

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF HOMELAND TOWERS, LLC AND  
NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T FOR  
A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR THE  
CONSTRUCTION, MAINTENANCE, AND OPERATION  
OF A TELECOMMUNICATIONS FACILITY AT 16 COOTE  
HILL ROAD, TOWN OF SHERMAN, CONNECTICUT

DOCKET NO. 499

July 22, 2021

APPLICANTS' POST HEARING BRIEF

Respectfully Submitted,



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## **PRELIMINARY STATEMENT**

Homeland Towers, LLC (“Homeland”) and New Cingular Wireless PCS LLC d/b/a AT&T (“AT&T”)(together the “Applicants”), by their attorneys, Cuddy & Feder LLP, respectfully submit this post-hearing brief in support of their application (“Application”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket No. 499. This Application addresses over a decade of efforts by numerous parties to meet the long standing public need for a new tower facility in the southern portion of Sherman. AT&T, FirstNet, Litchfield County Dispatch and the Town of Sherman can provide reliable communication services to residents and visitors in this area of the community should the Council approve the proposed tower in Docket 499.

The public need for infrastructure to provide reliable wireless services in southern Sherman, including emergency communication services, was noted by AT&T as far back as 2008 when AT&T began its own site search. At the time, AT&T had leased a parcel of property on Leach Hollow Road for construction of a new tower. After engaging the Town, and in response to vehement opposition to that proposed AT&T tower location, AT&T searched for alternative sites along the ridge associated with Wanzer Mountain at the suggestion of Town officials.

A few years later, AT&T leased 16 Coote Hill Road and proposed construction of a new tower (the “Proposed Site”). AT&T conducted a technical consultation on the Proposed Site with the Town in 2013 and 2014. Thereafter, AT&T deferred filing an application with the Siting Council for the Proposed Site for business reasons only.

During AT&T’s 2013/2014 municipal consultation, the Town independently commissioned its own analysis of emergency communications after a proposed public safety tower in the center of Town had been defeated at a Town Meeting. That analysis by the Town was overseen by the Town’s Public Safety Committee and confirmed that both public safety and commercial wireless service were not available in southern Sherman and that new tower(s) would be needed. Some seven years later, the Town and various public safety agencies still has a need for a new tower to support emergency communications in southern Sherman.

Recognizing the need for tower infrastructure in this part of the state, Homeland began its own independent investigation for sites to serve southern Sherman several years ago. Like AT&T before it, after a comprehensive site search, Homeland Towers identified the Proposed Site as the only practical and viable candidate for a new tower, ruled out numerous alternatives and entered into a long-term ground lease with the owners of 16 Coote Hill Road. The tower will also allow for

commercial wireless services to the public from AT&T, Verizon, local public safety and municipal agencies among others.

Notably, when the State of Connecticut opted into FirstNet and AT&T's national public safety network in late 2017, various areas of the state were identified where gaps in network services would require new infrastructure for FirstNet. AT&T thereafter took its search ring in southern Sherman off its deferred status to address this significant gap and as part of its FirstNet Initiative, a broadband network dedicated to America's police, firefighters and emergency medical services ("EMS"). Thereafter, AT&T coordinated with Homeland to pursue the Proposed Site through a second Town consultation process and this application in Docket 499. All parties acknowledge that there has been no new communications infrastructure constructed in southern Sherman and that this is the only proposal to make it to the Siting Council despite a decade of efforts by the private sector and the Town.

Interestingly, the intervenor acknowledged there are significant gaps in southern Sherman through citation to the Town's 2014 Public Safety Committee presentations to the community. The intervenor erroneously suggests that a low water tank or short tower in another town would work or that the proposed tower height could be significantly lowered. Upon further development of the record and cross-examination, these assertions are not credibly supported by the facts and involved sites evaluated by AT&T, Homeland, the Town and others for years. Respectfully, the intervenor's last minute and late attempts to submit documents and offer witness testimony, some of which was outside the scope of the statutory criteria for review by the Council, evidenced more of an intent to delay the proceedings and muddy the record than provide meaningful facts and expert opinion for Council consideration.

