

# Town of Scarborough Conservation Commission

January 24, 2024 | 6:00 pm | Hybrid: Town Council Chambers B and via Zoom

To participate in the Conservation Commission meeting remotely, please follow this link:  
[https://scarboroughmaine.zoom.us/webinar/register/WN\\_QOb7AbC4QfaVtle0ESIBNA](https://scarboroughmaine.zoom.us/webinar/register/WN_QOb7AbC4QfaVtle0ESIBNA)

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 12/11/23 meeting
  - (4) Review 1/24/24 agenda
  - (5) Commission membership
  - (6) Public comment
- 6:10 pm Old Business**
- (1) Conserving Land & Building Resiliency:
    - a) Review final recommendations for Environmental Standards (attached)
    - b) Conservation Land Bond review Parks and Conservation Land Board memo (attached), discuss approach for Conservation Commission memo
    - c) Update on Ad-Hoc Open Space Committee and Conservation Open Space Plan
- 6:40 pm New Business**
- (1) Planning Board Submittals
    - a) Summary of submitted applications
    - b) Discuss process for reviewing plans and submitting comments
- 7:15 pm Updates**
- (1) Promoting Citizen Stewardship: Report out from sub-committee
  - (2) Town Council
  - (3) Sustainability Committee
  - (4) Parks and Conservation Land Board
- 7:25 pm Set next meeting agenda**  
**Next meeting:** February 28, 2024 at 6:00 pm
- 7:30 pm Adjourn**

**Engineering & Technical Services**

259 US Route One | PO Box 360 | Scarborough, ME 04070 | P: 207.730.4400 | [scarboroughmaine.org](http://scarboroughmaine.org)

# Town of Scarborough Conservation Commission

December 11, 2023 | 6:00 p.m. | Scarborough Town Hall and via Zoom

## *Meeting Minutes - DRAFT*

### Present in person:

Commission: Dick Harvey, Randi Hogan, Pete Slovinsky, Maggie Vishneau

Staff: Jami Fitch, Autumn Speer

Guest: Andrew Mackie, Scarborough Land Trust (SLT); Carrick Gambell, Natural Resources Conservation Service (NRCS)

### Present via Zoom:

Commission: Rita Bretton, Cathleen Miller, Abel Plaud, Jessica Sargent, Marla Zando

Town Council: Karin Shupe

Guest: David Kunhardt

A recording of this meeting is available online: [https://www.youtube.com/watch?v=WqPd1xaH\\_qc](https://www.youtube.com/watch?v=WqPd1xaH_qc)

### Call to order

1. Meeting was called to order at 6:00 pm.
2. Marla motioned to accept the minutes. Pete seconded. Vote was 7 in favor and one abstained. Motion passed.
3. Randi reminded Commissioners whose terms expire in 2023 to submit their volunteer applications to the Town Clerk's office. She also welcomed Abel Plaud as the Commission's newest member.
4. Public Comment
  - Andrew Mackie announced that the Scarborough Land Trust and Friends of Scarborough Marsh have merged. A Scarborough Marsh Committee and Scarborough Marsh Advisory Panel will be formed. An annual Scarborough Marsh Conference is in the works.
  - David Kunhardt, resident and member of Citizens Climate Lobby (CCL), requested that the Commission support CCL's proposed Town Council resolution in support of federal [Carbon Cash Back legislation](#). CCL would like to present to the Commission at an upcoming meeting. **ACTION: JAMI will send CCL's draft resolution to the Commission.**
  - Carrick Gambell, resident and employee of NRCS, would like to see Scarborough adopt a program similar to [South Portland's 100 Resilient Yards](#).

### Old Business

1. Conserving Land & Building Resiliency:
  - a. Review GIS web app for coastal setbacks and buffers
    - The Town's GIS Administrator pulled together a mapping application to look at potential impacts of the proposed setbacks and buffers in coastal areas. Pete requested some revisions that have started to be incorporated.
    - There are approximately 968 undeveloped parcels that fall within the Highest Astronomical Tide (HAT) + 4' of sea level rise (SLR).

