



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

APPLICATION DENIAL

COMMISSION DECISION IN THE MATTER OF

RISING TIDE TOWERS, LLC
DEVELOPMENT PERMIT DP 5050

The Maine Land Use Planning Commission (“Commission”), at a meeting of the Commission held on October 9, 2019, after reviewing the application and supporting documents submitted by Rising Tide Towers, LLC for Development Permit DP 5050, makes the following findings of fact and conclusions.

I. APPLICATION SUMMARY

1. Applicant: Rising Tide Towers, LLC
6 Loudon Road
Concord, NH 03301
2. Agent: Black Diamond Consultants, Inc.
P.O. Box 57
Gardiner, ME 04345
3. Date of Completed Application: March 18, 2019
4. Location: Dallas Plantation, Franklin County
Part of Lot #49 on Dallas Plantation Tax Map 2
Communication Tower Coordinates: 44° 57' 52.73"N; 070° 36' 17.77"W
5. Site Zoning: Community Residential Development Subdistrict (“D-RS2”)
6. Lot Size: 40,000 square feet (leased lot)



7. Proposed Structures: Lattice telecommunications tower (190 feet tall) with concrete foundation
 Modular platform with canopy (10 feet by 14 feet)
 Electrical meter board (7 feet wide)
 Chain link fence (75 feet by 75 feet by 8 feet tall)
 Driveway extension (12 feet by 255 feet)
 Parking area (20 feet by 75 feet)

II. BACKGROUND AND PROPOSAL

Rising Tide Towers, LLC entered into a lease agreement with Mark Beauregard, Inc. for an unimproved parcel of land consisting of approximately 40,000 square feet (200 feet by 200 feet) for the proposed construction and operation of a cellular communications tower.¹ The lease lot is forested and situated within a larger parcel owned by Mark Beauregard, Inc., a portion of which is utilized as a shale pit, the remainder of which is forested.² Both the lease lot and larger parent parcel are located off Dallas Hill Road in Dallas Plantation within a Community Residential Development subdistrict. This D-RS2 subdistrict is located between Rangeley Lake to the west and Saddleback Pond to the east.

Rising Tide Towers, LLC proposes to construct a telecommunications facility (“proposed Project”) on its leased lot. The proposed Project would include a 190-foot tall lattice tower and concrete base, a 10-foot by 14-foot modular platform and canopy, a 7-foot wide electrical meter board, and a chain link fence to enclose a 75-foot by 75-foot area around the infrastructure. Rising Tide Towers, LLC proposes to extend an existing approximately 280-foot long driveway used to access the property from Dallas Hill Road by an additional approximately 255 feet to access the lease lot, and to construct a 20-foot by 75-foot gravel parking area along the southwest side of the fenced area. In total, Rising Tide Towers, LLC proposes to clear approximately 10,250 square feet of vegetation within a forested portion of the lease lot for the proposed Project. No lighting is proposed for the proposed Project.

The proposed Project would be located approximately 550 feet from Dallas Hill Road and approximately 400 feet from the nearest residence, which is located northwest of the proposed Project.

Regarding project purpose, Black Diamond Consultants, Inc., the agent and technical consultant for the proposed Project, stated that “[t]hroughout the nation and the State of Maine, towers are being installed at high elevations and in remote areas to provide cell phone coverage to these rural areas. These installations are promoted through the national ‘Universal Service Fund [USF]’. The USF is a service mandated by the Telecommunications Act of 1996 with the goal, in part, to increase the availability of advanced telecommunications services to all consumers, including those in low income, rural, insular, and high cost areas and at rates that are reasonably comparable to those charged in urban areas.”³

¹ The December 4, 2018, lease agreement is included in Rising Tide Towers, LLC’s permit application.

² The shale pit precedes the establishment of the D-RS2 subdistrict, which was adopted by the Commission on January 1, 2001.

³ Application DP 5050.

