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CAPE COD COMMISSION

DEVELOPMENT OF REGIONAL IMPACT DECISION

Date:	August __, 2024
Project:	Brick Kiln Monopole (File No. 24007)
Project Applicant:	Vertex Towers, LLC c/o Francis Parisi, Esq., Parisi Law Associates, P.C. 225 Dyer Street, Providence, RI 02903
Property Owner:	Falmouth Self Storage Nominee Trust G. Howard Hayes, Trustee
Property/ Site:	737 Gifford Street, Falmouth (Assessors ID 27-01-007)
Title Reference:	Book 4670 Page 97

SUMMARY

The Cape Cod Commission ("Commission") hereby grants Development of Regional Impact ("DRI") approval, with Conditions, for "Brick Kiln Monopole," to construct a 130-foot wireless communications tower with associated improvements at 737 Gifford Street in Falmouth, pursuant to a vote of the Commission at its meeting on August 22, 2024.

FINDINGS

The Cape Cod Commission hereby finds and determines as follows:

F1. The Applicant proposes development on a leased portion of a 11.6-acre +/- parcel, which currently contains an outdoor storage facility with associated improvements ("Property" or "Site"), by constructing a 130-foot multi-carrier monopole-style wireless communications tower with associated equipment ("Project"). The Applicant has legal standing to pursue the Project through a letter of authorization from the Property owner and a memorandum of lease (Falmouth Self Storage Nominee Trust).

F2. The East side of the Property abuts a fully-cleared utility easement. The west side of the Property abuts Gifford Street. The Property is mapped by Mass DEP for Outstanding Resource Waters (ORW) as classified under the Massachusetts Surface Water Protection and a MassDEP-designated

Surface Water Supply Zone B Area, but it is not mapped for other sensitive resources identified in the Regional Policy Plan ("RPP") such as priority habitat, natural landscapes, or undeveloped areas subject to flooding.

F3. Given the surrounding uses and development patterns and the type of development being proposed, the Site is best represented by the "Suburban Development Area" Placetype. Suburban Development Areas are characterized by moderately dense residential neighborhoods as well as automobile-oriented commercial development.

F4. The Applicant proposes to develop and operate on the Project Site an approximately 130-foot-tall wireless communications tower with other supporting and ancillary improvements, including:

- clearing +/- 5,500 square feet of vegetated area;
- constructing a 55'x70' compound surrounded by a 6'-tall fence;
- installing the monopole tower, carrier antennas, concrete equipment pads, and all associated ground equipment (including equipment cabinets, propane generators, and propane tanks) within the fenced area; and
- installing an approximately 12'x35' gravel driveway connecting the fenced area to the existing site drive.

F5. Suburban Development Area strategies include improving the design and function of commercial areas through landscaping and stormwater treatment; and encouraging redevelopment of existing commercial suburban development with denser clusters of buildings surrounded by less developed areas. The Applicant proposes to develop a currently undeveloped portion of the Property and to provide landscaping and stormwater management.

F6. Ongoing operations and activity at the Property would be minimal. Due to the minimal ongoing operations, the Project does not involve regionally significant or sustained effects on the transportation network.

F7. The Federal Telecommunications Act of 1996 at 47 USC §332(c)(7)(B)(i) provides that any regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

F8. The Federal Telecommunications Act of 1996 at 47 USC § 332(c) (7)(B)(iii) provides that any decision by a State or local government or instrumentality thereof to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

BACKGROUND

F9. The Commission retained, at the Applicant's expense, a consultant with expertise in reviewing technical aspects of the proposal. The consultant, Michael Lawton of Isotrope Wireless, LLC ("Isotrope"), provided an initial report on the application, followed by supplemental comments on additional materials submitted during review. The comments were reviewed as part of the proceedings.

PROCEDURAL HISTORY

F10. The Project requires mandatory DRI review pursuant to Section 3 of the Commission's *Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact ("Enabling Regulations")* (revised November 2021) as the "[c]onstruction of any Wireless Communication Tower exceeding 35 feet in overall height…".

F11. The Commission received a mandatory DRI referral for the Project from the Town of Falmouth ("Town") on April 1, 2024.

