THE COMMONWEALTH OF MASSACHUSETTS

ENERGY FACILITIES SITING BOARD

Petition of Hillman Energy Center, LLC Pursuant to G.L. c. 40A, § 3 for an Exemption from the Town of Tewksbury Zoning Bylaws	)	EFSB-25-08

INITIAL BRIEF

HILLMAN ENERGY CENTER, LLC

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I. INTRODUCTION

The record in this proceeding demonstrates that Hillman Energy Center, LLC (the "Company" or "Hillman") has satisfied all requirements for the Energy Facilities Siting Board ("EFSB" or "Siting Board") to approve its April 1, 2025 petition pursuant to G. L. c. 40A, § 3 (the "Petition") for individual and comprehensive exemptions from the Zoning Bylaw (the "Zoning Bylaw") of the Town of Tewksbury, Massachusetts ("Tewksbury" or the "Town"). Hillman proposes to construct a 125 megawatt ("MW") / 500 megawatt-hour ("MWh") battery energy storage system ("BESS") and related infrastructure (the "Project").

As detailed below, the Project will support the Commonwealth in meeting its clean energy goals. Grid-scale energy storage is a cornerstone of Massachusetts' clean energy transition. By providing 125 MW of fast-responding energy storage capacity with a four-hour duration, the Project will:

- Facilitate the integration of intermittent renewable generation by charging during off-peak periods, including periods of significant renewable generation, and discharging at peak periods;
- Reduce system peaks, lowering reliance on older, higher-emitting peaking plants and thereby reducing criteria pollutants and greenhouse gas ("GHG") emissions;
- Provide ancillary services (frequency response, voltage support, etc.) that improve reliability and resilience in ISO New England; and
- Support achievement of statutory emissions limits by enabling deeper decarbonization of the resource mix.

These benefits align with the Commonwealth's storage targets, Clean Peak objectives, GHG emissions reduction mandates, and the Siting Board's longstanding policy of facilitating infrastructure that enhances reliability while minimizing environmental impacts.

The Company has provided an accurate and complete description of the proposed Project including detailed site plans, and the Company has described the substantial benefits of the Project as well as its potential impacts, the site selection process, and other considerations. The evidentiary record shows that the Project satisfies all applicable standards.

Accordingly, for the reasons outlined herein and as documented in the evidentiary record in this proceeding the Company respectfully requests that the Siting Board grant individual and comprehensive exemptions from the Tewksbury Zoning Bylaw pursuant to G. L. c. 40A, § 3.

A. Description of the Project

The Project will consist of a 125 MW / 500 MWh BESS and related infrastructure located on approximately 4.3 acres of previously developed industrial land at 73-75 Hillman Street in Tewksbury. The Project also includes an approximately 1,200 foot long new electric transmission interconnection ("the Transmission Interconnection"). The Project will be interconnected to National Grid's existing Tewksbury 22 Substation (the "Interconnection Substation") located off Power Company Road in Tewksbury.[1]

The Project will be located entirely on previously developed parcels.[2] The BESS facility and related infrastructure (including a new project substation) will be located on two separate tax parcels, Parcels 35-6 and 35-7 as shown on the Town of Tewksbury's Assessor's map, otherwise known as 73 Hillman Street and 75 Hillman Street, respectively.[3] Both parcels are accessible from Hillman Street in Tewksbury.[4] These parcels are in an Industrial 2 ("I2") zoning district

[1] Exh. HEC-1 at 1; Attachment A-Supplemental.

[2] Exh. EFSB-D/S-G-6.

[3] *See* Exh. HEC-1 at 1; Attachment A-Supplemental.

[4] Exh. HEC-1 at 2; Attachment A-Supplemental at 3 (Drawing No. VL101).

according to the Town of Tewksbury's zoning map.[5] The 73 Hillman Street Parcel (Parcel 35-6) is approximately 4.05 acres in size.[6] Of the total land area on this parcel, approximately 3.8 acres is developed with an industrial and commercial building associated with an existing landscaping business and a truck repair shop, as well as extensive outdoor storage areas for materials and equipment onsite.[7] The remaining 0.25 acres of this parcel consists of an isolated vegetated wetland ("IVW"), which is mapped as a potential vernal pool.[8] The 75 Hillman Street Parcel (Parcel 35-7) is entirely developed and is approximately 0.29 acres in size.[9]

The Proposed Transmission Interconnection is approximately 1,200 feet long and will traverse three separate tax parcels: Parcel ID 49-34 owned by National Grid, Parcel ID 35-5 owned by National Grid, and Parcel ID 11-1 owned by the MBTA/CSX.[10] According to the Town of Tewksbury's zoning map, Parcel ID 11-1 and Parcel ID 35-5 are in an Industrial 1 ("I1") zoning district, and Parcel ID 49-34 is in a Park District zoning district.[11] Parcel ID 11-1 is an existing railroad corridor.[12] Parcel 49-34 contains the existing National Grid Substation 22A and wetland areas.[13] Parcel 35-5 contains the Interconnection Substation and wetland areas.[14]

[5] Exh. HEC-1 at 2.

[6] *Id.*; Attachment A-Supplemental at 3.

[7] Exhs. HEC-1 at 2, RR-EFSB-4(2) (containing aerial photographs of current site condition).

[8] Exh. HEC-1 at 2; Attachment A-Supplemental at 3.

[9] Exh. HEC-1 at 2; Attachment A-Supplemental at 3.

[10] Exhs. HEC-1 at 3, 5-7 (Figures 2-2, 2-3 and 2-4), RR-EFSB-8 (Figure RR-EFSB-8-1 depicting overhead and underground Proposed Transmission Interconnection route); Tr. 1, at 37.

[11] Exh. HEC-1 at 3, 5-7 (Figures 2-2, 2-3 and 2-4).

[12] *Id.*

[13] *Id.*

[14] *Id.*

The Project will consist of 134 Hithium LX5015 units and 40 EPC Power M10 inverters located on the BESS/substation site.[15] The Project design utilizes Hithium Infinity Block 5.016 MWh batteries with lithium iron phosphate ("LFP") chemistry.[16]

Each of the Hithium LX5015 units are 20' x 8' x 9.5' and will be transported to the site pre-assembled.[17] The Company will ship the units utilizing the local road system, which is adequate to transport the BESS units and other equipment to the Project Site.[18] The Hithium units will be arranged on concrete foundations with crushed stone surfacing.[19] The site plan provides for perimeter fencing, an access road for fire-department apparatus, and a BESS yard with the BESS containers arranged according to the manufacturer's spacing and installation specifications[20] and consistent with the provisions of the Massachusetts Fire Code regarding access, setbacks, and aggregation control.[21]

Each unit consists of a containerized modular system that houses integrated lithium-ion batteries, a bi-directional inverter, a thermal management system, and a battery management system with intelligent software controls.[22] The Hithium battery container units are UL 9540-listed systems with integrated battery management controls, thermal management, gas detection, automatic exhaust ventilation, and electrical shutdowns.[23] The steel enclosures of each container are IP55-rated and the modules are IP67-rated to prohibit any moisture intrusion from severe

[15] Exh. D/S-S-10; Tr. 3 at 347:1-350:13.

[16] Exhs. EFSB-S-2, EFSB-S-9.

[17] Exhs. EFSB-T-2; D/S-S-10.

[18] Exh. EFSB-T-2.

[19] Attachment A-Supplemental at 5.

[20] D/S-S-10; Attachment A-Supplemental at 5 (containing the project plans showing location and details for the BESS facility).

[21] Attachment A-Supplemental; Exh. EFSB-S-2.

[22] Exh. D/S-S-10.

[23] *Id.*

weather events.[24] Each unit is also equipped with an explosion-prevention ventilation system compliant with NFPA 69 (*Standard on Explosion Prevention Systems*).[25]

To mitigate the typical battery degradation associated with lithium-ion batteries, the Project may augment the batteries as needed throughout the life of the Project.[26] To show the maximum possible development footprint of the Project over its life, the site plans contained in Attachment A-Supplemental include "augmentation areas" where these additional battery containers may be added.[27]

The Project will include a new Project Substation.[28] The Project Substation will collect and route the power output from the BESS units and step it up to the transmission voltage of 115 kV that allows the power from the Project to interconnect with the Interconnection Substation.[29] The Project Substation will also take the routed power from the Interconnection Substation and step it down to allow the Project to store the power.[30] The Project Substation will include substation equipment, a graveled yard area, a control house and surrounding security fencing, a main power transformer, switchgear, circuit breakers, disconnect switches, and low and high buses, as shown on Attachment A-Supplemental.[31]

[24] Exhs. EFSB-S-8; EFSB-S-74.

[25] Exhs. EFSB-S-2; EFSB-S-8.

[26] Tr. 1 at 87:17-89:12.

[27] Attachment A-Supplemental; Exh. D/S-S-10. The 134 units in the site layout constitutes the number of units at the end-of-life of the Project. (Tr. 1, at 88:13-18).

[28] Exh. HEC-1 at 8; Attachment A Supplemental at 5.

[29] Exh. HEC-1 at 8; Tr. 3, at 347:1-9.

[30] Exh. HEC-1 at 8.

[31] *Id.*; Attachment A-Supplemental at 5; Exh. EFSB-G-18(1).

B. Procedural History

On March 31, 2025, the Company filed its Petition requesting individual and comprehensive zoning exemptions from the Town of Tewksbury's Zoning Bylaw for the Project. The Petition was accompanied by pre-filed Testimony and supporting materials showing that the Project would advance the public interest, provide important public benefits, appropriately minimize environmental or other local impacts, and significantly improve the existing site condition, and that the Project should therefore be granted a zoning exemption. On September 9, 2025, the Siting Board filed a Notice of Adjudication and Public Comment Hearing, and a Public Comment Hearing was held on October 9, 2025. The Siting Board also received written comments from interested parties.

By Order dated November 14, 2025, the Presiding Officer granted Petitions to Intervene from the Town of Tewksbury (the "Town") and Maureen DiPalma and Dennis Sheehan (the "DiPalma / Sheehan Intervenors"). The Presiding Officer also granted limited participant status to National Grid, five Tewksbury residents, and one State Representative. On December 19, 2025, the Presiding Officer granted a late-filed petition to intervene from the Tewksbury Board of Health.

On December 4, 2025, the Company submitted a supplemental filing. The supplemental filing reflected a change in battery manufacturers (from Sungrow to Hithium) which was made to allow the Company to submit additional information about the batteries to the Siting Board for public review. The supplemental filing also incorporated a revised stormwater system design at the request of the Town of Tewksbury and a new gravel parking pad.

