



# IDK Communications

January 10, 2014

Ms. Rebecca Stanizzi  
Economic Development Committee  
Town of Wayland  
41 Cochituate Road  
Wayland, MA 01778

**RE: Wireless Engineering Services – Overlay District Modification**

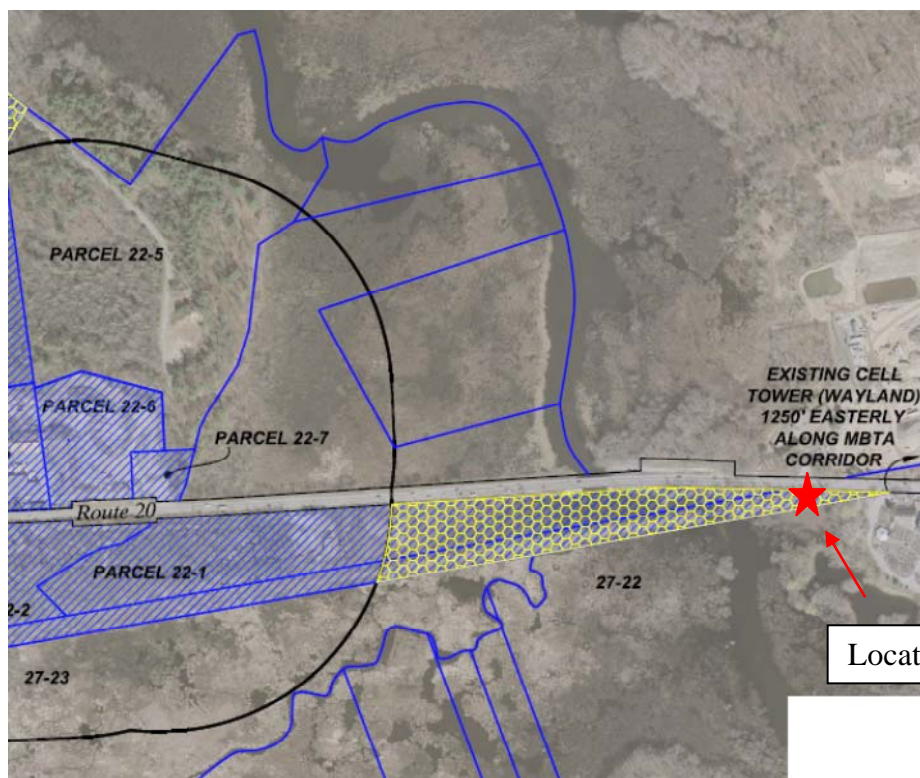
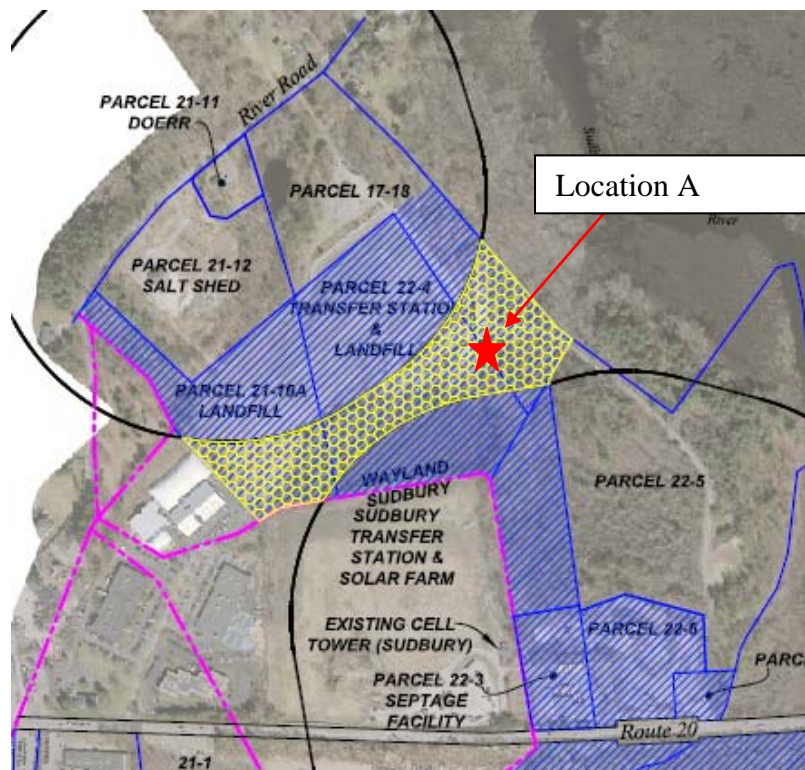
Dear Ms. Stanizzi,

