



HHLT Educational Forum: Conservation Subdivisions and the Open Space Overlay

February 5th 2018
Winter Hill

Topics Covered

SECTION	TOPIC
I	Comprehensive Plan
II	Open Space Index
III	Conservation Board and Natural Resource Officer
IV	Zoning Code: Open Space Overlay District and Conservation Subdivisions
V	Key Takeaways

SECTION I

COMPREHENSIVE PLAN

Land Use Control: An Exercise of Local Power

- New York is a “Home Rule” state
 - Article IX of the State Constitution provides for local self-governance
 - Towns enact local laws under the Municipal Home Rule Law
- Zoning laws are made at the local level (Town)
 - State zoning enabling statutes give Towns this power
- State law requires that Town adopt zoning laws in accordance with a Comprehensive Plan (Town Law §263)
 - Comprehensive Plan provides the “backbone” for the local zoning law

What is a Comprehensive Plan?

“A comprehensive plan is a statement of a community’s goals and a conceptual road map for how to achieve them.”

- Introduction to Philipstown Comprehensive Plan 2006

- Last Philipstown Comprehensive Plan adopted 2007
 - after numerous meetings and two Public Hearings
- Planning document expressing shared goals and principles
 - written by the community for the community
- Currently being updated (2018)
 - Comp. Plan Update Committee formed late 2017

Philipstown Comprehensive Plan Structure

- The Philipstown Comprehensive Plan process began with **community and stakeholder consensus goals** established during the “Philipstown 2020 Community Forum” held in 2001
- Process concluded with finalization of the Comprehensive Plan in 2007
- 2007 plan identified a number of goals and strategies developed during the process
- Two of these goals, which directly **support open space conservation and protection of natural resources** and lead to our current conservation subdivision provisions, are:
 - Goal 1 - Conserve Philipstown’s Rural, Historic and River-Community Character
 - Goal 7 - Protect Philipstown’s Natural Resources
- Chapter 3 of the Comprehensive Plan sets out the **Implementation Actions**

Goal 1: Conserve Philipstown's Rural, Historic and River-Community Character

- Strategies for this goal include:
 - Discourage intensive development in areas not designated for future growth in the Comprehensive Plan, allowing only low-density development
 - » Specifically encourage **open space development**, also known as “clustering” or “conservation” development
 - » **Keep development in scale and character with surroundings**
 - Preserve elements that contribute to Philipstown's rural and historic character
 - » Such elements include significant trees, ridgelines and forests

Goal 7: Protect Philipstown's Natural Resources

- Strategies for this goal include:
 - Protect Water Quality and Quantity
 - Identify critical parcels of land for preservation
 - Create an ongoing identification process
 - Develop ways to accomplish this preservation
 - Preserve habitat and scenic resources through use of **open area regulations**
 - Adoption of a **Natural Resource Protection Plan (NRPP)**
 - Implement NRPP through land use regulations and other measures

Open Space Development

- Comprehensive Plan Goal **Implementation Action R 2.4**: “Allow open space (cluster) development, with safeguards to ensure that such developments **do not lead to more development than would otherwise occur** and that they preserve open space that the Town wishes to protect.”

