

Revised January 8, 2020

## **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. Non-conformance 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**

**11.3.1** 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**

**11.4.1** A bed and breakfast shall conform to the following standards:

**11.4.1.1** The building housing the bed and breakfast shall have a residential character.

**11.4.1.2** The owner or manager of the bed and breakfast shall reside on the premises.

**11.4.1.3** Food and beverage service shall be limited to overnight guests.

**11.4.1.4** Food service shall not include dinners and shall be limited to breakfast, snacks, afternoon tea, and similar light food service.

**11.4.1.5** 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.

**11.4.1.6** 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 Title 7 M.R.S.A. §§ 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 “day camp” in which attendees do not sleep over night at the facility.

**11.6.3** The camp may provide “sleep over” facilities and programs for children provided that these are accessory and subordinate to its role as a day camp.

**11.6.4** The camp may be used for adult programs and activities provided that such use is accessory and subordinate to its role in serving attendees less than eighteen (18) years of age. Attendees at adult programs and activities may sleep at the facility but such use shall be limited to not more than seven (7) consecutive nights.

**11.6.5** Sleeping and living facilities may be provided for the staff of the camp but may be occupied only during periods when program attendees are present or when training, maintenance, or similar activities are occurring.

**11.6.6** The camp may be used for community activities and recreational programs as well as special events including activities that involve occasional overnight stays of less than five (5) consecutive nights.

**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. If public water and sewer are to be used the minimum area shall be a multiple of three (3) times the minimum lot area for the applicable district.

**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**

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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:

$$\frac{\begin{array}{l} \text{The Developable Area of the Parcel} \\ \text{Minus} \\ \text{Fifteen percent (15\% of the Total Area of the Parcel)} \\ \text{Equals} \\ \text{The Net Useable Area of the Parcel} \\ \text{Divided by} \\ \text{The Minimum Lot Size/Area Requirement per Unit/Lot} \\ \text{Equals} \\ \text{The Maximum Number of Lots/Units Allowed in an Open Space Subdivision} \end{array}}$$

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**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:

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**11.8.4.1.3.1** A lot 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.

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**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 Zone shall have less than required minimum lot area required by the Shoreland Zoning Ordinance. Lots that are located partially within the Shoreland Zone may be smaller than required by the Shoreland Zoning Ordinance if the principal building and the on-site sewage disposal system are located outside of the Shoreland Zone.

**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:

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**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.

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**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.

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**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.

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### **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.

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**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.**

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**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.**

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**11.8.4.3.2.2.5 Land that is within two hundred fifty (250) feet of a significant vernal pool.**

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**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**

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For purposes of this section, protected or common open space areas must comply with the following:

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**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;**

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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. A report of the 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

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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.

~~11.8.4.1.2 Lot Area The minimum area of a lot of record within the development shall be at least twenty thousand (20,000) square feet. In cluster developments with individual lot areas of twenty thousand (20,000) square feet, all dwelling units shall be connected to a common water supply and distribution system, either public or private, and a public sewer system or a central collection and treatment system.~~

**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 **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 **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

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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 **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 gross floor area of the principal building if located in the building nor seventy-five (75) percent of the gross 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 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 10:00 p.m. and 6:00 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 residence existing at the time of permit issuance (other than the dwelling on the same lot).

**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 § 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 § 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 16 feet for 1 to 5 lots, 18 feet for 6 to 9 lots and 20 feet for 10 or more lots. The right-of-way shall be ~~twenty-three (23) feet in width extend 8 feet beyond each side of the paved road.~~

**11.17.1.2 Individual Mobile Home Lots** ~~The minimum size of individual mobile home lots shall conform to the standards of 30-A § 4358.~~ Each individual mobile home lot shall be provided with:

- A. A continuing and potable supply of safe and sanitary water capable of furnishing a minimum of 125 gallons per day per mobile home lot;
- B. An adequate wastewater disposal means; and
- C. An adequate electrical power service of at least 100 amp capacity supplying at least 110 volts. All electrical outlets shall be weatherproof. No power line

**Commented [M1]:** The state has stanards for mobile home parks. These addresses lot sizes, road standards, etc. I've reference the state law and edited the existing rules to make them conform to the state requirements. I also deleted some antiquated provisions.

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shall be permitted to lie on the ground or to be suspended less than 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 10 feet by 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 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 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 ~~of a homemaker or office character~~ 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.A. §§ 52 & 56.

~~11.18.2.2 The setback requirement from registered farmland shall not apply to developments or uses exempted in 7 M.R.S.A. §§ 52 & 56.~~

accordance with the Table of Land Uses in 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 Bigelow Laboratory Contract Zone Districts.

**11.20.1.3** A new facility on public or private property in the Commercial Corridor District (CC), Rural Mixed-Use District (RMU), or Scenic Gateway District (SG).

**11.20.1.4** A new facility on public or private property in the Boothbay Village Mixed-Use District (BVMU), Residential District (R), Coastal Residential District (R-C), Water Reservoirs Protection Districts (WRP or WRP-27) or Well Head Protection Districts.

**11.20.1.5** A new facility on public or private property in the Boothbay Village Center District (BVC), Boothbay Village Fringe District (BVF), or East Boothbay Village District (EBV).

## **11.20.2 Height**

**11.20.2.1** Within the Residential, Coastal Residential, Water Reservoirs Protection, Village Mixed-Use, Well Head Protection, Boothbay Village Center, Boothbay Village Fringe, or East Boothbay Village Districts, the standard height limit for a new communications tower shall be one hundred thirty (130) feet as measured from the base of the tower to the highest point of the tower, including any attached receiving or transmitting antennas and devices. The Planning Board may allow the standard height limit to be exceeded by up to an additional twenty (20) feet, to a maximum of one hundred fifty (150) feet, if the increase in height enables the collocation of additional antennas that otherwise could not be accommodated on the tower and results in no material increase in the visual impacts of the tower as determined by the Planning Board. The Planning Board may also require the height of a tower be reduced down by as much as twenty (20) feet, to a maximum of one hundred ten (110) feet if the Planning Board finds

through review that reducing the tower height most effectively screens and mitigates the visual impacts of the tower from surrounding properties, abutters, roadways and public spaces. When considering a reduction in the maximum tower height, the Planning Board shall ensure that such a reduction still accommodates the colocation requirements of Section 11.23.8.

**11.20.2.2** Within the Manufacturing/Business, Marine Commercial, Commercial Corridor, Rural Mixed-Use, or Scenic Gateway Districts and the Bigelow Laboratory Contract Zone Districts, 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. painted in a sky tone above the top of surrounding trees and in an earth tone below tree-top level or stealth towers exhibiting concealed antennas or camouflaging treatment, such as mono-pole towers, as determined 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** 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.