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Chatham County Board of Commissioners  
12 East Street, P.O. Box 1809  
Pittsboro, NC 27312

By e-mail to Lindsay Ray, Clerk to the Board of Commissioners,  
lindsay.ray@chathamnc.org

**RE: Comments on Proposed Changes to the Chatham County Zoning Ordinance  
Sections 10.13, 11.2, 11.3, and 17.9**

Dear Chatham County Board of Commissioners,

The Duke Environmental Law and Policy Clinic is grateful for the opportunity to submit the following comments on Chatham County's proposed changes to its Zoning Ordinance. We commend the Board for continuing its efforts to update its Zoning Ordinance to more comprehensively address heavy industrial uses requiring conditional use permits, and encourage the Board to take the following comments into consideration before finalizing its proposed amendments.

In North Carolina, the Constitution declares that the policy of the state is to protect its lands and waters for the benefit of all its people.<sup>1</sup> To carry out this purpose, the State "and its political subdivisions" are empowered by the Constitution to enact measures to protect the land, air, and waters.<sup>2</sup> Counties are political subdivisions of the State of North Carolina. The North Carolina General Assembly ("General Assembly") has enacted statutes guiding the authority to enact these types of protections for both the North Carolina Department of Environmental Quality ("DEQ") and the county governments, including Chatham County.

DEQ has statutory authority to administer a variety of programs, including the North Carolina Environmental Policy Act ("NCEPA"), which requires an environmental impact analysis only for significant projects involving state-owned lands or state funds.<sup>3</sup>

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<sup>1</sup> N.C. Const. Article XIV, Section 5.

<sup>2</sup> *Id.*

<sup>3</sup> See N.C. Gen. Stat. Section 113A-1 *et seq.*

Most of the permits administered by DEQ are media-specific and do not analyze any cumulative and secondary impacts of permitted projects. DEQ permits for private activities do not adequately protect the environmental rights of persons from cumulative and secondary impacts of permitted activities.

County governments have the power to enact additional protections to promote justice in environmental protection and to meet their duty under the North Carolina Constitution. The proposed revisions to the Zoning Ordinance are legally supported, but need to be strengthened further than reflected in this draft to close numerous loopholes created by the current proposal

The existing language of Section 11.3 is well-drafted and meets the purposes of supplementing the state and federal systems for projects that are not required to undertake comprehensive environmental analysis under the applicable permitting programs. There is no compelling need to revise Section 11.3 at all. The proposed amendments will allow more development with less scrutiny in Chatham County, with no benefit to the people of Chatham County.

Specifically, the proposed exemption for projects less than ten acres in size is unjustified and unwise. Proposing a fixed acreage exemption is unrelated to the impacts from heavy industrial facilities. A bulk storage terminal, natural gas compressor station, or even a power plant can operate on a property well under ten acres. Larger mining operations could propose to mine in stages with a sequential proposal of units less than ten acres. Segmentation of projects under the North Carolina Mining Act and the Sedimentation and Pollution Control Act, which also contain minimum acreage exemptions, has resulted in permitting problems for decades. Section 11.3's existing language helps close this loophole in Chatham and should be retained.

Section 11.3's proposed exemption for projects already exempted from the NCEPA is even worse than the ten acre exemption. The purpose of an environmental impact analysis for projects at the county level is to cover gaps left by the state and federal permitting systems, not to parrot those same exemptions. Not only will this provision weaken protection for Chatham County's residents, but it will encourage industries to lobby the General Assembly to add more exemptions to the list laid out in N.C. Gen. Stat. Section 113A-12, thus causing problems for residents in other counties lacking an environmental impact analysis ordinance.

Proposed Section 17.9's provisions are generally an improvement over existing practice, but only if the provisions of Section 11.3 are not amended. As a complete package, the new Section 11.3 will exempt most of the projects which are likely to be proposed with 17.9 being a "break glass in case of emergency" discretionary power to request additional information. This is not an adequate substitute for an environmental impact analysis for the types of projects which are subject to Section 17.9. Chatham County has high natural resource values as well as a surging residential population and agriculturally productive land. Heavy industry requiring a conditional use permit should be subject to a rigorous environmental impact analysis. Section 17.9 only works as a

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supplement to the existing strong protections of Section 11.3. As an amendment package, the proposed language replaces a strong set of protections with a weaker and discretionary set. These proposed Zoning Ordinance amendments do not meet the duty of the County to protect its lands and waters for the people of Chatham County.

Sincerely,

/s/ Ryke Longest

Director

Duke Environmental Law and Policy Clinic

Cc: Hope Taylor, Executive Director, Clean Water for North Carolina  
Martha Girolami, Chatham Research Group