** Directional information, including one arrow figure only, shall be provided on each sign.

**8.3.8.5.1.3** The Town shall provide posts for mounting. Each owner shall provide, maintain, and replace his own sign. The owner shall pay a fee to the Town in an amount established by the Board of Selectmen for each sign. The Town may remove a sign if it is not properly maintained or if use to which the sign relates ceases operation or moves.

**8.3.8.6 Nonconforming Signs and Sign Structures** Signs not in conformance with the provisions of this section shall be allowed to remain except as qualified below:

**8.3.8.6.1** Other than sign maintenance, no nonconforming sign shall be reconstructed, remodeled, relocated, or changed in size unless such action will make the sign conforming to the greatest extent practicable. The existing sign face may be changed provided that it is not enlarged or made more nonconforming with any provisions of this section.

**8.3.8.6.2** Nothing in Section **8.3.8.6.1** shall be deemed to prevent keeping in good repair a nonconforming sign, including sign maintenance, repainting, and replacement of broken or deteriorated parts of the sign itself.

**8.3.8.6.3** A nonconforming sign or sign structure that is destroyed or damaged by any

means may be restored within six (6) months after such destruction only after the owner has shown that the damage did not exceed fifty (50) percent of the appraised value of the sign. If such sign or sign structure is destroyed or damaged to an extent exceeding fifty (50) percent of its appraised value it shall be removed and shall not be reconstructed or replaced unless such action makes the sign and sign structure conforming to the greatest extent practicable.

### **8.3.8.7 Temporary Signs**

**8.3.8.7.1** Temporary signs for business openings, commercial, community and other non-commercial special events may be posted in any place in Town upon a written permit from the Code Enforcement Officer. The Code Enforcement Officer shall only grant such a permit after presentation of evidence that the authorities controlling the proposed location of the sign have approved its posting. A temporary sign shall be posted for a period not to exceed fourteen (14) consecutive days or forty-two (42) days per calendar year. The applicant shall remove said signs upon termination of the activity. Street banners shall be no larger than fifty (50) square feet in area. No temporary sign, other than a street banner, shall be larger than twenty-four (24) square feet in area. Complete liability for any damage resulting from the placement of a banner across the public way shall be provided, in writing, by the person, firm, organization or corporation hanging the banner before the issuance of a permit for such banner. Such liability shall be acknowledged upon the application for the permit.

**8.3.8.1.1** “FOR SALE”, “FOR RENT” and “YARD/GARAGE SALE” signs are exempt from Section **8.3.8.6.7.1**.

### **8.3.8.8 Electronic Changeable Display Signs**

**8.3.8.8.1** Electronic changeable display signs are permitted only for the following uses in the following locations:

**8.3.8.8.1.1** A nonresidential use that is located in the Commercial Corridor District;

**8.3.8.8.1.2** A time and temperature display in accordance with Section **8.3.8.8.8**; or

**8.3.8.8.1.3** A governmental use in all land use districts other than the Resource Protection District.

**8.3.8.8.2** Only one electronic changeable display sign may be located on a lot. The changeable display may be part of a freestanding sign or a wall sign.

**8.3.8.8.3** Electronic changeable display signs must change as rapidly as technologically practicable with no phasing, rolling, scrolling, flashing, streaming or blending.

**8.3.8.8.4** Electronic changeable display signs may only consist of alphabetical or numeric text including punctuation, characters or symbols found on a standard keyboard on a plain or colored background and shall not include any graphic, pictorial or photographic images. The background may not be white or a bright

primary color. The sign cannot display letters or numbers in more than two (2) colors at any time

**8.3.8.8.5** The area of the electronically changeable display shall not exceed sixteen (16) square feet.

**8.3.8.8.6** The electronically changeable area must be incorporated into a larger sign and may not be more than sixty (60) percent of the total sign area.

**8.3.8.8.7** The illumination level of the display must be regulated by an automatic dimming control to limit the maximum luminance level from one-half hour before sunset to one-half hour after sunrise to seven hundred fifty (750) cd/m<sup>2</sup> or Nits.

**8.3.8.8.8** Signs indicating the current time or temperature are permitted in all commercial, industrial and mixed-use districts provided that the time and temperature display is incorporated into a larger sign and the area of the electronic display is not more than twelve (12) square feet.

### **8.3.8.9 Sign Illumination**

**8.3.8.9.1** Externally illuminated signs shall conform to the following standards:

**8.3.8.9.1.1** Any sign for a nonresidential use in any land use district except the Resource Protection District may be externally illuminated.

**8.3.8.9.1.2** The sign shall only be illuminated by steady white lights.

**8.3.8.9.1.3** The light source must be shielded to prevent beams or rays of light from being directed at any portion of the public way. Any signs found to cause roadside glare shall be removed.

**8.3.8.9.1.4** Lighting may not be of such intensity or brilliance as to cause glare or impair the vision of any operator of any motor vehicle or in any way interfere with the driver's operation of a motor vehicle.

**8.3.8.9.1.5** Wall signs shall only be illuminated by light fixtures mounted on the building or structure.

**8.3.8.9.1.6** Signs shall only be illuminated between 6:00 a.m. and 8:00 p.m. A sign may be illuminated outside of this period if the use is open for business. In this situation, the sign shall be turned off one-half hour after the use closes and may be turned on one-half hour before the use opens.

**8.3.8.9.2** Internally illuminated signs shall conform to the following standards:

**8.3.8.9.2.1** Internally illuminated signs are only permitted for nonresidential uses in the Commercial Corridor District.

**8.3.8.9.2.2** A lot in the Commercial Corridor District shall be limited to one internally illuminated free-standing sign and one internally illuminated wall sign. If a sign includes an electronic changeable display, it shall count as one of the allowed internally illuminated signs.

**8.3.8.9.2.3** The illumination of an internally illuminated sign shall be constant and shall not cause the appearance or color of the sign to change or move.

**8.3.8.9.2.4** The background of the sign face shall not be white.

**8.3.8.9.2.5** Signs including any electronic changeable display that is part of the sign shall only be illuminated between 6:00 a.m. and 8:00 p.m. A sign may be illuminated outside of this period if the use is open for business. In this situation, the sign shall be turned off one-half hour after the use closes and may be turned on one-half hour before the use opens.

#### **8.3.8.10 Sign Materials**

The face of the sign including a sign composed of channel letters shall conform to the following standards:

**8.3.8.10.1** The face of the sign shall not be or include any elements that are reflective or that have a high gloss surface such that it creates a distraction to motorists on adjacent roads or to abutting property owners, including the owner of a lot directly across a road.

**8.3.8.10.2** In the Residential, Coastal Residential, Boothbay Village Center, Boothbay Village Fringe, Boothbay Village Mixed-Use, East Boothbay Village, Watershed Protection, Watershed Protection – 27, and Resource Protection Districts the face of the sign shall be made of wood, stone, metal or other natural materials or of materials that simulate the appearance of wood, stone, metal, or natural materials.

#### **8.3.8.1.1 Calculation of the Sign Area**

The area of each sign shall be determined based on the following procedures depending on the type of sign.

**8.3.8.1.1.1 General Standard** The area of a sign shall include the effective sign area of the sign, including all lettering, wording, and accompanying design symbols, together with the background whether open or enclosed, on which they are displayed, including sections between paneled signs. Minimal supporting bracing or framework shall be excluded from the calculation of the area of a sign, but any decorative structure shall be included in the area.

**8.3.8.1.1.2 Two-Sided Signs** Only one side of a two-sided sign shall be counted when determining the sign area of such a sign.

**8.3.8.1.1.3 Signs with a Sign Board** When a sign consists of a sign board in which the lettering, wording, graphics and similar features are on a separate sign board such as a wall sign attached to a building, a projecting sign, or a ground-mounted sign, the entire area of the sign board shall be counted in the area of the sign.

**8.3.8.1.1.4 Applied Signs** When the lettering, wording, graphics and similar features are applied directly to a surface such as in an awning sign, canopy sign, channel letter sign, or a wall sign painted/applied directly on the wall surface and there is a distinctive background behind the features that sets it apart from the rest of the surface, the entire area within the distinctive background shall be counted in the area of the sign. When there is no distinctive background behind the features such as in a channel letter sign, the area of the sign shall be calculated by the area



of the smallest square, rectangle, circle, ellipse, or triangle that can enclose the effective sign area of the sign.

**8.3.8.1.1.5 Complex Signs:** When the lettering, wording, graphics and similar features are located on a larger surface such as in a pylon sign, only the area including the effective sign area that encompasses lettering, wording, graphics and similar features shall be included in the area of the sign. If these features are not located on a distinctive background that creates an identifiable sign face, the area of the sign shall be calculated by the area of the smallest square, rectangle, circle, ellipse, or triangle that can enclose the effective sign area of the sign.

**8.3.8.1.1.6 Changeable Display Signs:** When a sign incorporates either a manual or electronic changeable display, the entire area of the area that can display changeable copy shall be included in the area of the sign together with any border or framing.

### **8.3.9 Structures**

#### **8.3.9.1 General**

**8.3.9.1.1** No more than one principal structure shall be placed on one lot unless:

**8.3.9.1.1.1** The minimum lot area and shore frontage standards, without variance, are met for each principal structure; and

**8.3.9.1.1.2** The placement of the principal structures will allow division of the lot in conformance with all requirements of this Ordinance including the required minimum setbacks between principal and accessory structures on abutting lots.

**8.3.9.1.1.3** The Planning Board may waive or modify the requirements of Sections **8.3.9.1.1.1** and **8.3.9.1.1.2** for multi-structure developments that are not located in the Shoreland Overlay District if it finds that the development proposal meets the other requirements of the ordinance.

**8.3.9.1.2** Accessory structures shall meet the standards for approval of a principal structure except for minimum lot area, and in the case of accessory dwelling units not located within the Shoreland Overlay District, from minimum lot area per dwelling unit.

**8.3.9.1.3** Lawfully created lot coverage that exceeds that allowed in a zoning district may be continued and maintained but cannot be further increased.

#### **8.3.9.2 Location**

**8.3.9.2.1** New structures shall be sited with respect to significant natural features such as wetlands or designated unique or critical areas to minimize adverse impacts on these features on or off the property.

**8.3.9.2.1.1** New structures other than one and two family residential dwellings and their associated structures shall be sited so that obstruction of views from the public ways will be minimized. This can be achieved by taking advantage of topographic changes or existing vegetation.

**8.3.9.2.2** The lowest floor elevation or openings of all structures, including basements

shall be elevated at least one (1) foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils. The development shall be in compliance with the Town of Boothbay Floodplain Management Ordinance.

**8.3.10.2.2.1** All proposed developments and uses shall provide evidence that the development or use will not increase the 100-year flood elevation.

**8.3.9.2.3** Structures that require direct access to the water as an operational necessity, such as piers, docks and retaining walls; or other functionally water-dependent uses are exempt from shoreline setback requirements.

**8.3.9.2.4** Structures unless functionally water related shall be located outside the velocity zone in areas subject to tides. The Federal Emergency Management Agency's Flood Insurance Rate Maps shall be used to determine these areas.

## Section 9. Environmental Performance Standards

The following Environmental Performance Standards apply to all uses of land and structures within the Town of Boothbay.

**9.1 Floodplain Management Requirements** The use of land and structures shall conform to the requirements of the Town's Floodplain Management Ordinance.

### 9.2 Water Supply Protection Requirements

**9.2.1 Buffers, Water Supply Protection** A water supply protection buffer shall be designed and maintained in accordance with the standards of Section 9.2.1 to provide a buffer between any shoreline, including watershed tributary streams, and development in the Watershed Protection Overlay District.

**9.2.1.1** Water supply protection buffers for new structures on existing lots that are not part of a subdivision already incorporating appropriate phosphorous controls shall, to the greatest practical extent given lot limitations, be on the down slope from developed areas and located so that as much as feasible of any runoff from any developed area drains to the buffer in overland, unchannelized flow.

**9.2.1.1.1** Driveways and parking areas shall be designed and constructed so that disruption of natural drainage patterns is minimized. Runoff shall be directed to an unscarified buffer strip at least fifty (50) feet, plus two times the average slope, in width between the outflow point of any ditch or culvert and a shoreline.

**9.2.1.1.1.1** As an example, if the average slope between the shoreline and the proposed road, driveway or parking area is thirty (30) percent, then the road setback at that location would be fifty (50) feet plus 2 times thirty (30) feet or one hundred ten (110) feet.

**9.2.1.1.1.2** Best Management Practices including swales, ditch turnouts, water bars and broad based drainage dips shall be used. Gravel driveways shall be graded to prevent runoff from concentrating in the driveway.

**9.2.1.1.2** Runoff from roofs shall be distributed over stable, well-vegetated areas or be infiltrated into the soil using dry wells or other infiltration systems.

**9.2.1.2** Forest buffers shall be at least seventy-five (75) feet in width. Meadow buffers shall be a minimum of one hundred twenty-five (125) feet in width. The required width of a Mixed Meadow and Forest buffer shall be determined as a weighted average, based on the percentage of meadow and the percentage of forest.

**9.2.1.2.1** The width of the buffer may be reduced if not doing so would restrict the Developable Area to less than the twenty (20) percent of the lot area.

**9.2.1.3** Buffers shall meet the following:

**9.2.1.3.1** The canopy of a forest buffer must be maintained. Activities that may result in disturbance of the duff layer are prohibited.

**9.2.1.3.2** A meadow buffer must be maintained as a meadow with a generally tall stand of grass, not as a lawn. It must not be mown more than twice per calendar year. If a buffer is not located on natural soils, but is constructed on fill or

reshaped slopes, a buffer surface must either be isolated from stormwater discharge until a dense sod is established, or must be protected by a three inch layer of erosion control mix or other wood waste material approved by the DEP before stormwater is directed to it. Vegetation must be established using an appropriate seed mix.

**9.2.1.3.3** The maximum slope of a buffer must be less than fifteen (15) percent to be included in the calculation of buffer flow path length. Areas with slopes greater than fifteen (15) percent are too steep to be effective as a treatment buffer but should be left undisturbed. A buffer slope in excess of fifteen (15) percent may be used if it has been evaluated using a site specific hydrologic buffer design model approved by the DEP, and measures have been included to ensure that runoff remains well-distributed as it passes through the buffer.

**9.2.1.3.4** Buffers must be maintained and eroded areas within the buffer must be repaired, seeded and mulched.

**9.2.1.3.5** Buffers should not be traversed by all-terrain vehicles or other vehicles. Activities within buffers should be conducted so as not to damage vegetation, disturb the organic duff layer, or expose soil.

**9.2.1.4** Buffer areas are not required if the per acre phosphorus load limit for the impacted great pond or stream can be met by other means approved by the Planning Board.

**9.2.1.5** The latest Department of Environmental Protection approved methods shall be used for water supply protection buffers for development not included in Sections **9.2.1.1** or **9.2.1.4**.

**9.2.1.6** Upon approval of any development that involves a Water Supply Protection Buffer, the applicant shall:

**9.2.1.6.1** File a signed copy of the approval with the Lincoln County Registry of Deeds.

**9.2.1.6.2** File a copy of the registered approval with the Town of Boothbay Assessor. This copy shall include the Registry Book and Page reference.

**9.2.1.7** A footpath not to exceed six (6) feet in width as measured between tree trunks or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.

### **9.3 Stormwater Management Requirements**

**9.3.1** New construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where feasible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of storm waters. If it is not feasible to detain water on site, downstream improvements to the channel may be required of the applicant to prevent flooding caused by his project. The natural state of watercourses, swales, floodways, or right-of-ways shall be maintained as nearly as feasible. The design shall be for a 25 year storm.

**9.3.2 General** Any activity that requires a permit or approval from the Town shall be responsible for the management of all stormwater on the site including the discharge of any stormwater off the site in accordance with the following:

**9.3.2.1 Drainage Plan** Any activity that disturbs more than four thousand (4000) square feet of vegetated area or creates more than two thousand (2000) square feet of impervious surface shall prepare a drainage plan for the lot showing at a minimum the following:

**9.3.2.1.1** The general topography of the lot;

**9.3.2.1.2** The existing pattern of drainage on the lot including any drainage facilities;

**9.3.2.1.3** Any changes in the drainage patterns on the lot as a result of the proposed activity;

**9.3.2.1.4** All methods that will be used to minimize the flow of stormwater off the lot; and

**9.3.2.1.5** The adequacy of any downstream drainage facilities to accommodate stormwater flows from proposed use of the lot.

**9.3.2.2 Stormwater Management Plan** Any activity that disturbs more than twenty thousand (20,000) square feet of vegetated area or creates more than ten thousand (10,000) square feet of impervious surface or more than five thousand (5,000) square feet of impervious surface if the average pre-development slope of the area that is being disturbed is more than fifteen (15) percent shall submit a formal stormwater management plan rather than a drainage plan. The stormwater management plan shall be prepared by a licensed engineer and shall demonstrate how the stormwater on the site will be managed to minimize the amount of runoff from the site and meet the stormwater management provisions of the Maine Stormwater Management Design Manual - Stormwater Management Manual Volume I published by the Maine Department of Environmental Protection.

### **9.3.3 Low Impact Development**

**9.3.3.1** A stormwater management plan prepared in accordance with Section **9.3.2.2** shall be designed in accordance with the principles of Low Impact Development (LID) set forth in Chapter 4 of the Maine Stormwater Management Design Manual - Stormwater Management Manual Volume I published by the Maine Department of Environmental Protection.

**9.3.3.2** To the extent feasible given the natural conditions on the site, the stormwater management plan shall utilize LID Best Management Practices (BMPs) set forth in Chapter 10 of the Maine Stormwater Management Design Manual - Stormwater Management Manual Volume III published by the Maine Department of Environmental Protection.

**9.3.3.3** Small-scale activities that require the preparation of a drainage plan shall use vegetated buffers as set forth in Chapter 5 of the Maine Stormwater Management

Design Manual - Stormwater Management Manual Volume III published by the Maine Department of Environmental Protection where feasible.

