


THIS IS A TWO-SIDED DOCUMENT

 <p>NEW YORK STATE <b>Adirondack</b> parkagency</p> <p>P.O. Box 99 • Ray Brook, New York 12977 (518) 891-4050 www.apa.ny.gov</p>	<p><b>APA Project Permit 2013-171</b></p>
<p>In the Matter of the Application of</p> <p><b>NEW YORK RSA 2 CELLULAR PARTNERHIP d/b/a VERIZON WIRELESS, MICHAEL MARSDEN, RICHARD GUTTENBERG, and NANCY GUTTENBERG</b></p> <p>for a permit pursuant to §809 of the Adirondack Park Agency Act</p>	<p>Date Issued:</p>
	<p>To the County Clerk: This permit must be recorded on or before _____ . Please index this permit in the grantor index under the following names:</p> <ol style="list-style-type: none"><li><b>1. New York RSA 2 Cellular Partnership d/b/a Verizon Wireless</b></li><li><b>2. Michael Marsden</b></li><li><b>3. Richard Guttenberg</b></li><li><b>4. Nancy Guttenberg</b></li></ol>

SUMMARY AND AUTHORIZATION

New York RSA 2 Cellular Partnership d/b/a Verizon Wireless, Michael Marsden, Richard Guttenberg, and Nancy Guttenberg are granted a permit, on conditions, authorizing a new telecommunications tower (a major public utility use) in excess of 40 feet in height in an area classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of North Hudson, Essex County.

This project may not be undertaken, and no transfer deed shall be recorded, until this permit is recorded in the Essex County Clerk's Office. This permit shall expire unless so recorded on or before \_\_\_\_\_ in the names of all persons listed on the first page hereof and 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 lease agreement has been finalized, the tower constructed, and the utility lines have been extended to the site.

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

#### **AGENCY JURISDICTION**

The project consists of a new structure in excess of 40 feet in height, a major public utility use, and a subdivision by lease creating a non-shoreline lot less than 120,000 square feet within a Low Intensity Use land use area. Therefore, it is a Class A and B regional project requiring an Agency permit pursuant to Sections 810(1)(c)(5), §810(1)(c) (17), and 810(2)(b)(2)(b) of the Adirondack Park Agency Act. The first 1,750± feet of the tower access road is located within one-quarter mile of the Schroon River, which is designated a Recreational River by the Wild, Scenic and Recreational River System Act. That portion of the project is also a rivers project requiring an Agency permit pursuant to 9 NYCRR Sections 577.4(a) and 577.5(c)(1).

#### **PROJECT SITE**

The project site consists of two parcels of land located on the east side of Greenough Road (off US Route 9), in the Town of North Hudson, Essex County, in an area classified Low Intensity Use on the Adirondack Park Land Use and Development Plan Map. The tower will be located on Town of North Hudson tax parcel 105-1-22 (200± acres, "Tower Parcel"). Access to the tower will be through adjoining Town of North Hudson tax parcel 104.02-1-12 (102.5± Acres, "Access Parcel"). The "Tower Parcel" is described in a deed from Sheldon F. Wickes to Michael Marsden dated September 29, 1987 and recorded October 7, 1987 in the Essex County Clerk's Office in Liber 894 of Deeds at Page 282. The "Access Parcel" is described in a deed from Victoria Ann Ingalls, Susan Ingalls Lewis, James W. Ingalls, and Flora S. Ingalls to Richard Guttenberg and Nancy Guttenberg dated March 24, 2004 and recorded April 28, 2004 in the Essex County Clerk's Office in Liber 1398 of Deeds at Page 152 as Instrument No. 002438.

#### **PROJECT DESCRIPTION AS PROPOSED**

The project as proposed is summarized as follows:

A subdivision into sites involving the lease of a 100-foot by 100-foot parcel for the construction of a new 65-foot-tall (above existing ground level - AGL) telecommunications tower, plus a 4-foot-tall lightning rod for a total height of 69 feet. The tower will be located within a 52-foot by 46-foot fenced-in equipment compound

located 3,500± feet (0.66± miles) east of Greenough Road. A vegetative "no cutting" easement will protect trees in the vicinity of the proposed tower.

Within the equipment compound, New York RSA 2 Cellular Partnership d/b/a Verizon Wireless is proposing to install a total of 12 8-foot-tall panel antennas on the tower (at a centerline height of 61 feet AGL), construct a 11'7" by 30'0" equipment shelter on a concrete pad of the same size along with a backup generator, and install a 1,000 gallon propane tank on a separate 4'0" by 14'0" concrete pad. Blasting may be necessary for construction of the tower and access drive. Access to the facility will involve construction of a 5,366-foot-long gravel access drive to accommodate construction and service vehicles. The first 1,000± feet of the access drive will follow an established driveway that provides access to a private residence. The remainder of the access drive follows an existing unimproved woods road. Underground utilities will be located along the 12-foot-wide access drive and within the 30-foot-wide access and utility easement. There is also a proposed 20-foot-wide temporary clearing and grading easement on both sides of the permanent easement and around the lease parcel.

