

STATE OF NORTH CAROLINA

SUBLEASE AGREEMENT

COUNTY OF JACKSON

THIS LEASE AGREEMENT ("Lease") made and entered into as of the last date set forth in the notary acknowledgements below, by and between, the **STATE OF NORTH CAROLINA**, a body politic and corporate, hereinafter referred to as "SUBLESSOR", and the **COUNTY OF JACKSON**, a body politic and corporate, hereinafter referred to as "SUBLESSEE" (Sublessor and Sublessee each individually referred to herein as a "Party" and collectively referred to herein as the "Parties");

WITNESSETH:

THAT WHEREAS, Sublessor entered into a ground lease agreement dated November 27, 2006, incorporated herein by reference, in which Duke Energy leased to Sublessor that certain parcel or tract of land containing 1.0 acres, more or less, having an address of 3461 Tower Road, Sapphire, North Carolina and being more particularly shown and described as "PROPOSED COMMUNICATIONS FACILITY" on a survey for the project known as "TOXAWAY SITE # HP-1281, SCO ID # 10-08820-01A," sheet entitled "SITE PLAN" (sheet number Z-1), prepared by Tower Engineering Professionals (TEP #: 112735), dated 9/15/2011, attached hereto and incorporated herein as Exhibit A. (the "Site").

WHEREAS, the North Carolina Department of Public Safety, Division of Law Enforcement, State Highway Patrol has requested and approved the execution of this instrument for the purposes herein specified; and

WHEREAS, Sublessor, subject to the terms and conditions set forth herein, now desires to sublet the Premises, as defined herein, to Sublessee; and

WHEREAS, authority to approve and execute this Lease agreement was delegated to the Department of Administration, by resolution adopted by the Governor and Council of State on the 9th day of January, 2018; and

WHEREAS, the Parties have mutually agreed to the terms of this Lease as hereinafter set out.

NOW THEREFORE, the rental hereinafter agreed to be paid and the terms and conditions hereinafter set forth, Sublessor does hereby let and Lease unto Sublessee and Sublessee hereby takes and Leases from Sublessor for and during the period of time and subject

to the terms and conditions hereinafter set forth the Premises, as more particularly described herein.

1. Premises. The "Premises" shall consist of non-exclusive space to accommodate nine(9) antennas on that communications tower ("Tower") constructed by Sublessor on the Site (the non-exclusive space on the Tower for the location of said antennas being referred to herein as the "Tower Space"), along with sufficient space in Sublessor's equipment building ("Building") to house three (3) racks and as per the approved drawings referenced herein. The exact location of the Tower Space on the Tower and space in the Building where Sublessee may locate its Communications Equipment, as said term is defined herein, shall be designated by Sublessor in its reasonable discretion.

4. Term. The term of this Lease shall be for a period of fifteen (15) years, commencing on the 1<sup>st</sup> day of June 2018 and terminating on the 31<sup>st</sup> day of May 2033 (the "Term").

5.. Rent. Sublessee shall pay to Sublessor as rental for the Premises, the sum of ONE DOLLAR (\$ 1.00) for the Term.

6. Condition of Premises. Sublessor represents, subject to the terms of this Lease, that the Premises are suitable for the uses described in Paragraph 6 below.

7. Use and Equipment. Sublessee shall use the Premises for the purpose of installing, operating, maintaining, repairing, replacing and removing antennas, microwave dishes, transmission lines, cables, wires, receivers, generator(s), transmitter(s), transfer switch(es) and accessories necessary to broadcast radio waves (all such equipment whether located in the Building or on the Tower being collectively referred to herein as the "Communications Equipment") and for no other purpose without the prior written consent of Sublessor. Sublessee shall not use or knowingly permit any part of the Premises to be used for any unlawful purpose, nor for any purpose or in any manner which is in violation of any present or future Federal, State or local governmental laws or regulations, or which will constitute a public or private nuisance, nor for any business, use, or purpose deemed disreputable or extra hazardous. Sublessee shall not drill, cut, saw, burn, add to or remove any part of the Tower without the prior written consent of Sublessor. Sublessee agrees that the use and operation of any Communications Equipment installed on the Premises shall be consistent with the quiet use, enjoyment, and occupancy of Sublessor.

