

[REDACTED]

August 29, 2023

Robert A. Willig, Senior Deputy Attorney
Office of Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, Pennsylvania 15222
[REDACTED]

In Re: ACRE Request for Review – Raccoon Township – Beaver County
ACRE Request of [REDACTED]

Dear Senior Deputy Attorney Willig,

Please find Raccoon's Township's (hereinafter "Township") response to the ACRE Complaint of [REDACTED] (hereinafter [REDACTED]) dated June 7, 2023, received by the Office of Attorney General (hereinafter "OAG") on June 26, 2023, and your letter dated July 11, 2023, setting forth the three (3) complained of issues, addressed below:

BACKGROUND

On a letter dated June 7, 2023, [REDACTED] submitted to the OAG three (3) complaints regarding timbering harvesting operations within the Township, stemming from permitting issues on two (2) tracts that he was harvesting, being the [REDACTED] from December of 2021 (hereinafter [REDACTED]) and [REDACTED] from March of 2022 (hereinafter [REDACTED]). The permitting process on both tracts was entered into with the Township in March of 2022. [REDACTED] complaint alleges two (2) issues with the Township's ordinance, which applied to both permits and one (1) issue with the [REDACTED] parcel only regarding the timely approval of the permit.

(1) REVIEW OF E&S PLAN BY BEAVER COUNTY CONSERVATION DISTRICT AT [REDACTED]

[REDACTED] first complaint avers the following:

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 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.

(Page 1 of [REDACTED] ACRE Law Complaint).

Chapter 168, titled “Timber Harvesting,” Section 168.9, titled “Regulations,” Subsections A. through C., of the Township Code provides as follows:

- A. 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.
- B. Such plan will address all applicable erosion and sedimentation control and stream crossing regulations under Chapter 102, Erosion Controls and Regulations, issued under Act of June 22, 1937 (Clean Streams Law) and Chapter 105, Dam and Waterway Management Rules and Regulations, issued under Act of 1978, P.L. 1375, No. 325 (Dam Safety and Encroachments Act), as amended, or subsequent application legislation.
- C. Points that shall be addressed by the logging plan, include the following at a minimum:
 1. Design of the road system.
 2. Water control structures.
 3. Stream crossings.
 4. Log landings.
 5. Haul roads, skid roads, and skid trails.
 6. Maintenance of items in Subsection (C)(1) through (5).
 7. Road and log landing retirement.

8. The general location of the anticipated operation in relation to municipal and state highways.
9. The location of property boundaries for the tract on which the logging will take place and the boundaries of the proposed harvest area.
10. A cutting practice or stand prescription for each stand located in the proposed harvest area.
11. Copies of all required permits shall be submitted as an appendix to the logging plan.

Further, Chapter 168, titled "Timber Harvesting," Section 168.8, titled "Application," Subsection A., of the Township Code provides as follows:

Application for a timber harvesting permit shall be on a form prescribed by the Township and must be signed by the landowner and by the logging operator. The completed application must be submitted at least 15 days prior to the Supervisors regular monthly meeting with the following items attached:

- A. Logging plan meeting all requirements under Section 168.9.

With that as the background, [REDACTED] complaint is two-fold: (1) This E&S Application payment is not permitted and not appropriate for [REDACTED] to pay; and (2) The approval of the Application cannot be a prerequisite to securing a timber harvesting permit in the Township.

The undersigned has reviewed prior OAG opinions, Pennsylvania Codes and regulations, and case law regarding this matter. Instructive on this issue is the matter of North Coventry Township -- Chester County, OAG letter dated June 8, 2018. In that matter, North Coventry required the logger/operator to submit and have its E&S plan approved by the Chester County Conservation District prior to commencing operations. However, the DEP's E&S control regulations *do not* require submission of an E&S plan to the Conservation District and the Conservation District has no role in DEP's approval of such plans. What is required is that the written E&S plan, inspection, and monitoring records be available "at the project site during all stages of the earth disturbance activities." *25 Pa. Code Section 102.4(b)(8)*. **The Township may, at its own expense, submit an applicant's E&S Plan to the Conservation District for review to check compliance with regulations. What a Township cannot do is require the logger/operator to get approval from the Conservation District prior to harvesting.**

As a result, the Township acknowledges that its Ordinance contradicts the ACRE law in this regard.

The undersigned respectfully requests a suggested model ordinance for review, comment, and editing, for Township approval. The new ordinance will have to go through the advertising process, but this will ensure that it is compliant with current PA law, code, and regulations. **Please advise if this resolution is sufficient for this item.**

(2) TOWNSHIP REQUIRED ESCROW OF \$1,000.00 FOR BOTH TIMBER HARVESTING AND HIGHWAY EXCESS PERMIT

██████████ second complaint avers the following:

The second permitting issue encountered by ██████████ was the required \$1000 escrow payment for both the timber harvesting permit and the highway excess permit. Section 168-8 part H of the timber harvest ordinance states "Deposit in the amount of \$1,000.00 to cover all costs 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 operation shall be responsible for repairing any damage to the Township roads caused by traffic associated with 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 ██████████ found acceptable. ██████████ 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 ██████████ found acceptable. ██████████ 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 to the weight limit being posted.

(Pages 1 and 2 of ██████████ ACRE Law Complaint).

Without citing at length the Township's current Ordinance, it acknowledges that the language states that a "Deposit in the amount of \$1,000.00 to cover all costs 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."

With that as the background, ██████████ complaint is that he should not be financially responsible for the legal, engineering (including inspection), or forestry services fees for engaging in timber harvesting. It appears that ██████████ is not contesting that the \$1,000.00 escrow deposit is unreasonable as collateral and/or a bond in case there is damage to the roads of the Township caused by his company's timber harvesting but is only contesting that the \$1,000.00 is unreasonable if its purpose is for legal, engineering, or other expert fees.

