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Decision of the Martha's Vineyard Commission DRI 640-M 21 New Lane Cell Tower Modifications

1. SUMMARY

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| <u>Referring Board:</u> | Building Inspector, Town of West Tisbury |
| <u>Subject:</u> | Development of Regional Impact #640-M 21 New Lane Cell Tower Modifications |
| <u>Project:</u> | Extension of an existing camouflaged cell tower, and addition of equipment including antennas, a walk-in cabinet, and diesel generator. |
| <u>Owner:</u> | Robert Doane; Cynthia Doane; Irrevocable Living Trust of the Doane Children; Verizon Wireless - Leasee |
| <u>Applicant:</u> | Centerline Communications (Kimberly Revak) |
| <u>Applicant Address:</u> | Kimberly Revak, Site Acquisition Consultant 38 Treeline Court Fishkill, NY 12524 |
| <u>Deed:</u> | Recorded Land: Book 258, Page 239 |
| <u>Declaration of Trust:</u> | Recorded Land: Book 531, Page 246 |
| <u>Lease:</u> | Recorded Land: Book 1249, Page 84 |
| <u>Previous Decision:</u> | Recorded Land: Book 1315, Page 16 |
| <u>Project Location:</u> | 21 New Lane (Map 31, Lot 48), West Tisbury (20.2 acres). |
| <u>Decision:</u> | The Martha's Vineyard Commission (the Commission) approved the application for the project as a Development of Regional Impact with conditions, at a vote of the Commission on December 9, 2021. |
| <u>Written Decision:</u> | This written decision was approved by a vote of the Commission on January 6, 2022. |

The permit-granting authorities of the Town of West Tisbury may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.

2. FACTS

The exhibits listed below including the referral, the application, the notice of the public hearing, the staff report, the plans of the project, and other related documents are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Martha's Vineyard Commission.

2.1 Referral

The project was referred to the Commission on September 21, 2021 by the Building Inspector of the Town of West Tisbury, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, DRI Checklist Items: 1.3D *Modification to a Previous DRI*. On November 4, 2021, the Commission voted to hold a public hearing on the Application.

2.2 Hearings

Notice: Public notice of the hearing on the Application was published in the MV Times on November 18 and 25, 2021; notice was also published in the Vineyard Gazette on November 19 and 26, 2021. Abutters within 300 feet of the property were notified by mail on November 16, 2021.

Hearings: The Commission scheduled a public hearing on the Application pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on December 2, 2021 which was closed that same night with the exception of the written record which was left open until 12:00 pm on December 7, 2021 and closed at that time. The hearing was held entirely using remote conference technology as allowable under Chapter 20 of the Acts of 2021.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan." All pages are 8.5" x 11" unless otherwise noted.

- P1. Application Package consisting of sixteen (16) 17" x 11" pages prepared by Dewberry Engineers Inc. for American Tower dated May 11, 2021 and revised on July 30 and August 2, 2021, including: G-001 Title Sheet; G-002 General Notes; C-001 Overall Site Plan, scale 1 unit = 500 feet; C-101 Detailed Site Plan, scale 1 unit = 5 feet; C-102 Detailed Equipment Layout, no scale; C-201 Tower Elevation, no scale; C-401 Antenna Information & Schedule, no scale; C-501 Mount Details, no scale; C-502 Construction Details, no scale; C-503 Construction Details, no scale; E-101 Grounding Details & Electrical Schematic, no scale; E-501 Grounding Details, no scale; E-502 Grounding Details, no scale; R-601 Supplemental; R-602 Supplemental; R-603 Supplemental.

2.4 Reports

- R1. Antenna Mount Analysis Report prepared for American Tower Corporation by Tower Engineering Professionals, consisting of ninety-three (93) pages, dated March 31, 2021.

- R2. Structural Analysis Report prepared for American Tower Corporation by telamon CLS, consisting of thirty-five (35) pages, dated April 6, 2021.

