



## REQUEST FOR BOARD ACTION

ITEM NO. 17

**DATE OF MEETING:** April 20, 2015

**REQUESTED BY:** Megan O'Hare, Senior Planner, Planning & Community Development

**SHORT TITLE:** Resolution Requesting Approval of a Special Use Permit (SUP) for the Construction and Operation of a Telecommunication Facility.

**BACKGROUND:** Optima Towers IV, LLC, applicant, on behalf of H. Allen Wooten, owner, is requesting approval of a Special Use Permit for the construction and operation of a telecommunication tower. The property is zoned RA, Rural Agricultural zoning district and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses; telecommunication towers are permitted via Special Use Permit in the RA, Rural Agricultural zoning district. The property is located at 4559 NC Highway 53 West and may be further identified by Pender County PIN 3208-18-5058-0000.

**SPECIFIC ACTION REQUESTED:** To Hold a Public Hearing and Consider the Approval of a Special Use Permit for a Telecommunication Facility.

**RESOLUTION**

**NOW, THEREFORE BE IT RESOLVED** by the Pender County Board of Commissioners that:

on April 20, 2015 the Pender County Board of Commissioners (approved, modified, denied) a Special Use Permit request to construct and operate a telecommunication facility, as described herein. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Williams \_\_\_ Brown \_\_\_ McCoy \_\_\_ Piepmeyer \_\_\_ Tate \_\_\_

\_\_\_\_\_  
J. David Williams, Jr., Chairman      4/20/2015  
Date

\_\_\_\_\_  
ATTEST      4/20/2015  
Delivered      Date

## PLANNING STAFF REPORT

### Special Use Permit

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#### SUMMARY:

**Hearing Date:** April 20, 2015

**Applicant:** Optima Towers IV, LLC.

**Property Owner:** H. Allen Wooten, et al.

**Case Number:** 11355

**Land Use Proposed:** Optima Towers IV, LLC., applicant, on behalf of H. Allen Wooten, et al., owner, is requesting the approval of a Special Use Permit (SUP) for the construction and operation of a telecommunication facility, as defined in the Pender County Unified Development Ordinance:

*TELECOMMUNICATION TOWER: A structure, including the tower, antennas, panels, microwave dishes, receiving dishes, equipment building, other transmitting and receiving components and other accessory structures, used for the wireless electromagnetic transmission of information, excluding structures utilized as satellite earth stations and structures utilized for amateur or recreational purposes such as ham radio or citizen band radio.*

**Property Record Number and Location:** The property is located at 4559 NC Highway 53 and may be further identified by Pender County PIN 3208-18-5058-0000.

**Zoning District of Property:** The property is zoned RA, Rural Agricultural zoning district and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses; telecommunication facilities are permitted via Special Use Permit in the RA, Rural Agricultural zoning district.

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#### PROJECT DESCRIPTION:

Optima Towers IV, LLC, applicant, on behalf of H. Allen Wooten, owner, is requesting approval of a Special Use Permit for the construction and operation of a telecommunication facility. The property is zoned RA, Rural Agricultural zoning district and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses; telecommunication facilities are permitted via Special Use Permit in the RA, Rural Agricultural zoning district. The subject property is located at 4559 NC Highway 53 and may be further identified by Pender County PIN 3208-18-5058-0000.

The eighty-five (85) acre tract is currently used for farming and agricultural buildings on the southern portion of parcel. The northern area of the tract is currently vacant and wooded. The proposed facility will provide access via an approximately four hundred fifty (450) feet long, thirty (30) feet wide existing access easement. The dimensions of the leased area for the telecommunication facility will be one hundred (100) by one hundred (100) feet. The lattice tower itself is proposed as two hundred fifty (250) foot tall and must comply with the Pender County Unified Development Ordinance Section 5.3.12.Q.

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A full site development plan has been submitted along with this application, demonstrating the location of the proposed facility with setbacks (Exhibit 1). The applicant is submitting for a two hundred fifty (250) foot lattice tower with a distance of two hundred eighty-three (283) feet from the western property boundary, six hundred thirty-four (634) feet from the north property boundary along NC Highway 53, three hundred eighteen (318) feet from the eastern property boundary and two thousand six hundred fifty-four (2,654) feet from the southern property line. The nearest single-family residences are located on the properties two hundred eighty-three (283) feet to the west and three hundred eighteen (318) feet to the east of the proposed telecommunication facility.

Section 5.3.12.Q of the Pender County Unified Development Ordinance sets forth specific use standards for Telecommunication Facilities.

*Telecommunication Facilities*

- 1) *Co-located - Telecommunication antenna units that are attached to structures constructed for purposes other than supporting telecommunication equipment may be no taller than 30 feet or 30% of the structure's height. Co-located towers must comply with all relevant standards of this Article.*
- 2) *Freestanding - Freestanding telecommunication towers must comply with the following standards:*
  - a) *The minimum distance between the tower and an adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional, or from an adjoining local road separating the tower site from such a parcel, must be equal to the tower's height, but not less than 50 feet, nor less than the minimum setback depth applicable in the zoning district. This provision does not apply in relationship to any nonconforming residential use or the residence of a caretaker or watchman accessory to a permitted non-residential use.*
  - b) *The Board of Commissioners, through the Special Use Permit public hearing, may reduce the minimum distance required above on finding that a lesser distance will not be injurious to properties or improvements in the affected area, but in no case may the minimum distance be reduced to less than that equal to 50% of the tower's height, or 50 feet, nor less than the minimum required setback depth applicable in the zoning district in which the tower is located.*
  - c) *The minimum distance between the tower and any other adjoining parcel of land or road must be equal to the minimum setback depth applicable in the zoning district, plus any additional distance necessary to ensure that the tower, as designed, will fall within the tower site.*
  - d) *The distances referred to above must be measured from the outside dimensions of the tower, not from the guy anchors.*

- e) *If the tower is more than 100 feet high, but less than 180 feet high, it must be engineered and constructed to accommodate at least one additional telecommunication user. If the tower is at least 180 feet high, it must be engineered and constructed to accommodate at least 2 additional telecommunication users. Provision of co-location sites on other towers is encouraged wherever feasible.*
- f) *The base of the tower and each guy anchor must be surrounded by a fence or wall at least 8 feet high, unless the tower and all guy anchors are mounted entirely on a structure over 8 feet high. Except for its entrances, the fence or wall must be screened with plant material so that no more than two-thirds of its surface is visible, within 3 years after its installation, from a public street or from any adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional.*
- g) *A buffer yard must be provided around the perimeter of the lease lot as in accordance with the requirements of Article 8, Landscaping & Buffering. A 40-foot-type C buffer yard is required along the inside perimeter of a leased lot or parcel for the utilization of telecommunication towers.*
- h) *Radio, television, or other electromagnetic transmission or reception on other properties may not be disturbed or diminished.*
- i) *The tower must meet the standards of the Federal Aviation Administration (FAA) for avoiding obstruction of navigable airspace and approaches to public airports (see Federal Aviation Regulations Part 77, as amended), and for marking and lighting structures to promote aviation safety (see FAA Advisory Circular 70/7460, as amended). Specifically, tower lighting must meet applicable FAA standards for either red obstruction lighting systems or dual lighting systems (red lighting for nighttime and medium-intensity flashing white lighting for daytime). If a tower is proposed to be located within 1,000 feet of a private use airport, the application must so indicate.*
- j) *Output from the tower's antennas must meet the minimum standards of the Federal Communications Commission (FCC) relating to the environmental effects of radio frequency emissions.*

