

**COMMONWEALTH OF MASSACHUSETTS  
ENERGY FACILITIES SITING BOARD**

Petition of Moraga Storage, LLC  
Pursuant to G.L. c. 40A § 3 for an Exemption  
From the Zoning By-law of the Town of  
Oakham, MA

EFSB 25-07

**TOWN OF OAKHAM’S POST-HEARING BRIEF IN OPPOSITION  
TO MORAGA STORAGE, LLC’S PETITION FOR AN EXEMPTION  
FROM THE TOWN OF OAKHAM ZONING BY-LAW**

**I. BACKGROUND**

The Town of Oakham (“Town”) submits this Post-Hearing Brief in support of its opposition to the Petition of Moraga Storage, LLC (“Company”) for an exemption from the Town’s Zoning Bylaw, which prohibits the use of land for a Battery Energy Storage System (“BESS”) which is “not located on the site of, and specifically appurtenant to, a permitted Large Scale Solar Installation.” The Company’s proposed BESS project (“Project”) at 358 Coldbrook Road in Oakham (“Property”) is a large-scale industrial use which is incompatible in and unnecessarily destructive to the rural-residential district where it is located. The Property abuts quiet, privately-owned and occupied rural-residential properties to the west and south and undeveloped wooded land owned by the Massachusetts Department of Conservation and Recreation (“DCR”) to the east and north. The Company proposes to construct its facility in the immediate vicinity of a Zone A and Zone C Surface Water Protection Zone under the jurisdiction of DCR. Some of the water that infiltrates into the ground at and around the site recharges the public drinking water supply of the Quabbin and Wachusett Reservoirs and the groundwater of

local residents' private wells. The Property is hydraulically connected to the Watershed's headwaters according to Mass DEP maps. It is also within 2,000 feet of an elementary school.

The Company is proposing an outdoor, uncovered facility which will, by design, broadcast industrial noise, 24/7, 365 days per year to nearby sensitive receptors and likely for a significant distance radius disturbing the Town's historically quiet ambience. The Project involves new and evolving technology which is not appropriate for a rural setting with limited emergency response capacity. Any needed firefighting response would be immediately hobbled by a lack of water availability, a significant lack of manpower, a predictably long response time, and a lack of infrastructure and resources to stage a safe and effective evacuation of school children, Town employees and residents in the vicinity of the site. The Project is too close to the school and residences to allow the full dispersal to safe levels of deadly toxic gasses (HF, CO, for example) that may be released in a major thermal runaway or fire event at the facility. This risk has been established by air dispersion models of plume patterns available in the public domain but trivialized by the Company and its safety expert.

The Property is also not ready for a large-scale industrial redevelopment due to numerous unresolved environmental issues and previously concealed illegal dumping of potentially contaminated materials both on the Property, as well as over and onto the abutting DCR land which Massachusetts State agencies are inexplicably allowing to remain unabated despite repeated requests from the Town for responsible enforcement. There are countless more appropriate siting options across Massachusetts for a large-scale industrial use such as that proposed, including but not limited to industrial-zoned land or sites where the use can be co-located with existing substations. As noted by the Siting Board's Presiding Officer on the first day of the evidentiary hearing on March 4, 2026, the issue in this case is whether the Project is "reasonably necessary for

the convenience or welfare of the public.” It clearly is not, and the Town respectfully requests denial of the Petition.

## **II. ARGUMENT**

### **A. LEGAL STANDARD.**

On November 20, 2024, Governor Maura Healey signed legislation to accelerate progress towards the Commonwealth’s goal of net zero greenhouse gas emissions by 2050, entitled “An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers,” St. 2024, c. 239 (“Climate Act”). The Climate Act became effective February 18, 2025, and is applicable to the Project. The Climate Act altered the local zoning exemption in two respects: (1) it created a new definition of “public service corporation”; and (2) it transferred the authority to grant said zoning exemptions from the Department of Public Utilities (“D.P.U.”) to the Energy Facilities Siting Board (“Board”). St. 2024, c. 239, §§ 36, 37, 91.

The statutory exemption from local zoning for public service corporations under G.L. c. 40A, § 3, provides, in pertinent 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 by-law if, upon petition of the corporation, ... 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 ...

Id., as amended by St. 2024, c. 239, § 37 (eff. February 18, 2025).<sup>1</sup> To obtain a statutory exemption from zoning under this statute, the Company must: (1) qualify as a public service corporation; (2)

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<sup>1</sup> Prior to the amendment, this section of Chapter 40A applied only to the D.P.U., which could refer the zoning petition to the Board for hearing and decision under G.L. c. 25, § 4, under consistent standards of review. See, e.g., Petition of South Coast Wind Energy, LLC, Consolidated Petition Nos. D.P.U. 22-68, D.P.U., 22-67, and EFSB 22-24, (10/4/24), p. 207, fn. 92. The 2024 Climate Act transferred certain authority from D.P.U. to the Siting Board, including direct authority to grant zoning exemptions. See St. 2024, c. 239, §§ 72, 73, 75, 76, 83.

demonstrate that the present or proposed use is reasonably necessary for the public convenience or welfare; and (3) establish that it requires a zoning exemption. Save the Bay, Inc. v. Dep't of Pub. Utilities, 366 Mass. 667, 680 (1975).

