

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

ORIGINAL

APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC (AT&T) FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF A TELECOMMUNICATIONS TOWER FACILITY AT 8 BARNES ROAD IN THE TOWN OF CANAAN (FALLS VILLAGE), CONNECTICUT

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CONNECTICUT  
SITING COUNCIL

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**TOWN OF CANAAN INLAND WETLANDS/CONSERVATION  
COMMISSION'S DETAILED RESPONSES TO APPLICANT'S OBJECTIONS  
TO PARTICULAR EXHIBITS**

On June 8, 2011 the Applicant New Cingular Wireless, PCS, LLC pre-filed its Objection to Admission by the Siting Council of Certain Exhibits of the Falls Village Inland Wetland/Conservation Commission. The Falls Village Inland Wetlands/Conservation Commission ("IW/CC") responded on June 14, 2011 with bases for rejecting the Applicant's objections. The IW/CC hereby provides its detailed responses to particular exhibits objected to by the Applicant.

**I. Relevant and Material Exhibits**

At page 1 of its objections, the Applicant objects to the following exhibits as "Irrelevant, Immaterial and Unduly Repetitious." The Applicant's objections to these documents defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice. For the following additional reasons, these exhibits are relevant and material, and the Applicant's objections should be rejected:

IW10           Bormann, F. Herbert and Gene E. Likens, "Pattern and Process in a Forested Ecosystem; Disturbance, Development and the Steady State Based on the Hubbard Brook Ecosystem Study," Springer-Verlag, New York 1979 (excerpts).

**This excerpt is from a learned treatise, an authority for certified foresters. IW/CC Commissioner Susan Kelsey is a certified forester, and relies upon this authority, along with the entire IW/CC when considering any removal of trees for a building project within the bounds of the Town of Canaan. The Applicant's objections to these documents defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW11            Town of Canaan Town Road Inventory and Policy Recommendations.

**This Excerpt is public record, pertinent to the extensive road and roadwork proposed by the Applicant. The public record serves to inform the Siting Council on local regulation and policy, in fulfillment of the Siting Council's statutory mandates, and also informs the IW/CC's consideration and discharge of its statutory duties. If the objection were granted the exclusion of this excerpt would effect prejudice.**

IW31            Petersen, Richard C., "Connecticut's Venomous Snakes: Timber Rattlesnake and Northern Copperhead," State Geological and Natural History Survey of Connecticut, a Division of the Department of Agriculture and Natural Resources, Bulletin 103, 1970 (excerpts).

**This publication is a public record and official publication by the State Geological and Natural History Survey of Connecticut. It is material germane to the IW/CC's considerations and therefore brought to the attention of the Connecticut Siting Council in fulfillment of its statutory directives concerning wildlife and the environment, since the Timber Rattlesnake is endangered, its potential habitat is known to exist at the site and in the project action area, and its presence is documented (IW38) nearby. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW32            "Wildlife in Connecticut, Endangered and Threatened Species Series (Fact Sheet), Bog Turtle (*Clemmys muhlenbergii*)," Connecticut Department of Environmental Protection, wildlife division (no date).

**This publication is a public record and official publication of the Department of Environmental Protection of the State of Connecticut. It is material germane to the IW/CC's considerations and therefore brought to the attention of the Connecticut Siting Council in fulfillment of its statutory directives concerning wildlife and the environment, since the Bog Turtle is endangered, its potential habitat exists near the site and near the project action area. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW33            "Bog Turtle (*Clemmys muhlenbergii*) Northern Population RECOVERY PLAN," U.S. Fish and Wildlife Service, Hadley, Massachusetts, prepared by Michael Klemens, Ph.D., Wildlife Conservation Society, Bronx, New

York in cooperation with Pennsylvania field office, U.S. Fish and Wildlife Service, State College, Pennsylvania for Region 5, U.S. Fish and Wildlife Service, Hadley Massachusetts, May 15, 2001 (excerpts).

