Town of Raymond
Town Meeting Warrant – June 14, 2011

ARTICLE 2: Shall Article 4 of the Town of Raymond Land Use Ordinance, as adopted May 21, 1994 and amended through June 1, 2010, be further amended by adding the following new Subsection H.1 and Appendix B, as shown below and shall Article 2, Section A be amended by adding "Conditional Zoning Districts" as number 8 on the list of established districts, and shall the Land Use Regulation Map be amended as shown below?

[Note: The use of the word "Article" within the ordinance does not indicate a separate warrant article.]

Raymond Land Use Ordinance

ARTICLE 4 – DISTRICT REGULATIONS

H. Conditional Zoning Districts

1. Conditional Zoning District #1, Raymond Hill Wireless Communication Facility Conditional Zone – Conditional Zoning District #1, the Raymond Hill Wireless Communication Facility Conditional Zone, is created as shown on the Land Use Regulation Map. Conditional Zoning District #1 is subject to the regulations applicable in the Rural District (R), as modified by the Conditional Zoning Agreement between the Town of Raymond and Maine RSA #1, Inc., Michael Major and Mary Jean Major attached to this ordinance as Appendix B.

Appendix B

Conditional Zoning Agreement
between
the Town of Raymond and Maine RSA #1, Inc.,
Michael Major and Mary Jean Major

This is a conditional zoning agreement made as of the _____ day of _____, 2011, by and between the Town of Raymond, a body corporate and politic, located in the County of Cumberland and the State of Maine ("Town"), and Maine RSA #1, Inc., a Maine corporation ("Applicant"), and Michael Major and Mary Jean Major (collectively "Owners").

WHEREAS, Applicant, and/or its affiliates, proposes to construct a single Wireless Telecommunication Facility in the form of a monopole tower one hundred twenty five feet (125') in height and supporting infrastructure, antennas, utilities, equipment shelter, back-up power generator, propane tank, associated equipment and an access road from Valley Road within Owners' property located at 19 Farm Road, Raymond, and identified on the Town Assessor's records as Tax Map 13, Lot 51 ("Subject Property"); and

WHEREAS, Applicant intends to enter into a lease or other agreement with Owners which would grant Applicant the right to construct, operate and maintain a single Wireless Telecommunication Facility on the Subject Property; and

WHEREAS, the Subject Property is located in the Rural District (R) under the Town of Raymond Land Use Ordinance (the "Ordinance"); and

WHEREAS, the Ordinance provides that Wireless Telecommunication Facilities are an allowed use in the Rural Zoning District, may be constructed up to 75' in height, with an additional 25' for each co-locator, up to 125', but are prohibited above 600' ground level on Raymond Hill and cannot exceed 30' in height above the existing mature tree line adjacent to the tower; and

WHEREAS, Applicant asserts the following reasons for the conditional rezoning:

- The Federal Communications Commission ("FCC") has issued Applicant a license to provide wireless service to Raymond and the surrounding areas. Applicants' service objective in Raymond is to provide adequate coverage, capacity, and connectivity to areas near the village, Egypt Road, Panther Pond, and to northerly areas including Crescent Lake, Raymond Pond, and Route 85. Applicant is not currently providing adequate service to this area and has determined it requires at 125' tall Wireless Telecommunication Facility at a 680' ground elevation in order to do so.

- Applicant's wireless technology requires a line of sight technology and its antennas cannot effectively operate if blocked by trees or topography. The Applicant has determined that the highest trees near the proposed Wireless Telecommunication Facility are currently 78' tall. It is generally accepted that, in New England, oak trees are known to grow to 90', maple trees to 75', and pine trees, over 100'. Such trees may grow as much as 6" per year. Accordingly, the 75' height restriction and the limitation to 30' above the existing mature tree line would place Applicant's antennas in existing tree canopy that will continue to grow taller to block signals to and from Applicant's antennas.

