

### **15A NCAC 07M .0403 POLICY STATEMENTS**

(a) The placement and operations of major energy facilities in or affecting the use of public trust waters and adjacent lands or coastal resources of North Carolina shall be done in a manner that allows for protection of the environment and local and regional socio-economic goals as set forth in the local land-use plan(s) and state guidelines in 15A NCAC 07H and 07M. The placement and operation of such facilities shall be consistent with state rules and statutory standards and shall comply with local land use plans and with use standards for development within AECs, as set forth in 15A NCAC 07H.

(b) Proposals, plans and permit applications for major energy facilities to be located in or affecting any land or water use or coastal resource of the North Carolina coastal area shall include a disclosure of all costs and benefits associated with the project. This disclosure shall be prepared at the earliest feasible stage in planning for the project and shall be in the form of an impact assessment as defined in 15A NCAC 07M .0402 prepared by the applicant. If appropriate environmental documents are prepared and reviewed under the provisions of the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review will satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents are submitted in sufficient time to be used to review state permit applications for the project or subsequent consistency determinations.

(c) Local governments shall not unreasonably restrict the development of necessary energy facilities; however, they may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for energy facilities. This section shall not limit the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall demonstrate compliance with any local ordinance concerning land use and any applicable permitting process.

(d) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. In instances when shoreline portions of the coastal zone area are necessary locations, shoreline siting shall be acceptable only if it can be demonstrated that there are no significant adverse impacts to coastal resources, public trust waters, and the public's right to access and passage will not be unreasonably restricted, and all reasonable mitigating measures have been taken to minimize impacts to AECs. Whether restrictions or mitigating measures are reasonable shall be determined after consideration of, as appropriate, economics, technical feasibility, aerial extent of impacts, uniqueness of impacted area, and other relevant factors.

(e) The scenic and visual qualities of coastal areas shall be considered and protected as important public resources. Energy development shall be sited and designed to provide maximum protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration of natural landforms.

(f) All energy facilities in or affecting the use of public trust waters and adjacent lands or coastal resource shall be sited and operated so as to comply with the following criteria:

- (1) Activities that could result in significant adverse impacts on resources of the coastal area, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse impacts on the use of public trust waters and adjacent lands in the coastal area shall be avoided unless site specific information demonstrates that each such activity will result in no significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources;
- (2) For petroleum facilities, necessary data and information required by the state for state permits and federal consistency reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum release or spills, evaluate possible trajectories, and enumerate response and mitigation measures employing the best available technology to be followed in the event of a release or spill. The information must demonstrate that the potential for petroleum release or spills and ensuing damage to coastal resources has been minimized and shall factor environmental conditions, currents, winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. For facilities requiring an Oil Spill Response Plan, this information shall be included in such a plan;
- (3) Dredging, spoil disposal and construction of related structures that are likely to have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources shall be minimized, and any unavoidable actions of this sort shall minimize damage to the marine environment;
- (4) Damage to or interference with existing or traditional uses, such as fishing, navigation and access to public trust areas, and areas with high biological or recreational value such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule, shall be avoided to the extent that such damage or

- interference is likely to have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources;
- (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults, shall be avoided to the extent that damage to such structures resulting from geological phenomena is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources;
  - (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated sufficiently in advance of the commencement of severe weather to ensure that significant adverse impacts on the use of public trust waters, adjacent lands and coastal resources shall be avoided;
  - (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;
  - (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, as defined in G.S. 113A-113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
  - (9) No energy facilities shall be sited in areas where they pose a threat to the integrity of the facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of overwash or inlet formation, and areas in the vicinity of existing inlets;
  - (10) In the siting of energy facilities and related structures, significant adverse impacts to the following areas shall be avoided:
    - (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or spawning areas and essential fish habitat areas of particular concern as designated by the appropriate fisheries management agency, oyster sanctuaries, submerged aquatic vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and migratory bird routes;
    - (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible for registration or dedication by the North Carolina Natural Heritage Program;
    - (C) crossings of streams, rivers, and lakes except for existing readily-accessible corridors;
    - (D) anchorage areas and port areas;
    - (E) artificial reefs, shipwrecks, and submerged archaeological resources;
    - (F) dump sites;
    - (G) primary dunes and frontal dunes;
    - (H) established recreation or wilderness areas, such as federal, state and local parks, forests, wildlife refuges and other areas used in a like manner;
    - (I) military air space, training or target area and transit lanes;
    - (J) cultural or historic sites of more than local significance; and
    - (K) segments of Wild and Scenic River System.
  - (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability. Nesting and spawning periods shall be avoided; and
  - (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that existing prior to construction shall be restored as soon as practicable following abandonment. For abandoned facilities outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions as soon as practicable if the abandonment of the structure is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources.

*History Note:* Authority G.S. 113A-102(b); 113A-107; 113A-124;  
 Eff. March 1, 1979;  
 Amended Eff. April 1, 1992;  
 Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;  
 Temporary Amendment Eff. July 8, 1999; December 22, 1998;  
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 RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;  
 Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;  
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Returned to Code pursuant to order of Wake County Superior Court, currently under appeal, Eff.  
March 3, 2025.*