

**AN ORDINANCE
ADOPTING AND IMPLEMENTING
MOUNTAIN PROTECTION STANDARDS**

MOUNTAIN PROTECTION
ORDINANCE FOR TOWNS COUNTY

PURPOSES

The mountains of Georgia are characterized by steep slopes, thin soils, and, because of the natural stresses placed on such environments, they require special protection. Land disturbing activity on the high elevation, steep slope mountains of Georgia potentially threatens the public health, safety, welfare, and economic progress of the state. Such land disturbing activity:

- 1) May endanger the quality of surface water by increasing erosion and stream sedimentation;
- 2) Has the potential to induce landslides;
- 3) Has the potential to adversely affect ground water due to difficulty in providing proper sewage disposal in areas of steep **slope** and high elevation;
- 4) May damage the habitat for some species of wildlife (both plants and animal); and
5. May detract from the mountains' scenic and natural beauty which is vital to the local economy through the recreation and tourism industries.

To protect against these adverse effects, this ordinance is adopted.

Section 1. Applicability.

The Mountain Protection Plan shall apply to any "protected mountain" areas in Towns County, which is defined as:

"All land area 2,200 feet or more above mean sea level, that has a percentage slope of 25 percent or greater for at least 500 feet horizontally, and shall include the crests, summits, and ridge tops which lie at elevations higher than any such area."

The crests, summits, and ridge tops of mountains whose flanks meet the criteria for a protected mountain shall also be included within the protected area, even though the slopes of such crests, summits and ridge tops have slopes of less than 25 percent.

On an otherwise protected mountain, areas that are at an elevation of 2,200 feet or more and have a slope of less than 25 percent, exclusive of valley floors, shall be included within the protected mountain area. For the purposes of this plan, a valley floor is defined as a depression of the earth's surface where the slopes of mountains meet at a lower limit to become nearly level, and including such associated areas at the base or toe of a mountain with a 10:1 (10%) slope or less.

Illustration 1 provides a graphic of "protected mountains" according to the definition above. Illustration 2 indicates the angles of various slopes as a basis of comparison.

Section 2. Applicability to State Agencies.

These minimum planning standards and procedures shall apply to all state owned or administered land that contains a protected mountain within its boundaries. All state agencies shall comply with these minimum standards. Failure by a state agency to comply with such standards shall be considered an indication of a governmental action which may significantly adversely affect the quality of the environment under the Environmental Policy Act (O.C.G.A. 12-16-1 et seq.).

Section 3. References to Existing State and Local Regulations.

Section 3.1. Soil Erosion and Sedimentation Control.

Proposed land disturbing activity shall meet applicable requirements of the "Erosion and Sedimentation Act of 1975 as amended", and of any applicable local ordinances on soil erosion and sedimentation control.

Standards and requirements established in the Erosion and Sedimentation Act are not superseded by Mountain Protection standards.

Section 3.2. Water Supply.

Where one or more wells are to be used for individual water supply, the proposed land disturbing activity shall meet all applicable requirements of the "Water Well Standards Act of 1985;" the requirements of the rules and regulations of the department of Human Resources regarding individual or non-public wells; and any more stringent requirements imposed by the local governing authority.

If a public water supply system is to be provided, the water supply system shall meet all applicable requirements of the "Georgia Safe Drinking Water Act of 1977".

Section 3.3. Sewage Treatment.

Where one or more septic tanks are to be used for individual sewage disposal, the proposed land disturbing activity shall meet all applicable requirements imposed by the local governing authority.

If sewage treatment is to be provided by any means other than one or more individual septic tanks, the sewage treatment shall meet all applicable requirements of the "Georgia Water Quality Control Act".

Section 3.4

“All terms contained herein shall be as defined with O.C.G.A.§12-2-8,as amended, and if not defined in said section, then as defined within the Subdivision Regulations of Towns County, Georgia, except as provided herein.”

Section 4. Standards for Specific Land Uses.

Section 4.1. Hazardous Waste Disposal and Handling.

