

TOWN OF OYSTER BAY

SOUTH SHORE ESTUARY RESERVE WORKPLAN IMPLEMENTATION

OPEN SPACE PRESERVATION PLAN

September 2010



"This report was prepared for the Town of Oyster Bay and the New York State Department of State with funds provided under Title 11 of the Environmental Protection Fund."

Town of Oyster Bay

South Shore Estuary Reserve Workplan Implementation

Final ***Open Space Preservation Plan***

(Task 7 -AGREEMENT #: C006276)

For Submission to:

*Town of Oyster Bay
Department of Environmental Resources
150 Miller Place
Syosset, New York 11791*

and

*New York State Department of State
One Commerce Plaza
99 Washington Ave.
Albany, New York 12231
518-474-6000
www.nyswaterfronts.com*

Prepared by:

*Cashin Associates, P.C.
1200 Veterans Memorial Highway
Hauppauge, NY 11788*

September 2010

Acknowledgement

The Town of Oyster Bay Open Space Preservation Plan was prepared with the efforts of the following government officials, agencies, and consultants.

New York State Department of State

Dennis Mildner

Long Island South Shore Estuary Reserve Office

Jeffrey Fullmer

Sherry Forgash

Town of Oyster Bay

Neil Bergin

Nancy Kearney

Cashin Associates, P.C.

Gregory T. Greene

Keith W. Brewer

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Executive Summary

ES-1 Study Purpose

As part of the implementation of the SSER workplan and part of the Town's local waterfront revitalization program, the Town has been participating in the SSER open space work group to develop an open space acquisition and protection strategy. This study and plan is of particular importance due to a diminishing supply of land and natural resources in the Town as it advances toward maximum build-out conditions under current zoning. By developing this plan the Town strives to afford fairness to private owners of environmentally significant or sensitive property by balancing environmental protection needs with the land owners' right to develop.

ES-2 Study Area

This study will examine the area of the SSER that is located within the Town of Oyster Bay and immediate neighboring jurisdictions within the Town. The communities analyzed include Massapequa, the Village of Massapequa Park and the Village of Farmingdale. The northern border of the study area is defined as the northern boundaries of Massapequa and Farmingdale. The southern border of the study area is defined as the mean high tide line on the ocean side of Jones Beach Island. The eastern and western borders of the study area are defined as the eastern and western limits of the Town of Oyster Bay.

ES-3 Goals and Objectives of the Plan

The management of land is vital for the preservation of open space and the protection of the Town's natural resources. These broad goals and objectives are intended to serve as a basis for future planning and decision making throughout the Town. This plan reviews existing studies, current open space programs, open space preservation techniques and current open space efforts.

Section 1 Introduction

1.0 Project Overview

The South Shore Estuary Reserve (SSER) stretches from the western boundary of the Town of Hempstead in Nassau County to the middle of the Town of Southampton in Suffolk County. South to north, the SSER extends from the mean high tide line on the ocean side of the barrier islands to the inland limits of the mainland watersheds that drain into Hempstead Bay, South Oyster Bay, Great South Bay, Moriches Bay and Shinnecock Bay.

Outdoor recreation is a popular pastime throughout the SSER and according to the United States Forest Service “viewing and learning-oriented activities, such as visiting historic sites, viewing wildlife, and sightseeing, are among the most popular of recreational pursuits (United States Forest Service, 1995). Providing outdoor recreation and public access to the shoreline are significant factors in maintaining a high quality of life. However, residential growth and increased private development of waterfront properties are limiting factors affecting the quantity and quality of public access and open space preservation within the SSER.

The development of waterfront properties on Long Island as a whole has increased significantly since the 1950s. The Town of Oyster Bay (Town) is one of the several towns on Long Island containing land within the SSER and which has been dedicated to promoting sound use and conservation of the SSER resources. With the help of federal, state and local governments, the Town is now working towards increasing public use and open space preservation within the SSER. The Town is preparing this open space preservation plan in order to identify critical resources and manage priorities for the expenditure of limited funds for open space. This open space preservation plan will be incorporated into the Town’s Local Waterfront Revitalization Program.

1.1 Background

The Town of Oyster Bay encompasses a large amount of shoreline along its northern (Long Island Sound) and southern (South Shore Estuary and Atlantic Ocean) boundaries. The proximity of these significant waterbodies has substantially influenced the Town's identity, quality of life, economic prosperity and overall success. In the late nineteenth century the Town saw significant growth as a result of the railroad and an influx of summer vacationers. Mass migration from New York City to points east, including the Town of Oyster Bay, altered the rural and agricultural character of the town and brought with it thousands of private homes. In five decades the population has dramatically increased from 40,000 in 1950 to nearly 294,000 at the time of the 2000 census (U.S. Census Bureau, 2000).

Most of the south shore of Oyster Bay is developed primarily with residential development. Although several large and well established public parks do exist in the SSER region of the Town, most waterfront properties (with the exception of the barrier island) are home to private uses and hinder the quality and establishment of waterfront open space.

The amount of land available for dedicated shoreline public access and open space preservation around the SSER is limited, and opportunities to increase open space and public access will become fewer as private shoreline development continues. Such issues as safety concerns, parking deficiencies and fiscal constraints are also limiting the potential acquisition of new open space and protection of existing areas. In addition to the need for open space areas for recreational uses, it is also necessary to preserve and protect important and significant natural resources.

