

CAPE COD COMMISSION

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DATE: May 22, 2003

APPLICANT: Sprint Spectrum, LP
1 International Blvd.
Mahwah, NJ 07495

RE: Development of Regional Impact
Cape Cod Commission Act, Sections 12 and 13

PROJECT #: TR# 02034

PROJECT: Sprint Spectrum LP/Harwich cell tower
149 Route 137
East Harwich, MA 02645

MAP/PARCEL: 87/J1

BOOK/PAGE: 3618/314
1368/308

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Sprint Spectrum, LP (Sprint or Applicant) as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c.716 of the Acts of 1989, as amended, for the proposed Sprint Spectrum, LP/Harwich cell tower (Project) in East Harwich, MA. The decision is rendered pursuant to a vote of the Commission on May 22nd, 2003.

PROJECT DESCRIPTION

Sprint Spectrum, LP (Sprint) proposes to build a 150-foot flagpole on a town-owned parcel of land at the intersections of Routes 137 and 39 in East Harwich, MA. The parcel is approximately 166,123 square feet, and the site has been partially cleared for Fire Station No. 2 and associated parking lots.

The Project is proposed as a flagpole structure providing space for four co-locators, each of which would place a standard array of antennas within the flagpole to be hidden from public view. The accessory Equipment Compound is proposed to be contained within a fenced area of 2,500 square feet. The Equipment Compound will contain all necessary ground-based facilities and equipment for the antennas. This includes a proposal for four equipment cabinets placed at ground level,

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surrounded by a stockade fence and landscaping to help shield and buffer the equipment. Fire Station No. 2 will be modified to house a generator powered by natural gas that will accommodate the needs of the Department and the wireless facility. The flagpole is proposed to be located approximately 80 feet from Route 39, and approximately 173 feet from Fire Station No. 2 on a site that is within the CH2 zoning district. The remainder of the site is currently wooded and may be developed by the town as a Park.

PROCEDURAL HISTORY

The Harwich Planning Board referred the Project to the Commission on November 8th, 2002. A hearing officer opened the DRI hearing for procedural purposes on January 3rd, 2003. A duly noticed public hearing was conducted pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on March 12th, 2003 at the Harwich Town Hall. The subcommittee held a public meeting on March 20th, 2003 to deliberate on the Project, reviewing it under the 2002 Regional Policy Plan (RPP). At this meeting, the subcommittee voted unanimously to recommend to the full Commission that the Project be approved as a DRI, subject to conditions. The subcommittee met to review a draft decision on May 8th, 2003. The final public hearing was held before the full Commission on May 22nd, 2003. At this hearing, the Commission voted unanimously to approve the Project as a DRI, subject to conditions.

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant:

- Antenna Access Agreement between Town of Harwich and Sprint dated September 16, 2002
- Letters of interest to Bell Atlantic Mobil, AT&T, T-Mobil USA, Cingular Network and Nextel regarding co-location on the proposed flagpole dated October 22, 2002
- Affidavit from Radio Frequency Expert David A. Eichler dated November 5, 2002
- Application for site plan review and supporting technical information prepared by Terra Search, Inc. dated November 8, 2002
- Environmental Sound Evaluation conducted by Cavanaugh Tocci Associates dated November 15, 2002
- Affidavit from Site Acquisition Specialist Brady Goddell dated November 26, 2002
- Email from Joe Pereria of Terra Search, Inc. to Greg Smith dated December 2, 2002
- Email from Joe Pereria of Terra Search, Inc. to Greg Smith dated December 10, 2002
- Email from Joe Pereria of Terra Search, Inc. to Greg Smith regarding crane test dated December 12, 2002
- Email to David Maxson, Broadcast Signal Lab from Greg Smith dated December 17, 2002
- Email from Joe Pereria of Terra Search, Inc. dated December 19, 2002
- Letter from VHB, Inc. regarding proposed Project's compliance with NEPA dated December 19, 2002
- Email from Joe Pereria of Terra Search, Inc. dated December 30, 2002
- Email from Dan Tracy, Sprint Project Manager to Greg Smith dated January 10, 2003
- Photo simulation of proposed site prepared by Terra Search, Inc. , Inc. dated January 21, 2003
- Hazardous Materials Storage evaluation submitted by Terra Search dated January 30, 2003
- DRI application, site plan and supporting technical information submitted by Terra Search, Inc. dated January 31, 2003
- Email from Dan Tracy, Sprint Project Manager to Greg Smith dated February 3, 2003
- Email from Dan Tracy, Sprint Project Manager to Greg Smith dated February 4, 2003

