

Local Zoning and State and Federal Programs for Protection of Natural, Cultural and Historic Resource

The following zoning and bylaw matrix provides examples of specific measures that are currently employed/available to communities to help them protect their outstanding local and shared resources. A discussion of some of these measures is below, followed by a list of applicable State and Federal programs.

A. Local Zoning and Bylaws

Floodplains:

The National Flood Insurance Program requires communities that wish to make their residents eligible for federally-subsidized flood insurance to require that new construction within the floodplain is designed with all habitable areas above the 100-year flood level, and that associated utilities are "floodproofed". Many towns only require a base flood elevation and floodproofing, while others require a special permit or virtually prohibit new building within the floodplain. Berkley and Fall River are the only municipalities without floodplain zoning.

Development in the floodplain can cause incremental increases in the extent of the 100 year floodplain, further increasing the likelihood of eventual catastrophic property losses. It also results in the loss of floodplain-related resources such as wildlife habitat and scenic values.

Open Space Districts/Cluster Zoning:

Cluster zoning allows for the concentration of allowable density into a reduced portion of a site through reductions in lot size and frontage. The remaining portion of the site is preserved as open space through deed restrictions or by giving it to the town. Cluster zoning is also used to reduce the length of roadway and the amount of impervious surface within a development. Freetown, Berkley and Halifax do not currently have cluster zoning bylaws. Most of the other towns allow cluster development with special permits, while Middleborough and Raynham have established specific overlay districts where cluster development is allowed.

Halifax has an open space zoning district which prohibits most business and industrial uses, allows public and agricultural uses by right and residential uses by special permit.

Fall River also has an Open Space Recreational District which allows only recreational uses in addition to its cluster bylaw.

Water Resources Protections:

Water Resource Protection Overlay Districts are often used to protect a public well, wellfield or surface water reservoir. Most of these districts protect against hazardous materials and waste from contaminating drinking water. Most of the restrictions cover zones I (400 foot radius from a well), II (area that have aquifer contribution) and III

(recharge areas) and place controls on stormwater runoff, uses and activities within those zones. The most restrictive district is in Raynham, where no development is allowed in zones I and II, and only by special permit in zone III. Somerset and Fall River also have overlay districts specifically for surface water reservoir areas. Both municipalities require a no net increase in surface water discharge from new development and other site design constraints. Freetown and Berkley have no public water supply.

Wetlands Protection Districts and Bylaws:

A wetlands overlay district is used to require a setback of buildings and septic systems from the edge of a wetland, pond, stream or river or to prohibit new construction and/or filling, draining, excavation, dredging or removal of material from a wetland area. The buffer provides habitat value and allows for filtration of runoff.

Bridgewater, Middleborough and Raynham have such zoning districts. Raynham has prohibited all development within its Wetlands District in order to protect sensitive habitats.

Halifax has a special wetlands bylaw which expands the protected values under the Massachusetts Wetlands Protection Act to include wildlife habitat, recreation, air and noise pollution and aesthetics. It requires a permit for work which can be refused if the will be an adverse effect to the protected values. Dighton has a setback requirement in its general zoning bylaw.

Phasing and Building Limits:

Several communities have used phased growth and building permit limits to allow time to make decisions about infrastructure and open space as development progresses. For example, Halifax limits building permits to no more than 40 permits per year; no more than 6 permits per applicant over 12 months and 10 permits per project over 24 months. Dighton, Berkley, Taunton and Raynham also have similar limits.

Transfer of Development Rights:

Transfer of Development Rights are used to direct growth away from ecologically sensitive or historically important sites by moving development rights on a property by deed, easement or other legal instrument to another parcel that is in an area with infrastructure to accommodate additional development. This means that the new property can be developed at the combined density of both pieces of land, while the other remains open space.

Raynham and Carver currently have Transfer of Development Rights bylaws.

Demolition Delay:

A demolition delay bylaw is used to allow municipalities time to buy historic properties before they are demolished. It generally allows six months for negotiating the purchase of an historic building.

The City of Taunton has included structures over 50 years old, those that have historical significance and those that are located within 150 feet of an historic district in this by-law.

Lakeville has also enhanced its Demolition Delay bylaw by including structures, not just buildings. A significant structure includes structures listed on the National Register of Historic Places or is subject to a pending application; included in the Cultural Resources Inventory, or; is pending completion on a survey or vote of the Lakeville Historical Commission (this provision allows for the inclusion of stone walls and other stone work.