1.2 Study Area

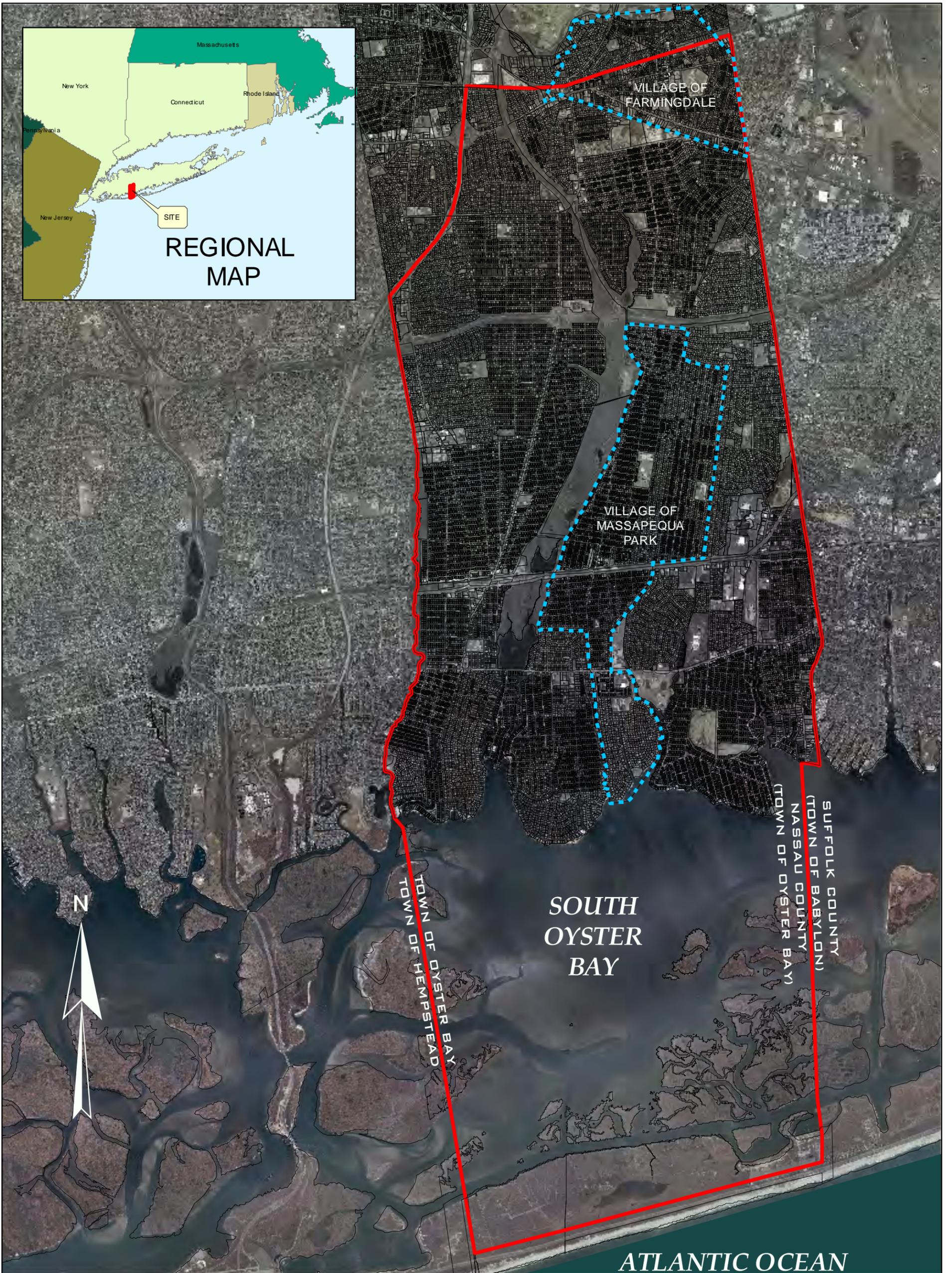
This plan will examine the area of the SSER that is located within the Town of Oyster Bay and immediate neighboring jurisdictions within the Town. The communities analyzed in this study include Massapequa, the Village of Massapequa Park and the Village of Farmingdale. The northern border of the study area is defined as the northern

boundaries of Massapequa and Farmingdale. The southern border of the study area is defined as the mean high tide line on the ocean side of Jones Beach Island. The eastern and western borders of the study area are defined as being the eastern and western boundaries of the Town of Oyster Bay. Figure 1 depicts the study area boundaries.

1.3 South Shore Estuary Reserve

At the urging of Long Islanders concerned with the future health of the South Shore Estuary, the New York State Legislature passed the Long Island South Shore Estuary Reserve Act (New York State Executive Law Article 46 Long Island South Shore Estuary Reserve, 1993). The intent of the legislation is summarized as follows:

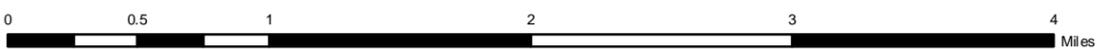
“The legislature hereby declares it to be in the public interest to protect and manage the South Shore Estuary System as a single integrated estuary. It is further in the public interest to establish a council made up of representatives of state and local governments and private citizens to create a South Shore Estuary Reserve, prepare a comprehensive management plan and make recommendations to preserve, protect and enhance the natural, recreational, economic and educational resources of the reserve, which the state and local governments may incorporate into policy, laws or regulations (New York State Executive Law, Article 46, 1993).”



Legend

- INCORPORATED VILLAGES
- BOUNDARY

FIGURE 1
TOWN OF OYSTER BAY
SOUTH SHORE ESTUARY RESERVE
OPEN SPACE PRESERVATION
STUDY AREA / AERIAL PHOTO



The act also created the Long Island South Shore Estuary Reserve and charged the Department of State with providing technical support to the Council. The Secretary of State serves as chair to the Council, which represents diverse interests including those of government, commercial baymen, charter/party boat operators, the marine trades, sport fishing, construction, environmental organizations, and academia. The NYS Department of State's Office of Coastal, Local Government and Community Sustainability (previously the Division of Coastal Resources) assisted the Council with development of the Comprehensive Management Plan for the Estuary Reserve (South Shore Estuary Reserve Council, adopted April 12, 2001).

The South Shore Estuary Reserve Comprehensive Management Plan

“The Council and State adopted the Long Island South Shore Estuary Reserve Comprehensive Management Plan on April 12, 2001, marking a major milestone for Reserve communities, water-dependent businesses and residents. The plan provides a blueprint for the long-term health of the Reserve's bays and tributaries, its tidal wetlands and wildlife, and its tourism and economy. The plan called for more than 75 actions to be implemented over five years at an estimated cost of \$98 million. This would be met from a variety of funding sources including the Clean Water/Clean Air Bond Act, the Environmental Protection Fund and the Environmental Initiative through the NYS Department of Transportation. Comparable levels of federal and local funding were sought, as well as smaller amounts from non-profit organizations. The support voiced by local governments, estuary-related businesses and non-profit organizations showed that they were motivated partners committed to taking action to improve and protect the estuary Reserve” (State of New York, 2001).