### *3) Standards for Specific Zoning Districts*

- a) *Residential Districts - Telecommunication towers in residential districts must comply with the following standards:*
  - i) *If the tower is more than 75 feet high, it must be located at least 1,500 feet from any other telecommunications tower greater than 75 feet high; provided, however, that this separation requirement does not apply from a tower if the applicant submits sufficient evidence to demonstrate that a reasonable effort to co-locate on that tower has been made, or that co-location on the tower will not technically satisfy the applicant's specific needs.*

- ii) *Buildings associated with the tower may not be used as an employment center for any worker (This provision does not prohibit the periodic maintenance or monitoring of equipment and instruments).*
  
- b) *Non-residential Districts - If the tower is more than 100 feet high, it must be located at least 1,000 feet from any other telecommunications tower greater than 100 feet high; provided, however, that this separation requirement does not apply from a tower if the applicant submits sufficient evidence to demonstrate that a reasonable effort to co-locate on that tower was made, or that co-location on the tower will not technically satisfy the applicant's specific needs.*

This Special Use Permit request has been evaluated for compliance with standards outlined in Section 5.3.12.Q, Telecommunication Facilities. Based on the applicant's submittal, the request is in conformance with all items.

Setbacks (2.a and 2.c): The minimum distance between the tower and an adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional, or from an adjoining local road separating the tower site from such a parcel, must be equal to the tower's height, but not less than 50 feet, nor less than the minimum setback depth applicable in the zoning district. This provision does not apply in relationship to any nonconforming residential use or the residence of a caretaker or watchman accessory to a permitted non-residential use.

As proposed, the tower meets setbacks requirements with a distance of two hundred eighty-three (283) feet from the western property boundary, six hundred thirty-four (634) feet from the north property boundary along NC Highway 53, three hundred eighteen (318) feet from the eastern property boundary and two thousand six hundred fifty-four (2,654) feet from the southern property line. The nearest single-family residences are located on the properties two hundred eighty-three (283) feet to the west and three hundred eighteen (318) feet to the east of the proposed telecommunication facility.

Telecommunication Users (2.e): As the tower is more than one hundred eighty (180) feet high, it must be engineered and constructed to accommodate at least two additional telecommunication users.

As proposed, the telecommunication facility shows space for up to five telecommunication users according to page three of the applicant's submitted narrative.

Fencing (2.f): The base of the tower and each guy anchor must be surrounded by a fence or wall at least 8 feet high, unless the tower and all guy anchors are mounted entirely on a structure over 8 feet high. Except for its entrances, the fence or wall must be screened with plant material so that no more than two-thirds of its surface is visible, within 3 years after its installation, from a public street or from any adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional.

The application proposes installing an eight (8) foot security fence with three strands of barbed wire as an anti-climbing device, thereby meeting the eight (8) foot requirement for telecommunication facilities (Exhibit 2).

Buffer Yard (2g): The application provides an existing wooded buffer as well as compliance with the buffering and fencing required in 2.f above, in accordance with the Pender County Unified Development Ordinance. The applicant shows landscaping surrounding the facility containing nineteen (19) Cypress Carolina Sapphires and seven (7) Dwarf Burford Hollies (Exhibit 3), along with existing vegetation, meeting the requirements of a Buffer C.

State and Federal Regulations (2.h,i, and j): As shown in Exhibit 4, the telecommunication facility will meet all FAA and FCC standards for illumination and environmental impacts, and the applicant will comply with all federal standards for radio frequency emissions. All applicable State and Federal permits will be obtained, including inspections and health department regulation compliance.

Tower Separation Requirements (3.a): If the tower is more than 100 feet high, it must be located at least 1,500 feet from any other telecommunication tower greater than 75 feet high; provided, however, that this requirement does not apply from a tower if the applicant submits sufficient evidence to demonstrate that a reasonable effort to co-locate on that tower was made, or that co-location on the tower will not technically satisfy the applicant’s specific needs. The applicant submitted evidence that co-location on a nearby tower is not feasible (Exhibit 5) and that there is not another tower, greater than seventy-five (75) feet in height, within a fifteen hundred (1,500) feet radius of the proposed tower, thus satisfying the tower separation requirement. The nearest tower is located approximately 2.65 miles to the east-northeast and is owned by Four County EMC (Exhibit 1).

Prior to the issuance of final zoning approval, a site development plan must be submitted and approved in accordance with applicable provisions of the Pender County Unified Development Ordinance. In addition, all other applicable state and federal permits and agency approvals must be obtained.

Use Type	Ref NAICS	Zoning Districts									
		RA	RP	RM	MH	PD	GB	OI	IT	GI	EC
MISCELLANEOUS USES											
Telecommunication Facilities		SD	SD			SD	SD	SD	SD	SD	

**EVALUATION:**

- A. **Public Notifications:** Advertisements for the proposal have been placed in the *Pender-Topsail Post & Voice*. Adjacent property owners were notified by first class mail; as well as a sign advertising the public hearing was placed on the subject property.
- B. **Basis for Granting SUP:** See Attachment A for approval procedures (§3.12.3 of Unified Development Ordinance) and revocation procedures (§3.12.4 of Unified Development Ordinance).
- C. **Unified Development Ordinance Compliance:** The property is currently zoned RA, Rural Agricultural zoning district and telecommunication facilities are permitted in the RA zoning

district by Special Use Permit, as prescribed by the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses.

**D. 2010 Comprehensive Land Use Plan Compliance:** The subject property is classified as Suburban Growth in the *2010 Comprehensive Land Use Plan*.

a. The SUP request may be supported by a policy within the *2010 Comprehensive Land Use Plan*:

i. **Policy 1A.1.5** -*The County supports a pro-business/pro-growth attitude, balanced by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike*

**E. Existing Land Use in Area:** There is existing farm equipment and buildings located at the extreme southern portion of the parcel. The surrounding properties are primarily rural and residential in nature, parcels adjacent to the subject property being occupied by vacant undeveloped land and single-family residential to the east and west.

**F. Site Access Conditions:** The proposed use will have direct access to NC Highway 53 using an existing thirty (30) feet wide access easement. The site's access will be subject to review and approval by the NCDOT.

**G. Conditions To Consider In Issuing the Special Use Permit For This Project:**

1. The project shall comply with all requirements of the Pender County Unified Developed Ordinance, specifically use standards outlined in Section 5.3.12.Q, Telecommunication Facilities.
2. Any violations of the conditions of this permit, confirmed by the Zoning Administrator shall result in this permit becoming void, if not corrected within 30 days of receipt of the notice of violation.
3. The applicant shall meet all other local, state and federal regulations.
4. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.
5. If subdivided, a plat indicating setbacks and conditions of this SUP shall be recorded meeting the standards of the Unified Development Ordinance.
6. Unless a request for additional time is granted or approved otherwise as a condition of the permit, a Special Use Permit shall expire and become void if final Zoning Approval has not been issued for the project within 24 months after the Notice of Approval of the Special Use Permit has been served on the applicant.

