

STATE OF CONNECTICUT  
SITING COUNCIL

American Towers, LLC/New Cingular Wireless PCS, LLC                      DOCKET # 463  
Application for a Certificate of Environmental  
Compatibility and Public Need for the construction,  
Maintenance, and operation of a telecommunications  
Facility located at  
351A Boston Post Road, East Lyme, Connecticut.

: DECEMBER 8, 2015

**APPLICATION TO INTERVENE UNDER CEPA, §4-177a AND §16-50n**

The BHSO Community Conservancy (“BHSO”), a voluntary association, hereby moves and petitions the Connecticut Siting Council to become a party intervenor in the above application by American Towers, LLC (“ATC”)/ New Cingular Wireless PCS, (“AT&T”), for a certificate of environmental compatibility and public need for a telecommunications facility at 351A Boston Post Road, East Lyme, Connecticut. The purpose of the intervention is to participate in these proceedings to prevent unreasonable impact to the natural resources of the State including scenic vistas so that evidence of alternative location(s) and/or configurations and technology of lesser visual impact may be entered into the record.

Pursuant to Conn.Gen.Stat. §22a-19 (“CEPA”), §16-50n and §4-177a, the BHSO Community Conservancy (“BHSO”), is an entity which has a direct interest in the proceedings which will be specifically and substantially affected as it is a voluntary association consisting of taxpayers and citizens of the Town of East Lyme within the viewshed of the proposed facility, including Sriram Krishnaswami of 29 Plum Hill Road, Richard Perry of 351B Boston Post Rd, Vivek S. Purohit of 48 Heritage Rd Leonard D. Schunemeyer of 23 Plum Hill and Craig C. Tooker of 342 Boston Post Rd. The members of the group are likely to suffer property value loss different from and

greater than that of the public in general due to the proximity of the facility to their homes. In addition, the group seeks to protect the scenic vistas in East Lyme generally on behalf of the general public. Intervenor seeks party status in the above proceedings for the purpose of submitting testimony, briefs and other evidence relevant to the consideration of the application under consideration; specifically the mitigation of environmental impact to scenic vistas by the use of alternate locations, alternative technology and tower configurations.

While there are many more than five area residents who support the BHSO in its intervention in these proceedings, the organization has limited itself to five members for reasons of efficiency.

Intervenor's participation will be in the interests of justice and is proper under CEPA in that the evidence and testimony to be given will tend to show that the proposed activity for which Applicant seeks a certificate is likely to unreasonably harm the public trust in the air, water or other natural resources of the State of Connecticut in that, if granted, the proposed facility will, inter alia, unreasonably impair the visual quality of the environment in and about the Boston Post Road, Plum Hill and surrounding area; and is reasonably likely to cause viewshed deterioration that is unreasonable because at least one feasible alternative solution of lesser impact for providing adequate coverage exists.

In support of this application, the movant states the following:

1. The BHSO Community Conservancy is a duly constituted Connecticut voluntary association with members who enjoy the scenic views in and about the area of the proposed facility off Boston Post Road.
2. The proposed tower will have a negative impact on the scenic vistas in East Lyme.
3. There exists an alternative means of providing adequate coverage by utilizing a

flagpole or radomed design, including micro cells and closer than 10ft spacing between carrier arrays, and lower heights to achieve adequate coverage.

4. The BHSO intends to submit evidence to the record which has not been previously considered in the form of expert testimony which will substantiate the feasibility of available alternatives to the proposed facility of lesser visual impact including sites at the state military reservation where an existing state police tower is located and the existing Boston Post Road water tower which will assist the Council in complying with its mandate to minimize impact as required by C.G.S §16-50g and 16-50p(3)(G)(b)(1).
5. The design does not incorporate the best available technology for reducing the visual impacts of the facility in that it fails to consider, antenna combining technology, closer spacing, close mounting and other stealth techniques, including multiple shorter antenna structures to cover the target area.

## **DISCUSSION OF LAW**

The Council must be mindful of the statutory requirements which apply to interventions under CEPA. The bar is quite low for filing an intervention and thus §22a-19 applications should not be lightly rejected. Finley v. Town of Orange, 289 Conn. 12 (2008) (an application need only allege a colorable claim to survive a motion to dismiss) citing Windels v. Environmental Protection Commission, 284 Conn. 268 (2007).

CEPA clearly and in the broadest terms indicates that any legal entity may intervene. This includes municipal officials, Avalon Bay Communities v. Zoning Commission, 87 Conn. App. 537, 867 A.2d 37 (2005).

An allegation of facts that the proposed activity at issue in the proceeding is likely to unreasonably impair the public trust in natural resources of the State is sufficient. See, Cannata v. Dept. Of Environmental Protection, et al, 239 Conn. 124 (1996)(alleging harm to floodplain forest resources).

