STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
191 MAIN STREET
EAST MILLINOCKET, MAINE 04430

PAUL RICHARD LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

PERMIT

DEVELOPMENT PERMIT DP 4983

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by Bay Communications II, LLC for Development Permit DP 4983, finds the following facts:

1. Applicant: Bay Communications II, LLC
   Attn: Mark Cook
   391 Oakland Street, 2nd Floor
   Mansfield, MA 02048

2. Date of Completed Application: September 8, 2015

3. Location of Proposal: T2 R8 NWP, Penobscot County
   Taxation Map PE004, Plan 02, Lot 17
   Cell Tower Coordinates: 45° 22' 28.3 " N; 068° 36' 54.9" W

4. Zoning: (M-GN) General Management Subdistrict
   (P-WL3) Wetland protection Subdistrict

5. Lot Size: 1.06 acres (lease)

6. Proposed Structures: Approximately 195' AGL (199' including antennas) tall, self-supporting lattice telecommunications tower with a 9 ft. by 12 ft. by 8 ft. support platform for equipment cabinets.

Project Details

7. The applicant, Bay Communications II, LLC proposes to develop their 1.06 acre lease lot in T2 R8 NWP Township with an approximately 195 foot AGL (199 foot including antennas) tall, self-supporting lattice telecommunications tower with a 9 foot by 12 foot by 8 foot platform for equipment cabinets and provisions for future equipment platforms and shelters within a 100 foot x 100 foot fenced area. The proposed tower would be located within the center of the 205 foot x 218 foot leased area. The tower base would be located more than 102 feet from the closest private access way and over 1,400 feet from Penobscot Valley Avenue, and at least 25 feet from property lines.

8. *Location, Access and Parking.* The 1.06 acre lease is located within the 640 acre parcel owned by Gardner Land Company, Inc. Currently, the land surrounding the leased area is utilized for timber management and gravel extraction. The proposed telecommunications facility would be accessed via a proposed 12 foot long by 60 foot wide driveway extending from the existing private gravel land management road. Parking would be limited to one proposed 10 foot by 20 foot parking area located at least 75 feet from the private road and at least 25 feet from property lines.

9. *Public Utilities*. The proposed tower facility would be served by an electrical service drop approximately 1,600 feet in length along the existing right of way for Penobscot Valley Avenue and the unnamed land management road.

10. *Soil Suitability*. A soils report was prepared by David Marceau, CSS of Gartley & Dorsky Engineering & Surveying, Inc. on July 29, 2014. The soils at the project site have been characterized as loamy to clayey textured soils derived primarily from lacustrine sediments, and deep organic soils derived primarily from peat moss. Drainage ranges from somewhat poorly drained to very poorly drained. The somewhat poorly drained Lamoine and Udothent map units are in the highest positions in the landscape, while the Scantic and Borosaparist map units are in the lowest position in the landscape. The report notes that seasonally high water tables ranged from 10 to 12 inches in the Lamoine and Udothent map units to 6 inches in the Scantic map unit, and at the surface in the Borosaprist map unit.

    A Wetland Identification and Delineation report was prepared by David W. Moyse, C.S.S., L.S.E. who found that a large evergreen and deciduous forested bog occupies the southerly half of the leased area. Two other small wetland areas were found to occupy the northeasterly and northwesterly corners of the leased area. According to the applicant, the proposed tower site would alter a small portion of wetland approximately 120 square feet) in the northeasterly and northwesterly corners of the project footprint.

11. *Tower Aesthetics and Visibility*. The applicant's site selection process also considered utilizing topography, tree lines, vegetation and distance to create separation and visual buffers from water bodies and other areas that might be visually impacted by the tower. Following consultation with the LUPC and Maine Historic Preservation Commission, EBI Consulting conducted a Visual Impacts Assessment (VIA) on behalf of the applicant. The VIA concluded that visibility of the proposed 199' high lattice-type tower structure would be extremely limited. EBI Consultants used GIS spatial analysis to model the potential view shed of the proposed tower, accounting for elevation, existing vegetation, and land cover. The view shed mapping analysis identified locations within a 5 mile radius of the site that are likely to be impacted. EBI Consultants conducted a balloon test on site, flying balloons at the anticipated height of the proposed tower (199 feet &189 feet). In pre-identified locations containing significant resources likely to be impacted, high resolution photographs were taken to determine whether or not the balloons were visible. Photo simulations were prepared to predict what the tower may look like from each location at locations where the balloons were visible. The balloons were only visible from the are in the vicinity of the tower site.

