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(Public)

Sponsors:

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March 25, 2025

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES TO THE PROCESS FOR 401 WATER QUALITY
CERTIFICATIONS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL
QUALITY, TO REFORM PERMITTING RELATED TO UPLAND BASIN MARINAS,
AND TO CLARIFY THAT CERTAIN MAN-MADE DITCHES ARE NOT COVERED
UNDER THE COASTAL AREA MANAGEMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143-214.1A reads as rewritten:

"§ 143-214.1A. Water quality certification requirements for certain projects.

(a) The following requirements shall govern applications for certification filed with the Department pursuant to section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1), for (i) maintenance dredging projects partially funded by the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund and Fund, (ii) projects involving the distribution or transmission of energy or fuel, including natural gas, diesel, petroleum, or electricity, and (iii) projects involving construction of an upland basin marina, as defined in G.S. 113A-129.11:

...

(c) For projects that are eligible for a Nationwide Permit or Regional General Permit issued by the United States Army Corps of Engineers, which are not subject to subsection (a) of this section, and are required or elect to be covered under an Individual Water Quality Certification, the Department shall perform a review of an application pursuant to all of the following requirements:

(1) On receipt of such application, the Department shall notify the applicant of any required fee within five business days. If the Department does not send the applicant a fee request within five business days of receipt of an application, the fee is waived. The Department's review period shall begin on the date the application fee is paid or on the sixth business day from receipt when the application fee has been waived pursuant to this subdivision. For application fees that are paid via interagency batch payment, the review period shall start on receipt of the application by the Division of Water Resources. The Department shall additionally post any public notice required under the federal Clean Water Act within five business days of receipt of an application.



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- (2) Within 30 business days of the beginning of the review period, the Department shall (i) determine whether or not the application is complete and notify the applicant accordingly and, (ii) if the Department determines an application is incomplete, specify all such deficiencies in a notice to the applicant. The applicant may file an amended application or supplemental information to cure the deficiencies identified by the Department for the Department's review. Review of amended applications or supplemental information responses provided by the applicant shall occur within 20 business days of receipt. An application may be deemed incomplete only if it does not provide sufficient information necessary for the Department to determine if the proposed discharges into navigable waters will comply with State water quality requirements. If the Department fails to issue a notice that the application is incomplete within the requisite initial 30-day period, or the supplemental 20-day review period, the application shall be deemed complete. As used in this section, "State water quality requirements" means water quality standards approved by the United States Environmental Protection Agency pursuant to 33 U.S.C. § 1313(c)(3).
- (3) If the Department determines that a public hearing is necessary pursuant to applicable requirements, the Department shall notify the applicant within the review period outlined in subdivision (2) of this subsection. If the hearing officer determines that additional information is required from the applicant at the conclusion of the public hearing comment period, the Department shall notify the applicant within 15 business days of the conclusion of the comment period and the supplemental information shall be subject to the review time lines laid out in subdivision (2) of this subsection.
- (4) The Department shall either approve or deny an application within (i) 10 business days of the date the application is deemed complete if no public hearing is held or (ii) 15 business days of the close of the record if a public hearing is held and no additional information is required. Failure of the Department to approve or deny the application within the requisite time period, as applicable, shall result in a waiver of the certification requirement by the State, unless the applicant agrees, in writing, to an extension of time, which shall not exceed one year from the State's receipt of the application for certification.
- (5) The Department shall issue a certification, with or without conditions or limitations, upon determining that the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The Department may include as conditions or limitations in a certification any effluent limitations or other limitations necessary to assure the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The Department shall not impose any other conditions or limitations in a certification.
- (6) The Department shall deny a certification application only if it determines that no reasonable conditions or limitations would provide assurance that the proposed discharges into navigable waters subject to the federal Clean Water Act will comply with State water quality requirements. The denial shall include a statement explaining why the Department determined the proposed discharges into navigable waters subject to the federal Clean Water Act will not comply with the State water quality requirements.

(7) The Department may grant, deny, or waive certification but shall not require an applicant to withdraw an application.

(d) On receipt of any application for certification filed with the Department pursuant to section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1), the Department shall notify the applicant of any required fee within five business days. If the Department does not send the applicant a fee request within five business days of receipt of an application, the fee is waived."

SECTION 1.(b) This section becomes effective October 1, 2025, and applies to applications for section 401 certification pending or submitted on or after that date.

SECTION 2. Article 7 of Chapter 113A of the General Statutes is amended by adding a new Part to read:

"Part 5A. Upland Basin Marinas.

"§ 113A-129.10. Legislative findings; broad construction.

(a) The General Assembly finds that development of properly sited and planned upland basin marinas to accommodate vessels promotes the public welfare for a number of reasons, including all of the following:

(1) Increasing riparian property owner access to the State's public trust waters.

