

**RIO ARRIBA COUNTY  
TIMBER HARVEST  
ORDINANCE**

**1998-05**

# **RIO ARRIBA COUNTY ORDINANCE No. 1998-05**

## **Article I. Title**

This ordinance shall be known as the "Rio Arriba County Timber Harvest Ordinance."

## **Article II. Purpose**

This ordinance is intended to protect, maintain and restore fully functional forests and streams, rivers, watersheds and acequias while permitting the harvest of forest goods; to protect against immediate and long range threats to the quality of the Rio Arriba County's water; to preserve local customs, culture and traditions; to preserve the bosques from harm and exploitation; to protect landowners and the property value of timberlands; to encourage the location of compatible uses of land; to promote sustainable logging practices; to encourage logging operations within Rio Arriba County; and to protect the health, safety and welfare of the citizens of Rio Arriba County.

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### **Article III. Statutory Authority**

The Rio Arriba Board of County Commissioners (“board of county commissioners”) is authorized to adopt this ordinance pursuant to NMSA 1978 §3-21-1 through 3-21-12 (zoning authority), and NMSA 1978 §4-37-1 through 4-37-9 (powers granted to counties to provide for the welfare of their inhabitants). NMSA 1978 68-2-1 to 50

### **Article IV. Jurisdiction, Application, Severability and Conflicting Provisions**

**A. Jurisdiction:** This ordinance shall apply to the unincorporated areas of Rio Arriba County. This ordinance does not apply to timber harvests on state and federal lands and Indian reservations. Federal agencies must consider the requirements of this ordinance as well as the Rio Arriba County Design and Development Regulation System. Ordinance No. 1996-01, under the National Environmental Policy Act 42 U.S.C. Section 4321, et.seq. and its implementing regulations at 40 C.F.R. Part 1500. (See Appendix II.)

**B. Application:** No timber harvest is allowed within Rio Arriba County after the effective date of this ordinance without a valid permit issued by the Rio Arriba County Planning and Zoning Department, except for those harvests which are exempt from the provisions of this ordinance under Article IV. Section (A) below or under Art. VI, Sec. (B) (2).

**C. Severability:** If any part of or any application of this ordinance is held invalid, the remainder of its application in other instances or persons shall not be affected.

**D. Conflicting Provisions:** Should a conflict exist between any limitation or requirement within this ordinance or in any other ordinance, regulation or law, the more restrictive limitation or requirement shall prevail.

### **Article V. Definitions**

1. Affected person or interest: Aggrieved person, corporation, partnership or other entity residing in, or owning property in, or doing business in Rio Arriba County who is directly affected by a decision of the Planning and Zoning Department, the Planning Committee or the Board of County Commissioners made with respect to the approval or denial of a THP and who alleges direct injury to their quality of life or property, and who alleges any error or illegality with respect to the approval or denial of a THP.

2. Applicant: Person, corporation, partnership or other entity who is in the process of applying for, or determining the requirement for, a permit. *See* Permittee.

3. Archeological, Cultural and Historic Resources: Structure, place, site or object having archeological, scientific, architectural, historic or other cultural significance as defined by The NMSA 1978 Section § 18-6-3, Cultural Properties Act.

4. Basil area: Cross sectional area of wood on a plane measured at four and one half feet (4.5) above ground and expressed in square feet per acre.

5. Buffer zones: Area of protection on either side of a stream or other watercourse.

6. Clear cutting: Harvest technique involving the removal of all trees from the area in question (such as one acre or a cutting unit) and leading to the establishment of an even-aged stand composed of naturally or artificially established trees not there before the cutting. This method is appropriate only to those species capable of establishment in conditions of full exposure .

7. Commercial Operator: Person, association, partnership or corporation engaged in the harvest of trees of any species within Rio Arriba County.

8. Community impacts: Effects of a timber harvest that will or may create an identifiable trend or set of conditions on county property or infrastructure or private property or the public health, safety and welfare.

9. Controlled burn: Within the context of these regulations, a fire started intentionally and overseen by a professional forester or timber operator for a definite purpose.

10. County: Rio Arriba County, New Mexico.

11. Culvert: Conduit, usually a corrugated pipe, constructed beneath a road.

12. Cutting Unit: Area of 25 acres or more but not more than 300 acres based on the topography of the area to be harvested, the number of persons to be engaged in the harvest, transportation, climate, and other relevant factors. Any area larger than 300 acres should be divided into two or more cutting units, each totaling less than 300 acres.

13. Damaged Trees: Trees that are 3 feet and above in height that have been knocked down or damaged to the extent that mortality or serious deterioration will occur, and such trees partially pushed over so as to result in permanent lean and visible damage to the root system, all as a result of the permittee's operation.

14. Deficient Condition: Treatment of slash, utilization of tree stems, erosion prevention re-vegetation, or regeneration action, or any other action not in conformance with this Ordinance.

15. Environmental Assessment: Statement which is supplemental to, and incorporates a Timber Harvest Plan, that identifies the effects of the proposed timber harvest on the

environment, public and private property and infrastructure, and the public health, safety and welfare which the Planning and Zoning Department will require under some circumstances in order to make an informed decision regarding the Timber Harvest Permit application.

16. Environmental impacts: Effects of a timber harvest that will or may create an identifiable trend or set of conditions on the historic and natural resources of the county.

17. Erosion control plan: Plan to be included in a Timber Harvest Permit application that shows how the drainage facilities; soil stabilization methods; water crossings; and roads, skid trails, and yarding areas will be designed and located to minimize surface and mass erosion, gullyng, channel erosion and siltation of watercourses.

18. Excessive Slope: Slope of greater than forty percent over a continuous ground distance of eighty yards or more.

19. Exempt harvests: Harvest of 25 acres or less in size by any landowner or landowners on a parcel of land within a calendar year where there are no militating factors due to site-specific conditions or harvesting methods; harvests of dead, dying, diseased trees below 10 % volume of timber per acre with no militating factors due to site-specific conditions or harvesting methods. *See* Militating factors, site -specific conditions, harvesting methods.