Site Plan Review:

Site plan review creates a process for review of an overall site development plan of by-right multi-family, commercial and industrial developments. Site plan review can alter the location and or design of a proposal but cannot prohibit the project.

Site Plan Approval:

Site plan approval is similar to site plan review, but a higher level of authority is given in which projects can be approved, modified or denied by way of the special permit process allowed under the State Zoning Law.

B. State and Federal Programs that relate to the management of Outstanding Resources

State Regulations/Programs

Massachusetts Clean Water Act: This act is the state version of the Federal Clean Water Act and requires the state to establish water quality standards that provide goals and designated uses for different classes of water bodies, and to establish criteria that must be met for attainment of those standards. An anti-degradation policy requires the state to designate "outstanding resource" waters and to protect the existing uses of a waterbody by restricting point sources and seeking improvement of degraded waters. Section 402 of the Clean Water Act establishes the "National Pollution Discharge Elimination System" (NPDES), requiring permits for all point source discharges as well as stormwater discharges from construction sites over one acre and municipalities of certain population densities.

Wetlands Protection Act: This act seeks to protect the public interest in the natural functions of wetlands, water bodies and floodplains, including flood storage, storm damage protection, wildlife habitat, prevention of pollution and fisheries protection. Such functions are preserved and promoted by limiting the human alteration of wetland resources areas, including water bodies, banks, bordering vegetated wetlands, the 100-year floodplain, and vernal pools, and of lands within 200 feet of these resource areas. The act is enforced locally by the Conservation Commission.

Rivers Protection Act: As part of the Wetlands Protection Act, this act defines a riverfront protection area for land within 200 feet of the annual high water line of perennial rivers and streams. Projects must meet performance standards that require that there are no significant adverse impacts to the riverfront area and there are no substantially equivalent economic alternatives to the proposed work.

Chapter 91 Public Waterfront Act: This waterways licensing law was first created in 1866 and is the oldest of its kind in the nation. It regulates activities in both inland and coastal areas such as great ponds, navigable rivers and streams, tidelands and historically filled tidelands. This law uses the public trust doctrine to preserve the public's right to fish, fowl and navigate in the intertidal area between high and low water marks and along certain navigable rivers and streams. Licenses or permits are required from DEP for structures such as docks, pilings, and moorings or for activities taking place on filled tidelands or seaward of the present mean high water line.

Title 5 of the State Environmental Code: This provision prohibits the siting of a new septic system's leaching field within 50 feet of a watercourse. It also establishes required percolation rates for soils that will be used as septic leaching fields. Many towns have increased these requirements through local zoning. This code is enforced locally by the Boards of Health.

Massachusetts Environmental Policy Act (MEPA): MEPA requires Massachusetts government to evaluate and allow for public discussion of the potentially harmful environmental impacts of a proposed project in advance so that government decision makers can make informed choices about whether and how a project should proceed. It also requires that alternatives to proposed projects be considered. MEPA is not a permitting process but it helps permitting agencies ensure that a project meets regulatory requirements. Projects are subject to MEPA review if they require agency action, financial assistance or permits, if they meet certain thresholds, or are in an Area of Critical Environmental Concern (ACEC). Environmental Impact Reports (EIRs) are automatically required if there are large impacts (e.g. alteration of one or more acres of bordering vegetative wetlands or withdrawal of 2,500,000 gals/day of water from a surface water source.)

Water Management Act: The Water Management Act requires a permit from the Department of Environmental Protection for any new or increased withdrawal of surface or ground water greater than 100,000 gallons per day. DEP must consider whether the applicant had adequately addressed alternatives, has implemented conservation measures and has involved the public in education. The act is designed to ensure that a watershed's safe yield is maintained and that needs are met for public water supply, water quality, waste assimilation, flood management, water-based recreation, wildlife habitat, agriculture and fish and wildlife.

Interbasin Transfer Act: The Interbasin Transfer Act was established to encourage the maintenance of adequate flows within a given watershed by requiring the implementation of conservation measures and the use of alternative in-basin sources of

supply before interbasin transfers are permitted. This law also requires that reasonable instream flow in the donor basin be maintained.

Massachusetts Department of Agricultural Resources

Agricultural Preservation Restriction (APR) Program: A voluntary program intended to offer a non-development alternative to farmers with important agricultural lands. The program offers to pay farmers the difference between the fair market value and the agricultural value of their farmland in exchange for a permanent deed restriction that precludes any use that will impact agricultural viability.

