

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

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

**REPLY BRIEF OF INTERVENOR
TEWKSBURY BOARD OF HEALTH**

April 3, 2026

I. INTRODUCTION

The Tewksbury Board of Health does not oppose battery energy storage as a technology, nor does it dispute the Commonwealth's important clean energy goals. The Board recognizes those goals as legitimate and significant. What the Board's statutory obligations under G.L. c. 111 do not permit, and what the Board therefore cannot accept, is the proposition that those goals justify granting zoning exemptions on a record that leaves critical public health questions unanswered.

The Town of Tewksbury and Hillman Energy Center have offered the Siting Board a straightforward narrative: the Host Community Agreement ensures public safety, the NFPA 855 compliance process will address technical gaps, and future permitting stages will close whatever remains open. The record also reflects that the Town negotiated a Host Community Agreement providing substantial annual payments and other financial benefits to the Town, while the Board of Health neither participated in negotiating that agreement nor exercises its statutory authority through it. The Town Manager and Select Board negotiated that agreement; the Board of Health did not, and by statute it could not. The Siting Board's determination must be based on the present record, not on assumptions regarding future compliance or future design refinements.

The Board of Health's obligations run to public health, not to municipal finance. Under G.L. c. 111, the Board is charged with the prevention of nuisances and causes of sickness, a duty that is non-delegable, preventative, and independent of any contractual framework. The question before the Siting Board is whether the current record supports findings consistent with that obligation. On the evidence presented, it does not.

The record establishes six points that neither the Town's brief nor Hillman's brief meaningfully addresses: (1) a thermal runaway event at this facility can produce hydrogen fluoride gas that standard first-responder monitors cannot detect, and that gas can reach vulnerable nearby populations under common wind conditions; (2) the Project's design is only 30% complete, and both the Hazard Mitigation Analysis and Emergency Response Plan remain in draft form with no completion timeline; (3) the stormwater management system cannot contain fire-related contaminants before they reach the Zone II groundwater supply; (4) the Company's noise analysis did not evaluate commercial and office buildings adjacent to the facility as sensitive receptors, and EFSB Staff acknowledged probable noise exceedances at those locations; (5) the alternative site analysis was inadequate and failed to meaningfully consider Candidate Site 3, which presents materially superior public health characteristics; and (6) the Board of Health's statutory authority under G.L. c. 111 is independent of the HCA and cannot be supplanted by it.

II. THE BOARD OF HEALTH'S STATUTORY AUTHORITY IS INDEPENDENT OF THE HCA AND CANNOT BE SUPPLANTED BY IT

The Town's analysis rests on a structural assumption that the Host Community Agreement, negotiated by the Town Manager and approved by the Select Board, functions as the primary vehicle for protecting public health. That assumption is not consistent with the statutory framework under G.L. c. 111.

Public health protection in Massachusetts is imposed directly on local boards of health by statute. G.L. c. 111 §§ 31, 122, 123, and 143 vest in boards of health the authority and duty to prevent nuisances, abate causes of sickness, and take preventative action in advance of harm. This authority is an exercise of the Commonwealth's police power. As the Supreme Judicial Court recognized in *Druzik v. Board of Health of Haverhill*, 324 Mass. 129 (1949), and reaffirmed in subsequent decisions, the police power vested in boards of health to protect public health cannot be contracted away or subordinated to a municipal executive's negotiated agreement. *See also Tri-Nel Management, Inc. v. Board of Health of Barnstable*, 433 Mass. 217 (2001).

The Town Manager has no statutory authority to determine 'causes of sickness,' to declare or abate nuisances, or to make binding public health determinations on behalf of the Board. Yet both the Town's and Hillman's briefs treat the HCA and future AHJ review as a complete answer to the public health concerns established in this record. That framing does not align with the statutory allocation of authority under G.L. c. 111 and does not provide a sufficient basis for granting zoning exemptions where those concerns are at issue.

