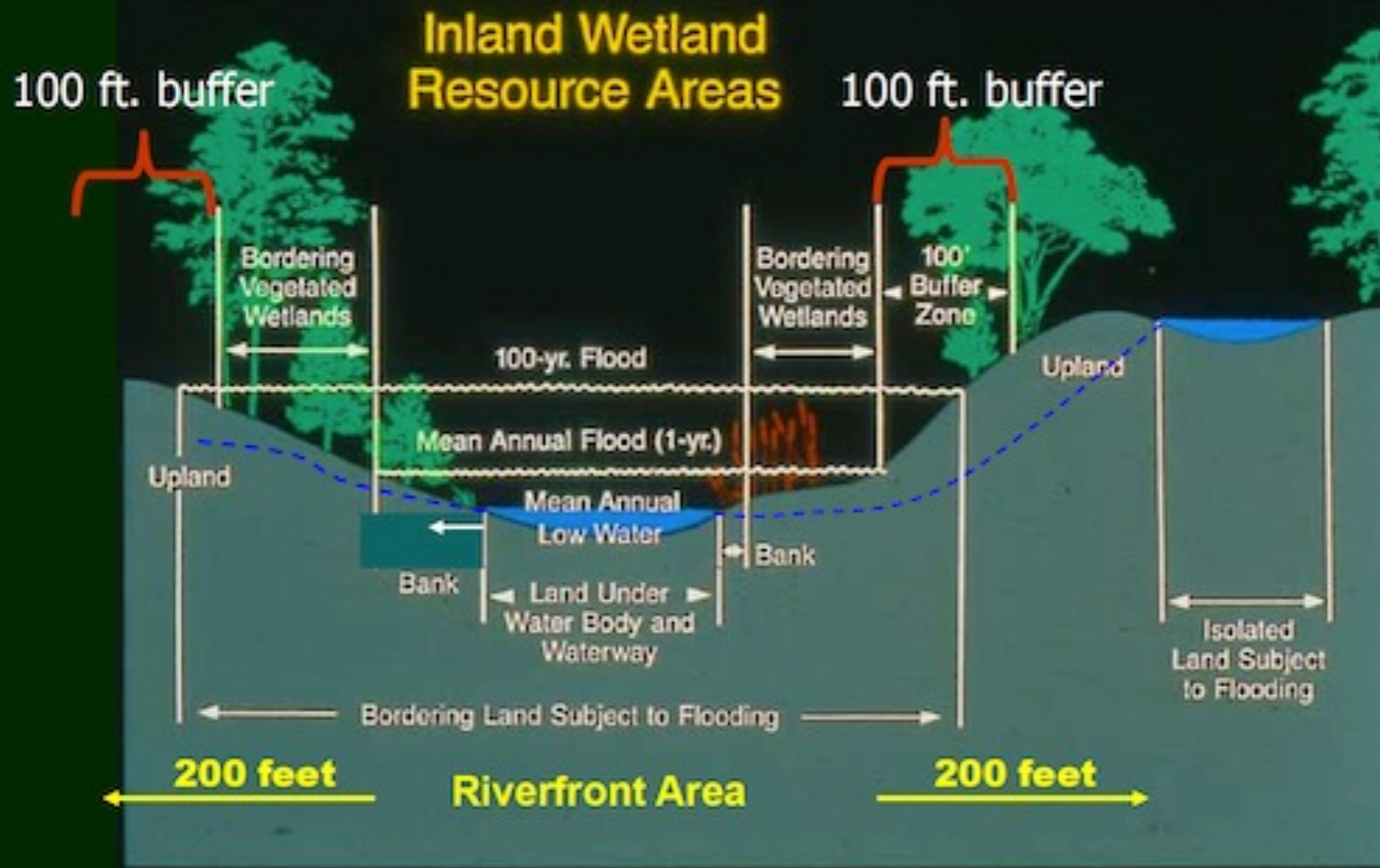




2023 Shutesbury Wetlands Protection Bylaw

Shutesbury Conservation Commission



Cross-sectional view: multiple resources areas and associated buffer zones may be present and overlapping.

What are Wetland Resource Areas?

