

# JUMBO GLACIER RESORT APPROVAL PROCESS

## - A HISTORY<sup>1</sup> -

### 1990

1. During the summer of 1990, Pheidias Project Management Corporation (Pheidias), on behalf of Glacier Resorts Ltd. and L.P. (a special purpose company and limited partnership formed for Nikken Canada Holdings Ltd.) discussed an Expression of Interest with the B.C. Ministry of Lands and Parks for the development of a ski resort in the upper Jumbo Valley providing access to nearby glaciers for year-round skiing and sightseeing. The client, Nikken Canada Holdings Ltd., had commissioned a study to find the best available location for a destination hotel in the mountains giving access to year-round skiing and unique sightseeing. Pheidias was encouraged to proceed with a formal application and was asked to show the **highest and best use of the land** according to public policy.
2. In March 1991 Pheidias submitted a volume containing a Formal Proposal with conceptual development plans according to the *Commercial Alpine Skiing Policy* (CASP) of the time. In June 1991 the proposal was formally accepted as an Expression of Interest.
3. **A public input period organized by B.C. Lands and focused on the land use issue was initiated in the summer of 1991.** The proponent was not permitted to participate since it had not yet been given proponent status by the Province. The public input period organized by B.C. Lands postponed the Formal Proposal and proponent selection process required by CASP.
4. The Regional District of East Kootenay noted that **in the absence of a regional plan by the Province it would be difficult to evaluate the proposal in terms of land use.**
5. In summer 1991 the Jumbo Creek Forestry Service Road (the FSR) was realigned, improved and extended **to the location of the sawmill site in upper Jumbo Creek where the Jumbo Glacier resort project was proposed, so that any car had access to the site.** The Mineral King Mine, where the public road ends, was closed.
6. At the conclusion of the public input period on September 26, 1991, B.C. Lands held an Open House in Invermere. **B.C. Lands then decided that on the basis of the initial response and the type of proposal, the project should move forward** to the Master Plan stage. However, the Proposal Call and proponent selection according to CASP was delayed for more than a year, until the beginning of 1993.
7. In 1992, the Province encouraged the proponent to move forward and confirmed that government policy encouraged the type of project being presented. At a meeting held during the World Economic Forum conference in Davos in January 1993, **Premier Mike Harcourt**

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<sup>1</sup> This document is available online at: [www.jumboglacierresort.com/chronology](http://www.jumboglacierresort.com/chronology)

**personally confirmed that provincial policy encouraged the type of project being presented** (see *Appendix 1* or <https://www.dropbox.com/s/bi1dgo3lhkb0l4g/1-Harcourt-feb24-93.pdf?dl=0>).

8. B.C. Lands also encouraged the proponent by referring a report, *The BC Rocky Mountain Tourism Region, A Canada - British Columbia Travel Industry Development Subsidiary Agreement Regional Tourism Study*, produced in 1982, that **advocated the development of destination ski resorts in the upper drainages of Jumbo** or of Horsethief Creek (relevant pages included in *Appendix 2* or <https://www.dropbox.com/s/e1o7gfhgpw9b1r9/2-TIDSA.pdf?dl=0>).
9. A May 1983 study by Ecosign for Jumbo Glacier Skiing Ltd. of Invermere proposing lift serviced skiing on Farnham Glacier was also made available for reference by government staff (included in *Appendix 3* or downloadable at <https://www.dropbox.com/s/r232xgaulp2qd7q/3-Ecosign-1983.pdf?dl=0>).
10. Following a Proposal Call announced in January 1993, **the Province signed an Interim Agreement with the proponent in March 1993** (re-issued in 1995, reconfirmed every year), selecting Glacier Resorts Ltd. as the sole proponent, providing exclusive development rights and confirming the application according to the CASP process and policy. However, the review was again delayed until when the land use question would be decided under the Commission on Resources and the Environment (CORE), established in 1992.

### 1993

11. CORE was the most comprehensive land use review exercise ever undertaken in the Kootenays by the Province, involving all **local stakeholders** and levels of government. The Commissioner was the former provincial Ombudsman. **Jumbo Glacier Resort was the only site-specific land use issue reviewed by and decided under CORE.**
12. The East Kootenay CORE process was entirely local and not void of controversy. Strong-minded individuals confronted the proponent's representatives, but the Province confirmed that the **"recommendations of the CORE table will be the most significant factor in the approval or rejection of the project"** (see letters in *Appendix 4* or at <https://www.dropbox.com/s/750f37n8h9jda8w/4-Gunton-Demarchi-93.pdf?dl=0>).
13. The East Kootenay CORE Table concluded its two year long major review process in November 1994 with the issuance of the *East Kootenay Land Use Plan* and with a **specific recommendation approving the land use for the Jumbo Glacier Resort project** subject to the outcome of the Environmental Assessment Act review (relevant CORE report pages in *Appendix 5* – or <https://www.dropbox.com/s/1xglnz9wevxwx0k/5-CORE-EastKootenay.pdf?dl=0> ).
14. The proponent's representatives were present as observers at the CORE meeting deciding the land use for the Jumbo Valley. The meeting was attended by the 22 sectors of the CORE Table (see *Appendix 6* or <https://www.dropbox.com/s/iczarszplbgehol/6-CORE-Table.pdf?dl=0>). **18 of the 22 sectors voted in favor of the land use designation favoring**

**the creation of the proposed ski resort in upper Jumbo Valley and 4 opposed it.** The majority of the 18 favourable sectors requested an integrated use designation specifically allowing the proposed resort while the four opposed desired a special management designation prohibiting ski resorts. The Commissioner compromised by choosing the minority special management designation but giving a clear go ahead to the resort use subject to the environmental review. The Commissioner acknowledged that the proponents' supporters (a large majority) wanted the project to go ahead following CORE and that the environmental review would cause another delay. In a letter dated December 13, 1994 (see letter in *Appendix 7* or <https://www.dropbox.com/s/bqg04q07yoj9on6/7-Owen-Dec13-94.pdf?dl=0>), **the Commissioner advised the Province that the environmental review provided under CASP would be adequate for the purposes of the CORE decision.** In addition, the Commissioner clearly indicated that:

