

MULTIFAMILY HOUSING & LAND USE REGULATION

METRO REGIONAL COALITION
GREATER PORTLAND COUNCIL OF GOVERNMENTS



PREPARED BY THE
LEVINE PLANNING STRATEGIES, LLC
AND THE
GREATER PORTLAND COUNCIL OF GOVERNMENTS

JANUARY 2021



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Cover photo: Westbrook Housing Authority
Report designed and written by Jeff Levine, AICP
Cartography and geographic analysis by Abe Dailey

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INTRODUCTION AND SUMMARY

The challenges facing the housing market in the Portland region are well documented and have resulted in a number of public policy actions. In response, many communities in the region are tackling specific housing initiatives, and looking at their land use codes to understand what impediments to multifamily housing development exist. A number of local changes have helped produce specific developments and contributed to the housing stock.

However, to date there is limited understanding about the regional nature of the challenge. How does one community's efforts relate to those going on right across the municipal boundary? How do these efforts relate to other planning work in areas such as transit, open space networks, and economic development?

In response to this question, the Greater Portland Council of Government's Metro Regional Coalition requested a study to explore the limits to multifamily housing development in the region. This analysis is not designed to imply any particular solution, but to provide a baseline of data for use in the regional discussion.



This work is inspired by work done in the greater Boston region in 2019 (*The State of Zoning for Multifamily Housing in Greater Boston*, available at https://ma-smartgrowth.org/wp-content/uploads/2019/06/03/FINAL_Multi-Family_Housing_Report.pdf) That study, sponsored by a variety of planning and economic development organizations, looked at 100 communities near Boston to explore where multifamily housing can be built, and how the decision-making process works.

That study found that very little land in the Boston region was zoned for multifamily housing. It also found that decision-making was generally taking place on a project-by-project basis rather than through a planning process. Further, it found that multifamily zoning in the Boston region was generally tied to creation of mixed-use districts. Finally, it identified a need to think about multifamily housing in the context of creating nodes of development.

This study, in the Portland region, is more limited in scope. It focuses on the seven Metro Regional Coalition communities rather than 100 communities. It looks at the specific limits to multifamily housing based on seven criteria and classifies land based on how many of those criteria apply in each zoning district.

Key findings from this study include the following:

- Multifamily housing is permitted with few limiting factors on just over five percent of the land area in Metro Regional Coalition communities;

- Multifamily housing is permitted with significant, but surmountable, limiting factors on just over ten percent of the land area in Metro Regional Coalition communities;
- Multifamily housing is simply not permitted in just under 40 percent of the land area in the region;
- The communities in the Metro Regional Coalition are all taking at least some efforts to promote multifamily housing;
- While many communities' land use codes allow for multifamily housing in theory, substantial barriers to multifamily development exist in reality, resulting in little or no production;
- Different communities have taken different approaches to how and where to permit multifamily housing;
- In many cases, zones that allow multifamily housing are located in growth nodes or along growth corridors, though this varies a great deal by specific locations; and
- Regional planning and coordination would increase multifamily housing production in the region and better coordinate it with other planning goals.

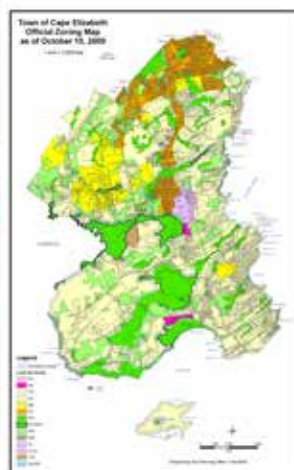
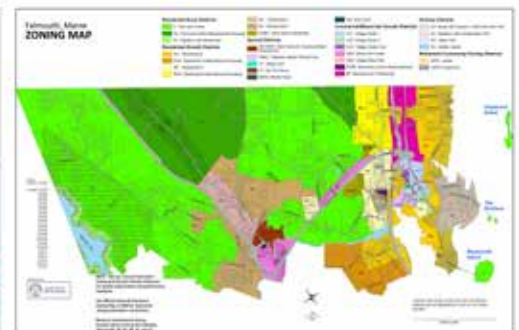
While there are excellent planning reasons to limit multifamily housing in some areas, such as sensitive wetlands, many of the limits imposed on such development exceed these rationales. Concerns about traffic, community character, and impacts on public facilities are legitimate, and should be addressed. However, they should be balanced with the costs imposed on potential multifamily developments in terms of uncertainty, time, and the effects of limiting available land supply on the price of that land.

These limits also have negative impacts that may not be intended. Requiring single-family housing on large lots may actually detract from community character and increase transportation and fiscal impacts on host communities. Thoughtful multifamily development can contribute to the traditional New England feel of municipalities and also save them money in public infrastructure needs. If placed in growth areas, they will also provide transportation benefits by allowing resident to walk and bike to services.



ZONING MAPS METRO REGIONAL COALITION COMMUNITIES

SOURCE: COMMUNITY WEB PAGES



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Tools for Building Communities

STUDY PURPOSE

Initially, the study was looking at the basic question:

- How much of the land in the region allows multifamily development?

However, it quickly became clear that answering this question alone would not help advance the understanding of housing regulations in the region. Many zoning districts permit multifamily in theory, but place significant barriers to actual production of multifamily product. For example, some zoning districts allow multifamily but require twice as much land as a single-family house. While this example at least levels the playing field between different types of housing, it makes the production of multifamily development no more feasible than developing single-family homes. Given the relative certainty of the single-family product, it is not surprising that little multifamily development takes place in such zones.

For this reason, the research questions were broadened to include the following:

- What impediments to multifamily development exist in the land use codes of the Metro Regional Coalition municipalities?
- How much of the land in the region is available for multifamily development at various levels of impediment?
- What similarities and differences are there between the regulatory schemes of each municipality?
- How does land use regulation align with regional transit corridors proposed as part of the Transit Tomorrow project?

Answering these questions helps inform policy discussions at the local and regional levels, and can help in development of tools to help meet housing needs in the Metro Regional Coalition area.

METHODOLOGY

The study began by collection the land use regulations and zoning maps of the municipalities in the region. After an initial read of these regulations, the zoning districts were delineated with basic characteristics in terms of housing development.

Next, interviews were conducted with staff from the planning offices in each of the communities. These interviews were designed to help deepen understanding of each zoning ordinance and the general application of the language. They were also a change to understand how policy and planning goals – such as those in municipal Comprehensive Plans – were reflected in zoning and site plan language. Discrepancies between planning goals and regulatory language were also identified in these interviews.

After the interviews were conducted, zoning districts were assigned to initial categories based on how many barriers existed to multifamily housing production. That initial classification was based on five categories:

- Multifamily housing is Generally allowed
- Multifamily housing is Allowed under some conditions
- Multifamily housing is Allowed under limiting conditions
- Multifamily housing is Essentially not allowed
- Multifamily housing is Not allowed

Zones in these categories were then mapped with a color scheme ranging from “green” for more permissive zones to “red” for restrictive zones.

This first iteration of the process provided a baseline for additional discussion with municipal planning staff. These maps were forwarded to planners in the region for their reactions. Several communities responded with proposed changes or clarifications and helped inform a second round of classifications.

For the second round, seven categories of impediments to multifamily housing were created. Each of

these categories was designed to be broad enough to apply across municipal codes, yet specific enough to provide a consistent evaluation framework. These categories are:

1. Large Lot Areas Required. Specifically, this criterion applies when a zoning district has a minimum lot size for multifamily housing greater than 20,000 square feet.

2. Large Lot Areas per Dwelling Unit. Lot area per dwelling unit is a common zoning tool. It is a measure of how much land area is required for each housing unit on a lot. This criterion applies when the lot area per dwelling unit in a zone is greater than 5,000 square feet.

3. Significant Parking Requirements. Parking requirements can limit multifamily development, particularly when applied in conjunction with extensive design requirements for parking areas. This criterion applies when a zone has a parking requirement of greater than 1.5 spaces per dwelling unit

4. Site Plan Review Requirements. Site plan review may apply across zoning districts, but directly affects multifamily housing production. Site plan standards provide additional regulatory barriers that may be designed to encourage single family development. Similarly, making multifamily housing a conditional use applies additional review standards that create risk and make multifamily housing production more challenging. This criterion applies when a land use code requires site plan review or conditional use review required for fewer than five units. In a few cases, such as perfunctory staff level review, this criterion was not applied.

5. Limits on Housing Types: Some zoning districts allow multifamily development but impose limits on the type of multifamily housing permitted. For example, it may only permit housing for those who are 55 or older, or it may only allow housing for workers in a particular institution. This criterion applies when any significant such limitations exist.

6. Minimum Heights: Many zoning districts, particularly those looking to incorporate some elements of Form Based Code, require new construction to have a minimum height. While such requirements are understandable in terms of trying to create a certain built environment, in practice they can act as limits to multifamily development. This criterion applies to any zoning district with any significant minimum height limits. It should be noted that maximum height limits can also restrict multifamily housing development. However, maximum heights were generally a less limiting factor than the seven criteria listed here.

7. Only Permits Two-Family Housing and/or Adaptive Reuse: Some zones allow two-family housing but not three or more units on a parcel. While such zones technically permit multifamily, they limit housing production almost as much as single-family zoning. Similarly, some zones allow adaptive reuse of existing buildings for multifamily housing, but do not allow new construction to include multifamily housing. Such a requirement can expedite adaptive reuse of existing institutional buildings, such as closed schools, but do not provide a comprehensive approach to allowing multifamily housing. Zones that have either requirement are included in this criterion.

