STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

THE TOWERS, LLC APPLICATION FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF A TELECOMMUNICATIONS FACILITY AND ASSOCIATED EQUIPMENT LOCATED AT 17 WARREN ROAD, WASHINGTON (NEW PRESTON), CONNECTICUT	:	DOCKET NO. 543
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	:	
	:	MAY 27, 2026

POST HEARING BRIEF OF INTERVENOR STEEP ROCK ASSOCIATION, INC.

The Connecticut Siting Council ("siting council") lacks jurisdiction to consider the captioned application due to defects in its composition and in the statutorily required notice of the application. Moreover, the conduct of the hearing was fundamentally unfair. In the event that the siting council determines that it does have jurisdiction and decides the application, Steep Rock Association, Inc., intervenor under the Connecticut Environmental Protection Act, C.G.S. §§ 22a-14 et seq. ("CEPA"), submits this post-hearing brief setting forth the factual and legal grounds why the application should be denied.

A. The siting council is improperly constituted because its presiding officer was neither appointed by the Governor nor confirmed by the legislature.

The siting council last had a duly appointed chairperson upon the appointment of Elin Katz by Governor Lamont and her confirmation by the Senate on April 15, 2025.[1] Chair Katz

[1] Senate Session Transcript for 4/15/2025, pp. 44-47.

resigned on June 12, 2025.[2] On the date that the siting council received the application which is the subject of Docket No. 543, and throughout its proceedings on the application, the siting council website indicated that the position of "chair" was vacant.[3]

Council member John Morissette presided over the proceedings on Docket No. 543 as the "Vice Chair." According to the siting council meeting minutes, Mr. Morissette was elected "Vice Chair" at a meeting of the siting council held on April 17, 2025: "Chair [Elin] Katz nominated Mr. [John] Morissette as Vice Chair of the Connecticut Siting Council; seconded by Mr. Carter. The motion passed unanimously."[4] Ms. Katz resigned less than two months later and has not been replaced.

The original legislation establishing the siting council, initially known as the "Power Facility Evaluation Council," contains the requirement that the Governor appoint the chairman of the Council "with the advice and consent of the House or Senate," and that provision has remained unchanged to the present except for technical amendments. See Public Acts 1971, No. 575, § 4. General Statutes § 16-50j (e) currently provides:

> The chairperson of the council shall be appointed by the Governor from among the five public members appointed by the Governor, with the advice and consent of the House or Senate, and shall serve as chairperson at the pleasure of the Governor.

Consistent with General Statutes § 16-50j (e), General Statutes § 4-9a (a) similarly provides:

> The Governor shall appoint the chairperson and executive director, if any, of all boards and commissions within the Executive Department, except the State Properties Review Board, the State Elections Enforcement Commission, the Commission on Human Rights and Opportunities, the Commission on Fire Prevention and Control, the Citizen's Ethics Advisory Board and the Transportation Policy Advisory Council.

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[2] Connecticut Siting Council website, Meeting Minutes of June 12, 2025.
[3] https://portal.ct.gov/csc/membership/membership/council-membership---energy
[4] Connecticut Siting Council website, Meeting Minutes of April 17, 2026.

No statute or regulation allows for the siting council to elect its own "Vice Chair," presiding officer or the like to preside over siting council proceedings.[5]

Collins English Dictionary defines "chairman" as "a person who presides over a company's board of directors, a committee, a debate, an administrative department, etc.," and "vice chairman" as "a member of a committee, board, group, etc., designated as immediately subordinate to a chairman and serving as such in the latter's absence; a person who acts for and assists a chairman."[6] Mr. Morissette's assumption of "Vice Chair" status by action of the siting council, without appointment by the Governor and without the advice and consent of the House or Senate, constitutes a usurpation of the power of the Governor and the General Assembly in violation of both General Statutes §§ 16-50j (e) and 4-9a (a).[7]

The siting council members did not have the authority to elect or appoint Mr. Morissette as the Vice Chair. Even the authority of the Governor, who is granted the appointment power by General Statutes § 16-50j (e), is subject to strict limitations because of the requirement of legislative confirmation:

> When the General Assembly is not in session and when no other provision has been made for filling any vacancy in an office, appointment to which is made by the General Assembly or either branch thereof, whether or not on nomination by

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[5] Regs., Conn. State Agencies § 16-50j–2a (5) provides: "'Chairperson' means the public member of the council appointed pursuant to the provisions of section 16-50j (d) of the General Statutes of Connecticut." Regs., Conn. State Agencies § 16-50j–2a (24) provides: "'Presiding Officer' means the Chairperson of the Connecticut Siting Council, or the Chairperson's designee."

[6] "Collins English Dictionary — Complete & Unabridged" 2012 Digital Edition © William Collins Sons & Co. Ltd. 1979, 1986, available at: https://www.dictionary.com/browse/chairman

[7] See also General Statutes § 4-9d (a), which provides: (a) Unless otherwise provided by law, an elected or appointed officer of the executive or judicial branch who, as such officer, is required to serve on a board, commission, Council, authority, task force or other body, and is unable or chooses not to so serve, may designate a person to serve on such body in his place, provided (1) an officer may only designate another officer of his agency and (2) an officer who is required by law to serve as a chairperson or presiding officer of such body shall not designate a person to serve on such body in his place.

