

# Town of Scarborough Conservation Commission

December 11, 2023 | 6:00 pm | Hybrid: Town Manager's Conference Room and via Zoom

To participate in the Conservation Commission meeting remotely, please follow this link:  
[https://scarboroughmaine.zoom.us/webinar/register/WN\\_6Ao8ka50QxS4305QiCqKbw](https://scarboroughmaine.zoom.us/webinar/register/WN_6Ao8ka50QxS4305QiCqKbw)

To view the Conservation Commission, please follow this link:  
<https://www.youtube.com/channel/UCD5Y8CFy5HpXMftV3xX73aw>

## *Agenda*

**6:00 pm**      **Call to order and attendance**

- (1) Welcome and introductions
- (2) Land acknowledgement
- (3) Vote on minutes from 11/13/23 meeting
- (4) Review 12/11/23 agenda
- (5) Public comment

**6:10 pm**      **Old Business**

- (1) Conserving Land & Building Resiliency:
  - a) Review GIS web application for coastal setbacks and buffers
  - b) Finalize recommendations for Environmental Standards for Natural Resource Protection (attached)

**6:55 pm**      **New Business**

- (1) Conserving Land:
  - a) Update on Ad-Hoc Open Space Committee
  - b) Discuss approach for supporting renewal of Scarborough Land Bond

**7:15 pm**      **Updates**

- (1) Promoting Citizen Stewardship: Report out from sub-committee
- (2) Town Council
- (3) Planning Board
- (4) Sustainability Committee
- (5) Parks and Conservation Land Board

**7:25 pm**      **Set next meeting agenda**

**Next meeting:** January 24, 2023 at 6:00 pm

**7:30 pm**      **Adjourn**

## Engineering & Technical Services

# Town of Scarborough Conservation Commission

November 13, 2023 | 6:00 p.m. | Scarborough Town Hall and via Zoom

## *Meeting Minutes - DRAFT*

Present in person:

Commission: Dick Harvey, Pete Slovinsky

Staff: Jami Fitch, Autumn Speer

Guest: Andrew Mackie, Scarborough Land Trust (SLT)

Present via Zoom:

Commission: Cathleen Miller, Jessica Sargent, Maggie Vishneau, Marla Zando

A recording of this meeting is available online: [https://www.youtube.com/watch?v=z1KF\\_8S79zI](https://www.youtube.com/watch?v=z1KF_8S79zI)

### Call to order

1. Meeting was called to order at 6:00 pm.
2. Pete motioned to accept the minutes. Marla seconded. Rollcall vote was unanimous. Motion passed.
3. Public Comment
  - Andrew Mackie shared that SLT is hosting a talk about how the personalities of small mammals influence forest growth at the Scarborough Town Hall on 11/14 at 6:30 pm. He also shared that the Fuller Farm bird trail has been upgraded to improve accessibility. He also encouraged the Conservation Commission write a letter to the Town Council to request reauthorization of Scarborough's land bond.
  - Pete would like to see the Commission work with SLT to provide community outreach about the importance of the land bond to the Town's goal of achieving 30x30. The accomplishments achieved due to the land bond should also be highlighted. Marla noted that she and Rita are open to working with Randi, Jami, and Allison Carrier to draft some articles.

### Old Business

1. Conserving Land & Building Resiliency: Review updated Environmental Standards for Natural Resource Protection and finalize recommendations
  - An updated environmental standards document was provided to the Commission with their meeting agenda. The Commission's previous comments and suggestions have been incorporated into the document, and additional comments were discussed during the meeting:
    - Pete suggested referencing "highest astronomical tide" (HAT) throughout the document instead of "highest annual tide." Highest astronomical tide is a more stable number than the highest annual tide.
    - The Maine Geological Survey determines the highest astronomical tide for Maine. The process is completed every 25 years, or so.
    - Add clarity around native vegetative buffers to specify that the native vegetation must be appropriate to the resource that it is adjacent to.

