

[TIMBER HARVESTING ORDINANCE]

WHEREAS, timber harvesting operations occur in the unincorporated portions of _____ County on a recurring basis; and

WHEREAS, timber harvesting is an important component of the local economy in _____ County, providing revenue to landowners, business opportunities, and jobs for local residents; it is the intent of the Governing Authority of _____ County to facilitate this industry while at the same time protecting county infrastructure and the safety of the community; and

WHEREAS, timber harvesting in many instances requires the use of county-maintained roads in order to transport the product to market; and

WHEREAS, it is in the public interest to protect the county road system from damage caused by timber harvesting operations to the extent allowed by state law; and

WHEREAS, O.C.G.A. §12-6-24 authorizes and establishes the terms and conditions under which this Ordinance may be adopted and enforced; and

WHEREAS, it is the intent of the Governing Authority of _____ County to preserve and exercise where appropriate all powers and authority granted to it under state law, including but not limited to O.C.G.A. §32-4-42 and O.C.G.A. §40-6-371, that are not in conflict with O.C.G.A. §12-6-24, in order to protect the health, safety and welfare of the community.

NOW, THEREFORE, it is hereby ORDAINED by the Governing Authority of _____ County as follows:

1.

All persons or firms harvesting standing timber in any unincorporated area of _____ County for delivery as pulpwood, logs, poles, posts, or wood chips to any woodyard or processing plant located inside or outside this state shall provide Notice of such harvesting operations to the _____ County Governing Authority or the designated agent thereof prior to entering onto the property if possible, but in no event later than 24 hours after entering onto the property. Further, such persons shall give Notice of cessation of cutting within 24 hours after the job is completed.

2.

The Notice of harvesting operations required by this Ordinance shall be provided for each separate tract to be harvested. Such Notice shall be made in such form as prescribed by rule or regulation of the Director of the Georgia Forestry Commission, and shall include the following information:

- a. A map of the area which identifies the location of the tract to be harvested and, as to those trucks which will be traveling to and from such tract for purposes of picking up and hauling loads of cut forest products, the main point of ingress to such tract from a public road and, if different, the main point of egress from such tract to a public road. If multiple points of ingress and/or ingress will be used, all such points shall be identified;
- b. A statement as to whether the timber will be removed pursuant to a lump sum sale, per unit sale, or owner harvest for purposes of ad valorem taxation under O.C.G.A. §48-5-7.5;

- c. The name, address, and daytime telephone number of the timber seller if the harvest is pursuant to a lump sum or per unit sale or of the timber owner if the harvest is an owner harvest; and
- d. The name, business address, business telephone number, and nighttime or emergency telephone number of the person or firm harvesting such timber.

3.

Subject to the provisions of Section 5 of this Ordinance, the Notice required by this Ordinance may be submitted in person, by transmission of an electronic record via telefacsimile or e-mail, or by mail.

4.

Subject to the provisions of Section 5 of this Ordinance, upon notification published by the Director of the Georgia Forestry Commission that a state-wide notification website or platform is available for public use, persons or firms wishing to utilize said website or platform to provide the Notice required by this Ordinance may do so at their option, and _____ County will accept notifications submitted in this manner.

5.

On and after a date specified and published by the Director of the Georgia Forestry Commission, use of the state-wide notification website or platform shall be mandatory and shall be the sole means of providing the Notice required by this Ordinance; on and after said date submission of the Notice by any of the means listed in Section 3 above shall cease and will no longer be deemed acceptable or in compliance with this Ordinance.

6.

The Notice required by this Ordinance shall not be or remain effective unless and until the person or firm providing such Notice has delivered to the Governing Authority of _____ County or its designated agent a valid surety bond, executed by a surety corporation authorized to transact business in this state, protecting _____ County against any damage caused by such person or firm in the amount of \$5,000.00; provided, however, that at the option of the person or firm harvesting timber a valid irrevocable letter of credit issued by a bank or savings and loan association, as defined in O.C.G.A. §7-1-4, in the amount of \$5,000.00 may be provided in lieu of a surety bond. Such bonds or letters of credit shall be subject to the conditions set forth in Sections 7 and 8 of this Ordinance. No more than one bond or letter of credit shall be required from each person or firm harvesting timber, regardless of the number of tracts harvested in the county for so long as the bond or letter of credit remains in effect. The bond or letter of credit required herein shall be valid only for the calendar year in which it was delivered. [Note to county attorneys: The maximum bond amount is set by statute at \$5,000.00 and may not be increased at the local level.]

7.

The bond or letter of credit required by Section 6 of this Ordinance shall protect _____ County against any damage requiring re-ditching or repair of existing ditch structures or the removal of any harvesting residue, including tree tops, debris, logs, pulpwood and other materials, placed in or around the county's rights of way caused by such person or firm tendering the bond or letter of credit. The proceeds of such bond or letter of credit shall be available to reimburse the county for any cost incurred to repair such damages or remove such debris in or around the county's rights of way. The

proceeds of such bond or letter of credit shall also be available to reimburse the county for any costs incurred to maintain or repair county roads damaged by the ingress or egress of motor vehicles engaged in the harvest operations located within 500 feet of any point of ingress or egress of the timber harvesting operation. The right of _____ County to call such bond or letter of credit in accordance with the provisions of Section 8 of this Ordinance shall be in addition to any other remedies available to the county at law or in equity for damage to county roads or rights of way.

8.

