

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

In Re:

APPLICATION OF NEW CINGULAR WIRELESS PCS,
LLC (AT&T) FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR THE
CONSTRUCTION, MAINTENANCE, AND OPERATION
OF A TELECOMMUNICATIONS TOWER FACILITY AT
8 BARNES ROAD IN THE TOWN OF CANAAN
(FALLS VILLAGE), CONNECTICUT

DOCKET: 409

Feb. 10, 2011

**PRE-HEARING MEMORANDUM OF THE INLAND WETLANDS AND
CONSERVATION COMMISSION OF THE TOWN OF CANAAN**

The Inland Wetlands and Conservation Commission of the Town of Canaan ("IW/CC") became a party in these proceedings in fulfillment of its statutory mandates under Connecticut law, to comply with the express policy of the State, and to provide the Siting Council with technical and expert information to assist the Council in arriving at conclusions in the public interest on the instant application upon a full record.

The applicant New Cingular Wireless PCS, LLC (AT&T) ("Cingular") has not submitted any application directly to our Commission for a permit in compliance with Conn. Gen. Stat. Sec. 22a-42. In light of this omission, we also appear in this proceeding in order to assemble information that we would ordinarily obtain under a direct application to our Commission from an applicant for a building project in the Town of Canaan [Exhibits IW4, IW5, IW8].

Anyone seeking permission to build in the Town of Canaan must complete a Permit Application package [Exhibit IW5]. The routing sheet includes mandatory review by this Commission and a permit issued by this Commission in fulfillment of Conn. Gen. Stat. Sec. 22a-42. ("Municipal regulation of wetlands and watercourses.") and Town Ordinance [Exhibit IW4].

Until Cingular obtains a permit from our Commission, it may not construct or operate the proposed facility.

Commission's Authority

The Inland Wetlands and Conservation Commission of the Town of Canaan (Falls Village) is a dual Town Commission deriving its authority from two Connecticut statutory schemes.

Conservation Commission

The Conservation Commission of the Town of Canaan was created under Conn. Gen. Stat. 7-131a and by authorization at Town Meeting to adopt an ordinance [Exhibit IW4]. Under this statute, our Commission was created:

for the development, conservation, supervision and regulation of natural resources, including water resources, within its territorial limits.

The legislative mandate also provides that

(b) A conservation commission shall conduct research into the utilization and possible utilization of land areas of the municipality and may coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare and distribute books, maps, charts, plans and pamphlets as necessary for its purposes. It may propose a greenways plan for inclusion in the plan of conservation and development of the municipality prepared pursuant to section 8-23. It may inventory natural resources and formulate watershed management and drought management plans. Such plans shall be consistent with water supply management plans prepared pursuant to section 25-32d. It shall keep an index of all open areas, publicly or privately owned, including open marshlands, swamps and other wetlands, for the purpose of obtaining information on the proper use of such areas, and may from time to time recommend to the planning commission or, if none, to the chief executive officer or the legislative body plans and programs for the development and use of such areas. It may make recommendations to zoning commissions, planning commissions, inland wetlands agencies and other municipal agencies on proposed land use changes. * * *

(Emphasis supplied.)

Inland Wetlands Commission

In its dual capacity as the Inland Wetlands Commission of the Town of Canaan, our Commission was created under Conn. Gen. Stat. 22a-42 and by authorization at Town Meeting.

Sec. 22a-42. Municipal regulation of wetlands and watercourses. Action by commissioner. (a) To carry out and effectuate the purposes and policies of sections 22a-36 to 22a-45a, inclusive, it is hereby declared to be the public policy of the state to require municipal regulation of activities affecting the wetlands and watercourses within the territorial limits of the various municipalities or districts.

(b) Any municipality may acquire wetlands and watercourses within its territorial limits by gift or purchase, in fee or lesser interest including, but not limited to, lease, easement or covenant, subject to such reservations and exceptions as it deems advisable.

(c) On or before July 1, 1988, each municipality shall establish an inland wetlands agency or authorize an existing board or commission to carry out the provisions of sections 22a-36 to 22a-45, inclusive. Each municipality, acting through its legislative body, may authorize any board or commission, as may be by law authorized to act, or may establish a new board or commission to promulgate such regulations, in conformity with the regulations adopted by the commissioner pursuant to section 22a-39, as are necessary to protect the wetlands and watercourses within its territorial limits. The ordinance establishing the new board or commission shall determine the number of members and alternate members, the length of their terms, the method of selection and removal and the manner for filling vacancies in the new board or commission. No member or alternate member of such board or commission shall participate in the hearing or decision of such board or commission of which he is a member upon any matter in which he is directly or indirectly interested in a personal or financial sense. In the event of such disqualification, such fact shall be entered on the records of such board or commission and replacement shall be made from alternate members of an alternate to act as a member of such commission in the hearing and determination of the particular matter or matters in which the disqualification arose. For the purposes of this section, the board or commission authorized by the municipality or district, as the case may be, shall serve as the sole agent for the licensing of regulated activities. * * *

(e) Any municipality, pursuant to ordinance, may act through the board or commission authorized in subsection (c) of this section to join with any other municipalities in the formation of a district for the regulation of activities affecting the wetlands and watercourses within such district. Any city or borough may delegate its authority to regulate inland wetlands under this section to the town in which it is located.