IDK has been tasked with the analysis of a modification to an existing wireless overlay district from both a technical and legal perspective. The modification is on the district off of Route 20 and is due to a development in that section of Town that with the 900 foot buffer requirement will shrink the size of the overlay district. Appendix “A” includes a copy of the buffers and the overlay district. The following paragraphs look at the technical impact of the modified district. Appendix “B” of this report provides a summary from a legal perspective of this modification.

**Technical Review**

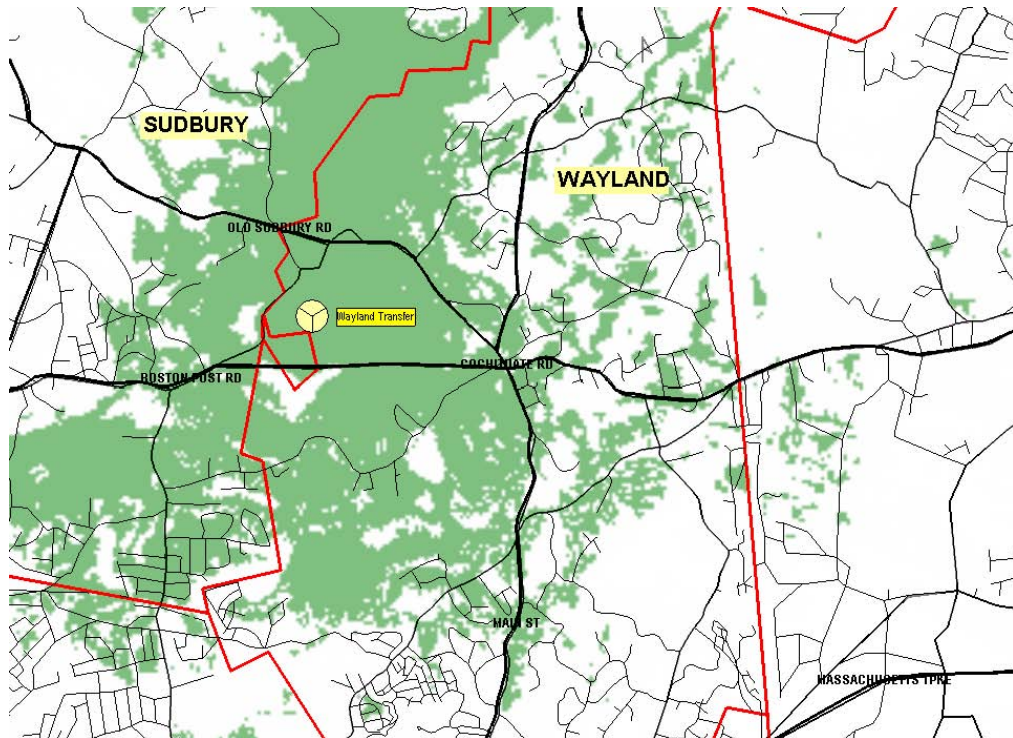
The examination of the impact from a technical perspective involves whether or not the new overlay will support a wireless structure and if so will that location provide radio coverage to the Town of Wayland. The following map, Figure 1, identifies two potential locations within the new overlay district for a wireless structure. These locations could support a new wireless structure from an installation perspective while not impacting the buffered area. Location “A” is at the Wayland Transfer Station and Location “B” is an area of existing High Tension Towers. There is another location next to the Transfer Station adjacent to the Longfellow Health Club that would also be viable but due to how close it is to the Transfer Station and having redundant coverage we chose to use the Transfer Station for the purposes of this analysis.

