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CAPE COD
COMMISSION

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DEVELOPMENT OF REGIONAL IMPACT DECISION

Date: November 15, 2022
Project: Centerville Gardens Wireless Communication Tower Re-submission (File No. 22021)
Project Applicant: Crown Castle, Inc.
c/o Edward Pare, Esq., Brown Rudnick, LLP
10 Memorial Boulevard, Providence, RI 02903
Property Owner: Centerville Gardens II, LLC
Property/ Site: 1060 Falmouth Road, Hyannis and 36 Wequaquet Lane, Centerville
(Assessors Map 250; Parcels 023H and 023T)
Title Reference: Book 26338 Page 204

SUMMARY

The Cape Cod Commission ("Commission") hereby grants Development of Regional Impact ("DRI") approval, with Conditions, for "Centerville Gardens Wireless Communication Tower Resubmission," to construct a 110-foot wireless communications tower with associated improvements at 1060 Falmouth Road in Hyannis and 36 Wequaquet Lane in Centerville, pursuant to a vote of the Commission at its meeting on November 15, 2022.

FINDINGS

The Cape Cod Commission hereby finds and determines as follows:

- F1. The Applicant proposes development on a leased portion of two parcels totaling +/- 2.9 acres, which currently contains an office building and parking area ("Property" or "Site"), by constructing a 110-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 (Centerville Gardens II, LLC).
- F2. The south side of the Property abuts Falmouth Road and other commercial properties. The north side of the Property is predominantly abutted by Wequaquet Lane and single-family residences.

- F3. The Property is in a Wellhead Protection Area (Zone II) and the Marine Water Recharge Area (MWRA) for Centerville River. Due to the location within a Zone II, the undeveloped 36 Wequaquet Lane parcel is mapped as the Natural Area Placetype. 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.
- F4. The portion of the Property known as 1060 Falmouth Road is represented by the "Suburban Development Area" Placetype. Suburban Development Areas are characterized by moderately dense residential neighborhoods as well as automobile-oriented commercial development.
- F5. The Applicant proposes to develop and operate on the Project Site an approximately 110-foot-tall wireless communications tower with other supporting and ancillary improvements, including:
- clearing +/- 8,000 SF of vegetated area;
 - constructing a 50'x50' stone compound surrounded by an 6'-tall stockade fence with acoustic inserts;
 - 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;
 - installing an approximately 12'x170' gravel driveway with turnaround connecting the fenced area to the existing parking lot;
 - loaming and seeding the disturbed areas outside of the fenced area; and
 - plantings to visually buffer the proposed compound and associated ground-mounted equipment.
- 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 landscaping and stormwater management.
- F7. 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.
- F8. 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.
- F9. 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.

PROCEDURAL HISTORY

F10. The Project was previously reviewed as a Development of Regional Impact (DRI) as File No. 22006, which was withdrawn by the Applicant prior to the close of the public hearing process. This re-submittal is a continuation of that review process.

F11. The Applicant made the following additional submittals and project modifications to its proposal from DRI File No. 22006 in the application reviewed here:

- the driveway turnaround was reduced in size and almost entirely removed from the Natural Area Placetype;
- landscaping was revised with greater variety in planting types;
- a note on Sheet A5 of the revised project plans that antenna mounts will be minimized was added;
- AT&T was added to the application as co-applicant ~~(the prior DRI did not formally include AT&T and no materials from AT&T were submitted with the original application);~~
- the applicant provided coverage information from AT&T, the primary tenant on the proposed tower; and
- the applicant provided a ground lease and rider for the existing tower located at 1047 Falmouth Road showing the applicant has the right to remove the tower prior to the end of the term of their ground lease.

F12. The Commission retained, at the Applicant's expense, a consultant with expertise reviewing technical aspects of the proposal. The consultant, David Maxson of Isotrope Wireless, LLC ("Isotrope"), provided an initial report on the original application for File No. 22006, followed by supplemental comments on that filing. Isotrope submitted additional comments for this filing, which were reviewed as part of the proceedings.

F13. 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...".

F14. The Commission received a mandatory DRI referral for the Project from the Town of Barnstable ("Town") on 7/21/2022.

