

SECTION 1200 – IMPACT FEES

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1201 General

- A. **Purpose.** The purpose of these impact fee provisions is to ensure that new development in Windham will be accomplished in a safe and healthful manner and that such development will bear a proportional or reasonably related share of the cost of new, expanded, or modified infrastructure necessary to service the development through: 1) the payment of impact fees that shall be dedicated to paying for the needed improvements, or 2) the construction of appropriate improvements as provided for herein.
- B. **Authority.** These impact fee provisions are adopted by the Town under the authority of 30A M.R.S.A §4354 and its statutory and constitutional home rule provisions.
- C. **Payment of Impact Fees.** The impact fees provided for under this chapter shall be determined in accordance with the provisions for calculation of each impact fee as established by the Town Council and set forth below. Where there is uncertainty as to the amount of the impact fee required to be paid by any development, that amount of the fee shall be determined by the Planning Board based upon the fee calculation methodology for that fee and the recommendation of the Planner. The impact fee shall be paid to the Town of Windham in care of the Planning Department. The fee shall be paid prior to the issuance of any building, plumbing, or other permit for the development subject to the fee. The Town Council may approve the payment of impact fees over time in accordance with an approved payment schedule provided that appropriate arrangements are in place to guarantee collection of the fees.
- D. **Impact Fee Accounts.** All impact fees collected under the provisions of this chapter shall be segregated and accounted for in separate impact fee accounts designated for the particular improvements in question. The impact fee accounts are as follows:
1. North Windham Sidewalk Impact Fee
 2. Recreation Impact Fee
 3. North Route 302 Road Improvements Impact Fee
 4. [Name of Impact Fee]

- E. Use of Impact Fees. Impact fees collected under the provisions of this chapter shall be used only to pay for the capital cost of the infrastructure improvements specifically associated with each impact fee as described below. No portion of the fee shall be used for routine maintenance or operation activities.
- The following costs may be included in the capital cost of the infrastructure improvement:
1. Engineering, surveying, and environmental assessment services directly related to the design, construction, and oversight of the improvement,
 2. The actual construction of the improvement including, without limitation, property acquisition costs, demolition costs, clearing and grading of the land, and necessary capital equipment,
 3. Mitigation costs,
 4. Legal and administrative costs associated with construction of the improvement including any borrowing necessary to finance the project,
 5. Debt service costs including interest if the Town borrows for the construction of the improvement,
 6. Relocation costs, and
 7. Similar costs that are directly related to the project.
- F. Refund of Impact Fees
1. If a building permit is surrendered or lapses without commencement of construction, the developer shall be entitled to a refund, without interest, of any impact fee paid in conjunction with that project. In the case of a refund, the Town shall retain four (4) percent of the impact fee paid to offset a portion of the administrative cost of collection. A request for a refund shall be made in writing to the Town Planner and shall occur within ninety (90) days of the lapse or expiration of the permit.
 2. Any fees that are not spent or obligated by contract for the specified improvement by the end of the calendar quarter immediately following ten (10) years for the date the fee as paid shall be returned to the developer or its designee without interest.
 3. The Town shall refund impact fees, or portions of those impact fees, that exceed the Town's actual costs of providing the capital improvement or facility for which the fees were paid.
- G. Waiver of Impact Fees. The Town Council may, by formal vote following a public hearing, waive the payment of a required impact fee, in whole or in part, if it finds that:
1. The developer voluntarily agrees to construct the improvement for which the impact fee would be collected, or
 2. The developer is required, as part of a development approval by the Town or a state or federal agency, to make or to pay for infrastructure improvements that are of the same nature as the improvement to be funded by the impact fee, or
 3. The infrastructure that the impact fee relates to has been created to attract industry and the fee would be charged to an industrial use.

- H. Review and Revision. The Town Council shall periodically review each impact fee established under this chapter at least once every five years. If the Council finds that the anticipated cost of the improvement has changed or that the identification of developments subject to the fee is no longer appropriate, the Council may propose changes in the impact fee. Any changes adopted as a result of such review shall apply to all future development but shall not be applied retroactively to projects that have already paid an impact fee.

