

State of Connecticut Siting Council

DOCKET NO. 488 —

Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T application for Certificate of Environmental Compatibility and Public Need for construction, maintenance, and operation of a telecommunications facility located at one of two sites: Kent Assessor ID #M10, Block 22, Lot 28 “Bald Hill Road” or 93 Richards Road, Kent, Connecticut.

: October 22, 2020

POST-HEARING PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE BALD HILL ROAD NEIGHBORS

Preliminary Statement

The Bald Hill Road Neighbors understand that public demand exists for wireless telecommunications in general. Nevertheless, there remains a need to balance the construction of wireless telecommunications infrastructure with other important factors such as environmental compatibility, neighborhood concerns, and municipal law and regulations.

Small Cells Technology Provides a Better-Balanced Solution to the Need for Service

Section 16-50j-1 of the Public Utility Environmental Standards Act requires, “balancing the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values...”.

The Bald Hill Road Neighbors concur with party/intervenor the Planned Development Alliance of Northwest Connecticut and with party/intervenor the Town of Kent that there is ample evidence that a small cells alternative better balances the need for cellular coverage with local scenic, historic, and recreational resources. The Bald Hill Road Neighbors agree that the use of utility-pole-mounted small cells along Route 341 and environs can provide more useful coverage to more residences and more streets than the proposed tower at Bald Hill. The Bald Hill Road Neighbors hereby adopt the proposed findings and arguments of the Planned Development Alliance that small cells are the best solution in this case.

AT&T's Application for a cell tower at either Site A, Bald Hill Road or Site B, Richards Road runs afoul of scenic, historic, and recreational values; numerous local zoning regulations; and other environmental concerns. The Bald Hill Neighbors, the various groups associated with the Richards Road site and the Town of Kent are all in agreement that neither proposed Site A nor Site B would be an acceptable solution for the need of wireless telecommunications. The testimony of the Kent Land Trust, Town of Kent Conservation Commission, South Spectacle Lake Residents, Housatonic Valley Association, and Council on Environmental Quality all explain the extraordinary environmental and scenic resources of the area surrounding the proposed tower facility sites. The small cells alternative better-complies with land use regulations in the Town of Kent and is more respectful of neighborhood concerns in the area, particularly at Bald Hill Road. (Testimony of R. Bruce Hunter, Testimony of Matthew Winter).

In particular, the devastation that such a 154ft tower on a 1.99-acre parcel of land at Site A in the Bald Hill Road neighborhood would have upon environmental, scenic, and recreational resources of the residential Bald Hill Road neighborhood. The testimony of R. Bruce Hunter and Peter Fitzpatrick highlight the damage to such resources that would result from the proposed monopole tower on Site A. This is in addition to the violation of numerous local land use regulations and the neighborhood concerns of proximity to neighboring homes. In sum, the proposed cellular facility on Site A should be rejected as entirely inappropriate for such a rural, residential area. The Council must also consider that the "fall zone" of the proposed tower on Site A, as described by Mr. Hunter, would impose a regulatory taking on the property of Mr. Fitzpatrick.

In the Alternative: Reduced Height Monopole and Facility on Site B (Richards Road)

In the alternative that the Council will not accept any small cells alternative to the proposed monopole on Site A or Site B, then the Bald Hill Road Neighbors urge the Council, at the very least, to approve only a shorter monopole tower, of around 100 feet in height, on Site B (Richards Road). The testimony of the South Spectacle Lake Residents and the testimony of R. Bruce Hunter and Peter Fitzpatrick agree that the harm to scenic, recreational, and environmental resources by the proposed tower facility on Site A exceeds the harm of the proposed facility on Site B.

Furthermore, placing a reduced-height monopole tower and facility on Site B would at least place the facility on a larger lot that is currently being used as what appears to be a contractor's yard for a business and not on a smaller rural residential lot on Bald Hill Road. Even if this would not eliminate the harm to environmental, scenic, and recreational resources of the area, it would still reduce the harm to those resources compared to the proposed facility on Site A (Bald Hill Road).

