

Sara Peterson

From: Newton, Trevor <Trevor.Newton@kimley-horn.com>
Sent: Friday, April 25, 2025 6:44 AM
To: Sara Peterson
Cc: Chris Cropley; Ariadne Will; Amy Ainslie; Kim Davis
Subject: VAR 25-01 Appeal Filing
Attachments: VAR 25-01_Appeal_Tidal Network_Sitka Zone 2_R0_042525.pdf

Good Morning Sara,

On behalf the Tlingit & Haida Indian Tribes of Alaska d/b/a Tidal Network, I'm passing along the attached appeal request to the Assembly concerning the Planning Commission's decision on VAR 25-01. We'd like to request we be on the May 29th agenda.

Please let me know if anything else is needed at this time.

Thanks,

Trevor Newton, P.E. (AL, GA, MS, NC, SC & TN)

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Central Council of the Tlingit & Haida Indian Tribes of Alaska

Tidal Network

Physical Address: PO Box 25500 • Juneau, Alaska 99802

Mailing Address: PO Box 25500 • Juneau, Alaska 99802

April 28, 2025

Sara Peterson
Municipal Clerk
City and Borough of Sitka Alaska
100 Lincoln Street, Suite 306, Sitka, AK 99835

RE: Appeal of VAR 25-01 Planning Commission Decision

Ms. Peterson,

The Central Council of the Tlingit & Haida Indian Tribes of Alaska d/b/a Tidal Network (the "Applicant") is respectfully filing this appeal in response to the Planning Commission's decision on VAR 25-01, in which a height variance was denied for a prospective communications tower located on 116 Nancy Court. Tidal Network believes the decision warrants reconsideration for the following reasons:

1. The Applicant demonstrated the presence of a significant coverage gap.
2. The Applicant demonstrated the proposal was the least intrusive means of closing the asserted coverage gap.
3. The Applicant demonstrated the proposal produced a minimal visual impact.
4. The Applicant would experience a greater wireless coverage gap if it were to construct a 35' tower instead of a 120' tower.
5. The Applicant would experience a greater wireless coverage gap if it were to place a tower in a nearby commercial or industrial zoned parcel when compared to the Nancy Court location.
6. The Applicant demonstrated that there are no available or technologically feasible alternatives, and the Planning Commission did not rebut this showing. The Planning Commission cited in its findings that a variance may not be solely granted to relieve pecuniary hardship or inconvenience. However, this was neither the factual basis of the Applicant's request nor the correct legal standard to apply. After making a good faith effort to identify less intrusive alternative sites in Sitka, the Applicant outlined why the Nancy Court property was the least intrusive means of filling the significant gap in wireless services in Zone 2. As such, the Applicant met its burden of showing the lack of available and technologically feasible alternatives. The Planning Commission did not rebut this showing by determining that there are available and feasible less-intrusive alternative sites that will fill the significant gap in coverage. Therefore, this finding by the Planning Commission should not be valid, as this cited reason was not the sole reason for the variance, but rather one of many to satisfy the applicable "least intrusive means" standard for communications tower siting. *See T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 996-999 (9th Cir. 2009); VAR 25-01 Staff Report for April 2, 2025,



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Hearing, Planning and Community Development Department, City and Borough of Sitka, at 3-6.

7. There is precedent in Sitka for towers in a residential zone at a height above 35'. There is an existing, approximately 150' guyed tower owned by Alaska Broadcast Communications, Inc. located at 611 Lake Street, which is in an R-1 zone.

Under the Telecommunications Act of 1996, Congress expressed clear intent to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." 110 Stat. at 56. While Congress preserved the authority of local governments to make zoning decisions regarding the placement and construction of wireless service facilities, it did so subject to certain limitations. Among them is the limitation that local regulations "shall not prohibit or have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. § 332(c)(7)(B)(II); *Sprint Telephone PCS, L.P. v. County of San Diego*, 543 F.3d 571, 576 (9th Cir. 2008) (en banc); *City of Anacortes*, 572 F.3d at 992.

The decision to deny this variance has the effect of restricting reliable service to Sitka residents and limits Tidal Network's ability to meet community needs in Zone 2. This appeal reflects our desire to continue working in partnership with the City and Borough of Sitka to build out essential infrastructure that strengthens Sitka's resilience, particularly in times of disruption and emergency.

Therefore, for the foregoing reasons, Tidal Network respectfully requests that the City Assembly overturn the Planning Commission's decision on VAR 25-01 and grant the requested variance to construct a 120' tower at 116 Nancy Court.

Gunalchéesh, Háw'aa (thank you) for your time and thoughtful consideration.

Respectfully,

Richard J. Peterson
President



EXISTING SBA TOWER
HEIGHT: 119' (122' TOP OF LIGHTNING ROD)
TOWER TYPE: MONOPOLE
FCC ASR: 1275367

PROPOSED TIDAL NETWORK TOWER
HEIGHT: 110' (120' TOP OF LIGHTNING ROD)
TOWER TYPE: MONOPOLE

0.66 MILES



Tlingit & Haida's

Tidal Network

Telecommunications & Broadband Infrastructure Enhancement

Sitka Program Initial Roll-Out @

112 & 116 NANCY COURT

SITKA, AK 99835

Supporting critical infrastructure development and broadband access in Southeast Alaska.