III. PROCEDURAL BACKGROUND

On March 18, 2019, the Commission accepted as complete for processing from Rising Tide Towers, LLC an application for a development permit (“Application DP 5050”) for its proposed Project. The Commission subsequently received a timely request from Paul and Mary Dobek for a hearing on Application DP 5050. At its meeting on May 1, 2019, the Commission voted to hold a public hearing on Application DP 5050.

The Commission provided notice of the public hearing and opportunity to intervene in this matter on May 31, 2019. Through its First Procedural Order, issued on June 25, 2019, the Commission granted intervenor status to two petitioners, Mark Beauregard and the Maine Appalachian Trail Club. The Commission held a hearing on Application DP 5050 on July 10, 2019, in Farmington, Maine. The hearing included both daytime and evening sessions. Participation in the daytime session was limited to the parties. The evening session was devoted to receiving testimony from members of the public. The Commission’s hearing record closed on August 22, 2019.

IV. AGENCY REVIEW COMMENTS

The Maine Department of Inland Fisheries and Wildlife reviewed Application DP 5050 and stated that there are no resources in the proposed Project area under the agency’s jurisdiction and therefore had no substantive comments.

The Maine Historic Preservation Commission reviewed Application DP 5050 and had no comments.

The Maine Natural Areas Program reviewed Application DP 5050 and stated that there are no rare botanical features that will be disturbed within the project site based on information currently available.

The Maine State Soil Scientist reviewed Application DP 5050 and stated that the site has suitable soils and slopes for the intended use and that appropriate erosion and sediment control measures are proposed.

V. COMMISSION’S ZONING DISTRICTS AND USE LISTINGS

Within the Commission’s service area, there are three major zoning district classifications—management, protection, and development districts—which the Commission has further delineated into zoning subdistricts to protect important resources and prevent conflicts between incompatible uses. For each subdistrict, the Commission designated uses that are allowed without a permit, uses that are allowed without a permit subject to standards, uses that are allowed with a permit, uses that are allowed with a permit by special exception, and uses that are prohibited. The Commission’s zoning subdistricts are codified in the Commission’s Land Use Districts and Standards, 01-672 C.M.R. ch. 10 (“Chapter 10”) (revised June 17, 2019).

D-RS2 subdistrict. “The purpose of the D-RS2 subdistrict is to designate residential areas that can accommodate an appropriate range of low-impact commercial and public uses that are compatible with residential uses. This subdistrict seeks to promote residential living and thriving neighborhoods with a limited range of services.”⁴

Allowed use. “Utility facilities” means “[s]tructures normally associated with public utilities, including without limitation: radar, radio, television, or other communication facilities; electric power transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; municipal sewage lines; gas, oil, water, slurry or other similar pipe lines or above ground storage tanks.”⁵ Within D-RS2 subdistricts, “utility facilities compatible with residential uses” is a use allowed with a permit and subject to the applicable land use standards set forth in Ch. 10, §§ 10.24–10.27.⁶

VI. APPROVAL CRITERIA AND LAND USE STANDARDS

The Commission’s general criteria for approval are codified in Ch. 10, § 10.24. The Commission’s land use standards are codified in Ch. 10, §§ 10.25–10.27, and are grouped into three categories: development standards, dimensional requirements, and activity-specific standards.⁷ Although an applicant must satisfy all applicable land use standards, the following are most relevant to the proposed Project.

1. General criteria for approval, Ch. 10, § 10.24. The following general criteria for approval must be met for the Commission to approve an application.
 - a. Adequate technical and financial provision has been made for complying with the requirements of the State’s air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto.
 - b. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods.
 - c. 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.
 - d. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site.
 - e. The proposal is otherwise in conformance with 12 M.R.S. §§ 681 – 689 and the regulations, standards and plans adopted pursuant thereto.

⁴ Ch. 10, § 10.21(N).

⁵ Ch. 10, § 10.02(248).

⁶ Ch. 10, § 10.21(N)(3)(c)(21).

⁷ Ch. 10, subchapter III.

