

Chapter 12

MARSHLANDS*

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ARTICLE I. IN GENERAL

Secs. 12-1—12-9. Reserved.

ARTICLE II. WETLANDS*

Sec. 12-10. Purpose.

The purpose of this article is to:

(1) Provide that land in the City of Gloucester subject to seasonal or periodic flooding as described in section 12-24 of this article shall not be used in such a manner as to endanger the health or safety of the occupants thereof, or of the public generally, or to burden the public with costs resulting from individual choices of land use.

(2) Assure the continuation of the natural flow pattern of the water courses within the city and to minimize the impact of coastal storms, in order to protect persons and property against the hazards of flood inundation.

(3) Protect the wetlands in the city by controlling activities deemed to have a significant effect either individually or cumulatively upon the following interests:

- a. Public or private water supply;
- b. Ground water supply;
- c. Flood control;
- d. Storm damage prevention;
- e. Prevention of pollution;
- f. Protection of land containing shellfish;
- g. Protection of fisheries;
- h. Protection of wildlife habitat;
- i. Prevention of erosion and sedimentation where erosion and sedimentation will have a detrimental effect upon wetland interests;
- j. Protection of erosion and sedimentation where erosion and sedimentation provide a beneficial effect upon wetland interests.

(4) In determining whether activities will have a significant effect upon wetland interests, the commission may examine not only the effect of a particular activity but the cumulative effect of all activities contained within a resource area or the buffer zone within the applicant's proposal.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-11. Statement of jurisdiction.

(a) Except as provided by this article or permitted by the Gloucester Conservation Commission (the "commission") no person shall remove, fill, dredge, alter or build upon or within any resource areas or the buffer zone.

(b) The following areas, also referred to as resource areas, are subject to protection under this article:

(1) Any bank, any freshwater wetland, any coastal wetland, any beach, any dune, any flat, any marsh, or any swamp, bordering on the ocean, any estuary, any creek, any river, any stream, any pond or any lake.

(2) Land under any of the water bodies listed above.

(3) Any bog, swamp, marsh or wet meadow, not otherwise included in (1) above.

(4) Land subject to tidal action.

(5) Land subject to coastal storm flowage.

(6) Land subject to flooding.

(7) Areas designated by the secretary of environmental affairs as Areas of Critical Environmental Concern (ACEC), including without limitation the Parker River/Essex Bay ACEC.

(8) Land extending one hundred (100) feet horizontally outward from the boundary of an ACEC (hereinafter called the upland edge).

(9) Vernal pools as defined in section 12-11.

(10) Isolated land subject to flooding which contains at least one thousand (1,000) cubic feet of water volume at least once annually with an average depth of at least six (6) inches, whether flooded by surface water or rising groundwater. Isolated land subject to flooding lacks a buffer zone.

(c) The following activities are subject to regulation under this article:

(1) Any activity proposed or undertaken within a resource area identified in section 12-11, subsection (b), which will remove, fill, dredge or alter that area.

(2) Any activity proposed or undertaken within one hundred (100) feet horizontally outward from the boundary of any resource area identified in section 12-11, subsection (b)(1) and (2) and within two hundred (200) feet horizontally outward from the upland edge (hereinafter called the buffer zone) which, in the judgment of the commission, will alter a resource area. With respect to an ACEC, it is emphasized that the commission's jurisdiction extends a total of three hundred (300) feet horizontally outward from the ACEC itself, i.e., a one-hundred-foot resource area known as the upland edge plus another two-hundred-foot buffer zone.

(Ord. No. 21-1990, 9-25-90; Ord. No. 63-2000, § I, 5-23-00)

Sec. 12-12. Interpretation of article.

In the interpretation and application of this article, all provisions shall be:

- (1) Liberally construed in favor of the protection of the interests as specified in section 12-10 of this article.
- (2) Deemed neither to limit nor repeal any other powers granted under federal or state law.
- (3) In the event of any conflict between the provision of this article and the Massachusetts Wetlands Protection Act and Regulations, the more protective measures will take priority.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-13. Exceptions.

