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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
106 HOGAN ROAD, SUITE 8
BANGOR, MAINE 04401

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

COMMISSION DECISION
IN THE MATTER OF

Maine RSA #4, Incorporated

Findings of Fact and Decision

DEVELOPMENT PERMIT DP 4944

The Maine Land Use Planning Commission (LUPC or Commission), at a meeting of the Commission held on March 11, 2015 at Brewer, Maine, after reviewing the application and supporting documents submitted by Maine RSA #4, Incorporated (Applicant or U.S. Cellular) for Development Permit DP 4944, public comments and testimony, agency review comments, and other related materials on file, finds the following facts:

- Applicant.* Maine RSA #4, Inc. [d/b/a U.S. Cellular Corporation]
Attn: Real Estate
8410 West Bryn Mawr Avenue; Suite 700
Chicago, Illinois 60631

Maine RSA #4, Inc.
Attn: Mr. Richard F. Houde, Project Manager, Maine
U.S. Cellular Corporation
100 Gannett Street; Suite B
South Portland, Maine 04106
- Landowner.* Christopher S. Cochran
PO Box 143
Princeton, Maine 04668
- Agent.* Black Diamond Consultants, Inc.
Attn: James Hébert
PO Box 57
312 Water Street
Gardiner, Maine 04345
- Location.* Big Lake Township, Washington County, Maine
Maine Revenue Service Map WA033, Plan 04, Portion of contiguous lots 23, 25, & 26
Washington Registry of Deeds: Book 1885, Page 171
USCC Site ID # 424342 (45° 10' 29.2" Latitude; -67° 36' 35.3" Longitude) NAD 83

5. *Zoning.* Residential Development Subdistrict (D-RS)
General Management Subdistrict (M-GN)
6. Big Lake is located approximately 3,000 feet west of the proposed Facility location. The Commission has identified Big Lake as a management class 3, resource class 1A, accessible, developed lake with the following resource ratings: outstanding fisheries resources, outstanding wildlife resources, and outstanding cultural resources. In the *Wildlands Lake Assessment*, scenic resources were marked as resources needing further field checking due to positive public comment.

PROPOSAL

7. *Proposal Summary.* On June 24, 2013, U.S. Cellular submitted an application seeking permit approval to construct a self-supported, lattice-style telecommunications tower and associated appurtenances (the Facility). In its June 24 submission, U.S. Cellular proposed a 250-foot tower. On February 09, 2015, U.S. Cellular revised its proposal, reducing the height of the proposed tower from 250 feet to 190 feet. The Facility would be located in Big Lake Township, Washington County, Maine and would provide cellular coverage to the Princeton and State Route 1 area.

SUMMARY OF ADMINISTRATIVE PROCESS

8. *Authorization of Public Hearing.* On June 11, 2014, the Commission authorized a public hearing associated with review of U.S. Cellular's proposal.
9. *Site Visit.* The Commission conducted a site visit to the proposed facility site and surrounding area on August 12, 2014.
10. *Public Hearing.* A public evidentiary hearing was held on August 13, 2014 in Princeton, Maine at which the Applicant's agent more fully described the proposed tower and associated appurtenances and the Commission received testimony from interested persons.
11. *Procedural Matters.* In accordance with the Commission's Chapter 5 Rules for the Conduct of Public Hearings, the Presiding Officer issued four (4) Procedural Orders addressing administrative and procedural matters.
 - A. First Procedural Order. On August 29, 2014, the First Procedural Order was issued to facilitate the receipt of additional information into the administrative record, extending the record period to Wednesday, September 17, 2014, and the rebuttal period to Thursday, September 25, 2014.
 - B. Second Procedural Order. On September 16, 2014, the Second Procedural Order was issued to facilitate the receipt of additional information into the administrative record, extending the record period to Monday, October 20, 2014, and the rebuttal period to Monday, October 27, 2014. Additionally, the Order reopened the public hearing at 9:00 a.m. on October 8, 2014, for the limited purpose of allowing Mr. Scott Kadey to testify.
 - C. Third Procedural Order. On November 18, 2014, the Third Procedural Order was issued to facilitate the limited receipt of additional information into the administrative record responsive to

questions raised by the Commissioners at their October 8, 2014 meeting regarding the relative impacts of permitting a 250 feet high telecommunications tower, compared to alternative shorter tower heights. The order reopened the record until Friday, January 9, 2015, and allowing submission of rebuttal comments until Friday, January 16, 2015.

