

# **Gilmer County**

**Not located in a MSA.**

**2003 Population Estimate 25,973; +9.7% change since 2000 Census.**

**Not a Tree City USA.**

**No tree board established by ordinance.**

## **Chapter 70 ENVIRONMENT**

### **ARTICLE III. MOUNTAIN PROTECTION**

#### **Chapter 50**

#### **ARTICLE I. IN GENERAL**

**Year first adopted or last revised unknown.**

**Addresses private property.**

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#### **ARTICLE I. IN GENERAL**

Section 50-1. Collection of tax on harvested timber.

## Chapter 70 ENVIRONMENT\*

**\*Cross references:** Animals, ch. 14; community development, ch. 26; health and sanitation, ch. 34; parks and recreation, ch. 38; planning, ch. 42; solid waste, ch. 46; utilities, ch. 54; land development ordinance general provisions, ch. 58; buildings and building regulations, ch. 66; floods, ch. 74; manufactured homes and trailers, ch. 78; subdivisions, ch. 82; utilities in subdivisions, § 82-231 et seq.; waterways, ch. 86.

**State law references:** Soil and water conservation, O.C.G.A. § 2-6-1 et seq.; control of soil erosion and sedimentation, O.C.G.A. § 12-7-1 et seq.

### Article I. In General

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### Article II. Soil Erosion and Sedimentation Control

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### Article III. Mountain Protection

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## ARTICLE III. MOUNTAIN PROTECTION

### Sec. 70-70. Findings of fact.

The mountains of the state 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 the state 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 groundwater due to the 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 animals); and
- (5) May detract from the mountains' scenic and natural beauty which is vital to the recreation and tourism industry of North Georgia.

(Ord. of 2-8-2001(1), § I)

### Sec. 70-71. Purpose.

The purpose of this article is to establish measures to guide future growth and development in the areas within protected mountains as defined in this article.

(Ord. of 2-8-2001(1), § I(A))

### Sec. 70-72. Authority.

This article is enacted pursuant to the authority contained in Ga. Const. art. IX, § II, ¶ I and art. IX, § II, ¶ III, and O.C.G.A. §§ 12-2-8(b), 50-8-2(a)(18)(B) and 50-8-7.1(b).

(Ord. of 2-8-2001(1), § I(B))

### Sec. 70-73. Jurisdiction.

This article shall apply to the unincorporated areas of the county and to any incorporated area electing to adopt this article.

(Ord. of 2-8-2001(1), § I(C))

### Sec. 70-74. Cite.

This article shall be known and cited as "Gilmer County Mountain Protection Ordinance."

(Ord. of 2-8-2001(1), § I(D))

### **Sec. 70-75. Interpretation.**

This article shall be interpreted in conjunction with federal and state rules, regulations and laws, and other county ordinances contained or referenced in this article.

(Ord. of 2-8-2001(1), § I(E))

### **Sec. 70-76. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Designated hazardous waste* means any solid waste identified as such in regulations promulgated by the state board of natural resources. The state board of natural resources may identify as designated hazardous waste any solid waste which the board concludes is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed, based on the factors set forth in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are codified as 40 CFR 261.11(a)(3), in force and effect on February 1, 1996, if such solid waste contains any substance which is listed on any one or more of the following lists:

- (1) List of Hazardous Constituents, codified as 40 CFR 261, Appendix VIII, in force and effect on February 1, 1996;
- (2) Groundwater Monitoring List, codified as 40 CFR 264, Appendix IX, in force and effect on February 1, 1996;
- (3) List of Hazardous Substances and Reportable Quantities, codified as 40 CFR Table 302.4, and all appendices thereto, in force and effect on February 1, 1996;
- (4) List of Regulated Pesticides, codified as 40 CFR 180, in force and effect on February 1, 1996;
- (5) List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 CFR 355, Appendix A, in force and effect on February 1, 1996; or
- (6) List of Chemicals and Chemical Categories, codified as 40 CFR 372.65 in force and effect on February 1, 1996.

*Federal act* means the federal Solid Waste Disposal Act, as amended, particularly by the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 USC 6901 et seq.), as amended, particularly by but not limited to the Used Oil Recycling Act of 1980 (Public Law 96-463), the Solid Waste Disposal Act Amendments of 1980 (Public Law 96-482), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510), the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616), and the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499), as amended.

*Hazardous waste* means any solid waste which has been defined as a hazardous waste in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act, which are in force and effect on February 1, 1996, codified as 40 CFR 261.3 and any designated hazardous waste. (Note: This is same definition as used

in the Georgia Hazardous Waste Management Act, O.C.G.A. § 12-8-60 et seq.)