12. *Tower Design and Lighting*. The proposed tower would not be lighted and would be neutral in color. The applicant has provided an FAA Determination letter dated October 27, 2014 verifying that the proposed tower does not require tower lighting. The proposed construction design is shown on plans prepared Black Diamond Consultants (signed and stamped by William F. Berry, PE and James R. Hebert, PE) in 10 sheets, entitled ME0015 T2 R8.

13. *Co-location*. The applicant has identified a significant gap in the Northeast Wireless network. The proposed height and location of the telecommunication tower is designed to provide adequate coverage across this gap in the wireless network. The applicant analyzed all existing structures and determined there were none that meet the requirements of the Northeast Wireless network at this time. As a result, without the proposed cell tower they would not be able to provide coverage across the significant gap. Other FCC carriers will be allowed to collocate on the proposed tower in the future and the design will accommodate the needs of future carriers at this facility.

14. *Financial and Technical Capacity*. The estimated total cost of the proposed development is $215,000. The development will be financed by Seaport Capital, an investment partner of Bay Communications II LLC

that has committed to invest $6.5 million in Bay Communications and to date has invested $3 million. Bay Communications has retained Black Diamond Consultants, Inc., who has over twelve years of experience in the telecommunications industry, for the architectural design and engineering of the project; and environmental consultant, EBI Consulting, Inc, with more than 20 years of experience. The applicant has also hired Lane H. Gray, PLC to conduct the land surveying and David L. Marceau, SSC to perform the soil analysis.

Agency Review Comments

15. After reviewing the proposal, the Maine Department of Inland Fisheries and Wildlife recommended that a vernal pool assessment be conducted for all areas within 250 feet of the project footprint. The applicant conducted a vernal pool survey and found that no vernal pools are present within the surveyed area. The MDIFW subsequently stated that they have no objections to the project.

16. After reviewing the proposal, the Maine Natural Areas Program commented that there were no rare botanical features that would be disturbed within the project site.

17. After reviewing the proposal, the Maine Historic Preservation Commission concluded that there will be no historic properties affected by the proposed undertaking, as defined by Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA).

18. After reviewing the proposal, the Maine State Soil Scientist had no objections to the project, but recommended that filter fabric be applied under any the section of parking area that would be located on Scantic (wetland) soils.

Commission Review Criteria

19. Under the Provisions of Section 10.02, Definition #213 of the Commission's Land Use Districts and Standards, Utility Facilities are structures normally associated with public utilities, including communication facilities; and towers and related equipment.

20. Under the Provisions of Section 10.23, N, 3, c(23) of the Commission's Land Use Districts and Standards, utility facilities may be allowed within a (M-GN) General Management Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A §685-B, and subject to the applicable requirement set forth in Sub-Chapter III.

21. Under the Provisions of Section 10.22, A, 3, d (9) of the Commission's Land Use Districts and Standards, utility facilities may be allowed within a (P-WL) Wetland Protection Subdistrict as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S.A §685-B, and subject to the applicable requirement set forth in Sub-Chapter III provided that the applicant shows by substantial evidence that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses or resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan.

22. Under the Provisions of Section 10.25,P, 2, a (2) of the Commission's Land Use Districts and Standards, Tier 3 reviews apply to projects altering any area of P-WL1 wetlands except as otherwise provided in Section 10.25,P,2,a,(2),(a), or one acre or more of P-WL2 or P-WL3 wetlands.

23. Under the provisions of Sub-Chapter III, Section 10.24, C of the Commission's Land Use Districts and Standards, The Commission shall approve no application unless adequate provision has been made for fitting the proposal harmoniously into existing natural environment in order to assure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area likely to be affected by the proposal. Pursuant to 12 M.R.S.A. §685-B,4,(C), the Commission may not approve an application, unless adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal.

24. Under the provisions of Sub-Chapter III, Section10.25, E, 1 of the Commission's Land Use Districts and Standards; the design of proposed development shall take into account the scenic character of the surrounding area. Structures shall be located, designed and landscaped to minimize their visual impact on the surrounding area, particularly when viewed from existing roadways or shorelines. To the extent practicable, proposed structures and other intrusive development shall be placed in locations least likely to block or interrupt scenic views as seen from traveled ways, water bodies or public property. If a site includes a ridge elevated above the surrounding areas, the design of the development shall preserve the natural character of the ridgeline.

25. Under the provisions of Sub-Chapter III, Section 10.26, A, 2 of the Commission's Land Use Districts and Standards; the minimum lot size required for commercial, industrial, and other non-residential uses involving one or more buildings is 40,000 square feet.

