



**APPLICATION FOR VARIANCE
(Zoning Board of Adjustment)
AND
APPLICATION SITE PLAN REVIEW
and CONDITIONAL USE PERMIT
(Planning Board)
FOR
TELECOMMUNICATIONS FACILITY**

SUPPLEMENT No. 2

Applicant: Vertex Towers LLC
Site Id: VT-NH-0298A
Property Address: 70 Moulton Ridge Road, Kensington, NH 03833
Tax Assessors: Map 10 Lot 1
Property Owner: Maribeth Dinicola
Date: February 21, 2023

1. Powerpoint Presentation

Respectfully submitted,

Vertex Towers, LLC
c/o Francis D. Parisi
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Providence, RI 02903
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**TOWN OF KENSINGTON
PLANNING BOARD / ZONING BOARD OF ADJUSTMENT
FEBRUARY 15, 2023**

**FRANCIS D. PARISI
FPARISI@PLAPC.COM**

MEETING PURPOSE

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FOR

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PROCEDURAL HISTORY

Planning Board (Site Plan Review and Conditional Use Permit)

05/25/22 Application filed

02/15/23 Public Hearing

Zoning Board of Adjustment (Variance)

05/25/22 Application filed

02/15/23 Public Hearing

Vertex Towers is a telecommunications infrastructure developer. We develop, manage and own telecommunications facilities in strategic locations across the country. The Vertex team has been working in the industry for almost 25 years and has the experience and expertise to navigate the challenges of the most complex markets.

Vertex's on the ground experience and expertise allows us to identify the opportunities and locations where there is a need for new telecommunications facilities. Identifying where a new facility is needed is only half of the equation. Strict zoning ordinances and environmental regulations require that new telecommunications facilities take into consideration not only the needs of the wireless provider but also potential permitting obstacles and construction costs. The Vertex team has the experience necessary to identify, permit and construct the best site for the property owner, the wireless provider and the municipality.

WHY WE ARE HERE

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The Property is a large, approximately 75 acre parcel located in the Residential/Agricultural Zoning District. The Applicant has submitted the accompanying Site Plans and additional material to the Town of Kensington PLANNING BOARD for SITE PLAN APPROVAL and a CONDITIONAL USE PERMIT, and respectfully requests that the PLANNING BOARD APPROVE the SITE PLANS as proposed and GRANT a CONDITIONAL USE PERMIT.

In addition, although the proposed Facility has been designed in accordance with the Town's Zoning Ordinance as much as possible, the proposed Facility will be in the Residential Agricultural Zoning District. Section 5.1.5.2 provides that in R/A Zoning District, new tower construction is not a permitted use. Given the terrain and topography of the Property, the lack of existing wireless telecommunications infrastructure as well as the technical requirements and limitations of wireless carriers and telecommunications tower construction, the location of the Facility represents the only viable alternative to achieve the coverage objectives and satisfy all of the other requirements of the Ordinance, including co-location. Because the Facility will be located in the R/A Zoning District, the Applicant respectfully requests a VARIANCE from the ZONING BOARD OF ADJUSTMENT.

WAIVERS REQUESTED

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In addition, although the proposed Facility has been designed in accordance with the Town's Zoning Ordinance as much as possible, the Applicant respectfully requests that the PLANNING BOARD grant WAIVERS pursuant to Section 5.1.9 as appropriate to permit construction and operation of the Facility as proposed:

Section 5.1.8.C.2 requires that the applicant submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA). Upon approval of Site Plans and issuance of the Conditional Use Permit, the Applicant agrees to provide the Town with a copy of a final NEPA checklist concurrent with is application for a building permit. The Applicant does not anticipate that an environmental impact statement and FCC approval will be required. Although the Applicant agrees to provide the Town with its NEPA checklist prior to construction, because a NEPA review is very specific with respect to site, location, design, height and many other criteria, the Applicant believes that conducting a NEPA analysis prior on the proposed Facility prior to Planning Board approval is premature and constitutes an hardship, and respectfully requests that the Planning Board grant a WAIVER of this Application requirement pursuant to Section 5.1.9.

COMMENTS OF TOWN ENGINEER

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BEALS · ASSOCIATES

PLLC

Waivers:

- 1. Section 5.1.8.C.2 – Conditional Use Permits:** We concur with the NEPA review at the time of application filing as premature due to the propensity that design features could change through the Planning Board review/hearing process. The proposal to provide the Board with the review/checklist prior to construction seems reasonable.
- 2. Section 5.1.9.A.3.c. - Waivers:** We take no exception to the waivers from certain application requirements as detailed in the application narrative.

Application Materials & Plans:

- 1. The applicant has submitted a very thorough and comprehensive application package & upon review, we have no issues with the application materials nor plan set specific to engineering matters. If the Zoning Board of Adjustment approves the requested variance, we would support Planning Board approval of the proposed site plan application.**

(original) Application Package

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- 1. Application for Variance (Zoning Board of Adjustment)**
- 2. Application for Site Plan Review and Conditional Use Permit**
- 3. Filing Fees**
- 4. Abutters List**
- 5. Letter of Authorization**
- 6. Project Narrative**
- 7. TOWAIR (FAA Analysis re No Hazard to Air Navigation)**
- 8. Report of Site Acquisition Specialist**
- 9. Report of RF Engineer and RF Coverage Maps**
- 10. MPE Report**
- 11. Structural Assessment from Civil Engineer**
- 12. Removal Cost Estimate and draft Removal Bond**
- 13. Site Plans**

WHY DO WE NEED ANOTHER CELL SITE?

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Wireless communications is not just a public convenience; it is a public safety necessity.

- There are now more wireless subscriptions than landline telephone subscriptions in the United States.
- More than 50% of American homes are “wireless only”
- More than 80% of 911 calls are made from mobile phones
- More and more workers are “telecommuting”

Kensington has a verifiable “gap” in wireless coverage that limits its access to rapidly evolving wireless services.

“[W]ithout a cell site located at or very near the proposed site, this area of Kensington would not meet the typical coverage requirements for multiple wireless carriers, resulting in a substantial gap in wireless coverage.”