#### **9.3.4 Stormwater Runoff**

**9.3.4.1** Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed using Best Management Practices in order to carry water from a 25-year storm or greater, and shall be stabilized with vegetation or lined with riprap.

**9.3.4.2** Storm water runoff management systems shall be maintained as necessary to ensure proper functioning.

#### **9.4 Erosion and Sediment Management Requirements**

**9.4.1** All activities that involve filling, grading, excavation or other similar activities that result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval. The plan shall demonstrate conformance with the standards of the most recent edition of Maine Erosion and Sediment Control Best Management Practices (BMPs) published by the Maine Department of Environmental Protection.

**9.4.2** In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

**9.4.3** Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

**9.4.4** Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

**9.4.4.1** Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.

**9.4.4.2** Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

**9.4.4.3** Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

**9.4.5** Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

#### **9.5 Groundwater Protection Requirements**

**9.5.1** Where on-site conditions are appropriate for infiltration, stormwater management shall utilize infiltration Best Management Practices (BMPs) to the maximum extent reasonable in accordance with Chapters 6 and 10 of the Maine Stormwater Management Design Manual - Stormwater Management Manual Volume III published by the Maine Department of Environmental Protection.

**9.5.2** Any activity or development, including single-family subdivisions, that will not be served by the year-round public water supply system and that will have a total design sewage flow of more than twelve hundred (1,200) gallons per day based on the design sewage flows in the Subsurface Wastewater Disposal Rules shall prepare a groundwater hydrologic analysis. This analysis must demonstrate that the use of groundwater will not have an adverse impact on the quality or quantity of groundwater available to uses on surrounding properties, including any provisions to mitigate any identified adverse impacts.

**9.6 Waste** All new and expanded uses shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner. The Planning Board shall consider the impact of particular industrial or chemical wastes or by-products upon the Town's disposal method and disposal area (in terms of volume, flammability or toxicity) and may require the applicant to dispose of such wastes elsewhere in conformance with all applicable state and federal regulations. The Planning Board may require the applicant to specify the amount and exact nature of all industrial or chemical wastes to be generated by the proposed operation.

**9.7 Snow Removal** No snow collected from outside the Watershed Protection Overlay District shall be deposited within the Watershed Protection Overlay District.





## **Section 10. Good Neighbor Performance Standards**

The following Good Neighbor Performance Standards apply to all uses of land and structures within the Town of Boothbay where appropriate.

### **10.1 Buffering**

#### **10.1.1 Visual Buffers Adjacent to Public Streets or Roads.**

**10.1.1.1** Any new use or development or any activity that expands the floor area of an existing building by more than fifty (50) percent shall establish a landscaped buffer strip along the property line with any public street or road when required by the land use district specific requirements of the district in which the use or activity is located.

**10.1.1.2** The width of the buffer strip shall be determined based on the district specific requirements for the district in which the use or activity is located.

**10.1.1.3** The buffer strip shall be maintained as a vegetated area and shall not be used for parking, storage, display of materials, and placement of dumpsters or similar items. A visual buffer shall be established within the buffer strip by landscaping, grading or fencing.

**10.1.1.4** The Planning Board or Code Enforcement Officer may waive the requirement for a buffer strip if the applicant can demonstrate that the proposed development or the circumstances of the lot provide for adequate visual buffering from a public street or road.

#### **10.1.2 Buffering of Residential Uses from Adjacent Nonresidential Activity**

**10.1.2.1** When a new or expanded nonresidential use or activity is adjacent to a residential use as defined in Section **10.1.2.1.2** a buffer shall be created and maintained within the required side and/or rear setbacks adjacent to the residential use to minimize the visual impacts of the nonresidential use on the residential activity.

**10.1.2.1.1** This requirement shall apply when:

**10.1.2.1.1.1** A new nonresidential use or nonresidential activity is established on a lot, or

**10.1.2.1.1.2** The floor area of an existing building used for nonresidential activity is increased by more than fifty (50) percent, or

**10.1.2.1.1.3** The area of an existing parking area serving a nonresidential use or activity is increased by more than fifty (50) percent.

**10.1.2.1.2** This standard shall apply where the non-residential use abuts:

**10.1.2.1.2.1** An existing residential use,

**10.1.2.1.2.2** A lot where a Building Permit for a residential building has been obtained from the Code Enforcement Officer,

**10.1.2.1.2.3** A lot created as part of a residential subdivision, or

**10.1.2.1.2.4** A lot in the Residential or Coastal Residential District.

**10.1.2.2** Temporary or permanent structures, including, but not limited to, driveways and

parking areas, dumpsters and storage shall not be allowed in the setback area. Subsurface wastewater disposal facilities may be installed in the buffer area but the required visual barrier shall still be required

**10.1.2.3** The buffer shall consist of landscaping, fencing or a berm or a combination thereof. The Planning Board or Code Enforcement Officer may approve buffers consisting of existing vegetation if it will provide adequate buffering.

**10.1.2.4** The buffer shall be designed and maintained to screen on a year-round basis areas used for parking and for outside activities including storage and service associated with the nonresidential activity from the adjacent residential use.

**10.1.2.5** The buffer shall be created in accordance with these provisions and inspected by the Code Enforcement Officer prior to the issuance of a Certificate of Occupancy for the project.

**10.1.2.6** The property owner shall be responsible for maintaining the buffer. Any vegetation that dies or is damaged or removed and any fencing that is damaged or removed shall be repaired or replaced within a timeframe determined by the Code Enforcement Officer.

### **10.1.3 Screening**

**10.1.3.1** Dumpsters and other storage facilities or areas for wastes shall be screened from view from public streets and abutting lots that are in residential use.

**10.1.3.2** The screening may be composed of fencing or landscaping or a combination thereof. The Planning Board may approve other methods of screening providing the intent of this section is met.

## **10.2 Exterior Lighting**

**10.2.1** Exterior lighting for nonresidential and multifamily residential uses shall be shielded so that the source of illumination is not visible beyond the property boundary.

**10.2.2** Where there is a mix of residential and commercial uses, exterior lights associated with commercial uses are restricted to a maximum of twenty (20) feet in height.

**10.2.3** In addition, all lighting (except for security purposes) shall be turned off between 11 p.m. and 6 a.m. Lighting between 11 p.m. and 6 a.m. will be allowed for the period a business is operating with Planning Board approval.

## **10.3 Emissions**

**10.3.1** Plans for new or expanded nonresidential and multifamily residential uses shall show the location and vertical height of all exhaust fans, vents, chimneys, or any other sources discharging or emitting smoke, fumes, gases, vapors, odors, scents or aromas with a description of the source materials.

**10.3.2** The submission shall include details on any proposed measures to minimize the impact of the air emissions on neighboring properties and the greater Boothbay community.

## **10.4 Noise**

**10.4.1** Nonresidential and multifamily residential uses as well as residential uses that include a home business or home occupation shall conform to the following standards:

**10.4.1.1** Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.

**10.4.1.2** The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by Section **10.4.1** shall be as established by the time period and type of District listed below. Sound pressure levels shall be measured at all lot lines, at a height of at least 4 feet above the ground surface.

**10.4.1.2.1** Sound from any source regulated by Section **10.4.1** shall not exceed the following limits at the property line of said source between the hours of 9:00 p.m. and 7:00 a.m.:

Land Use District	Sound Pressure Level Limits Measured in dBA's
Boothbay Village Mixed-Use, Commercial Corridor, Manufacturing/Business, and Marine Commercial Districts	65
Scenic Gateway, Boothbay Village Center, Boothbay Village Fringe, East Boothbay Village Center and Water Reservoirs Protection - 27 Districts	55
All other districts	45

**10.4.1.2.2** Where the emitting and receiving premises are in different districts, the limits governing the stricter district shall apply.

**10.4.1.2.3** The levels specified in Section **10.4.1.2.1** may be exceeded by ten (10) dBA for a single period, no longer than 15 minutes in any one day.

**10.4.1.2.4** The Planning Board may permit sound pressure levels that exceed the standards of Section **10.4.1.2.1** by not more than ten (10) dBA for construction, repair or non-routine maintenance if the property owner demonstrates that there is no other reasonable alternative to completing the work during the regulated time period. In its motion, the Planning Board shall establish the duration of its approval.



## **Section 11. Performance Standards For Specific Uses**

The following Performance Standards apply to the following specific uses of land and structures within the Town of Boothbay.

**11.1 Accessory Dwelling Units** One accessory dwelling unit shall be permitted by the Code Enforcement Officer on a lot having a one or two family residential dwelling. Additional proposed accessory dwelling units will need to seek Planning Board subdivision review and approval.

**11.1.1** The accessory dwelling unit shall be a minimum of 190 square feet in size. An accessory dwelling unit shall contain a maximum of eight hundred (800) square feet of living space.

**11.1.1.1** For purposes of Section **11.1.1**, “living space” means the total floor area designated for occupancy and exclusive use as an accessory dwelling unit, expressed in square feet, measured from the accessory dwelling unit side of adjoining partitions and the exterior of outside walls.

**11.1.2** An accessory dwelling unit shall be either located within an existing dwelling unit; attached to a single-family dwelling unit; or as a detached structure on the lot for the primary purposes of creating an accessory dwelling unit.

**11.1.3** If being rented, the accessory dwelling unit must be rented a minimum of 30 days.

**11.1.4** An accessory dwelling unit shall be exempt from density and minimum lot area requirements when it is located outside of the Shoreland Overlay District; however, it must comply with the setbacks and lot coverage requirements of the underlying zoning district. An accessory dwelling unit may only be permitted in the Shoreland Overlay District if the lot in question contains at least two times the required minimum lot area and shore frontage.

**11.1.5** Prior to obtaining a building permit from the Code Enforcement Officer, the owner of the accessory dwelling unit must provide written verification that the proposed unit is to be connected to adequate water and wastewater services. Written verification shall include the following:

**11.1.5.1** If an accessory dwelling unit is connected to a public, special district or other comparable sewer system, proof of adequate service to supply any additional flow created by the unit and proof of payment for the connection to the sewer system;

**11.1.5.2** If an accessory dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, Subsurface Wastewater Disposal Rules;

**11.1.5.3** If an accessory dwelling unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

- 11.1.5.4** If an accessory dwelling unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), Land Use Districts and Standards. Any test of an existing well or proposed well shall indicate that the water supply is potable and acceptable for domestic use.
- 11.1.6** Two ways to enter/exit the accessory dwelling unit shall be provided.
- 11.1.7** Should the owner(s) of the principal structure be found in noncompliance with the standards contained in Section **11.1**, the noncompliance shall be considered a violation of this Ordinance.
- 11.1.8** In the Shoreland Overlay Zone, an accessory dwelling unit shall be permitted only on one family residential dwelling lots.
- 11.1.9** An accessory dwelling unit shall not be subject to any additional off-street parking requirements beyond the off-street parking requirements of the single-family dwelling unit on the lot where the accessory dwelling unit is located.
- 11.1.10** Regulations established in Section **11.1** shall not supersede private, state, or local standards which may be more restrictive, including but not limited to, homeowners' association regulations, deed restrictions, septic requirements, shoreland zoning, and subdivision law.
- 11.1.12** A property owner may construct an accessory dwelling unit under Section **11.1** or utilize the dwelling unit allowance under Section **11.21**. They shall not be allowed to take advantage of the allowances of both Section **11.1** and Section **11.21**.
- 11.2 Agriculture/Farming**
- 11.2.1 Livestock Grazing** New livestock grazing areas shall not be permitted within One hundred (100) feet of the high-water line of a great pond and associated wetlands; within seventy-five (75) feet of other water bodies and coastal wetlands; nor within twenty-five (25) feet of outlet streams, tributary streams, watershed tributary streams and freshwater wetlands.
- 11.2.1.1** Activity associated with ongoing farm activities and which is not in conformance with the setback requirements of Section **11.2.1** may continue, provided that such grazing is conducted in accordance with a Soil and Water Conservation Plan.
- 11.2.2 Manure Disposal and Storage** All storage, spreading or disposal of manure shall be accomplished in conformance with the Maine Nutrient Management Rules.
- 11.2.2.1** All manure storage areas shall be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- 11.2.2.2** Manure shall not be stored or stockpiled within one hundred (100) feet of the shoreline of a great pond or within seventy-five (75) feet of any other shoreline.
- 11.2.3 Tilling of Soil** The tilling of soils for the growing of fruits, vegetables, grains, or other products for human or animal consumption shall be allowed in any District in the Town where farming is a permitted use. No tilling of land shall be done in a manner or left in such state as to promote soil erosion or to create or cause a water drainage problem or a public nuisance.

**11.2.3.1** A Soil and Water Conservation Plan shall be filed with the Code Enforcement Officer for tilling of soil of more than twenty thousand (20,000) square feet of surface area. Nonconformance with the provisions of said plan shall be a violation of this Ordinance.

**11.2.3.1.1** A Soil and Water Conservation Plan shall be filed with the Code Enforcement Officer for any tilling of soil in the Resource Protection District

**11.2.3.1.2** Assistance in preparing a soil and water conservation plan may be available through the local Soil and Water Conservation District office.

**11.2.3.2** There shall be no new tilling of soil within one hundred (100) feet of the high-water line of a great pond and associated wetland; within seventy-five (75) feet of streams and coastal wetlands; nor within twenty-five (25) feet of outlet streams, tributary streams, watershed tributary streams and freshwater wetlands.

**11.2.3.2.1** Operations in existence on March 24, 1990 and not in conformance with this provision may be maintained.

**11.3 Animal Breeding or Care** Animals and fowl shall be kept in such a manner as to not cause or create a public nuisance; not cause or create excessive air, water or land pollution; or that violates state, local, or humane laws or regulations.

**11.3.1** The raising of such animals or fowl shall be done in such yards or buildings that are necessary to contain or confine their respective kind.

**11.3.2** No person shall erect, occupy, or use any building or portion thereof or any other facility for a commercial purposes unless all waste storage areas produce no discharge of effluent or contaminated storm water.

**11.4 Bed and Breakfast** A bed and breakfast shall conform to the following standards:

**11.4.1** The building housing the bed and breakfast shall have a residential character.

**11.4.2** The owner or manager of the bed and breakfast shall reside on the premises.

**11.4.3** Food and beverage service shall be limited to overnight guests.

**11.4.4** Food service shall not include dinners and shall be limited to breakfast, snacks, afternoon tea, and similar light food service.

**11.4.5** Off-street parking shall be provided for guests and if the building is located within seventy-five (75) feet of the front property line, the guest parking shall not be located in the area between the front wall of the building and the street extending the full width of the lot.

**11.4.6** A natural or landscaped buffer strip at least fifteen (15) feet in width shall be maintained between any guest parking area and the property line with any abutting lot in residential use.

**11.5 Campgrounds** The minimum requirements imposed under State licensing requirements and the following shall apply:

**11.5.1** Each campsite shall be a minimum of two thousand (2,000) square feet of land that shall not include roads and driveways. Land below the upland edge of a wetland, and

land below the high-water line of a great pond or stream shall not be included in calculating land area per site.

**11.5.2** The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of fifty (50) feet from all abutting residential properties, one hundred (100) feet from registered farmland, one hundred (100) feet from the shoreline of a great pond and associated wetlands, and seventy-five (75) feet from any other shoreline.

**11.5.2.1** The setback requirement from registered farmland shall not apply to development or uses exempted in 7 M.R.S. §§ 52 & 56.

**11.6 Camps** A camp shall conform to the following requirements:

**11.6.1** The camp shall be licensed by the State of Maine.

**11.6.2** The primary use of the camp shall be as a “youth camp” in which the organization operating the camp shall administer year-round programming and activities primarily focused on youth development.

**11.6.3** The camp may provide “sleep over” facilities and programs provided that they are accessory and subordinate to the primary use.

**11.6.4** The camp may be used for adult programs and activities, including social events, leadership training, retreats and/or meetings which may require overnight accommodations, provided that such use is accessory and subordinate to the primary use.

**11.6.5** Sleeping and living facilities may be provided for staff.

**11.6.6** The camp may be used for community activities and recreational programs as well as special events, including activities that involve overnight stays, provided that such use is accessory and subordinate to the primary use.

**11.7 Chemical and Petroleum Product Storage** The storage of chemical, herbicide, pesticide, fertilizer, gasoline, petroleum, or kerosene products or by-products in excess of the amount normally associated with a use, such as individual household use, farming, commercial fishing and maritime activities, and restaurants, is prohibited:

**11.7.1** The Planning Board may allow storage of greater quantities if there is a demonstrated need for the additional volume of storage.

**11.7.2** No chemical, herbicide, pesticide, fertilizer, gasoline, petroleum, or kerosene products or by-products in excess of the amount normally associated with a use shall be stored within one hundred fifty (150) feet from any high-water line or upland edge of a wetland.

**11.8 Cluster or Open Space Development**

**11.8.1 Purpose** Open Space Development (or Cluster Development) is a form of development that allows a subdivision design in which individual lot sizes and setbacks are reduced in exchange for the creation of common open space and recreation areas, the preservation of environmentally sensitive areas, agriculture and silviculture and the reduction in the size of road and utility systems. The purpose of open space development is to provide permissive, voluntary and alternative zoning provisions that will help to preserve or provide desirable open space, tree cover, recreation areas and scenic vistas.



**11.8.2 Procedures for Review** The Planning Board shall follow the procedures for Subdivision Review.

**11.8.2.1 Application** In addition to the information required for Subdivision approval, an application for an open space subdivision shall include:

**11.8.2.1.1** A site plan, including, but not limited to, recreational facilities and landscaping plans with open spaces and existing and proposed trees and other vegetation.

**11.8.2.1.2** Information regarding land use designations; surrounding land uses; project design team; development schedule; type, size, number and estimated selling price of units; and density calculation.