(f) Municipal or district ordinances or regulations may embody any regulations promulgated hereunder, in whole or in part, or may consist of other ordinances or regulations in conformity with regulations promulgated hereunder. Any ordinances or regulations shall be for the purpose of effectuating the purposes of sections 22a-36 to 22a-45, inclusive, and, a municipality or district, in acting upon ordinances and regulations shall incorporate the factors set forth in section 22a-41.

(g) Nothing contained in this section shall be construed to limit the existing authority of a municipality or any boards or commissions of the municipality, provided the commissioner shall retain authority to act on any application filed with said commissioner prior to the establishment or designation of an inland wetlands agency by a municipality.

(Emphasis supplied.)

PROTECTION OF WETLANDS

The protection of the wetlands in the Town of Canaan is not only a matter of local concern. The State legislature recognizes the value for all citizens of the state in protecting and conserving wetlands:

Sec. 22a-36. Inland wetlands and watercourses. Legislative finding. The inland wetlands and watercourses of the state of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life. Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. It is, therefore, the purpose of sections 22a-36 to 22a-45, inclusive, to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its

environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.

(Emphasis supplied.)

Under this Inland Wetlands and Watercourses protective statutory scheme, the following provisions apply:

Sec. 22a-41. Factors for consideration of commissioner. Finding of no feasible and prudent alternative. Wetlands or watercourses. Habitats. Jurisdiction of municipal inland wetlands agencies.

(a) In carrying out the purposes and policies of sections 22a-36 to 22a-45a, inclusive, including matters relating to regulating, licensing and enforcing of the provisions thereof, the commissioner shall take into consideration all relevant facts and circumstances, including but not limited to:

(1) The environmental impact of the proposed regulated activity on wetlands or watercourses;

(2) The applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses;

(3) The relationship between the short-term and long-term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;

(4) Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (A) prevent or minimize pollution or other environmental damage, (B) maintain or enhance existing environmental quality, or (C) in the following order of priority: Restore, enhance and create productive wetland or watercourse resources;

(5) The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and

(6) Impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses.

(b) (1) In the case of an application which received a public hearing pursuant to (A) subsection (k) of section 22a-39, or (B) a finding by the inland wetlands agency that the proposed activity may have a significant impact on wetlands or watercourses, a permit shall not be issued unless the commissioner finds on the basis of the record that a feasible and prudent alternative does not exist. In making his finding the commissioner shall consider the facts and circumstances set forth in subsection (a). The finding and the reasons therefor shall be stated on the record in writing.

(2) In the case of an application which is denied on the basis of a finding that there may be feasible and prudent alternatives to the proposed regulated activity which have less adverse impact on wetlands or watercourses, the commissioner or the inland wetlands agency, as the case may be, shall propose on the record in writing the types of alternatives which the applicant may investigate provided this subdivision shall not be construed to shift the burden from the applicant to prove that he is entitled to the permit or to present alternatives to the proposed regulated activity.

(c) For purposes of this section, (1) "wetlands or watercourses" includes aquatic, plant or animal life and habitats in wetlands or watercourses, and (2) "habitats" means areas or environments in which an organism or biological population normally lives or occurs.

(d) A municipal inland wetlands agency shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.

(Emphasis supplied.)

While the Conservation Commission of our town is a coordinator and communicator for purposes of environmental conservation, as an Inland Wetlands Commission, our Commission plays a regulatory role. We appear here in part in fulfillment of that mandate. Our authority is derived not just from Town Ordinance and Conn. Gen. Stat. Sec. 22a-42 effecting the requirements and considerations of Conn. Gen. Stat. Sec. 22a-41, but also from the agreement of the State of Connecticut with the Federal Government under the Clean Water Act¹.

¹ Based on the Federal Water Pollution Control Amendments of 1948, then the Federal Water Pollution Control Amendments of 1972, major amendments enacted in the Clean Water Act of 1977 and the Water Quality Act of 1987.

As a Conservation Commission, our Commission has coordinated and communicated with such private and public entities as:

The Housatonic Valley Association
The Highlands Coalition
The Nature Conservancy
Department of Environmental Protection, State of Connecticut
The Northwest Conservation District
The Housatonic River Commission
The Trust for Public Lands
The Appalachian Mountain Club
Kings Mark Resource Conservation & Development Area, Inc.
CT D.E.P. Wildlife Division
Litchfield County Soil and Water Conservation District
Appalachian Mountain Club/U.S. Department of the Interior National Park Service
CT Department of Agriculture Farmland Preservation Program

When considering an application, we consider provisions of federal, state and local law.

State Endangered Species Act

There are state endangered species known to exist at or in the vicinity of the proposed site, as well as a state designated critical habitat. We consider the impact of any project on the surrounding wetlands, not just the immediate construction site.