The Company has failed to satisfy its burden of proving entitlement to a zoning exemption because it failed to demonstrate that it is a qualified “public service corporation” under the applicable definition, has failed to prove that the present or proposed use is “necessary for the public convenience or welfare,” and has failed to prove that comprehensive zoning exemptions are required, as set forth below.

**B. THE COMPANY IS NOT AN ELIGIBLE PETITIONER FOR AN EXEMPTION FROM THE TOWN’S ZONING BY-LAW.**

*i. Public Service Corporation*

A “Public service corporation” was not previously defined by statute and became a creature of interpretive case law by the Supreme Judicial Court. See Save the Bay, Inc. v. Dep't of Pub. Utilities, 366 Mass. 667, 684 (1975). In 2024, as noted above, the Commonwealth enacted the Climate Act which, through Section 36, amended G.L. c. 40A, § 1A, by adding a new definition of “Public service corporation.” That definition now provides, in pertinent part:

“Public service corporation”, (i) 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 ... proposes to own or operate electricity ... storage, transmission or distribution facilities ...

G.L. c. 40A, § 1A, as amended by St. 2024, c. 239, § 36.

Here, the Company is a private for-profit entity which has never built or operated a BESS facility. It was formed for the sole purpose of ownership and private profit off the Project, which will be operated by an unidentified third-party vendor, and will be reliant on monitoring allegedly

performed by Tesla from an undisclosed off-site location. Nevertheless, the Company contends that it qualifies as a “Public service corporation” under the above definition because it is a “Massachusetts-registered foreign limited liability company duly qualified to do business in the Commonwealth” and “proposes to own and operate an electric storage facility in Massachusetts.” Petition, at 32. This claim is overly simplistic and incorrect because it ignores the fact that the express purpose of the Act is to promote “clean” energy projects, not projects proposing to store electricity from fossil-fuel derived sources.

Where electricity storage facilities were recently added to the general headings of types of facilities within the definition of public service corporations pursuant to the terms of the Climate Act, the definition of public service corporation must be interpreted consistently with the underlying text and intent of the Climate Act. Indeed, established principles of statutory construction require that a provision of law must be interpreted with its plain meaning, and “according to the intent of [the proponent of the legislation] ascertained from all of its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.” Knapp Shoes, Inc. v. Sylvania Shoe Mfg. Corp., 418 Mass. 737, 744-745 (1994) (citations omitted). Accord Wolfe v. Gormally, 440 Mass. 699, 704 (2004), quoting 2A N. Singer, Sutherland Statutory Construction § 46.05, at 154 (6th ed. 2000) (“The statute must be viewed ‘as a whole’; it is ‘not proper to confine interpretation to the one section to be construed.’”).

Here, the Climate Act, by its very title, is “An Act promoting a clean energy grid, advancing equity and protecting ratepayers.” See Climate Act, St. 2024, c. 239. The title is especially valuable here because it reinforces what the text throughout the Climate Act expressly addresses,

that electricity “storage” facilities must involve “clean” energy to qualify for the zoning exemption, i.e., “storage” facilities which significantly reduce and eventually eliminate the use of energy from non-renewable sources. Accord Yates v. United States, 574 U.S. 528, 552 (2015) (“Titles can be useful devices to resolve ‘doubt about the meaning of a statute’”).

Additionally, it is noteworthy that other definitions of energy storage facilities throughout the Climate Act focus on the promotion and support of clean energy. Energy storage systems are to be “clean” and to reduce greenhouse gas emissions. St. 2024, c. 239, §§ 21, 30, 98; G.L. c. 164, § 1. The Act defines “Clean energy” in part as “advanced and applied technologies that significantly reduce or eliminate the use of energy from non-renewable sources ...” St. 2024, c. 239, § 6.

Here, the Company is clearly not a “Public service corporation” contemplated under the Climate Act because it does not claim, nor does it have any basis to claim, that any percentage of electricity stored at the facility is derived from renewable energy sources versus fossil-fuel derived sources. The Project does not “significantly reduce or eliminate the use of energy from non-renewable sources.” In fact, its sole purpose is exactly the opposite – to increase “the use of energy from non-renewable sources” by storing its excess capacity. Moreover, the Company stated its plans to collect its energy from the grid at times when the rates are at their lowest, including the middle of the night. This makes sense from a business model standpoint where the goal is to maximize profits when re-selling the energy at peak periods and at peak pricing. But this model bears no connection to the Commonwealth’s goals of collecting renewable solar energy, which can only be collected when the sun is shining. The Company does not qualify as a “Public service corporation” under the Climate Act when the statute is read as a whole, as it must under the above-

cited legal principles governing statutory interpretation, or any meaning of the term. The Petition should be dismissed on these grounds alone, without further inquiry.