FIGURE 1



IDK next performed a coverage analysis using the proposed location “A” identified in Figure 1. The analysis uses the PCS frequency range and assumes a wireless antenna height of 110 feet. The results of this coverage analysis can be seen in Figure 2.

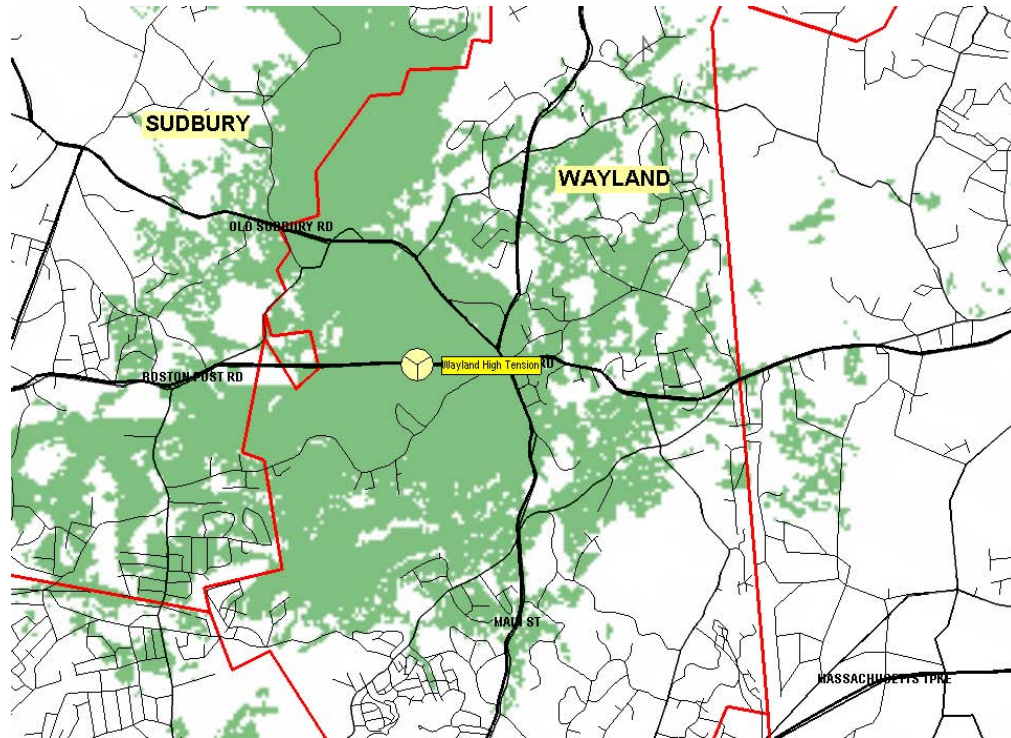
**FIGURE 2**



The resulting coverage from a site at the Wayland Transfer Station location provides significant coverage to the western part of the Town including the major roadways.

IDK next examined the coverage from the second location “B” identified in Figure 1. This location currently has High Tension Towers supporting electrical transmission. The analysis uses the PCS frequency range and an antenna height assuming the use of the existing High Tension Towers. Figure 3 on the next page is the resulting coverage.