> the Governor, or appointment to which is made by the Governor with the advice and consent of the General Assembly or either branch thereof, the Governor may fill the same until the sixth Wednesday of the next regular session of the General Assembly, and until a successor is elected or appointed and has qualified. The Governor may fill any vacancy in any office to which he has power of appointment, provided the Governor may not appoint a person who was nominated for an appointment subject to the advice and consent of the General Assembly or either branch thereof and whose nomination was rejected by the General Assembly or either branch thereof during the last preceding regular session of the General Assembly to the same or similar vacancy unless the General Assembly is in regular session.

General Statutes § 4-19. Had the legislature intended to allow the siting council to fill its own vacancies, it easily could have said so.

Further, Mr. Morissette, the "Vice Chair" elected by the siting council, is a retired Eversource Energy executive. According to his biographical note published by the siting council on its website,

> Mr. Morissette retired from Eversource Energy having responsibilities that included: Manager of Siting and Permitting, Supervisor - Distributed Resources for Connecticut Light and Power, Manager - Asset Management, Manager - Contract Administration, Wholesale Power Marketer for Select Energy, and Principal for the first commercial wind plant in Central America for Charter Oak Energy. Mr. Morissette is also the Chairman for the Town of Vernon's Risk Management Advisory Committee.[8]

The legislative history of Public Acts 1971, No. 575, the Public Act establishing the siting council, indicates that the siting council was intended to serve primarily to protect and preserve the environment and not be dominated or unduly influenced by individuals affiliated with the utilities appearing before and making application to it.[9] Having a presiding officer like Mr.

[8] https://portal.ct.gov/csc/membership/membership/council-membership---energy

[9] See, e.g., the remarks of Attorney Russell Brenneman, Vice Chairman of the Panel on Legislation of the Governor's Committee on Environmental Policy, who testified that the Committee believed that "an independent, environmentally oriented agency was needed" in lieu of the Public Utilities Commission to regulate the siting of utilities in the State." Joint Standing Committee Hearings, Environment, 1971, p. 467. The entire legislative history of Public Acts 1971, No. 575 is available at: https://collections.ctdigitalarchive.org/node/80217

Morissette, elected by the siting council, who was affiliated with a utility, is, at best, inconsistent with the legislature's expressed intention to insulate the siting council from the entities that it regulates.

The Governor did not designate a chairperson of the siting council and, therefore, did not do as the statute directs. Mr. Morissette was never appointed chairperson by the Governor nor approved by either branch of the General Assembly. The siting council is not properly constituted while Mr. Morissette serves as its "Vice Chair." An improperly constituted administrative agency lacks authority to act. *Dubaldo v. Department of Consumer Protection*, 209 Conn. 719 (1989). Under these circumstances, the siting council can take no valid action.

B. Defective notice of the proceedings on Docket No. 543 deprived the siting council of jurisdiction over the application.

C.G.S § 16-50j (i) requires in pertinent part that "Prior to commencing any hearing pursuant to section 16-50m, the council shall consult with and solicit written comments from (1) the Departments of Energy and Environmental Protection, Public Health, Agriculture, Economic and Community Development and Transportation and the Council on Environmental Quality, the Public Utilities Regulatory Authority, the Office of Policy and Management and the Office of Consumer Counsel…." There is no evidence in the record that the siting council complied with this requirement.

C.G.S. § 16-50*l* (b) also requires public notice of certificate applications.[10] The notice

[10] C.G.S. § 16-50*l* (b) provides in pertinent part: "A notice of such application shall be given to the general public, in municipalities entitled to receive notice under subdivision (1) of this subsection, by the publication of a summary of such application and the date on or about which it will be filed. Such notice shall be published under the regulations to be promulgated by the council, in such form and in such newspapers as will serve substantially to inform the public of such application and to afford interested persons sufficient time to prepare for and to be heard at the hearing prescribed in section 16-50m."

must "serve substantially to inform the public of such application and to afford interested persons sufficient time to prepare for and to be heard at the hearing" on the application. In order to achieve these objectives, the notice must indicate the site of the proposed tower. According to Regs., Conn. State Agencies §16-50j-2a (29), "Site" means "a contiguous parcel of property with specified boundaries, including, but not limited to, the leased area, right-of-way, access and easements on which a facility and associated equipment is located, shall be located or is proposed to be located." The applicant's public notice of Docket No. 543 indicates that the site of the proposed tower is 17 Warren Road in the Town of Washington.[11]

The applicant proposed three alternative locations for the access road to the proposed cell tower. The second proposed location encroaches upon the adjacent property at 290 Woodville Road in Warren. The applicant ultimately abandoned that alternative, electing instead to pursue a third alternative location purportedly offering a better sight line at the intersection of the access road with the street. In order to achieve this, the applicant's traffic engineer acknowledged the need to clear vegetation at 290 Woodville Road. The "site" of the proposed tower therefore properly includes 290 Woodville Road in Warren as well as 17 Warren Road in Washington. Reference to the property at 290 Woodville Road should have been included in the required statutory notice.[12] Moreover, the record reflects that the proposed tower will have impacts in both Washington and Warren.[13]

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[11] See Application, Att. 3, Legal Notice in the Republican American.