The project is shown on a set of plans (22 sheets) titled "Verizon Wireless, Project Number 20130935115, Location Code 271628, Site Name Underwood II Zoning Drawings," prepared by Costich Engineering of Rochester, NY, and having a final revision date of January 16, 2014, with one exception. Sheet CA500, "Tower Elevation and Notes," is replaced with a sheet of the same title dated May 31, 2014. Reduced-scale copies of the sheets titled "Overall Site Plan (Drawing Number CA100)" and "Tower Elevation, Details, & Notes (Drawing Number CA500)" are attached as 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, THE PROJECT IS APPROVED WITH 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 permittees, 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 permittees, 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 the project maps and plans referred to herein shall be furnished by the permittees to all subsequent owners or lessees of the project site prior to sale or lease, and by the permittees or any subsequent owner or lessee undertaking construction to any contractors undertaking any portion of this project. 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 2013-171 issued \_\_\_\_\_, 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 65 feet in height (plus a 4-foot-tall lightning rod, for a total height of 69 feet) and the antennas shall be located on the tower as shown on the plans referenced herein, with the top of the antennas at an elevation not to exceed 65 feet above ground level (centerline elevation of 61 feet above ground level). All clearing and grading for the proposed access road, tower, and equipment compound shall also be undertaken as shown on the project plans, including all stormwater management and erosion control measures.

#### **Review of Future Development**

5. Any future new land use and development on the project site, the 200±-acre "Tower Parcel" or the 102.5±-acre "Access Parcel," involving the construction of any new communications towers or the addition of any new antennas, parabolic dishes, or other equipment to the authorized 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, simulated branching, equipment building and other appurtenant facilities authorized herein is allowed without a new or amended permit. Amendments to this permit that involve only the 100-foot by 100-foot leased parcel may be processed by the Agency pursuant to an amendment request by the lessee.

6. No principal building shall be constructed on the parcel measuring 10,000 square feet (0.23± acres) in area and leased by New York RSA 2 Cellular Partnership d/b/a Verizon Wireless, absent an Agency permit that ensures conformance with Executive Law Section 809(10), including but not limited to conformance with the overall intensity guidelines. Any deed conveying this 10,000-square-foot parcel shall contain the preceding sentence pertaining to the prohibition of principal buildings on the 10,000-square-foot parcel.

#### Visual/Open Space Impacts

7. In order to minimize the visual appearance of the authorized tower, antennas, and support poles, they shall be painted dark charcoal grey or black with a non-reflective flat or matte finish.
8. On the project site and within 200 feet of the tower authorized herein, no existing trees 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 letter or permit compliance, except for the removal of those trees necessary to undertake the project as shown on the tree inventory, Sheet CA136 of the project plans titled "Tree Preservation Plan." This condition shall not be deemed to prevent the removal of dead or downed trees within the parcel leased by New York RSA 2 Cellular Partnership d/b/a Verizon Wireless, provided there is two weeks prior written notice to the Agency of the proposed cutting that includes verification by a forester or landscape architect of the condition of the tree(s) to be removed.
9. If a natural cause such as blow-down, ice storm, fire, disease or another event beyond the control of the operator of the tower and/or the antennas authorized herein results in the complete or partial loss of the vegetation that provides the screening and/or backdrop for the tower and/or its antennas, then New York RSA 2 Cellular Partnership d/b/a Verizon Wireless, or their successors and assigns, shall within six 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 re-design 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.

10. The tower shall not be lighted without prior Agency review and approval in the form of a new or amended Agency permit. The exterior light on the equipment shelter shall be a full cut-off fixture; that is, it shall be fully-shielded to direct light downward and not into the sky.

#### Co-Location

11. New York RSA 2 Cellular Partnership d/b/a Verizon Wireless, its successors and assigns shall make space available within their leasehold 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.

#### Invasive Species Prevention

12. All heavy equipment, including but not limited to trucks, excavators, and tractors to be used on the site for earth moving, grading or excavating, shall be washed with high pressure hoses and hot water either (i) prior to being brought on the project site or (ii) if washed on the project site, equipment shall be washed in one location to prevent the distribution of invasive species among different wash sites. The intent of this condition is to ensure that all equipment utilized for the project is clean and free of all soil, mud, or other similar material that may contain invasive plant materials, seeds, or other propagules.