20. Exotic species: Species of plant, tree, animal, bird or insect which is not native to a particular area.

21. Fell: To sever or cut a tree at its stump.

22. Forest: Ecosystem dominated by trees.

23. Forest products: Timber products such as raw logs for processing into lumber.

24. Harvest area or permit area: Area of land indicated on an applicant's map submitted with his application, state timber harvest permit or application and approved by the Planning and Zoning Department and attached to the Timber Harvest Permit showing the area where a permittee may lawfully engage in timber harvesting and related activities.

25. Harvest methods: Process used to cut and remove timber. Common harvest selection methods include:

(A) Seed-tree: a harvest technique which creates conditions similar to that of a clear-cut with the exception of the retention of a limited number of trees (singly or in clumps) within the harvested area to provide seed for a new generation of trees.

(B) Shelterwood: Harvest technique involving a series of cuts with retention of trees within the harvest area for the purpose of: 1) providing seed for a new generation of trees; and 2) altering light conditions on the ground to create appropriate conditions for germination and establishment of seedlings. Shelterwood harvests typically lead to the creation of even-aged stands, although some variations may eventually result in uneven-aged stands.

(C) Selection: Harvest techniques designed to create uneven-aged stands and maintain high forest cover across the landscape. Individual Tree Selection and Group Selection are the two dominant methods utilized within selection systems, and are indicative of the size of canopy gaps created during harvest. The choice of method would be determined by the regeneration requirements of the species in question (i.e., shade, sunlight, moisture, temperature).

(D) Salvage: Harvest of trees that have been or are in imminent danger of being killed or damaged by injurious agencies (fire, insects, disease, etc.) other than competition between trees. *See* Clear cutting, High grading, Thinning.

26. High-grading: Removal of only those trees with the highest economic value.

27. Landing: Place where logs are assembled in or near the forest for further transport, commonly with a change in method and over a long distance.

28. Landowner: Person, entity, or agent owning or having legal control of the use of real property within Rio Arriba County.

29. Legal non-conforming use: In the context of these regulations, an otherwise lawful use of land that which began prior to the effective date of this ordinance and which does not currently comply with applicable permitting or performance standards.

30. Log: 1) to cut and deliver logs or boles; 2) the bole or any segment of the bole (sometimes the thicker branches) of a felled tree.

31. Main Haul Road: Road which by reason of ease of access, column of traffic or other relevant condition is used for or facilitates the hauling of logs or equipment.

32. Management objectives: Property or timber owner's statement of the goal to be achieved by a proposed timber harvest, such as short-term or long-term income, forest regeneration, forest conversion, etc.

33. Militating factors: In the context of these regulations, factors that if present would require a Timber Harvest Permit for an otherwise exempt timber harvest of 25 acres or less. Some examples of militating factors include the presence of slopes of 40 percent grade or greater, unstable soils, and proximity to an acequia or other watercourse.

34. Multiple Cutting Unit Permit: Harvest permit for an area with two or more designated cutting units.

35. Non-timber resources: Watersheds and water courses, soils, vegetation, wildlife, and other natural resources and historic sites or structures present on property where a timber harvest is located.

36. Old growth: Timber stands dominated by mature trees.

37. Permittee: Person, corporation, partnership or other entity who holds a permit. *See*

Applicant.

38. Pests: Insects and pathogens that are capable of harming trees, such as dwarf mistletoe, bark beetles, spruce budworms, and root diseases.

39. Planning and Zoning Department: Rio Arriba County Planning and Zoning Department.

40. Planning staff: Director and staff of the Rio Arriba County Planning and Zoning Department.

41. Professional forester: Individual with formal education or appropriate technical or practical training or experience who is engaged in the art, science, business, or profession of forest management.

42. Proof of Ownership: Warranty deed and survey plat, affidavit or other document with sufficient legal description of real property evidencing a right to possess land upon which a commercial forest species is found.

43. Qualified timber operator: Individual who in the course of working on timber harvests over a period of several years for himself or others, and has acquired expertise in logging in accordance with applicable management plans, regulations and permit requirements.

44. Regeneration, Restoration: Human assistance of natural processes to re-establish forest composition, often accomplished through restocking, reseeding and logging road closure.

45. Riparian: Banks and adjacent environment of springs and seeps, watercourses, lakes and wetlands.

46. Second growth: Timber growth that comes up after removal of a mature stand by harvest, fire or other causes.

47. Silviculture: Science of forest management; the theory and practice of controlling forest establishment, composition and growth.

48. Site-specific conditions: Applicable to a given area, such as militating factors or characteristics related to a particular forest location.

49. Skid: Moving of logs or felled trees from the stump to a point of loading..

50. Skid Trail: Road or trail built for log skidding.

51. State Agencies: Including but not limited to NM Department of Environment, NM Highway Department, NM State Engineer, NM Department of Cultural Affairs, NM Energy, Minerals and Natural Resources-Forestry Division.

52. Stand: Contiguous group of trees sufficiently uniform in age class distribution,

composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

53. Steep slopes: Slopes in excess of 40 percent grade.

54. Sustainable forestry: Method of forestry that seeks to balance resource use with long-term availability and productivity. Sustainable forestry seeks to meet the needs of the present, without compromising the ability to meet the needs of the future.

55. Thinning: Timber cut done for purposes of enhancing the growth of the residual tree stand and for fire protection and not for regeneration of the forest. A thinning operation shall not result in the diminishment of existing or residual stands in terms of age class or size class. The primary focus of a thinning operation should be on the removal of the smaller, weaker trees of the stand. Thinning does not include selective harvesting of high-grade trees. See High-grading.

56. Timber harvest: Cutting of trees for market or forest management purposes.

57. Timber Harvest Permit: Written authorization issued by the Rio Arriba County Planning and Zoning Department to harvest timber within the county pursuant to the requirements of this ordinance and under any conditions of approval imposed by the county.

58. Timber Harvest Plan (THP): Statement of a timber harvest's location and size, harvest method used, and description of design and construction of roads and drainage systems, erosion control practices, restoration of the harvest area and other information required by these regulations. The THP shall be written, appropriate to the scale and intensity of the operations, and kept up to date. The long term objectives of management, and the means of achieving them, shall be clearly stated.