Moreover, the Company's pattern of conduct does not resemble that of a Public Service Corporation when it comes to its interactions with the public, and particularly with respect to the parties engaged in this process. The Company has systematically treated the residents of Oakham with contempt and dismissiveness. It timed its first "public information session" just days away from its initial filing with the Board and it located this meeting in another town. It organized subsequent meetings with two State agencies on two separate occasions (Mass DCR & Mass DEP) to discuss locally important site issues and excluded any participation in these discussions by Oakham Town officials. It either objected to providing or provided grossly inadequate responses to legitimate Information Requests, submitted by the Town in the expedited and rushed discovery process, including but not limited to its baseless and preposterous demand that the Town's counsel accede to the demand of Tesla to sign a nondisclosure agreement to obtain access to material which clearly was not confidential or privileged in any way, only to back off the demand later once it had apparently determined that it had wasted enough of opposing counsel's time opposing the frivolous confidentiality claims. It continues to withhold even basic financial information from the Town, the State and the public as to financial solvency, surety, Project costs, its financial costs and its profit targets. The Company has also actively deflected and delayed repeated requests by the Town on behalf of its Enforcement Authorities to access the Property to conduct site inspections in response to plain-sight violations of public health and conservation laws. None of this conduct would or should be tolerated by an entity claiming to be a "Public service corporation."

ii. *Public Convenience and Welfare*

The Company also does not qualify for a zoning exemption because it failed to demonstrate that the proposed use is “necessary for the public convenience or welfare.”

To be eligible for an exemption, substantial evidence must support a finding that the Company’s “proposed use is reasonably necessary for the public convenience or welfare.” Save the Bay, Inc. v. Dep’t of Pub. Utilities, 366 Mass. 667, 684 (1975). In determining whether an exemption is reasonably necessary for the convenience or welfare of the public, the Siting Board is required “to consider the effect of a new facility upon the local community and upon persons living nearby, but also to weigh the public effects of the requested exemption in the State as a whole.” Save the Bay, Inc., 366 Mass. at 685; Town of Truro v. Department of Public Utilities, 365 Mass. 407, 409 (1974). Factors relevant to the public welfare analysis include: 1) the need for the proposed use; 2) the proposed use of the site and any alternatives identified; and 3) the environmental or other impacts from the proposed use. See, e.g., New York Cent. R. Co. v. Dep’t of Pub. Utilities, 347 Mass. 586, 591 (1964); Petition of Cranberry Point Energy Storage, LLC for a Comprehensive Exemption from the Zoning Bylaw of the Carver, Massachusetts., Mass. D.P.U., No. 22-59 (June 30, 2023).

Before addressing the Company’s failure to meet any of these three elements, it is important to note that for the needs of the “public convenience or welfare” to be met with respect to a project seeking zoning exemptions under the Climate Act, one of the central purposes of the Act is “**protecting ratepayers.**” The Company, however, is proposing a project which could not be more financially disadvantageous to the Commonwealth and the electricity ratepayers. The Company purports that the Project will allow the Commonwealth’s electrical grid infrastructure to defer expansion and upgrade costs by strategically positioning BESS facilities and thereby will save on

costs. This is nonsense. In substitute for the alleged “deferral” of cost, it offers nothing but dramatically increased costs for infrastructure that is overpriced and over-promised. It might be a true cost savings if the cost of BESS facilities themselves were to cost the ratepayers somewhere near zero. However, at approximately \$1.3M per battery container for the Lithium battery equipment alone, these facilities, with hundreds of battery units in their arrays, will be dramatically expensive to build and equip. This for-profit, commercial developer is certainly not offering to foot the bill for the entirety of the equipment investment. This will be unblushingly passed along to the ratepayers, contrary to one of the central purposes of the Climate Act. The Company was unwilling, and presumably unable, to produce evidence of access to conventional bank financing for the Project in this case. The only conclusion from this is that the sole financing source the Company has available is expensive venture capital funding. This cost too has been undisclosed to date, unduly exposing ratepayers to higher cost.

Because the Company is structured as a for-profit commercial enterprise, it is the ratepayers who can expect to be hit for the costs of the Company’s return on investment, in addition to capital costs, and financing costs. This is the third leg of the fleecing stool that ratepayers can brace for if facilities like this are brought online by enabling State policy makers and their private business partners. If State policy makers truly have an interest in setting aside lawfully enacted local by-laws for the Public Convenience and Welfare, they could do so by incurring far lower costs by partnering with project proponents which are not driven solely by private profit motive.

#### **1. Lack of Need and Benefit from the Proposed Use**

As noted above, the Project does not propose facilities which store electricity generated from non-renewable sources. Therefore, there is no need at all for the Project from the perspective of the Climate Act which was enacted to promote renewable energy and ultimately to eliminate

fossil-fuel derived energy. The Company provides no technical analysis to support the claim that the Project is needed and supports the claim of need for the Project only by citing the fact that the Climate Act includes goals for the construction of BESS facilities generally. See EFSB-G-14. However, again, the Climate Act is focused on promoting renewable energy projects, not energy projects which are unrelated to renewable energy sources. This does not mean that energy projects unrelated to renewable energy can no longer be permitted. It means simply that an energy project unrelated to renewable energy is not entitled to the extraordinary blanket exemption from local zoning requirements which is available under the Climate Act. Granting a zoning exemption to the Company under the Climate Act on the sole basis that it proposes a “storage” facility without a required relation to renewable energy would be the same as granting a zoning exemption to a real estate developer under the Chapter 40B affordable housing statute on the sole basis that it seeks to construct “housing” without the required affordability restrictions.

