STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-_____-PET

Application of	)
Industrial Tower and Wireless, LLC	)
for a Certificate of Public Good,	)
pursuant to 30 V.S.A. § 248a, authorizing	)
the construction of a wireless telecommunications	)
facility in Tinmouth, Vermont.	)

APPLICATION OF INDUSTRIAL TOWER AND WIRELESS, LLC FOR A CERTIFICATE OF PUBLIC GOOD PURSUANT TO 30 V.S.A. SECTION 248A

By this Application, Industrial Tower and Wireless, LLC (together with its affiliated companies: "ITW" or "Industrial") represents:

1. The Applicant is a "company" as defined by 30 V.S.A. § 201 and, as such, is subject to the jurisdiction of the Vermont Public Utility Commission (the "Commission") pursuant to 30 V.S.A. § 203.

2. The proposed project will be a "telecommunication facility" as defined by 30 V.S.A. § 248a(b)(1).

3. ITW intends to construct a telecommunications facility on a portion of the approximately 32.35-acre parcel of land owned by George Herrick and Paul Herrick on 402 VT Rt 140, Tinmouth, Vermont. ITW refers to the project as "Tinmouth." The property owners have given ITW permission to proceed with this Application. The coordinates for the Project are latitude 43° 27'00.05" North and longitude 73° 02'24.05" West. See Permit Plans, Exhibit LH-1, for a visual depiction of the Project's location.

4. ITW will create a 80' x 80' "Compound" enclosed by an 8' high chain link fence, with a locked gate. Within the Compound, ITW will construct a 160' above ground level ("AGL") telecommunications self-supporting lattice tower ("Tower").

5. Five (5) thin "whip" antennas ("Antennas") will be mounted at 160' AGL of the Tower. Four (4) transmit Antennas will extend upward to a maximum height of 173.0' AGL. The receiving Antenna will reach downward from the 160' AGL mounting level. Each Antenna will measure approximately 13' long and 2.75" in diameter. Full and accurate specifications for the Antennas are attached as Exhibit KD-2.

6. ITW will place an equipment cabinet ("Cabinet") on a 10' by 10' concrete pad inside the Compound, to the northwest of the Tower. The Cabinet will contain the electronics equipment necessary for the operation of the Project. See Cabinet Specifications (Exhibit LH-2). Co-axial cables from the mounted antennas will descend on the inside of the Tower. The cables will exit near the base of the Tower and will connect with the Cabinets via a proposed cable bridge.

9. Approximate clearing limits are shown on the enclosed plans.[1] (Exhibit LH-1). The contractor will limit clearing to the minimum required to construct the Access and Compound, which is estimated to be approximately 17,719 square feet. Culverts, check dams, water bars, and silt fencing will be placed along the Access and at the Compound as indicated on the enclosed plans to control erosion both during and after construction. Construction shall meet the requirements of the State of Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control. After the completion of construction, the amount of new impervious surface area will be approximately 6,724 square feet.

[1] Clearing limits may need to be adjusted based on conditions encountered during construction.

NOTICE TO RECIPIENTS

Pursuant to the Public Utility Commission's ("Commission") *Sixth Amended Order Implementing Standards and Procedures for Issuance of a Certificate of Public Good for Telecommunications Facilities Pursuant to 30 V.S.A. § 248a*, entered in Case No. 18-2940-INV on September 21, 2018 ("Procedures Order"), any and all recipients of this application have 30 days to file comments, motions to intervene, or requests for hearing on the project with the Commission. If a recipient would like to request a hearing, the recipient must make a showing that the project raises a significant issue with respect to the applicable criteria under 30 V.S.A. § 248a(c)(1) and pursuant to the Procedures Order.

State Telecommunications Policy

[30 V.S.A. §248a(a)]

10. The Project is consistent with the goal of directing the benefits of improved telecommunications technology to all Vermonters pursuant to 30 V.S.A. § 202c(b). Existing and proposed communications support structures in and near the Town of Tinmouth cannot serve the area proposed to be served by the ITW Tinmouth site due to distance, height, and terrain blockage. The Project will provide the needed coverage and capacity to allow ITW subscribers living in, working in or passing through the Tinmouth area to be able to use ITW's network, something that is impossible at present. The Propagation Plots (Exhibit KD-1) illustrate the current lack of coverage and the estimated extent of the planned coverage from the ITW Tinmouth site.

Further, ITW has designed the Tower to be the lowest elevation tower that can reasonably achieve the coverage goals of ITW and the State of Vermont. A smaller tower would result in substantive gaps in coverage and/or the need for additional towers to be constructed to fill in those gaps. *See* Prefiled Testimony of Kevin Delaney ("Delaney pf") at p. 5.

11. ITW has designed the Tower and Compound to accommodate the equipment of other wireless communications providers. Sheet C-7 of the permit plans illustrates possible locations for the antennas that such carriers would seek to place on the Tower. Delaney pf. at p. 2-4.

Natural Environment, and Public Health and Safety
[30 V.S.A. § 248a(c)(1)]

12. The Project will not have an undue adverse effect on aesthetics, historical sites, air and water purity, the natural environment, and the public health and safety. This finding is supported by findings under Paragraph 15 below.

Public Health and Safety
[30 V.S.A. § 248a(c)(1)]

13. The Project will not have an undue adverse impact on public health and safety. Prefiled Testimony of Louis Hodgetts ("Hodgetts pf.") at 2-9.

