

July 16, 2012

Mr. John Wessels
Regional Director
National Park Service
12795 Alameda Parkway
Denver, CO 80225

Dear Mr. Wessels:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) to alert you to breaches in law, regulation and policy in a matter awaiting your approval – specifically, a proposed Right of Way (ROW) for a new cellular tower in the Lake area of Yellowstone National Park (YNP). For the reasons articulated below, PEER urges you to reject this ROW.

In a May 24, 2012 letter to the Wyoming State Historic Preservation Officer, YNP Superintendent Dan Wenk described the proposed Lake area tower as follows:

“The tower will be 100 feet tall and constructed of metal lattice with four tenant antennas located within the top 30 feet of the tower. Approximately 30 feet of the tower will be above the tree canopy.”

First, a “metal lattice” tower at Lake is prohibited under NPS's 2006 Management Policies (8.6.4.3. Telecommunication Sites) absent an extensive analysis of alternatives. That section states:

“New traditional towers (i.e., monopole or lattice) should be approved only after all other options have been explored.”

Our examination of the records available from YNP under the Freedom of Information Act (FOIA) indicates that the Park has not even looked at other options, let alone “explored” any. To our knowledge, this Management Policy has not been waived by the National Park Service (NPS) Director. Thus, you and Superintendent Wenk are bound by its requirements.

Second, the Park has violated Section 106 provisions of the National Historic Preservation Act requiring public notice, most notably:

“The agency official must...provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.” 36 CFR 800.2 (d)(2).

Yet, YNP has never solicited comments on this specific Lake tower proposal and no public comments have ever been received by the Park on this tower proposal.

Indeed, the Park has not shared a single detail about the tower with the public. No press release, no *Federal Register* notice, no public meetings, no coverage maps, etc. There has been zero opportunity for the public to comment on the specific proposal at Lake.

Third, Superintendent Wenk signed the ROW on May 30, 2012, a week before the Wyoming State Historic Preservation Officer's comments were received in the Superintendent's office. This is a direct violation of 36 CFR Part 800.1(c), which states the “agency official must complete the section 106 process...’prior to the issuance of any license.””

Fourth, this ROW violates the clear language of the Park’s own Wireless Plan. It has been represented to you that this proposed cell tower was encompassed in the Wireless Telecommunications Plan Environmental Assessment and FONSI, which YNP completed in 2009. In fact, this project is contrary to the Wireless Plan in several respects:

A. Height

On page 44 of the Park's Wireless Plan, it is stated that tower may not be “taller than 20 feet above the surrounding tree height” without “a detailed explanation of why a shorter installation is not feasible.” No such “detailed explanation” has been provided to the public. (No information at all has been provided to the public.)

In fact, our examination of the record shows that members of Yellowstone's Wireless Committee (established under the Wireless Plan) objected to the proposed height and the deviation from the Plan but these objections mysteriously vanished as the ROW neared its final phases.

B. Lack of Public Notice

The Plan provides on page 120: “A new facility will be constructed somewhere in the Lake area following the guidelines set forth in Chapter Two...”

Page 37 of Chapter Two begins: “Any proposed project will be subject to compliance with applicable laws, regulations, and NPS policies.” Nowhere does it state that a specific proposal for a cell tower at Lake is exempt from this process. In fact, the Wireless Plan was written to reform the egregiously poor process that led to the construction of the Old Faithful cell tower, which remains (more than ten years later) in its original location, one that the Park Service admits is undesirable.

Page 41 of Chapter Two (third paragraph from top) makes reference to the “RM-53 notification requirements” and adds a few others, none of which has been followed for the Lake cell tower proposal.

In fact, according to records PEER has examined, members of the Wireless Committee repeatedly expressed the belief that an extensive process of public notice (including a *Federal Register* notice and public meetings) was necessary under the Wireless Plan. They retained this belief even after they were informed that the Park's public position would be that the Wireless Plan/EA and FONSI were to be used as the NEPA documents for the specific Lake tower proposal. At least two members of the Wireless Committee helped to write the Wireless Plan. They understood what a mess the process had been for previous cell towers in Yellowstone, and believed that they were writing a document that would bring the public into the process, thus leading to a better outcome.

C. Lack of Report.

The Wireless Plan EA/FONSI calls for the Wireless Committee to issue an Annual Report to keep the public informed of all proposals received and reviewed. Two such reports have been issued to date (FY10 and FY11). No mention at all has been made of the Lake tower proposal(s) received and considered, though the Committee has been dealing with this matter on a regular basis since 2009.

Thus, the documentation for this cell tower is the worst in Yellowstone's history, even though the Wireless Plan was created to address concerns about the lack of public notice and an opportunity to be heard.

Fifth, as noted above, the Park has failed to keep an Administrative Record for the Lake tower proposal, in violation of RM53 and the Wireless Plan FONSI, which requires that the Park “document all decisions regarding wireless communications projects” (page 17). The entire official YNP record provided to PEER under FOIA begins on January 19, 2010 with receipt of the application for a tower at Lake, and abruptly ends on June 22, 2010. The Lake tower proposal is not exempt from NPS requirements to keep an Administrative Record.

Lastly, YNP has made no apparent inquiry of the impacts of this new tower on Park soundscapes. There is no coverage map showing how far into YNP backcountry signals from this new tower will penetrate. The Park has stated that it is their intent to provide coverage to the Lake developed area only – but not Bridge Bay. How does the public know that will be the case without seeing coverage maps?

It is our understanding that much of Yellowstone's backcountry receives cell coverage from the four (and soon to be five) towers on Park land. As a result, the solitude of the remotest vistas of Yellowstone is being compromised by NPS management that seems to disregard park resources and values. Soon there will be no place in Yellowstone outside

the reach of the insistent chirp of a cell phone or the web of internet access enabled by the cell signals.

For these reasons, we ask you to exercise independent judgment and thoroughly review these concerns. These violations of law, regulation and policy should dictate that you reject this ROW.

If you have any questions about the foregoing or wish to see YNP documents to which we refer, please let me know and I will supply them. Thank you for your attention to this matter.

Cordially,

Jeff Ruch
Executive Director

Cc. Superintendent Wenk
Mary Hopkins, Wyoming State Historic Preservation Officer
Advisory Council on Historic Preservation