Our Wetland Community

- **Shutesbury has marshes, bogs, Vernal Pools, wet meadows, forested swamps, ponds, and streams!**
- Shutesbury depends on well water and septic systems, making water quantity and water quality are precious community resources
- Connected forest habitat is essential for wildlife breeding and survival, including rare and endangered species
- In FY22, 94% of Commission site visits involved properties with some jurisdictional wetland Resource Area
- Unpaved roads: 16.7 miles, 43% of all roads, dozens (if not hundreds) of wetlands crossings that are subject to costly runoff and erosion issues

Wetland Free Public Services

- Carbon sinks: store 20-30% of global soil carbon despite occupying 5%-8% of area
- Create climate change adaptation and resilience zones but are vulnerable to impacts of climate change (Moomaw, et al. 2018)
- Store and control stormwater and protect properties from flooding
- Filter out contaminants and pollutants from stormwater, septic systems, roads, etc.
- Protect groundwater and drinking water quantity and quality
- Support biodiversity and critical wildlife habitat, including habitat for rare and endangered species
- Protects us from wildfires
- Provide localized cooling effects to protect us from climate change!
- Protect our many unpaved roads from costly damage due to stormwater runoff and flooding.

WETLANDS KEEP SHUTESBURY A LIVABLE COMMUNITY!

How do local Wetlands Bylaws work?

- State law (WPA): minimal protection standards that have NOT kept up with evolving environmental and climate science.
- Bylaws are designed to be more protective than state law under Home Rule Authority.
- 220 out of 351 towns and cities in Massachusetts have local wetland protection bylaws or ordinance (MACC, 2022)

Differences Between Bylaws and Regulations

- **Bylaws**

- Passed by a Town Meeting and approved by AGO
- Establish jurisdiction and procedures

- **Regulations**

- Adopted by ConCom
- Define terms, explain standards and procedures
- Necessary for proper and legal administration of the Bylaw
- Flesh out minimal language in the Bylaw
- Establish Fee Schedule
- Regulations should be updated every few years as science evolves

Current Bylaw

- 2023: Select Board and its Special Counsel raised concerns that current Bylaw is outdated.
- Severability Clause in Bylaw means current Bylaw is still a valid statute even if one provision is invalidated by a Court.
- SCC agrees an updated Bylaw is best approach.
- At request of the SB, the SCC drafted a new Bylaw based on the Model Bylaw created by the Massachusetts Association of Conservation Commissions (MACC).

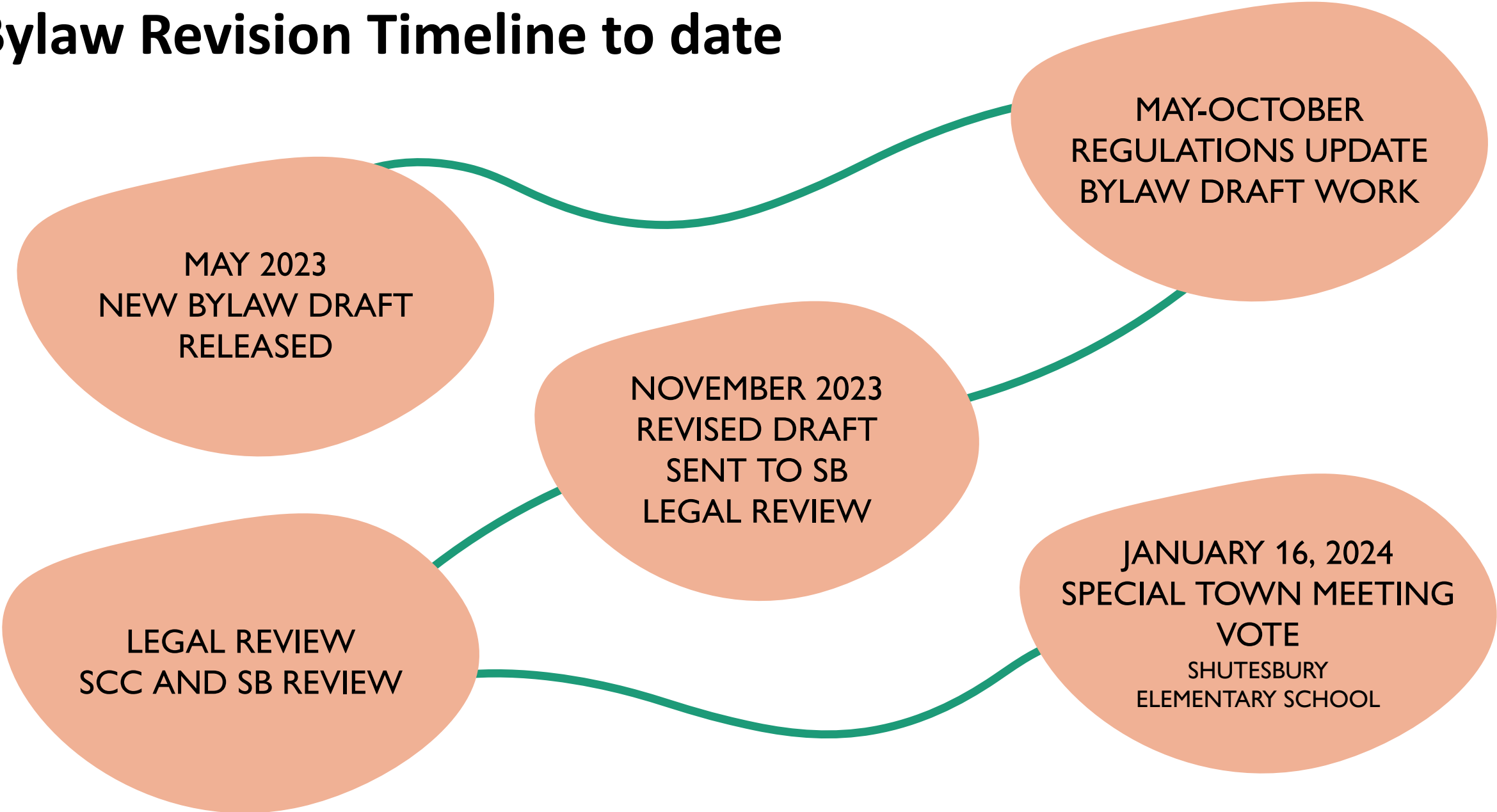
Why Use the 2006 MACC Model Bylaw and 2023 MACC Climate Resilient Recs?