F15. The Applicant submitted a DRI application for the Project to the Commission on 7/20/2022.

F16. The hearing period was opened with a substantive hearing on the Project on 8/10/2022 which was held by a DRI Subcommittee ("Subcommittee"). Additional continued public hearings were held on 9/13/2022, 10/11/2022, and 10/25/2022, where the Subcommittee reviewed a draft written DRI decision prepared by staff at the Subcommittee's direction. At this hearing session, the Subcommittee voted 3 in favor, 1 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.

F17. The full Cape Cod Commission held a hearing on the Project at its meeting on 11/3/2022. It considered the recommendation of the Subcommittee, including the draft written DRI decision. At

the hearing on 11/11/2022, 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

F18. 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

F19. There are no DCPC implementing regulations applicable to the Project.

F20. The Town of Barnstable’s current Local Comprehensive Plan (LCP) was adopted in 2010. It states a goal to provide infrastructure required for growth centers and redevelopment areas, which includes telecommunication infrastructure.

F21. The two parcels are split-zoned, with the areas closest to Falmouth Road within the HB (Highway Business) zone and the areas closest to Wequaquet Lane within the RD-1 (Residence D-1) zone. The fenced compound and tower are both located on the Wequaquet Lane parcel within the portion of the lot zoned RD-1. The access drive and other associated site improvements are split between the two parcels and zoning districts.

F22. The Barnstable Zoning Code allows wireless communication towers in all districts subject to variance relief from height requirements. The Project will also require Site Plan Review pursuant to Article IX of the code.

F23. The Property is subject to a 2012 Special Permit decision for the existing office building. In addition to the previously mentioned local discretionary review, this permit will require modification of the 2012 Special Permit specifically Condition #3 to incorporate reference to the updated Site Plan and Condition #5 which prohibits development and clearing of mature vegetation within the residentially-zoned portion of the property. All modifications to the Special Permit will be subject to approval by the Zoning Board of Appeals.

RPP CONSISTENCY REVIEW

F24. 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.

F25. 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.

F26. 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

F27. 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, WR2, and WR4 are applicable and material to the Project:

- Protect and preserve groundwater quality (WR1);
- Protect, preserve, and restore freshwater resources (WR2); and
- Manage and treat stormwater to protect and preserve water quality (WR4).

F28. The Project Site is in a DEP-approved Wellhead Protection Area (COMM WD #317). Due to this mapping, hazardous materials must be limited to household quantities. To meet this requirement, only biodegradable transformer fluids will be used as conditioned herein.

F29. The Project Site is in the Marine Water Recharge Area to Centerville River, a watershed that is nitrogen sensitive with a nitrogen TMDL. There will be no wastewater or managed turf, thus the only potential nitrogen input will come from stormwater runoff.

F30. The existing topography requires minimal grading and stormwater drainage patterns will resemble the existing drainage patterns. The flat grade of the Project Site and the proposed gravel drive and compound area will be designed to encourage infiltration.

F31. The proposed gravel road and storage pad will be sloped to direct any stormwater not infiltrated as sheet flow towards existing vegetated areas, thus not resulting in stormwater runoff impacts to any applicable resource areas consistent with WR3.

F32. Erosion control will be important during the construction phase and after the tower and appurtenances have been installed. An erosion and sedimentation control (ESC) plan will maintain the project area during construction and before the seed mixes are established. Appropriate project management during and after construction will mitigate potential impacts.

Open Space

F33. 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.

F34. The Area of Development Impact for purposes of the required open space mitigation is 8,000 sf.

F35. 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. Natural Areas are required to provide open space at a ratio of 3:1.

F36. Based on calculating the Open Space requirement using the Placetype ratios for each portion of the Area of Development Impact for the Project, the Project has an Open Space requirement of .35 acre.