8. Fixtures. Sublessor hereby acknowledges and agrees that the Communications Equipment and any other items belonging to Sublessee on the Premises, shall remain the property of Sublessee and shall not be, become or be deemed by Sublessor to be fixtures upon the Premises.

9. Conditions Precedent to Installation or Modification. Notwithstanding anything to the contrary herein, the Parties agree that Sublessee's right to install its Communications Equipment or to make any modifications to its Communications Equipment at the Premises shall not commence until Sublessee, at its sole cost and expense, completes the following: (i) tenth order inter-modulation study; (ii) update of the most recent Tower loading analysis; (iii) provision for commercial electric service and emergency power to operate its Communications Equipment;

and (iv) receipt of all required permits (if any) for the installation of, or modification to, its Communications Equipment and all required regulatory or governmental approvals of Sublessee's proposed use of the Premises. Sublessor shall have the right to review said inter-modulation study, Tower loading analysis and governmental permits to determine if Sublessee's Communications Equipment will cause a degradation in Sublessor's VIPER system or adversely affect the physical and structural capacity of the Tower. After reviewing said inter-modulation study, Tower loading analysis and governmental permits, if Sublessor determines in its sole discretion that the installation of, or modification to, Sublessee's Communications Equipment will result in a degradation of the VIPER system or adversely affect the physical and structural capacity of the Tower, Sublessee shall, at its sole cost and to the satisfaction of Sublessor, make any modifications, upgrades or improvements to its Communications Equipment necessary to prevent any disruption to the VIPER system or any impairment to the structural integrity of the Tower.

10. Governmental Approvals and Compliance. Sublessor agrees that the Tower and its operations shall meet applicable rules and regulations of the Federal Communications Commission ("FCC"), the Federal Aviation Administration ("FAA"), as well as all applicable State codes and regulations. Sublessee, at its sole cost and expense, shall obtain any necessary governmental licenses or authorizations required for installation, repair, alteration, improvement, or expansion of its Communications Equipment and shall comply with government regulations applicable to its operations, including those of the FCC and FAA.

11. Sublessor's and Sublessee's Rights in the Event of Interference. The Communications Equipment shall be designed, constructed, installed, maintained, and operated in compliance with the applicable rules and regulations of the FCC and good engineering practices. Sublessee confirms to Sublessor that the installation and use of its Communications Equipment will not interfere with the operation of the VIPER system or any other equipment on the Tower. In the event the Communications Equipment causes interference with the VIPER system or other equipment on the Tower, Sublessee shall proceed immediately to correct and eliminate the interference. Sublessee shall cease operation of its Communications Equipment until the cause of such interference is removed. Should interference reasonably objectionable to Sublessee be caused by Sublessor's equipment, Sublessor shall cooperate with Sublessee to eliminate such interference. Sublessee expressly agrees to pay for such equipment as may be necessary to prevent its interference with any radio transmissions by Sublessor, and will also be responsible for purchasing any equipment to correct any interference that Sublessor's equipment may cause in Sublessee's use and operation of its Communications Equipment. If interference caused by the Communications Equipment is not corrected and eliminated within thirty (30) days after Sublessee is notified of the interference, then Sublessor may terminate this Lease forthwith without liability to Sublessee.

12. Repair and Maintenance. Sublessor shall, at all times during the Term, at its own expense, put and maintain in thorough repair and in good and safe condition the Tower, the Building and the Site, whether such maintenance is necessitated by wear, tear, obsolescence, government regulation, or defects; latent or otherwise. Sublessee shall, at all times during the Term, at its own expense, maintain its Communications Equipment.

13. Utilities. Sublessor shall permit Sublessee access to its electric power source so that Sublessee may obtain all electrical energy required to operate its Communications Equipment. Sublessor shall pay for all electricity needed to power and operate Sublessee's Communications Equipment.

14. Sublessor's Right of Access. Sublessor or its agents shall have the right to enter the Premises at all times in order to examine it, or to make such alterations, repairs, improvements, or additions to the Premises as Sublessor may deem necessary or desirable without the same constituting an eviction of Sublessee in whole or in part, or a breach of this Lease.