The Applicants' professionals demonstrated through detailed competent testimony and field studies that the tower facility at the Proposed Site does not present significant adverse environmental impacts on any federal or state resources identified in the Council's enabling legislation. Indeed, the Applicants' established that any potential environmental effects can be fully mitigated and that the visibility of the proposed Facility is highly localized and limited to more distal views. The Applicants submit that any environmental effects do not outweigh the critical public need for a tower to provide reliable wireless service in this part of the state and that the tower as proposed meets the statutory criteria set forth in Section 16-50p of the Connecticut General Statutes ("C.G.S.") for approval.

### **STATEMENT OF FACTS**

## I. AT&T's Consumer Mobile, FirstNet, Municipal Public Safety Services

There is a significant deficiency in the existing AT&T wireless communications network in the southern portion of Sherman along state routes 37 and 39 and the neighboring areas. Applicants' Ex.1, Attachment 1; Applicants' Ex. 4, A13-A18; Applicants' Ex. 7, A42; Applicants' Ex. 7, Attachment 5. AT&T's need for a new tower facility in southern Sherman dates back more than a decade as evidenced by AT&T's meetings with the Town in 2009 and municipal consultation in 2013 for this location. Applicants' Ex. 1, pgs. 5 & 15, Applicants' Ex 1, Bulk File exhibit Technical Report. After completing the first municipal consultation in 2014, for business reasons, AT&T deferred the filing of an application. Id.

More recently, AT&T took its site search ring in the southern area of Sherman off its deferred status to address the significant gap in service in the community and also as part of its FirstNet Initiative, a broadband network dedicated to America's police, firefighters and emergency medical services ("EMS"). Id. When the State of Connecticut opted into FirstNet and AT&T's services in late 2017, various areas of the state were identified where gaps in network services would require new infrastructure, including this area of Sherman. Applicants' Ex. 4, A28. AT&T's coverage gaps were specifically identified and recently documented by drive-test data. AT&T's Ex. 7, Attachment 3; 6/24/21 Tr., ps. 247-248. The lack of service for wireless carriers and public safety agencies in this part of Sherman is fundamentally due to the absence of any adequate existing tower infrastructure or other wireless facility siting opportunities for an area characterized by significant changes in terrain elevation. Applicants' Ex. 1, Attachments 1 & 2.

The lack of wireless services in this area of Sherman was confirmed by the Sherman Telecommunications Committee as well as Verizon. Both indicated a need to collocate on the proposed Facility for public safety and commercial mobile services. The Sherman Telecommunications Committee advised that the proposed Facility is specifically needed to provide critical wireless service to the area. Applicants' Ex. 4, Attachments 6 & 7.

## II. Site Searches

AT&T and Homeland independently investigated different parcels of land in southern Sherman for the siting of infrastructure to address the public need for reliable wireless service in this area. Over the last decade, AT&T searched for and proposed numerous sites in Sherman, including potential tower locations within this search ring in the southern area of the Town. On June 12, 2013, AT&T submitted a Technical Report ("AT&T's 2013 Technical Report") to the Town proposing a wireless telecommunications tower facility at the proposed site. AT&T's 2013 Technical Report included 31 sites investigated with references back to 2009. AT&T completed

the municipal consultation process and had intended to file a certificate application for a tower site on the Site. In 2014, AT&T made a business decision to simply defer the site and an application was not filed with the Siting Council at that time. Applicants' Ex. 1, pgs. 5 & 15, 6/24/21 Tr., pg. 196.

Recognizing that a significant gap in wireless services exists in this part of Sherman, Homeland began its own independent investigation for sites and the potential for a new tower facility in the southern area of Sherman. Homeland investigated 42 sites and only 9 had landowners that expressed potential interest to Homeland. AT&T's RF engineers determined that 7 of these 9 sites would not provide the necessary coverage and one site was rejected due to the presence of an extensive wetlands system throughout the property. Like AT&T before it, Homeland identified the site as a viable candidate and entered into a long-term ground lease with the Owners. Applicants' Ex. 1, Attachment 2.

AT&T more recently took its site search ring in the southern area of Sherman off its deferred status to address the significant gap in service in the community and also as part of its FirstNet Initiative, a broadband network dedicated to America's police, firefighters and emergency medical services ("EMS"). Thereafter, AT&T entered into an agreement with Homeland Towers which includes a long-term lease for AT&T's use of the proposed tower Facility to provide its services to the community. Applicants' Ex. 1, pgs. 5 & 15. AT&T and Homeland have coordinated on this application and filing in Docket 499 to meet the need for a new tower site for multiple wireless communications needs to be met in southern Sherman.

