

**VILLAGE OF HIGHLAND FALLS
COUNTY OF ORANGE
STATE OF NEW YORK**

**RESOLUTION GRANTING NEGATIVE DECLARATION PURSUANT TO THE NEW
YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) REGARDING
PROPOSED TELECOMMUNICATIONS FACILITY AT 1530 ROUTE 9W IN THE
VILLAGE OF HIGHLAND FALLS**

WHEREAS, Verizon Wireless of the East LP d/b/a Verizon Wireless (“Verizon Wireless”) seeks to construct a personal wireless service facility (“Communications Facility”) consisting of an approximately 65 foot tall communications structure and related equipment, utilities and improvements (collectively, the “Communications Facility”) on property owned by the Town of Highlands and located at 1530 Route 9W in the Village of Highland Falls (the “Property”); and

WHEREAS, the Town of Highlands (“Town”) and Verizon Wireless have negotiated a Land Lease Agreement (“Lease”) to allow Verizon Wireless to occupy approximately 360 square feet (16’ by 22.5’) of surplus land on the Property; and

WHEREAS, the Town adopted a Resolution on August 8, 2022 in which it confirmed that upon completion of the Village Board of Trustees’ review under the New York State Environmental Quality Review Act (“SEQRA”) and in the event the Facility is granted governmental immunity, the Town will execute the Lease; and

WHEREAS, the Town and Verizon Wireless have requested the Village of Highland Falls Board of Trustees to consider granting governmental immunity to the Facility pursuant to Village Code §240-29(V)(2.1)(C); and

WHEREAS, Verizon Wireless and the Town have provided to the Village Board of Trustees certain information in support of the proposed Facility, including: (i) a detailed site plan; (ii) a Full Environmental Assessment Form (“FEAF”); (iii) a comprehensive Radio Frequency Design Engineering Necessity Case (“ENC”) prepared by Verizon Wireless’ Radio Frequency (RF) Engineer; (iv) a Visual Resource Evaluation (“VRE”); (v) a “No-Effect” notice provided by the New York State Office of Parks, Recreation and Historic Preservation (“SHPO”); and (vi) Site Compliance Report concerning RF emissions; and

WHEREAS, the SEQRA regulations found at 6 NYCRR Part 617.3(a) provide that no agency shall carry out, fund, or approve an action until it has complied with the requirements of SEQRA; and

WHEREAS, 6 NYCRR 617.6(a) requires that when an agency receives a proposal for approval of an action it must: (1) determine whether the action is subject to SEQRA; (2) determine whether the action involves a federal agency; (3) determine whether other agencies are involved;

(4) make a preliminary classification of the action; and (5) issue a determination of significance; and (6) determine whether an action is located in an Agricultural District; and

WHEREAS, it is not clear whether the request to consider granting governmental immunity from zoning constitutes an “action” which is subject to SEQRA (6 NYCRR 617.3(a)). Nevertheless, the Village Board of Trustees has elected to treat the request for governmental immunity as an action subject to SEQRA; and

WHEREAS, as the proposed action is not identified on the SEQRA Type II (exempt) list (6 NYCRR 617.5) or the SEQRA Type I list (6 NYCRR 617.4), the action is by default deemed an “unlisted action”; and

WHEREAS, the FEAF prepared and provided is appropriate for the evaluation of this matter; and

WHEREAS, by Resolution dated November 21, 2022, and after circulating a Notice of Intent to Act as Lead Agency, the Village Board of Trustees adopted a Declaration of Lead Agency for the proposed action; and

WHEREAS, based upon a review of available mapping, the action is not in an Agricultural District certified under the Agricultural and Markets Law; and

WHEREAS, the Village Board of Trustees has independently considered the information provided in the documents submitted by Verizon Wireless and the Town, comments from the public, and comments on the proposal provided by the Village Designated Engineer and Radio Frequency Expert Consultant.

NOW, THEREFORE, BE IT RESOLVED, that the Village Board hereby determines that:

1. the consideration of granting governmental immunity from zoning constitutes an unlisted action which may be subject to SEQRA;
2. Verizon Wireless has the pre-requisite radio station licenses by the FCC to install and operate a personal wireless service facility in the County of Orange;
3. the action involves other agencies that have the ability to issue discretionary determinations (approvals) for the project and such agencies have been notified of the Village Board of Trustees’ Declaration of Lead Agency status;
4. No involved agency has objected to the Board of Trustees’ Notice of Intent to Act as Lead Agency; and
5. the proposed action is not located in an Agricultural District and it will not have an ascertainable significant impact on any farm or farming operations.