15. Sublessee's Right of Access. Sublessee, with Sublessor's prior approval, shall have the right of access to the Premises throughout the Term for the purposes of installing, inspecting, maintaining, operating, repairing, and removing its Communications Equipment; provided, however, that Sublessee and its agents and employees shall not compromise the security of the VIPER system or disturb or interfere with Sublessor's operations during such time as they are on the Premises.

16. Sublessor's Right to Terminate. In the event that Sublessor should elect, pursuant to the Ground Lease, to abandon its use and possession of the Tower, Building and Site, this Lease shall terminate without liability to Sublessor. Sublessor shall give Sublessee not less than thirty (30) days written notice of its intent to so terminate this Lease.

17. Surrender Upon Termination of Lease. Upon termination of this Lease, Sublessee shall surrender the Premises in as good condition as they were at the beginning of the Term, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Sublessee had no control or for which Sublessor is responsible pursuant to this Lease, excepted. It is understood and agreed that Sublessee shall have the right to remove from the Premises, at Sublessee's own expense and without damage or injury to the Tower, the Building or any other property of Sublessor, the Communications Equipment and all items of personal property, trade fixtures, and other items belonging to Sublessee used in connection with Sublessee's operations on the Premises.

18. Fire or Other Casualty Loss.

(a) If the Premises is totally or partially destroyed by wind, explosion, fire, or casualty of any kind, either Sublessor or Sublessee shall have the option of terminating this Lease or any renewal thereof, upon giving written notice at any time within thirty (30) days from the date of such destruction, and if in the State of North Carolina, adequate insurance coverage, as applicable, for (i) statutory workers' compensation including employers' liability; (ii) comprehensive general liability including personal injury, broad form property damage, independent contractor, products/completed operations and, only if applicable, XCU (explosion, collapse, underground) and; (iii) automobile liability; and (iv) fire and extended coverage insurance. Notwithstanding the rights of any insurer, nothing herein shall affect the authority of the Attorney General of North Carolina, including but not limited to, the Attorney General's authority to represent Sublessor in any and all litigation.

19. Liability.

(a) To the extent permitted by applicable law, Sublessee shall be liable for the negligent or intentional acts or omissions of its agents and employees and shall save Sublessor harmless from and against any and all loss, damage, claim, demand, liability, or expense, including reasonable attorney fees, by reason of damage to person or property on or about the Premises or the Site, which may arise or be claimed to have arisen as a result of the use of the Premises by Sublessee or which may arise out of the installation, operation, repair, maintenance, inspection, or removal of Communications Equipment by Sublessee, its agents or employees, except where such loss or damage arises from the willful or negligent misconduct of Sublessor, its agents or employees.

(b) As between Sublessor and Sublessee, Sublessor, subject to the terms of this Lease, will be primarily liable for the negligent or intentional acts or omissions of its agents and employees. As to third parties, Sublessor is an immune sovereign and is not ordinarily subject to suit. However, Sublessor has enacted Chapter 143, Article 3, of the North Carolina General Statutes (the "Tort Claims Act"), pursuant to which Sublessor may be liable for the torts of its officers and employees, within the terms of the Tort Claims Act; accordingly, Sublessor will be primarily liable for any claims within the coverage of the Tort Claims Act. No provision of this Lease shall be construed as constituting a waiver of Sublessor's sovereign immunity or Sublessor's immunity under the Eleventh Amendment of the Constitution of the United States.

