COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

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| In the Matter of the Petition of Moraga Storage LLC. | ) | |
| Pursuant to G.L. c .40A § 3 for an Exemption from | ) | Docket no. |
| the Zoning Bylaws of the Town of Oakham, MA | ) | EFSB25-07 |

**POST HEARING INITIAL BRIEF FILED BY**
**LIMITED PARTICIPANTS, VINCENT PIUCCI AND BARBARA PIUCCI**

## I. Introduction and Applicable Law

This matter came on for evidentiary hearing before the Department of Public Utilities Energy Facilities Siting Board (hereinafter referred to as EFSB) beginning March 2, 2026, and continuing for seven days of testimony. The petitioner, Moraga Storage LLC (hereinafter referred to as Moraga or The Company) seeks exemptions from the Zoning Bylaws of the Town of Oakham, pursuant to Massachusetts General Law Chapter 40A, § 3, for a proposed standalone 180 MW lithium-ion battery energy storage facility (BESS) at 358 Coldbrook Road, Oakham. Under G.L. c. 40A, § 3. Moraga had the burden of proving the essential element of Massachusetts General Law Chapter 40A section 3., more specifically…." "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,… to the energy facilities siting board shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the 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;…" The petitioner therefore bears the burden to prove that it is a public service corporation, that it complied with the mandatory notice requirements, and that the requested exemptions are reasonably necessary for the convenience or welfare of the public.

## II. Moraga Is Not a Public Service Corporation Under G.L. c. 40A, § 3

The Board's siting statute in Massachusetts General Law Chapter 164 does not itself define public service corporation, but instead defines specific utility-type entities in G.L. c. 164, § 69G, including electric companies, gas companies, oil companies, and large clean energy storage facilities. Massachusetts appellate decisions and DPU precedent make clear that zoning exemptions under G.L. c. 40A, § 3 are available only where the petitioner both qualifies as a public service corporation and demonstrates that the exempted land use is reasonably necessary for public convenience or welfare. Cases such as *Save the Bay, Inc. v. Dep't of Pub. Utils*., 322 N.E.2d 742, 366 Mass. 667 (1975), *Planning Bd. of Braintree v. Dep't of Pub. Utils*., 647 N.E.2d 1186, 420 Mass. 22 (1995), *N.Y. Cent. R.R. Co. v. Dep't of Pub. Works*, 199 N.E.2d 319, 347 Mass. 586, 592 (1964), and D.P.U. 95-59 and 95-80 (*Petitions of Dispatch Commc'ns of New England, Inc. d/b/a Nextel Commc'ns, Inc., D.P.U. 95-59 & 95-80 (Mass. Dep't of Pub. Utils. 1996)*), apply a functional test that examines whether the corporation's primary purpose is to

provide an essential utility-type service to the public, whether its services are offered to an indefinite public or broad class of customers, whether it is subject to extensive utility-type regulation, whether its facilities are integrated into a networked public system, and whether the project advances public convenience or welfare rather than primarily private development interests.

Although the Supreme Judicial Court in *Save the Bay, Inc. v. Department of Public Utilities* ultimately upheld the zoning exemption there, the case is controlling because it sets out the governing framework under G.L. c. 40A, § 3. Moraga LLC does not qualify as a "public service corporation" under the standards articulated in *Save the Bay*, which focus on the nature of the service and the degree of state utility regulation, not simply on whether a facility connects to the grid or advances policy goals. Unlike the LNG company in that case, Moraga is a single-project limited liability company organized to own and operate one battery facility in Oakham, not a corporation chartered to furnish an essential utility service to a defined public service territory, and its reliance on ISO-NE and FERC rules cannot substitute for the comprehensive state utility regulation and obligation-to-serve *Save the Bay* describes. Its business is ordinary private infrastructure development: it holds one project asset, has no statutory franchise to serve the public, and is not organized or regulated as an "electric company," "gas company," or "transmission company" under G.L. c. 164. It lacks any certificate of public convenience and necessity or comparable adjudication that its corporate purpose is to meet a demonstrated public shortage or necessity, and it is not integrated into the Commonwealth's rate-regulation framework in the way the LNG supplier was in *Save the Bay*. Any public benefits from the Oakham battery project, such as wholesale-market participation or potential grid services, are at most by-products of Moraga's private project-level business purpose and do not transform this single-project LLC into the kind of regulated, territorially serving public service corporation that G.L. c. 40A, § 3 protects, even accepting that modern facilities are often held in project-finance entities. Rhynland Energy, Moraga's parent, publicly presents itself as a private battery-storage development firm pursuing multiple projects across New York and New England, including additional large BESS facilities in Massachusetts, which confirms that Moraga is simply one merchant project vehicle in a broader regional development pipeline rather than a chartered public utility created to serve a defined service territory.