## Engineering & Technical Services

- Remove “Marsh Migration Zone (developed)” from the setback/buffer table. The Shoreland Zoning ordinance should be updated to capture these guidelines during redevelopment adjacent to the marsh.
  - Coastal Bluffs – clarify that the requirements in the table apply only to undeveloped bluffs. Also, make setbacks consistent with marsh migration zone setbacks (HAT + 4’ SLR or HAT + 125’)
    - Related: Scarborough’s bluffs need to be evaluated and mapped to document whether they’re stable or unstable. Per State law, if a bluff is not mapped as unstable, it is assumed to be stable. The Town should limit armoring bluffs with riprap as much as possible.
  - Specify that setbacks and buffer widths for streams and rivers are measured from normal high water. The starting point for vernal pool setbacks and buffer widths needs to be determined.
  - Fertilizer note should be reviewed. In coastal waters, nitrogen is the nutrient of concern, where phosphorus is the concern in fresh water.
- The Commission would like see a GIS analysis of the HAT line that is buffered by 125’ and the existing HAT + 4’ SLR layer. Jami will ask Micah to prepare the maps for the Commission ahead of the December meeting.
  - Pete asked if the vegetated buffer should be wider in areas where the setback is wider (primarily in tidally-influenced areas). He suggested the buffer be a certain percentage of the setback area. This issue will be revisited after the mapping exercise is complete.
  - Once the recommendations are finalized, the Commission needs to think about how the ordinance will be presented to the Town Council.
  - Maggie asked which stakeholders will be opposed to the recommended changes. Are there other conversations that need to happen before this ordinance goes before the Town Council?
  - **ACTION: JAMI will ask Micah to prepare the maps so the Commission will have them prior to the 12/11 meeting.**
2. Conserving Land: Nominate Conservation Commission representative to Ad-Hoc Open Space Committee
- The Town Council approved the Ad-Hoc Open Space Committee at their 11/8 meeting. The Council would like the committees and groups called out in the charge to nominate a representative to serve on the Ad-Hoc Open Space Committee.
  - Maggie had expressed interest in serving as the Conservation Commission’s representative.
  - *Jessica nominated Maggie as the Conservation Commission’s representative to the Ad-Hoc Open Space Committee. Pete Seconded. Rollcall vote was unanimous. Motion passed.*
  - The Commission thanks Maggie for volunteering to serve as the Commission’s liaison.
3. Finalize Conservation Commission 2024 meeting dates
- The Commission will move their regular meeting date to the 4<sup>th</sup> Wednesday starting in January 2024, pending confirmation from Randi and Rita that 4<sup>th</sup> Wednesday will work for them.
  - December’s meeting date will remain the same (12/11). January’s meeting date is tentatively 1/27/24.
  - **ACTION: JAMI will check in with Randi and Rita on their availability to meet on the 4<sup>th</sup> Wednesday of the month. An update will be sent to the Commission once the meeting date is finalized.**

## New Business

1. Review Conservation Commission annual report
  - A draft annual report was provided to the Commission with the meeting materials.

- The report is for the Town Council and citizens and covers fiscal year 2023 (June 2022 – July 2023). All departments and some committees provide information for the report.
- The Commission would like the language around 30x30 to note that the goal is to conserve a **minimum of 30%** of the Town’s land.
- Pete asked that the map included in the draft to be updated with a legend. Jami will make sure the final image is a more complete map.
- The images in the draft will be provided to those who compile the overall report, but they may not make it into the final draft of the report.

## Updates

1. Promoting Citizen Stewardship: Report out from sub-committee
  - The subcommittee’s report was included with the Commission’s meeting materials.
  - The first two speaker series presentations are available on the [Scarborough Public Library YouTube channel](#). Hopefully the third will be posted soon.
  - Marla and Rita are looking for ideas for speakers and topics for the 2024 series. Please let them know if you have ideas.
2. Town Council
  - New Town Council committee assignments will be assigned in December.
3. Planning Board
  - An Aroma Joe’s is proposed for Bridges Drive. The Commission is encouraged to look at the Planning Board application for this site.
4. Sustainability Committee
  - The Sustainability Committee exploring an ordinance to establish a commercial property assessed clean energy (C-PACE) program in Scarborough, which would provide commercial property owners access to financing for energy efficiency upgrades. The Town has had a residential PACE program in place since 2010.
5. Parks and Conservation Land Board
  - The Board recommended the Town Council approve \$210K to support SLT’s acquisition of 50 Hanson Road. This parcel is 18 acres with 1,000 linear feet of Silver Brook, a wild brook trout stream according to IF&W. The parcel would make 700 contiguous acres of protected land (adjacent to existing SLT property and Broadturn Farm). It’s also in close proximity to a large parcel in Saco that is also conserved.
6. Low Impact Development Ordinance
  - The Friends of Casco Bay appealed DEP’s approval of the model ordinances submitted by Scarborough and the 13 other municipalities in this area. The appeal was recently heard by the Board of Environmental Protection (BEP). BEP remanded the issue back to DEP to set specific performance standards that municipalities need to include in their ordinances. This process will likely extend the Town’s ordinance development timeframe.