## **2. Site Selection**

Although G.L. c. 40A, § 3 does not require the petitioner to demonstrate that its preferred site is the best possible alternative, the Board must evaluate 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. Martorano v. Department of Public Utilities, 401 Mass. 257, 265 (1987); NY Central Railroad, 347 Mass. at 591.

Here, there is no reasonable justification for the Company’s site selection, which is plainly contrary to the public welfare. The Town has already been subject to an extraordinary loss of land and economic development potential for the greater good of the Commonwealth in taking land needed for the Quabbin Reservoir. The Town is not claiming to be a victim but is seeking only to

preserve what it has left – treasured character as a small, peaceful, rural-residential place to live. The Commonwealth should take notice of this fact and work with, not against the Town, regarding large-scale industrial projects which are inconsistent with sound planning, and which also do not serve the purpose of the Climate Act in any way meaningful enough to outweigh its adverse impacts on the Town.

The public water supply provided via the Quabbin and Wachusett reservoirs are directly fed by the Ware River Watershed, among other sources, of which a substantial portion of its land mass is contained within the Town’s boundaries. See OAK-MB, p. 3. The Town and its citizens have been paying a price and making sacrifices for the State-level public convenience and welfare when it comes to public drinking water supply since 1927. Id., pp. 3-4. And because of these contributions of under 2,000 people in Oakham, millions of the State’s citizens have benefited from one of the nation’s best and cleanest public water supplies for the most populated areas of the Commonwealth: the City of Worcester and Greater Boston. Id.

The history of the Quabbin Reservoir is often told as an epic of four towns (Dana, Enfield, Greenwich, and Prescott) submerged beneath the waves to provide clean water to a growing Boston. Id., pp. 4-6. Yet, the narrative of the Quabbin’s construction is not contained solely within the deep water. Id. To the east, the Town of Oakham stands as a living testament to a different kind of erasure. Id. While Oakham’s Town Center remains above water, the construction and reclamation of the Ware River Watershed in the 1920s, 30’s and 40’s effectively severed the Town’s economic limb. Id. By seizing about thirty percent of the Town’s land and demolishing its industrial heart, the Commonwealth of Massachusetts initiated a century of development and financial stagnation that the Town’s residents are still paying for today. Id.

The most visible casualty of this project was the village of Coldbrook Springs, the namesake of the very road on which the Company seeks to locate the Project. Id. In the early 20th century, Coldbrook Village was the economic engine of Oakham. Situated at the junction of the "Rabbit Line" railroad, it was a bustling hub of industry and tourism. It boasted two major hotels, a post office, a general store, and the White's Basket Factory, all of which provided essential local employment and growth. Id.

When the Metropolitan District Water Supply Commission (MDWSC) determined that the Ware River would be diverted to feed the Quabbin, the Coldbrook Springs portion of Oakham was marked for total liquidation, reclamation and state protection. Every home in the designated protection zone was razed, every business shuttered, and the railroad was dismantled. Id. Cemeteries were relocated. Id. The State did not just take the land; it took the Town's primary connection to the outside world at that time, and its most reliable source of tax revenue. Id. The consequences of this seizure were not a one-time cost, but a permanent economic freeze for the Town as a whole. Id. Because the seized land, roughly 4,000 acres, is held by Mass DCR and MWRA in a state of permanent forestation to protect water purity, it is functionally untapped by the Town's treasury. Id. While the State provides Payments in Lieu of Taxes (PILOT) for these land set-asides, PILOT payments are based on the land's value as "unimproved forest." Id. This creates a massive opportunity gap for development and subsequent Town revenue. Id. If those 4,000 acres were privately owned, they would support hundreds of homes and dozens of small businesses, generating millions in property taxes and motor vehicle excise revenue. Id. Instead, the remaining seventy percent of Oakham's property valuations must bear the full cost of maintaining the Town's infrastructure and educational costs through their own comparatively

higher local tax rates, while subsidizing the water supply of millions of people in Eastern Massachusetts. Id.

Today, almost 100 years later, Oakham remains a "host community" that receives little consideration from the State in return. Id. The destruction of Coldbrook Springs was an act of eminent domain that prioritized the needs of the metropole over the survival of the rural village. Id. As the State continues to debate fair compensation for the watershed towns in 2026, the story of Oakham serves as a reminder that the true cost of the Quabbin cannot be measured only in gallons of water, but in the lost generations of growth, industry, and revenue that vanished when the State took the "silent third" of the Town. Id. The fiscal impact for this is as follows:

### **Financial Impact Analysis**

*Calculated based on 2024–2026 Town of Oakham and MA Department of Revenue Data.*

Revenue Category	Current State Compensation	Private Land Potential (Est.)	Annual Net Loss
<b>Real Estate Tax</b>	\$147,068 (PILOT)	\$1,994,400 (at \$11.08 rate)	<b>(\$1,847,332)</b>
<b>MV Excise Tax</b>	\$0	\$150,000 (est. 1,000 vehicles)	<b>(\$150,000)</b>
<b>Commercial (CIP)</b>	\$0	\$500,000+ (Coldbrook hub)	<b>(\$500,000)</b>
<b>TOTALS</b>	<b>\$147,068</b>	<b>\$2,644,400</b>	<b>(\$2,497,332)</b>

*Note: The "Private Land Potential" assumes a conservative development density consistent with Oakham's current zoning and historical patterns.*

The sacrifice of Oakham's property owners and residents was not a historical event that ended in the 1930s; it is a recurring financial reality. For nearly a century, Oakham's protected lands have acted as a natural filter for the Commonwealth's water supply at the cost of its own prosperity. The Town currently operates with a \$2.5 million annual handicap, forced to provide modern services for a full-sized geography while possessing only two-thirds of its original tax-producing land.

