TOWN OF SWANZEY

OFFICE OF PLANNING AND ECONOMIC DEVELOPMENT

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Swanzey Planning Board & Conservation Commission Joint Meeting Agenda
September 11, 2025
6:00 PM

A joint meeting of the Swanzey Planning Board and Conservation Commission will be held on **Thursday, September 11, 2025, at 6:00 p.m. The meeting is upstairs at Whitcomb Hall (17 Main Street, Swanzey).** The meeting will also be live streamed on the Town of Swanzey's Facebook and YouTube pages. More information on public access to the meeting is available on the Town's website at: www.swanzeynh.gov.

1) Call to Order

2) Approval of Minutes

A. August 28, 2025

3) Public Hearings

A. **None**

4) Discussions/Other Business

A. Wetland Conservation District Discussion – Final Draft of Proposed Changes

B. Other business as required

5) Adjournment

Town of Swanzey, New Hampshire
Swanzey Planning Board
Meeting Minutes – **August 28, 2025**
Whitcomb Hall, Main Street, Swanzey, NH

Note: Draft Minutes are subject to review, correction and approval by the Board. Review and approval of Minutes generally takes place at the next regularly scheduled meeting of the Board.

CALL TO ORDER:
The meeting of the Swanzey Planning Board was called to order at 6pm by Chair Scott Self. The meeting was held at Whitcomb Hall and via Zoom software for the public. Other members present: Vice Chair Michael York, Victoria Ames, Richard Lane, Mark Scalera, Brandon Self, Alternates Stacey Goodale, and Selectman's Representative Mark LaBelle. Also present was Town Planner Adam Paquette and Recording Secretary Susan Ells.

The Chair called the roll and read the agenda for the evening. A quorum was present.

Absent: Jane Johnson, Alternate

Others Present:
Kai Kraemer with FACT TV, Jennifer Chabott for Naughton Dynamic Solutions, LLC

MINUTES:
The meeting minutes of August 14, 2025 were considered. A motion was made by Scalera to approve the meeting minutes as presented. There was a second by Lane**.** All were in favor. With no further discussion, the motion passed.

Lane requested that when changes are made to draft minutes that the correction get clarified in the Approved minutes as to what the change was. As an example, he was incorrectly cited as seconding a motion in a previous meeting. The board members agreed that this should be the practice going forward.

Discussions and Other Business:
New Tenant Application – 2A Tommys Way, Swanzey, NH 03446
Jennifer Chabott from Naughton Dynamic Solutions, LLC explained that previous tenant moved out and a new one is moving in which will be a machine shop. The decision before the board is whether the Town Planner can approve the application without a site plan review. York made the motion to approve the new tenant application with the condition that the fire department inspects the building. This was seconded by B Self. All were in favor and the motion passed.

Other business
Ames brought up the proposed revisions to the Wetland Conservation District Existing Ordinance from the July 24th meeting; she put together some data she hopes help the board with decisions; she described some property that has wetlands and the flooding that occurs; she researched old annual reports, the Town's master plan, she did a deep dive into case law and researched ordinances in NH; as a Planning board member, she feels it's her duty to make decisions based on the master plan; she described how surrounding land affects the wetlands; we have a duty to protect natural resources as well as save the

Town money by not having to make repairs to infrastructure due to the increase in storms that cause damage; she feels we need to take action to protect property and infrastructure. Chair Self made the comment that the area she referred to could be in a flood plain versus wetlands. She handed out the research for the board to read when they have time.

Chair Self said there are two newly created committees

1) The Covered bridge committee to research solutions to deter the oversized trucks from going through the bridge which causes damage. One solution is an I-beam bar before the bridge that is at the height limit; the other is a device that can determine a vehicle's height before it gets to the bridge and will flash a lighted sign when it is determined that the height of the truck will exceed the limit. Another solution is to put large signs at the intersection of Christian Hill with a truck detour to the new bridge. That seems to be where the problems come from probably due to GPS directions. The consensus is that the board supports a combination of the laser device and the signage solutions.
2) The other committee, the Swanzey Governance committee, was formed to look at how the town government works under various scenarios: with a Town Manager, a Town Council, or a Traditional Town Meeting. The Town wants to get the voters more involved in the town meetings so they can make informed decisions. At the last election, the voters approved changing the Selectboard from 3 members to 5 which will take affect after the next election; that can't be changed at least for a year so this the first year will be a good opportunity to see how that works.