Collocation
[30 V.S.A. § 248a(c)(3)]

14. The Project cannot be located on or at an existing telecommunications facility, as there are no suitable facilities within the area that ITW's Tinmouth site is intended to serve. Delaney pf. at p. 4-5. The proposed tower is situated in a valley along Route 140, making it an ideal location for a communications tower that can provide expansive coverage to the surrounding area. The proposed tower will significantly enhance service in this part of Rutland County by leveraging the valley's topography for optimal signal reach. The propagation plots that Kevin Delaney created for this site illustrate the coverage achieved by this location. *See* Exhibit KD-1. Research of the area confirmed that there are seven (7) existing towers within a ten (10) mile radius of the proposed site, including ITW's Ira site currently under construction. *Id.* However, the

propagation maps show that these existing sites do not provide coverage to the identified gap. The existing towers are simply too far away, not tall enough, or do not have space available to provide the needed coverage. See Existing Tower Analysis (Exhibit KD-3); Delaney pf. at 3-4. Nor is there any currently existing tall structure in the required area upon which ITW could locate the facility and meet its coverage objectives. *Id.*

15. The proposed Project will not have an adverse impact affecting any of the applicable criteria under 10 V.S.A. § 6086(a) and 10 V.S.A. § 1424a (d) and will conform to the land conservation measures in the applicable local and regional plans.

Criterion 1 - Water or Air Pollution:

HVAC System: The proposed equipment installation will utilize equipment cabinets installed outdoors within a fenced compound ("Compound") on a 10' by 10' concrete pad. The outdoor equipment cabinets are equipped with an air-to-air heat exchange system. The outer loop of the system includes air intake and exhaust perforations on the door and a fan to maintain the allowable operating temperatures within the cabinet. Hodgetts pf. at p. 3.

Dust Control: If conditions arise during construction that would require treatment to minimize dust, water and/or calcium chloride will be applied to the surface. There will be no noxious gases, smoke or odors emitted from the facility. *Id.*

Noise: No significant noise will be generated by this Project. Typical hours of construction will be 7:00 AM to 5:00 PM, Monday through Friday, although occasional evening or weekend work may be required.

Generalized concerns to Water or Air pollution are also unwarranted. The Project

is located outside of any wetland or stream buffer. There are no discharges to any water source – above or below ground. *Id.* at p. 4.

Outstanding Water Resources (10 V.S.A. § 1424a (d)); Headwaters, Waste Disposal, Water Conservation, Floodways, Streams, Shorelines and Wetlands (10 V.S.A § 6086(a)(1) (A)-(G), (2) and (3)):

Criterion 1A - Headwaters: The Project is not located in a headwater area. Further, there is no water supply or wastewater discharge from the site, and stormwater discharges will be affectively unchanged. Therefore, there would be no impact to the ability of a Headwaters area (if it exists at this location) to contribute to the down gradient potential for water supply. *Id.*

Criterion 1(B) – Waste Disposal: Following construction, the proposed Project will not generate any waste. Construction waste generated during construction of the project will be removed from the site and recycled or disposed of at approved waste processing facilities. *Id.*

Criterion 1(C) - Water Conservation: The proposed Project will be unmanned and will not require water or sewer facilities. *Id.*

Criterion 1(D) - Floodways: According to the FEMA Flood Insurance Rate Map (Firmette) for the Town of Tinmouth, VT (Exhibit LH-3), the Compound is not located in any flood hazard area. *Id.*

Criteria 1(E) and 1(F) - Streams and Shorelines: There are no stream crossings or shoreline improvements proposed on this project. The Clarendon River is located approximately 270 feet west of the proposed project site; however, the project disturbance is outside the 50' riparian buffer. In fact, the closest area of disturbance is more than 100

feet away from the edge of the riparian buffer and there are no proposed impacts to the river or the buffer. *See* Hodgetts pf. at pp. 4-5.

To prevent sediment run-off during construction from impacting the river or buffer, the contractor shall install the facility using sound construction methods in accordance with the State of Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control. *Id.*

Criterion 1(G) - Wetlands: Aaron Marcus and Lee Toomey from DuBois and King, Inc conducted a site visit on August 21, 2024 with amended data by Aaron Marcus on December 18, 2024, and prepared a report based on his findings. (Exhibit LH-4). There are wetlands on the property and in the vicinity of the Project. The Tinmouth Channel is a Class I wetland and is located to further to the west and north of the project parcel. None are affected. Hodgetts pf at p. 5.

The Project is located well outside of the 100' wetland buffer for the Tinmouth Channel with no proposed impacts to, or in its buffer. The Town commented that the Project was "very close" to a wetland but that is not accurate. The closest area of disturbance is more than 50 feet from the far edge of the wetland buffer of the closest wetland complex. *Id.* Thus, there are no impacts to any wetland. No State or Federal wetland permit is required for the Project. *See id.*

Best management practices (BMP's) (i.e. Silt fencing, wattles, erosion controls, etc.) will be employed during construction to ensure stormwater runoff does not carry construction related debris into nearby wetland features.

Criteria 2 and 3 - Water Supply: The proposed Project will be unmanned and will not require water or sewer facilities.

Criterion 4 - Soil Erosion: The erosion prevention sediment control measures outlined below shall meet all applicable Department of Environmental Conservation regulations. This project has less than one (1) acre of proposed disturbance, and therefore does not require a State of Vermont Stormwater Discharge Permit for Construction Activities, however construction will follow the best management practices as outlined in the State of Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control. *See* Hodgetts pf. at 5-6.