Shared Infrastructure Enhancement Objectives



CONNECTING COMMUNITY

1. SHARED TELCO INFRASTRUCTURE SUMMARY



Public Safety and Community Radio
System Shared Infrastructure



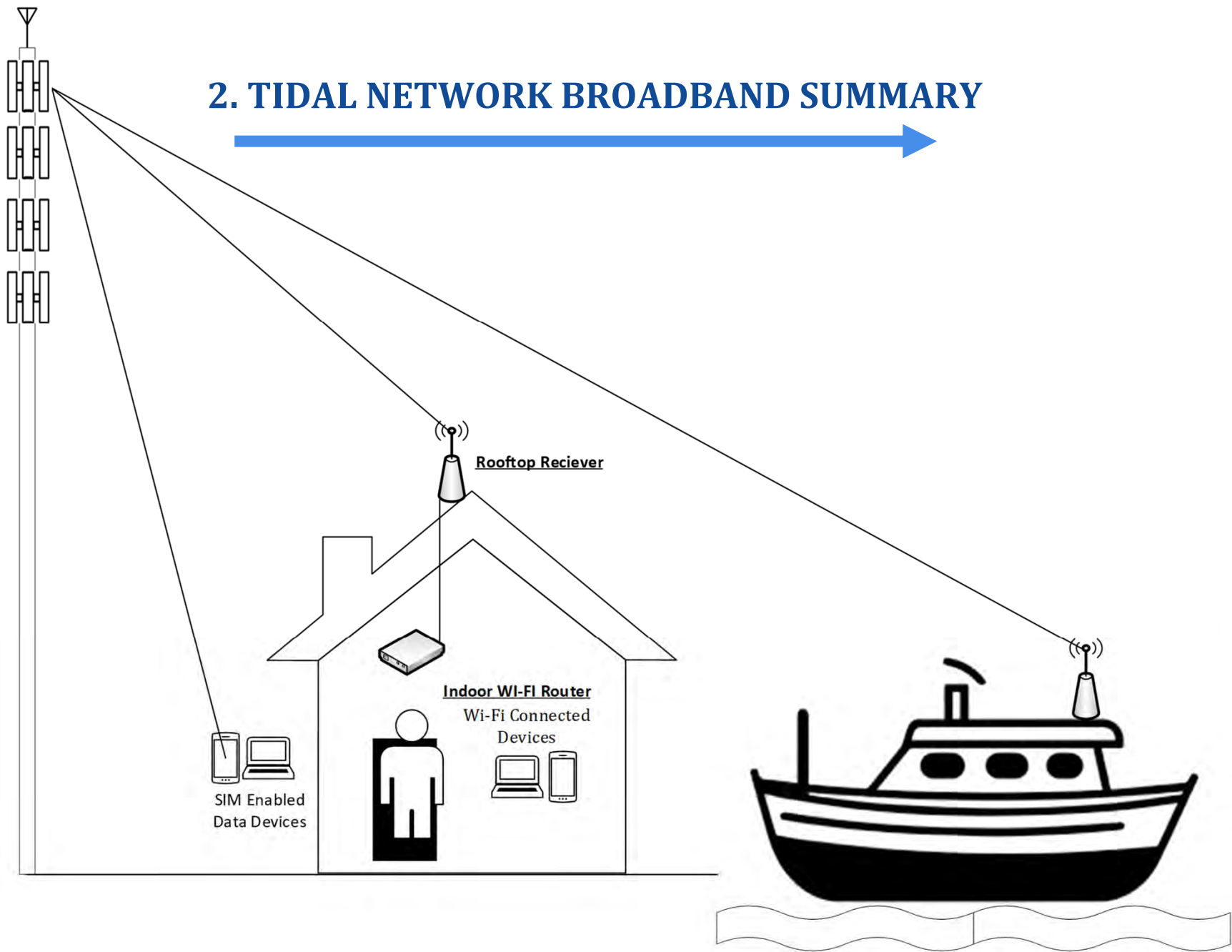
Dedicated Space for Cellular
Network Operators



Tidal Network Objectives in Southeast Alaska
Connect Communities via Shared Communications
Infrastructure

- 1. Telecommunication Infrastructure Enhancement
- 2. New Broadband Service & Residential Internet Access

2. TIDAL NETWORK BROADBAND SUMMARY



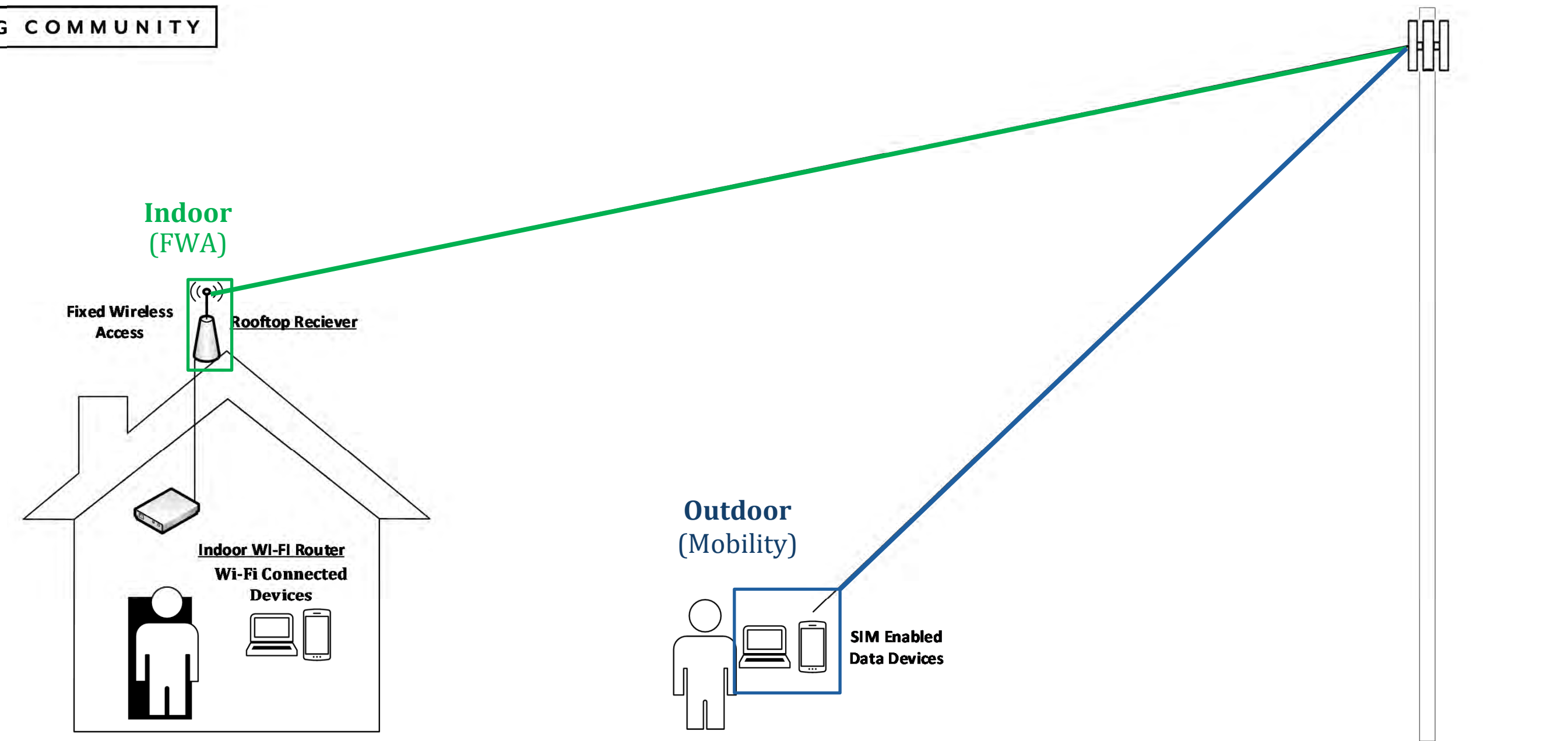
Tidal Network Broadband Service Delivery Methods

Indoor Internet Service: FWA (*Fixed Wireless Access*)

