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Article 9 Subdivision Review

§ 120-901 Purpose.

The purpose of these standards shall be to assure the comfort, convenience, safety, health and welfare of the people; to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Windham, Maine, the Planning Board shall evaluate the proposed subdivision, using the following criteria. The subdivision provisions set forth in these regulations are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that ~~residential and nonresidential and multifamily~~ construction is designed and developed in a manner that assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

§ 120-902 Statutory review criteria.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

When reviewing any application for a subdivision, as defined by Article 3, the review authority shall find that the criteria as found in 30-A M.R.S.A. § 4404 have been met, as well as all applicable provisions of this chapter and other sections of this Article 9, before granting approval (see § 120-911, Performance and design standards).

§ 120-903 Authority and administration.

- A. Authority; title. These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq., and all amendments thereto.
- B. Subdivisions recorded prior to enactment. The provisions of these standards, not specifically required by 30-A M.R.S.A. § 4401 et seq., shall not apply to any subdivision which has been approved by the Board and recorded in the Registry of Deeds of Cumberland County prior to the Town's enactment of subdivision regulations that became effective on February 7, 1972.
- C. Administration. The Planning Board of the Town of Windham, hereinafter called the "Board," shall administer these standards. The Board shall contain seven members. In addition, said Board shall have one alternate member, who shall have all the rights of a full member except said alternate may vote only in the absence of a full member. A quorum of four members shall be necessary to conduct a meeting. A majority vote of the quorum is required for the passage or denial of any motion before the Board.
 - (1) The term of members shall be three years.
 - (2) A municipal officer or their spouse shall not be a member of the Board.
 - (3) When there is a vacancy, the municipal officers shall appoint a person to serve the remainder of the unexpired term.
 - (4) The Board shall elect a Chair and Vice Chair from its own membership.
 - (5) Any questions of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members except the member who has declared the conflict or who is challenged.

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- [ii] Financial plan. Financial plan for the remaining financing.
- [iii] Letter. Letter acceptable to the Town from an appropriate financial institution, indicating an intention to provide financing subject to reasonable conditions of acceptance.
- [3] Certificate of good standing. If the applicant is a registered corporation, provide either a certificate of good standing (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.
- (k) Technical capacity. Describe the technical ability of the applicant and consultant(s) to undertake the development. Include the following information:
 - [1] Prior experience. A statement of the applicant's prior experience and appropriate training relating to the nature of the development. Specify prior experience relating to developments that have received permits from the Town.
 - [2] Personnel. Resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff contracted with or employed by the applicant who will design the development.
- (l) The name and contact information for the road association whose private way or road is used to access the subdivision (if applicable).

(m) Draft Homeowners' Association documents and draft deed as per the requirements of § 120-911N.

- (2) Mandatory plan information. The maps or drawings must be at a scale sufficient to allow review of the items listed under the approval criteria, but in no case shall be more than 100 feet to the inch.
 - (a) Name of the subdivision, date and scale.
 - (b) Stamp of the Maine licensed professional land surveyor that conducted the survey. At least one copy shall include an original stamped seal that is embossed and signed.
 - (c) Stamp, with date and signature, of the Maine licensed professional engineer that prepared the plans.
 - (d) A North arrow identifying all of the following: grid north, magnetic north with the declination between grid and magnetic; and whether magnetic or grid bearings were used in the plan design.
 - (e) Location map. The location map shall be drawn at a size and scale adequate to allow the Board to locate the subdivision within the municipality.
 - (f) Vicinity plan. A plan drawn at a scale of not over 400 feet to the inch to show the area within 250 feet of the property line of the proposed subdivision. The vicinity plan shall show the following:
 - [1] The approximate location of all property lines and acreage of parcels.
 - [2] Locations, widths and names of existing, filed or proposed streets, easements, or building footprints.
 - [3] The location and designations of any public spaces.
 - [4] An outline of the proposed subdivision, together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the proposed subdivision plan encompasses only part of the applicant's entire property holding.
 - (g) A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances,

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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.