Stormwater runoff during construction of the Project will be diverted or collected and treated as outlined in the State of Vermont Low Risk Handbook for Erosion Prevention and Sediment Control. *See id.* Silt fence will be installed parallel to grade and down gradient from construction to prevent eroded sediment from leaving the site. The effective increase in impervious area is approximately 6,724 square feet. The resulting total jurisdictional impervious area will remain below the one half (1/2) acre threshold for a stormwater operational permit. The proposed improvements will utilize the existing terrain and natural treatment systems to ensure water quality and that runoff rates do not adversely impact the existing drainage ways or wetlands. *See id.*

Additionally, the impact of the new impervious area to the groundwater supply is negligible considering the existing conditions and proposed improvements. The proposed improvements consist of installation of an Access and Compound, within a wooded area. The Access and Compound will be resurfaced with a crushed stone material. As proposed, this Access will see very limited use consisting of infrequent maintenance inspections and equipment deliveries following construction. The proposed Project will not require a water supply, will have no draw on the groundwater aquifer, nor will the Project have an in-

ground waste treatment system that could potentially contaminate the groundwater.

Within the proposed compound, a crushed stone surface with a gentle slope will be provided to capture rainfall and enhance infiltration. The runoff collected by the proposed equipment cabinets will discharge across this surface and disperse in the surrounding field.

Should winter earthwork take place, additional winter erosion control measures will be applied. These measures include minimizing the soil disturbance, installation of silt fencing prior to the ground freezing, and protecting the disturbed area with hay mulch, at twice the normal rate, as soon as feasible. To limit the effect of the spring snowmelt, all snow removed from the site shall be kept down gradient of the site work and all erosion control measures shall be inspected regularly. Permanent vegetative controls will be installed as early as practical to further protect the site. *Id.*

Criterion 5 - Highways and Other Means of Transportation*:* The Project will not cause unreasonable congestion or unsafe conditions with respect to the use of highways. The site is accessed from Route 140, an existing public road. After construction, the Project will generally be visited once or twice a month by a service technician for routine inspections.

Criterion 6 - Educational Services and Criterion 7 - Municipal Services*:* The proposed Project will have no effect on the ability of the Town of Tinmouth to provide educational services.

Except for the remote possibility of the need for emergency service which the site shares with any property where an accident may occur, the Project will not require municipal services. The Project will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services. In fact, increased wireless service will enhance the Town's ability to provide those services. ITW is always

willing to make space available on its Towers for any municipal repeater, or wireless service desired by the Town's municipal and emergency services.

Criterion 8 – Scenic Beauty, Historic Sites and Natural Areas: The Project is not located on a historic site. With regard to Historic Sites, please see the Historic Resources Review completed by EBI on April 30, 2025 (concluding that there are "No Historic Properties in the Area of Potential Effects-Direct Effects" and "No Historic Properties in the Area of Potential Effect-Visual Effects."), with which the Vermont Division for Historic Preservation concurred (Exhibit LH-5). Hodgetts pf. at p. 8.

The Town of Tinmouth's comments raise concern that the Tower will have an effect on a historic grave maker located in a cemetery across Route 140 from the Project. The Town's comments to not articulate the basis for its concern other than to assert generally that the Tower would be visible from the marker. First, there are no changes proposed to the historic marker or cemetery. Anybody looking at the marker or cemetery from the north (Route 140), west, or northeast should not see the proposed Tower. It would be behind them. Only if one looked at the marker from the south, which requires one to pass by it, walk through the cemetery and intentionally turn around to face the Tower site, would the Tower be visible. Given that, there is no rational basis to conclude that the Tower will or may have an undue and adverse effect on, or interference with, a person who desires to view and appreciate the historic marker or cemetery.

Further, there is no way to locate a Tower on this parcel which meets the coverage goals without making such a tower visible from the cemetery– even a 130 foot tower as expressly authorized in the Town's Zoning Bylaws would be visible to a person looking at

the marker from the south. ITW has located the Tower as far back on the site and lowered it to the minimum height necessary to meet the coverage goals. Accordingly, the Project will not have an undue adverse effect on historic sites.

A visibility analysis was conducted to review the potential visibility of the proposed installation and balloon float was conducted on December 31, 2024, to confirm the visual impact of the proposed Tower on the surrounding community. December was chosen because the lack of leaf-cover results in maximum visibility. Hodgetts pf. at p. 8. As is the standard industry practice, a 3' diameter red balloon was inflated, connected to a 160' long string, and tethered at the proposed site location. While the balloon was in the air at the proposed height, our staff drove the primary public roads within a two-mile radius of the project location to determine the visibility of the proposed installation. Views of the proposed installation were limited to Route 140 and East Road and from more limited spots of short duration due to the terrain and foreground vegetation. Photographs were taken from six (6) different viewpoints, identified in Exhibit LH-6. The balloon was visible from the four (4) viewpoints and simulations were developed of the proposed installation. The photo simulations are submitted as Exhibit LH-6.

The Town's comments raised a generalized concern about impacts to the scenic vistas of the Town. This project is not located in the land the Town Plan is concerned with and the only scenic area it is visible from is the intersection of Route 140 and East Road. *Id.* From that view the Tower is visible but blends into the wooded hillside behind it, (Exhibit LH-6) and it is not located on the ridgeline or open fields. Both of those features remain untouched and predominate the viewshed. *Id.*

The Tower's lattice design is intentional in that it helps the Tower blend into the background as light and the hillside behind it remains visible helping the prevailing landscape to remain the dominant visual feature. *Id.* Overall, lattice designs are typical designs that do not shock the conscience of the average person and are prevalent around the State. The Tower does not have an undue and adverse impact on any scenic view or area. Further, there is no way to locate a Tower to fill the existing coverage gap without it being visible from the East Road/Route 140 intersection. Even a 130 foot tower as allowed in the bylaws would be substantially visible.

Criterion 8(A) - Wildlife and Endangered Species: As documented in the Natural Resources Report (Exhibit LH-4) and confirmed by field investigations and the ANR Natural Resources Atlas, rare plant and wildlife species were observed within the Project Study Area (PSA). Hodgetts pf. at pp. 8-9. While no federally listed species were identified during field surveys, potential summer roosting habitat for the federally endangered northern long-eared bat (*Myotis septentrionalis*) was identified in the northwestern portion of the PSA. Eight mature sugar maples with suitable roosting characteristics were documented, though no known roosts were recorded within 2.5 miles of the project area. *Id.* at p. 9.