*Land disturbing activity* means any grading, scraping, excavating, or filling of land; clearing of vegetation; and any construction, rebuilding, or alteration of a structure. The term "land disturbing activity" shall not include activities such as ordinary maintenance and landscaping operations, individual home gardens, yard and grounds upkeep, repairs, additions or minor modifications to a single-family dwelling, and the cutting of firewood for personal use.

*Multifamily dwelling* means a structure that contains multiple dwelling units.

*Plat map* means a large-scale map that shows the location of tracts of land within a jurisdiction, and the tax status of such tracts.

*Protected mountain* means 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.

*Quadrangle map* means the most recently published U.S. Geological Survey 7.5 minute topographic map prepared at a scale of 1:24,000.

*Reforestation plan* means a plan, prepared by a registered forester, for replacing of harvested timber by replanting (as described in the Recommended Best Management Practices for Forestry in Georgia, published by the Georgia Forestry Commission) or by natural regenerative processes (such as coppicing, seed trees, etc.).

*Sensitive natural area* means any area, as identified now or hereafter by the state department of natural resources, which contains one or more of the following:

- (1) Habitat, including nesting sites, occupied by rare or endangered species;
- (2) Rare or exemplary natural communities;
- (3) Significant landforms, hydroforms, or geological features; or
- (4) Other areas so designated by the state department of natural resources; and which is sensitive or vulnerable to physical or biological alteration.

*Single-family dwelling* means a dwelling structure that is designed for the use of one family.

*Written notification* means a notice to an applicant which shall be given in writing and mailed by certified mail, return receipt requested, to the last known mailing address submitted by applicant to the land development officer. Notice to the land development officer shall be given in writing and mailed by certified mail, return receipt requested, or delivered personally to and a receipt obtained from the land development officer.

(Ord. of 2-8-2001(1), § II)

**Cross references:** Definitions generally, § 1-3.

**State law references:** Similar provisions, O.C.G.A. § 12-8-62.

### **Sec. 70-77. Establishment of a protected mountain district.**

The mountain protection district is hereby designated and shall comprise all land area within the jurisdiction of the county that is 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. The mountain protection district shall also include the crests, summits, and ridge tops which lie at elevations higher than any such area. The mountain protection district shall be further defined and delineated on the mountain protection district map. The mountain protection district map is hereby incorporated into and made a part of this article by reference.

(Ord. of 2-8-2001(1), § III)

**Sec. 70-78. Protection criteria.**

(a) Proposed land disturbing activity shall meet all applicable requirements of the Erosion and Sedimentation Act of 1975 (O.C.G.A. § 12-7-1 et seq.) and all applicable local ordinances on soil erosion and sedimentation control.

(b) When 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 governing authority.

(c) Where one or more wells are to be used for individuals 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 state department of human resources regarding individual or nonpublic wells; and, any more stringent requirements imposed by the governing authority.

(d) 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 (O.C.G.A. § 12-5-20 et seq.).

(e) 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 (O.C.G.A. § 12-5-170 et seq.).

(f) Single-family dwellings shall not be constructed at a density of more than one per acre and no such acre shall be less than 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 date of the adoption of the ordinance from which this article is derived, owned and described as a discrete parcel of real property according to the instrument of title of the person or persons owning the lot on such date.

(2) Any lot of less than one acre, if such a lot was, as of the date of the adoption of the ordinance from which this article is derived, 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 such date.

(3) Any land, or part of any land, which was contained in or subject to any master plan, planned unit development plan, 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 date of the adoption of the ordinance from which this article is derived, pursuant to a duly enacted planning and zoning ordinance; provided further, that any such planning and zoning ordinance must have provided for rules and procedures and governed lot sizes, density, types of buildings, and other limitations usually associated with the implementation of local zoning ordinances.

(g) Multifamily dwellings, in the absence of a public water supply and sewerage system, shall not be constructed at a density of more than four dwelling units per acre. If there is a public water supply and sewage system available to this property, then the density may be increased to no more than six dwelling units per acre. Regardless of which type of system, no such acre shall be less than 100 feet wide at the building site.

(h) Structures shall not extend more than 40 feet, as measured from the highest point

at which the foundation of such structure intersects the ground, above the uppermost point of the crest, summit, or ridge top of the protected mountain on which the structure is constructed. The height restriction in this subsection shall not apply to water, radio, or television towers; to any equipment for the transmission of electricity, to minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires; or to windmills.