**Blasting Plan**

13. If deemed necessary to conduct blasting to construct the access road or install the tower, a blasting plan shall be provided to the Agency for review prior to undertaking any blasting. Approval of the blasting plan could be in the form a letter of permit compliance.

**Documentation of Construction**

14. The Agency shall be provided with color photographs (both in print and digital form) showing the completed tower, antennas, and equipment compound within 30 days of project completion. Photographs shall be taken at the project site and from Photostation 1 (northbound High Peaks Welcome Center) and Photostation 2 (US Route 9). At the project site, photographs showing the entire completed project shall be provided. From all photostations, digital equivalent 55 mm and 85 mm lenses shall be employed. All photographs must clearly identify the date the picture was taken, the location of the photograph, and the lens size employed. Compliance photographs shall be taken on a clear day with little cloud cover.

Within 30 days of receipt of the photos, the Agency shall provide written confirmation of permit compliance or shall specifically state the reason(s) for non-compliance with this condition. In the event of non-compliance with this condition, the permittee shall within 45 days submit a plan for Agency review and approval to modify the structure and achieve compliance. Such plan shall also include a good faith estimate regarding the time necessary to undertake such changes upon final approval by the Agency.

**Discontinuance of Use**

15. 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, New York RSA 2 Cellular Partnership d/b/a Verizon Wireless, its 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 New York RSA 2 Cellular Partnership d/b/a Verizon Wireless, their successors and assigns, shall remove their respective antennas 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.

### **Legal Interests of Others**

16. This permit does not convey to the permittees any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized project or subdivision, nor does it authorize the impairment of any easement, right, title or interest in real or personal property held or vested in any person.

### **FINDINGS OF FACT**

#### **Background/Prior History**

1. According to information submitted by the permittees, neither the "Tower Parcel" nor the "Access Parcel" was part of a larger parcel as of the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan, nor did either owner on that date own any adjoining property.
2. New York RSA 2 Cellular Partnership d/b/a 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**

3. There is an existing single family dwelling on the 102.5±-acre "Access Parcel" (tax map no. 104.02-1-12.000), along with an associated 3.5±-acre clearing plus a 0.5±-acre manmade pond. The 200.0±-acre "Tower Parcel" (tax map no. 105.-1-22.000) does not contain any structures, but does contain a 0.4±-acre log landing. Both parcels are otherwise forested and contain existing woods roads.
4. Existing slopes at the tower location are less than 5± percent. Existing slopes along the route of the access drive range from less than 1 to 25± percent. The project plans show the grading, stormwater management, and erosion control plans for the access drive. The application included a "Stormwater Pollution



Prevention Plan for Underwood II Telecommunications Site," prepared by Costich Engineering of Rochester, NY (Project No. 4137.01) and dated March 2013.

5. Soils in the vicinity of the tower are mapped by the USDA Natural Resource Conservation Service's SSURGO program as the Lyman-Knob Lock complex, which is typically somewhat excessively drained, very rocky, and very bouldery.
6. East Mill Brook traverses southern portions of the project site, greater than 1,000 feet from any proposed development. Existing drainage patterns and proposed culvert locations are shown on the project plans.
7. There are wetlands on the project site adjacent to the access drive, as shown on the project plans. An Agency wetland biologist confirmed the presence of and location of wetlands during an October 1, 2013 site visit (W2013-180) and confirmed that jurisdictional wetlands will not be affected by the project. The wetlands are broad-leaved deciduous forested wetlands assigned a value rating of "2" pursuant to 9 NYCRR Part 578.

#### Character of the Area

8. The project site is 4.1± miles south of exit 30 on the Adirondack Northway (I-87), 5.6± miles north of exit 29, and 1.5± miles east of the northbound High Peaks Rest Area on I-87. The nearest hamlet area is North Hudson, 4± miles to the south of the project site.

#### Alternatives

9. A Site Selection Analysis Report provided with the application describes how Verizon Wireless considered two nearby, alternate sites that were ultimately rejected because a tower of 130 feet or more would have been required to achieve the same coverage objectives on I-87 that the proposed tower can achieve at a lower height. In addition, the proposed tower site has the advantage of existing access along a residential driveway and existing woods roads.
10. During the review of the project, Verizon Wireless proposed and the Agency evaluated alternatives of height and concealment for the proposed tower at the chosen site, including a 65-foot-tall unconcealed tower (authorized herein), a 65-foot-tall tower concealed as a 75-foot-tall simulated pine tree, an 85-foot-tall

unconcealed tower, and an 85-foot-tall tower concealed as a 95-foot-tall simulated pine tree. In Agency staff's opinion, concealment of the 65-foot-tall tower is not necessary to comply with the Agency's Towers Policy. However, staff analysis of the potential visual impact as seen from the northbound High Peaks Welcome Center (off I-87) indicates that any increase in the height or bulk of the tower, beyond what is authorized herein, would result in the tower having a more significant contrast with the setting and therefore would not be in compliance with the Towers Policy.