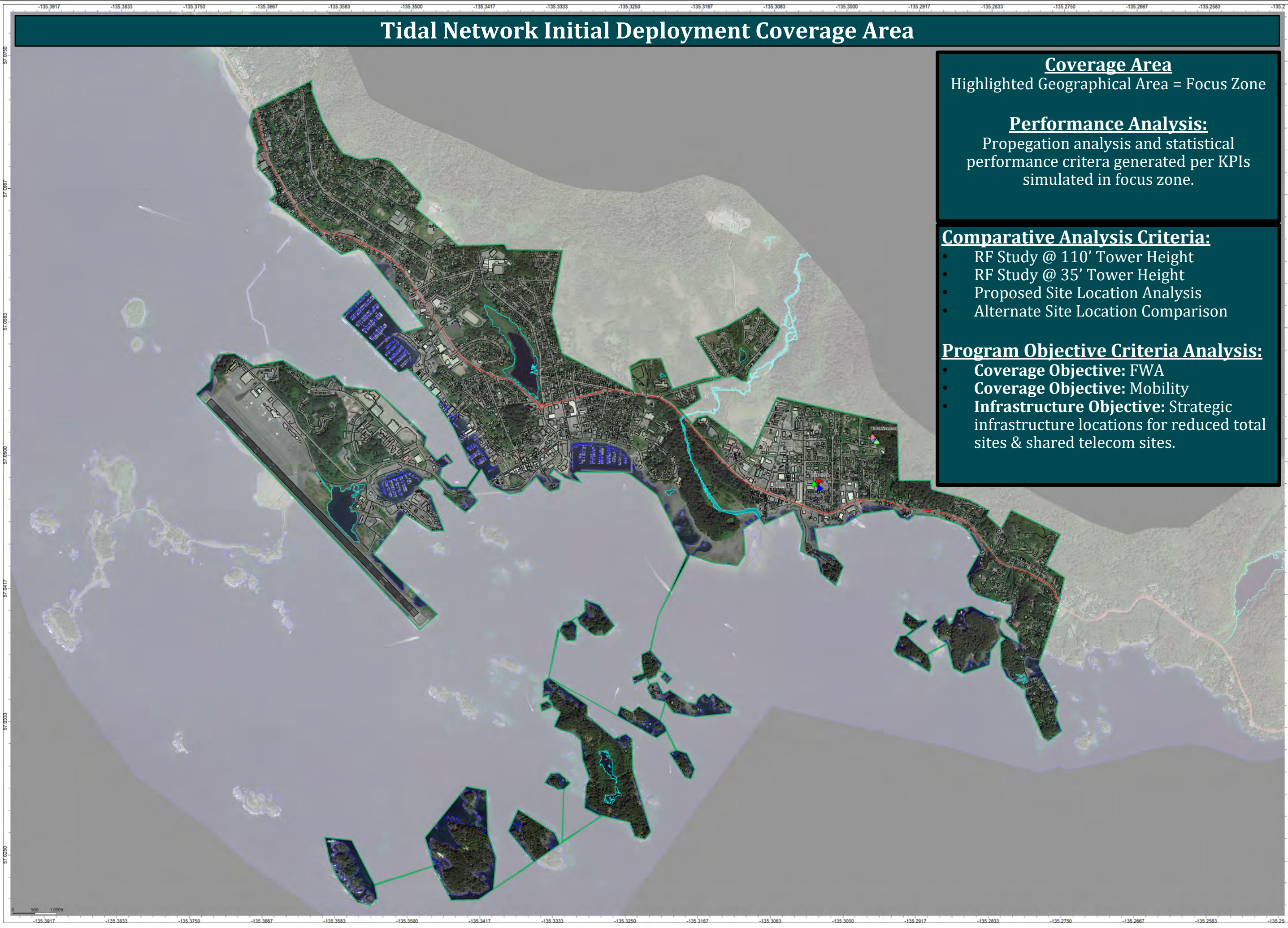
Outdoor Internet Service: Mobile (*SIM Enabled Data Devices*)



CONNECTING COMMUNITY



Tidal Network Initial Deployment Coverage Area



Coverage Area

Highlighted Geographical Area = Focus Zone

Performance Analysis:

Propegation analysis and statistical performance critera generated per KPIs simulated in focus zone.

Comparative Analysis Criteria:

- RF Study @ 110' Tower Height
- RF Study @ 35' Tower Height
- Proposed Site Location Analysis
- Alternate Site Location Comparison

Program Objective Criteria Analysis:

- Coverage Objective: FWA
- Coverage Objective: Mobility
- Infrastructure Objective: Strategic infrastructure locations for reduced total sites & shared telecom sites.



PROJECT LOCATION

112 & 116 NANCY COURT
SITKA, AK 99835

SHEET TITLE

Tidal Network Coverage Area

Project Description

Tidal Network Broadband Infrastructure Enhancement Project

Site ID:

Proposed + Alternative

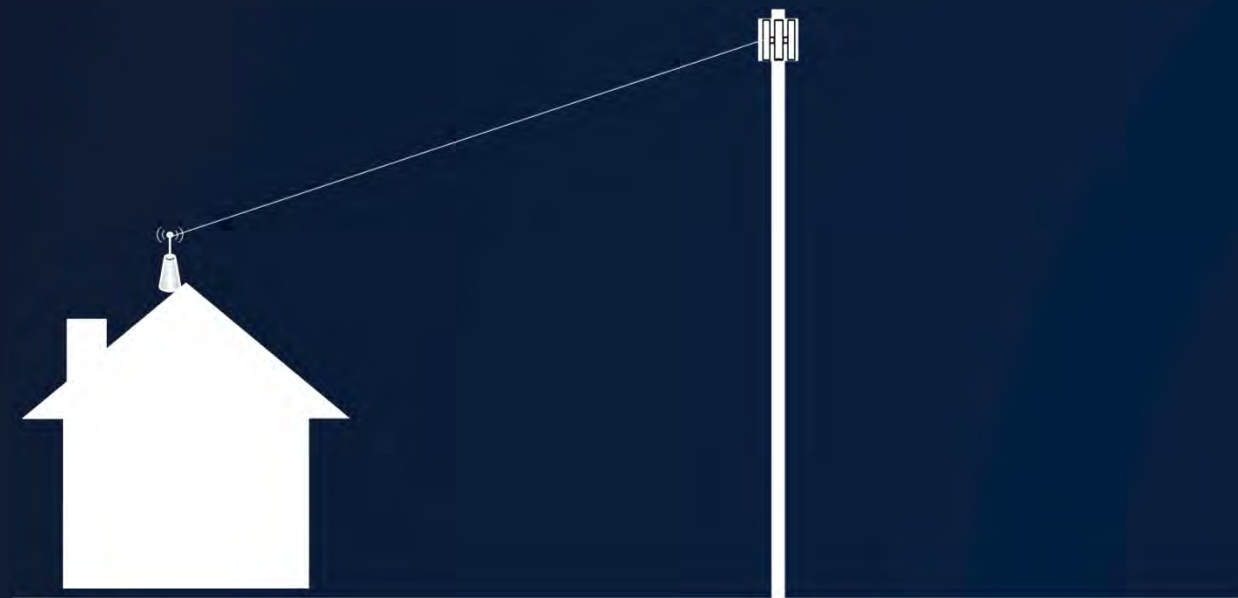
Sheet Number

Page-01

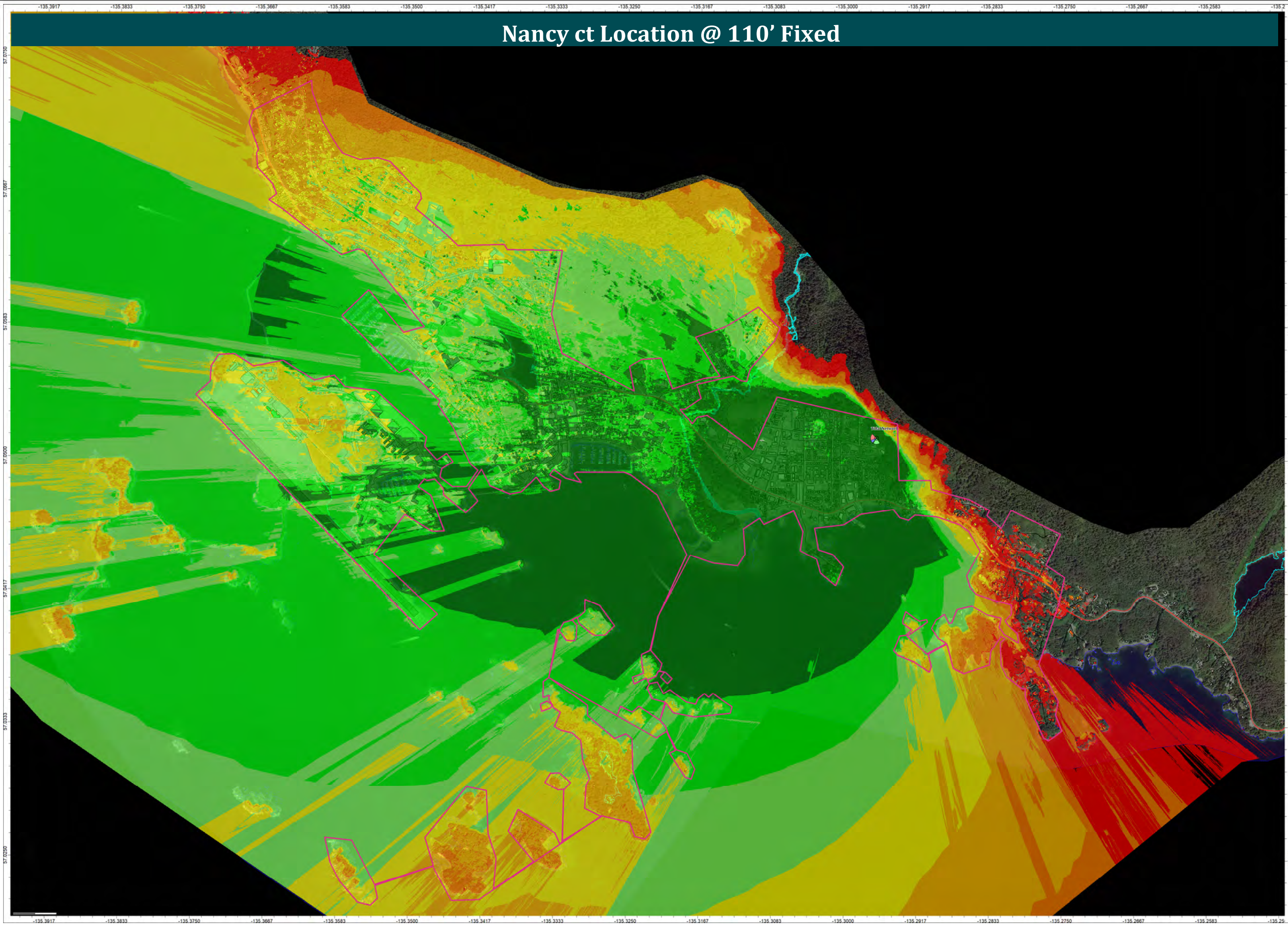
Propagation Modeling

Coverage Objective Type: FWA

(Indoor Broadband Service)



Nancy ct Location @ 110' Fixed





PROJECT LOCATION

112 & 116 NANCY COURT
SITKA, AK 99835

SHEET TITLE

Proposed Site
FWA Coverage
110' Tower

Project Description

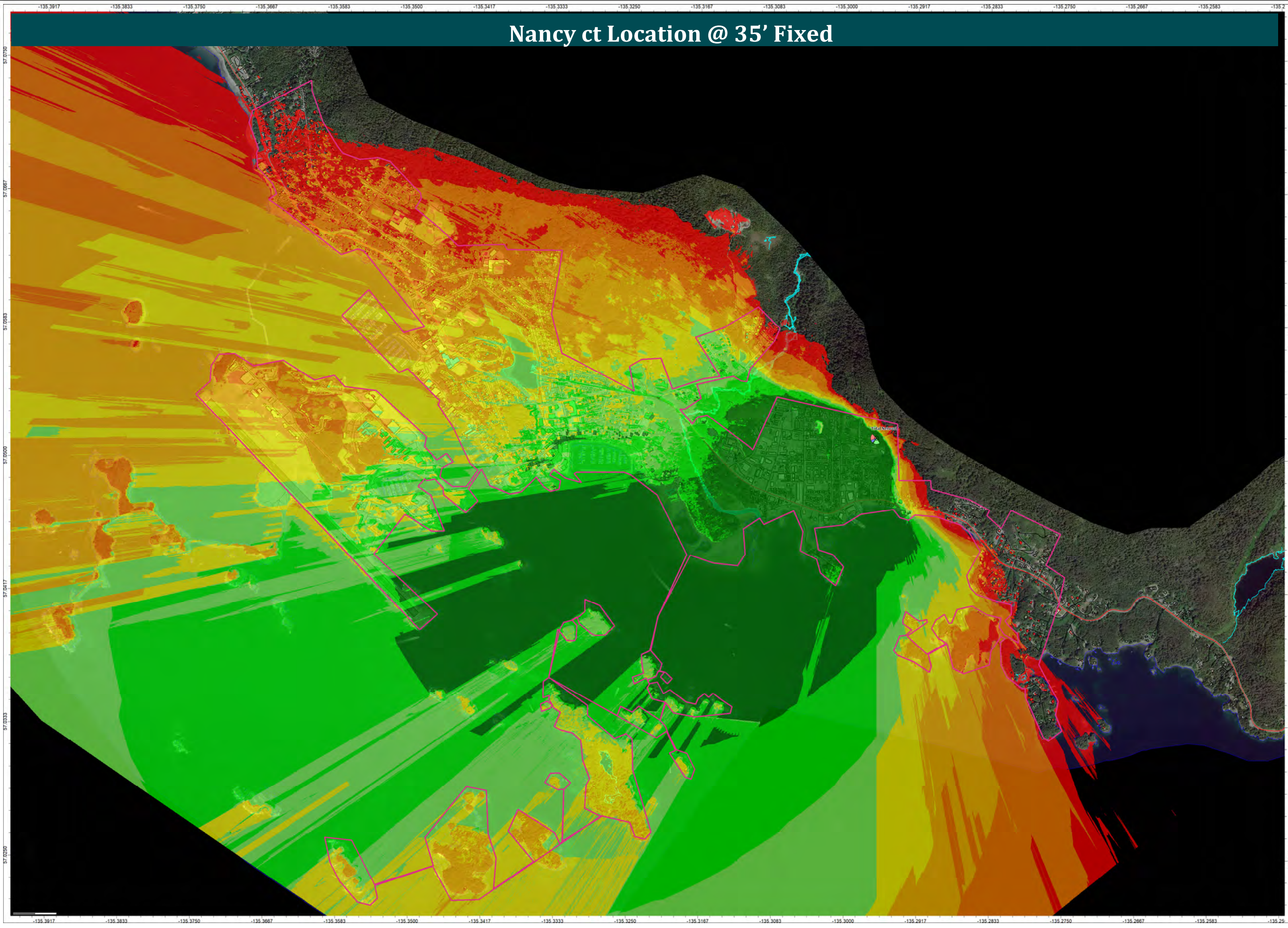
Tidal Network
Broadband
Infrastructure
Enhancement Project

