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CAPE COD COMMISSION

DEVELOPMENT OF REGIONAL IMPACT DECISION

Date:	January 2, 2025
Project:	Long Pond Road Monopole (File No. 24012)
Project Applicant:	TowerNorth Development, LLC c/o Atty. Ed Pare, Brown Rudnick One Financial Center, Boston, MA 02111
Property Owner:	WVB, LLC
Property/ Site:	1185 Long Pond Road, Brewster (Assessors ID Map 85 Lot 110)
Title Reference:	Book 25949 Page 149

SUMMARY

The Cape Cod Commission ("Commission") hereby grants Development of Regional Impact ("DRI") approval, with Conditions, for "Long Pond Monopole," to construct a 125-foot wireless communications tower with associated improvements at 1185 Long Pond Road in Brewster, pursuant to a vote of the Commission at its meeting on January 2, 2025.

FINDINGS

The Cape Cod Commission hereby finds and determines as follows:

F1. The Applicant proposes development on a leased portion of a +/- 2.3-acre property ("Property"; "Project Site"). The Property currently contains a commercial building operating as a liquor store with associated site improvements. The Applicant proposes the construction of a 125-foot multi-user monopole-style wireless communications tower with associated equipment ("Project"). The Applicant has legal standing to pursue the Project through a Memorandum of Lease and a Letter of Authorization, both from the Property Owner.

F2. The Project Site is located at the intersection of Millstone Road and Long Pond Road in an area developed with a mix of commercial and residential properties. The Property also abuts a small-scale commercial office building to the north, a residential property to the east, and an undeveloped parcel to the south.

F3. The Project Site is within a Wellhead Protection Area, but no other Regional Policy Plan ("RPP") mapped sensitive resource areas are present.

F4. Given the surrounding uses, the Project Site is best characterized by the Suburban Development Area Placetype based on the surrounding mix of residential and commercial development. Suburban Development Areas are characterized by moderately dense residential neighborhoods as well as automobile-oriented commercial development that may have a patchwork of fragmented open space.

F5. The Applicant proposes to develop and operate on the Project Site an approximately 125-foot-tall wireless communications tower with other supporting and ancillary improvements, including:

- clearing +/- 13,600 square feet of vegetated area;
- constructing a 50'x60' compound surrounded by a 6'-tall stockade fence with sound-attenuating material;
- 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 10'x250' gravel driveway connecting the fenced area to the existing site parking areas.

F6. 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 stormwater management.

F7. At the November 12, 2024 Subcommittee hearing on the Project, the Subcommittee considered an alternate site plan that was filed with the Application materials that located the monopole tower at the rear of the site, farther from the commercial building on the Site. Based on the characteristics of the Site, with portions of it existing in residential and commercial zoning districts and a portion in the Old Kings Highway Historic District, the Subcommittee considered that local boards with jurisdiction over the Project may have a greater interest in determining the exact location of the monopole tower on the Site as shifting the location on the same Site would be unlikely to present increased or different regional impacts. Following the November 12, 2024 hearing, the Applicant revised the Project design to locate the tower and enclosure westward on the Site, lessening visual impacts to residential areas to the east and reducing clearing.

F8. Ongoing operations and activity at the Property will be minimal. Due to the minimal ongoing operations, the Project does not involve regionally significant or sustained effects on the transportation network.

F9. 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.

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F10. 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

F11. 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

F12. 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…".

F13. The Commission received a mandatory DRI referral for the Project from the Town of Brewster ("Town") on August 12, 2024.

F14. The hearing period was opened procedurally on October 11, 2024

F15. The Applicant submitted a DRI application for the Project to the Commission on August 9, 2024. Additional materials were submitted October, November, and December of 2024.

F16. The first substantive hearing was held by a DRI Subcommittee ("Subcommittee") on the Project on November 12, 2024. The hearing was continued to December 10, 2024, with said hearing being 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 December 16, 2024.

F17. The Subcommittee held a public meeting to further discuss the Project on December 31, 2024. At this meeting, the Subcommittee voted 5 in favor, 0 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.

F18. The full Cape Cod Commission held a hearing on the Project at its meeting on January 2, 2025. It considered the recommendation of the Subcommittee, including the draft written DRI decision. At the hearing on January 2, 2025, 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

F19. 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.

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MUNICIPAL DEVELOPMENT BYLAWS, LCP, AND DCPC CONSISTENCY

F20. The Project is within the Brewster Water Protection DCPC and is subject to local implementing regulations incorporated into the Town's by-laws in 2009. Subject to the implementing regulations, the Applicant will require a water quality certificate and a Special Permit under Section 179-56D.1.C of the zoning bylaw from the Brewster Planning Board.

F21. The Town of Brewster's Local Comprehensive Plan (LCP), adopted in 2023, has not been certified by the Commission.

F22. The Property is split-zoned, with the western portion of the site within the CH (commercial high density) district and the eastern portion of the site within the RM (residential medium) district. The Project will require variances from the Brewster Zoning Board of Appeals, site plan review, a stormwater management permit, a water quality certificate from the Planning Board, review by the Old King's Highway Historic District Committee, and other local approvals as may be required.

RPP CONSISTENCY REVIEW

F23. 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.

F24. 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.

F25. 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

F26. 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).

F27. The Project does not include any wastewater infrastructure and is not expected to generate any wastewater while in operation. The Applicant has provided a nitrogen loading calculation for the entire property, which includes the existing liquor store and parking lot. The nitrogen loading below 5ppm-N, which is consistent with Objective WR1.

