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January 7, 2022

[REDACTED]
Office of the Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222

RE: ACRE Complaint—Upper Makefield Township, Bucks County

Dear Attorney Willig:

Please be advised that this firm serves as solicitor to Upper Makefield Township ("Township"). The Township is in receipt of a complaint submitted to the Attorney General's Office on October 25, 2021, and your correspondence dated December 1, 2021, in which you outline a request to review the Township's response to particular construction activity in the Township. The Township believes that its response to the construction is consistent with ACRE and with the Township's authority under the Municipalities Planning Code. Please allow this correspondence to serve as the Township's response to the complaint.

Procedural and Factual History

[REDACTED] is the owner of the [REDACTED] in Upper Makefield Township, otherwise identified as Tax Map Parcel [REDACTED] ("Property"). The complainant, [REDACTED], is a principal for [REDACTED]. The current use of the Property is an A-4 Riding Academy Use, permitted as a conditional use in the CM-Conservation Management Zoning District of the Joint Municipal Zoning Ordinance ("JMZO").

On July 9, 2018, [REDACTED] filed a conditional use application with the Township for the A-4 Riding Academy Use. The Upper Makefield Township Board of Supervisors granted the conditional use application and imposed conditions on the proposed use. [REDACTED] filed a land use appeal to the Bucks County Court of Common Pleas. The land use appeal culminated in a settlement through which the conditional use application was granted subject to conditions as fully set forth in the enclosed Stipulation of Settlement. The conditions set forth in the Stipulation of Settlement continue to serve as a source of limitations on the use of the Property, independent of ACRE or other statutory limitations on municipal regulation of agricultural uses. The Stipulation of Settlement, mutually agreed to by all parties involved, even served as the basis for

the denial of [REDACTED] previous ACRE complaint. [REDACTED] is due in court on January 10, 2022 on the Township's Petition for Contempt of the Stipulation of Settlement.

In or about September of 2021 the Township became aware of construction occurring on the Property despite that no permits had been issued. With knowledge that the site plan incorporated into the Stipulation of Settlement does not call for additional construction, Upper Makefield Township issued a stop-work order. To this day, [REDACTED] has not submitted a building permit to the Township. The Township has no supporting documents from [REDACTED] related to use of the structure, size of the structure, types of materials, etc. While [REDACTED] claims exemptions from numerous sections of state and local regulation, the Township received no permit requests by which it could assess the construction and determine what, if any, exemptions apply. The Township must assume that all standard requirements of construction apply unless [REDACTED] demonstrates otherwise. Rather than provide the Township with this information, [REDACTED] forged ahead with his construction and completed his construction, submitting an ACRE complaint rather than a building permit.

Stormwater Management Requirements

As a preliminary matter, given [REDACTED] has not submitted any building permits and that no inspection has occurred, the Township is unable to conclude that the unpermitted structure is a hoop house as claimed or that it might be entitled to *any* preferential treatment under state law. As the Attorney General's Office notes, there are circumstances under which a landowner may not be required to submit stormwater management plans for hoop houses under state law. *See e.g.* 32 P.S. §680-11. To state it plainly, no one can say whether those circumstances apply because [REDACTED] built the hoop house without submitting any plans or permit applications to the Township. Rather, he defiantly continued construction despite a stop-work order issued on September 29, 2021.

With respect to the validity of the Upper Makefield Township Stormwater Management Ordinance ("Stormwater Ordinance") as applied to [REDACTED] apparent agricultural use, there is no conflict with state law. The Stormwater Ordinance expressly exempts agricultural activity from peak rate control requirements and stormwater management site plan preparation as long as the agricultural activities are performed according to the requirements of Chapter 102 of Title 25 of the Pennsylvania Code, relating to erosion and sediment control.

The scope of the Attorney General's duties in an ACRE complaint is to review whether a local ordinance is an unauthorized local ordinance, as that term is defined. 3 Pa.C.S.A. §312.¹ The Second Class Township Code expressly allows the Township to enact ordinances governing stormwater management. 53 P.S. §67704. [REDACTED] has not suggested that anything in the

¹ "Unauthorized Local Ordinance." An ordinance enacted or enforced by a local government unit which does any of the following:

- (1) Prohibits or limits a normal agricultural operation unless the local government unit:
 - (i) has expressed or implied authority under State law to adopt the ordinance; and
 - (ii) is not prohibited or preempted under State law from adopting the ordinance.
- (2) Restricts or limits the ownership structure of a normal agricultural operation.

Township's ordinance conflicts with state law or is preempted by state law. To the contrary, the Stormwater Ordinance expressly references state statutes and state regulations. [REDACTED] complaint hinges on the flimsy proposition that the Stormwater Ordinance is being unlawfully applied to his construction, which Township has had no occasion to evaluate *because* [REDACTED] *has not submitted any permit applications.*

Uniform Construction Code Requirements

The Township has opted into the Uniform Construction Code as its municipal building code. Township Code §5-102. The Township is bound by the terms of the Uniform Construction Code as written in state law except for amendments as permitted therein. With respect to the requirements of the Uniform Construction Code upon agricultural buildings, again, the Township has not received any application which shows the use of the structure, or any specifications related to construction. However, the JMZO provides the following with respect to building requirements for non-residential farm buildings:

Non-residential Farm Buildings. A non-residential farm building requires an application for a building permit. However, if a non residential farm building is to be placed more than 150 feet from any road or property line, if the proposed construction is found by the municipality to be outside of the floodplain, and, if a permit has been applied for, no building requirements other than yard requirements need to be complied with.

JMZO §1403C.1.b. It remains to be seen, however, whether [REDACTED] structure qualifies as a Non-residential Farm Building and whether it meets the dimensional criteria set forth in the definition above. Regardless, there is no conflict between the Township's ordinances and state law relating to building code requirements or exemptions for agricultural buildings.

For the reasons set forth herein, Upper Makefield Township respectfully requests that the Attorney General's Office deny pursuit of the ACRE complaint submitted by Mr. Kretschman dated October 25, 2021.

Very truly yours,

GRIM, BIEHN & THATCHER

[REDACTED]

Enclosures

cc: [REDACTED] Manager, Upper Makefield Township (w/enc. via email only)
[REDACTED] (w/enc. via email only)
[REDACTED] n (w/enc. via USPS First Class Mail)