The record also reflects that the Town negotiated a Host Community Agreement committing Hillman to payments exceeding \$1,000,000 per year above the Town's current tax revenue from the site, in addition to public safety funds, property value security, and community support payments (*Exh. TEWK-JC; Exh. D/S-G-10; Tr. Vol. 8, pp. 1124, 1142-1143*). The Board of Health neither participated in negotiating that agreement nor exercises its statutory authority through it. The Town Manager advised the Board of Health on multiple occasions that Special Town Counsel

Jeffrey Bernstein, Esq. could not represent the Board in this proceeding due to conflicts of interest arising from the Town's financial relationship with the applicant. *See Board of Health Petition to Intervene*. These facts underscore why the Board of Health's statutory assessment must remain analytically distinct from the Town's contractual position in this proceeding.

The Board of Health does not oppose reasonable conditions on any approval the Siting Board may consider. But conditions premised on the HCA do not substitute for the Board's independent statutory obligations, and the question of whether those conditions adequately protect public health is a judgment the Board of Health is obligated to make under G.L. c. 111, independent of the Town Manager's contractual negotiations.

III. THE RECORD EVIDENCE ON HYDROGEN FLUORIDE AND TOXIC PLUME DISPERSION HAS NOT BEEN REFUTED

Both the Town and Hillman assert that a BESS fire does not present materially differently from a house or warehouse fire (*Exh. TEWK-PH, p. 4, lines 6-8; Tr. Vol. 8, p. 1010, lines 5-13*). The hearing record does not support that assertion, and neither brief engages with the specific record evidence that contradicts it.

The testimony in this record establishes the following: lithium-iron-phosphate cells contain fluorine-bearing compounds, including lithium phosphorus hexafluoride (LiPF₆), that decompose during thermal runaway at approximately 180-200 degrees Celsius to produce hydrogen fluoride (*Tr. at 538-540, testimony of Dr. Georges Melhem, Ph.D., ioMosaic*); the standard four- and five-gas monitors used by first responders do not measure for HF (*Tr. at 1279-1280*); and the 2026 edition of NFPA 855, Annex G, specifically identifies hydrogen fluoride as a chemical hazard produced under abnormal conditions in lithium-ion BESS (*Exh. RR-EFSB-12, pp. 94-95*). These are not contested propositions. They emerge from the Company's own record responses and from witness testimony that was not contradicted by any qualified chemical engineer.

The ioMosaic air dispersion model, prepared by three qualified chemical engineers and risk analysts, found that under D5 stability conditions (a representative average day, 5 m/s wind speed), an HF plume from a single container fire can extend approximately 1,000 feet downwind at concentrations exceeding EPA AEGL-2, the level associated with irreversible or serious health effects in the general population (*Exh. SD-iMC-B, Figure 5, p. 9; Tr. at 543*). Under F2 conditions (calm night, 2 m/s), the same plume extends approximately 2,800 feet (*Exh. SD-iMC-B, Figure 7, p. 11*). A rack fire, comprising one-sixth of a single container, produces an AEGL-2 plume extending approximately 570 feet in D5 conditions (*Exh. SD-iMC-B, Figure 11, p. 15*).

The Company's air dispersion model, prepared by Hazard Dynamics, was expressly scoped to exclude hydrogen fluoride. That scope was not set by an independent scientific determination that HF was irrelevant. It was set by the Company's fire consultant, ESRG (*Tr. at 430*). Dr. Marr of Hazard Dynamics confirmed that he had not reviewed the draft HMA (*Tr. at 460-461*) and that HF, being lighter than many combustion species, would remain mixed within the plume he

modeled and would travel the same path as the other species he did include (*Tr. at 524*). The Hazard Dynamics model therefore does not rebut the ioMosaic analysis. It simply does not address the toxin of primary concern.

The Hiller witnesses testified on behalf of the Town that BESS fires do not present materially differently from ordinary structure fires. But that testimony addressed general fire characteristics; it did not address HF generation from LFP chemistry, the detection gap created by HF-unequipped first-responder monitors, or the dispersion modeling results in the ioMosaic analysis. The record contains no evidence that a typical house or warehouse fire produces an HF-laden plume invisible to standard monitoring equipment and capable of reaching an assisted living facility and senior housing community within the modeled plume distances.

