

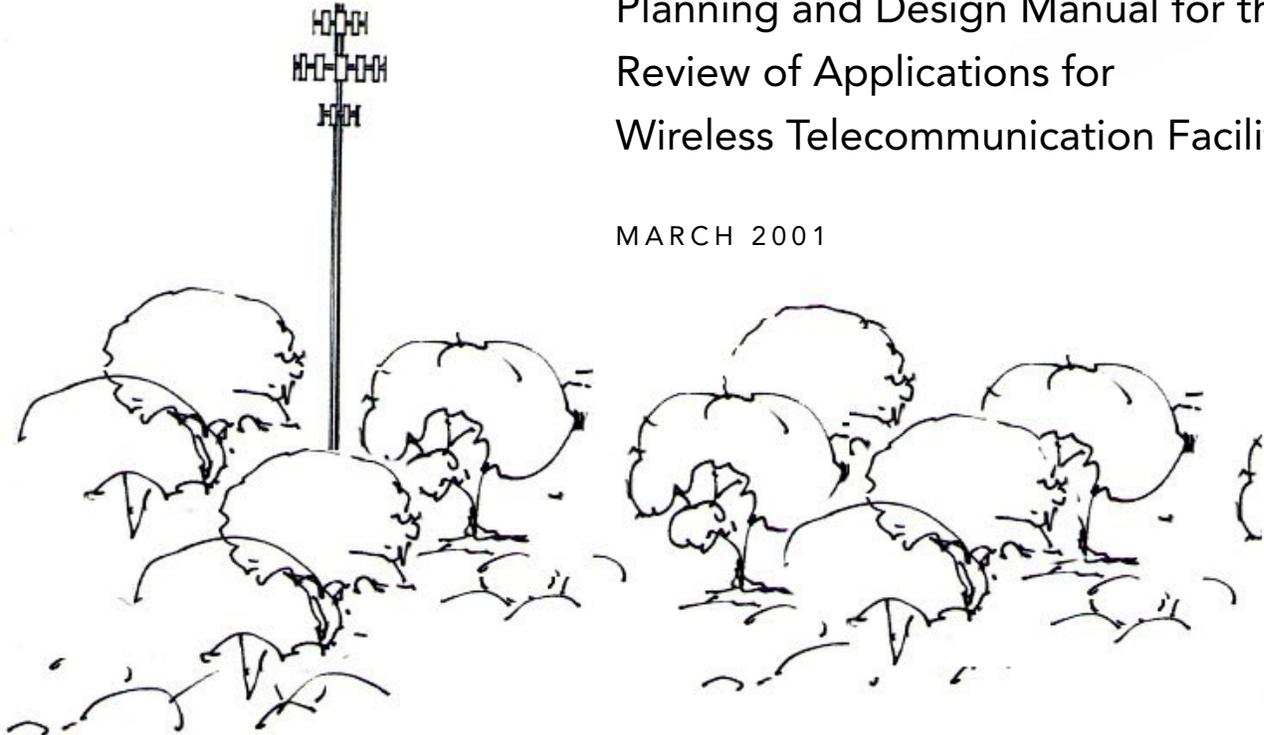
Planning and Design Manual for the Review of Applications for Wireless Telecommunications Facilities

A Practical Guide for Communities Managing Wireless
Telecommunications Facilities Siting in New York State



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Review of Applications for
Wireless Telecommunication Facilities

MARCH 2001



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NOTE:

This manual is intended to provide guidance and information. It is not a substitute for the advice of an attorney or planning consultant. New laws or cases decided after its publication may affect the content. The contributors to this report cannot accept responsibility for the use or interpretation of the information contained herein by other parties. Local governments reviewing applications or seeking to adopt regulations concerning wireless telecommunications facilities are encouraged to consult with legal counsel.



For a community to responsibly exercise its right to consider reasonable alternatives and to meet its obligation to support the provision of telecommunications services, it must acquire (at a minimum) a general understanding of how these systems function and how they are developed.

The wireless telecommunications industry and the growing demand for wireless services presents local municipalities with relatively new and somewhat unique issues. When compared to the usual list of impacts that are reviewed for land use proposals such as traffic, drainage, and water and wastewater services, the impacts related to wireless telecommunication systems are usually limited to visual and aesthetic concerns.

Those involved in land use decisions at the local level are not typically informed or educated in the area of telecommunications technology. Municipal civil engineers and consultants which boards normally rely upon for advice and direction often are not able to adequately understand and explain some of the technical issues. Further, local boards find it difficult to secure the professional help needed to understand potential visual and related impacts of a new facility.

For a community to responsibly exercise its right to consider reasonable alternatives and to meet its obligation to support the provision of telecommunications services, it must acquire (at a minimum) a general understanding of how these systems function and how they are developed. The process for review of telecommunications facilities applications can be a complicated task.

Municipalities need to obtain information from telecommunications facility applicants that:

- can be understood by board members and the public;
- is complete with all relevant information provided;
- is accurate and verified by technical documentation and independent review; and,
- is clear and not based on incorrect assumptions.

To obtain this information, the municipality needs to establish a collaborative relationship with the service provider. The municipality should also secure independent professional assistance to address the specific community planning, legal, aesthetic, and technical issues related to wireless telecommunications facility development.

Frequent changes in the names of companies and the continual changes in technology make it extremely difficult to plan or understand how a municipality might ultimately be affected by the build out of the wireless telecommunications system. The companies themselves seem at times unsure how these systems will ultimately develop. This apparent lack of foresight is often due to the complexity of industry dynamics and market conditions. On the other hand, there is considerable incentive for the industry to withhold information regarding future plans that might complicate and lengthen the decision-making process or compromise the applicant's legal or market position.

One thing seems certain, the technological and corporate landscapes are changing as rapidly as the physical landscape of towers, antennae, and supporting facilities. Communities will continue to be challenged to remain knowledgeable about developments that could have important local implications.



Purpose of the Manual

The purpose of this manual is to give municipal officials and citizens a starting point when reviewing an application for siting a wireless telecommunication facility. The goal is to help municipalities understand and plan for the siting process. This manual and the incorporated model review process and local laws are intended to act as an information bridge between communities and wireless communication service providers.

The “real-life” experiences and comments of community officials, citizens, and other experts are integrated throughout the document. It is hoped that the practical experiences of these community experts will make it easier for readers of this manual to develop the best siting and design techniques for their communities.

Context—The 1996 Federal Telecommunications Act

In 1996 the Federal Telecommunications Act was signed into law. While federal law establishes general criteria for the siting of telecommunication facilities, New York law also plays an important role. The authority over decisions for the siting of facilities was left to state or local governments to use within the parameters of state legislation. The relevant New York land use law will be discussed in a later section, but we will first analyze the key provisions of federal law.

The 1996 federal Act overhauled the existing federal communications law, which had been passed in 1934. Congress made sweeping changes in the law because of the great advances in technology. The Act opened the local telephone industry to competition, allowed telephone companies to enter into the provision of Internet service, allowed cable operators to provide telephone and Internet service, imposed standards for the installation of antennas and satellite dishes, and encouraged new services such as wireless communication and direct broadcast satellite to compete with traditional services. The Act also addressed the transmission of obscene material on the Internet and established funding for the development of technology in schools. The Federal Communications Commission has issued guidance documents and regulations which implement the Act.

The law in this area is not settled. New cases are regularly being decided by both federal and state courts. There are currently many conflicting lower court decisions on the issues discussed below and many of the cases discussed do not have precedential value in New York. Citations to important cases have been included in the footnotes. Your municipal attorney should be involved with any decisions to ensure that new cases have not significantly changed the law in this area.

The Federal Telecommunications Act of 1996 and a multitude of court decisions have established that simply saying “No” in response to applications for the siting of wireless telecommunication facilities is not an option unless such denials are in writing and supported by substantial evidence in a written record. However, these same decisions have reinforced local control over land uses. Municipalities that have planned for wireless facilities and have adopted appropriate regulations may negotiate the best alternate site and establish conditions of approval that will allow the service provider to obtain reasonable performance.

It is very important for local governments to be proactive by planning for



Important Note on Understanding Federal and State Case Law

The Telecommunications Act is, legally, a relatively new law. Many of its provisions are still being tested in the courts and courts in different parts of the nation have differing opinions on some of its provisions. This manual includes both federal and state court decisions that are relevant in New York at this time. Depending on what court issues a decision interpreting the Act, it may: 1) apply to all future cases with similar facts decided in New York; 2) not apply at all in New York; or 3) only be persuasive in New York, meaning a New York court or a federal court in New York only needs to take the decision into consideration in similar cases and would not be bound to follow it. When you read or hear about a case decided concerning wireless telecommunication facilities, before acting on it, your municipal attorney should be asked to review the case to determine how relevant it is to your municipality.

Towers Built on Speculation

There are towers being proposed by companies that do not have immediate plans for the installation of antenna (towers built on speculation). Companies who build these towers hope to lease space to providers. Since these towers do not fit under the definition of "personal wireless service facilities" in the federal Act, they do not receive the same treatment under federal law. They have no protection under federal law and likewise, would not be considered a public utility under state law. The definition of public utility in the case law has assumed that a service is being provided. Until the company shows proof of an agreement for attachment by a provider with FCC license approval, they are subject to the same zoning laws as non-wireless applicants.

Municipalities should require as part of the application process proof (such as a letter of intent from a provider) that the proposed tower will serve a wireless telecommunications provider with a valid FCC license to provide service to the area. Municipalities should consider how they want to apply local regulations to speculative towers, and to modify these regulations accordingly. Even if the municipality wants to encourage these types of towers in an effort to minimize the total number of towers, a separate definition and approval procedure should be provided. The existing zoning definitions should also be reviewed to determine whether these towers are allowed under the current regulations.

Municipalities should discuss speculative towers with representatives of the providers servicing its area. The providers may not have a need for a proposed tower to be built on speculation in the location proposed or, for other reasons, will not be able to use it. These concerns need to be raised by the board prior to any approvals, to avoid construction of a tower that is never used or is used by only one provider when it was indicated that several would be able to locate on it.



wireless telecommunication services. Your community will almost certainly receive an application for the placement of some type of tower or antenna. For those municipalities that have experienced this already, it is likely that there will be more applications in the future as the industry grows. The wireless telecommunications industry can play an important role in developing local legislation and resolving problems. There are competing concerns as the industry strives to build out its network as fast as possible while municipal leaders attempt to maintain community character and aesthetics. However, industry representatives also live and work in communities much like the ones in which they are trying to site facilities, and municipal officials and community residents are becoming increasingly dependent on the services that the industry provides. While disputes may not always be easily resolved, working relationships can be formed with the providers who are licensed to serve your area.

Bringing state and local government representatives together with industry representatives is encouraged to the extent that the Federal Communication Commission (FCC) has created the Local and State Government Advisory Committee (LSGAC). The LSGAC advises the FCC on issues of concern to state and local governments. In addition to submitting recommendations to the FCC on behalf of state, local, and tribal governments, the LSGAC has taken an active role in bringing representatives together to produce creative solutions to legal and regulatory issues that will promote the interests of consumers, governments, and the industry alike. The members of the LSGAC are a valuable resource to state and local government officials who have questions or comments about the FCC's rules and proceedings. The LSGAC maintains a Web site at www.fcc.gov/statelocal.

New York Law and the Public Utility Standard

The federal Act preserves local government zoning authority over the placement of wireless telecommunications facilities despite the restrictions placed on decisions. However, municipalities must operate within the constraints of state legislation on how zoning decisions are made. In order to regulate and make decisions about wireless telecommunications facilities, municipalities must first understand federal law and then proceed under the applicable state statutes. Municipalities may adopt regulations that allow wireless telecommunications facilities in districts as of right and require a variance in others, may place limitations on height and distance from property lines, may treat the placement of facilities as a special use, or may require site plan approval. The time periods and procedures provided in state law will apply as for other types of applications. Remember however, that all of these actions must be taken within the parameters of the federal Act discussed above.

The New York courts have developed an important standard relating to wireless telecommunications facilities. In New York State, public utilities are entitled to more lenient standards when applying for a variance and do not have to prove the statutory standards for variances. The Court of Appeals established the standard in 1978 in the case of *Consolidated Edison Co. of New York, Inc. v. Hoffman*.¹ To be granted a variance, the utility must demonstrate that the site is necessary to provide safe and adequate service and that there are compelling reasons, economic or otherwise, for the variance to be granted. Additionally, when the intrusion is minimal, the showing by the public utility should be reduced. In 1993, the Court of Appeals held that cellular telephone companies are considered public utilities.²

The 1993 decision left several unanswered questions. Most importantly, under the public utilities test, what is adequate service for a telecommunications provider? Until some more guidance is provided by the courts, there is no clear answer. Since there is no real guidance under state law for a municipality to determine if adequate service exists, when confronted with this question, it may be helpful for municipalities to review the presented evidence to determine whether there is proof of compelling reasons to obtain the variance, taking into consideration the level of intrusion into the community. A provider seeking a variance should present proof to the board that alternative sites have been considered and that significant gaps in coverage would still exist if a facility was placed on any of the alternative sites.³ A municipality should also consider the evidence presented on capacity and coverage weaknesses.⁴

If the municipality determines that there is no compelling

reason (i.e., the applicant has not illustrated a significant gap in coverage), it may deny the application without reaching the question of adequate service. In this situation, the municipality should be prepared to show in its denial the impact of the tower, alternatives available, and how those alternatives are viable options. If compelling reasons exist, the municipality will then have to consider whether the site is needed to provide safe and adequate service.

Municipalities should review their zoning law and local definitions. Many municipalities have zoning laws which define public utilities and offer preferential treatment. Wireless telecommunications facilities may fit into the local definition even when the municipality does not intend that result. The local regulations may provide more latitude in siting than even the case law, and should be amended if the municipality wants to avoid this result.

HOW WIRELESS WORKS



NOTE TO THE READER: A glossary of technical terms and acronyms is included as Appendix A in this manual for your reference.

Wireless telecommunications refers to the wide range of services provided by telecommunications companies intended to allow voice and data to flow to and from mobile users. The services take many forms but have in common a short-range two-way radio link to provide the connection between a mobile user and a nearby base station.

Part of the Telecommunications Act of 1996 involved the

reallocation of the radio spectrum for the purpose of providing wireless services. Potential wireless licensees were permitted to bid for the privilege of deploying and operating wireless networks in one or more service areas called “Major Trading Areas” (MTA) across the country. There are now multiple wireless service providers offering services in each MTA.

Each service provider is deploying networks and upgrading equipment and facilities for the purpose of meeting the growing demand for wireless services. New technology is also being deployed to increase the speed at which wireless subscribers can access data-intensive applications—such as

graphics, real-time video, and a host of high-end multimedia applications traditionally reserved for wired network connections. Some of the newer technologies require more spectrum allocations. More base station facilities are required to support the growing number of subscribers and the increasing need for higher data transfer rates. With these developments it is expected that service providers will continue to apply to municipalities for new base station construction and co-location approval (see Figure 1).

When a service provider establishes coverage in an area, part of the network design requires knowing how many subscribers are expected to use the service in each sector of their network (i.e., “cell”). When user demand approaches

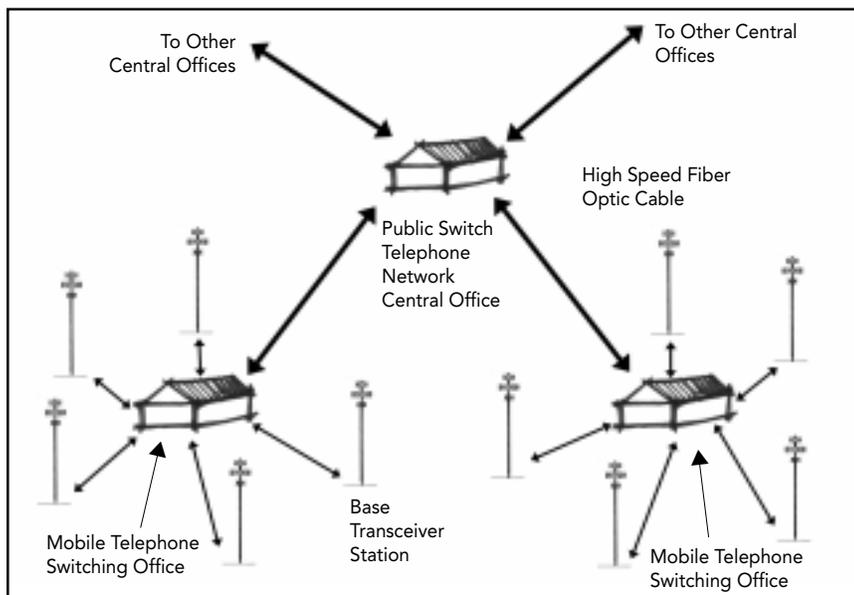


Figure 1: Wireless Telecommunication Network

capacity, the service provider may decide to add more channel capacity to the existing cell. This option may not be visually noticeable or it may just involve adding a few more antennas to the existing arrays. Once these options have been exhausted, the service provider may decide to split the cell into several smaller cells each of which has similar capacity over a much smaller geographic area (see Figure 2). When cells are split it can be expected that the heights at which the original antennas were mounted will need to be reduced. For tower mounted antenna arrays, this may allow the dismantling of upper sections of the original tower. In addition, shorter towers will then be needed near the center of each of the new cells.

So why are so many base station facilities with their antenna support structures being requested? The simple answer is that more subscribers are contracting for wireless service—over 100 million at the end of 2000 in the United States alone. But, there are also some technical and public policy issues driving the deployment of base stations spaced closer together.

For example, there has been a lot of recent publicity about the health effects of Non Ionizing Electromagnetic Radiation (NIER). Considering just cellular systems, users of mobile phones are exposed to much higher doses of NIER than non-users. However, that exposure comes primarily from the handset, not the base station. In an effort to reduce human exposure, the industry has limited the radiated power from some handsets to around 200 mW (0.2 watts). With lower power phones, the range of reliable communication is reduced and therefore more base stations are needed to cover a geographic area.

When operating at lower power, the battery life of the mobile phone will be extended. Cellular/PCS subscribers have been demanding this convenience. To accommodate such demands, service providers must reduce the distance from the base station to the mobile user—and that translates

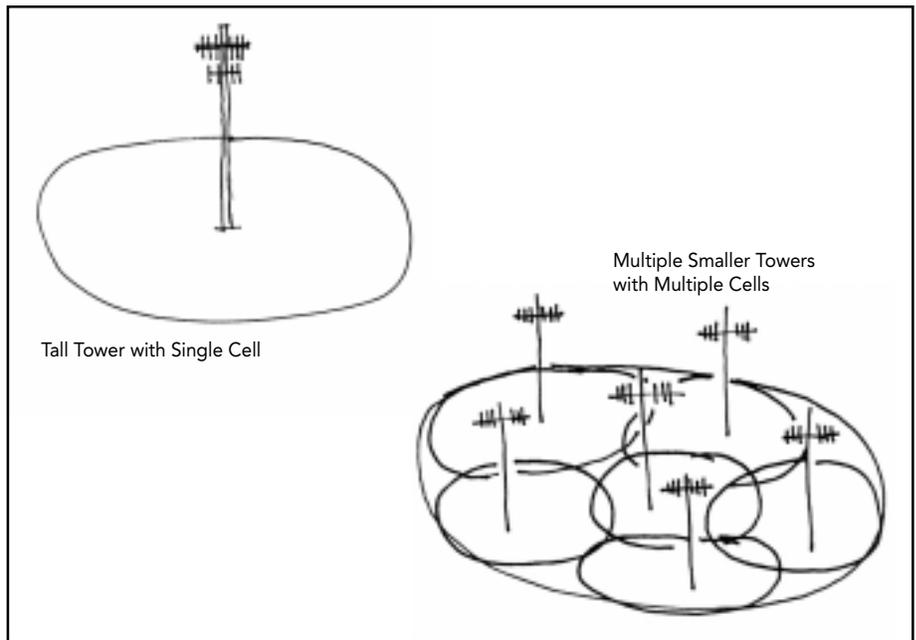


Figure 2: This graphic depicts how a taller tower can have similar signal coverage strength compared to multiple smaller towers.

to shorter base station spacing for new network build-outs and fill-in sites for existing networks.

Satellite-based cellular systems have been in development and in operation for several years providing global availability of phone service where no infrastructure (wired or otherwise) is available. At this time, none of the systems will provide the capacity to service the huge number of wireless subscribers currently using earth-based (terrestrial) cellular/PCS technology. In fact, satellite-based systems are designed to use the existing terrestrial network if it is available and will resort to direct satellite only as a last resort. For the purposes of this guide, satellite based systems should be viewed as a complementary technology secondary to the terrestrial cellular/PCS wireless network. New base station facilities are needed when a service provider either (1) initiates coverage in a geographic area, (2) needs to supplement inadequate coverage from existing base stations, or (3) when existing base stations no longer have sufficient capacity to handle the number of subscribers to be serviced.



HOW WIRELESS PROVIDERS SELECT SITES

Service providers design their networks to provide continuous service availability throughout a geographic area. While one objective is to “cover” a certain population area, to allow service subscribers to move throughout the area seamlessly, another objective is to provide sufficient capacity for

the number of users. Therefore, base station facilities will often be located near commercial areas and residences because that is where customers are located. With planning in advance and service providers working in collaboration with a community, a “fast track” may be established for either

single-cell sites or co-location.

When coverage or capacity is inadequate, the service provider considers positioning a new base station facility. In lieu of a new facility, the service provider may enter into a “roaming agreement” to allow its customers to use the existing facilities of another service provider. Capacity issues and the costs of such arrangements usually make this a temporary solution.

Choosing a site for a new facility is a multi-phase process for the service provider. The first phase involves identifying a geographic area called a search ring in which it is likely that a new base station facility will be able to cover the target area (see Figure 3). The service provider’s personnel or a contractor identify likely sites within the search ring that may be available for approval. Computer propagation predictions are made for each candidate site in order to determine viability, and the required antenna height for each proposed site is identified. Finally, a preferred site is selected and an application is prepared for local approval.

The technical documentation to support the need for a new facility at a particular location consists of computer generated propagation plots and field radio frequency (rf) drive test measurements. These are further described below. Network reports of dropped and blocked calls are also useful. Reports of dropped and blocked calls can be presented in various formats, but the objective is to demonstrate a history of cell performance that predicts inadequate capacity in plenty of time to take corrective action by cell splitting or implementing other capacity improvement techniques.

Propagation plots provide a visual map of predicted areas of wireless service coverage based upon a computer analysis using a “propagation model.” Generally the maps are color-coded to show areas of adequate coverage, marginal coverage, less than marginal coverage and no coverage for the following scenarios for each of the cells under consideration:

1. Existing coverage from operating or soon-to-be operating cells without the proposed cell’s contribution (see Figure 4 on p. 6).

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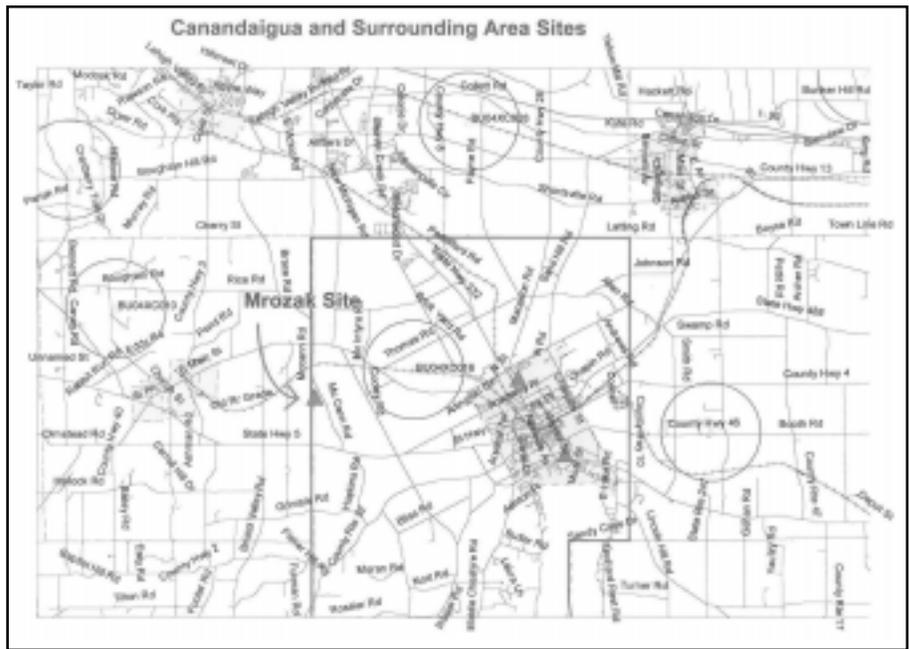


Figure 3: Search Rings

2. Existing coverage plus proposed coverage from the new cell for incremental heights if height is critical to the environmental analysis (see Figure 5 on p. 6).

A field radio frequency (rf) drive test, or simply a drive test, is a measurement process that experimentally determines the signal level achieved from an operating transmitter located at a proposed base station site. To allow interpretation, the rf drive test results are plotted on a map using a color-code scheme similar to that used for propagation plots (see Figure 6 on p.7).

