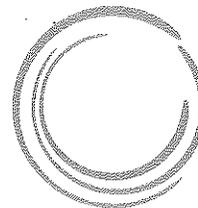


3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

Date: December 16, 2010

To: Richard Joyal
Seacoast Tower Development LLC
50 Resnick Road
Plymouth, MA 02360

From: Cape Cod Commission

Re: Development of Regional Impact
Cape Cod Commission Act, Sections 12 and 13

Applicant: Seacoast Tower Development LLC
50 Resnick Road
Plymouth, MA 02360

Project & Location: Commerce Park Chatham Cellular Tower Extension
146 Commerce Park South
Chatham, MA 02659

Project #: HDEX#10003

Book/Page: Book 19862 Page 172

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions, the application of Seacoast Tower Development LLC, (the Applicant) represented by Attorney Eliza Cox (Nutter McClennen & Fish), as a Development of Regional Impact (DRI) Hardship Exemption pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a thirty-five (35) foot extension to an existing eighty (80) foot telecommunications unipole tower with associated equipment, located at 146 Commerce Park South in Chatham, MA. This decision is rendered pursuant to a vote of the Commission on December 16, 2010.

PROJECT DESCRIPTION

The project consists of a thirty-five (35) foot extension to an existing eighty (80) foot telecommunications unipole tower (Tower) situated within an industrial park, resulting

Final Decision
Commerce Park Chatham Cell Tower Extension
December 16, 2010
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Keeping a Special Place Special

in a total tower height of 115 feet. In connection with this expansion, the existing compound area will be increased by approximately 1,437 square feet for a total compound area of 2,737 square feet that will accommodate three new equipment shelters.

PROCEDURAL HISTORY

The Commission received the DRI Hardship Exemption application for the thirty-five (35) foot extension on April 14, 2010. The DRI Hardship application was deemed substantively complete to proceed to a public hearing on August 12, 2010, and a letter was sent to the Applicant and town officials on August 19, 2010 informing them as such.

In accordance with the Cape Cod Commission Act, the hearing period was opened with a duly noticed public hearing held on September 21, 2010 at the Eldredge Public Library in Chatham, MA. At this hearing, the subcommittee voted to continue the public hearing to 5:00 pm on October 14, 2010 at the Assembly of Delegates Chamber in the First District Courthouse, Barnstable, MA.

On October 14, 2010, the hearing was procedurally continued by a hearing officer to October 26, 2010 at 6:30 pm at the Cape Cod Commission office.

On October 26, 2010 the subcommittee voted to continue the public hearing to a meeting of the Cape Cod Commission on December 2, 2010. On December 2, 2010 the public hearing was procedurally continued to a meeting of the Cape Cod Commission on December 16, 2010. A final and duly noticed public hearing was held on December 16, 2010 in the Assembly of Delegates Chamber in the First District Courthouse, Barnstable, MA.

A subcommittee meeting was held on October 26, 2010 where the subcommittee deliberated on the project and voted unanimously to direct staff to draft an approval (with conditions) decision.

A second subcommittee meeting was held on December 2, 2010 where the subcommittee reviewed the draft decision and moved to forward the draft decision, as amended to the December 16, 2010 full Commission meeting.

A final public hearing was held before the full Cape Cod Commission on December 16, 2010. At the close of this hearing, the Commission voted unanimously to approve the project as a DRI Hardship Exemption, subject to conditions.

MATERIALS SUBMITTED FOR THE RECORD

In addition to the list of materials submitted for the record (see Table 1 below), the application and notices of public hearing relative thereto, Commission staff's notes and correspondence, the minutes of public meetings and hearings, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

TABLE 1: Materials Submitted for the Record	
<i>Materials from Cape Cod Commission</i>	<i>Date Sent</i>
Email from P. Czepiga (PC) to Eliza Cox (EC) of Nutter, McClennen and	4/21/10

Fish re: attached estimate from David Maxson (DM) Commission Consultant	
Email from DM to EC re: correction of compound square footage	4/22/10
Email from PC to EC re: attached erratum from DM correcting square footage of compound	4/23/10
Letter from PC to Richard Joyal (RJ) of Seacoast Tower Development, LLC re: payment of attached estimate from DM	4/23/10
Letter from PC to RJ re: attached revised estimate from DM	5/11/10
Email from PC to EC re: attached letter about revised estimate from DM	5/11/10
Email from PC to EC re: executive committee agenda for fee waiver	6/1/10
Email from PC to EC re: executive committee meeting change	6/1/10
Email from PC to EC re: potential public hearing dates	8/11/10
Email from Kristy Senatori to EC re: application is complete	8/12/10
Email from PC to Terry Whalen (Chatham Town Planner) re: potential public hearing dates	8/16/10
Letter from PC to RJ re: application complete	8/19/10
Email from PC to Terry Whalen re: public hearing date	8/19/10
Email from PC to Terry Whalen re: project and LCP and local bylaws	9/9/10
Email from PC to EC re: original permit	9/13/10
Staff report (mailed to subcommittee on 9/14/10) with attached memo from DM dated 9/14/10	9/14/10
Email from PC to EC, DM, Terry Whalen re: attached staff report	9/14/10
Email from PC to subcommittee members re: attached Technical Bulletin 97-001	9/29/10
Email from PC to EC re: documents have been received	10/4/10
Email from PC to EC re: letter from abutter	10/14/10
Email from PC to EC re: subcommittee mailing	10/15/10
Staff report (mailed to subcommittee on 10/19/10)	10/19/10
Email from PC to EC, Terry Whalen re: attached staff report	10/19/10
Email from Sarah Korjeff to PC re: Chatham's Historic District	10/26/10
Email from PC to EC re: attached email from Terry Whalen re: compliance with local zoning	10/26/10
Email from PC to EC re: attached email from Sarah Korjeff	10/26/10
Email from PC to EC re: attached letter from Terry Whalen re: LCP and historic districts	10/26/10
Email from PC to EC re: letter from abutting property owners	11/13/10
Memorandum from Leslie Richardson to subcommittee re: Best Development Practices ED3.1 and ED3.2	11/30/10
Materials from Applicant	Date Received
DRI application with attached supporting materials	4/14/10
Letter from EC to Brona Simon of MHC re: attached PNF	4/14/10
Letter from EC to Chatham Town Officials with attached copies of DRI application	4/15/10
Email from EC to PC re: abutters list question	4/16/10
Email from EC to PC re: attached electronic version of DRI application	4/20/10
Email from EC to PC re: confirmation photosimulations complete	4/21/10