[12] See also C.G.S. § 16-50*l* (a), which provides in pertinent part, "[t]o initiate a certification proceeding, an applicant for a certificate shall file with the council an application, in such form as the council may prescribe, accompanied by a filing fee of not more than twenty-five thousand dollars, which fee shall be established in accordance with section 16-50t, and a municipal participation fee of forty thousand dollars, or, if the proposed location of the facility is in more than one municipality, eighty thousand dollars, to be deposited in the account established pursuant to section 16-50bb…."

[13] See, e.g., Tr., 4/14/2026, pp. 75-76, 78-79 (LaCava); Pre-Filed Testimony Dorton 11/25/2025.

Proper notice is a prerequisite to valid action by an administrative agency, and failure to give required notice constitutes a jurisdictional defect. When an administrative body acts without giving proper notice, any action taken is without legal effect. It is as though the body never met or voted, its meeting, in effect, being void ab initio. See *Koskoff v. Planning & Zoning Commission*, 27 Conn. App. 443, 448-450 (1992) and cases cited there. The siting council lacks jurisdiction over this application.

C. The proceedings on Docket No. 543 were fundamentally unfair.

"Fundamentals of natural justice require that there must be due notice of the hearing, and at the hearing no one may be deprived of the right to produce relevant evidence or to cross-examine witnesses produced by his adversary.... Put differently, [d]ue process of law requires that the parties involved have an opportunity to know the facts on which the commission is asked to act ... and to offer rebuttal evidence." (Citations omitted; internal quotation marks omitted.) *Grimes v. Conservation Commission*, 243 Conn. 266, 274 (1997). In short, "[t]he conduct of the hearing must be fundamentally fair." *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 408, cert. denied, 245 Conn. 917 (1998); see also R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (3d Ed. 2007) § 20:14, p. 587.

In addition to the compositional and notice defects discussed above, the siting council's proceedings on Docket No. 543 were fundamentally unfair in at least three critical respects. First, Vice Chair Morissette refused to allow questioning of the applicant on the first two alternatives it proposed. Counsel for Steep Rock Association asked the applicant's wetlands scientist to compare the relative environmental impacts of the three alternatives for the access road location, for each of which the applicant had prepared and submitted plans to the Council. Counsel for the applicant objected and the following exchange ensued:

ATTORNEY BALDWIN: Mr. Morissette, again, we're talking about a driveway access way to the cell site that is no longer, as Mr. Paul put it, in play. Perhaps we could focus on the environmental effects associated with the proposed driveway as outlined in our late-file exhibit.
ATTORNEY SHERWOOD: Mr. Morissette, one of the Council's responsibilities [even] without any environmental intervention is to consider alternatives to the proposal. And as an environmental intervener, I believe it's our responsibility to ask the Council to consider alternatives to the current proposal which are -- which would result in less impact. So, I think that particularly in light of the fact that the Applicant proposed the second iteration voluntarily and submitted site plans, that it certainly is worthy of the Council's consideration.
THE VICE CHAIR: I'm not sure I agree with that, Attorney Sherwood. I agree with the analysis that alternatives should be evaluated, but the alternatives that were originally proposed are no longer viable solutions. So, spending time asking questions about them I don't think are worthy of the time that we're here today. Attorney Bachman, do you have any comments on that?
ATTORNEY BACHMAN: Thank you, Vice Chair Morissette. I understand that Attorney Sherwood is a CEPA intervener and it is his responsibility to explore alternatives, but the alternatives must be feasible. And based on what the Applicant stated earlier, that there is only one access road on the table at this point, and that's how we will proceed. The other two are not viable, as you stated.
THE VICE CHAIR: Yes. So, with that, the objection is sustained. Please continue, Attorney Sherwood.[14]

The excluded line of questioning was highly relevant to the siting council's obligations under § 22a-19. The applicant, not the intervenors, proposed the three alternative access road locations. As noted below, the first and second alternatives would result in significantly less environmental impact than the third. When questioned about the abandonment of the second alternative and the adoption of the third, the applicant simply responded that the first two alternatives were "off the table," without offering any reasons.[15] This response morphed into nonviability or unfeasibility when it was used by the "Vice Chair" to prohibit further questioning, without any evidence in support.[16]

[14] Transcript 1/13/26, pp. 42-43.
[15] Transcript 1/13/26, pp. 31-33.
[16] The applicant's engineer testified that the proposed access road was moved to the location proposed in the third alternative design because the intersection sight distances were better but acknowledged that he did not measure the sight line distances for the first two locations