### III. Second Technical Consultation with the Town of Sherman

In October of 2020, the Applicants filed a second Technical Report with the Town of Sherman with details of the proposed Facility. Applicants' Ex.1, Bulk Filing. On Saturday, November 21, 2020, a duly noticed public information meeting was conducted via videoconference by the Board of Selectman. This information meeting included a presentation by the Applicants, and comments and questions from the Board of Selectman and the public. At the Town's request, Homeland conducted a noticed balloon float at the Site on Sunday, January 31<sup>st</sup>. Applicants' Ex. 1, pgs. 25-26; Applicants' Ex. 4, A3. Comment letters from the informational meeting were received and included in the Application. Applicants' Ex.1, Attachment 11. After the information meeting, the location of the proposed Facility on the Site was shifted in consultation with DEEP to avoid impacts to the slimy salamander, a State Threatened Species. Applicants' Ex. 1, pg. 26, Attachment 10.

### IV. Certificate Application

On March 12, 2021, the Applicants submitted an Application to the Siting Council for a Certificate to construct, maintain and operate a wireless facility at 16 Coote Hill Road. The proposed Facility consists of a new self-supporting monopole 170' in height that will accommodate 2 municipal whip antennas extending an additional 22' above the top of the monopole, bringing the total facility height to approximately 192' AGL. The monopole tower will be located within a 2,400 s.f. fenced equipment compound located within the 5,625 s.f. leased area in the southwestern portion of the Site. AT&T's antennas would be installed at an antenna centerline height of approximately 166' above grade level ("AGL") with a walk-in equipment cabinet and emergency back-up propane fueled generator located within the equipment compound. The tower compound would be enclosed by an 8' high chain link fence. The monopole tower and fenced equipment compound are designed to support the antennas and equipment of other FCC licensed wireless carriers as well as the municipal emergency communications equipment. Vehicle access to the Facility would be provided from Coote Hill Road over the existing paved driveway a distance of approximately 415', then along a new 12' wide gravel access drive approximately 1,635' to the tower compound. Utility connections would be routed underground along the proposed access drive from an existing transformer and telecommunications box at the existing paved driveway and pole in the road to the Site. The Facility will be unmanned with no sanitary or water services and will generate on average 1 vehicle trip per month by each wireless carrier consisting of a service technician in a light duty van or truck. Applicants' Ex.1, Attachments 3 & 4.

#### V. Hearing Filings and Intervenor

The Applicants submitted responses to Siting Council pre-hearing interrogatories on May 11, 2021 and submitted supplemental information on May 18, 2021. At the May 25, 2021 hearing in this proceeding, the Siting Council granted intervenor status to Stan Greenbaum. The Applicants issued interrogatories to intervenor Greenbaum on June 10, 2021. On June 17, 2021, the Applicants submitted responses to Siting Council interrogatories set two and late filed exhibits as well as responses to intervenor Greenbaum's interrogatories. All parties and intervenors were given a full and fair opportunity to obtain documentary evidence from one another as part of the proceeding.

#### VI. Public Hearings; Closed Evidentiary Hearing & Supplemental Submissions

Due to the pandemic, a remote public hearing via Zoom Conferencing was scheduled by the Siting Council for May 25, 2021 in accordance with Governor Lamont's March 14, 2020 Executive Order No. 7B, which was in effect at that time. At the May 25, 2021 public evidentiary hearing,

the Siting Council heard comprehensive testimony from the Applicants' panel of witnesses on the need for the Facility, the investigation of sites and any environmental effects associated with construction of the Facility. A public hearing session was conducted via Zoom Conferencing on the evening of May 25, 2021.

The evidentiary hearing was adjourned to June 24, 2021. On June 17, 2021, the Applicants' submitted responses to Siting Council's interrogatories set two and request for late-file exhibits. At the June 23, 2021 continued evidentiary hearing, the Applicants' panel of witnesses provided additional testimony regarding the public need, the comprehensive and lengthy search of sites and lack of significant environmental impacts. The evidentiary hearing was closed after all parties were given a full and fair opportunity to present evidence and cross-examine witnesses.