Email from EC to PC re: clarification re: compound size	4/21/10
Letter from EC to PC re: attached revised photosimulations	4/27/10
Email from Cynthia McGrath (of Nutter McClennen and Fish) to PC re: last green receipt/certified mailing	4/30/10
Letter from EC to PC re: attached photocopies of green receipts	4/30/10
Letter from EC to PC re: fee deferral	5/7/10
Letter from EC to PC re: fee deferral	5/10/10
Email from EC to PC re: scheduling conflict	5/13/10
Table re: project compliance with Technical Bulletin submitted by hand from EC	6/21/10
Letter from EC to PC re: enclosed payment	6/25/10
Letter from EC to PC re: attached propagation maps from 2006	7/27/10
Letter from EC to PC re: response to outstanding items and attached supporting materials	8/5/10
Email from EC to PC re: application complete question	8/10/10
Email from EC to PC re: public sector co-location	9/10/10
Email from EC to PC re: tower construction date	9/13/10
Email from EC to PC re: executive and regulatory committees	9/24/10
Memo from EC to PC re: executive committee	9/28/10
Letter from Ta-Wen Lee, PhD, PE (Manager of Telecommunications Division of FWT) re: failsafe design and tower's fall zone	9/21/10
Letter from EC to PC re: attached correspondence from MHC	10/4/10
Letter from EC to PC re: additional information to address outstanding issues	10/5/10
Letter from Luis Teves (Radiofrequency Design Engineer for Verizon) to PC received via Fax re: need for proposed extension	10/4/10
Coverage Maps submitted by hand from Luis Teves	10/26/10
Large site plans stamped by an engineer, submitted by hand from EC	10/26/10
Memo from EC to PC re: attached letters from abutting property owners and supporting materials	11/18/10
Email from EC to PC re: subcommittee meeting	11/19/10
Email from EC to PC re: draft decision	11/23/10
Materials from Public Agencies/Towns/State/Federal	Date Received
Letter from Terry Whalen (Chatham Town Planner) to PC re: project's consistency with LCP	9/20/10
Email from Terry Whalen to PC re: project's consistency with local zoning bylaws	10/18/10
Email from Terry Whalen re: attached letter regarding project's consistency with LCP and nearby Historic District	10/26/10

TESTIMONY

September 21, 2010 Public Hearing

A public hearing was held at 5:30 pm on September 21, 2010 in Forgeron Hall in the Eldredge Public Library in Chatham, MA.

Ms. Page Czepiga presented the staff report and gave a brief overview of the existing site setting and proposed project, the Cape Cod Commission's jurisdiction, the procedural history, Commission consultant and staff analysis, and conclusions. Ms. Czepiga said the

applicant is requesting relief from the fall zone requirements of the Technical Bulletin, the recommended crane/balloon test and visibility map, and some of the various materials and studies requested by the Technical Bulletin. She said the subcommittee can waive the requirements if they find the applicant has met the burden of proving a hardship exists (financial or otherwise) and if desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Act.

Attorney Eliza Cox of Nutter, McClennen & Fish, LLP presented the proposed project on behalf of Richard Joyal of Seacoast Tower Development LLC. Ms. Cox discussed the permitting history of the tower and said her client is seeking hardship relief from the requirements of the Technical Bulletin where a) due to the tower's existing location, compliance would necessitate significant and costly modifications to the structure, prohibit the tower in the first instance, and/or require relocation of the tower; or b) where the Technical Bulletin requires production of documentation/studies that are time consuming and/or costly.

Mr. Luis Teves (Verizon Wireless RF Engineer) spoke about the need for the proposed extension to increase coverage and capacity in the area.

The subcommittee members asked questions of the Applicant's team and Commission staff regarding the foundation and structural integrity of the tower, the need for the tower, local permitting requirements, and requested that Ms. Cox obtain a waiver from the property owner to the north regarding the tower's fall zone.

The subcommittee continued the hearing to October 14, 2010 at 5:00 pm at the Assembly of Delegates Chamber in the First District Courthouse, Barnstable, MA to allow the applicant time to obtain a letter from the property owner to the north.

October 14, 2010 Public Hearing

At 5:00 pm on October 14, 2010 a hearing officer continued the public hearing to October 26, 2010 at 6:30 pm at the Cape Cod Commission office for the purpose of accepting testimony on the project. No presentations were made and no testimony was taken.

October 26, 2010 Public Hearing

A public hearing was held at 6:30 pm on October 26, 2010 at the Cape Cod Commission office.

Ms. Czepiga gave an overview of information received since the last public hearing and explained items that needed action by the subcommittee. She said the subcommittee needs to determine whether the applicant has met the burden of proving that a hardship exists and whether desirable relief can be granted regarding the fall zone, balloon/crane test and visibility map and certain materials and studies requested by the Technical Bulletin.

Ms. Cox reviewed correspondence recently submitted into the record and noted the applicant is requesting relief from the crane/balloon test and visibility map as the cost to conduct a 2-day crane/balloon test is approximately \$4,500 to \$5,000 and noted it would delay the permitting process by several weeks. She noted photosimulations were created using the existing tower and said they are more precise than a crane/balloon test.

Ms. Cox explained that the applicant is seeking hardship relief from the fall zone requirements. She said a letter from FWT explained the tower is designed to collapse in the compound area or within a 60-foot radius of the tower. She said her client was seeking hardship relief, as the tower would have to be relocated to comply with the Technical Bulletin requirements or not be granted the ability to extend; both of which are substantial hardships. She said the inability to extend is a financial hardship to the applicant, as at the time of construction, the applicant invested an additional \$50,000 into the tower and foundation to allow for the extension in the event future demand justified it. She said the inability to benefit from the investment and extend the tower is a significant financial hardship and that requiring relocation of the tower would cost over \$300,000.

The subcommittee asked questions regarding the abutting property owners and the proposed extension's fall zone and proof of need for the proposed extension.