After applying these criteria to the zoning districts in each community, another round of maps was created. These maps used a monochromatic shading to indicate how many of these criteria applied. If none of these criteria applied, the zone was categorized as having “few limits.” If it had one criterion apply, the category “some limits” was applied. If it had two criteria apply, the category “more limits” was applied. For zones where three or more criteria applied, but multifamily was permitted, the category “many limits” was applied. Zones that did not allow multifamily at all - or only as part of a contract or conditional use that would require a legislative action - were placed in the “not allowed” category. Zones where little development at all was allowed were labeled “not applicable.”

This second round of maps is shown below. The amount of land in each category is also included in the

charts below. While there are still nuances to individual zoning districts, these maps and summary tables provide a general sense of actual housing policy -as applied in zoning codes and site plan ordinances – across the Metro Regional Coalition municipalities.

FINDINGS

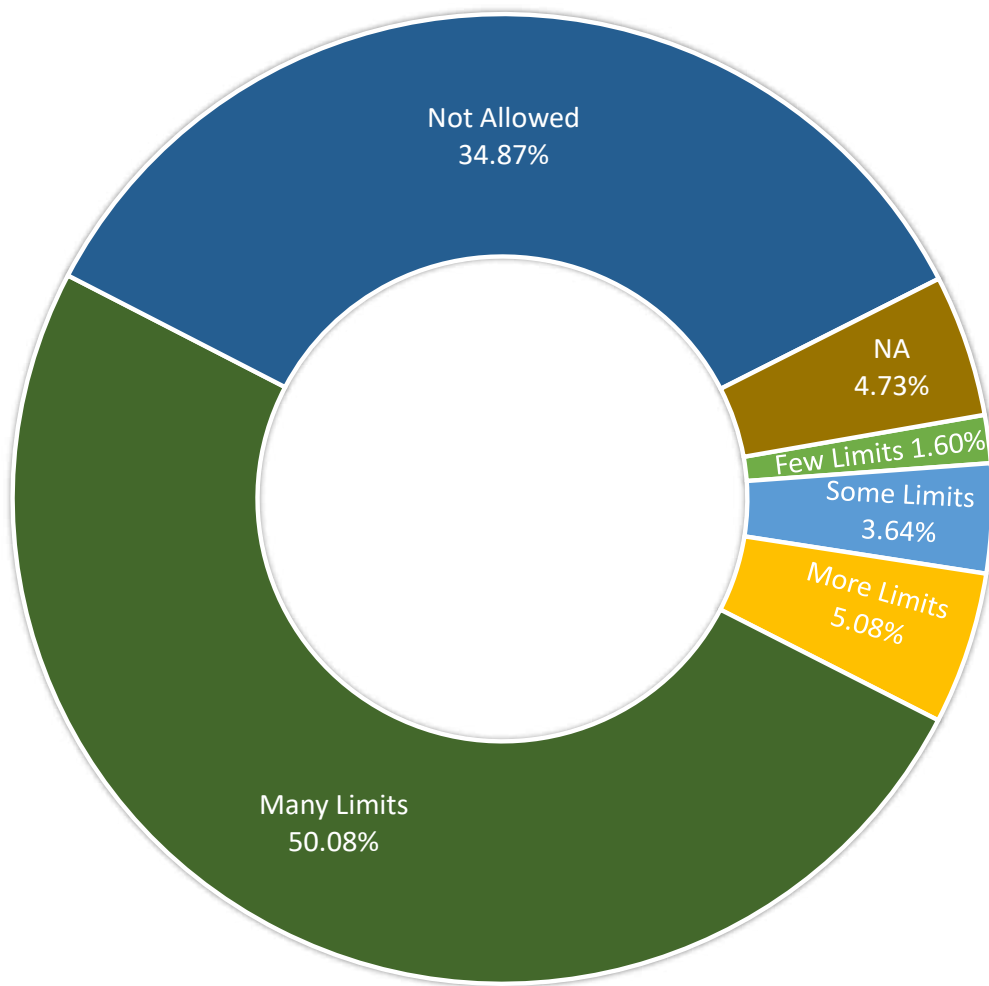
This is not a detailed study of each zoning district in each community, it provides a good overview of the impacts of zoning and site plan requirements on potential multifamily development.

Some key findings and recommendations:

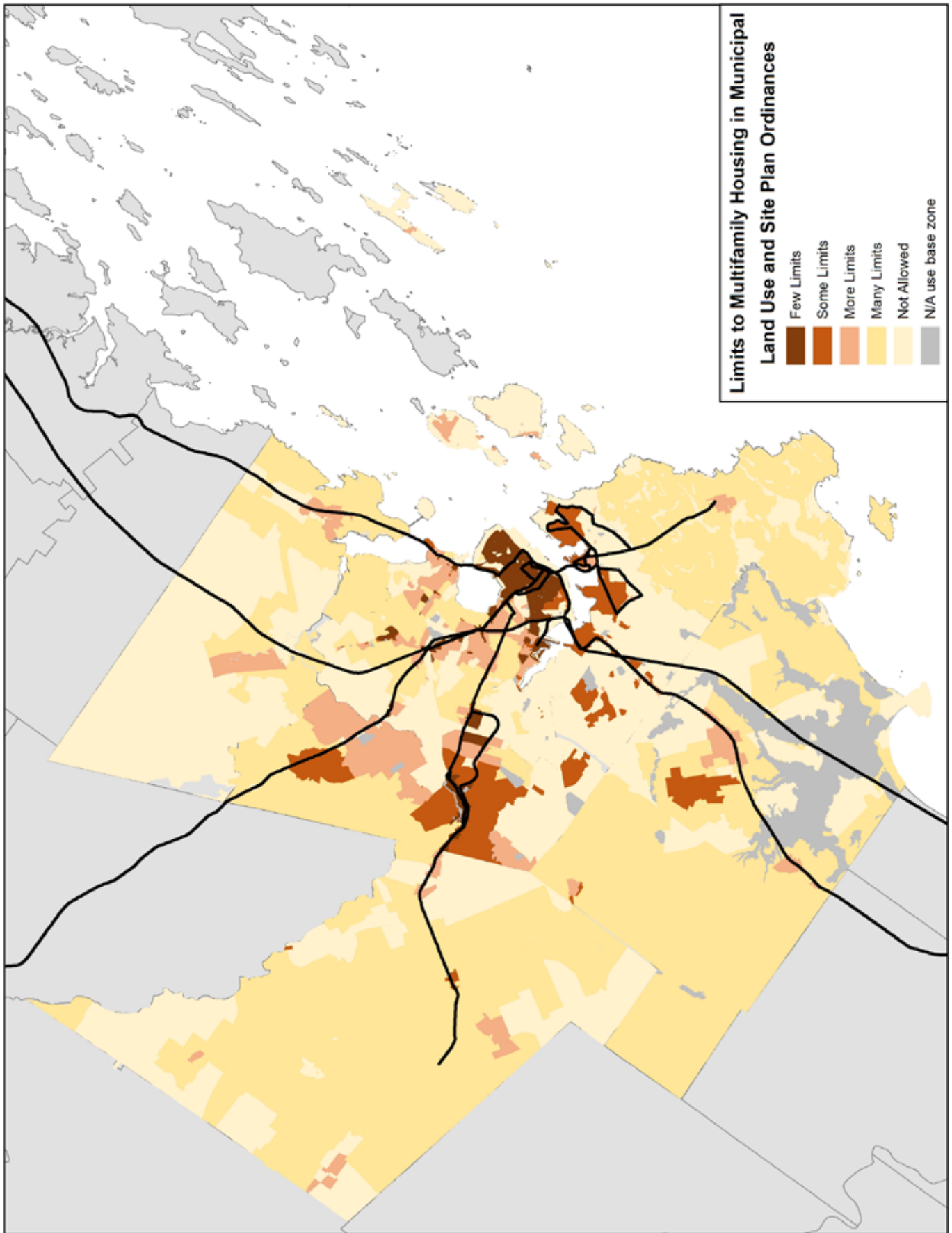
1. *Not enough land is zoned appropriately for multifamily development in the region.* Though about 60 percent of the land in the region allows multifamily development, most of that land imposes limits on such development that makes it very unlikely to occur. Loosening some of the limits on multifamily development will increase housing production and benefit the regional economy.
2. *Regulatory limits to multifamily development vary widely by community.* Some communities allow a fair amount of multifamily development and others do not. Similarly, some communities allow multifamily development in specific locations while others use wider, community-wide zones.
3. *Increased multifamily zoning should follow regional goals for location of new development.* It clearly makes sense to limit multifamily development in sensitive environmental locations - where single-family development should also be limited. However, there is a great deal of land along regional growth corridors that also does not allow multifamily housing in any significant ways. Most notably, major regional transit corridors should allow for multifamily housing, in order to provide residents of the units to utilize alternatives to driving.

This third finding is explored further in the next section of the report.

