

2015

Town of Boothbay Maine Ordinances

Boothbay, Me.

Follow this and additional works at: <https://digitalcommons.library.umaine.edu/towndocs>

Repository Citation

Boothbay, Me., "Town of Boothbay Maine Ordinances" (2015). *Maine Town Documents*. 6456.
<https://digitalcommons.library.umaine.edu/towndocs/6456>

This Plan is brought to you for free and open access by DigitalCommons@UMaine. It has been accepted for inclusion in Maine Town Documents by an authorized administrator of DigitalCommons@UMaine. For more information, please contact um.library.technical.services@maine.edu.

Administrative Code of the Town of Boothbay



Adopted May 2, 2005
Amended May 1, 2006
Amended May 7, 2007
Amended May 5, 2008
Amended May 2, 2011
Amended May 7, 2012

Town of Boothbay Administrative Code Table of Contents

I. General Ordinances

1. Introduction

- 1.1 Purpose
- 1.2 Construction
- 1.3 Amendment and/or Repeal
- 1.4 Enforcement
- 1.5 Severability
- 1.6 Definitions

2. Town Meeting

- 2.1 Annual Town Meetings
- 2.2 Special Town Meetings
- 2.3 Warrant
- 2.4 Petition for Warrant Article
- 2.5 Conduct of Meetings
- 2.6 Election Procedures
- 2.7 Referendum Questions

3. Town Offices and Officers

- 3.1 Elected Officials
- 3.2 Appointed Officials
- 3.3 Standing Town Boards and Committees

4. Conduct of Town Business

- 4.1 Fiscal Year
- 4.2 Licenses and Fees
- 4.3 Tax Acquired Property
- 4.4 Ethics and Conflicts of Interest
- 4.5 Purchasing Ordinance
- 4.6 General Welfare/Assistance

**Town of Boothbay Administrative Code
Table of Contents, cont.**

5. Public Order

- 5.1 Public Health & Safety Ordinance
 - 5.1.5 Licenses Generally
 - 5.1.6 Street Vendors and Street Goods Vendors
 - 5.1.7 Mobile Food Service Establishments
 - 5.1.8 Transient Sales
 - 5.1.9 Yard Sales
 - 5.1.10 Fireworks
 - 5.1.11 Obstruction of Public Ways
 - 5.1.12 Nudity
 - 5.1.13 Noise
- 5.2 Animal Control Ordinance
- 5.3 Public Streets and Traffic Ordinance
- 5.4 Emergency Services Ordinance
- 5.5 Addressing Ordinance
- 5.6 Firearms Ordinance
- 5.7 Public Works Ordinance
- 5.8 Solid Waste Ordinance
- 5.9 Utilities Ordinance
- 5.10 Use of Town Land Ordinance

6. Cable Television Ordinance

- 6.1 Purpose
- 6.2 Franchise Agreement Required
- 6.3 Application for Franchise Agreement
- 6.4 Issuance of Franchise Agreements
- 6.5 Establishment of New Multi-Channel Video and Cable Television Service
- 6.6 Installation of Service
- 6.7 Public Liability Insurance
- 6.8 Type and Scope of System
- 6.9 Hours of Operation
- 6.10 Non-Duplication of Programming
- 6.11 Annual Statement and Manager's Report to Selectmen
- 6.12 Free Service to the Town
- 6.13 Basic Service Tier Rates
- 6.14 Enforcement
- 6.15 Severability
- 6.16 Effective Date

7. [reserved for future use]

- II. Shellfish Conservation Ordinance**
- III. Harbor Ordinance with amendments from 5/1/2006**
- IV. Floodplain Management Ordinance from 5/5/2008**
- V. Zoning Ordinance from 5/5/2008**
- VI. Comprehensive Plan**

SECTION 1. INTRODUCTION

1.1 Purpose

These General Ordinances (Sections 1 through 7 of the Administrative Code) repeal and replace the Bylaws of the Town of Boothbay adopted March 6, 1950 and as amended.

1.2 Construction

These General Ordinances shall be liberally construed so as to give them effect consistent with the ordinary and reasonable meaning of their provisions and with the provisions of any general or special laws then in effect adopted by the State of Maine. No provisions of these General Ordinances shall be construed to limit the powers and duties of Municipal Officers, Boards and Committees imposed upon them by applicable provisions of the general or special laws of the State of Maine or the Boothbay Town Manager Plan. Unless the wording or context clearly dictates a different result, the provisions of any General Ordinance so far as they are the same as provisions of an Ordinance or Bylaw heretofore in force, shall be construed as a continuation thereof and not as a change thereof.

1.3 Amendment and/or Repeal

These General Ordinances shall not be construed to repeal any other existing Bylaws or Ordinances; provided, however, that where a provision of these General Ordinances conflict with or is inconsistent with another provision of these General Ordinances or any other ordinance, regulation or statute, the more restrictive provision shall control.

These General Ordinances may be amended or repealed at any Annual or Special Town Meeting by a majority vote of those present and voting at said Meeting, provided that an Article or Articles for that purpose shall have been inserted in the Warrant for said Meeting. The amendment or repeal of any General Ordinance shall not affect any act done, nor any right accrued or established, nor any action, suit or proceeding commenced or had in a civil case, nor affect any punishment, penalty or forfeiture incurred under such General Ordinance.

1.4 Enforcement

Any person who violates any provision of these General Ordinances shall be punished by fines as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

1.5 Severability

In the event any section, subsection or provision of any of these General Ordinances shall be held to be unconstitutional or invalid, such invalidity shall not affect the validity or constitutionality of any other section, subsection or provision.

1.6 Definitions

All definitions shall be consistent with State law as it may be amended from time to time.

1.6.1 Municipal Officer – A member of the Board of Selectmen, as defined in the Title 30-A of the Maine Revised Statutes Annotated (M.R.S.A.) § 2001(10).

1.6.2 Municipal Official – Any elected or appointed member of the municipal government, as defined in 30-A M.R.S.A. § 2001(11).

1.6.3 Town Manager Plan – Shall be as defined in 30-A M.R.S.A. § 2631.

SECTION 2. TOWN MEETINGS

2.1 ANNUAL TOWN MEETING: The Annual Town Meeting shall be held on the first Monday of May of each year at a time and place specified in the Warrant. All reports required by law to be printed shall be ready for distribution at least three (3) weeks before the annual meeting.

2.2 SPECIAL TOWN MEETINGS: Special Town Meetings may be called by a majority vote of the Board of Selectmen. If the Board of Selectmen unreasonably refuse to call a Town Meeting, a notary public may call a Town Meeting on the written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the Town at the last gubernatorial election, but in no case fewer than ten (10) voters.

2.3 WARRANT: All Town Meetings must be called and announced by publishing a copy of the Warrant, attested to by a Constable, in a locally published newspaper, or if there is no locally published newspaper, by posting the Warrant by means required by State law, at least two (2) weeks prior to the meeting date. The Warrant must state the time and place of the meeting, and the business to be acted upon at the meeting in distinct articles. The Warrant shall be posted, and a return on the Warrant shall be made, in accordance with State law. Except as otherwise provided by law, the warrant shall be prepared by the Board of Selectmen and must be signed by a majority of the Selectmen.

2.4 PETITION FOR WARRANT ARTICLE: On the written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the Town at the last gubernatorial election, but in no case fewer than ten (10) voters, the Board of Selectmen shall either insert a particular article in the next warrant issued or shall within sixty (60) days call a special Town Meeting for its consideration.

2.5 CONDUCT OF MEETINGS: Every voter registered to vote in the Town may vote at Town Meetings. All meetings shall be opened by the Town Clerk's calling for the election of a Moderator by written ballot, counting the votes for Moderator, and swearing in the Moderator. The Moderator shall preside over and supervise voting

at Town Meetings. No business may be acted upon at Town Meetings unless specifically included in the warrant.

2.6 ELECTIONS: At the Annual Town Meeting, elections by secret ballot shall be held for the offices of Moderator, Selectmen, Members of the Boothbay-Boothbay Harbor Community School District School Committee and Board of Trustees, Trustees of the Boothbay Region Water District, and Trustees of the Boothbay Region Cemetery District. A candidate for elected Town office must be a citizen of the United States, at least eighteen (18) years of age, and must be registered to vote in the Town.

Two (2) positions on the Board of Selectmen shall be up for election each year, with the exception that every three (3) years only one (1) position shall be up for election.

Terms for selectmen shall be three (3) years. The office of Selectman is governed by 30-A M.R.S.A. § 2526(3)(A).

One (1) position each on the Boothbay-Boothbay Harbor Community School District School Committee, the Boothbay-Boothbay Harbor Community School District Board of Trustees, the Boothbay Region Water District, and the Boothbay Region Cemetery District shall be up for election every year, for three (3) year terms.

Except as otherwise provided by law, nomination papers for Town office elections shall be available for forty (40) days before the filing deadline. Except as otherwise provided by law, the filing deadline is forty-five (45) days prior to election day.

Nomination papers must be signed by not less than twenty-five (25) voters registered in the Town of Boothbay.

2.7 REFERENDUM QUESTIONS: By order of the Board of Selectmen or on the written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the Town at the last gubernatorial election, but in no case fewer than ten (10) voters, the Board of Selectmen shall have a particular article placed on the next printed ballot or shall call a special Town Meeting for its consideration. The Board of Selectmen shall hold a public hearing on the subject of the article at least ten (10) days before the date for voting.

SECTION 3: TOWN OFFICIALS, BOARDS, and COMMITTEES

3.1 ELECTED OFFICIALS

3.1.1 Moderator. The Moderator shall be the official elected by a Town Meeting to serve as chairperson at the Town Meeting. The Moderator's term of office shall be only for the duration of a Town Meeting. The Moderator shall be elected by written ballot, as the first order of business at a Town Meeting. The duties of the Moderator shall include presiding over and supervising the voting at a Town Meeting and the conduct of the meeting itself.

3.1.2 Selectmen. Five (5) Selectmen shall serve at any one time, to be elected at large to three (3)-year terms. Two (2) Selectmen shall be elected each year except that every three (3) years only one (1) shall be elected.

The Selectmen are the executive authority of the Town. Responsibilities shall include, but not be limited to, management of the Town finances, protecting the health, safety and welfare of the residents in accordance with federal, state and local laws and regulations, management of public property and personnel, and management of contracts and relations with other State and local agencies and the public.

3.1.2.1 Overseers of the Poor. The Board of Selectmen shall serve as a board of Overseers of the Poor. The Overseers of the Poor shall determine the eligibility of needy residents of the Town for assistance in meeting basic living expenses, and implement such assistance. Their actions shall be directed by Section 4.6, General Welfare/Assistance Provision of this Administrative Code.

3.1.3 School Committee Members, Boothbay-Boothbay Harbor Community School District. Three (3) members of the Boothbay-Boothbay Harbor Community School District School Committee shall be elected to staggered three (3)-year terms, one (1) each year. Powers and duties of School Committee Members shall be as specified in Chapter 156, Maine Private and Special Laws of 1953, as may be amended from time to time.

3.1.4 Trustees, Boothbay-Boothbay Harbor Community School District. Three (3) members of the Boothbay-Boothbay Harbor Community School District Board of Trustees shall be elected to staggered three (3)-year terms, one (1) each year. Powers and duties of the Trustees shall be as specified in Chapter 156, Maine Private and Special Laws of 1953, as may be amended from time to time.

3.1.5 Trustees, Boothbay Region Water District. Three (3) members of the Boothbay Region Water District shall be elected to staggered three (3)-year terms. Two (2) Trustees shall be elected by the voters of Boothbay, one (1) shall be elected at large by the voters of Boothbay and Boothbay Harbor. Powers and duties of the Trustees shall be as specified in Chapter 15, Maine Private and Special Laws of 2001, as may be amended from time to time.

3.1.6 Trustees, Boothbay-Boothbay Harbor Cemetery District. Three members of the Boothbay-Boothbay Harbor Cemetery District Board of Trustees shall be elected to staggered three-year terms, one each year. Powers and duties of the Trustees shall be as specified in Chapter 156, Maine Private and Special Laws of 1939, as may be amended from time to time.

3.1.7 Unexpired Terms of Office. Vacancies in elected offices shall be filled as directed in 30-A M.R.S.A. §#2602 (vacancy in municipal office) and 20-A §#1653 (vacancy in CSD school committee). Any individual elected to fill a vacated, unexpired term of office shall be elected to serve only for the remainder of that term. They may then run for re-election as any incumbent might.

3.2 APPOINTED OFFICIALS

The following Town officials shall be appointed by the Board of Selectmen. Unless otherwise stated below, terms shall be one (1) year, from July 1 through June 30. To hold any of these offices, a person must be a resident of the Town of Boothbay for more than six (6) months of the calendar year, at least eighteen (18) years of age, a registered voter in the Town of Boothbay, and a citizen of the United States. The residency requirement does not apply to Appointed Officials who are employees of the Town.

3.2.1 Animal Control Officer. Animal Control Officers must be State-certified and may not have been convicted of a criminal violation under Title 17, Chapter 42 of the M.R.S.A., or adjudicated of a civil violation under Title 7, Chapter 739 of the M.R.S.A. Animal Control Officers' duties shall include controlling domesticated and undomesticated animals that are a cause of complaint in the community, or that pose a threat to public health or safety. Animal Control Officers shall enforce the terms of the Animal Control Ordinance, Section 5.2 of these General Ordinances.

3.2.2 Assessor. The Assessor must be State-certified. The Assessor shall plan and administer the assessment/appraisal system for the Town in maintaining current property valuation through visitation, data collection, and computer analysis. The Assessor shall appraise residential, commercial, agricultural, and industrial properties; special rights and interests; personal property; and public utility equipment and properties. The Assessor shall maintain and oversee the maintenance of official maps, transfers, and other records maintained in the assessment office. The Assessor shall make and enter computation valuations and other data in valuation commitment books, and determine the valuations to be placed on new, renovated, and existing property based on changing market value. The Assessor shall prepare and administer a department budget, and assist other Town departments with tax related questions.

3.2.3 Building Inspector. The Building Inspector must be skilled in the construction of buildings. The Building Inspector's duties are to issue building permits in accordance with the Town's ordinances regulating building construction, alteration, demolition or improvement; inspect all new buildings under construction or in the process of being repaired to see that all proper safeguards are used against the catching or spreading of fires, that the chimneys and flues are made safe and that the proper cutoffs are placed between the timbers in the walls and floorings where fire would be likely to spread and that all applicable codes have been followed; issue occupancy permits to allow the occupancy of new buildings provided such buildings conform to all applicable codes; withhold building permits from proposed construction in accordance with local ordinances and State and federal statutes; and other duties as expressly provided by ordinance or statute.

3.2.4 Code Enforcement Officer. The Code Enforcement Officer must be State-certified. The Code Enforcement Officer shall be responsible for enforcing shore-land zoning law and all ordinances related to Town zoning. The Code Enforcement Officer shall enforce State and local subdivision laws and regulations; site plan review requirements; the local floodplain management ordinance; State laws regarding junkyard and automobile graveyard licensing, miscellaneous nuisances, and accessibility for persons with disabilities; as well as any other codes falling under the Code Enforcement Officer's jurisdiction by ordinance or statute.

3.2.5 Constables. Constables are appointed annually by the Board of Selectmen and shall have the powers of a police officer as defined by State law, with the exception that their certificates of appointment shall state whether or not each Constable is allowed to carry a weapon.

3.2.6 Election (Ballot) Clerks. Election Clerks shall be appointed for two (2) year terms to serve at state, county and federal elections. For Town elections, Election Clerks shall be appointed for each election. Election Clerks shall assist in the conduct of elections to ensure that all applicable laws are followed. A minimum of two (2) Election Clerks shall be appointed. An immediate family member of a candidate may not be appointed as Election Clerk.

3.2.7 Fire Chief. The Fire Chief shall be responsible for the direction and control of all firefighters in the performance of firefighting operations, and for the maintenance of all fire equipment and buildings and shall otherwise serve as directed by the Emergency Services Ordinance, Section 5.4 of these General Ordinances.

3.2.7.1 Assistant Fire Chief. Two (2) Assistant Fire Chiefs shall be appointed, and shall carry out all duties of the Fire Chief in the Fire Chief's absence.

3.2.7.2 Emergency Management/Preparedness Director. The Emergency Management/Preparedness Director shall be responsible for Town-wide disaster preparedness and disaster response. S/he shall serve as directed by the Emergency Services Ordinance, Section 5.4 of these General Ordinances.

3.2.8 Forest Fire Warden. The Forest Fire Warden is appointed by the Director of the Maine Bureau of Forestry and must be the Town Fire Chief, if practicable. The Board of Selectmen must approve the appointment if someone other than the Town Fire Chief is appointed. The Forest Fire Warden shall be responsible for implementing programs to prevent forest fires and shall take immediate action to control any unauthorized forest fires, employing assistance when required.

3.2.9 Harbor Master. The Harbor Master shall oversee permitting of moorings and other structures in Town waters. The Harbor Master shall oversee the general

operation of the waters of the Town, including mooring plans and designated channels, and shall enforce the watercraft laws of the State and the Harbor Ordinance.

3.2.9.1 Deputy Harbor Masters. There shall be six (6) Deputy Harbor Masters appointed to oversee specific portions of the Town's waterways in accordance with State law and the Harbor Ordinance.

3.2.10 Health Officer. The Health Officer shall report to the Maine Department of Human Services (DHS) facts that relate to communicable diseases occurring in the Town; receive and evaluate complaints concerning nuisances posing a potential public health threat; inspect premises, with owner or person-in-possession consent or court-ordered warrant, where conditions posing a public health threat are known or believed to exist; order the suppression or removal of any conditions posing a threat to the public health after inspection and consultation with the DHS; and order removal of sources of filth as defined in State law. The Health Officer shall keep an accurate record of all proceedings, actions and transactions performed by the office, as required by State law.

3.2.11 Plumbing Inspector. The Plumbing Inspector must be State-certified and may not approve his/her own work or the work of an employer or employee, in which case the State Plumbing Inspector shall act. The Plumbing Inspector shall inspect all plumbing that requires permits, to ensure compliance with State rules and Town ordinances and investigate all construction or work covered by those rules and ordinances; condemn and reject all work done or being done or material used or being used that does not comply with State rules and Town ordinances, and order changes necessary to obtain compliance; issue a certificate of approval for any work that the Inspector has approved; keep an accurate account of all fees collected and transfer those fees to the Town Treasurer; keep a complete record of all essential transactions of the office; investigate complaints of alleged violations relating to plumbing or subsurface waste water disposal and take appropriate actions as specified by law; issue permits, when appropriate, before a seasonal dwelling can be converted to a year round dwelling in the shoreland zone if the disposal system is located within the shore-land zone; inspect shoreland zone subsurface systems, when requested by an owner who is going to sell, to determine if the system has malfunctioned within 180 days of transfer of that property; and submit an activity report by February 1 each year to the Town and DHS.

3.2.12 Public Works Foreman. The Public Works Foreman shall oversee all operations of the Public Works Department and maintenance of Public Works equipment and supplies. His/her duties shall be as outlined in the Public Works Ordinance, Section 5.7 of these General Ordinances.

3.2.13 Registrar of Voters. The Registrar of Voters may not hold or be a candidate for any State or county office or be an officer of any political party committee. The

Registrar of Voters shall be appointed for a term of two years; the appointment shall be made by January 1 of each odd-numbered year. The Registrar of Voters shall be responsible for maintaining a complete up to date list of persons registered to vote in the Town, assisting citizens in registering to vote, and verifying voter registration for other Town officials or departments.

3.2.14 Road Commissioner. The Road Commissioner is in charge of the repair and maintenance of all public ways within the Town, acting in accordance with general policies or guidelines determined by the Board of Selectmen. Road Commissioner duties are further defined in Section 5.3, Public Streets and Traffic Ordinance, and Section 5.7, Public Works Ordinance, of these General Ordinances.

3.2.15 Shellfish Warden. The Shellfish Warden must be State-certified. The Shellfish Warden shall be responsible for enforcing all State laws and local ordinances related to shellfish, including but not limited to licensing, site closings, size limits, and catch limits.

3.2.16 Tax Collector. The Tax Collector shall complete all tax collections of each tax commitment committed to the Tax Collector by the Assessor. The Tax Collector shall deposit all property and excise tax receipts with the Town Treasurer at least on a monthly basis and submit an accounting to the Board of Selectmen at least every two months.

3.2.16.1 Deputy Tax Collector. The Deputy Tax Collector shall assist the Tax Collector in the performance of the Tax Collector's duties.

3.2.16.2 Excise Tax Collector. The Excise Tax Collector shall be responsible for collecting excise taxes before vehicles or boats are registered to operate on the public ways or water bodies of the State. The Excise Tax Collector shall make monthly deposits of excise tax money to the Town Treasurer and submit an accounting to the Board of Selectmen at least every two months.

3.2.17 Town Clerk. The Town Clerk shall be responsible for maintaining, preserving, and providing access to Town records, including but not limited to vital statistics such as births, deaths, and marriages, appointments to Town offices, boards and committees, decisions of boards, licenses, registrations, commercial filings, election results, Town Meeting warrants, Town Meeting notes, and ordinances. The Town Clerk shall be responsible for conducting all elections in the Town.

3.2.18 Town Manager. Except as otherwise provided by law, the Town Manager shall be responsible for the coordination of all aspects of the administration of the Town. The Town Manager shall be responsible for the appointment of all department heads, subject to the approval of the Board of Selectmen, and, through the department heads, all municipal employees; the preparation of the

municipal budget for approval at Town Meeting; the administration of that budget once adopted; the regulation of departmental spending; the development and execution of an administrative plan for governmental activity; and the duties belonging to any other municipal office to which the Town Manager has specifically been appointed by the Board of Selectmen and separately sworn.

3.2.19 Treasurer. The Treasurer shall receive and record all revenues due the Town and make necessary disbursements upon authorization by the Board of Selectmen. The Treasurer shall be responsible for keeping the Town's financial accounts in accordance with generally accepted principles of municipal accounting. The Treasurer shall present clear financial information to the voters, primarily through the Town report, and to the Board of Selectmen so that the Board of Selectmen can make informed decisions, particularly with regard to municipal borrowing and investment. The Treasurer is also responsible for accepting tax warrants from the State and county governments and making sure they are promptly paid.

3.2.19.1 Deputy Treasurer. The Deputy Treasurer shall assist the Treasurer in the performance of the Treasurer's duties.

3.3 STANDING TOWN BOARDS and COMMITTEES

The following standing Town committees and boards shall be implemented. Unless otherwise specified below, committee and board members are appointed by the Board of Selectmen for staggered terms of three (3) years, from July 1 through June 30. To hold any of these positions, a person must be a resident of the Town of Boothbay for more than six (6) months of the calendar year, at least eighteen (18) years of age, a registered voter in the Town of Boothbay when appointed and while serving, and a citizen of the United States.

All boards and committees shall keep records of their proceedings.

Appointments and dismissals shall be made in accordance with Town's Policy on Administrative/Appointed Boards and Committees, as such policy is established by order of the Board of Selectmen and amended by the Board of Selectmen from time to time. There shall be no limit on the number of terms a board or committee member may serve, except as otherwise provided by law.

No person may serve on more than one of the following committees or boards at the same time: Town Board of Appeals, Town Board of Assessment Review, Town Planning Board, Town Port Committee, Boothbay Region Refuse Disposal District, Shellfish Committee.

3.3.1 Board of Appeals. The Board of Appeals shall consist of five (5) full members and two (2) alternate members. The Board shall hear and decide administrative appeals, interpretation appeals, and requests for variances filed in connection with decisions made under the Zoning Ordinance. The Board shall have jurisdiction over appeals filed under State law relating to special amusement permits (28-A M.R.S.A. § 1054) and appeals regarding whether a particular piece of farmland is eligible to be registered for protection from inconsistent

development and requests for variances to allow inconsistent development to occur on land adjacent to a registered farmland parcel.

3.3.2 Board of Assessment Review. The Board of Assessment Review shall consist of three (3) full members and two (2) alternate members. The Board shall hear and decide all appeals from the refusal of the Assessor or Board of Selectmen to make property tax abatements. The Board may take such evidence and testimony as it deems necessary and may grant such abatements as it thinks proper. The Board's decisions may be appealed in accordance with 36 M.R.S.A. § 843.

3.3.3 Administrative Code Review Committee. The Administrative Code Review Committee shall consist of not fewer than five (5) full members. The committee shall, on an ongoing basis, review all of the General Ordinances for consistency, relevancy, comprehensiveness and legality, and make recommendations to the Board of Selectmen for revisions, additions and deletions. The Committee shall oversee the production of a printed document listing all ordinances of the Town.

3.3.4 Planning Board. The Planning Board shall consist of five (5) full members and two (2) alternate members. The Board shall perform such duties and exercise such powers as are provided by the Zoning Ordinance and State law.

3.3.5 Port Committee. The Port Committee shall consist of seven (7) regular members, none of whom shall be the Harbor Master or a Deputy Harbor Master. Any applicable term limits shall be as specified in the Harbor Ordinance. The Port Committee shall be responsible for overseeing harbor use regulations and mooring administration as specified in the Harbor Ordinance.

3.4 Ad-Hoc Committees. In addition to Standing Town Boards and Committees, the Board of Selectmen may, from time to time, establish (or request Town Meeting to establish) and define a variety of appointed boards to assist in carrying out the work of the Town. Appointed boards may also be established as allowed by law.

SECTION 4: CONDUCT OF TOWN BUSINESS

4.1 Fiscal Year: The Town's fiscal year shall commence July 1 and shall close annually on the last day in June. The Board of Selectmen shall make all recommendations for municipal spending at the annual Town Meeting based upon the following:

4.1.1 The report of the Auditors for the period ending June 30 of the preceding year;

4.1.2 Actual income and disbursements for the current fiscal year to date (July 1 to the end of the month preceding the town meeting); and

4.1.3 Their best judgment for projected expenses.

4.2 Licenses and Fees: Except as otherwise provided by law, licenses and fees shall be established by the Board of Selectmen, which shall make and maintain a current schedule of such licenses and fees available, as updated on an annual basis, to the general public.

4.3 Tax Acquired Property: The Board of Selectmen shall have authority to deal with tax acquired property in any of the following ways:

4.3.1 The Board of Selectman may retain such property but only for town or public use.

4.3.2 All property which the selectmen in their discretion decide is not needed for town or public use shall be disposed of as follows:

4.3.2.1 The Board of Selectmen shall send notice via regular and certified mail to the immediately prior owner or owners of any impending sale at least 45 days prior to said sale or by March 15, whichever date shall first occur. Said prior owner or owners may redeem the property at any time within 30 days immediately following such notification with full payment of all outstanding taxes including a just value for the current year not yet assessed, along with cost of lien release, interest and all other costs including but not limited to notice and insurance. The Selectmen in their discretion, may determine a payment plan for such redemption by a prior owner or owners.

Providing only that all back and current taxes, interest and lien charges shall have been paid in full, the Selectmen shall execute and deliver a quit-claim deed from the Town to any owner of property in order to clear the title to that property from any undischarged tax lien.

4.3.2.2 Any property not redeemed in accordance with 4.3.2.1 above shall be disposed of as follows:

The Board of Selectmen shall solicit bids for the purchase of any such tax acquired property not needed for town or public use and not redeemed by the former owner or owners in accordance with 4.3.2.1 above and shall receive, open and read aloud at a public meeting all bids so received. Such reading to be the first week of June following foreclosure of the tax lien.”

4.3.2.3 The Board of Selectmen shall cause a public notice of impending public sale of tax-acquired property to be posted within the Town office, the post office, and to be advertised for two successive weeks in a newspaper with local/regional circulation, the last notice to be published at least seven (7) days prior to the advertised sale date.

4.3.2.4 The Board of Selectmen shall require the following for proper submission:

4.3.2.4.1 A bid sheet containing a full description of the property being bid upon, and the bid price in U. S. currency.

4.3.2.4.2 A bank check or money order, in an amount not less than 10% of the bid price, shall be included as a deposit on the bid. Failure to submit a deposit shall cause the bid to be automatically rejected.

4.3.2.5 The Board of Selectmen shall require that those bid items cited in Section 4.3.2.4, be sealed in a single plain envelope marked only "Tax-Acquired Property Bid" on the exterior and either be hand delivered to the Town, or, if mailed, to be enclosed within a second envelope addressed to the Board of Selectmen, Town of Boothbay, P.O. Box 106, Boothbay Maine, 04537.

4.3.2.6 The Board of Selectmen shall retain the right to accept or reject any and all bids submitted, and shall cause the same disclaimer to be noted in any public notice soliciting bids in accordance with this ordinance. Should the Board of Selectmen reject all bids, the property may be offered again for public sale without notice to any prior owner or owners.

4.3.2.7 The Board of Selectmen shall notify all bidders as to the outcome, shall retain the submitted bid price deposit of any successful bidder as a credit to payment, and shall return all other submitted deposits.

4.3.2.8 The Board of Selectmen shall, except in exigent circumstances, require payment in full from any successful bidder within thirty (30) calendar days following date when bids are opened and read aloud. Should the Board of Selectmen decree that exigent circumstances exist, a one-time-only extension of twenty (20) days may be granted for full payment. Should the bidder fail to pay the full balance, the Town shall retain the bid price deposit and title to the proffered property.

4.3.2.9 The Board of Selectmen shall issue only a Quit-claim Deed to convey title to tax-acquired property.

4.3.2.10 The successful bidder shall be responsible for the removal of any and all occupants of purchased tax-acquired property and shall, in writing, forever indemnify and save harmless the Town from any and all claims arising out of the sale of the tax-acquired property brought by the occupants of the purchased property, their heirs, successors and assigns.

4.4 ETHICS AND CONFLICTS OF INTEREST: The business and affairs of the Town of Boothbay must be conducted openly and in a manner that is above reproach. There cannot be any suggestion of favoritism, cronyism, or self-dealing in any of the actions of the Town or its Municipal Officers, Municipal Officials, or Employees, including without limitation, action pertaining to hiring and employment practices, purchasing of goods and services, raising of revenues, and providing of goods and services.

For the Town to carry out its operations effectively, it is necessary that it enjoy the confidence of the citizens of the Town and others in the integrity of its operations. In particular, it is necessary that no person will benefit from actions of the Town by reason of having, directly or indirectly, a position of influence in the Town.

Section 4.4 shall serve as a guide to the conduct of the Town's Municipal Officers, Municipal Officials, and Employees. There is not always a bright line that, when crossed, will constitute a violation of this section. It is expected that individuals will not attempt to come as close as possible to the limits in this Section 4.4 without crossing it. On the contrary, it is expected that individuals will try to avoid conduct that falls within the broad definitions of prohibited conduct.

Section 4.4 does not replace the laws, rules, and regulations that govern the business and affairs of municipalities, quasi-municipal corporations, and other bodies politic and corporate within the State of Maine generally, but is a supplement to those laws, rules, and regulations. In the event of a conflict between the provisions of such laws, rules, and regulations on the one hand and the provisions of this Section on the other, the more restrictive provisions shall govern unless prohibited by applicable law.

Section 4.4 does not supersede or replace any other applicable policies, laws, rules, and regulations that address issues of discrimination, harassment, and similar undesirable conduct.

4.4.0.1 Definitions

4.4.0.1.1 Responsible Person: a Municipal Officer, Municipal Official, or Employee of the Town.

4.4.0.1.2 Benefit: A gain, whether financial or otherwise, to a Responsible Person. A Responsible Person shall be deemed to realize a Benefit if a gain is realized by a member of the family of a Responsible Person or his business associate or any firm in which the Responsible Person has, directly or indirectly, an ownership interest of at least 10 percent. "Benefit" does not include a reasonable compensation package to an Employee arrived at in the ordinary course of business.

4.4.0.1.3 Conflict of Interest: A conflict between the interests of the Town and the interests of a Responsible Person. A Conflict of Interest arises when a Responsible Person may realize a Benefit from a decision on behalf of the Town that he could make or influence, or from the use of information concerning the business and affairs of the Town.

4.4.0.1.4 Contractor: any vendor, supplier, consultant, or contractor, that may provide goods or services to the Town.

4.4.1 Standards of Conduct: Each Responsible Person shall take reasonable steps to avoid a Conflict of Interest or the appearance of a Conflict of Interest.

Illustrations of conduct prohibited by this Policy are as follows:

4.4.1.1 A Responsible Person shall not engage in self-dealing or obtaining any Benefit directly or indirectly for himself, his family, or his friends. A Responsible Person shall hold in strict confidence all information concerning the business and affairs of the Town gained by reason of his association with the Town, and shall not use such information to assist in any way any Contractor in competition with any other Contractor seeking to furnish goods or services to the Town.

4.4.1.2 A Responsible Person shall not take part in any decision (or any discussion or deliberation concerning such decision) concerning the obtaining of goods or services by the Town from any Contractor if such Responsible Person is or will be employed by, or be a subcontractor to, or is an officer or director or trustee of, or owns or controls the Contractor, all during the time that such Contractor is to furnish such goods or services. For purposes of this policy, ownership (individually or together with family members, partners, and business associates) of at least 10 percent of the Contractor is deemed to constitute control of the Contractor.

4.4.1.3 A Responsible Person shall not accept any gift of goods or services of more than twenty-five dollars in value from any Contractor that wishes to do business with, or that is doing business with the Town.

4.4.1.4 No Responsible Person shall attempt to have any member of his family, or person with whom he has a personal or business relationship, to be hired as an employee of the Town, except in accordance with the hiring practices and procedures established by the Town, or with the prior approval of the Board of Selectmen. Such approval, together with the reasons for granting such approval, shall be in writing and filed with the minutes of the meeting of the Board of Selectmen at which such approval was granted. Nepotism in its broadest sense is prohibited.

4.4.2.1 Administration

4.4.2.1.1 If a question arises as to whether a course of action by a Responsible Person constitutes a violation of this Policy, the question shall be referred to the Board of Selectmen; provided that if the Responsible Person is a Selectman, that person shall not participate in the actions of the Board in considering the question. The Board of Selectmen shall gather information which it deems necessary to reach a decision, and shall confer with the Responsible Person in question. Such Responsible Person shall either abide by the findings and recommendations of the Board of Selectmen or resign his position.

4.4.2.1.2 A Responsible Person shall disclose to the Board of Selectmen any instance of a Conflict of Interest or the appearance of a Conflict of Interest prior to action by the Town on the matter to which such Conflict of Interest pertains, and such disclosure shall be included in the minutes of the meetings of the Board of Selectmen.

4.4.2.1.3 To the extent permitted by applicable laws, the Board of Selectmen shall have authority to cause the removal from his position with the Town, or otherwise discipline, any Responsible Person who fails to comply with the provisions of this Policy.

4.4.2.1.4 The Board of Selectmen shall maintain written records of its proceedings under this Section 4.

4.4.2.1.5 Annually, all Responsible Persons shall be given a copy of this ordinance, and shall acknowledge in writing that they have received a copy of this Policy and that they agree to the provisions of this Policy. Such acknowledgements shall be filed with the records of the Town Clerk.

4.4.3 Exceptions: It is acknowledged that the Town and the Boothbay region has a small population and that there might be occasions when the interests of the Town will be best served in engaging a Contractor where such engagement might result in a Benefit to a Responsible Person. Such engagement may be undertaken under the following provisions:

4.4.3.1 The Board of Selectmen shall review the circumstances of the proposed course of action; provided that if the Responsible Person is a Selectman, he shall not participate in the deliberations or decision of the Board of Selectmen except to provide information as to the nature of the proposed engagement.

4.4.3.2 The Board of Selectmen shall, at the request of any Selectman, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

4.4.3.3 After exercising due diligence, the Board of Selectmen shall determine whether the Town, in the exercise of reasonable efforts, can obtain a more advantageous transaction or arrangement from a person or entity that would not give rise to a Conflict of Interest.

4.4.3.4 If a more advantageous transaction or arrangement is not reasonably attainable, the Board of Selectmen shall determine by a majority vote whether the transaction or arrangement is in the Town's best interest and is fair and reasonable to the Town; it shall thereafter make its decision in writing as to whether to enter into the transaction or arrangement in conformity with such determination.

4.4.3.5 The Board of Selectmen shall prepare a written report of actions taken under Section 4.4.3.1 above, and such report together with its written decision shall be filed with the minutes of meeting of the Board of Selectmen at which the decision was made.

4.4.4 Confidential Information: Responsible Person shall not, without proper legal authorization, disclose confidential information, concerning the property, government or affairs of the Town, nor shall he or she use such information to advance the financial or private interest of himself or herself or others. For purposes of this subsection, the term "confidential information" shall mean any information, oral or written, which comes to the attention of, or is available to, such Responsible Person or appointee only because of his or her position with the Town, and is not a matter of public record and that term is defined in 1 M.R.S.A. §402(3). Information received and discussed during an executive session of a Boothbay administrative board or committee shall be considered within the constraints of this section, and shall not be disclosed to any third party unless permitted by affirmative vote of such body or as otherwise provided by law.

4.4.5 Use of Town Property: A Responsible Person may not, without prior approval by the Board of Selectmen, use, or permit the use of, any Town-owned property including, but not limited to, motor vehicles, equipment and buildings, for any private purposes. Nothing herein shall prohibit the use of Town buildings and equipment at rates and/or terms as may be established for the public at large.

4.5 PURCHASING ORDINANCE

4.5.1 Purpose. The purpose of this Ordinance is to standardize the purchasing procedure of the Town. The Board of Selectmen shall annually adopt dollar amounts to define purchase limits and bidding requirements, except as otherwise provided herein.

4.5.2 Purchasing Agent. The Purchasing Agent shall be the Town Manager.

4.5.3 Applicability. This Ordinance shall apply to purchases made by departments and agencies of the Town, except as otherwise specified herein.

4.5.4 Appropriation. Except as otherwise provided by law, no one shall make any purchase or allow any purchase to be made until an appropriation therefore has been voted by Town Meeting.

4.5.5 Purchase Limits

4.5.5.1 A Department Head or the Department Head's designated representative may make field purchases when the total purchase price for goods or services being purchased is less than the dollar amount set annually by the Board of Selectmen as the purchase limit for Department Heads under this Ordinance, provided the field purchases are reported to the Town Manager within three (3) days thereafter.

4.5.5.2 The Town Manager shall make any purchase when the total purchase price exceeds the dollar amount set annually by the Board of Selectmen as the purchase limit for Department Heads under this Ordinance.

4.5.6 Competitive Bidding

4.5.6.1 Competitive bids shall be required for all purchases in excess of the dollar amount set annually by the Board of Selectmen as the purchase limit for Department Heads under this Ordinance, unless specifically exempted by this Ordinance or by action of the Board of Selectmen.

4.5.6.2 Informal bidding procedures shall be allowed when a purchase is required to be by competitive bidding if the total purchase price is less than the dollar amount set annually by the Board of Selectmen for formal bidding procedures under this Ordinance, unless the Town Manager recommends use of formal bidding procedures.

4.5.6.3 Formal bidding procedures shall be followed by the Town Manager in all other cases when competitive bidding is required by this Ordinance.

4.5.6.4 The Town Manager may make cooperative purchases without competitive bidding if the Town Manager determines the purchase is being made after competitive bidding by the cooperative entity or at price more advantageous than the Town would be likely to obtain through competitive bidding.

4.5.6.5 The Town Manager may waive the requirements for competitive bidding, with the approval of the Board of Selectmen, for purchases in cases of emergency or when the purchase is inappropriate for competitive bidding due to the nature of the item, time constraints or other factors, provided that the Town Manager shall file a full and complete statement of the reasons for waiving competitive bidding.

4.5.7 Procedure for Formal Bidding. The procedure for formal bidding shall be as follows:

4.5.7.1 Invitation for Bids.

The Town Manager shall prepare the invitation for bids, describing the Town's requirements clearly, accurately and completely, but avoiding unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related (whether attached or incorporated by reference) materials furnished prospective bidders for the purpose of submitting sealed bids. The Town Manager shall determine that the requirements of the Town are clearly and accurately and completely stated within the invitation to bid. Every invitation to bid shall note that all purchases are subject to the conditions set forth in Section 4.5.9 hereof.

4.5.7.2 The Town Manager shall publicize the invitation for bids through distribution to prospective bidders, posting on the bulletin board at Town Offices and in the office of the department(s) involved, advertising in a newspaper with local and/or regional circulation, or such other means as the Town Manager determines is appropriate at least ten calendar days prior to the time set for public opening of sealed bids.

4.5.7.3 Bidder(s) shall submit sealed bids to the Town prior to the date and time specified for the opening of bids. Late bids shall not be accepted and no bidder shall be permitted to withdraw a bid after the deadline for bids specified in the invitation to bidders.

4.5.7.4 Bids shall be publicly opened at the time and place specified in the invitation to bid. A contract shall be awarded to the responsible bidder whose bid conforms to the invitation to bid and will be the most advantageous to the Town. Award may be delayed pending verification of a bidder's credentials and references or review of the bids received.

4.5.7.5 Nothing in this Ordinance shall preclude the Town from rejecting any and all bids as provided in Section 4.5.9.

4.5.8 Procedure for Informal Bidding.

The procedure for informal bidding shall be as follows:

4.5.8.1 The Town Manger shall solicit competitive bids either by notice communicated to vendors, posting on appropriate Town bulletin boards, or by advertisement in a newspaper(s) having at least local circulation. The notice shall contain specifications as to quantity and quality required, the availability of bid packages or other details, and the date and time when bids must be

received. Any solicitation or advertisement shall note that all purchases are subject to the conditions set forth in Section 4.5.9.

4.5.8.2 All bids shall quote delivered prices, terms of payment and cash discounts if applicable. If oral quotations are accepted, the Town Manager shall make a written record of the quotation. The person from whom the quote is received, and the date and time the quote is received by the Town shall be recorded.

4.5.8.3 The Town Manager shall attempt to solicit at least three vendors on every purchase subject to informal bidding procedures. If fewer than three bids are received, or if in the opinion of the Department Head or the Town Manager no bids are acceptable, re-bidding may be required.

4.5.8.4 In all cases the bid most advantageous to the Town, in terms of price, quality, and other factors being considered, shall be awarded.

4.5.9 Administrative Procedures and Conditions. Competitive bids shall be administered by the Town Manager and shall be subject to the following conditions:

4.5.9.1 The Town Manager shall keep a record of all bids submitted and such records shall be opened to public inspection.

4.5.9.2 All bidders shall be notified of bid results within ten days after the bids are opened.

4.5.9.3 Tie bids shall be resolved by the Board of Selectmen.

4.5.9.4 All bids shall be awarded on the basis of the bid most advantageous to the Town.

4.5.9.5 The Town reserves the right to accept or reject any or all bids, to investigate the qualifications of any bidder, and to waive or not waive any and all informalities in the bids when making an award.

4.5.9.6 If an award is made to other than the low bidder, the Town Manager shall file with the Board of Selectmen a full and complete statement of the reasons for determining that the low bid was not the bid most advantageous to the Town, together with all papers relating to the bidding process.

4.5.9.7 The Town shall retain custody of all bids submitted to the Town pursuant to this Ordinance.

4.5.10 Duties of Department Heads. In order to assist in advantageous and expeditious purchasing for the Town, Department Heads shall:

4.5.10.1 Determine acceptable quality of commodities and supplies to be purchased.

4.5.10.2 Cooperate with the Town Manager in establishing lists of specifications and vendors.

4.5.10.3 Be empowered to reject any unacceptable supply or commodity on the grounds of high cost or low quality, and provide the Town Manager a detailed report of any rejection.

4.6 General Welfare/Assistance

4.6.1 One of the principal purposes of establishing a town government is to do for its citizens that which they cannot do for themselves. The general welfare of the population has, since the founding of the Town in 1764, been well provided for by the Board of Selectmen, but is now directed and controlled by State law. As, however, the protection of the welfare of all citizens is a prime purpose of the adoption of this Administrative Code, the Town Manager is hereby authorized to:

1. Coordinate and cooperate with all local, state and national institutions to secure aid for townspeople in need;
2. To join with local churches and other local charities to pool information and funding in order to eliminate redundancy and promote efficiency;
3. To take all other actions as directed by the Board of Selectmen to promote the general welfare of the citizens of the Town.

4.6.2 Responsibilities: State law mandates that every municipality shall administer a General Assistance program (22 M.R.S.A. § 4305(1)). The Board of Selectmen must adopt an ordinance (after notice and hearing) that establishes written standards including the amount of assistance to be provided, as defined by State criteria. These standards are to be employed in making eligibility determinations (22 M.R.S.A. § 4305(3)). Within thirty (30) days of enactment the ordinance must be filed with the Department of Human Services. If the Town amends any part of its General Assistance Ordinance (including the adoption of new yearly maximums), only the amendment or notice thereof needs to be filed with the Department within thirty (30) days of enactment (22 M.R.S.A. § 4305(4)).

SECTION 5. PUBLIC ORDER

5.1. PUBLIC HEALTH AND SAFETY ORDINANCE

5.1.1 The Town ordains that all existing Maine State laws relating to Public Health shall be applicable as well as these Ordinances. The Health Officer is authorized to prosecute violations of Sections 5.1.2, 5.1.3 and 5.1.4 of this Ordinance.

5.1.2 The Health Officer is hereby authorized to have removed, at the expense of the owners of the property, any pile of garbage, refuse or waste matter that is dangerous to health or that gives off offensive odors or which might cause the breeding of flies or vermin, accumulated on any property which, after reasonable notice, has not been removed.

5.1.3 It is the right of the Town to make inspection of all places wherein food or beverages are sold or served to confirm that they are in accordance with Title 22 of the M.R.S.A. and to Town regulations that may be adopted by the Board of Selectmen from time to time, as it sees fit and in accordance with state law.

5.1.4 No house that is in such a dilapidated condition or state of filthiness or uncleanness as to endanger the health or life of any person that occupies it, or that is not furnished with a safe water supply or with toilet facilities, shall be used as a dwelling, or rented for that purpose. The Board of Selectmen, pursuant to 17 M.R.S.A. §#2851 et seq., may seek the advice of the Code Enforcement Officer and Health Officer to determine if conditions are dangerous to health, safety or life. The Board of Selectmen may then declare the building unfit for human habitation and take appropriate action.

5.1.5 Licenses Generally

5.1.5.1 Licensing authority. To the extent practical, licensing procedures should be uniform and consistent with the protection of the public health, safety and welfare. To that end, all licenses shall be issued, denied, suspended or revoked by the Town Manager or his/her designee except as expressly provided in these General Ordinances or by State law.

5.1.5.2 Applications. An applicant for a license must file with the Town Manager or his/her designee a sworn application in writing, on a form to be furnished by the Town Manager or designee. Each application submitted shall state the following information:

- (1) Name and description of the applicant.
- (2) Address (legal and local) of the applicant.
- (3) A brief description of the license desired.
- (4) The location to be used in conjunction with the license (if applicable).
- (5) The nature of the business or use for which the license is desired.
- (6) Name of Employer (if other than applicant).
- (7) Vehicle to be used (if any) (description and license #).
- (8) A recent photo of the applicant (within sixty (60) days).
- (9) The date of the application.

(10) Any other information as may be deemed necessary or useful by the Town Manager or his/her designee in determining whether such license applied for should be issued.

5.1.5.3 Fees.

5.1.5.3.1 Application Fee. The license application fee for each type of license shall be in such amount as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

5.1.5.3.2 Renewal Fee. The license renewal fee for each type of license shall be in such amount as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

5.1.5.3.3 Late Fee. An additional fee shall be charged for the issuance of any license more than 30 days after the expiration of the holder's prior license, unless the application for renewal license was filed prior to such expiration. The late fee for each type of license shall be in such amount as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

5.1.5.4 Standards for Denial, Suspension and Revocation. In addition to any other specific provision of these General Ordinances or State law authorizing such action, a license may be denied, suspended or revoked upon a determination of the existence of one (1) or more of the following grounds:

- (1) Failure to fully complete the application forms; knowingly making an incorrect statement of a material nature on such form; or failure to supply any additional documentation required or reasonably necessary to determine whether such license is issuable, or failure to pay any fee required hereunder; or
- (2) The licensed activity, or persons on the premises for the purpose of participating in the licensed activity, or persons patronizing the licensed device have caused one (1) or more breaches of the peace; or
- (3) There is a clear danger that a breach of the peace will occur if the licensed activity is permitted; or
- (4) The licensed activity or persons patronizing the licensed premises will substantially and adversely affect the peace and quiet of the neighborhood, whether or not residential, or any substantial portion thereof; or
- (5) The licensee has violated any provision of these General Ordinances in the course of the conduct of the activity or device for

which the license or licenses have been applied for, or have been issued; or

- (6) The occurrence of any event subsequent to issuance of the license which event would have been a basis for denial of the license shall be grounds for revocation thereof; or
- (7) The applicant's or licensee's real or personal property taxes, or final judgments due and payable to the Town, are determined to be in arrears as of the date of the license or application; or that real or personal property taxes or final judgments due and payable to the Town on account of the premises for which application has been made or a license issued have not been paid in full as of the date of the license or application.
- (8) Violation of any of the terms and conditions of the license.

5.1.5.5 Appeals.

5.1.5.5.1 Procedure. An appeal to the Board of Selectmen may be taken by any person aggrieved by the denial, suspension or revocation of a license by the Town Manager or his/her designee by filing a notice of appeal and the prescribed fee with the Board of Selectmen within thirty (30) days of the decision appealed from, and not thereafter. Every appeal shall be in writing and shall state the basis for the appeal. The Board of Selectmen shall hear the appeal within thirty (30) days after the filing of the appeal and may affirm, reverse or modify the decision appealed from. The taking of an appeal shall not stay a decision appealed from, except that at the request of the licensee, the Town Manager or his/her designee may stay the effective date of a suspension, revocation or denial of a renewal license upon a finding that the public is not likely to suffer any harm during the pendency of the appeal. In such case, the Town Manager or his/her designee shall make a written finding of his or her decision in this regard and shall notify the appellant.

5.1.5.5.2 Scope of Review. On appeal, the Board of Selectmen shall review the decision of the Town Manager or his/her designee and any disciplinary action taken pursuant thereto to determine whether the decision was based upon substantial evidence and the disciplinary action taken was proportionate to the violation. The Board of Selectmen may take additional evidence with respect to such decision or action, and if additional testimony or evidence is taken, shall determine the appeal upon all of the evidence.

5.1.5.5.3 Appeal to the Superior Court. Any person aggrieved by a decision of the Board of Selectmen on appeal may appeal therefrom to the Superior Court in accordance with the provisions of Maine Rule of Civil Procedure 80B.

5.1.5.6 License Not Transferable.

5.1.5.6.1 No license shall be transferred to any person, to any location, or to any other vehicle or device, and no license fee shall be refunded if the licensed activity is ceased prior to the expiration of the license. All purported transfers not in accordance with this section are void. A license shall be deemed the subject of an attempted transfer whenever there is a change in actual ownership interest. Upon any such event, the licensee shall immediately surrender the license to the Town Manager or his/her designee; except that, in the case of death, bankruptcy or receivership of any licensee, the duly appointed executor or administrator of the deceased licensee or the duly appointed trustee or receiver of the bankrupted licensee or licensee receivership may retain the license and operate under the same for the benefit of the estate with the written permission and approval of the Town Manager or his/her designee until such time as such operation is no longer needed to benefit the estate. Thereafter, such personal representatives, receivers, or trustees shall either return the license to the Town Manager or his/her designee or transfer the same to any other person, under order of the court having jurisdiction and upon written notice to the Town Manager or designee. In the interim, between the death of the licensee and the appointment of an executor or administrator, or in cases where no administration of the estate of a deceased licensee is contemplated, the widow or widower or person designated by all of the heirs of the deceased licensee may take over the license upon written notice of the Town Manager or his/her designee. Duly appointed and qualified guardians and conservators of the estate of a licensee may retain the license of their ward during the term of office upon written notice to the Town Manager or his/her designee.

5.1.5.6.2 In all cases arising out of this section in which the Town Manager or his/her designee is required to determine the identity or composition of or ownership interests in an applicant or licensee, or to determine whether a transfer of an ownership interest in an applicant or licensee has taken place, he or she shall look to the substance rather than the form of transactions and any person aggrieved may appeal the Town Manager or his/her designee's determination to the Board of Selectmen.

5.1.5.6.3 *Actual ownership interest* shall mean and include any legal or equitable interest in either the licensed firm, corporation, partnership or other entity, or the assets of that entity that are the subject matter of the license, other than any mortgage or security interest created solely as security for valuable consideration. In the case of stock in a corporation, the term shall be limited to those

persons who individually or collectively have an interest in more than one-half of the voting shares of the corporation. In the case of a limited partnership, the term shall not include ownership of limited partnership shares.

5.1.5.7 Inspections.

5.1.5.7.1 A licensee must allow access to the licensed premises to any Town official authorized to determine compliance with federal, state or local law at any reasonable time, including any time that access is allowed to the public.

5.1.5.7.2 A violation of this section is grounds for license nonrenewal, suspension, or revocation, in addition to any other penalties authorized by this Administrative Code.

5.1.5.8 Violations. In addition to any action that may be taken by the Town Manager or his/her designee or the Board of Selectmen with respect to the suspension or revocation of a license, violation of this section, or of any licensing provisions of the Town governed by this Administrative Code, or of any rule made pursuant thereto, shall be a civil violation subject to the penalties specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

5.1.5.9 Display of License. Every license shall be exhibited in a conspicuous place on the premises, device or vehicle at all times that the premises, device or vehicle is open to the public.

5.1.6 Street Vendors and Street Goods Vendors.

5.1.6.1 Definitions. For purposes of this section, the following definitions shall apply:

FARM RELATED PRODUCTS shall mean any agricultural, horticultural, forest or other product of the soil or water, including, without limitation, fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, grain and grain products, honey, nuts, maple syrup, apple cider and fruit juice.

MARINE RELATED PRODUCTS shall mean any fish and fish products, edible sea plants or other agricultural items derived from the sea, seafood, shellfish, and sea salts.

STREET GOODS VENDOR means a person who sells, demonstrates, distributes samples of or solicits or takes orders for goods other than food or beverages.

STREET VENDING means selling or offering to sell, displaying for sale, demonstrating, distributing samples of, or soliciting or taking orders for, any food, beverages, goods or services in any street, way or public place.

STREET VENDOR means a person who sells, demonstrates, distributes samples of or solicits or takes orders for food or beverages.

STREET, WAY OR PUBLIC PLACE means any public right-of-way, street, sidewalk, alley or path; and any park, playground or other Town-owned or Town-controlled property, or any portion thereof, which is open for use by the public as a matter of right.

5.1.6.2 License Required.

5.1.6.2.1 All street vendors conducting business on any street, way or public place must have a license issued by the Town Clerk as provided in this section. Any license issued pursuant to this section shall expire on December 31 immediately following issuance of the license.

5.1.6.2.2 A street vendor's license may be issued under this section only for the sale of food (including farm related products and marine related products), and shall be in addition to any other license, permit or authority required by law.

5.1.6.2.3 No street goods vendors may operate on any street, way or public place without a license and only during such times as set forth herein.

5.1.6.2.4 In addition to the information required by Section 5.1.5.2, each application for a street vendor's or street goods vendor's license shall include a specific description of the business, the goods or services to be sold, and the equipment, if any, to be used, including a reasonable estimate of the value thereof.

5.1.6.2.5 No street vendor's license shall be issued without the applicant first filing with the Town Clerk a certificate, in a form satisfactory to the Town Attorney, evidencing public liability insurance coverage in an amount not less than the maximum liability of the Town under applicable law and naming the Town as an additional insured. The certificate shall also provide for notice to the Town Clerk not less than thirty (30) days prior to any cancellation of insurance, which insurance the licensee shall maintain at all times while engaged in street vending.

5.1.6.2.6 Exceptions for License Required. No street vendor's license shall be required for the following:

- (1) Conducting business on Town-owned property pursuant to a lease, contract, or other agreement with the Town;

- (2) Transporting goods or passengers for hire;
- (3) Providing emergency medical or motor vehicle services;
- (4) Advertising only, on a motor vehicle; or
- (5) Persons selling solely for the benefit of a bona fide nonprofit organization.

5.1.6.3 Conditions of Operation.

5.1.6.3.1 Area of Operation. A licensed street vendor may operate in any zoning district of the Town where such use is a permitted or conditional use as defined in the Zoning Ordinance.

5.1.6.3.2 Conduct of Operations.

- (1) Every licensed street vendor shall wear a numbered badge issued by the Town Clerk.
- (2) Every licensed street vendor shall operate only from a pushcart that conforms to all applicable rules or regulations promulgated under this section.
- (3) Every licensed street vendor that is also a mobile food service establishment shall provide waste paper receptacles for use by customers, and shall maintain the immediate area free of litter generated by them.
- (4) No licensed street vendor shall sell any goods or services, or use any equipment not specifically authorized by the license, operate in any manner that would constitute an unfair or deceptive trade practice under State law, or make any noise in violation of Section 5.1.12, Noise Ordinance, of the Administrative Code.
- (5) No street vendor shall engage in street vending between the hours of 10:00 p.m. and 8:00 a.m.

5.1.6.4 Prohibited Operations.

5.1.6.4.1 No street vendor shall operate on any street, way or public place without a license.

5.1.6.4.2 No street goods vendor shall operate on any street, way or public place except during a festival or event declared pursuant to Section 5.1.6.5.

5.1.6.4.3 No vendor other than a licensed street vendor as defined in this section shall operate on any street, way or public place.

5.1.6.4.4 No street vendor shall operate:

- (1) Within any area designated by the Board of Selectmen for a street festival or other special event except as authorized by the Board of Selectmen;
- (2) On any Town-owned property without a lease, contract, or other agreement with the Town;

- (3) Within sixty-five (65) feet of any other licensed street vendor, except for festivals approved pursuant to Section 5.1.7.5;
- (4) On any sidewalk less than eight (8) feet in width or in any other location so as to impede the free passage of vehicles or pedestrians, obstruct the entrance to or exit from private property, jeopardize the public safety, or otherwise inconvenience the public; or
- (5) Between the hours of 10:00 p.m. and 8:00 a.m. of the succeeding day.

5.1.6.5 Declaration of Festivals.

5.1.6.5.1 The Board of Selectmen may designate an area for a street festival or other special event. In the event of such Festival designation, street and goods vendors shall be required to obtain the permission of the Festival organizer to conduct business within the Festival area. A Town license issued to the Festival Organizer shall apply to all permitted vendors.

5.1.6.5.2 The Festival organizer shall be required to defend, indemnify and hold the Town harmless from any claims resulting from Festival activities.

5.1.6.5.3 The Festival organizer shall be required to provide proof of general liability insurance, naming the Town of Boothbay as additional insured thereon in the minimum amount of not less than the maximum liability of the Town under applicable law.

5.1.6.5.4 The Festival organizer shall obtain a license from the Town, pursuant to Section 5.1.6, and any other applicable Zoning Ordinance provisions for all installations, structures, or objects placed within the public way for all street vendors conducting business within the Festival zone. Any license issued pursuant to this subsection shall be a per-event license and shall expire upon the conclusion of the Festival.

5.1.6.6 Rules Promulgated by Board of Selectmen. The Board of Selectmen is authorized to make reasonable written rules and regulations, not inconsistent with this section, governing the design, construction and location of pushcarts.

5.1.6.7 General Licensing Provisions to Apply. All provisions of Section 5.1.5 shall be additional to the provisions of this section.

5.1.7 Mobile Food Service Establishments.

5.1.7.1 Definitions. For purposes of this section, the following definitions shall apply:

Mobile food service establishment shall mean and include only a food service establishment capable of movement over public and private ways that has all utilities and facilities contained within the unit regardless of whether it needs

an outside power source or not; that has no fixed location for the operation or transaction of business; and that is moved from one location to a different location not less frequently than once every twelve (12) hours in any twenty-four (24) hour period in order to serve persons otherwise present at such locations at such times. Mobile food service establishments include, but are not limited to, pushcarts, food vending trucks and ice cream trucks.

5.1.7.2 License Required. No person shall operate a mobile food service establishment within the Town without a license from the Town Manager or his/her designee. Any license issued pursuant to this section shall expire on December 31 immediately following issuance of the license.

5.1.7.3 Application. An applicant for a mobile food service establishment license shall, in addition to the information required under Section 5.1.5.2, submit the following information to the Town Manager or his/her designee:

- (1) A plan for water supply;
- (2) A plan for the cleaning of the establishment at least daily;
- (3) A plan for waste disposal;
- (4) A plan for disposal of liquid waste, which shall not be allowed to run into the ground; and
- (5) A plan for the provision of restrooms for employees.

5.1.7.4 General Licensing Provisions to Apply. All provisions of Section 5.1.5 shall be additional to the provisions of this section.

5.1.8 Transient Sales.

5.1.8.1 License Required. No person shall engage in transient sales of consumer merchandise or services within the Town without a license from the Town Manager or his/her designee. Any license issued pursuant to this section shall expire on December 31 immediately following issuance of the license.

5.1.8.2 State License Required. Obtaining and maintaining a transient seller's license for the State by the applicant or licensee shall be a condition precedent to the issuance or maintenance of a license under this section.

5.1.8.3 General Licensing Provisions to Apply. All provisions of Section 5.1.5 shall be additional to the provisions of this section.

5.1.9 Yard Sales - Yard sales shall be regulated in the following manner:

5.1.9.1 Performance Standards

- (a) A yard sale may occur for three (3) or fewer consecutive days without obtaining a permit.
- (b) A yard sale may occur over a period of four (4) to seven (7) days if a permit has been issued by the Code Enforcement Officer.

- (c) Each household shall be allowed only four (4) yard sale events during a calendar year, regardless of whether each event required a permit.
- (d) No items shall be placed in the right-of-way or in such manner as to obstruct vehicles on the right-of-way.
- (e) An attempt shall be made to provide off-street parking for all patrons.

5.1.9.2 Any yard sales in excess of the standards will be considered retail sales and the standards for that use in the Zoning Ordinance Land Use Table shall apply.

~~**5.1.10 Fireworks** – No fireworks or other devices of a pyrotechnic nature shall be discharged within the confines of the Town except in public displays conducted in complete accordance with state law.~~

5.1.11 Obstruction of Public Ways - No person shall play with a kite, or at any game of ball, or throw any object, nor shall they skate, roll or slide in, across or along any public way in such a way that travelers might be injured or annoyed, whether such travelers shall be actually passing or not, except as may be specifically provided for by the Town.

5.1.12 Nudity - No person shall swim, bathe or sunbathe in the nude in any place exposed to public view.

5.1.13 Noise - The purpose of this Ordinance is to protect, preserve and promote the health, safety, welfare and quality of life of the citizens of Boothbay through the reduction, control and prevention of excessive noise. In addition to 29-A M.R.S.A. §§ 1912, 2079, 2079-A, as may be amended from time to time (regarding motor vehicles); 12 M.R.S.A. § 13068, as may be amended from time to time (regarding watercraft); 12 M.R.S.A. § 13070, as may be amended from time to time (regarding airmobiles); 12 M.R.S.A. § 13106, as may be amended from time to time (regarding snowmobiles); and 12 M.R.S.A. § 13157, as may be amended from time to time (regarding ATVs), the following shall apply:

5.1.13.1 - Definitions:

UNREASONABLE NOISE shall mean any excessive or unusually loud sound that either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities within the Town. Elements to be considered in determining whether noise is excessive in a given situation include, but are not limited to, the following: intensity of the noise, whether the noise is usual or unusual, whether the origin of the noise is natural or unnatural, the intensity of the ambient noise, the proximity of the noise to sleeping facilities, the zoning district within which the noise emanates, the time of the day or night the noise occurs, the duration of the noise, whether the noise is continuous or intermittent, and

whether alternate methods are available to achieve the objectives of the sound producing activity.

PERSON shall mean any individual, firm, partnership, association, syndicate, company, trust, corporation, municipality, agency or political, administrative or legal entity of any kind.

PLAINLY AUDIBLE shall mean any sound that can be detected by a person using his or her unaided hearing faculties. For example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.

5.1.13.2 – General Prohibitions. No person or persons shall make, cause to be made, assist in making or continue any excessive, unnecessary or unreasonable noise or disturbance, or any noise or disturbance that disturbs, destroys, or endangers the comfort, health, peace, or safety of others within the immediate vicinity of the noise or disturbance, especially between the hours of 9:00 PM and 7:00 AM.

5.1.13.3 – Specific Prohibitions. The commission of one or more of the following acts shall be deemed a violation of this Ordinance and shall be considered a noise disturbance and public nuisance, provided that the instrument, devices, vehicles or other noise source is plainly audible from (a) the property line of the premises from which the noise emanates if the noise is from a fixed location; or (b) a distance of fifty feet (50') from the building, structure, location or vehicle from which the noise emanates, whichever distance is greater:

(1) Horns and Signaling Devices. The repeated sounding of any horn or signal on any automobile, motorcycle or other vehicle except as a danger warning; the creation, by means of any other signaling device, of any unreasonable loud or harsh sound; and the sounding of any such device for unnecessary and/or unreasonable periods of time.

(2) Mobile, Portable or Outdoor Electronic Sound-producing Devices. The playing or use of a mobile, portable or outdoor electronic sound-producing device in such a manner or with such volume at any time and place as to disturb, destroy or endanger the comfort, repose or peace of persons.

(3) Radios, Musical Instruments and Phonographs. The playing, using or operating of any radio, musical instrument, or other machine or device for the production or reproduction of sound in such a manner as to disturb the peace, quiet, comfort or repose of any other persons in the vicinity with a volume louder than is necessary for the reasonably convenient hearing for

the person or persons or voluntary listeners thereto who are in the immediate vicinity, vehicle or chamber in which such machine or device is operated between the hours of 9:00 PM and 7:00 AM or at any time so as to annoy or disturb the quiet, comfort or repose of any persons located within or upon the premises of any office, dwelling, hotel or other type of residence or business.

- (4) **Vocal disturbances.** Yelling, shouting, singing, hooting and whistling between the hours of 9:00 PM and 7:00 AM or at any time so as to annoy or disturb the quiet, comfort or repose of any persons located within or upon the premises of any office, dwelling, hotel or other type of residence or business.
- (5) **Vehicular Noise.** Vehicles used, operated, or revved in such a manner as to create loud and unnecessary noise that is audible above background sounds and that disturbs the peace and quiet of others.
- (6) **Exhaust.** The discharge into the open air of the exhaust of any steam engine, internal combustion engine, motorboat, or motor vehicle, except through a muffler or other device that will effectively prevent loud or explosive noises therefrom.
- (7) **Parties and Other Social Events.** It shall be unlawful for any person in charge of a party or other social event to allow that party or event to produce unreasonable noise. A person shall be deemed to be in charge of a party or social event when that event occurs on private property and the person is present at the event and resides on the premises involved or is a person who lives in or on the premises involved and who has authorized the use of the premises for such event.

5.1.13.4 – The following shall be considered exempt from this Ordinance:

- (1) Any person who has obtained a Special Sound Permit from the Town.
- (2) All signaling devices, safety signals and warning devices required by state, federal, or local law; all signaling devices, safety signals and warning devices installed pursuant to manufacturer's specifications; or any other device used to alert persons to any emergency or used during the conduct of emergency work including, but not limited to, police, fire and medical/rescue vehicle sirens.
- (3) Any vehicle owned by and operated by federal, state or local government or a utility in the performance of its duties.
- (4) Any government or utility emergency repair.
- (5) Noise associated with a bona fide response to an emergency situation that poses a threat to the public health, safety or welfare.
- (6) Musical, recreational and athletic events conducted by and on the site of a school or municipal facility.
- (7) Equipment for maintenance of lawns and grounds during the hours of 7:00 A.M. to 9:00 P.M. (including, but not limited to, lawn mowers, hedge trimmers, weed trimmers, chain saws and leaf-blowers).
- (8) Noise associated with routine snow removal activities where customary practices and equipment are used and where the snow removal

equipment is operated within the manufacturer's specifications and in proper operating condition.

- (9) Any activity or conduct, the regulation of which has been preempted by federal or state law.

5.1.13.5 Special Sound Permits – Any person may apply to the Town Manager for a Special Sound Permit to authorize the production or generation of noise that would otherwise be in violation of this Ordinance prior to engaging in such activity. Any request for such a permit must be made at least forty-eight (48) hours before the time the intended noise-producing activity will commence. The Town Manager or his designee has the authority to grant or deny a Special Sound Permit, but the decision shall be made subject to the following standards:

1. The activity producing the noise must be an event that occurs infrequently on the premises for which the Special Sound Permit is requested.
2. The applicant may not receive more than two (2) Special Sound Permits for any particular premises in any twenty-eight (28) day period.
3. Reasonable conditions may be imposed on the Special Sound Permit.

5.1.13.5.1 Appeal of Denial of Special Sound Permit – An applicant may appeal the denial of a Special Sound Permit to the Board of Selectmen. Such an appeal must be filed within ten (10) days of the denial of the permit. The Board of Selectmen shall conduct an administrative hearing on the appeal. In the event such an appeal is not satisfactorily resolved before the Board of Selectmen, the applicant may appeal the Board of Selectmen's decision to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

5.1.13.6 Violations – A violation of this Ordinance shall be a civil violation.

5.1.13.7 Enforcement. – Any municipal officer or their designee or any sworn law enforcement officer who is a member of the Maine State Police or the Lincoln County Sheriff's Office may issue a civil violation complaint, in the same manner as would be the case with a parking violation, to the individual responsible for any such device emitting sound in violation of this Ordinance, including the driver of a motor vehicle, or the registered owner of the vehicle, the owner of record of a residence, the proprietor of a business or the person who is in physical control of the device responsible for the unreasonable or excessive noise. Actions shall be prosecuted in Maine District Court located in Wiscasset in accordance with Rule 80H of the Maine Rules of Civil Procedure.

