

**BUSTINS ISLAND VILLAGE CORPORATION**

**BUSTINS ISLAND, MAINE**

**ZONING ORDINANCE**

(As adopted August 2, 1975, effective  
September 1, 1975, and amended August 3, 1985  
and reflecting certain further  
changes approved by the Planning Board  
on July 12, 1986 as authorized at the  
1985 Annual Meeting of the B.I.V.C.  
and as further amended

August 4, 1990, August 3, 1991, August 5, 1995, August 1, 1998,  
August 5, 2000, August 4, 2001, August 2, 2003, August 7, 2004,  
August 5, 2006, August 4, 2007, August 7, 2010,  
August 6, 2011, August 4, 2012, August 3, 2013 and **August 5, 2023**)

**Note: The Zoning Map, Bustins Island Maine dated August 2, 2003 including corrections through May 16, 2005 and as it may be subsequently further amended and corrected is an integral part of this zoning ordinance.**

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ARTICLE 1 - GENERAL1.1 Short Title

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the Bustins Island Village Corporation of Bustins Island, Maine," and will be referred to hereinafter as this "Ordinance". The corporation shall be hereinafter referred to as the B.I.V.C.

1.2 Purpose

To further the maintenance of safe and healthful conditions and the general welfare, prevent and control water pollution, protect spawning grounds, fish, aquatic life, bird and other wildlife habitat, control Building sites, placement of Structures and land Uses, and conserve shore cover, visual as well as actual, points of access to inland and coastal waters and natural beauty.

This Ordinance does not grant any property rights; it does not authorize any person to trespass, infringe upon or injure the property of another; it does not excuse any person of the necessity of complying with other applicable laws and regulations.

1.3 Basic Requirements

All Buildings or Structures hereinafter erected, reconstructed, altered, enlarged, or moved, and Uses of Premises on the Island shall be in conformity with the provisions of this Ordinance. No Building, Structure, land or water area shall be used for any purpose or in any manner except as permitted within the District in which such Building, Structure, land, or water area is located.

1.4 Non-Conforming Uses1.4.1 Continuance of Non-Conforming Uses

1.4.1.1 The Use of any land, Building or Structure, lawful at the time of adoption or subsequent amendment of this Ordinance, may continue although such Use does not conform to the provisions of this Ordinance.

## 1.4.1.2 Non-Conforming Buildings or Structures

A Non-Conforming Building or Structure may be repaired, rebuilt, maintained, or improved; but the area in nonconformity may not be extended or expanded more than 50 percent of its original non-conforming Floor Area or Volume and only in

conformity with provisions of this Ordinance. Whenever a new, enlarged, or replacement Foundation is Constructed under a Non-Conforming Building or Structure, the Building or Structure and new Foundation must be placed such that the Setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee in accordance with criteria below. In addition, except for a permitted expansion of a non-conformity, if the completed Foundation does not extend beyond the exterior dimensions of the Building or Structure and the completed Foundation does not cause the Building or Structure to be elevated by more than three (3) additional feet as measured from the uphill side of the Building or Structure (from the original ground level to the bottom of the first floor sill), it shall not be considered an expansion of the Building or Structure.

Relocation: A Non-Conforming Building or Structure may be relocated within the boundaries of the parcel on which the Building or 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 or its designee in accordance with criteria below, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said rules. In no case, shall a Building or Structure be located in a manner that causes it to be more non-conforming.

Criteria: In determining whether a Building or Structure relocation meets the Setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the Lot, the slope of the land, the potential for soil erosion, the location of other Buildings or 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.

Shoreland District - In the Shoreland District, any portion of a Non-Conforming Building or Structure less than the required Setback from the Normal High-Water Line of a water body, Tributary Stream, or the Upland Edge of a Wetland may not be extended

or expanded by more than 30 percent of its original non-conforming Floor Area or Volume, based on its size as of January 1, 1989 or as of the subsequent date of its actual legal construction. A replacement Building or Structure may not be expanded if it is less than the required Setback from a water body, Tributary Stream, or Upland Edge of a Wetland and if the original legally existing Building or Structure it replaced had already been expanded by 30% in Floor Area or Volume based on its size as of January 1, 1989 or as of the subsequent date of its actual legal construction.

Throughout the Shoreland District and elsewhere when it is necessary to remove vegetation within the water or Wetland Setback area in order to relocate a Building or Structure, native vegetation shall be replanted to compensate for destroyed vegetation. In addition the area from which the relocated Building or Structure was removed must be replanted with vegetation. Replanting is required as follows:

(a) Trees removed in order to relocate a Building or Structure must be replanted with at least one native tree, three (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 area than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a Building or Structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be re-established within the Setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

(b) Where feasible, when a Building or Structure is relocated on a parcel the original location of the Building or Structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

1.4.1.3 A Non-Conforming Use may not be expanded.

#### 1.4.2 Discontinuance of Non-Conforming Uses

A Non-Conforming Use which is discontinued for a period of three (3) years may not be resumed. The Uses of the land, Building or Structure shall thereafter conform to the provisions of this Ordinance.

#### 1.4.3 Rules of Precedence

Whenever a Non-Conforming Use is superceded by a Permitted Use of a Building or Structure or a Building or Structure and land in combination, such Building or Structure or combination of a Building or Structure and land shall thereafter conform to the provisions of this Ordinance and the Non-Conforming Use may not thereafter be resumed.

#### 1.4.4 Transfer of Ownership

Ownership of land, Buildings and Structures which remain lawful but become non-conforming by the adoption or amendment of this Ordinance may be transferred and the new owner may continue the Non-Conforming Uses subject to the provisions of this Ordinance.

#### 1.4.5 Non-Conforming Lots of Record

1.4.5.1 A single Lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area or width requirements, or both, of the District in which it is located, may be built upon provided that such Lot shall be in separate ownership and not contiguous with any other Lot in the same ownership, and that all other provisions of this Ordinance shall be met. Variance of Setback or sidelines or Yard or other requirements not involving area or width may be obtained only by action of the Board of Appeals.

1.4.5.2 If two or more contiguous Lots or parcels are in single ownership of record at the time of adoption or amendment of this Ordinance, and if all or part of the Lots do not meet the dimensional requirements of this Ordinance, the lands involved shall be considered to be a single parcel for the purposes of this Ordinance and no portion of said parcel shall be built upon or sold which does not meet the dimensional requirements of this Ordinance; nor shall any division of the parcel be made which creates any dimension or area below the requirements of this Ordinance. Improved Lots with Buildings or Structures thereon may be partitioned upon petition to the Board of Appeals for a Variance to this effect.



#### 1.4.6 Restoration of Unsafe Property

Nothing in this Ordinance shall prevent the strengthening or restoring to safe condition of any part of any Building or Structure declared unsafe by the Building Inspector.

#### 1.4.7 Pending Application for Building Permits

Nothing in this Ordinance shall require any change in the plans, construction, size, or designated Use for any Building or Structure, or part thereof, for which application for a Building Permit has been made or a Building Permit has been issued or upon which construction commenced prior to the adoption or amendment of this Ordinance, provided construction shall start within 60 days after the issuance of such Permit.

#### 1.5 Validity, Severability and Conflicts

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 this Ordinance.

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation, or statute administered by the B.I.V.C., the more restrictive provision shall control.

#### 1.6 Conflict and Inconsistencies

##### 1.6.1 Conflict

This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other applicable rule, regulation, by-law, 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 control.

##### 1.6.2 Inconsistencies

It is the intention of this Ordinance to be dominant in those areas specifically designated herein. Any and all portions of the existing by-laws of the B.I.V.C. are hereby amended and modified or declared void, as the case may be, in order to make the same in each specific instance consistent with this Ordinance. Regulations promulgated by the Planning Board from time to time shall be made to resolve specifically said inconsistencies and

any person or legal entity that is aggrieved by said decision of the Planning Board shall have the right to present an appropriate petition to this effect to the Board of Appeals for their final adjudication.

## 1.7 Amendment

### 1.7.1 Initiation of Amendment

An amendment to this Ordinance may be initiated by:

- 1) the Planning Board of the B.I.V.C. provided a majority of the board has so voted, or
- 2) request of the Board of Overseers of the B.I.V.C. to the Planning Board, which shall be required to consider the amendment and present it at the next feasible Annual Meeting of the B.I.V.C., whether or not the Planning Board recommends the amendment, or,
- 3) written petition of a number of voters equal to at least 10 percent of the number of voters registered as attending the last Annual Meeting of the B.I.V.C. as certified by the Clerk.

### 1.7.2 Adoption of Amendment

An amendment to this Ordinance may be adopted by:

- 1) a majority of votes cast at the Annual Meeting of the B.I.V.C. at which the amendment is considered if the proposed amendment is recommended by the Planning Board.
- 2) a 2/3 majority of votes cast at the Annual Meeting of the B.I.V.C. at which the amendment is considered if the proposed amendment is not recommended by the Planning Board.

### 1.7.3 Requirement for Public Hearing

In either case, the Planning Board shall hold a public hearing on the proposed amendment(s) at least 15 days prior to the Annual Meeting of the B.I.V.C. at which the amendment is to be considered but in no event prior to June 15 in any year. Notice of the hearing shall be published twice in a newspaper that a) has a general circulation in the community and b) is entered as second class postal matter in the United States mails, first at least twelve days in advance of the hearing and second at least seven days in advance of the

hearing, and posted at least thirteen days in advance on the bulletin board at both the Post Office and the community house on the Island and mailed by first class mail to all the registered voters of the B.I.V.C. as certified by the clerk from the official assessor's records on the last preceding assessment date.

#### 1.7.4 Department of Environmental Protection Approval

The Mandatory Shoreland Zoning Act (*Title 38 M.R.S.A. §435-449 Reference added by Planning Board*) specifies that no ordinances or amendments involving designated shoreland areas are legally in effect unless approved by the Maine Department of Environmental Protection (DEP) Commissioner. Therefore, the Planning Board shall send to the DEP for approval copies of such amendments to the BIVC Zoning Ordinance as soon as practicable after the corporation meeting at which they are adopted.

#### 1.8 Repetitive Petitions

No proposed change in this Ordinance which has been unfavorably acted upon by the voters at an Annual Meeting shall be considered on its merits by an Annual Meeting within two (2) years after the date of such unfavorable action unless adoption of the proposed change is recommended by a 2/3 vote of the Planning Board.

#### 1.9 Effective Date

The effective date of this Ordinance is September 1, 1975.

ARTICLE 2 - ESTABLISHMENT OF DISTRICTS2.1 Zoning Districts

To implement the provisions of this Ordinance, the Island is hereby divided into the following Districts (hereinafter sometimes referred to as Zoning Districts):

- 1) A Resource Protection District which shall be as designated on the official zoning map hereinafter referred to and comprised primarily of the central portion of the Island.
- 2) A Shoreland District which shall be as designated on the official zoning map and begin at the Normal High-Water Line of the waters surrounding the Island, and extend inland on a horizontal line 250 feet. It shall include an overlay of the old shore reserve property which is also shown on the official zoning map.
- 3) A General Purpose District comprised of the portion of the Island not falling in the Shoreland District or the Resource Protection District.

2.2 Location of Districts

The Zoning Districts are located and bounded as shown on the official zoning map entitled "Zoning Map of Bustins Island, Maine, dated September 1, 1975," as amended August 7, 1993, August 3, 1996, and August 2, 1997 and as may be further amended from time to time and on file with the B.I.V.C.'s clerk. The official map shall be signed by the clerk of the B.I.V.C. and Chairman of the Planning Board at the time of the adoption of this Ordinance together with a certificate of the date of the adoption of said Ordinance. Any amendment to the map shall carry a similar certification and signature. The official zoning map is based on a W. L. Sawyer plan dated July 1, 1948, revised April 1, 1972, by John E. O'Donnell and Associates, Auburn, Maine.

*[Planning Board note: To date the most recent Zoning Map is dated August 2, 2003 with corrections through May 16, 2005]*

2.3 Uncertainty of Boundary Location

Where uncertainty exists with respect to the boundaries of the Zoning Districts as shown on the official zoning map, the following rules shall apply:

(1) Boundaries indicated as approximately following the center lines or the sidelines of roads or footpaths shall be construed as following said center lines or sidelines, as the case may be;

(2) Boundaries indicated as approximately following well established Lot Lines shall be construed as following such Lot Lines;

(3) Boundaries indicated as approximately following municipal ownership limits shall be construed as following such municipal ownership limits;

(4) Boundaries indicated as following shorelines shall be construed as following such shorelines, and in the event of natural change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the center lines of streams, brooks, ponds, or other bodies of water shall be construed as following such center lines;

(5) Boundaries indicated as being parallel to or extensions of features indicated in subsections (1) through (4) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map; and

(6) Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by subsections (1) through (5) above, the Board of Appeals shall interpret the District boundaries.