**This publication is a public record and official publication of the U.S. Fish and Wildlife Service. It is material germane to the IW/CC's considerations and therefore brought to the attention of the Connecticut Siting Council in fulfillment of its statutory directives concerning wildlife and the environment, since the Bog Turtle is endangered, its potential habitat exists near the site and near the project action area. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW37 Connecticut Environmental Conditions Online; Connecticut Critical Habitats.

**This website material is public record generated by UConn in coordination with the Governor's directive (Executive Order 15 on Responsible Growth), which provided the majority of the funding for the Connecticut Critical Mapping Project (See page 2 of IW37). The data is therefore taxpayer-funded, and noticeable by the Council, and of mandatory notice by the IW/CC in fulfillment of its mandates. This provides the explanation of a "Critical Habitat," a matter placed at issue in this application by the Applicant itself at Tab 7, Map at page 5 behind Tab 7, but with the glaring omission of the explanation. The Applicant's Tab 7 Map documents the presence of state-designated "Critical Habitat" within 1/2 mile radius of the proposed project. (See orange shaded area on the Applicant's map, Tab 7). This material omission by the Applicant has left it to the IW/CC to provide the explanation of, and substantiate the significance of and taxpayer investment in the protection of this "critical habitat" in close proximity to the proposed tower. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice as well as subvert the Governor's express directive.**

IW41 The Litchfield Hills Greenprint: The Case for Regional Conservation in the Litchfield Hills.

**The Siting Council may take administrative notice of relevant not-for-profit organizations' publicly available publication containing judicially noticeable facts. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice as well as subvert the Governor's express directive.**

IW44 U.S. Fish and Wildlife Service Endangered Species: Critical Habitat – What is it?

**This website material is an official publication of the U.S. Fish and Wildlife Service and is public record. This provides the explanation of a "Critical Habitat," a matter placed at issue in this application by the Applicant itself at Tab 7, Map at page 5 behind Tab 7, but with the glaring omission of the explanation. The Applicant's Tab 7 Map documents the**

presence of state-designated "Critical Habitat" within 1/2 mile radius of the proposed project. (See orange shaded area on the Applicant's map, Tab 7). This material omission by the Applicant has left it to the IW/CC to provide the explanation of, and substantiate the significance of the protection of this "critical habitat" in close proximity to the proposed tower. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties -- and indeed, that of the Siting Council -- and if granted would effect prejudice as well as disregard federal regulation under the Endangered Species Act, since habitat of Federally endangered species is known in the project action area.

IW45            Klemens, Michael W., "Amphibians & Reptiles in Connecticut, A Checklist With Notes on Conservation Status, Identification, and Distribution," Connecticut Department of Environmental Protection, Bulletin 32, 2000 (excerpts).

**This publication excerpt is public record and official publication of the Department of Environmental Protection of the State of Connecticut. It is material germane to the IW/CC's considerations and therefore brought to the attention of the Connecticut Siting Council in fulfillment of its statutory directives concerning wildlife and the environment, since the habitats of protected amphibians and reptiles as well as their presence is known in the project action area. The official publication also acknowledges that "road mortality" seriously affects populations of amphibians and reptiles. (IW45, page 6) Additional, even marginal, stress on these habitats and on the creatures that rely upon them is therefore a material issue on this docket. The Applicant has put this at issue by proposing a 1500 foot access road in a reptile and amphibian habitat. The official publication also documents the fact that breeding amphibians and other amphibians and reptiles rarely occur in isolation from one another (*Ibid.*), thus making the consideration of the species listed in this publication material to this proceeding. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW46            Dowhan, Joseph J. and Robert J Craig, "Rare and Endangered Species of Connecticut and the Their Habitats," State Geological and Natural History Survey of Connecticut, The Natural Resources Center, Department of Environmental Protection, Report of Investigations No. 6, 1976 (excerpts).