To conduct an rf drive test, a test antenna is elevated to the test height by use of a crane or it is mounted on an existing structure. A temporary transmitter provides a test signal to the elevated antenna. The vehicle equipped with measurement instruments is driven around the roadways within the cell to collect samples of average signal strength at numerous locations. From this information, “path loss” can be extracted and used to determine expected signal strength from the proposed base station antennas. Since the measurement equipment is mounted in a vehicle, the data will only be gathered along the roadways that are accessible to the vehicle. The drive test should include all areas of the target coverage and be conducted when the vegetation is in leaf. Data can be gathered for existing coverage and for each incremental height of the test antenna. Field rf drive tests are not always needed and by themselves are not the complete authority on performance. However, they are particularly useful when local structures, terrain or other considerations cast doubts upon the accuracy of the computer propagation plots or when it is otherwise necessary to demonstrate “real-world” performance.

The results of these tests are also used to assist the wireless

telecommunication provider through the municipal approval process once it has selected its preferred site. To be useable to municipalities which are reviewing height requirements, both rf drive tests (when performed) and propagation plots should conform to certain minimum requirements. These are discussed in the *Frequently Asked Questions* section in the appendix.

In addition to asking why a particular location is necessary, people often ask why a tower is needed? The answer is that antenna arrays must be elevated high enough to allow both transmit and receive signals between the mobile phone and the base station to retain sufficient strength for reliable reception. Signals that are too weak prevent reliable communication. There are numerous ways that antenna arrays can be elevated. The most common, and generally the most controversial, is the construction of a special structure—a tower.

Towers designed specifically for antenna arrays fall into the general classifications of (1) monopole (2) self-supporting lattice and (3) guyed lattice. Monopoles are limited in height to about 170 feet. Self-supporting and guyed lattice towers are limited in practice by the available ground area for placement of structure and guy wire foundations. Current trends in the wireless industry are to cover cells that are a maximum of a few miles in radius. For this type of coverage the towers, when required, are generally less than 200' tall (see Figure 7).

Generally speaking, the taller the tower above the surrounding structures and foliage the more easily the rf signal will be projected to the edges of the coverage area. It is undesirable to project the rf signal from a base station farther than needed because doing so will lead to unreliable mobile operation and may potentially interfere with adjacent cells. For a given user population density, it may be necessary to restrict the cell size so as to limit the number of potential users in that cell. This scenario would then lead to a smaller cell diameter and a corresponding lower tower height. It should be noted that, due to the complex radio frequency environment encountered in cellular systems, there is not an accurate linear relationship between tower height and cell diameter.

In many communities, there may be existing structures on which the antennas can be mounted. When existing structures are not suitable, or in rural areas where existing tall structures are uncommon, new “stealth” structures can be sometimes be built on which to mount the antennas. Rooftop sites with facade coverings, church steeples, farm-like silo sites with hidden antennas, flagpoles with flush-mounted antennas and fake trees with the antennas camouflaged by the artificial leaves are just some of the creative possibilities for making cellular antenna arrays “disappear”. Of course, 200-foot trees are unusual, so careful

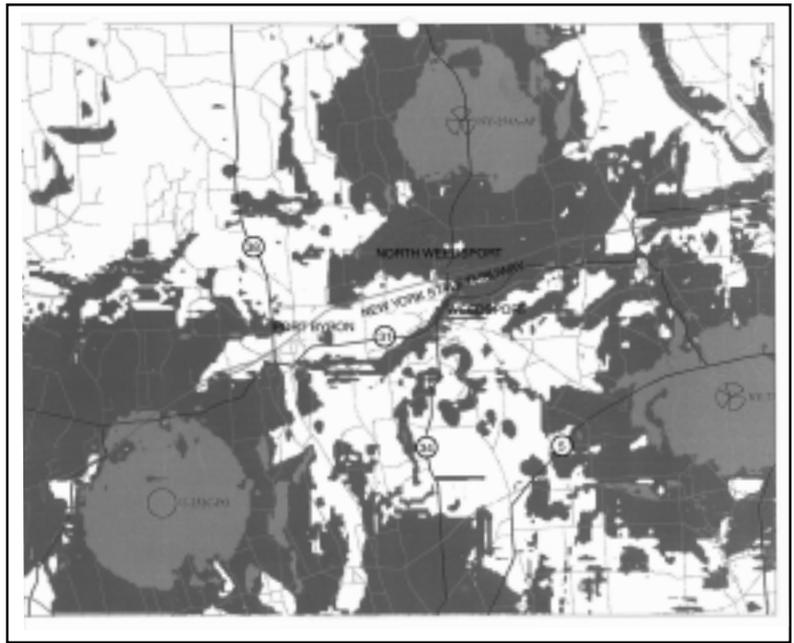


Figure 4: This map shows existing coverage strength of a wireless signal. The light gray indicates existing in-building coverage. The dark gray indicates existing in-vehicle coverage. The white areas indicate less than acceptable in-vehicle coverage. Applicants should provide color maps that have legends and are to scale.

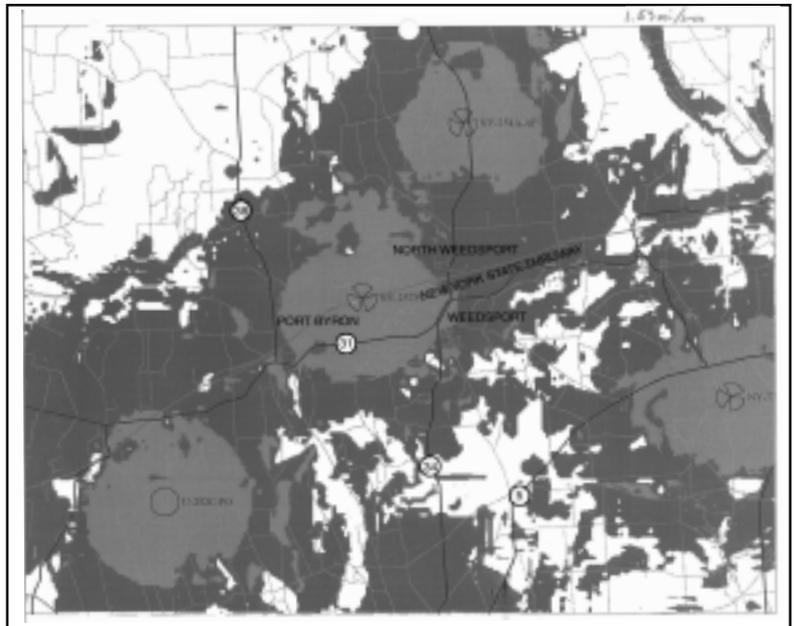


Figure 5: This map shows proposed coverage improvements of a wireless signal. The light gray indicates existing in-building coverage. The dark gray indicates existing in-vehicle coverage. The white areas indicate less than acceptable in-vehicle coverage. Applicants should provide color maps that have legends and are to scale.

consideration of the surrounding area should be made to identify what might fit in and what may otherwise visually stand out more than a tower. (See *Basic Principles of Design* later on in this manual.) Some municipalities have required camouflage painting of towers to help them blend in better with the surroundings. Imagination and creativity are the only boundaries in making cellular antennas and their

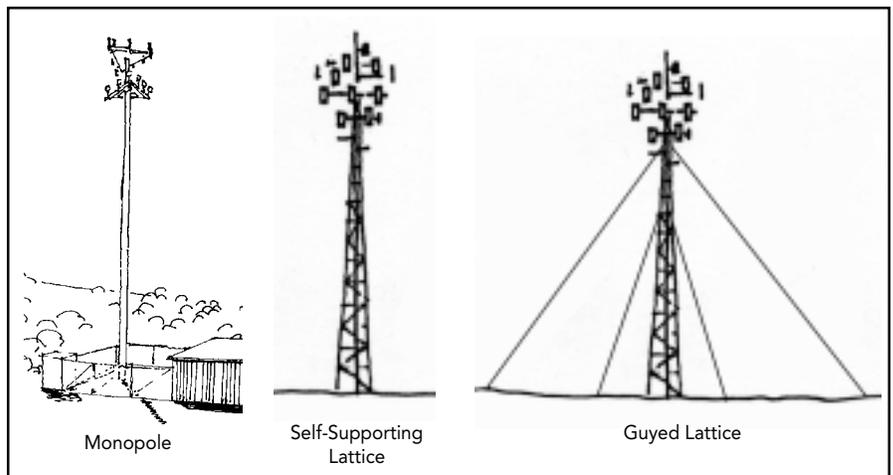


Figure 6: This map graphically depicts the rf-drive-test results for a proposed wireless facility. Applicants should provide color maps that have legends and are to scale.

support structures part of the scenery.

Co-location (the practice of mounting and locating the antennas and equipment for more than one service provider at the same base facility site) is another siting option. There are both legal and technical considerations related to co-location. In terms of technical feasibility, service providers are licensed to operate within certain bands of the radio frequency spectrum. The “cellular” band is located around 900 MHz (Mega-Hertz) while the “PCS” band is located around 1900 MHz (Hz is the unit of frequency and the “M” in front indicates a factor of one-million). Concerns about co-location relate to (1) interference between the multiple co-locating service providers, (2) mechanical mounting of the antenna arrays without blocking transmission and reception and (3) mechanical and wind load on the mounting structure. In most situations, two service providers—one operating in the “cellular” band and the other in the “PCS” band—can locate their antennas at the same height and proximity without interference. They are limited only by the mechanical mounting (physical) requirements of their hardware. When two “cellular” or two “PCS” service providers are to co-locate, there is a need to physically isolate their antennas from one another. This is most often accomplished by specifying the “tip-to-tip” separation from the other antennas. Typical “safe” separation is 10 feet tip-to-tip, but closer spacing is possible if other techniques are used.

Figure 7: Pole Classifications



LEGAL ISSUES INVOLVED WITH CO-LOCATION

Many local governments have adopted zoning laws that require or encourage co-location of wireless telecommunication facilities. While there are many benefits to encouraging co-location, when co-location is required pursuant to a zoning law this may violate the provisions of the federal Act which provide that local governments shall not unreasonably discriminate or have the effect of prohibiting service.

There are several reasons that a local law requiring co-location could give rise to a claim under the Act. The provider that owns the tower may charge unreasonably high rates to the provider required to co-locate, placing existing tower owners at an unfair advantage. Locating antenna on an existing tower or building may not provide the coverage the provider is seeking for its customers or the tower may have too many antenna already installed that would interfere with service.

While a municipality cannot require co-location in every instance, they may encourage co-location by local law or deny an application for construction of a tower because reasonable and technologically feasible co-location opportunities exist. In *New York SMSA Limited Partnership v. Town of Clarkstown*⁵, three providers applied to the town for the construction of towers. The town’s zoning law encouraged co-location. The planning board decided to allow only one company to construct a tower on which the other two could co-locate. This decision was made based on reports issued by the town’s telecommunications consultant who advised the board that all three providers would be able close significant gaps in coverage with the chosen location. The court did not find a violation of the Act since the co-location was a feasible option for the providers and the providers would be able to close gaps in coverage.

In another jurisdiction, a municipality’s denial of the



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structures are uncommon, new "stealth" structures can be sometimes be built on which to mount the antennas. Rooftop sites with facade coverings, church steeples, farm-like silo sites with hidden antennas, flagpoles with flush-mounted antennas and fake trees with the antennas camouflaged by the artificial leaves are just some of the creative possibilities for making cellular antenna arrays "disappear".

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construction of a tower was upheld when the provider would not consider co-location. Co-location and alternative sites were not discussed as an option and the provider merely presented evidence that they considered construction of a new tower a better business option.⁶

Municipalities can encourage co-location through a local law that provides incentives such as an expedited review process. When a provider chooses not to co-locate, the municipality should request an explanation during the application process as to why it was not considered. Any denial based on refusal to co-locate should be supported by substantial evidence showing co-location as an economically and technologically feasible alternative.

The current public policy climate in New York State finds service providers seeking the best ways to obtain needed coverage and capacity while best meeting the requirements of the communities and neighborhoods in which base station facilities are to be constructed. Numerous discussions among service providers and municipalities have led to the unmistakable conclusion that pro-active consideration of the visual and environmental factors that surround such siting are best considered early in the process so as to decrease the time it takes to obtain zoning approval. Since every technically viable site is not an acceptable site to the community, the ideal approach is to have each municipality identify where they prefer to see telecommuni-

cations facilities and then provide this information then to the service providers prior to the identification of potential sites. At the same time, service providers should provide short and long-range build-out plans to facilitate planning by the municipality. Planning in advance for wireless telecommunications can balance the needs of the service providers and the community, and help reduce the tension that sometimes accompanies applications to site wireless telecommunication facilities. The primary responsibility for planning in New York State rests with local governments. How this can be accomplished is the subject of the following section.



Carefully consider the full implications of co-location, especially where a large number of providers are competing for larger numbers of customers. While co-location can reduce the number of sites, it will tend to make the remaining sites taller and more obtrusive. Co-location may be preferable in some instances (e.g., rural area with flat topography). Some communities may prefer a larger number of facilities that are lower and more easily camouflaged or otherwise blended into the surroundings.

PLANNING FOR WIRELESS



Planning ahead for the deployment of wireless telecommunication facilities will help to ensure that your community will not be caught off guard by new applications for base station facilities. By determining in advance where the community would prefer to see towers placed, and then amending or adopting land use regulations to reflect these preferences, a great deal of potential controversy may be avoided.

The most successful planning efforts involve residents and industry representatives working together to find the most appropriate solutions for each individual community. Encouraging industry participation can be a difficult but worthwhile effort. The wireless telecommunications business is highly competitive and, as a result, service providers are often in contact with one

Example: Town of Smithtown, New York

Smithtown decided to be proactive in addressing the needs of the wireless industry rather than reactionary. According to its Wireless Master Plan Summary, "Smithtown's officials have made the following commitment: (1) Wireless regulation is a long-term strategy rather than a case-by-case, hit-or-miss series of tactics and (2) it is an exercise in municipal planning and zoning, not the physics of radio frequency propagation." This approach, while it places much emphasis on planning, may not be practical for all communities. However, it raises an important question in how a community wishes to plan for its future.

A very important question is raised for communities: How many providers might exist in the future and how many customers might they be serving in any one community?

This is a very difficult question for local boards to obtain answers to—in particular when the service providers don't have (or don't provide) detailed long-term facility plans outlined for their networks.

another only when co-location of sites is proposed. In order to anticipate service provider needs and facilitate municipal planning, some municipalities request all service providers who plan on filing applications to submit a 2-year build-out plan. The build-out plan should include propagation plots of existing coverage over the geographic area of the municipality and five miles beyond the border. This information alerts the municipality of future base station needs even if those sites are not to be built right away, and provides insight into how decisions on current applications may force more restrictive site locations in the future.⁷

Planning for wireless telecommunication facilities can take place in the context of an update of the community's comprehensive plan. A comprehensive plan outlines the community's vision for the future, areas for resource conservation, and targeted areas for growth and development. An important component of the comprehensive plan is the inventory and analysis. Because this plan element identifies specific natural and cultural features and their landscape characteristics, it can be used to help determine what areas are suitable or unsuitable for the siting of wireless telecommunication facilities. Resources that are of highest value to a community will vary from place to place. They may include a particular historical site, a natural feature such as a ridgeline, etc. These are the places and the characteristics of the locality that should be preserved. Understanding what these resources are, and where they are located, is a critical first step toward the development of a wireless telecommunication facility siting policy.

A community's comprehensive plan will usually contain an implementation section which outlines key steps necessary to realize the community's future vision. These steps may include the development of additional area or topic-specific master plans such as a wireless telecommunication master plan.

A wireless telecommunication master plan should incorporate several elements, whether pursued as a result of a recommendation in the community's comprehensive plan, or as an entirely separate effort. It should document values and characteristics the community wants to preserve, identify opportunities and constraints, discuss the visual impact on

the community (perhaps as a result of a visual impact analysis), examine design options, and consider safety, monitoring and maintenance, and the use of public sites. The plan should provide a map that clearly illustrates areas which are potentially suitable or unsuitable for the siting of wireless facilities. The map should be generally based on an inventory and analysis of a community's natural and cultural resources. Local officials may then decide whether to revise municipal regulations to support the findings of the wireless telecommunication master plan. These revisions may be minor, or may involve a major revision of several existing provisions.

For the community, the benefits of this approach are clear. However, there are also significant benefits for the wireless telecommunications industry. The master plan and subsequent land use regulations provide wireless carriers with a clearer understanding of the community's expectations.

Several model regulations have been developed to aid communities in reviewing proposed personal wireless service facilities. This document contains one example along with a list of others a community may want to review prior to creating its own law. (New York State Planning Federation Model Telecommunication Towers Regulation for Municipalities, found on their Web site www.nypf.org.) In addition, this document contains a model review process which can be used by communities to review applications for special use permits and site plans.

Moratorium

A moratorium is a temporary freeze on the issuance of building permits or other development approvals while a municipality considers and potentially adopts changes to its land use regulations. Under existing case law in New York State, local governments have the authority to enact moratoria.⁸ The moratorium cannot exceed a reasonable time and must be designed to halt development only while the municipality considers the adoption of legislation or a study of the issues. In addition, all procedural requirements must be met for the enactment of the local legislation including the possibility of mandatory referral to the county under General Municipal Law §239-m.

Some local governments will enact moratoria when they have knowledge of a potential application or have received an application for the construction of a wireless telecommunication tower in the municipality and have not yet developed legislation for their placement. Likewise, a municipality may consider a moratorium if it has already enacted legislation but realizes that it conflicts with the FCC guidelines.

While municipalities in New York State have successfully used moratoria for several years when working on land use issues, because the regulation of wireless facilities is also governed by federal law, locally enacted moratoria have been challenged by wireless providers as a violation of the federal

Act. The federal Act does not specifically discuss the use of moratoria by local governments, so providers have looked to the courts to question their adoption. In one of the first cases decided under the Act, a federal district court in Washington found that the federal Act did not preempt a municipality's authority to impose a six-month moratorium on the installation of a wireless telecommunications tower as long as the moratorium was adopted for a legitimate purpose.⁹ It is always best to have considered the issues ahead of time and planned for the arrival of a tower, but for those municipalities that have not, moratoria on the construction of wireless telecommunications towers are still permissible if certain standards are met.

For a further discussion of moratorium, including a review of the procedural requirements that must be met when enacting one, see the Department of State publication, *Land Use Moratoria*, James A. Coon Local Government Technical Series, January 1999, available at www.dos.state.ny.us or by calling 518-473-3355.

Federal Agreement on the Use of Moratoria

Because of the increased use of moratoria after passage of the federal Act, in 1997 the FCC initiated a rule-making proceeding to preempt local moratoria at the request of the Cellular Telecommunications Industry Association (CTIA). In 1998, the Local and State Government Advisory Committee of the FCC entered into an agreement with wireless industry representatives providing that moratoria for a short, defined period would be acceptable. After reaching agreement, the CTIA withdrew its petition calling for preemption. This agreement is not binding on any municipalities, but should be

considered by any municipality when enacting a moratorium.

The agreement recognizes that a moratorium may be appropriate if a local government needs time to review or amend its land use regulations but emphasizes that moratoria should be lifted as soon as possible. The first part of this agreement sets forth guidelines for municipalities and carriers to follow in connection with moratoria. The agreement provides that municipalities will work together with wireless providers to consider the issues involved and that moratoria should never be used to prevent or discourage placement of facilities and equipment. Additionally, the agreement suggests that all moratoria should be for a time certain and recommends that 180 days would be appropriate. The agreement also provides that the local government will continue to accept and process applications during the pendency of the moratorium.

The agreement also establishes a non-binding alternative dispute resolution procedure that either carriers or municipalities may invoke when moratoria or other delays seem to be adversely affecting the siting of wireless telecommunications facilities. Each case will be referred to a local government and a wireless industry representative chosen from a pool of volunteers. However, if a dispute proves to be difficult, parties are not foreclosed from seeking the legal remedies they feel are necessary. Any local government seeking to invoke the dispute resolution process should contact the Wireless Bureau of the FCC. The full text of this agreement can be found at www.fcc.gov/wtb/siting/ or by calling the FCC Commercial Wireless Division at (202) 418-0620.

A model local law to establish a moratorium is provided in the appendix.

TELECOMMUNICATIONS FACILITIES DEVELOPMENT: A PROCESS MODEL FOR REVIEWING APPLICATIONS



The process of reviewing applications is perhaps the most important part of this manual. It is through this process that the public and the telecommunications industry interface directly in the development of new facilities. It is during this process that the local review board must exercise its judgment in approving, disapproving, or approving with conditions each application.

As has been evident throughout this manual, the telecommunications facilities are a unique creature in terms of land use control law in New York State. This section of the manual provides a clear “walk through” of a suggested process

to be used by the municipality—from initial contact by the applicant to the construction and operation of the facility. This section integrates a pre-application process, the review of a complete application, and the formation of a decision. It is based upon several years of experience using the process model that has been successfully applied and refined by the Town of Pittsford, a suburban community in the Rochester metropolitan area. Experiences from rural and urban communities have been integrated into the process model. The model incorporates a fair amount of communication and background research before a formal application process

begins. This has been found to be most effective in “fast-tracking” an application once it has been received.

This section has been written for both communities with zoning and without zoning. It assumes there is some discretionary review provided, either through a special use permit process (a zoning provision) or a site plan review process (need a site plan review law, but zoning not necessary). This process model should be reviewed, and modified to fit your community’s project review practice, preference, and local regulations. The model establishes a collaborative relationship between the applicant and the community. A flowchart is provided to outline each of the key steps in the process.

This process model is intended to help municipal boards understand the major elements that should be considered in the review of telecommunications facilities. It is not intended to be the sole source of information on processing applications for telecommunication facilities. Please be sure to cross-reference your community’s review process with the related laws and regulations, such as the state environmental quality review act regulations (SEQRA) and state municipal law. This can be a complex issue and municipalities are encouraged to secure appropriate professional legal, planning, and design advice to help them with these applications.

The following outlines a recommended process for reviewing applications. An informal review process does not have to be required by the municipality, but is recommended to be followed to help advance the review of the project. This up-front work will streamline the formal process, which begins with the submission of an application for a telecommunication facility. The formal application and review process must be outlined in the municipality’s regulations. (A model law is provided in the appendix.)

Pre-Application Conference

The municipality should encourage service providers to schedule a pre-application conference to meet with the municipality’s staff to discuss the proposed project in general terms and to clarify the application requirements. The conference should be informal. However, the applicant should be encouraged to bring preliminary materials to the conference to inform staff (and/or a review board member) of siting information (such as the search ring map and location options of the proposed facility).

The general purpose of the pre-application conference is:

- To find out what the applicant has in mind on an informal basis.
- To explain the municipality’s standards, and procedures.
- To provide the applicant with the application form and list of items to be submitted with the application.

The applicant can facilitate the approval process by learning as much as possible about the community’s approach to siting facilities. Frank discussions early on can help

This process focuses on the visual impact aspects of a project. Unlike most site plan and special use permit reviews, which often focus on traffic, drainage, and site development issues, the major issue associated with telecommunication facilities development has been visual impact.

The municipality should consider designating a team to help manage the review process. The team should include a staff representative, point person from the reviewing board, a radio frequency engineering consultant and the applicant. Special assistance may also be needed from an attorney and a landscape architect or certified planner.

reduce the time and expense involved with the approval process. A community’s initial reaction to the application may lead the applicant to find additional ways to soften the visual or other potential impact of a proposed facility, or to concentrate on a site that is less sensitive. The municipality should respect the confidential nature of information provided by the applicant at this early stage.

The municipality should provide applicable zoning regulations, site plan review requirements, comprehensive plan, any specific regulations addressing telecommunication facilities, and a map of existing telecommunications facilities. The applicant should provide the municipality with a map showing the applicant’s entire FCC-licensed service area and a copy of the FCC-issued license. A general description of the proposed project should be provided, which includes:

- Type of service and facilities to be provided;
- Size of the major trading area (overall network area) within the municipality and five miles beyond licensed by the Federal Communications Commission (FCC); and
- Size of the area to be served by this project.

The applicant should discuss with the municipal representative the benefits to be derived from the project, including as appropriate:

- General service improvements to the provider’s customer base;
- Need for and/or improvements in emergency communications;
- Upgrading of necessary infrastructure, if any, for other business development, and;
- Elimination of redundant facilities and/or equipment.

Municipal representatives must be clear that no decisions can be made by the municipality during the pre-application process.

Development of Alternatives and Selection of Preferred Site(s)

This step, mainly accomplished by the applicant, examines potential sites. A process is outlined for comparing alternative sites. A key element of the comparison is looking at potential visual impact through a viewshed analysis. Using the viewshed analysis and analysis of the expected technical

A viewshed is simply the area from which the facility would be visible. A viewshed map depicts the extent of this area.

(radio frequency) performance of the alternative sites, a preferred site is selected. The preferred site becomes the subject of a formal application for approval by the municipality.

The municipality should conduct an informal meeting with the applicant to review the viewshed analysis studies. It is appropriate for the municipality's technical and visual consultant to be present at this meeting. The municipality should consider the following criteria:

- Is the applicant making a concerted effort to propose a structure at the lowest height technically feasible?
- Did the applicant try to co-locate on existing structures?
- Did the applicant propose to site the structure in a location with consideration to visual and other impacts? (See Basic Principles of Design following this section.)
- Did the applicant fully understand the municipality's applicable regulations?

The municipality should ask the applicant to describe efforts to identify and evaluate opportunities to co-locate the proposed electronic communication facility on other existing towers, buildings or other structures (e.g., water tanks). The municipality should ask the applicant to provide the names, addresses and telephone numbers of the current owner(s) of those structures. If the applicant doesn't intend to use an existing structure, the applicant should explain why. If they do intend to co-locate, their decision will be reviewed during the formal application process.