## 2.4 Division of Lots by District Boundaries

### 2.4.1

Where a Zoning District boundary line divides a Lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the Lot may be extended not more than 50 feet into the more restricted portion of the Lot, subject to the provisions of 2.4.2 below.

### 2.4.2

Extension of Use shall be considered a Conditional Use, subject to approval of the Planning Board and in accordance with the criteria set forth in paragraph 6.8.3(4), Factors Applicable to Conditional Uses.

ARTICLE 3 - CONSTRUCTION OF LANGUAGE AND DEFINITIONS3.1 Construction of Language

In this Ordinance, certain terms or words shall be interpreted as follows:

The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual; the present tense includes the future tense, the singular number includes the plural, and the plural includes the singular; the word "shall" is mandatory, and the word "may" is permissive; the words "used" or "occupied" include the words "intended", "designed", or "arranged to be used or occupied", the word "Building" includes the word "Structure", and the word "Dwelling" includes the word "residence", the word "Lot" includes the words "plot" or "parcel". In the case of any difference of meaning or implication between the text of this Ordinance and any map or illustration, the text shall control.

3.2 Definitions

In this Ordinance the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed:

Accessory Use, Building, or Structure: a Use or Building or Structure of a nature customarily incidental and subordinate to those of the Principal Use thereof.

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 greenhouse products. Agriculture does not include forest management and Timber Harvesting activities.

Alteration: any change, addition, or modification in construction, or any change in the structural members of a Building, such as bearing walls, columns, beams, or girders.

Auto Service Station: a place where gasoline, or any other automobile engine fuel (stored only in underground tanks), kerosene, or motor oil and lubricants or grease (for operation of motor vehicles) are retailed directly to the public on the Premises; including the sale of minor accessories and the

servicing and minor repair of automobiles, not including storage of unlicensed vehicles and not including body, frame, or fender straightening and repair.

Auto Repair Garage: a place where, with or without the attendant sale of engine fuels, the following services may be carried out: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision service, such as body, frame, or fender straightening and repair; over-all painting and under-coating of automobiles.

Automobile Graveyard: a Yard, field or other area used as a place of storage for 3 or more unserviceable, discarded, worn-out or junked motor vehicles.

Basal Area: - the area of cross section of a tree stem 4½ feet above ground level and inclusive of bark.

Basement/Cellar: - any portion of a Building or Structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below existing ground level.

Billboard: a Sign, Structure or surface larger than 6 square feet which is available for advertising purposes for goods or services rendered off the Premises, excluding directional Signs.

Board of Appeals: the board established as provided in Section 6.8.2 of Article 6.

Boathouse: A non-residential Structure designed for the purpose of protecting or storing boats for non-commercial purposes.

Building: A Structure for the support, shelter or enclosure of persons, animals, goods or property of any kind.

Building Height (In the Shoreland District): 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.

Building Height (Outside the Shoreland District): the vertical distance between the highest point of the roof and the average grade of the ground adjoining the Building.

Building Inspector: the Code Enforcement Officer appointed as provided in Section 6.1 of Article 6.

Building Permit: A permit for a Building or Structure granted in accordance with the provisions of Article 6.

Building Site: A Lot on which authorized site preparation (including without limitation, clearing and grading) and/or authorized construction work has been commenced or is on-going in connection with the construction of one or more Buildings or other Structures

Campground: Any Premises established for overnight Use for the purpose of temporary camping, and for which a fee is charged.

Channel: A natural or artificial watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow is water flowing within the limits of the defined Channel.

Clerk: The Clerk of the Bustins Island Village Corporation.

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; any swamp, marsh, bog, beach, flat, or other contiguous low land which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal Wetlands may include portions of coastal sand dunes.

Code Enforcement Officer: Code Enforcement Officer, also entitled Building Inspector, is the person appointed by the Board of Overseers to administer and enforce this Ordinance. Reference to the Code Enforcement Officer may be construed to mean Building Inspector, Plumbing Inspector, Electrical Inspector, and the like where applicable.

Conditional Use: A Use permitted only after review and approval by the Planning Board. A Conditional Use is a Use that would not be appropriate without restriction but which, if controlled under the provisions of this Ordinance, would promote the purposes of this Ordinance. Such Uses may be permitted if specific



provision of such Conditional Use is made in this Ordinance.

Conditional Use Permit: A permit for a Conditional Use granted in accordance with the provisions of Article 6.

Conforming Use: A Use of Buildings, Structures or land which complies with all applicable provisions of this Ordinance.

Constructed: includes built, erected, altered, reconstructed, moved upon, or any physical operations on the Premises which are required for construction. Excavation, fill, drainage, and the like, shall be considered a part of construction.

District: A specified portion of the municipality, delineated on the official zoning map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

Dwelling: A fixed Structure, containing one or more Dwelling Units.

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, including provisions for living, sleeping, cooking, and eating. The term shall include Mobile Homes and rental units regardless of the time-period rented but shall not include trailers or Recreational Vehicles.

Earth: Soil (including topsoil), sand, gravel, clay, loam, peat, rock, or other minerals.

Essential Services: The construction, alteration or maintenance of gas, electrical, communication facilities, steam, fuel or water transmission or distribution systems, collection, supply or disposal systems. Such systems may include towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories, but shall not include Buildings which are necessary for the furnishing of such services.

Eutrophication: The process of nutrient enrichment of waterbodies.

Excavation: Any removal of Earth or Earth material from its original position.

Family: One or more persons occupying a Premises and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, or hotel. Such unit shall not exceed five persons not related by blood or marriage.

Filling: Depositing or dumping any matter on or into the ground or water.

Flood: A temporary rise in stream flow or tidal surge that results in water overtopping its banks and inundating adjacent areas.

Flood Plain: The lands adjacent to a waterbody which have been or may be covered by the Regional Flood.

Floodway: The Channel of a stream and those portions of the Flood Plain adjoining the Channel that are required to carry and discharge the Flood water or Flood flows of any river or stream.

Flood Proofing: A combination of structural provisions, changes, or adjustments to properties subject to flooding, primarily for the reduction or elimination of Flood damages to properties, water and sanitary facilities, Structures, and contents of Buildings.

Regional Flood: The maximum known Flood of a waterbody; either the 100 year frequency flood, where calculated, or the flood of record.

Floor Area, Gross: The sum of the horizontal area of the floor(s) of a Structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a Structure such as porches and decks.

Footprint - The sum of the surface area of the earth occupied by a Structure, calculated on the basis of the exterior dimensions of the perimeter walls or bounds of such Structure, and including the exterior dimensions of the perimeter walls or bounds of any attached porches, decks or other attached Accessory Structures.

Forested Wetland - A freshwater Wetland dominated by woody vegetation that is six meters tall or taller.

Foundation: - the supporting substructure of a Building or other Structure, excluding wooden sills and post supports, including Basements, slabs, or other base consisting of concrete, block, brick, or similar material.

Freshwater Wetland - Freshwater swamps, marshes, bogs, and similar areas, other than Forested Wetlands which are:

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

Frontage, Road: The horizontal distance between the intersections of the Side Lot Lines with the Front Lot Line.

Frontage, Shore: The horizontal distance, measured in a straight line, between the intersections of the Side Lot Lines with the shoreline at the Normal High-Water Line.

Functionally Water-Dependent Uses: - Those Uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. The Uses include, but are not limited to, commercial and recreational fishing and boating facilities, excluding recreational boat storage Buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, Marinas, navigation aids, basins, and Channels, retaining walls, industrial Uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and Uses that

primarily provide general public access to coastal or inland waters.

Governing Body: the registered voters of the B.I.V.C. as certified by the clerk from the official assessor's records on the last preceding assessment date.

High Water Elevation, Normal: Normal High Water Elevation shall mean "Normal High-Water Line".

Home Occupation: An occupation or profession which is: customarily carried on in a Dwelling Unit or Building or Structure accessory to a Dwelling Unit; carried on by a member of the Family residing in the Dwelling Unit; and clearly incidental and secondary to the Use of the Dwelling Unit for residential purposes.

Island: Bustins Island and the surrounding waters of Casco Bay within the jurisdiction of the B.I.V.C.

Junkyard: A Yard, field, or other area used as a place of storage for:

1. Discarded, worn-out or junked plumbing, heating supplies, appliances and furniture;
2. Discarded, scrap and junked lumber;
3. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber or plastic debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and
4. Garbage dumps, waste dumps and sanitary fills.

Lagoon: an artificial enlargement of a waterbody, primarily by means of dredging and Excavation.

Lot: A parcel of land in one ownership or one leasehold with ascertainable boundaries described on a deed, plot or similar legal document.

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 areas beneath roads serving more than two Lots.

Lot, Corner: A Lot with at least two contiguous sides abutting upon a road.

Lot, Coverage: The percentage of the Lot covered by all Buildings, Structures, and all non-vegetated surfaces excluding naturally occurring ledge.

Lot, Interior: Any Lot other than a Corner Lot.

Lot Lines: The lines bounding a Lot as defined below:

Front Lot Line: On an Interior Lot, the line separating the Lot from the road. On a Corner or Through Lot, the line separating the Lot from either road.

Rear Lot Line: The Lot line opposite the Front Lot Line. On a Lot pointed at the rear, the Rear Lot Line shall be an imaginary line between the Side Lot Lines parallel to the Front Lot Line, not less than ten (10) feet long, lying farthest from the Front Lot Line. On a Corner Lot, the Rear Lot Line shall be opposite the Front Lot Line of least dimension.

Side Lot Line: Any Lot line other than the Front Lot Line or Rear Lot Line.

Lot Width: The horizontal distance between the Side Lot Lines, measured at the Building's front Setback line.

Lot of Record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file with the County Register of Deeds or in common use by City or County Officials.

Lot, Shorefront: Any Lot abutting a waterbody.

Lot, Through: Any Interior Lot having Frontages on two more or less parallel roads, or between a street and a waterbody, or between two waterbodies, as distinguished from a Corner Lot. All sides of Through Lots adjacent to roads and waterbodies shall be considered Frontage, and Front Yards shall be provided as required.

Marina: a shorefront commercial facility with provisions for one or more of the following: boat storage, boat launching, or the sale of supplies and services for watercraft and their equipment and accessories.

Mean Sea Level: as defined by the U.S. Coast and Geodetic Survey and commonly used as datum on all quadrangle sheets of the U.S. Geological Survey.

Mobile Home: a Structure designed as a Dwelling Unit for location on a temporary or permanent Foundation, and containing sleeping accommodations.

Mobile Home Park: a plot of land laid out to accommodate at least two Mobile Homes.

Net Residential Acreage: the gross acreage available for development, excluding the area for roads or access and the areas which are unsuitable for development.

Net Residential Density: the number of Dwelling Units per net residential acre.

Non-Conforming Building or Use: a Building, Structure, Use of land, or portion thereof, existing at the effective date of adoption of this Ordinance which does not conform to all applicable provisions of this Ordinance.

Normal High-Water Line: That line which is apparent from visible markings, changes in the character of soils due to prolonged action of water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In tidal areas, this line is the maximum spring tide level or the Upland Edge of the Coastal Wetland.

Open Space Use: A Use not involving: a Building or Structure, (including without limitation any Tent); Earth-moving activity; or the removal or destruction of vegetative cover, spawning grounds, or fish, aquatic life, bird and other wildlife habitat.

Parking Space: a minimum area of two hundred (200) square feet, exclusive of drives, aisles or entrances, fully accessible for the storage or parking of vehicles.

Party Tent: A Tent used to provide shelter for persons and/or property that does not have any sleeping accommodation.

Permitted Use: any Use of the type described in Sections 4.1.3, 4.2.3 or 4.3.3 of Article 4.

Planned Unit Development: land under unified management, planned and developed as a whole according to comprehensive and detailed plans, including streets, utilities, Lots or Building Sites, site plans and

design principles for all Buildings and Structures intended to be located, Constructed, used and related to each other, and for other Uses and improvements on the land. Development may be a single operation or a programmed series of operations including all lands and Buildings and Structures, with provision for operation and maintenance of such areas and improvements and facilities necessary for common use by the occupants of the development.

Planning Board: The board established as provided in Section 6.1.1 of Article 6.

Plumbing Permit: a permit for sanitation facilities as provided in Section 6.3 of Article 6.

Premises: one or more Lots which are in the same ownership and are contiguous or separated only by a road or waterbody, including all Buildings, Structures and improvements.