Farm Viability Enhancement Program: State technical assistance program that works with farmers to provide a business plan for their operation. Farmers that sign a short-term non-development covenant can receive \$20,000 for a 5-year covenant up to \$60,000 for large farms with a 10-year covenant.

Agricultural Business Training Program: Provides an opportunity for farmers to master basic business principles, with additional technical service.

Chapter 61, 61A and 61B: This program allows forest, agricultural and recreational land to be taxed at actual use value rather than its development potential. Landowners participate in this program for a fixed period of time, after which the land is taxed at the full value. If the property is sold while it is in protection, the landowner would owe the full amount of taxes that would have been paid up to that time. The town also has the first right of refusal to acquire the property at market value.

Community Preservation Act (CPA): The Community Preservation Act allows communities to create a local Community Preservation Fund through a surcharge of up to 3% on the real estate tax levy. The act also creates a significant state matching fund of more than \$25 million annually, to serve as an incentive to communities to take advantage of this legislation. Once adopted locally by ballot referendum, the Act requires at least 10% of the monies raised to be distributed to each of three categories: historic preservation, open space protection, and low and moderate income housing, allowing the community flexibility to distribute the other 70% of the money between any of these three categories

The Act also stipulates that a Community Preservation Committee (CPC) composed of 5-9 members representing various boards in the community should recommend to the community's legislative body how to spend the Community Preservation funds. Each CPC brings together a wide range of community groups, town boards and agencies to put together proposals for Town Meeting or City Council vote. These projects often leverage considerable funds from private donations and matching grants to support their community preservation goals.

Massachusetts Historical Commission: MHC can require the filing of a Public Notification Form to determine if a project is a significant risk to a cultural resource. Public Notification Forms are required if federal or state money is involved, or if there is an Army Corps of Engineers permit. They can require more information when reviewing permits and can require mitigation.

Areas of Critical Environmental Concern (ACEC): ACECs are areas with unique natural resources that are designated for the protection of marine and aquatic productivity, surface and groundwater quality, habitat values, storm damage prevention or flood control, historic and archeological resources, scenic and recreational resources, and other natural resources. All federal, state and local agencies as well as private parties must submit development plans to the Department of Conservation and Recreation to ensure that activities which would impact the ACEC are carried out in a way that would protect natural resources. Municipal boards and commissions are encouraged to implement local regulations and actions to protect and sustain ACEC areas.

Natural Heritage and Endangered Species Program

Priority Sites of Rare Species Habitat: This represents estimations of the most important natural communities and state-listed rare species habitats in Massachusetts. These habitats are based on rare species population records (maintained by the Natural Heritage & Endangered Species Program's Biological and Conservation Data System database). Program scientists draw estimated habitats by analyzing population records, species habitat requirements and available information about the landscape. Habitat sites are selected for biodiversity significance. Significance is determined by the global and state rarity of the species or communities present, as well as the quality of those species populations or communities. There are five levels of significance: outstanding, very high, high, moderate, and of general biodiversity interest. Priority sites are not afforded any protection by the state government, but the rare species that reside in these habitats are protected by the Massachusetts Endangered Species Act.

Biomap and Living Waters: The Natural Heritage and Endangered Species Program used its extensive database of over 7,000 records including 22 years of records of plants, animals and natural communities to select and map "Core Habitat Areas" that represent the most viable examples of natural communities and habitat for rare plant and animal species in Massachusetts. These maps also include the "Supporting Natural Landscapes", which include buffers around the core areas, connectivity between core areas, and large undeveloped and roadless patches. While this creates no added regulatory protection of these habitat areas, the BioMap and Living Waters Core Habitat and Surrounding Natural Landscape areas can be used by towns to create conservation priorities and can be worked into existing Open Space and Recreation plans. Many areas of Core Habitat can be protected by small entities such as towns or lands trusts, while larger areas may need to be protected by partnerships between agencies, town and private interests.

Federal Regulations/Programs

Clean Water Act: The Federal Clean Water Act works with the Massachusetts Clean Water Act to restrict point source discharges to the Taunton River and its tributaries through the NPDES program that requires permitting, treatment and monitoring of all municipal and industrial discharges. In addition, the act requires permitting for municipal stormwater discharges in communities above a certain population density. Section 404 of the act requires that any project that would discharge dredged or fill material into the river must receive a permit from the Army Corps of Engineers.

