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October 20, 2026

NOTICE OF INTENT TO SUE

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Sentinel Green Fig II, LLC
% Managing Partner
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Via email: jrabina@rabina.com
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Re: Section 617 of the Municipalities Planning Code Notice of Intent to Sue

To addresses as listed above:

On behalf of East Whiteland United, a group of landowners and citizens impacted by the Sentinel Green Fig II, LLC's ("Sentinel") development of the former Foote Mineral CERCLA Site ("Project"), undersigned counsel is hereby serving this letter to provide to you official notice pursuant to Section 617 of the Pennsylvania Municipalities Code of the group's intention to sue the East Whiteland Township and the Board of Supervisors (the "Township") and Sentinel for violations of the Township ordinances and the terms and conditions of the Final Plan Approval granted by the Township for the Project. The basis of this lawsuit is explained below:

1. Deficient Aqua America Water Supply Agreement

As the Township was previously informed during the Public Comment session of the Board of Supervisors on Wednesday, September 9, 2026, and by emails dated August 28, 2026, and September 14, 2026, the prerequisites for the issuance of any permit for the Project have not

been met by Sentinel. The Township acknowledged this reality when it issued a Stop Work Order on August 26, 2026, for work being conducted under Permit B-2026-221 (for micropiles, footings, concrete pads, and control house). Supervisors Lambert and Fixler reiterated the reason for this Stop Work Order during the September 9, 2026 meeting, i.e., Sentinel has failed to satisfy the prerequisites to begin work at the Site.

Sentinel's recent acquisition of an agreement with Aqua to provide projected amounts of water which approximate the totals included in the Final Plan Approval does not cure this defect. Most notably, according to the Final Plan Approval, Sentinel has to demonstrate to the Township that this new supply agreement – which will dramatically increase the volume of service along Swedesford Road – will have no impact on existing customers of Aqua who are Township residents. It is stunning that the Township merely posted this letter on its website, without even inquiring of Sentinel or Aqua whether that is the case. Until the Township provides evidence to the residents, this water agreement fails to fulfill the prerequisite to any permits being issued.

Similarly, during the history of this Project, at one point Sentinel proposed the use of a storage tank. A storage tank was never included in the Final Plan Approval. Has the Township even made an inquiry to Sentinel about that feature?

As you are aware, Sentinel continues substantial earthmoving at the Project Site daily. We assume these activities are conducted under the purported authority of Township Permit No. ES-2026-24, which the Township issued for Erosion and Sedimentation activities at 13 S. Bacton Hill Road on July 22, 2026. As previously presented, the Township should issue a Stop Work Order that applies to all permits at the Site, with the most significant Permit being, No. ES-2026-24.

2. New Permit Applications Demonstrate That Sentinel Is Impermissibly Returning To Its Desire For A Modified Design And New Use Of The Property

According to the Township webpage devoted to this Project, on September 25, 2026, Sentinel withdrew its prior permit applications for “footings, foundations and other ground improvements” for Buildings 1 and 2, “*only as shown on Plans*”. Contemporaneously, Sentinel submitted two new permit applications for “footings, foundations, **slab on grade**, and associated ground improvements” for Buildings 1 and 2, “*only as shown on Plans*”. As the Township is well aware, the Plans never showed slab on grade construction, but rather, basements of 20-foot depth were to be constructed. As the Township fully recalls, both its solicitor and Sentinel's counsel recognized that such a change (and the attendant reasons for the change) required an Amended Plan Approval, which was filed in January 2026. While Sentinel withdrew its Amended Plan Approval in May 2026, it was nevertheless back at the Township's door knocking for this precise modification, when it tried to force a vote of the Supervisors on July 8, 2026, to approve this modification through the pathetic euphemism of “field changes”.

Presumably the Township and its counsel have fully read and comprehended the legal memorandum submitted by Richard Wall at the Supervisors meeting of September 9, 2026. This attempted modification sought by Sentinel now, in the sleight of text of a building permit application can only be approved by Variance before the Zoning Hearing Board. Approve these two building permit applications, and the Township will be sued.

3. Sentinel Green Fig Has Impermissibly Circumvented MPC Procedures With This Project

Sentinel Green Fig is attempting to procure administrative approval for significant structural and operational changes constituting a new data center development plan without submitting the required application for additional zoning relief to the Zoning Hearing Board (ZHB). The Pennsylvania Municipalities Planning Code (MPC) protects affected landowners' rights to notice, participation, and a meaningful opportunity to challenge the applicant's evidence. See 53 P.S. § 10908(1), (3), (5), (8). The ZHB has exclusive jurisdiction over variance applications. 53 P.S. § 10909.1(a)(5). A materially changed development cannot obtain approval through an administrative process that circumvents the ZHB's statutory authority and deprives affected landowners of the MPC's procedural protections.

