ORDINANCE OF THE
CHATHAM COUNTY BOARD OF COMMISSIONERS
INSTITUTING A TEMPORARY MORATORIUM ON OIL
AND GAS DEVELOPMENT ACTIVITIES
WITHIN CHATHAM COUNTY, NORTH CAROLINA

WHEREAS, the Chatham County Board of Commissioners at its July 20, 2015 regular meeting, in order to provide all interested persons a full and ample opportunity to express their views on the question of whether a moratorium should be imposed on oil and gas development activities (as hereinafter defined) in Chatham County, after due advertisement as by law required, conducted a public hearing for the purpose of hearing the views of the public, gathering information, and taking appropriate action pursuant to authority conferred in Article 18, Chapter 153A of the North Carolina General Statutes, the Chatham County Moratorium Ordinance, and other relevant law regarding the imposition of a moratorium on oil and gas development activities in Chatham County; and

WHEREAS, at the public hearing twenty-three (23) persons spoke in favor of a moratorium and urged the County Commissioners to impose a moratorium, and one (1) persons spoke against imposing a moratorium;

WHEREAS, the Board of Commissioners, based on its own research and information gathering and the views expressed at the public hearing, makes the following findings of fact with respect to the problems or conditions necessitating a moratorium on oil and gas development activities in Chatham County:

(1) The extraction of oil or gas in Chatham County poses a significant threat to the health, safety, and welfare of residents, neighborhoods, environment and natural features; and

(2) Significant environmental, community, and human health impacts have resulted from commercial oil and gas development in other states and the full extent of such impacts has not been determined yet; and

(3) Oil or gas development is a unique and novel industrial use in Chatham County and thus can best be regulated as a conditional use; and

(4) Chatham County is primarily rural in character, being dependent on agricultural and agribusiness activities for 38% of its income and being among the top North Carolina counties for livestock, dairy, poultry production, and total farm income; and

(5) Chatham County is home to a growing specialty agricultural market, including organic farming, that depends upon a clean environment; and

(6) Chatham County is a prime location for residential developments with residents employed in surrounding urban areas who seek a rural environment, and the County is dependent on the property taxes from these developments; and

(7) Chatham County is home to the Jordan Lake State Recreation Area, Lower Haw State Natural Area, Jordan Lake Educational State Forest, Deep River State Trail, White Pines Nature Preserve, Condoret Nature Preserve, Deep River Park, La Grange Riparian Reserve, and Harris Lake; and

(8) These recreation areas provide recreation and environmental education for hundreds of thousands of visitors annually and along with other parts of Chatham County provide critical habitat for species that are endangered, rare, federal species of concern, and species protected by the Bald and Golden Eagle Protection Act; including the bald eagle, Cape Fear shiner, Carolina darter, Red-cockaded woodpecker, American eel, Bachman's sparrow, Carolina Redhorse, Atlantic Pigtoe, Brook floater, Carolina Creekshell, Septima's Clubtail, Yellow Lampmussel, Buttercup Phacelia, Harperella, Sweet Pinesap, and Virginia Quillwort; and

(9) Chatham County is located in the Triassic Basin, a shale rock basin with high quality streams, rare diabase seepage bogs, buffer areas, and other essential geological and ecological resources; and

(10) Over 6,000 Chatham County residents depend on the public water supply sourced from Jordan Lake, and approximately 300,000 citizens from surrounding counties depend on Jordan Lake for their water supply; and

(11) Chatham County also currently purchases water from the Town of Siler City and the City of Sanford and is therefore dependent upon water from the Cape Fear, Haw, Deep, and Rocky Rivers; and

(12) Jordan Lake, the Haw River, the Deep River, and the upper Cape Fear River are likely water resources from which oil and gas operators would draw millions of gallons of water to use for oil and gas development; and

(13) The majority of Chatham County residents depend upon well water for private water supply; and

(14) Chatham County's unique geography and minimal separation between shale formations and groundwater supplies puts well water users disproportionately at risk of groundwater supply contamination; and

(15) The Jonesboro seismic fault runs through Chatham County and hydraulic fracturing has been associated with increased seismic activity; and

