

# MBTA Communities Zoning Requirements

Planning Board Public Hearing  
October 26, 2023



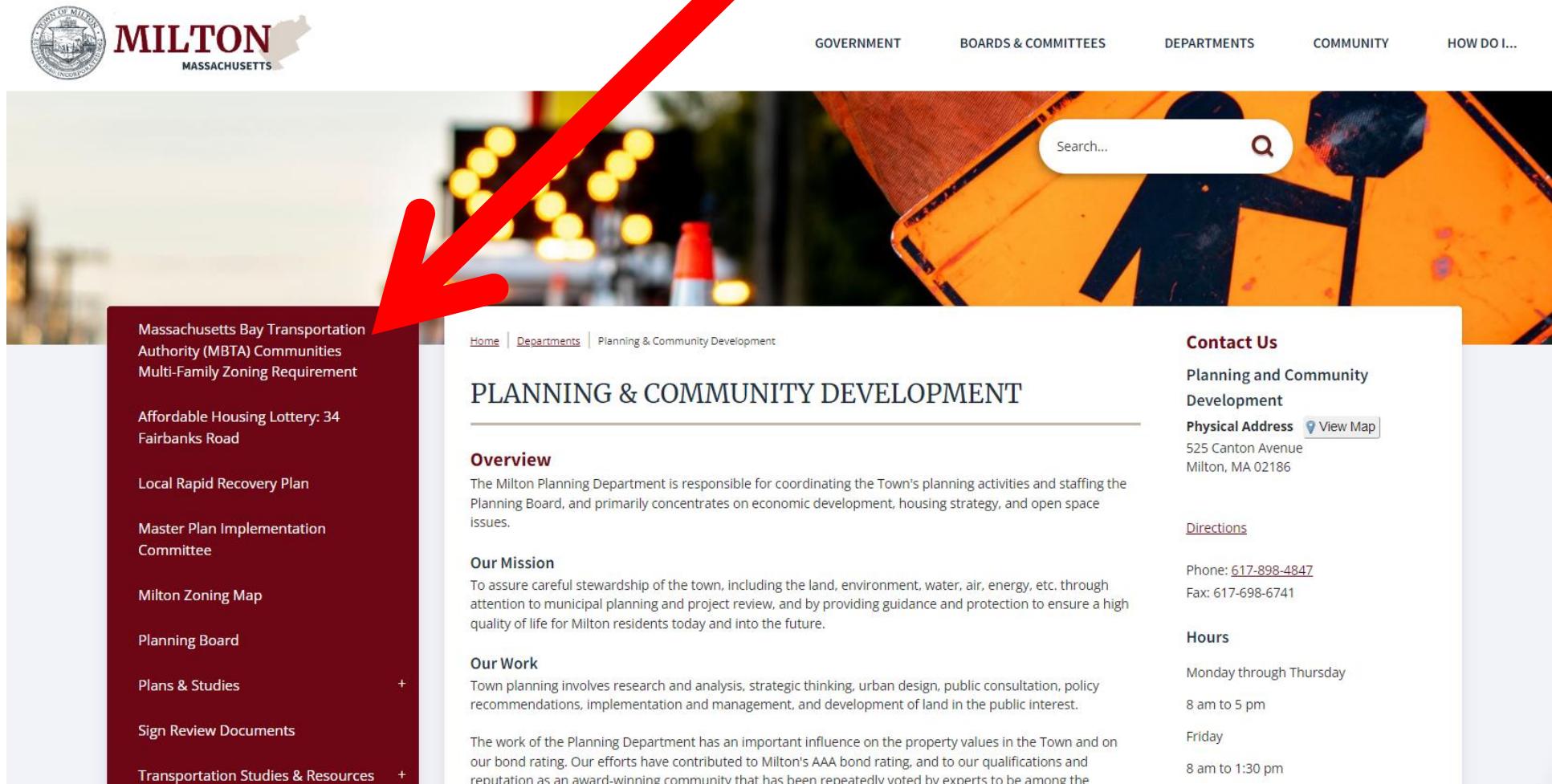
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Milton Department of Planning and Community Development



# Resources

[townofmilton.org/MiltonMBTA](http://townofmilton.org/MiltonMBTA)



**MILTON MASSACHUSETTS**

GOVERNMENT BOARDS & COMMITTEES DEPARTMENTS COMMUNITY HOW DO I...

Massachusetts Bay Transportation Authority (MBTA) Communities Multi-Family Zoning Requirement

Affordable Housing Lottery: 34 Fairbanks Road

Local Rapid Recovery Plan

Master Plan Implementation Committee

Milton Zoning Map

Planning Board

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## PLANNING & COMMUNITY DEVELOPMENT

### Overview

The Milton Planning Department is responsible for coordinating the Town's planning activities and staffing the Planning Board, and primarily concentrates on economic development, housing strategy, and open space issues.

### Our Mission

To assure careful stewardship of the town, including the land, environment, water, air, energy, etc. through attention to municipal planning and project review, and by providing guidance and protection to ensure a high quality of life for Milton residents today and into the future.

### Our Work

Town planning involves research and analysis, strategic thinking, urban design, public consultation, policy recommendations, implementation and management, and development of land in the public interest.

The work of the Planning Department has an important influence on the property values in the Town and on our bond rating. Our efforts have contributed to Milton's AAA bond rating, and to our qualifications and reputation as an award-winning community that has been repeatedly voted by experts to be among the

### Contact Us

Planning and Community Development

**Physical Address** [View Map](#)  
525 Canton Avenue  
Milton, MA 02186

[Directions](#)

Phone: [617-898-4847](tel:617-898-4847)  
Fax: 617-698-6741

**Hours**

Monday through Thursday  
8 am to 5 pm

Friday  
8 am to 1:30 pm



# What is the MBTA Communities law?

The requirement is codified as Section 3A of MGL c. 40A:

*Section 3A. (a)(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.*



# What is the MBTA Communities law?

Continued...

*(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.*

*(c) The department, in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section.*



# What is the MBTA Communities law?

The MBTA Communities Law is a mandate for Towns to create zoning, not a mandate for Towns to create new housing. The theory behind the law is to loosen restrictive zoning laws and enable property owners to meet intense demand for housing in Greater Boston.

- If Town Meeting passes zoning and the Executive Office of Housing and Livable Communities deems it compliant with the law, then Milton is compliant regardless of how many housing units are eventually produced.



# What are HLC's guidelines?

Under authority granted by the statute, the Executive Office of Housing and Livable Communities (HLC) issued final compliance guidelines on August 10, 2022.

HLC's guidelines categorize MBTA communities by their level of transit service. Milton, along with 12 other inner core communities, was classified as a rapid transit community.

Among other requirements in the guidelines, rapid transit communities have a deadline of December 31, 2023 to adopt compliant zoning.



# What are HLC's guidelines?

The Section 3A statute and HLC's guidelines lay out certain thresholds our zoning district must meet in order to comply with the law. Our district must

- Have an overall density of 15 units per acre
- Be at least 50 acres in area
- Be capable of accommodating new units equivalent to 25% of the Town's existing year-round housing units
  - For Milton, this unit capacity number is 2,461 units
- Have at least 50% of its area and unit capacity located within a half-mile of transit



# Options for Compliance

## Location

- The location and size of districts within a  $\frac{1}{2}$  mile of transit is determined by how much Developable Area exists in that area. Milton's Developable Area is reduced by the fact that the Mattapan Trolley hugs the Neponset River and the border with Boston; a significant fraction of the  $\frac{1}{2}$  mile radius is either on state property or not in Milton.
  - The HLC guidelines allow Milton to locate as much as 50 percent of our compliant zoning districts outside of the  $\frac{1}{2}$  mile transit radius

## Subdistricts

- The Town can create multiple subdistricts--with different requirements, in different areas--with the following restrictions
  - At least half of the district needs to be contiguous
  - Subdistricts need to be a minimum of five acres



# Options for Compliance

- Towns with existing compliant districts could potentially count that zoned capacity toward their requirements.
- Does Milton have any existing compliant districts?
  - No.
  - The overwhelming majority of land in Milton is zoned for a single housing unit per parcel.
  - Where townhouse and multifamily development is allowed, it is by special permit, not as of right.
  - Much of our multifamily development is age restricted.