5.1.13.8 Penalties. – For any first violation of this Ordinance, there shall be imposed a civil fine or penalty in such amount as specified in the Boothbay

Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time. Each subsequent violation within a two (2) year period from the date of the first violation shall carry with it a civil fine or penalty of double the prior penalty. A violation-free period of two (2) years shall return the penalty to the minimum.

5.1.13.8.1- In addition to civil penalties for any violation hereof, the District Court shall require the violator to pay the Town's reasonable attorney's fees and costs incurred in connection with prosecution of the enforcement action.

5.1.13.9 Waiver Fee. – A person charged with a violation of this Ordinance may admit the violation and avoid the necessity of further legal action by payment of a waiver fee to the Town in the amount of the minimum fine for the violation; provided, however, that the violation(s) alleged in the civil violation complaint shall be deemed admitted for the purpose of assessing any future penalties under this section. Upon receipt of such payment to the Town, the Town shall cause the complaint to be dismissed. Failure to pay the waiver fee within seven (7) days from the date of issuance of the complaint shall result in further enforcement action, including, without limitation, liability for the full amount of the fine for the violation and any other appropriate relief.

5.2 ANIMAL CONTROL ORDINANCE

5.2.1 – The purpose of this Ordinance is to require that all animals in the Town be kept under the control of their owner at all times so that they will not injure persons or other animals, damage property or create a public health threat or nuisance, pursuant to 7 M.R.S.A. § 3952.

The provisions of this Ordinance that apply to the owner of an animal apply equally to any person keeping, or having control, custody, or possession of that animal.

5.2.2 – Definitions:

ABANDONED ANIMAL: an animal that has been deserted by its owner or keeper.

ANIMAL: every living, sentient creature not a human being.

ANIMAL CONTROL: control of domesticated or undomesticated animals.

ANIMAL CONTROL OFFICER: any person appointed by the Town to enforce animal control laws.

ANIMAL SHELTER: a facility that includes a physical structure, or part of a physical structure, that provides temporary or permanent shelter to stray, abandoned, abused or owner-surrendered animals.

AT-LARGE: off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the animal.

BEACH: any beach area within the Town that is used by the general public.

DOG: any of large and varied groups of domesticated animals in the canine family.

OWNER: any person or persons, firm, association or corporation owning, keeping or harboring an animal or any person having custody, possession, or control of an animal.

5.2.3 – Animal Control Officer: A State-certified person(s) shall be employed by the Town who shall be known as and perform the duties of Animal Control Officer. The Animal Control Officer(s) shall be principally responsible for the enforcement of all laws related to domestic animals that pose a threat to public health and safety, controlling undomesticated animals in matters on which no other department or agency is charged by law to regulate, taking a stray animal to its owner or to an animal shelter, and ensuring that any injured animal that is at-large or in a public way is given proper medical attention. The Animal Control Officer(s) shall also have authority to deal with cases of dangerous dogs, animal trespass, and cruelty to animals, and shall be required to respond to reports of animals suspected of having rabies.

5.2.4 – At-Large Dogs: It is unlawful for any dog, licensed or unlicensed, to be at-large, except when used for permitted hunting. The owner of any dog found at large shall be subject to the civil penalties provided in 7 M.R.S.A. § 3915.

5.2.5 – Impoundment or Return of At-Large Dogs: All dogs found at-large in violation of 7 M.R.S.A. § 3911 may be impounded at the animal shelter or returned to the owner, at the discretion of the Animal Control Officer(s). If the Animal Control Officer(s) returns the dog to its owner, the owner shall pay a Return Fee as described in 7 M.R.S.A. § 3915 to the Town, which shall issue a receipt, before the dog is returned.

5.2.6 – Animal Noise:

- (1) Except as provided in subparagraphs (2) and (3) below, no owner shall permit or allow any animal to bark, howl or make other sound common to its species if such sounds recur in steady, rapid succession for 20 (twenty) minutes or more or to recur intermittently for one hour or more. Violators of this regulation shall be subject to fine as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.
- (2) Subparagraph (1) above shall not apply if any animal is provoked by trespassing people or animals on private property on which the animal is situated or by other legitimate cause for provocation.
- (3) Subparagraph (1) above shall not apply to farm animals kept on property the principal use of which is the production of farm products, or to commercial kennels.

5.2.7 – Control of Animal Waste: An owner must remove and dispose of any feces left by his/her animal on any sidewalk, street, beach, public property or private

property (other than the property of the owner of the animal or of a person who has consented to the presence of the animal on his or her property) and deposit such feces into an appropriate litter receptacle. An owner whose animal is present on any property from which the animal's feces is required to be removed pursuant to this section must have in his or her possession a plastic bag or similar utensil for collecting and removing the feces. This regulation shall not apply to any person who, by reason of physical handicap, is unable to comply with the requirement. Violators of this regulation shall be subject to fine as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

5.2.8 – Tags and Stickers: No dog shall be kept within the limits of the Town unless such dog is licensed by its owner in accordance with Maine law (7 M.R.S.A. § 3701). The owner shall make sure that the tag is securely attached to the dog's collar and that collar must be worn at all times by the dog except when on the premises of the owner or off the premises of the owner when hunting, in training, or in an exhibition (7 M.R.S.A. § 3923-B). In that case, the owner shall produce proof of license within 24 (twenty-four) hours upon request by the Animal Control Officer(s). If the tag is lost, the owner shall obtain a new license and tag. The Town shall issue the same upon presentation of the original license document and the payment of a Recording Fee as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

5.2.8.1 – Rabies Tags: Rabies tags obtained from a veterinarian attesting to immunization against rabies must be secured to a dog's collar and that collar must be worn at all times by the dog except as described in this section. In that case, the owner shall produce proof of license within twenty-four (24) hours upon request by the Animal Control Officer(s).

5.2.9 - Violations and Penalties: Any person who violates these Animal Control Ordinances shall be subject to a civil fine or penalty for each violation. The fine for a violation of State law shall be as set forth in State law, and the fine for a violation of local law shall be as State statutes 7 M.R.S.A. §§ 3913, 3915, 3924, and 3952 define state penalties, and shall be as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

Except as otherwise provided by law, all civil penalties collected pursuant to this Ordinance shall be recovered for the use of the Town and deposited in a separate account as required by 7 M.R.S.A. § 3945.

5.2.10 - Waiver Fee. – A person charged with a violation of this Ordinance may admit the violation and avoid the necessity of further legal action by payment of a waiver fee to the Town in the amount of the minimum fine for the violation; provided, however, that the violation(s) alleged in the civil violation complaint

shall be deemed admitted for the purpose of assessing any future penalties under this section. Upon receipt of such payment to the Town, the Town shall cause the complaint to be dismissed. Failure to pay the waiver fee within seven (7) days from the date of issuance of the complaint shall result in further enforcement action, including, without limitation, liability for the full amount of the fine for the violation and any other appropriate relief.

5.3 PUBLIC STREETS AND TRAFFIC ORDINANCE

5.3.1 – Traffic Laws: The Town adopts Title 29-A of the M.R.S.A. with the same force and effect as though set out in full herein as the official municipal ordinance for the operation of vehicles in the Town. Enforcement of Sections 5.3.1 through 5.3.6 shall be the Road Commissioner or any sworn law enforcement officer who is a member of the Maine State Police or the Lincoln County Sheriff's Office.

5.3.2 – The Board of Selectmen shall have the authority to locate stop signs on Town public ways and to make streets one-way in the Town, except as otherwise provided by law.

5.3.3 - Drivers of a vehicle on the approach of an emergency-responder vehicle showing a flashing red or blue light shall pull said vehicle to the right curb as soon as possible, and slow to a stop.

5.3.4 - No vehicle shall trail, follow or approach closer than two-hundred feet (200') any emergency vehicle going to or attending an emergency.

5.3.5 - No vehicle shall obstruct or impede traffic in any unreasonable manner on the public ways in the Town.

5.3.6 – No obstructions may be placed or caused to be placed within the legal right of way of any public way in the Town unless approved by the Road Commissioner.

5.3.6.1 – Mailbox Replacement: The Town will not be responsible for damage to any mailbox or mailbox post that is in the public right of way. The Town will not replace or repair damaged mailboxes in the right of way.

5.3.7 – Road Openings:

No person shall dig up any part of any street, highway, or town way, without first obtaining permission from the Road Commissioner, as set forth in 23 M.R.S.A. §§ 3351-3360-A. All openings in the streets and sidewalks made under such permit shall be opened and refilled under the supervision of the Road Commissioner and all expenses charged to the parties asking for such an opening. No road openings will be allowed for five (5) years after paving, except in emergency as determined by the Road Commissioner, with appeal to the

Board of Selectmen. For good cause shown, the Board of Selectmen may reverse or modify the decision of the Road Commissioner.

5.3.7.1 – All utilities placed under public ways in the Town must be “sleeved” (run through a larger pipe) to facilitate repairs without opening the road.

5.3.7.2 – Any person, persons, partnership, firm or corporation violating the above Ordinance shall be punishable by a fine as specified in the Boothbay Fee Schedule, as established by the Board of Selectmen and as amended by the Board of Selectmen from time to time.

5.3.8 - Parking Ordinance: The Board of Selectmen has the power to enact parking regulations, pursuant to 30-A M.R.S.A. § 3009, as it deems necessary. A copy of any Parking Ordinance shall be kept on file at the Town Clerk’s office.

5.3.9 - Bicycles: Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this State declaring rules of the road applicable except as to those that by their nature can have no application.

5.3.9.1 – Pursuant to 29-A M.R.S.A. § 2323, any person under 16 years of age who is an operator or a passenger on a bicycle on a public roadway or a public bikeway shall wear a helmet of good fit, positioned properly, and fastened securely upon the head by helmet straps.

5.3.10 – Street Acceptance Ordinance: The following ordinance is written for the purpose of setting minimum standards for streets and public ways that are to be considered by Town meeting for acceptance as public ways.

5.3.10.1 – No street or way that does not conform to the specifications in the Zoning Ordinance shall be laid out and accepted by Town meeting as a public street or way, unless the same shall have been actually constructed and used for public travel prior to the adoption of this Ordinance.

5.3.10.2 - Compliance with the conditions and specifications set forth in the Zoning Ordinance will render a street or way constructed on private land by the owners thereof eligible for consideration by Town meeting for laying out and acceptance as a street or public way for the use of the Town.

5.3.10.3 – The public benefit of any road will be important in the determination of its acceptance by Town meeting.

5.3.10.4 – No road shall be accepted by Town meeting after November 1st or before May 1st of any given year.

5.3.11 – Entrance to Town Ways (Driveways): Property owners must apply to the Road Commissioner or his/her designee for a permit to construct any driveway accessing a Town Way. For any driveway accessing State Aid Roads, a permit should instead be obtained from the Maine Department of Transportation (MDOT). Guidelines for locating a driveway entrance are set forth in the “Guidelines for Locating your New Residential Driveway,” dated May 2004, as may be amended from time to time by the Board of Selectmen following a recommendation from the Road Commissioner.

5.4. EMERGENCY SERVICES ORDINANCE

5.4.1 – Emergency Management: The Board of Selectmen shall appoint a Director of Emergency Management to develop plans for and to facilitate cooperation in the work of disaster prevention, preparedness, response and recovery in the Town.

5.4.1.1 - The Director shall serve as the Town’s liaison to the Lincoln County and Maine Emergency Management Agencies.

5.4.1.2 – The Director shall be appointed for a term of one (1) year and may be reappointed for indefinite one (1) year terms.

5.4.1.3 – The Director shall provide to the Fire Chief an Annual Report of the Department’s operations with a complete inventory of the Department’s equipment and recommendations for the future.

5.4.2 – Emergency Medical Services: The Board of Selectmen shall provide for the delivery of State of Maine licensed Emergency Medical Services for the Town on a 7 days per week, 24 hour per day basis.

5.4.2.1 – The Board of Selectmen shall require the provider of Emergency Medical Services to furnish an Annual Report of its operations.

5.4.3 – Fire Department: The Board of Selectmen shall maintain a Fire Department to extinguish fires and to provide emergency services in the Town.

5.4.3.1 - Life Safety Code:

5.4.3.1.1 - The Town adopts the current edition of the National Fire Protection Association Code NFPA 101 Life Safety Code published by the National Fire Protection Association with the same force and effect as though set out in full herein as the official Life Safety Code of the Town.

5.4.3.1.2 – The penalty for violating the provisions of said Life Safety Code, in addition to injunctive relief, shall be a fine as provided for by 30-A M.R.S.A. § 4452, as may be amended from time to time. Each day

during which a violation of said Life Safety Code continues shall constitute a separate violation.

5.4.3.2 – The Fire Department shall consist of a Fire Chief, two Assistant Fire Chiefs, and as many firefighters as deemed necessary to perform the functions of the Department.

5.4.3.3 – The Fire Chief shall have full and complete charge of the personnel, equipment, and facilities used by the Fire Department.

5.4.3.4 – The Fire Chief will provide to the Board of Selectmen an Annual Report of the Department's operations with an inventory of the Department's equipment and recommendations for the future.

5.4.3.5 – The Board of Selectmen and the Fire Chief shall insure that the Fire Department complies with State law in effect for municipal fire protection including, but not limited to, Title 26, Chapter 28 of the M.R.S.A. (Minimum Safety Standards for Firefighters) and Title 30-A, Chapter 153 of the M.R.S.A. (Municipal Fire Protection).

5.4.3.6 – The Fire Chief, subject to approval of the Board of Selectmen, is authorized to establish "Mutual Aid" or "Cooperative" agreements with other fire departments on behalf of the Town.

5.4.4 – Fire Alarms

5.4.4.1 – Definitions. - For the purpose of this ordinance, the following terms used herein shall be interpreted as follows:

FIRE ALARM SYSTEM – a system, including any mechanism, equipment or device, designed to automatically transmit or cause the transmission of a signal, message or warning from a private facility (i.e. residential or commercial) to the Lincoln County Communication Center or its successor, or to cause the activation of an audible device whose purpose or result is to obtain emergency response by the Town Fire Department.

NON-EMERGENCY ALARM – signals transmitted by an alarm system as a result of human error or equipment malfunction.

OWNER – any person or persons, firm, association, or corporation owning, renting, in possession of, in control of, or occupying a residence, building or structure equipped with an alarm system as defined in this section.

5.4.4.2 – Alarms.

5.4.4.2.1 - Response by Fire Department: Upon notification of an alarm message or signal from an alarm system, the Fire Department will be dispatched to the scene to take appropriate action. If the premises in which the alarm system is installed appears secure and there is no evidence to indicate that there is an emergency situation requiring the

presence or action of the Fire Department, the Town's obligation to the owner shall have been discharged and the Lincoln County Communications Center or its successor shall be notified of this determination.

5.4.4.2.2 - Transmission of Non-Emergency Alarms.

- a) **Assessment of Forfeitures.** – Any owner whose system causes transmission of a non-emergency alarm more than three (3) times in any one calendar year period shall be assessed a cash forfeiture as described in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time, for each instance of a non-emergency alarm in excess of three such alarms in any one calendar year.

- b) **Disconnection of the System.** – Any owner whose system causes the transmission of two or more non-emergency alarms within a forty-eight (48) hour period shall, upon request of the Fire Chief or an Assistant Fire Chief, immediately disconnect the system and shall not reconnect the system until it has been inspected and repaired. Notice of inspection and repair shall be provided to the Boothbay Fire Department prior to reconnection of the system.

5.5. ADDRESSING ORDINANCE

5.5.1 - Purpose of Ordinance. - The purpose of this Ordinance is to enhance the easy and rapid location of properties by law enforcement, fire, rescue, and medical service personnel in the Town.

5.5.2 – Authority. - This Ordinance is pursuant to and consistent with the municipal home rule process as provided for in 30-A M.R.S.A. § 3001.

5.5.3 – Administration. - The Code Enforcement Officer (CEO) shall administer this Ordinance. The CEO shall assign road names and numbers to all properties on both existing and proposed roads, in accordance with the criteria in Sections 5.5.4 and 5.5.5 of this Ordinance. The CEO shall be responsible for maintaining the following records under this Ordinance:

- a) A town map for official use showing road names and numbers.
- b) An alphabetized list of all property owners as identified by assessment records, showing the assigned numbers.
- c) An alphabetical list of all roads with property owners listed in order of their assigned numbers.
- d) All appropriate state records and forms.

5.5.4 - Naming System. - All roads that serve two or more properties shall be named regardless of whether the ownership is public or private. For the purposes of the Addressing Ordinance, the following definitions shall apply: "ROAD" refers to any highway, road, street, avenue, lane, private way, or similar paved, gravel, or dirt thoroughfare. "PROPERTY" refers to any property on which a permanent structure has been erected or could be placed. A road name assigned by the Town, or its representatives, shall not constitute or imply acceptance of the road as a public way.

The following criteria shall govern the naming of roads:

- a) No two roads shall have the same name (e.g. Pine Road and Pine Lane).
- b) No two roads shall have similar sounding names (e.g. Beech Street and Peach Street).
- c) Each road shall have the same name throughout its entire length.

5.5.5 - Numbering System. - Numbers shall be assigned every fifty (50) feet along both sides of the road, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road, ascending from the number origin.

The following criteria shall govern the numbering system:

- a) All number origins shall begin from North to South and West to East. For dead-end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead end.
- b) The number assigned to each structure shall be that of the numbered interval falling closest to the front door of said structure, or the driveway of said structure if the front door cannot be seen from the main road.
- c) Every structure with more than one principle use or occupancy shall have a separate number for each use or occupancy. For example, duplexes will have two separate numbers.
- d) Apartments will have one property number followed by an apartment number (i.e. 235 Maple Street, Apt. 2.)

5.5.6 – Compliance. - All owners of structures shall display and maintain in a conspicuous place their assigned numbers.

The following criteria shall govern the location, color and size of numbers:

- a) Structure Numbers. Where the structure is within fifty (50) feet of the edge of the road right-of-way, the assigned number shall be displayed on the front of the structure in the area of the front door or entry.
- b) Street Numbers. Where the structure is over fifty (50) feet from the edge of the road, the assigned number shall be displayed on a post, fence, mailbox (if immediately adjacent to the driveway), or the nearest structure to the property.
- c) Size and Color of Numbers. Numbers shall be a minimum of 4 inches high and of a contrasting color to its background.

- d) Every person whose duty it is to display the assigned number shall remove any numbers that might be mistaken for, or confused with, the assigned number.
- e) Inside Locations. All residents and other occupants are encouraged to post their assigned number and road name next to their telephone for emergency reference.

5.5.7 - New Developments and Subdivisions. - All new construction and subdivisions shall be named and numbered in accordance with the following provisions:

- a) New Construction. Whenever any residence or other principal structure is constructed, it shall be the duty of the new owner to get an assigned number from the CEO at the time of issuance of the building permit
- b) New Subdivisions. All developers shall show a proposed road name and lot numbering system on the final plat plan submission to the Planning Board.

Approval by the Planning Board after consultation with the CEO shall constitute the assignment of road names and numbers to the lots in the subdivision. On the final plan showing proposed roads, the applicant shall mark the center of the streets every fifty (50) feet, using lines and dots, so as to aid in the assignment of numbers to future structures.

5.5.8 - Effective Date. - It shall be the duty of the CEO to notify by mail each property owner and the Post Office of their new address at least sixty (60) days prior to the effective date of their use. It shall be the duty of each property owner to post the new numbers in accordance with this Ordinance, on the stated date of effective use. For new structures, numbering will be installed prior to final inspection or when the structure is first used or occupied, whichever comes first

5.5.9 - Enforcement and Penalties. - Violation of any of the provisions of this Ordinance shall be deemed civil violations. Any person or persons, firm or corporation owning or having control of any building or premises or other persons, such as subcontractors, who assist in the violation of this Ordinance shall be guilty of a civil violation, and upon adjudication thereof shall be fined as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time. The CEO, acting in accordance with his/her duties and responsibilities, shall serve written notice on the owner(s), or others assisting, of such violation or violations. If the violation is not corrected or abated within thirty (30) days of notification, the Board of Selectmen shall authorize and direct any and all actions seeking injunctions of violations and impositions of fines that may be appropriate or necessary to enforce the provisions of this Ordinance.

5.5.10 - Conflicts with Other Ordinances. - This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, bylaw,

permit or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings or structures, the provisions of this Ordinance shall prevail.

5.5.11 - Appeals Process: Appeals of any person aggrieved by a decision, act, or failure to act by the CEO as it relates to the implementation and enforcement of the Ordinance shall be to the Board of Selectmen.

5.6 FIREARMS ORDINANCE

5.6.1 - All laws pertaining to firearms regulation in the State of Maine (25 M.R.S.A. §2011) shall apply in the Town.

5.6.2 - Applications for concealed weapons permits must be made to the State Police.

5.7 PUBLIC WORKS ORDINANCE

5.7.1 – There shall be a Department of Public Works, the head of which shall be the Public Works Foreman, who shall be appointed by the Town Manager/Road Commissioner with ratification by the Board of Selectmen, and who shall be under the supervision of the Town Manager/Road Commissioner. The number of employees shall be determined by, and each such employee shall be appointed by the Town Manager, except as s/he may delegate such power to the Public Works Foreman.

5.7.2 – The Road Commissioner shall direct the maintenance of public ways in the Town in accordance with the Maine Roads Center Guide, as published by the Maine Dept of Transportation and as may be amended from time to time.

5.7.3 - The Road Commissioner shall, in addition to the duties required of him or her by law by 23 M.R.S.A § 2701 and § 3201, treat the public ways of the Town whenever conditions warrant.

5.8 SOLID WASTE ORDINANCE

5.8.1 – The Town is a member of the Boothbay Region Refuse Disposal District. All refuse disposal within the Town shall be governed by the rules and regulations of the Boothbay Region Refuse Disposal District.

5.8.2 No person may operate on any public way in the Town a vehicle containing solid or liquid waste unless the vehicle's load is covered or otherwise secured or

confined to prevent any portion of the load from falling, blowing, or spilling out of the vehicle, as provided by state law, 17 M.R.S.A. §§ 2263-A and 2264, as may be amended from time to time. Should any materials escape from the vehicle, the driver shall take immediate steps to retrieve that material and shall be held responsible for cleaning up any residual debris.

5.8.2.1 Any person violating this provision shall be considered to have committed a civil violation, punishable by a fine as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time, plus costs for the first violation, not more than twice that fee plus costs for the second violation, and not more than four times the initial fee plus costs for the third offense and each separate violation of the same nature thereafter within a 12 month period, which fines shall be recovered on complaint for the use of the Town.

5.8.3 Recycling – Recycling is required to the extent mandated by the Boothbay Region Refuse Disposal District recycling regulations.

5.9 UTILITIES ORDINANCE

5.9.1 The purpose of this Ordinance is to provide for Town regulation and use of community systems, including all aspects of their construction, installation, and operation, and any additions or extensions thereto in the Town; and to provide rules, regulations, and conditions for the granting of franchises for the construction, installation, maintenance, and operation of such systems in the Town, in the best interests of the Town and its citizens.

5.9.2 All utilities placed under public ways in the Town must be “sleeved” (run through a larger pipe) to facilitate repairs without opening the road.

5.9.3 Water: The supply of public water in Boothbay is provided by the Boothbay Region Water District (BRWD) the successor in interest of the former East Boothbay Water District and the Boothbay Harbor Water District. The enabling legislation for the Boothbay Region Water District is defined in Chapter 15, Maine Private and Special Laws of 2001 and as amended from time to time. The district is further regulated by the Maine Public Utilities Commission.

5.9.4 Sewer: The service of public sewer is provided by the Boothbay Harbor Sewer District, and provides public sewer services to the Town of Boothbay. The enabling legislation of the Boothbay Harbor Sewer District is set forth in Chapter 161 of the Maine Private and Special Laws of 1961 and as amended from time to time.

5.9.5 Community System Oversight Boards: Should the Board of Selectmen deem it advisable, the Board of Selectmen may appoint a committee for each Community System of no fewer than three (3) and no more than seven (7)

residents of the Town to form Oversight Boards. The term of office of a member shall be three (3) years except for initial appointments, which shall be staggered with at least one member for three (3) years, one member for two (2) years, and one member for one (1) year.

5.10 USE OF TOWN LAND ORDINANCE

5.10.1 - The purpose of this Ordinance is to regulate the use of and set forth the conditions applicable to the types of use and the signs that are allowed on Boothbay Town Land. The Board of Selectmen is authorized to make any reasonable written rules and regulations, not inconsistent with this section, for the use of Town Land.

5.10.2 Conditions and Requirements:

- a) No camping is allowed on Town Lands at any time, except with specific written permission of the Board of Selectmen.
- b) No vehicles shall be allowed on the grassed areas of Town Lands without permission, which may be granted by the Town Manager for a vehicle that will provide specific service for an event.
- c) The use of Town Land is permitted from 9:00 AM. to sunset. Other hours may be allowed by special permit from the Town Manager.
- d) Special event organizers shall be required to provide proof of general liability insurance, naming the Town of Boothbay as additional insured thereon in the minimum amount of not less than the maximum liability of the Town under applicable law.
- e) Trash facilities must be maintained by the event sponsors. The rental of a dumpster is recommended and all trash container must be emptied after the event.
- f) Traffic and parking control will be required for events, as directed by the Town Manager. This includes but is not limited to traffic flow control and crossing guards, and overflow areas. Signage for overflow parking may be required.
- g) A deposit as specified in the Boothbay Fee Schedule as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time, will be required for all events and will be refunded if the Town Land is left as originally found.
- h) Except as otherwise provided by law, signs are not allowed on the Common or other Town Lands without the completion of an application and approval of the Town Manager.
- i) No paint-ball or similar propelled-projectile activity shall be permitted on Town Land without permission of the Town Manager.
- j) The Town Manager may attach additional restrictions to the use of Town Land to ensure that the proposed activity does not impact day to day operations of the Town, events sponsored by the Town, the health and

safety of participants and the general public, and the protection of Town Land.

- k) In order to preserve the natural beauty and environment of Town land and to protect the Town's investment in the same, the Town reserves the right to prohibit the use of Town Land at any time when the public interest so requires.

5.10.3 When deemed by the Board of Selectmen to be in the best interest of the Town, the Board of Selectmen may waive any of the above conditions or requirements for the use of Town Land.

SECTION 6 CABLE TELEVISION ORDINANCE

6-1 Purpose.

The purpose of this chapter is to regulate the establishment and operation of multi-channel video and cable television service in the Town of Boothbay, Maine (the "Town") for the safety, convenience and general welfare of the public and to provide the procedures and conditions accompanying the application for and grant of Cable Television Franchise Agreements (CTFA), including the renewal of existing franchising agreements.

6-2 Franchise agreement required

No person, firm or corporation may construct, install, maintain or operate a multi-channel video and cable television system in the town without first obtaining a cable television franchise agreement from the town selectmen, authorizing the use of public streets and areas and establishing a framework for delivery of multi-channel video and cable television service, and without maintaining said franchise agreement in full force and effect.

6-3 Application for Franchise Agreement.

1. In order to obtain a new or renewal CTFA to establish or operate a cable television system in the Town, the applicant shall first submit an application to the town clerk which meets the requirements of this section.
2. Each applicant for a franchise agreement, including each applicant for renewal of an existing franchise agreement, shall cover the costs to the town including but not limited to the placement of public notices, advertising, and other expenses relating to, or incurred by the town, in acting upon such applications, and all legal and consulting fees and expenses. The town selectmen shall oversee the amount of these expenses as set forth in the Town's Fee Schedule.
3. Any application for a cable television franchise or renewal of a franchise must contain the following information:
 - a. The name, address, telephone number and e-mail address of the applicant and the applicant's local manager or other primary contact with the town;

- b. A detailed statement of the corporate or other business organization of the applicant, included but not limited to, the following:
 - i. The names, residence and business addresses of all officers and directors of the applicant, and all employees of the applicant who will have management-level responsibility of the cable system serving the town;
 - ii. The names, residence and business addresses of all officers, persons and entities having, controlling or being entitled to have or control 1% or more of the ownership of the applicant and each parent or subsidiary of the applicant and the respective ownership share of each such person or entity;
 - iii. The names and addresses of any parent or subsidiary of the applicant and any other business entity owning or controlling the applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement of the nature of any such parent or subsidiary business entity, including but not limited to multi-channel video and cable television service owned or controlled by the applicant, its parent and subsidiary and the areas served thereby;
 - iv. A detailed description of all previous experience of the applicant in providing cable television service and in any other related fields such as telecommunications or information services;
 - v. A detailed and complete financial statement of the applicant, its parents and its subsidiaries, prepared by a certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the Town Selectmen, setting forth the basis for a study performed by such lending institution or funding source to prove whatever capital shall be required by the applicant to construct and operate the proposed system in the Town; and
 - vi. A statement identifying, by place and date, any other cable television franchise(s) awarded to the applicant, its parent or subsidiary, the status of said franchise(s) with respect to completion thereof; the total cost of completion of such system(s); and the amount of the applicant's and its parents or subsidiaries resources committed to the completion thereof;
- c. A detailed description of the applicant's plan for operating the cable system serving the Town, including, but not limited to, the following:
 - i. A detailed map indicating all areas being served and additional areas proposed to be served, and a proposed construction time schedule for the installation of said equipment necessary to become operational throughout the entire area to be served, and the time of commencement of construction and anticipated operation date;

- ii. A statement or schedule setting forth all proposed rates and charges to be made to each classification of subscribers, including installation charges, service charges, equipment rental charges and any deposit requirements;
 - iii. A detailed statement describing the actual equipment and operational standards proposed by the applicant. In no event shall said operational and performance standards be less than those contained in Title 47 C.F.R. Subpart K (§ 76.601, et seq.)ⁱ, of the Rules and Regulations of the Federal Communications Commission, as amended in the future; and
 - iv. A copy of the form of any proposed or standard agreement between the applicant and any subscriber;
 - d. A detailed and complete statement describing the design of the cable system serving, or proposed to serve, the Town. Such statement shall include system architecture, channel capacity, channel uses, access, programming facilities, studio location, point to point service, two-way service, subscriber privacy, and interconnection; and
 - e. Such other information as the Town may require at the time of the franchise application.
4. Prior to issuing a request for proposals to any cable television company or companies for initial or renewal franchise agreements, the Town shall hold a public hearing or conduct some other process to determine any special local needs or interests with respect to cable television service and shall allow for a period of public comment on the request for proposals.
 5. Franchise agreement applications, including renewal applications and any submittals in response to a request for proposals or solicitation of bids and related documents, are public records. Upon filing of such documents, the Town shall provide reasonable notice to the public that such documents are open to public inspection during reasonable hours.
 6. A franchise agreement may be revoked by the Town Selectmen for good and sufficient cause after due notice has been given to the cable operator and a public hearing thereon, with the sole right to appeal to the Lincoln County Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.
 7. Before authorizing the issuance of any franchise agreement, including franchise renewals, and approvals of any transfers of ownership, property or rights under franchise agreements, the Town Selectmen shall review the applicant's character, financial and technical qualifications and the adequacy and feasibility of its qualifications to operate a multi-channel video and cable television system within the Town, and shall conduct a public hearing thereon. Such public hearing shall provide a reasonable opportunity for public input on the proposed franchise agreement, renewal or transfer. Before doing so, the Town shall publish a notice in a newspaper having general circulation in the Town at least seven (7) days before the hearing advising the name and address of the proposed franchisee, the fact that the Town will consider entering into an initial or renewal franchise agreement or transfer, and the time and place of the hearing.

6-4 Issuance of Franchise Agreements.

The Town shall enter into non-exclusive franchise agreements for not more than ten (10) years with those applicants that the Town finds are best able to establish and operate multi-channel video and cable television service in the Town on terms that are most favorable to the Town and its residents. Each franchisee shall provide the Town with a performance bond in the sum of not less than fifty thousand dollars (\$50,000) to ensure the franchisee's performance of its obligations under the franchise agreement.

Each franchise agreement between the Town and any multi-channel video and cable television provider shall contain the following:

1. A statement of the area or areas to be served by the provider;
2. A line extension policy;
3. A provision for renewal;
4. Procedures for the investigation and resolution of subscriber complaints by the provider;
5. An agreement to comply with the requirements of 30-A M.R.S.A. Section 3010 regarding consumer rights and protection and any amendments thereto;
6. Provisions for access to, and facilities to make use of local public, educational and governmental (PEG) access channels;
7. A provision authorizing the Town to conduct an annual performance evaluation hearing between May 15 and September 15, with one or more representative(s) from the franchisee with authority to address all provisions in the agreement in attendance, in order to evaluate the cable operator's compliance with obligations under the franchise agreement, to hear public input, to consider new technologies and services applicable to cable service and to hear from the cable operator;
8. Provisions for Maine-based (and preferentially Boothbay peninsula based) customer service;
9. Provisions for payments to the Town or other entities, including but not limited to, franchise fees and capital grants; and
10. Any other terms and conditions that are in the best interest of the Town.

6-5 Establishment of New Multi-Channel Video and Cable Television Service.

1. In the case of a franchise agreement for a new multi-channel video and cable television system, as soon as the franchise agreement has been executed, the cable franchisee shall:
 - a. Apply to the Federal Communications Commission for any required authorization to receive and transmit local and distant signals and to operate the cable system;
 - b. After the authorization has been granted, prepare the necessary engineering surveys, plans, and specifications in conformity with state and local laws;
 - c. After plans and specifications have been approved by state and local officials, prepare and execute any necessary pole contracts to permit alteration of poles so as to accept the necessary cables; and

- d. Install the cable system distribution plant in the Town in accordance with a time schedule to be submitted by the cable franchisee and approved by the Town Selectmen.
2. Until the system is in operation in the Town, the cable franchisee shall report its progress to the Town Selectmen at least every three (3) months. Should the cable franchisee fail to make all reasonable efforts to establish the system and put it into operation, or fail to comply with the requirements set forth in Section 6-5(1) above, the Town Selectmen shall, after notice and hearing, revoke the franchise agreement, and the cable franchisee shall forfeit the proceeds of the performance bond to the Town. In making this determination, the Town Selectmen shall take into consideration those matters beyond the control of the cable franchisee including delays caused by federal, state or local governmental agency, or by any public utility.

6-6 Installation of Service.

Each cable franchisee shall install and maintain the cable system in a workmanlike manner using only those materials and methods of installation, which are accepted in the industry as being safe and suitable to the purpose for which they were designed.

6-7 Public Liability Insurance.

Each cable franchisee shall carry all-risk public liability insurance with limits of at least seven million dollars (\$7,000,000) per occurrence and seven million dollars (\$7,000,000) in the aggregate, for bodily injury, personal injury, death or property damage, which coverage may be supplied by a combination of primary and excess policy limits. Each cable franchisee shall furnish the Town with, and keep current, a certificate of insurance that indicates compliance with this section.

6-8 Type and Scope of System.

Each Cable Franchisee shall:

1. Install and maintain at least an eighty-channel cable system designed to receive and transmit color television programming;
2. Provide for reception and transmission of the multi-channel video and cable television service and radio broadcast signals required by the Federal Communications Commission;
3. Provide public, educational and governmental (PEG) access channels as required by the terms of the franchise agreement; and
4. Provide leased channels and channels utilized for other non-broadcast purposes as are required by the Federal Communications Commission.

6-9 Hours of Operation.

Each cable franchisee shall keep the cable system serving the Town in operation twenty-four (24) hours per day, seven (7) days per week.

6-10 Non-Duplication of Programming.

Each cable franchisee shall provide for non-duplication of programs and program exclusivity as required by the rules of the Federal Communications Commission.

6-11 Annual Statement and Manager's Report to Selectmen.

Annually, within ninety (90) days after the end of the cable franchisee's fiscal year, but within the timetable allowing for an annual review as set forth in 6-4-(7) of this Ordinance, each cable franchisee shall file with the Town Manager an annual statement for the Town's franchise area including but not limited to a balance sheet, a profit and loss statement, an updated map of the service area, and all other information required by the terms of the franchise agreement. The report will be made available to the general public for comments and suggestions. The Town Manager, or his or her designee, shall then provide a summary of both the franchisee's report and public input to the Selectmen regarding the status of each cable franchise agreement and the quality of service issues.

6-12 Free Service to the Town.

Each Cable franchisee shall provide free basic cable service and cable programming service including free installation and service drop to each school and municipal building in the Town. The Town shall pay for any costs of installation of internal wiring necessary to distribute the cable service within the interior of such buildings.

6-13 Basic Service Tier Rates.

The Town will follow FCC Rate Regulationⁱⁱ in its regulation of the Basic Service Rates and Charges of any cable television system operating in the Town, notwithstanding any different or inconsistent provisions in the franchise.

1. In connection with such regulation, the Town will ensure a reasonable opportunity for consideration of the views and needs of interested parties, with preference given to senior and low-income households.
2. The Town Manager, or his or her designee, is authorized to research and execute on behalf of the Town and file with the FCC such certification forms or other instruments as are now or *may hereafter* be required by the FCC Rate Regulations in order to enable the Town to regulate basic service rates and charges.
3. The Town expects the Cable franchisee to offer rates equal to or better than rates offered to communities of like density, population and geography.

6-14 Enforcement.

Any cable operator in violation of any part of this ordinance shall be punished by fines as set forth in the Town's Fee Schedule. The Town selectmen may enforce this chapter

and any franchise agreement hereunder by seeking any available civil remedies, including injunctive relief as provided in 30-A M.R.S.A. § 3008(3) (E).

6-15 Severability.

Should any section of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

6-16 Effective date.

This chapter shall take effect immediately upon its adoption and shall apply to all cable television franchise agreements executed after adoption of this chapter.

- Notes: ⁱ Subpart K Technical Standards
 ⁱⁱ Subpart N: Cable Rate Regulation

SECTION 7. [reserved for future use.]

II. SHELLFISH CONSERVATION ORDINANCE

III. HARBOR ORDINANCE

IV. FLOOD PLAIN MANAGEMENT ORDINANCE

V. ZONING ORDINANCE

VI. COMPREHENSIVE PLAN

ⁱ Subpart K: Technical Standards

ⁱⁱ Subpart N: Cable Rate Regulation”

HARBOR ORDINANCE
of the
TOWN OF BOOTHBAY, MAINE
Proposed May 2012

I. GENERAL PROVISIONS

A. Purpose of Ordinance

This Harbor Ordinance is hereby established to regulate marine activities within the tidal waters of the Town of Boothbay, Maine in order to ensure safety to persons and property, promote availability and use of valuable public resources, and to create a fair and efficient framework for the administration of these waters.

B. Legal Authority

The legal authority for the establishment of this Ordinance and the provisions provided herein is provided by the municipal home rule process of Title 30-A M.R.S.A. and Title 38 M.R.S.A., which are available at the Town Office. The provisions of this Ordinance shall be liberally interpreted in order to meet the objectives of those statutes and the intent of this Ordinance.

C. Conflict with Other Ordinances and Regulations

Whenever a provision of this Ordinance conflicts with another ordinance of the Town of Boothbay or State or Federal regulation, the stricter provision shall be applied. Nothing contained herein shall be construed to conflict with the lawful jurisdiction of the United States Government with respect to enforcement of navigation, shipping or anchorage and associated laws of the United States or any valid laws or regulations of the State of Maine.

D. Validity and Severability

If any provisions or clause of this Ordinance or application thereof to any person, persons, or circumstances is found to be invalid, then such invalidity shall not affect any provisions or applications of the Ordinance which can be effectuated without the invalid provision or application. To this end, provisions of this Ordinance are declared severable.

E. Effective Date

This Ordinance and any subsequent amendment shall take effect and be in force from the date of its adoption by the Town and all previous Harbor Ordinances are hereby repealed.

F. Penalties

Violations of any of the provisions of this Ordinance shall be deemed civil violations. They are enforceable by the Harbor Master or any other law enforcement officer with jurisdiction in Boothbay by a civil action in the District Court to recover such relief, fees, fines and penalties as are provided for in Titles 30-A and 38 M.R.S.A.

G. Boothbay Waters

Boothbay Waters are defined herein to include waters on both sides of Linekin Neck, on the Damariscotta River north to the Boothbay/Edgecomb town line, Murray Hill area west to the

Boothbay/Boothbay Harbor town line as well as Card Cove, the islands of Negro Island, Ram Island, Cabbage Island, Sawyers Island, Barters Island, Fisherman Island, Inner and Outer White Islands, Outer Heron Island, Pumpkin Island, Damariscove Island, The Hypocrites, and Hodgdon Island, as well as all waters within the bounds of the Town of Boothbay in Linekin Bay and the Sheepscot and Damariscotta Rivers, Ovens Mouth, Back River, and Cross River.

H. Amendments

Amendments to this Ordinance shall be consistent with all amendment processes of the Town, which must be approved by Town Meeting following at least one public hearing conducted by the Port Committee.

II. DEFINITIONS:

Anchorage Area: An area of the harbor set aside for the temporary anchoring of Vessels.

Berth: The place where a Vessel lies when at a wharf or pier.

Channel: An area of waterway kept clear of moorings or other obstructions to allow the free passage of Vessels.

Commercial Marine Facility: Any commercial enterprise in the shoreland zone, such as one which handles finfish, shellfish, or any other marine related product, and/or any facility that provides rental or service moorings, or any marine related service such as, but not limited to, the following: sales, storage, construction or maintenance of boats or other marine related items, the provisions of slips and/or moorings for permanent or transient berthing, sales of fuel, supplies, or marine equipment and hardware, or the provision of meals or lodging.

Commercial Mooring: A mooring assigned to a Commercial Marine Facility under the Town's Zoning and Building Code Ordinance.

Commercial Vessel: A Vessel that generates income and is registered as commercial.

Congested Areas: Those areas of Boothbay Waters that are determined by the Harbor Master and confirmed and designated by the Port Committee to be approaching or to have reached capacity of available mooring space.

Fairway: The navigable waters of a harbor or other Waterway.

Float: Any floating structure, other than a Vessel, normally used as a point of transfer for passengers, fishing gear or other goods and not designed for self-propelled navigation.

Guest Mooring: A temporary mooring that may be permitted yearly in a non-Congested Area to a Boothbay property owner, solely for use by that permit holder's guests on a non-rental basis.

Mooring: A permanent means of securing a Vessel or Float to the bottom in a mooring area.

Mooring Float: Float system for securing multiple vessels in a congested area.

Mooring Plan: A plan for the placement and specification of moorings, usually in a Congested area, prepared by the Harbor Master, Deputy Harbor Masters, and Port Committee, with public input, and approved by the Selectmen.

M.R.S.A.: The Maine Revised Statutes Annotated.

Shorefront Owner: The owner of a parcel of land that borders on that area of Boothbay Waters off which a mooring is being requested.

Resident: Any person who occupies a dwelling within the municipality for more than 180 days in a calendar year or any person owning real estate in Boothbay.

Town Float: A Float owned and maintained by the Town of Boothbay.

Waterway: Any water area providing access from one place to another, principally a water area providing a regular route for water traffic.

Working Float: A Float used primarily for the storage of fishing gear or other marine related hardware used in a commercial activity.

Vessel: A watercraft of any kind including boats, scows, dredges and barges but excluding Floats and shellfish cars or other structures permanently attached to moorings.

III. HARBOR ADMINISTRATION

A. Administering Bodies and Agents

1. Port Committee: The Board of Selectmen shall appoint a Port Committee consisting of five (5) Residents, none of whom shall be the Harbor Master or Deputy Harbor Masters. Port Committee members shall be appointed from volunteers solicited by public announcement and will serve without compensation. The Port Committee will at all times consist of five (5) regular members serving staggered terms of three years, and no committee member shall serve more than two immediately successive terms. The Port Committee shall meet as required and may be called upon by the Selectmen to generally advise the Board of Selectmen on harbor related issues. All Port Committee meetings shall be advertised and open to the public and written minutes will be taken at and maintained for all committee meetings. A quorum shall consist of three (3) members. A vacancy shall occur upon the resignation or death of any member or when a member fails to attend three consecutive meetings or fails to attend at least 75% of all meetings during the previous twelve month period. Any member

of the Port Committee may be removed for cause by the Board of Selectmen, after notice and hearing, including upon recommendation of the Port Committee to the Board of Selectmen.

2. Harbor Master: The Harbor Master and Deputy Harbor Masters shall be appointed annually by the Board of Selectmen from resident volunteers solicited by public announcement. Certain duties and responsibilities of this office are prescribed by Title 38, M.R.S.A. The Harbor Master has the additional duty to administer and enforce the provisions of this Ordinance with the authority granted by law and through his appointment as Harbor Master. In addition to the duties prescribed under Title 38, M.R.S.A., the Harbor Master and the Deputy Harbor Masters shall have such other duties and responsibilities as may be assigned by the Board of Selectmen from time to time.

B. Mooring Administration

1. Registration: Mooring locations shall be registered annually by the Harbor Master based on one location per Vessel or Float. Registrants, other than Commercial Marine Facilities, must own a separate Vessel or Float for each mooring. However, exceptions may be granted by the Harbor Master for moorings, including Guest Moorings, in non-congested areas. No new mooring permit will be issued and space assigned without a “New Mooring Registration Application” being submitted to and approved by the Harbor Master and the Deputy Harbor Master for the area in which the mooring is being requested. In case of a renewal, the “Renewal Mooring Registration Application” form along with proper proof of inspection must be submitted. If a registrant fails to renew his mooring privilege, the Harbor Master shall notify the owner by certified letter (return receipt) at the registrant’s last known address that his mooring privilege shall expire unless renewed within thirty (30) days. If not so renewed, the mooring shall be considered abandoned.
2. Mooring Permit Number: The mooring permit holder must affix his assigned mooring permit number to the primary mooring buoy in at least three (3) inch letters of contrasting color, however winter buoys are exempted. Upon failure to display this number, the Harbor Master, after giving notice of deficiency, may attach the mooring permit number to the buoy and charge the cost to the mooring permit holder plus an administrative fee of twenty-five (\$25) dollars. If a mooring does not display a mooring permit number and cannot be otherwise identified, it shall be considered abandoned.
3. Permitted Transfers: As set forth in Title 38 M.R.S.A., a mooring permit used only for private commercial fishing purposes may be transferred at the request or death of the permittee, however a transfer will be allowed only to a member of the permit holder’s family and only if the mooring permit will continue to be used for private commercial fishing purposes. For purposes of this section, “member of the permit holder’s family” means only the permittee’s parent, child or sibling, by birth or by adoption, including a relation of half blood or a permittee’s spouse.

4. Fees: Mooring fees shall be paid in full at the time of submitting a Registration Application, either new or renewal. Mooring fees may be changed from time to time as recommended by the Port Committee and approved by the Board of Selectmen. Fees not paid by August 15th, will be considered delinquent and subsequently doubled. No applications will be processed until all related fees, excise taxes, charges, or penalties have been paid in full.

5. Mooring Permits For Commercial Marine Facility: The Harbor Master shall have authority to approve or disapprove a mooring permit application and/or assigning a mooring location to a Commercial Marine Facility only after a public hearing is held on the application, attended by the Harbor Master, the appropriate Deputy Harbor Master and Port Committee. An application for a rental or service mooring(s) must be presented in such format as may be prescribed by the Harbor Master and such application will be considered only for waterfront property owners of Commercial Marine Facilities and only after the Commercial Marine Facility has applied for and received all necessary approvals by all other local, state or federal agencies having jurisdiction. In addition, the following rules shall apply to all Commercial Marine Facilities:
 - a. Moorings of a Commercial Marine Facility in operation as of the date of passage of this amendment shall be grandfathered concerning location and number of moorings. However, the sale or transfer of 50% or more of the assets and/or ownership of such Commercial Marine Facility will require the Commercial Marine Facility to review with the Harbor Master and the Port Committee, such factors as use history, future development and other prevailing conditions and to reapply for both the number and location of moorings desired.

 - b. Applications for moorings by any Commercial Marine Facility subsequent to the enactment of this amendment may be restricted as to the number and location of moorings granted and/or the length of time the moorings are granted; such restriction being within the discretion of the Harbor Master with consultation of his Deputies and the Port Committee, taking into such consideration all factors they deem relevant.

 - c. The location of any Commercial Marine Facility mooring or the location and extent of any mooring field shall be determined by the Harbor Master with consultation of his Deputies and the Port Committee, taking into consideration all factors they deem relevant.

 - d. Rental or service moorings shall be identified and maintained by the Commercial Marine Facility in accordance with such conditions as may be placed on the permit by the Harbor Master, and all such moorings shall be clearly marked at all times by such size and color markings, as may be required to indicate the maximum boat size allowed on the mooring.

- e. Within two (2) years of the date of enactment of this amendment, and for all years thereafter, all Commercial Marine Facilities renting moorings or berths shall prominently exhibit a sign providing the locations of all existing facilities for the pumping out of human waste then currently available in Boothbay Waters and the waters of Boothbay Harbor and the failure to so provide will result in the denial or non-renewal of its mooring permit applications.
6. Mooring Assignments: Subject to the rights of the Harbor Master under state law, mooring locations shall initially be assigned to those persons owning Vessels or Floats and occupying mooring locations and those belonging to a Commercial Marine Facility which location existed as of the date of adoption of this Ordinance. Except as provided below, mooring privileges shall be granted upon application to the Harbor Master on a first come - first served basis. When the number of applications exceeds the number of available mooring spaces in Congested Areas, the Harbor Master shall maintain a waiting list of all applicants in that area who have not been assigned a mooring permit and post it in the Town Office. This list shall be used to assist the Harbor Master in assigning mooring permits as space becomes available and shall be subject to the applicable state law governing such waiting lists. Assignments shall then be made in the order received according to the following ordered priorities:
 - a. Shorefront Owners requesting an initial location.
 - b. Resident Commercial Vessel owners requesting an initial location.
 - c. Resident pleasure Vessel owners requesting an initial location.
 - d. Commercial Marine Facilities requesting initial location.
 - e. Multiple locations for the above following the same priority.
 - f. All others including Non-resident Vessel owners and Guest moorings.
 7. Mooring Plans: The Harbor Master shall, when assigning mooring locations, be guided by any current applicable Mooring Plan. Except as set forth in paragraph 3 above, moorings are not transferable and shall not be rented unless the original permit so provides. Notwithstanding anything to the contrary herein, the Harbor Master shall at all times have the authority to temporarily assign moorings for safety reasons during the winter months, extreme weather conditions or other emergencies
 8. Size and Owner Responsibility: All moorings shall be of sufficient size to hold the Vessel or Float for which it is to be used. There shall be no rafting of two (2) or more unattended vessels. Mooring permit holders shall be liable for any damage caused by faulty or inadequate moorings. Suggested tackle standards are available in the Harbor

Master's office. Mooring permits for working and mooring Floats shall be issued by the Harbor Master.

9. Mooring Inspections: All moorings shall be inspected every two years from the effective date of this Ordinance or when so required by the Harbor Master. The Harbor Master shall at all times have the right to inspect any mooring if he reasonably believes such inspection is necessary to ensure compliance with this Ordinance or the safety of Boothbay Waters. Except as may otherwise be required under a Mooring Plan, the inspection may be performed by the owner or his representative. The cost of any such inspection shall be borne by the mooring permit holder. An inspection report shall be filed with the Harbor Master within seven (7) working days of notification by the Harbor Master questioning the condition of a mooring; otherwise the report shall be filed prior to the next registration. The report shall include proof of inspection, name of inspector and itemized list of equipment and its condition and any other information the Harbor Master may request. If any component is repaired or replaced it shall also be noted on the report. The report shall be signed and dated by the inspector and mooring holder. If any component shows significant deterioration below the suggested standards of this Ordinance it shall be replaced. All new mooring bouys as of May 7, 2012 and thereafter shall be white with a blue stripe. Non-conforming mooring bouys existing as of May 7, 2012 shall be replaced with white bouys on or before June 1, 2015.

10. Abandoned Moorings: Any mooring location not occupied by the Vessel or Float registered to it during the permit year may be considered to be abandoned. The location may be reassigned by the Harbor Master in accordance with the above priority guidelines, after the Harbor Master has first given the registrant thirty (30) days advance written notice at his/her last known address, (certified mail, return receipt). The cost of removing or dropping moorings shall be assessed to the owner if not removed by him within thirty (30) days of receipt of said notice, in accordance with Title 38. Notwithstanding the above, this paragraph may not apply to a mooring whose Owner has notified the Harbor Master in writing that such mooring will not be occupied due to prolonged absence from the area, illness, or other extenuating circumstances , provided the permit is timely-renewed annually as required by this Ordinance.

C. Appeals Process and Procedures

Appeals:

Any person aggrieved by any decision of the Harbor Master as it relates to the administration and enforcement of this Ordinance may appeal such decision to the Port Committee. Unless by the Harbor Master's authority the decision is revoked, such decision shall remain in full force and be forthwith complied with by the person during the pendency of any appeal. Such appeals shall be made in writing to the Port Committee within fourteen (14) days of the decision from which the appeal is taken. The appeal must state with specificity the decision from which the appeal is taken and the reasons for the appeal. The appellant shall pay a non-refundable filing and notification fee in such amount(s) as the Board of Selectmen may from

time to time establish by Board of Selectmen order, which shall be paid at the time the appeal is filed with the Port Committee.

In deciding any appeal, the Port Committee shall conduct a hearing and affirm, modify or reverse the decision of the Harbor Master or may remand the matter to the Harbor Master for further proceedings consistent with this Ordinance. The Port Committee shall inform the person in writing of its decision and the reasons thereof. Written notice of the decision of the Port Committee shall be sent to the appellant, the Harbor Master and the Board of Selectmen within seven (7) days of the decision. Any decision of the Port Committee under this section may be appealed to the Board of Appeals within fourteen (14) days of the decision.

In deciding any appeal, the Board of Appeals shall conduct a hearing and affirm, modify or reverse the decision of the Port Committee or may remand the matter to the Harbor Master for further proceedings consistent with this Ordinance. The Board of Appeals shall inform the person in writing of its decision and the reasons thereof. Written notice of the decision of the Board of Appeals shall be sent to the appellant, the Harbor Master, the Port Committee and the Board of Selectmen within seven (7) days of the decision. Any decision of the Board of Appeals under this section may be appealed to Superior Court within thirty (30) days of the decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

IV. HARBOR USE REGULATIONS

A. Assumption of Risk

Any person using any facilities within Boothbay Waters shall assume all risk of damage or loss to his property, and to the property of others resulting from his compliance or failure to comply with this Ordinance. The Town of Boothbay assumes no risk on account of fire, theft, Act of God, or damages of any kind to Vessels, Floats, or other property within its jurisdiction except where such damage or injury is a direct result of the gross negligence, gross recklessness, or bad-faith misconduct of the Harbor Master, Deputy Harbor Masters, or other Town Agent.

B. Unseaworthy Vessels and Floats Prohibited in Boothbay Waters

A person shall not moor or permit to be moored in Boothbay Waters, a Vessel or Float of any kind whatsoever, which in the opinion of the Harbor Master is unseaworthy or in a badly deteriorated condition, or likely to sink, or to damage docks, wharves, floats or other vessels or which may become a menace to navigation, except in cases of emergency.

C. Correcting an Unsafe Berthing

If any Vessel or Float shall be found, in the judgment of the Harbor Master, to be unseaworthy or otherwise anchored or moored within Boothbay Waters in an unsafe or dangerous manner, or in such a way as to create a hazard to other Vessels or Floats or to persons or property, the Harbor Master shall promptly order and direct the owner or his authorized agent to take action to correct the situation. Primary responsibility for compliance with such orders and directions shall rest with the owner of such Vessel or Float, or his authorized agent; and in the absence of such owner or agent, said responsibility for compliance shall rest with the authorized operator of the Commercial Marine Facility at which the Vessel or Float is anchored or moored.

In an emergency situation or in the absence of any such responsible person, the Harbor Master shall forthwith board such Vessel or Float and cause the situation to be corrected, and the owner of the Vessel or Float shall be liable for any costs incurred by the Town of Boothbay in effecting such correction.

D. Custody and Removal of Unseaworthy or Illegally Berthed or Abandoned Vessels or Floats

Subject to the requirements of state laws, if any unattended Vessel or float shall be determined by the Harbor Master to be unseaworthy or anchored or moored illegally, or if the Harbor Master has reasonable grounds to believe that a Vessel or Float is unseaworthy or illegally berthed or has been abandoned within Boothbay Waters, the Harbor Master may assume custody of such Vessel or Float and cause it to be held or placed in storage. The Town of Boothbay, its officials, or anyone acting under their direction shall not be held liable for any damage to such Vessel or Float, nor liable to its owner before or after assuming custody. Vessels or Floats so taken into custody shall be released to the owner by the Harbor Master only after satisfactory proof of ownership has been presented and full reimbursement made, or provided for, to the Town for all costs incident to recovery, movement, storage or any other related action.

E. Anchoring in Congested Areas, Obstruction of Fairways, Channels, Launch Ramps or Berthing Spaces, and Removal of Sunken Vessels or Floats

1. It shall be unlawful to anchor in Congested Areas.
2. It shall be unlawful to tie up or anchor a Vessel or Float in Boothbay Waters in such a manner as to obstruct a fairway, Channel or launch ramp, or to carelessly sink or allow to be sunk, any Vessel or Float, in any Fairway, Channel or Berth, or to float loose timbers, logs, piles or other debris which will present a hazard to navigation.
3. Whenever the navigation of any Boothbay Waters or a Commercial Marine Facility, including anchorages and Berths therein, shall be determined by the Harbor Master to be obstructed or endangered by any sunken Vessel, Float, obstruction or other danger that has existed for more than three (3) days, the Vessel, Float, obstruction or other danger shall be subject to removal, or other disposition. The Owner or Owners of such Vessel, Float or other property causing said obstruction or danger shall be liable to the Town of Boothbay for all costs incident to said removal and disposition, and the Town of Boothbay, its employees, agents, and officers, shall not be liable for damages of any nature whatsoever arising out of or in any way connected with removal or disposition of such Vessel, Float or other property.

F. Obstruction to Public Docks, Walkways and Floats

1. No boat shall be left unattended at any Town Float for longer than 45 minutes without the consent of the Harbor Master or Deputy Harbor Master, except as permitted in subsection (4) below.

2. No boat, even when attended, shall be secured at any Town Float for a period longer than 4 hours without the consent of the Harbor Master or Deputy Harbor Master, except as permitted in subsection (4) below.
3. No boat, tended or untended, may be secured to any Town Float overnight without the consent of the Harbor Master, except as permitted in subsection (4) below;
4. Skiffs and dinghies may be secured to a Town Float provided they comply with the following;
 - A. Each skiff or dinghy shall be clearly and visibly marked with the owner's name and telephone number;
 - B. No skiff or dinghy shall be secured to the face of any Town Float;
 - C. All skiffs and dinghies shall be properly secured, maintained and bailed;
 - D. For the purpose of this Ordinance, skiffs and dinghies must be no longer than 14'; and
 - E. All skiffs and dinghies shall be secured at the bow only.
5. No bait, barrels, boxes, gear, equipment, pots, traps, trash or like items shall be placed or left upon any Town Float for a period of time longer than necessary to load or unload a boat.
6. No person shall park any vehicle so as to block access to any Town Float or launching ramp except for the sole purpose of loading or unloading.
7. The areas adjacent to Town Floats shall remain clear of all gear, equipment, trash, and debris at all times. The Harbor Master may remove altogether and/or relocate to the Town Office any gear or equipment that has been left on or in the areas adjacent to Town Floats for two (2) or more days.
8. All Town Floats are subject to removal after October 15 of each year, at the discretion of the Town Manager.
9. Usage fees for use of Town Floats may be charged in such amount as the Board of Selectmen may from time to time establish by Board of Selectmen order.

G. Working Floats

Working Floats are to be used only for the storage of fishing gear and other marine related hardware used in a commercial activity and shall not be used for the storage of rotten or decaying bait, fuel, or motor oils. Rafting or stringing together of Working Floats is prohibited unless approved by the Harbor Master. Unless otherwise applied for and permitted by the Harbor Master, Working Floats shall be square or rectangular in design, with the total area not exceeding six hundred (600) square feet. Working Floats shall be maintained at all times in good repair and seaworthy condition so as to safely handle and support the load placed upon them and shall have reflective strips attached to each side which are adequate to insure that the Float is visible at all

times. Any approvals granted by the Harbor Master under this paragraph shall be on the basis that the activity approved does not obstruct the free movement or safe anchorage of any Vessel.

The Harbor Master shall have authority to approve or deny an initial mooring permit application and/or assign a mooring location for a Working Float only after a public hearing is held by the Harbor Master on the application, attended by the appropriate Deputy Harbor Master. Applications for mooring a Working Float must be presented in such format as may be prescribed by the Harbor Master and such application will be considered only after the applicant has applied for and received all necessary approvals by all other local, state or federal agencies having jurisdiction over the Working Float. Mooring permits for Working Floats shall thereafter be approved for no longer than one (1) year and must be reapplied for on a yearly basis and all applicants for either a new or renewal mooring permit must demonstrate a business reason necessitating the Working Float and/or mooring location applied for.

The location designated for an approved mooring permit may subsequently be moved if the Harbor Master determines that the area in which the Working Float is located is congested. A mooring permit for a Working Float may set forth such conditions and requirements as the Harbor Master may deem desirable including, but not limited to, requiring that the Working Float be moored “fore and aft” and that the mooring be comprised of ground tackle of a size determined by the Harbor Master to be sufficient to safely moor the Float with it’s intended gear.

Working Floats are subject to the provisions of this Ordinance and, notwithstanding any other provision to the contrary, if the Working Floats or items stored thereon becomes, in the opinion of the Harbor Master, after consulting with the Deputy Harbor Master for that area, condition, or safety or if any provision of subsection G is violated, the Harbor Master shall notify the permit holder of such violation and, if such is not remedied within seven (7) days of notification, the Harbor Master may revoke the permit and cause the Mooring(s) and Float to be removed and stored at the permit holder’s expense.

H. Mooring Floats

1. Mooring floats may be moored in the waters of Boothbay on a space-available basis, as assigned by the Harbor Master. The granting of a mooring float site permit entitles the holder to one side of a mooring float. No permission for a mooring float shall be allowed by the Harbor Master in the event that the placement of the mooring float interferes with navigation of other vessels, interferes with the use of other mooring sites by vessels with permits, or in the event that the placement of such a float is inconsistent with space management of the Harbor.
2. The dimension of a mooring float shall be determined by the Harbor Master and Port Committee. In the event that permission is granted for the establishment of a mooring float on an approved mooring site, then the float, once established, shall be treated as an extension of the mooring gear and mooring hardware. All mooring floats shall be inspected prior to launching of the float and the mooring permit holders shall be responsible for completing all necessary repairs on the mooring and float prior to a

written report being submitted by permit holder or appointed agent to the Harbor Master or Deputy Harbor Master.

3. Applications for a site for a mooring float shall be submitted to the Harbor Master on forms provided by the Harbor Master. In addition to any information reasonably requested by the Harbor Master, the application form shall be accompanied by a Mooring Float Agreement between parties sharing the use of a mooring float. The Mooring Float Agreement form shall be provided by the Harbor Master. That agreement shall include a provision which states that a party ceasing to use that mooring float or terminating the use of that mooring float shall remain responsible for that party's share of fees or expenses of maintenance concerning that mooring float and gear. Such responsibility shall continue until that mooring float and gear is removed from the mooring site or until another party has assumed the use of that mooring float and gear and has agreed to pay any outstanding fees or expenses for maintenance associated with that mooring float and gear. The Harbor Master shall not accept an application for a mooring float site unless the application is accompanied by the signed agreement.
4. In the event that a person ceases to use a mooring float, or the use otherwise terminates, then the purchase price of that person's share of the mooring float and gear shall be disclosed, in writing, to the Harbor Master and that purchase price shall not exceed one half of the current fair market value of that mooring float and gear, as determined by the Harbor Master. In order to ensure maximum usage of mooring floats in the waters of Boothbay, the Town of Boothbay shall have the right of first refusal for any mooring float that becomes available for sale.

In the event of a dispute among mooring site permit holders with an approved mooring float and gear concerning the refusal or failure of a person sharing that float to pay a proportionate share of maintenance, taxes or harbor fees owed by owners for that float and gear, the Harbor Master shall be advised of such a dispute. In the event of non-payment of those shares of maintenance, taxes or mooring fees, the Harbor Master shall have the authority to terminate the mooring site permit and to re-assign that site to another mooring site permit holder.

THE SHELLFISH CONSERVATION ORDINANCE OF THE TOWNS
OF BOOTHBAY, BOOTHBAY HARBOR, SOUTHPORT, AND
EDGECOMB, MAINE

Towns of Boothbay Harbor, Boothbay, Edgecomb and Southport

Re-Adopted by voters at the Annual Town Meeting of each Town held in 2016

1. Title.

This ordinance shall be known, and may be cited as the "Shellfish Conservation Ordinance of the Towns of Boothbay Harbor, Southport, Boothbay, Edgecomb, Maine," and will be referred to herein as "this chapter."

2. Definitions. (As used in this Ordinance):

RESIDENT: A person who has been domiciled in this municipality for at least 12 months prior to the time his claim of such residency is made. Residency will be determined using the criteria in Attachment A.

NONRESIDENT: Anyone not qualified as a resident under this ordinance and not a holder of a resident license from a reciprocating town.

SHELLFISH, CLAMS AND INTERTIDAL SHELLFISH RESOURCES: Softshell clams (*Mya arenaria*).

MUNICIPALITY: The Town of Boothbay, Boothbay Harbor, Southport and Edgecomb, as the case may be.

LOT: The total number of softshell clams in any bulk pile. Where softshell clams are in a box, barrel or other container, each shall constitute a separate lot.

POSSESS: Dig, take, harvest, ship, transport, hold, buy and sell, retail and/or wholesale, softshell clam shellstock.

3. Authority.

This Ordinance has been prepared in accordance with the provisions of 12 M.R.S.A. § 6671, et seq., as revised, § 6681, as revised.

4. Purpose.

The purpose of this chapter is to establish a shellfish conservation program for the Towns of Boothbay, Boothbay Harbor, Southport and Edgecomb which will ensure the protection and optimum utilization of shellfish resources within the limits of these municipalities. These goals will be achieved by means, which may include:

- A. Licensing.
- B. Restricting the time and area where digging is permitted.
- C. Limiting the minimum size of clams taken.
- D. Limiting the amount of clams taken daily by a harvester.

5. Validity and severability.

If any section, subsection, sentence or part of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

6. Effective Date.

This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective following approval by all participating municipalities, provided that a certified copy of this chapter is filed with the Commissioner within 20 days of its adoption.

7. Shellfish Conservation Committee.

There is hereby established a Shellfish Conservation Committee composed of representatives from each of the municipalities which enact this ordinance. The municipal officers of each town shall appoint two of its Shellfish Committee members and at least one licensed commercial clam digger to be a member of the Committee. The Municipal Shellfish Warden(s) shall be a nonvoting member of the Committee.

- A. The Committee's responsibilities include:
1. Establishing, annually, in conjunction with the Department of Marine Resources, the number of shellfish digging licenses to be issued.
 2. Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information preparing in conjunction with and subject to the approval of the Department of Marine Resources a plan for implementing conservation measures.
 3. Submitting, to the Administrative Committee proposals for the expenditures of funds for the purpose of shellfish conservation.
 4. Periodically reviewing this chapter and making recommendations for its amendment.
 5. Securing and maintaining records of shellfish harvest from the municipally managed shellfish areas and of closed areas that are conditionally opened by the Department of Marine Resources.
 6. Recommending conservation closures and openings to the Administrative Committee or Council in conjunction with the Area Biologist of the Department of Marine Resources.
 7. Submitting an annual report to the municipalities and Department of Marine Resources covering the above topics and all other Committee activities.
- B. Term of office and vacancy. The term of office of any member of the Committee shall be for a period of three years from the date of appointment. The municipal officers shall appoint a person to fill a vacancy for any unexpired term.
- C. Committee officers. The Committee shall elect a Chairman, a Vice Chairman and Secretary from its members. The Chairman shall preside at all meetings of the Committee; the Vice Chairman shall preside in his absence; and the Secretary may record and keep minutes of each meeting.
- D. The Committee shall advise the officers of each municipality of all matters pertaining to conservation and harvesting of its shellfish resources, including, but not limited, to the opening and closing of clams flats. It shall act as a liaison between the municipalities and the state. It shall aid in the development of programs to help each municipality manage its shellfish resource. It shall represent the interest of the region with regard to shellfish resources and shall take such other action as may be necessary, or desirable, to implement harvesting and conservation management programs.
- E. For a meeting to be valid, a quorum of five members must be present.
- F. Any member not attending at least six meetings a year will be dropped from the Committee.
- G. Elections will be held each year at the January meeting.

H. Meetings will be held monthly with the time and place for next meeting being determined at the current month's meeting.

8. Amendments.

- A. Initiation. A proposal for an amendment to this chapter may be initiated by the following, but may be considered only if accompanied by Department of Marine Resources approval:
1. The municipal officers;
Or
 2. An individual, through a request to the Shellfish Conservation Committee and subsequent favorable majority vote of the Committee;
Or
 3. A written petition of the number of voters equal to at least 10% of the voters in the last gubernatorial election of the municipality in which the petition is originated.
Or
 4. Any amendment that is adopted in one Community must also be approved in the other three communities for the amendment to take effect.
- B. Procedure.
1. Any proposal for an amendment shall be made to the Shellfish Conservation Committee, in writing, stating the specific changes requested. Amendments initiated by petition shall be presented to the municipal officers who shall transmit them to the Shellfish Conservation Committee, for recommendation. When an amendment proposed by an individual receives a favorable vote of a majority of the Committee, the individual shall pay a fee to cover the costs of hearings and advertisements.
 2. Within thirty (30) days of receiving a properly initiated amendment, the Committee shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation in the municipality at least seven days prior to the hearing. The notice shall contain the time, date and place of hearing and sufficient detail about the proposed changes as to give adequate notice of their content. If the changes are extensive, a brief summary, together with an indication that a full text is available at the Town Clerk's office, shall be adequate notice.
 3. Following the public hearing, the Committee shall make a written recommendation regarding passage to the municipal officers, which will be accompanied by the required Department of Marine Resources approval of the proposal, prior to any action on the amendment by them.
- C. Adoption. Any amendment to this chapter shall only be adopted by a majority vote of the Town Meeting.
- D. Period of Ordinance. This ordinance and any amendments thereto shall remain in effect until repealed by the municipality or rescinded by the Commissioner of Marine Resources.