Hazardous waste or solid waste disposal facilities are prohibited from protected mountains. Disposal facilities permitted by the Environmental Protection Division of the Georgia Department of Natural Resources prior to the adoption of implementing regulations shall be exempt from this criterion.

Handling areas for the receiving and storage of hazardous waste are prohibited from protected mountains.

Section 4.2. Agriculture and Forestry.

Agriculture and forestry are permitted on protected mountains provided that: Such agriculture and forestry must be consistent with the best management practices established by the Georgia Forestry Commission or the Georgia Soil and Water Conservation Commission; and Agricultural and forestry activity shall be consistent with all state and federal laws, and all regulations promulgated the Georgia Department of Agriculture.

Section 4.3 Mining.

Mining activity on protected mountains is allowed, if such activity is permitted by the Georgia Department of Natural Resources.

Section 4.4. Single-Family Dwellings.

Single-family dwellings shall not be constructed at a density of more than one per acre, however, no such acre shall be less that 100 feet wide at the building site. This density restriction shall not apply to:

- 1) Any lot of less than one acre if such a lot was, as of the effective date of implementing regulations, owned and described as a discrete parcel of real property according to the instrument of title if the person or persons owning the lot on the effective date of implementing regulations shown as a discrete parcel of real property on a plat of survey properly recorded in the real property records of the Clerk of

Superior Court by the person or persons owning the lot on the effective date of implementing regulations.

- 2) Any land, or part of any land, which was contained in or subject to any master plan, planned unit development, special approved development plan, or any other development plan if such plan was filed with and approved by the local governing authority prior to the effective date of implementing regulations, pursuant to a duly enacted planning and zoning ordinance; provided further, that any such planning and zoning ordinance must have provided rules and procedures and governed lot sizes, density, types of building, and other limitations usually associated with the implementation of local zoning ordinances. (See Illustration 3).
- 3) **“Any development of real property or land disturbing which has occurred prior to the adoption of this Ordinance but does not have approval of the governing authority of Towns County for such activity shall not be exempted from the requirements of this Ordinance.**

Section 4.5. Multiple-family Dwellings.

Multi-family dwellings, shall require a minimum of three-quarters (3/4) of an acre per dwelling unit in accordance with the Rules and Regulations of the Towns County Board of Health as adopted in July, 2006.” Multiple-family residential developments may be, and are encouraged to be "clustered" where the net density of the developed portion of property is higher but the overall gross density of the subject property does not exceed **a density greater than three-quarters (3/4) of an acre per dwelling unit**, subject to applicable local health department requirements **at the time**.

Section 4.6. Commercial Structures.

Any proposal to construct a commercial structure on a protected mountain shall submit an application, which shall include:

- 1) A detailed landscaping plan which shall identify all trees which are to be removed that exceed eight inches in diameter as measured at a point on the tree four and one-half feet above the surface of the ground; shall contain a plan for replacement of any such trees that are removed (See Illustration 4); and
- 2) Such application shall also include a topographical survey of the projected site and an assessment of the effect that the project will have on the environment of the protected mountain after the project has been completed and is in operation. Nothing in this paragraph shall be construed to require commercial structures to comply with the density limitations for single or multiple-family dwellings.

Section 5. General Development Standards.

Section 5.1. Tree Removal Limit Without Reforestation Plan.

No person engaging in land disturbing activity on a protected mountain shall remove more than 50 percent of the existing trees which exceed eight inches in diameter as measured at a point on such a tree four and one-half feet above the surface of the ground unless such person has filed with the application a plan of reforestation developed by a registered forester. (See Illustration 5).

Section 5.2. Height Limitations.

Single-family dwelling structures shall not exceed 3 (three) stories or extend more than **thirty-five (35) feet in height** as measured from the height of a single-family dwelling structure shall be determined by measuring from the point of the highest eave of the structure down to the highest point at which the foundation of such structure intersects the ground. This height limitation shall not apply to the following: water, radio and television towers, electric transmission towers and lines, and to minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires; or windmills. (See Illustration 6.)