# Options for Compliance

## Dimensional Requirements

- Dimensional requirements like height, setbacks, and density do not need to be uniform across subdistricts, as long as the average of all the subdistricts meet the law's minimum requirements for density, reasonable size, and as-of-right permitting.
  - Example: One subdistrict comprising half the total district can have a density of five units per acre, and another district comprising the second half of the total district can have a density of twenty-five units per acre.

The flexibility in HLC's guidelines can help the Town craft districts that minimize change to the physical character of residential neighborhoods.



# Effect of Noncompliance

- If at any point HLC determines that an MBTA community is not in compliance with Section 3A, that MBTA community will not be eligible for funds from the following grant programs:
  - Housing Choice Initiative
  - Local Capital Projects Fund
  - MassWorks

HLC has identified 13 other discretionary grant programs for which it will take compliance into account when making awards.



# Effect of Noncompliance

It is still unknown what other consequences for noncompliance there may be, but both Governor Healey and Attorney General Campbell have indicated that housing is a priority for their offices.

In August, the Town of Holden was the first community to be subject to a lawsuit, by the group Lawyers for Civil Rights, for refusing to comply with the law



Matt Stout   
@MattPStout

@maura\_healey reacts to @andrewnbrinker story on Middleborough resisting state's new multifamily housing law. "Opting out is not an option," Healey said. "We've got to do this across the state. This administration . . . is really going to lean in here."



Tim Logan  
@bytimlogan

"Shall means shall." After Central Mass. town of Holden snubs ambitious new MBTA housing law, advocates file a lawsuit to force the issue...



bostonglobe.com

First lawsuit over new Mass. housing law targets town of Holden - The Bosto...  
A Central Massachusetts housing group filed a lawsuit that could tee up a court battle over the state's new multifamily housing law.





THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

(617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

**Advisory Concerning Enforcement of the MBTA Communities Zoning Law**

All MBTA Communities must comply with the Law. Communities that do not currently have a compliant multi-family zoning district must take steps outlined in the DHCD guidelines to demonstrate interim compliance. Communities that fail to comply with the Law may be subject to civil enforcement action.<sup>8</sup> Non-compliant MBTA Communities are also subject to the administrative consequence of being rendered ineligible to receive certain forms of state funding.<sup>9</sup> Importantly, MBTA Communities cannot avoid their obligations under the Law by foregoing this funding. The Law requires that MBTA Communities “shall have” a compliant zoning district and does not provide any mechanism by which a town or city may opt out of this requirement.<sup>10</sup>

MBTA Communities that fail to comply with the Law’s requirements also risk liability under federal and state fair housing laws. The Massachusetts Antidiscrimination Law<sup>11</sup> and federal Fair Housing Act<sup>12</sup> prohibit towns and cities from using their zoning power for a discriminatory purpose or with discriminatory effect.<sup>13</sup> An MBTA Community may violate these laws if, for example, its zoning restrictions have the effect of unfairly limiting housing opportunities for families with children, individuals who receive housing subsidies, people of color, people with disabilities, or other protected groups.



# Town Counsel Memo

See AG Advisory, p. 2 (emphasis added). We agree with the Attorney General's analysis in this regard. We also note, as does the AG, that under home rule, a municipality wields authority to enact local zoning only provided that such zoning is not inconsistent with constitutional or statutory requirements. Mass. Const. Amend. Art. 89 (amending Mass. Const. Amend. Art. 2). See AG Advisory, p. 1.

In our further opinion, in the event of a relevant legal challenge a court likely would accord substantial deference to the EOHLG in interpreting the EOHLG Guidelines broadly to satisfy the legislative purposes that the AG Advisory summarizes. For instance, the Supreme

In view of the above legal authority, we are compelled to underscore the Attorney General's cautions that emphasize that non-compliant MBTA Communities could be subject to civil enforcement actions, and potentially liability under state and federal anti-discrimination laws, if the required zoning districts are not created. See AG Advisory, p. 2. In our opinion, these potential penalties, in addition to the risk of loss of certain state funding, are a significant counterweight to arguments that the Guidelines are beyond EOHLG's authority to promulgate and enforce.



# What Does Compliance Look Like

The zoning district we create must satisfy several variables, including:

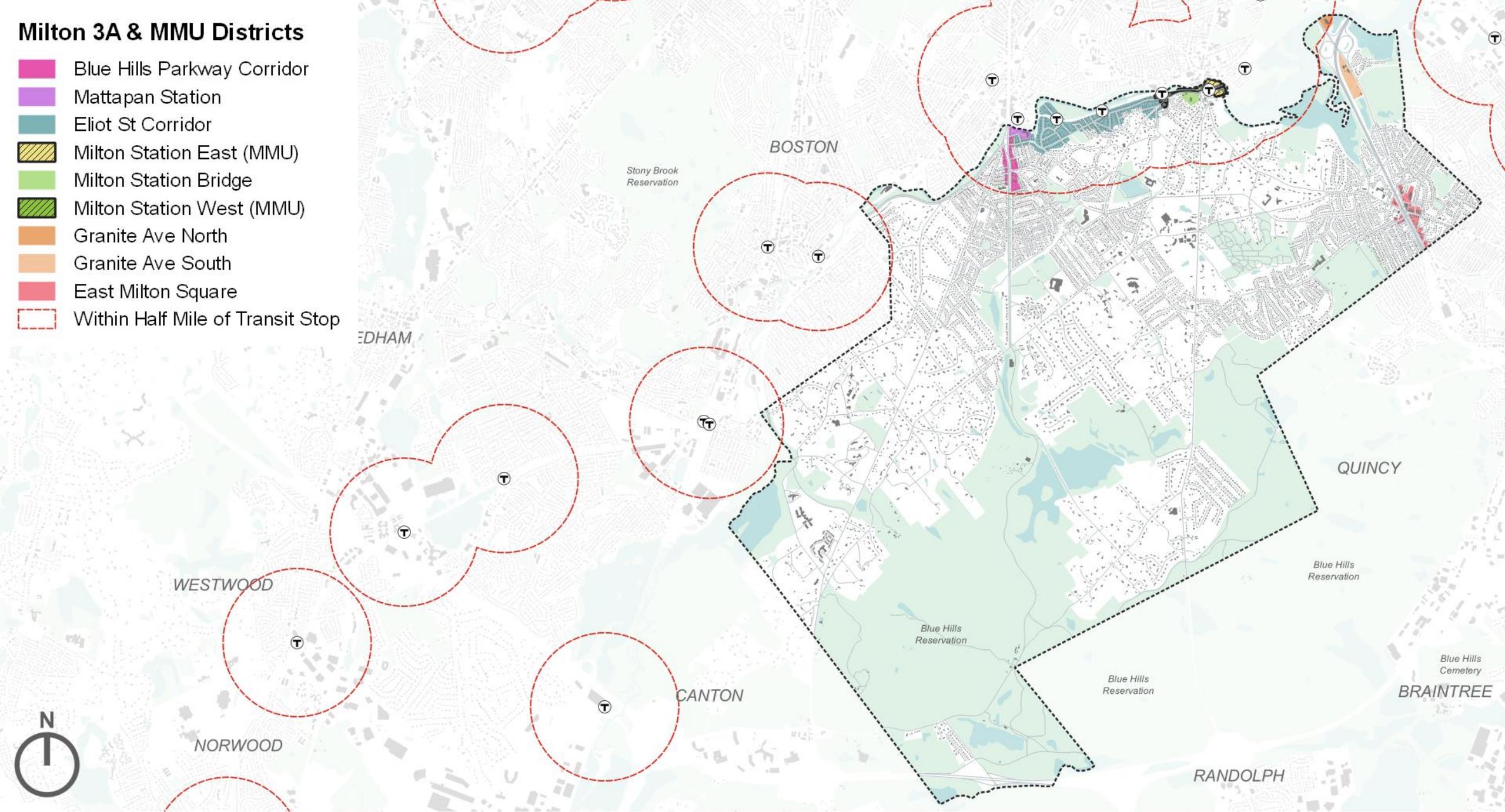
- At least 50 acres
- Zoned capacity of at least 2,461 units
- Overall density of 15 units per acre

With the help of our technical assistance providers, we have tested several options for subdistricts with the state's Compliance Model, a software tool designed to evaluate proposed zoning districts for compliance with all the requirements of the law and the HLC guidelines.



