

**STATE OF CONNECTICUT  
SITING COUNCIL**

DOCKET NO. 488 – Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at one of two sites: Kent Tax Assessor ID #M10, Block 22, Lot 38 Bald Hill Road or 93 Richards Road, Kent, Connecticut.

: MAY 15, 2020

**PDA OF CONNECTICUT RESPONSE TO APPLICANT’S OBJECTION TO BALD HILL NEIGHBOR’S MOTION TO PRESERVE EVIDENCE**

The Intervenor, Planned Development Alliance of Northwest Connecticut, Inc., hereby submits its response to Applicant’s objection to the Bald Hill Neighbor’s (“Bald Hill”) motion to preserve evidence. PDA supports Bald Hill’s motion and objects to Applicant’s motion for protection order.

With the exception of the discussion in the motion directed at *who* took the photographs of Site A and *from what location* the photographs were taken, a question on which PDA takes no position, PDA hereby adopts, supports and incorporates by reference the Bald Hill Neighbors’ arguments regarding environmental contamination at Site A.

Bald Hill’s description of Applicants misleading use of documents relating to unrelated aspects of environmental compatibility suggest an attempt to distract and deflect from the real and as yet unaddressed issue of what contamination may be disturbed during site development. These questions can be reasonably addressed by preservation of the conditions at Site A until such time as there is a site visit by the Council *in conjunction with* a proper site ASTM Phase I Site investigation.

The evidence which may exist at an undisturbed Site A would potentially benefit PDA and the public trust in the natural resources of the State which is a proper subject

of these proceedings under the Connecticut Environmental Protection Act. As such PDA's interest in the preservation of that evidence is material to the protection of PDA's interests in this proceeding. Under the holding in *Paylan v. St. Mary's Hospital Corp.*, 118 Conn. App. 258; 983 A.2d 56 (2009) in order for Bald Hill or PDA to draw an adverse inference from the destruction or spoliation of evidence, the other party must be on notice that the evidence must be preserved. Bald Hill's and PDA's objections accomplish this goal. If the Council denies the motion to preserve the evidence which exists at Site A, then PDA requests the Council draw an inference that the evidence which would have been preserved would have been adverse to the Applicant and the environmental integrity of Site A. See, *Beers v. Bayliner Marine Corp.*, 236 Conn. 769, 775, 675 A.2d 829 (1996).

Bald Hill's motion must be granted as the Applicant's objection and motion must be overruled to prevent the record from being deprived of material relevant evidence upon which to analyze the application.

Respectfully Submitted,

Planned Development Alliance of Northwest Connecticut, Inc.,

By \_\_\_\_\_  
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## CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 15th day of May 2020 and addressed to:

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