

HABERSHAM COUNTY BOARD OF COMMISSION
EXECUTIVE SUMMARY

SUBJECT: Timber Harvesting Ordinance

DATE: May 3, 2023

BUDGET INFORMATION:

ANNUAL- N/A

CAPITAL- N/A

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

☐ **STATUS REPORT**

☐ **OTHER**

COMMISSION ACTION REQUESTED ON: May 15, 2023 (First Reading)
June 19, 2023 (Second Reading)

PURPOSE: The Georgia Legislature passed HB897 regulating timber harvesting operations. As part of the bill, a statewide notification system has been created and there were changes to the bond requirements. ACCG created a model Timber Harvesting Ordinance which is recommended to be adopted by all counties.

BACKGROUND / HISTORY: To maintain our local issuing authority (LIA) status, Habersham County must adopt the attached Soil Erosion, Sedimentation, and Pollution Control ordinance.

1. The adoption of the model ordinance brings Habersham County into full compliance with all provisions of state law.
 2. This ordinance was drafted by ACCG to be compliant with all provisions of HB897.
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FACTS AND ISSUES:

- a. A timber harvester must submit a notification to the Georgia Forestry Commission via a new notification website. Habersham County will be notified via the portal when timber operations occur in our county.
 - b. The harvester is also required to post a \$5,000 surety bond or letter of credit to cover any potential costs of damage to the County roads or right-of-way. The \$5,000 is the maximum amount the county may charge.
 - c. The model ordinance also outlines the steps the county must take to call the bond to repair our infrastructure.
 - d. If the harvester appeals the damage claims against the bond, the model ordinance states the appeal goes to the Magistrate Court.
 - e. The bond or letter of credit shall only be valid for the calendar year in which it is issued. If the harvesting extends past the calendar year, a new bond or letter of credit shall be required.
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OPTIONS:

1. Approval of the proposed ordinance
 2. Denial of proposed ordinance
 3. Commission defined alternative
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RECOMMENDED SAMPLE MOTION: I motion to approve the Timber Harvesting Ordinance as submitted.

DEPARTMENT:

Prepared by: Mike Beecham

Director _____

**ADMINISTRATIVE
COMMENTS:** _____

County Manager

DATE: _____

FIRST READING DATE: May 15, 2023

APPROVAL DATE: June 19, 2023

HABERSHAM COUNTY

STATE OF GEORGIA

AN AMENDMENT TO THE HABERSHAM COUNTY CODE OF ORDINANCES BY THE ADDITION OF A NEW CHAPTER 70 ENTITLED “TIMBER HARVESTING” FOR THE PURPOSE OF REQUIRING THE PROVISION OF NOTICE OF INTENDED HARVESTING OPERATIONS IN UNINCORPORATED HABERSHAM COUNTY AND FOR OTHER PURPOSES

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

WHEREAS, timber harvesting is a key component of the local economy in Habersham County, providing revenue to landowners, business opportunities and jobs for local residents; it is the intent of the Board of Commissioners of Habersham County to facilitate this industry while at the same time protecting county infrastructure and the safety of the citizens of Habersham County; 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 Code provision may be adopted and enforced; and

WHEREAS, it is the intent of the Board of Commissioners of Habersham 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 citizens of Habersham County, Georgia.

NOW, THEREFORE, THE HABERSHAM COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAME as follows:

1.

Sec. 70-101. Notice requirement.

All persons or firms harvesting standing timber in any unincorporated area of Habersham 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 (hereinafter referred to as “Notice”) to the Board of Commissioners of Habersham County or its designee – the county manager of Habersham County (“hereinafter referred to as “the County”) by giving said Notice to the county manager for Habersham County 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.

Sec. 70-102. Notice content requirements.

Notice 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 egress 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.

Sec. 70-103. Initial method of notice.

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

Sec. 70-104. Initial alternate method of notice.