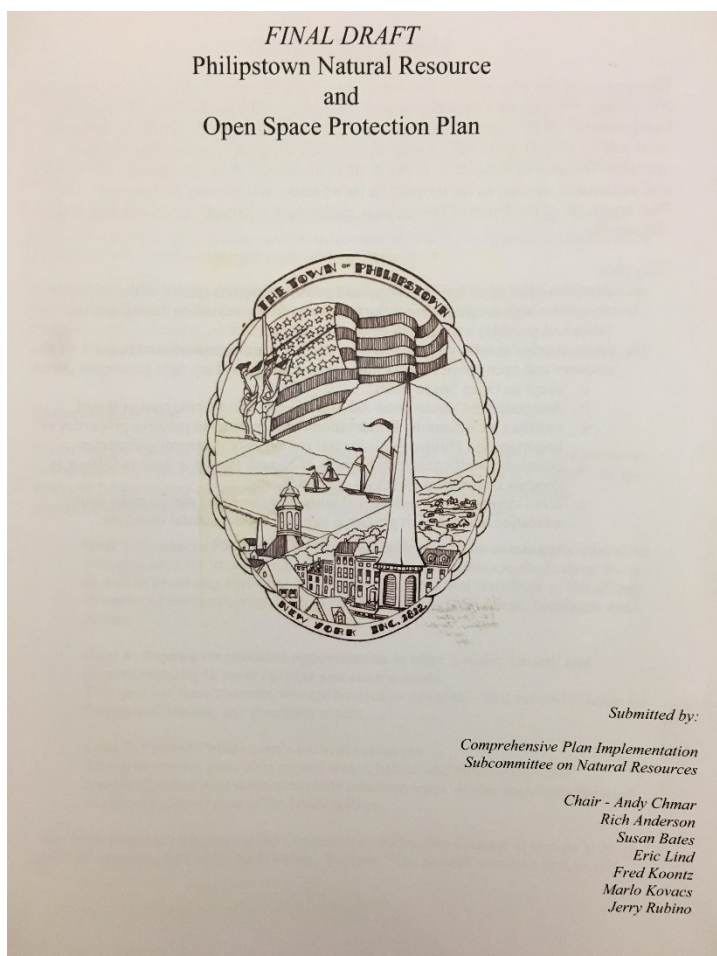
Open Space Development cont.

- Explanation for R 2.4:
 - Open space development, also known as cluster or conservation development, is a technique in which the same number of houses that would be allowed on a parcel under a conventional development scenario are arranged on smaller lots, preserving significant amounts of open space.
 - The use of this technique should be limited to those places where a conventional suburban development is a realistic possibility, but a cluster would produce a better result, with safeguards so that a developer cannot use this technique to build more units than would otherwise be permitted.
 - The open space to be preserved should be meaningful blocks of contiguous land that has conservation value and that preserves the rural qualities that the community values so much.

Natural Resource Protection Plan

- Comprehensive Plan Goal **Implementation Action M 1:**
“Prepare and adopt a natural resources plan.”
- Explanation for M 1:
 - The natural resources plan would identify existing preserved open space and establish proposed open space preservation.
 - The natural resources plan could then be linked to regulatory changes, such as **open space development provisions**.

Natural Resource and Open Space Protection Plan



Purpose:

- To establish ways to protect natural resources

Used by:

- Residents, Local Boards and Project Applicants

Key Recommendations Include:

- Open Space Index
- Conservation Board
- Natural Resource Officer
- Zoning Code Changes

