



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

**APA Project Permit  
2010-71**

Date Issued: September 25, 2012

In the Matter of the Application of

**NEW YORK RSA No. 2 CELLULAR PARTNERSHIP  
d/b/a VERIZON WIRELESS, THE VILLAGE OF  
PORT HENRY AND TOWN OF MORIAH**

for a permit pursuant to §809  
of the Adirondack Park Agency Act.

To the County Clerk: This permit  
must be recorded on or before  
**November 26, 2012.** Please index  
this permit in the grantor index  
under the following names:

- 1. New York RSA No. 2  
Cellular Partnership d/b/a  
Verizon Wireless**
- 2. Village of Port Henry**
- 3. Town of Moriah**

**SUMMARY AND AUTHORIZATION**

New York RSA No. 2 Cellular Partnership d/b/a Verizon Wireless (Verizon Wireless), the Village of Port Henry, and the Town of Moriah are granted a permit, on conditions, authorizing a structure over 40 feet in height in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Village of Port Henry, Town of Moriah, Essex County.

This project may not be undertaken until this permit is recorded at the Essex County Clerk's Office. This permit shall expire unless so recorded on or before November 26, 2012 in the names of all owners of record of any portion of the project site on the recordation date.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the permit is recorded. The Agency will consider the project in existence when the tower has been constructed, the antennas have been installed on the tower, and the equipment shed has been constructed.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional, or local.

**AGENCY JURISDICTION**

The project is the construction of a new structure in excess of 40 feet in height, Class A regional project in a Hamlet land use area requiring an Agency permit pursuant to Section 810(1)(a)(4) of the Adirondack Park Agency Act.

**PROJECT SITE**

The project site is located off Spring Street, in the Village of Port Henry, Town of Moriah, Essex County, in an area classified Hamlet by the Adirondack Park Land Use and Development Plan Map. The project site is identified on the Essex County tax map as tax parcel 97.56-1-21 (1.55± acres). The project site is described in deed dated November 17, 1969 from Niagara Mohawk Power Corporation to Village of Port Henry and Town of Moriah, recorded on December 22, 1969 in the Essex County Clerk's Office in Liber 484 of Deeds, Page 33.

**PROJECT DESCRIPTION AS PROPOSED**

The project as proposed is a subdivision into sites, involving the lease of an 80 by 80 foot parcel to Verizon Wireless for the construction of a new 115 foot tall telecommunications tower and a 12 by 30 foot equipment shelter on a concrete pad at the base of the tower. The tower and equipment building will be located within a 3,025 square foot fenced compound. Verizon Wireless proposes a 12 panel antenna array (i.e. four 8 foot panels on each of three sides of the array) mounted at a centerline height of 106 feet above ground level. Two six foot parabolic dish antennas will be installed at a centerline height not to exceed 96 feet above ground level. To reduce visual impacts the tower is proposed to be a simulated tree tower with branching extending to 121± feet above ground level.

The project is shown on a set of plans (11 sheets) Last Revised 3/8/12 and labeled: "Project Number: 2006160906 Port Henry-NYFRA715, Spring Street V/O Port Henry" prepared by Tectonic Engineering and Surveying Consultants, P.C. The individual plan sheets are entitled (in part) T-1, SU-1, SB-1, C-1, C-1A, C-1B, C-2, C-3, C-4, TP-1, and TP-2. A reduced-scale copy of sheets C-1 (Site Plan and Notes) and C-2 (Site Detail Plan, Elevation, Details, and Notes) are attached as a part of this permit for easy reference. The original, full-scale maps and plans referenced above are the official plans for the project.

**CONDITIONS**

**BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT FILE, THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The project shall be undertaken as described in the completed application, the Project Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the permit is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.
2. This permit is binding on the applicants, all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this permit and all the approved maps and plans referred to herein shall be furnished by the applicants to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2010-71 issued September 25, 2012, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
3. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

**Proposed Development**

4. The proposed project shall be undertaken as shown on the project plans. The tower shall not exceed 115 feet above existing ground level and the authorized panel antennas shall be located at a centerline height of 106 feet above ground level and the authorized six foot diameter parabolic dish antennas shall not exceed a centerline height of 96 feet above ground level as shown on the plans referenced herein. Simulated tree branching shall not exceed 121 feet above ground level. Clearing and grading around the proposed tower and equipment compound shall also be undertaken as shown on the project plans.

