

[REDACTED]

From: [REDACTED]
Sent: Monday, May 15, 2023 7:39 AM
To: ACRE Shared Mailbox
Cc: [REDACTED]
Subject: [EXTERNAL] East Taylor Township Timber Harvesting Ordinance
Attachments: Ordinance No 23-01 Removal of Timber20230420.pdf

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Dear Mr. Willig:

I am writing to call to your attention the attached Timber Harvesting ordinance that was recently enacted by the Board of Supervisors in East Taylor Township, Cambria County. This ordinance has several provisions that appear to be in violation of Pennsylvania's ACRE Law. As such, I request assistance from OAG in reviewing this ordinance and securing our rights as a normal agricultural operation in the Commonwealth of Pennsylvania.

Specifically, I would like to call to your attention the following provisions of Ordinance 23-01, adopted April 19, 2023:

On Page 5, Section (g)(2) C. requires the payment of a per-acre fee that we believe to be in violation of the ACRE Law. In your letter to Industry Borough, Beaver County dated January 15, 2021, you outlined that a per-acre fee that can range into the thousands of dollars is clearly unreasonable and in violation of state law. East Taylor's ordinance requires the payment of a \$300 fixed fee, plus \$50 per acre up to ten acres and \$25 per acre for all harvests of eleven acres and over. A permit for any harvest of at least 28 acres would therefore cost into the thousands of dollars – crossing the threshold previously established as an unreasonable cost for a timber harvesting permit. Additionally, Page 5, Section (h) provides for bond payments to be made in certain circumstances, amounting to \$100 per acre. This provision also appears to violate ACRE.

Additional sections of East Taylor Township Ordinance 23-01 that may violate the ACRE Law include:

Page 2, Section (f)(2) requires submission of timber harvesting plan to the County Conservation District and "all required fees must be paid at the time of submission." OAG has previously held that this requirement to pay such fees is a violation of the Municipalities Planning Code. Furthermore, DEP has expressly stated that municipalities may not require prior review and approval of a timber harvesting plan as a condition for the issuance of a timber harvesting permit. The requirement to pay fees to the Conservation District suggests that the ordinance intends to require the logger to pay for review. DEP has further stated that a township may "at its own expense" ask for Conservation District review of a timber harvesting plan, but it may not pass that expense on to the operator.

Page 3, Section (f)(3) M. requires the plan be signed by a "qualified forester," yet this term is undefined and ambiguous. Depending on the interpretation of this term, this provision could treat timber harvesting as a conditional use rather than a use as of right.

Page 4, Sections (f)(8) H., I. and J. restrict the silvicultural treatments that a landowner and forester may choose in the management of forested lands. Site-specific considerations may call for various best management practices to be implemented, which this language may unreasonably restrict.

Page 5, Section (g)(2) B. provides for proof of insurance. OAG previously opined on similar requirements in OAG's East Nantmeal Township letter dated April 13, 2016.

In addition to the provisions of the ordinance outlined above, we also take exception to the township's actions toward our company regarding road bonding requirements as well as the initial enactment of Ordinance 23-01.

We initially requested paperwork from East Taylor Township in mid-January 2023 to bond 0.5 miles of township road. The township subsequently failed to send us any paperwork relative to our request. Upon closer inspection, we found that the road in question was not posted in accordance with PennDOT Publication 221. Therefore, on February 20, we proceeded to move our crew onto the site. There was no mention of a township requirement for a timber harvesting permit at this time.

On February 21, Township Supervisor [REDACTED] came to the work site and demanded that our crew stop working until we applied for and received a road bond and a timber harvesting permit from the township. The township subsequently sent me an e-mail requesting a bond for Rosedale Street, but sent no information about a harvesting permit. At that time, the township informed me that they did not yet have the information from their solicitor because it was contained in a new ordinance.

On April 17, East Taylor Township sent me a timber harvesting permit application. I requested a copy of the ordinance at that time, and received it on April 20. Of note, the ordinance's signature page is dated April 19.

I believe that Supervisor [REDACTED] acted outside of his authority on February 21. Without a valid road posting in place, and without a properly enacted ordinance, our company should have been able to proceed without delay.

Therefore, I respectfully request your assistance in reviewing the East Taylor Township ordinance as enacted, and that you take appropriate action to bring East Taylor Township into compliance with applicable state laws. Additionally, I would appreciate any assistance your office can provide in ensuring that East Taylor Township will allow us to proceed with the successful execution of our timber harvest on a reasonable timeline. Thank you in advance for your assistance.

Regards,
[REDACTED]

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