Mark LaBelle mentioned that board members should not go on property without notifying the property owners due to liability; Chair Self said that the applications have a section that states the property can have a site visit by the board; Paquette said the section could be revised to state that there would need to be prior notice. Driving by, staying on the road is acceptable, unless invited onto the property by owner. Chair Self asked for each board member's opinion about removing the section or changing the wording to require prior notice.

Chair Self made the motion that we reword the section in the applications to require 3 days' notice before a site visit is allowed. LaBelle seconded the motion. No further discussion; all in favor and the motion passed.

LaBelle also advised that the board members should not allege negative actions by a person or a company unless there is proof. The code enforcement officer should be contacted to investigate if there is any concern.

Paquette reported that the Conservation Commission is available for a joint meeting on September 11th.

ADJOURNMENT

A motion to adjourn was made by B Self. There was a second to the motion by Lane with no further discussion. All were in favor and the m*otion passed.* Adjournment occurred at 6:50pm.

Next Meeting: September 11, 2025 – Joint Meeting With Conservation Commission

Respectfully Submitted,

Susan Ells, Recording Secretary
Approved on

Wetlands Conservation District Zoning Amendments for March 2026 Town Vote

Current ordinance, incl March 2025 amendments	PB/SCC joint meeting proposed changes	**Final draft for presentation to Public Hearing - *approved by SCC 9/7/2025***
A. PURPOSE	**A. PURPOSE**	**A. PURPOSE**
1. By the authority granted in NH RSA 674:16-17 and 20 and in the interest of public health, safety and general welfare, the Swanzey Wetlands Conservation District is hereby enacted to regulate the uses on those lands defined as wetlands:	*March 2025, unchanged*	**1.** By the authority granted in NH RSA 674:16-17 and 20 and in the interest of public health, safety and general welfare, the Swanzey Wetlands Conservation District is hereby enacted to regulate the uses on those lands defined as wetlands:
a. To prevent the development of structures and land uses on wetlands which would contribute to the pollution of surface and groundwater;	*March 2025, unchanged*	**a.** To prevent the development of structures and land uses on wetlands which would contribute to the pollution of surface and groundwater;
b. To prevent the destruction of natural wetlands which provide flood protection, groundwater recharge, pollution abatement, the augmentation of stream flow during dry periods, and valuable wildlife habitats;	*March 2025, unchanged*	**b.** To prevent the destruction of natural wetlands which provide flood protection, groundwater recharge, pollution abatement, the augmentation of stream flow during dry periods, and valuable wildlife habitats;
c. To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities;	***c.*** ~~To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities;~~	**c.** To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities which might be required as a result of abuse or inharmonious use of wetlands.
d. To encourage those uses that can be appropriately and safely located in wetlands areas;	*March 2025, unchanged*	**d.** To encourage those uses that can be appropriately and safely located in wetlands areas;
e. To preserve and enhance those aesthetic values associated with the wetlands of this Town.	*March 2025, unchanged*	**e.** To preserve and enhance those aesthetic values associated with the wetlands of this Town.
	~~**f.** Maintain ecological balances and conservation corridors along rivers, streams, and drainage ways.~~	**f.** Maintain ecological balances and conservation corridors along rivers, streams, and drainage ways.
	Add section of Definitions	**B. DEFINITIONS**
		Adjacent: Bordering, contiguous, or neighboring. The term includes wetlands that directly connect to other waters of New Hampshire, or that are in reasonable proximity to these waters, but physically separated from them by man-made dikes or barriers, natural river berms, beach dunes, and similar obstructions.
		Certified Wetland Scientist: A person qualified to delineate wetland boundaries and prepare wetland maps who is certified by the State of New Hampshire Board of Natural Scientists, as defined by RSA 310-A:76, II-a.
		Encroachment: The advancement of property development beyond a set boundary.
		Peatland: A bog, fen or peat swamp, distinguished by peat deposits, waterlogged conditions, acidic soil and water, and dominated by sphagnum mosses. These are rare communities that tend to be biodiversity hotspots, hosting carnivorous plants and other unusual and rare species.
		Vernal Pool: A naturally occurring or mitigation-created seasonal wetland that supports breeding by specialized amphibians and invertebrates. It is not formed by routine human activities, typically occurs in a shallow depression, has no permanent outlet or fish, holds water for at least two months after spring ice-out, and contains recognized indicator species. *Identification and Documentation of Vernal Pools in New Hampshire*, rev 2004.

