

Town of Scarborough Conservation Commission

June 25, 2024 | 6:00 pm | Hybrid: Public Safety Classroom and via Zoom

To participate in the Conservation Commission meeting remotely, please follow this link:
https://scarboroughmaine.zoom.us/webinar/register/WN_38MPYAy3SQmulksHV833-A

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 5/22/24 meeting
 - (4) Review 6/25/24 agenda
 - (5) Public comment
- 6:15 pm** **Old Business**
- (1) Conserving Land & Building Resiliency:
 - a) Conservation Open Space Plan: update on Community Engagement (Open House 7/25; smaller events planned)
 - b) Environmental Standards: update on Developer Forum and ordinance process
 - (2) [Planning Board submittals](#)
- 6:55 pm** **New Business**
- (1) Piping Plover Ordinance: review & discuss proposed changes to Ch. 610, Piping Plover Ordinance
- 7:20 pm** **Updates**
- (1) Promoting Citizen Stewardship: Report out from sub-committee
 - (2) Town Council
 - (3) Sustainability Committee
 - (4) Parks and Conservation Land Board
- 7:30 pm** **Adjourn**
- Next meeting:** July 24, 2024 at 6:00 pm

Engineering & Technical Services

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Town of Scarborough Conservation Commission

May 22, 2024 | 6:00 p.m. | Virtual via Zoom

Meeting Minutes - DRAFT

Present in person:

Commission: Bennett Flanders, Abel Plaud, Jessica Sargent, Pete Slovinsky

Staff: Jami Fitch, Eric Sanderson

Present via Zoom:

Commission: Loren Johnston, Marla Zando

Town Council: Karin Shupe

A recording of this meeting is available online: [Conservation Commission – 5/22/24](#)

Call to order

1. Meeting was called to order at 6:01 pm.
2. Jessica offered a land acknowledgement to recognize the Wabanaki People as traditional stewards of Scarborough.
3. Bennett motioned to accept the minutes. Pete seconded. Rollcall vote was unanimous. Motion passed.
4. Public Comment
 - Andrew Mackie of Scarborough Land Trust shared that SLT is holding a [plant sale fundraiser and spring festival](#) on 6/1 from 9:00 am - 1:00 pm at Broadturn Farm.
5. The Commission welcomed Loren Johnston, an alternate member who was recently appointed to the Commission.

Old Business

1. Open Space Plan
 - The first meeting of the Open Space Ad-Hoc Committee was held on 5/7. Jami provided a summary of the meeting. The consulting team from Viewshed prepared a lot of baseline data and maps for the meeting.
 - A public open house is scheduled Thursday, 7/25, to get input from residents. The Ad-Hoc Committee members will also attend community events over the summer to get public input.
 - The Ad-Hoc Committee's next meeting is in mid-June and will focus on planning the community events.
 - The Consultant intends to have a draft plan for the Town Council to review in January or February 2025.

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- The Ad-Hoc Committee is still working on determining the definition of “open space.” The Committee looked at different definitions used by communities around Maine that ranged from very black and white definitions to more philosophical definitions. The Ad-Hoc Committee seems to be leaning toward a combination of these approaches. The definition needs to be clear and measurable for ordinance language, but a more philosophical of value-based definition may be able to be included in the Plan.

2. Environmental Standards

- Planning staff and SEDCO will host a forum for developers on 5/23, which will include an overview of the proposed environmental standards and provide developers the opportunity to provide feedback. The Planning Department has received one set of written comments to date.
- Next steps for the standards will be determined following the developer forum.
- *Post-meeting follow up: [a recording of SEDCO's Developer Forum is linked.](#)*
- Jessica asked for an update on the Commission's recommendation to increase freeboard to three-feet in the Flood Plain Management Ordinance.
 - Jami shared that the Town Council opted to adopt a two-foot freeboard requirement. Pete attended the meeting on Zoom to explain the Commission's recommendation.
 - Karen shared her frustration that the Council did not adopt a three-foot freeboard. She shared that the Planning Board did not know that three feet was an option and only evaluated the two-foot option. In the future, Karin would like the Conservation Commission to review and provide recommendations for environmental-related ordinances before the Planning Board weighs in to help ensure all alternatives are considered.
 - Pete noted that the Council needs to have more information and education on this issue.
- Abel asked for more information about how the ordinance adoption process works.
 - Jami explained that the process can vary, but in general, an update will be brought forward to the Ordinance Committee, which is made up of three Town Councilors. The Ordinance Committee may vote to move an item forward to the Town Council after one meeting or it may take multiple meetings. Once the item goes to the Council, they will take it up at a first reading. If the item related to land use, the Council will refer it to the Planning Board for a public hearing. The item then goes back to the Town Council for a public hearing and second reading/vote. The Council may opt to have a public hearing and second reading/vote at the same meeting, or they will split the process and have a public hearing at one meeting and the second reading/vote at another.