The State Endangered Species Act provisions pertinent here include:

General Statutes Sec. 26-303 declares that the policy of the State is to protect endangered species:

Sec. 26-303. Findings. Policy. The General Assembly finds that certain species of wildlife and plants have been rendered extinct as a consequence of man's activities and that other species of wildlife and plants are in danger of or threatened with extinction or have been otherwise reduced or may become extinct or reduced because of destruction, modification or severe curtailment of their habitats, exploitation for commercial, scientific, education, or private use of because of disease, predation or other facts; that such species are of ecological, scientific, educational, historical, economic, recreational and aesthetic value to the people of the state, and that the conservation, protection and enhancement of such species and their habitats are of state-wide concern. Therefore the General Assembly declares it is a policy of the state to conserve, protect, restore and enhance any endangered or threatened species and essential habitat.

Each state agency is particularly directed to protect endangered wildlife under C.G.S.

Sec. 16-310:

Sec. 26-310. Actions by state agencies which affect endangered or threatened species or species of special concern or essential habitats of such species. (a) Each state agency, in consultation with the commissioner, shall conserve endangered and threatened species and their essential habitats, and shall ensure that any action authorized, funded or performed by such agency does not threaten the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species, unless such agency has been granted an exemption as provided in subsection (c) of this section. In fulfilling the requirements of this section each agency shall use the best scientific data available.

The IW/CC will assist the Siting Council by providing specific evidence to facilitate the enforcement of these provisions.

According to the Connecticut Chapter of the Nature Conservancy and the Connecticut Department of Environmental Protection, among the state-listed species in the Robbins Swamp-Hollenbeck River area are:

Aegolius acadicus, Northern saw-whet owl SC
Agrotis stigmata, Spotted dart moth SC
Ambystoma jeffersonianum, Jefferson salamander "complex" SC
Ambystoma laterale, Blue-spotted salamander E/SC
Apodrepanulatrix liberaria, New Jersey tea inchworm T
Atylotus ohioensis, Tabanid fly SC
Botaurus lentiginosus, American bittern E
Calephelis borealis, Northern metalmark E
Catocala herodias gerhardi, Herodias underwing E
Crotalus horridus, Timber rattlesnake E
Empidonax alnorum, Alder flycatcher SC
Erynnis lucilius, Columbine duskywing E
Euphyes bimacula, Two-spotted skipper T
Euphyes dion, Sedge skipper SC
Glyptemys insculpta, Wood turtle SC
Gomphus ventricosus, Skillet clubtail SC
Hemaris gracilis, Slender clearwing T
Hybomitra luridus, Horse fly SC
Lota lota, Burbot E
Lycaena hyllus, Bronze copper SC
Notropis bifrenatus, Bridle shiner SC
Papaipema leucostigma, Columbine borer T

Passerculus sandwichensis, Savannah sparrow SC
Rana pipiens, Northern leopard frog SC
Sargus fasciatus, Soldier fly SC
Satyroides eurydice, Eyed brown SC
Speranza exornata, Barrens itame T
Sturnella magna, Eastern meadowlark SC
Agastache nepetoides, Yellow giant hyssop E
Alopecurus aequalis, Orange foxtail T
Anemone canadensis, Canada anemone T
Asplenium ruta-muraria, Wallrue spleenwort T
Calamagrostis stricta ssp. *inexpansa*, Reed bentgrass SC
Cardamine douglassii, Purple cress SC
Carex alopecoidea, Foxtail sedge T
Carex aquatilis var. *aquatilis* Sedge SC
Carex castanea, Chestnut-colored sedge E
Carex cumulata, Clustered sedge T
Carex formosa, Handsome sedge SC
Carex hitchcockiana, Hitchcock's sedge SC
Carex oligocarpa, Eastern few-fruit sedge SC
Carex prairea, Prairie sedge SC
Carex sterilis, Dioecious sedge SC
Carex trichocarpa, Sedge SC
Carex tuckermanii, Tuckerman's sedge SC
Cryptogramma stelleri, Slender cliff-brake E
Cypripedium parviflorum, Yellow lady's-slipper SC
Cypripedium reginae, Showy lady's-slipper E
Draba reptan, Whitlow-grass SC
Dryopteris goldiana, Goldie's fern SC
Equisetum scirpoides, Dwarf scouring rush E
Gentianella quinquefolia, Stiff gentian E
Hepatica nobilis var. *acuta*, Sharp-lobed hepatica SC
Linnaea borealis ssp. *americana*, Twinflower E
Lythrum alatum, Winged loosestrife E
Malaxis brachypoda, White adder's-mouth E
Mitella nuda, Naked miterwort SC
Petasites frigidus var. *palmatius*, Sweet coltsfoot T
Pinus resinosa, Red pine E
Plantago virginica, Hoary plantain SC
Platanthera orbiculata, Large round-leaf orchid SC*
Potamogeton hillii, Hill's pondweed E
Quercus macrocarpa, Bur oak SC
Ribes triste, Swamp red currant E
Salix serissima, Autumn willow SC
Schizachne purpurascens, Purple oat SC
Schoenoplectus acutus, Hard-stemmed bulrush T
Sibbaldiopsis tridentata, Three-toothed cinquefoil T

Thuja occidentalis, Northern white cedar T
Trisetum spicatum, Narrow false oats SC
Trollius laxus, Spreading globe flower T
Uvularia grandiflora, Large-flowered bellwort E
Viola nephrophylla, Northern bog violet SC
The Timber Rattlesnake is of particular concern due to its endangered status, and the

habitat that may be affected by the proposed project.