Mr. Teves used coverage maps that demonstrated how the proposed tower would increase capacity and coverage in Chatham.

The subcommittee continued the public hearing to 3:00 pm on December 2, 2010 at the Assembly of Delegates Chamber in the First District Courthouse in Barnstable, MA.

October 26, 2010 Subcommittee Meeting

A subcommittee meeting was held on October 26, 2010 immediately following the public hearing. The subcommittee deliberated on whether the Applicant has met the burden of proving that a hardship exists, financial or otherwise, and whether waiving the fall zone requirements (subject to receiving a letter from abutting property owners to the north prior to a final decision being made by the full Commission) and the crane/balloon test and visibility map requirements present a substantial detriment to the public good or nullifies or substantially derogates from the intent or purpose of the Cape Cod Commission Act.

The subcommittee found that subject to receiving the previously requested letter (regarding the fall zone and property to the north), the Applicant has met the burden of proving that a hardship exists in complying with the fall zone requirements as the tower currently exists, the Applicant invested approximately \$50,000 at the time of construction to ensure the tower and foundation could accommodate a future extension, and relocating the existing tower would cost over \$300,000; and that desirable relief from the fall zone requirements may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

The subcommittee found that the Applicant has met the burden of proving that a hardship exists in conducting a crane/balloon test and providing a visibility map as the Applicant has provided photosimulations to depict the potential visual impact, a two day crane test would cost \$4,500 to \$5,000 and lead to permitting delays, and a crane test was conducted at the time of the original permit for the tower in 2006; and that desirable relief from these requirements may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

The subcommittee found that the coverage maps provided by Mr. Teves are sufficient to demonstrate a coverage and/or capacity problem requiring a solution, that the proposed height will solve the problem, and that the proposed height is the minimum necessary to achieve coverage of the target area and that the coverage maps document proof of need of the proposed tower extension.

The subcommittee found that the proposed project has the following benefits: it will increase capacity for data coverage (which can have positive economic benefits) and provide opportunities for co-location, it will decrease the need for an additional tower in the town, the monopole design is the least visually intrusive, and the project meets the following Best Development Practices: LU1.3, LU2.3, LU2.4, ED4.3, ED3.1, ED3.2 and ED4.4.

The subcommittee unanimously directed staff to draft a decision approving the hardship exemption request with conditions.

December 2, 2010 Public Hearing

At 4:30 pm on December 2, 2010 a Hearing Officer continued the public hearing to December 16, 2010 at 6:30 pm at the Assembly of Delegates Chamber in the First District Courthouse in Barnstable, MA. No presentations were made and no testimony was taken.

December 2, 2010 Subcommittee Meeting

A subcommittee meeting was held on December 2, 2010 in the Assembly of Delegates Chamber in the First District Courthouse, in Barnstable, MA; where the subcommittee reviewed the draft decision and letters provided by abutting property owners and found that desirable relief from the fall zone requirements of the Technical Bulletin may be granted as it relates to buildings within the fall zone and the northern and southern property lines without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. The subcommittee found that more information is needed to determine compliance with Best Development Practices ED3.1 and ED3.2 and that they should not be conferred to the project at this time. The subcommittee voted unanimously to approve the draft decision and forward it, as amended, to full Cape Cod Commission for a vote at their December 16, 2010 meeting.

JURISDICTION

The development, as described by Seacoast Tower Development, LLC's project description, qualifies as a DRI pursuant to Section 3(i)(2) of the Commission's *Enabling Regulations* (revised May 2010, corrected June 2, 2010) as the attachment to an existing Wireless Communications Tower for the purpose of supporting antennas for transmitting and/or receiving radio frequency communications that increases its overall height above existing grade by more than 20 feet.

FINDINGS

The Commission has considered the Hardship Exemption application of Seacoast Tower Development, LLC for the proposed extension to an existing telecommunications unipole tower and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings, pursuant to Sections 12 and 13 of the Act:

General Findings

- GF1. As the date of the first substantive public hearing was September 21, 2010, this project was reviewed subject to the 2009 Regional Policy Plan (RPP), as amended in May 2010, and the requirements of Technical Bulletin 97-001 -- *Guidelines for Development of Regional Impact Review of Wireless Communication Towers* (Technical Bulletin).
- GF2. As of the date of this decision, the Town of Chatham has a Local Comprehensive Plan (LCP). The project, as proposed, is consistent with Chatham's LCP as confirmed by written testimony provided by Terrance Whalen, Chatham Town Planner dated September 20, 2010 and October 26, 2010 that states *"In light of the Massachusetts's Historical Commission's recent findings of 'no effect' and that no further historical review is required, coupled with the fact that the Historic Business District is located approximately 800 feet to the south, this project should not have a negative impact upon the nearby historical district and will therefore be consistent with the Comprehensive Plan."* The Commission adopts the written testimony of Mr. Whalen, and finds that the project is consistent with Chatham's LCP.
- GF3. As provided in written testimony dated October 18, 2010 from Terrance Whalen, which was presented to and considered by the subcommittee at the public hearing on October 26, 2010, the project will legally comply with local zoning once it has been granted a modified height variance. The Commission adopts the written testimony of Mr. Whalen and finds that the project approval should be conditioned only upon the Applicant obtaining a modified height variance, ensuring compliance with local zoning bylaws.
- GF4. As the project is not located in a District of Critical Planning Concern, the Commission finds that the project can be considered to be consistent with this criterion.
- GF5. The Commission finds that the probable benefits of the project (increased capacity for data and voice coverage, providing opportunities for co-location, minimized need for additional towers in Chatham and complying with Best Development Practices LU1.3, LU2.3, LU2.4, and ED4.3 as outlined in LUF2, LUF3, and EDF2) outweigh the probable detriments of the proposed project.
- GF6. The proposed project consists of a thirty-five (35) foot extension to an existing eighty (80) foot tall cellular/wireless communications unipole, for a total height of 115 feet. The existing compound area will be increased by approximately 1,437 square feet for a total compound area of 2,727 square feet and will accommodate three new equipment shelters, enclosed by a wooden stockade fence. The existing unipole is at full capacity with arrays from three different wireless carriers: T-Mobile (at elevation 56.5 feet), Verizon Wireless (which holds a lease for the 66.5 feet elevation), and AT&T (at elevation 76.5 feet). The extension will be able to accommodate three (3) additional cellular carriers. The project is proposed to be located at 146 Commerce Park South, Chatham and is shown on the Town of Chatham Assessor's Map 5E as Parcel 42-T10, and on the plan recorded on the Barnstable County Registry of Deeds in Plan Book 430, as Parcel 10A.