**11.8.2.1.3** Information regarding the following:

**11.8.2.1.3.1** The extent to which the plan departs from the regulations of this and all other Ordinances otherwise applicable to the subject property, and the reasons why such departures are deemed to be in the public interest;

**11.8.2.1.3.2** The nature and extent of the common open space in the project, the reliability of the proposals for maintenance and conservation of the common open space, and the adequacy of the amount and function of the open space in terms of the densities and dwelling types proposed in the plan;

**11.8.2.1.3.3** The manner in which said plan makes adequate provision for public services, provides adequate control over vehicular traffic, and furthers the amenities of light and air, recreation, and visual enjoyment;

**11.8.2.1.3.4** The relationship, beneficial or adverse, of the proposed development upon the physical environment and the neighborhood in which it is proposed to be established; and

**11.8.2.1.3.5** Whenever applicable, documents indicating compliance and approval of mandated State statutes or other laws shall be obtained and submitted as part of the application.

**11.8.3 Requirements for Approval** The Planning Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the review criteria of Section 5.6 and the following are met:

**11.8.3.1** The development is designed to produce an environment of stable and desirable character, consistent with the intent and purpose of the cluster development regulations to promote public health, safety, and general welfare, and is in harmony with its surrounding neighborhood.

**11.8.3.2** Property in the vicinity of the area, included in the plan, will not be adversely affected.

**11.8.3.3** The property would be used for purposes and in a manner permitted in the existing district except for lot area and location of buildings.

**11.8.3.4** The location, size, nature, and topography of the open areas make them suitable for use as common areas for park, recreational purposes, and buffer areas between groups of home sites.

**11.8.4 Standards** In addition to the standards for Subdivision approval in Section 5.6, the following standards shall apply:

**11.8.4.1 Dimensional Standards**

**11.8.4.1.1 Area of Development** Within the Residential and Coastal Residential Districts and the Rural Mixed-Use District, the minimum area of an open space subdivision shall be ten (10) acres. In all other zoning districts the minimum area of an open space subdivision shall be three times the required minimum lot area per dwelling unit.

**11.8.4.1.2 Maximum Number of Lots** The intention in allowing Open Space Subdivisions is that a property owner or subdivider can create approximately the same number of lots that they could in a subdivision in which the lots meet the minimum lot size requirement. The maximum number of lots allowed in an Open Space Subdivision shall be calculated based on the following formula:

$$\begin{array}{c} \text{The Developable Area of the Parcel} \\ \text{Minus} \\ \text{Fifteen percent (15\%) of the Total Area of the Parcel} \\ \text{Equals} \\ \text{The Net Useable Area of the Parcel} \\ \text{Divided by} \\ \text{The Minimum Lot Size/Area Requirement per Unit/Lot} \\ \text{Equals} \\ \text{The Maximum Number of Lots/Units Allowed in an Open Space Subdivision} \end{array}$$

**11.8.4.1.3 Minimum Size of Lots** -- To provide property owners and subdividers with flexibility in the design of an Open Space Subdivision, there is no minimum lot size requirement subject to the following limitations:

**11.8.4.1.3.1** A lots that has its primary road frontage on an existing public road must meet the minimum lot area for the district in which it is located.

**11.8.4.1.3.2** For single-family lots with less than twenty thousand (20,000) square feet of lot area, the applicant must demonstrate that the lot will meet the requirements of the State Minimum Lot Size law.

**11.8.4.1.3.3** For lots that will have more than one (1) dwelling unit or a nonresidential use, the applicant must demonstrate that the lot will meet the requirements of the State Minimum Lot Size law.

**11.8.4.1.3.4** No lot that is located entirely within the Shoreland Overlay District shall have less than required minimum lot area required by the Shoreland Overlay District. Lots that are located partially within the Shoreland Overlay District may be smaller than required by the Shoreland Overlay District if the principal building and the on-site sewage disposal system are located outside of the Shoreland Overlay District.

**11.8.4.1.4 Minimum Lot Width**— To encourage the creation of lots that do not front on existing roads, lots in an Open Space Subdivision shall conform to the following minimum lot width requirements:

**11.8.4.1.4.1** A lot that fronts on an existing public road shall meet the minimum lot width requirement for the district in which it is located.

**11.8.4.1.4.2** A lot that fronts on an existing private road may have a minimum lot width of not less than seventy-five (75) percent of the minimum lot width requirement for the district in which it is located.

**11.8.4.1.4.3** Lots that front on a new road within the subdivision may have a minimum lot width of not less than fifty (50) percent of the minimum lot width requirement for the district in which it is located.

#### **11.8.4.2 Development Standards**

**11.8.4.2.1 Shape** To allow flexibility in the design of the subdivision in accordance with the process laid out in Section 5.6, there are no limitations on the shape of lots in an Open Space Subdivision as long as each lot contains a suitable development site of an appropriate size to accommodate the anticipated development. Flag lots and other irregularly-shaped lots are allowed as long as they are consistent with the overall utilization of the parcel based on the site inventory and analysis and conceptual subdivision plan.

**11.8.4.2.2 Sewage Disposal** Sewage disposal may be provided by connection to the public sewer system or individual, shared, or common subsurface sewage disposal facilities. The components of the sewage disposal systems may be located on the lot which they serve or may be located off the lot including within the protected or common open space.

**11.8.4.2.3 Perimeter Buffer** Whenever any portion of a lot in an Open Space Subdivision is located within twenty (20) feet of a parcel that is not part of the Open Space Subdivision, that portion of the lot shall be maintained as a vegetated buffer. No principal or accessory buildings, structural improvements (other than fences as part of an approved buffer), lawns, gardens, storage of personal items, or similar activities shall occur within this area. As part of the subdivision plan, the applicant shall provide details for how this buffer will be treated and maintained. If the area is currently wooded or heavily vegetated, this should be retained if possible. Where this area is not currently wooded, the applicant shall provide for the establishment of a vegetated buffer sufficient to provide visual relief to the abutting property. The Planning Board may waive or reduce this requirement to allow for utilities to cross the buffer or to retain scenic views.

#### **11.8.4.3 Open Space Standards**

**11.8.4.3.1 Minimum Protected or Common Open Space** – The concept of an Open Space Subdivision is to allow for smaller lots in return for a substantial portion of the parcel being set aside as open space. The minimum amount of land included in protected or common open space shall be determined by the following formula:

One Hundred Percent (100%) of the Area of the Parcel That Is Deducted From the  
Total Lot Area to Determine the Developable Area of the Parcel  
Plus  
Thirty Percent (30%) of the Developable Area of the Parcel

**11.8.4.3.2 Location of the Protected or Common Open Space** – The protected or common open space shall be located in accordance with the site inventory and analysis. In determining which land should be included in the open space, the applicant shall be guided by the following priorities:

**11.8.4.3.2.1 First Priority – Primary Conservation Areas** – Most or all of the identified Primary Conservation Areas should be included in the protected or common open space.

**11.8.4.3.2.2 Second Priority – Secondary Conservation Areas** – After including the Primary Conservation Areas in the open space, the following Secondary Conservation Areas should be considered for inclusion in the protected or common open space in the following order:

**11.8.4.3.2.2.1** Land that has been used for traditional access to the water or public beaches.

**11.8.4.3.2.2.2** Land that will be used to provide new or expanded access to the water.

**11.8.4.3.2.2.3** Land within one hundred (100) feet of tidal waters or streams that drain to tidal waters.

**11.8.4.3.2.2.4** Land within two hundred fifty (250) feet of Adams Pond or Knickerbocker Lakes.

**11.8.4.3.2.2.5** Land that is within two hundred fifty (250) feet of a significant vernal pool.

**11.8.4.3.2.2.6** Land that is adjacent to land that is owned by the Town, a land trust, formally organized conservation organization, or state agency or that is otherwise permanently protected as open space.

**11.8.4.3.2.2.7** Land which will allow for the continuation or connection of trails whether or not such a facility is proposed as part of the subdivision.

**11.8.4.3.2.2.8** Land that maintains the integrity of blocks of unfragmented habitat or that protects identified habitats and/or travel areas between habitat blocks.

**11.8.4.3.2.2.9** Land containing identified historic or archeological sites or significant cultural features such as stone walls and specimen trees.

**11.8.4.3.2.2.10** Land that is in current or planned agricultural or managed forestry use.

**11.8.4.3.2.2.11** Land that is in current or planned commercial fisheries use.

**11.8.4.3.2.2.12** Land that protects scenic views visible from public property or the views of abutting property owners or of dwellings to be built within the subdivision.

### **11.8.4.3.3 Use of Protected or Common Open Space**

For purposes of this section, protected or common open space areas must comply with the following:

**11.8.4.3.3.1** The common open spaces must be dedicated to the recreational amenity and environmental enhancement of the development, must protect natural resources, and must be recorded as such. For the purpose of these provisions, common open space means an area that:

**11.8.4.3.3.1.1** is not encumbered in any way by a principal structure;

**11.8.4.3.3.1.2** is not devoted to use as a roadway, road right-of-way, parking lot, sidewalk, or similar structural improvements;

**11.8.4.3.3.1.3** is left in its natural or undisturbed state, except for low-intensity recreational facilities including the cutting of trails for non-motorized recreation, unless the land will be managed by an approved sustainable forestry plan signed by a Licensed Maine Forester, or for community gardens, or for continuance of currently existing agricultural use, or for components of subsurface sewage disposal or water supply systems;

**11.8.4.3.3.1.4** is capable of being used and enjoyed for the purpose of informal and unstructured recreation and relaxation; and

**11.8.4.3.3.1.5** is legally and practicably accessible to residents of lots in the development out of which the open space is taken unless the open space will be owned by a private party for agricultural or other natural resource use or such access will compromise the natural resource value of the open space.

**11.8.4.3.3.2** The common open space shall be controlled by one (1) or more of the following methods:

**11.8.4.3.3.2.1** Common ownership by the owners of the lots/units within the development with covenants or deed restrictions approved by the Planning Board establishing restrictions on the use of the open space and provisions for its permanent management; and/or

**11.8.4.3.3.2.2** Transfer, with permanent restrictions, to a land trust or other recognized conservation organization; and/or

**11.8.4.3.3.2.3** Ownership by a private party for agricultural or other natural resource use provided that permanent restrictions are in place to provide for its continued use for this purpose.

**11.8.4.3.3.3** Any development proposed under this section shall specify the ownership, use, management, and entity responsible for maintenance of all common areas and facilities. When the open space will be protected through covenants or deed restrictions, those provisions must provide that the covenants or deed restrictions are enforceable by the owner of any lot in the subdivision,

by the owner of any lot outside of the subdivision that abuts the common open space, or by the Town of Boothbay. The covenants, deed restrictions and/or conservation easements shall provide for the monitoring of compliance with the restrictions at least once every two (2) years. The initial monitoring shall be conducted within two (2) years of the approval of the subdivision by the Planning Board. A report of each monitoring setting out the findings of the monitoring and any needed corrective action shall be submitted to the Code Enforcement Officer. The Code Enforcement Officer shall review the monitoring report and shall have the opportunity to conduct an on-site visit if necessary to verify the findings of the monitoring report. If the homeowners association or easement holder fails to conduct the required monitoring, the Town may carry out the monitoring. If the Town takes action to monitor or enforce the covenants, deed restrictions, or conservation easements, the cost of such monitoring and/or enforcement shall be recoverable by the Town from the homeowners association or easement holder. The Planning Board shall approve the arrangements for the ownership, control, use and maintenance of the common open space in accordance with the standards of subsections (a) and (b) above as part of the approval of a final subdivision plan. No changes in the use or management of common open space shall be made without Planning Board approval and a note shall be provided on the approved subdivision plan to this effect.

**11.8.4.3.3.4** Any common open space or facility not retained by a private owner shall be maintained by a developer or homeowners' association unless and until it is transferred in its entirety to a recognized conservation organization and until the transfer actually is completed. The formation and incorporation by the developer of a homeowners' association, if one is proposed, shall be accomplished prior to final subdivision approval.

## **11.9 Essential Services**

**11.9.1** A public utility, water district, sanitary district or a utility company of any kind may not install services to any new structure nor to any lot or dwelling unit in a subdivision, unless written authorization attesting to the validity and currency of all local permits required under Section 3 or any previous ordinance have been issued by the appropriate Town officials or other written arrangements have been made between the Town officials and the utility.

**11.9.1.1** If a public utility, water district, sanitary district or a utility company of any kind has installed services to a lot or dwelling unit in a subdivision in accordance with Section **11.9.1**, a subsequent public utility, water district, sanitary district or utility company of any kind may install services to the lot or dwelling unit in a subdivision without first receiving written authorization pursuant to Section **11.9.1**.

**11.9.2** Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

**11.9.3** The repair or replacement of existing essential services does not require Code Enforcement Officer or Planning Board approval if no new construction is proposed.

**11.9.4** The installation of essential services, other than road-side distribution lines, is not allowed except to provide services to a permitted use within these locations, or except where the applicant demonstrates to the Planning Board that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including adverse visual impacts.

## **11.10 Home Occupations and Home Businesses**

**11.10.1 General** The Town shall permit residents to operate small businesses and services on their property provided:

**11.10.1.1** The business activity is incidental to the use of the property as a residence;

**11.10.1.1.1** Accessory apartments; one family, two family and multifamily dwellings; lodging houses; and retirement facilities are residential uses.

**11.10.1.1.2** Home Occupations shall be permitted in any residential unit.

**11.10.1.1.3** Home Businesses shall be permitted only in single-family homes with approval of the Planning Board

**11.10.1.2** The business or service does not alter the residential character of the building or property, and is carried on primarily within the home or an accessory building;

**11.10.1.3** Any item sold shall be a product of the owner's labor (e.g., manufactured, produced, created, grown, or caught) or otherwise produced on the premises;

**11.10.1.4** There shall be provisions made to protect neighboring property owners from adverse impact from traffic, parking, hazardous materials, pollution, and electrical or electronic interference; and

**11.10.1.5** The water supply shall be adequate.

**11.10.2 Standards** The standards for accessory uses do not apply to Home Occupations and Home Businesses. The following standards shall apply:

**11.10.2.1 Emissions** The location and vertical height of all exhaust fans, vents, chimneys, or any other sources discharging or emitting smoke, fumes, gases, vapors, odors, scents or aromas shall be shown on plans submitted with an application, with a description of the source materials.

**11.10.2.2 Employees** Home Businesses shall be limited to no more than three (3) employees or subcontractors other than members of the family. Home Occupations shall be limited to members of the family and shall not have employees who are not members of the family.

**11.10.2.2.1** In the Shoreland Overlay District Home Businesses shall not have more than two employees other than members of the family.

**11.10.2.3 Hazardous Materials** The use shall not produce, use, manufacture or store hazardous materials; except that storage of hazardous materials shall be allowed in amounts that would be commonly found in an average household.

**11.10.2.4 Lighting** Lights shall be a maximum of 20 feet in height and shall be shielded so that the source of illumination is not visible at the lot lines.

#### **11.10.2.5 Noise**

**11.10.2.5.1** Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.

**11.10.2.5.2** The maximum permissible sound pressure level of any continuous, regular or frequent source of sound shall conform to the requirements of Section 10.4.

**11.10.2.6 Outdoor Storage** Any outdoor storage and any business or service not conducted entirely within a structure shall be screened to protect neighboring property owners.

**11.10.2.6.1** In locations where potential health or safety hazards may arise, such as rubbish storage or collection areas, a solid wooden fence, six (6) feet in height is required to deter children and animals from entering the premises.

**11.10.2.7 Sign** There shall be no more than one unlighted exterior sign, not to exceed four (4) square feet.

**11.10.2.8 Size** The total space on a lot used for the Home Business or Home Occupation shall not exceed thirty (30) percent of the floor area of the principal building if located in the building nor seventy-five (75) percent of the floor area of the principal building if located in an accessory structure.

**11.10.2.9 Waste Disposal** The applicant shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner. The Planning Board shall consider the impact of particular industrial or chemical wastes or by-products upon the Town's disposal method or disposal area in terms of volume, flammability or toxicity and may require the applicant to dispose of such wastes elsewhere in conformance with all applicable state and federal regulations. The Planning Board may require the applicant to specify the amount and exact nature of all industrial or chemical wastes to be generated by the proposed operation.

**11.10.3 Home Businesses and Home Occupations** shall not be permitted within a mobile home park except those conducted by occupants entirely within a mobile home with no direct customer contact within the park.

**11.11 Individual Private Campsites** Individual private campsites not associated with campgrounds are allowed on one family residential properties provided that the following conditions are met:

**11.11.1** One campsite per lot existing on March 24, 1990, or thirty thousand (30,000) square feet of lot area within the Shoreland Overlay Zone, whichever is less.

**11.11.2** Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet from the shoreline of a great pond and seventy-five (75) feet from any other shoreline.

**11.11.3** Only one recreational vehicle shall be allowed on a campsite.



**11.11.4** Recreational vehicles shall not be located on any type of permanent foundation except for a gravel pad, and no structure(s) except canopies shall be attached to the recreational vehicle.

**11.11.5** A written wastewater disposal plan describing the proposed method and location of wastewater disposal shall be required for each campsite and shall be approved by the Town Plumbing Inspector. Where disposal is off site, written authorization from the receiving facility or land owner is required.

**11.11.6** When a recreation vehicle, tent or similar shelter is occupied on a site for more than one hundred twenty (120) days per year, all requirements for residential buildings shall be met, including the installation of a subsurface wastewater disposal system in compliance with the *Maine Subsurface Wastewater Disposal Rules* unless the site is served by public wastewater facilities

**11.11.7** In the Resource Protection District the clearing of vegetation shall be limited to one thousand (1,000) square feet.

**11.12 Inns** An inn shall conform to the following standards:

**11.12.1** Food and beverage service shall be limited to overnight guests

**11.12.2** Food service may include dinner as well as breakfast, lunch, snacks, afternoon tea, and similar light food service

**11.12.3** Off-street parking shall be provided for guests and if the building is located within seventy-five (75) feet of the front property line, the guest parking shall not be located in the area between the front wall of the building and the street extending the full width of the lot

**11.12.4** A natural or landscaped buffer strip at least fifteen (15) feet in width shall be maintained between any guest parking area and the property line with any abutting lot in residential use.

