DOCKET NO. 471
SORRENTINO EXHIBIT 5
OBJECTION TO PROTECTIVE ORDER

VERIZON WIRELESS LEASE – NORTH CAROLINA

Consideration: **Cellco leases space on County's existing tower and then contributes $50,000 to construction of a new tower to be conveyed to County. Value of consideration including lease payments is $389,804**

BOARD OF COMMISSIONERS
AGENDA

August 18, 2014

EXHIBIT 5

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Currituck County
Agenda Item Summary Sheet

Agenda Item Title

Public Hearing Concerning the Ratification of a Tower Lease Agreement Dated August 31, 2005 With Cellco Partnership, d/b/a Verizon Wireless, Amendment to Tower Lease Agreement Dated January 20, 2006 and Approval of Second Amendment to Tower Lease Agreement

Brief Description of Agenda Item

This is a public hearing to receive comments on the ratification of a lease agreement, and approval of an amendment to the lease agreement, with Cellco Partnership/Verizon Wireless for the location of cellular telephone antennae array and supporting equipment on and at the county's lattice tower located behind the Southern Outer Banks Water Treatment Plant, 743 Ocean Trail, Corolla. The lease term is from January 20, 2006 to January 19, 2031. Over the life of the lease the collective value of monies contributed by Cellco for construction of the lattice tower and lease payments will equal $389,804.

Attached to this cover sheet is a copy of the Notice of Public Hearing published in the Coastland Times on August 7, 2014 and a resolution ratifying and approving the original lease agreement and amendment. The resolution further authorizes the County Manager and other county officers to execute the lease agreement amendment and other documents necessary to effectuate the terms and conditions of the lease.

Staff recommends approval as presented.

Board Action Requested

Action

Person Submitting Agenda Item

Presenter of Agenda Item

Ike McRee, County Attorney

NOTICE OF PUBLIC HEARING

TAKE NOTICE that pursuant to N.C. General Statute Section 158-7.1, the Currituck County Board of Commissioners will hold a public hearing on August 18, 2014 at 7:00 p.m., or as soon thereafter as the matter can be reached, in the Commissioners Meeting Room of the Historic Currituck County Courthouse, 153 Courthouse Road, Currituck, North Carolina 27929 concerning the ratification of a Tower Lease Agreement dated August 31, 2005 with Cellco Partnership, a Delaware general partnership, d/b/a Verizon Wireless and Amendment to Tower Lease Agreement and Non-Disturbance Agreement and Amendment to Lease dated January 20, 2006 and approval of a Second Amendment to Tower Lease Agreement. Under the lease and its amendment the county will lease space on the county's lattice tower located at 734 Ocean Trail, Corolla, NC and land area at the site for the location of antennae and associated equipment for cellular telephone communication for a period beginning January 20, 2006 and terminating on or about January 19, 2031 unless earlier terminated pursuant to terms of the lease. As consideration for the Cellco has contributed $50,000 toward construction of a 250 foot lattice tower conveyed to the county and has to date paid the county $87,027 in lease payments. Over the remaining term of the lease Cellco will pay to the county an additional $252,777. The collective value of Cellco's contribution and lease payments for the interest conveyed by the county is $389,804. The purpose for this transaction is to improve and secure cellular telephone communication on the Currituck Outer Banks and to further encourage the location of tourists, businesses and business travelers to the otherwise remote location within the county. In addition to holding the public hearing, the Board of Commissioners intends to ratify and approve the above described lease transaction.

This the 7th day of August, 2014.

Leanne Walton
Clerk to the Board of Commissioners

SECOND AMENDMENT TO TOWER LEASE AGREEMENT

THIS SECOND AMENDMENT TO TOWER LEASE AGREEMENT (the "Second Amendment") is made and entered into this _____day of _____ 201_, by and between **CURRITUCK COUNTY** ("Lessor") and **CELLCO PARTNERSHIP** d/b/a Verizon Wireless ("Lessee"). Lessor and Lessee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a Tower Lease Agreement on January 20, 2006, as amended by that First Amendment to Tower Lease Agreement on March 6, 2012 (collectively, the "Agreement"), whereby Lessee leased from Lessor certain space on the Lessor's Tower located at 734 Ocean Trail, Corolla, Currituck County, North Carolina, and as further described in the Agreement (the "Premises");

WHEREAS, the Parties desire to amend the Agreement to modify Lessee's equipment;

NOW THEREFORE, in consideration of the premises and the mutual undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Exhibit "B-1" of the Agreement is hereby replaced and superseded in its entirety by the attached Exhibit "B-2". In the event of any discrepancies between Exhibit "B-1 and Exhibit "B-2", Exhibit "B-2" shall control.

2. Lessee agrees that it will remove all unused mounts and coax lines on the Communications Tower.

3. The Agreement and Second Amendment contain all agreements, promises or understandings between Lessor and Lessee and no verbal or oral agreements, promises or understandings shall be binding upon either the Lessor or Lessee in any dispute, controversy or proceeding at law, and any addition, variation or modification to the Agreement and Second Amendment shall be void and ineffective unless made in writing and signed by the parties. In the event any provision of the Agreement and Second Amendment is found to be invalid or unenforceable, such a finding shall not affect the validity and enforceability of the remaining provisions of the Agreement and Second Amendment.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Second Amendment effective as of the day and year first above written.