- Letter from Joe Pereria of Terra Search, Inc. regarding application fee dated February 7, 2003
- Sprint drive technical test data dated February 24, 2003
- Letter of support for AT&T being co-locator on proposed flagpole submitted by Anderson and Kreiger, LLP dated March 12, 2003

From Cape Cod Commission staff:

- Letter to Harwich Board of Selectmen from Margo Fenn dated January 13, 2003
- Technical review of proposed flagpole submitted by David Maxson, Broadcast Signal Lab dated March 3, 2003
- Email from Tim Boesch to Greg Smith dated March 20, 2003

From Federal, State or Local officials:

- Referral letter from Harwich Town Planner Sue Leven received November 8, 2002
- Email from Harwich Town Planner Sue Leven to Greg Smith dated December 2, 2002
- Email from Harwich Town Planner Sue Leven to Greg Smith dated December 5, 2002
- Letter from Harwich Board of Selectmen dated December 18, 2002
- Letter from Town of Chatham Town Planner dated December 19, 2002
- Email from Harwich Town Planner Sue Leven to Greg Smith dated February 10, 2003
- Letter from Harwich Water Commissioners submitted to subcommittee dated March 11, 2003

From the Public:

- Email from Susan Broderick dated January 3, 2003
- Letter from Peter Schultz dated February 10, 2003
- Letter from Dave and Ann Ryer dated March 6, 2003
- Letter from Susan Broderick dated March 10, 2003
- Letter from Pleasant Bay Homeowners Association dated March 12, 2003
- Email from Al Rosenberg to Greg Smith dated March 14, 2003

The application and notices of public hearings relative thereto, the Commission staff's notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated in the record by reference.

TESTIMONY

Note: see minutes in project file for complete public hearing and subcommittee meeting proceedings.

At the March 12, 2003 public hearing the Applicant provided an overview of the proposed Project. Staff provided an overview of issues associated with community character, hazardous waste management and David Maxson's technical review. The Subcommittee heard oral testimony at the Public Hearing from:

Mr. Don Howell, Harwich Selectman stated that the Town generated the RFP after conducting a very thorough site search and a series of public hearings. It was determined that there were no appropriate alternative sites available, although an existing water tower would serve to provide adequate coverage for the existing coverage gaps that the proposed tower will negate. However, existing water towers are not available due to an existing Water Commissioner's policy that does not allow for cell towers or antennas to be located on water towers. Lowering the proposed towers' height would only necessitate more towers.

Bob Widegren, Harwich Town Selectman stated that the proposed tower's height of 150 feet was supposed to provide adequate service to prohibit additional towers from springing up all over town.

Greta Thompson spoke on behalf of the Pleasant Bay Homeowners Association, which represents approximately 57 homes in the rear of the Stop and Shop supermarket in Harwich. The Association remains concerned about the negative visual impacts in the area that would result from the flagpole. She stated that the flagpole is excessively tall for the area and would become an eyesore. If the roads at the intersection of Routes 137 and 39 are expanded, the fall zone would be lessened. She requested that in lieu of these issues that the Project be denied.

Sheila Smith stated that she is concerned about the lighting of the proposed flagpole. She also stated that she doesn't want a gold ball on top of the flagpole.

Pem Schultz asked if the airport knows about the proposed flagpole.

Anthony Bott stated that he is opposed to the flagpole. He asked that the Harwich Water Commission provide written confirmation that the existing water towers are not a viable option.

Al Rosenberg questioned the location at Routes 137 and 39, stating that a Commission staff traffic engineer stated the site may require additional turning lanes in the future to handle growth and traffic volumes.

Mr. Rosenberg also asked why a flagpole couldn't be located within the Town Forest, as he doesn't like the idea of a flagpole and a large flag flying. He stated that the public revenues from this Project would be used to support affordable housing initiatives.

Sue Leven stated that the establishment of one of the overlay zones within the boundaries of the town forest had occurred before she became the Town Planner, and that there is little likelihood that a cell tower would be located there due to concerns about placing such a structure within the Town Forest.