- (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-
- (e) If subsurface wastewater disposal systems (septic) are proposed, a hydrogeologic assessment prepared by a Maine licensed site evaluator or certified geologist regarding the ability of the site to meet the performance standards and approval criteria for subsurface wastewater disposal.
- (f) The location of driveways, if requested by the Planning Board.
- C. Major subdivision preliminary plan. The preliminary plan submission shall include five copies of the following information, including full-size plan sets, along with one electronic version of the entire submission. The Board may waive the submission information that is listed in § 120-910C(1)(c). All dimensions shown in feet or decimals of a foot, drawn to a scale of not more than 100 feet to the inch showing or accompanied by the following information:
 - (1) Mandatory written information.
 - (a) A fully executed and signed application form.
 - (b) Evidence of payment of the application and escrow fees as found on the Fee Schedule established by the Town Council.
 - (c) Proposed name of the subdivision and the name of the municipality in which it is located.
 - (d) Verification of right, title or interest in the property, or any abutting property, by deed, purchase and sales agreement, option to purchase, or some other proof of interest.
 - (e) A copy of the most recently recorded deed for the parcel. A copy of all existing deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
 - (f) A copy of any existing or proposed covenants or deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.
 - (g) A copy of any proposed easements on the property.
 - (h) The name, registration number and seal of the Maine licensed professional land surveyor who conducted the survey.
 - (i) Name, registration number and seal of any other licensed professional in the State of Maine who prepared the plan (if applicable).
 - (j) An indication of the type of sewage disposal to be used in the subdivision.
 - [1] When sewage disposal is to be accomplished by connection to the public sewer, a letter from the Portland Water District stating the district has the capacity to collect and treat the wastewater shall be provided.
 - [2] When sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses, prepared by a Maine licensed site evaluator or certified soil scientist, shall be provided. A map showing the location of all test pits dug on the site shall be submitted.

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Mandatory written information.**

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- (j) Typical cross sections of the proposed grading for roadways, sidewalks, etc., including width, type of pavement, elevations and grades.
- (k) Wetland areas shall be delineated on the survey.
- (l) The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, specimen trees, if present, and other essential existing physical features.
- (m) The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond.
- (n) The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision.
- (o) The location, size of existing and proposed sewers, water mains, culverts, bridges and drainageways on or adjacent to the property to be subdivided. The Board may require this information to be depicted via a cross section, or plan and profile view.
- (p) The location, names, and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
- (q) The width and location of any streets, public improvements or open space shown upon the Official Map and the Comprehensive Plan, if any, within the subdivision.
- (r) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
- (s) The location of any open space to be preserved or common areas to be created, and a general description of proposed ownership, improvement and management.
- (t) The approximate location of the tree line after development has been completed.
- (u) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the Town's Flood Insurance Rate Map, shall be delineated on the plan.
- (v) Areas within or adjacent to the proposed subdivision which have been identified by the Maine Department of Inland Fisheries and Wildlife "Beginning with Habitat Project" or within the Comprehensive Plan. (Copies of the Beginning with Habitat Project maps and the Comprehensive Plan are available in Town Hall.)
- (w) All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places, or have been identified in the Comprehensive Plan or by the Maine Historic Preservation Commission as sensitive or likely to contain such sites.
- (x) An erosion and sedimentation control plan prepared in accordance with the requirements of § 120-911C, Erosion and sedimentation Control.
- (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 Management Rules, as amended from time to time.
- (z) For conservation subdivisions that are proposed that do not maximize the development potential of the property being subdivided, a master plan for the remaining land shall be submitted. The master plan will show future roads, open space and lot layouts consistent with the requirements of § 120-911K,

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Mandatory Written Information**

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kinematic (RTK) GPS, survey-grade static GPS data collection or traditional methods of occupying known, high-precision surveyed monuments. The datum, survey methods, and type of survey equipment used shall be identified.