**This publication excerpt is public record and official publication of the Department of Environmental Protection of the State of Connecticut. It is material germane to the IW/CC's considerations and therefore brought to the attention of the Connecticut Siting Council in fulfillment of its statutory directives concerning wildlife and the environment, since the habitats of rare and endangered species and the presence of such species is material to whether a "Certificate of Environmental Compatibility and Public Need" is granted, and whether the IW/CC should grant its permission to the proposed project.**

**Thus consideration of the species listed in this publication material to this proceeding. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW47 Connecticut Audubon Society, "Connecticut State of the Birds: Conserving Birds & Their Habitats" 2006; Sibley, David Allen, "Birds Make Good Indicators of Environmental Health"; Introduction by Robert Martinez, President, Connecticut Audubon Society, Fairfield, Connecticut; "Recommendations from Connecticut Audubon Society" (excerpts); with letter of transmittal.

**The Siting Council may take administrative notice of this relevant not-for-profit organization's publicly available publication and judicially noticeable facts. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW48 Connecticut's Comprehensive Wildlife Conservation Strategy: Creating a vision for the future of wildlife conservation, State Department of Environmental Protection, Bureau of Natural Resources, October 1, 2005: Introduction; Chapter 1: Connecticut's Wildlife Distribution and Abundance: Determination of Species of Greatest Conservation Need (GCN); Chapter 2: Habitats, Sub-habitats, and Vegetative Communities in Connecticut (excerpts); Chapter 3: Threats Affecting Species of Greatest Conservation Need (GCN) or their Habitats (excerpts); Chapter 4: Conservation Actions for Connecticut's Twelve Key Habitats and GCN Species.

**This essential publication excerpt is public record and official publication of the Department of Environmental Protection of the State of Connecticut, published with U.S. Fish and Wildlife Service federal taxpayer funding. It is material germane to the IW/CC's considerations and therefore brought to the attention of the Connecticut Siting Council in fulfillment of its statutory directives concerning wildlife and the environment, since the habitats described and the species determined as of "Greatest Conservation Need" are material to whether a "Certificate of Environmental Compatibility and Public Need" is granted, and whether the IW/CC should grant its permission to the proposed project. Thus consideration of the species and habitats listed in this publication is material to this proceeding. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW49 Connecticut DEP Endangered, Threatened & Special Concern Species in Connecticut Explanation Page.

**This essential public record and official publication of the Department of Environmental Protection of the State of Connecticut defines "Endangered Species," "Threatened Species," and "Species of Special Concern," all of which are found at or near the proposed project action area. It is material germane to the IW/CC's considerations and therefore brought to the attention of the Connecticut Siting Council in fulfillment of its statutory directives concerning wildlife and the environment, since these designations are material to whether a "Certificate of Environmental Compatibility and Public Need" is granted, and whether the IW/CC should grant its permission to the proposed project. Thus consideration of the species and habitats listed in this publication is material to this proceeding. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW50            Connecticut DEP Endangered Species/Wildlife Income Tax Check-Off  
                  Funded Projects.

**This essential public record and official publication of the Department of Environmental Protection of the State of Connecticut demonstrates the fulfillment of state environmental policy, including programs and statutes that mandate regulation by the IW/CC. The emphasis on study results of "habitat loss" and "fragmentation" is particularly germane to these proceedings because the disruption of the site proposed (and put at issue in its application) by the Applicant is addressed here. (IW50, pages 1, 2**

**The taxpayer-funded programs include a survey of "state listed wetland-dependent bird species." (IW50, page 2) Such species are under the particular and statutory care of both the Siting Council and the IW/CC.**

**The taxpayer-funded programs include the Wood Turtle Study. Wood turtles are a species of special concern in Connecticut and are documented by NDDB near and in the project action area, placed at issue by the Applicant.**

**Likewise, the taxpayer-funded Rattlesnake Population Assessment (IW50, page 3) documented the threats to the endangered Timber Rattlesnake, whose potential habitat is near and in the project action area, placed at issue by the Applicant.**

**Likewise, the taxpayer-funded Mapping of State Listing Candidate Species - Plants (IW50, page 3) maps listed species of plants documented by the NDDB. Effects on such plants have been placed at issue by the Applicant because their habitat and presence is documented by NDDB in the project action area.**

**This is therefore material germane to the IW/CC's considerations and brought to the attention of the Connecticut Siting Council in fulfillment of its statutory directives concerning wildlife and the environment, since these designations are material to whether a "Certificate of Environmental Compatibility and Public Need" is granted, and whether**

**the IW/CC should grant its permission to the proposed project. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW52 U.S. Fish and Wildlife Fact Sheet: Small Whorled Pogonia.