- Massachusetts Association of Conservation Commissions (MACC) is the preeminent resource for conservation law and policy. See maccweb.org.
- Model Bylaw is basis for almost every other wetlands protection bylaw in Mass
- Model Bylaw has been thoroughly vetted by MACC's attorneys and consultants.
- Town Counsels for 100s other towns have reviewed much of this language
- Language has also been repeatedly approved by the AGO's Municipal Law Division.
- Special Counsel Gregor McGregor strongly endorses this Model Bylaw.
- Model Bylaw and MACC 2023 Updated Climate Resilient language means voters can trust that Bylaw is legally and scientifically appropriate.

Bylaw Development Process

Resources	MACC Model Bylaw; Climate Resilient Project (MACC/McGregor), Bylaws/Ordinances from 20+ other communities
Professional Reviewers	Janice Stone (professional wetland scientist, Conservation Agent, past SCC Chair and MACC Board member, Bylaw author) Beth Willson (professional wetland scientist, SCC Commissioner), past Conservation Agent
Legal	Legal Counsel Review-McGregor, Legere, and Stevens
Public Input	Public Hearing and Comment Period

Bylaw Revision Timeline to date



RESOURCE AREA PROTECTIONS IN OLD AND NEW BYLAWS

- Standard: Significant or cumulative effect
- Freshwater vegetated wetlands (isolated and bordering)
- Vernal Pools (which are a type of isolated freshwater wetland that is not defined alone by vegetation)
- Streams and Rivers, including **intermittent (subsurface) streams**
- Land Under Water Bodies and Waterways
- Land Subject to Flooding (isolated and bordering)
- The 100-foot Adjacent Upland Resource Area (AURA, also known as the Buffer Zone in the state Regulations) as a Resource Area.
- 200-foot Riverfront Area of perennial streams would be protected under the new proposed Bylaw (to match the WPA). This Resource Area did not exist in 1987 when current Bylaw was adopted.



Bylaw Nuts and Bolts

What would be staying the same?

What would be changing?

