



P.O. Box 5040 • Montgomery, Alabama 36103

Telephone 334-263-7594 • Fax 334-263-7678

www.alabamacounties.org

Hon. Ricky Harcrow, DeKalb County, President

Sonny Brasfield, Executive Director

TO: County Commission Chairs
County Engineers

FROM: Mary E. Pons
Association Counsel

DATE: November 6, 2012

RE: Revisions to Model Logging Notice Ordinance

In an effort to address issues raised by the Alabama Forestry Association and several of its members, I recently met with Craig Dillard, an attorney for Webb & Eley who handles road liability cases for the ACCA Liability Self-Insurance Fund, and longtime Autauga County Attorney Robert Faulk to review the model Logging Notice Ordinance previously circulated to counties. Our goal in this review was two-fold: (1) to determine whether changes could be made that might alleviate some of the logging industry concerns and (2) to make sure we are on the strongest possible legal footing in the event a county is sued over the implementation and/or enforcement of the Ordinance.

Following this review, it was decided that slight changes in the notice process should be recommended to make clear that warnings and citations will only be issued under the Ordinance for violation of the notice procedure set out in *Ala. Code § 23-1-80.1*. These changes will still put the timber owner on notice, when applicable, that certain planned activities create problems, and that pursuant to the county's general authority to regulate its roads, bridges, and rights of way under *Ala. Code § 23-1-80*, the timber owner (or his or her representatives) may be denied access to proposed sites and/or found in violation of other state or county laws or regulations.

To accomplish these objectives, we have developed alterations to the portion of the Ordinance regarding the county's receipt of a NOTICE OF COUNTY ROAD USAGE BY TIMBER OWNER. In general, there are three types of communication that may be provided to the timber owner in response to his/her NOTICE.

1. If the timber owner's NOTICE includes all required information and there are no county concerns with the planned activities, the county will send a PROPER NOTICE CONFIRMATION.
2. If the timber owner's NOTICE does not include all the required information, the county will send a NOTICE OF DEFICIENCY identifying what information is missing from the NOTICE received and explaining the corrective actions the timber owner should take.

3. If all required information is provided in the timber owner's notice, a response from the county is necessary if the proposed haul route, access point, or drainage procedures are unacceptable.
 - a. If the timber owner's NOTICE proposes an access point that the county will not allow to be utilized, the county will send the timber owner an ADVISORY REGARDING ACCESS POINT to let him/her know the access point cannot be utilized and he/she must propose an alternate; or
 - b. If the timber owner's NOTICE proposes a hauling route that the county finds unacceptable, the county will send the timber owner an ADVISORY REGARDING HAULING ROUTE to let him/her know he/she cannot use the route proposed and must propose an alternate; or
 - c. If the timber owner's NOTICE includes plans for maintaining normal drainage features that are inadequate, the county will send the timber owner an ADVISORY REGARDING DRAINAGE FEATURES to let him/her know the plan is inadequate and he/she should contact the county engineer to develop an adequate plan.

In each instance, the county will be advising the timber owner what action to take to correct problems and warning that failure to adequately address identified problems may result in denied access, violation of county policy or state law, and/or liability for damage to county roads, bridges or rights of way. The new communications outline the steps the county will take should the timber owner refuse to respond appropriately. Specifically, the communications assume the county will use its authority to deny access to the unacceptable access point should an alternative not be proposed.

In addition to the above-stated changes, we are also recommending that counties alter the NOTICE OF COUNTY ROAD USAGE BY TIMBER OWNER form to remove the request for liability insurance policy numbers and contact information and eliminate the letter to be sent to the timber owner's liability insurance carrier. This has been a particularly sensitive issue with many industry representatives who have contacted counties directly about the model Ordinance. Removing this information from the form in no way harms the county's ability to require payment for damages, but may eliminate some of the controversy which has erupted in recent weeks.

A revised model Ordinance incorporating all of the recommended changes discussed herein, including changes to the forms to be adopted as part of the county's Ordinance, can be found on the ACCA website at www.alabamacounties.org/?p=3180. If your county has already adopted the Model Logging Notice Ordinance, it is recommended that the county commission vote to replace the current Ordinance with this revised version. If your county has not adopted the Ordinance to date, we recommend that this version be considered and adopted by the county commission.

We hope that these minor changes will help alleviate the concerns of the Alabama Forestry Association and its membership. In any case, we do believe that with these adjustments to the notice process, the county will be in a very strong, defensible position in the event of a legal challenge to implementation or enforcement of the Ordinance adopted pursuant to *Ala. Code § 23-1-80.1*. Moreover, adoption of this revised Ordinance will provide the county with strong tools to protect its roads, bridges, and rights of way from damage caused by misuse or mistreatment during logging operations in the unincorporated areas of the county.

If you have any questions about these recommended changes, please contact the ACCA office.