3. Planning Board Submittals

- The Downs developers provided a response (attached) to the Commission's comments on Downs Road. If the Commission has any additional comments or feedback regarding the road design, they should be provided to staff so staff can incorporate them into their comments.
- Bennett noted that he's able to share official comments from the Commission with the Planning Board. Jami noted that the Commission's comments that were provided to The Downs developers are included in the minutes the Commission approved at the beginning of the meeting.

- Pete shared some questions and comments that The Downs developers did not address, including:
 - The “critter crossings” that are proposed are not actually “critter crossings.”
 - The developers are already increasing the footprint of the road, which will have a more significant impact on the wetland system than installing additional critter crossings.
- Jessica asked if the developers could be required to do more if they already meet the minimum standards. Jami explained that because Downs Road will become a Town road, the Town/Planning Board can set additional conditions of approval, since the Town will own and maintain the road in the future.
- Marla reminded the Commission that the Town can have stricter standards than State requirements and asked if the proposed road upgrades meet the Town’s rules. Jami explained that the Town’s standards don’t specifically speak to the number of wetland crossings that should be required, but the Planning Board has the ability to set certain requirements as a condition of approval.
- Eric shared that the Town’s subdivision ordinance requires developers to explain how they intend to minimize impact to natural resources. This section of the ordinance will likely come into play with the Planning Board’s review of The Downs’ subdivision amendment.
- Bennett noted that the Planning Board would like ordinances to have more teeth so they can require developers to do more.
- The Commission noted that the response from The Downs developers does not change any of their initial comments provided following the April meeting.
- **ACTION: COMMISSIONERS will provide additional comments related to Downs Road to Jami by 6/1.**

New Business

1. Tree Protection Ordinance

- South Portland’s recently adopted [tree protection ordinance](#) was shared with the Commission.
- Jami provided some background to the Commission related to tree cutting. The Town’s Shoreland Zoning (SLZ) Ordinance is the only ordinance that restricts tree cutting, which is the case for most communities. SLZ requires a permit for most tree cutting within the shoreland zone. The Town’s commercial solar ordinance has some requirements around revegetation if trees are cut to install the array.
- South Portland’s ordinance requires trees of certain sizes to be preserved. Projects going before the Planning Board would need tree protection approval. Projects that do not go before the Planning Board would need tree protection approval under the following scenarios:
 - Removing 10 or more significant trees (most routine maintenance at residential properties is covered under this threshold)
 - Removing 3 or more heritage trees
 - Removing any historic/cultural/program trees
- Jessica asked if there is an example of a recent project this ordinance would have applied. Bennet gave Bayley Seafood as an example that recently came before the Planning Board.

- Pete asked how the ordinance would be enforced. Jami said Code Enforcement would enforce it for residential properties. Site plans or subdivisions would go through the Planning Board.
- Pete noted that any fines associated with this ordinance should be higher than those set in SLZ. There are many cases throughout the State of people violating SLZ ordinances and just paying the fine because the fines are not high enough to deter violations.
- Jessica shared there is a high failure rate with urban trees, so any in lieu fee set should account for potential replacement of the tree within the first year of planting.
- The Commission noted that there needs to be a designated area in Town where in lieu trees would be planted, a town forest for example. Setting a priority forested area to preserve may help make progress toward 30x30.
- The Commission would like to hear lessons learned from South Portland.
- **ACTION: JAMI will speak with Autumn about how to proceed with this ordinance.**

Updates

1. Education Subcommittee

- Marla provided an overview of the subcommittee's work. They have submitted articles about Conservation Commissions in general and about Scarborough's Commission's goals for the Town's e-newsletter.
- The Committee would like to support the land bond efforts. Marla suggested the Commission write a letter to the editor in support of the bond.
- They are looking for speakers for another speaker series in the fall.

