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DATE: February 20, 2025

TO: Windham Town Council Ordinance Committee
THROUGH: Bob Burns, Assistant Town Manager
FROM: Steve Puleo, Planning Director
Cc: Barry Tibbetts, Town Manager
Amanda Lessard, Senior Planner/Project Manager

RE: #25-07: LUO Amendments to Article 1, 3, 8, and 9 - Stormwater Consistencies with
Maine DEP Ch. 500 for Municipal Delegated or Capacity Authority.

The town is proposing amendments to Chapter 120 Land Use Ordinance (LUO) in Article 1 General, Article 3 Definitions, Article 8 Site Plan, and Article 9 Subdivision to align the town's stormwater and site development provisions with the Department of Environmental Protection (DEP) stormwater rules and other state regulations to qualify for delegated authority status.

In 2008, Windham lost its delegated status to issue stormwater permits due to several critical factors. First, the Town's Comprehensive Plan was outdated and was determined not to be consistent with state law. Second, the Town's Land Use Ordinance was not consistent with the Maine DEP Chapter 500 Stormwater Rules. Windham is now seeking to reinstate its DEP Capacity Stormwater Authority and establish a Delegated Site Authority, including Capacity Site Authority, to issue state-required Subdivision and Site Plan permits. Reinstating this authority and expanding to delegated site authority will allow Windham to manage its own stormwater permitting process, ensuring local oversight and compliance with state regulations.

The Planning staff is working with Gorrill Palmer (GP) Consulting Engineers, the Town's third-party consulting engineers, to apply to DEP for Delegated Authority. GP has professional experience working with other municipalities managing their delegated authority review programs. GP reviewed and highlighted ordinance provisions that need amendments and modifications to be consistent with DEP stormwater rules and other state regulations to qualify for delegated authority status. In 2024, the Town Council approved LUO amendments, which involved updating the Future Land Use Map in the Comprehensive Plan. This update required a state consistency review, and the state determined that the Town's Comprehensive Plan is now consistent with state law.

Maine DEP Delegated Authority allows a municipality to issue certain state-required environmental permits—such as stormwater and site development permits—on behalf of the Maine Department of Environmental Protection (DEP). This authority enables a town or city to review, approve, and enforce environmental regulations locally, rather than requiring all permit applications to go through the state DEP.

To qualify for Delegated Authority, a municipality must demonstrate that its local land use ordinances, comprehensive plan, and review processes are consistent with Maine DEP regulations, particularly stormwater management (Chapter 500) and the Site Location of Development Act. Once granted, this authority allows the municipality to manage its own permitting, inspections, and

compliance enforcement under state guidelines, improving efficiency, reducing delays, and maintaining local control over development projects.

Summary of the Proposed Chapter 120 Land Use Ordinance Changes:

Article 1 General

- [§120-104](#). Conflict with other provisions. This provision could be interpreted as municipal statutes not State, based on definition of legislative body below.

Article 3 Definitions

- Correct the definitions of [Impervious Area](#) to match Chapter 500 definitions.
- Correct the definitions of [Landscaped Green Area](#) to match Chapter 500 definitions.
- Add to the definition [Parcel](#) to match the definition in Site Location of Development Law.
- Correct the definition of [Person](#) to match the definition Chapter 500 and Site Location of Development Law.

Article 8 Site Plan

- [§120-802A\(9\)](#). The three-year period could conflict with Ch 500.
- [§120-805A\(1\)\(c\)](#). This could conflict with Ch 500 if there is a cumulative impact.
- [§120-807F\(1\)](#). Need to be revised.
- [§120-810C](#). This should this reference Ch 500 and SLODA Review
- [§120-811B\(2\)\(b\)\[4\]](#) Potential conflict with Ch 500.
- [§120-811B\(2\)\(b\)\[5\]](#). Potential conflict with Ch 500.
- [§120-812C\(1\)\(d\)](#). This will conflict with the revisions to Ch 500 and MS4 Low Impact Development standards.
- [§120-812E\(1\)\(a\)](#). This addresses the Flood Standard but not Treatment or Phosphorous Standards.
- [§120-812E\(1\)\(f\)](#). This addresses treatment for major development.
- [§120-812F\(2\)](#). This provision addresses Basic Standard.

Article 9 Subdivision Review

- [§120-907B\(4\)\(c\)\(4\)](#). Major Subdivision requires General Standards.
- [§120-908 Waivers](#). Maine DEP typically doesn't like vague waiver language.
- [§120-908C\(2\)\(b\)\[11\]](#). This makes it sound like they could waive all of Ch 500 with the exception of the flood standard, need to tighten waiver language.
- [§120-910B](#). It appears the minor subdivisions may be exempt from Ch 500.
- [§120-910B\(3\)\(c\)](#). Maine DEP won't like this waiver. It also doesn't reference a storm frequency on would only address the Flood Standard.
- [§120-910B\(3\)\(d\)](#). This conflicts with Ch 500 basic standards and needs to address the new MCGP requirements.
- [§120-910C\(2\)\(x\)](#). Must meet the Basic standards.
- [§120-910C\(2\)\(y\)](#). Must meet the General, Flood, Phosphorous standards.
- [§120-910C\(3\)\(f\)\(1\)](#). Maine DEP does not like this waiver this should reference CH 500 the referenced publication was replaced by the 2009 Ch 500 rewrite.
- [§120-911C](#). This addresses Basic Standards for Major Sub.

- [§120-911J\(1\)](#). This is confusing, it sounds like this is only referring to the definitions section of Ch 500.
- [§120-911J\(2\)](#). This provision will need to be revised
- [§120-911J\(3\)](#). This provision will need to be revised.
- [§120-911J\(5\)](#). Should this reference 502 instead of 500.
- [§120-911J\(6\)](#). The Maine DEP does not like Flooding standard waivers.
- [§120-911J\(7\)](#). Gorrill Palmer asked: Does Windham have a CFUP for Highland? No to establish a CFUP, we would need to create a Highland Watershed management plan.

Conclusion

These amendments intent to ensure that Windham’s stormwater and site development regulations are consistent with state standards, facilitating the town’s ability to manage its own stormwater permitting process effectively.