# Land Use

* 1. Introduction

The Land Use element’s purpose within Mashpee’s Comprehensive Plan is to establish a plan for land use in Mashpee over the next 20 years. This involves recommendations for updating current, as well as proposing new, land use controls and regulations designed to implement this plan. As defined by the Guidebook to Massachusetts Land Use 2021 by the American Planning Association, a land use plan shall be designed to provide a basis for decision making for the long-term future of the community and internally consistent in its policies, forecasts, and standards (Mitchell & Ritchie, 2021). Chapter 1*, Housing,* provides additional information on development and housing trends.

The Land Use Chapter is the centerpiece of comprehensive planning, connecting all other elements of the plan and serving as a guide for thoughtful municipal decision-making on how to best manage land in Mashpee. This element discusses the existing conditions in Town, including land use and zoning development as well as identify challenges and opportunities associated with land use.

* 1. Existing Conditions

To establish a plan and propose new land use controls and regulations, an updated inventory of existing land use conditions is required. This section includes an overview of existing land use conditions and current zoning in Mashpee.

### Existing Land Use

Mashpee is home to the federally recognized Mashpee Wampanoag Tribe whose people have been living in Mashpee and the surrounding region for more than 12,000 years. Approximately 150 acres of land in Mashpee represents the Tribe’s initial reservation where it can exercise full tribal sovereignty, including the right to hunt, fish, and gather (Mashpee Wampanoag Tribe, n.d.). This area holds critical importance to the survival of traditions, lifeways, and culture for the Wampanoag Tribe (Mashpee Wampanoag Tribe). The Mashpee Wampanoag Tribe regulates Tribal member hunting, fishing, and gathering rights through traditional and codified Tribal law (Mashpee Wampanoag Tribe).

Mashpee has a rural resort character, consisting mainly of residential areas, active recreational facilities, forests, and wetlands (MassGIS, 2009). There are many sites, structures, rural landscapes, and significant archaeological sites that are threatened by suburban pressures from Falmouth and Barnstable (Massachusetts Historical Commission, 1984). Further information on the protection and preservation of important historic, cultural, and archaeological features of the Town is discussed in Chapter 6, *Heritage and Preservation*. Land use changes that have occurred between 1951-2005 are summarized in Table 5-1. During that time period the Town has lost a significant amount of agricultural and forest land to development. In that same time period the Town acquired almost 700 acres of recreation and public space.

| **Table 5-1. Land Use Over Time** |
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| **Class of Land Use** | **1951** | **1971** | **1985** | **1999** | **2005** | **Change 1951-2005** |
| Agriculture Land | 503.1 | 338.0 | 238.0 | 190.8 | 112.5 | -390.6 |
| Forest | 12588.2 | 11391.3 | 10135.4 | 8143.0 | 8667.5 | -3920.8 |
| Recreation & Public Space | 181.8 | 496.0 | 639.4 | 886.5 | 868.8 | 687.0 |
| Residential | 480.1 | 1303.3 | 2351.7 | 3965.3 | 3199.0 | 2718.9 |
| Commercial | 15.6 | 59.8 | 128.2 | 208.1 | 153.2 | 137.6 |
| Water | 1455.2 | 1462.5 | 1462.5 | 1447.1 | 1526.7 | 71.5 |
| Wetlands | 470.7 | 503.1 | 566.3 | 574.5 | 874.6 | 403.9 |
| Other | 621.3 | 762.0 | 794.6 | 895.4 | 982.6 | 361.4 |

*Source: MassGIS Land Use (1971-1999), MassGIS Land Use (2005)*

Table 5-2 below provides a breakdown of land cover based on Massachusetts Geographic Information System (MassGIS) 2005 Land Use data. This data set documents land area covered by forests, wetlands, impervious surfaces, agriculture, and other land and water classifications.