- Locating a Wireless Telecommunication Facility below 600' elevation on Raymond Hill would not provide connectivity with other Wireless Telecommunication Facilities in Applicant's network. Potential sites to the north and east areas of Raymond Hill that may meet the ground elevation criteria would negatively impact Raymond Pond, be virtually impossible to construct due to topography, and have radio frequency connectivity issues. Wireless Telecommunication Facilities are not permitted in the areas west of Raymond Hill.

and

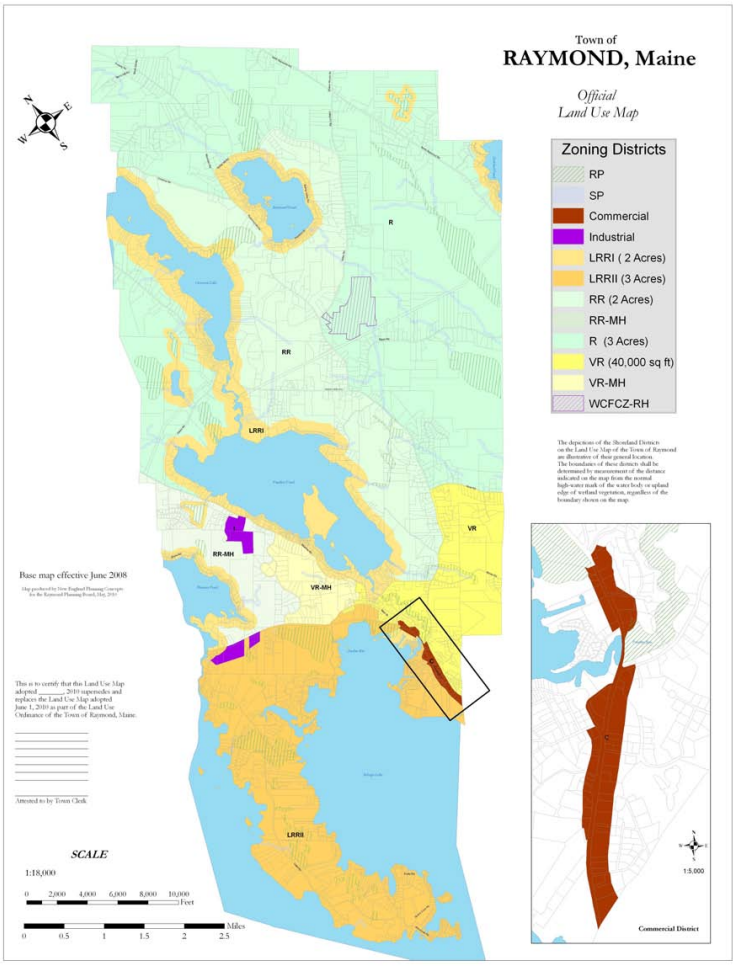
WHEREAS, the Raymond Planning Board has provided legal notice for and held a public hearing as required by Article 7, Section C. of the Ordinance and by 30-A M.R.S.A. § 4352(8) and has submitted its report; and

WHEREAS, the Conditional Rezoning is consistent with Policies and Goals listed in Section 12 of the Comprehensive Plan including: expand the commercial tax base; reduce tax burden to citizens; maintain adequate levels of public safety services (e.g. information on the State of Maine website indicated that up to 30% of all emergency calls in Maine came from cell phones in 2007); and permit new commercial growth; and

WHEREAS, the Conditional Rezoning is consistent with the existing and permitted uses within the Rural District where Wireless Telecommunication Facilities are permitted by the Ordinance;

NOW THEREFORE, in consideration of the mutual promises made by each party to the other herein, the parties covenant and agree as follows:

1. The Town shall amend the Land Use Regulation Map by adopting the map change amendment shown below:



2. A single Wireless Telecommunication Facility, as described in this Conditional Zoning Agreement and the application materials submitted by KJK Wireless on behalf of the Applicant, to include a 125' monopole tower and supporting infrastructure, antennas, utilities, equipment shelter, backup power generator, propane tank, associated equipment and an access road from Valley Road, sited within a fenced enclosure, on a 75' x 75' leased area as shown on the Site Plan entitled "U.S. Cellular, [site name] Raymond, ME, Site No.: 853462" dated August 25, 2009, shall be a permitted use on the Subject Property, subject to review under the provisions of Article 9, Section S Wireless Communications Facilities, and Article 10, Site Plan Review, of the Ordinance.

3. The Wireless Telecommunication Facility constructed pursuant to this Conditional Rezoning Agreement shall not be subject to the limitations of Article 9, Section S, Subsections 6(b) and 6(c), provided it is constructed and operated in accordance with the following conditions and restrictions.

