



# Town of Middletown

350 EAST MAIN ROAD • MIDDLETOWN, RHODE ISLAND 02842

## BUILDING INSPECTIONS AND ZONING

OFFICE: (401) 847-5769 • FAX: (401) 845-0414

January 23, 2017

Todd A. Bianco, Coordinator  
Rhode Island Energy Facility Siting Board  
89 Jefferson Blvd.  
Warwick, RI 02888

Re: *EFSB Order SB-2016-01 -The Narragansett Electric Company, d/b/a National Grid Aquidneck Island Reliability Project*

Dear Mr. Bianco:

Pursuant to the above-referenced order and in my capacity as the Building Inspector for the Town of Middletown, I hereby submit this Advisory Opinion to the Rhode Island Energy Facility Siting Board (“EFSB”) regarding the Aquidneck Island Reliability Project proposed by The Narragansett Electric Company, d/b/a National Grid (“National Grid”). Specifically, I have been asked to provide advisory opinions on the following: (1) whether the work proposed in Middletown as part of the facility’s construction and operation is subject to the Town’s Erosion and Sediment Control Ordinance, and if so, whether National Grid’s Erosion and Sediment Control Plan would conform to the Ordinance; and, (2) whether the Facility would meet the requirements of other municipal ordinances.

In preparing this advisory opinion, the documents that I have reviewed include the following:

- Petition of Narragansett Electric Company, d/b/a National Grid (“National Grid”) for a Special Use Permit from Section 602 of the Middletown Zoning Ordinance to allow construction of and electric power substation and high voltage electric transmission line towers on real estate located at Jepson Lane and identified as lots 49, 53 & 53 on Middletown Tax Assessor’s Plat 111 (the “substation”).
- Petition of National Grid for a Dimensional Variances from Sections 603, 701, 705(F)(1) & 705(G) of the Middletown Zoning Ordinance to allow construction on the property of a 20’ screening wall and an 8’ fence that exceed the maximum 6’ height allowance and to allow barbed wire fencing in a residential zone, on real estate located at Jepson Lane and identified as lots 49, 53 & 53 on Middletown Tax Assessor’s Plat 111.
- Site Plans for Aquidneck Island Reliability Project, Jepson Lane, Middletown & Portsmouth, RI by VHB dated November 7, 2016, sheets 1 - 14.
- Existing Conditions Survey by Garafalo, dated September 2014, Revised May 1, 2015.
- Engineering Plans by NGRID: ESC-001, ESC-002, ESC-003, SP-001 and LP-001 (Engineering Plans certified 3/01/2016).

- Stormwater Management computations prepared for the Jepson Substation, Jepson Lane, Middletown & Portsmouth, RI, by VHB, dated November 2016.
- Soil Erosion and Sediment Control Plan for Jepson Substation, by VHB, dated October 2016.
- Long Term Stormwater Operation and Maintenance Plan and Pollution Prevention and Source Control, Jepson Substation, by VHB, dated October 2016, revised November 2016.
- Sound Study Summary Memorandum by VHB, dated December 14, 2016.
- Site Plan Review Memoranda from the Town's consulting engineer, Steven Cabral, PE, of Crossman Engineering: Memo 1 of 2, dated July 19, 2016, revised through November 25, 2016; Memo 2 of 2, dated November 25, 2016.
- Advisory Opinion of the Middletown Planning Board to the Middletown Zoning Board of Review, dated December 20, 2016.

1. The Soil Erosion and Sediment Control Ordinance. Chapter 151 of the Middletown Code of Ordinances is entitled "Construction Site Runoff Control" (the "ordinance"). The stated purpose of ordinance is to "prevent soil erosion and sedimentation from occurring as a result of non-agricultural development within the town by requiring proper provisions for stormwater disposal and soil erosion during construction, in order to promote the safety, public health and general welfare of the town." The ordinance is applicable to "any situation involving any disturbance to the terrain (and its contours) and topsoil or vegetative ground cover upon any property within the town after determination of applicability by the Building Official, or his/her designee." Based on the provisions of Section 151.03 "Determination of Applicability" of the ordinance and the extent of the proposed land-disturbing activity, it is my opinion that construction of the proposed facility is subject to the provisions of the ordinance.

Section 151.37, Performance Principles, identifies specific requirements that must be accomplished by the proposed project. Those requirements include but are not limited to the following:

- All post-development stormwater management measures shall comply with Chapter 153 of the code of ordinances.
- All drainage provisions shall be of such a design and capacity so as to adequately handle stormwater runoff, including runoff from tributary upstream areas which may be outside the locus of the project.
- Drainage facilities shall be installed as early as feasible during construction and, if possible prior to site clearance.