F12. The hearing period was opened procedurally on May 31, 2024

F13. The Applicant submitted a DRI application for the Project to the Commission on May 15, 2024. Additional materials were submitted on May 23, 2024 and July 24, 2024.

F14. The first substantive hearing was held by a DRI Subcommittee ("Subcommittee") on the Project on July 2, 2024. The hearing was continued to July 30, 2024, with said hearing begin cancelled due to the late of submittal of additional materials by the Applicant. A final public hearing was conducted by the Cape Cod Commission on August 22, 2024.

F15. The Subcommittee held a public meeting to further discuss the Project on August 7, 2024. An additional public meeting was held on August 13, 2024. At this meeting, the Subcommittee voted X in favor, X opposed to recommend to the full Commission that it grant DRI approval for the Project, with conditions, as set out in the draft written DRI decision reviewed by the Subcommittee.

F16. The full Cape Cod Commission held a hearing on the Project at its meeting on August 22, 2024. It considered the recommendation of the Subcommittee, including the draft written DRI decision. At the hearing on August 22, 2024, the Commission voted to adopt the draft written DRI decision, and approve the Project, with the Conditions set out in said decision.

DRI REVIEW STANDARDS

F17. Section 6(c)(viii) of the *Enabling Regulations* contains the standards to be met for DRI approval, which include, as applicable, consistency with the RPP, District of Critical Planning Concern ("DCPC") implementing regulations, municipal development bylaws, and Commission-certified Local Comprehensive Plans ("LCP"). The Commission must also find that the probable benefit from the Project is greater than the probable detriment.

MUNICIPAL DEVELOPMENT BYLAWS, LCP, AND DCPC CONSISTENCY

F18. There are no DCPC implementing regulations applicable to the Project.

F19. The Town of Falmouth's current Local Comprehensive Plan (LCP) was adopted in 2016. It includes sustaining economic vitality among its goals, especially emphasizing the infrastructure necessary to attract and support the business sector. It specifically identifies poor cell and internet connectivity among the areas of concern.

F20. The Project is located in the Agricultural B (AGB) Zoning District. Section 240-6.1B of the Town's Zoning Ordinance provides that television or radio antennas exceeding 50 feet above ground are a Special Permit use in the AGB district, to be granted by the Falmouth Zoning Board of Appeals.

RPP CONSISTENCY REVIEW

F21. The Commission reviewed the Project relative to the 2018 RPP and companion Technical Bulletins, which were those in effect at the time the Commission commenced substantive hearing on the Project. Under Section 9 of the RPP, the Commission assesses the Project's consistency with the RPP by determining whether the Project is consistent with the goals and objectives in the RPP that are deemed applicable, material and regionally significant with respect to the Project. The companion Technical Bulletins assist in elaborating and interpreting the RPP's goals and objectives.

F22. The RPP goals and objectives specifically referenced in this section of the Decision and discussed in detail below are those determined to be applicable, material, and regionally significant with respect to the Project and are thus subject to RPP consistency review.

F23. Subject to the Conditions set out in this Decision, the Project is consistent with the RPP goals and objectives and with the corresponding provisions from the Technical Bulletins, as discussed in detail below, and as such the Project is consistent with the RPP.

Water Resources

F24. The Water Resources Goal of the RPP is to maintain a sustainable supply of high-quality untreated drinking water and protect, preserve, or restore the ecological integrity of Cape Cod's fresh and marine surface water resources. Water Resources Objectives WR1 and WR4 are applicable and material to the Project:

- Protect and preserve groundwater quality (WR1); and
- Manage and treat stormwater to protect and preserve water quality (WR4).

F25. The Project Site is mapped by Mass DEP for Outstanding Resource Waters (ORW) as classified under the Massachusetts Surface Water Protection and a MassDEP-designated Surface Water Supply Zone B Area. These designations are associated with Long Pond, a public water supply reservoir. Disturbances greater than 1,000 square feet in these mapped areas require additional stormwater management design, which the applicant has acknowledged in the Stormwater Report. Placement of fill would require a 401 Water Quality Certification and MEPA review, but the existing topography of the site means there will be minimal grading and no fill is proposed.

F26. The Applicant has proposed the installation of backup emergency generators. All proposed generators will be fueled with propane, posing little to no risk of drinking water contamination. Any transformers on site will be required to use biodegradable and non-toxic fluids.