RF Report of Radio Frequency Engineer

SPOTTY CELL SERVICE “A PUBLIC HAZARD”

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The Concordia Daily Sun

January 8, 2019

“Poor quality or non-existent telecommunications services are **jeopardizing the health and safety of our residents and are constraining economic development** in New Hampshire’s Lakes Region,” stated the letter signed by Executive Director Jeffrey Hayes of the Lakes Region Planning Commission and numerous municipal officials.

“Just as telecommunications providers were required to supply landline service decades ago, wireless service has become the ‘life line’ replacement for wired services. The requirements of outdated technologies must be carried forward to the more modern replacement technologies. Failing to do so has **serious and well-established safety and economic concerns.**”

“It’s a **big-time problem** for our community.”

WHY HERE?

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Given the location (and lack) of existing wireless infrastructure, the topography and terrain, the lack of existing tall structures in and around Kensington, zoning and other land use restrictions (i.e. wetlands and conservation land), **“the proposed [facility] to be located at 70 Moulton Ridge Road is the least intrusive and only available and viable alternative to provide adequate coverage to this significant gap in coverage.”**

Report of Site Acquisition Specialist

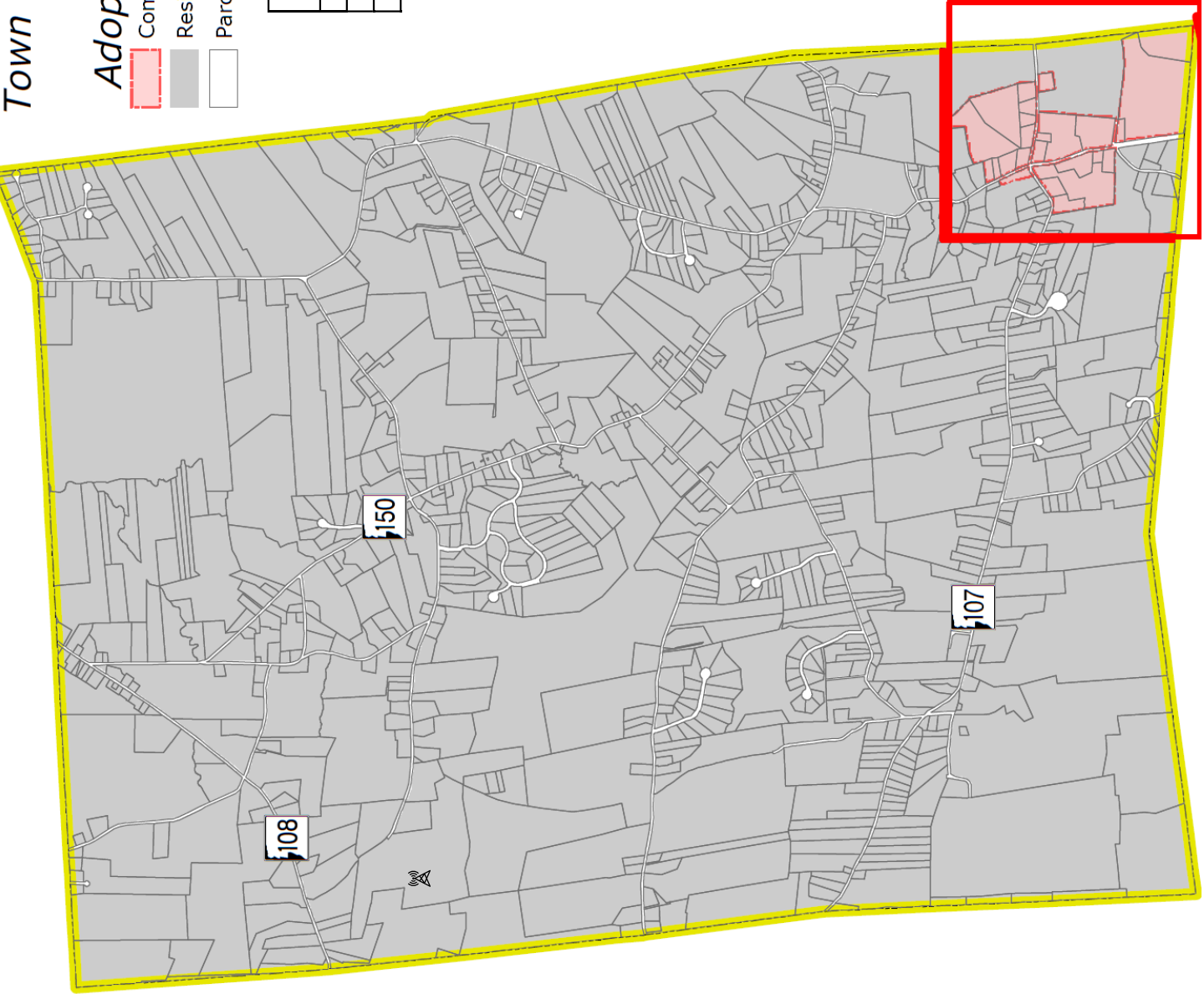
Town of Kensington, MD Zoning Map

Adopted March, 2013

-  Commercial District (Adopted 2013)
-  Residential and Agricultural Zone
-  Parcel Boundaries (2007)

