

		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 impervious surface area	30%
<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%
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**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
<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	50 feet
<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 impervious 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

7.5.13.3.5	Maximum road setback	None
7.5.13.3.6	Minimum side property line setback	20 feet
7.5.13.3.7	Minimum rear property line setback	20 feet
7.5.13.3.8	Maximum building height	34 feet.
7.5.13.3.9	Maximum impervious surface area	20% of lot area or as approved by Planning Board in accordance with Sec. 7.5.13.4.3
7.5.13.3.10	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
7.5.13.3.11	Minimum shoreland setback	100 feet (See 7.5.13.4.1)
7.5.13.3.12	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	150 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 impervious surface area	20% of lot area or as approved by Planning Board in accordance with Sec. 7.5.14.4.3
<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)

7.5.15.3.1	Minimum developable lot area	80,000 square feet
7.5.15.3.2	Minimum net developable lot area per dwelling unit	80,000 square feet
7.5.15.3.3	Minimum lot width	150 feet
7.5.15.3.4	Minimum road setback	State - 50 feet Town – 33 feet Private way – 8 feet from the closest edge of the R-O-W
7.5.15.3.5	Maximum road setback	None
7.5.15.3.6	Minimum side property line setback	20 feet
7.5.15.3.7	Minimum rear property line setback	20 feet
7.5.15.3.8	Maximum building height	34 feet
7.5.15.3.9	Maximum impervious surface area	20% of lot area
7.5.15.3.10	Maximum area of lot that can be developed	20% of lot area
7.5.15.3.11	Minimum shoreland setback	75 feet
7.5.15.3.12	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	80,000 square feet
<b>7.5.16.3.3</b>	Minimum lot width	150 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 impervious 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	75 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



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.

**7.5.18.4.6.4.4.2** 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 6
- **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	BVMU	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 Apartment	C	C	C	C	C	C	C	C	C	N	C	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>



USE/ACTIVITY - DISTRICT	R	R-C	BVC	BVF	BVMU	EBV	SG	RMU	CC	MB	MC	WRP-27	WRP	WP	RP
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	N	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

USE/ACTIVITY/ DISTRICT	R	R-C	BVC	BVF	BVMU	EBV	SG	RMU	CC	MB	MC	WRP-27	WRP	RP
Automobile Service Station	N	N	N	N	N	N	N	N	PR	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>	PR	N
Business Services	N	N	PR <sup>4,11</sup>	PR	PR	PR	PR	PR	PR	C	PR <sup>17</sup>	PR	N	N
Campground	PR	N	N	N	N	PR <sup>10</sup>	PR	PR	PR	N	N	N	N	N
Car Wash	N	N	N	N	N	N	N	N	PR <sup>18</sup>	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
Construction and Property Management Services	N	N	N	PR	PR	PR <sup>10</sup>	PR	PR	PR	C	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
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
Flea Market/Tent Sale	N	N	C <sup>8</sup>	N	N	N	N	PR	PR	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
Gambling	N	N	N	N	N	N	N	N	N	PR	N	N	N	N
Home Occupation	C	C	C	C	C	C	C	C	C	N	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>	N
Hotel/Motel	N	N	N	PR	PR <sup>6</sup>	N	N	N	PR	N	PR	N	N	N

USE/ACTIVITY - DISTRICT	R	R-C	BVC	BVF	BVMU	EBV	SG	RMU	CC	MB	MC	WRP-27	WRP	WP	RP
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	PR <sup>10</sup>	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>

USE/ACTIVITY - DISTRICT	R	R-C	BVC	BVF	BVMU	EBV	SG	RMU	CC	MB	MC	WRP-27	WRP	RP	
Restaurant	PR <sup>2</sup>	N	PR	PR	PR <sup>6</sup>	PR <sup>4</sup> 11	PR	N	PR	PR	PR <sup>2</sup>	PR <sup>2,12</sup>	N	N	
Retail Business	N	N	PR	PR	PR	PR <sup>3</sup> 11	PR	N	PR	PR	PR <sup>2</sup>	PR <sup>2,12</sup>	N	N	
Retail Fuel Distributor	N	N	N	N	N	N	N	N	N	PR	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	
Sex Related Business	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	
Shopping Center	N	N	N	N	N	N	N	N	PR	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	
Storage Facility/Structure	N	N	N	N	PR	N	PR <sup>7,10</sup>	PR	N	C	N	N	N	N	
Transportation Terminal	N	N	N	N	N	N	N	N	PR	N	N	N	N	N	
Veterinary Hospital	N	N	N	PR	PR <sup>6</sup>	N	PR	PR	PR	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