**This is an official publication of the U.S. Fish and Wildlife Service and is public record. It is material the IW/CC must consider -- as the Council must, and the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW53 U.S. Fish and Wildlife Fact Sheet: Bog Turtle.

**This is an official publication of the U.S. Fish and Wildlife Service and is public record. It is material the IW/CC must consider -- as the Council must, and the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW54 U.S. Fish and Wildlife "Endangered Species Program Overview" webpage  
(<http://www.fws.gov/newengland/EndangeredSpec-Overview.htm>)  
(last visited 2/8/11).

**This is an official publication of the U.S. Fish and Wildlife Service and is public record. It is material the IW/CC must consider -- as the Council must, since federally endangered species are documented in the project action area, and the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW55 U.S. Fish and Wildlife Protocol Relating to Applicant's Tab 7 Materials  
([http://www.fws.gov/newengland/EndangeredSpec-Consultation\\_Project\\_Review.htm](http://www.fws.gov/newengland/EndangeredSpec-Consultation_Project_Review.htm)) (last visited 2/8/11).

**This is an official publication of the U.S. Fish and Wildlife Service and is public record.**

**This official publication was utilized by the Applicant's environmental expert in order to generate a letter of "no effect." Its omission from the application as explanation of how the applicant generated its letter (Tab 7, page 10) (Trans. Feb. 17, 2011). Without this USFWS protocol, the Applicant's material omissions may not be detected. This is therefore material the IW/CC must consider, and the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW56 U.S. Fish and Wildlife Definition of "Action Area"  
(<http://www.fws.gov/northeast/nyfo/es/actionarea.htm>) (last visited 2/8/11).

**This is an official publication of the U.S. Fish and Wildlife Service and is public record.**

**This official publication should have been utilized by the Applicant's environmental expert in order to follow the protocol required by USFWS in obtaining a "No Effect" letter. Its omission from the application as explanation of how the applicant generated its letter (Tab 7, page 10) (Trans. Feb. 17, 2011) may be a material omission. Without this USFWS regulatory definition, the Applicant's material omissions may not be detected. This is therefore material the IW/CC must consider -- as the Council must, and the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW57            Webpage Linking U.S. Fish and Wildlife Website to Connecticut DEP  
Webpage Listing State Endangered Species  
(<http://www.fws.gov/scripts/exit.cfm?link=http://www.ct.gov/Dep/cwp/browse.asp?A=2702>) (last visited 2/8/11).

**This is an official publication of the U.S. Fish and Wildlife Service and is public record.**

**This official publication should have been utilized by the Applicant's environmental expert in order to follow the protocol required by USFWS in obtaining a "No Effect" letter. Its omission from the application as explanation of how the applicant generated its letter (Tab 7, page 10) (Trans. Feb. 17, 2011) may be a material omission. Without this USFWS regulatory definition, the Applicant's material omissions may not be detected. This is therefore material the IW/CC must consider, and the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW58            Connecticut DEP "Insects Plants Endangered and Invasive Species"  
Webpage Linked From USFWS webpage  
(<http://www.ct.gov/Dep/cwp/browse.asp?A=2702>) (last visited 2/8/11).