*This recommendation assumes that the environmental assessment process under the Environmental Assessment Act will be:*

- *imminently available to begin reviewing proposals*
- *efficient in providing a one-window review within strict time limits, and*
- *effective in providing public participation and the consideration of the full range of values that may be affected by the proposed development.*

15. In the Special Management designation for the Jumbo Valley, **CORE gave tourism resorts the highest value** – ahead of Grizzly Bears, which were given only a high value (see SMA values and ratings from CORE report in *Appendix 8* or <https://www.dropbox.com/s/625pplz66zto588/8-Jumbo-SMA-Values.pdf?dl=0>).

## 1995

16. The majority of the stakeholders involved in the CORE process felt that environmental interests were given a disproportionately high representation at the CORE Table and produced an independent land use recommendations report in March 1995. This report, entitled *Land Use Plan by the Coalition for an East Kootenay Solution*, reduced the land designations for conservation and special management and assigned an Integrated Use designation to the Jumbo Valley. The CORE *East Kootenay Land Use Plan* placed 16.5% of the land in protected areas, a notably higher designation level than the provincial policy target of 12%.
17. **In April 1995, the Province formally announced the approval of the land use decision** (see *Appendix 9* or <https://www.dropbox.com/s/ogu8zu2msa6t4cq/9-ProvincialNewsRelease-April10-95.pdf?dl=0>). Environment, Lands and Parks Minister Moe Sihota noted, “The proponents of this project have shown a great deal of understanding and co-operation while awaiting the completion of the land-use plan,” and Employment and Investment Minister Glen Clark explained that “the East Kootenay Land-Use Plan includes Jumbo Valley within the special resource management zone category – a designation which allows this type of development to be considered.”
18. The project was transitioned into the *Environmental Assessment Act* (EA Act) review process. The proponent was required to submit its draft Master Plan, which was being prepared under

CASP, to the Environmental Assessment Office (EAO) by June 30, 1995. Starting in July 1995, the EAO spent **more than two years in public consultations** and discussions with special interest groups. A 60-person Project Committee comprising all government agencies and local governments formally consulted with a Public Advisory Committee (PAC) that was chosen by the EAO with a majority of project opponents. Finally, in May 1998 (more than two years after the EA Act deadlines), the EAO produced *Project Specifications* and commentaries regarding the Jumbo Glacier Resort Project, published in three volumes.

19. During the process initiated by the EAO to prepare the *Project Specifications*, the proponent group noticed a map being drafted by provincial staff showing an undocumented and unexplainable concentration of grizzly bears in the Jumbo Valley. In November 1995, the proponent group made a request to see data or any underlying information that would support the map. In the absence of the supporting information the proponent made a request under the *Freedom of Information and Protection of Privacy Act* and in March 1996 obtained several boxes of documents, including some correspondence among provincial staff and others that indicated **a plan to veto or to stifle the application by making the proponent work forever on the application.**

Most notable was a memo from Guy Woods to Anna Wolterson (both in the Ministry of Environment) dated March 22, 1993, referring to communications with the regional Director of the Ministry of Environment, Dennis McDonald, accused by his staff of not doing enough in his efforts to stop the work of the proponents' consultants, stating, in the first paragraph, *"my suggestion is that we use the proponents' funds and work as effectively as we can to ensure that the development does not proceed. We often have a great deal of difficulty producing documents and proof of problems. Lets look at this as an opportunity to collect the ammo, to stop the development!"*

The internal correspondence indicated a clear strategy from a large segment of provincial staff, since when the proposal was announced in 1990, to ally themselves with special interest groups and to do everything possible to propagate misinformation and to discredit the project and the proponents in order to ensure that the proposal would die.

It was clear that a large segment of provincial staff expected both the East Kootenay CORE Table land use designation process and the environmental assessment review under the EA Act would condemn the project to extinction.

The Province, however, continued to **give assurances that a fair process** would be provided.

See *Appendix 10* or <https://www.dropbox.com/s/2cs93o4iquecrx9/10-Freedom-of-Information-and-Letters.pdf?dl=0>) for correspondence outlining the conspiracy, as well as letters from Ministers encouraging the proponent dating from 1994 to 2005, when the formal review of the Master Plan under CASP resumed, after completion of the EA process).

20. In 1995 the Province created both the EA Act and the *Mountain Resorts Associations Act* (MRAA). **The two Acts and CASP were supposed to be coordinated and to provide a fair and timely process to project proposals such as the ski resort proposal for the Jumbo**

**Valley.** The proponent anticipated that following the EA Act and CASP processes the resort area would be designated as a Mountain Resort Area and would be able to proceed with its own municipal status following the land use decision and all the environmental and relevant Ministries' approvals. The EA Act process was supposed to provide the "one window" efficient approval process mentioned in the Commissioner's letter of December 13, 1994 (*Appendix 7* or <https://www.dropbox.com/s/bqg04q07yoj9on6/7-Owen-Dec13-94.pdf?dl=0>).

## 1996

21. The proponent requested that the Regional District ask the Province to follow the necessary procedures as contemplated by the MRAA and **the Regional District made the request, with a unanimous vote, in September 1996 (a vote based on the East Kootenay CORE Table land use decision)**. However, the Minister responded negatively, and the understanding was that the Province would not act while the environmental review was in progress but would act once the process was concluded.