Meeting adjourned at 7:19 pm.

## Next Meeting:

December 11, 2023 @ 6:00 pm

## **Draft 11.13.23**

### **SECTION XXXX. ENVIRONMENTAL STANDARDS – NATURAL RESOURCE PROTECTIONS**

#### **A. PURPOSE**

The Scarborough Marsh is central to the Town's identity, creating a special awareness by our residents of the importance of all of the Town's natural resources. Future land use will follow a pattern of development that is sensitive to protecting our beaches, dunes, rivers, open spaces, farmlands, and other elements that comprise our unique ecosystem.

Natural resource protections are established to:

- Maintain, and where possible improve, the quality of surface waters and ground water by controlling the rate and volume of stormwater runoff and preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen.
- Protect, and where possible improve, potential water supplies and aquifers and aquifer recharge areas.
- Protect, and where possible improve, wildlife habitats and maintain ecological balance.
- Protect, and where possible improve, unique or unusual natural areas and rare and endangered plant and animal species.
- Protect, and where possible improve, shellfish and fisheries.
- Prevent the destruction of, or significant changes to, wetlands, related water bodies and adjoining land which provide flood protection, and to protect persons and property against the hazards of flood inundation by assuring the continuation of the natural or existing flow patterns of streams and other water courses within the Town.
- Prevent the expenditure of municipal funds for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.

The provisions and criteria set forth in this Section are in addition to the provisions of applicable state and federal laws and regulations, other sections of this Site Plan Ordinance, Zoning Ordinance, and other local ordinances and regulations.

Where any provision of this Section conflicts with a state or federal law or regulation, another section of this Site Plan Ordinance, Zoning Ordinance, or another local ordinance or regulation, the more restrictive provision shall apply.

Nothing in this Section shall permit a use or activity which is contrary to any other provision of the Zoning Ordinance.

#### **B. APPLICABILITY**

These requirements shall apply to all new development requiring site plan or subdivision approval affecting any of the following natural resources:

- All vernal pools.
- All wetlands.
- All non-tidal perennial river, stream, or brook.
- All tidally influenced waterways.
- All coastal bluffs.

## **C. DEFINITIONS**

### **Coastal Bluff:**

Defined as a steep shoreline slope formed in sediment (loose material such as clay, sand, and gravel) that has three feet or more of vertical elevation just above the high tide line. Cliffs or slopes in bedrock (ledge) surfaces are not bluffs and are not subject to significant erosion in a century or more. Beaches and dunes do not form bluffs, except along the seaward dune edge as a result of erosion.

### **Coastal Wetlands:**

Coastal Wetland means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

### **Diameter at Breast Height (DBH):**

DBH is the diameter of a tree measured 4.5 feet above the ground.

### **Forested Wetland:**

Forested wetland means a regulated wetland with at least 20 percent of the surface area covered by woody vegetation greater than 20 feet in height.

### **Fresh Water Wetland:**

Freshwater wetland means freshwater swamps, marshes, bogs, and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and not considered part of a great pond, coastal wetland, river, stream, or brook.

### **Highest Astronomical Tide (HAT):**

Highest Astronomical Tide is the elevation of the highest predicted astronomical tide expected to occur at a specific tide station over the National Tidal Datum Epoch (NTDE). The NTDE is a specific 19-year period adopted by the National Ocean Service as the official time segment over which tide observations are taken and reduced to obtain mean values for tidal datums.

**Natural Resource Setback:**

A natural resource setback is a defined distance between a river, stream, or brook; wetland; or vernal pool, and any upland development and may include a vegetated buffer as required.

**River, Stream or Brook:**

River, stream or brook means a channel between defined banks. A channel is created by the action of surface water and has two or more of the following characteristics:

- It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.
- It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.
- The channel bed is primarily composed of mineral material such as sand and gravel, parent material, or bedrock that has been deposited or scoured by water.
- The channel contains aquatic animals such as fish, aquatic insects, or mollusks in the water or, if no surface water is present, within the stream bed.
- The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch, grassy swale, or other drainage way constructed, or constructed and maintained, solely for the purpose of draining stormwater.

**Vegetated Buffer:**

A vegetated buffer is part of the natural resource setback area that maintains the natural vegetation cover from the natural resource for a specified distance. Limited activity may take place in the vegetated buffer.

**Vernal Pool:**

Vernal pools or "spring pools" are shallow depressions that usually contain water for only part of the year. "Significant vernal pools" are a subset of vernal pools with particularly valuable habitat. Vernal pools must be identified between April 10 and May 10 by a qualified wetland scientist.

