TOWN OF SCARBOROUGH, MAINE

Town of Scarborough Conservation Commission

September 25, 2024 | 6:00 pm | Town Council Chambers B and Virtual via Zoom

To participate in the Conservation Commission meeting remotely, please follow this link:
https://scarboroughmaine.zoom.us/webinar/register/WN_VGfUhINcSkeL03Yk9dDPng

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 7/24/24 meeting

(4) Review 9/25/24 agenda

(5) Public comment

6:15 pm **Old Business**

(1) Environmental Standards
   a) Report out from 8/28 roundtable with developers
   b) Discuss next steps

(2) Planning Board submittals (not available until 9/24)

6:30 pm **New Business**

(1) Discuss and select Commission's next focus: tree protection or pesticide restrictions

7:00 pm **Commission Business**

(1) Review draft FY24 annual report submission (attached)

(2) Committee term limits
From Ch. 302A, Boards and Committees Manual: *Starting on January 1, 2025, committee/board members shall serve not more than three (3) consecutive full terms of office and until your vacancy is filled on all committees/boards with one (1) year off before they can apply to the same committee/board. Following the effective date of this change, committee/board members actively serving more than three (3) consecutive full terms, will be permitted to complete their term prior to requirement of the twelve (12) month break in service.* [Adopted 09/04/2024]

7:15 pm **Updates**

(1) Education sub-committee

(2) Town Council

(3) Sustainability Committee

(4) Sustainable Scarborough Day

(5) Planning projects: Open Space Plan & Vulnerability Assessment

7:30 pm **Adjourn**

Next meeting: October 23, 2024 at 6:00 pm

Town of Scarborough Conservation Commission

July 24, 2024 | 6:00 pm | Town Council Chambers B and Virtual via Zoom

Minutes - DRAFT

Present in-person
Staff: Jami Fitch, Autumn Speer, Emerson Goodrich
Commission: Bennett Flanders, Abel Plaud, Jessica Sargent, Pete Slovinsky, Marla Zando
Town Council: Karin Shupe

Present via Zoom
Commission: Cathleen Miller, Maggie Vishneau
Staff: Angela Blanchette
Town Council: Jean-Marie Caterina

A recording of this meeting is available online: Conservation Commission – 7/24/24

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. Pete motioned to accept the minutes from the June meeting, Abel seconds. The motion passed unanimously.
4. Jami calls attention to the Open Space Workshop which is on 7/25 from 6:00 to 8:00 pm.

Public Comment

- Jamie, who lives in the 3rd district in Portland, has been commenting at Conservation Commission meetings in multiple communities. He mentions Scarborough's connection to Casco Bay by way of Silver Brook, and that there is money to remove dams that are plugging streams and rivers such as the Stroudwater Dam in Portland. He notes the poor water quality behind the dam and the vitality that could return if the dam were to be removed. He hopes to invigorate people to weigh in on Portland's decision
- Stannis, who lives in Scarborough and will be directly impacted by the Maine Turnpike Authority's (MTA) Gorham Connector project, speaks of the project and issues pertaining to congestion in North Scarborough. He notes that nearly 20 years ago, the Maine Turnpike took control of the area and can only build turnpikes, rather than improving existing roads or considering other alternatives. He highlights the Maine Sensible Transportation Act that requires reasonable transportation alternatives be considered and improvements to existing roads take precedence over new construction. Studies demonstrated that the Turnpike will on the whole impact commute times minimally. He offers to donate the portion of Red Brook on his property to the Scarborough Land Trust or the Town if the project does not proceed.