## **POINT I**

### **A PUBLIC NEED CLEARLY EXISTS**

#### **FOR A NEW TOWER FACILITY IN SOUTHERN SHERMAN**

##### **I. AT&T Established A Public Need for a New Tower with Expert Testimony, Data and Analysis**

Pursuant to C.G.S. Section 16-50p, the Siting Council is required to find and determine as part of any Certificate application, "a public need for the proposed facility and the basis for that need." C.G.S. §16-50p(a)(1). In this Docket, AT&T provided coverage analyses, data and expert testimony that clearly demonstrate the need for a new tower facility to provide reliable wireless services in southern Sherman to homes, public safety agencies and the traveling public. Applicants' Ex. 1, Attachment 1; Applicants Ex. 4, A13-A18, Applicants' Ex. 7, Attachment 3 ; 5/25/21 Tr., pgs. 65-66;102-103; 6/24/21 Tr., pg. 191. Indeed, the Application materials and AT&T's expert witness testimony demonstrate that a new tower facility at a minimum height of 170' AGL is required to provide reliable telecommunications services to the public as well as a broadband public safety network dedicated to first responders through FirstNet services. *Id.* In addition to expert testimony, AT&T's analyses included sophisticated modeling, drive data and statistical analyses to show that a new tower facility is needed to provide wireless services to an area of the state that has gone without such services for over a decade. Applicants' Ex.1, Attachment 1; Applicants' Ex. 4, A13-A18; Applicants' Ex. 8, Attachment 1. AT&T's gap in services and need for new infrastructure were in fact confirmed by the Town's Public Safety Committee in 2013 which concluded that the southern area of Sherman lacked adequate reliable wireless service, including

emergency communication services. Applicants' Ex. 4, Attachment 5. Since none of the recommendations in the Town Public Safety Committee's 2013 presentations to the community were implemented, its conclusions about the lack of wireless services and communication services are still valid today. 6/24/21 Tr., pg. 289.

## **II. The Intervenor's Purported Alternatives Analysis Is Not Credible**

The "cellular tower" analysis submitted by the intervenor Greenbaum is not credible and cannot be relied upon as evidence regarding AT&T's need for a new tower in the vicinity of the Proposed Site. The information was provided without any report or explanation regarding the analysis conducted. No details were provided regarding the modeling software or the data used to create the maps. It is unclear what frequencies were evaluated. The intervenor provided no resume or other information regarding the qualifications of the creator of the maps, Richard Touroonjian, nor is he someone known to have proficiency in the network design of commercial mobile radio systems. The maps suggested as alternatives a site that the Applicants demonstrated is unavailable (Wanzer Mountain/Timber Trails) and a tower that cannot provide service to the area covered by the proposed Facility due to terrain (Tower Hill Site) all of which was confirmed on cross-examination of multiple witnesses including the intervenor's witness. Applicants' Ex. 1, Attachment 2, 6/24/21 Tr., pg. 188; 203-205; 243-244; 249. In short, the intervenor's suggestion of alternatives including lower tower heights lacks any credible scientific or technical support and is nothing more than an attempt to cast doubt on the credible facts established by AT&T regarding the public need for a 170' tower at the Proposed Site.

## **POINT II**

### **THERE ARE NO EXISTING STRUCTURES OR OTHER VIABLE ALTERNATIVE SITES FOR SITING THE PROPOSED WIRELESS FACILITY**

#### **I. The Applicants' Exhausted All Potential Alternatives**

The record in this proceeding demonstrates an exhaustive analysis of this area of Sherman by both Homeland, AT&T, and the Town itself conducted over several years in accordance with both



the law and the Siting Council's own expectations before tower applications are filed. Indeed, AT&T was engaged in site searches in this area of Sherman for several years starting in 2008, dropped a highly controversial tower site, moved to areas the Town suggested and first formally consulted with the Town regarding a facility at the proposed Site in 2013. As part of its search for sites, AT&T evaluated 31 locations. Applicants' Ex. 1, pg. 15; 6/24/21 Tr., pg. 196. Knowing that the southern area of Sherman lacked reliable wireless service and infrastructure, in early 2015, Homeland began its search for sites. Homeland's comprehensive search included evaluation of 42 locations. Only 9 of the 42 sites investigated by Homeland had property that expressed interest in speaking with Homeland about leasing space for a tower facility. The record in this proceeding demonstrates that 7 of these 9 sites would not provide the necessary coverage based on AT&T's RF analyses and one site was rejected due to the presence of an extensive wetlands system throughout the property. Applicants' Ex. 1, Attachment 2, Applicants' Ex. 4, A7; 5/25/21 Tr., pg. 80-82. No alternative locations were suggested during the municipal consultation, which is not surprising given the comprehensive review of all potential sites by the Applicants and the Town as part of a decade of efforts.