| **Table 5-2. Existing Land Use 2005** |
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| Land Use | **Mass GIS Land Use Description (2005)** | **Mashpee Land Area (Acres)** |
| Agriculture | Cranberry Bog:Both active and recently inactive cranberry bogs and the sandy areas adjacent to the bogs are used in the growing process. Impervious features associated with cranberry bogs such as parking lots and machinery are included. | 108.3 |
| Pasture:Fields and associated facilities (barns and other outbuildings) are used for animal grazing and the growing of grasses for hay. | 2.5 |
| Cropland:Generally, tilled land is used to grow row crops. Boundaries follow the shape of the fields and include associated buildings (e.g., barns). This category also includes turf farms that grow sod. | <1 |
| Nursery:Greenhouses and associated buildings as well as any surrounding maintained lawn. Christmas tree (small conifer) farms are also classified as Nurseries. | 1.6 |
| **Total Agriculture** | **112.5** |
| Recreation & Public Space | Urban Public/ Institutional:Lands comprising schools, churches, colleges, hospitals, museums, prisons, Town halls or courthouses, police and fire stations, including parking lots, dormitories, and university housing. Also, may include public open green spaces like Town commons. | 117.2 |
| Water-Based Recreation: Swimming pools, water parks, developed freshwater and saltwater sandy beach areas, and associated parking lots.  | 12.7 |
| Participation Recreation:Recreation Facilities are used by the public for active recreation. Includes ball fields, tennis courts, basketball courts, athletic tracks, ski areas, playgrounds, and bike paths plus associated parking lots. Primary and secondary school recreational facilities are in this category, but university stadiums and arenas are considered Spectator Recreation. | 223.5 |
| Golf Course:Includes the greenways, sand traps, water bodies within the course, associated buildings, and parking lots. | 383.8 |
| Saltwater Sandy Beach | 131.6 |
| **Total Recreation & Public Space** | **868.8** |
| Residential | Very Low-Density Residential:Housing on > 1 acre lots and very remote, rural housing.  | 146.5 |
| Low-Density Residential:Housing on 1/2 - 1 acre lots.  | 723.3 |
| Medium Density Residential:Housing on 1/4 - 1/2 acre lots.  | 1,345.9 |
| High-Density Residential:Housing on smaller than 1/4 acre lots. | 559.7 |
| Multi-Family Residential:Duplexes (usually with two front doors, two entrance pathways, and sometimes two driveways), apartment buildings, condominium complexes, including buildings, and maintained lawns. | 423.6 |
| **Total Residential** | **3,199.0** |
| Commercial | Malls, shopping centers, and larger strip commercial areas, plus neighborhood stores and medical offices (not hospitals). | 153.2 |
| Industrial | Light and heavy industry, including buildings, equipment, and parking areas.  | 77.6 |
| Undeveloped | Forest:Areas where tree canopy covers at least 50% of the land. Both coniferous and deciduous forests belong to this class. | 8,667.5 |
| Open Land: Vacant land, idle agriculture, rock outcrops, and barren areas. | 119.8 |
| Transitional: Open areas in the process of being developed from one land use to another (if the future land use is at all uncertain).  | 36.8 |
| Brushland/Successional: Predominantly (> 25%) shrub cover, and some immature trees not large or dense enough to be classified as forest. | 21.5 |
| Mining:Includes sand and gravel pits, mines, and quarries. The boundaries extend to the edges of the site’s activities, including on-site machinery, parking lots, roads, and buildings. | 27.0 |
| Waste Disposal: Landfills, dumps, and water and sewage treatment facilities such as pump houses, and associated parking lots. | 14.3 |
| **Total Undeveloped** | **8,886.9** |
| Transportation and Utility | Transportation: Airports (including landing strips, hangars, parking areas, and related facilities), railroads and rail stations, and divided highways (related facilities would include rest areas, highway maintenance areas, storage areas, and on/off ramps). | 611.5 |
| Marina:Include parking lots and associated facilities but not docks | 6.9 |
| Powerline/Utility:Powerline and other maintained public utility corridors and associated facilities, including power plants and their parking areas. | 62.2 |
| **Total Transportation and Utility** | **680.6** |
| Cemeteries | Includes the gravestones, monuments, parking lots, road networks, and associated buildings. | 5.2 |
| Wetlands | Forested Wetland: DEP Wetlands (1:12,000) WETCODEs 14, 15, 16, 24, 25 and 26. | 218.5 |
| Non-Forested Wetland:DEP Wetlands (1:12,000) WETCODEs 4, 7, 8, 12, 23, 18, 20, and 21. | 351.2 |
| Saltwater Wetland | 304.9 |
| **Total Wetlands** | **874.6** |
| Water | DEP Wetlands  | 1,526.7 |
| **TOTAL** | **16,379.9** |