F27. Commission staff has reviewed the project plans and stormwater report, and the system is appropriately sized and designed consistent with Objective WR4.

F28. Stormwater drainage patterns will resemble the existing drainage patterns. The flat grade of the Project Site and the proposed gravel drive and compound area have been designed to encourage infiltration. The proposed gravel road and storage pad will be sloped to direct stormwater not infiltrated to sheet flow towards existing vegetated areas where it will infiltrate, thus not resulting in stormwater runoff impacts to any applicable resource areas.

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F29. Nitrogen loading from the Project will be generated only by stormwater runoff from impervious areas. The only impervious area proposed is the compound area, which would contain the ground equipment and monopole.

F30. Because no wastewater generation or fertilization is proposed or anticipated, the Project is expected to be well below the 5 ppm sitewide nitrogen loading concentration limit.

F31. The Applicant included an erosion control plan addressing the construction phase and after the tower and appurtenances have been installed. The exposed soil will be prone to erosion by wind and water during construction, and the proposed erosion and sedimentation control (ESC) plan will help establish and maintain soils during construction and before the seed mixes are established. The plan includes weekly monitoring of the erosion and sediment controls and additional checks within 12 hours of rain events.

Open Space

F32. The Open Space Goal of the RPP is to conserve, preserve, or enhance a network of open space that contributes to the region's natural and community resources and systems. Open Space Objective OS3, which seeks to protect or provide open space appropriate to context, is applicable and material to the Project.

F33. The Area of Development Impact for purposes of the required open space mitigation, excluding area used for naturalized elements of the stormwater management systems, is 5,500 sf.

F34. Projects in Suburban Development Areas are required to provide high-quality open space in a ratio of 1:1 on-site, offsite, or by cash contribution.

F35. The Applicant previously committed to a cash contribution to provide open space in the Town of Falmouth to meet Objective OS3. A payment in lieu of the provision of restricted open space land is appropriate given the relatively small Area of Development Impact for the Project and the Project's location adjacent to developed areas.

F36. Based on the current per-acre open space mitigation figure of $92,256 for the Town of Falmouth, the .13-acre Development Impact Area results in a required payment of $11,993.

Community Design

F37. The Community Design goal of the RPP is to protect and enhance the unique character of the region's built and natural environment based on the local context. Community Design Objectives CD2 and CD3 are applicable and material to the Project:

- Minimize the amount of newly disturbed land and impervious surfaces (CD2); and
- Avoid adverse visual impacts from infrastructure to scenic resources (CD3).

F38. The Applicant has sited the Project to limit its impact on community character. The Project encompasses only 5,500 square feet of new clearing and little new impervious area because it uses an existing entrance drive, consistent with the RPP's Community Design Objective CD2.

F39. Mature vegetation and the curved entrance drive will help to screen the lower portion of the proposed tower and the fenced enclosure from Gifford Street, but the proposed tower's height and proximity to an existing utility corridor will make the tower visible from other parts of Gifford

Street and from Brick Kiln Road, especially where the utility corridor crosses the Brick Kiln Road and in nearby parking areas at Falmouth High School.

F40. The Applicant provided photosimulations of the proposed monopole from vantage points identified by the Commission. The proposed height is significantly above the height of trees in the vicinity, which are 35 to 45 feet tall.

F41. There are no identified scenic resources in the vicinity that would be impacted by the Project.

F42. The additional materials submitted by the Applicant on July 24, 2024 were reviewed by the Commission's peer review consultant, Isotrope Wireless, who determined that said materials evidenced that Verizon's coverage gap could be filled with a 110-foot-tall tower.

F43. The visual impacts of the proposed multi-carrier monopole at a height of 130 feet, as compared to 110 feet, are de minimus while providing for further improvement of wireless services for Verizon customers and additional locations for potential future co-locators.

F44. The Project will be set back substantially from the road and is surrounded by a vegetated buffer that should effectively screen the Project. The Project meets the RPP Community Design Goal and objectives CD2 and CD3.