In this case, the \$1,000.00 escrow deposit was returned to [REDACTED]. In short, what the Township's ordinance states and its practice are two (2) different things. There were no legal, engineering, or other expert costs attributed to [REDACTED]. His deposit was held in escrow in the event that there was damage to the roads attributable to his logging activities. To that end, the engineer inspected the road prior to and after the completion of [REDACTED] logging activities, and after finding that no damage was caused to the road, recommended returning the \$1,000.00 being held for that purpose. All fees and work performed by the engineer were billed to the Township, with [REDACTED] not being responsible for any of those costs. There were no legal or expert costs incurred.

In any event, after review of prior OAG opinions on this matter, Pennsylvania Codes and regulations, and case law, it is acknowledged that the language regarding the legal, engineering, and forester services (experts) contradicts ACRE law. The undersigned will not further state a position regarding the escrow for the potential road bond/maintenance that was returned to [REDACTED] in full, as that does not seem to be his issue as stated in his complaint.

The undersigned respectfully requests a suggested model ordinance for review, comment, and editing, for Township approval, to address this language. The new ordinance will have to go through the advertising process, but this will ensure that it is compliant with current PA law, code, and regulations. Please advise if this resolution is sufficient for this item.

(3) TIMELINESS OF APPROVAL OF [REDACTED] PERMIT

[REDACTED] third and final complaint avers the following:

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 work session, the permit was not approved because one supervisor was absent and [REDACTED] abstained. The [REDACTED] permit was finally approved by the township in 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] used his position with the township to attempt to prevent his mother's timber from being logged. The agreement is for the purchase of [REDACTED] timber by [REDACTED] 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.

(Page 2 of [REDACTED] CRE Law Complaint).

By way of further background, on the original paperwork submitted for timbering, the property owner was listed in the name of an Irrevocable Trust. In a separate legal matter, it was determined that this was improper and steps were taken to have [REDACTED] individually, named as the correct property owner. This was accomplished and the Deed and Revocation and Termination of the Irrevocable Trust were recorded in the Recorder of Deeds in Beaver County on May 13, 2022. At the first meeting in June (Raccoon Township has 2 meetings a month -- the first is the Supervisors Regular Meeting and the second is the Work Session Meeting, which is sometimes canceled), the approval of the permit on the [REDACTED] property was tabled, as the paperwork in possession of the Township was still titled in the Irrevocable Trust's name. As the Trust had no authority to bind the property and enter into a valid agreement, new paperwork needed to be submitted to reflect the correct owner. Also subsequent to that time, the issue regarding the pipeline was discovered and was addressed.

The new paperwork for the timbering application was not signed until August 2022. [REDACTED] advised of the decision that she wished to sign a new timbering agreement during the early part of that month. At that time, the item was put on the agenda for approval. As happens for some Township meetings, only two (2) Supervisors attend the meetings, as each of the Supervisors work full-time, with two (2) of them working nights and/or shifts in which he cannot make the meetings. This was the case in this instance, being that all three (3) Supervisors were not able to attend the scheduled meetings.

For the September and October meetings, there were only (2) Supervisors, one of them being [REDACTED]. He abstained at the direction of the undersigned. Although he is not directly obtaining moneys for timbering, being that the party doing so is his mother in which he could eventually be privy to said funds, in an abundance of caution, I instructed him to abstain. This is the reason that approval was not made during that time.

In the middle of October 2022, [REDACTED] attorney, his father, reached out to me and asked what could be done to get approval. I told him it was a matter of getting the two (2) other supervisors there at same meeting, which they couldn't do previously because of work schedules, but that they would be there at the Work Session meeting of October 25, 2022. [REDACTED] attorney understood and appreciated the explanation. At the October 25, 2022 Work Session meeting, the [REDACTED] permit was approved, issued on October 26, 2022, effective until April 26, 2023.

Initially, the undersigned does not believe this is an ACRE matter, as [REDACTED] does not cite anything in his complaint averring improper language in the Township's ordinance.

Further, it is steadfastly denied that [REDACTED] used his position as Township Supervisor in an attempt to deny the logging permit of his mother's property. If the above explanation is deemed insufficient, had [REDACTED] wanted to ensure the denial of the logging permit, he would have instructed or suggested the other Supervisors to vote "no". He did nothing of the sort and did not interfere in the other Supervisors own evaluation of the matter and eventual vote.

Still further, [REDACTED] claims that he incurred additional expenses attempting to acquire the permit, as well as opportunity costs associated with declining lumber prices during the permit waiting period. Despite this claim, [REDACTED] attached nothing to his letter evidencing the same and has provided no information as to what those amounts were other than just making a blanket, unsupported statement.

In sum, the Township proceeded in a timely, responsible and proper fashion for approval of the [REDACTED] permit and no adverse consequences should come from its actions, should it be first be deemed an ACRE matter that can be addressed by [REDACTED] complaint. It should be noted that [REDACTED] complaint only came after he completed timbering the [REDACTED] parcel and received his full escrow deposit back, and not while operations were ongoing. Further, an attempt to reach [REDACTED] attorney through email went unanswered, despite being the same email that was used for communication months earlier.

Please advise as to the OAG's position and provide next steps for the Township, including a model ordinance for Township consideration. The Township remains willing to work towards an amicable resolution to these matters.

Very truly yours,

[REDACTED]
[REDACTED]
[REDACTED]
Solicitor for Raccoon Township

Cc: [REDACTED]

Raccoon Township