

 <p>NEW YORK STATE <b>Adirondack</b> parkagency</p> <p>P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050</p>	<p><b>APA Project Permit 2014-140</b></p>
<p>In the Matter of the Application of <b>FRANKLIN COUNTY</b> 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: <b>1. Franklin County</b></p>

**SUMMARY AND AUTHORIZATION**

This permit authorizes the construction of a tower 180 feet in height and the installation of 10 antennas on the tower, in an area classified Rural Use on the Adirondack Park Land Use and Development Plan Map in the Town of Ellenburg, Clinton County.

This permit shall expire unless recorded in the Clinton County Clerk's Office on or before \_\_\_\_\_, in the names of all permittees listed above and in the names of all owners of record of any portion of the project site on the recordation date.

The 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 project shall be undertaken in compliance with all conditions stated herein. Failure to comply with this permit is a violation and may subject the permittee, successors, and assigns to civil penalties and other legal proceedings.

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.

### PROJECT SITE

The project site is a 3.91±-acre parcel of land located on the north side of West Hill Road (a/k/a County Route 5, a/k/a Old Route 190) in the Town of Ellenburg, Clinton County, in an area classified Rural Use on the Adirondack Park Land Use and Development Plan Map. The site is identified on Town of Ellenburg Tax Map Section 97, Block 1 as Parcel 21.4, and is described in a deed from The People of the State of New York, Acting By and Through the Power Authority of the State of New York, to Franklin County, dated February 11, 2014, and recorded March 21, 2014 in the Clinton County Clerk's Office under Instrument Number 2014-00263613.

### PROJECT DESCRIPTION

The project as conditionally approved herein involves the removal of a 200-foot-tall guyed lattice tower and the construction of a 180-foot-tall self-supporting lattice tower. Ten Franklin County antennas, for emergency communications, will be mounted to the new tower at various heights. Three of those ten antennas, a quad dipole antenna and two single dipole antennas, will extend above the tower to an overall height of 189 feet and 1 inch. At the tower's base, an existing equipment shelter (64 square feet in footprint) will be removed and a new equipment shelter (192 square feet in footprint) will be constructed. The tower, equipment shelter, backup generator, and propane tanks will be within an area approximately 1,700 square feet in size surrounded by a 6-foot-high chain link security fence. Existing overhead electric service to the site will be replaced with underground service. No new access roads or tree cutting is proposed.

The project site is shown on a "Map of Survey Prepared for Franklin County 911 Services," prepared by Bradford L. Marsh, LS of Malone, NY, with Copyright 2014 ("Survey Map"). The survey was completed on March 20, 2014.

The project is shown on the following maps and plans titled "Emergency Services - 2014 Tower Upgrades," prepared by Beardsley Design Associates of Malone, NY ("Tower Plans"):

- C-106, Site Plan West Hill Location, dated August 20, 2014;
- C-501, Site Details, dated July 31, 2014;
- A-101, Equip. Building Floor Plan & Elevations, dated April 28, 2014 and last revised November 6, 2014;

- S-106, Tower Elevation West Hill Location, dated July 22, 2014 and last revised November 5, 2014;
- S-501, Structural Details, dated July 31, 2014; and
- S-502, Miscellaneous Details, dated July 31, 2014.

A reduced-scale copy of sheets C-106 (Site Plan West Hill Location) and S-106 (Tower Elevation West Hill Location) of the Tower Plans are attached as a part of this permit for easy reference. The original, full-scale maps and plans described in this paragraph are the official plans for the project, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

#### **AGENCY JURISDICTION**

The project requires an Agency permit pursuant to Sections 809(2)(a) and 810(1)(d)(5) of the Adirondack Park Agency Act [Executive Law, Article 27], because it is a structure in excess of 40 feet in height on Rural Use lands.