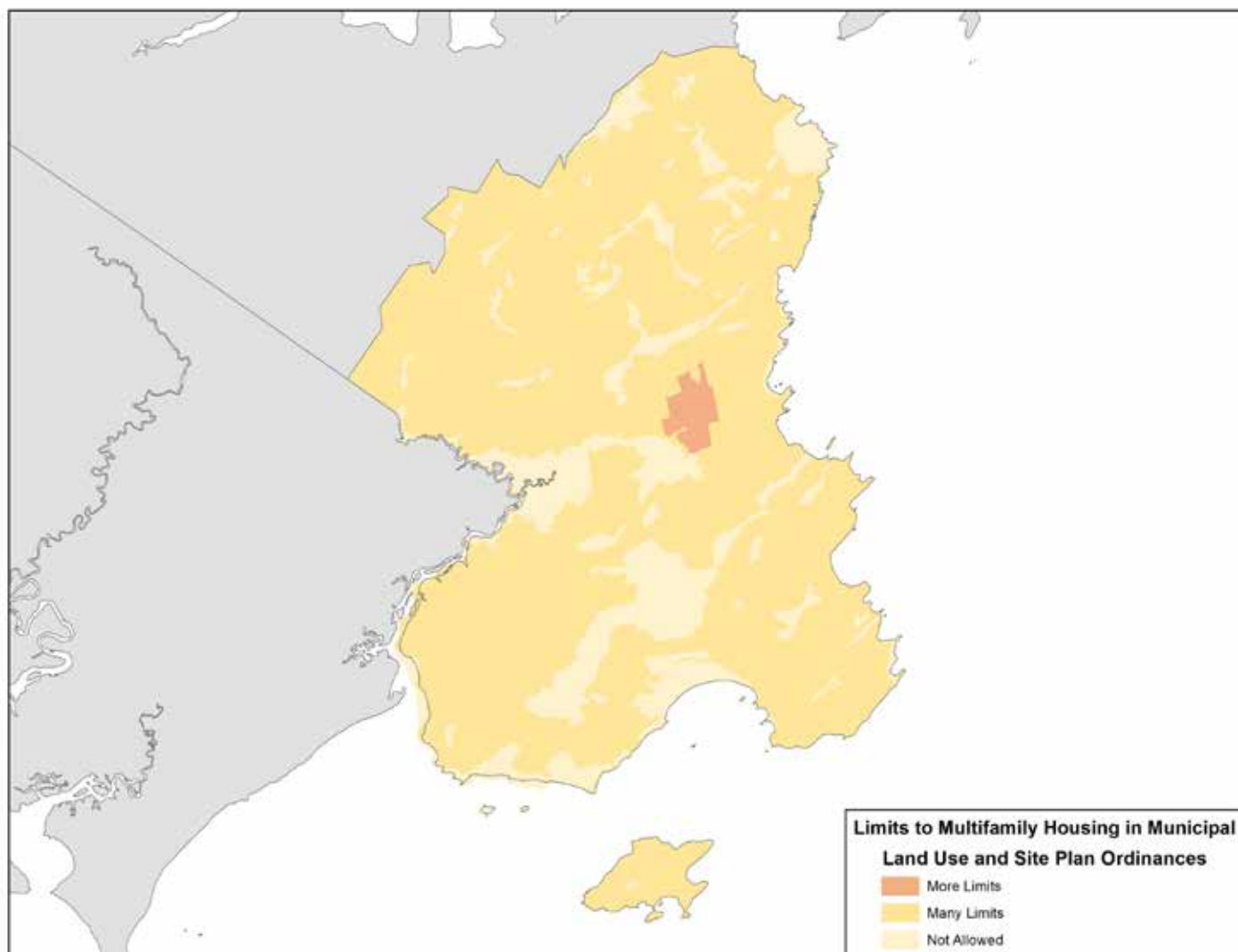
Percentage of Land in MRC Region by Limits to Multifamily Development



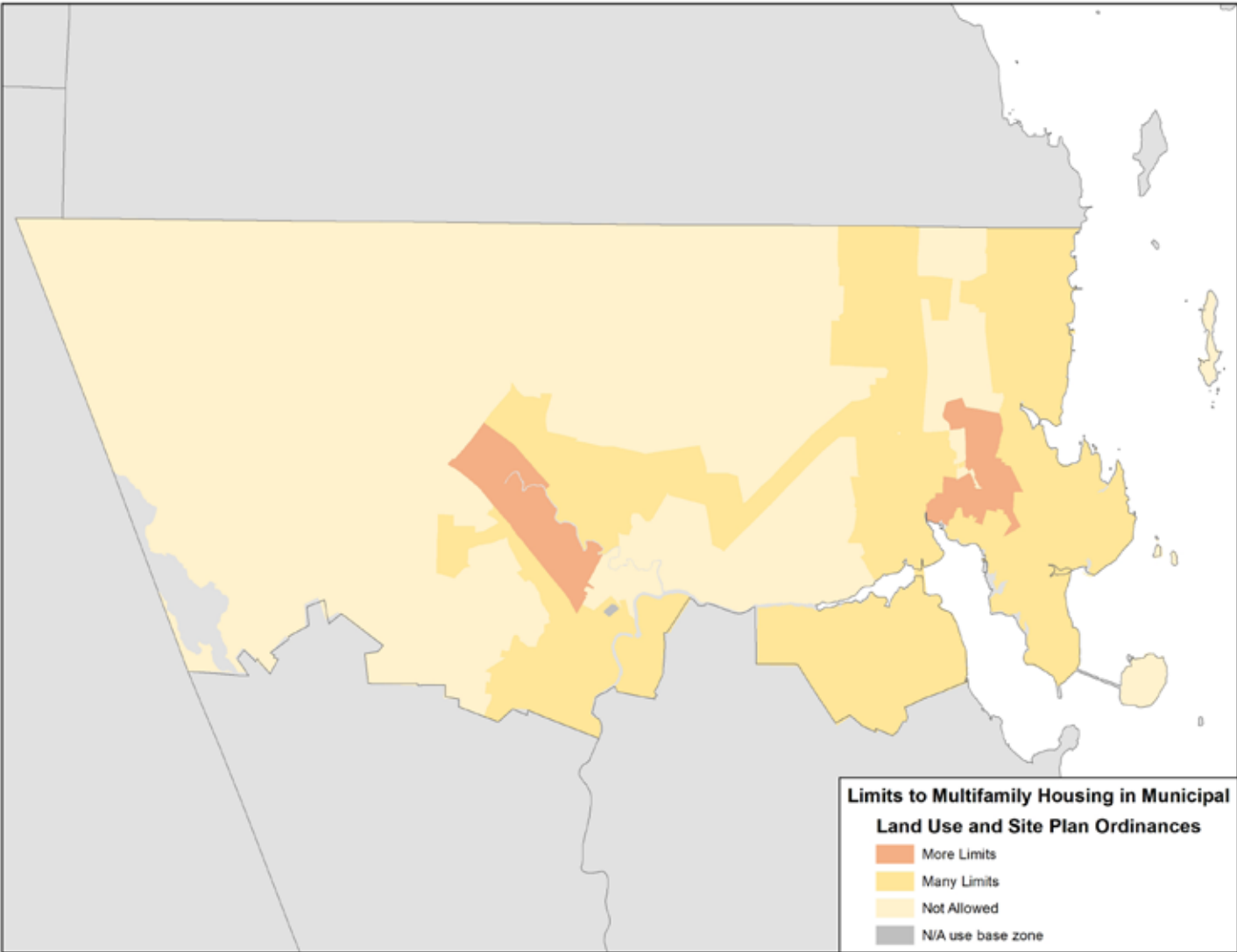
MRC Region	Total Acres	% of Total
Few Limits	2,009.05	1.6%
Some Limits	4,569.29	3.6%
More Limits	6,374.20	5.1%
Many Limits	62,826.85	50.1%
Not Allowed	43,744.14	34.9%
NA	5,929.82	4.7%



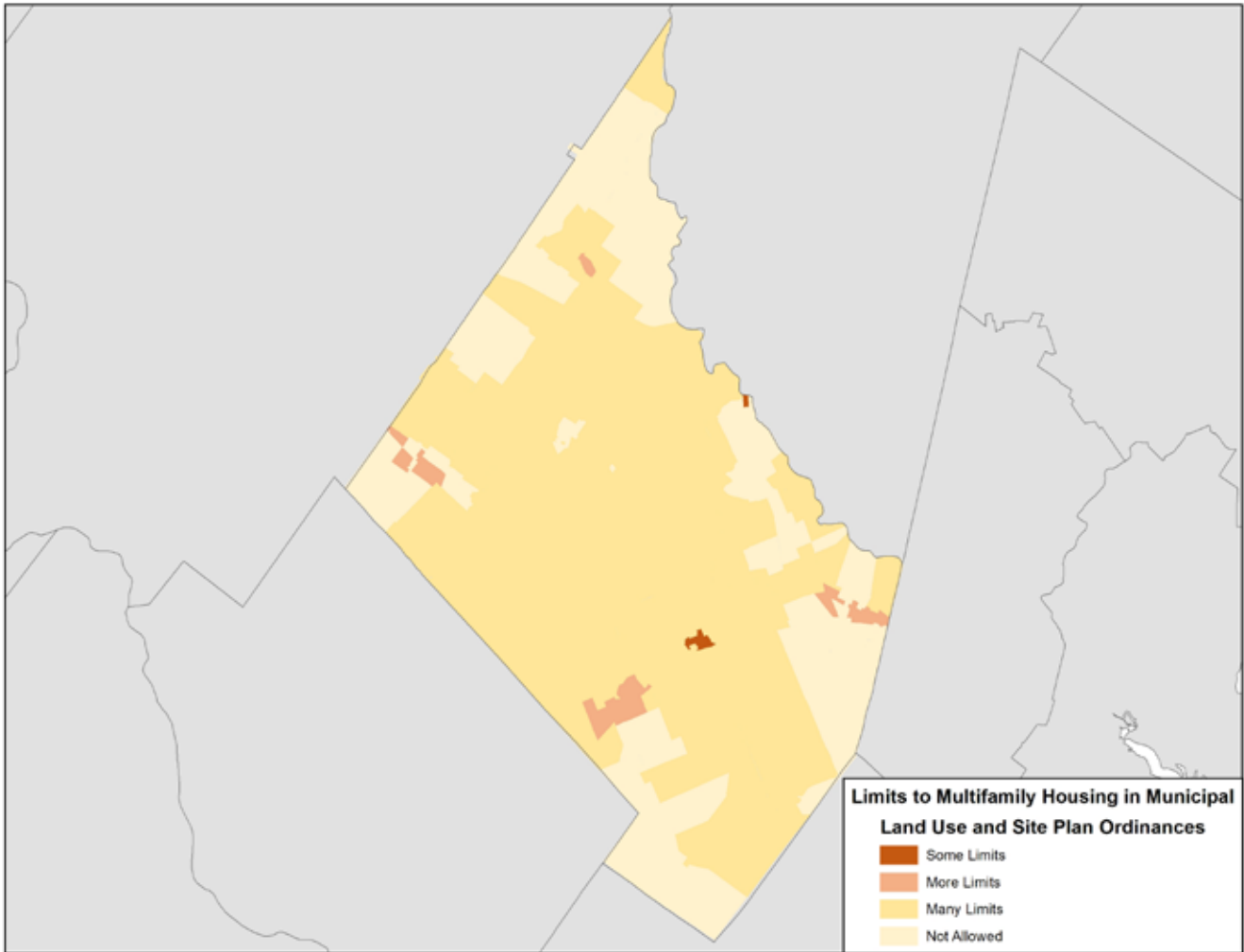
Cape Elizabeth	Acres	% of Total
More Limits	109.3	1.2%
Many Limits	7,676.4	80.9%
Not Allowed	1,703.7	18.0%