The permit and application required by this article shall not be required for:

- (1) Maintaining or repairing (but not substantially changing or enlarging, nor the destruction and removal of trees) the following:
 - a. A utility structure or facility, existing at the time of the adoption of this article, and used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services; or
 - b. A public or private way, existing at the time of the adoption of this article; or
 - c. A private building, existing at the time of the adoption of this article;

provided with respect to the above that the work conforms to the performance standards set forth in this article.

(2) Removal of debris, by hand, from a resource area provided that the work does not change width, depth or direction of flow of water, and that the work conforms to the performance standards adopted in this article.

(3) Emergency projects necessary for the protection of the health or safety of the public, provided that: the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth of Massachusetts or a political subdivision thereof; advance notice, oral or written, has been given to the commission prior to commencement of work or within twenty-four (24) hours after commencement; the commission or its agent certifies the work as an emergency project; the work is performed only for the time and place certified by the commission for the limited purposes necessary to abate the emergency; and within twenty-one (21) days of commencement of an emergency project a permit application shall be filed with the commission for review as provided in this article. Upon failure to meet these and other requirements of the commission, the commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

- (4) The following activities, when undertaken within the buffer zone or within the upland edge:
 - a. The planting, tending, maintaining and harvesting of commercial crops and household lawns and gardens;
 - b. Installation or repair of fences;

- c. Mowing of fields;
- d. Erection and removal of seasonal produce or flower stands;
- e. Grazing of animals;

provided, that the work with respect to the above conforms to the performance standards set forth in this article.

(5) The application of pesticides, herbicides or chemical fertilizers undertaken within the buffer zone, and not undertaken in conjunction with an activity otherwise subject to regulation under this article, and provided that application of the pesticides, herbicides or fertilizers is done in accordance with applicable state and federal laws.

(6) Repair and maintenance of pile-supported structures, with proper building permit issued by the building inspector, shall not require application and permit required by this article.

(Ord. No. 21-1990, 9-25-90; Ord. No. 79-1998, § I, 2-17-98)

Sec. 12-14. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them:

Alter shall include, without limitation, the following actions:

- (1) Removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;
- (2) Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood retention characteristics;
- (3) Drainage or other disturbance of water level or water table;
- (4) Dumping, discharging or filling with any material which may degrade water quality;
- (5) Driving piles or erecting buildings or structures of any kind;
- (6) Placing of obstructions whether or not they interfere with the flow of water;
- (7) Destruction of plant life, including cutting of trees;
- (8) Changing of water temperature, biochemical oxygen demand, nutrient levels or, other physical or chemical characteristics of the water;
- (9) Placing of fill, or removal of material which would alter elevation;
- (10) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
- (11) Application of pesticides, herbicides, or chemical fertilizers.

Area of critical environmental concern (ACEC) means areas so designated by the executive office of environmental affairs.

Buffer zone means the area extending one hundred (100) feet horizontally outward from the resource areas numbered (1) and (2) of section 12-11, subsection (b) and/or two hundred (200) feet horizontally from (8) of section 12-11, subsection (b).

Cumulative means increasing in effect by successive additions.

Freshwater wetlands shall have the meaning ascribed in paragraph 7 of the Wetlands Protection Act. Additionally hydric soils may also be used in determining the existence of freshwater wetlands.

Hydric soils are defined as soils that in their undrained condition are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation.

Resource area is an area identified as a resource area in section 12-11 subsection (b) of this article.

Tree. A woody perennial plant with one (1) main stem which at a height of five (5) feet is over six (6) inches in diameter.

Upland edge is land ending one hundred (100) feet horizontally outward from the boundary of an ACEC.

Vernal pool is any body of water which has been certified by the Massachusetts Natural Heritage Endangered Species Program as a vernal pool.

The following words and phrases (as well as any others used in, but not defined in the article) shall have the same meaning as ascribed in the Wetlands Protection Act's Regulations (MGL 131 S40 310 CMR).

<u>Act</u>	<u>Coastal wetlands</u>	<u>Significant</u>
<u>Activity</u>	<u>Conditions</u>	<u>Stream</u>
<u>Agriculture</u>	<u>Determination</u>	<u>Swamp</u>
<u>Aquaculture</u>	<u>Dunes</u>	<u>Wet meadows</u>
<u>Bog</u>	<u>Person aggrieved</u>	<u>Wildlife</u>
<u>Wildlife habitat</u>	<u>Work</u>	

(Ord. No. 21-1990, 9-25-90)

Sec. 12-15. Presumptions of significance, performance standards, and burden of proof.