Site ID:

Proposed Site

- FWA Coverage Legend**
- SS-RSRP Level (DL) (dBm) >= -60
 - SS-RSRP Level (DL) (dBm) >= -65
 - SS-RSRP Level (DL) (dBm) >= -70
 - SS-RSRP Level (DL) (dBm) >= -75
 - SS-RSRP Level (DL) (dBm) >= -80
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 - SS-RSRP Level (DL) (dBm) >= -90
 - SS-RSRP Level (DL) (dBm) >= -95
 - SS-RSRP Level (DL) (dBm) >= -100
 - SS-RSRP Level (DL) (dBm) >= -105
 - SS-RSRP Level (DL) (dBm) >= -110
 - SS-RSRP Level (DL) (dBm) >= -115

Nancy ct Location @ 35' Fixed





PROJECT LOCATION

112 & 116 NANCY COURT
SITKA, AK 99835

SHEET TITLE

Proposed Site
FWA Coverage
35' Tower

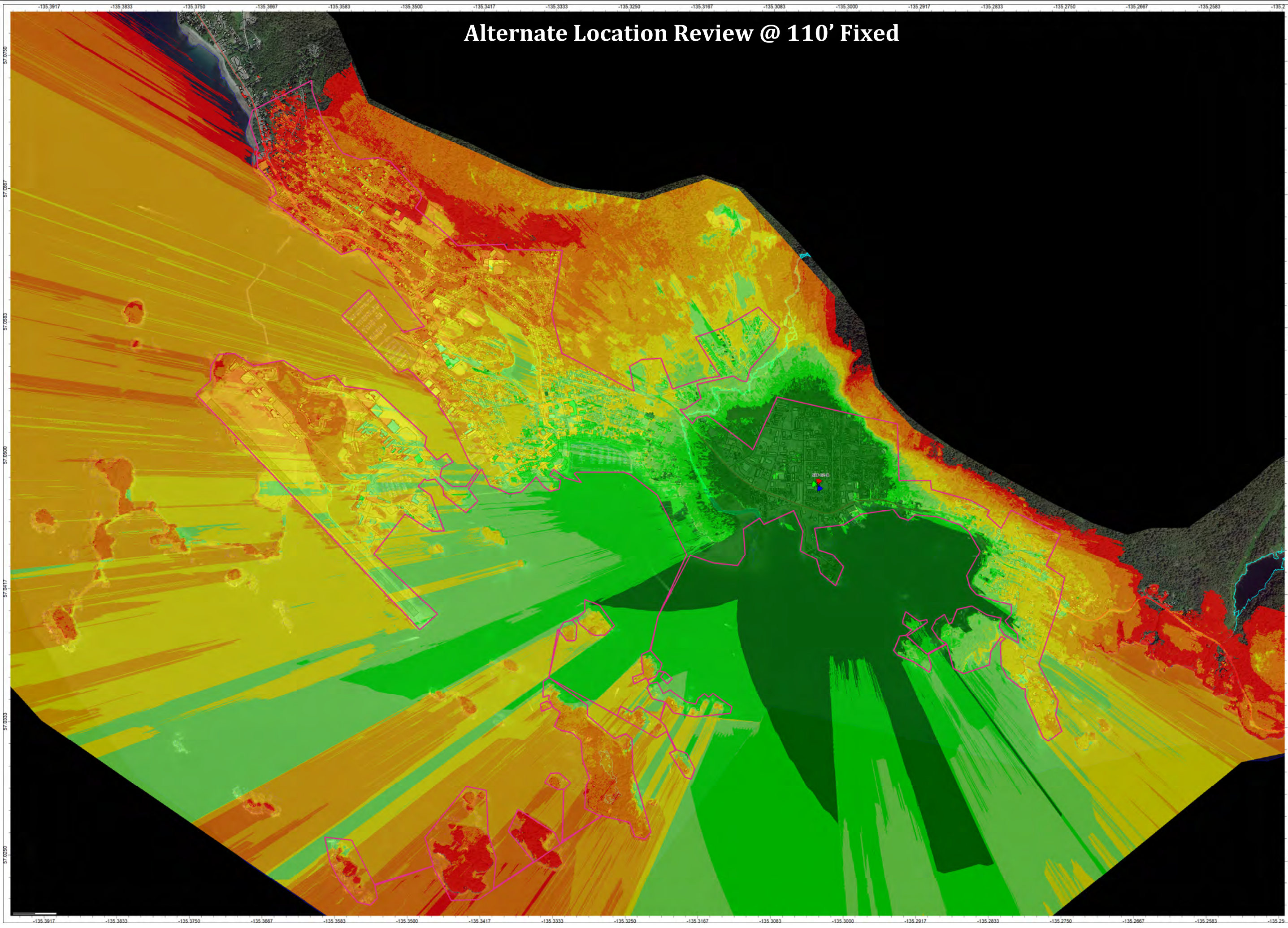
Project Description

Tidal Network
Broadband
Infrastructure
Enhancement Project

Site ID:

Proposed Site

- FWA Coverage Legend**
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 - SS-RSRP Level (DL) (dBm) >= -110
 - SS-RSRP Level (DL) (dBm) >= -115



