

## 980 CMR: ENERGY FACILITIES SITING BOARD

### 980 CMR 9.00: COASTAL ZONE FACILITY SITE SELECTION, EVALUATION, AND ASSESSMENT

#### Section

- 9.01: General Provisions
- 9.02: Site Evaluation and Comparison
- 9.03: Coastal Zone Management Policies
- 9.04: Intervention

#### 9.01: General Provisions

(1) Scope and Purpose. 980 CMR 9.00 implements the Massachusetts Coastal Zone Management Program as adopted by the Secretary of Environmental Affairs under M.G.L. c. 21A, §§ 2, 3, 4 and recognizes the Siting Council's designation as the energy facilities siting agency under the Massachusetts Coastal Zone Management Program (hereinafter CZM Program) and the coastal zone management act and regulations 16 USC, § 1454(b)(8), 1455(c)(8); 15 CFR 923.14, 923.52.

The Siting Council's authority to adopt this chapter is set forth at M.G.L. c. 164, § 69H, I, J; M.G.L. c. 30A, § 1 *et seq.*; and 980 CMR 3.00. Requirements set forth here are in addition to those set forth in 980 CMR 6.00, 7.00, 8.00, 10.00, and 11.00 and siting guidelines. In the case of conflict, 980 CMR 9.00 shall govern the final instance.

The Siting Council will review the installation of facilities subject to certification under the Federal Natural Gas Act for purposes of determining compliance with the CZM Program as set out in 980 CMR 7.07(9). Findings as to these facilities will issue from the Office of Coastal Zone Management pursuant to 16 U.S.C. § 1451 *et seq.*

#### (2) Definitions.

Area of Critical Environmental Concern means an area which has been designated by the Secretary of Environmental Affairs pursuant to M.G.L. c. 21A, § 2 and M.G.L. c. 30, § 61 *et seq.*, or which has been accepted for designation under Section 6.46 of the regulations establishing the CZM Program by the Executive Office of Environmental Affairs (hereinafter CZM regulations) prior to the filing of the Notice of Intent or Long-Range Forecast or Supplement and which has been designated prior to approval by the Council of the Notice of Intent or Long-Range Forecast. The term area for preservation or restoration, under the coastal zone management act, 16 USC, § 1451 *et seq.* shall be synonymous with the term, area of critical environmental concern.

Coastally Dependent Energy Facility means

1. a facility which uses indigenous energy resources of the coastal zone;
2. a facility which serves as a transfer point between ocean and land;
3. a facility which transmits or transports energy or energy sources from a transfer point or other energy facility in the coastal zone to an inland or other coastal location;
4. a facility which stores energy or energy sources necessary for transshipment from the ocean, for surge storage, or to supply coastal energy facilities and maritime industries, as more fully specified in the CZM Program, Policy 8. A facility which does not meet one of these criteria is not coastally dependent as more fully specified in Policy 8.

Significant Resource Area means an area within the coastal zone, as identified in the Massachusetts Coastal Zone Management Program, and includes salt ponds, salt marshes, dunes, beaches, barrier beaches, shell fish beds, estuaries, coastal embayments, anadromous fish runs, erosion areas, flood plains, public recreation beaches, historic sites and districts, developed harbors, and port areas.

#### 9.02: Site Evaluation and Comparison

##### (1) Evaluation and Comparison.

- (a) Where a facility is proposed for coastal siting, the lead company or petitioner must propose, evaluate, and compare at least one alternative site. In the case of a facility

## 9.02: continued

which is claimed to be coastally dependent, at least one alternative site in the coastal zone must be proposed, evaluated, and compared. In the case of a facility which is not coastally dependent, the alternative to be proposed, evaluated and compared shall be inland of the coastal zone. Any alternative shall be reasonably determined and demonstrated to be capable of development and licensing or approval by all federal, state, regional and local agencies. The evaluation will include a justification of the necessity for or advantage of coastal siting together with an explicit definition of the process developed to compare alternative sites.

(b) The lead company or petitioner will complete and provide a following site evaluation for each alternative site as set forth below.