The supplemental ioMosaic analysis responding to RR-EFSB-11 further established that the 30-foot sound barrier walls planned for the site's eastern perimeter do not shorten dispersion distances. They actually create turbulence that draws higher concentrations of contaminants closer to ground level on the leeward side, toward Emerald Court (*Exh. RR-EFSB-11, p. 2*).

The record further reflects that following the Moss Landing thermal runaway event in 2025, hundreds of nearby residents sought medical attention (*Exh. HEC-SD-FP-9*). The Company's own response to EFSB-S-41 committed that the HMA and ERP for this Project would 'incorporate lessons' from Moss Landing. Those documents remain in draft form with no finalization timeline.

These facts fall directly within the statutory definition of 'causes of sickness' and nuisance under G.L. c. 111. Their presence in the record is not a reason to add conditions. It is a reason to decline exemptions on this record.

IV. INCOMPLETENESS IS NOT A REASON TO DEFER PUBLIC HEALTH JUDGMENT; IT IS PRECISELY THE REASON TO WITHHOLD IT

Both the Town and Hillman urge that the 30% design level, draft HMA, and draft ERP are normal features of a zoning exemption proceeding, to be resolved in future permitting stages. The Board of Health does not dispute that incomplete design is common at this stage. What the Board disputes is whether that fact answers the public health question presented here.

The petition was filed April 1, 2025. The design remains at 30% completion, the same level reflected on the March 26, 2025 plans initially submitted (*Tr. Vol. 8, p. 1140*). Neither the HMA nor the ERP has been finalized, and no completion timeline was provided in response to discovery. The Company's only commitment was that both documents would be submitted 'prior to commercial operation' (*Exh. D/S-S-28*). That is not a timeline. It is an indefinite deferral of the core safety analysis.

The HMA that was submitted was prepared using the 2020 edition of NFPA 855, despite the Company's commitment to comply with the 2026 edition (*Tr. at 932*). It does not evaluate the consequences of a thermal runaway in a single BESS unit as required by NFPA 855 (2026) Section

4.4.2.1(1) (*Tr. at 930*). It does not address stakeholder goals and objectives. It does not identify fire suppression systems. It does not characterize worst-case hazard scenarios. And it was not reviewed by Hazard Dynamics, the Company's own dispersion modeler, who confirmed he had not seen it (*Tr. at 460-461*).

The ERP cannot be finalized until the HMA is complete. As Professor Puchovsky testified, a response plan cannot be developed without first knowing the hazards to which responders will be responding (*Tr. at 960*). The draft ERP references hazards not addressed in the draft HMA, and the two documents are not coherent (*Tr. at 989-990*).

For the Board of Health, the operative legal standard is preventative. Under G.L. c. 111 § 122, the Board's duty is triggered by potential causes of sickness shown in the present record, not by assurances that future documents will eventually address the concerns that record evidence has already identified. Incompleteness is not a reason to defer public health judgment. It is precisely the reason to withhold it. The Board cannot fulfill its statutory obligation to Tewksbury residents on the basis of documents that do not exist.

The broader pattern of information unavailability compounds the concern. Requests for ventilation configuration details for the Hithium containers, which exist and are sold commercially, were not provided, ostensibly because the plans are only 30% complete (*Tr. at 1296*). Heat release rate data was withheld as proprietary, though the Company's witness acknowledged that assumption was never verified (*Tr. at 1285*). Electrolyte composition, directly relevant to HF generation modeling, was not disclosed. These are the inputs to any credible public health risk assessment for this site, and they were not available to the parties, the Board of Health, or the Siting Board.

V. THE STORMWATER MANAGEMENT SYSTEM DOES NOT MEET THE REQUIREMENTS OF SECTION 5.6 AND CANNOT PROTECT THE ZONE II GROUNDWATER SUPPLY

The Project Site lies entirely within the Town's Groundwater Protection District and the DEP-approved Zone II wellhead protection area associated with the Tewksbury Hospital's public water supply, a well that drew and used over 3,100,000 gallons in 2024 (*Exh. D/S-T-3; Tr. at 726*). State regulations under 310 CMR 22.21(2)(b)7 prohibit making more than 15% of a Zone II site impervious unless an artificial recharge system is provided that will not result in the degradation of groundwater quality. The Company's proposal reflects 36% impervious surface, more than double the regulatory threshold, and does not provide the vegetated stormwater system required by Section 5.6 of the Zoning Bylaw and the DEP's own sample bylaw language adopted by the Town.