59. Under story: Vegetation below the forest canopy.

60. Unstable soils: Soils that are severely susceptible to erosion by wind, water or other eliminates of the environment that are susceptible to landslides as shown on U.S. Natural Resources Conservation Service soil survey maps for Rio Arriba County.

61. Utilization: Removal of whole trees, tree stems or portions of trees from the cutting unit.

62. Water Bar: Drainage structure such as a ditch, mounded earth, or staked log, installed on a road or skid trail at an approximate thirty degree down slope angle which diverts surface water runoff into adjacent undisturbed areas.

63. Water Course: Stream of water or the bed of a stream.

64. Waiver: Specific exemption from a regulation granted in writing by the County. Requests for a waiver must be submitted in writing and signed by the applicant and the landowner.

65. Watershed: Area drained by a system of streams and springs.

66. Yarding (or landing): Place where logs are collected.

## **Article VI. Permit Application Requirements and Procedures**

### **A. Pre-Application Conference**

1. Landowners or their agents, (referred to as “applicants”) shall meet with county planning staff prior to beginning work on a proposed timber harvest to determine whether a permit is required for a proposed harvest. At the conference, applicants shall generally describe the size and location of the proposed harvest with reference to acequias and other watercourses, public roads, communities or other landmarks; describe the geology and topography of the site of the proposed timber harvest with reference to United States Geological Survey 7.5 minute quadrangle or 1:24,000 scale maps and the U.S. Natural Resources Conservation Service soil survey maps for Rio Arriba County; and, disclose the name of the land owner or timber operator and the professional forester or qualified timber operator who will be conducting the harvest and preparing the Timber Harvest Plan (THP).

2. Based upon the information received at the pre-application conference, the Planning and Zoning Department shall make an initial determination whether an applicant must apply for a Timber Harvest Permit. If so, planning staff shall provide the applicant with a copy of this ordinance and advise the applicant of all required submissions and notice requirements.

### **B. Timber Harvest Plan**

#### **1. Projects Requiring a Timber Harvest Plan**

(a) A Timber Harvest Plan (THP) shall be prepared for all proposed timber harvests within Rio Arriba County unless the proposed harvest falls within one of the exceptions under Art. IV, Sec. A or under paragraph (2) below.

(b) Issuance of a Commercial Harvest Permit by the New Mexico Energy, Minerals and Natural Resources Forestry Division does not require Rio Arriba County to issue a Timber Harvest Permit where the proposed timber harvest would violate the terms, conditions, intent or requirements of this ordinance.

#### **2. Exceptions from the THP Requirement**

(a) Christmas tree harvests, firewood cutting or gathering for personal use and other wood products harvesting under 25 acres by any landowner or landowners on a parcel of land where there are no militating factors due to site-specific conditions or harvesting methods; harvests of dead, dying, diseased trees below 10 % volume of timber per acre with no militating factors due to site-specific conditions or harvesting methods. One permit, 25 acres or less per year within the same area shall be approved administratively with application for review to the Planning Department to insure adequate water coarse protection.

(b) Active timber harvests in production as of the effective date of this ordinance are to treated as legal non-conforming uses. These harvest are not to be permitted to expand or enlarge

operations beyond the area under harvest on the effective date of ordinance without a valid permit issued pursuant to these regulations.

### **3. Persons Qualified to Prepare a THP**

A THP shall be prepared by a professional forester or qualified timber operator and shall comply with these regulations as set forth in Article VI of these regulations.

### **4. Contents of the THP**

(a) Name, address, telephone number of property owner and timber owner (if different from the property owner) of the site of the proposed harvest; and name, address, telephone numbers and resume or work history of timber operator or professional forester.

(b) Legal description of proposed harvest site by section, township and range or other commonly used system; disclosure of acreage to be harvested and the extent of the harvest in terms of board feet to be removed or basal area per acre to be left in the harvest area; an inventory of the forest types and timber resources on the harvest site; and, a narrative description of non-timber resources, including wildlife, water, soils, Under story vegetation, and known archeological, cultural and historic resources. Information, maps, diagrams, or photographs showing or describing the locations of archeological resources shall remain confidential pursuant to NMSA 1978 §18-6-11.1.

(c ) Management objectives, species selection, and type of forest products to be harvested. Management objectives shall clearly describe strategies and prescriptions for meeting the owner's objectives within the context of the forest's long-term sustainability.

(d) Description of applicant's choice of harvest system and equipment to be used.

(e) Descriptions and maps of logging roads to be used or developed; means of crossing or avoiding watercourses or wetlands; construction design and placement of roads, water crossings and landings; and, any necessary maps of public roads and routes to be used for hauling logs showing applicable seasonal weight rights of way or easements for crossing another's property. Applicants must also provide descriptions limits.

(f) Erosion Control Plan showing drainage facilities; soil stabilization methods; water crossings; and showing how roads, skid trails, and yarding areas will be designed and located to minimize surface and mass erosion, gulying, channel erosion and siltation of watercourses. Design and construction of roads and drainage systems shall be prepared in compliance with Water Quality Protection Guidelines for Forestry Operations in New Mexico, New Mexico Energy, Mineral and Natural Resources Department (March 1983).

(g) A Regeneration plan for the site of proposed harvest, except for thinning operations, and the estimated cost of regeneration. The regeneration plan shall be prepared in compliance with Water Quality Protection Guidelines for Forestry Operations in New Mexico, New Mexico Energy, Mineral and Natural Resources Department (March 1983).

(h) Fire management plan addressing fire prevention and suppression plans.

(i) Map, USGS 7.5 minute quadrangle or 1:24,000 scale showing: Harvest area boundaries, boundaries or regeneration area, yarding area, public roads to be used for hauling, existing and proposed logging roads and water crossings, locations of all watercourses or acequias on property, location of unstable soils and steep slopes, steep slope and riparian buffer zones.

(j) Application for, or copy of, Commercial Harvest Permit submitted to or issued by the New Mexico Forestry Division.

### C. Performance Standards

The Planning and Zoning Department shall consider the following performance standards in evaluating each application for a Timber Harvest Permit. All Timber Harvest Permit applications shall address means of achieving the performance standards.