The governing precedent is direct. In *Scalise v. Zoning Hearing Bd. of Boro. of West Mifflin*, 756 A.2d 163, 167–68 (Pa. Commw. Ct. 2000), the Commonwealth Court held that alterations to a use authorized by variance require further action by the zoning authorities. Pennsylvania appellate courts also require the final development plan to remain “essentially identical to” the preliminary plan. *Rickert v. Latimore Twp.*, 960 A.2d 912, 918 (Pa. Commw. Ct. 2008). Only *de minimis* changes are permissible. *Bailey v. Zoning Bd. of Adjustment*, 801 A.2d 492, 505 (Pa. 2002).

4. The Only Environmental Impact Assessment Is Fraudulent And Incomplete

East Whiteland United is also intending to bring suit against the Township and Sentinel for violating East Whiteland Township Ordinance § 175-23C (the “EIA Ordinance”), which provides, in relevant part, that:

Environmental impact assessment. A subdivision or land development application which seeks preliminary or final approval of a residential subdivision or land development of more than five lots or units or a commercial, industrial, office or professional use or combination thereof containing more than one lot or building or one building in excess of 5,000 square feet in gross floor area or any use which requires conditional use approval shall be accompanied by an environmental

impact assessment (EIA) report in narrative form prepared in accordance with the provisions of this subsection[.]

East Whiteland Township, Pa., Zoning Ordinance § 175-23C.

The EIA Ordinance’s requirements for an Environmental Impact Assessment (“EIA”) are robust and include, as delineated therein, (1) analysis of site features; (2) identification of community services and facilities; (3) natural resources impact; (4) recreational impact; (5) traffic impact study; and (6) sound vibration study, with each category having separate subcategory requirements. *Id.* There can be no dispute that the Project is subject to the requirements of the EIA Ordinance as JMR Engineer LLC (“JMR”) has explicitly cited and acknowledged the EIA Ordinance as applying to the Project in its correspondence with East Whiteland Township. *See, e.g.*, May 31, 2024 letter from JMR to Mr. Zachary Barner, AICP, Director of Planning and Development, East Whiteland Township, attached hereto as **Exhibit A**.

To date, only one EIA has been prepared for the Project, and that was issued by JMR on November 10, 2023, which is attached hereto as **Exhibit B** (the “EIA Report”). In the “Report Overview” therein, JMR states that “the site has been remediated and removed from the National Priorities List in accordance with DEP requirements.” Ex. B at 5. The Overview also states that the “Applicant is proposing to construct two Data Center buildings which will be approximately 250,000 s.f. each, for a total of approximately 500,000 s.f. of building footprint.” *Id.* Both of these statements were made either with knowing falsehood or with reckless disregard for the truth, and as long as the EIA Report relies on these two false premises, it is as though no EIA Report has been prepared at all.

As this Board is aware, the fiction that the Project site has been fully remediated and therefore removed from the CERCLA National Priorities List was false in November 2023, and remains false to this day. A simple public record search of EPA’s National Priorities List reflects that the “Foote Mineral Co.” site remains on the National Priorities List, and has remained uninterrupted since October 14, 1992. *See* [National Priorities List \(NPL\) Sites - by State | US EPA](#). The fact that the only EIA Report to date misrepresented the fundamental environmental condition of the site being on the National Priorities List is alone sufficient to deem it deficient, yet that is hardly its only fatal flaw.

When the Project was first approved for a variance back in February 27, 2018, the Opinion and Order issued by the East Whiteland Township Zoning Hearing Board, attached hereto as **Exhibit C**, expressly granted the variance for two, two story buildings with a footprint of 180,000 square feet, “for a total floor area of the data centers of 720,000 square feet.” Ex. C at 3. No justification is presented in the EIA Report as to why the Project analyzed was limited to 500,000 square feet. *See generally* Ex. C. Thus, from the start, the EIA Report is flawed in that it intentionally or recklessly analyzed a significantly smaller space than the actual Project.

What is particularly troublesome is that by November 10, 2023, when the EIA Report was issued, the Project site had already markedly increased in size from what was approved in February 2018. On or about November 16, 2021 – two years before the fraudulent EIA Report was issued – the East Whiteland Township Zoning Hearing Board issued another written decision to an appeal by Sentinel’s predecessor, attached hereto as **Exhibit D**, that granted “an extension of the previously granted use variance for a data center to allow additional building footage, for a new total of 1.86 million square feet, plus an additional 35,865 square feet of modular area.” Ex. D at 1-2. EWT Ordinance § 175-23C requires an “analysis of site features” with several particular requirements that must be described thereunder. *Id.* § 175-23C(1)(a)-(d). The EIA Report captures far less than 30% of the actual Project site, and therefore cannot as a matter of law be deemed to have sufficiently analyzed the site features when it left over 70% of the Project site unconsidered.

