Regulations on Developing Minimum Environmental Criteria under the North Carolina Environmental Policy Act

I. Purpose

The purpose of this memorandum is to establish for the constituent institutions of the University of North Carolina minimum criteria for minor operations or small, routine facilities projects at or below which no filing of environmental documents will be required. The goal is to ensure adequate protection to the environment while facilitating the many routine operations and small maintenance, repair, or construction projects at the constituent institutions by allowing separation of activities with a high potential for environmental effects (major) from those with only a minimum potential (nonmajor).

II. Background

Section .300, Chapter 25 of the Administrative Procedures for the North Carolina Environmental Policy Act (NCEPA) allows State agencies to prepare minimum criteria for exemption of minor, routine projects from the requirements of NCEPA. Specifically, the procedure states that "a state agency may establish specific criteria designating minimum levels of environmental impact." No filing of environmental documentation under the NCEPA review procedures is required for actions which do not exceed such levels. The provisions which allow environmental documentation not to be filed do not in any way provide exception to the consideration process leading to a decision regarding an activity falling within or outside the minimum criteria thresholds and the potential impact on the environment of such activity; as such, the provisions of this document do not remove the requirement for a project or activity to meet all appropriate and relevant federal, State, and local environmental regulatory requirements.

III. Delegation of Authority

Chancellors of the constituent institutions are responsible for the implementation of these policies with respect to their individual campuses. For projects which apply to facilities directly under the control of General Administration, the Vice President for Finance shall be responsible to the President for the implementation of these policies.

Each chancellor, the Vice President for Finance, or their designees shall interpret the provisions of the NCEPA to require that policies and programs be considered in the light of the NCEPA's comprehensive environmental objectives, except where existing law applicable to the operations expressly prohibits compliance or makes compliance impossible.

IV. General Criteria for Major or Nonroutine Activities

The following criteria is intended to provide guidance concerning the definition and handling of actions which have potential for impact on the environment and, therefore, are to be considered for filing of an environmental assessment of appropriate level.

A. Major activities will include those activities which exist or have the potential to exist at a level greater than those otherwise excluded by minimum (nonmajor) criteria.

B. Major activities will include demolition of or additions, rehabilitation and/or renovations to a structure listed in the National Register of Historic Places or more than 50 years of age except where agreement exists with the Department of Cultural Resources that the structure lacks architectural or historical significance.

C. Major activities will include ground disturbances involving National Register of Historic Places listed archaeological sites or areas around buildings 50 years old or older except where agreement exists with the Department of Cultural Resources.

D. Major activities taken after preparation of and in conformance with a master plan, management plan, or capital project for which an environmental document was completed, may

require an environmental impact statement, an environmental assessment, a finding of no significant impact, or a record of decision. Determination of which type of document is most appropriate will be made after considering:

1. The need for updating information in the earlier, broader document as it relates to current conditions and the proposed activity, and

2. The specificity and sufficiency of the earlier, broader document in addressing the effects of the proposed activity.

E. An item which does not fall within the broad definition of a major activity in all probability will fit the definition of a non-major activity as described below. Persons who have responsibility for the determination concerning an activity falling within the major or non-major category also have responsibility as to the impact on the environment of such activity. The definitions are not fixed criteria but rather are guidelines to be applied by the person with whom the ultimate decision rests concerning appropriate environmental study and documentation.

V. Nonmajor Activity

The following minimum criteria are established as an indicator of the types and classes of thresholds of activity at and below which environmental documentation under the NCEPA is not required. The Vice President for Finance or individual chancellors may require environmental documentation for activities that would otherwise qualify under these minimum criteria thresholds.

A. Standard maintenance or repair activities or facility operations needed to maintain the originally defined function of a project or facility including but not limited to the following:

1. Routine repairs and housekeeping projects which maintain a facility's original condition and physical features, including but not limited to re-roofing and minor alterations where in-kind materials and techniques are used. This also encompasses structures 50 years of age and older and for which no separate law, rule, or regulation dictates a formal review and approval process.

2. Any single action which involves relocation of students, faculty, or staff from or into a site using existing university buildings or leased buildings for which the building occupancy classification is not changed.