(i) Any application for a building permit to construct a commercial structure shall contain a detailed landscaping plan. Such landscaping plan shall:

- (1) Identify all trees which are to be removed that exceed eight inches in diameter as measured at a point on the tree 4 feet above the surface of the ground;
- (2) Contain a plan for replacement of any such trees that are removed; and
- (3) Include a topographical survey of the project 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 subsection shall be construed to require commercial structures to comply with the density provision of subsections (f) and (g) of this section.

(j) No person engaging in land disturbing activity shall remove more than 50 percent of the existing trees that exceed eight inches in diameter as measured at a point on such a tree 4 feet above the surface of the ground, unless such person has filed with the application a plan of reforestation developed by a registered forester.

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

(l) Hazardous waste or solid waste disposal facilities are prohibited from protected mountains. Disposal facilities permitted by the state department of natural resources, environmental protection division, prior to the promulgation of a mountain protection plan shall be exempt from this criterion.

(m) All roads on protected mountains shall be designed and constructed to minimize the potential for landslides, erosion and runoff.

(Ord. of 2-8-2001(1), § IV)

### **Sec. 70-79. Exemptions.**

The following shall be exempted from the provisions of this article:

- (1) Agriculture and forestry on protected mountains provided that:
  - a. Agriculture and forestry activities are consistent with the best management practices established by the state forestry commission or the state soil and water conservation commission;
  - b. Agricultural and forestry activities are consistent with all state and federal laws, and all regulation promulgated by the state department of agriculture.
- (2) Mining activity on protected mountains if such activity is permitted by the state department of natural resources.

(Ord. of 2-8-2001(1), § V)

**Sec. 70-80. Administration and enforcement procedures.**

(a) *Site plans.* Application for a local development permit within the mountain protection district shall include a site plan, drawn at a scale of one inch equals 50 feet by a registered land surveyor or professional engineer licensed by the state with the following information:

(1) A map of all planned excavation and fill, including calculations of the volume of cut and fill involved, cross sectional drawings showing existing and proposed grades. Elevations, horizontal scale, and vertical scale must be shown on the cross sectional drawings.

(2) A map of any wetland boundaries occurring within the site must be provided. This boundary may be included on other maps provided by the applicant.

(3) Location, dimensions and area of all impervious surfaces, both existing and proposed, on the site and adjacent to the site for a distance of 200 feet.

(4) The orientation and distance from the boundaries of the proposed site to the nearest bank of an affected perennial stream or water body.

(5) Elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than two feet; and no greater than one foot for slopes less than or equal to two percent.

(6) Location and detailed design of any spill and leak collection systems designed for the purpose of containing accidentally released hazardous or toxic materials.

(7) All proposed temporary disruptions or diversions of local hydrology.

(8) The site plan shall contain a surveyor's or engineer's certification that the project site is or is not located within a water supply watershed district, a wetlands protection district, the Coosawattee River Corridor Protection District or the mountain protection district, as applicable.

(b) *Activities to comply with site plan.* All development activities or site work conducted after approval of the site plan shall conform with the specifications of the site plan. Significant changes to the site plan that would, alter the amount and velocity of stormwater runoff from the site, increase the amount of impervious surface within the development, alter the overall density of development, result in a considerable increase in the amount of excavation, fill, or removal of the overall appearance of the development as proposed, can be amended only with the approval of the land development officer or his designated appointee. Minor changes, such as the realignment of streets or minor alterations to drainage structures and other infrastructure to meet unexpected conditions are exempted from this requirement.

(c) *Exemptions to site plan requirements.* The following activities and developments are exempt from the requirement for detailed site plans: Repairs to a facility that are part of a previously approved and permitted development.

(d) *Powers of the land development officer.* The land development officer shall have the power to enforce the provisions of this article. The land development officer shall have the authority to issue stop work orders and cite violators of this article to court. The land development officer shall have the power to conduct investigations as reasonably deemed necessary to carry out his duties of enforcing this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of

investigating and inspecting the site.

(e) *Review procedures.* The application shall be made to the land development officer or his designated appointee and will be reviewed within 30 days. At the time of the application, the applicant shall pay a filing fee as specified by the board of commissioners. The review period shall include the preparation of findings (approval, approval with conditions, or disapproval) by the land development officer or his designated appointee. The applicant will receive written notification of the findings of the land development officer or his designated appointee. Decisions of the land development officer or his designated appointee may be appealed to the board of commissioners.

(f) *Duration of permit validity.* The development permit approval shall be valid for one year from the date of approval. If substantial work has not been done on the development within this time period, the development permit approval shall be null and void.

