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STAFF DRAFT – NOT APPROVED BY AGENCY

 <p>NEW YORK STATE OF OPPORTUNITY.</p> <p>Adirondack Park Agency</p> <p>PO Box 99 · 1133 NYS Route 86 Ray Brook, NY 12977 Tel: (518) 891-4050 www.apa.ny.gov</p>	<p style="text-align: center;">APA General Permit/Order 2023G-1</p>	<p>Effective Date:</p>
	<p>In the Matter of the Issuance of a General Permit/Order for: Certain Modifications of Existing Towers or Base Stations (Eligible Facilities Requests)</p>	

SUMMARY AND AUTHORIZATION

This General Permit/Order is issued to allow for certain modifications of existing wireless towers or base stations that do not substantially change the physical dimensions of such towers or base stations and involve co-location, removal, or replacement of transmission equipment.

All terms and conditions of a certification issued pursuant to this General Permit/Order shall apply to the applicant and any individual, contractor, municipality, or other entity undertaking the authorized work on the project site.

This General Permit/Order does not grant any right to trespass upon the lands or interfere with the riparian rights of others, nor does it authorize the impairment of any easement, right, title, or interest in real or personal property. Nothing contained in this General Permit/Order shall be construed to satisfy any legal obligations of the applicant to comply with all applicable laws and regulations or to obtain any governmental approval or permit from any entity other than the Agency, whether federal, state, regional, or local.

This General Permit/Order is in effect until modified or revoked by the Agency.

JURISDICTION

The Adirondack Park Agency has jurisdiction over most construction of structures in excess of 40 feet in height and most major public utilities pursuant to §§ 809 and 810 of the Executive Law (the Adirondack Park Agency Act), and/or as new land use or development pursuant to Executive Law § 814, 9 NYCRR § 579.1, and 9 NYCRR § 4.150 (Executive Order 150). The Agency has jurisdiction over activities within designated river areas pursuant to Article 15, Title 27, of the Environmental Conservation Law (the Wild, Scenic, and Recreational Rivers System Act) and 9 NYCRR Part 577. The Agency has jurisdiction over activities involving wetlands pursuant to Article 24 of the Environmental Conservation Law (the Freshwater Wetlands Act), Executive Law §§ 809(2)(a) and 810(1), and 9 NYCRR § 578.2(a).

ELIGIBILITY

Any proposal that meets the criteria set forth below, as defined by the Federal Communications Commission (FCC), is eligible for a certification issued pursuant to this General Permit/Order:

- a. The project is a modification of an existing wireless tower or base station;
- b. The project does not substantially change the physical dimensions of such tower or base station; and

- c. The project involves co-location, removal, or replacement of transmission equipment.

Please refer to the Agency's Eligible Facilities Request (EFR) Definitions and Requirements ([link](#)) for a more detailed explanation of the above criteria.

If the proposal does not meet the criteria for an EFR, this General Permit/Order 2023G-1 may not be used. Please instead see the Agency's General Permit 2005G-3R (<https://apa.ny.gov/Forms/FormDetails.cfm?recordID=39>) or contact the Agency's Regulatory Programs Division for guidance (apasubmissions@apa.ny.gov).

APPLICATION REVIEW PROCESS

Upon receipt of an application, Agency staff will confirm jurisdiction, determine whether the proposed project meets the eligibility criteria described above, and review the application for completeness.

Pursuant to Agency regulations provided under 9 NYCRR §572.4(a)(1), applications must contain the signatures of all owners of record of the land involved. Thus, the requisite first procedural step in the application for an EFR under Section 6409 is submission of an application signed by the landowner(s). Agency review of an EFR, to determine if it contains all required information, begins when this complete application, signed by the landowner(s), is received by the Agency. Without the required signatures, this application will remain un-filed and the shot clock will not begin to run.

Once the application is filed and received, the Agency will determine whether it is complete. If an incomplete application is received, the Agency will inform the applicant within 15 days, describing the information necessary to complete the application.

Upon receipt of a complete application for a proposal that meets the eligibility criteria described above, the Agency will issue a signed certificate approving the project within 60 days, as calculated and accounting for any tolling periods pursuant to Section 6409 of the Spectrum Act of 2012 and its implementing regulations. [Link to EFR Definitions and Requirements.](#)

FINDINGS OF FACT

1. The modification complies with all requirements of an Eligible Facilities Request as defined under Section 6409 of the Spectrum Act of 2012 and clarified in Federal Communications Commission (FCC) regulations at 47 CFR 1.6100 and various FCC rulings and orders.
2. The modification will be consistent with the Agency's Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park (Towers Policy) to the extent not preempted by federal laws and regulations.
3. The modification will be consistent with the Nationwide Programmatic Agreement for the Co-Location of Wireless Antennas and any subsequent amendments executed by the FCC, the National Conference of State Historic Preservation

- Officers, and the Advisory Council on Historic Preservation.
4. The modification will not cause any change in quality of registered, eligible, or inventoried property, as those terms are defined in 9 NYCRR 426.2, for the purposes of implementing §14.09 of the New York State Historic Preservation Act to the extent not preempted by federal laws and regulations.

CONCLUSIONS OF LAW

The Agency has considered all statutory and regulatory criteria for approval set forth in Executive Law §§ 809, 9 NYCRR Parts 574, 577, 578, and 579, and Environmental Conservation Law §§ 15-2705, 15-2709, 24-0103, 24-0105, and 24-0801. The Agency hereby finds that, for all land use areas and wetland value ratings, the activities authorized by certificate pursuant to this General Permit/Order, except as preempted by Section 6409 of the Spectrum Act, 47 U.S.C.A. § 1455:

- 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 land use area(s) involved;
- c. will be consistent with the overall intensity guidelines for the land use area(s) involved;
- d. will comply with the shoreline restrictions of Executive Law § 806;
- 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;
- f. will secure the natural benefits of wetlands associated with the project, consistent with the general welfare and beneficial economic, social, and agricultural development of the state;
- g. will be consistent with the purposes and policies of the Wild, Scenic and Recreational Rivers System Act;
- h. will comply with the restrictions and standards of 9 NYCRR § 577.6; and
- i. will not cause an undue adverse impact upon the natural, scenic, aesthetic, ecological, botanical, fish and wildlife, historic, cultural, archeological, scientific, recreational or open space resources of the river area, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived therefrom.