3. Routine disposal operations of hazardous chemicals, asbestos, or other environmentally sensitive operations for which a written procedure has been established, reviewed by appropriate authority, and determined to be in consonance with environmental law.

4. The use of chemicals for boiler feedwater treatment, cooling tower water treatment, pesticides, herbicides, cleaning solvents, and other chemical products which may be considered environmentally sensitive, provided the materials are stored and utilized in keeping with the applicable Material Safety Data Sheet (MSDS).

5. The handling of asbestos incident to a repair, maintenance, or minor construction project provided that the amount of asbestos material is removed, stored, disposed, and handled in accordance with published Department of Environmental Health and Natural Resources procedures for processing asbestos.

6. Routine grounds maintenance and landscaping and grounds construction such as sidewalks, trails, walls, foot bridges, gates, and related facilities including outdoor exhibits.

7. Maintenance activities to roads, bridges, parking lots, and their related facilities. Note, this applies to routine maintenance operations and not to extension or expansion of the facility.

8. Maintenance and repair of utilities on their existing rights-of-way.

9. Surface drainage systems, including modifications which reduce the discharge of freshwater or otherwise mitigate existing negative environmental effects.

10. Boat ramps, docks, piers, bulkheads, and associated facilities - when constructed in accordance with 15ANCAC 12C.0300.

11. Activities necessary to fulfill the existing requirements of in-effect permits for the protection of the environment and human health.

12. Other maintenance and repair activities on projects which are consistent with previously approved environmental documents.

B. Sampling survey, monitoring, and related research activities including but not limited to the following:

1. Aerial photography projects involving the photographing or mapping of the lands of the state.

2. Biology sampling and monitoring of:

a. fisheries resources through the use of traditional commercial fishing gear, electricity, and rotenone;

b. Wildlife resources through the use of traditional techniques, including but not limited a to traps, drugs, and firearms; and

c. woodland using standard approved forestry monitoring and techniques.

3. Soil survey projects involving the sampling or mapping of the soils of the state.

4. Establishing stream gauging stations for the purpose of measuring water flow at a particular site.

5. Placement of monitoring wells for the purpose of measuring groundwater levels, quantity, or quality.

6. Gathering surface or subsurface information on the geology, minerals, or energy resources of the state.

7. Placement and use of geodetic survey control points.

8. Other routine survey and resource monitoring activities or other temporary activities required for research into the environment which have minimum long-term effects.

C. Minor construction, demolition, or real estate acquisitions activities (except that sensitive areas may require exceptions to these thresholds) including but not limited to the following:

1. Any new construction activity meeting the following criteria as appropriate:

a. a building or structure less than 10,000 square feet in footprint and the use of the structure does not involve the handling or storage of hazardous materials; and/or

b. grading or disturbing less than five (5) acres of previously undisturbed ground (exclusion of this category does not in itself preclude development of a sedimentation plan as part of the design).

2. Routine paving or repair of existing roads and parking lots (provided that no ground disturbance will be involved necessitating development of a sedimentation plan); and/or

Construction of a two-lane road of less than 500 feet in length – provided that other laws concerning siltation/sedimentation plans are observed.

3. Demolition of/or additions, rehabilitation and/or renovations to a structure not listed in the National Register of Historic Places or less than 50 years of age.

4. Acquisition of real estate for which the use of the property does not vary from its intended purpose or function at the time of acquisition or is consistent with local land-use plans.

5. Potable water or other utility systems such as the following:

a. construction of new wells for water supply purposes; and/or

b. improvements to water treatment plants that involve less than 1,000,000 gallons per day added capacity, or improvements not intended to add capacity to the facility that have design withdrawal less than one-fifth of the 7Q10 flow of the contributing stream; and/or

c. installation of water lines or other utility lines in proposed or existing rights-of-way for streets or utilities, or new water lines less than five miles in length; and/or

d. construction of water tanks, booster pumping, or rechlorination pump stations; and/or

e. sewer line installations not exceeding minimum criteria of the permitting agency and not located in sensitive areas.

6. Groundwater withdrawals not exceeding the minimum criteria of the permitting agency and not located in sensitive areas.