#### **CONDITIONS**

#### **THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The project may not be undertaken until this permit has been recorded in the Clinton County Clerk's Office.
2. This permit is binding on the permittee, all present and future owners, lessees, sublessees, and successors in interest of the project site, and all persons undertaking all or a portion of the project, for as long as the tower remains on the site. Copies of this permit, the Survey Map, and Tower Plans shall be furnished by the permittee to all subsequent owners, lessees, sublessees, and successors in interest of the project site prior to sale or lease, and by the permittee and/or any subsequent owner, lessee, sublessee, or successor in interest to all persons undertaking any development activities authorized herein.
3. In addition to complying with all terms and conditions of this permit, all future activities on the project site shall be undertaken in compliance with the requirements of New York State's Adirondack Park Agency Act, Freshwater Wetlands Act [Article 24 of the Environmental Conservation Law], and the Adirondack Park Agency's implementation regulations [9 NYCRR Sections 570-588].

4. 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 2014-140, issued \_\_\_\_\_, the conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."

### Development

#### **Construction Location and Size**

5. Prior to construction of the new tower and equipment building, as shown on the Tower Plans and authorized herein, the existing tower and equipment building shall be removed from the project site.
6. Subject to the conditions stated herein, this permit authorizes the construction of the 180-foot-tall self-supporting lattice tower, the installation of ten antennas on the tower, and the 190-square-foot equipment shelter in the location shown and as depicted on the Tower Plans. Any change to the location, dimensions, or other aspect of the tower, including the addition of any new antennas, parabolic dishes, or other equipment, shall require a new or amended permit. Maintenance and/or replacement of the tower, antennas, simulated branching, equipment building, and other authorized facilities may occur pursuant to the conditions herein without a new or amended permit.

#### **Tower and Antenna Height**

7. The tower shall not exceed 180 feet in height above ground level. The antennas shall be located as depicted on sheet S-106 of the Tower Plans; the top of the antennas shall not exceed 189 feet and 1 inch in height above ground level.

#### **Structure Color**

8. The lattice tower and cable ladder shall be hot-dipped galvanized steel (resulting in a neutral matte gray color) or painted dark charcoal gray or black with a non-reflective flat or matte finish. The exterior colors of the equipment shelter, including roof and siding, shall be a neutral charcoal gray, as proposed.

### **Outdoor Lighting**

9. All exterior lighting on the project site shall be limited to and installed pursuant to sheet A-101 of the Tower Plans, on the equipment shelter. There shall be no lights on or illuminating the tower. Any change to this lighting shall require prior written Agency approval.

### **Tree Cutting/Vegetation Removal**

10. On the project site and outside of the existing "treeline" shown on the Survey Map and sheet C-106 of the Tower Plans, no trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed, except for the removal of dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
11. 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, its antennas, and equipment shelter, then Franklin County, or its successors and assigns, shall within six months, present a plan for Agency approval intended to achieve compliance with the Agency's "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park." The plan shall describe a program of re-vegetation and/or re-design intended to achieve compliance within 10 years, or relocation to an alternate compliant site within two years. Approval of the plan may be in the form of a letter of permit compliance, or a new or amended permit.

### **Project Operations**

#### **Documentation of Construction**

12. 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 Photo Setup #10 (West Hill Road, 0.38± miles west of tower) and Photo Setup #20 (Vanderbogart Road, 2.91± miles southeast of tower). 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, if the Agency finds the project is not in compliance, it shall specifically state the reason(s) for non-compliance. In the event of non-compliance, the permittee shall within 45 days submit a plan and schedule to modify the structure and achieve compliance for Agency review and approval.

### **Reports**

13. At the request of the Agency, the permittee or the permittee's successor shall report in writing the status of the project, including details of compliance with any terms and conditions of this permit.

### **Discontinuance of Use**

14. The tower authorized herein shall be removed within one year following any discontinuance of its use for a full year. Any authorized antenna listed on sheet S-106 of the Tower Plans shall be removed within six months following any discontinuance of its use for six months. Replacement of the tower or any antennas removed pursuant to this condition shall require a new or amended Agency permit.

## **FINDINGS OF FACT**

### **Background**

#### **Site History**

1. According to information submitted by the permittee, the project site was not part of a larger parcel as of the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan, i.e., the landowner on that date did not own any adjoining property.