This particular site search area in Sherman is predominated by significant ranges in ground elevation and densely wooded areas. No tall structures are located at the higher elevations in this area of the Town of Sherman. The significant terrain in this area also prevents any existing structures outside of the search area from consideration as alternatives because the terrain would block signals from reaching the area targeted for service. These include a short water tank owned by Aquarion and a tower owned by New Fairfield in New York State that AT&T evaluated in 2013 and provided the Town and its consultants with data on as part of its rejection as an alternative site. Applicants' Ex. 1, pg. 15; Attachments 1 & 2; 6/24/21 Tr., pgs. 188; 249.

There simply are no known existing or alternative tower sites in the search area other than the Site presented in this Application.

## **II. The Intervenors' Attempt to Present Alternatives Is Unsupported By Any Credible Evidence**

In his various submissions, the Intervenor suggests that feasible alternative locations exist despite the facts in the record demonstrating otherwise. The Intervenor focuses almost exclusively on three locations thoroughly vetted by the Applicants over the years. The Intervenor's positions on the existence of alternatives are based more on his economic objectives

of two locations and surprising given his own service on the Board of the Naromi Land Trust, which rejected siting of a tower on its lands.

For several reasons, the Wanzer Mountain/Timber Trails location suggested by the Intervenor is not a suitable or feasible alternative site. The Intervenor submitted a letter from the President of Timber Trails indicating purported advantages of a tower located at the top of Wanzer Mountain. However, no facts or information were provided to remotely support the opinions in this letter. What was omitted, as testified to by Mr. Vergati, is the years wasted engaging the author of the Timber Trails letter in lease negotiations on various properties to no avail based on irrational landlord economic expectations. Perhaps more importantly, Mr. Vergati testified about the near impossible construction/access challenges at the location suggested by the Intervenor and the potential for more visibility of a tower located at the top of the mountain. 6/24/21 Tr., pgs. 203-204; 243-244. A tower on top of Wanzer Mountain is simply not feasible, and the Intervenor provided no real facts or evidence to the contrary.

The Applicants also proved that locations owned by the land trust on Wagon Wheel Road are not viable alternatives. First and foremost is the fact that the Naromi Land Trust was unwilling to lease space for a wireless facility, even if the property would meet AT&T's need, which it did not. Applicants' Ex. 1, Attachment 2; 6/24/21 Tr., pg. 242. Finally, these Naromi Land Trust properties on Wagon Wheel Road have no street frontage/access at all and are characterized by extremely steep slopes. Applicants' Ex. 1, Attachment 2; 5/25/21 Tr., pgs. 80-82. Curiously, the Intervenor confirmed that AT&T comprehensively reviewed Naromi Land Trust locations on Wagon Wheel Road in 2013 confirming that AT&T evaluated the sites as the Council would expect it to, not that they are viable. The Intervenor also confirmed that Mr. Vergati engaged with the Naromi Land Trust in 2015 and his testimony regarding Homeland's site search and that the properties are not viable alternatives. These facts support the Applicants' position, not the Intervenor's.

Finally, the Town of New Fairfield-owned tower located in Patterson, New York, is a relatively short tower outside of the search area on the other side of a ridgeline. Thus, as Mr. Lavin testified, even if this tower were extended to a height of 199' AGL, collocation on this tower would not provide any coverage to the area where coverage is needed. 6/24/21 Tr., pgs. 188 & 249. In fact, this exact same conclusion was formally provided by AT&T to the Town and its consultants as part of the first 2013/2014 consultation on the Proposed Site on Coote Hill Road.

The Intervenor's last-minute and late attempt to suggest that the Applicants did not evaluate all potential alternative locations is false and only managed to frustrate the orderly nature of docket proceedings.