BE IT FURTHER RESOLVED, that based upon its review of the project and the FEAF, and review by the Village Designated Engineer and Radio Frequency Expert Consultant, and upon comparison with the Criteria for Determining Significance found at 6 NYCRR Section 617.7(c), the Village Board hereby finds that the request to consider granting governmental immunity under the Village Code and the proposed construction of the Communications Facility constitute an action which will not have a significant adverse environmental impact on the environment and, therefore, does not require preparation of an Environmental Impact Statement; and

BE IT FURTHER RESOLVED, that this determination is based in part, upon the following facts and conclusions:

SEQRA Status

To the extent that consideration of a waiver of zoning is subject to SEQRA, this matter is an unlisted action under SEQRA as it does not qualify as any of the exemptions listed on the Type II list of actions (which are not subject to review under SEQRA) (6 NYCRR 617.5) and does not fit within the description of any of the actions identified on the Type I list (6 NYCRR 617.4).

Introduction

The purpose of the Communications Facility is to provide an adequate and safe level of emergency and non-emergency Verizon Wireless communications services to the southern portion of the Village of Highland Falls by providing service in areas of significant coverage gaps and providing capacity in areas that lack sufficient capacity.

Impact on Land

This project will result in a small to negligible impact on land. The project site is located on a previously developed parcel of land which is used for municipal purposes (i.e., a DPW site along US Route 9W) and encompasses only 360 square feet of land. Ingress and egress will be provided by an existing driveway and internal road. Utility services (power and telephone/fiber) will originate from existing overhead lines on the west side of Route 9W. The communications facility will be unmanned and visited for routine maintenance purposes approximately 3-4 times per year by Verizon Wireless (only as needed). As such, this project will not have any impact on existing water or sewage services. In addition, neither pedestrian nor vehicular access will be significantly impacted. Adequate parking is provided for the infrequent maintenance visits.

Impact on Water

The proposed Communications Facility will not result in any significant impact upon (a) any water body, protected or non-protected, (b) surface or groundwater quality or quantity, or (c) drainage flow or patterns, inclusive of surface water runoff. There are no regulated wetlands located in close proximity to the proposed work.

Impact on Air

This project will not result in any significant impact on air quality. The Communications Facility proposed does not involve or concern any air quality issues, permits or otherwise. As previously mentioned, this Communications Facility will be unmanned, and visited for routine maintenance purposes approximately 3-4 times per year by Verizon Wireless (only as needed). Therefore, no significant traffic-based impact(s) exist.

Impact on Plants and Animals

Although the FEA Mapper indicates that the EAF Mapper denotes the presence of the Northern Long-Eared Bat in the general area, the FEA Mapper concludes that because the Communications Facility is proposed for a portion of the Property that has been previously developed, no impacts to such species will occur. The project does not involve any destruction of habitat for the Northern Long-Eared Bat.

The EAF Mapper also denotes the presence of Chestnut Oak Forest in the area. This is not a concern because the Property has been previously developed and additional clearing for the Communications Facility is not required.

Impact on Agricultural Land Resources

The proposed Communications Facility will have no impact on agricultural land resources as the property has been previously disturbed and developed. In addition, the property is not listed as being a farm operation within an agricultural district certified under the Agriculture and Markets Law, Article 25-AA, Section 303 and 304.

Impact on Aesthetic Resources

The proposed Communications Facility will result in a negligible impact on aesthetic resources, or no significant visual impact depending on location and view. This is confirmed by the VRE prepared for the Communications Facility, which includes existing photographs and photosimulations prepared of the proposed tower from various locations within the Village. The Communications Facility is relatively short in height (i.e., 65') and the Property upon which the Communications Facility is proposed is generally commercial in nature and suitable for the proposed use. Surrounding uses in the area include a local high school and Fairbridge Inn and Suites.

Impact on Historic and Archeological Resources

The proposed Communications Facility will not adversely impact local historic properties in the area and will not result in any significant impact on site(s) or structure(s) of historic, prehistoric or paleontological importance.

The proposed Communications Facility has been reviewed by SHPO pursuant to Section 106 of the National Historic Preservation Act. By notice dated May 17, 2022, SHPO has determined that

the proposed Communications Facility will not have any direct or visual effects on historic properties within the Area of Potential Effects.

Impact on Open Space and Recreation

The proposed Communications Facility will not result in any significant impact on the quantity or quality of existing or future open spaces or recreational opportunities given the small size of the facility and its placement on a lot in municipal ownership and use. The Property is not currently used for recreation.

Impact on Critical Environmental Areas

This project will not impact any Critical Environmental Area(s). According to the NYSDEC website, the property is not identified as a Critical Environmental Area.

Impact on Transportation

This project will not result in any significant impact on existing transportation systems. The proposed Communications Facility will be unmanned, and visited by Verizon Wireless approximately 3-4 times each year for Verizon Wireless (only as needed) for maintenance and inspection purposes. There will be a slight increase in vehicle trips during the approximately two month construction time frame associated with work vehicles and delivery trucks. The amount of additional vehicles is comparable to the amount associated with the construction of a single family home. Route 9W is well maintained and will have no difficulty handling this small number of additional trips.