(a) *Presumption of significance.*

(1) The commission will presume that each of the resource areas identified in section 12-11 subsection (b) is significant to one (1) or more of the interests identified in section 12-10(3).

(2) These presumptions are rebuttable, i.e., the presumption may be overcome based on a clear showing by credible evidence that the activity in the resource area does not play a role in protection of said interests.

(3) In making its determination as to a resource area, the commission will employ the standards and presumptions contained in Parts II and III of 310 CMR 10.00 (Wetlands Protection), with the following amplifications:

a. Where a proposed activity involves the removing, filling, dredging or altering of any marsh, swamp, bog or wet meadow, the commission will presume that the areas are significant to the same interests as bordering vegetative wetlands, which are specified in 310 CMR 10.55(1).

b. Where a proposed activity involves the removing, filling, dredging or altering of the upland edge of an ACEC, the commission will presume that such area is significant to the following interests: flood control; prevention of storm damage; protection of land containing shellfish and fisheries; wildlife habitat; and prevention of pollution.

(b) *Performance standards.*

(1) When the commission allows work to be performed in an area that it has determined to be significant to the protection of the interests identified in section 12-10(3) it will require the work to meet certain performance standards. Performance standards are intended to identify the standard of care to which the applicant must adhere, in order to achieve the protection of the affected interests.

(2) Performance standards vary according to the resource area affected. The commission will employ the performance standards contained in Parts II and III of 310 CMR 10.00 of the Act, with the following amplifications:

a. Where a proposed activity involves the removing, filling, dredging or altering of any marsh, swamp, bog or wet meadow, the commission will employ the performance standards which apply to bordering vegetative wetlands, which are specified in 310 10.55(4) of the Act.

b. Where a proposed activity involves the removing, filling, dredging or altering of the upland edge the performance standards below shall apply:

1. No vegetation (other than existing lawns, flowers, vegetables, crops and ornamental shrubs) shall be cut within the upland edge.

2. No impervious surface shall be added to land within the upland edge. Impervious surfaces include, but may not be limited to, roads and driveways as well as structures.

3. No components of any drainage system or septic system shall be installed within one hundred (100) feet of the upland edge; that is, within two hundred (200) feet of the ACEC.

c. Notwithstanding the provisions of section 12-15(b)(2)b.2 and 3 above, the commission may issue a wetlands permit permitting such work which results in the loss or alteration of a portion of the upland edge or buffer zone for any of the following:

1. Lots in existence prior to adoption of subdivision control in Gloucester (1961);

2. Lots either already approved under subdivision control law or protected under law from zoning changes because of the subdivision process; and

3. Lots endorsed by planning board in accordance with ANR procedures of Massachusetts General Laws Chapter 41 section 81P or plans for lots submitted to the planning board prior to the adoption of this article, when the applicant can show that there is no reasonable alternative location on the lot for the proposed activity and that any adverse impacts will be minimized. Notwithstanding these performance standards, it shall be noted that resource areas such as a coastal bank, land under a body of water (stream or pond) or bordering vegetated wetland or marsh, bog or swamp may be contained within the upland edge. When this occurs on any given parcel, the more restrictive standards shall apply.

A showing that the proposed activity will be limited to reconstruction within the same footprint of a building existing as of the effective date of this article will be sufficient to overcome this presumption.

(3) The performance standards contained in section 12-15(b)(2) above are minimum standards. Where these standards are not sufficient, in the commission's judgment, to protect the interests identified in section 12-10(3) of this article, the commission may impose such conditions as are necessary to provide the indicated level of protection. (See section 12-20(a))

(c) *Burden of proof.*

(1) Any person who files a notice of intent to perform any work within the resource area or within the buffer zone has the burden of demonstrating to the commission:

a. That the area is not significant to the protection of any of the interests identified in section 12-10(3); or

b. That the proposed work will contribute to the protection of these interests by complying with the performance standards for the affected areas as established by section 12-15(b).

(2) Any person who requests the commission to regulate work taking place outside the commission's jurisdiction has the burden of demonstrating to the commission's satisfaction that the work is likely to alter a resource area.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-16. Requests for determination of applicability and submission of notices of intent.