The Connecticut Appellate Court has noted that statutes “such as the EPA are remedial in nature and should be liberally construed to accomplish their purpose.” Avalon

Bay Communities, Inc. v. Zoning Commission of the Town of Stratford, 87 Conn.App.537 (2005); Keeney v. Fairfield Resources, Inc., 41 Conn.App. 120, 132-33, 674 A.2d1349 (1996). In Red Hill Coalition, Inc. V. Town Planning & Zoning Commission, 212 Conn. 7272, 734, 563 A.2d 1347 (1989) ("section 22a-19[a]makes intervention a matter of right once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded"); Polymer Resources, Ltd. v. Keeney, 32 Conn. App. 340, 348-49, 629 A.2d 447 (1993) ("[Section] 22a-19[a] compels a trial court to permit intervention in an administrative proceeding or judicial review of such a proceeding by a party seeking to raise environmental issues upon the filing of a verified complaint. The statute is therefore not discretionary.") See Also, Connecticut Fund for the Environment, Inc. v. Stamford, 192 Conn. 247, 248 n.2, 470 A.2d 1214 (1984).

In Mystic Marinelife Aquarium v. Gill, 175 Conn. 483, 490, 400 A.2d 726 (1978), the Supreme Court concluded that one who filed a verified pleading under § 22a-19 became a party to an administrative proceeding upon doing so and had "statutory standing to appeal for the limited purpose of raising environmental issues." "It is clear that one basic purpose of the act is to give persons standing to bring actions to protect the environment." Belford v. New Haven, 170 Conn. 46, 53-54, 364 A.2d 194 (1975).

The Intervenor is entitled to participate as a §22a-19 intervenor which allows for a right of appeal under that statute. Committee to Save Guilford Shoreline, Inc. v. Guilford Planning & Zoning Commission, 48 Conn. Sup. 594, 853 A.2d 654(2004) once any entity has filed for intervention in an administrative proceeding, it has established the right to appeal from that decision independent of any other party. Mystic Marinelife Aquarium v. Gill, 175 Conn. 483 (1978) stated quite clearly that "one who files a §22a-19 application becomes a party with statutory standing to appeal." Branhaven Plaza, LLC v Inland Wetlands Commission of the Town of Branford, 251 Conn. 269, 276, n.9 (1999) held that a party who intervenes in a municipal land use proceeding pursuant to §22a-19 has standing to appeal the administrative agency's decision to the Superior Court. The Court cited as support for this proposition, Red Hill Coalition, Inc. v. Conservation Commission, 212 Conn. 710, 715, 563 A.2d 1339 (1989)("because the [appellants] filed a notice of intervention at the commission hearing in accordance with §22a-19(a), it doubtless had statutory standing to appeal from the commission's decision for that limited purpose.")

In Keiser v. Zoning Commission, 62 Conn. App. 600, 603-604 (2001) our Appellate Court stated that the Branhaven Plaza case is directly on point and held "the plaintiff in the present case properly filed a notice of intervention at the zoning commission hearing in accordance with §22a-19(a). Accordingly, we conclude that he has standing to appeal environmental issues related to the zoning commission's decision."

The rights conveyed by CEPA are so important and fundamental to matters of public trust that the denial of a 22a-19 intervention itself is appealable. See, CT Post Limited Partnership v. New Haven City Planning Commission, 2000 WL 1161131 Conn. Super. (Hodgson, J. 2000)(§22a-19 intervenors may file an original appeal for improper denial of intervenor status).

Intervenors' application for intervenor status should be granted so that it may participate by presenting evidence for the record and meaningfully assist the Siting Council in reaching a decision which minimizes impact to natural resources of the state while providing adequate coverage for wireless telecommunications.

#### VERIFICATION

The undersigned, Craig Tooker, duly authorized Director of the BHSO Community Conservancy, duly sworn, hereby verifies that the above application is true and accurate to the best of his knowledge and belief.

Craig Tooker

Sworn and subscribed before me this 7 th day of December, 2015.

[Signature]

Notary Public; My Commission Expires

My Commission Expires July 31, 2017

Respectfully Submitted,

The BHSO Community Conservancy,

**Keith R. Ainsworth, Esq.**

Digitally signed by Keith R. Ainsworth, Esq.  
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By \_\_\_\_\_

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The intervenor requests copies of all filings made in the course of this docket to date and from this date forward and requests service by electronic mail.

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 8th day of December, 2015 and addressed to:

Ms. Melanie Bachman, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 orig, 15 copies, plus 1 electronic) (US Mail/electronic).

And electronic copies to:

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