D. Fourth Procedural Order. On February 3, 2015, the Fourth Procedural Order was issued to facilitate the receipt of additional information, at the request of the Applicant, into the administrative record for the limited purpose of allowing U.S. Cellular to modify the height of the telecommunications tower proposed by reducing the tower height to 190 feet from 250 feet and to provide any application materials associated with the modified proposal. The order reopened the record until Monday, February 9, 2015, and allowed submission of rebuttal comments to Thursday, February 19, 2015.

12. On December 04, 2014, the landowner of the subject property received Amendment A to Forestry Operations Permit FOP 870, approving timber harvesting of 2.75 acres within the D-RS subdistrict which fronts West Street. The timber harvest was proposed to be in compliance with the Maine Forest Service standards. At that time of issuance, the landowner, the landowner's agent, the Applicant's agent, and the Applicant's council were notified in writing that a 50-foot vegetative buffer strip would have to be retained in compliance with Commission's *Vegetation Clearing Standards*, Section 10.27,B, between the tower and West Street's right-of-way boundary.

SUMMARY OF KEY STANDARDS

13. Utility facilities may be allowed within an M-GN subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, and subject to the applicable requirements set forth in Sub-Chapter III (*Ch. 10.22,A,3,c,(23)*).
14. Driveways associated with non-residential uses may be allowed within D-RS and M-GN subdistricts upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, and subject to the applicable requirements set forth in Sub-Chapter III (*Ch. 10.21,J,3,c,(7)* and *Ch. 10.22,A,3,c,(4)*).
15. The dimensional requirements for commercial, industrial or other non-residential uses involving one or more buildings include a minimum lot size of 40,000 square feet, and the minimum setbacks include 75 feet from the traveled portion (edge) of the nearest roadway and 25 feet from side and rear property boundary lines (*Ch. 10.26*).
16. For structures set back at least 500 feet from a great pond or tidal water, "the maximum structure height shall be: 100 feet for commercial, industrial, and other non-residential uses involving one or more structures" (*Ch. 10.26,F,1*). Features of structures which contain no floor area such as chimneys, towers, ventilators and spires, and freestanding towers and turbines may exceed the maximum height with the Commission's approval (*Ch. 10.26,F,3*).
17. *Evaluation of the Visual Impact, and Alternative Locations and Designs.*
- A. The [C]ommission 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” (12 M.R.S. § 685-B(4)(C), which is incorporated into Ch. 10.24,C).

- B. The design of proposed development shall take into account the scenic character of the surrounding area. Structures shall be located, designed and landscaped to reasonably minimize their visual impact on the surrounding area, particularly when viewed from existing roadways or shorelines (Ch. 10.25,E,1,a).
- C. To the extent practicable, proposed structures and other visually 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 (Ch. 10.25,E,1,b).

REVIEW OF EVIDENCE

18. *Review of Evidence.* The Commission has assembled a large administrative record regarding the proposed Facility. The administrative record contains, among other items, the application and subsequent submittals from the Applicant, written and oral testimony from Interested Persons and written comments from government review agencies which were gathered through a process conducted in accordance with the Commission’s Chapter 4 and 5 Rules, including an evidentiary public hearing held at the discretion of the Commission. The Commission’s findings and conclusions are based on review of the administrative record.

SUMMARY OF PROPOSAL INFORMATION

19. *Facility description, design and setbacks.* U.S. Cellular has submitted an application seeking permit approval to construct a utility facility in Big Lake Township, Washington County, Maine. The Facility would be constructed on a 40,000 square foot, leased parcel of land accessed by a 30 foot by 800 foot utility/access easement. The Facility would include: a 190 foot self-supported, lattice-style telecommunications tower; a 12 foot by 20 foot equipment shelter with a 5 foot by 5 foot concrete entrance stoops and exterior lighting; a 100 foot by 100 foot cleared facility compound area; a 75 foot by 75 foot by 8 foot high chain-linked fenced area topped with a 1 foot high barbed wire support arm with three strands of barbed wire; capacity expansion areas for four (4) tenants; a 30 foot by 85 foot parking area; an 18 foot by 800 foot driveway; a service drop; and signage.

The base of the tower would be set back 800 feet from West Street, approximately 374 feet from the nearest property boundary line, and approximately 3,000 feet from Big Lake. Ground elevation is 220 feet NGVD 29.

20. *Technical and financial capacity (Ch. 10.25,C).* Black Diamond Consultants, Inc. has been retained to complete permitting and site plan development. Construction of the Facility would be completed by a qualified construction company upon successful bid for the construction. U.S. Cellular, a multi-billion dollar corporation, would finance the total cost, estimated to be approximately \$250,000, for permitting, installation, operation, maintenance and decommissioning of the Facility.