**This is an official publication of the Connecticut DEP, linked from the U.S. Fish and Wildlife Service webpage from which the Applicant obtained its self-generated letter of no environmental effect. This webpage is public record.**

**This official publication should have been utilized by the Applicant's environmental expert in order to follow the protocol required by USFWS in obtaining a "No Effect" letter. Its omission from the application as explanation of how the applicant generated its letter (Tab 7, page 10) (Trans. Feb. 17, 2011) may be a material omission. Without this USFWS CT DEP research and consideration, the Applicant's material omissions may not be detected. This is therefore material the IW/CC must consider, and the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**



## II. Other Exhibits

At page 4 of its objections, the Applicant objects to the following exhibits as "Unduly Repetitious." For the following reasons, these exhibits are relevant and material, and the Applicant's objections should be rejected:

IW1 Certified copy, Wetlands and Watercourses Regulations of the Town of Canaan, Connecticut, as amended October 1, 1975.

**This is an official publication of the Town of Canaan, and is the official regulations of a party to this proceeding. This is a certified copy of a public record. To the extent that the Applicant may have filed these regulations in some bulk filing, the IW/CC has no direct knowledge or record of such filing. Since these regulations are binding on the Connecticut Siting Council as well as the IW/CC and the Town of Canaan and the State of Connecticut, the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW6 Letter of January 15, 2011 to the Connecticut Siting Council from the Inland Wetlands-Conservation Commission of the Town of Canaan, Connecticut: Notice of Intent to be a party, Docket 409.

**This is a public record. As of this date, the Siting Council's electronic internet docket sheet does not show all filings. It is offered for completeness. If the original letter is already part of the official record of this proceeding, the IW/CC concurs that this may be duplicative.**

IW7 Town of Canaan Falls Village 2002 Plan of Conservation & Development, Planning and Zoning Commission, January 9, 2002 (excerpts).

**This is a public record and official document adopted by the Town of Canaan and must be considered in this proceeding. To the extent that the Applicant may have filed this Plan in some bulk filing, the IW/CC has no direct knowledge or record of such filing.**

**Additionally, under UAPA Section 174-4(4), "documentary evidence may be received in the form of copies or excerpts,\* \* \* ". It is the IW/CC's position that these excerpts are particularly material to this proceeding and in fulfillment of the Siting Council's statutory mandate, and are provided here for that purpose. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW8 Certified copy, Town of Canaan, Falls Village Zoning Regulations (excerpt) 4.3. Steep Slope Overlay Zone; 5.1. Landscaping and Buffers.

**For the same reasons stated above at IW7, the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW13            IW/CC Letter of September 21, 2009 to Stacy P. Montgomery, The Ottery Group, Inc.

**This is a public record. The IW/CC has no direct knowledge that this letter is already part of the record. Therefore the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW14            Cuddy & Feder Letter of October 29, 2009 to First Selectman Mechare, Falls Village, CT.

**This is a public record. The IW/CC has no direct knowledge that this letter is already part of the record. Therefore the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW16            Cuddy & Feder Letter of March 24, 2010 to IW/CC.

**This is a public record. The IW/CC has no direct knowledge that this letter is already part of the record. Therefore the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW18            Cuddy & Feder Letter of October 19, 2010 to Chairman Daniel F. Caruso, Connecticut Siting Council.

**This is a public record. The IW/CC has no direct knowledge that this letter is already part of the record. Therefore the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW34            Connecticut Department of Environmental Protection, A County Report of Connecticut's Endangered, Threatened and Special Concern Species, 12/1/2010: Litchfield County.

**This essential public record and official publication of the Department of Environmental Protection of the State of Connecticut demonstrates the status of the species appearing on the NDDB map of the proposed project action area. It is material germane to the IW/CC's considerations and therefore brought to the attention of the Connecticut Siting Council in fulfillment of its statutory directives concerning wildlife and the environment, since these species, their habitats and presence are material to whether a "Certificate of Environmental Compatibility and Public Need" is granted, and whether the IW/CC should grant its permission to the proposed project. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW35 Connecticut Department of Environmental Protection, Endangered Species Webpage.