Updates

1. Town Council Update (moved from later in the agenda as it relates to the Gorham Connector project)
   - The Commission was provided with the South Portland Conservation Commission's memo in opposition to the Gorham Connector. Karin recommends the Commission look at the proposed route, issue an opinion, and has a draft memo.
   - Stannis adds that a third party review the project, especially to evaluate the environmental impacts. GPCOG/PACTS may be able to provide support.
   - Jessica clarifies that the Conservation Commission could provide input to the Town Council. The Council could in turn pass a resolution regarding their past endorsement of the project.
   - Autumn adds that if a public meeting were to be held in September, it would be a good opportunity for all of the committees to weigh in.
   - Angela, a member of PACTS, adds that through a 2015 PACTS study and the public comment that came from that study the neighborhoods explicitly wanted a new route to move traffic from the Gorham area to Portland. Angela suggests it would be helpful for PACTS to revisit the study now.
   - Pete calls into question both the impacts to Red Brook and the Greenhouse Gas Emission reduction findings on page 2 of the MOA between Scarborough and MTA.
   - Karin asserts that she believes sooner rather than later would be helpful for the Commission to issue an opinion on the Connector project, as no public process has begun or been scheduled.
   - Angela notes it would be helpful to discuss impacts with MTA, which can later be referenced in the opinion issued by the Commission.
   - Jessica suggests an information request as an intermediate step before issuing a recommendation.
   - Marla inquires about who could consider and evaluate alternative courses of action for the project given that MTA cannot legitimately consider alternatives to building the Connector.
   - Jean-Marie supports returning to GPCOG/PACTS to revisit their study and adds that MTA is still faced with an extensive regulatory process and other delays.
   - Angela adds that MaineDOT is approaching the project from a study/planning perspective and does not have any capital funds to contribute to the project.

Old Business

1. Environmental Standards
   - Autumn notes there's a round table meeting planned with developers, engineers, and representatives from the Commission (Pete, Randi, and Karin) on 8/28/24.
   - Jessica asks if materials can be provided in advance of the meeting, such as the scientific basis and the standards of other peer communities.
   - Autumn suggests the Commission consider the conflict between the land bond and conservation requirements without the purchase of land.
   - Pete notes that the Environmental Standards were produced with the possibility of settling for a middle ground, and Autumn underscores that areas of compromise help in moving the process along.
   - Jean-Marie adds that the Environmental Standards are penciled in for the Ordinance Committee in September, but questions if the timing is right in regards to the Land Bond and the conflation of the two topics.
   - Angela notes that in the SEDCO meeting, discussing real life construction sites and issues resonated with developers in terms of articulating the reasoning behind the environmental standards. Pete suggests looking at a few case studies in preparation for the round table meeting.
   - **ACTION: JAMI will schedule a meeting with Pete, Randi, and Karin to prepare for the 8/28 roundtable.**
2. Parks and Conservation Land Bond

- Jessica provides an update on the Town Council workshop, and the $6M request for the land bond passed unanimously at first reading. A public hearing will be held in August. Jessica underlines the importance of showing up in support, as there was discussion of lowering the amount or implementing spending requirements. The suggested spending requirements are already met through the Town's existing process. The second reading is on 9/4 and will be the last opportunity for comment. Jessica suggests that public education is crucial, and there will be a communications plan.
- Pete suggests noting the 214% increase is justified due to the increase in land values since 2019's $2.5M land bond.
- Cathleen notes that she and Marla can work on social media content and other communications.
- Marla and Jessica underline that the $6M investment could leverage up to $23M in matching funds.

3. Planning Board Submittals
   - Autumn provides a brief update. There are no submittals pertinent to the Conservation Commission this month.

Updates (continued)

1. Promoting Citizen Stewardship
   - Marla reminds the Commission of the presentation on the science of salt marshes on 8/6 at 6:30 pm. It is co-hosted with Maine Audubon, Scarborough Land Trust, and Scarborough Public Library.
2. Town Council
   - Karin notes upcoming events such as the Open Space Workshop on 7/25, Council Corner Live on 8/7, and the developer roundtable at the end of August.
   - Karin additionally mentions there will be three openings on Town Council on the November ballot. She also underlines the impact of those who serve on Town Council.
3. Sustainability Committee
   - Jami adds additional important dates including the Public Meeting for the Vulnerability Assessment on 8/12, and the neighborhood meetings for Higgins and Pine Point in September.
   - Emerson is coordinating a Coastal Meetup on 8/22 at 2:00 pm at the Eastern Trail parking lot on Pine Point Road. Details will be posted on the Town website.
   - Jami notes Sustainable Scarborough is on 10/6.