Known Habitats of State and Federally Listed Species

Robbins Swamp was recognized in 1985 by Nancy Murray -- then a staff biologist at the Connecticut Department of Environmental Protection [Exhibit IW66], now Biologist/Senior Environmental Analyst, NDDDB Program Coordinator for the Connecticut D.E.P. (App. Tab 8) as

"one of the most significant [inland wetlands] because of the high concentration of state-listed 'species of special concern'. Thirteen 'species of special concern' are known to be extant in Robbins Swamp. The names of species and locations are not provided due to their extremely sensitive nature."

This critical habitat of state listed species and the effect of the proposed project on their habitat is of utmost concern and consideration here.

CONSERVATION AND WETLANDS ISSUES TO BE CONSIDERED IN DOCKET 409

In fulfillment of our mandate under C.G.S. Sec. 22a-41, our Commission must consider and seek a full and fair record regarding the following:

PURSUANT TO C.G.S. 22a-41

- (a)(1) Environmental Impact
- (a)(2) Feasible and Prudent Alternatives
- (a)(3) Short-term and Long-Term Impacts
- (a)(4) Irreversible and Irretrievable Loss of Wetlands
- (a)(5) Character and Degree of Injury
- (a)(6) Impacts on Outside Wetlands and Watercourses

(b)(1) & (2) Feasible and Prudent Alternatives

(c) Aquatic, Plant, Animal Life and Habitats

(d) Regulated Activities Outside Wetlands

Endangered and Listed Species

A critical issue in this proceeding is the proximity of the proposed site to, and its effect upon Natural Diversity Data Base mapped locations of endangered or listed species. The application contains an apparently self-generated letter from the U.S. Fish and Wildlife Service to which the applicant was not entitled in light of the applicant's omission of state listed and endangered species -- an essential review step required by state law and acknowledged by federal authorities. These species are under the specific care of the IW/CC, and are also under the care of the Connecticut Siting Council and its DEP member designee.

The Nature Conservancy has described the vicinity of the proposed tower as:

A unique geography of limestone forests, ridges and wetlands runs from the Massachusetts border down to the center of Connecticut. This vast chain of intact forests and waterways teems with more than 150 rare and endangered species, a spectacular concentration of plants and animals rivaled nowhere else in the state.

The Northwest Highlands feature rugged uplands like Canaan Mountain, an eight mile range rising steeply to a series of summits, one as high as 1,962 feet. Rocky ledges, diverse vegetation and dense woodlands mark this natural area including 2,000 acres of forest that have been protected from indiscriminate logging for the past 50 years. Today, almost 7,000 acres are protected on Canaan Mountain.

Adjacent to Canaan Mountain is the Hollenbeck River and its watershed, which includes Robbins Swamp, Connecticut's largest inland wetland. Robbins Swamp represents one of the region's most significant natural areas: the regions second largest calcareous wetland. Formed from limestone karsts—jagged broken rock formed from an ancient seabed—the bedrock of these open wetlands makes them alkaline, unlike most New England wetlands, which are acidic. Nearby Wangum Lake Brook, which drains into the Hollenbeck River, is also part of this calcareous wetland complex.

The unique geology of Canaan Mountain and Robbins Swamp gives rise to a rich collection of plants, animals and natural communities, some of which are found nowhere else on Earth. The endangered timber rattlesnake and northern metalmark butterfly are

found here as well as three rare bird species and 23 rare species of plants, including a variety of trees, flowering plants, grasses and sedges.

(The Nature Conservancy in New England, Northwest Highlands, can be found at: <http://www.nature.org/wherewework/northamerica/states/connecticut/preserves/art21228.html> (last visited 2/3/11)) (Emphasis supplied.)

Need for Up-Dated On-Ground Inventory and Environmental Impact Study

An on-ground inventory has not been conducted on or around Cobble Hill in recent memory. To conduct such an inventory and environmental impact study, in the face of a proposal such as the one in this proceeding, becomes the responsibility of the Siting Council, whose mandates include:

Sec. 26-310. Actions by state agencies which affect endangered or threatened species or species of special concern or essential habitats of such species. (a) Each state agency, in consultation with the commissioner, shall conserve endangered and threatened species and their essential habitats, and shall ensure that any action authorized, funded or performed by such agency does not threaten the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species, unless such agency has been granted an exemption as provided in subsection (c) of this section. In fulfilling the requirements of this section, each agency shall use the best scientific data available.