1202 North Windham Sidewalk Impact Fee

- A. Description of the improvements. The North Windham Sidewalk Impact Fee will be used to partially fund the construction of public sidewalks to accommodate pedestrian movement in the Commercial 1 zoning district as set forth in the Town's 21st Century Downtown Plan (see North Windham Sidewalk Impact Fee Methodology dated June 14, 2013 in Appendix E). This includes improvements in the following areas: Roosevelt Trail (Route 302), Tandberg Trail (Route 35 and 115), River Road, and Manchester Drive.
- B. Need for the improvements. The road network in the North Windham commercial district serves a large volume of vehicular traffic. The roads serve to provide mobility throughout the region, and local access to commercial establishments. In addition, the public road network provides pedestrian movement between local commercial businesses. Many sections of the public road system in North Windham either lack sidewalks entirely, or provide them only on one side of the road. Commercial growth creates more pedestrian movements that increase conflicts between bicyclists and motor vehicles on the primary road network. This results in increased safety concerns. To address this concern, the Town's 21st Century Downtown Plan recommends that the Town expand the network of sidewalks along major roads.
- C. Applicability. In accordance with Section 406(E)(6)(j), the following commercial development activities commenced on or after June 14, 2013 on properties that do not have an existing sidewalk along all or a portion of their property's frontage shall be subject to the impact fee:
- The construction or placement of new buildings with a cumulative area that is greater than, or equal to, five hundred (500) s.f.
 - The enlargement of existing buildings by five hundred (500) s.f. or more
 - As required by the Planning Board as part of a Site Plan approved in accordance with Section 800 of this Ordinance.
- D. Amount of the Fee. The base impact fee for the sidewalk improvements shall be five (5) linear feet of sidewalk per 100 square feet or fraction thereof of the gross floor area to be constructed, erected, enlarged, extended, or relocated on the site multiplied by the per linear foot of sidewalk fee as set by the Town Council in the fee schedule (*see*

Appendix A Fee Schedule). The formula described above shall be calculated as follows:

$$\text{Base Impact Fee} = [5 \text{ linear feet}] \times \{ [\text{Total gross square footage of building}] / [100 \text{ square feet}] \} \\ \times [\text{linear foot sidewalk fee } \$]$$

The amount of the base fee is based upon the North Windham Sidewalk Impact Fee Methodology dated May 14, 2014 (*See Appendix E*). The fee is based on the average estimated construction costs of sidewalks in North Windham based on the following conditions:

- Installation of granite curbing if no curbing exists
- Installation of closed drainage infrastructure if no curbing exists as determined by the Director of Public Works
- Replacement of existing bituminous curbing with granite curbing
- Resetting of existing granite curbing as determined by the Director of Public Works due to the condition of existing granite curbing.

The base impact fee shall be adjusted to account for changes in the cost of construction. The impact fee shall be adjusted based upon the change in the ENR Construction Cost Index between June 2013 and the month in which the impact fee is paid. The amount of the fee shall be calculated as follows:

$$\text{Impact fee to be paid} = \text{Base impact fee} \times (\text{ENRCCI for the month in which fee is paid} / \text{ENRCCI for June 2013})$$

where ENRCCI is the national construction cost index published by ENR (Engineering News Record).

Impact Fee Maximum. The maximum sidewalk fee required for any property will be equal to the property's road frontage times the base impact fee at the time of application. If the calculated fee is less than the maximum, future development that meets the criteria of Section 1202.E. will be required to pay the impact fee up to the maximum amount for the property.

- E. **Expenditure of Funds.** Impact fees shall be collected and expended in two (2) subareas within the Commercial 1 zoning district. Fees shall be expended on sidewalk construction within the subarea from which they are collected. The subareas are as follows:

- Roadways within the C1 District that are south of White's Bridge Road
- Roadways within the C1 District that are north of White's Bridge Road.

- F. **Impact Fee**

1. The North Windham Sidewalk Impact Fee shall be paid for any project that meets the applicability standards in Section C, above.

2. A property shall be required to pay the fee in the event of future development on said property until the amount of fees paid is equal to the length of property frontage multiplied by the fee per linear foot of sidewalk in Section 4, above, is reached.. Properties with an existing sidewalk on a portion of their frontage shall pay a maximum fee equal to the length of lot frontage on which sidewalk does not exist at the time of development.
- G. Sunset Provision. The fee shall remain in effect until the Town has collected \$2.1 million in fees in subarea 1 and \$900,000 in subarea 2 (as adjusted for construction cost inflation) or until July 1, 2026 whichever comes first unless such time is extended by vote of the Town Council.

