

Elmore County Logging Notice Ordinance

Section I – Purpose and Authority

Pursuant to the authority granted to the Elmore County Commission under Ala. Code § 23-1-80.1 and in accordance with the provisions of that statute, therefore be it ordained by the Elmore County Commission as follows:

The Elmore County Commission finds that it is in the best interest of the citizens of the county to adopt and implement this Ordinance to require that all timber owners submit proper notice to the county commission prior to initiating any timber harvesting activities or utilizing any county roads or bridges for delivery of pulpwood, logs, poles, posts, or wood chips to any wood yard or processing plant.

Section II – Jurisdiction

This Ordinance shall only apply within the unincorporated areas of the county for activities governed by this Ordinance at access points within the county and on county-maintained roads or bridges. This Ordinance shall be read in addition to and not in place of any other ordinances, rules, or regulations promulgated regarding permissible uses of county roads, bridges and rights of way in the unincorporated areas of the county.

Section III -- Definitions

For the purposes of this Ordinance, the following terms shall have the following meanings:

- (1) **Activities Governed by this Ordinance.** The harvesting of timber and/or the utilization of county roads, bridges and rights of way for the delivery of pulpwood, logs, poles, posts, or wood chips to any wood yard or processing plant by a timber owner or his or her representatives, employees, or contractor.
- (2) **Contractor.** Any person or firm who has executed a written or oral agreement with a timber owner to perform one or more of the activities governed by this Ordinance.
- (3) **Driveway or Access Management Policy.** A policy adopted by the county commission to provide criteria and conditions which must be met by any person or firm desiring to access or connect to county roads, bridges or rights of way.
- (4) **Existing Access Point.** A location where the timber owner desires to utilize a county road or right of way for accessing a tract of land for activities governed by this Ordinance, which will be either:
 - (a) If the county has a driveway or access management policy, a location which (i) has previously been approved, permitted, or grandfathered by the county through the county's driveway or access management policy and has been previously used to access the tract, or (ii) has not been approved or permitted under the county's driveway or access management policy, but has been previously used to access a tract of land unless the county rebuts the presumption that the location is an existing access point.
 - (b) If the county does not have a driveway or access management policy, a location that has been previously used to access a tract of land.
- (5) **New Access Point.** A location to access a tract of land for activities governed by this Ordinance that has not previously been used to access the tract of land.
- (6) **Regular Office of the County Commission.** The Elmore County Highway Department.

- (7) **Route.** The county road, bridge or right of way to be utilized for activities governed by this Ordinance.
- (8) **Timber Owner.** A timber owner is any one of the following:
 - (a) The person or firm who has legal title to timber when the timber enters a county road.
 - (b) Any person or firm that has entered into a contract with a landowner for the purposes of severing timber and delivering pulpwood, logs, poles, posts, or wood chips to any wood yard or processing plant.
 - (c) A landowner who harvests his or her own timber and delivers pulpwood, logs, poles, posts, or wood chips to any wood yard or processing plant.
- (9) **Tract.** A specified parcel of land.
- (10) **Business Day.** Any day that the Elmore County Highway Department is open, which days and hours of operation are at all times posted on the county website (www.elmoreco.org) and on the Elmore County Highway Department premises.
- (11) **Road and bridge fund.** Any county fund in which monies are earmarked specifically for road and bridge projects.

Section IV – Notice Requirement

The notice requirements set out herein shall be applicable to any use of county roads, bridges and rights of way for activities governed by this Ordinance, which are carried out by a timber owner, his or her representatives or employees, or a contractor. No county road, bridge or right of way shall be utilized by a timber owner, his or her representatives or employees, or a contractor until and unless the timber owner has fully complied with the provisions of this section.

- (a) **Notice Submission.** Prior to any use of the county road or roads for activities governed by this Ordinance, a timber owner shall provide prior notice of such intent under the procedures set out herein.

Notice shall be given for each separate tract of land the timber owner intends to utilize for activities governed by this Ordinance. If the timber owner intends to utilize the roads, bridges, or rights of way in any other county, he or she shall also notify that county under the provisions of Ala. Code § 23-1-80.1, if that county has adopted an Ordinance in accordance with that statute.