21. *Vehicular Circulation, Access and Parking (Ch. 10.25,D).*

- A. *Site Access.* Access would be by a 12 foot wide gravel driveway with 3 foot ditches set in the 30 foot by 800 foot access easement area. Two hundred and twenty five (225) feet of the driveway is pre-existing and would only require resurfacing and ditching. Five hundred and seventy five (575) feet of the driveway would be new construction consisting of 12-inches of course base gravel and 6 inches of top compaction gravel. The entire driveway would be sloped from the center; ditches would be covered with 4 inches of loam, seeded and mulched.
- B. *Parking.* The parking and vehicle turn-around area would be 30 feet by 85 feet. After construction, vehicular access to, and circulation within, the operating telecommunications site would be infrequent and would require, at most, 2 or 3 vehicles during heavy maintenance or trouble shooting events. Vehicles would be able to exit the site without backing onto West Street.

22. *Lighting (Ch. 10.25,F,2).*

- A. Tower. The Federal Aviation Administration (FAA) conducted Aeronautical Study number 2015-ANE-59-OE on the 190-foot Facility and issued a *Determination of No Hazard to Air Navigation* on January 27, 2015. The study revealed that the tower would not exceed obstruction standards and would not be a hazard to air navigation and that marking and lighting of the tower would not be necessary provided notification conditions were followed.
- B. Site Exterior. Exterior lighting would be located on facility shelter(s) and would be one, 50 to 100 watt timed, cutoff fixture per shelter designed to retain the light close to the shelter(s). Exterior lights would only be used when the facility is occupied for maintenance or facility checks. The facility would be un-manned except during site inspections, maintenance, and repairs. The equipment shelters(s) would not be lit when un-manned.

23. *Soil Suitability, Erosion and Sedimentation Control, Wetland Alterations, and Soils Disturbance (Ch. 10.25,G, M and P, and Ch. 10.27,F).*

- A. Soil Suitability. On August 13, 2013, a State of Maine Certified Soils Scientist conducted a Class A high intensity site-specific soil survey to identify the soil types within any disturbed portions of the project area and a Class B high intensity soil survey to identify the soil types elsewhere within the project area. The survey was conducted in accordance with the "Guidelines for Maine Certified Soil Scientists for Soil Identification and Mapping" (Maine Association of Professional Soil Scientists, 2009). Soils at and around the proposed disturbed portions of the tower area were identified as moderately well drained Shirley silt loams (Sm) and well drained Winnecook very stony loams (Wi). Soils along the access easement were identified as poorly drained Monarda filled (Mf), poorly and very poorly drained Monarda and Wonsqueak Association (MW) [hydric soils observed on both sides of, and along the eastern part of, the access easement], and somewhat excessively drained Thorndike gravelly sandy loams (Th). Soils identified elsewhere within the lease area were Winnecook (Wi), somewhat poorly drained Telos very fine sandy loams (Te) and somewhat poorly drained Shirley silt loams (Ss). The Scientist concluded that the soils at the site are suited for the proposed project as long as the facility and associated access easement are appropriately designed and constructed to address inherent soil limitations.

- B. Erosion and Sedimentation Control. The proposed tower area is comparably level and is covered by a mixture of mature deciduous and evergreen trees; the area shows evidence of recent timber harvesting. The areas to be cleared of vegetation with resulting soil disturbance would include a 100 foot by 100 foot facility compound area, a 30 by 85 foot parking area, an 18 foot by 575 foot new access driveway and ditch easement area, and an 18 foot by 225 foot resurfaced and expanded access driveway and ditch easement area. The Applicant proposes to clear, fill and grade approximately 26,950 square feet. Any imported fill would be free of hazardous or toxic materials and would be stabilized to prevent erosion. Erosion control best management practices would be implemented in accordance with the Commission's *Land Use Districts and Standards* (the Commission's Standards) and the Maine Department of Environmental Protection's, *Maine Erosion and Sediment Control BMP's*, March 2003.
- C. Wetland Alterations. The Applicant stated that no wetlands would be impacted by the clearing, construction, or operation of the proposed tower.
24. *Subdivision and Lot Creation and Title, Right and Interest (Ch. 10.25,Q)*. The Applicant submitted a 20 year land division history that indicated that no non-exempt divisions have occurred on the contiguous parcels of land described in Washington County Registry of Deeds Book 1885, Page 171-172 in the past 20 years. The life tenant cited in this deed is deceased. On January 24, 2014, the Applicant and Landowner entered into a memorandum of lease which, among other things, granted an eighteen (18) month option for the Applicant to lease a 40,000 square foot portion of the lots and a combined 30 foot utility/access easement.
25. *Signs (Ch. 10.27,J)*. The Facility would have an assortment of cautionary and regulatory required signs. These signs would include a 24" by 24" No Trespassing sign, a FCC Antenna Structure Registration Sign, a 7" by 10' Notice with Instructions Sign on each shelter constructed, and a 10" by 14" Radio Frequency Notice or Caution Sign on each shelter constructed.
26. *Tower Failure Evaluation*. The telecommunication tower would be designed following "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures", ANSI Standard ANSI/EIA/TIA-22-G. The tower would be anchored and designed not to fail (tip over or fail by brittle fracture) but to experience a ductile "bending" mode of failure. A catastrophic loading, beyond design predicted conditions, would result in the devastation of the surrounding area and it is expected that the tower would fold in on itself with no impact to areas beyond the development site and the tower reach (tower height).
27. *Tower Abandonment and Removal*. Should the lease expire or be terminated, or should the tower be abandoned, Maine RSA #4, Inc. d/b/a U.S. Cellular Corporation stated that the Corporation would remove the tower, the associated appurtenances, all solid waste and other debris from the parcels and dispose of the debris in a proper manner, in compliance with applicable state and federal solid waste laws and rules.
28. *Capacity Expansion*. The proposed 190-foot Facility would be designed and constructed to accommodate future capacity expansion for four (4) additional tower antenna arrays at differing tower heights for future wireless telecommunication providers.

