

DATE: April 7, 2025

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

RE: #25-07 LUO Amendments to Articles 3, 4, 8, and 9 - Stormwater Consistencies with Maine DEP for Municipal Delegated Review Authority

Overview

During the meeting held on [February 25, 2025](#), the Town Council Ordinance Committee unanimously voted to request the attached amendments to the Land Use Ordinance. These amendments pertain to Article 1 (General), Article 3 (Definitions), Article 8 (Site Plan), and Article 9 (Subdivision). The purpose of these amendments is 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.

On [March 11, 2025](#), the Town Council voted to forward the attached Land Use Ordinance amendments to the Board for a public review and recommendation in accordance with [§ 120-107](#) of the Land Use Ordinance.

Background

On [March 10, 2025](#), the Director of Planning informed the Board that Windham lost its delegated stormwater permitting authority in 2008 due to inconsistencies between its Comprehensive Plan, Land Use Ordinance (LUO), and Maine DEP Chapter 500 Stormwater Rules. Since then, the Town has updated its Comprehensive Plan and is now seeking to reinstate its delegated stormwater permitting authority, as well as establish delegated site law and traffic movement permitting authority.

The Planning staff and the Town Attorney, in collaboration with Gorrill Palmer (GP) Consulting Engineers, the Town's third-party contractors, are working to ensure that the LUO amendments meet DEP requirements. GP has identified the necessary updates. In 2024, the Town Council approved LUO changes, including an updated Future Land Use Map, which the State has deemed consistent with Maine law.

Purpose

By securing Delegated Authority, Windham can streamline its permitting process, improve efficiency, and maintain local oversight while ensuring compliance with state environmental regulations.

<u>State of Maine DEP Reviews</u>		<u>Municipalities with Delegated Review Authority</u>
1.	Complexity of the Project: More complex projects require detailed analysis and can take longer to review.	Local Regulations: Municipalities may have their own regulations and standards that can affect review times.

<u>State of Maine DEP Reviews</u>		<u>Municipalities with Delegated Review Authority</u>
2.	Quality of the Application: Incomplete or poorly prepared applications can lead to delays as additional information is requested.	Staff Expertise and Availability: The experience and availability of local staff can impact how quickly reviews are completed.
3.	Environmental Impact: Projects with significant environmental impacts may require more thorough review and public consultation.	Public Involvement: Local public hearings and consultations can add to the timeframe.
4.	Staff Availability: The availability of DEP staff to review applications can affect processing times	Coordination with Other Agencies: Coordination with other local or state agencies can sometimes cause delays
5.	Regulatory Requirements: Compliance with state and federal regulations can add to the review time.	Application Completeness: Just like with state reviews, the completeness and quality of the application play a significant role.

Summary of the Proposed Chapter 120 Land Use Ordinance Changes:

Article 1 General:

- [§120-104](#). Conflict with Other Provisions. This provision may be interpreted as relating to municipal statutes rather than State laws, based on the definition of legislative.

Article 3 Definitions:

- Revised the definition of [Impervious Area](#) to align with the definition in Chapter 500.
- Updated the definition of [Landscaped Green Area](#) to match the definition in Chapter 500.
- Expanded the definition of [Parcel](#) to align with the Site Law.
- Amended the definition of [Person](#) to ensure consistency with both Chapter 500 and the Site Law.
- The Attorney added a new definition for the Site Law statutes, per [38 M.R.S. § 481-490](#).
- The Attorney added a new definition for the Stormwater Management Law, per [38 M.R.S. § 420-D](#).

Article 8 Site Plan

- [§120-802A\(9\)](#): The three-year period may conflict with Chapter 500 requirements. It should be changed to a five-year period to align with the Stormwater Management Law.
- [§120-805A\(1\)\(c\)](#): There is a potential conflict with Chapter 500 due to cumulative impact considerations. However, no changes are required, as minor developments are reviewed by the Staff Review Committee. These projects typically under Maine's Stormwater Management Law (38 M.R.S. § 420-D) and Chapter 500 Rules provide specific exemptions for smaller projects that do not meet certain impact thresholds. Here are the key exemptions:

1. Small-Scale Land Disturbance

- Projects that disturb less than one acre of land (including clearing, grading, or excavation) are exempt from requiring a stormwater permit, unless they are

part of a larger common plan of development that cumulatively exceeds one acre.

2. Small Impervious Area Increases

- If a project creates or adds less than one acre of impervious surface (such as roofs, driveways, or parking lots), it does not require a stormwater permit.
- Expansions of existing impervious areas under 20,000 square feet generally do not trigger stormwater permitting unless in an urban impaired watershed.

3. Agricultural and Forestry Activities

- Agricultural activities, including crop production and grazing, are generally exempt, but structures such as barns or farm roads may require review if over one acre.
- Forest management operations, such as logging and timber harvesting, are also exempt unless they convert land to a non-forested use.

4. Single-Family Residential Projects

- Construction of individual single-family homes and duplexes on separate lots, even if over one acre, is exempt from permitting requirements.
- However, larger subdivisions with multiple lots exceeding one acre of total impervious surface may require a permit.

5. Minor Site Alterations in Urban Areas

- Small redevelopment projects in urban impaired stream watersheds may qualify for exemptions if they do not increase runoff or if stormwater treatment measures are already in place.