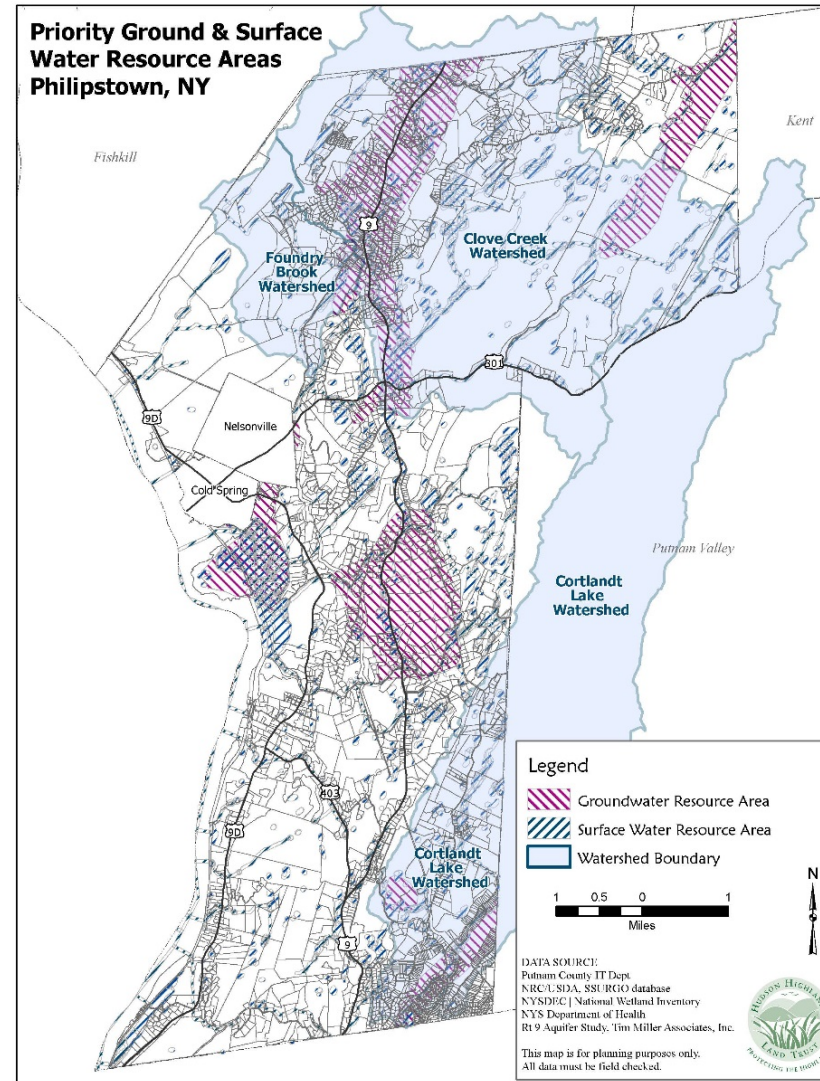
SECTION II

OPEN SPACE INDEX

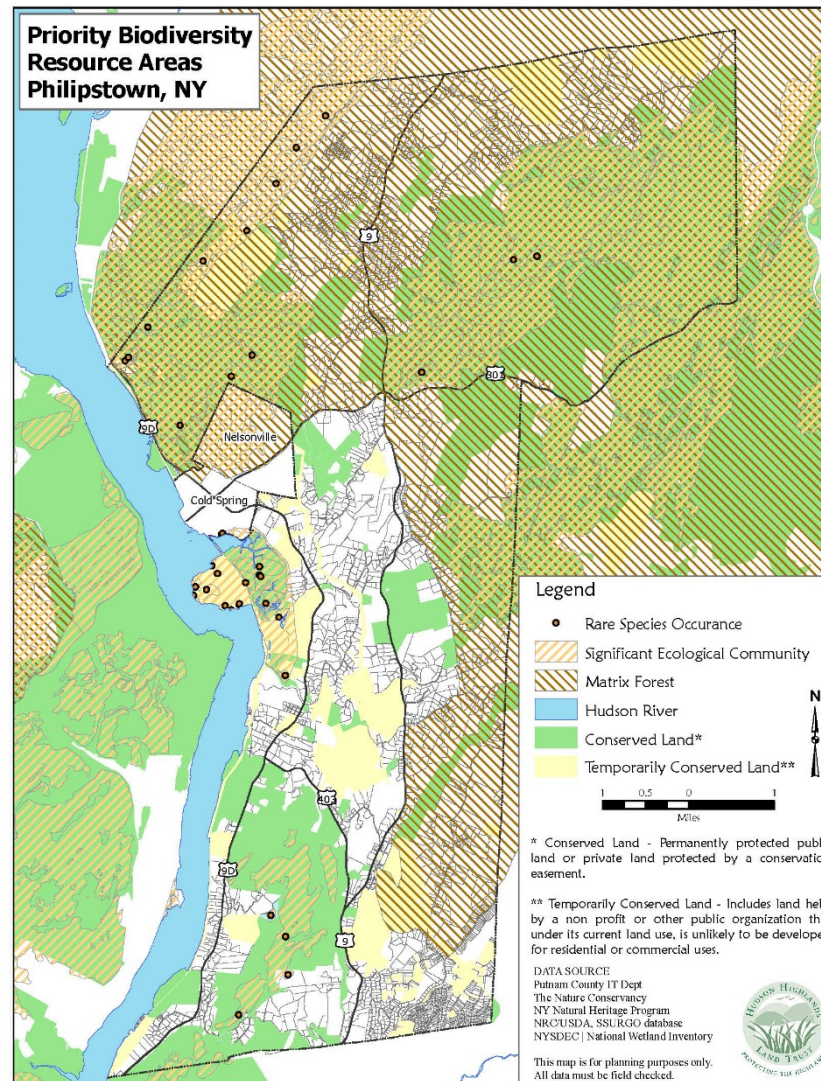
Creating the Open Space Index

- Focus on **natural resource functions** selected by the community:
 - » Ground and Surface Water
 - » Biodiversity
 - » Community Character
 - » Outdoor Recreation
- The following slides show the maps identifying these primary resource functions (and can be found in Appendix A of the plan):

