

1 15A NCAC 07M .0403 is adopted under emergency procedures as follows:

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3 **15A NCAC 07M .0403 COASTAL ENERGY DEVELOPMENT - SPECIFIC POLICY STATEMENTS**

4 (a) The policy statements in this section are enforceable and shall be considered by local governments and DCM
5 when issuing permits and implementing the coastal management program under this Subchapter and commenting on
6 federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

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

12 (c) Proposals, plans and permit applications for major energy facilities to be sited in or impacting any land or water
13 use or coastal resource of the North Carolina coastal area shall include a disclosure of all costs and benefits associated
14 with the project. This disclosure shall be prepared in the form of an impact assessment as defined in 15A NCAC 07M
15 .0402 prepared by the applicant. If environmental documents are prepared and reviewed under the provisions of the
16 National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review
17 shall satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents
18 are submitted to review state permit applications for the project or consistency determinations.

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

25 (e) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. When the siting
26 of energy facilities along shorelines of the coastal zone area are necessary, shoreline siting shall be acceptable only if
27 it can be demonstrated that there are no significant adverse impacts to coastal resources, public trust waters, and the
28 public's right to access will not be restricted, and all mitigating measures have been taken to minimize impacts to
29 AECs. Mitigating measures shall be determined after consideration of economics, technical feasibility, areal extent
30 of impacts, and impacted area.

31 (f) The scenic and visual qualities of coastal areas shall be considered and protected as public resources consistent
32 with G.S. 113A-1-2(b)(4)(a). Energy development shall be sited and designed to provide maximum protection of
33 views to and along the ocean, sounds, and scenic coastal areas, and to minimize the alteration of natural landforms.

34 (g) All energy facilities in or impacting the use of public trust waters and adjacent lands or coastal resources shall be
35 sited and operated so as to comply with the following criteria:

- 1 (1) Activities that may result in significant adverse impacts on coastal resources, including marine and
2 estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse
3 impacts on the use of public trust waters and adjacent lands in the coastal area shall be avoided.
- 4 (2) For petroleum facilities, data and information required for State permits and federal consistency
5 reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum release or spills, evaluate
6 possible trajectories, and enumerate response and mitigation measures employing the best available
7 technology to be followed in the event of a release or spill. The information shall demonstrate that
8 the potential for petroleum release or spills and ensuing damage to coastal resources has been
9 minimized and shall factor environmental conditions, currents, winds, and inclement events such as
10 northeasters and hurricanes, in trajectory scenarios. This same data and information shall be
11 required for facilities requiring an Oil Spill Response Plan;
- 12 (3) Dredging, spoil disposal, and construction of structures that are likely to have significant adverse
13 impacts on the use of public trust waters and adjacent lands or coastal resources shall be avoided;
- 14 (4) Significant adverse impacts to existing or traditional uses, such as fishing, navigation and access to
15 public trust areas, and areas with high biological or recreational value such as those listed in
16 Subparagraphs (f)(10)(A) and (H) of this Rule, shall be avoided;
- 17 (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults,
18 shall be avoided if the siting of structures will have significant adverse impacts on the use of public
19 trust waters, adjacent lands or coastal resources;
- 20 (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as
21 extreme wind, currents, and waves due to northeasters and hurricanes, shall be initiated to ensure
22 that significant adverse impacts on the use of public trust waters, adjacent lands and coastal
23 resources;
- 24 (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;
- 25 (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing
26 environmental or natural resources of more than local significance, as defined in G.S. 113A-
27 113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- 28 (9) Energy facilities shall not be sited in areas where they pose a threat to the integrity of the facility
29 and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of
30 overwash or inlet formation, and Inlet Hazard Areas identified in 15A NCAC 07H .0304;
- 31 (10) In the siting of energy facilities and related structures, significant adverse impacts to the following
32 areas shall be avoided:
 - 33 (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom
34 areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or
35 spawning areas and essential fish habitat areas of particular concern as designated by the
36 appropriate fisheries management agency, oyster sanctuaries, submerged aquatic

1 vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and
2 migratory bird routes;

3 (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible
4 for registration or dedication by the North Carolina Natural Heritage Program;

5 (C) crossings of streams, rivers, and lakes except for existing corridors;

6 (D) anchorage areas and port areas;

7 (E) artificial reefs, shipwrecks, and submerged archaeological resources;

8 (F) Ocean Dredged Material Disposal Sites;

9 (G) primary dunes and frontal dunes;

10 (H) established recreation or wilderness areas, such as federal, state and local parks, forests,
11 wildlife refuges;

12 (I) military air space, training or target area and transit lanes;

13 (J) cultural or historic sites of more than local significance; and

14 (K) segments of Wild and Scenic River System.

15 (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability.
16 Nesting and spawning periods shall be avoided; and

17 (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that
18 existing prior to construction shall be restored following abandonment. For abandoned facilities
19 outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions
20 if the abandonment of the structure is likely to have significant adverse impacts on the use of public
21 trust waters, adjacent lands or coastal resources.

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

24 Emergency Adoption Eff. January 2, 2024.