**This essential public record and official publication of the Department of Environmental Protection of the State of Connecticut demonstrates the availability to the Applicant of information in the NDDDB of the presence of state endangered species in the project action area, consideration of which is recommended by the USFWS before issuance of a letter of "No Effect," and required by the IW/CC. Therefore it is material germane to the IW/CC's considerations and brought to the attention of the Connecticut Siting Council in fulfillment of its statutory directives concerning wildlife and the environment, since these species, their habitats and presence are material to whether a "Certificate of Environmental Compatibility and Public Need" is granted, and whether the IW/CC should grant its permission to the proposed project. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties and if granted would effect prejudice.**

IW40 Housatonic Valley Association letter dated January 19, 2011 from Tim Abbott.

**This is a public record. As of this date, the Siting Council's electronic internet docket sheet does not show all filings. It is offered for completeness. If the original letter is already part of the official record of this proceeding, the IW/CC concurs that this may be duplicative.**

**III. Exhibits Relating to IW/CC Consideration of "The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity," Where Exclusion Would Effect Prejudice and Violate Statutory Duty**

At page 5 of its objections, the Applicant objects to the following exhibits "relating to Health and/or Environmental Effects of RF Emissions" that should be excluded, stating that:

In fact, the Siting Council has taken administrative notice of the TCA and its preemption provisions with respect to environmental effects of radio frequency energy \* \* \* .

However, no preemption exists to IW/CC consideration of "The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity" (C.G.S. §22a-41(5)), and the Applicant may not silence the IW/CC on this subject, nor act in concert with a state agency to prevent its consideration by the IW/CC in its official capacity. As we stated in our prefiled testimony, it is our joint responsibility with the Siting Council to be absolutely certain that public interest and

concerns are fully protected in a proceeding to consider a building project within the bounds of the Town of Canaan. The Applicant's claim of FCC preemption over consideration of health-related evidence is not applicable to, nor binding upon the IW/CC. The TCA did not repeal the Clean Water Act under whose mandates the Commission operates. All such evidence is relevant and material to the IW/CC's deliberations, decisions and recommendations, and the Applicant cannot represent to the Siting Council that it is settled law that the Telecommunications Act of 1996 preempts the Federal Clean Water Act. For these reasons, the following exhibits are material and relevant both to the IW/CC's consideration and to the Connecticut Siting Council in fulfillment of our statutory mandates:

IW59 Letter of January 14, 2011 Division of Migratory Bird Management, U.S. Fish and Wildlife Service, to FCC re: Comments of the U.S. Fish and Wildlife Service's Division of Migratory Bird Management filed electronically, on WT Docket No. 08-61 and WT Docket No. 03-187, Regarding the Environmental Effects of the Federal Communication Commission's Antenna Structure Registration Program.

**This is a public record of the U.S. Fish and Wildlife Service, and since the Applicant proposes a telecommunications tower in a known migratory bird flyway and wetland, the letter is material and germane to these proceedings, especially with regard to bird strike kills (see especially page 6) and radiation issues (page 6). The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties -- and those of the Siting Council -- and if granted would effect prejudice.**

IW61 Briefing Paper on the Need for Research into the Cumulative Impacts of Communication Towers on Migratory Birds and Other Wildlife in the United States *Division of Migratory Bird Management (DMBM), U.S. Fish & Wildlife Service* – for Public Release, LAST UPDATED: January 23, 2009, Albert M. Manville, II, Ph.D., Senior Wildlife Biologist, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr. – MBSP-4107, Arlington, VA 22203. 703/358-1963; [Albert\\_Manville@fws.gov](mailto:Albert_Manville@fws.gov).

