



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

DAVID W. SUNDAY, JR.  
ATTORNEY GENERAL

May 27, 2025

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

[REDACTED]  
[REDACTED]  
[REDACTED]  
sent via email to [REDACTED]

Big Beaver Borough  
ATTN: Board of Supervisors  
114 Forest Drive  
Darlington, PA 16115

sent via email to [REDACTED] & [REDACTED]

*Re: ACRE Complaint – Big Beaver Borough – Beaver County*

Dear Board of Supervisors and [REDACTED]

Act 38 of 2005 ("ACRE"), 3 Pa.C.S. §311, *et seq.*, requires that the Office of Attorney General ("OAG"), upon request of an agricultural owner or operator, review a local government ordinance for compliance with Act 38. The Act authorizes the Office, in its discretion, to file a lawsuit against the local government unit if, upon review, the Office believes that the ordinance unlawfully prohibits or limits a normal agricultural operation.

[REDACTED] filed an ACRE request for review with the OAG. He contends that Big Beaver Borough's timber harvesting ordinance violates ACRE. He specifically takes issue with the Borough's property line no-cut zones and the requirement to get neighbors' permission to waive those setback distances. A copy of the ACRE request is attached for your review.

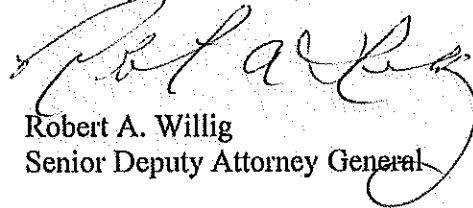
The OAG has dealt with the issue of blanket no-cut buffer zones many times before. For example, this Office addressed the matter in the Lower Saucon Township, Northampton County case. I attach that portion of a letter the OAG sent to Lower Saucon explaining why blanket no-cut buffer zones violate ACRE. The OAG recommends that Big Beaver remove the blanket no-cut buffers from its timber harvesting ordinance.

I reached out to [REDACTED] asking for more information on his claims. In his May 27<sup>th</sup> email response which is attached, he explained in clear and persuasive terms why securing such

neighbor permission is unworkable. If the Borough agrees to remove the no-cut buffer provisions from the ordinance, then the requirement that one secure the neighbors' permission to waive those buffers becomes moot. If Big Beaver repeals the no-cut buffer provisions, this ACRE case will be resolved and closed.

If Big Beaver Borough can please respond to the ACRE complaint within 30 days of receipt of this letter giving the OAG its thoughts on this matter I would greatly appreciate it. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Willig", written over the typed name and title.

Robert A. Willig  
Senior Deputy Attorney General



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO  
ATTORNEY GENERAL

February 15, 2019

Office of Attorney General  
1251 Waterfront Place  
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[REDACTED]

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Lower Saucon Township  
[REDACTED]  
3700 Old Philadelphia Pike  
Bethlehem, PA 18015

Re: ACRE Review Request - [REDACTED]  
Lower Saucon Township-Northampton County

Dear [REDACTED],

The [REDACTED] and [REDACTED] ACRE complaint contends that Lower Saucon's timber harvesting requirements violate state law. After careful review of the relevant information, the Office of the Attorney General ("OAG") finds that the ordinances violate ACRE in the following respects:

1. Charging \$3,227.03, as reflected in Invoice # 5799, in consultant fees for [REDACTED] to review the site plans for the [REDACTED] and [REDACTED] properties, §§ 180-102.B(1) & (3), 102.C(1);<sup>1</sup>

<sup>1</sup> In [REDACTED] site plan applications for [REDACTED] and [REDACTED] there is a notation that the township collected a \$2,000.00 escrow fee. Lower Saucon's Fee Schedule lists a \$2,000.00 escrow requirement in Section 3, "Subdivision/Land Development, Minor Subdivisions." After [REDACTED] had reviewed the site plans, Lower Saucon informed [REDACTED] that its "escrow account currently has a negative balance. A cease and desist order [for the timber harvest] has been issued...until payment of \$3,227.03 (Invoice #5799 attached) is made." Apparently, Lower Saucon is using the funds in an applicant's escrow fees to pay for professional reviews of site plans.

