

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

VIA ELECTRONIC MAIL ONLY

January 27, 2026

In the Matter of the Petition of
Hillman Energy Center, LLC Pursuant
To G.L. c. 40A § 3 for an Exemption
From the Zoning Bylaws of the
Town of Tewksbury, MA

EFSB 25-08

POSITION STATEMENT AND COMMENTS OF THE
TEWKSBURY BOARD OF HEALTH, INTERVENOR,
IN RESPONSE TO THE MOTION FOR PARTIAL SUMMARY DECISION

I. Introduction and Scope of Comments

The Tewksbury Board of Health (the “BOH”) submits these comments for two limited and complementary purposes:

1. To provide public health context within the BOH’s statutory role under G.L. c. 111, §§ 122 and 143; and
2. To identify specific public health and drinking-water protection considerations associated with this proposed facility, located within the Town’s Groundwater Protection District (Zone II).

The BOH takes no position on whether the Energy Facilities Siting Board (“Siting Board” or “EFSB”) should grant or deny the Petition for exemption from local zoning bylaws under G.L. c. 40A, § 3, nor does it seek to influence the EFSB’s determination regarding whether the proposed facility is reasonably necessary for the convenience or welfare of the public. Rather, the BOH submits these comments to assist the Siting Board by identifying public health considerations for the record and the specific safeguards that should be preserved or established for a facility of this type in a Zone II setting, regardless of the Motion’s outcome.

II. Statement of Non-Opposition

The BOH does not oppose the Petition before the Energy Facilities Siting Board and does not, by this filing, advocate for denial of the requested zoning exemption. The BOH's participation as an intervenor and the submission of these comments are intended solely to identify the scope of the BOH's independent statutory responsibilities and to highlight public health and drinking-water protection considerations that should be preserved and appropriately addressed through the processes established by law.

III. Public Health Interests and Zone II Context

Based on information presently available in the record, the proposed facility implicates subject matters that fall within the traditional jurisdiction of local boards of health, including but not limited to:

- Protection of groundwater and drinking water resources, particularly given the facility's location within Zone II;
- Storage, handling, and potential release of hazardous materials, including battery energy storage systems (BESS) and fire-suppression materials;
- Potential contamination pathways associated with stormwater management, fire suppression activities, or emergency response; and
- Known and yet-to-be-determined conditions that may affect the health and safety of inhabitants of the Town.

The BOH emphasizes that these considerations arise in addition to the zoning and energy-policy determinations currently before the Siting Board, and that they reflect the BOH's independent public health mandate.

IV. Zone II Groundwater Protection as a Public Health Safeguard

A. Zone II Purpose Under Section 5.6

Section 5.6 of the Town's Groundwater Protection District Bylaw states that its purpose is to promote health and welfare by ensuring adequate quality and quantity of drinking water; preserving and protecting drinking-water sources; preventing temporary and permanent contamination; and conserving natural resources.

Section 5.6 includes multiple controls that implement groundwater protection in a Zone II setting, including:

- Impervious cover limits (15 percent or 2,500 square feet, whichever is greater), except under special-permit provisions;
- Special-permit triggers for activities presenting groundwater risk, including stormwater management and artificial recharge systems, framed as measures to prevent groundwater contamination and avoid significant groundwater degradation; and
- Stormwater and artificial recharge standards and BMP expectations, including pollutant-removal approaches (e.g., constructed stormwater wetlands, wet detention ponds, water quality swales, sand filters, organic filters), with the requirement that stormwater plans align with MassDEP stormwater standards and handbook guidance, and limitations on direct discharge to surface waters, wetlands, and vernal pools.

B. Current Record Reflects Impervious Coverage Above Zone II Threshold

Materials currently before the Siting Board include representations that the Project would result in approximately 36 percent impervious surface. This materially exceeds the Zone II principle that land uses exceeding 15 percent impervious cover must provide artificial recharge that will not result in groundwater degradation.

Where impervious coverage materially exceeds the Zone II threshold reflected in Section 5.6 and in current record materials, stormwater and artificial recharge design and protective features become central safeguards for drinking-water protection and, if the Project is approved, should ideally be fully addressed through enforceable conditions.

