



August 24, 2026

Board of Supervisors
Upper Mount Bethel Township
387 Ye Old Highway
PO Box 520
Mount Bethel, PA 18343

Upper Mount Bethel Township Board of Supervisors,

With regards to the Slate Belt Holdings', LLC (Slate Belt) "Validity Challenge and Request for Favorable Use Class Determination" dated July 22, 2026 and its proposal that the Board of Supervisors sign a proposed Memorandum of Understanding that includes a series of obligations in exchange for Slate Belt postponing Validity Challenge proceedings, the Delaware Riverkeeper Network and Green Amendments For The Generations urge you, the Board of Supervisors, to:

- ✓ Prioritize development of a strong data center ordinance that will apply to any data center application put forth upon its passage and seek pending status for such ordinance in order to seek early legal recognition.
- ✓ Recognize that the validity challenge is not the threat it has been made out to be. The July 22, 2026 filing with the Zoning Hearing Board is, in the first instance, a request for a Use Class Determination; until the Use Class Determination request is complete, the validity challenge is not ripe; and upon Determination of a Use Class for the data center (the outcome we presume), the validity challenge becomes moot.
- ✓ Plan to fully participate in the Use Class Determination proceeding as a party advocating for the most appropriate outcome regarding a Slate Belt data center proposal and the electric substation elements, and should recognize that the Township's current ordinance has meaningfully significant protections when it comes to a data center.
- ✓ Refuse to sign the proposed Slate Belt Memorandum of Understanding ("MOU"), as proposed or modified, because it will weaken existing and future protections for township residents and the environment, will violate legal and constitutional mandates, gives Slate Belt special status in the ordinance development process, pre-agrees to essential elements of an ordinance such as a data center being given by-right status, essentially gives Slate Belt veto authority over draft ordinance provisions, and is deficient in all the ways identified in the August 24, 2026 letter provided by Delaware Riverkeeper Network and Green Amendments For The Generations regarding the specific elements of the MOU.

We begin by noting:

- Provisions of Upper Mount Bethel's Ordinances undermine the legal strength of the asserted validity challenge filed on July 22, 2026; while data centers are not specifically named, the current ordinance includes a Savings Clause that provides a process by which Slate Belt can secure a Use Class Determination from the Zoning Hearing Board.
- The July 22, 2026 filing by Slate Belt includes a request for a Use Class Determination.
- Because the Use Class Determination proceeding is not yet complete, the filed validity challenge is not legally ripe.
- If the Zoning Hearing Board grants a legally defensible Use Class Determination, the Slate Belt validity challenge becomes moot.
- To the extent Slate Belt's proposed data center includes electric substations, this portion of the plan is already specifically provided for in Township Ordinance and will require conditional use consideration and approval.
- The proposed MOU provides Slate Belt with special status in an ordinance negotiation and pre-agrees to elements which would weaken the level of protection from a data center the Township could pursue.
- According to our legal analysis, signing the proposed MOU would be a violation of law that could subject the Township to legal challenge.
- In the absence of signing the MOU, the Township should act swiftly to put in place a clear and protective data center ordinance so that any future data center applications will be subject to its protections.
- Until such time as the Township has a new data center ordinance in place, the current ordinance applies and already includes some vitally important protections with regards to data center impacts that would most certainly be lost in any ordinance negotiated with Slate Belt pursuant to the proposed MOU.
- It is not unlikely that Slate Belt is exercising the current strong arm tactics and threats of litigation because they are concerned about some of the strong protections already present in the current Township ordinance and are seeking to force a process whereby they can secure a data center ordinance that, in many essential respects, would be weaker than the status quo and would fully allow for the data center project it already has in mind.

The Township should prioritize development of a strong data center ordinance that will apply to any data center application put forth upon its passage and seek pending status for such ordinance in order to seek early legal recognition.

Under current law, development applications are subject to the zoning ordinance in place at the time the application is filed. Given the fast pace of data center proliferation across our state and our region, with few areas seemingly off limits (e.g. when the zoning does not provide for it, or ordinances are not too their liking, Talen and other data center advocates simply seek to muscle through any needed zoning or ordinance changes), it behooves you to take swift action to pass a strong data center ordinance to ensure that any future data center applications will be subject to a more robust and protective set of protections.

The Township has already taken solid steps to develop a well-informed, defensible, and protective data center ordinance and so already has a good draft from which to begin the process. Green Amendments For The Generations, Delaware Riverkeeper Network, and well informed Upper Mount Bethel residents will be providing some helpful enhancements to make it even better and can be added as the ordinance advances through the process.