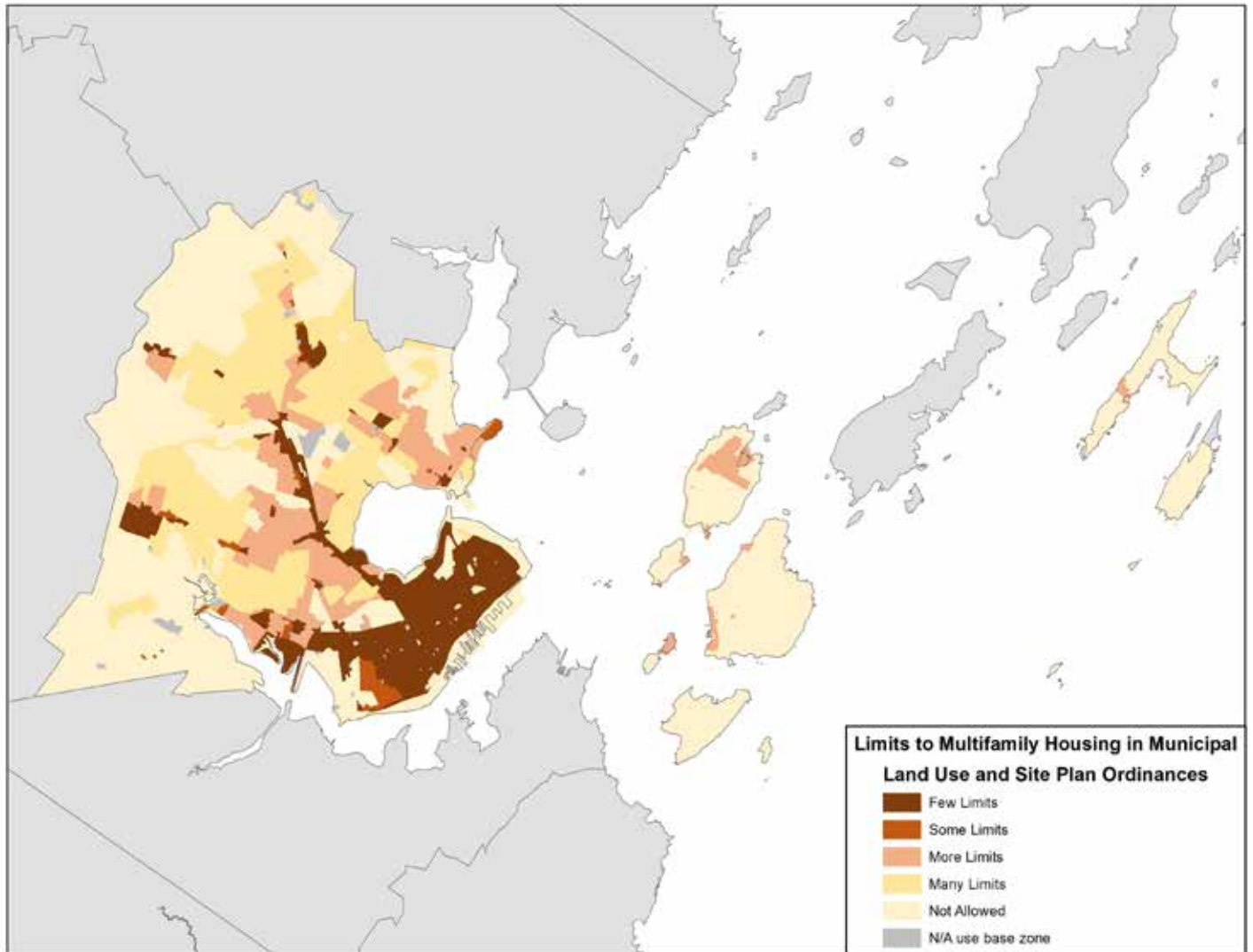
Falmouth	Acres	% of Total
More Limits	693.9	3.7%
Many Limits	5,607.1	29.9%
Not Allowed	12,430.3	66.3%
NA	4.5	0.0%



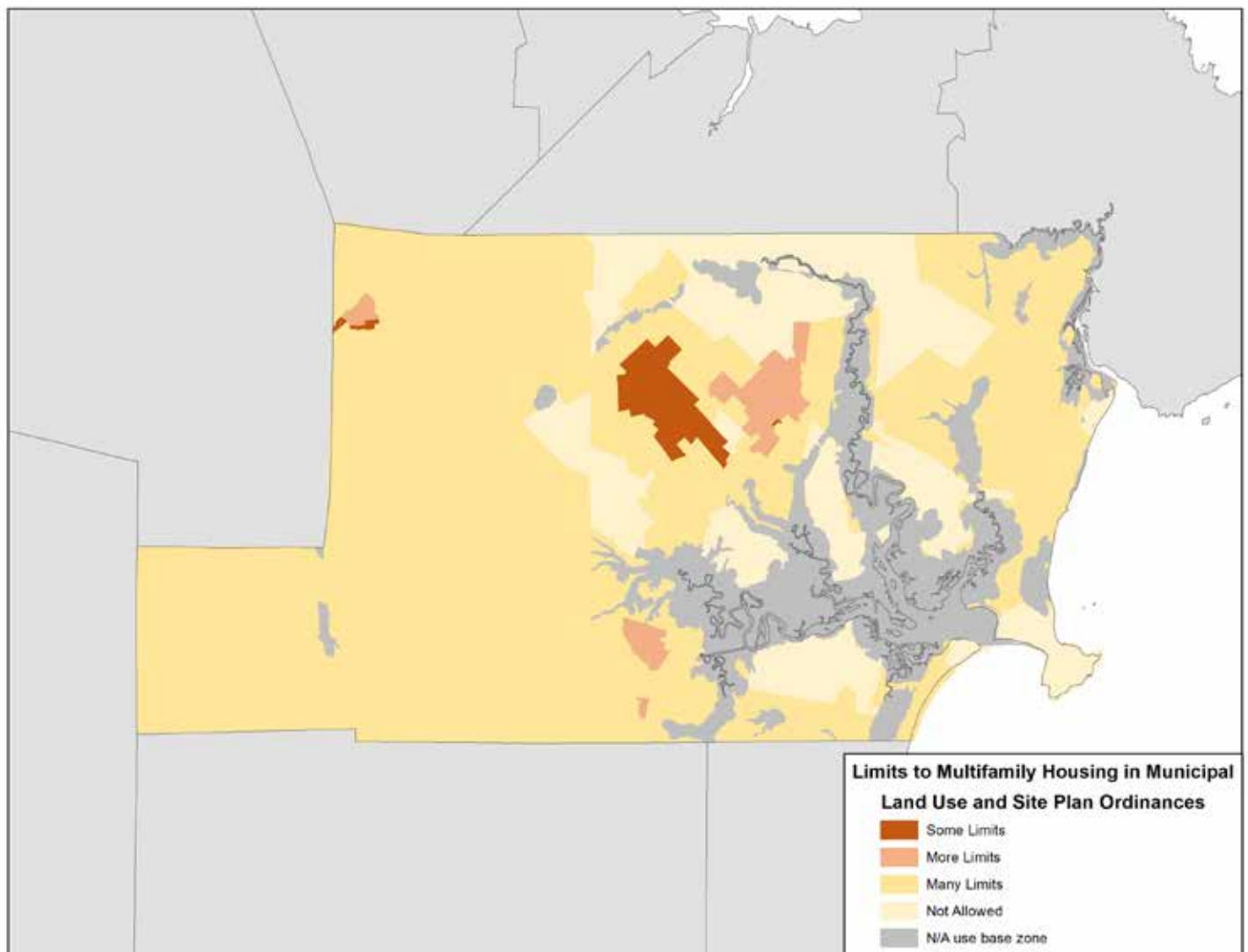
Gorham	Acres	% of Total
Some Limits	54.8	0.2%
More Limits	618.3	1.9%
Many Limits	22,599.7	68.9%
Not Allowed	9,524.5	29.0%