(b) Each state agency responsible for the primary recommendation or initiation of actions on land or in aquatic habitats which may significantly affect the environment, as defined in section 22a-1c, shall ensure that such actions are consistent with the provisions of sections 26-303 to 26-312, inclusive, and shall take all reasonable measures to mitigate any adverse impacts of such actions on endangered or threatened species or essential habitat. The Secretary of the Office of Policy and Management shall consider the consistency of such proposed actions with the provision of said sections 26-303 to 26-312, inclusive, in determining whether or not an environmental impact evaluation prepared pursuant to section 22a-1b satisfies the requirements of sections 22a-1a to 22a-1h, inclusive, and regulations adopted pursuant to said sections.

(c) If the Secretary of the Office of Policy and Management, in consultation with the commissioner, determines that a proposed action violates subsections (a) or (b) of this section and there are no feasible and prudent alternatives the state agency may apply to the commissioner for an exemption. The commissioner may grant an exemption after considering the following factors: (1) The agency did not make an irreversible or irretrievable commitment of resources after initiation of consultation with the department that forecloses the opportunity for formulating and implementing feasible and prudent

alternatives, (2) the benefits of the action clearly outweigh the benefits of alternative courses of action, consistent with conserving the species or its essential habitat, and such action is in the public interest, (3) the action is of regional or state-wide significance, and (4) the agency plans to take reasonable mitigation and enhancement measures necessary and appropriate to minimize the adverse impacts of the action upon the species or essential habitat, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement.

(d) If the Secretary of the Office of Policy and Management, in consultation with the commissioner, determines that a proposed action would not appreciably reduce the likelihood of the survival or recovery of an endangered or threatened species, but would result in the incidental taking of such species, the commissioner shall provide the state agency with a written statement that: (1) Specifies the impact of such incidental taking on the species; (2) specifies feasible and prudent measures and alternatives that shall be implemented as part of the proposed project in order to ensure that the action does not appreciably reduce the likelihood of the recovery of the species; and (3) sets forth terms and conditions including, but not limited to, reporting requirements to ensure compliance with this subsection. Any taking that is in compliance with the measures and alternatives specified pursuant to this subsection shall not be prohibited by sections 26-303 to 26-312, inclusive.

Siting Council Responsibility to Implement State Policy

Sec. 22a-1a. Declaration of policy: Coordination of state plans and programs. (a) In furtherance of and pursuant to sections 22a-1 and 22a-15, the General Assembly, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influence of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Connecticut residents.

(b) In order to carry out the policy set forth in sections 22a-1a to 22a-1f, inclusive, it is the continuing responsibility of the state government to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs, and resources to the end that the state may: (1) Fulfill the responsibility of each generation as trustee of the environment for succeeding generations; (2) assure for all residents of the state safe, healthful, productive, and esthetically and culturally pleasing surroundings; (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; (4) preserve important historic, cultural, and natural aspects of our Connecticut heritage, and maintain, wherever possible, an environment

which supports diversity and variety of individual choice; (5) achieve an ecological balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources; and (7) practice conservation in the use of energy, maximize the use of energy efficient systems and minimize the environmental impact of energy production and use.

State Legislation for endangered or threatened species:

Conn. Gen. Stat.

Sec. 26-311. Taking of endangered or threatened species. Construction of chapter.

(a) Except as otherwise provided in section 26-310, it is unlawful for (1) any person to wilfully take any endangered or threatened species on or from public property, waters of the state or property of another without the written permission of the owner on whose property the species occurs; (2) any person, including the owner of the land on which an endangered or threatened species occurs, to wilfully take an endangered or threatened species for the purpose of selling, offering for sale, transporting for commercial gain or exporting such specimen; (3) any state agency to destroy or adversely modify essential habitat designated pursuant to section 26-306, so as to reduce the viability of the habitat to support endangered or threatened species or so as to kill, injure, or appreciably reduce the likelihood of survival of the species.

(b) Nothing in sections 26-303 to 26-312, inclusive, or any regulation adopted pursuant to said sections shall prohibit a person from performing any legal activities on his own land that may result in the incidental taking of endangered or threatened animal and plant species or species of special concern.

(c) Nothing in sections 26-303 to 26-312, inclusive, or any regulations adopted pursuant to said sections shall prohibit any action authorized pursuant to an exemption or permit provided for by the federal Endangered Species Act or in any regulation adopted under said act, or permit any action prohibited by the Endangered Species Act or by any regulation adopted under said act.

(d) Nothing in sections 26-303 to 26-312, inclusive, or any regulations adopted pursuant to said sections shall prohibit transportation through this state of any endangered or threatened species in accordance with the terms of any permit issued under the laws of another state provided the person in possession of an endangered or threatened species can prove legal possession of the species.

(e) The commissioner may prohibit, in an emergency, the taking of any state species of special concern threatened with undue depletion from overutilization of the species for commercial, recreational, scientific, educational or private purposes.