### **POINT III**

#### **THE PROPOSED TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS LISTED IN THE STATE STATUTE**

##### **I. Potential Visual Effects**

###### **a. Overall Visibility**

Potential visibility was assessed within a two (2) mile radius of the proposed Facility ("Study Area"). A sophisticated computer based, predictive viewshed model coupled with in-filed analysis and photographic simulations of the proposed tower was prepared. The proposed Facility is not located within 250' of a school or day care center. Applicants' Ex. 1, Attachment 8. The analysis reveals that areas from where the Facility would be visible comprise  $\pm 29$  acres of seasonal visibility and an additional  $\pm 5$  acres of year-round visibility. Together, this represents approximately 0.4%, or less than 1% of the 2-mile radius Study Area. The visual assessment concludes that visibility is primarily limited to two areas, northeast and northwest of the site at distances between  $\pm 0.5$  mile and  $\pm 0.85$  mile away. Predicted visibility is primarily seasonal, when leaves are off the trees, including northwest of the Site along Route 37 and Leach Hollow Road for an approximately  $\pm 0.5$  mile stretch. Id.

Only one home is estimated to have year-round views within 0.5 mile of the proposed Facility, which is the property owner's residence at 16 Coote Hill Road. The estimated number of homes that would have seasonal views within 0.5 miles of the proposed facility is 5. Both seasonal and year-round views are expected along an approximate 0.5-mile stretch of Route 39 North, a Town-designated scenic road, to the northeast of the proposed Facility. No visibility is predicted along the remaining Town-designated scenic roads (Cozier Hill Road, Briggs Hill Road, Spring Lake Road, and Orange Pepper Road). Applicants' Ex. 4, A36. Given its slim profile, the whip antenna proposed at the top of the tower will not result in any perceptible visibility. Id.

Overall, the record reveals that the proposed Facility will not have a significant visual impact. Indeed, anticipated visibility of the proposed Facility is comparatively less than visibility of the existing tower facility located at 29 Bogus Hill Road in neighboring New Fairfield that was approved in Docket No. 315. Expert testimony also indicated that stealth techniques, such as a

“monopine” would not be appropriate or required given the low visibility to begin with. 5/25/21 Tr., pgs. 70-72.

**b. The Intervenor’s Crane Test is Inaccurate and Does Not Meet the Scientific Requirements for Visibility Assessments**

The visual materials purportedly submitted by the Intervenor are inaccurate and do not meet the scientific standards for visual assessments required in applications as set forth in the Siting Council’s tower application guidelines. *See* R.C.S.A. §16-50j-74 and Connecticut Siting Council Application Guide for Community Antenna Television and Telecommunication Facilities, July 2012. As such, the Intervenor’s visual information should be disregarded by the Siting Council as unreliable for purposes of evaluating visual effects of the tower proposed in this proceeding. The Intervenor lists a “visual impact study” and a “July 26, 2013 balloon float from 150 Rt 37 South” among the documents he submitted. However, as pointed out at the continued evidentiary hearing, these documents were not received. 6/25/21 Tr., pg. 280. Regarding, the “May 21, 2021 crane tower simulation” submitted by the intervenor, little or no information was provided to support or explain the submission. The location of the crane and distance from the actual tower location was estimated, the distance from the photo to the crane was not provided, the one photo provided appears to be taken with a zoom lens and no information was provided regarding the lens used. This one photo does not in any way depict the visibility of the proposed Facility and fails to meet any of the visibility analysis content requirements for applications. Thus, it is untrustworthy and must be disregarded.

**II. Potential Impacts to the Natural Environment**

**a. Wetlands, Watercourses and Floodplains**

The wetland delineation for the Site notes one wetland system separated by a relatively large upland island in the central portion of the Site. The Proposed Facility is located approximately 79’ from the nearest wetland boundary. The proposed gravel access drive includes two wetland crossings impacting approximately 1,545 s.f. of delineated wetlands. As set forth in the Wetlands Impact Analysis, there are no alternative access options that would avoid wetlands crossings because the wetland system extends across north and south property boundaries. An alternative route for the access drive is not feasible given the property owner’s plans for the southeast portion of the Site. Applicants’ Ex. 5; 5/25/21 Tr., pgs. 47; 59; 6/24/21 Tr., pg.200; 211-