**1. Sustainability of Timber Production:** The long-term sustainability of timber production in Rio Arriba County is declared to be beneficial to the public health, safety, welfare and economic well-being. Clear cutting without a valid sivicultural purpose is prohibited without a variance granted pursuant to this ordinance. Timber harvests using the seed tree method are strongly discouraged. Thinning of small diameter trees is strongly encouraged during before or after saw timber harvest. (Thinning)

**2. Economic Development and local employment:** Rio Arriba County hereby encourages sustainable timber harvesting, local employment and value added production of forest products on-site or in the neighboring communities to stimulate and maintain rural economic development.

**3. Water Quality and Availability:** All timber harvests permitted under this ordinance must include adequate buffer zones, terrain management and erosion control measures and well-designed roads, landings and water crossings to protect quality and availability.

The minimum standards for riparian buffer zones are as follows:

<u>Slope of Land</u>	<u>Buffer Strip Width,</u>
<u>Above Watercourse</u>	<u>Each Side of Stream or Other Body of Water</u>
0%	50 feet
10%	70 feet
20%	90 feet
30%	110 feet
40%	130 feet

New Mexico Standards for Interstate and Intrastate Streams shall be met or exceeded. Management activities, including harvesting and road building, should not cause a water body to fail to meet its designated use as defined in the state water quality standards. Forest operations near a water body that fails to meet state water quality standards for its designated use should not

cause further deterioration of water quality and should take steps to improve water quality. Logs shall not be skidded across streams or watercourses or through vernal pools or wetlands.

Timber harvests shall leave a residual stand of trees of not less than an average of 60 square foot Basil area per acre in trees 9 inches in diameter or greater at breast height.

**4. Soil Protection:** Timber harvests on slopes of 40 percent or more, or in unstable soils, are prohibited unless a variance is granted pursuant to this ordinance.

**5. Logging Roads and Hauling:** Logging roads, skid trails, water crossings and landing areas shall be designed and located so as to minimize soil disturbance and compaction, erosion and unnecessary vegetation and ground cover removal. Proposed locations of skid trails and logging roads shall be indicated in the permit application. Design of logging roads and drainage systems shall comply with Water Quality Protection Guidelines for Forestry Operations in New Mexico, New Mexico Energy, Mineral and Natural Resources Department (March 1983). Logging roads should be 15 feet wide. Landing areas should be one-quarter acre in size.

Logging trucks transporting forest products from the harvest site shall not violate any applicable or seasonal weight limits for public roads.

**6. Harvest Selection, Harvesting Techniques, Residual Stand Protection, Old Growth Management, Reforestation and Restocking, Management of Waste and Slash,**

(a) Common harvest selection methods include:

(i) Seed-tree: a harvest technique which creates conditions similar to that of a clear-cut with the exception of the retention of a limited number of trees (singly or in clumps) within the harvested area to provide seed for a new generation of trees.

(ii) Shelterwood: a harvest technique involving a series of cuts with retention of trees within the harvest area for the purpose of: 1) providing seed for a new generation of trees; and 2) altering light conditions on the ground to create appropriate conditions for germination and establishment of seedlings. Shelterwood harvests typically lead to the creation of even-aged stands, although some variations may eventually result in uneven-aged stands.

(iii) Selection: harvest techniques designed to create uneven-aged stands and maintain high forest cover across the landscape. Individual Tree Selection and Group Selection are the two dominant methods utilized within selection systems, and are indicative of the size of canopy gaps created during harvest. The choice of method would be determined by the regeneration requirements of the species in question (i.e., shade, sunlight, moisture, temperature).

(iv) Salvage: harvest of trees that have been or are in imminent danger of being killed or damaged by injurious agencies (fire, insects, disease, etc.) other than competition between trees.

(v) Thinning: A timber cut done for purposes of enhancing the growth of the residual tree stand and for fire protection and not for regeneration of the forest. A thinning operation

shall not result in the diminishment of existing or residual stands in terms of age class or size class. The primary focus of a thinning operation should be on the removal of the smaller, weaker trees of the stand. Thinning does not include selective harvesting of high-grade trees.

(vi) High grading: Which is the removal of only those trees with the highest economic value, without a valid silvicultural basis, is prohibited in order to preserve the long-term sustainability and viability of timber resources within Rio Arriba County.

(b) Timber harvest is to be conducted in such a way so as to avoid or minimize harm to the remaining trees on the property along skid trails and corridors.

(c ) All old-growth stands should be identified and managed to preserve old-growth characteristics.

(d) Harvested areas shall be restored by restocking or reseeded. Where tree planting occurs, emphasis shall be on native, locally-sourced species, rather than exotics, or extra-regional genetic stock. The restocking requirement does not apply to thinning operations.

(e) Slash shall be used to the extent possible. Slash need not be burned at the harvest site, and may be used for firewood, lopped and scattered, or treated mechanically, so long as the slash treatment does not create or increase fire hazard or impair forest restoration methods.

(f) Chemicals, containers, liquid and solid non-organic wastes including fuel and oil shall be disposed of in an environmentally appropriate manner at off-site locations.

(g) Multiple Cutting Units: Unless specifically authorized by the Rio Arriba County Planning and Zoning, no commercial operator harvesting under a multiple unit permit shall commence harvest activities in a third unit unless all slash, water barring and utilization treatments have been completed on either of the previous two active units. Similarly, no commercial operator shall be allowed to fell timber in more than two cutting units at one time.

**7. Archeological, historic and cultural resources:** Applicants should make systematic efforts to identify areas of archeological, cultural, or historical significance, and to implement mechanisms to ensure that timber harvests do not damage such sites, and to incorporate protection of such sites into timber harvest plans and operations. The New Mexico Office of Cultural Affairs may be consulted for the purposes of surveying, recording, assessment and establishment of areas set aside for preservation.

## **8. Abatement of Noise, Dust, Smoke, and Traffic**

(a) Timber harvests should be operated in such a manner so as to minimize dust and smoke emissions and noise.