All notices shall be delivered to the regular office of the county commission, which for the purposes of this Ordinance shall be the Elmore County Highway Department, located at 155 County Shop Road, Wetumpka, AL 36092 (fax 334-567-1100 or email wrbchd@elmoreco.org). Notice may be submitted in person, facsimile, electronic mail, or regular mail; however, in determining method of delivery, the timber owner shall be aware that he or she shall not be in compliance with this Section unless timely notice is provided as set out in subsection (b) and he or she either receives a PROPER NOTICE CONFIRMATION as provided in subsection (d) or receives no response from the county engineer within the timeframes set out in subsections (b) and (d)(4). Therefore, no activities governed by this Ordinance may commence until and unless the timber owner has fully complied with all requirements.

- (b) **Time for Providing Notice.** All notices shall be delivered in a timely manner as follows:
 - (1) If the planned activities governed by this Ordinance will require use of a new access point to the tract of land where such activities will take place, the timber owner shall provide four business days' notice to the county commission as provided herein.

- (2) If the planned activities governed by this Ordinance will require use of an existing access point for the tract of land where activities governed by this Ordinance will be conducted, the timber owner shall provide two business days' notice to the county commission as provided herein.
- (c) **Form of Notice.** The notice shall be submitted on the NOTICE OF COUNTY ROAD USAGE BY TIMBER OWNER Form found on the county's website (www.elmoreco.org). The NOTICE shall include each of the following:
- (1) A map or legal description of the area which identifies the location of the tract of land where activities governed by this Ordinance will be conducted and the access point or points to the tract from a county road;
 - (2) A statement regarding whether the access point or points are new or existing point or points;
 - (3) Details outlining how access will be accomplished while maintaining the normal drainage features on the public road;
 - (4) The expected routes upon county roads, bridges and rights of way related to the activities governed by this Ordinance;
 - (5) The estimated acreage of the tract of land where activities governed by this Ordinance will be performed;
 - (6) The estimated date that access to the county roads, bridges and rights of way will commence for activities governed by this Ordinance;
 - (7) The name, address, and daytime telephone number of the timber owner;
 - (8) The name, address, and daytime telephone number of any contractor to be involved in activities governed by this Ordinance if not the same as the timber owner; provided, however, that if the contractor is not known at the time notice is submitted, the timber owner shall provide this information prior to accessing the county roads, bridges and rights of way;
 - (9) The name and address for the timber owner's liability insurance carrier;
 - (10) The name and address of the liability insurance carrier for any contractor to be involved in activities governed by this Ordinance if not the same as the timber owner; provided, however that if the contractor is not known at the time notice is submitted, the timber owner shall provide the information prior to accessing the county roads, bridges and rights of way.
- (d) **Notice Review Required.** The county engineer shall review each NOTICE received and take the following actions as appropriate:
- (1) **Proper Notice Received.** If the county engineer determines that the NOTICE submitted complies with the requirements of this Ordinance and Ala. Code § 23-1-80.1 and that the access points, steps to protect proper drainage, and roads and bridges intended to be utilized by the timber owner are adequate and do not create safety or other concerns, he or she shall forward to the timber owner a PROPER NOTICE CONFIRMATION within the timeframes set out in subsection (d)(4).

If the PROPER NOTICE CONFIRMATION has been issued as provided herein, no other notice shall be required by the timber owner during the period of time the properly submitted NOTICE is in effect, except in the event of a violation of the NOTICE as set out in Section V. If a timber owner has received a CITATION under Section V(b), no new notice applications shall be accepted until all fines and penalties have been properly paid to the county commission as provided in Section V(c).

- (2) **Advisory Communication Regarding Planned Activities.** If the NOTICE submitted by the timber owner includes information indicating problems with intended actions by the timber owner, the county may issue an advisory to the timber owner within the timeframes set out in subsection (d)(4) advising that the NOTICE received from the timber owner includes all of the information required to be submitted under this Ordinance, but that there are problems with one or more of the planned activities.
- (3) **Notice Deficiency.** If the NOTICE submitted is deficient in any respect, the county engineer shall forward to the timber owner a NOTICE OF DEFICIENCY within the timeframes set out in subsection (d)(4). The NOTICE OF DEFICIENCY shall set out the areas in which the NOTICE submitted by the timber owner is deficient and shall provide guidance on how to correct the deficiencies.