Second, the siting council refused to order a second balloon float to allow the intervenors to conduct meaningful cross examination on the applicant's visual assessment.[17] The applicant acknowledges that the "primary impact of facilities such as this is visual."[18] The consultant who prepared the "Visual Assessment" attached to the application testified that the balloon float comprised a critical component of the assessment, allowing the consultant to significantly reduce the claimed area of visibility initially established by the consultant's computer modeling.[19] The balloon float took place on April 25, 2025, was not noticed to the public and occurred several months prior to the submission and publication of legal notice of the above-referenced application. The siting council denied the motion on the basis that "a balloon float is not required under Connecticut General Statutes § 16-50p and the visual assessment in the application was developed to evaluate the visibility of the tower within a two-mile radius of the proposed facility site."[20] The Council's decision ignores the fact that the balloon float constitutes a critical component of the applicant's visual assessment and by depriving the intervenors of access to the data on which it relies the Council impinged upon the intervenors' right to meaningful cross-examination.[21]

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proposed. Tr., 01/13/2025, pp. 22-23 (Johnston). In any event, the applicant acknowledged that Connecticut Department of Transportation intersection sight distance requirements could not be met at any point along the frontage of the proposed cell tower site and that it would be seeking an exception from those requirements in connection with its application for encroachment permit. Tr., 2/24/2026, p. 74 (Kendall).

[17] Council Decision on Joint Motion for Balloon Float, 02/20/26

[18] Narrative, p. 16/25

[19] Transcript 12/4/25, p. 95. Compare the "Viewshed Analysis Maps" attached to the "Visual Assessment" at pp. 10-11/53 to the viewshed analysis map" attached as Exhibit 5 to the Responses to Council Interrogatories, 11/26/25, revised after the consultant conducted the balloon float and showing a much-reduced visibility.

[20] Council Decision on Joint Motion for Balloon Float, 02/20/26.

[21] See Tr., 12/4/2025, pp. 102-105 (Landino) for Mr. Landino's testimony regarding the importance of the balloon float to his Visual Assessment.

Further, the applicant has stated that it will not enter private property to collect data for its visual assessment, so the visual assessment contains only selected photographs from public roadways and the Mount Tom State Park Tower. The assessment provides no direct evidence on the visibility from hundreds of acres of private property in the immediate vicinity of the proposed tower. The siting council cannot fulfill its statutory duty to evaluate "the probable environmental impact of the facility … including a specification of every significant adverse effect, including, scenic, historic and recreational values…;" General Statutes § 16-50p (A) (3) (B); because no photographs of the balloon from sensitive historical, cultural, recreational and educational receptors in the immediate area were made part of the public hearing record.

Third, the siting council refused to compel the applicant to respond to a discovery request to disclose its analysis of a small cell alternative to the proposed tower.[22] The Area Residents Group served an interrogatory on the applicant on January 6, 2026 requesting a line-item breakdown of the Applicant's small cell cost estimate.[23] The applicant did not object to that interrogatory, but no cost breakdown was provided. During the February 24, 2026, session of the public hearing, the applicant's witness, Keith Vellante, testified that the applicant performed an "internal review" or "internal analysis" of the viability of small cells as an alternative to the proposed tower. Counsel for the Area Residents Group asked that the review or analysis be disclosed to the intervenors, and his request was summarily denied by Vice Chair Morissette.[24] The intervenors filed a motion to compel production of the applicant's review or analysis on April 13, 2026,[25] which was denied by the siting council as untimely.[26] The intervenors also filed

[22] Council Decision on Joint Motion for Order to Compel Production of Documents, 04/15/26.
[23] See Interrogatory No. 10, Interrogatories to Applicant and Request for Production, 12/29/25.
[24] Transcript, 2/24/2026, pp. 115-116.
[25] Joint Motion for Order to Compel Production of Documents, 04/13/26
[26] Council Decision on Joint Motion for Order to Compel Production of Documents, 04/15/26

a motion to reconsider, which was denied by the Council as untimely, irrelevant and repetitious.[27] The applicant has never produced the review or analysis. Failure to compel production of the review or analysis compromised the intervenors' right to cross-examination. *Epright v.Liberty Mut. Ins. Co.*, 349 Conn. 679 (2024) ("Permitting a party to…review the materials obtained, created, and relied on by [a testifying] expert in arriving at his or her opinion is necessary…If this were not so, parties would be unduly hampered in their…ability to effectively cross-examine the expert").

These rulings deprived the intervenors of "the opportunity to know the facts on which the agency is asked to act, to cross-examine witnesses and to offer rebuttal evidence"; *Burton v. Department of Environmental Protection,* 337 Conn. 781, 800 (2021); and rendered the proceedings on Docket 543 fundamentally unfair.

D. The applicant failed to demonstrate "the nature of the probable environmental impact of the facility ... including a specification of every significant adverse effect" as required by C.G.S. § 16-50p (a) (3) (B).

C.G.S. § 16-50p (a) (3) (B) provides that the siting council cannot issue a certificate unless it finds that "the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including, but not limited to…ecological balance…public health and safety… scenic, historic and recreational values… agriculture… forests and parks…air and water purity, and …fish, aquaculture and wildlife… are not sufficient reason to deny the application."