It is my opinion that National Grid's Erosion and Sediment Control Plan does not conform to the requirements of the Ordinance, as the Plans and proposed sediment controls do not conform to the Performance Principles outlined in Section 151.37. The Performance Principles of concern are as follows:

- Section 151.37.G. requires that the drainage provisions during construction be of such a design and capacity so as to adequately handle stormwater runoff. The documents presented for the 3 acre substation yard are inadequate to adequately protect abutting properties and downstream wetlands from sedimentation and erosion during rainfall events during the construction phase. For example, no designs have been provided to demonstrate that adequately sized and spaced sediment traps are being provided and no means to control peak runoff during construction are being provided.
- Section 151.37 (H) requires that drainage facilities be installed as early as feasible during construction and if feasible, prior to site clearance. For the substation construction sequencing, there are no drainage facilities being installed early in the construction process. This sequencing increases the potential for soil erosion and sedimentation impacts during construction.
- As noted below, post-development stormwater management measures do not comply with Chapter 153 of the Town's Code of Ordinances.
- All drainage provisions do not adequately handle stormwater runoff and will create the potential for increased discharge and downstream impacts during and after construction.

## 2. Other Municipal Ordinances.

a. *The Zoning Code:* I reviewed for the plans for the proposed facility for compliance with the Middletown Zoning Code. In my opinion, construction of the facility would require the following relief from the Middletown Zoning Board of Review (the "Board"):

1. A Special Use Permit from Section 602 of the Middletown Zoning Ordinance to allow construction of an electric power substation and high voltage electric transmission line towers on real estate located at Jepson Lane and identified as lots 49, 53 & 53 on Middletown Tax Assessor's Plat 111 (the "substation").

2. Dimensional Variances from Sections 603, 701, 705(F)(1) & 705(G) of the Middletown Zoning Ordinance to allow construction adjacent to the substation of a 20' screening wall and an 8' fence that exceeds the maximum 6' height allowance and to allow barbed wire fencing in a residential zone.<sup>1</sup>

b. *The Stormwater Management Ordinance.* I also reviewed the plans for the proposed facility for compliance with Middletown's Stormwater Management Ordinance, which is set forth in Chapter 153 of the Town's Code of Ordinances. The purpose of said chapter is to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased stormwater runoff. It is applicable to all development occurring within the Town of Middletown and requires stormwater management plans that incorporate best management practices for water quality

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<sup>1</sup> An Advisory Opinion from the Board dated January 23, 2017 regarding said Special Use Permit and Dimensional Variances has been submitted to the EFSB.

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control as described in the *Rhode Island Stormwater Design and Installation Standards Manual*, as amended.

Based on the reports prepared by Steven Cabral, PE, of Crossman Engineering, the Town's consulting engineer, the plans for the proposed facility do not comply with the requirements of the Stormwater Management Ordinance and the state's stormwater design manual. Therefore, it is my opinion that the plans do not meet the requirements of Chapter 153 of the Town Code.<sup>2</sup>

c. *The Comprehensive Plan.* The Middletown Comprehensive Plan was adopted as an ordinance of the Town on March 2, 2015, and amended on November 16, 2015. Following a public hearing held on December 14, 2016, the Middletown Planning Board found that the plans for the construction of the proposed facility were not consistent with the Comprehensive Plan. The Middletown Zoning Board of Review also found that said plans were not consistent with the Comprehensive Plan following a public hearing held on January 10, 2017. In particular, the Zoning Board found that the plans were not consistent with the following goals if the Plan:

GOAL N-I: Ensure that new development takes place in an ecologically sound Manner.

GOAL N-IV: Promote the preservation and restoration of ecological systems in Middletown.

GOAL N-V: Protect the natural and rural character of Middletown.

GOAL N-VI: Preserve existing forested areas and increase the town's tree resources.

GOAL L-II: Appropriately site commercial and industrial uses.

GOAL L-IV: Protect natural resources including environmentally sensitive lands, flora and fauna, and water quality.

GOAL L-VII: Protect and enhance the natural scenic beauty and heritage of Middletown as a coastal New England community.

Based on the foregoing, it is my opinion that the plans for the construction of the proposed facility does not meet the requirements of the Town's Comprehensive plan.

Sincerely,



Jack Kane  
Middletown Building Inspector

cc. Town Planner  
Town Solicitor

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<sup>2</sup> The Middletown Planning Board found that the plans for the proposed facility do not comply with the Town's stormwater management ordinance (Chap. 153) in its January 3, 2017 Advisory Opinion to the EFSB.