Standards for Issuance of Certificate

General Statutes § 16-50p(3) establishes the standards for determining whether to issue a certificate of public need and environmental compliance (a "certificate") for a cell tower project. The Siting Council may not issue a certificate, "either as proposed or as modified by the Council, unless it shall find and determine: (A) ... a public need for the facility and the basis for the need, (B) the nature of the probable environmental impact of the facility ... including a specification of every significant adverse effect, including, but not limited to ... (iii) public health and safety, scenic, historic and recreational values ... [and] (C) why the adverse effects or conflicts referred to in subparagraph (3) of this subdivision are not sufficient reason to deny the application " (C.G.S. § 16-50p(3)(A) through (C)).

Furthermore, C.G.S. § 16-50p(b)(1) requires the Siting Council to examine, among other things, "(C) whether the proposed facility would be located in an area of the state which the council, in consultation with the Department of Energy and Environmental Protection and any affected municipalities, finds to be a relatively undisturbed area that possesses scenic quality of local, regional or state-wide significance, and (D) the latest facility design options intended to minimize aesthetic and environmental impacts." The Siting Council may deny an application "if it determines that ... (iii) the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood and no public safety concerns require that the proposed facility be constructed in such a location." (C.G.S. § 16-50p(b)(1)(iii)).

Finally, C.G.S. § 22a-19 provides that the Siting Council may not issue such certificate if the project, "does or is reasonably likely to unreasonably pollute, impair or destroy the public trust in the air, water or natural resources of the state if, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with reasonable

requirements of public health, safety and welfare.” (Fuller, Connecticut Land Use Law & Practice § 32:6, p. 206 (2007 ed.), citing § 22a-19(b)).

Given the unreasonable impact of the proposed cellular tower facilities on local scenic vistas in this rural, residential area, and the importance of preserving those scenic attributes, the burden is on the Applicants to demonstrate that all relevant surrounding circumstances and factors, demonstrate there is no feasible and prudent alternative to their proposal and that fulfillment of such proposal is consistent with the reasonable requirements of the public health, safety and welfare. The Applicants have not carried that burden.

Proposed Findings of Fact

General Scenic, Recreational, and Environmental Values

1. The Town of Kent Connecticut, and in particular the areas surrounding proposed cellular facility Sites A and B, are among the most scenic areas in Connecticut (Comments of the Connecticut Council on Environmental Quality).
2. People move to Kent to live in a scenic and largely unspoiled rural area, away from commercial and industrial property uses. (Testimony of R. Bruce Hunter, Testimony of Connie Manes). The Council has heard testimony that, this region is, “a state jewel that is nationally recognized for its breathtaking views, natural beauty and world class outdoor recreation.” (Testimony of Todd Powell, III B 3 attachments).
3. The Bald Hill Road neighborhood is comprised of several rural, residential properties which are home to area residents. (Testimony of R. Bruce Hunter, Testimony of Peter Fitzpatrick). Residents of areas such as Bald Hill rely on the preservation of local environmental, scenic, and recreational resources through local zoning regulations and state law. (Testimony of R. Bruce Hunter).
4. Either of the proposed towers would have a substantial negative impact on scenic values and scenic vistas. (Testimony of R. Bruce Hunter, Testimony of Connie Manes, Testimony of Marleen Donnenfeld.)

5. Of the two proposed tower sites, the proposed facility on Site A (Bald Hill Road) would be particularly detrimental to the environmental, scenic, and recreational values of the Bald Hill Road neighborhood. (Testimony of R. Bruce Hunter, Testimony of Peter Fitzpatrick). The proposed tower facility on Site A would also significantly harm the view shed from South Spectacle Lake. (Testimony of Marleen Donnenfeld).

Town of Kent Zoning Regulations

6. Kent Zoning Regulation Section 9660-2 states: “A new tower shall be on a lot of at least three acres of land and shall be of an area and configuration such that the tower in the proposed location shall be set back from all property lines by a distance no less than 120 percent of the height of the tower.” The proposed Site A property is only 1.99 acres in size, significantly less than the minimum lot size of at least three acres under Kent Zoning Regulation 9660-2. (Application Section 3, Tab A). Furthermore, the proposed tower is to be 135 or 154 feet in height, and yet is to be built within 60 feet of the property line at Site A, with a support structure to be within 25 feet of said property line. The adjacent property with a dwelling at that point is owned by Peter Fitzpatrick. (Testimony of Peter Fitzpatrick Question 6 page 2, Application Sec. 3 Tab A photo of proposed tower).