212. The wetlands crossings are proposed within the narrowest features of the wetland and are comprised of seasonal intermittent watercourses with minimal to no bordering wetlands and utilize the upland areas for the majority of the driveway location. The Wetland Impact Analysis details other design considerations, such as the utilization of natural stream crossing design standards and the placement of the crossings at topographic plateaus to minimize filling and grading requirements. Wetland protection measures and an invasive species control plan as set forth in the Wetland Impact Analysis will also be implemented to mitigate impacts. Due to the fact that the proposed Facility will not alter existing surface or subsurface flow and include gravel surfaces, the hydrology of the nearby wetland will not be altered. Based on these mitigation measures as outlined in the Wetland Impact Analysis, no adverse impacts to wetlands or watercourse are anticipated and any impacts are unavoidable. Applicants' Ex. 1, Attachment 6; 5/25/21 Tr., pgs. 106; 113; 115-116; 6/24/21 Tr., pg. 225. Best management practices to control stormwater and soil erosion during construction and post-installation will be implemented. Id. As Mr. Gustafson testified, the Wetland Protections that will be implemented includes independent compliance monitoring to ensure protection of the wetlands. 6/24/21 Tr., pg. 222.

#### **b. Habitat Assessment and Wildlife**

Consultation with DEEP indicated known extant populations of State Listed Species, including the slimy salamander (*Plethodon glutinosus*), a State Threatened Species, to occur within or close to the boundaries of the parcel and properties in the area. To mitigate any potential impacts to the slimy salamander, Homeland relocated the proposed Facility on the parcel from the location shown in the Technical Report to the current proposed location and submitted a report to DEEP detailing this proposed relocation. In response, DEEP concurred with the report findings that the relocation of the proposed Facility on the Parcel eliminates all direct impacts to the slimy salamander habitat. With respect to the other State Listed Species, DEEP recommended best management practices, including tree clearing time limits, and Homeland agreed to comply with all recommended best practices. Applicants' Ex. 1, Attachment 10; 5/25/21 Tr., pgs. 40-45; 116-117; 99-100.

Homeland's evaluation also identified that one federally listed threatened species, the northern long eared bat ("NLEB"), is known to occur in the vicinity of the Parcel. A review of the DEEP National Database Diversity ("NDDB") Map reveals that proposed Facility is not located within 150' of a known NLEB maternity roost tree or within 0.25 mile of a NLEB hibernaculum. As explained in the USFWS and NDDB Compliance Determination included in the Application, based on these results, conservation measures are not required. However, Homeland agrees to

implement the USFWS voluntary conservation measures detailed in the Compliance Determination. Id.

These protection measures include periodic inspections by an independent compliance monitor, consistent with DEEP requirements. 5/25/21 Tr., pgs. 40-45; 113; 6/24/21 Tr., pgs. 222-227.

### **c. Clearing, Grading and Drainage Assessment**

The total area of disturbance, including grading and clearing, is approximately 67,000 s.f. and approximately 90 trees will need to be removed, 48 of which are 14” of greater dbh. Existing trails on the Site will be used for the access drive to minimize impacts. Applicants’ Ex. 1, Attachment 3; 5/25/21 Tr., pgs. 21-22. Best management practices to control stormwater and soil erosion during construction and post-installation of the Proposed Facility and access drive will be implemented. Sedimentation and erosion controls will be designed, installed, and maintained during construction activities in accordance with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control. In addition, the proposed Facility will require a DEEP Connecticut Stormwater General Permit for Construction Activities, which includes regular inspections, weekly inspections, and inspections after a quarter inch rainfall by a third-party monitor. 6/24/21 Tr., pgs. 222-223.

As testified by Mr. Gustafson, once the facility is constructed and stabilized, the storm water measures will withstand precipitation events and avoid any erosive force within the stormwater controls and also within the receiving areas of stormwater. 6/24/21 Tr., pg. 224-225.

### **III. Other Environmental & Neighborhood Considerations**

The proposed Facility will comply with all public health and safety requirements. Applicants’ Ex. 1, Attachments 3, 4 & 7; Applicants’ Ex. 4; A12. Since the proposed Facility will be unmanned, there will be no substantial impacts from traffic, sanitary waste or material impact on air emissions.

