



208.345.6933 • PO Box 844, Boise, ID 83702 • www.idahoconservation.org

October 22, 2020

Idaho State Board of Land Commissioners

Brad Little, Governor

Lawrence E. Denney, Secretary of State

Lawrence G. Wasden, Attorney General

Brandon D. Woolf, State Controller

Sherri Ybarra, Superintendent of Public Instruction

Dustin T. Miller, Director & Secretary to the Board

RE: Request for Contested Case Regarding Proposed Lease No. M700086

Dear Members of the Idaho Board of Land Commissioners:

The Idaho Conservation League (ICL) hereby respectfully requests that the Land Board include consideration of IDL Communication Site Lease M700086, proposed to be issued to New Cingular Wireless, at its upcoming regular meeting on November 17, 2020. We also hereby request that the Land Board initiate a contested case with regards to this lease.

IDL Communications Site Lease M700086 would approve a communications site lease for a 195-foot tall cellular tower proposed by AT&T Mobility Corporation, Inc. as manager of New Cingular Wireless PCS, LLC.

ICL remains concerned that the location of the proposed tower will result in significant effects to resources of the surrounding Sawtooth National Recreation Area (SNRA). In particular, as we have previously commented, the proposed 195-foot tall tower, which is three times taller than surrounding trees, is in direct conflict with the core values protected by the enabling legislation of the SNRA. The SNRA was established by Congress to assure the preservation of the area's natural, scenic, historic, pastoral, and fish and wildlife values, and to provide for the enhancement of its recreational values. The proposed cell tower, which is proposed to be located adjacent to the Sawtooth Scenic Byway between the highway and the scenic forests and mountain peaks, is clearly contrary to those values.

Furthermore, CusterTel's analysis indicates that "a taller tower on the property does not provide materially better coverage" due to the topography of the area (CusterTel comment letter to IDL). We also continue to have serious concerns that the proposed tower could include some form of

lighting in the future. The project site is squarely in the middle of the Central Idaho Dark Sky Reserve (CIDSR), designated by the International Dark Sky Association in 2017. The CIDSR is the only such designation in the U.S., one of only 12 such reserves in the world, and was awarded “Gold Tier” status - the highest ranking for night sky quality. ICL was instrumental in establishing the CIDSR and we continue to work to protect and preserve the dark sky values of the area.

The Land Board previously heard comments on the proposed cellular tower lease from the lease applicant, ICL, the Mayor of Stanley, and other concerned residents and public stakeholders at its regular meeting on July 21, 2020. Although ICL and other commenters requested that the Land Board direct the Idaho Department of Lands (IDL) to pursue negotiations with the applicant and CusterTel over alternative arrangements that would minimize impacts of the proposed cellular tower, the Land Board concluded the July 21 meeting without taking any action or providing any direction to IDL staff.

Absent such Land Board direction, it appears that IDL staff have not sought to engage with CusterTel or the applicant about alternative possible arrangements, and instead are moving forward to finalize the lease as proposed by the applicant.

ICL is very concerned that an opportunity is being missed to develop an alternative approach that meets all interests and legal mandates, such as co-locating the AT&T cellular facility with the existing CusterTel site on state lands, and/or other site locations.

ICL seeks to ensure that the Land Board is fully informed about potential impacts of the proposed lease and alternatives, and to avoid possible litigation that may result if the proposed IDL lease is approved in its current form.

To that end, ICL requests that the Land Board address this issue at the November 17, 2020 regular meeting and direct IDL to conduct a contested case hearing over the requested lease.

As defined in the Idaho Administrative Procedure Act (“APA”), a “contested case” is defined as any “proceeding by an agency . . . that may result in the issuance of an order.” *See* I.C. § 67-5240. *See also* IDAPA 20.01.01.002.4 (Land Board APA rules, defining a contested case as any “proceeding which results in the issuance of an order”); *Laughy v. Idaho Transportation Department*, 149 Idaho 867, 243 P.3d 1055 (Idaho 2010) (addressing agency duty to conduct contested case hearings over requested agency approvals).

Directly relevant here is Idaho Code 58-122, which provides that the Land Board may “in its discretion, determine[] that a contested case hearing would be of assistance to the board in the

exercise of its duties and authorities.” *See also* Idaho Code 54-104(4) (vesting Land Board with power to “review upon appeal all decisions of the director of the department of lands in contested matters”). In addition, Idaho Code 58-132 specifically acknowledges the importance of cooperating with the federal government in administering state lands, and directs that the Land Board “determine the best use or uses, viewed from the standpoint of general welfare, to be made of state land now owned or hereafter acquired. . . .” *See* I.C. 58-132.

Given the significant concerns already raised by ICL and many others regarding the proposed cellular tower, and its impacts on visual and other values that are cherished and protected within the SNRA, it is appropriate for the Land Board to direct IDL to conduct a contested case hearing pursuant to Idaho Code 58-122, the Idaho APA, and implementing Land Board regulations in this matter.

In conclusion, ICL respectfully asks that the Land Board (a) address the proposed lease at its November 2020 meeting, and (b) direct IDL to conduct a contested case hearing over the proposed lease before rendering any final decision.

Respectfully submitted,



Jonathan Oppenheimer
External Relations Director
208.345.6933 x 126
joppenheimer@idahoconservation.org