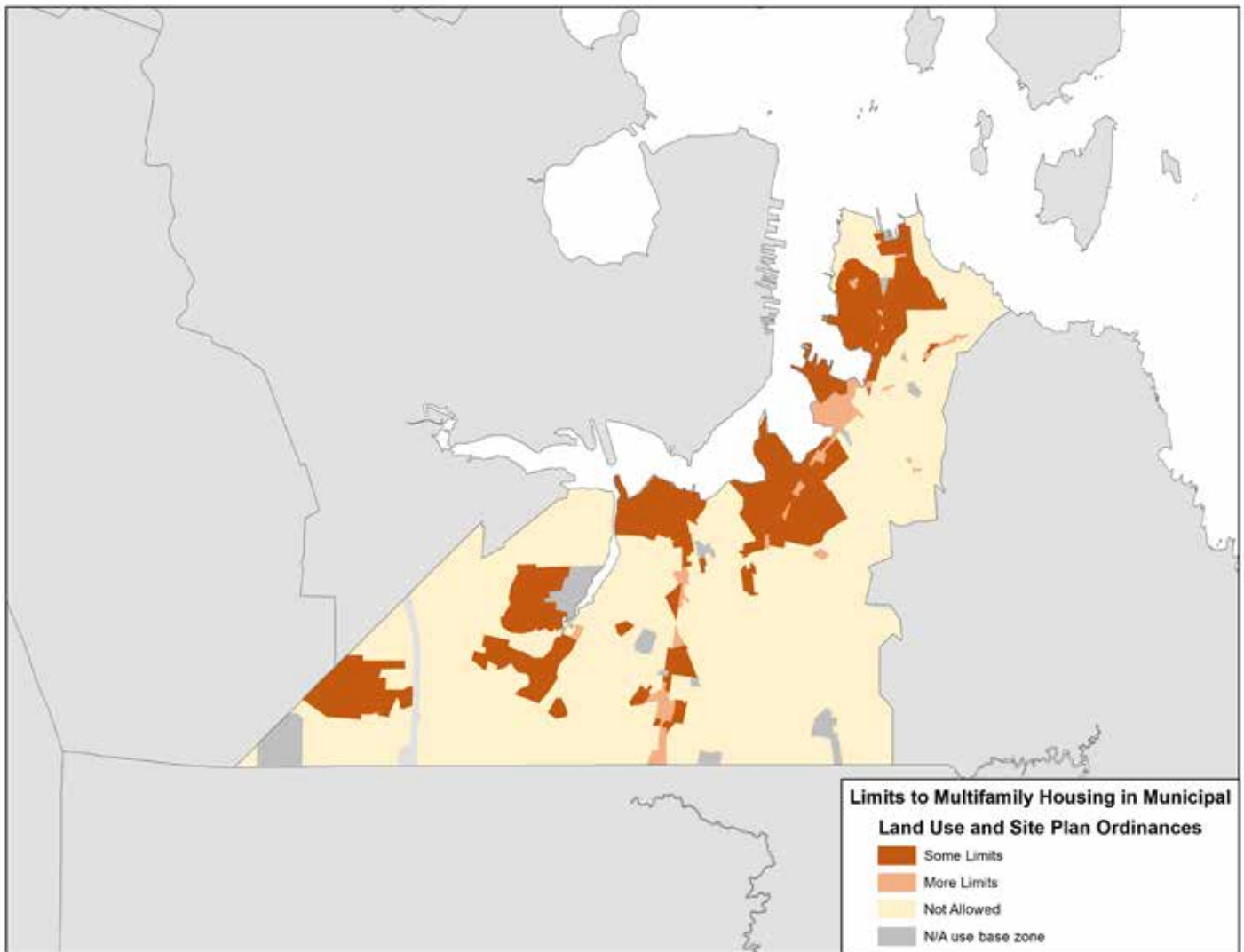
Portland	Acres	% of Total
Few Limits	1,675.4	12.0%
Some Limits	169.3	1.2%
More Limits	1,705.9	12.2%
Many Limits	3,048.7	21.8%
Not Allowed	7,212.2	51.6%
NA	168.8	1.2%



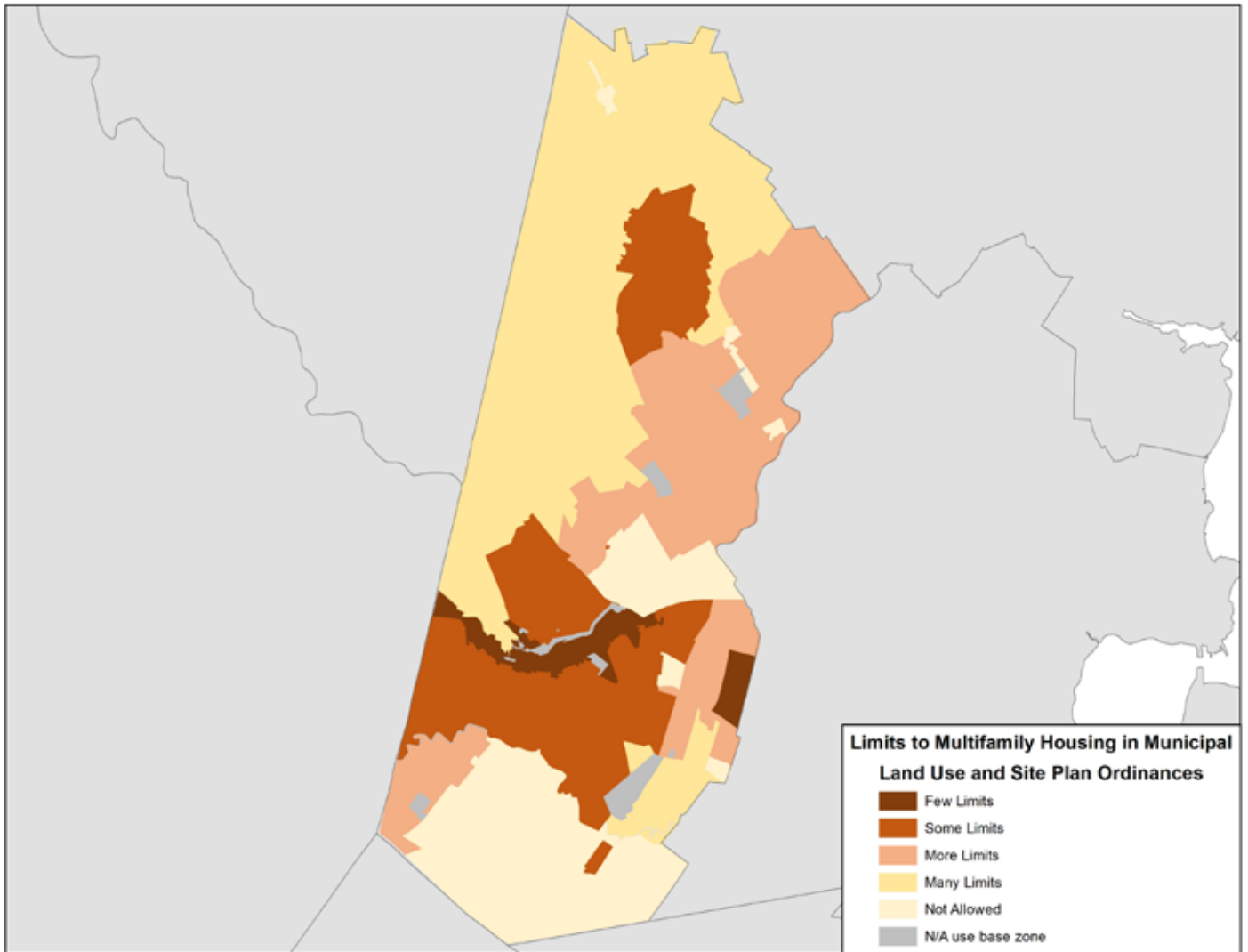
Scarborough	Acres	% of Total
Some Limits	547.4	1.7%
More Limits	600.9	1.9%
Many Limits	19,898.6	63.0%
Not Allowed	5,232.4	16.6%
NA	5,318.5	16.8%



South Portland	Acres	% of Total
Some Limits	1,562.1	20.2%
More Limits	184.3	2.4%
Not Allowed	5,753.0	74.3%
NA	247.5	3.2%



Westbrook	Acres	% of Total
Few Limits	333.7	3.0%
Some Limits	2,235.7	20.1%
More Limits	2,461.6	22.2%
Many Limits	3,996.3	36.0%
Not Allowed	1,888.0	17.0%
NA	190.5	1.7%



MULTIFAMILY ZONING AND TRANSIT

As part of its regional planning work, the Greater Portland Council of Governments has been leading a process - entitled "Transit Tomorrow" - to develop a strategy for improved transit service in the region.