OLD VERSUS NEW BYLAW PURPOSES (VALUES)

- Take out aesthetics and historic values
- Minor wording changes to be consistent with newer standards
- ADD:
 - Protection of biodiversity
 - Mitigation of adverse effects from climate change
 - Carbon/greenhouse gas storage and sequestration
 - Localized cooling
 - Rare species habitat including rare plant and animal species

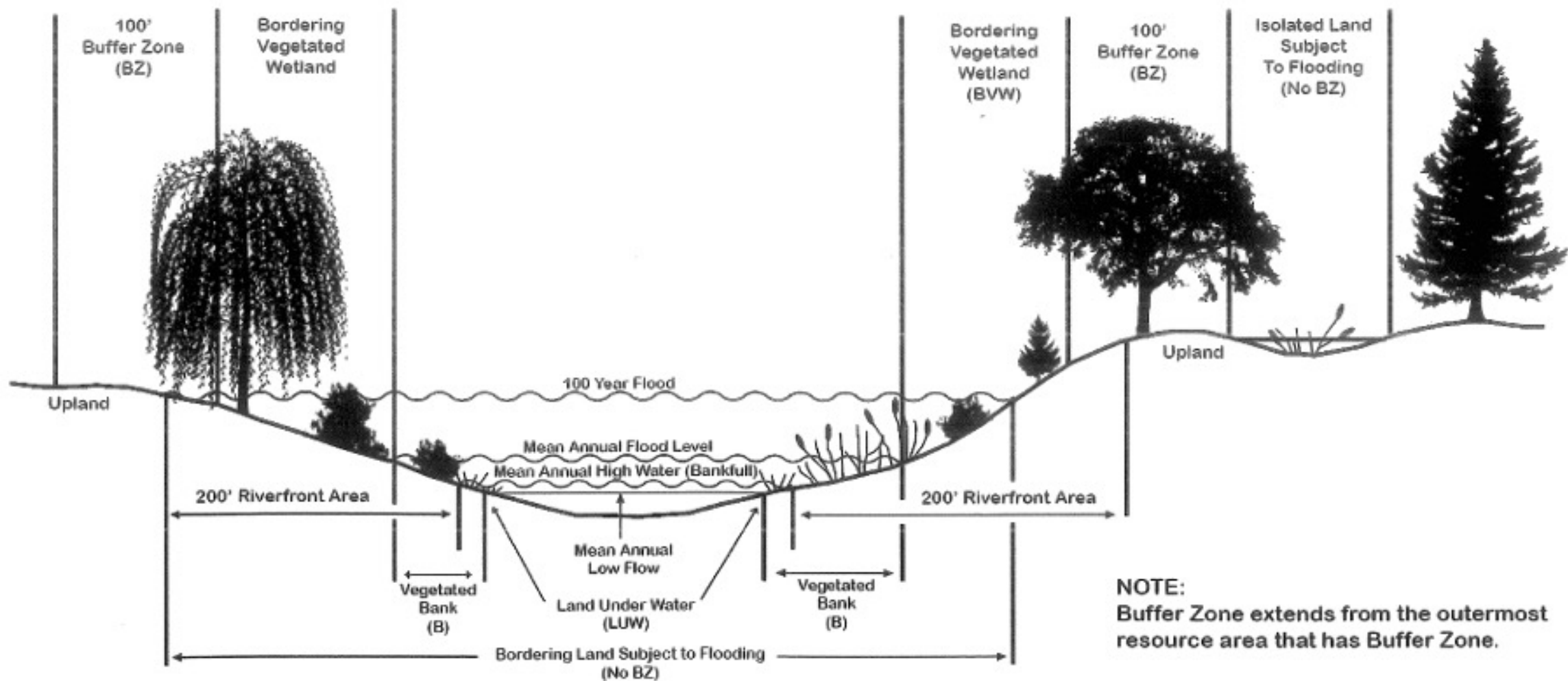


FIGURE 1: Inland Wetland Resource Areas and associated Buffer Zones. Modified from: Massachusetts Department of Environmental Protection (personal communication) and MA WPA regulations.