The parties thereafter exchanged extensive discovery, with the Company responding to hundreds of information requests from the Siting Board and Intervenors. A procedural conference was held on December 11, 2025. The DiPalma / Sheehan Intervenors filed testimony on December 19, 2025, which they supplemented on January 19, 2025. On January 13, 2026, the DiPalma /

Sheehan Intervenors filed a Motion for Partial Summary Judgment, to which the Company and the Tewksbury Board of Health responded.

On February 6, 2026, the Town submitted testimony from Town Manager John C. Curran, noting that a Host Community Agreement ("HCA") between the Company and the Town had been reached and that the HCA reasonably protected the public interest of the Town.[32] The Town also submitted testimony from Paul Hayes of the Hiller Companies, who opined that the Project does not present any substantial risk to public health based on the information presented.

Evidentiary hearings were held between February 9 and February 27, 2026. Following the conclusion of the evidentiary hearings, the Company submitted responses to record requests issued during the hearings, including a request that the Company conduct additional test pits at the project site to monitor groundwater levels.

C. Legal Framework and The 2024 Climate Act

On November 20, 2024, Governor Maura Healey signed into law legislation (the "2024 Climate Act") that aims to accelerate the adoption of battery storage, improve grid reliability, and support the state's goal of net-zero greenhouse-gas emissions by 2050.[33] Among other things, the 2024 Climate Act sets a target of 5,000 MW of long-term contracts for energy storage systems by July 31, 2030. Governor Healy recently expanded the Commonwealth's commitment to energy storage through Executive Order No. 654, issued on March 16, 2026, which set an additional goal of 5,000 MW (five GW) of energy storage online or under development within Massachusetts by the

[32] The Town submitted a near final version of the HCA into the record on February 6, 2026, as an attachment labeled Exhibit JCC-2 to its pre-filed testimony (Exh. TEWK-JC). Hereinafter references to the HCA refer to Exhibit JCC-2.

[33] An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers, St. 2024, c. 239 (the "2024 Climate Act").

end of 2035 "to facilitate the integration of additional electricity supply, alleviate grid constraints, and reduce peak energy demand."[34]

As discussed in more detail below, the 2024 Climate Act aimed to expedite and improve local zoning exemption authority for energy storage projects in multiple respects. For instance, it codified the definition of "public service corporation" to expressly include developers of energy storage projects.[35] In addition, it explicitly authorized developers of large energy storage systems that have received a comprehensive exemption from local zoning bylaws to petition the Siting Board for a certificate of environmental impact and public interest.[36] These and other changes evince the Commonwealth's strong policy to facilitate the development of significant battery energy storage capacity in order to advance the Commonwealth's critical emissions and climate goals.

II. THE PROJECT MEETS THE REQUIREMENTS FOR A COMPREHENSIVE ZONING EXEMPTION

The record demonstrates that the Project meets all of the requirements for an exemption from the Town of Tewksbury's existing and future zoning bylaws to permit the Project to be developed. The Siting Board should grant the Company's request to advance the Commonwealth's ambitious energy storage goals, as discussed in more detail herein.

A. Standard of Review

G.L. c. 40A, § 3, para. 2, provides, in relevant part:

> Lands or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or bylaw if, upon petition of the corporation, the department of telecommunications and cable or the energy facilities siting board shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the

[34] Executive Order No. 654.

[35] St. 2024, c. 239, § 36.

[36] *Id.* § 118(a).

> exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public…[37]

In numerous longstanding decisions interpreting the foregoing requirement, the Department of Public Utilities (the "Department"), the Siting Board, and courts have determined that a petitioner seeking exemption from a local zoning bylaw under G.L. c. 40A, § 3 must meet three criteria. First, the petitioner must qualify as a public service corporation.[38] Second, the petitioner must demonstrate that its present or proposed use of the land or structure is reasonably necessary for the public convenience or welfare.[39] Finally, the petitioner must establish that it requires exemption from the zoning ordinance or bylaw.[40] These standards are met here.

B. Hillman Qualifies as a Public Service Corporation

Section 36 of the 2024 Climate Act codified the definition of "public service corporation" to explicitly include developers of energy storage projects like the Company, as follows:

> a corporation or other entity duly qualified to conduct business in the commonwealth that owns or operates or proposes to own or operate assets or facilities to provide electricity, gas, telecommunications, cable, water or other similar services of public need or convenience to the public directly or indirectly, including, but not limited to, *an entity that owns or operates or proposes to own or operate electricity generation, storage*, transmission or distribution facilities, or natural gas facilities including pipelines, and manufacturing and storage facilities . . . .[41]

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[37] As amended by St. 2024, c. 239, § 37 (effective Feb. 18, 2025).

[38] Vineyard Wind, LLC, D.P.U. 21-08, at 5 (2021) ("Vineyard Wind"); NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 18-21, at 4 (2019) ("Westfield"); NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 17-147, at 6 (2019) ("K Street"); Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667 (1975) ("Save the Bay").

[39] Vineyard Wind at 6; Westfield at 5-6; K Street at 7-8; Boston Gas Company, D.T.E. 00-24, at 3 (2001) ("Boston Gas").

[40] Vineyard Wind at 6; Westfield at 6-7; K Street at 8-9; Tennessee Gas Pipeline Company, D.T.E. 01-57, at 4 (2002) ("Tennessee Gas").

[41] G.L. c. 40A, § 1A (emphasis added); St. 2024, c. 239, § 36.

In decisions preceding this statutory definition, the Department of Public Utilities had already found that non-utility developers of BESS facilities qualify as public service corporations based in part on the important energy services and benefits they provide to the public by advancing the Commonwealth's climate objectives.[42] By codifying a definition of "public service corporation" that includes entities owning or developing BESS facilities, the 2024 Climate Act removes any ambiguity that the owners of such facilities qualify as "public service corporations" for purposes of a zoning exemption.

Hillman is an entity duly qualified to do business in the Commonwealth and proposes to own and operate a 125 MW electric storage facility.[43] Therefore, the Company qualifies as a public service corporation pursuant to G.L. c. 40A, § 1A.

C. The Project is Reasonably Necessary for the Public Convenience and Welfare

1. Standard of Review

In determining whether a petitioner's present or proposed use is reasonably necessary for the public convenience or welfare, the Siting Board balances the interests of the general public against the local interest.[44] The Siting Board makes "a broad and balanced consideration of all aspects of the general public interest and welfare and not merely [an] examination of the local and individual interests which might be affected."[45] "When reviewing a petition for a zoning exemption under G.L. c. 40A, § 3, the Department is empowered and required to consider the

[42] See Cranberry Point Energy Storage, LLC, D.P.U. 22-59, at 38 (2022) ("Cranberry Point"); Medway Grid, LLC, D.P.U. 22-18/22-19, at 32 (2023) ("Medway Grid").

[43] Exh. HEC-1 at 32.

[44] Cranberry Point, at 39.

[45] New York Central Railroad v. Department of Public Utilities, 347 Mass. 586, 592 (1964) ("New York Central Railroad").

public effects of the requested exemption in the state as a whole and upon the territory served by the applicant."[46]

Accordingly, the Siting Board examines: (1) the need for, or public benefits of, the present or proposed use; (2) the present or proposed use and any alternatives or alternative sites identified; and (3) the environmental impacts or any other impacts of the present or proposed use.[47] These requirements are met here.

2. There is a Need For, and Public Benefit of, The Proposed BESS

The Company has demonstrated the need for the Project's proposed use and the public benefits that will result from meeting that need.[48] Approval of the Project will contribute to the Commonwealth's achievement of important energy and environmental policies, such as the Commonwealth's net zero emissions target for 2050, and thereby protect the health, economy, people, and natural resources of the Commonwealth.[49] By providing 125 MW of fast-responding energy storage capacity with a four-hour duration, the Project will:

- Facilitate the integration of intermittent renewable generation;[50]
- Reduce emission and reliance on fossil fuels by charging during off-peak periods when renewable generation is typically highest and discharging during peak periods;[51]
- Reduce system peaks, lowering reliance on older, higher-emitting peaking plants and thereby reducing criteria pollutants and greenhouse gas emissions;

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[46] Cranberry Point, at 39 (citing Save the Bay, 366 Mass. at 685; New York Central Railroad,347 Mass. at 592).

[47] Cranberry Point, at 40 (citing Boston Gas Company, D.T.E. 00-24, at 2-6 (2001); Tennessee Gas Pipeline Company, D.T.E. 01-57, at 5-6 (2002)); Medway Grid, at 34 (citing, e.g., NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 17-147, at 8 (2019)).

[48] Exhs. EFSB-N-4, EFSB-G-2, EFSB-G-3.

[49] EEA Determination Of Statewide Greenhouse Gas Emissions Limit And Sector-Specific Sublimits For 2050 (Dec. 2022) *available at* https://www.mass.gov/doc/determination-letter-for-the-2050-cecp/download (last accessed Mar. 11, 2026).

[50] Exh. D/S-G-22.

[51] Exhs. EFSB-N-3, EFSB-N-4, EFSB-G-3.

- Provide ancillary services (frequency response, voltage support, reactive power, etc.) that improve reliability and resilience in ISO New England;[52] and

- Support achievement of statutory emissions limits by enabling deeper decarbonization of the resource mix.[53]

Furthermore, the Project is consistent with Massachusetts' energy storage goals, including a 5,000 MW energy storage procurement target for 2030 pursuant to the recently enacted 2024 Climate Act[54] and an additional goal of 5,000 MW of energy storage online or under development within Massachusetts by the end of 2035 pursuant to Executive Order No. 654 issued by Governor Healey on March 16, 2026.[55] These targets evince the Commonwealth's robust commitment to energy storage and its goal of supporting intermittent renewable generation resources such as solar and wind with energy storage.

The Project is also consistent with the Commonwealth's Energy Storage Initiative, which the Commonwealth launched in 2015 to: (1) attract, support and promote storage companies in Massachusetts; (2) accelerate the development of commercial storage technologies; (3) expand markets for storage technologies and value storage benefits to clean energy integration, grid reliability, system-wide efficiency, and peak demand reduction; and (4) recommend policies, regulations and programs that help achieve those objectives.[56]

As part of the 2015 Energy Storage Initiative, the Department of Energy Resources ("DOER") and Massachusetts Clean Energy Center ("MassCEC") partnered to conduct various

[52] Exh. EFSB-N-4.

[53] *Id.*

[54] St. 2024, c. 239, § 98

[55] Executive Order No. 654.

[56] *See* ESI Goals & Targets, Mass.gov, *available at* https://www.mass.gov/info-details/esi-goals-storage-target (last accessed Mar. 11, 2026).

storage studies including *State of Charge: A Comprehensive Study of Energy Storage* in 2016 (the "State of Charge Report") and *Charging Forward: Energy Storage in a Net Zero Commonwealth* in 2024 (the "Charging Forward Report").[57] These studies reviewed the storage industry, economic development, and market opportunities for energy storage and evaluated potential policies and programs to support energy storage development in Massachusetts.