26. Under the provisions of Sub-Chapter III, Section 10.26, D, 2 of the Commission's Land Use Districts and Standards; the minimum setbacks for commercial structures, including parking areas is 75 feet from the traveled portion of the nearest roadway and 25 feet from the side and rear property lines.

27. Under the provisions of Sub-Chapter III, Section10.26, E of the Commission's Land Use Districts and Standards; the maximum lot coverage shall be 30% for all uses involving one or more buildings. Coverage shall be calculated by determining the percent of the lot covered by all structures including paved driveways, sidewalks, parking lots and other impervious structures.

28. Under the Provisions of Sub-Chapter III, Section 10.26,F of the Commission's Land Use Districts and Standards, for a structure set back at least 500 feet from a great pond, the maximum building height shall be 100 feet for commercial, industrial, and other non-residential uses involving one or more structures. Features of structures which contain no floor area such as chimneys, towers, ventilators and spires, and free standing towers and turbines may exceed the maximum height with the Commission's approval.

29. Visual Impact Analysis: The applicant has provided substantial information with which to evaluate potential visual impacts. Because this is a 199' tower, and because there were potentially sensitive resources in the area, such as water bodies with high cultural and recreational ratings, a 5 mile radius was warranted, but in reviewing viewshed mapping, local information, and field testing, the applicant was able to rule out visibility from sensitive resources. According to the computer simulated viewshed maps and balloon test described in the VIA, the tower would be visible only from limited areas within the 5-mile radius, primarily limited to along the existing land management road and an existing recreational trail in the vicinity of the project site.

30. The facts are otherwise as represented in Development Permit application DP 4983, and supporting documents.

Based upon the above Findings, the staff concludes that:

1. In accordance with Sections 10.22,A,3,c,(23) of the Commission's Land Use Districts and Standards, the proposed telecommunications tower with supporting equipment is an allowed use in an (M-GN) General Management Subdistrict.

2. In accordance with Sections 10.22, A, 3, d (9) of the Commission's Land Use Districts and Standards, the proposed telecommunications tower with supporting equipment is an allowed use by special exception in a (P-WL) Wetland Protection Subdistrict.

3. In accordance with Sub-Chapter III, Section 10.24,3 and 12 M.R.S.A. §685-B,4,(C), the erection of the proposed telecommunication tower would not be expected to have an undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal. Specifically:

    a. The potential undue adverse impacts to the scenic character have been minimized by siting the tower in a location that does not create visual impacts on sensitive resources, and by keeping the tower height below 200', therefore avoiding the need for FAA safety lighting. Views of the proposed neutral colored tower would be extremely limited and fairly unobtrusive to recreational users of this area.

    b. The applicant has demonstrated by substantial evidence, including a Site Acquisition Affidavit that explains the challenges in siting the proposed tower, that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses or resources within the subdistrict with which it is incompatible

    c. The potential undue adverse impacts to natural resources have been minimized by limiting the amount of vegetation cutting and wetland alteration to only that which is needed for the tower, supporting structures, ancillary equipment and driveway. No rare or unique botanical features, inland wading bird and waterfowl habitat, deer wintering areas or inland fish habitat would be directly affected. Further, appropriate erosion control measures would be utilized and there are no nearby streams or wetlands in the vicinity of the project.

    d. There are no undue adverse impacts to historic resources. A review of the proposal by the Maine Historic Preservation Commission indicates that the proposed undertaking will have no adverse effect on historic properties.

4. In accordance with Sub-Chapter III, Section 10.25,E,l of the Commission's Land Use Districts and Standards, the proposed tower has been located and designed to minimize visual impacts from the adjacent roadways, recreational trails, and water bodies located within 5 miles of the project site. The proposed tower is not located on a ridgeline.

5. In accordance with Sub-Chapter III, Section 10.26, A, 2 of the Commission's Land Use Districts and Standards, the proposed lease area is at least 40,000 square feet.

6. In accordance with Sub-Chapter III, Section 10.26, D, 2 of the Commission's Land Use Districts and Standards; the proposed tower, accessory structures and parking area meet the minimum setbacks for commercial structures, including parking areas 75 feet from the traveled portion of the nearest roadway and 25 feet from the side and rear property lines.

7. In accordance with Sub-Chapter III, Section 10.26, E of the Commission's Land Use Districts and Standards; the proposed tower and accessory structures does not exceed the 30% maximum lot coverage.

8. In accordance with Section 10.26,F of the Commission's Land Use Districts and Standards, the telecommunication tower may exceed the Commission's maximum 100 foot height restriction for structures because the proposed structure does not contain floor area, and the proposed height of approximately 195 feet (199 feet with antennas) is necessary for telecommunication coverage.