- f. In the case of an application for a structure upon any lot in a subdivision, that the subdivision has received the approval of the Commission.⁸

The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public's health, safety and general welfare will be adequately protected.

2. Technical and financial capacity, Ch. 10 § 10.25(C). In considering this land use standard, the Commission requires that the applicant retain qualified consultants, contractors and staff to design and construct the proposed project in accordance with approved plans. The Commission requires that the applicant have adequate financial resources to construct the proposed project to meet the criteria of all state and federal laws including the Commission's rule Chapter 10.
3. Vehicular Circulation, Access and Parking, Ch. 10, § 10.25(D). In considering this land use standard, the Commission evaluates whether the proposal ensures adequate provision has been made for loading, parking and circulation of land; traffic movement in, on and from the site; and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods.
4. Natural character and cultural resources, Ch. 10, § 10.25(E). In considering this land use standard, the Commission requires that the design of proposed development take into account the scenic character of the surrounding area. This land use standard requires structures to be located, designed and landscaped to reasonably minimize their visual impact on the surrounding area, particularly when viewed from existing roadways, with attention to designated scenic byways; major water bodies; coastal wetlands; permanent trails; or public property. An applicant must also demonstrate that the proposed activity will not have an undue adverse impact on historic resources.
5. Noise and lighting, Ch. 10, § 10.25(F). In considering this land use standard, the Commission imposes noise limitations measured at property lines and compliance with standards for exterior light levels, glare reduction, and energy conservation for any proposed lighting.
6. Soil suitability, Ch. 10, § 10.25(G). In considering this land use standard, the Commission requires that the applicant demonstrate that soils suitable to the proposed use of the land are present.

⁸ In considering this land use standard, the Commission evaluates whether the proposal to place a structure upon any lot in a subdivision and whether any divisions of land comply with the Commission's laws and rules governing subdivisions. "'Subdivision' means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of the land or by leasing." 12 M.R.S. § 682(2-A). A lot or parcel that when sold or leased created a subdivision requiring a permit from the Commission under Chapter 206-A, Use regulation, is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. 12 M.R.S. § 682-B(5). The Commission's land use standards for subdivision and lot creation are set forth in Ch. 10, § 10.25(Q).

7. Erosion and sedimentation control, Ch. 10, § 10.25(M). In considering this land use standard, the Commission requires the effective control of soil erosion and sedimentation during and following completion of construction activities.
8. Dimensional requirements, Ch. 10, § 10.26. There are multiple dimensional requirement standards, all of which an applicant must satisfy for the Commission to approve an application. Those most relevant to the proposed Project are identified below.
 - a. Minimum lot size, Ch. 10, § 10.26(A)(2): 40,000 square feet
 - b. Minimum setbacks, Ch. 10, § 10.26(D): 25 feet from the side and rear property lines
 - c. Maximum structure height, Ch. 10 § 10.26(F)(4)(a): In areas beyond 500 feet of the normal high water mark of a body of standing water 10 acres or greater, structure height in the D-RS2, subdistrict shall be limited to 35 feet. Structures used for agricultural management, structures with no floor area, or features of buildings which contain no floor area such as chimneys, towers, ventilators, and spires may exceed these maximum heights with the Commission's approval.
 - d. Signs, Ch. 10 § 10.27(J): The Commission's regulations pertaining to signs, set forth in Ch. 10, § 10.27(J)(2), establishes standards to ensure placement of signs does not produce undue adverse impact upon the resources and uses in the area.