## **Attachment A**

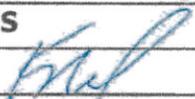
### **3.12.3 Procedures for Reviewing Applications**

- A. The special uses, as specified in the various districts, may be established only after review and approval by the Board of Commissioners.
- B. The Board of County Commissioners, acting in a quasi-judicial manner and setting, shall hear evidence from the applicant and any interested members of the public.
- C. The Board of Commissioners shall hold a public hearing on the application for a Special Use Permit within sixty (60) days after the completed application is filed.
- D. The Administrator shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date fixed for the hearing.
- E. All Special Use Permit applications must be presented to the Administrator for a determination of completeness.
- F. An appeal from a completeness determination may be made to the Board of Adjustment within twenty (20) days of the determination.
- G. The Board of Commissioners shall approve, modify, or deny the application for a Special Use Permit. In approving a Special Use Permit, the Board of Commissioners, with due regard to the nature and state of all adjacent structures and uses in the district within same is located, shall make written findings that the following are fulfilled:
  1. The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;
  2. The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;
  3. The proposed use shall not constitute a nuisance or hazard;
  4. The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;
  5. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;
  6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;
  7. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and
  8. The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of said use.

### **3.12.4 General Provisions Concerning Special Use Permits**

- B. Revocation - In any case where the Special Use Permit or the conditions of a Special Use Permit have not been or are not being complied with, the Administrator may initiate a notice of violation for the provisions of this ordinance and the conditions of the Special Use Permit not in compliance or the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners or both actions may be initiated. Procedures for notice of such hearing shall be the same as procedures for consideration of an initial application for a Special Use Permit and the permittee shall be notified.

## APPLICATION FOR SPECIAL USE PERMIT

THIS SECTION FOR OFFICE USE			
Application No.	SUP 11355	Date	3-13-15
Application Fee	\$ 500.00	Receipt No.	150548
Pre-Application Conference	—	Hearing Date	4-20-15
<b>SECTION 1: APPLICANT INFORMATION</b>			
Applicant's Name:	Optima Towers IV, LLC	Owner's Name:	H. Allen Wooten, etal
Applicant's Address:	PO Box 2041	Owner's Address:	PO Box 126
City, State, & Zip	Mount Pleasant, SC 29465	City, State, & Zip	Burgaw, NC 28425
Phone Number:	843-324-9745	Phone Number:	910-604-0049
Legal relationship of applicant to land owner:			
<b>SECTION 2: PROJECT INFORMATION</b>			
Property Identification Number (PIN):	3208-18-5058-0000	Total property acreage:	85.29
Zoning Classification:	RA	Acreage to be disturbed:	.25
Project Address :	4559 US Highway 53, Burgaw, NC		NAICS Code:
Description of Project Location:	Located in Northeast portion of parcel 3208-18-5058-0000. Site is accessed from Highway 53 Road via an existing access entrance that is used for current access to the surrounding properties owned by the Wooten family.		
Describe activities to be undertaken on project site:	Wireless communications facility with tower, including necessary access and utilities.		
<b>SECTION 3: SIGNATURES</b>			
Applicant's Signature	 Keith Powell, Optima Towers IV LLC	Date:	3/4/15
Owner's Signature	See attached signed zoning authorization form by H. Allen Wooten	Date:	
<b>NOTICE TO APPLICANT</b>			
<ol style="list-style-type: none"> <li>1. Applicant must also submit the information described on the Special Use Checklist.</li> <li>2. Applicant or agent authorized in writing must attend the public hearing.</li> <li>3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Commissioners or other authorized person agrees to table or delay the hearing.</li> <li>4. Applicant may wish to review the required findings for approval of a Special Use Permit found on page 1 of this application</li> <li>5. <b>Permit will become void after 12 months if a final zoning permit is not obtained, unless specifically requested at the time of public hearing.</b></li> </ol>			

Office Use Only							
<input type="checkbox"/> General/ Fees: \$300 +\$10 per acre over 5 acres, Max. of \$5,000 <input checked="" type="checkbox"/> Tower over 75 Feet/ Fees \$500 <input type="checkbox"/> Minor Revisions /Fees \$100 <input type="checkbox"/> Mining Fees \$750					<b>Total Fee Calculation: \$</b> 500.00		
					<b>Application#:</b>		
					<b>Date of Hearing:</b> 4-20-15		
Attachments Included with Application: (Please include # of copies)							
CD /other digital version	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Plan Sets 10	# of large	# of 11X17 10	Other documents/Reports	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	
<b>Payment Method:</b>	<b>Cash :</b> <input type="checkbox"/> \$ _____		<b>Credit Card:</b> <input type="checkbox"/> Master Card <input type="checkbox"/> Visa		<b>Check:</b> <input checked="" type="checkbox"/> Check # 3881		
Application received by:		Patronus				Date: 3-9-15	
Application completeness approved by:		Patronus				Date: 3-13-15	

### Special Use Permit Checklist

<input type="checkbox"/>	Signed Application Form (Both Applicant and Owner)
<input type="checkbox"/>	Application fee
<input type="checkbox"/>	Legible list of all property owners adjacent to the property upon which the use is to be located. The list shall include the mailing address & physical address of these property owners (The application will not be advertised for public hearing until the list is accurate & complete)
<input type="checkbox"/>	One business size envelope legibly addressed with first class postage for each of the adjacent property owners on the above list.
<input type="checkbox"/>	<b>Project Narrative</b> --Written description of the project ( <u>max of 3 pages</u> ) including the following: <ul style="list-style-type: none"> <li><input type="checkbox"/> Location of the project and type of access to project site</li> <li><input type="checkbox"/> Detailed description of the activities to be undertaken on the site, including hrs. of operation, # of employees, etc.</li> <li><input type="checkbox"/> Description of all construction activities to be undertaken on the site</li> <li><input type="checkbox"/> Describe type of utilities that will serve project and status of approval from applicable providers</li> <li><input type="checkbox"/> List of all state and federal permits that will be required for the project</li> <li><input type="checkbox"/> Describe any potential impacts the project will have on the community or adjacent properties such as traffic, noise, etc. and explain efforts to mitigate these impacts (<u>this item must be addressed by the applicant</u>). The applicant may also wish to describe any positive benefits the project will provide for the community and/or neighbors of the project.</li> </ul>
<input type="checkbox"/>	<b>Project Map(s)</b> --Map or maps of the special use project site with boundaries of the project if less than the parcel boundaries. This map or maps shall be drawn to a <u>readable</u> scale. The scale shall be not more than 200' to the inch. The map shall display an accurate bar graph scale, date prepared, north arrow and the author of the map. This map(s) shall show the following: <ul style="list-style-type: none"> <li><input type="checkbox"/> Boundaries of the property upon which the special use will be located, the acreage in the property and project site, with a north arrow and bar graph.</li> <li><input type="checkbox"/> Access from the site and/or project boundaries to the nearest publicly maintained road.</li> <li><input type="checkbox"/> Location of any existing structures or uses on the property and within 50' of the property.</li> <li><input type="checkbox"/> Location of the project boundaries if they do not coincide with the property boundaries.</li> <li><input type="checkbox"/> Existing and proposed structures, other on-site improvements, and location of all activities associated with the use, location of well, septic tank, and/or other utilities.</li> <li><input type="checkbox"/> Boundary of all clearing, grading, and/or land disturbing activities on the site and the calculated acreage of all land disturbing activities on the site.</li> <li><input type="checkbox"/> Parking, loading areas, and access to the project (See Article 7, Pender County UDO)</li> <li><input type="checkbox"/> Landscaping and buffering (See Article 8, Pender County UDO)</li> <li><input type="checkbox"/> All signs to be located on the property (See Article 10, Pender County UDO)</li> <li><input type="checkbox"/> Pedestrian walks, area lighting and flood lighting.</li> <li><input type="checkbox"/> Existing natural features of the site including, wooded areas, tree lines, ponds, streams, other water bodies or ditches on or adjacent to the site, designated flood hazard areas &amp; known or designated wetlands on the site.</li> <li><input type="checkbox"/> Drainage plan and/or direction of flow of runoff from the project and site.</li> <li><input type="checkbox"/> After review by the Planning and Community Development Department, additional information may be required to be submitted.</li> <li><input type="checkbox"/> Two full size and twenty reduced size (max. 11"x17") copies of this map(s) shall be submitted.</li> </ul>
<b>RETURN COMPLETED APPLICATION TO:</b> Pender County Planning & Community Development P.O. Box 1519 Burgaw, NC 28425	