9. Licensing.

A municipal shellfish digging license is required for any person to dig, or take, shellfish from the shores and flats of the reciprocating municipalities without having a current license issued by a municipality as provided by this chapter. Additionally, a commercial digger also must have a valid State of Maine commercial shellfish license issued by the Department of Marine Resources or a receipt of payment from the Department of Marine Resources.

- A. License classification.
1. Resident commercial shellfish license. This license is only available to residents of the municipality and entitles the holder to dig, and take, any amount of shellfish from the shore and flats of the reciprocating municipalities.
 2. Nonresident commercial shellfish license. This license is available to nonresidents of the municipality and entitles the holder to dig, and take, any amount of shellfish from the shores and flats of the reciprocating municipalities.
 3. Resident recreational shellfish license. This license is available to the residents of the municipality and entitles the holder to dig, and take, no more than one peck of shellfish, in any one day, for the use of oneself or one's family, from the shores and flats of the reciprocating municipalities. It shall be unlawful for anyone holding a State commercial shellfish license to obtain a recreational license in all towns in the interlocal agreement.
 4. Nonresident recreational shellfish license. This license is available to nonresidents of the municipality and entitles the holder to dig and take no more than one peck of shellfish, in any one day, for the use of oneself or one's family, from the shores and flats of the reciprocating municipalities. It shall be unlawful for anyone holding a State commercial shellfish license to obtain a recreational license in all towns in the interlocal agreement.
- B. Open license sales. When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year:
1. Notice of the dates, places, times and the procedures for the license sales shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to the Commissioner of Marine Resources.
 - a. Licenses shall be sold as according to DMR Regulation Chapter 7.40, Municipal Licensing of Shellfish Harvesters.
- C. All shellfish licenses must be signed. The licensee must sign the license to make it valid.
- D. Application procedure. Any person may apply to the Town Clerk for the licenses required by this chapter on forms provided by the municipality. (See Attachment B.[1]) [1] Editor's Note: Attachment B is on file in the town offices.
- E. Contents of application. The application must be in the form of affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.
- F. All license fees must accompany, in full, the application for the respective license before license is issued.
- G. Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid and void.
- H. Procedure. The Town Clerk prepares a form to list the names, addresses and phone numbers of license purchasers along with a license number listed sequentially and indicative of residency status (e.g., R1 for resident license No. 1 and N1 for nonresident license No. 1). In the case of commercial licenses, the license numbers would begin R1 and continue through R5; the next number would be N1 followed by R6 through R10. The next set of 11 would begin with N2 followed by R11 through R20. Each

successive set of 11 repeats the previous (i.e., N3, R21-R30, R31-40). Because of a difference in the statutes between commercial and recreational licenses, the listing of the first 10 for recreational licenses differs from commercial licenses. The license numbers would begin with R1 followed by N1 then R2 through R10. Thereafter the listing is the same as for the commercial licenses. A separate but similar form is prepared for each license category for which the municipality has requested open sales. Since a number of resident licenses need to be sold before a nonresident license becomes available, more nonresidents may apply for licenses than are available, particularly during the initial sales. A second form needs to be prepared. It should contain information on nonresidents who apply for a license listed sequentially. As nonresident licenses become available, as indicated on the first form, the information is transferred from the second to the first and the applicant notified.

1. Each applicant shall perform eight hours mandatory conservation work or if serving on the Shellfish Conservation Committee must have attended at least six meetings before obtaining a commercial shellfish license. Conservation work shall be approved by the Shellfish Conservation Committee, and a Committee member must be present at the time the work is being performed under supervision of the Town Warden.
2. All licenses, resident commercial, nonresident commercial, resident recreational and nonresident recreational issued to individuals 65 years of age or older will be issued free of charge.
3. No individual may hold a valid resident commercial and a valid nonresident commercial license at the same time.
4. All commercial licenses will be sold at one location.

10. Violations and penalties.

Any person who violates this chapter shall be punished as provided by 12 M.R.S.A. § 6671(10) or 6681, as appropriate in the circumstances.

11. Fee; use of revenues from fees and penalties.

All fees for shellfish licenses will be set by a vote of the Shellfish Committee at annual shellfish committee meeting. Additionally, an agent fee of \$2 will be charged for each license and shall be retained by the local clerk as payment for issuing the license. Fees and penalties received shall be used for costs incurred in the enforcement and management of the Shellfish Conservation Chapter.

12. Limitation of Diggers.

In that clam resources may vary in density and size distribution over the limited soft shell clam producing areas of the municipality, from year to year municipality carefully husband its shellfish resources. Following the annual review of these resources (i.e. size distribution, abundance and the warden's reports) as required by the Shellfish Conservation Committee, in consultation with the DMR's area Biologist, the Shellfish Conservation Committee will determine whether limiting commercial and/or recreational shellfish licenses is an appropriate shellfish management option for the following year.

- A. Prior to annual shellfish committee meeting, each year, the Shellfish Conservation Committee shall document and report its findings, as regards to the allocation of commercial and recreational licenses to be made available for the following license year, to the Commissioner of Marine Resources for approval.

- B. After receiving approval of proposed license allocations from the Commissioner of Marine Resources, the Shellfish Conservation Committee shall notify the municipal town clerk, in writing, the number and allocation of shellfish licenses to be issued by that municipality.
- C. Notice of the number of licenses to be issued, and the procedure for application, shall be published in a newspaper, or combination of newspapers, of general circulation in the municipality not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until said period expires.
- D. The Municipal Town Clerk shall issue licenses to those residents who have met the requirements of obtaining a resident commercial license. The Town Clerk shall issue licenses to residents and non-residents July 1st to June 30th of the following year.
- E. License Expiration Date – Resident and Nonresident Commercial and Recreational licenses issued under authority of this ordinance expire at midnight on June 30th following date of issue.

13. Reciprocal Harvesting Privileges.

Resident Commercial, Nonresident Commercial, Nonresident Recreational and Resident Recreational license holders may harvest shellfish within any municipality governed by the ordinance.

14. Suspension.

Any shellfish licensee having three or more convictions for a violation of this Ordinance within the preceding three years shall have his shellfish license automatically suspended for a period of thirty (30) days, unless specified elsewhere in this Ordinance.

15. Opening and Closing of Flats for Conservation Purposes.

The Municipal Officers, conditioned upon the approval of the Commissioner of Marine Resources, may open and/or close areas of shellfish harvesting. Within fourteen (14) days of receipt of written request of the Shellfish Conservation Committee, the Municipal Officers may hold a public hearing on the proposal. The decision of the Municipal Officers shall be based on the recommendation of the DMR's area biologist and public input. The decision of the Municipal Officers will be in the form of request letter to the Department of Marine Resources. The Municipal Officers shall provide sufficient notification to the public of any conservation closure or opening by publishing, advertising and/ or posting in public places, an official municipal closure or opening notice signed by the Shellfish Warden or the Department issued permit, five (5) days prior to the initial closure or opening date. The method of notification must be approved by the Department prior to issuance of the permit.

16. Minimum Legal Size of Soft Shell Clams

- A. In accordance with DMR Statute 6681 Sec. 3 it is unlawful for any person to possess soft shell clams within the municipality which are less than two inches in the longest diameter except as provided by Subsection B of this section.

- B. Tolerance – any person may possess soft clams that are less than two inches if they comprise less than 10% of a lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

17. Depuration Digging.

While Depuration Digging is controlled by the State it is the intent of the clam committee to recommend whenever possible, this digging be done by local diggers. Any moneys received by the towns in the ordinance, shall be turned over to the Shellfish Conservation Committee.

Attachment A – Residence Criteria

1. Motor Vehicle License Address
2. Motor Vehicle Registration Address
3. Voter Registration Address
4. Location of owned residential real estate
5. Location of rented residential real estate
6. Hunter License Address
7. Utility Service Address
8. Address and physical location for spouse and/or children
9. Location for children's school registration
10. Any other physical evidence of physical character demonstrating residency

Zoning Ordinance of the Town of Boothbay



Adopted November 7, 2007

Amended May 5, 2008

Amended May 3, 2010

Amended May 7, 2012

Amended May 14, 2014

Amended May 2, 2016

Amended November 7, 2017

TABLE OF CONTENTS

1. GENERAL

1.1 Title1-1
1.2 Effective Date1-1
1.3 Purpose1-1
1.4 Conflict with Other Ordinances1-1
1.5 Validity and Severability1-1
1.6 Availability1-1
1.7 Changes and Amendments1-1
1.8 Land Use Goals and Objectives1-2
1.9 Administration1-3
 1.9.1 Objectives1-3
 1.9.2 Authorization Required1-3
 1.9.3 Responsibilities1-4
 1.9.3.1 Code Enforcement Officer1-4
 1.9.3.2 Planning Board1-4
 1.9.3.3 Board of Appeals1-4
 1.9.4 Enforcement1-4

2. ZONING

2.1 Purpose2-1
2.2 Establishment of Zoning Districts and Overlay Zones and Areas2-1
 2.2.1 Zoning Districts2-1
 2.2.2 Overlay Zones2-2
 2.2.3 Boundaries and Maps2-3
2.3 Contract Zoning2-4
2.4 Procedures for Amending or Changing Zoning Districts
 and Overlay Zones and Areas2-4

3. DEVELOPMENT AND USE

3.1 Purpose3-1
3.2 Applicability3-1
3.3 Responsibilities3-1
3.4 General Standards3-1
3.5 Procedures for Review of Proposed Developments and Uses3-2
 3.5.1 Pre-application Meeting3-2
 3.5.2 Application3-3
 3.5.3 Application Review by the Code Enforcement Officer3-4
 3.5.4 Application Review by the Planning Board3-5
 3.5.5 Waivers and Variances3-7
 3.5.6 Approved Applications3-7
 3.5.7 Revision or Amendment3-7
 3.5.8 Appeal3-7
 3.5.9 Records3-7
3.6 Review Criteria3-8
 3.6.1 General3-8
 3.6.2 Conditional Use Applications3-8
3.7 Prohibited Uses and Activities3-8
3.8 Measurement and Use Definitions3-11
3.9 District Standards3-14
 3.9.1 C1 District3-14
 3.9.2 C2 District3-18

Zoning Ordinance of the Town of Boothbay

3.9.3 C3 District	3-24
3.9.4 General Residential District	3-28
3.9.5 Industrial Park District	3-33
3.9.6 Maritime Commercial District	3-37
3.9.7 Special Residential District	3-41
3.9.8 Village District	3-45
3.9.9 Water Reservoirs Protection District.....	3-50
3.9.10 Well Head Protection District	3-55
3.10 Supplemental Use Standards	3-59
3.10.1 Accessory Apartments.....	3-59
3.10.2 Agriculture	3-59
3.10.3 Animal Breeding or Care	3-60
3.10.4 Campgrounds	3-60
3.10.5 Change of Use	3-60
3.10.6 Chemical and Petroleum Product Storage	3-61
3.10.7 Commercial Development next to Residential Uses	3-61
3.10.8 Development next to Registered Farmland	3-61
3.10.9 Docks, Piers, Wharves, Bridges	3-61
3.10.10 Essential Services.....	3-62
3.10.11 Home Occupations	3-63
3.10.12 Individual Private Campsites.....	3-64
3.10.13 Junkyards.....	3-64
3.10.14 Mineral Exploration and Extraction	3-65
3.10.15 Mobile Homes	3-66
3.10.16 Mobile Home Parks.....	3-66
3.10.17 One Family Residences in the Resource Protection Area	3-67
3.10.18 Public Facilities	3-68
3.10.19 Stairway for Shoreline Access in the Shoreland Overlay Zone.....	3-68
3.10.20 Storage Shed.....	3-68
3.10.21 Timber Harvesting.....	3-68
3.10.22 Wind Turbines.....	3-69
3.10.23 Communications Towers.....	3-69
3.10.24 Retail Marijuana Establishments	3-75
3.11 Development and Performance Standards	3-76
3.11.1 Buffers, Visual	3-76
3.11.2 Buffers, Water Supply Protection	3-77
3.11.3 Clearing or Removal of Vegetation for Activities other than Timber Harvesting	3-76
3.11.4 Construction Standards	3-77
3.11.5 Cuts and Fills.....	3-78
3.11.6 Emissions	3-78
3.11.7 Hazard Trees, Storm-damaged trees, and Dead Tree Removal	3-78
3.11.8 Exemptions to Clearing and Vegetation Removal Requirements	3-79
3.11.9 Revegetation Requirements.....	3-80
3.11.10 Erosion and Sedimentation Controls	3-81
3.11.11 Lighting	3-82
3.11.12 Lots.....	3-82
3.11.13 Noise	3-83
3.11.14 Outdoor Storage	3-83
3.11.15 Parking and Loading	3-83
3.11.16 Roads and Driveways.....	3-85
3.11.17 Roadside Trees and Walls.....	3-89
3.11.18 Sanitation.....	3-89
3.11.19 Screening.....	3-91
3.11.20 Signs.....	3-91
3.11.21 Snow Removal	3-95
3.11.22 Storm Water Runoff.....	3-96
3.11.23 Structures.....	3-96
3.11.24 Waste Disposal.....	3-96

4. SUBDIVISION

4.1 Purpose4-1

4.2 Applicability4-1

4.3 Responsibilities.....4-1

4.4 General Standards.....4-1

4.5 Procedures for Subdivision Review.....4-2

 4.5.1 General4-2

 4.5.2 Pre-application Meeting4-2

 4.5.3 Application4-2

 4.5.4 Completeness Review4-5

 4.5.5 Application Review4-5

 4.5.6 Site Visit.....4-6

 4.5.7 Joint Meetings4-6

 4.5.8 Consulting Cost Fee4-6

 4.5.9 Impact Fee4-6

 4.5.10 Performance Guarantees.....4-6

 4.5.11 Waivers4-7

 4.5.12 Approved Applications.....4-7

 4.5.13 Revision or Amendment.....4-8

 4.5.14 Appeal4-8

 4.5.15 Records.....4-8

4.6 Review Criteria.....4-8

4.7 Prohibited Activities and Development.....4-10

4.8 Measurement Definitions4-11

4.9 District Standards4-12

 4.9.1 C1 District4-12

 4.9.2 C2 District4-13

 4.9.3 C3 District4-14

 4.9.4 General Residential District4-14

 4.9.5 Industrial Park District4-15

 4.9.6 Maritime Commercial District4-15

 4.9.7 Special Residential District4-16

 4.9.8 Village District4-17

 4.9.9 Water Reservoirs Protection District.....4-18

 4.9.10 Well Head Protection District4-20

4.10 Development and Performance Standards.....4-21

 4.10.1 Buffers, Water Supply Protection.....4-21

 4.10.2 Chemical and Petroleum Product Storage4-21

 4.10.3 Clearing or Removal of Vegetation for
 Activities other than Timber Harvesting4-21

 4.10.4 Cuts and Fills.....4-23

 4.10.5 Development next to Registered Farmland4-23

 4.10.6 Erosion and Sedimentation Controls4-23

 4.10.7 Essential Services4-24

 4.10.8 Junkyards.....4-24

 4.10.9 Large Scale Development.....4-24

 4.10.10 Lots.....4-24

 4.10.11 Open Space.....4-25

 4.10.12 Roads.....4-25

 4.10.13 Roadside Trees and Walls4-29

 4.10.14 Sanitation.....4-29

 4.10.15 Soil4-30

 4.10.16 Storm Water Runoff Control4-30

 4.10.17 Structures.....4-30

 4.10.18 Water Quality4-31

 4.10.19 Water Supply.....4-31

4.11 Cluster Development4-32

5. APPEALS, INTERPRETATIONS AND VARIANCES

5.1 Purpose5-1
5.2 Applicability5-1
5.3 Responsibilities5-1
 5.3.1 Applicant or Aggrieved Party.....5-1
 5.3.2 Board of Appeals.....5-2
5.4 Appeal Procedure5-2
 5.4.1 Time Limit5-2
 5.4.2 Application.....5-2
 5.4.3 Notification5-3
 5.4.4 Record of Decision being Appealed.....5-4
 5.4.5 Public Hearings5-4
 5.4.6 Variance Recorded5-6
 5.4.7 Approved Appeals.....5-7
 5.4.8 Reconsideration.....5-7
 5.4.9 Appeal to Superior Court5-7
 5.4.10 Remanded Appeals.....5-7
 5.4.11 Records.....5-7
5.5 Review Criteria– Administrative Appeals.....5-7
5.6 Review Criteria – Variance5-8
 5.6.1 General5-8
 5.6.2 Dimensional Standards.....5-8
 5.6.3 Disability5-8
 5.6.4 Endangered Species.....5-8
 5.6.5 Registered Farmland5-9
 5.6.6 Set-back Variance for One-family Dwellings5-9
 5.6.7 Limitations5-9

6. DEFINITIONS6-1

APPENDIX

1 GENERAL

Table of Contents

1.1 Title	1-1
1.2 Effective Date.....	1-1
1.3 Purpose.....	1-1
1.4 Conflict with Other Ordinances.....	1-1
1.5 Validity and Severability	1-1
1.6 Availability.....	1-1
1.7 Changes and Amendments	1-1
1.8 Land Use Goals and Objectives	1-2
1.9 Administration.....	1-3
1.9.1 Objectives.....	1-3
1.9.2 Authorization Required	1-3
1.9.3 Responsibilities	1-4
1.9.3.1 Code Enforcement Officer	1-4
1.9.3.2 Planning Board.....	1-4
1.9.3.3 Board of Appeals	1-4
1.9.4 Enforcement	1-4

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

1.2 Effective Date This Ordinance shall be effective November 7, 2007 and repeals and replaces the Zoning Ordinance of the Town of Boothbay previously adopted on May 5, 2003 and as amended.

1.3 Purpose The purpose of this Ordinance is to ensure that the growth and use of the land and the resources of the Town of Boothbay are consistent with the Comprehensive Plan. *{30-A §§ 4314(2)¹ and 4352(2)}*²

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

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

1.4 Conflict with Other Ordinances This Ordinance shall not be construed to repeal any other existing bylaws or ordinances; provided, however, that where a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation or statute, the more restrictive provision shall control. *{DEP § 7}*³

1.5 Validity and Severability Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance. *{1 § 71(8) and DEP § 6}*

1.6 Availability A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be available at the Town Office for use or for sale at reasonable cost. Notice of availability of this Ordinance shall be posted. *{30-A § 3005 and DEP § 5}*

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

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

² References to State statute or regulation requiring inclusion or providing wording are for information only.

³ DEP references are to Department of Environmental Protection Chapter 1000 State of Maine Guidelines for Municipal Shoreland Zoning Ordinances for information only.

made available in accordance with the Town of Boothbay Administrative Code. {30-A §§ 3002(1), 3004(4), 4403(2) and 4352(1), (9) & (10)}

1.7.1 Changes or amendments to the regulations for the use of land or structures in the Shoreland Overlay Zone including any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located beyond the high-water line of areas affected by tidal action, a great pond, a stream, outlet stream from any freshwater wetland or within a wetland shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the amendments, attested and signed by the Town Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on any amendment within 45 days of his or her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted within the 45 day period shall be governed by the terms of the amendment if such amendment is approved by the Commissioner. {DEP §§ 4 and 8}

1.8 Land Use Goals and Objectives The following goals from the Comprehensive Plan are established to guide the Town in the implementation of this Ordinance. These goals are intended to provide a general policy framework for the specific Ordinance regulations.

1.8.1 Small Town Character The Town should assure that the small town, rural character of Boothbay is maintained by:

- A. Retaining open space and natural areas throughout the community;
- B. Keeping the scale and intensity of new development in proportion to the existing residential character of the Town and the physical capacity of the natural resources to support the residents and businesses, with special attention paid to the carrying capacity of off-shore islands;
- C. Protecting the scenic quality of the Town along the shorefront and main roads and in areas with outstanding scenic beauty.

1.8.2 Residential Uses. The Town should manage residential development in the community to assure that it is a positive addition to the community by:

- A. Encouraging a range of housing opportunities to meet the needs of all residents;
- B. Regulating development so as to:
 1. Not overburden the road and drainage systems;
 2. Provide a good living environment for all residents; and
 3. Protect the Town from extraordinary service and maintenance costs in the future; and
- C. Requiring new residential developments pay for those municipal improvements incurred for the new developments.

1.8.3 Commercial and Industrial Uses The Town should encourage the retention, expansion and creation of small-scale commercial and industrial enterprises that would provide year-round employment opportunities for local people by:

- A. Minimizing adverse impact on neighboring property owners from noise, traffic, parking, odors, signs, lighting, hazardous waste and electrical or electronic interference;
- B. Permitting commercial and industrial uses in residential areas when the proposed use would meet the performance standards of this Ordinance for the particular location;
- C. Discouraging industries that require large amounts of water or produce high quantities of waste;
- D. Discouraging uses that would overtax either the Town's natural resources or transportation system; and
- E. Requiring new commercial and industrial developments pay for those municipal improvements incurred for the new developments.

1.8.3.1 Home Occupations The Town should allow residents to operate small businesses and services in their homes as long as measures are taken to minimize adverse impacts on neighboring property owners from noise, traffic, parking, odors, hazardous materials, pollution, lighting and electrical or electronic interference.

1.8.3.2 Tourist Facilities Recognizing the commercial and economic importance of tourism as being the number one industry not only in the Town of Boothbay but in the region, the Town should allow the retention and expansion of tourism facilities provided by:

- A. Limiting new commercial activities that primarily serve seasonal visitors to small-scale facilities that are compatible with the rural nature of the community;
- B. Requiring new facilities, or additions or modifications to existing facilities, be made to meet the standards of quality to assure safe highway access, good visual design and positive environmental impacts;

- C. Following stringent buffering standards to minimize adverse impacts on neighboring properties; and
- D. Discouraging conversion of tourist facilities into dwelling units.

1.8.3.3 Marine-Related Activities The Town should promote the retention of traditional marine-related activities, such as fishing, shell fishing, boat building, and marine supply and service, by:

- A. Assuring continued access to the water for fishermen and the public;
- B. Protecting and improving the water quality of the shellfish harvesting areas; and
- C. Allowing marine-related activities throughout the community subject to reasonable regulations to minimize adverse impacts on neighboring properties.

1.8.4 Environment The Town should preserve the quality of life and Boothbay's environment by:

1.8.4.1 Encouraging the owners of environmentally sensitive areas and critical wildlife habitats to use their property in a manner that does not jeopardize the environmental value of their land or create problems for neighboring property owners or the Town; and

1.8.4.2 Assuring both the quality and quantity of ground water by:

- A. Limiting the density and type of new development;
- B. Controlling the handling, use and storage of petroleum products, chemicals and other potentially hazardous substances to minimize the potential for ground water contamination.
- C. Enforcing wastewater disposal regulations; and
- D. Protecting the public water supply for the Boothbay Region by reducing the risk of bacterial, hazardous material, chemical and other potential pollution of municipal well heads, watersheds and aquifers and reducing the risk of phosphorus export to Adams Pond and Knickerbocker Lake.

1.8.5 Shoreland The Town should adopt, administer, and enforce land use regulations consistent with the Department of Environmental Protection's guidelines for municipal shoreland zoning ordinances to:

- A. Provide the required zoning and subdivision standards while at the same time preserving those activities, within the zoned areas, that are indigenous to the region;
- B. Further the maintenance of safe and healthful conditions;
- C. Prevent and control water pollution;
- D. Protect fish spawning grounds, aquatic life, bird and other wildlife habitat;
- E. Protect buildings and lands from flooding and erosion caused by development and use;
- F. Protect archaeological and historic sites;
- G. Protect commercial fishing and maritime industries;
- H. Protect freshwater and coastal wetlands;
- I. Control building sites, placement of structures and land uses;
- J. Conserve shore cover, and visual as well as actual points of access to inland and coastal waters;
- K. Conserve natural beauty and open space; and
- L. Anticipate and respond to the impacts of development in shoreland areas. *{DEP § 1}*

1.9 Administration

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

- A. To assure that the state and local regulations governing land use, wastewater disposal and development are administered in a fair and even-handed manner;
- B. To assure that the Town is aware of all new development and construction activity in all areas of the Town and that requests for approvals are acted upon in a timely manner;
- C. To assure that all development and construction is carried out in accordance with the applicable codes and regulations and requirements for project approval; and
- D. To provide on-going oversight of wastewater disposal systems using overboard discharge to assure that they are functioning according to the design and permit requirements.

1.9.2 Authorization Required No person shall engage in any development, subdivision, or use requiring either a permit or approval from the Code Enforcement Officer, Planning Board or Board of Appeals, as applicable; or expand, change, or replace an existing use or structure; or renew a discontinued non-conforming use without first obtaining the required permit or approval. *{DEP § 16 B}*

1.9.3 Responsibilities

- 1.9.3.1 Code Enforcement Officer** The Code Enforcement Officer shall be the reviewing authority and shall approve, approve with conditions or deny:
- A. Any request for development or use designated in the Land Use and Activity Tables of Sections 3.9.1 – 3.9.10 as requiring a Permit (P); and
 - B. Any request for development or use not specifically the responsibility of the Planning Board or the Board of Appeals.

1.9.3.2 Planning Board

1.9.3.2.1 The Town shall maintain a Planning Board in accordance with the Provisions of State Law and The Town of Boothbay Administrative Code. *{Administrative Code, 30-A § 4324(2) and DEP § 16 A(3)}*

1.9.3.2.2 The Planning Board shall be the reviewing authority of all applications for development, subdivision and use not the responsibility of the Code Enforcement Officer.

1.9.3.2.3 Organization and Voting The Planning Board shall consist of 5 members and 2 alternate members. In the absence of a member(s) the alternate members present shall vote in the order of appointment. *{Administrative Code}*

1.9.3.2.3.1 Quorum Three voting members of the Planning Board shall constitute a quorum.

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

1.9.3.3 Board of Appeals The Town shall maintain a Board of Appeals in accordance with the provisions of 30-A § 2691. *{30-A §§ 2691(1), 4353 and DEP § 16 A(2)}*

1.9.3.3.1 The Board of Appeals shall hear appeals from decisions or actions of the Code Enforcement Officer and the Planning Board, requests for variances, and requests for interpretations of boundaries of Zoning Districts, Overlay Zones and Areas within the Shoreland Overlay Zone. *{30-A § 2691(4)}*

1.9.3.3.1.1 A decision of the Planning Board relative to a subdivision application can only be appealed to Superior Court. *{30-A § 4353(1)}*

1.9.3.3.2 Organization and Voting The Board of Appeals shall consist of 5 members and 2 alternate members. In the absence of a member(s) the alternate members present shall vote in the order of appointment. *{30-A §§ 2691(2A) & (2E)}*

1.9.3.3.2.1 Quorum Three voting members of the Board of Appeals shall constitute a quorum. *{30-A § 2691(3A) and DEP § 16 H(4)(b)(i)}*

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

1.9.4 Enforcement

1.9.4.1 Any property or use existing in violation of the provisions of this Ordinance shall be deemed to be a nuisance. *{30-A § 4302 and DEP § 16 I(1)}*

1.9.4.2 Code Enforcement Officer It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer finds that any development, subdivision or use requiring approval under this Ordinance is taking place without such approval or where approval has been obtained but a provision of this Ordinance or any condition of the application approval is being violated, he or she shall notify, in writing, the person responsible for such violation and the property owner. The notification shall indicate the nature of the violation; and order action necessary to correct the violation. Actions ordered may include: discontinuance of illegal use of land or structures or work being done, removal of illegal structures, and abatement of nuisance conditions. *{30-A § 4452(1), 38 § 441(3A) and DEP § 16 I(2)(a)}*

1.9.4.2.1 The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to land use permits or approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance. *{DEP § 16 I(2)(b)}*

1.9.4.2.2 A copy of any notice of violation issued shall be provided to the Board of Selectmen and be maintained by the Code Enforcement Officer as a permanent record. Any notice of violation may be appealed to the Board of Appeals. *{DEP § 16 I(2)(a)}*

1.9.4.3 Legal Actions When any order of the Code Enforcement Officer pursuant to Section 1.9.4.2 does not result in the correction or abatement of the violation or nuisance condition and such order has become final or a timely appeal has not been taken, the Board of Selectmen, upon notice from the Code Enforcement Officer, may institute, and in the Shoreland Overlay Zone shall institute, any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Boothbay. *{30-A §§ 4452(2) & (3) and DEP 1 § 16 I(3)}*

1.9.4.3.1 The Board of Selectmen is hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by the Code Enforcement Officer or Alternate Code Enforcement Officer; and there is no evidence that the owner acted in bad faith; or unless the removal of the structure or use will result in a threat or hazard to public health and safety, or will result in substantial environmental damage. *{DEP § 16 I(3)}*

1.9.4.4 Fines Any person, firm, or corporation, including, but not limited to, a landowner, the landowner's agent, a contractor, or the occupant of any building or premises, who violates any of the provisions of this Ordinance shall be liable for fines as provided for by State law, 30-A § 4452. Each day such a violation is permitted to exist after notification shall constitute a separate offense. *{30-A § 4452(3) and DEP § 16 I(4)}*

2 ZONING

Table of Contents

2.1 Purpose.....	2-1
2.2 Establishment of Zoning Districts and Overlay Zones and Areas.....	2-1
2.2.1 Zoning Districts.....	2-1
2.2.2 Overlay Zones.....	2-2
2.2.3 Boundaries and Maps.....	2-3
2.3 Contract Zoning.....	2-4
2.4 Procedures for Amending or Changing Zoning Districts and Overlay Zones and Areas.....	2-4

2.1 Purpose The purpose of Section 2 is to divide all tracts or parcels of land in the Town of Boothbay into Zoning Districts and Overlay Zones in order that allowed uses, regulations and development standards can vary by the purpose of District or Zone. Section 2 also provides the standards for establishing new locations with different standards and for adding or removing a tract or parcel of land from an established Zoning District, Overlay Zone, or an Area within the Shoreland Overlay Zone. *{30-A §§ 4301(15-A)⁴ and 4352(8)}*⁵

2.1.1 Standards for Development and Use are in Section 3; Cluster Development and Subdivision standards are in Section 4.

2.2 Establishment of Zoning Districts and Overlay Zones and Areas The Town of Boothbay is hereby divided into Zoning Districts and Overlay Zones to achieve this purpose.

2.2.1 Zoning Districts Ten zoning districts are hereby established to delineate specific areas with differing development and use standards.

2.2.1.1 C1 District: The area adjacent to Route 27 between the Edgecomb Town line and Hardwick Road designated as “C1” on the Town of Boothbay Zoning Map. This District is primarily rural residential with limited commercial uses permitted.

2.2.1.2 C2 District: The area adjacent to Route 27 between Hardwick Road and a line approximately one and one-fourth miles south of Hardwick Road designated as “C2” on the Town of Boothbay Zoning Map. This District is primarily commercial with light industrial and residential uses allowed.

2.2.1.3 C3 District: The area adjacent to Route 27 between a line approximately one and one-fourth mile south of Hardwick Road and Country Club Road designated as “C3” on the Town of Boothbay Zoning Map. This District permits commercial and light industrial uses of a greater diversity than the C2 District and also allows residential uses.

2.2.1.4 General Residential District All areas not included in another District. This District is primarily residential with limited commercial uses permitted.

2.2.1.5 Industrial Park District The area designated as “Industrial Park District” on the Town of Boothbay Zoning Map. This District and the Maritime Commercial District are the two primary industrial districts.

2.2.1.6 Maritime Commercial District The area in East Boothbay designated as “Maritime Commercial District” on the Town of Boothbay Zoning Map. This District is the primary commercial and industrial district for maritime uses. *{38 § 447 and DEP § 13(F)}*⁶

2.2.1.7 Special Residential District The area in East Boothbay on Linekin Neck located south of a line drawn 150 feet north of the center line of King Philips Trail and its extension westerly to Linekin Bay; and Barters, Hodgdon, and Sawyers Islands. This District is primarily residential with limited commercial uses permitted. More stringent development standards than in the General Residential District are required to protect the areas included.

⁴ All Title, Chapter, and Section (“§”) references are to Maine Revised Statutes Annotated (M.R.S.A.), as may be amended from time to time.

⁵ References to State statute or regulation requiring inclusion or providing wording are for information only.

⁶ DEP references are to Department of Environmental Protection Chapter 1000 State of Maine Guidelines for Municipal Shoreland Zoning Ordinances for information only.

2.2.1.8 Village District: The historic commercial and public areas in Boothbay Center and East Boothbay designated on the Town of Boothbay Zoning Map as “Village District”.

2.2.1.9 Water Reservoirs Protection District The area adjacent to Adams Pond and Knickerbocker Lake. These water bodies are the principal source of the public water for the Boothbay region.

2.2.1.9.1 The area within 500 feet of the high-water line of:

Adams Pond (portion of Tax Map U-19);
Knickerbocker Lake (portion of Tax Map R-4);
Knickerbocker Lake Marsh (portion of Tax Map R-4); and
The pond to the west of Adams Pond (portion of Tax Map R-4).

2.2.1.9.2 The area within 75 feet of the high-water line of the Adams Pond and Knickerbocker Lake inlet streams.

2.2.1.10 Well Head Protection District The area within 500 feet of each well head of the Boothbay Region Water District (portion of Tax Map R-7).

2.2.2 Overlay Zones Three Overlay Zones are hereby established to delineate specific areas where different development standards than in a Zoning District are required. The standards of the overlay zone supersede those of a zoning district for the portion of a lot within the overlay zone.

2.2.2.1 Bigelow Laboratory Contract Zone The area in East Boothbay as shown in Exhibit A of the contract zone agreement included as the Appendix to this Zoning Ordinance.

2.2.2.1.1 The Bigelow Laboratory Contract Zone shall overlay the General Residential District and the Shoreland Overlay Zone.

2.2.2.2 Shoreland Overlay Zone

The land areas located within 250 feet of the:

- A. High-water line of any great pond,
- B. Upland edge of a coastal wetland including all areas affected by tidal action, and
- C. Upland edge of a freshwater wetland rated moderate or high by the Department of Inland Fisheries and Wildlife;

and the land areas located within 75 feet of the:

- A. Upland edge of a freshwater wetland not rated moderate or high by the Department of Inland Fisheries and Wildlife,
- B. High-water line of a stream, and
- C. High-water line of any outlet stream from any freshwater wetland

designated as “Shoreland Zone” on the Town of Boothbay Shoreland Zoning Map. {38 § 438-A(2) and DEP §§ 3 and 17}

2.2.2.2.1 The Shoreland Overlay Zone shall overlay all Zoning Districts where features described in Section 2.2.2.2 exist. The Resource Protection Area and the Stream Protection Area are located entirely within the Shoreland Overlay Zone.

2.2.2.2.2 Resource Protection Area The areas described below and designated as “Resource Protection Area” on the Town of Boothbay Shoreland Zoning Map.

2.2.2.2.2.1 The areas within 250 feet of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds which are rated “moderate” or “high” value waterfowl and wading bird habitat, including nesting and feeding areas, by the Department of Inland Fisheries and Wildlife; {DEP § 13 A(1)}

2.2.2.2.2.1.1 For the purposes of Section 2.2.2.2.2.1, “wetlands associated with great ponds” shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond, and have a surface elevation at or below the water level of the great pond during the period of normal high water. “Wetlands associated with great ponds” are considered to be part of that great pond. {DEP § 13 A(1)}

2.2.2.2.2.2 The area within 250 feet of the upland edge of the coastal wetlands associated with the following water bodies:

Cross River (portions of tax Maps R-2, R-3, R-5, R-6);
Wiley Pond (portion of Tax Map R-3); and

Big Meadow (portions of Tax Maps R-7 and R-8);

2.2.2.2.3 The area within 250 feet of the upland edge of coastal wetlands on the following islands:

Big Huckleberry	Inner Ram Island	Pumpkin Island
Damariscove Island	Little Huckleberry Island	Ram Island
Fisherman's Island	Miles Island	Tibbetts Island
Fort Island	Outer Heron Island	White Island #5 and #6
Green Island	Perch Island	

2.2.2.2.4 Areas of two or more contiguous acres with sustained slopes of 20% or greater. *{DEP § 13 A(3)}*

2.2.2.2.5 Areas of two or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a pond, stream or tributary stream during the period of normal high water. *{DEP § 13 A(4)}*

2.2.2.2.3 Stream Protection Area All areas within 75 feet of the high-water line of a stream and outlet streams from freshwater wetlands exclusive of those areas within 250 feet of the high-water line of a great pond or within 250 feet of the upland edge of a freshwater or coastal wetland as designated as "Stream Protection Area" on the Town of Boothbay Shoreland Zoning Map. *{DEP § 13 G}*

2.2.2.3 Watershed Overlay Zone The area located from the outer edge of the Water Reservoirs Protection District to the upland edge of the Adams Pond and Knickerbocker Lake watersheds as shown on the Town of Boothbay Watershed Overlay Zoning Map.

2.2.2.3.1 The Watershed Overlay Zone shall overlay parts of the C2, C3, General Residential, Industrial Park and Village Districts.

2.2.3 Boundaries and Maps

2.2.3.1 The above Zoning Districts, Overlay Zones and Areas in the Shoreland Overlay Zone are shown on the Town of Boothbay Zoning Map, the Shoreland Zoning Map and the Watershed Overlay Zoning Map. These official zoning maps, as may be amended from time to time by Town Meeting, are hereby made a part of this Ordinance. *{30-A § 4352(3) and DEP § 9 A}*

2.2.3.2 Zoning District, Overlay Zone and Areas in the Shoreland Overlay Zone boundary lines are Town lines, property lines, and the centerlines of roads and non-vehicular rights-of-way except where otherwise specifically described. *{DEP § 10}*

2.2.3.3 Boundaries which are indicated as following shorelines of ponds and saltwater bodies, streams, outlet streams, tributary streams and the upland edge of wetlands and watersheds shall be construed to follow such shorelines, streams and edges. In the event of change in the shoreline, stream or edge, the boundaries shall be construed as moving with the actual shoreline, stream or edge.

2.2.3.4 Boundaries indicated as being parallel to, or extensions of, features indicated in Sections 2.2.3.2 and 2.2.3.3 shall be so construed.

2.2.3.5 The scale of the map shall determine distances not specifically indicated on the official zoning maps.

2.2.3.6 Where physical or cultural features existing on the ground vary from those shown on the official zoning maps, or where other circumstances not covered by Sections 2.2.3.2 through 2.2.3.5 exist, the Board of Appeals shall interpret the Zoning District and Overlay Zone boundaries and shall be the final Town authority as to location of the boundaries. *{30-A § 4353(2A) and DEP § 10}*

2.2.3.7 Where the textual description of a Zoning District is in conflict with the official zoning maps as to the boundaries of a Zoning District, the boundary as shown on the official zoning maps shall be used. Where the textual description of an Overlay Zone or Areas in the Shoreland Overlay Zone is in conflict with the official zoning maps as to the location of the Overlay Zone or Area in the Shoreland Overlay Zone, the boundary in the textual description shall be used.

2.2.3.8 The Town of Boothbay Zoning Map, the Shoreland Zoning Map and the Watershed Overlay

Zoning Map shall be certified by the attested signature of the Town Clerk and shall be located in the Town Office. *{30-A §§ 3002(1) & (2) and DEP § 9 C}*

2.2.3.8.1 The official Shoreland Zoning Map shall be drawn at a scale of not less than 1 inch equals 2,000 feet. Boundaries of the Resource Protection Area and the Stream Protection Area shall be clearly delineated and a legend indicating the symbols for each Area shall be placed on the map. *{DEP § 9 B}*

2.2.3.8.2 If amendments are made in the Area boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within 30 days after the amendment has been approved by the Commissioner of the Department of Environmental Protection. *{DEP § 9 D}*

2.2.4 No proposal to amend the official zoning maps shall be entertained within one year from the date of denial of the same request unless such denial occurred at the annual Town Meeting, in which case it may be proposed again at the next annual Town Meeting.

2.3 Contract Zoning

2.3.1 Pursuant to 30-A § 4352(8), conditional or contract zoning is hereby authorized for development where, for reasons such as the unusual nature or unique location of the development proposed, a majority of the legislative body of the Town at a duly called Town Meeting finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions not generally applicable to other properties similarly zoned. Any rezoning under Section 2.3 shall establish rezoned areas that are compatible with the existing and permitted uses within the original zones. Nothing in Section 2.3 shall authorize a rezoning, or an agreement to change or retain a zone, that is inconsistent with the Town's Comprehensive Plan.

2.3.2 Any proposal to amend the Town of Boothbay zoning maps through the establishment of a contract zone shall be accompanied by a non-refundable fee in such amount(s) and for such purpose(s) as the Board of Selectmen may from time to time establish by Board of Selectmen order, which shall be paid at the time the request is filed with the Planning Board.

2.3.2.1 To help recover costs incurred by the Town in the review, administration, site inspection, and public notice associated with the contract zone proposal; publishing, public notice and review fees in such amount(s) and for such purpose(s) as the Board of Selectmen may from time to time establish by Board of Selectmen order shall be paid by the applicant to the Town of Boothbay at the time of filing the contract zone proposal. An independent consulting and peer review escrow account fee, determined in the same manner, shall be paid if required by a majority vote of the Planning Board.

2.3.3 The Planning Board shall conduct a public hearing prior to any property being rezoned under Section 2.3. Notice of this public hearing shall be in accordance with 30-A § 4352(8) and Section 2.4.2.

2.3.4 Conditions and restrictions imposed under the authority of Section 2.3 shall only relate to the physical development and operation of the property and may include, by way of example:

- A. Limitations on the number and types of uses permitted;
- B. Restrictions on the scale and density of development;
- C. Specifications for the design and layout of building and other improvements;
- D. Schedules for commencement and completion of constructions;
- E. Performance guarantees securing completion and maintenance of improvements, and guarantees against defects;
- F. Preservation of open space and buffers, and protection of natural areas and historic sites;
- G. Contributions toward the provision of municipal facilities and services required by the development; and
- H. Provisions for enforcement and remedies for breach of any condition or restriction.

2.4 Procedures for Amending or Changing Zoning Districts and Overlay Zones and Areas

2.4.1 Changes and Amendments This Ordinance may be amended by a majority vote of the legislative body of the Town at a duly called Town Meeting. Amendments to this Ordinance may be considered following petition in accordance with the Town of Boothbay Administrative Code, recommendation of the Planning Board or by majority action of the Board of Selectmen. Prior to requesting adoption, proposed amendments shall be submitted to a public hearing to be held by the Planning Board in accordance with 30-A § 4352. Copies of proposed amendments shall be posted and be made available

in accordance with the Administrative Code. {30-A §§ 3002(1), 3004(4) and 4352(9) & (10)}

2.4.1.1 Changes or amendments to the regulations for the use of land or structures in the Shoreland Overlay Zone including any structure built on, over or abutting a dock, wharf or pier, or any other structure extending or located below the high-water line of areas affected by tidal action, a great pond, stream, outlet stream, tributary stream or within a wetland, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A copy of the amendments, attested and signed by the Town Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on any amendment within 45 days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted within the 45 day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner. {38 § 438-A(3)and DEP § 8}

2.4.2 Notice of the public hearing by the Planning Board to be held in accordance with Section 2.4.1 shall: {1 § 406 and 30-A § 4352(9)}

2.4.2.1 Be posted in the Town Office at least 13 days before the public hearing. {30-A § 4352(9)}

2.4.2.2 Be published at least two times in the Boothbay Register. The date of the first publication shall be at least 12 days before the public hearing and the date of the second publication shall be at least 7 days before the public hearing. The notice shall be written in plain English, understandable by the average citizen. {30-A § 4352(9)}

2.4.2.3 The Code Enforcement Officer shall notify by U. S. Postal Service first class mail:

- A. Owners, as listed by the Boothbay Tax Assessor, of property within 100 feet of the area included in a proposed change or amendment of the Zoning Districts or Overlay Zones or Areas; and {30-A § 4352(9)}
- B. The Boothbay Region Water District if the proposed change or amendment is within the Water Reservoirs Protection District, the Well Head Protection District or in the Watershed Overlay Zone. {30-A § 4352-9(E)}

2.4.2.3.1 The notification shall be at least 13 days before the first Planning Board hearing on the change or amendment of the Zoning Districts or Overlay Zones or Areas and include:

- A. The date, time and place of the first public hearing and include the location;
- B. The location and a general description of the proposed changes;
- C. A copy of the applicable Town of Boothbay Zoning Map, the Shoreland Zoning Map and the Watershed Overlay Zoning Map; and
- D. The conditions and restrictions imposed under Section 2.3 for all notices of proposed changes or amendments in connection with Contract Zoning. {30-A §§ 4352(8) & (9)(A)}

2.4.2.3.2 Failure of any property owner to receive a notice of a public hearing shall not necessitate another public hearing or invalidate any action taken by the Planning Board.

2.4.2.4 The Code Enforcement Officer shall notify by U. S. Postal Service first class mail at least 14 days before the first Planning Board hearing the owner of a property included in a proposed inclusion of a property in the Resource Protection Area. {38 § 438-A(I-B)} [**Resource Protection Area**]⁷

2.4.3 Records

2.4.3.1 The Code Enforcement Officer shall maintain a permanent record of all Planning Board meetings, proceedings and correspondence. {1 § 407(1) and 30-A § 4403(1)}

2.4.3.2 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. {38 § 441(3C) and DEP § 16 I(2)(c)}

2.4.3.2.1 On a biennial basis, a summary of this record as it affects the Shoreland Overlay Zone shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection. {DEP § 16 I(2)(c)}

⁷ **Resource Protection Area** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in this protection area within the Shoreland Overlay Zone.

3 DEVELOPMENT AND USE

Table of Contents

3.1 Purpose	3-1
3.2 Applicability	3-1
3.3 Responsibilities	3-1
3.4 General Standards.....	3-1
3.5 Procedures for Review of Proposed Developments and Uses	3-2
3.5.1 Pre-application Meeting	3-2
3.5.2 Application.....	3-2
3.5.3 Application Review by the Code Enforcement Officer.....	3-4
3.5.4 Application Review by the Planning Board	3-5
3.5.5 Waivers and Variances.....	3-7
3.5.6 Approved Applications	3-7
3.5.7 Revision or Amendment.....	3-7
3.5.8 Appeal	3-7
3.5.9 Records.....	3-7
3.6 Review Criteria	3-8
3.6.1 General	3-8
3.6.2 Conditional Use Applications	3-8
3.7 Prohibited Uses and Activities	3-8
3.8 Measurement and Use Definitions	3-11
3.9 District Standards	3-14
3.9.1 C1 District	3-14
3.9.2 C2 District	3-18
3.9.3 C3 District	3-24
3.9.4 General Residential District	3-28
3.9.5 Industrial Park District	3-33
3.9.6 Maritime Commercial District	3-37
3.9.7 Special Residential District	3-41
3.9.8 Village District	3-45
3.9.9 Water Reservoirs Protection District.....	3-50
3.9.10 Well Head Protection District	3-55
3.10 Supplemental Use Standards	3-59
3.10.1 Accessory Apartments.....	3-59
3.10.2 Agriculture	3-59
3.10.3 Animal Breeding or Care	3-60
3.10.4 Campgrounds	3-60
3.10.5 Change of Use	3-60
3.10.6 Chemical and Petroleum Product Storage	3-61
3.10.7 Commercial Development next to Residential Uses	3-61
3.10.8 Development next to Registered Farmland	3-61
3.10.9 Docks, Piers, Wharves, Bridges	3-61
3.10.10 Essential Services.....	3-62
3.10.11 Home Occupations	3-63
3.10.12 Individual Private Campsites.....	3-64
3.10.13 Junkyards.....	3-64
3.10.14 Mineral Exploration and Extraction	3-65
3.10.15 Mobile Homes.....	3-66
3.10.16 Mobile Home Parks.....	3-66
3.10.17 One Family Residences in the Resource Protection Area	3-67
3.10.18 Public Facilities	3-68
3.10.19 Stairway for Shoreline Access in the Shoreland Overlay Zone.....	3-68
3.10.20 Storage Shed.....	3-68
3.10.21 Timber Harvesting.....	3-68
3.10.22 Wind Turbines.....	3-69
3.10.23 Communications Towers.....	3-69
3.10.24 Retail Marijuana Establishments	3-75
3.11 Development and Performance Standards.....	3-76

Zoning Ordinance of the Town of Boothbay

3.11.1 Buffers, Visual.....3-76
3.11.2 Buffers, Water Supply Protection.....3-77
3.11.3 Clearing or Removal of Vegetation for Activities
 other than Timber Harvesting.....3-76
3.11.4 Construction Standards.....3-77
3.11.5 Cuts and Fills.....3-78
3.11.6 Emissions3-78
3.11.7 Hazard Trees, Storm-damaged trees, and Dead Tree Removal3-78
3.11.8 Exemptions to Clearing and Vegetation Removal Requirements.....3-79
3.11.9 Revegetation Requirements3-80
3.11.10 Erosion and Sedimentation Controls3-81
3.11.11 Lighting3-82
3.11.12 Lots.....3-82
3.11.13 Noise.....3-83
3.11.14 Outdoor Storage3-83
3.11.15 Parking and Loading3-83
3.11.16 Roads and Driveways3-85
3.11.17 Roadside Trees and Walls3-89
3.11.18 Sanitation.....3-89
3.11.19 Screening.....3-91
3.11.20 Signs3-91
3.11.21 Snow Removal3-95
3.11.22 Storm Water Runoff3-96
3.11.23 Structures.....3-96
3.11.24 Waste Disposal3-96

3.1 Purpose The purpose of Section 3 is to ensure that the development and use of land and structures in the Town of Boothbay is consistent with the Comprehensive Plan and the objectives of this Ordinance as stated in Section 1.8 by allowing orderly growth while ensuring public safety, and environmental protection. *{30-A § 4352(2) and 38 § 440-A}*⁸

3.2 Applicability Section 3 applies to development and use of land requiring either a permit from the Code Enforcement Officer or approval by the Planning Board for:

- A. New structures and uses;
- B. Expanding, modifying, or replacing an existing structure or use; and
- C. Renewing a discontinued non-conforming use.

3.2.1 Standards for Zoning are in Section 2; Cluster Development and Subdivision standards are in Section 4.

3.3 Responsibilities

3.3.1 Applicant The applicant shall have the burden of proving that the proposed development or use conforms to:

- A. The ordinance standards as set forth in Sections 3.9, 3.10 and 3.11;
- B. Any other Town ordinance or regulation, or any State or Federal law that the Town is responsible for enforcing; and
- C. All requirements for granting of a permit or approval as set forth in Section 3.6. *{DEP §§ 16 B(3) & D}*^{9,10}

3.3.2 Code Enforcement Officer The Code Enforcement Officer shall approve, approve with conditions or deny:

- A. Any request for development or use designated in the Land Use Tables of Sections 3.9.1 through 3.9.10 as requiring a Permit (P);
- B. Any eligible facilities request under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a), for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station, as those terms are defined under the Spectrum Act; and
- C. Any request for development or use not specifically the responsibility of the Planning Board or the Board of Appeals.

3.3.3 Planning Board The Planning Board shall review and approve, approve with conditions or deny:

- A. Any request for development or use designated in the Land Use Tables of Sections 3.9.1 through 3.9.10 as requiring Planning Board (PB) or Conditional Use (C) approval; and
- B. Any proposed expansion, relocation, reconstruction, replacement or use of a non-conforming structure and expansion, resumption or change of a non-conforming use. *{30-A § 4301(12)}*

3.4 General Standards

3.4.1 No structure or land shall be used or occupied, and no structure or part thereof shall be erected, constructed, expanded, moved or altered that is not in conformity with all of the standards herein specified for the Zoning District, Overlay Zone, or Area within the Shoreland Overlay Zone in which it is located, unless a permit is obtained from the Code Enforcement Officer, an approval is obtained from the Planning Board, or variance is granted by the Board of Appeals. *{DEP §§ 11 & 16 B}*

3.4.2 Where a Zoning District, Overlay Zone, or Area boundary line does not follow a lot line, the standards applicable to the less restricted portion of the lot may not be extended into the more restricted portion of the lot.

3.4.3 Non-conforming conditions shall be allowed to continue subject to the requirements set forth for non-conforming lots, structures and uses if they existed:

- A. In the Shoreland Overlay Zone before a Shoreland Zoning Ordinance was first adopted on March 4, 1974,
- B. Elsewhere before a Zoning Ordinance for the Town of Boothbay was first adopted on August 20, 1979, or

⁸ All Title, Chapter, and Section (“§”) references are to Maine Revised Statutes Annotated (M.R.S.A.), as may be amended from time to time.

⁹ References to State statute or regulation requiring inclusion or providing wording are for information only.

¹⁰ DEP references are to Department of Environmental Protection Chapter 1000 State of Maine Guidelines for Municipal Shoreland Zoning Ordinances for information only.

- C. Before subsequent amendments of the Zoning Ordinance that made the lot non-conforming, *{DEP § 12 A}*
- 3.4.3.1** Except as specifically provided in Sections 3.10.20, 3.11.9.2 and 3.11.20.3, a non-conforming condition shall not be permitted to become more non-conforming. *{DEP § 12 A}*
- 3.4.3.2** Non-conforming lots, structures and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming lot or structure. *{DEP § 12 B(1)}*
- 3.4.3.2.1** If two or more principal structures existed on a single lot of record as of the dates in Section 3.4.3, each may be sold on a separate lot provided that the State *Minimum Lot Size Law* (12 §§ 4807-A – 4807-D) and *Maine Subsurface Wastewater Disposal Rules* are complied with. When such lots are divided each lot thus created must be as conforming as feasible to the dimensional requirements of Sections 3.9, 3.11.9 and 3.11.15. *{Department of Health and Human Services 10-144 CMR 241 and DEP § 12 E(2)}*
- 3.4.3.2.2 Contiguous Built Lots** If two or more contiguous lots or parcels are in a single or joint ownership of record as of the dates in Section 3.4.3, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State *Minimum Lot Size Law* and *Maine Subsurface Wastewater Disposal Rules* are complied with. *{Department of Health and Human Services 10-144 CMR 241 and DEP § 12 E(2)}*
- 3.4.3.2.3 Contiguous Lots – Vacant or Partially Built** If two or more contiguous lots or parcels are in single or joint ownership of record as of the dates in 3.4.3, if any of these lots do not individually meet the dimensional requirements of Sections 3.9, 3.11.9 and 3.11.15 or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements. *{DEP § 12 E(3)}*
- 3.4.3.2.3.1** Section 3.4.3.2.3 shall not apply to two or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the dates in Section 3.4.3 and recorded in the Lincoln County Registry of Deeds, if the lot is served by a public sewer or can accommodate a subsurface wastewater disposal system in conformance with the *Maine Subsurface Wastewater Disposal Rules*; and
- A. Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- B. Any lots that do not meet the frontage and lot area requirements of Section 3.4.3.2.3.1.A are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area. *{38 § 438-A(1-A)(B), Department of Health and Human Services 10-144 CMR 241 and DEP § 12 E(3)}*
- 3.4.3.3** The normal upkeep and maintenance of non-conforming structures and uses including repairs or renovations are permitted if:
- A. They do not involve expansion of non-conforming use or structure, or
- B. Are required by federal, state, or local building and safety codes. *{DEP § 12(B)(2)}*
A building permit may be required.

3.5 Procedures for Review of Proposed Developments and Uses

- 3.5.1 Pre-application Meeting** Any person may attend a regular meeting of the Planning Board to discuss informally a proposed development or use before the preparation and submission of an application.
- 3.5.1.1** The purpose of the Pre-application Meeting shall be to discuss informally the proposal and the provisions of Town Zoning Ordinance and shall not be considered substantive review for purposes of the state savings statute, 1 § 302. No fees shall apply, and no binding commitments shall be made between the applicant and the Planning Board. Comments made by Planning Board members during the discussion shall not be construed to be the opinions of the Board or to cover all aspects of the proposal or Ordinance standards and contrary opinions may be expressed after review of an application. The notification requirements of Section 3.5.4.2.2 do not apply.
- 3.5.1.2** The applicant may present to the Planning Board, for informal review and comment, a sketch of the proposed development or use. The sketch may consist of a rough outline, and may be a free-hand, penciled sketch of the parcel, showing structures and other features that may be of assistance to the Planning Board in clarifying the Ordinance requirements to the applicant.

3.5.2 Application

- 3.5.2.1** Applications shall be made to the Code Enforcement Officer in writing and shall use forms prescribed by the Town. *{DEP § 16 C(1)}*
- 3.5.2.1.1** 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.
- 3.5.2.1.2** Applications shall include information that will permit the Code Enforcement Officer and Planning Board to determine whether the proposed development or use is consistent with the standards of this Ordinance and any other Town ordinance or regulation, or any State or Federal law that the Town is responsible for enforcing.
- 3.5.2.1.2.1** Information required for Planning Board approval not required to be in writing or on paper may be provided in person or by a designated representative in a public hearing.
- 3.5.2.1.3** The Planning Board may require a 3-dimensional model of any proposed above ground structure.
- 3.5.2.1.4** The Code Enforcement Officer and the Planning Board may at any time before approval require the submission of additional information including, without limitation, a survey prepared by a currently licensed Maine surveyor within 5 years of the application's submittal.
- 3.5.2.2** Applications shall be signed by the owner or owners of the property or their representative, certifying that the information in the application is complete and correct. If the person signing the application is not the owner of the property, then the applicant shall submit a letter signed by the owner authorizing the development or use. *{DEP § 16 C(2)}*
- 3.5.2.2.1** Applications shall be dated, and the Code Enforcement Officer shall note upon each application the date and time of its receipt. *{DEP § 16 C(3)}*
- 3.5.2.2.2** 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. *{30-A § 4355}*
- 3.5.2.3** The application shall include, when applicable:
- 3.5.2.3.1** A valid plumbing permit, including the site evaluation approved by the local Plumbing Inspector or applicable State agency whenever the nature of the proposed building or use would require the installation of a subsurface wastewater disposal system. *{DEP § 16 C(4)}*
- 3.5.2.3.2** A permit from the Department of Environmental Protection in accordance with 38 § 480-C for the protection of natural resources.
- 3.5.2.3.3** A Maine Construction General Permit under 38 § 420-D from the Maine Department of Environmental Protection for storm water management.
- 3.5.2.3.4** A construction permit from the Department of Public Safety. *{25 § 2448}*
- 3.5.2.3.5** State Fire Marshal approval. *{5 § 4594-D(7)}*
- 3.5.2.4** Applications shall only be accepted when:
- 3.5.2.4.1** Taxes and accounts payable to the Town are current.
- 3.5.2.4.1.1** 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.
- 3.5.2.4.1.2** Real and personal property taxes for the property to be developed or used have been paid in full.
- 3.5.2.4.1.3** Notification expenses as required by Section 3.5.4.2.2.2 have been paid in full.
- 3.5.2.4.1.4** The requirement that all taxes and accounts be paid prior to making an application under Section 3 may be:
- 3.5.2.4.1.4.1** 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 12 months from the date of said agreement; or

3.5.2.4.1.4.2 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.

3.5.2.4.2 There is no outstanding notice of violation duly issued by the Code Enforcement Officer:

- A. That has not been appealed to the Board of Appeals within the required time period;
- B. That is pending before the Board of Appeals or a reviewing court; or
- C. Where the decision of the Board of Appeals or a reviewing court has not been fully complied with.

3.5.2.4.3 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:

- A. That is pending before the State or federal environmental agency or a reviewing court; or
- B. 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.

3.5.2.5 Upon receipt of plans for a proposed public road or a required improvement or modification to an existing public road, the Code Enforcement Officer shall forward one copy to the Road Commissioner for review and comment.

3.5.2.6 If the proposed development includes soil disturbance, new structures, or relocation of existing structures on or adjacent to a site listed on, or eligible to be listed on the National Register of Historic Places the applicant shall submit a copy of the application to the Maine Historic Preservation Commission for review and comment. The Code Enforcement Officer shall determine if this review is required. *{DEP § 15 T}* [**Shoreland Overlay Zone**]¹¹

3.5.2.6.1 The Maine Historic Preservation Commission shall be informed of the proposed development or use at least 20 days before any decision by the Code Enforcement Officer or the first hearing on the application by the Planning Board. *{DEP § 15 T}*

3.5.2.6.2 A permit is not required for an archaeological excavation as long as the excavation:

- A. Is conducted by an archaeologist listed on the State Historic Preservation Officer's level one or level two approved list, and
- B. Erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures employing Best Management Practices. *{38 § 439-A(8) and DEP § 16 B(2)}*

3.5.2.7 Any inconsistent or conflicting information in an application shall be construed against the applicant.

3.5.3 Application Review by the Code Enforcement Officer

3.5.3.1 The Code Enforcement Officer shall, for applications for which he or she is the reviewing authority, notify the applicant within 35 days either that the application is complete, or, if the application is incomplete, what additional material is needed to make the application complete. *{DEP § 16 D}*

3.5.3.2 The Code Enforcement Officer shall within 35 days of the submission of a complete application determine if the application is in conformance with the Standards of Section 3 and the Review Criteria of Section 3.6.1. *{DEP § 16 D}*

3.5.3.3 If the application is in conformance, the application shall be approved or approved with conditions. If not in conformance, the application shall be denied. Applications not approved or approved with conditions within 35 days of the submission of a complete application shall be deemed as being denied. *{DEP 16 D}*

3.5.3.3.1 The Code Enforcement Officer shall not approve an application until the applicant has obtained a driveway or entrance or traffic movement permit under 23 §§ 704 or 704-A from the Maine Department of Transportation if such permit is required.

3.5.3.3.2 The Code Enforcement Officer shall consider comments received from the Maine

¹¹ **Shoreland Overlay Zone** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in the Shoreland Overlay Zone including the Resource Protection and Stream Protection Areas portions thereof.

Historic Preservation Commission prior to rendering a decision on the application. *{DEP § 15 T}* [Shoreland Overlay Zone]

3.5.3.4 If a permit is either approved with conditions or denied, the reasons as well as conditions shall be stated in writing. *{1 § 407(1) and DEP § 16 D}*

3.5.4 Application Review by the Planning Board

3.5.4.1 General All meetings to consider applications before the Planning Board shall be public hearings.

3.5.4.1.1 An applicant may agree to an extension of time for Planning Board review, public hearing or decision on an application.

3.5.4.2 Completeness Review Within 35 days of receiving an application the Planning Board shall hold a Completeness Review. *{DEP § 16 D}*

3.5.4.2.1 The purpose of a Completion Review is to determine if information required to be on paper is sufficiently complete to proceed to an Application Review.

3.5.4.2.1.1 Completion Reviews are normally not required for Use or Wharves and Weirs applications.

3.5.4.2.2 Notification The Code Enforcement Officer shall notify by U. S. Postal Service first class mail:

- A. The applicant and the owner of the property where a development or use is proposed;
- B. Owners as listed by the Boothbay Tax Assessor of property within 100 feet of any property line of a proposed development or use;
- C. The Boothbay Region Water District if a proposed land use project is within the Water Reservoirs Protection District, the Well Head Protection District or in the Watershed Overlay Zone; and *{30-A § 4358-A}*
- D. The Boothbay Harbor or Edgecomb Town Clerk and Planning Board if the proposed development or use abuts or includes any portion of their Town.

3.5.4.2.2.1 The notification shall be at least 7 days before the first Planning Board meeting on the application and include :

- A. The date, time and place of the first public hearing on the application, and
- B. The location and a general description of the proposed development or use.

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

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

3.5.4.2.3 Notice The Code Enforcement Officer shall publish at least two times in the Boothbay Register a notice of the date, time and place of the first meeting to be held on an application. The first publication of the notice shall be at least 7 days before the meeting. In addition, the notice shall be posted in a public place in Boothbay. The notice shall include the location and a general description of the development or use. *{1 § 406}*

3.5.4.2.4 At the conclusion of Completeness Review, the Planning Board shall notify the applicant that:

- A. An Application Review has been scheduled, or
- B. 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. *{DEP § 16 D}*

3.5.4.3 Application Review

3.5.4.3.1 An Application Review meeting shall be held within 30 days of the receipt of an application or the conclusion of a Completeness Review specified in Section 3.5.4.2 unless the applicant requests a delay. *{DEP § 16 D}*

3.5.4.3.1.1 If the applicant is not present when the Application Review meeting is scheduled, the date, time and place of the public hearing shall be sent to the applicant by U. S. Postal

Service first class mail. {30-A § 4403(3)(C)}

- 3.5.4.3.2** The purpose of the Application Review meeting is to determine if the proposed development or use is in conformance with the standards of the Zoning Ordinance.
- 3.5.4.3.3** The Planning Board shall, within 30 days of the conclusion of an Application Review public hearing at which all requested information has been provided, and during which all verbal and written submissions for and against the proposed development or use have been heard, determine if the application is in conformance with the Standards of Section 3 and the Review Criteria of Section 3.6. If in conformance, the application shall be approved or approved with conditions. {DEP § 16(D)}
- 3.5.4.3.3.1** The Planning Board shall not approve an application until the applicant has obtained a driveway or entrance or traffic movement permit under 23 §§ 704 or 704-A from the Maine Department of Transportation if such permit is required.
- 3.5.4.3.3.2** The Planning Board shall not approve an application until the applicant has obtained a construction permit from the Department of Public Safety if such a permit is required. {25 § 2448}
- 3.5.4.3.3.3** The Planning Board shall not approve an application until the applicant has obtained written acceptance from the Boothbay Region Water District and the Boothbay Harbor Sewer District if connection to their system is proposed.
- 3.5.4.3.3.4** If the Planning Board during its Completeness Review or Application Review requires the applicant to obtain written acceptance of proposed emergency vehicle turnaround areas from the Boothbay Fire Chief, the Planning Board shall not approve an application until such acceptance is obtained.
- 3.5.4.3.3.4.1** Section 3.5.4.3.3.4 does not apply to one and two family dwellings.
- 3.5.4.3.3.5** The Planning Board shall not approve an application until any Consulting Fee required by Section 3.5.4.5 or Impact Fee required by Section 3.5.4.6 has been paid in full.
- 3.5.4.3.3.6** In making its decision the Planning Board shall consider comments received from the Maine Historic Preservation Commission prior to rendering a decision on the application. {DEP § 15 T} [Shoreland Overlay Zone]
- 3.5.4.3.3.7** The Planning Board shall deny an application if it does not make a positive finding that the proposed development or use will satisfy the requirements of Section 3.6.
- 3.5.4.3.4** In issuing its decision, the Planning Board shall make findings of fact establishing that the proposed development or use does or does not meet the goals and objectives of Section 1.8, the standards of Section 3 and the review criteria of Section 3.6. {DEP § 16 D}
- 3.5.4.3.5** If an application is either approved with conditions or denied, the reasons as well as conditions shall be stated in writing. {1 § 407(1) and DEP § 16 D}
- 3.5.4.4 Site Visit** The Planning Board may hold a public meeting on the site of a proposed development or use before taking action on an application.
- 3.5.4.4.1** Prior to the inspection the Planning Board may require the applicant provide a plan or sketch indicating the location of permanent or temporary markers located to enable the Planning Board to readily locate and appraise the proposed development or use in the field.
- 3.5.4.4.2** The Planning Board shall not take action on an application during a site visit.
- 3.5.4.5 Consulting Fee** The Planning Board may at any time before or after submission of a complete application require an applicant pay for an independent review by one or more professional(s) of the Planning Board's choice of any proposed plans, specifications, calculations, surveys, improvements, or environmental impact reports submitted by an applicant, as well as to examine any impacts that may be caused by the proposed subdivision that relate to findings of fact needed to render a fair and responsible decision. The cost of the independent review shall be a fee in such an amount as the Board of Selectmen may from time to time establish by Board of Selectmen order. The results of the consultation or peer review for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the

benefit of the Town and shall remain its property. Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation or peer review results or the outcome of the application.

3.5.4.5.1 Whenever the balance of the fee is reduced to less than 25% of the original fee, the Planning Board may require an additional deposit in an amount specified by Board of Selectmen order if it finds that additional professional services may be required by the Board. The total consulting cost fee may not exceed the amount specified by Board of Selectmen order. Any balance remaining shall be returned to the applicant.

3.5.4.6 Impact Fee The Planning Board may determine that a proposed development or use will require improvements or modifications off-site. The Town Manager, with Board of Selectmen approval, shall determine the fair share cost to be paid by the applicant. *{30-A § 4354}*

3.5.5 Waivers and Variances

3.5.5.1 The Code Enforcement Officer and the Planning Board may approve development and use proposals that do not meet other standards where specifically allowed in Section 3.

3.5.5.2 Any other departure from the literal standards for a development or use regulation of Section 3 shall require a variance approval from the Board of Appeals. *{30-A §§ 2691(4) & 4353(1)}*

3.5.5.3 When the Code Enforcement Officer or Planning Board grants a waiver, waiver certificates shall be recorded at the Registry of Deeds by the applicant and indicate the waiver granted and the date on which it was granted.