VII. ANALYSIS AND CONCLUSIONS

1. Technical and financial capacity. Rising Tide Towers, LLC has contracted with Black Diamond Consultants, Inc. to perform site surveys, engineered drawings for site development, and to serve as their agent for all matters regarding Application DP 5050. Black Diamond Consultants, Inc. included with Application DP 5050 a summary of experience and training with respect to telecommunications towers site and environmental assessments in Maine. Rising Tide Towers, LLC provided a letter from Camden National Bank, dated March 18, 2019, stating that Rising Tide Towers, LLC has the financial capacity to construct the proposed Project, which has an estimated cost of \$245,000. The Commission concludes that Rising Tide Towers, LLC has demonstrated that it has adequate technical and financial capacity to comply with applicable environmental laws and regulations.
2. Vehicular Circulation, Access and Parking. Rising Tide Towers, LLC stated that vehicle access to and circulation within an operating communications site is infrequent and requires, at most, the use of two or three vehicles during a maintenance or troubleshooting event. Access to the proposed Project would be via an existing driveway off Dallas Hill Road and space to allow vehicles to turn around within the proposed Project area would be provided. Parking for the facility would be located approximately 500 feet from Dallas Hill Road and screened by existing trees and vegetation. The lease lot is located interior to the parent parcel and has no direct road frontage. An easement provides access from the Dallas Hill Road to the lease lot and proposed Project. The Commission concludes that Rising Tide Towers, LLC has made adequate provision for loading, parking and circulation on and from the site such that that the proposed Project will

not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods.

3. Noise and lighting. Members of the public testified at the hearing that the proposed Project would generate noise. On July 18, 2019, the Commission requested additional information regarding anticipated noise from the proposed Project. On July 25, 2019, Black Diamond Consultants, Inc. provided a response to the additional information request. The response stated that operation of the proposed Project would not generate any discernable noise levels at the lease boundary lines. The proposed Project would not include any noise generating mechanical components and the voice and broadband radio frequency generation from the proposed Project would not generate any discernable noise. Rising Tide Towers, LLC does anticipate the generation of noise during construction of the proposed Project. Sounds emanating from construction-related activities conducted between 7:00 a.m. and 7:00 p.m. are exempt from the Commission's noise standards.⁹

The proposed Project would not include any exterior lighting and is not required by the Federal Aviation Administration to include tower lighting.

The Commission concludes that the proposed Project would comply with the Commission's noise and lighting standards provided any post-construction noise generated by the proposed Project complies with the noise standards set forth in Ch. 10, § 10.25(F)(1)(a).¹⁰

4. Soil suitability. Rising Tide Towers, LLC submitted with Application DP 5050 a class A and B high intensity soil survey completed by Main-Land Development Consultants, Inc. The soil survey concludes that the soils within the proposed Project area are suitable for the proposed use of the land. This conclusion is supported by the Maine State Soil Scientist's review comments. The Commission concludes that Rising Tide Towers, LLC has demonstrated that the proposed Project would comply with Ch. 10, § 10.25(G).
5. Erosion and sedimentation control. Rising Tide Towers, LLC submitted with Application DP 5050 engineered plans with environmental and civil details (Sheet C-5), prepared by Black Diamond Consultants, Inc., which describes the proposed construction and post-construction erosion and sedimentation control measures. The Commission concludes that the proposed Project would comply with the Commission's standards for erosion and sedimentation control set forth in Ch. 10, § 10.25(M).
6. Maximum structure height. The only proposed Project component that exceeds the 35-foot height limitation for the D-RS2 subdistrict is the 190-foot tall communications tower. The nature of the project requires the tower structure to exceed the 35-foot height limitation. The Commission concludes that the proposed Project, including the proposed tower which would have no floor area, would comply with the Commission's maximum structure height standards set forth in Ch. 10 § 10.26(F)(4)(a).

⁹ Ch. 10, § 10.25(F)(1)(b)(1).

¹⁰ Between 7:00 a.m. and 7:00 p.m., noise levels at the lease boundaries is limited to 55 decibels [dB(A)] and between 7:00 p.m. and 7:00 a.m., noise levels at the lease boundaries is limited to 45 dB(A). These levels may be exceeded by 10 dB(A) for a single period, no longer than 15 minutes per day.

