

# JUMBO GLACIER RESORT APPROVAL PROCESS

## - A HISTORY -

1. During the summer of 1990, Pheidias Project Management Corporation, on behalf of Glacier Resorts 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. It was encouraged to proceed with a formal application and in March 1991 it submitted a volume containing a Formal Proposal with conceptual development plans according to the *Commercial Alpine Skiing Policy* (CASP). In June 1991 the proposal was formally accepted as an Expression of Interest. **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.
  2. 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** (letter enclosed – *Appendix 1*).
  3. 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.
  4. 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 personally confirmed that provincial policy encouraged the type of project being presented** (letter attached – *Appendix 2*).
  5. 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 attached – *Appendix 3*).
  6. A May 1983 study by Ecosign for Jumbo Glacier Skiing Ltd. of Invermere proposing lift serviced skiing on Farnham Glacier (relevant pages attached – *Appendix 4*) was also made available for reference by government staff.
  7. Following a Proposal Call announced in January 1993, **the Province signed an Interim Agreement with the proponent in March 1993** (it has been renewed for seventeen years), selecting Glacier Resorts Ltd. as the sole proponent and confirming the
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application according to the CASP process and policy. However, the review was again delayed until the land use question would be decided under the new Commission on Resources and the Environment (CORE), established in 1992.

8. 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.**
9. 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”**<sup>1</sup> (letters attached – *Appendix 5*).
10. 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 attached – *Appendix 6*).
11. 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 (list attached – *Appendix 7*) and **18 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 (letter attached – *Appendix 8*), **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:<sup>2</sup>

*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.*

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<sup>1</sup> See letter to Oberto Oberti from Thomas Gunton dated December 31, 1993 attached at *Appendix 6*.

<sup>2</sup> Letter to Hon. Moe Sihota and Hon. Glen Clark from Commissioner Stephen Owen dated December 13, 1994 attached at *Appendix 9*.

12. 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 (relevant CORE report pages and CORE report analysis attached – *Appendix 9*).
13. 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%.
14. **In April 1995, the Province formally announced the approval of the land use decision** (news release attached – *Appendix 10*). 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.”<sup>3</sup>
15. 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.
16. 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 (some relevant correspondence is attached – *Appendix 11*). The Province, however, continued to give assurances that a fair process would be provided.

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<sup>3</sup> Province of British Columbia News Release (included at *Appendix 10*).

17. 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 8*). 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 in September 1996. 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.
18. 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.
19. 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.**
20. 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**" (attached – *Appendix 12*).
21. **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 attached – *Appendix 13*).
22. 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.
23. 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 – *Appendix 14*).

24. **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 and granting court costs to defendants (decision attached – *Appendix 15*). 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.**
25. 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 16*).
26. On **July 12, 2007**, following another two year public review under CASP, the Province **approved the Master Plan for Jumbo Glacier Resort.**
27. While waiting to sign a Master Development Agreement (MDA), **in early 2008, in order to facilitate training Canadian athletes and also the CODA 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.**
28. Glacier Resorts Ltd. gave a sub-license for half of the Farnham Glacier tenure at \$1 to CODA. CODA is training Olympic skiers from a temporary camp facility accessed 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 lift service rather than snow cats.
29. In August 2008, despite the long history of the application and the provincial ten years' license for skiing on Farnham Glacier the applicant was surprised by the regional district's planner, being advised prior to installation that a removable platter lift does not require a building permit from the regional district **but later being told 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 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 continue to have to use diesel operated snow cats, helicopters and tents to train on the glacier.
30. In **October 2008** the applicant concluded an extensive and precedent setting **Impact Management and Benefit Agreement (IMBA)** with the Shuswap Indian Band of Invermere.

31. 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 Tribal Council (KNTC) based in Cranbrook expressed opposition and asked the EA Office to deny the extension.
32. The applicant continued meetings with the Ktunaxa representatives and a draft IMBA with the KNTC was tabled as of April 2nd, 2009.
33. 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.**
34. On July 3<sup>rd</sup>, 2009, representatives of the KNTC informed the proponent that they had been instructed by their leadership to suspend meetings until further notice, pending negotiations with the Province.
35. **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.
36. 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, **denying 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.
37. 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 be represented in the Regional District by the Director of Area F.
38. 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.

39. 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.
40. Twenty years after the start of the application process for the most sustainable ski area in North America, where the snow is, the proponent is expecting the just conclusion in the near future, and to bring people soon to the top of the glaciers by means of lifts rather than by helicopters.