(a) *Request for determination.* Upon written application of any person, the commission shall make a written determination within twenty-one (21) days as to whether this article applies to any land or work thereon. The commission shall accept the request for determination filed pursuant to the wetlands protection act, as an application under this article, and may require additional information to be answered as an addendum to the state's request for determination. [The submittal of the request for determination shall be accompanied by an environmental assessment fee of \\$50.00 \(Ord. 02-25, 6/25/2002\)](#)

(b) *Notice of intent.* Any person desiring to perform any activity subject to section 12-11 of this article and not described in section 12-12 shall file a notice of intent with the commission. The commission shall accept the notice of intent filed pursuant to the wetlands protection act as an application under this article, and may require additional information to be answered as an addendum to the state's notice of intent.

(c) *Contents of notices of intent.* The application shall include such information and plans as the commission determines necessary to describe the proposed activity, its impact on the environment, and its effect on the interests protected by this article. When the commission or its agent determines that an activity proposed in an application represents only a portion of a project, it may require information describing the entire project and its potential impact.

(d) *Submittal of notice of intent.* An application or notice of intent under this article shall be delivered by hand or sent by certified mail, receipt acknowledged to the commission, and shall be accompanied by the filing fee required in MGLA 131 S. 40 and which is payable to the city, and an environmental assessment fee described in section 12-16(e). A notice of intent application may be filed before other permits, variances and approvals required by the city's zoning or subdivision control regulations or any other article or regulation have been obtained.

(e) *Fees.* The amount of the fee shall be determined by the number of interests presumed to be significant under the Act and potentially affected by the proposed action, as determined by the commission or its agent. The interests are described in section 12-10(3) of this article. The current fee structure is as follows:

CITY OF GLOUCESTER CONSERVATION COMMISSION
Local Ordinance Fees (as of 7/1/06)

For public convenience this is a modified version for full version please contact the office.

Building Permit Sign-off	\$20 with site visit \$10 without site visit
Board of Health Sign-Off	\$30 with site visit \$10 without site visit
Letter Permit	\$40.00
Requests for Determination	\$175.00
After the fact Request for Determination (enforcement or post work)	\$350

Notices of Intent

Please note your category below and whether your project is located within or adjacent to one of the following: riverfront resource area, ACEC, fish runs, fisheries, shellfish or eel grass beds; if so, your project requires an additional fee as noted in the following chart.

Category 1 – Work on an existing single family home lot such as an addition, porch, pool, etc.; site work without a house not related to work in a resource; invasive vegetation control; septic system repairs; monitoring wells; new agriculture or aquaculture projects; resource improvement or non-enforcement restoration or tree clearing exceeding 10 trees.

Category 2 – New single family home or duplex construction; impervious parking lot; beach nourishment; public utility projects; inland limited projects; each crossing for driveway to a single family home; each storm drain-project source discharge; water level variations; water supply exploration; tree clearing greater than ¼ acre or any project not listed in any other category.

Category 3 – Site preparation for development beyond structures (projects developed on land owned in common or with common interest is considered one project under conservation review); each structure other than a single family home or duplex (beyond accessory uses to a single family home, including directly related/immediate site work; road construction or common or shared driveway, hazardous material clean up, water supply development, tree clearing greater than ½ acre.

Category 4 – Each crossing for development (more than duplex) or commercial/industrial road; dam/sluiceway/tidegate work; landfill operation/closure; sand/gravel/excavation operation

outside of or in excess of other project filing; railroad line or utility road construction; bridge; dredging; treatment plant and discharge; tree clearing greater than 1 acre or any hazardous material release response.

Category 5 – Docks, piers, dikes or new retaining walls located on the coast or river

Category 6 – Delineations of Bordering Vegetated Wetland under the Wetlands Protection Act not associated with small or single family home (SFH) projects. Delineations related to SFHs or duplexes can be included under the project filing.