Principal Building or Structure: the Building or Structure in which the primary Use of the Lot is conducted.

Principal Use: the primary Use to which the Premises are devoted, and the main purpose for which the Premises exist.

Prohibited Use: Any Use of the types described in Sections 4.1.5, 4.2.5 or 4.3.5 of Article 4.

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.

Recreational Areas: Premises or portions thereof used for public or private recreation, including parks, playgrounds, ball fields, golf courses, driving ranges, and swimming areas, but excluding Campgrounds.

Recreational Camping: Use of any Tent with no Foundation or platform for the purpose of providing temporary shelter for one or more persons for recreational purposes.

Recreational Vehicle: A vehicle or vehicular attachment designed for temporary sleeping or living quarters for one or more persons, which is not a

Dwelling and which may include a pick-up camper, travel trailer, tent trailer, and motor home.

Road: A path of travel for persons and authorized vehicles that has been duly accepted by the BIVC as a public right of way.

Setback: The minimum horizontal distance from a Lot line to the nearest part of a Structure.

Setback from Water: The minimum horizontal distance from the higher of the Normal High-Water Line or Upland Edge of a Wetland, or Tributary Stream to the nearest part of a Building, Structure, road, Parking Space, or other regulated object or area.

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.

Shore Reserve: Land within the Shoreland District owned by the B.I.V.C. and designated as Shore Reserve on the Zoning Map of Bustins Island, Maine. (See also Section 4.2.8)

Sign: A name, identification, description, display or illustration which is affixed to, painted or represented, directly or indirectly, upon a Building, Structure, parcel or Lot and which relates to an object, product, place, activity, person, institution, organization or business on the Premises.

Special Meeting: Any Special Meeting or Extraordinary Special Meeting as such terms are defined in the B.I.V.C. by-laws as amended.

State: The State of Maine or any agency or political subdivision thereof exercising jurisdiction.

Structure: Anything Constructed or erected, except a boundary wall or fence, the use of which requires location on or above the ground or attachment to something on the ground.

Subdivision: The division of a tract or parcel of land into three or more Lots, whether accomplished by sale, lease, development, building or otherwise, in any five year period. For the purpose of this Ordinance the term Subdivision shall include such developments as shopping centers, condominiums, Mobile Home Parks and



Campgrounds where there are three or more units involved.

Land divided by inheritance, order of court or gift to a relative, except where the objective of such transaction is to avoid municipal review, is not considered part of a Subdivision. Also, in determining whether a Subdivision has occurred, land retained by the subdivider for his own use as a single Family residence for a period of five years shall not be computed in the number of Lots created, nor shall the creation of any Lot or parcel 40 acres or larger be considered part of a Subdivision unless the objective of such division is to avoid municipal review.

Sun Canopy: A Tent without walls or sides, other than optional mosquito netting, that (i) does not have any sleeping accommodation and (ii) does not exceed 400 square feet of Floor Area below the ceiling of the Tent.

Tent: A portable self-contained fabric or fabric-like Structure used to provide temporary shelter to one or more persons and/or property (i) with no Foundation other than an optional temporary platform erected on a frame of metal or wood and (ii) having no utilities either permanently or temporarily attached to service the Structure.

Tenting Area: A plot of land on which Tents are pitched for more than 30 days in a year.

Tenting Permit: Any permit required pursuant to this Ordinance to pitch and use a Tent.

Timber Harvesting: The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting and removal of trees in the Shoreland District on a Lot of less than two (2) acres shall not be considered Timber Harvesting. Such cutting and removal of trees shall be regulated pursuant to Section 5.16, Vegetative Cutting.

Trailer, Utility: A vehicle without motive power, designed to be towed by a passenger automobile but not designed for human occupancy and which may include a utility trailer, boat trailer, horse trailer, or snowmobile trailer.

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 formed because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

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/or the maximum spring 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 twenty (20) feet tall or taller.

Use: the purpose for which land or a Building or Structure is arranged, designed, or intended, or for which land or a Building or Structure is or may be occupied.

Use Permit: a permit for a Permitted Use granted in accordance with the provisions of Article 6.

Variance: A relaxation of the terms of this Ordinance where such Variance would not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Ordinance would result in unnecessary or undue hardship.

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

Wetlands - See Coastal Wetland, Forested Wetland, and/or Freshwater Wetland.<sup>1</sup>

Wireless Communication Facility - A facility that transmits, receives, distributes, provides or offers wireless communications together with the facility's associated antennas, microwave dishes, horns, cables, wires, conduits, ducts, lightning rods, electronics and other types of equipment for the transmission, receipt,

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<sup>1</sup> Caption and note added by Planning Board

distribution or offering of such signals, wireless communication towers, antenna support Structures, and other Structures supporting said equipment and any attachments to those Structures including guy wires and anchors, equipment Buildings, generators, parking areas, utility services, driveways and roads and other accessory features. Citizens band and amateur radio facilities are not included within the scope of this definition.

Yard: The area of land on a Lot not occupied by the Principal Building.

Yard, Front: the area of land between the Front Lot Line and the nearest part of the Principal Building.

Yard, Side: the area of land between the Side Lot Line and the nearest part of the Principal Building.

Yard, Rear: the area of land between the Rear Lot Line and the nearest part of the Principal Building.

ARTICLE 4 - LAND USE DISTRICT REQUIREMENTS4.1 Resource Protection District4.1.1 Purpose

- (1) To further the maintenance of safe and healthful conditions and the general welfare; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control Building Sites, placement of Buildings and Structures and land Uses; and conserve shore cover, visual as well as actual, points of access to inland and coastal waters and natural beauty.
- (2) To control the use of shoreland and other areas to provide maximum protection to the land and water resources so that:
  - a. The processes of Eutrophication, sedimentation, and pollution, leading to the ultimate degradation or destruction of the water body, will be eliminated or delayed as long as possible;
  - b. The process of accelerated nutrient enrichment of waterbodies, which almost always accompanies shoreland development, will be kept to a minimum;
  - c. Waterbodies, particularly those with public access, will be maintained in a condition fit for the present and future Use and enjoyment of the public; and
  - d. Erosion of the coastline may be prevented.
- (3) To provide minimum standards, as a stopgap measure, until such time as research establishes precisely the susceptibility of various waterbodies to degradation and the exact nature of the effects of shoreland development on that degradation process.
- (4) To enhance the enjoyment and Use of waterbodies through the protection of fish and aquatic life from destruction that results from advance stages of man-induced Eutrophication.
- (5) To protect the most vulnerable shoreland areas of all waterbodies and other areas in which land Uses would adversely affect water quality, productive

habitat, biological systems, or scenic and natural values, and to discourage development in unsafe or unhealthful areas. Such areas include, but are not limited to:

- a. Wetlands, swamps, marshes and bogs; and
- b. Significant wildlife habitats.

#### 4.1.2 Basic Requirement

Permitted Uses and Conditional Uses shall conform to all dimensional requirements and other applicable requirements of this Ordinance. A Building or Use Permit shall be required for all Buildings or Structures, in accordance with the provisions of Article 6 of this Ordinance.

#### 4.1.3 Permitted Uses

The following Uses are permitted in the Resource Protection District without the need for a Building or Use Permit except as herein provided:

##### (1) Rural

- a. Open Space Use;
- b. Agriculture and gardening; and
- c. Timber and cordwood harvesting and storage.

##### (2) Other

- a. Retenments and erosion prevention Structures and activities;
- b. Recreational Camping for seven days or fewer in any 30 day period; and
- c. Temporary Signs of no more than two square feet of area.

##### (3) Shore Reserve

- (4) Municipal Public Recreation including but not limited to golf courses, tennis courts and ball fields.

#### 4.1.4 Conditional Uses

The following Uses are permitted only upon the granting of a Conditional Use Permit by the Planning Board, in accordance with the provisions of Article 6:

##### (1) Buildings and Structures

Buildings or Structures accessory to Permitted or Conditional Uses, upon a finding of the Planning Board that:

- a. The proposed Building or Structure is related and necessary to a Building or Permitted or Conditional Use; and
- b. The proposed Building or Structure will involve:
  - 1) no danger to the public health and safety;
  - 2) no significant degradation of air and water quality;
  - 3) no alteration of Wetlands;
  - 4) no significant increase in erosion or sedimentation; and
  - 5) no significant interference with the natural, scenic and historic value of those areas designated by Federal, State, or municipal agencies.

##### (2) Municipal

Municipal Uses as are approved at a B.I.V.C. Annual or Special Meeting to authorize such Uses.

#### 4.1.5 Prohibited Uses

All Uses which are not Permitted Uses or Conditional Uses for which a Conditional Use Permit has been granted are prohibited.

#### 4.1.6 Dimensional Requirements

Any Lot created in the Resource Protection District after the adoption of this amendment shall contain at least 20,000 square feet and have at least 50 feet Frontage on a public way. Pre-existing contiguous Lots of record located in the Resource Protection District

and existing as of the date of adoption of this amendment shall not be subject to merger under Section 1.4.5.2 of this Ordinance so long as they remain in the Resource Protection District; however, they may not be further divided if doing so would create a Lot of less than 20,000 square feet. The provisions of this section shall not prevent the addition to the Resource Protection District of any pre-existing Lot no matter its size.

No portion of any Lot created after the effective date of adoption or amendment of this Ordinance and lying within the Resource Protection District may be used to meet the dimensional requirements of other Districts in which the remainder of the Lot is situated. Where a residential Building or Structure is in existence on the effective date of adoption or amendment of this Ordinance, no Lot containing such Building or Structure shall be created which does not meet the dimensional requirements of the Shoreland District, and which does not contain a minimum of 40,000 square feet.

#### 4.1.7 Performance Standards

Permitted Uses and Conditional Uses shall conform to the performance standards delineated in Article 5 of this Ordinance for the following:

Accessory Buildings and Structures

Agriculture

Modifications of Existing Buildings and Structures

Piers, Docks, and Other Shoreland Construction

Signs and Billboards

Timber Harvesting

Vegetative Cutting

Water Quality Protection

#### 4.2 Shoreland District

##### 4.2.1 Purpose

- (1) To further the maintenance of safe and healthful conditions and the general welfare; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat;

control Building Sites, placement of Buildings and Structures and land Uses; and conserve shore cover, visual as well as actual, points of access to inland and coastal waters and natural beauty.

- (2) To control the Use and development of undeveloped shoreland areas, and to provide maximum protection to the land and water resources so that:
  - a. The processes of Eutrophication, sedimentation, and pollution, leading to the ultimate degradation or destruction of the water body, will be eliminated or delayed as long as possible;
  - b. The process of accelerated nutrient enrichment of waterbodies, which almost always accompanies shoreland development, will be kept to a minimum;
  - c. Waterbodies, particularly those with public access, will be maintained in a condition fit for the present and future Use and enjoyment of the public; and
  - d. Erosion of the coastline may be prevented.
- (3) To provide minimum standards, as a stopgap measure, until such time as research establishes precisely the susceptibility of various waterbodies to degradation, and the exact nature of the effects of shoreland development on that degradation process.
- (4) To enhance the enjoyment and Use of waterbodies through the protection of fish and aquatic life from destruction that results from advanced stages of man-induced Eutrophication.
- (5) To minimize expenditures of public monies for Flood control projects.
- (6) To minimize rescue and relief efforts undertaken at the expense of the general public.
- (7) To minimize expenditures of public monies for Flood and high water damage to public facilities such as water mains, sewer lines, septic systems, streets, bridges, piers and docks.
- (8) To protect the storage capacity of Flood Plains and assure retention of sufficient Floodway area to convey Flood and high water flows which reasonably can be expected to occur.



- (9) To encourage open space Uses such as Agriculture and recreation.
- (10) To control Building Sites.

#### 4.2.2 Basic Requirement

Permitted Uses and Conditional Uses shall conform to all dimensional requirements and other applicable requirements of this Ordinance. A Plumbing Permit and a Building or Use Permit shall be required for all Buildings, Structures, Uses and sanitary facilities, in accordance with the provisions of Article 6 of this Ordinance.