The DEP's August 2025 Guidance on Public Health, Safety and Environmental Impacts of Electric Battery Storage and Electric Vehicle Chargers, issued pursuant to the 2024 Climate Act, specifically identifies the requirement that BESS facilities in a Zone II be located within a self-

containment area so that in the event of a fire, fire extinguishing chemicals will be completely contained. The Project Site, as designed, does not include such a system.

The record evidence on this point is specific. Mr. Horsley, a qualified stormwater management expert, testified that approximately 80% of rainfall and fire-related runoff would infiltrate directly into the subsurface through the crushed stone between the BESS containers before reaching any treatment component (*Tr. at 1421*). The water-quality units in the system do not remove dissolved pollutants such as hydrogen fluoride, which is highly water-soluble (*Tr. at 1421-1422*). The Company's own stormwater engineer confirmed there is no shutoff valve to capture contaminated water in the event of a fire (*Tr. at 120*). Only approximately 20% of runoff would reach the treatment system, and even that portion would not be treated for dissolved toxic compounds (*Tr. at 1421-1422*).

The Company's stated response to this evidence is reactive rather than preventative: contaminated runoff would be addressed by a Licensed Site Professional and DEP spill response team after contamination has already occurred (*Tr. at 1342-1344*). The Town Manager's response to RR-EFSB-17 confirmed this framing, expressing the expectation that wetlands would be 'restored' following a contamination event. That is not a stormwater management system that 'will not result in the degradation of groundwater quality' under 310 CMR 22.21(2)(b)7. It is a plan to remediate after degradation has occurred.

The reason the Company has not designed the site to meet the vegetated system and self-containment requirements is straightforward: the record supports the conclusion that the site cannot accommodate the facility as proposed while meeting applicable requirements. Mr. Horsley testified that meeting all applicable requirements on this site would require reducing the number of BESS containers by approximately 50%, using the vegetated infiltration system, and importing fill to achieve the required 3-foot separation from seasonal high groundwater (*Tr. at 624-625*). The Company has not proposed those changes.

VI. THE NOISE ANALYSIS FAILED TO EVALUATE COMMERCIAL BUILDINGS AS SENSITIVE RECEPTORS, AND THE RECORD REFLECTS PROBABLE EXCEEDANCES AT THOSE LOCATIONS

The MassDEP Noise Control Regulation, 310 CMR 7.10, prohibits any person from causing noise that increases the ambient sound level at the nearest inhabited buildings by more than 10 dB(A) above background. The Company's acoustic consultant, Ryan Callahan, confirmed on cross-examination that his noise study evaluated compliance only at residential locations, treating only inhabited residential buildings as sensitive receptors. He did not collect sound pressure data at the commercial and office buildings located across Hillman Street and Rockland Street from the facility (*Tr. Vol. 10, pp. 1462-1465*).

This is a significant gap in the record. The commercial buildings on Hillman Street are located approximately 50 feet from the south side of Hillman Street, placing them in close proximity to

the project property line. EFSB Staff member Timothy Reilly questioned Callahan directly about this gap and stated on the record: 'It is certainly conceivable that there are exceedances above the DEP noise policy, this 10 dBa above ambient, at these commercial buildings' (*Tr. Vol. 10, p. 1467*). No sound data was collected at those buildings. No analysis was performed to assess whether workers in those commercial spaces would experience noise levels exceeding the 310 CMR 7.10 standard.