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Commerce Park Chatham Cell Tower Extension

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- GF7. The Applicant has received a letter of support from Verizon Wireless dated October 4, 2010, which expresses its support for and desire to utilize the proposed tower extension if it is approved and constructed.
- GF8. The project will be constructed in accordance with the following plans (attached to this decision as Exhibit A and incorporated by reference):
- Site/Abutter Plan (Sheet CC-2) drawn by Turning Mill Consultants, Inc and last revised 4/9/10
 - Compound Plan & Elevation (Sheet CC-3) drawn by Turning Mill Consultants, Inc and last revised 4/9/10
- GF9. Section IV.C of the Technical Bulletin states that the applicant shall submit documentation of the legal rights to install and use the proposed facility mount at the time of the application for DRI approval. The project is proposed for property that is owned by 3DM Properties, LLC (f/k/a 3M Properties, LLC). The Applicant has signed a Lease Agreement with 3DM Properties for approximately 4,410 square feet of the property as shown on the plan recorded with the Barnstable County Registry of Deeds in Plan Book 430 page 95. The lease covers a period of five years; from November 1, 2006 and ending October 31, 2011. The lease provides for automatic renewal if the lessee is not in default and has not breached the lease.
- GF10. Findings of the 2006 Chatham Zoning Board of Appeals Special Permit state that "the topography of the subject property is unique in that it is one of the highest lots within the Industrial Park" and "The Applicants reviewed and determined that there were not any existing structures in the area which could be utilized for the placement of antennas which would bridge the coverage gaps."
- GF11. The Commission adopts the verbal testimony of Mr. Luis Teves (Verizon Wireless RF Engineer) and finds that the proposed tower extension will provide increased capacity and extend coverage to an area along Route 28 in Chatham that currently has very weak coverage. The Commission further finds that the proposed tower extension will expand coverage of both the PCS frequency (the network data is shared over, such as text messaging and emails) and the 850 frequency (used for voice calls).
- GF12. The Commission adopts the written testimony of David Maxson, dated September 14, 2010, and finds that the increase in noise associated with the addition of three co-locators is not likely to be an issue in the active industrial area and that the facility extension will remain compliant with FCC Radiofrequency Radiation regulations, even when fully occupied by 6 personal wireless services. As such, the Commission finds that annual monitoring is not necessary, however an evaluation of noise and/or Radio Frequency Energy Exposure be required in accordance with condition GC15 of this decision.

Tower Height

- GF13. Part V, Sections A and B of the Technical Bulletin state that personal wireless service facilities should be no higher than 10 feet above the average height of buildings within 300 feet; that they should not exceed the height limits of the zoning district in which they are located unless they are totally camouflaged; and, that, if there are no residences within 300 feet, the facility should project no higher than 10 feet above the average tree canopy height. Section C of the Technical Bulletin allows wireless service facilities up to 150 feet in height where the Town has established a wireless facility overlay district and states that monopoles are the preferred type of mount for taller structures.
- GF14. The Commission finds that the thirty-five (35) foot extension to the existing eighty (80) foot unipole, for a total height of 115 feet, will extend more than 10 feet above the height of the adjacent buildings and tree canopy and that there are no residential structures within 300 feet. The Commission also finds that there is no wireless facility overlay district in Chatham, however, the use is a special permitted use in the Industrial Zone District and the existing tower was constructed following a dimensional variance to exceed the thirty (30) foot height limit by the Chatham Board of Appeals in 2006.
- GF15. The Commission further finds that the Applicant will need to secure a modified height variance for the additional height to extend the tower to 115 feet. The Commission finds that any future relief granted to the height requirements of the zoning by the Town of Chatham Board of Appeals would fulfill the requirement that the town have a wireless facility overlay district. As such, the Commission finds the proposed tower height is consistent with the tower height requirements as set forth in Part V of the Technical Bulletin, in that the Tower exceeds the height limits of the zoning district but can be conditioned to secure a variance from the town to allow a 115 foot tower, that there are no residences within 300 feet of the tower, and the unipole design is consistent with the recommendations for taller structures. The Commission further finds that the tower is the minimum height necessary to provide sufficient coverage and capacity for its cellular network while providing adequate height for co-locators.

Setbacks/Fall Zones

- GF16. The Technical Bulletin states that all personal wireless facilities and their equipment shelters should comply with the building setback provisions of the zoning district in which the facility is located. The project is located in an Industrial Zone district, which has a 10 foot setback requirement from the front and a 5 foot setback from the side and rear property lines. The proposed site plan demonstrates that the tower and equipment shelters meet the zoning setbacks, and therefore, the Commission finds the project is consistent with the building setback provisions of the local zoning district, as required by the Technical Bulletin.
- GF17. Section D of the Technical Bulletin also has a requirement that the tower fall zone must be equal to the height of the facility (115 feet) to any property line, dwelling, road, business, or institutional use and states the Commission may reduce this requirement by up to 50% if the Commission finds that a substantially better design will result from such a reduction.

