

[REDACTED]

November 15, 2023

**via Regular Mail and E-mail**

[REDACTED]

Robert A. Willig  
Senior Deputy Attorney General  
PA Office of Attorney General  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, PA 15222

RE: ACRE – Request for Review  
Valley Township, Chester County, Pennsylvania

Dear Senior Deputy Willig:

My Firm serves as Solicitor to Valley Township ("Township"), Chester County, Pennsylvania. I write in response to your correspondence of October 13, 2023 on behalf of the Office of the Attorney General ("OAG"), with regard to an ACRE request for review ("ACRE Request") submitted by [REDACTED] of [REDACTED], a timber harvesting company [REDACTED], on September 12, 2023. The Township received your correspondence on October 19, 2023.

By way of background the ACRE Request stems from the submission of an Erosion and Sediment Control ("E&S") Plan for proposed timber harvesting activities at the property of [REDACTED] (the "Owner") located at [REDACTED] and [REDACTED] (the "Properties")<sup>1</sup>. See Exhibit "A". Review comments were provided to [REDACTED] on May 12, 2023 regarding compliance with the Township's Ordinances, as well as other related concerns such as access through the adjacent tax parcel which is not owned by the Owner.<sup>2</sup> See Exhibit "B".

<sup>1</sup> The proposed plan also includes a portion of the timber harvest operation occurring on a property within adjacent Sadsbury Township ([REDACTED]). As of the date of the response, to the knowledge of the Township, [REDACTED] has not made a submission to [REDACTED] as required under its ordinances for the portion of the timber harvesting operation in [REDACTED].

<sup>2</sup> The only access to the Properties is through an easement on [REDACTED]. Due to land development plans for [REDACTED] the Township is aware of the location and scope of the access easement. [REDACTED] plans depict access through [REDACTED] outside of the easement. The counsel for the owner of [REDACTED] has advised that to his knowledge no additional access easement or other license or permission has been granted for the timber harvesting operation through this parcel. Therefore, the reflected access on the submission to the Township appears to be located outside of the easement based on the information available to the Township.

[REDACTED]

██████████ provided limited responses to some of the comments by communications dated August 15, 2023. See Exhibit "C".<sup>3</sup>

██████████ has identified six (6) Ordinance subsections, which he alleges violate ACRE. See Exhibit "D". At the outset and in sum, please note the Township maintains its Ordinance requirements are reasonable, valid and lawful municipal regulations for timber harvesting activities particularly in areas where there are environmentally sensitive natural features such as on the Properties on which ██████████ proposes the timber harvesting operations. The Properties contain steep slopes and two (2) streams, one of which, ██████████ has been identified by the Commonwealth as an impaired stream and as a Chapter 93 Designated Stream for Warm Water Fishes. See Exhibit "E".

The Ordinances at issue in this Ordinance Review were adopted as part of Ordinance No. 1 of 2015. Ordinance No. 1 of 2015 was the product of careful planning in conjunction with the Chester County Planning Commission ("CCPC") as part of a Vision Partnership Program grant. The Township worked closely with the CCPC, utilizing recommendations and models from the County including a model Natural Resources Standards Ordinance for the Brandywine Creek Greenway Strategic Action Plan. The Township also consulted with the Brandywine Conservancy in regard to forested riparian buffer protections, utilizing recommendations and models including the Pennsylvania Lands Trust Model Ordinance.

#### **Challenge 1: Ordinance Section 27-317.1.F (Conservation Plan).<sup>4,5</sup>**

██████████ allegations:

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<sup>3</sup> To the Township's knowledge ██████████ is not associated with the Owner of the Properties. The Owner was not copied on the ACRE Review. The Township recognizes that ordinances must have universal applicability and as discussed herein is amenable to addressing any deficiencies in its Ordinances. However, given the Owner's prior communications with the Township Manager regarding future development of the Properties, the Township questions whether the proposed timber harvesting is for agricultural purposes as addressed by ACRE or it is in preparation for future development, which would require additional and different permitting (including an NPDES permit) even if the removed timber was put to commercial sale.