Current ordinance, incl March 2025 amendments	PB/SCC joint meeting proposed changes	**Final draft for presentation to Public Hearing - *approved by SCC 9/7/2025***
		Vernal pool indicator species: Includes but not limited to fairy shrimp, wood frogs, spotted salamanders, or Jefferson-blue spotted salamander complex. These species depend not only on the pools for breeding sites, but upon surrounding upland habitat for other life requirements.
		Wetland: Pursuant to RSA 482-A:2-A:2.X, an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
		Wetland buffer: The protected area adjacent to wetlands and surface waters in the Wetlands Conservation District. This area is ideally naturally vegetated, maintains a diversity of native vegetation, and remains unaltered by development at the time of construction and thereafter (excepting any area designated for permitted uses or subject to a Conditional Use Permit). The purpose of this area is to prevent erosion and sedimentation, filter runoff, reduce non-point source pollution, support flood storage, minimize downstream flooding, and protect wildlife habitat.
		Wetland setback: The distance between a wetland and the nearest point to which any building or structure, parking lot, driveway, or other use can be built**.**
B. DISTRICT BOUNDARIES	**B. DISTRICT BOUNDARIES**	**C. DISTRICT BOUNDARIES**
1. The Swanzey Wetlands Conservation District is defined as those areas of the town that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. The Wetlands Conservation District is sometimes referred to herein as "wetlands" or "wetland areas."	*[move definition of "wetlands" to new Definitions section]*	
2. "Wetlands" include but are not limited to:	**2.** The Wetlands Conservation District includes but is not limited to	**1.** The Wetlands Conservation District includes but is not limited to:
	a. Wetlands of any size adjacent to surface water	**a.** Wetlands of any size adjacent to surface water
	b. Vernal pools over 500 square feet	**b.** Vernal pools over 500 square feet
a. Any freshwater wetland, which includes marshes, swamps, bogs, vernal pools and wooded bottomlands, and any surface waters, including rivers, streams and intermittent streams, and the land under said waters (excepting 4th order streams and designated rivers, lakes and ponds covered by Section VIII Shoreland Protection District.	**c.** Any freshwater wetland over 1000 square feet, which includes marshes, swamps, bogs, and wooded bottomlands, and any surface waters, including rivers, streams and intermittent streams, and the land under said waters.	**c.** Any freshwater wetland over 1000 square feet, which includes marshes, swamps, bogs, and wooded bottomlands, and any surface waters, including rivers, streams and intermittent streams, and the land under said waters
	[Consider deleting buffers.] [create better language]	