SUMMARY OF AGENCY COMMENTS

29. The Maine Natural Areas Program reviewed the 250-foot Facility proposal and searched the Natural Areas Program's Biological and Conservation Data System files for rare or unique botanical features in the vicinity of the proposed site and indicated that according to their current information there are no rare botanical features that would be disturbed within the project site.

30. The Maine Department of Inland Fisheries and Wildlife reviewed the 250-foot Facility proposal and consideration of the proposal's probable effect on the environment, and on the agencies programs and responsibilities, and provided the following comments (*summarized*):

The Department has reviewed information for known locations of Endangered, Threatened, and Special Concern species; designated Essential and Significant Wildlife Habitats; and Fisheries Habitat concerns within the vicinity of the telecommunications facility. Our information indicated no locations of Endangered, Threatened or Special Concern species within the project area. Additionally, the Department has not mapped any Essential or Significant Wildlife Habitats or Fisheries Habitats that would be directly affected by the proposal.

Given the 250-foot height of the tower, bird collisions are likely. If at all possible, the Department recommends that the tower height be reduced to less than 200 feet. Towers below 200 feet in height do not require lighting which can attract birds and result in increased mortality. If a reduction in height is not possible, the Department recommends that the tower lighting be flashing white strobe lights with a maximum off period between flashes. This type of lighting is far less attractive to migratory birds than continuous or pulsing, incandescent red or white lights.

31. The Maine Historic Preservation Commission reviewed the 250-foot Facility proposal on May 28, 2013, and concurred that there are no historic properties affected within the project's $\frac{3}{4}$ mile area of potential effects (APE). Consequently, pursuant to 36 CFR 800.4(d)(1), no further Section 106 consultation is required unless additional resources are discovered during project implementation pursuant to 36 CFR 800.13.

On October 25, 2013, the Preservation Commission requested that the Applicant conduct and submit a 5 mile APE topographic and vegetation height study and a 5 mile APE architectural survey. On March 14, 2014, the Preservation Commission indicated the architectural historian's topographic and vegetative height study was satisfactory and recommended a continuation of the remaining architectural survey for areas not eliminated with the study.

32. The Passamaquoddy Tribe, the Department of Agriculture, Conservation and Forestry's Bureau of Parks and Lands, and the New England Forestry Foundation's Sunrise Tree Farm Conservation Easement received a copy of the 250-foot Facility proposal and did not submit comments.