(b) Traffic generated by timber harvests shall not create a threat to the public health,

safety or welfare or cause deterioration to county roads, culverts or bridges without compensation to the county for necessary improvements or repairs to county roads made necessary by the timber harvest or related activities, subject to the existing condition of the roads prior to the initiation of hauling timber from the harvest area.

**9. Hours of Operation:** Hours of operation may be regulated due to forest fire danger or to protect the public health, safety and welfare of county residents.

**10. Compatibility with Adjacent Land Uses:** The planning staff, planning committee and Board of County Commissioners shall consider the compatibility of the proposed timber harvest with adjacent land uses.

### **11. Combined Assessment of Individual Applications or Existing Harvests**

(a) Planning and Zoning Department shall also review applications and existing harvests to determine whether, based upon the identity, relationship or affiliation of the applicants or permittee and the location of the proposed, permitted or exempt timber harvests, two or more pending or existing permits or exempt harvests should be considered to be a common plan or scheme of operation undertaken by an applicant, or permittee, or groups of applicants or permittees or operators of existing exempt harvests, to harvest timber.

(b) Purpose of a combined assessment is to determine whether such a common plan or scheme of operations exists, and if so, to identify, analyze and disclose the effects of the harvests on the environment, public and private property and infrastructure, and the public health, safety and welfare.

(c) The Planning and Zoning Department may order an applicant to prepare an Environmental Assessment pursuant to this ordinance upon a finding that the proposed and existing harvests, when assessed together, would have significant effects on the environment, public and private property and infrastructure, and the public health, safety and welfare.

### **D. Fees and Performance Bond**

**1. Application Fees:** The application and review fee shall be \$100.00. The Planning and Zoning Department may set a graduated fee scale for review of THP applications depending on the size and complexity of the application or proposed harvest.

**2. Plan Review Fee:** Planning staff may have a THP reviewed by a qualified professional forester to be agreed upon by the Planning and Zoning Department and the applicant, the cost of which shall be paid by the applicant.

**3. Performance Bond:** Applicants shall post a bond equal to the cost of restoration of the timber land as set forth in the THP. The board of county commissioners, upon recommendation of the Planning and Zoning Department, may seek forfeiture of the bond in the event of failure to comply with restoration plan. The forfeited bond shall be used only to cover forest restoration costs.

## **E. Effective Life of THP's and Timber Harvest Permits**

A THP and Timber Harvest Permit shall be effective for the duration of the harvest; or, for three years from the date of issuance if no timber is harvested pursuant to the plan.

## **F. Amendment of THP's**

1. The Permittee must submit an Amended THP to the Planning and Zoning Department to reflect changes in land ownership of the site of the harvest; or discovery of previously unknown springs, watercourses, or archeological, cultural or historic resources; or expansions in the area of the permitted harvest area unless exempted by Article VI, Section (F) (4) below; or to reflect other significant changes in the information provided under Article VI, Section B (4).

2. The THP may be periodically revised to incorporate the results of monitoring or new scientific and technical information, as well as to respond to changing environmental, social and economic circumstances.

3. The Planning and Zoning Department may issue an Amended Timber Harvest Permit upon approval of an application for an amendment. Amendments involving significant changes in size, method or intensity of the harvest may require review by the Planning Department and Planning Committee and approval by the County Commission pursuant to Article VI, Section G through K. The determination of whether a proposed permit amendment will require further review shall be made at the discretion of the code administrator.

4. A THP does not need to be revised if a single proposed expansion is less than 10 percent of the permitted harvest or less than 25 acres, whichever is less. The Permittee must submit an Amended THP pursuant to this section for any further expansions.

(a) The Permittee shall give the Planning and Zoning Department written notification of the proposed expansion exempt from the requirement to prepare and submit an Amended THP.

(b) In cases where there are site specific militating factors present in the proposed harvest expansions area, the Permittee shall prepare an Amended THP for review and approval by the Planning and Zoning Department. Such proposals may also require preparation of an Environmental Assessment pursuant to Article VI, Section H where the Planning and Zoning Department finds that the proposed harvest expansion would have significant environmental or community impacts.

(c) The Permittee shall not begin harvesting or harvest related operations within the proposed expansion area until the Planning and Zoning Department issues a memorandum recording the proposed expansion that is exempt from the requirement to prepare and submit an Amended THP under this section.

## **G. THP Application Notice, and Public Participation Requirements**

1. The Code Administrator shall hold a public meetings with the affected community to determine whether a THP shall be issued pursuant to this ordinance. The meeting will be informal in nature and the code administrator or designee has the discretion to limit the length and scope of testimony offered at the meeting.

2. Applicants shall send notice of the place, date and time of the public meeting on the THP application by certified mail return receipt requested to all property owners adjoining the exterior boundaries of the property to be harvested and to any potentially affected areas as determined by the Planning Department. Certificates of receipt shall be submitted to planning staff prior to the hearing on the application.

3. If the proposed harvest is located on or in the watershed of a stream, river, acequia or other body of water used for irrigation purposes, the Applicant shall also notify the mayordomos of all downstream acequias within the immediate area of the THP application and public meeting place, date and time for the application in person or by certified mail return receipt requested. Certificates of receipt shall be submitted to planning staff prior to the hearing on the application.

4. The applicant shall also post notices of the THP application and the place, date and time of the public meeting in a conspicuous place on the nearest public road to the proposed harvest, and also at the nearest post office serving the area in which the proposed harvest is located. Such notices placed on public roads shall be at least 18 inches by 24 inches in size with a light background and dark lettering and shall also comply with applicable state or local laws, ordinances, or regulations regarding size, placement, text, or appearances. Statements of notification shall be submitted to Planning Staff prior to the public meeting of the application.

5. The public meeting on a THP application shall be held within fifteen (15) days of receipt of the application by the Planning and Zoning Department. The applicant shall comply with the notice requirements in paragraph 2, 3, and 4 above no later than ten (10) days before the date of the public hearing.

6. Persons, associations, organizations, corporations or others affected by a proposed timber harvest may also file written comments on the THP application with the Planning and Zoning Department.

7. The Planning and Zoning Department may coordinate and consult with any state, local or federal agency for technical assistance in the application process.