The Township should move forward to create its data center ordinance without fear or favor in its normal course of business. To do otherwise, such as agreeing to the provisions of the MOU that undermines, strips and limits this authority, would be giving up its independence and failing in its Township obligations to solely enact ordinances to protect the health, safety, and welfare of the Township's residents and not for the benefit of industry applicants.

To strengthen the protective capabilities of a proposed ordinance, the Township should seek pending ordinance status for its data center ordinance prior to adoption. A proposed ordinance is considered “pending” when “there has been a ‘sufficient public declaration’ of an intent to amend the existing zoning ordinance.” *Casey v. Zoning Hearing Board of Warwick Township*, 328 A.2d 464, 467 (Pa. 1974). When the Board requests that the ordinance be advertised, the Board should seek pending status and advertise it as such. This may provide enhanced advance protection.

The Board of Supervisors should make passage of a new data center ordinance its priority, and take all necessary and appropriate steps to begin and advance through the process to secure its ultimate passage. As we can see from neighboring Lower Mount Bethel, industry leaders such as Talen, will not hesitate to undercut community efforts to pass a protective data center ordinance – having proposed a new request for rezoning to accommodate a new data center project just days before the vote on a new ordinance. Talen has spent months telling the Lower Mount Bethel community they wanted to *work with them* to ensure a quality data center that respected and protected the community. But in the final analysis, they could not contain their own desire to prioritize industry profits over the health, safety and quality of life the community and environment they professed to care about.

Upper Mount Bethel Supervisors should learn the lesson and act fast.

The Township should recognize that the validity challenge is not the threat it has been made out to be. The July 22, 2026 filing with the Zoning Hearing Board is, in the first instance, a request for a Use Class Determination; until the Use Class Determination request is complete, the validity challenge is not ripe; and upon Determination of a Use Class for the data center (the outcome we presume), the validity challenge becomes moot.

While Slate Belt leads all of its materials and outreach with the threat of a validity challenge, and uses that aspect of its filing as the cudgel with which it seeks to bully the township into an unfavorable MOU, the reality of their legal filing, and threat of validity challenge harm, is, in our opinion, overstated.

While the current Upper Mount Bethel Zoning Ordinance does not specifically, at this time, mention data centers, it contains what is known as a Savings Clause. The Savings Clause acts as a catchall for new uses that may not be explicitly spelled out elsewhere in the ordinance. This provision and the process it provides for, does in fact provide a pathway for Slate Belt to advance its data center under the existing Upper Mount Bethel Zoning Ordinances.

Section 350-14(B) of the township ordinance provides that, “[w]hen a use is proposed which is not specifically listed in any specific use class, then the Zoning Hearing Board may determine the use class subcategory (as defined herein) which is most similar to the proposed use and said proposed use, if approved by the Board, shall be subject to all of the requirements of said use class subcategory.”

In describing Board Functions, the ordinance goes on to state that one of the functions of the Zoning Hearing Board is that it:

may determine that a use proposed for location in any zoning district may or may not be similar to other uses permitted in a specific use class or use class subcategory as defined herein. Therefore, in such a case it may or may not be permitted as a similar use in that use class. Such a determination shall be based on the following criteria:

1. That this use is similar to and/or compatible with other uses permitted in the district.
2. That the use does not adversely affect or create nuisances for adjoining residential areas.
3. That this use does not generate traffic loads, congestion or excessive parking requirements in the district which would be detrimental to other uses in the district.
4. That the use does not detract from or substantially differ from or exhibit any influences, emissions or glare which are detrimental to the health, safety, welfare or morals of other persons residing in or undertaking uses or other activities in the area.

§ 350-40 (C)(c).

Recognizing that “it is impossible for a legislative body to anticipate every conceivable use of land,” the Commonwealth Court has described Savings Clauses as “**the procedure to be used when a proposed use is neither permitted nor prohibited in the Zoning Ordinance.**” *JoJo Oil Co. v. Dingman Twp. Zoning Hearing Bd.*, 77 A.3d 679, 682–686 (Pa. Cmwlth. 2013) (emphasis added).

By virtue of the Savings Clause provisions, the Upper Mount Bethel Zoning Ordinance already provides a path for a Determination of Use which will dictate the appropriate placement and approval mechanism under ordinance that the Township will use when reviewing an application for a data center by Slate Belt. The existence of these provisions and the process they lay out, assures Slate Belt, and all would-be developers, that there is a process for determining a proposed use if it is not explicitly mentioned in Upper Mount Bethel’s zoning and ordinances.