## 1998

22. In 1998, seeing that the Project Specifications appeared to be biased and difficult to respond to, the proponent made a submission to the office of the provincial Ombudsman requesting a review, but it again received assurances that the Province was intending to complete a fair process in a timely manner.
23. The proponent continued studies, responses and meetings with provincial staff and other experts leading to the presentation of a Project Report that contains the result of the work undertaken from 1990 to 2003. It was submitted in thirteen volumes on December 31, 2003 and was re-submitted as required by the Environmental Assessment Office for the start of the public consultation, which started on February 7, 2004. **The Project Report and the public process comments and responses have been made widely available through the web sites of the EAO and of the proponent.**
24. It is important to note that as a result of the public process and comments that are part of the review under the EA Act, the proponent improved and modified the preliminary Master Plan of the project with a number of important changes that are listed in the attached document **"Significant Changes"** (see *Appendix 11* or <https://www.dropbox.com/s/w00dsikwrgvq7du/11-SignificantChanges.pdf?dl=0>).

## 2004

25. **The quasi-judicial review done under the EA Act was concluded in August 2004** by the EAO report and by its recommendations, which stated in its conclusions that **the project is "in the broad public interest"** (EAO recommendation and an editorial from the Calgary Herald is included in *Appendix 12* or <https://www.dropbox.com/s/n4t3ght971w06r9/12-EAO-Recommend-Aug4-04.pdf?dl=0>).

26. The Ministers took extra time to review the reports and finally issued **an Environmental Certificate** as recommended by the EAO, dated as of October 12, 2004, and presented to the public on October 14, 2004.
27. On October 12, 2004, the Shuswap Indian Band of Invermere reaffirmed its support for the Jumbo Glacier Resort project in a press release and publicly announced its separation from the Ktunaxa Kinbasket Tribal Council in favour of joining the Shuswap Nation Tribal Council, with the support of the 17 chiefs of the Shuswap Nation.
28. On October 19<sup>th</sup>, 2004, Kathryn Teneese, the leading negotiator for the Ktunaxa Nation during the EA Act process was quoted by Turtle Island Native Network as follows<sup>2</sup>:

*"Of course I was disappointed but did not have high expectations since the project is in line with the Provincial governments 'BC is open for business' approach. In fact the project was mentioned in one of the present governments throne speeches."*

*Kathryn Teneese explained to Turtle Island Native network that while there are many requirements related to dealing with KKTC concerns in the approval of the environmental certification, there are still a number of outstanding matters to be addressed.*

*"Some major Ktunaxa concerns have not been addressed in the Environmental Assessment Certificate; (i) impacts to grizzly bears and other wildlife; (ii) impacts to hunting and other traditional uses; (iii) Ktunaxa cultural and sacred values associated with the Jumbo valley; (iv) cumulative effects. In contrast to the information provided by the BC government, most grizzly bear experts agree that the project poses a significant risk to southern Purcell grizzly populations."*

*The KKTC administrator says she is hopeful that they can deal with their outstanding concerns in their discussions with the Regional District, Lands and Wildlife BC and the Jumbo Glacier Resort proponent. She looks forward to the ongoing consultation and negotiation of an Impact Management and Benefits Agreement.*

*In the past the talks have not been productive from a KKTC perspective, "We have had discussions with the proponents over the past ten years. However there has been no agreement reached on any issue. . . There have been some broad discussions about economic benefits. We have not had discussion about participation. However these matters will be part of the Impact Management and Benefits Agreement negotiations with the proponent."*

*Question - Does this project present an opportunity for KKTC to participate in a project that will bring jobs and benefits, provided your outstanding concerns are addressed?*

*Answer "It is our expectation that these are some of the matters that will be part of the Impact Management and Benefits Agreement."*

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<sup>2</sup> <http://www.turtleisland.org/discussion/viewtopic.php?t=2648#p4230>

29. Project opponents referred the major issues reviewed during this entire process to **the federal ombudsman in the Office of the Auditor General, the Commissioner of the Environment and Sustainable Development**, and to the federal ministries, which responded in 2005 confirming the assessments made by the EAO (copies attached in *Appendix 13* – [https://www.dropbox.com/s/x60elvqh9ldz0rx/13-Federal Letters.pdf?dl=0](https://www.dropbox.com/s/x60elvqh9ldz0rx/13-Federal%20Letters.pdf?dl=0)).
30. **RK Heli-Ski Panorama (RK) requested a judicial review** of the EAO process and of the decision of the Ministers to grant an Environmental Certificate. The case was heard for five days in court in Cranbrook, in the end of October 2005. Two lawyers from Vancouver represented RK, a lawyer from Victoria represented the Province and a Cranbrook lawyer represented the proponent. In November 2005, the judge rendered his decision upholding the Environmental Certificate. His decision is attached in *Appendix 14* or [https://www.dropbox.com/s/yyzl0a4uhzzvyxk/14-RK-Decision+MP-excerpt .pdf?dl=0](https://www.dropbox.com/s/yyzl0a4uhzzvyxk/14-RK-Decision+MP-excerpt.pdf?dl=0)). RK had made the case that natural justice had been denied to the opponents, **but it was clear that if there is any party that has been denied natural justice in this process, it is the applicant, not the opponents.**
31. RK appealed the decision. Three judges of the Court of Appeal of British Columbia unanimously confirmed the decision of the Cranbrook court, with a written decision that further vindicated the respondents (decision attached – *Appendix 15* or <https://www.dropbox.com/s/m5txazwzkdstmn5/15-Reasons4Judgment-RKvGlassman.pdf?dl=0>).