The applicant to an administrative agency bears the burden of proof. *Samperi v. Inland Wetlands Agency*, 226 Conn. 579, 593 (1993); see *Komondy v. Zoning Board of Appeals*, 127

[27] Council Decision on Joint Motion for Reconsideration of the Council's Denial of the April 13, 2026 Joint Motion for an Order to Compel Production of Documents, 04/29/26.

Conn. App. 669, 678 (2011) ("[T]he burden rests with the applicant to demonstrate its entitlement to the requested relief"). The applicant has failed to meet its burden of proof by largely limiting its investigation of the site to desktop reviews. The public hearing record contains expert testimony of likely adverse impacts to inland wetlands, listed species, scenic values and historical and cultural resources and many of these concerns were not evaluated, let alone resolved, by the applicant.

With respect to potential wetlands impacts, the applicant has failed to provide sufficient information on existing conditions at the proposed cell tower site to allow the siting council to determine the environmental impacts of the proposed tower. The applicant offered no plan showing surveyed property boundaries, the surveyed location of wetlands and watercourse boundaries at the site and adjacent properties, existing wetlands crossings, vegetation, soil types and topography, all of which are necessary in order that the plan showing proposed activities affecting onsite inland wetlands and watercourses may be understood and evaluated.[28] Further, the applicant has failed to provide sufficient information regarding wetland characteristics and functions to allow the siting council to analyze proposed impacts to inland wetlands and watercourses. One would expect that submissions for State agency review of inland wetlands impacts for proposed towers would satisfy, at a minimum, standards recommended to

[28] The most recent plan set filed by the applicant on December 30, 2025 as a late filed exhibit has no courses and distances, flags only one of the two onsite wetlands, labels some but not all wetlands flags, purports to show existing and proposed contour lines without any indication of the source of the data or elevations they purport to represent, does not show wetlands vegetation, depicts some but not all trees, and contains no information on soil types or the presence of ledge. Late-filed Exhibits, 12/30//25, 14/57.

Connecticut municipalities by the Department of Energy and Environmental Protection.[29] In this case, they do not.

The applicant used desktop reviews to evaluate the potential impacts of the proposed development on listed species.[30] The applicant utilized the USFWS "key" review process to conclude that there would be no adverse effect on wildlife, but the USFWS process addresses only those species listed under the federal Endangered Species Act. Therefore, sole reliance on the USFWS "key" review system leads to lack of consideration for other species of concern which may likely occur at the site, such as the 28 state-listed species documented at the Macricostas Preserve, less than two miles away.[31]

Similarly, the applicant offered a Natural Diversity Database determination letter from the Connecticut Department of Energy and Environmental Protection in support of the project which did not identify any listed species on or in the vicinity of the proposed tower site as evidence of no adverse impact. However, the applicant's determination letter, contains the following disclaimer: "Natural Diversity Database information includes all information regarding listed species available to us at the time of the request. This information is a compilation of data collected over the years by the Department of Energy and Environmental

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[29] C.G.S. § 22a-42a of the Inland Wetlands and Watercourses act authorizes municipalities to establish the boundaries of inland wetlands and watercourses within their jurisdiction and regulations governing activities which may affect the inland wetlands and watercourses so established. CTDEEP has promulgated model regulations to serve as guidance to municipalities with respect to what application materials are necessary for review of proposed regulated activities and how such reviews should be conducted. See Steep Rock Association, Inc. Administrative Notice Item No. 42, Connecticut Department of Energy and Environmental Protection, *Inland Wetlands and Watercourses Model Municipal Regulations* (4th Ed., May 1, 2006) pp. 14-15.

[30] Tr., 12/4/2025, p. 111 (Gustafson). The applicant did commission a field study to determine if the bog turtle is present at the site, apparently unaware that the bog turtle does not occur in Connecticut east of the Housatonic River. Tr., 4/28/2026, p. 21 (Klemens).

[31] Pre-filed Testimony of Brian E. Hagenbuch, PhD., 11/20/25, 5-8/12.

Protection's Natural History Survey and cooperating units of DEEP, land owners, private conservation groups and the scientific community. This information is not necessarily the result of comprehensive or site-specific field investigation." The NDDB warns that "[c]onsultation with the NDDB should not be substituted for on-site surveys required for thorough environmental assessments."[32] The applicant's "Avian Resource Inventory" dated December 26, 2025, likewise is based entirely on a literature search and entailed no fieldwork or direct observation whatsoever.[33]

The applicant's "Visual Assessment" fails to meet minimum professional standards to allow the siting council to adequately assess the visual impact of the proposed tower. According to the federal Bureau of Land Management, "Decisions regarding design aesthetics and the associated visual impact on the surrounding environment should be made by qualified persons…. Such qualifications normally include academic or other accepted credentials in landscape architecture."[34] All Points Technology Corporation, which prepared the "Visual Assessment," does not report having any landscape architects on its staff.[35] Richard Landino, the applicant's consultant who answered questions regarding the "Visual Assessment" at the commencement of the public hearing, is a graphics artist with a Bachelor of Arts degree in Music from Southern Connecticut State University. The assessment's "Methodology" narrative fails to provide basic

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[32] https://portal.ct.gov/deep/nddb/nddb-frequently-asked-questions

[33] Applicant's late-filed Exhibits, 12/30/25, 43-57/57. 61. Dean Gustafson, who prepared the study, has a B.S. degree in Plant and Soil Sciences from the University of Massachusetts. Mr. Gustafson disclosed no degrees, education or experience in ornithology, zoology, ecology, or any other disciplines concerning migratory birds. Late-filed Exhibits, 12/30/25, 7/57.

