

JUMBO GLACIER RESORT APPROVAL PROCESS

- A HISTORY¹ -

1990

1. During the summer of 1990, Pheidias Project Management Corporation (Pheidias), on behalf of Glacier Resorts Ltd. and L.P. (Glacier - 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 major destination hotel and surrounding residential units 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.

1991

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. This was confirmed by letter by the Deputy Minister in charge.
3. **CASP required that a proponent be selected through a request for proposals before starting the public process. Instead 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, but its conceptual proposal was made public.
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 kind of car or truck had access to the site.** The Mineral King Mine, where the public road ends, was closed. Both the public road and the forestry road are maintained by the Province, through different ministries.
6. At the conclusion of the public input period on September 26, 1991, B.C. Lands held an Open House in Invermere. Staff at **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 Interim Agreement and the Master Plan stage. The municipal council of Invermere voted to request

¹ This document is available online at: www.jumboglacierresort.com/chronology

the Province to move the project to the Master Plan stage. However, the Proposal Call and proponent selection according to CASP was delayed for more than a year.

1992

7. In 1992, the Province encouraged the proponent to move forward and confirmed that government policy encouraged the type of project being presented. The proponent continued studies to prepare a Master Plan submission, primarily with Norecol Environmental, Alpentech, Golder Associates, McElhanney Engineers and Pheidias as prime consultant and designer. A Formal Proposal (a preliminary master plan) was submitted according to CASP.
8. B.C. Lands 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 1* 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 2* or downloadable at <https://www.dropbox.com/s/r232xgaulp2qd7q/3-Ecosign-1983.pdf?dl=0>).

1993

10. At a meeting held during the World Economic Forum conference in Davos in January 1993, **Premier Mike Harcourt personally confirmed that provincial policy encouraged the type of project being presented** (see *Appendix 3* or <https://www.dropbox.com/s/bi1dgo3lhkb0l4g/1-Harcourt-feb24-93.pdf?dl=0>
11. 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 after), selecting Glacier Resorts Ltd. as the sole proponent according to the CASP process and policy.
12. The proponent immediately submitted a preliminary Master Plan, but the review was delayed until when the land use question would be decided under the Commission on Resources and the Environment (CORE) process, established the previous year.
13. 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 to be decided under CORE.**

14. The Province confirmed with a letter of the Deputy Minister of Environment 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>).

1994

15. 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 5* or <https://www.dropbox.com/s/iczarszplbgeh0l/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 favorable 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 6* 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.*

16. 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 7* or <https://www.dropbox.com/s/625pplz66zto588/8-Jumbo-SMA-Values.pdf?dl=0>).
17. The East Kootenay CORE Table concluded its 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 8* – or <https://www.dropbox.com/s/1xglnz9wevwx0k/5-CORE-EastKootenay.pdf?dl=0>).

1995

18. 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%. 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 number and size of land use designations for conservation and special management and assigned an Integrated Use designation to the Jumbo Valley.
19. **In April 1995, the Province formally announced the approval of the land use decision for the Jumbo Glacier Resort project** (see *Appendix 9* or <https://www.dropbox.com/s/ogu8zu2msa6t4cq/9-ProvincialNewsRelease-April10-95.pdf?dl=0>).
20. 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.”
21. 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.
22. The EA Act process was presented by the provincial government as providing supposed the “one window” efficient approval process that would have responded to the requirements mentioned in the above noted Commissioner’s letter of December 13, 1994 (*Appendix 6* or <https://www.dropbox.com/s/bqg04q07yoj9on6/7-Owen-Dec13-94.pdf?dl=0>).
23. In July 1995, the EAO started the process under the EA Act, but it did not follow the timelines prescribed in the Act. The Project Director of the EAO established a review committee including provincial staff, federal National Parks staff and local government and First Nations representatives comprising approximately 60 persons. Each meeting was public. A public library including all submissions, reports and studies was established by the EAO.
24. During the process initiated by the EAO to prepare the *Project Specifications*, the proponent group noticed a map being drafted by ministry of environment 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 (FOI)*. There was no response in 1995.

