

## ARTICLE 1 General

### § 120-104. Conflict with other provisions.

Whenever a provision of this chapter conflicts with or is inconsistent with another provision of this chapter or of any other Town ordinances, State or Federal regulations or statutes, the more restrictive provision shall control.

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**Commented [SP1]:** 120-104 Good catch all statement, but could be interpreted as municipal statutes not State, based on definition of legislative body below. rb

**Commented [SP2R1]:** The legislative body is the Town Council. We could include State and Federal references.

## ARTICLE 3 Definitions

**IMPERVIOUS AREA** — The ratio of the horizontal area of all impervious surfaces on a lot to the total lot area means the total area of a parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete and underdrained artificial turf fields are all considered impervious. For the purpose of determining jurisdictional thresholds, the Department may, depending on the design, consider such facilities to provide alternative treatment as described in Section 4(B)(3)(e) of this Chapter.

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**Commented [SP3]:** Impervious Area Def. Different then Ch 500. rb

**LANDSCAPED GREEN AREA** — An area of land which is landscaped with a ground cover of bark mulch, grass or other natural green plant material and which is then covered with trees or shrubs for all or part of its area. For the purposes of this chapter, the definition of a landscaped green area does not include materials such as concrete, asphalt, or hardscapes that have been painted green means an area of land that has been disturbed and re-planted or covered with one or more of the following: grass or other herbaceous plants, shrubs, trees, or mulch; but not including area that has reverted to a natural, vegetated condition. An area of grass is considered landscaped if it is mowed more than twice per twelve month period.

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### PARCEL —

- A. A piece or area of land formally described and recorded with map, block and lot numbers, by metes and bounds, by ownership, or in such a manner as to specifically identify the dimensions and/or boundaries.
- B. Informally, as land in general. **[Amended at time of adoption of Code (see Ch.**

**1, General Provisions, Art. I)]**

P.C. Is defined the same as "parcel of land" in rules adopted pursuant to the Site Location of Development Law, 38 M.R.S. §481 et seq.

PERSON — Includes an individual, firm, association, organization, partnership, trust, company or corporation, is defined the same as in rules adopted pursuant to the Site Location of Development Law 38 M.R.S. §481 et seq.

(I) Each person as defined in 48 M.R.S.A., Section 482 (4), shall be regarded as a separate and distinct entity, except that at combination of persons shall be treated as a person for the purpose of the Site Location Law If:

- (a) Together they- pursue a common scheme of development which is subject to the Site Location Law even though individual person in the combination own separate parcels which may not be- subject to the Site Location Law if the parcels were , developed separately; or
- (b) One person engages in a transaction with another person with the intent to evade the intent and purpose of the Site Location Law.

**ARTICLE 8  
Site Plan**

**§120-802(A)**

(9) The cumulative development of an area equal to, or greater than, one acre within any three-year five-year period. The applicability of this subsection does not include the construction of streets that are reviewed as part of a subdivision application under the standards of Article 9 of this chapter.

**§120-805(A)(1)**

(c) This could conflict with Ch 500 if there is a cumulative effectThe establishment of a new nonresidential use, even if no buildings or structures are proposed, that involves the development of more than 25,000 square feet but less than one acre of land.

(1) In making its determination to allow a waiver from the flooding standard due to insignificant increases in peak flow rates, the Town shall consider cumulative impacts. If additional information is required to make a determination concerning increased flow.

(2) The Town may consider cumulative impacts due to runoff from other projects when applying this standard

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**Commented [SP6]:** Person definition different in CH 500 and SLODA. RB

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to any wetland.

(3) **Discretionary authority.** Notwithstanding compliance with the PBR requirements and standards set forth in this Section, the Town may require that an individual stormwater permit be obtained in any case where the Department determines that the activity:

- [a] May violate the standards of the Stormwater Management Law or this Chapter;
- [b] Could lead to significant environmental impacts, including cumulative impacts; or
- +[c] Could have an unreasonable adverse impact on a protected natural resource.