## Milton 3A & MMU Districts

- Blue Hills Parkway Corridor
- Mattapan Station
- Eliot St Corridor
- Milton Station East (MMU)
- Milton Station Bridge
- Milton Station West (MMU)
- Granite Ave North
- Granite Ave South
- East Milton Square
- Within Half Mile of Transit Stop



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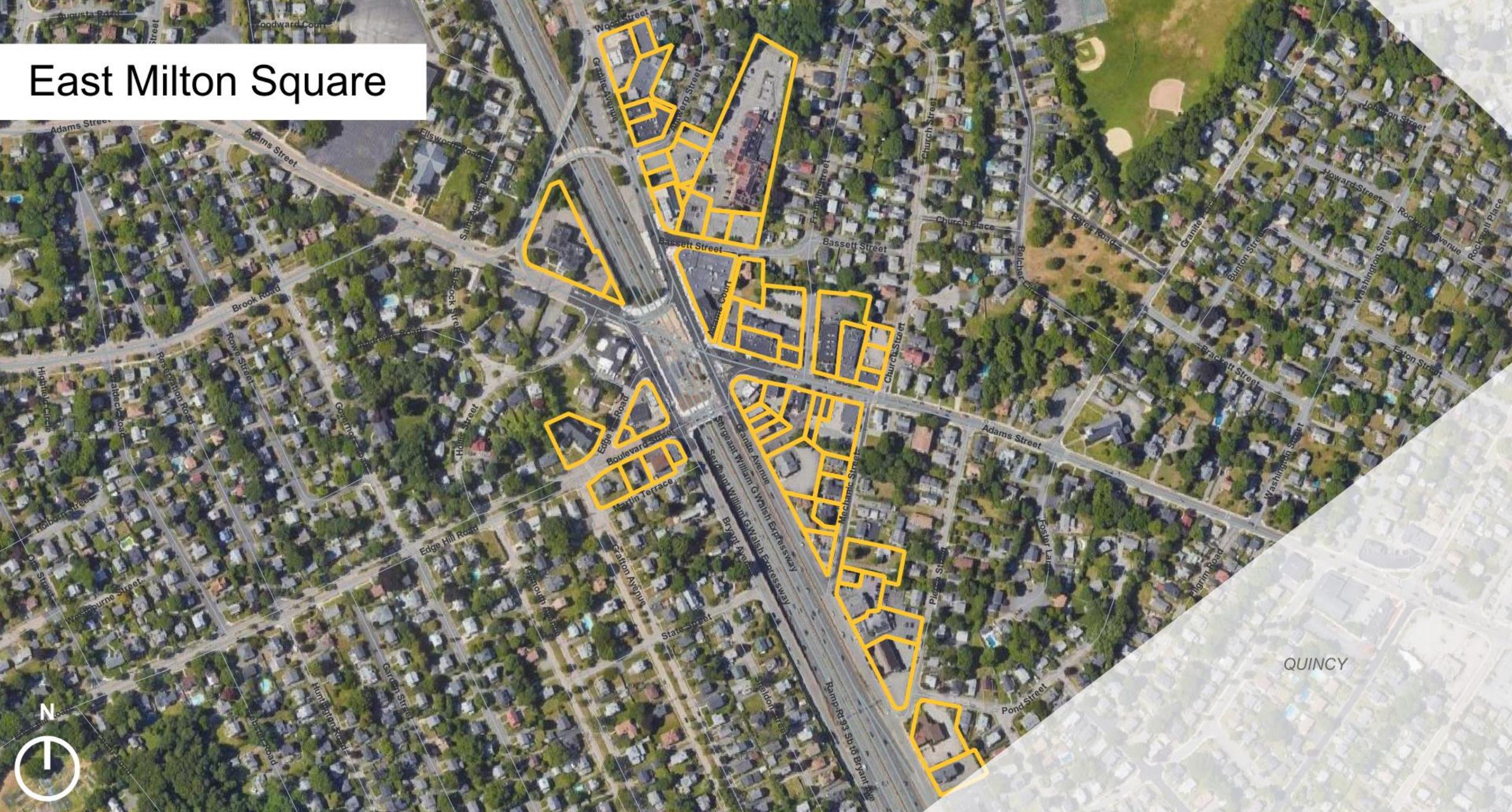
# Zoning Subdistricts

We are proposing six subdistricts (some with further sub-subdistricts) to comprise our overall zoning district.

Each subdistrict is tailored to match, as much as possible, the existing built environment via restrictions on height, density, setbacks, and open space requirements.