## 2007

32. On **July 12, 2007**, following another two-year public review process under CASP, the Province **approved the Master Plan for Jumbo Glacier Resort.**
33. While waiting to sign a Master Development Agreement (MDA), **in early 2008, in order to facilitate the training Canadian of athletes and the Calgary Olympic Development Association's (CODA) training program, the Province granted Glacier Resorts Ltd. a ten years' license for skiing on Farnham Glacier, one of the four glaciers within the boundary of the Interim Agreement and of the Master Plan.**
34. Glacier Resorts Ltd. gave a sub-license for half of the Farnham Glacier tenure at \$1 to CODA. CODA trained Olympic skiers from a temporary camp facility accessed by extending a road from the Horsethief Creek drainage, utilizing diesel operated snow cats to carry the skiers uphill. Glacier Resorts Ltd. expected to offer a similar opportunity to other athletes, but to introduce electric lift service rather than snow cats.
35. In August 2008, despite the long history of the application and the provincial ten years' license for skiing on Farnham Glacier the regional district's planner surprised the applicant who had been advised prior to installation that a removable platter lift would not require a building permit from the regional district **The planner indicated at installation time that it would require rezoning. This in practice placed a veto on the installation, as it was too late and unclear how to process a new application for rezoning,** and assisted project opponents who blockaded the access road preventing contractors from installing the lift. The platter lift was



placed in storage waiting for a resolution of the required approval process while athletes continued to use diesel operated snow cats, helicopters and tents to train on the glacier.

36. In **October 2008** the applicant concluded an extensive and precedent setting **Impact Management and Benefits Agreement (IMBA)** with the Shuswap Indian Band of Invermere.

## 2009

37. In January 2009 the deadline for start of construction (October 12, 2009) in the EA Certificate was extended by another five years. The Ktunaxa Nation Council (KNC) based in Cranbrook expressed opposition and asked the EA Office to deny the extension.
38. The applicant continued meetings with the Ktunaxa representatives and a draft IMBA with the KNC was tabled by the KNC as of April 2nd, 2009.
39. In May 2009 the provincial candidate that supported the project won more than 50% of the popular vote in the ridings of the Columbia Valley that go from Radium to Fairmont, and **in particular in Area F of the regional district**, confirming a trend of the last fifteen years, when **project opponents never won a majority of the popular vote in the area, despite the disinformation campaign and the prominence of the project name.**
40. On July 3<sup>rd</sup>, 2009, **KNC representatives e-mailed Grant Costello cancelling future meetings** and stating that: “We have gone through some critical meetings with respect to the Jumbo project. We have been directed by the leadership to: (i) organize a meeting with the Premier, Minister Krueger and Ktunaxa Nation leadership regarding the Jumbo area prior to the end of July; and (ii) temporarily suspend negotiations with GRL pending the convening of the meeting with the Premier and Minister Krueger, and further direction from the nation. Given this direction we are unable to meet with you next week as planned. We will contact you after we meet the Premier, etc. and the nation leadership provides further direction”. However, KNC representatives made representations to the RDEK opposing a motion to re-instate the 1996 resolution requesting the Province to create a Mountain Resort Municipality for JGR, once the Master Development Agreement is completed.
41. **On August 7<sup>th</sup>, 2009, the Board of Directors of the Regional District of the East Kootenay re-instated the 1996 resolution, by voting to request the Province to designate a Mountain Resort Municipality for Jumbo Glacier Resort** once a Master Development Agreement is signed and that a council of local citizens, supported by a locally based advisory group including First Nations, be appointed to govern the resort. (*Appendix 16* or <https://www.dropbox.com/s/65geb8ocykwhmof/16-RDEK-August7-Vote-2009.pdf?dl=0>).
42. Project opponents claimed that there had not been an adequate public process leading to a local decision and that the vote of the directors was undemocratic, **ignoring the fact that the East Kootenay CORE Table decision of 1994, prior to the Environmental Assessment Act review process, had been a public and entirely local land use decision. This decision had been favourable and was the prior to condition of the entire process. The local land use decision had been confirmed by the vote of the Directors of the East Kootenay**



- Regional District in 1996**, but the opponents also maintained that this time the vote of the regional directors was not a local democratic decision (a claim that was not made following the 1994 CORE decision and the 1996 regional Directors vote, when the assumption was that the opponents could block the project through the EA process). The opponents requested a new vote.
43. On September 4th, 2009, despite a request to overturn the August 7th vote, the Board of Directors of the Regional District of East Kootenay voted to request the Province that in the initial stage of a Mountain Resort Municipality for Jumbo Glacier Resort, before the establishment of a voting population, the mountain resort should be represented in the Regional District by the Director of Area F.
  44. On September 25th, 2009, **the Minister of Community and Rural Development responded to the requests of the RDEK confirming in a final manner that the Ministry will act accordingly** (*Appendix 17* – <https://www.dropbox.com/s/uvazlf68ba15yq3/17-Letter-NormWalter-Sept25-2009.pdf?dl=0>).
  45. On October 9<sup>th</sup>, 2009, the Minister of Tourism, Culture and the Arts, wrote to Pheidias Project Management Corporation to explain that the Province is waiting to complete a potential accommodation of the Ktunaxa Nation by December 1, 2009, before deciding to sign a Master Development Agreement. (*Appendix 18* – <https://www.dropbox.com/s/ceh5h9mdfqnvuie/18-Letter Minister Krueger-Oct9-2009.pdf?dl=0>)
  46. On **December 4<sup>th</sup>, 2009, Mayor David Wilks, who sponsored the motion in favour of Jumbo Glacier Resort in August, was elected Chairman of the Regional District of East Kootenay with an expanded majority of ten Directors**, from a total of fifteen Directors.
  47. On April 21, 2010, the Minister of Tourism, Culture and the Arts wrote to Pheidias Project Management Corporation that the Province is still finalizing consultations with the KNC, and the Province “expects this step to be completed in the near future.” (*Appendix 19* – <https://www.dropbox.com/s/tyfex1cc76q5no6/19-Letter from Minister Krueger-April2009.pdf?dl=0>)
  48. On September 15<sup>th</sup>, 2010, Pheidias wrote to the Minister of Aboriginal Affairs noting that Wildsight’s requests that the Province should not “fast track” the approval process are egregious, and that in the 20<sup>th</sup> year of process it is time to conclude negotiations and process.
  49. On October 6<sup>th</sup>, 2010, the Minister of Tourism, Culture and the Arts wrote to Pheidias Project Management Corporation that the Province is still dealing with two matters, including First Nations consultations, but stated “**I can assure you that the Ministry expects to complete these items in the near future**”. (*Appendix 20* – <https://www.dropbox.com/s/w6am8vbx82tjkm/20-Letter from Minister Kruger-Oct6-2009.pdf?dl=0>).
  50. On October 22th, 2010, a press release announced, “the Ktunaxa Nation and Province Sign an Engagement Agreement”. The press release noted that “**\$1.65 million** will be provided to the Ktunaxa nation ...to more effectively engage the Province on land and resource