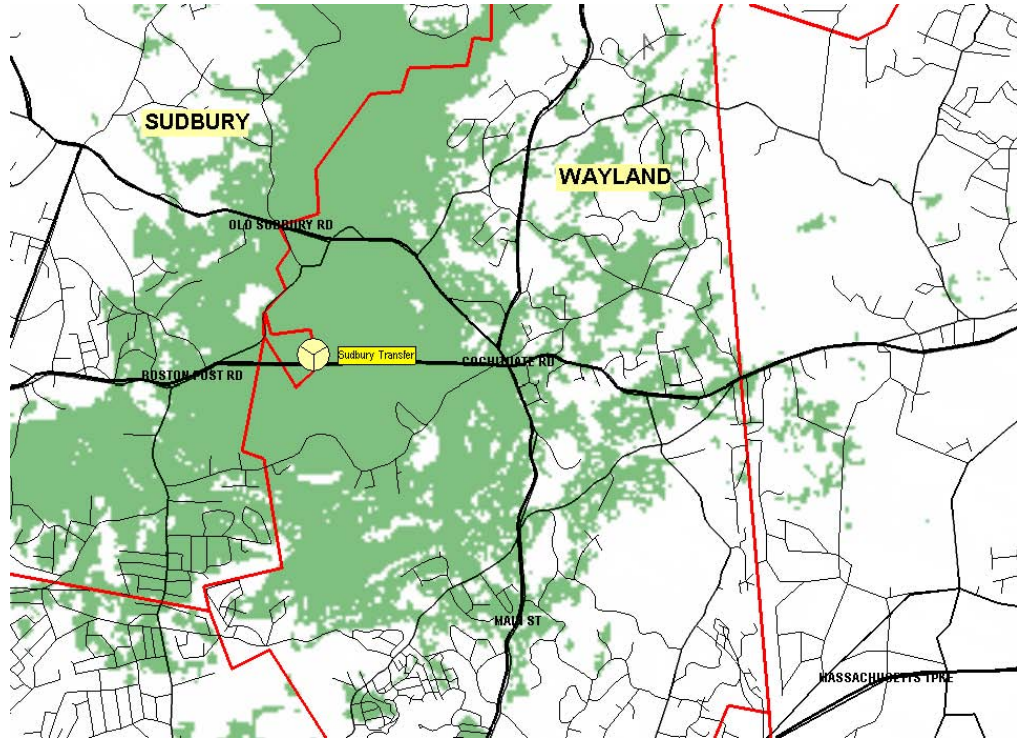
**FIGURE 3**



The coverage from Location “B”, the High Tension Towers, provides similar coverage to the western part of Town as Location “A” with a little more added coverage in the downtown section.

Today there exists a wireless site in Sudbury at their Transfer Station that is located right over the Town border. IDK ran a coverage analysis from this site to determine the level of radio coverage from this location and how it compares to the coverage afforded by the Wayland Transfer Station location. Figure 4 on the next page shows this coverage.