7. Signs. The proposed Project includes required cautionary and regulatory signage to be installed at the facility. Rising Tide Towers, LLC proposes to install three signs: a Federal Communications Commission antennae registration sign; a notice of guidelines for working in radiofrequency environments sign measuring 7 inches by 10 inches; and a radiofrequency notice or caution sign measuring 10 inches by 14 inches. The Commission concludes that the proposed signs for the proposed Project would comply with the Commission's standards set forth in Ch. 10 § 10.27(J).
8. Land division history. Rising Tide Towers, LLC provided land division history dating back to 1984 for the parent parcel owned by Mark Beauregard, Inc. The Commission finds that the proposed Project would not include the development of any structures on lots that are part of a subdivision and that the land division history demonstrates that Rising Tide Towers, LLC has not created a subdivision. The Commission concludes that the proposed Project would comply with Ch. 10, §§ 10.24(F) and 10.25(Q).
9. Comprehensive Land Use Plan. The criteria for approval require compliance with 12 M.R.S. §§ 681 – 689 and the regulations, standards and plans adopted pursuant thereto. Pursuant to 12 M.R.S. § 685-C(1), the Commission has a Comprehensive Land Use Plan that guides the Commission in developing specific land use standards, delineating district boundaries, siting development, and generally fulfilling the purposes of the Commission's governing statute. If approving applications submitted to it pursuant to 12 M.R.S. § 685-B, the Commission may impose such reasonable terms and conditions as the Commission considers appropriate to satisfy the criteria of approval and purpose set forth in these statutes, rules, and the Comprehensive Land Use Plan.

The Commission received comments and testimony from members of the public regarding the decommissioning of the proposed communication tower. A stated policy goal of the Comprehensive Land Use Plan is to “[e]nsure that infrastructure improvements are well planned and do not have an adverse impact on the jurisdiction’s principal values” and to “[r]equire that highly visible facilities such as communication towers be dismantled and removed from the site when they are unused for an extended period of time.”¹¹ “In the case of radio communication towers, the Commission will ensure that such towers are dismantled and removed from the premises if unused for an extended period.”¹²

Rising Tide Towers, LLC’s lease agreement with Mark Beauregard, Inc. stipulates that upon termination of the lease, the tenant (i.e., Rising Tide Towers, LLC) shall remove the proposed Project, all foundations and all other equipment, cables, fixtures and personal property and otherwise restore the premises to its original condition.¹³

The Commission finds that a decommissioning plan, including financial assurance to complete all aspects of decommissioning, would be required to ensure compliance with the policy objectives of the Comprehensive Land Use Plan and criteria for approval at Ch. 10, § 10.24(E). The Commission concludes that the proposed Project would comply with Ch. 10, § 10.24(E) provided a decommissioning plan acceptable to the Commission be submitted to the Commission prior to the commencement of construction.

¹¹ Comprehensive Land Use Plan, p. 8.

¹² Comprehensive Land Use Plan, p. 143.

¹³ Lease Agreement, Section 7, included with Application DP 5050.

Another stated policy goal of the Comprehensive Land Use Plan is to “[r]equire that communication towers be made available for other users where feasible in order to limit the number of such towers.”¹⁴ Section 17 of Rising Tide Towers, LLC’s lease agreement with Mark Beauregard, Inc. provides that Rising Tide Towers, LLC may sublease space upon and issue leases and licenses in and to Rising Tide Towers, LLC’s facility. The Commission concludes that this policy objective would be met with a condition requiring co-location of utilities on the proposed tower when feasible.

10. Public’s health, safety and general welfare. The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public’s health, safety and general welfare will be adequately protected. In the context of utility facilities the applicant “generally must show that the proposed use[] will not burden local public facilities and services” including “fire and ambulance services.”¹⁵

Rising Tide Towers, LLC stated that fire protection to the proposed Project would be provided by the Rangeley Fire and Rescue Department located approximately two miles from the proposed Project site. The proposed Project will not be connected to a water supply, will not generate wastewater, and will not be staffed beyond the periodic and temporary staff needed to service the facility or make repairs. The Commission finds that the normal operation of the proposed Project would not place undue burden on local public facilities and services.