National Flood Insurance Program (NFIP): This program provides landowners in participating communities with federally subsidized flood insurance. As part of participation, municipalities must restrict building in the 100-year floodplain and create a flood zone overlay district.

National Environmental Policy Act (NEPA): Much like MEPA, NEPA requires an environmental impact assessment and public review for all projects that are federally assisted or permitted.

Rivers and Harbors Act: This act requires any obstruction in or over "navigable waters" to receive a permit from the Army Corps of Engineers. Permits are evaluated for a project's effect on navigation and ecology.

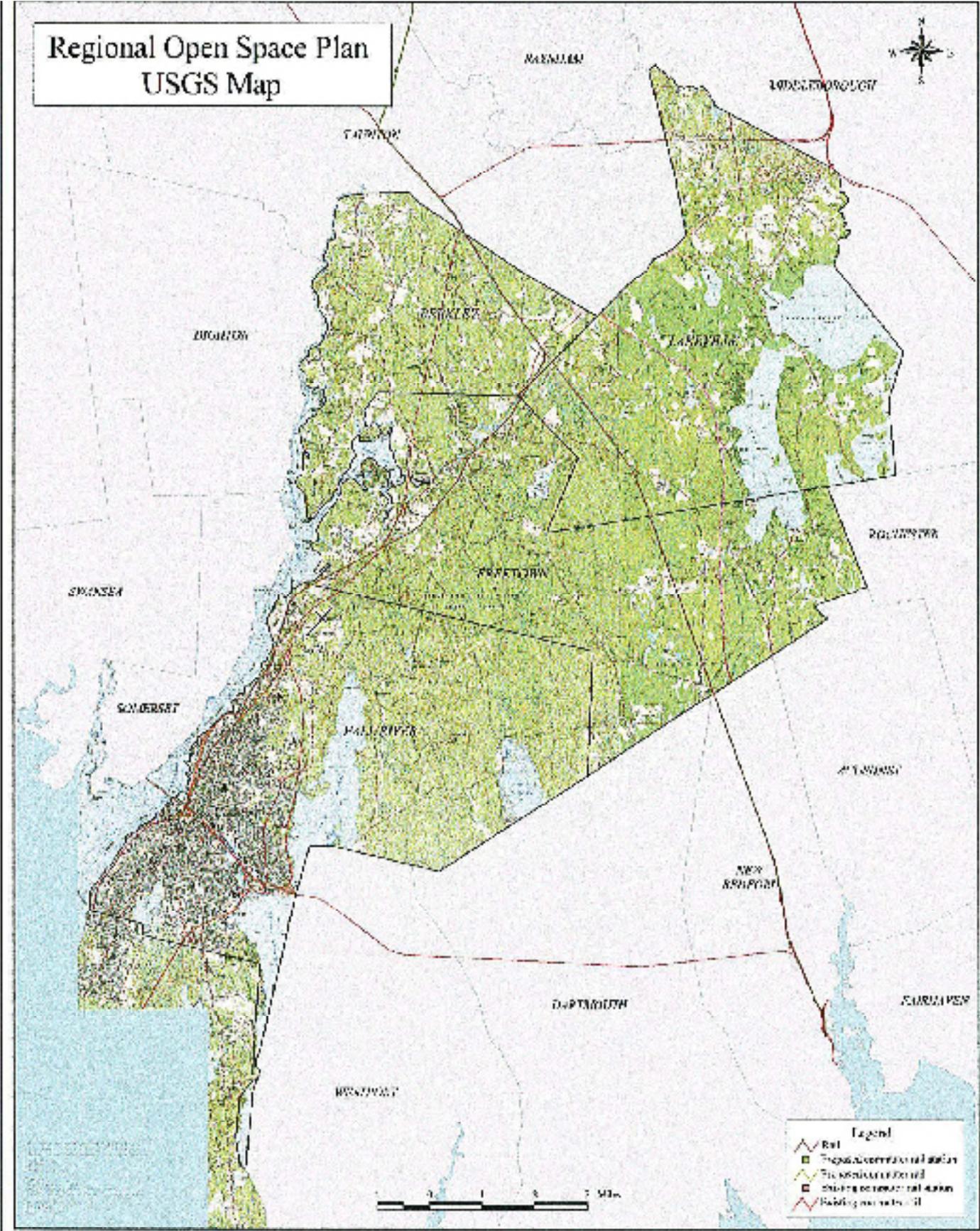
National Wild & Scenic Rivers Act: This act protects designated rivers and those under study from any federally licensed dam, diversion, channelization, hydroelectric facility or other water resource development project that would have a direct and adverse effect on the river's free flowing condition or its nationally significant resources.