[34] United States Department of the Interior, Bureau of Land Management, *Best Management Practices for Reducing Visual Impacts of Renewable Energy Facilities on BLM-Administered Lands* First Edition – 2013, p. 114; see also Landscape Institute and Institute of Environmental Management & Assessment, *Guidelines for Landscape and Visual Impact Assessment* (3rd Ed., 2013), pp. 21-22.

[35] See https://allpointstech.com/our-team/

information necessary to evaluate the reliability of the assessment, such as the name, source and date of the "aerial photograph and topographic base maps" used in the development of the viewshed analysis,[36] an explanation of how "the type, size, and density of trees" and "topographic constraints" within the potential viewshed area were determined in order to evaluate seasonal visibility and what sources it relied upon,[37] and which version of Esri's ArcMap GIS software was used in its analysis.[38]

Finally, the applicant's "Preliminary Historic Resources Determination" provides the siting council with no meaningful insight into the potential impacts of the proposed cell tower on historical resources in the area. Michael Libertine, its author, does not satisfy the Secretary of the Interior's qualifications for an expert in archeological and historic resources, has no expertise in historic preservation, and has no degrees or education in any areas concerning historical or archaeological resources.[39] Mr. Libertine acknowledged that he is not qualified to determine whether a property is eligible for listing on the National Register of Historic Places or the State Register of Historic Places.[40] In the conduct of his study, he did not review the State Historic Preservation Office Files to determine whether there were listed resources with the Area of Potential Effects, although such information is readily available, relying instead on a summary report from another consultant.[41] The sum total of the evidence the applicant offered relevant to the effect of the proposed cell tower on historic values involved nothing more than internet

[36] Application, Attachment 9, p. 4/53.
[37] Application, Attachment 9, pp. 4-5/53 ("Seasonal visibility is therefore estimated based on a combination of factors including the type, size, and density of trees within a given area; topographic constraints; and other visual obstructions that may be present.")
[38] Application, Attachment 9, p. 3/53. Esri (Formerly the Environmental Systems Research Institute) is replacing its ArcGIS program with its newer platform, ArcGIS Pro.
[39] Tr. 2/24/2026, pp. 12-13 (Libertine); Tr. 4/14/2026, p. 52 (Libertine).
[40] Tr. 2/24/2026, pp. 28-29 (Libertine).
[41] Tr. 2/24/2026, pp. 20-21 (Libertine); cf. Tr., 4/28/2026, pp. 125-126 (Haynes).

research and review of a third-party summary by an individual with no qualifications or experience in historical resources.

The applicant failed to provide the siting council with the information necessary to fulfil its responsibilities under C.G.S. § 16-50p (a) (3) (B).

E. Potential adverse environmental impacts outweigh the public need.

The proximity of the Macricostas Preserve and the Montessori School, intrusion into core forest, the Important Bird Area adjacent to the tower and access road, avoidable wetlands impacts, and likely adverse effects on listed plant and animal species, all outweigh the public need for the tower in light of the demonstrated feasibility of a small cell network providing comparable service at equivalent cost.

Moreover, the proposed tower site fails to comply with federal guidance on cell tower siting. *Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning*, Migratory Bird Program, U. S. Fish and Wildlife Service, Falls Church, Virginia (March 2021), item 14 on the siting council's own Administrative Notice List, warns that "[t]owers should not be sited in or near wetlands, other known bird concentration areas (e.g., state or federal refuges, staging areas, rookeries, and Important Bird Areas), or in known migratory bird movement routes, daily movement flyways, areas of breeding concentration, in habitat of threatened or endangered species, [or] key habitats for Birds of Conservation Concern…," requires avoidance of "ridgelines, coastal areas, wetlands or other known bird concentration areas," and that recommends "already degraded areas for tower placement." Dr. Albert M. Manville II, a distinguished scientist, Branch Chief (1997-1999) and Senior Wildlife Biologist (2000 to 2014) at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, and author of the *Recommended Best Practices*,

testified unequivocally that the proposed tower did not incorporate the best practices and would result in harm to birds, bats and insects.[42] The applicant's insistence that it complies with the federal guidance is disingenuous and further illustrates its disregard for environmental impacts to surrounding area resources.

No evidence has been produced to justify the intrusion of a 140-ft high tower into this pristine natural setting in northeastern Washington.

F. The proposed tower would adversely affect a scenic area of statewide significance and no public safety concerns are implicated.