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Determinations of the boundaries between "wetlands" and "uplands" shall be made in accordance with methods outlined in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual Y-87-1 and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (Version 2.0 or as amended).	*March 2025, unchanged*	**2.** Determinations of the boundaries between "wetlands" and "uplands" shall be made in accordance with methods outlined in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual Y-87-1 and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (Version 2.0 or as amended).
	d. In determining the size of a wetland, any portion of a wetland on an adjacent parcel ~~or in an adjacent municipality~~ shall be included. *[re-numbered]*	**3.** In determining the size of a wetland, any portion of a wetland on an adjacent parcel shall be included.
C. GENERAL PROVISIONS	**C. GENERAL PROVISIONS**	**D. GENERAL PROVISIONS**
1. In all cases where the Wetlands Conservation District is superimposed over another zoning district in the Town of Swanzey, that district whose regulations are more restrictive shall apply.	*March 2025, unchanged*	**1.** In all cases where the Wetlands Conservation District is superimposed over another zoning district in the Town of Swanzey, that district whose regulations are more restrictive shall apply.
		2. For all wetlands over 10,000 square feet, peatlands over 1,000 square feet, vernal pools over 500 square feet, and wetlands of any size adjacent to open water the following shall apply:
		All uses not permitted in the Wetlands Conservation District shall have either a specified setback from the wetland, or be placed outside of a naturally vegetated buffer—choice to be made by the applicant. Where such buffer exists in a naturally wooded condition at the time of development, it shall remain as such.
		a. In the Rural/Agricultural, Residence, Business, and Commercial/Industrial Districts, uses not permitted in the Wetlands Conservation District shall have a 75' setback from the wetland, or be placed outside of a 50' naturally vegetated buffer.
		b. In the Industrial Park, Village Business District I and Village Business District II, uses not permitted in the Wetlands Conservation District shall have a 50' setback from the wetland, or be placed outside of a 20' naturally vegetated buffer.
		3. Buffers or setbacks of greater width may be required by the Planning Board when a wetland abuts a slope of 10% or more.
2. In the event that the Selectmen, Conservation Commission, Planning Board, Zoning Board of Adjustment, Code Enforcement Officer or the Health Inspector, showing just cause, question the accuracy of a wetland area on a specific parcel of land, the accuracy of the boundaries shall be determined by a certified wetland scientist (as defined by RSA 310-A:76, II-a), with associated costs to be the responsibility of the Applicant (RSA 676:4,I (g)).	*[certified wetland scientist now defined in Definitions]*	**4.** In the event that the Selectmen, Conservation Commission, Planning Board, Zoning Board of Adjustment, Code Enforcement Officer or the Health Inspector, showing just cause, question the accuracy of a wetland area on a specific parcel of land, the accuracy of the boundaries shall be determined by a certified wetland scientist, with associated costs to be the responsibility of the Applicant (RSA 676:4,I (g)).

Current ordinance, incl March 2025 amendments	PB/SCC joint meeting proposed changes	**Final draft for presentation to Public Hearing - *approved by SCC 9/7/2025***
		5. Any lawful use of buildings, structures, premises, land (including mowing), or parts thereof existing at the effective date of this section or amendments thereto and not in conformance with the provisions of this section shall be considered to be a nonconforming use. Any nonconforming use may continue and may be maintained, repaired, and improved. Without a Conditional Use permit, no such nonconforming use may be expanded, changed to another nonconforming use, or renewed after it has been discontinued for a period of 12 months or more.
D. USES PERMITTED	**D. USES PERMITTED**	**E. USES PERMITTED**
Uses permitted in the Wetlands Conservation District, provided that all required permits have been obtained, are as follows:	*March 2025, unchanged*	**1**. Provided that all required permits have been obtained, the following uses are permitted in the Wetlands Conservation District without a Conditional Use permit. The Wetland Conservation District shall be maintained in a natural state to the maximum extent possible.
1. Construction of wells for water supply, or man-made ponds as permitted by NH Dept. of Environmental Services;	**1.** Construction of wells for water supply, ~~or man-made ponds as permitted by NH Dept. of Environmental Services;~~	**a.** Construction of wells for water supply;
2. Wildlife habitat development and management;	*March 2025, unchanged*	**b.** Wildlife habitat development and management;
3. Conservation areas and footpaths, footbridges and boardwalks providing for pedestrian recreational uses such as fishing, hunting, hiking, birdwatching and nature study, provided: a. Said structures are constructed so as to permit the unobstructed flow of water and; b. the natural contour of the wetlands is preserved.	**3**. Conservation areas and footpaths, footbridges and boardwalks providing for pedestrian recreational uses such as fishing, hunting, hiking, birdwatching and nature study;	**c.** Conservation areas and footpaths, footbridges and boardwalks providing for pedestrian recreational uses such as fishing, hunting, hiking, birdwatching and nature study;
4. Open spaces as permitted by subdivision regulations and other sections of the Ordinance;	*March 2025, unchanged*	**d.** Open spaces as permitted by subdivision regulations and other sections of the Ordinance;
5. Forest management and tree farming within 75 ft. of wetlands, consistent with best management practices published by the NH Department of Resources and Economic Development and UNH Cooperative Extension;	**5.** Forest management and tree farming within ~~buffers~~, including any associated access roads, using techniques as set forth in Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, NH Department of Resources and Economic Development, 2004, as it may be amended;	**e.** Forest management and tree farming within 75 ft. of wetlands, including any associated access roads, using techniques as set forth in Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, New Hampshire Department of Resources and Economic Development, 2004, as it may be amended;
6. Agriculture within 75' of wetlands, where it does not impair the function and values in the adjacent wetlands, consistent with best management practices published by the NH Department of Agriculture, Markets and Food;	**6.** Agriculture within ~~buffers,~~ including grazing, as defined by RSA 21:34-a, according to recognized soil and water conservation practices, including the protection of wetlands and groundwater from pollution caused by fertilizers, manure storage, pesticides and herbicides as set forth in Best Management Wetland Practices for Agriculture, NH Department of Agriculture;	**f.** Agriculture within 75 ft. of wetlands, including grazing, as defined by RSA 21:34-a, according to recognized soil and water conservation practices, including the protection of wetlands and groundwater from pollution caused by fertilizers, manure storage, pesticides and herbicides as set forth in Best Management Wetland Practices for Agriculture, New Hampshire Department of Agriculture;