25. In 1995 the Province created also the *Mountain Resorts Associations Act* (MRAA). **The EA Act 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 requested 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.

1996

26. In March 1996 the proponent obtained the response to the FOI enquiry of 1995 in 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.** Most notable was a memo from Guy Woods to Anna Wolterson (both in the Ministry of on the application 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. Let's look at this as an opportunity to collect the ammo, to stop the development!"* The internal correspondence indicated a strategy from a certain segment of provincial staff, since when the proposal was publicly announced in 1990 by provincial staff, to ally themselves with special interest groups and to do everything possible to manipulate information and to discredit the project and the proponents in order to ensure that the proposal would die.

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.

27. The proponent had 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.
28. Public meetings submissions and studies were produced by opponents, proponent and provincial staff toward the preparations of Project Specifications. Draft Project Specifications were circulated for discussion.

1997

29. The entire year was spent in public consultations and proponents' reports in response to project opponents as part of the public process leading to finalizing the draft Project Specifications. The proponent 's engineers even did soil testing to prove the feasibility of project services.

1998

30. In May 1998, Ray Crook, Project Director for the Environmental Assessment Office issued in three volumes the **Project Specifications. Under the EA Act timelines they should have been issued by the end of 1995.**
31. 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.

1999

32. The proponent continued studies, responses and voluntary public meetings and meetings with provincial staff and other experts leading to the Project Report that contains the result of the work undertaken since 1990. 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>).

2000

33. On January 26, 2000 investors and experts from Europe and the United States and the consultants from Vancouver travelled to Victoria to meet with the Deputy Minister of the Environmental Assessment Office, Dr. Sheila Wynn, and with the Deputy Minister of Employment and Investment, Charles Kang to express their concerns and frustrations with the continuous delays, misrepresentations and changing goal posts regarding the project. The meetings were attended also by provincial staff, including the EAO Project Director, Ray Crook, and the Assistant Deputy Minister of Environment, Dr. Jon O’Riorden. Key message coming from the meeting was that **the process was near conclusion and that the proponent and its investors should persist because the EA certificate would be the “green light” for the project.** Also, Dr. O’Riorden (named in the FOI material mentioned above) admitted that he had never visited the site and made a commitment to do so in the near future with the proponent’s consultants (he did it in April).

2001

34. The year was spent continuing trying to complete a Project Report with all the studies, responses and compromises needed to satisfy the Ministry of Environment and the other ministries.

2002

35. On May 30, 2002, while studies were continuing to try to obtain final approvals and the Certificate, a new Environmental Assessment Act (EA Act) was assented to. A major change was that an environmental Certificate under the new Act would not have permanent status, as

when the application was started in 1995. Section 18 of **the new Act provided for an EA certificate to have validity for only 5 years followed by only one permitted 5-year extension, unless “substantial construction start had occurred before the deadline”.**

36. According to the new EA Act, after winning an approval for a Certificate, the proponent now had to apply for and obtain Master Plan approval and a Master Development Agreement through the provincial process, then to apply for and obtain an amendment to the Official Community Plan (OCP) and for rezoning from the local government (either the existing regional district or a future mountain resort municipality – common experience is that an OCP amendment alone may require 2 years). After that, for projects on un-surveyed and un-serviced crown land, essential services, land subdivisions, and building permits had to be approved and a “substantial construction start” had to be completed and accepted by the Minister in order for the Certificate to remain valid.

2003

37. On December 31, 2003, after eight years of consultations, studies, reports and public meetings the proponents’ consultants submitted to the Province in 13 volumes the Project Report required under the EA Act for final public review and provincial approval. It included all responses to all questions in the Project Specifications issued by the Province in May 1998.

2004

38. The 13 volume Project Report was re-submitted on January 31, 2004 to respond to further requirements 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.**
39. **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>).
40. 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.
41. 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 favor of joining the Shuswap Nation Tribal Council, with the support of the 17 chiefs of the Shuswap Nation.