Consequently, the EIA Report is fatally flawed because it cannot adequately analyze the environmental impact of the Project where it is (1) based on the material false statement that the Site was fully remediated and removed from the National Priorities List; and (2) only analyzes less than 30% of the total Project.

If the above were not bad enough, the EIA Report also suffers from being no longer current and accurate, in addition to the fraudulent premises set forth therein. In September 2024 the EPA issued its Third Five-Year Plan (“Third FYP”) for the Foote Mineral Co. Superfund site, a copy of which is attached hereto as **Exhibit E**. Since the EIA Report was issued in November 2023, nothing in the Third FYP was considered in the only document created to fully analyze the environmental impact of the project wholly occurring on a Superfund site.

Contrary to the material representation in the EIA Report, the Third FYP by the EPA makes it clear that the Project site is not remediated, and far from it. Indeed, the introduction dispels the false claim of remediation, stating that “[t]his FYP has been prepared because hazardous substances, pollutants or contaminants remain at the Site above levels that allow for unlimited use and unrestricted exposure.” Ex E at 5. Specifically, the Third FYP “performed a screening-level risk review and found that the cleanup goals used **are not protective of either residential (specifically, a child resident) or commercial/industrial use[.]**” *Id.* at 16 (emphasis added). Moreover, “[g]roundwater exceedances of respective inorganic remedial goals for boron, bromate, and lithium, persisted for all monitored wells.” *Id.* at 20. In particular, “lithium concentrations continue to exceed the 2006 ROD remedial goals[.]” *Id.* The same finding was made with respect to Boron and Bromate. *Id.* at 21. The Third FYP also found that concentrations for chromium and lithium “exceed surface water screening criteria for human health and may present unacceptable risk to human health.” *Id.* at 30. The EIA Report is silent on how the Project will impact all of this substantial contamination exposures because it falsely represented that remediation was complete and was published before the Third FYP. Without considering the Project site in its accurate and current condition, the EIA Report is virtually useless and in no way complies with East Whiteland Township Zoning Ordinance § 175-23C.

It is particularly inappropriate for the Project to go forward relying on the defunct and fraudulent EIA Report when the Third FYP does address the Data Centers and expressly cautions their construction. As the Third FYP states: “[t]he current Property owner intends to redevelop the Property by building a data farm facility. **However, the extent of groundwater contamination with [volatile organic compounds] is not known.**” *Id.* at 29 (emphasis added). The Third FYP identifies a plethora of unknowns about the dangers of the proposed Project, including that “the potential for vapor intrusion cannot be ruled out and sampling should be performed **prior to any construction of enclosed buildings.**” *Id.* at 30 (emphasis added). Indeed, the unknowns of the extent of the site’s contamination resulted in the EPA giving as its conclusion in the Third FYP that a “protectiveness determination of the remedy cannot be made at this time until further information is obtained.” *Id.* at 35.

As a result of the Third FYP findings, the EPA revoked a Sitewide Ready for Anticipated Use designation for the Foote Mineral site on September 16, 2024, attached hereto as **Exhibit F**. Therein, the EPA specifically stated that “[t]he entire site **no longer meets**” the requisite criteria to protect human exposure and long-term human health protection. *Id.* (emphasis in original). Again, the EIA Report ignores this critical change that should have been considered in any legitimate EIA report as it goes to the environmental concerns of the very Project the EIA Report presumes to evaluate.

Given the unknown and known contamination identified in the Third FYP, for the EIA Report to be valid, it must consider and address these unknown and known concerns. In the federal contexts, Pennsylvania courts look to 42 U.S.C. § 4332(c)(2) to determine whether an EIA report contains the sufficient content and detail to be legally sufficient. *Del. Water Emergency Group v. Hansler*, 536 F. Supp. 26, 41 (E.D. Pa. 1981). Section 4332(c)(2) requires that the EIA report discuss the “reasonably foreseeable effects of the proposed” action and “a reasonable range of alternatives” as well as several other criteria that needs to be addressed. *Id.* None of the five requirements for an EIA report under Section 4332(c)(2) are met by JMR’s fifteen-page EIA Report. Since the EIA Report is devoid of the exact content that is required by EIAs under the current case law concerning EIAs, it is patently deficient to be relied upon to green-light a major construction project on a non-remediated CERCLA Superfund site.