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## §120-807F

(1) As part of the final site plan submission, the applicant shall state whether the following approvals are required and shall provide a copy of any such approval that the applicant has received. If the applicant has not received a required approval, it shall include the status of the pending approval and evidence of receipt of the required approval shall be included as a condition of Town approval. If the Board is unsure whether a permit or license from a federal, state or local agency is necessary, the applicant may be required to obtain a written opinion from the appropriate agency as to the applicability of their regulations. [Amended 6-16-2022 by Order No. 22-108; 10-24-2023 by Order No. 23-193]

- (a) Maine Department of Environmental Protection, under the Site Location of Development Act.<sup>37</sup>
- (b) Maine Department of Environmental Protection, under the Natural Resources Protection Act<sup>38</sup> or Stormwater Law 06-096 CMR Ch. 500, Stormwater Management, or if an MEPDES wastewater discharge license is needed.
- (c) Maine Department of Transportation, for a traffic movement permit and/or highway entrance/driveway access management permit outside of the Urban Compact.
- (d) Town of Windham Public Works Department for a curb cut permit inside the Urban Compact (see § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards).
- (e) The Portland Water District if existing or proposed public water or sewer service is to be used.
- (f) Maine Department of Health and Human Services if a central water supply system is to be used.

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(e) A Maine licensed professional civil engineer if individual wells serving each building site are to be used. The Board may also require the applicant to submit the results of water quality tests as performed for, or by, the State of Maine, Department of Health and Human Services. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. J)]

(f) Maine Department of Health and Human Services if an engineered sewage collection and treatment system is to be utilized.

(g) The Plumbing Inspector if individual septic tanks are to be installed by the builder.

(h) United States Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.<sup>39</sup>

(i) Written approval of any proposed street names from the Town of Windham E911 Addressing Officer.

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#### §120-810C

A. Consulting, review and construction observation fees. Notwithstanding any other provision(s) of this chapter, Articles 1 through 12 (the "code"), to the contrary, and in addition to such fees as are otherwise specified by the code, the Town shall assess fees to cover 100% of its costs related to independent geotechnical, hydrologic, engineering, planning, legal, and similar professional consulting services, including Maine Department of Environmental Protection, under the Site Location of Development Act. and Maine Department of Environmental Protection, under the Natural Resources Protection Act<sup>38</sup> or Stormwater Law 06-096 CMR Ch. 500, Stormwater Management, or if an MEPDES wastewater discharge license, incurred in the review and post-approval inspections of site plan applications. Such fees shall be subject to the following limitations:

Commented [SP11]: 120-810(c) Should this reference Ch 500 and SLODA Review. rb

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#### §120-811B(2)(b)

[4] At a minimum, engineering calculations used to for basins and ponds designed to control flows so as to meet the flooding standard must have principal spillways capable of controlling runoff from 24-hour storms of the 2-year, 10-year, and 25-year frequencies. determine drainage requirements based upon the twenty-five-year, twenty-four-hour storm frequency.

[5] Methods of minimizing erosion and controlling sedimentation during and after construction. Erosion and sedimentation control plan. In addition to a site plan, an erosion and sedimentation control plan must be included that contains, at a minimum, permanent stabilization measures to be taken (e.g., paving or planting vegetation), installation details of the erosion control

Commented [SP12]: 120-811B(2)(b) Potential conflict with Ch 500. rb

measures proposed, seeding and mulching rates, and a construction schedule with the proposed construction dates and timeframe for major earth moving and construction events. This plan and its details may be included on the site plan instead of being a separate submission

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#### §120-812C(1)

(d) In parking lots utilizing a parking angle of 90°, 30% of the spaces shall be created with a stall width of 10 feet zero inches and a stall depth of 20 feet zero inches. Remaining spaces shall be created with a stall width of at least nine feet zero inches and a stall depth of at least 18 feet zero inches.

**Commented [SP13]:** 120-812C(1)(d) This may conflict with the revisions to Ch 500. rb

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#### §120-812E(1)

(a) Stormwater management systems for minor and major site plans shall detain, retain, or result in the infiltration of stormwater from the twenty-four-hour storms of the two-year, ten-year, and twenty-five-year frequencies such that the peak flows of stormwater from the project site do not exceed the peak flows of stormwater prior to undertaking the project. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards. The Planning Board may waive the flooding standard in accordance with the following criteria:

(f) Major site plans, regardless of size, shall submit a stormwater management plan that complies with Section 4C(2) and Section 4C(3) of the General Standards of the DEP Chapter 500, Stormwater Management, as amended.<sup>45</sup>

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#### §120-812F

(2) An erosion control plan shall show the use of erosion and sediment control best management practices (BMPs) at the construction site consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping, Erosion and Sedimentation Control. BMPs shall be designed, installed and maintained in accordance with the standards contained in the latest revisions of the following Maine DEP Documents:

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(a) Maine DEP Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers.