### **Project Sponsor**

2. This West Hill project is proposed by Franklin County's Department of Emergency Services to upgrade its Emergency Radio Communications System as part of a statewide initiative by the NYS Division of Homeland Security and Emergency Services to improve interoperability capability between emergency service providers throughout the state. This initiative will allow emergency service providers to operate out of their local area during times of wide area emergencies (i.e., ice storms, hurricanes, etc.) and be able to communicate with each other and the local emergency service providers. The project also helps to provide a seamless interoperable communication system for governmental public safety/service agencies throughout an eleven county Adirondack Consortium, which cannot fully function without the Franklin County system and West Hill tower and its antennas as a link between St. Lawrence and Clinton Counties.
3. The Franklin County Radio Network includes 13 sites, including seven towers that will be replaced as part of the statewide initiative referenced above. Two towers among those seven are within the Adirondack Park: West Hill and Mt. Pisgah. The functionality of the West Hill and Mt. Pisgah towers is independent of the other, i.e., providing local service to mobile radios within their coverage areas and communication with the 911 Call Center in Malone. Three sites in the Franklin County Radio Network and in the Park will not be replaced or modified as part of the 2014 Radio Upgrade Project: Duane VFD, St. Regis Falls VFD, and Tupper Lake Emergency Services Building.
4. 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). The 2002 Towers Policy updated a 1978 policy, in part due to the recognition that "governmental emergency communications are being converted to digital technology, which will require new facilities to provide services to meet the needs for public health, safety, and welfare." Section III-D of the 2002 Towers Policy "recognizes that such factors should be taken into consideration along with other policy guidelines."

### **Existing Development**

5. The existing tower has an open lattice, steel truss, guyed tower design that was installed prior to 1973 by the New York Power Authority (the prior owner) as part of its communication system.

The corner-corner distance of the tower legs is 3 feet. The tower top is 200 feet and 10 inches above the existing grade, which makes it subject to FAA jurisdiction. Consequently, the tower has aircraft warning lights on the top of the tower and at mid-height on the tower. The tower is painted in the FAA aircraft warning pattern of alternating sections of red and white. The tower is supported by three groups of guy cables, spaced at 120 degrees around the tower base, attached to the tower at approximately 60 feet, 120 feet, and 180 feet above grade, and then secured to concrete foundations placed approximately 150 feet from the tower base.

### **Proposed and Authorized Development**

6. The 180-foot-tall self-supporting lattice tower authorized herein will replace the existing 200-foot-tall tower. The 180-foot-tall tower will be a self-supporting open lattice truss type with a triangular cross section. It will have a leg-to-leg distance at its base of approximately 21 feet and at its top of approximately 4 feet 8 inches. The tower will support a total of ten antennas, including six linear radio antennas, two planar microwave antennas, and two parabolic dish microwave antennas, plus a cable ladder for cables serving the antennas.

### **Project Site**

#### **Water Resources and Wetlands**

7. There are no water bodies, streams, or wetlands on the project site.

#### **Vegetation**

8. The project site is forested with a dense, young stand of trees approximately 40 feet tall (mostly birch, balsam, cherry, and spruce), except for existing clearings around the tower site, access drive, and existing guy wires and utilities. Vegetation will be allowed to re-grow in the area of the guy wires and utilities after they are removed as part of this project.

#### **Soils**

9. Soils on the project site are mapped by the USDA Natural Resource Conservation Service as Peasleeville loam, which is typically gently sloping, very stony, and somewhat poorly drained.