2002 New York State Environmental Protection Fund's Local Waterfront Revitalization Program (EPF LWRP)

The Department of State awarded the Town of Oyster Bay EPFLWRP funds that would allow the Town, “to implement projects for Oyster Bay in the South Shore Estuary Reserve Comprehensive Management Plan. The projects include: a watershed action

plan for the Massapequa Creek to enhance non-point source pollution controls; a clam monitoring program; a habitat restoration plan for Massapequa Creek; coordination of open space acquisition; and analysis of expanded public access, recreation facilities, and infrastructure improvements to sustain water dependent uses” (New York State Department of State, 2002). This report fulfills the open space component of the overall project.

Section 2 Existing Studies

2.0 Introduction

Several plans and studies were reviewed as part of this plan's development. These documents provided the history of open space and environmental protection on Long Island and created the context from which this plan was developed. A brief summary of the more fundamental and pertinent studies are provided below. These studies are for the most part regional in scope and are frequently consulted for various projects on Long Island.

2.1 Town of Oyster Bay Area – Specific Projects

The Town is currently conducting various area-specific land use, open space, and resource protection studies. These studies involve intensive area-specific research and included public involvement which is indispensable in providing land use and other important area specific information. Some of the studies include:

- Glenwood Landing Waterfront Redevelopment and Revitalization Plan
- Oyster Bay/Cold Spring Harbor Complex Harbor Management Plan
- Oyster Bay Western Waterfront Plan
- Current/ongoing groundwater and open space protection efforts in the Town's Special Groundwater Protection Area (SGPA)

2.2 Nassau County Open Space Plan

The *Nassau County Open Space Plan* was prepared for the Nassau County Planning Commission and was finalized in 2000. It was largely based on an implementation strategy outlined in Nassau County's *Comprehensive Plan* (Nassau-Suffolk Regional Planning Board, December, 1971). The plan focuses on inventorying all existing and potential open space opportunities within Nassau County. The open space plan establishes recommendations and identified various techniques and funding sources that would provide a framework for establishing a comprehensive open space program for the County's open space assets. The plan also outlines the criteria and process used to evaluate potential areas and parcels for future open space designation.

2.3 New York State Open Space Comprehensive Plan

The State of New York has prepared an open space plan as well. The 2009 *State Open Space Conservation Plan*, prepared by the New York State Department of Conservation (NYSDEC) and the NYS Office of Parks, Recreation & Historic Preservation (NYSOPRH) sets the long term goals and framework for future open space preservation and asset management. The study includes a discussion of past preservation results, provides a list of recommended projects, outlines techniques and strategies for preserving or protection environmentally significant lands, and identifies various open space preservation funding mechanisms.

2.4 Town of Oyster Bay Groundwater and Open Space Protection Plan

The *Groundwater and Open Space Protection Plan* is the progeny of recent planning efforts by the Town within the Oyster Bay Special Groundwater Protection Area (SGPA), which culminated in the formulation and adoption of the Town's Aquifer Protection Overlay (APO) and Recreation (REC) zoning districts. As such, this study seeks to compliment these previous efforts and assume a level of consistency with their goals, objectives, standards and restrictions. At the same time, the study recognizes and appropriately adapts its near build-out conditions, existing land use and zoning patterns, the types of resources present, and the relative scarcity of sites that are suited and available for protection.

2.5 Other Open Space Plans

In addition to the documents mentioned above, several other open space plans were reviewed to assist in the creation of this document:

An Open Space Vision for the Town of Queensbury was prepared in 2003, by the upstate New York community to create a long term vision for area conservation efforts. The document outlines open space opportunities that exist in the community and discusses the focus groups that were held for the public to solicit opinions and concerns of participants.

The *Open Space Master Plan* for the Town of South Windsor, Connecticut was created in 2000. The plan sought to preserve the “rural character” of the community as it experienced increased suburbanization. The document was the result of efforts of the Open Space Task Force created in 1994 by the Windsor Town Council.

A *Plan of Open Space and Conservation* for the Town of Woodstock, Connecticut was adopted in 2001 and amended in 2003. It was prepared by the Woodstock Conservation Commission and is significant because Woodstock is the second largest town in Connecticut, coming after New Milford. The Town is part of the Quinebaug and Shetauket Rivers Valley Natural Heritage Corridor. The goal of the plan was to wisely manage land development and protect the environment so Woodstock remains a rural community with a balanced approach to sustaining its natural and cultural heritage.

2.6 Miscellaneous Planning and Land Use Sources

Other planning, land use and open space literature is available through the American Planning Association and was used in the preparation of this document. Much of the pertinent literature reviewed during this study was prepared, published, and/or sold by the American Planning Association including: APA (1999); Witten *et al* (1995); Strong *et al* (1996); Arendt (1996); Arendt, *et al* (1994); Diel and Barrett (1988); and Mertes and Hall (1995).

Section 3 Current Open Space Programs

3.0 Introduction

The Town has long recognized the importance of protecting its diverse natural resources. For years the Town has strived to preserve its important environmental assets through the commissioning of planning studies, initiation of land use legislation and conducting research that support this effort. In addition, Oyster Bay created an Environmental Bond Fund Advisory Committee made up of representatives from different sectors of the community to conduct extensive research on environmentally sensitive lands for possible acquisition or enhancement, and to make project recommendations to members of the Town Board. The Town also has set aside funds for the express purpose of preserving and protecting open space. This section reviews many of the programs and laws that the Town has enacted for open space preservation.

3.1 Conservation Programs

A major conservation program, Save Our Environmental Assets Fund (SEA Fund) was officially approved in 2000 by a majority vote of Town residents. The fund (SEA Fund I) was established exclusively for the acquisition, preservation, and protection of environmentally sensitive land, as well as the enhancement of park and recreational facilities. The fund is divided into two distinct spending categories, with \$20 million allocated toward the acquisition of environmentally sensitive land and \$10 million toward funding improvements to park and recreation facilities. Clear selection criteria have been developed in an attempt to prioritize which spaces would be considered first for SEA Funds. To date there have been three funds approved: SEA Fund I, II and III.