C.G.S. § 16-50p (b) (1) (C) requires the siting council, in every application for a proposed cell tower, to examine, among other things, "whether the proposed facility would be located in an area of the state which the council, in consultation with the Department of Energy and Environmental Protection and any affected municipalities, finds to be a relatively undisturbed area that possesses scenic quality of local, regional or state-wide significance." The siting council may deny an application if "the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood and no public safety concerns require that the proposed facility be constructed in such a location." C.G.S. § 16-50p (b) (1).[43]

There was substantial testimony before the siting council that the proposed cell tower would be located within a scenic area of statewide significance. According to Dr. Klemens, Steep Rock Association's Macricostas Preserve, "[c]oupled with other protected lands (e.g., Mount Tom State Park, Wyantenock State Forest) and privately owned lightly developed

[42] Pre-filed Testimony of Albert M. Manville, II, Ph.D., 11/22/25, and Curriculum Vitae.
[43] The administrative record contains no evidence that the siting council consulted with the Department of Energy and Environmental Protection on whether the proposed cell tower would be located in "a relatively undisturbed area that possesses scenic quality of local, regional or state-wide significance."

working lands, [i.e., the area in the vicinity of the proposed tower] represents one of the largest intact landscapes within the State." He further testified, "[a] cell tower that is proposed to be inserted into the heart of an ecologically intact and topographically diverse landscape encompassing thousands of acres requires extreme diligence on the part of the CT Siting Council." [44]

Steep Rock Association's Macricostas Preserve ranks among the top three hiking destinations in Litchfield County according to reader choice surveys conducted by Litchfield Magazine. Steep Rock Association preserves host thousands of visitors each year who enjoy hiking its peaks and viewsheds. Steep Rock owns or manages the entire ridge between the village of New Preston (Route 45 and Jones Road) and Rabbit Hill Road in Warren, which includes several miles of trails and lookout points for visitors to enjoy the viewshed, some of which are within two miles of the proposed cell tower site.[45]

The average tree height in the vicinity of the proposed tower is 73 feet, so the proposed tower will rise 67 feet above the height of the trees.[46] Photographic evidence submitted by Steep Rock Association demonstrates that the proposed tower would be visible from the trail system within Steep Rock's Macricostas Preserve.[47] Photographic evidence and testimony offered by the Washington Montessori Association, Inc. indicates that the proposed tower will be visible from the adjacent school and its nature trails.[48]

The proposed tower site is also surrounded by notable historic and cultural resources,

[44] Pre-filed Testimony of Michael W. Klemens, Ph.D., 11/19/25, p. 3.
[45] Pre-filed Testimony of Brian E. Hagenbuch, PhD., 11/20/25, 5/12
[46] Tr. 1/13/2026, p. 111 (Landino).
[47] Supplemental Pre- Testimony of Brian E. Hagenbuch, Ph.D., received 02/10/26; Steep Rock Association 2026 Macricostas Preserve Trail Map
[48] Supplemental Pre-filed Testimony of Kerry Dorton, 02/10/26.

most of which are not shown on the applicant's "Visual Assessment," even as supplemented,[49] or on its "Historical Resources Screening Map."[50] A study by an Historic Preservation Specialist identified "22 historic resources within a two mile radius of the proposed tower, of which 18 will be, or have the potential to be, adversely visually impacted by the project. Two of the resources surveyed are listed on the National Register of Historic Places. A third resource is listed on the State Register of Historic Places. The remaining 19 resources, in [his] opinion, would be eligible for listing on the State Register of Historic Places as individual resources or in multiple resource nominations."[51] The site is proximate to state-designated scenic highway Route 202 and Town of Washington-designated scenic road Romford Road, and across the road from the Shepaug River, once considered for "Wild and Scenic River" status by the National Park Service.[52]

Intrusion into the viewsheds of the Macricostas Preserve, state and local designated scenic roads, the Shepaug River, and nearby historic homes has not been justified by any demonstration of pressing public safety concerns.[53]

G. There are feasible and prudent alternatives to that proposed which would eliminate or reduce the anticipated environmental impacts.

Steep Rock's intervention into the proceedings under C.G.S. § 22a-19 imposes certain additional responsibilities on the siting council. The statute first requires that the siting council determine whether the proposed cell tower facility "does or is reasonably likely to unreasonably pollute, impair or destroy the public trust in the air, water or natural resources of the state." C.G.S. § 22a-19 (b). If the siting council finds that Steep Rock has made a prima facie case of

[49] See Responses to Council Interrogatories 11/26/2025, Ex. 5, 60/74; Responses to Council Interrogatories, Set Two, 12/30/25 Att. 1 pp. 10-12/12.
[50] Attached as an exhibit to the applicant's "Preliminary Historic Resources Determination."
[51] Pre-filed Testimony of Wes Haynes, 12/30/25, Ex. 2 13/36.
[52] Pre-filed Testimony of Brian E. Hagenbuch, PhD., 11/20/25, 4/12
[53] Transcript 12/4/25 pp. 76-77 (Paul).

such impairment, the siting council must then determine if, "considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare." C.G.S. § 22a-19; see *City of Waterbury v. Town of Washington*, 260 Conn. 506, 549- 51 (2002).[54] There was evidence of three alternatives which would result in significantly less environmental impact than the proposed cell tower, one suggested by Steep Rock and two put forth by the applicant but later withdrawn from consideration.