SUMMARY OF PUBLIC COMMENTS

33. The Commission received a number of comments from interested persons on the initially proposed 250-foot Facility. Key comments and key concerns raised include (*summarized*):
- A. Many comments received were in favor of allowing the 250-foot Facility's construction as proposed, stating that the expanded coverage would improve service for private residences and business owners, provide more reliable coverage in power outages, and emergency medical and fire events, and provide cost savings due to the elimination of land line requirements.
 - B. Other commenters outlined that, while they favor a facility to improve coverage, they do not believe the proposed location and height is suitable and suggest a review of alternative locations and heights which would be less visible to: tourists and local residents recreating on Big Lake and surrounding waterbodies; those hiking the scenic overlook on Pocomoonshine Mountain; the year-round population center of Big Lake; and nearby historic farms and properties. Some of the alternative locations suggested were: Huntley Hill in Indian Township, at a "town approved site" behind the Princeton Elementary School, and farther back and centered on the proposed property.
 - C. Concerns were raised on the permanent devaluation a lighted 250-foot Facility would have on the visual uniqueness and extraordinary natural beauty of the area and subsequently, the economic impact that devaluation would cause to ecotourism in an economically depressed area. The concerns were that the location and height of the tower would have an adverse impact to views on and from water ways, hiking locations, and at lodging establishments, rental properties, historic sporting camps, and guide locations.
 - D. Concerns were raised with the 250-foot Facility with regard to the lighted tower and night sky light pollution. Specifically, it was stated that the required light on the 250-foot tower would be intrusively visible at night and would have an adverse visual impact to all those location noted in Finding of Facts 33,B and 33,C. The commenters stated that Big Lake Township is a rural residential area with no buildings over two stories high and no street lamps to contribute to light pollution; therefore, the light would be inconsistent with the local character of the surrounding area. They also state that the presence of other compromising night sky lights on Musquash Mountain in Topsfield and Woodland Pulp, LLC in Baileyville are not in themselves justification to further compromised the night sky and destroy scenic views. In fact, the visible nature of these distant night lights highlight the strong visibility this new light would have on the visual character of the area.
 - E. Further concerns and statement about the 250-foot Facility were also provided on: personal property devaluation; the health and welfare of both human and wildlife populations, specifically the bird and bee populations; the type and duration of lighting; co-location on nearby towers such as the one in Grand Lake Stream; and the choice of the proposed lighted tower location within the most densely populated area of Big Lake Township.

34. The Commission received comments from interested persons on the revised 190-foot Facility. Key concerns raised include (*summarized*):
- A. Interested persons commented that the 190-foot Facility is proposed in the same location as the 250-foot Facility. It is stated that many of those who opposed the 250-foot Facility did not oppose a tower per se, but opposed the location and hence, other locations should still be vetted for the higher 250-foot tower so as to provide the best possible service to the community.
 - B. Concerns were raised as to whether the Applicant had demonstrated that the 190-foot Facility would fit harmoniously into the existing natural environment and that the public's health, safety and general welfare, particularly the community's general economic welfare, would be adequately protected. It is stated that the tower, because of its height and recent timber harvesting on the subject parcel, would be visible from portions of Big Lake, Big Lake Campground and Tabernacle, and the areas historic farms. The comments assert that because of the tower's visibility and industrial aesthetics, placing it in a residential, but largely undeveloped, area where there are no comparable structures may have a significant negative effect on the local economy because the tower would not blend with the overall picturesque nature of Big Lake Township. Further placement of the tower in proximity to the Princeton Airport and its flight path may be unsafe.
 - C. Concerns were raised that the new coverage maps appear to show that Big Lake Township, Grand Lake Stream Plantation, Indian Township, and Princeton already have in-vehicle coverage and that the 190-foot Facility would not significantly increase this coverage and, hence, would not increase the safety of individuals in emergency situations at those locations. Further concerns were raised that the coverage maps appear to show that while in-building coverage for a small circumference around the tower and a few scattered spots is obtained, most of the coverage does not reach the communities and populations that need it most and therefore does not improve community safety or economic benefit to the area as much as a 250-foot facility would if sited in a different, but appropriate location.
 - D. Lastly, concerns were raised that by proposing the 190-foot Facility in the same location the Applicant gives the appearance of having selected the site specifically for the purpose of obtaining maximum federal funding rather than reviewing and potentially finding an alternative location more sensitive to the existing natural environment which would both meet the needs of the community and meet the FCC Auction 901 coverage requirements, but which would potentially gain U.S. Cellular less financial compensation.

SUMMARY OF SCENIC IMPACT ASSESSMENT

35. *Scenic Character, Natural and Historic Features (Ch. 10.24,C)*. In August of 2013, the Applicant submitted a scenic analysis of the 250-foot Facility that included a balloon test, but did not assess impacts on water bodies except from shorelines. In October of 2013, LUPC staff provided comments that indicated areas where further information was needed. The Applicant then provided a predictive visibility map, and some additional information regarding impacts to scenic character and natural and historic features within a five mile radius of the proposed 250-foot Facility. Background research and reconnaissance surveys of scenic characteristics and views were conducted on scenic

resources, public use areas, recreational areas, conservation properties, snowmobile trails, ATV trails, boat launches, viewshed corridors, cultural landscapes, historic built resources, and along the shoreline at publically accessible locations adjacent to Big, Long, Lewy, and Pocomoonshine Lakes. Reconnaissance surveys were not conducted at private residences, remote campsites, private forest roads, on waterbodies, or during the nighttime.