The Company's position, as stated by Callahan, is that DEP considers only inhabited residential buildings as sensitive receptors for noise compliance purposes. That position is contradicted by the DEP's own Noise Pollution Policy Interpretation document, which was introduced into the record by Attorney Senie during cross-examination of Callahan. That document states that MassDEP noise criteria apply at 'the nearest occupied residence or other sensitive receptor.' Attorney Senie noted that the phrase 'or other sensitive receptor' appears multiple times in the DEP policy document. Callahan was unable to dispute the document's language (*Tr. Vol. 10, pp. 1465-1468*).

The Board of Health notes that people who work in commercial and office buildings adjacent to the facility spend extended hours in those spaces. They are not transient passersby. If noise levels from the facility exceed the 310 CMR 7.10 standard at those locations, those workers are exposed to regulatory non-compliant noise during their working hours. The Company's failure to even collect data at those locations means the Siting Board has no basis to find compliance with the applicable standard at the nearest occupied buildings to the project site.

This evidentiary gap reinforces the broader pattern of incomplete analysis that runs throughout the record. A facility that cannot demonstrate noise compliance at the nearest occupied buildings to its north is not a facility for which the required findings can be made on the current record.

VII. THE ALTERNATIVE SITE ANALYSIS WAS INADEQUATE, AND CANDIDATE SITE 3 PRESENTS A MATERIALLY SUPERIOR OPTION

The Company's alternative site analysis does not meet the standard reflected in applicable precedents. Candidate Sites 1 and 2 were dominated by wetlands and lacked sufficient upland area, facts that were apparent from the outset. Their inclusion as nominally reviewed alternatives does not constitute the earnest site comparison the Siting Board's review is designed to require. *See Park City Wind, EFSB 20-01/D.P.U. 20-56/57, at 44 (alternative sites should be viable, even if ultimately rejected in favor of a preferred site for documented reasons).*

Candidate Site 3 is a genuinely viable alternative, and on the public health metrics that are at issue in this proceeding, it is demonstrably superior to the Project Site. It is not located within the Zone II or the Groundwater Protection District. It has no residential structures within 1,000 feet. The Project Site, by contrast, has 14 single-family homes within 1,000 feet and the Emerald Court senior housing community, which includes an assisted living facility, beginning at approximately 600-650 feet (*Exh. EFSB-SS-8; Exh. Attachment C-Supplemental, Figure 6.1*).

The disparity is made more striking by the Company's own reasoning for rejecting Candidate Site 1, in part because of single-family homes located 1,560 feet away (*Tr. at 285-286; Exh. D/S-1(1)*). Yet that same Company selected the Project Site despite a 470-unit senior housing community, an assisted living facility, and a daycare beginning at approximately 600 feet. The Company has offered no coherent explanation for why residential proximity was disqualifying at 1,560 feet but acceptable at 600 feet.

The Company's stated reason for rejecting Candidate Site 3 was that connecting it to the substation within public roadways would be approximately 4,000 feet and would be 'prohibitively expensive.' No cost evidence was submitted to support that characterization.

The record also reflects that BESS facilities can be sited along circuit lines rather than adjacent to substations, a point raised in discovery and not refuted (*Exh. D/S-G-22*). When asked directly why the Project must be at this location rather than at any other site near the regional grid, the Company's only answer was that the substation has available capacity and the site is proximate (*Exh. D/S-G-22*). That is not the demonstration of reasonable necessity that G.L. c. 40A § 3 requires.

VIII. RECORD FINDINGS THE SITING BOARD MUST ADDRESS

Consistent with the Siting Board's obligation to balance the interests of the general public against local interests under applicable precedents, the following record findings, each of which is established by testimony and exhibits admitted into evidence, require express consideration in any decision on this petition:

First, the record reflects that hydrogen fluoride may be generated during a BESS thermal runaway event at this facility, that standard first-responder monitors do not measure for HF (*Tr. at 1279-1280*), and that the Company's air dispersion model deliberately excluded HF from its scope (*Tr. at 430*). The ioMosaic model, the only qualified chemical engineering analysis of HF dispersion in this record, was not contradicted by any chemical engineer or risk analyst.

