

SECTION .0400 – COASTAL ENERGY POLICIES

15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY

(a) It is hereby declared that the general welfare and public interest require that reliable sources of energy be made available to the citizens of North Carolina. It is further declared that the development of energy facilities and energy resources within the state and in offshore waters can serve important regional and national interests. However, unwise development of energy facilities or energy resources can conflict with the recognized and equally important public interest that rests in conserving and protecting the valuable land and water resources of the state and nation, particularly coastal lands and waters. Therefore, in order to balance the public benefits attached to necessary energy development against the need to protect valuable coastal resources, the planning of future land uses, the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse impact upon vital coastal resources or uses, public trust areas and public access rights.

(b) Exploration for the development of offshore and Outer Continental Shelf (OCS) energy resources has the potential to affect coastal resources. The Federal Coastal Zone Management Act of 1972, as amended, requires that federal oil and gas leasing actions of the US Department of the Interior be consistent to the maximum extent practicable with the enforceable policies of the federally approved North Carolina Coastal Management Program, and that exploration, development and production activities associated with such leases comply with those enforceable policies. Enforceable policies applicable to OCS activities include all the provisions and policies of this Rule, as well as any other applicable federally approved components of the North Carolina Coastal Management Program. All permit applications, plans and assessments related to exploration or development of OCS resources and other relevant energy facilities must contain sufficient information to allow adequate analysis of the consistency of all proposed activities with these Rules and policies.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
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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15A NCAC 07M .0402 DEFINITIONS

(a) "Impact Assessment" is an analysis which fully discusses the potential environmental, economic and social consequences, including cumulative and secondary impacts, of a proposed project. At a minimum, the assessment shall include the following and for each of the following shall discuss and assess any effects on any land or water use or natural resource of the coastal area, including the effects within the coastal area caused by activities outside the coastal area:

- (1) a full discussion of the preferred sites for those elements of the project affecting any land or water use or natural resource of the coastal area:
 - (A) In all cases where the preferred site is located within an area of environmental concern (AEC) or on a barrier island, the applicant shall identify alternative sites considered and present a full discussion [in terms of Subparagraphs (a)(2) through (9) of this Rule] of the reasons why the chosen location was deemed more suitable than another feasible alternate site;
 - (B) If the preferred site is not located within an AEC or on a barrier island, the applicant shall present reasonable evidence to support the proposed location over a feasible alternate site;
 - (C) In those cases where an applicant chooses a site previously identified by the state as suitable for such development and the site is outside an AEC or not on a barrier island, alternative site considerations shall not be required as part of this assessment procedure;
- (2) a full discussion of the economic impacts, both positive and negative, of the proposed project. This discussion shall focus on economic impacts to the public, not on matters that are purely internal to the corporate operation of the applicant. No proprietary or confidential economic data shall be required. This discussion shall include analysis of likely adverse impacts upon the ability of any governmental unit to furnish necessary services or facilities as well as other secondary impacts of significance;
- (3) a full discussion of potential adverse impacts on coastal resources, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129;
- (4) a full discussion of potential adverse impacts on existing industry and potential limitations on the availability of natural resources, particularly water, for future industrial development;
- (5) a full discussion of potential significant adverse impacts on recreational uses and scenic, archaeological and historic resources;

- (6) a full discussion of potential risks of danger to human life or property;
- (7) a full discussion of the procedures and time needed to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;
- (8) other specific data necessary for the various state and federal agencies and commissions with jurisdiction to evaluate the consistency of the proposed project with relevant standards and guidelines;
- (9) a specific demonstration that the proposed project is consistent with relevant local land use plans and with guidelines governing land uses in AECs.

Any impact assessment for a proposal for oil or gas exploration activities shall include a full discussion of the items described in Subparagraphs (a)(1) through (9) of this Rule for associated exploration activity, including all reasonably foreseeable exploration wells and any delineation activities that are reasonably likely to follow a discovery of oil or gas.