Additionally, there is proposed critical habitat for the monarch butterfly (*Danaus plexippus*), which is listed as a Proposed Threatened species under the Endangered Species Act. Although the habitat in the proposed disturbance area is largely young forest with limited milkweed present, the project may create forest edges favorable to monarchs. Common milkweed (*Asclepias syriaca*) was observed occasionally in the old quarry area,

which is not anticipated to be impacted. *Id.*

No known rare, threatened, or endangered natural communities occur within the area of disturbance, though the broader Tinmouth Channel wetland complex supports multiple rare plant species. *Id.* Within the PSA, the rare long-headed thimbleweed (*Anemone cylindrica*, S1S2) was observed in ten subpopulations, totaling over 200 genets and representing what may be the largest known extant population in Vermont. Black-seeded clearweed (*Pilea fontana*, S2S3) was also likely observed, pending fall confirmation. These findings have been documented in the Rare Plant Form and Photo Exhibit. These are not affected by any work associated with the Project. *See* Hodgetts pf. at 8-9. At the request of ANR, the western and southern edges of subpopulation 1 of the Anemone Cylindrica will be flagged by a qualified botanist with high visibility flagging and signage indicating no heavy machinery shall enter the RTE polygon for this subpopulation. *Id.*

The area of proposed disturbance lacks high-quality or irreplaceable natural communities. The only potential natural community identified a small patch of Calcareous Red Maple, Tamarack Swamp (S2). This area is too marginal and isolated to be considered state significant and is not affected. Most of the remaining habitat is composed of young, disturbed forest with limited ecological value. *See id.*

The unoccupied nature of the proposed telecommunications facility, combined with its limited footprint and use of an existing sugar bush access road, is expected to have a negligible impact on wildlife movement or use of the area. *Id.* at p. 9. No bear scarring was observed on mast trees surveyed, and no additional state- or federally listed species are expected to be impacted by the project. *Id.*

Criterion 9(K) – Development Affecting Public Investments: The Project does not impact any known areas of public investment.

Conformance with Local and Regional Plans - Pursuant to 30 V.S.A. § 248a(c)(2), during the Commission's review, "substantial deference [will be] given to the land conservation measures" in the local and regional plans of the "affected municipality." Accordingly, ITW addresses the relevant provisions of both the Town of Tinmouth Town Plan (adopted January 9, 2020) ("Town Plan") and the Rutland Regional Plan (adopted June 19, 2018) to demonstrate that the proposed Project is in alignment with applicable planning goals and policies.

While zoning bylaws are preempted by statute, a town may base its recommendations on a duly adopted zoning bylaw addressing telecommunication facilities, though rote adherence to the bylaws is not appropriate given the preemption. Tinmouth's Zoning Regulations (the "Regulations") have a telecommunications provision (Section 409) and Tinmouth appears to rely on them in its comments. As such, ITW outlines how it complies with the Regulations concerning telecommunications. Overwhelmingly, ITW meets the letter of the Regulations. Where there is not strict compliance, ITW explains why good cause exists to vary from the Regulations.

Tinmouth Town Plan

The Town Plan provides a generalized set of goals and objectives for the Town of Tinmouth. Hodgetts pf. at p. 10 It does not have any specific guidance as concerns Telecommunications Towers. As concerns public utilities it provides non-specific recommendations that they be located in such a way so as not to have an undue and

adverse impact on the scenic quality and land values of the Town. *Id.*
Of those general objectives is a statement that utilities should be located in a way such that they will not have undue adverse effects on the scenic values of the Town.

The Project meets this objective in that it is located off of a ridgeline, designed as a an open lattice tower that is not shocking or offensive to the reasonable viewer. Hodgetts pf. at p. 10 The Tower compound and lower sections are screened by existing vegetation and as the balloon float and simulations show, is only briefly visible from portions of the Town.

Of note, the Town Plan states that the Town's land use bylaws shall implement the intent of the Town Plan. *Id.* As applied to this Project, those regulations identify that this parcel of land may have telecommunications towers as conditional uses. The Project therefore complies with the intent of the plan as reflected in the land use bylaws.
The Town Plan has a section dedicated to Economic Development, including the following with respect to the changing nature of the local economy:

> "…since 1960 employment has been dominated by residents commuting to out-of-town jobs. However, computers and our fiber-optic cable connections have offered increased opportunities for work at home. The changing nature of employment has a significant effect on land use. The Tinmouth Town Plan intends to accommodate these changes, especially the growth of home occupations by local residents."
>
> Town Plan at 24.

The Town continues stating it Business Policy is as follows:

> The town of Tinmouth supports the development and expansion of agriculture

> (including forestry), B & B enterprises, independent artisans and home-based businesses.
>
> *Id.*

The Project supports the economic development in Tinmouth. It aides business owners who seek reliable means of communications within Tinmouth.

The Town Plan further discusses the resources it seeks to protect within the Town. The Town Plan identifies that the Town seeks to preserve open fields available for agriculture, locate development outside of the core of uninterrupted forest tracks, and preserve sensitive wetland or river resources. The Project meets these generalized objectives in that it is not in an open field or on agriculturally valuable soils, is not located in any core forest habitat, and is not within any wetland or river buffer. Hodgetts pf. at p. 10.