#### 4.2.3 Permitted Uses

The following Uses are permitted in the Shoreland District without the need for a Building or Use Permit except as herein provided:

- (1) Rural
  - a. Open Space Use;
  - b. Agriculture and gardening; and
  - c. Timber and cordwood harvesting and storage in accordance with Sections 5.15 and 5.16 of this ordinance.
- (2) Other
  - a. Filling, grading, lagooning, dredging, or other Earth-moving activity operated in accordance with State laws, and involving the removal or Filling of less than ten (10) cubic yards of material from or onto any Lot in any one (1) year, or the removal or Filling of material incidental to construction, alteration or repair of a Building or Structure or in the grading and landscaping incidental thereto, or the removal, Filling, or transfer of material incidental to construction, alteration or repair of a public or private way or Essential Services;
  - b. Recreational Camping for ten days or fewer in any 30 day period;
  - c. Use of one or more Party Tents for the purpose of providing shelter to persons and/or property in connection with social gatherings or functions for no more than ten days in any 90 day period;

- d. Use of Sun Canopies to provide temporary shelter to persons and/or property; and
- e. Signs.

#### 4.2.4 Conditional Uses

The following Uses are permitted only upon the granting of a Conditional Use Permit by the Planning Board, in accordance with the provisions of Article 6:

##### (1) Rural

- a. Sale of produce and plants raised on the premises, or seasonal sales of produce and plants not raised on the premises;
- b. Recreational Areas;
- c. Accessory Uses, Buildings and Structures;
- d. Uses which are similar to the above Uses; and
- e. Recreational Camping for more than ten days in any 30 day period.

##### (2) Residential

- a. Single Family Dwellings;
- b. Two-Family Dwellings;
- c. Accessory Uses, Buildings and Structures;
- d. Boathouses;
- e. Piers, docks, and floats;
- f. Uses which are similar to the above Uses;
- g. Home Occupations;
- h. Temporary use of one or more Tents for the purpose of providing shelter to persons and/or property in connection with the construction of a Building or Structure; and
- i. Use of one or more Party Tents for the purpose of providing shelter to persons and/or property in connection with social gatherings and functions for more than ten days in any 90 day period.

- (3) Commercial and Industrial Uses Requiring a Shorefront Location
  - a. Facilities which by nature of their operation require a shorefront location including, without limitation, boat yards, Marinas, bath houses, and commercial fishing activities; and
  - b. Accessory Uses and Structures.
- (4) Public, Semi-Public, and Institutional
  - a. Churches or other places of worship, parish houses, rectories, convents, and other religious institutions;
  - b. Public Buildings such as libraries, museums and civic centers;
  - c. Public utilities, including sewage collection and treatment facilities;
  - d. Accessory Uses, Buildings and Structures; and
  - e. Uses which are similar to the above Uses.
- (5) Municipal  
Municipal Uses as are approved at a B.I.V.C. Annual or Special Meeting to authorize such Uses.

#### 4.2.5 Prohibited Uses

All Uses which are not Permitted Uses or Conditional Uses for which a Conditional Use Permit has been granted are prohibited. The provisions of Section 4.2.3(2) notwithstanding, any Use which would require Filling the tideland between the normal low water line and the Normal High-Water Line, except to prevent erosion, restore eroded property, or as incidental to the placement of piers for the construction of docks, is prohibited.

#### 4.2.6 Dimensional Requirements

- (1) Lots in the Shoreland District shall meet or exceed the following minimum requirements in which all Setback distances are to be measured horizontally: (Additional area may be required by other provisions of this Ordinance.)

Minimum Lot Size

with subsurface septic systems other than sanitary sewers	30,000 square feet
with sanitary sewers or with other non-subsurface septic systems	10,000* square feet

\*Additional Maine Department of Environmental Protection requirements may apply.

Minimum Frontage

abutting a public road only	100 feet
abutting tidal water	150 feet

Minimum Yard Dimensions

front Setback	30 feet
side Setback	10 feet
rear Setback	20 feet
Setback from Normal High-Water Line, Tributary Stream or Upland Edge of a Wetland	75 feet

<u>Maximum Lot Coverage</u>	20 percent
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- a. A Lot abutting a public road, but not tidal water, shall have a minimum Road Frontage of 100 feet. A Lot abutting tidal water shall have a minimum Shore Frontage of 150 feet, measured in a straight line between the points of intersection of the Side Lot Lines with the shoreline at the Normal High-Water Line.
- b. A Front Yard abutting a public road shall have a minimum depth of 30 feet from the right of way line or 40 feet from the center line, whichever distance is greater. A Front Yard abutting the shoreline of a pond, stream or tidal water shall have a minimum depth of 75 feet from the Normal High-Water Line. The depth of any Yard abutting a public road or any waterbody shall conform to the Front Yard requirements.
- c. Combined width of both Side Yards shall be 30 feet.

(2) Principal Building

If more than one Principal Building is Constructed on a single Lot, all dimensional requirements shall be met separately for each such Principal Building.

(3) Required Yard Spaces Shall Serve Only One Lot

No part of the Yard or other open space required on any Lot for any Building or Structure shall be included as part of the Yard or open space similarly required on another Lot for any Building or Structure thereon.

(4) Visibility at Corner Lots

All Corner Lots shall be kept free from visual obstructions for a distance of 25 feet measured along the intersecting road lines.

(5) Building Height

No Building or Structure shall exceed 30 feet in height. Features of Buildings and Structures, such as chimneys, and ventilators may exceed 30 feet in height, but shall be set back from the nearest Lot Line a distance not less than the height of such feature, unless a greater Setback is required by other provisions of this Ordinance.

(6) Maximum Footprint Area

The combined Footprint areas of all Dwellings on any Lot shall not exceed 3,000 square feet.

4.2.7 Performance Standards

Permitted Uses and Conditional Uses shall conform to the performance standards delineated in Article 5 of this Ordinance for the following:

Accessory Buildings and Structures

Agriculture

Boathouses

Campgrounds, Mobile Homes, Recreational Areas and Tenting Areas

Elevation of Buildings Above Flood Level

Filling, Grading, Lagooning, Dredging, or Other Earth-Moving Activity

Home Occupations

Modifications of Existing Buildings and Structures

Multi-Family Dwelling Units

Off-Street Parking and Loading Requirements

Piers, Docks, and Other Shoreland Construction

Planned Unit Development and Cluster Development

Sanitary Provisions

Signs and Billboards

Timber Harvesting

Vegetative Cutting

Water Quality Protection

#### 4.2.8 Shore Reserve (Overlay District)

Those areas abutting the shoreline owned by the B.I.V.C., hereinafter called the Shore Reserve, are designated on the Zoning Map of Bustins Island, Maine.

They are not a separate District, but instead are controlled by the Zoning District in which they lie. Depending upon the terms and conditions in the deeds of grant to the B.I.V.C., the rules and regulations of the Board of Overseers, and the by-laws of the B.I.V.C. as they shall pertain to any and all of the areas, their use may be more restrictive than the Zoning District in which they lie. Reference should be made to the terms of said deeds of conveyance, said rules and regulations of the Board of Overseers and said by-laws of the B.I.V.C., as well as this Ordinance for a full determination of said restrictions and limitations of use.

#### 4.3 General Purpose District

##### 4.3.1 Purpose

To allow a maximum diversity of Uses, while protecting the public health and safety, environmental quality and economic well-being of the Island, by imposing minimum controls on those Uses which, by virtue of their external effects (waste discharge, noise, glare, fumes, smoke, dust, odors, or auto or truck traffic), could otherwise create nuisances or unsafe or unhealthy conditions.

#### 4.3.2 Basic Requirement

Permitted Uses and Conditional Uses shall conform to all dimensional requirements and other applicable requirements of this Ordinance. A Plumbing Permit and a Building or Use Permit shall be required for all Buildings, Structures, Uses, and sanitary facilities, in accordance with the provisions of Article 6 of this Ordinance.

#### 4.3.3 Permitted Uses

##### 4.3.3.1 Permit Not Required

The following Uses are permitted in the General Purpose District without the need for a Building or Use Permit:

##### (1) Rural

- a. Open Space Use;
- b. Agriculture and gardening;
- c. Sale of produce and plants raised on the premises, or seasonal sale of produce and plants not raised on the premises;
- d. Timber and cordwood harvesting and storage in accordance with Sections 5.15 and 5.16 of this Ordinance;
- e. Public or private recreation facilities including parks, playgrounds, golf courses, driving ranges, and swimming pools, but excluding Campgrounds; and
- f. Accessory Uses.

##### (2) Other

- a. Filling, grading, lagooning, dredging, or other Earth-moving activity operated in accordance with State laws, and involving the removal or Filling of less than ten (10) cubic yards of material from or onto any Lot in any one (1) year, or the removal or Filling of material incidental to construction, alteration or repair of a Building or Structure or in the grading and landscaping incidental thereto, or the removal, Filling or transfer of material incidental to construction,

alteration or repair of a public or private way or Essential Services;

- b. Recreational Camping for ten days or fewer in any 30 day period;
- c. Use of one or more Party Tents for the purpose of providing shelter to persons and/or property in connection with social gatherings or functions for ten days or fewer in any 90 day period; and
- d. Use of Sun Canopies to provide temporary shelter to persons and/or property.

#### 4.3.3.2 Permit Required

The following Uses are permitted in the General Purpose District with a Building and/or Conditional Use Permit as herein provided:

##### (1) Residential

- a. Single Family Dwellings;
- b. Two-Family Dwellings;
- c. Home Occupations; and
- d. Accessory Uses and Structures.

##### (2) Public, Semi-Public, and Institutional

- a. Churches or other places of worship, parish houses, rectories, convents and other religious institutions;
- b. Public, private and parochial schools;
- c. Public Buildings such as libraries, museums, civic centers;
- d. Cemeteries;
- e. Accessory Uses and Structures; and
- f. Uses which are similar to the above Uses.

##### (3) Other

- a. Boathouses;



- b. Piers, docks, and floats not requiring a Conditional Use Permit; and
- c. Signs.

#### 4.3.4 Conditional Uses

The following Uses are permitted only upon the granting of a Conditional Use Permit by the Planning Board, in accordance with the provisions of Article 6:

##### (1) Rural

- a. Accessory Uses and Structures; and
- b. Uses which are similar to the above Uses.

##### (2) Residential

- a. Planned Unit Developments or cluster developments;
- b. Accessory Uses and Structures; and
- c. Uses which are similar to the above Uses.

##### (3) Commercial and Industrial

- a. Facilities having less than 2,500 square feet of Gross Floor Area and less than 20,000 square feet of Lot Area and employing less than 6 full-time employees or equivalent thereof; and
- b. Accessory Uses and Structures.
- c. A Wireless Communication Facility Constructed in accord with applicable federal and State standards.

##### (4) Public, Semi-Public, and Institutional

- a. Public utilities, including sewage collection and treatment facilities;
- b. Waste processing or disposal facilities other than sewage collection and treatment facilities;
- c. Accessory Uses and Structures; and
- d. Uses which are similar to the above Uses.

(5) Other

- a. Filling, grading, lagooning, dredging, or other Earth-moving activity which does not meet the criteria for permitted Filling, grading, lagooning, dredging, or other Earth-moving activity, including extractive Uses such as gravel pits, quarries, mines, and dredging operations;
- b. Billboards;
- c. Accessory Uses and Structures;
- d. Piers, docks and other shoreland construction requiring a Conditional Use Permit;
- e. Uses which are similar to the above Uses;
- f. Recreational Camping for more than ten days in any 30 day period;
- g. Use of one or more Tents for the purpose of providing shelter to persons and/or property in connection with the construction of a Building or Structure; and
- h. Use of one or more Party Tents for the purpose of providing shelter to persons and/or property in connection with social gatherings or functions for more than ten days in any 90 day period.

(6) Municipal

Municipal Uses as are approved at a B.I.V.C. Annual or Special Meeting to authorize such Uses.

4.3.5 Prohibited Uses

All Uses which are not Permitted Uses or Conditional Uses for which a Conditional Use Permit has been granted are prohibited.

4.3.6 Dimensional Requirements

- (1) Lots in the General Purpose District shall meet or exceed the following minimum requirements: (Additional area may be required by other provisions of this Ordinance.)

Minimum Lot Size

with subsurface septic systems other than sanitary sewers 20,000 square feet

with sanitary sewers or with other non-subsurface septic systems 10,000 square feet

Minimum Frontage 100 feet (150 feet for Shore frontage)

Minimum Yard Dimensions

front Setback 30 feet

side Setback 10 feet

rear Setback 20 feet

Setback from Normal High-Water Line  
Tributary Stream, or Upland Edge of  
a Wetland 75 feet

Maximum Lot Coverage 15 percent

- a. A Lot abutting a public road shall have a minimum Road Frontage of 100 feet. A Lot abutting a pond, stream or tidal water shall have a minimum Shore Frontage of 150 feet, measured in a straight line between the points of intersection of the Side Lot Lines with the shoreline at the Normal High-Water Line.
- b. A Front Yard abutting a public road shall have a minimum depth of 30 feet from the right of way line or 40 feet from the center line, whichever distance is greater. A Front Yard abutting the shoreline of a pond, stream or tidal water shall have a minimum depth of 75 feet from the Normal High-Water Line. The depth of any Yard abutting a public road or any waterbody shall conform to the Front Yard requirements.
- c. Combined width of both Side Yards shall be 30 feet.