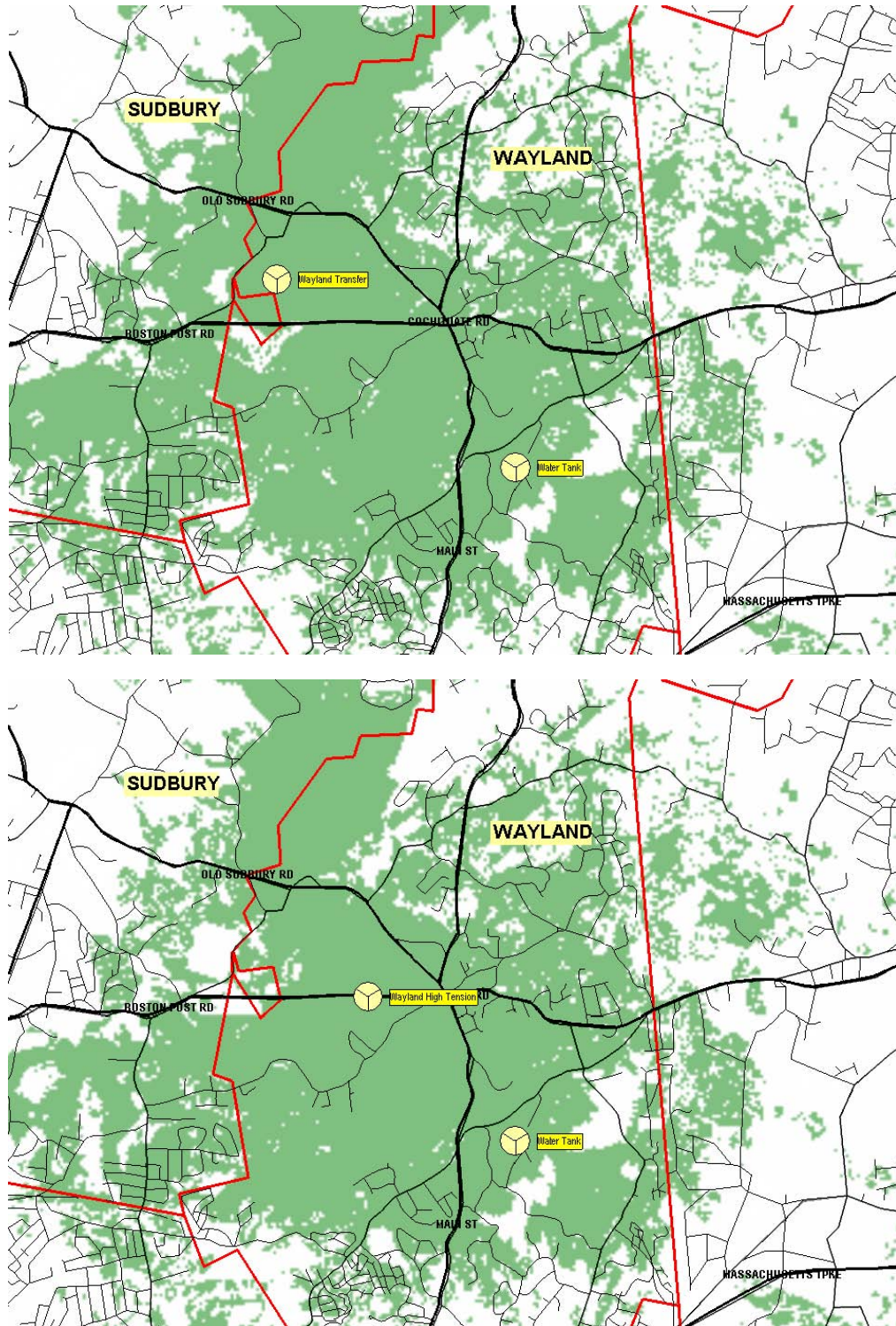
**FIGURE 4**



The radio coverage from the Sudbury Transfer Station is very similar to the coverage from the Wayland Transfer Station.

To determine how the locations at the Wayland Transfer Station and the High Tension Towers will interact with the other wireless district in Town, IDK ran an analysis as seen in Figure 5 on the next page. The analysis uses the existing wireless tower off of Old Connecticut Path in combination with a new structure at the Wayland Transfer location as identified in Figure 1 and 2 and a separate analysis using the High Tension Tower location also identified in Figures 1 and 3.

**FIGURE 5**



The analysis shows that proposed sites at the Wayland Transfer Station or the High Tension Towers work with the existing site at the water tank off of Old Connecticut Path and provides interconnection for a user traveling between the two locations.

**Results**

From this analysis it shows that even with a reduction of the overlay district a viable site can still be found within this district and it will work in conjunction with the existing wireless site off of Old Connecticut Path.

Please refer to Appendix "B" for a legal summary of the overlay reduction.