The State of Charge report identified ratepayer cost benefits of energy storage associated with "reduced peak demand, deferred transmission and distribution investments, reduced GHG emissions, reduced cost of renewables integration, deferred new capacity investments, and increased grid flexibility, reliability and resiliency."[6] The report also identified near and long term economic and workforce benefits to Massachusetts by implementing energy storage. The DOER has implemented many of the State of Charge report's recommendations to promote energy storage in the state. Likewise, the Commonwealth discussed the importance of flexibility in a deeply decarbonized grid in its Clean Energy and Climate Plan for 2050 ("2050 CECP").[58]

Recognizing the changing energy storage landscape, Section 80(a) of *An Act Driving Clean Energy and Offshore Wind* (St. 2022, c. 179, § 80) authorized the DOER and the MassCEC to conduct the Charging Forward Report, a follow-on to the State of Charge Report. The Charging Forward Report re-affirmed many of the findings in the State of Charge Report and found that the "deployment and use of energy storage systems is a critical and cost-effective strategy for the Commonwealth to encourage in meeting its goals under the 2050 CECP."[59]

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[57] State of Charge: A Comprehensive Study of Energy Storage in Massachusetts, Emerging Technology Division *available at* https://www.mass.gov/media/6441/download (last accessed Mar. 11, 2026); and Charging Forward: Energy Storage In a Net Zero Commonwealth (dated Dec. 31, 2023), *available at* https://www.mass.gov/doc/charging-forward-energy-storage-in-a-net-zero-commonwealth-report/download (last accessed Mar. 11, 2026).

[58] Massachusetts Clean Energy and Climate Plan for 2050 at p. 73 (Dec. 2022) *available at* https://www.mass.gov/doc/2050-clean-energy-and-climate-plan/download (last accessed Mar. 11, 2026).

[59] Charging Forward Report at 14.

The Project intends to advance the Commonwealth's energy goals in part by participating in the Massachusetts Clean Peak Standard ("CPS"). The CPS is designed to provide incentives to clean energy technologies that can supply electricity or reduce demand during seasonal peak demand periods established by DOER.[60] According to DOER, Clean Peak Resources contribute to the Commonwealth's environmental protection goals concerning air emissions, including those required by the Global Warming Solutions Act (G.L. c. 21N, §§ 1-9) by displacing non-renewable generating resources while reducing peak demand and system losses and increasing grid reliability.[61]

The Project is well-positioned to support the CPS. One of the many benefits of this Project is that it is "fully dispatchable," or capable of providing an energy source directly to the transmission system during peak load and storing electricity during off-peak periods.[62] Fully dispatchable BESS installations like the Project also perform additional grid services such as frequency regulation, voltage support, and black start capability to restart after an outage.[63] Standalone BESS, like the Project, are the ideal clean facilities to achieve the objectives of the CPS because they displace non-renewable generating sources, thereby reducing air emissions, reducing peak demand, and increasing reliability.[64]

Approval of the Project will advance the Commonwealth's ambitious storage targets, contribute to the Commonwealth's achievement of the important energy and environmental policies set forth above, and provide additional benefits in terms of grid flexibility and reliability.

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[60] *See* 225 C.M.R. 21.01 (Purpose).

[61] *Id.*

[62] Exh. HEC-1 at 43; EFSB-N-1, EFSB-N-3.

[63] Exhs. HEC-1 at 43, EFSB-G-2, EFSB-N-1, EFSB-N-4; Tr. 1, at 30.

[64] Exhs. EFSB-G-3, EFSB-G-4, EFSB-N-3, EFSB-N-4.

Accordingly, the Siting Board Should find there is a public need for, and benefit from, the Project.

3. The Company Adequately Considered Alternative Sites Before Selecting the Preferred Site

With respect to the Siting Board's consideration of the proposed use and alternative sites:

> G.L. c. 40A, § 3 does not require the petitioner to demonstrate that its preferred site is the best possible alternative, nor does the statute require the Siting Board to consider and reject every possible alternative site presented. Rather, the availability of alternative sites, the efforts necessary to secure them, and the relative advantages and disadvantages of those sites are matters of fact bearing solely upon the main issue of whether the preferred site is reasonably necessary for the convenience or welfare of the public.[65]

Here, the Company conducted a robust analysis of alternative sites prior to selecting the Project Site. The Company first identified a viable location to interconnect the Project, a necessity for the successful development of any BESS project.[66] Because of its potential interconnection capacity and the congestion on the transmission grid that could be alleviated by a BESS project located nearby, the Company determined that the Interconnection Substation as the preferred point of interconnection for this Project. [67]

The Company then conducted a high-level review of many sites in the general vicinity of the Interconnection Substation.[68] As a result of this initial screening, the Company identified four alternative sites for the Project based on the following criteria:

- Proximity to Interconnection Substation: The Company prioritized sites close to the Interconnection Substation to minimize potential impacts of the interconnection route and to minimize costs of longer electric transmission interconnection lines;

[65] Cranberry Point, at 39 (citing Martarano v. Department of Public Utilities, 401 Mass. 257, 265 (1987); New York Central Railroad, 347 Mass. at 591).

[66] Tr. 2, at 304.

[67] *Id.* at 304:14-306:4.

[68] *Id.* at 307.

- Current land use: Parcels with existing industrial uses were favored due to the reduced environmental impact and potential for brownfield qualifications;
- Surrounding land uses: Adjacent land uses were also taken into consideration to minimize impacts on neighboring parcels;
- Size of parcel: Parcels were only considered if they were a minimum of 4 acres and had at least 3.5 acres of buildable upland area;
- Site access: Existing access from a public right of way was also a key factor of viable parcels; and
- Environmental and ecological considerations: The Company considered ability to avoid or minimize impacts to existing environmental considerations, including, but not limited to, rare species.[69]

The Company then conducted a more detailed evaluation of the four candidate sites, all located within Tewksbury, using the screening criteria.[70]

The first alternative site is an approximately 137-acre parcel situated approximately 350 feet to the east of the Interconnection Substation ("Candidate Site 1").[71] This site contains an existing electric substation, several existing electric transmission corridors and various parking areas owned and operated by National Grid.[72] The entire extent of Candidate Site 1 is located within an area mapped as a Massachusetts Department of Environmental Protection ("MassDEP") Zone II Wellhead Protection Area.[73] In addition, a majority of this candidate site that is not occupied by the existing electric substation and parking areas is mapped as wetland.[74]

[69] Exh. HEC-1 at 13.

[70] *Id.*

[71] Exhs. HEC-1 at 15; EFSB-SS-2(1).

[72] Exhs. HEC-1 at 15 EFSB-SS-2(1).

[73] Exhs. HEC-1 at 15, EFSB-SS-2(1), EFSB-G-14(1).

[74] Exhs. HEC-1 at 15, EFSB-SS-5, EFSB-SS-2(1).

There is an approximately 5-acre forested upland area on the southern portion of this parcel, immediately adjacent to an existing railroad corridor.[75] However, this upland is not accessible from a public roadway and would require extensive wetland impacts to gain access to construct a BESS facility on this upland area.[76] Surrounding land uses include extensive wetland area to the northwest, the Interconnection Substation to the immediate west; an existing railroad corridor, industrial development and high-density residential area to the south, and residential areas to the east and northeast.[77] After consideration, Candidate Site 1 was appropriately eliminated from consideration due to the extensive amount of wetland areas mapped on the site, the significant wetland impacts that would be required to gain access to the remaining available uplands on the site to construct a 125 MW BESS facility, and the abundance and high density of residential development immediately adjacent to the south, east, and northeast of the site's property line.[78]

The Company also considered an approximately 73.7-acre parcel situated approximately 2,300 feet to the north of the Interconnection Substation ("Candidate Site 2").[79] This candidate site is the farthest straight-line distance from the Interconnection Substation of all the candidate sites considered.[80] This site has access from North Street via Network Drive and contains active office and research buildings and associated parking areas.[81] An existing electric transmission

[75] Exhs. HEC-1 at 15, RR-D/S-1(1).

[76] Exhs. HEC-1 at 15; EFSB-SS-5.

[77] Exhs. HEC-1 at 15; EFSB-SS-2, EFSB-SS-2(1), EFSB-SS-4, EFSB-SS-5.

[78] Exhs. HEC-1 at 15; EFSB-SS-2, EFSB-SS-2(1), EFSB-SS-4, EFSB-SS-5, EFSB-SS-8, RR-D/S-1; RR-D/S-1(1); Tr. 2, at 282-286.

[79] Exhs. HEC-1at 16, EFSB-SS-2, EFSB-SS-2(1), RR-D/S-2 (the distance from the Interconnection Substation to the cul-de-sac within Candidate Site 2 is approximately 4,200 feet).

[80] Exhs. HEC-1 at 16, EFSB-SS-2(1).

[81] Exhs. HEC-1 at 16, EFSB-SS-2, EFSB-SS-2(1).

corridor traverses the southeast corner of the site and provides a direct potential pathway to the Interconnection Substation.[82] Of the 73.7-acre site, all but 16.5 acres is occupied by the existing office park and all but 3.0 acres of the unoccupied 16.5 acres is mapped as wetland.[83] This available forested upland is not sufficient to construct a 125 MW BESS facility.[84] Surrounding land uses include a major highway (I-495) and commercial and industrial buildings to the north, an existing electric transmission corridor and residences to the east, and extensive wetland areas to the west and south (portions of which are municipal open space identified as The Great Swamp).[85] After consideration, Candidate Site 2 was eliminated mainly due to the lack of available upland area to accommodate a 125 MW BESS facility.[86]

The Company also considered an approximately 7.78-acre situated southwest of the Interconnection Substation ("Candidate Site 3").[87] The direct distance between Candidate Site 3 and the Interconnection Substation is approximately 2,000 feet.[88] The site contains an existing paved parking area with several one-story retail buildings that occupy approximately 2.9 acres of the site.[89] There is an additional approximately 1.2 acres of upland forested area that could be combined with the 2.9 acres of existing developed areas to construct a 125 MW BESS facility.[90] Based upon available mapping, the remaining 3.68 acres of the site consists of wetlands.[91]

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[82] Exhs. HEC-1 at 16, EFSB-SS-2(1); Tr. 2 at 291-92.

[83] Exhs. HEC-1 at 16, EFSB-SS-2, EFSB-SS-2(1) at 2.

[84] Exhs. HEC-1 at 16; EFSB-SS-2.

[85] Exh. HEC-1 at 16.

[86] *Id.*; Exh. EFSB-SS-2.

[87] Exhs. HEC-1 at 16, EFSB-SS-2(1) at 3.

[88] Exh. EFSB-SS-6, RR-EFSB-6(1).

[89] Exhs. HEC-1 at 16.