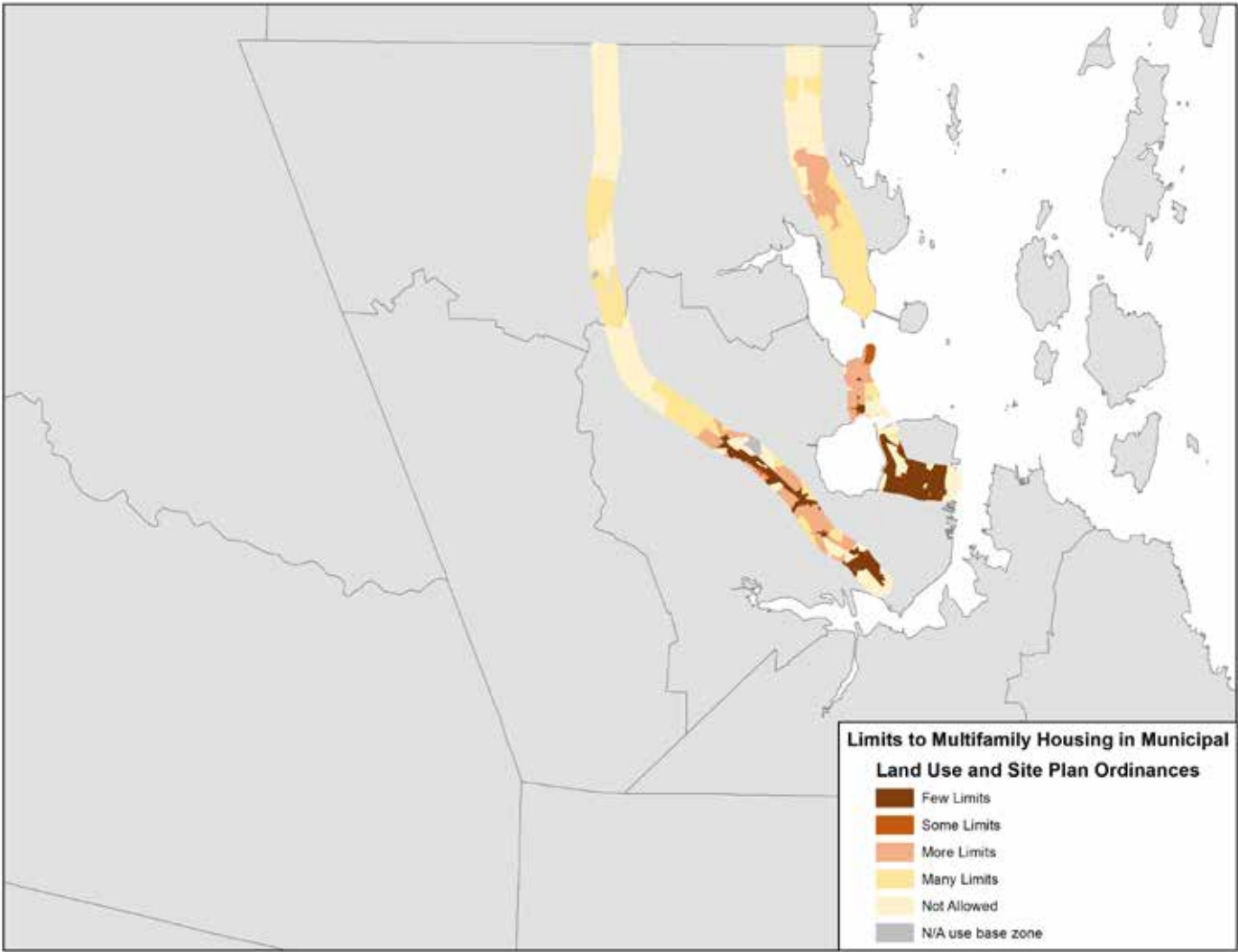
While there are impediments to multifamily housing development everywhere in the region, particular attention should be paid to priority transit corridors. For this reason, the following pages show most of the draft priority corridors from Transit Tomorrow, and the limits to multifamily development within those corridors. For the purposes of this work, the corridors are assumed to be 1/2 mile wide, centered on a major roadway or other linear route. That width means that all that land is within 1/4 mile of the route.

This analysis is summarized below. Following an overall summary table are maps and summary tables for each transit corridor studied.

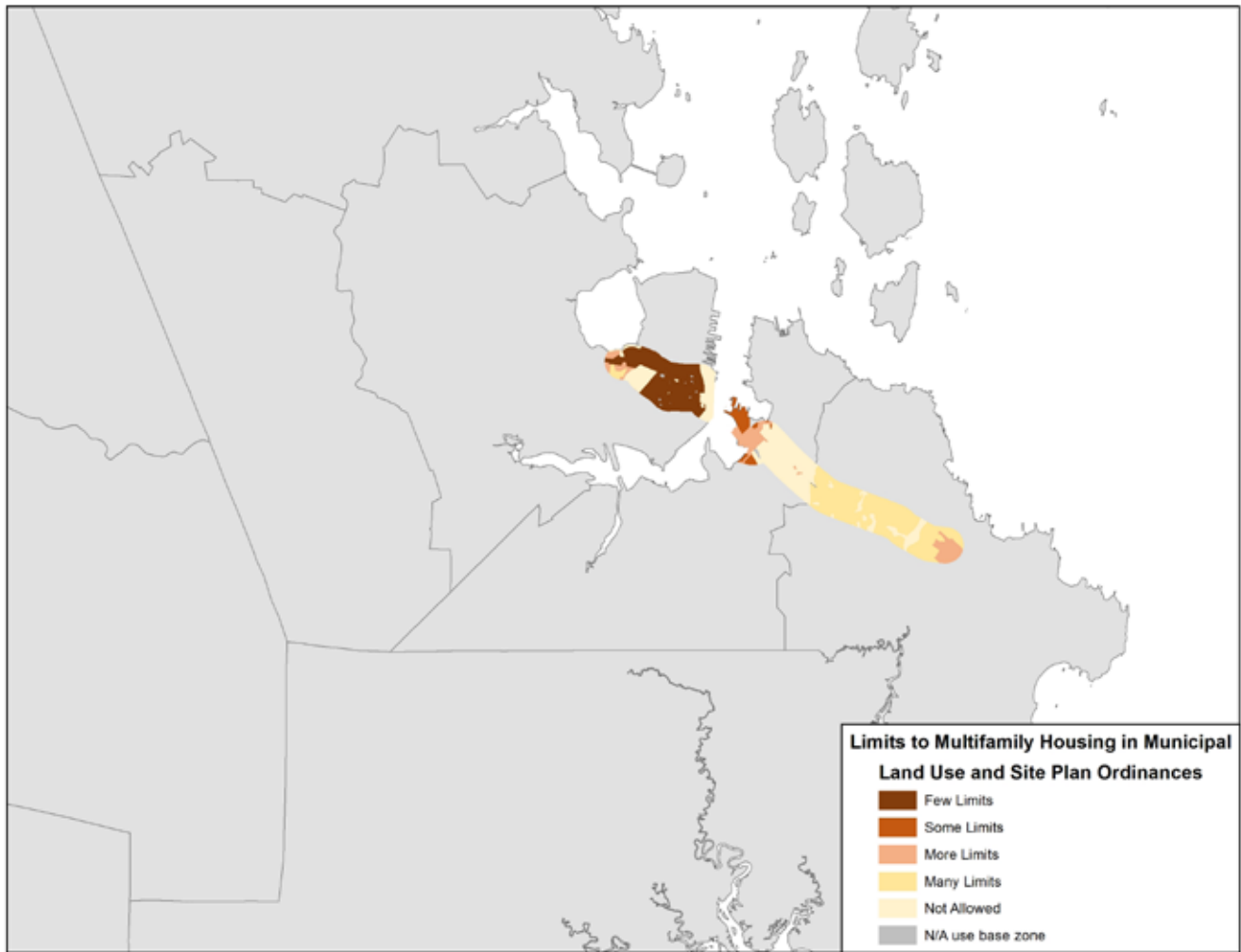
Key findings and recommendations of this work are as follows:

1. *More land is zoned for multifamily development along these corridors.* Broadly, over 20% of the land on these corridors allows multifamily development with "few" or "some" limits, as compared to just over 5% of the land in the entire region. Similarly, just over one third of the land in these corridors allows multifamily development with "more" limits or fewer, as compared with just over one tenth of the land in the region as a whole.
2. *The zoning for multifamily varies widely by priority transit corridor.* Similar to the communities in the region, the transit priority corridors have a range of permissiveness for multifamily development. The Portland-West corridor, the Portland-South Portland corridor, and the Portland-Scarborough corridors seem to allow for more multifamily development than others.
3. *Transit and land use regulations should be better aligned.* While zoning and site plan rules are ultimately local decisions, good planning and fiscal policy would seek to align those policies with transit investments. These corridors should be priorities for changes in land use regulations on the local level.

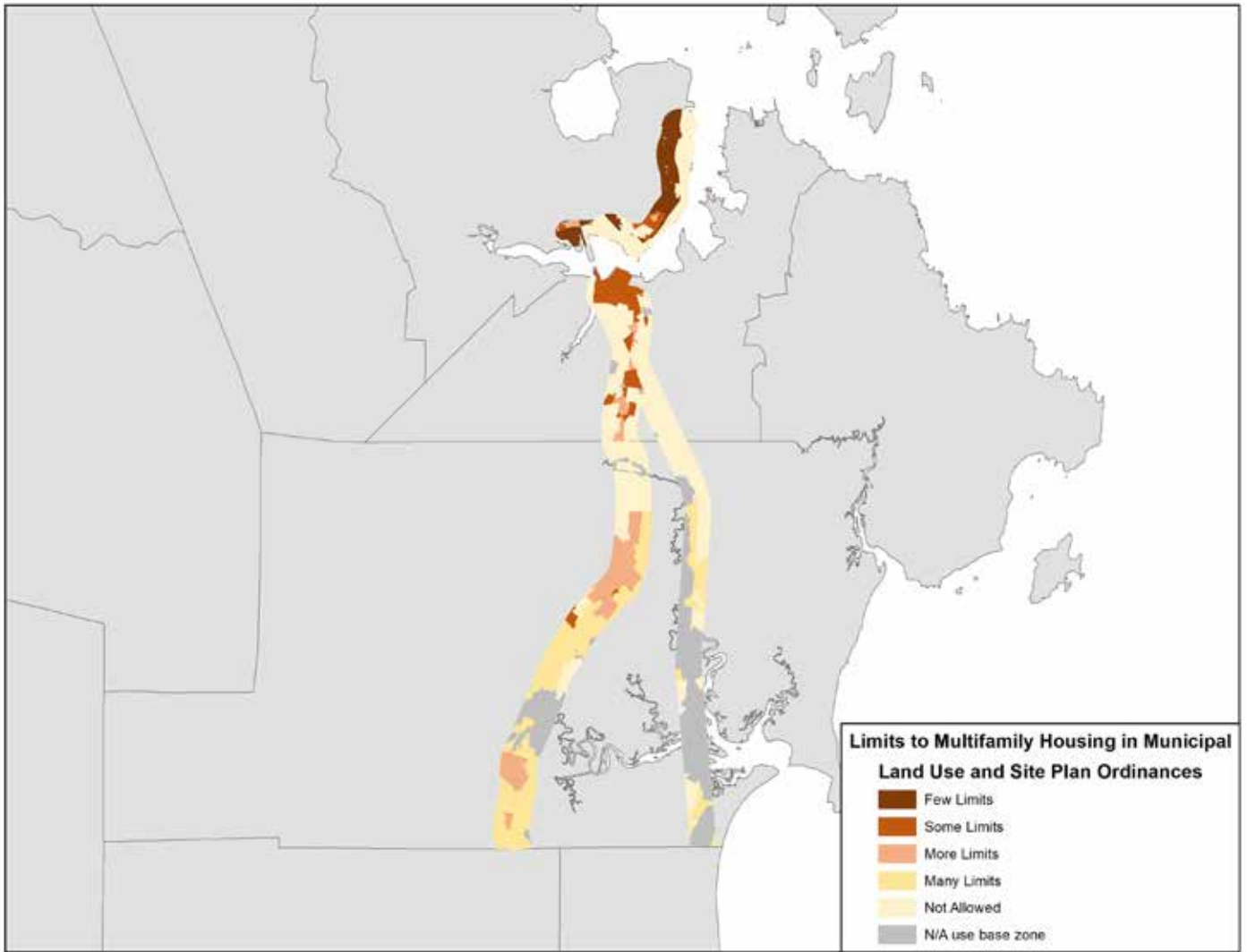
Land Along Priority Transit Corridors		
Category	Acres	Percent
Few Limits	2032.40	10.90%
Some Limits	2012.24	10.79%
More Limits	2514.04	13.48%
Many Limits	4947.70	26.54%
Not Allowed	5879.28	31.53%
NA	1260.05	6.76%
TOTAL	18645.71	100.00%