2. Town Council

- The Parks and Conservation Land Board intends to request a \$6M bond, based on the results of a public survey. The bond will be used for the following purposes:
 - Preserving drinking water sources
 - Protecting marshes and wetlands that protect Scarborough from flooding and sea level rise
 - Protecting water quality in rivers, streams, and Scarborough Marsh
 - Protecting natural areas next to Scarborough Marsh
 - Preserving fish and wildlife habitat
 - Preserving access to natural areas
 - Conserving natural resources
 - Protecting natural areas from development
- Jessica noted that the land bond is similar to a line of credit. The money would not be spent until an application is approved by the Town Council.
- This is a difficult budget year largely due to the revaluation.
- Karin did not support the municipal budget because she feels it doesn't include enough, including a stormwater fee feasibility study and additional staff position for the Engineering and Technical Services Department.
- Karin commends the Commission for pursuing the tree protection ordinance.

3. Sustainability Committee

- Town Council approved the Commercial PACE ordinance.
- The Committee made a recommendation to purchase certified clean energy at a cost savings to the Town.

- Sustainable Scarborough Day planning is underway. Jami hopes to schedule a planning committee meeting soon.

Meeting adjourned at 7:27 pm.

Next Meeting:

June 26, 2024 @ 6:00 pm



ATTACHMENT 1

RESPONSE TO CONSERVATION COMMISSION COMMENTS

On behalf of **Crossroads Holdings, LLC (Applicant)**, our office along with Flycatcher and Gorriall Palmer is submitting response to the Conservation Commission's comments with regards to The Downs Town Center Subdivision Amendment.

To provide some further background on this matter, the Applicant has acquired necessary state and federal environmental permits (Site Location of Development Act, Natural Resource Protection Act, and Clean Water Act – Maine General Permit). During the permitting process, the Applicant coordinated with natural resource agencies including the U.S. Army Corps of Engineers (USACE), the Maine Department of Environmental Protection (MDEP), the Maine Department of Inland Fisheries and Wildlife (MDIFW) and the Maine Natural Areas Program (MNAP). The design team has relied on the expertise of these agencies, our engineers, and land use experts from Flycatcher to achieve The Downs' project goals, while avoiding, minimizing, and/or mitigating impacts to protected natural resources.

As part of our design approach, we have prioritized avoiding wetland impact for this section of road reconstruction as required by state and federal regulations and have designed for a new public street and bike/pedestrian cross section. This reconstructed road section meets the requirements of improving vehicular as well as pedestrian and bicycle use with a 22' wide roadway, 10' multi-use path and esplanade for safety, all the while avoiding new wetland impacts. The design presented is the culmination of balancing all of these competing interests; while avoiding wetland impacts and accommodating the recommendation to incorporate wildlife passage along the road.

- ***The Commission does not consider the stormwater conveyance culvert a critter crossing.***

Response: While a stormwater conveyance may not provide an ideal wildlife passage, they are frequently utilized by amphibians, reptiles and other small wildlife for passage.

- ***Without elevations and crossing details (including cross sections) Commissioners cannot determine if the crossings are in appropriate locations. The Commission requests the plans include elevations and cross sections for each crossing.***

Response: Elevations and cross sections have been added to the plans. The current design includes two wildlife crossings, which are essentially three feet wide by two feet tall arched culverts with a naturalized bottom, placed at the lowest elevations along the road in areas chosen to avoid wetland impacts. In addition, retaining walls are located in select areas to minimize disturbance to the existing wetlands and areas near the culverts. To further circumvent animals from crossing the roads between the passages, and to funnel animals to the tunnels, "drift fencing" approximately 8-inches tall and 100 feet beyond the retaining walls to the east and west of each crossing will be installed. These diversion/funneling fences will have a solid face (not mesh) and be installed in direct contact with the ground.