1203 Recreation Impact Fee

- A. Description of Improvements. The Recreation Impact Fee will be used to partially fund the acquisition and development of land for recreation fields and facilities throughout the Town as set forth in the Town's Parks and Recreation Facilities Capital Investment Plan, adopted by the Town Council on October 8, 2013, and attached in Appendix F.
- B. Need for Improvements. Existing municipal and school district recreational facilities, including rectangular playing fields, diamond-shaped fields, and hard-court facilities are in high demand, and conflicts regarding scheduling and access to facilities among user groups occur throughout the sports seasons. New residential growth creates additional demand for recreation facilities, which can result in a loss of access to recreational activities and facilities. The Parks and Recreation Facilities Capital Investment Plan outlines the how the Town maintain the existing levels of service for recreational facilities faced with demand driven by a growing population.
- C. Applicability. All new residential development activities commenced on or after April 10, 2014, shall be subject to the Recreational Impact Fee. This includes:
 1. Dwelling, Single Family Detached
 2. Dwelling, Two-Family
 3. Dwelling, Multifamily
 4. Accessory Apartment
 5. Manufactured Housing
- D. Amount of the Fee. The amount of the impact fee will be based on the cost land acquisition and development costs, calculated on a per capita basis, multiplied by the average household sized for the type of dwelling unit being constructed. The formula for this shall be calculated as follows:
Recreation Impact Fee = {[(Land Acquisition Costs)+(Facility Development Costs)]/[(2030 Projected Population)-(2010 Baseline Population)]} x (Average Household Size for Dwelling Unit category)

The amount of the fee is based on "Recreation Impact Fee: Basis of Assessment, Windham, Maine," dated September 27, 2013.

- E. Expenditure of Funds. Fees will be collected on a Town-wide basis for the acquisition and development of recreation facilities anywhere in Town.
- F. Sunset Provision. The fee shall remain in effect until July 1, 2030, unless such time is extended by vote of the Town Council.

1204 North Route 302 Road Improvements Impact Fee

- A. Purpose. Roosevelt Trail/Route 302 is part of the National Highway System. It is the most significant highway corridor in the Town of Windham and is critical to the current and future mobility of local and regional motorists. This corridor provides important connections to Route 202 and State Routes 115, 35, and 4, as well as River Road, a major State Collector Highway. In addition, Route 302 is vital to the accommodation of future growth and development on land served by this corridor.

In order for Route 302 to continue to adequately serve local and regional transportation needs, while also providing additional capacity to support future development and accompanying traffic generation and demands, roadway infrastructure improvements are warranted. These improvements are highlighted in the Town of Windham “North Route 302 Corridor Plan, Windham, Maine” adopted by the Town Council in March 2011.

The Town has identified in the Corridor Plan roadway infrastructure improvements that will accommodate traffic growth projected for the next 10 years, and will establish the additional vehicular capacity and adequate levels of service necessary to serve, accommodate, and benefit new development. The purpose of the North Route 302 Capital Improvement District is to reimburse the portion of the Town’s cost of constructing these roadway infrastructure improvements that benefit new development by providing additional vehicular capacity.

- B. Applicability
 - 1. This impact fee shall commence upon the earliest of either January 1st, 2015, or upon the Town of Windham’s commitment of funds to complete the infrastructure projects stated in Section H, below. The impact fee shall apply to any of the activities listed in this section that are located within the fee collection areas identified in Section J. North Route 302 Road Improvements Impact Fee Collection Areas Map that generate additional traffic within the North Route 302 Capital Improvement District (*Note: For existing uses, the impact fee shall only apply to activities or uses that generate new trips above their existing levels*):
 - (a) New development,
 - (b) Change in or expansion of an existing development,
 - (c) All new development seeking subdivision or site plan approval,
 - (d) The expansion of previously approved subdivisions or site plans,
 - (e) New development enabled by land divisions exempted from subdivision review as per Title 30-A M.R.S.A. §4401 (4),

- (f) All new extractive industry operations,
 - (g) Any change in use, when such change results in a re-classification from one land use to another in accordance with the uses listed in Section 300 Definitions and/or Section 400 Zoning Districts, and
 - (h) The location, or relocation, of any land use that requires a certificate of occupancy from the Code Enforcement department.
2. The following development and construction shall be exempt from this ordinance:
- (a) Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips
 - (b) Construction of accessory buildings or structures which do not generate additional vehicle trips.
 - (c) The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.
 - (d) The location, or relocation, of a land use which does not generate additional vehicle trips.