## **H. Staff Recommendation Upon Review of Application**

**1. Recommendation of approval:** Upon review of a complete application and consideration of public comment, the Planning and Zoning Department may recommend issuances of a Timber Harvest Permit. The department shall have ten (10) working days after submission of a THP application to determine whether an application is complete. Incomplete applications shall be sent back to the applicant. The Planning and Zoning Department shall make a decision on the application and issue a decision within five (5) working days of receipt of a complete application.

**2. Finding of Significant Impact; Requirement to Prepare an Environmental Assessment:** Upon review of a complete application and consideration of public comment, and finding that a proposed timber harvest will or may have a significant effect on watercourses or acequia systems, county or private property, other natural or historic resources, or the public health, safety and welfare, the Planning and Zoning Department may order an applicant to prepare an Environmental Assessment in compliance with Appendix I of this ordinance and Paragraph I below.

**3. Denial:** Upon review of the completed application and consideration of public comment, and finding that granting the permit application would significantly impair or jeopardize the public health, safety and welfare, the Planning and Zoning Department may deny a Timber Harvest Permit application.

#### **I. Preparation of an Environmental Assessment**

1. An applicant may be required to prepare an Environmental Assessment (EA) for a proposed harvest when the Planning and Zoning Department, upon review of the THP application, finds that the proposed harvest would cause a significant environmental impact. The department's findings shall be in writing and fully state the nature and significance of the environmental impact and the legal or factual basis for the finding.

2. An EA shall be appropriate to the scale, intensity of the timber harvest, and the uniqueness of the affected resources. EAs shall include watershed-level considerations as well as the impacts of on-site harvest and processing facilities. Environmental impacts shall be assessed prior to commencement of site-disturbing operations. The EA shall be a supplement to and incorporate the THP.

#### **J. Staff Decision Upon Review of an Application and EA**

**1. Recommendation of Approval:** Upon review of the complete application and EA and completion of hearings and the period for public comment, the Planning and Zoning Department may issue a Timber Harvest Permit. The Planning and Zoning Department shall make a decision on the application and Environmental Assessment and issue a decision within five (5) working days of their receipt by the department.

**2. Denial:** Upon review of the completed application and EA and consideration of public comment, and finding that granting the permit application would significantly impair or jeopardize the public health, safety and welfare, the Planning and Zoning Department may deny a Timber Harvest Permit application.

#### **K. Planning Staff, Planning Committee and County Commission Action on THP Applications**

1. The Planning Staff shall have ten (10) working days in which to review the application for completeness. If the application is deemed complete it shall proceed for processing before the respective county governmental bodies. If it is deemed incomplete, the Planning Staff will notify the applicant in writing of the deficiencies. The application will not again be reviewed until a complete application is submitted.

2. The Planning and Zoning Committee shall review and recommend approval or denial of all THP applications after the Planning and Zoning Department has made its recommendation on the application.

3. The applicant shall provide fifteen (15) days notice of the Planning and Zoning Committee's consideration of the THP application as follows:

(a) Applicants shall send notice of the THP application and its place and date of consideration by the Planning Committee by certified mail return receipt requested to all property owners adjoining the exterior boundaries of the property to be harvested and to any potentially affected areas as determined by the Planning Department. Certificates of receipt shall be submitted to planning staff prior to the Planning Committee's consideration of the application.

(b) If the proposed harvest is located on or in the watershed of a stream, river, acequia or other body of water used for irrigation purposes, the Applicant shall also notify the mayordomos of all downstream acequias of the THP application and its place and date of consideration by the Planning and Zoning Committee. Notice shall be in person or by certified mail return receipt requested. Statements of notification or certificates of receipt shall be submitted to planning staff prior to the Planning Committee's consideration of the application.

(c) The applicant shall also post fifteen (15) days notice of the THP application and its place and date of consideration by the Planning and Zoning Committee in a conspicuous place on the nearest public road to the proposed harvest, and also at the nearest post office serving the area in which the proposed harvest is located. Such notices placed on public roads shall be at least 18 inches by 24 inches in size with a light background and dark lettering and shall also comply with applicable state or local laws, ordinances, or regulations regarding size, placement, text, or appearances. Statements of notification shall be submitted to planning staff prior to the Planning Committee's consideration of the application.

(d) A notice stating the Planning Committee will consider a THP application shall be published in a newspaper of general circulation serving Rio Arriba County at least once no later than 15 days prior to the date of the meeting at which the Planning Committee will hear the application. The published notice shall state the applicant's name, location of proposed timber harvest and the place and date of the Planning commission's consideration of the application. A copy of the notice shall be submitted to planning staff prior to the hearing on the application.

4. The Rio Arriba Board of County Commissioners shall make the final decision on whether to approve or approve with conditions or deny a THP.

5. The applicant shall provide notice of the County Commission's consideration of the THP application as follows:

(a) Applicants shall send notice of the THP application and its place, date and time of consideration by the County Commission fifteen (15) days prior to the meeting deadline by certified mail return receipt requested to all property owners adjoining the exterior boundaries of the property to be harvested and to any potentially affected areas as determined by the Planning Department. Certificates of receipt shall be submitted to planning staff prior to the County

Commission's consideration of the application.

(b) If the proposed harvest is located on or in the watershed of a stream, river, acequia or other body of water used for irrigation purposes, the Applicant shall also notify the mayordomos of all downstream acequias of the THP application and its place and date of consideration by the County Commission. Notice shall be in person or by certified mail return receipt requested. Statements of notification or certificates of receipt shall be submitted to planning staff prior to the County Commission's consideration of the application.

(c) The applicant shall also post notices of the THP application and its place and date of consideration by the County Commission in a conspicuous place on the nearest public road to the proposed harvest, and also at the nearest post office serving the area in which the harvest is 18 inches by 24 inches in size with a light background and dark letting and shall also comply with applicable state or local laws, ordinances, or regulations regarding size, placement, text, or appearances. Statements of notification shall be submitted to planning staff prior to the County Commission's consideration of the application.

(d) A notice stating the County Commission will consider a THP application shall be published in a newspaper of general circulation serving Rio Arriba County at least once no later than 15 days prior to the date of the meeting at which the County Commission will hear the application. The published notice shall state the applicant's name, location of proposed timber harvest and the place and date of the County Commission's consideration of the application. A copy of the notice shall be submitted to planning staff prior to the County Commission's consideration of the application.