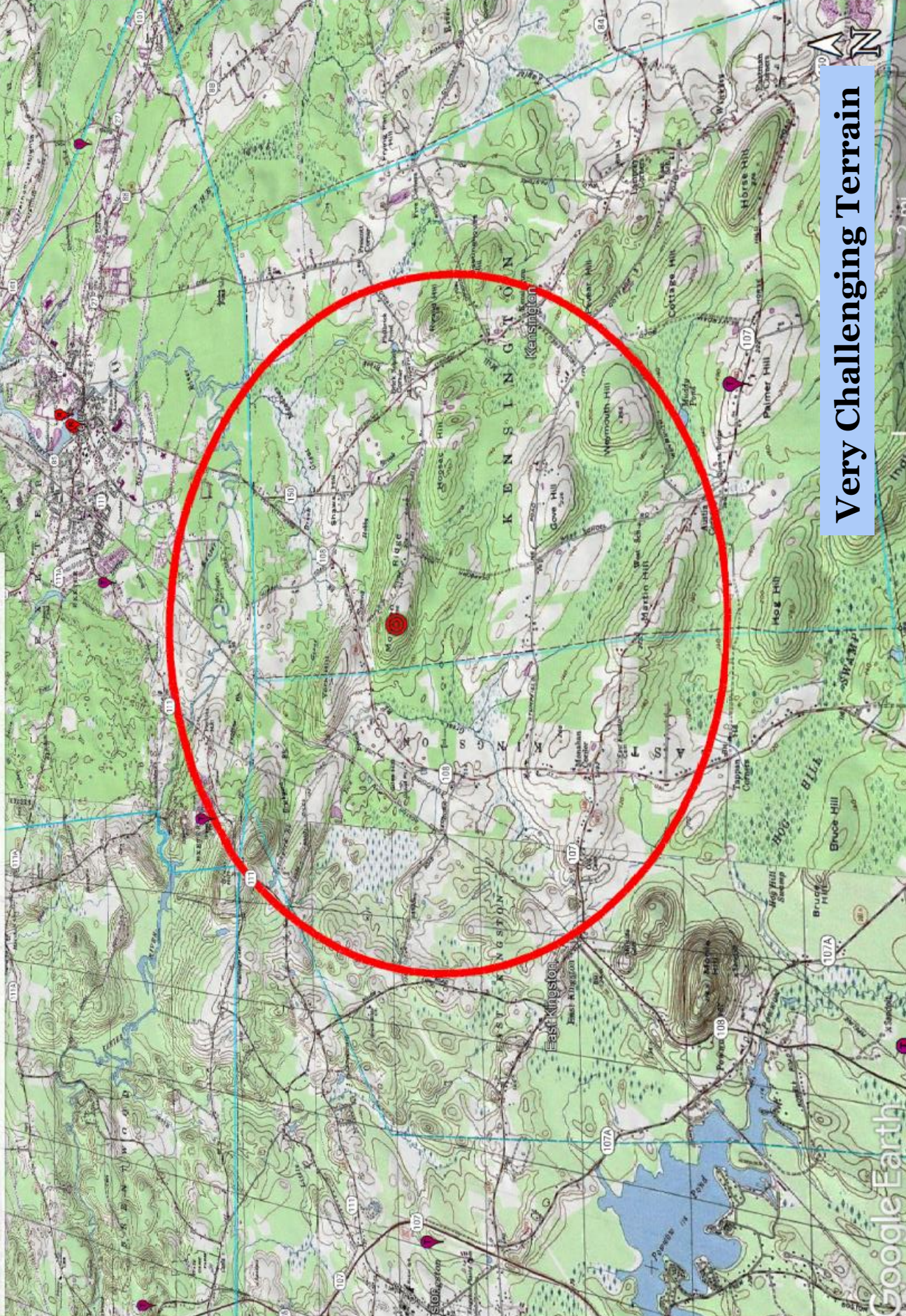
	New Tower Construction
Commercial District	PCU
Wetland District	X
Residential/Agricultural District	X

P = Permitted Use without Conditional Use Permit
 PCU = Permitted Use with Conditional Use Permit
 X = Prohibited



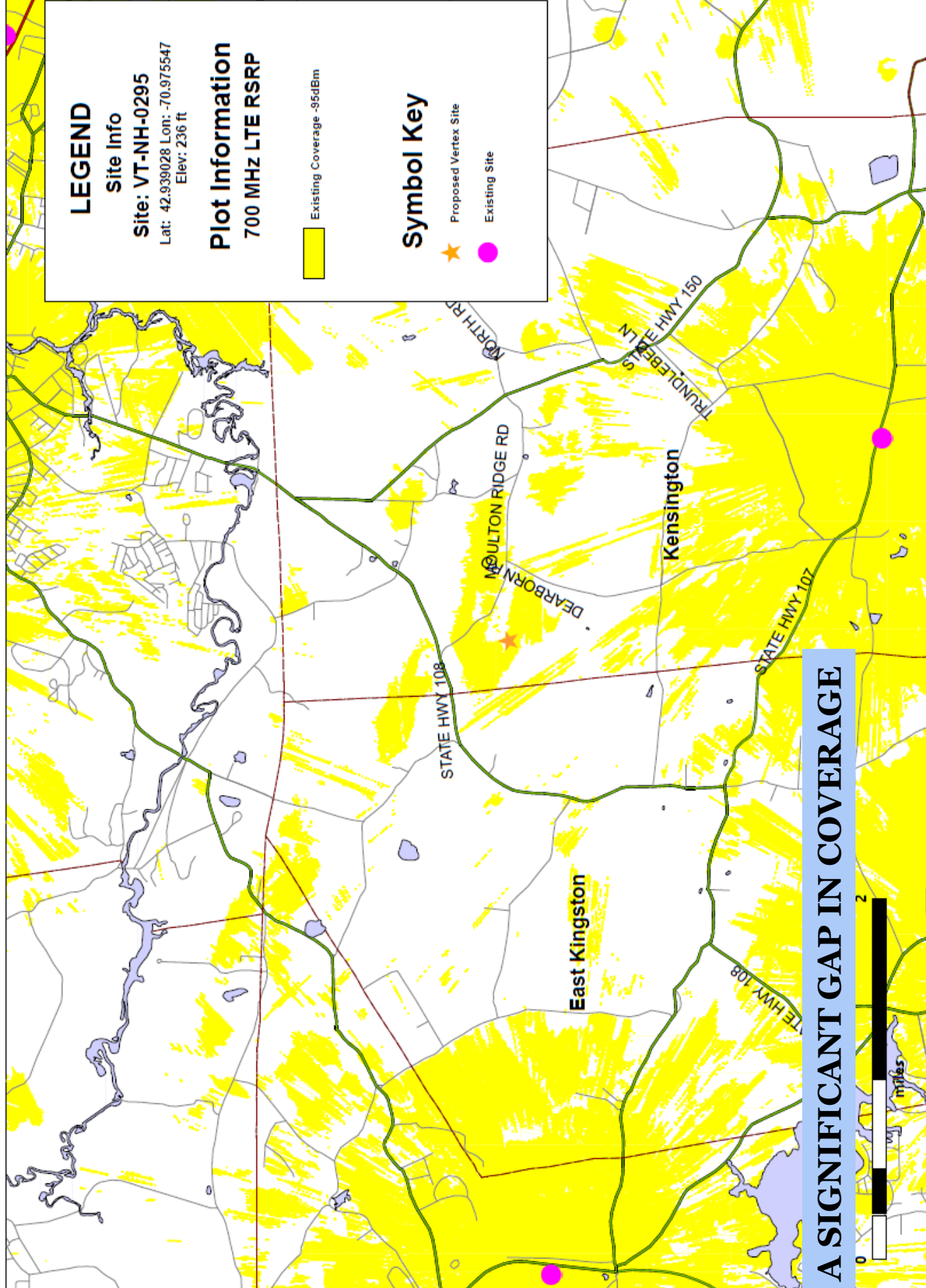
VT-NH-0295D Existing Sites Overview Map - Topo