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7. Maintaining, repairing or replacing existing and lawfully located structures, public utilities, streets, roads, and access ways provided that the work conforms to the general standards in this section.	*March 2025, unchanged*	**g.** Maintaining, repairing or replacing existing and lawfully located structures, public utilities, streets, roads, and access ways provided that the work conforms to the general standards in this section;
	8. The removal of invasive species as identified by the USDA for the State of New Hampshire;	**h.** The removal of invasive species as identified by the USDA for the State of New Hampshire;
	9. Scientific research and educational activities;	**i.** Scientific research and educational activities;
	10. Construction of structures no larger than 150/200 square feet ~~within buffer~~.	**j**. Construction of a structure no larger than 100 square feet within 75 ft. of a wetland within the Wetland Conservation District.
	11. The uses listed above, provided that all required permits have been acquired, are presumed to be consistent with the protection of wetland functions and values when in accord with the following prohibitions and so are allowed in the Wetland Conservation District (including buffers) without a Conditional Use permit. These uses should not:	**2.** Permitted uses are presumed to be consistent with the protection of wetland functions and values, when in accord with the following prohibitions. Permitted uses should not:
	a. Obstruct or change the flow of water;	**a.** Obstruct or change the flow of water;
	b. Alter the natural contour of the surface configuration of the wetland;	**b**. Alter the natural contour or the surface configuration of the wetland;
	c. Involve filling, dredging, or draining of the wetland;	**c.** Involve filling, dredging, or draining of the wetland;
	d. result in the pollution of the wetland, surface water, or groundwater; involve substantial clearing of vegetation, except for the purposes of agriculture or forest management in accord with best management practices.	**d.** Result in the pollution of the wetland, surface water, or groundwater;
		e. Involve substantial clearing of vegetation, except for the purposes of agriculture or forest management in accord with best management practices.
	E. CONDITIONAL USES	**F. CONDITIONAL USES**
	Any activity within the Wetlands Conservation District that is not listed as a Permitted Use in Section VII, Article D, is presumed to negatively impact the functions and values of the wetland, unless the applicant can demonstrate otherwise, as outlined below. The following activities may be allowed through the issuance of a Conditional Use Permit by the Planning Board:	Any activity within the areas under jurisdiction of this ordinance (including any designated buffers or setbacks) that is not listed as a Permitted Use in Section VII, Article E, is presumed to negatively impact the functions and values of the wetland, unless the applicant can demonstrate otherwise. The following may be allowed through the issuance of a Conditional Use Permit by the Planning Board:

Current ordinance, incl March 2025 amendments	PB/SCC joint meeting proposed changes	**Final draft for presentation to Public Hearing - *approved by SCC 9/7/2025***
	~~A conditional use permit shall not be required for impacts to areas within the district that are under the jurisdiction of the New Hampshire Department of Environmental Services when a State wetlands permit or when a State Shoreland Water Quality Protection permit has been issued. However, when the State has issued a wetlands permit, a conditional use permit may also be required for proposed disturbance to those land areas within the Wetlands Conservation District that are not under the jurisdiction of the State, including, but not limited to, buffer zones, and vernal pools.~~	
	Subject to the provisions of RSA 674:21, the Planning Board is hereby authorized to issue Conditional Use Permits for the following uses: ~~which are not permitted under Section D of this ordinance:~~	
	~~**1.** Creation of new lots by subdivision that would require the disturbance of or crossing of lands within the Wetlands Conservation District~~ *[PB deemed an action, not a use; however, intro language refers to "activities"]*	**1**. Subdivisions that necessitate the disturbance or crossing of lands within the Wetlands Conservation District.
		2. Structures
	2. Construction of <u>new</u> structures or additions to <u>legally pre-existing structures</u> ~~buildings associated with and/or additions to legally pre-existing multi-family or non-residential primary structures as of the effective date of this ordinance (March 10, 2026),~~ provided that there is no encroachment closer to the wetland than what currently exists.	**a.** New structures on lots where there are no previously existing non-conforming uses.
		b. On lots with non-conforming uses, new structures, or additions to legally pre-existing structures, provided that there is no encroachment closer to the Wetland Conservation District than what currently exists.
	3. The construction, repair or maintenance of streets, roads, and other access ways, including driveways, footpaths, bridges, if essential to the productive use of land within and/or adjacent to the Wetland Conservation District.	**3.** Construction-of streets, roads, and other access ways, including driveways, footpaths, bridges.
	4. Impervious surfaces, and activities which result in soil compaction such as parking vehicles or heavy equipment.	**4.** Impervious surfaces, and activities which result in soil compaction, such as parking vehicles or heavy equipment.
	5. New or expanded utility systems, stormwater management systems, and rights-of-way or easements associated with the systems.	**5**. New or expanded utility systems, stormwater management systems, and rights-of-way or easements associated with the systems.

Current ordinance, incl March 2025 amendments	PB/SCC joint meeting proposed changes	**Final draft for presentation to Public Hearing - *approved by SCC 9/7/2025***
	6. Restoration of a previously disturbed area within the Wetlands Conservation District.	**6.** Restoration of a previously disturbed area within the Wetlands Conservation District.
	7. Man-made ponds as permitted by NH Department of Environmental Services, water impoundments, dry hydrants, and fire protection ponds.	**7.** Man-made ponds as permitted by New Hampshire Department of Environmental Services, water impoundments, dry hydrants, and fire protection ponds.
	F. CONDITONAL USE PERMIT CRITERIA	**G. CONDITIONAL USE PERMIT CRITERIA**
	A Conditional Use Permit may be granted for conditional uses as listed in Section F. ~~allowed uses~~ within the Wetlands Conservation District when all of the following criteria have been met. *[PB]*	A Conditional Use Permit may be granted for conditional uses as listed in Section F. when all of the following criteria have been met.
	1. The proposed use and/or activity is only allowed if there is no ~~viable~~ reasonable alternative location which would avoid encroachment into the Wetlands Conservation District. *[PB]*	**1.** The land is reasonably suited to the use, activity, or alteration.
	2. Encroachment into the Wetlands Conservation District has been minimized to the maximum extent possible, including reasonable modification of the scale or design of the proposed use.	**2.** There is no reasonable alternative location which would avoid encroachment into the jurisdictional area.
	3. The nature, design, siting, and scale of the proposed use and the characteristics of the site including but not limited to topography, soils, vegetation, and habitat are such that, when taken as a whole, will avoid the potential for adverse impacts to the wetland resource.	**3.** Encroachment into the jurisdictional area has been minimized to the maximum extent possible, including reasonable modification of the scale or design of the proposed use.
	*[move to **E.** Permitted Uses, per PB]*	**4.** The proposal is the alternative with the least adverse impact to areas under the jurisdiction of this section.
	3. The nature, design, siting, and scale of the proposed use and the characteristics of the site including but not limited to topography, soils, vegetation, and habitat are such that, when taken as a whole, will avoid the potential for adverse impacts to the wetland resource.	**5.** The nature, design, siting, and scale of the proposed use and the characteristics of the site including but not limited to topography, soils, vegetation, and habitat are such that, when taken as a whole, will avoid the potential for adverse impacts to the wetland resource.
	6. Where there has been disturbance or alteration of the Wetlands Conservation District during construction, revegetation may be required.	**6.** The proposed use shall not have any adverse impact on abutting properties.
		7. The jurisdictional area is maintained in a natural state to the maximum extent possible. While unsafe or diseased trees may be removed, stumps and root systems must be left intact in the ground. Where there has been disturbance or alteration of the jurisdictional area during construction, re-vegetation with native species may be required by the Planning Board.