<sup>4</sup> ██████████ identifies Section 27-317.F; however, there is no such Ordinance section. The Township believes based on the nature of allegation that ██████████ is referencing Section 27-317.1.F. If ██████████ is referring to a different section, the Township requests it be identified so it may appropriately respond.

<sup>5</sup> ██████████ did not include a copy of the challenged ordinance provisions. For convenience the language of the challenged section is included herein. Section 27-317.1.F states:

"Required Conservation Plan. Any agricultural, horticultural or forestry related uses which involve earthmoving activities, or the commercial harvesting or timbering of vegetation shall require an approved conservation plan by the Chester County Conservation District, pursuant to Chapter 102, Erosion Control, of Title 25, Rules and Regulations, Department of Environmental Protection. All on-site activities shall then be in compliance with the approved conservation plan."

- "requires a conservation plan approved by the county conservation district."

Township's response:

██████████ cites no legal authority to substantiate its allegation. It is also unclear what ██████████ is objecting to in Section 27-317.1.F. In particular, it is unclear if he is objecting to the existence of a conservation plan pursuant to Chapter 102, Erosion Control, of Title 25, Rules and Regulations, Department of Environmental Protection, or if he is objecting to the approval by the county conservation district. The Township requests clarity so it may respond appropriately to this allegation.

To the extent ██████████ is objecting to approval of the conservation plan by the county conservation district, the Township has spoken with the Chester County Conservation District which has advised the Township that while many timber harvest operations submit their plans for review and approval, the approval is not required based on their correspondence with the Pennsylvania Department of Environmental Protection ("PaDEP"). The Township would be amenable to removing the approval language in regard to timber harvest operations from Section 27-317.1.F.

**Challenge 2: Ordinance Section 27-318.2.B(5) (Land Disturbance)<sup>6</sup>**

██████████ allegation:

- "Land disturbance, steep slopes and riparian buffers. All items that are covered by the Chapter 102 E&S Plan."

Township's response:

██████████ appears to be challenging the requirement to have a forestry plan. He does not cite any legal authority to substantiate his allegation.

The Township has been unable to locate any law that would preclude it from requiring a forestry plan for a timber harvesting operation. The decisions posted on the OAG website suggest that such a requirement is permitted. Further, the 2019 PSU Model Ordinance in Section 4(b) specifically requires the landowner on whose land the timber harvesting is to occur to provide a written logging plan in the form specified by the ordinance to the local government.

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<sup>6</sup> Section 27-318.2.B(5) states:

"It shall be a violation of this chapter to regrade, fill, pipe, divert, channel, build upon, or otherwise alter or disturb a natural resource protected by this section prior to the submission, review and approval, where required, of the following: ... (5) Timber harvesting operation/forestry plans in accordance with § 27-318, Subsection 8."

The Township would be interested in ascertaining and better understanding the OAG's position on this item.

**Challenge 3: Ordinance Section 27-318.4.E(1)(b) (Steep Slopes)<sup>7</sup>**

**[REDACTED] allegation:**

- "Land disturbance, steep slopes and riparian buffers. All items that are covered by the Chapter 102 E&S Plan."

**Township's response:**

[REDACTED] does not cite any case law in regard to this allegation. Further, it is unclear what [REDACTED] is challenging in regard to this ordinance provision. In particular, the Township permits timber harvesting within the steep slopes as an exception to the general prohibition in the Ordinance. Therefore, it is unclear if [REDACTED] objects to the 15% limitation or the prohibition regarding clear cutting and/or grubbing. The Township requests clarity so it may begin to address this allegation.

Notwithstanding the foregoing, the Township is amenable to considering appropriate revisions to this section to permit the discretion necessary for foresters to address unique characteristics found within individual forests, while balancing the best management practices that must be employed to stabilize steep slopes and to protect down slope property owners. The Township would have significant concerns about permitting grubbing on slopes in excess of 25% given the significant role the stumps and root balls play in the stabilization of the slopes.