20. Hazardous Materials.

(a) For purposes of this Lease: (i) "Hazardous Material" or "Hazardous Materials" means and includes, without limitation, (1) solid or hazardous waste, as defined in the Resource Conservation and Recovery Act of 1980, or in any applicable state or local law or regulation, (2) hazardous substances, as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), or in any applicable state or local law or regulation, (3) gasoline, or any other petroleum product or by-product, (4) toxic substances, or rodenticides, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975, or in any applicable state or local law or regulation, as each such Act, statute, or regulation may be amended from time to time; (ii) "Release" shall have the meaning given such term, in Environmental Laws, including, without limitation, CERCLA; and (iii) "Environmental Law" or "Environmental Laws" shall mean "Super Fund" or "Super Lien" law or any other federal, state, or local statute, law, ordinance, or code, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be legally in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated and officially adopted thereunder or in connection therewith: Super Fund Amendments and Reauthorization Act of 1986 ("SARA"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"); The Clean Air Act ("CAA"); the Clean Water Act ("CWA"); the Toxic Substance Control Act ("TSCA"); the Solid Waste Disposal Act ("SWDA"), as amended by the Resource Conservation and Recovery Act ("RCRA"), the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970 ("OSHA"). All obligations and liabilities arising under this Paragraph 20 which arise out of events or actions occurring prior to the expiration or termination of this Lease shall survive the assignment of this Lease and the expiration, termination, cancellation or release of record of this Lease.

(b) Sublessee agrees that it will conduct its activities on the Premises and the Site in compliance with all applicable Environmental Laws. As between Sublessee and Sublessor, Sublessee, subject to the terms of this Lease and to the extent permitted by applicable law, will be primarily liable for the existence or discovery of any Hazardous Materials on the Premises or the Site or for the migration of any Hazardous Materials to other properties or for the release of any Hazardous Materials into the environment in violation of applicable Environmental Laws, arising solely from Sublessee's use of the Premises. As between Sublessor and Sublessee, Sublessor, subject to the terms of this Lease and to the extent permitted by the Tort Claims Act, will be primarily liable for the existence or discovery of any Hazardous Materials on the Site or for the migration of any Hazardous Materials to other properties or for the release of any Hazardous Materials into the environment in violation of applicable Environmental Laws, arising solely from Sublessor's use of the Site.

21. Right to Assign and Lease. Sublessee shall not assign this Lease or sublet the Premises or any part thereof without the prior written consent of Sublessor.

22. Prohibition on Gifts. North Carolina General Statute §133-32 prohibits the offer to, or acceptance by, any employee of Sublessor of any gift from anyone with a contract with Sublessor, or from any person seeking to do business with Sublessor. By execution of this Lease, Sublessee attests, for its entire organization, including its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.

23. Modification. No modification of any provision hereof and no cancellation or surrender hereof shall be valid unless made in writing and signed and agreed to by both Parties.

24. Binding Effect. Subject to the provisions herein, this Lease shall extend to and bind the Parties and their heirs, executors, administrators, successors and assigns.

25. Applicable Law. This Lease shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina, regardless of conflict of law principles.

26. Effect of Waiver. The failure of either Party to insist in any instance upon strict performance of any of the terms and conditions set forth in this Lease shall not be construed as a waiver of the same in any other instance.

27. Complete Agreement. This Lease represents the entire agreement between the Parties covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the Parties.

28. Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

29. Construction. No provision of this Lease shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party's having or being deemed to have prepared or imposed such provision.

30. Interpretation. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural may be substituted for the singular number in any place or places herein in which the context may require such substitution or substitutions.

31. Terms. Capitalized terms used in this Lease shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

32. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

33. Memorandum of Lease for Recording. At the request of either Party, Sublessor and Sublessee shall execute a memorandum of this Lease for recording in the public records at the requesting Party's sole cost and expense. The memorandum of Lease shall set forth the Parties, provide a description of the Premises, specify the Term and incorporate this Lease by reference.

34. Notices. All notices herein provided to be given, or which may be given by either Party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows:

to Sublessor: North Carolina Department of Public Safety  
Attn: Property Manager  
4227 Mail Service Center  
Raleigh, North Carolina 27699-4227

with copy to: State Property Office  
Attn: Manager, Leasing and Space Planning Section  
1321 Mail Service Center  
Raleigh, North Carolina 27699-1321

to Sublessee: County of Jackson  
Attn: County Manager  
401 Grindstaff Cove Road, Suite A-207  
Sylva, NC 28779

Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either Party may be changed by written notice.

[signatures begin on following page]

IN TESTIMONY WHEREOF, this Lease has been executed by the Parties, in duplicate originals, as of the dates set forth in the notary acknowledgements below.