*Source: MassGIS Land Use (2005)*

Mashpee encompasses approximately 16,384.78 acres of land. Of the total land, 65.6% is constrained by ecologically sensitive habitats and dense canopy including forest (52.9%), forested wetlands (1.3%), non-forested wetlands (2.1%), and water (9.3%).

| **Table 5-3. Existing Land Use 2016a** |
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| **MassGIS Land Use Code (2016)** | **Mass GIS Land Use Name (2016)** | **Mashpee Land Area (Acres)** |
| 7 | Agriculture | 40.6 |
| 3 | Commercial | 1,000.2 |
| 4 | Industrial | 121.7 |
| 10 | Mixed use, primarily residential | 56.2 |
| 2 | Open Land | 5,030.9 |
| 8 | Recreation | 176.7 |
| 12 | Residential – multi-family | 948.0 |
| 13 | Residential - other | 44.4 |
| 11 | Residential – single-family | 3,253.2 |
| 55 | Right-of-way | 974.7 |
| 9 | Tax exempt | 3,167.0 |
| 0 | Unknown | 54.9 |
| 88 | Water | 1,516.4 |
| TOTAL | **16,384.9** |

*Source: MassGIS Land Cover/Land Use (2016)*

*Notes: aMassGIS 2016 land cover/land use dataset does not conform to the classification schemes of*

 *previous land use data from MassGIS (1971-1999; 2005). The 2016 Mass GIS land use/land cover*

 *information for Mashpee is provided for informational purposes.*

* + 1. *Existing Regulatory Framework*

The Town of Mashpee employs a Zoning Bylaw and The Rules and Regulations Governing the Subdivision of Land as the guiding documents that regulate the development of land in the Town. Each of these are discussed in more detail in this section.

The allowable use of land is determined by the designation of a zoning district, which is established in the Zoning Bylaw. The Town is divided into six underlying zoning districts (Town of Mashpee, 2015). Underlying zoning districts and their minimum lot size requirements are detailed in Table 5-4. The Town has two residential districts, three commercial districts, and one industrial district. The zoning districts for the Town are shown on Map X.

| **Table 5-4. Minimum Lot Size for Zoning Districts** |
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| **Zoning District** | **Minimum Lot Size (square feet)** | **Minimum Lot Frontage (square feet)** |
| **Residential Districts** |
| R3 | 40,000 | 150 |
| R5 | 80,000 | 150 |
| **Commercial Districts** |
| C1 | 40,000 | 200 |
| C2 | 40,000 | 200 |
| C3 | 40,000 | 200 |
| **Industrial Districts** |
| I1 | 40,000 | 200 |

*Source: Town of Mashpee, 2020*

Overlay Districts

In addition to the underlying zoning districts described above, the Town applies seven overlay districts. An overlay district is a specific type of zoning district that floats on top of an underlying zoning district and brings an additional layer of standards to all areas within the defined overlay boundary, regardless of the underlying base zoning district. Overlay districts can serve multiple purposes, such as encouraging denser development or discouraging development in natural resource areas. Overlay districts are shown in Map X.

Below is summary of the overlay districts provided in the Zoning Bylaw along with any dimensional or use restrictions associated with the overlay:

**Groundwater Protection District**

The purpose of Article XIII in the Zoning Bylaw is to protect public health from the contamination of existing and potential public and private water supplies and to protect the general welfare by preserving limited water supplies for present and future use.