- (b) Maine Erosion and Sediment Control Practices Field Guide for Contractors.
- (c) Applicants are required to utilize contractors who are certified in erosion control through the Maine Department of Environmental Protection's Voluntary Contractor Certification Program.

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§120-907

[4] Require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams, of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards.<sup>53</sup> The review shall also ensure compliance with performance standards contained in The general standards Section (4C) apply as described below in addition to the basic standards described in Section 4(B). § 120-911C, D(2), H(1), and J of this chapter. The review shall include attendance at any scheduled Planning Board site walk. [Amended 3-26-2019 by Order 19-020]

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**§120-908. Waivers.**

Need to tighten language

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§120-908C(2)(b)

[11] Flooding or adverse drainage impacts on abutting properties.

## ARTICLE 9 Subdivision

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§120-910B

Minor subdivision final plan. The final plan submission shall include five copies of the following information, including full-size plan sets, along with one electronic version of the

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**Commented [SP17]:** 120-907B(4)(c)(4)Major Subdivision requires General Std rb

**Commented [SP18]:** 120-908 MaineDEP typically doesn't like vague waiver language. rb

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**Commented [SP19]:** 120-908C(2)(b)[11]This makes it sound like they could waive all of Ch 500 with the exception of the flood standard. rb

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entire submission. The Board may waive the submission information that is listed in § 120-910B(1)(c).

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§120-910B(3)

(c) A surface drainage plan or stormwater management plan with profiles and cross sections, showing the design of all facilities and conveyances necessary to meet the stormwater management standards set forth in Article 9 (Subdivision Review). The plan shall be drawn by a Maine licensed professional civil engineer and shall include a written statement indicating that the proposed subdivision will not create erosion, drainage or runoff problems either in the subdivision or on adjacent properties. Changes in runoff shall be calculated by using the TR-55 or TR-20 method or subsequent revisions and met comply with Chapter 500 Stormwater Law Section 4F Flooding Standards.

(d) A soil erosion and sediment control plan prepared by a Maine licensed professional engineer or a certified professional in erosion and sediment control (CPESC) consistent with the requirements of § 120-911C, Erosion and sedimentation control. [Amended 5-23-2023 by Order No. 23-092]

...

§120-910C(2)

(x) An erosion and sedimentation control plan prepared in accordance with the requirements of § 120-911C, Erosion and sedimentation control and complies with Maine DEP Chapter 500 Stormwater Rules, 4C Basic standards, amended from time to time. [Amended 5-23-2023 by Order No. 23-092]

(y) A stormwater management plan, prepared by a Maine licensed professional engineer in accordance with the most recent edition of Stormwater Management for Maine: Best Management Practices Manual and Maine DEP Chapter 500 Stormwater Rules, 4D General and phosphorus standards and Section 4F Flooding standards, as amended from time to time. [Amended 5-23-2023 by Order No. 23-092]

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§120-910C(3)(f)

[1] A phosphorus impact analysis and control plan conducted using the procedures set forth in MDEP Manual, "Stormwater Management for Maine Phosphorus Control in Lake Watersheds," published by the MDEP, January 2008, and subsequent revisions. The analysis and control plan shall include all worksheets, engineering calculations, and construction specifications and diagrams for control measures, as required by the Phosphorus

**Commented [SP20]:** 120-910B It appears the minor subdivisions may be exempt from Ch 500.

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**Commented [SP21]:** 120-910B(3)(c)MaineDEP won't like this waiver. It also doesn't reference a storm frequency on would only address the Flood Standard. rb

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**Commented [SP22]:** 120-910B(3)(d)This conflicts with Ch 500 basic STD; rb, Needs to address the new MCGP requirements, sjp (talk Mark A.)