Limitations on Review of Alternate Sites

Except for projects that are undergoing review under an environmental impact statement process, only one site may need to be evaluated—however, the applicant is at some greater risk if the municipality finds reasonable cause to deny the application. For telecommunications projects being reviewed as a special use permit under their local zoning regulations, the community may have authority to consider alternative sites (consult legal counsel as to the limits of your local authority for the particular case at hand).

Impact on Service

When making decisions for special use permits and site plan approval, the local review board must consider the decision's impact on service. The community cannot prohibit the development of facilities in general, nor can it discriminate against providers of functionally equivalent service.

If co-location is not proposed, the applicant should identify a reasonable number of alternative sites that meet technical requirements and meet municipal zoning/land use requirements. For each alternative, the applicant should briefly describe the proposed tower, antennae, and support facilities as follows:

- Size (height above ground level to the top of the tower and to top of antennae, dimensions of all components, including base and top dimensions);
- Type (e.g., self-supporting monopole, guyed tower), materials and color of the tower;
- Number, type (e.g., dish, whip, panel), size (e.g., height, diameter);
- Configuration and sizes of the tower foundation and antennae supports (e.g., cross arms, guy wires, antennae mounts);
- Lighting or striping as an air navigation hazard, if required; and
- Equipment shelter.

Also, the applicant should describe any other alternatives that were evaluated, including:

- Other geographical sites within the proposed service area;
- Use of different tower and antennae types, heights and configurations at the proposed site and other geographical sites within the proposed service areas; and
- Use of other technologies.

VIEWSHED ANALYSIS

The municipality should ask the applicant to provide a viewshed map for each alternative site. The purpose of the viewshed map is to identify those locations within 5 miles of each proposed site where there is a relatively high probability that the proposed facility will be visible. The viewshed map is to be based on the proposed structure height at each location, above an identified base elevation in feet above sea level. The resulting viewshed map defines the maximum area from which the tallest element of the completed facility could potentially be seen within the study area (ignoring the screening effects of existing vegetation). Foreground (0 to 0.5 mile), middle-ground (0.5 to 3.5 miles), and background (3.5 to 5 miles) should be delineated on the map.

The applicant should review the viewshed data and select a preferred alternative site based on the lowest potential visual impact and the technical and economical feasibility.

Legal Issues Involved with Application Procedures

There are several kinds of information that the municipality may wish to receive during the application process but the provider feels is proprietary business information, such as private lease agreements or the provider's build out plans. The Act and case law are silent on this subject. Generally, any information required by a municipality should be reasonably related to the purpose of the zoning law. To avoid legal challenges, the municipality should only require the information that is necessary for the board to make a decision. Proprietary information received by the municipality would be exempt from disclosure under the Freedom of Information Law. In the case of a private lease agreement, it may only be necessary to require verification that there is a lease; who the lease is with; who is responsible under the lease for maintenance, damage, and abandonment of the tower; and whether co-location will be allowed. While a build-out plan may be extremely useful to a municipality, providers are unlikely to agree to offer the plan. Alternatively, the municipality could require a description of the area served by the provider, its existing capacity and weaknesses, how the particular site was chosen, and how a facility at that location will improve service.

Signal propagation studies for the preferred location at the proposed tower and antennae height, as well as alternative antennae heights and/or sites, should be considered as well. A detailed explanation which supports the selection of the preferred alternative should include:

- the demonstrated need for the service;
- environmental, visual and site impacts;
- and initial development and life-cycle costs;
- and an explanation of why the alternative sites were not preferred.

At this point, the “proposed action” has been clearly defined. This is important information that will be required for compliance with the state environmental quality review act. With the preferred alternative site selected by the applicant, the formal application process can now begin.

Municipalities may not always be able to charge applicants the actual cost for consultant fees. However, a municipality may pass a local law that would establish fees based on the average costs incurred for reasonable and necessary expenses in reviewing an application. If your municipality already has a fee schedule for zoning or planning applications, you may wish to amend the schedule to establish fees for wireless telecommunication facility applications taking into consideration expenses necessary for the board to make a decision. If there is no existing fee schedule, the municipality may want to consider including a section on fees in any local legislation on these facilities.

Formal Application for Approval

■ IDENTIFY THE LOCAL REVIEW PROCESS

The application must be submitted in accordance with the local regulatory requirements. The following regulatory tools are some of the most commonly used by municipalities:

- **Zoning and site plan review**—The zoning regulations will establish the zoning district(s) in which the facility is permitted. In this situation, if the community has a site plan review requirement, a site plan review process would be initiated. This process will be essentially no different from any other site plan review undertaken by the board—except that the technical issues will be unique to telecommunications facilities.
- **Zoning and special use permit**. When the municipality's zoning regulations only allow the telecommunication facility development with a special use permit, then the special use permit review process would be followed. (Some communities also require site plan review in addition to the special use permit process.)
- **Variations**. There may be times when zoning regulations prohibit a communications provider from locating a facility in one of the zoning districts. In this case, the applicant must apply for a variance from the local zoning board of appeals.
- **Site plan review and no zoning**—For municipalities that have established a local law authorizing site plan review (and no local zoning law), simply follow your community's established process.
- **Licensing**—Some municipalities have a stand-alone licensing provision for telecommunications facilities, some combine licensing with the above tools. Follow those processes as appropriate.
- **Subdivision**—New telecommunications facilities development on open land may involve the creation of a separate parcel for the new facility. This subdivision of land would require approval by the local board responsible for approval of the subdivision plan (usually the planning board). The subdivision approval process may also include one or more of the above-referenced approvals for the telecommunications facility. Follow your community's process for review of

subdivision plats and coordinate the other reviews as necessary and appropriate.

■ DETERMINATION OF A COMPLETE APPLICATION

The municipality must determine that the application and supporting materials are complete to initiate the application process.

The application should include information on the following:

- The applicant, representatives of the applicant and the property owner(s).
- Site description, including natural and man-made features.
- Site plan including proposed facilities, supporting structures, access, and plantings.
- Site access, utilities, construction and operation.
- Telecommunications data including map of search ring, propagation plot, and rf test drive results.
- Visual impact assessment and mitigation report including visual simulations of facility.
- Description of other permits required as applicable (curb cuts, Federal Aviation Administration [if applicable]), etc.
- Copy of the FCC license.

The application must also include an environmental assessment form for state environmental quality review act (SEQRA) compliance, most likely a long form.

■ READING THE SITE PLAN FOR A TELECOMMUNICATIONS FACILITY

Review of the site is an integral part to the application review process. The following identifies some of the key questions and requests a review board should consider when reviewing an application:

- Did the applicant show on the site plan the point on the property where the wireless facility is to be constructed?
- Did the applicant identify standard survey information, such as existing property boundaries, topography, easements, adjacent structures and the extent of vegetation on the site?

Public Utility Standard

As discussed in the first chapter, New York courts have developed more lenient standards which apply to wireless service providers seeking a variance. Rather than meeting the tests established by statute, the utility must demonstrate that:

- the site is necessary to provide safe and adequate service and that there are compelling reasons, economic or otherwise; and,
- that alternative sites were considered which would not provide adequate service; and,
- that the intrusion of the project into the community was minimal relative to the community as a whole.

The model law in the appendix authorizes the review board to establish application submission requirements necessary and appropriate for the review of the project.

- Did the applicant show the proposed access to the facility, including road alignment, width, and road surface type, etc.?
- Did the applicant identify construction parking and storage areas?
- Did the applicant identify other environmental resources on or adjacent to the site, such as water bodies, wetlands, historic structures, etc.?
- Did the applicant include graphic construction elevations of the proposed facilities? Details in the elevations should include facility height dimensions; descriptions and dimensions of the surrounding vegetation (for example, tree species); descriptions and dimensions of fencing around the facility; descriptions of the facility construction (e.g., monopole, lattice, building exterior materials, roof pitches, etc.)?
- Did the applicant include descriptions and locations of mitigation (e.g., planting of vegetation, etc.)?
- Did the applicant propose to site the structure in a location with consideration to the design elements of line, form, texture, background and color? (See Basic Principles of Design.)

■ VISUAL ASSESSMENT

The applicant should provide a visual inventory and analysis using the visual analysis methodology provided in the appendix. The analysis should enable the review board to understand the potential visual issues surrounding the development of the facility. This information which is provided directly addresses concerns shared by the general public. It should include:

- A description of the natural and manmade character of the area, including identifying streets and highways, roads (residential, commercial, etc.), vegetation, land use, and visually sensitive sites, including parks, historic sites and public access facilities (e.g., trails, boat launches) within a five-mile radius of the proposed project site. Characterize the type and density of development.
- A list of key viewer groups (e.g., residents, hikers, motorists, campers, canoeists).
- Identification of key viewpoints, such as public roads; recreation areas—such as parks, historic sites, lakes and rivers; residential developments.
- Whether or not the viewing points are stationary or moving (such as along a roadway, hiking trail or water route).
- The width of the field of view and the horizontal viewing angle.

The application process must comply with the state environmental quality review act (SEQRA). The lead agency must be determined—and will most likely be the board issuing approval for the application. The lead agency must make a determination of environmental significance and determine whether or not an Environmental Impact Statement (EIS) must be prepared. If a positive declaration is issued, the application is only considered complete upon filing of a Notice of Completion of the Draft EIS.

- Whether or not the view is through vegetation or open area.
- The duration of the view.
- What other natural and manmade features are seen by the viewer in foreground (0 to ½ mile), middle ground (½ to 3 miles) and background (3 to 5 miles) views.
- A visual analysis site map, line of site profiles, and visual simulation photographs keyed to the site map consistent with visual analysis methodology (see appendix on visual impact assessment).

■ **IMPACT MINIMIZATION**

Impact minimization is the most important role shared by the local review board and the applicant during the application review process. Both parties need to work together to consider alternatives (such as height of the facility). It may take several meetings and give and take between the parties to achieve mutually acceptable solutions. This section outlines the major tasks to be accomplished by the applicant, with guidance by the local review board, toward impact minimization.

The applicant should describe efforts to minimize visual impact. If this objective cannot be accomplished in some instances, the applicant should explain why it is not technically feasible, providing substantial evidence to support this claim. The local review board shall consider these efforts and may require additional efforts if there is a reasonable basis for

Time Periods

The local review board must follow local and state statutory time periods and must make a decision within a reasonable amount of time. However, a series of meetings and requests for additional information for purposes of review under the state environmental quality review act does not automatically violate this provision when normal review procedures are followed.

such requirement. The following are some of the more practical methods to be considered by the applicant and local review board. This list is not an exhaustive list of methods, nor is it expected that all of these techniques will be applicable to a given application.

- Avoid ridge lines where the tower will be silhouetted against the sky. The tower and facilities should be back-dropped by existing trees and topography.
- Minimize the height of the facility.
- Limit the amount of vegetation that is removed to provide maximum screening. The equipment shelter may be separated from the tower to maintain vegetation near the tower.
- Locate the tower in areas of existing tall trees and provide an effective year-round landscaped buffer that is under the control of the landowner or lessee.
- Use existing roads or driveways for access rather than constructing new roads and driveways.
- Screen the tower with walls, columns or other building elements and/or plantings as appropriate to the setting.
- Use color to blend the towers or antennae with its surroundings.
- Use different tower and antennae configurations, for example, a monopole rather than a guyed wire structure. Tower and antennae may be camouflaged, located on a building, and may even have the potential for other appropriate “stealth” design.
- Locate the tower so that if there is a failure of the structure it will not impact adjacent land uses.

If the visual impact analysis reveals that there is vegetation on or adjacent to the project site that must be retained for screening of the proposed tower/antennae, the applicant should document how such vegetation will be protected throughout the operational life of the project. For example, it could be protected by acquiring a larger lease /purchase area and limiting the vegetation to be removed or by written agreement with the landowner(s) that a defined vegetative buffer will remain uncut outside the lease/purchase area for a specified time period. The municipality should stipulate these protective measures in its decision granting approval.

■ **FEDERAL AVIATION ADMINISTRATION REGULATIONS AND REQUIREMENTS**

Wireless telecommunications towers over 200 feet and

Pittsford Perspective

It has been determined, after many years of dealing with wireless communication applications, that when topography and existing features allow, lower, camouflaged facilities can achieve the providers’ current objectives while limiting the impact of a needed technology in a more densely populated or visually sensitive area.

Tower Design—Legal Issues

Municipalities have successfully negotiated with providers for a proposed tower to be camouflaged or for a different tower design to be used. The question arises whether a municipality may require that a provider use a different type of design or to use camouflage. The courts have not yet answered this question, but a reviewing board may be able to require compliance with appearance standards during site plan or special use permit review if the authority is appropriately provided in local regulations. If this issue is decided by a court, the court would probably look to how significant the increased cost would be to the provider, the effect on service, whether other providers in the same or similar situations were required to do the same, and whether valid reasons, supported by substantial evidence, exist to require an alternative construction.

towers within certain distances of airports must be reviewed by the Federal Aviation Administration (FAA) and registered with the FCC. Registration with the FCC must be undertaken after a tower owner has requested a study of the site by the FAA and the FAA has determined that the tower, with or without safety modifications, is not a hazard. The owner can then file for registration with the FCC.

Upon registration, and based on the recommendation of the FAA, the FCC will require the structure to be painted and lighted (marked) as necessary to make it conspicuous to aircraft. The recommendations on marking, painting, or lighting may vary depending on terrain, weather patterns, locations and type of tower. Not all registered structures are assigned painting and lighting. FCC rules also require that all tower owners must display and maintain the lighting assigned by the Commission; regularly inspect lighting and associated control equipment; promptly report and record light outages, malfunctions, and restoration; and repair or replace malfunctioning lights and equipment (see FAA Web site reference in Appendix).

Local requirements could also provide for a back-up power source, as well as allow a local review board to select the plan it desires from among the marking plans permitted.

■ FUTURE EXPANSION OR USE OF THE FACILITY BY OTHERS

The municipality should identify any future plans by the applicant to increase the height of the tower or antennae or to add additional towers or antennae to the proposed project site. The applicant should provide signal propagation studies, cost estimates and timetables for such planned expansions.

The applicant should describe any future plans to allow equipment of other service providers to co-locate on the applicant's proposed tower. They should also provide the names of said companies and points of contact and phone numbers for each prospective provider. Discuss the capacity of the structure to support weight and wind loads from

County Referral

Applications for projects on property within 500 feet of the following must be referred to the county planning agency: a municipal boundary; an existing or proposed recreation area; an existing or proposed state or county highway; an existing or proposed state or county parkway, thruway, expressway, road or highway; an existing or proposed right-of-way of a stream or drainage channel owned by the county or for which the county has established channel lines; or an existing or proposed boundary of any county or state-owned land on which a public building or institution is situated, or, the boundary of a farm operation located in an agricultural district. General Municipal Law, Section 239-m contains further detail on this requirement.

Draft or Final EIS

For projects involving a draft environmental impact statement, the board, acting as "lead agency" typically (see the SEQRA regulations for exceptions) would prepare or cause to be prepared a final environmental impact statement (FEIS). After the FEIS has been accepted as complete, and circulated, the board can make its decision. That decision must address the mandatory findings set forth in the SEQRA regulations.

additional equipment, potential signal interference, and the visual appearance of clustered facilities. Provide signal propagation studies, cost estimates and timetables for any proposed co-located facilities on the applicant's proposed tower. Discuss the potential for signal interference between potential co-locators and describe planned methods to avoid or mitigate the interference.

■ MAINTENANCE OF THE TOWER(S)

The municipality should require the applicant to provide the name of the maintenance company, key points of contract, addresses and phone numbers if maintenance of the communication tower and associated facilities is to be contracted out or done by someone other than the applicant/service provider.

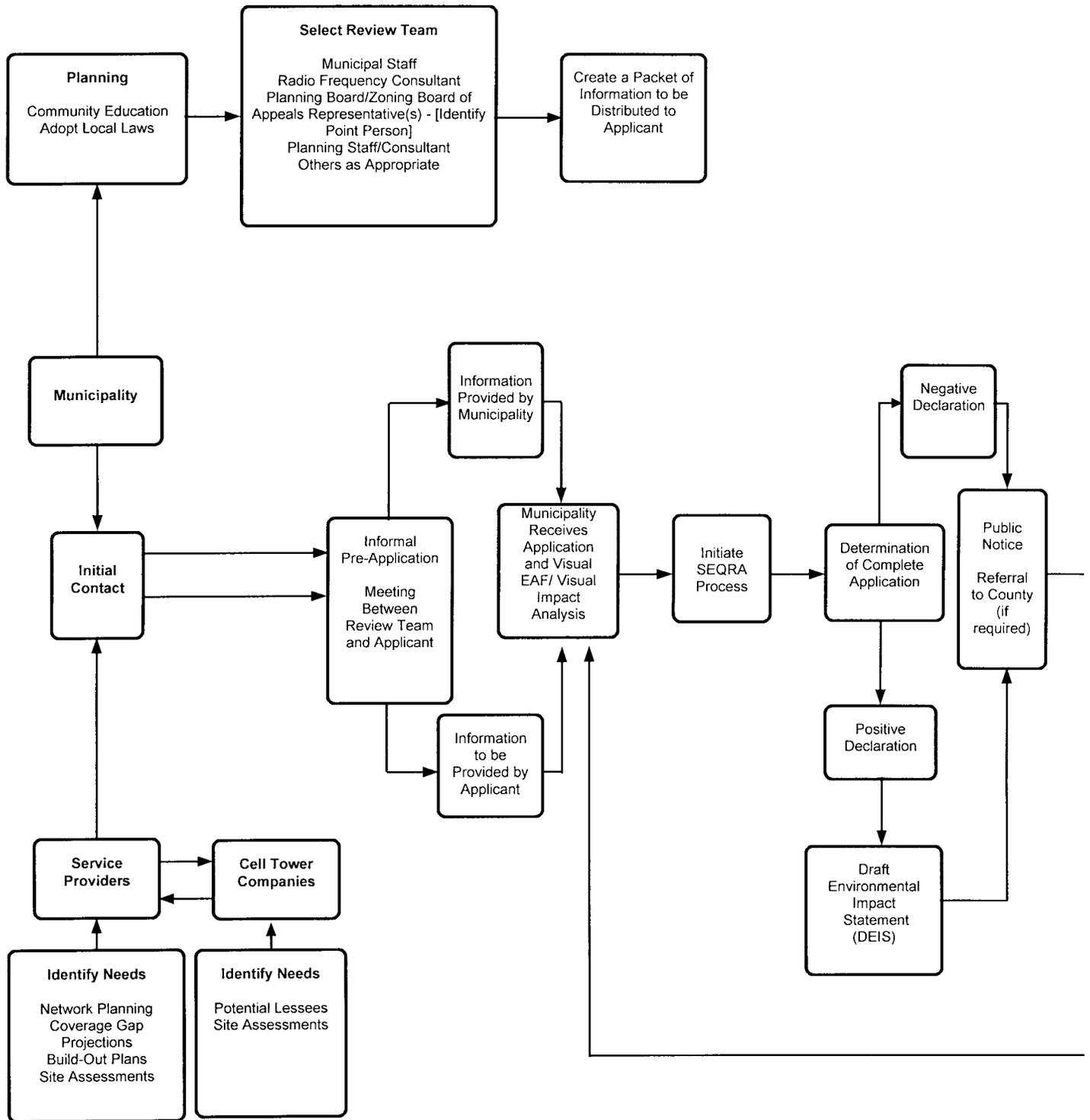
■ DISCONTINUANCE OF USE

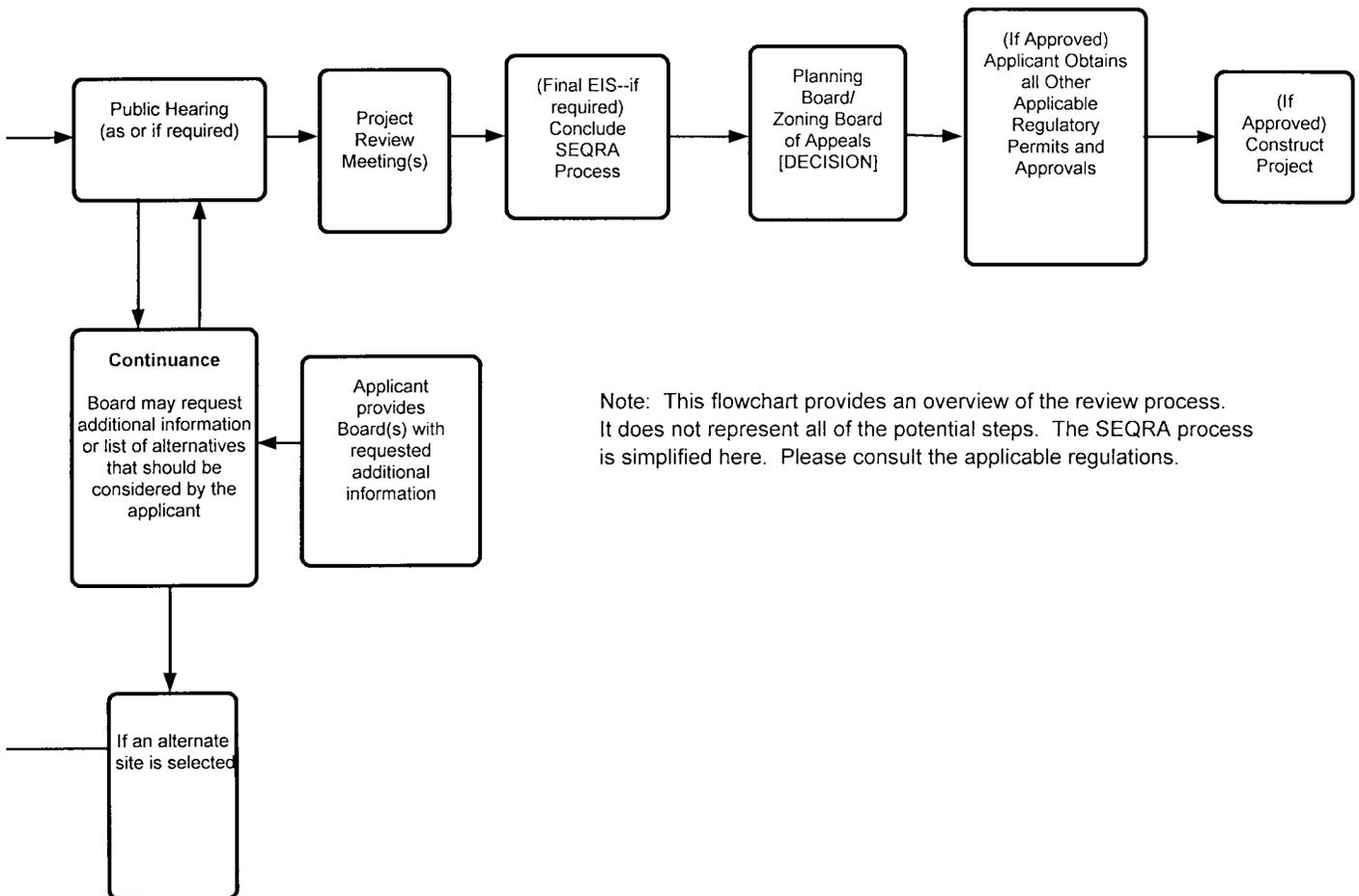
The applicant should describe the anticipated useful life of the proposed facilities and provide a plan for the removal of the applicant's proposed tower, antennae, and accessory structures, and for restoration of the site should the service use be discontinued.

■ PUBLIC HEARING

Once the application is complete, the formal review process can proceed. In some communities, for certain projects involving site plan review, and in all communities for projects which require a variance, special use permit, or

Model Siting Review Process: A General Overview





Note: This flowchart provides an overview of the review process. It does not represent all of the potential steps. The SEQRA process is simplified here. Please consult the applicable regulations.

subdivision approval, a public hearing must be conducted within a specified time period from a complete application. The public hearing would be scheduled, conducted, and closed after all testimony is heard and information and evidence necessary to proceed with the application is received.

- It may attract community interest, concern, or animosity.
- The board chairperson must set the rules for maintaining civil behavior.
- Allow adequate time for all members of the public who desire to speak to do so.
- Board members should actively listen to the testimony presented by all sides.
- Be sure the public has adequate information available on the subject.
- It is helpful to have the municipality's radio frequency consultant available to answer technical questions from the public.

If a draft environmental impact statement has been prepared for the project, the lead agency must also determine that to be complete. The public hearing on the impact statement should coincide with the hearing on the special use permit and/or site plan and/or subdivision application. (Please refer to the regulations for the New York State Environmental Quality Review Act (SEQRA) at 6 NYCRR Part 617 to ensure the SEQRA process is properly followed. Dates for hearings under SEQRA, etc. may be different from those for site plans or special use permits that are not undergoing an environmental impact statement review process.)

After the close of the hearing, the reviewing board must

begin to conclude its decision-making process. This process may involve consideration of modifications to the project to ensure that the adverse impacts are mitigated or "softened" to the maximum extent practicable—keeping in mind the limitations imposed by the Telecommunications Act.

The time frame for rendering the decision is dependent upon the application process being followed. For site plans, special use permits, and subdivision approvals involving a public hearing, the decision must be rendered within 62 days after the close of the public hearing. The time for rendering a decision may be extended by mutual consent of the applicant and the local review board.

The Act specifically requires decisions to be in writing and supported by substantial evidence in a written record. The decision must address the requirements for such decisions set forth in state law and the municipality's applicable law(s). As you will read in the legal section, concern about the health effects of radio frequency emissions on the health of nearby residents is not a permissible reason for making zoning decisions about facility placement, provided the facility complies with FCC emissions standards.