2 Miles



Very Challenging Terrain

RF Existing Coverage Without VT-NH-0295@145'



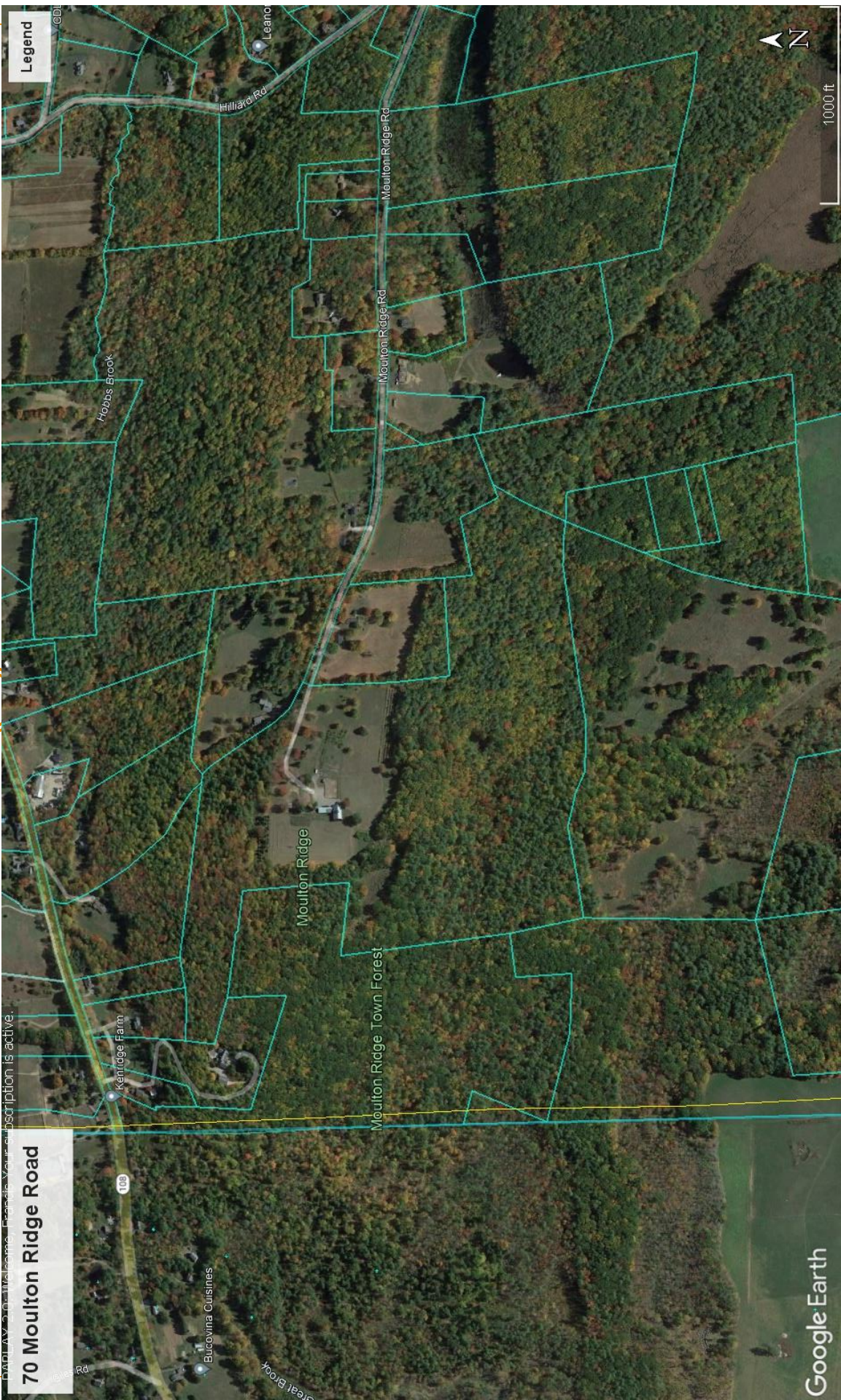
A SIGNIFICANT GAP IN COVERAGE

70 MOULTON RIDGE ROAD

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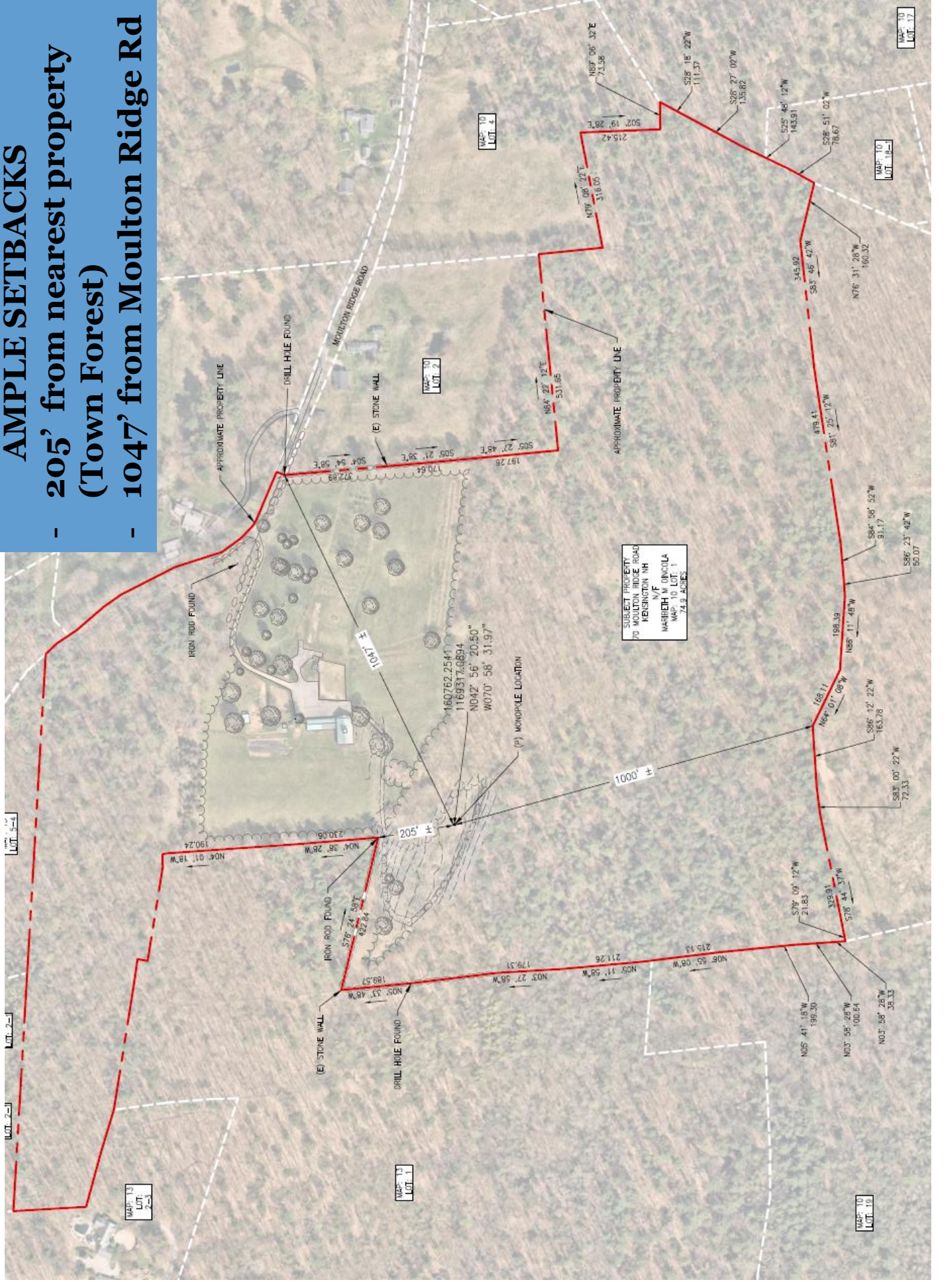
70 Moulton Ridge Road

Legend



AMPLE SETBACKS (Town Forest)

- 205' from nearest property
- 1047' from Moulton Ridge Rd



(P) 10' WIDE UTILITY EASEMENT

50' x 50' fenced compound, containing ground based equipment in weather-proof cabinets

6' fence with barbed wire