V. MassDEP BESS Guidance and Containment Expectations

The MassDEP guidance excerpt included in the record identifies example conditions for BESS in sensitive settings, including:

- Locating BESS above the 100-year floodplain and within a self-containment area so that, in the event of a fire, fire-extinguishing chemicals will be completely contained;
- Environmental considerations in the event of a fire or other release, including air contamination from the fire plume with possible deposition to land and water, and contamination from suppression-water runoff; and

- Recognition that lithium-ion systems are typically required to provide spill containment due to chemistry-specific hazards.

From a BOH public-health perspective, these containment and response pathways (air plume, suppression runoff, and spill containment) are directly relevant at a Zone II groundwater-recharge location because they implicate groundwater and drinking-water protection, emergency-response safety, and the potential for mobilization of contaminants toward the Zone II aquifer.

VI. BOH Statutory Authority Under G.L. c. 111

A. Authority Under G.L. c. 111, § 122

Pursuant to G.L. c. 111, § 122, the BOH is authorized to examine conditions within the Town and, where it determines that a nuisance, source of filth, or cause of sickness exists, to order such conditions removed or abated in accordance with the statute. Where such conditions are found, the BOH may take appropriate action consistent with the statute to protect public health and safety.

This authority is ongoing and is exercised based on site conditions and evidence in accordance with applicable procedures. The BOH offers this background solely to clarify that its public-health responsibilities under G.L. c. 111 operate within their own statutory framework and, as appropriate, may be coordinated with other agencies and with any conditions the Siting Board may establish.

B. Authority Under G.L. c. 111, § 143

Pursuant to G.L. c. 111, § 143, the BOH is authorized, following notice and public hearing, to regulate the location of trades or employments that may be a nuisance or harmful to the inhabitants or dangerous to public health, including the authority to prohibit such activities in locations not assigned by the BOH.

The BOH makes no determination in this filing as to whether the proposed facility constitutes a trade or employment subject to § 143. The BOH's position is limited to preserving its authority to evaluate that question, should circumstances warrant, based on a complete factual record, operational details, and potential public-health impacts, consistent with statutory requirements.

C. Relationship Between EFSB Proceedings and Board of Health Jurisdiction

The BOH recognizes and respects the EFSB's jurisdiction to adjudicate petitions for zoning exemptions under G.L. c. 40A, § 3, and offers these comments to assist the Board in developing a complete record on public-health considerations relevant to this Zone II location.

For clarity, the BOH understands that the EFSB's determination on the zoning-exemption petition addresses the request for zoning relief under G.L. c. 40A, § 3, while the BOH's responsibilities under G.L. c. 111, §§ 122 and 143 operate under their own statutory standards and procedures. Any future exercise of BOH authority would be based on evidence, statutory criteria, and applicable procedural safeguards, including notice and public hearing where required by law.

VII. BOH Requests to the Siting Board

While remaining neutral on the Motion's legal merits, the BOH respectfully requests that the Siting Board:

- 1) State clearly that Zone II drinking-water recharge protections are core public health safeguards at this location.
In resolving the Motion, include language that does not imply that groundwater/drinking-water recharge protections applicable to Zone II settings are discretionary or may be diminished without equivalent protection. This is a public health clarification, not a legal position on waiver authority.
- 2) If the Project is approved, ensure that any approval preserves protections equivalent to or stronger than Section 5.6's groundwater safeguards.
If the Project is approved, require final, enforceable conditions that at minimum achieve Section 5.6's protective objectives for stormwater/artificial recharge, including preventing untreated discharges; preserving hydrology; managing peak flows; minimizing erosion and sedimentation; avoiding significant groundwater degradation; and reducing pollutants, using protective BMP approaches consistent with Section 5.6 and MassDEP stormwater standards/handbook guidance.
- 3) If the Project is approved, require BESS-specific containment measures aligned with MassDEP's guidance pathways and example conditions.
Require enforceable conditions that specifically address:
 - a) contamination pathways described in the MassDEP excerpt (air plume deposition and suppression-water runoff); and

- b) the guidance example of placing BESS above the 100-year floodplain and within a self-containment area for fire extinguishing chemicals, particularly in this Zone II setting.
- 4) If the Project is approved, ensure the record and conditions address emergency response safety (airborne hazards) and severe weather resilience. To the extent the Board is establishing conditions to protect public health at this Zone II location, the BOH requests that the record and any final conditions address:
- a) airborne hazard controls and responder/public protective actions in the event of a fire or release, consistent with MassDEP's recognition of air contamination from the fire plume. This includes requiring the Applicant to identify protective-action distances and downwind safety protocols based on incident conditions, rather than relying solely on fixed-distance assumptions; and
 - b) severe weather, extreme precipitation, and floodplain-related failure modes, consistent with the MassDEP excerpt's inclusion of 100-year floodplain siting as an example protective condition and the need to prevent releases and contaminated runoff under adverse conditions.