(h) Draft Homeowners' Association documents and a draft lot deed as per the requirements of § 120-911N.

- (2) Mandatory plan information.
 - (a) All of the information presented on the preliminary plan, and any amendments thereto suggested or required by the Board.
 - (b) Map and lot numbers for all lots as assigned by the Town of Windham Assessing Department.
 - (c) The seal of the Maine licensed professional who prepared the plan.
 - (d) By proper designation, all public open space for which offers of cession are made by the subdivider and those spaces to which title is reserved by him.
 - (e) The location of all permanent monuments.

§ 120-911 Performance and design standards.

[Amended 4-27-2010 by Order 10-075; 5-10-2011 by Order 11-070; 7-24-2012 by Order 12-091; 12-16-2014 by Order 14-491; 2-28-2017 by Order 17-038; 10-10-2017 by Order 17-161]

The performance and design standards in this section are intended to clarify and expand upon the statutory review criteria found in § 120-902. In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance and design standards. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate all performance and design standards and statutory criteria for approval have been or will be met.

A. Basic subdivision layout.

- (1) Lots.
 - (a) Calculation of density. See § 120-541, Net residential area or acreage, in Article 5, Performance Standards.
 - (b) Wherever possible, side lot lines shall be perpendicular to the street.
 - (c) The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division. Deed restrictions or notes on the plan shall either prohibit future divisions of the lots or specify that any future division shall constitute a revision to the plan and shall require approval from the Board, subject to the criteria of the subdivision statute, the standards of these regulations and conditions placed on the original approval.
 - (d) If a lot on one side of a public street fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the public street to meet the minimum lot size.
 - (e) Lot numbering. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the E-911 Addressing Officer and the comments shall be considered by the Board.
- (2) Utilities. The size, type and location of public utilities, such as sewers, water lines, storm drains,

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well system.

- [3] Wells shall not be constructed within 100 feet of the traveled way of any street if located downhill from the street, or within 50 feet of the traveled way of any street if located uphill of the street. This restriction shall be included as a deed restriction to the affected lots.
 - (b) Lot design shall permit placement of wells, subsurface wastewater disposal areas, and reserve sites for subsurface wastewater disposal areas in compliance with the Maine Subsurface Waste Water Disposal Rules and the Well Drillers and Pump Installers Rules.
 - (c) If a central water supply system is provided by the applicant, the location and protection of the source and the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144 CMR 231).
 - (d) In residential subdivisions where the Fire-Rescue Department identifies the need for additional water storage capacity for firefighting purposes, the applicant shall provide adequate water storage facilities.
 - [1] Facilities may be ponds with dry hydrants, underground storage reservoirs or other methods acceptable to the Fire-Rescue Chief.
 - [2] A minimum storage capacity shall meet the requirements of the National Fire Protection Association Life Safety Code (NFPA 101). The Board may require additional storage capacity upon a recommendation from the Fire-Rescue Chief.
 - [3] Where surface ponds are proposed for water storage, the capacity of the pond shall be calculated based on the lowest water level less an equivalent of three feet of ice. An easement shall be granted to the municipality, granting access to and maintenance of dry hydrants or reservoirs where necessary.
 - [4] Hydrants or other provisions for drafting water shall be provided to the specifications of the Fire-Rescue Department. Minimum pipe size connecting dry hydrants to ponds or storage vaults shall be six inches. A suitable accessway to the hydrant or other water source shall be constructed.
 - [5] The Board may waive the requirement for water storage only upon submittal of evidence that the soil types in the subdivision will not permit their construction or installation and/or that the Fire-Rescue Chief has indicated, in writing, that alternate methods of fire protection are available and incorporated into the subdivision plan.
- C. Erosion and sedimentation ~~and impact on water bodies control.~~
- (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:
 - (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.