Construction vehicle use of Coote Hill Road, including traffic management, will be similar to construction of a single-family home with the exception of a crane. Traffic management details will be provided with the Development & Management Plan (“D&M Plan”). If required, Homeland will use police assistance for traffic management during construction. Applicants’ Ex. 8, A9; 5/25/21 Tr., pg. 76. The Intervenor attempted to raise a legal issue on the permitted use of Coote Hill Road for access and filed a document titled as a “traffic study”. The so-called traffic study consisted of nothing more than photos of vehicles on Coote Hill Road, which could not be

verified by the Intervenor's witnesses at the continued evidentiary hearing. 6/24/21 Tr., pgs. 273-274. It did not include any analysis by a traffic professional and as such, cannot be relied upon as credible evidence or rebut the Applicants' engineering testimony that traffic impacts can be managed during construction of the facility.

The legal issue attempted to be raised, despite Intervenor's lack of standing, was procedurally rejected by the Council as part of a motion by the Applicants. Regardless, Homeland submitted evidence and provided testimony regarding Homeland's compensation to the owner of Coote Hill Road for maintenance of the road. Homeland's Motion for Protective Order; 5/25/21 Tr., pg. 19.

Consultation with the State Historic Preservation Office ("SHPO") confirmed that no historic resources will be impacted by the development of the proposed Facility. Applicants' Ex. 4, Attachment 9. In addition, the proposed Facility will have no adverse impacts to Connecticut Prime Farmland and/or Important Agricultural Soils. Applicants' Ex. 5, Attachment 2.

The Applicants' Environmental Sound Assessment concluded that the noise associated with the operation of AT&T's proposed Facility will remain below the DEEP and Sherman standards. Applicants' Ex. 1, Attachment 9. The sound assessment demonstrated that under worse-case conditions, which include the operation of the cooling equipment and emergency back-up generator simultaneously, the noise level will comply with the sound level standards. Id.

Given the foregoing, the Council should find and determine that the proposed Facility will not have any significant environmental, historic, cultural or visual impacts on the neighborhood.

## **CONCLUSION**

The Applicants demonstrated a critical public need for and lack of any significant adverse environmental effects associated with the proposed tower Facility. The Applicants demonstrated the importance of this proposed Facility needed to serve the public and provide reliable emergency communications through FirstNet in an area which has experienced gaps in reliable services for more than a decade. The Applicants' evidence, based on data and expert analyses and testimony, reveals that there are no known practical or feasible alternatives to remedy gaps and provide reliable wireless services to the public.

The visual effects are extremely limited, particularly for a tower, given the terrain in this area of Sherman. The Proposed Site is ideally situated visually and not at the highest elevations on Wanzer Mountain, which would result in greater visual effects. The Applicants respectfully

submit that any highly localized visibility is unavoidable in meeting the public's need for reliable commercial and public safety emergency communication services in this part of the state.

The Applicants also demonstrated that any potential impacts to sensitive species habitats and wetlands have been avoided or can be fully mitigated so that the proposed Facility will not result in any significant adverse impacts.

The record also demonstrates that the Intervenor offered non-expert opinions that were unsupported by any credible data or analysis. These efforts were likely intended to muddy the record and unnecessarily delay the proceedings.

The Applicants respectfully submit that review of the credible facts in this proceeding support the following findings:

- This area of the state has lacked reliable wireless and emergency communication services for more than a decade;
- A comprehensive site search by both AT&T and Homeland over several years resulted in the one proposed tower site for consideration;
- No other alternatives exist for providing critical public safety and mobile communications services to the public;
- The environmental effects are either limited or fully mitigated, none of which independently or cumulative outweigh the need for a new tower site to serve the public.

Based on all of the foregoing, and upon balancing of the probable environmental effects associated with the proposed Facility as required by statute, the Applicants respectfully submit the public need for the tower facility for reliable communications far outweighs any adverse environmental effects associated with the project. For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, the Applicants submit that the standards and criteria set forth in C.G.S. Section 16-50p for approval of tower facilities by the Council had been met and fully warrant issuance of a Certificate for the proposed Facility.



**CERTIFICATE OF SERVICE**

I hereby certify that on this day one original and 15 hard copies, and one electronic version of the foregoing were sent to the Connecticut Siting Council and one electronic copy was sent to:

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Dated: July 22, 2021



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