# East Milton Square



# Granite Ave North

BOSTON



# Granite Ave South

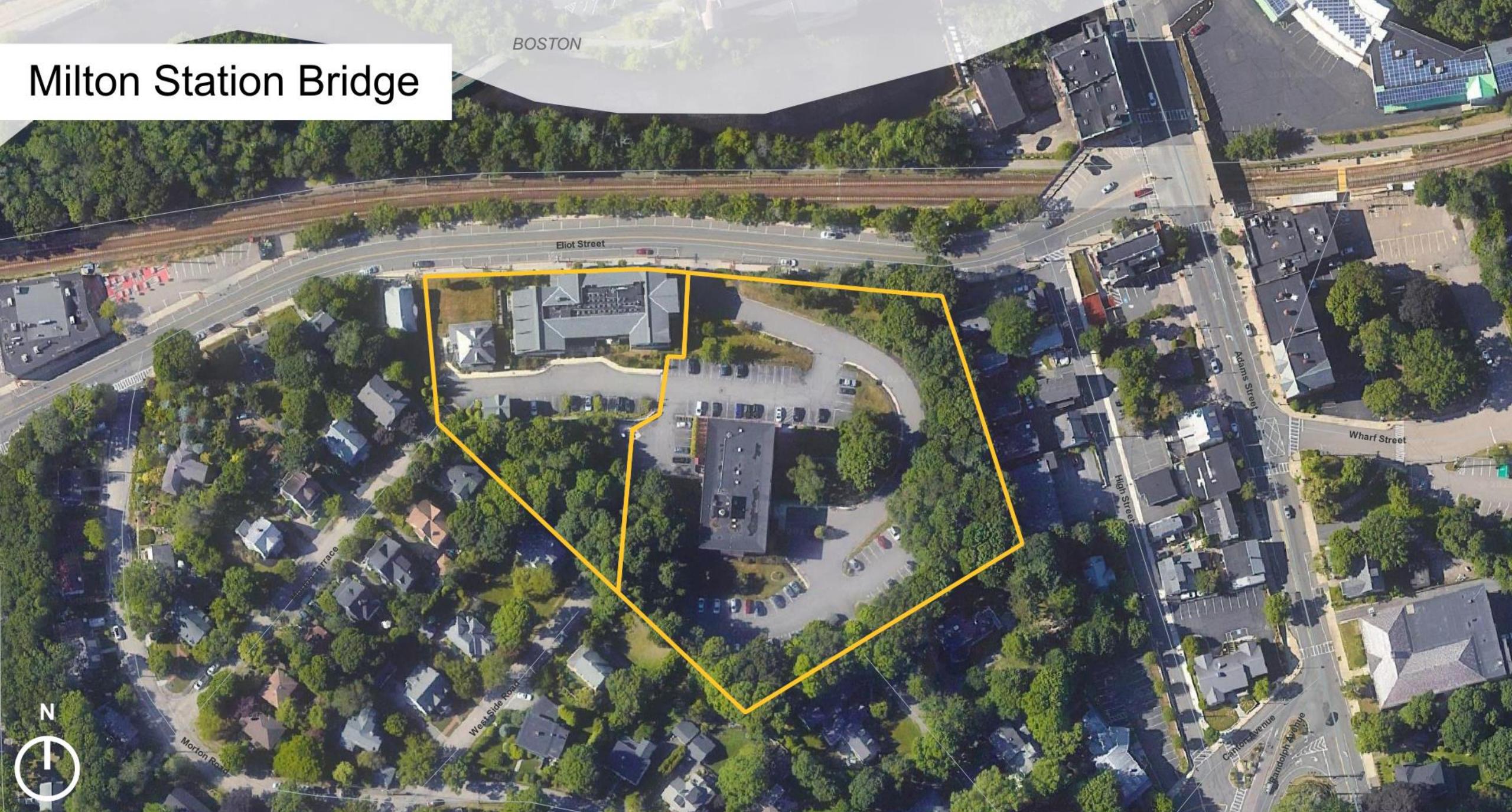


# Milton Station East (MMU)

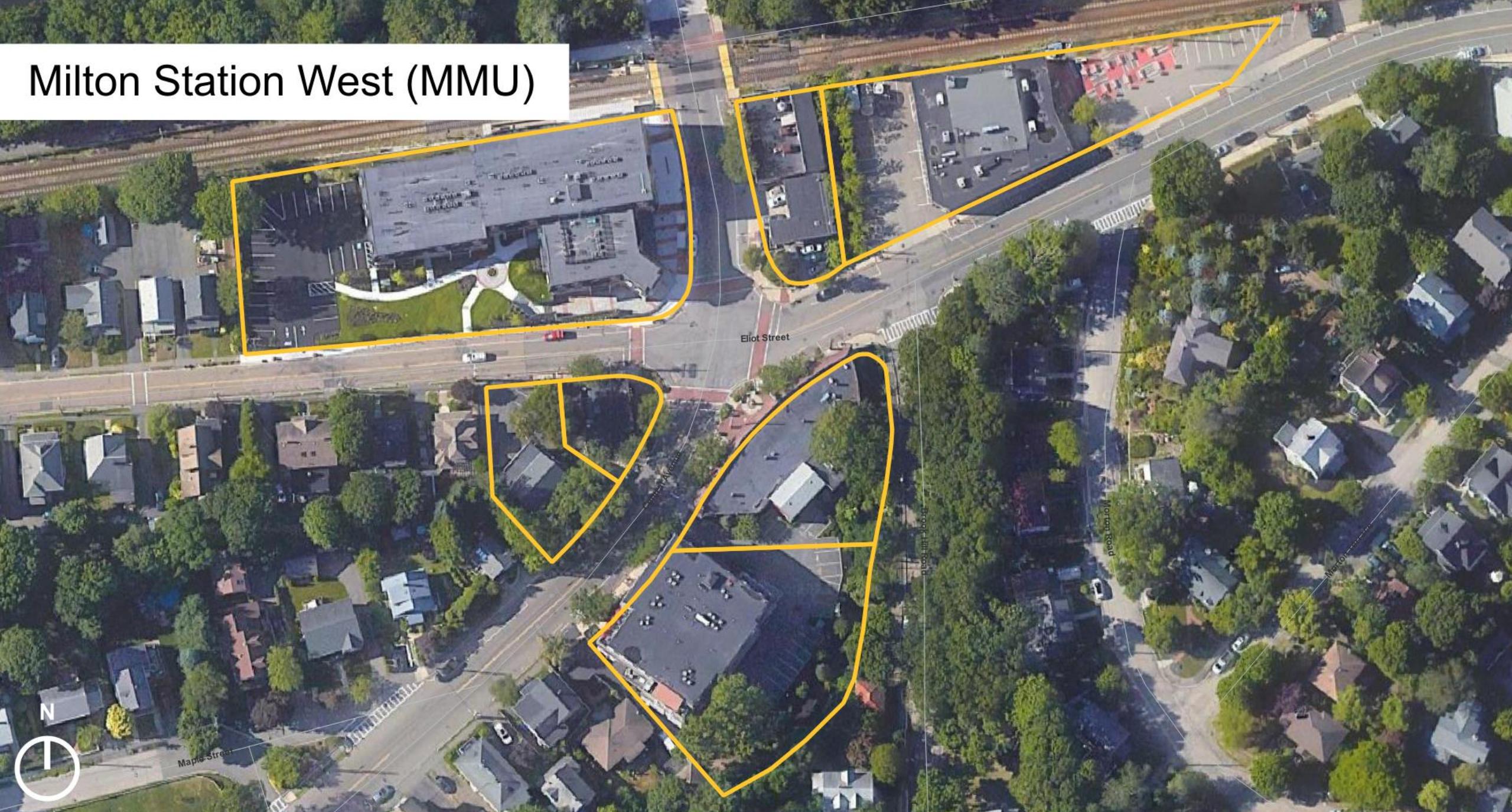


BOSTON

# Milton Station Bridge



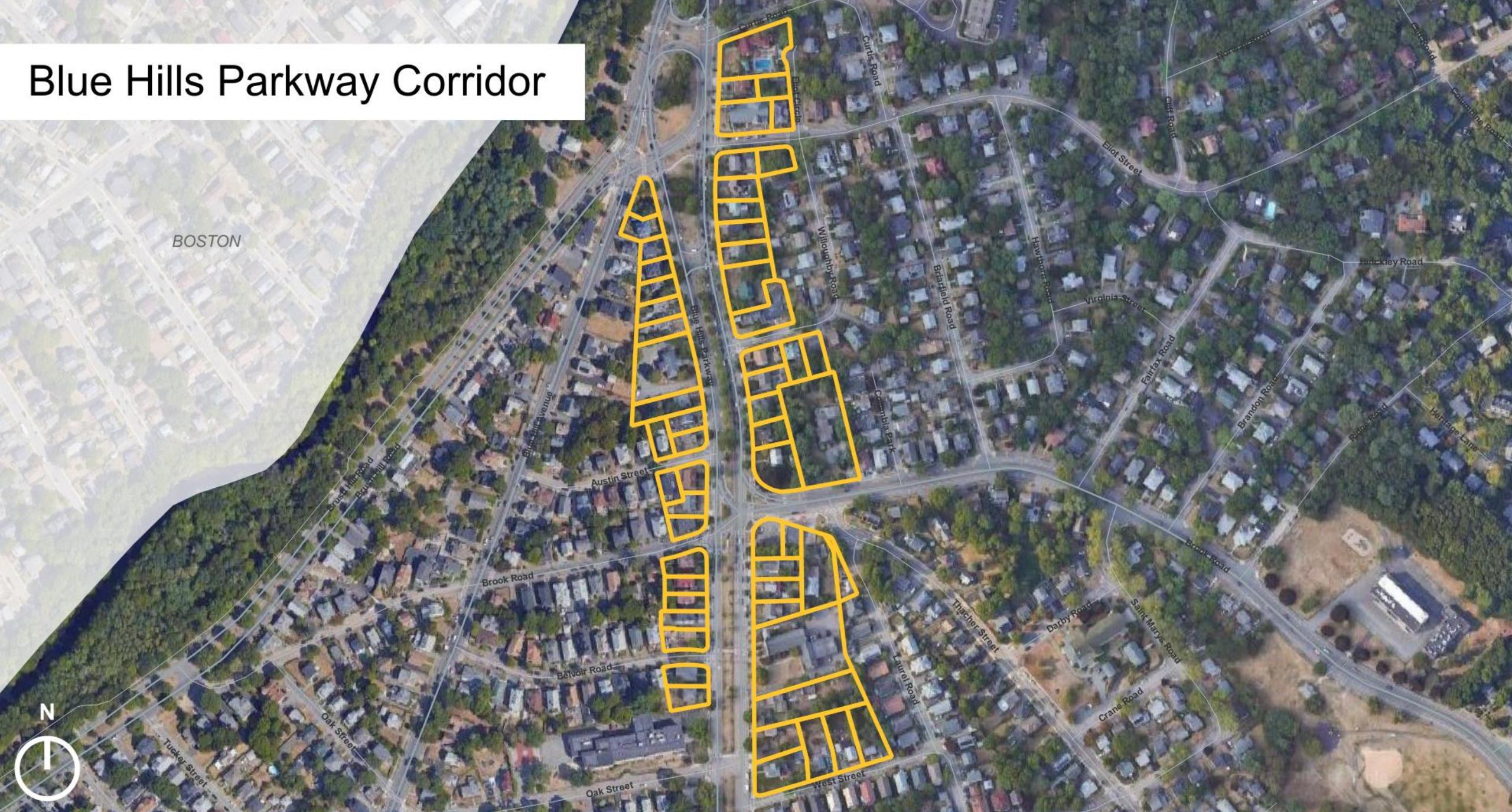
# Milton Station West (MMU)