Next meeting: September 25, 2024

Meeting adjourned at 7:41 pm.

TOWN OF SCARBOROUGH, MAINE

Environmental Standards Roundtable

August 28, 2024 | 4:00 – 6:00 p.m. | Town Council Chambers B

Meeting Notes

In attendance:
Town Committees: Randi Hogan, Conservation Commission; Robyn Saunders, Long Range Planning Committee; Pete Slovinsky, Conservation Commission
Consultants: Drew Gagnon, Gorrill Palmer; Kiley Mason, Sebago Technics; Jon Whitten, Haley Ward
Town Councilors: Jon Anderson, Jean-Marie Caterina, Karin Shupe
Staff: Angela Blanchette, Town Engineer; Jami Fitch, Sustainability Manager; Emerson Goodrich, Sustainability Fellow; Autumn Speer, Planning Director

Background and Purpose

- DEP has been pushing for more protections on a local level because state regulations aren't strong enough. There will be mandated changes coming down from DEP soon for Scarborough and other MS4 stormwater communities.
- Town surveys point to environmental protection as a priority of residents.
- Environmental standards presented at the Developer Forum were an ideal scenario. Staff hopes to find common ground in order to address gaps in resource protection in the Town.

Conservation Commission Remarks

- Looked at what other municipalities and jurisdictions have done to address setbacks across the country. Hoping to avoid severe water quality issues that other communities have experiences, such as in communities in the Chesapeake Bay watershed and others that share similarities with Scarborough. Limiting impervious surfaces, regulating forest clearing, and establishing buffers around natural resources are part of the approaches taken to minimize impact, but stormwater runoff persists as a severe issue. Scarborough has the opportunity to get ahead of negative impacts, rather than trying to fix environmental damage.
- Scarborough is unique because of the presence of the Marsh as well as other connected water systems and wetlands in the area. The Marsh and the wetlands serve as buffers and flood storage areas. The more these buffers are conserved and protected from impervious surface, the less will runoff into the Marsh.
- Scarborough's designated growth areas are adjacent to the Marsh and often include large wetland areas, which must be reconciled to be able to move forward and protect resources.
- Recommendations coming from the Conservation Commission are based on scientific facts and best practices and have been worked on extensively by staff as well as the Commission.
- Wetlands have previously not been considered valuable resources. Environmental standards can serve to alleviate this conflict and optimize Town goals.

- Conditions and climate are changing, and setbacks also provide room for habitats to change over time, such as marsh migration and increased precipitation.
- Established local standards will help provide consistency and predictability for developers.
- Standards are not meant to apply to redevelopment.
- Will there be a process to help landowners who lose the ability to develop their land? The Zoning Board of Appeals is one option. There were exemptions/grandfathering processes in areas of Maryland that can be looked at as examples.
- Standards were developed for several reasons:
    1. Natural resource protection
    2. Constructability (designing sites up to the edge of the wetland leaves no room for error)
    3. Chronic noncompliance at construction sites
- If standards are being scaled back, Council should see the science showing the reduced standards will still benefit natural resources.
- Need to better understand the impact of the proposed standards. The GIS model that was developed shows entire parcels being impacted by the standards even if only a small portion of the parcel won't be able to be developed.
- Priorities:
    1. Health of Scarborough Marsh
    2. Health of rivers and streams
    3. Protection of vernal pools
    4. Standards that are stronger than State minimums
    5. Predictability and consistency