C. Impact Fee Procedures

- 1. Any person who seeks a permit or approval for any development, activity or use described in Section B(1), above, is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance.
- 2. Preliminary determinations regarding whether a proposed development will generate traffic within the North Route 302 Capital Improvement District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined in accordance with the procedures in Section D, below.

D. Impact Fee Calculations. An impact fee shall be applied to development projects in the Town of Windham that generate additional traffic within the North Route 302 Capital Improvement District. This impact fee is structured to be in proportion to the development project's share of infrastructure costs necessitated by the development and as enabled by Title 30-A M.R.S.A. §4354. The process for this impact calculation is as follows:

- 1. For projects that do not require subdivision approval, site plan approval, or as determined by the Town Planner as not requiring a traffic analysis:
 - (a) The Town Planner shall determine the fee in accordance with the amounts stated in Section L, Table 1. North Route 302 Road Improvement Impact Fee, Windham, Maine and Section M. Map 1. North Route 302 Road Improvement Impact Fee Collection Areas.
 - (b) The applicant may request that the fee be calculated by either the Town's consulting engineer, or by hiring a Registered Professional Engineer with significant experience in traffic engineering. The analysis shall be conducted in accordance with Section 1203(D)(2), below. All costs incurred as a result of said analysis shall be the responsibility of the applicant. A building permit or certificate of occupancy,

- whichever applies, shall not be issued by the Code Enforcement Officer prior to the payment of any costs incurred by the Town's consulting engineer.
2. For projects that require subdivision approval, site plan approval, or as determined by the Town Planner as being required to conduct a traffic analysis:
 - (a) A traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through the North Route 302 Capital Improvement District in the peak commuter hour (whether A.M. or P.M., whichever is greater).
 - (b) The impact fee calculation for individual development projects shall use generally accepted standards, such as the Maine Department of Transportation's currently adopted edition of the Institute of Transportation Engineers "Trip Generation" Handbook or traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the peak commuter hour of traffic in the A.M. or P.M., whichever is greater.
 - (c) The costs assigned to trips shall be based upon a fee per new trip (primary trip) to be generated by a development project that passes through the North Route 302 Capital Improvement District within the peak commuter hour. All new trips that pass through the District shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (pass-by trips) or trips in the area that are rerouted (diverted trips) shall not be utilized in the assessment.
 - (d) The fee determination shall be based on the following formula with the fee amounts stated in the Fee schedule, as set by the Town Council (*see Appendix A Fee Schedule*):
 - 1) The Town's cost of realigning Anglers Road with Whites Bridge Road as stated in the "North 302 Corridor Plan" for roadway infrastructure improvements in the North Route 302 Capital Improvement District amounts to \$300,000, less any state and federal funding contributions. The Town cost is to be funded in whole or in part from this impact fee ordinance.
 - 2) The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 392 trip ends in the peak commuter hour of traffic.
 - 3) Each additional trip generated by the new development will benefit from the 392 trip ends of capacity and will utilize one trip end of that additional capacity.
 - 4) The Town will finance one half of the cost of the improvements through the North Route 302 Road Improvements Impact Fee and the fee per trip, therefore, shall be \$382.65. This fee per trip equals \$150,000 / 392 trip ends.
 - (e) The Planning Board or Town Planner shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, building, dwelling unit (as defined in the Windham Zoning Ordinance), unit of occupancy (as defined in the Windham Zoning Ordinance) or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the

- point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development
3. If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.
 4. The Town Planner or Planning Board, as appropriate, may reduce the amount of the impact fee for projects that are required as part of their approval to construct all or a portion of the infrastructure improvements stated in Section 1203(H)(1), below. The amount of the fee reduction shall be the difference between the cost of the impact fee and the applicant's cost to construct the improvements.
- E. Impact Fee Payment. See Section 1201.C. for general payment information. The impact fee amount, as determined in accordance with this Ordinance, shall be paid to the Town according to the payment schedule established under Section D., except as follows:
1. For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.
 2. For a new residential dwelling(s) proposed on a lot(s) created by a land division(s) exempted from subdivision review as per Title 30-A M.R.S.A. §4401(4), the impact fee amount shall be paid prior to the issuance of a building permit for construction.
- F. North Route 302 Capital Improvement District. The North Route 302 Capital Improvement District is depicted on the map attached to this Ordinance as Appendix A and generally conforms with the "North 302 Corridor Plan" study area.
- G. Impact Fee -Trust Fund
1. There is hereby established a North Route 302 Capital Improvement District Fund to segregate the impact fee revenues generated by this Ordinance from the Town's general revenues.
 2. Funds withdrawn from this trust fund account shall be used in accordance with Section H. of this ordinance.
- H. Use of Impact Fee Funds
1. Funds generated by this Ordinance shall be used for the purpose of financing the capital improvements to realign Anglers Road with Whites Bridge Road as stated in the "North 302 Corridor Plan" for roadway infrastructure improvements within the North Route 302 Capital Improvement District. See Section 1201.E. for a list of items which may be included in the capital costs of the project.
 2. No funds shall be used for periodic or routine maintenance.
 3. Given that bonds or loans may be issued to finance the implementation of the capital improvements identified in the plan for roadway infrastructure improvements within