OLD VERSUS NEW BYLAW JURISDICTION (RESOURCE AREAS)

- No change to protections for freshwater wetlands, ponds, rivers, streams, intermittent streams, land under waterbodies and waterways, land subject to flooding
- No change to 100-foot Buffer Zone (Adjacent Upland Resource Area or AURA)
- Specifies banks and vernal pools, although these are already protected under current Bylaw.
- Adds 200-foot Riverfront Area (RFA) to perennial streams as a Resource Area—to be consistent with the state WPA; RFA didn't exist in 1987

OLD VERSUS NEW BYLAW

Exemptions

- Added exemption for agriculture to bring into conformity with 1991 legislation with preempts local regulation of agriculture; 1996 AGO decision affirms this preemption
- Exempts mosquito control work done under the provisions of M.G.L. Chapter 40 §5 or M.G.L. Chapter 252
- Adds clarifying language that some Minor Activities under CMR 10.02(2)(b) may be exempt in the Regulations as SCC has already done in the 2023 Regulations.

OLD VERSUS NEW BYLAW SMALL PROJECTS

- 2023 Regulations adopted process for Administrative Approvals of small projects that would not require a Public Hearing, RDA, or NOI.
- Section 4 makes this procedure into a type of permit under the Bylaw.
- Regulations spell out the procedures and criteria.
- Allows for minor projects, particularly in the outer 50 feet of the AURA, and other activities, to be quickly reviewed and approved with some conditions.
- Saves landowners time, expense of Abutter Notifications, Legal Notices in newspaper

OLD VERSUS NEW BYLAW APPLICATIONS AND FEES

- Minor wording changes as now included in Model MACC Bylaw
- Important MACC-advised language for use of consultants under MGL Chapter 44 §53G
 - 53G is already authorized under state law
 - Language about fees was outdated

OLD VERSUS NEW BYLAW NOTICES AND HEARINGS

- Certificates of Mailing allowed; aligns with MassDEP requirements;
LESS EXPENSIVE
- Abutter Notifications only providing a description of project, not project plans.
 - Impractical to send plans
 - Plans are always posted on SCC webpage
 - Plans can be inspected at SCC office or digital copies provided upon request
 - Hard copies provided upon request.
- Allows for Public Hearings to be postponed with applicant consent.

OLD VERSUS NEW BYLAW Permits

- Important new standard language: *The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect.*
- Clarifying language about cumulative effect on Resource Areas
- Clarifying language about hardship waivers and how they are determined
 - Avoid, minimize, mitigate
 - Overriding public interests
 - Feasibility
 - Avoid taking without compensation
- Permit amendments and time limits

OLD VERSUS NEW BYLAW Permits-Presumptions

- Consider cumulative adverse effect, including on Values pertaining to climate resilience and greenhouse gas mitigation
- Avoid, Minimize, and Mitigate where feasible
- Regulations may include no-disturb areas, buffer strips, safeguards
- Riverfront Area standards to align with WPA standards
- Ability to require a wildlife habitat evaluations
- Vernal Pools: presumptions can be overcome with evidence



OLD VERSUS NEW BYLAW Regulations

- No major changes proposed
- Clarifying language about what goes into Regulations
- Existing Regulations can be quickly revised to adapt to new Bylaw

OLD VERSUS NEW BYLAW Definitions

- Incorporating many definitions that are in Regulations
- Regulations can include more definitions
- Expanded definition of “alteration” to align with MACC recommendations and other newer bylaws/ordinances adopted statewide
- Adverse effect, cumulative effect, practicable alternative
- Resilience
- Pollution Prevention, Rare Species, Storm Damage Prevention
- Bank, Vernal Pools, Flood Control, Freshwater Wetlands, Pond, River, etc.

Next Steps

- Draft was reviewed by McGregor, Legere, and Stevens law firm; minor edits incorporated.
- Further revisions may be considered based on Public Hearing tonight.
- Final draft will be noted on by Conservation Commission and then sent to the Select Board.
- Warrant on Special Town Meeting on January 16, 2024 (time to be announced) at the Shutesbury Elementary School.

How does New Bylaw Benefit Residents?

- Preserves current protections and ensures best scientific standards
- Aligns with 2023 Regulations
- Reduce costs and application requirements
- Waivers allowed to ensure landowners not deprived of ability to use their properties (e.g., small lots near Lake Wyola)
- New standards allow Commission to consider climate change and climate change resilience benefits provided by wetlands and AURA
- Prepares for environmental climate change impacts: weather, temperature rise, future commercial and housing development, and water scarcity



For more information:
shutesbury.org/wetlands-bylaw

To contact the Conservation Commission: concom@shutesbury.org

**To access the Zoom link to the Monday, December 18
public hearing on the Draft Bylaw:**
shutesbury.org/calendars