- ***Two crossings are not sufficient. If this were a new road, Army Corps would require crossings every 50-feet (equaling approximately 24 culverts). The Commission recommends a minimum of five (5) crossings (not including the stormwater conveyance culvert).***

Response: This is not a new road, but a replacement of an existing road that was constructed decades ago. Fill placed in wetlands prior to the enactment of the Clean Water Act and Natural Resources Protection Act is considered upland and not subject to jurisdiction. Further, federal and state law cannot authorize fill in a wetland if a practical or less impactful alternative exists. As such, the Applicant has identified two locations for installing wildlife crossings that don't require fill in wetlands. Additional crossings would require wetland impacts due to the raise in roadway grade to provide appropriate cover over the culvert crossing which, in this case, can be avoided while still meeting the design needs of the roads and providing for safe wildlife passage below the road.

If we were to apply the Maine General Permit standards referenced by the Commission, we can look specifically to wetland crossings section, where the General Permit requires *"New and replacement wetland crossings that are permanent shall be constructed in such a manner as to preserve hydraulic and ecological connectivity, at its present level, between the wetlands on either side of the road."* Further, the condition notes *"Alternative crossing designs that preserve wetland hydraulic and ecological connectivity (e.g. rock sandwiches) may also be considered."*

Implementation of any wildlife crossings would improve the ecological and hydrologic connectivity of the wetland systems on either side of Scarborough Downs Road. In the springs of 2019 and 2020, vernal pool surveys completed by Flycatcher indicated highly productive breeding activity for obligate vernal pool species (e.g., wood frogs and spotted salamanders) within the forested wetland east of the road. Despite the presence of the Scarborough Downs Road for several decades, amphibians successfully continue to utilize this breeding habitat in highly productive numbers. Study of amphibian movement patterns has shown that obligate vernal pool species utilize a variety of habitats around their natal pool outside of the breeding season. The plant community and cover in the "island" between Paddock Road and Scarborough Downs Roads consists of a stratified complex of predominately hardwood forest with a robust understory of shrubs and herbaceous plants. This is ideal cover for pool breeding amphibians and likely used by a variety of species of reptiles and mammals that may be drawn to the pool for refuge or to forage. Wetlands west of Scarborough Downs Road have been disturbed by past logging (previous owner) leading to reduced forest cover and does not provide ideal canopy cover of overstory trees for shade, deep litter and lacks the woody debris that amphibians prefer. Due to these differences in habitat quality and structure, it's likely most pool breeding amphibians spend most of their life cycle in the island habitat.

With the buildout of The Downs, traffic is projected to return to past levels when the Harness Racing business was a regional destination, potentially adding some risk to any migrating amphibians and reptiles that may occupy this marginal habitat west of Scarborough Downs Road. Mitigating these potential risks is most important during the spring breeding season when warm (40-50F) rains occur at night. So called "big night" events tend to be when most vernal pool breeding amphibians migrate to pools and are at the greatest risk of mortality that may affect overall amphibian populations. By installing two wildlife crossings with the planned funneling features, it will help minimize the risk of traffic impacts to local amphibians, reptiles and other small wildlife populations.

- ***The crossings should re-establish the connection between the two wetland systems. The short-term impact to the wetland system by adding crossings is far outweighed by the long-term benefits of connecting the two systems.***

Response: As required by standards of State and Federal law, the existing road is being designed within the existing footprint to avoid impacts to wetlands which abut the road. The crossing inlet and outlet are at approximately the same elevation and will provide surface runoff overflow hydrologic connectivity between wetlands on either side of Scarborough Downs Road.

- ***Crossings should include funneling/fencing to help direct animals toward the crossings. Example:***



Response: As noted above, the crossing design includes drift fence to direct wildlife to the crossings.

