Wetlands Conservation District Zoning Amendments for March 2026 Town Vote

Current ordinance, incl March 2025 amendments	**Final draft for presentation to Public Hearing - *Reviewed and approved by SCC 10/6/2025. Incorporating Town counsel comments. Reviewed 10/9 by PB***
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:	**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;	**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;	**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 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;	**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.	**e.** To preserve and enhance those aesthetic values associated with the wetlands of this Town.
	f. To maintain ecological balances and conservation corridors along rivers, streams, and drainage ways.
	B. DEFINITIONS
	As used in this Section VII, the following terms shall have the following 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. *Source: Identification and Documentation of Vernal Pools in New Hampshire*, rev 2004.
	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.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 (see Section D.2). This area is 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 (see Section D.2)**.**
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."	
2. "Wetlands" include but are not limited to:	The Wetlands Conservation District is defined as those areas of the town that contain the following:
	a. Wetlands of any size adjacent to surface water.
	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.
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).	**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).
	3. In determining the size of a wetland, any portion of a wetland on an adjacent parcel shall be included.
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.	**1.** In all cases where the Wetlands Conservation District is superimposed over another zoning district in the Town of Swanzey, or is less restrictive than state law governing wetlands (including, but not limited to, RSA 482-A:2.X.), those regulations that 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 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)).	**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.
	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 or repaired.
	6. While unsafe or diseased trees may be removed, stumps and root systems must be left intact in the ground.
D. USES PERMITTED	**E. USES PERMITTED**
Uses permitted in the Wetlands Conservation District, provided that all required permits have been obtained, are as follows:	**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;	**a.** Construction of wells for water supply;
2. Wildlife habitat development and management;	**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.	**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;	**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;	**e.** Forest management and tree farming, including any associated access roads. Within 75 feet of any wetland, these uses shall employ 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;	**f.** Agriculture, including grazing, as defined by RSA 21:34-a. Within 75 feet of any wetland, agriculture shall follow 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;
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.	**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;
	h. The removal of invasive species as identified by the USDA for the State of New Hampshire;
	i. Scientific research and educational activities;
	j. Construction of a structure no larger than 100 square feet with at least a 50' setback from the wetland.
	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;
	b. Alter the natural contour or the surface configuration of the wetland;
	c. Involve filling, dredging, or draining of the wetland;
	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.
	F. CONDITIONAL USES
	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 in the Wetland Conservation District or any adjacent designated buffer or setback through the issuance of a Conditional Use Permit by the Planning Board:
	1. Structures
	a. New structures on lots where there are no previously existing non-conforming structures.
	b. New structures on lots with non-conforming structures, or additions to legally pre-existing structures, provided that there is no encroachment closer to a wetland.
	2. Streets, roads, and other access ways, including driveways,-sidewalks, and bridges.
	3. Impervious surfaces, and activities which result in soil compaction, such as parking vehicles or heavy equipment.
	4. New or expanded utility systems, stormwater management systems, and rights-of-way or easements associated with the systems.

	5. Restoration of a previously disturbed area within the Wetlands Conservation District.
	6. Man-made ponds as permitted by New Hampshire Department of Environmental Services, water impoundments, dry hydrants, and fire protection ponds.
	7. Expansion or change of an existing non-conforming use, or renewal of the use after it has been discontinued for 12 months or more.
	8. Removal of trees, stumps, and root systems.
	G. CONDITIONAL USE PERMIT CRITERIA
	A Conditional Use Permit may be granted for conditional uses as listed in Section F. in the Wetland Conservation District or any adjacent designated buffer or setback when all of the following criteria have been met.
	1. The land is reasonably suited to the use, activity, or alteration.
	2. There is no reasonable alternative location which would avoid encroachment into the jurisdictional area.
	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.
	4. The proposal is the alternative with the least adverse impact to areas under the jurisdiction of this section.
	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. The proposed use shall not have any adverse impact on abutting properties.
	7. The Wetland Conservation District and any designated buffer is maintained in a natural state to the maximum extent possible. Where there has been disturbance or alteration during construction, re-vegetation with native species may be required by the Planning Board.
	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.
	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, at its discretion, require a review by a qualified professional (such as a certified soil scientist or engineer). In accordance with RSA 676:4-b, the applicant is responsible for any associated costs.
	5. The Board shall act to approve, conditionally approve, or disapprove the completed application within 65 days (+30 days for developments of regional impact) of acceptance except as otherwise provided in Site Plan Review Regulations. Approval or disapproval shall be by affirmative vote of the majority of members present.
	6. Planning Board decisions on Conditional Use Permits may be appealed directly to the Superior Court (RSA 676:5(III)).
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 wetland as defined in Section B. of this ordinance.
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.	**2.** Wetlands, as defined in Section B. of this ordinance, 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	**J. AREAS EXEMPTED**
Areas exempted from this section will include wetlands associated with currently functioning and maintained, man-made:	**1**. Wetlands associated with currently functioning and maintained, man-made:
1. Ditches and stormwater treatment swales	**a.** Ditches and stormwater treatment swales
2. Sedimentation and/or detention basins or ponds	**b.** Sedimentation and/or detention basins or ponds
3. Agricultural and irrigation ponds or swales	**c.** Agricultural and irrigation ponds or swales
4. Fire ponds, cisterns and related facilities	**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.	**2.** Wetlands associated with 4th order streams and designated rivers, lakes and ponds covered by Section VIII Shoreland Protection District