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~~(1) Where a subdivision is traversed by a watercourse or drainageway or where the Board feels that surface water drainage to be created by the subdivision should be controlled for the protection of the subdivision and owners of property abutting it, there shall be provided an easement or drainage right of way and culverts, catch basins or other means of channeling surface water within such subdivision and over the property of owners abutting upon it, of such nature, width and location as the Board deems adequate.~~

~~(a) The applicant shall transfer the easement to a homeowners' association.~~

~~(b) Maintenance of the easement will be the responsibility of the homeowners' association.~~

~~(c) The easement shall specify that in the event that the applicant or homeowners' association neglects its maintenance responsibilities, the Town reserves the right to maintain the features of the easement and charge the homeowners' association for all expenses.~~

(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.

~~(5) The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean up stages. (See Chapter 201, Stormwater Management, Article I, Surface Water Protection.)~~

D. Sewage disposal.

(1) Public sewer system. Where an existing or proposed public sanitary gravity sewer main is located within 1,500 feet of a proposed subdivision at its nearest point, the applicant shall provide, at his expense, a connection to, or extension of, the public gravity sewer main.

(a) The Portland Water District shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be complete prior to the construction of the subdivision.

(b) The Portland Water District shall review and approve, in writing, the construction drawings for the public sewerage system. This includes, but is not limited to, the size and location of laterals, collectors, manholes, and pump stations.

(2) Private systems. When a proposed subdivision is not within a distance required for public sewage disposal service, sewage disposal shall be private subsurface wastewater disposal systems. The subdivision may be served by a private central sewage system in accordance with the provisions for central sewage systems in Article 5, Performance Standards. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Subsurface Waste Water Disposal Rules. The site evaluator shall certify, in writing, that all test pits which meet the requirements for a new system represent an area large enough to provide a disposal area on soils which meet the Disposal Rules.

E. Impact on natural beauty, aesthetics, historic sites, wildlife habitat, rare natural areas or public access to

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the shoreline.

- (1) Preservation of natural beauty and aesthetics.
- (a) The plan shall, by notes on the final plan and/or deed restrictions, not allow the clearing of trees in areas where tree cover is depicted on the plan for a period of at least five years from the date of Planning Board approval. Mandatory buffers for stormwater or other reasons depicted on the plan shall not be cleared of vegetation unless the Planning Board grants an amendment to the subdivision or for maintenance that does not alter the purpose for which the buffer was required.
- (b) The plan shall include the planting of street trees. Street trees shall be of a variety capable of withstanding winter street maintenance and planted no more than 50 feet apart.
- (2) Reservation or dedication and maintenance of open space and common land, facilities and services.
 - (a) All open space common land, facilities and property shall be owned by:
 - [1] The owners of the lots or dwelling units by means of a lot owners' association;
 - [2] An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
 - [3] The Town of Windham, subject to the approval of the Windham Town Council.
 - (b) Further subdivision of the common land or open space and its use for other than noncommercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to noncommercial recreational or conservation uses may be erected on the common land.
 - (c) The common land or open space shall be shown on the final plan with appropriate notations on the plan to indicate:
 - [1] It shall not be used for future building lots; and
 - [2] Which portions of the open space, if any, may be dedicated for acceptance by the municipality.
 - ~~(d) The final plan application shall include the following:
 - [1] Covenants for mandatory membership in the lot owners' association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.
 - [2] Draft Articles of Incorporation of the proposed lot owners' association as a not for profit corporation; and
 - [3] Draft bylaws of the proposed lot owners' association, specifying the responsibilities and authority of the association and the operating procedures of the association and providing for proper capitalization of the association to cover the costs of major repairs, maintenance and replacement of common facilities.~~
 - ~~(e) In combination, the documents referenced in § 120-911E(2)(d), above, shall provide for the following:
 - [1] The homeowners' association shall have the responsibility of maintaining the common property or facilities.
 - [2] The system by which the association shall levy annual charges against all owners of lots or dwelling~~

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~~units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.~~

~~{3} The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.~~

~~{4} The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until rights have been transferred to the association per the bylaws or covenants.~~