Second, the record reflects that modeled plume transport of HF under representative D5 wind conditions reaches the Emerald Court senior housing community and nearby single-family residences within the AEGL-2 exposure zone (*Exh. SD-iMC-B, Figure 16*). That community includes an assisted living facility. The first-responder response protocol anticipated by the Company is defensive, allowing thermal events to run their course while attempting to relocate residents who may not be ambulatory and whose location relative to a shifting, undetectable plume cannot be determined with standard monitoring equipment (*Tr. at 499-500, 1103*).

Third, the record reflects that the Hazard Mitigation Analysis and Emergency Response Plan, the core documents for evaluating and responding to the risks established above, were presented as drafts based on the 2020 NFPA standard despite the Company's commitment to the 2026 standard, are not coherent with each other, and have no finalization timeline (*Tr. at 930-936, 960, 989-990*).

Fourth, the record reflects that the stormwater management system cannot prevent contaminated fire-related runoff from infiltrating into a Zone II groundwater supply, that no shutoff valve exists to contain such runoff, and that approximately 80% of such runoff would bypass the treatment system entirely (*Tr. at 120, 1421-1422*).

Fifth, the record reflects that the Town's position in this proceeding is presented through a financial and contractual agreement, comprising more than \$1,000,000 per year in payments, negotiated without the participation of the Board of Health. The Town Manager advised the Board of Health on multiple occasions that Special Town Counsel Jeffrey Bernstein, Esq. could not represent the Board in this proceeding due to conflicts of interest arising from the Town's financial relationship with the applicant. *See Board of Health Petition to Intervene; Exh. D/S-G-10*.

Sixth, the record reflects that the Company's noise analysis did not evaluate the commercial and office buildings on Hillman Street and Rockland Street as sensitive receptors under the MassDEP Noise Policy, despite those buildings being among the nearest occupied structures to the facility. EFSB Staff acknowledged on the record that exceedances above the DEP noise policy at those commercial buildings are conceivable (*Tr. Vol. 10, pp. 1466-1468*). The DEP Noise Pollution Policy Interpretation expressly states that noise criteria apply at the nearest occupied residence or other sensitive receptor, a standard the Company's analysis did not apply to the occupied commercial buildings adjacent to this site.

A decision granting exemptions without addressing these six points would not reflect the 'broad and balanced consideration of all aspects of the general public interest and welfare' that applicable precedents require (*New York Central Railroad v. Department of Public Utilities, 347 Mass. 586, 592 (1964)*).

IX. THE BOARD OF HEALTH RETAINS INDEPENDENT STATUTORY AUTHORITY NOT DISPLACED BY THIS PROCEEDING

The Board of Health's site assignment authority under G.L. c. 111 § 143 and its nuisance and public health jurisdiction under G.L. c. 111 §§ 122 and 123 are not displaced by the Siting Board's disposition of this zoning exemption petition. The Board voted unanimously to initiate a site assignment proceeding; that proceeding was withdrawn in the context of this docket, with the Board expressly reserving its statutory authority.

The Board of Health raises this not as a statement of adversarial intent, but as a matter of law. The Siting Board's grant of a zoning exemption does not constitute a determination that the use is consistent with applicable public health standards. If the risks documented in this record materialize or remain unresolved following any approval, the Board of Health retains the power and the duty to act under its independent statutory authority, including site assignment, nuisance, and public health jurisdiction. Neither the HCA nor this proceeding extinguishes that obligation.

X. DECISION CONSTRAINTS ARISING FROM THE RECORD

The Siting Board's determination in this proceeding must be grounded in the evidentiary record and must reflect reasoned findings addressing the specific public health issues that record presents. Where credible evidence shows potential risks to nearby populations, including toxic gas exposure, limited detection capability, rapid plume transport, and the absence of containment for fire-related runoff within a Zone II groundwater protection area, the Board's findings must address whether those risks have been adequately characterized and mitigated in the present record, rather than on assumptions regarding future compliance or future design refinement.