**D. NATURAL RESOURCE SETBACKS AND BUFFERS REQUIRED**

A natural resource setback is a defined distance between a river, stream, or brook; wetland; or vernal pool, and any upland development. Depending upon the type of resource, the natural resource setback may also contain a vegetated buffer. The required minimum vegetated buffer is a portion of the natural resource setback area directly adjacent to the resource and maintains the natural vegetation cover from the natural resource for a specified distance. Minimum vegetated buffers must include native vegetation. Lawn areas are not permitted.

If the required vegetated buffer area contains an area that has a slope of 10% or more for at least 10 feet in a direction perpendicular to the edge of the jurisdictional area, the required width of the natural resource setback and vegetated buffer shall be increased by 10 feet.

All natural resource setbacks and vegetated buffers shall be marked with permanent pins every 50-100' and signage as determined by the Planning Board. All required boundary markers shall be installed before project construction commences.

The following required setbacks and buffer width standards apply in accordance with the type of resource identified as follows:

Required Setback and Buffer Width	Natural Resource Setback	Vegetated Buffer
Contiguous Wetlands $\leq$ 1,000 SF	25'	15'
Contiguous Wetlands $\geq$ 1,000 SF $\leq$ 10,000 SF	50'	25'
Contiguous Wetlands $\geq$ 10,000 SF	100'	75'
Vernal Pools	250'	225'
River, stream or brook	100'	75'
Non-Tidal Marsh Tributary Zone	125'	100'
Marsh Migration Zone (Undeveloped)	HAT + 4' or HAT + 125'	100'
Marsh Migration Zone (Developed)	HAT + 4' or HAT + 125'	50' (restored)
Coastal Bluff Zone (Unstable)	HAT + 4' or HAT + 150'	35'; 15' (restored in developed areas)
Coastal Bluff Zone (Stable)	HAT + 4' or HAT + 100'	25'; 15' (restored in developed areas)

**ADD DIAGRAMS HERE**

## E. PERMITTED ACTIVITIES

Activities that do not involve the erection or construction of any structure or impervious surface, will not alter the natural surface configuration by the addition of fill or by dredging, will not result in site alterations, and is otherwise permitted by the Zoning Ordinance are permitted as shown in the following table. Uses not specifically identified shall be prohibited.

Standards and Permitted Activity use table abbreviations are as follows:

- P – Permitted by Right
- NO – Not a Permitted Activity
- NA – Not Applicable



Table XX.

Permitted Activity	Vegetated Buffer	Natural Resource Setback Area - Outside of Vegetated Buffer
Pesticides Permitted	NO	NO
Fertilizer Permitted	NO	P
Forest Management Activities	NO	P
Invasive Species Control	P	P
Planting/establishment of Non-invasive species	P	P
Outdoor Lighting	NO	P
Fences	NO	P
Stormwater Retention or Detention Basin	NO	NO
Stormwater Conveyance Structures	NO	P
Sewage Disposal Facilities	NO	NO
Soil Erosion and Sediment Control Measures	NO	P
Shoreline Stabilization	NO	NO
Living Shorelines	P	P
Maintenance to existing structures and improvements within existing footprint	P	P
Repair, maintenance and improvements to existing public rights-of-way, utilities and sidewalks	P	P
Construction of piers or docks, provided that all required local, state, and federal approvals have been granted	P	P
Wildlife refuges, parks and recreational uses, conservation nature trails, and open spaces as permitted or required by the Zoning Ordinance or Subdivision Regulations	P	P
Trailhead Parking	NO	P
Grading, Fill or Excavation Activities	Only for permitted activities in Table XX	Only for permitted activities in Table XX

When fertilizers are permitted, they must be low phosphate slow release fertilizer allowed for revegetation of buffers using native plants.

When forest management activities are permitted, harvesting up to 20% of the total volume each acre of trees 4.5 inches DBH or greater in any 10-year period is allowed.

Invasive species control shall be completed under the guidance and approval of a Licensed Forester, ISA Certified Arborist, Registered landscape Architect, or Qualified Resource Buffer Professional.

Reconstruction and modifications of existing structures is permitted; however, footprint expansion must move landward to the greatest extent practical.

Fences may be constructed along the vegetated buffer line; however, they must have no footings and no ground disturbance within five feet (5') of the vegetated buffer.