- F. Conformance with land use ordinances. All lots shall meet the dimensional requirements of the zoning district in which they are located. The proposed subdivision shall meet all applicable performance standards or design criteria of this chapter. Note: See § 120-533, Lot, backlot, in Article 5, Performance Standards, for additional standards regarding backlots in subdivisions.
- G. Financial and technical capacity.
- (1) Financial capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination, the Planning Board shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development. The Board shall also consider the proposed time frame for construction and the effects of inflation.
 - (2) Technical ability.
 - (a) The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision.
 - (b) In determining the applicant's technical ability, the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.
- H. Impact on groundwater quality or quantity.
- (1) Groundwater quality.
 - (a) Projections of groundwater quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation). See § 120-910C(1)(c)[3] for hydrogeologic assessment submission requirements.
 - (b) No subdivision shall increase any contaminant concentration in the groundwater at any subdivision water supply well or any project boundary to more than the primary drinking water standards. No subdivision shall increase any contaminant concentration in the groundwater at said locations to more than the secondary drinking water standards. A hydrogeological evaluation shall demonstrate that the groundwater concentrations of nitrate as nitrogen meet the maximum contaminant level standard of 10 mg/L of the EPA's National Primary Drinking Water Regulations at the project boundaries. Where past land activities, such as agriculture, indicate the potential for high background levels of nitrate nitrogen or other groundwater contaminants, the Planning Board may require testing to determine background levels and may place limitations on total groundwater discharges to ensure safe drinking water supplies for existing and/or proposed households. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (c) If groundwater is to be used for potable purposes and contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.

- (2) For subdivisions that require a DEP review under the Site Location of Development Act (SLDA), a stormwater management plan shall be submitted which complies with the SLDA permit and the requirements of DEP Chapter 500, Stormwater Management.
 - (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.
 - (4) For subdivisions outside of the watershed of a great pond that require neither a SLDA permit nor a DEP stormwater permit, a stormwater management plan shall be submitted that complies with Sections 4B, Basic Standards, and 4C, General Standards, of the DEP Chapter 500, Stormwater Management.
 - (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.
 - (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. ~~(See also Chapter 201, Stormwater Management, Article I, Surface Water Protection, of the Town Code.)~~
 - (7) For all subdivisions, regardless of size, located in the Highland Lake watershed, the following additional standards shall be met: **[Amended 5-22-2018 by Order 18-905]**
 - (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.
- K. Conservation subdivisions. **[Amended 1-15-2019 by Order 18-257; 6-9-2020 by Order 20-140]**
- (1) Purpose.
 - (a) This subsection establishes standards and procedures for developing conservation subdivisions that set aside a significant portion of the site as open space that is permanently protected while allowing the homes to be grouped on smaller lots on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The standards are intended to ensure that those areas of the site that are not developable or that have natural resource value are included in the open space.
 - (b) Development under this provision is intended to promote imaginative, well-designed subdivisions which preserve open space, forests and agricultural uses, and an overall rural character. Additionally, conservation subdivisions should provide public access to land for passive and active recreation; protect natural features, environmentally sensitive areas and wildlife cover; respect the physical qualities of the land; and, in some instances, reduce the overall development costs of a subdivision. The standards for conservation subdivisions allow for the creation of lots that are smaller than those that would otherwise be required by the applicable zoning district regulations and in some cases can be combined with density bonuses to allow additional lots, in return for setting aside the balance of the property as permanent open space.

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sample for each road proposed for acceptance as a public way with the core sample and reports paid for by the applicant.

- [5] The surface pavement shall not be placed until the base paving has gone through at least one complete winter. The application of a tack coat and/or shim coat to the base may be required by the Town, when necessary, to ensure the appropriate bonding between base and final surface coats of pavement.
- [6] Notwithstanding the provisions of any other section thereof, the Town may at any time lay out and accept any street or way in the Town of Windham, Maine, as a public street of said Town whenever the general public interest so requires. The cost of said street or way may be borne by said Town or may be borne by another party.