**Review of Future Development**

5. Any future new land use and development on the project site, involving the construction of any new communications towers or the addition of any new antennas, parabolic dishes or other equipment to the existing tower, shall require prior Agency review and approval in the form of a new or amended permit.

Maintenance and/or "in kind" replacement of the tower, antennas, equipment building and other appurtenant facilities authorized herein is allowed without a new or amended permit.

**Simulated Tree Tower**

6. In order to minimize the visual appearance of the tower, the panel antennas, and associated infrastructure, it shall be concealed as a fully-formed simulated tree tower. The tower, antenna array, and supporting infrastructure on the tower shall be painted dark charcoal grey or black with a non-reflective flat or matte finish. The simulated tree tower shall be designed in accordance with Condition 4 above.

Prior to undertaking the project, Verizon Wireless, their successors and assigns must submit to the Agency for approval, the proposed concealment details and specifications for the tower that mimic the bark, branching structure, needle pattern, and coloration of a mature, fully formed white pine tree. Approval will be granted via letter of compliance.

7. Other than removal of those trees necessary to undertake the project as shown on Sheet C-1 (the tree removal plan), no existing trees located on the project site and within 100 feet of the tower authorized herein shall be cut, culled, trimmed, pruned or otherwise removed from the project site without prior Agency review and approval in the form of a new or amended permit or a letter of permit compliance. This condition shall not be deemed to prevent the removal of dead or downed trees within the parcel leased by Verizon Wireless provided there is two weeks prior written notice to the Agency of the proposed cutting that includes verification of the condition of the tree or trees to be removed.
8. If a natural cause such as blow-down, ice storm, fire, disease or another event beyond the control of the operator of the tower/antenna array authorized herein results in the complete or partial loss of the vegetation that provides the screening and/or backdrop for the tower/antenna array, then Verizon Wireless, or their successors and assigns, shall within 6 months, present a plan for Agency approval intended to achieve "substantial invisibility" as set out in the Agency's "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park." Landowners of the site shall negotiate in good faith to allow for the implementation of any plan approved by the Agency. The plan shall describe a program of re-vegetation and/or redesign intended to achieve substantial invisibility within 10 years, or relocation to an alternate substantially invisible site within two years. The plan shall also provide for substantially

the same wireless service existing prior to the loss of vegetation. Approval of the plan may be in the form of a letter of permit compliance, or a new or amended permit.

#### Co-Location

9. Verizon Wireless, their successors and assigns, shall make space available on the project site to other FCC-licensed carriers for their use in creating cellular telephone "cells" and to other entities to the extent that space is available at the then-current market rate customarily charged for such space leases. However, such further use shall require prior review and approval from the Adirondack Park Agency, and will be subject to the environmental impact analysis required by law and the Agency's "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park." Should the carriers and/or owners be unable to agree on the terms of the lease for such co-location; they shall submit the dispute to mediation or arbitration pursuant to the guidelines of a nationally recognized dispute resolution organization.

#### Discontinuance of Use

10. If the use of the tower for the authorized cellular telephone, voice, data or other forms of wireless communications is discontinued for more than one year, Verizon Wireless, their successors and assigns, shall remove the tower from the site within the following year. If the use of the herein authorized antennas for cellular telephone, voice, data or other forms of wireless communications is discontinued for more than six months, then Verizon Wireless, their successors and assigns, shall remove the antenna array from the tower within the following six months. Once the time frames for removal have expired according to this condition, placement of a new tower on the project site or replacement of the antennas on the tower for cellular telephone, voice, data or other forms of wireless communications shall be subject to review and approval by the Agency in the form of a new or amended permit. The landowners, their successors and assigns shall allow timely removal of the tower or antenna array pursuant to this condition.

#### FINDINGS OF FACT

##### Background/Prior History

1. The project site was has not been the subject of prior Agency involvement.
2. Verizon Wireless is a public utility and wireless telecommunications company licensed by the Federal Communications Commission (FCC) and authorized to do business in Essex County, New York.

**Existing Environmental Setting and Character of the Area**

3. Land uses in the vicinity of the project site consist of year-round residences. The project site is densely vegetated with mature mixed deciduous and coniferous trees. There are no wetlands on or immediately adjacent to the project site. The abandoned water tank, which is a dominate Port Henry landscape feature, is located within the project site but on an separate tax parcel not owned by the Village of Port Henry or Town of Moriah. There are 14 properties and one street eligible to be listed on the National Register of Historic Places located within 0.5 miles of the project site.