- GF18. An August 5, 2010 letter from Eliza Cox on behalf of the Applicant describes the tower as being located 146 feet from Commerce Park Road property line, 100 feet from the northern property line and 134 feet from the eastern boundary of the adjacent property to the east (owned by the same property owner). The Site/Abutter Plan (Sheet CC-2, drawn by Turning Mill Consultants, Inc and last revised 4/9/10) indicates that the tower is located approximately 26 feet from the southern property line and that a building located on the southern property is located approximately 82 feet from the base of the tower.
- GF19. The Commission adopts the verbal testimony of Ms. Eliza Cox presented to and considered by the subcommittee at the October 26, 2010 public hearing and finds that the Applicant invested approximately \$50,000 at the time of construction to ensure the tower and foundation could accommodate a future extension and that relocating the existing tower would cost over \$300,000.
- GF20. Application materials from Eliza Cox (dated November 18, 2010) state that the property directly abutting the project site to the north has been condominiumized and is known as the "East End Condominium" with two buildings; Building A (located on the northerly border of the property) and Building B (located in the southeast corner of the property). The East End Condominium was established pursuant to a Master Deed and Declaration of Trust (an organization of the unit owners) establishing the "East End Condominium Trust" was created. The Master Deed is recorded in the Barnstable County Registry of Deeds in Book 6280, Page 192 and the Declaration of Trust is recorded with the Registry of Deeds in Book 6280, Page 215. The November 18, 2010 application materials state that Building B (owned by Gerald D. Moore) is the only unit located within the tower's 115 foot fall zone. Mr. Gerald D. Moore is also the president, treasurer, and a trustee of the condominium trust. The Commission adopts this testimony and further finds that Mr. Moore has submitted a letter to the Commission (dated October 30, 2010) which states in part *"The East End Condominium property is located approximately 100 feet from the base of the existing tower and is, therefore, within the Cape Cod Commission's definition of the extended tower's fall zone. With respect to the application, please allow this letter to confirm that the East End Condominium Trust has no objection to the proposed extension of the telecommunications tower."*
- GF21. The Commission finds that the Applicant has met the burden of proving that a financial hardship exists in complying with the Fall Zone requirements as the Applicant invested approximately \$50,000 at the time of construction to ensure the tower and foundation could accommodate a future extension and relocating the existing tower would cost over \$300,000. The Commission further finds that with the letter dated October 30, 2010 from Mr. Gerald Moore, that desirable relief from the fall zone requirements as it relates to buildings within the fall zone and the northern property line may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

GF22. The site plan indicates that there are buildings located within the 115 foot fall zone of the tower. The Commission finds that the buildings located within the fall zone are located on property owned by the same property owner of that which the tower is constructed on, one of the buildings was built within the fall zone after the existing tower was constructed, and the proposed tower extension does not increase or change the number of buildings within the fall zone. The Commission further finds that the owner of the buildings located within the fall zone and the abutting property owner to the east (Daniel Meservey) has submitted a letter to the Commission (dated October 30, 2010) which states *"Please allow this correspondence to confirm for the record my support, as owner of the locus and abutting property, of Seacoast Tower Development, LLC's application to extend the existing 80 foot cellular tower located on the locus by 35 feet to 115 feet in height. I understand that the locus and my abutting property (and the structure located thereon) are within the Commission's definition of fall zone for the extended tower."*

GF23. The Commission finds that the Applicant has met the burden of proving that a financial hardship exists in complying with the Fall Zone requirements as the Applicant invested approximately \$50,000 at the time of construction to ensure the tower and foundation could accommodate a future extension and relocating the existing tower would cost over \$300,000. The Commission further finds that with the letter dated October 30, 2010 from Daniel Meservey, that desirable relief from the fall zone requirement as it relates to buildings within the fall zone and the eastern property line may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

GF24. November 18, 2010 application materials from Eliza Cox explain that she mistakenly testified at the September 21, 2010 and October 26, 2010 public hearings that the property directly abutting the project site to the south was owned by the same owner as the project site based on an indexing error at the Barnstable County Registry of Deeds. The November 18, 2010 application materials also explain that the property to the south is currently owned by Jon S. Bassett and Nancy Pitnof and includes a letter from Mr. Bassett and Ms. Pitnof (dated October 31, 2010) that states the northerly edge of their property is approximately 26 feet from the base of the cell tower and the building on their property is approximately 82 feet from the base of the tower. The letter from Mr. Bassett and Ms. Pitnof further states in part: *"I understand that my property is within the fall zone of the cellular tower. Please allow this correspondence to confirm that understanding and also that we have no objection to and support the proposed 35 foot extension of the tower."*

GF25. The Commission finds that the Applicant has met the burden of proving that a financial hardship exists in complying with the Fall Zone requirements as the Applicant invested approximately \$50,000 at the time of construction to ensure the tower and foundation could accommodate a future extension and relocating the existing tower would cost over \$300,000. The Commission further finds that with the letter dated October 31, 2010 from Mr. Jon Bassett and Ms. Nancy Pitnof, that desirable relief from the fall zone requirement as it relates to buildings within the fall zone and the southern property line may

be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Design Standards

- GF26. The Technical Bulletin states that to the extent the facility extends above the height of the vegetation immediately surrounding it, the facility should be painted a light gray or light blue color to blend with the sky and clouds. The 2006 height variance contained a condition that required the Building Commissioner, in consultation with the Town Planner, to select the color of the tower from a neutral color palette provided by the Applicant. The Applicant is proposing to paint the tower extension white to match the existing pole. The Commission finds that this approach is consistent with the intent of the Technical Bulletin to blend the tower with the sky and clouds.
- GF27. The Technical Bulletin requires equipment shelters to be underground; designed with traditional Cape Cod architectural styles and use traditional materials; or be located behind an effective year-round landscape buffer and/or wooden fence. The Application materials show that the three proposed equipment shelters associated with the tower are designed with traditional Cape Cod styles and materials and are placed behind a 6-foot stockade fence. As such, the Commission finds that the proposed shelters are consistent with the Technical Bulletin Guidelines.
- GF28. The Technical Bulletin requires the tower to be camouflaged if within an existing structure; or blocked from public views by structures; or a year-round landscape buffer. The Commission finds that the base of the tower is blocked from nearby public views by existing structures and vegetation and that the photosimulations indicate that the extended tower is unlikely to have significant visual impacts beyond those of the existing tower. The Commission further finds that the extension of the existing tower is preferable to relocating or constructing a new tower, and that the site location provides camouflage to the maximum extent possible, and that the proposed materials and color of the proposed tower and equipment shelters are consistent with the camouflage and buffer requirements of the Technical Bulletin.