USE/ACTIVITY - DISTRICT	R	R-C	BVC	BVF	BVMU	EBV	SG	RMU	CC	MB	MC	WRP-27	WRP	WP	RP
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

**INSTITUTIONAL USES**

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 <sup>17</sup>	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

USE/ACTIVITY - DISTRICT	R	R-C	BVC	BVF	BVMU	EBV	SG	RMU	CC	MB	MC	WRP-27	WRP	WP	RP
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	N	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	PR	PR	PR	PR	PR	PR	PR	PR	PR	C	PR	PR	PR	N	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:

<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.
- 8.3.8.4.4.4 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.

**8.3.9.9.2.5** 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.

**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 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 p.m. and 7:00 a.m.:

<b>Land Use District</b>	<b>Sound Pressure Level Limits Measured in dBA's</b>
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 Apartments** One accessory apartment shall be permitted on a lot having a one or two family residential dwelling.

**11.1.1** The owner(s) of the principal structure must reside in the principal structure or the accessory apartment.

**11.1.2** The number of occupants of the accessory apartment is limited to two adults.

**11.1.3** The accessory apartment shall contain a maximum of eight hundred (800) square feet of living space.

**11.1.3.1** For purposes of Section 11.1.3, “living space” means the total floor area designated for occupancy and exclusive use as an accessory apartment, expressed in square feet, measured from the apartment side of adjoining partitions and the exterior of outside walls.

**11.1.4** A lot must have a minimum of twenty thousand (20,000) square feet of area if connected to a municipal sewer district to be eligible for the addition of an accessory apartment on the same lot as an existing dwelling unit. The applicant shall have the burden to establish the lot area. The Code Enforcement Office or Planning Board may require the lot area be established by a survey signed and sealed by a Maine licensed land surveyor.

**11.1.5** In order for an accessory apartment to be added to a lot where wastewater is disposed of by other than connection to a municipal sewer district, the lot must have a minimum of forty thousand (40,000) square feet or comply with the requirements of the State Minimum Lot Size law whichever is larger. The applicant shall have the burden to establish the lot area. The Code Enforcement Officer or Planning Board may require the lot area be established by a survey signed and sealed by a Maine licensed land surveyor. The wastewater disposal system on the property in question shall be functioning properly at the time of application. In addition, the applicant must submit a new HHE-200 form as documentation that the existing system can support the addition of an accessory apartment. The HHE-200 form, after review and approval by the Local Plumbing Inspector, shall be recorded by the applicant at the Lincoln County Registry of Deeds at the same time that the Registration of Accessory Apartment form is recorded, with a copy of the HHE-200 form as recorded provided to the Code Enforcement Officer within ten (10) days of it being recorded. Failure to provide a copy of the HHE-200 form to the Code Enforcement Officer within ten (10) days of it being recorded shall void the approval of the accessory apartment.

**11.1.6** Two ways to enter/exit the accessory apartment 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** An accessory apartment that complies with the requirements of Section 11.1 shall not be considered a principal structure when calculating the required minimum lot area per principal structure.

**11.1.9** In the Shoreland Overlay Zone an accessory apartment shall be permitted only on one family residential dwelling lots.

## **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 five thousand (5,000) 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:

The Developable Area of the Parcel  
Minus

Fifteen percent (15%) of the Total Area of the Parcel  
Equals  
The Net Useable Area of the Parcel  
Divided by  
The Minimum Lot Size/Area Requirement per Unit/Lot  
Equals  
The Maximum Number of Lots/Units Allowed in an Open Space Subdivision

**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 collocation 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.