The Council's Statutory Obligation to Protect Inland Wetlands

It is the public policy of the State of Connecticut to protect inland wetlands and watercourses and "prevent loss of fish and other beneficial aquatic organisms, wildlife and

vegetation and the natural habitats thereof.” General Statutes Section 22a-36. Robbins Swamp and the Hollenbeck River constitute Connecticut’s largest inland wetland, located directly in the effective coverage area proposed by AT&T.

State law also provides for protection of Natural Area Preserves “of outstanding scientific, educational, biological, geological, paleontological or scenic value.” General Statutes Section 23-5a et seq.

The Council’s Statutory Obligation to Protect Endangered Species

General Statutes Section 26-310 requires state agencies to protect endangered or threatened species or species of special concern and their essential habitats:

Sec. 26-310. Actions by state agencies which affect endangered or threatened species or species of special concern or essential habitats of such species. (a) Each state agency, in consultation with the commissioner, shall conserve endangered and threatened species and their essential habitats, and shall ensure that any action authorized, funded or performed by such agency does not threaten the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species, unless such agency has been granted an exemption as provided in subsection (c) of this section. In fulfilling the requirements of this section, each agency shall use the best scientific data available.

(Emphasis supplied.)

Need for Current DEP-Ordered NDDDB Endangered and Listed Species Inventory

We strongly recommend that the DEP or an independent unbiased qualified agency selected by the Council complete an on-ground inventory prior to any decision regarding tower placement at the Cobble Hill site.

This inventory should be conducted during the growing and migratory seasons to have validity. Such an inventory is an absolute necessity as Cobble Hill is in fact virtually surrounded by one of Connecticut’s most valuable wetlands, which, no doubt, has a symbiotic relationship with the Cobble Hill ecology.

Connecticut Taxpayer Investment in Protecting and Managing Robbins Swamp

The proposed project is contiguous with the state's largest inland wetland preserve -- a preserve paid for in part by Connecticut taxpayers through the "Endangered Species/Wildlife Income Tax Check-Off Fund." The Income Tax fund was created in 1993 by the legislature to allow Connecticut state income tax payers to voluntarily donate portions of their tax refund to support efforts aimed at helping Connecticut's endangered species, natural area preserves and watchable wildlife. [See Exhibit IW50] A description can be seen at the State D.E.P. website, <http://www.ct.gov/dep/cwp/view.asp?A=2702&Q=323458> (last visited 2/3/11)].

The preserve is described by the D.E.P. as:

Robbins Swamp Natural Area Preserve: Robbins Swamp is the state's largest inland wetland, contains many state-listed species, and is also an important wildlife management area. Funding will provide for the development of a plan that details the purpose, character, and protected resources within the Preserve. The plan will also detail management measures that will protect and enhance the Preserve's physical and biological integrity. (Contact person: Nancy Murray, (860) 424-3589)

(Ibid., Emphasis supplied.)

Statutes Relevant to Siting Council Responsibilities

This proceeding is for the purpose of determination of the project's eligibility for a "Certificate of Environmental Compatibility and Public Need," defined in the General Statutes as subject to environmental and scenic criteria:

Sec. 16-50p. Certification proceeding decisions: Timing, opinion, factors considered. Telecommunications and community antenna television facilities: Additional factors considered, conditions. Modification of location. Amendment proceeding decisions. Service and notice. "Public need" defined. (a)(1) In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate.

(2) The council's decision shall be rendered in accordance with the following: * * *

(3) The council shall file, with its order, an opinion stating in full its reasons for the

decision. The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine:

(A) Except as provided in subsection (c) of this section, a public need for the facility and the basis of the need;

(B) The nature of 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, electromagnetic fields that, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning, the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife;

(C) Why the adverse effects or conflicts referred to in subparagraph (B) of this subdivision are not sufficient reason to deny the application; * * *

(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, in addition to its consideration of subdivisions (1) to (5), inclusive, of subsection (a) of this section: (A) The feasibility of requiring an applicant to share an existing facility, as defined in subsection (b) of section 16-50aa, within a technically derived search area of the site of the proposed facility, provided such shared use is technically, legally, environmentally and economically feasible and meets public safety concerns, (B) whether such facility, if constructed, may be shared with any public or private entity which provides telecommunications or community antenna television service to the public, provided such shared use is technically, legally, environmentally and economically feasible at fair market rates, meets public safety concerns, and the parties' interests have been considered and (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 (i) shared use under the provisions of subparagraph (A) of this subdivision is feasible, (ii) the applicant would not cooperate relative to the future shared use of the proposed facility, or (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.

(2) When issuing a certificate for a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i, the council may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the unnecessary proliferation of such facilities in the state. * * *

(Emphasis supplied.)