No above ground properties within the study area were found to be individually listed in the National Register of Historic Places or listed as contributing resources in a National Register Historic District. Three scenic resources were determined to have views of the 250-foot Facility: 1) the True North Farm, a high significance cultural landscape; 2) a historic building of moderate significance at 809 West Street; and 3) a historic building of moderate significance at 856 West Street. The report states that these vantage points are not considered high value scenic views. The report further clarifies that because of topography, vegetation cover, and large parcels of woodlands and bogs, long distance views are limited and intermittent, except on the open water and from small streams that pass through low-lying wetlands. The limited and intermittent views would not diminish the integrity of the existing viewsapes and therefore, the 250-foot Facility would have no adverse visual impact to any significant visual resources.

On February 9, 2015, the Applicant submitted a revised predictive visibility map for the revised 190-foot Facility. Utilizing the previous scenic assessment and study information, and the new tower height, two scenic resources were determined to have views of the 190-foot tower: 1) the True North Farm, a high significance cultural landscape; and 2) the historic building of moderate significance at 809 West Street. The historic building of moderate significance at 856 West Street is predicted to no longer have views of the tower. No other changes to the scenic analysis were noted.

36. *Alternative Location and Designs (Ch. 10.25,E,1).*

- A. Alternative Locations. The Applicant stated that the site was chosen because the site coordinates were identified as meeting the needs for the proposed area radio frequency coverage under the FCC Action 901 requirements. Site acquisition was based on the receptiveness of the landowner, of the closest property to those coordinates, to lease an area to U.S. Cellular. Because the closest landowner was favorable to a proposed Facility, a property specific location was then determined utilizing the highest ground elevation, natural screening, and proximity to other property boundary lines (>250 feet) and nearest residences (~700 feet). No other alternative sites for tower placement were considered for further evaluation and processing.
- B. Co-Location. U.S. Cellular stated that a telecommunications system has a radio frequency coverage radius of approximately 6 miles which is highly dependent of area topography and vegetation. The Applicant provided information showing that there are no existing towers within the desired coverage radius area on which U.S. Cellular could co-locate.
- C. Alternative Height. The Applicant provided radio frequency coverage information for both a 250-foot and a 190-foot tower. The plots show little difference in the predictive coverage and the Applicant states that both a 250-foot and a 190-foot tower appear to meet the FCC Auction 901 coverage requirements. The Applicant modified its original proposal by reducing the proposed tower height from 250 feet to 190 feet.

D. Design Capacity Expansion. The proposed 190-foot Facility would be designed and constructed to accommodate four (4) additional wireless telecommunication providers.

37. The facts are otherwise as represented in Development Permit application DP 4944 and supporting documents.

ANALYSIS AND CONCLUSIONS

Based upon the above FINDINGS and the following ANALYSIS, the Commission CONCLUDES:

1. The Facility, which includes a utility facility and associated driveway, is an allowed use within the subdistricts in which it is proposed. (*Ch. 10.21,J,3,c,(7); Ch. 10.22,A,3,c,(4); Ch. 10.22,A,3,c,(23).*)
2. Excluding Ch. 10.25,E,1 which is discussed below in Conclusion 3, the Facility complies with the applicable and relevant development standards contained in Ch. 10.25, specifically Ch. 10.25,C, D, E,2, F, G, M, P, and Q.
3. With regard to Scenic Character, Ch. 10.25,E,1,a and b.

Minimize Visual Impact and Placement of Visually Intrusive Development. The Commission's rules require that the Facility tower be located, designed and landscaped to reasonably minimize its visual impact on the surrounding area (*Ch. 10.25,E,1,a*). The Commission's rules further provide that the Facility tower, to the extent practicable, be placed in a location least likely to block or interrupt scenic views (*Ch. 10.25,E,1,b*).

A. *With regard to design and landscaping of the Facility*. In the case of a communications tower, design components of the structure with the potential to influence visual impacts may include color, type, width, height, and lighting.

In response to concerns and questions about the 250-foot tower's daytime and nighttime visibility, and to questions regarding the feasibility of constructing a tower less than 200 feet that would still meet FCC Auction 901 coverage requirements, the Applicant reviewed the radio frequency coverage data and subsequently proposed to reduce the height of the tower from 250 feet to 190 feet. In reducing the height, the Applicant reduced the visual impact of the tower by reducing its daytime visibility and eliminating its nighttime lighting.

The Applicant has further designed the Facility to be as unobtrusive as possible by proposing the tower be of a neutral color and by utilizing exterior equipment shelters cut-off lighting which would be used only during site inspections, maintenance, and repairs. In addition, the Facility would be set back from roads and property lines to a distance greater than required under Ch. 10.26.