**Public Notice and Comment**

4. The Agency notified all adjoining landowners and those parties as statutorily required by Section 809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin. No comments were received.

**Other Regulatory Permits and Approvals**

5. In a completed Local Government Notice Form, the Town of Moriah has advised that no municipal approval for the project is required. A license is required from the Federal Communications Commission (FCC).
6. On May 11, 2011 the New York State Army National Guard advised the applicant that the project will not have an impact on military training airspace.

**Alternatives**

7. Verizon considered several alternatives to the proposed project, including locating the antennas on the abandoned water tank on adjoining tax parcel 97.56-1-1, on an existing 195-199 foot tall, 24 inch guyed lattice tower (Agency Permit 90-601) located approximately two miles southwesterly of the Village of Port Henry, and in the location of the tower approved herein but at lower elevations.

The site was determined not to be a viable option since the tower did not have the structural capacity to accommodate the proposal and since the tower is located further away from the target coverage area of Port Henry.

Based upon a 10/5/06 structural analysis report prepared by Clough Harbor Associates, LLP the historic water tank located directly adjacent to the project site does not have the structural capacity to accommodate the infrastructure approved herein. The report cites deflected tower legs, tower leg base rust, and unsound stairs, railings, and tank as deficiencies preventing the use of the historic structure.

Verizon Wireless' radio frequency design engineers evaluated the possibility of lowering the panel antennas to a centerline height of 102 feet above ground level. Their analysis concluded that interference from the nearby forest canopy would result in an unacceptable loss of coverage.

### **Documentation of Construction**

8. The Agency shall be provided with color photographs (print with a backup electronic copy) showing the simulated tree tower, antennas and equipment compound within 30 days of project completion. Photographs shall be taken from the project site and photostations 14, 17, and 20. At photostations 14, 17, and 20, digital equivalent 55 mm and 85 mm lens shall be employed. All photographs must clearly identify the date the picture was taken, the photostation number, and the lens size employed. Compliance photographs shall be taken on a clear day with little cloud cover.

### **PROJECT IMPACTS**

#### **Towers Policy and Visual Impacts**

9. On February 15, 2002, the Agency adopted a policy entitled "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park" (Towers Policy). This policy is intended to protect aesthetic, open space and other resources, while providing for telecommunications systems consistent with federal law.
10. A visual analysis of the proposed tower/antenna array was prepared by the applicant. It included computerized mapping showing areas of potential visibility based on topography. The visual impact analysis included a balloon test to identify the actual areas of visibility. The balloon study confirmed the tower's visibility from portions of Lake Champlain, along a portion of New York State Route 22 southerly of the Village of Port Henry, and from the Village of Port Henry (Main Street and the New York State Department of Environmental Conservation's public boat launch located easterly of the project site. Photographic simulations of the tower from select viewpoints were prepared using photographs taken during the balloon study.

11. As a result of Agency review of the project based upon the pertinent development considerations set forth in Section 805(4) of the Adirondack Park Agency Act and applicable regulations it has been determined that the project is consistent with the Agency's "Towers Policy" because it will be located in a Hamlet land use area, because it will be partially screened from many areas by its location among tall white pine trees, and because the tower will be a simulated tree designed to look like the surrounding pine trees and because the antenna array will be painted a dark color that blends with the tree.

#### **Historic Preservation**

12. By letter dated April 24, 2012 the NYS Office of Parks, Recreation and Historic Preservation determined that a monopine tower (simulated tree tower) will have No Effect on historic resources within 0.5 miles of the tower site. Therefore, the project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

#### **CONCLUSIONS OF LAW**

The Agency has considered all statutory and regulatory criteria for project approval as set forth in Section 809(10) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574. The Agency hereby finds that the project is approvable and complies with the above criteria, provided it is undertaken in compliance with the conditions herein.

PERMIT issued this            day  
of                           , 2012

ADIRONDACK PARK AGENCY

BY: \_\_\_\_\_  
Richard E. Weber, III Deputy Director  
(Regulatory Programs)

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF ESSEX )

On the            day of            in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber III personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

REW:LRW:MJG:mlr