(b) "Major energy facilities" are those energy facilities which because of their size, magnitude or scope of impacts, have the potential to affect any land or water use or natural resource of the coastal area. For purposes of this definition, major energy facilities shall include, but are not necessarily limited to, the following:

- (1) Any facility capable of refining oil;
- (2) Any terminals (and associated facilities) capable of handling, processing, or storing liquid propane gas, liquid natural gas, or synthetic natural gas;
- (3) Any oil or gas storage facility that is capable of storing 15 million gallons or more on a single site;
- (4) Electric generating facilities 300 MGW or larger;
- (5) Thermal energy generation;
- (6) Major pipelines 12 inches or more in diameter that carry crude petroleum, natural gas, liquid natural gas, liquid propane gas, or synthetic gas;
- (7) Structures, including drillships and floating platforms and structures relocated from other states or countries, located in offshore waters for the purposes of exploration for, or development or production of, oil or natural gas; and
- (8) Onshore support or staging facilities related to exploration for, or development or production of, oil or natural gas.

(c) "Offshore waters" are those waters seaward of the state's three-mile offshore jurisdictional boundary in which development activities may impact any land or water use or natural resource of the state's coastal area.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
 Eff. March 1, 1979;
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15A NCAC 07M .0403 POLICY STATEMENTS

(a) The placement and operations of major energy facilities in or affecting any land or water use or natural resource of the North Carolina coastal area 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 7H and 7M. 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 rules for land uses in AECs.

(b) Proposals, plans and permit applications for major energy facilities to be located in or affecting any land or water use or natural resource of the North Carolina coastal area shall include a full 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 prepared by the applicant as defined in 15A NCAC 7M .0402. 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.

(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 coastal resources and public trust waters will be protected, 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, areal 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 any land or water use or natural resource of the coastal area shall be sited and operated so as to comply with the following criteria:

- (1) Activities that could result in adverse impacts on resources of the coastal area, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and adverse impacts on land or water uses in the coastal area shall be avoided unless site specific information demonstrates that each such activity will result in no adverse impacts on land or water uses or natural resources of the coastal area.
- (2) Necessary data and information required by the state for state permits and federal consistency reviews, pursuant to 15 CFR part 930, shall completely assess the risks of oil spills, evaluate possible trajectories, and enumerate response and mitigation measures employing the best available technology to be followed in the event of a spill. The information must demonstrate that the potential for oil 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 reasonably likely to affect any land or water use or natural resource of the coastal area 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 reasonably likely to affect any land or water use or natural resource of the coastal area.
- (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 reasonably likely to affect any land or water use or natural resource of the coastal area.
- (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 adverse impacts on any land or water use or natural resource of the coastal area shall be avoided.
- (7) Adverse impacts on species identified as threatened or endangered on Federal or State lists 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, the following areas shall be avoided:
 - (A) areas of high biological significance, including offshore reefs, rock outcrops and hard bottom areas, sea turtle nesting beaches, freshwater and saltwater wetlands, primary or secondary nursery areas and essential fish habitat-habitat areas of particular concern as designated by the appropriate fisheries management agency, submerged aquatic vegetation beds, shellfish beds, anadromous fish spawning and nursery areas, and colonial bird nesting colonies;
 - (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 congested port areas;
 - (E) artificial reefs, shipwrecks, and submerged archaeological resources;
 - (F) dump sites;
 - (G) primary dunes and frontal dunes;

- (H) established recreation areas, such as federal, state and local parks, and other areas used in a like manner.
 - (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability. Nesting and spawning periods shall be avoided.
 - (12) If facilities located in the coastal area are abandoned, habitat of equal value 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 reasonably likely to affect any land or water use or natural resource of the coastal area.
- (g) As used in this Section, an event that is "reasonable likely" to occur if credible evidence supports the conclusion that the event will likely occur.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
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