Land Use

- LUF1. MPS LU2.2 (*Co-location of Telecommunication Facilities*) requires telecommunications facilities to demonstrate the commitment of at least two co-locators into the design of the facility. Application materials state "*Seacoast Tower Development, LLC has received interest in the proposed 35' extension from Metro-PCS and QualComm*". In addition, the Applicant has provided a letter of support from Mr. Luis Teves of Verizon Wireless (dated October 4, 2010) which indicates their willingness to install additional antenna upon the unipole at a different height. The proposed extension will provide space for three co-locators and, as such the Commission finds that the project complies with MPS LU2.2.
- LUF2. Best Development Practice (BDP) LU1.3 (*Redevelopment/Reuse*) encourages DRIs to reuse existing developed locations in appropriate areas. As the project consists of the expansion of an existing wireless communication

monopole, located in an already developed industrial park, the Commission finds that the project is consistent with BDP LU1.3.

- LUF3. BDP LU2.3 (*Co-locate Public Infrastructure*) encourages DRIs to allow co-location of public services, infrastructure, and utilities and BDP LU2.4 (*Access to Emergency Responders*) encourages telecommunication facilities to provide access to emergency responders. According to verbal testimony provided by Eliza Cox on behalf of the Applicant, presented to and considered by the subcommittee at the September 21, 2010 public hearing, the Applicant is open to allowing public sector co-location for emergency services (police and fire department) use. As such, the Commission finds that the project is consistent with BDP LU2.3 and LU2.4.

Economic Development

EDF1. MPS ED4.1 (*Demonstrated Need & Public Benefit*) states that development of infrastructure shall be in response to existing regional demand and shall improve the availability, reliability, quality, and cost of services. Based on coverage maps presented to and considered by the subcommittee at the October 26, 2010 public hearing by Luis Teves (Radio Frequency Design Engineer for Verizon Wireless), the proposed tower will increase cell phone coverage and reliability to part of Chatham that currently has very weak coverage. According to testimony from Mr. Teves, presented to and considered by the subcommittee at the September 21, 2010 and October 26, 2010 public hearings, the extension will increase Verizon's capacity, allowing them to provide additional data services such as text messaging, picture messaging, and faster email and internet access. According to Mr. Teves, wireless carriers need more than 1 set of antennas in the same structure to cover all the wireless services that customers are now demanding. The Commission adopts the verbal testimony of Mr. Teves, and finds that the project complies with MPS ED4.1.

EDF2. BDP ED4.3 (*Reliable Emergency Access*) encourages telecommunication infrastructure to contribute to a regional network that will withstand a natural disaster and may be accessed and used by public safety officials in the case of an emergency. According to verbal testimony, presented to and considered by the subcommittee at the September 21, 2010 public hearing, the Applicant is open to allowing public sector co-location for emergency services (police and fire department) use. As such, the Commission finds the project complies with BDP ED4.3.

Natural Resources & Open Space

NR/OSF1. The project site is a previously disturbed area that is located in an industrial park. According to the application materials, the estimated disturbed area for the installation of the equipment shelters and utility connections is 2,737 square feet. Given the relatively small area of disturbance and previously disturbed nature of the site, the Commission finds that the provision of open space is not required for this project.

Water Resources

WRF1. The project is located in a Wellhead Protection Area, Marine Recharge Area, and Water Quality Improvement Area. As such, MPS WR2.2 (*Prohibition on*

Hazardous Materials/Wastes) and WM1.1 (*Hazardous Materials/Waste Restrictions*) apply. These standards state that development involving the use, treatment, generation, handling, storage or disposal of Hazardous Materials, with the exception of Household Quantities shall not be permitted in these areas. The Commission finds that the project approval can be conditioned to prohibit Hazardous Materials on the project site, consistent with MPS WR2.2 and WM1.1.

- WRF2. The Commission finds that additional information is needed to address stormwater MPS WR7.2 (*On-site Infiltration*), WR7.3 (*Roof Runoff*), and WR7.9 (*Best Management Practices during Construction*). Specifically the Applicant should provide a plan that demonstrates on-site stormwater infiltration, that roof runoff is managed separately and directly infiltrated, and construction best management practices for erosion and sediment controls. The Commission finds that this information is needed prior to the issuance of a Preliminary Certificate of Compliance for the commencement of site construction in accordance with condition WRC2 of this decision.

Waste Management

- WMF1. The Commission finds that additional information is needed to address MPS WM1.5 (*Compliance with Massachusetts Hazardous Waste Regulations*). Specifically, the Applicant must notify or register with the Massachusetts Department of Environmental Protection, a plan is needed that addresses how the Hazardous Waste will be managed prior to disposal, and information should be provided on the registered, licensed company which will be disposing of the Hazardous Waste. The Commission finds that this information is needed prior to the issuance of a Preliminary Certificate of Compliance for the commencement of site construction and for each carrier's installation in accordance with condition WMC5 of this decision.
- WMF2. The Commission finds that additional information is needed to address MPS WM2.1 (*Construction Waste*). Specifically, the Applicant should provide a written plan regarding management of Construction & Demolition waste generated by site preparation work which addresses the disposal of C&D waste and demonstrates how solid wastes and recyclable materials currently categorized by the MA DEP as a waste ban material will be handled, separated from C&D waste, and disposed of. The plan should also address the items listed in MPS WM2.2 (*C&D Waste Plan*). The Commission finds that this information is needed prior to the issuance of the Preliminary Certificate of Compliance for the commencement of construction at the site, and prior to issuance of a Final Certificate of Compliance for each carrier's installation in accordance with condition WMC1 of this decision.

Affordable Housing

- AHF1. As per the guidance described in Technical Bulletin 10-001 (*Guidelines for Calculation of Mitigation for Developments of Regional Impact In "other" Category for Minimum Performance Standard AH3.1*), the Commission finds that the project falls within the "other" category for the mitigation requirements of MPS AH3.1.

AHF2. As per the guidance described in Technical Bulletin 10-001, the Commission finds that as the project will be creating fewer than the equivalent of three (3) full time jobs, the applicant is not required to provide the Affordable Housing mitigation consistent with MPS AH3.1.

Heritage Preservation & Community Character

HPCCF1. The Commission finds that more information is needed to address MPS HPCC2.11 (*Exterior Lighting*). Specifically, each co-locator should provide a copy of site plans and other technical information on exterior lighting to ensure its consistency with MPS HPCC2.11 and Technical Bulletin 95-001 (*DRI Guidance for Exterior Lighting Design*). The Commission finds that this information is needed prior to the issuance of the Final Certificate of Compliance for each carrier's installation in accordance with conditions HPCCC2 and HPCCC3 of this decision.