When damage results from a person or firm's harvesting activities, the Governing Authority of _____ County shall make and provide a written claim to the person or firm causing the damage within 30 business days after the Governing Authority becomes aware of the damage. Such claim may be given in person, by telefacsimile, email or mail. The claim shall describe the damage in detail and, in compliance with Section 9 (a) of this Ordinance, give the person or firm the opportunity to repair such damage within 30 days of the notification; provided, however, the county shall be authorized to repair the damage immediately if the Governing Authority or its designee determines the conditions present a threat to public safety, health or welfare and, upon making such repairs, shall present to the person or firm and the issuer of the applicable bond or letter of credit an itemized list of expenses incurred as a claim against the responsible party and the issuer of its bond or letter of credit. Upon the issuance of a claim as provided in this Section the Governing Authority of _____ County or its designee shall notify the issuer of the bond or letter of credit that a claim has been made and will be resolved or adjudicated according to the terms of this Ordinance.

9.

Within 30 days of receipt of the written claim described in Section 8, the person or firm against whom the claim is submitted may:

a. Repair such damage at his or its own expense with the approval and supervision of the Governing Authority of _____ County or its designee. When repairs are completed to the satisfaction of the governing authority or its designee, the governing authority or its designee shall provide a written notification of satisfactory completion within five business days to the responsible person or firm and to the surety issuing the bond or the bank issuing the letter of credit, thereby terminating the claim.

b. In the event of inclement weather or other factors preventing repair of the damage, request a 30 day extension to repair the damage from the Governing Authority of _____ County, provided that no extensions shall exceed 90 days from the date the claim was tendered. Approval of any extension shall be at the discretion of the Governing Authority of _____ County or its designee.

c. Appeal the claim to the Magistrate Court of _____ County. Any such appeal must name the issuer of the bond or letter of credit as a party, who shall be served with all pleadings in the action and shall have the right to appear. The Magistrate Court will hear evidence and arguments within 30 days of the written appeal and issue a ruling within ten days of such hearing. Any such appeal shall toll the 30 day period, or any extension thereof, required by Section 8 of this Ordinance. If the Magistrate Court rules in favor of the person or firm against whom the claim was made, the county shall have no right to recover any proceeds of the bond or letter of credit, and judgment shall be entered against the county. If the Magistrate Court rules in favor of the county the court shall determine the amount of damages

to which the county is entitled to recover and enter judgment accordingly; the Governing Authority of _____ County shall be authorized to call the bond or letter of credit and recover from the proceeds thereof an amount equal to the judgment entered by the court, up to the total amount of the bond or letter of credit. The portion of any judgment entered in favor of the county that exceeds the amount of the bond or letter of credit shall be subject to collection by any additional remedies at law or equity.

d. In the event the person or firm against whom the claim has been submitted fails to take any of the actions allowed under subsections (a), (b) or (c) of this Section within the time required therein, such person or firm shall be deemed to have waived any and all rights to contest the call of the bond or letter of credit.

10.

If the person or firm tendering a bond or letter of credit pursuant to the requirements of this Ordinance continues its timber harvesting operation beyond the calendar year in which the bond or letter of credit was issued, the person or firm continuing the timber harvesting operation shall tender a new bond or letter of credit within five (5) business days after the first day of the new calendar year.

11.

In the event a bond or letter of credit tendered pursuant to the requirements of this Ordinance is revoked by the surety or bank, then a valid replacement bond or letter of credit must be delivered to the Governing Authority of _____ County within five business days after the date of revocation in order for timber harvesting operations to continue. In addition, if the person or firm tendering the bond or letter of credit caused its revocation, the amount of the bond or letter of credit required shall be increased to \$7,500 after the first revocation, and \$10,000 after a second revocation caused by the person or firm tendering the bond or letter of credit. The maximum amount of the bond or letter of credit shall not exceed \$10,000.

12.

Submission of the Notice required by this Ordinance shall authorize the person or firm submitting same to undertake the timber harvesting operation described in the Notice and shall remain in effect until such time as the person or firm gives Notice that the harvesting operation is complete; provided, however, that any change in the facts required to be provided for purposes of such Notice, including but not limited to a change in the scope or extent of the operation, must be reported to the Governing Authority of _____ County within three business days after such change.

13.

Any person or firm that engages in a timber harvesting operation in the unincorporated portion of _____ County without complying with the Notice requirements of this Ordinance shall be subject to a citation and trial, and upon conviction shall be fined in an amount not to exceed \$1,500.00 for each violation.

14.

This Ordinance applies to activities which qualify as forestry land management practices or agricultural operations under O.C.G.A. §12-7-17 (5) and (6) on land that is zoned for or used for forestry, silvicultural or agricultural purposes. It shall not authorize land disturbing activities incidental to development in conflict with the limitations set forth in O.C.G.A. §12-7-17 (6).

15.

Consistent with O.C.G.A. §12-6-24:

- (a) no fee shall be charged to provide and submit the Notice required by this Ordinance; and
- (b) no permit, including a driveway permit, shall be required of the person or firm engaged in a timber harvesting operation as defined by said Code section. Persons and firms providing the Notice required by this Ordinance may be asked to consult with county officials responsible for roads and public works for the purpose of minimizing damage to the county's roads, rights of way and infrastructure, and are urged to follow recommendations from county officials. Notwithstanding the forgoing, the person or firm conducting the timber harvest operation bears ultimate responsibility for their actions, and nothing in this Ordinance shall preclude the Governing Authority of _____ County from taking any and all legal action necessary to protect its property and the health, safety and welfare of its citizens.

16.

The provisions of this Ordinance are severable, and the invalidity of any phrase, clause, section or part of this Ordinance shall not affect the validity or effectiveness of the remainder of this Ordinance.

SO ORDAINED, this _____ day of _____, 202__.