Oakham continues to pay a disproportionate price for a resource they help protect but are largely forbidden from using. Id.

The Company now seeks to further intrude on the Town's home-rule authority and self-determination, but this time, in a manner which is in clear conflict with the State's original rationale for taking land for the Quabbin Reservoir and taking subsequent steps to protect the related Watershed in the area where the Project is now proposed. Under these unique circumstances, where the Town has already sacrificed so much for the greater good, the Board should conclude that allowing this Petition is on balance, clearly contrary to the public welfare. It was simply unreasonable and contrary to all sound planning principles for the Company to select the one municipality in the area which has a specific prohibition of large-scale commercial BESS facilities not tied to solar facilities. There is no possible justification for its site selection in a rural-residential district, and the Board must decline to endorse it.

### **3. Environmental and Other Impacts**

Finally, the Board must evaluate the environmental and other impacts in finding that the public welfare will be served.

There is unrefuted evidence of illegally dumped potentially hazardous materials on the Project site. OAK-MB, p. 8. Any disturbance of soils any place on the Property, that have received decades of automotive fluid absorption from junk yard use, will risk accelerated movement of toxic pollutants into the local ground water and surface run-off. Id. This presents an immediate and serious risk to private well water and public waterways, including the surface water protection zones for the Ware River Watershed on and abutting the Property. Id. There is not one, but multiple, unaddressed sites on the Property of illegal landfills containing unknown, but likely significant quantities of commercial solid waste. Id. The continuance of these conditions, and/or

any unsupervised, unregulated, or otherwise substandard attempts to mitigate these landfill sites will risk accelerated movement of toxic pollutants into the local ground water and surface run-off, not to mention health risks to the contractors engaged to remove them, as well as abutters subject to releases of dust from disturbed contaminated soils into the air. Id. The Company's latest filing on these issues is stunning in its depravity. The Board asked, in RR-EFSB-11 about cleanup. The Company responded that it intended, apparently without any regulatory filings and approvals in advance, to perform "targeted" removal of illegally discarded or buried material in its intended Project footprint in and around potentially contaminated areas and jurisdictional wetland areas and nothing more, and that this was a proper balance of competing State interests, in its opinion. See RR-EFSB-11. Tellingly, this response is signed only by the Company's Project manager, not its environmental expert witness, Mr. Bergeron, who has been the affirming witness for all previous environmental-related responses from the Company and testified under oath on these issues at the evidentiary hearing. It is easy to reasonably surmise why the Company's actual expert witness did not sign off on the Company's proposal – because he knows it is absurd and illegal.

Further, on the issue of noise, this is a rural-residential area where it is not reasonable to impose commercial-operation type noise levels. Constant industrial noise from cooling fans and transformers in the facility on the residents and the elementary school in an otherwise extremely quiet area with no competing noise pollution of that nature and duration is unreasonable and adverse to the public interest. OAK-MB, pp. 9-11. The Oakham Board of Health's review of the Project as exhibited on the EFSB Docket 25-07 led it to suspect that the BESS facility will result in a public nuisance, be harmful to the inhabitants, injurious to their estates, and/or dangerous to public health. Id. Establishing and operating a grid scale, industrial BESS facility in a quiet, rural community that generates constant 24/7 industrial noise, and presenting a risk of toxic exposure

from initial construction activities, ongoing battery delivery trucking and transportation hazards, and establishing an ongoing risk of uncontrollable fire from industrial accidents, presents risks to the public health of abutters, nearby households and all others in the Town of Oakham. Id. By State law, no activity which may constitute a noisome trade shall be permissible to proceed in a municipality unless the board of health, after a public hearing, has assigned a location for such facility. Id. The Oakham Board of Health has had no direct contact of any kind, including Company introduction, outreach, meeting attendance, or requested agenda to date. Id.

These are issues of real and substantial concern, not limited to the Town's position in this case, but also an issue of Statewide concern, as noted in a Comments document submitted to MassDEP and other State agencies by the Massachusetts Association of Health Boards ("MAHB") dated June 11, 2025. See Exhibit A to OAK-MB, supra. As noted by MAHB, BESS facilities such as that proposed pose various health concerns, including noise from cooling fans, inverters and transformers, and toxic contents of smoke. Id. The Company, through its noise expert witness, Mr. Callahan, claims the Project poses no threat of exceeding the MassDEP Noise Policy. The problem with this is Mr. Callahan's report on this issue is tainted by essentially sham baseline noise testing which ignores the actual sensitive noise receptors affected by the Project, and by modeling estimates of noise generation from the Project which lack data for two out of three noise generating components of the BESS because they have not yet been selected. See Hearing Transcript, Vol. 6, pp. 961-983.