development decisions” and stated also: “The Ktunaxa nation would like to commend the Province for their commitment in developing this approach for land and resource management, and we look forward to demonstrating a co-operative relationship that can be a model for others to follow”. (Appendix 21 – [https://www.dropbox.com/s/cwvt0xm31djps1/21-Provincial News Release-Ktunaxa.pdf?dl=0](https://www.dropbox.com/s/cwvt0xm31djps1/21-Provincial%20News%20Release-Ktunaxa.pdf?dl=0)).

51. On October 25<sup>th</sup>, 2010, the Provincial cabinet was shuffled and Ministers’ responsibilities were changed. New letters were written to the new Ministers, with information packages.
52. On November 15<sup>th</sup>, 2010, Representatives of the Ktunaxa Nation Council (previously the Ktunaxa Kinbasket Tribal Council, the KKTC ) under the leadership of Troy Sebastian (previous NDP candidate in the same riding as Minister Bill Bennett) conducted a demonstration in Victoria in front of the Parliament Building in order to declare the Jumbo Valley sacred ground to the Ktunaxa First Nation and persuade the Province not to conclude the approval process for the Jumbo Glacier Resort project, formally started under bipartisan provincial policy in July 1991. This was followed by a full-page ad in the Vancouver Sun and the Province. A commentary by Don Cayo of the Vancouver Sun
53. is attached. (Appendix 22 – <https://www.dropbox.com/s/w8yhedfhg7haqb1/22-DonCayo-Nov26-2010.pdf?dl=0>).
54. On December 16<sup>th</sup>, 2010 following a letter written on November 11, 2010 Chief Paul Sam of the Shuswap wrote another letter to the Premier condemning the action of the Ktunaxa and refuting the new claim of sacred grounds (Appendix 23 – [https://www.dropbox.com/s/hl09mf18key55ca/23-Letter from Shushwap to Premier.pdf?dl=0](https://www.dropbox.com/s/hl09mf18key55ca/23-Letter%20from%20Shushwap%20to%20Premier.pdf?dl=0)).

## 2011

55. On February 4<sup>th</sup>, 2011, Vancouver Media Coop published an article by the Sinixt Nation under the title “Jumbo Deception” condemning the opposition of the Ktunaxa to the JGR project (Appendix 24 – [https://www.dropbox.com/s/swh50rdkwvzt1z7/24-A Jumbo Deception.pdf?dl=0](https://www.dropbox.com/s/swh50rdkwvzt1z7/24-A%20Jumbo%20Deception.pdf?dl=0)).
56. On February 19<sup>th</sup>, 2011, the *Globe and Mail* published an article in the “Globe Travel” section by a writer based in Kimberley, B.C., including misleading pictures, unfounded claims of new information on Grizzly bears and the Jumbo Valley, and interviews with Ktunaxa representatives. The article included a map of the sacred territory of the Ktunaxa, i.e. the Jumbo Valley, **never seen before**. There was no mention of the sawmill at the project site or of the mine at the opening of Jumbo Valley or of the on-going logging operations. Letters to the Minister (as well as a brief letter to the editor) were written in full response to the claims of the article writer. On February 26<sup>th</sup>, 2011, the *Columbia Valley Pioneer* responded to the *Globe and Mail* article with an editorial entitled “Jumbo omission”. The Ministry also provided a response on July 28, 2011 (five months later) outlining the project’s multiple and comprehensive review processes to the writer. (Appendix 25 –

<https://www.dropbox.com/s/0ur8qyaiew3qcya/25-JumboOmission+Response-to-Kirby.pdf?dl=0>)