9. The project would alter less than 1 acre of (P-WL3) Wetland Protection Subdistrict 3.

10. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

Therefore, the staff approves the application of Bay Communications II, LLC with the following Conditions:

1. ***At least one week prior to commencing the permitted activities****, the permittee or the designated agent must contact the Commission staff and notify them of the estimated date construction work will start. Notice may be provided in writing, in person, by email, or by calling. If you leave or send a message, please include your full name, telephone number, permit number, and the date the work will start.*

2. The enclosed permit certificate must be posted in a visible location on your property immediately after receipt and during development of the site and construction of the structures and activities approved by this permit.

3. Construction activities authorized in this permit must be substantially started within 2 years of the effective date of this permit and substantially completed within 5 years of the effective date of this permit. If such construction activities are not started and completed within this time limitation, this permit shall lapse and no activities shall then occur unless and until a new permit has been granted by the Commission.

4. The permitted tower and associated structures must be centered within the leased lot and, along with the parking area, maintain a minimum set back of at least 50 feet from the access road and at least 25 feet from the leased property boundary lines.

5. Construction activities must be substantially in conformance with the Site Plan prepared by Black Diamond Consultants, Inc. and last revised on November 18, 2015.

6. The telecommunication tower shall be made available for co-location of other antenna (or compatible systems) in accordance with the design and load capacity of the tower structure.

7. The tower shall be dismantled and removed from the site when the tower is unused for an extended period of time.

8. The tower structure shall be installed and maintained an appropriate color for the structure to best blend with the skyline.

9. With the exception of signage required by the FAA or the FCC, no signage or advertisements shall be installed on the tower above 20 feet from ground elevation.

10. The permittee shall comply with all Federal Aviation Administration (FAA) requirements for the telecommunications tower authorized by this permit.

11. The driveway must be located and constructed so that (a) it will not erode or create any undue restriction or disruption of existing surface water drainage ways and (b) it will divert runoff to a vegetated buffer strip so as to prevent it from directly entering a water body, mapped P-WL1 wetland or roadway.

12. Temporary and permanent sedimentation control measures must be implemented to effectively stabilize all areas of disturbed soil and to catch sediment from runoff water before it leaves the construction site so that sediment does not enter water bodies, drainage systems, water crossings, wetlands or adjacent properties. Clearing and construction activities, except those necessary to establish sedimentation control devices, shall not begin until all erosion and sedimentation control devices (including ditches, culverts, sediment traps, settling basins, hay bales, silt fences, etc.) have been installed and stabilized. Once in place, such devices shall be maintained to ensure proper functioning.

13. Effective, temporary stabilization of all disturbed and stockpiled soil must be completed at the end of each work day. All temporary sedimentation and erosion control devices shall be removed after construction activity has ceased and a cover of healthy vegetation has established itself or other appropriate permanent control measures have been effectively implemented. Permanent soil stabilization shall be completed within one week of inactivity or completion of construction.

14. Should any significant erosion or sedimentation occur during the construction or maintenance of the facility, including repairs to the access road network, the applicant shall contact the Land Use Planning Commission immediately, notifying it of the problem and describing all proposed corrective measures.

15. All exterior lighting must be located and installed so as to illuminate only the target area to the extent possible. Exterior lighting must not produce a strong, dazzling light or reflection beyond lot lines onto neighboring properties, water bodies, or roadway so as to impair driver vision or to create nuisance conditions.

16. All debris generated as a result of the permitted activities shall be removed from the lot and disposed of in a proper manner, in compliance with applicable state and federal solid waste laws and rules.

17. The scenic character and healthful condition of the area covered under this permit must be maintained. The area must be kept free of litter, trash, junk cars and other vehicles, and any other materials that may constitute a hazardous or nuisance condition.

18. The permittee shall secure and comply with all applicable licenses, permits, authorizations, and requirements of all federal, state, and local agencies including but not limited to: Air and Water Pollution Control Regulations; Subsurface Wastewater Disposal System approval from the Local Plumbing Inspector and/or Maine Department of Health and Human Services, Subsurface Wastewater Program; and the Maine Department of Transportation, Driveway Entrance Permit, a physical E-911 address from your County Commissioner's Office.

19. Upon completion of construction, the permittee shall submit a report from a licensed professional certifying that the cell tower facility has been constructed as approved by the terms and conditions of this permit.

This permit is approved upon the proposal as set forth in the application and supporting documents except as modified in the above stated conditions, and remains valid only if the permittee complies with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT EAST MILLINOCKET, MAINE, THIS TWENTY FOURTH DAY OF NOVEMBER, 2015.

