

Vermont Fish & Wildlife Department

**Procedure for the Review and Mitigation of Impacts to Wildlife and its Habitat
Associated with the Development of Wireless Communications Towers in Vermont**

Draft
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Section I. Position Statement:

In keeping with the Agency of Natural Resources' (ANR) policy regarding wireless service communication towers dated December 16, 2002, the Fish & Wildlife Department recognizes the public interest served by such infrastructure and upholds the policies and procedures of the ANR with respect to the conservation and protection of natural resources including fish and wildlife habitat. The Department believes that, under certain circumstances, wireless communications towers and related activities can affect significant wildlife habitat. The goal of the Department is to ensure the public's interests in the conservation and effective stewardship of its wildlife resources through the reasonable application of clear guidelines for the development of wireless communications towers, while properly considering and addressing related impacts to significant wildlife habitat. This position is established pursuant to the ANR's Natural Resource Conservation Procedure (November 19, 1996), and the Department's procedure regarding "Wildlife Habitat Impact Assessments in the State of Vermont" (October 22, 1998).

The Department recommends that the communication tower interests coordinate with Departmental staff early in the planning process to address any wildlife habitat related issues, in order to assist in designing communication tower projects that can receive Department support in the Act 250 process.

Section II. Review Process:

The Department recognizes the ANR's Natural Resource Conservation Procedure (November 19, 1996) that establishes a process to direct the review of regulated projects, such as wireless communications towers, that includes: (1) **avoidance** of impacts to significant natural resources; (2) **mitigation** of impacts to significant natural resources; (3) **replacement** of the functions or values associated with unavoidable impacts to significant natural resources and finally, when necessary (4) analysis of **alternatives** to the proposed action. The Department will apply this ANR policy and review framework when reviewing proposals for the development and operation of wireless communications towers and the potential impacts they may present to significant wildlife habitat and migratory birds. Other habitat specific mitigation guidelines may be applicable under certain circumstances and may be applied on a case-by-case basis (see below).

The Department's experience in reviewing wireless communications towers has demonstrated several important trends that are relevant to this procedure:

1. Review of wireless communications tower projects with the communications industry and their representatives has tended to be positive, proactive and non-confrontational;
2. Early discussions in the site planning process between Department staff and applicants facilitate site plan revision and assist in the efficient design of communication tower projects and seamless site plan revision when necessary.
3. Most proposed wireless communications tower projects do not present any impacts to significant wildlife habitat or migratory birds;

Given what the Department has learned from its experience with this industry, the following provisions are hereby established to guide the Department in the review of impacts to significant wildlife habitat associated with wireless communications towers.

Section III. Review of Impacts to Significant Wildlife Habitat:

The Agency is required to review wireless communication tower projects under Act 250 (10 V.S.A. Ch. 151 section 6086) criterion 8(a) and relevant case law. The Department's role is to provide comments and recommendations to the District Environmental Commission on criteria 8 and 8(a). In that role, the Department seeks to protect the significant wildlife habitats that may be affected by the development of wireless communications towers, including: (1) deer winter habitat; (2) hard mast stands determined to be significant feeding habitat for black bears (e.g., concentrated stands of American beech or red oak); (3) wetlands that support significant wildlife functions; (4) habitat that is important for the survival of state or federally listed threatened or endangered species; and (5) concentrated nesting habitat for Bicknell's thrush. Additional habitats may be determined to be significant based on scientific evidence presuming they meet the statutory definition of "necessary wildlife habitat" pursuant to Act 250; however, this is an infrequent occurrence.

In all cases where the Department determines that proposed projects will present significant impacts to a significant wildlife habitat the following stepwise review process will be applied:

1. Consider alternative locations/sites for the proposed project in order to avoid or reduce impacts;
2. In the event no alternative sites are available or otherwise justified, seek to, based on scientific data, design the project to reduce impacts to the habitat. This may include adjusting the tower, guy wires, and access roads locations, or restrict/control access to the site at critical times of the year.
3. For those impacts that are unavoidable, and given full consideration to all potential strategies for minimizing impacts to the habitat associated with the project, other mitigation measures may be applied including: (1) habitat compensation (based on existing mitigation guidelines for deer winter habitat, black bear habitat, Bicknell's thrush habitat, or the

Vermont Wetland Rules); or (2) habitat enhancement/improvement. In general, the Department will not require habitat compensation for projects that impact less than 87,120 square feet (2 acres) in total. There may be rare cases where the Department determines that it is not possible to mitigate impacts to the habitat. In those unusual circumstances, the Department recommends the use of alternative sites. Otherwise, the Department may be in a position to oppose a permit for the project.