LESSOR:

CURRITUCK COUNTY

_____
WITNESS

By: _____
Name: _____
Title: _____
Date: _____

LESSEE:

CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS

_____
WITNESS

By: _____
Name: David R. Heverling
Title: Area Vice President Network
Date: _____

EXHIBIT "B-2"

LESSEE is authorized to install and maintain the following equipment:

ANTENNA INFORMATION

ANTENNAS:	(4) BXA-171063/12CF @ 195' A.G.L., Center of Radiation (2) BXA-70063/8CF @ 195' A.G.L., Center of Radiation (2) BXA-70080/8CF @ 195' A.G.L., Center of Radiation
DIPLEXERS:	(4) RFS FD9R6004/1C-3L Diplexers
TMAS:	(2) RFS ATMAWSD-1A20 TMAs

Diameter of Transmission Lines: Not to exceed 1 5/8"

Corolla
2/2011

Corolla
SNS 8.2.05

DOC#-TLA9-26-97

TOWER LEASE AGREEMENT

This Agreement, made this 20th day of January, 2006 between **CURRITUCK COUNTY**, with its principal offices located at 145 Courthouse Road, Currituck, North Carolina 27929, Tax ID # 56-6000292 hereinafter designated LESSOR and **CELLCO PARTNERSHIP**, a Delaware general partnership, d/b/a Verizon Wireless, with its principal offices at 180 Washington Valley Road, Bedminster, New Jersey 07921, hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WITNESSETH

WHEREAS, LESSOR is the owner of certain real property located at 734 Ocean Trail, Currituck County, North Carolina;

WHEREAS, LESSEE desires to lease a portion of the subject Property, as defined herein, to construct, maintain and operate a communications facility;

WHEREAS, LESSOR desires LESSEE to construct a communications tower ("Communications Tower") at a height of two hundred fifty (250') feet, which upon completion, will be owned and maintained by LESSOR, and a portion of which shall be leased to LESSEE;

WHEREAS, LESSOR deems it in the best interest of LESSOR to lease a portion of said Property to LESSEE, along with a portion of the Communications Tower; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. CONSTRUCTION OF COMMUNICATIONS TOWER.

a. Construction of Communications Tower. LESSEE, at its sole cost and expense, shall construct a Communications Tower on the Property owned by LESSOR. The Communications Tower shall be of sufficient structural capacity to accommodate LESSOR and LESSEE, as well as limited additional capacity for future uses, such additional limited capacity to be as determined by LESSEE.

b. Governmental Approvals. Prior to commencing construction of the Communications Tower, LESSEE shall obtain and submit to LESSOR copies of all certificates, permits, licenses, and other approvals that may be required by any federal,

state or local authorities, including, without limitation, the Federal Communications Commission ("FCC") and Federal Aviation Administration ("FAA"), relating to LESSEE's construction of the Communications Tower (collectively the "Approvals"). LESSOR shall cooperate with LESSEE's reasonable business efforts to obtain Approvals.

c. Conveyance of Communications Tower. As used in this section, "Final Completion" shall occur when the local jurisdiction in which the Communications Tower is located has inspected the Communications Tower and has issued a final unconditioned certificate of occupancy or equivalent certification with respect to the Communications Tower. Upon Final Completion, LESSEE shall provide LESSOR with all certificates, permits, licenses or other approvals required by any federal, state or local authority to construct the Communications tower, and all other documents reasonably requested by LESSOR evidencing that the Communications Tower is free of all liens and encumbrances and that the Communications Tower complies with all applicable local, state and federal laws and regulations. Upon LESSOR's written acknowledgment of receipt of such documentation, LESSEE shall convey title to the Communications Tower to LESSOR by bill of sale "AS IS" and without any warranty or representation regarding the suitability of the Communications Tower for any particular purpose of use, and LESSEE shall assign to LESSOR all warranties provided by the tower manufacturer to the extent they are transferable by an assignment of warranties. LESSEE agrees and acknowledges the Communications Tower shall comply with all applicable local, state and federal laws and regulations upon transfer of title to LESSOR.

d. Payment of Costs. LESSEE shall pay all costs associated with the construction of the Communications Tower, including, without limitation: the cost of the Communications Tower; freight to the Property; foundation installation costs; tower erection costs; costs associated with the construction of a fence or other provisions for security; the reasonable cost of drawing telephone and electric services to the Communications Tower; tower grounding costs; the cost of building and other permits; the costs of erosion control and drainage; landscaping costs; the cost of environmental and geotechnical studies; the costs of all design and engineering plans and specifications and surveys; title examination and title commitment costs; zoning costs including without limitation, filing and application fees; recording costs; and costs incurred regarding FAA and FCC compliance, and any and all other required Federal regulatory filings.

2. PREMISES. LESSOR hereby leases to the LESSEE a portion of that certain space on the LESSOR's Tower ("Tower"), located at 734 Ocean Trail, Corolla, Currituck County, State of North Carolina, as shown on the Tax Map of the County of Currituck as Tax Map Number 011600000060000, and being further described in Deed Book 439 at Page 50, as recorded in the Office of the Register of Deeds for Currituck County, (the entirety of LESSOR's property is referred to hereinafter as the "Property"), together with a parcel of land sufficient for the installation of LESSEE's equipment building as shown on Exhibit "A", attached hereto and made a part hereof together with the non-exclusive right

for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a twenty (20') foot wide right-of-way extending from the nearest public right-of-way, Ocean Trail, to the demised premises, said demised premises and right-of-way for access being substantially as described herein in Exhibit "A" and attached hereto and made a part hereof which tower space, demised premises and right-of-way are collectively referred to hereinafter as the "Premises".