42. On October 19th, 2004, Kathryn Teneese, the leading negotiator for the Ktunaxa Nation during the EA Act process was quoted by Turtle Island Native Network as follows²:

"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."

2005

43. 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)).
44. **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

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

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.

45. On November 23, 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>).

RK had made the case that natural justice had been denied to the opponents, **but it had become clear that the party that had been denied natural justice was the proponent.**

2006

46. The Province formally resumed the public review process interrupted in 1995 under the Commercial Alpine Ski Policy toward the approval of the Master Plan submitted and reviewed under the Environmental Assessment Act. Consultations with the First Nations were also restarted.

2007

47. RK appealed the decision of the Supreme Court of B.C. On January 8, 2007, three judges of the B.C. Court of Appeal unanimously confirmed the decision of the Cranbrook court. (decision attached – *Appendix 15* or <https://www.dropbox.com/s/m5txazwzkdstnn5/15-Reasons4Judgment-RKvGlassman.pdf?dl=0>).
48. On **July 12, 2007**, following another two-year public review process under CASP, the **Province approved the Master Plan for Jumbo Glacier Resort.**

2008

49. 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.**
50. 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. wanted to offer a similar opportunity to other athletes, but to introduce electric lift service rather than snow cats on the other part of the glacier.
51. In August 2008 the regional district's planner advised the proponent that a removable platter lift would not require a building permit from the regional district. However, after the lift was acquired and delivered, **the planner indicated at installation time that a lift installation would require rezoning before it could occur. It was too late and unclear how to process**

an application for rezoning and required public hearings. At the same time opponents 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. Athletes continued to use diesel operated snow cats, helicopters and tents to train on the glacier with CODA.

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

2009

53. 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.
54. 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.
55. In May 2009 the provincial candidate that publicly 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, which includes Invermere.**
56. On July 3rd, 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”. Also, 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.
57. **On August 7th, 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>).
58. 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. The opponents requested a new vote.
59. On September 4th, 2009, the Board of Directors of the Regional District of East Kootenay confirmed the August decision and 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.

60. 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 would act accordingly** (*Appendix 17* – <https://www.dropbox.com/s/uvazlf68ba15yq3/17-Letter-NormWalter-Sept25-2009.pdf?dl=0>).
61. On October 9th, 2009, the Minister of Tourism, Culture and the Arts, wrote to Pheidias to explain that the Province was 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)
62. On **December 4th, 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 a majority of ten Directors, from a total of fifteen Directors.

2010

63. On April 21, 2010, the Minister of Tourism, Culture and the Arts wrote to Pheidias Project Management Corporation that the Province was 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)
64. On September 15th, 2010, Pheidias wrote to the Minister of Aboriginal Affairs noting that Wildsight’s requests that the Province should not “fast track” the approval process were egregious, and that in the 20th year of process it was time to conclude negotiations and process.
65. On October 6th, 2010, the Minister of Tourism, Culture and the Arts wrote to Pheidias Project Management Corporation that the Province was 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).
66. 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/cwvt0xm31djpss1/21-Provincial_News_Release-Ktunaxa.pdf?dl=0).

67. On October 25th, 2010, the Provincial cabinet was shuffled and Ministers' responsibilities were changed. New letters were written to the new Ministers, with information packages.
68. On November 15th, 2010, Representatives of the KNC 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. A full-page ad in the Vancouver Sun and the Province followed. Commentary by the Vancouver Sun is attached. (*Appendix 22* – <https://www.dropbox.com/s/w8yhedfhg7haqb1/22-DonCayo-Nov26-2010.pdf?dl=0>).
69. On December 16th, 2010 after 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_from_Shushwap_to_Premier.pdf?dl=0)).

2011

70. On February 4th, 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_Jumbo_Deception.pdf?dl=0)).
71. On February 19th, 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 26th, 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 outlining the project’s multiple and comprehensive review processes to the writer. (*Appendix 25* – <https://www.dropbox.com/s/0ur8qyaiew3qcy/25-JumboOmission+Response-to-Kirby.pdf?dl=0>)
72. On March 5th, 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>)
73. On March 14th, 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.