[90] *Id.*

[91] *Id.*; Exh. EFSB-SS-2(1) at 3.

Surrounding land uses include extensive wetlands to the east, an existing railroad corridor and extensive wetlands to the north, and industrial/commercial areas to the west and south.[92] Candidate Site 3 is separated from the Interconnection Substation by mapped wetland, and any direct transmission connection from this site would necessarily traverse these wetlands, resulting in direct impacts to wetlands that would be greater than 5,000 square feet.[93]

After consideration, Candidate Site 3 was eliminated for a number of reasons. Any potential overhead or underground electric transmission interconnection from this site directly to the Interconnection Substation would result in extensive impacts to existing forested wetland resource areas.[94] A potential underground electric transmission interconnection from this site to the Interconnection Substation within public roadways would be approximately 4,000 feet in length, which would be complex, highly obstructive to the Town during construction, have high estimated costs, and may not be feasible given existing infrastructure, wetland and hydrologic conditions, and requirements from National Grid.[95] Likewise, a horizontal directional drill from Candidate Site 3 across the wetland systems to the Interconnection Substation would be 10 to 100 times the cost of the proposed interconnection route and may not be technically feasible.[96]

The Company also considered a no-build alternative. Under the no-build alternative, the Project would not be constructed, and the Commonwealth would not benefit from the Project's

[92] Exh. HEC-1 at 17.

[93] Exhs. EFSB-SS-2, EFSB-2(1) at 3, EFSB-SS-6; Tr. 1, at 60:18-22.

[94] Exhs. HEC-1 at 17, EFSB-SS-2, EFSB-2(1) at 3, EFSB-SS-6.

[95] Exhs. HEC-1 at 17, RR-EFSB-6.

[96] Exh. RR-EFSB-6; Tr. 1, at 60:18-22.

contributions toward Massachusetts' emission-reduction goals and energy storage targets.[97] Thus, the no-build alternative was not considered to be a viable alternative.[98]

After consideration of these alternatives, Candidate Site 4 (the preferred project site) was appropriately selected for the following reasons: (1) it is entirely developed and will not result in any impacts to undeveloped forested areas or wetlands; (2) its location is proximate to the Interconnection Substation; (3) it is accessible from a public roadway (Hillman Street); (4) surrounding land uses are predominantly industrial/commercial in nature; and (5) it is commercially available.[99] Indeed, the land uses immediately surrounding this candidate site are compatible with the proposed facility and include an electric transmission corridor to the west, commercial warehouse and storage facilities with associated offices to the south, industrial uses with a single residence to the immediate east (with the Emerald Court retirement community further from the Project site to the east)[100], and an existing railroad corridor, wetlands, and an existing electric substation to the north.[101] As discussed in more detail below, the Company has designed the Project to be fully compatible with and minimize the impacts of the Project on these surrounding land uses in terms of noise, environmental impacts, stormwater management / water quality, and safety, among other things. For all these reasons, the Siting Board should find that the Company conducted sufficient analysis of alternative sites and that the selected site is an appropriate location for the Project.

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[97] Exh. HEC-1 at 18.

[98] *Id.*

[99] *Id*.

[100] Exh. EFSB-SS-8.

[101] Exh. HEC-1 at 18.

4. The Company Designed the Project to Avoid or Minimize Any Environmental and Other Local Impacts of the Proposed BESS

The Project has been sited and designed to avoid and/or minimize impacts to environmental resources and any other impacts of the proposed BESS, as discussed in detail in the sections that follow.[102] Moreover, the Company has conducted robust community outreach and coordinated with the Town to minimize local impacts. This outreach led, among other things, to the execution of the HCA and the Town to state that the HCA reasonably protects the public interest within the Town.[103] Thus, the Siting Board should determine that the benefits of the Project, combined with its minimal impacts, support a zoning exemption.

a. The Project Will Comply with Applicable Noise Limits and the MassDEP Noise Policy

The Project will comply with the MassDEP Noise Policy and Town of Tewksbury Bylaws with respect to sound levels in all respects.[104] To ensure compliance, the Company plans to conduct a post-construction sound level assessment to verify that the Project operates in compliance with the applicable sound limits.[105] If the sound levels were to exceed applicable limits, additional mitigation would be implemented to achieve compliance.[106]

To determine compliance with applicable standards, the Company's expert noise consultant completed a Sound Level Assessment Report, submitted as Attachment C-Supplemental. The report modeled all of the Project sound sources at their worst-case (*i.e.*,

[102] An Environmental Justice analysis is not required for this Project. An Environmental Justice Community analysis is required if a project is within 1 mile of an EJ population or within 5 miles of an EJ community if the project has air emissions. The closest Environmental Justice Community is approximately 1.7 miles west of the Project Site.

[103] Exh. TEWK-JC at 8-9.

[104] Attachment C-Supplemental at 4-5.

[105] Exh. EFSB-NO-3.

[106] Exh. EFSB-NO-5.

highest) sound levels.[107] To further ensure that the modeling is conservative, and that the actual sound levels are no more than the worst-case levels presented in the Sound Level Assessment Report, the report: (i) applied a 2 dBA uncertainty value that was added to all modeled sound sources, thus making every sound source louder than its predicted worst-case level for modeling purposes; (ii) assumed favorable conditions for sound propagation, corresponding to a moderate, well-developed ground-based temperature inversion as might occur on a calm, clear night or equivalent downwind propagation; (iii) assumed meteorological conditions where the human ear is most sensitive; and (iv) did not consider additional attenuation due to air turbulence, foliage, or wind shadow effects.[108]

The Sound Level Assessment Report includes an ambient sound level measurement program to document the existing conditions in the vicinity of the Project as well as computer modeling to predict sound levels from the Project.[109] Results from the measurement program and the modeling were used to evaluate compliance with the MassDEP Noise Policy—which limits the increase over ambient in certain locations to 10 dBA or less and prohibits creation of new 'pure tone' conditions—and the Town of Tewksbury's sound limits in areas not covered by the MassDEP noise policy.[110]

To determine ambient sound levels, existing condition sound levels were continuously measured for eight days at three locations around the site.[111] Supplemental short-term measurements were also performed at three additional locations near the site during both a

[107] *See* Attachment C-Supplemental; Exh. EFSB-NO-1.

[108] Attachment C-Supplemental at 21; Exh. EFSB-NO-3.

[109] Attachment C-Supplemental at 4.

[110] *Id.*

[111] *Id.*

daytime and nighttime period.[112] These measurement locations were selected to accurately reflect the Project layout and the land uses in the vicinity of the Project Site, including the Emerald Court retirement and assisted living community to the east of the Project.[113] The eight-day average sound level using the lowest hourly L_{90} sound levels measured during each daytime and nighttime period of the program was used to establish representative daytime and nighttime background (ambient) sound levels at each location.[114]

Noise controls necessary to meet the requirements of the MassDEP Noise Policy were implemented and are discussed in the Sound Level Assessment Report.[115] Mitigation reflected in the acoustic model includes utilizing low noise equipment, such as a low noise power transformer, equipment silencers and noise mitigation kits, and sound attenuation barriers (*i.e.,* sound walls).[116]

At all residential locations, predicted sound level increases range from 6 to 10 dBA above the nighttime ambient and range from 4 to 8 dBA above the daytime ambient.[117] In addition, the Project is not predicted to create any new pure tones.[118] Therefore, with the proposed noise mitigation measures, or equivalent design changes, the Project will meet the requirements set forth in the MassDEP Noise Policy at all applicable locations.[119] Moreover, the predicted sound level increases are based on low ambient sound levels derived from the quietest nighttime and

[112] *Id.*

[113] Attachment C-Supplemental at 13.

[114] *Id.*

[115] *Id.*

[116] *Id*. at 33.

[117] *Id.*

[118] *Id.*

[119] *Id.*

daytime hours.[120] During the majority of time, background sound levels are expected to be higher than those assumed in the evaluation, and the resulting sound level impacts will be less.[121]

The Project will also comply with the Town of Tewksbury sound level limits at all locations.[122] The Town's Bylaws, Chapter 8.12.050, defines property line noise limits for continuous sources based on the receiving property classification.[123] Area Use I includes residences and schools and Area Use II includes all other properties, which have maximum Nighttime Level Exterior Noise Standard of 50 dBA and 65 dBA, respectively.[124] At Area Use II locations, predicted Project-Only sound levels are at or below 65 dBA and at Area Use I locations, predicted Project-Only sound levels are below 50 dBA during both daytime and nighttime. [125] Therefore, with the noise mitigation measures, or equivalent design changes, the proposed Project will meet the Town of Tewksbury Bylaws with respect to sound.[126]

For all these reasons, the Project will not create any undue impacts with respect to noise. In fact, because the existing site includes significant use of heavy equipment and traffic from large trucks associated with the landscaping business and truck repair facility, the Project will likely result in significant reductions in maximum sound levels at the Project site.

b. The Project Will Not Create Any Unsafe Electric or Magnetic Fields

Any electric or magnetic fields created by the Project will be at low levels and safe at all locations outside the Project. During operation, electromagnetic ("EM") fields of varying

[120] *Id.*

[121] *Id.*

[122] *Id.* at 5.

[123] Town of Tewksbury General Bylaw § 8.12.050.

[124] *Id.* The maximum Daytime Exterior Noise Standards are louder than the nighttime levels, and therefore compliance with the Nighttime Exterior Noise Standards also complies with the Daytime Exterior Noise Standards.

[125] Attachment C-Supplement at 24.

[126] *Id.*

frequencies from the Project will surround: 1) the direct current ("DC") battery banks; 2) the DC lines connecting the battery banks to the power inverters; 3) the alternating current ("AC") power inverters that convert between DC and AC power; 4) the Project Substation, bus work, and other associated equipment; and 5) the 115-kV transmission connections connecting the Project Substation to the existing Interconnection Substation.[127]

All Project elements that produce EM fields are hundreds of feet from the nearest residential neighborhood. At the closest residence, approximately 83 feet from the nearest Project-related infrastructure, EM field levels would be somewhat higher than at other nearby residences.[128] However, even at this location, all field levels (DC, 60-Hz, and RF) from the Project are expected to be low and far below the exposure limits for the general public recommended by ICNIRP and ICES (ICNIRP, 2009, 2010; ICES, 2019).[129] Accordingly, the Project will not create any unsafe electric or magnetic fields.

c. The Project Will Not Produce Any On-Site Emissions or Harmful Air Pollutants

Normal operations of the BESS will not produce any on-site greenhouse gas emissions or harmful air pollutants.[130] In fact, the Commonwealth has found that BESS projects will provide important benefits to "achiev[ing] net zero carbon emissions in the Commonwealth by 2050."[131]

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[127] *See* Exh. HEC-1(4) (Attachment D to the Petition); Attachment-D-Supplemental ("the evaluation provided in the Exponent Report will not change as a result of the new battery manufacturer and the conclusions of the Exponent Report remain unchanged."). *See also* Exhs. RR-EFSB-8 and RR-EFSB-9.