7. Solid waste disposal activities such as the following:

a. construction of solid waste management facilities other than landfills exempt pursuant to N.C.G.S. § 130A-294(a)(4) which store, treat, process, incinerate, or dispose of less than 350 tons per day (averaged over one year) of solid waste; and/or

b. disposal of solid waste by land application on 100 total acres or less and where less than 10 percent (10%) of the total land application area is converted from a nonplantation forested area; and/or

c. land-disturbing activities which are not located within High Quality Waters (HQW) Zones or Trout Water Buffer Zones and land-disturbing activities that will disturb less than five (5) acres within a HQW Zone or a Trout Water Buffer Zone.

8. Development activities within Areas of Environmental Concern (AEC) of the 20-county coastal area which do not require a Coastal Area Management Act (CAMA) major or minor permit pursuant to T15A NCAC 7K. Also minor construction activities may be undertaken in AEC which do not require a Coastal Area Management Act permit except activities which might require a NCEPA Environmental Document under provisions of another state approval or authorization.

9. Development activities within AEC of the 20-county coastal area which require a CAMA major or minor permit and which meet all applicable criteria set forth in T15A NCAC 7H-State Guidelines for Areas of Environmental Concern, except the following:

a. new marinas;

b. new navigation channels;

c. excavation of materials from aquatic environments for use for beach nourishment or other purposes not directly related to approved navigation projects; and

d. any activity which might require a NCEPA environmental document under provisions of another state approval or state or local governmental agency requirement.

10. Air emissions of pollutants from a minor source or modification as defined in 15A NCAC 2D.0503 that are less than 100 tons per year or 250 tons per year as defined therein.

11. Reclamation of underground storage tanks. Note: The reclamation is considered to be a minor activity. Consideration of product which may have leaked from the tank and restoration of groundwater quality is not authorized for non-consideration by classification as a minor activity.

12. Dams less than 25 feet in height and having less than 50 acre-feet of storage capacity.

13. Construction or remodeling of swimming pools.

D. Management activities including but not limited to the following:

1. Replenishment of shellfish beds through the placement of seed oysters and/or shellfish clutch on suitable marine habitats.

2. Creation and enhancement of marine fisheries habitat through the establishment of artificial reefs in accordance with the Division of Marine Fisheries' Artificial Reef Master Plan.

3. Placement of fish attractors and shelter public waters managed by the N.C. Wildlife Resources Commission.

4. Translocation and stocking of native or naturalized fish and wildlife in accordance with appropriate agency species management plans, watershed management plans, or other approved resource management plans.

5. Reintroduction of native endangered or threatened species in accordance with State and/or Federal guidelines or recovery plans.

6. Production of native and agricultural plant species to create or enhance fish or wildlife habitat and forest resources, including fertilization, planting, mowing, and burning in accordance with fisheries, wildlife, and/or forestry management plans.

7. Forest products harvested in accordance with the National Forest Service or the N.C. Division of Forest Resources forest products management plans.

8. Reforestation of woodlands in accordance with the National Forest Service or the N.C. Division of Forest Resources woodlands management plans.

9. Use of forestry Best Management Practices to meet the performance standards in Forest Practice Guidelines Related to Water Quality codified as 15A NCAC 1I.

10. Control of forest or agricultural insects and disease outbreaks by lawful application of labeled pesticides and herbicides by licensed applicators on areas of no more than 100 acres.

11. Control of species composition on managed forest lands as prescribed by approved forest management plans by the lawful application of herbicides by licensed applicators.

12. Control of aquatic weeds in stream channels, canals, and other water bodies by the

lawful application of labeled herbicides by licensed applicators on areas of no more than two acres or 25 percent of surface area, whichever is less.

13. Controlled or prescribed burning for wildlife, timber enhancement, and hazard reduction in accordance with applicable management plans.

14. Plowing fire lines with tractor plow units or other mechanized equipment for the purpose of suppressing wildland (brush, grass, or woodland) fires and prescribed burning.

15. Scooping or dipping water from streams, lakes, or sounds with aircraft or helicopters for the purpose of suppressing wildland (brush, grass, or woodland) fires.

16. Drainage projects where the mean seasonal water table elevation will be lowered less than one foot over an area of one square mile or less and riparian and wetland areas will not be permanently affected.

17. Manipulation of water levels in reservoirs or impoundments in accordance with approved management plans for the purpose of providing for water supply storage, flood control, recreation, hydroelectric power, fish and wildlife, and aquatic weed control.