The provisions carefully provide for the process by which the Zoning Hearing Board can make that determination when needed. And if the process ends without a legally defensible determination, the MPC and ordinances allow for legal appeal and other measures, potentially a validity challenge.

A validity challenge would only be appropriate if the Zoning Hearing Board were to make the determination that a proposed data center use is not comparable to any other existing use and/or the current ordinance bans or prohibits the proposed use. There has been no such determination nor suggestion by the Zoning Hearing Board. In fact, the Use Class Determination process was only initiated when Slate Belt made its July 22, 2026 filing requesting the Use Class Determination.

While Slate Belt and allies like to emphasize the validity challenge elements of the filing as a means of frightening the town into the action they seek (i.e. signing the oppressive MOU), in fact, the July 22, 2026 filing with the Zoning Hearing Board is, in the first instance, a request by Slate Belt that the Zoning Hearing Board follow the Use Class Determination procedure laid out in the ordinance. Specifically the filing states: "Slate Belt requests a favorable use class determination from the Board pursuant to Sections 350-6.A(2)(b), 350-14.B and 350-40.C(1)(c) of the Zoning Ordinance the Data Center is permitted by right in the I-2 District as a "high technology industry" or "general industrial" use on the Subject Property where the Data Center is proposed."

If the Zoning Hearing Board were to determine that the proposed data center were an appropriate use in the I-2 District as requested by Slate Belt in its July 22, 2026 filing, the validity challenge aspect of the filing becomes, by our evaluation, legally moot. And until such time as the Zoning Hearing Board renders a use class determination, the validity challenge is, by our evaluation, not legally ripe. Either way, the focus of current decisionmaking should be upon the Use Class Determination process, not the assertion of a validity challenge that does not yet have sufficient grounds to proceed.

The Township should plan to fully participate in the Use Class Determination proceeding as a party advocating for the most appropriate outcome regarding a data center proposal and the electric substation elements, and should recognize that the Township's current ordinance has meaningfully significant protections when it comes to a data center.

When the Use Class Determination process begins, the Township should fully engage as a party, offering its perspective on the appropriate outcome. So too should Township residents. If the Zoning Hearing Board renders a final determination the Township or residents disagree with, they may appeal.

It is wrong to assert and presume that the Zoning Hearing Board will render a legal determination that results in the grounds for a validity challenge, as opposed to an alternative legally appropriate outcome.

The best way for the Township to secure a legally appropriate Use Class Determination outcome, rendering the asserted validity challenge moot, is to participate and support an appropriate determination.

In addition to asserting its perspective regarding the appropriate use determination for a data center, the Township should be clear that the electric substations Slate Belt proposes as part of its project are already specifically addressed in the township's existing ordinance as a conditional use. Specifically, pursuant to Section 350-17 "the construction of new electric generation plants and electric facilities and related facilities" are conditional uses. The proposed electric substations to be included as part of the Slate Belt proposed project are part of, but separate from, the data center. The township should take the position that the Slate Belt electric substations should be subject to their own application and conditional use requirement pursuant to section 350-17.

If the Zoning Hearing Board concludes its proceeding with a Use Class Determination for the Slate Belt data center that is legally appropriate, we do not see legal grounds for the validity challenge and there is no reason for the MOU.

Upon a favorable outcome from the current Zoning Hearing Board Use Determination request, any present day data center application will be subject to current ordinance protections. While supporters of the data center seek to highlight current ordinance provisions that most certainly need strengthening in any new data center ordinance, they fail to mention the provisions in place that actually provide quite significant protection and will most assuredly be opposed by Slate Belt in any negotiated-ordinance as proposed by the MOU.

Current Township ordinances include a variety of protections that would apply to a data center application submitted today. This ordinance contains requirements regarding noise, vibration, and lighting that are particularly significant in the data center context and can drive a requirement for stronger protections on other fronts such as larger setbacks or bigger buffers needed to meet the noise or lighting obligations.

It would not be wise for the Township to wipe-away these existing protections as applied to Slate Belt and to pre-agree to an ordinance where the industry will essentially have veto authority over any protective provisions it does not like.

The Township should refuse to sign the proposed Slate Belt MOU, as proposed or modified, because it will weaken existing and future protections for township residents and the environment, will violate legal and constitutional mandates, gives Slate Belt special status in the ordinance development process, pre-agrees to essential elements of an ordinance such as a data center being given by-right status, essentially gives Slate Belt veto authority over draft ordinance provisions, and is deficient in all the ways identified in the August 24, 2026 letter provided by Delaware Riverkeeper Network and Green Amendments For The Generations regarding the specific elements of the MOU.