Print Form

# HELLMAN YATES & TISDALE

ATTORNEYS AND COUNSELORS AT LAW

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March 6, 2015

## VIA FEDERAL EXPRESS

Megan O'Hare, Planner II  
Pender County Planning and Community Development  
805 S. Walker Street  
Burgaw, NC 28425  
(910) 259-2110

RE: Optima Towers IV, LLC's proposed 250-foot self support wireless communication facility to be located at 4559 Highway 53, Burgaw, NC 28425

Dear Megan:

We are pleased to present this application for a 250-foot self support wireless communications facility to be located at 4559 Highway 53, Burgaw, NC 28425 on behalf of Optima Towers IV, LLC. The underlying property is owned by H. Allen Wooten, et al, which is designated as Pender County tax map number 3208-18-5058-0000. The property is located in the Rural Agricultural (RA) district. This facility is desperately needed in order to provide adequate voice and advance data coverage to the surrounding area. We have taken the liberty of recasting the relevant sections of the Pender County Ordinance regarding wireless communication towers and antennas below with our response to the relevant section in bold:

### 5.3.11(P) Miscellaneous Uses - Telecommunication Facilities

- 1.Co-located - Telecommunication antenna units that are attached to structures constructed for purposes other than supporting telecommunication equipment may be no taller than 30 feet or 30% of the structure's height. Co-located towers must comply with all relevant standards of this Article.

**Applicant accepts and acknowledges this provision. However, this provision does not apply, as this is an application for a new tower.**

- 2.Freestanding - Freestanding telecommunication towers must comply with the following standards:
  - a. The minimum distance between the tower and an adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional, or from an adjoining local road separating the tower site from

such a parcel, must be equal to the tower's height, but not less than 50 feet, nor less than the minimum setback depth applicable in the zoning district. This provision does not apply in relationship to any nonconforming residential use or the residence of a caretaker or watchman accessory to a permitted non-residential use.

**Applicant accepts and acknowledges this provision. As shown on Sheet Z01 of the Site Plans and Drawings, attached hereto as Exhibit "1" and incorporated herein by reference, the proposed 250-ft. self support wireless communications facility is set back 318 feet from the front property line; 634 feet from the northwestern side property line; 2654 feet from the southeastern side property line; and 283 feet from the rear property line.**

- b. The Board of Commissioners, through the Special Use Permit public hearing, may reduce the minimum distance required above on finding that a lesser distance will not be injurious to properties or improvements in the affected area, but in no case may the minimum distance be reduced to less than that equal to 50% of the tower's height, or 50 feet, nor less than the minimum required setback depth applicable in the zoning district in which the tower is located.

**\* This provision is not applicable, as the proposed tower meets the setback requirements in subsection (2)(a).**

- c. The minimum distance between the tower and any other adjoining parcel of land or road must be equal to the minimum setback depth applicable in the zoning district, plus any additional distance necessary to ensure that the tower, as designed, will fall within the tower site.

**The setbacks for the RA zoning district are 30 feet in the front, 10 feet to the sides and 25 feet to the rear. As shown on Sheet Z01 of Exhibit "1," the proposed 250-ft. self support wireless communications facility is set back 318 feet from the front property line; 634 feet from the northwestern side property line; 2654 feet from the southeastern side property line; and 283 feet from the rear property line, thus ensuring that, in the unlikely event that the tower should fall, it would fall within the parent parcel.**

- d. The distances referred to above must be measured from the outside dimensions of the tower, not from the guy anchors.

**Applicant accepts and acknowledges this provision.**

- e. If the tower is more than 100 feet high, but less than 180 feet high, it must be engineered and constructed to accommodate at least one additional telecommunication user. If the tower is at least 180 feet high, it must be engineered and constructed to accommodate at least 2 additional telecommunication users. Provision of co-location sites on other towers is encouraged wherever feasible.

**The proposed self support wireless communications facility is 250-foot in height and is designed for five (5) communication carriers, as is shown on Sheet Zo2 of Exhibit "1."**

- f. The base of the tower and each guy anchor must be surrounded by a fence or wall at least 8 feet high, unless the tower and all guy anchors are mounted entirely on a structure over 8 feet high. Except for its entrances, the fence or wall must be screened with plant material so that no more than two-thirds of its surface is visible, within 3 years after its installation, from a public street or from any adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional.

**As shown on Sheets Zo2 and Zo3 of Exhibit "1," the proposed self-support wireless communications facility will be enclosed by a seven-foot-high chained link fence, topped with three strands of barbed wire as an anti-climbing device, for a total height of eight feet. In addition, please see Sheet Zo6 of Exhibit "1," which shows the landscaping plan by Optima Towers IV. Optima will plant 19 Cypress Carolina Sapphires and 7 Dwarf Buford Hollys to screen the compound.**

- g. A buffer yard must be provided around the perimeter of the lease lot as in accordance with the requirements of Article 8, Landscaping & Buffering. A 40-foot-type C buffer yard is required along the inside perimeter of a leased lot or parcel for the utilization of telecommunication towers.

**Please see Sheet Zo6 of Exhibit "1," which shows the landscaping plan by Optima Towers IV. Optima will plant 19 Cypress Carolina Sapphires and 7 Dwarf Buford Hollys to screen the compound.**

- h. Radio, television, or other electromagnetic transmission or reception on other properties may not be disturbed or diminished.

**Applicant accepts and acknowledges this provision.**

- i. The tower must meet the standards of the Federal Aviation Administration (FAA) for avoiding obstruction of navigable airspace and approaches to public airports (see Federal Aviation Regulations Part 77, as amended), and for marking and lighting structures to promote aviation safety (see FAA Advisory Circular 70/7460, as amended). Specifically, tower lighting must meet applicable FAA standards for either red obstruction lighting systems or dual lighting systems (red lighting for nighttime and medium-intensity flashing white lighting for daytime). If a tower is proposed to be located within 1,000 feet of a private use airport, the application must so indicate.

**The FAA Determination of No Hazard to Air Navigation is attached hereto as Exhibit "2" and incorporated herein by reference. As shown on the FAA Determination, the proposed self support wireless communications facility will employ a medium dual**

**lighting system.**

- j. Output from the tower's antennas must meet the minimum standards of the Federal Communications Commission (FCC) relating to the environmental effects of radio frequency emissions.

**Applicant accepts and acknowledges this provision.**

2. Standards for Specific Zoning Districts

- a. Residential Districts - Telecommunication towers in residential districts must comply with the following standards:
  - i. If the tower is more than 75 feet high, it must be located at least 1,500 feet from any other telecommunications tower greater than 75 feet high; provided, however, that this separation requirement does not apply from a tower if the applicant submits sufficient evidence to demonstrate that a reasonable effort to co-locate on that tower has been made, or that co-location on the tower will not technically satisfy the applicant's specific needs.
  - ii. Buildings associated with the tower may not be used as an employment center for any worker (This provision does not prohibit the periodic maintenance or monitoring of equipment and instruments).

