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NORTH CAROLINA
Environmental Quality

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MEMORANDUM **CRC-26-74**

TO: Coastal Resources Commission
FROM: Cameron Luck
SUBJECT: Proposed Amendments to 15A NCAC 7H .0208 – Upland Basin Rule Changes in Accordance with Amendments to G.S. 113A-129

Session Law 2025-48 amended provisions of the Coastal Area Management Act (CAMA) and the State's water quality statutes to establish new standards applicable to the permitting of upland basin marinas. As a result, the Coastal Resources Commission (CRC) is considering amendments to the administrative code. The proposed amendments presented in this agenda item are limited to those rules administered by the CRC and address the implementation and enforcement of the statutory changes to CAMA.

Session Law 2025-48 establishes a new statutory framework that authorizes upland basin marinas, provided specified environmental standards are met. These standards include allowances for impacts to coastal wetlands of no more than five percent (5%) of the total coastal wetland area on the project site and no more than ten percent (10%) of the linear footage of existing vegetated coastal wetlands bordering open waters, as well as exempting newly created shorelines associated with upland basin marinas from the requirement of a 30-foot vegetated buffer on Public Trust Shorelines. The law also specifically establishes permit application review procedures including a 60-day decision timeframe following receipt of the request for supplemental information from the Department and limits the Department to one request for additional information.

Division staff are currently implementing the provisions of Session Law 2025-48 during permit review and decision-making consistent with the statutory amendments. The proposed rule amendments are intended to codify these statutory standards within the Commission's rules, providing additional clarity to applicants, local permit officers, consultants, and Division staff.

Staff look forward to discussing this topic and the proposed rule language at the upcoming Commission meeting.

15A NCAC 07H .0208 USE STANDARDS

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined in 15A NCAC 07H .0208(a)(6), or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

(A) Navigation channels and canals may not be allowed through regularly and irregularly flooded coastal wetlands if the loss of wetlands will have significant adverse impacts on fishery resources, water quality, or adjacent wetlands. Navigation channels and canals may be allowed if there is no alternative that would avoid the wetland ~~losses~~.losses, or if the navigation channel or canal is associated with an upland basin authorized pursuant to G.S. 113A-129.12(b).

(B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

(C) Dredged material from maintenance of channels and canals through coastal wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no wetland impacts. Under no circumstances shall dredged material be placed on regularly or irregularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);

(D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;

(E) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;

(F) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;

(G) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and

(H) Maintenance excavation in canals, channels, and boat basins within primary nursery areas and beds of submerged aquatic vegetation as defined in 15A NCAC 03I .0101(4)(i), by the Marine Fisheries Commission shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation shall be approved if the applicant meets all of the following criteria:

(i) There has been navigational use of the area;

(ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there

shall be evidence that the channel was continuously used for a specific purpose;

(iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) and Part (b)(1)(C) of this Rule without impacting adjacent nursery areas and beds of submerged aquatic vegetation as defined in 15A NCAC 03I .0101(4)(i) by the Marine Fisheries Commission;

(iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel; and

(v) Consistent with the provisions of G.S. 113-229.

(5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin, or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities, and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking, and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:

(A) Marinas shall be sited in non-wetland areas or in deep water areas not requiring dredging, and shall not disturb shellfish resources, beds of submerged aquatic vegetation as defined in 15A NCAC 03I .0101(4)(i) by the Marine Fisheries Commission, or wetland habitats, except for dredging necessary for access to high-ground sites. The following alternatives for siting marinas shall be allowed.

(i) an upland basin site that complies with the criteria established within G.S. 113A-129.12; ~~requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;~~

~~(ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;~~

~~(iii)~~(ii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and

~~(iv)~~(iii) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.

(B) Marinas that require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule;

(C) Marinas to be developed in waters subject to public trust rights, other than those created by dredging upland basins or canals for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;

(D) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure will result from the location of the marina. In compliance with 33 U.S.C. 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards 15A NCAC 02B .0200 adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption as determined by the NC Division of Marine Fisheries in accordance with 15A NCAC 18A .0900. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

(E) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the State or deeded by the State;

(F) Marina basins shall be designed to promote flushing through the following design criteria:

(i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and

(ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation;

(G) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters;

(H) Marinas shall be located and constructed so as to avoid impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes permanent or temporary mooring sites; speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted;

(I) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality as determined by the

Division of Water Resources. Marina design shall comply with all applicable EMC requirements 15A NCAC 02B .0200 for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);

(J) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;

(L) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;

(M) All applications for marinas shall be reviewed by the Division of Coastal Management to consider the cumulative impacts of marina development in accordance with G.S. 113A120(a)(10); and

(N) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes the estuarine shorelines and public trust shorelines Area of Environmental Concern (AEC).

(1) Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality described in 15A NCAC 03Q .0202 for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters (ORW) by the Environmental Management Commission (EMC), the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties.

(2) Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. When the Commission or the Department evaluate a project in the Coastal Shoreline AECs, such as permitting, variance requests, or federal consistency reviews, they shall consider efforts to avoid and minimize the impacts to the following:

(1) The quality of estuarine and ocean life,

(2) Shore front erosion and flooding,

(3) The productivity of the natural environments, such as those which support commercial and sport fisheries, and

(4) Features that provide important habitat areas for fish and wildlife, such as wetlands, flood plains, bluff shorelines, mud and sand flats, and forested shorelines.

(c) Management Objectives. All shoreline development shall be compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Included in management objectives are the necessity to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid or minimize adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. To ensure a project avoids and minimizes adverse impacts, development shall comply with the following standards:

(1) All development projects, proposals, and designs shall preserve natural barriers to erosion, including peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.

(2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to service the primary purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the rule to the maximum extent feasible.

(3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973 pursuant to G.S. 113A-50 through 113A-67:

(A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water that is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.

(B) No development project proposal or design shall propose an angle for graded slopes or fill that is greater than an angle that can be retained by vegetative cover or other erosion-control devices or structures.

(C) All development projects, proposals, and designs that involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; unless the project involves clearing land for the purpose of forming a reservoir later to be inundated.

(4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly or

indirectly impair water quality increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.

(5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.

(6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use.

(7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Natural and Cultural Resources.

(8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the use of the accessways.

(9) Within the AECs for shorelines contiguous to waters classified as ORW by the EMC, no CAMA permit shall be approved for any project that would be inconsistent with rules adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.

(10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:

(A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;

(B) Pile-supported signs (in accordance with local regulations);

(C) Post- or pile-supported fences;

(D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;

(E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;

(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;

(G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;

(H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased;

(I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development shall be

permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:

(i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities, such as water and sewer; and

(ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in 15A NCAC 07J .0210 and .0211; and

(J) Where application of the buffer requirement set out in Subparagraph (d)(10) of this Rule would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development shall be permitted within the buffer if all the following criteria are met:

(i) The lot on which the proposed residential structure is to be located, is located between:

(I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or

(II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;

(ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;

(iii) Placement of the residential structure and pervious decking shall be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;

(iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces shall be allowed within the buffer; and

(v) The lots shall not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation

Section of the Division of Marine Fisheries of the Department of Environmental Quality.

(K) Development occurring along a newly created shoreline associated with an upland basin marina permitted in accordance with G.S.113A-129.

(e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the EMC has adopted rules that contain buffer standards.

(f) Specific Use Standards for ORW Coastal Shorelines.

(1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:

(A) provide a buffer zone of at least 30 feet from the normal high water line or normal water line; and

(B) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.

(2) Single-family residential lots that would not be buildable under the low-density standards defined in Subparagraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.