- F37. The Applicant proposes to meet the Open Space requirement through placing a Conservation Restriction on a +/- 1.19-acre portion of the parcel known as 36 Wequaquet Lane, which is the entirety of said parcel with the exception of the footprint of the Project and exceeds the Open Space requirement meeting Objective OS3.
- F38. The Applicant has agreed to a cash payment to the Town of Barnstable to provide open space and meet Objective OS3 if a suitable entity to hold a Conservation Restriction cannot be found. 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 in a highly developed area.
- F39. Based on the current per-acre open space mitigation calculation for the Town of Barnstable, the .35-acre Open Space requirement results in a required payment of \$33,555.

Community Design

- F40. 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 CD1 and CD3 are applicable and material to the Project:
- Promote context-sensitive building and site design (CD1); and
 - Avoid adverse visual impacts from infrastructure to scenic resources (CD3).
- F41. The proposed 110-foot-tall monopole is sited to the rear of an existing commercial building that faces Falmouth Road, approximately 315 feet back from the roadway. The monopole is designed to accommodate up to 4 antenna arrays.
- F42. Commission staff identified sites for photo-simulations based on the Project's potential for visibility along the Route 28 corridor, from nearby residential neighborhoods, and from areas with natural open vistas and inventoried historic resources.
- F43. The photo-simulations indicate that while the Project will be visible due to its height above the trees, its visibility is limited primarily to the commercially zoned area adjacent to the proposed site and to the adjacent section of Falmouth Road where there are open lawns and parking lots that allow long views. There is limited visibility from most side streets and other locations due to existing vegetation height and distance from the proposed site.
- F44. The DRI Application states that the proposed tower is intended to replace an existing cell tower of approximately the same size and height that is sited behind a commercial structure on the south side of Falmouth Road. The proposed location is further back from Falmouth Road than the existing tower (current setback about 125' and proposed about 315'), but there is less vegetation close to the road edge on the north side.
- F45. The proposed tower may be visible along more of Falmouth Road.
- F46. The proposed tower profile is similar in height (8' shorter) and in number of antenna arrays.
- F47. The Applicant added a note to the project plans that visual impacts would be minimized by narrowing antenna arrays and grouping them close together.
- F48. The Project employs methods recommended under Objective CD3 of the Community Design Goal of the RPP, which seeks to avoid adverse visual impacts from infrastructure on scenic resources. The proposed tower is located away from scenic resources, it is sited adjacent to an already

developed commercial site, it uses an existing paved parking area for most of its access path, it is partially screened from Falmouth Road by existing commercial buildings, and it is mostly screened from adjacent areas by existing vegetation.

- F49. The landscape plan was revised to cluster a mix of native plants of varied heights in keeping with surrounding natural vegetation around the south side of the equipment shelter and gravel drive for screening.
- F50. The existing vegetation in the Project footprint is primarily low-growing invasive species, mostly Japanese Knotweed and Autumn Olive. To ensure that the proposed landscaping is maintained the Applicant will provide an invasive species management plan prior to construction that will be implemented during the construction period. The invasive species management plan will include best management practices such as careful removal from the site, proper disposal, and cleaning of construction equipment to limit spread.

Cultural Resources

- F51. The proposed Project is not located within a historic district or a neighborhood with distinctive architecture. The state's database of cultural resources includes an inventoried area outside the immediate project site, along Phinney's Lane, with three historic homes: the Lewis Homestead (circa 1717), the Phinney House (circa 1730), and the Phinney Homestead (circa 1820). Both the Barnstable Historical Commission and the Mashpee Wampanoag Tribe provided comments during Federal Section 106 review of the Project noting these resources in the project vicinity, as well as the potential for archaeological sensitivity. All three of these historic structures are over 1,000 feet from the proposed project site and separated by several properties and roadways with mature vegetation that provide visual screening, as shown in the photo-simulations.
- F52. Massachusetts Historical Commission (MHC) reviewed the proposed project and provided stamped comments on May 3, 2022 stating the Project is unlikely to affect historic or archaeological resources. Staff suggests the Project is consistent with the Cultural Heritage goal.

Capital Facilities & Infrastructure

- F53. 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
- F54. Based on the materials provided by the Applicant, the Project is infrastructure that would improve cellular service in the area of the proposed site as well as maintain existing levels of service, in response to the needs of the region.
- F55. 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.