Likewise, despite the Third FYP identifying several material unknowns the EIA Report does nothing to cure these unknowns because it was issued nearly a year before the Third FYP was published *and* improperly operated under the likely knowingly false presumption that the site was fully remediated. Most alarmingly, the Third FYP specifically instructs sampling to be performed for vapor intrusion before the Data Centers are build, Ex. E at 30, but the EIA Report is completely silent on vapor testing. *See generally* Ex. B. Indeed, none of the contamination reported in the Third FYP is even addressed in the EIA Report because it was written under the false pretext that remediation was complete. Pennsylvania courts recognize that the “purpose” of an EIA is to “present a site-specific assessment of the environmental consequences associated

with” a particular course of proposed action. *Citizens Advisory Comm. On Private Prisons, Inc. v. United States DOJ*, 197 F. Supp. 2d 226, 254 (W.D. Pa. 2001); *see also, Bosco v. Beck*, 475 F. Supp. 1029, at *1032 (D. N.J. 1979) (“The purpose of the environmental assessment is to ensure that the Step 1 grantee considers the environmental impacts of a proposed action at the earliest possible point in the Step 1 grantee's planning process”).

Here, the EIA Report makes no effort to supply the critical contamination missing from the Third FYP because it did not bother to be updated in response to the Third FYP being issued and rested on the false premise that the site was completely remediated. It is, in short, worthless in terms of evaluating the environmental impact of the Project since it is based on stale and false information. Nevertheless, as the Township and the community knows, construction – including earth moving work – has already begun on the Project site.

Finally, and most importantly, the EIA Report – and all Project studies to date for that matter – completely overlook the fact that two federally listed endangered species, the Indiana bat and northern long-eared bat, include the Project site in their natural range. According to the PNDI records for the Project site, attached hereto as **Exhibit G** (PNDI-973264), both the Indiana bat’s and northern long-eared bat’s habitat range includes the Project site. Ex. G at 5. The northern long-eared bat was listed endangered on May 4, 2015, and its lead region, according to the FWS, includes the Project site. *See [Species Profile for Northern Long-Eared Bat\(Myotis septentrionalis\)](#)*. The Indiana bat has been listed endangered since March 11, 1967, and likewise has Pennsylvania included as among its lead habitat region. *See [Species Profile for Indiana bat\(Myotis sodalis\)](#)*.

As this Board is aware, construction, deforestation, and earth-moving work has already begun on the Project site. Several courts have ruled that destruction of the trees and vegetation that the Indiana and northern long-eared bat inhabit constitute an illegal taking under Section 9 of the Endangered Species Act. *Bob House*, at 1031-32 (E.D. Ky. 1997) (“[T]he Indiana bat’s foraging habitat may be adversely affected by the Leatherwood Fork timber sale and thus may constitute a ‘taking’ of the Indiana bat, as the timer sale may harass and/or harm the Indiana bat in violation of the ESA”); *Animal Welfare Inst. v. Beech Ridge Energy LLC*, 675 F. Supp. 2d 540, 545 (D. Md. 2009) (same); *Bensman v. United States Forest Serv.*, 984 F. Supp. 1242 (W.D. Mo. 1997) (same); *S.C. Coastal Conservation League v. United States Army Corps of Eng’rs*, 127 F.4th 457, 470 (4th Cir. 2025) (quoting a BiOp as stating that “the consequences of habitat removal ‘include personal injury or mortality of the [northern long-eared bat] individuals roosting in trees that are removed, and loss of foraging, commuting, and roosting habitat.’”). The harm caused by the Project’s destruction of the Indiana and northern long-eared bats’ habitats is compounded by the fact that the construction is likely releasing significant pollutants into the surrounding environment that will further harm the endangered bats.

What is more, if the Project were completed without mitigating the harm to the endangered bats, the bats will face additional long-term harm from the Data Centers themselves.

The Missouri Department of Conservation, for instance, recently issued warnings against similar AI data centers as having adverse impacts on the Indiana and northern long eared bat. *See* [St. Charles data center threatens local endangered species, conservationists say | ksdk.com](#). Other reports detail how construction sounds can cause the Indiana bat to permanently flee a habitat. *See* [Conservationists raise wildlife concerns over Virginia data centers](#). Thus, this Project is particularly disruptive and harmful to the two federally listed endangered bat species, yet no EIA has been prepared that even acknowledges that bats' existence on the Project site.

A stop work order must be issued as to all work on the Project site *unless and until* a legally sufficient EIA report is prepared that is (a) based on the most recent information from the Third FYP; (b) is tailored to the actual geographical scope of the Project; (c) considers the Project's impact and potential taking of the federally listed endangered species Indiana bat and northern long-eared bat and (d) no longer falsely represents that the Project site is remediated but actually considers and addresses the known and unknown contamination presently at the site. Every minute delayed to a real EIA report being prepared exposes the workers currently on the Project site and the surrounding community to unacceptable risk to their health and safety.

Conclusion

East Whiteland United is committed to ensure that this Project ceases violating local laws and ordinances, and adequately projects the environment for both the human and animal community members. Should the concerns in this letter not be addressed immediately and substantially, East Whiteland United will bring suit.

Respectfully submitted,

/s/ Philip S. Rosenzweig

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