57. On March 5<sup>th</sup>, 2011, Daphne Bramham of the Vancouver Sun commented with a full-page article on page 3, entitled, “After 21 years it’s time for Jumbo decision,” with the following subtitle, “Final verdict likely won’t make everyone happy, but government has more than enough information at its disposal.” (*Appendix 26* – <https://www.dropbox.com/s/rhtaj2xfp0f2in/26-VancouverSun-March6-2011.pdf?dl=0>)
58. On March 14<sup>th</sup>, 2011, Glacier Resorts Ltd., wrote a letter to the Minister of Forests, Lands and Natural Resources, welcoming the new government’s emphasis on jobs and families, emphasizing how this environmentally sustainable project accomplishes long standing provincial policy objectives, and enclosing a signed copy of the final draft of the Master Development Agreement as received from provincial staff on completion of the approval processes.
59. In June 2011, Glacier Resorts Ltd. submitted a management plan to take over glacier skiing operations on Farnham Glacier, previously offered by WinSport Canada (formerly known as CODA), which operated under a sub-license from Glacier Resorts Ltd. The initial operation was set up as a summer training site for the Canadian ski team in preparation for the 2010 Winter Olympics. Restarting operations would allow the continuation of an Olympic legacy for the benefit of B.C. ski clubs and the public. An approval of the management plan by the Province was received on July 22<sup>nd</sup>, 2011, but it was conditional on confirmation of compliance with the Province’s Strategic Engagement Agreement signed in October 2010 with the Ktunaxa Nation Council. This apparent approval was, in effect, not an approval since notification of compliance with the Province’s Strategic Engagement Agreement was not received until **October 2011** – too late for summer operations. By August 2011, when it had become clear that a recommencement of summer skiing operations, even if only via snow cats, was not going to be permitted in time, the local contractors had to renounce their planned work on Farnham Glacier. An article and an editorial by the local paper, *The Columbia Valley Pioneer*, accurately described the situation and criticised project opponents’ unsubstantiated and misleading claims. The article, the editorial, a letter from a local parent (quoted in the article), and an exchange of letters between the Province and the proponent’s representative are included in *Appendix 27* — <https://www.dropbox.com/s/s8najd66cjkthy8/27-FarnhamGlacier-SummerOperations-Letters+articles-2011.pdf?dl=0>.
60. On June 26, 2011 on **the eve of the 20<sup>th</sup> anniversary of the Province’s formal acceptance of the Expression of Interest**, a group of local community leaders from the Columbia Valley wrote to Premier Clark urging the Province to finalize Jumbo Glacier Resort’s approval process in a fair and honourable manner by signing the MDA. The group included the Mayor of Radium, the Chief of the Shuswap Indian Band, the President & CEO of Panorama Mountain Village, executives of the Copper Point Resort and Golf Courses, the CEO of the Kinbasket Group of Companies, executives of the Eagle Ranch Golf Resort, the Executive Director of the Columbia Valley Chamber of Commerce, Radium Resort, and numerous local business owners (see *Appendix 28* – <https://www.dropbox.com/s/4f1tlb4aay8frdt/28-Jumbo-CommunityLeadersSupport.pdf?dl=0>).

61. Correspondence with the Minister of Forests, Lands and Natural Resources Operations indicated that it is time for the Minister to complete the Master Development Agreement, terminating unforgivable delays, denials of public policy implementation, and equivocations on correct information. Justice and democratic policy implementation also require that his colleagues respond to the request first made by the regional district in 1996, after the completion of the East Kootenay CORE Table land use designation process, at the start of the EA Act process, and restated in 2009. This is the request that the Province create a mountain resort municipality so that the project can implement the approved Master Plan and so that the infrastructure work may finally proceed as per the project's environmental certificate. By now it should be clear that the complaints of those who stated that the project has been "fast tracked" are rather unfounded.
62. On October 16, 2011, the new managers of France Neige International expressed a renewed desire of the French ski industry to participate in the development of Jumbo Glacier Resort, which they recognized as the best new ski project available in North America. The French interest dates to 1993, when Jean Pierre Sonois, Chairman of the Board and CEO of la Compagnie des Alpes, Eric Guilpart, Vice President Business Development, and Francis Crouzet, Ingenieur INSA-Directeur Technique, came to see the project site and skied into Jumbo Valley with the designer of the project – confirming it as the best potential ski resort in North America. France Neige International invited key project representatives as well as key local, provincial, and First Nations representatives to visit the French Alps and the work of the Compagnie des Alpes to learn about the French ski industry and its ski areas.
63. On February 6<sup>th</sup>, 2012, a B.C. delegation, including Bill Bennett MLA representing the Province of B.C., started a weeklong visit to the French Alps and the resorts of la Compagnie des Alpes as guests of France Neige International. The visit included a very successful presentation to key French industry representatives, including the senior representatives of la Caisse des Depots and Consignations, principal owners of la Compagnie des Alpes.
64. **On March 20<sup>th</sup>, 2012, the Minister of Forests, Land, and Natural Resources Operations announced the execution of the Master Development Agreement by the Province, as completion of a process begun in 1993 with an Interim Agreement.**
65. On March 26<sup>th</sup>, 2012, a French group representing France Neige International and la Compagnie des Alpes came to B.C. visiting and skiing the area of the Jumbo Glacier Resort project. They were also met by a group of project opponents, who generated a flow of negative correspondence to their head offices.
66. On June 8<sup>th</sup>, 2012, the Board of Directors of the Regional District of East Kootenay **reaffirmed again the unanimous 1996 request** (restated in 2009 by majority vote) to the Province **to create a Mountain Resort Municipality following the execution of the Master Development Agreement.**
67. In August 2012, without any consultation with the Shuswap Indian Band or with project representatives (but, as discovered later, at the request of representatives of the Ktunaxa Nation Council) **the regional office of the Ministry of Forest, Lands and Natural**

**Resources Operations in Cranbrook closed road access to the project site**, just past the start of the Jumbo Pass trail, at kilometre 15.8 of the Jumbo Creek Forestry Service Road (the FSR). An earth dam was placed on the road to block passage, instead of the bridge, with a prominent sign indicating the official road closure. This particular bridge is the only one that had become part of the approved Master Plan, and is inside the boundary of the Controlled Recreation Area and of what was the proposed boundary of the mountain resort municipality to be created by the Province.