Ms. Schultz asked who would use the Town Park and where would people park their vehicles.

JURISDICTION

The proposed Project qualifies as a Development of Regional Impact under Chapter A, Section 3(i) of the Commission's Regulations of General Application which states that "construction of any wireless communication facility exceeding thirty-five (35) feet in height from the natural grade of the site on which it is located" is presumed to be a Development of Regional Impact.

FINDINGS

The Commission has considered the application of Sprint Spectrum, LP for the proposed flagpole in East Harwich, MA, and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

General

1. The proposed Project is a cellular/wireless communications flagpole, 150 feet in height, designed to hold up to four antenna arrays to be located within the flagpole for both Sprint and AT&T, as well as two additional wireless co-locators.
2. The Town of Harwich issued a Request for Proposal (RFP) from qualified companies to design, construct and operate a wireless facility to be located on an already disturbed town-owned parcel (166,123 square feet) located on the corner of Route 137 and 39 in East Harwich which currently houses the East Harwich Fire Station No. 2 (Town Parcel). Sprint successfully responded to the RFP.
3. The proposed Project would provide improved cellular phone service in East Harwich to both AT&T and Sprint customers.
4. The Applicant will be required to obtain all zoning approvals from the Town of Harwich.
5. The proposed Project will be constructed in accordance with Plans submitted by Terra Search dated November 4, 2002. The flagpole will be located approximately 80 feet from Route 39, and 103 feet from Route 137. The Equipment Compound will be located approximately 95 feet from Route 39 and 105 feet from Route 137. The flagpole and equipment cabinets will lie within a fence-enclosed area totaling approximately 2,500 square feet.
6. The proposed Project is needed to provide signal propagation in this area of Harwich for both Sprint and AT&T's wireless communications networks. The proposed flagpole will also provide space for a majority of active wireless carriers that may also need to improve their network coverage in this region. Sprint and AT&T have stated that there exist significant gaps in their network coverage, which creates the need for a new facility in East Harwich. The Regional Policy Plan (MPS 4.4.2.1) and Technical Bulletin 97-001, *Guidelines for DRI Review of Wireless Communications Towers*, requires telecommunications facilities to locate on existing structures, or to co-locate with other carriers wherever feasible to reduce visual impacts. The Applicant has provided a letter of interest from AT&T Wireless Services. At a public hearing held on March 12, 2003, a letter was provided to the subcommittee stating that AT&T was negotiating with Sprint to lease space within and next to the proposed flagpole for its wireless communications antenna and equipment.
7. Two privately owned and operated wireless facilities are presently located on Queen Anne Road in Harwich. There are also two wireless antennas located within the spire of the Pilgrim Congregational Church in Harwich. The proposed 150-foot flagpole would provide the necessary coverage for Sprint, AT&T and two additional co-locators within the identified area where a coverage gap currently exists and would be of sufficient height to negate the need for them to install additional wireless facilities within the existing coverage gap area in East Harwich.
8. Elevation drawings submitted by Terra Search dated November 4, 2002 show the location of four internally-mounted antenna arrays for the co-locating wireless carriers on the flagpole at 10-foot intervals. Sprint will have an antenna at 147 feet. AT&T will have an antenna at 137 feet, and two additional antenna arrays may be located at 127 and 117 feet.

9. The Town of Harwich has two Wireless Telecommunications Overlay Districts that were passed at town meeting in May 1998.
10. The Project site is located outside the two Wireless Telecommunications Overlay Districts, as the portion of town to be served is beyond the reach of facilities that are/could be located in the two wireless telecommunications districts.
11. Sprint signed an Antenna Access Agreement (Agreement) with the Town of Harwich on September 16, 2002 for the use of a portion of the Town Parcel for the construction and operation of a cellular communications facility. The lease covers a period of twenty-four (24) years, which would begin 60 days following the issuance of a building permit for the flagpole.
12. David Maxson of Broadcast Signal Lab, the Commission's consultant on wireless facilities projects, prepared a summary review of the proposed Project. He received copies of all materials from the Applicant and attended the public hearings and subcommittee meetings. His report analyzes Sprint's proposal and supporting material, and indicates that the proposed 150-foot flagpole would meet the Commission's goals of wireless facilities co-locating multiple carriers to minimize the number of wireless towers, as well as providing needed wireless coverage.