(16) Chatham County is home to historic underground coal mining operations that have left a network of subterranean tunnels throughout the County which have weakened the structural integrity of the bedrock substrata and may serve as conduits for hydraulic fracturing fluids; and

(17) Chatham County's local infrastructure, including roads, currently are subject to minimal traffic, most of which consists of private cars, light trucks, and agricultural vehicles, and oil and gas development will greatly increase traffic by both private and large, commercial vehicles which will greatly increase wear-and-tear on local infrastructure, resulting in increased repair and maintenance needs; and

(18) The hazardous materials used during oil and gas development and the potential for operational accidents will require existing emergency response providers to acquire additional training and to respond to additional emergency calls; and

(19) Hydraulic fracturing will generate large quantities of potentially toxic wastewaters that Chatham County's existing Bynum Wastewater Treatment Plant is not equipped to process; and

(20) Existing state statutes and regulatory programs for oil and gas development do not yet constitute the best management practices necessary to adequately ensure such activities will not negatively impact the air, soil, water, environment, and health of residents within Chatham County; and therefore do not adequately protect the health and welfare of the County's residents because they do not address oil or gas development's locality-specific effects on the unique natural, geologic, demographic, social, financial, and other conditions that exist within Chatham County's boundaries; and

(21) The Board finds it necessary to provide for additional time to study the impact of fracking and other oil and gas development activities that has been experienced in other states and to determine the adequacy of applicable State and federal regulatory programs in regulating and mitigating such impacts in Chatham County's particular natural and man-made environment, and to consider enactment of any appropriate additional best management practices to properly address such impacts; and

(22) The Board further finds it necessary to provide for additional time to study the impacts, including financial impacts, on the County's roads and other infrastructure and services and to determine the financial damages that may result to the County, its citizens and residents; and;

(23) The County has already initiated the process of revising and updating its zoning ordinance and considering whether, and to what extent, zoning should be extended to the currently unzoned portion of the County, which process is scheduled for completion in approximately twenty-one months. Zoning for oil and gas development and developing standards for appropriate County permits should be done in coordination with this update of the zoning ordinance;

WHEREAS, the Board of Commissioners of Chatham County has considered the following actions to address the problems or conditions set forth above and found them to be inadequate:

(1) The Board has considered taking no action. However there are serious questions, for the reasons hereinabove stated, whether the current state and federal regulatory programs are adequate to protect the County's interests, therefore it is not in the best interest of the County to allow oil and gas development activities without further study and appropriate local regulation.

(2) The zoning ordinance is not by itself an adequate regulatory tool because it would either allow or not allow oil and gas development within designated zones without the necessary information regarding the location of the oil or gas reserves. Furthermore, in zones where it would be allowed as an industrial use, there must be standards specific to oil and gas development because of its highly unusual nature. This is a circumstance for which conditional use zoning may be appropriate to protect the public health and safety of the residents of Chatham County.

(3) Other existing County ordinances generally applicable to development such as erosion and sedimentation control, water supply watershed regulations, setbacks and buffers regulate only specific, limited impacts and, even taken together, are not adequate to regulate the wide range of impacts of oil and gas development.

(4) Establishing a permitting process for oil or gas development without thorough study would be premature and could result in standards that are inadequate to regulate or mitigate the local impacts, or that are unnecessarily stringent and might be subject to legal challenge as preempted by the state regulatory programs. The state regulatory program has been only recently finalized and is currently subject to legal challenge and more time is needed for Chatham County to determine what conditions are necessary and reasonable to supplement the State programs without being subject to preemption.

WHEREAS, the County has determined that the foregoing actions or alternative courses of action are not adequate because hydraulic fracturing or fracking is a relatively new method of extracting subsurface oil and gas and the County staff is not sufficiently informed as to the potential dangers to the public of this method and how to best regulate the same within the limited authority granted to local governments by the North Carolina General Assembly.