**11.13 Junkyards**

**11.13.1 Application** In addition to the requirements of Section 5.4, all applications shall include:

**11.13.1.1** Name and address of junkyard operator if different from the landowner;

**11.13.1.2** Identity by list and definition the materials to be stored; and

**11.13.1.3** A plot plan of the storage area proposed to be used including size; height of screening fences; setbacks from property lines, public roadways, and residences on neighboring properties.

**11.13.2 Standards** The Planning Board shall review each application for a new or expanded junkyard and approve or deny the application based on the ability of the applicant to meet the approval standards of Section 5 and the following:

**11.13.2.1** All junkyards shall be set back one hundred (100) feet from the edge of the public road surface, seventy-five (75) feet from all side and rear lot lines, one hundred fifty (150) feet from all shorelines, three hundred (300) feet from any public building, public park, public playground, public bathing beach, school, church or cemetery, and

three hundred (300) feet from any well that serves as a public or private water supply (except any well that only serves the junkyard or the owner or operator's residence).

**11.13.2.2** If a junkyard is located within six hundred (600) feet of any roadway and adjoining properties, it shall be screened by means of well-constructed and properly maintained fencing, plantings, or natural and man-made landscaping to a minimum height of six (6) feet, but in all cases sufficient to accomplish complete screening of the junkyard from ordinary view;

**11.13.2.3** The ability to conform to state and federal hazardous waste regulations in regards to handling and storage of materials, including, without limitation,

**11.13.2.4** Requirements as established in the *Maine Subsurface Wastewater Management Rules* regarding the discharge of fluids into ground and surface waters; and

**11.13.2.5** The ability to provide adequate means of fire safety as determined by inspection by the Town Fire Chief or State Fire Marshal.

#### **11.14 Kennels**

**11.14.1.** All animals shall be housed indoors between 9:00 p.m. and 7:00 a.m.

**11.14.2** Structures or pens for housing or containing the animals shall be located not less than two hundred (200) feet from the nearest property line.

**11.14.3** All pens, runs, or kennels, and other facilities shall be designed, constructed, and located on the site in a manner that will minimize the adverse effects upon the surrounding properties. Among the factors that shall be considered are the relationship of the use to the topography, natural and planted horticultural screening, the direction and intensity of the prevailing wind, the relationship and location of the residences and public facilities on nearby properties, and other similar factors.

**11.14.4** The owner or operator of a use approved under these standards shall maintain the premises in a clean, orderly, and sanitary condition at all times. No garbage, feces, or other waste material shall be allowed to accumulate on the premises.

**11.14.5** Temporary storage containers for any kennel wastes containing or including animal excrement shall be kept tightly covered at all times and emptied not less frequently than once every four (4) days. Such containers shall be made of metal, fiberglass or plastic to facilitate cleaning, and shall be located in accordance with the setbacks required for outdoor runs.

**11.14.6** All enclosed kennels shall be constructed of materials to provide for cleanliness, ease of maintenance, and noise control.

**11.14.7** Outdoor dog runs shall be completely fenced.

**11.14.8** Any incineration device for burning excrement, soaked waste papers, and/or animal organs or remains shall be located in accordance with the setbacks required for outdoor runs and shall have chimney vents not less than thirty-five (35) feet above the average ground elevation. The applicant shall also provide evidence that he has obtained approval from the Maine Department of Environmental Protection for the proposed incinerator, and that it meets state standards for particulate emissions, flue gas temperature, and duration of required flue temperatures.

**11.15 Mineral Exploration and Extraction** Mineral exploration and extraction shall conform to the Erosion and Sedimentation Control standards of Section **9.4** and the Storm Water standards of Section **9.3**.

**11.15.1 Mineral Exploration** Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods that create minimal disturbance of ground surface that shall not exceed one hundred (100) square feet. All excavations, including test pits and holes, shall be immediately capped, refilled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

**11.15.2 Mineral Extraction** The following provisions apply to any mineral extraction activity:

**11.15.2.1** Expansions of gravel pits in existence on November 7, 1989 shall meet the standards contained herein and shall require approval by the Planning Board.

**11.15.2.1.1** For the purposes of Section **11.15.2.1**, an expansion is defined as an enlargement of the excavated pit perimeter.

**11.15.2.2 Setbacks**

**11.15.2.2.1 Property Line** Extraction operations (sandpits, etc.) shall not be permitted within fifty (50) feet of any property line.

**11.15.2.2.2** No part of any extraction operation, including drainage and runoff control features, in the Shoreland Overlay District shall be permitted within one hundred (100) feet of the shoreline of a great pond or within seventy-five (75) feet of any other shoreline.

**11.15.2.3 Standards**

**11.15.2.3.1** A reclamation plan shall be filed with and approved by the Planning Board before an approval is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section **11.15.2.3.5**.

**11.15.2.3.2** Mineral extraction shall not expose more than four (4) surface acres of soil in total at any one point in time. When this limit has been reached, extraction in new areas shall not begin until the formerly excavated area has been reclaimed in accordance with the reclamation plan required herein such that no more than four (4) surface acres are exposed at any one time.

**11.15.2.3.3** The average slope of any cut bank shall not exceed four (4) feet vertical to one (1) foot horizontal. The owner of the gravel pit is responsible for maintaining this condition.

**11.15.2.3.4** Mineral deposits shall not be removed or excavated within two (2) feet of the seasonal high water table.

**11.15.2.3.5** Within twelve (12) months following the completion of extraction operations at any extraction site, ground levels and grades shall be established in accordance with the following:

**11.15.2.3.5.1** All debris, stumps, and similar material shall be removed for disposal in an approved location or buried on site. Only materials generated on site may be buried or covered on site;

**11.15.2.3.5.1.1** The State of Maine Solid Wastewater laws, 38 M.R.S. § 1310, and Chapter 404 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

**11.15.2.3.5.2** The final grade slope shall be two and a half (2.5) feet horizontal to one (1) foot vertical or flatter; and

**11.15.2.3.5.3** Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

**11.15.2.3.5.4** Extraction operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period.

**11.15.2.4** In keeping with the purposes of the Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

**11.16 Mobile Homes and Modular Housing** Any mobile home meeting the U.S. Department of Housing and Urban Development construction standards or any modular home constructed in accordance with state standards for modular homes shall be considered a one family dwelling and allowed to be located in the Town under the same terms as any other one family dwelling. This shall include, but not be limited to, compliance with the minimum lot area and setback standards.

#### **11.17 Mobile Home Parks**

**11.17.1 Standards** Mobile home parks shall conform to the standards of 30-A M.R.S. § 4358 and the following:

**11.17.1.1 Access** The park shall have at least one paved road with unobstructed access to a public street or highway with a pavement width of not less than sixteen (16) feet for one (1) to five (5) lots, eighteen (18) feet for six (6) to nine (9) lots and twenty (20) feet for ten (10) or more lots. The right-of-way shall be twenty-three (23) feet in width.

**11.17.1.2 Individual Mobile Home Lots** The minimum size of individual mobile home lots shall conform to the standards of 30-A M.R.S. § 4358. Each individual mobile home lot shall be provided with:

**11.17.1.2.1** A continuing and potable supply of safe and sanitary water capable of furnishing a minimum of one hundred twenty-five (125) gallons per day per mobile home lot;

**11.17.1.2.2** An adequate wastewater disposal means; and

**11.17.1.2.3** An adequate electrical power service of at least one hundred (100) amp capacity supplying at least 110 volts. All electrical outlets shall be weatherproof.

No power line shall be permitted to lie on the ground or to be suspended less than twelve (12) feet above the ground.

**11.17.1.3 Location** The park shall be located on a well-drained site properly graded to insure rapid drainage and freedom from stagnant pools of water. The park shall not be located on land that is exposed to chronic nuisances such as noise, smoke, fumes and odors.

**11.17.1.4 Motor Vehicle Parking Space** A vehicle parking space of ten (10) feet by twenty (20) feet shall be provided in every mobile home park for each individual mobile home space in addition to the minimum mobile home space requirement. Such spaces shall have a well-drained stabilized or paved surface, maintained in good repair.

**11.17.1.5 Parking of Mobile Homes** The mobile home park shall be laid out so that each mobile home shall be separated in all directions at least thirty (30) feet from any adjacent mobile home. Setback requirements from adjoining lots not part of the mobile home park shall apply to each individual mobile home lot.

**11.17.1.6 Playground Area** Not less than one hundred (100) square feet of play space for each individual mobile home lot shall be provided and restricted in every mobile home park exclusively to playground use. Such spaces shall be protected from streets and parking areas, and shall have a well-drained stabilized or paved surface, maintained in good repair.

**11.17.1.7 Refuse and Garbage Disposal** The storage, collection, and disposal of refuse in the mobile home park shall not create health hazards, rodent harborage, insect-breeding areas, accident hazards or air pollution. All refuse or garbage shall be stored in fly-tight, watertight, and rodent-proof containers, which shall be provided in sufficient number and capacity to prevent any refuse from overflowing. Satisfactory container racks or holders shall be provided for each mobile home space. The mobile home park owner or operator will be responsible for the removal of garbage and refuse from such containers.

**11.17.2 Mobile Home Storage** No mobile home shall be stored or used for commercial purposes, within a mobile home park.

**11.17.2.1** Home occupations conducted by occupants entirely within a mobile home with no direct customer contact are allowed.

## **11.18 Public Facilities**

**11.18.1** Parking areas serving public boat launching facilities shall be setback no less than fifty (50) feet from the shoreline if the Planning Board finds that no other reasonable alternative exists further from the shoreline.

**11.18.2** Picnic areas, public wells and drinking water springs and water supply intake points shall be set back one hundred (100) feet from registered farmland.

**11.18.2.1** The setback requirement from registered farmland shall not apply to developments or uses exempted in 7 M.R.S. §§ 52 & 56.

**11.19 Wind Turbines** may be placed on lots with at least forty thousand (40,000) square feet in

accordance with the Table of Land Uses in Section 7.6 and shall be placed on the lot so that the distance from any lot line shall be at least one hundred twenty-five (125) percent of the maximum height.

**11.19.1** The height of the turbine shall be measured to the maximum height of the rotating blades.

**11.19.2** The height measured to the maximum height of the rotating blades shall not be greater than three times the length of a rotating blade above the tree line adjacent to the turbine.

**11.19.3** The Planning Board may grant waivers to the height and setback standards.

## **11.20 Communications Towers**

**11.20.1 Priority of Locations** New communications towers must be located according to the order of priorities as listed below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.

**11.20.1.1** Colocation on an existing communications tower or other existing structure (*e.g.*, water tower).

**11.20.1.2** A new facility on public or private property in the Manufacturing/Business District (MB), Marine Commercial District (MC) or Residential District (R) that is subject to the Bigelow Laboratory Contract Zone.

**11.20.1.3** A new facility on public or private property in the Commercial Corridor District (CC), Rural Mixed-Use District (RMU), or Scenic Gateway District (SG).

**11.20.1.4** A new facility on public or private property in the Boothbay Village Mixed-Use District (BVMU), Residential District (R), Coastal Residential District (R-C), Water Reservoirs Protection Districts (WRP or WRP-27) or Well Head Protection Districts.

**11.20.1.5** A new facility on public or private property in the Boothbay Village Center District (BVC), Boothbay Village Fringe District (BVF), or East Boothbay Village District (EBV).

## **11.20.2 Height**

**11.20.2.1** Within the Residential, Coastal Residential, Water Reservoirs Protection, Village Mixed-Use, Well Head Protection, Boothbay Village Center, Boothbay Village Fringe, or East Boothbay Village Districts, the standard height limit for a new communications tower shall be one hundred thirty (130) feet as measured from the base of the tower to the highest point of the tower, including any attached receiving or transmitting antennas and devices. The Planning Board may allow the standard height limit to be exceeded by up to an additional twenty (20) feet, to a maximum of one hundred fifty (150) feet, if the increase in height enables the collocation of additional antennas that otherwise could not be accommodated on the tower and results in no material increase in the visual impacts of the tower as determined by the Planning Board. The Planning Board may also require the height of a tower be reduced down by as much as twenty (20) feet, to a maximum of one hundred ten (110) feet if the Planning Board finds through review that reducing the tower height most effectively screens and mitigates the visual impacts of the tower from surrounding properties, abutters, roadways and public spaces. When

considering a reduction in the maximum tower height, the Planning Board shall ensure that such a reduction still accommodates the colocation requirements of Section **11.23.8**.

**11.20.2.2** Within the Manufacturing/Business, Marine Commercial, Commercial Corridor, Rural Mixed-Use, or Scenic Gateway Districts and the portion of the Residential District that is subject to the Bigelow Laboratory Contract Zone, the height limit for a new communications tower or the expansion of an existing communications tower shall be two hundred (200) feet as measured from the base of the tower to the highest point of the tower, including any attached receiving or transmitting antennas and devices. The Planning Board may require the height of a tower be reduced down by as much as twenty (20) feet, to a maximum of one hundred eighty (180) feet if the Planning Board finds through review that reducing the tower height would materially reduce the visual impacts of the tower from surrounding properties, abutters, roadways and public spaces, including to avoid the need for FAA lighting.

**11.20.3 Setbacks** A new or expanded communications tower must comply with the setback requirements for the zoning district in which it is located, or be setback one hundred twenty-five (125) percent of its height from all property lines, whichever is greater. This setback requirement may be satisfied by including areas outside the property boundaries if secured by a recorded easement. The following exceptions apply:

- (1) The setback may be reduced by the Planning Board upon a showing by the applicant that the tower is designed to collapse in a manner that will not harm other property. The Planning Board cannot reduce the setback by more than sixty (60) percent of tower height.
- (2) An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.

**11.20.4 Buffering** All communications towers shall be surrounded by a buffer of dense tree growth and vegetation that screens the facility and minimizes its visual impact from abutting properties, roadways and public spaces. If the majority of the site is heavily vegetated with mature tree growth and effectively screens the facility, the Planning Board may require the existing vegetation to be preserved, and supplemented with new plantings where necessary, except for the minimum amount of clearing necessary to install the facility and provide access and utilities. If heavy vegetation and mature tree growth are not present to effectively screen the facility on one or more property lines or from surrounding roadways or public spaces, the Planning Board has the authority to require the tower to be sited in an alternative location on the property that exhibits an adequate buffer or screening that screens the facility and minimizes its visual impact from abutting properties, roadways and public spaces. The Planning Board has the authority to require the landscape buffer be protected by a landscape easement specifying that the trees within the buffer not be removed or topped, unless the trees are dead or dying. This landscape easement may include a distance equivalent to one hundred fifty (150) percent of the total tower height, be within the carrier's lease, and/or apply to buffering and vegetation on other areas of the site that provide effective screening.

**11.20.5 Visual Impact Analysis** In order to review and assess the suitability of the proposed buffering of a tower, the optimal tower setback from adjacent property lines, the proposed color, style and height of the tower, and the tower's overall visual impacts and effects, the Planning Board may require photo simulations and a line of sight profile of the tower within the landscape from a variety of perspectives, including surrounding roadways, abutting properties, public spaces, designated scenic resources as identified in the Comprehensive Plan, and from archaeological and historic resources including, but not limited to, the National Register of Historic Places. (The analysis of impact on historical and archaeological resources shall meet the requirements of the Maine State Historic Preservation Officer in his/her review capacity for the FCC.) The Planning Board may require other simulations of the tower height and location within the landscape using a balloon test or similar method typical in the industry. To assess the extent of the structure's actual visibility within the landscape, float a brightly colored balloon, or collection of balloons, at the height of the tower or other tall structure and check each previously identified area of concern. The applicant may be required to provide an assessment via ARC GIS (ESRI software). Using the visual impact analysis, the Planning Board has the authority to mitigate and minimize the visual impact of a tower by: specifying the required setback and location, requiring changes and/or enhancements to the buffering, and regulating the tower height and style.

**11.20.6 Tower Style** Tower types shall be limited to monopole-style towers. The exterior finish of a tower shall be either a galvanized metal surface or a surface that is painted or otherwise treated in a neutral color. The design and color of the tower shall be approved by the Planning Board.

**11.20.7 Lighting** Towers and attached antennas and devices shall not be artificially lighted, unless required by the FAA or other federal or state agency. If lighting for such equipment is required, the Planning Board may review the available lighting alternatives and require the design that would cause the least impact to surrounding properties and views. All other lights installed at the facility shall be mounted less than twelve (12) feet above ground level, located and shielded to minimize light pollution, and illuminated only as necessary for work or safety at the facility.

**11.20.8 Colocation** All new communications towers shall be designed and constructed to accommodate the colocation of additional antennas, equipment and facilities on the tower and site. To meet this standard the applicant, owner and all other tower users shall allow other commercial wireless telecommunication service providers using functionally compatible technology to collocate; shall provide a mechanism for the construction and maintenance of collocated antennas and infrastructure; and shall provide for reasonable sharing of costs in accordance with industry standards. To ensure colocation and prevent the need for additional new towers within the same coverage area, the Planning Board may require an existing or new tower to be increased in height up to the maximum height allowed and/or make other accommodations in order to provide for colocation. When designing a tower and site for colocation the facility should be designed to accommodate the inclusion of at least three additional telecommunication service providers and shall have the structural integrity to accommodate these additional antennas and/or an expansion in height of the tower. The Planning Board may waive the requirement for colocation or the number of additional providers to be collocated, but only after the



Planning Board reviews and determines with satisfactory evidence that technical constraints prohibit colocation.

**11.20.9 Noise** generated should not exceed limits permitted under local ordinance (per zoning district). Testing of generators, at separate times, shall be limited to between 8 am and 5 pm, Monday – Friday.

**11.20.10 Advertising** No advertising or signage is permitted on communications towers or any attached transmitting and receiving antennas or devices.

