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June 29, 2016

VIA EMAIL AND U.S. MAIL

Wendy O'Brien
Proden & O'Brien
Attorneys at Law
99 East Main Street
Uniontown, PA 15401

Re: Laurel Mountain Midstream Operating, LLC
Springhill Compressor Station
Response to Objectors' Proposed Conditions

Dear Ms. O'Brien:

The purpose of this letter is to set forth Laurel Mountain Midstream Operating, LLC's ("Laurel Mountain") response and objections with respect to the Bezjak's proposed conditions to the approval of Laurel Mountain's Springhill Compressor Station zoning application.

I. Relevant Legal Standards and Considerations

Under Sections 603(c)(1) and 912.1 of the Pennsylvania Municipalities Planning Code ("MPC"), a zoning hearing board has the statutory authority to attach "reasonable conditions" based on the "evidence in the record." *See* 53 P.S. § 10603(c)(1); 53 P.S. § 10912.1; *Coal Gas Recovery, L.P. v. Franklin Township Zoning Hearing Board*, 944 A.2d 832 (Pa. Cmwlth. 2008) (holding that the imposition of conditions when there is no evidence in the record to support the conditions is manifestly unreasonable and an abuse of discretion); Ryan, *Pennsylvania Zoning Law and Practice* §9.4.19 (reasonable conditions are those that advance a valid zoning interest and are supported by the evidence of record).

In order for a condition to be "reasonable," it must relate to a standard adopted in a zoning ordinance. *See Hill v. Zoning Hearing Board of Maxatawny Twp.*, 597 A.2d 1245 (Pa. Cmwlth. 1991) (a zoning board has the power to impose conditions only "if the conditions reflect the subject matter and content of an ordinance duly enacted by the governing body of the municipality"); Ryan, *Pennsylvania Zoning Law and Practice* §9.4.18 (the imposition of conditions which do not relate to matters specifically regulated by the ordinance and exceed the requirements of the ordinance constitute an invasion of the legislative function, and generally are invalid).

In applying the principles of preemption, Pennsylvania courts have consistently held that environmental statutes and regulations preempt local zoning that attempts to address the operational aspects of a land use, which are within a federal or state regulatory agency's purview under the various environmental statutes and regulations. *See State College Borough Water Authority vs. Bd. of Supervisors of Halfmoon Township*, 659 A.2d 640 (Pa. Cmwlth. 1995); *Clinton County*, 643 A.2d at 1169. *Clinton County Solid Waste Authority v. Wayne Twp.*, 643 A.2d 1162, 1169 (Pa. Cmwlth. 1994) (conditions are not reasonable if inconsistent with state environmental laws and regulations).

When viewed as a whole, it is clear that Bezjak's proposed conditions are inherently unreasonable where they are not based upon the evidence of record or otherwise exceed the scope of permissible local regulation. For these reasons, Laurel Mountain objects to the imposition of all of the Bezjak's proposed conditions.

II. Specific Objections

In addition to Laurel Mountain's general objections, Laurel Mountain provides the following specific objections to each of the proposed conditions:

1. LMM shall install and maintain sound mitigation so that the measured sound level is 50 dBA during daytime hours (7 AM- 9 PM) and 35 dBA during nighttime hours (9 PM - 7 AM) as measured at any property line boundary or location on an adjacent property. The sound level should be measured using a 15 minute, A-weighted equivalent continuous sound level (LAeq) metric. Compliance shall be tested with all compression engines and other sources of noise running at full capacity.

At the hearing, both parties provided evidence and testimony that the compressor station complies with the Zoning Ordinance's noise standards without the need for any mitigation measures. As such, the imposition of this condition would constitute a manifest abuse of discretion.

2. LMM shall implement blowdown injection technology, or equivalent means to prevent blowdowns from venting directly into the atmosphere.

The foregoing condition is an impermissible attempt to regulate the operational aspects of Laurel Mountain's operations. *Range Resources Appalachia, LLC v. Salem Twp.*, 964 A.2d 869 (Pa. 2009). Furthermore, it constitutes an abuse of discretion because it addresses matters that are not of record.

3. LMM shall file quarterly with Fayette County a report providing the following information

* * *

7. LMM shall at the same time it notifies PaDEP of any incidents, including without limitation Springhill Compressor Station Malfunctions, email a copy of the incident notification to the Fayette County Office of Planning, Zoning and Community Development.

These conditions are not related to any standard adopted in the Zoning Ordinance and otherwise fail to serve any legitimate zoning purpose. Furthermore, the County does not have an air quality specialist on staff that would be qualified to analyze the requested data. These conditions would impose unnecessary and burdensome obligations on both the County and Laurel Mountain.

4. LMM shall file with Fayette County an Emergency Response Plan, including an evacuation plan for residents of Hope Hollow Road and Honor Roll Road in the event of an accident. The evacuation procedure under this plan will be communicated to nearby residents of Hope Hollow Road and Honor Roll Road in writing.
5. LMM shall communicate to nearby residents notice of all planned blowdowns.

In its Proposed Findings of Fact and Conclusions of Law, Laurel Mountain has proposed a similar condition that accomplishes the same purposes.

6. LMM shall not operate the gas fired engines at any time with the doors to the engine enclosures open.

Laurel Mountain will attempt to operate all of the engines with the doors closed but cannot be subject to an unqualified prohibition that may run afoul of federal regulations and create a potential safety hazard.

8. LMM shall plant and maintain a Number 1 bufferyard pursuant to § 1000-212 Table 5 along the common border of the Bezjak property.

As provided for in Exhibit M, this would constitute an abuse of discretion where the entire property is surrounded by mature trees and the Bezjak property is vacant.

9. No future improvement which will generate emissions, glare, or noise shall be installed within 200 feet of the Bezjak Property line and no current improvement may be moved or reconstructed closer than its current location.
10. LMM shall reapply to the ZHB for a new Special Exception in the event that the equipment at Springhill Compressor Station changes or the capacity of the

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Springhill Compressor Station is increased by any other means by more than 10%.

These conditions are an improper attempt to change the terms of the Zoning Ordinance and usurp the County Commissioners' legislative power.

11. LMM shall remove the encroachments on the Bezjak property.

This proposed condition is improper for a number of reasons, including that it does not involve the use of the property (*i.e.*, the Springhill Compressor Station) or the actual property that is the subject of the application.

12. Zoning approval shall be revoked by the Zoning Officer for violations of these conditions as well as after notification by DEP of violations of permit # GP5-26-00587D, or any subsequent GPS permits which may be issued from time to time.

A notice of violation issued by the County or DEP does not mean that there is an actual violation of an ordinance, regulation or permit. This proposed condition is contrary to law and violates due process rights.

For the foregoing reasons, Laurel Mountain requests that the Board not impose the Bezjak's proposed conditions.

Very truly yours,



Shawn N. Gallagher

cc: Ms. Sara Rosiek
Mr. David Toal
Laurel Mountain Midstream Operating, LLC