WHEREAS, the County has determined that a twenty-four (24) months moratorium on oil and gas development will provide the County an opportunity to update in its current land use ordinances without being required to approve such development under its current, inadequate ordinances; and

WHEREAS, the Board of Commissioners of Chatham County has determined that the moratorium imposed by the Ordinance shall terminate on August 16, 2017 and that the duration of the moratorium imposed is reasonable because that is the minimum period of time that it will take to address the problems caused by oil and gas activities. The only reasonable alternatives to imposing this moratorium are (i) adopting a hastily prepared ordinance that may exceed the County's regulatory authority, or (ii) allowing oil and gas activities without providing the citizens of the County the necessary land development guidance and review tools required to protect the public health and safety; and

WHEREAS, it is the expressed intent of the Board of Commissioners to lift the moratorium as soon as possible and to that end it will instruct all consultants, boards, and committees working on the problems and conditions necessitating the moratorium to complete their work as soon as reasonably possible so that the required ordinance or ordinances will be in place and development can resume at the earliest possible time, but with the proper safeguards in place to protect the citizens, residents, and property owners of Chatham County;

NOW, THEREFORE, be it ordained by the Chatham County Board of Commissioners:

Section 1. *Recitals Incorporated by Reference*. The above and foregoing recitals are incorporated in the Ordinance by reference.

Section 2. *Authority*. This Ordinance is enacted pursuant to (1) the General Statutes of the State of North Carolina, Section 153A-121, which grants Chatham County general ordinance-making power; (2) General Statute, Section 153A-123, which grants Chatham County the authority to enforce its ordinances; (3) General Statute, Section 153A-340, which grants Chatham County the authority to adopt zoning and development regulation ordinances to promote health, safety, morals, or the general welfare, including the authority to adopt temporary moratoria; (4) General Statute, Section 113-415.1, which addresses the County's ordinance-making powers related to oil and gas development; and (5) the Chatham County Moratorium Ordinance.

Section 3. *Definitions*. The words and phrases defined in this Section shall have the following meaning when found in this Ordinance:

(1) "Drilling" shall mean the sinking, penetrating, boring, or digging of a shaft or hole in the earth for any purpose.

(2) "Gas" shall mean all natural gas, including casing-head gas, coal-bed methane, and all other hydrocarbons not defined as oil in Subsection (6).

(3) "Horizontal Drilling" shall mean drilling at an angle greater than three degrees from vertical.

(4) "Hydraulic Fracturing," or "Fracturing," or "Fracking" shall mean all stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure

that is expressly designed to initiate or propagate fractures in a target geologic formation to enhance production of oil or gas.

(5) "Natural Features" shall mean the water resources, land resources, air resources, geologic resources, animal species, and plant species within a municipality's boundaries.

(6) "Oil" shall mean crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(7) "Oil or Gas Development" shall mean all or any part of the process of exploration, development or production of oil or gas, including without limitation, drilling, casing, operation, fracturing, completion, plugging and abandonment of wells, pads, impoundments and other associated activities.

(8) "Oil or Gas Operator" shall mean a person who acquires a lease or other property interest in surface and/or subsurface lands for the purpose of conducting exploration for or extracting oil or gas.

(9) "Oil or Gas Owner" shall mean the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and others.

(10) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

(11) "Water Supply" or "Water Resources" shall mean any groundwater or surface water intended or used for human consumption; household purposes; farm, livestock, or garden purposes; or for conservation and preservation purposes.

(12) "Well" shall mean any new or existing shaft or hole drilled, sunk, bored, or dug into the earth or into underground strata for the extraction, injection, or placement of any oil, liquid, or gas; or any new or existing shaft or hole drilled, sunk, bored, dug or used in conjunction with such extraction, injection, or placement of any oil, liquid, or gas using hydraulic fracturing, fracturing, or fracking methods. The term "well" does not include any shaft or hole drilled, sunk, bored, or dug into the earth for the sole purpose of testing for, pumping, or extracting therefrom potable, fresh, or usable water for household, domestic, industrial, agricultural, public use, or other activity not related to oil or gas development activities.

Section 4. *Jurisdiction*. This ordinance shall apply to all of Chatham County except for those areas included with incorporated municipalities and their extraterritorial jurisdictions.