Subject to the provisions of Paragraph 5 hereof, 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 Notice may do so at their option and Habersham County will accept notifications submitted in this manner.

Sec. 70-105. Mandatory method of notice when applicable.

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; on and after said date, submission of the Notice by any of the means listed in

Paragraph 3 above shall cease and will no longer be deemed acceptable or in compliance with this code section.

Sec. 70-106. Surety bond requirement.

The Notice shall not be or remain effective unless and until the person or firm providing such Notice has delivered to the County a valid surety bond, executed by a surety corporation authorized to transact business in this state, protecting Habersham 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 Paragraphs 7 and 8 of this section. 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.

Sec. 70-107. Call of bond or letter of credit.

The bond or letter of credit required by Paragraph 6 of this section shall protect Habersham County against any damage requiring re-ditching or repair of existing ditch structures or the removal of any harvesting residue, including treetops, 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 damage 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 Habersham County to call such bond or letter of credit in accordance with the provisions of Paragraph 8 of this section 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.

Sec. 70-108. Right to repair upon claim against surety.

When damage results from a person or firm's harvesting activities, the County shall make and provide a written claim to the person or firm causing the damage within 30 business days after the County 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 Paragraph 9 (a) of this section, 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 County 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 County 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 section.

Sec. 70-109. Repair acceptance, extensions on time to repair, appeals.

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 County. When repairs are completed to the satisfaction of the County, the County 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 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 County.
- (c) Appeal the claim to the Magistrate Court of Habersham 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 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 Paragraph 8 of this section. If the 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 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 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 subparagraphs (a), (b) or (c) of this Paragraph 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.

Sec. 70-110. Annual renewal of surety.

If the person or firm tendering a bond or letter of credit pursuant to the requirements of this section 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 business days after the first day of the new calendar year.

Sec. 70-111. Requirements upon revocation of surety.

In the event a bond or letter of credit tendered pursuant to the requirements of this section is revoked by the surety or bank, then a valid replacement bond or letter of credit must be delivered to the 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.

Sec. 70-112. Authority of notice; amendment thereof.

Submission of the Notice 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 County within three business days after such change.

Sec. 70-113. Failure to comply; penalties.

Any person or firm that engages in a timber harvesting operation in the unincorporated portion of Habersham County without complying with the Notice requirements of this section 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.

Sec. 70-114. Applicability to other practices and operations.

This section 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).

Sec. 70-115. Restrictions on fees and permitting requirements.

Consistent with O.C.G.A. §12-6-24:

- (a) no fee shall be charged to provide and submit the Notice; 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 Georgia code section. Persons and firms providing the Notice 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 section shall preclude the County from taking any and all legal action necessary to protect its property and the health, safety and welfare of its citizens.

2.

This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

3.

- (a) It is hereby declared to be the intention of the Habersham Board of Commissioners that all sections, paragraphs, sentences, clauses and phrases of this ordinance are upon their

enactment, believed by the board of commissioners to be fully valid, enforceable and constitutional.

- (b) It is hereby declared to be the intention of the Habersham Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this ordinance is severable from every other section, paragraph, sentence, clause or phrase of this ordinance. It is further declared to be the intention of the board of commissioners that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this ordinance.
- (c) In the event that any section, paragraph, sentence, clause or phrase of this ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the board of commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses, or phrases of the ordinance and that, to the greatest extent allowed by law, all remaining sections, paragraphs, sentences, clauses, or phrases of the ordinance shall remain valid, constitutional, enforceable, and of full force and effect

4.

Except as otherwise provided herein, all ordinance or parts of ordinances in conflict with this ordinance are hereby repealed.

5.

This ordinance shall become effective upon its adoption.

DULY ORDAINED AND ADOPTED this 19th day of June, 2023.

**HABERSHAM COUNTY BOARD
OF COMMISSIONERS**

Attest:

Ty Akins, Chairman

Brandalin Carnes, County Clerk