HPCCF2. According to information provided by the applicant, no lighting is required by the Federal Aviation Administration for the 115 foot tower.

HPCCF3. MPS HPCC1.3 (*Archaeological Sites*) requires development to be configured to maintain and/or enhance archaeological sites. In addition, MPS HPCC1.1 (*Historic Structures*) requires preservation of the key features of a historic structure's setting. The Commission finds that Massachusetts Historical Commission (MHC) has reviewed the Project Notification Form, submitted for this project and does not have any comments on the project and that no further MHC review is required. Based on this, the Commission finds the project complies with MPS HPCC1.3.

HPCCF4. The Commission finds that the Applicant is seeking hardship relief from the recommended crane test and visibility map requirements of the Technical Bulletin. The Applicant has submitted photosimulations of the proposed structure and provided a description of the visibility of the proposed tower extension from the nearby Cape Cod rail trail and Route 28 to demonstrate the potential visual impact of the extended tower. The Commission further finds that based on this information, the extension of the tower will have limited or minimal visual impacts, due to its location in an industrial park away from the nearby historic district, and the flush mounted antenna are concealed within the pole and are therefore the least visually intrusive design possible for a tower of this height.

HPCCF5. The Commission adopts the written testimony of Ms. Eliza Cox (dated 10/26/10) and finds that conducting a two-day crane test would cost \$4,500 to \$5,000 dollars and lead to permitting delays and that a crane test was conducted at the time of the original permit for the tower in 2006.

HPCCF6. The Commission finds that the Applicant has met their burden of proving that a financial and other hardship exists, as a crane test was conducted at the time of the original permit from the town and conducting the crane test and visibility map again would cost \$4,500 to \$5,000 and result in permitting delays. The Commission further finds that desirable relief (waiving the crane test & visibility map requirements) may be granted without substantial detriment to the public good and without nullifying or substantially

derogating from the intent or purpose of the act as the applicant has provided alternative means to understand the visibility of the proposed tower extension.

CONCLUSION

Based on the above findings, the Commission hereby concludes:

1. That the probable benefits of the proposed project are greater than the probable detriments. This conclusion is supported by findings GF5, LUF2, LUF3 and EDF2.
2. That upon satisfaction of the conditions identified in this decision, the proposed project is consistent with the 2009 (as amended) Regional Policy Plan.
3. Upon issuance of a modified height variance by the Zoning Board of Appeals, the project can be found consistent with Chatham's Local Comprehensive Plan and its local development by-laws/ordinances, as outlined in findings GF2 and GF3.
4. The project is not located in a District of Critical Planning Concern and therefore can be considered to be consistent with this criterion.

CONDITIONS

The Commission hereby approves, with conditions, the Hardship Exemption application of Seacoast Tower Development LLC for the proposed project located at 146 Commerce Park South, Chatham, MA provided the following conditions are met:

General Conditions

- GC1. This decision is valid for a period of 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of this written decision.
- GC2. The applicant shall obtain all necessary federal, state, and local permits for the proposed project.
- GC3. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, and remain in compliance herewith, shall be deemed cause to revoke or modify this decision.
- GC4. No development work, as the term "development" is defined in the Cape Cod Commission Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.
- GC5. Prior to issuance of a Building Permit for any proposed "development" as defined by the Cape Cod Commission Act and as approved herein, the applicant shall submit final plans as approved by state, federal, and local boards for review by Commission staff to determine their consistency with this decision. If Commission staff determines that the final plans are not consistent with those plans approved as part of this decision, the Commission

shall require that the Applicant seek a modification to this decision in accordance with the Modification Section of the Commission's *Enabling Regulations* in effect at the time the modification is sought.

- GC6. All development shall be constructed in a manner consistent with the following plans and other information attached hereto as Exhibit A:
- Site/Abutter Plan (Sheet CC-2) drawn by Turning Mill Consultants, Inc and last revised 4/9/10
 - Compound Plan & Elevation (Sheet CC-3) drawn by Turning Mill Consultants, Inc and last revised 4/9/10
- GC7. Any deviation to the proposed project from the approved plans, including but not limited to changes to the design, location, lighting, landscaping, or other site work, shall require approval by the Cape Cod Commission through its modification process, pursuant to the Commission's *Enabling Regulations*. The applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.
- GC8. Prior to the issuance of a Building Permit for development, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that states that all conditions in this decision pertaining to issuance of a Building Permit have been met.
- GC9. Prior to the first wireless carrier's installation on the 35 foot extension of the unipole becoming operable for the cellular network, the applicant shall obtain a Final Certificate of Compliance from the Commission that states that all conditions pertaining to site work have been met. Such Certificate of Compliance shall not be issued unless all applicable conditions have been complied with.
- GC10. Prior to each subsequent co-locator within the 35 foot extension of the unipole becoming operable for that company's cellular network, the applicant and carrier company shall obtain a final Certificate of Compliance from the Commission that states that all conditions pertaining to each carrier's installation has been met. Such Certificates of Compliance shall not be issued unless all applicable conditions have been complied with.
- GC11. Prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall provide written proof to the Commission that a copy of this decision has been provided to the general contractor(s) for each carrier/co-locator at least thirty (30) calendar days prior to commencement of construction.
- GC12. The Applicant shall notify Commission staff in writing at least thirty (30) calendar days prior to its intent to seek each Preliminary and each Final Certificate of Compliance. Such notification shall include a list of key contact(s), along with their telephone numbers, mailing addresses, and email addresses, for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition, if needed, and inform the Applicant in writing of any deficiencies and

corrections needed. The Commission has no obligation to issue any Certificate of Compliance unless and until all conditions are complied with.