*Planning Board of Braintree v. Department of Public Utilities* confirms that a zoning exemption may be granted only after the agency determines both that the petitioner qualifies as a public service corporation and that the exempted use is reasonably necessary for the convenience or welfare of the public. Moraga's petition for comprehensive zoning exemptions is fundamentally distinguishable from *Planning Board* and falls outside the core purpose of G.L. c. 40A, § 3, even if that decision is read to apply to private as well as municipal utilities. In Planning Board, the Supreme Judicial Court upheld exemptions for a municipal light department created by special act and subject to a clear statutory duty to serve local ratepayers, for a traditional substation integral to system reliability, on a record that included completed environmental review and a formal determination that no Environmental Impact Report was required. By contrast, Moraga is a private, merchant-style BESS developer

seeking to advance a discretionary, market-driven project on a former auto junkyard with known contamination, asking the EFSB to nullify Oakham's targeted legislative response to BESS-specific fire, explosion, and plume-toxicity risks without supplying the kind of robust, site- and technology-specific evidence on need, alternatives, and mitigation that justified relief in *Planning Board*. On this record, Moraga has not demonstrated that its project is reasonably necessary for the convenience or welfare of the public within the meaning of § 3 as interpreted in *Planning Board*, and general references to statewide clean-energy policy cannot cure that evidentiary deficiency or erase the statute's case-specific necessity requirement.

*New York Central Railroad Co. v. Department of Public Works* is relevant because it explains that the agency must undertake a "broad and balanced consideration of all aspects of the general public interest and welfare," while still giving due respect to the local interests that will be affected. Moraga falls short of what *New York Central* requires because it has not provided the concrete, fact-based record the SJC has said is needed to justify relief for a public service corporation, and high-level invocations of reliability and climate policy cannot substitute for detailed proof. In *New York Central*, the railroad supplied evidence on system-wide public benefits, traffic and logistics, financial impacts on the railroad's ability to perform its public functions, site suitability, and mitigation of neighborhood effects, allowing the DPU (and a court) to weigh "the convenience or welfare of the public" as a whole. By contrast, Moraga offers largely generalized claims and local-scale assertions, without the specific, quantified, and comparative evidence on alternatives, siting choices, and mitigation that would enable the EFSB to make the subsidiary findings *New York Central* contemplates under G.L. c. 40A and c. 30A. The existence of ISO-NE planning processes and generic market studies does not relieve Moraga of its burden to build that record in this docket if it seeks the extraordinary remedy of overriding Oakham's zoning.

D.P.U. 95-59 is important because it applies *Save the Bay* directly and explains that public service corporation status depends not merely on providing some public benefit, but on providing an essential utility-type service under the requisite degree of governmental control and regulation; D.P.U. 95-80 is likewise significant because the Department there declined to extend public service corporation status and denied exemption relief where the petitioner failed to satisfy that standard. Together, these authorities are relevant here not because they compel the same outcome as in prior utility cases, but because they supply the legal test Moraga must satisfy and underscore that the burden remains on Moraga to prove both public service corporation status and true necessity for overriding Oakham's zoning protections, even for newer technologies such as storage. Moraga falls short of the public-service-corporation standard applied in D.P.U. 95-59 and 95-80 because it cannot satisfy the same legal test that led the Department to conclude even a widely used commercial mobile radio service provider like Nextel was not a public service corporation under G.L. c. 40A, § 3. In D.P.U. 95-59 and the follow-on procedural order in 95-59-A, the Department held that CMRS did not qualify as a public service corporation where, on balance, it did not meet the *Save the Bay* standard—specifically, it was not providing an essential utility-type service under the requisite degree of governmental control and regulation—and in 95-80 it reached the same result on a similar record. Moraga, as a single-project merchant BESS LLC with no franchise, no obligation to serve an indefinite

public, and no direct retail utility regulation, falls even further from that benchmark than Nextel did, and generalized claims that storage is "modern critical infrastructure" do not, by themselves, supply the missing attributes of traditional public-utility status required for c. 40A, § 3 exemptions.