**The proposed self support wireless communications facility is 250' a.g.l. and is located 2.65 miles away from the closest tower that is more than 75 feet in height (a 180-ft. tower owned by Four County EMC). This information is shown on Sheet Z01 of Exhibit "1."**

- b. Non-residential Districts - If the tower is more than 100 feet high, it must be located at least 1,000 feet from any other telecommunications tower greater than 100 feet high; provided, however, that this separation requirement does not apply from a tower if the applicant submits sufficient evidence to demonstrate that a reasonable effort to co-locate on that tower was made, or that co-location on the tower will not technically satisfy the applicant's specific needs.

**Applicant accepts and acknowledges this provision.**

**3.12.3 Procedures for Reviewing Applications**

G. The Board of Commissioners shall approve, modify, or deny the application for a Special Use Permit. In approving a Special Use Permit, the Board of Commissioners, with due regard to the nature and state of all adjacent structures and uses in the district within same is located, shall make written findings that the following are fulfilled:

- 1. The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;

**A telecommunications facility is listed as a special use in the RA district.**

2. The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;

**The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property. In fact, the proposed wireless telecommunications facility will not endanger, but actually will enhance, the safety of residents, employees, travelers and neighboring properties by providing adequate wireless infrastructure and effective access to 911 First Responders, fire, police, and EMS.**

3. The proposed use shall not constitute a nuisance or hazard;

**The proposed wireless telecommunications facility shall not constitute a nuisance or hazard. In fact, it will benefit the residents of this area of Pender County by providing access to effective wireless coverage for both voice and advanced data.**

4. The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;

**The proposed self support wireless communications facility will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners.**

5. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;

**Adequate utilities, access roads, drainage, sanitation or other necessary facilities will be provided.**

6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;

**The ingress and egress will be designed as to minimize the traffic congestion in the public roads. After installation, there will only be periodic maintenance visits to the site. The periodic maintenance visits will not cause traffic congestion in the public roads.**

7. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and

**Applicant will fully comply with the applicable regulations of the district in which the proposed tower is located.**

8. The proposed use shall not adversely affect surrounding uses and shall be placed on

a lot of sufficient size to satisfy the space requirements of said use.

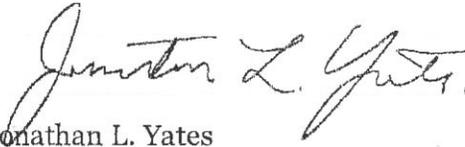
**The H. Allen Wooten, et al property is 85.29 acres and enjoys a healthy perimeter vegetative cover, providing plenty of space and separation for the proposed self support wireless communications facility.**

In addition please find the Memorandum of Need for the proposed facility with propagation studies prepared by CelPlan, which are attached hereto as Exhibit "3" and incorporated herein by reference. Also, we have included a list of the adjacent property owners, attached hereto as Exhibit "4," as well as stamped and addressed envelopes.

Finally, enclosed please find the application form, and a letter of authorization from the landowner granting permission to Optima Towers IV, LLC and myself to file all permit applications on their behalf. On behalf of Optima Towers, we thank you very much for your time and consideration in the review of this application. If you have any questions or if we can provide any additional information, please call me at my direct line of 843-414-9754 or 843-813-0103. We look forward to working with you and your staff on this project for Optima Towers.

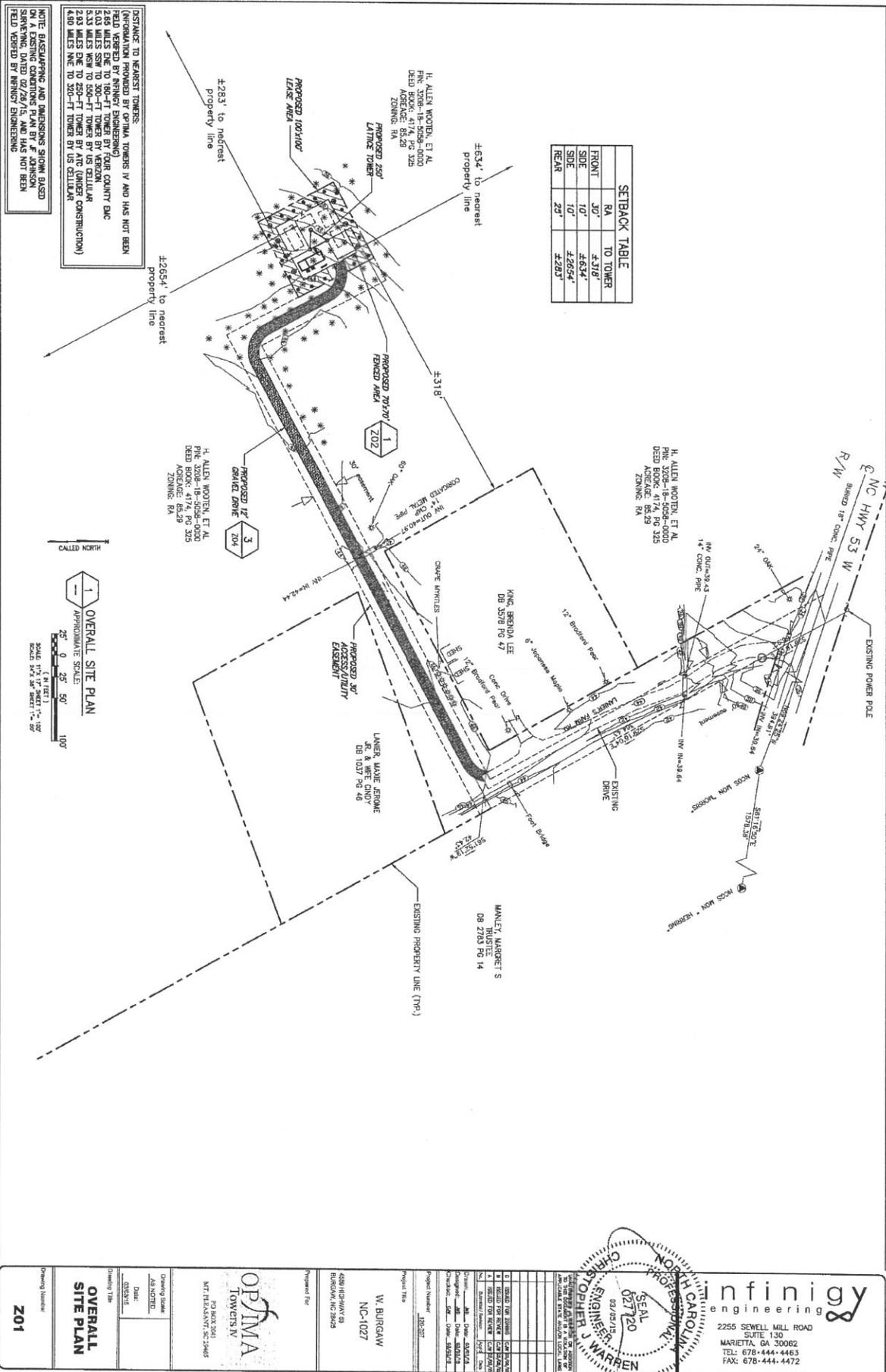
With warmest regards, I am

Very truly yours,



Jonathan L. Yates

JLY:edh  
Enclosures



**infinigy**  
 engineering

2255 SEWELL MILL ROAD  
 SUITE 130  
 MARIETTA, GA 30062  
 TEL: 678-444-4463  
 FAX: 678-444-4472

Professional Engineer  
 J. WARREN  
 02/28/15  
 SEAL 027120

**OPTIMA**  
 TOWERS IV

M.F. HILSON/NC 25465

Project Name: 45th HIGHWAY 88 BUILDING, NC 28045

Project Number: 105-207

Client: W. BURGAW  
 NC-1027

Drawn By: [Blank]