## Engineering & Technical Services

- Pete suggested that getting areas that fall within HAT + 4' SLR in conservation will help the Town achieve 30x30 goals.
- Autumn noted that additional analysis is needed to confirm parcels and acreage impacted.
- b. Review recommendations for Environmental Standards for Natural Resource Protection
  - A little more work is needed to finetune the recommended setback and buffer requirements in the marsh migration zone.
  - More thought needs to be given to both marsh migration areas and coastal bluff systems. Also need to look at coastal bluff requirements to confirm they don't conflict with Shoreland Zoning.
  - Autumn, Jami, and Pete will meet prior to the January meeting to iron out the final recommendations so they can be presented to the Commission in January.
  - Dick would like to address ephemeral/intermittent streams in the future. He started looking at hill shade maps to help identify where intermittent streams may be located in Scarborough.
  - **ACTION: JAMI will set up a meeting with Autumn and Pete to finalize recommendations.**

## New Business

1. Conserving Land:
  - a. Update on Ad-Hoc Open Space Committee
    - Committees and groups are nominating members to serve on the Ad-Hoc Open Space Committee. Autumn and Jami are tracking nominees and will submit the names to the Town Council for appointment at the 1/17/24 meeting.
    - The Request for Qualifications for consulting services for the Open Space Plan will be released just after Christmas, and qualifications packages will be due in late January.
    - Karin Shupe will continue to be the Commission's liaison as well as the liaison to the Ad-Hoc Open Space Committee.
  - b. Discuss approach for supporting renewal of Scarborough Land Bond
    - The Parks and Conservation Land Board (PCLB) drafted a memo to the Town Council to recommend renewal of the Land Bond. An amount for the bond is to be determined.
    - Support from the Trust for Public Land has been requested. The organization would help determine what level of funding the community would likely support and help with the campaign to build support for the bond.
    - SLT has offered to help with financial support for polling and leading the campaign.
    - The Commission supports a memo to Council in support of a bond measure on the 2024 ballot.
    - Jessica noted that getting the land bond on the ballot is the first step and work to support the campaign will be needed. Pete noted that the Commission hasn't had a large role in past land bond campaigns. Jami will get some guidance on that the Commission's role can be. Individuals can participate in the capacity in any capacity.
    - **ACTION:**
      - **JAMI will share PCLB's draft memo with the Commission.**
      - **JAMI will get some guidance on what role the Commission can play in the land bond campaign.**

## Updates

1. Promoting Citizen Stewardship: Report out from sub-committee

- A report was provided with the meeting materials. Marla and Rita are pulling together a communication plan for 2024.
- Randi suggested focusing outreach and messaging around the land bond and 30x30.
- Marla requested some information on the [Route 1 and Route 9 resiliency project](#). Jami provided a brief overview: a public meeting was held on 11/9/23. MaineDOT is collecting more information about tidal flow and water levels to determine sizing of openings/culverts to handle anticipated tidal flow over the next 50 years. The design details presented at the public meeting are very preliminary and will likely change as a result of additional data collection and analysis.

## 2. Town Council

- Karin supports the land bond on the ballot. Clarification is needed related to the amount of the bond. Any memo written to the Council should point out that land is more expensive today than it was when the previous land bonds were approved. The memo note that land conservation is one way to manage growth.
- Pete suggested looking at what a \$2.5M parcel was in 2019 compared with 2024.
- The bond amount will likely need to be determined by June 2024.
- The Town Council will have a goal setting workshop in January. Karin is working on coming up with goals and would like to see conservation continue to be a Council goal. She encouraged the Commission to reach out to her with ideas.

## 3. Sustainability Committee

- The Sustainability Committee is wrapping up with funding request to the Finance Committee to establish a sustainability reserve account.
- The Committee will hear from CCL at their December meeting.

## 4. Parks and Conservation Land Board

- The Town Council approved the first reading for \$210,000 from the Land Bond Reserve Fund 50 Hanson Road project. SLT received additional funding for the project from the Maine Outdoor Heritage Fund and Cabela's.

Meeting adjourned at 7:22 pm.

### **Next Meeting:**

January 24, 2024 @ 6:00 pm

***DRAFT “CARBON CASH-BACK” RESOLUTION FOR THE TOWN of SCARBOROUGH***

We, the Town Council of the Town of Scarborough, hereby call upon our State and Federal elected representatives to enact national carbon-pricing legislation like the [Energy Innovation and Carbon Dividend Act, H.R. 5744](#) to protect Maine from environmental risks and costs.