(g) *Penalties and fines for noncompliance.*

(1) When a building or other structure has been constructed in violation of this section, the violator shall be required to remove the structure at the direction of the land development officer.

(2) When removal of vegetative cover, excavation, or fill has taken place in violation of this section, the violator shall be required to restore the affected land to its original contours and to restore vegetation, as far as practicable, at the direction of the land development officer.

(3) If the land development officer discovers a violation of this article that also constitutes a violation of any provision of the Clean Water Act as amended, the land development officer shall issue written notification of the violation to the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the landowner.

(4) Any person who violates any provision of this article, or any permit condition or limitation established pursuant to this article shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section 1-9. Other ordinances incorporated in this article may specify other penalties which shall govern over this section.

(h) *Suspension, revocation.* The land development officer or his designated appointee shall suspend or revoke a permit if he finds that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work set forth in the permit. The land development officer or his designated appointee shall issue written notification of denial, issuance, conditional issuance, revocation or suspension to the applicant.

(i) *Administrative appeals.* Any party aggrieved by any decision of the land development officer may within 30 days thereafter appeal therefrom to the board of commissioners. The appellant shall furnish the land development officer written notification of appeal specifying the judgement of decision from which appeal is taken. A decision by the board of commissioners shall be the final administrative appeal and their decision shall be carried out by the land development officer.

(j) *Judicial review.* All final decisions of the board of commissioners concerning denial, approval, or conditional approval of a permit shall be reviewable in the superior court of the county.

(k) *Amendments.* This article and the mountain protection district map may from time to time be amended in accordance with procedures and requirements in the general

statutes and as new information becomes available.

(i) *Relief assessment.* Assessors and boards of assessors shall consider requirements of these regulations in determining the fair market value of land.

(m) *Variances.*

(1) *When issued.* The board of commissioners may authorize, upon appeal in individual cases, variances from the terms of this article as will not be contrary to the public interest. Variances will only be issued in cases where, owing to special conditions, a literal enforcement of the provisions of this article will result in unnecessary hardship. Such variance may be granted in individual cases of practical difficulty or unnecessary hardship only upon a finding by the board of commissioners that all of the following conditions exist:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;

b. The application of this article to the particular piece of property would create an unnecessary hardship;

c. Relief if granted, would not cause substantial detriment to the mountains of the county or impair the purposes and intent of this article;

d. The special circumstances surrounding the request for a variance are not the result of acts by the applicant; and

e. The variance is not a request to permit a use of land, buildings or structures that is not permissible in the district involved.

(2) *Conditions.* The board of commissioners may, as a condition of the variance to certain provisions of this article, require that alternative measures be taken by the applicant such that the purposes of this article may be achieved through alternative means.

(Ord. of 2-8-2001(1), § VI)

## ARTICLE I. IN GENERAL

**Sec. 50-1. Collection of tax on harvested timber.**

- (a) This section is adopted for the purpose of establishing and adopting a standard procedure requiring notice of the startup of timber harvest activities in the county and enforcement provisions for the violation of this section.
- (b) The timber harvesting contractor shall give written notification to the office of the tax assessor within 48 hours after the startup (moving in of equipment or cutting of any trees). Such notice shall be in the following form:

*Notification of Harvesting*

TABLE INSET:

Harvesting Contractor: _____		
Contact Person: _____		
Address:		
City: _____	State: _____	Zip: _____
Telephone Number: _____		
Landowner: _____ Location: _____		
Beginning Date: _____ Estimated Ending Date: _____		
Oral Notification of Completion Date: _____		

At the completion of harvesting of the timber identified in the notification form, the contractor shall give oral (phone call sufficient) notification of such completion.

- (c) For failure to comply with the reporting requirements in subsection (b) of this section the penalty for first offense shall be a fine of \$100.00 and subsequent offenses shall be fines not to exceed \$500.00.
- (d) This section shall be enforced by the county. Citations for violations shall require appearance before the magistrate court of the county.

(Ord. of 7-14-1994, §§ 1-3)

**Sec. 50-2. Ad valorem tax foreclosures.**

- (a) The board of commissioners hereby declares that it will follow the requirements as set forth in O.C.G.A. § 48-4-75 et seq. relating to tax sales, regarding judicial in rem foreclosures of tax executions.

(b) The duly elected tax commissioner shall have the authority to commence tax foreclosure and through the county attorney to file petitions with the county superior court in accordance with O.C.G.A. § 48-4-75 et seq. relating to tax sales.

(Ord. of 5-22-1997)

Secs. 50-3--50-30. Reserved.