Checked By: [Blank]

Scale: AS SHOWN

Date: [Blank]

Project Title: [Blank]

Overall Site Plan  
 201







Mail Processing Center  
 Federal Aviation Administration  
 Southwest Regional Office  
 Obstruction Evaluation Group  
 2601 Meacham Boulevard  
 Fort Worth, TX 76193

Exhibit 4

Aeronautical Study No.  
 2015-ASO-416-OE

Issued Date: 02/02/2015

Keith Powell  
 Optima Towers IV, LLC  
 P.O. Box 2041  
 Mt. Pleasant, SC 29465

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:           Antenna Tower NC-1027-B W Burgaw  
 Location:           Burgaw, NC  
 Latitude:           34-32-23.77N NAD 83  
 Longitude:          78-00-00.50W  
 Heights:            37 feet site elevation (SE)  
                           265 feet above ground level (AGL)  
                           302 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, a med-dual system - Chapters 4,8(M-Dual),&12.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

This determination expires on 08/02/2016 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates , heights, frequency(ies) and power . Any changes in coordinates , heights, and frequencies or use of greater power will void this determination. Any future construction or alteration , including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law , ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (816) 329-2526. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2015-ASO-416-OE.

**Signature Control No: 240590604-242153002**  
Bill Kieffer  
Specialist

( DNE )

Attachment(s)  
Frequency Data  
Map(s)

cc: FCC

Frequency Data for ASN 2015-ASO-416-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
698	806	MHz	1000	W
806	824	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1850	1910	MHz	1640	W
1930	1990	MHz	1640	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W

TOPO Map for ASN 2015-ASO-416-OE





**CelPlan**  
*Wireless Global Technologies*

March 6, 2015

Kyle Breuer  
Director  
Planning and Community Development  
Pender County  
805 South Walker Street  
Burgaw, NC 28425

Re: Optima Towers proposed communications facility at 4559 NC Highway 53, Burgaw, NC

Dear Mr. Breuer,

I appreciate the opportunity to address and demonstrate that co-location(s) on any existing tower, antenna, or useable structure in search area for the proposed tower is not reasonable or possible to provide the necessary coverage to the vicinity of NC Highway 53 west of Burgaw North from Coras Grove Road, West from Piney Woods Road, East from Violets Lane, and South from Foxwood Drive. To provide the minimum level of coverage requirements and to meet the Pender County's zoning ordinance, a new tower of approximately 250-ft in height is required. We reviewed the following information, submitted to us by Optima Towers:

1. Current transmitting locations of the PCS and Cellular carriers in and around the residential and commercial areas of west of Burgaw in vicinities north and south of NC Highway 53;
2. The current available coverage requirements including existing structure evaluation and user transmitting-receiving locations;
3. Residential-Commercial layout and density, physical properties, and general usage type by user (voice-data-seasonal-annual);
5. Existing cellular PCS coverage for residential and commercial areas west of Burgaw, Wards Corner-Malpass Corner, and vicinities north and south of NC Highway 53 in Pender County.
6. Existing structures available for collocation respective to the needs of coverage;  
and
7. Properties zoned for wireless communication facilities.

Our analysis concluded that a tower in the proposed search area by Optima Towers is absolutely necessary in order to improve cellular, voice, and data usage. Cellular voice, data usage, and coverage have changed over the years and the development of the communications facilities have changed accordingly. Previously, communications facilities were developed to be big and tall to provide a large coverage area for voice calls and outside usage. Currently with the move to more extensive Cellular phone usage (vs landline phones) and after smart-phone development, the coverage necessary to handle extensive data and voice traffic requires communications facilities to be smaller and more precise in their location. Subsequently, the search areas for newer facilities have been reduced dramatically and the proposed search ring for this site is no more than a 2600-ft radius.

As this relates to the areas west of Burgaw and in vicinities north and south of NC Highway 53, our analysis shows an area of distressed or non-usable coverage exists North from Coras Grove Road,

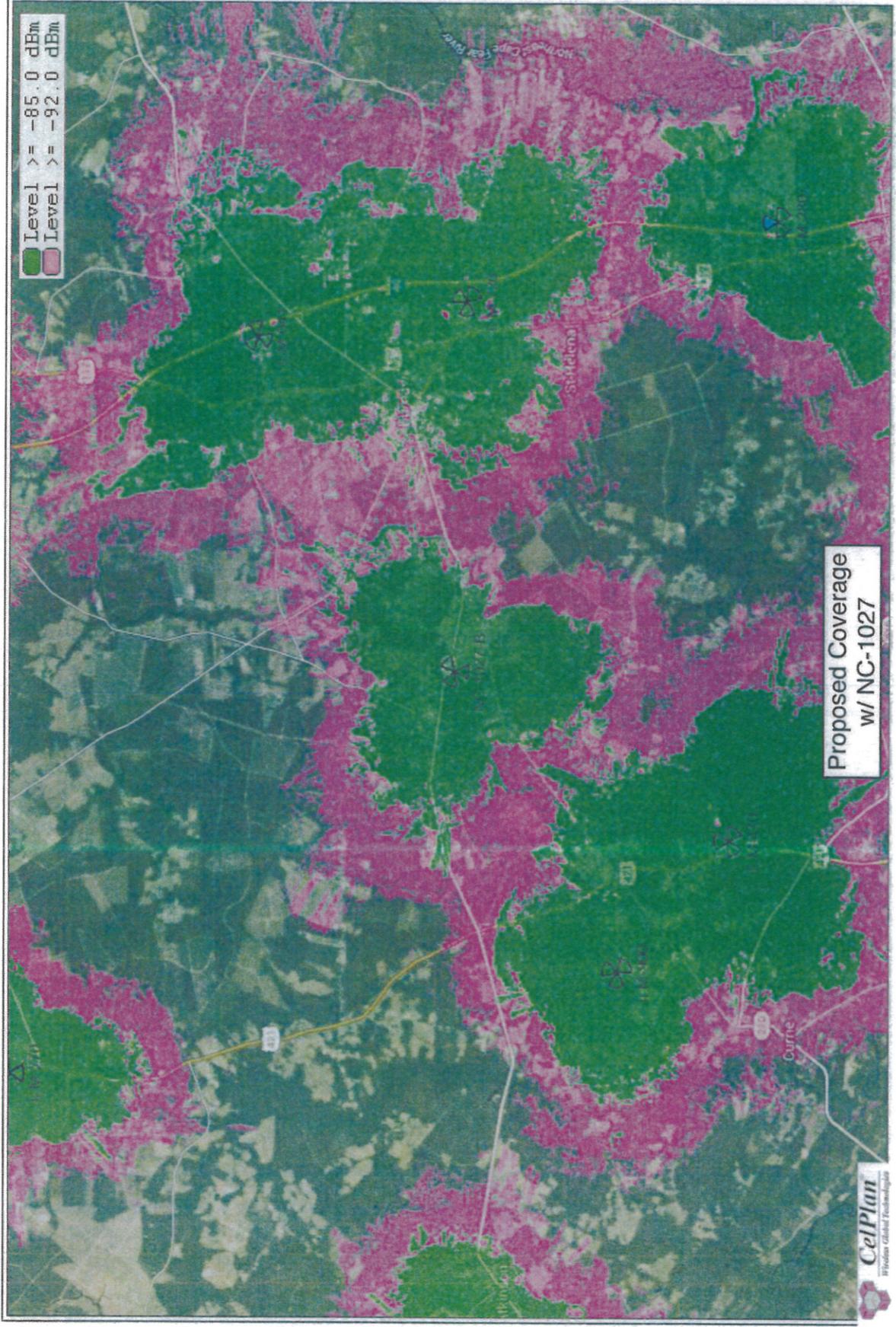
West from Piney Woods Road, East from Violets, and as far south from Fowxwood Road. The designated search area is a dynamic area that has high volume cellular and PCS traffic. In addition, this area experiences not only heavy vehicular use, but also residential and light commercial development. These dynamics require the a structure to be located in the center of this search area at or near the intersection of New Savannah Road and NC Highway 53. There are no existing communications facilities that will provide a complete solution for this area. The heights of the surrounding communication facilities are low to moderate in size, approximately 250-ft to 400-ft above ground level. The planned communications facility by Optima Towers will solve the existing problem and extend coverage to the distressed commercial and residential areas of Pender county, specifically the areas North from Coras Grove Road, West from Piney Woods Road, East from Violets Lane, and South from Foxwood Drive and surrounding vicinities. The radio frequency emissions from the planned Optima Towers facility will comply with all FCC standards.