A. The use permitted shall be limited to that described in this Conditional Rezoning Agreement, Applicant's FCC license, and as shown on Applicant's site plan entitled "U.S. Cellular, [Site Name]: Raymond, ME, Site No.: 853462" dated August 25, 2009.

B. The scale and density of development shall be restricted to that shown on Applicant's plan entitled "U.S. Cellular, [Site Name]: Raymond, ME, Site No.: 853462" dated August 25, 2009. Minor changes may be approved by the staff of the Town of Raymond.

C. Specifications for the design and layout of the buildings and other improvements shall adhere to that shown on Applicant's site plan entitled "U.S. Cellular, [Site Name]: Raymond, ME, Site No.: 853462" dated August 25, 2009. Minor changes, including co-location of communications uses may be approved by the staff of the Town of Raymond.

D. Applicant shall provide Raymond's Code Enforcement Officer a schedule for the commencement and completion of improvements prior to the commencement of construction.

E. Applicant shall provide performance guarantees securing completion of improvements, and guarantees against defects. Such guarantees shall be mutually agreeable between the Town of Raymond and Applicant.

F. Prior to the commencement of construction, Applicant shall submit to the Raymond Code Enforcement Officer letters from the Maine Natural Areas Program and the Maine Historic Preservation Commission that indicate there are no impacts to natural areas or historic locations.

G. Applicant shall make the Wireless Telecommunication Facility available to the Town for public safety communications as follows:

(1) Applicant shall accept and approve the Town's written application to locate two (2) antennas at the top of the tower, another antenna at an elevation of approximately 80 feet, and ground area for an equipment shed or cabinet, as follows:

i. a Department of Public Works antenna up to a 12 foot 4 bay folded dipole stick and coax.

ii. a Fire/Rescue/Public Safety antenna up to a four bay 12 folded dipole antennae with coax.

iii. a control unit – a small Yagi antenna and coax.

(2) The applicant shall pre-engineer the tower to accept the above equipment.

(3) Applicant shall provide ground space within the secure tower compound for the Town to install and maintain an equipment shelter or cabinet.

(4) Applicant shall, at its expense, install the above equipment at the time of tower construction provided the Town delivers the equipment to the site prior to or during the time the applicant constructs the tower.

(5) Applicant shall, at its expense, connect antennae and coax on the tower to the equipment building.

(6) The Town shall incur no charges for rental or use of the tower/building site.

(7) Applicant shall provide the foregoing tower space at no expense to the Town for as long as the tower is in existence, provided that the Town enter into a Lease Agreement similar to the attached exhibit __, to memorialize this arrangement.

(8) Notwithstanding any other provision of this Conditional Rezoning Agreement or of the Ordinance, the antennas located by the Town pursuant to this Section 3.g may extend up to 15 feet above the top of the tower.

4. The Applicant shall record this Conditional Zoning Agreement in the Cumberland County Registry of Deeds at Applicant's expense within 30 days following approval of the conditional rezoning by the Raymond town meeting.

5. This is the sole zoning for the property and except as otherwise set forth in this Conditional Zoning Agreement, all other requirements of the Rural District shall apply. Except as expressly modified herein, the use and occupancy of the property shall be governed by and comply with all applicable provisions of the Ordinance, including applicable provisions of Article 9, Section S.

6. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the land, and shall bind Applicant, Owners and their heirs, successors and assigns as well as any person in possession or occupancy of the property, and shall inure to the benefit of and be enforceable by the Town.

7. Any violation of any provision of this Contract Zoning Agreement shall constitute a violation of the Ordinance. The Town shall have the power to

enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Article 5 of the Ordinance and through legal action for specific performance of this Agreement. Penalties for violations shall be as set forth in 30-A M.R.S.A. § 4452.

8. By executing this Conditional Zoning Agreement, Applicant and Owners agree to the conditions contained herein.

9. In the event that Applicant or its successors or assigns fail to develop the Wireless Telecommunication Facility in accordance with this Agreement, or in the event of any other breach hereof by Applicant, this Agreement may be terminated by vote of the Raymond town meeting. In that event, the property may then be used only for such uses as are otherwise allowed by law.