The local review board can approve, approve with modifications, or deny the application. Any conditions imposed by the board must be reasonably connected to an adverse effect being avoided. The board's decision must be filed with the municipal clerk and mailed to the applicant within five business days after the decision has been reached. If approved, project construction could begin with the receipt of local building permit and other necessary construction permits.



BASIC PRINCIPLES OF DESIGN

This section provides information on basic design principles and terminology that can be used to evaluate the visual impacts of applicant proposals. The basic design elements that should be considered when reviewing new wireless facilities include scale, line, form, texture, and color. The impact a new wireless facility has on a community is usually based on its degree of change to these existing elements. A good understanding of these elements should help municipality representatives form objective comments on the degree of contrast a new facility may present.

The basic design principles:

- **Scale:** the proportionate size relationship between an object and the surroundings in which the object is placed.
- **Form:** the structure, mass, or shape of a landscape or of an object. Landscape form is often defined by edges outlines of landforms, rockforms, vegetation patterns, waterforms, or the enclosed spaces created by these attributes.
- **Line:** the intersection of two planes; a point that has been extended; a silhouette of form. In landscapes—

ridges, skylines, structures, changes in vegetation, or individual trees and branches—may be perceived as line.

- **Texture:** the visual manifestations of the interplay of light and shadow created by the variations in the surface of an object or landscape.
- **Color:** The property of reflecting light of a particular

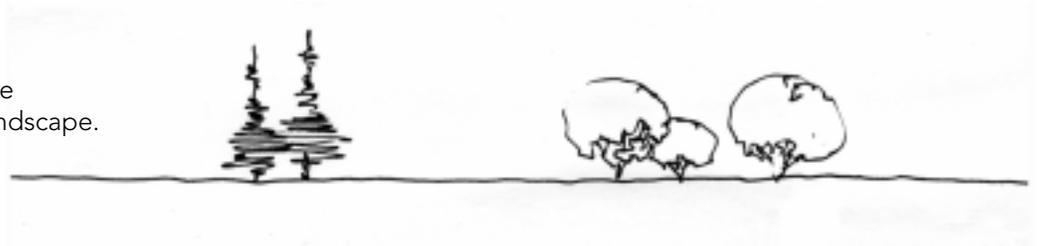
wavelength that enables the eye to differentiate otherwise indistinguishable objects. A hue (red, green, blue, yellow, and so on), as contrasted with a value—black, white, or gray.

The following illustrations identify the major design principles one should understand in order to evaluate the visual impact of applicant proposals:

■ Scale

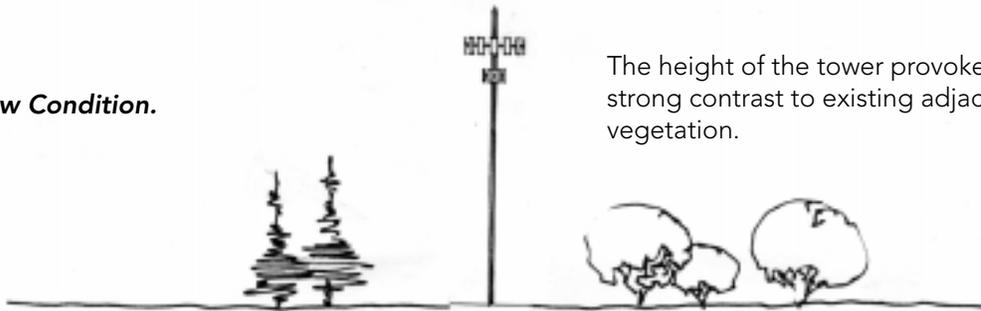
Existing Condition.

The existing trees are the distinct feature in the landscape.



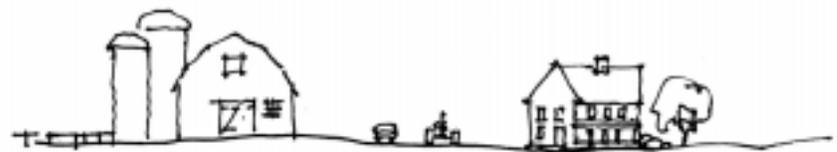
New Condition.

The height of the tower provokes a strong contrast to existing adjacent vegetation.



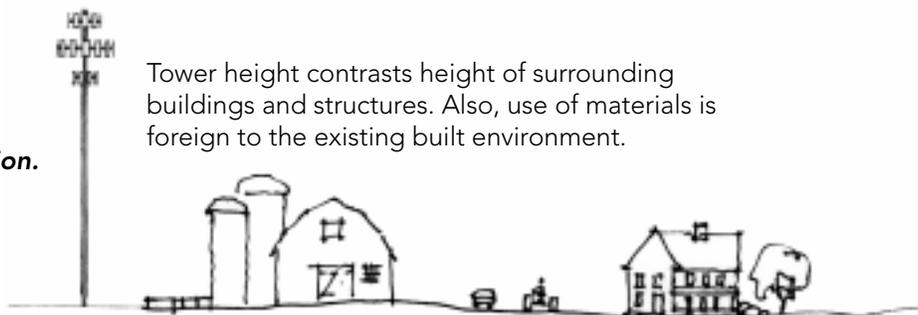
Existing Condition.

The existing buildings are the distinct feature in the landscape.



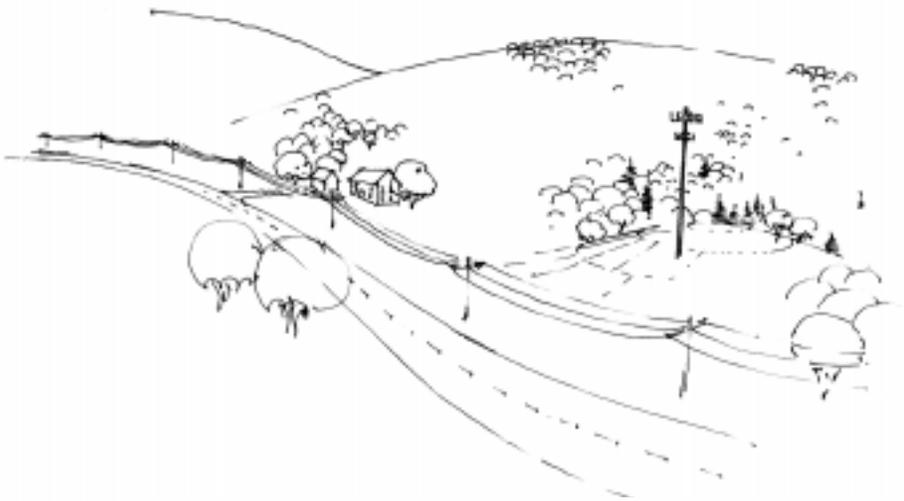
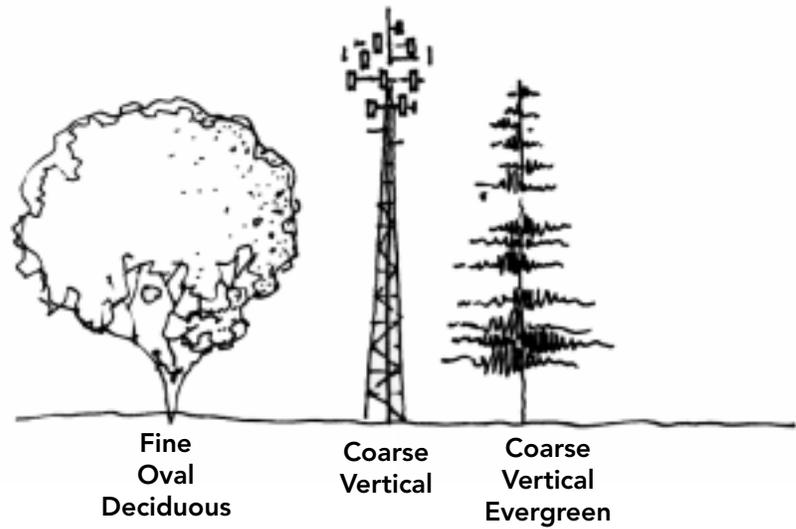
New Condition.

Tower height contrasts height of surrounding buildings and structures. Also, use of materials is foreign to the existing built environment.

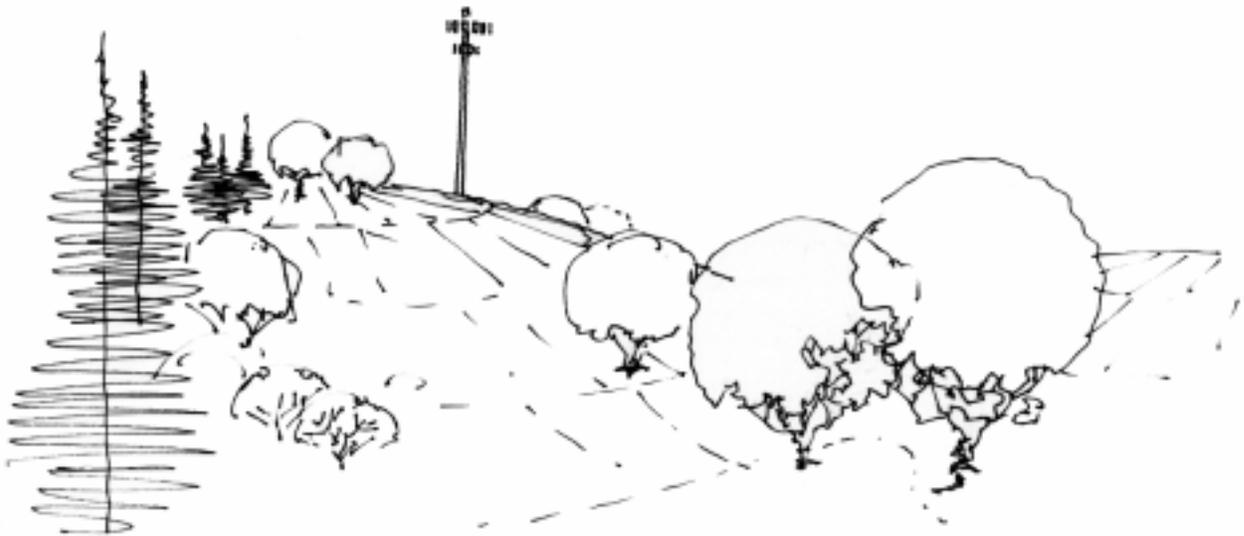


Form

A typical tower construction has a distinct vertical form. Often the form of the tower can contrast adjacent vegetation height and texture.



In this view, the form of the tower appears to have less contrast and therefore less impact on the surrounding landscape. The landform, rather than the tower, is the dominating feature in the landscape.



In this view, the form of the tower contrasts the landform. The contrast is increased because the tower also contrasts the open background view of the sky.

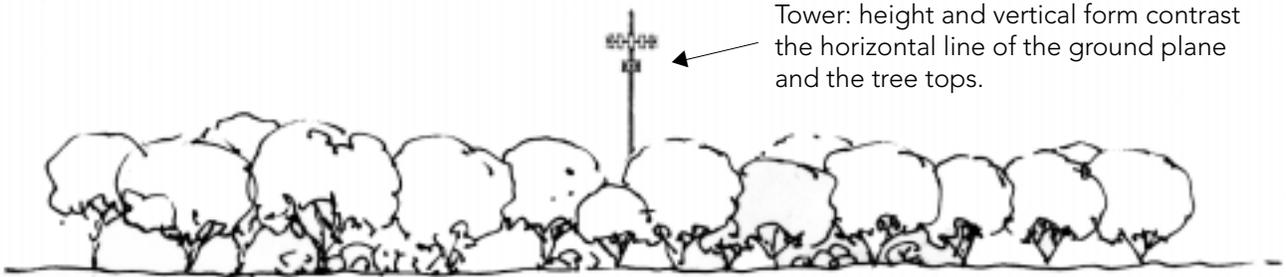
Line

Existing Condition.

The common vegetation form and height creates a perceived horizontal line.



Tower: height and vertical form contrast the horizontal line of the ground plane and the tree tops.



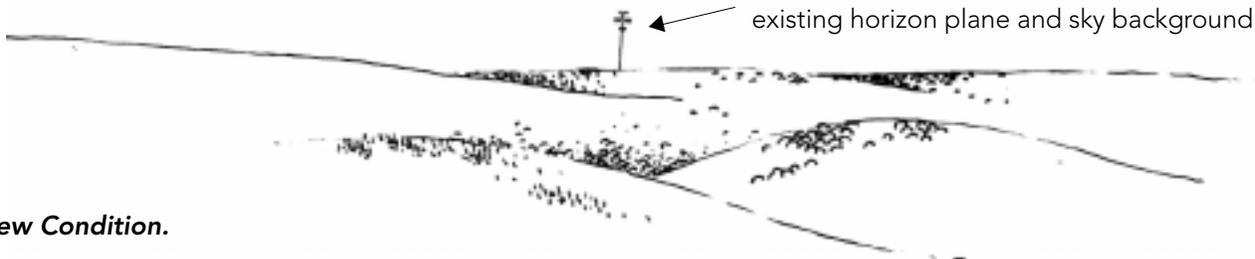
New Condition.

Existing Condition.

The landform in this view creates the perception of line.



Tower: new visible element that constasts existing horizon plane and sky background.



New Condition.

■ Texture

Existing Condition.

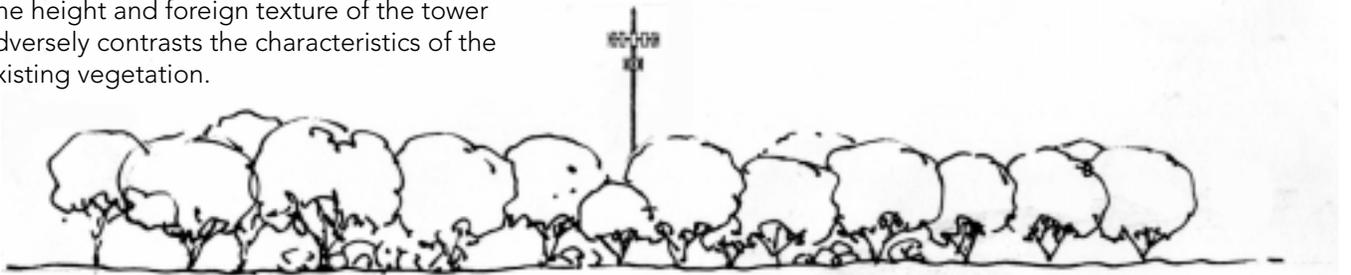
The common texture and massing of the vegetation unifies the landscape.

Existing vegetation
(similar scale and species)



New Condition.

The height and foreign texture of the tower adversely contrasts the characteristics of the existing vegetation.



Existing Condition.

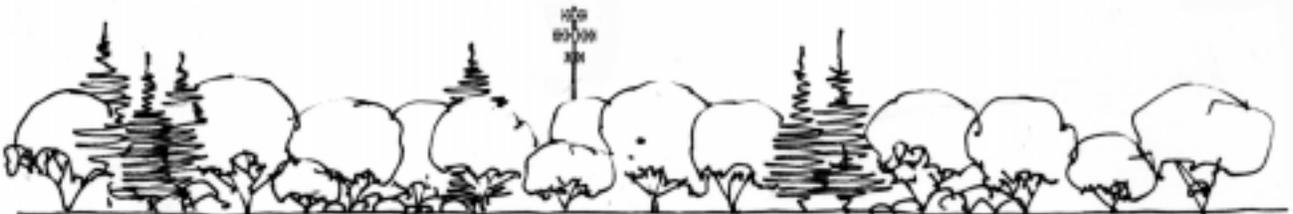
The varied types of vegetation create an irregular pattern and texture.

Existing coarse vegetation texture
(mix of evergreen and deciduous trees of various heights)



New Condition.

The irregular scale and texture of the tower are less intrusive on this irregular and non-unified form of the vegetation.

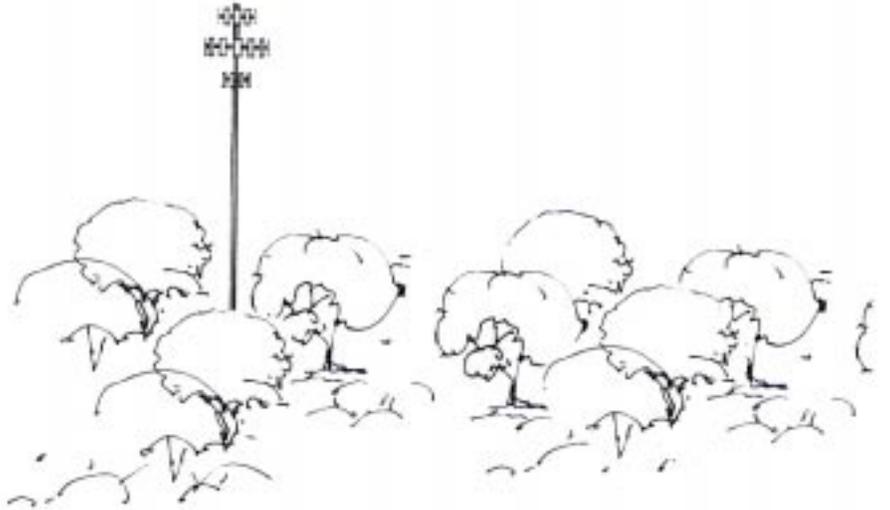


Existing Condition.

The texture and scale of the vegetation is somewhat regular.

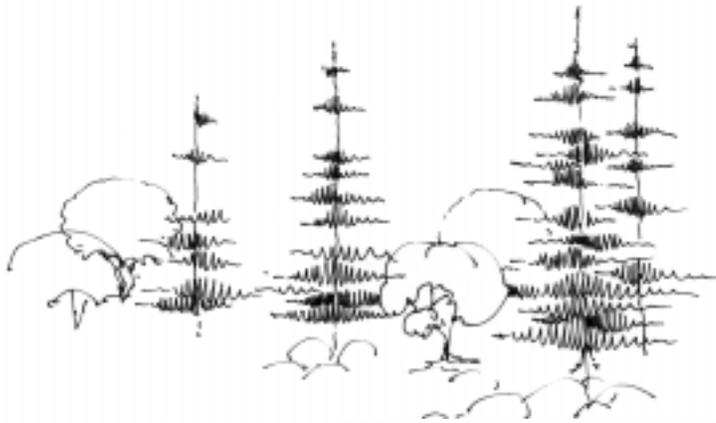


Visual impact of new tower contrasts scale and texture of existing vegetation.

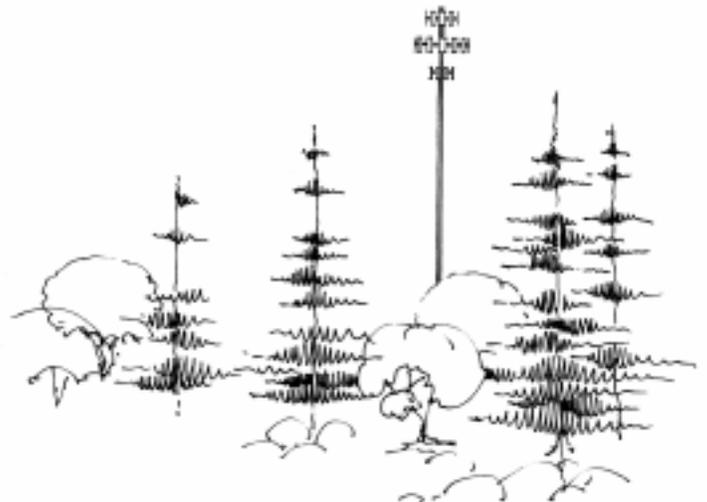


Existing Condition.

The texture of the landscape is varied.

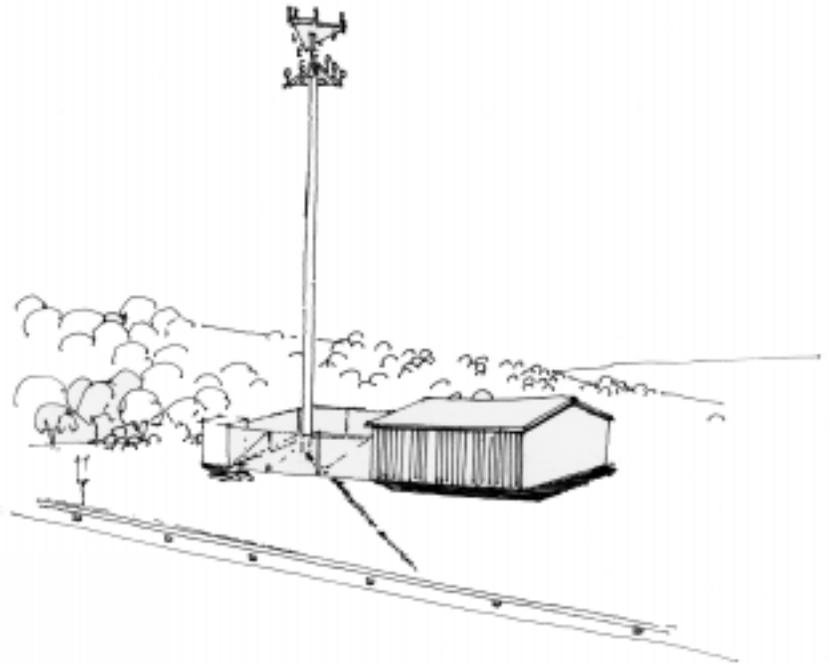


Visual impact of new tower is minimized by the scale and texture of surrounding varied vegetation.

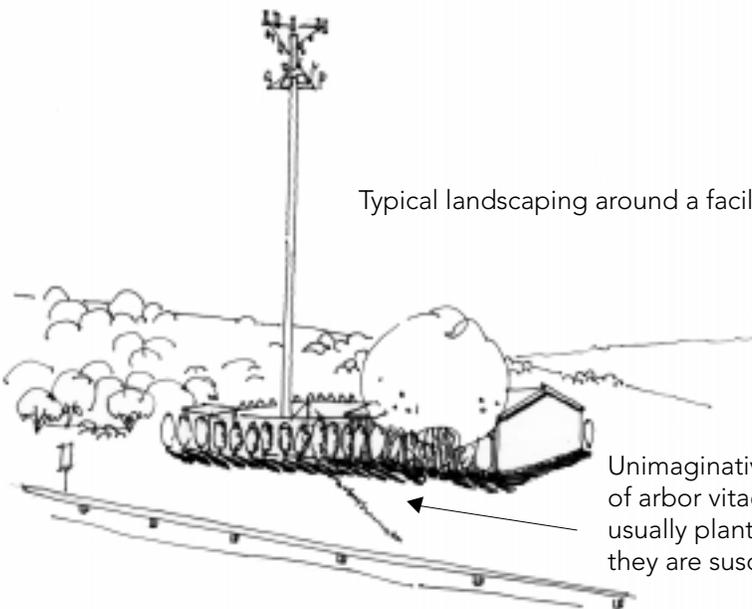


■ Site Design Details

Wireless facilities often include a base building and a tower enclosed in fencing. Usually, the tower has the greatest visual impact on the landscape because of its contrasting scale and form. However, the base building can also impact an existing landscape because of its scale, form, and texture. Often attempts to mitigate the contrasting features of the facility fail to consider these contrasts from various points of view.

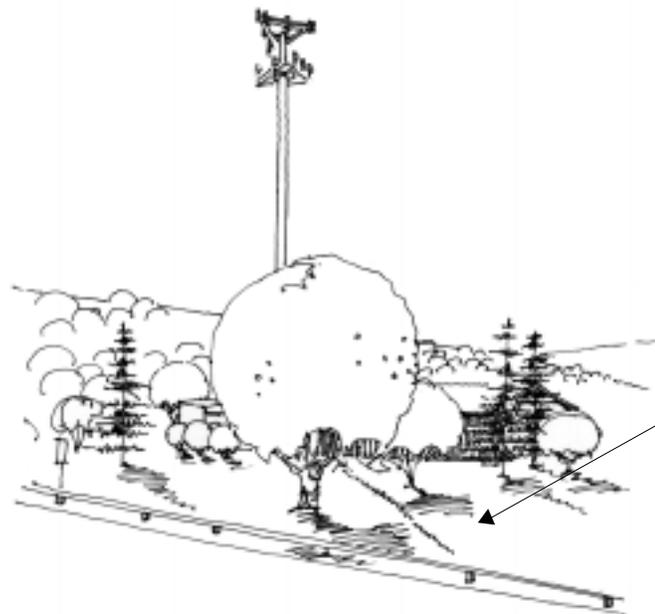


Typical landscaping around a facility.



Unimaginative evergreen screen planting. Use of arbor vitae tree species, for example, are usually planted out of context in areas where they are susceptible to deer browsing damage.

Creative approach to landscaping around the facility.



Use of native evergreen and deciduous plantings for screening. Use of varied plant groupings breaks up appearance of base facility. Foreground planting minimizes the impact of the facility's scale.



After a wireless telecommunications facility is installed, there are still several concerns for municipalities. The structural safety of the tower, maintenance of the site, compliance with local requirements, and the potential for abandonment of the facility, are all concerns.

Municipalities want to insure that the facilities are maintained and that necessary painting, landscaping and accessory buildings or roads are kept in good order. Providers can be required to maintain sites but providers should be treated equally when requiring post-approval maintenance. Any local legislation should address maintenance concerns and provide an enforcement mechanism for failure to maintain. The enforcement procedure may be similar to enforcement of building code or zoning violations. Municipalities can also require that the provider submit an engineer's or other professional's report to the municipality periodically that confirms that the tower still meets all structural safety standards and no damage exists which threatens the public.