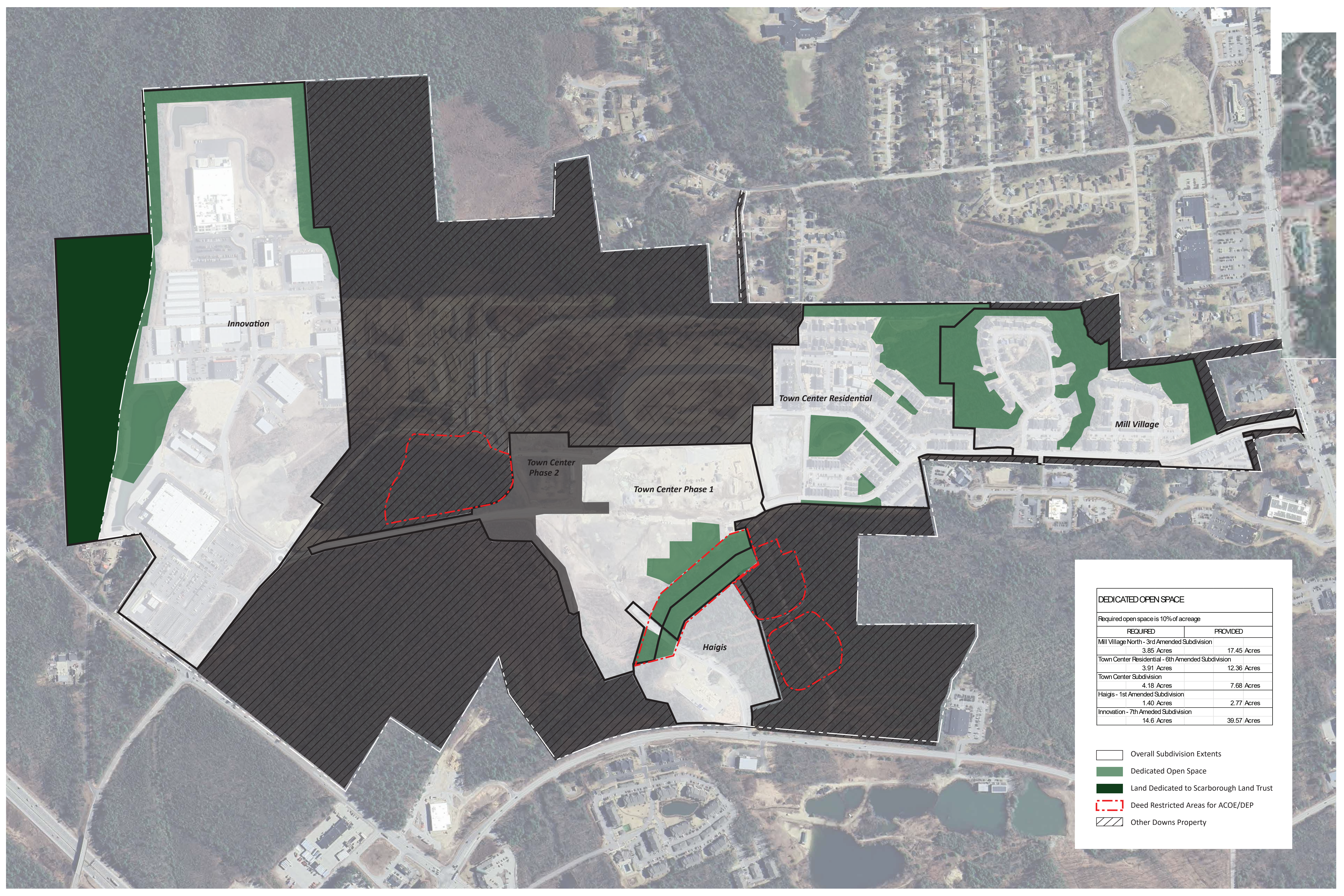
- ***Reconnecting the wetland systems will reduce road flooding and improve road resiliency.***

Response: The Applicant and design team are not aware of any flooding issues within the roadway. The large wetland complex on the west side of Downs Road conveys surface runoff through a ditch along Downs Road and eventually to Willowdale Brook. As discussed above, the wildlife crossings are being added primarily to provide safe passage for amphibians, but the culverts can also act as “overflow” mechanisms during large storm events.