[128] Attachment D-Supplemental.

[129] *Id.*

[130] Tr. 1, at 31:20-21, 33:20-24, 84:23-85:2.

[131] Medway Grid, at 40 (2023); see also Trimount ESS, LLC, EFSB-25-05, D.P.U. 24-152. At 20-21 (2026).

During construction of the Project, the Company will implement best management practices ("BMPs") to address dust control and air quality.[132] To minimize the potential for airborne dust from earth-disturbing activities, the Company will require its contractors to place water trucks with misters in or near the work areas during construction activities and utilize them as appropriate when conditions require.[133] In addition, if it is necessary to stockpile excavated soil on the site for a prolonged period of time, it will be covered with plastic sheeting or a similar barrier to minimize the potential for the release of dust and for soil migration from the work area quality.[134] The Project will also install anti-tracking pads at construction entrances and will conduct regular sweeping of the pavement of adjacent roadway surfaces during the construction period to minimize the potential for construction traffic to kick up dust and particulate matter.[135] To minimize air emissions from construction equipment, the Company will comply with state law (G.L. c. 90, § 16A) and MassDEP regulations (310 CMR 7.11 (1)(b)), which limit vehicle idling to no more than five minutes except for vehicles being serviced, vehicles making deliveries that need to keep their engines running, and vehicles that need to run their engines to operate accessories.[136] In addition, contractors who enter into an agreement with the Company will be contractually obligated to comply with the most current EPA emission standards for construction equipment at the time of construction.[137]

[132] Exh. HEC-1 at 19 .

[133] *Id*.

[134] *Id*.

[135] *Id*.

[136] *Id*.

[137] *Id*. at 19.

d. The Project Stormwater Management System Meets All Applicable Standards

The Project includes an engineered stormwater management system incorporating best management practices ("BMPs") that is fully compliant with the MassDEP Stormwater Handbook.[138] Among other things, the Massachusetts Stormwater Handbook, as well as Stormwater Management Standards pursuant to the Massachusetts Wetlands Protection Act ("WPA"), G.L. c. 131 § 40, and the Massachusetts Clean Water Act, G.L. c. 21, §§ 26-53, promote increased stormwater recharge, the treatment of more runoff from polluting land uses, low impact development ("LID") techniques, pollution prevention, the removal of illicit discharges to stormwater management systems, and improved operation and maintenance of stormwater BMPs.[139]

The Company's professional civil engineers and expert stormwater consultants at Langan have completed a Stormwater Management Memorandum for the Project that was submitted in Attachment B-2nd Supplemental (hereinafter "Attachment B(S2)"). The Stormwater Management Memorandum presents the engineering calculations completed to design the stormwater management system, a detailed description of the proposed system, and an explanation of how the system complies with all applicable state and local standards and requirements.

The stormwater management systems for the Project have been designed to meet all applicable provisions of the MassDEP Stormwater Management Standards.[140] The stormwater management systems are designed to ensure that post-development peak discharge rates do not exceed pre-development peak discharge rates.[141] The proposed stormwater system will include

[138] *See generally* Attachment B(S2).

[139] Exh. HEC-1 at 23.

[140] *Id.*

[141] *Id.*; Attachment B(S2) at 2.

water quality units (hydrodynamic separators with inlet grates) and underground infiltration systems (precast concrete leaching chambers) to promote water quality and groundwater recharge.[142] The 4.34-acre Project Site where the BESS facility and the Project Substation will be constructed currently contains approximately 2.05 acres of existing impervious areas (47% of the site).[143] The post-development site impervious area is approximately 1.56 acres (36% of the site), a net decrease in impervious area of 0.49 acres (11% of the site).[144] Thus, the Project will result in significant improvements in groundwater recharge compared to the existing site conditions.

The Company also conducted a groundwater hydrogeological evaluation for the Project to characterize hydrogeologic conditions in the vicinity of the Project Site and to evaluate the Project's potential to adversely affect groundwater resources, including nearby private wells, public water supplies, and nearby surface-water/wetland receptors.[145] The groundwater hydrogeological evaluation concluded that an unanticipated release from the proposed BESS Site would not result in an unmanageable risk to groundwater and/or nearby surface-water bodies provided that (1) the Project is constructed and operated consistent with the proposed engineered controls and (2) appropriate emergency response/spill prevention planning is implemented and maintained.[146]

Further, consistent with the requirements in Title 40 of the Code of Federal Regulations ("CFR"), Part 112, as well as the Massachusetts Contingency Plan, the Company will develop and maintain a Spill Prevention, Control, and Countermeasure Plan ("SPCC Plan").[147] The SPCC Plan will detail specific measures to prevent spills, provide protocols for routine maintenance and

[142] Exh. HEC-1 at 23; Attachment B(S2) at 2.

[143] Attachment B(S2) at 1.

[144] *Id*. at 1.

[145] Exh. EFSB-W-3(1).

[146] *Id.* at 6.

[147] Exh. EFSB-S-60.

monitoring, identify personnel responsibilities in the event of a spill, and identify the specific procedures to be followed in the event of a spill at the facility.[148]

e. The Project Will Result in an Improvement in Water Quality Compared to the Existing Site Conditions

The Project does not generate any process-related wastewater and will not require any sanitary sewer connection.[149] The Project is not located within a MassDEP Approved Zone I Wellhead Protection Area but is within the bounds of a MassDEP Approved Zone II Wellhead Protection Area and a local Groundwater Protection Overlay District.[150] The Zone II Wellhead Protection Area and the Town Groundwater Protection Overlay District are associated with two Community Groundwater Wells, identified as MassDEP Source ID #'s 3295001-01G and 3295001-03G. The wells are located 1.54 and 1.77 miles, respectively, from the Project Site.[151] One well is no longer active, and the other is currently used as the water supply for the Tewksbury Hospital, though the Town has indicated the active well is planned to be deactivated and will no longer serve as a water supply.[152]

The Project has minimal potential to impact public water supply sources and other water resources due to project safeguards including: (1) a stormwater management system that includes water quality units and an underground infiltration system that meets all applicable MassDEP requirements and standards, as discussed previously;[153] (2) secondary containment measures for the main power transformers at the Project Substation and medium voltage transformers that include

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[148] *Id*.

[149] Exh. HEC-1 at 20; Tr. 1, at 121:8-23.

[150] Exhs. HEC-1 at 20; EFSB-SS-3; EFSB-G-14; EFSB-G-14(1).

[151] Exh. EFSB-G-14

[152] *Id*.; Tr. 8, at 1196:5-11. Once the well is deactivated, there will be no active public water supply wells within the Zone II area.

[153] Exh. HEC-1 at 20, Attachment B(S2) at 2.

built-in containment;[154] (3) the development of a Long-Term Pollution Prevention Operation and Maintenance Plan and a Construction Period Soil, Erosion, and Sediment Control Plan;[155] and (4) additional plan development including and SPCC Plan and the Emergency Response Plan ("ERP").[156]

f. The Project Will Have Minimal Impact on Wetlands

State and local wetland resource areas located on or near the Project Area include: Bordering Vegetated Wetlands ("BVW"), Isolated Vegetated Wetlands ("IVW"), the 100-foot Buffer Zone, the 50-foot no build zone, and the 25-foot no disturb zone (the last two zones are local bylaw wetland resource areas only).[157] The IVW also qualifies as Isolated Land Subject to Flooding ("ILSF") under the WPA.[158]

The Project has been sited and designed to completely avoid the IVW/ILSF on the parcels of land that will contain the BESS facility and the Project Substation.[159] The Project will be designed to comply with all applicable local, state, and federal regulatory performance standards related to wetland resource areas.[160] All proposed work within the 100-foot Buffer Zone will include the use of BMPs such as erosion control barriers to establish limits of work and to ensure that there are no short- or long-term impacts to adjacent wetland resource areas.[161] The Project will require the

[154] Exh. HEC-1 at 20; Exh. EFSB-SS-3; Tr. 1, at 45-46.

[155] Exh. HEC-1 at 20; Attachment B(S2) at 187-207 (Long-Term Pollution Prevention Operation and Maintenance Plan); Exhs. EFSB-S-3, EFSB-W-11; Tr. 1, at 39-41.

[156] Exh. HEC-1 at 20; Exh. EFSB-SS-3; EFSB-S-60.

[157] Exh. HEC-1 at 21; Attachment B(S2) at 2, 151.

[158] Exh. HEC-1 at 21. The extent of wetland resource areas on the Project Site is presented in drawing Figure 2-3 of the Petition.

[159] Exh. HEC-1 at 22. Construction of the Proposed Transmission Interconnection will result in the temporary impact to approximately 2,400 square feet of BVW. *Id.*; Exh. EFSB-SS-2.

[160] Exh. HEC-1 at 22.

[161] *Id.*; Tr. 1, at 39-40.

development of a Stormwater Pollution Prevention Plan ("SWPP") that will identify controls to be implemented to mitigate the potential for erosion and sedimentation from soil disturbance during construction.[162] Similarly, the Massachusetts Stormwater Management Standards require the development of a Construction Period Soil Erosion and Sediment Control Plan.[163] In addition, all stockpiles (if necessary) will be located outside of the 100-foot Buffer Zone and refueling or storage of equipment—except for those that cannot be moved due to safety or operational requirements—will not be permitted within 100 feet of wetland resource areas.[164]

The record demonstrates that the Project will comply with the Massachusetts WPA, G.L. c. 131 § 40, and the accompanying regulations at 310 CMR 10.00 *et seq*., which protect water-related lands including but not limited to wetlands, rivers, streams, floodplains, ponds, and estuaries, and which establish performance standards by which work is conducted in these resource areas.[165] The implementation of the WPA wetlands regulations is delegated, in part, to local Conservation Commissions.[166] Any proposed activity that will remove, fill, dredge, alter, or build upon a protected area or within 100 feet of a protected area (i.e., the Buffer Zone) requires the filing of a Notice of Intent.[167]

The Town of Tewksbury has a local wetlands protection bylaw with associated regulations. The Tewksbury Conservation Commission will review the Notice of Intent, which will be filed under both the WPA and the local bylaw and may issue a permit in the form of an Order of Conditions.[168]

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[162] Exh. HEC-1 at 22*; see also* Exh. EFSB-W-11.

[163] Exhs. HEC-1 at 22, EFSB-W-11, EFSB-SS-3.

[164] Exh. HEC-1 at 22.

[165] *Id.* at 20-21; Exh. EFSB-W-11.

[166] Exh. HEC-1 at 20.

[167] *Id*. at 20-21; Tr. 1, at 135:14-21.