A municipality can ask for proof that the wireless telecommunications facility complies with the FCC emissions standards, but cannot impose monitoring or reporting requirements that are different from the FCC's. The FCC has predetermined that many wireless facilities are unlikely to be harmful and are deemed "categorically excluded" from routinely having to determine compliance with FCC emissions standards. If the facility is not categorically excluded, it may have reporting requirements and a municipality can require all reports on radio frequency (rf) emissions compliance be submitted to the municipality as well as to the FCC. The FCC has prepared a handbook to assist local governments in determining compliance with FCC standards,

A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance (June 2000). It can be downloaded from the FCC Web site at www.fcc.gov/wtb/siting or ordered by calling (202) 418-2464.

Some municipalities require an annual license for the operation of a wireless telecommunications facility. A yearly license can be required provided the license fee is reasonably related to the actual cost of administering and enforcing the license and may not be used as a source of general revenue for the municipality.

The potential for abandonment of towers is also a concern of municipalities. If a tower is abandoned and not maintained it may become structurally unsafe. The municipality may have to remove the tower out of concern for the public. Additionally, if a tower is no longer used by the provider, without their consent, another carrier could not use it. Some municipalities have required providers to post a bond to cover the cost of removal. However, there is no authority under New York State law for a municipality to require such a bond. If local legislation provided that towers which are unused for a certain period of time are deemed abandoned, the municipality would be allowed to remove the tower and place the cost of removal as a lien on the tax rolls if unpaid. Any local legislation, which would authorize the municipality to remove a tower, would need to provide all interested parties, including the tower owner and property owner if different, with sufficient notice and an opportunity to be heard prior to removal. Municipalities should discuss these concerns with the providers servicing their area to determine the potential for abandonment and possible solutions.

ADDITIONAL LEGAL ISSUES—REVIEW OF LEGISLATION, RULINGS AND CASE LAW



The Telecommunications Act of 1996 governs federal, state and local government authority over the siting of "personal wireless service" facilities. The Act preserves the authority of state and local governments over decisions regarding the placement, construction, and modification of personal wireless service facilities, except as provided. The FCC plays no role in local zoning decisions about the placement of these facilities, but municipal actions with

respect to wireless telecommunication facilities must be in accordance with the Act.

The following summarizes key provisions of the Act:

- *The Act prohibits discrimination by municipalities against providers of functionally equivalent services.*

Local governments may treat providers differently if different zoning concerns are present. However, the local government must have a rational basis for

distinctions and cannot unreasonably favor one competitor over another. Before a decision is made, the board with authority should review its past decision to determine whether a denial could be considered discrimination. Courts will first look to whether a denial was discriminatory and then whether that denial was unreasonable.

A municipality does not violate this particular provision by providing different standards or denying applications for placement of towers in residential versus commercial neighborhoods as long as a rational basis exists for this distinction.¹⁰ However, a court may find that “unreasonable discrimination” exists when, for example, a municipality:

- denies an application for tower construction in similar zoning districts when there is no valid reason for the distinction, for instance, allowing a tower in an R-2 zoning district but not an R-1.¹¹
 - denies an application on the basis that no new towers are needed because service is already being provided in the area through a competitor.¹²
 - discriminates against providers of different services such as analog and digital.¹³
- ***The Act prevents local municipalities from enacting an outright ban on wireless telecommunication facilities.***

Many courts, including the Second Circuit in New York, have found that language in the act prevents a local government from passing legislation or making decisions on individual applications which would have the “effect of prohibiting service”.¹⁴ There are still many unanswered questions as to when a denial constitutes a prohibition of service. While outright bans clearly violate this provision, it is unclear if service is effectively prohibited by a denial when the carrier is already providing service but wishes to expand coverage or improve service. Such a denial by a town in New York has been upheld by a federal appeals court, as well as other federal courts with similar fact situations.¹⁵ In that case, a provider wanted to locate three towers throughout the town. The town planning board determined that adequate coverage could be provided with fewer towers leaving only minimal gaps in service. The court considered whether a significant gap in coverage existed and if so, whether the gap could be closed by less intrusive means or fewer towers. A significant gap in service exists when remote users cannot connect or maintain service with any provider. The Act is not violated when users of a system have some ability to reach a cell site and does not guarantee that each individual must have access to service all of the time from every available provider.

The court found that a significant gap did not exist because service was adequate while customers were in their automobiles and the new facilities were intended to provide better in-building coverage. In addition, the court agreed with the town that fewer towers would still provide adequate service.

Many local governments wish to draft legislation to completely prohibit the erection of towers in residential districts while allowing them in other districts. The provider would then need to apply to the zoning board of appeals for a variance to construct the tower. While such a prohibition may be permissible in many municipalities, this type of legislation may be considered a violation of the federal Act under this section in municipalities that essentially have no other zoning districts besides residential.¹⁶

- ***Municipalities must make their decisions within a reasonable amount of time.***

Making a decision within a reasonable amount of time was intended to mean the time it normally takes the municipality to make similar development decisions. It is not intended to give wireless providers any preferential treatment, but insures that the state statutory and local time periods are followed. This provision was found to be violated in New York when a municipality failed to act, implemented a moratorium, and then took no action on the application when the moratorium was over.¹⁷ However, a series of meetings and requests for additional information for purposes of review under the State Environmental Quality Review Act, does not automatically violate this provision when normal review procedures are followed.¹⁸

- ***The Act provides that the decision the board makes must be in writing.***

Municipalities should provide written decisions as they would in any other zoning case. When interpreting the federal Act, the majority of courts have held that a decision in writing cannot simply be a letter of denial without an explanation,¹⁹ or minutes of a meeting stating that the application has been denied.²⁰ Some courts have not accepted the transcript of the meeting denying the request as satisfying this requirement,²¹ while other federal courts that have supported the theory that a simple denial without further explanation is sufficient, it is unlikely that such a result would be reached in New York.²²

- ***All decisions regarding wireless telecommunications facilities must be supported by substantial evidence.***

While it is always good practice to support land use decisions with findings of fact to indicate the reasoning behind such decisions, the Act specifically requires denials to be supported by substantial evidence in a written record. The “evidence” need not be included in

the same document that provides the decision, but it must be contained within the written record.

When reviewing decisions under the Act, courts will consider whether the decision is supported by substantial evidence. “Substantial evidence” means that there is enough relevant evidence for a reasonable mind to accept as adequate to support the decision.

Municipalities need to be careful when denying an application in cases where the applicant presents expert testimony over an issue. In New York, when an applicant presents expert testimony, this testimony can only be refuted by other experts.²³ Denials have been invalidated when the expert evidence was disregarded and not adequately addressed by the board or there was no opposing expert testimony considered.²⁴ However, when opposing experts are present, the municipal body is entitled to choose between them.²⁵

In New York, citizen opposition alone, absent any other findings by a board, is not sufficient to sustain a denial of an application.²⁶ A denial will not be upheld

based on generalized statements by citizens concerning the affect on property values, aesthetics, and visual blight,²⁷ or when the majority of citizen opposition concerns health effects.²⁸

- ***Municipalities may not make decisions based on the health effects of radio frequency emissions.***

The Act expressly preempts state and local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency (RF) emissions. The FCC has developed acceptable standards for RF emissions. If a facility meets the FCC standards, concern about the effects of emissions from the facility on the health of nearby residents is not a permissible reason for making zoning decisions about its placement. A municipality can ask for proof that the wireless telecommunications facility complies with the FCC emissions standards, but cannot impose additional standards, monitoring or reporting requirements that are different from the FCC’s.

STATUS OF AND SPECIAL RULES FOR UNIQUE AREAS



Special Rules for Historic Areas and State-Owned Property

Section 704(c) of the Act requires the FCC to provide technical support to states to encourage them to make property, rights-of-way and easements under their jurisdiction available for the placement of wireless telecommunications facilities. Many of these facilities have already been placed along thruway and other highway rights-of-way and on public buildings and lands around the state. While there remains a general presumption that the state is immune from zoning regulations, there is no clear answer as to whether placement of these facilities on state property is subject to local zoning regulations. Until such time as this question is answered, municipalities should encourage dialogue with the agencies or authorities that control state property within their municipality to determine future plans for telecommunications facilities. State property owners should be included in discussions during the development of a local telecommunications law. Municipalities and the state may be able to work together to site new facilities capable of holding several antennas on government property for maximum benefit to consumers while reducing the overall number of towers.

Placement of facilities on or within view of historic properties or within a locally designated historic district raises additional concerns. In order to protect state designated

historic properties and local historic districts and their views, it is absolutely necessary for municipalities to have legislation in place regulating placement of wireless telecommunications facilities. While local legislation which completely prohibits placement in or around these areas may violate the federal Act if it has the effect of prohibiting service, municipalities and providers have worked together to resolve concerns by camouflaging antenna when the antenna were necessary to provide service. The industry should be involved in discussions with the municipality to highlight to providers the importance of these areas and to resolve concerns.

When the FCC licenses a provider, the licensee is required to comply with the National Environmental Policy Act of 1969. Each licensee must evaluate the location of a proposed structure to determine if it is in an environmentally sensitive area. Sites which are registered or eligible for listing in the National Register of Historic Places are considered environmentally sensitive. When a licensee is constructing a facility which impacts an environmentally sensitive area it must receive approval from the FCC. In this case, all interested parties are able to file comments on the proposed effects within thirty days. When a municipality is notified by the state historic preservation officer, it has the opportunity to comment on the proposed tower and its effect on historic

resources. If a municipality receives a letter regarding placement of a facility near a historic area, it may provide written comments within the time specified. This process does not affect any local procedures for tower approval and if approval is received from the FCC, the provider would still have to comply with any local regulatory process for the placement of facilities. If there will be a significant environmental impact, the FCC may deny a license application after the applicant is afforded the opportunity to reduce, minimize or eliminate the environmental problem.

The FCC must also comply with the National Historic Preservation Act which requires the FCC to obtain comments from the Advisory Council for Historic Preservation and complete a review prior to the approval of a telecommunications project. The FCC must consult with the applicant, the state historic preservation officer or tribal historic preservation officer, the Advisory Council, representatives of local governments, and individuals or organizations with a demonstrated interest in the project, to find ways to avoid, minimize or mitigate the adverse effects.

When a company is building a tower on speculation, until an FCC license holder is involved, these reviews would not all apply and the tower would be subject to any local historic district legislation and the requirement to minimize significant impact to historic resources pursuant to the state environmental quality review act.

Adirondack Park—With respect to the siting of wireless telecommunication facilities within the Adirondack Park, the Adirondack Park Agency (APA) has the regulatory responsibility to review all proposed projects outside

hamlet boundaries. The agency also has jurisdiction if projects are greater than forty feet in height or if the project constitutes a new major public utility. In addition to the review by the APA, telecommunication facilities may also be subject to local review by the municipality.

Critical Environmental Areas—These are specially designated areas under the State Environmental Quality Review Act. Thresholds for Type I actions (actions that are likely to have a significant adverse environmental impact and which are listed in 6NYCRR Part 617) are reduced when such actions are proposed within Critical Environmental Areas.

Coastal Management Zones—Communities that have an approved waterfront revitalization program under the New York State local waterfront revitalization program (LWRP) will need to perform a consistency review. The review must determine if the proposed project is consistent with the policies of the New York State Coastal Management Program (CMP) and the municipality's New State Department of State (NYSDOS) approved Local Waterfront Revitalization Program (LWRP).

The NYSDOS Division of Coastal Resources has jurisdictional authority to review projects and activities of federal and state agencies for consistency with the policies of the New York State Coastal Management Program (CMP) and approved LWRPs. This review authority extends to siting wireless facilities in a coastal zone which involve federal or state agency actions, funding, permits or approvals.



LEASING MUNICIPAL PROPERTY

Leasing municipal property represents a new source of revenue for municipalities and may help to avoid placement of towers in undesirable areas. Antennas have been placed on existing structures such as water towers and stadiums or towers have been built on municipal rights-of-way. The following items should be carefully considered prior to leasing property to a provider.

Price—Other municipalities in your area should be surveyed to determine the revenue they are receiving. If available, the municipality should also check with private entities that have leased space in the area to determine the rate they are receiving.

Term—The length of the lease is an important consideration. The municipality may not want to enter into a long-term lease for a fixed price.

Accessory Structures—The type of accessory structures needed by the provider should be clarified as well as access to these structures.

Emergency Access—Access to the site, as well as emergency provisions in case the tower or antenna is damaged, should be considered.

Co-location—The lease should clarify whether or not other providers will be allowed to use the structure. If a new tower is being built, the municipality may want to require co-location for future providers and revenue from additional users.

Compliance with Federal Laws—The lease should address who is responsible for compliance with FCC and FAA regulations.

Insurance—The provider should be required to carry insurance sufficient to cover potential damage to the municipal structure. The lease should provide that the insurance cannot be canceled without notification and name the municipality as a beneficiary.

Cancellation—The municipality may need to cancel the lease when there is significant public health, safety and welfare concerns so there should be flexibility in the

cancellation provisions. The lease should also carefully spell out what happens if the provider goes out of business. Clauses on assignment of the lease by the tenant, abandonment and termination of the agreement should be carefully spelled out.

Maintenance—The lease needs to provide access for municipal maintenance of their own utilities as well as for the provider.

ASSESSMENT AND TAXATION OF TELECOMMUNICATION FACILITIES



Wireless telecommunications towers are taxable real property if they are used merely as “supports” for the transmission equipment and are not used in the transmission of signals.²⁹ Accessory buildings which are not being used in the direct transmission of the signal, are also taxable. The taxable status of electronic equipment and antennas used in the transmission of signals is unclear. This equipment is not specifically included or excluded from the definition of real property and at least one lower court has found that electronic equipment and antenna are excluded from the definition of real property and are not taxable.³⁰

In January of 2001, the New York State Department of Taxation and Finance and the Office of Real Property

Services issued a joint report to the Governor and State Legislature entitled, *Local Telecommunications Taxes and Fees in New York State*. The report describes the various taxes levied on telecommunications companies and offers suggestions for improvements. A copy of this report is available from the New York State Department of Taxation and Finance, Office of Tax Policy Analysis at (518) 457-3187 or on their Web site at www.tax.state.ny.us.

For assistance in valuing wireless telecommunications towers, see NYS Office of Real Property Services, Valuation Reference Manual, Part I, Commercial Structures and Yard Improvement Information.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) PROCESS



Basic Review Process for Wireless Telecommunication Facility Applications³¹

As with any discretionary action that could affect the environment, when reviewing an application for the siting of a wireless telecommunications facility, the reviewing agency—whether it is the legislative body (city council, town board, village board of trustees), planning board, or zoning board of appeals—must incorporate the State Environmental Quality Review Act (SEQRA) into its decision making process. The SEQRA process is designed to ensure that decision-makers take a “hard look” at any potential significant adverse environmental impacts of their actions, and consider alternatives that might mitigate such impacts.

Because the issue of telecommunications is very recent, there is little guidance from the courts regarding segmentation as it relates to these types of facilities. In the absence of a wireless telecommunication master plan, a municipality which fails to consider a build-out plan provided by the applicant when reviewing an application for a single-site may be subject to legal challenge.

What is the “action”?

When an application for a wireless telecommunication facility is received, it almost always pertains to the siting of an individual facility. In most cases, the local reviewing board will review the application in that light. However, wireless telecommunication facilities, as described throughout this manual, are basic components of large and expanding networks. This raises an important question in terms of SEQRA review. What is the “action”? Is it the siting of a single facility, or is it the creation of a network?

SEQRA discourages the “segmentation” of larger projects into smaller component pieces for the purpose of environmental review. It defines “segmentation” as follows: “Segmentation means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.” By this definition, limiting the description of the “action” to the siting of a single wireless telecommunication facility could be considered segmentation.

Section 617.3 (g) of the SEQRA regulations notes that, “Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it.” By this general rule, an agency reviewing a single wireless telecommunication facility should understand the potential environmental impacts of the applicant’s larger network plans for facilities both within and outside its own local jurisdiction. Applicants for wireless telecommunication facilities may be reluctant to share information about their larger network plans, but the reviewing board should insist that, within reason, this information is necessary for it to meet its obligations under SEQRA. Ideally the network development plans of wireless telecommunication service providers in the region would be discussed during the community’s planning process and in advance of particular applications.

Does SEQRA apply?

The first thing that the reviewing agency must consider is whether SEQRA applies to the “action” that they are about to take. The New York State Department of Environmental Conservation (NYSDEC) has provided guidance in this regard by establishing lists of Type I and Type II actions within its SEQRA regulations (6 NYCRR Part 617). If the action is listed as Type II, it has already been determined that the action will not have a significant impact on the environment and is, therefore, not subject to review under SEQRA. Because applications for the siting of wireless telecommunication facilities are unlikely to fit within any of the actions listed as Type II, they are almost always subject to review under SEQRA.

Determine “Lead Agency”

Assuming that the action is subject to SEQRA (it is not listed as Type II), the reviewing board must determine who will act as “lead agency” for the purpose of SEQRA review. Due to New York State’s system of home rule, in most cases a local reviewing board (legislative board, planning board, or zoning board of appeals) is the only agency that will make a discretionary decision to approve an application for a wireless telecommunication facility. As the only “involved” agency (to use SEQRA terminology), this local review board must act as lead agency for the purpose of SEQRA review. There may be other agencies that will review the application for a wireless telecommunication facility—such as the county planning board by referral under General Municipal Law (Section 239 -m and -n)—but because these agencies do not have actual decision-making authority, they are considered “interested” but not involved agencies and cannot act as lead agency under SEQRA.

Classify the “Action” and Determine Significance

Once the lead agency has been established (refer to 6 NYCRR Part 617 for details about notification, publication, etc.³²), the lead agency must classify the action as either Type I or unlisted. The construction of wireless telecommunication facilities is not specifically listed as a Type I. However, there are thresholds listed as Type I that could be met by an applicant for a wireless telecommunication facility in certain cases. Examples of such Type I actions include:

- the approval of “any structure exceeding 100 feet above original ground level in a locality without any zoning regulation pertaining to height.” A telecommunication tower could easily exceed this threshold.
- the approval of, “any unlisted action . . . occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site, or district or prehistoric site that is listed on the National Register of Historic Places, or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is listed on the State Register of Historic Places.” An application for a wireless telecommunication facility could meet this location threshold.

There are other thresholds in the Type I list that could be reached by an application for approval of a wireless telecommunication facility.

If the lead agency determines that the proposed action is a Type I action, it must use a full Environmental Assess-

ment Form (EAF) to determine the significance of the action. If the lead agency determines that the proposed action is unlisted, it must at a minimum use a short EAF to determine the significance of the action. It may decide, instead, to use the full EAF if the short EAF would not provide sufficient information on which to base the determination of significance.

Using either the short or full EAF as appropriate (see above), the lead agency must determine the significance of its proposed action. Section 617.7 of the SEQRA regulations provides additional guidance for determining significance. One notable criteria for determining significance, found in section 617.7(c)(xii), is “two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.” The cumulative impact criteria could be used by a local reviewing board, faced with several applications (current or anticipated) for wireless telecommunication facilities, to justify a closer look at the combined impacts of these facilities on the local environment.

Based upon its review, the lead agency may determine that the proposed action has the potential for one or more significant adverse environmental impacts. If that is the case, the lead agency issues a “positive declaration” and prepares, or causes to be prepared, an Environmental Impact Statement (EIS). Based upon its review of the short or full EAF, the lead agency may instead determine that the proposed action will not result have a significant adverse environmental impact or that the identified adverse environmental impacts will not be significant. If that is the case, the lead agency issues a “negative declaration” and the SEQRA process concludes. Having completed its responsibilities under SEQRA, the reviewing board may then make its decision about the application.

There is a third option for the lead agency if the action proposed by an applicant is unlisted and if a full EAF has been used to determine significance. The lead agency may issue a “conditioned negative declaration” for an action which as initially proposed, may result in one or more significant adverse environmental impacts; however, mitigation measures identified and required by the lead agency will modify the proposed action so that no significant adverse environmental impacts will result. The conditioned negative declaration, like a negative declaration, concludes the SEQRA process. Having completed its responsibilities under SEQRA, the reviewing board may then make its decision about the application.

Environmental Impact Statement

If a positive declaration has been issued for the proposed action, an Environmental Impact Statement (EIS) must be prepared. This involves several steps:

- formal scoping (optional),
- preparation and acceptance of a draft EIS,
- public review and comment on the draft EIS,
- a public hearing (optional),
- the preparation by the lead agency of a final EIS which responds to comments received, and
- the issuance of findings by the lead agency.

After findings have been made by the lead agency, the SEQRA review process is complete.

According to SEQRA regulations (Part 617.9) the applicant can prepare the draft EIS, or choose to have the lead agency prepare the draft EIS. If the applicant prepares the draft EIS, it must be submitted to, and accepted as complete by, the lead agency. The final EIS must be prepared by the lead agency. The lead agency can charge the applicant a fee to cover the actual costs of either preparing or reviewing (but not both) an EIS. Procedures for doing so are found in the SEQRA regulations (Part 617.13).

Additional SEQRA considerations

- **Visual EAF Addendum**—The Visual EAF Addendum (Appendix B of Section 617.20 of the SEQRA regulations), is intended to supplement information provided for question 11 (Impact on Aesthetic Resources) of part 2 of the full EAF . Because aesthetic impacts are among the primary considerations associated with the siting of wireless telecommunication facilities, the Visual EAF Addendum can be a useful tool for the lead agency as it attempts to make a determination of significance.
- **Local lists of Type I and Type II actions**—As a supplement to the list of Type I actions contained in Part 617.4 of the SEQRA regulations, an agency may adopt its own list of additional Type I actions, and/or may adjust the thresholds in the Part 617.4 list to make them more inclusive. The same is true for Type II actions. An agency may adopt its own list of additional Type II actions as long as the action, in no case, has a significant adverse impact on the environment.

Local communities should consider whether to include wireless telecommunication facilities on any additional Type I or Type II lists. Part 617.14 of the SEQRA regulations provides information about establishing individual agency procedures to implement SEQRA.



CONCLUSION

There are no simple solutions for planning and review of wireless telecommunications facilities. Hopefully, this manual helps provide useful information for local staff and members of the local board responsible for review of these facilities. With this information, local staff and review board members can better lead their communities through the process of planning and project review so that the character of your community can be conserved, while permitting well-planned and creatively designed telecommunications facilities.



Camouflaged cellular tower in a residential area, Town of Pittsford, New York.

Technical Appendices

Glossary of Terms

Antenna: the device that radiates and receives electromagnetic waves needed for cellular/PCS operation.

Attenuation: the term used to describe reduction of signal strength as would happen due to building penetration or propagation through foliage.

BTS (base transceiver station): the central cell facility that contains all the receivers, transmitters and other apparatus needed for cellular/PCS operation.

Capacity: the number of mobile users that can realistically be serviced by a BTS.

CDMA: the acronym referring to one of several digital modulation schemes called Code-Division Multiple Access.

Cell: the geographical area serviced by a BTS (base transceiver station).

Cell Tower Company: sometimes referred to a “speculative tower company,” refers to a company that proposes and builds towers and equipment enclosures for the purpose of renting space to cellular/PCS service providers.

Cellular: the original reference to the type of systems providing mobile telephone service by using a multiplicity of low-power base stations each of which services a small geographical area. The term has evolved to generally refer to the systems that operate near the 900 MHz frequency band—the first licensed cellular band.

Central Office (CO): the telephone company facility that manages the switching and operation of the Public Switched Telephone Network in a geographical area (see also Mobile Telephone Switching Office).

Co-location: the practice of mounting and locating the antennas and equipment for more than one service provider at the same BTS facility site.

Coverage: the general term that describes the ability of a BTS to send and receive wireless signals of sufficient strength to provide reliable cellular/PCS service.

Downlink: one of the two required radio signal paths—this one refers to the radio path from the BTS to the mobile phone (also see “uplink”).

Drive Test: the process of erecting a temporary transmit antenna for the purpose of measuring path loss from a proposed BTS location or otherwise measuring the actual system performance of an existing BTS facility to establish the operational feasibility of such a site.

Dropped Call: a call that for one or more reasons can no longer be maintained by the BTS. Dropped calls usually result from either weak signal strength as would occur inside a building or because a cell lacks capacity during a hand-off.

Fading: a term that describes the wireless radio environment’s short-term attenuation of the signal between the BTS and mobile phone.

GHz: the abbreviation for “Giga-Hertz” indicating 1,000,000,000 cycles-per-second of a radio signal. By comparison, household power systems operate at 60 Hz (60 cycles-per-second).

GSM: the acronym for “Global System for Mobile Communications”, a standard developed and implemented in Europe to allow contiguous mobile phone coverage throughout the continent. This system has been adopted by some service providers in the United States.

Guyed Tower: a construction technique that uses stabilizing cables to provide lateral support for a tower.

Hand-off: the process whereby control of a cellular/PCS call in progress is

shifted into the adjacent cell as the mobile phone moves from one cell to another.

Home Rule: the state constitutional grant of power to local governments over their own property, affairs, and government.

Hz: the standard abbreviation for Hertz (cycles-per-second).

Interference: any electromagnetic radiation or noise that is not the desired signal.

Lattice Tower: description of the type of tower construction typified by cross-bracing between three posts that constitute a rigid antenna support structure.

Link Budget: the tabulation of all communication system gains, losses and wireless signal effects due to propagation. The link budget allows determination of whether sufficient signal strength to permit reliable communication will exist throughout the proposed cell.

MHZ: “Mega-Hertz”, or 1,000,000 Hz (see GHz).

Mobile Telephone Switching Office (MTSO): the “central office” facility that coordinates the operation of multiple BTS facilities to assure proper call routing and hand-off.