- ***The Commission recommends that the full wetland system, including the portion adjacent to the protected vernal pool and the wetlands on the southern side of Downs Road, be placed in conservation.***

Response: Throughout the design and permit review process with environmental agencies, the Applicant has followed required mitigation sequencing to avoid, minimize and mitigate for impacts to protected natural resources. This area of the overall site is not part of this subdivision application and is therefore not a component of this review process. The applicant has consistently met or exceeded the open space and conservation requirements of the CPD zone for areas that have been applied for and reviewed. The attached Figure provides a summary of the project status and compliance with the applicable zoning requirements.

This has included a combination of onsite and offsite preservation and in-lieu fee payments to the Maine Natural Resources Conservation Service. The onsite preservation component includes conservation of the vernal pool and critical terrestrial habitat located east of Scarborough Downs Road and west of Paddock Road. Protection of this habitat provides the greatest benefit to the long-term viability of the amphibian populations in the area by protecting the highest value and most utilized habitat surrounding the pool.

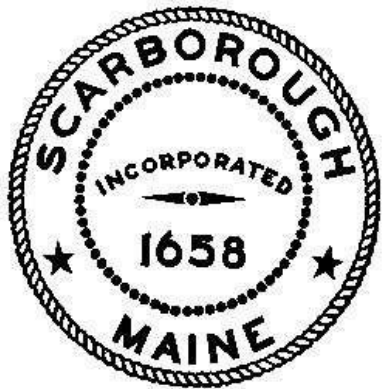


CHAPTER 610

TOWN OF SCARBOROUGH

PIPING PLOVER AND LEAST

TERN ORDINANCE



Adopted June 6, 2001
Amended October 2, 2013
Amended May 7, 2014

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**CHAPTER 610
TOWN OF SCARBOROUGH
PIPING PLOVER AND LEAST TERN
PROTECTION ORDINANCE**

1. Purpose.

The purpose of this Ordinance is to avoid or minimize adverse effects on Piping Plovers and Least Tern and their young by protecting their nesting, brooding, fledging, roosting and foraging activities on beaches within the Town of Scarborough from April 1st through Labor Day, except as specified.

2. Applicability.

This ordinance shall apply to Scarborough's public beaches and beaches managed by the Town.

3. Definitions.

Beach: ~~means a~~ any beach area within the Town of Scarborough, which is used by the general public.

Enclosure: ~~means A structure surrounding and protecting a nest an area from which~~ pedestrians and ~~vehicles animals are excluded~~ by means of ~~symbolic fencing and netting.~~

Habitat Areas:

Essential and Significant Habitat Area: Habitat areas currently or historically providing physical or biological features essential to the conservation of an endangered or threatened species and which may require special management considerations.

Identified Habitat Area: Habitat areas marked by symbolic or electronic fencing, netting, signs, and/or enclosures.

Least Tern: The Atlantic Coast Least Tern (*Sternula antillarum*), identified as an endangered species, as listed under Maine's Endangered Species Act (MESA) of 2003.

Nesting Activity: When Piping Plover and Least Tern territorial pairs, nests, or chicks are present.

Owner of a ~~dog~~ Pet (or owner): ~~means any p~~ Person having custody, possession, or control of a ~~dog~~ pet.

Piping Plover: ~~means the~~ The Atlantic Coast Piping Plover (*Charadrius melodus*), identified as a threatened species pursuant to the Federal Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 et seq. and endangered in Maine as listed under MESA of 2003.

Recreational Activity:

- a. Any game involving balls, discs, nets in which individuals throw, catch or hit objects (such as volleyball, spike ball, football, frisbee, golf, etc.).
- b. Any individual(s) moving at a pace faster than a walk, such as jogging and running.

Commented [JF1]: Suggested revision from member of the public:
from April 1st through Labor Day when Nesting Activity is occurring. When Nesting Activity is not occurring as verified and determined by the Maine Department of Inland Fisheries and Wildlife (MDIFW), this ordinance is not in effect, except as specified.

Nesting activity varies from year to year and from beach to beach. A set period of time will be easier for the public to follow and easier to enforce. **Town Council should weigh in on this.**

Commented [JF2]: Several public comments requesting this be removed. Reason for inclusion: plover chicks are very small and well camouflaged. They move from their nests near the dune to the waterline within hours of hatching. Their only defense mechanism is to freeze if they feel threatened. It's easy to step on a plover chick when moving at a pace faster than a walk.