(2) Principal Building

If more than one Principal Building is Constructed on a single Lot, all dimensional requirements shall be met separately for each such Principal Building.

(3) Required Yard Spaces Shall Serve Only One Lot

No part of the Yard or other open space required on any Lot for any Building or Structure shall be included as part of the Yard or open space similarly required on another Lot for any Building or Structure thereon.

(4) Visibility at Corner Lots

All Corner Lots shall be kept free from visual obstructions for a distance of 25 feet measured along the intersecting road lines.

(5) Building Height

No Building or Structure shall exceed 30 feet in height. Features of Buildings and Structures, such as chimneys, towers, ventilators, and spires, may exceed 30 feet in height, but shall be set back from the nearest Lot Line a distance not less than the height of such feature, unless a greater Setback is required by other provisions of this Ordinance.

(6) Maximum Footprint Area

The combined Footprint areas of all Dwellings on any Lot shall not exceed 3000 square feet.

4.3.7 Performance Standards

Permitted Uses and Conditional Uses shall conform to the performance standards delineated in Article 5 of this Ordinance for the following:

Accessory Buildings and Structures

Agriculture

Boathouses

Campgrounds, Mobile Homes, Recreational Areas and Tenting Areas

Elevation of Buildings Above Flood Level

Filling, Grading, Lagooning, Dredging, or Other Earth-Moving Activity

Home Occupations

Modifications of Existing Buildings and Structures

Multi-Family Dwelling Units

Off-Street Parking and Loading Requirements

Piers, Docks, and Other Shoreland Construction

Planned Unit Development and Cluster Development

Sanitary Provisions  
Signs and Billboards  
Timber Harvesting  
Vegetative Cutting  
Water Quality Protection

*Informational Note for Applicants*

*Department of Environmental Protection (DEP) Requirements*

*A person performing any of the following activities may require a permit from the DEP, pursuant to 38 M.R.S.A. section 480-C, if the activity occurs in, on, over, or adjacent to any Freshwater or Coastal Wetland, great pond, river, stream or brook and operates in a such a manner that material or soil may be washed into them:*

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;*
- B. Draining or otherwise dewatering;*
- C. Filling, including adding sand or other material to a sand dune; or*
- D. Any construction or alteration of any permanent Structure.*

ARTICLE 5 - PERFORMANCE STANDARDS5.1 Principal and Accessory Buildings and Structures(1) Setbacks

- a. General - All new Principal or Accessory Buildings or Structures shall be set back at least seventy five (75) feet horizontal distance from the Normal High-Water Line of a water body, Tributary Streams, or the Upland Edge of a Wetland.
- b. Additional Setback Standard from Coastal Bluffs - For Principal Buildings or Structures, water and Wetland Setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

(2) Accessory Structures

On a non-conforming Lot of record on which only a residential Structure exists, and it is not possible to place an Accessory Structure meeting the required water body, Tributary Stream, or Wetland Setbacks, the Code Enforcement Officer may issue a permit to place a single Accessory Structure with no utilities for storage of yard tools and similar equipment. Such Accessory Structure shall not exceed eighty (80) square feet in area nor eight feet in height, and it shall be located as far from the shoreline or Tributary Stream as practical and shall meet all other applicable standards, including Lot Coverage and vegetative clearing limitations. In no case, shall the Accessory Structure be located closer to the shoreline or Tributary Stream than the Principal Structure.

No garage or other Accessory Building or Structure shall be located in a required Front Yard. When located to the rear of the Principal Building, the Accessory

Building shall be set back at least 20 feet from the Side or Rear Lot Lines, provided that all Accessory Buildings and Structures shall be set back at least 75 feet from the Normal High-Water Line of a waterbody.

## 5.2 Agriculture

- (1) 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 M.R.S.A. sections 4201-4209).
- (2) Manure shall not be stored or stockpiled within seventy-five (75) feet horizontal distance of water bodies, Tributary Streams, or Wetlands. Manure shall not be stored within the Shoreland District.
- (3) There shall be no new tilling of soil within seventy-five (75) feet horizontal distance from water bodies and Coastal Wetlands, nor within twenty-five (25) feet horizontal distance of Tributary Streams and Freshwater Wetlands. Operations in existence on August 4, 2007 and not in conformance with this provision may be maintained.
- (4) Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet horizontal distance of water bodies and Coastal Wetlands, nor within twenty-five (25) feet horizontal distance of Tributary Streams and Freshwater Wetlands. Livestock grazing associated with ongoing farm activities and which are not in conformance with the above Setback provisions may continue provide that such grazing is conducted in accordance with a Conservation Plan.
- (5) In all areas where soil is tilled in excess of 1/4 acre, an untilled filter strip of natural vegetation shall be retained between the tilled ground and the Normal High-Water Line of the surface water areas protected by the Districts herein provided. The width of this strip shall vary according to the average slope of the land as follows:

Average Slope of Land  
Between Tilled Land and  
Normal High Water Line

(percent)

0-4  
5-9

Width of Strip Between  
Tilled Land and Normal  
High-Water Line (Feet  
Along Surface of the  
ground)

50  
70

10-14  
15 and over

90  
110

- (6) Agricultural practices shall be conducted to minimize soil erosion, sedimentation, contamination, and nutrient enrichment of ground and surface waters.
- (7) Agricultural practices not in conformance with these standards may be allowed by Conditional Use Permit.

### 5.3 Boathouses

Boathouses may be located within a Shorefront Lot but shall be set back a minimum of 75 feet from the Normal High Water Elevation of a pond, stream, or tidal water; shall not exceed one (1) Boathouse on the Premises for each Shorefront Lot; shall not exceed a height of fifteen (15) feet; shall not exceed three hundred (300) square feet in horizontal area covered; and shall be at least fifteen (15) feet from any Side Lot Line. All distances shall be measured horizontally.

### 5.4 Campgrounds, Mobile Homes, Recreational Areas, Tents, and Tenting Areas

- (1) No Campgrounds, Mobile Homes, Recreational Vehicles, or Tenting Areas are allowed on the Island.
- (2) Tents

In Districts where Tents are a Permitted Use or a Conditional Use the following standards shall apply:

- a. No Tent may be used to provide shelter to persons unless the tenters have access to and use a functional sanitary system satisfying the provisions for residential Lots set forth in Section 5.13 of this Ordinance.
- b. Party Tents may be pitched without a Tenting Permit for up to ten days in any 90 day period to provide temporary shelter for property in connection with a wedding, party, or other social function or gathering; provided, however, that if the Party Tent will also be used to provide shelter to persons, the owner of the Lot on which the Party Tent is to be pitched shall obtain a Tenting Permit and demonstrate to the satisfaction of the Code Enforcement Officer that the sanitary systems to be used in connection with the function or gathering are adequate. Subject to



applicable legal requirements, such sanitary systems may include (but shall not necessarily include) temporary portable sanitary systems. No Party Tent shall be used to provide shelter to persons in connection with a social function or gathering lasting more than three consecutive days unless the owner of the Lot on which the Party Tent shall be pitched shall first obtain a Conditional Use Permit.

- c. The use of gas generators or other electrical energy generating equipment in connection with Recreational Camping is strictly prohibited.
- d. The use of any flame or other heat generating source (including without limitation, fires and campstoves) in connection with Recreational Camping is strictly prohibited.
- e. No Tent may be pitched and used on a Lot for the purpose of providing shelter to persons in connection with the construction of a Building or Structure unless (i) the Lot has existing functional sanitary system satisfying the provisions for residential Lots set forth in Section 5.13 of this Ordinance or (ii) the Conditional Use Permit application for the Tent specifies the location of the conforming sanitary facilities to be used by the tenters and, if the applicant is not the owner of such facilities, includes written permission from the owner of such facilities for their use.
- f. The use of any Tent, including, without limitation, Party Tents, shall comply with all applicable fire, life-safety and other applicable laws and codes.

#### 5.5 Elevation of Buildings Above Flood Level

All Buildings shall have their lowest floor and their heating, electrical, septic tank, filter field and other vital utility facilities Constructed at an elevation not less than two (2) feet above the level of the Regional Flood or, if this is unknown or cannot be reasonably determined, five (5) feet above the Normal High-Water Line of a waterbody.

5.6 Filling, Grading, Lagooning, Dredging, or Other Earth-Moving Activity

(1) General

Filling, grading, lagooning, dredging, and other Earth-moving activity which would result in erosion, sedimentation, or impairment of water quality or fish and aquatic life is prohibited.

(2) Earth-Moving Not Requiring a Conditional Use Permit

The following Earth-moving activity shall be allowed without a Conditional Use Permit authorized by the Planning Board:

- a. the removal or Filling of less than ten (10) cubic yards of material from or onto any Lot in any one (1) year;
- b. the removal or Filling of material incidental to construction, alteration or repair of a Building or Structure or in the grading and landscaping incidental thereto; and
- c. the removal, Filling, or transfer of material incidental to construction, alteration or repair of a public or private way or Essential Services.

All other Earth-moving, processing and storage shall require a Conditional Use Permit authorized by the Planning Board.

(3) Application for Conditional Use Permit

Application for a Conditional Use Permit from the Planning Board for Excavation, processing and storage of Earth shall be accompanied by a plan (which, if so required by the Planning Board, shall be prepared by a registered land surveyor or registered professional engineer) which shall show:

- a. the name and current address for tax purposes of the owner of the property involved;
- b. the location and boundaries of the Lot or Lots for which the permit is requested;

- c. the existing contours of the land within and extending beyond the above boundaries for two hundred (200) feet at intervals not to exceed five (5) feet referred to Mean Sea Level;
  - d. the contours as proposed following completion of the operation at intervals not to exceed five (5) feet referred to Mean Sea Level;
  - e. the location of all proposed access roads and temporary Buildings and Structures;
  - f. the proposed provisions for drainage and erosion control, including drainage calculations; and
  - g. other information necessary to indicate the physical characteristics of the proposed operation.
- (4) Conditions of Permit

The Planning Board may authorize a Conditional Use Permit providing the following conditions shall be met:

- a. The smallest amount of bare ground practicable under the circumstances shall be exposed for the shortest time practicable under the circumstances. The Planning Board shall set a specific date after which bare ground shall not be exposed.
- b. Temporary ground cover such as mulch shall be used. The Planning Board shall set a specific date by which permanent ground cover shall be planted.
- c. Diversions, silting basins, terraces and other methods to trap sediment shall be used.
- d. The extent and type of fill shall be appropriate to the Use intended. The applicant shall specify the type and amount of fill to be used.
- e. Fill shall not restrict a Floodway, Channel, or natural drainageway.
- f. The sides and bottom of cuts, fills, Channels, and artificial water courses shall be Constructed and stabilized to prevent erosion or failure. Such Structures are to be designed and built according to the Maine Soil and Water Conservation Commission technical guide, standards and specifications.

- g. No below-grade Excavation except for drainageway shall be allowed within fifty (50) feet of any Lot Line or public road.
- h. Topsoil or loam shall be restored to a depth of not less than four (4) inches.

(5) Optional Conditions of Permit

The Planning Board may impose other reasonable conditions to safeguard the neighborhood and the Island which may include those relating to:

- a. methods of removal or processing;
- b. hours of operation;
- c. type and location of temporary Structures;
- d. routes for transporting material;
- e. area and depth of excavations;
- f. provision of temporary or permanent drainage;
- g. disposition of stumps, brush and boulders; and
- h. cleaning, repair and/or resurfacing of streets used in removal activity which have been adversely affected by said activity.

(6) Surety and Terms of Permit

No permit shall be issued without a bond or other security to insure compliance with such conditions as the Planning Board may impose. No permit shall be issued for a period to exceed three (3) years, although such permit may be renewed for additional periods in the same manner.

(7) Existing Operations

Any operation involving the Excavation, processing or storage of Earth in lawful operation at the time this Ordinance becomes effective may operate for a period of three (3) years from the effective date. Resumption of any operation existing at the time this Ordinance becomes effective and subsequently discontinued for a period of more than one (1) year shall require application for a new permit. Continuation of any

existing operation for more than three (3) years shall require a permit from the Planning Board.