Category 1	\$250
Category 2	\$500
Category 3	\$750
Category 4	\$1000
Category 5	\$4/linear foot not to exceed \$200 for sfh/duplex and \$2000 for other
Category 6	\$1 per linear ft. not to exceed \$2000 (For delineations for BVW only.)
After the fact Notice of Intent for enforcement or post work	2 times filing fee with a minimum of \$600

GWO delineations of all resource areas. Not associated with small or SFH projects. This category would apply only to major project resource reviews.	\$1 per linear ft not to exceed \$2000.00 For all other resource area delineations and multiple resource area delineations. Note: delineations related to SFH or duplex filing can be included under the project filing.
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Riverfront Resource Areas Additional fee	+ 50% of filing fee
Work in or adjacent to ACEC, fish runs, fisheries, shellfish or eel grass beds additional fee	+ 50% of filing fee
Notice of Intent review of replication or mitigation of resource area	\$175
Amendment to NOI Minor	\$65
Amendment to NOI Major	Same as original filing fee
Extension Permit Request	\$70 (for each extension)
Certificate of Compliance Request	\$70

Release of Enforcement Order, when recorded on deed	\$150
Release of Enforcement Order with out need to record order on deed	\$30

(*Fees are based on a seventy-five dollars (\$75.00) per square foot construction cost as determined by the building inspector's office. (Ord. 02-22 Delete 6/11/2002)

*Fees are based on a one hundred twenty dollars (\$120.00) per square foot construction cost as determined by the building inspector's office. Ord. 02-22, 6/11/2002

(Ord. No. 21-1990, 9-25-90, modified 7/1/06)

Sec. 12-17. Hearing on permit applications.

The commission shall open a public hearing on any notice of intent application within twenty-one (21) days of its receipt. The commission shall combine its hearing under this article with the hearing conducted under MGLA Chapter 131, section 40 (The Wetlands Protection Act). Notice of the time and place of the hearing shall be given by the commission at the expense of the applicant, not less than five (5) days prior to the hearing, by publication in a newspaper of general circulation in the city and by mailing a notice, to the applicant, the city clerk, and abutters and abutters to the abutters, any such notice to be expedited by the city clerk's office or the planning division, and to such other persons as the commission may determine.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-18. Effect of insufficient information.

If the commission finds that the information submitted by the applicant is not sufficient:

- (1) To describe the site, the work or the effect of the work on the interests identified in section 12-10; or
- (2) To sustain the burden of proof as to the protection of those interests, as described in section 12-10(3); then this finding shall be sufficient cause for the commission to deny a permit or, in the commission's discretion, to continue the hearing to another date to enable the applicant or others to submit additional information.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-19. Review by other officials.

When applicable, the conservation commission may transmit copies of any application described in section 12-16(a) of this article to other city officials and boards (listed below) for review and comment.

<u>Board of health</u>	<u>Planning board</u>
<u>City engineer</u>	<u>Zoning board of appeals</u>
<u>City council</u>	<u>Harbormaster</u>
<u>Tree warden</u>	<u>Shellfish advisory commission</u>

If a project applicant is required by the executive officer of environmental affairs to prepare an environmental impact report, (EIR) and if that EIR scope includes impacts on any resource area, the commission may consider the EIR in any decision pursuant to this article. The commission

shall have the authority to continue its hearing under this article until the final EIR is certified by the secretary of environmental affairs as complying with the Massachusetts Environmental Policy Act.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-20. Permit--Issuance; denial; expiration and modification.

(a) *Issuance of permit.* If, after a public hearing, the commission determines that the activities which are the subject of the application will or are likely to have a significant effect upon the interests protected by this article, the commission shall, within twenty-one (21) days of the close of the hearing, issue or deny a permit for the activities requested. If it issues a permit after making such a determination, the commission shall impose conditions which it deems necessary or desirable to protect those interests, and all work shall be performed in accordance with the conditions. If the commission determines that the area which is the subject of the application is not significant to the interests protected by this article, it shall issue a permit within twenty-one (21) days of the close of the public hearing. Each permit issued pursuant to this section shall be signed by a majority of the commission and a copy thereof shall be sent forthwith to the applicant and to the Commonwealth Department of Environmental Protection. No work proposed in any application shall be undertaken before the permit issued by the commission with respect to such work has been recorded in the registry of deeds (or, if the work is proposed upon registered land, in the registry section of the land court for the district in which the land lies).