Section 5. *Purpose*. The purpose of the moratorium is to allow the Chatham County Board of Commissioners time to review the Mining and Energy Commission's regulations and other state and federal regulations applicable to oil and gas development to determine whether such regulations adequately protect the County and its citizens from the impacts of hydraulic fracturing and other oil and gas development activities, and to develop standards and conditions to be implemented through a conditional use permit or other appropriate mechanisms to address any impacts that are not adequately addressed by applicable state and federal regulations.

Section 6. *Imposition of Moratorium on the Oil and Gas Development Activities*. There is hereby established a twenty-four (24) months moratorium on any County approval required by law for oil and gas development activities. It shall be unlawful and a violation of this Ordinance for any person within the jurisdiction to which this Ordinance applies to engage in oil or gas development activities that require a County permit. The Board will use this twenty-four (24) months moratorium period to study the impacts of oil and gas development activities in other states and develop a plan to regulate and mitigate impacts from these activities that are not addressed adequately by State and federal regulatory programs, the existing County Zoning Ordinance, and other ordinances, giving consideration to the particular natural and man-made environment of Chatham County.

Section 7. *Action and Schedule*.

(a) Studies. The Board of Commissioners will hire a consultant or consultants with expertise regarding fracking and other oil and gas development activities and their impacts on the natural, man-made, and social environments and its economic benefits and costs. The consultant(s) will be tasked to study Chatham County and to analyze state and federal regulatory programs and to prepare a report for the Board regarding the full range of expected impacts on Chatham County, including financial impacts. The study will include the most current analysis of impacts in localities similar to Chatham County in other states and the effectiveness of local ordinances in managing those impacts. This study and report should be completed within the first year of the moratorium and will include the consultant's conclusions as to whether additional time is needed for thorough study.

(b) Development of Conditional Use Ordinance. Upon completion of the study and report, the Board intends to develop a draft conditional use ordinance and/or other ordinances based on the report and the consultant's advice which will be coordinated with the revisions to the County's comprehensive zoning ordinance. The draft ordinance will be made available for public review and comment and at least one public hearing will be held. Based on public comments the Board will finalize the ordinance and initiate the adoption procedure. Development of the ordinance and final approval is estimated to take one year.

Section 8. *Enforcement and Penalties*.

(a) This Ordinance may be enforced by any legal or equitable remedies available, including, but not limited to, injunctive relief. The County Manager shall have the authority to direct the County Attorney, or any such other legal

counsel as may be employed, to take appropriate legal action to address any violation of this Ordinance.

(b) Penalties. Any person engaging in oil and gas development activities in violation of the Ordinance shall be guilty of a misdemeanor pursuant to North Carolina General Statute, Section 14-4 and shall be subject to a fine of $500 per offense. Each day that such person continues to violate this section after receiving notice from the County Manager, his agents, or any law enforcement officer of Chatham County, that this Ordinance has been violated shall be considered a separate and distinct offense.

Section 9. *Moratorium Expiration*. The moratorium established by this Ordinance shall expire upon the earliest of (a) enactment of a comprehensive land use plan and/or a permitting process by the County establishing standards and conditions to address any impacts of oil and gas development activity, or (b) twenty-four (24) months from the date this Ordinance is adopted; provided that if at the end of the 24 months period the Board determines based on advice of its consultants that more time is needed to develop an effective ordinance, or if material changes have been made to state or federal regulatory programs so as to require additional study, the Board may extend this moratorium for such additional time as is necessary.

Section 10. *Limitation on Moratorium*. This moratorium shall not apply to the following:

(a) Any development determined to be vested pursuant to N.C. Gen. Stat. §153A-344.1

(b) Any development for which substantial expenditures have already been made in good faith reliance on valid administrative approval.

Section 11. *Severability*. If any portion of this Ordinance is deemed unconstitutional or unenforceable by a court of competent jurisdiction, the remainder shall remain in full force and effect.

Section 12. *Effective Date*. This Ordinance shall be in full force and effect from and after adoption.

ADOPTED THIS THE 17th DAY OF AUGUST, 2015 BY THE CHATHAM COUNTY BOARD OF COMMISSIONERS.

James G. Crawford

James G. Crawford, Chairman
Chatham County Board of Commissioners

CHATHAM COUNTY OF NORTH CAROLINA
OFFICIAL SEAL
FOUNDED 1771