NNEPRA North Corridor	
Category	Acres
Few Limits	199.67
Some Limits	5.71
More Limits	286.02
Many Limits	579.77
Not Allowed	1013.90
NA	55.75

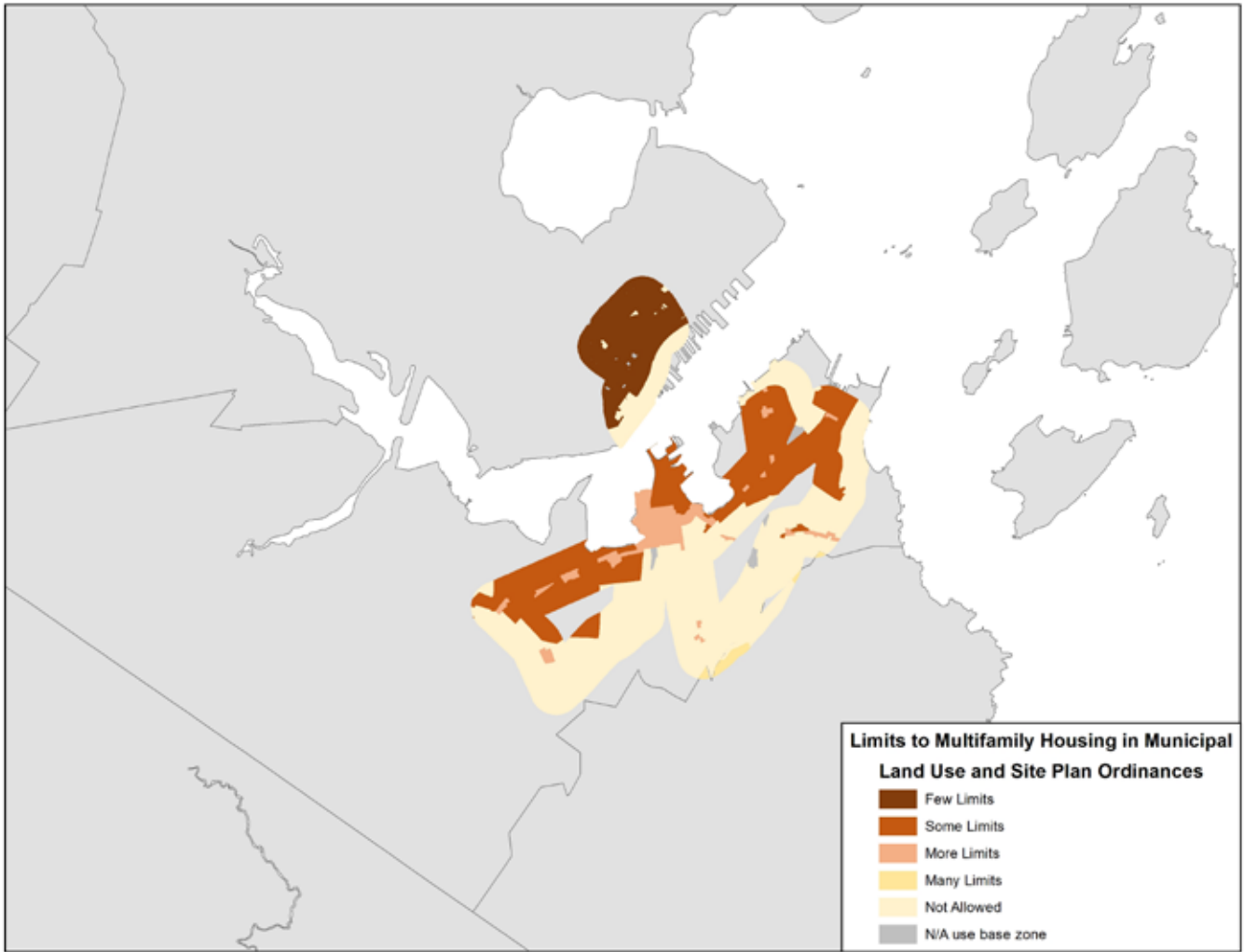


Portland-Cape Elizabeth Corridor	
Category	Acres
Few Limits	425.48
Some Limits	63.62
More Limits	182.78
Many Limits	574.11
Not Allowed	536.16
NA	6.92

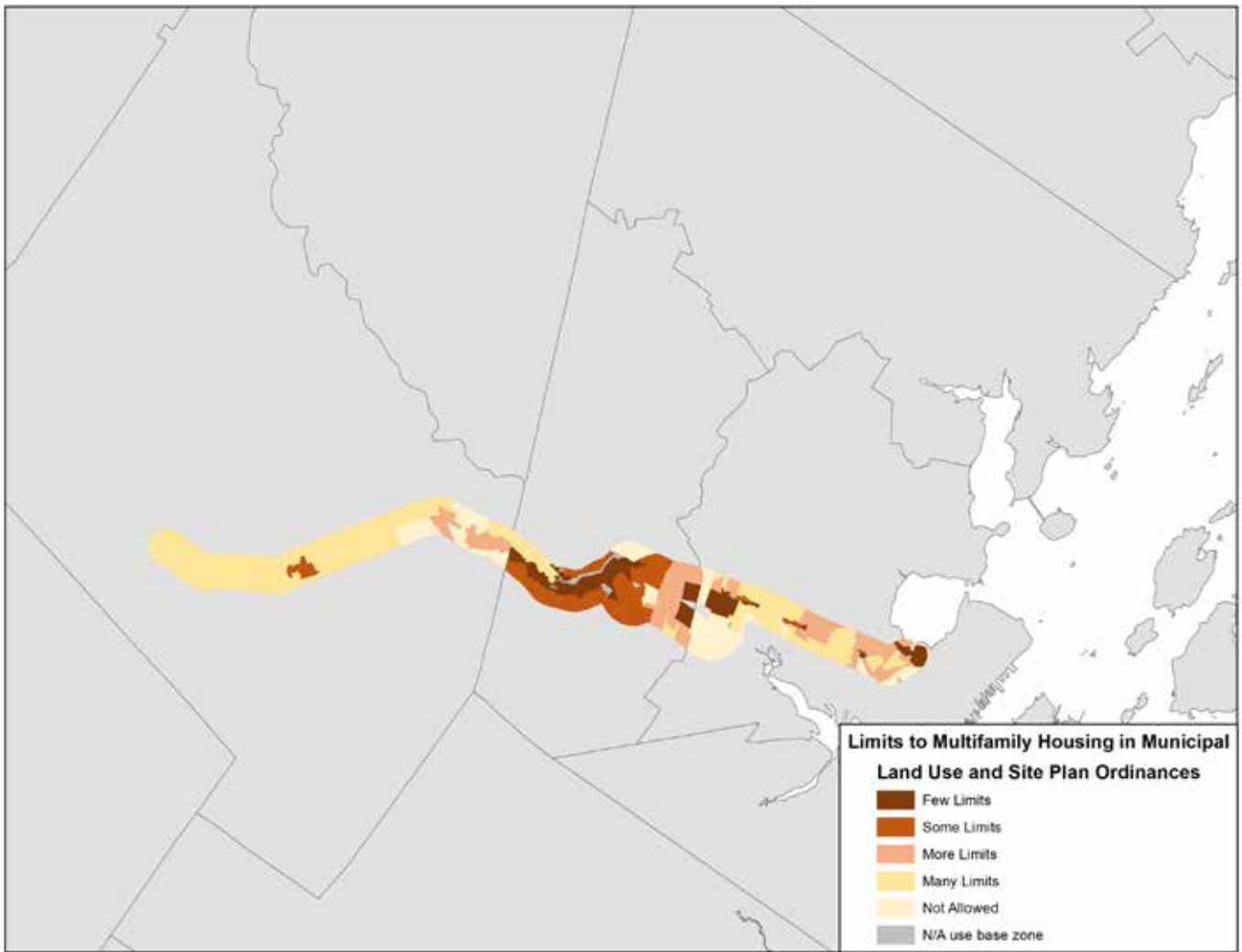


Portland-Scarborough Corridor	
Category	Acres
Few Limits	311.65
Some Limits	311.55
More Limits	458.92
Many Limits	847.14
Not Allowed	1203.65
NA	321.75

