TOWN OF WILMINGTON
WETLANDS ENFORCEMENT BY-LAW

I PURPOSE

The purpose of this By-law is to provide additional enforcement for the protection of jurisdictional wetlands resource areas and adjoining land areas in the Town of Wilmington, which are subject to the performance standards and procedures of the Wetlands Protection Act (M.G.L. Chapter 131 § 40).

This enforcement By-law is intended to utilize the Home Rule authority of the municipality to authorize additional enforcement actions.

II JURISDICTION

The enforcement By-law overlays those resource areas currently protected by the Wetlands Protection Act (M.G.L. Chapter 131 § 40) and the 100-foot Buffer Zone.

III ENFORCEMENT

1. No person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter resource areas protected by the Wetlands Protection Act, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an Enforcement Order issued pursuant to the Wetlands Protection Act (M.G.L. Chapter 131 § 40).

2. The Commission shall have authority to enforce the Wetlands Protection Act (M.G.L. Chapter 131 § 40), and permits and orders issued there under, by violation notices, non-criminal citations under M.G.L. Chapter 40 § 21D, and civil and criminal court actions. Any person who violates provisions of this By-law may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

3. When a violation is believed to have occurred, the following Procedures for Violations shall be followed:

    A. The Commission or its agent shall conduct a site visit to determine if a violation has occurred and the extent of the violation.

B. Upon notification of a violation, the Commission shall issue a notice of violation to each party whom it believes is responsible and may, at its discretion, require any of the following remedies:

a. work shall stop and erosion and sediment control measures shall be implemented forthwith; and/or
b. responsible party shall attend a scheduled Commission meeting to present a "mitigation plan"; and/or
c. responsible party shall file a Request for Determination of Applicability; and/or
d. responsible party shall file a Notice of Intent.

C. If the responsible party does not timely comply with the required remedies as specified in the notice of violation, the Commission shall issue an Enforcement Order pursuant to M.G.L. Chapter 131 § 40.

D. If the responsible party fails to comply with the Enforcement Order by the dates specified in the Enforcement Order, a fine may be levied as specified in Section IV of this By-law. The responsible party shall be notified of the fine by certified mail and first class mail.

4. Upon request of the Commission, the Board of Selectmen and Town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law. These remedies are cumulative and not mutually exclusive.

IV FINES

1. Any person who violates any provision of this By-law, wetland permits, or administrative orders issued thereunder, shall be subject to a fine pursuant to Section IV 2 herein, but in any event a fine of no more than $300.00 for each offense. From the first day of the occurrence, a violation shall be considered a single, continuing violation for the purpose of fine assessment. However, upon notice of an Enforcement Order specifying remediation required of the offending party by the Commission, the party shall comply fully with that Order by a date certain, as specified within the Order to complete remediation. Upon the first day following the expiration date of the Order for remediation, the offense shall then be considered a subsequent offense and subject to enhanced fines pursuant Section IV 2 herein. The Commission may, in its sole discretion, and upon written

application by the offending party, extend the time for compliance.

2. Fines may be assessed according to the schedule below. First offense fines may be waived at the discretion of the Commission or its agent, provided the offender presents the Commission or agent with an acceptable remediation plan and implementation timeline.

	Unauthorized Activity in Buffer Zone	Unauthorized Activity in Wetlands Resource Area	Non-Compliance with an Order of Conditions or Enforcement Order or Violation Notice
First Offense	$25.00	$50.00	$50.00
Second Offense	$50.00	$150.00	$200.00
Third Offense (and any subsequent offense)	$300.00	$300.00	$300.00

3. As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in M.G.L. Chapter 40 § 21D, which has been adopted by the Town in Section 38 of the By-Laws of the Inhabitants of the Town of Wilmington Revised.

V BY-LAW CHANGES

Changes to the By-Law shall be accomplished by vote of Town Meeting. This Wilmington Wetlands Enforcement By-Law does not give the Conservation Commission authority to promulgate regulations.

VI SEVERABILITY

The invalidity of any section or provision of this By-law shall not invalidate any other section or provision thereof, which other provisions shall remain in effect, nor shall it invalidate any order, permit, approval or determination which previously has been issued.

VII EFFECTIVE DATE

The effective date of this by-law will be the date on which this By-law is approved by vote at the 2006 Wilmington Annual Town Meeting.