Current ordinance, incl March 2025 amendments	PB/SCC joint meeting proposed changes	**Final draft for presentation to Public Hearing - *approved by SCC 9/7/2025***
		8. In determining whether or not a Conditional Use permit will be granted, the Planning Board shall consider the following to determine whether allowing the proposed encroachment will result in an adverse impact on the area.
		a. The size, character, and quality of the jurisdictional area being encroached upon.
		b. The location and connectivity of said area in relation to other wetlands in the surrounding watershed.
		c. The nature of the ecological and hydrological functions served by said area.
		d. The nature of the topography, slopes, soils, and vegetation that encompass said area.
		e. The role of said area in mitigating soil erosion, sediment and nutrient transport, groundwater recharge, flood storage, and flow dispersion.
		f. The extent to which said area serves as wildlife habitat or travel corridor.
	G. CONDITIONAL USE PERMIT APPLICATION PROCEDURE	**H. CONDITIONAL USE PERMIT APPLICATION PROCEDURE**
		1. The applicant is required to provide a detailed plan to the Planning Board showing the proposed encroachment into the Wetlands Conservation District (and any designated setback or buffer), and any information necessary to demonstrate that the proposed encroachment will not cause adverse impacts to the wetland system, or design details that demonstrate that proposed mitigation will prevent adverse impacts to the Wetland Conservation District.
		2. Upon receipt of an application for a conditional use permit under this section of the ordinance, the Planning Department must forward the application to the Conservation Commission at least five (5) business days before the Commission's next regularly scheduled meeting.
		3. After receiving an application for a Conditional Use permit from the Planning Department, the Conservation Commission will review the application and submit advisory comments to the Planning Board at least five (5) business days before the Planning Board's next regularly scheduled meeting. This review will be based on the Conditional Use permit criteria outlined in this article.
		4. If, after reviewing and commenting on the application, the Conservation Commission identifies the need for additional details regarding the scope of work, the Planning Board may require a review by a qualified professional (such as a certified soil scientist or engineer). In accordance with RSA 676:4.I(g)), the applicant is responsible for any associated costs.
E. SPECIAL PROVISIONS		**I. SPECIAL PROVISIONS**
1. No leach field or dry well may be located closer than one hundred twenty five (125) feet to any designated wetland. In instances of septic failure, certified to by the Town of Swanzey Health Officer, the one hundred twenty five (125) foot requirement is waived if a licensed septic designer certifies to the Health Officer that a one hundred twenty five (125) foot setback is not possible; in that event, the system can be replaced to State specifications.		**1.** No leach field or dry well may be located closer than seventy-five (75) feet to any designated wetland. In instances of septic failure, certified to by the Town of Swanzey Health Officer, the seventy-five (75) foot requirement is waived if a licensed septic designer certifies to the Health Officer that a seventy-five (75) foot setback is not possible; in that event, the system can be replaced to State specifications.