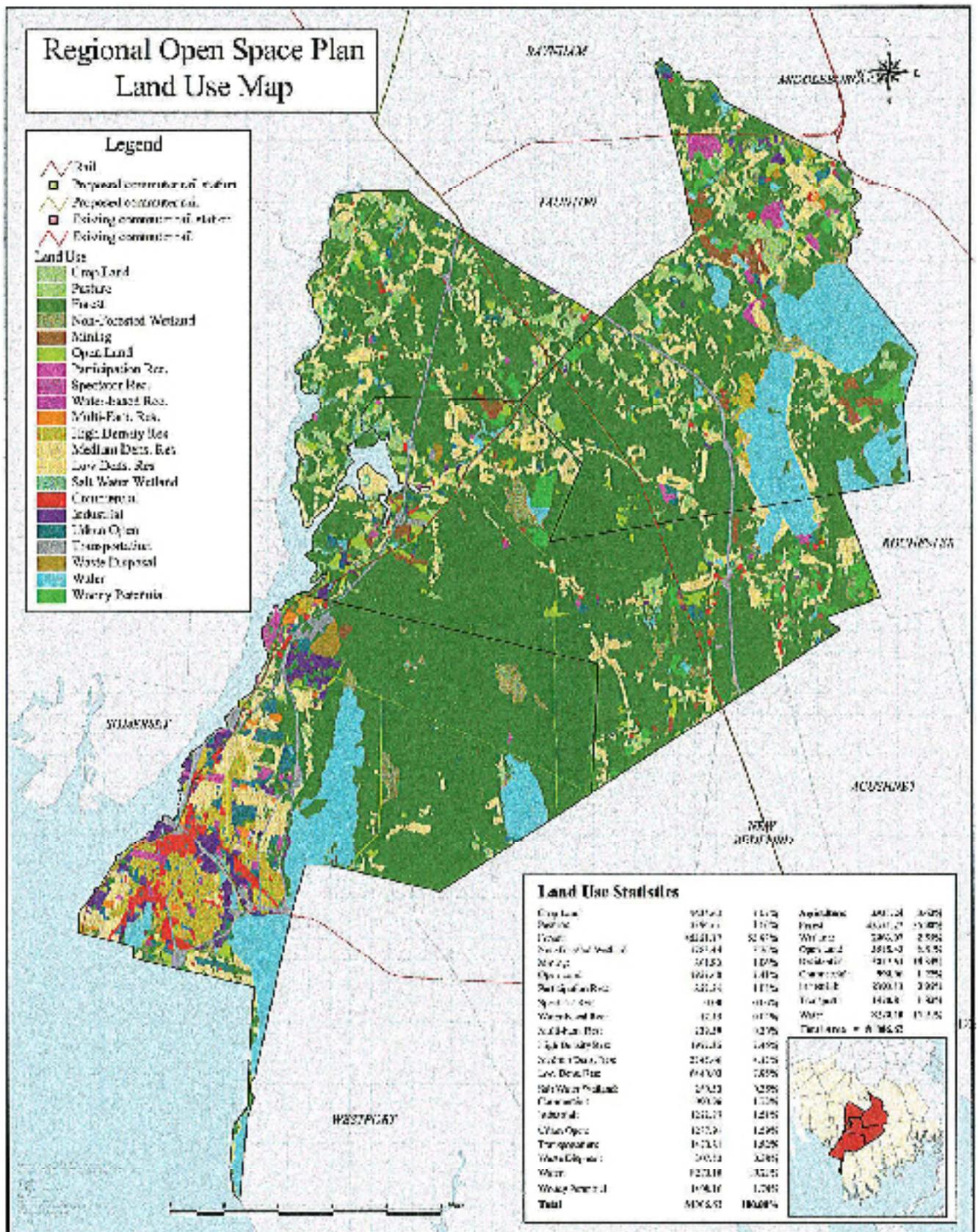
United States Department of Agriculture

Environmental Quality Incentive Program (EQIP): Provides technical and financial assistance to landowners and operators of crop or livestock farms for planning and designing Best Management Practices that protect the soil, air and water, increase soil productivity, enable care for farm animals, and manage waste produced on the farm.

