

HOUSE DOCKET, NO.

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FILED ON: 09/08/2011

HOUSE No. 03706

The Commonwealth of Massachusetts

PRESENTED BY:

Brian Dempsey

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act authorizing the Division of Capital Asset Management and Maintenance to grant an easement over an access road in Upton State Forest.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

HOUSE No. 03706

The committee on Ways and Means to whom was referred the Bill authorizing the Division of Capital Management and Maintenance to grant an easement over an access road in Upton State Forest (House, No. 1149, changed), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 3706).

- For the committee,
- Brian S. Dempsey
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The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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An Act authorizing the Division of Capital Asset Management and Maintenance to grant an easement over an access road in Upton State Forest.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to grant an easement forthwith over an access road in Upton State Forest in the town of Upton to the owner of a wireless telecommunications tower, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Notwithstanding sections 40E to 40J inclusive of chapter 7 of the General Laws,
- 2 the commissioner of capital asset management and maintenance, on behalf of, and in
- 3 consultation with the commissioner of the department of conservation and recreation, may grant

4 an easement along an access road in the Upton State Forest, currently under the care and control
5 of said department of conservation and recreation to Industrial Tower and Wireless, LLC of 40
6 Lone street, Marshfield, Massachusetts and its tenants, licensees, successors and assigns. The
7 easement granted to Industrial Tower and Wireless, LLC and its tenants, licensees, successors
8 and assigns shall follow the gravel road from Warren street to the proposed building site for a
9 wireless telecommunications tower on land bordering the state forest and shall be for the purpose
10 of accessing the tower and supplying utility service transmissions systems, including electrical
11 and telephone lines, underground to the tower for Industrial Tower Wireless, LLC and its
12 tenants, licensees, successors and assigns. The easement area contains approximately 23,412
13 square feet of land and is within the layout of the existing gravel roadway shown in a plan
14 entitled "Proposed Communications Facility Off Warren St. Upton, MA Map 15 Lot 30"
15 prepared by Industrial Communications Engineering Division and dated February 22, 2010. The
16 exact boundaries of the easement shall be determined by the commissioner of capital asset
17 management and maintenance, in consultation with the department of conservation and
18 recreation, after completion of a survey. The value of the easement shall be determined by the
19 commissioner of the division of capital asset management and maintenance pursuant to 1 or
20 more independent professional appraisals. Said easement shall be conveyed by deed without
21 warranties or representations by the commonwealth.

22 SECTION 2. In consideration for and as a condition of the grant of the easement authorized in
23 section 1, Industrial Tower and Wireless, LLC and its tenants, licensees, successors and assigns
24 shall construct and maintain 2 single leaf gate replacements in Upton State Forest, the locations
25 of which shall be determined by the department of conservation and recreation; and provide 2 to
26 3 new radio systems to said department for the benefit and use by staff members at the Upton

27 State Forest; provided, however, that if the value of this consideration is determined to be less
28 than the value of the easement granted, Industrial Tower and Wireless, LLC shall pay the
29 difference and said amount shall be paid into the Conservation Trust of the department.

30 SECTION 3. Notwithstanding any general or special law to the contrary, the Industrial Tower
31 and Wireless, LLC and its tenants, licensees, successors and assigns shall be responsible for all
32 costs and expenses, including but not limited to, costs associated with any engineering, surveys,
33 appraisals, and deed preparation, and preconstruction, construction and postconstruction costs to
34 mitigate and remedy erosion and grading issues on the access road and annual maintenance of
35 said road, related to the grant authorized under this act as such costs may be determined by the
36 commissioner of the division of capital asset management and maintenance in conjunction with
37 the department of conservation and recreation.

38 SECTION 4. Notwithstanding any general or special law to the contrary, the inspector general
39 shall review and approve the appraisal required pursuant to section 1. The inspector general
40 shall prepare a report of his review of the methodology utilized for the appraisal and shall file the
41 report with the commissioner of capital asset management and maintenance, the house and
42 senate committees on ways and means and the joint committee on bonding, capital expenditures
43 and state assets. The commissioner of capital asset management and maintenance shall, 30 days
44 before the execution of any grant of easement authorized by this act, or any subsequent
45 amendment thereto, submit the proposed grant of easement or amendment and a report thereon to
46 the inspector general for his review and comment. The inspector general shall issue his review
47 and comment within 15 days of receipt of the proposed grant of easement or amendment. The
48 commissioner of capital asset management and maintenance shall submit the proposed grant of
49 easement or amendment, and the reports and the comments of the inspector general, if any, to the

50 house and senate committees on ways and means and the joint committee on bonding, capital
51 expenditures and state assets at least 15 days before execution of the grant.

52 SECTION 5. The grantee and its tenants, licensees, successors and assigns shall use the
53 easement solely for the purposes of access to the wireless communications tower and to supply
54 utility service transmissions systems, including electrical and telephone lines to said tower as
55 determined by the commissioner of capital asset management and maintenance. The easement or
56 other agreement pertaining to the grant of the easement shall include a provision restricting the
57 use of the property by the grantee and its tenants, licensees, successors and assigns to such
58 purposes and providing that such easement shall terminate if the property ceases to be so used or
59 is used for any other purpose.

60 SECTION 6. If the easement granted pursuant to section 1 ceases to be used by the grantee and
61 its tenants, licensees, successors and assigns for the purposes of access to the wireless
62 communications tower and to supply utility service transmissions systems, the easement shall
63 terminate.