SUBLESSEE:

COUNTY OF JACKSON

By: \_\_\_\_\_  
Name: Brian Thomas McMahan  
Title: Chairman,  
Jackson County Board of Commissioners

Attest:

\_\_\_\_\_  
Angela M. Winchester, Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF JACKSON

I, \_\_\_\_\_, a Notary Public, do hereby certify that ANGELA M. WINCHESTER personally appeared before me this day, with whom I am personally acquainted, who, being by me duly sworn, says that she is the Clerk to the Board of Commissioners of the County of Jackson, and that BRIAN THOMAS MCMAHAN is the Chairman of the Board of Commissioners of Jackson County, the entity which executed the foregoing and annexed instrument; that she knows the common seal of said County of Jackson; that the seal affixed to the name of the County of Jackson was subscribed thereto by said Chairman of the Board of Commissioners and that said Chairman of the Board of Commissioners and said Clerk to the Board of Commissioners subscribed their names thereto, and said common seal was affixed by order of the Board of Commissioners, and said instrument is the act and deed of said County of Jackson.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

(NOTARIAL SEAL-STAMP)

**SUBLESSOR:**

**STATE OF NORTH CAROLINA**

By: \_\_\_\_\_

Tim Walton, Director  
Department of Administration  
State Property Office  
State of North Carolina

**STATE OF NORTH CAROLINA**

**COUNTY OF WAKE**

I, \_\_\_\_\_, a Notary Public in and for the aforesaid County of Wake and the State of North Carolina, do certify that Tim Walton, personally came before me this day and acknowledged that he is Director of State Property Office, Department of Administration, State of North Carolina, and that by authority duly given and as the act of the State, has signed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the \_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