Modulation: in communication systems this refers to how electrical signals (representing information such as data or voice) are used to change radio waves so that this change can be detected and recovered at the receiver, thereby allowing recovery of the information.

Monopole Tower: a unified self-supporting structure typified by a smooth tapered steel pole similar to roadway light supports.

Morphology: the term describing the characteristics of the radio environment in which the cellular/PCS system must operate. Morphologies can be described as Dense-Urban, Urban, Suburban, and Rural, and relate to the types of structures and densities of population. Knowing the morphology for a given cell allows the cell designer to assume certain propagation characteristics with some degree of certainty, thereby allowing for adjustment of just a few operating parameters (such as antenna height) to achieve desired levels of service.

Network: the general term used to describe all the BTS facilities and equipment required to provide cellular/PCS services.

Non-ionizing Electromagnetic Radiation (NIER): in wireless applications, this is the formal term for radio waves that emit from either the BTS or the mobile phone. “Non-ionizing” indicates that, in this sense, it is not like nuclear radiation.

Omni-directional: equal and uniform radio frequency (rf) coverage in all directions.

Path Loss: the attenuation experienced by the radio waves as they propagate from the BTS to the mobile phone or from the mobile phone to the BTS. Path loss will be the same for either direction over short periods of time.

PCS: Personal Communication Services, the FCC designation for the new band of frequencies and services authorized in the Telecommunications Act of 1996.

Photo simulation: a photographic superposition of an existing view with the image of a tower (or other structure) to provide a sense of the visual impact expected for a proposed structure.

Propagation Plot: sometime called a “computer simulation”, it is the

graphical representation of the expected signal strength at specific locations within a cell and the nearby area.

Provider: see “service provider.”

Public Switched Telephone Network (PSTN): the network of equipment that provides land-line services.

RF (radio-frequency): the general term referring to high-frequency waves utilized in wireless systems to facilitate propagation of information from one location to another.

Radome: an antenna enclosure that protects the equipment from direct exposure to the environmental conditions (wind, rain, snow, ice, etc.). It is designed to be “transparent” to radio waves and therefore causes little attenuation of the signal while at the same time blocking view of the equipment that it encloses.

Roaming Agreement: a business agreement whereby wireless service providers who lack a network infrastructure in a given area are allowed to have their subscribers access a competitor’s network for placing and receiving calls. The costs of the roaming agreement are generally high and are often a motivation to the roaming service provider to deploy new cell sites that will provide service directly to their customers.

RF Drive Test: see “Drive Test”.

RF Transparent Material: see “radome”.

RSSI: “Radio Signal Strength Indicator”.

Search Ring: the relatively small geographic area plotted on a map and centered at a proposed BTS in which it is likely that a technically viable (if not aesthetically acceptable) location can be found for the facility.

Sector: the geographic area serviced by one set of BTS antennas. In order to increase capacity, cells are “sectored” so that they provide essentially independent capacity for each sector.

Self-supporting Tower: the class of tower structures that do not require guy wires.

SEQRA: the acronym for the State Environmental Quality Review Act.

Service Provider: for the cellular/PCS and wireless industry, these are generally the entities that have acquired wireless operating licenses through the FCC auction process. Such entities have mandates to provide wireless services to the general population.

“Spec” Tower: a new term that refers to building towers on speculation that a service provider will want to lease space on the tower and locate a BTS at the site.

TDMA, Time-Division Multiple Access: the general term for one type of digital modulation. GSM systems are specific applications of TDMA technology.

Terrain Data Base: the topographical information in digitized form, generally obtained from the US Geological Survey, that is useful in propagation plot preparation. Since radio signals are affected by changes in terrain, the computer propagation model uses the digitized data to appropriately apply attenuation to the simulated signal to more accurately predict path loss.

Terrestrial: earth-based.

Uplink: one of the two required radio signal paths—this one refers to the radio path from the mobile phone to the BTS (also see “downlink”).

Viewshed: the area from which the facility can be seen.

Weak Link: a section of a monopole tower intended to be the bend/break point should the tower be in jeopardy due to wind and/or ice loading. The rest of the tower is over-designed so as to make the section “weak” only by comparison. Ideally, the weak link design will allow the monopole to break and hinge at the proper location, thereby reducing wind load, so as to prevent damage to adjacent property.

Wind Load: the term used to describe the forces exerted by wind on a tower structure. Wind load increases as the exposed cross-sectional area of the structure increases and as the height of the structure is raised. Wind load is calculated with statistically worst-case conditions of wind velocity and radial ice formation to predict the safe structural limits for a tower and all mounted equipment for which it was designed.

APPENDIX B

Provisions from the Telecommunications Act of 1996

The Act provides:

“SEC. 704.

FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY—Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

(7) PRESERVATION OF LOCAL ZONING AUTHORITY—

(A) GENERAL AUTHORITY—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) LIMITATIONS—

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the

extent that such facilities comply with the Commission's regulations concerning such emissions.

- (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) DEFINITIONS—For purposes of this paragraph—

- (i) the term 'personal wireless services' means commercial

mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

- (ii) the term 'personal wireless service facilities' means facilities for the provision of personal wireless services; and
(iii) the term 'unlicensed wireless service' means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v)).

- (b) RADIO FREQUENCY EMISSIONS—Within 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93-62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.

APPENDIX C

Model Local Telecommunication Facilities Law

This model local law is provided for municipalities as an example only. It is not intended to be adopted without consultation with the municipal attorney.

This model regulates telecommunication facilities by amending the zoning law to provide for the issuance of a special use permit by the zoning board of appeals. Telecommunication facilities can be allowed as a special permit use throughout the municipality or only in specific zones as long as limiting the facilities to specific zones complies with federal law. Municipalities without zoning may use the model language to enact a separate site plan review local law. In any event, editing will be necessary to accommodate the existing zoning law and special municipal considerations.

The difficulty in drafting a local law is that each municipality is unique and has different topography, existing structures and scenic resources. These unique qualities will affect where the municipality will want the towers and can easily affect the transmission of signals. Municipalities should have an idea of where towers will be needed prior to adopting local legislation. The municipality may also want to work with the providers prior to adopting any local legislation to determine their needs.

There may be instances when the provider will also need to obtain a variance along with the special use permit. As discussed earlier in this manual, the usual standards for variance do not apply to FCC license holders because the provision of personal wireless service is considered a public utility under New York State law.

This model excludes towers built by companies that have no immediate plans for the placement of antenna (towers on speculation) from its provisions. Since these towers are not included, they would be subject to the general zoning law of the municipality and, as discussed earlier, would not be considered a public utility for purposes of zoning. If the municipality wanted to include these towers in their legislation, the definition of telecommunication tower would need to be amended.

PURPOSE AND INTENT

The purpose of this law is to establish predictable and balanced regulations for the siting of telecommunication facilities in order to accommodate the growth of such facilities while protecting the public against any adverse impacts on aesthetic resources and the public safety and welfare. The [name of municipality] wants to accommodate the need for telecommunications facilities while regulating their location and number, minimizing adverse visual impacts through proper design, siting

and screening, avoiding potential physical damage to adjacent properties, and encouraging joint use of tower structures.

The law also seeks to minimize the total number of telecommunication towers in the community by encouraging shared use of existing and future towers, and the use of existing tall buildings and other high structures, in order to further minimize adverse visual effects from telecommunication towers.

This law is not intended to prohibit or have the effect of prohibiting the provision of personal wireless services nor shall it be used to unreasonably discriminate among providers of functionally equivalent services consistent with current federal regulations.

DEFINITIONS

- (a) **Telecommunication tower**—A structure on which one or more antenna will be located, that is intended for transmitting and/or receiving radio, television, telephone, wireless or microwave communications for an FCC licensed carrier, but excluding those used exclusively for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar private, residential communications.
- (b) **Telecommunication antenna**—A system of electrical conductors that transmit or receive radio frequency waves.
- (c) **Telecommunications facility**—any or all of the physical elements of the central cell facility that contains all the receivers, transmitters, and other apparatus needed for cellular/pc's operation (also known as base transceiver station (BTS)).
- (d) **Accessory use**—An accessory use serves the principal use, is subordinate in area, extent or purpose to the principal use, and is located on the same lot as the principal use. Examples of such uses include transmission equipment and storage sheds.
- (e) **Public utility facility**—A facility other than a telecommunication tower or telecommunication antenna for the provision of public utility services, including facilities constructed, altered or maintained by utility corporations, either public or privately owned, or government agencies, necessary for the provision of electricity, gas, steam, heat, communication, water, sewage collection, or other such service to the general public. Such facilities shall include poles, wires, mains, drains, sewers, pipes, conduits, cables, alarms and call boxes and other similar

equipment, but shall not include office or administration buildings. For purposes of the zoning law, telecommunication towers or telecommunication antenna, defined separately in the zoning law, shall not be governed by the zoning regulations which apply to the broader definition of public utility facilities, but shall be governed by these regulations.

REVIEW AUTHORITY

The model language provides for the zoning board of appeals to review applications. Planning boards may also review special use permit applications, and the language should be amended to reflect the appropriate board in the municipality. This section also encourages providers to place their antenna on existing towers or structures by exempting them from the special use permit requirements.

- (a) The zoning board of appeals is hereby authorized to review and approve, approve with modifications or disapprove special use permits for telecommunication facilities pursuant to this law. The zoning board of appeals shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed telecommunication facility, including the use of camouflage of the tower structure and/or antenna to reduce visual impact.
- (b) Except as provided below, no telecommunication facility shall hereafter be erected, moved, reconstructed, changed or altered and no existing structure shall be modified to serve as a telecommunication facility, except after obtaining a special use permit in conformity with this law.
- (c) Telecommunication antenna placed on existing telecommunication towers or on existing structures do not require a special use permit, unless the existing tower or structure is located in a residential district, or unless it will be modified in such a way as to increase its height, or a new accessory structure would be built.
- (d) The zoning board of appeals may waive any or all of the requirements for approval for applicants proposing minor changes to existing facilities and for applicants proposing the use of camouflage for a telecommunication tower when the board finds that such camouflage significantly reduces visual impact to the surrounding area. However, the board may not waive the requirement that a public hearing be held on the application.
- (e) No building permit shall be issued until the applicant provides proof that space on the facility has been leased or will be operated by a provider licensed by the FCC to provide service in the area.

GENERAL CRITERIA

No special use permit relating to a telecommunications facility shall be authorized by the zoning board of appeals unless it finds that such facility:

- (1) Is necessary to provide adequate service to locations that the applicant is not able to serve with existing facilities;
- (2) Conforms to all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies; and,
- (3) Will be designed and constructed in a manner which minimizes visual impact to the extent practical;
- (4) Is the most appropriate site among those available within the technically feasible area for the location of a telecommunications facility.

SUBMISSION REQUIREMENTS

The municipality should incorporate a list of items required to be submitted as part of an application, including a visual impact analysis. A suggested list of items is included in the following appendix.

CO-LOCATION

The shared use of existing telecommunications towers or other structures shall be preferred to the construction of new facilities. Any special use permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to co-locate within an existing telecommunication facility or upon an existing structure within a reasonable distance, regardless of municipal boundaries, of the site. The applicant must demonstrate that the proposed telecommunication facility cannot be accommodated on existing telecommunication facilities due to one or more of the following reasons:

- (1) The planned equipment would exceed the structural capacity of existing and approved telecommunication facilities or other structures, considering existing and planned use for those facilities;
- (2) The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented;
- (3) Existing or approved telecommunications facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;
- (4) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures; and
- (5) The property owner or owner of the existing telecommunication facility or other structure refuses to allow such co-location or requests an unreasonably high fee for such co-location compared to current industry rates.

FALL ZONES

Telecommunication facilities shall be constructed so as to minimize the potential safety hazards and located in such a manner that if the facility should fall, it will remain within the property boundaries and avoid habitable structures, public streets, utility lines and other telecommunication facilities.

SETBACKS

Telecommunication facilities shall comply with all existing setbacks within the affected zone. Setbacks shall apply to all tower parts including guy wire anchors, and to any accessory facilities. Additional setbacks may be required by the zoning board to contain on-site substantially all icefall or debris from tower failure and/or to preserve privacy of adjoining residential and public property.

LIGHTING

Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Notwithstanding, an applicant may be compelled to add FAA-style lighting and marking, if in the judgement of the zoning board, such a requirement would be of direct benefit to public safety. The board may choose the most appropriate lighting and marking plan from the options acceptable by the FAA at that location. The applicant must provide both standard and alternative lighting and marking plans for the board's review.

VISIBILITY AND AESTHETICS

- (1) The maximum height for telecommunication towers permitted under this article, including any antennas or other devices extending above the tower, measured from the ground surface shall be 150 feet.
- (2) Towers shall be a galvanized finish or painted gray above the surrounding treeline and painted gray, green, black or similar colors designed to blend into the natural surroundings below the surrounding treeline unless other standards are required by the FAA. Towers should be designed and sited so as to avoid, whenever possible, application of

FAA lighting and painting requirements. Accessory uses shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

- (3) The project shall be designed to blend with the natural and/or man-made surroundings to the maximum extent practicable.
- (4) Structures offering slender silhouettes (i.e. monopoles or guyed tower) may be preferable to freestanding lattice structures except where such freestanding structures offer capacity for future shared use. The zoning board may consider the type of structure being proposed and the surrounding area.
- (5) The applicant must examine the feasibility of designing a proposed telecommunication tower to accommodate future demand for additional facilities.

VEGETATION AND SCREENING

- (1) Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter shall take place prior to approval of the special use permit. Clear-cutting of all trees in a single contiguous area shall be minimized to the extent possible.
- (2) The zoning board may require appropriate vegetative buffering around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, waterways, historic or scenic areas, or public roads.

ACCESS AND PARKING

- (1) A road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads and shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- (2) Equipment or vehicles shall not be stored on the facility site.

SIGNAGE

The use of any portion of a telecommunication facility for signs for promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited. The zoning board may require the installation of signage with safety information.

SECURITY

- (1) Towers, anchor points around guyed towers, and accessory structures shall each be surrounded by fencing not less than six feet in height.
- (2) There shall be no permanent climbing pegs within fifteen feet of the ground.
- (3) Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site.
- (4) A locked gate at the junction of the access way and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public thoroughfare.

ENGINEERING STANDARDS

- (1) All telecommunication facilities shall be built, operated and maintained to acceptable industry standards. Each application must contain a site plan for the facility containing the signature of an engineer licensed by the State of New York.
- (2) Every facility shall be inspected at least every second year for structural integrity by a New York State licensed engineer. A copy of the inspection report shall be submitted to the municipality.

ABANDONMENT AND REMOVAL

At the time of submission of the application for a telecommunication facility the applicant shall submit an agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower used as a telecommunication facility if such facility becomes technologically obsolete or ceases to perform its originally intended function for more than twelve consecutive months. Upon removal, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.

ENFORCEMENT

The municipality should review its provisions on enforcement in the general zoning law to determine whether it would apply and if not, incorporate an enforcement mechanism for the applicant's failure to comply with the legislation.

APPENDIX D

Model Submission Requirements for Applications for Approval by Municipality

The review board may waive any particular submission requirement(s) it determines unnecessary for review of a particular project.

PROJECT PARTICIPANTS

Provide the names, addresses, phone and fax numbers of the following involved parties, as appropriate:

- The landowner of the project site to be purchased or leased;
- The service provider-corporate and point of contact [include the FCC license number and certificate of need as a public utility (as/if applicable)];
- Engineering consultant(s);
- Legal representative(s); and

- Other authorized service providers proposing to co-locate on the tower now or in the near future.

Where co-location is proposed, provide the names, addresses and phone numbers of the current owner(s) of the tower, building or structure upon which the co-location was considered or is proposed.

SITE DESCRIPTION

Provide a narrative description of the proposed project site, including:

- Existing site improvements, including access, utilities, and the presence of existing towers, buildings, or other structures;
- Vegetative cover (e.g., plant cover types, species, tree types (average,

minimum, and maximum) relative condition (health) of the vegetation; and tree stand density) slopes;

- Soils and the depth to bedrock;
- Wetlands and surface water bodies;
- Site drainage;
- Any special plant and animal habitats contained on the NYSDEC Natural Heritage Program database; and
- Any historic or archeological resources on the site and any historic resources adjacent to the site.

Where co-location is proposed, provide to-scale site plans and elevations of the existing tower, building or structure to be used for co-location. Provide plans, elevations, and details showing the proposed electronic communication facilities and existing antennae located on the tower.

SITE PLAN AND CONSTRUCTION DETAILS

Provide a detailed, labeled, and to-scale site plan that includes the following information:

- Scale, north arrow, date and name of preparer;
- Project site boundaries (if part of a larger parcel, include a map of the larger, parent parcel and the location of the area to be acquired or leased for the project);
- Abutting property owners, names and addresses;
- All bodies of water; wetlands; permanent or intermittent streams; and mean high water mark for larger water bodies on or adjoining the project site;
- Existing and proposed topographic contours at two-foot intervals in and within 200 feet of all proposed areas to be disturbed;
- All existing and proposed buildings, structures, roads, utilities, and driveways;
- Existing vegetation cover types and tree lines;
- The proposed limits of vegetation disturbance and/or clearing related to the proposed construction of the site access, tower, and accessory structures;
- All trees 4 inches or greater in size (diameter at breast height, DBH) to be removed;
- All proposed plantings; and
- All existing and proposed drainage and erosion control and stormwater management facilities.

For any new or improved access roads or driveways, provide a grading plan, centerline profile, and cross sections (every 100 feet showing proposed and existing contours at two foot intervals) and identify the construction material(s) (e.g., gravel, asphalt).

Provide detailed construction plans and elevation of the proposed tower, antennae, equipment shelters (enclosed building, structure, cabinet, shed or box to contain batteries and electrical equipment). Show all foundations, piers, structural supports, cross arms, guy wires and anchors, antennae mounting mechanisms and signage. Label the size, material and provide color sample of all towers, antennae, and accessory structures (e.g., equipment shelters, security fencing, signage).

SITE ACCESS, CONSTRUCTION AND OPERATION

Describe the type, location, and size of any road and/or driveway providing existing and proposed access to the proposed tower site. Describe any proposed temporary or permanent improvements, including any proposed vegetation removal, site drainage, crossing of streams or wetlands and installation of impervious, paved surfaces and utilities.

VISUAL IMPACT ANALYSIS

Provide a visual impact analysis for the proposed project. (*See Appendix I of this Manual.*)

TELECOMMUNICATIONS DATA

The following documentation usually should accompany the initial application for new base transceiver station (BTS) facility construction or co-location.

Two distinct classes of proposed sites are “coverage” sites and “capacity” sites. Some items listed below may not be required in cases where the municipality agrees that the proposed site is suitable as proposed. Such cases might arise when it is known that a site will not cause significant visual impact (such as a rooftop stealth installation) and when the proposed site will not force the selection of more controversial neighboring BTS sites at a later date. Remember that every BTS site (including co-location) that is approved narrows the options for adjoining neighbor sites. Such narrowing of options may eventually result in the placement of future BTS facilities at unacceptable locations.

■ ***Initial Application Documents Relevant to BTS Coverage Sites***

- The search ring map with alternate sites marked.
- Existing cellular/PCS coverage propagation plot showing existing operational neighboring sites up to 5 miles beyond the boundary of the municipality. This will help the municipality understand the need for more BTS sites and where they might be located.
- Same as above except add in all proposed sites that are not the subject of the current application. This will aid the municipality in gaining a picture of the network planning and to what extent the subject proposed BTS is required.
- Same as above except add in the subject of the current application and a reasonable number of alternate sites (one plot per proposed site, antenna elevation at the required height) evaluated by the applicant. In particular, note the need for future BTS facilities and carefully note the expected location of a search ring to assure it is not more controversial than that which results from other alternate sites.
- A narrative of sufficient detail to allow the municipality to understand why individual sites are deemed not viable (technical and/or visual) and why the proposed site stands out as the best visual prospect of all the alternate sites.

■ ***Initial Application Documents Relevant to BTS Capacity Sites***

- History plot of Busy Hour capacity approaching sector capacity. This plot allows forecasting increasing user demand in a given cell sector that, unless addressed, will cause undue blocked or dropped calls.
- Propagation plots to demonstrate the rf coverage of the existing BTS sites and the proposed capacity sites and alternative sites if applicable (one plot per site).
- A narrative or outline that addresses the antenna height required for the new capacity site and the reduction of antenna height (if so proposed) that results at neighboring sites. Such antenna height reductions may provide the opportunity for removal of tower sections so as to reduce the existing visual impact.
- ***Utilities.***
 - Describe existing utility services (e.g., electric, telephone, etc.) to the project site and any improvements necessary to construct and operate the proposed project.
- ***Other Regulatory Permits and Approvals.***
 - The applicant shall identify all permits or approvals necessary from local, state or federal agencies for this proposed project. Provide names and phone numbers of key points of contact with said agencies. Provide copies of written approvals and other permits received.
 - Provide documentation from the New York State Office of Parks, Recreation and Historic Preservation that the project will not have any impact on archeological or any structures or areas eligible for or inclusion on the National or New York State Historic Registers. If the Historic Preservation Office determines that there is a potential for impacts to archeological or historic resources, then provide their recommendations for mitigation of those resources.
 - Documentation from the New York State Department of Environmental Conservation regarding the presence or absence of any protected species (Natural Heritage information).

Sample Moratorium on Wireless Telecommunication Towers

This sample moratorium is provided for municipalities as an example for use in drafting local legislation. The municipal attorney should always be consulted for review as local conditions may require the addition or elimination of information, or laws may have changed since the publication of this guide. The moratorium in this example is only placed on the construction of towers, as the placement of a single antenna on an existing structure generally does not present the same concerns as a tower. If the attachment of antennas to provide wireless service is presenting particular problems in a municipality, the definition in this sample would need to be amended.

The sample incorporates all of the necessary requirements found in the federal Act, the FCC agreement with the CTIA and others, and relevant New York and federal case law.

These include:

- a fixed time period of 90 days with a specific termination date; (Note: The agreement between the FCC and the CTIA allows for a moratorium of up to 180 days. Therefore, the moratorium could be extended an additional 90 days if the legislative body feels that an extension is warranted. Under existing law it is generally not recommended that a moratorium exceed 180 days);
- the acceptance and processing of applications during the moratorium;
- description of what the local government intends to accomplish during the moratorium; and
- the inclusion of the industry and the public in the development of the legislation.

Additional considerations upon enactment of a moratorium:

- the legislative body, with the advice of its attorney, should insure that all procedural requirements have been met for the adoption of the legislation and should consider adopting the moratorium by local law, even if an ordinance would otherwise be allowed, to avoid uncertainty;
- the municipality should know the contact person for all providers licensed to operate in their area and contact them with information on the moratorium and ways in which the wireless providers can assist;
- the appropriate boards should be prepared to act on applications as soon as the moratorium is concluded to avoid further delays and to comply with requirements that a municipality act on an application within a “reasonable time”; and
- upon completion of the moratorium, the municipality should handle all applications in the order that they were received during the moratorium, providing all relevant application material is received, so that applicants can reach their market ahead of their competitors who filed later applications.

SECTION 1. PURPOSE.

- (a) The Federal Telecommunications Act preserves the authority of local governments over reasonable nondiscriminatory decisions regarding the placement, construction, and modification of wireless telecommunications towers. It appears that there will be a continual interest and need to construct towers to meet demand and accommodate new technologies within the State and the [name of municipality]. The [name of municipality] [has received several requests to locate such towers and accessory uses (or) expects to receive requests in the near future to locate such towers and accessory uses].
- (b) The [name of municipality] has significant concerns over the location of wireless telecommunications towers within the [city/town/village]. The zoning regulations of the [name of municipality] were adopted at a time before wireless telecommunications towers existed, and

appropriate siting and development standards do not exist. The [city/town/village] would like to insure that the installation of these towers proceeds in a fashion that minimizes any adverse impacts while maximizing services and benefits to the community. The [name of municipality] wants to accommodate the need for wireless telecommunications towers while regulating their location and number; minimize adverse visual impacts through proper design, siting and screening; avoid potential physical damage to adjacent properties; and encourage joint use of tower structures.

- (c) This law is necessary in order address the [name of municipality’s] concerns by barring final decisions on applications for tower construction in order to allow the [legislative body] time to research the issues and adopt a local law regulating wireless telecommunications towers and accessory uses consistent with the comprehensive plan of the [name of municipality]. The [city/town/village] hopes to develop legislation that will establish a clear and understandable permitting process to guide local officials and businesses. In order to facilitate this effort, the [legislative body] will seek the input of citizens through the public hearing process and will request comments and suggestions from companies that provide wireless services within the area.

SECTION 2. DEFINITIONS.

- (a) *Telecommunications tower*—A structure on which one or more antenna will be located, that is intended for transmitting and/or receiving radio, television, telephone, wireless or microwave communications for an FCC licensed carrier, but excluding those used exclusively for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen’s bands, amateur radio and other similar private, residential communications.
- (b) *Telecommunication antenna*—A system of electrical conductors that transmit or receive radio frequency waves.
- (c) *Accessory use*—An accessory use serves the principal use, is subordinate in area, extent or purpose to the principal use, and is located on the same lot as the principal use. Examples of such uses, include transmission equipment and storage sheds.

SECTION 3. IMPOSITION OF MORATORIUM.

- (a) For a period of ninety days from and after the effective date of this law, no final decision shall be made on any application for the construction or erection of a telecommunications tower, antenna or accessory use. For the purpose of this law, a final decision shall be deemed to mean any approval which would in any way authorize the construction or erection of a telecommunications tower, antenna or accessory use.
- (b) The imposition of this law shall not affect the acceptance or processing of new applications, or applications for which approval has been granted prior to the effective date of this law.³³

SECTION 4. CASES INVOLVING HARDSHIP.