[168] Exh. HEC-1 at 21; Tr. 1, at 135.

An Order of Conditions ensures that the proposed Project will contribute to the protection of the interests of the WPA and includes conditions under which work will be carried out to minimize impacts on wetland resource areas and may include conditions for long-term operation and maintenance of the stormwater management system that will continue after the work is done.[169]

g. The Project Will Meet or Exceed All Applicable Safety Standards and Protect Public Safety

The proposed BESS was designed in strict conformance with all relevant codes and standards to ensure it is constructed and operated in a manner that remains safe to the public, emergency responders and operators.[170] This includes a series of redundant safeguards built into the hardware and management systems of the BESS that mitigate the risk of fire and thermal events, both in terms of the creation of such events and the response thereto, which include a combination of equipment design and procedural controls to prevent overcharging, overheating, internal shorts, and related failures.[171] In addition, the design, construction, installation, commissioning, operation, maintenance, and decommissioning of the BESS will conform to the National Fire Protection Association's 2026 edition of NFPA 855, Standard for the Installation of Stationary Energy Storage Systems, even though Massachusetts only requires compliance with an earlier version of NFPA 855.[172]

The BESS will adhere to the following international, national, and state safety requirements and standards:

- "Massachusetts Comprehensive Fire Safety Code," 527 CMR 1.00, Massachusetts Board of Fire Prevention Regulations, Code, 12/9/2022, Chapter 52, Stationary Storage Battery Systems.

[169] Exh. HEC-1 at 21; Tr. 1, at 135.

[170] Exhs. HEC-1 at 12, EFSB-S-2.

[171] Exhs. HEC-1 at 12, EFSB-S-9.

[172] Exh. HEC-1 at 12; Tr. 9, at 1257-1260; *see also* Tr. 8, at 1111:4-9 ("The International Fire Code and the state fire codes that are developed out of the international code use 855 as that gold standard of permitting compliance and construction compliance.").

- "NFPA 1, Fire Code," National Fire Protection Association, Quincy MA
- "NFPA 855, Standard for the Installation of Stationary Energy Storage Systems," National Fire Protection Association, Quincy MA
- "UL 9540, Safety of Energy Storage Systems and Equipment," Edition 3.
- "UL 9540A, Test Method for Evaluating Thermal Runaway Fire Propagation in Battery Energy Storage Systems," Edition 4.[173]

Additionally, the Company and the Town have included in the HCA an Appendix highlighting all of the safety regulations that that the Project will adhere to and that calls out specific NFPA 855 standards that must be followed.[174]

The Company regularly reviews best practices and current codes and standards, and the Company engages qualified professionals to ensure the Project is designed and constructed in conformance with applicable codes.[175] If safety codes or standards change and the change requires retrofits to existing projects, the Company will modify the Project as necessary.[176]

The Project will be controlled remotely and have internal sensors that continuously monitor system operation.[177] If safety circuits detect a condition outside normal operating parameters, the energy supply and discharge are stopped, and individual system components are automatically shut down.[178] The operator can also remotely control operation of the facility.[179]

[173] Exh. HEC-1 at 12.

[174] Exh. TEWK-JC at 8:16-19.

[175] Exhs. HEC-1 at 12, EFSB-S-1.

[176] Exh. EFSB-S-1.

[177] Exhs. HEC-1 at 12, EFSB-S-9, EFSB-S-17; EFSB-S-20.

[178] Exhs. HEC-1 at 12, EFSB-S-20.

[179] Exhs. HEC-1 at 12, EFSB-S-9, EFSB-S-16, EFSB-S-20.

In addition, the Project team is working with the Tewksbury Fire Department to finalize an ERP and safety training document.[180] The draft ERP[181] will be finalized prior to operation of the facility, while the safety training documents will be finalized prior to the arrival of onsite materials.[182] The two documents will enumerate roles and responsibilities for safety and emergency response, identify protocol for severe weather planning, identify protocol for the preparation and planning for emergencies, and identify emergency procedures and fire response plans.[183] Both documents are intended to be living documents—the ERP is to be reviewed at least annually and updated after any material change to the installation or procedures, and the training program will be refreshed on at least an annual basis and after any major ERP revision.[184]

Accompanying the ERP and safety training document, the Company has prepared a draft hazard mitigation analysis ("HMA") that assesses hazard risks and the anticipated overall effectiveness of the protections in place to mitigate consequences in the unlikely event of any failure at the facility.[185] The HMA and ERP will be finalized as "as-built" documents after verification of the installed configuration, receipt of any final comments from the Tewksbury Fire Department and any other authorities having jurisdiction ("AHJs"), and completion of testing.[186]

The Company will also ensure that the Project cybersecurity safety features meet industry-recognized frameworks and standards, including NIST CSF, ISO 27001, IEC 62443,

[180] Exh. EFSB-G-6; HCA §6.A.

[181] Exh. D/S-G-21(1).

[182] Tr. 2, at 189.

[183] Exhs. HEC-1 at 13, EFSB-G-11.

[184] Exh. EFSB-S-11.

[185] Exh. D/S-G-20(1) at 5.

[186] Exh. EFSB-S-76.

and NERC CIP.[187] These standards collectively ensure the integrity, availability, and confidentiality of systems and data throughout the lifecycle of the Project.[188]

h. The Project Will Generate No Hazardous Waste

All waste generated during demolition, site preparation, construction, and operation of the Project will be transported offsite in accordance with local, state, and federal guidelines and regulations.[189] The Project will implement measures to minimize the generation of solid and other waste.[190] Any non-recyclable solid waste will be transported to a licensed solid waste facility.[191]

During the course of the remainder of the design phase and prior to and throughout the construction phase of the Project, the Company will continue to consult with a Licensed Site Professional to ensure that no contaminated soil, groundwater, or media within the jurisdiction of G.L. c. 21E (if applicable, G.L c. 21C) and the Occupational Safety and Health Administration ("OSHA") is excavated, removed, handled, or disposed of without proper notification to and coordination with the MassDEP Bureau of Waste Site Cleanup.[192] If an oil and/or hazardous materials spill releases to the environment and "Reportable Conditions" as defined in the Massachusetts Contingency Plan ("MCP") are met, then a notification to the MassDEP within a specified timeframe would occur.[193] If a notification to MassDEP is required, the Company or its vendor would conduct additional assessment activities and, if necessary, remedial or cleanup

[187] Exh. EFSB-S-5.

[188] *Id*.

[189] Exh. HEC-1 at 23.

[190] *Id.* at 24; Exh. EFSB-HW-4.

[191] Exh. HEC-1 at 24.

[192] *Id.*

[193] *Id.*; Exh. EFSB-S-60.

activities until the risk to human health and the environment are below acceptable standards.[194] If the construction phase results in the removal of excess topsoil from the Project Site, it would be tested as required and removed for off-site disposal at an appropriate receiving facility.[195] Any solid waste encountered or generated during construction of the Project will be transported offsite in accordance with local, state, and federal guidelines and regulations.[196]

During normal operation of the BESS, no solid or hazardous waste stream will be generated.[197] If any BESS units are replaced throughout project operation, any used batteries will be removed from the site, transported, and managed in accordance with all local, state, and federal guidelines and regulations.[198]

i. Decommissioning

The record demonstrates that the Company will follow proper procedures and best practices when decommissioning the Project at the end of its useful life.[199] The Company will engage a professional engineer to develop a formal, stamped decommissioning plan that will address any safety risks with appropriate mitigation measures.[200] Decommissioning of the Project, which will be performed by a qualified third-party contractor,[201] will take approximately 8-12 months.[202] The Company anticipates decommissioning to follow a phased approach that will include: (i) de-energization of the equipment and removal of specialized equipment from the

[194] Exh. HEC-1 at 24; Exh. EFSB-S-60.

[195] Exh. HEC-1 at 24.

[196] *Id*.

[197] *Id.*; Exh. EFSB-HW-7.

[198] Exh. HEC-1 at 24.

[199] Exhs. EFSB-S-52, EFSB-S-57.

[200] Exh. EFSB-S-57.

[201] Exh. EFSB S-52.

[202] Exh. EFSB-S-57.

Project Site; (ii) the removal of basic structures and non-specialized equipment from the site; (iii) the removal of all sub-grade equipment and foundations, including all piping, trenching, and other steel and concrete girders; and (iv) the backfilling and reseeding of excavated areas and on-site roads and further site restoration, as needed.[203] To ensure adequate funding for decommissioning and site restoration, the Company has agreed to obtain a decommissioning bond in an amount between $3,000,000 and $6,000,000.[204] Further, the Company will collaborate with the Town with respect to the Project's decommissioning and will provide Tewksbury with at least with at least 180 days' prior written notice.[205]

j. The Project Will Have Minimal Traffic Impacts, and Traffic During Operations Will Be Significantly Less Than the Existing Site Conditions

Traffic impacts due to construction of the Project and occasional on-site maintenance visits during operations will be minimal.[206] No delays to local traffic should be experienced except where the delivery vehicles may need to travel on narrow roadways or when there is an occasional oversized vehicle.[207] In these scenarios, the Company will coordinate with the Town to manage local traffic, including to work with the Tewksbury Chief of Police particularly regarding construction traffic and to include traffic mitigation as part of its Construction Management Plan.[208]

The Company will establish construction personnel parking either in a designated area on the site with access/egress via the local road of Hillman Street or at a remote location where workers can

[203] *Id*.

[204] HCA at §14.

[205] *Id.*

[206] Exh. HEC-1 at 30.

[207] *Id.* at 30.

[208] *Id.* at 30; HCA at § 11.

be shuttled to the Project Site.[209] Any remote parking areas and/or contractor staging/laydown areas will be located within previously developed and disturbed areas in proximity to the Project Site.[210] Once operational, the Project will be monitored remotely, and any traffic to the Project Site will be limited to periodic site inspections and maintenance visits, significantly less than existing traffic in light of the site's current use as an active landscaping business and truck repair facility.[211]

k. The Company Will Minimize Local Impacts During Construction Through Coordination with Local Authorities

The record demonstrates that the Company has coordinated and will continue to work with the Town of Tewksbury to ensure minimal disruption to abutters and neighboring properties during construction. The Company intends to obtain all necessary permits in or before Q4 2026 and commence construction in 2027.[212] Prior to construction, the Company will prepare a construction management plan in coordination with the Tewksbury Town Manager, Tewksbury Fire Department, and the Tewksbury Police Department.[213] The construction management plan will include a written timetable setting forth the pre-construction, construction and completion schedule.[214]

In accordance with the Host Community Agreement and the Tewksbury General Bylaw Section 8.12, construction work hours for the Project will be between Monday–Friday, 7:00 a.m. to 5:00 p.m.[215] Any construction required outside these hours will be done in coordination with the Town of Tewksbury.[216] The Company will also develop a site-specific logistics plan in accordance

[209] Exh. HEC-1 at 31.