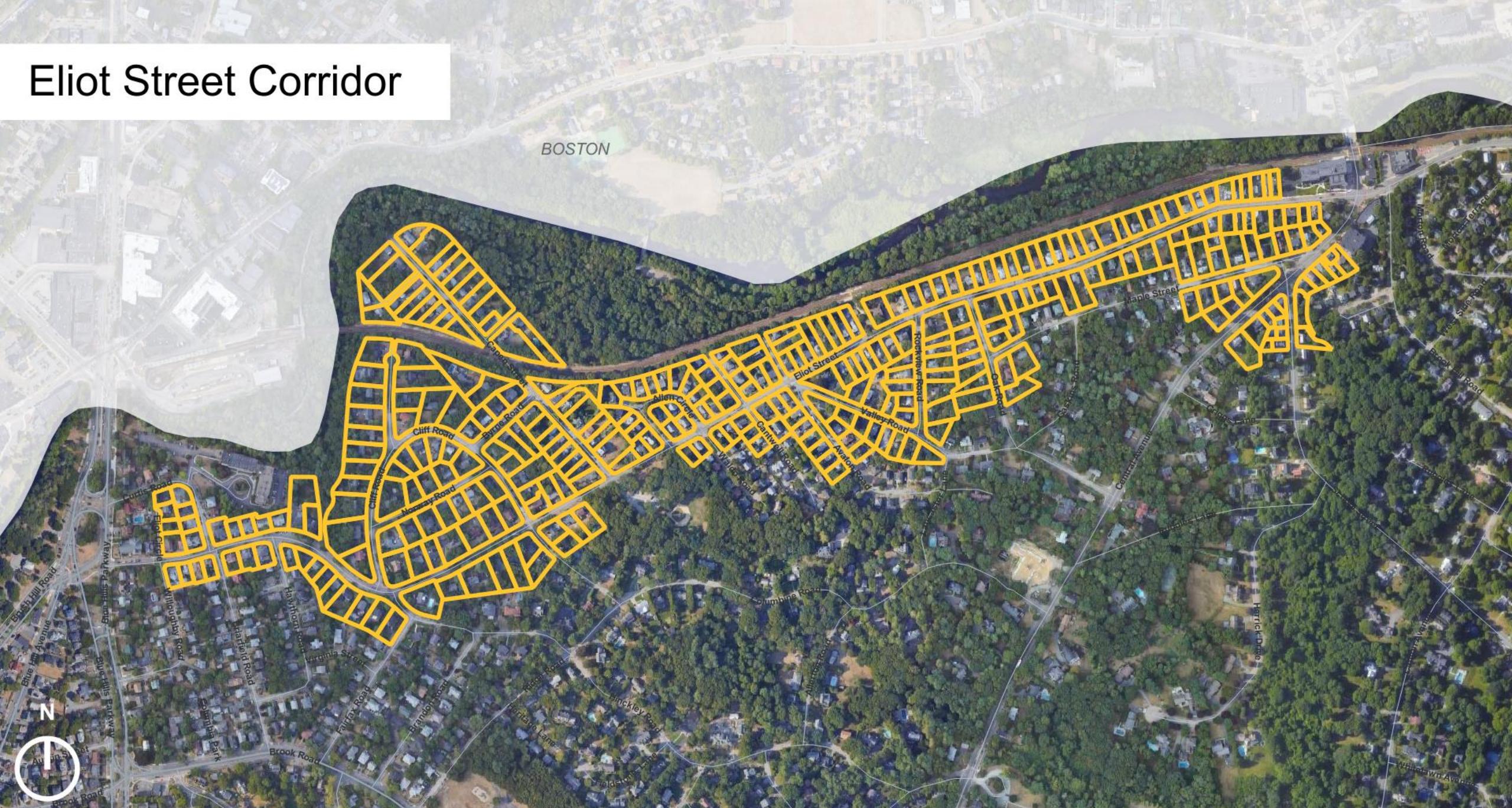
# Mattapan Station



# Blue Hills Parkway Corridor



# Eliot Street Corridor



# Option 1n - Compliance Model Summary

Slightly revised parcel boundaries & FAR

Subdistrict	Key Model Inputs							Model Outputs							
	Max. units/acre	FAR	Max. unit/lot	Min. Lot Size	Max. Parking Spaces per Unit	Max. Bldg Height (stories)	Max. % Bldg + Parking Coverage	Unit Capacity	Acreage	Density Denominator	Modeled Density	% Land in Contiguous Subdistricts	% Land in Transit Area	% Units in Transit Area	% Unit Target Met by 3A District Alone
Granite Ave North (6)	45	1.1	n/a	n/a	1.5	6	60%	171	3.6	2.6	65.1		contributing	contributing	3A
Granite Ave South (4.5)	45	1.1	n/a	n/a	1.5	4.5	60%	530	11.7	11.4	46.4				3A
Mattapan Station	45	1.1	n/a	n/a	1	6	60%	228	5.1	4.3	52.9	contributing	contributing	contributing	3A
Milton Station East (6)*	40	1.0	n/a	n/a	1	6	60%	325*				contributing	contributing	contributing	MMU
Milton Station Bridge (4.5)	40	1.0	n/a	n/a	1	4.5	60%	185	4.8	4.8	38.9	contributing			3A
Milton Station West (4.5)*	40	1.0	n/a	n/a	1	4.5	60%	108*				contributing			MMU
East Milton Square	30	n/a	n/a	n/a	1	2.5	60%	423	21.1	21.1	20.0				3A
Eliot Street Corridor	n/a	0.7	3	7,500 sf	1	2.5	60%	480	82.0	81.9	5.9	contributing	contributing	contributing	3A
Blue Hills Pkwy Corridor	30	0.7	n/a	7,500 sf	1	2.5	50%	175	16.9	16.9	10.3	contributing	contributing	contributing	3A
<b>TOTAL</b>								<b>2,625</b>	<b>145.2</b>	<b>143</b>	<b>15.3</b>	<b>74.9%</b>	<b>77.4%</b>	<b>56.3%</b>	<b>89.1%</b>
<b>COMPLIANCE TARGET</b>								<b>2,461</b>	<b>50</b>	<i>n/a</i>	<b>15</b>	<b>50%</b>	<b>50%</b>	<b>50%</b>	<b>Min. 75%</b>

\* In this option, we are assuming the **Milton Station East and West Subdistricts** will make use of the new mixed-use provision as described in [the most recent guidance from the State, issued on 8/17/2023](#). Mandatory Mixed Use (MMU) subdistricts count towards meeting 3A unit capacity requirements but do not count towards any other 3A requirements. The calculations in this sheet reflect that.

# Option 1n - Detailed Zoning Parameters

## Mandatory Mixed Use (MMU) + Eliot St Corridor

Subdistrict	Setbacks				Coverage	Height		Max. Parking Spaces per Unit	Max Units per Acre	FAR	Max Units per Lot	Min Lot Size
	Min. Front Setback	Min. Side Setback	Min. Both Side Setbacks	Min. Rear Setback		Max. Bldg + Parking Coverage	Max. Bldg Height (stories)					
Granite Ave North (6)	30'	10'	20'	30'	60%	6	75'	1.5	45	1.1	n/a	n/a
Granite Ave South (4.5)	30'	10'	20'	30'	60%	4.5	60'	1.5	45	1.1	n/a	n/a
Mattapan Station	15'	5'	20'	30'	60%	6	75'	1	45	1.1	n/a	n/a
Milton Station East (6)*	15'	5'	20'	30'	60%	6	75'	1	40	1.0	n/a	n/a
Milton Station Bridge (4.5)	15'	5'	20'	30'	60%	4.5	60'	1	40	1.0	n/a	n/a
Milton Station West (4.5)*	15'	5'	20'	30'	60%	4.5	60'	1	40	1.0	n/a	n/a
East Milton Square	15'	5'	20'	30'	60%	2.5	42'	1	30	n/a	n/a	n/a
Eliot Street Corridor	15'	5'	20'	20'	60%	2.5	35'	1	n/a	0.7	3	7,500 sf
Blue Hills Pkwy Corridor	20'	5'	20'	20'	50%	2.5	35'	1	30	0.7	n/a	7,500 sf

# Mandatory Mixed Use Zone

The original HLC guidelines permitted new zoning to allow mixed-use, but prohibited a requirement that zones be mixed-use.