(8) Earth-Moving Activity in the State Shoreland Zone

When an excavation contractor will perform activities resulting in one cubic yard or more of Earth material being added or displaced in a shoreland area regulated by the State of Maine, compliance with the following State requirements shall be required:

- (a) A person certified in erosion control practices by the Maine Department of Environmental Protection shall be responsible for management of erosion and sedimentation control practices at the site. This person shall be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion.
- (b) Include on the required plan or permit application (Building Permit application, Conditional Use Permit application or other DEP permit or Use Permit application), the name and certification number of the person who will oversee activities causing or resulting in soil disturbance.
- (c) For purposes of this section, "excavation contractor" means an individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform

5.7 Home Occupations

- (1) Home Occupations shall be carried on wholly within the Principal Building and within the Building and Structure accessory to it and only after expressed written permission by the Planning Board which shall make appropriate conditions to such permit.
- (2) Not more than two persons outside the Family shall be employed in the Home Occupation.

- (3) There shall be no exterior display, no exterior Sign (except as permitted by the provisions of this Ordinance), no exterior storage of materials and no other exterior indication of the Home Occupation or variation from the residential character of the Principal Building.
- (4) No nuisance, waste discharge, offensive noise, vibration, smoke, dust, odors, heat, glare, or radiation shall be generated.

#### 5.8 Modifications of Existing Buildings or Structures

- (1) No external modifications or additions to any Structure or Building subject to Flood damage are permitted unless such modification will not increase the Flood damage potential of the Building or Structure and will not cause the Structure or Building to increase the degree of obstruction to Flood flows.
- (2) Any internal modification of an existing Building or Structure may be permitted if such modification will not endanger human lives or increase the Flood damage potential of the Regional Flood.

#### 5.9 Multi-Family Dwelling Units

##### (1) Two-Family Dwelling Units

Lots for two-Family Dwelling Units shall meet all of the dimensional requirements for single-Family Dwelling Units, except that the Lot Area and Shore Frontage shall be equal to that required for an equivalent number of single-Family Dwelling Units, and the Road Frontage shall exceed by 50 per cent the requirement for a single-Family Dwelling Unit.

##### (2) Multi-Family Dwelling Units (3 or more)

No multi-Family Dwelling Units (3 or more) shall be allowed on the Island.

#### 5.10 Off-Street Parking and Loading Requirements

No motor driven vehicle such as autos, trucks, motor-cycles, motor bikes, mini bikes and scooters and the like will be permitted on the Island without specific approval

of the Board of Overseers which shall make appropriate requirement as to their use, storage, parking and loading. The only basis for approval shall be commercial need and/or to provide Essential Services to the community.

#### 5.11 Piers, Docks, and Other Shoreland Construction

##### (1) General Requirements

- a. No causeway, bridge, Marina, wharf, dock or other permanent Structure shall be Constructed in, on, over or abutting on any great pond or tidal waters nor any fill deposited or dredging done therein without a permit from the Department of Environmental Protection of the State of Maine. If an application for such project is duly filed with the Department and the Department fails to respond thereto within the time period prescribed by its rules, a permit from the Department for such project shall be deemed to have been issued as of the expiration of such time period, provided such procedure is in accordance with the Department's policy and the applicant shall, upon request of the Planning Board, have the burden of establishing to the satisfaction of the Board the filing of the application and non-action by the Department.
- b. No causeway, Marina, wharf, dock or other permanent or floating Structure shall extend more than ten per cent (10%) of the width of any stream, measured at its Normal High-Water Line.
- c. Any Structure, permanent or floating, shall require a Conditional Use Permit from the Planning Board if it:
  - 1) extends more than ten (10) feet from the bank of any pond or stream or tidal waters;
  - 2) has any permanent parts located between the banks of any stream or below the Normal High Water Elevation of any pond;
  - 3) is Constructed as part of any commercial Use; or
  - 4) requires dredging or Filling.
- d. No new Structure shall be built on, over or abutting a pier, wharf, dock or other Structure extending below the Normal High-Water Line of a water body or within a Wetland unless the Structure requires direct access to the water body or Wetland as an operational necessity.

- e. No existing Structures built on or over or abutting a pier, wharf, dock or other Structure extending below the Normal High-Water Line of a water body or within a Wetland shall be converted to a residential Dwelling in any district.

(2) Application for Conditional Use Permit

A Conditional Use Permit application shall be made as follows:

- a. For any proposed shoreland construction or alteration requiring a permit from the Department of Environmental Protection, a copy of said permit (or application in the event that the prescribed time period for the Department's issuing a permit has expired) and all attachments thereto shall constitute the application to the Planning Board.
- b. For all other proposed shoreland construction or alteration, application to the Planning Board shall be made on forms provided for the purpose.
- c. No permit shall be required for normal repair and maintenance of existing facilities.

(3) Conditions of Permit

The Planning Board may authorize a Conditional Use Permit providing the following conditions shall be met:

The proposed activity:

- a. shall not unreasonably interfere with existing recreational and navigational Uses, nor unreasonably alter scenic and aesthetic qualities;
- b. shall not unreasonably interfere with or harm the natural environs of any pond, tributary, stream, or tidal water nor harm any fish or wildlife habitat;
- c. shall not cause unreasonable soil erosion nor lower the quality of any waters;
- d. shall not unreasonably alter the natural flow or storage capacity of any water body; and
- e. shall not create or cause to be created unreasonable noise or traffic of any nature.

(4) Optional Conditions of Permit



The Planning Board may impose such other reasonable conditions to the Permit as it may deem advisable to protect the environment.

## 5.12 Planned Unit Development and Cluster Development

### (1) Purpose

The purpose of these provisions is to allow for new concepts of housing development where maximum variations of design may be allowed, provided that the Net Residential Density shall be no greater than is permitted in the District in which the development is proposed.

### (2) Basic Requirements

Planned Unit Developments and cluster developments shall meet all of the following criteria:

- a. All Planned Unit Developments and cluster developments shall meet all requirements for a residential Subdivision.
- b. The minimum area of land in a Planned Unit Development or cluster development shall be 4 acres.
- c. Any Lot abutting a public road shall have a Road Frontage and area no less than that normally required in the District. On other than public roads, Lot Area and Road Frontage may be reduced by not more than 30 percent from the requirements of the District in which the proposed development is located provided that:
  - 1) No Building Lot shall have an area of less than 10,000 square feet.
  - 2) All Lots except those abutting a circular turn-around shall have a minimum Road Frontage of 75 feet. The Road Frontage of Lots abutting a circular turn-around may be reduced to 50 feet, provided that the minimum Lot Width at the face of the Building shall be 75 feet.

- d. In no case shall Shore Frontage be reduced below the minimum Shore Frontage normally required in the District.
- e. Lots in a Planned Unit Development or cluster development shall meet all other dimensional requirements for the District in which they are located.
- f. The total area of common land within the development shall equal or exceed the sum of the areas by which any Building Lots are reduced below the minimum Lot Area normally required in the District.
- g. Every Building Lot that is reduced in area below the amount normally required shall abut such common land for a distance of at least fifty (50) feet.
- h. All common land for recreational or conservation purposes only shall be owned jointly or in common by the owners of the Building Lots, by a trust or association which has as its principal purpose the conservation or preservation of land in essentially its natural condition, or by the B.I.V.C.
- i. Further subdivision of common land or its use for other than non-commercial recreation or conservation, except for easements for underground utilities, shall be prohibited. Structures and Buildings accessory to non-commercial recreational or conservation Uses may be erected on the common land.
- j. Where a Planned Unit Development or cluster development abuts a waterbody, a portion of the shoreline, as well as reasonable access to it, shall be a part of the common land.
- k. All Dwelling Units in a Planned Unit Development or cluster development shall be connected to a common water supply and distribution system, either public or private, at no expense to the B.I.V.C.
- l. All Structures with required plumbing in a Planned Unit Development or cluster development shall be connected to a public sanitary sewer system, if available, or to a central collection and treatment system in accordance with the sanitary provisions of this Ordinance.

- m. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage areas, in accordance with an overall plan for site development.

#### 5.13 Sanitary Provisions

To promote health, safety and general welfare, and to protect ground and surface waters and public and private water supplies from contamination or nutrient enrichment, all sewage disposal systems shall be installed in accordance with the Maine Subsurface Wastewater Disposal Rules and/or if applicable the Maine State Internal Plumbing Code both as amended and the following:

- a. Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions shall not extend closer than seventy-five (75) feet horizontal distance from the Normal High-Water Line of a water body or the Upland Edge of a Wetland and
- b. New systems, excluding fill extensions, shall be Constructed no less than one hundred (100) feet from the Normal High-Water Line of a perennial water body. The minimum Setback distance for a new subsurface disposal system may not be reduced by Variance.
- c. Holding tanks are not allowed for first-time use in the Shoreland District.

Nevertheless, where specific provisions of this Ordinance are more restrictive, they shall prevail.

There shall be no more than two flush toilets in any Structure or in total on any Lot.

#### 5.14 Signs and Billboards

##### (1) General

Billboards are prohibited in the Shoreland District and the Resource Protection District. The following provisions shall apply to Signs and Billboards in all Districts where permitted.

##### (2) Size, Location and Illumination

No Sign or Billboard shall be erected adjacent to any public way in such a manner as to obstruct clear and

free vision or where, by reason of its position, shape, color, illumination or wording, the Sign or Billboard may interfere with, obstruct the view of or be confused with, any authorized traffic Sign, signal or device or otherwise constitute a hazard to pedestrian or vehicular traffic.

Flashing, moving or animated Signs and Billboards are prohibited.

No Sign or Billboard shall exceed twenty (20) feet in height. No billboard shall exceed twenty-five (25) square feet in area.

No Sign or Billboard shall be located within three (3) feet of a road line or other Lot Line.

(3) Types of Signs

- a. Public traffic and directional Signs and Signs designating public or semipublic activities shall be permitted.
- b. Name Signs shall be permitted, provided such Signs shall not exceed 6 square feet in area, and shall not exceed two Signs per Premises.
- c. Residential users may display a single Sign not over 3 square feet in area relating to goods or services rendered on the Premises, or to the sale, rental, or lease of the Premises.
- d. Signs relating to trespassing and hunting shall be permitted.
- e. Signs relating to goods and services sold on the Premises shall be permitted, provided such Signs shall not exceed six (6) square feet in area, and shall not exceed two (2) Signs per Premises.

5.15 Timber Harvesting

The following standards shall govern Timber Harvesting throughout the Island:

(1) Harvesting Operations

- a. Harvesting operations shall be conducted in such a manner that a well-distributed stand of trees is retained.

- b. Harvesting activities shall not create single openings greater than 5,000 square feet in the forest canopy.
- c. Harvesting shall not remove more than 40 percent of the volume of trees 6 inches in diameter and larger, measured at 4 1/2 feet above ground level in any 10 year period. Removal of trees less than 6 inches in diameter, measured as above, is permitted in conformance with all other provisions of this section. For the purposes of these standards, a stand means a contiguous group of trees, sufficiently uniform in species, arrangement of age classes, and condition, to be identified as a homogeneous and distinguishable unit.
- d. Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.

(2) Slash

No significant accumulation of slash shall be left within 50 feet of the Normal High Water Elevation of waterbodies. At distances greater than 50 feet but less than 250 feet from the Normal High Water Elevation of waterbodies, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground.

(3) Roads

No roads requiring Earth-moving, cut or fill shall be Constructed.

(4) Shoreland District

Timber Harvesting is not permitted within 75 feet of the Normal High-Water Line except to remove safety hazards.

Elsewhere in the Shoreland District, in any stand of trees beyond 75 feet of the Normal High-Water Line, harvesting shall remove not more than 40 percent of the volume of trees 4 inches in diameter and larger

measured at 4-1/2 feet above ground level in any 10 year period provided that a well distributed stand of trees and other vegetation is maintained.

#### 5.16 Vegetative Cutting

##### (1) General Purpose District and Resource Protection District

In the General Purpose and Resource Protection Districts, cutting of trees and conversion to other vegetation is allowed for approved construction and landscaping. Clearing for Agriculture shall conform to the standards for Agriculture of this Ordinance for the District. Where natural vegetation is removed, it shall be replaced with other vegetation that is equally effective in retarding erosion and preserving natural beauty.

##### (2) Shoreland District

In the Shoreland District, there shall be effective vegetative screening between Buildings and shorelines; however, cutting of trees and conversion to other vegetation is allowed for approved construction and landscaping provided that the cutting is done in accordance with the following sub-sections:

##### A. Within 75 feet of the Normal High-Water Line

In any stand of trees within 75 feet of the Normal High-Water Line a buffer strip of vegetation shall be preserved. In this strip:

- a. There shall be no cleared opening or openings, except for approved construction, 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. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
- b. Selective cutting of trees is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this section, a "well distributed stand of trees" is defined as maintaining a rating score of 16 per 25-

foot by 50-foot rectangular area as determined by the following rating system:

<u>Diameter</u> (at 4½ ft. above ground level)	<u>Points</u>
2" - <4"	1
4" - <8"	2
8" - <12"	4
>12"	8

The following shall govern in applying this point system:

(i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

(ii) Each successive plot must be adjacent to, but not overlap a previous plot;

(iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;

(iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance;

(v) 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.