(b) *Denial of permit.* The commission is authorized to deny a permit for the following reasons: failure to submit necessary information and/or plans requested by the commission; failure to meet the design specifications, performance standards, and other requirements in the regulations of the commission; for failure to avoid or prevent significant or cumulative adverse effects upon the interests protected by this article; or when the commission determines that no conditions are adequate to protect those interests. The commission shall consider any demonstrated hardship to be suffered by the applicant because of denial, but demonstration of hardship shall not limit the commission's authority to deny a permit or impose conditions. No person shall submit an application which is substantially similar to one (1) which has been denied until a period of two (2) years, commencing with the date the denial was issued, has lapsed. The commission shall have the sole authority to determine if there are sufficient changes to an application to allow its resubmittal within two (2) years.

(c) *Expiration and modification of a permit; issuance of certificates of compliance.* A permit shall expire three (3) years from the date of issuance; all work under a permit must be completed within that time period. Any permit may be renewed, in the discretion of the commission, for an additional one-year period, provided that a written request for renewal is received by the commission at least thirty (30) days prior to expiration.

The commission may revoke or modify any permit issued under this article for cause, after notice to the permit holder and after a public hearing. The permit holder shall be afforded an opportunity to participate in the hearing.

The commission, in its discretion, may combine the permit or other disposition of an application issued under this article with its action under the Wetlands Protection Act.

Upon completion of work permitted under the Wetlands Permit, the applicant must apply to the conservation commission for a certificate of compliance. If the commission determines that the work has been completed in accordance with the wetlands permit, it shall issue a certificate of compliance.

(d) *Variances*. No variances shall be allowed for any proposed work within a designated flood hazard area.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-21. Security for permits.

As part of a permit issued under this article, in addition to any security required by any other municipal or state board, agency or official, the commission may require that the performance and observance of the conditions imposed by the permit be secured wholly or in part by one or more of the methods described below:

(1) By proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility determined by the commission to be sufficient and payable to the city upon default.

(2) By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the city, whereby the permit conditions shall be performed and observed before any lot may be conveyed.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-22. Remedies to commission's action on permit.

A person aggrieved by the conservation commission's denial or issuance of a permit, with or without conditions, may pursue his remedies under M.G.L.A. chapter 249, section 4.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-23. Penalty for violation.

The commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of ensuring that conditions contained within permits are met and to inspect for reported violations of this article, provided that such persons have not been denied access by the property owner or his or her representative.

The commission shall have the authority to enforce this article, its regulations, and permits issued thereunder by violation notices, administrative orders and penalties, and civil and criminal court actions. Upon request of the commission, the city general 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. City boards and officers, including any police officer or other office having police powers, shall have authority to assist the commission in enforcement.

Any persons who violate any provision of this article, any regulations promulgated by the commission or any permits issued pursuant to this article, may be subject to an administrative penalty.

The commission shall have the authority to impose an administrative penalty, after holding a public hearing and after having given written notice to the party, under the conditions below:

(1) Anyone who, alone or acting together with other person(s), builds upon, fills, removes, discharges into, dredges or alters land in a buffer zone or resource area without a City of

Gloucester Wetlands Permit but who obtains a permit after being so notified, or complies with conditions set by the conservation commission in the enforcement order, may be fined up to two hundred dollars (\$200.00) for each separate violation.

(2) Anyone who, alone or acting together with other person(s), builds upon, fills, removes, discharges into, dredges or alters land in a buffer zone or resource area without a city wetlands permit and who after receiving written notice, fails to apply for a permit or comply with the conditions, set by the commission, in the enforcement order, may be assessed an administrative penalty of up to two thousand dollars (\$2,000.00) for each separate violation.

(3) Anyone who, alone or acting together with other person(s), builds upon, fills, discharges into, removes, dredges or alters land in a buffer zone or resource area in a manner contrary to the conditions contained within a permit may be assessed an administrative penalty of up to three thousand dollars (\$3,000.00) for each separate violation.

(4) Anyone who, alone or acting together with other person(s) builds upon, fills, discharges into, removes, dredges or alters a resource area in which significant damage has occurred to the wetland or where the damage can only be partly corrected may be assessed an administrative penalty of up to four thousand dollars (\$4,000.00) for each separate violation. An example of significant damage may include, but not be limited, to instances where the available remedies require an involved procedure such as restoration or replication of a wetland or the removal of a structure.