The current Township ordinance already includes clear and meaningful community and environmental protections that would apply to a data center, as laid out in section 350-15(I)(1)-(35), if it were to proceed under current ordinance provisions.

Through the MOU, these basic protections would be wiped away, leaving the community at the whim of Slate Belt and a set of community and environmental protections the industry deems acceptable for the construction and operation of their data center.

There are many provisions within the MOU - as we lay out in the attached letter provided by Delaware Riverkeeper Network and Green Amendments For The Generations – that are inequitable and inappropriate whereby the Township gives away essential positions of strength, pre-agrees to provisions that would have seriously undermining consequences, and that we believe are both illegal and unconstitutional.

It is our belief that Slate Belt views all, or some, of the existing protections in Upper Mount Bethel ordinances as unappealing and/or too onerous for their liking, so they are seeking to create a pathway to alleviate themselves of the obligation to comply with these pre-existing conditions. In our estimation, the validity challenge has been filed as a means by which to frighten, cajole, bully or otherwise convince the township to enter into an MOU that will set aside those existing conditions in lieu of a new data center ordinance process where Slate Belt would be given inappropriate, excessive, and disproportionate power – what essentially is veto authority through the ongoing threat that they will reinitiate their validity challenge.

Upper Mount Bethel's existing ordinance provisions include several that are particularly significant and meaningful in the context of data centers. Would stronger protections be beneficial in a data-center specific ordinance? Absolutely. But Slate Belt is unlikely to agree to any meaningful set of requirements that would require them to curb their plan and operations in a way that is different than what they have already planned for.

While data center supporters highlight provisions in the Township's existing ordinance that are not as strong as one would hope to secure in a new data center ordinance, we find there are existing provisions that ensure a higher standard of protection and that are unlikely to be secured in the lopsided ordinance negotiation process the MOU provides for.

In an effort – as we interpret it -- to advocate for the signing of the MOU, Supervisor Erlo has shared examples of potential firmer protections he has discussed with Slate Belt, but these discussions are not in writing and there is no mechanism by which to assure such offerings would be agreed to in any negotiated-ordinance process. These are simply ideas batted around behind closed doors.

By contrast, rather than unenforceable promises made behind closed doors that are unknowable and unenforceable by the public, the Township does have meaningful authority to impact data center project design in its current ordinances. In addition, it has other means at its disposal for securing agreement from Slate Belt to undertake additional protections in its project design – such as bigger buffers. For example, negotiations around tax abatements may be just such an

opportunity, as long as they are not signed away in an MOU as is currently proposed. In addition, full enforcement of existing ordinance requirements – such as limitations on noise, lighting and vibration – could be a driver that requires things like bigger setbacks and higher quality buffers in order to assure the existing noise, light and vibration limitations are achieved.

Among the existing ordinance provisions we see as significant, particularly given the tremendous harmful effects experienced as the result of noise, light and vibrations from data centers:

Section 350-19 "Performance, traffic, environmental protection and community impact requirements" provides that "all existing and proposed uses shall be subject to compliance with the performance, traffic and environmental impact requirements identified herein." Section 350-15(H)(3)(c) also provides "All general industrial uses must comply with the applicable performance, traffic impact, environmental protection and community impact analysis and requirements set forth in § 350-19 and with the definitions of "industry, compatible" set forth in Article II."

Section 193-3(E)(2)(a) protects from continuous noise, as measured at the property line, that has a sound level in excess of 65 dBA between 6:00 am and 6:00 pm; that between 10:00 pm and 7:00 am has a sound level in excess of 50 dBA at the property line, as well as limitations on peak sound pressure.

Section 193-5 includes additional mandates ensuring protections within neighboring land uses. This section provides that "no person shall operate or cause to be operated on public or private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth in the receiving land use category in Table 1 when measured at or within the property boundary of the receiving land use. Any noise source that produces sound in excess of those levels shall constitute a noise disturbance." In residential communities the sound limitations are those in excess of 55 dBA from 6:00 am to 6:00 pm and 45 dBA from 6:00 pm to 6:00 am; for parks the protections are 65 and 55 respectively.

