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Office of Attorney General

JUN 26 2023

June 7, 2023

Legal Review Section

PA Office of Attorney General

ATTN: ACRE

15<sup>th</sup> Floor, Strawberry Square

Harrisburg, PA 17120

RE: Raccoon Township, Beaver County, Timber Harvesting Ordinance

Dear Mr. Willig,

Raccoon Township, Beaver County, Pennsylvania currently has a timber harvest ordinance that applies to all tree harvesting operations within the Township. [REDACTED] purchased two tracts of timber within Raccoon Township and experienced permitting issues with both timber tracts. The first tract was purchased from [REDACTED] December of 2021. The neighboring tract was purchased from [REDACTED] in January 2022. [REDACTED] entered the permitting process with Raccoon Township in March of 2022 for both timber tracts. [REDACTED] encountered two issues with the ordinance that applied to both timber tracts and a separate issue that pertained to the permit application for the [REDACTED] tract alone.

The first issue with permitting both timber tracts was the requirement for the Beaver County Conservation District to review and approve Erosion and Sediment Control Plan at the time and expense of the operator. Section 168-9 part A. states "A logging plan shall be prepared for each harvesting operation within Raccoon Township by a professional forester or forest technician. The plan must be reviewed and approved by the Beaver County Conservation District or Department of Environmental Protection." Raccoon Township's requirement to have BCCD review and approve an Erosion and Sediment Plan as a prerequisite to securing a timber harvest permit is a violation of The Acre Act.

The E&S plan for [REDACTED] was submitted to Beaver County Conservation District on January 28, 2022. [REDACTED] paid BCCD \$350.00 for the review. The BCCD approval letter was received on March 11, 2022. The E&S Plan for the [REDACTED] tract was submitted to BCCD on February 11, 2022. [REDACTED] paid BCCD \$450.00 for the review. The BCCD approval letter was received on March 11, 2022.

The E&S plan review by BCCD cost [REDACTED] time and money. The E&S Plan was available on site during all stages of earth disturbance activity and could be reviewed by DEP or BCCD based on a complaint or investigation. If Raccoon Township would like the E&S Plan reviewed by BCCD they should do so on their own time and at their expense. This should not be the responsibility of the operator nor should it be a prerequisite to securing a timber harvesting permit in the township.

The second permitting issue encountered by [REDACTED] was the required \$1000 escrow payment for both the timber harvesting permit and the highway excess weight permit. Section 168-8 part H of the timber harvest ordinance states "Deposit in the amount of \$1000.00 to cover all cost including, but not limited to, legal, engineering and forester services. This fee may be changed from time to time by resolution of the Board of Supervisors." Section 168-8 part I states "Excess weight permit application. The landowner and the operator shall be responsible for repairing any damage to the Township roads caused by traffic

associated with the timber harvesting operation. If the proposed route will be utilizing Township roads, and the tonnage will be exceeded, an excess weight permit will be required **including a bond in an amount specified by the Township Engineer.**" The bond amount of \$1000.00 is stated in the "Excess Weight Permit Application."

The application fee for the Timber Harvest Permit is \$250.00 which [REDACTED] found acceptable. [REDACTED] found the escrow payment of \$1000.00 to be excessive. The operator should not be financially responsible for the township's legal, engineering or forestry fees when engaging in a timber harvest in the Commonwealth of Pennsylvania.

The application fee for the Excess Weight Permit is \$100.00 which [REDACTED] found acceptable. [REDACTED] found the escrow payment of \$1000.00 to be excessive. If a township road is posted with a weight restriction, it should have been inspected by an engineer to determine the amount of weight the road can withstand without damage prior to posting the weight limit. The operator should not be held financially responsible for engineering inspection fees since the highway should have been inspected prior to the weight limit being posted.

The third issue [REDACTED] encountered was the timeliness of the township's approval of the [REDACTED] Timber Harvest Permit. Both the [REDACTED] and [REDACTED] Timber Harvest Permits were applied for in March Of 2022. The [REDACTED] permit was approved on May 12, 2022. Initially, the [REDACTED] permit was held up to dissolve a trust associated with the [REDACTED] property. The trust was dissolved leaving [REDACTED] the sole owner of the property. The updated property card naming [REDACTED] the sole owner of the property was submitted to Raccoon Township on May 24, 2022. At the June township supervisor meeting the [REDACTED] Timber Harvest permit was not approved citing an underground utility crossing would need to be cleared by [REDACTED] to issue the permit. [REDACTED] owns a nitrogen transportation pipeline that would need to be crossed for both the [REDACTED] harvest and [REDACTED] harvest (see Exhibit A). The [REDACTED] permit was approved without any mention of the pipeline. [REDACTED] cleared the pipeline in writing for the [REDACTED] harvest on August 8, 2022. The pipeline crossing approval was submitted to the township on that same day. At the August supervisor meeting, the township would not issue the permit for the [REDACTED] tract, citing the supervisors would require another month to rereview all of [REDACTED] application documents. At the September township meeting, [REDACTED], a township supervisor and relative of [REDACTED], abstained from the vote citing a conflict of interest. With one supervisor absent and [REDACTED] abstaining, the permit was not approved. At the September township work session, the permit was not approved because one supervisor was absent and [REDACTED] abstained. The [REDACTED] permit was finally approved by the township on October 26, 2022.

The permitting process in Raccoon Township took 8 months for the [REDACTED] Timber Harvest permit. [REDACTED] did everything within its power to comply with the township's ordinance. It is in [REDACTED] opinion that [REDACTED] is used his position with the township to attempt to prevent his mother's timber from being logged. The agreement for the purchase of [REDACTED] timber by [REDACTED] is between [REDACTED] and [REDACTED] not [REDACTED] Raccoon Township's delay in issuing the Timber Harvest permit has left [REDACTED] with additional expenses attempting to acquire the permit as well as opportunity cost associated with declining lumber prices during the permit waiting period.

Please contact Robert Lindsay with any questions. Please Inform [REDACTED] the results of the investigation.

Best Regards,

[REDACTED]