Alternate Location Review @ 110' Fixed



PROJECT LOCATION
112 & 116 NANCY COURT
SITKA, AK 99835

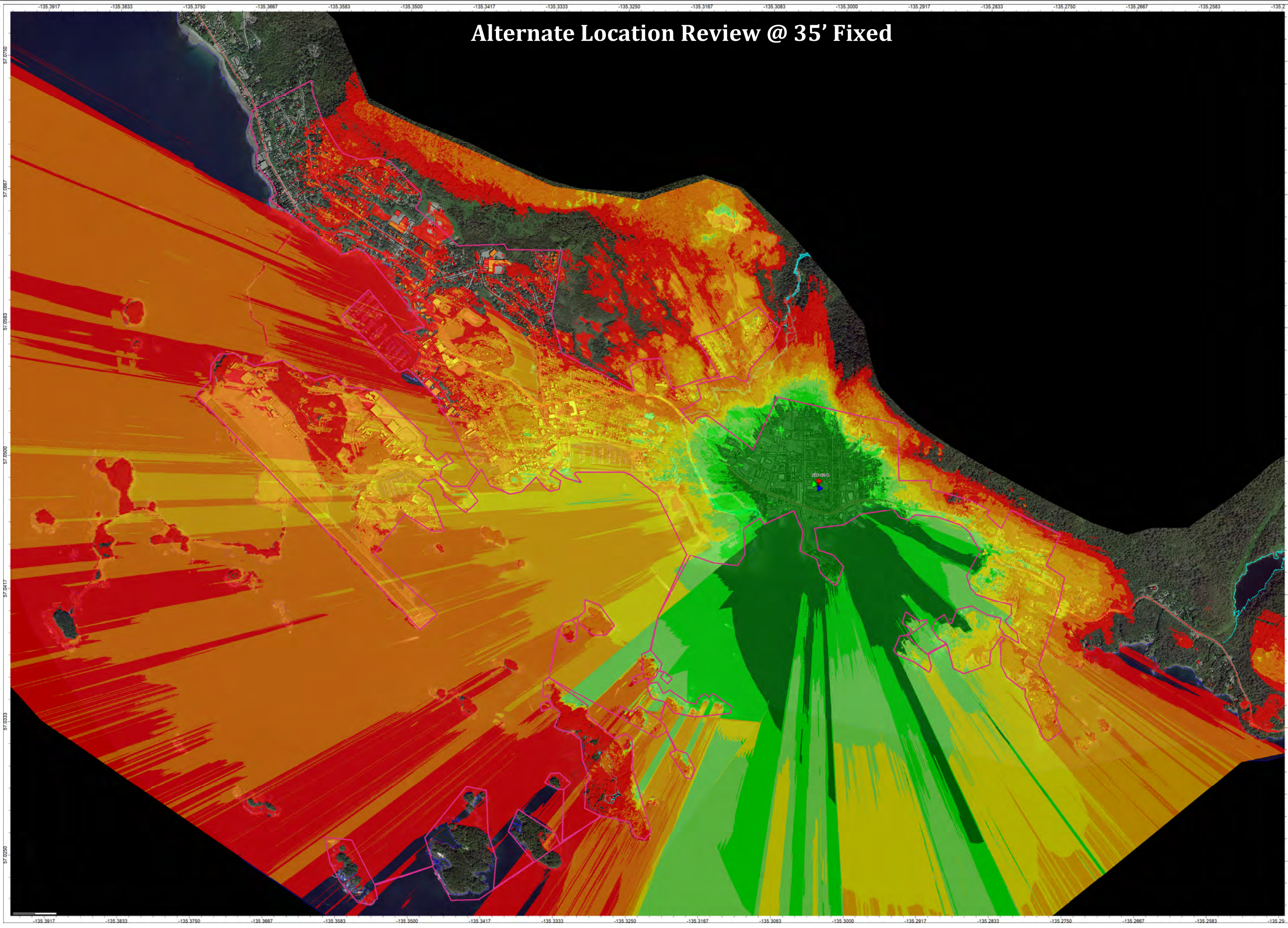
SHEET TITLE
Alternate Site
FWA Coverage
110' Tower

Project Description
Tidal Network
Broadband
Infrastructure
Enhancement Project

Site ID:
Alternate Site

FWA Coverage Legend

SS-RSRP Level (DL) (dBm) >= -60
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SS-RSRP Level (DL) (dBm) >= -115



Alternate Location Review @ 35' Fixed



PROJECT LOCATION

112 & 116 NANCY COURT
SITKA, AK 99835

SHEET TITLE

Alternate Site
FWA Coverage
35' Tower

Project Description

Tidal Network
Broadband
Infrastructure
Enhancement Project

Site ID:

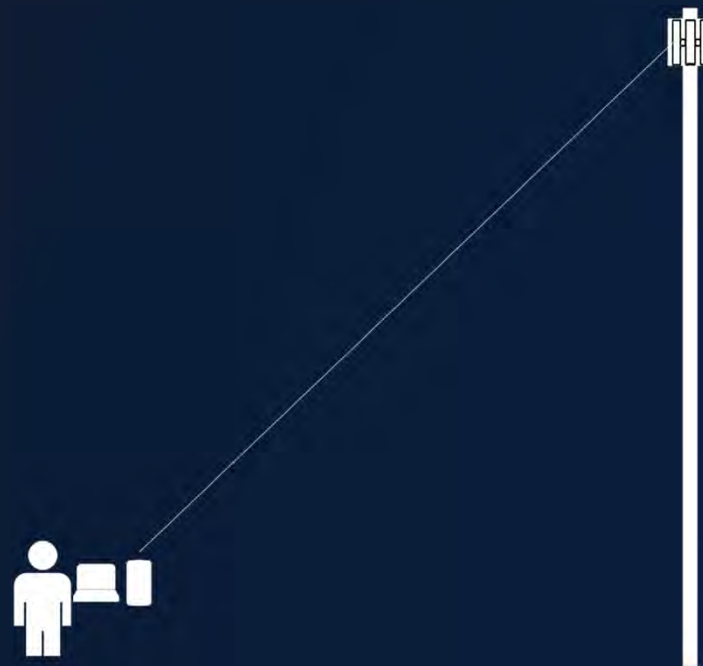
Alternate Site

- FWA Coverage Legend**
- SS-RSRP Level (DL) (dBm) >= -60
 - SS-RSRP Level (DL) (dBm) >= -65
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 - SS-RSRP Level (DL) (dBm) >= -115