Recent changes to the guidelines now allow towns to create a Mandatory Mixed-Use (MMU) District that includes up to 25% of their unit capacity total.

- This is technically not a 3A compliant district, so using this option has implications for our overall compliance metrics

In order to preserve commercial uses in the Milton Village and Central Avenue business districts, the Planning Board has studied designating those areas as MMU districts.



# Unit Capacity and Net New Units

The state's unit capacity calculation is a theoretical number, used by HLC to objectively analyze proposed zoning. It is not rooted in on-the-ground conditions, and should not be viewed as a predictive tool.

The unit capacity figure generated by the state's compliance model does not consider other non-zoning land use regulations that could affect development, including:

- Wetlands regulations
- Floodplain regulations
- Historic districts/demolition delay bylaws
- Building and fire codes

All of these regulations would still apply to proposed projects in MBTA Communities districts, and could affect the size of developments, or whether they occur at all.



# Unit Capacity and Net New Units

The unit capacity calculation treats every parcel as a blank canvas.



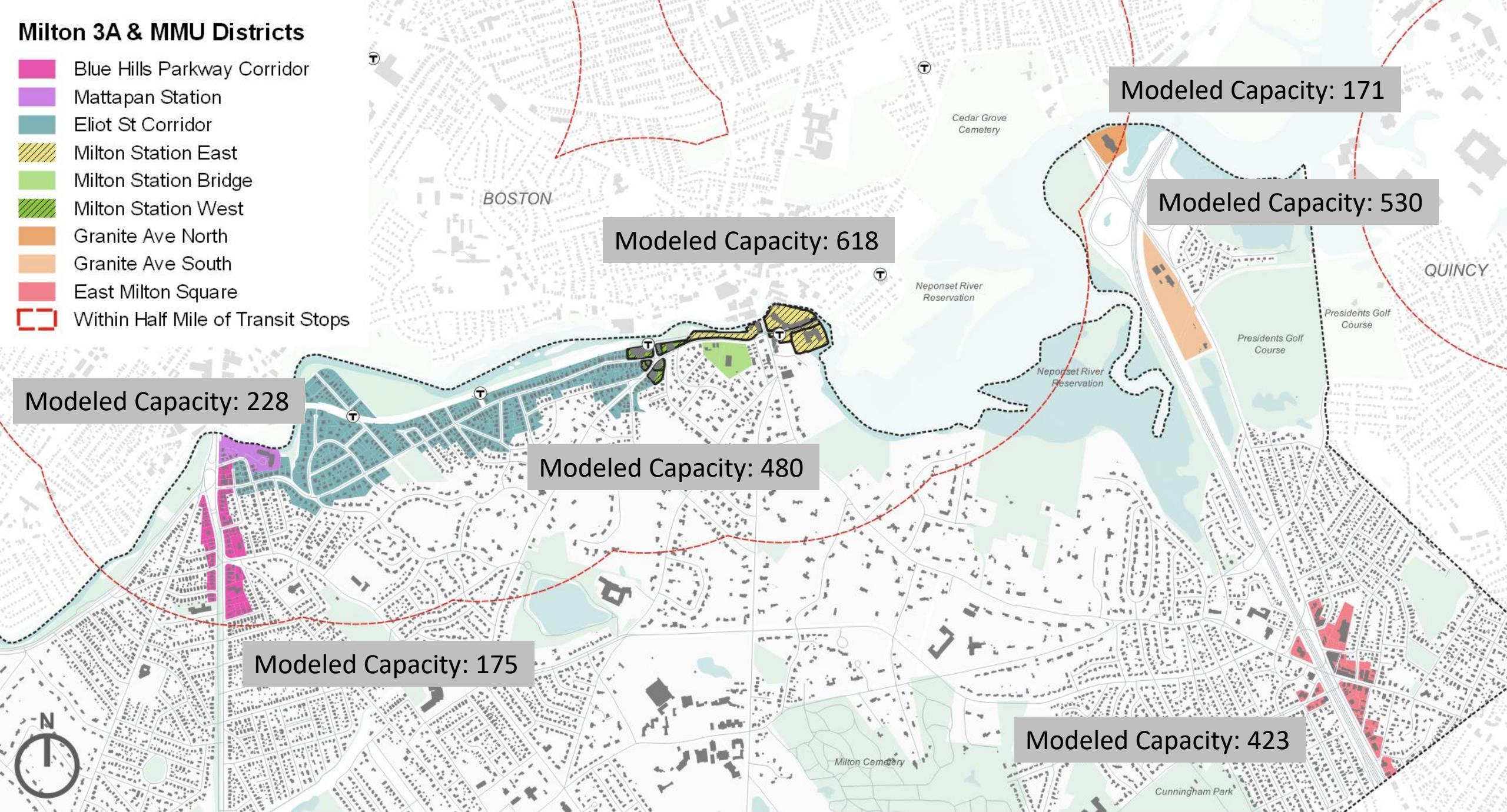
From a municipal impact perspective, the modeled unit capacity figure is less relevant than the net new units figure.

Modeled units – Existing units = Net new units



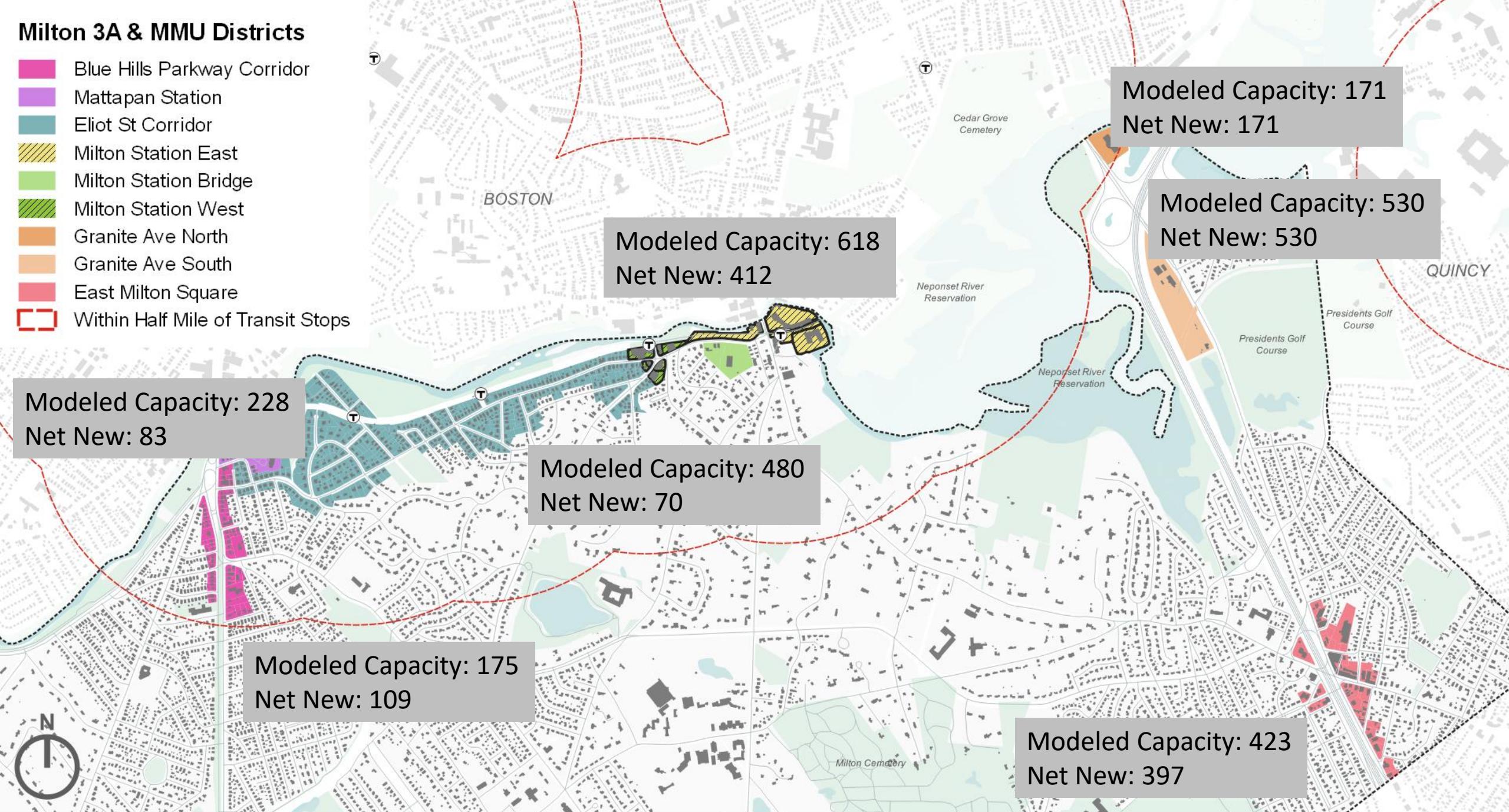
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# Development of Subdistricts

To the greatest extent possible, we are rezoning where multifamily housing already exists.