TOWN OF RAYMOND

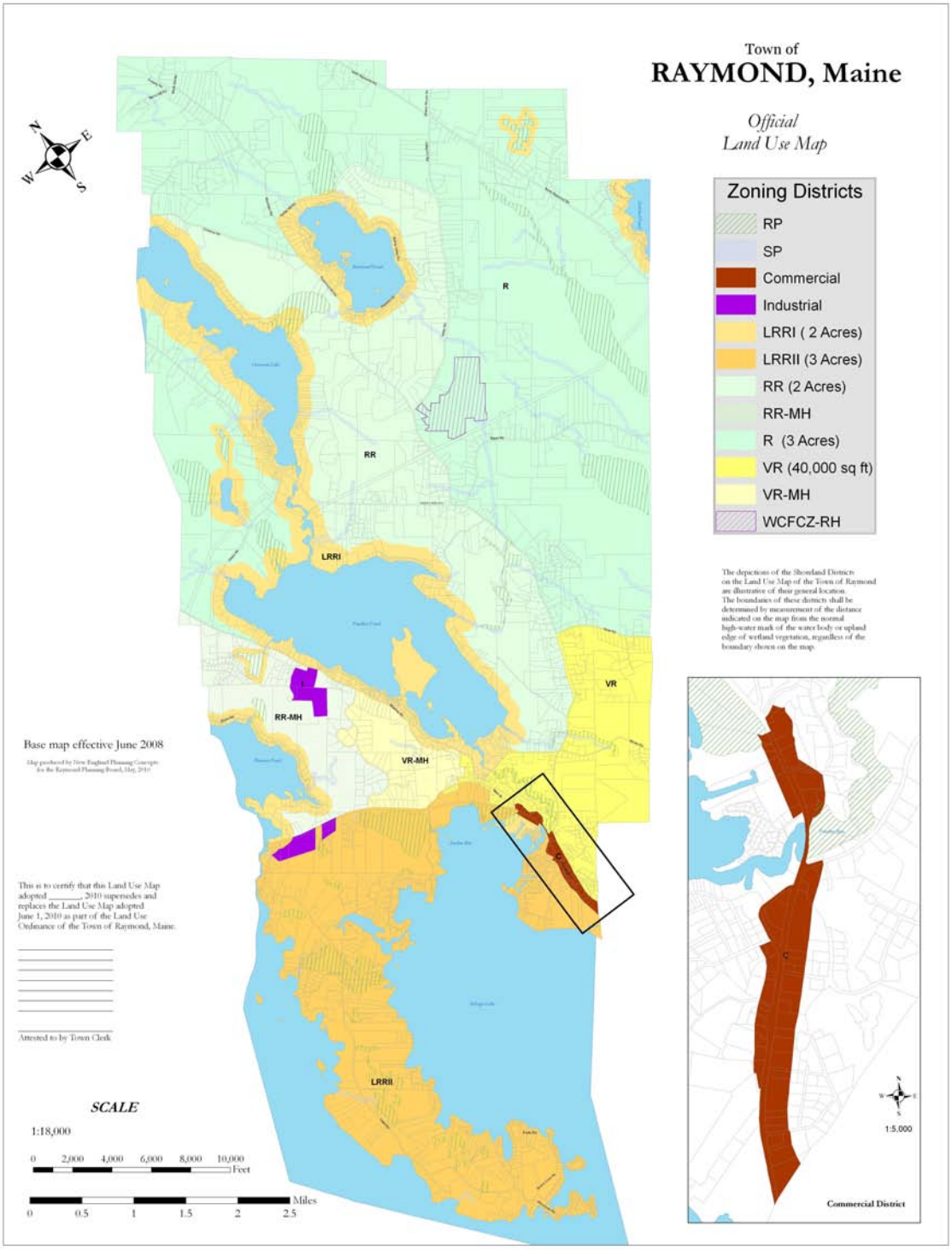
By: _____
Donald Willard, its Town Manager duly authorized by referendum vote on July 14, 2011

MAINE RSA #1, INC.

By: _____
_____
Its President

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. _____,
2011

PERSONALLY APPEARED the above-named Donald Willard in his capacity as Town Manager of the Town of Raymond and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town.

_____
Notary Public/ Attorney at Law

Map Amendment