**Challenge 4: Ordinance Section 27-318.5.D(4) (Wetland Margins)<sup>8</sup>**

**[REDACTED] allegation:**

- "Land disturbance, steep slopes and riparian buffers. All items that are covered by the Chapter 102 E&S Plan."

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<sup>7</sup> Section 27-318.4.E(1)(b) states:

"E. Limitations of construction on slopes greater than 25%. The following regulations shall apply for any contiguous area of 100 square feet or greater with slopes greater than 25%:

(1) No more than 15% of an area with slopes greater than 25% shall be regraded, removed, built upon, or otherwise altered or disturbed. In addition, the disturbance permitted on slopes greater than 25% shall be limited to the following activities: ...

(b) Timber harvesting, when conducted in compliance with § 27-318, Subsection 8. Clear-cutting or grubbing trees is prohibited on slopes greater than 25%."

<sup>8</sup> Section 27-318.5.D(4) states: "Timber harvesting is prohibited within the wetland margin."

Township's response:

██████ does not identify what he is challenging in this section, as the section does not address land disturbance, steep slopes or riparian buffers. The Township requests clarification regarding the nature of this allegation so it may respond appropriately.

**Challenge 5: Ordinance Section 27-318.6.D(3) (Riparian Buffer)<sup>9</sup>**

██████ allegation:

- "Land disturbance, steep slopes and riparian buffers. All items that are covered by the Chapter 102 E&S Plan."

Township's response:

Again, ██████ cites no legal authority to substantiate its allegation. The Township would be interested in ascertaining and better understanding OAG's position regarding timber harvesting requirements as related to the riparian buffers.

**Challenge 6: Ordinance Section 27-318.8.F (Riparian buffer)<sup>10</sup>**

██████ allegation:

- "Again no harvest in buffers".

Township's response:

The Township incorporates its response to Challenge 5. The Township also seeks clarity as to whether ██████ is also challenging the preclusion of clear-cutting or grubbing in any riparian buffer, so it may appropriately respond to this allegation.

In summary, the Township is unclear as to how certain provisions the Ordinance violates ACRE as alleged by ██████ or the nature of ██████ challenges in regard to some Ordinance provisions. However, the Township recognizes that it has been nearly a decade since it last reviewed these portions of its Ordinance and that law and best practices have evolved over that time period. The Township is committed to working with OAG to ensure that the timber

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<sup>9</sup> Section 27-318.6.D(3) states: "Timber harvesting is prohibited within riparian buffers."

<sup>10</sup> Section 27-318.8.F states: "Timber-harvesting operations shall not be permitted within any riparian buffer or wetland margin. Clear-cutting or grubbing shall not be permitted within any riparian buffer, wetland margin, the Flood Hazard District, or on slopes greater than 25%."

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harvesting sections of the Township's Ordinance comply with state law and enacting ordinance amendments which are appropriate to address concerns of OAG.

To that end, the Township has directed my office to review the 2019 Penn State Extension Model Ordinance. The Brandywine Conservancy has also been contacted to obtain its most recent model ordinance for review, as it is our understanding that in the context of other ACRE reviews, the Conservancy has worked with you to develop a compliant model ordinance. The Chester County Planning Commission has also been contacted for assistance. The Township could, if appropriate, provide you with a draft ordinance amendment for your review and collaboration on behalf of OAG.

The Township looks forward to hearing from you on behalf of the Office of the Attorney General at your convenience. In the meantime, should you have any questions or require additional information from the Township, please do not hesitate to contact me directly.

Very truly yours,

[REDACTED]  
[REDACTED]

[REDACTED]  
Enclosures (Exhibits "A" – "E")

cc:

[REDACTED]  
Valley Township Board of Supervisors  
[REDACTED]