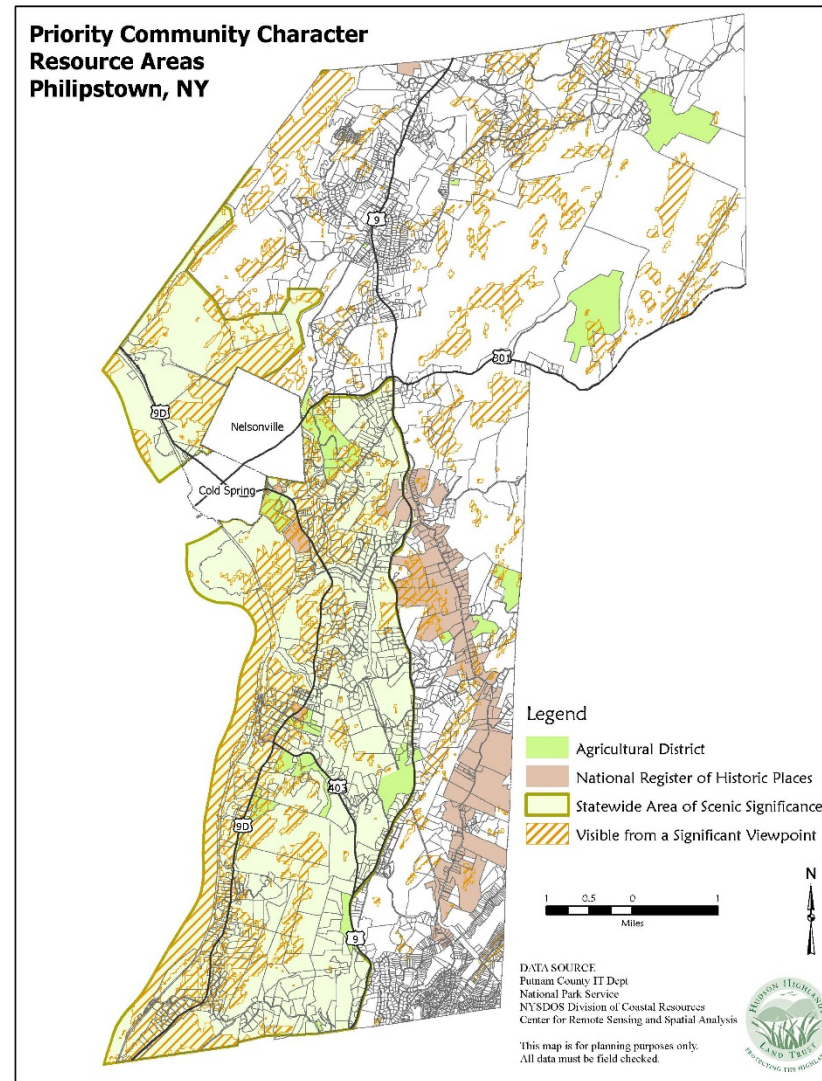
Creating the Open Space Index: Water Resource Areas