No activities governed by this Ordinance shall be conducted by the timber owner, his or her representatives, or employees, or contractor until such time as the deficiencies have been corrected, a corrected NOTICE submission has been delivered to the county highway department, and a PROPER NOTICE CONFIRMATION has been forwarded to the timber owner by the county engineer within the timeframes set out in subsection (d)(4).

Any timber owner, including his or her representatives, or employees, or contractor, who proceeds with any activities governed by this Ordinance prior to correcting the identified deficiencies and receiving a PROPER NOTICE CONFIRMATION, shall be subject to penalties for failure to comply with notice requirements as set out herein.

- (4) The county engineer shall respond to each NOTICE submitted by the timber owner within four business days of receipt if the planned activities require use of a new access point and within two business days of receipt if the planned activities require use of an existing access point. If the timber owner does not receive a written response from the county engineer within these timeframes, he or she may proceed with activities as set out in the NOTICE. However, if the timber owner has received a NOTICE OF DEFICIENCY, he or she shall not conduct any activities governed by this Ordinance until such time as the deficiencies have been corrected, a corrected NOTICE submission has been delivered to the county highway department, and a PROPER NOTICE CONFIRMATION has been forwarded to the timber owner by the county engineer within the timeframes set out herein.
- (e) **Notice Period.** A NOTICE properly submitted as evidenced by receipt of a PROPER NOTICE CONFIRMATION shall authorize the timber owner to conduct activities governed by this Ordinance as described in said NOTICE for a period of twelve (12) months from the date the PROPER NOTICE CONFIRMATION is issued by the county engineer. The county commission may grant the timber owner one six-month extension to conduct activities governed by this Ordinance as described in the NOTICE upon written request from the timber owner received by the county engineer prior to the date of expiration of the NOTICE.
- (f) **Suspension of Notice Requirements.** Pursuant to Ala. Code § 23-1-80.1, in the event the Governor of the State of Alabama declares a state of emergency as a result of an event that causes damage to timber within the county, the notification requirements set forth herein are suspended during the time period in which the Governor's proclamation remains in effect.

Section V – Penalties for Noncompliance

- (a) **Warning.** A timber owner who fails to comply with the notice requirements set out in Section IV or fails to comply with the terms of a properly submitted NOTICE shall be provided one written WARNING granting the timber owner the opportunity to properly comply with the notice requirements or the terms of the properly submitted NOTICE. The WARNING shall be personally delivered by the county license inspector to the timber owner or to his or her representatives, employee, or contractor located at the site where a violation of the notice requirements or of the terms of a properly submitted NOTICE has occurred. The person to whom the WARNING is issued shall acknowledge in writing receipt of the WARNING at the time delivered. If the timber owner is not at the site where the WARNING is issued, a copy of the WARNING with the signed acknowledgment shall be immediately forwarded to the timber owner by facsimile or email and U.S. mail.

In the event the WARNING is issued for the failure to properly submit a NOTICE as required in Section IV, including the failure to correct any deficiencies in a submitted NOTICE as set out in Section IV (d), all activities governed by this Ordinance shall cease immediately upon receipt of the WARNING until such time as the timber owner has properly complied with the notice requirements set out in Section IV and has received a PROPER NOTICE CONFIRMATION from the county engineer.

In the event the WARNING is issued for failure to comply with the terms of a properly submitted NOTICE, the non-compliant activities shall cease immediately. Any continued activities in violation of the terms of the NOTICE shall result in the issuance of a CITATION as set out in subsection (b).

- (b) **Issuance of Citation.** If the timber owner fails to comply with the notice requirements set out in Section IV or fails to comply with the terms of a properly submitted NOTICE following receipt of a WARNING as provided in subsection (a), he or she shall be issued a CITATION for noncompliance by a county license inspector appointed by the county commission as authorized in Ala. Code § 23-1-80.1. (See also Ala. Code § 40-12-10.)