Members of the public provided comments and testimony regarding the general safety of nearby property owners in the event that the proposed tower catastrophically fails and collapses. Black Diamond Consultants, Inc. addressed this concern both as supplemental information to Application DP 5050 and at the live hearing on July 10, 2019. Rising Tide Towers, LLC submitted a report entitled, Structural Design Report, prepared by Sabre Industries Towers and Poles, dated May 3, 2018. The Structural Design Report documents that the tower design was prepared in accordance with American National Standards Institute (ANSI)/Telecommunications Industries Association (TIA) Structural Standard for Antenna Supporting Structures and Antennas ANSI/TIA-222-G. In accordance with ANSI/TIA-222-G, the proposed tower is designed to withstand winds up to 90 miles per hour with no ice and 40 miles per hour wind with 0.75 inches of ice. In the event of a catastrophic failure of the proposed tower it would not fall onto land outside the lease lot and surrounding land owned by the lessor, Mark Beauregard, Inc. Mark Beauregard, Inc. provided a written agreement to Rising Tide Towers, LLC, signed and dated January 29, 2019, granting Rising Tide Towers, LLC access to property owned by Mark Beauregard, Inc. in the event of a failure of the tower onto the property surrounding the lease lot.

The Commission finds that the location of the proposed Project on the lease lot interior to the parent parcel from which it was divided is such that the proposed 190-foot tall tower would not be capable of reaching neighboring properties in the event of a catastrophic failure and collapse.

Numerous members of the public provided comments and testimony that the radiofrequency energy emitted by the proposed tower, which would be designed with the capacity to support 5G technologies, would cause adverse human health effects. The Commission has reviewed

¹⁴ Comprehensive Land Use Plan, p.8.

¹⁵ Comprehensive Land Use Plan, § 4.3.E.

information regarding cancer and health risks associated with cellular communications towers provided by the World Health Organization's International Agency for Research on Cancer, the U.S. Federal Communications Commission, and the American Cancer Society.¹⁶ Based on its review, the Commission finds most credible the information from the scientific and regulatory authorities on cancer research and human health protection, which concludes that the cancer risk from cellular communications towers is low. The Commission concludes that the proposed Project would comply with the Commission's public's health, safety and general welfare general criteria for approval of permit applications.

11. Natural character and cultural resources. Rising Tide Towers, LLC submitted a letter from the State Historic Preservation Officer at the Maine Historic Preservation Commission, dated October 9, 2018, concluding that there are no historic properties that would be affected by the proposed Project.

a. Visual impact assessment

Rising Tide Towers, LLC submitted a visual impact assessment prepared by Black Diamond Consultants, Inc., dated October 2, 2018. The visual impact assessment evaluated the scenic impact of the proposed Project, including the tower, on resources within five miles of the lease lot. The Commission concurs that a five-mile radius is an appropriate area of potential effects for the proposed Project since the tower would not be lighted, would be below 200 feet in height, and would be located on topography that is gently sloping in all directions making it unlikely to be visible from most vantage points greater than five miles away. The visual inventory was conducted by Black Diamond Consultants, Inc. on September 7, 2018, during leaf-on vegetative conditions. Black Diamond Consultants, Inc. floated a five-foot diameter weather balloon from a location close to the proposed Project site to provide a visual indicator of the top of the proposed communications tower and to assist in the identification of resources within the area of potential effects from which the proposed Project would be visible. A summary of resources within the area of potential effect from which the proposed Project would be visible are summarized with notes in Table 1.

¹⁶ U.S. Food and Drug Administration, <https://www.fda.gov/radiation-emitting-products/cell-phones/current-research-results> (accessed September 25, 2019). International Agency for Research on Cancer press release No. 208, May 31, 2011, https://www.iarc.fr/wp-content/uploads/2018/07/pr208_E.pdf (accessed September 25, 2019). American Cancer Society <https://www.cancer.org/cancer/cancer-causes/radiation-exposure/cellular-phone-towers.html> (accessed September 25, 2019).

b. Resources inside the area of potential effects

Table 1. Resources within the 5-mile area of potential effects.