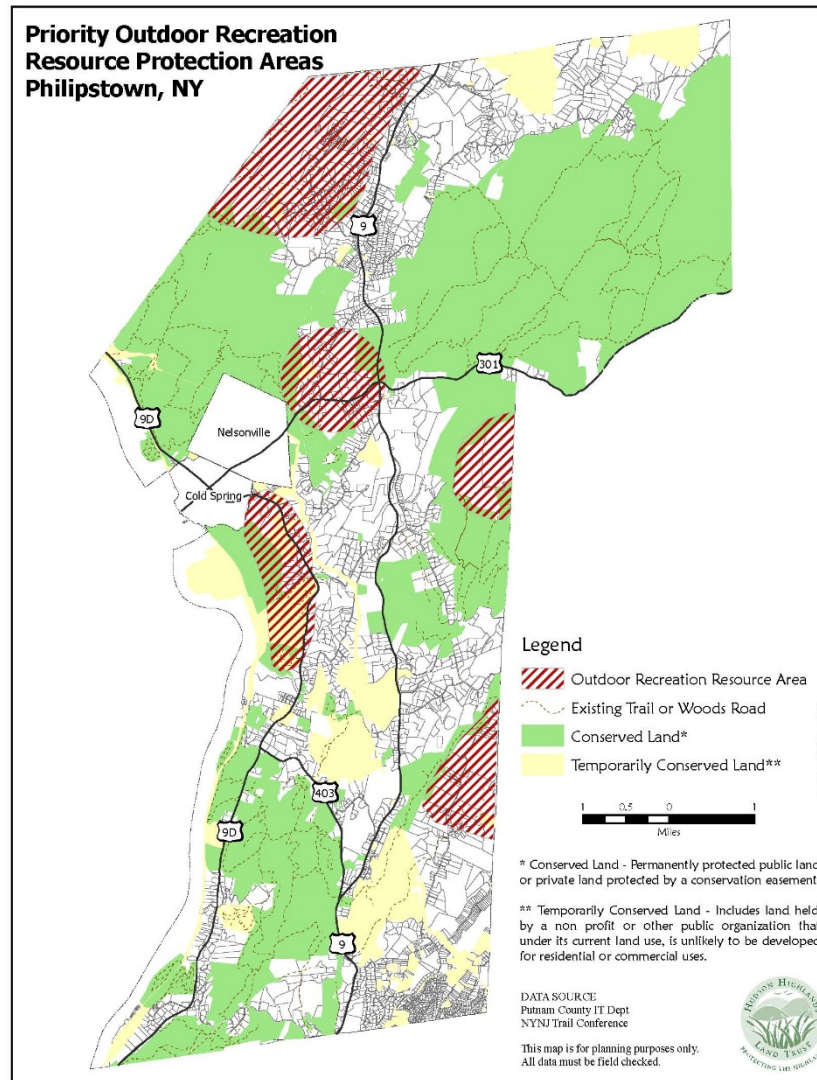
Creating the Open Space Index: Biodiversity



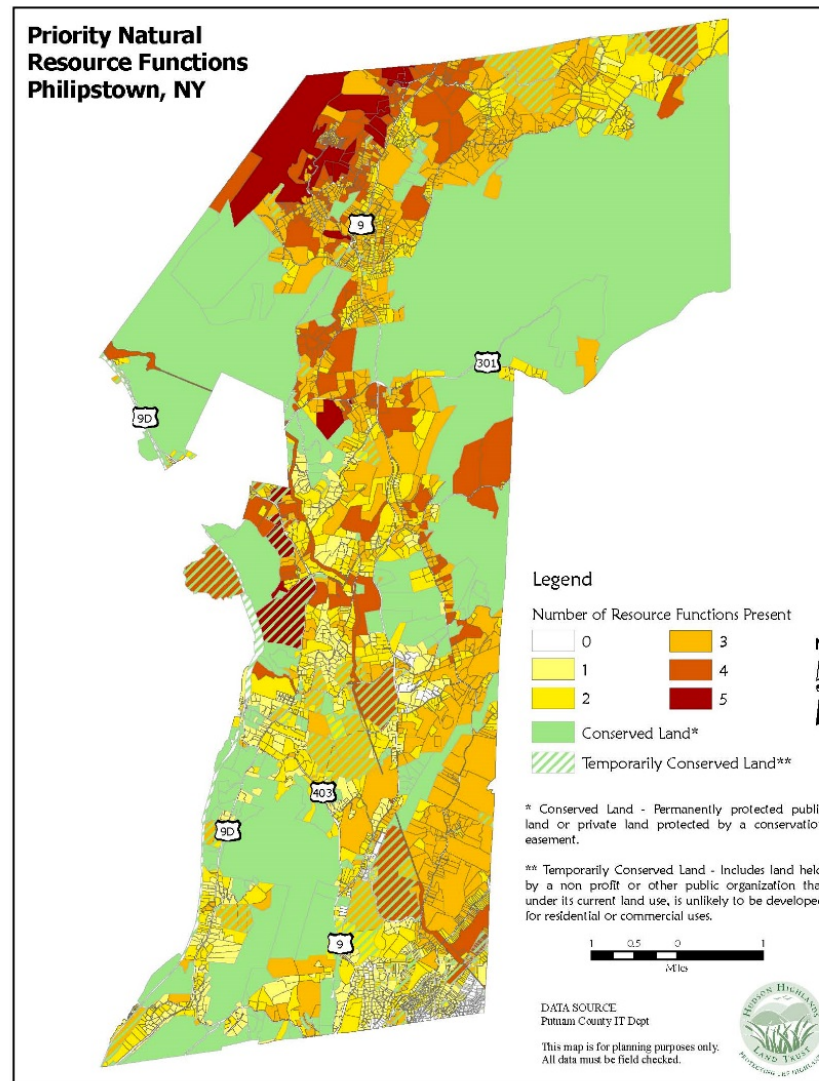
Creating the Open Space Index: Community Character