“The height of a structure used for commercial purpose or as a multi-family dwelling, including, but not limited to, town houses, apartments and condominiums, shall be determined by measuring from the highest point of the utmost portion of the crest, summit, or ridge top of the structure down to the footing. The walls placed upon the footing including, but not limited to, poured concrete walls, block wall, or any wall consisting of any other type of construction material shall be considered a portion of that structure to be included in the height limitation.”

Section 5.3. Road Construction.

All roads on protected mountains shall be designed and constructed to minimize the potential for landslides, erosion, and run-off. (See Illustration 7.)

Section 6. Assessment of Impact of Potential Development on Protected Mountains.

Section 6.1. Public Purposes and Private Property Rights.

Land Development, and the commencement of other activities, if they are consistent with this Mountain Protection Plan, will not have a negative effect on public health, safety or welfare. The application of mountain protection standards to land development and activities will not pose an undue burden on property owners nor result in the diminishing of private property rights.

Section 6.2. Conservation of Unique/Significant Flora and Fauna.

The most significant areas of unique flora and fauna are located on lands owned and managed by the United States Forest Service. Rare and endangered species may be located within areas of protected mountains, although specific sites are not known.

Land development and the commencement of other activities, if they are consistent with the Mountain Protection Plan, should not have a negative impact on wildlife and plant and animal habitats. However, all of Towns County's protected mountains, may have areas worthy of conservation.

Section 6.3. Groundwater and Surface Water Quality.

To a significant extent, ground and surface waters are protected by existing state and federal regulations. Furthermore, much of Towns County's ground and surface water is protected through ownership and management by the US Forest Service, through implementation of its Land and Resource Management Plan. Development and other activities consistent with this Mountain Protection Plan will not have an adverse impact on protected mountains.

Section 6.4. Aesthetics.

The visual impact, of development and activities consistent with this Mountain Protection Plan, should not be significant.

Section 6.5. Historical and Archaeological Resources.

Historic and archaeological resources in Towns County are inventoried and assessed in the Comprehensive Plan. An analysis of the location of such resources indicates that historic and archaeological resources are predominantly located outside of protected mountain areas. Those resources located within protected mountain areas are largely located on lands owned and managed by the US Forest Service in accordance with its Land Resource Management Plan. Therefore, development consistent with this Mountain Protection Plan is not expected to have any adverse impacts on existing historic and archaeological resources.

Section 6.6. Adjacent Sensitive Natural Areas.

Sensitive natural areas include wildlife habitats, rare natural communities, significant land forms and geological features, flood plains, wetlands, and other such areas sensitive or vulnerable to physical or biological alteration. Development consistent with this Mountain Protection Plan is not expected to have adverse effects on sensitive natural areas.

Section 6.7. Duration of Impacts.

No significant impacts of an adverse nature are anticipated if development conforms to the mountain protection plan. Any minimal impacts that might occur on protected mountains would be temporary.

Section 7. Mountain Protection Permit and Site Plan Required.

- 1) An approved site plan and mountain protection permit shall be required for any proposed land(s), building(s), sign(s) or other structure(s) to indicate and insure compliance with all provisions of this ordinance and any other county ordinances before any permit is issued or any improvement, grading, land disturbing activity or alteration of land(s), building(s) or other structures commences.
- 2) **This Ordinance shall apply to all land disturbance activity or construction or any improvements to real property unless it is exempted by state law, which occur in the area as of set forth under section 1**

Section 8. Administration, Enforcement and Penalties.

Section 8.1. Approval of Site Plan and Issuance of Permit.

The provisions of this Mountain Protection Ordinance shall be administered and enforced by the Towns County Commissioner by and through its designated representative, the Towns County Planning Commission.

Prior to conducting any land disturbing activity or any improvement, alteration of land(s), or commencement of any building(s) or other structure(s), upon any protected mountain area(s) in Towns County, the owners (or designated agent thereof) of the land to be effected shall present to the Towns County Planning Commission a site plan which shall include:

- 1) the name, address and telephone number of the property owner;
- 2) a topographic survey plat of the proposed site;
- 3) a metes and bounds plat of survey of the proposed site, including thereon, all building sites and proposed location(s) of all buildings and improvements and including all building elevations;
- 4) a statement specifying the location and source of water and sewer or septic service for the proposed improvements;
- 5) a landscape plan as required under Section 4.6 for commercial development;
- 6) a reforestation plan for any development subject to Section 5.1 for tree removal limits; and
- 7) such further documents as the Planning Commission may reasonably request in order to determine compliance with the standards of development as set out in this ordinance.