The Project is located in the Conservation Zoning District of the Town of Tinmouth. The Town Plan identifies that the Conservation Zoning District as an area developed with the desire to preserve agricultural and forestry lands along with wildlife habitats. Town Plan at p. 46. The Project aligns with this objective as discussed above. The Town Plan states that development in this district should be limited and low-intensity. The Project is a limited development and low intensity. Hodgetts pf. at p. 12. The overall impact is less than 1 acre, and the site is rarely visited. There are no lights, no substantive noise, no waste, nor water usage. *Id.* at 12.

The Town Plan states that

> Maintaining Tinmouth's active farms, open fields, wildlife corridors, and unbroken productive forests are all top priorities of this plan. It is also

> important, however, for residents and landowners to have room for future development. Building along the border between these open and forested areas will have the least impact on the community's economic potential and natural habitat and will give all residents and visitors the opportunity to share the scenic beauty of the town.

ITW tried to follow this guidance and has located the Tower in a developed area (gravel quarry) and away from any open or deeply forested areas. Hodgetts pf. at p. 13.

The Town Plan (p. 50) discusses areas that are sensitive to development. These includes steep slopes, ridgelines, shores and stream banks, wetlands, wildlife corridors and crossings, wetlands, productive woodlands, floodways and floodplains. The Town Plan generally expresses a desire for development to be located away from these sensitive areas whenever possible. The Project meets the desires of the Town Plan in that it is not in any of these sensitive areas nor will present any reasonable risk to any of these areas. *Id.* ITW notes that in the Town Plan's section of the siting of solar facilities, the Town Plan identifies that one of the desired areas for solar development is in disturbed areas like gravel and sand pits. Plan at p. 73. While not controlling, ITW tracked this desire and located the Project in a gravel quarry. Hodgetts pf. at p. 13.

To the extent that the Town Plan discusses scenic resources the Project meets those objectives. The sole scenic area that is impacted by the Tower is the stretch of Route 140 where it intersects East Road. As noted above, the Tower's view from this area is limited. Hodgetts pf. at p. 13. The Tower does not detract in

any unreasonable degree from the views of the open fields as the Tower blends into the background.

The Town Plan highlights Tinmouth Center as a center for community interaction, a container for community memories, and a focus of community identity while also stating that it is lacking the elements of a village and is not the kind of village that development can be built upon. Town Plan at 45-46. It states that inhabitants must work at home or commute to jobs and find stores and services in other towns. *Id*. In discussions of economic development, the town plan refers to the increase in residents who work from home or have home businesses. *Id*. at 24. It is acknowledged that the changing nature of employment has had a significant effect on land use and the town plan intends to accommodate these changes, especially the growth of home occupation by local residents. *Id*. at 45.

The telecommunications services that ITW will provide through the Project will primarily be targeted to business customers seeking a reliable, reasonably-price means of communicating between their offices and remote users. Delaney pf. at p. 6. As such, the Project will promote a balanced, diverse economic base, with a focus on locally owned businesses, including home-based ones. The deployment of ITW's service in Tinmouth will also attract commercial development, especially for business that require reliable two-way mobile communications. *Id.*

This type of project also brings with it the opportunity to attract the major wireless communications carriers to the area to improve their wireless communications networks. *Id.* This would provide more reliable cell service to residents and visitors. If the infrastructure is available, the wireless carriers can expand their networks quicker and

more cost effective than having to go through the process of locating areas and permitting their own tower. This benefit of having a tower creates the opportunity that the Town Plan calls for to promote the broad goal to allow new development and create a village that development can be built upon. *Id.*

Tinmouth Zoning Bylaws

Tinmouth has adopted Zoning Regulations ("the Regulations"), and included therein, bylaws concerning the provision of telecommunications services (Section 409). While these zoning bylaws are preempted as a matter of law, they may be the basis for the Town's comments and so ITW addresses them below.

The Project is located in the Conservation Zoning District. Telecommunications Facilities are a conditionally permitted and allowed use in this district. Thus, telecommunications towers in general are consistent with the overall purposes of the district. Had Tinmouth desired to have no towers placed within this district, it would not have listed them as a conditionally permitted use.

The Project was situated as directed by the purposes set forth for the district. The Bylaws state that the purposes of the district are to "promote low-intensity development on the edge of open fields or forested land to avoid loss of either resource." The Project is low intensity. It is unmanned, rarely visited, has no lights and makes no substantive noise. Hodgetts pf. at pp. 11-14. It is located on the edge of forested and protected habitat so as not to impact it and away from an open field. *Id.*

Section 409 of the Bylaws addresses Wireless Telecommunications Facilities. The provisions of Section 409 are as follows (in bold) and ITW's response to such are below in this font.

A. Purpose.

The purpose of this section is to ensure appropriate review and oversight of wireless telecommunications towers and associated infrastructure, to protect the scenic, historic, environmental, and residential resources and qualities of the community, and to minimize the visual and environmental impacts of these facilities, all within the confines dictated by federal law.

The Project meets this purpose to the maximum extent possible. It is located away from and outside of any residential area, not in any historic property, outside of any wetland buffer, stream channel, wildlife connectivity area, and rare plant resource area. It is sized to the lowest extent reasonably possible to meet the coverage objectives of the State and ITW.

B. Procedure

1. Conditional use approval is required for all wireless telecommunications facilities that are licensed and/or regulated by the Federal Communications Commission, along with any associated equipment, buildings, and infrastructure. However, in accordance with 24 VSA §4412(9), the Zoning Administrator shall issue a permit for a Wireless Telecommunications Facility that is determined to create either no impact or only de minimis impact upon any of the criteria in this Article of the Zoning Regulations. The Zoning Administrator's decision shall be in writing, and may be appealed as with any other decision.

2. No permit shall be required for a Wireless Telecommunication Facility that is subject to or has received a Certificate of Public Good under 30 VSA §248a.

The Project seeks a CPG and so is consistent with this section.