- New §120-805A(1)(c)(1): Per the attorney's review and recommendation, waivers should be restricted to only sub-threshold impacts, which are reviewed under the minor site plan application process.
- New §120-805A(1)(c)(2): The town may consider cumulative impacts of the runoff.
- New §120-805A(1)(c)(3): The town may apply Discretionary authority may require a stormwater permit to meet one of the following three criteria:
- New §120-805A(1)(c)(3)[a]: Projects that may violate Stormwater Management Law.
- New §120-805A(1)(c)(3)[b]: Projects that could to significant environmental cumulative impacts or
- New §120-805A(1)(c)(3)(c): Projects that could have unreasonable adverse impact on a protected resource.
- §120-807F(1): Attorney added language for clarity and compliance.
- §120-807F(1)(a): Attorney suggested Site Law reference.
- §120-807F(1)(b): Attorney review and suggested modification.
- §120-810C: Should explicitly reference Chapter 500 and SLODA review. The Attorney made suggestions to include a number of state permits that could be reviewed.
- §120-811A(2): Reduced the number of hard copies of the application at the time of submittal.
- §120-811B(1): Reduced the number of hard copies of the application at the time of submittal.
- §120-811B(2)(b)[4]: Potential conflict with Chapter 500 provisions. The Attorney suggested improvement to the provision to make consistent with Chapter 500 regulations.
- §120-811B(2)(b)[5]: Possible inconsistency with Chapter 500 regulations.

- [§120-812C\(1\)\(d\)](#): Will conflict with Chapter 500 revisions and MS4 Low Impact Development standards. The Attorney suggestion to reflect the MDEP regulations.
- [§120-812E\(1\)\(a\)](#): Addresses the Flood Standard but omits Treatment and Phosphorus Standards.
- [§120-812E\(1\)\(f\)](#): Covers treatment requirements for major developments.
- [§120-812F\(2\)](#): Pertains to the Basic Standard requirements and does not need to be amended.
- [§120-812F\(2\)\(c\)](#): Attorney suggested addition of text for consistency.

Article 9 Subdivision Review

- [§120-907B\(4\)\(c\)\(4\)](#): Major subdivisions must comply with the General Standards.
- [§120-908 Waivers](#): Maine DEP typically disfavors vague waiver language; revisions should ensure clarity and specificity. The Attorney amended the waiver language requiring projects requiring.
- [§120-910B](#): Suggests that minor subdivisions may be exempt from Chapter 500; clarification is needed. The Attorney revised the provision the delegate review requires
- [§120-910B\(3\)\(c\)](#): Maine DEP will not approve this waiver. Additionally, it lacks a storm frequency reference, addressing only the Flooding Standard and should include the Basic, General, and Phosphorus standards. The Attorney revised eliminates the waiver from delegated review projects, requiring all Maine DEP regulations be met.
- [§120-910B\(3\)\(d\)](#): Conflicts with Chapter 500 Basic Standards and must also align with new the Maine Construction General Permit (MCGP) requirements. Requires a separate MCGP permit.
- [§120-910C\(2\)\(x\)](#): Must fully comply with the Chapter 500 Basic Standards. Attorney revised the language to comply with the basic standards.
- [§120-910C\(2\)\(y\)](#): Must adhere to the Chapter 500 General, Flooding, and Phosphorus Standards. Improved by the Attorney.
- [§120-910C\(3\)\(f\)\(1\)](#): Maine DEP does not support this waiver; should reference Chapter 500 Stormwater Law. The cited publication was replaced in the 2009 Chapter 500 Stormwater Law rewrite.
- [§120-911C](#): Addresses Basic Standards for major subdivisions. No changes made.
- [§120-911J\(1\)](#): Language is unclear—currently suggests referencing only the definitions section of Chapter 500. Needs clarification. Attorney added language for clarification.
- [§120-911J\(2\)](#): Requires revision for consistency and clarity. Revised by Attorney to improve clarity and consistency.
- [§120-911J\(3\)](#): Needs revision to align with regulatory requirements. The Attorney revision the provision to align with the regulatory requirements.
- [§120-911J\(5\)](#): Should this reference Chapter 502 instead of Chapter 500? Clarification is needed. Added by the Attorney.
- [§120-911J\(6\)](#): Maine DEP does not support waivers for Flooding Standards. The Attorney struck the waiver option.

Zoning Amendment Process

There are no specific standards in the Town ordinance by which to judge the proposed zoning change, but State statute requires all proposed zoning to be consistent with the goals and objectives

of the [Comprehensive Plan](#). The Ordinance can refer the proposed LUO amendment to the Planning Board in which the Board will hold a public hearing and make land use recommendations to the Town Council.

This review of the Planning Board is a public hearing to making a land recommendation on this item to the Town Council. The Town Council will need to vote on the proposed changes to the Land Use Ordinance for the changes to be officially approved. The Planning Board public hearing had is scheduled this meeting, April 14, 2025 and the Town Council public hearing scheduled for April 29, 2025. After the public hearing and discussion by the Board, the Planning Board may vote on a recommendation to the Town Council similar to the following:

MOTION: To (**recommend/recommend with comments/not recommend**) approval of the proposed amendments to the Code of the Town of Windham Chapter 120 Land Use Ordinance to Amendments to Articles 1, 3, 8, and 9 to align Windham Stormwater provision with Maine DEP for Municipal Delegated Review Authority.