First, Steep Rock offered extensive testimony and analysis regarding the feasibility of a small cell network as an alternative to the proposed tower, which was never seriously considered by the applicant.[55]

Second, implementation of either of the applicant's first or second alternative plans, which it refused to consider or discuss after proposing its favored third alternative, would reduce the adverse environmental impacts of the tower. The applicant's third alternative plan would

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[54] Although this argument is framed in terms of siting council responsibilities under General Statutes § 22a-19, the Council is required to make these same determinations under General Statutes § 16-50p as well: "[Section] 16-50p provides an extensive list of factors that the siting council is required to consider and weigh. In its consideration of the factors provided for in § 16-50p, the siting council is implicitly considering whether the proposed installation poses unreasonable harm to the environment and whether or not there are feasible and prudent alternatives." (Footnote omitted.) *Planned Development Alliance of Northwest Connecticut v. Connecticut Siting Council*, Superior Court, judicial district of New Britain, Tax and Administrative Appeals Session at New Britain, Docket No. HHBCV216063734S (October 19, 2021) 2021 WL 5277470 at *5.

[55] See Lawton Supplemental Prefiled Testimony, 2/10/2026, 2/426: "In this case, our professional opinion is that this particular area, the number and sizes of available utility poles along the roads, and this particular profile of need (roads, homes and businesses and their proximity to the roads) indicate that small cells and ODAS warrant consideration as a viable technical alternative to the proposed tower. We have field mapped and measured all the Utility Poles along Route 202 and completed a 'proof of concept' design for small cell coverage along Route 202 which we have provided in a prior submission. We did not map the utility poles along Route 341 but note that there are overhead lines and supporting poles along this roadway as well. The applicant has provided no rationale for its refusal to consider this area for an alternative coverage design."

result in increases in amount of disturbed area, tree clearing, wetlands impacts, and length of access road. Although the applicant claims that the relocation of the access road as depicted in the third alternative plan was required to improve the sight lines from the access road at its intersection with Rte. 341, the applicant did not disclose the intersection sight distances for the first two alternatives, if indeed they were ever calculated.[56] Moreover, the siting council heard testimony from Garrett S. Bolella, a professional traffic engineer, that the proposed access drive cannot be safely accommodated anywhere along the frontage of the proposed cell tower site due to the inability to obtain required sight distances at the intersection of the access drive and Connecticut Rte. 341, a state highway.[57] The applicant acknowledged the inadequacy of the sight lines at its favored location but its traffic engineer testified that an exception to this requirement from the Department of Transportation would be requested, and would likely be granted, due to the extremely low usage of the access driveway.[58] If an exception would be necessary for any of the three alternative driveway locations, then the supposedly "improved" sight intersection distances cannot justify approval of the third alternative plan, which would result in far greater environmental impacts.

STEEP ROCK ASSOCIATION, INC.,
INTERVENOR

s/ David F. Sherwood
David F. Sherwood
Moriarty, Paetzold & Sherwood
2230 Main Street, P.O. Box 1420
Glastonbury, CT 06033-6620
Tel. (860) 657-1010
dfsherwood@gmail.com
Juris No. 412152
Its Attorneys

[56] Transcript 1/13/26 p. 23 (Johnston).
[57] Supplemental Pre-filed Testimony of Garrett S. Bolella, submitted on 04/13/26, pp. 1-2.
[58] Tr., 2/24/2026, p. 74 (Kendall).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was electronically mailed to the following service list on May 28, 2026.

Kenneth C. Baldwin, Esq.
Jonathan Schaefer, Esq
Robinson & Cole LLP
One State Street
Hartford, CT 06103
(860) 275-8200
kbaldwin@rc.com
jschaefer@rc.com

Brian Paul
Project Manager
The Towers, LLC
c/o Vertical Bridge REIT, LLC
750 Park of Commerce Drive
Boca Raton, FL 33787

Brian.Paul@verticalbridge.com
Elizabeth Glidden
Sr. Engineer, Regulatory and Real Estate
Cellco Partnership d/b/a Verizon Wireless
20 Alexander Drive
Wallingford, CT 06492
elizabeth.glidden@verizonwireless.com

The Honorable James L. Brinton
First Selectperson
Town of Washington
Bryan Memorial Town Hall
2 Bryan Hall Plaza
Washington Depot, CT 06794-0383
(860) 868-2259
jbrinton@washingtonct.org

The Honorable Gregory M. LaCava
First Selectperson

Town of Warren
50 Cemetery Road
Warren, CT 06754
(860) 868-7881
selectman@warrenct.gov

Joseph P. Mortelliti, Esq.
Cramer & Anderson LLP
30 Main Street, Suite 204
Danbury, CT 06810
(203) 744-1234
jmortelliti@crameranderson.com

Mario F. Coppola, Esq.
Matthew L. Studer, Esq.
Berchem Moses PC
1221 Post Road East, Suite 301
Westport, CT 06880
(203) 227-9545
mcoppola@berchemmoses.com
mstuder@berchemmoses.com

s/ David F. Sherwood
David F. Sherwood
Commissioner of the Superior Court