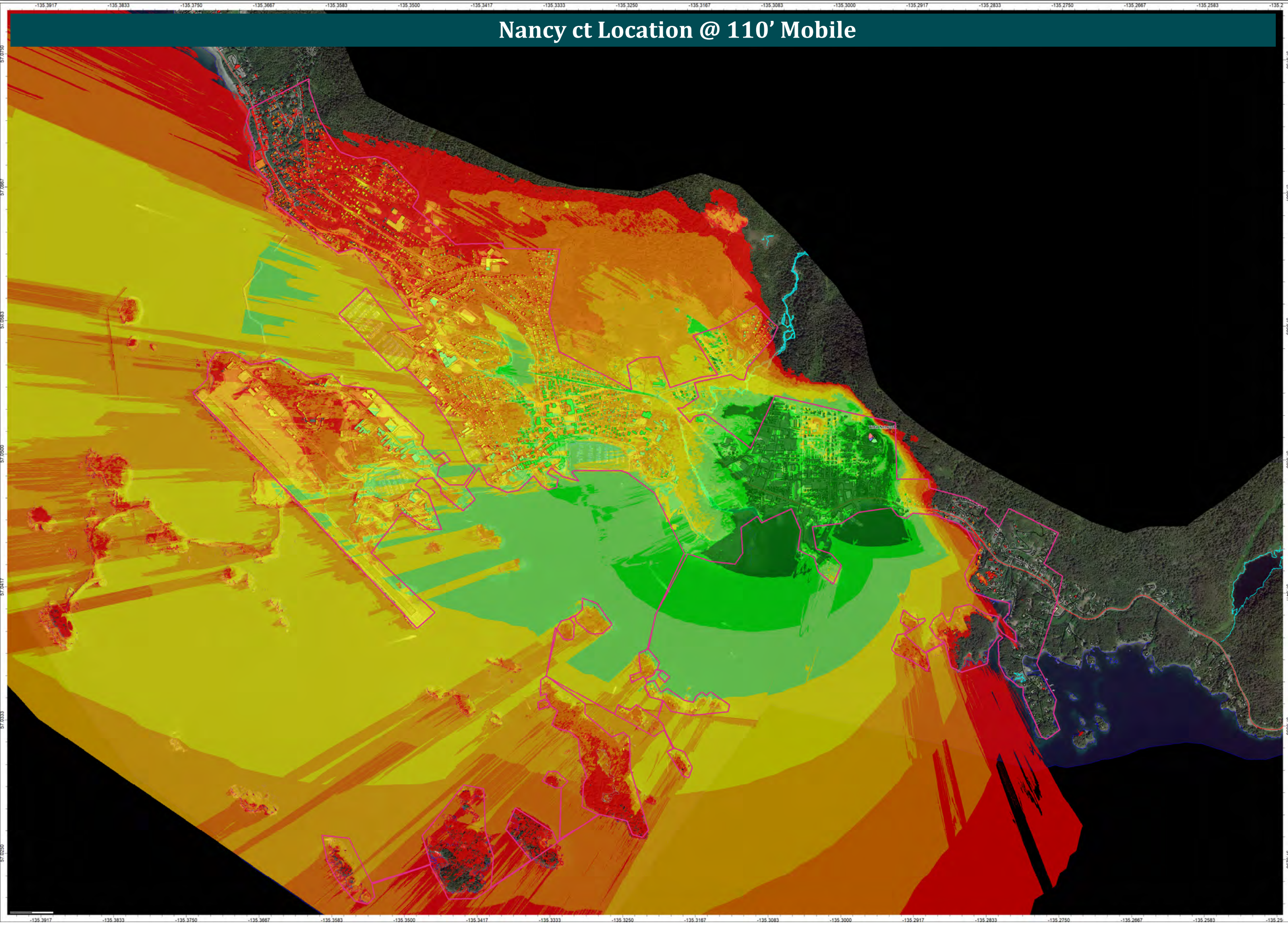
Propagation Modeling

Coverage Objective Type: Mobility

(Outdoor Broadband Service)



Nancy ct Location @ 110' Mobile





PROJECT LOCATION

112 & 116 NANCY COURT
SITKA, AK 99835

SHEET TITLE

Proposed Site
Mobility Coverage
110' Tower

Project Description

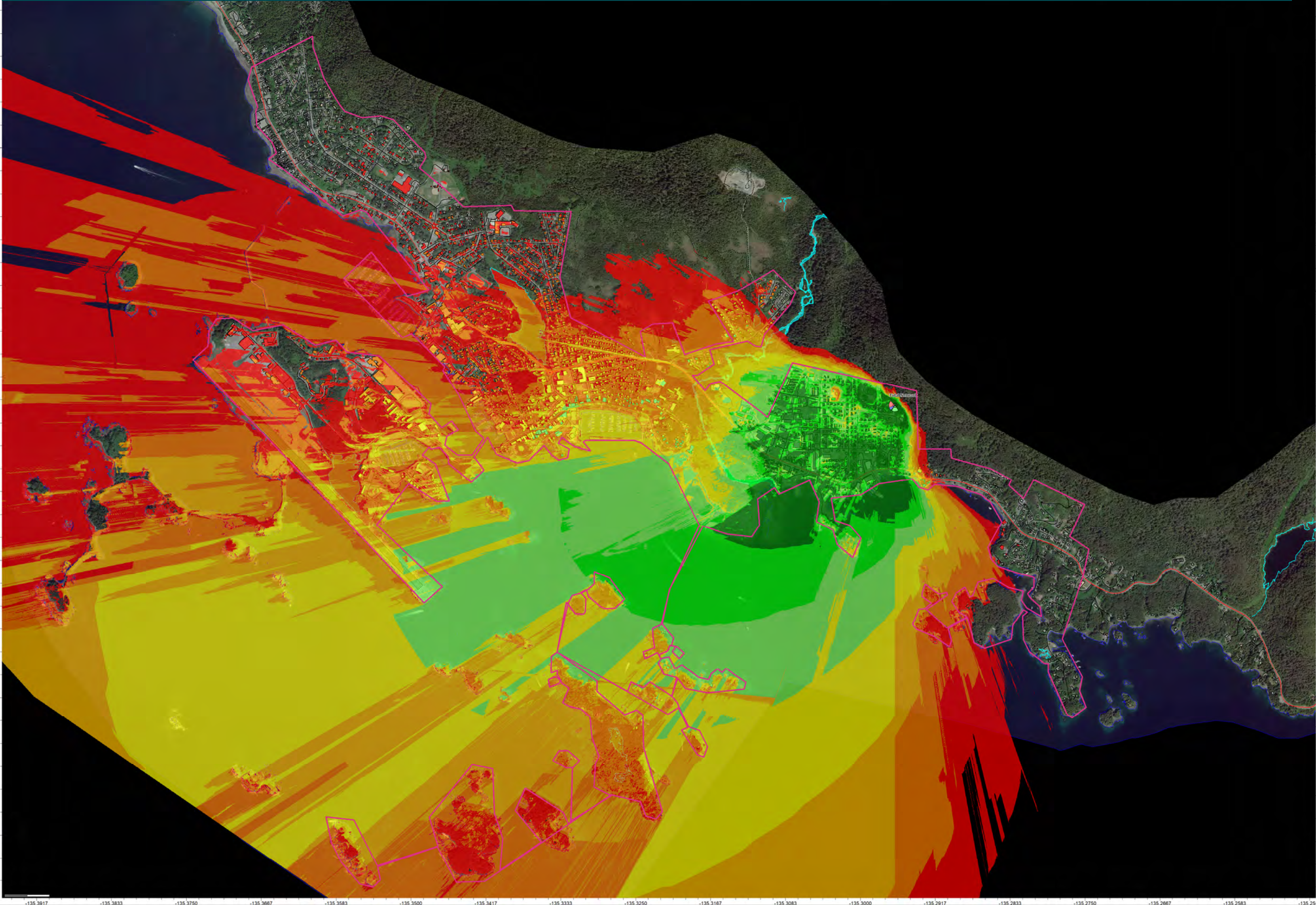
Tidal Network
Broadband
Infrastructure
Enhancement Project

Site ID:

Proposed Site

- FWA Coverage Legend**
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Nancy ct Location @ 35' Mobile