To protect households, we support a [Carbon Tax and Cash-Back](#) approach that charges fossil fuel producers for their carbon pollution and rebates the money collected to all residents on an equal basis. Enacting such a Carbon Cash-Back program decreases long-term fossil-fuel dependence, aids in the economic transition for energy consumers, and keeps local energy dollars [in Maine's economy](#). Carbon taxes are in place in over 40 countries. In the UK, their Carbon tax went into effect in 2013, and the next six years saw a reduction in all fossil fuel extraction, especially coal. A similar policy to ours is returning checks to Canadian citizens this year. It is also projected to have two-thirds or more of Mainers gain more in rebated cash than they might pay in added costs of taxing polluters. Maine citizens would come out ahead, since there is so little coal, oil or gas mining here, yet everyone would get checks.

Carbon Cash-Back has been championed by US economists ([Jan 16, 2019 WSJ](#)) as the most effective and fair way to deliver rapid reductions in harmful carbon emissions at the scale required for our safety.

We expect our representatives to lead in this critical moment for the health and well-being of our citizens and for the protection of Maine's natural resources upon which we all rely.

The record of the vote approving this article shall be transmitted by written notice to Scarborough’s Congressional Representative and Maine’s two U.S. Senators, and to the President of the United States, informing them of the instructions from their constituents, by the Scarborough Town Council within 30 days of this vote.

Date \_\_\_\_\_, 2024

Town Clerk \_\_\_\_\_



## Parks and Conservation Land Board

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December 4, 2023

To the Town Council,

The Parks and Conservation Land Board recommends you consider placing a referendum question on the ballot for residents to vote on authorizing the Town of Scarborough to issue new bonds for the purchase of land and interests in lands throughout the town for purposes of conservation of natural areas, providing public access and recreation, and protection of wildlife habitat and scenic or environmentally sensitive areas.

The Land Acquisition Reserve Fund has traditionally been funded with such bonds, with voters approving bond measures in 2000, 2003, 2009, and 2019. There is approximately \$1.1 million of bonding capacity remaining from the 2019 Parks and Conservation Land Bond, excluding funds currently approved by Town Council or recommended by the Parks and Conservation Land Board. Since December 2022, \$750,000 has been spent from the Land Bond. Given the rate and cost per acre of recent projects and likely future projects, this remaining funding will be exhausted in approximately one (1) year.

In addition to maintaining Scarborough's historic rate of parks and land conservation, new bonding capacity is necessary to fulfill the resolution recently unanimously approved by the Town Council supporting the concept of the 30X30 campaign to protect and conserve at least 30 percent of land and water by 2030.

If the Town Council agrees with the Parks and Conservation Land Board that new parks and land conservation bonding authority is an important next step to achieving our community's conservation goals, we recommend exploring the appropriate referendum amount for a fall 2024 bond, with the understanding that additional research is needed, including a survey on priorities, community sentiment, and amount.

Sincerely,

Suzanne A. Foley-Ferguson  
Chair, Parks and Conservation Land Board

### **Scarborough Parks and Conservation Land Board**

259 US Route One | PO Box 360 | Scarborough, ME 04070 | P: 207.730.4000 | [scarboroughmaine.org](http://scarboroughmaine.org)

## **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 astronomical in which an activity is proposed. 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. The Maine Geological Survey has defined the HAT, and approximated its extent along the Maine coastline.



**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 appropriate 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 respectively.

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 natural resource setbacks and minimum vegetated 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'	100% of Natural Resource Setback
River, stream or brook	100'	75'
Non-Tidal Marsh Tributary Zone	125'	100'
Marsh Migration Zone	HAT + 4' or HAT + 125' (whichever is greater)	100% of Natural Resource Setback
Coastal Bluff Zone (Unstable)	HAT + 4' + 150'	35'
Coastal Bluff Zone (Unmapped)	HAT + 4' + 150'	35'
Coastal Bluff Zone (Stable)	HAT + 4' + 100'	25'

The starting point for measuring setbacks for stream and rivers shall be the normal high water line.

The starting point for measuring setbacks for vernal pools shall be the outer depression edge of the vernal pool as identified by a qualified wetland scientist.

The starting point for measuring setbacks for coastal bluffs shall be the highest point of the bluff.

**FUTURE - 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

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
Installation 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 listed above	Only for permitted activities listed above

Permitted fertilizers must be low phosphate slow release in areas of fresh water impact and slow release nitrogen in areas of coastal water impacts, both at a rate recommended from a soil test

Depending on the buffer type, revegetation of buffers must use appropriate native plants.

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.

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

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.