The Company has also failed to address fire, smoke, and emergency response concerns noted by the Town's Fire Chief. First, the Chief has concern about smoke control. OAK-TH. The Company proposes misting a smoke plume from a distance (weather conditions permitting) as one possible tactic to minimize the volume of smoke and fumes released into the upper air columns.

Id. In addition to the substantial water supply and manpower that this would consume, this tactic is unlikely to be an assurance of effective smoke plume containment under many possible circumstances. Id. Furthermore, according to the Town's Fire Chief, any longstanding release of smoke and particulate matter from burning commercial batteries will create a large-scale contamination risk which will include toxic heavy metals that will settle to the ground as fall-out dust, for miles around. Id. According to the Fire Chief, BESS fires have been known to burn for six to eight hours on the short end, (with the risk of re-ignition up to a week), to days on the long end. Id. The amount of toxic smoke produced by such volume and duration would be a disaster. Id.

The Town is not seeking to oppose the Project on fire and emergency response concerns alone, but as one more of the many concerns which cumulatively compel the conclusion that the Project should not be approved. The Company's fire safety expert claims the Town has nothing to be concerned about, but the Town has every right to be concerned about evolving high risk industrial infrastructure in a small town with limited emergency response capabilities. There have been recent real-world fires and emergency events related to analogous BESS facilities involving lithium-ion batteries, acknowledged by the Company. See, e.g., RR-EFSB-9(1). This is not an appropriate site selection for what amounts to the continued research and development of such new technologies.

The Town also lacks sufficient roadway infrastructure to support the Project. See EFSB-OAK-1. For instance, Coldbrook Road, where the Project is proposed, was partially reconstructed and paved from the center of town to the school driveway, but the rest of Coldbrook Road from the school to Old Turnpike Road has not been reconstructed or paved in over 20 years. Id. This is the section which has the sole means of access to the Project site. Id. Coldbrook Road is also a

narrow, rural way that is no more than 18 to 20 feet wide in most stretches. Id. Two-way traffic on this roadway in many locations is not possible/passable when a large and/or over-sized vehicle is on the way. Id. The entrance to Coldbrook Road off Old Turnpike Road is extremely narrow, with no more than a 20 ft. span at the intersection. Id. This makes it nearly impossible for a tractor trailer to make that turn, as well as the entrance to the Property for the Project. Id. Both entrances will be extremely difficult for trucks and trailers to navigate the turn. Id. There is also a constricted turn radius at the Property's entry from Coldbrook Road that would impede large trucking entering and leaving the Property, especially if they are rated wide loads. Presently, Coldbrook road is in fair to poor condition at various locations. Id. The pavement surface has significant cracking, heaves, and deterioration of pavement surfaces and shoulder edges for the length of the road from the school entrance to Old Turnpike Road and Rt. 122, which is about 1 mile in length. Id.

Rutland Road, which will serve truck traffic, is also a very narrow, rural way only 20 ft. wide in most stretches. Id. Two-way traffic on this roadway in many locations is not possible/passable when a large and/or over-sized vehicle is on the way. Id. Similarly inadequate is Old Turnpike Road, which has not been reconstructed or paved for at least 10 years or more. Id. The northern section of Old Turnpike Road that lies from Route 122 to Coldbrook Road is in the worst condition relative to the whole road. Id. This section includes significant drainage issues, road deterioration, cracks, potholes, and heaving. Id.

The Town's road subgrades also lack reinforcement. Id. Reinforced roadway subgrades are a modern road construction technique that involves the addition of material engineered for a high compressive strength for vertical force resilience from heavily weighted travel. Id. Such reinforcing materials include gravel, stone, engineered and uniformly graded fill and often an application to the soil and material of a liquid chemical stabilizer/binder. Id. This subgrade

material base is then mechanically compacted to provide a strong, well-draining, uniform surface on which to lay bituminous concrete (asphalt) pavement upon. Id. The benefit to reinforced subgrades is to increase load bearing capacity and durability to prevent road damage, settlement, and premature deterioration. Id. This practice extends the duration of pavement surface quality. Id.

The majority of Oakham's roads originated as horse drawn cart paths, and trails. Id. Most roads were initially maintained as graded soil surfaces. Id. The more heavily traveled roads in the Town were eventually upgraded with simple gravel applications and later, with “tar and chip” surface applications with no additional material emplaced. Id. In the past 40 years, most of Oakham’s main and secondary roads have been paved and maintained with bituminous concrete (asphalt). Id. There historically has been no reason to reinforce most of the Town’s roadway subgrades because traffic has been for predominantly light, private vehicle use, and not for 75 to 95 daily vehicle trips to the Project site for construction, including heavy vehicles, as proposed. Id.