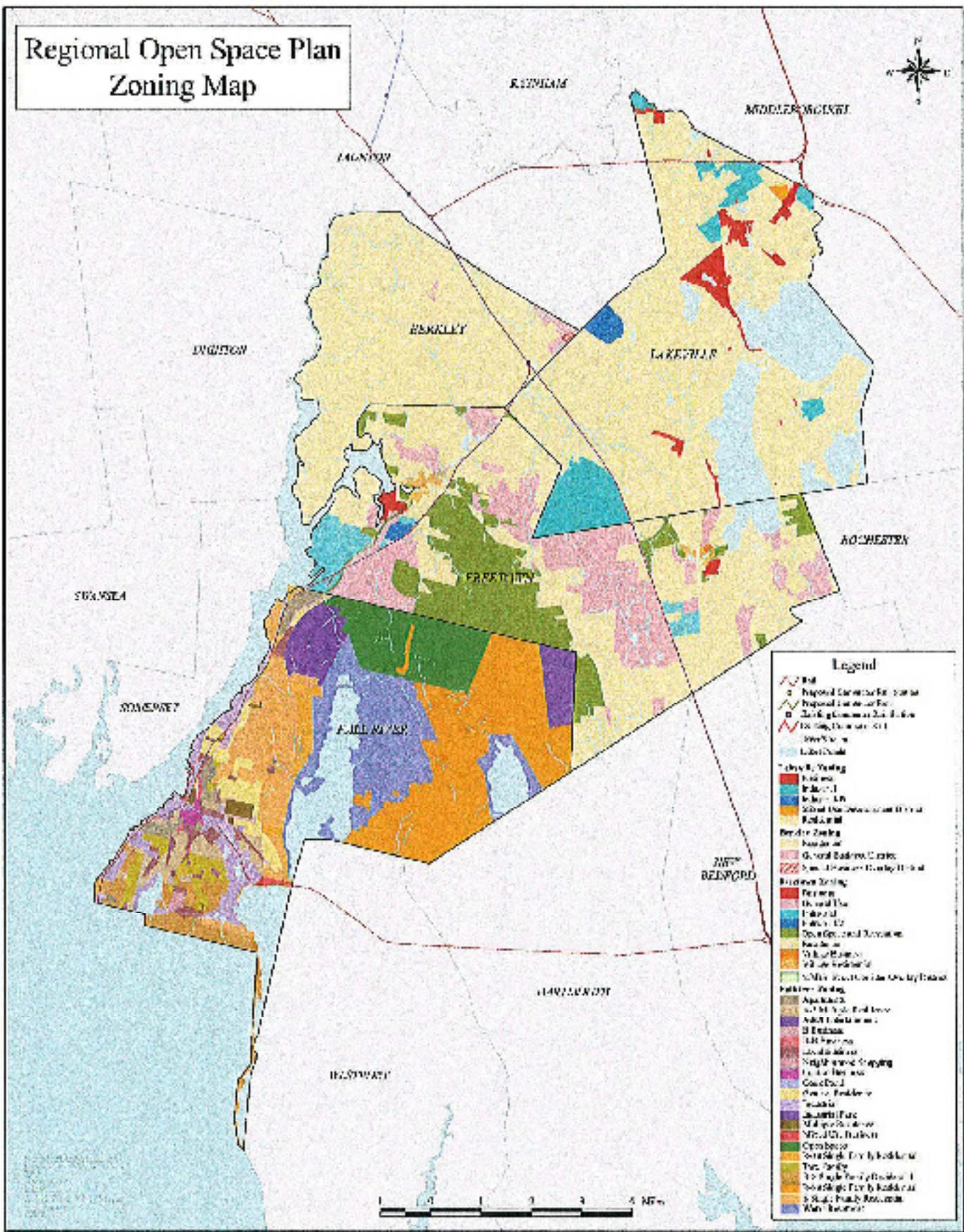
Wildlife Habitat Incentive Program (WHIP): Technical and financial assistance for landowners who want to voluntarily improve wildlife habitat or restore ecosystems on their property.

Wetland Reserve Program (WRP): Purchase of temporary or permanent easements on farmed wetlands for water supply protection and wildlife habitat. Restore farmed wetlands for wildlife habitat.





Regional Open Space Plan Zoning Map



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