

I. Energy Facility Siting Act

The Energy Facility Siting Act (the “Siting Act”)¹ consolidates in the EFSB, with two exceptions, all state and local governmental regulatory authority for the siting, construction, operation and alteration of energy facilities “designed or capable of operating at a gross capacity of 40 megawatts or more” of electricity.² Subject to the exceptions, EFSB’s decision in favor of an application to locate a major energy facility in Rhode Island constitutes the granting of all permits, licenses, variances or assents, under the EFSB’s authority, which would be required for a proposed facility.³

Importantly, DEM remains the permitting authority where it exercises a permitting or licensing function under the delegated authority of federal law.⁴ In addition, permits required pursuant to the State’s Freshwater Wetlands Act (the “Wetlands Act”) remain under the jurisdiction of DEM. Consequently, the EFSB’s decision cannot act as a grant of any permit or license which is issued by DEM pursuant to its federally delegated authority or the Wetlands Act. For further discussion of the permitting requirements applicable to this particular proposed project, see Part II (ii) herein.

II. Advisory Opinions

(i) The impact on vegetative community, fish and wildlife that will be caused by disruption of the habitat

First, to address impacts on freshwater fish species, topographical maps show that the project proposed in this Application will cross two warmwater streams, Trout Brook and Tarkiln Brook. DEM has fish survey data for Tarkiln Brook which show Tarkiln Brook contains

¹ R.I. GEN. LAWS § 42-98-1 *et seq.*

² R.I. GEN. LAWS § 42-98-3(d).

³ *Id* at § 1(a).

⁴ *Id* at 7(a)(3)

bluegill, brown bullhead, chain pickerel, common shiner, fallfish, pumpkinseed, white sucker, yellow bullhead, and yellow perch.⁵ Tarkiln Brook does contain a Species of Greatest Conservation Need, the common shiner (*Luxilus cornutus*), a species listed in RI's Wildlife Action Plan. Trout Brook, is a smaller stream consisting of a chain of small ponds flowing through wetlands, for which DEM does not have fish survey data.

The effects of construction on fish populations and instream habitat should be reduced if the Applicant carefully utilizes the temporary swamp mat bridges that it proposes to cross streams along the construction corridor. However, if freshwater mussels are present, the placement of swamp mat bridges could negatively impact mussel populations. Three species of freshwater mussels have been identified in the Blackstone River watershed by Raithel and Hartenstine (2006), *Elliptio complanata*, *Pyganodon cataracta*, and *Alasmidonta undulata* and, consequently, have the potential for being found in Trout and Tarkiln Brooks. The bottoms of these streams should be thoroughly inspected for mussels and, if found, all mussels should be removed and placed in areas that will not be affected by the placement of the mat bridges.

Next, it is important to consider the interrelated impacts on upland habitats, birds, herptiles, and other species. In the eastern United States, birds dependent on early successional/shrubland habitats are experiencing persistent population declines, mirroring landscape-level losses of these habitats (Hanberry & Thompson, 2019). At least 41 bird species are associated with shrublands as breeding habitat in New England (Schlossberg & King, 2007), and of these, 17 are identified as Species of Greatest Conservation Need (SGCN) in Rhode Island (RIDEM DFW, 2015). Early successional/shrubland habitats are a relatively rare natural

⁵ Tarkiln Pond, located just upstream, was found to contain bluegill, black crappie, brown bullhead, chain pickerel, golden shiner, largemouth bass, and pumpkinseed.

habitat community in Rhode Island, comprising an estimated 3.3% of the state's land cover (Buffum et al., 2011).

Vegetation removal within the existing right-of-way (ROW), as proposed in the Siting Report, will result in a short-term loss of habitat for early successional breeding bird species. On the other hand, powerline ROWs can be critical contributors of early successional habitat so long as there is consistent management of low-growing vegetation compatible with utility line operation and maintenance in these areas. Roughly 82% of ROW area in Rhode Island is classified as shrubland habitat, representing over half of all non-coastal shrubland habitat in the state and roughly 31.5% of total shrubland habitat in Rhode Island (Buffum et al., 2011). Consequently, powerline ROWs serve as important habitats for shrubland breeding birds (Confer & Pascoe, 2003; Ross et al., 2022) and are core breeding locations for some SGCN species, such as Prairie Warblers (*Setophaga discolor*) (Clarkson et al., 2023).