7. Section 9660-4 of the Kent Zoning Regulations states: “A related unmanned equipment and/or storage building(s) shall be permitted, provided that it contains no more than 750 square feet of gross floor area and is not more than 12 feet in height and is screened from view from adjacent properties and public street. The tower compound would consist of a 3,950 s.f. area to accommodate AT&Ts equipment.” The proposed facility at Site A contains an equipment pad and support facility that would not comply with such regulation. (Application Sec. 3. Tab A. p.1)

8. Kent Zoning Regulation Section 7220-5 states: “No scrap or waste material shall be stored on any lot unless within a building or screened from view from off the premises.” The record in this matter shows metal and debris on the Site A property. (Photos from Bald Hill Road Neighbors First Set of Interrogatories, Applicants’ Response to the Siting Council First Set of Interrogatories, Testimony of Peter Fitzpatrick, at 2-3 Question 8, Applicants’ Response to Siting Council Interrogatories Set II).





EXISTING

PHOTO
9

DESCRIPTION
LOOKING SOUTH



EXISTING

PHOTO
14

DESCRIPTION
FROM SOUTHERN PROPERTY LINE LOOKING NORTHWEST



9. Section 9660-2 states: “New Tower applications shall demonstrate that the service provided cannot be provided with equipment added to an existing or other proposed antenna or tower.” The proposed cellular facility and monopole on Site A would violate such regulation. Planned Development of Northwest Connecticut has demonstrated that an acceptable alternative balancing the need for cellular service with environmental concerns exists in the form of small cells technology. (Testimony of David Maxson, *passim*). The Town of Kent is in concurrence with the appropriateness of small cells technology as a proper alternative to the proposed monopole tower facility. (Testimony of Jean Speck).

10. The Site A property is in a Kent Rural Zoning District and is an unimproved vacant parcel. (Application Section 3, Tab A). The proposed telecommunications facility includes an approximately 5,400 square foot leased area and 3,950 square foot compound area located in the southwestern section of the host parcel. The proposed telecommunication facility is proposed to be accessed by a 300 ft new gravel driveway. The entire proposed facility would be located within a mature upland forest. (Application, Tab A lines 1-6, Bald Hill Neighbors First Set of Interrogatories, Applicants’ responses to Siting Council’s first set of Interrogatories, Wetlands Inspection Field Form; Applicants’ Responses to Council’s Interrogatories Set II).



11. Kent Zoning Regulations Section 7400 limits site disturbance to 100 cubic yards. The proposed Site A tower and facility would violate such regulation because the proposed total area of disturbance area on the property is 15,500 square feet or 18% of the total area of the Site A property. (Application Site Impact Statement).

12. Kent Zoning Regulations Section 8530 prohibits the proposed facility and tower on Site A. Such facility would violate such regulation because it would require the removal of 22 trees, including five trees of 10-14 inches dbh and 10 trees of 14 inches dbh or greater. (Application Site Evaluation Report Section G, Site Impact Statement Tree Removal Count, Tree Inventory)

13. Kent Zoning Regulation 9630:2 sets a preference that the proposed tower facility be constructed outside the National Horizon Line Conservation District.

Detrimental Scenic, Environmental, Recreational, and Economic Impacts at Bald Hill

14. R. Bruce Hunter, MAI, is an expert in real property appraisal. (Pre-Filed Testimony of R. Bruce Hunter, Qualifications). Mr. Hunter conducted a Neighborhood Impact Study of the effect of the proposed facility on Site A on surrounding properties in the Bald Hill Road area. (Pre-Filed Testimony of R. Bruce Hunter).
15. A Neighborhood Impact Study is the process by which an appraiser reviews an existing or proposed property use to determine if that use may or may not have a detrimental impact on property values or on the character of the neighborhood. In that determination, the appraiser considers the environmental, scenic, and recreational resources' connection to local properties and property values. (Pre-filed Testimony of R. Bruce Hunter, page 2).
16. In rural residential areas, harm to natural resources and amenities is expressed in the marketplace as a loss in value to a particular piece of property due to reduced desirability. (Pre-filed Testimony of R. Bruce Hunter, page 2).
17. There are 16 Residential Homes within 1,000 ft from the proposed Site A tower and support compound. (Testimony of R. Bruce Hunter, Testimony of Peter Fitzpatrick).
18. Five neighboring, residential properties are within 650 feet of the proposed Site. All the properties considered by Mr. Hunter were rural and residential in nature. (Pre-filed Testimony of Bruce Hunter page 2 question 5)
19. The Hunter Neighborhood Impact Study examined the totality of the factors, including but not limited to environmental factors such as nearby forest, scenery, views of ridgelines, and outdoor recreational activity. Such environmental factors figured substantially because Bald Hill Road is a rural, residential area. (Pre-filed Testimony of R. Bruce Hunter page 2 question 5).