## **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

John P. Anderson  
WITNESS

**INHABITANTS OF THE  
TOWN OF BOOTHBAY**

Charles R. Cunningham  
Chairman, Board of Selectmen  
Charles R. Cunningham  
William E. Harris  
Vice Chairman, Board of Selectmen  
Alan Shrocks  
Selectman  
Eric Hodgdon  
Selectman  
Eric Hodgdon  
Selectman

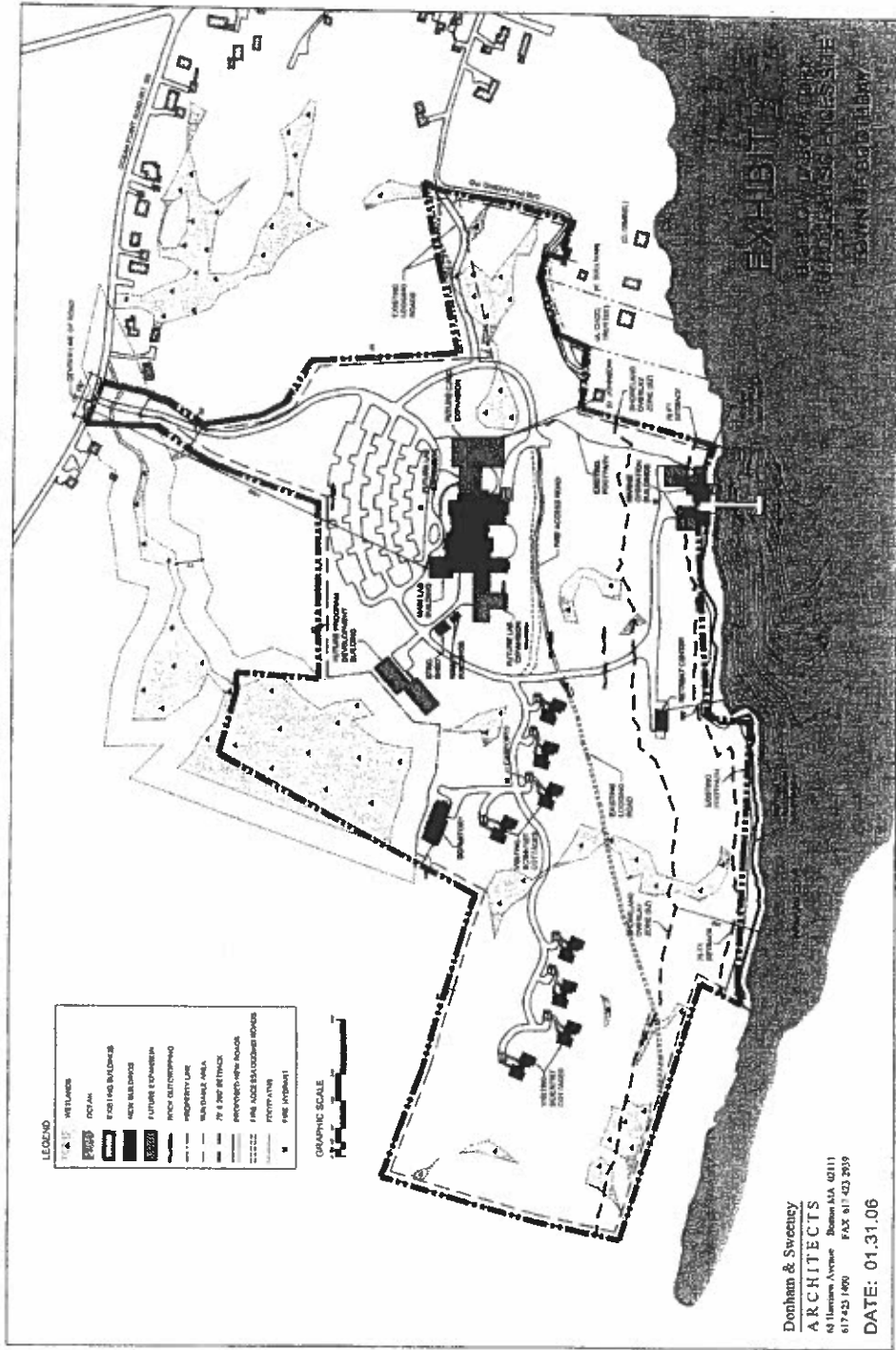
**BIGELOW LABORATORY  
FOR OCEAN SCIENCES**

By: Louis E. Sage  
Louis E. Sage  
Its President, duly authorized









**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**

_____	/s/ _____
WITNESS	Chairman, Board of Selectmen
_____	/s/ _____
WITNESS	Vice Chairman, Board of Selectmen
_____	/s/ _____
WITNESS	Selectmen
_____	/s/ _____
WITNESS	Selectmen
_____	/s/ _____
WITNESS	Selectmen