(2) Expanding the total area of the State's public trust waters.

(3) Reducing and confining potential storm debris.

(4) Reducing the need for additional onshore impervious surfaces associated with parking.

(5) Promoting the use of innovative technologies.

(6) Promoting the collection of site-specific data designed to assure compliance with applicable water quality standards.

(7) Maintaining or improving overall water quality when sited, designed, constructed, and operated in conformance with the provisions of this Part.

(b) Accordingly, it is the intent of the General Assembly that this Part be broadly construed to further the general purposes stated in this Part.

"§ 113A-129.11. Definitions.

As used in this Part, the following definitions apply:

(1) AEC or Area of Environmental Concern. – An area designated by the Coastal Resources Commission pursuant to G.S. 113A-113.

(2) Boat slip. – Any structure adjoining, attached to, or part of a pier which has the capacity to store one boat.

(3) Upland basin marina. – A marina constructed by excavating or dredging lands of elevations above the current mean or ordinary high-water mark and designed to accommodate more than 10 vessels or boat slips. Upland basin marinas shall be considered a water-dependent use for purposes of general use standards adopted by the Coastal Resources Commission.

"§ 113A-129.12. Upland basin marina permitting and development.

(a) Unless the Director of the Division of Water Resources or the Director of the Division of Coastal Management makes a finding, based on site-specific technical information, that the applicant cannot comply with one or more of the criteria listed in subsection (b) of this section, the Division of Water Resources and the Division of Coastal Management shall approve an application for the development of an upland basin marina project, within 60 days after the applicant submits a completed application or supplemental information requested by the Department to demonstrate compliance with all of the criteria set forth in subsection (b) of this section. The Department may make one written request for any supplemental information necessary to make its finding within 30 days after the applicant submits a complete application, and the permit may be conditioned upon measures that are necessary to ensure that the applicant complies with all of the criteria set forth in subsection (b) of this section. When the Department requests supplemental information, the 60-day review period restarts upon receipt of the

supplemental information requested by the Department. If the Department fails to act on an application for the development of an upland basin marina project within the 60-day review period, the application shall be deemed approved.

(b) The criteria with which an upland basin marina shall comply to qualify for permitting pursuant to subsection (a) of this section are all of the following:

- (1) The upland basin marina is designed to accommodate 10 or more vessels, including individual homeowner boat slips, boat lifts, or dry stack storage.
- (2) The waters contained in the upland basin marina have a dissolved oxygen content equal to or greater than the dissolved oxygen content of the water located 50 feet plus or minus 5 feet from the entrance to the upland basin marina before development. As part of the application, an applicant shall provide to the Division of Water Resources and the Division of Coastal Management site-specific sampling data documenting pre-project dissolved oxygen levels of the water located 50 feet plus or minus 5 feet from each proposed entrance to the proposed upland basin marina. Waters located within the upland basin marina shall be classified the same as the waters in the immediate vicinity of any entrance to the upland basin marina.
- (3) The project has a bond or set-aside funds for the long-term operation and maintenance of any technology required to meet or exceed then-applicable water quality standards. The applicant shall provide an estimate of annual operation and maintenance costs, and the bond or set-aside funds shall be equal to five years of the estimated annual operation and maintenance costs.
- (4) Construction of the upland basin marina impacts or removes a total area of coastal wetlands that is no more than five percent (5%) of the total area of the proposed upland basin marina waters.
- (5) Construction of the upland basin marina impacts or removes a total linear footage of coastal wetlands fringe that is no more than ten percent (10%) of the total linear footage of existing coastal wetlands along the shoreline of the property or properties of the permit applicant.
- (6) The proposed upland basin marina project complies with specific use standards adopted by the Coastal Resources Commission for navigation channels, canals, and boat basins. An upland basin marina project shall not be considered a "finger canal" or "finger canal system" if the project does not contain right angle corners.
- (7) The upland basin marina has a 30-foot vegetated buffer or buffers along the post-project shoreline, excluding any newly created inside shorelines, if required by the Department.
- (8) The proposed upland basin marina project complies with specific use standards adopted by the Coastal Resources Commission for marinas, except that a stormwater management system may be located within the 30-foot buffer area described in subdivision (7) of this subsection.
- (9) The project includes mitigation or has mitigation credits for wetland impacts caused by excavation or construction of entrances, exits, and upland vessel accommodation areas, where such entrances, exits, and upland vessel accommodation areas exceed 125 linear feet of shoreline in total.
- (10) The upland basin marina is sited and designed to avoid significant adverse impacts to the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation, water quality, and spawning and primary nursery areas. Compliance with subdivisions (1) through (10) of this subsection shall create a presumption that the project has avoided significant adverse impacts to the productivity and biologic integrity of coastal wetlands,

1 non-coastal wetlands, shellfish beds, submerged aquatic vegetation, water
2 quality, spawning areas, and primary nursery areas and to have complied with
3 State water quality antidegradation requirements. Compliance constitutes
4 appropriate avoidance of significant adverse environmental impacts,
5 including those identified in this Part.