In the event any public utility is unable to use the aforementioned right-of-way, the LESSOR hereby agrees to grant an additional right-of-way either to the LESSEE or to the public utility at no cost to the LESSEE.

LESSOR hereby grants permission to LESSEE to install, maintain and operate the radio communications equipment, antennas and appurtenances described in Exhibit "B" attached hereto.

LESSEE reserves the right to replace the aforementioned equipment with similar and comparable equipment provided said replacement does not increase tower loading of said Tower.

3. SURVEY. LESSOR has granted to LESSEE the right to survey the Property and Premises, and said survey is attached hereto and incorporated herein as Exhibit "C", which shall control in the event of boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by the LESSEE.

4. TERM. This Agreement shall be effective as of the date of execution by both parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments will be due at an annual rental of Ten Thousand Twenty and no/100ths Dollars ($10,020.00) to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR or to such other person, firm or place as the LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date. The Commencement Date is defined as the first (1st) day of the month following the date this Agreement is executed by the parties or the first (1st) day of the month following the date LESSEE is granted a building permit by the governmental agency charged with issuing such permits, whichever event occurs last. In consideration of LESSEE constructing the Communications Tower and providing a bill of sale to LESSOR to the Communications Tower, LESSEE shall receive a rent abatement (the "Rent Abatement Amount") to be applied against the rent for a term sufficient for LESSEE to recover its actual costs for and expense of constructing the Communications Tower, including all those costs as required to be paid by LESSEE set forth in Section 1(d) herein. The Rent Abatement Amount shall be determined by the Parties within thirty (30) days of *Final* Completion of the Communications Tower.

Feb 30 2011

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If permitted by the local utility company servicing the Property, LESSEE shall furnish and install an electrical submeter at the Property for the measurement of electrical power used by LESSEE's installation. LESSEE shall pay for its own power consumption used thirty (30) days after receipt of an invoice from LESSOR indicating the usage amount.

5. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless the LESSEE terminates it at the end of the then current term by giving the LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

6. EXTENSION RENTALS. Rent shall be increased annually on the anniversary of the Commencement Date by three (3%) percent.

7. ADDITIONAL EXTENSIONS. If at the end of the fourth (4th) five (5) year extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least six (6) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such term. Annual rental for each such additional five (5) year term shall be equal to 115% of the annual rental payable with respect to the immediately preceding five (5) year term.

8. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining and operating a communications facility and uses incidental and all necessary appurtenances. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of LESSEE (not including the access easement). All improvements shall be at LESSEE's expense and the installation of all improvements shall be at the discretion and option of the LESSEE. LESSEE shall have the right to replace, repair, add or otherwise modify its equipment or any portion thereof, whether the equipment is specified or not on any exhibit attached hereto, during the term of this Agreement. LESSEE will maintain the Premises in a good condition reasonable wear and tear excepted. LESSOR will maintain the Property, excluding the Premises, in good condition, reasonable wear and tear excepted. It is understood and agreed that LESSEE's ability to use the Property is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit LESSEE use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use by LESSEE. In the event that any of such applications for such Governmental Approvals should be finally rejected or LESSEE determines that

such Governmental Approvals may not be obtained in a timely manner or any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority or soil boring tests are found to be unsatisfactory so that LESSEE in its sole discretion will be unable to use the Premises for its intended purposes or the LESSEE determines that the Property is no longer technically compatible for its intended use, LESSEE shall have the right to terminate this Agreement. Notice of the LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by the LESSEE. All rentals paid to said termination date shall be retained by the LESSOR. Upon such termination, this Agreement shall become null and void and all the Parties shall have no further obligations including the payment of money, to each other.

9. ACCESS TO TOWER. LESSOR agrees the LESSEE shall have free access to the Tower at all times for the purpose of installing and maintaining the said equipment. LESSOR shall furnish LESSEE with necessary means of access for the purpose of ingress and egress to this site and Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of LESSEE or persons under their direct supervision will be permitted to enter said premises.

10. TOWER COMPLIANCE. LESSOR covenants that it will keep the Tower in good repair as required by all federal, state, county and local laws. The LESSOR shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of towers. If the LESSOR fails to make such repairs including maintenance the LESSEE may make the repairs and the costs thereof shall be payable to the LESSEE by the LESSOR on demand. If the LESSOR does not make payment to the LESSEE within ten (10) days after such demand, the LESSEE shall have the right to deduct the costs of the repairs from the succeeding monthly rental amounts normally due from the LESSEE to the LESSOR.

No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances.

All antenna(s) on the Tower must be identified by a marking fastened securely to its bracket on the Tower and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

11. INTERFERENCE. LESSEE agrees to have installed radio equipment of the type and frequency which will not cause measurable interference to the equipment existing as of the date this Agreement is executed by the Parties of the LESSOR or other lessees of the Property. In the event LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE of such interference, LESSEE will take all steps necessary to correct and eliminate the interference. LESSOR agrees that LESSOR and any other tenants of the property who currently have or in the future take possession of the Property

will be permitted to install only such radio equipment that is of the type and frequency which will not cause measurable interference to the existing equipment of the LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph and therefore, either Party shall have the right to specifically enforce the provisions of this paragraph in a court of competent jurisdiction.

