



Practicing Forestry Under Local Regulations: A Guide for Landowners

Robert E. Bardon, Ph.D., *Extension Specialist*
Brandon A. King, *Extension Assistant*
Mark A. Megalos, Ph. D., *Outreach Associate*

Department of Forestry and Environmental Resources
North Carolina Cooperative Extension Service

Introduction

The number of local regulations impacting forestry on private land in the Southeast has significantly increased since the 1970's, more than doubling every five years (Granskog et al, 2002). This proliferation of regulations is a growing concern for many in the forestry community. Major factors behind this rise in the number of ordinances are the expanding population of the region and migration of urban populations to the suburbs and rural communities.

As population expands, more and more forestland disappears, converted to residential, retail, industrial, and other non-forestry uses. The challenge of managing conflicts between forestry and non-forestry uses falls to local governments, especially as trees and other vegetative buffers are cleared. As trees are removed, perceived and real environmental impacts may bring about restrictive or prescriptive land use regulations. Other regulations may be created as citizens voice their concerns about the removal of individual trees or the cutting of multiple trees on private property. These regulations may restrict

the extent to which forestry can be conducted or they could exempt certain forestry practices. The latter is sometimes protected under a statewide right-to-practice law. Right-to-practice laws are often enacted at the state level and have been developed by many states to protect the right to continue practices common to both forestry and agriculture.

This publication examines tree protection regulations, zoning, and other ordinances at the county and municipal government level. Guidance is offered on how to practice forestry under existing regulations and on how involvement in the community can retain forestry as a viable land use.

Importance of location and jurisdiction
Location will determine whether county or municipal regulations restrict forestry activities. Zoning and unified development ordinances (UDOs) are enforceable within a local government's planning jurisdiction. Planning jurisdiction refers to the geographical area where a government has the authority to regulate land uses and create plans for

growth and development. A municipal planning jurisdiction includes all area within the corporate boundary, all areas that have been annexed, and any area within the extraterritorial jurisdiction (ETJ). For the protection of public health and safety, municipalities may also enforce regulations within one mile of their corporate boundaries without establishing an ETJ. A county's planning jurisdiction encompasses any area not within the planning jurisdictions of municipalities in the county. In some instances, counties and municipalities may share zoning and planning responsibilities and regulations. County and municipal planning departments can provide information about where their regulations apply.

Types of Tree Protection Regulations

Regulations designed to protect or preserve trees are commonly called "tree protection" or "timber harvesting" ordinances and typically address two common concerns of cities and counties: clearcutting of all trees on private property prior to development and the loss of individual trees. In some cities and counties ordinances have been developed to insure that there is a reporting of timber harvest so that the county can collect taxes. Many ordinances have been enacted to protect county roads. For example, there is concern for mud on the highway from logging trucks. Also, there are safety issues related to trucks entering the highway. Tree protection regulations typically do not stand alone but are often incorporated within other ordinances. They are often created by amending existing zoning ordinances or UDOs and may be found in the landscaping and vegetative buffer sections of these ordinances. In contrast, "street tree ordinances" regulate the removal, maintenance, and preservation of vegetation on public property and public rights-of-way.

Forestry Activities and Local Acts

Communities can regulate the removal of

trees, regardless of why or where trees are cut, or they can address specific practices, such as clearcutting on undeveloped property. Forestry activities may be exempt from a local government's tree protection regulation if the local government voluntarily chooses to exempt forestry or if state government prohibits local governments from applying tree protection regulation to forestry activities such as would be contained in right-to-practice forestry law. To be exempt from the local regulation the local government may set certain conditions that must be met. These conditions may include:

- If the property in which forestry activities are conducted is enrolled in the county present use value taxation program. A present use taxation program assesses property taxes based on its current use, such as forestry or agriculture, instead of its highest and best use—development.
- If forestry activities are conducted under a forest management plan prepared or approved by a qualified forester.
- If the property on which forestry activities are conducted meets the county present use value taxation program classifications as defined in a state statute, but the land does not have to be enrolled in the program.