Alternative Sites and Alternate Transmitting Technologies

The Siting Council's role in minimizing damage to the environment is shared by the IW/CC. In addition to the Council's statutory duty under Section 26-310 to "use the best scientific data available" to protect endangered species, The Public Utility Environmental Standards Act (Chapter 277a) expresses the State's policy to encourage research to achieve "minimal damage to the environment":

Sec. 16-50g. Legislative finding and purpose. The legislature finds that power generating plants and transmission lines for electricity and fuels, community antenna television towers and telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such power plants, lines and towers, if not properly planned and controlled, could adversely affect the quality of the environment and the ecological, scenic, historic and recreational values of the state. The purposes of this chapter are: To provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state; to encourage research to develop new and improved methods of *** transmitting and receiving television and telecommunications with minimal damage to the environment and other values described above ***.

(Emphasis supplied.)

In an effort to protect the environment in the vicinity of the proposed tower, on March 19, 2010 the IW/CC suggested an alternative site to the applicant in an industrial zone. [Exhibits IW12-IW18] While this site was not ideal because every site in Falls Village has some proximity to Robbins Swamp, protected wetlands, watercourses and habitats of protected species, the IW/CC deemed the alternative site to have less impact visually, and was a commercial zone site. On March 24, 2010 the applicant rejected that site [Exhibit IW16, Letter dated 3/24/10] on the ground that it was redundant without providing details as to how it was redundant, other than to say that the alternative was "located in close proximity to an existing

AT&T facility owned by Litchfield County Dispatch. As such, the Century Aggregate site would be largely redundant and cannot be used by AT&T in any scenario including a two tower site combination." The assertion appears in the application:

The other site suggested by a municipal official, Century Aggregate, was also rejected due to its proximity to an existing AT&T facility (AT&T's Site 1134) and its overall distance from the area where coverage is required.

(App. page 12)

This dismissal of an alternative site offered to prevent proliferation of towers and to encourage tower sharing does not meet the applicant's burden to support its rejection. The applicant will be asked to provide the reason that AT&T's existing site 1134 will not fill its coverage needs with the proposed signals. The applicant will be asked to explain how signals that travel great distances would render an existing functioning AT&T facility (AT&T Site 1134) to be too "overall distan[t]" from the "area where coverage is required," (App. p. 12) and to explain whether "largely redundant" [Cuddy & Feder Letter, 3/24/10, Exhibit IW16], means redundant. The burden of proof of a significant gap remains with the applicant, and the documents provided require further explanation to rise to the level of a significant gap.

Permitting Process

In view of the Town's suggestion of an alternative site, it would be premature to go through the full IW/CC permit process until the final tower site and attendant site issues are determined through these Council proceedings. The Town is at a disadvantage in a site selection process because AT&T is silent about A) the "area where coverage is required" and "service to the area where coverage is needed by AT&T." (App. Page 12) and B) the reach of the proposed signals and AT&T's master build-out plan, including the intended present and future power densities, and the measures to be taken for post-construction monitoring to ensure compliance

with the stated purpose that the proposed coverage is for Falls Village and this area of the state. [Cuddy & Feder Letter, 3/24/10, Exhibit IW16].

Area to be Covered

The applicant has variously described the area to be covered as "the intended coverage area" (App. p. 12) and "gaps in reliable coverage...in the eastern portion of Falls Village along Routes 7, 126 and 63 and surrounding areas." (App. p. 9) and "The proposed Facility, in conjunction with other existing and proposed facilities in Falls Village, Cornwall and Salisbury, is needed by AT&T to provide its wireless services to people living, working and traveling through this area of the State." (*Ibid.*)

Alternative Technologies

The applicant asserts that

"Repeaters, microcell transmitters, distributed antenna systems and other types of transmitting technologies are not a practicable or feasible means of providing coverage within the service area for this site. These technologies are suited for small, specifically-defined areas where new coverage is needed, such as commercial buildings, shopping malls or tunnels. Closing the gap in eastern Falls Village involves the provision of coverage along local road (Routes 7, 126 and 63) and providing coverage to the widely dispersed homes in the area. As such, these technologies are not viable as an alternative to the need for a macrocell site in this area of the State."

(App. page 10)

There are already repeaters in Falls Village serving other carriers. In fulfillment of its obligation to the people of Falls Village, the IW/CC will request technical details regarding the Applicant's failure to consider alternatives.

Visibility

Another issue for the IW/CC is the proposed 150 foot AT&T tower's high visibility in our township, making it a great intrusion on our landscape and rural view shed.

The distant views of rolling hills, wetlands and rural vistas are extremely important attributes of Falls Village, as this community is one of the more bucolic, rural areas remaining in Connecticut. The town is highly treasured by a number of environmental organizations, including the Nature Conservancy, the Housatonic River Commission, the Berkshire-Litchfield Environmental Council, and the Appalachian Mountain Club, among others—a primary reason people reside here.

Scenic Road and Ethan Allen Highway Historic Sites and Vistas

Route 7 from North Canaan to Kent has been designated by the Connecticut DOT as a "Scenic Highway". The criteria for this designation include:

A potential state scenic highway must abut significant natural or cultural features such as agricultural land or historic buildings and structures which are listed on the National or State Register of Historic Places, or afford vistas of marshes, shoreline, forests with mature trees or other notable natural or geologic feature which singularly or in combination set the highway apart from other state highways as being distinct. The Highway shall have a minimum length of one (1) mile and shall abut development which is compatible with its surroundings. Such development must not detract from the scenic or natural character or visual qualities of the highway area.