12. LESSEE COMPLIANCE. All installations and operation in connection with this Agreement by LESSEE shall meet with all applicable Rules and Regulations of the Federal Communications Commission, Federal Aviation Agency and all applicable codes and regulations of the township, county and state concerned. Under this Agreement, the LESSOR assumes no responsibility for the licensing, operation, and/or maintenance of LESSEE's radio equipment.

13. INDEMNIFICATION. Each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the use and occupancy of the Premises or the Property by the Party, its servants or agents, excepting, however, such claims or damages as may be due to or caused by the acts or omissions of the other Party, or its servants or agents.

Whether the cause of any damage, loss, or liability is insurable, insured or not insured, foreseen or unforeseen, neither Party nor its representatives, agents contractors, subcontractors, invitees or licensees shall not in any event be liable to the other Party or its representatives, agents, contractors, subcontractors, invitees or licensees for claims for anticipatory profits, consequential, incidental, exemplary, punitive, or any indirect damages of any nature arising at any time, from any cause whatsoever, whether arising in tort, contract, warranty, strict liability, by operation of law, or otherwise, even if by such Party's, its representatives', agents', contractors', subcontractors', invitees' or licensees' negligence or fault, connected with or resulting from performance or non-performance under this agreement or as a result of the construction, maintenance, operation or use of the Property, the Premises, the tower, building, the site, or the easement(s) by either Party.

14. INSURANCE. The Parties hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the premises or to property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. LESSOR and LESSEE each agree that at its own cost and expense, each will maintain comprehensive general liability and property liability insurance with liability limits of not less than $1,000,000 for injury to or death of one or more persons in any one occurrence and $500,000 for damage or destruction to property in any one occurrence. LESSOR agrees that LESSEE may self-insure against any loss or damage which could be covered by a comprehensive general public liability insurance policy.

15. ANNUAL TERMINATION. Not withstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder and shall have paid all rents and sums due and payable to the LESSOR by LESSEE, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of this Agreement provided that three (3) months prior notice is given the LESSOR.

16. REMOVAL UPON TERMINATION. LESSEE, upon termination of the Agreement, shall, within ninety (90) days, remove its building(s), antenna structure(s) (except footings), fixtures and all personal property and otherwise restore the Property to its original condition, reasonable wear and tear excepted. LESSOR agrees and acknowledges that all of the equipment, fixtures and personal property of the LESSEE shall remain the personal property of the LESSEE and the LESSEE shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall

pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

17. RIGHT OF FIRST REFUSAL. If the LESSOR during the lease term or any extension of the lease term elects to sell all or any portion of the Property, whether separately or as part of the larger parcel of which the Property are a part, the LESSEE shall have the right of first refusal to meet any bona fide offer of sale on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after notice thereof from LESSOR, LESSOR may sell the Property or portion thereof to such third person in accordance with the terms and conditions of his offer. For purposes of this Paragraph, any transfer, bequest or devise of the LESSOR's interest in the Property as a result of the death of the LESSOR, whether by will or intestate succession, shall not be considered a sale of the Property for which the LESSEE has any right of first refusal.

18. RIGHTS UPON SALE. Should the LESSOR, at any time during the term of this Agreement, decide to sell all or any part of the Property to a purchaser other than LESSEE, such sale shall be under and subject to this Agreement and LESSEE's rights hereunder, and any sale by the LESSOR of the portion of this Property underlying the right-of-way herein granted shall be under and subject to the right of the LESSEE in and to such right-of-way.

19. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants shall peaceably and quietly have, hold and enjoy the Premises.

20. TITLE. LESSOR covenants that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants that there are no other liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent the use of the Premises by the LESSEE as set forth above.

21. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between the LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either the LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not effect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right

to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity.

22. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State in which the Property is located.

23. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld or delayed.

24. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: Currituck County
145 Courthouse Road
Currituck, North Carolina 27929

LESSEE: Cellco Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Notice shall be effective upon mailing or delivering the same to a commercial courier, as permitted above.

25. DEFAULT. In the event there is a default by the LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, the LESSOR shall give LESSEE written notice of such default. After receipt of such written notice, the LESSEE shall have fifteen (15) days in which to cure any monetary default and thirty (30) days in which to cure any non-monetary default, provided the LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and the LESSEE commences the cure within the thirty (30) day period and thereafter continuously

and diligently pursues the cure to completion. The LESSOR may not maintain any action or effect any remedies for default against the LESSEE unless and until the LESSEE has failed to cure the same within the time periods provided in this paragraph.

26. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

27. SUBORDINATION AND NON-DISTURBANCE. At LESSOR's option, this Agreement shall be subordinate to any mortgage or other security interest or other security interest by LESSOR which from time to time may encumber all or part of the Property or right-of-way; provided, however, every such mortgage or other security interest or other security interest shall recognize the validity of this Agreement in the event of a foreclosure of LESSOR's interest and also LESSEE's right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement. LESSEE shall execute whatever instruments may reasonably be required to evidence this subordination clause. In the event the Property is encumbered by a mortgage or other security interest, the LESSOR immediately after this Agreement is executed, will obtain and furnish to LESSEE, a non-disturbance agreement for each such mortgage or other security interest in recordable form. In the event the LESSOR defaults in the payment and/or other performance of any mortgage or other security interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or security interest and the LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

28. RECORDING. LESSOR agrees to execute a Memorandum of this Lease Agreement which LESSEE may record with the appropriate Recording Officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either term or rent payments.

29. ENVIRONMENTAL.

a. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the activities of the LESSEE.

b. LESSOR shall hold LESSEE harmless and indemnify the LESSEE from and assume all duties, responsibility and liability at LESSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such compliance results from conditions caused by the LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, unless such environmental conditions are caused by the LESSEE.

30. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Lease upon fifteen (15) days written notice to LESSOR. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease. Notwithstanding the foregoing, all rental shall abate during the period of such fire or other casualty.

31. CONDEMNATION. In the event of any condemnation of the Property, LESSEE may terminate this Lease upon fifteen (15) days written notice to LESSOR if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the antennas, equipment, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Lease.

32. SUBMISSION OF LEASE. The submission of this Lease for examination does not constitute an offer to lease the Premises and this Lease becomes effective only

upon the full execution of this Lease by the Parties. If any provision herein is invalid, it shall be considered deleted from this Lease and shall not invalidate the remaining provisions of this Lease. Each of the Parties hereto warrants to the other that the person or persons executing this Lease on behalf of such party has the full right, power and authority to enter into and execute this Lease on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Lease.

33. APPLICABLE LAWS. LESSEE shall use the Premises as may be required or as permitted by applicable laws, rules and regulations. LESSOR agrees to keep the Property in conformance with all applicable, laws, rules and regulations and agrees to reasonably cooperate with the LESSEE regarding any compliance required by the LESSEE in respect to its use of the Premises.

34. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

35. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

(SIGNATURES TO FOLLOW)

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR: **CURRITUCK COUNTY**

Gwen H. Keene
WITNESS

Gwen H. Keene
WITNESS

BY: _____ [SEAL]