1. Identification of the site relative to the areas of critical environmental concern and significant resource areas;
  2. Identification and evaluation of Massachusetts Coastal Zone Management Program policies and regulatory requirements which apply to each site;
  3. Identification of statutory and regulatory citations to all federal, state, regional, and local licenses, approvals, permits, and authorizations required for construction, operation, and decommissioning of the proposed facility;
  4. Identification of relevant facilities and resources which may be in the national interest, including potential competition or conflicts among or between such facilities and resources; and
  5. Submission upon request of the Council of complete and current copies of all engineering, design, safety, environmental analyses, reports, tests, applications, approvals, licenses, and decisions which have been submitted to or issued by any federal, state, regional, or local agency in connection with the site or use.
  6. Environmental description of each site and its vicinity, including a review of significant land, air, and water use; ecology; geology; hydrology; meteorology;
  7. Environmental analysis of construction impact;
  8. Environmental analysis of facility operation including land, air and water use ecological impact; heat dissipation; waste, chemical, and biocide discharge; health and safety; visual and aesthetic impact; decommissioning; and
  9. Socioeconomic impact analysis including measures to mitigate adverse impact during construction, operation, and decommissioning;
  10. Summary analysis of all measures to be taken to comply with land, air, and water use and ecological standards, policies, regulations, bylaws, and statutes of the Commonwealth and its political subdivisions.
- (c) The environmental evaluation must be site specific but may be premised upon standard facility design parameters rather than upon specific facility design. The evaluation must be substantively complete before formal review of a proposed facility will begin. The analysis may employ secondary sources such as existing studies and reports completed by public or private agencies. All studies, reports, and analyses employed in the preparation of the evaluation and comparison are to be provided to the Siting Council.
- (d) The Siting Council may waive or modify the requirements of this rule in the case of:
1. a proposed facility which is ancillary to an existing use and which does not substantially alter the environmental impact at the primary site;
  2. a transmission or pipeline facility which is proposed to be sited within an existing and currently used corridor;
  3. an oil or gas storage facility with a capacity which does not exceed 50,000 gallons and which is proposed for an existing and currently used site.
- (e) The primary site will be the lead company or petitioner's preferred site unless the Council determines that an alternative site is superior on the basis of the evaluation and comparison and applicable environmental laws, regulations, and policies including those of the Massachusetts Coastal Zone Management Program.

9.03: Coastal Zone Management Policies(1) Coastal Zone Management Policies.

(a) The Siting Council specifically recognizes the policies and policy appendix of the Massachusetts Coastal Zone Management Program as adopted by the Secretary of Environmental Affairs under M.G.L. c. 21A, §§ 2, 3, 4 as a health, environmental

9.03: continued

protection, resource use, and development policy of the Commonwealth as required by M.G.L. c. 164, § 69H, 69H½.

(b) In the case of a facility proposed for siting within or impacting an area of critical environmental concern, the Council will give prime consideration to the environmental policy to protect such natural resource areas against degradation as more fully specified in the Massachusetts Coastal Zone Management Program, Policies 1, 2 and 11. "Prime consideration" means that the Council will give special weight to the environmental impact of a facility in or impacting such environmentally sensitive areas.

Pursuant to its statutory duty to act consistently with environmental protection, resource use and development policies of the Commonwealth, the Council will safeguard habitat and the maintenance of antidegradation water quality standards by being consistent with the policies and Policy Appendix of the CZM Program; by complying with use restrictions and prohibitions under the inland and coastal wetlands restriction program, M.G.L. c. 131, § 40A, c. 130, § 105; the scenic rivers act, M.G.L. c. 21, § 17A; the ocean sanctuaries act, M.G.L. c. 32A, §§ 13 through 17, 18. The Council will make affirmative findings that the characteristics of the area will not be degraded or adversely affected unless compelling countervailing considerations, in balance, warrant approval of the site.

Where the Council has approved a site within or impacting an area of critical environmental concern pursuant to M.G.L. c. 164, §§ 69H, I, J, and where new information is obtained by a regulatory agency after the initial approval of the Council, which if known at the time of initial approval would have received the special weight given to environmental impact for such areas, then such environmental impact will be given special weight in any proceeding under M.G.L. c. 164, § 69K.

(c) Approval of a long-range forecast, supplement, or notice of intention to construct an oil facility which includes a facility to be sited within or impacting an area of critical environmental concern shall not be construed as a waiver of compliance with the requirements of other federal, state, or local agencies as these apply to such an area.

(2) Consideration of National Interests. Consistent with 980 CMR 7.01(5), 7.03(2), 7.06(1), and 8.01(5) and other sections of 980 CMR 7.00 through 9.00 the Council recognizes a national interest in the development of energy resources which are necessary to meet requirements of the nation. Consequently, the Council will give adequate consideration to the national interest in energy facilities and it will not limit its deliberations to the needs of the Commonwealth alone nor restrict the siting of facilities which are necessary to meet energy requirements beyond the Commonwealth.

9.04: Intervention

(1) Agency Intervention.

(a) Pursuant to M.G.L. c. 30A, § 10, any agency with a direct and substantial regulatory interest in matters which may be affected by the site selection, evaluation, and assessment process of 980 CMR 9.00 may intervene before the Council in accord with 980 CMR 1.00.

(b) The Office of Coastal Zone Management within the Executive Office of Environmental Affairs and any agency with implementing responsibility under the Massachusetts Coastal Zone Management Program may intervene in any proceeding before the Council which involves adjudicatory review of a coastal site or which is subject to a current health, environmental protection or resource use and development policy of the Commonwealth relating to the coastal zone. The Office of Coastal Zone Management will be provided with a copy of all forecasts, supplements, notices of intent, and materials filed under 980 CMR 9.00 for site selection, evaluation, and assessment of facilities proposed for siting within the coastal zone.

980 CMR: ENERGY FACILITIES SITING BOARD

REGULATORY AUTHORITY

980 CMR 9.00: M.G.L. c. 164, §§ 69H through 69J.