3.2 Existing Open Space and Environmental Protection Laws

There are various laws in place that assist the Town in preservation of open space, protection of ground water and other natural resources. The Town's authority to regulate land use, through zoning powers, review over certain development applications, and adoption and enforcement of local legislation are key factors in the Town's land management and environmental control.

Nassau County is the agency with ultimate discretion over subdivision approvals. However, the Town has created language in its Zoning Code (Chapter 246) to address the use of cluster-open space subdivision designs. Section 246-5.4.1, *Conservation subdivision* provides the Town with the means to preserve and protect ground and surface water resources, natural landforms, existing vegetation and wildlife habitats.

Under Section 246-5.4.1, the Town requires residential subdivision proposals involving more than 5-acres of land be considered for a conservation subdivision. The law also identifies specific resources protected through conservation subdivision designs. Those resources include:

- Slopes that exceed 15 percent gradients;
- Areas with severe soil erosion potential, as defined by the Nassau County Soil Survey;
- Land located within deep groundwater recharge areas and/or the Oyster Bay Special Groundwater Protection Area, as defined by Nassau County Department of Health;
- Flood hazard areas as defined by the National Flood Insurance Program;
- Areas with a shallow depth to groundwater defined as less than 20 feet;
- Tidal and freshwater wetlands, including but not limited to those wetlands identified and classified by the New York State Department of Environmental Conservation;
- Land within the Coastal Zone, as defined by the New York State Department of State;
- Mature woodlands;
- Habitat for rare, unique, threatened, endangered, or protected species of plants and animals, as defined by the New York State Natural Heritage Program or federal or state law;
- Unique topography, such as kettle holes, kames and high elevations;
- Scenic view, corridors, and open space;

- Land adjacent to federal, state or county lands, state parkways, and county highways; railroads and Town parks;
- Officially designated local, state or federal historic landmarks; and
- Any other characteristics which the Town Board and the County Planning Commission find a conservation subdivision would serve to protect.

The Town also has the authority to acquire lands for park or open space purposes and implement certain state and local laws such as the State Environmental Quality Review Act (SEQR) and Chapter 110, *Environmental Quality Review* of the Town Code. These programs and policies are important in ensuring that natural resources are protected. Some other Town Code legislation which directly supports the protection and management of open space, environmental resources, recreational facilities and groundwater resources are:

- Chapter 143 Landmarks Preservation
- Chapter 168 Parks and Recreation
- Chapter 196 Shellfish and Marine
- Chapter 241 Waterways

3.3 Recently Enacted Legislation

The Town has created a Recreational Zoning District (REC) for certain areas and has re-zoned specific parcels that must adhere to REC zone requirements. The main objective of the zone is to preserve existing recreational/open space uses and to protect the quality and quantity of groundwater recharge. This is accomplished by creation of this lower density zone; mitigate flooding by utilizing drainways and minimizing the amount of impervious surfaces. This zone's principal uses are public parks and municipal uses by the Town, county, state or federal government, or a special district with Town Board approval. Also, certain residential properties were rezoned to lower densities, limiting the level of development that may occur.

Section 4 Open Space Preservation Techniques

4.0 Introduction

Open space preservation is an important component of land use planning. There are many benefits associated with open space preservation such as: protection of sensitive natural habitats; preservation of groundwater, streams, lakes and ponds; soil erosion control; and protection of historic features; archaeological sites; and other valuable natural, social and cultural resources. These techniques offer a variety of potential open space opportunities and a means by which to control community growth.

A vast array of land acquisition and environmental resource protection strategies are available for open space and environmental resource protection. Approaches to open space preservation include: fee simple land acquisition; the dedication of open space as part of cluster subdivision approvals; donation of land to land trusts; the filing of conservation, scenic, and agricultural easements; the purchase and transfer of development rights; and more. There are several open space preservation tools that could be available to the Town. The following summarizes several of these tools and describes each technique, weighs their advantages and disadvantages, and when applicable, provides examples of their use.

4.1 Land Acquisition

The Town's outright purchasing of open space would be the most direct method for open space preservation. Unlike the limited interests conveyed by conservation easements and purchase of development rights agreements, fee simple land acquisition provides the Town with full rights and interests in the property.

By holding title to the property, the Town has full control over the land's disposition. However, full ownership can be quite costly and drain Town resources. When evaluating fee simple land acquisition factors such as purchase price (including interest if applicable), removal of the land from the local property tax roll, ongoing site monitoring,

maintenance and management responsibilities associated with full ownership must all be taken into consideration, especially on Long Island where land values are above average.

Several different approaches to financing open space acquisition are available, including the use of real estate transfer taxes, specially-designated sales tax revenues, establishment of special funds, taxing districts, the sale of municipal bonds, and the award of federal and state-sponsored matching fund grants. Also, land can be acquired using monetary donations from charitable organizations or philanthropists and/or through a variety of other approaches including hybrid or mixed financing mechanisms.

The Town has already implemented a special fund approach for land acquisition. In 2000, Town citizens, by referendum, voted to approve the Save Our Environmental Assets Fund (SEA Fund). This fund was specially earmarked for land acquisition, preservation of environmentally significant and sensitive areas, implementation of waterfront enhancements, and improvement to parks and other recreational facilities. Each SEA Fund makes available \$30 million, of which \$20 million of the fund is slated for purchase of environmentally significant land and \$10 million allocated toward improvements to the Town's park and recreational systems.

4.2 Real Estate Transfer Tax Program

As of the date of this report, this program has not been utilized in Nassau County. However, this method has been used in Suffolk County, NY; Cape Cod, Nantucket, and Martha's Vineyard, Massachusetts; and other areas of the country where open space preservation is an environmental, social, economic and political priority.

The State of New York does not have legislation which expressly permits the establishment of municipal real estate transfer tax programs. However, §40 of the State's *Municipal Home Rule Law* allows a municipality to adopt a local law seeking various delegated powers which may be authorized through special enabling regulations enacted by the State legislature. This regulation may include permission to impose a local land transfer tax to be utilized for open space acquisition.