The zoning board of appeals (or, in municipalities without zoning, the legislative body) shall have the power, after a public hearing, to vary or modify the application of any provision of this law upon its determination that this law would impose extraordinary hardship upon an applicant and that a variance from this law will not adversely affect the health, safety and welfare of the [city/town/village]. Any request for a variance shall be filed with the clerk of the [named] body. The [named] body shall conduct a public hearing on five days notice and make its decision within twenty days of its receipt of the appeal by the clerk.

Frequently Asked (Technical) Questions

Q. *What is a Wireless Telecommunications Network?*

A. A telecommunications network is comprised of all the base transceiver station (BTS) (cell) facilities, the mobile telephone switching office (MTSO) connecting those facilities and the public switched telephone network (PSTN).

Q. *What is the Minimum Level of Service Necessary?*

A. Minimum level of service is defined by the service provider and is integral with the network design philosophy it employs. Level of service can be defined variously—sometimes in terms of number of dropped calls, transmission errors, or other technical measures related to lost information. Ultimately, for siting cellular/PCS systems, the path loss must be held below the value determined in the link budget so as to allow reliable service.

Q. *Are there economic constraints that impact the level of service decisions?*

A. The economic constraints under which service providers operate finds them attempting to trade-off performance against cost. They must work between two limiting conditions. First, if the minimum level of service is set too low, subscribers will not only experience noise on their calls but will also experience too frequent drop-outs and otherwise unreliable service. Second, if the service provider sets the level of service requirements too high the need to add extra base stations will drive up the cost in an already competitive marketplace. Since cost and performance are so interrelated, the service provider will be attempting to define reasonable service levels that assure network performance with the fewest number of BTS sites.

Q. *How is the link budget related to level of service?*

A. Establishing the required level of service of a base station is founded upon the development of a link budget. The link budget identifies all the system gains and losses and identifies the worst-case permissible signal strength that will allow reliable communication from and to subscribers. The link budget includes the signal losses anticipating that the user might be inside a building (high loss), inside a vehicle (medium loss) or on the street (low loss). Each of these situations, and over 40 other variables related to the radio environment in which the system must operate, are taken into account. The resulting maximum path loss allows a computer generated propagation plot (or rf drive test plot) to display areas of coverage where the minimum signal strength is exceeded, where it is marginal, and where it is clearly unusable according to the initial assumptions. If the initial assumptions are valid, then the propagation plot represents realistic performance.

Q. *How many base station facility sites must a municipality allow?*

A. There is no specific answer to this question, and the issue might be framed as “How can sites be situated so as to reduce the overall impact to the community?” Working from that approach requires the municipality to extend pro-active efforts to define the community values that must be preserved. It also requires the service provider to apply creative approaches. In critical sites, application of non-standard approaches to base station facility design should be considered. This may include placing the base station facility further toward the edge of the proposed cell so as to avoid a controversial location or using stealth techniques to disguise a site. In some cases, it may even be possible for the service provider to adjust siting of yet-to-be built adjacent BTS site locations so as to facilitate better site selection in the proposed cell. The municipality should keep in mind that in cellular/PCS site

selection, there is never just one site in question—the site under consideration is part of a larger network. Once a site is approved, it will become the “locked in” variable that will place much tighter geographical constraints on the surrounding sites yet to be proposed.

Q. *How can propagation plots and rf drive tests be formatted and performed for best use by the municipality?*

A. In order to make the information submitted to municipalities usable to demonstrate minimum height requirements for zoning consideration, both rf drive tests (when performed) and propagation plots should conform to certain minimum requirements. When performed, each component in the rf drive test setup should be certified as currently in calibration and traceable to NIST (National Institute of Standards and Technology), and the test plan for demonstrating coverage should be well-defined by the service provider who is proposing the site. Both incremental propagation plots, and field rf drive test plots when used, should demonstrate a clear transition from pass to fail as the incremental height of the base station antenna is changed. Documentation should clearly identify major roadways and landmarks. The color-code for signal level conditions should be the same on both propagation plots and rf drive test plots. The color-code should be explicitly defined on the map—preferably printed by the software package that generated the plot so as to avoid errors or omissions when writing these in by hand. Finally, a complete disclosure of the assumptions under which the analysis was performed—assumptions such as foliage losses, fade margins, ERP, and minimum signal level requirements from the link budget—should be declared in writing to avoid the possibility of misunderstanding on the part of those reviewing the materials.

Q. *Are there special precautions related to the use and interpretation of propagation plots and rf drive test results by municipalities?*

A. A word of caution regarding the propagation plots and field rf drive tests is in order. There exists a high degree of variability in the mobile radio environment in which the cellular system must operate. For example, drive test data taken in the winter in the Northeast will not be valid for summer conditions due to changes in the foliage. Some other variability is not so obvious, and field rf drive tests are only as accurate as the equipment used to perform the measurements. Loose connectors, uncalibrated receivers, incorrect transmit power setting, defective test antennas and a multitude of other potential errors further complicate the uncertainty of the measurements unless they are controlled. Field measurements are often performed on tight deadlines and sometimes in less than favorable weather conditions. Therefore, municipalities should not regard either drive test data as absolutely accurate. Likewise, propagation plots are only as good as the assumptions used in the “propagation model” on which they are based.

Because of the complexities in field data collection and the numerous errors that can be mistakenly introduced into measurements, in critical cases it is highly recommended that the rf drive test plans and their execution be monitored and certified by an independent expert who is qualified in rf field measurement. Such an expert may already be affiliated with the firm that provides engineering support services to the municipality. Universities often have faculty experts who are qualified in rf field measurements. Other resources to help locate independent experts include organizations like the New York State Association of Towns.

The interpretation and use of propagation plots and field rf drive test data in critical applications where the data is being used in support of environmentally sensitive sites may best be handled by an expert—

whether from the service provider or an independent expert—who is knowledgeable in the subject as it applies to cellular technology. In critical cases, such an expert can disclose the propagation model assumptions, and monitor and witness the performance of field rf drive test measurements to a test plan and certify the results for

reasonableness, repeatability, and normalization of measured results. This may then allow the municipality decision makers the freedom to focus on the proposed site's impact rather than questioning the accuracy of the technical claims.

APPENDIX G

Coastal Management Consistency Review

While both federal and state agency activities must be consistent with the policies of the New York State Coastal Management Program, the reviews are conducted differently for each:

Federal Activities (e.g., development projects, permits, and funding) are reviewed by the Division of Coastal Resources to ensure adherence to the state program or an approved Local Waterfront Revitalization Program.

State Activities (e.g., development projects, permits, funding, and planning) are reviewed by the agency conducting the activity. Under Article 42 of the New York State Executive Law, the agency must modify the activity if it would adversely affect the state's coastal resources and thus conflict with the policies of the New York State Coastal Management Program or an approved Local Waterfront Revitalization Program. The Division of Coastal Resources advises the agencies on the consistency of their activities with the state or local program.

Federal Consistency—The consistency provisions of the federal Coastal Zone Management Act of 1972 require federal agency activities to be consistent with the state's federally approved Coastal Management Program. This requirement applies to all federal activities and federally authorized activities within, as well as activities outside, the state's coastal zone that affect the zone. Applicants for federal agency approvals or authorizations are required to submit copies of federal applications to the Department of State, together with a Federal Consistency Assessment Form and consistency certification; so that the Department can review the consistency certification and proposal for consistency with the Coastal Management Program.

Applicants for federal funding must submit an identification of the proposed funding source and a description of the project. If the Department of State determines that the proposed activity would be inconsistent with the state's Coastal Management Program, federal agencies may not fund or approve the proposal. Direct activities by federal agencies are subject to similar requirements.

State Consistency—No state agency involved in a Type I or unlisted action may carry out, fund, or approve the action until the agency has complied with the provisions of Article 42 of the New York State Executive Law and implementing regulations in 19 NYCRR Part 600. The law and regulations require certain state agency actions in the coastal area to be consistent with the coastal policies in 19 NYCRR Part 600.5, or a state-approved LWRP. Type I and unlisted actions are required to be evaluated for possible effects on coastal policies or approved LWRPs. As soon as an agency determines its action is being contemplated in the coastal area, and prior to making a determination of significance pursuant to the State Environmental Quality Review Act, the agency must complete a Coastal Assessment Form (CAF) to assist it in making determinations of coastal consistency and environmental significance. For state agency actions involving an Environmental Impact Statement (EIS), the EIS must include an identification of the applicable coastal policies and a description of the effects of the action on those policies, whether the agency is acting as the lead or the involved agency. State agencies may not make a final decision on the action until the state agency has made a written finding that it is consistent with the coastal policies in 19 NYCRR Part 600.5 or an approved LWRP.

APPENDIX H

Sources of Information on the Internet and Web Site Links

STATE AGENCIES:

<http://www.dec.state.ny.us>

This site is the home page for the New York State Department of Environmental Conservation (NYSDEC). The page includes categories such as: What's New, For our Visitors, About DEC, Regulatory Information, Education & Information, Outdoors & Natural Resources and Environmental Protection.

<http://www.dos.state.ny.us>

This site is the home page for the New York State Department of State (NYS DOS). The page includes a comprehensive list of services and programs.

<http://www.northnet.org/adirondackparkagency/>

The Adirondack Park Agency's Page—This page contains information on a variety of subjects concerning the Adirondack Park Agency and land use and related development issues.

FEDERAL AGENCIES:

<http://www.fcc.gov/statelocal/>

FCC Focus on State & Local Government Issues—The purpose of this page is to provide state and local governments with a central source of information on the Federal Communication Commission (FCC) proceedings of the most interest to them.

<http://www.fcc.gov/wtb/siting/>

The FCC Wireless Telecommunications Bureau's Facility Siting Page—This page contains information on a variety of subjects concerning the siting of facilities for wireless telecommunications providers.

<http://www.faa.gov/>

The Federal Aviation Administration Page—This page contains information on a variety of subjects concerning the Federal Aviation Administration (FAA).

OTHER AGENCIES:

<http://www.flipag.net/nopoles/>

Families For Appropriate Cell Tower Siting—This Site was established as a reference guide to assist in the distribution of information concerning communication/cell towers, wireless Lans, and cell phones. Information concerning the health effects, zoning debates, school issues, legal issues, state, national, and local issues. This site indicates that it is updated with new developments on a national, international and local scale.

<http://www.search4sites.com/about.htm>

Search 4 Sites—This is a convenient source for information on co-location and rooftop sites for the wireless industry. A search engine allows the reader to look for available sites.

<http://www.plannersweb.com/articles/cam128.html>

Planning for Cellular Towers by Ben Campanelli, Planning Commissioner's Journal—The PCJ is a quarterly publication designed for citizen planners, including members of local planning commissions and zoning boards. It is geared to non-professionals and avoids technical jargon.

<http://www.planwireless.com>

PlanWireless is a newsletter devoted to informing local governments about the wireless industry.

<http://encarta.msn.com/index/conciseindex/5c/05caa000.htm?z=1&pg=2&br=1>

Encarta—This article in the encyclopedia includes an explanation of cellular radio telephone mechanics, the cellular network, and the history of the technology.

<http://www.wirelessweek.com/mediakit/whoweare.htm>

This is an in-depth weekly newspaper covering all the business, technology and regulatory news in cellular, personal communications

services, paging, specialized mobile radio, private mobile radio, wireless Internet, wireless data, satellite, wireless local loop and microwave.

<http://www.ameritech.net/users/nlehto/index.htm>

An online version of Municipal Cable TV & Telecommunications, a quarterly newsletter produced by the Michigan law firm of O'Reilly, Rancilio, Nitz, Andrews, Turnbull & Scott, P.C. The newsletter contains information of immediate impact and interest to municipal officials regarding cable television and telecommunications law and policy.

<http://www.mrsc.org/legal/telecomm/tcpage.htm>

Produced by the Municipal Research and Services Center in Washington, this page provides a wealth of information on telecommunication issues for local governments and is updated frequently.

<http://www.wcl.american.edu/pub/organizations/atlas/links.htm>

This page of the Web site of the American Telecommunications Law Association provides links to federal, state and law journal information on telecommunications law and policy.

<http://www.millervaneaton.com>

This law firm from Washington D.C. has represented local governments on telecommunications issues and the Web site provides several articles on issues affecting local governments.

<http://www.natoa.org>

The Web site of the National Association of Telecommunication Officers and Advisors.

<http://www.ntia.doc.gov>

The Web site of the National Telecommunications and Information Administration, an agency of the U.S. Department of Commerce, which is the voice of the executive branch on domestic and international telecommunications issues.

<http://www.stealthsite.com>

This private company provides antenna concealment technology and the Web site provides examples of what is being done around the country and the cost.

<http://www.utilitycamo.com>

A private company that provides concealment technology to make wireless towers as inconspicuous as possible.

<http://www.wow-com.com>

The Web site of the Cellular Telecommunications Industry Association which provides basic facts about the industry.

<http://www.planning.org>

The Web site of the American Planning Association offers information on a variety of topics related to community design, development and topics such as smart growth.

APPENDIX I

Model Visual Impact Analysis (VIA)

INTRODUCTION

The following methodology is to be employed by the applicant when required by the local review board to prepare a Visual Impact Assessment (VIA) Report for a proposed telecommunications facility.

The purpose of the VIA is to:

1. Define the visual character of the project study area.
2. Inventory and evaluate existing visual resources and viewer groups within the study area.

3. Identify key views for visual assessment which represent the range of landscape characteristics and viewer groups within the project study area.
4. Assess the visual impacts associated with the proposed action.

The VIA is to be prepared under the direct guidance of a registered landscape architect experienced in the preparation of visual impact assessments. The VIA is to be prepared in accordance with the policies, procedures and guidelines contained in established visual impact assessment methodologies (see Literature Cited/References section).

EXISTING VISUAL CHARACTER

See Figures 1 (Site Location Map) and 2 (Proposed Site Plan) for the project example which follows.

■ *Physiographic/Visual Setting*

DEFINITION: Landscape Character is defined by the basic pattern of landform, land use, vegetation, and water features that make up a view.

Include a description of the New York State physiographic region where the project site is located.

EXAMPLE: The location of the project site is located in the Central

Appalachian physiographic region of New York State, immediately south of the Mohawk Valley (source). As the name implies, this region is distinguished by its gently rolling to hilly topography. Water features in the region include tributaries to the Mohawk and Susquehanna Rivers, along with scattered wetlands, small lakes and ponds. Land use is primarily agricultural and rural residential, interspersed with small villages and hamlets. Vegetation in the region is characterized by a mix of open fields and forest. Forests are primarily deciduous (northern hardwoods) and typically occur in relatively small blocks or woodlots.

■ *Vegetation and Landform*

Based on established visual assessment methodology (NYSDEC, not dated) and site-specific topographic and land use conditions, the study area for this project is to be defined as the area within a 5.0-mile radius of the project site.

EXAMPLE: Within this area, physiographic and vegetation conditions are typical of the larger region. The study area is characterized by hilly topography with elevations ranging from approximately 1,150 to 1,800 feet above sea level. Vegetation is a roughly 50:50 mix of open agricultural fields and deciduous

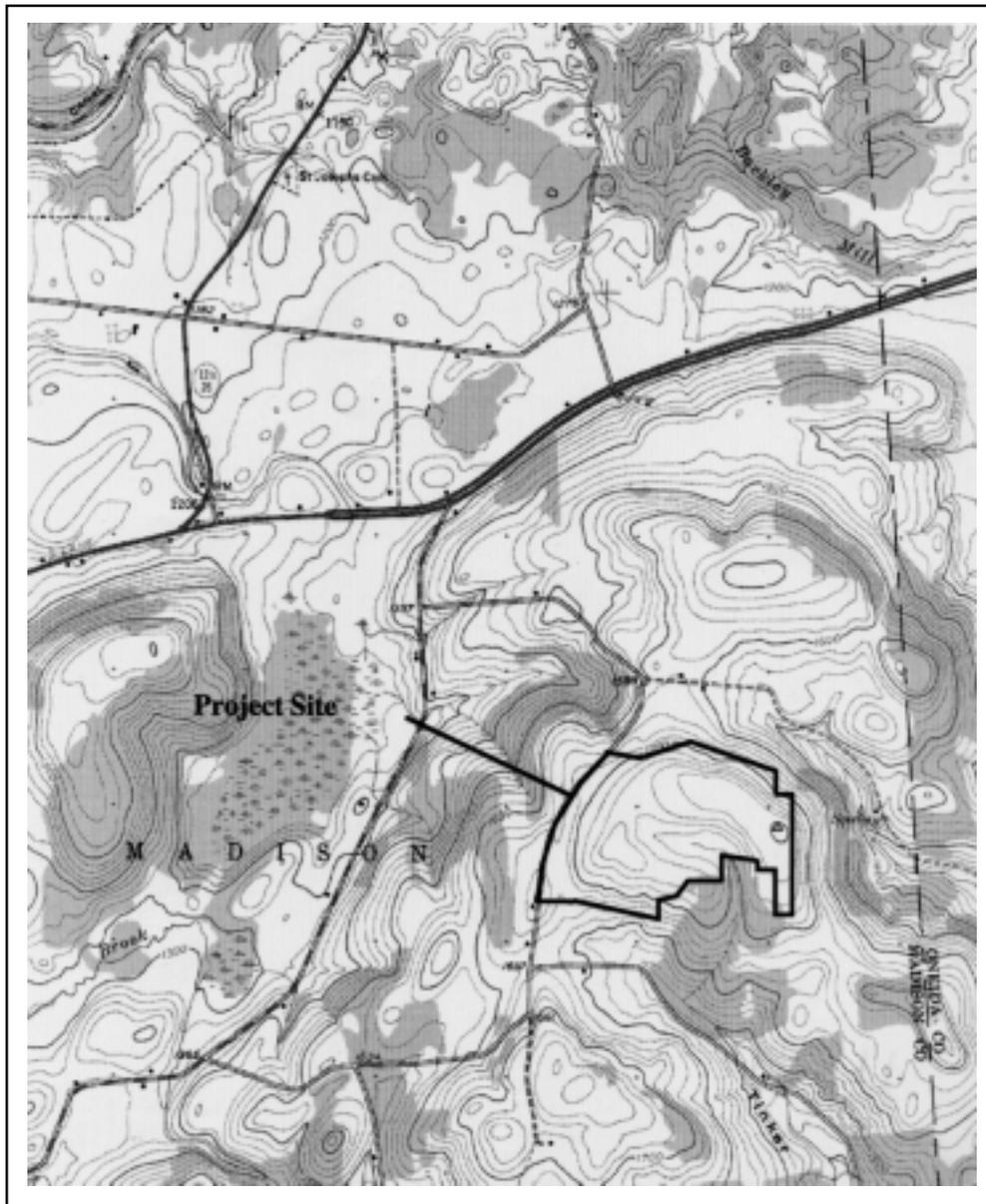


Figure 1: Site Location Map—Oriskany Falls Communication Facility

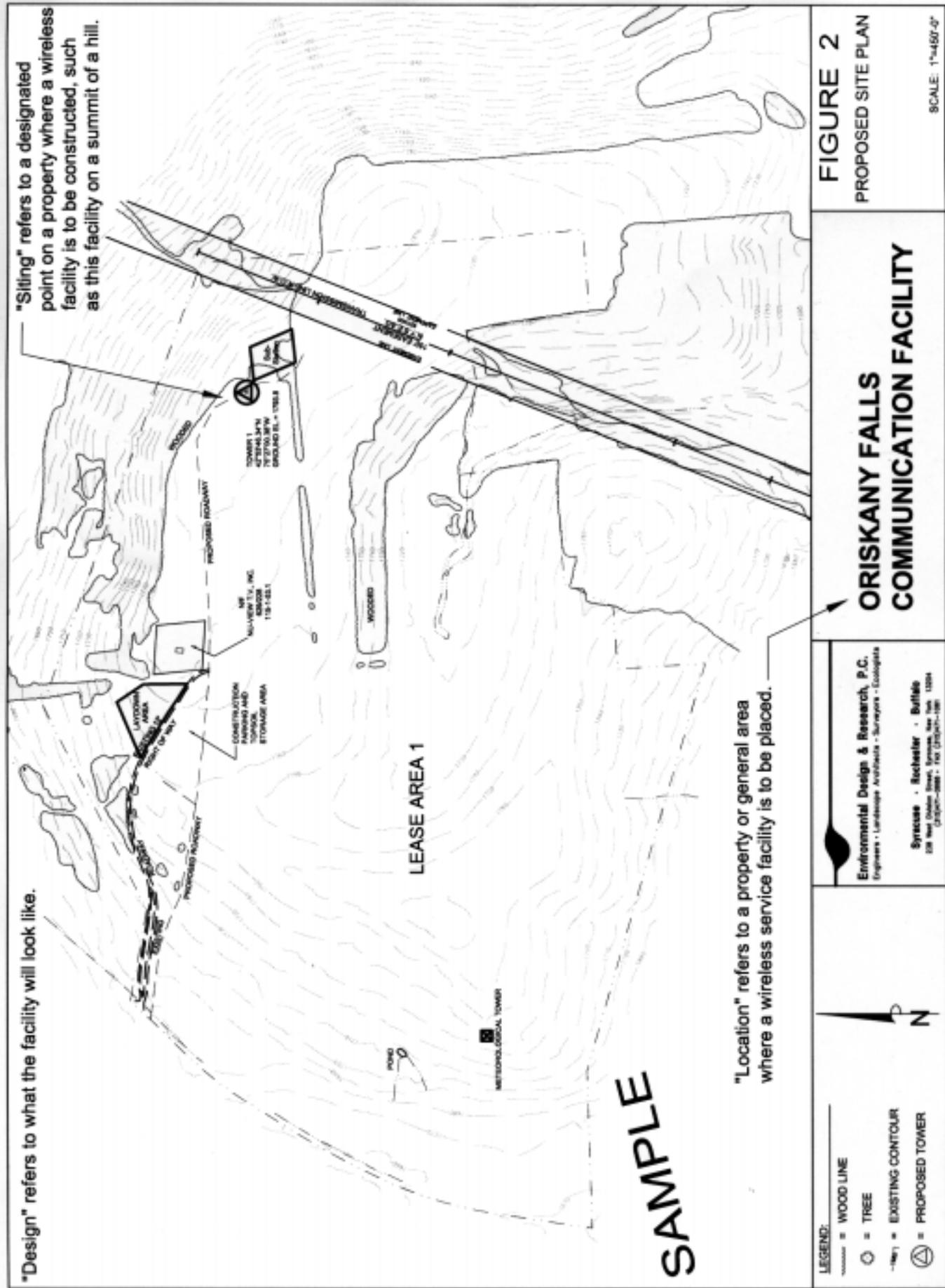


Figure 2: Proposed Site Plan—Oriskany Falls Communication Facility

woodlots. Open fields tend to occur on level valley bottoms and gentle slopes, while woodlots occur more commonly on steep slopes, ravines and in wetlands.

■ **Land Use**

Include a brief description of land use within the study area.

EXAMPLE: Land use within the study area is a mix of rural land and small villages and hamlets. Rural portions of the area are dominated by open land (agricultural and undeveloped), farms and scattered rural residences. Dairy farming is the dominant agricultural use in the area, and contributes significantly to its bucolic character. Higher density residential and commercial development is concentrated in the Villages of Oriskany Falls and Waterville (both located in Oneida County) in the northeastern portion of the study area. Other pockets of higher density development occur in the hamlets of Madison, Bouckville, Solsville, Sangerfield, and North Brookfield. These smaller concentrations of homes and businesses occur at various road intersections within the study area. All of the villages and hamlets are relatively small and well-defined components of a primarily rural/agricultural landscape.

■ **Water Features**

Include a brief description of water features within the study area.

EXAMPLE: Water features within the study area are primarily small streams and ponds which are not major aesthetic features in the landscape. The more significant water features include the Sangerfield River, Nine Mile Swamp, Lake Moraine, and the Chenango Canal. Except for Lake Moraine, which offers some

open views across the water and accommodates shoreline cottages/camps, even these larger water features are not distinctive components of the landscape. Due to their occurrence within largely forested corridors these water features are generally only visible at bridge and culvert crossings.

■ **Visually Sensitive Resources**

Identify visually sensitive resources such as scenic roads or byways (as identified by NYSDOT), recognized scenic overlooks or vistas, water bodies within the study area protected under the State's Wild, Scenic and Recreational Rivers Act (ECC Article 15, Title 27), state parks, forests, wildlife management areas or multiple use areas.

Other possible items to consider:

- Golf courses, state forests and trails that are used for hunting, cross country skiing, snowmobiling and hiking;
- Historic homes (identified by an architectural survey undertaken by the project cultural resource consultants (listed on the State and National Register of Historic Places and those eligible for listing on the Register (the final decision on this matter lies with the State Historic Preservation Officer (SHPO);
- Intensive land uses that could also be considered visually sensitive (i.e. villages and hamlets, major roads, state highways and traffic counts);
- Event locations; and
- Other visually sensitive or intensive land uses occur just outside the 5.0-mile radius study area.

The location of these structures within the study area is to be illustrated on a map (See Figure 3).