**11.20.11 Coverage** As part of any proposal, the applicant shall submit a radio frequency coverage analysis showing existing or planned wireless facilities within ten (10) miles of the proposed location. Maps shall be supplied that indicate on street and in building coverage for both existing/planned sites and the proposed location. The coverage analysis for the proposed location must show all available optional antenna heights if it is a co-location or all possible antenna heights starting at a minimum of ninety (90) feet if it is a new facility. The coverage analysis must use each current licensed frequency band by the applicant. An applicant shall demonstrate that there is inadequate coverage for the area covered by the application.

**11.20.12 Structural Standards** New communications towers shall meet all applicable requirements of federal and state regulations and shall be designed and installed in accordance with the standards of the Electronic Industries Association / Telecommunications Industries Association (EIA/TIA) Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.

**11.20.13 Emergency Access** A new communications tower must install a “Knox box” on the compound entrance and shall provide the Town and its Fire Department with sets of keys to the knox box in order to allow emergency access to the facility by emergency vehicles and personnel.

**11.20.14 Fencing** A new communications tower must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

**11.20.15 Existing Towers** Communications towers existing before May 2, 2015 that do not comply with these performance standards or with the use or dimensional requirements of the zoning district in which they are located may continue to be used subject to the nonconformity provisions of this Ordinance. The addition, removal or relocation of transmitting or receiving devices on such towers does not constitute the expansion or enlargement of the nonconforming use and does not require Planning Board review, provided the total height of the communications tower, including attached devices, is not increased.

**11.20.16 Abandonment** A communications tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The Code Enforcement Officer shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the Code Enforcement Officer that the facility has not been abandoned. If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the Town may

remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

**11.20.17 Removal** Prior to the commencement of any construction, the applicant shall provide the Town with a performance bond or letter of credit in an amount sufficient to cover the cost of removal of the facility if it is abandoned as set forth above, including all site reclamation costs deemed necessary to return the site to its pre-construction condition, such as the removal of any road and reestablishment of vegetation. The applicant shall maintain such bond or replacement bond/letter of credit in place throughout the time period that the communications tower is in existence. The performance bond or letter of credit or any replacement performance bond/letter of credit shall be subject to the prior approval of the Town Attorney. The amount of the performance bond or letter of credit or any replacement performance bond/letter of credit shall be increased by 15% on the first of January every five years. The owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

**11.20.18 Shoreland Zoning** Communications towers shall not be allowed within the Shoreland Overlay Zone. However, land within the Shoreland Overlay Zone may be counted toward the setback requirements provided that the siting of the communications tower is outside the Shoreland Overlay Zone.

**11.20.19 Standard Conditions of Approval.** The following standard conditions of approval shall be a part of any approval issued by the Planning Board. Where necessary to ensure that an approved project meets the criteria of this Ordinance, the Planning Board may impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved plan, and shall include:

**11.20.19.1** The owner agrees to allow shared use of the tower if another applicant agrees to pay reasonable charges for co-location. The owner of the communications tower and his or her successors and assigns agree to:

**11.20.19.1.1** Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

**11.20.19.1.2** Negotiate in good faith for shared use of the communications tower by third parties;

**11.20.19.1.3** Allow shared use of the communications tower if an applicant agrees in writing to pay reasonable charges for co-location; and

**11.20.19.1.4** Require no more than a reasonable charge for shared use of the communications tower, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs

by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the communications tower.

**11.20.19.2** The proposed facility will comply with all FCC standards for radio frequency emissions. Upon request by the Town, the applicant shall certify such compliance.

**11.20.19.3** Upon request, the applicant shall provide the Town with a list of tenants of the facility.

**11.21 Dwelling Unit Allowance** Multiple principal dwelling units may be constructed on lots where housing is allowed, subject to the following requirements.

**11.21.1** If a lot does not contain an existing dwelling unit, up to four (4) units shall be allowed per lot if the lot is located in an area in which housing is allowed, meets the requirements of minimum lot size, and is located within a designated growth area as defined in the Boothbay Comprehensive Plan.

**11.21.2** If a lot does not contain an existing dwelling unit and does not meet Section **11.21.1**, up to two (2) dwelling units per lot located in an area in which housing is allowed, provided the requirements of minimum lot size are met. The two (2) dwelling units may be either within one structure or separate structures.

**11.21.3** If a lot contains an existing dwelling unit, up to two (2) additional dwelling units may be allowed in the following configurations:

**11.21.3.1** One within the existing structure or attached to the existing structure;

**11.21.3.2** One detached from the existing structure; or

**11.21.3.3** One of each.

**11.21.4** If a lot contains two existing dwelling units, no additional dwelling units may be built on the lot.

**11.21.5** Notwithstanding anything in Section 11.21 to the contrary, all dimensional requirements including, but not limited to, lot area, lot coverage, setbacks, and height, established in Section **7.5** shall apply to each dwelling unit on the lot.

**11.21.6** Prior to obtaining a building permit from the Code Enforcement Officer, the owner of the dwelling unit(s) shall provide written verification that the proposed unit is to be connected to adequate water and wastewater services. Written verification shall include the following:

**11.21.6.1** If a housing structure is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

**11.21.6.2** If a housing structure is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified adequate by a local plumbing inspector pursuant to State requirements for plumbing inspections (30-A M.R.S. §4221). Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

**11.21.6.3** If a housing structure is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

**11.21.6.4** If a housing structure is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

**11.21.7** Regulations established in Section **11.21** shall not supersede private, state or local standards which may be more restrictive, including but not limited to, homeowners' association regulations, deed restrictions, septic requirements, shoreland zoning, and subdivision law.

**11.21.8** If more than one dwelling unit has been constructed on a lot as a result of Section **11.21**, the lot is not eligible for any additional units or increases in density using Section **11.21** or the provisions established in Section **11.1**.

**11.21.9** If a lot with a dwelling unit in existence prior to May 6, 2024 is torn down and an empty lot results, for the purposes of Section **11.21**, the lot shall still be considered developed for a period of two years and Section **11.21.3** would be applicable.

**11.22 Affordable Housing Density Bonus** In accordance with State Housing legislation, 30-A M.R.S. § 4364 *et seq.* (commonly referred to as "L.D. 2003"), an automatic density bonus for certain affordable housing developments approved on or after July 1, 2024, shall apply. For purposes of Section 11.22, the Planning Board shall verify that the development:

**11.22.1** Is an affordable housing development as defined in this Ordinance, which includes the requirement that 51% of the total units on the lot are affordable;

**11.22.2** Is in a designated growth area defined herein and pursuant to State housing legislation 30-A M.R.S. § 4364-A(1)(A) or (B) or served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system;

**11.22.3** Is located in an area in which multifamily dwellings are allowed per this Ordinance;

**11.22.4** Complies with minimum lot size requirements; and

**11.22.5** Owner provides written verification that each unit of the housing development is proposed to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. Written verification must include the following:

**11.22.5.1** If a housing unit is connected to public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

**11.22.5.2** If a housing unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to State requirements for plumbing inspections (30-A M.R.S. § 4221). Plans for a subsurface wastewater disposal must

be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

**11.22.5.3** If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit

**11.22.5.4** If a housing unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

**11.22.6** Long-Term Affordability. Prior to the granting of a certificate of occupancy for any dwelling unit located within an affordable housing development, the owner of the affordable housing development shall execute a restrictive covenant consistent with this section, to be reviewed and approved by the CEO and the Town Attorney, that is enforceable by the Town of Boothbay or its designee. Such restrictive covenant shall be recorded in the Lincoln County Registry of Deeds at the expense of the owner.

**11.22.6.1** For rental housing, occupancy of all units designated affordable in the development will remain limited to household at or below 80% of the local area median income at the time of initial occupancy.

**11.22.6.2** For owned housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

**11.22.7** Density Bonus. If the requirements of Section 11.22.1 and 11.22.2 are met, the affordable housing development shall be granted as follows:

**11.22.7.1** A dwelling unit density of 2.5 times the base density that is otherwise allowed in that District. If fractional results occur when calculating the density bonus in this subsection, the number of unit is rounded down to the nearest whole number.

**11.22.7.2** A reduction in parking requirements to no more than two (2) off-street parking spaces for every three (3) dwelling units of the affordable housing development. If fractional results occur when calculating the density bonus in this subsection, the number of parking spaces is rounded up to the nearest whole number.

## **11.23 Solar Energy Conversion Systems**

**11.23.1** Roof-mounted and ground-mounted systems less than 4,200 sq. ft. in total area are not subject to Site Plan Review, but must meet the dimensional requirements of the underlying zoning district.

**11.23.2** The installation of new ground-mounted solar energy conversion systems in excess of 4,200 sq. ft. of total area, the expansion of any existing solar energy conversion system, or installation of any associated facilities shall be subject to site plan review under Section 5 of this Ordinance.

**11.23.3 Submission Requirements.** In addition to the site plan submissions required in Section 5.4.3 of this Ordinance, the following plans and supporting materials shall be

submitted:

**11.23.3.1 An Operations, Maintenance and Decommissioning Plan, providing:**

**11.23.3.1.1** description of the regular operation and maintenance of the facility, including the frequency and scope of regular inspections and the frequency and method of vegetation management,

**11.23.3.1.2** the timeline and process of decommissioning of the system,

**11.23.3.1.3** Solar System specifications, including manufacturer, model, and facility size.

**11.23.3.1.4** Certification that layout, design and installation conform to and comply with all applicable industry standards such as the National Electrical Code (NEC/NFPA-70), the American National Standards Institute (ANSI), the Underwriter's Laboratories (UL), the American Society for Testing and Materials (ASTM), the Institute of Electric and Electronic Engineers (IEEE), the Solar Rating and Certification Corporation (SRCC), the Electrical Testing Laboratory (ETL), and other similar certifying organizations, the Maine Uniform Building and Energy Code (MUBEC), fire and life-safety codes (NFPA 1 and NFPA101), and any other standards applicable to solar energy conversion systems.

**11.23.3.1.5** Certification that the project complies with the utility notification requirements contained in Maine law and accompanying regulations through the Maine Public Utilities Commission, unless the applicant intends, and so states on the application that the system will not be connected to the electricity grid.

**11.23.3.1.6** An Emergency Action Plan approved by the Boothbay Fire Chief or their designee. The solar energy conversion system owner or project proponent shall also provide a copy of the Site Plan application to the Fire Chief for review and comment. The Fire Chief shall base any recommendation for approval or denial of the application upon review of the fire safety of the proposed system.

**11.23.3.1.7** A wildlife and habitat impact survey by the Maine Natural Areas Program or a project evaluation and essential habitat and threatened species review from the Department of Inland Fisheries and Wildlife indicating that the proposed installation will have no negative habitat or wildlife impact.

**11.23.4 Height.** Solar Energy Conversion Systems shall be subject to the building height limitation of each zone.

**11.23.5 Setbacks.** Solar energy Conversion Systems shall be subject to the setbacks of each zone.

**11.23.6 Impervious surface calculations.** Solar Energy Conversion Systems shall not be included in calculations for open space or impervious cover.

**11.23.7 Lot Coverage.** The total panel surface area of a ground or pole-mounted solar energy conversion system, regardless of the mounted angle, shall be calculated as part of the overall lot coverage.

**11.23.8 Design Standards** Solar energy conversion systems shall not obstruct solar access to neighboring properties and shall have a nonreflective surface to minimize any visual disruptions.

**11.23.9 Siting and impact.**

**11.23.9.1** Solar energy conversion systems should be sited to minimize or negate any solar glare onto nearby properties or roadways without unduly affecting the functionality or efficiency of the solar energy conversion system.

**11.23.9.2** Preference should be given to locating the system on previously developed, degraded, or marginally productive portions of the property. No topsoil or prime agricultural soil shall be removed from the site for the installation of the system, except as necessary to comply with this section or other applicable laws.

**11.23.9.3** The ground-mounted solar energy conversion system shall be fully enclosed by fencing. The bottom of such fencing shall be raised off the ground by a minimum of six (6) inches and shall be designed to minimize the chances of wildlife getting trapped inside the fence. All fencing shall meet the requirements of the National Electric Code.

**11.23.9.4** Lighting shall be limited to lighting necessary for operations and human safety and must meet the requirements for lighting elsewhere in this Ordinance.

**11.23.9.5** Systems shall meet the screening requirements for the district of the system they are in

**11.23.9.6** Systems shall maintain a cleared area of ten (10) feet outside the fence surrounding the installation.

**11.23.9.7** Vegetation shall be maintained so as to minimize the possibility of ignition from the system. Native, pollinator friendly seed mixtures shall be used to revegetate the area around the installation, the use of pesticides is prohibited.

**11.23.10 Performance Guarantee**

**11.23.10.1** The applicant shall provide financial assurance for the decommissioning of the installation in the form of a performance bond, cash escrow payment, or letter of credit, for 125% of the total cost of decommissioning, as demonstrated in a decommissioning cost analysis submitted by the applicant. This performance guarantee shall be in effect prior to any sitework and prior to the issuance of any building permits. The value of the bond shall be based on the estimates of a professional engineer. The Town may, at the applicant's expense, hire their own engineer to review the applicant's estimates. The terms of the performance guarantee shall be subject

to approval by the Town Attorney.

**11.23.10.2** Every five (5) years, the owner shall submit an updated estimate of the cost of decommissioning, based on the opinions of a professional engineer, and provide a new performance bond. The Town may, at the applicant's expense, hire its own engineer to review the applicant's estimates.

#### **11.23.11 Removal and Decommissioning**

**11.23.11.1** Any solar energy conversion system which has reached the end of its useful life or has been abandoned consistent with this Section shall be removed. The owner or operator shall physically remove the installation no more than 180 days after the date of discontinued operations. The owner or operator shall notify the approval authority by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

**11.23.11.1.1** Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.

**11.23.11.1.2** Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations. Without prior approval from the Boothbay Region Refuse Disposal District (BRRDD), none of the waste generated during disposal shall be deposited at the BRRDD facility.

**11.23.11.1.3** Stabilization of the site to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption of extant vegetation.

**11.23.11.1.4** Re-vegetation. Native, pollinator-friendly seed mixtures shall be used to fully revegetate all previously disturbed surfaces.

#### **11.23.11.2 Abandonment**

**11.23.11.2.1** The solar energy conversion system shall be considered abandoned when it fails to operate for more than one year without the written consent of the Select Board. If the owner or operator of the solar energy conversion system fails to remove the entire system in accordance with the requirements of this section within 180 days of abandonment, or by the proposed date of decommissioning, whichever occurs first, the Town retains the right to enter and remove the same. As a condition of the site plan approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation. After one year, any unpaid costs associated with the removal shall be enforced as a tax lien placed on the real estate of the array site.



## **Section 12. Appeals, Interpretations and Variances**

**12.1 Purpose** The purpose of Section 12 is to define the authority and procedures of the Board of Appeals of the Town of Boothbay established in accordance with the provisions of 30-A M.R.S. § 2691.

### **12.2 Applicability**

**12.2.1** Section 12 applies to requests for:

**12.2.1.1** A variance from the strict interpretation of the standards of this Ordinance;

**12.2.1.2** An administrative appeal in connection with a decision or interpretation of the Code Enforcement Officer;

**12.2.1.3** An administrative appeal in connection with a decision of the Planning Board except with respect to a subdivision application, and

**12.2.1.4** An interpretation of a zoning boundary.

**12.2.2** A decision of the Planning Board relative to a subdivision application shall be appealed directly to Superior Court.

### **12.3 Responsibilities**

#### **12.3.1 Applicant or Aggrieved Party**

**12.3.1.1** An applicant shall have the burden of proving that:

**12.3.1.1.1** The relief requested from the ordinance standards meets all requirements for granting of variances as set forth in Section 12.5; or

**12.3.1.1.2** A zoning boundary should be located as proposed by the applicant.

**12.3.1.2** An aggrieved party shall have the burden of proving that:

**12.3.1.2.1** A decision or action of the Code Enforcement Officer is not in conformity with the purposes and provisions of this Ordinance; or

**12.3.1.2.2** A decision of the Planning Board is not in conformity with the purposes and provisions of this Ordinance.

**12.3.1.3** The applicant is responsible for determining what, if any, other approvals are needed from Town, State or Federal agencies or authorities.

#### **12.3.2 Board of Appeals**

**12.3.2.1** De Novo Administrative Appeals The Board of Appeals shall conduct a *de novo* review for the following:

**12.3.2.1.1** Decisions of the Code Enforcement Officer The Board of Appeals shall hear and shall grant, grant with conditions, remand, or deny administrative appeals from decisions or actions of the Code Enforcement Officer where it is alleged that there is an error in any order, requirement, decision or determination; a failure to act; or inappropriate action by the Code Enforcement Office in his or her review of a permit application or enforcement responsibilities under this Ordinance.

**12.3.2.1.2** Violations The Board of Appeals shall hear and shall grant, grant with conditions or deny appeals of notices of violations, including those relating to subdivisions.

**12.3.2.2** Appellate Administrative Appeals The Board of Appeals shall conduct an appellate review for the following:

**12.3.2.2.1** Decisions of the Planning Board The Board of Appeals shall hear and

shall grant, grant with conditions, remand, or deny administrative appeals from decisions of the Planning Board where it is alleged that there is an error in any order, requirement, decision or determination; a failure to act by the Planning Board in the administration of this Ordinance.

**12.3.2.3 Interpretations** When requested by an applicant, the Board of Appeals shall interpret the boundaries of a Zoning District, an Overlay Zones or an area within the Shoreland Overlay District.

**12.3.2.4 Variances** The Board of Appeals shall hear and shall, subject to the limitations of Section 12.5, grant, grant with conditions or deny requests for relief from the standards of the Zoning Ordinance that cannot be granted by the Planning Board.

## **12.4 Appeal Procedure**

### **12.4.1 Time Limits**

**12.4.1.1** An administrative appeal must be filed within thirty (30) days of the date of the decision being appealed. The date of a written Code Enforcement Officer decision shall be the date of the decision. The date of the final vote by the Planning Board on an application shall be the date of the decision.

**12.4.1.1.1** The failure to bring an administrative appeal within the time frame provided may be determined by a court to be a forfeiture of the right to challenge the underlying decision in subsequent proceedings.