3.5.6 Approved Applications

3.5.6.1 All permits and approvals of developments or uses shall lapse and become void unless Start of Construction or Operation there under, as defined in Section 6, begins within one year of the date of the authorization. On showing of good cause before the expiration of the one year period, the approving authority 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. *{DEP § 16 F}*

3.5.6.2 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. *{30-A § 4406(4)}* [**Watershed Overlay Zone**]

3.5.6.3 On approval of an application for an expansion of a non-conforming structure in the Shoreland Overlay Zone or an application requiring a water supply protection buffer, the Planning Board 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:

- A. File the original and one copy with the Lincoln County Registry of Deeds.
- B. File one copy with the Town of Boothbay Assessor. This copy shall include the Registry's Book and Page reference.

3.5.7 Revision or Amendment A new or amended permit or approval is required if any changes in plans, construction, size or use of any structure or parts thereof are made after the issuance of a permit or approval.

3.5.7.1 The Code Enforcement Officer may approve *de minimis* changes that do not alter lot lines, change the essential nature of the proposal, or affect any of the approval criteria without requiring filing of a new application and without the notifications and notices required for a new application. Approval shall be by written endorsement of the changes on the approved permit or approval.

3.5.8 Appeal Notwithstanding any other Section 3 provision, any decision of the Code Enforcement Officer or Planning Board on an application shall be appealable to the Board of Appeals as set forth in Section 5. *{30-A §§ 2691(4) & 4353(1) and DEP § 16 H(1)(a)}*

3.5.9 Records

3.5.9.1 The Code Enforcement Officer shall maintain a permanent record of all Planning Board meetings, proceedings and correspondence. *{1 § 407(1), 38 § 441(3C) and DEP § 16 I(2)(c)}*

3.5.9.2 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. {38 § 441(3C) and DEP § 16 I(2)(c)}

3.6 Review Criteria

3.6.1 General The Code Enforcement Officer and Planning Board shall consider the following criteria and, before granting approval, must determine that the application is in conformance with the land use goals and objectives of Section 1.8, the standards of Section 3 and that the proposed development or use:

- A. Will maintain safe and healthful conditions;
- B. Will not result in water pollution, erosion or sedimentation to surface waters;
- C. Will adequately provide for the disposal of wastewater;
- D. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- E. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters; {38 § 440-A}
- F. Will protect archaeological and historic resources as designated in the Comprehensive Plan;
- G. Will not adversely affect existing commercial fishing or maritime activities in the Maritime Commercial District; and
- H. Will avoid problems associated with floodplain development and use. {DEP § 16 D}

3.6.2 Conditional Use Applications In addition to the criteria of Section 3.6.1, the Planning Board shall approve a Conditional Use application, or approve it with conditions, if it makes a positive finding, based on the information presented, that the proposed use, with any conditions attached, meets the following standards:

- A. The proposed use will not place a burden on municipal facilities or services which, due to the location or the characteristics of the site or proposed development or use, is significantly greater than the burden that would result from similar uses in other situations;
- B. The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles, and the visibility afforded to pedestrians and the operators of motor vehicles;
- C. The proposed use will not cause water pollution, sedimentation or erosion that cannot be controlled using Best Management Practices; contaminate any water supply; nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;
- D. The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;
- E. The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard, nor unreasonably restricted access of light and air to neighboring properties;
- F. The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils that will create nor aggravate adverse environmental impacts on surrounding properties;
- G. If the proposed use has characteristics that differ substantially from those normally associated with the general category of use, such difference shall not depreciate the economic value of surrounding properties; and
- H. The proposed use:
 - 1. Will not result in damage to spawning grounds, fish, aquatic life, birds or other wildlife habitat;
 - 2. Will conserve shoreland vegetation to the greatest practical extent;
 - 3. Will conserve visual points of access to waters as viewed from public facilities to the greatest practical extent; {38 § 440-A}
 - 4. Will conserve physical points of access to waters; and {38 § 440-A}
 - 5. Will avoid problems associated with floodplain development and use.

3.7 Prohibited Activities, Developments and Uses

3.7.1 General No person may:

- A. Sell, lease, develop, build upon, or convey for consideration; or
- B. Offer or agree to sell, lease, develop, build upon, or convey for consideration any land or dwelling unit in a subdivision created after March 4, 1974 that has not been approved by the Boothbay

Planning Board or approved under 38 §§ 481 – 490, Site Location of Development Act where applicable, and subsequently recorded in the Lincoln County Registry of Deeds. *{30-A § 4406(1) and DEP § 16 D}*

3.7.2 Development

3.7.2.1 Endangered Species No development or use shall be allowed that will:

- A. Significantly alter any habitat the Commissioner of Inland Fisheries and Wildlife has identified as essential to the conservation of any threatened or endangered species; or
- B. Violate protection guidelines prepared by the Commissioner of Inland Fisheries and Wildlife for the protection of species designated as endangered or threatened. *{Department of Inland Fisheries and Wildlife Rule 09-137 Chapter 8}*

3.7.2.1.1 A variance in connection with developments or uses affecting endangered species may be granted by the Board of Appeals 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. *{Department of Inland Fisheries and Wildlife Rule 09-137 Chapter 8}*

3.7.2.2 Excessive Slope New development is not permitted on vacant lots with no principal structure that have sustained slopes in excess of 30%. *{38 § 488(5)(B)(6)}*

3.7.2.2.1 New development in the Resource Protection Area is not permitted on vacant lots with no principal structure that have sustained slopes in excess of 20%. *{DEP § 16 E(3)(a)}* [**Resource Protection Area**]¹²

3.7.2.3 Unstable Soil, Improper Drainage and Water Pollution No new land use, whether during or after construction, shall be located on soils in or upon which the proposed establishment or maintenance will cause adverse environmental impacts. Locations where new use is prohibited include areas of unstable soil subject to slumping, mass soil movement, or where erosion cannot be controlled using Best Management Practices; and areas with improper drainage or water pollution.

3.7.2.3.1 The reconstruction of existing structures in such areas is allowed if all other provisions of Section 3 are met.

3.7.3 Emissions The emission of dust, dirt, fly ash, fumes, vapors or gases that could be injurious to human health, animals, or vegetation; detrimental to the enjoyment of adjoining or nearby properties; or that could soil or stain persons or property at any point beyond the lot line of the commercial or industrial establishment creating that emission shall not be allowed. In addition, no land use shall be allowed that produces harmful, offensive, or bothersome odors, scents, or aromas (including, but not limited to, those produced by manufacturing processes, food preparation, food processing, fish sales, rendering, fermentation processes, decaying organic matter, and incinerators) perceptible beyond their lot lines, either at ground or habitable elevation.

3.7.4 Explosive Storage The storage of explosives, including, but not limited to, ammunition, matches, and gunpowder in excess of the amount normally associated with a use, such as, individual household use, farming, commercial fishing activities, and restaurants is prohibited.

3.7.4.1 The Planning Board may allow storage greater than permitted in Section 3.7.4 if:

- A. Required as part of an allowed use for the property;
- B. There is a demonstrated need; and
- C. The requirements of Section 3.6.2 for approval of a Conditional Use are met.

3.7.5 Junkyard It is prohibited to operate a junkyard in any part of the Town without first being issued a permit by both the Planning Board pursuant to this Ordinance and the Board of Selectmen pursuant to State law. *{30-A § 3754}*

3.7.6 Non-conformance Except as specifically provided in Sections 3.10.20, 3.11.9.2 and 3.11.20.3, a non-conforming condition or use shall not become more non-conforming. *{DEP §§ 12 A & D(1)}*

3.7.6.1 Resumption Prohibited A lot or structure in or on which a non-conforming use is discontinued for a period exceeding two years, or which is superseded by a conforming use, may

¹² **Resource Protection Area** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in this protection area within the Shoreland Overlay Zone.

not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period, for a maximum of a three year period total. This provision shall not apply to the resumption of a use of a residential building provided that the structure has been used or maintained for residential purposes during the preceding 5 year period. {DEP § 12 D(2)}

3.7.7 Structures No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the high-water line of a great pond, stream, outlet stream or within a wetland unless the structure requires direct access to the great pond, stream, outlet stream or wetland as an operational necessity. { DEP § 15 C(5)}

3.7.8 Subsurface Wastewater Disposal shall not be allowed for new or expanded uses if the property is subject to a sewer “Ready to serve” fee. [**Watershed Overlay Zone**]¹³

3.7.9 Transfer of Ownership No person may sell or convey any land unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. The term “permanent marker” includes, but is not limited to, the following: a granite monument; a concrete monument, an iron pin, or a drill hole in ledge. {30-A § 4406(2)}

3.7.10 Uses

3.7.10.1 Prohibited in all locations:

- A. Nuclear generating plants for electricity, production of nuclear materials, or storage of same;
- B. Gasoline, petroleum, or kerosene distillation or derivation of by-products;
- C. Manufacture of explosives, ammunition, fireworks, matches or gunpowder; acid; ammonia, bleaching powder, chlorine, disinfectant, insecticide or poisons;
- D. Cement, lime, gypsum, plaster or plaster of Paris manufacture; asphalt, or creosote manufacture, refining or treatment;
- E. Tanning, working or storing green hides or skins;
- F. Fat rendering; production of fats and oils from animal or vegetable products by boiling or distillation; garbage, offal or animal reduction, incineration, or processing; grease, lard or tallow manufacture from animal fat; and glue or gelatin manufacture;
- G. Acetylene gas manufacture or bulk storage;
- H. Manufacture that results in the creation of any hazardous wastes as designated under the U.S. Clean Water Act, Section 311, Public Law 52-500, or storage or use of radioactive waste materials as defined by 38 § 1451; and
- I. Taverns.

3.7.10.2 Prohibited adjacent to great ponds and associated wetlands, streams, outlet streams and tributary streams that flow into great ponds:

- A. Auto washing facilities;
- B. Auto or other vehicle service and/or repair operations, including body shops;
- C. Chemical and bacteriological laboratories;
- D. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms;
- E. Commercial painting, wood preserving, and furniture stripping;
- F. Dry cleaning establishments;
- G. Electronic circuit assembly;
- H. Metal plating, finishing, or polishing;
- I. Petroleum or petroleum product storage or sale except storage on the same property as a permitted use occurs and except for storage and sales associated with marinas;
- J. Photographic processing;
- K. Printing; and
- L. Marinas on great ponds and streams, outlet streams and tributary streams that flow into great ponds. {DEP § 15 F} [**Shoreland Overlay Zone, Watershed Overlay Zone**]

3.7.11 Waste Disposal

3.7.11.1 No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated

¹³ **Watershed Overlay Zone** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in the Watershed Overlay Zone.

uses or the water classification of a great pond, stream, outlet stream or wetland. *(DEP § S)*

3.7.11.2 The disposal of wastewater by means other than specifically permitted in Section 3.11.15 shall not be allowed.

3.8 Measurement and Use Definitions The following definitions from Section 6 are included here to help clarify what is allowed.

Accessory Uses A use that is incidental and subordinate to the principal use.

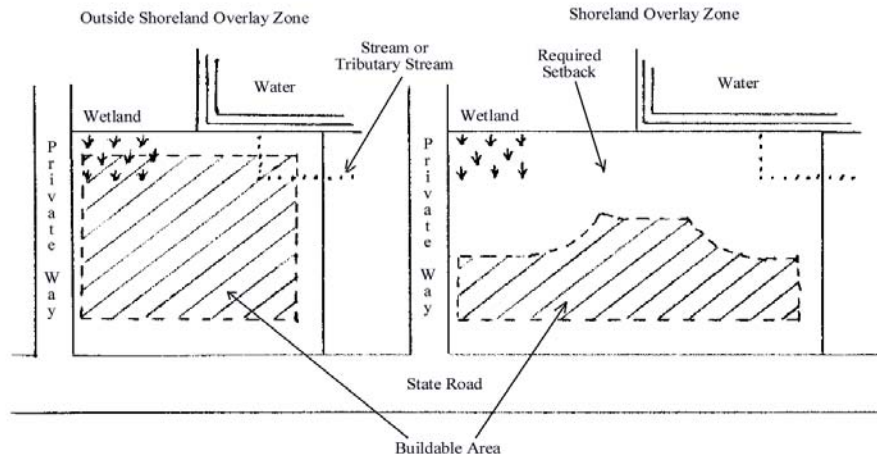
An accessory use shall be considered accessory to the principal use if:

- A. The accessory use is located in the principal structure and does not exceed 30% of the floor area of the principal structure; or
- B. The accessory use is located in an accessory structure and does not exceed 75% of the floor area of the principal structure.

An accessory use that exceeds these standards shall be considered the principal use. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A Home Occupation is not an Accessory Use.

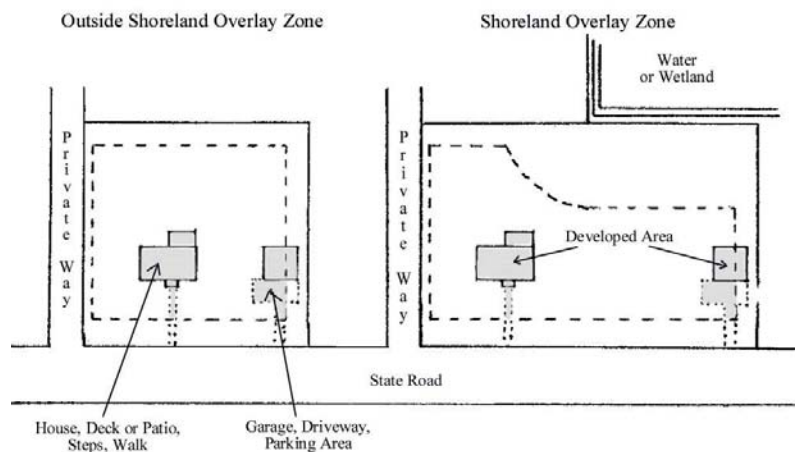
Buildable Area The specified portion of a lot where development is allowed. In determining such area of a lot, the following shall be excluded:

- A. The area included in the required setbacks;
- B. All wetlands in the Shoreland Overlay Zone;
- C. Areas with endangered species, excessive slopes, unstable soil, improper drainage or water pollution as prohibited in Sections 3.7.2;
- D. Land that is situated below the high-water line of any great pond, stream, outlet stream or freshwater wetland;
- E. Land that is part of a right-of-way, or easement, including utility easements; and
- F. Land that is located within the 100 year frequency flood plain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the applicant shows proof through the submittal of materials prepared by a Registered Land Surveyor that show that the property in question lies at least 2 feet above the 100 year flood level. The elevation of filled or manmade land shall not be considered. *{38 § 440}*



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

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



Distance The horizontal or vertical separation of two points.

High-water Line Same as normal high-water line.

Lot Area The area of land enclosed within the boundary lines of a lot, minus land below the high-water line of a great pond, stream, outlet stream or the upland edge of a wetland and minus areas beneath the right-of-way of roads serving more than two lots. Outside the Shoreland Overlay Zone land below the upland edge of a wetland is included. {DEP § 17}

Lot Coverage The areas included in the definition of Developed Area within the entire lot.

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

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

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

Setback The required distance:

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

Shore Frontage The length of a lot bordering on a great pond, stream or coastal wetland measured in a straight line between the intersections of the lot lines with the shoreline. In the Shoreland Overlay Zone, Shore Frontage includes frontage on outlet streams and freshwater wetlands.

Shoreline

- A. The high-water line of ponds, streams, outlet streams and tributary streams;
- B. The upland edge of the maximum spring tide of coastal wetlands including salt marshes and salt meadows and all areas affected by tidal action; and
- C. The upland edge of saturated soil of freshwater wetlands including forested wetlands.

Structure Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of wooden and wire fences, and poles, wiring and other aerial equipment normally associated with service drops including guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, portable garages and satellite dishes. The term does not include ham radio antennas, signs, picnic tables, small fireplaces/barbecue pits or small satellite dishes and similar structures having no floor area. {38 § 436-A(12) and DEP § 17}

Structure Height The vertical distance measured from the average ground elevation adjacent to the foundation, i.e., the underlying base, substructure, or support of a building, to the highest point of the roof excluding antennas, solar panels and passive chimneys projecting above the roof.

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

Use The purpose for which land or a structure is arranged, designed or intended, or for which either land or

Zoning Ordinance of the Town of Boothbay

a structure is maintained or occupied. This includes, but is not limited to, activities on the land such as clearing of vegetation and timber harvesting.

Wetland A Freshwater or Coastal Wetland.

3.9 District Standards

3.9.1 C1 District These standards are in addition to the Use Standards of Section 3.10 and the Development and Performance Standards of Section 3.11.

3.9.1.1 Permitted Uses The Land Use Table of Section 3.9.1.1.3 designates the allowed uses in the C1 District.

3.9.1.1.1 If a use is not specifically listed in the Land Use Table, or is not specifically listed in Section 3.7 or 3.9.1.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use.

3.9.1.1.1.1 Only specifically allowed structures are permitted. *{DEP § 15 B(1)}* [**Resource Protection Area**]

3.9.1.1.2 The Planning Board shall determine if a second, third, etc., use on a lot is an accessory use in accordance with the definition in Section 3.8 or an additional principal use. Only accessory uses that would be allowed as principal uses in the proposed location shall be permitted, and such accessory uses shall meet the requirements for approval of the principal use.

3.9.1.1.3 Land Use Table

3.9.1.1.3.1 Use Key

3.9.1.1.3.1.1 Approval Required

- A Allowed use Building permit may be required
- C Conditional Use Requires Planning Board determination that proposal satisfies Review criteria of Section 3.6
- P Permit Required Requires Code Enforcement Officer determination that Proposal satisfies General Review criteria of Section 3.6.1
- PB Planning Board Requires Planning Board determination that Proposal satisfies General Review criteria of Section 3.6.1
- Blank Use not allowed

3.9.1.1.3.1.2 Specific Requirements and Limitations (Superscripts in this table)

- 2 Use is allowed only as accessory to a principal, related use.
- 3 Use shall maintain a visual buffer strip along any public way. *See* Section 3.11.1
- 5 Use is allowed only with public sewer or out of District wastewater disposal. *{DEP § 15 F(8)}*

3.9.1.1.3.2 Use Table

USE/ACTIVITY	Outside Overlay areas	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area 3.9.1.4.2.2.1	Supplemental Standards
RESIDENTIAL					3.9.1.3.1
Accessory Apartment	P	P	PB	PB	3.10.1
Dwelling, Multifamily	PB	PB			3.11.9.12..3.4
Dwelling, One Family	P	P	PB	PB	3.10.17
Dwelling, Two Family	P	P			
Lodging House	PB	PB			3.11.9.3.4
Retirement Facility	PB	PB			3.11.9.3.4

Zoning Ordinance of the Town of Boothbay

USE/ACTIVITY	Outside Overlay areas	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area 3.9.1.4.2.2.1	Supplemental Standards
COMMERCIAL and INDUSTRIAL					3.10.7
Agricultural Packaging and Storage	PB				
Agricultural Product Processing	PB				
Agriculture/Farming	A	PB	PB	PB	3.10.2
Animal Breeding or Care	PB	PB			3.10.3
Aquaculture (Land support for)	PB	PB	PB		
Bed & Breakfast	PB	PB			
Campground	PB	PB			3.10.4
Commercial Fishing Activities	A	PB			
Communications Tower	C ³				3.10.23
Conference Center	PB	PB			
Convention Center	PB	PB			
Day Care Center	PB	PB			
Essential Services	PB ³	PB ³	PB ³	PB ³	3.10.10
Farm Stand	A				
Home Occupation (Homemaker/Office)	P	P		PB	3.10.11
Home Occupation (Other)	PB	PB		PB	3.10.11
Hotel/Motel	PB				
Indoor Theater	PB	PB			
Kennel	PB	PB			
Kiosk	P	P	PB	PB	
Laboratory, Research Facility	PB	PB			
Laundromat	C ^{2,5}				
Marina		PB			
Maritime Activities	PB	PB			
Mobile Home Park	PB				3.10.16
Neighborhood Store	PB	C			
Offices; Business, Professional	PB	PB			
Recreational Facility - Indoor	PB	PB			
Restaurant	PB ²	PB ²			
Retail Business	PB	PB			
Sawmill	C ³				
Service Business	PB	PB			
Small Engine Repair & Sales	PB	PB			
Veterinary Hospital	PB				
Warehousing	PB	PB			
Wood Processing	PB	PB			

Zoning Ordinance of the Town of Boothbay

USE/ACTIVITY	Outside Overlay areas	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area 3.9.1.4.2.2.1	Supplemental Standards
INSTITUTIONAL					3.10.7
Cemetery	C				
Church, Parish House	PB	PB			
Community Center, Club	PB	PB			
Congregate Housing/Nursing Home	PB	PB			
Educational Facility	PB	PB			
Hospital	PB				
Museum, Library	PB				
Parks and Recreation	PB	PB		PB	
Public Facility	PB	PB			3.10.18
MISCELLANEOUS					
Clearing of Vegetation	A	P	P	P	3.11.3
Docks, piers, wharves, bridges and other similar structures					
Temporary		P	P	P	3.10.9
Permanent		PB	PB	PB	3.10.9
Forest Management Activities	A	A	A	A	
Individual Private Campsite	A	P	P	P	3.10.12
Sign	P	P	P	P	3.11.17
Timber Harvesting	A	PB	PB	PB	3.10.21
Wind Turbines					
Up to 60 feet in height	A	A	A	A	3.10.22
Over 60 feet in height	C	C	C	C	3.10.22

3.9.1.2 Prohibited Uses A use is not permitted in a specific location unless an “Approval Required” designation of “A”, “C”, “P” or “PB” is shown in the Land Use Table of Section 3.9.1.1.3.2. A blank indicates a prohibited use.

3.9.1.2.1 The following uses are not allowed in the C1 District.

- | | |
|------------------------------------|---------------------------------|
| Amusement Park | Parking Facility |
| Auto, Rec. Vehicle Sales & Service | Recreational Facility - Outdoor |
| Automobile Repair | Recycling Operations |
| Automobile Service Station | Retail Fuel Distributor |
| Bus Terminal | Retail Marijuana Establishment |
| Car Wash | Retail Marijuana Social Club |
| Firewood Processing | Roadside Stand |
| Flea Market/Tent Sale | Sex Related Business |
| Funeral Home | Shopping Center |
| Gambling | Storage Facility |
| Junkyard | Temporary Business Housing |
| Manufacturing | Terminal for Bulk Oil and Gas |
| Mineral Exploration | Trucking Distribution Terminal |
| Mineral Extraction | Waste Disposal/Landfill |
| Miniature Golf | Waste Transfer Facility |
| | Wholesale Business |

3.9.1.3 Supplemental Use Standards

3.9.1.3.1 Residential Dwellings Conditional Use approval is required if the dwelling is not connected to public water and sewer. [**Resource Protection Area**]

3.9.1.4 Development and Performance Standards

3.9.1.4.1 Lots The following standards are in addition to the standards of Section 3.11.9.

3.9.1.4.1.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a great pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. *{30-A § 4404(17)}*

3.9.1.4.1.2 Coverage Lots or the part thereof in the Shoreland Overlay Zone may be developed to a maximum of 20%. *{DEP § 15 B(4)}* [**Shoreland Overlay Zone**]¹⁴

3.9.1.4.1.3 Developable Area The Developed Area divided by the Buildable Area percentage, as these terms are defined in Section 3.8, shall not exceed 30%.

3.9.1.4.1.4 Frontage The minimum shore frontage on a great pond, stream, outlet stream or wetland shall be 200 feet. *{DEP § 15 A(1)}* [**Shoreland Overlay Zone**]

3.9.1.4.1.4.1 The minimum shore frontage per principal commercial, governmental, industrial, or institutional structure on a stream, outlet stream or wetland shall be 300 feet. *{DEP § 15 A(1)}* [**Shoreland Overlay Zone**]

3.9.1.4.1.5 Size The minimum size of a lot shall be 80,000 square feet.

3.9.1.4.1.5.1 The standards of Section 3.11.9.3 shall apply.

3.9.1.4.1.6 Width The average distance between the side lot lines shall be at least 200 feet.

3.9.1.4.1.6.1 The minimum width of any portion of any lot within 100 feet of the high-water line of a stream, outlet stream or upland edge of a wetland shall be the same as the required frontage set forth in Section 3.9.1.4.1.4. *{DEP § 15 A(4)}* [**Shoreland Overlay Zone**]

3.9.1.4.2 Structures The following standards are in addition to the standards of Section 3.11.20.

3.9.1.4.2.1 Height The maximum structure height shall be 34 feet. *{DEP § 15 B(2)}*

3.9.1.4.2.1.1 The above height limitation does not apply to chimneys, antennas and communications towers. *{DEP § 15 B(2)}*

3.9.1.4.2.2 Setbacks New structures shall have the following minimum setbacks:

Lot Lines (side and rear) 40 feet

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way) 8 feet

Road (right-of-way center line) State 100 feet Town 33 feet

The setback requirements from public ways and roads shall not apply to driveways, sidewalks, and similar structures. Fences and walls on corners of lots that are bordered by two intersecting public or private roads shall be setback a minimum of 8 feet from the edge of each road and shall be no more than 42 inches in height.

Structure on Adjoining Property Principal 40 feet Accessory 20 feet

The setback requirements from structures on adjoining properties do not apply to structures on adjoining properties with less than the required setback.

¹⁴ **Shoreland Overlay Zone** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in the Shoreland Overlay Zone including the Resource Protection and Stream Protection Areas portions thereof.

Shorelines 75 feet {DEP § 15 B(1)} [Shoreland Overlay Zone]

In addition, the Buildable Area setback on lots bounded on at least 3 sides by water shall be 150 feet from the point of any peninsula.

3.9.2 C2 District These standards are in addition to the Use Standards of Section 3.10 and the Development and Performance Standards of Section 3.11.

3.9.2.1 Permitted Uses The Land Use Table of Section 3.9.2.1.3 designates the allowed uses in the C2 District.

3.9.2.1.1 If a use is not specifically listed in the Land Use Table, or is not specifically listed in Section 3.7 or 3.9.2.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use.

3.9.2.1.1.1 Only specifically allowed structures are permitted. {DEP § 15 B(1)} [**Resource Protection Area**]¹⁵

3.9.2.1.2 The Planning Board shall determine if a second, third, etc., use on a lot is an accessory use in accordance with the definition in Section 3.8 or an additional principal use. Only accessory uses that would be allowed as principal uses in the proposed location shall be permitted, and such accessory uses shall meet the requirements for approval of the principal use.

3.9.2.1.3 Land Use Table

3.9.2.1.3.1 Use Key

3.9.2.1.3.1.1 Approval Required

A	Allowed use	Building permit may be required
C	Conditional Use	Requires Planning Board determination that proposal satisfies Review criteria of Section 3.6
P	Permit Required	Requires Code Enforcement Officer determination that Proposal satisfies General Review criteria of Section 3.6.1
PB	Planning Board	Requires Planning Board determination that Proposal satisfies General Review criteria of Section 3.6.1
	Blank	Use not allowed

3.9.2.1.3.1.2 Specific Requirements and Limitations (Superscripts in this table)

- 2 Use is allowed only as accessory to a principal, related use.
- 3 Use shall maintain a visual buffer strip along any public way. *See* Section 3.11.1
- 4 Use shall maintain a water supply protection buffer. *See* Section 3.11.2
- 5 Use is allowed only with public sewer or out of District or Overlay Zone wastewater disposal. {DEP § 15 F(8)}
- 7 Use shall satisfy criteria of 3.6.1

¹⁵ **Resource Protection Area** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in this protection area within the Shoreland Overlay Zone.

Zoning Ordinance of the Town of Boothbay

3.9.2.1.3.2 Land Use Table

USE/ACTIVITY	Outside Overlay areas	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area 3.9.2.4.2.2	Watershed Overlay Zone	Supplemental Standards
RESIDENTIAL						3.9.2.3.1
Accessory Apartment	P	P	PB	PB	P	3.10.1
Dwelling, Multifamily	PB	PB			PB	3.11.-9.12..3.4
Dwelling, One Family	P	P	PB	PB	P	3.10.17
Dwelling, Two Family	P	P		PB		
Lodging House	PB	PB			PB	3.11.9.3.4
Retirement Facility	PB	PB			PB	3.11.9.3.4
COMMERCIAL and INDUSTRIAL						3.10.7
Agricultural Packaging and Storage	PB	PB			PB	
Agricultural Product Processing	PB	PB			PB	
Agriculture/Farming	A	A	PB	PB		3.10.2
Amusement Park	C ³					
Animal Breeding or Care	PB	PB				3.10.3
Aquaculture (Land support for)	PB	PB	PB		PB	
Auto, Rec. Vehicle Sales & Service	PB					
Automobile Repair	PB					
Automobile Service Station	PB					
Bed & Breakfast	PB	PB			PB	
Bus Terminal	C					
Campground	PB	PB				3.10.4
Car Wash	C ⁵					
Commercial Fishing Activities	A	PB			PB	
Communications Tower	C ³				C ³	3.10.23
Conference Center	PB	PB			PB ⁴	
Convention Center	PB	PB			PB ^{4,5}	
Day Care Center	PB	PB			PB	
Essential Services	PB ³	PB ³	PB ³	PB ³	PB ³	3.10.10
Farm Stand	A				A	
Flea Market/Tent Sale	C					
Funeral Home	PB				PB	
Home Occupation (Homemaker/Office)	P	P		PB	P	3.10.11
Home Occupation (Other)	PB	PB		PB	PB	3.10.11
Hotel/Motel	PB	PB			PB ⁵	
Indoor Theater	PB	PB			PB	
Junkyard	C ³					3.10.13
Kennel	PB	PB			PB	

Zoning Ordinance of the Town of Boothbay

USE/ACTIVITY	Outside Overlay areas	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area 3.9.2.4.2.2	Watershed Overlay Zone	Supplemental Standards
COMMERCIAL and INDUSTRIAL						3.10.7
Kiosk	P	P	PB	PB	P	
Laboratory, Research Facility	PB	PB			PB	
Laundromat	C ^{2,5}				C ^{2,5}	
Manufacturing	PB	PB			PB	
Marina		PB				
Maritime Activities	PB	PB			PB	
Mineral Exploration	C					3.10.14
Mineral Extraction	C					3.10.14
Miniature Golf	PB					
Mobile Home Park	PB					3.10.16
Neighborhood Store	PB	C			PB	
Offices; Business, Professional	PB	PB			PB	
Parking Facility	PB ³	C ³				
Recreational Facility - Indoor	PB	PB			PB ⁴	
Recreational Facility - Outdoor	PB	C			PB ⁴	
Recycling Operations	PB				C ⁴	
Retail Marijuana Establishment	PB ⁷					3.10.24
Restaurant	PB	PB			PB	
Retail Business	PB	PB			PB	
Retail Fuel Distributor	C ³					
Roadside Stand	P				P	
Sawmill	C ³					
Service Business	PB	PB			PB	
Shopping Center	C					
Small Engine Repair & Sales	PB	PB				
Storage Facility	PB				PB	
Terminal for Bulk Oil and Gas	C ³					
Trucking Distribution Terminal	C ³					
Veterinary Hospital	PB				PB ⁵	
Warehousing	PB	PB			PB	
Waste Disposal/Landfill	C ³					
Waste Transfer Facility	C ³					
Wholesale Business	PB	PB			PB	
Wood Processing	PB	PB			PB	
INSTITUTIONAL						3.10.7
Church, Parish House	PB	PB			PB	
Community Center, Club	PB	PB			C	

Zoning Ordinance of the Town of Boothbay

Congregate Housing/Nursing Home	PB	PB			PB	
USE/ACTIVITY	Outside Overlay areas	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area 3.9.2.4.2.2	Watershed Overlay Zone	Supplemental Standards
INSTITUTIONAL						3.10.7
Educational Facility	PB	PB			PB	
Hospital	PB				PB ⁵	
Museum, Library	PB				PB	
Parks and Recreation	PB	PB		PB	PB	
Public Facility	PB	PB			PB	3.10.18
MISCELLANEOUS						
Clearing of Vegetation	A	P	P	P	P	3.11.3
Docks, piers, wharves, bridges and other similar structures						
Temporary				P		3.10.9
Permanent				PB		3.10.9
Forest Management Activities	A			A	A	3.10.21.3
Individual Private Campsite	A			P	A	3.10.12
Sign	P			P	P	3.11.17
Timber Harvesting	A			PB	PB	3.10.21
Wind Turbines						
Up to 60 feet in height	A	A	A	A	A	3.10.22
Over 60 feet in height	C	C	C	C	C	3.10.22

3.9.2.2 Prohibited Uses A use is not permitted in a specific location unless an “Approval Required” designation of “A”, “C”, “P” or “PB” is shown in the Land Use Table of Section 3.9.2.1.3.2. A blank indicates a prohibited use.

3.9.2.2.1 The following uses are not allowed in the C2 District.

- | | |
|---------------------|----------------------------|
| Cemetery | Sex Related Business |
| Firewood Processing | Temporary Business Housing |
| Gambling | |

3.9.2.3 Supplemental Use Standards

3.9.2.3.1 Residential Dwellings Conditional Use approval is required if dwelling is not connected to public water and sewer. [Resource Protection Area]

3.9.2.4 Development and Performance Standards

3.9.2.4.1 Lots The following standards are in addition to the standards of Section 3.11.9.

3.9.2.4.1.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a great pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. *{30-A § 4404(17)}*

3.9.2.4.1.2 Coverage Lots or the part thereof in the Stream Protection Area or in the Shoreland Overlay Zone may be developed to a maximum of 20%. *{DEP § 15 B(4)}* [Shoreland Overlay Zone]¹⁶

3.9.2.4.1.3 Developable Area The Developed Area divided by the Buildable Area percentage, as these terms are defined in Section 3.8, shall not exceed 50%.

3.9.2.4.1.3.1 The maximum percentage of the buildable area that may be developed is 30%. [Resource Protection Area]

3.9.2.4.1.4 Frontage The minimum shore frontage on a great pond, stream, outlet stream or wetland in feet shall be: *{DEP § 15 A(1)}* [Shoreland Overlay Zone]

USE/LOCATION	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area
Residential per dwelling unit			
Adjacent to tidal areas	150	150	150
Adjacent to non-tidal areas	200	200	200
Governmental, Institutional, Commercial or Industrial per principal structure			
Adjacent to tidal areas	200	200	200
Adjacent to non-tidal areas	300	300	300
Public and Private Recreational Facilities	200	200	200

3.9.2.4.1.5 Size The minimum size of a lot in square feet shall be:

Outside Overlay area	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area	Watershed Overlay Zone
40,000	60,000	80,000	60,000	40,000

3.9.2.4.1.6 Width The average distance in feet between the side lot lines shall be:

Outside Overlay area	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area	Watershed Overlay Zone
100	100	150	150	100

3.9.2.4.1.6.1 The minimum width of any portion of any lot within 100 feet of the high-water line of a stream, outlet stream or upland edge of a wetland shall be the same as the minimum Shore Frontage of Section 3.9.2.4.1.4. *{DEP § 15 A(4)}* [Shoreland Overlay Zone]

3.9.2.4.2 Structures The following standards are in addition to the standards of Section 3.11.20.

3.9.2.4.2.1 Height The maximum structure height shall be 34 feet. *{DEP § 15 B(2)}*

3.9.2.4.2.1.1 The above height limitation does not apply to chimneys, antennas and

¹⁶ **Shoreland Overlay Zone** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in the Shoreland Overlay Zone including the Resource Protection and Stream Protection Areas portions thereof.

communications towers. {DEP § 15 B(2)}

3.9.2.4.2.2 Setbacks New structures shall have the following minimum setbacks:

Lot Lines (side and rear) 20 feet

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way) 8 feet

Road (right-of-way center line) State 50 feet Town 33 feet

The setback requirements from public ways and roads shall not apply to driveways, sidewalks, and similar structures. Fences and walls on corners of lots that are bordered by two intersecting public or private roads shall be setback a minimum of 8 feet from the edge of each road and shall be no more than 42 inches in height.

Structure on Adjoining Property Principal 40 feet Accessory 20 feet

The setback requirements from structures on adjoining properties do not apply to structures on adjoining properties with less than the required setback.

Shorelines 75 feet {DEP § 15 B(1)} [**Shoreland Overlay Zone**]

In addition, the Buildable Area setback on lots bounded on at least 3 sides by water shall be 150 feet from the point of any peninsula. [**Shoreland Overlay Zone**]

3.9.3 C3 District These standards are in addition to the Use Standards of Section 3.10 and the Development and Performance Standards of Section 3.11.

3.9.3.1 Permitted Uses The Land Use Table of Section 3.9.3.1.3 designates the allowed uses in the C3 District.

3.9.3.1.1 If a use is not specifically listed in the Land Use Table, or is not specifically listed in Section 3.7 or 3.9.3.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use.

3.9.3.1.2 The Planning Board shall determine if a second, third, etc., use on a lot is an accessory use in accordance with the definition in Section 3.8 or an additional principal use. Only accessory uses that would be allowed as principal uses in the proposed location shall be permitted, and such accessory uses shall meet the requirements for approval of the principal use.

3.9.3.1.3 Land Use Table

3.9.3.1.3.1 Use Key

3.9.3.1.3.1.1 Approval Required

A	Allowed use	Building permit may be required
C	Conditional Use	Requires Planning Board determination that proposal satisfies Review criteria of Section 3.6
P	Permit Required	Requires Code Enforcement Officer determination that Proposal satisfies General Review criteria of Section 3.6.1
PB	Planning Board	Requires Planning Board determination that Proposal satisfies General Review criteria of Section 3.6.1
	Blank	Use not allowed

3.9.3.1.3.1.2 Specific Requirements and Limitations (Superscripts in this table)

- 2 Use is allowed only as accessory to a principal, related use.
- 3 Use shall maintain a visual buffer strip along any public way. *See* Section 3.11.1
- 4 Use shall maintain a water supply protection buffer. *See* Section 3.11.2
- 5 Use permitted only with public sewer or out of District or Overlay Zone wastewater disposal. *{DEP § 15 F(8)}*

3.9.3.1.3.2 Land Use Table

USE/ACTIVITY	Outside Overlay Zone	Watershed Overlay Zone	Supplemental Standards
RESIDENTIAL			
Accessory Apartment	P	P	3.10.1
Dwelling, Multifamily	PB	PB	
Dwelling, One Family	P	P	
Dwelling, Two Family	P	P	
Lodging House	PB	PB	
Retirement Facility	PB	PB	
COMMERCIAL and INDUSTRIAL			3.10.7
Agricultural Packaging and Storage	PB	PB	
Agricultural Product Processing	PB	PB	
Agriculture/Farming	A		3.10.2
Animal Breeding or Care	PB		3.10.3
Aquaculture (Land support for)	PB	PB	
Auto, Rec. Vehicle Sales & Service	PB		
Automobile Repair	PB		
Automobile Service Station	PB		
Bed & Breakfast	PB	PB	
Bus Terminal	C		
Campground	PB		3.10.4
Car Wash	C ⁵		
Commercial Fishing Activities	A	PB	
Communications Tower	C ³	C ³	3.10.23
Conference Center	PB	PB ⁴	
Convention Center	PB	PB ^{4,5}	
Day Care Center	PB	PB	
Essential Services	PB ³	PB ³	3.10.10
Farm Stand	A	A	
Funeral Home	PB	PB	
Home Occupation (Homemaker/Office)	P	P	3.10.11
Home Occupation (Other)	PB	PB	3.10.11
Indoor Theater	PB	PB	
Kennel	PB	PB	
Kiosk	P	P	
Laboratory, Research Facility	PB	PB	
Laundromat	C ^{2,5}	C ^{2,5}	
Manufacturing	PB	PB	
Maritime Activities	PB	PB	
Mineral Exploration	C		3.10.14

Zoning Ordinance of the Town of Boothbay

USE/ACTIVITY	Outside Overlay Zone	Watershed Overlay Zone	Supplemental Standards
COMMERCIAL and INDUSTRIAL			3.10.7
Mineral Extraction	C		3.10.14
Miniature Golf	PB		
Mobile Home Park	PB		3.10.16
Neighborhood Store	PB	PB	
Offices; Business, Professional	PB	PB	
Parking Facility	PB ³		
Recreational Facility - Indoor	PB	PB ⁴	
Recreational Facility - Outdoor	PB	PB ⁴	
Recycling Operations	PB	C ⁴	
Restaurant	PB	PB	
Retail Business	PB	PB	
Retail Fuel Distributor	C ³		
Roadside Stand	P	P	
Sawmill	C ³		
Service Business	PB	PB	
Shopping Center	C		
Small Engine Repair & Sales	PB		
Storage Facility	PB	PB	
Veterinary Hospital	PB	PB ⁵	
Warehousing	PB	PB	
Waste Disposal/Landfill	C ³		
Waste Transfer Facility	C ³		
Wholesale Business	PB	PB	
Wood Processing	PB	PB	
INSTITUTIONAL			3.10.7
Church, Parish House	PB	PB	
Congregate Housing/Nursing Home	PB	PB	
Educational Facility	PB	PB	
Hospital	PB	PB ⁵	
Museum, Library	PB	PB	
Parks and Recreation	PB	PB	
Public Facility	PB	PB	3.10.18
MISCELLANEOUS			
Clearing of Vegetation	A	P	3.11.3
Forest Management Activities	A	A	3.10.21.3
Individual Private Campsite	A	A	3.10.12
Sign	P	P	3.11.17
Timber Harvesting	A	PB	3.10.21

Zoning Ordinance of the Town of Boothbay

USE/ACTIVITY	Outside Overlay Zone	Watershed Overlay Zone	Supplemental Standards
MISCELLANEOUS			
Wind Turbines			
Up to 60 feet in height	A	A	3.10.22
Over 60 feet in height	C	C	3.10.22

3.9.3.2 Prohibited Uses A use is not permitted in a specific location unless an “Approval Required” designation of “A”, “C”, “P” or “PB” is shown in the Land Use Table of Section 3.9.3.1.3.2. A blank indicates a prohibited use.

3.9.3.2.1 The following uses are not allowed in the C3 District.

Amusement Park	Junkyard
Cemetery	Marina
Community Center, Club	Retail Marijuana Establishment
Docks, piers, wharves, etc.	Retail Marijuana Social Club
Firewood Processing	Sex Related Business
Flea Market/Tent Sale	Temporary Business Housing
Gambling	Terminal for Bulk Oil and Gas
Hotel/Motel	Trucking Distribution Terminal

3.9.3.3 Development and Performance Standards

3.9.3.3.1 Lots The following standards are in addition to the standards of Section 3.11.9.

3.9.3.3.1.1 Configuration The depth-to-width ratio and the width-to-depth ratio shall not exceed 5 to 1.

3.9.3.3.1.2 Developable Area The Developed Area divided by the Buildable Area percentage, as these terms are defined in Section 3.8, shall not exceed 50%.

3.9.3.3.1.3 Size The minimum size of a lot shall be 40,000 square feet.

3.9.3.3.1.4 Width The average distance between the side lot lines shall be 100 feet.

3.9.3.3.2 Structures The following standards are in addition to the standards of Section 3.11.20.

3.9.3.3.2.1 Height The maximum structure height shall be 34 feet.

3.9.3.3.2.1.1 The above height limitation does not apply to chimneys, antennas, solar panels and communications towers.

3.9.3.3.2.1.2 The maximum structure height can be 44 feet if the structure is more than 250 feet from Route 27 along Country Club Road.

3.9.3.3.2.2 Setbacks New structures shall have the following minimum setbacks:

Lot Lines (side and rear) 20 feet

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way) 8 feet

Road (right-of-way center line) State 50 feet Town 33 feet

The setback requirements from public ways and roads shall not apply to driveways, sidewalks, and similar structures. Fences and walls on corners of lots that are bordered by two intersecting public or private roads shall be setback a minimum of 8 feet from the edge of each road and shall be no more than 42 inches in height.

Structure on Adjoining Property Principal 40 feet Accessory 20 feet

The setback requirements from structures on adjoining properties do not apply to structures on adjoining properties with less than the required setback.

3.9.4 General Residential District These standards are in addition to the Use Standards of Section 3.10 and the Development and Performance Standards of Section 3.11.

3.9.4.1 Permitted Uses The Land Use Table of Section 3.9.4.1.3 designates the allowed uses in the General Residential District.

3.9.4.1.1 If a use is not specifically listed in the Land Use Table, or is not specifically listed in Section 3.7 or 3.9.4.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use.

3.9.4.1.1.1 Only specifically allowed structures are permitted. *{DEP § 15 B(1)}* [**Resource Protection Area**]¹⁷

3.9.4.1.2 The Planning Board shall determine if a second, third, etc., use on a lot is an accessory use in accordance with the definition in Section 3.8 or an additional principal use. Only accessory uses that would be allowed as principal uses in the proposed location shall be permitted, and such accessory uses shall meet the requirements for approval of the principal use.

3.9.4.1.3 Land Use Table

3.9.4.1.3.1 Use Key

3.9.4.1.3.1.1 Approval Required

A	Allowed use	Building permit may be required
C	Conditional Use	Requires Planning Board determination that proposal satisfies Review criteria of Section 3.6
P	Permit Required	Requires Code Enforcement Officer determination that Proposal satisfies General Review criteria of Section 3.6.1
PB	Planning Board	Requires Planning Board determination that Proposal satisfies General Review criteria of Section 3.6.1
	Blank	Use not allowed

3.9.4.1.3.1.2 Specific Requirements and Limitations (Superscripts in this table)

- 2 Use is allowed only as accessory to a principal, related use.
- 3 Use shall maintain a visual buffer strip along any public way. *See* Section 3.11.1
- 4 Use shall maintain a water supply protection buffer. *See* Section 3.11.2
- 5 Use permitted only with public sewer or out of District or Overlay Zone wastewater disposal. *{DEP § 15 F(8)}*
- 6 Use allowed only on lots of ten (10) or more acres that have been restricted against any subsequent use of the property for an outdoor recreational facility without the required minimum of ten (10) acres. The deed restrictions must be approved as to form and legal sufficiency by the Town Attorney prior to any Planning Board approval of such use.

¹⁷ **Resource Protection Area** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in this protection area within the Shoreland Overlay Zone.

Zoning Ordinance of the Town of Boothbay

3.9.4.1.3.2 Land Use Table

USE/ACTIVITY	Outside Overlay areas	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area 3.9.4.4.2.3	Watershed Overlay Zone	Supplemental Standards
RESIDENTIAL						
Accessory Apartment	P	P	PB	PB	P	3.10.1
Dwelling, Multifamily	PB	PB			PB	3.11.9.3.4
Dwelling, One Family	P	P	PB	PB	P	3.10.17
Dwelling, Two Family	P	P			P	
Lodging House	PB	PB			PB	3.11.9.12.3.4
Retirement Facility	PB	PB			PB	3.11.9.3.4
COMMERCIAL and INDUSTRIAL						3.10.7
Agriculture/Farming	A	PB	PB	PB		3.10.2
Animal Breeding or Care	PB	PB				3.10.3
Aquaculture (Land support for)	PB	PB	PB	PB	PB	
Bed & Breakfast	PB	PB			PB	
Campground	PB	PB				3.10.4
Commercial Fishing Activities	A	PB			PB	
Communications Tower	C ³					3.10.23
Conference Center	PB	C			PB ⁴	
Day Care Center	PB	PB			PB	
Essential Services	PB ³	PB ³	PB ³	PB ³	PB ³	3.10.10
Farm Stand	A				A	
Home Occupation (Homemaker/Office)	P	P		PB	P	3.10.11
Home Occupation (Other)	PB	PB		PB	PB	3.10.11
Hotel/Motel	C	C			C ⁵	
Kennel	PB	PB			PB	
Kiosk	P	P	PB	PB	P	
Laundromat	C ^{2,5}				C ^{2,5}	
Marina		PB				
Maritime Activities	PB	PB			PB	
Mobile Home Park	PB					3.10.16
Neighborhood Store	PB					
Offices; Business, Professional	PB				PB	
Recreational Facility – Indoor	PB				PB	
Recreational Facility- Outdoor	PB ⁶					
Restaurant	PB ²	C ²			PB ²	
Service Business	PB	PB			PB	
Small Engine Repair & Sales	PB	PB				
Veterinary Hospital	C					
INSTITUTIONAL						3.10.7
Cemetery	C					

Zoning Ordinance of the Town of Boothbay

USE/ACTIVITY	Outside Overlay areas	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area 3.9.4.4.2.3	Watershed Overlay Zone	Supplemental Standards
INSTITUTIONAL						3.10.7
Church, Parish House	PB	PB			PB	
Community Center, Club	PB	PB				
Congregate Housing/Nursing Home	PB	PB			PB	
Educational Facility	PB	PB			PB	
Museum, Library	PB					
Parks and Recreation	PB	PB		PB		
Public Facility	PB	PB				3.10.18
MISCELLANEOUS						
Clearing of Vegetation	A	P	P	P	P	3.11.3
Docks, piers, wharves, bridges and other similar structures						
Temporary		P	P	P		3.10.9
Permanent		PB	PB	PB		3.10.9
Forest Management Activities	A	A	A	A	A	3.10.21.3
Individual Private Campsite	A	P	P	P	A	3.10.12
Sign	P	P	P	P	P	3.11.17
Timber Harvesting	A	PB	PB	PB	PB	3.10.21
Wind Turbines						
Up to 60 feet in height	A	A	A	A	A	3.10.22
Over 60 feet in height	C	C	C	C	C	3.10.22

3.9.4.2 Prohibited Uses A use is not permitted in a specific location unless an “Approval Required” designation of “A”, “C”, “P” or “PB” is shown in the Land Use Table of Section 3.9.4.1.3.2. A blank indicates a prohibited use.

3.9.4.2.1 The following uses are not allowed in the General Residential District.

- | | |
|------------------------------------|--|
| Agricultural Packaging and Storage | Parking Facility |
| Agricultural Product Processing | Recreational Facility Outdoor |
| Amusement Park | Recycling Operations |
| Auto, Rec. Vehicle Sales & Service | Retail Business |
| Automobile Repair | Retail Fuel Distributor |
| Automobile Service Station | Retail Marijuana Establishment |
| Bus Terminal | Retail Marijuana Social Club |
| Car Wash | Roadside Stand |
| Convention Center | Sawmill |
| Firewood Processing | Sex Related Business |
| Flea Market/Tent Sale | Shopping Center |
| Funeral Home | Storage Facility |
| Gambling | Temporary Business Housing |
| Hospital | Terminal for Bulk Oil and Gas |
| Indoor Theater | Trucking Distribution Terminal |
| Junkyard | Warehousing |
| Laboratory, Research Facility | Waste Disposal/Landfill |
| Manufacturing | Waste Transfer Facility |
| Mineral Exploration | Wholesale Business |
| Mineral Extraction | Wood Processing |
| Miniature Golf | |

3.9.4.3 Supplemental Use Standards

3.9.4.3.1 Residential Dwellings Conditional Use approval is required if dwelling is not connected to public water and sewer. **[Resource Protection Area]**

3.9.4.4 Development and Performance Standards

3.9.4.4.1 Lots The following standards are in addition to the standards of Section 3.11.9.

3.9.4.4.1.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a great pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. *{30-A § 4404(17)}*

3.9.4.4.1.2 Coverage Lots or the part thereof in the Resource Protection and Stream Protection Areas or in the Shoreland Overlay Zone may be developed to a maximum of 20%. *{DEP § 15 B(4)}* **[Shoreland Overlay Zone]**¹⁸

3.9.4.4.1.3 Developable Area The Developed Area divided by the Buildable Area percentage, as these terms are defined in Section 3.8, shall not exceed 50%.

3.9.4.4.1.3.1 The maximum percentage of the buildable area that may be developed is 30%. **[Resource Protection Area]**

3.9.4.4.1.4 Frontage The minimum shore frontage on a great pond, stream, outlet stream or wetland in feet shall be: *{DEP § 15 A(1)}*

USE/LOCATION	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area
Residential per dwelling unit			
Adjacent to tidal areas	150	150	150
Adjacent to non-tidal areas	200	200	200
Governmental, Institutional, Commercial or Industrial per principal structure			
Adjacent to tidal areas	200	200	200
Adjacent to non-tidal areas	300	300	300
Public and Private Recreational Facilities	200	200	200

3.9.4.4.1.5 Size The minimum size of a lot in square feet shall be:

Outside Overlay area	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area	Watershed Overlay Zone
40,000	60,000	80,000	60,000	40,000

3.9.4.4.1.6 Width The average distance in feet between the side lot lines shall be:

Outside Overlay area	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area	Watershed Overlay Zone
100	100	150	150	100

3.9.4.4.1.6.1 The minimum width of any portion of any lot within 100 feet of the high-water line of a great pond, stream, outlet stream or upland edge of a wetland shall be the same as the minimum Shore Frontage of Section 3.9.4.4.1.4. *{DEP § 15 A(4)}* **[Shoreland Overlay Zone]**

¹⁸ **Shoreland Overlay Zone** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in the Shoreland Overlay Zone including the Resource Protection and Stream Protection Areas portions thereof.

3.9.4.4.2 Structures The following standards are in addition to the standards of Section 3.11.20.

3.9.4.4.2.1 Height The maximum structure height shall be 34 feet. *{DEP § 15 B(2)}*

3.9.4.4.2.1.1 The above height limitation does not apply to chimneys, antennas and communications towers. *{DEP § 15 B(2)}*

3.9.4.4.2.2 Setbacks New structures shall have the following minimum setbacks (in feet):

Lot Lines (side and rear) 20

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way) 8

Road (right-of-way center line) State 50 Town 33

The setback requirements from public ways and roads shall not apply to driveways, sidewalks, and similar structures. Fences and walls on corners of lots that are bordered by two intersecting public or private roads shall be setback a minimum of 8 feet from the edge of each road and shall be no more than 42 inches in height.

Structure on Adjoining Property Principal 40 Accessory 20

The setback requirements from structures on adjoining properties do not apply to structures on adjoining properties with less than the required setback.

Shorelines

Great ponds and associated wetlands 100 *{DEP § 15 B(1)}* [**Shoreland Overlay Zone**]

Other shorelines 75 *{DEP § 15 B(1)}* [**Resource Protection Area, Stream Protection Area, Shoreland Overlay Zone**]

In addition, the Buildable Area setback on lots bounded on at least 3 sides by water shall be 150 feet from the point of any peninsula. [**Shoreland Overlay Zone**]

3.9.5 Industrial Park District These standards are in addition to the Use Standards of Section 3.10 and the Development and Performance Standards of Section 3.11.

3.9.5.1 Permitted Uses The Land Use Table of Section 3.9.5.1.3 designates the allowed uses in the Industrial Park District.

3.9.5.1.1 If a use is not specifically listed in the Land Use Table, or is not specifically listed in Section 3.7 or 3.9.5.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use.

3.9.5.1.2 The Planning Board shall determine if a second, third, etc., use on a lot is an accessory use in accordance with the definition in Section 3.8 or an additional principal use. Only accessory uses that would be allowed as principal uses in the proposed location shall be permitted, and such accessory uses shall meet the requirements for approval of the principal use.

3.9.5.1.3 Land Use Table

3.9.5.1.3.1 Use Key

3.9.5.1.3.1.1 Approval Required

A	Allowed use	Building permit may be required
C	Conditional Use	Requires Planning Board determination that proposal satisfies Review criteria of Section 3.6
P	Permit Required	Requires Code Enforcement Officer determination that Proposal satisfies General Review criteria of Section 3.6.1
PB	Planning Board	Requires Planning Board determination that Proposal satisfies General Review criteria of Section 3.6.1
Blank		Use not allowed

3.9.5.1.3.1.2 Specific Requirements and Limitations (Superscript in this table)

- 3 Use shall maintain a visual buffer strip along any public way. *See* Section 3.11.1
- 7 Use shall satisfy criteria of 3.6.1

3.9.5.1.3.2 Land Use Table

USE/ACTIVITY	Outside Overlay Zone	Watershed Overlay Zone	Supplemental Standards
RESIDENTIAL			
Temporary Business Housing	PB	C	3.9.5.3.7
COMMERCIAL and INDUSTRIAL			
Agricultural Packaging and Storage	A	A	
Agricultural Product Processing	A	A	
Aquaculture (Land support for)	A	A	
Automobile Repair	A		
Commercial Fishing Activities	A	PB	
Communications Tower	A		3.10.23
Essential Services	PB	PB	3.10.10
Firewood Processing	PB	PB	

Zoning Ordinance of the Town of Boothbay

USE/ACTIVITY	Outside Overlay Zone	Watershed Overlay Zone	Supplemental Standards
COMMERCIAL and INDUSTRIAL			
Gambling	C	C	
Laboratory, Research Facility	A	A	
Manufacturing	A	A	
Maritime Activities	A	A	
Mineral Exploration and Extraction	PB		3.10.14
Offices; Business, Professional	A	A	
Parking Facility	A	A	
Recycling Operations	A	A	
Restaurant	C	C	
Retail Business	PB	PB	
Retail Fuel Distributor	C		
Service Business	A	A	
Retail Marijuana Establishment	PB ⁷		3.10.24
Sex Related Business	C ³		3.9.5.3.5
Small Engine Repair & Sales	A	A	
Storage Facility	A	A	
Terminal for Bulk Oil and Gas	C		
Trucking Distribution Terminal	A		
Warehousing	A	A	
Wholesale Business	A	A	
Wood Processing	A	A	
INSTITUTIONAL			
Educational Facility	A	A	3.9.5.3.2
Public Facility	PB	PB	3.10.18
MISCELLANEOUS			
Clearing of Vegetation	A	P	3.11.3
Forest Management Activities	A	A	3.10.21.3
Sign	P	P	3.11.17
Timber Harvesting	A	A	3.10.21
Wind Turbines			
Up to 60 feet in height	A	A	3.10.22
Over 60 feet in height	C	C	3.10.22

3.9.5.2 Prohibited Uses A use is not permitted in a specific location unless an “Approval Required” designation of “A”, “C”, “P” or “PB” is shown in the Land Use Table of Section 3.9.5.1.3.2. A blank indicates a prohibited use.

3.9.5.2.1 The following uses are not allowed in the Industrial Park District.

Accessory Apartment	Hospital
Agriculture/Farming	Hotel/Motel
Amusement Park	Individual Private Campsite
Animal Breeding or Care	Indoor Theater
Auto, Rec. Vehicle Sales & Service	Junkyard
Automobile Service Station	Kennel
Bed & Breakfast	Kiosk
Bus Terminal	Laundromat
Campground	Lodging House
Car Wash	Marina
Cemetery	Miniature Golf
Church, Parish House	Mobile Home Park
Community Center, Club	Museum, Library
Congregate Housing/Nursing Home	Neighborhood Store
Docks, piers, wharves, bridges, etc.	Parks and Recreation
Dwelling, Multifamily	Recreational Facility - Indoor
Dwelling, One Family	Recreational Facility - Outdoor
Dwelling, Two Family	Retail Marijuana Social Club
Conference Center	Retirement Facility
Convention Center	Roadside Stand
Day Care Center	Sawmill
Farm Stand	Shopping Center
Flea Market/Tent Sale	Veterinary Hospital
Funeral Home	Waste Disposal/Landfill
Home Occupation (Homemaker/Office)	Waste Transfer Facility
Home Occupation (Other)	

3.9.5.3 Supplemental Use Standards

3.9.5.3.1 Condominiums Industrial, Commercial, and Industrial/Commercial condominiums are allowed in the Industrial Park District. Residential uses other than Temporary Business Housing are not allowed.

3.9.5.3.2 Educational Facilities shall be limited to vocational training.

3.9.5.3.3 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.

3.9.5.3.4 Residential Dwellings shall be allowed on lots not part of the Industrial Park Subdivision approved on August 20, 1991. Lots as they exist in the Boothbay Tax Assessors records as of November 6, 2007 shall, if they include any new residential development after this date, be developed in accordance with the standards of Section 3.9.2 for the C2 District. Access for such lots shall not be via Industrial Park Road.

3.9.5.3.5 Sex Related Businesses shall be located at least 1,000 feet from Route 27.

3.9.5.3.6 Subsurface Wastewater Disposal Existing properties using subsurface wastewater disposal facilities within the Industrial Park District shall be connected to a public sewer when the current system fails, if public sewer is available. Subsurface wastewater disposal shall not be permitted for new uses if the property is subject to a sewer “ready to serve” fee.

3.9.5.3.7 Temporary Business Housing The Planning Board may approve the construction of a dwelling unit as an accessory use for short term housing. In addition to meeting the standards for conditional uses in Section 3.6.2, Temporary Business Housing shall adhere to the following standards:

A. The owners, employees and customers of the principal use are the only persons

- authorized to use the dwelling unit;
- B. Occupancy shall only occur in connection with a project currently being worked on or during negotiations for a future project;
- C. Occupancy shall be for a maximum of 30 consecutive days per use;
- D. The number of occupants is limited to two adults;
- E. Only one dwelling unit shall be permitted on a lot;
- F. The dwelling unit shall not be in a separate structure; and
- G. Two ways to enter/exit shall be provided.

3.9.5.4 Development and Performance Standards

3.9.5.4.1 Lots The following standards are in addition to the standards of Section 3.11.9.

3.9.5.4.1.1 Access shall be via Industrial Park Road.

3.9.5.4.1.2 Configuration The depth-to-width ratio and the width-to-depth ratio shall not exceed 5 to 1.

3.9.5.4.1.3 Developable Area The Developed Area divided by the Buildable Area percentage, as these terms are defined in Section 3.8, shall not exceed 100%.

3.9.5.4.1.4 Size Lots of a minimum of 20,000 square feet are permitted with public water and public sewer. All other lots shall have a minimum of 40,000 square feet.

3.9.5.4.1.5 Width The average distance in feet between the side lot lines shall be 50 feet for lots less than 40,000 square feet and 100 feet for all other lots.

3.9.5.4.2 Parking and Loading The Planning Board may waive the parking requirements of Section 3.11.12 relating to parking wholly within the property.

3.9.5.4.3 Structures The following standards are in addition to the standards of Section 3.11.20.

3.9.5.4.3.1 Height The maximum height of all structures and accessory support equipment shall be 34 feet except the maximum height of structures and accessory support equipment more than 1,000 feet from Route 27 and Pension Ridge Road shall be 54 feet. This limitation shall not apply to antennas, chimneys and communication towers.

3.9.5.4.3.1.1 Planning Board approval is required for structures and accessory support equipment exceeding 34 feet.

3.9.5.4.3.1.2 A fire suppression system shall be required for structures exceeding 34 feet. The Planning Board may waive this requirement.

3.9.5.4.3.1.3 A detailed landscape plan shall be required for all structures and accessory support equipment exceeding 34 feet. This requirement shall not apply to antennas, chimneys and communications towers.

3.9.5.4.3.2 Number More than one principal structure may be placed on a lot. The limitations of Section 3.11.20.1.1 shall not apply.

3.9.5.4.3.3 Setbacks New structures shall have the following minimum setbacks:

Lot Lines (side and rear) 10 feet

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way) 8 feet

Road (right-of-way center line) State 50 feet Town 8 feet

The setback requirements from public ways and roads shall not apply to driveways, sidewalks, and similar structures. Fences and walls on corners of lots that are bordered by two intersecting public or private roads shall be setback a minimum of 8 feet from the edge of each road and shall be no more than 42 inches in height.

Structure on Adjoining Property 20 feet

The setback requirements from structures on adjoining properties do not apply to structures on adjoining properties with less than the required setback.

3.9.5.4.3.4 Wind Turbines The lot size restrictions of Section 3.10.22 shall not apply.

3.9.6 Maritime Commercial District These standards are in addition to the Use Standards of Section 3.10 and the Development and Performance Standards of Section 3.11.

3.9.6.1 Permitted Uses The Land Use Table of Section 3.9.6.1.3 designates the allowed uses in the Maritime Commercial District.

3.9.6.1.1 If a use is not specifically listed in the Land Use Table, or is not specifically listed in Section 3.7 or 3.9.6.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use.

3.9.6.1.2 The Planning Board shall determine if a second, third, etc., use on a lot is an accessory use in accordance with the definition in Section 3.8 or an additional principal use. Only accessory uses that would be allowed as principal uses in the proposed location shall be permitted, and such accessory uses shall meet the requirements for approval of the principal use.

3.9.6.1.3 Land Use Table

3.9.6.1.3.1 Use Key

3.9.6.1.3.1.1 Approval Required

A	Allowed use	Building permit may be required
C	Conditional Use	Requires Planning Board determination that proposal satisfies Review criteria of Section 3.6
P	Permit Required	Requires Code Enforcement Officer determination that Proposal satisfies General Review criteria of Section 3.6.1
PB	Planning Board	Requires Planning Board determination that Proposal satisfies General Review criteria of Section 3.6.1
Blank		Use not allowed

3.9.6.1.3.1.2 Specific Requirements and Limitations (Superscripts in this table)

- 2 Use is allowed only as accessory to a principal, related use.
- 3 Use shall maintain a visual buffer strip along any public way. *See* Section 3.11.1
- 5 Use permitted only with public sewer or out of District or Overlay Zone wastewater disposal. {DEP § 15 F(8)}

3.9.6.1.3.2 Land Use Table

USE/ACTIVITY	Approval Required	Supplemental Standards
RESIDENTIAL		
Accessory Apartment	PB	3.10.1
Dwelling, Multifamily	PB	
Dwelling, Two Family	PB	
Lodging House	PB	
COMMERCIAL and INDUSTRIAL		3.10.7
Agricultural Packaging and Storage	PB	
Agricultural Product Processing	PB	
Aquaculture (Land support for)	PB	
Bed & Breakfast	PB	
Commercial Fishing Activities	PB	
Communications Tower	PB	3.10.23
Day Care Center	PB	
Essential Services	PB ³	3.10.10
Home Occupation (Homemaker/Office)	P	3.10.11

Zoning Ordinance of the Town of Boothbay

USE/ACTIVITY	Approval Required	Supplemental Standards
COMMERCIAL and INDUSTRIAL		3.10.7
Home Occupation (Other)	PB	3.10.11
Indoor Theater	PB	
Kiosk	PB	
Laboratory, Research Facility	PB	
Laundromat	C ^{2,5}	
Manufacturing	PB	
Marina	PB	
Maritime Activities	PB	
Neighborhood Store	PB	
Offices; Business, Professional	PB	
Parking Facility	PB	
Recreational Facility - Indoor	PB	
Recycling Operations	PB	
Restaurant	PB	
Retail Business	PB	
Sawmill	PB ²	
Service Business	PB	
Small Engine Repair & Sales	PB	
Warehousing	PB	
Wholesale Business	PB	
Wood Processing	PB ²	
INSTITUTIONAL		3.10.7
Educational Facility	PB	
Museum, Library	PB	
Parks and Recreation	PB	
Public Facility	PB	3.10.19
MISCELLANEOUS		
Clearing of Vegetation	PB	3.11.3
Docks, piers, wharves, bridges and other similar structures		
Temporary	P	3.10.9
Permanent	PB	3.10.9
Individual Private Campsite	P	3.10.12
Sign	P	3.11.17
Wind Turbines		
Up to 60 feet in height	A	3.10.22
Over 60 feet in height	C	3.10.22

3.9.6.2 Prohibited Uses A use is not permitted in a specific location unless an “Approval Required” designation of “A”, “C”, “P” or “PB” is shown in the Land Use Table of Section 3.9.6.1.3.2. A blank indicates a prohibited use.

3.9.6.2.1 The following uses are not allowed in the Maritime Commercial District.

Agriculture/Farming	Hotel/Motel
Amusement Park	Individual Private Campsite
Animal Breeding or Care	Junkyard
Auto, Rec. Vehicle Sales & Service	Kennel
Automobile Repair	Mineral Exploration
Automobile Service Station	Mineral Extraction
Bus Terminal	Miniature Golf
Campground	Mobile Home Park
Car Wash	Recreational Facility - Outdoor
Cemetery	Retail Fuel Distributor
Church, Parish House	Retail Marijuana Establishment
Community Center, Club	Retail Marijuana Social Club
Conference Center	Retirement Facility
Congregate Housing/Nursing Home	Roadside Stand
Convention Center	Sex Related Business
Dwelling, One Family	Shopping Center
Farm Stand	Storage Facility
Firewood Processing	Temporary Business Housing
Flea Market/Tent Sale	Terminal for Bulk Oil and Gas
Forest Management Activities	Timber Harvesting
Funeral Home	Trucking Distribution Terminal
Gambling	Veterinary Hospital
Hospital	Waste Disposal/Landfill
	Waste Transfer Facility

3.9.6.3 Supplemental Use Standards All uses except for residential, bed and breakfast and home occupations shall be functionally water-dependent uses or uses accessory to such uses. *{DEP §14 Note 5}*

3.9.6.3.1 Change of Use The conversion of seasonal residences to year-round residences is prohibited in the Shoreland Overlay Zone. *{DEP §14 Table 1}*

3.9.6.3.2 Bed and Breakfast use is allowed only if in an existing residential dwelling.

3.9.6.3.3 Functionally Water-dependent All uses except Residential, Bed and Breakfast and Home Occupations shall be functionally water-dependent uses or accessory to such functionally water-dependent uses.

3.9.6.3.4 Residential Dwellings are allowed only if they are an accessory apartment to or a conversions of an existing one family residential dwelling.

3.9.6.4 Development and Performance Standards

3.9.6.4.1 Clearing of Vegetation for Activities other than Timber Harvesting The limitation of Section 3.11.3.2.2.2 on the size of a cleared opening shall not apply. *{DEP §15 P(3)}*

3.9.6.4.2 Lots The following standards are in addition to the standards of Section 3.11.9.

3.9.6.4.2.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a great pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. *{30-A § 4404(17)}*

3.9.6.4.2.2 Coverage Lots or the part thereof in the Shoreland Overlay Zone may be developed to a maximum of 70%. *{DEP § 15 B(4)}* [**Shoreland Overlay Zone**]

3.9.6.4.2.3 Developable Area The Developed Area divided by the Buildable Area percentage, as these terms are defined in Section 3.8, shall not exceed 100%.