74. 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 22nd, 2011, just in time for some late summer skiing, but it was conditional on confirmation of compliance with the Province's Strategic Engagement Agreement signed in October 2010 with the KNC. Notification of compliance with the Province's Strategic Engagement Agreement was **not received until October 2011** – too late for summer operations.
75. *The Columbia Valley Pioneer*, accurately described the situation and criticized project opponents' unsubstantiated 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/s8najd66cjky8/27-FarnhamGlacier-SummerOperations-Letters+articles-2011.pdf?dl=0>.
76. On June 26, 2011 on **the eve of the 20th 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 honorable 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>).
77. Correspondence with the Minister of Forests, Lands and Natural Resources Operations indicating that it was time for the Minister to complete the Master Development Agreement continued.
78. 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 originated in 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. They confirmed 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.

2012

79. On February 6th, 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.
80. On March 20th, 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.
81. On March 26th, 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 in France.
82. On June 8th, 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.
83. 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 kilometer 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.
84. On November 20th, 2012 the 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. (Project Fundamentals are attached as Appendix 29 –<https://www.dropbox.com/s/5flx45hb2ekzoko/29-ProjectFundamentals.pdf?dl=0>). However, the Letters Patent creating the municipality indicated *that the municipality would create the Official Community Plan (OCP) for the resort village by February 2015. The OCP is a condition precedent for rezoning and development and building permits.* (In fact, despite proponents' assistance and drafts derived from the approved Master Plan, the municipality was unable to complete the OCP by 2015 and had to ask for an extension, after the October 12, 2014 deadline of the EA Certificate).

85. On November 30th, 2012, the Ktunaxa Nation Council (KNC) launched a Petition in the Supreme Court of British Columbia to have the Master Development Agreement quashed.
86. 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.

2013

87. On February 19th, 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.
88. After a Public Hearing held on May 13th, 2013, **on May 21st, 2013 the Jumbo Glacier Mountain Resort Municipality passed the first rezoning bylaw (not including the resort village) 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.
89. 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 on Farnham Glacier 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.
90. 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 to upper Jumbo Creek by the B.C. Forests staff was discovered in summer 2012. A meeting on site on August 1st, 2013 with project representatives, engineering consultants, and Ministry of Transportation staff seemed to indicate a consensus on route alignment and road standards for a new access on the north side of the creek. 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 in the Master Plan and updated in 2013.
91. 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.

2014

92. The Petition from the KNC to quash the Master Development Agreement (MDA) for the Jumbo Glacier Resort project was heard in the Supreme Court of B.C. in the first two weeks of January 2014.
93. **On April 3rd, 2014, the decision of the Supreme Court of B.C. was rendered, dismissing the petition with a 117-page decision, confirming the MDA and the 23 years' approval process of the project.** The KNC appealed the decision.
94. In the Spring of 2014, following various engineering design submissions and more conversations with provincial staff in Cranbrook, it became apparent that the alternative route on the north side of Jumbo Creek required more studies, notifications and consultations 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. Permission to open the north access route was not granted. 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.**
95. 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.
96. The OCP and resort village 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 any event having zoning for the resort village by summer 2014 would hardly offer time for subdivision preparations and approvals in 2014. There was no chance to start even a portion of the resort village). 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 excluding the resort village* in the upper Jumbo Creek drainage, in advance of the OCP. **The Public Hearing was held on August 6th, 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.**
97. Making use of available designs from the Ministry of Forests, Lands and Natural Resources Operations (FLNRO), 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 20th, 2014, after the freshet window established by the Ministry of Environment 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.
98. On August 20th, 2014, **first permits to start the ski area 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.

99. 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.**
100. 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, had started.
101. At the end of October 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.
102. 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 practiced at mountain resorts. The reports also confirmed that the resort village has no avalanche exposure.