The procedure for issuing the citation shall be as provided for issuance of the WARNING as set out in subsection (a). The CITATION shall be personally delivered to the timber owner or to his or her representatives, employee, or contractor located at the site where a violation of the notice requirements or of the terms of a properly submitted NOTICE has occurred. The person to whom the CITATION is issued shall acknowledge in writing receipt of the CITATION at the time delivered. If the timber owner is not at the site where the CITATION is issued, a copy of the CITATION with the signed acknowledgment shall be immediately forwarded to the timber owner by facsimile or email and U.S. mail.

- (c) **Assessment of Fines.** A timber owner who has been issued a CITATION as set out in subsection (b) shall be fined five hundred dollars (\$500) per day for each day that he or she is in violation of the provisions of this Ordinance or that he or she fails to comply with the provisions set out in a WARNING issued under subsection (a). All fines collected shall be payable to the county commission and deposited into the county's road and bridge fund.

The county license inspector appointed to enforce this Ordinance shall assess all fines from the date of issuance of the CITATION until such time as he or she receives satisfactory proof that the violation or violations are no longer taking place. The county license inspector shall notify the timber owner in writing of the total amount assessed in fines for the violation or violations of this Ordinance, with instructions to make full payment of all fines payable to the county commission within 10 days of the date of the notice of final assessment of fines. No new notice applications shall be accepted by the county commission from the timber owner until and unless all fines have been properly paid as set out in the county license inspector's final assessment of fines.

- (d) **Injunction.** In addition to the issuance of a citation and assessment of a \$500 fine for each day the timber owner is in violation of this Ordinance, the county commission may bring a civil action in a court of competent jurisdiction in the county to enjoin the timber owner, his or her representatives or employees, or a contractor from conducting activities governed by this Ordinance in violation of this Ordinance. All court actions shall be filed and conducted in accordance with the Alabama Rules of Civil Procedure and the laws of this state.
- (e) **Requirement to Post Security.** If any timber owner has been cited for any violations of this Ordinance on three separate occasions within a 24-month period as set out in this section, the county commission shall require the timber owner to post security as a condition of utilizing the county roads, bridges, and rights of way for activities governed by this Ordinance. Security shall be set in an amount determined by the county commission to be adequate for any damage resulting to county roads or bridges from the use of such roads and bridges by the timber owner or his or her representatives, employees or contractors.

Section VI – Liability of Timber Owner

Compliance with the notice provisions of this Ordinance shall in no way operate to relieve the timber owner or his or her representatives, employees, or contractors from liability for any damages which may arise from their use of public roads, bridges or rights of way in the county. Additionally, the issuance of a PROPER NOTICE CONFIRMATION shall in no way constitute an act on behalf of the county which shall result in the county commission, the county engineer, or any employees of the county commission being held liable in any matter arising from the actions or inactions of the timber owner, of his or her representatives, employees, or contractors.

Section VII – Relation to Other Laws

This Ordinance is intended to comply with the provisions of Ala. Code § 23-1-80.1 regarding a timber owner providing notice of intent to utilize county roads and bridges for activities governed by this Ordinance. Nothing in this Ordinance shall be viewed as a limitation on Elmore County's general superintendence of the roads and bridges within its jurisdiction or its authority to promulgate and enforce rules and regulations related thereto as provided in Ala. Code § 23-1-80, Ala. Code § 11-3-11, or any other general or local laws applicable to the county. Additionally, nothing in this Ordinance shall in any way limit or affect the county's authority to regulate and enforce any laws governing the use of or damage to a county-maintained road or bridge or a county right of way.

Section VIII -- Amendments

The county commission may adopt amendments to this Ordinance at a regularly scheduled meeting of the county commission; provided, however, that any adopted amendments shall not take effect for thirty (30) days after the action of the county commission. All forms referenced in this Ordinance may be altered or amended by the county commission as necessary and appropriate without amendment to the Ordinance.