The evidence here does not demonstrate that the identified hazards, including hydrogen fluoride generation, plume transport into residential areas within short timeframes, incomplete hazard and emergency response planning, and the lack of a self-containment system for fire-related runoff, have been fully evaluated or mitigated. Nor does it demonstrate that these issues can be resolved through generalized reliance on post-approval permitting or code compliance. Under these circumstances, the statutory standard for granting zoning exemptions under G.L. c. 40A § 3 cannot be satisfied without either declining to grant the exemptions on this record or conditioning any approval on the prior completion and review of the analyses and design changes necessary to resolve these risks. The record similarly does not support a finding that the noise impacts on the nearest occupied commercial buildings have been adequately assessed, or that the alternative site analysis reflects the earnest comparison the applicable standard requires.

XI. CONCLUSION

The statutory standard under G.L. c. 40A § 3 places the burden squarely on the applicant to demonstrate, by substantial evidence of record, that its proposed use is reasonably necessary for the public convenience or welfare. That burden includes demonstrating that the Project's impacts, including public health and safety impacts, have been adequately characterized and mitigated. It is not the Board of Health's burden to prove that this facility is unsafe. It is Hillman's burden to prove, on this record, that it is safe. On the evidence presented, that burden has not been met.

The Board of Health respectfully submits that the present record does not support the findings required to grant zoning exemptions under G.L. c. 40A § 3. The record reflects unresolved and documented public health concerns: a toxic gas hazard not adequately characterized by the Company's own analysis, an incomplete design that prevented meaningful risk assessment, a stormwater system that cannot protect a Zone II public drinking water supply from fire-related contamination, a noise analysis that failed to evaluate compliance at the nearest occupied commercial buildings, an inadequate alternative site analysis that did not meaningfully consider a materially superior candidate site, and a statutory public health framework that the HCA cannot displace.

The Town's position in this proceeding is presented through the framework of a negotiated financial and contractual agreement, whereas the Board of Health's position arises from independent statutory duties under G.L. c. 111. The Town Manager advised the Board of Health

on multiple occasions that Special Town Counsel Jeffrey Bernstein, Esq. could not represent the Board in this proceeding due to conflicts of interest arising from the Town's financial relationship with the applicant. *See Board of Health Petition to Intervene*. The Siting Board's balancing of public and local interests should take into account the distinction between these positions.

If the Siting Board determines that some form of approval is warranted, the Board of Health requests that any such approval be expressly conditioned on: (1) a complete, finalized HMA meeting all 2026 NFPA 855 requirements, including a full HF plume dispersion analysis by qualified chemical engineers, submitted to and reviewed by the Board of Health before any construction permit issues; (2) a finalized ERP developed in coordination with the Board of Health and the Tewksbury Fire Department, consistent with the completed HMA, and submitted for Board of Health review before any construction permit issues; (3) a redesigned stormwater management system incorporating the vegetated infiltration system required by Section 5.6 and a full self-containment system for fire-related runoff, meeting DEP August 2025 Guidance requirements; (4) a groundwater monitoring plan approved by the Board of Health prior to construction; (5) a supplemental noise analysis evaluating sound pressure levels at the commercial and office buildings on Hillman Street and Rockland Street as sensitive receptors under 310 CMR 7.10, with any required mitigation implemented before commercial operation; and (6) express preservation of the Board of Health's independent authority under G.L. c. 111, including site assignment and nuisance jurisdiction, notwithstanding the grant of any zoning exemption.

Battery storage serves important Commonwealth goals; that is not in dispute. The issue is whether the present record supports a finding that this Project, on this site, is consistent with the public health and safety of the residents the Board of Health is obligated by law to protect. That finding is not supported by the present record. Absent express findings addressing the record evidence outlined above, the grant of zoning exemptions would not reflect the reasoned decision-making required under Massachusetts law.

Respectfully submitted,



Tewksbury Board of Health Agent
Intervenor, EFSB 25-08

Dated: April 3, 2026

This Post-Hearing Brief Response is submitted by the Director of Public Health in an administrative capacity on behalf of the Tewksbury Board of Health, which appears as an Intervenor in this proceeding. The positions set forth herein reflect the official vote and direction of the Board of Health and are submitted to represent the Board's public health concerns in this matter.

EFSB-25-08 - REPLY BRIEF OF TEWKSBURY BOARD OF HEALTH