68. On November 20<sup>th</sup>, 2012, twenty-two years after the start of the application process for the most sustainable ski area in North America, in a location with the best and most reliable snow, and with unique access to high alpine glaciers, **the just and final conclusion of the process was obtained with the formation of the Jumbo Glacier Mountain Resort Municipality, fulfilling the 1996 request by the East Kootenay Regional District**. It was hoped that it would be soon possible to bring people to the top of the glaciers by means of lifts rather than by helicopters, and to offer accessible year-round skiing and high alpine glacier sightseeing for the first time in Canada (Project Fundamentals are attached as *Appendix 29* – <https://www.dropbox.com/s/5flx45hb2ekzoko/29-ProjectFundamentals.pdf?dl=0>).
69. On November 30<sup>th</sup>, 2012, the Ktunaxa Nation Council (KNC) launched a Petition in the Supreme Court of British Columbia to have the Master Development Agreement quashed.
70. Project consultants started planning construction access by the reactivation of the forestry road on the north side of Jumbo Creek, with a small connection of new road near the project site. This would avoid the need of the bridge at km 15.8 of the FSR. Also, start of construction on the Farnham Glacier side, reopening summer skiing as CODA did, was planned.
71. On February 19<sup>th</sup>, 2013, the Mayor and Council of the Jumbo Glacier Mountain Resort Municipality held their first meeting, in the council chamber of the Village of Radium Hot Springs.
72. After a Public Hearing held on May 13<sup>th</sup>, 2013, **on May 21<sup>st</sup>, 2013 the Jumbo Glacier Mountain Resort Municipality passed the first rezoning bylaw that would permit start of construction of the project in the Farnham Glacier drainage**. Soil testing, design development and preliminary work were planned and started in order to begin construction of a lodge and to prepare summer skiing on Farnham Glacier, replacing with permanent facilities the camp operated by CODA before the 2010 Winter Olympics.
73. A blockade by protesters in August 2013, removed in September after necessary legal steps were taken to obtain an injunction, effectively caused the loss of the season both for construction and summer skiing. It was evident that opening the project from the Farnham side with summer skiing could be disrupted again, by protestors or by late openings of the access road due to avalanches or debris, so the option to open for summer skiing only started to look less prudent than that of opening operations from the Jumbo Creek drainage, for winter and summer, even if more demanding in terms of reopening access.

74. Engineering design to obtain the permits to reopen access to the Jumbo Creek resort site was an urgent requirement that had become apparent after the closure was discovered in summer 2012. A meeting on site on August 1<sup>st</sup>, 2013 with project representatives, engineering consultants, and Ministry of Transportation staff seemed to indicate a consensus on route alignment and road standards. This appeared to be a big step forward in order to finalize the engineering design of the alternative access route, on the north side of Jumbo Creek, outlined in the route study submitted at various times of the approval process.
75. In the fall 2013, images of Jumbo Glacier Resort reached as far as South Korea. Means of Production Inc. and JP Films from Sydney, Australia, arrived at Farnham Glacier on November 1st, 2013 to film a commercial for POSCO, a multinational steel-making company headquartered in Pohang, South Korea.
76. The Petition from the KNC to have quashed the Master Development Agreement (MDA) for the Jumbo Glacier Resort project was heard in the Supreme Court of British Columbia in the first two weeks of January 2014.
77. **On April 3<sup>rd</sup>, 2014, the decision of the Supreme Court was rendered, dismissing the petition with a 117-page decision, confirming the MDA and the 23 years' approval process of the project.** This seemed to give the final green light to the project, but the KNC appealed the decision.
78. Following various engineering design submissions and more conversations with provincial staff in Cranbrook, in the Spring of 2014 it became apparent that the alternative route on the north side of Jumbo Creek required more studies, notifications and consultations again before permits could be obtained. In particular, provincial staff advised that the northern route alignment required additional archaeological studies and consultations with the Ktunaxa First Nation, with an unclear timeline. Consequently, it became obvious that **construction work in the Jumbo Creek drainage could get underway in summer 2014 only if the existing forestry service road (the FSR) access could be reopened.**
79. Applications for creek crossings and discussions for the placement of temporary bridges as required to obtain the use of the existing forestry road were started in consultation with the Ministry of Forests, Lands and Natural Resources Operations (MFLNRO) in Cranbrook.
80. The Official Community Plan (OCP) and zoning for the project had been progressing toward approval in 2015, as required in the letters patent of the municipality, but the Jumbo Glacier Mountain Resort Municipality was not ready to complete the work by summer 2014. In order to have permission to start construction, in June 2014, the proponent requested limited zoning for the ski area facilities in the Jumbo valley, and the Jumbo Glacier Mountain Resort Municipality agreed to prepare limited zoning for the ski area and related facilities in the upper Jumbo Creek drainage, in advance of the OCP. **The Public Hearing was held on August 6<sup>th</sup>, 2014, and zoning for the day lodge, a service building and the first chairlift was approved in the following weeks. Land leases for the building sites were also obtained in order to secure building permits.**

81. Making use of available designs from MFLNRO, adapted by the project engineers, a new bridge to give access to the project site past km 15.8 of the Jumbo Creek FSR, was ordered and delivered for installation by August 20<sup>th</sup>, 2014, after the freshet window permitting creek crossing by construction equipment. Two temporary bridges were also delivered to permit construction equipment access over the ford at km 11.1 of the FSR and to cross Jumbo Creek to install the permanent bridge at km 15.8 of the FSR.
82. On August 20<sup>th</sup>, 2014, **permits were in place 23 years after the start of the approval process.** With all permits and equipment required for the creek crossing and bridge installations being available, bridge installation was started to reopen the road where it had been closed by MFLNRO.
83. Snowfall arrived at the project site in mid-September, but despite the weather and more threats on the Internet and in the media, as well as a handful of protestors camping along the route to the site, work proceeded feverishly and the initial foundations **of the necessary components of the opening phase: the day lodge, a service building and chairlift #1.1, were solidly in place by the Environmental Certificate's deadline of October 12, 2014** (established by virtue of the revised Environmental Assessment Act of 2002, which did not exist at the beginning of the process).
84. The Environmental Assessment Office advised that a construction stoppage should take place until when it completed consultations regarding the determination of a substantial construction start. However, with its permission work continued on road access improvements and site protection before closure for snow. Construction of the Jumbo Glacier Resort project, after 24 years of studies and permit processes, has started.
85. Continuation of construction was stopped by order of the Environmental Assessment Office, pending new controversies on the definition of construction start, a challenge to the location of the day lodge by the heli-ski company (<http://jumboglacierresort.com/avalanche-exposure-at-jumbo-glacier-resort/>), and pending the Minister of Environment's decision regarding the determination of start of substantial construction according to the deadline of October 12, 2014.
86. Reports by Peter Schaerer and by Dynamic Avalanche Consulting indicated that the position of the day lodge had been incorrectly shown by the reports of the heli-ski company and that the minor potential day lodge exposure can be easily protected with known techniques practised at mountain resorts. The reports also confirmed that the resort village has no avalanche exposure.
87. The directors of Glacier Resorts Ltd., the project proponent since 1990, were confident that 2015 would see the final green light for the Jumbo Glacier Resort project from the authorities having jurisdiction, but on June 18<sup>th</sup>, 2015, the Minister of Environment communicated her decision, that substantial construction start had not occurred by October 12<sup>th</sup>, 2014, and consequently the environmental Certificate for the project had lapsed. The decision surprised Glacier Resorts Ltd. because it had been **based on Ktunaxa Nation Council submission of expectations of a larger construction for the opening of the First Phase, a larger**