20. The proposed tower and facility on Site A negatively impact the desirability from the rural character and environmental amenities of the neighborhood. The proposed tower and facility run afoul of the protections of local zoning regulations which property owners rely on for protection against incongruent industrial/commercial applications. (Testimony of Bruce Hunter page 4 question 8).

21. The loss of environmental amenities and the natural environmental resources are very important to property values. The proposed tower and facility on Site A harms those natural amenities and that harm results in a loss of value. (Testimony Bruce Hunter page 4 question 8). Harms to environmental factors such as ridgeline views, recreational amenities, scenery, are so extensive as to result in the following:

- \$91,250 loss to the value of the Fitzpatrick property.
- \$51,000 loss to the Ough property.
- \$45,000 loss to the DiPentima property.
- \$30,000 loss to the Kirkiles/Holcombe property.
- \$20,000 loss to the Harris property.

(Pre-filed Testimony of R. Bruce Hunter page 3 question 7).

22. The proposed tower on Site A creates a potential “fall zone” of the tower and related debris onto the neighboring property of Peter Fitzpatrick. If the whole tower were to fall, or produce significant debris, it would encroach about 127 ft onto the Fitzpatrick property. This would essentially force Mr. Fitzpatrick to provide an easement to the owner of the tower without permission or compensation. (Testimony of Bruce Hunter P. 4. Qs. 10-11). The forced taking of this easement amounts to \$14,400 in value. (Testimony of Bruce Hunter page 4 question 14).

23. Mr. Fitzpatrick refuses to live with his family at the house he rebuilt on his property because of the fall zone and proximity to the cell tower. (Testimony of Peter Fitzpatrick). Mr. Fitzpatrick has been unable to cut his losses by selling his property because potential buyers have refused to purchase after learning about the potential project on Site A.

Testimony of Peter Fitzpatrick — Exhibit B — Fitzpatrick Property Photograph



Figure 1: Photograph from Fitzpatrick and Site A Property Line Facing Fitzpatrick House — Taken April 15, 2020

24. Section 16-50k of the Connecticut General Statutes bestows upon the Applicant the same rights of eminent domain as exercised by the Siting Council. As such an attempted taking of an easement where procedures were not followed is considered by Connecticut Courts an abuse of discretion. (*Connecticut Light Power Co. v. Huschke*, 35 Conn. Supp. 303 (1979)).

25. The Applicants' own balloon test and computer-simulated tower photography show that the proposed tower at Site A would significantly disrupt the ridgeline and scenery of the area. (Application Attachment 10, Photograph 28). This would remain the case even at a reduced tower height of 131 feet. (Applicants' Late-Filed Exhibit of August 6, 2020, Photograph 28, Powell Bald Hill Exhibit A Dock View Photo).



PROPOSED

PHOTO	LOCATION	ORIENTATION	DISTANCE TO SITE	VISIBILITY
28	RICHARDS ROAD	NORTHWEST	+/- 0.43 MILE	YEAR ROUND



PROPRIETARY INFORMATION: Applicants' Phase 1 Site A Environmental Evaluation

Findings 26 – 45 redacted.

The Small Cells Alternative Presented by Planned Development Alliance

The Bald Hill Road Neighbors hereby adopt the Findings of Fact presented by the Planned Development Alliance of Northwest Connecticut. The Neighbors fully support the small cells alternative presented by the Alliance.

Alternative Findings:

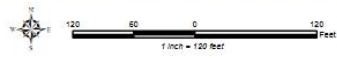
In the alternative that the Council will not support the small cells alternative presented by the Planned Development Alliance, the Bald Hill Road Neighbors offer the following provisional findings of fact:

46. Proposed Site B is located at 93 Richards Road and the host site currently serves as a contractor's or similar facility for the owner's construction business. (Application, Attachment 5 and Applicant's Response to Siting Council Interrogatories, Set 2).