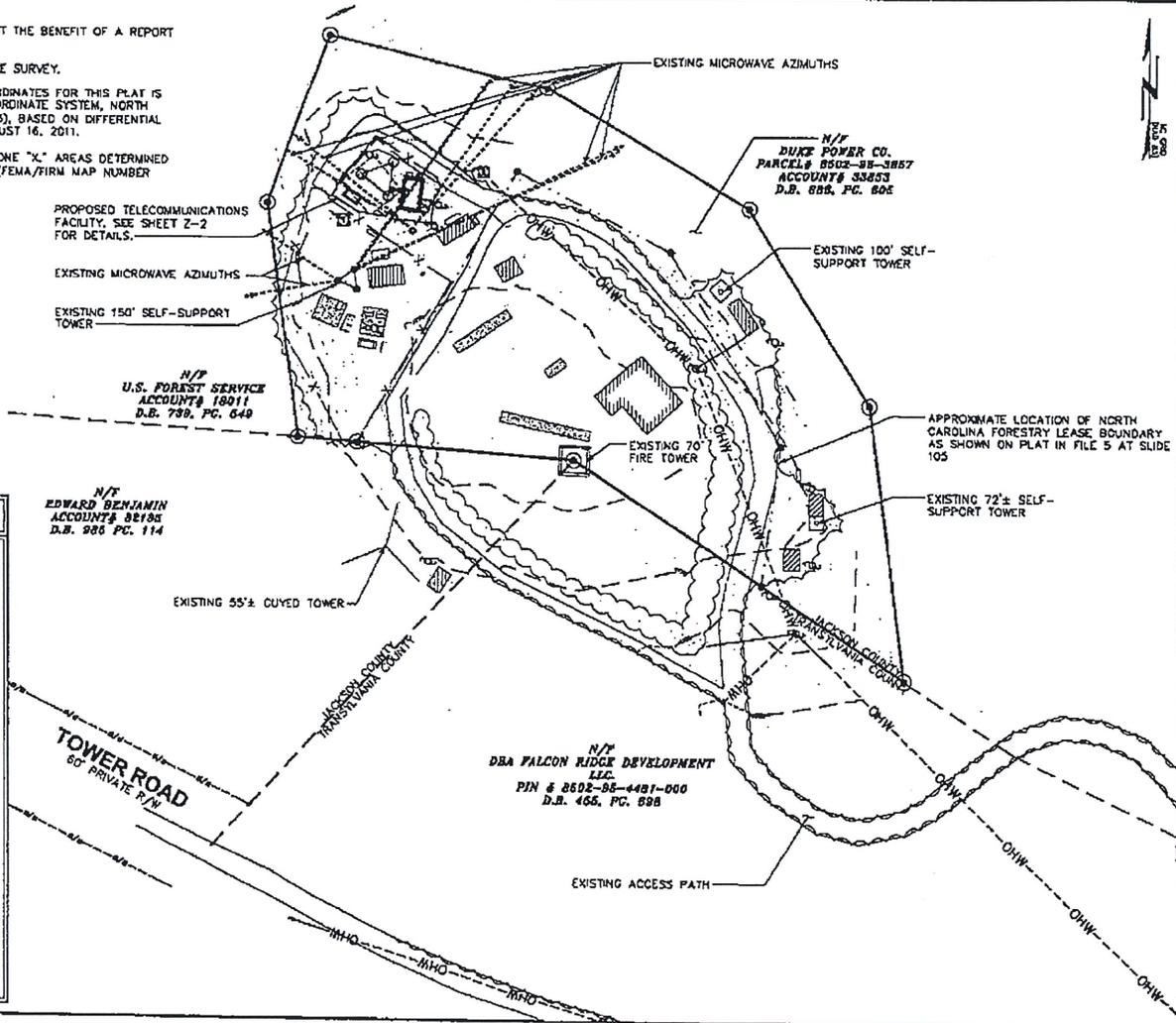
\_\_\_\_\_  
Print Name

My Commission Expires: \_\_\_\_\_

EXHIBIT A  
"TOXAWAY, HP-1281"  
(sheet Z-1)

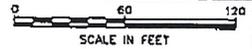
**NOTES:**

1. THIS PLAN HAS BEEN PREPARED WITHOUT THE BENEFIT OF A REPORT OF TITLE.
2. THIS PLAN DOES NOT REPRESENT A TITLE SURVEY.
3. THE BASIS OF THE MERIDIANS AND COORDINATES FOR THIS PLAN IS THE NORTH CAROLINA STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983 (NCSPCS NAD 83), BASED ON DIFFERENTIAL GPS OBSERVATIONS PERFORMED ON AUGUST 16, 2011.
4. THIS PROPERTY IS LOCATED IN FLOOD ZONE "X." AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN (FEMA/FIRM MAP NUMBER 3700850200K).
6. SUBJECT PIN: 8502-96-3857
7. PROPERTY OWNER: DUKE POWER COMPANY



LEGEND	
	WATER VALVE
	FIRE HYDRANT
	EXIST. PROPERTY LINE
	ADJ. PROPERTY LINE
	EXIST. UTILITY POLE
	EXIST. TELCO PEDESTAL
	EXIST. MANHOLE COVER
	EXIST. LIGHT POLE
	EXIST. CONTOUR LINE
	EDGE OF PAVEMENT
	OVERHEAD WIRE
	CHAIN LINK FENCE
	EXISTING TREE LINE
	IRON ROD FOUND
	PROPERTY CORNER

**SITE PLAN**  
SCALE: 1" = 60'



PLANS PREPARED FOR:  
  
3318 GARNER ROAD, BLDG. 2  
RALEIGH, NC 27607  
OFFICE: (919) 682-4440

PROJECT INFORMATION:  
**TOXAWAY**  
**SITE # HP-1281**  
**SCO ID # 10-08820-01A**  
3461 TOWER ROAD  
SAPPHIRE, NC 28774  
(JACKSON COUNTY)

PLANS PREPARED BY:  
  
**TOWER ENGINEERING PROFESSIONALS**  
3703 JUNCTION BOULEVARD  
RALEIGH, NC 27603-5263  
OFFICE: (919) 681-6351  
www.tepro.net  
N.C. LICENSE # C-1794

SEAL:

1	09-15-11	ZONING
0	06-30-11	PRELIMINARY ZONING
REVI	DATE	ISSUED FOR:
DRAWN BY: TAG   CHECKED BY: JBG		

SHEET TITLE:  
**SITE PLAN**

SHEET NUMBER:  
**Z-1**

REVISION:  
1  
TEP # 112735