Avoiding penalties

To avoid conflicts with local regulations and possible penalties, forest landowners should:

- Acquaint themselves with local tree protection, landscaping, and other vegetative buffer requirements BEFORE harvesting. There are specific consequences within many tree protection regulations that may include civil or criminal penalties. Local governments have the right to require performance bonds, deny permits, levy fines, and require reestablishment of vegetation. Penalties may be financially significant. Fines or mitigation costs can be greater than the value of the timber harvested

and exist to ensure compliance with local regulations.

- Determine which regulations apply to the land by checking with planning or inspections departments within the local government.
- Document land use before, during, and after activities through photos and video. This may help if it is necessary to show that the activity was in compliance with the local regulation.

Zoning and the UDO

Zoning is an extremely powerful tool for regulating land use. It is largely used by local governments to prevent conflicts between various land uses (e.g., not allowing a sawmill operation next to a hospital). Zoning can be inflexible—any use that is not specifically allowed or listed within a zoning ordinance may be prohibited. However, zoning ordinances may be amended to add additional permitted uses. Many land use requirements pertaining to landscaping, buffers along roadways, and the replanting of trees after cutting may be contained throughout various chapters of a zoning ordinance. This requires a careful review of an entire zoning ordinance to ensure that all rules associated with tree cutting or planting are found.

Zoning applied to forestland may include restrictions and provisions that will determine:

- Whether trees may be harvested.
- Which trees may be harvested.
- Where the trees may be harvested.
- How the area to be harvested must be replanted or maintained after the trees are removed.

Land use regulations, including the zoning ordinance itself, may be contained within a UDO. Many municipalities and counties are now compiling all of their land use regulations into this single unified section of a city or county's code of ordinances.

Note: Tree protection regulations created

pursuant to local bills may or may not be included in the zoning ordinance or UDO. They are still enforceable and may simply be found somewhere else within a local government's code of ordinances. Contact your city or county government for information on its code of ordinances.

Watershed and Other Protections

Water supply watershed protection, floodplain and floodway development, noise, burning, air pollution control, soil erosion and sedimentation control, landscaping, and other ordinances may regulate forestry practices or have the potential to do so. These ordinances can impact landowners—even though these regulations may not be included as part of a municipal or county zoning ordinance or in a UDO, but could be referenced within their code of ordinances and published elsewhere. Ordinances that address public health, safety, and welfare may be enacted under a local government's general ordinance-making authority (e.g., a burning ordinance) or pursuant to other state laws.

Landscaping or vegetative buffer ordinances, enacted to reduce conflicts between land uses and to preserve the aesthetics of a community, may not address forestry practices specifically—but they may regulate the removal or maintenance of vegetation on private property. Landscaping rules may also be enacted through zoning rather than the general ordinance-making authority. Forest harvesting can be regulated under landscaping ordinances, and this must be considered before trees are cut or removed. Landscaping regulations may include tree protection provisions that allow for forestry.

Burning and noise ordinances may be enacted under local government's general ordinance-making authority. A local ordinance may restrict the open burning of debris or woodland within the county or municipality limits. Some ordinances may allow burning for agricultural and forestry purposes with a

permit while others do not allow open burning for such purposes. Burning restrictions may apply only during certain times of a year or under certain weather and air quality conditions. Noise ordinances regulate the sources and level of sound allowed in a community, and some provide exemptions for forestry and agricultural activities or equipment.

Become Involved in Your Community

Forest landowners need to anticipate development as they plan future management. Land uses will change, and forestry may be in conflict with new uses as communities grow. As communities grow they typically change or develop a number of local regulations. It is important as a forest owner to understand when a possible change may affect your ability to conduct forestry activities. The following represent a list of possible means by which local governments can affect your land use. It is important to be aware of these indicators of growth and be a part of their development.

Comprehensive land use plans—Plans for future municipal or regional development will determine where residential, commercial, and other development will occur.

Extraterritorial jurisdiction (ETJ)—Properties within or adjacent to an existing or planned ETJ are likely to be annexed by a municipality. Land use regulations may change in the ETJ, and new land uses other than forestry, such as commercial or residential development, will appear in the ETJ.

Municipal annexation agreements—Agreements made between cities will delineate areas that each city may annex in the future.