- Dimensional requirements in these subdistricts are meant to match the existing multifamily housing stock.
- By rezoning existing multifamily properties, we are able to set the pace of redevelopment and ensure that dramatic changes does not happen in a compressed timeframe.



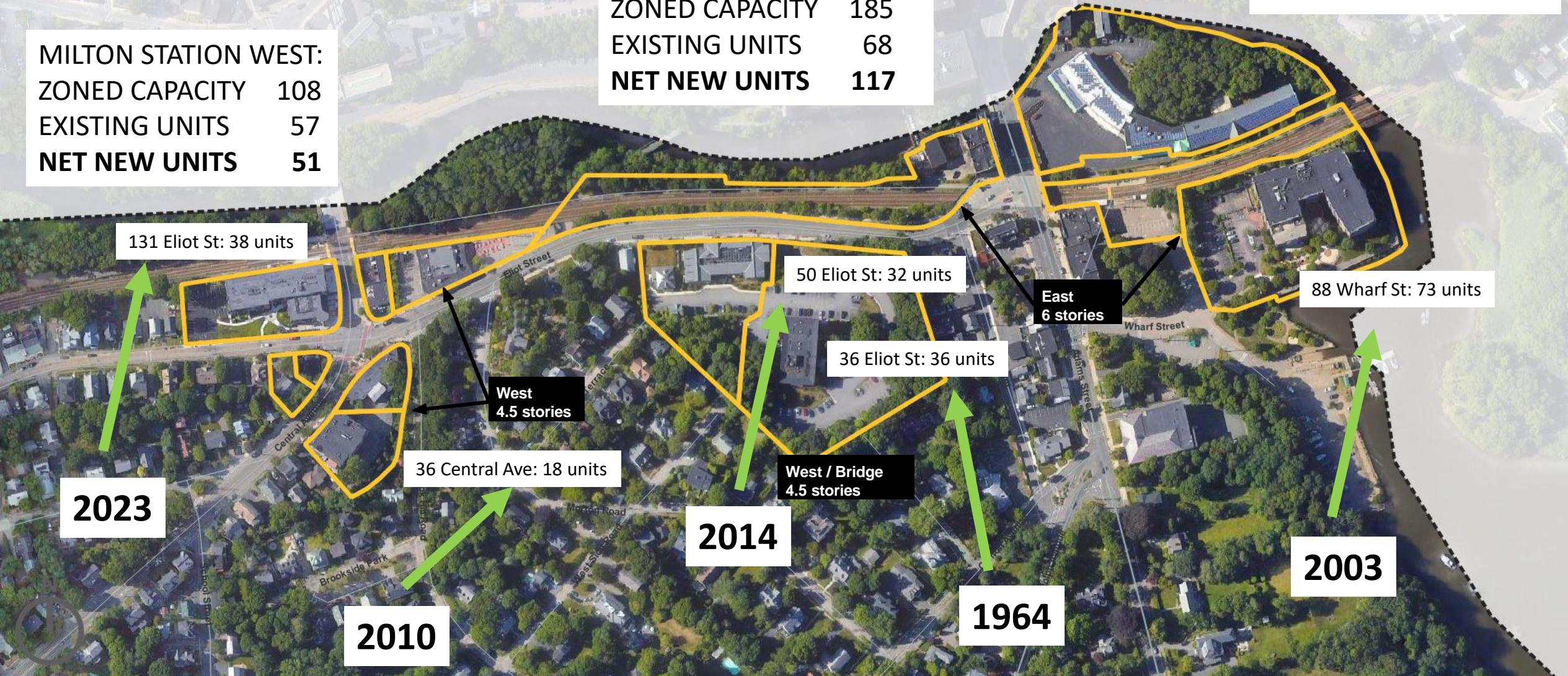
# Milton Station

MILTON STATION WEST:  
ZONED CAPACITY 108  
EXISTING UNITS 57  
NET NEW UNITS 51

MILTON STATION BRIDGE:  
ZONED CAPACITY 185  
EXISTING UNITS 68  
NET NEW UNITS 117

Mills at Extra Space: 8 units

MILTON STATION EAST:  
ZONED CAPACITY 325  
EXISTING UNITS 81  
NET NEW UNITS 244



# Site Plan Review

Projects built under our MBTA Communities zoning will be subject to Site Plan Review by the Planning Board. Although the Planning Board does not have the ability to reject a zoning-compliant project, it can place reasonable conditions on a project to mitigate traffic, stormwater, design, and other impacts.

- The zoning outlines a site plan review procedure, including material submission requirements.
- Projects subject to site plan review must have a public hearing at the Planning Board, which requires public advertising, abutter notification, and public comment.



# Development Standards

In addition to requirements regulating height, density, and setbacks, the MBTA Communities zoning article includes development standards that will help shape projects and ensure they are as consistent with Milton's planning goals as possible. These standards include:

- **Parking maximums for residential uses:** to ensure that projects do not produce excessive parking, which would bring additional traffic and congestion to Milton's streets, the zoning sets a maximum number of parking spaces a development can provide.
  - In a survey of 200 multifamily buildings in Inner Core communities, the Metropolitan Area Planning Council found that an average of 30% of required parking spaces were empty at peak times. This indicates that zoning tends to require more parking than is necessary for a given project.



# Development Standards

- **Open space and recreation:** Open space requirements are designed to prioritize usable open space and thoughtful landscaping that contributes visual interest and screening where needed. Additionally, larger projects are required to have a play area or common space for use by children living in the project.
- **Design standards:** Requirements about building orientation, location of building entrances, and site planning will help new projects fit in with the existing neighborhood context.



# Affordable Housing

HLC's guidelines allow towns to include in their zoning an affordability requirement of up to 10% of units. Milton's zoning includes this 10% requirement.

- The guidelines allow for a greater affordability requirement (up to 20%) if an independent financial analysis demonstrates that local projects would still be feasible with such a requirement. Town staff are in the process of commissioning such an analysis; an increased affordability requirement would be subject to a zoning amendment by a future Town Meeting.



# MBTA Communities and Milton Planning Goals

Much of the commentary and discussion around the MBTA Communities law has centered around potential negative impacts, but the law could also be a tool to help the Town achieve many of its housing and economic development goals

## Milton Master Plan (2015)

Objective 3.2 Increase and Expand the Range of Housing Types

- Strategy 1: Create smaller housing units
  - Multifamily units created under MBTA Communities zoning will invariably be smaller than typical single-family houses
- Strategy 2: Increase market rate and subsidized housing for the elderly
  - Although age-restricted housing is not allowed under MBTA Communities, zoning for multifamily will open up opportunities for seniors to downsize within the community



# MBTA Communities and Milton Planning Goals

## Housing Production Plan (2020)

- “Priority Housing Needs Require a Greater Diversity of the Housing Stock”
  - Goal of 250 affordable units over the next five years reflecting about 10% to the total estimated unmet housing need and annual housing production goals.
    - Affordable units are impossible outside of multifamily production.
  - Rental development goal of 85% of all new units created.
  - About half of rental units produced directed to seniors or single individuals (many with special needs) through one-bedroom units, 40% for small families with two bedrooms, and 10% of units for larger families with at least three bedrooms (required by state for units that are not age-restricted or for single person occupancy.)
    - Although the guidelines prohibit age and occupant restrictions, new multifamily construction will be smaller than single-family