Using existing cart path and clearing to minimize vegetation removal.

(P) UNDERGROUND ELEC/TELCO FROM (E) METER BOARD TO (P) DEMARC'S (ROUTE TO BE COORDINATED WITH OWNER AND UTILITY COMPANIES, CONTRACTOR TO ADD ADDITIONAL HAND HOLE AS REQUIRED)

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(E) 5' CONTOURS, TYP.

295

(E) 1' CONTOUR

APPROXIMATE PROPERTY LINE

N04° 38' 28" W
230.06

(E) STONE WALL

IRON ROD FOUND

S76° 24' 58" E
422.84

(E) GRAVEL DRIVE TO BE UPGRADED AS REQUIRED LENGTH 1,800±

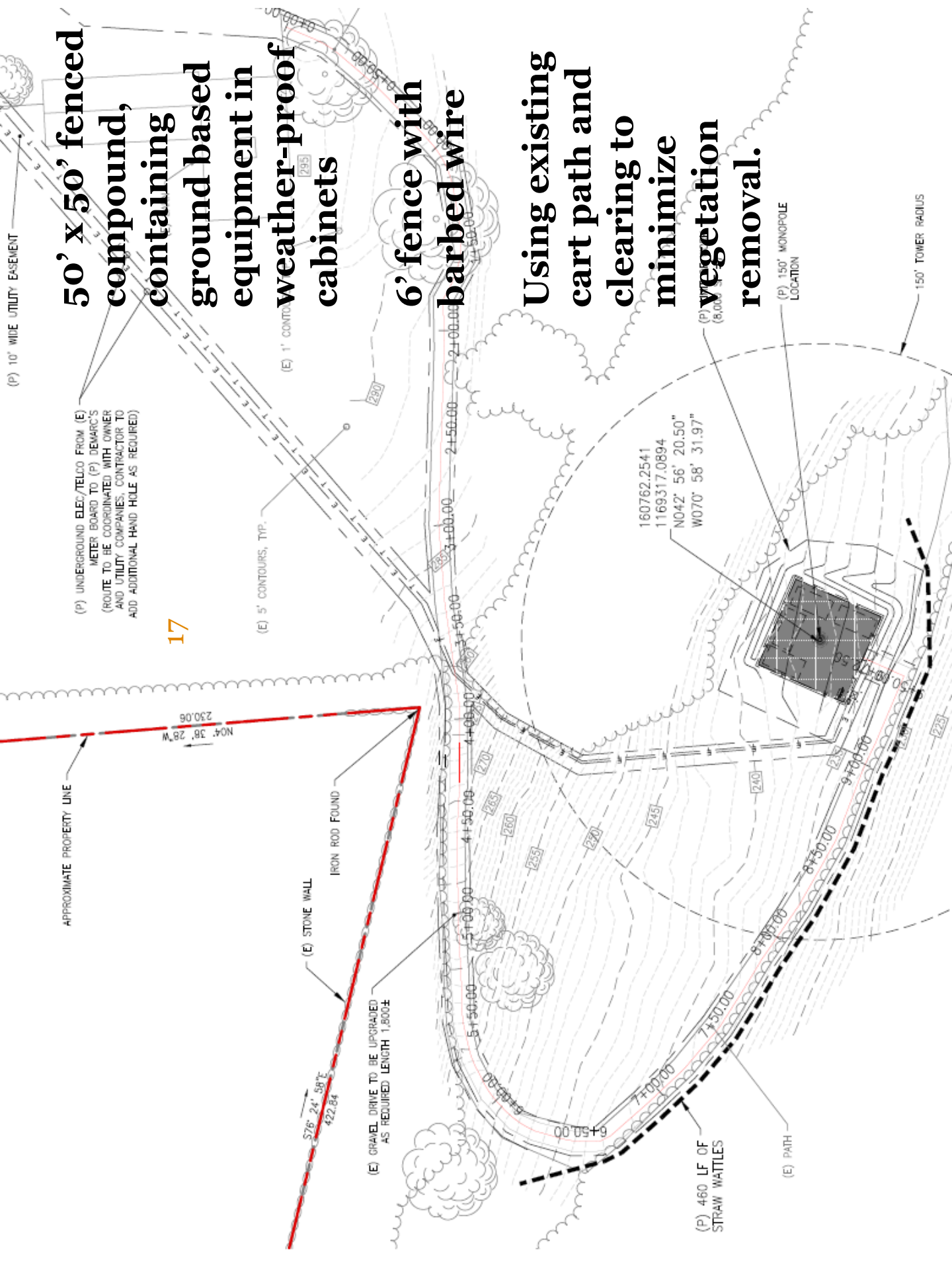
160762.2541
1169317.0894
N04° 2' 56' 20.50"
W070° 58' 31.97"