#### **Public Notice and Comment**

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

#### **Other Regulatory Permits and Approvals**

12. On July 30, 2013, the Town of North Hudson Planning Board unanimously voted to approve the "Tower Parcel" landowner's request for a new cell tower. A completed Local Government Notice Form signed February 27, 2014 by the Town of North Hudson Codes Official indicates that the proposed "use" is allowed in the local zoning district(s) and that the project is not prohibited by any local law or ordinance and that no municipal approval is required. The form, and an attached cover letter, indicates that the height of the tower is acceptable to the town and that a building permit is required for the project (for the equipment shelter and tower base).
13. No formal notice to the Federal Aviation Administration (FAA) is required for a tower of the proposed height in this location.
14. By letter dated February 27, 2014, the New York Air National Guard determined that the project as proposed would not cause any significant negative impact on the military training airspace it underlies and therefore the USAF would not contest the application.
15. The tower authorized herein will require licensing from the Federal Communications Commission (FCC).

**PROJECT IMPACTS**

**Wetlands**

16. Provided the access drive is constructed in the location shown on the project plans, thereby avoiding the class 2 wetlands present, then this project will have no impacts on wetlands.

**Land Resources**

17. Provided the access drive is constructed as shown on the project plans, including all stormwater and erosion control features, then there will be no undue adverse impacts resulting from construction, maintenance, or use of the access drive.
18. Requiring that heavy equipment used for the project be cleaned prior to on-site use will help to prevent the potential spread of invasive species.
19. Requiring Agency review and approval of a blasting plan prior to commencing blasting on the site for the access road or tower site will protect the land resources.

**Open Space/Aesthetics**

20. Prohibiting lights on or directed toward the tower and requiring the exterior light on the equipment shelter to be fully-shielded and directed downward will reduce nighttime light pollution (glare, light trespass and sky glow).

**Visual Analysis**

21. A visual analysis of the proposed tower and antenna array was completed and submitted by the permittees. It included computerized mapping showing areas of potential visibility based on topography, a balloon test to identify the tower location, height and actual areas of visibility, photographs of the balloon test, and simulations of an unconcealed tower from two locations. An Agency staff member was present during the October 1, 2013 balloon test.
22. The tower and antennas will not be visible from the Adirondack Northway (I-87), the Schroon River, public use areas (such as the Sharp Bridge Campground), or other public roads, except in two locations as described in this paragraph. One location from which the tower will be visible is the truck/RV/bus parking area of the northbound High Peaks Welcome Center (rest area) off I-87.

From that location, the top 15 feet of the tower will be visible, 1.5± miles to the northeast, but backdropped by existing topography and vegetation. The tower may also be visible from a single point on US Route 9. The potential view is limited and to the side of the road, heavily screened by existing hardwood trees, where peering through the trees may reveal a skylit view of the top 15 feet of the tower, located 0.85± miles to the northeast.

23. As a result of Agency review of the project based upon the pertinent development considerations set forth in §805(4) of the Adirondack Park Agency Act and applicable regulations it has been determined that the project will not result in any undue adverse impacts on the Park's visual and open space resources because the proposed tower and antennas will not be readily apparent as viewed from off-site locations, provided the tower, antennas, and support poles are painted dark charcoal grey or black with a non-reflective flat or matte finish.

#### Towers Policy

24. On February 15, 2002, the Agency adopted a policy titled "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.
25. The proposed tower and antennas are consistent with the Agency's "Towers Policy" because the tower and antennas will be substantially invisible from off-site locations. The proposed tower and antennas, including their appurtenant support facilities and access drive, will not be readily apparent as to size, composition, or color and the structure will, to the maximum extent practicable, blend with the background vegetation as seen from all significant potential public viewing points and as documented by simulation and other visual analysis methods.

#### Historic Sites or Structures

26. On November 4, 2013, the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) concurred with the filing of No Effect (OPRHP File No. 0005978546), meaning OPRHP found that the project will not cause any change in the quality of "registered," "eligible," or "inventoried" property. Further, the application on record reveals no 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, would be materially affected by the proposed project.

**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; Section 15-2709 of the NYS Wild, Scenic and Recreational Rivers System Act (ECL, Article 15, Title 27) and 9 NYCRR Section 577.8. 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    , 2014

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 2014, 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.

\_\_\_\_\_  
Notary Public

REW:ADL:JLM:mlr