### Slopes

10. Existing slopes on the project site are 3 percent or less.

### Visual

11. As shown on sheet A-101 of the Tower Plans and authorized herein, there are two lights on the equipment shelter located under the building's eaves and one light located above the door. The two eave lights will be controlled by a switch on the interior of the building and will only be used if equipment needs to be serviced at night. The light above the door will be a 2-head LED motion detector flood light.
12. A visual analysis of the tower and antennas was submitted with the application for this permit, titled "Visual Assessment West Hill Tower Replacement," prepared by Beardsley Design Associates, and dated August 18, 2014. This analysis included: computerized mapping showing areas of potential visibility within five miles of the tower site based on topography and vegetation; a site visit to identify the tower location, height, and actual areas of visibility; photographs of the existing tower; and simulations of the proposed tower. An Agency staff member was present during the site visit, which occurred on July 11, 2014.
13. The visual analysis, described in the Finding of Fact above, indicates that the tower and antennas will be visible from the following locations within the Adirondack Park and within five miles of the tower site: 0.52± miles of Brainardsville Road (Franklin County Route 24), 1.07± miles of Bradley Pond Road (Clinton County Route 2), 3.14± miles of West Hill Road and Ellenburg Center Road (Clinton County Route 5), 0.18± miles of Smith Road (Clinton County Route 6), and various town roads (i.e., Tacey Road, Harrigan Road, Cheyne Road, Sancomb/Moore Road, Lombard/Patnode Road, Vanderbogard Road, Seymour Road, Steam Mill Road, and Spear Hill Road), plus road locations with isolated or intermittent views. In summary, the tower and antennas will be visible from 31% of the county highway length within the study area (areas within the Adirondack Park and within 5 miles of the tower), with 46% of that visibility being from between 3 and 5 miles of the tower. The same analysis indicates that the tower and antennas will not be visible from the following locations within the Adirondack Park and within five miles of the tower site: Lower Chateaugay Lake, the Chateaugay River, the Chateaugay Narrows, the North Branch of the Great Chazy River, State Route 190, State Route 374, or any areas of Forest Preserve.

14. The lower portion of the tower/antennas and the entire equipment shelter will be concealed by trees, leaving the upper 15% to 75% of the tower/antennas visible, depending on the viewpoint.
15. Views of the tower and antennas are often in context of other vertical structures, i.e., the other communications towers, wind turbines, utility poles, or farm silos. The 180-foot-tall tower authorized herein will be less visible than the existing 200-foot-tall tower, due to the reduction in height and lack of FAA-required lighting and striping. The visual bulk of the new tower will increase, as compared to the existing tower, because of the increase in the lattice width and the addition of antennas. The authorized tower is oriented so that two tower legs (A and B) are placed in a plane parallel to the West Hill Road, which will cause the legs to overlap each other and the cable ladder when viewed from West Hill Road. Similarly, the dish antennas will be mounted on legs A and B at the same height so that they overlap each other as viewed from West Hill Road.
16. This Agency's Towers Policy is intended to protect aesthetic, open space and other resources, while providing for telecommunications systems consistent with federal law.

#### **Historic Sites or Structures**

17. By letter dated August 20, 2014, the New York State Office of Parks, Recreation and Historic Preservation determined that the project will have no impact upon the cultural resources in or eligible for inclusion in the State and National Registers of Historic Places. Furthermore, the tower will not be visible from two cemeteries located on West Hill Road and Smith Road.

#### **Co-Location**

18. The Franklin County Department of Emergency Services will consider co-location by other governmental agencies/emergency service providers assuming there is a demonstrated need and adequate reserve capacity is maintained on the tower for the department's future needs. No co-location is authorized on the tower at this time. Any structures and antennas proposed for this tower in the future that are not for governmental emergency communications will be reviewed as potential co-locations, which are preferred under the Towers Policy so long as substantial invisibility can be achieved.

### **Nearby Land Uses**

19. The character of the area is predominantly agricultural, but also includes rural residences and forested areas. These landscape features often result in wide views over long distances.
20. The project site is 3.9± miles east of the Hamlet of Brainardsville and 3.5± miles west of the Hamlet of Ellenburg Center.
21. The project site is 0.5± miles south of and inside the Adirondack Park boundary. Three Noble Environmental Power industrial wind parks (i.e., Chateaugay, Ellenburg, and Clinton) are located just north of the Park boundary, outside the Park, and together include 192 GE 1.5 MW turbines each 390± feet tall and white in color.
22. There is an existing 120±-foot-tall communications tower with an antenna as tall as 140 feet, authorized by Agency Permit 88-22, which is 350± feet northwest of the tower authorized herein. There is an existing 100±-foot-tall communications tower 220± feet east of the tower authorized herein.
23. The project site is located within 1/8 mile of a designated scenic vista on the official Adirondack Park Land Use and Development Plan Map. However, the views from the vista are generally to the south, west, and east and not to the north where the existing towers are located and the authorized tower will be located.

### **Access**

24. The tower site is 165± feet north of the edge of right-of-way of West Hill Road. An existing gravel drive provides access to the site from the road. A gate exists at the start of the access drive.