If the Project were to take place, the construction traffic, e.g. heavy equipment deliveries/departures, trucking of surface grading materials (sand/gravel/stone deliveries/disposals, trucking of ready-mix concrete deliveries) would cause significant degradation to Oakham's roadways. Id. The roadways in Oakham are built to withstand residents’ traffic. Id. Construction of the Project would entail an estimated hundreds of round-trip travels by extremely heavy vehicles over Oakham’s rural roadways. Id. As noted above, these roads generally were not constructed to withstand this frequency and intensity of construction traffic. Id. With the lack of reinforced subgrade, the Town’s roads will be damaged by such use and will start

to show signs of accelerated deteriorating within less than a year of the proposed activity commencing. Id.

The public roadway pavement surfaces will receive damage and accelerated wear from heavy travel with heavy-duty vehicles. Id. This will cause spot depressions, ruts, severe cracking and shoulder edge deterioration. Id. Another aspect of great concern is the structural integrity of the roadway drainage systems, especially culverts. Id. There are several subgrade drainage culverts emplaced across each road listed. Id. With the amount of heavy-duty vehicle traffic from this Project, these culverts are at risk for significant deformation and collapse. Id. Any localized drainage failures/disruption can have a cascading effect on roadway damage acceleration. Id. Depressions and ruts in the roadways caused by damage from heavy vehicle traffic, result in rainwater not properly draining off the roadways causing standing water and asphalt deterioration. Id.

For the delivery of Battery Enclosure Units and any structural fixtures and excavating equipment, over-sized vehicles and over-weight loads will likely be necessary. Id. Round trip travel for these types of hauls are likely to be 500 and 1000 for years one and two. Id. For the life of the Project, perhaps double or triple that number. Id. This type of traffic presents other concerns because these vehicles will be much heavier and wider than our roads can accommodate in many locations. Id. Such truck travel will impede the opposite lane of traffic in many instances and will put extraordinary stress on the shoulder of these roads. Id. If the shoulder of the roads starts to break away from the pavement of the road, it will cause unsafe road conditions that the Town will struggle to address with its limited resources in manpower and funding. Id.

Lastly, vehicles with large wheelbases, especially those with articulating trailers, require a larger turning radius to make 90+ degree turns. Id. Most of the roads in the Town, including the

roads listed above, are no more than 20-25 ft. wide from one side to another at critical intersections. Id. These roadway limitations make it extremely difficult, if not impossible to make sharp turns with a very large hauling vehicle. Id. Locations for such vehicles to turn around (reverse direction) are also extremely limited within the Oakham roadway system. Id. These concerns are heightened by the prospect that up to 297 very large tractor-trailer loads with a HAZMAT rated cargo will be transported through the Town, just for the initial delivery, let alone replacement and decommissioning hauls. Id.

The roadway issues further highlight the inherently compromised, unsafe, and abysmal location to manage a BESS emergency event such as a fire, particularly with a call fire department, a limited water supply, and limited means of access. Id. A catastrophic fire would have no outcome but massive and lasting devastation, swift and certain. Id. The risk to the people, the land, the wildlife, the local water supply and the MWRA water supply is patently unacceptable on its face. Id. “Risk” for this situation cannot be trifled with, mitigated or simply managed. Id. It must be utterly avoided at all costs at this Project site as a matter of common sense.

*iii. Comprehensive Zoning Exemptions Are Not Required.*

Finally, the Company bears the burden of proving that exemption from a particular provision of a zoning ordinance is “required” to allow construction or operation of the Company’s Project for purposes of G.L. c. 40A, § 3. Here, the Company has refused to answer the Board’s Information Request specifically asking the Company to “[d]escribe the potential for the Company to combine the BESS Project with a Large-Scale Solar Installation on the 42.9-acre parcel or adjacent land.” See EFSB-Z-1. The Company’s response to this was as follows: “The Company has proposed a standalone BESS facility and does not plan to combine the BESS Project with Large-Scale Solar.” Id. Aside from the fact that the response is evasive and not responsive to the

question asked, the response precludes the Company from proceeding because a combined BESS/Large-Scale Solar facility would negate operation of the Zoning Bylaw's prohibition of standalone BESS facilities. The exemption would thus not be "required." The fact that the Company has determined that a standalone facility would generate the greatest rate of financial return does not mean that a zoning exemption is "required" to proceed with a BESS facility at the Property, as the exemption would not be required if the BESS were combined with Large-Scale Solar. It also raises further question as to whose interest is at stake here – the Commonwealth in achieving renewable energy goals, or private parties with "money on the mind." The answer is clearly the latter, or the Company would have answered the question and provided the requested information about the potential for a combined BESS/Large-Scale Solar facility which would be more consistent with the Commonwealth's renewable energy goals and consistent with the requirements of the Town's Zoning Bylaw. Perhaps the use needs to be scaled down to achieve a more suitably designed project for the 42.9-acre parcel in the rural-residential area at issue. That is an open question because the Company refused to answer the question, which is another reason to deny the Petition.