3.9.6.4.2.4 Frontage The minimum shore frontage shall be 200 feet. *{DEP §15 A(1)}*

3.9.6.4.2.5 Size The minimum size of a lot in square feet shall be 40,000 square feet.

3.9.6.4.2.6 Width The average distance between the side lot lines shall be 100 feet.

3.9.6.4.2.6.1 The minimum width of any portion of any lot within 100 feet of the upland edge of a wetland shall be 200 feet. *{DEP § 15 A(4)}* [**Shoreland Overlay Zone**]

3.9.6.4.3 Signs The following standards of Section 3.11.17 in connection with signs shall not apply:

- A. Section 3.11.17.3.5.1 in connection with the maximum height of the sign; and
- B. Section 3.11.17.4.1.4 in connection with the number of signs.

3.9.6.4.4 Structures The following standards are in addition to the standards of Section 3.11.20.

3.9.6.4.4.1 Height The limitations of Section 3.10.9.4 shall not apply and the maximum height of a structure on any lot, or on, over or abutting a pier, wharf, dock or other structure extending beyond the upland edge of a coastal wetland, shall be no greater than 13 feet above the first floor elevation of any one family dwelling on abutting properties, or 34 feet, whichever is greater; provided, however, notwithstanding any other provision of this Ordinance to the contrary, the height for any manufacturing facility for a maritime related business, where access to the water is an operational necessity, shall be 75 feet. For the purposes of this requirement, the one family dwelling on abutting properties shall be only those one family dwelling's whereby a line drawn by the shortest measurable distance from the said one family dwelling, excluding breezeways, garages or barns, etc., to the high-water line would be found to intersect the footprint of the structure. *{DEP § 15 C(8)}*

3.9.6.4.4.1.1 Notwithstanding the limitations of Section 3.9.6.4.4.1, lawfully existing structures may be expanded as long as the maximum height of the addition is no higher than the maximum height of the existing structure and all other dimensional requirements are met.

3.9.6.4.4.1.2 The above height limitation does 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. *{DEP § 15 B(2)}*

3.9.6.4.4.2 Number More than one principal structure may be placed on a lot. The limitations of Section 3.11.20.1.1 shall not apply.

3.9.6.4.4.3 Setbacks New structures shall have the following minimum setbacks:

Lot Lines (side and rear) 10 feet

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way) 8 feet

Road (right-of-way center line) State 25 feet Town 25 feet

The setback requirements from public ways and roads shall not apply to driveways, sidewalks, and similar structures. Fences and walls on corners of lots that are bordered by two intersecting public or private roads shall be setback a minimum of 8 feet from the edge of each road and shall be no more than 42 inches in height.

Structure on Adjoining Property 20 feet

The setback requirements from structures on adjoining properties do not apply to structures on adjoining properties with less than the required setback.

Shorelines No setback required except parking areas shall be set back 25 feet. *{DEP §§ 15 B(1) & G(1)}* [**Shoreland Overlay Zone**]

3.9.7 Special Residential District These standards are in addition to the Use Standards of Section 3.10 and the Development and Performance Standards of Section 3.11.

3.9.7.1 Permitted Uses The Land Use Table of Section 3.9.7.1.3 designates the allowed uses in the Special Residential District.

3.9.7.1.1 If a use is not specifically listed in the Land Use Table, or is not specifically listed in Section 3.7 or 3.9.7.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use.

3.9.7.1.2 The Planning Board shall determine if a second, third, etc., use on a lot is an accessory use in accordance with the definition in Section 3.8 or an additional principal use. Only accessory uses that would be allowed as principal uses in the proposed location shall be permitted, and such accessory uses shall meet the requirements for approval of the principal use.

3.9.7.1.3 Land Use Table

3.9.7.1.3.1 Use Key

3.9.7.1.3.1.1 Approval Required

- A Allowed use Building permit may be required
- C Conditional Use Requires Planning Board determination that proposal satisfies Review criteria of Section 3.6
- P Permit Required Requires Code Enforcement Officer determination that Proposal satisfies General Review criteria of Section 3.6.1
- PB Planning Board Requires Planning Board determination that Proposal satisfies General Review criteria of Section 3.6.1
- Blank Use not allowed

3.9.7.1.3.1.2 Specific Requirements and Limitations (Superscripts in this table)

- 2 Use is allowed only as accessory to a principal, related use.
- 3 Use shall maintain a visual buffer strip along any public way. *See* Section 3.11.1

3.9.7.1.3.2 Land Use Table

USE/ACTIVITY	Outside Overlay areas	Shoreland Overlay Zone	Stream Protection Area 3.9.7.4.3.2.1	Supplemental Standards
RESIDENTIAL				
Accessory Apartment	P	P	PB	3.10.1
Dwelling, Multifamily	PB			3.11.-9.12..3.4
Dwelling, One Family	P	P	PB	
Dwelling, Two Family	P	P		
Lodging House	PB	PB		3.11.-9.12..3.4
Retirement Facility	PB			3.11.-9.12..3.4
COMMERCIAL and INDUSTRIAL				
Agriculture/Farming	PB			3.10.2
Aquaculture (Land support for)	PB			
Bed & Breakfast	PB	PB		
Campground	PB			3.10.4
Commercial Fishing Activities	A	PB		
Communications Tower	C ³			3.10.23
Day Care Center	PB			
Essential Services	PB ³	PB ³	PB ³	3.10.10

Zoning Ordinance of the Town of Boothbay

Farm Stand	A			
USE/ACTIVITY	Outside Overlay areas	Shoreland Overlay Zone	Stream Protection Area 3.9.7.4.3.2.1	Supplemental Standards
COMMERCIAL and INDUSTRIAL				3.10.7
Home Occupation (Homemaker/Office)	P	PB	PB	3.9.7.3.1, 3.10.11
Home Occupation (Other)	PB	PB	PB	3.9.7.3.1, 3.10.11
Hotel/Motel	C			
Kiosk	P	P	PB	
Maritime Activities	C	C		
Neighborhood Store	C			
Offices; Business, Professional	C			
Restaurant	C ²			
Service Business	PB			
INSTITUTIONAL				3.10.7
Museum, Library	PB			
Parks and Recreation	PB	PB	PB	
Public Facility	PB			3.10.18
MISCELLANEOUS				
Clearing of Vegetation	A	P	P	3.11.3
Docks, piers, wharves, bridges and other similar structures				
Temporary		P	P	3.10.9
Permanent		PB	PB	3.10.9
Forest Management Activities	A	A	A	3.10.21.3
Individual Private Campsite	A	P	P	3.10.12
Sign	P	P	P	3.11.17
Timber Harvesting	A	PB	PB	3.10.21
Wind Turbines				
Up to 60 feet in height	A	A	A	3.10.22
Over 60 feet in height	C	C	C	3.10.22

3.9.7.2 Prohibited Uses A use is not permitted in a specific location unless an “Approval Required” designation of “A”, “C”, “P” or “PB” is shown in the Land Use Table of Section 3.9.7.1.3.2. A blank indicates a prohibited use.

3.9.7.2.1 The following uses are not allowed in the Special Residential District.

- | | |
|------------------------------------|---------------------------------|
| Agricultural Packaging and Storage | Community Center, Club |
| Agricultural Product Processing | Conference Center |
| Amusement Park | Congregate Housing/Nursing Home |
| Animal Breeding or Care | Convention Center |
| Auto, Rec. Vehicle Sales & Service | Educational Facility |
| Automobile Repair | Firewood Processing |
| Automobile Service Station | Flea Market/Tent Sale |
| Bus Terminal | Funeral Home |
| Car Wash | Gambling |
| Cemetery | Hospital |
| Church, Parish House | Indoor Theater |

Junkyard	Retail Marijuana Establishment
Kennel	Retail Marijuana Social Club
Laboratory, Research Facility	Roadside Stand
Laundromat	Sawmill
Manufacturing	Sex Related Business
Marina	Shopping Center
Mineral Exploration	Small Engine Repair & Sales
Mineral Extraction	Storage Facility
Miniature Golf	Temporary Business Housing
Mobile Home Park	Terminal for Bulk Oil and Gas
Parking Facility	Trucking Distribution Terminal
Recreational Facility - Indoor	Veterinary Hospital
Recreational Facility - Outdoor	Warehousing
Recycling Operations	Waste Disposal/Landfill
Retail Business	Waste Transfer Facility
Retail Fuel Distributor	Wholesale Business
	Wood Processing

3.9.7.3 Supplemental Use Standards

3.9.7.3.1 Home Occupations Direct sales and services and related signage are not permitted on lots with frontage on Shore Road.

3.9.7.3.2 Wind Turbines are not permitted between the intersections of Ocean Point Road and Van Horn Roads with the Shore Road.

3.9.7.4 Development and Performance Standards

3.9.7.4.1 Lots The following standards are in addition to the standards of Section 3.11.9.

3.9.7.4.1.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a great pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. *{30-A § 4404(17)}*

3.9.7.4.1.2 Coverage Lots or the part thereof in the Stream Protection Area or in the Shoreland Overlay Zone may be developed to a maximum of 20%. *{DEP § 15 B(4)}* **[Shoreland Overlay Zone]**¹⁹

3.9.7.4.1.3 Developable Area The Developed Area divided by the Buildable Area percentage, as these terms are defined in Section 3.8, shall not exceed 50%.

3.9.7.4.1.4 Frontage The minimum shore frontage on a great pond, stream, outlet stream or wetland in feet shall be: *{DEP § 15 A(1)}* **[Shoreland Overlay Zone]**

USE/LOCATION	Shoreland Overlay Zone	Stream Protection Area
Residential per dwelling unit		
Adjacent to tidal areas	150	150
Adjacent to non-tidal areas	200	200
Governmental, Institutional, Commercial or Industrial per principal structure		
Adjacent to tidal areas	200	200
Adjacent to non-tidal areas	300	300
Public and Private Recreational Facilities	200	200

¹⁹ **Shoreland Overlay Zone** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in the Shoreland Overlay Zone including the Stream Protection Areas portion thereof.

3.9.7.4.1.5 Size The minimum size of a lot in square feet shall be:

Outside Overlay area	Shoreland Overlay Zone	Stream Protection Area
40,000	60,000	60,000

3.9.7.4.1.6 Width The average distance in feet between the side lot lines measured within the lot boundaries shall be:

Outside Overlay area	Shoreland Overlay Zone	Stream Protection Area
100	100	150

3.9.7.4.1.6.1 The minimum width of any portion of any lot within 100 feet of the high-water line of a stream, outlet stream or upland edge of a wetland shall be the same as the minimum Shore Frontage of Section 3.9.7.4.1.4. *{DEP § 15 A(4)}* [**Shoreland Overlay Zone**]

3.9.7.4.2 Signs shall not exceed 6 square feet and no more than two per premise are allowed. *{DEP § 15 I(1)}*

3.9.7.4.3 Structures The following standards are in addition to the standards of Section 3.11.20.

3.9.7.4.3.1 Height The maximum structure height shall be 34 feet. *{DEP § 15 B(2)}*

3.9.7.4.3.1.1 The above height limitation does not apply to chimneys, antennas and communications towers. *{DEP § 15 B(2)}*

3.9.7.4.3.2 Setbacks New structures shall have the following minimum setbacks:

Lot Lines - side and rear 20 feet

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way - closest edge of right-of-way 8 feet

Road, right-of-way center line State 50 feet Town 33 feet

The setback requirements from public ways and roads shall not apply to driveways, sidewalks, and similar structures. Fences and walls on corners of lots that are bordered by two intersecting public or private roads shall be setback a minimum of 8 feet from the edge of each road and shall be no more than 42 inches in height.

Structure on Adjoining Property Principal 40 feet Accessory 20 feet

The setback requirements from structures on adjoining properties do not apply to structures on adjoining properties with less than the required setback.

Shorelines 75 feet *{DEP § 15 B(1)}* [**Shoreland Overlay Zone**]

3.9.8 Village District These standards are in addition to the Use Standards of Section 3.10 and the Development and Performance Standards of Section 3.11.

3.9.8.1 Permitted Uses The Land Use Table of Section 3.9.8.1.3 designates the allowed uses in the Village District.

3.9.8.1.1 If a use is not specifically listed in the Land Use Table, or is not specifically listed in Section 3.7 or 3.9.8.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use.

3.9.8.1.2 The Planning Board shall determine if a second, third, etc., use on a lot is an accessory use in accordance with the definition in Section 3.8 or an additional principal use. Only accessory uses that would be allowed as principal uses in the proposed location shall be permitted, and such accessory uses shall meet the requirements for approval of the principal use.

3.9.8.1.3 Land Use Table

3.9.8.1.3.1 Use Key

3.9.8.1.3.1.1 Approval Required

A	Allowed use	Building permit may be required
C	Conditional Use	Requires Planning Board determination that proposal satisfies Review criteria of Section 3.6
P	Permit Required	Requires Code Enforcement Officer determination that Proposal satisfies General Review criteria of Section 3.6.1
PB	Planning Board	Requires Planning Board determination that Proposal satisfies General Review criteria of Section 3.6.1
Blank		Use not allowed

3.9.8.1.3.1.2 Specific Requirements and Limitations (Superscripts in this table)

- 3 Use shall maintain a visual buffer strip along any public way. *See* Section 3.11.1
- 5 Use permitted only with public sewer or out of District wastewater disposal.
{*DEP § 15 F(8)*}

3.9.8.1.3.2 Land Use Table

USE/ACTIVITY	Outside Overlay zones	Shoreland Overlay Zone	Watershed Overlay Zone	Supplemental Standards
RESIDENTIAL				3.9.8.3.3
Accessory Apartment	P	P	P	3.10.1
Dwelling, Multifamily	PB	PB	PB	3.11.9.12.3.4
Dwelling, One Family	P	P	P	
Dwelling, Two Family	PB	PB	PB	
Lodging House	PB	PB	PB	3.11.9.12.3.4
COMMERCIAL and INDUSTRIAL				3.10.7
Aquaculture (Land support for)	PB	C	PB	
Bed & Breakfast	PB	PB	PB	3.9.8.3.1
Commercial Fishing Activities	A	PB	PB	
Communications Tower	C ³			3.10.23
Day Care Center	PB	C	PB	
Essential Services	PB ³	PB ³	PB ³	3.10.10
Farm Stand	A		A	
Home Occupation (Homemaker/Office)	P	P	P	3.10.11
Home Occupation (Other)	PB	PB	PB	3.10.11
Indoor Theater	PB	PB	PB	
Kiosk	P	P	P	
Laboratory, Research Facility	PB	C	PB	
Laundromat	C ⁵			
Maritime Activities	PB	PB	PB	
Neighborhood Store	PB	C	PB	
Offices; Business, Professional	PB	PB	PB	
Restaurant	PB	C	PB	
Retail Business	PB	PB	PB	
Roadside Stand	PB		PB	
Service Business	PB	PB	PB	
Small Engine Repair & Sales	PB	PB		
Veterinary Hospital	C			3.9.8.3.4
INSTITUTIONAL				3.10.7
Cemetery	PB			3.9.8.3.2
Church, Parish House	PB	PB	PB	
Community Center, Club	PB	PB		
Congregate Housing/Nursing Home	PB	C	PB	
Educational Facility	PB	PB	PB	
Museum, Library	PB	PB	PB	
Parks and Recreation	PB	PB	PB	
Public Facility	PB	PB	PB	3.10.18

Zoning Ordinance of the Town of Boothbay

USE/ACTIVITY	Outside Overlay zones	Shoreland Overlay Zone	Watershed Overlay Zone	Supplemental Standards
MISCELLANEOUS				
Clearing of Vegetation	A	P	P	3.11.3
Docks, piers, wharves, bridges and other similar structures				
Temporary		P		3.10.9
Permanent		PB		3.10.9
Forest Management Activities	A	A	A	3.10.21.3
Sign	P	P	P	3.11.17
Timber Harvesting	A	PB	PB	3.10.21
Wind Turbines				
Up to 60 feet in height	A	A	A	3.10.22
Over 60 feet in height	C	C	C	3.10.22

3.9.8.2 Prohibited Uses A use is not permitted in a specific location unless an “Approval Required” designation of “A”, “C”, “P” or “PB” is shown in the Land Use Table of Section 3.9.8.1.3.2. A blank indicates a prohibited use.

3.9.8.2.1 The following uses are not allowed in the Village District.

- | | |
|------------------------------------|---------------------------------|
| Agricultural Packaging and Storage | Marina |
| Agricultural Product Processing | Mineral Exploration |
| Agriculture/Farming | Mineral Extraction |
| Amusement Park | Miniature Golf |
| Animal Breeding or Care | Mobile Home Park |
| Auto, Rec. Vehicle Sales & Service | Parking Facility |
| Automobile Repair | Recreational Facility - Indoor |
| Automobile Service Station | Recreational Facility - Outdoor |
| Bus Terminal | Recycling Operations |
| Campground | Retail Fuel Distributor |
| Car Wash | Retail Marijuana Establishment |
| Conference Center | Retail Marijuana Social Club |
| Convention Center | Retirement Facility |
| Firewood Processing | Sawmill |
| Flea Market/Tent Sale | Sex Related Business |
| Funeral Home | Shopping Center |
| Gambling | Storage Facility |
| Hospital | Temporary Business Housing |
| Hotel/Motel | Terminal for Bulk Oil and Gas |
| Individual Private Campsite | Trucking Distribution Terminal |
| Junkyard | Warehousing |
| Kennel | Waste Disposal/Landfill |
| Manufacturing | Waste Transfer Facility |
| | Wholesale Business |
| | Wood Processing |

3.9.8.3 Supplemental Use Standards

3.9.8.3.1 Bed and Breakfast use is allowed only if in an existing residential dwelling.

3.9.8.3.2 Cemeteries are allowed only as an expansion of an existing use.

3.9.8.3.3 Residential Dwellings other than one family are allowed only if they are conversions of existing one family residential dwellings.

Zoning Ordinance of the Town of Boothbay

Road (right-of-way center line) 33 feet

The setback requirements from public ways and roads shall not apply to driveways, sidewalks, and similar structures. Fences and walls on corners of lots that are bordered by two intersecting public or private roads shall be setback a minimum of 8 feet from the edge of each road and shall be no more than 42 inches in height.

Structure on Adjoining Property 20 feet

The setback requirements from structures on adjoining properties do not apply to structures on adjoining properties with less than the required setback.

Shorelines 75 feet *{DEP § 15 B(1)}* [**Shoreland Overlay Zone**]

In addition, the Buildable Area setback on lots bounded on at least 3 sides by water shall be 150 feet from the point of any peninsula. [**Shoreland Overlay Zone**]

3.9.8.4.3.2.1 It is desirable that new construction abutting existing structures with traditionally modest (pre-zoning) front setback, creating a characteristically close relationship with the street, continue this pattern in order to retain the area's character. Therefore, the setback of new construction should harmonize with the average setback of existing adjacent buildings.

3.9.9 Water Reservoirs Protection District These standards are in addition to the Use Standards of Section 3.10 and the Development and Performance Standards of Section 3.11.

3.9.9.1 Permitted Uses The Land Use Table of Section 3.9.9.1.3 designates the allowed uses in the Water Reservoirs Protection District.

3.9.9.1.1 If a use is not specifically listed in the Land Use Table, or is not specifically listed in Section 3.7 or 3.9.9.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use.

3.9.9.1.2 The Planning Board shall determine if a second, third, etc., use on a lot is an accessory use in accordance with the definition in Section 3.8 or an additional principal use. Only accessory uses that would be allowed as principal uses in the proposed location shall be permitted, and such accessory uses shall meet the requirements for approval of the principal use.

3.9.9.1.3 Land Use Table

3.9.9.1.3.1 Use Key

3.9.9.1.3.1.1 Approval Required

A	Allowed use	Building permit may be required
C	Conditional Use	Requires Planning Board determination that proposal satisfies Review criteria of Section 3.6
P	Permit Required	Requires Code Enforcement Officer determination that Proposal satisfies General Review criteria of Section 3.6.1
PB	Planning Board	Requires Planning Board determination that Proposal satisfies General Review criteria of Section 3.6.1
	Blank	Use not allowed

3.9.9.1.3.1.2 Specific Requirements and Limitations (Superscripts in this table)

- 1 Functionally water-dependent uses and uses accessory to such functionally water-dependent uses only.
- 3 Use shall maintain a visual buffer strip along any public way. *See* Section 3.11.1
- 4 Use shall maintain a water supply protection buffer. *See* Section 3.11.2

3.9.9.1.3.2 Land Use Table

USE/ACTIVITY	Outside Overlay Zone	Shoreland Overlay Zone	Supplemental Standards
RESIDENTIAL			
Dwelling, One Family	PB ⁴	PB ⁴	
COMMERCIAL and INDUSTRIAL			3.10.7
Communications Towers	C ³		3.10.23
Essential Services	PB ³	PB ³	3.9.9.3.1, 3.10.10
Home Occupation (Homemaker/Office)	P	P	3.10.11
Kiosk	PB ¹	C ¹	
INSTITUTIONAL			3.10.7
Public Facility	PB ¹	PB ¹	3.9.9.4.8.2.1, 3.10.18
MISCELLANEOUS			
Clearing of Vegetation	P	P	3.9.9.4.2
Docks, piers, wharves, bridges and other similar structures			
Temporary		P	3.10.9

Zoning Ordinance of the Town of Boothbay

Permanent		PB	3.10.9
USE/ACTIVITY	Outside Overlay Zone	Shoreland Overlay Zone	Supplemental Standards
MISCELLANEOUS			
Forest Management Activities	PB	PB	3.10.21.3
Individual Private Campsite	PB	PB	3.10.12
Sign	P	P	3.11.17
Timber Harvesting	PB	PB	3.10.21
Wind Turbines			
Up to 60 feet in height	A	A	3.10.22
Over 60 feet in height	C	C	3.10.22

3.9.9.2 Prohibited Uses A use is not permitted in a specific location unless an “Approval Required” designation of “A”, “C”, “P” or “PB” is shown in the Land Use Table of Section 3.9.9.1.3.2. A blank indicates a prohibited use.

3.9.9.2.1 The following uses are not allowed in the Water Reservoirs Protection District.

- | | |
|------------------------------------|---------------------------------|
| Accessory Apartment | Lodging House |
| Agricultural Packaging and Storage | Manufacturing |
| Agricultural Product Processing | Marina |
| Agriculture/Farming | Maritime Activities |
| Amusement Park | Mineral Exploration |
| Animal Breeding or Care | Mineral Extraction |
| Aquaculture (Land support for) | Miniature Golf |
| Auto, Rec. Vehicle Sales & Service | Mobile Home Park |
| Automobile Repair | Museum, Library |
| Automobile Service Station | Neighborhood Store |
| Bed & Breakfast | Offices; Business, Professional |
| Bus Terminal | Parking Facility |
| Campground | Parks and Recreation |
| Car Wash | Recreational Facility - Indoor |
| Cemetery | Recreational Facility - Outdoor |
| Church, Parish House | Retail Marijuana Establishment |
| Commercial Fishing Activities | Retail Marijuana Social Club |
| Community Center, Club | Recycling Operations |
| Conference Center | Restaurant |
| Congregate Housing/Nursing Home | Retail Business |
| Convention Center | Retail Fuel Distributor |
| Day Care Center | Retirement Facility |
| Dwelling, Multifamily | Roadside Stand |
| Dwelling, Two Family | Sawmill |
| Educational Facility | Service Business |
| Farm Stand | Sex Related Business |
| Firewood Processing | Shopping Center |
| Flea Market/Tent Sale | Small Engine Repair & Sales |
| Funeral Home | Storage Facility |
| Gambling | Temporary Business Housing |
| Home Occupation (Other) | Terminal for Bulk Oil and Gas |
| Hospital | Trucking Distribution Terminal |
| Hotel/Motel | Veterinary Hospital |
| Indoor Theater | Warehousing |
| Junkyard | Waste Disposal/Landfill |
| Kennel | Waste Transfer Facility |
| Laboratory, Research Facility | Wholesale Business |
| Laundromat | Wood Processing |

3.9.9.2.2 On vacant lots with no principal structure, new development is not permitted on sites with sustained slopes in excess of 20%.

3.9.9.2.3 Subsurface wastewater disposal shall not be permitted for new or expanded uses if the property is subject to a sewer “Ready to serve” fee.

3.9.9.3 Supplemental Use Standards

3.9.9.3.1 Essential Services 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.

3.9.9.4 Development and Performance Standards

3.9.9.4.1 Buffers, Water Supply Protection A water supply protection buffer shall be designed and maintained in accordance with the standards of Section 3.11.2.

3.9.9.4.2 Clearing or Removal of Vegetation for Activities other than Timber Harvesting There shall be no cutting or removal of vegetation within the strip of land extending 75 feet inland from the high-water line of a great pond and associated wetlands, except to remove safety hazards specifically identified and marked by a Maine licensed forester. *{38 § 439-A(6) and DEP §§ 15 O((1)(a)(v) & P(2))}*

3.9.9.4.2.1 At distances greater than 100 feet from the shoreline of a great pond and 75 feet from any other shoreline, there shall be allowed on any lot, in any 10 year period, selective cutting of not more than 40% of the volume of trees 4 inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. *{38 § 439-A(6) and DEP § 15 P(3)}*

3.9.9.4.2.1.1 The cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized and for the removal of safety hazards specifically identified and marked by a Maine licensed forester. *{DEP §§ 15 O((1)(a)(v) & P(1))}*

3.9.9.4.3 Lots The following standards are in addition to the standards of Section 3.11.9.

3.9.9.4.3.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a great pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. *{30-A § 4404(17)}*

3.9.9.4.3.2 Coverage Lots may be developed to a maximum of 3,000 square feet, excluding the part of driveways less than 10 feet in width.

3.9.9.4.3.2.1 Lots may be developed to a maximum of 20%. *{DEP § 15 B(4)}*

3.9.9.4.3.3 Developable Area The Developed Area divided by the Buildable Area percentage, as these terms are defined in Section 3.8, shall not exceed 20%.

3.9.9.4.3.4 Frontage The minimum shore frontage on a great pond, stream, outlet stream or wetland in feet shall be: *{DEP § 15 A(1)}* [**Shoreland Overlay Zone**]

USE/LOCATION	Shoreland Overlay Zone
Residential per dwelling unit	
Adjacent to tidal areas	150
Adjacent to non-tidal areas	200
Governmental, Institutional, Commercial or Industrial per principal structure	
Adjacent to tidal areas	200
Adjacent to non-tidal areas	300

Public and Private Recreational Facilities	200
--	-----

3.9.9.4.3.5 Size

3.9.9.4.3.5.1 Four Acres: Four acres are required if the lot is served by both a subsurface wastewater disposal system and private well(s) that are located within the Water Reservoirs Protection District. Single lots of record in existence on May 3, 2004 and not contiguous with any other lot in the same ownership or lots shown on a subdivision plan approved by the Planning Board prior to May 3, 2004 may be constructed on even if such lots do not meet the 4 acre minimum lot size or cannot meet the 200 foot great pond or stream setback requirement for subsurface wastewater disposal systems provided that such subsurface wastewater disposal system is set back from the great pond and stream to the greatest practical extent. In no case shall the great pond and stream setback for the subsurface wastewater disposal system be less than 100 feet.

3.9.9.4.3.5.1.1 In determining the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

3.9.9.4.3.5.2 Two Acres: If wastewater is removed from the Water Reservoirs Protection District.

3.9.9.4.3.5.3 Sixty thousand square feet with public water and public sewer.

3.9.9.4.3.6 Variances shall not be granted for lot area, lot width or shore frontage.

3.9.9.4.3.7 Width The average distance between the side lot lines shall be 150 feet.

3.9.9.4.3.7.1 The minimum width of any portion of any lot within 100 feet of the upland edge of a wetland or outlet stream shall be the same as the minimum Shore Frontage of Section 3.9.9.4.3.4. *{DEP § 15 A(4)}* [**Shoreland Overlay Zone**]

3.9.9.4.4 Roads and Driveways New roads and driveways are prohibited except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the area. A road or driveway may also be approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the area. When a road or driveway is permitted, the road or driveway shall be set back as far as feasible from all shorelines. *{DEP § 15 H(4)}*

3.9.9.4.4.1 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 road 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.

3.9.9.4.4.2 Road and driveway surface drainage 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.

3.9.9.4.4.2.1 The unscarified buffer strip shall be at least 50 feet, plus two times the average slope, in width between the outflow point of the ditch or culvert and a shoreline.

3.9.9.4.4.2.2 As an example, if the average slope between the shoreline and the proposed road is 30%, then the road setback at that location would be 50 feet plus 2 times 30 feet or 110 feet. *{Rich Baker e-mail 2/21/2007}*

3.9.9.4.4.3 Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed for new roads and driveways in accordance with the standards of Section 3.11.13.2.3.

3.9.9.4.5 Sanitation The minimum setback for new subsurface wastewater disposal systems from

the high-water line of a great pond or stream shall be 200 feet. *{Department of Health and Human Services 10-144 CMR 241 and DEP § 15 K Note}*

3.9.9.4.5.1 Subsurface Wastewater Disposal Existing properties where a subsurface wastewater disposal facility is located in, or partially in, the Water Reservoirs Protection District shall be connected to a public sewer within three years from the date a “Ready to serve” fee is applicable.

3.9.9.4.6 Snow Removal No dumping of snow from outside the District.

3.9.9.4.7 Surface Drainage Road, driveway and parking area surface drainage 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. *{DEP § 15 H(7)}*

3.9.9.4.8 Structures The following standards are in addition to the standards of Section 3.11.20.

3.9.9.4.8.1 Height The maximum structure height shall be 34 feet. *{DEP § 15 B(2)}*

3.9.9.4.8.1.1 The above height limitation does not apply to chimneys, antennas and communications towers. *{DEP § 15 B(2)}*

3.9.9.4.8.2 Setbacks New structures shall have the following minimum setbacks:

Lot Lines (side and rear) 20 feet

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way –(closest edge of right-of-way) 8 feet

Road (right-of-way center line) State 50 feet Town 33 feet

The setback requirements from public ways and roads shall not apply to driveways, sidewalks, and similar structures. Fences and walls on corners of lots that are bordered by two intersecting public or private roads shall be setback a minimum of 8 feet from the edge of each road and shall be no more than 42 inches in height.

Structure on Adjoining Property Principal 40 feet Accessory 20 feet

The setback requirements from structures on adjoining properties do not apply to structures on adjoining properties with less than the required setback.

Shorelines

Great ponds and associated wetlands 150 feet

Other shorelines 75 feet *{DEP § 15 B(1)}* [Shoreland Overlay Zone]

In addition, the Buildable Area setback on lots bounded on at least 3 sides by water shall be 150 feet from the point of any peninsula. [Shoreland Overlay Zone]

3.9.9.4.8.2.1 The minimum setback from water requirement shall not apply to functional 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 allows. Functionally water-dependent fixtures shall include, but not be limited to, pumping stations, pumps, vaults, and hydrants, and structures housing the same.

3.9.10 Well Head Protection District These standards are in addition to the Use Standards of Section 3.10 and the Development and Performance Standards of Section 3.11.

3.9.10.1 Permitted Uses The Land Use Table of Section 3.9.10.1.3 designates the allowed uses in the Well Head Protection District.

3.9.10.1.1 If a use is not specifically listed in the Land Use Table, or is not specifically listed in Section 3.7 or 3.9.10.2 as a prohibited use, and the Planning Board determines that it is substantially similar to and compatible with a use that is listed in the Land Use Table, it shall be regulated in the same manner as such use.

3.9.10.1.2 The Planning Board shall determine if a second, third, etc., use on a lot is an accessory use in accordance with the definition in Section 3.8 or an additional principal use. Only accessory uses that would be allowed as principal uses in the proposed location shall be permitted, and such accessory use shall meet the requirements for approval of the principal use.

3.9.10.1.3 Land Use Table

3.9.10.1.3.1 Use Key

3.9.10.1.3.1.1 Approval Required

A	Allowed use	Building permit may be required
P	Permit Required	Requires Code Enforcement Officer determination that satisfies Review criteria of Section 3.6
		Proposal satisfies General Review criteria of Section 3.6.1
PB	Planning Board	Requires Planning Board determination that Proposal satisfies General Review criteria of Section 3.6.1
		Use not allowed

3.9.10.1.3.1.2 Specific Requirements and Limitations (Superscript in this table)

3 Use shall maintain a visual buffer strip along any public way. *See* Section 3.11.1

3.9.10.1.3.2 Land Use Table

USE/ACTIVITY	Approval Required	Supplemental Standards
RESIDENTIAL		
Accessory Apartment	P	3.10.1
Dwelling, Multifamily	PB	
Dwelling, One Family	P	
Dwelling, Two Family	P	
Lodging House	PB	
Retirement Facility	PB	
COMMERCIAL and INDUSTRIAL		3.10.7
Aquaculture (Land support for)	PB	
Bed & Breakfast	PB	
Campground	PB	3.10.4
Commercial Fishing Activities	PB	
Communications Towers	C ³	3.10.23
Day Care Center	PB	
Essential Services	PB ³	3.10.10
Home Occupation (Homemaker/Office)	P	3.10.11
Home Occupation (Other)	PB	3.10.11
Kennel	PB	
USE/ACTIVITY	Approval Required	Supplemental Standards
COMMERCIAL and INDUSTRIAL		3.10.7
Kiosk	PB	
Maritime Activities	PB	
Service Business	PB	
Small Engine Repair & Sales	PB	
INSTITUTIONAL		3.10.7
Church, Parish House	PB	
Congregate Housing/Nursing Home	PB	
Educational Facility	PB	
Public Facility	PB	3.10.18
MISCELLANEOUS		
Clearing of Vegetation	P	3.11.3
Forest Management Activities	A	3.10.21.3
Individual Private Campsite	P	3.10.12
Sign	P	3.11.17
Timber Harvesting	PB	3.10.21
Wind Turbines		
Up to 60 feet in height	A	3.10.22

Over 60 feet in height	C	3.10.22
------------------------	---	---------

3.9.10.2 Prohibited Uses A use is not permitted in a specific location unless an “Approval Required” designation of “A”, “C”, “P” or “PB” is shown in the Land Use Table of Section 3.9.10.1.3.2. A blank indicates a prohibited use.

3.9.10.2.1 The following uses are not allowed in the Well Head Protection District.

Agricultural Packaging and Storage	Miniature Golf
Agricultural Product Processing	Mobile Home Park
Agriculture/Farming	Museum, Library
Amusement Park	Neighborhood Store
Animal Breeding or Care	Offices; Business, Professional
Auto, Rec. Vehicle Sales & Service	Parking Facility
Automobile Repair	Parks and Recreation
Automobile Service Station	Recreational Facility - Indoor
Bus Terminal	Recreational Facility - Outdoor
Car Wash	Retail Marijuana Establishment
Cemetery	Retail Marijuana Social Club
Community Center, Club	Recycling Operations
Conference Center	Restaurant
Convention Center	Retail Business
Docks, piers, wharves, bridges, etc.	Retail Fuel Distributor
Farm Stand	Roadside Stand
Firewood Processing	Sawmill
Flea Market/Tent Sale	Sex Related Business
Funeral Home	Shopping Center
Gambling	Storage Facility
Hospital	Temporary Business Housing
Hotel/Motel	Terminal for Bulk Oil and Gas
Indoor Theater	Trucking Distribution Terminal
Junkyard	Veterinary Hospital
Laboratory, Research Facility	Warehousing
Laundromat	Waste Disposal/Landfill
Manufacturing	Waste Transfer Facility
Marina	Wholesale Business
Mineral Exploration	Wood Processing
Mineral Extraction	

3.9.10.2.2 Subsurface Wastewater Disposal shall not be allowed for new or expanded uses if the property is subject to a sewer “Ready to serve” fee.

3.9.10.3 Supplemental Use Standards

3.9.10.3.1 Forest Management Activities The use of pesticides or fertilizers in connection with Forest Management Activities is prohibited.

3.9.10.4 Development and Performance Standards

3.9.10.4.1 Clearing or Removal of Vegetation for Activities other than Timber Harvesting

The cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized and for the removal of safety hazards specifically identified and marked by a Maine licensed forester. *{DEP §§ 15 O(1)(a)(v) & P(1)}*

3.9.10.4.2 Lots The following standards are in addition to the standards of Section 3.11.9.

3.9.10.4.2.1 Configuration The depth-to-width ratio and the width-to-depth ratio shall not exceed 5 to 1.

3.9.10.4.2.2 Coverage Lots or the part thereof in the Shoreland Overlay Zone may be developed to a maximum of 20%. *{DEP § 15 B(4)}* [**Shoreland Overlay Zone**]

3.9.10.4.2.3 Developable Area The Developed Area divided by the Buildable Area percentage, as these terms are defined in Section 3.8, shall not exceed 30%.

Zoning Ordinance of the Town of Boothbay

Shorelines 75 feet {DEP § 15 B(1)} [Shoreland Overlay Zone]

3.10 Supplemental Use Standards

3.10.1 Accessory Apartments One accessory apartment shall be permitted on a lot having a one or two family residential dwelling.

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

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

3.10.1.3 The accessory apartment shall contain up to a maximum of 800 square feet of living space.

3.10.1.3.1 For purposes of Section 3.10.1.3, “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.

3.10.1.4 A lot must have a minimum of 20,000 square feet, 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 Officer or Planning Board may require the lot area be established by a survey signed and sealed by a Maine licensed land surveyor.

3.10.1.5 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 40,000 square feet or comply with the requirements of the State Minimum Lot Size law, 12 §§ 4807 – 4807-G for multiple unit housing, 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 10 days it being recorded. Failure to provide a copy of the HHE-200 form to the Code Enforcement Officer within 10 days of it being recorded shall void the approval of the accessory apartment.

3.10.1.6 Two ways to enter/exit the accessory apartment shall be provided.

3.10.1.7 Should the owner(s) of the principal structure be found in non-compliance with the standards contained in Section 3.10.1, the non-compliance shall be considered a violation of this Ordinance.

3.10.1.8 An accessory apartment that complies with the requirements of Section 3.10.1 shall not be considered a principal structure when calculating lot area per principal structure.

3.10.1.9 In Shoreland Overlay Zone an accessory apartment shall be permitted only on one family residential dwelling lots. {DEP § 15 A(5)} [**Shoreland Overlay Zone**]

3.10.2 Agriculture

3.10.2.1 Livestock Grazing New livestock grazing areas shall not be permitted within 100 feet of the high-water line of a great pond and associated wetlands; within 75 feet of other water bodies and coastal wetlands; nor within 25 feet of outlet streams, tributary streams and freshwater wetlands. {DEP § 15 N(5)}

3.10.2.1.1 Activity associated with ongoing farm activities and which are not in conformance with the setback requirements of Section 3.10.2.1 may continue, provided that such grazing is conducted in accordance with a Soil and Water Conservation Plan. {DEP § 15 N(5)}

3.10.2.2 Manure Disposal and Storage All spreading or disposal of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 §§ 4201 – 4209). {DEP § 15 N(1)}

3.10.2.2.1 All manure storage areas shall be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water. {DEP § 15 N(2)}

3.10.2.2.2 Manure shall not be stored or stockpiled within 100 feet of the shoreline of a great pond

or within 75 feet of any other shoreline. *{DEP § 15 N(2)}*

3.10.2.3 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. 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.

3.10.2.3.1 A Soil and Water Conservation Plan shall be filed with the Code Enforcement Officer for tilling of soil of more than 20,000 square feet of surface area. Non-conformance with the provisions of said plan shall be a violation of this Ordinance. **[Shoreland Overlay Zone]**
{DEP § 15 N(3)}

3.10.2.3.1.1 A Soil and Water Conservation Plan shall be filed with the Code Enforcement Officer for any tilling of soil. **[Resource Protection Area]**

3.10.2.3.1.2 Assistance in preparing a soil and water conservation plan may be available through the local Soil and Water Conservation District office. *{DEP § 15 N(3)(Note)}*

3.10.2.3.2 There shall be no new tilling of soil within 100 feet of the high-water line of a great pond and associated wetland; within 75 feet of streams and coastal wetlands; nor within 25 feet of outlet streams, tributary streams and freshwater wetlands. *{DEP § 15 N(4)}*
[Shoreland Overlay Zone]

3.10.2.3.2.1 Operations in existence on March 24, 1990 and not in conformance with this provision may be maintained. *{DEP § 15 N(4)}*

3.10.3 Animal Breeding or Care The keeping or raising of fewer than 5 animals or fowl over 6 months old shall be allowed in all Districts of the Town; provided, however, it shall be unlawful to keep animals or fowl in such a manner as to cause or create a public nuisance; cause or create excessive air, water or land pollution; or keep them in any manner or condition that violates state, local, or humane laws or regulations. 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.

3.10.3.1 The keeping or raising of 5 or more animals or fowl over 6 months old shall be allowed as specified in the Land Use Table.

3.10.3.2 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. **[Resource Protection Area, Watershed Overlay Zone]**

3.10.4 Campgrounds The minimum requirements imposed under State licensing requirements and the following shall apply: *{DEP § 15(D)}*

3.10.4.1 Each campsite shall be a minimum of 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.

3.10.4.2 The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of 50 feet from all abutting residential properties, 100 feet from registered farmland, 100 feet from the shoreline of a great pond and associated wetlands, and 75 feet from any other shoreline. *{7 §§ 52 & 56}*

3.10.4.2.1 The setback requirement from registered farmland shall not apply to development or uses exempted in 7 §§ 52 & 56.

3.10.5 Change of Use An existing non-conforming use may be changed to another non-conforming use provided the Planning Board determines that the proposed use has no greater adverse impact on the subject and adjacent properties and resources or on great ponds, streams, outlet streams, tributary streams or wetlands than the former use. *{DEP §§ 12 C(4) & D(3)}*

3.10.5.1 In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses. *{DEP § 12 C(4)}*

3.10.5.2 No existing structures built on, over, or abutting a pier, dock, wharf, or other structure extending beyond the high-water line of a great pond, stream, outlet stream or within a wetland shall be converted to residential dwelling units; *{DEP § 15 C(7)}* [**Shoreland Overlay Zone**]

3.10.5.3 The Town shall rigorously enforce the Department of Health and Human Services *Rules For Conversion Of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone* with respect to proof of adequate wastewater disposal prior to the conversion of a seasonal dwelling to year-round use. *{144A CMR 242}* [**Shoreland Overlay Zone**]

3.10.6 Chemical and Petroleum Product Storage The storage of 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:

3.10.6.1 The Planning Board may allow storage of greater quantities if there is a demonstrated need and the requirements of Section 3.6.2 for approval of a Conditional Use are met.

3.10.6.2 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 150 feet from any high-water line or upland edge of a wetland.

3.10.7 Commercial Development next to a Residential Use Where development other than for a residential use is proposed adjacent to a residential use, the side and rear yard setback shall be landscaped to form a visual buffer. Temporary or permanent structures, including but not limited to, driveways and parking areas, dumpsters and storage shall not be allowed in the setback area.

3.10.7.1 Accessory apartments; one family, two family and multifamily dwellings; lodging houses; and retirement facilities are residential uses.

3.10.7.2 This standard shall apply where the non-residential use abuts:

- A. An existing residential use,
- B. A lot where a Building Permit for a residential building has been obtained from the Code Enforcement Officer, or
- C. A lot created as part of a residential subdivision.

3.10.7.3 Subsurface wastewater disposal facilities may be installed in the buffer area with Planning Board approval. The required visual barrier shall be present.

3.10.8 Development next to Registered Farmland The following uses shall be set back 100 feet from registered farmland, land that is held in common ownership with registered farmland or being considered for registration under 7 M.R.S.A.: *{7 § 52(1)}*:

- A. Commercial Food Establishments dispensing or selling food; *{7 §§ 52 & 56}*
- B. Residential Buildings; and *{7 §§ 52 & 56}*
- C. School buildings and any playgrounds, athletic fields or other school facilities designed for use by children in the vicinity of school buildings. *{7 §§ 52 & 56}*
- D. Private wells and drinking water springs shall be set back 100 feet from registered farmland. *{7 §§ 52 & 56}*

3.10.8.1 A variance permitting development or use of land for residential purposes may be granted if adherence renders a parcel of land subdivided prior to registration of the farmland unusable for residential purposes. Any variance granted for such a purpose shall be conditioned to provide the maximum feasible setback from the abutting registered farmland. *{7 §§ 52, 56 and 57}*

3.10.8.2 The setback requirement from registered farmland shall not apply to developments or uses exempted in 7 §§ 52 & 56.

3.10.9 Docks, Piers, Wharves, Bridges and other structures and uses extending over or below the high-water line of a great pond, stream, and outlet stream or within a wetland shall meet the following standards:

- A. Access from shore shall be developed on soils appropriate for such use and constructed so that erosion is controlled by employing Best Management Practices;
- B. The location shall not interfere with existing developed or natural beach areas;
- C. The facility shall be located so as to minimize adverse effects on fisheries;
- D. 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. Non-commercial docks, piers

and wharves shall not exceed 6 feet in width and commercial docks, piers and wharves shall not exceed 12 feet in width;

- E. The structure/use shall not have an unreasonable adverse effect on the value or enjoyment of abutting property owners;
- F. The structure/use shall not be a threat to public safety, health or welfare;
- G. The structure shall conform to all local, state and federal regulations in existence at the time of construction or change. *{DEP § 15 C}*

3.10.9.1 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. This requirement shall not apply to a man-made body of water surrounded by land that is the property of a single owner. *{DEP § 15 C(6)}*

3.10.9.2 Temporary Bridges with no earth work do not require a permit from the Code Enforcement Officer. *{DEP § 14(Note 11)}*

3.10.9.3 A submerged land lease from the Department of Conservation is required if the pier, wharf or bridge extends beyond the normal low water line. *{Department of Conservation 04 059 Chapter 53}*

3.10.9.4 Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the high-water line of a great pond, stream, outlet stream and tidal area or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure. *{DEP § 15 C(8)}*
[Shoreland Overlay Zone]

3.10.9.5 The Planning Board may require the submission of a mylar and four paper copies of a proposed site plan, prepared within 5 years of the application's submittal, by a currently licensed Maine surveyor that includes such information as the Planning Board may request, including, without limitation:

- All dimensions of the proposed structure;
- All structures within 50 feet of the proposed structure;
- Setbacks from property lines;
- Mean high water line, mean low water line and near edge of navigation channel at normal low water; and
- Riparian lines.

If approved, the site plan shall be recorded at the Lincoln County Registry of Deeds prior to a building permit being issued by the Code Enforcement Officer, with a copy of the site plan as recorded provided to the Code Enforcement Officer.

3.10.10 Essential Services

3.10.10.1 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. *{30-A § 4406(3), 38 § 444 and DEP § 16 G}*

3.10.10.1.1 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 3.10.10.1, 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 3.10.10.1. *{30-A § 4406(3) and 38 § 444}*

3.10.10.2 Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors. *{DEP § 15 L(1)}*

3.10.10.3 The repair or replacement of existing essential services does not require Code Enforcement Officer or Planning Board approval if no new construction is proposed. *{DEP § 15 L(3)}*

3.10.10.4 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. {DEP § 15 L(2)} [Resource Protection Area, Stream Protection Area]

3.10.11 Home Occupations

3.10.11.1 General The Town shall permit residents to operate small businesses and services on their property provided:

3.10.11.1.1 The business activity is incidental to the use of the property as a residence;

3.10.11.1.1.1 Accessory apartments; one family, two family and multifamily dwellings; lodging houses; and retirement facilities are residential uses.

3.10.11.1.2 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;

3.10.11.1.3 Any item sold is a product of the owner's labor (e.g., manufactured, produced, created, grown, or caught);

3.10.11.1.4 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

3.10.11.1.5 The water supply is adequate.

3.10.11.2 Standards The standards for accessory uses do not apply to Home Occupations. The following standards shall apply:

3.10.11.2.1 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.

3.10.11.2.2 Employees There shall be no more than three employees or subcontractors other than members of the family.

3.10.11.2.2.1 There shall not be more than two employees other than members of the family. {DEP § 17} [Shoreland Overlay Zone]

3.10.11.2.3 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.

3.10.11.2.4 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.

3.10.11.2.5 Noise

3.10.11.2.5.1 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.

3.10.11.2.5.2 The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by Section 3 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.

3.10.11.2.5.2.1 Sound from any source regulated by Section 3 shall not exceed the following limits at the property line of said source:

Sound Pressure Level Limits Measured in dBA's

(Applicable Hours: 9 p.m. – 7 a.m.):

Maritime Commercial, C1, C2 and C3 Districts	65
All other areas	55

3.10.11.2.5.2.2 Where the emitting and receiving premises are in different Districts, the limits governing the stricter District shall apply to any regulated noise entering that District.

3.10.11.2.5.2.3 The levels specified may be exceeded by 10 dBA for a single period, no longer than 15 minutes in any one day.

3.10.11.2.6 Outdoor Storage Any outdoor storage and any business or service not conducted entirely within a structure shall be screened to protect neighboring property owners.

3.10.11.2.6.1 In locations where potential health or safety hazards may arise, such as rubbish storage or collection areas, a solid wooden fence, 6 feet in height is required to deter children and animals from entering the premises.

3.10.11.2.7 Sign There shall be no more than one unlighted exterior sign, not to exceed 4 square feet.

3.10.11.2.8 Size The total space on a lot used for the home occupation shall not exceed 30% of the gross floor area of the principal building if located in the building nor 75% of the gross floor area of the principal building if located in an accessory structure.

3.10.11.2.9 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.

3.10.11.3 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.

3.10.11.4 Approval Home Occupations of a "homemaker" or "office" nature shall be allowed in all residential uses and shall require a permit from the Code Enforcement Officer. All other Home Occupations, including home day care, shall only be allowed with one family residential uses and shall require Planning Board approval.

3.10.12 Individual Private Campsites Individual private campsites not associated with campgrounds are allowed on one family residential properties provided that the following conditions are met: *{DEP § 15(E)}*

3.10.12.1 One campsite per lot existing on March 24, 1990, or 30,000 square feet of lot area within the Shoreland Overlay Zone, whichever is less.

3.10.12.2 Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back 100 feet from the shoreline of a great pond and 75 feet from any other shoreline.

3.10.12.3 Only one recreational vehicle shall be allowed on a campsite.

3.10.12.4 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.

3.10.12.5 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.

3.10.12.6 When a recreation vehicle, tent or similar shelter is occupied on a site for more than 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. *{Department of Health and Human Services 10-144 CMR 241 and DEP § 16 E(6)}*

3.10.12.7 The clearing of vegetation shall be limited to 1,000 square feet. *{DEP § 15 E(4)}* [**Resource Protection Area**]

3.10.13 Junkyards

3.10.13.1 Application In addition to the requirements of Section 3.5.2, all applications shall include:

A. Name and address of junkyard operator if different from the landowner;

- B. Identity by list and definition the materials to be stored; and
- C. 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.

3.10.13.2 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 criteria for a Conditional Use Permit and the following:

- 3.10.13.2.1** All junkyards shall be set back 100 feet from the edge of the public road surface, 75 feet from all side and rear lot lines, and 150 feet from all shorelines, 300 feet from any public building, public park, public playground, public bathing beach, school, church or cemetery, and 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).
- 3.10.13.2.2** If a junkyard is located within 1,000 feet of any highway incorporated in both the Interstate System and Primary System or within 600 feet of any other roadways 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 6 feet, but in all cases sufficient to accomplish complete screening of the junkyard from ordinary view;
- 3.10.13.2.3** Ability to conform to state and federal hazardous waste regulations in regards to handling and storage of materials, including, without limitation, 30-A § 3754-A(5);
- 3.10.13.2.4** Requirements as established in the *Maine Subsurface Wastewater Management Rules* regarding the discharge of fluids into ground and surface waters; and *{Department of Health and Human Services 10-144 CMR 241 and DEP § 16 E(6)}*
- 3.10.13.2.5** Ability to provide adequate means of fire safety as determined by inspection by the Town Fire Chief or State Fire Marshal.

3.10.14 Mineral Exploration and Extraction Mineral exploration and extraction shall conform to the Erosion and Sedimentation Control standards of Section 3.11.7 and the Storm Water Runoff standards of Section 3.11.19.

3.10.14.1 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 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. *{DEP § 15 M}*

3.10.14.2 Mineral Extraction The following provisions apply to any mineral extraction activity:

3.10.14.2.1 Expansions of gravel pits in existence on November 7, 1989 shall meet the standards contained herein and shall require approval by the Planning Board.

3.10.14.2.1.1 For the purposes of Section 3.10.14.2.1, an expansion is defined as an enlargement of the excavated pit perimeter.

3.10.14.2.2 Setbacks

3.10.14.2.2.1 Property Line Extraction operations (sandpits, etc.) shall not be permitted within 50 feet of any property line. *{DEP § 15 M(2)}*

3.10.14.2.2.2 No part of any extraction operation, including drainage and runoff control features, shall be permitted within 100 feet of the shoreline of a great pond or within 75 feet of any other shoreline. *{DEP § 15 M(2)}* [**Shoreland Overlay Zone**]

3.10.14.2.3 Standards

3.10.14.2.3.1 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 3.10.14.2.3.5. *{DEP § 15 M(1)}*

3.10.14.2.3.2 Mineral extraction shall not expose more than 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 4 surface acres are exposed at

any one time.

3.10.14.2.3.3 The average slope of any cut bank shall not exceed 4 feet vertical to 1 foot horizontal. The owner of the gravel pit is responsible for maintaining this condition.

3.10.14.2.3.4 Mineral deposits shall not be removed or excavated within 2 feet of the seasonal high water table.

3.10.14.2.3.5 Within 12 months following the completion of extraction operations at any extraction site, ground levels and grades shall be established in accordance with the following: *{DEP § 15 M(4)}*

3.10.14.2.3.5.1 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;

3.10.14.2.3.5.1.1 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.

3.10.14.2.3.5.2 The final grade slope shall be 2 1/2 feet horizontal to 1 foot vertical or flatter; and

3.10.14.2.3.5.3 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.

3.10.14.2.3.5.4 Extraction operations shall be deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12 month period.

3.10.14.2.4 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. *{DEP § 15 M(5)}*

3.10.15 Mobile Homes Any mobile home meeting the U.S. Department of Housing and Urban Development construction standards 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. *{30-A § 4358(2)}*

3.10.16 Mobile Home Parks

3.10.16.1 Standards Mobile home parks shall conform to the standards of 30-A § 4538 and the following:

3.10.16.1.1 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 extend 8 feet beyond each side of the paved road.

3.10.16.1.2 Individual Mobile Home Lots 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 shall be permitted to lie on the ground or to be suspended less than 12 feet above the ground.

3.10.16.1.3 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.

3.10.16.1.4 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.

3.10.16.1.5 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.

3.10.16.1.6 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.

3.10.16.1.7 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.

3.10.16.1.8 Service Streets The park shall be provided with service streets designed and constructed in accordance with the standards of Section 3.11.13 for roads with well-drained, stabilized or paved surfaces maintained in good repair and well-lighted at night with a light intensity at the center of roadway of no less than 2 foot candles. The pavement width shall not be less than 16 feet. Where parallel parking is permitted on one side of the street only, the total width of such street shall not be less than 26 feet. Where parking is permitted on both sides of the street, the total width of such street shall be not less than 32 feet.

3.10.16.1.9 Service Area Not less than 150 square feet of laundry drying space shall be provided in every mobile home park for each 4 individual mobile home lots. Such laundry drying spaces shall not be located between the street and the mobile homes or between the individual motor homes. The laundry drying space shall be so located as to be as inconspicuous as feasible from the adjacent numbered routes and city streets. Such spaces shall have a well-drained stabilized or paved surface, maintained in good repair.

3.10.16.1.10 Size of Sites Each individual mobile home lot shall be not less than 50 feet wide and 75 feet deep exclusive of parking and laundry area. The bounds of each space shall be clearly marked, and the space shall be well-surfaced or seeded to provide adequate drainage beneath and adjacent to any mobile home parked thereon.

3.10.16.2 Mobile Home Storage No mobile home shall be stored or used for commercial purposes, within a mobile home park.

3.10.16.2.1 Home occupations of a homemaker or office character conducted by occupants entirely within a mobile home with no direct customer contact are allowed.

3.10.17 One Family Residences The Planning Board may waive the structure setback requirements and approve the construction of a one family residential dwelling provided that applicant demonstrates that all of the following conditions are met: *{38 § 439-A(7) and DEP § 16 E}* [**Resource Protection Area**]

3.10.17.1 There is no location on the property, other than a location within the Area, where the dwelling can be built;

3.10.17.2 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;

3.10.17.3 All proposed buildings, wastewater disposal systems and other improvements are:

- A. Located on natural ground slopes of less than 20%;
- B. 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;
- C. Elevated, including basements, at least one foot above the 100 year floodplain elevation; and
- D. Otherwise in compliance with any applicable municipal floodplain ordinance. *{38 § 439-A(7)}*

3.10.17.3.1 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. *{38 § 439-A(7)}*

3.10.17.4 Size The total ground-floor area, including cantilevered or similar overhanging extensions,

of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be reduced by variance.

3.10.17.5 All structures, except functionally water-dependent structures, are set back from the all shorelines as far as feasible, but not less than 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.

3.10.18 Public Facilities

3.10.18.1 Parking areas serving public boat launching facilities shall be setback no less than 50 feet from the shoreline if the Planning Board finds that no other reasonable alternative exists further from the shoreline. *{DEP § 15 G(1)}* [**Shoreland Overlay Zone**]

3.10.18.2 Picnic areas, public wells and drinking water springs and water supply intake points shall be set back 100 feet from registered farmland. *{7 §§ 52 & 56}*

3.10.18.2.1 The setback requirement from registered farmland shall not apply to developments or uses exempted in 7 §§ 52 & 56.

3.10.18.3 The restrictions on clearing of vegetation in Section 3.11.3.2 shall not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary. *{DEP § 15 P(2)}*

3.10.19 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 4 feet in width; that the structure does not extend below or over the high-water line of a great pond, stream, outlet stream or the upland edge of a wetland unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 § 480–C; and that the applicant demonstrates that no reasonable access alternative exists on the property. *{DEP § 15 B(6)}* [**Shoreland Overlay Zone**]

3.10.20 Storage Shed On a non-conforming 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 80 square feet in area or 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. *{DEP § 15 B(1)(d)}*

3.10.21 Timber Harvesting Timber harvesting and related activities shall comply with the Commissioner of Conservation *Statewide Standards for Timber Harvesting and Related activities in the Shoreland Areas*, Maine Forest Service Rule – Chapter 21. *{38 § 438- B and DEP § 15 O-1}* [**Shoreland Overlay Zone, Water Reservoirs Protection District, Watershed Overlay Zone**]

3.10.21.1 Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following two options: *{DEP § 15 O-1(3)}*

3.10.21.1.1 Option 1 (Forty percent volume removal), as follows: *{DEP § 15 O-1(3)(a)}*

3.10.21.1.1.1 Harvesting of no more than 40% of the total volume on each acre of trees 4 1/2 inches DBH (diameter 4 1/2 feet from ground level) or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area; *{DEP § 15 O-1(3)(a)(i)}*

3.10.21.1.1.1.1 Timber harvesting operations exceeding the 40% limitation in Section 3.10.21.1.1.1 may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine licensed forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The Planning Board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed. *{DEP § 15 O(2)(b)}*

3.10.21.1.1.2 A well-distributed stand of trees that is windfirm, and other vegetation including existing ground cover, must be maintained; and,

3.10.21.1.1.3 Within 75 feet of the high-water line of streams, outlet streams ponds, and the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet of the high-water line of a pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.

3.10.21.1.2 Option 2 (Sixty square foot basal area retention), as follows: *{DEP § 15 O-1(3)(b)}*

3.10.21.1.2.1 The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1 inch DBH, of which 40 square feet per acre must be greater than or equal to 4 1/2 inches DBH;

3.10.21.1.2.2 A well-distributed stand of trees that is windfirm, and other vegetation including existing ground cover, must be maintained; and,

3.10.21.1.2.3 Within 75 feet of the high-water line of water bodies and within 75 feet of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet of the high-water line of a pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.

3.10.21.1.3 Landowners must designate on the Forest Operations Notification form required by Title 12 Chapter 805, subchapter 5 which option they choose to use. Compliance will be determined solely on the criteria for the option chosen. *{DEP § 15 O-1(3)}*

3.10.21.1.4 The State of Maine Department of Conservation's Bureau of Forestry may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area. *{DEP § 15 O-1(3)}*

3.10.21.2 Timber harvesting abutting a great pond shall be limited to the following: *{DEP § 15 O(1)}*

3.10.21.2.1 Within the strip of land extending 75 feet inland from the high-water line there shall be no timber harvesting, except to remove safety hazards specifically identified and marked by a Maine licensed forester. *{38 § 439-A(5)(B) and DEP §§ 15 O((1)(a)(5)}*

3.10.21.2.2 Beyond the 75 foot "no-harvest" strip referred to in Section 3.10.21.2.1, timber harvesting is permitted in accordance with Section 3.10.21.1. *{38 § 438-B and DEP § 15 O-1}*

3.10.21.3 The use of pesticides or fertilizers in connection with Forest Management Activities is prohibited. [**Resource Protection Area, Watershed Overlay Zone**]

3.10.22 Wind turbines may be placed on lots with at least 40,000 square feet and shall be placed on the lot so that the distance from any lot line shall be at least two times the maximum height.

3.10.22.1 Wind turbines up to 60 feet in height measured to the maximum height of the rotating blades are an allowed use in all Zoning Districts.

3.10.22.2 Wind turbines greater than allowed in Section 3.10.22.1 shall be allowed as a Conditional Use in all Zoning Districts. 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.

3.10.22.3 The Planning Board may grant waivers to the height and setback standards.

3.10.23 Communications towers

3.10.23.1 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.

- (1) Colocation on an existing communications tower or other existing structure (*e.g.*, water tower).
- (2) A new facility on public or private property in the Industrial Park, Maritime Commercial or Bigelow Laboratory Contract Zone Districts.
- (3) A new facility on public or private property in the C1, C2 or C3 Districts.
- (4) A new facility on public or private property in the General Residential (outside of the Bigelow Laboratory Contract Zone District), Special Residential, Water Reservoirs Protection or Well Head Protection Districts.
- (5) A new facility on public or private property in the Village District.

3.10.23.2 Height.

3.10.23.2.1 Within the General Residential (outside of the Bigelow Laboratory Contract Zone District), Special Residential, Water Reservoirs Protection, Well Head Protection Districts and Village Districts, the standard height limit for a new communications tower shall be 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 20 feet, to a maximum of 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 20 feet, to a maximum of 110 feet if the Planning Board finds through review that reducing the tower height most effectively screen and mitigate 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 3.10.23.8.

3.10.23.2.2 Within the Industrial Park, Maritime Commercial, C1, C2, C3 and Bigelow Laboratory Contract Zone Districts, the height limit for a new communications tower or the expansion of an existing communications tower shall be 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 20 feet, to a maximum of 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.

3.10.23.3 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 percent (125%) 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 60% 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.

3.10.23.4 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 150% 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.

3.10.23.5 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.

3.10.23.6 Tower style. Tower types shall be limited to monopole-style towers 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-pine towers, as determined by the Planning Board.

3.10.23.7 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 12 feet above ground level, located and shielded to minimize light pollution, and illuminated only as necessary for work or safety at the facility.

3.10.23.8 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.

3.10.23.9 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.

3.10.23.10 Advertising. No advertising or signage is permitted on communications towers or any attached transmitting and receiving antennas or devices.

3.10.23.11 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 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.

3.10.23.12 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.

3.10.23.13 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.

3.10.23.14 Fencing. A new communications tower must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

3.10.23.15 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.

3.10.23.16 Abandonment. A communications tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO 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 CEO 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.

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.

3.10.23.17 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.

3.10.23.18 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:

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:
 - a. 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;
 - b. negotiate in good faith for shared use of the communications tower by third parties;
 - c. allow shared use of the communications tower if an applicant agrees in writing to pay reasonable charges for co-location; and
 - d. 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.
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.
3. Upon request, the applicant shall provide the Town with a list of tenants of the facility.

3.10.24 Retail Marijuana Establishments

3.10.24.1 Location criteria. No retail marijuana establishment shall be sited within five hundred (500) feet of the lot lines of a drug free safe zone.

3.10.24.2 Area of activities. Production, storage, testing, display, and sale of marijuana and marijuana products shall be within a building and shall not be visible from the exterior; provided, however, that a mobile, self-contained extraction lab maybe in operation at a retail marijuana establishment site on a temporary, short-term basis (*i.e.*, less than five (5) days per month).

3.10.24.3 Noxious gases and fumes. Retail marijuana product manufacturing facilities and retail marijuana testing facilities shall include appropriate ventilation and alarm systems to mitigate noxious gases or other fumes used or created as part of the production.

3.10.24.4 Security. Security requirements for retail marijuana establishments shall include:

- (1) Lockable doors and windows to include intrusion alarms with audible and law enforcement notification components sending notification directly to or through a third party to the local law enforcement agency.
- (2) Video surveillance capable of covering the exterior of the establishment, interior, and any plants cultivated within the establishment. The video surveillance system shall be operated with continuous recording twenty-four hours per day, seven days per week and such records of surveillance shall be retained for a minimum duration of thirty (30) days.
- (3) Exterior lights with motion sensors covering the full perimeter of the establishment.

3.10.24.5 Off premises storage. Off premises storage of marijuana or marijuana products relating to growing, selling, distributing, testing, or processing marijuana or marijuana products is considered an extension of those uses and must meet all state and local standards for those uses, including, without limitation Planning Board review and approval.

3.10.24.6 Prohibition on drive-through service. No retail marijuana establishment shall operate a drive-through service.

3.10.24.7 Additional standards for retail marijuana cultivation facilities.

3.10.24.7.1 Retail marijuana cultivation facility activity shall be within an enclosed locked area or enclosed outdoor area. The cultivation area shall not be visible from a public way or adjacent properties.

3.10.24.7.2 Retail marijuana cultivation facilities located in the C2 zoning district are limited to seven thousand five hundred square feet (7500 s.f.) or three hundred (300) flowering marijuana plants, whichever is less. Retail marijuana cultivation facilities located in the Industrial Park zoning district shall be in accordance with State standards.

3.11 Development and Performance Standards

3.11.1 Buffers, Visual The required setback area from any public way shall be maintained as a visual buffer when required for a specific use in a Land Use Table of Section 3.9.

3.11.1.1 This visual 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 barrier shall be established within the buffer strip by landscaping or fencing.

3.11.1.2 The Planning Board may waive the requirement for a visual buffer if the applicant can demonstrate that the proposed development or the circumstances of the lot satisfy the intent of this standard.

3.11.2 Buffers, Water Supply Protection A water supply protection buffer shall be designed and maintained in accordance with the standards of Section 3.11.2 when required for a specific use in a Land Use Table of Section 3.9. [**Watershed Overlay Zone**]

3.11.2.1 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.

3.11.2.1.1 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 50 feet, plus two times the average slope, in width between the outflow point of any ditch or culvert and a shoreline. *{DEP § 15 H(7)}*

3.11.2.1.1.1 As an example, if the average slope between the shoreline and the proposed road, driveway or parking area is 30%, then the road setback at that location would be 50 feet plus 2 times 30 feet or 110 feet. *{Rich Baker e-mail 2/21/2007}*

3.11.2.1.1.2 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.

3.11.2.1.2 Runoff from roofs shall be distributed over stable, well-vegetated areas or be infiltrated into the soil using dry wells or other infiltration systems

3.11.2.2 Wooded buffers shall be 75 feet in width. Non-wooded buffers shall be 125 feet in width.

3.11.2.2.1 The width of the buffer may be reduced if not doing so would restrict the Developable Area to less than the 20% of the Buildable Area. [**Shoreland Overlay Zone**]

3.11.2.2.2 In determining whether a property that has exceeded the Maximum Developable Area, the Developed Area shall be divided by the Buildable Area as the terms are defined in Section 3.8.

3.11.2.2.3 The Maximum Developable Area shall be calculated separately for each District if a lot is in more than one District with different standards.

3.11.2.3 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.

3.11.2.4 The latest Department of Environmental Protection approved methods shall be used for water supply protection buffers for development not included in Sections 3.11.2.1 or 3.11.2.3.

3.11.2.5 On approval of an application, the Planning Board shall sign the original and 4 copies of the site plan showing the buffer area. The Code Enforcement Officer and applicant shall each retain one signed copy and the applicant shall:

- A. File the original and one signed paper copy with the Lincoln County Registry of Deeds.
- B. File one copy with the Town of Boothbay Assessor. This copy shall include the Registry's Book and Page reference. *{30-A § 4406(1)(B)}*

3.11.2.6 A footpath not to exceed 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. *{DEP § 15 P(2)(a)}*

3.11.3 Clearing or Removal of Vegetation for Activities other than Timber Harvesting {DEP § 15 P}

3.11.3.1 General All clearing of trees shall be in accordance with the Best Management Practices. Ground water runoff buffers as required in Section 3.11.2 shall be maintained.

3.11.3.2 Shoreland Overlay Zone and Watershed Overlay Zone

3.11.3.2.1 Except to allow for the development of permitted uses and the removing of safety hazards specifically identified and marked by a Maine licensed forester, a buffer strip of vegetation shall be preserved within a strip of land extending 100 feet from the shoreline of a great pond and 75 feet from any other shoreline, as follows: {38 § 439-A(6) and DEP §§ 15 O((1)(a)(5) & P(2))}

3.11.3.2.1.1 There shall be no cleared opening or openings greater than 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.