More specifically, mowing and cutting of existing habitat within the ROW will result in temporary impacts to shrubland-dependent species of conservation concern. However, early successional vegetation characteristic of these ROWs is expected to regenerate quickly. Furthermore, the Siting Report indicates that the Applicant will mulch and seed impacted areas where needed to reestablish appropriate native plant communities, and subsequent vegetation maintenance post-construction will be identical to current management practices. Therefore, impacts associated with temporary shrubland habitat loss are expected to be localized and short-term. That said, it remains important to take any feasible measures to avoid acute impacts to shrubland breeding birds. DEM recommends that ROW vegetation clearing should occur outside the breeding season (avoiding April–August) to prevent direct nest destruction and mortality of dependent young.

There are also two known occurrences of the spotted turtle (*Clemmys guttata*; a Species of Greatest Conservation need with a state Protected status) within the project area, and the species is likely found in additional locations associated with wetlands in the area. However, spotted turtles do move out of wetlands to adjacent uplands, both to lay eggs and aestivate during the summer. At these times, the spotted turtles would be vulnerable to crushing by heavy machinery. Turtles could also become trapped due to the deployment of erosion control measures (silt fencing, construction mats).

Several approaches could be used to mitigate potential impacts to the spotted turtle in wetlands and uplands adjacent to the wetlands. If feasible, avoiding work in wetlands and upland areas adjacent to wetlands during late spring and summer will reduce the potential turtle mortality risks noted above. Risks would be most minimized if work in the wetlands and uplands adjacent to wetlands occurred during the turtle inactive season, which occurs November through March. During the remaining months of the year when turtles are active, it is important for the Applicant to implement measures to prevent mortality by conducting visual checks for turtles in the pathway of machines or those entangled in silt fencing/mats followed by relocation to nearby areas out of the active work zone.

Additionally, several state-listed species of plants have been documented in the project area and could be impacted by project activities. Surveys by BSC group in 2024 confirmed some of these localities. It is notable that the BSC report contains no data on the occurrence of Zigzag Bladderwort (*Utricularia subulata*) which is an aquatic plant species of concern previously documented in the project area. The wetland complex containing this species (approx. 41.9688°, -71.5579°) also harbors spotted turtles and another species of concern (Wood horsetail

[*Equisetum sylvaticum*]). This is one of the more ecologically sensitive areas in the project footprint and coincides with the proposed ROW to the north.

Any measures taken to reduce habitat disturbance in areas containing state-listed plant species will be beneficial. The Applicant proposes to use fencing to prevent project activities from impacting these surveyed locations, which is an important measure that requires adherence to mitigate risks to these species. DEM recommends cordoning off identified rare plant populations immediately prior to the commencement of work, as well as incorporating a sufficient buffer within fenced areas where feasible to further enhance the protection of rare plant populations. Furthermore, identified protected resource locations should be avoided and adequately protected to the greatest degree practicable using the proposed avoidance and minimization measures described in the Siting Report; in particular, these measures should be employed for those protected resource locations depicted on the site plans within existing accesses to be improved or immediately proximate to active work areas.

In addition to within-ROW clearing, the Siting Report proposes the removal of 1.21 acres of trees along 0.6 miles of ROW to widen the ROW from 50 feet to 75 feet wide to “provide adequate line clearances, and avoid outage risks from falling tree branches.” Limited, localized impacts to forest-breeding birds from permanent habitat loss associated with this project are expected. However, the Applicant proposes that cleared areas will be absorbed into the existing ROW and managed to encourage the growth of early successional shrubs and vegetation. Therefore, direct habitat loss incurred by forest-breeding species may be offset by direct gains in habitat for early successional-dependent species, many of which are of conservation concern (Hanberry & Thompson, 2019; RIDEM DFW, 2015). Still, tree removal should occur outside of the breeding season (avoiding April–August) to prevent direct nest loss and mortality of

dependent young. Furthermore, any woodland clearing occurring January–March should consider the presence of Bald Eagle (*Haliaeetus leucocephalus*) and Great Horned Owl (*Bubo virginianus*) nests, which are active at that time. Ground surveys should be conducted prior to tree clearing occurring during this period. If active nests are identified in woodlands scheduled for clearing, further coordination with DEM and USFWS is advised to ensure compliance with state and federal laws.

The Siting Report indicates construction-related traffic, consisting of heavy machinery and vehicles, will occur over the full duration of the project. Vehicles will use the existing access roads along the ROW to the greatest extent practicable, and additional noise is expected from construction-related activities. The Siting Report states that construction-related noise impacts will be negligible and limited by adherence to daytime hours specified in local ordinances; however, this framing appears to evaluate noise pollution primarily in the context of human receptors and does not adequately address potential wildlife impacts.