2.5 Other Exhibits

- E1. Referral to the MVC from the West Tisbury Building Inspector, received September 21, 2021.
- E2. Letter of Authorization from American Tower, operator of the tower facility, to allow New Cingular Wireless PCS, LLC dba AT&T Mobility to act as an agent, dated April 19, 2021.
- E3. DRI Application submitted October 6, 2021.
- E4. Valmont Structures Pine Tree Concealed Cell Tower Brochure.
- E5. Letter to MVC from Applicant regarding Section 6409 of the Federal Middle Class Tax Relief and Job Creation Act, dated October 20, 2021.
- E6. MVC Staff Report, dated October 29, 2021.
- E7. Applicant's response to staff questions, dated October 29, 2021.
- E8. Emails between Kimberly Revak and Alex Elvin regarding battery powered generators, dated October 29, 2021.
- E9. MVC Staff Presentation for LUPC, dated November 1, 2021.
- E10. Applicant's response to MVC questions, dated November 4, 2021.
- E11. MVC Staff Presentation for the full Commission, dated November 4, 2021.
- E12. Existing and Proposed Coverage Maps showing proposed LTE: RSRP (dBm), scale 1:62,139, submitted December 7, 2021.
- E13. Email from Gary Waitt of American Tower outlining maintenance proposal, dated December 7, 2021.
- E14. Three letters from the following citizens: Meredith Eppel, abutter; Nancy Eppel, Cheryl Eppel, John Segar, Anna Segar and Charles Segar, abutters; and Rez Williams and Lucy Mitchell, abutters.
- E15. Minutes of the Commission's Land Use Planning Committee Modification Review, November 1, 2021.
- E16. Minutes of the Commission's Modification Review, November 4, 2021.
- E17. Minutes of the Commission's Public Hearing, December 2, 2021.
- E18. Minutes of the Commission's Deliberation & Decision, December 9, 2021.
- E19. Minutes of the Commission's Approval of the Written Decision, January 6, 2022.

2.6 Summary of Testimony

The following gave testimony during the public hearing on December 2, 2021:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the project by Kimberly Revak.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public: Lawrence Schubert, former member of the West Tisbury Zoning Board of Appeals; Scott Mclsaac, abutter; Chris Mclsaac, abutter.

3. FINDINGS

3.1 Project Description

DRI 640 was approved with conditions in 2013, allowing for the installation of a 66-foot-high Personal Wireless Service Facility tower, with associated ground equipment. The tower was approved as either a “stealth monopole or monopine (artificial tree) – if a monopine, an additional 5-foot de minimis taper crown without equipment may be added to the top to give a more natural appearance provided this meets the West Tisbury zoning regulations.” The structure was built as a monopine tower, following review by the West Tisbury ZBA.

The proposal is to co-locate new AT&T equipment at the tower site in order to provide better service to the area. New equipment will include a walk-in cabinet (WIC), a 15kW diesel generator and concrete pad, cables and underground conduits, and a 7' GPS antenna (1' antenna mounted to a 6' support post). Changes to the tower itself will include extending the tower 15 feet, and adding a new mount for AT&T antennas and other equipment.

The tower is currently 65 feet high, including the artificial tree branches; and the proposed height, including branches, is 80 feet (nine feet higher than the allowable height under the 2013 MVC approval).

3.2 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is to “protect the health, safety, and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha’s Vineyard which contribute to public enjoyment, inspiration, and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies.”

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluation the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all testimony presented and reviewing all documents submitted during the hearing and review period.

3.3 Benefits and Detriments

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 of the Act.

A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.

A1. The Commission finds that the proposed development at this location is essential and appropriate in view of the available alternatives (Section 15(a) of the Act.)