[210] *Id.* at 31.

[211] *Id.*

[212] Exhs. HEC-1 at 10; EFSB-G-10.

[213] *See* HCA § 9.

[214] *Id.*

[215] *Id.* at § 10.A.

[216] *Id.*

with state and local laws and in collaboration with the Tewksbury Fire Department, Police Department, and Department of Public Works to minimize impacts on local traffic patterns and flow.[217]

Construction is estimated to take approximately 12-14 months from groundbreaking to operation.[218] During construction, the Company and its engineering, procurement and construction ("EPC") contractor will use various means of site security, including but not limited to fencing, gated and locked access/egress points, motion sensors, closed-circuit television cameras, and others.[219] If required during construction, the Company will work with the Town of Tewksbury in the identification and securing of offsite staging space.[220]

l. The Project Will Have Minimal Visual Impact on the Surrounding Community

The Company has considered the potential visual impact of the Project to abutting land uses in the vicinity of the Project Site.[221] The Company has provided detailed visual renderings, viewsheds, and aerial footage of the Project from multiple perspectives.[222] The Project has been designed such that it will have minimal visual impact within the surrounding area as it will include extensive visual screening from the sound barriers and proposed vegetation to minimize visual impacts.[223] The Project is consistent in character to the neighboring commercial properties to the

[217] Exh. EFSB-T-1.

[218] Exh. EFSB-CM-1.

[219] Exh. EFSB-CM-5.

[220] Exh. EFSB-CM-3.

[221] Exh. HEC-1 at 25.

[222] Exhs. EFSB-V-1(1), D/S-G-1(1), RR-EFSB-3(1), RR-EFSB-3(2), RR-EFSB-4(1), RR-EFSB-4(2).

[223] *See* Exhs. EFSB-V-1(1), D/S-G-1(1), RR-EFSB-3(1), RR-EFSB-3(2), RR-EFSB-4(1), RR-EFSB-4(2). In the HCA, the Company also agreed to minimize visual impacts "in part through plantings, landscaping, buffering walls, berm development, and/or fencing that shall be properly maintained throughout the course of the Term of the Agreement." HCA at § 10.C.

south and existing electrical infrastructure to the north and west of the Project Site.[224] Furthermore, the Project will not be visible from the Emerald Court residential community to the east of the Project Site.[225]

m. The Project Will Not Impact Cultural Resources or Environmental Justice Communities

The Company initiated a cultural resource sensitivity assessment and due diligence review to identify historic architectural properties and archaeological sites on and in the vicinity of the Project Site, including the Proposed Transmission Interconnection.[226] The Company conducted a search of the Massachusetts Historical Commission's ("MHC") Inventory of the Historic and Archaeological Assets of the Commonwealth. In addition, the Project Site was assessed for archaeological sensitivity through field visits by a Principal Archaeologist.[227] The assessment concluded that the Project Site and proposed interconnection route have a low sensitivity for cultural resources.[228]

To determine the effect of the Project on cultural resources, the Company initiated a formal consultation with the MHC through the submission of a Project Notification Form ("PNF") in March of 2025.[229] By email, the MHC confirmed that it did not have comments on the Project's PNF, indicating that the MHC did not require any additional studies related to historic or cultural resources.[230]

The Company also sited the Project to have no impacts on Environmental Justice ("EJ") populations. Based on the EEA "EJ Mapping Tool," the closest mapped EJ population is

[224] Exh. RR-EFSB-4(2).

[225] Exh. RR-EFSB-3(2).

[226] Exh. HEC-1 at 30.

[227] *Id*.

[228] *Id*.

[229] Exh. HEC-1(5) (Attachment E to the Petition).

[230] Tr. 1, at 34:16-35:10.

approximately 1.7 miles from the Project Site.[231] Moreover, the Project supports labor interests and addresses economic justice.[232] During construction, the Company anticipates anywhere from 25-60 personnel on site.[233] The Company intends for as many of those personnel to be union as possible and to utilize local labor.[234]

n. The Project Will Not Impact Any Protected Species

According to Massachusetts Natural Heritage and Endangered Species Program ("NHESP") Atlas (August 1, 2021, 15th Edition), the site is not located within an area of Estimated Habitats of Rare Wildlife or an area of Priority Habitats of Rare Species.[235]

o. Community Outreach

The Company conducted extensive outreach with the Town, elected State and Town officials,[236] local media, and the general public in order to share information regarding battery storage and the Project.[237] The Company has also joined and spoken before local chambers of commerce and on local radio stations to respond to questions about battery storage generally and the Project specifically.[238] The Company also introduced its nationally-recognized BESS safety

[231] Exh. HEC-1 at 43.

[232] Tr. 1, at 32.

[233] Exh. EFSB-CM-1; Tr. 1 at 82-83.

[234] Tr. 1 at 83; Exh. EFSB-N-2

[235] Exh. HEC-1 at 30.

[236] For example, on March 4, 2025, the Company met with State Representative Robertson at the Project Site and briefed him on the project and permitting process. (Exh. HEC-1 at 44). Later that evening the Company participated in an Open Meeting of the Tewksbury Select Board where the Project was presented. (*Id.*). On March 6, 2025, the Company met with State Senator Finegold and District Director, Janice Phillips at the Senator's office where they were briefed on the project. (*Id.*). The Company later on had numerous discussions with the Town of Tewksbury since filing the Petition. (Exh. EFSB-G-7).

[237] *See* Exh. HEC-1 at 44-45.

[238] Exhs. EFSB-G-6; EFSB-G-7.

experts to the Tewksbury Fire Department to discuss the drafting of an ERP and system designs required by the Town's first responders.[239]

On March 18, 2025, the Company conducted an Open House at the Holiday Garden Inn in Tewksbury.[240] Invitations were sent to residents and businesses within ½ mile of the Project Site as well as to members of the Tewksbury Select Board and town staff. Approximately 50 people attended that meeting.[241]

In addition to the outreach described above, the Company has also created opportunities for members of the public to learn about the project and to contact Company representatives with any concerns.[242] These include:

- The Company established a Project website in order to provide basic Project information, answers to frequently asked questions, and contact resources; the website will be kept up to date throughout the duration of Project development.[243]

- Similarly, the Company established a dedicated e-mail address and phone numbers to communicate with property owners and other stakeholders regarding the Project. This email address is listed in all Project outreach materials, including mailings, flyers handed out door-to-door, the website, and community events.[244]

Prior to construction, the Company will develop a Construction Community Outreach Plan to keep Town officials, emergency personnel, property owners, and business informed of construction activities.[245] The Company will also collaborate with the Town to develop a Construction Management Plan and will continue to work collaboratively with Town officials to minimize

[239] Exh. EFSB-G-6.

[240] Exh. HEC-1 at 44.

[241] *Id.*

[242] *Id.* at 44-46.

[243] *Id.* at 46.

[244] *Id.*; Exhs. EFSB-G-6; EFSB-G-6(1).

[245] Exh. HEC-1 at 46.

construction impacts.[246] This includes that all of the Company's construction personnel work responsibly and respectfully in the community and adhere to commitments and permitted work hours established with the Town.[247]

p. Host Community Agreement

For nearly the past two years, the Company and the Town of Tewksbury have engaged in discussions related to the Project, ultimately reaching a mutually agreeable Host Community Agreement ("HCA") to ensure the needs and concerns of the Town were addressed.[248] Under the HCA, the Company and Town agreed to foster a cooperative working relationship with respect to the Project to promote their mutual interests.[249] Among other provisions, the Company agreed to the following:

- To make environmental, public health, and public safety payments and other investments, undertake protective or mitigation measures and other certain non-monetary public health and public safety measures;
- To decommission and remove the Project following the end of its useful life at the Company's sole expense, and to provide the Town with a bond or other agreeable funding mechanism to decommission and remove the Project;
- To use commercially reasonable efforts to purchase goods and services necessary for the construction of the Project from local vendors;
- To fund several initiatives that support the Town and local community, including: Public Safety Training & Technical Rescue Equipment Funds; Community Support Funding; Water Quality Improvement Funding; Energy and Sustainability Programming Funding; a portion of an energy capacity study to be conducted by National Grid; and contributions to Town Energy & Sustainability Programming Funding;
- Obtain and maintain insurance policies that meet minimum coverage requirements; and

[246] Tr. 8, at 1104:4-1105:22; HCA, § 9.

[247] Exh. HEC-1 at 46.

[248] Exh. HEC-1 at 45, *see generally* the HCA.

[249] HCA § 1.

- To establish a fund sufficient to pay the record owners (as of construction commencement) of residential properties containing residential structures that are located within six hundred and fifty feet of the Project's perimeter for the amount of any material reduction in the value of their home that such a homeowner can reasonably demonstrate was directly attributable to the construction of the Project, not to exceed $25,000.[250]

Additionally, the Company will provide the Town over $1,000,000 in annual payments in lieu of taxes.[251] Similarly, the HCA highlights all the safety regulations that the Company will have to adhere to for the Project, calling out NFPA 855 specifically among others.[252] The HCA also addresses decommissioning, offering protections for future residents and community members in the event when the facility is retired, shut down or otherwise deactivated.[253]

D. Hillman Requires Zoning Exemptions from Specific Sections of the Town of Tewksbury Zoning Bylaws

1. Standard of Review

In determining whether an exemption from a provision of a zoning ordinance is "required," the Department and the Siting Board look to whether the exemption is necessary to allow construction or operation of the petitioner's project as proposed.[254] The petitioner must identify the individual zoning provisions applicable to its project and establish that an exemption from each of the provisions is required.[255]

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[250] *See* HCA § 6 (Payments).

[251] Exh. D/S-G-10.

[252] *See* Exh. TEWK-JC at 8:16-19.

[253] *Id.* at 8:11-13.

[254] NSTAR Electric Company d/b/a Eversource Energy, EFSB 14-02/D.P.U. 14-73/14-74, at 93 (2017) ("Eversource Walpole-Holbrook"); NSTAR Electric Company d/b/a Eversource Energy, EFSB 15-03/D.P.U. 15-64/15-65, at 80 (2017) ("Eversource Mystic-Woburn"); NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 15-85, at 6 (2016) ("Eversource Woburn").

[255] Eversource Walpole-Holbrook at 94; Eversource Mystic-Woburn at 81 n. 71; Eversource Woburn at 6.