# MBTA Communities and Milton Planning Goals

## **Final Report of the Equity and Justice for All Advisory Committee (2022)**

- The report of the Equity and Justice for All Advisory Committee focuses almost exclusively on affordable housing and 40B compliance
  - MBTA Communities guidelines allow for a 10 percent inclusionary zoning requirement, which would create deed restricted units that are impossible under single-family zoning.
  - The MBTA Communities legislation is designed to increase housing supply region-wide with the goal of stabilizing rents and prices



# MBTA Communities and Milton Planning Goals

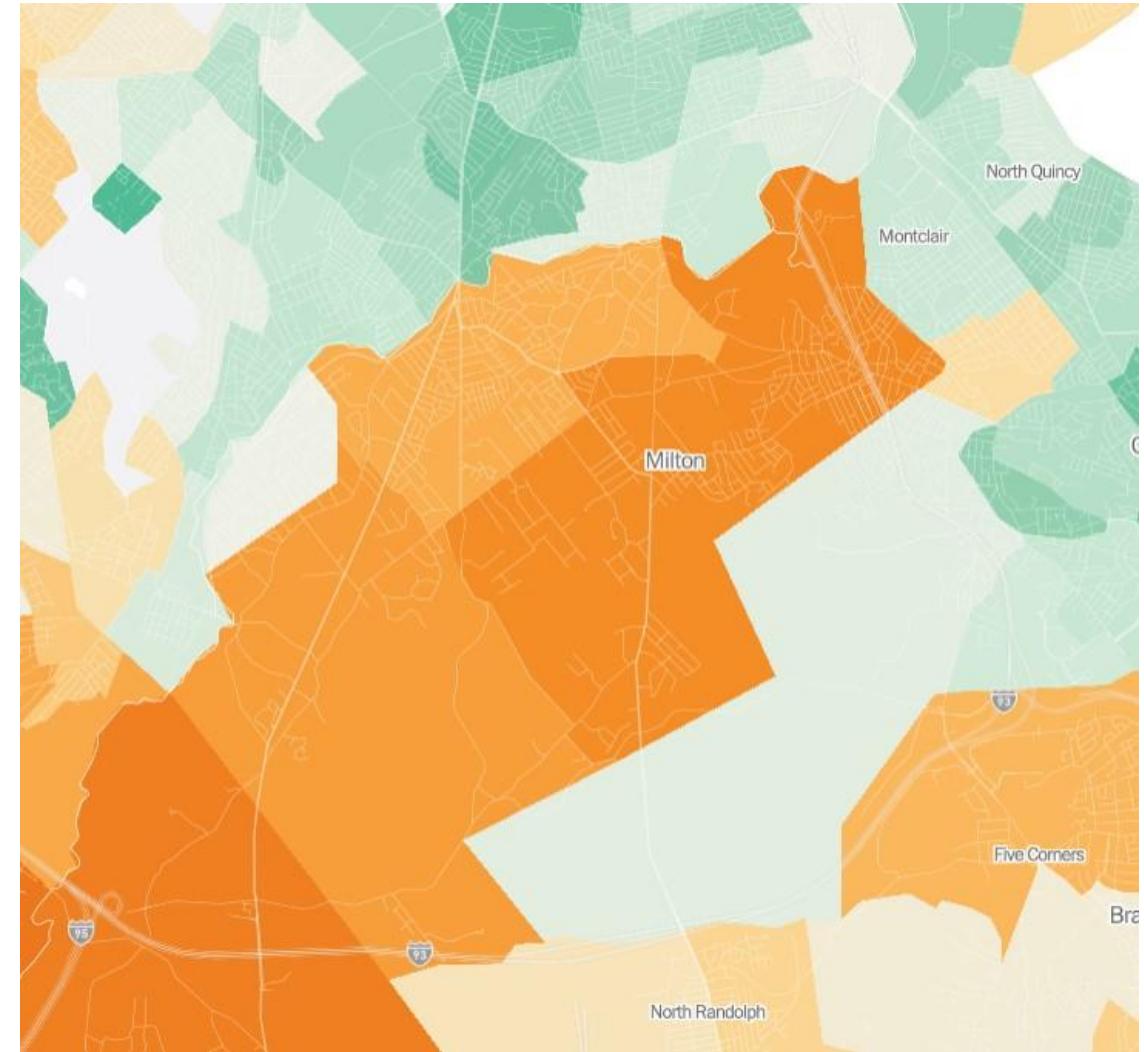
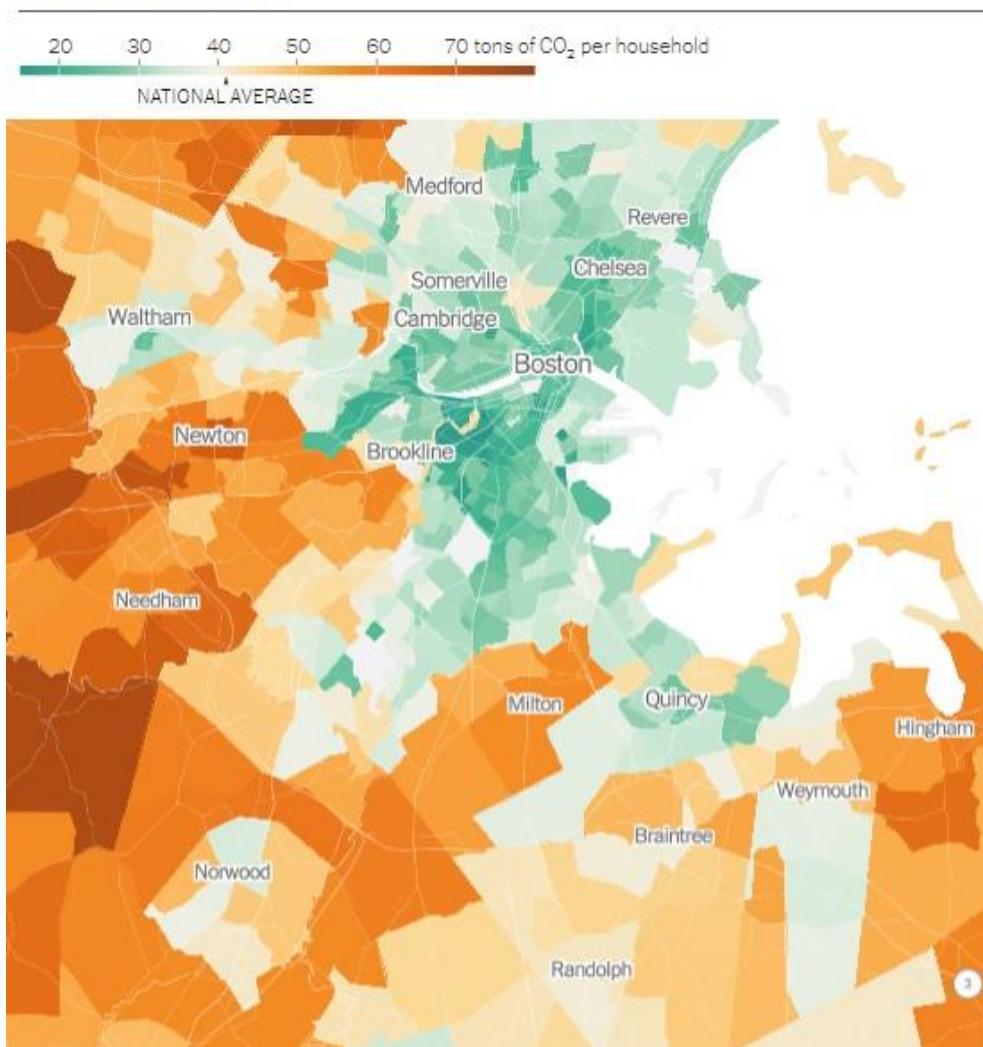
## Ongoing climate change and sustainability planning

- Transportation emissions are the number 1 contributor to green house gases in the United States. Enabling more people to live near transit will reduce vehicle miles traveled.
- Households in denser, more walkable neighborhoods have a lower carbon footprint than households in single-family neighborhoods.



# MBTA Communities and Milton Planning Goals

## Boston metro area



A black and white aerial photograph of a residential neighborhood. The area is densely packed with houses, mostly single-family homes with lawns. There are several streets and a few larger buildings, possibly schools or community centers. The terrain is relatively flat with some minor hills or ridges visible in the background.

Thank you!