B. *With regard to the location and placement of the Facility*. The Applicant stated that the development site was chosen based on its proximity to coordinates chosen to maximize reception and meet FCC Auction 901 requirements. Because the closest and first contacted property owner

indicated a willingness to lease a parcel for the Facility, no other properties were evaluated for placement of the tower. Additionally, the Applicant reviewed the coverage radius area and indicated that there are no existing towers within the desired coverage radius area on which U.S. Cellular could co-locate.

Some public comments suggested other alternative locations for the proposed tower may exist on other properties; however, there is no indication that those properties: would be leasable, would meet the needs of the FCC Auction 901 requirements; and would be less likely to block or interrupt scenic views. Further, some public comments suggested other alternative locations for the proposed tower may exist on the subject property; however, the Applicant stated that the placement within the subject property was chosen to maximize ground elevation (and therefore reception), screening of the lower portions, and distance to property lines and residences.

Because the FCC has identified the area as underserved, because the Applicant has designed the Facility to maximize reception while reasonably minimizing its visual impact on the surrounding area (by lowering the towers height, constructing the tower of a neutral color, utilizing exterior equipment shelters cut-off lighting only during site inspections, maintenance and repairs, and setting the tower at a greater distance from the road and property lines than required), and because the Applicant has minimize to the extent practicable the interruption of scenic views (by placing the tower within the subject property in a location that exceeds standard setback requirement, that is at a distance from residences, and that screens portions of the Facility compound), the Commission concludes that the Applicant has demonstrated that the Facility has been designed to reasonably minimize its visual impact on the surrounding area and, to the extent practicable, placed in a location least likely to block or interrupt scenic views, satisfying Ch. 10.25,E,1,a and b.

4. The Facility complies with the dimensional requirements in Ch. 10.26. With regard to Ch. 10.26,F, the proposed tower may exceed the Commission's maximum 100-foot height restriction for structures because the proposed tower does not contain floor area, is free standing, and a tower in excess of 100' in height is necessary to provide telecommunications coverage. (*Ch. 10.26,F,3.*)
5. The Facility complies with the applicable and relevant activity-specific standards contained in Ch. 10.27, specifically Ch. 10.27,F and J.
6. With regard to the statutory criteria for approval in 12 M.R.S. § 685-B(4), which are incorporated into Ch. 10.24:
 - A. Technical and Financial Capacity. The Applicant has demonstrated adequate technical and financial capacity to comply with applicable State environmental laws and satisfied Section 685-B(4)(A).
 - B. Loading, Parking, and Circulation. Adequate provision has been made for loading, parking, and circulation and the Applicant has satisfied Section 685-B(4)(B).

C. Undue Adverse Effect.

- i. *Effects on Existing Uses and Scenic Character.* The effect on existing uses and scenic character is determined by review of relevant evidence, typically in the form of a scenic assessment, combined with public or other testimony. Scenic impact assessment techniques are discussed in the Comprehensive Land Use Plan (CLUP), Section 5.10.B. The Applicant's assessment presented information about daytime visual effects on roads, selected public properties, shorelines, and culturally significant private properties and concluded that the 250-foot Facility, and correspondingly the 190-foot Facility, would have no undue adverse effects on scenic resources. No information was presented by the Applicant about the visual impacts on users of the nearby water bodies; however, some information about uses of nearby lakes was presented during public testimony for consideration.

Public testimony indicated that some local residents had concerns about scenic effects, including impacts on local water bodies and cultural resources. Other members of the public expressed no concern about the visual impacts or a willingness to accept the impacts if that meant that cell service would be available.

Although not as thorough as desired, the Commission finds that the Applicant's scenic impact assessment, in combination with public testimony, a reduced tower height and the elimination of night lighting, provides credible evidence and supports the Applicant's conclusion that the proposed development will not have an undue adverse impact on existing uses and scenic resources. In accepting this conclusion, the Commission considered the Federal Communications Commission (FCC) identification of the area as underserved for cellular communications. Additionally, in reference to the nearest waterbody, Big Lake, the Commission found relevant and persuasive that although none of the scenic assessment was conducted on the lake, the analysis was conducted from the shore of the lake. This, combined with Big Lake's scenic rating being neither outstanding nor significant (the lake has a scenic resource rating needing further field checking due to positive comment), is part of the basis for the Commission's conclusion that the 190-foot Facility will not have an undue adverse impact on existing uses or scenic character. The Applicant has demonstrated the Facility will not have an undue adverse effect on existing uses and scenic character, satisfying the corresponding requirements in Section 685-B(4)(C).

- ii. *Effects on Natural Resources.* The Maine Department of Inland Fisheries and Wildlife reviewed the proposed Facility application and indicated no locations of Endangered, Threatened or Special Concern species within the project area. Additionally, the Department has not mapped any Essential or Significant Wildlife Habitats or Fisheries Habitats that would be directly affected by the proposal. The Department did indicate concerns over likely migratory bird collisions, particularly due to the initially proposed tower height and lighting, and requested that the tower height be reduced to less than 200 feet, if possible, or, if not possible, a change in type of lighting. The tower has been lowered to 190 feet and will not need to be lit.