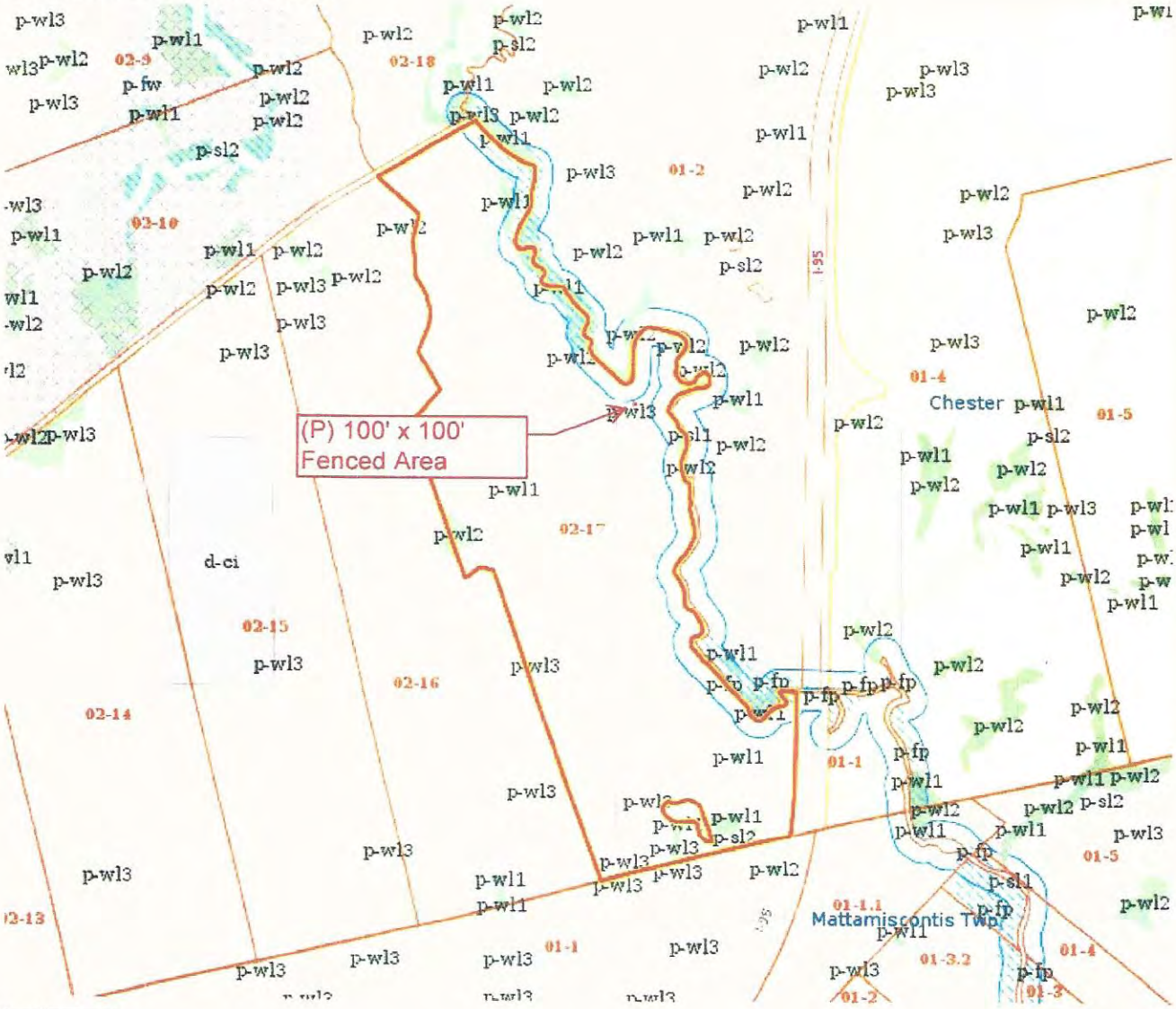
By:_____

Nicholas D. Livesay, Executive Director

Maine Department of Agriculture, Conservation and Forestry - Land Use Planning Commission

Zoning and Parcel Viewer

Map generated: Friday, May 8, 2015



Parcel number	Town/Geocode	Town Code	Plan	Lot	Zones Intersected	LUPC Region	Contact number
1	T2 R8 NWP/19817	PE004	02	17	p-fp, p-sl1, p-sl2, p-wl1, p-wl2, p-wl3	E MILLINOCKET	(207) 746-2244