Ordinances—Zoning and other ordinances, as they are developed or modified, will shape future development and determine allowable land uses.

Sewer and water extensions—Cities may ex-

tend water and sewer services to undeveloped areas to encourage population growth and new development.

Transportation plans—Plans that guide the expansion of a city or county's transportation infrastructure will show where roads are to be constructed and improved years in advance.

Landowners need to recognize that community concerns about forestry may determine the practices allowed on their lands in the future. Involvement in the community and awareness of concerns is a first step. Once involved, landowners can offer expertise and guidance about the benefits of properly managed forestland to both local officials and fellow citizens. Trees help preserve visual appearance of a community, provide habitat for wildlife and plants, and preserve a community's history and heritage. All of these uses can be provided through good forest management and it is important for a community to understand that it is important to keep forestland in forests and that restrictions in the ability to practice good forestry can result in the loss of forest ownership and the ultimate loss of the forestland forever.

Become a resource to your community and local government:

- Learn about city and county jurisdictions and regulations that apply to your land. Your city or county manager's office and the city and county planning, zoning, environmental, engineering, and inspection departments can provide this information.
- Look online at local government Web sites for zoning ordinances, tree protection regulations, and other land use regulations. Remember that laws and regulations made available through local government web sites are not the legally enforceable versions—they are provided only for general guidance and reference. Local departments, city clerks, or county clerks maintain the official enforceable text.

Note: The failure of a county or municipal

official to provide you with the most recent amendments to an ordinance or rule does not relieve you of the obligation of complying nor does it result in the imposition of liability upon that official or that official's employer.

- Ask questions of local officials and government staff about zoning or tree protection ordinances in your community. Guidance and contact information are often available on a city or county's planning, zoning, or environmental department web page.
- Ensure that your forestry operation complies with all applicable federal, state, and local laws and regulations. Achieving compliance with regulations must be a goal of your forest management plan. Referencing local regulations and permit requirements within the management plan is one way to accomplish this goal. Keep in mind that each time the plan is revised these references must be checked and updated.
- Do not engage in any forest management practices without first consulting and receiving official guidance from local, state, or federal departments that enforce laws and regulations that may apply to your forestland. Obtain all guidance in writing.
- Participate in the various planning boards, citizen advisory councils, or other groups or committees to become aware of local policies that may affect the use or management of your forestland. When possible, offer your perspective—that of the forest landowner, consulting forester, or resource professional—to concerned citizens and local officials.

Checklist for Practicing Forestry

Use this checklist before undertaking any forestry activities that may be affected by local tree protection, zoning, and other regulations. The checklist will help ensure compliance with local regulations and thus help you avoid fines and other penalties. Add other items to the checklist as you discover them.

- Obtain a management plan developed by a professional forester, and make sure the plan is followed during all harvesting and management activities.
- Determine which tree protection, landscaping, vegetative buffer, zoning, or other regulations apply to your forestry activities.
- Contact your local planning, inspections, or other local government offices that enforce land use and environmental protection regulations for details on these regulations.
- Verify which of your forestry activities are exempt under local regulations.
- Seek regulatory guidance and interpretation before you act. Obtain guidance in writing, and retain it for your records.
- Make sure that all required permits have been obtained.
- Consider visual and riparian buffers or other ways to preserve vegetation that may go beyond regulatory requirements. These considerations can help alleviate community and nearby neighbors' concerns.

Literature Cited

Granskog, J.E., T. Haines, J.L. Greene, B.A. Doherty, S. Bick, H.L. Haney, Jr., S.O. Mof-fat, J. Speir, and J.J. Spink. *Chapter 8: Policies, Regulations, and Laws*. In: Wear, D.N. and J.G. Greis, eds. 2002. Southern forest resource assessment. Gen. Tech. Rep. SRS-53. Asheville, NC: U.S. Department of Agriculture, Forest Service, Southern Research Station. 635 p.

This manuscript is also published as 5 North Carolina Cooperative Extension Service Publication Number WON-41 available at <http://www.ces.ncsu.edu/nreos/forest/pdf/WON/won41.pdf>

Educational programs of the Southern Regional Extension Forester are open to all people without regard to race, color, sex, disability, religion, age, or national origin.