Capital Facilities & Infrastructure

F45. The Capital Facilities & Infrastructure Goal of the RPP is to guide the development of capital facilities and infrastructure necessary to meet the region's needs while protecting regional resources. Capital Facilities & Infrastructure Objective CAP2, which seeks to coordinate the siting of capital facilities and infrastructure to enhance the efficient provision of services and facilities that respond to the needs of the region, is applicable and material to the Project

F46. Based on the materials provided by the Applicant, the Project is infrastructure that would improve cellular service in the area of the proposed site, in response to the needs of the region.

F47. Wireless network connectivity is influenced by many factors, including proximity to a cell site, physical obstacles and signal interference. Wireless service can be affected by severe weather, topographical features, or large structures or other objects between a phone and the nearest cell site.

F48. The Applicant suggests that Verizon has identified a significant gap in wireless coverage in this area of Falmouth. The Applicant identified the proposed site as the only feasible location to close Verizon's significant gap.

F49. The Project would improve cellular coverage in Falmouth for Verizon and includes space for additional carriers.

F50. The Commission retained a wireless consultant to review the claimed coverage gaps as required under Technical Bulletin 97-001. The wireless consultant confirmed that there are coverage gaps in this area of Falmouth.

Cultural Heritage

F51. The Cultural Heritage Goal of the RPP is to protect and preserve the significant cultural, historic, and archaeological values and resources of Cape Cod. The following Cultural Heritage Objectives are applicable and material to the Project:

- To protect and preserve forms, layouts, scale, massing, and key character defining features of historic resources, including traditional development patterns of villages and neighborhoods (CH1); and
- Protect and preserve archaeological resources and assets from alteration or relocation (CH2).

F52. Inventoried historic sites in the Project vicinity are far enough away from the Project that any visual impact of the proposed tower would be limited and would not affect their historic significance.

F53. There is potential for archaeological impacts because the proposed project involves some new clearing. The applicant submitted a Project Notification Form (PNF) dated May 10, 2024, to Massachusetts Historical Commission (MHC) for comment but did not provide proof of receipt by MHC. MHC has 30 days to review and comment on PNFs from the date of submittal. MHC did not respond to the PNF within this time period.

Consistency with Technical Bulletin 97-001: Guidelines for DRI Review of Wireless Communication Towers (Revised September 2010)

F54. The Commission retained a wireless consultant, Michael Lawton of Isotrope Wireless, LLC ("Isotrope") to assist the Commission in the review of technical data, including the coverage analysis provided by the carrier, Verizon.

F55. Isotrope reviewed the data and found that a significant gap in coverage at the 2100MHz band does exist for Verizon, potentially having an impact most acutely on the provision of wireless data services. No indication of coverage gaps or interest from additional carriers was provided by the Applicant during the review.

F56. In consultation with Commission staff, Isotrope reviewed the proposed alternative site analysis which did not identify any other sites that would be available or preferential to the proposed site.

F57. The Project does not require any waivers under the Wireless Technical Bulletin.

Regional Benefits/Detriments

F58. Probable benefits of the Project identified include:

- The Project will address identified wireless coverage and capacity problems in the area, providing needed service to a variety of users including area residents, the traveling public, and visitors who rely on such services for emergency communications to operate their businesses and to communicate with friends and family either at home or in their vehicles. Wireless communications are used by many homeowners who have eliminated land lines and use of multiple wireless platforms creates high data demand that will be served by the Project.
- The Project will improve wireless services for the nearby Falmouth High School.
- The Project provides opportunities for other national wireless carriers to site-share on the proposed wireless communications tower, potentially eliminating or limiting the future need for additional wireless towers in the area.

F59. Probable detriment of the Project identified include:

- The Project may have visual impacts along adjacent Gifford Street and Brick Kiln Road, with more acute impacts from Brick Kiln Road looking into the existing utility easement.

F60. The Commission finds that the Probable Benefit of the Project is greater than the Probable Detriment.

CONCLUSION

F61. Based on the Findings above and subject to the Conditions set out herein, the Commission further determines, finds, and concludes that the Project is consistent with the 2018 Cape Cod Regional Policy Plan, applicable provisions from the Falmouth Local Comprehensive Plan, and applicable municipal development bylaws; the probable benefit of the Project is greater than the probable detriment; there is not substantial evidence in the record to warrant a denial under the standards of the Federal Telecommunications Act of 1996; and the Commission hereby grants DRI approval for the Brick Kiln Monopole Project described herein.