3.11.3.2.1.1.1 A footpath not to exceed 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.

3.11.3.2.1.2 Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained.

3.11.3.2.1.2.1 A “well-distributed stand of trees” adjacent to a great pond or a stream flowing to a great pond shall be defined as maintaining a rating score of 24 or more in each 25 foot by 50 foot rectangular 1,250 square feet) area as determined by the following rating system:

Diameter of tree at 4½ feet above ground level (inches)	Points
2 – <4 inches	1
4 – <8 inches	2
8 – <12 inches	4
12 in. or greater	8

3.11.3.2.1.2.1.1 Adjacent to other streams, outlet streams, tributary streams, and wetlands a “well-distributed strand of trees” is defined as maintaining a minimum rating score of 16 per 25 foot by 50 foot rectangular area.

3.11.3.2.1.2.1.2 As an example, adjacent to a great pond and associated wetlands, if a 25 foot by 50 foot plot contains 4 trees between 2 and 4 inches in diameter, 2 trees between 4 and 8 inches in diameter, 3 trees between 8 and 12 inches in diameter, and 2 trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

3.11.3.2.1.2.1.2.1 Thus, the 25 foot by 50 foot plot contains trees worth 36 points. Trees totaling 12 points (36- 24 =12) may be removed from the plot provided than no clear openings are created.

3.11.3.2.1.2.1.3 The following shall govern in applying this point system:

- A. The 25 foot by 50 foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer.
- B. Each successive plot must be adjacent to, but not overlap a previous plot.
- C. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance.
- D. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance.
- E. Where conditions permit, no more than 50% of the points on any 25 foot by 50 foot rectangular area may consist of trees greater than 12 inches in diameter.

3.11.3.2.1.2.2 Maintaining “other natural vegetation” is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4 ½ feet above ground level for each 25 foot by 50 foot rectangle area. If 5 saplings do not exist, no woody stems less than 2

inches in diameter can be removed until 5 saplings have been recruited into the plot.

3.11.3.2.1.2.3 Notwithstanding the above provisions, no more than 40% of the total volume of trees 4 inches or more in diameter, measured at 4 ½ feet above ground level may be removed in any 10 year period.

3.11.3.2.1.3 In order to protect water quality and wildlife habitat existing vegetation under 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 Sections 3.11.3.2.1 and 3.11.3.2.1.1.1.

3.11.3.2.1.4 Pruning of tree branches on the bottom one-third of the tree is allowed.

3.11.3.2.1.5 In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

3.11.3.2.1.6 There shall be no cutting or removal of vegetation within the strip of land extending 75 feet inland from the high-water line of a great pond and associated wetlands, except to remove safety hazards specifically identified and marked by a Maine licensed forester. *{38 § 439-A(6)(B) and DEP §§ 15 O((1)(a)(5) & P(1)}* [**Resource Protection Area**]

3.11.3.2.2 At distances greater than 100 feet from the shoreline of a great pond and 75 feet from any other shoreline, there shall be allowed on any lot, in any 10 year period, selective cutting of not more than 40% of the volume of trees 4 inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. *{DEP § 15 P(3)}* [**Shoreland Overlay Zone**]

3.11.3.2.2.1 The cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized and the removal of safety hazards specifically identified and marked by a Maine licensed forester. *{DEP §§ 15 O((1)(a)(5) & P(1)}* [**Resource Protection Area**]

3.11.3.2.2.2 In no event shall cleared openings in the portion of a lot within the Shoreland Overlay Zone for any purpose, including but not limited to, principal and accessory structures, driveways and wastewater disposal areas, exceed in the aggregate, 25% of the lot area within the Shoreland Overlay Zone, or 10,000 square feet, whichever is greater, including land previously cleared. *{DEP §15 P(3)}*

3.11.3.2.3 Clearing or removal of woody vegetation necessary for a new subsurface wastewater disposal system and any associated fill extensions shall not extend closer than 75 feet from the high-water line of a great pond, stream, outlet stream or the upland edge of a wetland. *{DEP § 15 K}*

3.11.3.2.4 Legally existing nonconforming cleared openings on March 24, 1990 may be maintained, but shall not be enlarged, except as allowed by Section 3.11.3.2. *{DEP §15 P(4)}*

3.11.3.2.5 Fields and other cleared openings that have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 3.11.3.2. *{DEP §15 P(5)}*

3.11.4 Construction Standards It is particularly important that new structures meet the following minimum design criteria.

3.11.4.1 The exterior walls shall be finished with a covering of wood, plastic, or metal clapboards; wood siding; or wood, asphalt, plastic, 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.

3.11.4.2 Every chimney shall be constructed of solid masonry units or materials prefabricated or otherwise approved by the National Board of Fire Underwriters.

3.11.4.3 All newly erected structures that are to be wired shall have an adequate and safe electrical service of at least 100 amperes and shall be wired in accordance with acceptable industry standards.

3.11.4.4 All buildings shall be set on masonry foundations in the form of masonry walls at least 6 inches thick, or masonry posts at least 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 6 inches thick. Mobile home foundations need not be set to below the frost line if not on ledge. Buildings that do not exceed 400 square feet are exempt from this requirement.

3.11.4.5 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.

3.11.5 Cuts and Fills The top of a cut or bottom of a fill section shall not be closer than 10 feet to an adjoining property, unless otherwise approved by the Planning Board.

3.11.5.1 Except in a ledge cut, cuts and fills shall be no steeper than a slope of 2 1/2 feet horizontal to 1 foot vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 3.11.10. Where a cut results in exposed ledge, side slopes no steeper than 4 feet vertical to 1 foot horizontal are permitted. {DEP §15 H(5)}

3.11.5.2 There shall be no filling, dredging, or grading within 100 feet of the high-water line. [Resource Protection Area]

3.11.6 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.

3.11.6.1 Section 3.11.6 does not apply to one and two family dwellings.

3.11.7. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal

3.11.7.1. Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

3.11.7.1.1. Within the shoreline buffer, 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 (4.5) 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.

3.11.7.1.2. Outside of the shoreline buffer, 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 (4.5) 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 zone, 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 (4.5) 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 (4.5) feet above the ground level.

3.11.7.1.3. 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.

3.11.7.1.4. 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 zone.

3.11.7.1.5. 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 (4.5) feet above the ground level.

3.11.7.2 Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

3.11.7.2.1. Within the shoreline buffer, 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.

3.11.7.2.2. Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone 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.

3.11.8. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 3.11.3 provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

3.11.8.1. 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 chapter, 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 3.11.3 apply;

3.11.8.2. The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 3.9 are not applicable;

3.11.8.3. The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;

3.11.8.4. The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 15(N) are complied with;

3.11.8.5. 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 a general development district, commercial fisheries and maritime activities 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.A section 343-E, and that is located along:

3.11.8.5.1. A coastal wetland; or

3.11.8.5.2. A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.

3.11.8.6. The removal of non-native invasive vegetation species, provided the following minimum requirements are met:

3.11.8.6.1. 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;

3.11.8.6.2. Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and

3.11.8.6.3. 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.

NOTE: An updated list of non-native invasive vegetation is maintained by the Department of Agriculture, Conservation and Forestry's Natural Areas Program:
<http://www.maine.gov/dacf/mnap/features/invasiveplants/invasives.htm>

3.11.8.7. 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.

3.11.9 Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 3.11.7, 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.

3.11.9.1. 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.

3.11.9.2. 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:

3.11.9.3. 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.

3.11.9.4. Revegetation activities must meet the following requirements for trees and saplings:

- (a) All trees and saplings removed must be replaced with native noninvasive species;
- (b) Replacement vegetation must at a minimum consist of saplings;
- (c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
- (d) No one species shall make up 50% or more of the number of trees and saplings planted;
- (e) 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
- (f) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.

3.11.9.5. Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:

- (a) 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;

- (b) 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;
- (c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
- (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
- (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years

3.11.9.6. Revegetation activities must meet the following requirements for ground vegetation and ground cover:

- (a) 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;
- (b) 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

Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.

3.11.10 Erosion and Sedimentation Controls {38 § 420-C}

3.11.10.1 All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

- (a) Mulching and revegetation of disturbed soil.
- (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
- (c) Permanent stabilization structures such as retaining walls or rip-rap.

{DEP § 15 Q(3)}

3.11.10.2 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.

{DEP § 15 Q(2)}

3.11.10.3 Any proposal to fill, displace or expose soil or other earthen material shall require a site specific Erosion and Sedimentation Control Plan developed in accordance with the then – current as of the date of the application edition of the *Maine Erosion And Sediment Control BMPS* of the Bureau of Land and Water Quality, Maine Department of Environmental Protection. {Bureau of Land and Water Quality, Maine Department of Environmental Protection, DEP § 15 Q(1)} 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

3.11.10.4. 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:

- (a) 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.
- (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

(c) 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.

3.11.10.5. 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.

3.11.11 Lighting Lights shall be shielded so that the source of illumination is not visible beyond the property boundary. Where there is a mix of residential and commercial uses, exterior lights associated with commercial uses are restricted to a maximum of 20 feet in height. 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.

3.11.11.1 Section 3.11.11 does not apply to one and two family dwellings.

3.11.12 Lots

3.11.12.1 General

3.11.12.1.1 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.

3.11.9.1.1.1 The Planning Board may approve variations from this requirement.

3.11.12.1.2 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.

3.11.12.1.3 Lot configuration and structure location shall provide for adequate off-street parking and service facilities.

3.11.9.2 Non-conforming Lots Development may occur without the need for a variance on a non-conforming lot of record that existed:

- A. in the Shoreland Overlay Zone before a Shoreland Zoning Ordinance was first adopted on March 4, 1974,
- B. elsewhere before a Zoning Ordinance for the Town of Boothbay was first adopted on August 20, 1979, or
- C. before subsequent amendments of the Zoning Ordinance that made the lot non-conforming, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. *{DEP § 12 E(1)}*

3.11.12.2.1 The Board of Appeals may grant variances. *{DEP § 12 E(1)}*

3.11.9.2.2 Variances shall not be granted for lot area, lot width or shore frontage. *{DEP § 12 E(1)}*
[Shoreland Overlay Zone]

3.11.12.3 Size

3.11.12.3.1 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. *{30-A § 4401(6) and DEP § 15 A(3)}*

3.11.12.3.2 Land beneath roads serving more than two lots shall not be included towards calculating minimum lot area. *{DEP § 15 A(2)}*

3.11.12.3.3 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. *{DEP § 15 A(2)}* **[Shoreland Overlay Zone]**

3.11.12.3.4 Lodging Houses, multifamily dwellings, retirement facilities and accessory apartment for other than one family residential dwellings shall have a minimum of 30,000 square feet per dwelling unit adjacent to tidal areas and 40,000 square feet per dwelling unit adjacent to non-tidal areas. *{DEP § 15(A)(1)}* **[Shoreland Overlay Zone]**

3.11.13 Noise

3.11.13.1 Section 3.11.13 does not apply to one and two family dwellings with no home occupation or accessory use on the property.

3.11.13.2 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.

3.11.13.3 The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by Section 3 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.

3.11.13.3.1 Sound from any source regulated by Section 3 shall not exceed the following limits at the property line of said source:

Sound Pressure Level Limits Measured in dBA's (Applicable Hours: 9 p.m. – 7 a.m.):	
C1, C2, C3, Industrial Park and Maritime Commercial Districts	65
All other areas	55

3.11.13.3.2 Where the emitting and receiving premises are in different Districts, the limits governing the stricter District shall apply.

3.11.13.3.3 The levels specified may be exceeded by 10 dBA for a single period, no longer than 15 minutes in any one day.

3.11.14 Outdoor Storage All outdoor storage facilities 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 275 gallons in size, may be exempted from this requirement provided that there is no seasonal high-water table within 4 feet of the surface, and that rapidly permeable sandy soils are not involved.

3.11.14.1 Section 3.11.11 does not apply to one and two family dwellings.

3.11.15 Parking and Loading Off-street parking shall be required for all new and expanded uses and shall be adequately sized for the proposed use. *{DEP § 15 G(2)}*

3.11.15.1 General

3.11.15.1.1 Parking areas shall meet the shoreline setback requirements for structures for the district in which such parking areas are located. *{DEP § 15 G(1)}* [**Shoreland Overlay Zone**]

3.11.15.1.2 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.

3.11.15.1.3 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 such establishments.

3.11.15.1.4 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).

3.11.15.1.4.1 Section 3.11.15.1.4 does not apply in the Maritime Commercial District or Industrial Park District.

3.11.15.1.5 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.

3.11.15.1.6 Loading facilities shall be located entirely on the same lot as the structure or use to be served. Loading facilities shall also be designed so that they do not interfere with customer traffic flows and parking.

3.11.15.2 Access Standards for other than one and two family residential uses Lots shall be designed with a limited number of access points. Normally a maximum of 2 shall be allowed

regardless of the number of businesses served.

3.11.15.2.1 The Planning Board may approve variations from this requirement.

3.11.15.2.2 Access points shall be so located as to minimize traffic congestion and to avoid generating traffic on local streets of a primarily residential character.

3.11.15.2.3 Provision shall be made for vehicular access in such a manner as to safeguard against hazards to traffic and pedestrians in 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, frontage roads, and traffic controls on existing and proposed public or private roads.

3.11.15.2.4 Access points for commercial uses shall be designed in profile, grading and location to provide the following minimum sight distance, measured in each direction. There are two steps in determining minimum sight distance. First, establishing the point from which the sight distance will be measured; second, measuring the sight distance from that point. Each is described below:

Step 1: The measurement point shall be at least 5 feet behind the curb line or edge of shoulder and 3 1/2 feet above the road surface.

Step 2: From this measurement point an object in the center of the outside travel lane of the roadway 4 1/2 feet above the pavement must be able to be seen at a distance determined by the legal speed limit of the roadway. This distance is 10 times the legal speed limit.

For example, if the legal speed limit is 30 miles per hour, the minimum sight distance is 300 feet in each direction.

3.11.15.2.4.1 The minimum site distance shall be 100 feet. The Planning Board may allow a shorter distance if the subdivider can show that no alternative exists.

3.11.15.2.5 Entrances and exits shall be clearly identified by the use of entrance and exit signs, curb cuts, and landscaping.

3.11.15.2.6 Where necessary to safeguard against hazards to traffic and pedestrians or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, and traffic controls within existing and proposed public roads.

3.11.15.3 Parking Area Standards for other than one and two family residential uses

3.11.15.3.1 Major interior travel lanes shall be designed to allow continuous and uninterrupted traffic movement. Enclosures, such as guardrails, curbs, fences, walls, and landscaping, shall be used to identify circulation patterns of 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.

3.11.15.3.2 Access to parking stalls shall not be provided from major interior travel lanes.

3.11.15.3.3 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 provided for it without requiring the moving of any other motor vehicles.

3.11.15.3.4 All parking spaces and access drives shall be at least 5 feet from any side or rear lot line. Where development is proposed adjacent to a one or two family residential use, the 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.

3.11.15.3.4.1 Where commercial development is proposed adjacent to a residential use, parking spaces and access drives shall not be allowed in the side and rear setbacks and a visual buffer shall be required in accordance with the standards of Section 3.10.7.

3.11.15.3.5 Parking spaces for a small number of vehicles shall each be approximately 10 feet wide and 20 feet long unless the Planning Board finds that it is clearly demonstrated that smaller parking spaces are appropriate. *{DEP § 15 G(3)}*

3.11.15.3.6 Parking stalls and aisle layout shall conform to the following Parking Design Standards Table: {DEP § 15 G(3)}

Parking Design Standards Table

Parking <u>Angle</u>	Stall <u>Width</u>	Skew <u>Width</u>	Stall <u>Depth</u>	Aisle <u>Width</u>
90°	9' - 0"		18' - 5"	24' - 0"
60°	8' - 6"	10' - 5"	18' - 0"	16' - 0" one way only
45°	8' - 6"	12' - 9"	17' - 5"	12' - 0" one way only
30°	8' - 6"	19' - 0"	17' - 0"	12' - 0" one way only

3.11.15.3.7 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.

3.11.15.3.8 In unpaved parking areas, appropriate markers shall be used to delineate parking stalls.

3.11.15.3.9 In aisles using diagonal parking, arrows shall be painted on the pavement to indicate proper traffic flow.

3.11.15.3.10 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.

3.11.15.3.11 All parking areas and driveways shall have a gravel sub-base at least 12 inches in thickness and 2 inches of finish gravel, bituminous plant mix grade C hot, or concrete, and shall have appropriate bumper or wheel guards where needed.

3.11.15.3.12 Road and driveway surface drainage 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. {DEP § 15 H(7)} [Shoreland Overlay Zone, Watershed Overlay Zone]

3.11.15.4 Minimum Parking Requirements A minimum of two parking spaces shall be provided on each tract or parcel of land.

3.11.15.4.1 Uses other than one and two family residential shall provide at least one parking space for each nonresident employee on the largest work shift and one space for each dwelling unit, guest room, campsite, boat slip, mooring or office.

3.11.15.4.2 The Planning Board may grant waivers of the minimum number of spaces requirement and require additional spaces if it determines that such minimums are insufficient.

3.11.15.4.2.1 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 Institute of traffic Engineers Parking Generation Manual.

3.11.16 Roads and Driveways Section 3.11.16 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. {DEP § 15 H}

3.11.16.1 General

3.11.16.1.1 Road and driveways shall meet the shoreline setback requirements for structures for the district in which such roads and driveways are located unless no reasonable alternative exists as determined by the Planning Board. If no reasonable alternative exists as determined by the Planning Board, the road and/or driveway setback requirement shall be not less than 50 feet upon a 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. {DEP § 15 H(1)} [**Shoreland Overlay Zone**]

3.11.16.1.2 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.

3.11.16.1.3 Detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed roads shall be required.

3.11.16.1.4 Roads and driveways shall be designed so as not to create through or “short cut” travel paths.

3.11.16.1.5 New roads and driveways are prohibited except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the area. A road or driveway may also be approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the area. When a road or driveway is permitted, the road or driveway shall be set back as far as feasible from all shorelines. {DEP § 15 H(4)} [**Resource Protection Area**]

3.11.16.1.5.1 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.

3.11.16.1.6 The Planning Board, upon recommendation of the Road Commissioner, may approve variations from the road requirements of Section 3.11.16.

3.11.16.2 Drainage Standards Good drainage must be provided for all new or rebuilt roads and driveways. Section 3.11.13.2 standards are recommended but are not mandatory for driveways on one and two family residential properties outside the Shoreland Overlay Zone.

3.11.16.2.1 Road and driveway surface drainage 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. {DEP § 15 H(7)} [**Shoreland Overlay Zone, Watershed Overlay Zone**]

3.11.16.2.1.1 The unscarified buffer strip shall be at least 50 feet, plus two times the average slope, in width between the outflow point of the ditch or culvert and a shoreline. {DEP § 15 H(7)}

3.11.16.2.1.1.1 As an example, if the average slope between the shoreline and the proposed road is 30%, then the road setback at that location would be 50 feet plus 2 times 30 feet or 110 feet. {Rich Baker e-mail 2/21/2007}

3.11.16.2.2 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 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.

3.11.16.2.3 Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed for new roads and driveways 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: {DEP § 15 H(8)} [**Shoreland Overlay Zone, Watershed Overlay Zone**]

3.11.16.2.3.1 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:

<u>Grade (Percent)</u>	<u>Spacing (Feet)</u>
0-2	250
3-5	200-135
6-10	100-80

11-15	80-60
16-20	60-45
21+	40

3.11.16.2.3.2 Drainage dips may be used in place of ditch relief culverts only where the grade does not exceed 10%.

3.11.16.2.3.3 On sections having slopes greater than 10%, ditch relief culverts shall be placed at approximately a 30 degree angle down slope from a line perpendicular to the centerline of the road or driveway.

3.11.16.2.3.4 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.

3.11.16.2.4 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. *{DEP § 15 H(9)}*

3.11.16.2.4.1 A permit is not required for the replacement of an existing road or driveway culvert as long as:

- A. The replacement culvert is not more than 25% longer than the culvert being replaced;
- B. The replacement culvert is not longer than 75 feet; and
- C. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse. *{DEP § 16 B(1)}*

3.11.16.3 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.

3.11.16.3.1 Roads and driveways shall be set back at least 100 feet from the shoreline of a great pond and 75 feet from any other shorelines unless no reasonable alternative exists as determined by the Planning Board. *{DEP § 15 H(1)}*

3.11.16.3.1.1 If no other reasonable alternative exists, the road or driveway setback requirement shall be no less than 50 feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the great pond, stream, outlet stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the great pond, stream, outlet stream or wetland.

3.11.16.3.1.2 On slopes of greater than 20% the road or driveway setback shall be increased by 10 feet for each 5% increase in slope above 20%.

3.11.16.3.1.3 The setback requirements of Section 3.11.16.3 shall 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 due to an operational necessity. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 3.11.16.3 except for that portion of the road or driveway necessary for direct access to the structure.

3.11.16.3.2 Road and driveway grades shall be not greater than 10% except for segments of less than 200 feet. *{DEP § 15 H(6)}*

3.11.16.3.3 Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a shoreline. *{DEP § 15 H(2)}*

3.11.16.4 Road Standards

3.11.16.4.1 General

3.11.16.4.1.1 The center line of the roadway shall be the center line of the right-of-way.

3.11.16.4.1.2 Roads shall be constructed to their full width and length as shown on the site 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.

3.11.16.4.2 Emergency Vehicle Access A turnaround area on new roads and driveways shall be provided for emergency vehicles approximately every 500 feet. The turnaround area shall meet the standards for new roads. The location(s) and design(s) of the turnaround area(s) shall be agreed to by the Fire Chief.

3.11.16.4.2.1 New roads and driveways that are an extension of an approved road or whose end is more than 200 feet from an existing cross road, shall provide a turnaround area at the end of the road or driveway. If it is feasible that the new road could be extended in the future, the Plat Plan shall indicate the portion(s) of the turnaround area beyond the required road Right-of-Way that shall revert to the abutting properties.

3.11.16.4.3 Intersections Where new road intersections are proposed, they shall be designed in profile, grading, and location to provide the following sight distance, measured in each direction. There are two steps in determining sight distance. First, establishing the point from which the sight distance will be measured; second, measuring the sight distance from that point. Each is described below:

Step 1: The measurement point shall be at least 5 feet behind the curb line or edge of shoulder and 3 1/2 feet above the road surface.

Step 2: From this measurement point an object in the center of the outside travel lane of the roadway 4 1/2 feet above the pavement must be able to be seen at a distance determined by the legal speed limit of the roadway. This distance in feet is 10 times the legal speed limit.

3.11.16.4.3.1 The minimum site distance shall be 100 feet. The Planning Board may allow a shorter distance if the subdivider can show that no alternative exists.

3.11.16.4.3.2 Where necessary, corner lots shall be cleared of all growth and sight obstructions, and if necessary the ground excavated, to achieve the required visibility.

3.11.16.4.3.2.1 The limitations on clearing or removal of vegetation in Section 3.11.3 shall apply *{DEP § 15 P}* [**Shoreland Overlay Zone, Watershed Overlay Zone**]

3.11.16.4.4 Pavement

3.11.16.4.4.1 Minimum standards for the base layer of pavement shall be the Maine Department of Transportation specifications for plant mix grade B hot bituminous with an aggregate size no more than 1 inch maximum with the minimum thickness after compaction of 2 inches.

3.11.16.4.4.2 Minimum standards for the surface layer of pavement shall meet the Maine Department of Transportation specifications for plant mix grade C hot bituminous with an aggregate size no more than 3/4 inch maximum with the minimum thickness after compaction of 1 1/2 inches.

3.11.16.4.4.3 Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint.

3.11.16.4.5 Preparation

3.11.16.4.5.1 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 50 foot intervals.

3.11.16.4.5.2 Organic materials, soils not suitable for roadways, rocks and boulders shall be removed to a depth of 2 feet below the subgrade of the roadway and replaced with material meeting the specifications for gravel aggregate sub-base.

3.11.16.4.5.3 Except in a ledge cut, road and driveway banks shall be no steeper than a slope of 2 1/2 feet horizontal to 1 foot vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 3.11.7. Where a cut results in exposed ledge, side slopes no steeper than 4 feet vertical to 1 foot horizontal are permitted. *{DEP §15 H(5)}*

3.11.16.4.5.4 Sub-base and Base Course

3.11.16.4.5.4.1 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 24 inches. The gradation of the part that passes a 3 inch square mesh sieve shall meet the following grading standard: Aggregate for sub-base shall contain no particles of rock exceeding 4 inches in any dimension.

3.11.16.4.5.4.2 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 4 inches. The gradation of the part that passes a 3 inch square mesh sieve shall meet the following grading standard: Aggregate for the base shall contain no particles of rock exceeding 2 inches in any dimension.

3.11.16.4.5.5 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.

3.11.16.4.6 Size

3.11.16.4.6.1 The following standards apply to Private roads:

Minimum Right-of-Way Width		50 feet
Minimum Pavement Width	Access for 1 – 5 lots	16 feet
	Access for 6 – 9 lots	18 feet
	Access for 10 or more lots	20 feet
Roadway Crown		¼ inch per foot
Minimum width of shoulders (each side)		3 feet

3.11.16.4.6.2 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

3.11.17 Roadside Trees and Walls

3.11.17.1 Because roadside trees are extremely important to the character of Boothbay, removal of trees shall be minimized, especially along public ways. Shifting the site of the building, parking lot, or the entrance or exit drive can usually lessen removal of existing trees.

3.11.17.2 Where stone walls exist, care shall be taken to disturb these as little as possible, since they also act to retain the character of country roads.

3.11.18 Sanitation

3.11.18.1 General

3.11.18.1.1 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 a municipal sewer district or equipped with either a septic tank and drainage field or a mechanical wastewater treatment facility installed in conformance with the *Maine Subsurface Wastewater Disposal Rules*. Approval by the Local Plumbing Inspector or the Maine Department of Health and Human Services Division of Health Engineering (in the case of a mechanical system not for overboard discharge) or the Department of Environmental Protection (in the case of overboard discharge of effluent from a mechanical system) is also required. *{Department of Health and Human Services 10-144 CMR 241 and DEP § 15 K(1)}*

3.11.18.1.1.1 A holding tank for wastewater disposal is not permitted for a first-time residential use. *{DEP § 15 K(1)}*

3.11.18.1.2 Proposed uses requiring subsurface wastewater disposal, and commercial or industrial development and other similarly intensive land uses, shall require a soils report prepared by a state-certified professional based on an on site investigation. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation and presence of ledge, drainage conditions, and other pertinent data

that the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist. *{38 § 439-A(3) and DEP § 15 R}*

3.11.18.1.2.1 On lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be required as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.

3.11.18.1.2.2 In no instance shall a disposal area be permitted on soils or on a lot that requires a New System Variance from the *Maine Subsurface Wastewater Disposal Rules*. *{Department of Health and Human Services 10-144 CMR 241}*

3.11.18.1.2.3 The Planning Board reserves the right to require that more than one test sample be provided for determining the ability of the land to support adequate subsurface wastewater disposal.

3.11.18.1.2.4 A soils report for the property to be developed that was previously prepared and submitted in connection with an approved subdivision and filed with the Lincoln County Registry of Deeds shall satisfy this requirement.

3.11.18.1.3 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.

3.11.18.1.4 Notwithstanding any of the requirements of Section 3.11.18, recycling gray-water from, including, but not limited to, baths and washing machines for outdoor uses shall be permitted.

3.11.18.2 Subsurface Wastewater Disposal

3.11.18.2.1 General

3.11.18.2.1.1 No person shall dispose of waste from any one family dwelling unit by means of subsurface wastewater disposal unless such lot of land on which such one family dwelling unit is located contains at least 20,000 square feet; and if the lot abuts a pond, stream, or tidal area, it shall further have a minimum frontage of 150 feet in the Shoreland Overlay Zone and 100 feet in all other areas. *{12 § 4807-A(1)}*

3.11.18.2.1.2 No person shall dispose of wastewater by means of subsurface wastewater disposal from any dwelling unit, other than a one family unit, or any other land use activity which may generate wastewater in excess of the waste disposal requirements of normal one family dwelling units, unless such multiple unit dwelling units or other land use activity is located on a lot of a size and minimum frontage which complies with the requirements of the State Minimum Lot Size law, 12 §§ 4807-4807-G for multiple unit housing or other land use activities. *{12 § 4807-A(2)}*

3.11.18.2.1.3 Lots with less area or frontage than required in Sections 3.11.15.2.1.1 and 3.11.15.2.1.2 may be approved for subsurface wastewater disposal by the Maine Department of Health and Human Services. *{12 §§ 4807-B(2) & 4807-C}*

3.11.18.2.1.4 Exemptions

3.11.18.2.1.4.1 The restrictions of Section 3.11.18.2.1.1 for a lot for one family residential purposes shall not apply to one family residential dwelling unit on any lot which, prior to January 1, 1970, was specifically described as an identifiable and separate lot either in the instrument conveying such lot to the then owner or in a valid and enforceable agreement for purchase and sale or was shown on a plan recorded in accordance with law, prior to January 1, 1970; provided that contiguous lots in the same ownership on or after October 3, 1973 shall be considered as one lot for the purpose hereof. *{12 § 4807-D}*

3.11.18.2.1.4.2 The restrictions of Sections 3.11.18.2.1.1 and 3.11.18.2.1.2 shall not apply to any building in existence and in place on or before October 3, 1973, which then or theretofore disposed of wastewater by means of subsurface wastewater disposal; except that no person shall reduce the size of the lot upon which such building is located to a size or frontage less than that allowed unless approved in accordance with Section 3.11.18.2.1.3. *{12 § 4807-D}*

- 3.11.18.2.2** Replacement subsurface wastewater disposal systems shall meet the standards for replacement systems as contained in the *Maine Subsurface Wastewater Disposal Rules*. {Department of Health and Human Services 10-144 CMR 241}
- 3.11.18.2.3** 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 180 days preceding the date of transfer. {30-A § 4216}
- 3.11.18.2.4** Clearing or removal of woody vegetation necessary for a new subsurface wastewater disposal system and any associated fill extensions shall not extend closer than 75 feet from the high-water line of a great pond, stream, outlet stream or the upland edge of a wetland. {DEP § 15 K} [Shoreland Overlay Zone]
- 3.11.18.2.5** First time subsurface wastewater disposal systems shall not be installed on sites having an original ground slope greater than 20%.
- 3.11.18.2.6** The minimum setback for new subsurface wastewater disposal systems shall comply with the *Maine Subsurface Wastewater Disposal Rules*, shall not be reduced by variance, and be no less than 100 feet from the high-water line of a great pond, stream, outlet stream or the upland edge of a wetland. {Department of Health and Human Services 10-144 CMR 241 and DEP § 15 K Note}
- 3.11.18.2.6.1 Sanitation** The minimum setback from the high-water line of a great pond or stream shall be no less than 200 feet. [Resource Protection Area]
- 3.11.18.2.6.2** The minimum setback for new subsurface wastewater disposal systems shall be no less than 100 feet from wells.
- 3.11.18.2.6.3** Side and rear yard setback requirements shall not apply to subsurface wastewater disposal systems except for commercial development next to residential uses where the requirement for visual buffering of Section 3.10.7 shall apply.
- 3.11.18.2.7** Existing properties where a subsurface wastewater disposal facility is located, or partially located, in the Watershed Overlay Zone shall be connected to a public sewer within three years from the date a “Ready to serve” fee is applicable. [Watershed Overlay Zone]

3.11.19 Screening In locations where potential health or safety hazards may arise (such as rubbish storage or collection areas), a solid wooden fence six feet in height is required.

3.11.19.1 Section 3.11.19 does not apply to one and two family dwellings.

3.11.20 Signs

3.11.20.1 Exemptions For purposes of Section 3.11.20, the term “sign” shall not include and no permit shall be required for:

- A. “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 stand alone signs normally used by real estate agencies and other signs not over 3 square feet in area; {DEP § 15 I(3)}
- B. One or two signs that identify a residential property owner that meet the requirements of Section 3.11.20; {DEP § 15 I(2)}
- C. Signs erected or posted and maintained for public safety and welfare or pursuant to any governmental function, law, code, or other regulation; {DEP § 15 I(5)}
- D. Signs relating to trespassing and hunting, not exceeding 2 square feet in area; and {DEP § 15 I(4)}
- E. Brass, or similar metallic material, plaques of a personal nature not exceeding one square foot in area.

3.11.20.2 Prohibited Signs

- A. 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.
- B. Flashing signs, roof signs, signs containing moving parts, and signs containing reflective elements that sparkle or twinkle in the sunlight are not permitted. Signs indicating the current time or temperature are permitted provided they meet all other provisions of Section 3 except as provided in Sections 3.11.20.10.2 and 3.11.20.10.3.

- C. Signs advertising or identifying a business, organization, goods or services that is either defunct or no longer located or available on the premises. *{DEP § 15 I(1)}*
- D. Signs larger than 32 square feet.
- E. Signs larger than 6 square feet. *{DEP §§ 15 I(1) & (2)}* [**Resource Protection Area, Stream Protection Area**]
- F. 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.
- G. Internally illuminated signs except as provided in Section 3.11.20.11.
- H. Illuminated signs where the source of illumination is visible beyond the property boundary. *{DEP § 15 I(7)}*
- I. More than two signs per premise. [**Resource Protection Area, Stream Protection Area**]

3.11.20.3 Placement Standards

3.11.20.3.1 No signs other than directional signs may be located:

- A. within 33 feet of the center line of any public way if the highway/right-of-way is less than 66 feet in width;
- B. within 20 feet from the outside edge of the paved portion of any public way with more than 2 travel lanes and a total paved portion in excess of 24 feet in width; or
- C. within the full width of the right-of-way of any public way.

3.11.20.3.2 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.

3.11.20.3.3 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).

3.11.20.3.4 No projecting sign shall extend into a vehicular public way, nor be less than 10 feet above a pedestrian way.

3.11.20.3.5 No sign or supporting framework shall extend to a height above the maximum building height permitted in a District.

3.11.20.3.5.1 No sign shall extend higher than 20 feet above the ground. *{DEP § 15 I(6)}*
[**Shoreland Overlay Zone**]

3.11.20.4 Business Display Advertising Signs

3.11.17.4.1 **General** Signs shall be placed on the same lot as the business and shall not obstruct motorists' vision on any abutting road or in parking areas.

3.11.20.4.1.1 The multiple sign concept of Section 3.11.20.4.3 shall be used on lots with signs for 4 or more businesses or services.

3.11.20.4.1.2 The longest dimension shall not be over 8 feet.

3.11.20.4.1.3 One stand-alone sign, visible from each direction, shall be allowed for each road abutting the property.

3.11.20.4.1.4 No more than two signs relating to goods and services sold on the premises shall be permitted. *{DEP § 15 I(1)}* [**Shoreland Overlay Zone**]

3.11.20.4.2 **Identification Signs** Two identification signs per professional business or for a building under construction by a contractor are permitted on the premises of the same. Such signs shall not exceed 6 square feet with the maximum dimension of 3 feet.

3.11.20.4.3 **Multiple Signs.** Signs other than Wall Signs advertising several occupants of the same building, building complex or business park shall be combined on a single free-standing display board. Multiple signs shall be used at any complex of 4 or more businesses.

3.11.20.4.3.1 The display board shall be of an integrated and uniform design.

3.11.20.4.3.2 The maximum size of the display board shall be 32 square feet and the maximum size of each business or office sign shall be 4 square feet.

3.11.20.4.3.2.1 The maximum size of the display board shall be 6 square feet. *{DEP § 15 I(1)}* [Shoreland Overlay Zone]

3.11.20.4.3.3 Complexes with over 300 feet of frontage will be permitted 2 free-standing signs.

3.11.20.4.4 Wall Signs Shall have an aggregate area not exceeding 1 1/2 square feet for each lineal foot of building face parallel to a street lot line, or 10% of the wall area to which it is attached, whichever is less. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.

3.11.20.4.4.1 Where 2 or more wall signs are affixed to one wall, the gross display area shall be the sum total area of all signs.

3.11.20.4.4.2 Signs shall not obscure architectural features of the building, including, but not limited to, arches, sills, mountings, cornices, and transoms.

3.11.20.4.4.3 No part of a sign, including the display surface, shall extend beyond the ends of the wall or more than 6 inches from the building surface.

3.11.20.4.4.4 The size of signs attached to buildings may be increased in area by 25% for every 100 feet of building setback beyond 100 feet. The increase may be prorated according to the actual setback distance.

3.11.20.5 Directional Signs

3.11.20.5.1 General 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, to a maximum of 4 within the Town for the business.

3.11.20.5.1.1 Such signs shall be uniform in size and type of lettering and shall conform to the following specifications:

Width	36 inches
Height	8 inches
Letter Height	maximum of 4 inches
Sign Face	white with black lettering
Rear Face	painted dark green
Material	1/2 inch to 3/4 inch wood board.

3.11.20.5.1.2 Directional information, including one arrow figure only, shall be provided on each sign.

3.11.20.5.1.3 The Town shall provide posts for mounting. Each owner shall provide, maintain, and replace his own sign. The Town may remove a sign if it is not properly maintained or if business operations cease.

3.11.20.5.2 Service clubs and fraternal organizations may include the emblem in color.

3.11.20.5.3 Directional signs indicating an entrance or exit, or a combined entrance/exit, shall be limited to 2 at each driveway. Such signs shall contain no advertising material, shall be no more than 3 square feet in area, and shall not extend higher than 3 feet above ground level.

3.11.20.6 Institution Signs

3.11.20.6.1 Two identification signs per church, museum, library, educational facility, or similar public structure shall be allowed. Such signs shall not exceed 6 square feet with the maximum dimension of 3 feet.

3.11.20.6.2 A bulletin board or similar sign not exceeding 32 square feet in display area, in connection with any church, museum, library, educational facility, or similar public structure, provided that the top of such sign shall not be more than 8 feet above ground level, and provided that it does not possess any of the characteristics listed under “Prohibited Signs”.

3.11.20.6.2.1 The bulletin board or similar sign shall not exceed 6 square feet. *{DEP § 15 I(1)}* [Shoreland Overlay Zone]

3.11.20.7 The Planning Board may approve more than 2 signs on a lot identifying a property owner, business, institution or service for locations outside the Shoreland Overlay Zone.

3.11.20.8 Non-conforming Signs and Sign Structures Signs not in conformance with the provisions of Section 3.11.20 shall be allowed to remain except as qualified below:

3.11.20.8.1 Other than sign maintenance, no non-conforming sign shall be reconstructed, remodeled, relocated, or changed in size or content to show a new trade name, different words, letters or numbers, new design, different colors or different logo, unless such action will make the sign conforming to the greatest extent practicable..

3.11.20.8.2 Nothing in Section 3.11.20.8 shall be deemed to prevent keeping in good repair a non-conforming sign, including sign maintenance, repainting, and replacement of broken or deteriorated parts of the sign itself.

3.11.20.8.3 A non-conforming sign or sign structure that is destroyed or damaged by any means may be restored within 6 months after such destruction only after the owner has shown that the damage did not exceed 50% of the appraised value of the sign. If such sign or sign structure is destroyed or damaged to an extent exceeding 50%, 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. .

3.11.20.9 Temporary Signs

3.11.20.9.1 Temporary signs for business openings, commercial and 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 14 consecutive days or 42 days per calendar year. The applicant shall remove said signs upon termination of the activity. Street banners shall be no larger than 50 square feet in area. No temporary sign, other than a street banner, shall be larger than 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, 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.

3.11.20.9.1.1 “FOR SALE”, “FOR RENT” and “YARD/GARAGE SALE” signs are exempt from Section 3.11.20.9.1.

3.11.20.9.2 Real estate “FOR SALE” signs shall be limited to one at each intersection location where travelers must change direction from one public way to another to reach a particular property for sale, to a maximum of 4 within the Town per property for sale. 3.11.20.10 Changeable Display Signs

3.11.20.10.1 Changeable display signs are permitted at businesses providing retail fuel sales to display the price of fuel only.

3.11.20.10.2 Changeable display signs must change as rapidly as technologically practicable with no phasing, rolling, scrolling, flashing, streaming or blending.

3.11.20.10.3 Changeable display signs may consist of alphabetical or numeric text on a plain or colored background and shall not include any graphic, pictorial or photographic images.

3.11.20.11 Sign Illumination

3.11.20.11.1 Internally illuminated signs shall only be permitted at businesses providing retail

fuel sales along the Route 27 corridor.

3.11.20.11.2 Only steady white lights are allowed on internally or externally illuminated signs; any such signs found to cause roadside glare shall be removed.

3.11.20.11.3 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.

3.11.20.11.4 Lighting must be shielded to prevent beams or rays of light from being directed at any portion of the public way.

3.11.20.11.5 Signs must comply with the provisions of Section 3.11.11.

3.11.21 Snow Removal No dumping of snow from outside the Zone. [**Watershed Overlay Zone**]

3.11.22 Storm Water Runoff 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. *{38 §420-C and DEP §§ 15 G(2) & J}*

3.11.22.1 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. *{38 § 420-C and DEP § 15 Q(5)}*

3.11.22.2 Storm water runoff control systems shall be maintained as necessary to ensure proper functioning. *{DEP § 15 J}*

3.11.23 Structures

3.11.23.1 General

3.11.23.1.1 No more than one principal structure shall be placed on one lot unless:

- A. The minimum lot area and shore frontage standards, without variance, are met for each principal structure; and
- B. The placement of the principal structures will allow division of the lot in conformance with all requirements of Section 3 including the required minimum setbacks between principal and accessory structures on abutting lots. *{DEP § 15 A(5)}*

3.11.23.1.2 Accessory structures shall meet the standards for approval of a principal structure except for minimum lot area.

3.11.23.1.3 Lawfully created lot coverage that exceeds that allowed in a Zoning District may be continued and maintained but cannot be further increased. *{DEP § 12 A}*

3.11.23.2 Location

3.11.23.2.1 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.

3.11.23.2.1.1 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.

3.11.23.2.2 The lowest floor elevation or openings of all structures, including basements shall be elevated at least 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. *{38 § 440 and DEP § 15 B(3)}*

3.11.23.2.2.1 All proposed developments and uses shall provide evidence that the development or use will not increase the 100-year flood elevation. *{38 § 440}*

3.11.23.2.3 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. *{DEP § 15 B(1)(a)}* [**Shoreland Overlay Zone**]

3.11.23.2.3.1 Recreational boat storage structures are not functionally water-dependent. *{DEP § 17}*

3.11.23.2.4 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. [**Shoreland Overlay Zone**]

3.11.23.3 Non-conforming Structures

3.11.23.3.1 Expansion A non-conforming structure may be added to or expanded, after approval from the Planning Board, only if such addition or expansion does not cause an increase in non-conformity of the structure as such term is defined in Section 6 and is otherwise in compliance with all requirements of Section 3. *{DEP § 12 C(1)}*

3.11.23.3.1.1 This prohibition applies to each structure independently. The removal of a more non-conforming structure does not provide justification for an increase in the non-conformity of a remaining structure.

3.11.23.3.1.1.1 The addition of a deck, porch, entrance step, or patio to, or adjacent to, a structure shall be considered an expansion.

3.11.23.3.1.2 Expansion or reconstruction of an existing structure on a non-conforming lot shall be no closer than the minimum setbacks of Sections 3.9.1 – 3.9.10 to structures on adjoining properties, lot lines or roads.

3.11.23.3.1.3 Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria set forth in Section 3.11.23.3.1.3.1. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 3.11.23.3.1.5, and the foundation does not cause the structure to be elevated by more than 3 additional feet, as measured from the uphill side of the structure from original ground level to the bottom of the first floor sill, it shall not be considered to be an expansion of the structure. *{DEP § 12 C(1)(b)}*

3.11.23.3.1.3.1 In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. *{DEP § 12 C(2)}*

3.11.23.3.1.4 Expansion of non-conforming structures shall be subject to the State Plumbing Laws (30-A § 4211) requiring documentation of wastewater disposal capabilities.

3.11.23.3.1.5 Additional Standards [Shoreland Overlay Zone]

3.11.23.3.1.5.1 After January 1, 1989, if any portion of a structure is less than the required setback from a shoreline, that portion of the structure shall not be expanded, as measured in floor area or volume by 30% or more, during the lifetime of the structure. *{38 § 439-A(4) and DEP § 12 C(1)(a)}*

3.11.23.3.1.5.1.1 If a replacement structure conforms to the requirements of Section 3.11.23.3.3 and is less than the required setback from a great pond, stream, outlet stream, tributary stream or wetland, the replacement structure may not be expanded if the original structure existed on January 1, 1989 and has been expanded by 30% in floor area and volume since that date. *{DEP § 12 C(1)(a)}*

3.11.23.3.1.5.2 Open decks, porches, entrance steps, patios, and other such structures shall not be included in the calculation of volume or area of the existing structure in Section 3.11.20.3.1.5.1. These structures shall not be expanded, as measured in floor area by 30% or more during the lifetime of the principal structure.

3.11.23.3.1.5.2.1 A deck shall be considered as open unless, for a continuous period of at least 5 years before a proposed expansion under Section 3.11.23.3.1.5.2, the deck:

- A. Had been completely covered by a roof; and
- B. Had an exterior wall on all sides of at least two feet in height.

3.11.23.3.1.5.3 The 30% expansion cap for nonconforming structures applies to each building individually and cannot be credited to another building, unless the proposed expansion will result in a single structure.

3.11.23.3.1.5.3.1 Any portion of the permitted 30% expansion of a nonconforming building not used in expanding the building may be used for a new or expanded structure directly associated with the building, such as, but not limited to, a deck, entrance steps or a patio.

3.11.23.3.1.5.3.2 Any portion of the permitted 30% expansion of a structure directly associated with the building, such as, but not limited to, a deck, entrance steps or a patio may not be used to expand the building beyond its permitted 30%.

3.11.23.3.1.5.4 Expansions of one family residential dwellings that comply with the standards of Section 3.11.23.3.1 shall require approval of the Planning Board. *{DEP § 12 D(1)}*

3.11.23.3.2 Relocation

3.11.23.3.2.1 A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface wastewater disposal system meets the requirements of State law and the *Maine Subsurface Wastewater Disposal Rules* (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming. *{Department of Health and Human Services 10-144 CMR 241 and DEP § 12 C(2)}*

3.11.23.3.2.1.1 In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. *{DEP § 12 C(2)}*

3.11.23.3.2.2 Nothing in Section 3.11.23.3.2 shall prohibit the relocation of a non-conforming structure to a separate conforming lot on which the structure and use will be conforming, provided that all necessary permits are obtained.

3.11.23.3.3 Reconstruction or Replacement

3.11.23.3.3.1 Any non-conforming structure which is removed, damaged or destroyed by more than 50% of the market value of the structure before such damage, destruction or removal may be reconstructed or replaced in the original location provided an application has been filed with the Planning Board within one year of the date of said damage, destruction, or removal. *{DEP § 12 C(3)}*

3.11.23.3.3.1.1 If a reconstructed or replacement structure of the same volume and floor area as the old structure can be located completely outside a setback area, no portion of the reconstructed or replacement structure may be built within that setback area; and *{DEP § 12 C(3)}*

3.11.23.3.3.1.2 The right to reconstruct or replace in the original location of Section 3.11.23.3.3.1 shall not apply to non-conforming structures located less than the required setback from a great pond, stream, outlet stream, tributary stream or wetland in the Shoreland Overlay Zone if:

- A. A reconstructed or replacement structure of the same volume and floor area as the old structure can be located completely outside a setback area, then no portion of the reconstructed or replacement structure may be built within that setback area; or if
- B. The reconstructed or replacement structure cannot be located completely outside a setback area, then the reconstruction or replacement shall be in compliance with the setback requirements to the greatest practical extent as determined by the Planning Board. *{DEP § 12 C(3)}* [**Shoreland Overlay Zone**]

3.11.23.3.3.1.2.1 In determining whether the structure relocation meets a setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on site soils suitable for septic systems, the type and amount of vegetation to be removed to accomplish the relocation, and the physical condition and type of foundation present, if any. *{DEP §§ 12 C(2) & C(3)}*

3.11.23.3.3.1.3 The right to reconstruct or replace in the original location of Section 3.11.23.3.3.1 shall not apply to non-conforming structures where the damage, destruction or removal is the result of a willful act of the owner or a person or persons acting for the owner.

3.11.23.3.3.1.4 Any expansion in area or volume shall conform to the standards of Section 3.11.23.3.1. *{DEP § 12 C(1)(a)}*

3.11.23.3.3.1.5 In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. *{DEP § 12 C(3)}*

3.11.23.3.3.2 Any non-conforming structure that is located less than a required setback and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if an application has been filed with the Code Enforcement Officer within one year of such damage, destruction, or removal. *{DEP § 12 C(3)}*

3.11.23.3.3.3 Additional Standards [Shoreland Overlay Zone]

3.11.23.3.3.3.1 If any portion of the reconstructed or replacement structure is less than a required setback other than a shoreline setback, that portion shall not be larger than the ground-floor area, including cantilevered or similar overhanging extensions, of the original structure.

3.11.23.3.3.3.2 If any portion of the reconstructed or replacement structure is less than a required shoreline setback, that portion shall be limited in area and volume by the expansion limitations of Section 3.11.23.3.1.5.1 for the original structure. *{DEP § 12 C(1)(a)}*

3.11.23.3.3.3.3 When it is necessary to remove vegetation within the water or wetland setback area in order to replace, reconstruct or relocate a structure, the Planning Board shall require replanting with native vegetation to compensate for the destroyed vegetation. Replanting shall be required as follows: *{DEP § 12 C(2)}*

3.11.20.3.3.3.3.1 Trees removed in order to relocate a structure must be replanted with at least one native tree, 3 feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

3.11.23.3.3.3.2 Other woody and herbaceous vegetation, and ground cover that are removed or destroyed in order to relocate a structure must be re-established. An area the same size as the area where vegetation or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation or ground cover replanted must consist of similar vegetation or ground cover that was disturbed, destroyed or removed.

3.11.23.3.3.3.3 In addition, the area from which a relocated structure was removed shall, to the extent feasible, be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

3.11.23.3.3.4 Nothing in Section 3.11.20.3.3 shall prevent the demolition of the remains of any damaged or destroyed structure.

3.11.23.4 Setbacks The setback area from roads and public ways shall not be used for any above ground structure. Driveways, sidewalks, walls, fences and the planting of vegetation are allowed.

3.11.23.4.1 The Planning Board may allow subsurface waste disposal if there is no other feasible location on the lot.

3.11.23.4.2 No development shall be allowed within the road or public way right-of-way.

3.11.24 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 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.

3.11.24.1 Section 3.11.21 does not apply to one and two family dwellings.

4 SUBDIVISION

Table of Contents

4.1 Purpose	4-1
4.2 Applicability	4-1
4.3 Responsibilities	4-1
4.4 General Standards.....	4-1
4.5 Procedures for Subdivision Review	4-2
4.5.1 General	4-2
4.5.2 Pre-application Meeting	4-2
4.5.3 Application.....	4-2
4.5.4 Completeness Review	4-5
4.5.5 Application Review.....	4-5
4.5.6 Site Visit.....	4-6
4.5.7 Joint Meetings	4-6
4.5.8 Consulting Cost Fee	4-6
4.5.9 Impact Fee.....	4-6
4.5.10 Performance Guarantees.....	4-6
4.5.11 Waivers	4-7
4.5.12 Approved Applications	4-7
4.5.13 Revision or Amendment.....	4-8
4.5.14 Appeal.....	4-8
4.5.15 Records.....	4-8
4.6 Review Criteria	4-8
4.7 Prohibited Activities and Development.....	4-10
4.8 Measurement Definitions	4-11
4.9 District Standards	4-12
4.9.1 C1 District	4-12
4.9.2 C2 District	4-13
4.9.3 C3 District	4-14
4.9.4 General Residential District	4-14
4.9.5 Industrial Park District	4-15
4.9.6 Maritime Commercial District	4-15
4.9.7 Special Residential District	4-16
4.9.8 Village District	4-17
4.9.9 Water Reservoirs Protection District.....	4-18
4.9.10 Well Head Protection District	4-20
4.10 Development and Performance Standards.....	4-21
4.10.1 Buffers, Water Supply Protection	4-21
4.10.2 Chemical and Petroleum Product Storage	4-21
4.10.3 Clearing or Removal of Vegetation for Activities other than Timber Harvesting.....	4-21
4.10.4 Cuts and Fills.....	4-23
4.10.5 Development next to Registered Farmland	4-23
4.10.6 Erosion and Sedimentation Controls.....	4-23
4.10.7 Essential Services	4-24
4.10.8 Junkyards.....	4-24
4.10.9 Large Scale Development	4-24
4.10.10 Lots.....	4-24
4.10.11 Open Space.....	4-25
4.10.12 Roads.....	4-25
4.10.13 Roadside Trees and Walls	4-29
4.10.14 Sanitation.....	4-29
4.10.15 Soil	4-30
4.10.16 Storm Water Runoff Control.....	4-30
4.10.17 Structures.....	4-30
4.10.18 Water Quality	4-31
4.10.19 Water Supply.....	4-31
4.11 Cluster Development.....	4-32

4.1 Purpose The purpose of Section 4 is to ensure that the subdivision of land in the Town of Boothbay complies with the Comprehensive Plan and the objectives of this Ordinance as stated in Section 1.8 and the requirements of the State of Maine for subdivision of land (30-A §§ 4401 – 4407)²⁰ by allowing orderly growth while ensuring public safety and protection of the environment. *{30-A § 4352(2) and 38 § 440-A}*

4.2 Applicability Section 4 applies to all tracts or parcels of land proposed for subdivision, in accordance with 30-A §§ 4401(4). A lot of 40 or more acres shall not be counted as a lot subject to the standards of Section 4 unless the lot or parcel from which it is divided is located entirely or partially within any shoreland area as defined in 38 § 435 or in Section 6. Section 4 also applies to Cluster Developments.

4.2.1 Standards for Zoning are in Section 2; Development and Use standards are in Section 3.

4.3 Responsibilities

4.3.1 Applicant The applicant shall have the burden of proving that the proposed development or use conforms to:

- A. The ordinance standards as set forth in Sections 4.9, 4.10 and 4.11;
- B. Any other Town ordinance or regulation, or any State or Federal law that the Town is responsible for enforcing; and
- C. All requirements for granting of a permit or approval as set forth in Section 4.6. *{30-A § 4403(6) and DEP §§ 16 B(3) & D}*^{21 22}

4.3.2 Planning Board The Planning Board shall review and approve, approve with conditions or deny all requests for subdivision of land as defined by 30-A § 4401(4) except as provided by 30-A §§ 4401(4) and 4402. This includes cluster developments. *{30-A § 4403(1)}*

4.4 General Standards

4.4.1 No subdivision shall be approved that is not in conformity with all standards herein specified for the Zoning District, Overlay Zone, or Area within the Shoreland Overlay Zone in which it is located, unless a waiver or variance as specifically allowed in Section 4.4.2 is granted. *{30-A § 4353(2)(c) and DEP §§ 11 & 16 B}*

4.4.2 Where a Zoning District, Overlay Zone, or Area boundary line does not follow a lot line, the standards applicable to the less restricted portion of the lot may not be extended into the more restricted portion of the lot.

4.4.2.1 The Board of Appeals may grant variances.

4.4.2.2 Variances shall not be granted for lot area, lot width or shore frontage. *{DEP § 12 E(1)}*
[Shoreland Overlay Zone]

4.4.3 Non-conforming Lots Development may occur without the need for a variance on a non-conforming lot of record that existed:

- A. In the Shoreland Overlay Zone before a Shoreland Zoning Ordinance was first adopted on March 4, 1974,
- B. Elsewhere before a Zoning Ordinance for the Town of Boothbay was first adopted on August 20, 1979, or
- C. Before subsequent amendments of the Zoning Ordinance that made the lot non-conforming, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. *{DEP § 12 E(1)}*

4.4.3.1 Except as specifically provided in Section 4.4.2 a non-conforming condition shall not be permitted to become more non-conforming. *{DEP § 12 A}*

4.4.3.2 Non-conforming lots may be transferred, and the new owner may continue to use the non-conforming lot. *{DEP § 12 B(1)}*

²⁰ All Title, Chapter, and Section (“§”) references are to Maine Revised Statutes Annotated (M.R.S.A.), as may be amended from time to time.

²¹ References to State statute or regulation requiring inclusion or providing wording are for information only.

²² DEP references are to Department of Environmental Protection Chapter 1000 State of Maine Guidelines for Municipal Shoreland Zoning Ordinances for information only.

4.4.3.2.1 If two or more principal structures existed on a single lot of record as of the dates in Section 4.4.3, each may be sold on a separate lot provided that the State *Minimum Lot Size Law* (12 §§ 4807-A – 4807-D) and *Maine Subsurface Wastewater Disposal Rules* are complied with. When such lots are divided each lot thus created must be as conforming as feasible to the dimensional requirements of Sections 4.9, 4.10.10.2 and 4.10.14.2. *{Department of Health and Human Services 10-144 CMR 241 and DEP § 12 E(2)}*

4.4.3.2.2 Contiguous Built Lots If two or more contiguous lots or parcels are in a single or joint ownership of record as of the dates in Section 4.4.3, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State *Minimum Lot Size Law* and *Maine Subsurface Wastewater Disposal Rules* are complied with. *{Department of Health and Human Services 10-144 CMR 241 and DEP § 12 E(2)}*

4.4.3.2.3 Contiguous Lots – Vacant or Partially Built If two or more contiguous lots or parcels are in single or joint ownership of record as of the dates in 4.4.3, if any of these lots do not individually meet the dimensional requirements of Sections 4.9, 4.10.10.2 and 4.10.14.2 or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements. *{DEP § 12 E(3)}*

4.4.3.2.3.1 Section 4.4.3.2.3 shall not apply to two or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the dates in Section 4.4.3 and recorded in the Lincoln County Registry of Deeds, if the lot is served by a public sewer or can accommodate a subsurface wastewater disposal system in conformance with the *Maine Subsurface Wastewater Disposal Rules*; and

- A. Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- B. Any lots that do not meet the frontage and lot area requirements of Section 4.4.3.2.3.1.A are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area. *{38 § 438-A(1-A)(B), Department of Health and Human Services 10-144 CMR 241 and DEP § 12 E(3)}*

4.4.4 No subdivisions shall be approved for areas registered as Farmland or Open Space (36 §§ 1101 – 1121) or Tree Growth (36 §§ 571 – 584-A).

4.5 Procedures for Subdivision Review

4.5.1 General All meetings to consider applications before the Planning Board shall be public hearings. *{30-A § 4403(2)}*

4.5.1.1 An applicant may agree to an extension of time for Planning Board review, public hearing or decision on an application.

4.5.2 Pre-application Meeting Any person may attend a regular meeting of the Planning Board to discuss informally a proposed subdivision before the preparing and submitting of an application.

4.5.2.1 The purpose of the Pre-application Meeting shall be to discuss informally the proposal and the provisions of Town Zoning Ordinance and shall not be considered substantive review for purposes of the state savings statute, 1 § 302. No fees shall apply, and no binding commitments shall be made between the applicant and the Planning Board. Comments made by Planning Board members during the discussion shall not be construed to be the opinions of the Board or to cover all aspects of the proposal or Ordinance standards and contrary opinions may be expressed after review of an application. The notification requirements of Section 4.5.3.5 do not apply.

4.5.2.2 The applicant may present to the Planning Board, for informal review and comment, a sketch plan of the proposed subdivision. The sketch plan may consist of a rough outline of the proposed subdivision, and may be a free-hand, penciled sketch of the parcel, showing the proposed layout of streets, lots, and other features that may be of assistance to the Planning Board in clarifying the Ordinance requirements to the applicant.

4.5.3 Application

4.5.3.1 A Plat Plan and related materials may be submitted to the Planning Board without prior contact, but an applicant is advised to use the pre-application procedures of Section 4.5.2.

4.5.3.2 Applications shall be made to the Code Enforcement Officer in writing and shall include the “Subdivision Application” form and such other information that will permit the Planning Board to determine whether the proposed subdivision is consistent with the standards of this Ordinance and any other Town ordinance or regulation, or any State or Federal law that the Town is responsible for enforcing. *{DEP § 16 C(1)}*

4.5.3.2.1 Applications shall be dated and signed by the owner or owners of the property, or their representative, certifying that the information in the application is complete and correct. If the person signing the application is not the owner of the property, the applicant shall submit a letter signed by the owner authorizing the subdivision. *{DEP §§ 16 C(2) & C(3)}*

4.5.3.2.2 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. *{30-A § 4355}*

4.5.3.2.3 The application shall include, when applicable:

4.5.3.2.3.1 An application for approval under the Maine Site Location of Development Act. *{38 § 483-A}*

4.5.3.2.3.2 A permit from the Department of Environmental Protection in accordance with 38 § 480-C for the protection of natural resources.

4.5.3.2.3.3 A Maine Construction General Permit under 38 § 420-D from the Maine Department of Environmental Protection for storm water management.

4.5.3.3 Applications shall only be accepted when:

4.5.3.3.1 Taxes and accounts payable to the Town are current.

4.5.3.3.1.1 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.

4.5.3.3.1.2 Real and personal property taxes for the property to be subdivided have been paid in full.

4.5.3.3.1.3 Notification expenses as required by Section 4.5.3.5.2 have been paid in full.

4.5.3.3.1.4 The requirement that all taxes and accounts be paid prior to submission of a Subdivision application may be:

4.5.3.3.1.4.1 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 12 months from the date of said agreement; or

4.5.3.3.1.4.2 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.

4.5.3.3.2 There is no outstanding notice of violation duly issued by the Code Enforcement Officer

- A. That has not been appealed to the Board of Appeals within the required time period;
- B. That is pending before the Board of Appeals or a reviewing court; or
- C. Where the decision of the Board of Appeals or a reviewing court has not been fully complied with.

4.5.3.3.2.1 The applicant, subdivider or principals of such applicant or subdivider are not in default nor have an outstanding notice of violation on any subdivision plan previously approved by the Planning Board. Such default or failure to correct violations shall constitute conclusive evidence of the inability of the applicant or subdivider to comply with the requirements of Section 4 or to complete work required by a subdivision plan.

4.5.3.3.3 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:

- A. That is pending before the State or federal environmental agency or a reviewing court; or
- B. 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.

4.5.3.4 The Code Enforcement Officer shall note upon each application the date and time of its receipt. *{DEP § 16 C(3)}*

4.5.3.4.1 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.

4.5.3.4.1.1 Information required for Planning Board approval not required to be in writing or on paper may be provided in person or by a designated representative in a public hearing.

4.5.3.4.2 The Planning Board may at any time before approval require the submission of additional information. *{30-A § 4403(3)(B)}*

4.5.3.5 Notification On receipt of an application, the Code Enforcement Officer shall issue the applicant a dated receipt and notify by U. S. Postal Service certified letter, return receipt requested: *{30-A § 4403(3)(A)}*

- A. The applicant and the owner of the property where a subdivision is proposed. *{30-A § 4403(4)(A)}*
- B. Owners as listed by the Boothbay Tax Assessor of property within 100 feet of any property line of a proposed subdivision; *{30-A § 4403(3)(A)}*
- C. The Boothbay Region Water District if a proposed subdivision is within the Water Reservoirs Protection District, the Well Head Protection District or in the Watershed Overlay Zone; and *{30-A §§ 4403 (3)(A) and 4358-A}*
- D. The Boothbay Harbor or Edgcomb Town Clerk and Planning Board if the proposed subdivision abuts or includes any portion of their Town. *{30-A §§ 4403(1)(A) & (3)(A)}*

4.5.3.5.1 The notification shall be at least 7 days before the first Planning Board meeting on the application and include:

- A. The date, time and place of the first public hearing on the application; and
- B. The location and a general description of the proposed subdivision. *{30-A §§ 4403(3)(B) & (4)}*

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

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

4.5.3.6 Notice The Code Enforcement Officer shall publish at least two times in the Boothbay Register a notice of the date, time and place of the first meeting to be held on an application. The first publication of the notice shall be at least 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 proposed subdivision. *{1 § 406 and 30-A § 4403(4)(B)}*

4.5.3.7 Upon receipt of plans for a proposed public road or a required improvement or modification to an existing public road, the Code Enforcement Officer shall forward one copy to the Road Commissioner for review and comment.

4.5.3.8 If the proposed development includes soil disturbance, new structures, or relocation of existing structures on or adjacent to a site listed on, or eligible to be listed on the National Register of Historic Places the applicant shall submit a copy of the application to the Maine Historic Preservation Commission for review and comment. The Code Enforcement Officer shall determine if this review is required. *{DEP § 15 T}* [**Shoreland Overlay Zone**]²³

4.5.3.8.1 The Maine Historic Preservation Commission shall be informed of the proposed development at least 20 days before the first hearing on an application by the Planning Board. *{DEP § 15 T}*

4.5.3.9 Any inconsistent or conflicting information in an application shall be construed against the

²³ **Shoreland Overlay Zone** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in the Shoreland Overlay Zone including the Resource Protection and Stream Protection Areas portions thereof.

applicant.

4.5.4 Completeness Review Within 30 days of receiving an application, the Planning Board shall hold a Completeness Review. *{30-A § 4403(3B) and DEP § 16 D}*

4.5.4.1 The purpose of a Completion Review is to determine if information required to be on paper is sufficiently complete to proceed to an Application Review.

4.5.4.1.1 An application for subdivision approval is not complete until it includes a Plat Plan which is based on a survey.

4.5.4.2 A Completeness Review shall be held if an applicant submits a Preliminary Plat Plan as allowed by 30-A § 4403. The Preliminary Plat Plan shall conform, to the extent necessary to determine completeness of the application, to the requirements of the Subdivision Application Form.

4.5.4.3 At the conclusion of Completeness Review, the Planning Board shall notify the applicant that:

- A. An Application Review has been scheduled, or
- B. 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 Subdivision Application. *{30-A §§ 4403(3B) & (3C) and DEP § 16 D}*

4.5.4.4 Failure to submit the required information within 6 months of the conclusion of the Completeness Review shall void the application.

4.5.5 Application Review

4.5.5.1 The Planning Board shall schedule a public hearing for an Application Review of a proposed subdivision within 30 days after the conclusion of the Completeness Review specified in Section 4.5.4. *{30-A § 4403(4) and DEP § 16 D}*

4.5.5.1.1 If the applicant is not present when the Application Review meeting is scheduled, the date, time and place of the public hearing shall be sent to the applicant by U. S. Postal Service first class mail. *{30-A § 4403(3)(C)}*

4.5.5.2 The purpose of the Application Review meeting is to determine if the proposed subdivision is in conformance with the standards of the Zoning Ordinance.

4.5.5.2.1 The Planning Board shall not accept or approve final plans or final documents prepared within the meaning and intent of Title 21, chapter 121 that are not sealed and signed by the professional land surveyor under whose responsible charge they were completed. *{30-A § 4403(3)(D) and 32 § 13907}*

4.5.5.3 The Planning Board shall, within 30 days of an Application Review public hearing at which all requested information has been provided, and during which all verbal submissions for and against the proposed subdivision have been heard, approve the application, approve with conditions, or deny the application. *{30-A § 4403(5) and DEP § 16 D}*

4.5.5.3.1 The Planning Board shall not approve an application until the applicant has obtained a driveway or entrance or traffic movement permit under Title 23 §§ 704 or 704-A from the Maine Department of Transportation if such permit is required.

4.5.5.3.2 The Planning Board shall not approve an application until the applicant has obtained written acceptance from the Boothbay Region Water District and the Boothbay Harbor Sewer District if connection to their system is proposed.

4.5.5.3.3 The Planning Board shall not approve an application proposing new or extended roads or driveways until the applicant has obtained written acceptance of proposed emergency vehicle turnaround areas from the Boothbay Fire Chief.

4.5.5.3.4 The Planning Board shall not approve an application until any Consulting Fee required by Section 4.5.8 or Impact Fee required by Section 4.5.9 has been paid in full.

4.5.5.3.5 In making its decision the Planning Board shall consider comments received from the Maine Historic Preservation Commission prior to rendering a decision on the application. *{DEP § 15 T}*

4.5.5.3.6 The Planning Board shall deny an application if it does not make a positive finding that the proposed subdivision will satisfy the requirements of Section 4.6. *{30-A § 4404(9) and DEP § 16 D}*

4.5.5.4 In issuing its decision, the Planning Board shall make findings of fact establishing that the proposed subdivision does or does not meet the goals and objectives of Section 1.8, the standards of Section 4 and the review criteria of Section 4.6. *{30-A § 4403(6) and DEP § 16 D}*

4.5.5.5 If an application is either approved with conditions or denied, the reasons as well as conditions shall be stated in writing. *{1 § 407(1) and DEP § 16 D}*

4.5.6 Site Visit The Planning Board may hold a public meeting on the site of a proposed subdivision before taking action on an application.

4.5.6.1 Prior to the site visit, the Planning Board may require the applicant provide a plan or sketch indicating the location of permanent or temporary markers located to enable the Planning Board to readily locate and appraise basic lot and road layout in the field.

4.5.6.2 The Planning Board shall not take action on an application during a site visit.

4.5.7 Joint Meetings If any portion of a subdivision is in Boothbay Harbor or Edgecomb, all public hearings to review the application or a revision or amendment to a subdivision shall be held jointly by the reviewing authorities from Boothbay Harbor or Edgecomb. The reviewing authorities in each municipality, upon written agreement, may waive the requirement for any joint meeting or hearing. *{30-A § 4403(1-A)}*

4.5.8 Consulting Fee The Planning Board may at any time before or after submission of a complete application require an applicant to pay for an independent review by one or more professional(s) of its choice of any proposed plans, specifications, calculations, surveys, improvements, or environmental impact reports submitted by an applicant, as well as to examine any impacts that may be caused by the proposed subdivision that relate to findings of fact needed to render a fair and responsible decision. The cost of the independent review shall be a fee in such an amount as the Board of Selectmen may from time to time establish by Board of Selectmen order. The results of the consultation or peer review for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town and shall remain its property. Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation or peer review results or the outcome of the application.