[Exhibit IW19]

The scenic designation will be compromised by the proximity of the proposed tower to Route 7 and towering above the National Register landmark South Canaan Meetinghouse. This building is an active attraction to visitors, especially during the summer months when summer rental residences fill, when tourists visit the foothills of the Berkshires and Litchfield County, and when travelers use Route 7 for access to the Housatonic River as well as the Berkshire mountains and cultural attractions in Massachusetts.

The historic South Canaan Meetinghouse structure is listed on the Historic Register and inventoried by the National Park Service in its feasibility study for the now-federally designated Upper Housatonic National Heritage Area. [Exhibits IW20, IW21, IW22, IW23]

The applicant's view shed analysis requires careful review in light of assertions that seek to minimize the appearance of a telecommunications tower of 150 feet. The Town of Canaan is a rural town where people choose to live because of its natural beauty, open vistas, and abundant wildlife. Hunting and fishing abound in our local swamps, ponds, streams and rivers. Hikers, bicyclists, kayakers, canoeists, and wildlife enthusiasts flock to this area bringing in eco-tourism and business to our local merchants. Our un-interrupted views of natural mountain ridge lines bring scores of motorists and motorcyclists to our town especially in the spring, summer, and fall; again contributing to our local economy. Cobble Hill lies in the center of our town and is the visual epicenter for the occasional, part-time, and full time residents of the Robbins Swamp, Undermountain, Music Mountain, Barrack Mountain, Beebe Hill, and Battle Hill areas.

The Town of Canaan's Inland Wetlands/Conservation Commission – as the Town itself in its Plan of Conservation and Development [Exhibit IJ7] -- is proud to protect these vital assets of our area. The prominence of the proposed site from the perspective of homeowners, designated historic areas, and scenic roads is a major concern to this Commission. Uninterrupted unspoiled natural scenic beauty is an asset to Falls Village.

Conservation Area of High Priority

Northwestern Connecticut is the northern-most terminus of the Highlands Coalition, authorized by Congress under the Highland Conservation Act to protect areas of high conservation priority. This assessment is pending at this time.

Without a study in this context, the effect of opening of the forest canopy at both the site and the expanded logging road ("access road") is in question, as is the effect on habitat quality of Cobble Hill. Tower site and building site approval before adequate assessment and inventory is made in this ecologically sensitive area may be premature. Other projects and management

programs already in place must be considered, including Federally sponsored projects, such as the Upper Housatonic Valley National Heritage Area, the Highlands Coalition and Robbins Swamp Preserve. Consideration of less vulnerable sites to provide adequate coverage is therefore appropriate.

Access Road Issues

Another significant issue regarding the Cobble Hill site is the access to the site on what is now a quite fragile old logging road. The Town's Planning and Zoning Commission contracted an engineer to evaluate the site and its access. [Exhibits IW19A and IW19B]

The grade of this access exceeds 25% in some areas, averaging 20% with areas of 26%.

Not only does this grade risk imperiling adjoining wetlands with washout in the event of heavy downpours, there are also physical safety issues.

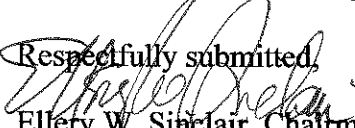
The engineer's report, however, states: "Grades over 20% require assist vehicles. Rock surfaced grades over 16% require special surfacing design to alleviate traction problems." In addition to the risk of severe erosion, there is, apparently, the problem of vehicle access for both maintenance and emergency.

The widening of the access road to 12 feet, with additional unspecified widening at the curves (5 extreme and 9 lesser curves) may have considerable impact on the contiguity of the forest canopy. Swales and riprap projected for moderating water run-off will, apparently, comprise over 6 ½ acres, providing additional disruption of the forest canopy and related effects.

These will be significant intrusions with significant environmental impacts on both transient and indigenous wildlife and wetlands, and will be carefully vetted by the IW/CC.

CONCLUSION

This proceeding provides an opportunity for constructive cooperation between the Connecticut Siting Council and the Town of Canaan Inland Wetlands and Conservation Commission to implement applicable state and local statutes in a positive fashion for the benefit of the residents of the Town and the State. We welcome this opportunity and look forward to participating in the hearing in the public interest.

Respectfully submitted,

Ellery W. Sinclair, Chairman
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CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and twenty copies of the foregoing was served on the Connecticut Siting Council by hand and copy of same was sent postage prepaid to:

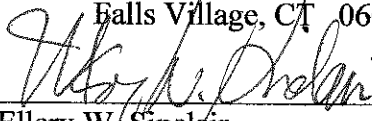
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A copy was also delivered by hand to:

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Town of Canaan Planning & Zoning Commission
Town Hall, Main Street
Falls Village, CT 06031



Ellery W. Sinclair

Dated: February 10, 2011