For the purposes of this sub-section, "other natural vegetation is maintained" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4½) feet above ground level for each 25-foot by 50-foot rectangular area. If five saplings do not exist, no woody stems less than two (2) inches in diameter may be removed until five saplings have been recruited into the plot.

- c. In order to protect water quality and wildlife habitat, existing naturally occurring native vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed,

except to provide for a footpath or other Permitted Uses as described above. This section shall not be interpreted as prohibiting the pruning of planted ornamental or garden plants or the mowing of lawns in existence as of August 4, 2007 or lawfully added thereafter.

- d. 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.

B. Throughout the Shoreland District:

- a. Cutting shall remove not more than 40 percent of the volume of trees 4 inches in diameter and larger measured at 4-1/2 feet above ground level in any 10 year.

Where natural vegetation is removed, it shall be replaced with other vegetation that is equally effective in retarding erosion and preserving natural beauty.

Trees constituting a safety hazard may be removed, but trees so removed and trees removed in conjunction with the development of Permitted Uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to Basal Area.

In no event, shall cleared openings for any purpose, including but not limited to Principal and Accessory Structures, driveways, lawns, and sewage disposal areas, exceed in the aggregate 25% of the Lot Area within the Shoreland District or ten thousand (10,000) square feet, whichever is greater, including land previously cleared.

- b. Pruning of tree branches on the bottom 1/3 of the tree is permitted.
- c. Cleared openings legally in existence on the effective date of this ordinance may be maintained,



but shall not be enlarged except as permitted by this ordinance.

- d. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this Section 5.16.

#### 5.17 Water Quality Protection

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life or to impair designated Uses or the water classification of a water body, Tributary Stream, or Wetland.

##### (1) Storm Water Runoff

- a. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, 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.
- b. Storm water runoff control systems shall be maintained by property owners to ensure proper functioning.

##### (2) Erosion and Sedimentation Control

- a. 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 Code Enforcement Officer for review and recommendation and then to the Planning Board for approval and shall include, where applicable, provisions for:
  - i. Mulching and revegetation of disturbed soil.

- ii. Temporary runoff control features such as hay bales, silt fencing, or diversion ditches.
  - iii. Permanent stabilization Structures such as retaining walls or rip-rap.
- b. 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.
- c. Erosion and sedimentation control measures shall apply to all aspects of a 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.
- d. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked by the use of rip-rap, 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:
  - i. Where mulch is used, it shall be applied at the rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - ii. Anchoring the mulch with netting, peg, and twine or other suitable method may be required to maintain mulch cover.
  - iii. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked bales and/or silt fences.
- e. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways 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 rip-rap.

## 5.18 Subdivisions

Application for Subdivision approval shall be made on a form approved by the Planning Board. Plans for Subdivisions must be drawn and certified by a State of Maine registered professional engineer or State of Maine registered land surveyor and submitted to the Planning Board for approval. All Lots created within a Subdivision must meet the dimensional requirements of Section 4 for the District within which they are located and the plan shall show Lot dimensions, area, and such other information as the Planning Board may require. The plans shall indicate the location of water bodies, Wetlands, and the Normal High-Water Line. If construction or Earth moving is planned, the plans shall also show how drainage and waste disposal are to be provided. Plans shall address each of the review criteria set forth in Title 30-A M.R.S.A. §4404 and any others that the Planning Board may reasonably require.

To the extent permitted by law, and except as may be otherwise provided by any applicable B.I.V.C. subdivision regulations or subdivision ordinance, the Planning Board and the applicant shall follow the same administrative procedures as in Section 6.8.3 of the Bustins Island Village Corporation Zoning Ordinance for Conditional Use Permits including the holding of a public hearing with the same notice requirements. In accordance with Section 6.8.3, the Planning Board may attach conditions to its approval of the Subdivision plan.

ARTICLE 6 - ADMINISTRATION6.1 Enforcement

This Ordinance shall be administered by a Planning Board established under the Maine Revised Statutes Annotated, Chapter 187, Sections 4351 to 4359 of Title 30-A, as amended, and shall be enforced through a Code Enforcement Officer who shall be entitled the Building Inspector, who shall be appointed by the Board of Overseers after considering the recommendation of the Planning Board.

6.1.1 Planning Board Establishment

The Planning Board shall be established as follows:

- a. Appointments to the Board shall be made by the Board of Overseers.
- b. The Board shall consist of 5 members and 2 associate members, all of whom shall be legal voters of the B.I.V.C.
- c. The term of office of a member is five years, but initial appointments shall be made for 1, 2, 3, 4, and 5 years, respectively. The term of office of an associate member is 5 years.
- d. A member of the Board of Overseers may not be a member or associate member of the Planning Board.
- e. When a member is unable to act because of conflict of interest, physical incapacity, absence from the State or any other reason satisfactory to the chairman, the chairman of the Planning Board shall designate an associate member to act in his stead. When there is a permanent vacancy, the Board of Overseers shall appoint a person to serve for the unexpired term.
- f. An associate member may attend all meetings of the Board and participate in its proceedings, but may vote only when he has been designated by the chairman to act for a member.
- g. Any question of whether a particular issue involves a conflict of interest under Maine Revised Statutes, Title 30-A, Section 2605, or any applicable successor provision of such law sufficient to disqualify a member (or associate member) from

voting thereon shall be decided by a majority vote of the members and acting associate members, except the member (or associate member) who is being challenged.

- h. The board shall elect a chairman and secretary from its own membership.
- i. A copy of each Subdivision plot approved under this subchapter shall be filed with the clerk of the B.I.V.C.

#### 6.1.2 Plans

Under Title 30-A, M.S.R.A. §4324 and §4326, the B.I.V.C. annual or special meeting may adopt and/or amend a comprehensive plan and/or a Local Growth Management Program containing its recommendations for the development of the Island.

- a. Among other things, the plan may include the proposed general character, location, Use, construction, layout, extent, size, open spaces and population density of all real estate, and the proposed method of rehabilitating blighted Districts and eliminating slum areas.
- b. A local planning committee, appointed by the Board of Overseers, as specified in the statute shall hold a public hearing on its tentative proposals, before it adopts the plan or an amendment of it.
- c. Once adopted by the B.I.V.C. annual or special meeting, the plan becomes a public record. It shall be filed with the clerk of the B.I.V.C.
- d. After the B.I.V.C. annual or special meeting has adopted the plan, an ordinance or official map may not be enacted, adopted or amended, and public property may not be established or modified in location or extent, until the Board has made a careful investigation and reported its pertinent recommendations which are consistent with the plan. The Board shall make its official report at the next annual meeting of the B.I.V.C. The failure of the Board to issue its report constitutes the Board's approval of the proposal. A proposal which has been disapproved by the Board may be enacted only by a 2/3 vote of the B.I.V.C. at its annual meeting.

## 6.2 Building or Use Permit

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or Use of land or Structure requiring a permit in the District in which such activity or Use would occur; or expand, change, or replace an existing Use or Structure; or renew a discontinued Non-Conforming Use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while work authorized by the permit is performed.

- (1) All applications for Building or Use Permits shall be submitted in writing to the Building Inspector on a form designed for this purpose.
- (2) During the period when the Island ferry is running daily scheduled trips and at least 15 days prior to the end of that season's scheduled daily trips, the Building Inspector shall, within fifteen days of the filing of a complete application for a Building or Use Permit, approve, deny or refer to the Planning Board for Conditional Use Permit, all such applications. At other times the Building Inspector, when he believes on-site inspection is necessary, may at his discretion, defer action on an application until 15 days subsequent to the Island ferry's next beginning daily scheduled trips. Alternatively, the applicant may at his own expense arrange, by means acceptable to the Building Inspector, to transport him to the Island for an on-site inspection; in which case, the Building Inspector shall act within 15 days of that inspection. Any incomplete application shall be returned to the applicant within 15 days of its receipt with a notation of what is required to complete the application.

The Building Inspector may, without Planning Board approval, approve Building or Use Permits only with respect to Buildings, Structures or Uses which in his judgment are clearly Permitted Uses. His decision shall be in writing on a form designed for the purpose, and communicated directly to the applicant. One copy of the Building Inspector's decision shall be filed with the clerk. In cases where the Building Inspector deems that a Conditional Use Permit is required, he shall also provide a copy of his decision to the Planning Board.

- (3) No Building Permit for a Building or Structure on any Lot shall be issued except to the owner of record thereof, or his authorized agent, until the proposed construction or alteration of a Building or Structure shall comply in all respects with the provisions of this Ordinance or with a decision rendered by the Board of Appeals or the Planning Board.
- (4) Any application for such a permit shall be accompanied by a plan accurately drawn to scale, showing the actual shape and dimensions of the Lot to be built upon, the exact location and size of all Buildings or Structures already on the Lot, the location of new Buildings or Structures to be Constructed together with the lines within which all Buildings and Structures are to be Constructed, the existing and intended Use of each Building or Structure and such other information as may be necessary to provide for the execution and enforcement of this Ordinance. The Planning Board may require that this plan be prepared by a registered land surveyor or registered professional engineer.
- (5) Applications for permits with their accompanying plans and Building Permits shall be maintained as a permanent record by the Planning Board or the Building Inspector.
- (6) A Building Permit secured under the provisions of this Ordinance shall expire if the work or change is not commenced within one year of the date on which the permit is granted, and if the work or change is not substantially completed within two years of the date on which the permit is granted.
- (7) A copy of all Building or Use Permits shall be posted in a prominent place on the property while construction is in progress.

### 6.3 Plumbing Permit Required

No Building Permit shall be issued for any Building or Structure or Use involving the construction, installation or alteration of sewage disposal facilities unless a valid sewage disposal permit has been secured by the applicant or his authorized agent in conformance with the sanitary provisions of this Ordinance.

### 6.4 Fees

No Building or Use Permit shall be issued without payment of a fee. Effective August 3, 1985 the initial fee schedule shall be:

Building Permit	\$25.00
Conditional Use Permit	\$75.00
Appeal Filing Fee	\$100.00

These fees are to be non-cumulative on a single petition with the highest fee only prevailing.

Thereafter, the permit fees may be changed from time to time by the Planning Board and the appeal filing fee by the Zoning Board of Appeals provided that 30 days notice of the effective date of any increase in fees shall be posted at the community house and the Post Office.

All fees are payable to the Bustins Island Village Corporation.

### 6.5 Building Inspector

It shall be the duty of the Building Inspector to enforce the provisions of this Ordinance under the direction of the Planning Board and to initially review all applications for Building or Use Permits submitted to him.

If the Building Inspector shall find that any provision of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the



action necessary to correct it. He shall order discontinuance of illegal Use of land, Buildings, or Structures; removal of illegal Buildings, Structures, additions, or work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

#### 6.6 Legal Action and Violations

When any violation of any provision of this Ordinance shall be found to exist, the Board of Overseers either on its own initiative, or upon notice from the Building Inspector, is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the B.I.V.C.

#### 6.7 Fines

Any person, firm or corporation being the owner or having control or Use of any Building or Structure or Premises who violates any of the provisions of this Ordinance, shall be guilty of a misdemeanor and on conviction shall be fined not less than \$5.00 nor more than \$100.00. Each day such a violation is permitted to exist after notification shall constitute a separate offense.

#### 6.8 Appeals and Conditional Use Permits

##### 6.8.1 Procedure

- a. All appeals or applications for Conditional Use Permits shall be based upon a written decision of the Building Inspector.
- b. Administrative appeals and Variance appeals shall be heard and decided upon by the Board of Appeals in accordance with the provisions of this Ordinance.
- c. Applications for Conditional Use Permits shall be heard and decided upon by the Planning Board in accordance with the provisions of this Ordinance.
- d. Appeals shall lie from the decision of the Building Inspector or the Planning Board to the Board of Appeals and from the Board of Appeals to the Superior Court according to State law.

## 6.8.2 Board of Appeals

### (1) Establishment

A Board of Appeals is hereby established in accordance with State law and the provisions of this Ordinance.