CONDITIONS

C1. This Decision shall be final when the appeal period set out in Section 17 of the Cape Cod Commission Act has elapsed without appeal (or if such an appeal has been filed, when the appeal has been finally settled, dismissed, adjudicated, or otherwise disposed of in favor of the Applicant). Thereafter, this Decision shall be valid and in effect, and local development permits may be issued pursuant hereto for a period of seven years from the date of this Decision, or for such extended period as may be permitted by the Commission pursuant to the *Enabling Regulation*s.

C2. A copy of the Decision, when final and prior to commencement of the Project, shall be recorded with the Barnstable Registry of Deeds.

C3. This Decision shall be appurtenant to and run with the Property. The Decision shall bind and be enforceable against, and inure to the benefit of, the Applicant, its heirs, successors, and assigns.

C4. The Applicant shall obtain all required federal, state, and local permits, licenses, and approvals for the Project, including without limitation a Special Permit from the Falmouth Zoning Board of Appeals. Consistency with Municipal Development Bylaws shall be confirmed by the Applicant and provided to the Commission staff after obtaining all said required local permits, licenses, and approvals for the Project. Prior to commencement of the Project, the Applicant shall provide the Commission with copies of all required local permits, licenses, and approvals for the Project. Any changes to the Project resulting from the municipal review process may require modification of this Decision.

C5. The Project shall be constructed, operated, and maintained consistent with the following documents ("Approved Project Plans"). Plans, protocols, and other documents received or required to be submitted as Conditions of this Decision shall be treated as incorporated into the Approved Project Plans once received, reviewed, and approved for consistency with this Decision by Commission staff, and the Project shall thereafter be constructed, operated, and maintained consistent with the Approved Project Plans, as so supplemented:

- Plan set entitled "VT-MA-0433C Falmouth Brick Kiln Rd" consisting of 7 sheets, prepared by Scott Adams, P.E., final revision dated 4/16/2024

C6. The Applicant shall provide a copy of this Decision and the Approved Project Plans to the Project's general contractor prior to commencement of the Project. The Applicant shall maintain a copy of this Decision and the Approved Project Plans on the Project Site throughout Project construction.

C7. Prior to and as a Condition to issuance of a building permit/s for the Project from the Town of Falmouth, the Applicant shall request and obtain from the Commission a Preliminary Certificate of Compliance; the issuance of such Preliminary Certificate of Compliance evidences that the Applicant has satisfied all Conditions in this Decision required to have been satisfied prior to the issuance of a local building permit/s.

C8. Prior to and as a Condition to issuance of a Certificate/s of Use and Occupancy or building permit sign-off/s for the Project from the Town of Falmouth Building Department, the Applicant shall request and obtain from the Commission a Final Certificate of Compliance; the issuance of such Final Certificate of Compliance evidences that the Applicant has satisfied all Conditions in this Decision required to have been satisfied prior to the issuance of a local Certificate/s of Use and Occupancy or building permits sign-off/s, and shall confirm that the Project was constructed or implemented in accordance with this Decision.

C9. The Applicant hereby authorizes Commission staff to make site visits as necessary, at reasonable times and upon reasonable notice to the Applicant, to confirm that the Project has been implemented in accordance with this Decision, including upon an Applicant's request for a Certificate of Compliance hereunder.

C10. Prior to and as a condition to issuance of a Final Certificate of Compliance by the Commission, the Applicant shall make a cash contribution in the amount of $11,993 payable to Barnstable County Treasurer to support acquisition and conservation of open space in the Town of Falmouth.

C11. All proposed backup generators shall be propane fueled.

C12. Transformer fluids used onsite shall be biodegradable and non-toxic.

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SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE

Executed this _____ day of _____ 2024

For the Cape Cod Commission by:

_____

Signature

_____

Print Name and Title

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2024

Before me, the undersigned notary public, personally appeared_____,

in his/her capacity as _____ and on behalf of the Cape Cod Commission, whose name is signed on the preceding or attached document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was [ ] photographic identification with signature issued by a federal or state governmental agency, [ ] oath or affirmation of a credible witness, or [X] personal knowledge of the undersigned.

_____

Notary Public

My Commission Expires: _____

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