

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

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

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

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

- (1) CAMA management objectives and relevant use standards of the estuarine and ocean system AECs.
- (2) CAMA management objectives and use standards of the coastal wetlands AEC.
- (3) The policy goals stated in G.S. 113-102(b).

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

(g) Nothing in this section shall obviate the need for an applicant to obtain all relevant federal permits required for the upland basin marina project. (2025-48, s. 2.)