#### **F. NATURAL RESOURCE PROTECTION PLAN REQUIRED**

When natural resources exist on a site proposed for development, a Natural Resource Protection Plan shall be submitted as part of the Site Plan Application and/or Subdivision Application and include the following information:

- Written narrative to accompany plans on how impacts to natural resources have been minimized through the project design to the maximum extent possible and how the resource and resource buffers will be maintained and/or improved. .
- Location of protected resource(s) and wetland delineation (completed in the last five years), if applicable. The exact location of a wetlands boundary shall be determined through a field investigation by a qualified professional.
- Location of all required setbacks, buffer areas and associated easements required for access for long term maintenance and management needs.
- Location of all existing and proposed buildings, structures, streets, driveways, and other site improvements.
- Location and type of permanent resource boundary markers shall be shown on the plan.
- A note stating the limits of fertilizer application required.
- A note stating no pesticides shall be used.

#### **G. WAIVERS – NATURAL RESOURCE PROTECTIONS**

The Planning Board may review waivers to natural resource protection standards for the following:

- 1.

**Scarborough Conservation Commission  
Education Subcommittee Report  
December 11, 2023**

**1. 2024 Conservation Speaker Series**

- We are asking for input for topics and speakers for the 2024 Conservation Speaker Series.
- Please contact Marla and Rita with your ideas.

**2. Scarborough Community Survey**

- The Town of Scarborough is conducting a community survey to better understand the issues and challenges facing Scarborough residents and visitors.
- The survey includes questions concerning managing residential growth, transportation, solid waste services, stormwater management/flood control, bike ways, side walks, environmental protection, climate change adaptation, among other topics.
- Please complete the survey, available on the Town's website. The survey vendor is compiling and analyzing results to create a report for the Town Council in late December.
- Townwide Community Survey information and a link to take the survey is available here: <https://www.scarboroughmaine.org/stay-connected/municipal-projects/townwide-community-survey>

**3. Scarborough Conservation Commission Topics in the News**

- "Town acts to bolster resiliency of coastal roads in face of rising sea levels: U.S. Route 1 and Pine Point Road face increased flooding risk from sea-level rise and storm events, prompting a climate-ready resiliency project." *Scarborough Leader*, November 10, 2023
- "SLT enhances accessibility of Fuller Farm Preserve's bird trail" in *Scarborough Leader*, November 10, 2023
- "Town Conducting Community Survey"(survey results will help guide Town Council goals and prioritize community investments) in Town Newsletter, November 15, 2023
- "Bass Pro/Cabela's Outdoor Fund supports Scarborough Land Trust conservation acquisition project" in *Scarborough Leader*, November 17, 2023
- "Conservation Commission Gears Up for Open Space Plan" (references Town Council's 30x30 resolution and includes the 30x30 Fact Sheet) in Scarborough Board & Committee News, November 27, 2023
- "Long Range Planning Committee: Ordinance Revisions" (references Town's landscape requirements which includes specifics on required landscaping, buffer requirements and updates to the permitted species types with a focus on native plants), in Scarborough Board & Committee News, November 27, 2023
- "Planning Board: New Projects & 2024 Meeting Schedule" (references the Town's fourth utility-scale solar project on West Beech Ridge Road), in Scarborough Board & Committee News, November 27, 2023

- “Transportation Committee: Upcoming Townwide Study” (References mapping of pedestrian and bicycle routes to find gaps and reviewing High Crash Locations) in Scarborough Board & Committee News, November 27, 2023
- “Coastal Waters & Harbor Advisory Committee” (references dredging of Scarborough River by the US Corps of Engineers) in Scarborough Board & Committee News, November 27, 2023
- “Parks and Conservation Land Board” (references the \$1.4 million dollars left that can be bonded for future land conservation projects), in Scarborough Board & Committee News, November 27, 2023
- “Sustainability Committee: Proposed Updates for 2024” (references Sustainable Scarborough Day) in Scarborough Board & Committee News, November 27, 2023
- “State wants to raise roadways to prevent flooding on Route 1, Pine Point Road: The project, a few years away, would heighten low-lying sections of Route 1 and Pine Point Road by 4 feet.” in *Scarborough Leader*, December 1, 2023
- “Share Your Thoughts: Online Survey Open to All” (references the Town’s Community Survey which is available by an online link), in Town Newsletter, December 1, 2023
- “Scarborough River Dredging Underway at Ferry Beach” in Town Newsletter, December 1, 2023

### **Upcoming Events, Meetings, and Workshops**

**December 11, 2023: Conservation Commission Meeting @ 6:00 pm**