Anthropogenic noise is correlated with decreased nest success and physiological condition across many bird taxa (Madden et al., 2026; Senzaki et al., 2020). Furthermore, construction noise introduced into previously quiet areas may have more pronounced effects on individual birds not routinely exposed to chronic noise (e.g., near highways) (Sieving et al., 2024). The project area is described in the Siting Report as being “predominately within quiet forest areas.” Therefore, short-term impacts to avian breeding success within and surrounding the project area are reasonably expected from any active construction occurring during the breeding season (April – August). The Siting Report indicates a one-year construction duration, making overlap with the avian breeding season likely if work proceeds continuously. Though vehicle

noise will be mitigated with mufflers, intermittent heavy machinery operations and construction activity are likely to affect breeding birds.

It is recognized that construction noise is largely unavoidable and may constitute an acceptable short-term consequence of the project. Given the practical constraints on curtailing noise for an extended construction phase, the Division of Fish and Wildlife’s principal mitigation recommendation is procedural: project managers should prioritize completing tree and vegetation clearing during the non-breeding season (avoiding April – August) to reduce acute impacts to breeding birds, recognizing that broad curtailment of construction noise during breeding months may be impractical.

Finally, the Applicant specified that a “No Effect” determination was received for federally listed endangered species. The Applicant should obtain an updated Species List and Determination Letter through the U.S. Fish and Wildlife Service’s Information for Planning and Consultation program (IPaC).

Respondents:	Testimony Topic:
Alan Libby Supervising Fisheries Biologist Division of Fish and Wildlife	Freshwater Fisheries
Samuel Miller Non-game Bird Biologist Division of Fish & Wildlife	Birds
Christopher Thawley Herpetologist and Species of Greatest Conservation Need Coordinator Division of Fish & Wildlife	Herptiles, habitat, plants
Leland Mello, Supervising Biologist– Habitat & Development Division of Fish & Wildlife	Habitat

(ii) Whether the Facility will present an unacceptable harm to the environment

DEM is charged with determining whether projects and activities present an acceptable harm to the environment through the various permits, licenses, and reviews authorized under the Rhode Island General Laws and the associated rules and regulations promulgated thereunder. Projects and activities determined to be compliant with the thresholds and standards set for acceptability in those various rules and regulations, in the context of harm to the environment, are approved, often through the issuance of permits. Conversely, projects and activities that have an unacceptable level of harm to the environment either result in denial of permits and approvals for the proposed project or activity, or enforcement actions to stop and mitigate the harm for conditions not considered under an application before DEM.

The judgement as to whether the project, as a whole, will present an unacceptable harm to the environment will depend on the analysis and decision on each and every permit application required under these laws and regulations. Failure to receive any of these required permits would represent a determination by DEM that the proposed project presents an unacceptable harm to the environment.

The project is subject to the following DEM permitting actions separate and apart from the EFSB process:

- DEM issued Freshwater Wetlands Permit # 24-0323 for this project on July 16, 2025, pursuant to the Freshwater Wetlands Act, R.I. Gen. Laws § 2-1-21 and the *Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act*.
- DEM issued CGP Permit # RIR102763 for this project on July 16, 2025, under the Rhode Island Pollution Discharge Elimination System (RIPDES) Construction Activity General Permit, after stormwater review of soil erosion and sediment controls was conducted by DEM under authority delegated to DEM by the federal Environmental Protection Agency pursuant to the Clean Water Act.⁶

⁶ To the extent that the proposed project may require additional permits, licenses, approvals, etc. from DEM pursuant to its delegated authority under federal law which are not listed above, DEM expressly reserves its jurisdiction.

Because the relevant permits have been issued, it is DEM's opinion that the project does not present an unacceptable harm to the environment, provided the Applicant takes feasible measures to prevent harm to habitat and wildlife described in Section II(i) herein.

Respondent: Jason McNamee, PhD
Deputy Director, Bureau of Natural Resources

A handwritten signature in black ink that reads "Jason E. McNamee". The signature is written in a cursive style with a large initial "J" and "M".

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2026, I sent a true copy of the following to the Energy Facilities Siting Board via first class mail, postage pre-paid, and to the parties on the attached service list via electronic mail.

/s/ Jenna Giguere, Esq.

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SB-2025-01 The Narragansett Electric Company’s Application for the Woonsocket Substation – Nasonville Substation Rebuild and Alteration Project for North Smithfield and Burrillville, Rhode Island – *Updated 2/6/26*

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