18. Specific modifications in previously permitted discharges resulting in an increased flow of less than 500,000 gallons per day.

19. Installation of on-farm Best Management Practices for the N.C. Cost Share Program for Nonpoint Source Pollution Control codified as 15A NCAC 6E.

20. Continuation of previously permitted activities where no increase in quantity or decrease in quality is proposed.

21. Acquisition or acceptance of real property to be retained in a totally natural condition for its environmental benefits, or to be managed in accordance with plans for which environmental documents have been approved.

22. Care of all trees, plants, and groundcovers on public lands.

23. Activities authorized for control of mosquitoes such as the following:

a. mosquito control water management work in freshwater streams performed in accordance with "Best Management Practices for selective clearing and snagging" in Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquaric Habitat, U.S. Army Corps of Engineers Technical Report EL-92-35 Smith et al. 1992, or other guidelines reviewed through intergovernmental review processes as set out in 1NCAC.25.0211;

b. mosquito control water management work in salt marsh environments performed under Open Marsh Water Management guidelines reviewed through the intergovernmental review process;

c. lawful application of chemicals approved for mosquito control by the United States Environmental Protection Agency and the State when performed under the supervision of licensed operators; and

d. lawful use of established species to control mosquitoes.

VI. Exceptions to Minimum (Nonmajor) Criteria

Any activity falling within the parameters of the minimum criteria set out in this memorandum will not routinely be required to have environmental documentation under the NCEPA; however, the President,

chancellor, or their designees may determine that environmental documents under the NCEPA are required in any case where one of the following findings applies to a proposed activity.

A. The proposed activity could cause significant changes in industrial, commercial, residential, silviculture, or agricultural land-use concentrations or distributions which would be expected to create adverse water quality, air quality, or groundwater impacts, or affect long-term recreational benefits, shellfish, wildlife, or their natural habitats.

B. The proposed activity has indirect effect or is part of cumulative effects not generally covered in the approval process for state action and that may result in a potential risk to human health or the environment.

C. The proposed activity is of such an unusual nature or has such widespread implications that an uncommon concern for its environmental effects has been expressed to the University or the constituent institution.

D. The proposed activity may have a potential for significant, adverse, and direct effects on a "sensitive area" which include but are not limited to the following:

1. Wetlands delineated by the U.S. Army Corps of Engineers in accordance with 33 CFR 328.3 and 40 CFR 230.3;

2. Historical and Archeological sites protected by the National Historic Preservation Act and National Executive Order 11593 and State Executive Order 16 administered by the N.C. Department of Cultural Resources;

3. National Historic Landmarks as designated in accordance with the Historic Site Act at 16 USC 461;

4. State Parks Lands administered in accordance with N.C.G.S. § 113-44.9;

5. State-Owned Game Lands administered in accordance with N.C.G.S. § 113-264 and 306(d);

6. State-Owned Forest Land administered in accordance with N.C.G.S. § 113-22;

7. State Nature Preserves and Dedicated Natural Areas administered in accordance with N.C.G.S. § 113A-164.1;

8. Primary and Secondary Nurseries designated in accordance with 15A NCAC 3R.0003 and 10C NCAC .0503, and Critical Habitat Areas designated in accordance with 15A NCAC 31.0001; and 101 NCAC .0001 (5);

9. State High-Quality Waters designated in accordance with 15A NCAC 2B.0201 (d); this includes waters classified as WS-I, WS-II, SA and ORW (Outstanding Resource Waters):

10. State Natural and Scenic Rivers designated in accordance with N.C.G.S. § 113A-30;

11. North Carolina Coastal Reserves designated in accordance with N.C.G.S. § 113A-129.1;

12. State Lakes administered in accordance with N.C.G.S. § 146-3; and

13. Lands which contain animal or plant species protected by the Federal Endangered Species Act (administered by the U.S. Fish and Wildlife Service), State Endangered and Threatened Wildlife and Wildlife Species of Special Concern Act (N.C.G.S. § 113-311 administered by the North Carolina Wildlife Resources Commission), State Plant Protection and Conservation Act (N.C.G.S. § 106-202.12 administered by the North Carolina Department of Agriculture).

*Moved from 1300.3[R]