**construction that could not be materially done because of lack of zoning and lack of access, and whose requirement had never been disclosed to the proponent.**

88. Glacier Resorts Ltd. started working on a request for judicial review of the decision of the Minister of Environment and examining all available options to continue the project. One option was an alteration to the Master Development Agreement for a project with a smaller resort size (2,000 bed units), below the thresholds of the regulations of the Environmental Assessment Act, maintaining compliance with all the environmental conditions, except the deadline for start of substantial construction by October 12, 2014.
89. On August 6<sup>th</sup>, 2015, the Court of Appeal British Columbia unanimously dismissed the application by the Ktunaxa Nation Council to overturn the earlier Supreme Court decision which upheld the Master Development Agreement (MDA) between Glacier Resorts Ltd. and the Province for the development of Jumbo Glacier Resort. According to the three judges' decision "The decision of the Minister to approve the MDA did not violate the Ktunaxa's freedom of religion guaranteed under s. 2(a) of the "Charter". The Minister did not breach his duty to consult and accommodate under s. 35.
90. On December 11, 2015, Glacier Resorts Ltd. forwarded to the Province the revised drawings and related information regarding a reduced resort village base with **a formal notification of change as permitted under the terms of the MDA**. This would allow construction of the project to start again with a maximum of up to 2000 tourist beds.
91. On December 18, 2015, the Petition to have the decision of the Minister of Environment overturned by judicial review was filed in the Supreme Court of British Columbia by Glacier Resorts Ltd. If successful, this would eliminate the need to reduce the size of the resort village below the threshold of the EA Act regulations.
92. On March 16<sup>th</sup>, 2016, the Supreme Court of Canada decided to accept to hear the appeal of the Ktunaxa Nation Council of the decisions of the Supreme Court of British Columbia and of the British Columbia Court of Appeal. The Ktunaxa appeal was set to be heard on December 1<sup>st</sup>, 2016.
93. On September 7<sup>th</sup>, 2016, Glacier Resorts Ltd. made its submission to the Supreme Court of Canada in support of the submission by the Province of B.C.
94. On December 1<sup>st</sup>, 2016, the Supreme Court of Canada heard the appeal of the Ktunaxa Nation Council. The hearing can be seen at:

<http://www.scc-csc.ca/case-dossier/info/webcasts-webdiffusions-eng.aspx?ya=2016&ses=01&submit=Search>

Glacier Resorts Ltd. and its L.P were confident that justice would prevail and the project will finally go ahead.

95. On November 1<sup>st</sup>, 2017, the Supreme Court of Canada **unanimously dismissed** the appeal of the Ktunaxa Nation Council, with two judges (Moldaver and Cote) offering a different legal opinion for the dismissal. The judges decision was:

*“Held:* The appeal should be dismissed.

*Per McLachlin C.J.* and Abella, Karakatsanis, Wagner, Gascon, Brown and Rowe JJ.: The Minister’s decision does not violate the Ktunaxa’s s. 2 (a) Charter right to freedom of religion. In this case, the Ktunaxa’s claim does not fall within the scope of s. 2 (a) because neither the Ktunaxa’s freedom to hold their beliefs nor their freedom to manifest those beliefs is infringed by the Minister’s decision to approve the project.

*Per Moldaver* and Côté JJ.: The Minister reasonably concluded that the duty to consult and accommodate the Ktunaxa under s. 35 of the Constitution Act, 1982 was met; however, the Minister’s decision to approve the ski resort infringed the Ktunaxa’s s. 2 (a) Charter right to religious freedom.

Reasons at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16816/index.do>

96. On June 25, 2018, the Supreme Court of British Columbia (SCBC) heard the petition filed on December 18, 2015, by Glacier Resorts Ltd., and on August 17, 2018, the SCBC ruled in favour of Glacier Resorts’ petition that the Province of British Columbia’s October 12, 2014 decision that construction of the Jumbo Glacier Resort project was not “substantially started” be remitted.

The decision by then Minister of the Environment Mary Pollack had caused the project’s Environmental Certificate to expire. The judgment found that the then Minister’s decision was unreasonable, and that relevant evidence was not considered. Justice Forth therefore remitted the decision to the current Minister with specific instructions to consider the interpretation of the legislative scheme, the mitigating/limiting factors and legal analysis made in the judgment.

97. Glacier Resorts Ltd. is confident that the new Minister of Environment will follow the instructions of the judge. After 27 years of government process the Jumbo Glacier Resort will soon start construction in a final manner. Opening for year-round skiing and unique sightseeing in the best climate and mountains of North America will follow in two years.