Location:

13. The proposed Project site was identified as a potential location for a wireless facility by the Lower Cape Wireless Working Group, according to the report "The State of Wireless Facilities on Lower Cape Cod" prepared by Broadcast Signal Lab in November 2000. The Town of Harwich selected the town parcel located at the intersections of Routes 137 and 39 as the site for a wireless facility after the town conducted an extensive alternatives analysis. Sprint had conducted an alternatives analysis of possible tower sites on existing structures and of available land in the town. Sprint determined that locating an antenna on an existing water tower would provide optimum coverage within the area where the coverage gaps exist. However, current policy does not allow antennas to be located on water towers in Harwich. Consequently, the Town of Harwich designated the Town Parcel as the preferred location for a wireless facility because it is a town-owned parcel within the commercial highway (CH2) district and would provide coverage within an identified area where coverage gaps exist.

Dimensions:

14. Section V.B of the Technical Bulletin states that, in general, the height of a wireless service facility should not be more than 10 feet above the average building height or tree canopy if there are no buildings within 300 feet of the site. However, Fire Station No. 2 is located within 300 feet of the proposed site. The height of the proposed flagpole at the intersections of Routes 137 and 39 is higher than the surrounding terrain by approximately 100-110 feet. Sprint has proposed a flagpole of 150 feet because they say this height is the minimum necessary to provide sufficient coverage for its cellular network while providing adequate height for co-locators. Correspondence from AT&T indicates that a 150-foot flagpole would allow their antenna to be mounted at 137 feet, which they claim would be the minimum required height to provide sufficient coverage within the existing coverage gap. This was corroborated by David Maxson of Broadcast Signal Lab.
15. The Technical Bulletin states that a fall zone should be equal to the height of the proposed flagpole (150-feet), but the Bulletin allows for a reduction of that zone by half of the proposed height (75-feet) if a better design would result. As the town has proposed to construct a Town

Park on the site, and as the flagpole is to be a central component of the proposed Town Park, the flagpole could not be located further to the rear of the site. Abutting the Town Project Parcel is a residential neighborhood, with most abutters in the immediate vicinity to the north, south and west in commercial use. Outside of the commercial zone to the north, south and east of the proposed site are numerous residential neighborhoods. Route 6 is located approximately one mile north of the site, and Route 28 is located approximately one mile to the south of the site. The Commission has determined that the fall zone requirement may be waived in this case, because the location of the flagpole is central to the design of the Town Park and cannot be relocated to another part of the Town Parcel. As designed, the proposed Project meets the guidelines of the Technical Bulletin. Also, as proposed, the 150-foot flagpole would minimize visual impacts through the construction of a wireless facility of sufficient height to allow for the co-locating of two (2) additional wireless carriers, which may negate the need to construct additional wireless facilities in this area of town. As Fire Station No. 2 is more than 172 feet from the flagpole, and Route 137 is more than 103 feet from the flagpole, a fall zone of 75 feet is acceptable.

Scenic Landscapes and Vistas:

16. Section VI-A of the Technical Bulletin states that wireless facilities should not be located in areas open to view from public roads, recreational areas or residential development. The proposed flagpole and associated Equipment Compound would be visible from the surrounding commercial zone adjacent to Routes 137 and 39, as well as several residential neighborhoods and the proposed Town Park. However, this Project is located within a commercial zone, the design conceals antennas within the flagpole, and the flagpole will be a focal point of the proposed Town Park.
17. A photosimulation of the Project's visibility in Harwich was prepared by Terra Search, Inc. based on a crane test conducted on January 9, 2002, when a crane at the site was raised to 150 feet. The photosimulation indicates that the flagpole would be visible from Hals Path, Bay Road, Carriage Estates, Riverview Drive, the Harwich Post Office, Holmes Road, Continental Drive and Johanna's Path.
18. Terra Search, Inc. also prepared photosimulations of how a flagpole would appear from a height of 120 feet based upon results of the crane test conducted on January 9th, 2003. Photosimulation suggests that a flagpole at this height would be visible from Bay Road, Carriage Estates, Riverview Drive, the Harwich Post Office, Continental Drive and Johanna's Path. However, the Commission found that this 120-foot height would necessitate the construction of additional wireless facilities that may not otherwise be required with a 150-foot tower.
19. Correspondence from VHB, Inc. to Sprint dated December 19, 2002 stated that the proposed wireless communications facility complies with the National Environmental Policy Act (NEPA) and will not adversely affect any environmentally sensitive areas.