Finally, no wetlands or streams would be impacted by the proposal and there are no rare or unique botanical features which would be disturbed in the area. Based on these factors and the above findings, the Applicant has demonstrated the Facility will not have an undue adverse effect on natural resources, satisfying the corresponding requirement in Section 685-B(4)(C).

- iii. *Effects on Historic Resources.* The Applicant has demonstrated the Facility will not have an undue adverse effect on historic resources, satisfying the corresponding requirement in Section 685-B(4)(C).
- iv. *Effects Overall.* The Applicant has made adequate provision 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, satisfying Section 685-B(4)(C).

D. Soil Erosion. The Facility will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water, satisfying Section 685-B(4)(D).

E. General Conformance with Statutes, Rules, and Plans. Title 12, Section 685-B(4)(E) (and Land Use Standard §10.24, E) specifies that the Facility must be in conformance with 12 M.R.S., Chapter 206-A and the regulations, standards and plans adopted thereto. Applicable statutory criteria for approval are discussed above. Additionally, the Commission has more generally reviewed Title 12, Chapter 206-A and no Facility components or features are out of conformance with any applicable statutory standards. As explained more fully above in this decision, the Commission has reviewed the Facility under applicable regulations and standards, specifically the Commission's Land Use Standards contained in Chapter 10 of its rules, and, as articulated in the findings and conclusions above, the Facility conforms with these regulations and standards. Finally, in conducting its review and reviewing and applying the applicable statutory provisions in Chapter 206-A, and the applicable regulations and standards, the Commission interpreted and applied the statutory provisions, regulations and standards in light of the CLUP. *See* 12 M.R.S. § 685-C(1) ("The [C]ommission must use the [CLUP] as a guide in . . . generally fulfilling the purposes of this chapter.") As proposed, the Commission concludes the Facility satisfies the conformity requirement in 12 M.R.S. § 685-B(4)(E).

Therefore, the Commission APPROVES Development Permit DP 4944, submitted by Maine RSA #4, Incorporated for a 190-foot telecommunications tower and associated appurtenances, as proposed with the following CONDITIONS.

1. The Standard Conditions for Development Permits, version 04/04, a copy of which is attached.
2. Except as provided for in this permit, all activities shall be in conformance with the Standards for: *Erosion and Sedimentation Control*, Section 10.25,M; *Vegetation Clearing*, Section 10.27,B; *Filling and Grading*, Section 10.27,F; *Signs*, Section 10.27,J; *Lighting*, Section 10.25,F,2; and the *Guidelines for Vegetative Stabilization*, Appendix B of the Commission's *Land Use Districts and Standards*, revised September 01, 2013, copies of which are attached.

3. The tower and appurtenances must be placed at the identified locations. The base of the tower must be set back at least one tower height from any public road, any private road open for public use, and any other property boundary line, 500 feet from all bodies of standing water 10 acres or greater in size, 150 feet from the nearest major flowing water, and 100 feet from the nearest minor flowing water and upland edge of wetlands designated as a (P-WL1) wetland of special significance.
4. The utility/access easement must be set back at least 25 feet from side and rear property boundary lines.
5. The total area altered (disturbed) for the Facility and utility/access easement shall be less than 1.0 acre. The altered area must not impact any wetland areas, vernal pools, or streams.
6. The Permittee shall secure and comply with all other applicable licenses, permits, and authorizations of all federal, state and local agencies including but not limited to: the Federal Aviation Administration, the US Army Corps of Engineers, the Maine Department of Environmental Protection, and the Maine Department of Transportation.
7. Should any erosion or sedimentation impacting a wetland areas, vernal pools, or streams occur during construction, the Permittee shall contact the Land Use Planning Commission staff immediately, or as soon as possible if the event occurs outside of regular business hours, notifying staff of the problem and describing all proposed corrective measures.
8. Once construction is complete, the Permittee shall submit to LUPC staff photos of the site showing the completed Facility and utility/access easement.
9. Upon lease expiration or termination, or should the tower be vacant or abandoned for more than two years, the Permittee shall remove the tower and all associated appurtenances from the lot. Any solid waste materials and other debris from the Facility must be disposed of in accordance with Maine Solid Waste Disposal Rules.

In accordance with 5 M.R.S. § 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person.

DONE AND DATED AT BREWER, MAINE, THIS 11TH DAY OF MARCH, 2015.

By: _____
Nicholas D. Livesay, Executive Director