STATE OF CONNECTICUT

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Executive Director

DATE: May 13, 2009

TO: S. Derek Phelps, Executive Director
Connecticut Siting Council

FROM: Karl Wagener, Executive Director

RE: Proposed Telecommunications Facility at Rabbit Hill Road, Warren (Docket #378)

In response to the Siting Council's April 14, 2009 request for comments and consultation regarding Docket #378, the Council on Environmental Quality reviewed the application and offers the following comments.

The Council recommends strongly that the application be denied for four reasons:

1. Construction of a communications tower on Site A would contravene Connecticut's farmland preservation policy.

2. State law does not authorize the substitution or creation of alternative farming parcels in exchange for farmland that is taken for the facility.

3. Siting Council approval would not eliminate the applicant's need to have the permission of the landowner *and* the owner of the development rights. The applicant does not have the latter's permission.

4. The proposed location possesses scenic quality of local, regional and state-wide significance that make it an inappropriate choice to locate a tower on either Site A or Site B.

The Council also offers comments and recommendations regarding the viewshed analysis.

I. Construction of a telecommunications facility on Site A would contravene Connecticut's farmland preservation policy.

The development rights on Site A were purchased by the taxpayers of Connecticut. The owner of the land may not sell those rights again to the applicant for the purpose of constructing a telecommunications facility. The statute is clear. CGS Section 22-26bb(d) defines "development rights" as the "rights of the fee simple

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owner of agricultural land to develop, construct on, sell, lease or otherwise improve the agricultural land *for uses that result in rendering such land no longer agricultural land"* [emphasis added] , subject to certain exceptions which are not applicable here.

Because the development rights were sold to the state, the landowner may not lease the same land for a non-agricultural commercial purpose.

The application states that some of the area to be developed for the facility is wooded and does not possess prime soils. The farmland preservation statute makes it clear that preservation of farms, including non-productive portions, is within the intent of the statute. CGS Section 22-26aa states that **"**conservation of certain arable agricultural land *and adjacent pastures, woods, natural drainage areas and open space areas* [emphasis added] is vital for the well-being of the people of Connecticut."

CGS Section 22-26bb(d) clarifies that the landowner may make undertake "improvements, activities and uses thereon as may be directly or incidentally related to the operation of the agricultural enterprise." The construction of a commercial telecommunications tower does not satisfy this requirement.

II. State law does not authorize the substitution or creation of alternative farming parcels in exchange for farmland that is taken for the facility.

The applicant proposes, as compensation for taking agricultural land on site A, putting into production more land than would be taken out of production on the site. The Council does not see anything in statue that would permit this mitigation. In fact, to accept such a proposal would lead to a predictable result: piecemeal destruction of farms that the public has paid to preserve.

Furthermore, the land that is proposed to be put into production is not "new' farmland. If the applicant has the capability to turn this currently fallow land into productive land, then so does the farmer when the need arises. This proposed mitigation amounts to a net loss of farmland, a contradiction of the intent of the state's farmland preservation policy.

III. Siting Council approval would not eliminate the applicant's need to have the permission of the landowner *and* the owner of the development rights. The applicant does not have the latter's permission.

Should the Siting Council choose to give serious consideration to Site A pursuant to CGS Section 16-50p(a)(3)(G), which is applicable to the *regulatory* question, it still should give due consideration to the *ownership* question. Simply put, it is this Council's understanding that the easement held by the state prohibits the proposed use. The landowner may not make an agreement to lease rights no longer owned, even if the Siting Council considers the site to be acceptable from a regulatory

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standpoint.

Also, this Council notes that the application is not consistent with the intent of Public Acts 03-221 and 03-278, which added the subsection regarding restricted agricultural land to Siting Council statutes. The intent of the General Assembly in 2003 was to allow the construction of a telecommunications antenna on the Tiffany Farm in Lyme (House Session Transcripts, May 30, 2003). That facility subsequently was constructed without Siting Council approval as it was placed on an existing silo. It is ironic and regrettable that P.A. 03-221 and P.A. 03-278 were adopted, without public hearing or public input or agency advice, as they were not needed and have led to the potentially damaging application before you.

IV. The proposed location possesses scenic quality of local, regional and state-wide significance that make it an inappropriate choice to locate a tower on either Site A or Site B.

Site B is not on land to which the state acquired development rights. Both sites A and B are on a hill that is a local attraction for tourists and residents in search of a breathtaking view of Lake Waramaug and its surrounding farms and hills. A portion of this view was featured in the April 2009 issue of *National Geographic Traveler* magazine. The tower will be visible from two roads that have been designated "scenic" and from another road that is being considered for scenic designation. It is near the crest of a scenic hill in a region nationally acclaimed for its scenery. Sec.16-50p states that:

> "(b) (1) Prior to granting an applicant's certificate for a facility described in subdivision (5) or (6) of section 16-50i, the council shall examine… (C) whether the proposed facility would be located in an area of the state which the council, in consultation with the Department of 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 council may deny an application for a certificate if it determines that… (iii) the proposed facility would substantially affect the scenic quality of its location and no public safety concerns require that the proposed facility be constructed in such a location."

This is such a location. In addition to agriculture, tourism is a major economic activity in this part of the state. The location of a modern cell tower among the beautiful hills and prominent farm silos that characterize the region can reasonably be expected to have an economic as well as a scenic impact.

V. The proximity of potentially sensitive scenic receptors in the area warrants an expansion of the visual analysis to include those locations.

The Council maintains that the exceptional scenic vistas in the area analyzed in the application are sufficient to deny the application. In addition, the visual impact

might be broader than described in the application. Above All State Park, Mount Bushnell State Park, the beach and campground at Lake Waramaug State Park and Mt. Tom State Park were not included in the viewshed analysis of the application. If the Siting Council were to give serious consideration to Site B, it should require an analysis that encompasses those areas.

I would be pleased to answer any questions you might have about these comments.

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