F28. The Project includes semi-permeable crushed stone surfaces in the equipment compound and access road as well as impervious concrete pads for the monopole and telecommunications equipment. The Project proposes several control measures to manage stormwater runoff,

including a pea gravel infiltration trench to manage runoff from the equipment compound and a swale and infiltration basin to manage runoff generated from the access road.

F29. The Stormwater Report provided for the revised location of the Project on the Site includes approaches consistent with Commission requirements but contains some inconsistencies, thus a final Stormwater Report will be required prior to construction for review and approval by Commission staff.

Open Space

F30. 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.

F31. The Area of Development Impact for purposes of the required open space mitigation is 13,600 sf.

F32. 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.

F33. 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. Provided that the Applicant makes a cash contribution to provide open space in the Town of Brewster, the Project meets Objective OS3.

F34. Based on the current per-acre open space mitigation figure of $94,905 for the Town of Brewster, the .31-acre Development Impact Area results in a required payment of $29,420.

Community Design

F35. 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).

F36. The Applicant has sited the Project to limit its impact on community character. The Project encompasses only 13,600 sf of new clearing and minimizes new impervious area because it uses an existing entrance drive, consistent with the Objective CD2.

F37. The Applicant has compacted their development with a small equipment pad and a single lane access drive. The Project proposes +/- 13,600 sf of clearing on the Site for the underground utilities, access drive and compound. Thus, the Project is minimizing newly disturbed land and impervious surfaces, consistent with Objective CD2.

F38. The Applicant provided photosimulations of the proposed monopole from vantage points identified by the Commission. Following the relocation of the Project on the Site, the Applicant submitted revised photosimulations that evidenced a de minimus change in visual impacts from Long Pond Road and Millstone Road as compared to the original proposal while significantly reducing visual impacts to properties to the east of the Site.

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F39. The Project will be set back substantially from the road and is surrounded by a vegetated buffer that should effectively screen the Project. The native vegetation in the buffer areas will be preserved to maximum extent possible. The screening provided by the vegetative buffer makes landscaping unnecessary for consistency with Community Design objectives, and none is proposed.

F40. The Project's visibility will not impact any scenic or culturally significant resources at the proposed location, and thus the Project is consistent with Objective CD3.

Capital Facilities & Infrastructure

F41. 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

F42. 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.

F43. 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.

F44. The Applicant suggests that Verizon has identified a significant gap in wireless coverage in this area of Brewster. The Applicant identified the proposed site as the only feasible location to close Verizon's significant gap after conducting an alternative site analysis, which was included in the Application.

F45. The Project would improve cellular coverage in Brewster for Verizon and includes space for additional carriers.

F46. 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 Brewster and that the proposed height of the tower is consistent with the evidenced gap.

Cultural Heritage

F47. 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).

F48. 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. While the revised location of the Project on with Site is located within the Old King's Highway Historic District, the revision does not increase any potential impacts to historic resources.

F49. The Applicant submitted a Project Notification Form to the Massachusetts Historical Commission ("MHC"). The MHC reviewed the current location of the Project and determined on May 29, 2024 that the Project was unlikely to have adverse impacts on historic or archaeological resources. Based on this, the Project is consistent with Objective CH2.

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

F50. 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.

F51. 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.

F52. 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.

F53. The Project does not require any waivers under the Wireless Technical Bulletin.

Regional Benefits/Detriments

F54. 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 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.
- Upon mutual agreement of the Applicant and the Town, the Applicant will donate a location on the tower and in the compound for municipal E911 services equipment and facilities, ensuring vital emergency services are adequately supported.

F55. Probable detriment of the Project identified include:

- The Project may have visual impacts along adjacent roadways, with more acute impacts from Old Freemans Way looking west.

F56. The Commission finds that the Probable Benefit of the Project is greater than the Probable Detriment.

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CONCLUSION

F57. 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 Brewster 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 Long Pond Road 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 variance from the Brewster 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 "MA-1005B, 1185 Long Pond Road, Brewster, MA 02631, Barnstable County" consisting of 6 sheets, prepared by Scott Adams, P.E., final revision dated 12/2/2024

C6. The Approved Project Plans are subject to approval by local boards in Brewster. If the Applicant wishes to relocate the Project to an alternative location on the Property based on feedback from local boards, the Applicant shall submit updated plans to Commission staff for review for consistency with this Decision. The Applicant may be required to seek a Modification to this Decision as provided under the Commission's regulations at the time of such request.

C7. 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.

C8. Prior to and as a Condition to issuance of a building permit/s for the Project from the Town of Brewster, 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.

C9. 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 Brewster 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.

C10. 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.

C11. Prior to and as a condition to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall submit a final Stormwater Report for review and approval by Commission staff.

C12. Prior to and as a condition to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall submit final Nitrogen Loading Calculations for review and approval by Commission staff.

C13. 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 $29,420 payable to Barnstable County Treasurer to support acquisition and conservation of open space by or at the direction of the Town of Brewster.

C14. All proposed backup generators shall be propane fueled.

C15. Transformer fluids used onsite shall be biodegradable and non-toxic.

C16. Upon mutual agreement of the Applicant and the Town, the Applicant shall donate a location on the tower and in the compound for municipal E911 services equipment and facilities.

SIGNATURE PAGE FOLLOWS

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SIGNATURE PAGE

Executed this _____ day of _____ 2025

For the Cape Cod Commission by:

_____

Signature

_____

Print Name and Title

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2025

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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