Name: DANIEL F. SCANLON II

Title: COUNTY MANAGER

Date: 8-31-05

LESSEE: **CELLCO PARTNERSHIP**
D/B/A VERIZON WIRELESS

Diane Gappla
WITNESS

BY: _____ [SEAL]
David R. Heverling
Northeast Area Vice President
Network

Date: 12006

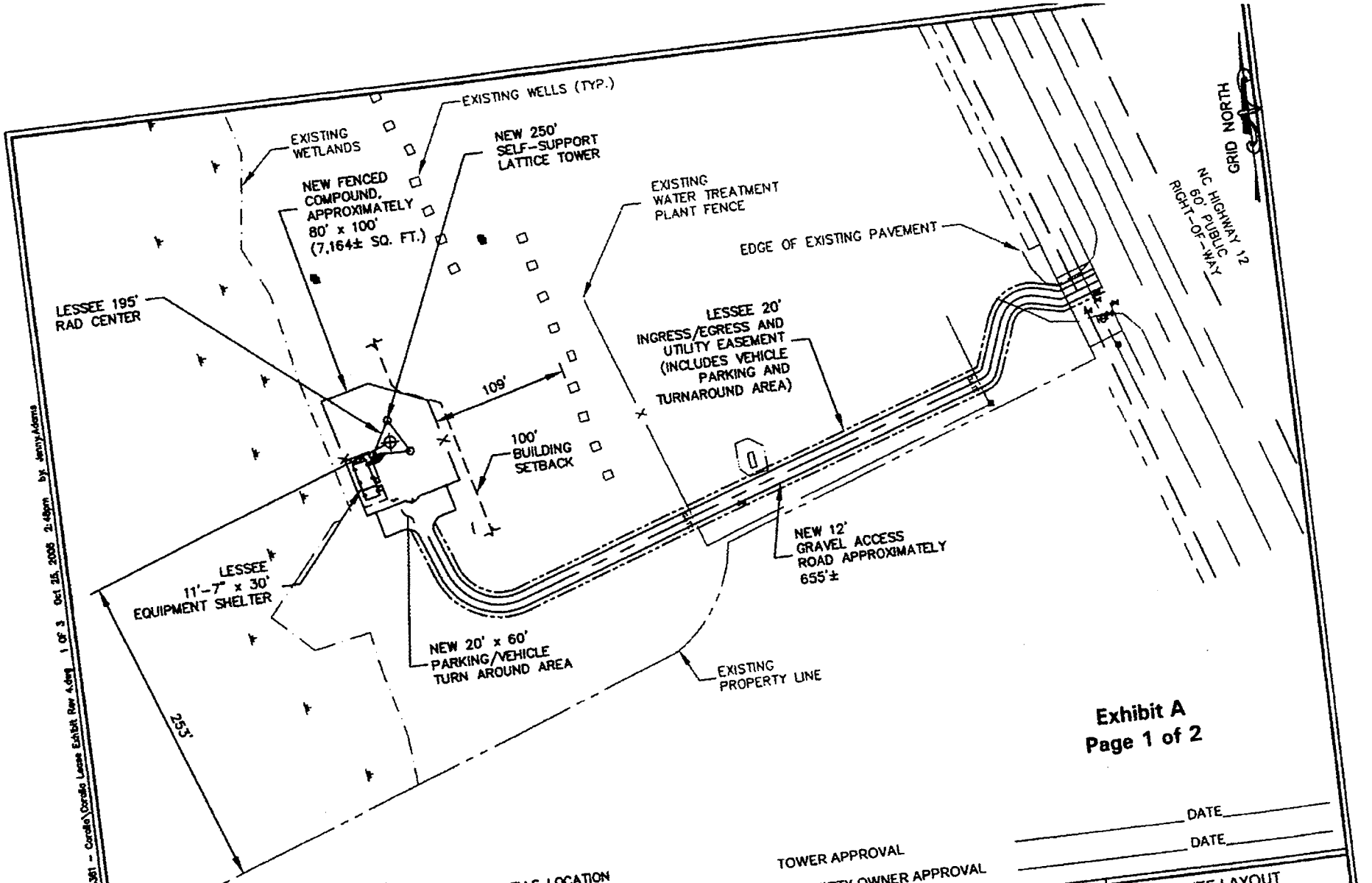


Exhibit A
Page 1 of 2

TOWER APPROVAL _____ DATE _____

PROPERTY OWNER APPROVAL _____ DATE _____

REV 1: CHANGED RAD CENTER TO 195'
REV 2: MODIFIED OVERALL VIEW TO INCLUDE MONITOR WELLS LOCATION IN RELATION TO TOWER SITE.
REV 3: REVISED LAYOUT PER WETLANDS DELINEATION INFORMATION
REV 4: REVISED COMPOUND LOCATION

JOB No.: 012055361		
DATE: 10/25/05		
REV.: 4		
DESIGNED	DRAWN	CHECKED
KRM	JGA	KRM

Kimley-Horn and Associates, Inc.
Post Office Box 33068
Raleigh, North Carolina 27636

PROPOSED COROLLA LATTICE TOWER - RAW LAND
734 OCEAN TRAIL
COROLLA, NC 27927
CURRITUCK COUNTY

SITE LAYOUT
SHEET 1 OF 3
SHOWING 100' x 100' LESSEE LEASE AREA AND IMPROVEMENTS
1" = 200'

NOT FOR CONSTRUCTION

drawing name: I:\200verizon\2004 - Virginia\012055361 - Corolla\Corolla Lease Exhibit Rev A.dwg 1 OF 3 Oct 25, 2005 2:48pm by: Jenny Adams