The major benefit of this program is that valuable open space can be acquired without the need for increasing already high property taxes or securing loans which require the fulfillment of debt service requirements. Instead the program would allow the Town to establish a real estate transfer tax on the conveyance of real property, when the transfer exceeds a certain specified monetary value threshold. A value threshold should be established in order to avoid overburdening struggling low to moderate income individual and first time buyers who may already have a difficult time affording a home without the added expense of a transfer tax.

4.3 Property Tax

A voter referendum can assess a special property tax for certain purposes. For example, in 1997, citizens of the Town of Greenburgh voted to adopt a one percent property tax increase in order to capitalize a multi-year program to outright purchase or acquire interests in land for open space preservation.

4.4 Land Banking

When land banking is used by a town or county government, or even a not-for-profit agency, it is typically to retain some control over the future development of a particular area. The method can be used to control suburban sprawl, to preserve open space, or to halt growth altogether. Land banking may also be used to exert control over how the land is developed, by controlling if it is zoned for commercial or residential use. Land banking may also be a benefit to future buyers by controlling land prices. It also may give the Town the ability to build new parks and other projects on land that may become too expensive for a tight Town budget, but are necessary for expanding residential needs.

4.5 Land Trusts

Land trusts are private, not-for-profit, conservation organizations that in conjunction with land owners and municipalities work to preserve and protect critical land and natural resources. Land trusts can preserve land by direct acquisition, purchase of development rights, acceptance of philanthropic gifts, and the holding of conservation easements on

environmentally sensitive properties. Land trusts can be a very effective method of acquiring open space due to their focused mission, dedicated staff and the fact that land trusts have fewer constraints to achieve fiscal and administrative flexibility than municipalities. Several land trusts already exist in Nassau County and include: North Shore Land Alliance, Centre Island Land Trust, Oyster Bay Cove Land Trust, and Long Island Chapter of The Nature Conservancy.

4.6 Installment Purchase Agreements

Installment purchase agreements provide the Town the flexibility in financing of property acquisitions by allowing the Town to make installment payments over an extended period of time as opposed to one lump sum purchase. This approach could have certain advantages to the buyer such as easing the initial financial burden by spreading out payments over a specified term; may allow the purchaser to lease the land until the acquisition cost are fully realized; and could provide the purchaser with certain limited land interests that prevents the land from being developed. The seller may benefit as well by providing a steady stream of income during the transition period and can offer them certain tax incentives.

4.7 Bargain Sales

This technique involves the selling of property to a land trust or other eligible not-for-profit organization at a below-market price, therefore making the seller eligible for certain tax benefits. The seller may claim the difference between the sale price and the actual fair market price as a charitable donation allowing the seller to deduct the difference from their federal income tax.

4.8 Charitable Land Donations, Gifts, and Endowments

This technique usually involves the donation of land, specified interests in land, or capital for the future purchase of open space, development rights, and easements by philanthropists who wish to have environmentally valuable or sensitive land preserved for the use and enjoyment for future generations.

Acceptance of a land donation will require that the receiving organization or agency manage the land. Therefore, it is imperative that prior to acceptance of title, the receiving entity carefully assess the value of the land as open space (or other purpose) and verify that there are no liens, mortgages, site contamination, or other serious defects or issues which may cause additional future costs and liabilities or which diminish the value of the property for its chosen purpose.

4.9 Tax Incentives

As mentioned in Section 4.8 above, the Federal government offers certain tax incentives to property owners who are interested in preserving land. In addition, the preservation of land can produce local property tax and estate tax benefits which may be incentive enough to make land owners donate their land for preservation.

4.10 Land Swaps

Negotiating direct land swaps with local governments or nonprofit land preservation organizations provides private property owners with the opportunity to switch land that may not be suitable for development with a piece of property that may be more suited to their needs. For example, a private landowner whose property contains or abuts extensive wetlands may find it beneficial to swap land with a local government or land trust that owns a less environmentally important sensitive, and developmentally constrained property. In situations, where the value of the two properties differs, cash can also be exchanged in order make the swap more equitable.

4.11 Transfer of Development Rights

The transfer of development rights involves the transfer of a property owner's right to develop their land from one property to another. This technique compensates a land owner whose property is located in an area preserved for open space or limited in terms of its maximum build-out potential, by permitting the landowner to utilize the development rights elsewhere. Also depending on existing zoning regulations, these development rights may also be transferred to another party who is seeking additional development density on a designated receiving parcel. These development rights can

carry a significant market value, especially where undeveloped land is increasingly scarce and the demand for buildable sites is high and the development potential and anticipated economic returns are large.

It is recommended that the properties involved in these transfer programs are within the same school district so that tax revenues or school district impacts are not transferred to another district. In support of this, New York State Town Law § 261-a, *Transfer of development rights; definitions; conditions; procedures* (NYS enabling legislation for transfer of development rights programs) specifically addresses this issue by stating that a transfer of rights "... may not unreasonably shift the tax burden between the taxpayers..." of two or more school districts or special assessment districts. This restriction helps to ensure that "outside" area tax bases remain unaffected or little-affected by the transfer of development rights and tax benefits and public service burdens remain equitably distributed.

This technique is usually complex and can be cumbersome to administer. It is sometimes contentious if property owners feel that they are not being justly compensated or when neighbors of the properties being developed object to increases in development density, physical encroachment, and possible environmental impacts. One of the biggest constraints of this type of technique in the Town of Oyster Bay is the lack of available, undeveloped property for inclusion in the program.

4.12 Purchase of Development Rights

The purchase of development rights programs involve a negotiated legal agreement between a property owner and municipal, county, or state agency, or land trust for an interest in the right to develop the property. Depending on the agreement the owner of the property retains title to the land, but is not permitted to develop the parcel in accordance to the agreement filed with the County Clerk and its registry of deeds. This agreement can run with the land in perpetuity or be written to encompass a specified term. Because the right to build is in effect extinguished, the property owner can realize a reduced property tax assessment and may be entitled to income tax concessions as a

result of a reduced assessed value. One of the negative aspects of this technique is that the purchaser of the development rights can spend large sums of money without fully capitalizing on the many benefits of owning the land outright.