In the *Medway Grid* docket, the EFSB initially dismissed a petition for a standalone BESS for lack of explicit statutory jurisdiction, concluding that "the Legislature did not grant jurisdiction over BESS to the Siting Board." See *Medway Grid, LLC*, Final Decision, EFSB 22-02/D.P.U. 22-18/22-19 (Mass. Energy Facilities Siting Bd. May 11, 2023). While the DPU subsequently granted *Medway Grid* comprehensive zoning exemptions under G.L. c. 40A, § 3 on June 30, 2023, finding in that case of first impression that the project qualified as a public service corporation, that ruling turned on a specific and substantial evidentiary record: *Medway Grid* held an ISO-NE capacity supply contract obligating it to deliver 250 MW to the regional grid, its facilities were directly integrated into Eversource's transmission infrastructure, and the DPU made detailed findings of public necessity and public convenience. See *Medway Grid*, LLC, D.P.U. 22-18/22-19 (Mass. Dep't of Pub. Utils. June 30, 2023). Moraga has not made a comparable showing here. It has not demonstrated an equivalent ISO-NE obligation to serve, an equivalent integration into the transmission system, or the kind of site-specific, quantified evidence of public necessity that the DPU required in Medway Grid. The existence of the Medway Grid precedent therefore cuts both ways: it confirms that public-service-corporation status is available in principle to storage developers, but it also establishes that such status must be earned on a rigorous, fact-specific record. Moraga has not built that record in this proceeding. The Board must therefore still apply the established functional test, and under that test Moraga fails.

## III. Failure to Comply with Mandatory Notice Requirements

Even if Moraga could qualify as a public service corporation, its petition must fail because it did not comply with the mandatory notice requirements of G.L. c. 40A, § 11, which G.L. c. 40A, § 3 expressly incorporates as a condition precedent to any zoning exemption. Section 11 requires mailed notice to "parties in interest," including abutters, abutters to abutters within 300 feet, and the planning board of the city or town, and it mandates that such notice clearly identify the petitioner, the premises, the date, time, and place of the public hearing, the subject matter of the hearing, and the nature of the action or relief requested. In the context of this petition, that means proper mailed notice of a battery energy storage system proposal and the specific exemptions sought, for a public hearing in Oakham, not notice of a different use or a non-hearing "open house" in another town.

The testimony of Planning Board Chair Phillip Warbasse established that the Oakham Planning Board never received proper notice of a BESS proposal and that, instead, the Company pursued illusory alternative uses after being told about the Town's BESS bylaw. Mr. Warbasse testified that he was the primary contact for Moraga between 2022 and 2024, that he advised the Company three times of the Town's Attorney-General-approved BESS bylaw prohibiting standalone BESS facilities unless tied to large-scale solar projects, and that "[a]fter being told" of that bylaw "the Company went into a mode of deception," requesting permits and sending hearing notices for other uses that were never initiated and appeared to him, in hindsight, to be illusory. He further testified that the

Company then used that misinformation in its ANRAD filing, seeking wetlands approvals without disclosing that the true purpose was to build a prohibited BESS facility, and that the ANRAD itself failed to accurately depict wetland-related jurisdictional areas on the site. In his words, the Company's initial communications "were not upfront or forthcoming," and the Planning Board "did not receive proper notice" of Moraga's actual intention to build a BESS facility.

Abutter James Stevens likewise testified that the only mailed notice he initially received from the Town concerned "a Special Permit to operate an automobile storage facility for online auctioning" at 358 Coldbrook Road, and that he had no objection to that use. He first learned that the proposal was in fact a 180 MW BESS project only when the petitioner later sent a postcard inviting abutters to an "open house" at a library in Barre, Massachusetts, on March 27, 2025, to "learn about the proposed 180 MW battery energy storage project." That postcard was not notice of a public hearing in Oakham and did not purport to comply with G.L. c. 40A, § 11.