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**Commented [SP23]:** 120-910C(2)(x)Basic STD. rb

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**Commented [SP24]:** 120-910C(2)(y)General, Flood, Phosphorous. rb

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Design Manual

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§120-911C Erosion and sedimentation control. [Amended 5-23-2023 by Order No. 23-092]

- (1) An erosion control plan showing the use of erosion and sediment control best management practices (BMPs) at the construction site consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping. Erosion and Sedimentation Control. BMPs shall be designed, installed and maintained in accordance with the standards contained in the latest revisions of the following [Maine DEP documents and complies with Maine DEP Chapter 500 Stormwater Rules, 4C Basic standards, amended from time to time](#):
  - (a) Maine DEP Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers.
  - (b) Maine Erosion and Sediment Control Practices Field Guide for Contractors.
  - (c) Applicants are required to utilize contractors who are certified in erosion control through the Maine DEP's Voluntary Contractor Certification Program.
- (2) The developer shall provide a statement from a Maine licensed professional civil engineer that the plan shall prevent soil erosion and sedimentation from entering water bodies, wetlands and adjacent properties.
- (3) Topsoil shall be considered part of the subdivision. Except for surplus topsoil for roads, parking areas and building excavations, it is not to be removed from the site.
- (4) Except for normal thinning and landscaping, existing vegetation shall be left intact to prevent soil erosion. The Board may require a developer to take measures to correct and prevent soil erosion in the proposed subdivision.

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§120-911J Stormwater

- (1) Stormwater management for subdivisions shall incorporate appropriate treatment measures for water quantity and quality to meet the requirements specified below for development of the lots as well as the infrastructure to support the project. Each application shall include maximum developed, disturbed and impervious areas for each lot based upon the definitions contained in Section 3, DEP Chapter 500, Stormwater Management.<sup>60</sup>
- (2) For subdivisions that require a DEP review under the Site Location of Development Act (SLDA),<sup>61</sup> a stormwater management plan shall be submitted which complies with the SLDA permit and the requirements of DEP Chapter 500, Stormwater Management.

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**Commented [SP26]:** 120-911C This addresses Basic Std for Major Sub. rb

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(3) For subdivisions that do not require a SLDA permit but require a DEP permit under the Stormwater Law, a stormwater management plan shall be submitted which complies with the requirements of DEP Chapter 500, Stormwater Management.

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(5) For subdivisions within the watershed of a great pond that require neither a DEP SLDA permit nor a DEP stormwater permit, a stormwater management plan shall be submitted that complies with Section 4B, Basic Standards, of DEP Chapter 500, Stormwater Management. In addition, the stormwater management plan shall comply with Section 4D, Phosphorous Standards, of DEP Chapter 500, Stormwater Management.

**Commented [SP28]:** 120-911J(2 & 3) This will need to be revised. rb

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(6) For all subdivisions, regardless of size, a stormwater management plan shall be submitted that complies with Section 4E, Flooding Standard, of the DEP Chapter 500, Stormwater Management, as amended. For a project that does not require a DEP SLDA permit, the Planning Board, upon a request by the applicant, may waive the flooding standard in the event that greater than 75% of the impervious and developed areas (as defined in Section 3 of DEP Chapter 500) for both the lots and infrastructure are treated through the use of buffers in accordance with DEP Chapter 500, Stormwater Management. **[Amended 5-23-2023 by Order No. 23-092]**

**Commented [SP29]:** 120-911J(5) Should this reference 502 instead? rb

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§120-911J(7)

(a) Projects in the Highland Lake watershed shall not be allowed to pay the compensation fee for exceeding the project's phosphorus allocation. Notwithstanding 1 M.R.S.A. § 302, this amendment shall be applicable to and shall govern any application for subdivision plan approval that did not receive lawful final approval by and so was pending on or at any time after, September 5, 2017, regardless of whether that application was a pending proceeding under 1 M.R.S.A. § 302.

**Commented [SP30]:** 120-911J(6) The MaineDEP won't like this waiver. rb

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**Commented [SP31]:** 120-911J(7) Does Windham have a CFUP for Highland? rb. No, to establish a CFUP, we would need to create a Highland Watershed management plan. sjp

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