4.13 Lease of Development Rights

This is similar to the purchase of development rights except instead of an outright purchase, the rights are leased to the municipality or other entity for a negotiated period of time. This strategy permits the land owner to retain title of the property, receive tax benefits, be paid a yearly leasing fee and retain all development rights in the land once the lease has expired. This option is usually not as favorable among municipalities because it is temporary and open space is not preserved for future generations.

4.14 Easements

An easement is an agreement entitling the holder to certain interests or rights on or over another's property for a specific use. The easement can either be specified for a certain time period or perpetual in duration and generally either restricts what can be done with the land or allows a non-owner to have a specific right of use of the property. Although the non-owner usually does not hold a possessory interest in the land, easements are usually recorded with the County Clerk, legally-binding and may be enforced by the courts.

Easements can offer a certain level of flexibility to land preservation efforts because they can address an entire property or a described portion of the property, depending on the needs of the parties involved. Landowners often prefer this technique since the restrictions only affect certain property rights, thus leaving the remainder of the landowner's rights, uses and values intact.

4.15 Covenants and Deed Restrictions

These techniques are legal instruments commonly filed with deeds, approved land subdivision maps, and other important documents to ensure that they will appear on future title reports, so as to apprise future purchasers or Town land management officials

of their existence and bolster the enforceability of the restrictions. Covenants and restrictions differ from easements. Covenants and restrictions are contracted promises, whereas easements represent an actual transfer of a specific interest or right in a property. These techniques not only provide opportunities for preserving open spaces or greenways but can be integral to protecting natural resources such as groundwater. Covenants may restrict the use of fertilizers and pesticides or the clearing of vegetation, site grading, stormwater management, and the use of various best management practices to prevent pollution from the handling of hazardous material.

4.16 Large Lot Zoning

The purpose of large lot zoning is to reduce the density of development permitted under existing zoning regulations, and any land use and environmental impacts that may be associated with high density development or urbanization. This technique is extremely beneficial when the land contains pristine forests, steep slopes or environmentally sensitive areas such as adjacent to surface water bodies or above aquifers used for residential water supplies. Although this land use technique can offer a variety of benefits, it also has been criticized as being unfair or precluding low-and moderate-income individuals from inhabiting certain areas due to the additional expenses associated with buying a large lot.

4.17 Recreation and Conservation Districts

This technique involves the creation of zoning districts which limit land uses to recreational activities or conservation purposes. This zoning may be a “floating zone” which “overlies” the existing zoning district and serves to formalize additional standards and restrictions for preserving valuable natural resources in the district. The decision as to whether this technique would be applicable should be based on a review of the existing stock of open space and recreational lands, Town demographics, and an evaluation of future open space and recreational needs. Any such need should be based on a Town-wide demand and should not be directed toward the preservation/establishment of recreational uses on one or two lots in the community. A clear and significant demand for such recreational facilities should be demonstrated and the distinction of the various

sites in terms of their natural and open space qualities should be apparent. Rezoned properties must allow for the future establishment of economically viable uses and provide an effective means for substantially advancing the legitimate public purpose of establishing sufficient recreational facilities for a growing community. The Town of Oyster Bay's recent enactment of its Recreation (REC) district is an example of this technique.

4.18 Open Space/Cluster Subdivision Designs

Although the Nassau County Planning Commission has review and approval authority over all subdivision applications in the County, the Town of Oyster Bay has adopted its own conservation subdivision law pursuant to §246-5.4.1 of the *Code of the Town of Oyster Bay, New York*. The purpose of the law is to require developers of proposed subdivisions encompassing five or more acres to submit a conservation subdivision map to Nassau County Planning Commission for review and consideration. The Town enacted this program to protect and preserve its critical natural resources, including its groundwater, surface water, natural landforms, vegetation and wildlife habitats for the general well being of the community and future generations.

The preserved open space is depicted on the approved final subdivision map and a conservation easement is drafted which specifies the physical boundaries, terms, and conditions of the easement. This open space is usually dedicated to and held by a government agency, land trust, or homeowners association.

4.19 Planned Unit Developments

Planned unit developments (PUD) are floating overlay districts that offer greater flexibility than conventional zoning by allowing a mix of uses and housing types, density bonuses, clustering of development, and modified dimensional zoning requirements or performance standards based on an overall master plan of the site and the proposed project. This technique often involves the dedication of open space or other public amenities in exchange for greater density or modified zoning requirements, can be used as receiving areas for transfer of development rights, and may ultimately be governed

more by specific development performance standards than standardized zoning requirements.

The Town has adopted legislation under § 246-5.6, *Planned Unit Development Districts*, of the Town Code which creates a PUD district and authorizes their use. This law cites several purposes for the establishment of a PUD district including § 246-5.6.1.5 which states that the PUD will ... "promote the preservation of commonly owned open space and recreational benefits for all residents."

4.20 Overlay Districts

This approach creates a specially defined district which is superimposed over the standard "underlying" zoning district. This area is subject to additional standards and controls over the zoning that is already in place in order to address unique conditions, characteristics, qualities, and/or sensitivities which the municipality would like to protect or manage. This technique is commonly used to protect ground and surface waters, wetlands, forest, scenic areas, hillsides, prime agricultural soil, historic or archaeologically significant sites and features, and other valuable resources.

The Town has adopted a ground water protection law (Aquifer Protection Overlay District) which specifically targets protecting ground water resources. This law involves the institution of certain land use controls in sensitive or critically important areas that are identified as vulnerable to contamination.

4.21 Joint Use Agreement

This technique involves existing land uses that can provide open space and recreational values to a community. These land uses could include: cemeteries, ball fields and other recreational facilities at schools and colleges, and large areas reserved for stormwater recharge. These areas can provide a variety of benefits, including both passive and active recreational opportunities, wildlife habitat, flood storage, recharge of stormwater, and other resource protection benefits.

4.22 Clearing Restrictions

The Town's APO district limits vegetative disturbance and clearing restrictions while allowing property owners to retain full title and use of their properties within the regulatory confines of zoning, with the proviso that a proportion of existing on-site vegetation be retained.

4.23 Exactions and Impact Fees

This technique involves requirements for developers of subdivisions and sometimes commercial site plans to provide:

- Land for use as parks or other important public purposes;
- Community facilities; or
- Fees to provide reasonably related public infrastructure and services that will serve the residents or tenants of the new development.