Moraga filed the Affidavit of Andrew O. Kaplan of Pierce Atwood LLP on October 15, 2025, attesting that all notice requirements from the Presiding Officer's September 24, 2025 letter had been met, including that mailed notice was sent by first class mail to the abutters list provided by the Town Assessor and to the Oakham Planning Board, Town Administrator, Select Board, Zoning Board of Appeals, Department of Public Works, Conservation Commission, and the planning boards of abutting towns. That affidavit is insufficient to establish compliance with G.L. c. 40A, § 11. While it attests that notice was mailed to the listed parties, it conspicuously omits attaching a copy of the actual notice letter sent. The only documents attached to the affidavit are the newspaper tear sheets and the abutters list. Without the actual notice letter in the record, the Board cannot verify that the mailed notice contained the statutorily required elements, including an accurate description of the subject matter and the nature of the relief requested—particularly in light of sworn testimony from Planning Board Chair Warbasse and abutter James Stevens that Moraga's prior communications described the project as an automobile storage facility, not a 180 MW BESS. The attached abutters list establishes only who was mailed notice, not what they were told. A bare attorney attestation that notice was mailed, unsupported by the actual notice document, is a legal conclusion, not a factual showing, and does not satisfy Moraga's burden to prove compliance with the mandatory notice condition precedent in G.L. c. 40A, §§ 3 and 11.

On this record, the Board cannot find that the notice condition expressly built into § 3 has been satisfied. Because compliance with § 11 is a statutory prerequisite to any zoning exemption under § 3, this deficiency is independently fatal to Moraga's request for comprehensive zoning relief.

## IV. Environmental Effects of Construction

The evidence shows that construction and operation of the proposed facility will adversely affect the environment, particularly wetlands and related resource areas. Moraga’s own witness, Brian Benito, confirmed that the approximately 42.9-acre parcel has a long history as an automobile salvage and recycling site and contains

automobile-related debris throughout much of the property, including within wetlands and buffer zones. That testimony matters because it shows that the project site is not a clean, ordinary development parcel; it is a contaminated landscape in which construction activity will necessarily interact with preexisting environmental degradation.

Moraga's response to Record Request EFSB-11 is especially revealing. The company states that it will remove large debris only within the approximately 18-acre limit of work and will conduct only "reasonable, targeted removal" outside that area when such removal can occur without wetland impacts or expansion of the project footprint. In other words, Moraga does not propose to clean up the site comprehensively. It proposes instead to leave substantial debris in place wherever removal would be inconvenient, costly, or environmentally sensitive.

That limitation is not a virtue. It is an admission that the project footprint has been drawn to avoid the hardest environmental problems rather than solve them. Moraga further acknowledges that full debris removal across the parcel could require access through sensitive wetlands, the creation of temporary access routes and staging areas, the use of specialized equipment, tree cutting, and additional permitting. Those are not minor logistical concerns; they are direct evidence that meaningful work on the site risks further disturbance to wetlands and associated resource areas. The company's position is, in effect, that the safest way to avoid environmental harm is to leave hazardous debris where it sits.

The record also undermines any claim that the proposed construction area is environmentally benign simply because it falls within an approved limit of work. Moraga offers no assurance that excavation, grading, drainage work, or construction traffic within the 18-acre area will avoid contact with debris-tainted soils, buried automobile parts, or residual fluids associated with the former salvage operation. The company's assertion that the project was designed to avoid and minimize wetland impacts is not proof that such impacts will be prevented. It is merely a statement of intent, and intent is not the same as demonstrated environmental protection.

Moraga's own testimony therefore confirms two critical points: first, the site contains widespread automobile-related contamination; and second, complete remediation would likely trigger additional environmental disturbance. That combination is precisely why the project fails to satisfy the statutory requirement that energy infrastructure be developed with minimum environmental impact. The Board should not accept a proposal that relies on preserving contamination in place while introducing new construction risks into a wetland-adjacent and degraded parcel. On this record, the project has not been shown to meet the Commonwealth's obligation to advance energy infrastructure without unnecessary environmental harm.