PROJECT LOCATION

112 & 116 NANCY COURT
SITKA, AK 99835

SHEET TITLE

Alternate Site
Mobility Coverage
110' Tower

Project Description

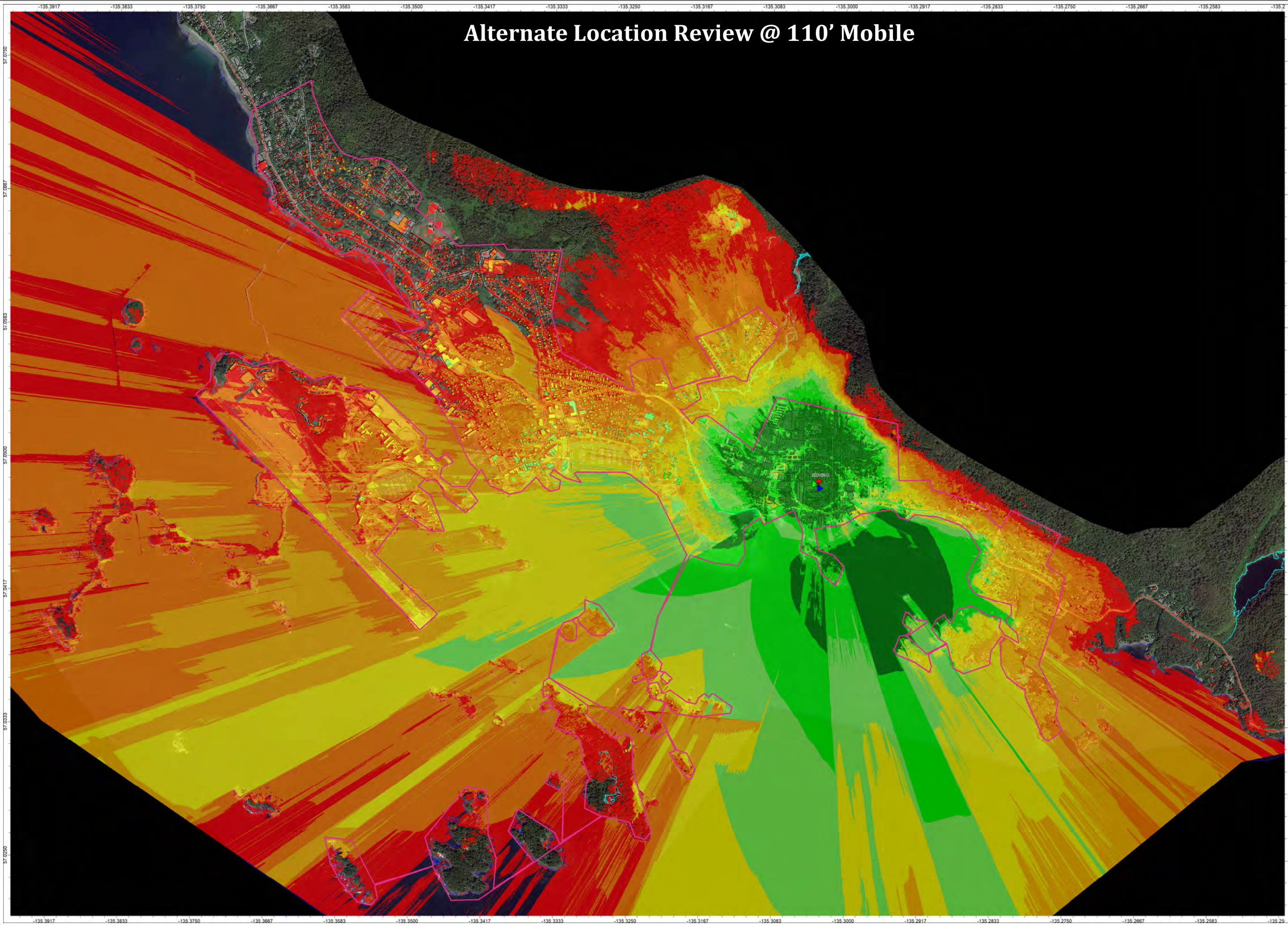
Tidal Network
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Alternate Location Review @ 110' Mobile





PROJECT LOCATION

112 & 116 NANCY COURT
SITKA, AK 99835

SHEET TITLE

Alternate Site
Mobility Coverage
110' Tower

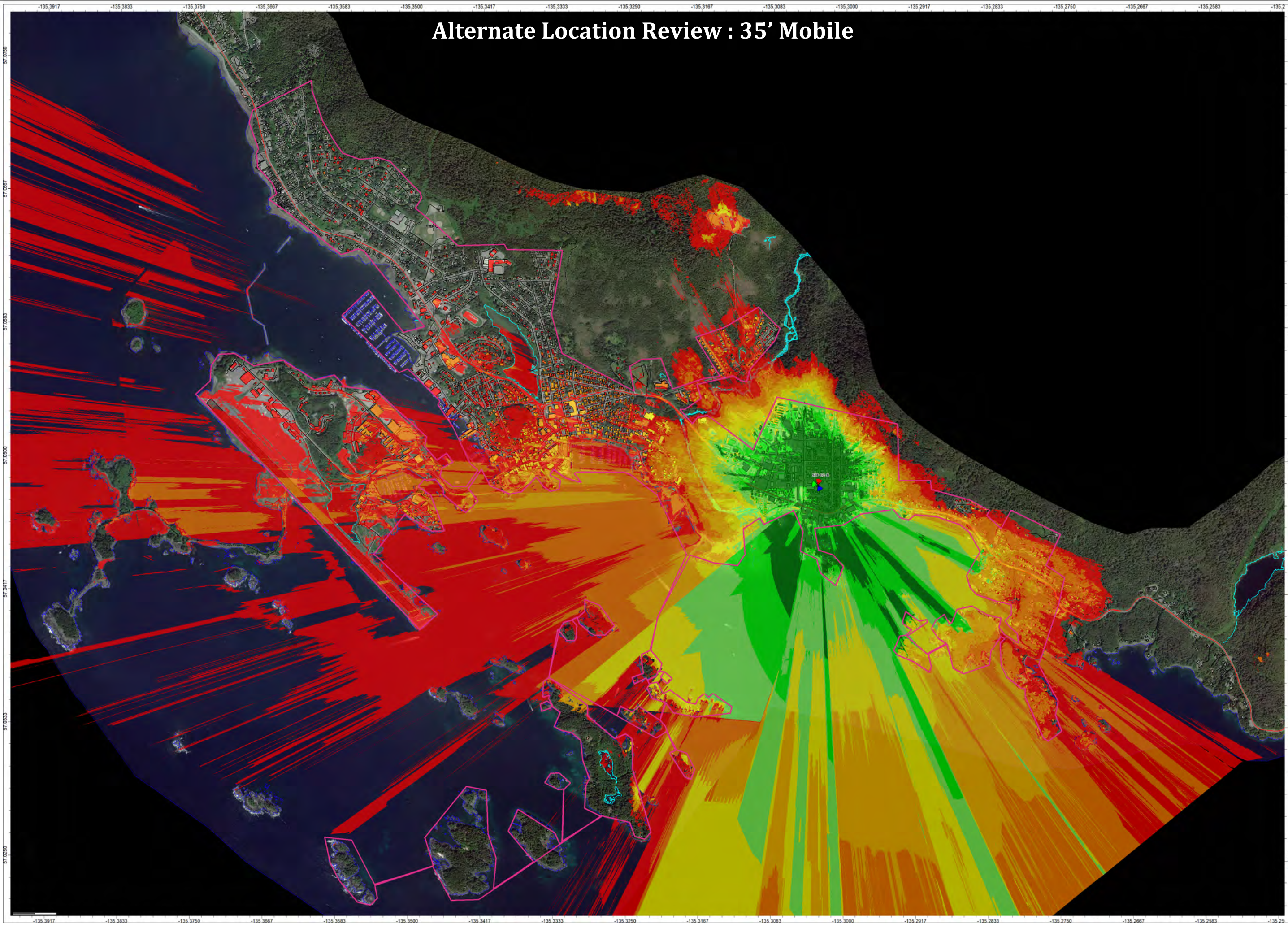
Project Description

Tidal Network
Broadband
Infrastructure
Enhancement Project

Site ID:

Alternate Site

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 - SS-RSRP Level (DL) (dBm) >= -115



Alternate Location Review : 35' Mobile



PROJECT LOCATION

112 & 116 NANCY COURT
SITKA, AK 99835

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Alternate Site
Mobility Coverage
110' Tower

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