- the North Route 302 Capital Improvement District, impact fee funds may be used to pay debt service on such bonds or loans to the extent that the improvements provided are a component of the plan for roadway infrastructure improvements, as per Section H. 1. of this ordinance.
4. Funds may be used to provide refunds in accordance with Section I.
 5. Funds shall not be used to pay for any site specific road improvements, such as right-turn entry lanes, site driveway islands, etc., that are required of a development project that is proposed and constructed on any lot abutting a roadway section within the North Route 302 Capital Improvement District. Such project and site specific improvements shall be the responsibility of the developer. Nothing in this section shall limit the Town from providing economic development incentives for site specific improvements at the Town's sole discretion.
- I. Refund of Impact Fees
1. If a development permit expires such that there is no activity that will generate additional traffic covered by this ordinance, the developer may apply for a refund. The refund request must be consistent with Section 1201.F.1.
 2. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall be returned consistent with Section 1201.F.2.
- J. Roadway Infrastructure Improvements
1. As per Section H. 1. of this section, the funds generated by this impact fee will be used to accomplish improvements to realign Anglers Road with Whites Bridge Road as stated in the "North 302 Corridor Plan Windham, Maine" prepared by Gorrill-Palmer Consulting Engineers, Inc. and adopted by the Windham Town Council in March 2011.
 2. The above cited plan may be amended by the Town Council, in accordance with the Windham Town Charter, if the amendments to the plan are consistent with and further the purpose of this ordinance.
- K. Sunset Provision. The fee shall remain in effect until the Town has collected \$150,000 in fees (as adjusted for construction cost inflation) or until July 1, 2026 whichever comes first unless such dollar amount is increased or time limit is extended by vote of the Town Council.

L. Table 1. North Route 302 Road Improvement Impact Fee, Windham, Maine

Use	Trip Rate*	% primary	Cost Per Primary Trip	Fee Area 1**	Fee Area 2**	Fee Area 3**
Quality Restaurant	7.49	40	\$382.65	\$1,146.42	\$286.61	\$116.64
High Turnover Restaurant	11.15	37	\$382.65	\$1,578.62	\$394.66	\$157.86
Fast Food Restaurant	33.84	30	\$382.65	\$3,884.66	\$971.17	\$388.47
24 Hour Conv Market***	52.41	25	\$382.65	\$5,013.67	\$1,253.42	\$501.37
Quick Lube****	5.19	50	\$382.65	\$992.98	\$248.25	\$99.30
Auto Care	3.38	50	\$382.65	\$646.68	\$161.67	\$64.67
Self Serve Car Wash*****	5.54	50	\$382.65	\$1,059.94	\$264.99	\$105.99
General office	1.73	100	\$382.65	\$661.98	\$165.50	\$66.20
Medical office	3.46	100	\$382.65	\$1,323.97	\$330.99	\$132.40
Veterinary Clinic	4.72	100	\$382.65	\$1,806.11	\$451.53	\$180.61
Retail	2.71	35	\$382.65	\$362.94	\$90.74	\$36.29
Bank	25.82	27	\$382.65	\$2,667.60	\$666.90	\$266.76
Light industry	0.97	100	\$382.65	\$371.17	\$92.79	\$37.12
Dwelling Unit*****	1.01	100	\$382.65	\$386.48	\$96.62	\$38.65

* PM peak hour Trips Per 1,000 sf for uses not exceeding 2,000 sf unless otherwise noted under use