4.5.8.1 Whenever the balance of the fee is reduced to less than 25% of the original fee, the Planning Board may require an additional deposit in an amount specified by Board of Selectmen order if it finds that additional professional services may be required by the Board. The total consulting cost fee may not exceed the amount specified by Board of Selectmen order. Any balance remaining shall be returned to the applicant.

4.5.9 Impact Fee The Planning Board may determine that a proposed development will require improvements or modifications off-site. The Town Manager, with Board of Selectmen approval, shall determine the fair share cost to be paid by the applicant. *{30-A § 4354}*

4.5.10 Performance Guarantees

4.5.10.1 Types of Guarantees Before approving a subdivision application, the Planning Board may require the subdivider to provide one of the following performance guarantees for an amount adequate to cover the total construction costs of all required improvements, taking into account the time span of the construction schedule and the inflation rate for construction costs:

- A. A certified check payable to the Town, a savings account or a certificate of deposit naming the Town as owner, for the establishment of an escrow account;
- B. A performance bond approved by the Town Attorney payable to the Town issued by a surety company;
- C. An irrevocable letter of credit approved by the Town Attorney from a financial institution establishing funding for the construction of the subdivision, from which the Town may draw if construction is inadequate, or
- D. An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed. *{30-A § 4404(10)}*

4.5.10.1.1 The Planning Board, with the advice of the Road Commissioner, Board of Selectmen

and Town Attorney, shall determine the conditions and amount of the performance guarantee.

4.5.10.2 Contents of Guarantee The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the applicant, and a date after which the applicant will be in default and the Town shall have access to the funds to finish construction.

4.5.10.2.1 Escrow Account A cash contribution for the establishment of an escrow account shall be made by a certified check made out to the Town of Boothbay, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the subdivider, the Town shall be named as owner or co-owner, and the consent of the Town shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the subdivider unless the Town has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the subdivider and the amount withdrawn to complete the required improvements.

4.5.10.2.2 Performance Bond A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the subdivider, and the procedures for collection by the Town. The bond documents shall specifically reference the subdivision for which approval is sought.

4.5.10.2.3 Letter of Credit An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan.

4.5.10.2.4 Conditional Agreement The Planning Board, at its discretion, may provide for the subdivider to enter into a binding agreement with the Town in lieu of the other financial performance guarantees. Such an agreement shall provide for approval of the final plan on the condition that no more than 4 lots may be sold or built upon until either:

- A. It is certified by the Code Enforcement Officer that all required improvements have been completed in accordance with these regulations and the regulations of the appropriate utilities; or
- B. A performance guarantee, acceptable to the Town, is submitted in an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and prorated for the portions of the required improvements already installed.

4.5.10.2.4.1 Notice of the agreement and conditions shall be on the Plat Plan that is recorded at the Lincoln County Registry of Deeds.

4.5.10.3 Release of Guarantee Prior to the release of any part of the performance guarantee, the Planning Board shall determine to its satisfaction, based in part upon the report of a professional hired by the Town and whatever other agencies and departments may be involved, that the proposed improvements meet the design and construction requirements for that portion of the improvements for which the release is requested.

4.5.10.4 Default If, upon inspection, the professional hired by the Town finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he or she shall so report in writing to the Code Enforcement Officer, the Board of Selectmen, the Planning Board, and the subdivider or builder. The Town shall take any steps necessary to preserve its rights.

4.5.11 Waivers

4.5.11.1 Where authorized in Section 4, the Planning Board may approve subdivisions that do not meet specific adopted standards.

4.5.11.2 When the Planning Board grants a waiver, the Plat Plan to be recorded at the Registry of Deeds by the applicant shall indicate the waiver granted and the date on which it was granted.
{30-A § 4406(1)(B)}

4.5.12 Approved Applications On approval of an application, the Planning Board shall sign the original transparency and 4 copies of the Plat Plan. The Code Enforcement Officer and applicant shall each retain one signed copy and the applicant shall:

- A. File the original transparency and one signed paper copy with the Lincoln County Registry of

Deeds.

B. File one copy with the Town of Boothbay Assessor. This copy shall include the Registry's Book and Page reference. *{30-A § 4406(1)(B)}*

4.5.12.1 Failure to begin Start of Construction of the subdivision, as defined in Section 6, within three years of the date of the Planning Board final approval shall render the plan null and void. On showing of good cause before the expiration of the three year period and the providing for the continuation of any performance guarantees for the period of the extension the Planning Board may grant a one year extension. Upon determining that a subdivision's approval has expired, the Planning Board shall have a notice placed in the Registry of Deeds to that effect. *{DEP § 16 F}*

4.5.12.2 A copy of the approved application shall be available on site while work authorized by the approval is being conducted. *{30-A § 4406(4)}* [**Watershed Overlay Zone**]²⁴

4.5.13 Revision or Amendment Any application for subdivision approval that constitutes a revision or amendment of a subdivision plan that has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being reviewed or amended. In reviewing such an application, the Planning Board shall make findings of fact addressing whether the proposed revisions meet the criteria of Section 4.6. *{30-A § 4407}*

4.5.13.1 The Planning Board may approve *de minimis* changes that do not alter lot lines, change the essential nature of the proposal, or affect any of the approval criteria without the notifications and notices required for a new application.

4.5.13.2 Amended Plat Plans shall be prepared and recorded in accordance with Section 4.5.12. *{30-A § 4407(1)}*

4.5.14 Appeal Notwithstanding any other provision of Section 4, where any application is approved or denied by the Planning Board, appeal of the decision on the entire application shall be made to the Superior Court within 30 days of the decision. *{30-A § 4353(1)}*

4.5.15 Records

4.5.15.1 The Code Enforcement Officer shall maintain a permanent record of all Planning Board meetings, proceedings and correspondence. *{1 § 407(1), 30-A § 4403(1) and DEP § 16 I(2)(c)}*

4.5.15.2 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. *{38 § 441(3C) and DEP § 16 I(2)(c)}*

4.6 Review Criteria The Planning Board before granting approval, must determine that the application is in conformance with the land use goals and objectives of Section 1.8, the standards of Section 4 and that the proposed subdivision will protect and preserve the general welfare. In making its decision the Planning Board shall consider the following criteria: *{30-A §§ 4403(5C) & 4404 and DEP §16 D(9)}*

4.6.1 Adjoining Municipality For any proposed subdivision that abuts or is partially in Boothbay Harbor or Edgecomb, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in Boothbay Harbor or Edgecomb; *{30-A §§ 4403(1-A) & 4404(19)}*

4.6.2 Aesthetic, Cultural and Natural Values The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the Town of Boothbay, rare irreplaceable natural areas, or any public rights for physical or visual access to the shoreline; *{30-A § 4404(8), 38 § 440-A and DEP §§ 16 (D)(4) & (5)}*

²⁴ **Watershed Overlay Zone** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in the Watershed Overlay Zone.

- 4.6.3 Conformity with Local Ordinances and Plans** The proposed subdivision conforms to this Ordinance and the Comprehensive Plan. In making this determination, the Planning Board may interpret the Zoning Ordinance and Comprehensive Plan; *{30-A §§ 4352(2) & 4404(9) and 38 § 440-A}*
- 4.6.4 Erosion** The proposed subdivision will not cause soil erosion that cannot be controlled using Best Management Practices or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results; *{30-A § 4404(4) and DEP § 16 (D)(2)}*
- 4.6.5 Financial and Technical Capacity** The subdivider has adequate financial and technical capacity to meet the standards of Section 4; *{30-A § 4404(10)}*
- 4.6.6 Flood Areas** If, based on the Federal Emergency Management Agency's National Flood Insurance Program Flood Insurance Rate Maps and information presented by the applicant, the Planning Board determines the subdivision, or any part of it, is in a flood-prone area, the subdivider has determine the 100 year flood elevation and flood hazard boundaries within the subdivision and has included a condition of plan approval requiring that structures in the subdivision will be constructed with their lowest floor, including the basement or opening, at least 1 foot above the 100 year flood elevation. For buildings this means the lowest floor, including the basement, or opening; *{30-A § 4404(13) and DEP §§ 15 B(3) & 16 (D)(8)}*
- 4.6.7 Ground Water** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water; *{30-A § 4404(12) and DEP § 16 (D)(2)}*
- 4.6.8 Historical Preservation** The proposed subdivision is consistent with the Maine Historic Preservation Commission comments if the proposed subdivision is in the Shoreland Overlay Zone and is on or adjacent to any archaeological site listed on, or eligible to be listed on, the National Register of Historic Places; *{DEP §§ 15 T & 16 D(6)}*
- 4.6.9 Large Scale Development** The division of large parcels of land shall be in accordance with the State of Maine Site Location of Development requirements of 38 §§ 481-490;
- 4.6.10 Maritime Activities** Will not adversely affect existing commercial fishing or maritime activities in the Maritime Commercial District; *{DEP § 16 D(7)}*
- 4.6.11 Municipal Services** All impacts on municipal facilities and services have been identified and specific plans for mitigation without cost to the service providers are satisfactory to them; *{30-A §§ 4404(3), (6) & (7)}*
- 4.6.12 Phosphorus Concentration** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a pond's phosphorus concentration during the construction phase and life of the proposed subdivision; *{30-A § 4404(18)}*
- 4.6.13 Pollution** The proposed subdivision will not result in undue water or air pollution. In making this determination, the Planning Board shall at least consider:
- A. The elevation of the land above sea level and its relation to the floodplains;
 - B. The nature of soils and sub soils and their ability to adequately support subsurface wastewater disposal;
 - C. The slope of the land and its effect on effluents;
 - D. The availability of streams for disposal of effluents; and
 - E. The applicable state and local health and water resource rules and regulations; *{30-A § 4404(1) and DEP § 16 (D)(2)}*
- 4.6.14 Safety and Health** Safe and healthful conditions will be maintained; *{DEP § 16 D(1)}*
- 4.6.15 Sanitation** The proposed subdivision will provide for adequate wastewater disposal and will not cause an unreasonable burden on municipal facilities and services if they are used; *{30-A § 4404(6) and DEP § 16 (D)(3)}*
- 4.6.16 Spaghetti-lots** If any lots in the proposed subdivision have shore frontage on a stream, outlet stream, great pond or coastal wetland, none of the lots created within the subdivision shall have a lot depth to shore frontage ratio greater than 5 to 1; *{30-A § 4404(17)}*
- 4.6.17 Streams** Any stream, outlet stream or tributary stream within or abutting the proposed subdivision that has been identified on any maps submitted as part of the application. Stream, outlet stream or tributary stream does not mean a ditch or other drainage way constructed and maintained solely for the purpose of draining storm water or a grassy swale; *{30-A § 4404(15) and 38 § 480-B(9)}*

4.6.18 Storm Water The proposed subdivision will provide for adequate storm water management; *{30-A § 4404(16)}*

4.6.19 Sufficient Water The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision; *{30-A § 4404(2)}*

4.6.20 Surface Waters Whenever situated entirely or partially within the watershed of any pond or within 250 feet of any great pond or wetland, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water; *{30-A § 4404(11)}*

4.6.21 Traffic The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed. If the proposed subdivision requires driveways or entrances onto a state or state aid highway, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to 23 § 704 and any rules adopted under that section; and *{30-A § 4404(5)}*

4.6.22 Wetlands All wetlands within the proposed subdivision have been identified on the Plat Plan, regardless of the size of these wetlands. Any mapping of wetlands may be done with the help of the local soil and water conservation district; *{30-A § 4404(14)}*

4.7 Prohibited Activities and Development

4.7.1 Development

4.7.1.1 Development in the following areas is prohibited and they shall be marked on all lots on the final plat, including residual areas that may be subdivided in the future.

4.7.1.1.1 Cluster Development is not permitted. *{DEP § 16 E}* [**Resource Protection Area**]²⁵

4.7.1.1.2 Endangered Species No subdivision or cluster development shall be allowed that will:

- A. Significantly alter any habitat the Commissioner of Inland Fisheries and Wildlife has identified as essential to the conservation of any threatened or endangered species; or
- B. Violate protection guidelines prepared by the Commissioner of Inland Fisheries and Wildlife for the protection of species designated as endangered or threatened.

{Department of Inland Fisheries and Wildlife Rule 09-137 Chapter 8}

4.7.1.1.2.1 A variance in connection with subdivisions or cluster developments affecting endangered species may be granted by the Board of Appeals 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. The Board of appeals shall hold a public hearing on the proposed action. *{Department of Inland Fisheries and Wildlife Rule 09-137 Chapter 8}*

4.7.1.1.3 Excessive Slope New development is not permitted on vacant lots that have sustained slopes in excess of 30%. *{38 § 488(5)(B)(6)}*

4.7.1.1.3.1 New development is not permitted on vacant lots that have sustained slopes in excess of 20%. *{DEP § 16 E(3)(a)}* [**Resource Protection Area**]

4.7.1.1.4 Subsurface Wastewater Disposal In no instance shall a disposal area be permitted on soils or on a lot that requires a New System Variance from the *Maine Subsurface Wastewater Disposal Rules*. *{Department of Health and Human Services 10-144 CMR 241}*

4.7.1.1.4.1 Subsurface wastewater disposal shall not be allowed for new or expanded uses if the property is subject to a sewer “Ready to serve” fee. [**Watershed Overlay Zone**]

4.7.1.1.5 Unstable Soil, Improper Drainage and Water Pollution No new land development, whether during or after construction, shall be located on soils in or upon which the proposed establishment or maintenance will cause adverse environmental impacts. Locations where new development is prohibited include areas of unstable soil subject to slumping, to mass soil movement, or where erosion cannot be controlled using Best Management Practices; and areas with improper drainage or water pollution.

4.7.1.2 Partial Subdivision. If the proposal is to subdivide only a portion of a parcel, the applicant

²⁵ **Resource Protection Area** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in this protection area within the Shoreland Overlay zone.

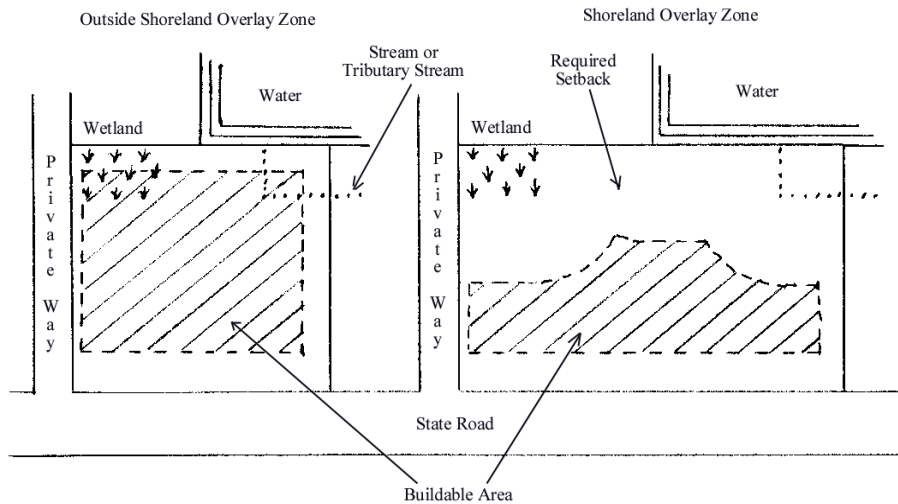
may impose permanent restrictions running with the land that prohibit or severely restrict development of a portion of the parcel as separate lots, and these restrictions are recorded at the Lincoln County Registry of Deeds, the identification of undevelopable areas are not required for lots so restricted.

4.7.2 Transfer of Ownership No person may sell or convey any land unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. The term “permanent marker” includes, but is not limited to, the following: a granite monument; a concrete monument, an iron pin, or a drill hole in ledge. {30-A § 4406(2)}

4.8 Measurement Definitions The following definitions from Section 6 are included here to help clarify what is allowed.

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

- A. The area included in the required setbacks;
- B. All wetlands in the Shoreland Overlay Zone;
- C. Areas with endangered species, excessive slopes, unstable soil, improper drainage or water pollution as prohibited in Sections 4.7.1;
- D. Land that is situated below the high-water line of any great pond, stream, outlet stream or freshwater wetland;
- E. Land that is part of a right-of-way, or easement, including utility easements; and
- F. Land that is located within the 100 year frequency flood plain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the applicant shows proof through the submittal of materials prepared by a Registered Land Surveyor that show that the property in question lies at least 2 feet above the 100 year flood level. The elevation of filled or manmade land shall not be considered. {38 § 440}



Distance The horizontal or vertical separation of two points.

High-water Line Same as normal high-water line.

Lot Area The area of land enclosed within the boundary lines of a lot, minus land below the high-water line of a great pond, stream, outlet stream or the upland edge of a wetland and minus areas beneath the right-of-way of roads serving more than two lots. Outside the Shoreland Overlay Zone land below the upland edge of a wetland is included. {DEP § 17}

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

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

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

Setback The required distance:

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

Shore Frontage The length of a lot bordering on a great pond, stream or coastal wetland measured in a straight line between the intersections of the lot lines with the shoreline. In the Shoreland Overlay Zone, Shore Frontage includes frontage on outlet streams and freshwater wetlands.

Shoreline

- A. The high-water line of ponds, streams, outlet streams and tributary streams;
- B. The upland edge of the maximum spring tide of coastal wetlands including salt marshes and salt meadows and all areas affected by tidal action; and
- C. The upland edge of saturated soil of freshwater wetlands including forested wetlands.

Wetland A Freshwater or Coastal Wetland

4.9 District Standards These standards are in addition to the Development and Performance Standards of Sections 4.10 and 4.11.

4.9.1 C1 District

4.9.1.1 Development and Performance Standards

4.9.1.1.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. *{30-A § 4404(17)}*

4.9.1.1.2 Frontage The minimum shore frontage on a great pond, stream, outlet stream or wetland shall be 200 feet. *{DEP § 15 A(1)}* [**Shoreland Overlay Zone**]

4.9.1.1.2.1 The minimum shore frontage per principal commercial, governmental, industrial, or institutional structure on a stream, outlet stream or wetland shall be 300 feet. *{DEP § 15 A(1)}*

4.9.1.1.3 Setbacks The Buildable Area shall be setback, from:

Lot Lines (side and rear)	40 feet	
The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.		
Private Way (closest edge of right-of-way)	8 feet	
Road (right-of-way center line)	State 100 feet	Town 33 feet
Shorelines	75 feet	<i>{DEP § 15 B(1)}</i> [Shoreland Overlay Zone]

In addition, the Buildable Area setback on lots bounded on at least 3 sides by water shall be 150 feet from the point of any peninsula.

4.9.1.1.4 Size The minimum size of a lot shall be 80,000 square feet.

4.9.1.1.5 Width The average distance between the side lot lines measured within the lot boundaries shall be 200 feet.

4.9.1.1.5.1 The minimum width of any portion of any lot within 100 feet of the high-water line of a stream, outlet stream or upland edge of a wetland shall be the same as the minimum Shore Frontage of Section 4.9.1.1.2. *{DEP § 15 A(4)}* [**Shoreland Overlay Zone**]

4.9.2 C2 District

4.9.2.1 Development and Performance Standards

4.9.2.1.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. {30-A § 4404(17)}

4.9.2.1.2 Frontage The minimum shore frontage in feet on a great pond, stream, outlet stream or wetland in feet shall be: {DEP § 15 A(1)} [**Shoreland Overlay Zone**]

USE/LOCATION	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area
Residential per dwelling unit			
Adjacent to tidal areas	150	150	150
Adjacent to non-tidal areas	200	200	200
USE/LOCATION	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area
Governmental, Institutional, Commercial or Industrial per principal structure			
Adjacent to tidal areas	200	200	200
Adjacent to non-tidal areas	300	300	300
Public and Private Recreational Facilities	200	200	200

4.9.2.1.3 Setbacks The Buildable Area shall be setback from:

Lot Lines (side and rear) 20 feet

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way) 8 feet

Road (right-of-way center line) State 50 feet Town 33 feet

Shorelines 75 feet {DEP § 15 B(1)} [**Shoreland Overlay Zone**]

In addition, the Buildable Area setback on lots bounded on at least 3 sides by water shall be 150 feet from the point of any peninsula.

4.9.2.1.4 Size The minimum size of a lot in square feet shall be:

Outside Overlay area	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area	Watershed Overlay Zone
40,000	60,000	80,000	60,000	40,000

4.9.2.1.5 Width The average distance in feet between the side lot lines measured within the lot boundaries shall be:

Outside Overlay area	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area	Watershed Overlay Zone
100	100	150	150	100

4.9.2.1.5.1 The minimum width of any portion of any lot within 100 feet of the high-water line of a stream, outlet stream or upland edge of a wetland shall be the same as the

minimum Shore Frontage of Section 4.9.2.1.2. *{DEP § 15 A(4)}* [**Shoreland Overlay Zone**]

4.9.3 C3 District

4.9.3.1 Development and Performance Standards

4.9.3.1.1 Configuration The depth-to-width ratio and the width-to-depth ratio shall not exceed 5 to 1.

4.9.3.1.2 Setbacks The Buildable Area shall be setback from:

Lot Lines (side and rear) 20 feet

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way) 8 feet

Road (right-of-way center line) State 50 feet Town 33 feet

4.9.3.1.3 Size The minimum size of a lot shall be 40,000 square feet.

4.9.3.1.4 Width The average distance between the side lot lines measured within the lot boundaries shall be 100 feet.

4.9.4 General Residential District

4.9.4.1 Development and Performance Standards

4.9.4.1.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. *{30-A § 4404(17)}*

4.9.4.1.2 Frontage The minimum shore frontage on a great pond, stream, outlet stream or wetland in feet shall be: *{DEP § 15 A(1)}* [**Shoreland Overlay Zone**]

USE/LOCATION	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area
Residential per dwelling unit			
Adjacent to tidal areas	150	150	150
Adjacent to non-tidal areas	200	200	200
Governmental, Institutional, Commercial or Industrial per principal structure			
Adjacent to tidal areas	200	200	200
Adjacent to non-tidal areas	300	300	300
Public and Private Recreational Facilities	200	200	200

4.9.4.1.3 Setbacks The Buildable Area shall be setback from:

Lot Lines (side and rear) 20 feet

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way) 8 feet

Road (right-of-way center line) State 50 feet Town 33 feet

Shorelines

Great ponds and associated wetlands 100 feet *{DEP § 15 B(1)}* [**Shoreland Overlay Zone**]

Other shorelines 75 feet {DEP § 15 B(1)} [**Resource Protection Area, Stream Protection Area**]

In addition, the Buildable Area setback on lots bounded on at least 3 sides by water shall be 150 feet from the point of any peninsula. [**Shoreland Overlay Zone**]

4.9.4.1.4 Size The minimum size of a lot in square feet shall be:

Outside Overlay area	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area	Watershed Overlay Zone
40,000	60,000	80,000	60,000	40,000

4.9.4.1.5 Width The average distance in feet between the side lot lines measured within the lot boundaries shall be:

Outside Overlay area	Shoreland Overlay Zone	Resource Protection Area	Stream Protection Area	Watershed Overlay Zone
100	100	150	150	100

4.9.4.1.5.1 The minimum width of any portion of any lot within 100 feet of the high-water line of a great pond, stream, outlet stream or upland edge of a wetland shall be the same as the minimum Shore Frontage of Section 4.9.4.1.2. {DEP § 15 A(4)} [**Shoreland Overlay Zone**]

4.9.5 Industrial Park District

4.9.5.1 Development and Performance Standards

4.9.5.1.1 Access shall be via Industrial Park Road.

4.9.5.1.2 Configuration The depth-to-width ratio and the width-to-depth ratio shall not exceed 5 to 1.

4.9.5.1.3 Residential Dwellings Residential dwelling shall be allowed on lots not part of the Industrial Park Subdivision approved on August 20, 1991. Lots as they exist in the Boothbay Tax Assessors records as of November 6, 2007 shall, if they include any new residential development after this date, be developed in accordance with the standards of Section 3.9.2 for the C2 District. Access for such lots shall not be via Industrial Park Road.

4.9.5.1.4 Setbacks The Buildable Area shall be setback from:

Lot Lines (side and rear)	10 feet
	20 feet abutting existing and approved residential dwellings

The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.

Private Way (closest edge of right-of-way)	8 feet
Road (right-of-way center line)	State 50 feet Town 8 feet

4.9.5.1.5 Size Lots of a minimum of 20,000 square feet are permitted with public water and public sewer. All other lots shall have a minimum of 40,000 square feet.

4.9.5.1.6 Subsurface Wastewater Disposal shall not be allowed for new or expanded uses if the property is subject to a sewer “Ready to serve” fee.

4.9.5.1.7 Width The average distance in feet between the side lot lines measured within the lot boundaries shall be 50 feet for lots less than 40,000 square feet and 100 feet for all other lots.

4.9.6 Maritime Commercial District

4.9.6.1 Development and Performance Standards

4.9.6.1.1 Clearing of Vegetation for Activities other than Timber Harvesting The limitation of Section 4.10.3.2.2.2 on the size of a cleared opening shall not apply. {DEP §15 P(3)}

4.9.6.1.2 Configuration The depth-to-width ratio or the depth-to-shore frontage on a pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. {30-A § 4404(17)}

4.9.6.1.3 Frontage The minimum shore frontage shall be 200 feet. {DEP §15 A(1)}

4.9.6.1.4 Setbacks The Buildable Area shall be setback from:

- Lot Lines (side and rear) 10 feet
- The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.
- Private Way (closest edge of right-of-way) 8 feet
- Road (right-of-way center line) State 50 feet Town 33 feet
- Shorelines No setback required. {DEP § 15 B(1)} [Shoreland Overlay Zone]

4.9.6.1.5 Size The minimum size of a lot in square feet shall be 40,000 square feet.

4.9.6.1.6 Width The average distance between the side lot lines measured within the lot boundaries shall be 100 feet.

4.9.6.1.6.1 The minimum width of any portion of any lot within 100 feet of the upland edge of a wetland shall be 200 feet. {DEP § 15 A(4)} [Shoreland Overlay Zone]

4.9.7 Special Residential District

4.9.7.1 Development and Performance Standards

4.9.7.1.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. {30-A § 4404(17)}

4.9.7.1.2 Frontage The minimum shore frontage on a great pond, stream, outlet stream or wetland in feet shall be: {DEP § 15 A(1)} [Shoreland Overlay Zone]

USE/LOCATION	Shoreland Overlay Zone	Stream Protection Area
Residential per dwelling unit		
Adjacent to tidal areas	150	150
Adjacent to non-tidal areas	200	200
Governmental, Institutional, Commercial or Industrial per principal structure		
Adjacent to tidal areas	200	200
Adjacent to non-tidal areas	300	300
Public and Private Recreational Facilities	200	200

4.9.7.1.3 Setbacks The Buildable Area shall be setback from:

- Lot Lines (side and rear) 20 feet
- The setback requirements from lot lines shall not apply to subsurface wastewater disposal systems.
- Private Way (closest edge of right-of-way) 8 feet
- Road (right-of-way center line) State 50 feet Town 33 feet
- Shorelines 75 feet {DEP § 15 B(1)} [Shoreland Overlay Zone, Stream Protection Area]

Shorelines 75 feet {DEP § 15 B(1)} [**Shoreland Overlay Zone**]

In addition, the Buildable Area setback on lots bounded on at least 3 sides by water shall be 150 feet from the point of any peninsula. [**Shoreland Overlay Zone**]

4.9.8.1.4 Size Lots with a minimum of 20,000 square feet are permitted outside the Shoreland Overlay Zone if connection to public water and public sewer is required. All other lots shall have a minimum of 40,000 square feet.

4.9.8.1.4.1 In the Shoreland Overlay zone lots shall be a minimum of 60,000 square feet. [**Shoreland Overlay Zone**]

4.9.8.1.5 Width The average distance between the side lot lines measured within the lot boundaries shall be 100 feet.

4.9.8.1.5.1 The minimum width of any portion of any lot within 100 feet of the upland edge of a wetland shall be the same as the minimum Shore Frontage of Section 4.9.8.1.2. {DEP § 15 A(4)} [**Shoreland Overlay Zone**]

4.9.9 Water Reservoirs Protection District

4.9.9.1 Prohibited Development

4.9.9.1.1 On vacant lots with no principal structure, new development is not permitted on sites with sustained slopes in excess of 20%.

4.9.9.1.2 Subsurface wastewater disposal shall not be permitted for new or expanded uses if the property is subject to a sewer “Ready to serve” fee.

4.9.9.1.3 Cluster development is not permitted.

4.9.9.2 Development and Performance Standards

4.9.9.2.1 Buffers, Water Supply Protection A water supply protection buffer shall be designed and maintained in accordance with the standards of Section 4.10.1.

4.9.9.2.2 Clearing or Removal of Vegetation for Activities other than Timber Harvesting There shall be no cutting or removal of vegetation within the strip of land extending 75 feet inland from the high-water line of a great pond and associated wetlands, except to remove safety hazards specifically identified and marked by a Maine licensed forester. {38 § 439-A(6) and DEP §§ 15 O((1)(a)(v) & P(2))}

4.9.9.2.2.1 At distances greater than 100 feet from the shoreline of a great pond and 75 feet from any other shoreline, there shall be allowed on any lot, in any 10 year period, selective cutting of not more than 40% of the volume of trees 4 inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. {DEP § 15 P(3)}

4.9.9.2.2.1.1 The cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized and for the removal of safety hazards specifically identified and marked by a Maine licensed forester. {DEP §§ 15 O((1)(a)(v) & P(1))}

4.9.9.2.3 Lots

4.9.9.2.3.1 Configuration The depth-to-width ratio or the depth-to-shore frontage on a pond, stream or coastal wetland ratio and the width-to-depth ratio shall not exceed 5 to 1. {30-A § 4404(17)}

4.9.10.1.5 Size The minimum size of a lot shall be 80,000 square feet.

4.9.10.1.6 Width The average distance between the side lot lines measured within the lot boundaries shall be 150 feet.

4.9.10.1.6.1 The minimum width of any portion of any lot within 100 feet of the high-water line of a stream, outlet stream or upland edge of a wetland shall be the same as the minimum Shore Frontage of Section 4.9.10.1.3. *{DEP § 15 A(4)}* [**Shoreland Overlay Zone**]

4.10 Development and Performance Standards

See Section 4.11 for additional standards for cluster developments.

4.10.1 Buffers, Water Supply Protection A water supply protection buffer shall be designed and maintained in accordance with the following standards. [**Watershed Overlay Zone**]

4.10.1.1 Water supply protection buffers for the subdivision of 5 or fewer lots that do not involve the construction of new roads or expansion of existing roads shall, to the maximum practical extent given lot limitations, be on the down slope from developed areas and located so that as much as feasible runoff from any developed area drains to the buffer in overland, unchanneled, flow.

4.10.1.1.1 Wooded buffers shall be 75 feet in width. Non-wooded buffers shall be 125 feet in width.

4.10.1.1.1.1 The width of the buffer may be reduced if not doing so would restrict the Developable Area to less than the 20% of the Buildable Area allowed. [**Shoreland Overlay Zone**]

4.10.1.1.2 Buffer areas are not required if the per acre phosphorus load limit for the impacted great pond or stream can be met by other approved means.

4.10.1.2 Roads and driveways 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 50 feet, plus two times the average slope, in width between the outflow point of any ditch or culvert and a shoreline. *{DEP § 15 H(7)}*

4.10.1.2.1 As an example, if the average slope between the shoreline and the proposed road is 30%, then the road setback at that location would be 50 feet plus 2 times 30 feet or 110 feet. *{Rich Baker e-mail 2/21/2007}*

4.10.1.2.2 Best Management Practices including swales, ditch turnouts, water bars, broad based drainage dips shall be used. Gravel driveways shall be graded to prevent runoff from concentrating in the road or driveway.

4.10.1.3 Water supply protection buffers for all development not included in Section 4.10.1.1 shall be in accordance with the latest Department of Environmental Protection approved methods.

4.10.1.4 The buffer shall be shown on all subdivision plats filed with the Lincoln County Registry of Deeds. All deeds shall reference the filed plan or subdivision plat.

4.10.2 Chemical and Petroleum Product Storage No chemical, herbicide, pesticide, fertilizer, gasoline, petroleum, or kerosene products or by-products shall be stored within 150 feet from any high-water line or upland edge of a wetland.

4.10.3 Clearing or Removal of Vegetation for Activities other than Timber Harvesting *{DEP § 15 P}*

4.10.3.1 General All clearing of trees shall be in accordance with the Best Management Practices. Ground water runoff buffers as required in Section 4.10.1 shall be maintained.

4.10.3.2 Shoreland Overlay Zone and Watershed Overlay Zone

4.10.3.2.1 Except to allow for the development of permitted uses and the removal of safety hazards specifically identified and marked by a Maine licensed forester, a buffer strip of vegetation shall be preserved within a strip of land extending 100 feet from the shoreline of a great pond and 75 feet from any other shoreline, as follows: *{38 § 439-A(6) and DEP §§ 15 O((1)(a)(v) P(2)}*

4.10.3.2.1.1 There shall be no cleared opening or openings greater than 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.

4.10.3.2.1.2 Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained.

4.10.3.2.1.2.1 A “well-distributed stand of trees” adjacent to a great pond or a stream flowing to a great pond shall be defined as maintaining a rating score of 24 or more in each 25 foot by 50 foot rectangular (1,250 square feet) area as determined by the following rating system:

Diameter of tree at 4½ feet above ground level (inches)	<u>Points</u>
2 – <4 inches	1
4 – <8 inches	2
8 – <12 inches	4
12 in. or greater	8

4.10.3.2.1.2.1.1 Adjacent to other streams, outlet streams, tributary streams, and wetlands maintaining a “well-distributed strand of trees” is defined as having a minimum rating score of 16 per 25 foot by 50 foot rectangular area.

4.10.3.2.1.2.1.2 As an example, adjacent to a great pond and associated wetlands, if a 25 foot by 50 foot plot contains 4 trees between 2 and 4 inches in diameter, 2 trees between 4 and 8 inches in diameter, 3 trees between 8 and 12 inches in diameter, and 2 trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

4.10.3.2.1.2.1.2.1 Thus, the 25 foot by 50 foot plot contains trees worth 36 points. Trees totaling 12 points (36- 24 =12) may be removed from the plot provided than no clear openings are created.

4.10.3.2.1.2.1.3 The following shall govern in applying this point system:

- A. The 25 foot by 50 foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer.
- B. Each successive plot must be adjacent to, but not overlap a previous plot.
- C. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance.
- D. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance.
- E. Where conditions permit, no more than 50% of the points on any 25 foot by 50 foot rectangular area may consist of trees greater than 12 inches in diameter.

4.10.3.2.1.2.2 Maintaining “other natural vegetation” is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4 ½ feet above ground level for each 25 foot by 50 foot rectangle area. If 5 saplings do not exist, no woody stems less than 2 inches in diameter can be removed until 5 saplings have been recruited into the plot.

4.10.3.2.1.3 In order to protect water quality and wildlife habitat existing vegetation under 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 Sections 4.10.3.2.1 and 4.10.3.2.1.1.

4.10.3.2.1.4 Pruning of tree branches on the bottom one-third of the tree is allowed.

4.10.3.2.1.5 In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

4.10.3.2.1.6 There shall be no cutting or removal of vegetation within the strip of land extending 75 feet inland from the high-water line of a great pond and associated wetlands, except to remove safety hazards specifically identified and marked by a Maine licensed forester. {38 § 439-A(6B) and DEP §§ 15 O((1)(a)(v) & P(1)} [**Resource**

Protection Area]

4.10.3.2.2 At distances greater than 100 feet from the shoreline of a great pond and 75 feet from any other shoreline there shall be allowed on any lot in any 10 year period selective cutting of not more than 40% of the volume of trees 4 inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. *{DEP § 15 P(2)}* [**Shoreland Overlay Zone**]

4.10.3.2.2.1 The cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized and for the removal of safety hazards specifically identified and marked by a Maine licensed forester. *{DEP §§ 15 O((1)(a)(v) P(1)}* [**Resource Protection Area**]

4.10.3.2.2.2 In no event shall cleared openings in the portion of a lot within the Shoreland Overlay Zone for any purpose, including but not limited to, principal and accessory structures, driveways and wastewater disposal areas, exceed in the aggregate, 25% of the lot area within the Shoreland Overlay Zone, or 10,000 square feet, whichever is greater, including land previously cleared. *{DEP § 15 P(2)}*

4.10.3.2.3 Clearing or removal of woody vegetation necessary for a new subsurface wastewater disposal system and any associated fill extensions shall not extend closer than 75 feet from the high-water line of a great pond, stream, outlet stream or the upland edge of a wetland. *{DEP § 15 K}*

4.10.3.2.4 Legally existing nonconforming cleared openings on March 24, 1990 may be maintained, but shall not be enlarged, except as allowed by Section 4.10.3.2.

4.10.3.2.5 Fields and other cleared openings that have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 4.10.3.

4.10.4 Cuts and Fills The top of a cut or bottom of a fill section shall not be closer than 10 feet to an adjoining property, unless otherwise approved by the Planning Board.

4.10.4.1 Except in a ledge cut, cuts and fills shall be no steeper than a slope of 2 1/2 feet horizontal to 1 foot vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 4.10.6. Where a cut results in exposed ledge, side slopes no steeper than 4 feet vertical to 1 foot horizontal are permitted. *{DEP §15 H(5)}*

4.10.4.2 There shall be no filling, dredging, or grading within 100 feet of the high-water line. [**Resource Protection Area**]

4.10.5 Development next to Registered Farmland The following uses shall be set back 100 feet from registered farmland, land that is held in common ownership with registered farmland or that is being considered for registration under 7 M.R.S.A.: *{7 § 52(1)}*:

- A. Commercial Food Establishments dispensing or selling food; *{7 §§ 52 & 56}*
- B. Residential Buildings; and *{7 §§ 52 & 56}*
- C. School buildings and any playgrounds, athletic fields or other school facilities designed for use by children in the vicinity of school buildings. *{7 §§ 52 & 56}*
- D. Private wells and drinking water springs. *{7 §§ 52 & 56}*

4.10.5.1 A waiver permitting subdivision of land for residential purposes may be granted if adherence renders a parcel of land subdivided prior to registration of the farmland unusable for residential purposes. Any waiver granted for such a purpose shall be conditioned to provide the maximum feasible setback from the abutting registered farmland. *{7 §§ 52, 56 & 57}*

4.10.5.2 The setback requirement from registered farmland shall not apply for developments or uses exempted in 7 §§ 52 & 56.

4.10.6 Erosion and Sedimentation Controls *{38 § 420-C}*

4.10.6.1 Subdivisions that displace or expose soil or other earthen material, including, but not limited to, clearing or removal of vegetation and construction activity which involve filling, grading, excavation or other similar activities shall use Best Management Practices to minimize the amount of exposed soil at every phase of construction and to minimize the erosion of soil and the sedimentation and phosphorus buildup of watercourses and water bodies. Erosion control measures must be installed before the activity begins, be maintained, kept in place and functional

until the site is permanently stabilized. {DEP § 15 Q(3)}

4.10.6.2 In order to create the least potential for erosion and the sedimentation and phosphorus buildup of watercourses and water bodies, 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 feasible, and natural contours shall be followed as closely as feasible. {DEP § 15 Q(2)}

4.10.6.3 Any proposal to fill, displace or expose soil or other earthen material shall require a site specific Erosion and Sedimentation Control Plan developed in accordance with the *Maine Erosion and Sediment Control BMPS* of the Bureau of Land and Water Quality, Maine Department of Environmental Protection. {Bureau of Land and Water Quality, Maine Department of Environmental Protection and DEP § 15 Q(1)}

4.10.7 Essential Services Where public water or sewer could be extended to the subdivision in the foreseeable future, the subdivision shall be designed to accommodate the extensions of utilities.

4.10.8 Junkyards shall be set back 100 feet from the edge of the surface of a public road, 75 feet from all side and rear lot lines, 150 feet from all shorelines, 300 feet from any public building, public park, public playground, public bathing beach, school, church or cemetery, and 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 abutting residence).

4.10.9 Large Scale Development The division of a parcel of land including any residual lot that exceeds 30 acres into 15 or more lots for one family, detached, residential dwellings to be offered for sale or lease to the general public within any 5-year period shall require:

- A. Approval under the Site Location of Development regulations of 38 §§ 481 – 490, or
- B. The set aside of 50% of the developable land as open space contiguous with the subdivision in accordance with 38 § 488;

4.10.10 Lots

4.10.10.1 Configuration Subdivisions shall be designed so as to prevent “land-locked” properties.

4.10.10.1.1 Lot configuration and area shall be designed to provide for adequate off street parking and service facilities based upon the type of development contemplated.

4.10.10.1.2 Lots with multiple frontages are to be avoided whenever feasible. When lots do have frontage on two or more right-of-ways, the plan and deed restrictions shall indicate that vehicular access and egress shall be located on the less-traveled way. This requirement shall be noted on the Plat Plan and in the deed of any lot with multiple frontages.

4.10.10.1.2.1 The Planning Board may approve variations from this requirement.

4.10.10.1.3 No residential lot may have vehicular access or egress directly from or onto an arterial highway. This requirement shall be noted on the Plat Plan and in the deed of any lot with frontage on an arterial highway.

4.10.10.1.4 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.

4.10.10.1.5 Wherever feasible, side lot lines shall be perpendicular to the road.

4.10.10.1.6 Whenever feasible, lot lines should follow existing rock walls.

4.10.10.2 Size

4.10.10.2.1 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. {30-A § 4401(6) and DEP § 15 A(3)}

4.10.10.2.2 Land beneath roads serving more than two lots shall not be included towards calculating minimum lot area. {DEP § 15 A(2)}

4.10.10.2.3 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. {DEP § 15 A(2)} [**Shoreland Overlay Zone**]

4.10.11 Open Space

4.10.11.1 Subdivisions shall maintain Open Spaces and Natural or Historic Features as follows:

4.10.11.1.1 Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended.

4.10.11.1.2 The Planning Board may require that the development plans include a landscape plan that will show the placement of trees and vegetation, graded contours, streams, outlet streams and tributary streams as well as the preservation of scenic, historic or environmentally significant areas.

4.10.11.1.3 If the proposed subdivision contains any identified historical or archaeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program (Title 12 Chapter 201-A) as rare and irreplaceable natural areas, these areas shall be included in the open space, and suitably protected by appropriate covenants and management plans.

4.10.11.1.4 Any public right of access shall be maintained by means of easements or rights-of-way, or shall be included in the open space with provisions made for continued public access. *{38 § 440-A}*

4.10.11.2 The dedication and maintenance of common open space, including open space required by Cluster and Large Scale developments, and services shall be as follows:

4.10.11.2.1 Common land, facilities and property shall be owned jointly or in common by the owners of the dwelling units by means of a homeowners association, or by an association that has as its principal purpose the conservation or preservation of land in essentially its natural condition.

4.10.11.2.2 Further subdivision of the common land or its use for other than non-commercial recreation or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures accessory to non-commercial recreational or conservation uses may be erected on the common land.

4.10.11.2.3 The homeowners association shall have the responsibility of maintaining the common property or facilities.

4.10.11.2.4 The subdivider shall maintain control of the common property and be responsible for its maintenance until development sufficient to support the association has taken place.

4.10.12 Roads Section 4.10.12 shall apply to all roads within subdivisions, and shall control the roadway, shoulders, curbs, sidewalks, culverts, drainage system and other appurtenances. In addition, it shall apply to any improvement or modification of a road external to the subdivision as may be required. Road construction shall conform to good engineering practices and be suitable for the intended usage of the road. It shall also apply to driveways where specifically noted. *{DEP § 15 H}*

4.10.12.1 General

4.10.12.1.1 Approval of the final plan 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.

4.10.12.1.2 Detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed roads shall be required.

4.10.12.1.3 Subdivision roads shall be designed so as not to create through or "short cut" travel paths within the subdivision or within abutting residential areas.

4.10.12.1.4 Dead End Roads are discouraged.

4.10.12.1.5 New roads and driveways are prohibited except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the area. A road or driveway may also be approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the area. When a road or driveway is permitted, the road or driveway shall be set back as far as feasible from all shorelines. *{DEP § 15 H(4)}* [Resource Protection Area]

4.10.12.1.5.1 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.

4.10.12.1.6 The Planning Board, upon recommendation of the Road Commissioner, may approve variations from the requirements of Section 4.10.12.

4.10.12.2 Access Standards Provision shall be made for vehicular access to the subdivision in such a manner as to safeguard against hazards to traffic on, and pedestrians in, existing roads and within the subdivision, to avoid traffic congestion on any road, and to provide safe and convenient circulation on public roads and within the subdivision.

4.10.12.2.1 The vehicular access to the subdivision shall be arranged to minimize traffic use of existing local residential roads.

4.10.12.2.2 Existing or proposed public or private roads giving access to the subdivision shall meet the subdivision design standards and specifications for roads within the subdivision. The subdivider shall cause these roads to be brought into compliance with such standards and specification, meeting the requirements of Section 4.10.12.

4.10.12.2.3 Where necessary to safeguard against hazards to traffic and pedestrians or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, and traffic controls within existing and proposed public roads.

4.10.12.2.4 For any proposed subdivision that abuts or is in Boothbay Harbor or Edgecomb, the proposed subdivision shall not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in Boothbay Harbor or Edgecomb.

4.10.12.2.5 Subdivisions with frontage on state numbered highways shall be designed with a limited number of access points to and from the highway.

4.10.12.3 Drainage Standards Good drainage must be provided for all new or rebuilt roads.

4.10.12.3.1 Road and driveway surface drainage shall be directed to an unscarified buffer strip and shall be diffused to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip. *{DEP § 15 H(7)}* [**Shoreland Overlay Zone, Watershed Overlay Zone**]

4.10.12.3.1.1 The unscarified buffer strip shall be at least 50 feet, plus two times the average slope, in width between the outflow point of the ditch or culvert and a shoreline. *{DEP § 15 H(7)}*

4.10.12.3.1.1.1 As an example, if the average slope between the shoreline and the proposed road is 30%, then the road setback at that location would be 50 feet plus 2 times 30 feet or 110 feet. *{Rich Baker e-mail 2/21/2007}*

4.10.12.3.2 If ditches are to be used for drainage, they shall be designed using Best Management Practices and shall blend with the terrain of the land.

4.10.12.3.3 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: *{DEP § 15 H(8)}* [**Shoreland Overlay Zone, Watershed Overlay Zone**]

4.10.12.3.3.1 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:

<u>Grade (Percent)</u>	<u>Spacing (Feet)</u>
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

4.10.12.3.3.2 Drainage dips may be used in place of ditch relief culverts only where the grade does not exceed 10%.

4.10.12.3.3.3 On sections having slopes greater than 10%, ditch relief culverts shall be placed at approximately a 30 degree angle down slope from a line perpendicular to the centerline of the road or driveway.

4.10.12.3.3.4 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.

4.10.12.3.4 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. *{DEP § 15 H(9)}*

4.10.12.3.4.1 A permit is not required for the replacement of an existing road culvert as long as:

- A. The replacement culvert is not more than 25% longer than the culvert being replaced;
- B. The replacement culvert is not longer than 75 feet; and
- C. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse. *{DEP 16 § B(1)}*

4.10.12.4 Location Standards Roads shall be located so as to avoid wetlands and rare species where feasible and to minimize the need for cuts and fills.

4.10.12.4.1 Roads shall be set back at least 100 feet from the shoreline of a great pond and 75 feet from any other shorelines unless no reasonable alternative exists as determined by the Planning Board. *{DEP § 15 H(1)}*

4.10.12.4.1.1 If no other reasonable alternative exists, the road setback requirement shall be no less than 50 feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the great pond, stream, outlet stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the great pond, stream, outlet stream or wetland.

4.10.12.4.1.2 On slopes of greater than 20% the road setback shall be increased by 10 feet for each 5% increase in slope above 20%.

4.10.12.4.1.3 The setback requirements of Section 4.10.12.4 shall not apply to approaches to water crossings, or to roads that provide access to permitted structures and facilities located nearer to the shoreline due to an operational necessity. Roads providing access to permitted structures within the setback area shall comply fully with the requirements of Section 4.10.12.4 except for that portion of the road necessary for direct access to the structure.

4.10.12.4.2 Road grades shall be not greater than 10% except for segments of less than 200 feet. *{DEP § 15 H(6)}*

4.10.12.4.3 Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a shoreline. *{DEP § 15 H(2)}*

4.10.12.5 Road Standards

4.10.12.5.1 General

4.10.12.5.1.1 The center line of the roadway shall be the center line of the right-of-way.

4.10.12.5.1.2 Roads shall be constructed to their full width and length as shown on the Plat 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.

4.10.12.5.2 Emergency Vehicle Access A turnaround area on new roads and driveways shall be provided for emergency vehicles approximately every 500 feet. The turnaround area shall meet the standards for new roads. The location(s) and design(s) of the turnaround area(s) shall be agreed to by the Fire Chief.

4.10.12.5.2.1 New roads and driveways that are an extension of an approved road or whose end is more than 200 feet from an existing cross road, shall provide a turnaround area at the end of the road or driveway. If it is feasible that the new road could be extended in the future, the Plat Plan shall indicate the portion(s) of the turnaround area beyond the required road Right-of-Way that shall revert to the abutting properties.

4.10.12.5.3 Intersections Where new road intersections are proposed, they shall be designed in profile, grading, and location to provide the following minimum sight distance, measured in each direction. There are two steps in determining minimum sight distance. First, establishing the point from which the sight distance will be measured; second, measuring the sight distance from that point. Each is described below:

Step 1: The measurement point shall be at least 5 feet behind the curb line or edge of shoulder and 3 1/2 feet above the road surface.

Step 2: From this measurement point an object in the center of the outside travel lane of the roadway 4 1/2 feet above the pavement must be able to be seen at a distance determined by the legal speed limit of the roadway. This distance in feet is 10 times the legal speed limit.

4.10.12.5.3.1 The minimum site distance shall be 100 feet. The Planning Board may allow a shorter distance if the subdivider can show that no alternative exists.

4.10.12.5.3.2 Where necessary, corner lots shall be cleared of all growth and sight obstructions and, if necessary, the ground excavated to achieve the required visibility.

4.10.12.5.3.2.1 The limitations on clearing or removal of vegetation in Section 4.10.3 shall apply {DEP § 15 P} [Shoreland Overlay Zone, Watershed Overlay Zone]

4.10.12.5.4 Pavement

4.10.12.5.4.1 Minimum standards for the base layer of pavement shall be the Maine Department of Transportation specifications for plant mix grade B hot bituminous with an aggregate size no more than 1 inch maximum with the minimum thickness after compaction of 2 inches.

4.10.12.5.4.2 Minimum standards for the surface layer of pavement shall meet the Maine Department of Transportation specifications for plant mix grade C hot bituminous with an aggregate size no more than 3/4 inch maximum with the minimum thickness after compaction of 1 1/2 inches.

4.10.12.5.4.3 Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint.

4.10.12.5.5 Preparation

4.10.12.5.5.1 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 50 foot intervals.

4.10.12.5.5.2 Organic materials, soils not suitable for roadways, rocks and boulders shall be removed to a depth of 2 feet below the subgrade of the roadway and replaced with material meeting the specifications for gravel aggregate sub-base.

4.10.12.5.5.3 Except in a ledge cut, road banks shall be no steeper than a slope of 2 1/2 feet

horizontal to 1 foot vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 4.10.6. Where a cut results in exposed ledge, side slopes no steeper than 4 feet vertical to 1 foot horizontal are permitted. {DEP §15 H(5)}

4.10.12.5.5.4 Sub-base and Base Course

4.10.12.5.5.4.1 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 24 inches. The gradation of the part that passes a 3 inch square mesh sieve shall contain no particles of rock exceeding 4 inches in any dimension.

4.10.12.5.5.4.2 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 4 inches. The gradation of the part that passes a 3 inch square mesh sieve shall contain no particles of rock exceeding 2 inches in any dimension.

4.10.12.5.5.5 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.

4.10.12.5.6 Size In determining the required pavement width for subdivisions proposing to develop only a portion of the parcel, the minimum width shall be calculated using the maximum number of lots that could be created from the parcel, unless the applicant imposes permanent restrictions running with the land, recorded at the Lincoln County Registry of Deeds, that prohibit or severely restricts development of a portion of the parcel as separate lots. The maximum number of lots shall be determined by dividing the size of the parcel (less any land area permanently restricted as set forth herein) by the minimum required lot size in each of the Zoning Districts or Overlay Zones or Areas in which the parcel is located.

4.10.12.5.6.1 The following standards apply to Private roads:

Minimum Right-of-Way Width		50 feet
Minimum Pavement Width	Access for 1 – 5 lots	16 feet
	Access for 6 – 9 lots	18 feet
	Access for 10 or more lots	20 feet
Roadway Crown		¼ inch per foot
Minimum width of shoulders (each side)		3 feet

4.10.12.5.6.2 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

4.10.13 Roadside Trees and Walls

4.10.13.1 Because roadside trees are extremely important to the character of Boothbay, removal of trees shall be minimized, especially along public ways. Shifting the site of the building or the entrance or exit drive can usually lessen removal of existing trees.

4.10.13.2 Where stone walls exist, care shall be taken to disturb these as little as possible since they also act to retain the character of country roads.

4.10.14 Sanitation

4.10.14.1 General

4.10.14.1.1 Proposed uses requiring subsurface wastewater disposal, and commercial or industrial development and other similarly intensive land uses shall require a soils report prepared by a state-certified professional based on an on site investigation. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation and presence of ledge, drainage conditions, and other pertinent data

that the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist. {38 § 439-A(3) and DEP § 15 R}

4.10.14.1.1.1 On lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be required as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.

4.10.14.1.1.2 The Planning Board reserves the right to require that more than one test sample be provided for determining the ability of the land to support adequate wastewater disposal.

4.10.14.1.1.3 A soils report for the property to be subdivided that was previously prepared and submitted in connection with an approved subdivision and filed with the Lincoln County Registry of Deeds shall satisfy this requirement.

4.10.14.1.2 Subsurface wastewater disposal systems shall not be installed on sites having an original ground slope greater than 20%.

4.10.14.1.3 No wastewater treatment facility, which services more than one dwelling unit, shall be approved unless such facility is owned jointly by the owners of each dwelling unit.

4.10.14.2 Setbacks The minimum setback for new subsurface wastewater disposal systems shall comply with the *Maine Subsurface Wastewater Disposal Rules*, shall not be reduced by waiver, and be no less than 100 feet from the high-water line of a perennial great pond or stream. {Department of Health and Human Services 10-144 CMR 241 and DEP § 15 K Note}

4.10.14.2.1 The minimum setback from the high-water line of a great pond or stream shall be no less than 200 feet. [Resource Protection Area]

4.10.14.2.2 The minimum setback for new subsurface wastewater disposal systems shall be no less than 100 feet from wells.

4.10.14.2.3 Side and rear yard setback requirements shall not apply to subsurface wastewater disposal systems except for commercial development next to existing or approved residential uses where a visual barrier shall be required. See Section 3.10.7.

4.10.15 Soil Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.

4.10.16 Storm Water Runoff Control

4.10.16.1 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. {38 §420-C and DEP § 15 J}

4.10.16.2 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, and shall be stabilized with vegetation or lined with riprap. {38 § 420-C and DEP § 15 Q(5)}

4.10.16.2.1 Subdividers shall submit to the Planning Board, as part of the final plan, detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed storm water management systems.

4.10.16.3 Storm water runoff control systems shall be maintained as necessary to ensure proper functioning. {DEP § 15 J}

4.10.17 Structures

4.10.17.1 All 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.

4.10.17.2 The lowest floor elevation or openings of all structures, including basements, shall be elevated at least 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. *{30-A § 4404(13), 38 § 440 and DEP § 15 B(3)}*

4.10.17.2.1 The subdivider shall provide evidence that the development will not increase the 100-year flood elevation. *{38 § 440}*

4.10.18 Water Quality

4.10.18.1 No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of a great pond, stream, outlet stream or wetland. *{30-A § 4404(12) and DEP § S}*

4.10.18.2 Ground water quality shall be assessed with the projection based on the assumption of drought conditions assuming 60% of annual average precipitation.

4.10.18.3 No subdivision shall increase any contaminant concentration in the ground water to more than half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.

4.10.18.4 If ground water contains contaminants in excess of the primary standards, and the subdivision is to be served by on site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.

4.10.18.5 If ground water contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.

4.10.18.6 Subsurface wastewater disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells are recommended in the assessment, those standards shall be included as a note on the Plat Plan, and as restrictions in the deeds to the affected lots.

4.10.19 Water Supply

4.10.19.1 When a subdivision is to be served by a public water system, the complete supply system, including fire hydrants, shall be installed at the expense of the subdivider. The number and location of fire hydrants shall be reviewed and approved in writing by the Boothbay Fire Department.

4.10.19.1.1 The subdivider shall provide a written statement from the servicing water company or district that adequate water for both domestic and fire fighting purposes can be provided without placing an undue burden on the source, treatment facilities or distribution system involved. The subdivider shall be responsible for paying the costs of system improvements necessary to serve the subdivision.

4.10.19.1.2 The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the servicing water company or district and the Fire Chief.

4.10.19.2 When the location of a subdivision does not allow for a financially reasonable connection to a public water system, the Planning Board may allow the use of individual wells or a private community water system.

4.10.19.2.1 The subdivider shall prohibit dug wells by deed restrictions and a note on the plan.

4.10.19.2.1.1 The Planning Board may grant a waiver.

4.10.19.2.2 If a central water supply system is provided by the subdivider, the location and protection of the source, and the design, construction and operation of the system shall conform to the standards of the Department of Health and Human Services *State of Maine Rules Relating to Drinking Water. {10-144 Chapter 231}*

4.11 Cluster Development

4.11.1 Purpose The purpose of cluster 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. {30-A § 4353(4-C)}

4.11.2 Procedures for Review The Planning Board shall follow the procedures for Subdivision Review.

4.11.2.1 Application In addition to the information required for Subdivision approval, an application for a cluster development shall include:

4.11.2.1.1 A site plan, including, but not limited to, recreational facilities and landscaping plans with open spaces and existing and proposed trees and other vegetation.

4.11.2.1.2 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.

4.11.2.1.3 Information regarding the following:

- A. 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;
- B. 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;
- C. 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;
- D. 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
- E. Whenever applicable, documents indicating compliance and approval of mandated State statutes or other laws shall be obtained and submitted as part of the application.

4.11.3 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 4.6 and the following are met:

4.11.3.1 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.

4.11.3.2 Property in the vicinity of the area, included in the plan, will not be adversely affected.

4.11.3.3 The property would be used for purposes and in a manner permitted in the existing residential District except for lot area and location of buildings.

4.11.3.4 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.

4.11.4 Standards In addition to the standards for Subdivision approval in Section 4, the following standards shall apply:

4.11.4.1 Dimensional Standards

4.11.4.1.1 Area of Development Within the General and Special Residential Districts, the minimum area of the cluster development shall be 10 acres. If public water and sewer are to be used the minimum area shall be a multiple of 3 times the minimum lot area for the applicable District.

4.11.4.1.2 Lot Area The minimum area of a lot-of-record within the development shall be at least 20,000 square feet. In cluster developments with individual lot areas of 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.

4.11.4.1.2.1 The minimum lot area per dwelling unit shall be 30,000 square feet adjacent to tidal areas and 40,000 square feet next to non-tidal areas. {DEP § 15 A(5)} [**Shoreland Overlay Zone**]

4.11.4.1.3 Developable Area The Maximum Developable Area as specified for the District, shall be applied to the cluster development as a whole; however, the lot coverage for any individual lot shall not exceed 50%.

4.11.4.1.3.1 The lot coverage shall not exceed 20% of the portion of the lot located within the Shoreland Overlay Zone. *{DEP § 15 B(4)}* [**Shoreland Overlay Zone**]

4.11.4.1.3.2 T Maximum Developable Area shall be calculated separately for each District if a lot is in more than one District.

4.11.4.1.4 Shore Frontage The minimum shore frontage per dwelling unit shall be 150 feet adjacent to tidal areas and 200 feet next to non-tidal areas. *{DEP § 15 A(5)}* [**Shoreland Overlay Zone**]

4.11.4.1.5 The overall dimensional requirements per dwelling unit, including shore frontage and lot area, shall not be reduced by variance. When determining whether dimensional requirements are met, only land area within the Shoreland Overlay Zone shall be considered. *{DEP § 15 A(5)}* [**Shoreland Overlay Zone**]

4.11.4.2 Supplemental Standards

4.11.4.2.1 Number of Units Within the General Residential and Special Residential Districts, the maximum number of dwelling units for a cluster development shall not exceed the number resulting from dividing the total area of the zoning lot devoted to cluster development, by the minimum size of the subdivision lot permitted in the applicable District.

4.11.4.2.1.1 A density bonus may be granted for the preservation of open space, designs and site plans that would increase buffering, designs that reduce environmental impact, and for the provision of affordable housing. In no case shall the density bonus allow an increase in excess of 10% of the number of dwelling units normally allowed.

4.11.4.2.2 Open Space The open space shall be dedicated to the recreational amenity and environmental enhancement of the development, must protect natural resources, and shall be recorded as such. For purposes of these provisions, open space means an area that:

- A. Is not encumbered in any way by a principal structure;
- B. Is not devoted to use as a roadway, road right-of-way, parking lot, or sidewalk;
- C. Is left in its natural or undisturbed state if wooded, except for cutting of trails for walking or jogging, or if not wooded at the time of development, is landscaped for ball fields, play fields, picnic areas, or similar activities;
- D. Is capable of being used and enjoyed for the purpose of informal and unstructured recreation and relaxation; and
- E. Is on the same lot and is legally and practicably accessible to all residents of lots in the cluster development out of which the open space is taken.

5 APPEALS, INTERPRETATIONS AND VARIANCES

Table of Contents

5.1 Purpose	5-1
5.2 Applicability	5-1
5.3 Responsibilities	5-1
5.3.1 Applicant or Aggrieved Party.....	5-1
5.3.2 Board of Appeals.....	5-2
5.4 Appeal Procedure	5-2
5.4.1 Time Limit	5-2
5.4.2 Application.....	5-2
5.4.3 Notification	5-3
5.4.4 Record of Decision being Appealed.....	5-4
5.4.5 Public Hearings	5-4
5.4.6 Variance Recorded	5-6
5.4.7 Approved Appeals.....	5-7
5.4.8 Reconsideration.....	5-7
5.4.9 Appeal to Superior Court	5-7
5.4.10 Remanded Appeals.....	5-7
5.4.11 Records.....	5-7
5.5 Review Criteria – Administrative Appeals.....	5-7
5.6 Review Criteria – Variance	5-8
5.6.1 General	5-8
5.6.2 Dimensional Standards.....	5-8
5.6.3 Disability	5-8
5.6.4 Endangered Species.....	5-8
5.6.5 Registered Farmland	5-9
5.6.6 Set-back Variance for One-family Dwellings	5-9
5.6.7 Limitations	5-9

5.1 Purpose The purpose of Section 5 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 § 2691.²⁶ {DEP § 16 A(2)}^{27 28}

5.2 Applicability Section 5 applies to requests for:

- A. A variance from the strict interpretation of the standards of this Ordinance;
- B. An appeal in connection with of a Code Enforcement Officer or Planning Board decision or action, and
- C. An interpretation of a zoning boundary. {30-A § 4353(2)}

5.2.1 A decision of the Planning Board relative to a subdivision application shall be appealed directly to Superior Court. {30-A § 4353(1)}

5.3 Responsibilities

5.3.1 Applicant or Aggrieved Party

5.3.1.1 An applicant shall have the burden of proving that:

- A. The relief requested from the ordinance standards meets all requirements for granting of variances as set forth in Section 5.6; or
- B. A zoning boundary should be located as proposed by the applicant.

5.3.1.2 An aggrieved party shall have the burden of proving that:

- A. A decision or action of the Code Enforcement Officer is not in conformity with the purposes and provisions of this Ordinance; or

²⁶ All Title, Chapter, and Section (“§”) references are to Maine Revised Statutes Annotated (M.R.S.A.), as may be amended from time to time.

²⁷ References to State statute or regulation requiring inclusion or providing wording are for information only.

²⁸ DEP references are to Department of Environmental Protection Chapter 1000 State of Maine Guidelines for Municipal Shoreland Zoning Ordinances for information only.

B. A decision of the Planning Board is not in conformity with the purposes and provisions of this Ordinance; or {DEP §§ 16 D, 16 H(1)(a) & H(4)(b)(ii)}

5.3.1.3 The applicant is responsible for determining what, if any, other approvals are needed from Town, State or Federal agencies or authorities.

5.3.2 Board of Appeals

5.3.2.1 Administrative Appeals A *de novo* review shall be held in accordance with the provisions of Section 5.4.5.2.4 below.

5.3.2.1.1 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. {30-A §§ 2691(4) & 4353(1) and DEP §§ 16 H(1)(a) & (3)}

5.3.2.1.2 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 made; or failure to act by the Planning Board in the administration of this Ordinance. {30-A §§ 2691(4) & 4353(1) and DEP §§ 16 H(1)(a) & (3)}

5.3.2.1.3 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. {30-A § 2691(4) and DEP § 16 H(3)}

5.3.2.2 Interpretations When requested by an applicant, the Board of Appeals shall interpret the boundaries of a Zoning District, an Overlay Zone or an Area within the Shoreland Overlay Zone. {30-A § 4353(2)(A)}

5.3.2.3 Variances The Board of Appeals shall hear and shall, subject to the limitations of Section 5.6, grant, grant with conditions or deny requests for relief from the standards of the Zoning Ordinance that cannot be granted by the Planning Board. {30-A §§ 2691(4) & 4353(2)(C) and DEP §§ 11 & 16 H(1)(b)}

5.4 Appeal Procedure

5.4.1 Time Limit

5.4.1.1 Appeal An administrative appeal must be filed within 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. {DEP § 16 H(4)(a)(i)}

5.4.1.1.1 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.

5.4.1.2 A variance request and a request for an interpretation of a boundary may be submitted at any time. {DEP § 16 H(4)(a)(i)}

5.4.2 Application

5.4.2.1 Applications shall be made to the Code Enforcement Officer in writing on forms prescribed by the Board of Appeals. {DEP §§ 16 C(1) & H(4)(a)(ii)}

5.4.2.1.1 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. {DEP §§ 16 C(2) & (3)}

5.4.2.1.2 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. {30-A § 4355}

5.4.2.1.3 Applications shall include a concise written statement indicating what provision of the Zoning Ordinance requires interpretation or what relief is requested as well as an explanation of why it should be granted. {DEP § 16 H(4)(a)(ii)(a)}

5.4.2.1.3.1 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. *{DEP § 16 H(4)(a)(ii)(b)}*

5.4.2.1.3.2 The Board of Appeals may at any time before approval require the submission of additional information.

5.4.2.2 Applications shall only be accepted when:

5.4.2.2.1 Taxes and accounts payable to the Town are current.

5.4.2.2.1.1 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.

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

5.4.2.2.1.3 Notification expenses as required by Section 5.4.3.1.2 have been paid in full.

5.4.2.2.1.4 The requirement that all taxes and accounts be paid prior to making an application under Section 5 may be:

5.4.2.2.1.4.1 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 12 months from the date of said agreement; or

5.4.2.2.1.4.2 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.

5.4.2.2.2 There is no outstanding notice of violation duly issued by the Code Enforcement Officer:

- A. That has not been appealed to the Board of Appeals within the required time period;
- B. That is pending before the Board of Appeals or a reviewing court; or
- C. Where the decision of the Board of Appeals or a reviewing court has not been fully complied with.

5.4.2.2.3 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:

- A. That is pending before the State or federal environmental agency or a reviewing court; or
- B. 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.

5.4.2.3 The Code Enforcement Officer shall note upon each application the date and time of its receipt.

5.4.2.3.1 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.

5.4.2.4 Any inconsistency or conflicting information in an application shall be construed against the applicant.

5.4.3 Notification *{1 § 406}*

5.4.3.1 The Code Enforcement Officer shall notify by U. S. Postal Service first class mail:

- A. The applicant and the owner of the property where the relief is requested;
- B. Owners as listed by the Boothbay Tax Assessor of property within 100 feet of any property line of the property;
- C. The Boothbay Region Water District if the property is within the Water Reservoirs Protection or Well Head Protection Districts or in the Watershed Overlay Zone;
- D. The Planning Board if the appeal is from its decision or is a zoning interpretation request;
- E. The Board of Selectmen; and
- F. The Boothbay Harbor or Edgecomb Town Clerk if the proposed variance or appeal is for a property abutting or including any portion of their Town.

5.4.3.1.1 The notification shall be at least 7 days before the first Board of Appeals meeting on the application and include:

- A. The date, time and place of the first public hearing on the request, variance or appeal; and
- B. The location and a general description of the request, variance or appeal.

5.4.3.1.2 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.

5.4.3.1.3 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.

5.4.3.2 Notice The Code Enforcement Officer shall publish at least two 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 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.