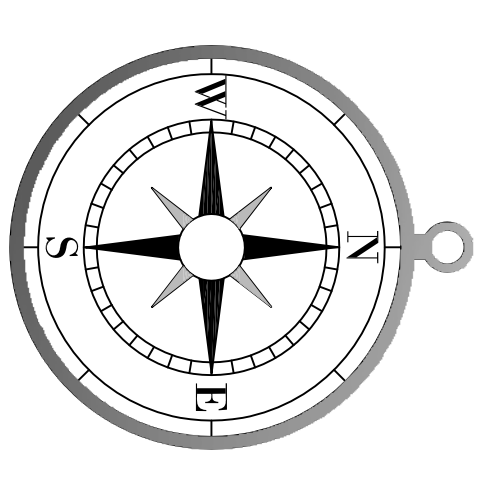
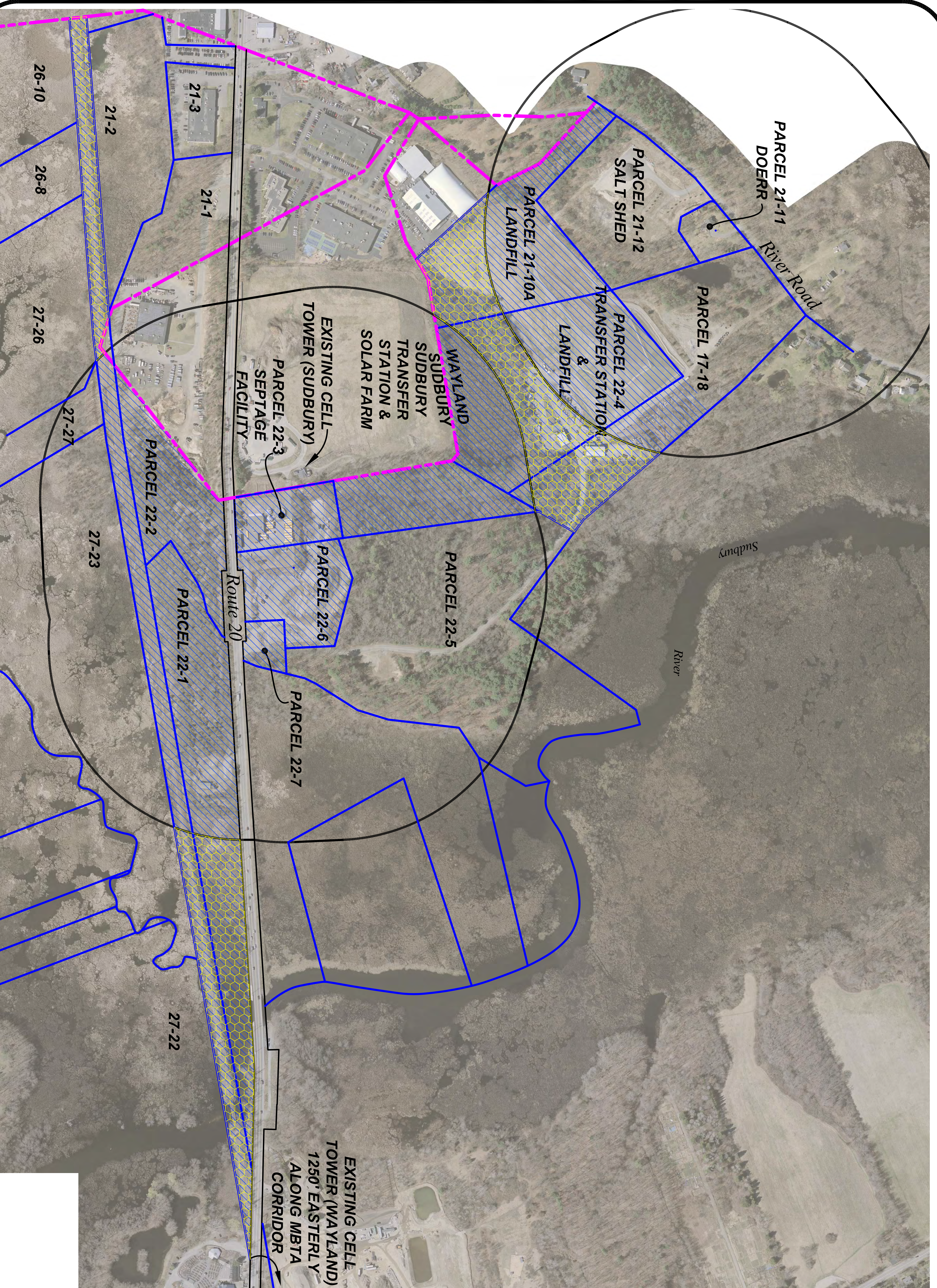
Please feel free to contact me if you have any questions.