**This is a public record of the U.S. Fish and Wildlife Service, and for the same reasons as stated at IW 59 above, the Applicant's objection to this document defies the IW/CC's discharge of its statutory duties -- and those of the Siting Council -- and if granted would effect prejudice.**

- IW70 Balmori, Alfonso, "Mobile Phone Mast Effects on Common Frog (*Rana temporaria*) Tadpoles: The City Turned into a Laboratory," *Electromagnetic Biology and Medicine*, 29:31-35, 2010
- IW71 Balmori, Alfonso, "Electromagnetic pollution from phone masts. Effects on wildlife." *Pathophysiology*, 2009.
- IW72 Frey, Allan H. and Edwin S. Eichert, "Modification of Heart Function With Low Intensity Electromagnetic Energy," *Journal of Bioelectricity* 5(2), 201-210 (1986)
- IW73 Balmori, Alfonso, "The incidence of electromagnetic pollution on the amphibian decline: Is this an important piece of the puzzle?" *Toxicological & Environmental Chemistry*, Apr.-June 2006; 88(2): 287-299.
- IW74 Everaert, Joris and Dirk Bauwens, "A Possible Effect of Electromagnetic Radiation from Mobile Phone Base Stations on the Number of Breeding House Sparrows (*Passer domesticus*)," *Electromagnetic Biology and Medicine*, 26: 63-72, 2007
- IW75 Balmori, Alfonso, "Possible Effects of Electromagnetic Fields From Phone Masts on a Population of White Stork," *Electromagnetic Biology and Medicine*, 24: 109-119, 2005.
- IW76 Magras, Ioannis N. and Thomas D. Xenos, "RF Radiation – Induced Changes in the Prenatal Development of Mice," *Bioelectromagnetics*, 18:455-461, 1997.

**The seven pre-marked exhibits above appeared in learned treatises. This is material the IW/CC must consider, and the Applicant's objection to these documents defies the IW/CC's discharge of its statutory duties, and if granted would effect prejudice and prevent the IW/CC from making a full and fair record.**

- IW84 Kato Yasuko, "RF Effects on Plants, Summary," *Shukan Kinyabi*, July 2, 2004, pp. 27-29. Translated for Japan Focus by Jean Inglis.

**This is material of which the Siting Council may take administrative notice. (See UAPA Section 4-178). It appeared in an international periodical. In light of the known presence of habitat of the federally-endangered small whorled pogonia at the proposed action area, as well as many other state protected plant species, this is material the IW/CC must consider. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties, and if granted would effect prejudice and prevent the IW/CC from making a full and fair record.**

#### **IV. No Limited Appearance Statements**

At page 7 of its objections, the Applicant objects to the following exhibits characterizing them as "Limited Appearance Statements." This is simply not true. No application for a "limited appearance," as defined in C.G.S. §16-50n(f) was applied for by these public-minded individuals. These communications to the Siting Council are in the form of written comments (see UAPA Section 4-177c(b)), or affidavits. As sworn affidavits they are reliable. More importantly, most of the exhibits objected to by the Applicant indicate a willingness (despite no mandatory requirement) to be available to answer the Council's questions. On February 17, 2011, the following people offered to answer questions:

Bonnie Burdick

Elaine LaBella

Marc Rosen

The time for the Applicant to insist on cross-exam has passed, and the Applicant has waived its opportunity by failing to ask questions in a timely manner. Additionally, in her affidavit of February 7, 2011 (IW38), Mary Lu Sinclair offers to make herself available for questions.

For the following reasons, the Applicant's objections must be rejected:

IW27            November 17, 2010 Letter from Susan Pinsky and Marc Rosen to Connecticut Siting Council.

**This is a public record, admissible under UAPA 4-177c(b).**

IW29            January 28, 2011 Letter from Hon. Andrew W. Roraback and Hon. Roberta B. Willis to Connecticut Siting Council.

**This is a public record, admissible under UAPA 4-177c(b).**

IW38            Affidavit of Mary Lu Sinclair dated February 7, 2011.

**This is a sworn affidavit, reliable, and admissible under UAPA 4-177c(b). Additionally, Mrs. Sinclair has offered her availability to answer questions. In light of the presence of potential habitat of the endangered timber rattlesnake at the proposed action area, this is material the IW/CC must consider. The photograph provided by Mrs. Sinclair documents an endangered Timber Rattlesnake in the same valley as the proposed project. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties, and if granted would effect prejudice and prevent the IW/CC from making a full and fair record.**

IW39 "Rattlesnake Spotted Slithering in Sharon: Snake Measuring 4 Feet Spotted By Viewer," WFSB.com, September 1, 2010.