**BIGELOW LABORATORY  
FOR OCEAN SCIENCES**

_____	By: /s/ _____
WITNESS	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 Shimmiel 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

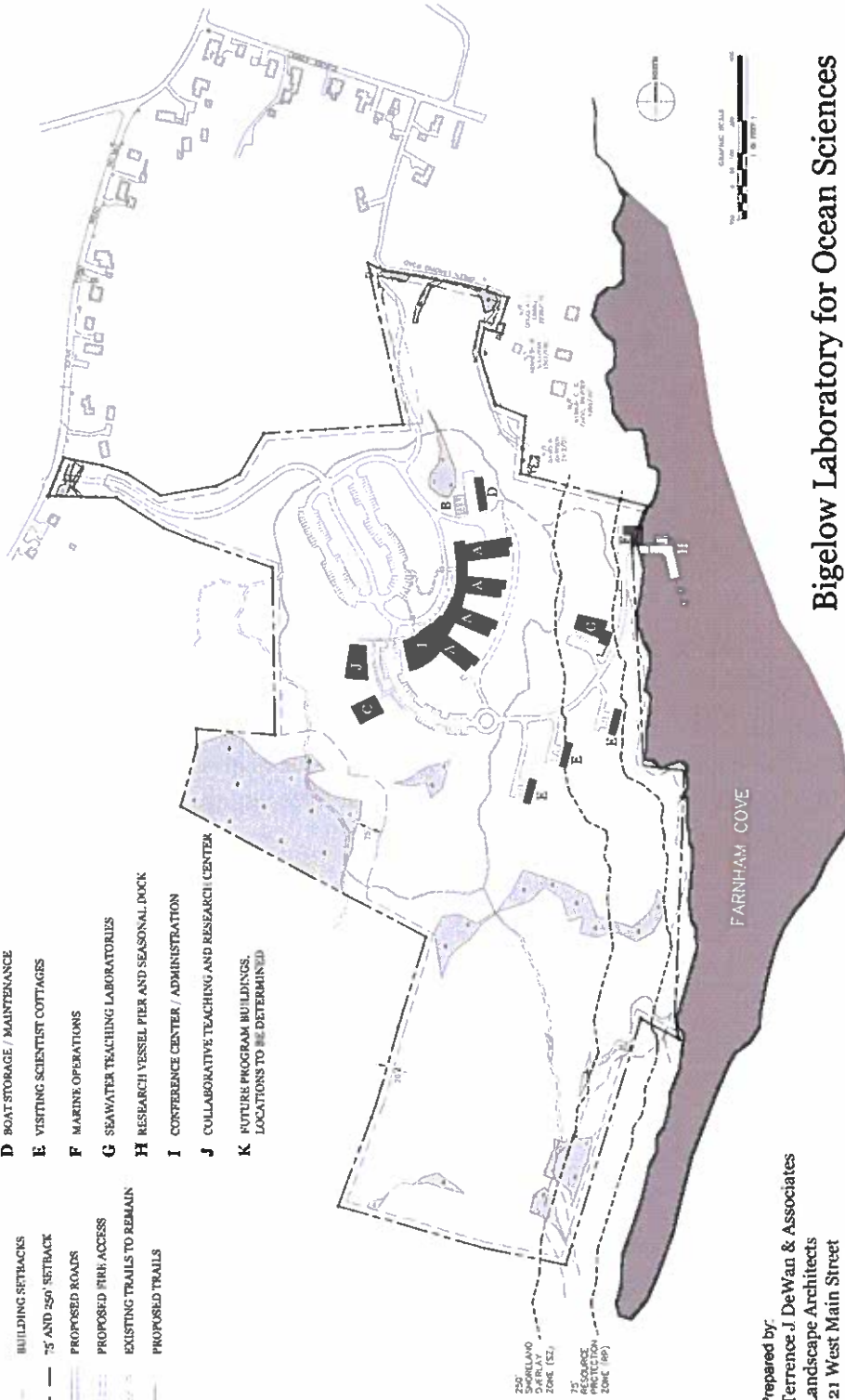
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Print Name

**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 207.846.9757 Fax 207.846.0675

**Bigelow Laboratory for Ocean Sciences**  
 February 3, 2010  
 Town of Boothbay, Maine

**Contract Zone Exhibit B**