Section III.D(1) of the Nassau County Planning Commission's *Regulations for the Subdivision of Land* (2009) specifically states that: "Adequate, convenient, and suitable areas for parks, playgrounds, or other recreational uses, may be required in the discretion of the Commission. Such recreational area, if required, shall be a minimum of (3) percent of the entire holding, or more if the applicable local municipality's laws, rules or regulations require larger areas to be set aside."

4.24 Incentive Zoning/Density Bonuses

Incentive zoning is a land use tool that offers developers density bonuses, incentives and inducements such as increased overall development density in exchange for certain amenities such as parks and open space reserves, plazas, public parking facilities, or additional affordable housing units which may be sorely needed by a community. As an example, a municipality's zoning code may include provisions which foster the dedication of a publicly accessible greenway along a river, in exchange for increased development density on a portion of the site. In so doing, a community need may be fulfilled while providing a comparable or even greater profit for the developer.

4.25 Eminent Domain (Condemnation of Land)

Eminent domain is the power of a sovereign governmental body to acquire private property that it needs for a specific public purpose. In order for the condemnation to be a valid exercise of the police power, the land must be acquired for a public purpose that in some manner promotes the general health, safety, and welfare of the public and “just compensation” must be paid for the land in question. This approach is not commonly used for the acquisition of open space and usually used as a last resort only when the acquisition of the land is absolutely imperative and other approaches have failed or are infeasible.

4.26 Land Purchases from Tax Foreclosure Sales

Private property owners who continually fail to pay property taxes may ultimately be forced to surrender their property to the responsible governmental taxing agency. If these lands are determined to be suitable for open space preservation purposes or have certain environmental and recreational qualities, the land can be acquired (tax title) by a government agency and used as open space and public recreation areas. When the land has no such values, it may be purchased and later sold or auctioned-off, and the proceeds deposited into an open space acquisition account for future open space land purchases.

4.27 Implementation of the State Environmental Quality Review Act (SEQRA)

Environmental assessments are required for many development projects to fulfill SEQRA mandates and although, this technique is not specifically designed for fulfilling open space preservation needs, it does provide lead agencies with an opportunity to review projects for potential environmental impacts including those which may affect open space, water resources, agricultural land and soils, recreational facilities, critical environmental areas, and other important natural assets. It provides a mechanism for mitigating or avoiding various environmental impacts that might otherwise occur if these assessments were not conducted.

4.28 Stormwater Recharge Areas

Contaminated stormwater is a significant source of pollution to ground and surface waters. Recharge basins that collect stormwater are important for many reasons including their function of controlling, storing, treating, and recharging stormwater which may contain various pollutants. Recharge basins help to replenish falling groundwater supplies and purify runoff before entering Long Island's sole source aquifer. These recharge areas protect against flooding, create needed aquatic and terrestrial wildlife habitat, provide vegetated buffers between land uses, and preserve certain rural aesthetic qualities. Recharge basins and their surrounding uplands should never be developed and periodic basin inspection/maintenance programs are vital to maintaining groundwater quality and quantity.

Section 5 Open Space Efforts

5.0 Introduction

The Town has long recognized the importance of protecting its diverse natural resources. For years the Town has strived to preserve its important environmental assets through the commissioning of planning studies, initiation of land use legislation, and conducting research that supports this effort. The Town spans the entire width of Long Island from the Atlantic Ocean and southern bay shores to the south, to the north shore and Long Island Sound and includes numerous embayments, harbor, canals, inlets, and a magnificent barrier island.

5.1 Existing Open Space Areas

The area within the Town that is part of the SSER for the purposes of this study could be divided into two separate areas: Town of Oyster Bay/Jones Beach Barrier Island and the south shore of Oyster Bay mainland and vicinity. Each area can be described as follows:

- Town of Oyster Bay/Jones Beach Barrier Island

Aside from Ocean Parkway, the portion of the Jones Beach barrier island within the Town of Oyster Bay consists entirely of preserved open space. This part of the Town consists of a section of Jones Beach State Park to the west, John F. Kennedy Memorial Wildlife Sanctuary (500 acres), and Tobay Beach and Boat Basin to the east.

- South Shore of the Oyster Bay Mainland and Vicinity

The southern mainland shore of the Town contains several small, moderate, and large community parks and greenways including Tackapausha Preserve greenway along upper Seaford Creek (80 acres); Massapequa Preserve greenway which contains hiking and bicycle trails along the Massapequa Creek (423 acres); John J. Burns Park contains an assortment of recreational amenities (52 acres); Marjorie Post Park also offers an assortment of recreational amenities (42.5 acres); Ellsworth W. Allen Park (15.8 acres); and the privately owned Peninsula Golf course.

5.2 Current Open Space Efforts

As part of the implementation of the SSER workplan, listed below are some of the Town's recent open space preservation efforts found within the SSER (Figure 2).