6 (c) The submission of a Major Development Coastal Area Management Act (CAMA)
7 permit application for an upland basin marina project shall constitute a complete application for
8 purposes of water quality certification review by the Division of Water Resources. Unless the
9 Director of the Division of Water Resources or the Director of the Division of Coastal
10 Management objects in writing or requests additional information necessary to evaluate
11 compliance with water quality standards as provided in subsection (a) of this section, no further
12 information shall be required by the Department for purposes of evaluating whether the upland
13 basin marina project will comply with water quality standards or CAMA use standards referenced
14 in this Part. Compliance with the Major Development CAMA permitting process shall also
15 constitute compliance with all relevant provisions of Article 1 of this Chapter.

16 (d) The Department shall allow an applicant for an upland basin marina project to use
17 innovative technology to maintain dissolved oxygen levels or improve dissolved oxygen above
18 pre-project ambient dissolved oxygen levels in the immediate vicinity of the entrance to the
19 upland basin marina. If the applicant proposes the use of innovative technology, the Department
20 shall require the permit holder to provide financial assurance, in the form of a bond or set-aside
21 funds, for long-term operation and maintenance of the innovative technology, in accordance with
22 subdivision (b)(3) of this section. If the applicant provides a certification from a North Carolina
23 licensed professional engineer that the proposed innovative technology is capable of attaining
24 required dissolved oxygen levels within the proposed upland basin marina, the Department shall
25 not require any additional information.

26 (e) In the absence of site-specific technical concerns provided to the applicant by the
27 Director of the Division of Water Resources or the Director of the Division of Coastal
28 Management based on information provided during the permit review process, an upland basin
29 marina project that satisfies the criteria provided in subsection (b) of this section shall be deemed
30 to satisfy all of the following:

31 (1) CAMA management objectives and relevant use standards of the estuarine
32 and ocean system AECs.

33 (2) CAMA management objectives and use standards of the coastal wetlands
34 AEC.

35 (3) The policy goals stated in G.S. 113-102(b).

36 (f) Nothing in this section shall be construed to abrogate the Department's authority to
37 ensure long-term compliance with applicable water quality standards in light of the goals and
38 requirements set forth in this Part. If data collected as part of the requirements of this Part, or
39 otherwise, indicate noncompliance with applicable water quality standards in the waters within
40 the upland basin marina or adjacent waters within the vicinity of each entrance to the upland
41 basin marina, the Department may require the owner of the upland basin marina development at
42 the time of the noncompliance to bring the waters within the upland basin marina and adjacent
43 waters into compliance with applicable water quality standards, in light of the overall goals and
44 policies set forth in this Part to promote the construction and use of upland basin marinas.

45 (g) Nothing in this section shall obviate the need for an applicant to obtain all relevant
46 federal permits required for the upland basin marina project."

47 **SECTION 3.(a)** G.S. 113A-103 is amended by adding a new subdivision to read:

48 "(8a) "Man-made ditches" mean constructed, altered, or excavated features used to
49 convey water, including, but not limited to, artificial ponds, culverts, canals,
50 swales, storm channels, minor-drainage features, and roadside ditches. For
51 purposes of this subdivision, the term "altered" does not include the alteration

of a natural shoreline, natural stream, or natural wetland, and the term "excavated" does not include submerged lands that have been dredged for the purpose of navigation."

SECTION 3.(b) G.S. 113A-113 reads as rewritten:

"§ 113A-113. Areas of environmental concern; in general.

...
(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:

...
(2) Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and ~~tributaries~~ tributaries, excluding man-made ditches under G.S. 113A-103(8a), thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality;

...
(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, excluding man-made ditches under G.S. 113A-103(8a), to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;

...
(b1) The Commission may not designate man-made ditches, as defined under G.S. 113A-103(8a), as areas of environmental concern.

...."

SECTION 3.(c) G.S. 113-229(n)(3) reads as rewritten:

"(3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt water Cordgrass (*Spartina alterniflora*), Black Needlerush (*Juncus roemerianus*), Glasswort (*Salicornia* spp.), Salt Grass (*Distichlis spicata*), Sea Lavender (*Limonium* spp.), Bulrush (*Scirpus* spp.), Saw Grass (*Cladium jamaicense*), Cattail (*Typha* spp.), Salt-Meadow Grass(*Spartina patens*), and Salt Reed-Grass (*Spartina cynosuroides*). A marshland shall not include any area contained within a man-made ditch, as defined under G.S. 113A-103(8a)."

SECTION 4. Except as otherwise provided, this act is effective when it becomes

law.