### **Alternatives**

25. According to a November 6, 2014 letter from Champlain Communications, consultant to Franklin County for their 2014 Radio Upgrade Project, the tower height and antenna locations for the West Hill tower "were set at the minimum height needed to meet the program requirements and allow adequate vertical separation between antennas to limit interference problems."

26. The project sponsor evaluated the possibility of installing Franklin County's antennas on the existing tower, but determined that the tower is in poor condition.
27. The project sponsor evaluated the possibility of co-locating antennas on the nearby towers referenced in **Finding of Fact 22**. The 100-foot-tall tower to the east is a very light tower and is not tall enough for most of the antennas needed for the project. Furthermore, it is owned by the Federal government (Department of Homeland Security) and, for security reasons, co-location is not allowed on the tower. The 120-foot-tall tower to the northwest is currently loaded to capacity with existing radio equipment. Even if it had adequate spare capacity for some of the Franklin County antennas, it does not have the required height and would not obviate the need for the 180-foot-tall tower.
28. The project sponsor evaluated whether an alternate tower design could reduce the bulk of the tower. A guyed tower could have a smaller cross-section and lower up-front costs. However, the chosen self-supporting lattice tower has a smaller on-the-ground impact, more flexibility in locating antennas, less torsional movement (which is better for line-of-sight microwave communications), is safer for maintenance personnel climbing the tower, would have less off-site impacts in the unlikely event of collapse, and has a smaller impact zone for ice hazards.

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

29. The Agency notified all adjoining landowners and other parties and published a Notice of Complete Permit Application in the Environmental Notice Bulletin, as required by the Adirondack Park Agency Act. No comments have been received.

#### **Other Regulatory Requirements**

30. A Local Government Notice Form signed August 25, 2014 by the Town Code Enforcement Officer reports that this use is allowed in the local zoning district, the project is not prohibited by any local law or ordinance, and the project will require a building permit.
31. By letter dated November 5, 2014, the New York Air National Guard determined that the project as proposed would not cause any significant negative impact on military training airspace.

32. The antennas authorized herein will require licensing from the Federal Communications Commission. Franklin County has current licenses for three of the antennas that will be on the tower and will obtain the licenses for the remaining seven antennas.
33. No formal notice to the Federal Aviation Administration (FAA) is required for a tower of the proposed height in this location.

#### Impairment of Rights

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

#### PROJECT IMPACTS

##### Visual

35. The authorized tower and antennas will be consistent with the Agency's Towers Policy due to the tower being a replacement of an existing tower that reduces the overall tower height and eliminates existing FAA lighting and striping (**Finding of Fact 5**); the purpose of the tower and its antennas for local and regional emergency communications and their role in the functionality of the eleven county Adirondack Consortium for public health, safety, and welfare (**Finding of Fact 2**) as a governmental emergency communications facility (**Finding of Fact 4**); the consolidation of visual intrusion from locating the tower close to 2 other communication towers (**Finding of Fact 22**); the tower's location, design, orientation, height, and color; the location, size, shape, and orientation of the antennas; the visual analysis and subsequent report (**Findings of Fact 12-14**); the context of the tower among other vertical structures (i.e., wind turbines, utility poles, and farm silos); the retention of all existing trees, shrubs, and vegetation on the project site as shown on the Tower Plans, which screen the lower portion of the tower and antennas, as well as the entire equipment shelter, and are required by remain by condition of this permit. The increase in the visual bulk of the new tower will be minimal, as compared to the existing tower, especially when viewed from distances greater than three miles of the tower.

36. Prohibiting lights on or directed toward the tower and requiring the exterior lights on the equipment shelter to be installed as shown on sheet A-101 of the Tower Plans will reduce nighttime light pollution (glare, light trespass and sky glow).

**Historic Sites or Structures**

37. The project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR § 426.2 for the purposes of implementing Section 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 set forth in the Adirondack Park Agency Act and 9 NYCRR Part 574. The Agency hereby finds that the project authorized as conditioned herein:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies, and objectives of the Rural Use land use area;
- c. will be consistent with the overall intensity guidelines for the Rural Use land use area;
- d. will comply with the shoreline restrictions of § 806 of the Adirondack Park Agency Act; and
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the economic and social benefits that might be derived therefrom.

PERMIT issued this            day  
of                           , 2015

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 2015, 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:EAP:mlr