**This is material of which the Siting Council may take administrative notice. (See UAPA Section 4-178). It appeared in local news vehicle. In light of the presence of potential habitat of the endangered timber rattlesnake at the proposed action area, this is material the IW/CC must consider. The Applicant's objection to this document defies the IW/CC's discharge of its statutory duties, and if granted would effect prejudice and prevent the IW/CC from making a full and fair record.**

IW51 February 7, 2011 Letter from Hank Gruner to Connecticut Siting Council.

**This is a public record, admissible under UAPA 4-177c(b).**

IW69 Letter of January 13, 2011 to Connecticut Siting Council Chairman Daniel Caruso from the Housatonic River Commission.

**This is a public record, admissible under UAPA 4-177c(b).**

IW81 Friends of Wangam Valley Mission Statement, 2003.

**This is a historical local document of which the Council may take administrative notice and admissible under UAPA 4-177c.**

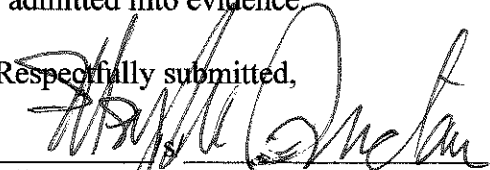
IW83 Affidavit of Bonnie H. Burdick, dated February 9, 2011.

**This is a sworn affidavit, reliable, and admissible under UAPA 4-177c(b). Additionally, Mrs. Burdick has offered her availability to answer questions. This essential and material evidence contains photographic proof of the visibility of the proposed tower at sites from which the applicant has asserted it is not visible. The visibility of the tower is at issue in this proceeding. This affidavit is therefore offered into the record with photographic evidence on a material fact to rebut an assertion by the applicant. The author made herself available during the public comment portion of the hearing to answer any questions. The Applicant has waived its opportunity. Exclusion of this exhibit will effect prejudice, deny**

**the right of parties and citizens to make a full and fair record, deny due process and prevent the IW/CC's discharge of its statutory duties.**

For all of the foregoing reasons, these exhibits are relevant and material, the Applicant's objections should be rejected, and the Inland Wetlands/Conservation Commission's proffered pre-marked exhibits be admitted into evidence

Respectfully submitted,

  
Ellery W. Sinclair, Chairman, Inland Wetlands/Conservation Commission  
Town of Canaan (Falls Village), 201 Under Mountain Road  
Falls Village, CT 06031  
(860) 824-7454, WML61@comcast.net

CERTIFICATE OF SERVICE

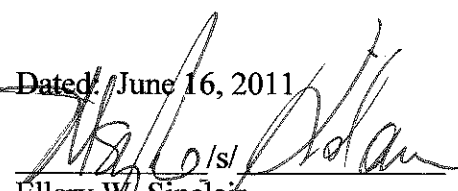
I hereby certify that on June 16, 2011, a copy of the foregoing was sent electronically to the Connecticut Siting Council through Christina Walsh, and also to the following. Hard copies will be hand delivered on each of these parties and the Siting Council at the continued hearing on Thursday June 16, 2011:

Lucia Chiochio, Esq.  
Cuddy & Feder LLP  
445 Hamilton Avenue, 14th Floor  
White Plains, NY 10601  
lchicchio@cuddyfeder.com

Michele Briggs  
AT&T  
500 Enterprise Drive  
Rocky Hill, CT 06067-3900  
michele.g.briggs@cingular.com

Patty and Guy Rovezzi  
36 Barnes Road  
Falls Village, CT 06031  
rovezzi2005@yahoo.com

Town of Canaan Planning & Zoning Commission  
Attn: Frederick J. Laser, Chairman  
Town Hall, Main Street  
Falls Village, CT 06031

Dated: June 16, 2011  
  
Ellery W. Sinclair