(P) 460 LF OF STRAW WATTLES

(E) PATH

(P) 150' MONOPOLE LOCATION

150' TOWER RADIUS



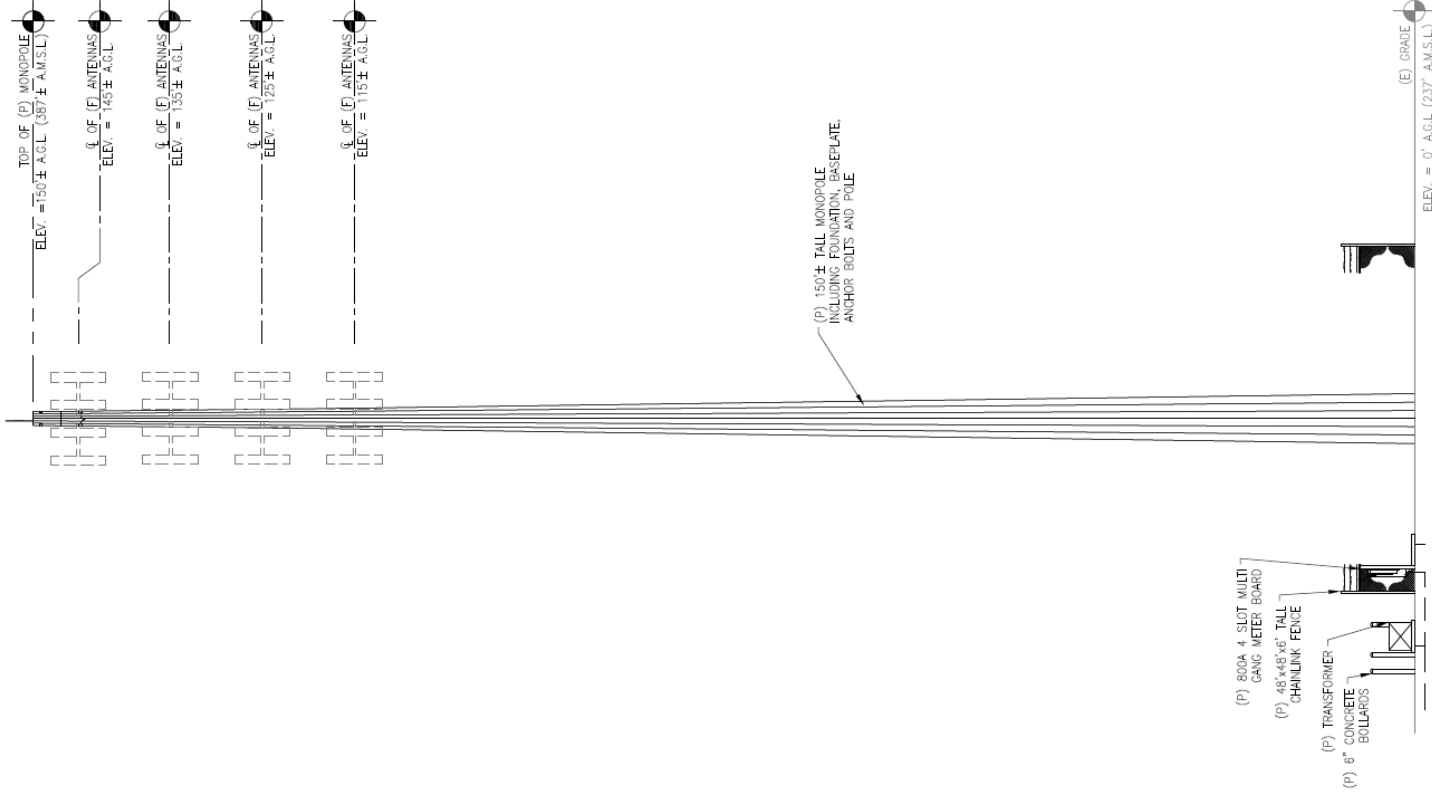
Tower Type: Monopole
Height: 150'