4. Specifically, with respect to access restrictions for avoiding indirect impacts to the functions of deer winter habitat, the Department will apply the time restrictions established in the Guidelines for the Review and Mitigation of Impacts to Deer Winter Habitat in Vermont (2000) that is December 15 through April 15. During this time,
 - Permittees should make reasonable attempts to minimize site visits as much as possible.
 - Routine maintenance activities should be limited to two (2) visits per month per co-locator and access should be accomplished without the use of motorized vehicles.
 - Motorized vehicle access will be allowed on VAST trails or pre-existing roads that already support motorized access to the area.
 - Notwithstanding the above, access to the project site using motorized vehicles shall be allowed for emergency purposes. Emergency access events shall be reported to the Department no later than 72 hours after the event.
 - Access to the site for essential maintenance activities, beyond the provisions presented above, is only allowed with prior authorization of the Department. A Department contact will be identified in the applicable permit or other appropriate document. (reference Guidelines for the Review & Mitigation of Impacts to White-tailed Deer Winter Habitat 1999, pages 10 - 11).
5. With respect to access restrictions for avoiding indirect impacts to the functions of black bear feeding habitat (e.g., bear-scarred beech stands) the Department will apply the time restrictions based on scientific literature. However, access restrictions for such purposes will only be applied in cases where the project is located directly adjacent to or within 500 feet of a significant bear feeding habitat. Reasonable efforts should be made to avoid locating wireless communications towers directly within a significant bear feeding habitat.
6. Other considerations the Department will take into account in evaluating the extent of impacts associated with a project include the scale of impact, and the potential for co-location of infrastructure. The Department recognizes that, in

many instances, the physical footprint of the tower site itself is relatively small. Access roads, however, can be extensive depending upon the location of the proposed tower. The use of existing roads will be taken into account favorably when considering appropriate mitigation. Other considerations may include the cumulative impacts associated with on-going development of projects in the same region. Cumulative impacts may also result from increased or cumulative growth of maintenance activities associated with multiple antenna owners.

Section IV. Review of Impacts on Migratory Birds:

The Department recognizes the scientific literature detailing the potential deleterious effects on migratory birds associated with communications towers greater than 200 feet in height, supporting Federal Aviation Administration lighting requirements, and developed with guy wires. Extensive mortality of migrating birds colliding with tall communication towers and guy wires occurs during both spring and fall migrations through the United States and in the northeast. The U.S. Fish and Wildlife Service and Partners in Flight have developed guidelines for the proper siting, construction, operation and decommissioning of communications towers to avoid or minimize these impacts to migrating birds. Based on this information and the supporting science, the Department shall apply the following guidelines in the review of wireless communications towers with respect to addressing impacts to migrating birds:

- Avoid new towers that are above 200 feet in height;
- Avoid the use of guy wires and pursue the use of self-support structures;
- Where FAA lighting is required, use the minimum amount of pilot warning and obstruction avoidance lighting. Unless otherwise required by the FAA, only white (preferable) or red strobe lights should be used at night, and these should be the minimum number, minimum intensity, and minimum number of flashes per minute (longest duration between flashes) allowable by the FAA. The use of solid red or pulsating red warning lights at night should be avoided.
- In the event that large numbers of birds or bats are found to be killed by a permitted facility, the Department may revisit the permit conditions and will work with the permittee to reduce or eliminate future kills from occurring.

Contact Information:

For additional information and assistance regarding communications towers and impacts to wildlife and habitat please contact the Department at:

Springfield District Office: (802) 885-8832

Barre District Office: (802) 476-0199

Wayne A. Laroche
Commissioner

Date