PHOTO LOG

- Photo Location □ Site
- Photo Marker --- Limit of Disturbance
- Monopole --- Underground Eleo/Telco
- Equipment / Utilities
- Carrier Equipment Areas
- Evergreen Trees
- ✗ Tree to be removed





EXISTING

PHOTO
11

DESCRIPTION
DRIVEWAY LOOKING EAST

RECEIVING DIVISION



EXISTING

PHOTO
12

DESCRIPTION
DRIVEWAY LOOKING EAST

RECEIVING DIVISION





EXISTING

PHOTO
13

DESCRIPTION

DRIVEWAY LOOKING NORTHEAST TOWARDS PROPOSED COMPOUND



EXISTING

PHOTO
18

DESCRIPTION

FROM PROPOSED TOWER LOCATION





EXISTING

PHOTO

16

DESCRIPTION

LOOKING SOUTHWEST TOWARDS PROPOSED COMPOUND





EXISTING

PHOTO
7

PROPOSED UNDERGROUND ELECTRICAL/TELCO

DESCRIPTION

DRIVEWAY LOOKING NORTHEAST



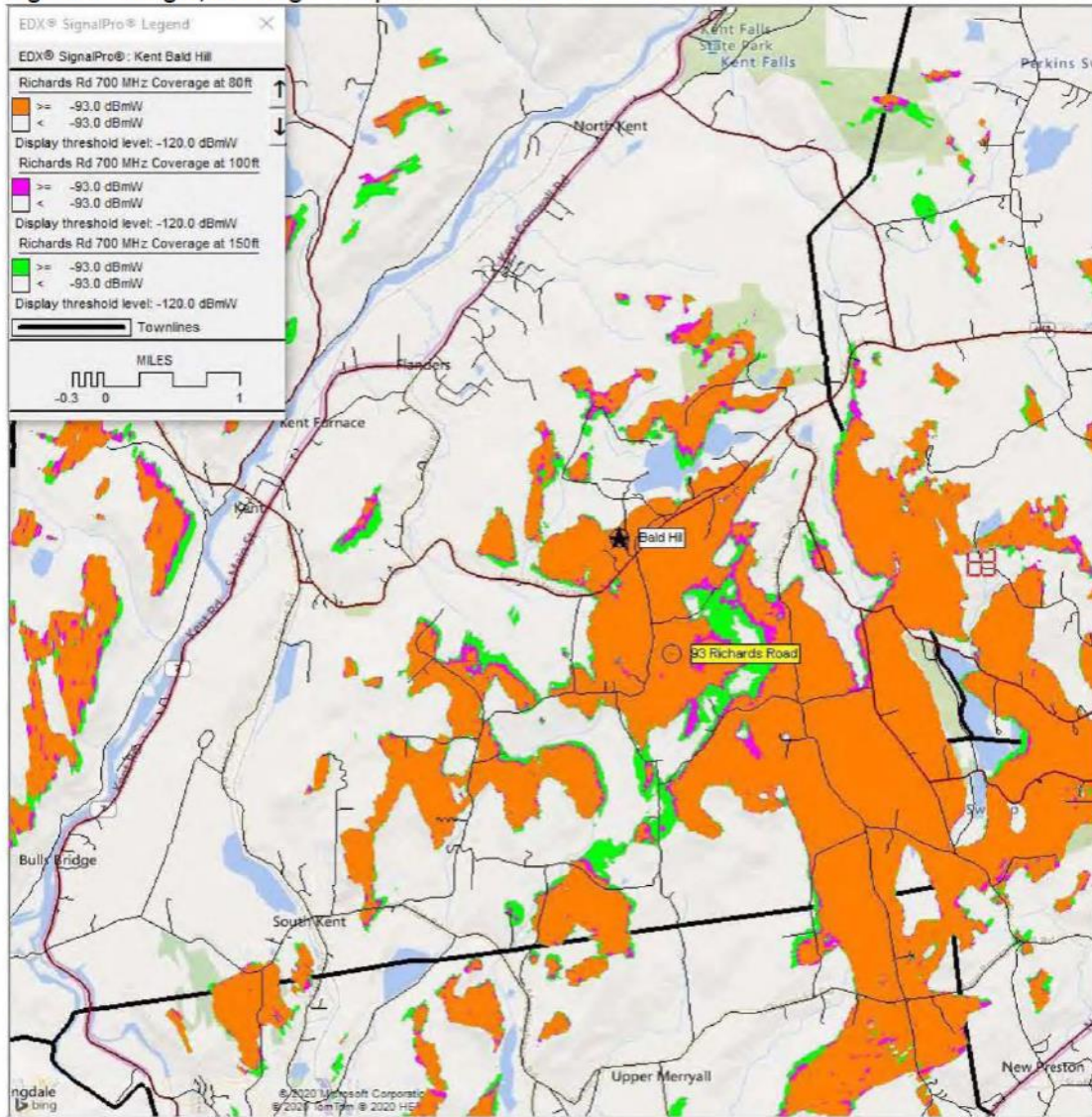
- 47. Site B is in a Rural Zoning District but is improved with a one-story commercial building and photographs show the area around the proposed site is storage yard for a business. (Application, Attachment 5).
- 48. The Site B host property is approximately 6.821 acres in size, a lot size greater than the three-acre minimum required by Kent Zoning Regulations. (Application, Attachment 5).
- 49. The harm to environmental resources, including ridgelines and views from South Spectacle Lake are not as severe at Site B as would be the harms by the proposed tower facility at Site A. (Testimony of Marleen Donnenfeld).
- 50. There are significantly fewer residences within 650 feet of the Site B proposed facility than would be within 650 feet of the Site A proposed facility (Application, Attachment 5;