Designed to support multiple wireless telecommunications carriers, including

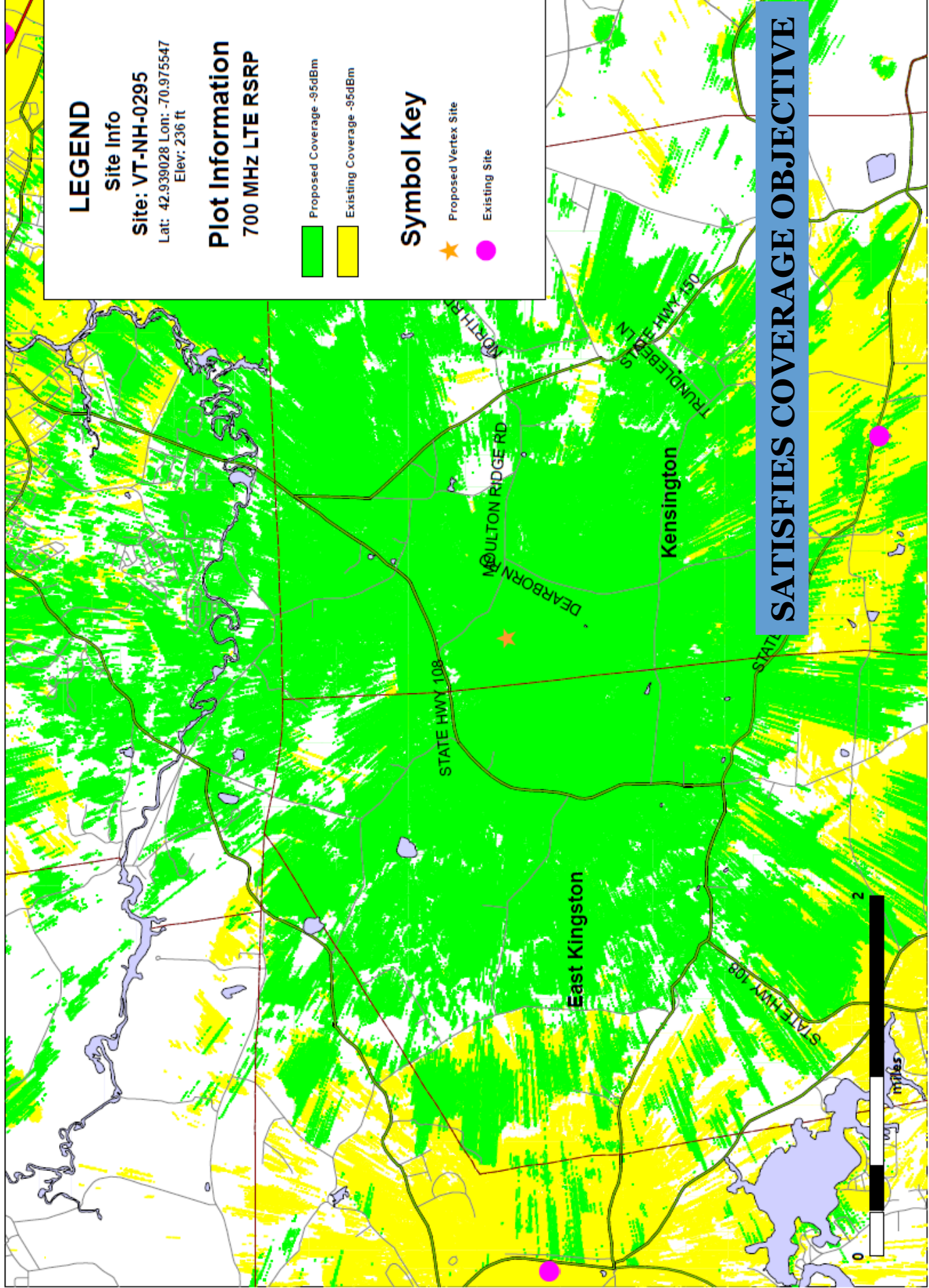
- T-Mobile
- AT&T / FirstNET
- Verizon Wireless
- DISH Networks

Construction & Design Standards:
 Telecommunications Industry Assn. (TIA)
 American Society of Safety Eng's (ASSE)
 American National Standards Ins. (ANSI)

Design Criteria:
 Will satisfy county specific wind and ice loading standards



RF Existing Coverage With VT-NH-0295@145'



SATISFIES COVERAGE OBJECTIVE

EXCEEDS ALL SAFETY REQUIREMENTS UNDER FCC REGULATIONS

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The maximum permissible RF exposure limits adopted by the FCC for both general population/uncontrolled exposure and for occupational/controlled exposure incorporate a substantial margin of safety and have been established to be well below levels generally accepted as having the potential to cause adverse health effects.

Even at the lowest heights on the tower, and especially given the height of the tower and ample setbacks, the RF emissions from the tower will be well below of the applicable FCC limits for general public exposure.

MEETS PURPOSE AND INTENT AND SITING CRITERIA FOR TELECOMMUNICATIONS FACILITY

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The proposed Facility has been designed to satisfy the Town's Bylaw as much as possible.

Meets all the general siting standards and policies and additional requirements for wireless telecommunications facilities.

The location of the proposed Facility is on a large, substantially undeveloped lot amply set back from abutting properties and public rights of way.

The Facility has been designed to minimize visibility as much as possible. No FAA lighting or marking required. No signs on tower.

There are no other structures of sufficient height and structural integrity anywhere near the Property which would provide the requisite telecommunications coverage.

As a wireless infrastructure developer, Vertex encourages co-location and has relationships with all of the existing wireless telecommunications carriers licensed in this market and intends to provide space on the proposed Facility at commercially reasonable rates, which will minimize the total number of towers in the community.

MEETS ALL OF THE CRITERIA FOR A VARIANCE

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674:33 Powers of Zoning Board of Adjustment. –

- I. (a) The zoning board of adjustment shall have the power to:
- (2) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:
 - (A) The variance will not be contrary to the public interest;
 - (B) The spirit of the ordinance is observed;
 - (C) Substantial justice is done;
 - (D) The values of surrounding properties are not diminished; and
 - (E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - (b)(1) For purposes of subparagraph I(a)(2)(E), "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (B) The proposed use is a reasonable one.
 - (2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.
 - (3) The definition of "unnecessary hardship" set forth in subparagraphs (1) and (2) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

IN the public interest

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The proposed Facility:

- **will enhance wireless telecommunications service coverage in the Town;**
- **is desirable to the public convenience for personal use of wireless services and for community safety in times of public crisis and natural disasters;**
- **will be an attractive feature to area businesses; and**
- **will facilitate the adequate provision of transportation by improving mobile telecommunications for business, personal and emergency uses.**

Spirit of the Ordinance is observed

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- The proposed Facility has been designed to satisfy the Town's Zoning Ordinance regulating personal wireless service facilities as much as possible.
- large substantially undeveloped parcel with an ample vegetative buffer
 - set back amply from abutting property lines
 - no FAA lighting required
 - designed to facilitate co-location, to minimize the total number of towers in the community

Substantial INJUSTICE if denied

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There are already other similar towers located in the surrounding communities all comparative in height to the proposed Facility. The proposed location meets all of the other requirements for a wireless communications facility. Moreover, the proposed Facility has been designed to mitigate all impacts of the facility as much as possible. Given the great public benefit and the minimal if any impact on the surrounding area, it would be a substantial injustice if the requested variances are denied.