The phrase separate violations is defined as the same action done more than once which violates this article or taking several actions at the same time each of which violate this article in a different way. An example of the first instance would be to bring fill into a wetland on more than one (1) occasion. An example of the second instance would be to dredge a pond, install a culvert across a brook and fill a wetland all without a permit. This would be three (3) separate violations even if they occurred on the same day. Separate violations may include, but not be limited to these examples.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-24. Preacquisition violations.

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this article or in violation of any order issued under this article shall forthwith comply with any such order to restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three (3) years following the recording of the deed or the date of the death by which such real estate was acquired by such person. The city shall, if necessary, petition for relief in a court having equity jurisdiction to restrain a violation of this article and to enter such orders as it deems necessary to remedy such violation. An owner or occupant of property which may be affected by the removal, filling, dredging or altering pursuant to this article, or ten (10) residents of the city under the provisions of M.G.L.A. Chapter 214, § 10A. may likewise petition for such relief in a court having equity jurisdiction.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-25. Conservation commission to promulgate rules and regulations to effectuate chapter.

(a) After due notice and public hearing, the conservation commission may promulgate procedural rules and regulations to effectuate the purpose of this chapter. Failure by the

commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this article.

(b) The commission may adopt additional definitions not inconsistent with section 12-14 in its regulations promulgated pursuant to subsection (a).

(Ord. No. 21-1990, 9-25-90)

Sec. 12-26. Adoption of wetlands maps.

Wetlands maps prepared by the city planning division from 1977-1978 on the forty thousand series city base maps showing all wetlands, the area of critical environmental concern, and the one hundred-foot buffer zone, are on file at the planning office. These maps are to be used as a guideline for the commission and the public and are not jurisdictional.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-27. Floodplain management.

(a) *Coastal high hazard areas.* Coastal high hazard areas (V zones 1-30) are located within areas of special flood hazard. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash; therefore, all buildings or structures shall be located landward of the reach of the mean high tide.

(b) *Floodways.* Located within areas of special flood hazard are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, all encroachments, including fill, new construction, substantial improvements, and other developments are expressly prohibited, unless a technical evaluation demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(c) *Unnumbered A zones.* All buildings or structures located in an unnumbered A zone shall be elevated or floodproofed. The best available data shall be used to determine the base flood elevation.

(d) *Adoption of flood insurance maps.* The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled, "Flood Insurance Study for the City of Gloucester," dated May 1984, with accompanying flood insurance rate maps and flood boundary-floodway maps, is hereby adopted by reference and declared to be a part of this article. The Flood Hazard Insurance Study is on file at the building inspector, city engineer and the city planning offices.

(e) *Liability.* This article shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(f) *Health regulation pertaining to the flood hazard zones.* The board of health, in reviewing all proposed water and sewer facilities to be located in the flood hazard zones established under this article, shall require that:

(1) The repair, replacement, or construction of water supply facilities within the flood hazard zones shall be designed to prevent infiltration of flood waters into the water supply system; and

(2) The repair, replacement, or construction of sanitary sewage into the flood hazard zones shall be designed to prevent infiltration of flood waters into the system and discharges from the system into the flood waters.

(g) *Submittal requirements relative to the flood hazard zones.* So that the commission may determine that for new construction of buildings, substantial improvements to or relocation of existing buildings, the purposes of this article relative to flood hazard zones are met, nine (9) copies of a site plan at a scale of one inch equals ten feet prepared by a registered land surveyor or registered professional civil engineer, shall be submitted to the commission by the applicant. The site plan shall show at least the following:

- (1) The location, boundaries, and dimensions of each lot.
- (2) Two-foot contours of the existing and proposed land structure.
- (3) Location of existing and proposed structures, watercourses, and drainage easements, means of access, drainage, and sewer disposal facilities.
- (4) The area and location of existing or proposed leaching fields, if any.
- (5) Base flood elevation for the 100-year floodplain level as identified on the Flood Insurance Rate Map (FIRM) for the City of Gloucester.

(Ord. No. 21-1990, 9-25-90)

Sec. 12-28. Severability.

The invalidity of any section or provision of this article shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

(Ord. No. 21-1990, 9-25-90)