2015

103. On June 18th, 2015, Mary Polak, Minister of Environment, communicated her decision, **that substantial construction start had not occurred by October 12th, 2014**, and consequently the environmental Certificate for the project had lapsed. The decision surprised the proponent because the Minister's decision was **based on expectations of a larger construction for the opening of the resort village of the First Phase, a larger residential construction that could not be materially done because of lack of zoning and lack of access, and whose impossible requirements in terms of timing had never been disclosed to the proponent.**
104. Glacier 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. A letter from the Minister of Environment seemed to open the door to the opportunity to continue with a smaller resort.
105. On August 6th, 2015, the Court of Appeal British Columbia unanimously dismissed the application by the KNC 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.

106. On December 11, 2015, Glacier 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, but it was not accepted.
107. 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.

2016

108. On March 16th, 2016, the Supreme Court of Canada granted leave to hear the appeal of the KNC of the decisions of the Supreme Court of British Columbia and of the British Columbia Court of Appeal. The appeal was set to be heard on December 1st, 2016.
109. On September 7th, 2016, Glacier made its submission to the Supreme Court of Canada in support of the submission by the Province of B.C.
110. On December 1st, 2016, the Supreme Court of Canada heard the appeal of the KNC. The hearing can be seen at: <http://www.scc-csc.ca/case-dossier/info/webcasts-webdiffusions-eng.aspx?ya=2016&ses=01&submit=Search>

2017

111. On November 1st, 2017, the Supreme Court of Canada unanimously dismissed the appeal of the KNC, 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>

2018

112. On June 25, 2018, the Supreme Court of British Columbia (SCBC) heard the petition filed on December 18, 2015, by Glacier requesting a judicial review of the decision of the Minister of Environment that substantial construction start had not occurred by the deadline of the EA Act.
113. On August 17, 2018, Justice Forth of the SCBC ruled in favor of Glacier's petition. **The judgment found that in the Minister's decision relevant evidence was not considered.** Justice Forth remitted the decision to the Minister with specific instructions to consider the interpretation of the legislative scheme, the mitigating/limiting factors and legal analysis made in the judgment.
114. On September 11, 2018 the provincial Minister of Environment appealed the decision of August 17 of Justice Forth.

2019

115. On January 28 and 29, 2019, the B.C. Court of Appeal heard the provincial appeal. Glacier hoped that the decision would be handed down before summer and that construction would restart immediately after the decision.
116. On February 20, 2019, Glacier learned that Arnold Armstrong, its chairman of the board of directors, had suddenly passed away at home the day before. Mr. Armstrong was a prominent lawyer, developer, mining man, founder of many companies and client and friend of Oberto Oberti since when he designed a high rise in the West End of Vancouver for Mr. Armstrong in the late 1980s. Mr. Armstrong had joined Glacier Resorts Ltd. and L.P. in 1993 when Nikken Canada Holdings Ltd. retired, and had become chairman of the board after the Interim Agreement with the Province of B.C., bringing new life to the project. His passing away was a blow to the founders' dream.
117. On August 6, 2019, the B.C. Court of Appeal made known its decision on the appeal of the Minister of Environment. Two out of three judges upheld the appeal. Glacier agreed with the dissenting judge, who would have dismissed the appeal, "on the basis that in assessing whether the start that had been made was sufficiently substantial to meet the legislative

objective, the Minister's express refusal to consider all relevant circumstances affecting the extent to which Glacier could advance the construction was unreasonable."

118. Glacier filed an appeal to the Supreme Court of Canada (SCC) citing the argument of the dissenting judge.
119. On August 29, 2019, media reports indicated that the federal government would give the KNC \$16 million to study and manage a proposed new conservancy for the Qat'muk Declaration region that would include the Jumbo Glacier Resort project area of the Master Development Agreement and of the Jumbo Glacier Mountain Resort Municipality.
120. The directors of Glacier received this message as an indication that a compromise solution would be more constructive than continuing litigations.
121. **Following an offer by the Nature Conservancy of Canada (NCC), effective on November 15, 2019, the directors of Glacier Resorts Ltd. and L.P. withdrew the appeal to the SCC and returned all permits to the Province in exchange for compensation.**