### (2) Appointment and Composition

- a. The Board of Appeals shall be appointed by the Board of Overseers and consist of 5 members, all of whom shall be legal voters of the B.I.V.C. serving staggered terms of one but no more than three years in accord with Chapter 213, Title 30, Section 2411 of the Maine Statutes as amended. The Board shall elect annually a chairman and secretary from its membership. The secretary shall keep the minutes of the proceedings of the Board of Appeals, which shall show the vote of each member upon each question. All minutes of the Board shall be public record. A quorum shall consist of three members.
- b. Any question of whether a particular issue involves a conflict of interest under Maine Revised Statutes, Title 30-A, Section 2605, or any applicable successor provision of such law sufficient to disqualify a member (or associate member) from voting thereon shall be decided by a majority vote of members and acting associate members, except the member (or associate member) who is being challenged.
- c. A member of the Board may be dismissed for cause by the Board of Overseers upon written charges and after public hearing.
- d. At its discretion, the Board of Overseers may appoint up to three (3) associate members who shall serve in accord with the Maine State Law above mentioned.
- e. A member of the Board of Overseers may not be a member or associate member of the Board of Appeals.

### (3) Powers and Duties

- a. Administrative Appeals: to hear and decide where it is alleged there is an error in any order, requirement, decision, or determination by the Building Inspector or the Planning Board in the enforcement of this Ordinance. An action of the

Building Inspector may be modified or reversed by the Board of Appeals, by concurring vote of at least three members of the Board of Appeals; an action of the Planning Board may be modified or reversed by a concurring vote of at least four members of the Board of Appeals.

When the Board of Appeals reviews a decision of the Building Inspector, the Board of Appeals shall hold a "de novo" hearing. At this time, the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and law, and reaching its own decision.

When the Board of Appeals reviews a decision of the Planning Board, it shall hold an appellate hearing and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or facts presented to the Planning Board. The Appeals Board may only review the record of the proceedings before the Planning Board. The Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

All references to hearings and public hearings in this Section 6.8.2 shall be deemed to include "de novo" hearings or appellate hearings as the case may be.

- b. Variance Appeals: to hear and decide, upon appeal, in specific cases where a relaxation of the terms of this Ordinance would not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Ordinance would result in unnecessary or undue hardship. The Board of Appeals shall grant a Variance only by concurring vote of at least 4 members and in so

doing, may prescribe conditions and safeguards as are appropriate under this Ordinance.

(4) Appeal Procedure

- a. In all cases, a person aggrieved by a decision of the Building Inspector or the Planning Board, must commence his appeal within 30 days after a written decision is made by the Building Inspector or the Planning Board, as the case may be, and filed with the clerk of the B.I.V.C. The appeal shall be filed with the Board of Appeals on such form, and be accompanied by such documents, as shall be satisfactory to the Board of Appeals, and the aggrieved person shall specifically set forth on the form the grounds for the appeal.
- b. Following the filing of an appeal, and before taking action upon it, the Board of Appeals shall hold a public hearing with regard thereto. All such hearings shall be held during the months of June, July or August following receipt of the appeal, except that a hearing may be held in September at the discretion of a majority of the Board of Appeals unless written objections to the holding of such hearing in September are filed with the Board of Appeals at least 5 days prior to the date of the hearing by 5 or more legal voters of the B.I.V.C. If such objections are filed in a timely manner, and not withdrawn, the hearing must be continued to June of the following year. Appeals received after August 31 will be held over for hearing in the next June or July, as determined by the Board of Appeals. At least 20 days in advance of a hearing the Board of Appeals shall notify the appellant, the Building Inspector, the Planning Board and the Board of Overseers of the time and place of the hearing, and at least 10 days in advance of the hearing the Board of Appeals shall publish notice of the hearing in a newspaper of general circulation in the area and shall post notice of the hearing at a bulletin board at the community house and the Post Office Building on the Island.
- c. Upon receipt of notice of the hearing from the Board of Appeals, the appellant shall be responsible for the following:
  - (i) the timely dispatch, i.e. no later than 10 days in advance of the hearing, by certified mail,

return receipt requested, of an appropriate notice of public hearing, as furnished by the Board of Appeals, to each of the persons specified in subsection d of this Section 6.8.2(4); and

- (ii) delivery to the Board of Appeals, prior to the commencement of the hearing, of the signed "return receipt" forms issued by the Post Office for certified mail, as evidence of receipt of notice of the hearing by the persons referred to in clause (i) above.

In lieu of the foregoing, the appellant may deliver to the Board, prior to commencement of the public hearing, signed acknowledgments by one or more required property owners that they have received from the appellant a copy of the notice of hearing. All required property owners must be covered, either by the certified mailing (and return receipt requested card) or by a signed acknowledgment.

The appellant shall also be responsible for obtaining the names and addresses of all persons to whom notice must be mailed or from whom written acknowledgment must be obtained as herein provided and the accuracy thereof.

- d. The persons to whom notice shall be dispatched as provided in subsection c of this Section 6.8.2(4) shall be all owners of property within 200 feet of the property which is the subject of the appeal.
- e. The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals, provided that proper and timely notice has been mailed as herein provided.
- f. At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.
- g. The Building Inspector or his designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he deems appropriate for an understanding of the appeal.
- h. The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without

interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the Order of the Chairman.

- i. Within 30 days of the public hearing, the Board of Appeals shall reach a decision on an appeal and shall inform, in writing, the appellant, the Building Inspector, the Planning Board, and the Board of Overseers and file a copy of its decision and the reasons therefor with the clerk of the B.I.V.C.
- j. Upon notification of the granting of an appeal by the Board of Appeals, the Building Inspector shall immediately issue a Building or Use Permit in accordance with the conditions of the approval.
- k. A Variance under the provisions of this Ordinance secured by vote of the Board of Appeals shall expire if the work or change involved is not commenced within one year of the date on which the appeal is granted, and if the work or change is not substantially completed within two years.

#### 6.8.2(5) Department of Environmental Protection Notification

Copies of Variance applications for property in the Shoreland District including all supporting information shall be forwarded by the Board of Appeals to the Commissioner of the Department of Environmental Protection at least 20 days prior to a hearing or any action by the Board of Appeals. Any comments received from the Commissioner prior to action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

Copies of Variance approvals for property in the Shoreland District shall be sent to the Department of Environmental Protection within 14 days of the Board of Appeals decision.

#### 6.8.3 Conditional Use Permits

##### (1) Authorization

The Planning Board is hereby authorized to hear and decide upon applications for Conditional Use Permits in accordance with State Law and the provisions of this Ordinance.

(2) Powers and Duties

The Planning Board shall hear and approve with modifications or conditions, or disapprove, all applications for Conditional Use Permits. The applicant or his representative must be present at the public hearing. Failure of the applicant or his representative to appear, requires the Board to deny the application without prejudice. No Conditional Use Permit shall be authorized unless specific provision for such Conditional Use is made in this Ordinance.

(3) Application Procedure

- a. A person informed by the Building Inspector that he requires a Conditional Use Permit shall file an application for the permit with the Planning Board on forms provided for the purpose.
- b. Following the filing of an application, and before taking action upon it, the Planning Board shall hold a public hearing with regard thereto. All such hearings shall be held during the months of June, July or August following receipt of the application, except that a hearing may be held in September at the discretion of a majority of the Planning Board unless written objections to the holding of such hearing in September are filed with the Planning Board at least 5 days prior to the date of the hearing by 5 or more legal voters of the B.I.V.C. If such objections are filed in a timely manner, and not withdrawn, the hearing must be continued to June of the following year. Applications received after August 31 will be held over for hearing in the next June or July, as determined by the Planning Board. At least 20 days in advance of a hearing the Planning Board shall notify the applicant, the Building Inspector, the Board of Overseers and the Board of Appeals of the time and place of the hearing, and at least 10 days in advance of the hearing the Planning Board shall publish notice of the hearing to the BIVC website (BIVC.net) and shall post notice of the hearing at a bulletin board at the community house and the Post Office Building on the Island.
- c. Upon receipt of notice of the hearing from the Planning Board, the applicant shall be responsible for the following:

- (i) the timely dispatch, i.e. no later than 10 days in advance of the hearing, by certified mail, return receipt requested, of an appropriate notice of public hearing, as furnished by the Planning Board, to all owners of property within 200 feet of the property which is the subject of the application; and
- (ii) delivery to the Planning Board, prior to the commencement of the hearing, of the signed "return receipt" forms issued by the Post Office for certified mail, as evidence of receipt of notice of the hearing by the persons referred to in clause (i) above.

In lieu of the foregoing, the applicant may deliver to the Board, prior to commencement of the public hearing, signed acknowledgments by one or more required property owners that they have received from the applicant a copy of the notice of hearing.

All required property owners must be covered, either by the certified mailing (and return receipt requested card) or by a signed acknowledgment.

The applicant shall also be responsible for obtaining the names and addresses of all persons to whom notice must be mailed or from whom written acknowledgment must be obtained as herein provided and the accuracy thereof.

- d. The owners of the property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Planning Board, provided that proper and timely notice has been mailed as herein provided.
- e. At any hearing, a party may be represented by an agent or attorney. Hearings shall not be continued to other times except for good cause.
- f. The Building Inspector or his designated assistant shall attend all hearings and may present to the Planning Board all plans, photographs, or other material he deems appropriate for an understanding of the application.
- g. The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked



through the Chair. All persons at the hearing shall abide by the order of the Chairman.

- h. Within 30 days of the public hearing, the Planning Board shall reach a decision on a Conditional Use and shall inform, in writing, the applicant, the Building Inspector and Board of Overseers of its decision and its reasons therefor. It shall file a copy of its decision and the reasons therefor with the clerk of the B.I.V.C.
- i. Upon notification of the decision of the Planning Board the Building Inspector, as instructed after expiration of the appeal period, shall issue, with conditions prescribed by the Planning Board, or deny a Building Permit.
- j. A Conditional Use Permit secured under the provisions of this Ordinance by vote of the Planning Board shall expire if the work or change involved is not commenced within one year of the date on which the Conditional Use is authorized, and if the work or change is not substantially completed within two years.

(4) Factors Applicable to Conditional Uses

- a. In considering a Conditional Use Permit the Planning Board shall evaluate the immediate and long-range effects of the proposed Use upon:
  - 1. The maintenance of safe and healthful conditions.
  - 2. The prevention and control of water pollution and sedimentation.
  - 3. The control of Building Sites, placement of Structures and land Uses.
  - 4. The protection of spawning grounds, fish, aquatic life, bird and other wildlife habitat.
  - 5. The conservation of shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty.
- b. The Planning Board shall also consider the following factors:
  - 1. The compatibility of the proposed Use with adjacent land Uses.

2. The need of a particular location for the proposed Use.
3. Access to the site from existing or proposed roads.
4. The location of the site with respect to Flood Plains and Floodways of streams.
5. The amount and type of wastes to be generated by the proposed Use and the adequacy of the proposed disposal systems.
6. The impact of the proposed Use on the land and adjacent water bodies and the capability of the land and water to sustain such Use without degradation.
7. Existing topographic and drainage features and vegetative cover on the site.
8. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
9. The impact of the proposed Use on transportation facilities.
10. The impact of the proposed Use on local population and community facilities.
11. The impact of the proposed Use on local water supplies.

(5) Conditions Attached to Conditional Uses

- a. Upon consideration of the factors listed above, the Planning Board may attach such conditions, in addition to those required elsewhere in this Ordinance, that it finds necessary to further the purposes of this Ordinance. Violation of any of these conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation; increased Setbacks and Yards; specified sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational controls; professional inspection and maintenance; sureties; deed restrictions; restrictive covenants; locations of piers, docks,

parking and Signs, type of construction; or any other conditions necessary to fulfill the purposes of this Ordinance.

- b. In order to secure information upon which to base its determination the Planning Board may require the applicant to furnish, in addition to the information required for a Conditional Use Permit, the following information:
  1. A plan of the area showing contours at intervals to be determined by the Planning Board and referred to Mean Sea Level, Normal High-Water Line, ground water conditions, bedrock, slope and vegetative cover.
  2. A soils report identifying the soils boundaries and names in the proposed development with the soils information superimposed upon the plot plan in accord with the USDA Soil Conservation Service National Cooperative Soil Classification.
  3. Location of existing and proposed Buildings, parking areas, traffic access, driveways, walkways, piers, open spaces, and landscaping.
  4. Plans of Buildings, Structures, sewage disposal facilities, and water supply systems.
  5. Other pertinent information necessary to determine if the proposed Use meets the provisions of this Ordinance. In evaluating each application the Planning Board may request the assistance of the Regional Planning Commission, County Soil and Water Conservation District and any other State or Federal agency which can provide technical assistance.