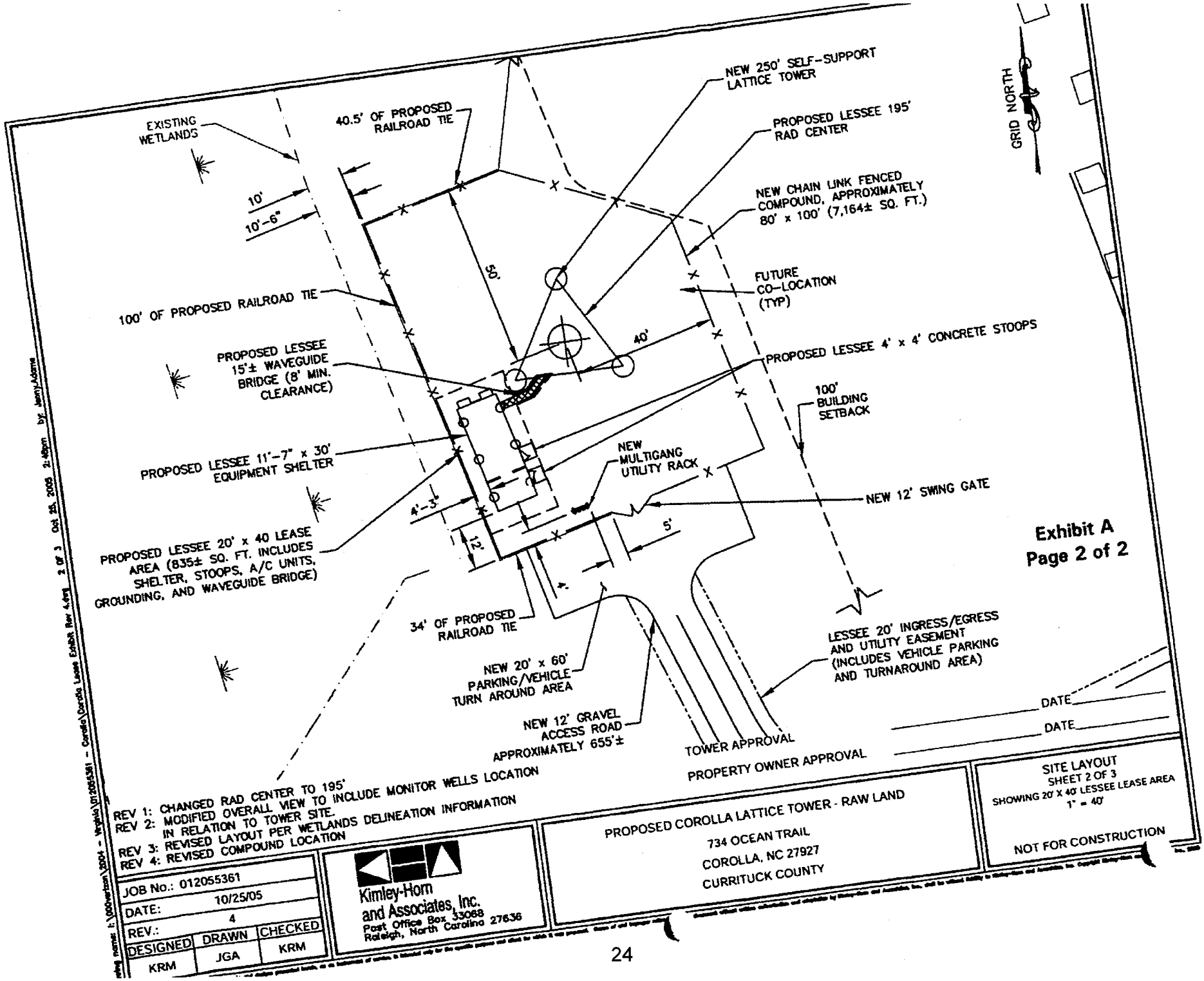

EXISTING WETLANDS
40.5' OF PROPOSED RAILROAD TIE
NEW 250' SELF-SUPPORT LATTICE TOWER
PROPOSED LESSEE 195' RAD CENTER
GRID NORTH
NEW CHAIN LINK FENCED COMPOUND, APPROXIMATELY 80' x 100' (7,164± SQ. FT.)
10'
10'-6"
50'
FUTURE CO-LOCATION (TYP)
100' OF PROPOSED RAILROAD TIE
40'
PROPOSED LESSEE 4' x 4' CONCRETE STOOPS
PROPOSED LESSEE 15'± WAVEGUIDE BRIDGE (8' MIN. CLEARANCE)
100' BUILDING SETBACK
PROPOSED LESSEE 11'-7" x 30' EQUIPMENT SHELTER
NEW MULTIGANG UTILITY RACK
NEW 12' SWING GATE
4'-3"
5'
12'
PROPOSED LESSEE 20' x 40 LEASE AREA (835± SQ. FT. INCLUDES SHELTER, STOOPS, A/C UNITS, GROUNDING, AND WAVEGUIDE BRIDGE)
4'
34' OF PROPOSED RAILROAD TIE
LESSEE 20' INGRESS/EGRESS AND UTILITY EASEMENT (INCLUDES VEHICLE PARKING AND TURNAROUND AREA)
NEW 20' x 60' PARKING/VEHICLE TURN AROUND AREA
NEW 12' GRAVEL ACCESS ROAD APPROXIMATELY 655'±
TOWER APPROVAL
PROPERTY OWNER APPROVAL
DATE
DATE
Exhibit A
Page 2 of 2
REV 1: CHANGED RAD CENTER TO 195'
REV 2: MODIFIED OVERALL VIEW TO INCLUDE MONITOR WELLS LOCATION IN RELATION TO TOWER SITE.
REV 3: REVISED LAYOUT PER WETLANDS DELINEATION INFORMATION
REV 4: REVISED COMPOUND LOCATION
JOB No.: 012055361
DATE: 10/25/05
REV.: 4
DESIGNED KRM
DRAWN JGA
CHECKED KRM
Kimley-Horn and Associates, Inc.
Post Office Box 33068
Raleigh, North Carolina 27636
PROPOSED COROLLA LATTICE TOWER - RAW LAND
734 OCEAN TRAIL
COROLLA, NC 27927
CURRITUCK COUNTY
SITE LAYOUT
SHEET 2 OF 3
SHOWING 20' X 40' LESSEE LEASE AREA
1" = 40'
NOT FOR CONSTRUCTION