All of the foregoing shall constitute an application for a Mountain Protection Permit. The Planning Commission shall have forty-five days in which to review said application for determination of compliance with this ordinance. In the event, during such review, the Planning Commission determines more information is necessary from the applicant, it shall request, in writing, such information and mail such request, by certified mail, return receipt requested, to the applicant. Applicant shall furnish such requested information to the Planning Commission within ten day of receipt of said notice, and such information shall be deemed part of the application. During such review period, the Towns County Planning Commission may request the applicant to appear before the commission to answer any questions or supply further information concerning the matters set forth within the application. Likewise, during said review period, the applicant may request the Planning Commission to allow the applicant to appear before the Planning Commission in order to explain or comment upon any matters set forth in the application. It shall be solely within the discretion of the Planning Commission as whether to request or allow appearance of the applicant.

If the Planning Commission finds all matters set forth in the application to be in compliance with the requirements of this ordinance, the Planning Commission shall issue a Mountain Protection Permit to the applicant and shall approve the metes and bounds survey to be recorded upon the deed records maintained in the Office of the Clerk of Towns County Superior Court. In the event the Planning Commission determines that the matters set forth within the application do not meet the standards and requirements of this ordinance, then in such event the Planning Commission shall deny

issuance of a Mountain Protection Permit to the applicant and shall notify the applicant, in writing, and by certified mail, return receipt requested, of the reasons for the denial of said permit. At any time subsequent to such a denial, the applicant may reapply for the Mountain Protection Permit by submitting a new application in compliance with the standards and matters set forth in this ordinance. No land disturbing activity nor construction or erection of improvements or buildings or structures shall commence upon any protected mountain areas in Towns County, as defined in this ordinance, unless approved by the Towns County Planning Commission and has been recorded upon the records maintained by the Clerk of the Superior Court of Towns County, Georgia.

Section 8.2 Inspections and Stop Work Orders.

The filing of an application for a Mountain Protection Permit shall be deemed to constitute the consent of the owner of the property described therein for the Towns County Planning Commission, by its designated representative(s), to enter upon the property for the purposes of verifying the information contained within the application and to determine whether there has been compliance, during land disturbing activity and/or construction or erection of improvements, with this ordinance or with the plans submitted as part of the application.

In the event the Planning Commission determines there is a failure to comply with this ordinance or such plans, a stop work order shall be issued by the Planning Commission and sent, by certified mail, return receipt requested, to the owner of the property as disclosed on the application, and such order shall specify the act(s) of noncompliance as found by the Commission, and what acts must be taken by the owner to be in compliance with this ordinance or such plans. Thereafter, the owner shall have fifteen days in which to bring the property into compliance and until which no further work shall be done on the property except as may be necessary solely to bring the property into compliance with this ordinance or such plans. The continuing of any work upon the property, after receipt of a stop work order, and except as necessary to bring the property into compliance, shall be in violation of this ordinance. Failure to bring the property into compliance within fifteen days of receipt of such a stop work order shall be a separate violation of this ordinance.

Section 8.3. Penalties.

Any person, firm, or corporation or other legal entity violating, neglecting, or refusing to comply with any of the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined up to \$1000 per day for each offense, by the Court of proper jurisdiction. Each day such violation continues shall constitute a separate offense.

Section 9. Conflict with Other Laws.

Whenever the provisions of this ordinance impose more restrictive standards than are required in or under any other statute, the provisions of this Ordinance shall govern. Whenever the provisions of any other statute require more restrictive standards than are required by this Ordinance, the provisions of such statute shall govern.

Section 10. Severability.

Should any section or provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Adopted this 21st day of September, 2006

/s/ Bill Kendall
Towns County Commissioner

/s/ Linda H. Hedden
Towns County Clerk