2. Applying no-cut buffers along streets, riparian areas,<sup>2</sup> waterbodies, and abutting properties, including buildings on adjacent properties, in addition to the required retention of a percentage of the original basal area,<sup>3</sup> §180-127.2.D;
3. The required use of contour lines at a maximum of ten (10) foot intervals on United States Geographical Survey ("USGS") maps, 180-127.2.A(2)(f);
4. The requirement that the site plan include a "certificate of insurance" for the harvesting contractor, § 180-127.2.A(3)(f);
5. The requirement that the site plan include the "[d]uration of forestry operation (number of days)," in order to secure a permit, § 180-127.2.A(3)(c);
6. Mandatory use of the "Selection Harvest Method"<sup>4</sup> instead of one or more of the other accepted silvicultural<sup>5</sup> methods, §180-127.2.B;
7. Requiring certain reforestation processes and time periods, §180-127.2.B(3);
8. Restricting certain forestry activities on slopes greater than 25% (where trees must be winched off using cable) and 40% (no harvesting unless a tree is diseased or presents a danger), §180-127.2.B(4) & (5);
9. Requiring cross drain culverts, broad based dips, water-bars,<sup>6</sup> and other water-control structures as needed to allow surface water to traverse logging roads,

<sup>2</sup> A "riparian zone" is "an area adjoining a body of water, normally having soils and vegetation characteristic of floodplains or areas transitional to upland zones." See Pennsylvania State University ("PSU"), College of Agricultural Sciences, *Best Management Practices for Pennsylvania Forests*, p. 46 (Attached as Exhibit A).

<sup>3</sup> "Basal area" is "[a] measurement of the cross-sectional area of a tree trunk in square feet at breast height. Basal area (BA) of a forest stand is the sum of the basal areas of the individual trees, and is reported as BA per acre." <https://extension.psu.edu/forest-stewardship-terminology>.

<sup>4</sup> "Selection cutting, a regeneration technique in which trees are removed singly or in small groups, is appropriate for forests comprised of trees of different ages, or uneven-aged forests." See PSU, College of Agricultural Sciences, *Timber Harvesting in Pennsylvania – Information for Citizens and Local Government Officials*, p. 5. (Attached as Exhibit B).

<sup>5</sup> "Silviculture is the art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society such as wildlife habitat, timber, water resources, restoration, and recreation on a sustainable basis." <https://www.fs.fed.us/forestmanagement/vegetation-management/silviculture/index.shtml>.

<sup>6</sup> A "culvert" is a "[p]ipe made of metal, plastic or other suitable material installed under roads to transmit water from an inside ditch to the outside edge of a road for dispersion." A "broad based dip" is a "dip and a reverse slope in the trail or walkway surface with a cross slope in the dip to provide cross drainage. It can be described as a gentle roll in the centerline profile of the road that is designed to be a relatively permanent and self-maintaining water diversion structure that can be traversed by any vehicle." A "water bar" is a "combined shallow trench and ridge made of earth, rocks, or logs constructed diagonally across a trail or walkway to remove and disperse surface runoff from the trail or walkway." <https://efotg.sc.egov.usda.gov/references/public>, pp. 2, 3, & 4.

or trails, or landing areas in a way that will not cause soil erosion, §180-127.2.C(2)(c)[1]-[4];

10. Requiring that all disturbed areas, including but not limited to landing areas, haul roads, logging roads and trails and skid trails be fertilized and seeded during reforestation, § 180-127.2.C(2)(c)[4](d); and

11. Mandating that tops and slash<sup>7</sup> be disposed of in certain ways, § 180-127.2.C(10).

We elaborate upon each of these issues as follows:

### CONSULTANT FEES

Pursuant to §§ 180-102.B(1) & (3), 102.C(1) and Section 3 of the Township's Fee Schedule, Lower Saucon charged [REDACTED] \$3,227.03 in consultant fees for [REDACTED] to review their site plans. Such charges are not lawful and, if already collected, Lower Saucon must return the money.

The Municipalities Planning Code ("MPC") expressly prohibits townships from charging a landowner "expenses for engineering...or other technical consultants...costs" in administering a zoning ordinance. 53 P.S. § 10617.3(e). Timber harvesting is "a permitted use by right in all zoning districts in every municipality." 53 P.S. § 10603(f). Lower Saucon's attempt to charge thousands of dollars for reviewing site plans during the permitting process - for a permitted use by right - is tantamount to unlawfully converting the application into one for a conditional use. Lower Saucon cannot apply the provisions of Section 3, "Subdivision/Land Development, Minor Subdivisions" to forestry activities. The township must return any previously collected money and no longer charge consulting fees for those seeking to harvest timber.