The Commission finds that the probable benefits of the project outweigh the probable detriments, as described below. With respect to impacts upon the environment (Section 15(b) of the Act), the Commission finds the project would have a detrimental impact. With respect to impacts upon persons and property (Section 15(c) of the Act), the Commission finds the project would have a beneficial impact. The Commission also finds that the project would not adversely affect the provision of municipal services or the burden on taxpayers, would not unduly burden existing public facilities, and would not interfere with local, regional, or state planning objectives.

A2. The Commission finds that the proposed development would have a detrimental impact upon the environment relative to other alternatives (Section 15(b) of the Act).

The Commission notes the following with respect to impacts on the environment:

Energy

- The proposed diesel generator would come on automatically during outages, and once a week for 20 minutes as part of its maintenance cycle.
- The compound is currently used by Verizon, which has a building and generator on the site. The Applicant has stated that it would not be possible to share the Verizon generator, which is located inside the building and is configured differently.
- The Applicant has stated that the facility currently has a battery backup system that is designed to provide temporary backup during an emergency (for the period before a generator turns on), but that a diesel generator would still be necessary.
- The Applicant has stated that battery backup for this purpose is not currently used by the industry, and cannot be accommodated by AT&T, although technical information was not provided.

Ecology and Habitat

- The tower has shed a noticeable amount of plastic into the nearby environment, including inside and outside the compound.
- The proposal would add about 15 feet of additional synthetic branches to the tower.
- The applicant has offered to clean up fallen debris; replace worn branches; and conduct annual site inspections to determine maintenance needs, in line with current ATC standards.

Water quality (including groundwater)

- The proposed generator would be self-contained and double-walled, with a catch basin, an alarm system for the fuel tank, and other spill-prevention measures.

A3. The Commission finds that the proposed development would have a beneficial effect upon other persons and property (Section 15(c) of the Act).

The Commission notes the following with respect to impacts on persons and property:

Telecommunications

- The project will increase AT&T coverage in West Tisbury and Chilmark, including the area around Tisbury Great Pond and along State and Middle Roads. The Commission considered this to be the primary benefit of the modification.

Scenic Values

- The tower is visible from nearby properties.
- The project would increase the tower height by about 15 feet, making it about nine feet higher than originally approved by the MVC.
- The closest property line is 142 feet to the north, and the closest buildings are within about 290 and 580 feet of the tower.

Noise and Night Lighting

- According to the manufacturer, the proposed generator will produce about 66 decibels at a distance of about 23 feet. (60-70 decibels is about equal in volume to a spoken conversation.)
- The closest property line is about 137 feet to the north, and the closest buildings are within about 290 and 580 feet of the tower.
- The plans show two LED motion-controlled lights mounted on the proposed walk-in cabinet. No lighting is proposed for the tower.

Impact on Abutters

- Two letters from abutters have been submitted in opposition to the proposal.
- (See Scenic Values)

A4. The Commission finds that the impacts associated with the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act) do not apply to the project.

A5. The Commission finds that the proposed development would not adversely affect the provision of municipal services and the burden on taxpayers in making provision there for (Section 15(e) of the Act).

With respect to the provision of municipal services or burden on taxpayers, the project will likely have a minimal impact on municipal services and taxpayers, since it is privately maintained and relatively independent of municipal services.

A6. The Commission finds that the proposed development would use efficiently and would not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years (Section 15 (f) of the Act).

The Commission notes that the project is to co-locate new AT&T equipment at the tower site in order to provide service to the area, including the potential use by first responders.

A7. The Commission finds that the project as proposed generally does not interfere with the ability of the municipality to achieve objectives set forth in the municipal general plan, and would not contravene land development objectives and policies developed by regional or state agencies (Sections 14(b), 15(g), and 15(h) of the Act), respectively.

The Commission notes that the project generally aligns with the Island Plan.

A8. The Commission finds that the proposed development as conditioned is consistent with municipal ordinances and by-laws (Section 14(c) of the Act).

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.

The requested project in general advances the Commission's land development objectives, as outlined in Section A7 of this Decision.

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.

The project is consistent with local zoning.

D. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.

The project site is partly within the Coastal District, and is consistent with those regulations.