EXHIBIT B

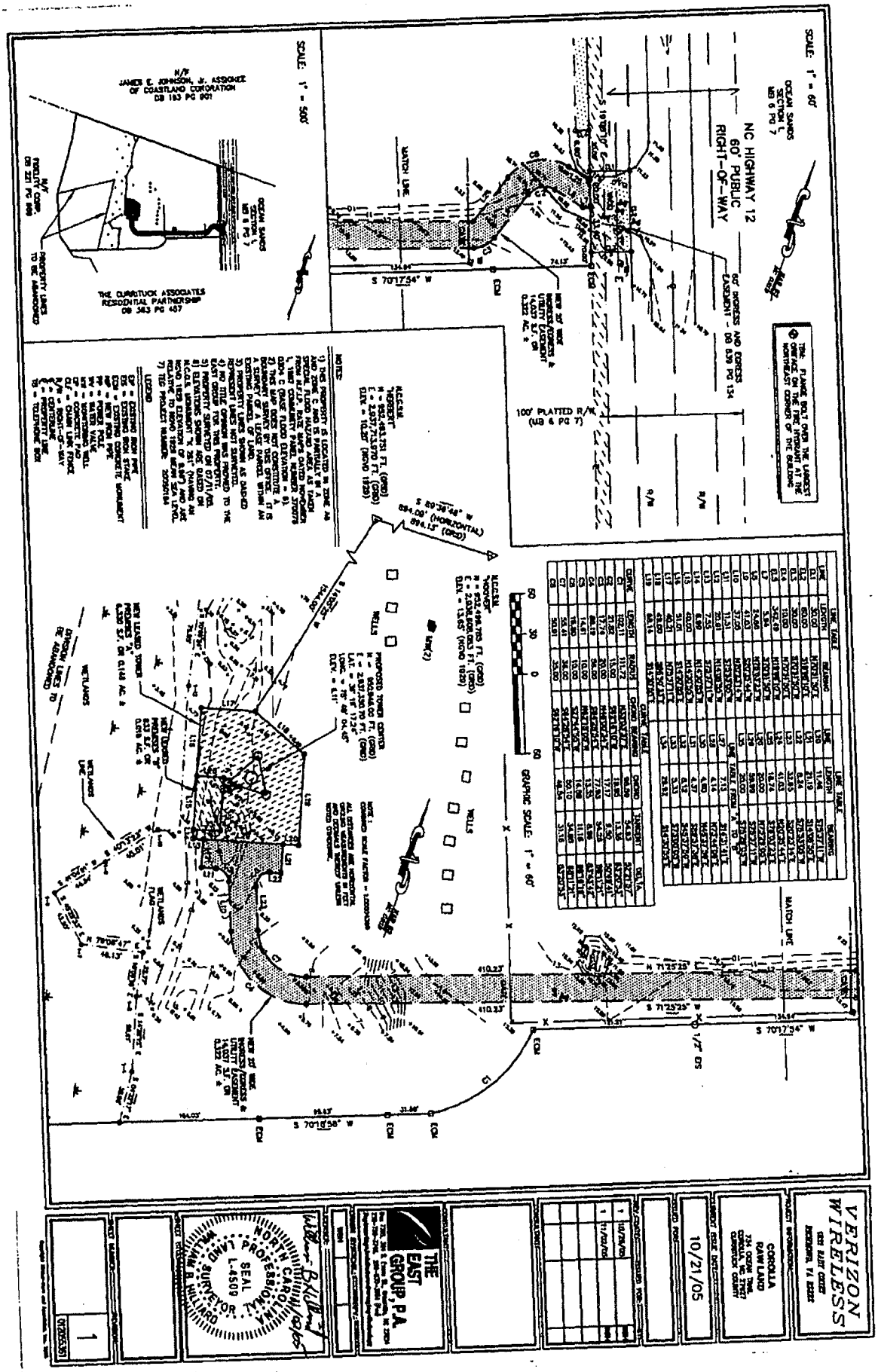
LESSEE is authorized to install and maintain the following equipment:

ANTENNA INFORMATION

ANTENNAS: (4) Antel LPA80080-8 @ 195' A.G.L. Center of Radiation
(4) Antel LPA185080-12 @ 195' A.G.L. Center of Radiation
Orientation: 0°/ 155°

Diameter of transmission line: Not to exceed 1 5/8"

EXHIBIT C
SURVEY



RESOLUTION RATIFYING AND AUTHORIZING AMENDMENT TO LEASE AGREEMENT WITH CELLCO PARTNERSHIP, D/B/A VERIZON WIRELESS, FOR LOCATION OF CELLULAR TELEPHONE ANTENNAE ARRAY AND SUPPORTING EQUIPMENT ON COUNTY PROPERTY LOCATED AT 743 OCEAN TRAIL, COROLLA, NORTH CAROLINA

WHEREAS, N.C. Gen. Stat. §158-7.1 of the General Statutes of North Carolina authorizes a county to privately negotiate leases of county property for commercial purposes; and

WHEREAS, the Currituck County Board of Commissioners held a public hearing on August 18, 2014 to receive public comments regarding Currituck County, (the "County"), ratification of and amendment to lease to Cellco Partnership, a Delaware general partnership, d/b/a Verizon Wireless, ("Cellco"), of space on a county lattice tower and land area for support structure located at 743 Ocean Trail, Corolla, North Carolina for construction and maintenance of cellular telephone antennae array and associated equipment; and

WHEREAS, the lease originally entered into on January 20, 2006 will expire on or about January 19, 2031 unless earlier terminated pursuant to terms of the lease; and

WHEREAS, as consideration for the lease Cellco has contributed $50,000 toward construction of a 250 foot tall lattice tower located at the lease site, has to date paid to the County $87,027 in lease payments and over the life of the lease will pay an additional $252,777 to the County for a collective value to the County in the amount of $389,804; and

WHEREAS, the Currituck County Board of Commissioners finds that location of Cellco's equipment and facilities on the surplus space on the County's lattice tower will improve and secure cellular telephone communication on the Currituck County Outer Banks and will further encourage the location of tourists, businesses and business travelers to an otherwise remote location of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE CURRITUCK COUNTY BOARD OF COMMISSIONERS THAT:

1) The Tower Lease Agreement by and between the County and Cellco dated August 31, 2005 as amended by instrument dated January 20, 2006 is hereby ratified and a Second Amendment to Tower Lease Agreement is hereby approved.

2) The County Manager and other appropriate County officials are authorized to execute the Second Amendment to Tower Lease Agreement with Cellco and any other documents necessary to effectuate the terms and conditions of the Second Amendment to Tower Lease Agreement.

(3) This resolution is effective immediately upon its adoption.

Adopted this 18th day of August, 2014

S. Paul O'Neal, Chairman
Currituck County Board of Commissioners

ATTEST:

LeAnne Walton
Clerk to the Board of Commissioners

(COUNTY SEAL)