3. Prior to granting any approval, the Board of Adjustment shall make affirmative findings upon the entire general conditional use criteria described in Article IV of the Zoning Regulations; the criteria described below; any other applicable provisions of this Ordinance, and the goals and policies in the Town Plan.

This is not applicable.

4. A complete application form shall be filed, along with a site plan showing all information required in Section 402, and any other information required in this Section. A complete application shall also include a report, plans, and elevations stamped by qualified engineers that:

5. Describes the height, design, and elevation of all proposed infrastructure;

The Project meets § 409(B)(4) and (5) because ITW's CPG application and attachments provide all this information. *See* Application Materials and Exhibits

6. Documents the height of all proposed antenna mounting positions on a tower; The Project meets § 409(B)(6) because ITW's CPG application explains that the antenna will be placed 160' up the Tower.

7. **Describes the tower's proposed capacity, including number, height, and type(s) of antennas that the tower is expected to accommodate; and**

The Project meets § 409(B)(7) because ITW's CPG application explains all technical elements of the Project.

8. **Documents the need for the proposed site and structure(s), and demonstrates why no other alternative site will provide adequate coverage or capacity. However, the applicant may at the same time submit the required information for alternative sites acceptable to it. If the Board of Adjustment rejects the primary site, on request of the applicant it will proceed to consider such alternative site or sites without requiring a new application.**

The Project meets § 409(B)(8) because documents were submitted showing that the Project cannot be located on or at an existing telecommunications facility, as there are no suitable facilities within the area that ITW's Tinmouth site is intended to serve.

9**. Applicants shall also submit photographs of existing conditions at the proposed site or sites, and accurate photo simulations showing post-construction conditions at the site.**

The Project meets § 409(B)(9) because the requested photos were included in ITW's CPG application.

10. **Additional information may be required by the Board of Adjustment.**

This is not applicable.

11. An applicant must be a wireless service provider or FCC licensee, or landowner with an executed contract to provide land or facilities to one of those entities. A permit shall not be granted for facilities to be built on speculation.

The Project meets § 409(B)(11) because ITW is a wireless service provider and holds an FCC license; the Project is not speculative.

12. No permit shall be required for a property owner to place or allow placement of antennae used to transmit, receive, or transmit and receive communications signals on the property owner's premises if the aggregate area of the largest face of the antennae is not more than eight sq ft, and if the antennae and mast to which they are attached do not extend more than 12 feet above the roof of that portion of the building to which they are attached.

Section 409(B)(12) is not applicable to the Project.

13. No permit shall be required for a Wireless Telecommunication Facility that is used exclusively for municipal radio dispatch service or emergency radio dispatch service and which does not exceed 50 feet in height.

Section 409(B)(13) is not applicable to the Project.

14. This section shall not apply to amateur radio, citizens band radio, AM or FM radio, or broadcast television service.

Section 409(B)(14) is not applicable to the Project.

C. **Location**

1. Prohibited locations.

Telecommunications towers and associated equipment, buildings, and infrastructure shall not be located in:

a. **Land not ordinarily suitable for subdivision under Section 301.1 of the Subdivision Regulations**

The Project meets § 409(C)(1)(a) because it will be constructed on a portion of the lot located at 402 VT Rt 140, Tinmouth, Vermont (latitude 43°27’00.05” North and longitude 73°02’24.05” West); ITW has received permission from the property owners. The specific proposed location is not on land “not ordinarily suitable for subdivision.” Hodgetts pf. at p. 14.

b. **Historic Districts as defined in the Town Plan, or designated as such by the State of Vermont or the United States Department of the Interior; unless located within an existing structure, e.g. a church steeple or attic.**

The Project meets § 409(C)(1)(b) because it is not located within a Historic District. *Id.* at 15.

c. **Protection District or the Flood Hazard Overlay Zone;**

The Project meets § 409(C)(1)(c) because it is not located within the Flood Hazard Overlay Zone. *Id.*

d. **any required setback from rivers, streams, or wetlands.**

The Project meets § 409(C)(1)(d) because it is not located within any required setback from a river, stream or wetland. *Id.*

2. Telecommunications towers, and associated equipment, buildings, and infrastructure, including access roads, shall comply with Section 412, Conditional Use in the Ridgeline Protection Overlay District.

The Project meets § 409(C)(2) because it is not located within the Ridgeline Protection Overlay District. *Id.*

3. **Applicants are encouraged to locate antennas within existing tall structures such as church steeples or barn silos; in these instances, the above standards may be modified by the Board of Adjustment.**

Section 409(C)(3) is not applicable to the Project as there are no suitable facilities within the area that ITW's Tinmouth site is intended to serve. Delaney pf. at pp. 7-8.

4. Height. In addition to other standards herein, no tower or structure shall exceed 130 feet in height. No tower or structure may be higher than 10 feet above the average height of buildings within 300 feet of the proposed facility. The Facility will not project more than 20 feet above the average elevation of the tree line measured within 50 feet of the highest vertical element of the Wireless Telecommunication Facility on lands owned or leased by the applicant.

The Project cannot strictly comply with this provision. ITW has good cause to exceed a 130' arbitrary limit. According to testimony from ITW's RF Engineer, for the Tower to meet ITW's coverage goals for the surrounding valley, the antennas must be placed at the proposed height. Delaney pf. at p 8. In other words, the Tower's current height is the minimum viable height. The Project would not meet its coverage objectives with a 130' peak height. *Id.* At that height extensive coverage gaps would exist. *Id.* This would require additional towers – the very thing Tinmouth would not desire. Further, in the event a carrier other than ITW wanted to use this tower, a tower of 117 (130' – 13ft antennas) would prevent such collocation. *Id.* This runs counter to the State and Tinmouth's expressed desires for collocation. Here, given that the coverage objectives of ITW and the State cannot be met with a 130' tower, nor would collocation be feasible at that height, good cause exists to deviate from the height set forth in the Regulations.