**Popponesset Overlay District**

The overlay allows for small lot sizes (6,000 square feet) and greater lot coverage.

**Wireless Facility Overlay District**

The area within the two hundred ten (210’) foot wide Commonwealth Electric Company transmission line easement running generally east-west between the Falmouth Town line and the Barnstable Town line, except that portion within the boundaries of the Otis A.N.G.B. Accident Prevention Zone; All other lands in the Town which are not located within the boundaries of the Mashpee National Wildlife Refuge, within one thousand (1000’) feet of the mean high water line of a Great Pond or a tidal water body, within historic districts, within one thousand (1000’) feet of a historic district or of structures or places listed in the Massachusetts State Register of Historic Places, within the Otis A.N.G.B. Accident Prevention Zone, within the R-3 or R-5 Zoning Districts or within three hundred (300’) feet of the right of way of any designated scenic roadway.

This district is intended to minimize visual and environmental impacts, as well as any potential deleterious impact on property values, that may arise from the presence of personal wireless service facilities in the vicinity. No personal wireless service facility shall be placed, constructed or modified within the town except in conformance with the requirements of this section, in conjunction with other regulations adopted by the Town, including historic district regulations, design review and other bylaws and regulations designed to encourage appropriate land use, environmental protection, and provision of adequate infrastructure development.

**Mashpee Center Overlay District**

The Mashpee Center Overlay District shall include those parcels shown on the 1998 Mashpee Assessors’ Maps as Map 27, Block 46, Map 28, Blocks 3 through 12, Map 35, Blocks 30 and 31, and Map 36, Blocks 1 through 20, 5A, 5B, 41 through 45, 47 and 49 through 52. The Mashpee Historic District is located within the Mashpee Center Overlay District.

**Historic District**

Section 110-1 of the Mashpee General Bylaw states that the purpose of the Historic District is to aid in the preservation and protection of the distinctive characteristics and architecture of buildings and places significant in the history of the Town, the maintenance, and improvement of their settings and the encouragement of new building designs compatible with the existing architecture.

**Otis A.N.G. B. Accident Prevention Zone**

The Otis A.N.G.B. Accident Prevention Zone is shown on a map entitled “Otis A.N.G. B. Accident Prevention Zone” dated January 1987 on file in the office of the Town Clerk. It is considered part of the Zoning Bylaw. The bylaw references to APZs are based on a map dated January 1987. Within this zone, new schools, hospitals, theaters, or places of public assembly are not allowed. In addition, no portion of any structure located within the said zone may exceed thirty-five (35’) feet in height, measured from the highest natural grade of the site at the foundation line. It was to prevent accidental crashes of landing planes into structures.

**Light Industrial Overlay District:**

The Light Industrial Overlay District includes all parcels shown as within the I-1 and C-3 Zoning Districts on the Official Zoning Map.

**Areas of Critical Environmental Concern (ACEC)**

The purpose of Article XIV in the Zoning Bylaw is the protection of Areas of Critical Environmental Concern, areas of significance for flood control or the prevention of storm damage, waters containing shellfish and fisheries, and other public interests identified by the Wetlands Protection Act (MGL C. 131, §40 and 40A) and the Town’s Wetlands Protection Bylaw.

**The Floodplain District**

Article XI in the Zoning Bylaw covers the Floodplain District, which includes all Special Flood Hazard Areas within the Town Designated as Zone EA or VE on the Barnstable County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program.

**Marijuana Exclusion Zone**

The purpose of the Marijuana Exclusion Zone is to show areas where marijuana establishments are not permitted to operate within the Town.

**Development Tools**

The Mashpee Zoning Bylaw contains provisions beyond the designation of zoning districts and overlay districts to regulate development. Below is a summary of some of the regulatory tools available to the Town to manage development.

**Cluster Development**

The purpose of Section 174-47 of the Zoning Bylaw is to encourage the preservation of open space, reduce the impact of new development on the Town’s water quality and natural resources, to promote the more efficient use of land and municipal infrastructure, and to protect and promote the health, safety, and general welfare of the inhabitants of the Town.