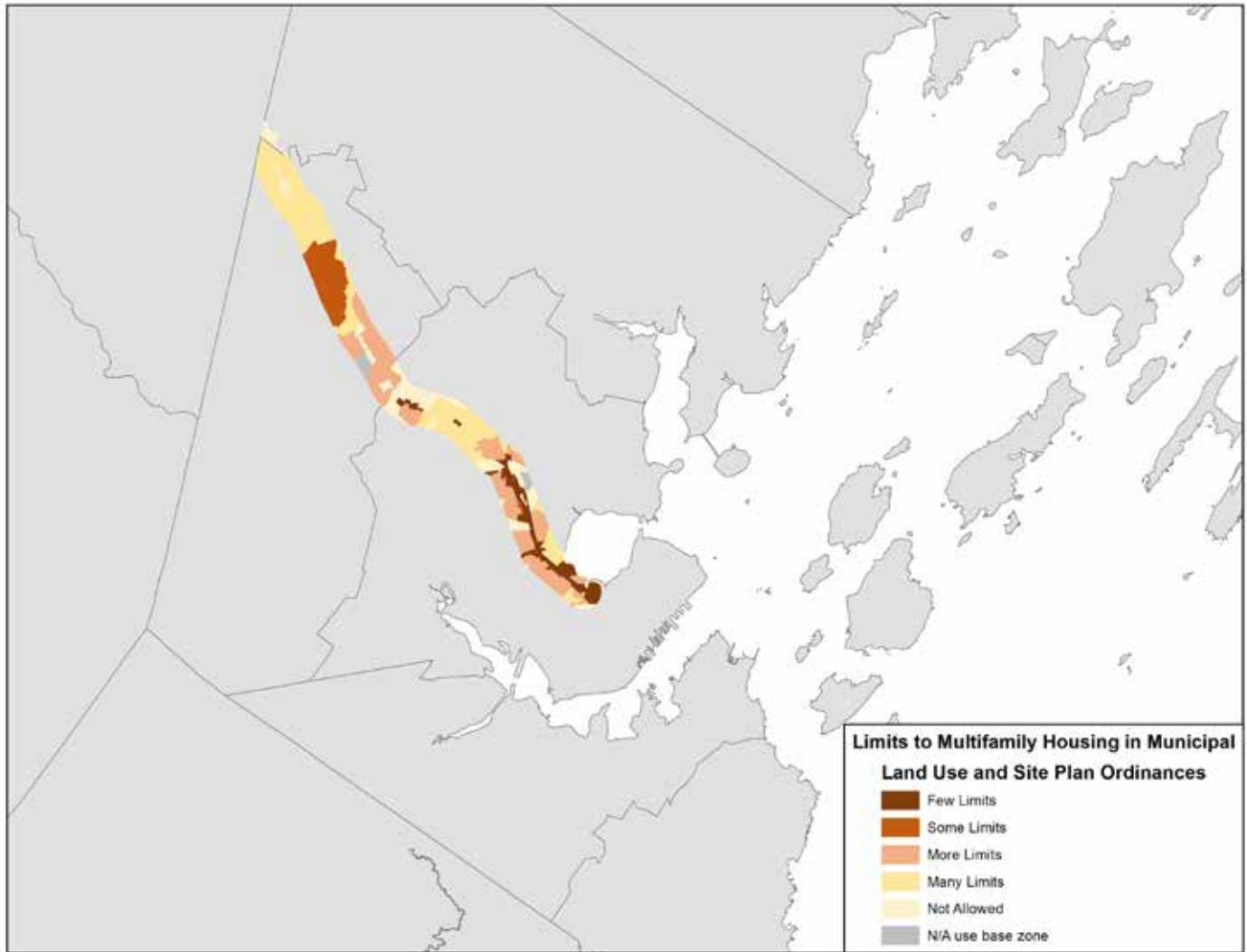
NNEPRA South Corridor	
Category	Acres
Few Limits	72.14
Some Limits	141.23
More Limits	26.17
Many Limits	195.50
Not Allowed	948.23
NA	771.09



Portland-South Portland Corridor	
Category	Acres
Few Limits	305.17
Some Limits	581.27
More Limits	114.47
Many Limits	16.98
Not Allowed	1107.64
NA	14.99



Portland-West Corridor	
Category	Acres
Few Limits	477.20
Some Limits	622.63
More Limits	748.15
Many Limits	1839.40
Not Allowed	695.44
NA	40.81



Portland-Windham Corridor	
Category	Acres
Few Limits	241.09
Some Limits	286.23
More Limits	697.53
Many Limits	894.80
Not Allowed	374.26
NA	48.74



CONCLUSION

This is an overview report, and is not designed to provide final recommendations for changes to local land use policy. However, it provides data that suggests that there is a disconnect between housing production goals (particularly for below-market affordable housing,) land use regulations, and regional transit ambitions.

Some key findings:

- *Not enough land is zoned appropriately for multifamily development in the region.* Though about 60 percent of the land in the region allows multifamily development, most of that land imposes limits on such development that makes it very unlikely to occur. Loosening some of the limits on multifamily development will increase housing production and benefit the regional economy.
- *Regulatory limits to multifamily development vary widely by community.* Some communities allow a fair amount of multifamily development and others do not. Similarly, some communities allow multifamily development in specific locations while others use wider, community-wide zones.
- *More land is zoned for multifamily development along priority transit corridors.* Broadly, over 20% of the land on these corridors allows multifamily development with “few” or “some” limits, as compared to just over 5% of the land in the entire region. Similarly, just over one third of the land in

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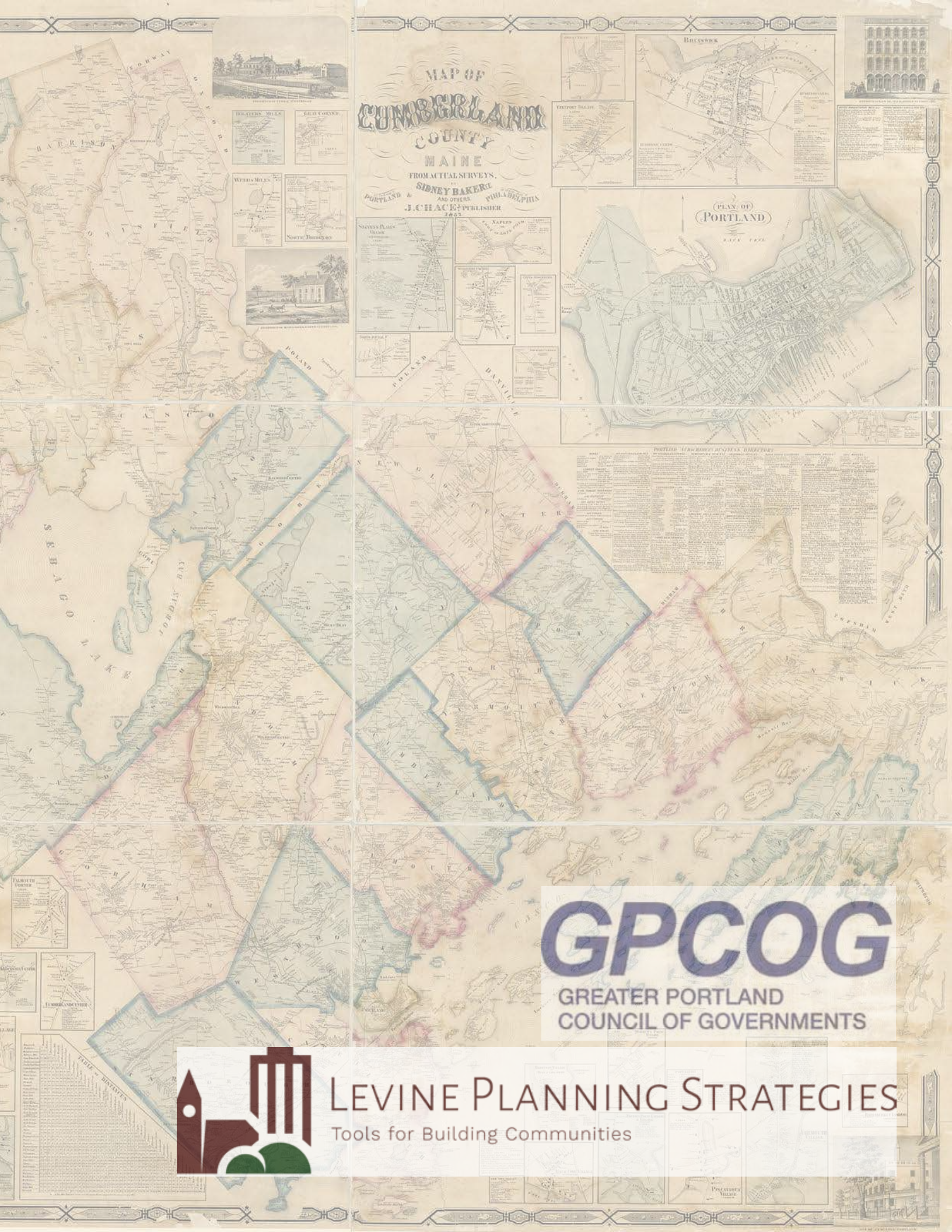
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Based on these findings, this report offers the following recommendations:

- *Increased multifamily zoning should follow regional goals for location of new development.* It clearly makes sense to limit multifamily development in sensitive environmental locations - where single-family development should also be limited. However, there is a great deal of land along regional growth corridors that also does not allow multifamily housing in any significant ways. Most notably, major regional transit corridors should allow for multifamily housing, in order to provide residents of the units to utilize alternatives to driving.
- *Transit and land use regulations should be better aligned.* While zoning and site plan rules are ultimately local decisions, good planning and fiscal policy would seek to align those policies with transit investments. These corridors should be priorities for changes in land use regulations on the local level.

Hopefully the data in this report will be helpful for the Metro Regional Coalition and other policymakers in the Portland region as you work to balance these important issues.





MAP OF
CUMBERLAND
COUNTY
MAINE
FROM ACTUAL SURVEYS.
BY
SIDNEY BAKERS
AND OTHERS.
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