5. **Setbacks. The minimum setback requirement for any telecommunications tower or associated structure shall be as required in the applicable zoning district, plus an additional setback equal to the height of the tower (the 'fall zone'). The minimum setback for any tower taller than 100' shall be 300' from a dwelling and residential zoning district boundary. Where a tower is mounted on an existing structure such as a barn, silo, church steeple, or utility pole, and the tower does not increase the height of the structure more than ten feet, then the additional 'fall zone' setback is not required.**

As Tower is greater than 100 ft in height under a strict application of the Bylaws, the minimum setback is 300 feet from the boundary of the residential districts to the South and West. The Tower is more than 300 feet from the western boundary but not 300' from the southern residential district boundary. Hodgetts pf. at p. 16. The Tower itself is approximately 150' back from the closest residential zoning district boundary (across Route 140). *Id.*

The setback standard cannot be strictly met while otherwise meeting the Town's desired objectives of locating towers outside of open fields, on the edges of forest tracks, outside of stream channels and wetland buffers and with limited disturbance. *Id.* Locating the Tower any further back on this site to meet the arbitrary standards of the bylaws impacts wetland buffers, natural plant communities, and brings the Tower into the Protection Zoning District where no structures are allowed. Locating the Tower where it is proposed allows ITW to limit road clearing and disturbances, keep the tower and compound out of any sensitive area, and reduce clearing so that no critical natural communities are affected. *Id.*

Notably, the Tower is located over 500 feet from the nearest residence and more than 300' from the nearest property line of a property that is used for residential purposes.

Thus good cause exists to not strictly follow the Town's recommendations based on its bylaws. Further, ITW notes that Section 1105(D) of the Bylaws allows for a waiver of setback requirements due to other legal requirements such as the wetland rules and other provisions of the Bylaws. Thus, even if the bylaws were applicable, a mechanism exists therein to not follow the setback standards but waive as needed.

6. Lighting. Towers requiring lighting shall not be permitted, unless the Board of Adjustment finds it the only viable alternative to meet reasonable facility requirements of a communications service provider. If a tower tall enough to require lighting is permitted by the Board of Adjustment, the only tower lighting allowed is that required by FAA regulation. All lighting shall be shielded to minimize or prevent glare onto adjoining properties.

The Project meets § 409(C)(6) because the Tower is not lit. Hodgetts pf. at p. 17.

9. **Bulk, Height, and Glare. All towers and related infrastructure shall be designed to minimize the visual impact of height and mass. Materials shall be of a type, style, color, and location so as to blend into the site, minimize glare, and not result in undue adverse visual impacts to the natural landscape or the built environment.**

The Tower is designed to meet this provision. The Tower is a slate grey metallic lattice tower. This was chosen because it allows light to pass through the Tower minimizing its visual bulk and appearance. The color allows the Tower to blend in with the sky and background. There is nothing reflective on the Tower that would produce glare. The Tower's antenna are thin whip antenna which are barely visible from the ground. *Id.*

8. Noise. The Board of Adjustment may require the applicant to provide a study from a qualified engineer as to the maximum projected noise from the proposed facility, measured in dB Ldn (decibels, logarithmic scale, accounting for greater sensitivity at night). This study shall include existing or ambient measurements, plus noise that may be created or caused by the proposed facility. Noise measurements and projections shall be provided for the location of the tower facility itself and at the property line. Noise emissions shall not exceed 70 db at the property line.

The Project meets § 409(C)(8) because it will not produce any noise perceivable at the property line during its operations. *Id.*

9. Screening/Camouflage/Fencing.

a. Screening shall be required at the perimeter of the site, unless it is demonstrated that existing natural foliage is sufficient. Required screening shall be at least ten feet in depth, and at least ten feet tall, with the potential to grow to significant size at maturity.

The Project meets § 409(C)(9)(a) because the area immediately surrounding the Tower's contains numerous mature sugar maple and other trees, thereby screening the Compound and base of the Tower. *Id.*

b. **Disturbance to existing topography or vegetation shall be minimized, unless found necessary to mitigate visual or aesthetic impacts. The**

location and type of security fencing shall be shown and described on the site plan.

The Project meets § 409(C)(9)(b) because it is designed to be located away from the road in an area of previous disturbance. The site utilizes the existing gravel pit access road and clears the minimum amount of tree cover necessary to build the Project. The area of disturbance leaves substantial screening vegetation in place, avoids any important plant communities and the security fencing is shown as within the limits of screening.

c. Towers are not required to be camouflaged as trees. If the applicant chooses to disguise the tower as a tree, it shall closely imitate a native species such as white pine, hemlock, or spruce.

Section 409(C)(9)(c) is not applicable to the Project because the Tower is not designed to be camouflaged as a tree.

10. Co-location

a. The principle of co-location shall be employed to the greatest extent possible. The applicant shall demonstrate that there are no other existing towers that can accommodate the proposed use(s). If other towers do exist, then the applicant must demonstrate that they are technically inadequate, and/or that bona fide, good faith negotiations with that landowner have failed. The duration and terms of any offer by either party shall be disclosed to the Board of Adjustment.

The Project meets § 409(C)(10)(a) because no suitable existing tower is located such that colocation on the facility would provide service coverage within the area that ITW's Tinmouth site is intended to serve. Delaney pf. at p. 4.

b. Any permit granted shall include a condition requiring that other wireless service providers shall be allowed to co-locate on any new or existing tower. The applicant shall provide written evidence as to how it will comply with this condition, and under what terms it proposes to allow co-location. Such terms must be approved by the Board of Adjustment and included in the permit.