F56. The Applicant suggests that AT&T has identified a significant gap in wireless coverage in this area of Barnstable. The Applicant identified the proposed site as the only feasible location to close AT&T's significant gap.

- The existing tower at 1047 Falmouth Road cannot structurally accommodate AT&T unless one of the existing lessors relinquishes their current location and removes their equipment.
- It would likely be uneconomic for AT&T to install new service to the existing tower at 1047 Falmouth Road for a period of less than two years, by which time the ground lease for the existing tower will expire.

F57. The Project would improve cellular coverage in Barnstable for AT&T and includes space for three additional carriers.

- The Applicant has provided a letter of interest from Dish Wireless, which does not currently have coverage in the area.
- The Applicant has provided letters from Verizon and T-Mobile expressing interest in moving from the existing tower at 1047 Falmouth Road to the proposed tower if the existing tower is removed.

F58. The Commission retained a wireless consultant to review the claimed coverage gaps as required under Technical Bulletin 97-001.

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

F59. The Commission retained a wireless consultant, David Maxson of Isotrope Wireless, LLC ("Isotrope") to assist the Commission in the review of technical data, including the coverage analysis provided by AT&T.

F60. Isotrope reviewed the data and found that a significant gap in coverage does exist for AT&T. Dish has also expressed interest in location on the tower as it seeks to build out its new wireless network.

F61. There will also be coverage gaps for Verizon and T-Mobile if the existing tower at 1047 Falmouth Road is removed.

F62. In consultation with Commission staff, Isotrope identified the existing tower at 1047 Falmouth Road as the only potential alternate location in the area.

F63. Isotrope's review stated it was likely that AT&T's gap could be filled with concealed antenna monopoles (CAM) along the Falmouth Road corridor, providing similar effectiveness in closing the coverage gap to the single monopole proposed. Isotrope noted that because CAMs may be limited to one or two carriers, more CAMs may be required in an area to provide the same level of service as a tower.

F64. The Commission does not review CAMs of less than 80' in height. This inherent preference within the Commission regulations was weighed against the impacts of alternatives to the Project in relation to regionally significant resources.

F65. The Applicant, successor in interest to SSLP, provided a Rider to the ground lease for the existing tower at 1047 Falmouth Road that states, in part:

“... SSLP may remove the Tower ... upon the expiration or termination of this Agreement after the third Renewal Term, whereupon SSLP will restore the Site to substantially the condition existing on the Commencement Date (other than replacing the 100-foot lattice tower) ...”

F66. The Applicant is past the third Renewal Term and has stated that the existing tower will be removed from 1047 Falmouth Road prior to the expiration of the lease on June 23, 2024 and will not be replaced by the Applicant.

F67. The Project requires and is hereby granted a waiver from the “Fall Zone” requirement under the Wireless Technical Bulletin.

- The “Fall Zone” requirement is for a distance equal to the height of the proposed tower to any abutting property line. The proposed tower meets this requirement from the residential parcels at the rear of the site, but only provides for 42’ feet from the corner property line for the neighboring parcel at 1080 Falmouth Road.
- The portion of the “Fall Zone” on the 1080 Falmouth Road parcel is currently occupied by stormwater infiltration for the existing commercial use (currently a CVS).

Regional Benefits/Detriments

F68. Probable benefits of the Project identified include:

- The Project will address identified wireless coverage and capacity problems for AT&T and Dish Wireless in the general vicinity of the project and maintain existing coverage for Verizon and T-Mobile, 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 all four national wireless carriers to site-share on the proposed WCT, potentially eliminating or limiting the future need for additional wireless towers in the area.

F69. Probable detriments of the Project identified include:

- The Project may have visual impacts along the Falmouth Road corridor, with more acute impacts to properties in immediate proximity to the Site.
- The Project is proposed to replace an existing tower at 1047 Falmouth Road, which is a preferred site concerning potential impacts along the roadway and to abutters.
- ~~Community opposition to the proposed tower was voiced during the public hearings on the Project, and no opposition to the existing tower at 1047 Falmouth Road or support for the new tower was voiced.~~

CONCLUSION

Based on the Findings above and subject to the Conditions set out below, the Commission further determines, finds, and concludes that the Project is consistent with the 2018 Cape Cod Regional Policy Plan, applicable provisions from the Barnstable LCP, 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 Centerville Gardens Wireless Communication Tower Re-submission (File No. 22021).