**12.4.1.2** A variance request and a request for an interpretation of a boundary may be submitted at any time.

### **12.4.2 Application**

**12.4.2.1** Applications shall be made to the Code Enforcement Officer in writing on forms prescribed by the Board of Appeals.

**12.4.2.1.1** Applications shall be dated and signed by the person requesting a decision by the Board of Appeals, certifying that the information in the application is complete and correct.

**12.4.2.1.2** An application fee in such amount as the Board of Selectmen may from time to time establish by Board of Selectmen order shall accompany the application.

**12.4.2.1.3** Applications shall include a concise written statement indicating what provision or provisions of the Zoning Ordinance requires interpretation or what relief is requested as well as an explanation of why it should be granted.

**12.4.2.1.3.1** A sketch drawn to scale, showing, but not limited to, lot lines, location of existing structures, and other physical features of the lot pertinent to the relief requested shall be included unless the Board of Appeals determines it is not necessary. This requirement shall not apply to administrative appeals of Planning Board decisions.

**12.4.2.1.3.2** The Board of Appeals may at any time before approval require the submission of additional information except for administrative appeals of Planning Board actions.

**12.4.2.2** Applications shall only be accepted when:

**12.4.2.2.1** Taxes and accounts payable to the Town are current.

**12.4.2.2.1.1** The applicant's real and personal property taxes, plus any and all other accounts of the applicant payable to the Town, have been paid in

full.

**12.4.2.2.1.2** Real and personal property taxes for the property to be developed or used have been paid in full.

**12.4.2.2.1.3** Notification expenses as required by Section **12.4.2.1.2** have been paid in full.

**12.4.2.2.1.4** The requirement that all taxes and accounts be paid prior to making an application under Section 12 may be:

**12.4.2.2.1.4.1** Satisfied by the execution of an agreement with the Town Manager for their payment in full under such terms and conditions as the Town Manager may deem advisable, provided that payment in full is made in or within twelve (12) months from the date of said agreement; or

**12.4.2.2.1.4.2** Waived in whole or in part by the Board of Selectmen upon good cause shown and upon such terms and conditions as are agreeable to the applicant. The Board of Selectmen's decision in this regard shall be final, subject only to an appeal by an aggrieved party to Superior Court.

**12.4.2.2.2** There is no outstanding notice of violation duly issued by the Code Enforcement Officer:

**12.4.2.2.2.1** That has not been appealed to the Board of Appeals within the required time period;

**12.4.2.2.2.2** That is pending before the Board of Appeals or a reviewing court; or

**12.4.2.2.2.3** Where the decision of the Board of Appeals or a reviewing court has not been fully complied with.

**12.4.2.2.3** There is no outstanding notice of violation duly issued by any State or federal environmental agency relating to the property that is the subject of the application:

**12.4.2.2.3.1** That is pending before the State or federal environmental agency or a reviewing court; or

**12.4.2.2.3.2** Where the decision of the State or federal environmental agency or a reviewing court has not been fully complied with, or no further action will be taken by the issuing agency.

**12.4.2.3** The Code Enforcement Officer shall record on each application the date and time of its receipt.

**12.4.2.3.1** The Code Enforcement Officer shall determine if all pages of the current application forms have been submitted and, if not, notify the applicant that the application must be on the current forms and be complete.

**12.4.2.4** Any inconsistency or conflicting information in an application shall be construed against the applicant.

#### **12.4.3** Notification

**12.4.3.1** The Code Enforcement Officer shall notify by U. S. Postal Service first class mail:

**12.4.3.1.1** The applicant and the owner of the property where the is relief requested;

**12.4.3.1.2** Owners as listed by the Boothbay Tax Assessor of property within one hundred (100) feet of any property line of the property;

- 12.4.3.1.3 The Boothbay Region Water District if the property is within the Watershed Protection Overlay District or the Well Head Protection District;
- 12.4.3.1.4 The Planning Board if the appeal is from its decision or is a zoning interpretation request;
- 12.4.3.1.5 The Board of Selectmen; and
- 12.4.3.1.6 The Boothbay Harbor or Edgecomb Town Clerk if the proposed variance or appeal is for a property abutting or including any portion of said municipalities.
- 12.4.3.2 The notification shall be at least seven (7) days before the first Board of Appeals meeting on the application and include:
  - 12.4.3.2.1 The date, time and place of the first public hearing on the request, variance or appeal; and
  - 12.4.3.2.2 The location and a general description of the request, variance or appeal.
- 12.4.3.3 The Code Enforcement Office or Board of Appeals may determine that additional property owners should be made aware of the application. The applicant shall reimburse the Town for the expense of these additional notifications. No further action shall be taken on the application until the Town has been reimbursed.
  - 12.4.3.3.1 Failure to receive a notice of a public meeting shall not necessitate another public meeting or invalidate any action taken by the Board of Appeals.
- 12.4.4 **Notice** The Code Enforcement Officer shall publish at least two (2) times in the Boothbay Register a notice of the date, time and place of the first meeting to be held on a request for interpretation, a variance, or an appeal. The first publication of the notice shall be at least seven (7) days before the meeting. In addition, the notice shall be posted in a public place in Boothbay. The notice shall include the location and a general description of the request for interpretation, a variance, or an appeal.
  - 12.4.4.1 A copy of each variance request in the Shoreland Overlay Zone, including the application and all supporting information supplied by the applicant, shall be forwarded by the Code Enforcement Officer to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to the first Board of Appeals hearing on the application.
- 12.4.5 **Record of Decision being Appealed** The Code Enforcement Officer shall transmit to the Board of Appeals all documentation in connection with the decision being appealed. For decisions of the Planning Board, this shall include the Planning Board's findings of fact and the minutes of the meetings at which the Planning Board considered the application.
- 12.4.6 **Public Hearing**
  - 12.4.6.1 **Completeness Review** The Board of Appeals shall hold a public hearing on a request for an interpretation, a variance, or an appeal within thirty-five (35) days of its receipt of an application.
    - 12.4.6.1.1 The purpose of a Completion Review is to determine if information required being on paper is sufficiently complete to proceed to an Application Review.
    - 12.4.6.1.2 At the conclusion of Completeness Review, the Board of Appeals shall notify the applicant that:
      - 12.4.6.1.2.1 An Application Review has been scheduled, or
      - 12.4.6.1.2.2 An Application Review has been scheduled conditioned upon the receipt of specific additional information. Such information shall be provided

in accordance with the deadline for submission specified in the application form.

**12.4.6.2** Application Review Within thirty-five (35) days of the conclusion of a Completeness Review specified in Section **12.4.6.1** an Application Review meeting shall be held.

**12.4.6.2.1** The Planning Board and Board of Selectmen shall be made parties to the action.

**12.4.6.2.2** For Administrative Appeals of Code Enforcement Officer decisions, variance requests, and interpretations, the Board of Appeals shall permit testimony and the presentation of evidence at any public hearing by any interested person, provided that such testimony and evidence is relevant to the proceeding and not unduly repetitious.

**12.4.6.2.3** For Administrative Appeals of Planning Board decisions subject to appellate review, the Board of Appeals shall limit testimony and the presentation of evidence at any public hearing only to people who participated in or attended the Planning Board meetings at which the application that is the subject of the appeal was considered. Any testimony shall be limited to information that was presented at the Planning Board meeting. The Board of Appeals shall not accept new information that was not available to the Planning Board at the public hearing.

**12.4.6.2.4** An applicant may agree to an extension of time for Board of Appeals review, public hearings or decision on an application.

**12.4.6.2.5** The purpose of the Application Review meeting is to interpret the boundaries of a Zoning District, an Overlay Zone or an area within the Shoreland Overlay Zone, or to determine if:

**12.4.6.2.5.1** The proposed deviation from the Ordinance standards meets the requirements for approval of Section **12.5**;

**12.4.6.2.5.2** The decision or action of the Code Enforcement Officer was in conformance with the standards of the Zoning Ordinance and other applicable regulations, or

**12.4.6.2.5.3** The decision or action of the Planning Board was in conformance with the standards of the Zoning Ordinance.

**12.4.6.2.6** Administrative Appeal

**12.4.6.2.6.1** The Board of Appeals will examine the facts that were presented to the Planning Board or the Code Enforcement Officer as the case may be, and will determine if the Planning Board or Code Enforcement Officer was correct in applying the Zoning Ordinance to those facts.

**12.4.6.2.6.2** For a *de novo* review of a decision or action of the Code Enforcement Officer, the Board of Appeals will accept the presentation of facts, whether orally or in documentary form, from any person. They may accept the presentation of such facts from any person who did not present facts in the decision of the Code Enforcement Officer, and they may examine other facts that had not been presented to the Code Enforcement Officer. The Board of Appeals will listen to the parties and to their lawyers or other representatives that the parties may bring to the Board of Appeals.

**12.4.6.2.6.3** For an appellate review of a decision of the Planning Board, the Board of Appeals shall confine its review to the record of the application review by the Planning Board and any information provided at the public hearing that relates

directly to the information available to the Planning Board during its consideration of the application. The Board of Appeals shall not consider any information that was not available to the Planning Board except advice from the Town's legal counsel.

**12.4.6.2.6.4** When the Board of Appeals has completed its work under Sections **12.4.6.2.6.1**, **12.4.6.2.6.2**, or **12.4.6.2.6.3** above, the Board of Appeals will take one of the following three actions:

**12.4.6.2.6.4.1** The Board of Appeals can decide that the Planning Board or Code Enforcement Officer needs to consider more facts before making a valid decision, in which case the Board of Appeals will send the matter back to the Planning Board or Code Enforcement Officer with instructions to consider these additional facts and then make a decision based on all of the facts; or

**12.4.6.2.6.4.2** The Board of Appeals can decide that the Planning Board or Code Enforcement Officer did not apply the Zoning Ordinance properly, or did not interpret the Zoning Ordinance properly, in which case the Board of Appeals can reverse or modify the decision of the Planning Board or Code Enforcement Officer; or

**12.4.6.2.6.4.3** The Board of Appeals can decide that the Planning Board or Code Enforcement Officer was correct in its interpretation and application of the Zoning Ordinance, in which case the Board of Appeals can uphold the decision of the Planning Board or Code Enforcement Officer.

**12.4.6.2.6.4.4** If the Board of Appeals sends the matter back to the Planning Board or the Code Enforcement Officer under Section **12.4.6.2.6.4.1** above, then the Planning Board or Code Enforcement Officer will hold another hearing or otherwise conduct further proceedings, at which time additional facts will be presented in accordance with the instructions from the Board of Appeals, and make a decision based on all the facts.

**12.4.6.2.7** Variance Appeals

**12.4.6.2.7.1** Any comments received from the Commissioner of the Department of Environmental Protection in connection with a variance request in the Shoreland Overlay Zone prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

**12.4.6.3 Final Action** The Board of Appeals shall within thirty-five (35) days of the conclusion of a public hearing at which all requested information has been provided, and during which all verbal submissions for and against the interpretation, variance, or appeal have been heard, determine if the interpretation, variance, or appeal is in conformance with the applicable provisions of the Zoning Ordinance.

**12.4.6.3.1** The reasons and basis for its decision, including a statement of the facts found and conclusions reached, as well any conditions shall be stated in writing.

**12.4.6.3.2** A copy of the decision shall, within seven (7) days of reaching a decision, be sent to the applicant, Code Enforcement Officer, Planning Board and Board of Selectmen.

**12.4.6.3.3** If the action involves a variance within the Shoreland Overlay District, written notice of a decision shall be mailed to the Department of Environmental Protection

within seven (7) days of the decision.

**12.4.6.4 Variance Recorded** If the Board of Appeals grants a variance, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. This certificate must be signed by the Board of Appeals members approving the variance and recorded by the applicant in the Lincoln County Registry of Deeds within ninety (90) days of the date stated on the final written approval of the variance or the variance is void. The variance is not valid until the certificate of variance is recorded.

**12.4.6.4.1** A variance in connection with a subdivision must be included as a note on the face of the subdivision plan being recorded and must be recorded within ninety (90) days of the final Planning Board vote on the subdivision application.

#### **12.4.7 Approved Appeals**

**12.4.7.1** All approvals of appeals shall lapse and become void unless Start of Construction or Operation there under, as defined in Section 2, begins within one year of the date of the authorization. On showing of good cause before the expiration of the one year period, the Board of Appeals may grant a one year extension. If operations under any use permit do not begin or cease for a period of more than one year, such use permit shall lapse and a new permit shall be required before recommencement of such use.

**12.4.7.2** Every building permit shall be displayed in a conspicuous place on the premises and a copy of all other permits shall be on site while work authorized by the permit is being conducted.

**12.4.7.3** On approval of an appeal of a required water supply protection buffer, the Board of Appeals shall sign the original and 4 copies of the final site plan. The Code Enforcement Officer and applicant shall each retain one signed copy and the applicant shall:

**12.4.7.3.1** File the original and one copy with the Lincoln County Registry of Deeds.

**12.4.7.3.2** File one copy with the Town of Boothbay Assessor. This copy shall include the Registry Book and Page reference.

**12.4.8 Reconsideration** The Board of Appeals may reconsider any decision reached within forty-five (45) days of the date of the final vote on the appeal or interpretation or variance request. The request to the Board of Appeals to reconsider a decision must be filed within ten (10) days of the final vote to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the final vote on the original decision. The Board of Appeals in reconsidering a prior decision may conduct an additional hearing and receive additional evidence and testimony.

**12.4.9 Appeal to Superior Court** An aggrieved party may appeal a decision of the Board of Appeals to Superior Court in accordance with Rule 80B of the *Maine Rules of Civil Procedure* within forty-five (45) days of the date of the final Board of Appeals vote on the appeal or interpretation or variance request.

**12.4.9.1** Appeal of a reconsideration decision must be made within fifteen (15) days the final vote on the reconsideration request.

#### **12.4.10 Remanded Appeals**

**12.4.10.1 Code Enforcement Officer** The Code Enforcement Officer shall, within thirty-five (35) days of receiving the reasons why an appeal from his/her decision is being remanded, approve, approve with conditions or deny the application.

**12.4.10.2 Planning Board** The Planning Board shall consider all remanded appeals as Old Business at its next regularly scheduled Public Hearing.

**12.4.11 Records** The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications and associated documentation submitted, permits granted or denied, applications approved or denied, waivers and variances granted or denied, revocation actions, revocation of permits and approvals, appeals, court actions, violations investigated, violations found, and fees collected.

## **12.5 Review Criteria – Variance**

**12.5.1 General** The Board of Appeals may grant a variance:

**12.5.1.1** If the activity, development or use is not prohibited by this Ordinance and is consistent with the land use goals and objectives of Section **1.8**.

**12.5.1.2** If the proposed development or use would meet the standards of this Ordinance except for the specific provision(s) from which relief is sought;

**12.5.1.3** If the minimum setback for new subsurface wastewater disposal systems from water bodies required by the *Maine Subsurface Wastewater Disposal Rules* is not reduced; and

**12.5.1.4** Except as provided in Sections **12.5.2**, **12.5.3** and **12.5.6**, only when strict application of this Ordinance to the petitioner and the petitioner’s property would cause undue hardship.

**12.5.1.4.1** Except as provided in Section **12.5.6**, the term “Undue Hardship “ as used in Section **12.5** shall mean all of the following:

**12.5.1.4.1.1** The land in question cannot yield a reasonable return unless a variance is granted;

**12.5.1.4.1.2** The need for a variance is due to the unique circumstances of the property and not to general conditions in the neighborhood;

**12.5.1.4.1.3** The granting of a variance will not alter the essential character of the locality; and

**12.5.1.4.1.4** The hardship is not the result of action taken by the applicant or a prior owner.

**12.5.2 Dimensional Standards Variance** A variance may be granted from the dimensional standards relating to lot area, developable area, frontage, lot width and setback standards, when strict application of this Ordinance to the petitioner and the petitioner’s property would cause a practical difficulty and when all of the following conditions exist:

**12.5.2.1** That the need for a variance is due to the unique circumstances of the property and not to general conditions in the neighborhood;

**12.5.2.2** The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

**12.5.2.3** The practical difficulty is not the result of action taken by the petitioner or a prior owner;

**12.5.2.4** No other feasible alternative to a variance is available to the petitioner;

**12.5.2.5** The granting of a variance will not adversely affect the natural environment to an unreasonable degree; and.

**12.5.2.6** The property is not located in whole or in part within the Shoreland Overlay District.



**12.5.2.7** As used in Section **12.5.2**, “dimensional standards” means and is limited to ordinance provisions relating to lot area, lot coverage, frontage, lot width and setback requirements.

**12.5.2.8** As used in Section **12.5.2**, “practical difficulty” means that the strict application of this Ordinance to the property precludes the ability of the petitioner to pursue a use permitted where the property is located and results in significant economic injury to the petitioner.

**12.5.3 Disability Variance** A dimensional variance may be granted to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board of Appeals shall restrict any variance granted under Section **12.5.3** solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board of Appeals may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

**12.5.4 Endangered Species Variance** A dimensional variance in connection with developments or uses affecting endangered species may be granted if the Commissioner of Inland Fisheries and Wildlife certifies that the proposed action would not pose a significant risk to any population of endangered or threatened species and a public hearing is held on the proposed action.

**12.5.5 Registered Farmland Variance** A dimensional variance permitting development upon or use of land for residential purposes within one hundred (100) feet of Registered Farmland or land held in common ownership with the registered farmland, may be granted if the parcel of land was subdivided prior to registration of the farmland. Any variance granted for such a purpose shall be conditioned to provide the maximum feasible setback from the abutting registered farmland.

**12.5.5.1** A variance is not required for residential development if the exceptions of Title 7 M.R.S. §§ 52 and 56 are met.

**12.5.6 Set-back Variance for One Family Dwellings** A dimensional variance from a set-back requirement for a one family dwelling that is the primary year-round residence of the petitioner shall only be permitted when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. The variance shall not exceed twenty (20) percent of a set-back requirement and shall not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage and developable area.