Engineer Remarks

- Affected landowners and developers should have the same discussion as this roundtable.
- Available GIS is not representative of natural resources on sites. For example, not all wetlands are mapped in GIS.
- Can other standards be put in place that could achieve similar goals rather than restricting land that can be developed?
- How the site is designed and the stormwater is treated is asserted as the most important concern. This can include more informed stormwater treatment selection.
- Low-impact development (LID) is not as broad as assumed by engineers. LID needs to begin with the site planning and design process.
- Rules make it easy to set a tone with development. Clarity is key. The proposed standards are far outside the other regulatory agencies (DEP and ACOE).
- Standards don't align with the plans and priorities for the Scarborough's downtown districts. Look at where the standards should be applied.
- There need to be exceptions for downtown areas and redevelopment.
    - Clarification: these standards would not apply to redevelopment.
- Assumptions:
    1. If standards are passed, development will leave Scarborough.
    2. Engineers will use required buffers as stormwater treatment and direct runoff to them.
- Priorities:

1. Maximize value of a site
2. Continue to be able to develop
3. Clear rules
4. Relief for exceptions
5. Integrate monitoring

Discussion

- Conditions are changing. Buffers and setbacks are needed to allow resources space to move.
- Should the Town focus standards on the Marsh? Ordinance could to focus on priority areas (e.g., Marsh, impaired streams, etc.)
- Redevelopment should improve existing site conditions but the full standards will not apply to redevelopment.
- South Portland has a setback impact fee. Consider a similar model for Scarborough.
- DEP uses impervious cover (IC) as a surrogate for pollution. The Town could tighten IC limits on development, which will likely limit development on parcels. Setting buffers and setbacks around natural resources provides more flexibility in site design than limiting IC.
- When an entire parcel is developed, it leaves no room for error.
- Wetland crossings need to be allowed in the standards.
- Goal of the standards is to develop more responsibly to protect natural resources. There may be other adjustments that can be made to accommodate the proposed setbacks. For example, required front setbacks could be reduced to offset the additional setback and buffer widths in the environmental standards.
- The Comp Plan designates growth areas in sensitive areas (urban impaired watersheds).
- Look at applying standards around the marsh and in impaired and threatened watersheds.
- At a minimum, to minimize wetland impacts during construction, staff would like to see a 25-foot setback and a 15-foot buffer around wetlands. The group is open to reconvening at a later date to look at additional requirements, including low impact development standards that may be coming from DEP.
- Engineers would like stormwater outfalls to be allowed within the setback.
- Councilor Anderson suggests holding a Councilor Corner Live on this topic to help inform the public of proposed changes.
- DEP tracks filled wetlands in each municipality. Between 2015 and 2020, 8 acres of wetlands were filled in Scarborough.
- Conservation Commission would like assurance that the process will not end with the 25-foot setback and a 15-foot buffer around wetlands. The group of Commissioners, engineers, Councilors, and staff are open to reconvening in January to continue discussing environmental standards and other State-mandated ordinance changes that may be coming.
- Pete suggests focusing next efforts on the marsh, the largest tributaries to the marsh, and impaired streams. Will need to reconcile overlap of designated growth areas and impaired watersheds.

Identify Common Ground

- Scarborough Marsh is a jewel and should be protected.
- Finding ways to maximize value with the least amount of impact on natural resources.
- Finding ways to allow for exceptions (e.g., wetland crossings).

- Establishing priority areas and resources (e.g., Marsh, major marsh tributaries, impaired streams)
- A 25-foot setback and 15-foot vegetated buffer around all wetlands is acceptable to all, as a first step.

Next Steps

1. Update wetland buffer widths to 15-feet and setbacks to 25-feet, allow for wetland crossings.
2. Share updated language with the group for review.
3. Bring ordinance to the Ordinance Committee in October.
4. Reconvene group in January to discuss additional environmental standards and upcoming LID requirements.

Proposed Amendments 9.12.24

WETLAND SETBACKS – (Add to Site Plan and Subdivision)

Wetland setback requirements shall apply to all **new development requiring site plan or subdivision approval.** Redevelopment projects shall maintain the minimum wetland setbacks under this Ordinance or that which was previously permitted at the property.