## **L. Administrative Appeals and Judicial Review**

**1. Appeal of a Planning and Zoning Department Decision:** Planning and Zoning Department decisions with respect to the granting or denial of a Timber Harvest Permit, or decisions with respect to whether an EA should be required of an applicant may be appealed to the planning committee within fifteen (15) days of the date of the decision pursuant to NMSA 1978 §3-21-8 and the Rio Arriba County Design and Development Regulation System, Article II, Sec. VI, G.

**2. Appeal of a Planning and Zoning Committee Decision:** Planning and Zoning Committee decisions upholding, reversing or remanding Planning and Zoning Department decisions regarding the issuance or denial of Timber Harvest Permits or decisions with respect to whether an EA should be required of an applicant may be appealed to the board of county commissioners within fifteen (15) days of the date of the decision pursuant to NMSA 1978 §3-21-8 and the Rio Arriba County Design and Development Regulation System, Article II, Sec. VI, G.

**3. Judicial Review of a Decision by the Board of County Commissioners:** Decisions of the board of county commissioners upholding, reversing or remanding Planning and Zoning Committee decisions to the Planning and Zoning Department regarding the issuance or denial of Timber Harvest Permits or decisions with respect to whether an EA should be required of an applicant may be appealed to the First Judicial District Court pursuant to NMSA 1978 §3-21-9.

### **4. Initiating Appeals to the Planning and Zoning Committee or Board of County**

**Commissioners:** Persons aggrieved by a decision of the Planning and Zoning Department or the Planning and Zoning Committee may initiate the appeals process upon filing a written Notice of Appeal with the Planning and Zoning Department and payment of an appeal fee of \$50.00.

**5. Hearing Dates:** A hearing on the appeal shall be held by the appropriate body at its next regularly scheduled meeting or within 45 days of the appeal date, provided that the public notice requirements for a public hearing can be met by the appealing party.

**6. Quasi-Judicial Nature of Appeal Hearings:** Appeals to either the Planning and Zoning Committee or board of county commissioners shall be quasi-judicial in nature and shall follow the procedures set forth in the Rio Arriba County Design and Development Regulation System, Article II, Sec. II, B.

## **Article VII. Variances**

A. A written application for a variance from the terms, limitations, and requirements of this ordinance shall be submitted to the Planning and Zoning Department by the Applicant as part of the THP application packet or later as a separate submission. The application for a variance shall be accompanied by a non-refundable filing fee of \$75.00 per variance from the terms of this ordinance sought by the Applicant.

B. The variance application shall identify the term, limitation or requirement with reference to the article, section and paragraph for which the applicant seeks a variance. The variance application shall also state the grounds upon which the variance is sought. Lack of technical ability or the expense in preparing the THP application shall not be grounds for seeking or granting a variance.

C. There shall be no administrative variances granted by the Planning and Zoning Department under the Timber Harvest Ordinance. The Planning and Zoning Department shall review variance applications and make recommendation for consideration by the Planning and Zoning Committee.

D. Before recommending approval of a variance to the Planning and Zoning Committee, the Planning and Zoning Department shall make the following findings of fact. These same findings must be made by the Planning and Zoning Committee before it may recommend approval to the Board of County Commission. Finally, these same findings must be made by the Board of County Commission before it may approve a variance:

1. Granting of the variance shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice.

2. Granting of the variance shall not be detrimental to the public health, safety, or welfare, or the materially injurious to properties or improvements in the area of notice.

3. Granting the variance is justified because there is a physical hardship for the applicant resulting from size, shape or existing structures thereon, or from topographic or physical conditions on the site or in the area of notice.

4. Granting the variance upholds the spirit and intent of the Rio Arriba County Design

and Development Regulation System and this ordinance, and that in doing so the public safety and welfare is secured, and substantial justice is done.

5. The variance shall be warranted for one or more of the following reasons:

(a) Strict or literal interpretation and enforcement of the specified performance standard or regulation would result in unnecessary physical hardship inconsistent with the purposes of this ordinance.

(b) Exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the vicinity.

(c) Strict or literal interpretation and enforcement of the specified performance standard or regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the area of notice.

E. The Planning and Zoning Department shall submit the variance application, the THP application, proof of compliance with the notice and filing fee requirements, and the Department's findings of fact and recommendation to the Planning and Zoning Committee for a hearing within 45 days of receiving the completed variance application.

F. Upon setting a hearing date before either the Planning and Zoning Committee or the board of county commissioners, the applicant shall give notice of the hearing pursuant to Art VI, Sec. G of this ordinance.

G. Upon review of the applications and completion of hearings and the period for public comment, the Planning and Zoning Committee shall make recommendations for all variance requests to the Board of County Commissioners. Recommendations for approval of variances must be approved by a majority vote of the members of the Planning and Zoning Committee.

H. The Board of County Commissioners shall decide all variance requests within 60 days following issuance of the Planning and Zoning Committee recommendation and of the Applicant meeting the notice requirements pursuant to Article VI, Section K (5).. Decisions on request for variances shall be approved by a majority vote of the board of county commissioners.

I. In granting variances, the Board of County Commission may impose conditions regarding the timber harvest and related operations to ensure that the timber harvest and related operations to which the variance applies will be as compatible as practicable with, and not adversely effect, properties within the area of notification for the requested variance, downstream communities, or the communities through which the harvested timber is transported

## **Article VIII. Violations and Enforcement**

**A. Monitoring :** Monitoring shall be conducted by the Rio Arriba Staff and the New Mexico Forestry Division during permitted timber harvests to assess the condition of the forest and watershed, compliance with the THP and for community and environmental impacts. The frequency and intensity of monitoring should be determined by the scale and intensity of the timber harvest as well as the relative complexity and fragility of the affected environment. Monitoring procedures should be consistent and replicable over time to allow comparison of

results and assessment of change per State and County Staff.

**B. Administrative Procedures:** Administrative enforcement of this ordinance shall follow the procedure set forth in the Rio Arriba County Design and Development Regulation System, Article II, Sec. VII, A.