Impacts on Energy

The proposed Communications Facility will not result in any significant impact on the community's sources of fuel or energy supply. First, an adequate source of power exists at the existing service lines in the vicinity of the project. Second, it is estimated that the Communications Facility will require approximately the same number of kW hours of power as a typical 3-4 bedroom house per year to operate, an impact which is not considered to be significant and which will not cause the need for any major electrical upgrades.

Noise and Odor Impacts

This project will not result in any significant environmental impact due to objectionable odors, noise or vibration. The proposed Communications Facility does not generate loud noise or vibrations during routine operations. Any potential noise or vibration impact(s) will be temporary and minor in nature and confined to the construction phase.

Impact on Public Health

The proposed Communications Facility will not adversely impact the public health and safety.

Without limitation to this evaluation, local municipalities are prohibited by the Telecommunications Act of 1996 from regulating 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. 47 USC 332 [c] [7] [B] [iv]. The Site Compliance Report confirms that the facility (a) will comply by a wide margin with the requirements of the Federal Communications Commission (FCC) concerning RF emissions (i.e., operate at a composite ground level significantly below the applicable FCC exposure limits; and (b) be categorically excluded from local regulation under applicable federal law.

Because Verizon Wireless has demonstrated that the Communications Facility will be in full compliance with all applicable FCC emissions requirements, the Telecommunications Act prohibits the Village from denying the construction of the facility based on RF emissions.

Impact on Growth and Character of Community or Neighborhood

This project will not adversely impact the character of the existing community. Although a variety of land uses exist in the general vicinity, the impact on such uses (if any) is typically visual in nature when considering a telecommunications facility. As previously stated, visibility of the proposed Communications Facility will be minor or insignificant in nature and scope due to the relatively small tower structure proposed (i.e. approximately 65' tall).

Additionally, it is well recognized that having safe and reliable wireless communications service is a significant benefit to the general public, first responders and local emergency agencies. In this regard, the Village of Highland Falls has clearly recognized the importance of having safe and reliable wireless services. Section 1 of Local Law 3 of the year 2020, enacted by the Village of Highland Falls Board of Trustees, reads as follows:

“The Board of Trustees of the Village of Highland Falls hereby finds and determines that the current inability of the Village to achieve reliable wireless communications within the Village is a danger to public health and safety.”

The Village Board of Trustees finds that the Communication Facility will result in a significant public benefit to the community.

NEGATIVE DECLARATION

Based upon the comprehensive review of the FEAF, together with the documentation provided by Verizon Wireless, the information provided by the Village Designated Engineer, the Village's Radio Frequency Expert Consultant, and all other relevant information submitted on this project, including SHPO's determination of No Effect, the Village Board of Trustees of the Village of Highland Falls hereby concludes that an Environmental Impact Statement (EIS) will not be required for the public utility Communications Facility proposed because this Action will not result in any significant adverse environmental impacts (*see* 6 NYCRR § 617.7(a)(2)).

BE IT FURTHER RESOLVED, that

- (1) the Village Board of the Village of Highland Falls, based upon (i) its thorough review of the FEA, along with any and all other documents prepared and submitted with respect to this proposed action and its environmental review, and (ii) its thorough review of the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR 617.7(c), hereby makes a negative determination of environmental significance (“Negative Declaration”) in accordance with SEQRA for the above referenced proposed action, and determines that no Environmental Impact Statement will be required; and
- (2) the Village Mayor of the Village of Highland Falls is hereby authorized and directed to complete and sign as required the determination of significance, confirming the foregoing Negative Declaration, the fully completed and signed FEA and determination of significance, will be attached hereto and incorporated by reference in this Resolution; and

BE IT FURTHER RESOLVED, that this Determination of No Significance shall be considered a Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law; and

BE IT FURTHER RESOLVED, the Village Clerk is authorized and directed to file this Resolution as is required by law and do all that is necessary to effectuate the determinations contained herein; and

MOTION BY: _____

Voting: Trustee Aylward _____

Trustee DiSalvo _____

Trustee Guerrero _____

Trustee Phillips _____

Mayor D’Onofrio _____

SECONDED BY: _____

The resolution was duly adopted on _____, 2022

Regina Taylor, Village Clerk
Village of Highland Falls

VILLAGE CLERK CERTIFICATION OF FILING ON NEXT PAGE

I, **Regina Taylor**, Village Clerk of the Village of Highland Falls, do hereby certify that the attached Resolution is a true and accurate copy of the original on file at the office of the Village Clerk of the Village of Highland Falls, 303 Main Street, Highland Falls, NY 10928.

Regina Taylor, Village Clerk
Village of Highland Falls