**12.5.6.1** The term “undue hardship” as used in Section **12.5.6** means all of the following conditions apply:

**12.5.6.1.1** The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

**12.5.6.1.2** The granting of a variance will not alter the essential character of the locality;

**12.5.6.1.3** The hardship is not the result of action taken by the applicant or a prior owner;

**12.5.6.1.4** The granting of the variance will not substantially reduce or impair the

use of abutting property; and

**12.5.6.1.5** That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

**12.5.6.2** In the Shoreland Overlay District, the standards for a set-back variance for one family dwellings of Section **12.5.1** shall apply. The standards of Section **12.5.6** shall not apply.

**12.5.7 Limitations** The Board of Appeals shall limit any variances granted as strictly as feasible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest feasible extent, and in doing so, may impose such conditions on a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed. The provisions of Section **12.5.1** shall apply to any variance granted under Sections **12.5.2, 12.5.4, 12.5.5** and **12.5.6**.

**12.5.7.1** A variance shall not be granted for establishment of any use otherwise prohibited by this Ordinance.

## **Appendix**

### **BIGELOW LABORATORY FOR OCEAN SCIENCES CONTRACT ZONING AGREEMENT**

This Agreement dated as of MAY 24, 2006, by and between **THE INHABITANTS OF THE TOWN OF BOOTHBAY**, a municipal corporation existing under the laws of the State of Maine, located in the County of Lincoln and State of Maine (the “Town”) with a mailing address of 1011 Wiscasset Road, P.O. Box 106, Boothbay, Maine 04537-0106, and **BIGELOW LABORATORY FOR OCEAN SCIENCES**, a Maine non-profit corporation located in the County of Lincoln and State of Maine (“Bigelow”) with a mailing address of P.O. Box 475, West Boothbay Harbor, Maine 04575-0475.

WHEREAS, Bigelow owns a certain lot or parcel of real estate located on Ocean Point Road and Green Landing Road in Boothbay, Maine, fronting on Farnham Cove, consisting of approximately 64 acres, described in a deed dated June 30, 2003 and recorded at the Lincoln County Registry of Deeds in Book 3090, Page 184 and a second deed dated August 27, 2003 and recorded at said Registry in Book 3173, Page 278 and a third undated deed recorded at said Registry in Book 3173, Page 287 and a fourth deed dated August 27, 2003 recorded at said Registry in Book 3173, Page 289 and generally being shown on the Assessor’s Tax Map R-8 as Lot 30 (the “Property”);

WHEREAS, the Property is currently located in the General Residential (“GR”) zoning district and the Shoreland Overlay Zone (“SOZ”) under the Zoning Ordinance of the Town of Boothbay (“Zoning Ordinance”);

WHEREAS, the GR zoning district presently allows as permitted uses, or conditional uses, various uses, including educational facilities, hotels/motels, maritime activities, professional offices, museums, libraries and laboratory research facilities but not a marine research and educational facility;

WHEREAS, Bigelow wishes to develop the Property as a state-of-the-art Marine Research and Educational Facility with a laboratory and research center for the study of marine and oceanic sciences, a dormitory and cottage-style housing for students and visiting scholars, a retreat and conference center and a dock and other water-dependent structures on the Property, along with an access drive, internal circulation drives, parking lots, loading and service areas, storage facilities, and related infrastructure improvements to the Property (“the Project”);

WHEREAS, the Zoning Ordinance does not currently recognize a Marine Research and Educational Facility as a defined use;

WHEREAS, Bigelow has requested a rezoning of the Property to permit a Marine Research and Educational Facility;

WHEREAS, the size, location, configuration, topography, and deep-water access of this site permit a level of buffering, landscaping, and site design that will be appropriate for a Marine Research and Educational Facility, provided the operation is restricted to the sketch plan proposed by Bigelow and further provided that the restrictions of this Agreement are observed;

WHEREAS, the Property contains existing trails across the Property that will be preserved and/or relocated in substantially the same quality and quantity as currently exists on the Property;

WHEREAS, Bigelow will concentrate development into only certain areas of the site plus roadways totaling approximately 14 acres, thereby preserving approximately 50 acres of the 64 acre site in its natural state, which provides a unique amount and quality of vegetative buffering;

WHEREAS, the Project serves the Town's policy of preserving the aesthetic quality of the community by encouraging buffers for new developments and protecting scenic vistas as set forth in Volume I, Section II(A)(2)(f) of the Comprehensive Plan;

WHEREAS, the Project serves the Town's policy of promoting the study of marine or oceanographic sciences in appropriate areas of Town as set forth in Volume I, Section II(B)(2.1)(d) of the Comprehensive Plan;

WHEREAS, the Project serves the Town's policy of providing suitable areas within the Town for the development of low-intensity institutional activity such as marine research facilities in the GR zoning district as set forth in Volume I, Section II(B)(2.2) of the Comprehensive Plan;

WHEREAS, the Project serves the Town's policy of supporting the marine resources industry in the Town and the region by studying marine and oceanographic sciences as set forth in Volume I, Section II(C)(2)(c) of the Comprehensive Plan;

WHEREAS, the Project serves the Town's policy of encouraging the conservation of open spaces as set forth in Volume I, Section II(D)(2)(f) of the Comprehensive Plan;

WHEREAS, the Project serves the Town's policy of promoting the study of marine or oceanographic sciences as set forth in Volume I, Section II(E)(2)(i) of the Comprehensive Plan;

WHEREAS, the Project serves the Town's policy of ensuring that future development activities contribute financially to meet the increased demands on municipal services as set forth in Volume I, Section II(G)(2)(b) of the Comprehensive Plan;

WHEREAS, the Project serves the Town's policy of supporting the use of private recreational and cultural facilities that are available to all residents of the Town as set forth in Volume I, Section II(H)(2)(D) of the Comprehensive Plan;

WHEREAS, all of the required public hearings have been duly noticed and conducted in accordance with Maine law;

WHEREAS, the Planning Board, pursuant to Section VI(D) of the Zoning Ordinance and 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid;

WHEREAS, the Town, acting by and through Town Meeting, is authorized to approve contract zoning agreements pursuant to Section VI(D) of the Zoning Ordinance and the provisions of 30-A M.R.S.A. § 4352(8); and

WHEREAS, the Town, acting by and through Town Meeting, therefore, has determined that said rezoning would be, and is, pursuant to and consistent with the Town's local growth management program and Comprehensive Plan adopted pursuant to 30-A M.R.S.A. § 4321 *et seq.* and consistent with the existing and permitted uses within the original zoning district classifications and has authorized the execution of this Agreement and amendment of the Zoning Ordinance accordingly.

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The Town hereby amends the Zoning Map of the Town of Boothbay, by adopting the zoning map change amendment shown on ***Exhibit A***.

2. The Property shall be developed substantially in accordance with the sketch plan shown on ***Exhibit B*** (including the layout of the buildings, pedestrian and vehicular circulation plan, open space and landscaping); provided, however, that the Project shall be subject to site plan review and approval by the Planning Board and, if required by law, subdivision review and approval by the Planning Board. Any site plan review applications shall be consistent with the sketch plan attached as Exhibit B and the application and approval requirements contained in Section XII (site plan) of the Zoning Ordinance, as may be amended from time to time. The Planning Board may permit deviations from the sketch plan, as long as the deviations are consistent with the purposes of this Agreement and as otherwise allowed by law.

3. The Town shall not issue Bigelow any building permits for the project until Bigelow has received all required federal, State and local permits. Any part of this Agreement related to activity in the SOZ is subject to review and approval of the Commissioner of the Maine Department of Environmental Protection pursuant to Section II(C) of the Zoning Ordinance, as may be amended from time to time.

4. Bigelow is authorized to create a Marine Research and Educational Facility, as defined herein, at the Property. For purposes of this Agreement, a Marine Research and Educational Facility means a comprehensive laboratory and related facilities that can accommodate the following activities and facilities: scientific research; educational programs; laboratory work and related product development and enhancement; residential housing for students, visiting scholars and other persons related to the Marine Research and Educational Facility; conference and retreat facilities for employees, students, visitors and other persons related to the Marine Research and Educational Facility; offices and maintenance facilities to support the Marine Research and Educational Facility; a dock and other water-dependent

structures; and other supporting and accessory uses, which shall be secondary and incidental to the above-listed uses, including, without limitation, passive recreational activity.

5. Phase I is planned to consist of the following:

- (a) a main laboratory building, the building foot print of which shall not exceed 47,000 square feet;
- (b) marine operations buildings, the total building foot print of which shall not exceed 13,500 square feet;
- (c) visiting scientist housing consisting of 6 two-bedroom cottages and 2 three-bedroom cottages arranged in duplexes, the total building foot print of which shall not to exceed 21,920 square feet, along with storage sheds/carports for the cottages, the total building footprint of which shall not exceed 2,800 square feet; and
- (d) maintenance garage buildings, the total building foot print of which shall not exceed 1,500 square feet.

Phase II may include the following:

- (a) a collaborative research center, which may be attached to and a part of the main building, the building foot print of which shall not exceed 12,500 square feet;
- (b) an addition to the main laboratory building for office space (and not included as part of the collaborative research center), the building foot print of which shall not exceed 5,000 square feet;
- (c) a retreat center, the building foot print of which shall not exceed 4,500 square feet;
- (d) additional visiting scientist housing consisting of 6 two-bedroom cottages and 2 three-bedroom cottages arranged in duplexes, the total building foot print of which shall not to exceed 21,920 square feet, along with storage sheds/carports for the cottages, the total building footprint of which shall not exceed 2,800 square feet; and
- (e) a dormitory building, the building foot print of which shall not exceed 5,950 square feet.

Phase III may include the following:

- (a) future program development buildings, the total building foot print of which shall not to exceed 10,050 square feet.

These three phases constitute the entire Project that Bigelow intends to construct. While it is Bigelow's intent to construct all three phases, the ultimate phasing and speed of construction of the Project is dependent upon Bigelow's ability to raise and receive funds. Portions of the phases may be pushed up or pushed back into other phases of the development. The size and timing may change depending on the availability of funding for the various phases of the Project.

6. Construction and use of the facility shall be subject to the following conditions:

(a) Permitted Uses: The use allowed or permitted on the Property shall be limited to a Marine Research and Educational Facility as defined in Paragraph 4.

(b) Building Height: The maximum height of the main building shall be 65 feet; the height of the main building shall be the vertical distance measured from the average ground elevation at any point adjacent to the foundation, i.e., the underlying base, substructure, or support of a building, to the highest point of the roof, excluding antennas and chimneys, using predevelopment grades if fill has been added and using post-development grades if soil has been removed.

(c) Setbacks: Because the marine operations buildings are functionally water dependent structures, they shall be permitted a zero foot setback from the upland edge of the coastal wetland of Farnham Cove.

(d) Building Footprint: The maximum allowable building total foot print for the buildings shall be 149,440 square feet.

(e) Frontage/Lot Width: No minimum road frontage shall apply to the Property, although Bigelow shall maintain sufficient road frontage on both Route 96 (Ocean Point Road) and Green Landing Road as to provide adequate sight distances for vehicular access to the Property. The minimum lot width for the Property shall be at least 1,000 feet as measured by the average horizontal distance between the side lot lines of the lot that run perpendicular to the shore frontage of the lot on Farnham Cove.

(f) Landscaping: The Property shall be landscaped to enhance the general appearance of the Project from surrounding properties as determined by the Planning Board at the time of site plan approval. The landscaping shall be maintained by Bigelow or its successors in interest. After the date of approval of this Agreement, there shall be no significant amount of removal of existing trees or other vegetation except as indicated in an approved site plan or as otherwise approved by the applicable Town authority.

(g) Sewer and Water: The facility will be served by public water and on-site waste disposal systems.

(h) Utilities: All utilities for the main laboratory building and its contiguous buildings shall be installed underground unless to do so would be unreasonably expensive or impractical in the field; all utilities for all other buildings may be located underground. Any and all utilities, transformer boxes, substations, pumping stations and meters shall be located and designed so as not to be unsightly or hazardous to the general public.

(i) Parking: The Project shall provide sufficient parking to meet the needs of the facility, as determined by the Planning Board at the time of site plan approval.

(j) Site Access: Except as may be reasonably necessary during construction, the principal vehicular access point to the Property shall be located off of Route 96 (Ocean Point Road). Access to the Property via Green Landing Road shall be for emergency vehicles only; Bigelow shall maintain a locked gate at the Property's intersection with Green Landing Road, with keys or access codes made available to emergency personnel. The Board of Selectmen shall adopt any necessary and appropriate parking regulations relating to the intersection of the Bigelow access drive and Green Landing Road.

(k) Fire Protection: The Project shall provide a loop in the waterline located in Green Landing Road so that there is no dead end in the water line system. A minimum of three (3) hydrants shall be located on the Property in such locations as approved by the Boothbay Fire Chief or his designee. The Project shall provide a fire lane around the entire perimeter of the main building and sufficient fire lanes and turnarounds on the site, all as approved by the Boothbay Fire Chief, to ensure that fire apparatus can adequately access all buildings on the Property. All buildings shall contain sprinklers as approved by the Boothbay Fire Chief or his designee.

(l) Open Space: Bigelow shall be responsible for improving and maintaining the public walking trails and the open space as shown on the sketch plan and as may be amended by a site plan approved by the Planning Board. Prior to the issuance of a Certificate of Occupancy, Bigelow shall deed to the Town a public recreational easement on and over the walking trails shown on a site plan approved by the Planning Board. Bigelow reserves the right to restrict the use of said easement to passive recreational activity and to prohibit the public's use of vehicles of any kind on said easement, which includes all motorized vehicles and mechanical vehicles, including but not limited to bicycles, rollerblades, skates, skateboards, carts, wagons, carriages or similar wheeled vehicles, except that wheelchairs or similar vehicles designed to accommodate disabled individuals are allowed if necessary for a disabled individual to use the easement. Bigelow also reserves the right to restrict use of said easement to certain hours and to restrict the use of amplified sound within said easement. The parties agree that any duty of care for use of the easement is governed by 14 M.R.S.A. § 159-A *et seq.* Due to the limited residential nature of the Marine Research and Educational Facility use (as well the open space and public access provided for hereunder), the Project shall not be considered a large scale use under the Zoning Ordinance, as may be amended from time to time.

(m) Site Plan: The property subject to this Agreement shall be developed and used only in accordance with a site plan approved by the Planning Board. That site plan may be amended from time to time pursuant to the provisions of the Zoning Ordinance. Any site plan amendment that involves any change to the definition of a Marine Research and Educational Facility or an increase in the maximum allowable footprint of the buildings will require an amendment to this Agreement.

(n) Timing of Construction: Bigelow's construction of the Project and its various phases is wholly dependent upon its ability to raise funds for this Project. However, once Bigelow is issued a building permit for any aspect of the Project, it shall have two (2) years from the date of issuance of said building permit to complete the work authorized by the building permit.



7. As part of the Agreement, the Board of Selectmen may, but is not obligated to, require a bond, escrow agreement, irrevocable letter of credit, or other surety in such amount as is approved by the Board of Selectmen as being reasonably necessary to ensure compliance with the conditions or restrictions required by the rezoning and, where necessary to ensure continued compliance, may require such surety to remain in effect after occupancy of the rezoned property. Such surety shall be posted before issuance of any building permit.

8. Bigelow shall provide advance notice in writing to the Town and on its website and in *The Boothbay Register* (or any successor newspaper of general circulation in the Town) of the dates of arrival and departure of any research or other seagoing vessel larger than 60 feet in length that may be visiting and/or docking at the Property.

9. Bigelow shall provide, subject to availability, public meeting space to Town administrative boards and committees at no charge to the Town; provided, however, that, at Bigelow's option, the Town shall be responsible for set up and clean up. Bigelow agrees to meet annually with the Town to review operations and issues.

10. (a) If the Property is hereafter determined to be or made subject to Maine property taxation, the Property shall be assessed and taxed in accordance with Maine law.

(b) If the Property is hereafter determined to be or made exempt from Maine property taxation or if Bigelow becomes entitled for any reason whatever to pay less than 100% of the property tax rate imposed on other property owners in the Town, Bigelow shall nevertheless pay to the Town, semiannually or on whatever basis real and personal property taxes are hereafter generally due in the Town, commencing with the 1st day of April following the issuance of the first Certificate of Occupancy relating to the Project, an amount as specified herein (the "PILOT amount"). The PILOT amount payable by Bigelow initially shall be equal to \$15,000 for the first July 1 – June 30 fiscal year (hereinafter the "Base Year") after issuance of the first Certificate of Occupancy relating to the Project. At the beginning of each fiscal year after the Base Year (each such date hereinafter called an "increase date"), the PILOT amount payable by Bigelow for that year shall be adjusted, effective for the fiscal year commencing on each such increase date to an amount equal to the greater of (i) the prior year's PILOT amount; (ii) an annual PILOT amount that bears the same proportion the annual PILOT amount in effect during the calendar month immediately preceding such increase date as the Consumer Price Index All Urban Consumers, U.S. City Average, All Items, Base Period 1982–84=100 (Not Seasonally Adjusted) as published by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter the "CPI Index") published for December of that fiscal year bears to such CPI Index as in effect for December of the preceding fiscal year; or (iii) the prior year's PILOT amount times the percentage increase in the Town's municipal budget (not including the school budget or county assessment) of that fiscal year from the prior fiscal year's municipal budget plus the prior year's PILOT amount. In the event that the United States Bureau of Labor Statistics shall discontinue the issuance of such CPI Index or change such CPI Index or not publish said CPI Index for the month in question, a reasonable conversion factor shall be applied or a reasonable equivalent substitute or successor index shall be used as determined by the Town for the computations set forth herein. Bigelow shall receive a dollar for

dollar credit off any payment under this subparagraph for any property taxes or service charges otherwise imposed by law and paid by Bigelow with respect to the Property.