**Accessory Apartment**

The Zoning Bylaw defines accessory apartments as apartments created within or detached from a single-family residential structure under the provisions of §174-45.4. One accessory apartment is permitted per lot under the Zoning Bylaw.

Setbacks

The purpose of the Mashpee Wetlands Protection Bylaw, Chapter 172 of the Mashpee General Bylaw, is to protect Wetlands, related water resources, and adjoining land areas in the Town of Mashpee from a variety of human and natural threats. Zoning bylaws have been adopted to promote wetland conservation efforts. Article VII of the Zoning Bylaw outlines land space requirements, including building setback requirements from bodies of water, wetlands, and cranberry bogs. Section 174-33 notes that structures must adhere to a setback of at least 50 feet from any water or wetland. Section 174-34 requires a 150-foot setback for any habitable structure from any active [within the previous five years] cranberry bog or meadow.

**Open Space Incentive Development**

Section 174-46 details the zoning regulations related to open space protection in Mashpee. An open space incentive development maybe granted through special permit by the Planning Board in any residential district, except as provided under Subsection H., to preserve open space and natural resource areas within the Town, promote an efficient pattern of land development, and promote the health, safety, and general welfare of the inhabitants of the Town.

**Mashpee and Quashnet River Protective Districts**

The purpose of this Article XII in the Zoning Bylaw is the preservation of the Mashpee River and Quashnet River and the protection of wildlife resources. The Mashpee and Quashnet River Protective Districts Areas are shown on the Open Space Incentive Plan.

**Primary and Secondary Conservation Areas**

The Primary and Secondary Conservation Areas are shown on the Open Space Incentive Plan. Table 5-5 below summarizes the total land area by zoning categories.

| **Table 5-5. Land Area by Zoning Category** |
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| **Zoning Category** | **Acres** | **Percentage of Total Land Area** | **Regulatory Authority** | **Provisions** |
| Residential Districts |
| R3  | 6084.1 | 37.1% | Town of Mashpee | Zoning Bylaw, §174-4 |
| R5 | 497.8 | 3.0% |
| **Commercial Districts** |
| C1  | 250.7 | 1.5% | Town of Mashpee | Zoning Bylaw, §174-4 |
| C2 | 99.9 | 0.6% |
| C3 | 74.49 | 0.5% |
| **Industrial Districts** |
| I1 | 1273.35 | 7.8% | Town of Mashpee | Zoning Bylaw, §174-4 |
| **Other Districts** |
| Groundwater Protection District | 5571.64 | 34.0% | Commonwealth of Massachusetts, Town of Mashpee | Massachusetts General Laws, Chapter 41AZoning Bylaw, §174-79 |
| Popponesset Overlay District | 164.68 | 1.0% | Town of Mashpee | Zoning Bylaw, §174-4 |
| Wireless Facility Overlay District | 608.50 | 3.7% | Town of Mashpee | Zoning Bylaw, §174-4 |
| Mashpee Center Overlay District | 62.65 | 0.4% | Town of Mashpee | Zoning Bylaw, §174-4 |
| Light Industrial Overlay District | 1347.84 | 8.2% | Town of Mashpee | Zoning Bylaw, §174-4 |
| Mashpee Flood Insurance Rate Map | 3862.38 | 23.6% | Federal Emergency Management Agency (FEMA) | Zoning Bylaw, §174-4 |
| Areas of Environmental Concern | 881.37 | 5.4% | Secretary of Energy and Environmental Affairs (EEA) | Massachusetts General Laws, Chapter 131, §40 and 40A |
| Historic District  | 91.29 | 0.6% | Mashpee Historic District Commission | Mashpee General Bylaw, §110-1 |
| Marijuana Exclusion Zone | 436.13 | 2.7% | Commonwealth of Massachusetts | Massachusetts General Laws, Chapter 94G § 3(a)(2)(ii) |
| Seabury Special Permit Zones | 1014.00 | 6.2% | Town of Mashpee |  |

*Source: Mashpee GIS, 2020*

**Rules and Regulations Governing the Subdivision of Land**

The Mashpee Planning Board adopted an updated version of the Rules and Regulations Governing the Subdivision (Rules and Regulations) of Land in 2017. This document details the Town’s regulations for designing and constructing subdivisions, in accordance with the Massachusetts Subdivision Control Law (Massachusetts General Laws Chapter 41, Sections 81K – 81GG).

