

# PRESERVING VALUABLE LANDS IN LAND USE DECISIONS

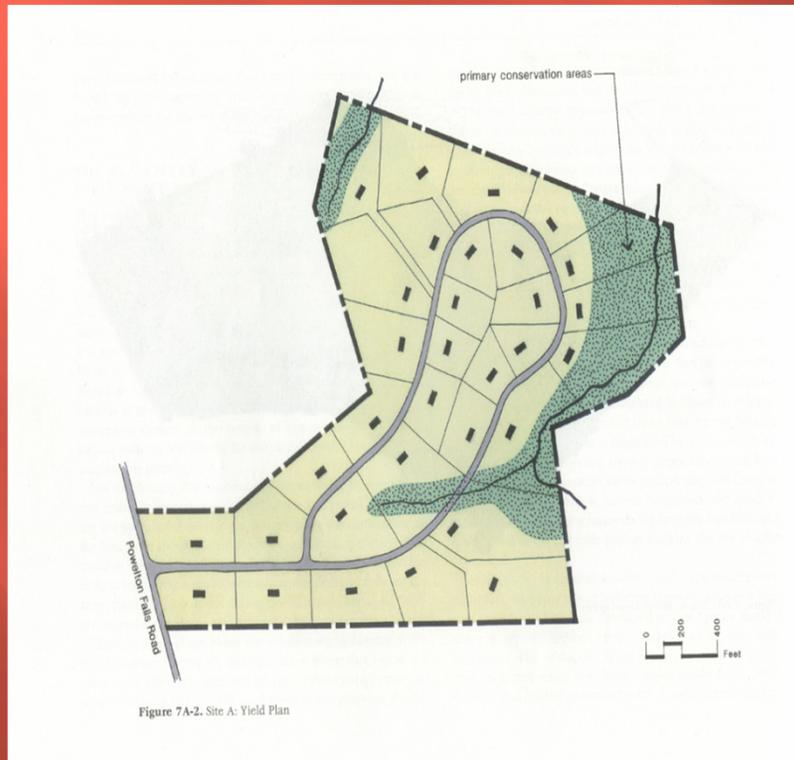
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Rhinebeck and Hudson

From Randall J. Arendt, *Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks*, Island Press, 1996

## CONVENTIONAL SUBDIVISION



## CLUSTER SUBDIVISION



Traditional Neighborhood Design, from Andre Duany and Elizabeth Plater-Zyberk, Duany Plater-Zyberk & Co.,



# Smith v Town of Menden

- ▣ Court of Appeals by vote of 4-3 upheld a mandatory conservation restriction intended to run with the land in perpetuity as a condition of site plan approval
  - Already 4 conservation overlays
  - No public access
  - Supported by a comprehensive plan

# Purpose of Open Space

Important distinction:

- ▣ Preservation of open space to achieve a desired residential or commercial density (e.g. average density zoning)
- ▣ Conservation of natural or cultural resources of lasting value (viewsheds, habitats, aquifers, ridgelines)

# Limitations of Land Trusts for Mandated Easements

- ▣ Mission of the land trust
- ▣ Burden of monitoring
- ▣ Burdent of enforcement

Make the land trust an early partner in the development of the project



# Limitations for Municipalities for Mandated Easements

- ❑ Budgeting for ongoing expense of holding and monitoring easement in perpetuity
- ❑ Authority of local laws
- ❑ Allocation of staff
- ❑ Changing municipal budgets
- ❑ Public purpose vs. private benefit



# Deed Restrictions and Restrictive Covenants

- ❑ Limitations on enforcement (estoppel, laches and waiver)
- ❑ Cannot be held by third party
- ❑ Not authorized to last in perpetuity
- ❑ Easily amended by any subsequent reviewing board



# Term Easements

- ❑ Authorized by the Conservation Easement Enabling Act
- ❑ Questionable investment for a land trust
- ❑ Changing municipal attitudes and resources
- ❑ Appropriate for a world undergoing climate change?



# Town of Sand Lake (Joel Russell)

- ▣ Before subdivision or site plan is submitted, applicant must complete a Conservation Analysis:

*“inventory maps, survey and topographic maps, written description of the land, and a written analysis of a conservation value of various site features.”*

# Rhinebeck and Warwick zoning laws (Ted Fink)

- ▣ Purpose broadly stated
  - Protect significant biological resources
  - Avoid loss of habitat
  - Avoid adverse effects on watersheds
  - Facilitate biodiversity conservation
  - Maintain healthy ecosystems
  - Cost effective to protect natural resources