- GC13. The Applicant agrees to allow Commission staff to enter onto the property, which is the subject of this decision, after reasonable notice to the Applicant, for the purpose of determining whether the conditions contained in this decision including those linked to each Preliminary and Final Certificate of Compliance have been met.
- GC14. The tower shall be no taller than 115 feet above ground level and shall be painted white with all antenna arrays and associated cabling mounted internally.
- GC15. The Applicant or, if directed by the Applicant, the wireless carriers located on the tower, shall submit an evaluation of noise and/or Radio Frequency Energy Exposure (by calculation or measurement as necessary) within thirty (30) days of receipt of a written request by the Cape Cod Commission staff. The Cape Cod Commission staff will make such a written request only when there is significant information indicating that the noise and/or Radio Frequency Energy Exposure generated by the facility has or may have changed in a manner that may exceed or closely approach the respective regulatory limits. The Commission shall identify the method to be employed to address the concern, consistent with good engineering practice. Any Radio Frequency Energy Exposure evaluation should be signed and certified by a qualified Radio Frequency engineer, stating that Radio Frequency Energy Exposure calculations and/or measurements are accurate and whether they show compliance with FCC Guidelines as specified in sub-section VI C (Radiofrequency Radiation Standards) of the Technical Bulletin. Any noise evaluation should be signed and certified by an engineer qualified to measure and evaluate acoustic noise in the environment, stating that the noise calculations/measurements are accurate and whether they are compliant with Commission requirements as specified in sub-section VI B (Noise Standards) of the Technical Bulletin.

Water Resources

- WRC1. All new carriers/co-locators that are not, as of the date of this decision, presently sited on the tower, and that require a back-up generator as part of their operation shall use a generator that is powered by natural gas, propane gas, or batteries to comply with MPS WR2.2 (*Prohibition on Hazardous Materials/Wastes*) and WM1.1 (*Hazardous Materials/Waste Restrictions*). The provision of a back-up generator, located in the compound area, in compliance with this condition shall not by itself necessitate a modification of this decision. The specifications for such generator shall be provided to Commission staff to confirm compliance with this condition prior to the Commission's issuance of a Preliminary Certificate of Compliance for each new carrier proposing a generator.
- WRC2. Prior to issuance of a Preliminary Certificate of Compliance for any development approved herein, the Applicant should submit plans to the Commission staff for review and approval that demonstrate on-site stormwater infiltration for any run-off caused by the cellular tower, that roof

runoff from the new equipment shelters is managed separately and directly infiltrated, and the implementation of construction best management practices for erosion and sediment controls to ensure compliance with stormwater MPS WR7.2 (*On-site Infiltration*), WR7.3 (*Roof Runoff*), and WR7.9 (*Best Management Practices during Construction*).

Heritage Preservation & Community Character

- HPCCC1. Prior to the request for a Preliminary Certificate of Compliance for each wireless carrier that is proposing a new equipment shelter, the carrier shall submit elevation plans to Commission staff for review and approval in accordance with the Technical Bulletin equipment shelter design guidelines which include the use of traditional Cape Cod styles and materials.
- HPCCC2. Prior to issuance of the Final Certificate of Compliance for each carrier's installation, the Applicant and/or the tenant carriers shall submit for Commission staff review and approval information on exterior lighting for the equipment pads and/or equipment shelters that addresses Section VI(A)(5)(a) of Technical Bulletin 97-001 and Technical Bulletin 95-001. All new exterior lighting for ground illumination for the project shall be in conformance with Technical Bulletin 95-001.
- HPCCC3. Prior to issuance of the Final Certificate of Compliance for each carrier's installation, Commission staff shall conduct a site visit to verify conformance with condition HPCCC2. The Final Certificate of Compliance for each carrier's installation shall not be issued until Commission staff issues a written approval of the final exterior lighting design.
- HPCCC4. Commission staff shall review any change to or deviation from the approved exterior lighting design. If a change is made to the approved exterior lighting design, the Applicant or subsequent carriers shall submit information to Commission staff that allows Commission staff to determine whether that the changed design is consistent with MPS HPCC2.11 and Technical Bulletin 97-001. Commission staff may approve such changes so long as they are consistent with the requirements set forth in MPS HPCC2.11 and Technical Bulletin 97-001.

Waste Management

- WMC1. Prior to issuance of the Preliminary Certificate of Compliance for any development approved herein, and prior to issuance of a Preliminary Certificate of Compliance for each carrier's installation in the extended portion of the tower, the Applicant and/or tenant carriers shall submit for Commission staff review and approval a copy of a plan or plans that address MPS WM2.1 and MPS WM2.2. The Preliminary Certificate of Compliance for site construction and for each carrier's installation shall not be issued until Commission staff issues a written approval indicating conformance with this condition.
- WMC2. As the project site is located in a Wellhead Protection Area, on-site servicing of all construction equipment for the project shall be limited to lubrication of fittings and joints to reduce the generation of Hazardous Wastes.

- WMC3. All new equipment buildings and/or new pads for the project shall be constructed of an impervious surface, free of gaps/cracks, and without floor drains.
- WMC4. All new on-site air conditioning units for the project shall use digital thermostats without a mercury switch, and all new equipment shelters shall use incandescent lights for interior lighting. Fluorescent lighting within the new equipment shelters is prohibited.
- WMC5. Prior to the issuance of the Preliminary Certificate of Compliance for commencement of site construction and prior to the issuance of a Final Certificate of Compliance for each new carrier's installation, the Applicant and/or tenant carriers shall submit for Commission staff review and approval, a copy of a plan or plans that address MPS WM1.5 (*Compliance with Massachusetts Hazardous Waste Regulations*).
- WMC6. Prior to the issuance of the Final Certificate of Compliance for each new carrier's installation, Commission staff shall conduct a site visit to verify conformance with conditions WMC2 through WMC4. The Final Certificate of Compliance for each carrier's installation shall not be issued until Commission staff issues a written approval indicating that each new installation is consistent with conditions HWC2 through HWC4.

SUMMARY

The Cape Cod Commission hereby approves with conditions the application of Seacoast Tower Development LLC for a thirty-five (35) foot extension to an existing eighty (80) foot unipole at 146 Commerce Park South, Chatham, MA as a DRI Hardship Exemption as outlined in this decision pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended.

[SIGNATURE LINE ON FOLLOWING PAGE]

Royden Richardson
Royden Richardson, Commission Chair

December 16, 2010
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Dec 16, 2010

Before me, the undersigned notary public personally appeared Royden Richardson in his capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he 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 personal knowledge of the undersigned.

Gail P. Hanley
Notary Public

My Commission Expires:

10.13.11