### NO-CUT BUFFERS

Section 180-127.2.D mandates no-cut buffer zones of between seventy-five (75) and one hundred (100) feet. These no-cut buffers apply along streets, riparian areas, waterbodies, and abutting properties, including buildings on adjacent properties, in addition to the retention of a percentage of the original basal area.

That portion of subsection D dealing with water bodies and riparian areas conflicts with the state regulatory programs protecting "[a]ll surface waters, lakes, ponds, streams and wetlands in Pennsylvania." See Pennsylvania Department of Environmental Protection ("DEP"), *Timber Harvest Operations Field Guide for Waterways, Wetlands, and Erosion Control*, July 2009, p. 4. (Attached as Exhibit D). The DEP's Erosion and Sediment Control and Waterway Management regulatory schemes<sup>8</sup> implement best management practices for timber harvesting near streams, ponds, wetlands, floodplains, and other waters of the Commonwealth. The regulations do not

<sup>7</sup> "Top" means the upper portion of a felled tree that is unmerchantable because of small size, taper, or defect."  
"Slash" means woody debris left in the woods after logging, including logs, chucks, bark, branches, uprooted stumps, and broken or uprooted trees or shrubs." See PSU School of Forest Resources, *Pennsylvania Model Forestry Regulations*, p. 3 (Attached as Exhibit C)

<sup>8</sup> 25 Pa.Code Chapters 102 and 105.

regulations recognize the unique nature of each forest by allowing timber harvesting activities near water sources using required best management practices tailored to the particular site conditions of a specific property.

The ACRE statute provides for the OAG to utilize the PSU School of Agriculture as experts in agricultural operations issues. 3 Pa.C.S. § 314(d). In this case, the OAG consulted with a PSU School of Agriculture professor emeritus of forestry. The Penn State expert advised that any blanket, automatic buffer requirement is contrary to Best Management Practices ("BMPs") and sound forest management accepted in the field of forestry. A professional forester develops a forest plan for a timber harvesting operation and in so doing, assesses the overall health of the forest and identifies the best management practices to implement to sustain and improve the health of the forest. This includes, for example, identifying which trees to remove, how much canopy to retain, addressing environmentally sensitive areas, and the overall management goals to sustain that forested land. These management goals will vary depending on the site specific conditions at a particular forest. In addition, the DEP requires a person engaging in timber harvesting activities to have either a written erosion and sediment ("E&S") control plan or an approved E&S permit depending on the size of the timber harvesting operation. 25 Pa. Code §§ 102.4(b), 102.5(b). An E&S plan or permit requires planning for the site specific characteristics of the earth disturbance activity and the implementation of BMPs. Thus, Lower Saucon's blanket setback buffer zone requirement is unreasonable and contrary to sustainable forestry practices because it precludes all timber harvesting in the zone and there may be trees that should be removed to maintain the long term health of the forest. Moreover, there may be safety or other reasons which require the harvesting of trees in the buffer zone, including the prevention of accelerated erosion and sediment control. The buffer setback also results in a direct economic impact by reducing the amount of property from which an owner can harvest trees in contravention of the MPC.

Our suggested amendment is to delete subsection D and replace it with a provision that requires the owner/operator of the timber harvesting operation to provide a forest plan prepared by a professional forester that sets forth the applicable BMPs to be implemented for the timber harvest, including the plan to address harvesting in the vicinity of waterbodies, along streets, property lines, abutting properties, and buildings on adjacent properties. The owner/operator may also be required to provide proof of any required DEP plans or permits.

#### **TEN FOOT COUNTOUR LINES**

Section 180-127.2.A(2)(f) requires the use of USGS maps with a maximum of ten foot intervals for the forestry site plans.

The MPC prohibits ordinances from "unreasonably restrict[ing] forestry activities." 53 P.S. § 10603(f). The PSU expert advises that the ten foot interval requirement for the topographic map is excessive and cost prohibitive. The expert states that in his decades of experience in the forestry field the intervals on most topographic maps in Pennsylvania are twenty feet. In the expert's opinion, while a map with ten feet intervals may be a reasonable requirement for a residential development, such a short interval is not necessary for a timber harvest even when including road planning. Complying with the Ordinance forces the applicant to incur the added expense of completing a site specific survey; topographic maps with twenty foot intervals do not. In order to procure a site specific survey, a land owner or logger has to hire a professional land surveyor. The Pennsylvania Society of Land Surveyors explains on its website that "[d]epending on the nature and extent of the work, [a survey would cost] anywhere from a few hundred to several thousand