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, and the addition of conditions and offers, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriments in light of the considerations set forth in section 15 of the Act.

4. DECISION

The Federal Middle Class and Jobs Creation Act of 2012, Section 6409 (Wireless Facilities Deployment), provides that state and local governments must approve “any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” The Martha’s Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on December 9, 2021, and agreed that while it must approve the project, it could apply conditions as appropriate.

Approval of a local permit application for eligible facilities under the Middle Class and Jobs Creation Act must occur within 60 days of receipt of the application. The Commission’s oral decision occurred within the 60-day period. However, because the decision is not binding until approved in writing and filed as required, the agent for the Applicant agreed to extend the deadline to accommodate the Commission’s scheduled approval of the written decision and the filing thereof.

The following Commissioners, all of whom participated in the hearing and deliberations participated in the decision on December 9, 2021:

- Voting to approve the project: Jeff Agnoli, Trip Barnes, Christina Brown, Jay Grossman, Fred Hancock, Kathy Newman, Doug Sederholm, Christine Todd, Jim Vercruysse.
- Voting against: Ben Robinson.
- Ineligible to participate: Brian Packish and Ted Rosbeck.
- Absent: Josh Goldstein, Michael Kim, Ernie Thomas, Linda Sibley.

Based on the above considerations, the Commission approved the application for the project as a Development of Regional Impact with conditions.

This Written Decision is consistent with the deliberation of the Commission on December 9, 2021 and was approved by a vote of the Commission on January 6, 2022.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Commission imposes the following conditions in order to minimize the potential detriments and maximize the potential benefits:

1. As offered by the Applicant:

- The cleanup of existing fallen faux branches and needles within the compound and surrounding area will be completed at the time of the installation of the proposed extension.
- Replacement of existing weathered branches that are not affected by the extension design will also be completed at the time of the extension installation.

2. The decision as to whether to remove the faux branches from the pole as it currently exists, or to continue with the use of faux branches, will be left to the West Tisbury ZBA. If the ZBA decides to continue with the faux branches, then the following condition applies:

3. The Applicant shall remove all fallen artificial branches and needles from the property, including within and outside the compound, prior to the completion of the project. The Applicant shall also conduct semiannual inspections of the property, with cleanup as necessary inside and within 200 feet of the enclosure. Recovered materials shall be recycled, and if that is not possible, the Applicant shall advise the Commission as to the intended disposal.

6. CONCLUSION

6.1 Permitting from the Town

The Applicants must, consistent with this Decision, apply to the appropriate Town of West Tisbury Officers and Boards for any local development permits which may be required by law.

The permit-granting authorities of the Town of West Tisbury may now grant the request for approval of the Applicant's proposal in accordance with this decision and may place further conditions thereon in accordance with applicable law or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the Commission.

6.2 Notice of Appellate Rights

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the West Tisbury Town Clerk.

6.3 Length of Validity of Decision

The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin substantial construction.

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6.4 Signature Block


Joan Malkin, Chair

10 Jan 2022
Date

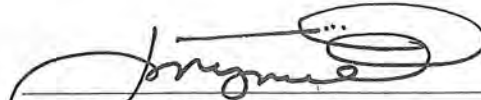
6.5 Notarization of Decision

Commonwealth of Massachusetts

County of Dukes County, Mass.

On this 10th day of JANUARY, 2022, before me, JENNIFER L. CHRISTY, the undersigned Notary Public, personally appeared Joan Malkin, proved to me through satisfactory evidence of identity, which was PERSONALLY KNOWN TO ME to be the person whose name was signed on the preceding or attached document in my presence, and acknowledged to me that she signed it voluntarily for its stated purpose as a free act and deed, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.




Signature of Notary Public

JENNIFER L. CHRISTY
Printed Name of Notary
My Commission Expires JULY 26, 2024

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: JAN-11, 2022

Deed: Book 1610, Page 750

Document Number: _____