Creating the Open Space Index: Recreation

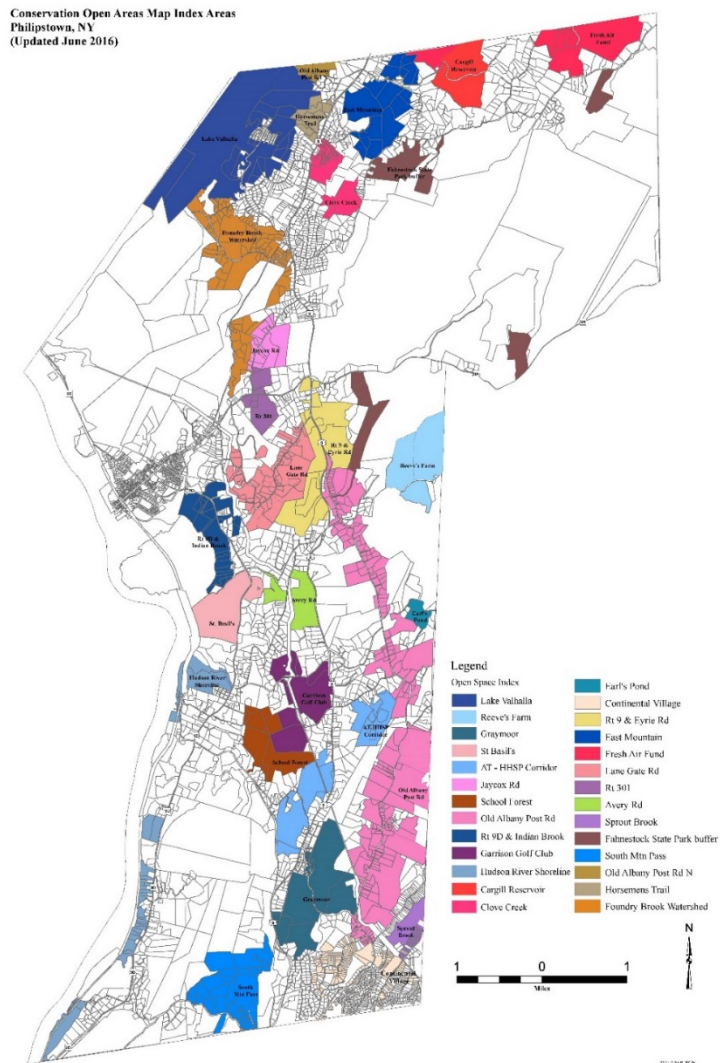


Creating the Open Space Index: Land Prioritization Based on Combined Natural Resource Functions



**Darkest Red
Shows
Highest
Natural
Resource
Value**

Open Space Index Map: Priority Areas Inventory



Open Space Index forms the Basis for the Open Space Overlay District (OSO) in the Zoning Code

SECTION III

**CONSERVATION BOARD AND NATURAL
RESOURCE OFFICER**

Conservation Board and Natural Resource Officer

- Conservation Board
 - created after Open Space Index approved by Town
- Under **State Law** the Conservation Board must:
 - Review each development application in any Open Space Index area
 - Submit a written report to the relevant reviewing board within 45 days
 - The written report shall
 - evaluate the proposed development in terms of the Town's open area planning
 - include the **effect of such use or development on the Open Space Index**
 - make recommendations as to the most appropriate use of the open area
 - Be filed with the Town Board
- Natural Resource Review Officer
 - established pursuant to Natural Resource Protection Plan
 - Role includes review of development applications in the OSO