## V. Encroachment and Trespass on Abutter's Real Property

Moraga's own witness, Brian Benito, admitted under oath that the project plans show an existing pavement encroachment onto James Stevens's property and that Moraga has not resolved that encroachment. That admission is significant because it confirms that the project, as currently designed, relies on continued use of another person's

land to provide access to and from the site. The company's construction and operational access plan therefore rests on a disputed property condition that remains unresolved on the record.

The problem is not merely technical or clerical. Intervenors asked Moraga to explain how large trucks could make a 90-degree turn from Coldbrook Road onto the site driveway without trespassing on the Stevens property or damaging nearby residential property. Moraga responded only that the site plan shows the project site abutting Coldbrook Road in a way that it believed would avoid trespass. But when confronted at hearing with the actual drawings, Mr. Benito conceded that the pavement reflects a "minor encroachment" on the Stevens property and acknowledged that the company had not fixed the problem.

Even then, Moraga offered no commitment to remove the encroachment. Instead, it said only that it would be willing to meet with the abutter and discuss the issue, while also stating that it was not in a position at the hearing to negotiate encroachments. That is not a resolution. It is an admission that the project proceeds without a lawful, finalized access arrangement over the affected area. A project that cannot demonstrate clear, non-encroaching access to the public way as designed has not shown that its basic site layout is legally and physically suitable for approval.

Under Black's Law Dictionary, trespass is an unlawful entry onto another's land, however slight. Moraga's admitted use of an encroaching paved area fits squarely within that concept. A project that depends on an unresolved trespass-like condition over an abutter's property cannot credibly be described as fully ready for approval, much less as a project that has minimized legal and practical harms to surrounding property owners. The failure to cure the encroachment also raises serious doubts about whether Moraga is acting with the level of care, transparency, and public responsibility expected of an applicant seeking to advance a controversial utility-scale project.

This unresolved encroachment weighs against a finding that the project serves the public convenience and welfare. Moraga is not presenting a fully secured access solution; it is asking the Board to approve a project while leaving a private property dispute open and unresolved. That is not consistent with sound permitting practice, and must not be rewarded with approval.

## VII. Conclusion

The record in this proceeding tells a consistent story: Moraga approached this project without transparency, without respect for local law, and without the legal standing necessary to invoke the preemptive authority it seeks. When Moraga first appeared before the Town of Oakham's Planning Board and Conservation Commission, it did not disclose that it intended to build a utility-scale battery energy storage facility. That failure to be forthcoming set the tone for a proceeding in which the company has repeatedly asked the Board to accept incomplete answers, unresolved problems, and unsubstantiated assurances in place of the clear evidentiary showing the statute demands.

The Town of Oakham did not wait for this proceeding to make its position known. On June 27, 2022, residents voted unanimously at Annual Town Meeting to prohibit stand-alone battery energy storage systems within the town. That bylaw was approved by then-Attorney General Maura Healey on January 4, 2023. It represents the considered, democratically expressed judgment of the community most directly affected by this project. The EFSB should not displace that judgment unless Moraga has satisfied every statutory prerequisite on a strong evidentiary record. It has not come close to doing so.

The record establishes that Moraga:

- is not a public service corporation within the meaning of G.L. c. 40A, § 3, and therefore cannot invoke the statute's preemptive authority over local zoning;
- failed to comply with the mandatory notice requirements of G.L. c. 40A, § 11, a jurisdictional defect that alone warrants dismissal;
- proposes a project that its own witness concedes will leave automobile-related contamination in place across wetlands and buffer zones, and that has not been shown to achieve minimum environmental impact as the statute requires; and
- relies on an unresolved continuing trespass over an abutter's property for its only access to the site, a condition it has refused to commit to cure.

Each of these failures is independently sufficient to deny the petition. Taken together, they demonstrate that Moraga has not built the record, secured the rights, or satisfied the legal prerequisites that would justify overriding the express and unanimous will of the people of Oakham. In view of the above, it is incumbent on the EFSB to deny this petition in its entirety.

Respectfully submitted on this 12th day of April 2026 by

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