Further, the Board only grants a request for "comprehensive zoning exemptions" "on a case-by-case basis where the applicant demonstrates that issuance of a comprehensive exemption could avoid substantial public harm by serving to prevent a delay in the construction and operation of the proposed use." Petition of Park City Wind, LLC, EFSB 20-01/D.P.U. 20-56/20-57 (2023). For "substantial public harm" to be demonstrated, the Board must make findings that: (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. Park City Wind, at 208; Vineyard Wind, LLC, D.P.U. 21-08, at 153 (2021). No such “substantial public harm” can be found here based on the above criteria. The Company has provided no support for a claim that the Project is “time sensitive.” The Project also clearly does not involve “multiple municipalities that might hinder development of a large project spanning these communities” nor is this a case in which the “affected communities do not oppose” the exemption, as the only affected community, the Town, opposes it. Finally, this is not a case where the Project proponent has made a legitimate effort to engage the local community and discuss local concerns.

The Planning Board Chair was the primary contact person for the first two years of the Company’s approaches to the Town from 2022 – 2024. OAK-PW. After advising the Company three times of the Town’s standalone BESS zoning prohibition, it appeared that the Company went into a mode of deception. Id. The Company requested permits for other uses of the Property, even sending hearing notices to abutters for those other uses, which were in fact never initiated, and appeared after the fact to have been illusory. Id. The Company parlayed their misinformation about the actual project they had in mind, but kept secret, into their ANRAD filing with the Conservation Commission to get approval of a wetlands delineation without disclosing that the purpose of the delineation was for a BESS facility otherwise prohibited. Id. As was learned subsequently, the ANRAD also failed to accurately or honestly acknowledge or depict the extent of wetland-related jurisdictional areas on the site, including areas related to the initially proposed Project footprint and related infrastructure. Id. The Company’s claim that the Town has been

obstinate or uncooperative in the Company's alleged effort to conduct outreach with the Town is disingenuous. Id. The Company's initial communications with the Town were not upfront or forthcoming and the Town learned very quickly to be cautious when communicating with Company representatives. Id. Thus, the manner in which the Company has conducted the dialogue required with the Town as a prerequisite for seeking blanket zoning exemptions has not been conducted in good faith and should be deemed inadequate to support the Petition.

Therefore, the Board cannot reasonably grant a comprehensive exemption based on the evidence before it.

**C. BOARD HAS AUTHORITY TO GRANT EXEMPTIONS, BUT NOT AUTHORITY TO LEGISLATE**

During testimony and IR responses filed by the Company, the Company acknowledged that the proposed BESS facility would be an industrial operation on the Property that would entail industrial land use of the host parcel in the Town of Oakham. For the matter it brings before the Board, the Company specifically seeks comprehensive By-law relief from the Town, that specifically includes comprehensive relief from:

Town of Oakham By-laws

Chapter 14- Zoning

- 4.1.1 Permitted Use: Basic Requirements (Residential/Agricultural/Commercial/Sp. Permits)
- 4.4.4 Prohibited Use: Grid Scale, Stand-alone BESS
- 5.2 Dimensions: No structures over 35 feet tall
- 5.3 Dimensions: No structures within less than 50 feet of a property boundary
- 5.5 Dimensions: Minimum Buildable Area
- 5.6 Dimensions: Hammerhead Lot building prohibition
- 6.3 Soil Removal

The Company asserts in their Petition that comprehensive relief from the above Town By-laws would be essential for the Project to proceed. Setting aside the Town’s contentions about why the Petition should be denied as stated in Section II.B., above, the Town separately challenges the Company’s ability under any statutory framework in the Massachusetts General Laws or CMR to create a zoning district in Oakham, which does not have a zone for industrial uses. In its Petition, at page 6, paragraph 4, the Company accurately attests: “The entire Town of Oakham, including the Project Site, is designated as an agricultural and rural zoning district (“A&R district”).”

This is an important distinction for the Town of Oakham. Also, within the Town of Oakham’s By-laws, but not mentioned in any of the Company’s filings or testimony, is Chapter 14, Section 4.3:

“Industrial: No land in the Town of Oakham is now, nor has ever been, zoned "Industrial", nor expressly designated for industrial land use. No special permit shall be granted for industrial land use including, but not limited to, Prohibited Uses, Section 4.4.”

While the Board has jurisdiction to exempt the Project from requirements of the Zoning Bylaw, it does not have jurisdiction to create a zoning district allowing industrial uses where none otherwise exists, nor does it have jurisdiction to grant what would essentially be a use variance. This is a unique issue involving Oakham and compels denial of the Petition for lack of jurisdiction as a matter of law.

### **III. CONCLUSION**

It is understood that increasing the amount of electrical energy storage capacity is a high priority of the State’s current policy makers, and they have set a goal of 5,000 MW of new energy storage by the year 2030. But this does not require that the Board must approve all proposed battery storage proposals that happen to be submitted by any party. The Town contends that there

is substantial evidence in the record which compels denial of the Petition, in addition to the legal issues noted above, and respectfully requests that the Board deny the Petition.

Respectfully submitted,

TOWN OF OAKHAM

By its attorney,

/s/ George X. Pucci

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Dated: April 13, 2026

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**CERTIFICATE OF SERVICE**

I, George X. Pucci, hereby certify that on the below date, I caused a copy of the foregoing *Town of Oakham's Opposition to Moraga Storage LLC's Petition for an Exemption from the Town of Oakham By-law* to be served upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure) by electronic filing.

Date: April 13, 2026

/s/ George X. Pucci  
George X. Pucci (BBO# 555346)