5.4.3.3 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 20 days prior to the first Board of Appeals hearing on the application. *{38 § 438-A(6-A) and DEP § 16 H(2)(f)}* **[Shoreland Overlay Zone]**²⁹

5.4.4 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. *{DEP § 16 H(4)(a)(iii)}*

5.4.5 Public Hearings

5.4.5.1 Completeness Review The Board of Appeals shall hold a public hearing on a request for an interpretation, a variance, or an appeal within 35 days of its receipt of an application. *{DEP 16 §§ D & H(4)(a)(iv)}*

5.4.5.1.1 The purpose of a Completion Review is to determine if information required being on paper is sufficiently complete to proceed to an Application Review.

5.4.5.1.2 At the conclusion of Completeness Review, the Board of Appeals shall notify the applicant that:

- A. An Application Review has been scheduled, or
- B. 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. *{DEP § 16 D}*

5.4.5.2 Application Review Within 35 days of the conclusion of a Completeness Review specified in Section 5.4.5.1 an Application Review meeting shall be held. *{DEP § 16 D & H(4)(a)(iv)}*

5.4.5.2.1 The Planning Board, the Code Enforcement Officer and Board of Selectmen shall be made parties to the action. 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. *{30-A §§ 2691(3)(D) & 4353(3)}*

5.4.5.2.2 An applicant may agree to an extension of time for Board of Appeals review, public hearings or decision on an application. *{DEP § 16 H(4)(a)(iv)}*

5.4.5.2.3 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:

- A. The proposed deviation from the Ordinance standards meets the requirements for

²⁹ **Shoreland Overlay Zone** in brackets indicates that the section and its subsection standards only apply to the portion of a lot in the Shoreland Overlay Zone including the Resource Protection and Stream Protection Areas portions thereof.

- approval of Sections 5.5 and 5.6,
- B. The decision or action of the Code Enforcement Officer was in conformance with the standards of the Zoning Ordinance and other applicable regulations, or
 - C. The decision or action of the Planning Board was in conformance with the standards of the Zoning Ordinance.

5.4.5.2.4 Administrative Appeal

- (1) The Board of Appeals will examine the facts that were presented to the Planning Board or the Code Enforcement Officer (the “CEO”) as the case may be, and will determine if the Planning Board or CEO was correct in applying the Zoning Ordinance to those facts.
- (2) 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 proceedings of the Planning Board or the CEO, and they may examine other facts that had not been presented to the Planning Board or the CEO. 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.
- (3) When the Board of Appeals has completed its work under paragraphs (1) and (2) above, the Board of Appeals will take one of the following three actions:
 - (a) The Board of Appeals can decide that the Planning Board or CEO 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 CEO with instructions to consider these additional facts and then make a decision based on all of the facts; or
 - (b) The Board of Appeals can decide that the Planning Board or CEO 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 CEO; or
 - (c) The Board of Appeals can decide that the Planning Board or CEO 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 CEO.
- (4) If the Board of Appeals sends the matter back to the Planning Board or the CEO under paragraph (3)(a) above, then the Planning Board or CEO 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.

5.4.5.2.4.1 When conducting a *de novo* review, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of the evidence upon which the decision of the Code Enforcement Officer or Planning Board was made. For all matters before the Board of Appeals, the person filing the appeal or request shall have the burden of proof. The Board of Appeals shall affirm or reverse, in whole or in part, the decision of the Code Enforcement Officer or the Planning Board or remand the matter to the Code Enforcement Officer or Planning Board for further consideration. {DEP §§ 16 D, H(3) & H(4)(b)(ii)}

5.4.5.2.4.2 The Board of Appeals when acting in a *de novo* capacity shall base its decision and make findings of fact establishing that the proposed development does or does not meet goals and objectives of Section 1.8, the standards of Sections 2 and 3 and the review criteria of Sections 5.5 and 5.6. {30-A § 2691(3)(E) and DEP § 16 D}

5.4.5.2.4.2.1 The Board of Appeals shall deny an application if it does not make a positive finding that the proposed development or use will satisfy the requirements for approval.

5.4.5.2.4.3 The Board of Appeals shall not approve an application until the applicant has obtained a driveway or entrance or traffic movement permit under 23 §§ 704 or 704-A from the Maine Department of Transportation if such permit is required.

5.4.5.2.4.4 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. {38 § 438-A(6-A) and DEP § 16 H(2)(f)} [Shoreland Overlay Zone]

5.4.5.2.4.5 Site Visit The Board of Appeals may hold a public meeting on the site of a proposed development or use as part of a *de novo* review.

5.4.5.2.4.5.1 Prior to the inspection the Board of Appeals may require the applicant provide a plan or sketch indicating the location of permanent or temporary markers located to enable the Board of Appeals to readily locate and appraise basic lot and road layout in the field.

5.4.5.2.4.5.2 The Board of Appeals shall not take action on an application during a site visit.

5.4.5.2.4.6 Impact Fee The Planning Board may determine that a proposed development or use will require improvements or modifications off-site. The Town Manager, with Board of Selectmen approval, shall determine the fair share cost to be paid by the applicant. *{30-A § 4354}*

5.4.5.3 The Board of Appeals shall within 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 Standards of Sections 2 or 3, the Review Criteria of Sections 5.5 and 5.6. If in conformance, the application shall be approved or approved with conditions. *{DEP §§ 16 D & H(b)(iii)}*

5.4.5.4 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. *{1 § 407(1), 30-A § 2691(3)(E) and DEP § 16 H(4)(b)(iv)}*

5.4.5.5 A copy of the decision shall, within 7 days of reaching a decision, be sent to the applicant, Code Enforcement Officer, Planning Board and Board of Selectmen. *{30-A § 2691(3)(E) and DEP § 16 H(4)(b)(iv)}*

5.4.5.6 Written notice of a decision shall be mailed to the Department of Environmental Protection within 7 days of the decision. *{DEP § 16 H(4)(b)(iv)}*

5.4.6 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 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. *{30-A § 4353(5)}*

5.4.6.1 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 90 days of the final Planning Board vote on the subdivision application. *{30-A §§ 4403(7) & 4406(1B)}*

5.4.7 Approved Appeals

5.4.7.1 All approvals of appeals shall lapse and become void unless Start of Construction or Operation there under, as defined in Section 6, 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. *{DEP § 16 F}*

5.4.7.2 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.

5.4.7.3 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:

- A. File the original and one copy with the Lincoln County Registry of Deeds.
- B. File one copy with the Town of Boothbay Assessor. This copy shall include the Registry's Book and Page reference.

5.4.8 Reconsideration The Board of Appeals may reconsider any decision reached within 45 days of the date of the final vote on the appeal or interpretation or variance request. The request to the Board to reconsider a decision must be filed within 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 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. *{30-A § 2691(3)(F) and DEP § 16 H(6)}*

5.4.9 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 45 days of the date of the final Board of Appeals vote on the appeal or interpretation or variance request. *{30-A § 2691(3)(G) and DEP § 16 H(5)}*

5.4.9.1 Appeal of a reconsideration decision must be made within 15 days the final vote on the reconsideration request. *{30-A § 2691(3F) and DEP § 16 H(6)}*

5.4.10 Remanded Appeals

5.4.10.1 Code Enforcement Officer The Code Enforcement Officer shall, within 35 days of receiving the reasons why an appeal from his/her decision is being remanded, approve, approve with conditions or deny the application. The Code Enforcement Officer shall follow the procedures of Section 3.5.3 in the review of the remanded appeal.

5.4.10.2 Planning Board The Planning Board shall consider all remanded appeals as Old Business at its next regularly scheduled Public Hearing. The Planning Board shall follow the procedures of Section 3.5.4 in review of the remanded appeal.

5.4.11 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. *{1 § 407(1), 30-A § 2691(3)(B), 38 § 441(3)(C) and DEP § 16 I(2)(c)}*

5.5 Review Criteria – Administrative Appeals The Board of Appeals shall consider the following criteria and, before granting approval, must determine that the application is in conformance with the land use goals and objectives of Section 1.8, the standards of Sections 2 and 3 and that the proposed development or use:

- A. Will maintain safe and healthful conditions;
- B. Will not result in water pollution, erosion or sedimentation to surface waters;
- C. Will adequately provide for the disposal of wastewater;
- D. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- E. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- F. Will protect archaeological and historic resources as designated in the Comprehensive Plan;
- G. Will not adversely affect existing commercial fishing or maritime activities in the Maritime Commercial District; and
- H. Will avoid problems associated with floodplain development and use. *{DEP § 16 D}*

5.6 Review Criteria – Variance

5.6.1 General The Board of Appeals may grant a variance:

- A. 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.
- B. If the proposed development or use would meet the standards of this Ordinance except for the specific provision(s) from which relief is sought;
- C. 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
- D. Except as provided in Sections 5.6.2, 5.6.3 and 5.6.6, only when strict application of this Ordinance to the petitioner and the petitioner's property would cause undue hardship. *{30-A § 4353(4) and DEP § 16 H(2)}*

5.6.1.1 Except as provided in Section 5.6.6, the term “Undue Hardship“ as used in Section 5.6 shall mean all of the following:

- A. The land in question cannot yield a reasonable return unless a variance is granted;
- B. The need for a variance is due to the unique circumstances of the property and not to general conditions in the neighborhood;

- C. The granting of a variance will not alter the essential character of the locality; and
- D. The hardship is not the result of action taken by the applicant or a prior owner.
{30-A § 4353(4) and DEP § 16 H(2)}

5.6.2 Dimensional Standards A variance may be granted from the dimensional standards relating to lot area, developable area, frontage 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:

- A. That the need for a variance is due to the unique circumstances of the property and not to general conditions in the neighborhood;
- B. 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;
- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- D. No other feasible alternative to a variance is available to the petitioner; and
- E. The granting of a variance will not adversely affect the natural environment to an unreasonable degree.
- F. The property is not located in whole or in part within the Shoreland Overlay Zone.
{30-A § 4353(4-C)}

5.6.2.1 As used in Section 5.6.2, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements. *{30-A § 4353(4-C)}*

5.6.2.2 As used in Section 5.6.2, "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. *{30-A § 4353(4-C)}*

5.6.3 Disability A 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 5.6.3 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. *{30-A § 4353(4-A) and DEP § 16 H(2)(d)}*

5.6.4 Endangered Species A 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. *{Department of Inland Fisheries and Wildlife Rule 09-137 Chapter 8}*

5.6.5 Registered Farmland A variance permitting development upon or use of land for residential purposes within 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. *{7 §§ 52, 56 & 57}*

5.6.5.1 A variance is not required for residential development if the exceptions of Title 7 §§ 52 and 56 are met. *{7 § 52(5)(B) and 57}*

5.6.6 Set-back Variance for One Family Dwellings A 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 20% 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. *{30-A § 4353(4-B)}*

5.6.6.1 The term "undue hardship" as used in Section 5.6.6 means all of the following conditions apply:

- A. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

- B. The granting of a variance will not alter the essential character of the locality;
- C. The hardship is not the result of action taken by the applicant or a prior owner;
- D. The granting of the variance will not substantially reduce or impair the use of abutting property; and
- E. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available. *{30-A § 4353(4-B)}*

5.6.6.2 In the Shoreland Overlay Zone, the standards for a set-back variance for one family dwellings of Section 5.6.1 shall apply. The standards of Section 5.6.6 shall not apply. *{DEP § 16 H(2)}*
[Shoreland Overlay Zone]

5.6.7 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. *{DEP § 16 H(2)(e)}*

5.6.7.1 The approval criteria of Section 5.6.1 shall apply to any variance granted under Sections 5.6.2, 5.6.4, 5.6.5 and 5.6.6. *{DEP § 16 H(2)(c)}*

5.6.7.2 A variance shall not be granted for establishment of any use prohibited by this Ordinance in Section 3.7 or 3.9. *{DEP § 16 H(2)(b)}*

6 DEFINITIONS

Abutting Land: Real estate³⁰ that shares a common boundary, or portion of a boundary, with land on which a **development** is proposed.

Abutting Land: Real estate which shares a common boundary, or portion of a boundary, with land that is held in common ownership with land registered or being considered for registration under Title 7 M.R.S.A. when the abutting real estate is within 100 feet of the land registered or being considered for registration. Abutting land includes, but is not limited to, land separated by a **road** and within 100 feet of land that is held in common ownership with land registered or being considered for registration under Title 7 M.R.S.A.³¹ {7 § 52(1)}³² [**Registered Farmland**]

Accessory Structure: A **structure** that is incidental and subordinate to the **principal structure**. A **deck** or similar extension of the Principal Structure or a garage attached to the Principal Structure by a roof or a common wall is considered part of the Principal Structure. {12 § 682(5) and DEP § 17}³³

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

An accessory use shall be considered accessory to the principal use if:

- A. The accessory use is located in the **principal structure** and does not exceed 30% of the **floor area** of the principal structure; or
- B. The accessory use is located in an **accessory structure** and does not exceed 75% of the floor area of the principal structure.

An accessory use that exceeds these standards shall be considered the Principal Use. Accessory uses, when aggregated, shall not subordinate the Principal Use of the **lot**. A **home occupation** is not an Accessory Use.

Aggrieved Party: An owner of land whose property is directly or indirectly affected by the granting or denial of a permit, approval or **variance** under this Ordinance; a **person** whose land abuts land for which a permit, approval or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit, approval or variance. {DEP § 17}

Agricultural Activities: The growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farm woodlot products, including Christmas trees. {38 § 361-A(1-B)}

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

Agricultural Product: An item under A, B, C or D below if the item is sold in accordance with any applicable state or federal law or rule:

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

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

Agriculture: The production, keeping or maintenance for sale or lease, of plants and/or animals, including, but not limited to, forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include **animal breeding or care**, kennels, or **forest management** and **timber harvesting** activities. {DEP § 17 and Chap 1000, 1-1-2015 ver.}

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

³⁰ Words in **bold** are defined in this Section.

³¹ All Title, Chapter, and Section (“§”) references are to Maine Revised Statutes Annotated (M.R.S.A.), as may be amended from time to time.

³² References to State statute or regulation requiring inclusion or providing wording are for information only.

³³ DEP references are to Department of Environmental Protection Chapter 1000 State of Maine Guidelines for Municipal Shoreland Zoning Ordinances for information only.

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

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

Applicant: An individual, firm, association, organization, partnership, trust, company or corporation that has a vested interest in the property.

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

Aquaculture: The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species. Only the support facilities on land shall be subject to the requirements of this Ordinance. *{DEP § 17}*.

Arterial Highway: A highway providing long-distance connections as approved by the Federal Highway Administration pursuant to 23 Code of Federal Regulations, Section 470.105(b) (1999), as may be amended from time to time.

Automobile and Recreational Vehicle Sales & Service: Any **building** or premises where automobiles or other motor vehicles are sold or offered for sale and where they are repaired or maintained.

Automobile Graveyard: A **yard**, field or other area used to store 3 or more unregistered or uninspected motor vehicles as defined in 29-A § 101(42), or parts of such vehicles.

- A. Does not include any area used for **temporary** storage by an establishment or place of business that is primarily engaged in doing auto body repair work to make repairs to render a motor vehicle serviceable.
- B. Includes an area used for automobile dismantling, salvage and **recycling operations**. Standards for **junkyards** apply. *{30-A § 3752(1)}*

Automobile Recycling Business: Except as this term may otherwise be defined by State law, an automobile recycling business shall mean the business premises of a **person** who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles, provided that 80% of the business premises specified in the application for an automobile recycling business permit is used for automobile **recycling operations**. Standards for **junkyards** apply.

Automobile Repair: A business for the repair of automobile and other motor vehicles. Includes body shops.

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

Barroom: See **Tavern**.

Basal Area: The area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark. *{DEP § 17}*

Basement: Any portion of a **structure** with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level. *{38 § 436-A(1-A) and DEP § 17}*

Bed and Breakfast: Any dwelling in which overnight transient accommodations are provided and offered to the public for compensation. Includes **Inns**.

Billboard: See **Sign, Billboard**.

Boat Launching Facility: A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, **docking** area, and parking spaces for vehicles and **trailers**. *{DEP § 17}*

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

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

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

Buffer, Wooded: A naturally wooded area including an undisturbed organic layer. [**Water Supply Protection**]

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

- A. The area included in the required **setbacks**;
- B. All **wetlands** in the **Shoreland Overlay Zone**;
- C. Areas with endangered species, excessive slopes, unstable soil, improper drainage or water pollution as prohibited in Sections 3.7.2 and 4.7.1;
- D. Land that is situated below the **high-water line** of any **great pond, stream, outlet stream or freshwater wetland**;
- E. Land that is part of a **right-of-way**, or easement, including utility easements; and
- F. Land that is located within the 100 year frequency flood plain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the applicant shows proof through the submittal of materials prepared by a Registered Land Surveyor that show that the property in question lies at least two feet above the 100 year flood level. The elevation of filled or manmade land shall not be considered.

Building: Any **structure** having a roof or partial roof supported by columns or walls used or intended to be used for the shelter or enclosure of **persons**, animals or objects regardless of the materials of which it is constructed. {12 § 682(3)}

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

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

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

Bureau of Forestry – State of Maine Department of Agriculture, Conservation, and Forestry, Bureau of Forestry. {DEP Chap 1000, 1-1-2015 ver.}

Bus Terminal: A place for the parking, fueling or servicing of motor vehicles used for the transport of passengers as a business. The taking-on or discharging of passengers may also occur.

Campground: Any area or **tract** of land to accommodate two or more parties in **temporary** living quarters, including, but not limited to, tents, **recreational vehicles** or other shelters. May include facilities for the disposal of human wastes from recreational vehicles not occupying a **campsite**. {DEP § 17}

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

Cannabis: “Cannabis” as that term is defined in 7 M.R.S.A. § 2442(5), as may be amended.

Canopy: The more or less continuous cover formed by tree crowns in a wooded area. {DEP § 17}

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

Cemetery A burial ground. Does not include **family** burial grounds that are allowed by 13 § 1142.

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

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

Church: A place of worship.

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

Cluster Development: A form of **development** that allows a **subdivision** design in which individual **lot** sizes and **setbacks** are reduced in exchange for the creation of common open space and recreation areas, the

preservation of environmentally sensitive areas, **agriculture** and silviculture and the reduction in the size of **road** and utility systems. *{30-A § 430I(1-A)}*

Coastal Wetland: All tidal and subtidal lands; all lands with **vegetation** present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. All areas below the highest annual tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to **salt marshes** and **salt meadows**. *{38 §§ 436-A1(1) & 480-B(2) and DEP § 17 and Chap 1000, 1-1-2015 ver.}*

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

Commercial Fishing Activities: Activities directly related to commercial fishing and those **commercial** activities commonly associated with or supportive of commercial fishing, such as sale of fuel; manufacture or sale of ice, bait and nets; and the sale, installation or repair of boats, engines and other equipment commonly used on boats. Only individuals and businesses providing these services to others for profit shall be subject to the provisions of this Ordinance. The construction of boats as a principal occupation is a **manufacturing use** when determining where the use may be conducted, unless it conforms to the standards of **home occupation**, in which case it shall be treated as a home occupation in determining where the use may be conducted. *{38 § 436-A(1-A)}*

Commercial Use: The **use** of lands or **structures**, other than a **home occupation**, the intent and result of which activity is the production of income from the buying and selling of goods or services, exclusive of rental of residential **buildings** or **dwelling units**. *{DEP § 17}*

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

Community Center: A **building** that provides a meeting place for local, non-profit community organizations on a regular basis.

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

Conditional Use: A **use** that owing to some special characteristics attendant to its operation or installation requires approval by the Planning Board subject to special requirements different from the usual requirements of this Ordinance.

Condominium: **Real estate**, portions of which are designated for separate ownership and the remainder of which is designed for common ownership solely by the owners of those portions under a declaration, or an amendment to a declaration, duly recorded pursuant to Maine law. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners. Any real estate **development** consisting exclusively of clustered, detached, **one family** residences is not a condominium, unless so designated in the declaration. *{33 §§ 1601-1603}*

Conference Center: A facility with overnight accommodations designed specifically for hosting conventions and meetings.

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

Congregate Housing: Residential housing that consists of private **dwelling units** with an individual bathroom and an individual food preparation area, in addition to central dining facilities, and within which a supportive services program serves occupants.

Convention Center: A **building(s)** without overnight accommodations that provides sports, display or entertainment facilities for the general public, usually for a fee.

Cross-sectional area – the cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water

line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel. *{DEP Chap 1000, 1-1-2015 ver.}*

Day: For enforcement purposes, a day is any portion of a 24 hour period commencing at midnight.

Day Care Center: (1) A house or other place in which a **person** maintains or otherwise carries out a regular program, for consideration, for any part of a **day** providing care and protection for 13 or more children under 13 years of age; (2) A facility that is not part of a person's own home where there are between 3 and 12 children being cared for; or (3) Any location or locations that are operated as a single day care program or by a single person or persons when there are more than 12 children being cared for. Day care center may include a facility operated as a nursery school, a facility operated by a home day care provider or a summer camp established solely for recreational and educational purposes or a formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Commissioner of Education in accordance with 20-A Maine Revised Statutes Annotated.

DBH: The diameter of a standing tree measured 4 1/2 feet from ground level. *{DEP § 17}* [**Timber Harvesting**]

Deck: A level **structure** attached or adjacent to a **building** elevated above the surface of the ground that may have a railing, awning or other covering.

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

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

Density: The number of **dwelling units** per unit of land.

Developable Area: The portion of a **lot** that may be developed expressed as a percentage of **Buildable Area**.

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

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

Development: A change in land **use** involving **alteration** of the land, water or **vegetation**, or the addition or alteration of **structures** or other construction not naturally occurring. *{30-A § 4301(6) and DEP § 17}*

Dimensional Requirements: Numerical standards relating to spatial relationships including, but not limited to, **setback, lot area, frontage and height**. *{DEP § 17}*

Disability: Any incapacitation, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a **person** which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services. *{DEP § 17}*

Discharge: Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, disposing, emptying or dumping onto the land or into the water or ambient air. *{38 § 1317(1)}*

Disruption of shoreline integrity - the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions. *{DEP Chap 1000, 1-1-2015 ver.}*

Distance: The horizontal or vertical separation of two points. *{DEP § 3}*

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

Docks, piers, wharves, bridges and other structures and uses extending over or beyond the high-water line or within a wetland:

Temporary Structures that remain in or over the water for less than 7 months in any period of 12 months.
Permanent: Structures that remain in or over the water for 7 months or more in any period of twelve 12 consecutive months. *{38 § 440-B(2) and DEP § 17}*

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months. *{DEP Chap 1000, 1-1-2015 ver.}*

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

Drive-through service: A business establishment that allows for brief walk-up window or **drive-through** customer transactions on the premises, either by direct contact with service personnel or by use of automated equipment.

Driveway (in shoreland overlay) - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less. *{DEP Chap 1000, 1-1-2015 ver.}*

Driveway (outside shoreland overlay): A vehicular access-way serving no more than two **lots**.

Drug free safe zone: An area designated as a “safe zone” within the meaning of 30-A M.R.S.A § 3253, as may be amended, by Town Meeting.

Duplex: *See Dwelling, Two-Family.*

Dwelling, Multifamily: A **building** or portion thereof containing 3 or more **dwelling units** that are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common **basement**. Includes **condominiums**, townhouses and row homes.

Dwelling, One Family: A detached **building** or **Mobile Home** designed or intended to be used exclusively for residential occupancy by one family only and containing only one **dwelling unit**. A separate room/apartment for members of the immediate family, including, but not limited to, parents, grandparents and children, may be included. This term does not exclude **home occupations** that conform to the standards set forth in Section 3.10.11.

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

Dwelling Unit: One or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one **family** with separate toilets and facilities for bathing, cooking and sleeping exclusively for the **use** of the family. The term shall include **mobile homes** and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented.

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

Emergency operations - Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury. *{DEP Chap 1000, 1-1-2015 ver.}*

Enclosed, locked facility/Enclosed outdoor area: A closet, room, building, greenhouse, or other enclosed area that is equipped with locks or other security devices that permit access only by the individual authorized to grow, cultivate, process, store, and distribute marijuana in conformance with the State law.

Essential Services: Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; **municipal** wastewater lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include **service drops** or **buildings** which are necessary for the furnishing of such services. *{DEP § 17}*

Expansion of a Structure: *See Structure Expansion.*

Expansion of Use: The addition of one or more months to a **use’s** operating season; or the use of more footprint

of a structure or ground area devoted to a particular use. *{DEP Chap 1000, 1-1-2015 ver.}*

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

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

Farming: The cultivation and tillage of the soil as a livelihood and includes dairying; raising livestock, freshwater fish, fur-bearing animals or poultry; producing, cultivating, growing and harvesting fruit, produce or floricultural or horticultural commodities; or any practices on a farm that are incident to or in conjunction with these farming operations. Farming does not include **forestry**, the growing of timber or the operation of a farm for recreational activity.

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

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

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

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

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

Firewood Processing: The **commercial** storage, sawing, chipping, splitting, compacting and related activities associated with producing of combustible wood products for sale. Firewood processing for one's personal **use** and associated incidental sale is permitted in all areas of Town.

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

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

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

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

Floodway: The channel of a water course and the adjacent land areas that must be reserved in order to **discharge** the 100 year flood without cumulatively increasing the water surface elevation by more than 1 foot in height. *{38 § 436-A(4) and DEP § 17}*

Floor Area: The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls. *{DEP Chap 1000, 1-1-2015 ver.}*

Flowering marijuana plant: "Flowering marijuana plant" as that term is defined in 7 M.R.S.A. § 2442(12), as may be amended.

Footprint: The entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks. *{DEP Chap 1000, 1-1-2015 ver.}*

Forest Management Activities: Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of **timber harvesting** and the construction, creation or maintenance of **roads**. *{DEP § 17}*

Forest Management Plan: A site-specific document signed by a **professional forester** outlining proposed activities to ensure compliance with performance standards and regeneration requirements established pursuant to this subchapter. *{12 § 8868(2)}*

Forest Stand: A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit. *{DEP Chap 1000, 1-1-2015 ver.}*

Forested Wetland: A **freshwater wetland** dominated by **woody vegetation** that is six (6) meters (about twenty

20 feet) tall or taller. *{38 §§ 436-A(5-A) & 440-B(2-C) and DEP § 17 and Chap 1000, 1-1-2015 ver.}*

Forester, Professional: A person licensed pursuant to Title 32, Chapter 76. *{12 § 8868(3)}*

Forestry: See **Forest Management Activities**.

Foundation: The supporting substructure of a **building** or other **structure**, excluding wooden sills and post supports, but including, but not limited to, **basements**, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material. *{DEP § 17}*

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

1. Of 10 or more contiguous acres; or of less than 10 contiguous acres and adjacent to a **great pond** such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of **wetland vegetation** typically adapted for life in saturated soils.

Freshwater wetlands may contain small **stream** channels or inclusions of land that do not conform to the criteria of this definition. *{38 § 436-A(5) and DEP § 17}*

Shrub/open **wetlands** next to **ponds** are part of the pond if, during normal high water, the elevation of the water in the wetland is the same as that of the pond. *{DEP clarification – Shoreland Zoning News, Volume 18, Issue 2, Fall 2005}*

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

Functionally Water-Dependent Uses: Those **uses** that require, for their primary purpose, location on submerged lands or require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to, **commercial** and recreational fishing and boating facilities, finfish and shellfish processing; fish-related storage and retail and **wholesale** marketing facilities; waterfront **dock** and port facilities; shipyards and boat building facilities; **marinas**; navigation aids; basins and channel, ~~retaining walls~~ shoreline structures necessary for erosion control purposes; **industrial** uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site; and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage **buildings** are not considered to be a functionally water-dependent use. *{38 § 436-A(6), 38 § 438-A(7) and DEP §§ 15 G & 17 and Chap 1000, 1-1-2015 ver.}*

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

Garage Sale: See **Yard Sale**.

Great Pond: Any inland body of water which in a natural state has a surface area in excess of 10 acres and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres. An artificially formed or increased inland body of water completely surrounded by land held by a single owner is not subject to the regulations for great ponds. *{38 §§ 436-A(7) & 480-B(5) and DEP § 17}*

Great Pond classified GPA - any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds. *{DEP Chap 1000, 1-1-2015 ver.}*

Ground Cover: Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor. *{DEP § 17}*

Harvest Area: The area where **timber harvesting** and related activities, including the cutting of trees, skidding, yarding, and associated **road** construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest. *{DEP § 17}* [**Timber Harvesting**]

Hazardous Material/Matter: Substances identified under 38 § 1319 that present a present or potential danger to the people of the State or to its natural environment when deposited on land or **discharged** on or into waters of the State or ambient air. *{38 § 1317(2)}*

Hazard tree - a tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure

and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger. *{DEP Chap 1000, 1-1-2015 ver.}*

Height of a Structure: *See Structure Height.*

High-water Line (Non-tidal Waters): That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in **vegetation**, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with **great ponds** that support non-**forested wetland** vegetation and hydric soils and that are at the same or lower elevation as the water level of the great pond during the period of normal high-water are considered part of the great pond. Same as Normal High-water Line. *{38 § 436-A(9) and DEP § 17}*

NOTE: Adjacent to **tidal waters**, **setbacks** are measured from the **upland edge** of the **coastal wetland**. *{DEP § 17}*

Home Occupation: Any activity performed for pecuniary gain in a **dwelling unit**, or other **structure** accessory to a dwelling unit, or directed from a dwelling unit by one or more residents of that dwelling unit that conforms to all requirements of this Ordinance.

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

Home Occupation, Other: All occupations, including **Day Care** not included in **Home Occupation, Homemaker/Office**.

Increase in Non-conformity of a Structure: Any change in a **structure** or property which causes further deviation from the dimensional standard(s) creating the non-conformity such as reduction in **lot line** or **shoreline setback distance**, increase in **lot coverage**, or increase in **height of a structure**. Property changes or **structure expansions** which either meet the dimensional standard or which cause no further increase in the linear extent of non-conformance of the existing structure shall not be considered to increase non-conformity. For example, there is no increase in non-conformity with the lot line or shoreline setback if the expansion extends no further into the required setback area than does any portion of the existing **non-conforming structure**. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the lot line or shoreline than the closest portion of the existing structure from that lot line or shoreline than the closest portion of the existing structure from that lot line or shoreline. Included in this allowance are expansions which in-fill irregularly shaped structures. *{DEP § 17}*

Individual Private Campsite: An area of land which is not associated with a **campground**, but which is developed for repeated camping by one group only, not to exceed 10 individuals and which involves site improvements which may include, but not be limited to, a gravel pad, **parking area**, fire place, or tent platform. *{DEP § 17}*

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

Industrial: The assembling, fabrication, finishing, **manufacturing**, packaging or processing of goods, or the extraction of minerals. *{DEP § 17 and Chap 1000, 1-1-2015 ver.}*

Industrial, Commercial, and Industrial/Commercial Condominiums: **Real estate**, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions under a declaration, duly recorded at the Lincoln County Registry of Deeds. A condominium is a legal form of ownership, not a land **development** type. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners. Shall not include **residential uses**, such as, but is not limited to, **dwelling units**, **lodging houses**, or **retirement facilities**. *{Maine Condominium Act of 1983}*

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

17}

Junkyard: Except as this term may otherwise be defined by State law, a junkyard shall mean a **yard**, field or other area used to store:

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

Includes **Automobile Graveyards** and **Automobile Recycling Business**.

Kennel: A **commercial** establishment for the boarding of 5 or more cats, 5 or more dogs or a combination of 5 or more cats and dogs for short periods of time.

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

Lake: *See Pond.*

Land Division: *See Subdivision.*

Land Management Road - a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads. *{DEP Chap 1000, 1-1-2015 ver.}*

Landfill: Disposal of trash and garbage by burying it under layers of earth.

Large Scale Developments: **Development** regulated by Title 38, Subchapter 1, Article 6, Site Location of Development. *{38 M.R.S.A §§ 481 – 490}*

Licensed Forester: A **person** licensed pursuant to Title 32, chapter 76. Same as **Professional Forester**. *{12 § 8868(3) and DEP § 17}*

Line of Navigation: The point where there is 3 feet of water at the lowest tide level of the year as identified in tide tables published by the National Ocean Service.

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

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

- A. A house where lodgings are rented to fewer than 5 lodgers;
 - B. The dormitories of charitable, educational or philanthropic institutions; or
 - C. The emergency **use** of private dwelling houses at the time of conventions or similar public gatherings.
- The term lodger does not include **persons** within the second degree of kindred to the person operating the lodging house. *{30-A § 3801(A)}*

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

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

Lot Area: The area of land enclosed within the boundary lines of a **lot**, minus land below the normal **high-water line** of a water body or **upland edge of a wetland** and minus areas beneath the **roads** serving more than two lots. *{DEP § 17 and Chap 1000, 1-1-2015 ver.}*

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

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

Lot Lines: A property boundary line other than a **shore line** of any **parcel** held in single or separate ownership: Except that where any portion of the property boundary line extends into or beyond a **public way**, the property line shall be deemed to be the public way **right-of-way** line. A high water line where the **lot** does not extend beyond the high water line (the ocean not a **stream** running through a property, for example) shall be considered a lot line for determining **lot area** and **lot coverage**.

- Lot of Record:** A lot that exists as shown on a **subdivision** plan approved by the Planning Board or a deed as shown or described in the records of the Lincoln County Registry of Deeds.
- Lot Width:** The average **distance** between the side **lot lines** of a **lot** measured within the lot boundaries.
- Manufacturing:** The making of goods and articles by hand or machinery including assembly, fabrication, finishing, packaging and processing.
- Marijuana:** Marijuana means cannabis.
- Marina:** A business establishment having **frontage** on navigable water and, as its **principal use**, providing for hire offshore moorings or **docking** facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities. *{DEP § 17 and Chap 1000, 1-1-2015 ver.}*
- Maritime Activities:** The repair, loading and unloading of boats, chandlery and other activities designed and intended to facilitate maritime trade. *{38 § 436-A(8)}* Only individuals and businesses providing these services to others for profit shall be subject to the provisions of this Ordinance. The construction of boats as a principal occupation is a **manufacturing use** when determining where the use may be conducted, unless it conforms to the standards of **home occupation**, in which case it shall be treated as a home occupation in determining where the use may be conducted. The storage of boats is a **storage facility** use when determining where the use may be conducted.
- Market Value:** The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels. *{DEP § 17}*
- Mineral Exploration:** Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition. *{DEP § 17}* Excludes test pits for wells and wastewater disposal systems.
- Mineral Extraction:** Any operation within any 12 month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site. *{DEP § 17}* Includes **Quarrying**.
- Miniature Golf:** A novelty golf game usually played with a putter on a course having tunnels, bridges, sharp corners and other obstacles around, over or under which the ball must be guided.
- Minimum Lot Width:** The closest **distance** between the side **lot lines** of a **lot**. When only two lot lines extend into the **Shoreland Overlay Zone**, both lot lines shall be considered to be side lot lines. *{DEP § 17}*
- Mobile Home:** A **residential dwelling unit** as defined in 10 § 9081.
- Mobile Home Park:** A **parcel** of land under unified ownership approved by the Town of Boothbay for the placement of 3 or more manufactured homes. *{30-A § 4358(1)(B)}*
- Mobile Home Park Lot:** The area of land on which an individual home is situated within a **mobile home park** and which is reserved for use by the occupants of that home. *{30-A § 4358(1)(B-1)}*
- Multi-unit residential** - a residential structure containing three (3) or more residential dwelling units. *{DEP Chap 1000, 1-1-2015 ver.}*
- Multiple Signs:** See **Signs, Multiple**.
- Municipal Services:** Shall include all providers used in connection with the provision of services to the general public. These include, but not limited to, water and sewer.
- Native:** Indigenous to the local forests. *{DEP § 17 and Chap 1000, 1-1-2015 ver.}*
- Neighborhood Store:** A retail store of less than 1,600 square feet of selling space serving the residents in the immediate vicinity with items commonly found in a grocery or drug store for use off premise.
- Noise:** A sound of any kind, especially when loud, confused, indistinct, or disagreeable.
- Non-conforming Condition:** A **non-conforming lot, structure** or **use** which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.— *{DEP § 17 and Chap 1000, 1-1-2015 ver }*

Non-conforming Lot: A single **lot of record** which does not meet the area, **frontage**, or width requirements of the **District** in which it is located and which was in lawful existence in the **Shoreland Overlay Zone** before a Shoreland Zoning Ordinance was first adopted on March 4, 1974, that existed elsewhere before a Zoning Ordinance for the Town of Boothbay was first adopted on August 20, 1979, or that existed before subsequent amendments of the Zoning Ordinance. *{DEP § 17}*

Non-conforming Structure: A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage or footprint, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect. *{DEP Chap 1000, 1-1-2015 ver.}*

Non-conforming Use: Use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect. *{12 § 682(10) and DEP Chap 1000, 1-1-2015 ver.}*

Non-native invasive species of vegetation - species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems. *{DEP Chap 1000, 1-1-2015 ver.}*

Normal High-water Line (Non-tidal Waters): *See High-water Line (Non-tidal Waters)*

Nursing Home: A facility which is operated in connection with a hospital, or in which nursing care and medical services are prescribed by or performed under the general direction of **persons** licensed to practice medicine or surgery in the State, for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care, but who do require skilled nursing care and related medical services. The term “nursing home” shall be restricted to those facilities, the purpose of which is to provide skilled nursing care and related medical services for a period of not less than 24 hours per **day** to individuals admitted because of illness, disease or physical or mental infirmity and which provides a community service. *{22 § 1812A}*

Office, Business and Professional: The place of business of doctors, lawyers, accountants, financial advisors, architects, surveyors, **real estate** and insurance businesses, psychiatrists, counselors, and the like or in which a business conducts its administrative, financial or clerical operations. This definition includes banks and other financial services, government offices and offices of providers of **municipal services**.

Outlet Stream: Any perennial or intermittent **stream**, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland. *{DEP Chap 1000, 1-1-2015 ver.}*

Parcel: *See Tract or Parcel of Land.*

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

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

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

- A. Facilities incident to the operation of those properties for the parking of motor vehicles, including, without limitation, ancillary waiting rooms, lockers, space for concessions, stores and offices, terminal facilities for trucks and buses, facilities for servicing motor vehicles and for the sale of gasoline, oil and other accessories, and all facilities appurtenant to these incident operations; and
- B. All property, rights, easements and interests relating to the facility that are considered necessary for the construction or operation of the facility. *{30-A § 5401(5)}*

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

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

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

Person: An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity. *{DEP § 17}*

Piers, docks, wharves, bridges and other structures and uses extended over or beyond the normal high-water line or within a wetland. *{DEP Chap 1000, 1-1-2015 ver.}*

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

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

Plant canopy: “Plant canopy” as that term is defined in 7 M.R.S.A. § 2442(29), as may be amended.

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

Shrub/open **wetlands** next to ponds are part of the pond if, during normal high water, the elevation of the water in the wetland is the same as that of the pond. *{DEP clarification–Shoreland Zoning News, Volume 18, Issue 2, Fall 2005}*

Principal Structure: A structure other than one which is used for purposes wholly incidental or accessory to the use of another structure or use on the same lot. *{DEP Chap 1000, 1-1-2015 ver.}*

Principal Use: A **use** which is the main use on the same lot. *{DEP Chap 1000, 1-1-2015 ver.}*

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

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

Professional Forester: *See Forester, Professional.*

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

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

Public Facility: Any facility, including, but not limited to, **buildings**, property, recreation areas, and **roads**, which are owned, leased, or otherwise operated, or funded by a government body or public entity. *{DEP § 17}*

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

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

Quarrying: The removal of rock, slate, gravel, sand, topsoil or other natural material from the earth by excavating, stripping, leveling or other such process.

Real Estate: Land and **structures** attached to it. *{12 § 682(12)}*

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

Alluvial	Charles	Cornish	Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa	Podunk	Rumney	Saco
Suncook	Sunday	Winooski	<i>{DEP § 17}</i>		

Recreational Facility: A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat-launching facilities. *{DEP § 17}*

Recreational Facility - Indoor: Any **commercial** enterprise which receives a fee in return for the provision of some recreational activity including, but not limited to, video arcades, pool halls, bowling alleys, pinball arcades, gyms, health clubs and swimming pools. Does not include **Indoor Theaters**.

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

Recreational Vehicle: A vehicle or an attachment to a vehicle designed to be towed, and designed for **temporary** sleeping or living quarters for one or more **persons**, and which may include a pick-up camper, travel **trailer**, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a **structure**, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles. *{DEP § 17}*

Recycling Operation (Recycling Center): A facility in which recoverable resources, such as **vegetation**, newspapers, glassware, plastics and metal cans, are collected, stored, flattened, crushed, bundled or processed for shipment. Does not include **junkyards**.

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

1. An existing system which is either malfunctioning or being upgraded with no significant change of design flow or **use** of the **structure**; or
2. Any existing overboard wastewater **discharge**. *{DEP § 17}*

Residential dwelling unit - a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units. *{DEP Chap 1000, 1-1-2015 ver.}*

Residential Use: Accessory apartments; **one family, two family and multifamily dwellings; lodging houses;** and retirement facilities. This term does not exclude **home occupations** that conform to the standards set forth in Section 3.10.11.

Residual basal area - the average of the basal area of trees remaining on a harvested site. *{DEP Chap 1000, 1-1-2015 ver.}*

Residual Stand - a stand of trees remaining in the forest following timber harvesting and related activities *{DEP Chap 1000, 1-1-2015 ver.}*

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

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

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

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

Retail marijuana cultivation facility: A “retail marijuana cultivation facility” as that term is defined in 7 M.R.S.A. § 2442(35), as may be amended. A retail marijuana cultivation facility is an entity licensed to cultivate, prepare and package retail marijuana and sell retail marijuana to retail marijuana establishments and retail marijuana social clubs.

Retail marijuana establishment: A “retail marijuana establishment” as that term is defined in 7 M.R.S.A. § 2442(36), as may be amended. A retail marijuana establishment is a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility, or a retail marijuana testing facility.

Retail marijuana products manufacturing facility: A “retail marijuana products manufacturing facility” as that term is defined in 7 M.R.S.A. § 2442(38), as may be amended. A retail marijuana products manufacturing facility is an entity licensed to purchase retail marijuana; manufacture, prepare and package retail marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities, retail marijuana stores and retail marijuana social clubs.

Retail marijuana social club: A “retail marijuana social club” as that term is defined in 7 M.R.S.A. § 2442(39), as may be amended. A retail marijuana social club is an entity licensed to sell retail marijuana and retail marijuana products to consumers for consumption on the licensed premises.

Retail marijuana store: A “retail marijuana store” as that term is defined in 7 M.R.S.A. § 2442(40), as may be amended. A retail marijuana store is an entity licensed to purchase retail marijuana from a retail marijuana cultivation facility and to purchase retail marijuana products from a retail marijuana products manufacturing facility and to sell retail marijuana and retail marijuana products to consumers.

Retail marijuana testing facility: A “retail marijuana testing facility” as that term is defined in 7 M.R.S.A. § 2442(41), as may be amended. A retail marijuana testing facility is an entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products.

Retirement Facility: A facility for retirement living which does not qualify as a hospital, **congregate housing**, or **nursing home**.

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

Riprap: Rocks, irregularly shaped, and at least 6 inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes not to exceed 2 units horizontal to 1 unit vertical or less. *{DEP Chap 1000, 1-1-2015 ver.}*

River: A free-flowing body of water including its associated **floodplain wetlands** from that point at which it provides drainage for a watershed of 25 square miles to its mouth. Standards for **coastal wetland** apply to land abutting the Cross, Damariscotta and Sheepscot Rivers. *{DEP § 17}*

Road: A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles. This definition does not include a **driveway** as defined. *{DEP § 17DEP Chap 1000, 1-1-2015 ver.}*

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

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

Salt Marsh: Areas of **coastal wetland** (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by **tidal waters**. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed. *{DEP § 17}*

Salt Meadow: Areas of a **coastal wetland** that support salt tolerant plant species bordering the landward side of **salt marshes** or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by **tidal water**. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas. *{DEP § 17}*

Sapling - a tree species that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level. *{DEP Chap 1000, 1-1-2015 ver.}*

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

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

- A. The listing of that dwelling as an occupant’s legal residence for the purpose of:
 1. Voting.
 2. Filing a state tax return.
 3. Automobile registration; and
- B. The occupancy of that dwelling for a period exceeding 7 months in any calendar year. *{30-A § 4201(4)}*

Seedling - a young tree species that is less than four and one half (4.5) feet in height above ground level. *{DEP Chap 1000, 1-1-2015 ver.}*

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

Service Business: A business establishment that provides services to the public and that attracts little or no client traffic, other than employees of the entity operating the **principal use**. Service businesses do not engage in the on premise sale, rental or lease of goods.

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

Formatted: Header, Line spacing: single, Tab stops: Not at 5.38"

- A. In the case of electric service:
 1. The placement of wires or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway **right-of-way**; and
 2. The total length of the extension is less than 1,000 feet.
- B. In the case of cable and telephone service:
 1. The extension, regardless of length, will be made by the installation of optical fiber, cable, or wires to existing utility poles, or
 2. The extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length. *{DEP § 17}*

Setback: The required **distance**:

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

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

Shopping Center: Any concentration of two or more retail stores or service establishments under one ownership or management containing 25,000 square feet or more of total gross floor space.

Shore Frontage: The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline. *{DEP Chap 1000, 1-1-2015 ver.}*

Shoreland Overlay Zone: The land area located within two hundred, fifty (250) feet horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within two hundred, fifty (250) feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream. *{DEP Chap 1000, 1-1-2015 ver.}*

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

Sign, Billboard: A **structure** designed, intended or used for advertising a product, property, business, entertainment, service, amusement or the like, and not located where the matter advertised is available or occurs.

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

Sign, Temporary: A **sign** or advertising display designed, intended to be displayed or displayed for a short period of time.

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

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

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

Skid Road or Skid Trail - a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation. *{DEP Chap 1000, 1-1-2015 ver.}*

Slash - the residue, e.g., treetops and branches, left on the ground after a timber harvest. *{DEP Chap 1000, 1-1-2015 ver.}*

Sludge: Non-hazardous solid, semisolid or liquid waste generated from a **municipal, commercial or industrial** wastewater treatment plant, water supply treatment plant or wet process air pollution control facility or any other waste having similar characteristics and effect. The term does not include industrial **discharges** that are point sources subject to permits under the federal Clean Water Act, 33 United States Code, Section 1342 (1999).

Small Engine Repair & Sales: Any **building** or premises where small engines are sold or offered for sale or where they are repaired or maintained. A small engine is an engine typically used for personal **use**, including, but not limited to, lawn mowers, garden tractors, chain saws, weed trimmers and tillers.

Start of Construction or Operation:

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

Storm-damaged tree - a tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event. *{DEP Chap 1000, 1-1-2015 ver.}*

Stream: A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition, highest resolution version of a the national hydrography dataset available from the United States Geological Survey 7.5 minute series topographic on the website of the United States Geological Survey or the national map, or if not available, a 15minute series topographic map, to the point where the body of waterstream becomes a river or flows to where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland within the shoreland area and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream. *{DEP Chap 1000, 1-1-2015 ver.}*

Street: See **Road**.

Storage Facility: A **structure** or area for the storage of items, including, but not limited to, boats and other water craft, as a business.

Storage Structure: A **structure** with areas for rent for the storage of items by the public.

Structure: Anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with or anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors.. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8. *{DEP Chap 1000, 1-1-2015 ver.}*

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

Structure Expansion: An increase in the **floor area** or **volume of a structure**, including all extensions, including, but not limited to, attached **decks**, garages, porches and greenhouses. *{DEP § 17}*

Structure Height: The vertical **distance** between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area. *{DEP Chap 1000, 1-1-2015 ver.}*

- Structure Volume:** The volume of all living areas of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.
- Subdivision:** This term shall be the same as defined in 30-A §§ 4401(4) & 4402. For the current definition, see the **Code Enforcement Officer**.
- Substantial start** - completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost. *{DEP Chap 1000, 1-1-2015 ver.}*
- Subsurface Wastewater Disposal System:** Any system designed to dispose of waste or wastewater on or beneath the surface of the earth; including, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any **discharge** system licensed under 38 § 414, any surface waste water disposal system, or any **municipal** waste water treatment system. *{30-A § 4201(5) and DEP § 17}*
- Sustained Slope:** A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area. *{DEP § 17}*
- Tavern:** An establishment where the serving of liquor by the drink to the general public is the principal business and where food may be served or sold as accessory to the **principal use**.
- Temporary or Temporary Use:** Any period of time or **use** not to exceed 30 consecutive **days**, except as applies to **piers** and other **structures** and uses extending over or beyond the high-water line or within a **wetland**.
- Temporary Business Housing:** A **dwelling unit** provided as a convenience for the owners, employees and customers of a business.
- Temporary Sign:** See **Sign, Temporary**.
- Terminal for Bulk Oil and Gas:** A premises where oil and gas products used for domestic or **commercial** heating, cooking and similar purposes are stored and from which they are distributed to the ultimate consumers or to retail or **wholesale business**. Does not include oil and gas products used for **manufacturing** or **industrial** purposes or for fueling of boats in a **marina**.
- Tidal Water:** All waters affected by tidal action during the highest annual tide. *{DEP § 17 and DEP Chap 1000, 1-1-2015 ver.}*
- Timber Harvesting:** The cutting and removal of timber for the primary purpose of selling or processing forest products. “Timber harvesting” does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a **lot** that has less than two (2) acres within the **Shoreland Overlay Zone** shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 3.11.3, Clearing or Removal of **Vegetation** for Activities Other Than Timber Harvesting. *{12 § 8868(4) and DEP § 17 and DEP Chap 1000, 1-1-2015 ver.}*
- Timber Harvesting and Related Activities:** **Timber harvesting**, the construction and maintenance of **roads** used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. *{12 § 8868(5) and DEP § 17}*
- Tract or Parcel of Land:** All contiguous land in the same ownership provided that lands located on opposite sides of a public or private **road** are considered each a separate tract or parcel of land unless the road was established by the owner of the land on both sides of the road. *{30-A § 4401(6)}*
- Trailer:** Any non-motorized vehicle used or constructed so as to permit its being used as a **temporary** dwelling for travel, recreation and vacation **use**. This term shall include but not be limited to camper, camper-trailer and all other similar short-term shelter devices.
- Tree** - a woody perennial plant with a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity. *{DEP Chap 1000, 1-1-2015 ver.}*
- Tributary Stream:** A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial **vegetation** or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This

definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland. **NOTE:** Water setback requirements apply to tributary streams within the shoreland zone. *{DEP §§ 15(B)(1) & 17 and DEP Chap 1000, 1-1-2015 ver.}*

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

Upland edge of a wetland - the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and spring highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller. *{DEP Chap 1000, 1-1-2015 ver.}*

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

Use Accessory: See **Accessory Use**.

Use, Expansion: The addition to an existing **use** such as the addition of one or more months to a use's operating season; the use of more **floor area** or ground area devoted to a particular use; or the addition of one or more **permitted uses**. *{DEP § 17}*

Use, Principal: See **Principal Use**.

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

Vegetation: All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level. *{DEP § 17}*

Velocity Zone: An area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. *{DEP § 17}*

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

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

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

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

Warehousing: The storage, deposit, or stocking of merchandise or commodities in a **structure** or room, or on the premise. Includes **temporary** storage of materials normally associated with construction and landscaping. This includes, but is not limited to, sand, gravel, dirt, rocks and mulch.

Waste Disposal: The removal or destruction of by-products resulting from a process other than the products for which the process is implemented. This includes, but is not limited to, saw dust, welding rods, animal dung, uneaten food and other household waste, grass clippings, tree limbs and other **vegetation**, building and construction debris, and wastewater. The term excludes **sludge**. Facilities for the disposal of human wastes accumulated on boats are services provided by **marinas**. Facilities to for the disposal of human wastes accumulated on **recreational vehicles** are services provided by **campgrounds**.

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

Water body: Any great pond, river or stream. *{DEP Chap 1000, 1-1-2015 ver.}*

Water Crossing: Any project extending from one bank to the opposite bank of a **stream, outlet stream, tributary stream** or **wetland** whether under, through, or over the water or wetland. Such projects include, but may not be limited to, **roads**, fords, **bridges**, culverts, water lines, sewer lines, and cables as well as

maintenance work on these crossings. This definition includes crossings for **timber harvesting** equipment and related activities. {DEP § 17}

Wetland: A freshwater or coastal wetland. {DEP § 17and DEP Chap 1000, 1-1-2015 ver.}

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

Windfirm: The ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage. {DEP § 17} [**Timber Harvesting**]

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

Woody Vegetation: Live trees or woody, non-herbaceous shrubs. {DEP § 17}

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

Yard Sale: The sale of personal household items to the public but not by consignment. This term shall include **garage sales** and other such sales from a residential dwelling unit or property. [**Administrative Code**]

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;

Zoning Ordinance of the Town of Boothbay

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;

Zoning Ordinance of the Town of Boothbay

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.

Zoning Ordinance of the Town of Boothbay

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/carpports 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;

Zoning Ordinance of the Town of Boothbay

- (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 Famham 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

Zoning Ordinance of the Town of Boothbay

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.

Zoning Ordinance of the Town of Boothbay

(1) 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.

Zoning Ordinance of the Town of Boothbay

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.

Zoning Ordinance of the Town of Boothbay

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

Zoning Ordinance of the Town of Boothbay

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. Fewis

WITNESS

Eric Hodgdon

WITNESS

Bonnie D. Fewis

INHABITANTS OF THE TOWN OF BOOTHBAY

Charles R. Cunningham

Chairman, Board of Selectmen
Charles R. Cunningham

Don E. Harris

Vice Chairman, Board of Selectmen

Alan Throckmold

Selectman

Eric Hodgdon

Selectman

Eric Hodgdon

Selectman

BIGELOW LABORATORY FOR OCEAN SCIENCES

John P. Anderson

WITNESS

By: Louis E. Sage

Louis E. Sage

Its President, duly authorized

Zoning Ordinance of the Town of Boothbay

STATE OF MAINE
Lincoln, ss.

May 24, 2006

Personally appeared the above named Charles R. Cunningham Chairman of the Board of Selectmen, and swore the foregoing instrument to be his free act and deed and the free act and deed of the Inhabitants of the Town of Boothbay.

Before me,

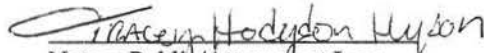
Notary Public/Attorney at Law
Tracey Hodgdon Hyson, Notary Public
State of Maine
My Commission Expires 12/30/2006
Print Name

STATE OF MAINE
COUNTY OF Lincoln, ss.

May 24, 2006

Personally appeared before me the above-named Louis E. Sage in his capacity as President of Bigelow Laboratory for Ocean Sciences and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Bigelow Laboratory for Ocean Sciences.

Before me,


Notary Public/Attorney at Law
Tracey Hodgdon Hyson, Notary Public
State of Maine
My Commission Expires 12/30/2006
Print Name

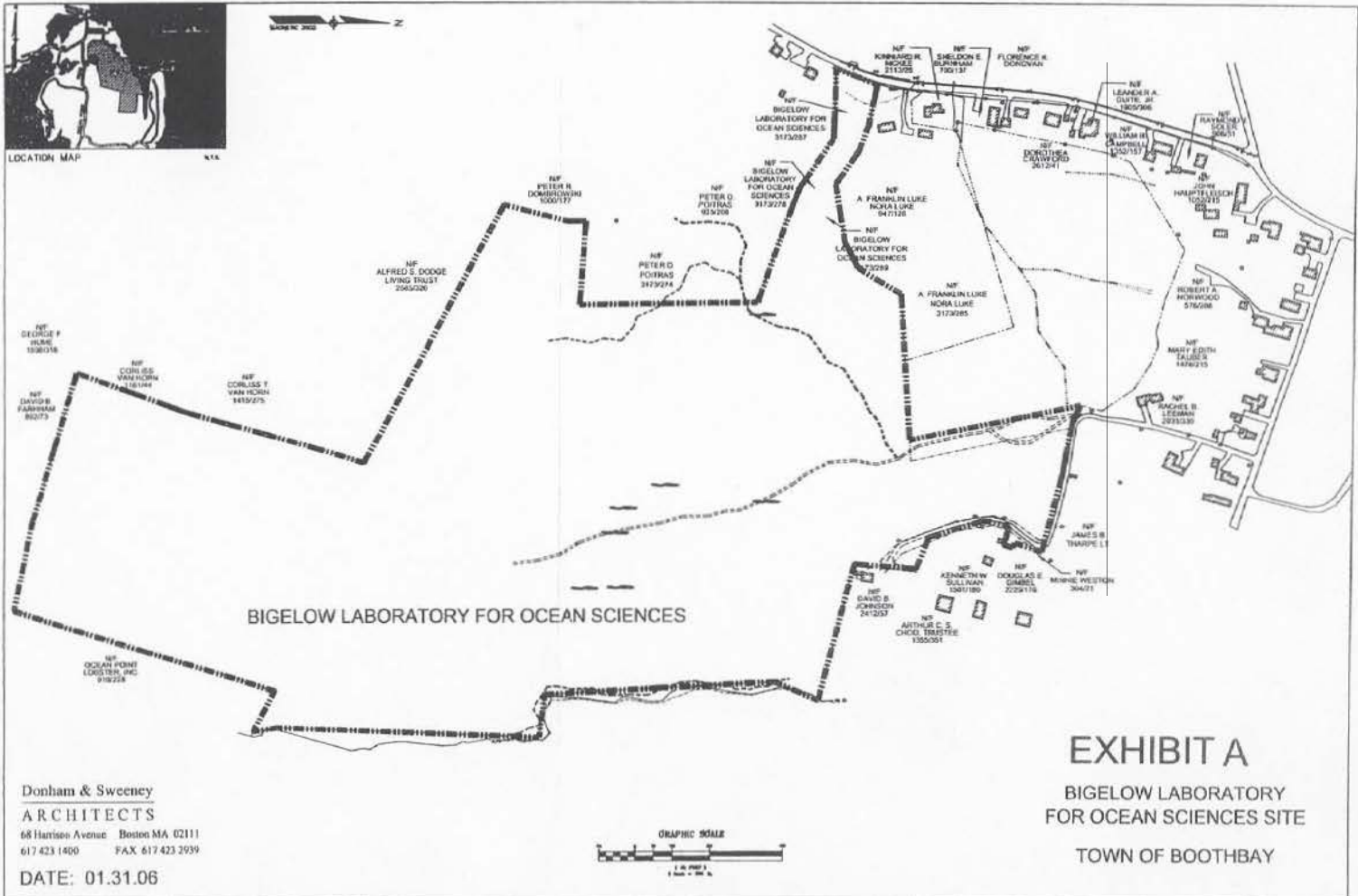
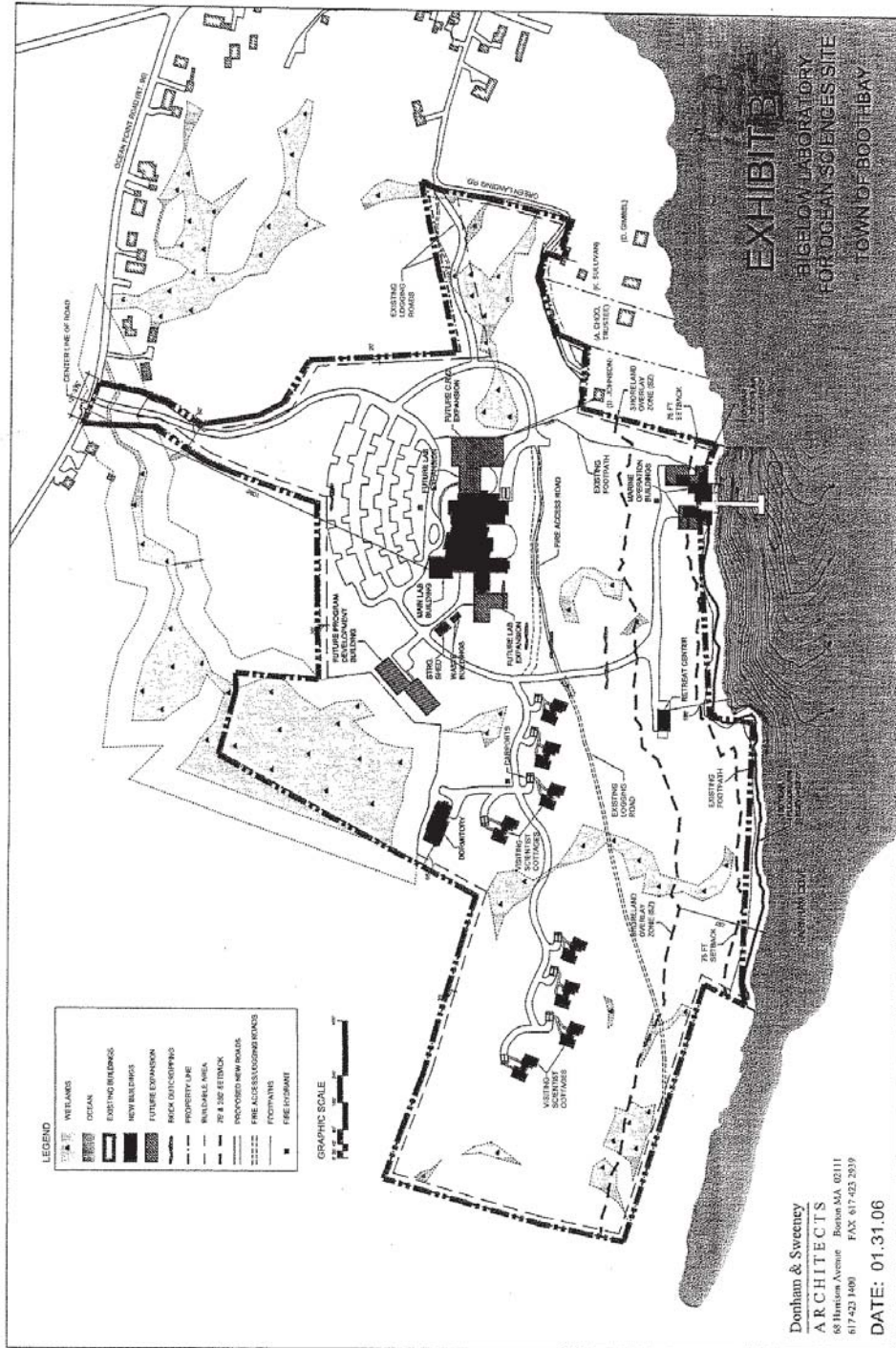


EXHIBIT A
 BIGELOW LABORATORY
 FOR OCEAN SCIENCES SITE
 TOWN OF BOOTHBAY

Donham & Sweeney
 ARCHITECTS
 68 Harrison Avenue Boston MA 02111
 617 423 1400 FAX 617 423 2939
 DATE: 01.31.06

Zoning Ordinance of the Town of Boothbay



**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 24th 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.

Zoning Ordinance of the Town of Boothbay

- (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.

Zoning Ordinance of the Town of Boothbay

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

Zoning Ordinance of the Town of Boothbay

width of the permanent access way between the shoreline and the pier shall not exceed 24', and the maximum width of the fixed pier (narrowest dimension) shall not exceed 40'.

M. Replace Exhibit B of the CZA dated January 31, 2006 with Exhibit B dated February 3, 2010.

N. All provisions of the CZA are incorporated into this Amendment and are hereby modified or amended to conform to this Amendment but in all other respects are to be and shall continue in full force and effect.

**INHABITANTS OF
THE TOWN OF BOOTHBAY**

WITNESS

_____/s/
Chairman, Board of Selectmen

WITNESS

_____/s/
Vice Chairman, Board of Selectmen

WITNESS

_____/s/
Selectmen

WITNESS

_____/s/
Selectmen

WITNESS

_____/s/
Selectmen

**BIGELOW LABORATORY
FOR OCEAN SCIENCES**

WITNESS

By: _____/s/
Graham Shimmiel
Its Executive Directly, duly authorized

Zoning Ordinance of the Town of Boothbay

STATE OF MAINE

Lincoln, ss.

_____, 2010

Personally appeared the above named _____, Chairman of the Board of Selectmen, and swore the foregoing instrument to be his free act and deed and the free act and deed of the Inhabitants of the Town of Boothbay.

Before me,

/s/
Notary Public/Attorney at Law

Print Name

STATE OF MAINE

Lincoln, ss.

_____, 2010

Personally appeared the above named Graham Shimmield in his capacity as Executive Director of Bigelow Laboratory for Ocean Sciences and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Inhabitants of Bigelow Laboratory for Ocean Sciences.

Before me,

/s/
Notary Public/Attorney at Law

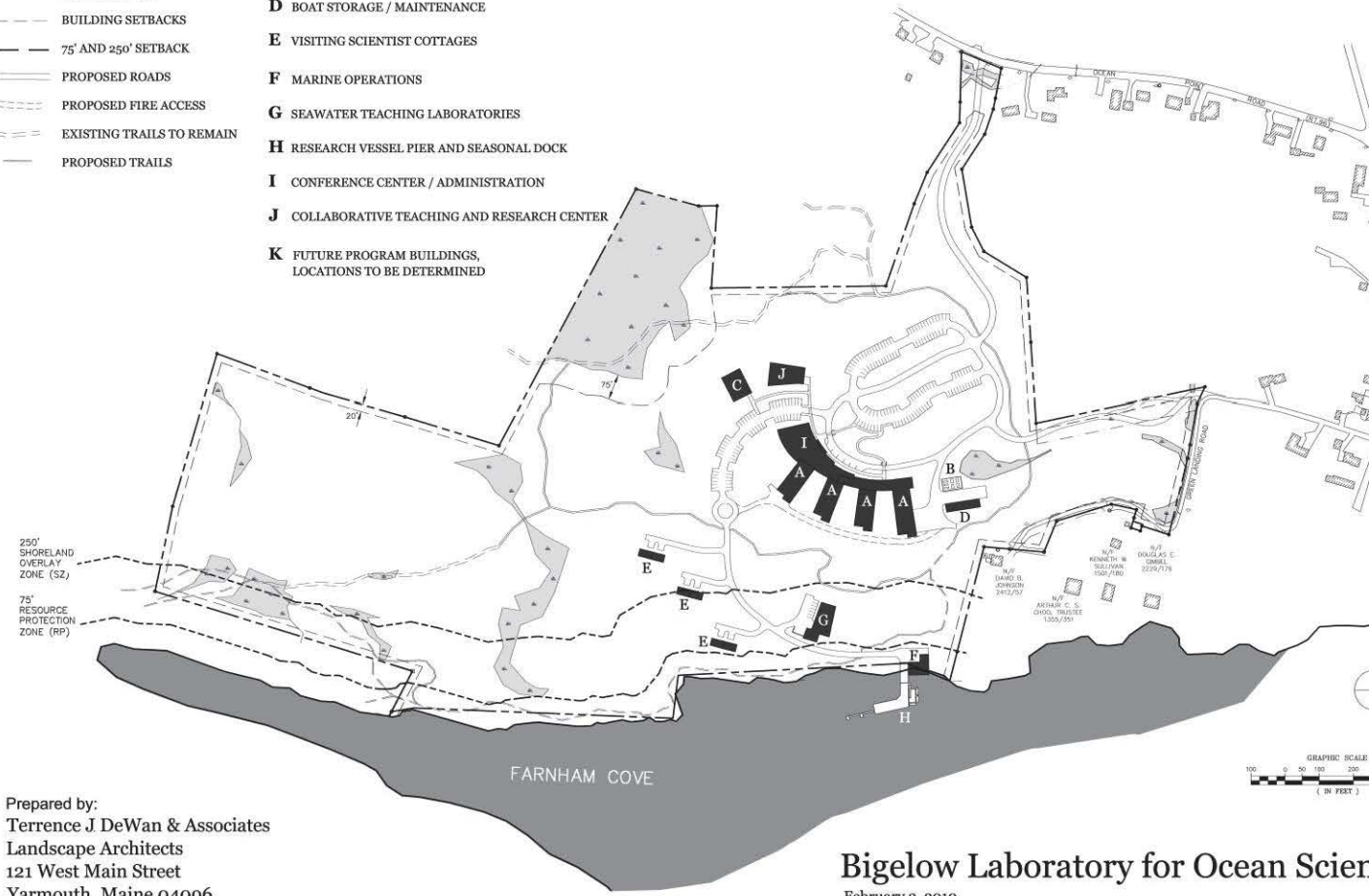
Print Name

LEGEND

-  WETLANDS
-  EXISTING BUILDINGS
-  PROPOSED BUILDINGS
-  PROPERTY LINE
-  BUILDING SETBACKS
-  75' AND 250' SETBACK
-  PROPOSED ROADS
-  PROPOSED FIRE ACCESS
-  EXISTING TRAILS TO REMAIN
-  PROPOSED TRAILS

BUILDINGS

- A** MAIN LABORATORY AND RESEARCH BUILDING
- B** CHILLER / GENERATOR ENCLOSURE
- C** DORMITORY
- D** BOAT STORAGE / MAINTENANCE
- E** VISITING SCIENTIST COTTAGES
- F** MARINE OPERATIONS
- G** SEAWATER TEACHING LABORATORIES
- H** RESEARCH VESSEL PIER AND SEASONAL DOCK
- I** CONFERENCE CENTER / ADMINISTRATION
- J** COLLABORATIVE TEACHING AND RESEARCH CENTER
- K** FUTURE PROGRAM BUILDINGS, LOCATIONS TO BE DETERMINED



Prepared by:
 Terrence J DeWan & Associates
 Landscape Architects
 121 West Main Street
 Yarmouth, Maine 04096
 Phone 207.846.0757 Fax 207.846.0675

Bigelow Laboratory for Ocean Sciences
 February 3, 2010
 Town of Boothbay, Maine
Contract Zone Exhibit