SECTION IV

ZONING CODE: OPEN SPACE OVERLAY DISTRICT AND CONSERVATION SUBDIVISIONS

Open Space Overlay District

- Open Space Conservation Overlay District (OSO) defined in §175-18 of Philipstown Code
 - Purpose: *“Special protection of large tracts of land identified as important for conservation by the Town's Open Space Index is necessary to preserve the Town's natural resources and attractive rural quality”*
 - Definition: *“The OSO District shall include land shown in the Open Space Index that is located on parcels of 30 acres or more”*
- Regulatory Effect on Land Uses in the OSO
 - Conventional Subdivision: Minimum Lot Size = 15 acres
 - Conservation Subdivision: Maximum Density = 5 acres per dwelling unit and 80% preserved as Open Space
 - Same steep slopes and wetlands protections apply to both types of subdivisions
 - i.e. You cannot build on steep slopes or wetlands, even in a conventional subdivision

Conservation Subdivisions in Philipstown Zoning Code

- Purpose: Conservation or clustered subdivisions intended to accommodate development in Open Space Overlay, while preserving natural resources and community character.
- Achieved By: Clustering residential units while preserving large tracts of contiguous open space, protected by a conservation easement.
 - Conservation easement to be held, monitored and enforced by the Town, other government body, or a qualified non-profit conservation organization.

Goal: A Conservation Subdivision should result in a better conservation outcome than a Conventional Subdivision. Density bonuses are earned by providing conservation value.

Conservation Subdivisions: What does Philipstown's Zoning Code Say?

- Protected Open Space is to be contiguous and **shall not result in fragmentation**
- Key Challenges in achieving Open Space Overlay Goals
 - Percentage of Land to be Preserved as Open Space (§175-20 H Philipstown Code):
 - Defined as a percentage of **total “gross” acreage, not buildable acreage**
 - 80% within the Open Space Overlay District (OSO); 60% within non-OSO area
 - Density formula removes 75% unbuildable land to calculate dwelling units
 - However, remaining 25% unbuildable land (e.g. steep slopes, wetlands) gives developer a **“density bonus” with no offsetting conservation value**

“[O]rdinances that calculate density based on gross tract acreage are fundamentally flawed, as house lots could not possibly be created in unbuildable areas, such as wetlands.”

Randall Arendt, *Rural by Design*, Second Edition 2015, Page 321

Conservation Subdivisions: What does Philipstown's Zoning Code Say? cont.

- Key Challenges in achieving Open Space Overlay Goals (continued)
 - Open Space appears to allow all agricultural uses (e.g. livestock) and related structures
 - Not just passive uses
 - Does not clearly specify who directs the Conservation Analysis (§175-20 A (1))
 - Applicant submits Conservation Analysis under zoning code
 - Natural Resource Protection Plan provides that the Natural Resource Officer conduct conservation analysis

Conservation Subdivisions: Models



(Source: Rural By Design R. Arendt 2015)

18 lots are shown in the conventional plan on the left and the conservation plan in center, where half the **buildable land** has been preserved as permanent open space (in addition to unbuildable soils and slopes). Double density is shown on the right, with 36 quarter-acre hamlet lots, where 70% of the **buildable land** has been conserved. Density increases generally obligate applicants to provide special benefits to the community, e.g, large increases in open space, land to the municipality or land trusts, or affordable housing. (Source: R. Arendt 2015 (citing Arendt 1999 and National Lands Trusts))

SECTION V

KEY TAKEAWAYS

Land Conservation Concerns

- Compared to a conservation subdivision, a conventional subdivision would allow fewer houses (1 house per 15 acres in OSO) and prohibit large commercial agricultural uses
 - The same steep slopes and wetlands protections are afforded under both types of development.
- Conservation values are significantly impaired where there is:
 - Fragmentation
 - Intensive commercial or agricultural uses
 - Development wrapping around sensitive natural features (e.g., water)
- Conservation easements are difficult to monitor and enforce where there are:
 - Many homeowners bordering the open space
 - Intensive agricultural uses
 - Structures on the open space
 - Fragmentation of the open space

Key Takeaways

- A Conservation Subdivision must have a better conservation outcome than a Conventional Subdivision. This is how a developer earns a density increase.
- How do we ensure this happens?
 - Ensure Conservation Board and Natural Resource Review Officer input is fully utilized
 - Planning Board directs Conservation Analysis process
 - Code Improvements:
 - Open space percentage of buildable acreage, not total acreage
 - Limit open space uses to passive uses
- Consequences of Bad Precedent: Future Loss of Iconic Open Space Index properties