Town Council should weigh in on this.

- c. Any use of kites, drones, ultralights, parasails, kneeboards or other devices flown manually or remotely powered by wind power, battery, gas or electric motors.
- d. Any use of wheeled vehicles, such as bicycles, skateboards, sand surfers, or other wheeled recreational devices, excluding non-motorized carts and wagons.

Sand surfer-Surfer: ~~means a~~ Recreational device consisting of a board on wheels attached to a large kite or sail and propelled by wind power.

Structures: Large constructions built in or on the sand using marine debris or non-marine materials.

Symbolic fencingFencing: ~~means~~ One or two strands of lightweight string, tied between posts to delineate areas where pedestrians, pets, and vehicles should not enter.

Wrack lineLine: ~~means~~ The line of dried seaweed, marine vegetation and other debris left on the beach by the action of the tides.

2.4. Piping Plover and Least Tern nesting-Nesting habitat-Habitat to be identifiedIdentified.

On or before April 1st of each year, the Town of Scarborough, in conjunction with the Maine Department of Inland Fisheries and Wildlife (MDIFW), the United States Fish and Wildlife Service (USFWS), and/or the Maine Audubon Society, will identify Piping Plover and Least Tern nesting habitat and will mark or arrange for the marking of such habitat with posts and warning signs.

5. ~~Nests and broods~~Identified Habitat Areas ~~P~~rotected.

When Piping Plover or Least Tern nests are present, the Town of Scarborough, in conjunction with the ~~Maine Department of Inland Fisheries and Wildlife~~MDIFW, the ~~United States Fish and Wildlife Service~~USFWS, and/or the Maine Audubon Society, will create or arrange for the installation of fencing (symbolic or electric) and/or creation of ~~an~~ enclosure~~s~~ around such nests in accordance with the guidelines of the ~~United States Fish and Wildlife Service~~USFWS and authorization issued by the ~~Maine Department of Inland Fisheries and Wildlife~~MDIFW. Once such fencing and/or enclosures have been created, the following prohibitions shall apply:

- (1)a. No person shall physically enter into ~~an~~ an Identified Habitat Area protected by fencing or an enclosure, except for wildlife management purposes authorized by the ~~Maine Department of Inland Fisheries and Wildlife~~MDIFW or the ~~United States Fish and Wildlife Service~~USFWS.
- (2)b. No person shall remove or disturb the wrack line located ~~in front of an enclosure located~~ within 330 feet of a Piping Plover or Least Tern brooding siteIdentified Habitat Area, unless such activity is approved by the ~~Maine Department of Inland Fisheries~~MDIFW and ~~Wildlife or the United States Fish and Wildlife Service~~USFWS.
- (3)c. No owner of a ~~dog-pet~~ shall cause or permit that ~~dog-pet~~ to enter the exelclosure Identified Habitat Area or shall fail to prevent that ~~dog-pet~~ from entering the exelclosureIdentified Habitat Area. All dogs shall be leashed-managed in accordance with the Animal Control Ordinance, Chapter Ch. 604.

~~(4)~~d. No person shall drive or operate a vehicle, including a non-motorized vehicle, on or above the wrack line. ~~(ai)~~ Non-emergency activities such as removal of dead or injured sea mammals shall require at least two responders, one of which will act as the spotter to and from the scene. ~~(bii)~~ All emergency response personnel will account for and avoid nesting sites and chicks to the maximum extent practicable, consistent with the nature and urgency of the emergency. However, it is the policy of the Town of Scarborough that such essential vehicles will avoid driving on the wrack line where possible and will avoid frequent driving on the beach in a way which would create deep ruts that could impede movement of Piping Plover and Least Tern chicks.

~~(5)~~e. No person shall engage in a recreational activity, as specified in Section 3, Definitions, recreational activity, a) and b) within 100 feet of the Identified Habitat Area between April 1st through Labor Day, kite flying, kitesurfing or parasailing

f. No person shall engage in a recreational activity, as specified in Section 3, Definitions, recreational activity c) and d) within 650 feet of the Identified Habitat Area between April 1st through Labor Day, within 650 feet of nesting or territorial adult or unfledged juvenile Piping Plovers between April 1st and August 31st.