Design Standards:

20. The proposed Project will be constructed of steel and painted white. The town, Applicant and Commission staff will work together on the specifics of the landscaping, fencing, parking and lighting plans for the proposed Project and the Park.

21. Four equipment cabinets will be placed at ground level on a three-inch above grade concrete equipment pad. The equipment cabinets will be painted a non-reflective gray finish and will not extend above the height of the fence.
22. According to both a report filed by Terra Search dated November 6, 2002 and by the Applicant's FAA consultant ASAC dated September 29, 2002, no lighting is required by the Federal Aviation Administration (FAA) because at 150 feet, the proposed flagpole does not require FAA notification.

Noise and Radiofrequency Radiation (RFR):

23. According to Section VI-B of the Technical Bulletin, noise impacts from wireless facilities should not exceed 50 decibels (dB) at the property line. Noise can be created by wind shear and resistance across the flagpole face, and by the operation of electrical equipment at the base of the flagpole. Cavanaugh Tocci Associates conducted a noise assessment on November 5, 2002, and noted that the assessment provides a specific acoustical analysis only for the currently proposed Sprint installation. Future proposed carriers' antenna facilities would require additional acoustical analyses to ascertain continued compliance with the applicable acoustical criteria.
24. Sprint proposes to replace the existing generator at Fire Station No. 2 with a natural gas generator that will provide sufficient back-up power for both the proposed telecommunications equipment and Fire Station No. 2. The noise assessment states that it has not yet been resolved whether the generator proposed by Sprint would be of sufficient electrical capacity to serve just the Sprint facility and the fire station, or would be of sufficient capacity to also serve future wireless telecommunications carriers' antenna installations. Furthermore, the noise assessment recommends that the generator be equipped with exhaust and air intake silencers to reduce noise.
25. Section VI-C of the Technical Bulletin requires authorization to certify that the Radiofrequency Radiation (RFR) from the proposed telecommunications equipment is compliant with federal and state safety standards. Sprint includes a statement by David Eichler, RF Engineer, in his affidavit that the proposed Sprint emissions of radio frequency energy will be compliant with federal and state requirements. Based on the proposed antenna height, and the specifications of 47 CFR §1.1307, Table 1, it is the opinion of Mr. David Maxson that the proposed Sprint flagpole emissions will inherently be compliant with applicable RFR regulations.

Other Technical Bulletin issues:

26. Section IX of the Technical Bulletin requires monitoring and maintenance of a cellular tower after it has been constructed. Measurements of RFR and noise levels must be taken 90 days after operation begins, and at annual intervals thereafter.
27. Section X of the Technical Bulletin states upon abandonment of the facility, the owner should physically remove the personal wireless facility within 90 (ninety) days from the date of abandonment. As outlined in Section 6 of the Agreement between the Town of Harwich and Sprint, "within 120 days of the termination or expiration of the agreement between the Town of Harwich and Sprint (lessee), lessee will remove all such facility improvements, except that the lessee shall transfer all of lessee's right, title and interest in the antenna structure. Upon removal of the lessee's equipment, lessee will, to the extent reasonable, restore the portion of the site not compromising the antenna structure to its condition at the commencement of the agreement. Lessee shall, on the commencement of the agreement, post a removal bond with the town in the

sum of \$10,000 to secure the completion of the removal and restoration work required by the agreement.”

Hazardous Materials:

28. The site is located in an existing Wellhead Protection Area/Zone II. As such, MPS 4.3.1.3 would apply to this Project. Sprint will construct base station equipment cabinets that have integrated battery back-up. Site plans indicate the Equipment Compound will be surrounded by fencing and screening and will include up to four concrete slabs, each pad designed to accommodate the equipment cabinets of each of the carriers.
29. The Plans show space for four equipment pads within the Equipment Compound capable of accommodating a total of four carriers. Sprint will be installing one equipment pad with four equipment cabinets. AT&T will install up to two equipment cabinets mounted on an equipment pad inside the Equipment Compound. Sprint is proposing to use a natural gas powered generator located within Fire Station No. 2 as a back-up source of power for the wireless facility. Batteries will also be used to provide for backup power by both Sprint, AT&T and all other co-locators.
30. Sprint provided the Commission with proposed lease language for this wireless facility. The language in the Agreement prohibits the use of any hazardous materials on site, as well as the on-site disposal of hazardous wastes. It also provides that tenants will indemnify the Town of Harwich for costs associated with future site testing to ascertain whether or not there has been an on-site release of hazardous materials.
31. Sprint provided Commission staff with plans for a backup power supply, which is to be comprised of four (4) sealed batteries to be stored in a sealed storage cabinet located within the Equipment Compound. The backup power will be used to supply emergency or backup power to the facility and associated equipment.