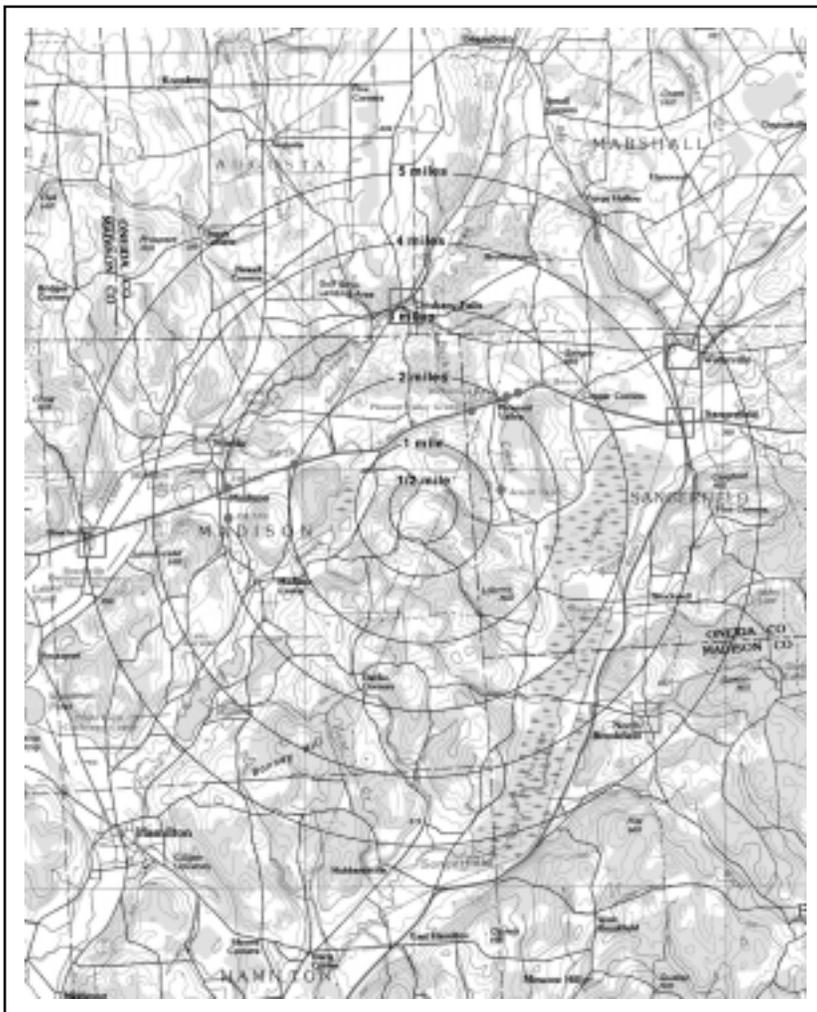


Figure 3: Study Area and Visually Sensitive Resources—Oriskany Falls Communications Facility

LEGEND

-  Cultural Site
-  Village/Hamlet

■ **Landscape Similarity Zones**

Identify landscape similarity zones within a 5.0-mile radius of the site. Include their general landscape character, use, and potential views of the project.

■ **Viewer/User Groups**

Identify categories of viewer/user groups within the study area.

EXAMPLES:

- Commuters and through-travelers who will pass in close proximity to the project site;
- Local residents who will see the proposed project structure from their farms, homes, yards, places of business and local roads; and
- Tourists and shoppers who are traveling to or passing through the area for the purpose of experiencing cultural or recreational resources in and adjacent to the study area.

■ **Project Visibility**

An analysis of potential project visibility is to be undertaken to identify those locations where there is a relatively high probability that the proposed facility will be visible. This analysis includes identifying potentially visible areas on a viewshed map and verifying visibility in the field.

■ **Viewshed Analysis**

A viewshed map of the study area is to be prepared using USGS digital elevation model (DEM) data (7.5-minute series) and a computer program called MicroDEM+. The MicroDEM+ program defines the viewshed (using topography only) by running elevational cross-sections every 0.25 degrees, in a 360-degree circle through the study area. It samples elevational points every 1-meter along the section lines. The viewshed map is to be based on a maximum structure height above an identified base elevation in feet above sea level. The resulting viewshed map (See Figure 4) defines the maximum area from which the tallest element of the completed facility could potentially be seen within the study area (ignoring the screening effects of existing vegetation). Foreground (0 to 0.5 mile), middleground (0.5 to 3.5 miles), and background (3.5 to 5 miles) should be delineated on the map.

EXAMPLE: The viewshed map (Figure 4) reveals that the project has the potential to be visible throughout a large portion of the study area. This is not surprising, given the height of the wind turbines and their location on an open hilltop. Areas indicated as potentially visible (discounting the effects of vegetation screening) tend to be concentrated to the northwest and east of the project site. Specific locations include the villages of Oriskany Falls and Waterville and the majority of the Route 20 corridor. Portions of Lake Moraine, the White Eagle Conference Center and three sites considered potentially eligible for listing on the State and National Register of Historic Places (Jewett Farm, Alcott House and Richmond House) also fall within the project viewshed. The one Register-listed site (Pleasantville Grange) and three other sites considered potentially eligible for listing (JM 25, JM 35A and JM 35B) are indicated as being screened by existing topography (See Figures 3 and 4).³⁴

VISUAL IMPACT ANALYSIS

The visual impact assessment procedures used for the study should be based on NYS Department of Transportation visual assessment policy (specified in Engineering Instruction 88-43) and visual impact assessment methodologies developed by the U.S. Department of the Interior, Bureau of Land Management (1980), U.S. Department of Agriculture, National Forest Service (1974), the U.S. Department of Transportation, Federal Highway Administration (1981), the U.S. Army Corps of Engineers (Smarden, et al., 1988) and the New York State Department of Environmental Conservation (not dated). The specific techniques used for this study and the result examples of the VIA are described below.

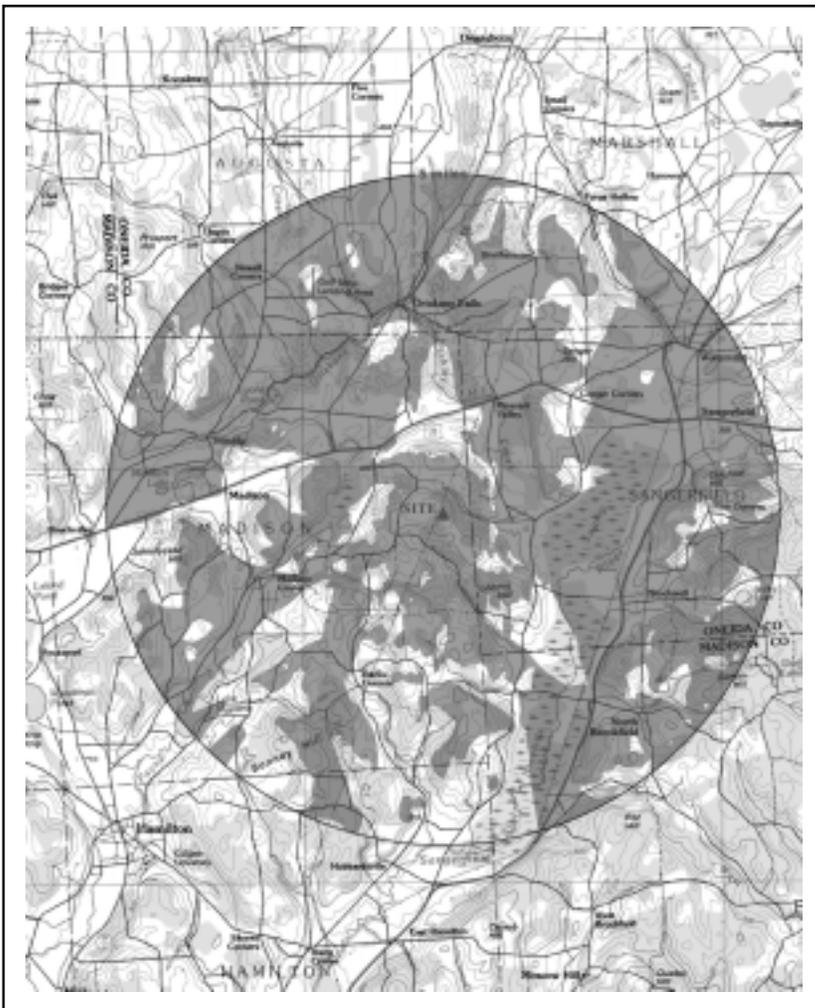


Figure 4: Viewshed Map—Oriskany Falls Communications Facility

LEGEND

- Project potentially visible based on topography only. (Screening provided by existing vegetation is ignored.)

■ *Field Verification*

Assess the nature and extent of the structure's actual visibility from each identified sample use area. This step is to include identification of any screening of the structure provided by intervening vegetation, buildings, etc. The purpose of this exercise is to document potential project visibility based on actual field conditions, and provide a scale reference for subsequent computer-generated visual simulations.

A brightly colored balloon (preferably yellow) is the best tool to use as a visual target. The balloon should be raised to a height above the existing grade that approximates the finished elevation of the structure. Weather conditions should be favorable throughout most of the day. Clear skies and bright sunshine are the days with the best visibility. Calm winds result in relatively stationary balloon heights.

While the balloons are in the sky, field crews should drive public roads and visit public vantage points within the 5-mile radius (78 square mile) study area to document points from which the balloons can and cannot be seen. The number of representative viewpoints varies within the study area. All photos should be taken with a lens settings at 50 mm to simulate normal human eyesight relative to scale. The time and location of each photo should be noted on field maps and data sheets, and at each site it should be determined whether the balloons are visible or not. Global Positioning Satellite (GPS) readings can also be taken at each viewpoint to document exact location and aid in the visual simulation process. Include field notes and photographs in the study's appendix.

EXAMPLE: Field verification and photo documentation indicated that actual visibility of the balloons was much more limited

than the viewshed map would suggest, due primarily to the screening effect of existing vegetation. At least one of the balloons was visible from 136 of the 235 photographed viewpoints (See Figure 5). The areas of highest visibility were concentrated in the higher elevation northern portion of the study area, and along Route 12 to the east. The balloons were least visible in southwestern portion of the study area. Visibility was documented from various locations along Route 20 and from the Village of Oriskany Falls. Visibility from the other villages and hamlets within the study area was generally obstructed. The balloons could not be seen from the one Register-listed structure, but could be seen from three of the six Register-eligible structures within three miles of the site. Visibility was also documented from the west side of Lake Moraine, Lake Moraine Road (County Route 83) around the White Eagle Conference Center and portions of Canal Road along the Chenango Canal. The balloons could not be seen from the site of the Bouckville Outdoor Antiques Show or the North Brookfield area (See Figure 5). Field evaluation also revealed that the existing guyed meteorological towers on the project site, because of their narrow profile and gray color, are extremely difficult to see from viewpoints greater than 0.5-mile from the site.

■ *Selected Viewpoints*

Select four viewpoints to show representative views of the proposed project. The views should represent sensitive viewer groups and resources. The selected viewpoints will show the range of visual changes that will occur with the project in place. The locations of these viewpoints should be illustrated (See Figure 5).

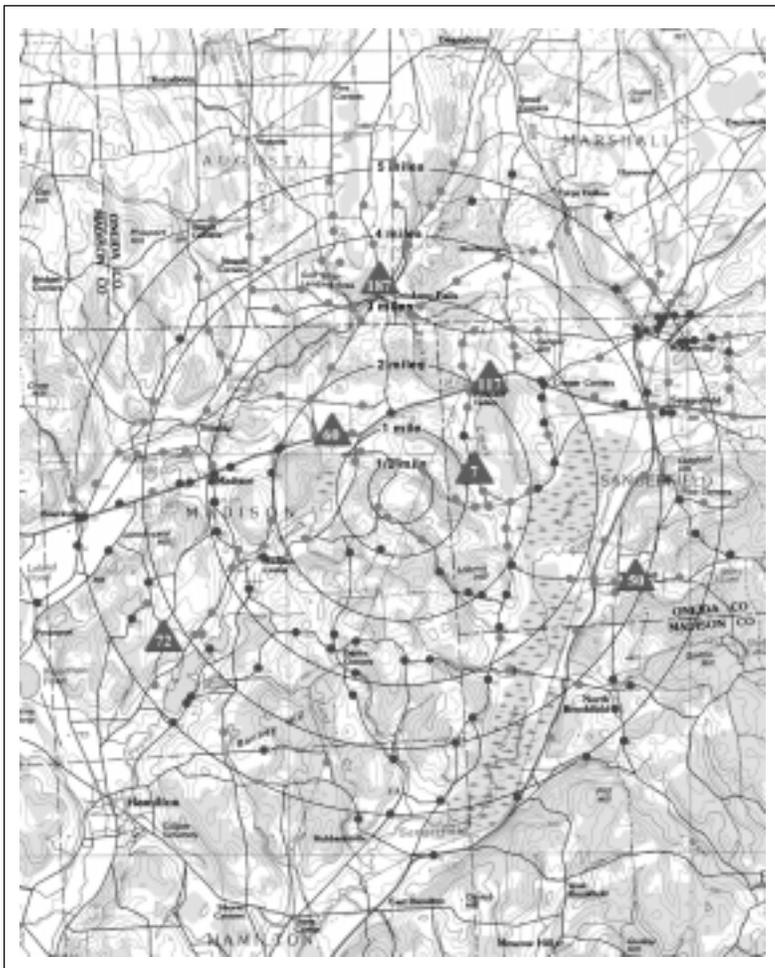


Figure 5: Viewpoint Location Map—Oriskany Falls Communications Facility

LEGEND

-  Visible
-  Not Visible
-  Simulation Viewpoints



Figure 6A: Alternative site near highway. View facing north showing existing condition.



Figure 6B: Visual simulation of view facing north showing facility in silo.

One of these viewpoints is illustrated as the existing condition photograph in Figure 6. Computer-assisted visual simulations of the same views following completion of the proposed project are also included in these figures. The type of structure should be depicted as accurately as possible.

■ ***Analysis of Existing Viewpoints and Potential Project Visibility***

An analysis of each viewpoint should be provided.

EXAMPLE: *Viewpoint 1 Existing View*

This view is from the Jewett Farm, a site identified by the project cultural resources consultant as potentially eligible for listing on the State and National Register of Historic Places.

The view is looking to the rear of the farmhouse, across a small, open field to a wood lot up the hill. It includes various farm equipment, an overhead utility line, and a metal machine shed. This viewpoint is approximately 1.0 mile east of the project site and is typical of near mid-ground views from rural homes and local roads in valley settings. It is representative of the rural/agricultural landscape similarity zone.

■ ***Proposed Project***

With the proposed project in place, only the top of the structure will be visible from this location. The base of the structure is fully screened by the intervening wooded hills between the viewpoint

and the site. The visual impact of the project from this location is also reduced by the various built features and existing visual clutter in the view. Consequently, project visibility and contrast is very limited from this location.

■ **Mitigation and Alternatives**

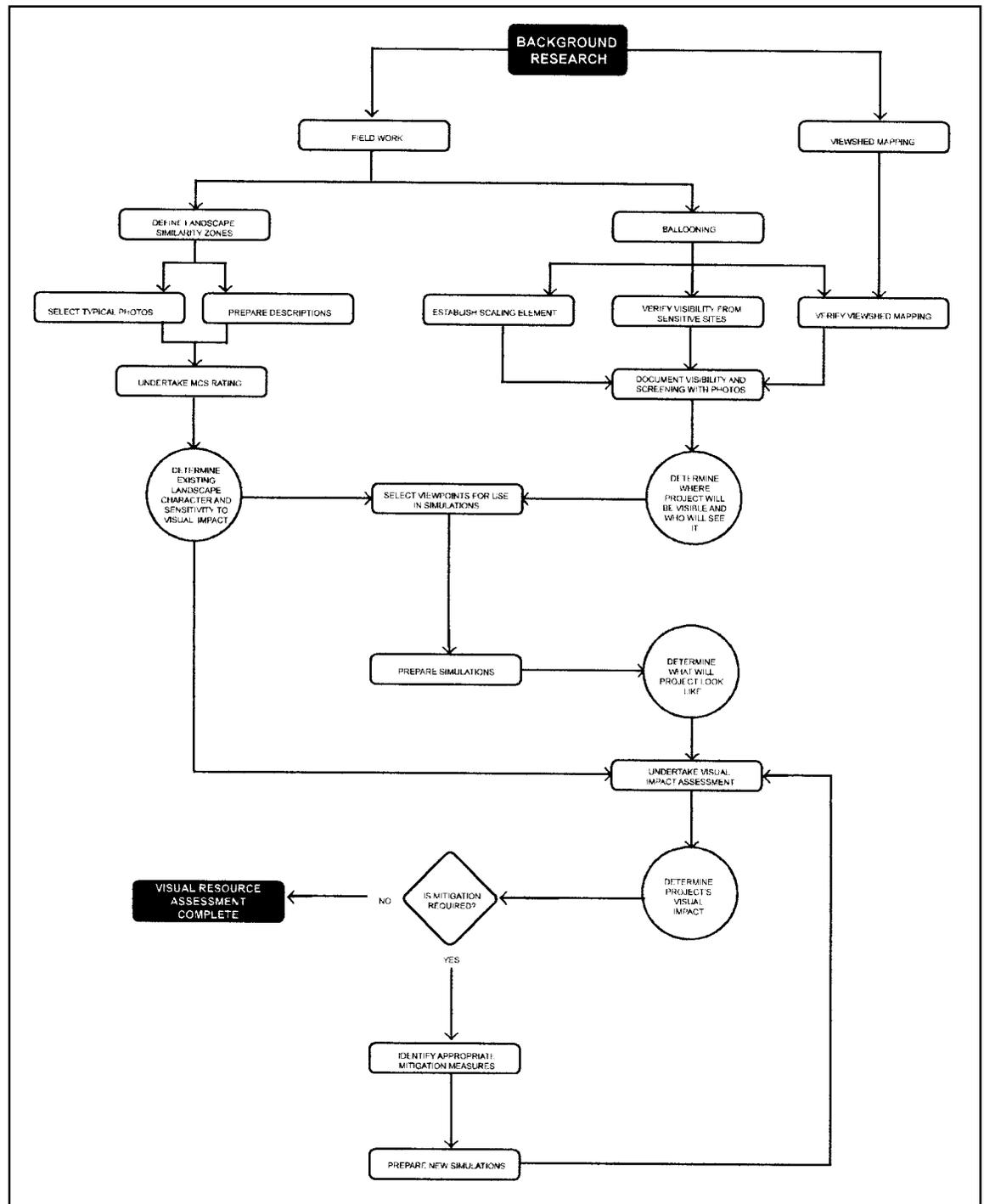
The project sponsor should describe the potential adverse visual impacts of the proposed project to the visual environment. Methods to mitigate or soften these impacts should be fully explored and could include elements such as modification to structure design, height, siting, color and use of camouflaging where appropriate. The sponsor should also describe what mitigation methods were considered, but not recommended and why.

CONCLUSIONS

Conclusions from the study are to be presented at the end of the study. The following conclusions to be drawn included results of field verification, the quantity of visually sensitive resources or intensive land uses impacted by the project, impact on foreground, middleground, and background views, adverse visual contrasts (if any) visual impact mitigation methods to be used, and statements regarding what should be done at the completion of the project's life.

(The maps and images which follow represent a combination of different projects to create a complete sample for the visual impact reference material.)

Figure 7: Visual Resource Assessment Process



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End Notes

- 1 *Consolidated Edison Co. of New York, Inc. v. Hoffman*, 43 N.Y.2d 598, 403 N.Y.S.2d 193 (1978).
- 2 *Cellular Telephone Co. v. Rosenberg*, 82 N.Y.2d 364, 604 N.Y.S.2d 895 (1993).
- 3 *Sprint Spectrum, L.P. v. Town of Guilderland*, 173 Misc.2d 874, 662 N.Y.S.2d 717 (Albany County 1997); *Genesee Telephone Co. v. Szmigel*, 174 Misc.2d 567, 667 N.Y.S.2d 588 (Monroe County 1997).
- 4 *Genesee Telephone Co. v. Szmigel*, 174 Misc.2d 567, 667 N.Y.S.2d 588 (Monroe County 1997).
- 5 *New York SMSA Limited Partnership v. Town of Clarkstown*, 99 F. Supp. 2d 381 (D.D.N.Y. 2000).
- 6 *APT Minneapolis v. Eau Claire County*, 80 F. Supp.2d 1014 (D. Wisc. 1999).
- 7 Municipality's legal authority to require build-out plans is not fully clear.
- 8 *Hasco Electric Corp. V. Dussler*, 143 N.Y.S.2d 240 (West Ch. Co. 1955).
- 9 *Sprint Spectrum, L.P. v. City of Medina*, 924 F. Supp. 1036 (W.D. Wash. 1996).
- 10 *Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1998) (finding no unreasonable discrimination when town required more information and a more intense review under SEQRA of an application for placement in a residential zone than it had required of previous providers in industrial zones.)
- 11 *Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F. Supp. 732 (C.D. Ill. 1997).
- 12 *Sprint Spectrum LP v. Town of Easton*, 982 F. Supp. 47 (D. Mass. 1997).
- 13 *Western PCS II Corp. v. Extraterritorial Zoning Authority of Santa Fe*, 957 F. Supp 1230 (D.N.M. 1997).
- 14 *Town of Amherst v. Omnipoint Communications*, 173 F.3d 9 (1st Cir. 1999); *AT&T Wireless Services of Florida, Inc. v. Orange County*, 982 F. Supp. 856 (M.D. Fla. 1997); *AT&T Wireless PCS, Inc. v. City of Virginia Beach*, 979 F. Supp. 416 (E.D. Va. 1997).
- 15 *Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1998); *Omnipoint Communications v. Newton Township*, 219 F.3d 240 (3d Cir. 2000), cert. denied, 148 L.Ed.2d 446 (2000); *360 Degree Communications Co. v. Albemarle County*, 211 F.3d 79 (4th Cir. 2000); *APT Pittsburgh v. Penn Township Butler County*, 196 F.3d 469 (3d Cir. 1999); *Cellular Telephone Company v. Borough of Ho-Ho-Kus*, 24 F. Supp.2d 359 (D. N.J. 1998); *Century Cellunet v. City of Ferrysburg*, 933 F. Supp. 1072 (W.D. Mich. 1997).
- 16 *Smart SMR of New York, Inc. v. Town of Stratford*, 995 F. Supp. 52 (D. Conn. 1998).
- 17 *Sprint Spectrum, L.P. v. Town of West Seneca*, 172 Misc.2d 287, 659 N.Y.S.2d 687 (Erie County 1997).
- 18 *Nextel Partners of Upstate New York, Inc. v. Town of Canaan*, 62 F. Supp.2d 691 (N.D.N.Y. 1999).
- 19 *Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F. Supp. 732 (C.D. Ill. 1997).
- 20 *AT&T Wireless v. Orange County*, 982 F. Supp. 856 (M.D. Fla. 1997).
- 21 *Western PCS II Corp. v. Extraterritorial Zoning Authority of Santa Fe*, 957 F. Supp 1230 (D.N.M. 1997).
- 22 *AT&T Wireless PSC, Inc. v. City of Virginia Beach*, 155 F. 3d 423 (4th Cir. 1998).
- 23 *WEOK Broadcasting Corp. v. Town of Lloyd*, 79 N.Y.2d 373, 583 N.Y.S.2d 170 (1992); *Ganco, Inc. v. City of Buffalo*, 244 A.D.2d 932, 665 N.Y.S.2d 150 (4th Dept. 1997).
- 24 *Cellco Partnership v. Town of Farmington*, 3 F. Supp.2d 178 (D. Conn. 1998); *Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F. Supp. 732 (C.D. Ill. 1997); *OPM-USA-Inc. v. Brevard County*, 7 F. Supp.2d 1316 (M.D. Fla. 1997); *Ernalex Construction Realty Corp. v. Bellissimo*, 256 A.D. 2d 338, 681 N.Y.S.2d 298 (2nd Dept. 1998).
- 25 *Cellular Telephone Company v. Borough of Ho-Ho-Kus*, 24 F. Supp.2d 359 (D. N.J. 1998).
- 26 *Twin County Recycling Corp. v. Yevoli*, 90 N.Y.2d 1000, 665 N.Y.S.2d 627 (1997).
- 27 *Sprint Spectrum, L.P. v. Cestone*, N.Y.L.J. Feb. 5, 2001 (S.D.N.Y. 2001); *Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F. Supp. 732 (C.D. Ill. 1997).
- 28 *Cellular Telephone Company v. Town of Oyster Bay*, 166 F.3d 490 (2d Cir 1999).
- 29 N.Y. Real Property Tax Law Section 102(12)(i); NYS Office of Real Property Services, 10 Op. Counsel SBRPS No. 108 (2000).
- 30 *Travis v. City of Binghamton*, 183 Misc.2d 699 (Broome Co. 1999); see also, NYS Office of Real Property Services, 10 Op. Counsel SBRPS No. 108 (2000).
- 31 If a municipality wishes to accept applications during a moratorium, it should consult with its attorney using its home rule authority to supercede enabling law provisions that require reviewing boards to take action on certain types of land use applications within statutorily prescribed time periods. Failure of a board to act on a subdivision application within 62 days may allow an applicant to seek default approval of such application. *Turnpike Woods, Inc. v. Stony Point*, 70 NY2d 735, 519 NYS2d 960 (1987).
- 32 The statewide SEQRA regulations (6 NYCRR Part 617) are available from the NYS Department of Environmental Conservation.
- 33 This discussion is intended to be a general overview of how the SEQRA process works in relation to the review of applications to site wireless telecommunication facilities. It is not intended to be used as a legal guide to SEQRA compliance. Please consult the SEQRA regulations (6 NYCRR Part 617) and obtain professional assistance as appropriate.



Notes



Notes



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