Sincerely,



Karla Chagas

Electrical Engineer  
[karla@celplan.com](mailto:karla@celplan.com)  
703-259-4031

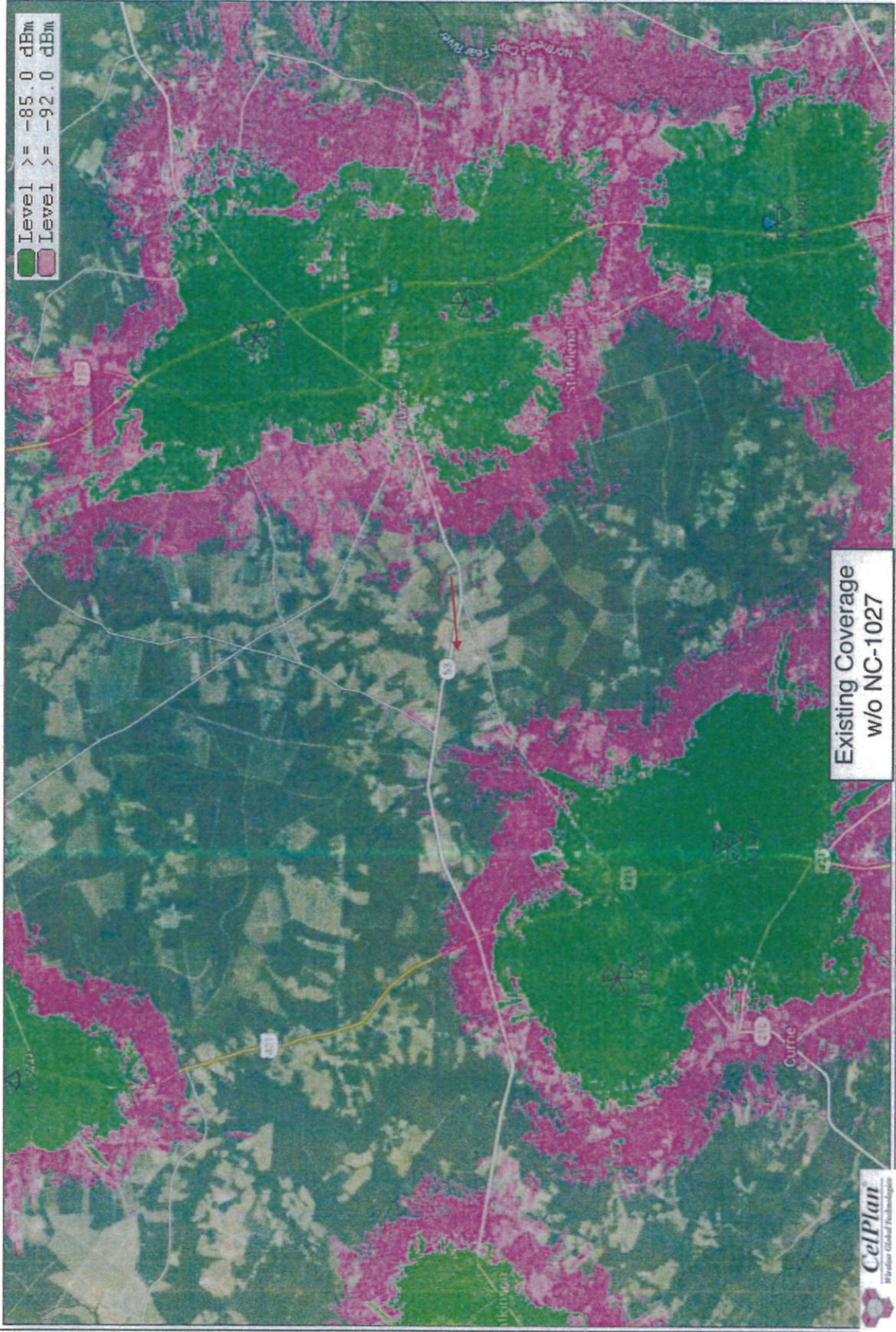


Level  $\geq$  -85.0 dBm  
Level  $\geq$  -92.0 dBm

Proposed Coverage  
w/ NC-1027

**CellPlan**  
Wireless Global Technologies

Level  $\geq$  -85.0 dBm  
Level  $\geq$  -92.0 dBm



Existing Coverage  
w/o NC-1027





**Applicant:**  
Optima Towers IV, LLC

**Owner:**  
H. Allen Wooten, et al.

**Special Use Permit:**  
#11355

**Legend**

 Subject Property



**Vicinity**





**Applicant:**  
Optima Towers IV, LLC

**Owner:**  
H. Allen Wooten, et al.

**Special Use Permit:**  
#11355

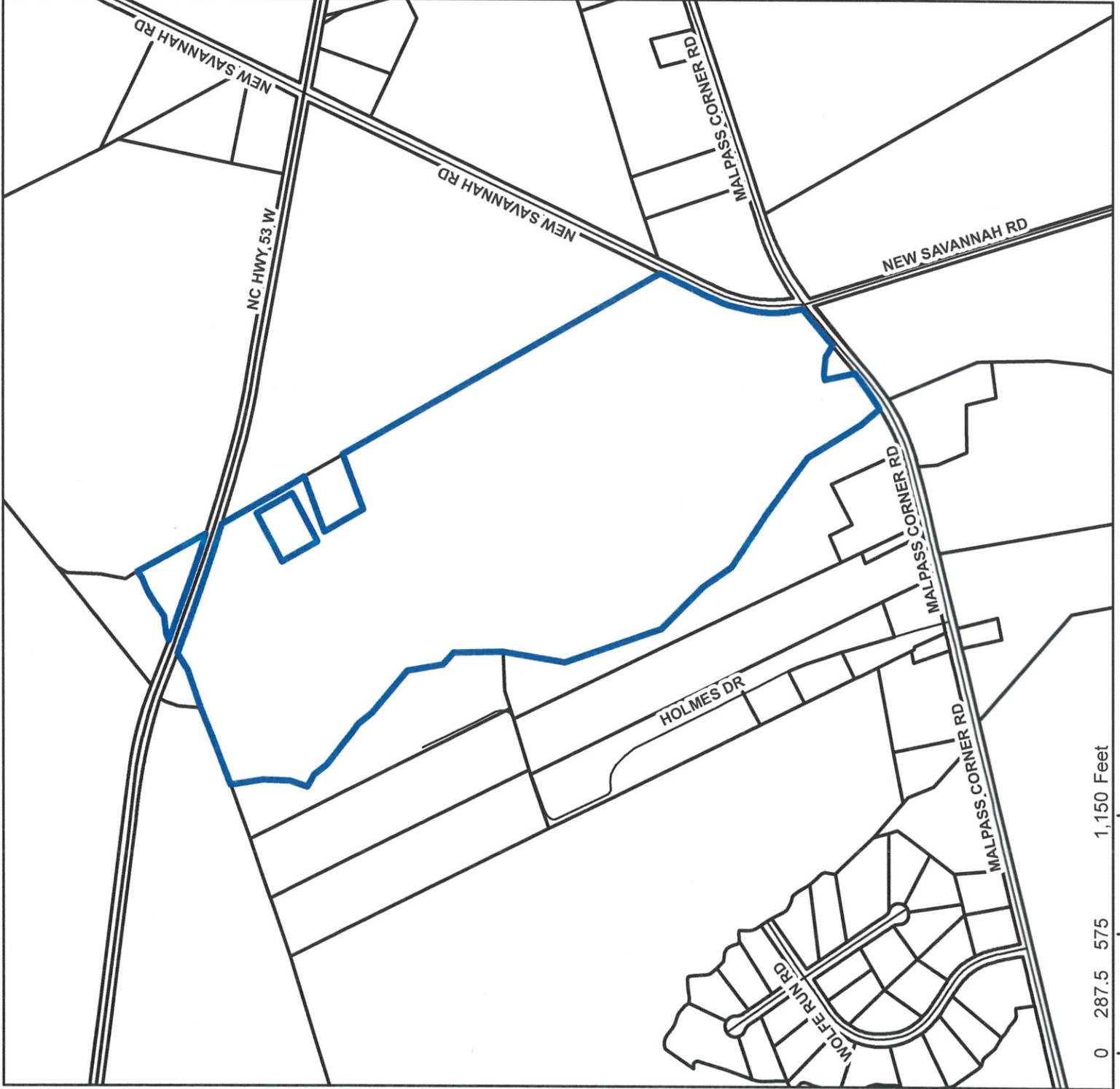
**Legend**

UDO Zoning

-  EC, Environmental Conservation
-  GB, General Business