Moreover, Section 193-3(E)(5) provides protection from vibrations: "Unless a variance is obtained pursuant to § 193-4B, operating or permitting the operation of any device that causes vibration which is above the vibration perception threshold of an individual at or beyond the property boundary of the source if on private property or at 50 feet from the source if the source is on a public space or public right-of-way. For the purpose of this section, "vibration perception threshold" means the minimum ground- or structure-borne vibrational motion necessary to cause a person of normal sensitivities to be aware of the vibration."

Section 350-19 also applies section 350-33(I) to the proposed data center, which deals with outdoor lighting.

Section 350-33(A)(3) and 350-33(I) provide numerous protections regarding lighting, including protecting neighboring uses from unwanted light and encourages use of emergent energy efficient lighting technologies.

Section 350-15(I)(14) dictates the required and allowed lighting and illumination “shall be arranged so as to protect the surrounding streets and adjoining property from direct glare”.

Section 350-15(I)(7) sets size limitations that “The size of each building located in a planned industrial park shall not exceed 800,000 square feet.” And if a developer were to seek anything larger, they must first be approved as a conditional use by the Board of Supervisors.

Ordinances also include impervious cover limitations depending on the use that can restrain the level of development.

While there are minimal set back requirements from the property boundary, limitations on noise, light and vibration will be essential factors for determining the actual setbacks required for a specific data center proposal. While the prescribed setback might be minimal, will that setback be enough, and other requirements such as buffers enough, to meet the noise, vibration and light obligations?

It is likely that through a negotiated ordinance Slate Belt would attempt to draft their way out of these kinds of requirements already found in the Township’s ordinance and applicable to a project that, if approved today, were to be constructed at the location Slate Belt proposes.

In addition, the current ordinance recognizes electric substations as a conditional use, thereby creating a higher bar of review and protection. But by its own filings, we can see that Slate Belt is seeking to make such aspects of their project permitted by right and therefore subject to a lower threshold of protections. (*see, e.g.*, Slate Belt’s proposed ordinance, found in Exhibit C of the Validity Challenge, specifically designates Accessory Uses/Structures, which includes electric substations, as being permitted by right rather than conditional use).

Slate Belt is looking to secure special treatment in the process of creating a data center-specific ordinance, as compared to other industrial uses in the town. The supervisors should not buy into this end goal.

Slate Belt’s attempt to have the Township agree to bypass the zoning hearing board's need to make a comparable use determination is not authorized by ordinance. In addition, the Board’s approval of the MOU would evidence favorable treatment to Slate Belt Holdings that would constitute a “special law” that treats citizens differently, in violation of Article III, Section 32 of the Pennsylvania Constitution and the 14th Amendment.

Further, provisions throughout the MOU seek to tie the hands of the Township to a predetermined outcome when it comes to data centers writ large, and to the Slate Belt data center in particular. The MOU repeatedly commits the township to a pre-determined outcome, denying

it the freedom to render decisions and take actions that protect the environmental rights of impacted communities and ensures the township fulfills its trustee obligations pursuant to Article 1 Section 27 of the state constitution - the *Pennsylvania Green Amendment*. The MOU also prevents the township from fulfilling its constitutional duty pursuant to Article 1 Section 27 to consider the environmental rights implications of proposed actions, decisions and outcomes, prior to taking action, and thereby ensuring environmental rights will not be infringed upon; denies the Township the ability to consider its duty as trustee of impacted public natural resources and the implications of proposed action for natural resource trust beneficiaries who are present and future generations; and denies the Township the opportunity and ability to undertake the constitutional due diligence necessary to inform and support any final decision regarding environmental rights and constitutional natural resource trust obligations and impacts.

If Slate Belt proceeds with the validity challenge and the Zoning Hearing Board supports the application of the Slate Belt curative amendment without undertaking the Use Class Determination, the municipality and impacted community members would have the right, upon sound legal grounds, to appeal that decision. It is our assessment, given the ordinance provisions as written, such sound legal grounds would most certainly exist.

To the degree the Supervisors are being convinced to sign the MOU because they are in fear of being taken to court, we simply note that Slate Belt is not the only interested party with legal resources and the willingness to use them. The Township is likely to end up in court if they sign the MOU and/or if the Zoning Hearing Board were to accept and support the validity challenge without following through on the requested Use Class Determination.

In the final analysis, when that legal action comes, would you rather be in court standing with, and defending, the community you are a part of? Or standing with and defending the data center that will inflict enduring, irreparable and generational harm on Upper Mount Bethel?

Respectfully submitted,



Maya K. van Rossum
the Delaware Riverkeeper &
Green Amendments Founder/Leader