**C. Civil Actions:** This ordinance may be enforced in the district court by the board of county commissioners, the district attorney or attorney general pursuant to NMSA 1978 §3-21-1, *et seq.*, or by the board of county commissioners, or adjacent and neighboring property owners pursuant to the Rio Arriba County Design and Development Regulation System, Article I, Sec. X. Relief may include abatement, injunction, mandamus and civil penalties. Affected person, applicants and permittees may sue the board of county commissioners to compel performance of any non-discretionary duty by county staff. In an action brought pursuant to this ordinance, either the board of county commissioners or a person who has an interest that is or may be adversely affected may intervene if not a party.

**D. Civil Penalties:** Upon conviction in a civil action for violation of this ordinance, the defendant shall pay civil penalties in accordance with the Rio Arriba County Design and Development Regulation System, Article I, Sec. X. for each violation of this ordinance.

#### **Article IX. Amendments to the Timber Harvest Ordinance**

Amendments to this ordinance shall follow the procedure set forth in the Rio Arriba County Design and Development Regulation System, Article II, Sec. IX.

#### **Article X. Effective Date of the Ordinance**

This ordinance shall take effect thirty (30) days after final passage by the board of county commissioners.

## **Appendix I - Contents of an Environmental Assessment**

### **A. Introduction.**

1. An applicant shall prepare and submit an Environmental Assessment with a Timber Harvest Permit application when the Planning and Zoning Department has determined that the proposed timber harvest would have a significant impact on watercourses or acequia systems, public or private property, natural or historic resources, or the public health, safety and welfare.

2. An Environmental Assessment (EA) shall identify the impacts of the proposed timber harvest on the environment, property, infrastructure and public health, safety and welfare as set forth in Section B below and provide sufficient analysis of these impacts to enable the public and Planning and Zoning Department to make an informed decision on whether to recommend issuance of a Timber Harvest Permit application.

3. The Environmental Assessment shall include watershed-level considerations as well as the impacts of on-site harvest and processing facilities. Environmental impacts shall be assessed prior to commencement of site-disturbing operations.

### **B. Contents of the Environmental Analysis**

**1. Management Objectives** - The EA shall briefly describe the applicant's management objectives for the proposed timber harvest and the location, area and the extent of the proposed timber harvest.

**2. Identification of Significant Impacts** - The EA shall include the Planning and Zoning Department's findings made upon review of the Timber Harvest Permit application that the proposed timber harvest would have significant impacts on watercourses or acequia systems, county or private property, natural or historic resources, or the public health, safety and welfare.

#### **3. Timber Harvest Impacts Analysis**

(a) The EA shall address the environmental impacts of the proposed timber harvest on timber and vegetation; soils and geology; water courses and wetlands; water quality, quantity and availability; wildlife and fish habitat; and archeological, cultural and historic resources. The analysis shall also include the cumulative impacts of all other forest uses and development in the watershed in which the proposed harvest is located.

(b) The EA shall identify and disclose the potential effects on the county and its citizens and property owners in terms of impacts to public and private infrastructure and property; compatibility with adjacent land uses; impact of the proposed harvest on the local economy and workforce; and on the public health, safety and welfare.

(c) The EA shall state whether the impacts of the proposed timber harvest can be eliminated or mitigated through project design or planning. The EA may also identify and analyze other impacts not identified by the Planning and Zoning Department.

(d) The Planning Department may require the applicant to seek the comments and input

of New Mexico state agencies with specialized expertise such as the State Engineer, the Environment Department, the Office of Cultural Affairs, the Forestry Department, the Highway and Transportation Department and the Soil and Water Conservation Districts so that the effects on water quality, water rights, archeological, historic and cultural resources, forestry, environmental issues, road and highway safety, road and highway suitability, public safety of the proposed timber harvest may be more fully understood. Written comments or opinions of the consulting agencies shall be attached in full to the EA.

#### **4. Preparation:**

An EA shall be prepared by an independent third party with appropriate technical or scientific skills or expertise as approved by the Planning and Zoning Department and paid for by the applicant.

#### **Appendix II. Consideration by Federal Agencies**

Federal law specifically requires that government agencies consider this ordinance as well as the entire Rio Arriba County Design and Development Regulation System (Ordinance No. 1996-01) in the preparation of environmental analysis pursuant to the National Environmental Policy Act 42 U.S.C. 4321 et.seq. and its implementing regulations at 40 C.F.R. Part 1500, specifically 40 C.F.R. Section 1502.16 (c ) and 1506.2 (d).

**RIO ARRIBA COUNTY ORDINANCE 1998-05.  
THIS ORDINANCE WIL BE KNOWN AS  
RIO ARRIBA TIMBER HARVEST ORDINANCE**

**WHEREAS, the County of Rio Arriba will provide a guide for reviewing, approving or denying, the permitting of harvesting forest timber, while trying to protect forest, bosques, water sheds, landowners, and the health, safety, and welfare of the people of Rio Arriba and,**

**WHEREAS, this ordinance will be one of several that will be a section or part of the comprehensive plan by the powers, granted to Counties, to protect and promote prosperity and,**

**WHEREAS, the County of Rio Arriba has a substantial amount of forest land and a process and system of guiding such activities is needed,**

**THEREFORE, the Board of County Commissioners of Rio Arriba County will review, approve and adopt this ordinance to take effect thirty (30) days subsequent to the approval and signature of this ordinance, dated this day 27th of August, 1998.**

**\_\_\_\_\_  
ALFREDOL.MONTOYA, CHAIRMAN**

**\_\_\_\_\_  
MOISES MORALES, COMMISSIONER**

**\_\_\_\_\_  
RAY TAFOYA, COMMISSIONER**

**ATTEST:**

**\_\_\_\_\_  
FRED VIGIL, COUNTY CLERK**

**CERTIFICATE OF FILING**

I, Fred Vigil, County Clerk, do hereby certify that the foregoing ordinance designed as Ordinance 1998-05 was filed in my office on the 28 day of August, 1998 in Book Number 7 Pages 1228, thru 1251.

Typed & edit by Epifania Archuleta 8/2005