~~(6)~~g. No person shall discharge or cause the discharge of any fireworks on any beach on which Piping Plovers or Least Terns are nesting from April 1st until all chicks are fledged.

h. No person shall discharge or cause the discharge of any fireworks in the Higgins Beach Community and vicinity on the ocean side of Spurwink Road beginning at the intersection of Black Point Road and Spurwink Road to the Cape Elizabeth line, per Ch. 608A, Consumer Fireworks Ordinance.

~~(7)~~i. No person shall build or attempt to build any fires on a beach unless authorized to do so in writing by the Scarborough Community Services Department or owner of the beach property, and then only after obtaining any permits required from the Scarborough Fire Department., as per Ch. 612, Ordinance Creating Rules and Regulations for Use of Parks and Recreational Facilities. No person shall utilize a sand surfer within 650 feet of nesting or territorial adult or unfledged juvenile Piping Plovers between April 1st and August 31st.

j. Holes dug within 330 feet of the Identified Habitat Area must not be left unattended and must be filled in before leaving the beach during the period when unfledged Piping Plover and Least Tern chicks are present.

k. No person shall build any structure, as specified in Section 3, Definitions, within 330 feet of the Piping Plover and Least Tern Identified Habitat Area.

5. Enforcement and penalties.

~~Any person who violates any provision of this Ordinance commits a civil violation for which a civil penalty of no less than \$50.00 and no greater than \$250.00 shall be imposed. This Ordinance may be enforced by any officer of the Scarborough Police Department.~~

6. Relation to ~~state~~State and ~~federal~~Federal lawsLaws.

This Ordinance is intended to be consistent with state and federal protections of Piping Plovers, Least Terns, and Piping Plover habitat ~~their habitat~~, including the Endangered Species Act (ESA) of 1973 that provides a framework to conserve and protect endangered and threatened species

and their habitats both domestically and abroad. In the event of any inconsistency between this Ordinance and state or federal laws or regulations, the more stringent provisions shall ~~control~~ prevail.

7. ~~Relation to private~~ Private ~~protection~~ Protection efforts Efforts.

This Ordinance is not intended to supersede or displace any efforts or activities of private individuals or organizations or any protections afforded to Piping Plovers and Least Terns and their habitat by deed restrictions, conservation easements, and other types of private covenants. To the extent any such private covenants are more restrictive than the provisions of this Ordinance, this Ordinance does not authorize any departure from the requirements of such covenants.

8. Enforcement and Penalties.

Any person who violates any provision of this Ordinance commits a civil violation for which a civil penalty of no less than \$100.00 and no greater than \$500.00 shall be imposed. This Ordinance may be enforced by any officer of the Scarborough Police Department.

(Note: Federal Endangered Species Act [ESA] violations related to Piping Plovers and Least Terns are specified under ESA Section 9 [Prohibited Acts] and are enforced as per ESA Section 11 [Penalties and Enforcement of the Endangered Species Act]. These violations are enforced by federal officers.)

9. Addendum - Higgins Beach Wildlife Management Area.

The Higgins Beach Wildlife Management Area (Map U001069) Figure 1., is owned by the State of Maine and is a subunit of the Scarborough Marsh Wildlife Management Area and extends from the Spurwink River approximately 150 yards to the southwest of the point to the low water mark. This area is designated Essential and Significant Wildlife Habitat and protected under the MESA, which is regulated by MDIFW (L.D. 1246, 2023).

The area outlined, is also protected under the Natural Resources Protection Act and regulated by the Maine Department of Environmental Protection Act with input from MDIFW biologists. Significant Wildlife Habitat has been identified in this area for shorebird nesting, feeding and staging. Symbolic fencing on MDIFW-owned property will remain in place into October to protect migrating shorebirds.

Commented [JF3]: Changed to be consistent with Ch. 604, Animal Control Ordinance and Ch. 612, Ordinance Creating Rules and Regulations for Use of Parks and Recreational Facilities

Commented [JF4]: Added at the request of MDIFW

Figure 1. Higgins Beach Wildlife Management Area Map