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 Regulations*.
- 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 Site Plan approval, a Special Permit modification, a height variance, and any other necessary assents or approvals under the Barnstable Bylaws. Consistency with Municipal Development Bylaws shall be ratified and confirmed by the Applicant 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 "SITE NO: 875052," consisting to 12 sheets, prepared by Scott Adams P.E., AEG Advanced Engineering Group, dated 10/14/2021, as revised 8/29/2022
- 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 Barnstable, 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 final~~ building permit ~~sign-off/s close out~~ for the Project from the Town of Barnstable 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 final~~ building permits ~~sign-off/s close out~~, 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 Preliminary Certificate of Compliance, the Applicant shall develop invasive species plan outlining best management practices for Commission staff review and approval for the construction and operational phases of the Project. The plan shall require mechanical methods be implemented until proven ineffective. If, over time, any invasive species do not respond to mechanical controls, alternative methods to control invasive species could be pursued after consulting with and obtaining written approval from Commission staff.
- C11. Prior to and as a condition to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall provide evidence that a conservation entity acceptable to the Commission is willing to hold a Conservation Restriction consistent with M.G.L Chapter 184, Sections 31-33, inclusive, that permanently protects the +/- 1.19-acre portion of the parcel known as 36 Wequaquet Lane, which is the entirety of said parcel with the exception of the footprint of the Project. The Applicant shall also provide an accompanying conservation restriction plan and a draft Conservation Restriction between the parties for Commission staff review and approval.
- C12. Prior to and as a condition to issuance of a Final Certificate of Compliance by the Commission, the Applicant shall record a Conservation Restriction for the +/- 1.19-acre portion of the parcel known as 36 Wequaquet Lane at the Barnstable County Registry of Deeds.
- C13. If a conservation entity acceptable to the Commission willing to hold a Conservation Restriction is not identified by the Applicant, prior to and as a condition to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall make a cash contribution in the amount \$33,555 payable to Barnstable County Treasurer, to be used for the purpose of supporting acquisition and conservation of open space in the Town of Barnstable in lieu of Conditions C11 and C12.
- C14. To the extent that a back-up generator is proposed for the Project, the Commission encourages a single, shared back-up generator for all users of the Project. If more than one back-up generator is used for the Project, they shall not be tested at the same time. ~~Back-up generators shall only be fueled by natural gas or propane. Sound attenuating fencing as shown on the Project plans shall be installed and any generator shall be optioned to include a sound enclosure.~~ Routine generator testing shall only be performed on weekdays during day-light hours.

C15. Sound attenuating fencing as shown on the Project plans shall be installed and any generator shall be optioned to include a sound enclosure.

C16. Back-up generators shall only be fueled by natural gas or propane.

C15.C17. Transformer fluids used onsite shall be biodegradable and non-toxic.

C16.C18. The existing tower at 1047 Falmouth Road, ~~including any footings or foundation,~~ shall be decommissioned and removed and the Site shall be restored to substantially the condition existing prior to construction of the existing tower (other than replacing the 100-foot lattice tower) no later than 120 days after final building permit close out for the Project or no later than June 23, 2024, whichever is sooner. Removal shall include no less than the removal of the top 24" of the foundation for the tower, removal of the installed reinforcement and anchor bolts, and removal of the reinforcement anchors that were installed to modify the tower after originally installed. in its entirety no later than 120 days after final building permit sign off for the Project or no later than June 23, 2024, whichever is sooner.

- Failure to decommission and remove the existing tower at 1047 Falmouth Road, including the top 24" of the foundation, installed reinforcement and anchor bolts, and any reinforcement anchors that were installed to modify the tower after originally installed, including any footings or foundation, in its entirety by June 23, 2024 shall be cause to revoke this decision.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE

Executed this _____ day of _____ 2022

For the Cape Cod Commission by:

Signature

Print Name and Title

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2022

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: _____

SEAL