NO EFFECT ON ABUTTING PROPERTY VALUES

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In Daniels v. Londonderry, 953 A.2d 406 (N.H. 2008), the New Hampshire Supreme Court considered a proposal involving a 170 foot telecommunications tower. The record appendix includes numerous reports that analyze the question whether wireless towers (such as the proposed Facility) diminish the value of surrounding residential properties as to other towers in similar settings. The conclusions in the case and of the five reports in the record appendix underscore that wireless towers do not diminish the value of surrounding residential properties.

Denying the Variance(s) an UNNECESSARY HARDSHIP

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Given:

- the location of the tower relative to the surrounding neighborhoods and other existing telecommunication sites in and around the Town;
- the topography of the surrounding area;
- the lack of viable alternatives in the area;
- the Town's, the federal government's and the public's desire to accommodate multiple wireless communications companies;
- the demand for robust and reliable telecommunications coverage; and
- the requirement to accommodate rapidly evolving technologies;

literal enforcement of the Ordinance will exact unnecessary hardship.

MEETS ALL OF THE CRITERIA FOR SITE PLAN APPROVAL

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The proposed Facility has been designed to fulfill the purpose and intent of the Town's Site Plan Review Regulations as much as possible. The location of the proposed Facility is on a large substantially undeveloped, amply set back from abutting properties and public right of ways. There are no other structures of sufficient height anywhere near the Property which would provide the requisite telecommunications coverage. The use is passive in nature and will not generate any traffic, smoke, dust, heat, glare, discharge of noxious substances, nor will it pollute waterways or groundwater. Once constructed, the proposed Facility will have no adverse impact on the Town's scenic and historic assets, safety, health, environment, general welfare, values and quality of life, and will facilitate the provision of telecommunications services throughout the municipality and enhance the ability of wireless carriers to provide telecommunications services to the community quickly, effectively and efficiently.

MEETS ALL OF THE CRITERIA FOR A WAIVER

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5.1.1.9 WAIVERS

A. General

Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
2. The waiver will not, in any manner, vary the provisions of the Kensington Zoning Ordinance, Kensington Master Plan, or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
 - Topography and other Site features;
 - a. Availability of alternative site locations;
 - b. Geographic location of property;
 - c. Size/magnitude of project being evaluated and availability of co-location.

THE TELECOMMUNICATIONS ACT OF 1996

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In 1996, the U.S. Congress enacted the Telecommunications Act of 1996, Pub. L. No. 104-104, § 704; 110 Stat. 56 (1996) (the “TCA” or the “Telecommunications Act”).

The intent of the TCA as enacted by Congress was to institute a framework to promote competition and innovation within the telecommunications industry.

Law specifically preserves local zoning authority with respect to the siting of wireless service facilities, but it clarifies when the exercise of local zoning authority may be preempted by federal law.

○ SECTION 704 (7) PRESERVATION OF LOCAL ZONING AUTHORITY-

- ✦ (A) GENERAL AUTHORITY- Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.
- ✦ (B) LIMITATIONS- (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof-
 - (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
 - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

THE TELECOMMUNICATIONS ACT OF 1996

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The Applicant's application is governed by the TCA which "imposes specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of such facilities...47 U.S.C. § 332(c)(7)." *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115-116 (U.S. 2005).

Under this provision, local governments shall not take actions that "prohibit or have the effect of prohibiting the provision of personal wireless services," § 332(c)(7)(B)(i)(II), and any decision denying such a request must "be in writing and supported by substantial evidence contained in a written record," § 332(c)(7)(B)(iii). *Id.*

The TCA overrides boards that do not decide matters based upon the merits of local ordinances and, instead, yield inappropriately to ill-founded opposition. *Brehmer v. Planning Board of Town of Wellfleet*, 238F.3d117, 122 (1stCir.2001), citing *Roberts v. Southwestern Bell Mobile Sys., Inc.*, 429 Mass. 478, 709 N.E.2d 798, 806 (1999) ("Congress certainly intended to protect providers of [personal wireless] services from irrational or substanceless decisions by local authorities who might bend to community opposition to these facilities."). See also *Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One v. Todd*, 244F.3d 51,57-58 (1stCir. 2001) (TCA protects against overzealous or parochial regulation at the local level); *Town of Amherst v. Omnipoint Communications Enterprises, Inc.*, 173 F.3d 9 (1st Cir.1999).

Moreover, the TCA specifically states that "[n]o State or local government or instrumentality thereof may regulate 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 U.S.C. § 332(c)(7)(B)(iv).

The Board cannot rely upon generalities about visual impacts that are not "grounded in the specifics of the case." *New Cingular Wireless PCS LLC v. Town of Stow*, 2009 WL2018450 (D. Mass. 2009) at *8 ("bare conclusory assertions" are not substantial evidence), citing *Todd*, 244 F.3d at 61. The Board cannot rely on generalized concerns that "refer to negative comments that are applicable to any tower regardless of location." *Todd*, 244 F.3d at 61 (visual impact). See also *SBA Towers*, *supra*; *Nextel Communications of the Mid-Atlantic, Inc. v. Town of Sudbury*, 2003 WL 543383 (D. Mass. 2003) (same) and cases cited.

SUMMARY

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THE APPLICANT requests a VARIANCE and SITE PLAN APPROVAL and ADDITIONAL USE PERMIT to construct a Telecommunications Facility:

The proposed Facility meets all of the siting criteria for a wireless telecommunications facility under the Town's Zoning Ordinance, other than those provisions for which a VARIANCE has been requested.

The proposed Facility meets all of the requirements for a VARIANCE.

The Applicant has provided all of the documentation required for a CONDITIONAL USE PERMIT other than those requirements for which a WAIVER has been requested.

The proposed Facility meets all of the requirements for SITE PLAN APPROVAL other than those provisions for which WAIVERS have been requested.

The proposed Facility is required to close a substantial COVERAGE GAP and represents the ONLY VIABLE ALTERNATIVE.

Pursuant to §704(a) of the Federal Telecommunications Act of 1996 which provides, among other things, that wireless facilities may not be prohibited in any particular area and that any denial of zoning relief must be based upon substantial evidence.

Accordingly, the APPLICANT respectfully requests that the ZONING BOARD OF ADJUSTMENT GRANT a VARIANCE, the PLANNING BOARD APPROVE the SITE PLANS and GRANT A CONDITIONAL USE PERMIT, and that both boards grant such other relief deemed necessary so that the Applicant may construct and operate the proposed Facility.