Here, several exemptions requested are for sections of the Tewksbury Zoning Bylaw that either require special permits or are eligible for a variance under G.L. c. 40A, § 10.[256] Both special permits and variances are a discretionary type of zoning relief that are subject to appeal. Both pose legal uncertainty and have the potential for adverse interpretations, delay, burden and undue expenses.[257] Similarly, a project subject to a special permit or variance appeal cannot obtain construction financing until the appeal is fully resolved. Accordingly, the Department has found that requiring a public service company to obtain special permits could result in Project delay and has therefore granted exemptions from the special permit requirement under G.L. c. 40A, § 3.[258]

2. Zoning Exemptions Required

Zoning exemptions required for this Project include the following. According to the Town of Tewksbury Massachusetts Zoning Map (the "Zoning Map"), the BESS/Substation Site is in the I2 zoning district, and the Proposed Transmission Interconnection runs through the I1 and Park zoning districts. Under the Table of Uses (*i.e.,* Section 5.4.3 and Appendix A of the Zoning Bylaw), BESS facilities are permitted in the I2 zoning district only with a Planning Board special permit.[259] The Table of Uses also does not permit transmission interconnection as a use in the I1 or Park zoning districts, and use variances are not permitted under the Zoning Bylaw. Thus, exemption from these provisions is required.

[256] In all cases, it is difficult to demonstrate the existence of unique conditions for the grant of a variance.

[257] A copy of the updated Tewksbury Zoning Bylaw is contained in Exh. RR-EFSB-2(1).

[258] See, e.g., NSTAR Electric Company, D.P.U. 18-155 at 65 (2020); Hopkinton LNG Corporation, D.P.U. 17-114 at 70 (2018).

[259] The Town of Tewksbury amended its zoning Bylaws after the Company had filed its Petition on April 1, 2025. At the time of the Company's initial Petition on April 1, 2025, the Table of Uses did not list energy storage systems as a permitted use in any zoning district.

Section 5.4.5.D of the Zoning Bylaw prohibits as accessory structures any "truck box, Conex box, or steel storage unit." Because the Project will utilize containerized Hithium units to house the battery components, exemption from this provision is likely required.[260]

According to the Zoning Map, the Project Site lies in the Groundwater Protection District.[261] Section 5.6 of the Zoning Bylaw imposes use restrictions and special permit requirements for uses within the overlay district. Furthermore, Section 5.6.3.C.3 requires a special permit for any "system of storm water management and artificial recharge of precipitation." The Proposed Transmission Interconnection will also run through the Groundwater Protection district. Thus, to construct the Project on the Project site, an exemption from the operation of Section 5.6 is required.[262]

The Project also requires exemptions from certain dimensional requirements for industrial districts. Section 5.3.4 of the Tewksbury Zoning Bylaw provides the dimensional and density requirements that apply to principal and accessory uses and structures in the Town's industrial districts. Structures in the I2 district must have a minimum and maximum front setback of 50 feet, a minimum rear and side yard setback of 25 feet, and a maximum height of 40 feet. With respect to structures that exceed the 40-foot height limitation, the planning board may grant special permits to allow structures of up to 60 feet high. For the Project, certain BESS containers and inverters will be located within the 50-foot front yard setback.[263] Likewise, a 30-foot sound wall will be located within both the 50-foot front yard setback and the 25-foot side yard

[260] Exh. D/S-S-10.

[261] Exh. EFSB-G-14(1).

[262] In their Motion for Partial Summary Judgment, the DiPalma / Sheehan Intervenors argued that the Siting Board lacks authority to exempt the Project from Section 5.6 of the Zoning Bylaw. This argument is without merit, for all the reasons set forth in the Company's Opposition to the Motion for Partial Summary Judgment. To the extent necessary, the Company incorporates the arguments from its Opposition by reference herein.

[263] Attachment A-Supplemental at 5.

setback.[264] Similarly, the lightning mast on the BESS/Substation Site is 65 feet tall and will exceed the Zoning Bylaw's height limitation.[265] Accordingly, exemptions from these provisions are required.

The Proposed Transmission Interconnection, which will cross multiple property lines, will be located on lots within the I1 and Park zoning districts that do not have any frontage. Section 5.3.4.A requires that lots in the I1 district have at least 150 feet of frontage in addition to having front setbacks of 50 feet, side and rear setbacks of 25 feet, and a maximum height of 40 feet (or 60 feet by special permit). Section 5.3.5 requires that Park zone district lots have 50-foot front setbacks, 15-foot rear and side setbacks, a maximum height of 35 feet, and 150 feet of frontage. The Proposed Transmission Interconnection will cross Parcels 35-5, 49-34, and 11-1 that all appear to have insufficient frontage. The structures comprising the Proposed Transmission Interconnection, which must span the railroad tracks, will exceed the height limits in both the I1 and Park zoning districts by exceeding 40 feet in height. Finally, as the structures will cross property lines, they will necessarily occupy the front, side, and rear setbacks. Therefore, to construct the Project, an exemption from the operation of the prohibitions in Sections 5.3.4.A and 5.3.5 is required.

A zoning exemption is also required for certain provisions regarding principal and accessory structures. Section 5.3.1.A of the Zoning Bylaw prohibits the construction of more than one principal structure on one lot. In industrial districts, special permits may be granted by the planning board under Section 5.3.4.B.1 to permit more than one principal structure, which

[264] Section 5.3.1.E.5 of the Zoning Bylaw exempts fences under 7 feet from the general setback requirements, which means that fences over 7 feet must meet the setback requirements imposed by Section 5.3.4.A. The Project will require security fences (10 feet) and sound walls that exceed the 7-foot height limitation under 5.3.1.E.5.

[265] Exh. HEC-1 at 9; *see also* Exh. RR-EFSB-4(1).

may be conditioned. To the extent the BESS units are considered principal structures, the Project, which consists of 134 BESS units as well as the Project Substation, would be prohibited by the Zoning Bylaw without a special permit.

Accessory structures are those that are "located on the same lot with the main building, detached or attached, and customarily incidental and subordinate to the use of the main building."[266] Several project components, including, but not limited to, the Project Substation, Proposed Transmission Infrastructure, the 65-foot lightning mast, and thirty foot sound wall, may be considered incidental or subordinate to the BESS units and therefore accessory structures (the "Subordinate Structures"). If found to be accessory structures, such structures must meet the dimensional requirements of Section 5.3.1.E of the Zoning Bylaw. Section 5.3.1.E limits accessory structures to 20 feet in height (Zoning Bylaw, § 5.3.1.E.1) and requires each accessory structure to be located behind the front building line of the principal building (Zoning Bylaw, § 5.3.1.E.3). The Subordinate Structures will exceed the 20-foot height limit and cannot be placed directly behind a principal building due to the multi-structure design of the Project.[267] Accordingly, exemptions from these provisions of the Zoning Bylaw are required.

E. The Grant for a Comprehensive Zoning Exemption Is Appropriate for the Project

The Siting Board and the Department have recognized that comprehensive zoning relief is necessary in circumstances where, as here, numerous individual exemptions are required, and the issuance of a blanket exemption could avoid substantial public harm by serving to prevent delay in the construction and operation of the proposed use.[268]

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[266] Zoning Bylaw §2 (defining accessory structure).

[267] *See* Attachment A-Supplemental.

[268] New England Power Company d/b/a National Grid, D.P.U. 09-136/09-137, at 49 (2011); Boston Edison Company d/b/a NSTAR Electric, EFSB 04-1/D.T.E. 04-5/04-7, at 147 (2005) ("Boston Edison 2005").

To make a determination regarding substantial public harm, the Department and the Siting Board have articulated relevant factors that are applied on a case-by-case basis, including, but not limited to, whether (1) the proposed project contributes to a reliable energy supply for the Commonwealth; (2) the project is time sensitive; (3) the project involves multiple municipalities that could have conflicting zoning provisions that might hinder the uniform development of a large project spanning these communities; (4) the proponent of the project has actively engaged the communities and responsible officials to discuss the applicability of local zoning provisions to the project and any local concerns; and (5) the affected communities do not oppose the issuance of the comprehensive exemption.[269]

In accordance with the applicable standard, and as detailed above, there is an existing need for this Project, and numerous individual exemptions are required. Without comprehensive zoning relief, there is currently no pathway for the Project to be reviewed and approved in a manner so as to enable its timely construction and completion. Application of the five factors indicates that denial of a comprehensive zoning exemption would result in substantial public harm.

First, The Company has demonstrated that the Project will contribute as a reliable energy source that will transact in the ISO-NE energy, capacity, and ancillary services markets, will participate as a Clean Peak resource, and will help achieve the Commonwealth's goal of net-zero emissions.[270]

Second, the Project is time sensitive and requires a comprehensive zoning exemption to obtain a certificate of environmental impact and public interest ("Certificate") pursuant to section

[269] Cranberry Point, at 124.

[270] Exhs. EFSB-G-2, EFSB-N-4.

118(a) of the 2024 Climate Act. The primary purpose of the 2024 Climate Act was to streamline the siting and permitting of large energy storage projects before the EFSB. Importantly, Section 118(a) of the 2024 Climate Act creates an interim, streamlined process for approval of large battery storage projects prior to the consolidated permit process under G.L. c. 164, § 69T becoming effective. The Company diligently filed its Petition a full 15 months prior to the end of June 2026 to qualify for the interim Certificate process. The EFSB should grant a comprehensive zoning exemption to allow the Company to apply for a Certificate.

Third, any potential future zoning changes "could have an impact on the construction and operation of the Project, introducing further delay and uncertainty."[271] The grant of a comprehensive exemption with respect to all existing and future zoning bylaws that could negatively impact the Project would avert the need to litigate any changes in local zoning bylaws and permit the Company to move forward with the Project.

Fourth, the record demonstrates that the Company and the Town of Tewksbury have engaged in collaborative discussions related to the Project to address local concerns of the Project. Indeed, the Company and Town reached agreement on the HCA, which will ensure that the Town is benefited by the Project. As discussed above, the HCA provides payments and additional protections to the Town, the community and surrounding residents. The Town has affirmed that the HCA reasonably protects local interests.[272]

Fifth, and relatedly, the record demonstrates that the Town of Tewksbury does not oppose the Project.[273]

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[271] Cranberry Point, at 126.

[272] Exh. TEWK-JC at 9:2-7.

[273] *Id*. at 8:20-26.

Accordingly, the Company has met the standard for a comprehensive zoning exemption.[274]

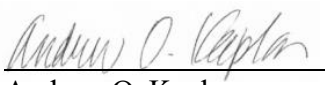
III. CONCLUSION

For all the foregoing reasons, the Project meets all applicable standards for comprehensive and individual zoning exemptions. The Project is in the public interest and will further improve energy policies and energy storage targets of the Commonwealth. Accordingly, the Siting Board should grant the Company the comprehensive and individual zoning exemptions from the Town of Tewksbury Zoning Bylaws as set forth above.

Respectfully submitted,

Hillman Energy Center, LLC

By its attorneys



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[274] See Cranberry Point, at 128; Medway Grid, at 138; Boston Edison 2005, at 162.