** Fee cost per 1,000sf.

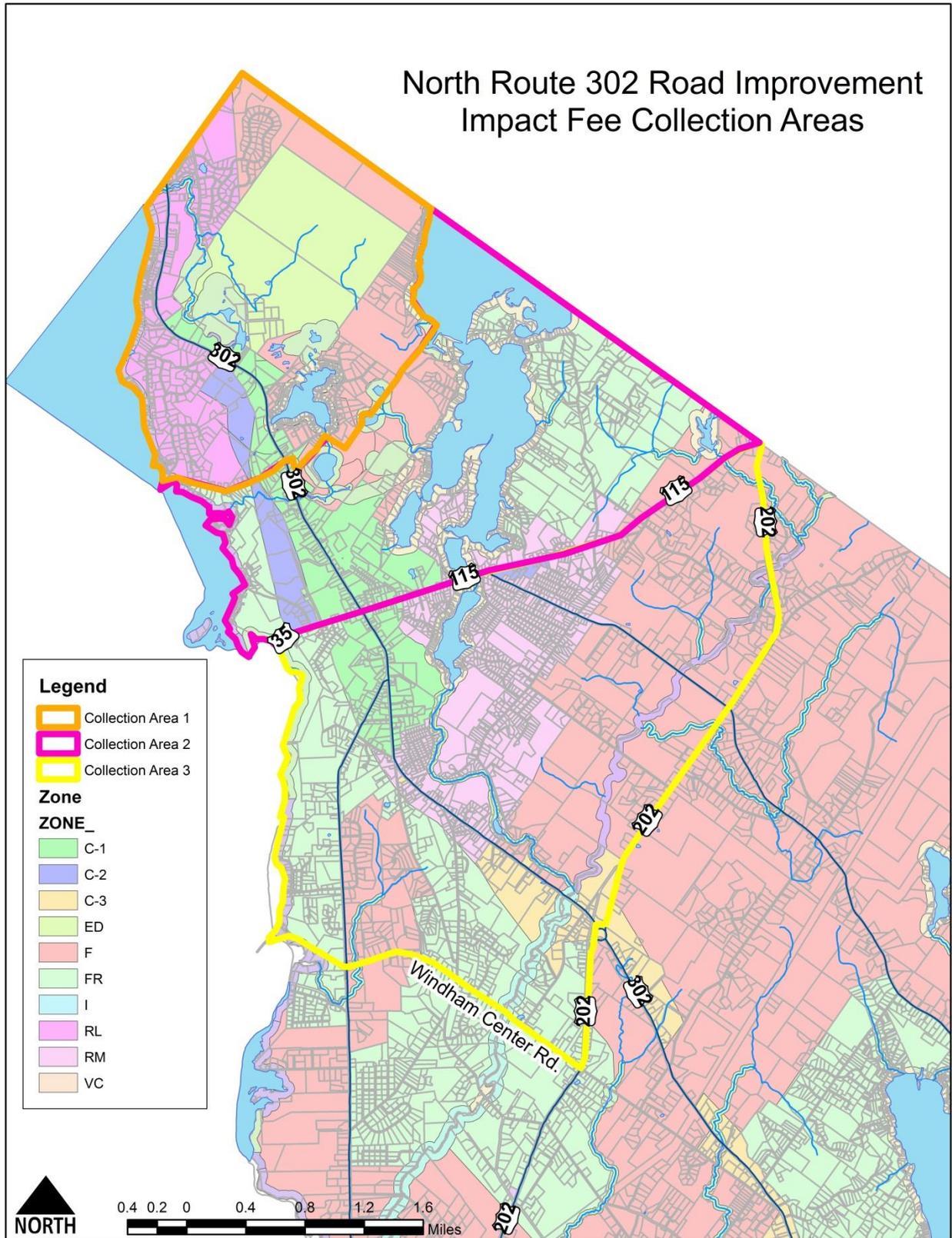
***Convenience Market without gas pumps

**** Trip Rate per service positions

***** Trip Rate per wash stall

***** Trip Rate per dwelling unit

M. Map 1. North Route 302 Road Improvement Impact Fee Collection Areas



Section 1200 Amendments

Order 13-071; Date 05-14-2013	Add Section 1202, North Windham Sidewalk Impact Fee
Order 14-033; Date 03-11-2014	Add Section 1203, Recreation Impact Fee
Order 14-093; Date 04-08-2014	Add Section 1204, North Route 302 Road Improvements Impact Fee
Order 14-502; Date 12-16-2014	Corrected typos and errors of omission