Testimony of R. Bruce Hunter). There is only one residence within 650 feet of the proposed compound at Site B. (Application, Attachment 6).

51. Vehicle access to the Site B facility would make at least partial use of an existing varying width gravel access driveway, whereas the proposed Site A facility would require cutting of additional trees and construction of a new 300-foot access driveway from Bald Hill Road. (Application, Attachment 6).
52. The proposed facility at Site B would use setbacks from the property boundary that are more substantial than the setbacks required for the Site A facility. (Application, Attachment 6).
53. The proposed facility at Site B would involve the cutting of no trees 14 inches or greater dbh, a lower number than would be cut in the mature upland forest at proposed Site A. (Application, Attachment 6 and Applicant's Response to Council Interrogatories, Set 2).
54. The disturbance area of the proposed construction at Site B would be a lower percentage of the total property than at Site A, owing to the much smaller host property at Site A. (Application, Attachment 6).
55. The proposed equipment/storage facility size of 1,200 square feet on Site A exceeds the Town of Kent limit of 750 square feet for unmanned equipment or storage buildings. The same proposed facility on Site B is 960 square feet also exceeds the 750 square foot limit, but is less non-conforming than the proposed facility on Site A. (Application Attachments 3, 4, 5, and 6; see also Testimony of Mathew Winter).
56. Under questioning from the Council, the Applicants' signal engineer, Mr. Lavin, testified that Site B provides more coverage than does Site A with a tower 131 in height. (Transcript of Sept. 22, page 665, lines 19-23).

57. A Tower of around 100 feet in height would provide adequate coverage from Site B to fulfill the public need in the area for cellular service. (Pre-Filed Testimony of David Maxson, July 16,2020, page 14, figure 2).

Figure 2 – Height/Coverage Comparison for Richards Road



58. Marleen Donnerfeld testified on behalf of the South Spectacle Lake Residents that a cellular tower facility on Site A (Bald Hill Road) would work a greater harm on the viewshed from South Spectacle Lake than would a comparable tower facility on Site B (Richards Road).

59. For the foregoing reasons, proposed Site B is a more appropriate location for a wireless communications facility than proposed Site A.

Site A (Applicants' Response to Siting Council Interrogatories Set II):



EXISTING PHOTO	DESCRIPTION
5	PROPOSED ACCESS ROAD LOOKING NORTHWEST



Site B (Applicants' Response to Siting Council Interrogatories Set II)



EXISTING PHOTO	DESCRIPTION
12	DRIVEWAY LOOKING EAST



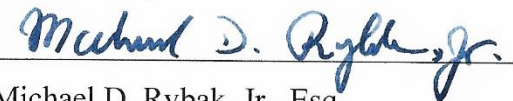
Respectfully Submitted,

The Bald Hill Neighbors.

By 
Anthony F. DiPentima, Esq.

October 22, 2020

Date

By 
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CERTIFICATE OF SERVICE

I hereby certify that a true, original copy, of the foregoing was placed in the U.S. Mail on this 22nd day of October 2020 and addressed to:

Ms. Melanie Bachman
Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

I further certify that an electronic copy of the foregoing was sent to:

siting.council@ct.gov

And I certify that electronic copies of the foregoing were sent to:

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