Exterior Lighting:

32. Section VI-A-5-a of the Technical Bulletin states that "lighting of equipment shelters and any other facilities on the ground" should be designed in accordance with the Commission's Technical Bulletin 95-001 on exterior lighting.
33. Sprint is not proposing any ground lighting at the site.

Natural Resources and Open Space:

34. The Project is located in a Significant Natural Resources Area (SNRA) as mapped by the 2002 RPP due to the presence of potential public water supply area. However, it is not located in estimated rare species habitat as mapped by the Natural Heritage and Endangered Species Program. Also, there are no wetlands on or within 100 feet of the site.
35. A natural resources inventory was not required for the Project due to the small area of the site and its isolation from undeveloped areas.
36. The Project is a component of a municipal Park planned at this site, and as such is not required to provide open space.

Other Regional Policy Plan issues:

37. There are no water resources or transportation impacts anticipated from the proposed Project's construction and operation.

CONCLUSION

Based on the findings above, the Commission hereby concludes:

1. The proposal meets the guidelines of Technical Bulletin 97-001 (the fall zone has been waived- refer to Finding #12) and the applicable Minimum Performance Standards of the 2002 Regional Policy Plan (the open space requirement has been waived- refer to Finding #37).
2. Provided that the Applicant obtains all permits required by the Town of Harwich, the Project is consistent with the Town's development regulations.
3. The proposed Project complies with the Harwich Local Comprehensive Plan, which has been certified by the Cape Cod Commission.
4. The benefits of the proposed Project outweigh the detriments resulting from the development. This is supported by the facts that the flagpole would be located on town-owned land in an already-disturbed site in a commercial (CH2) zone (finding #2); the Project as proposed would provide improved cellular phone service in East Harwich to customers (finding #3); the design conceals the antennas within the flagpole (finding #8); the placement of this flagpole would have a high probability of providing space for a majority of active wireless carriers in East Harwich (finding #12); and the Project would replace the existing Fire Station's generator with a natural gas generator that will serve as a back-up generator for the Fire Station (finding #24). These benefits outweigh the detriment of the visual impact resulting from the construction of the flagpole at the intersection of Routes 137/39 in the Town of Harwich.
5. The Commission hereby approves with conditions the application of Sprint Spectrum, LP for the Sprint Spectrum LP Harwich cell tower as a Development of Regional Impact, provided the following conditions are met:

CONDITIONS

General:

1. This DRI decision is valid for 7 years. Local development permits may be issued pursuant hereto for a period of 7 years from the date of the written decision. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.
2. The Applicant shall obtain all necessary Federal, state and local permits for the proposed Project.
3. No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed, or if such an appeal has been filed, until all judicial proceedings have been completed.
4. Prior to the issuance of a Building Permit for any phase of construction, the Applicant shall obtain a preliminary Certificate of Compliance from the Commission that states that all conditions in this decision pertaining to the issuance of a Building Permit have been met. Prior

to the flagpole becoming operable for the cellular networks, the Applicant shall obtain a final Certificate of Compliance from the Commission. Notification of the need for a final Certificate of Compliance shall be given to the Commission at least 30 days in advance of the Project's start of operations, to allow time for staff to inspect the site and ascertain that all conditions have been met.