Amounts payable under this subparagraph shall be in lieu of real estate and personal property taxes and in lieu of service charges, including any service charges that may be imposed under 36 M.R.S.A. § 652(1)(L) or any similar or successor law with respect to the Property for each applicable year. Such amounts shall be due and payable in the same proportions and on the same dates and shall be subject to the same interest charges, as applicable under law for non-payment of real and personal property taxes. In the event Bigelow shall fail to pay such amounts when due, the Town shall have all rights otherwise available to it under law including, without limitation, the right to file a civil action for collection of the same (the exclusive venue for which shall be Maine Superior Court (Lincoln County)), and Bigelow agrees to pay all costs of suit and collection including reasonable attorney's fees.

11. The provisions of this Agreement shall be deemed restrictions on the use of the Property except as this Agreement may be amended by future written agreement between the Town, acting through its legislative body, and Bigelow or its successors-in-interest without need for approval of any other party except as otherwise provided by law.

12. The provisions of this Agreement shall operate as an "overlay" zone with respect to the area shown on **Exhibit A**, and except as otherwise set forth in the aforesaid conditions, all other requirements of the underlying GR zoning district and SOZ shall apply.

13. The restrictions, provisions and conditions of this Agreement are an essential part of the rezoning, shall run with the Property, shall bind Bigelow, its successors-in-interest and assigns of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town and its Code Enforcement Officer.

14. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Zoning Ordinance and any applicable amendments thereto or replacement thereof.

15. The Town shall have the power to enforce all conditions and restrictions of this Agreement, both through an enforcement action pursuant to Section IV(I) of the Zoning Ordinance, as may be amended from time to time, and through legal action for specific performance of this Agreement. In the event that Bigelow or its successors or assigns fail to develop the project in accordance with this Agreement, or in the event of any other breach hereof, and such failure or breach continues for a period of thirty (30) days after written notice of such failure or breach from the Town to Bigelow, its successors and assigns, or in the event such failure or breach cannot reasonably be remedied or cured within such thirty (30) day period, if Bigelow, its successors or assigns, fails to commence a cure or to remedy such failure or breach within said thirty (30) day period and thereafter fails to diligently prosecute such cure or remedy to completion in a reasonable time, then this Agreement may be terminated by vote of its legislative body. In that event, the Property may then be used only for such uses as otherwise allowed by law.

John P. Anderson

WITNESS

John P. Anderson

WITNESS

John P. Anderson

WITNESS

Bonnie D. Lewis

WITNESS

Eric Hodgdon

WITNESS

Bonnie D. Lewis

**INHABITANTS OF THE  
TOWN OF BOOTHBAY**

Charles R. Cunningham

Chairman, Board of Selectmen  
Charles R. Cunningham

Charles R. Cunningham

Vice Chairman, Board of Selectmen

Robert L. Throckmorton

Selectman

Robert L. Throckmorton

Selectman

Eric Hodgdon

Selectman

**BIGELOW LABORATORY  
FOR OCEAN SCIENCES**

John P. Anderson

WITNESS

By: Louis E. Sage

Louis E. Sage

Its President, duly authorized

STATE OF MAINE  
Lincoln, ss.

May 24, 2006

Personally appeared the above named Charles R. Cunningham Chairman of the Board of Selectmen, and swore the foregoing instrument to be his free act and deed and the free act and deed of the Inhabitants of the Town of Boothbay.

Before me,

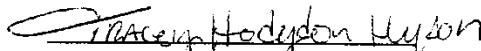
Notary Public/Attorney at Law  
Tracey Hodgdon Hysen, Notary Public  
State of Maine  
My Commission Expires 10/30/2006  
Print Name

STATE OF MAINE  
COUNTY OF Lincoln, ss.

May 24, 2006

Personally appeared before me the above-named Louis E. Sage in his capacity as President of Bigelow Laboratory for Ocean Sciences and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Bigelow Laboratory for Ocean Sciences.

Before me,

  
Notary Public/Attorney at Law  
Tracey Hodgdon Hysen, Notary Public  
State of Maine  
My Commission Expires 10/30/2006  
Print Name





## **FIRST AMENDMENT TO BIGELOW LABORATORY FOR OCEAN SCIENCES CONTRACT ZONING AGREEMENT**

This First Amendment to Bigelow Laboratory For Ocean Sciences Contract Zoning Agreement is made and entered into as of the 24<sup>th</sup> day of May, 2010, which shall be attached to the Bigelow Laboratory for Ocean Sciences Contract Zoning Agreement dated May 24, 2006 by and between the **INHABITANTS OF THE TOWN OF BOOTHBAY**, a municipal corporation existing under the laws of the State of Maine and located in Boothbay, County of Lincoln, State of Maine and having a mailing address of P.O. Box 106, Boothbay, ME 04537-0106 (the “Town”), and **BIGELOW LABORATORY FOR OCEAN SCIENCES**, a Maine non-profit corporation located in the County of Lincoln and State of Maine (“Bigelow”) with a mailing address of P.O. Box 475, West Boothbay Harbor, Maine 04575-0475.

WHEREAS, the Town and Bigelow are parties to a contract zone agreement dated May 24, 2006 (the “CZA”); and

WHEREAS, the parties desire to amend certain provisions of the CZA in order to take into consideration recent changes in Bigelow’s project plans.

NOW, THEREFORE, in consideration of the mutual conditions and covenants contained herein, the parties agree as follows:

**A.** Insert a new recital clause after the fifth recital clause of the CZA (which provides “WHEREAS, the Zoning Ordinance does not currently recognize . . .”) as follows:

WHEREAS, the Zoning Ordinance does not currently allow commercial docks, piers and wharves to exceed 12 feet in width;

**B.** The first sentence of Paragraph 2 of the CZA shall be amended by adding the phrase “dated February 3, 2010” after the first reference to Exhibit B as follows:

The Property shall be developed substantially in accordance with the sketch plan shown on ***Exhibit B*** dated February 3, 2010 (including the layout of the buildings, pedestrian and vehicular circulation plan, open space and landscaping); provided, however, that the Project shall be subject to site plan review and approval by the Planning Board and, if required by law, subdivision review and approval by the Planning Board.

**C.** The second sentence of Paragraph 2 of the CZA shall be amended by updating the Zoning Ordinance citation as follows:

Any site plan review applications shall be consistent with the sketch plan attached as Exhibit B and the application and approval requirements contained in Section 3 (Development and Use) of the Zoning Ordinance, as may be amended from time to time.

**D.** The second sentence of Paragraph 3 of the CZA shall be amended by updating the Zoning Ordinance citation as follows:

Any part of this Agreement related to activity in the SOZ is subject to review and approval of the Commissioner of the Maine Department of Environmental Protection pursuant to Section 2.4.1.1 of the Zoning Ordinance, as may be amended from time to time.

**E.** Paragraph 5 of the CZA shall be amended by replacing the paragraph in its entirety with the following:

5. The sketch plan shown on Exhibit B constitutes the entire Project that Bigelow intends to construct. While it is Bigelow's intent to construct all aspects of the educational and research campus as expeditiously as possible, the ultimate phasing, timing, and speed of construction of the Project is dependent upon Bigelow's ability to raise and receive funds.

The first phase of construction is planned to include the following:

- (a) A research and office building, which will be the first component of the main laboratory and research building, and its accessory structures (including, without limitation, a chiller/generator enclosure).
- (b) The access road from Ocean Point Road, the gated emergency access drive off Green Landing Road, wire utilities, treatment facility for sanitary waste, water line interconnection.

The remaining buildings and site work for the Project, which will be built in project components as funding becomes available, may include the following:

- (aa) Three additional wings of the main laboratory and research building, the total building footprint (including any footprint constructed under subparagraph (a) above) of which shall not exceed 50,000 square feet.



- (bb) A marine operations building at the head of the pier, the total building footprint of which shall not exceed 5,000 square feet.
- (cc) A seawater teaching laboratory and classroom building in the vicinity of the pier, set back a minimum of 75' from the mean high water line, the total building footprint of which shall not exceed 8,500 square feet.
- (dd) A conference/education center and administrative office building, which may be attached to the main laboratory and research building, the total building footprint of which shall not exceed 10,000 square feet.
- (ee) Visiting scientist housing consisting of 3 two-bedroom cottages and 3 three-bedroom cottages arranged in duplexes, the total building footprint of which shall not exceed 21,920 square feet, along with storage sheds/carports for the cottages, the total building footprint of which shall not exceed 2,800 square feet.
- (ff) A separate collaborative teaching and research center, the total building footprint of which shall not exceed 12,500 square feet.
- (gg) A dormitory building, the total building footprint of which shall not exceed 5,950 square feet.
- (hh) A boat storage and maintenance building, the total building footprint of which shall not exceed 5,000 square feet.
- (ii) Future program buildings, the total building footprint of which shall not bring the Project total to a footprint greater than 149,440 square feet.
- (jj) A research vessel pier to service ocean-going research vessels as well as smaller boats that are used by Bigelow as part of its program activities.
- (kk) All remaining site work, which may include parking lots, stormwater management facilities, an access road to the shorefront facilities, pedestrian trails and outdoor use areas.

**F.** Paragraph 6(c) of the CZA shall be amended by replacing the paragraph in its entirety with the following:

(c) Setbacks: Because the marine operations buildings is a functionally water dependent structure, it shall be permitted a zero foot setback from the upland edge of the coastal wetland of Farnham Cove and shall be permitted to encroach into said coastal wetland.

**G.** Paragraph 6(i) of the CZA shall be amended by adding a new second sentence as follows:

A minimum of two parking spaces shall be provided for and designated as public parking for recreational trail use purposes.

**H.** Paragraph 6(j) of the CZA shall be amended by adding the word “emergency” between the words “Bigelow” and “access” in the last sentence as follows:

The Board of Selectmen shall adopt any necessary and appropriate parking regulations relating to the intersection of the Bigelow emergency access drive and Green Landing Road.

**I.** The first sentence of Paragraph 6(k) of the CZA shall be amended by replacing the first sentence in its entirety with the following:

(k) Fire Protection: The Project shall provide a loop feed in the waterline located in Green Landing Road or a comparable connection that ties into the water line in School Street so that there is no dead end in the water line system.

**J.** Insert a new, additional sentence immediately after the second sentence of Paragraph 6(l) of the CZA as follows:

The easement deed into the Town will include a provision that allows Bigelow to subsequently relocate the public recreational easement, with the consent of the Town, through an amended easement deed recorded at the Lincoln County Registry of Deeds.

**K.** Paragraph 6(n) of the CZA shall be amended by replacing the paragraph in its entirety with the following:

(n) Timing of Construction: Bigelow’s construction of the Project and its various components is wholly dependent upon its ability to raise funds for this Project. However, once Bigelow is issued a building permit for any aspect of the Project, it shall have two (2) years from the date of issuance of said building permit to complete the work authorized by the building permit. One six (6) month extension of this time limit may be authorized by the Code Enforcement Officer, in writing, upon good cause shown by Bigelow, following the Code Enforcement Officer’s consultation with the Planning Board about the extension request at a public meeting.

**L.** Add a new Paragraph 6(o) as follows:

(o) Pier Width: Because the fixed pier requires access for truck-mounted cranes to load and off-load mobile scientific laboratories, the maximum allowable width of the permanent access way between the shoreline and the pier shall not exceed 24', and the maximum width of the fixed pier (narrowest dimension) shall not exceed 40'.

**M.** Replace Exhibit B of the CZA dated January 31, 2006 with Exhibit B dated February 3, 2010.

**N.** All provisions of the CZA are incorporated into this Amendment and are hereby modified or amended to conform to this Amendment but in all other respects are to be and shall continue in full force and effect.

**INHABITANTS OF  
THE TOWN OF BOOTHBAY**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
/s/  
Chairman, Board of Selectmen

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
/s/  
Vice Chairman, Board of Selectmen

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
/s/  
Selectmen

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
/s/  
Selectmen

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
/s/  
Selectmen

**BIGELOW LABORATORY  
FOR OCEAN SCIENCES**

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WITNESS

By: /s/  
Graham Shimmield  
Its Executive Directly, duly authorized

STATE OF MAINE

Lincoln, ss.

\_\_\_\_\_, 2010

Personally appeared the above named \_\_\_\_\_, Chairman of the Board of Selectmen, and swore the foregoing instrument to be his free act and deed and the free act and deed of the Inhabitants of the Town of Boothbay.

Before me,

/s/ \_\_\_\_\_  
Notary Public/Attorney at Law

\_\_\_\_\_  
Print Name

STATE OF MAINE

Lincoln, ss.

\_\_\_\_\_, 2010

Personally appeared the above named Graham Shimmield in his capacity as Executive Director of Bigelow Laboratory for Ocean Sciences and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Inhabitants of Bigelow Laboratory for Ocean Sciences.

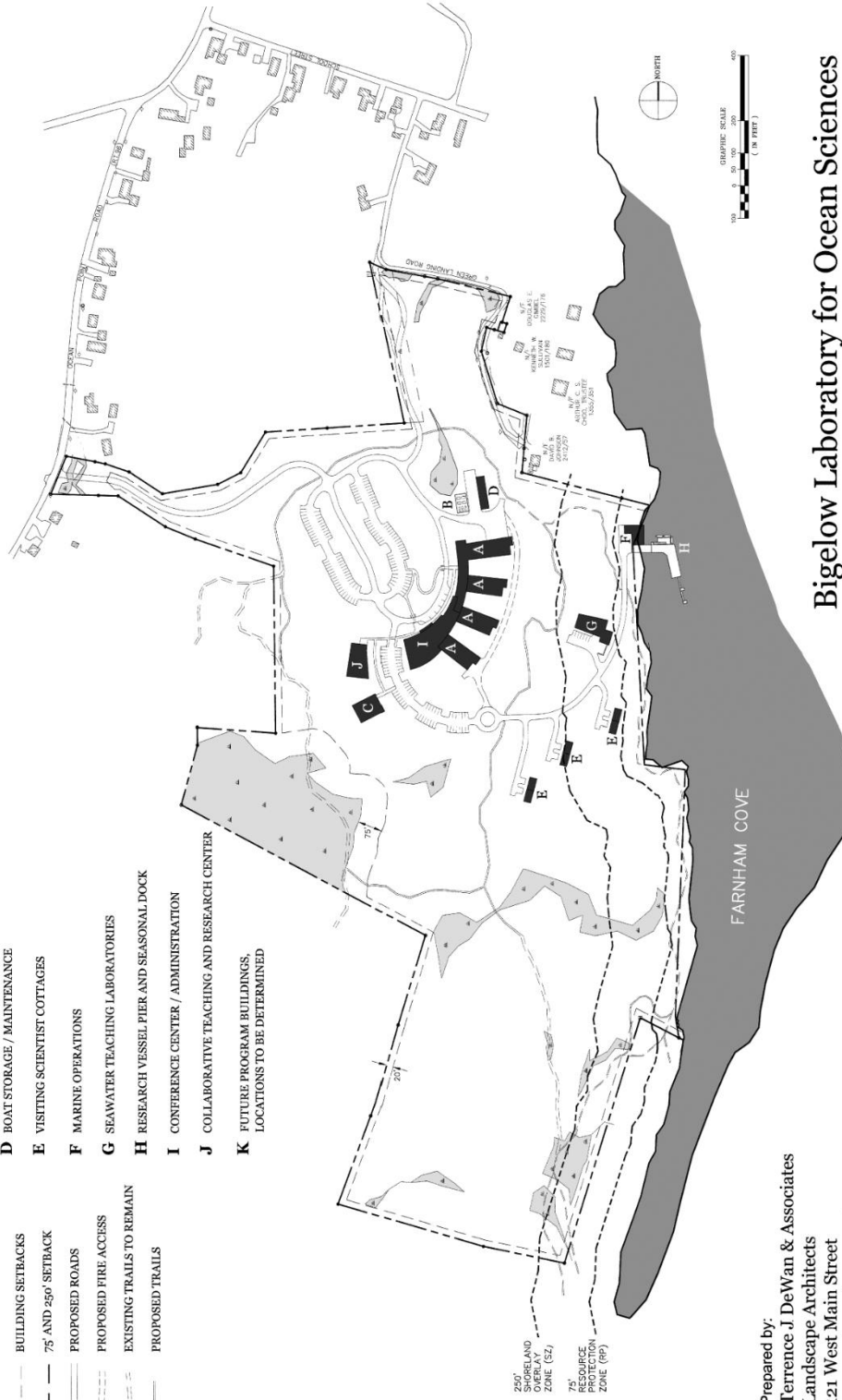
Before me,

/s/ \_\_\_\_\_  
Notary Public/Attorney at Law

\_\_\_\_\_  
Print Name

## LEGEND

- WETLANDS**  
 EXISTING BUILDINGS  
 PROPOSED BUILDINGS  
 PROPERTY LINE  
 BUILDING SETBACKS  
 75' AND 250' SETBACK  
 PROPOSED ROADS  
 PROPOSED FIRE ACCESS  
 EXISTING TRAILS TO REMAIN  
 PROPOSED TRAILS
- BUILDINGS**  
**A** MAIN LABORATORY AND RESEARCH BUILDING  
**B** CHILLER / GENERATOR ENCLOSURE  
**C** DORMITORY  
**D** BOAT STORAGE / MAINTENANCE  
**E** VISITING SCIENTIST COTTAGES  
**F** MARINE OPERATIONS  
**G** SEAWATER TEACHING LABORATORIES  
**H** RESEARCH VESSEL PIER AND SEASONAL DOCK  
**I** CONFERENCE CENTER / ADMINISTRATION  
**J** COLLABORATIVE TEACHING AND RESEARCH CENTER  
**K** FUTURE PROGRAM BUILDINGS, LOCATIONS TO BE DETERMINED



Prepared by:  
 Terrence J DeWan & Associates  
 Landscape Architects  
 121 West Main Street  
 Yarmouth, Maine 04096  
 Phone 207.846.0757 Fax 207.846.0675

Bigelow Laboratory for Ocean Sciences  
 February 3, 2010  
 Town of Boothbay, Maine

Contract Zone Exhibit B