The Project meets § 409(C)(10)(a) because the Tower and Compound are designed to accommodate the equipment of other wireless communications providers.

Lowering the Tower as the Town appears to desire would defeat the intent of this requirement and prevent any future wireless provider from collocating on this tower. Delaney pf. at p. 5.

11. Access Roads and Above Ground Utilities. Any roads or above ground utilities shall follow the contour of the land, and be sited and constructed to minimize visual impacts to the greatest extent possible.

The Project meets § 409(C)(11) because an existing sugar bush access road will primarily be used, with any additional extension being less than one hundred feet. The extension will follow the contours of the land, will be negligibly visible to passersby, and is generally designed to avoid, to the greatest extent possible, undue adverse impacts. Hodgetts pf. at p. 19.

12. **Environmentally Sensitive Areas. The Town Plan and Zoning Regulations describe environmentally sensitive areas including steep slopes, wetlands, floodways, unique natural features, wildlife habitat, historic sites, high elevations, ridgelines, and scenic resources. Telecommunications facilities and associated infrastructure shall avoid undue adverse impacts on these areas to the greatest extent possible. Where there may be adverse impacts, then the project shall be designed to mitigate these impacts to the greatest extent possible. The Board of Adjustment shall approve these mitigations in the permit.**

The Project meets § 409(C)(11) because it is not located within any wetlands, flood zones, or other environmentally sensitive areas and is designed to avoid, said areas. There are no adverse impacts to any of these environmentally sensitive areas. Further, the area of proposed disturbance generally lacks high-quality or irreplaceable natural communities. *Id.* at pp. 19-20.

Thus, as demonstrated the Project meets the Zoning Bylaws in almost every regard. Where there is not strict compliance, the Project has good cause to vary from the specific standard.

Regional Plan

The Rutland Regional Plan emphasizes infrastructure improvement and economic development, citing as key goals:

- Improve infrastructure
- Improve business climate

Regional Plan at 51-52. More specifically, Regional Plan Chapter 19 (Telecommunications) supports the following goals:

- Determine if and where telecommunications and public safety intersect, and if necessary, advocate for protecting public safety.
- Help communities to assess demand for broadband internet services to attract providers.
- Assist communities in identifying desirable telecommunication infrastructure sites.
- Advocate infrastructure sharing by telecommunications facilities in lieu of new towers and other structures and for the removal of unused towers if not activated or in use for a certain period of time
- Provide model regulations and information on federal and state laws to interested communities.
- Initiate an inventory of wireless telephone and emergency radio service areas.
- Promote a common strategy for deployment of service in the Region with the business and telecommunications industries.
- Encourage developers to work with towns early in the process of adding or altering telecommunications infrastructure.

These general non-specific goals are met. Hodgetts pf. at p. 20-21. The Project promotes infrastructure development where there is none currently. The Project allows for collocation as well and is open to collocation should any be desired in the future. It promotes the overall objectives of Vermont which is for universal coverage as such is in the interests of public safety. It is designed to minimize and almost totally avoid any impacts to wetlands, sensitive natural areas, and is well setback from the road. Its RF emissions are within federal standard limits and as such presents no risk to safety or the public good.

IV. DISCUSSION AND CONCLUSION

The proposed Project involves the construction of a new telecommunications facility. Based upon all of the above evidence, the application does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.

The Project will promote the general good of the State by expanding wireless telecommunications infrastructure to support modern mobile services along highways and in communities; providing high quality services for businesses and residents; providing competitive choices for consumers; and providing the opportunity to improve public safety and economic development within the State, all in conformance with the substantive criteria under Section 248a.

On February 12, 2025, ITW provided the 60-day written notice, as required under 30 V.S.A. § 248a(e), to the following: Town of Tinmouth Selectboard and Planning Commission, Mt. Ascutney Regional Commission, the Agency of Natural Resources, Division of Historic Preservation, Commissioner of the Department of Public Service and its Director for Public

Advocacy, the Secretary of the Agency of Transportation, the Public Utility Commission and the landowners of record of properties adjoining the Project site. Subsequently, ITW updated its plans to adjust the Tower so that it was outside of the Conservation Zoning District and provided new notices.

Concurrently with the filing of this Application, ITW has provided copies of this Application, and accompanying prefiled testimony and exhibits, to the following: Town of Tinmouth Selectboard and Planning Commission, Rutland Regional Commission, the Agency of Natural Resources, Division of Historic Preservation, Commissioner of the Department of Public Service and its Director for Public Advocacy, the Secretary of the Agency of Transportation. A notice of the filing of this Application has also been provided to the landowners of record of properties adjoining the Project site.

In support of this Application, ITW submits the Prefiled Testimony and exhibits sponsored by the following witnesses:

Witness	Subject
Kevin Delaney, Vice President of Site Acquisition & Development	Describes the purpose for the Project and efforts to collocate on existing structures; certifies compliance with FCC Maximum Permissible Exposure levels
Louis Hodgetts, Project Consultant	Describes the Project's design and impact impact on the applicable Criteria of 10 V.S.A. § 6086(a), and addresses conformance with the applicable local and regional plans.

WHEREFORE, Petitioner respectfully requests that the Board:

1. Find that the Application complies with all applicable filing requirements pursuant to 30 V.S.A. § 248a criteria and does not raise a substantial issue under said Section;
2. Find that the Project will promote the general good of the State of Vermont and authorize the Applicant to undertake the actions as described herein and in its exhibits;
3. Issue an Order and Certificate of Public Good; and
4. Take such other measures as may be required for the expeditious review and approval of this Application.

Dated in Burlington, Vermont this 8th day of August, 2025

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