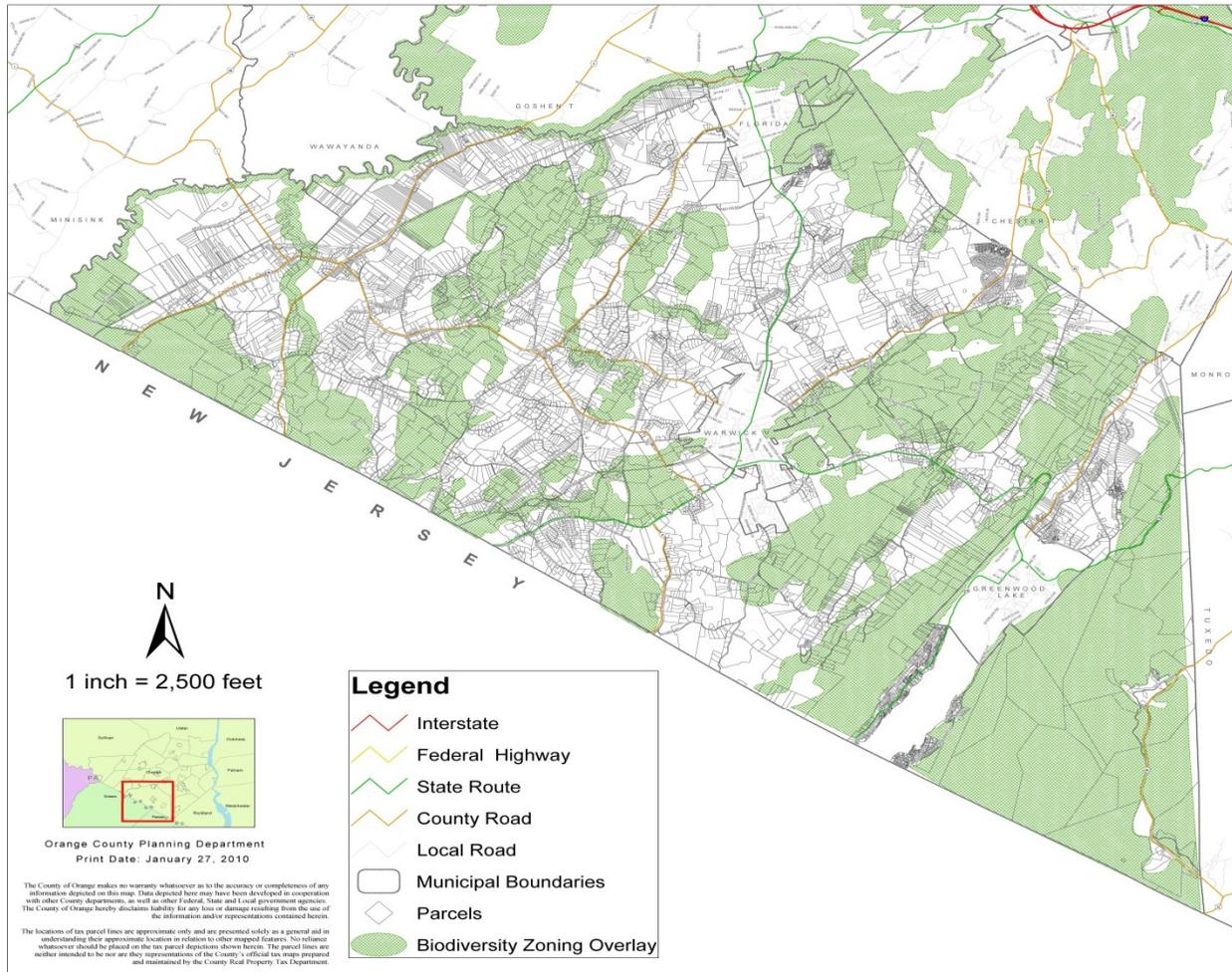


# Intent of habitat analysis zoning

- ▣ Incorporate habitat assessments in decision-making of all reviewing boards
- ▣ To use Hudson River Estuary Corridor Biodiversity Assessment Manual (Hudsonia)
- ▣ Significant habitat areas become primary conservation areas in existing resources and site analysis plan

# BIODIVERSITY OVERLAY ZONE

## Town of Warwick, New York Biodiversity Zoning Overlay



# Warwick and Rhinebeck

- ▣ Rhinebeck: Habitat assessment mandatory for all development reviews subject to SEQRA
- ▣ Warwick: for all major and certain minor subdivisions in biodiversity overlay zone
- ▣ Must be completed prior to submission of a formal application
- ▣ Hudsonia's report must be used, but Board may require a site-specific habitat assessment

# Site-specific habitat assessment

- ▣ Soils and geological information
- ▣ Habitat descriptions
- ▣ Acreage for each habitat to be impaired
- ▣ Identification of all special habitats
- ▣ Habitat assessment – offsite and onsite
- ▣ Assessment of habitat quality
- ▣ Identify wildlife of greatest conservation need

# Site-specific habitat report

- ▣ Site overview with bedrock, geology and soils
- ▣ Habitat descriptions
- ▣ Indicators of habitat quality
- ▣ Habitat map
- ▣ Soils map
- ▣ Vegetation and wildlife list with locations
- ▣ Narrative discussion/potential impacts
- ▣ Recommendations

# Focus on protecting valuable lands

- ▣ Scenic Hudson – protecting the lands that matter most
- ▣ The Open Space Institute – Northeast Resilient Landscape Initiative
- ▣ “Resilient sites are natural places likely to withstand the growing impact of climate change and to offer refuge to a diverse array of plants and animals.”

# Conclusion

- ▣ Be sure a strong comprehensive plan or environmental survey supports the zoning
- ▣ Allow some flexibility in use of conservation easements and deed restrictions
- ▣ Require conservation analysis and habitat assessment prior to submission of development plans
- ▣ Use conservation easements to protect lands of greatest conservation value, especially those that support biodiversity