Resource	Description	Tower Visibility
Haley Pond and Haley Pond Park	<p>Haley Pond, located partly in Dallas Plantation and partly in the Town of Rangeley, is a management class 7, resource class 2 lake with significant fisheries resources but not a significant scenic resource rating.¹⁷</p> <p>Haley Pond Park is owned and maintained by the Town of Rangeley.</p> <p>The park provides benches, a dock for kayaks and canoes, gazebo, ice skating.¹⁸</p>	The proposed tower would be visible above the ridgeline to the southeast of Haley Pond from Haley Pond Park.
Gull Pond	Gull Pond, located in Dallas Plantation, is a management class 7, resource class 2 lake with significant fisheries resources but not a significant scenic resource rating.	The proposed tower would be visible from portions of Gull Pond that are greater than 1.5 miles distant due to intervening topography and mature trees along the perimeter of the pond in the direction of the proposed tower.
Route 4/16 Rangeley Lakes Scenic Byway west of Rangeley Village	The Rangeley Lakes Scenic Byway is designated by the National Scenic Byways Program, part of the U.S. Department of Transportation, Federal Highway Administration.	The proposed tower site would be slightly visible from Route 4/16 west of Rangeley Village as a driver descends the road into the village. The tower would be 3 miles away from this vantage point, which also includes houses and associated development, such as telephone poles, roads, and power lines, in the foreground.

¹⁷ Ch. 10, Appendix C. Resource class 2 means lakes of regional significance (with no outstanding values but at least one significant resource value).

¹⁸ Based on information from the Town of Rangeley website <https://www.townofrangeley.com/180/Parks-Recreation> (accessed October 1, 2019).

Stratton Road/Route 16	Public road	From the Stratton Road just east of Rangeley Village, the proposed tower would be slightly visible above the ridge to the southeast, across Haley Pond. The proposed tower would be approximately 2 miles away from this vantage point.
Oakes Perry Cemetery, Dallas Hill Road		The proposed tower would be slightly visible behind foreground trees to the west of Oakes Perry Cemetery.
Dallas Plantation Town Hall, Dallas Hill Road		The proposed tower would be partially visible beyond the tree line west of the Dallas Plantation Town Hall, a structure listed in the National Register of Historic Places.

c. Issues discussed during the public hearing

The Maine Appalachian Trail Club initially expressed concern in its petition for leave to intervene about the five-mile area of potential effect. At the hearing on July 10, 2019, Commission staff explained the basis for selecting a five-mile radius for the proposed Project. In response to the Commission’s additional information request, Black Diamond Consultants, Inc. provided additional information assessing the potential impact of the proposed Project from a distance of six miles—the approximate distance to the summit of Saddleback Mountain and the Appalachian Trail. In its response, Black Diamond Consultants, Inc. stated at a distance of six miles, the surface texture, detailing, and form of the proposed tower would not be visible. No further comment was submitted from Maine Appalachian Trail Club on the sufficiency of the distance used for the visual impact assessment.

Several members of the public, who also reside within the D-RS2 subdistrict, testified and commented that Rising Tide Towers, LLC did not provide notice that the weather balloon test was going to be conducted and therefore were not able to view the potential scenic impact from their properties and roads near their properties. At least one member of the public submitted comments expressing concern about the timing of the visual impact assessment noting that the proposed tower would be more visible during leaf-off and winter conditions.