5.2.1 South Oaks Property

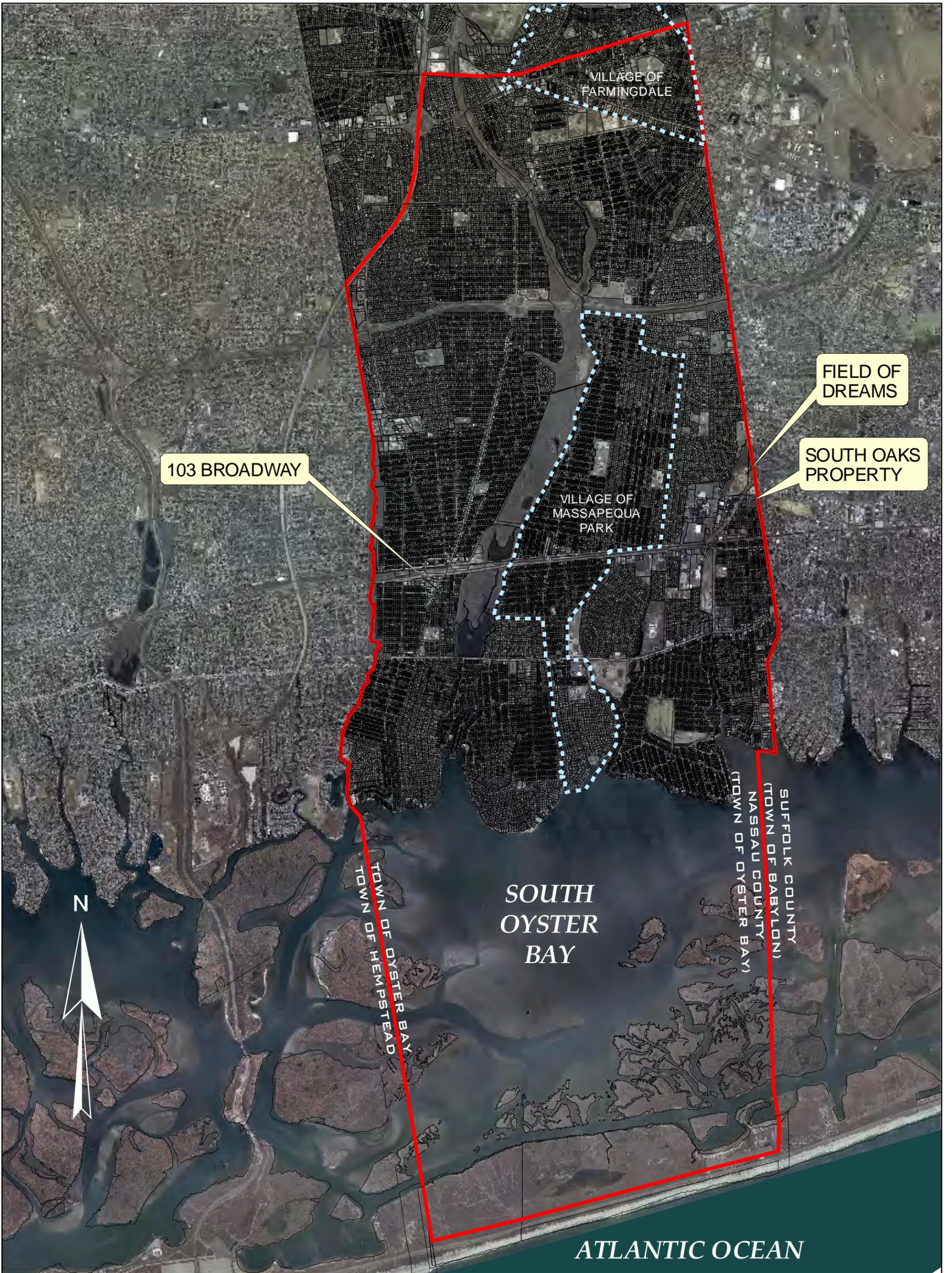
The South Oaks Hospital property that is located southeast of Sunrise Mall, along the Nassau/Suffolk County boundary offers some potential open space. The southern portion of the property contains a vacant, square-shaped 5.27-acre undeveloped wooded parcel.

5.2.2 Field of Dreams

The Field of Dreams is a 10-acre parcel located on the north side of Old Sunrise Highway, just east of the Sunrise Mall. The land was previously owned by Nassau County as part of the South Oaks Hospital property. In 2004, the property was purchased by the Town of Oyster Bay for the development of a recreational sports complex, consisting of two state-of-the-art multi-use lighted playing fields, a practice field, a basketball court, playground and restrooms. The development of a recreational ball field was the undertaking of local residents for the site. The parcel was being considered for the possible development of a large box-store or a senior housing development; however, local residents protested the commercial development of the site to the Town, which ultimately lead to Nassau County selling the land to the Town of Oyster Bay for recreational development.

5.2.3 103 Broadway Parcel

In 2004, the Oyster Bay Town Board approved the condemnation and rezoning of a 13,254 square foot parcel located at 103 Broadway, Massapequa, for a passive park. The triangular-shaped parcel is located in Massapequa, bounded on the north by Sunrise Highway, on the west by Hicksville Road and on the east by Broadway. The act of rezoning the parcel was recommended by a study conducted during a moratorium on the block, in response to residents' concerns with respect to the potential future development, and possible redevelopment, of properties located in the area. The parcel is intended to



Legend

-  INCORPORATED VILLAGES
-  BOUNDARY

FIGURE 2
TOWN OF OYSTER BAY
SOUTH SHORE ESTUARY RESERVE
OPEN SPACE PRESERVATION
CURRENT OPEN SPACE EFFORTS



be developed as a passive recreational park in an effort to enhance the residential character of the surrounding area.

5.3 Site Assessment Recommendations

5.3.1 Assessment

It is important for the Town to develop a systematic approach to identify likely sites for conservation, acquisition or other forms of preservation. All open space protection activities that involve funding or some form of discretionary action from the Town should meet certain minimum criteria demonstrating that the property has value to the general community. The development of a minimum standard may help to guide land management and preservation-minded decision-making and ensure that open space and environmental protection activities are judiciously undertaken.

Relevant factors that may be used to identify important open space and resource protection sites may include:

- Physical characteristics (such as size and condition) of the parcel;
- Nature of surrounding land uses (e.g., industry, parkland, residential neighborhood, etc.);
- Presence of groundwater, surface water and wetland resources;
- Notable sensitive or vulnerable ecological values (e.g., habitats that support rare, threatened, or endangered species);
- Historic, archaeological, social, or cultural values;
- Potential for linkage to existing parks, open space or other social and cultural facilities;
- Outdoor recreational value, particularly where such resources are needed or relatively lacking;
- Scenic value;
- Flood storage, stormwater control and attenuation, or important aquifer recharge or groundwater protection qualities;
- Public access to coastal waters and other resources;

- Potential for mitigating development impacts (e.g., buffering between incompatible lands uses);
- Availability of effective land use tools and/or reasonable cost of acquisition or preservation, available funding or grant assistance, potential for joint partnerships;
- Private property rights; and
- Specific local land use and development needs including economic development, provision of workforce housing, generation of tax revenues, creation of jobs, etc.

5.3.2 Existing Open Space Parcels

In order to evaluate and assess existing open space parcels within the Town and particularly within the SSER boundaries, it is recommended that the Town digitize and enter into a GIS data base all existing open space parcels.

Section 6 References

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