VIII. Additional Record Clarifications Requested

To support a clear assessment of public health and drinking-water protection at this Zone II location, the BOH respectfully requests that, in resolving the Motion and in any subsequent orders addressing conditions or record development, the Siting Board require the Company to provide the following clarifications in the record:

- 1) Zone II stormwater/recharge design and groundwater degradation standard
A description of how the Project's stormwater management and artificial recharge systems have been designed to reflect: (a) the Project's location within a Zone II wellhead protection area; and (b) the Zone II concept that artificial recharge "will not result in the degradation of groundwater quality." The response should identify the final design documents relied upon and any water-quality, pollutant-loading, or mass-balance analyses used to support that conclusion.
- 2) Status of key local groundwater protection requirements
A concise status update on stormwater/groundwater items identified in Town technical review correspondence currently in the record (including any requests for additional soil test pits at infiltration-system locations, mounding analyses, and

confirmation of minimum separation to seasonal high groundwater under Section 5.6). The update should state whether each item has been addressed in revised plans and summarize the final separation-to-groundwater assumptions/results for the infiltration systems.

3) Fire-suppression water and contaminated runoff containment

A description of how the final site and drainage design will contain, capture, or otherwise manage fire-suppression water and contaminated runoff associated with a BESS fire or thermal runaway event, considering MassDEP's guidance discussion of suppression-runoff pathways. The response should identify physical containment features (i.e.: berms, curbing, liners, sumps, shutoff valves, lined basins) and explain the level of containment expected under a reasonable worst-case fire scenario for this Zone II setting.

4) Existing conditions / 21E context at 73–75 Hillman Street

A summary of any environmental assessments completed for 73–75 Hillman Street (e.g., 21E Phase I/II or equivalent), including whether any contaminants have been identified and whether any MassDEP Release Tracking Numbers exist. The response should also explain how the stormwater and artificial recharge systems have been designed and will be implemented to avoid mobilizing any existing site contaminants toward the Zone II aquifer.

5) Dimensional/Height Status Clarification

A clarification of the proposed maximum structure height and the applicable zoning-district dimensional standards. The BOH raises this as a record-clarity item because structure height can relate to public-safety planning (including emergency operations and incident management) and should be understood in relation to nearby sensitive receptors. Specifically, the BOH requests that the Company:

- a) identify the proposed maximum heights of all major project components (including any container stacks, transformer/switchgear, and lighting structures), and the applicable local dimensional standards; and
- b) provide a brief evaluation of whether and how the proposed height and equipment placement could influence (i) air dispersion of operational emissions or incident-related releases under typical and adverse meteorological conditions, and (ii) noise propagation from equipment during operation, including identification of any mitigation measures proposed if modeling or monitoring indicates potential off-site impacts.

These requests are made solely to improve record completeness and to assist in supporting enforceable public-health protections appropriate for a Zone II setting; they are not intended as factual assertions that any specific element of the Project design is deficient, nor as disagreement with the Siting Board's authority or judgment.

IX. Conclusion and Preservation of Board of Health Authority

The BOH submits these Position Statement and Comments to assist the Siting Board by ensuring that the record clearly reflects:

- 1) the continued applicability of Massachusetts public health law and the independent role of local boards of health in safeguarding public health;
- 2) the specific public-health considerations arising from the Project's location in a Zone II drinking-water recharge area, including stormwater management, BESS containment, fire-suppression water management, and emergency response readiness, so that appropriate and enforceable safeguards are fully developed in the record; and
- 3) if the Project proceeds, that any approval includes conditions that maintain protection standards consistent with Section 5.6 and MassDEP guidance.

Consistent with its statement of non-opposition, the BOH's intent is cooperative and record-focused: to support clear, enforceable public-health protections appropriate for a Zone II setting. The BOH also recognizes that it has ongoing statutory responsibilities under G.L. c. 111, §§ 122 and 143, including the authority, where statutory thresholds are met, to investigate conditions affecting public health and to take actions consistent with applicable standards and procedures. Nothing in this filing should be construed as a waiver, limitation, or prejudgment of the BOH's authority or responsibilities.

Respectfully submitted,

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