**Subdivisions**

The Planning Board approves all “subdivisions,” as defined in Section III of the Rules and Regulations. Section 174-67.1, under Article XI of the Zoning Bylaw, regulates subdivisions as pertaining to floodplain zone provisions: all subdivision proposals shall be designed to ensure that public utilities and facilities are located and constructed to minimize or eliminate flood damage; and adequate drainage is provided to reduce exposure to flood hazards.

**Development Standards**

The Town’s Rules and Regulations employ a variety of different types of requirements and standards for development. These include road design and construction standards, lot design standards, landscaping requirements, and other items associated with the design and construction of land development.

* 1. Challenges & Opportunities

### Challenges

Single-use commercial centers have limited Mashpee’s growth potential in recent years. Mixed-use zoning is not widespread throughout Mashpee, which reduces cohesion between different land uses within the Town. Additional zoning concerns, such as the current restrictive ADU bylaw, make it difficult for Mashpee to capitalize on underutilized land.

### Opportunities

Residents have a strong desire to convert existing single-use areas to mixed-use development to facilitate a stronger connection between residential and commercial areas while protecting open space and natural resources throughout the Town. Amending the zoning ordinance to encourage a wider array of land use options would promote economic development and modernize Mashpee’s land use policies.

### Current Measures

Mashpee is effectively at build out under current zoning with very little growth possible in the areas where growth is most sustainable. The Town is working toward shifting its development priorities away from a sprawling development pattern to encourage development and redeployment in areas that are more suitable based on their location, transportation amenities, connectivity to services, and access to infrastructure. To achieve its goals, the Town is re-evaluating its maximum build out population in consideration of the community's needs today while ensuring continued and enhanced protection of open spaces and the Town's natural resources. This will require zoning changes and continuing acquisition of lands for open space purchases.

* 1. **Goals & Policies**

*Goals*

1. Maintain and enhance Mashpee’s small-town community character, natural beauty, and cultural and historical amenities.
2. Ensure development is consistent with current and future growth projections and is responsive to infrastructural capacity and resource availability so that people and families are stably housed, further degradation of Mashpee’s polluted waterbodies is prevented, and traffic flow and congestion are properly mitigated.
3. Promote mixed-use development/redevelopment to concentrate various activities in appropriate centralized locations.
4. Limit gentrification of historically low-income neighborhoods and culturally significant areas of the Town.
5. Ensure access and availability of high-quality drinking water, within the allowed nutrient loading from wastewater (such as the TDML for Nitrogen) by ushering in growth that does not degrade the Town’s capacity to deliver or the capacity of our natural systems.

*Policies*

1. Focus new growth in already disturbed areas of Town where adequate infrastructure is planned or in place and incentivize the protection/preservation of the remaining vacant properties where the only feasible growth does not meet the projected housing need (year-round housing).
2. Ensure Town services and facilities are adequate in consideration of current shortfalls and future growth projections.
3. Maintain the legitimacy and accuracy of the zoning bylaw and other local regulatory documents.
4. Identify opportunities for mixed-use development in existing commercial areas as appropriate.
5. Ensure that any new growth does not exceed the Town’s capacity to provide high quality drinking water and/or treat wastewater.
6. Improve connectivity between neighborhoods, between commercial, municipal and residential centers, and between Mashpee’s unique combination of native American community, resort community, and residential/small town.
7. Ensure new development provides a net tax by encouraging or requiring the use of fiscal impact analysis for certain uses or projects.