Yours truly,



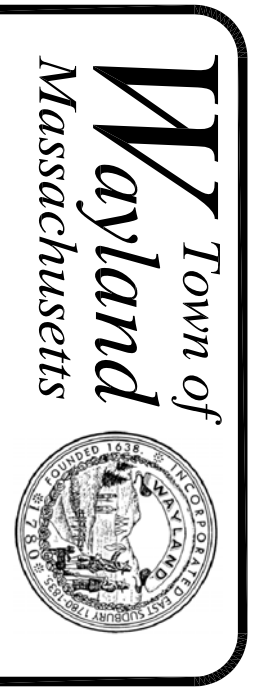
Ivan Pagacik

## APPENDIX A



**NOTES:**  
 1.) PARCEL NUMBERS REFER TO THE TOWN OF WAYLAND ASSESSORS MAPS.

No.	Revision/Issue	Date



Town Surveyors Office  
 27 Commercial Street, Wayland, MA 01981

Compiled Plan of Land in Wayland, Massachusetts Wireless Overlay District 900' Buffer

Project	Sheet
Date	12/19/2013
Scale	1" = 200'

## APPENDIX B

J. Raymond Miyares  
Thomas J. Harrington  
Christopher H. Heep

Jennie M. Merrill  
Marguerite D. Reynolds  
Jonathan E. Simpson

January 10, 2014

Ms. Rebecca Stanizzi  
Economic Development Committee  
Town of Wayland  
41 Cochituate Road  
Wayland, MA 01778

**Re: Wireless Engineering Services—Overlay District Modification**

Dear Ms. Stanizzi:

Miyares and Harrington LLP has been tasked with providing a legal perspective on the modification of the Town's wireless communications overlay district. We understand that the Town is considering new residential development within the wireless overlay district. Given that Section 1503.2.13 of the Zoning Bylaw provides for a 900-foot setback from "a lot line defining a parcel on which exists a dwelling," the new residential development will reduce the land area available for siting a wireless telecommunications facility and, for practical purposes, shrink the size of the overlay district.

As the Town is aware, the Federal *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.* (the "TCA") can serve to override the Town's Zoning Bylaw and allow for telecommunications facilities to be sited at unanticipated and (at least on the face of the Zoning Bylaw) prohibited locations. Wireless telecommunications providers and third-party tower construction companies are adept at using the TCA offensively, and frequently argue that towns must grant variances and other zoning relief for new facilities. These wireless developers acknowledge that the use is facially prohibited on a chosen parcel based upon zoning, but they nonetheless argue that a denial of the variance (or other zoning relief sought) would constitute an "effective prohibition" of service, and therefore violate the TCA. Given the reality of the TCA and the manner in which applicants seek to wield it, the principal purpose of the Town's wireless overlay district is to effectively steer all prospective wireless telecommunications facilities to the Town's chosen location(s) and, in those cases where an applicant has designs on another parcel, to serve as an effective defense against an "effective prohibition" claim.

Pursuant to the TCA, local regulation and individual local decisions may not "prohibit or have the effect of prohibiting" the provision of personal wireless services. The courts have developed a two-part test for determining whether an "effective

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prohibition” has occurred. The first question is whether there is a “significant gap” in coverage in the area. *Green Mountain Realty Corp. v. Leonard*, 688 F.3d 40 (1<sup>st</sup> Cir. 2012). With regard to this prong of the test, “a significant gap must be ‘large enough in terms of physical size and number of users affected’ to distinguish it from ‘a mere, and statutorily permissible, dead spot.’” *Id.*; quoting *Second Generation Props., L.P. v. Town of Pelham*, 313 F.3d 620, 631 (1<sup>st</sup> Cir. 2002). The second question is “whether alternatives to the carrier’s proposed solution to that gap mean that there is no effective prohibition.” *Green Mountain Realty Corp. v. Leonard*, 688 F.3d 40, 57 (1<sup>st</sup> Cir. 2012); see also *Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38, 52-53 (1<sup>st</sup> Cir. 2009) (“Ultimately, the question is a practical inquiry into feasible, available alternatives.”) Potentially important factors in judging an alternative location include whether it is technically efficient or at least technically adequate, whether its overall cost makes it economically feasible, whether local authorities would prefer the alternative solution, and whether local authorities are willing to cooperate on the alternative solution. See *Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d at 52-53.