Current ordinance, incl March 2025 amendments	PB/SCC joint meeting proposed changes	**Final draft for presentation to Public Hearing - *approved by SCC 9/7/2025***
2. Wetland areas will not be used to satisfy minimum lot area and setback requirements and may not be used when applying a residential density factor.	*March 2025, unchanged*	**2.** Wetland areas will not be used to satisfy minimum lot area and setback requirements and may not be used when applying a residential density factor.
F. AREAS EXEMPTED FROM THIS SECTION	**I. AREAS EXEMPTED FROM THIS SECTION**	**J. AREAS EXEMPTED FROM THIS SECTION**
Areas exempted from this section will include wetlands associated with currently functioning and maintained, man-made:	Areas exempted from this section will include wetlands associated with 4th order streams and designated rivers, lakes and ponds covered by Section VIII Shoreland Protection District, and currently functioning and maintained, man-made:	**1**. Wetlands associated with currently functioning and maintained, man-made:
1. Ditches and stormwater treatment swales	*March 2025, unchanged*	**a.** Ditches and stormwater treatment swales
2. Sedimentation and/or detention basins or ponds	*March 2025, unchanged*	**b.** Sedimentation and/or detention basins or ponds
3. Agricultural and irrigation ponds or swales	*March 2025, unchanged*	**c.** Agricultural and irrigation ponds or swales
4. Fire ponds, cisterns and related facilities	*March 2025, unchanged*	**d.** Fire ponds, cisterns and related facilities
		To be exempted, such features may not have been constructed as part of compensatory mitigation or created in what were previously jurisdictional wetlands
To be exempted, such features may not have been constructed as part of compensatory mitigation or created in what were previously jurisdictional wetlands.	*March 2025, unchanged*	**2.** Wetlands associated with 4th order streams and designated rivers, lakes and ponds covered by Section VIII Shoreland Protection District

TOWN OF SWANZEY

OFFICE OF PLANNING AND ECONOMIC DEVELOPMENT

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Memorandum – Office of Planning & Economic Development

TO: Planning Board

FROM: Adam Paquette, Town Planner

DATE: September 8, 2025

RE: Wetland Conservation District Changes

General Discussion

The purpose of this memo is to address the role of buffers in certain zoning districts and to explain why the buffer provisions in the current ordinance proposal represent a fair compromise between those who support them and those who oppose them.

Opponents of buffers often cite concerns that they constitute land taking and create unnecessary hurdles for development in key districts. While it is true that buffers add an extra step to the process, they do not prohibit development. Instead, applicants can pursue a conditional use permit to build within the Wetland Conservation District. This directly responds to the most significant concern raised at last year's hearing, that buffers would strip away development rights without offering relief. The current proposal provides that relief and should address those objections.

Planning staff believes the question of wetland buffers deserves public input at a hearing. Removing buffers from the proposal without giving residents the opportunity to weigh in would be a disservice to the community. Allowing comments on this final draft will give the Board a more complete view of both scientific evidence and public opinion, two essential components of sound Planning Board decision-making.

Fifth Amendment Concerns

Planning staff have reviewed Fifth Amendment concerns raised by Planning Board members and respectfully request that these perspectives be considered.

Wetland buffers generally do not qualify as a "taking" under the Fifth Amendment because property owners are not being deprived of all economically viable use of their land. A regulation only rises to the level of a compensable taking if it either (1) requires the government to physically occupy private property, or (2) denies the owner every reasonable economic use (as established in cases like Lucas v. South Carolina

Coastal Council, 505 U.S. 1003 (1992). Buffers don't meet this standard, because:

- Reasonable use remains available. Landowners can still develop outside the buffer area, and even within it if they obtain a conditional use permit. This means the regulation imposes restrictions, but not total prohibition.
- Regulation for public welfare is permitted. Courts have long held that land use regulations designed to protect health, safety, and welfare (such as zoning, setback requirements, or environmental protections) are legitimate exercises of government authority (see Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978).
- Buffers are tied to legitimate public interests (protecting water quality, reducing flood risk, maintaining habitat). If the regulation is not arbitrary or confiscatory, it is generally upheld.

Wetland buffers regulate how land is used, but they don't amount to the government seizing or rendering the property useless, so they fall under permissible regulation, not a taking.

Final Note

Staff truly appreciates all the effort the Planning Board and Conservation Commission have put into updating the Wetlands Conservation District. It's inspiring to see local boards working together to create changes that will make a real difference in the community. Thank you for your ongoing commitment to the Town of Swanzey.