~~(f) Provisions for streets that are offered for acceptance but not accepted.~~

~~[1] Any subdivision application that includes the creation of one or more public streets must provide draft homeowners' association documents to the Planning Board. The association documents shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair, and plowing of the subdivision street(s) should they not be accepted by the Town Council.~~

~~[2] The homeowners' association documents shall be in a form acceptable to the Town Attorney.~~

~~[3] The homeowners' association documents shall be recorded in the Cumberland County Registry of Deeds within 90 days of the date that the Board votes to approve the subdivision.~~

N. Maintenance of Common Elements

(1) Any subdivision application must provide draft homeowner's association documents. The final plan application shall include the following:

(a) Covenants for mandatory membership in the homeowners' association setting forth the owner's rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.

(b) Draft articles of incorporation of the proposed homeowner's' association as a not-for-profit corporation; and

(c) Draft bylaws of the proposed homeowners' association, specifying the responsibilities and authority of the association, the operating procedures of the association, including an inspection and maintenance schedule, and providing for proper capitalization of the association to cover the costs of inspection, maintenance, repair and replacement of common facilities.

(2) In addition, the documents referenced in § 120-911N(1), above, shall provide for the following:

(a) The homeowners' association shall have the responsibility of maintaining the common property or facilities, including any required stormwater improvements.

(b) The system by which the association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the inspection, maintenance, repair and replacement of common property and facilities and tax assessments.

(c) The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.

(3) The developer or subdivider shall maintain control of the common property and be responsible for its

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maintenance, including snow plowing, until either of the following has occurred:

- (a) The legislative body accepts said improvements; or
- (b) The developer or subdivider has transferred responsibility for ongoing maintenance of the improvements to the homeowners' association.
- (4) The homeowners' association shall be in a form acceptable to the Town Attorney.
- (5) The homeowners' association documents shall be recorded in the Cumberland County Registry of Deeds within 90 days of the date that the subdivision plan is recorded in the Cumberland County Registry of Deeds. Evidence of such recording shall be provided to the Code Enforcement Office. No lots shall be sold in the subdivision prior to recording and all deeds shall reference the Declaration establishing the homeowners' association.

§ 120-912 Final approval and filing.

- A. Upon findings of fact and determination that all standards in 30-A M.R.S.A. § 4404 and Article 9 of this chapter have been met, and upon voting to approve the subdivision, the Board shall sign the final plan. The Board shall specify, in writing, its findings of fact and reasons for any conditions or denial.
- B. The applicant shall record and file the plan as follows:
 - (1) The Mylar(s) of an approved subdivision shall include the signed stamp of the licensed professional who prepared the plans.
 - (2) Major subdivisions must resubmit the application's GIS data if revisions have been made during the preliminary plan or final plan review phase. The revised data must in the format required for preliminary plan submissions and all revisions made to the plan following the preliminary plan submission must be included. The Planning Board shall not sign any Mylars until the GIS data has been resubmitted.
 - (3) One original Mylar of the signed plan shall be retained by the Board as part of its permanent records.
 - (4) One original Mylar of the signed plan shall be recorded in the Registry of Deeds.
 - (5) Within seven days of recording, the applicant shall provide the Town with a copy of the recorded plan. No site work shall commence, or building permits issued, prior to the Town's receipt of a copy of the recorded plan.
 - (6) One complete, full-sized paper set of the approved plans shall be filed with the Planning Department, plus one full-size paper copy of the plan sheet containing the signature block, and one electronic copy of the subdivision plan in a format acceptable to the Town.
 - (7) Documentation shall be submitted to the Town confirming that all required ~~open-space-related~~ deeds, covenants, or legal agreements have been filed with the Registry of Deeds.
- C. Plan sections.
 - (1) At the time the Board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to ensure the orderly development of the plan.
 - (2) If any Town or quasi-municipal department head notified of the proposed subdivision informs the Board that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the