In order for the Town’s wireless overlay district to function in a manner consistent with this provision of the TCA, it must contain parcels that lie within a “significant gap” in service. Clearly, an overlay district that lies entirely within an area that is adequately “covered” will not be of any use to a provider, and therefore will not serve to prevent development of a tower elsewhere in Town. “Location A” and “Location B” are both located within the portion of the overlay that remains amenable to wireless development after the “new” 900 foot buffer is applied. Based on IDK Communications’ analysis, both of these locations will provide wireless coverage to a significant swath of the Town. See IDK Communications report at Figures 2 and 3. Moreover, IDK Communications’ analysis suggests that either of these two sites, when used in connection with the Old Connecticut Path site, should provide coverage to the study area shown on Figures 2 through 5. See IDK Communications Report at 6 (“The analysis shows that proposed sites at the Wayland Transfer Station or the High Tension Towers work with the existing site at the water tank off of Old Connecticut Path and provides interconnection for a user traveling between the two locations.”)

In addition, the wireless overlay district must contain parcels that constitute a realistic, available and practical alternative to other potential sites. Accordingly, the parcels within the overlay must be readily available for lease to, and use by, a wireless telecommunications provider and must be amenable to actual construction and operation of a telecommunications facility. For purposes of this letter, I assume that conditions on the ground at the transfer station will allow for construction of a wireless telecommunications facility.

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I understand that there is an existing wireless telecommunications facility located close to the Transfer Station, just over the Town line. This existing facility appears to provide coverage similar to that of "Location A" and "Location B." Accordingly, a wireless telecommunications provider that is presently operating on the Sudbury site is unlikely to have any interest in "Location A" or "Location B." Nonetheless, these two locations will still provide the Town a useful means of defense against a hostile application from a wireless developer that is new to the area and hopes to site a facility within the study area shown on Figures 2 through 5. The fact that the Town owns these sites insulates it from a claim that another alternative (*i.e.* the Sudbury facility) is not "available" for purposes of the TCA because of the action, or inaction, of a third party.

In addition, the Town should be aware of the procedural steps that must be taken before the municipally owned landfill site can be leased to, or used by, a private wireless telecommunications provider. The Town will need to undergo the proper procurement process, including issuance of a Request for Proposals ("RFP") soliciting interest in the lease and development of its property. In addition, Town Meeting must vote to authorize the Board of Selectmen to enter into the lease of any vacant municipal land. See M.G.L. c.40, §3 (granting to boards of selectmen the independent authority to lease "a public building or part thereof" with no corresponding grant if authority for raw land). Finally, depending upon the municipal entity that holds the landfill site and the purpose (or purposes) for which the landfill site was originally acquired, Town Meeting may need to vote to transfer the custody of the parcel to the Board of Selectmen, or authorize the use of the property for telecommunications purposes, or both. See *Harris v. Town of Wayland*, 392 Mass. 237 (1984)(requiring authorization of Town Meeting vote to transfer use of land held by School Committee "for school purposes" to Board of Selectmen for purpose of sale).

For the purposes of this letter, I assume that these steps have been taken already. To the extent that they have not yet been taken, I recommend that the Town undertake these steps proactively so that the land is clearly available, as a matter of law, to wireless telecommunications providers in advance of any hostile applications for parcels outside of the overlay.

Subject to the foregoing caveats, it appears that even after the reductions in size attributable to the new residential development, the wireless communications overlay district adequately provides for the siting of a new facility that could serve the areas of Town shown on Figures 2 through 5. As such, the overlay district should serve its intended purpose of drawing reasonable applicants with a corresponding gap into the overlay, and providing a strong disincentive to those who would attempt to develop elsewhere.

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January 10, 2014  
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Thank you for the opportunity to assist the Town in this matter, and please do not hesitate to contact me if you would like to discuss this matter further.

Sincerely,

A handwritten signature in blue ink, appearing to read 'THJ', with a long, sweeping horizontal line extending to the right.

Thomas J. Harrington