-  GI, General Industrial
-  Incorporated
-  IT, Industrial Transition
-  MH, Manufactured Housing
-  O&I, Office & Institutional
-  PD, Planned Development
-  RA, Rural Agricultural
-  RA-Conditional Zoning 1
-  RP, Residential Performance
-  Subject Property



**Current Zoning**





**Applicant:**  
Optima Towers IV, LLC

**Owner:**  
H. Allen Wooten, et al.

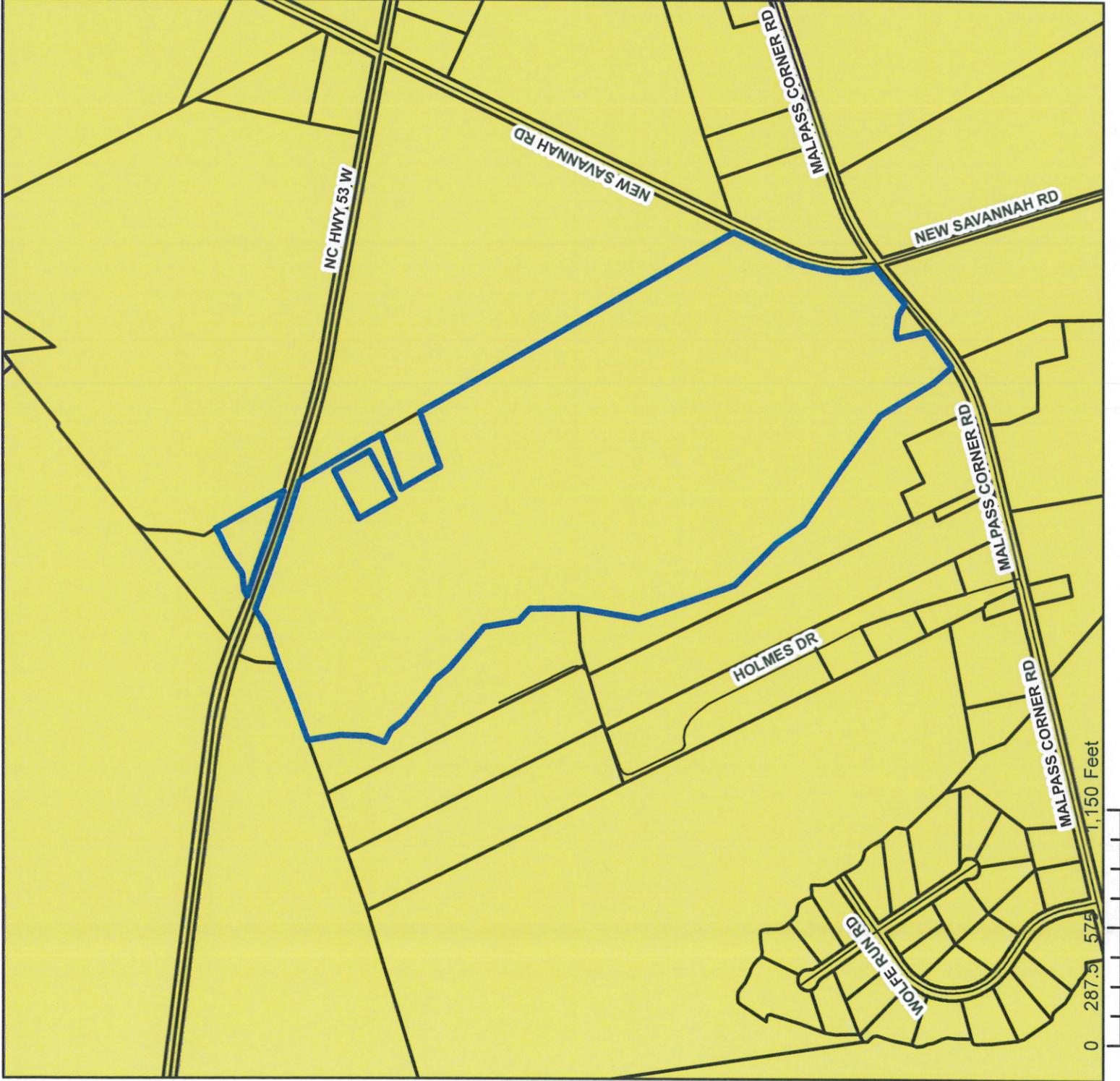
**Special Use Permit:**  
#11355

**Legend**

Future Land Use	
	Industrial
	Mixed Use
	Office, Institutional, Business
	Rural Growth
	Suburban Growth
	Subject Property



**Future Land Use**





**Applicant:**  
Optima Towers IV, LLC

**Owner:**  
H. Allen Wooten, et al.

**Special Use Permit:**  
#11355

**Legend**



Subject Property



2012 Aerial