5. Prior to the issuance of a preliminary Certificate of Compliance, the Applicant shall submit final plans as approved by local boards for review by Commission staff to determine their consistency with Section 7 of the Cape Cod Commission Administrative Regulations, Modifications to Approved DRIs, dated 6/3/99 and as amended from time to time.
6. The proposed Project shall be constructed as a 150-foot flagpole with internally mounted antenna for Sprint, AT&T and up to two (2) additional wireless carriers, with accessory equipment shelters and landscaping, as shown on the site plans dated November 4, 2002 prepared by Terra Search Design Group. The flagpole shall be white in color.
7. Prior to the issuance of a final Certificate of Compliance, the Applicant shall submit a report of the ambient and existing conditions of Radiofrequency Radiation (RFR) and noise at the site. After the Project is constructed and operational, the Applicant shall submit a report of measurements of RFR and of noise/sound measurements from the flagpole. The first RFR and noise reports shall be submitted to the Commission within 90 days of commencing operations, and at annual intervals from the date of issuance of the final Certificate of Compliance. The noise reports shall be conducted and signed by an acoustical engineer and show that the Project continues to meet the maximum noise threshold of 50 dB at the property boundary. Annual reports shall include all RFR and noise/sound measurements for all subsequent carriers.
8. The Applicant shall maintain the Project in good condition for the entirety of its operational period. Such maintenance shall include, but not be limited to, structural integrity of the mount, security barrier, painting, fencing and landscaping. The Applicant shall not build upon or disturb any areas other than those that are under lease agreement with the Town of Harwich.
9. If Sprint intends to abandon the Project, it shall notify the Commission and Town of Harwich of this intention and the proposed date of abandonment, by certified U.S. Mail. Such notice shall be given no less than 30 days prior to the abandonment. Within 120 days of the of the termination or expiration of the Agreement between Sprint and the Town of Harwich, Sprint will remove all Facility improvements, except that Sprint may transfer all of Sprint's right, title and interest in the Antenna Structure to the Town of Harwich. Sprint will then, to the extent reasonable, restore the portion of the Site not comprising the Antenna Structure to its condition at the commencement of the Agreement.
10. Prior to the issuance of a final Certificate of Compliance, Sprint shall provide a bond of \$10,000 to the Town of Harwich to secure the completion of the removal and restoration work associated with the transfer of Sprint's right, title and interest in the Antenna Structure. The bond shall be returned to the Applicant at such time when the conditions of the transfer are satisfactorily completed between Sprint and the Town of Harwich.
11. All wireless carrier companies on the proposed flagpole shall be limited to the use of either the natural gas generator located in Fire Station No. 2 and/or battery packs located in the equipment shelters to provide emergency or backup power to the facility and associated equipment.

12. The Equipment Compound pads shall be constructed without floor drains or sumps.
13. Prior to the issuance of a preliminary Certificate of Compliance, the Applicant shall meet with Commission staff to determine the type and size of trees and plant materials, and depth of buffer based on site conditions for a landscape plan for the Equipment Compound the flagpole.
14. Should lighting of the equipment shelters be needed, it must conform to the Commission's Technical Bulletin on Exterior Lighting (95-001). Any and all ground lighting for the site (including Sprint, AT&T and other carriers) shall be limited to incandescent bulbs equipped with an external shield and directed downward. All site lighting shall also be motion-sensor activated.
15. Prior to issuance of a final Certificate of Compliance, Commission staff shall conduct a site inspection to verify compliance with the limitation on on-site fuel use and that equipment shelters have been constructed without floor drains. If, based on the site inspection, the site is found not to be in compliance with these requirements, the Applicant shall modify the Project to conform to the decision. Such modification shall take place prior to issuance of a final Certificate of Compliance.
16. Prior to issuance of a final Certificate of Compliance, Commission staff shall conduct a site inspection to verify the types and shielding of exterior light fixtures. If, based on the site inspection, the fixture types and shielding are found not to be in compliance with Condition #14, the Applicant shall modify the exterior lighting to ensure conformance with that condition.

The Cape Cod Commission hereby approves with conditions the application of Sprint Spectrum, LP as a Development of Regional Impact pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended for the proposed Sprint Wireless Facility in East Harwich, Massachusetts.


 Robert D. Deane, Chair

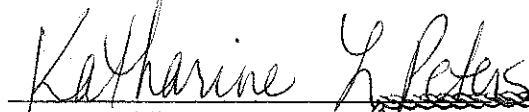
5/23/03
 Date

Commonwealth of Massachusetts

Barnstable, ss.

On this 23rd day of May, 2003, before me personally appeared Robert Deane, to be known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his

free act and deed.


 Notary Public

My Commission expires:



Decision

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