DEFINITIONS (add to both Site Plan and Subdivision)

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.

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.

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.

WETLAND SETBACK AND BUFFER REQUIRED

A wetland setback is a defined distance between a coastal wetland, freshwater wetland or forested wetland, and any upland development. The wetland setback also includes a vegetated buffer.

The required minimum vegetated buffer is a portion of the wetland setback area directly adjacent to the wetland and maintains the natural vegetation cover from the wetland for a specified distance. Lawn areas are not permitted in the vegetated buffer.

All wetland 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 setback and minimum vegetated buffer width standards apply:

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Environmental Resource Type	Vegetated Buffer	Wetland Setback
Wetlands	15’	25’

*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.

A. 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

Permitted Activity	Setback Area – Inside of Vegetated Buffer	Setback Area - Outside of Vegetated Buffer
Pesticides Permitted	NO	NO
Fertilizer Permitted	NO	P
Tree Cutting or Vegetation Removal	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

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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	NO
Grading, Fill or Excavation Activities	NO	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.

B. WAIVERS – WETLAND SETBACKS

The Planning Board may review waivers to wetland setbacks for the following:

1. Wetland Crossings
    a. The crossing must be located at the narrowest span of wetlands, and
    b. The crossing must be designed to move flow between the segregated wetlands, and
    c. Minimum footprint of the roadway or utility crossing must be demonstrated to reduce wetland impacts, and
    d. Open bottom culverts shall be included every 25 feet, and
    e. It is demonstrated that no other alternative route is feasible

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Scarborough Conservation Commission
Annual Report
July 1, 2023 to June 30, 2024

The Conservation Commission is tasked with increasing awareness of the value of and reducing damages to our natural resources and working with Town Staff, other committees, and local organizations to encourage sustainable stewardship of Scarborough's natural resources.

The Commission continues to focus on issues related to its 2022 a goals-setting process, which aligned priorities with the Scarborough Comprehensive Plan. The following efforts initiated over the past year aligned with three focus areas:

Conserving Land

- Nominated a Commissioner to serve on the Ad Hoc Open Space Committee to help guide the development of Scarborough's Open Space Plan.
- Supported the Parks and Conservation Land Board's efforts to renew the Town's land acquisition fund.

Building Resiliency

- Developed and proposed environmental standards to require vegetated buffers and setbacks around wetlands, marshes, streams, rivers, vernal pools, and coastal bluffs to protect natural resources.
- Selected a Commissioner to serve on the working group that is guiding Scarborough's Vulnerability Assessment.
- Reviewed and provided input on several projects submitted to the Scarborough Planning Board.

Promoting Engaged Citizen Stewardship

- Worked in collaboration with the Scarborough Land Trust, Friends of Scarborough Marsh, and the Scarborough Public Library to coordinate the 2023 Conservation Speaker Series on a variety of topics related to conservation and climate change.
- Assisted with the coordination of Scarborough's inaugural Sustainable Scarborough Day.
- Published articles in *The Leader* and the Town's e-newsletter about the Commission's work.

Conservation Commission administration

The Commission would like to extend gratitude to Chair, Randi Hogan, and Vice-Chair, Jessica Sargent for their leadership.

The Commission also recognizes former members Rita Breton and Richard Harvey for their service and welcomes new members Abel Plaud and Bennett Flanders.

Thanks also to Council liaison Karin Shupe, staff liaison, Jami Fitch, Sustainability Manager, and additional staff support from Autumn Speer, Planning Director, and Angela Blanchette, Town Engineer.

Respectfully submitted,

Randi Hogan, Chair
Jessica Sargent, Vice-Chair
Bennett Flanders, Cathleen Miller, Abel Plaud, Peter Slovinsky, Maggie Vishneau, and Marla Zando, Commission Members