The Commission requested details about locations that were evaluated for this project as part of the requirement: 1) to locate and design structures to reasonably minimize their visual impact on the surrounding area, particularly when viewed from existing roadways or shorelines; and 2) to be placed in a location least likely to block or interrupt scenic views as seen from traveled ways,

water bodies, or public property. The Commission requested an explanation of what options, if any, were explored to change the target radius of the tower with the requesting carrier.^{19 20}

Black Diamond Consultants, Inc. stated that it “reviewed several properties within the assigned AT&T search ring to determine which properties were most favorable for the proposed telecommunications facility design, construction, and operation relative to environmental considerations, owner property size, ease of access to property, and facility screening capabilities. The property selected met all of these considerations favorably in that the size of the owner property is approximately 115 acres and the introduction of the 100' X 100' developed area will have minimal impact on the existing stormwater drainage conditions; use of an existing access road reduces the amount of additional impervious surfaces required for site access; and location of the facility within the extensive forested property provides screening of the facility equipment, tower, and fencing, located below the tree lines, to surrounding areas.” “The target radius was provided by AT&T to achieve maximum wireless transmission public safety coverage to the area, considering area topography and the desire to avoid [Federal Aviation Administration] required tower lighting.”²¹

12. Allowed use determination. Within D-RS2 subdistricts, the proposed Project is a use allowed with a permit and subject to the applicable land use standards provided the proposed Project is compatible with residential uses. The D-RS2 subdistrict is designed to better integrate a mix of home-based businesses, residential dwelling types, and public uses that occur in a residential zone. One of the policy objectives of the D-RS2 subdistricts is to allow certain commercial uses, such as bed and breakfasts and golf courses in keeping with residential character, rather than placing such uses on a more intensive zone where less benign uses could be proposed later.²²

A significant concern expressed in the approximately three dozen public comments received on Application DP 5050 and the oral testimony of seven members of the public, mostly people who reside in the D-RS2 community surrounding the proposed Project, was that the proposed Project is not compatible with the residential neighborhood in which it is proposed. All public comments received on Application DP 5050 are in opposition to the proposed Project.

Rising Tide Towers, LLC identified other types of commercial uses within the Dallas Hill Road D-RS2 subdistrict that include the shale pit on the parent parcel from which the lease lot was divided; a Quonset storage building located approximately 800 feet from the proposed Project; and a golf course located approximately 2,500 feet from the site.²³ Commission review of aerial photography indicates that there are approximately 12 residential dwellings within a quarter-mile of the proposed Project and more dwellings within more distant portions of the D-RS2 subdistrict. The Commission is not aware of any commercial developments in this D-RS2 subdistrict aside from the shale pit and Quonset storage building.

¹⁹ Commission’s additional information request, July 18, 2019.

²⁰ The Commission received public comments regarding the lack of credible evidence in the record on the target radius of the tower.

²¹ Black Diamond Consultants Inc. response to additional information request, July 25, 2019.

²² Comprehensive Land Use Plan, p.27 (2010).

²³ Rising Tide Towers, LLC’s July 25, 2019, response to additional information request. The golf course referenced is located outside of the D-RS2 subdistrict. See Zoning Petition 475 (1992).

Persons testifying at the hearing and commenting on the proposed Project argued that the proposed communications tower would be unlike any other development in the neighborhood and result in undue adverse effects on the residential use and character of the area.

The Commission finds that the proposed Project would be unlike other existing commercial uses within the subdistrict in that the 190-foot tall communications tower would present a significant change to existing character of the area and is wholly incomparable to the other types of commercial uses that currently exist in this residential subdistrict. The Commission concludes that the proposed Project would not be compatible with the existing residential uses in the Dallas Hill D-RS2 subdistrict and is therefore not an allowed use.

VIII. FINAL CONCLUSIONS

The proposed Project is not compatible with residential uses and is therefore not an allowed use in the Community Residential Development subdistrict. Therefore, the Commission denies the application of Rising Tide Towers, LLC for the proposed construction of a communications tower in Dallas Plantation.

Appeals of this Commission decision must be taken to Superior Court in accordance with applicable state laws and court rules. Rules of Practice, 01-672 C.M.R. 4.04(11)(b) (last amended October 18, 2013).

DONE AND DATED AT GREENVILLE, MAINE, THIS 9th DAY OF OCTOBER, 2019.

A handwritten signature in cursive script, reading "Everett Worcester", written in black ink on a light-colored background.

Everett Worcester, Chair