

JUMBO GLACIER RESORT APPROVAL PROCESS

- SOME KEY ISSUES -

Throughout the process the project came to be defined as “controversial”. Controversy is not unique to this project and is a healthy part of any democratic debate. **What is unique to this project is the length of the debate, the repetitive aspects and the changing goal posts of the various processes.** It was the proponent’s and the government officials’ hope that the extensive and repeated processes would eventually resolve the issues to everybody’s satisfaction, but it is now clear that there are parties that **will likely never be satisfied, irrespective of process or fact.** The discussion was complex and covered issues that took three volumes to be described by the EA Office and the large Project Committee (comprising all interested federal and provincial government agencies and representatives of local government and First Nations) when it issued the Project Specifications.

To summarize, **a few key issues** that emerged at the East Kootenay CORE Table local land use designation process (1992 to 1994) and during the EA Act review process (1995 to 2004) were:

1. Protection of Jumbo Pass both for hikers and wildlife.
2. Elimination of the threat of a highway project through Jumbo Pass connecting East and West Kootenays.
3. Protection of the regional Grizzly Bear population.
4. Avoiding the creation of new burdens for taxpayers.
5. Continuing to maintain a profitable heli-ski operation.
6. Global Warming.
7. Keeping the “backcountry” without new intrusions.
8. “Everybody is against the project”.

These, and the other issues raised reasonable concerns, which are still in the public domain. The provincial process gave the proponent an opportunity to address these issues and **many people, especially those who in the last twenty years were appointed by our democratic society to judge the outcome, are now satisfied that they have been properly addressed, and that the project can be successfully constructed mitigating impacts to an insignificant level, and with many benefits.** Some people did not have the time to follow the process or did not have a disposition to hear the arguments, and are still not persuaded. To summarize responses:

1. **Jumbo Pass:** This pass and the valley corridor leading to it have been protected. The resort has been located north of the trail and of the corridor leading to it and designed to not be visible from Jumbo Pass. Only one of the existing road corridors in the valley will be maintained. The lifts, on the opposite far side of the valley will not be visible except with binoculars because of the distances, the locations of the lifts and the scale of the mountains.
 2. **Elimination of the threat of a highway project through Jumbo Pass connecting East and West Kootenays:** The Ministry of Transportation has confirmed since 1993 that both funding and planning for a Jumbo Pass highway project have been completely eliminated,
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and the project's road alignments and design speed would not be suitable for the previously planned (1980s) Jumbo Pass highway (whose possible cost is often quoted in error).

- 3. Protection of the regional Grizzly Bear population:** This has been the main object of all the studies from 1990 to 2007 and the main focus of the EA Act review over nine years. No other tourism resort project has ever conducted more thorough and complete habitat mapping and field research. A study on Grizzly Bear populations in the Central Purcells, commissioned jointly with the Environmental Assessment Office and conducted primarily by project opponents, confirmed the proponents' consultants' findings through many years of environmental studies. Of the 33 individual grizzly bears identified from hair samples collected in the 1998 "Grizzly Bear Population Survey in the Central Purcell Mountains," covering an area of 4,000 square kilometres, **only 2 grizzly bear hair samples were collected in the Jumbo Valley, versus 31 in the other drainages.** Grizzly bears were not found within one kilometre of main valley bottom roads, even though 26% of the capture sites were located near these roads. The proposed resort is at the end of an existing road and will be strictly confined and managed. The conclusion of the cumulative impact study completed under the EA Act review was that impacts of the project as designed and with the proposed management plans would be insignificant. Impacts may be mitigated to achieve a zero or near zero net habitat loss. The EAO noted that:¹

“The key finding of the CEA was that, in the absence of any measures to mitigate impacts on Grizzly bears, the Project would increase the risk of Grizzly bear mortality by 2.6% to 3.8% and reduce habitat effectiveness by 1.7% to 3.1% within the 3,977 squared/kilometers study area (89% of the Central Purcell GPBU).”

“However, the risk of mortality and loss of habitat effectiveness within the CRA would be substantially reduced by application of measures described in the proponent's Grizzly Bear Management Plan.”

In addition, no hunting restriction, except for the development, area has been proposed for the Jumbo Valley or its proximity, as a mitigating measure.

- 4. Avoiding the creation of new burdens for taxpayers:** Generally speaking mountain resorts provide a vastly positive, not negative tax cash flow to governments. In the case of this project, and according to current government policy, taxpayer funded subsidies have **neither been offered nor requested.** The Province has insisted that road improvements must be paid for by the developer, even for changing the forestry road to a public gazetted access road to Jumbo Valley. On the contrary, the project will be a major contributor of revenues to the Province for the benefit of all taxpayers. It is calculated that on completion **the project will be generating over \$24 million a year of provincial**

¹ EAO *Jumbo Glacier Resort Assessment Report* (pages 55-59).

taxes, after a contribution of over \$100 million in taxes due to construction. Ski resorts are among the most efficient economic engines of the Province.

5. The proponent has committed **to cooperate with the heli-ski company, and it believes that the project will enhance its operations' profitability.** As proof of good faith it has offered to buy the heli-ski company at market value before construction starts and to continue to operate it. The Province may in any event determine mandatory compensation, if it were true that the project were to cause a loss to the heli-ski company, but the Province already compensated the heli-ski company when the Interim Agreement was signed in 1993 with a huge increase in territory. (see map – *Tab 18*). A legal challenge by the heli-ski company was rejected in court, and rejected unanimously by three judges on appeal.
6. **Global warming is one more reason why this project is very necessary.** Only going up to the elevations of upper Jumbo Valley and its mountain tops it will be possible to have an abundance of good natural snow for skiers. This is why experts worldwide are advocating that **new ski areas should be located in the right climate at higher elevations.** A recent letter from John Ritchie (enclosed – *Tab 19*) joins the choir of expert supporters, such as Franz Klammer, that have encouraged the proponent group to pursue this project. A fact sheet discussing climate change and a note on sustainability have been enclosed as *Tab 20*.
7. **Keeping the “backcountry” without new intrusions, “Back-country” versus “Front-country”:** from a sustainability point of view it is the front-country that should contain and limit development to avoid filling the valleys with development and reducing connectivity and biodiversity. A small mountain resort in the backcountry is like a ship in the ocean, and a view from the air shows very easily the insignificant intrusion of such project. In addition, **it is in the back-country that the valley elevations and the mountain heights are such that it is possible to have snow and skiing** without the need of artificial snow-making and the risk of rain in winter. All B.C. ski areas currently either have or would need snowmaking, because they are in inadequate climatic conditions. In addition, only in the back-country it is possible to access glaciers that offer year round skiing, as well as the enjoyment of spectacular mountain views. Helicopter skiing was born in the back-country because it is there that there is the best climatic condition for skiing. That is where all new ski resorts should be ideally located.
8. **“Everybody is against the project”:** Those who could not be convinced of the value of the project have portrayed an image of general opposition to the project, making the argument that “90% of the people oppose it”, but this is far from the truth and is highly misrepresentative. It is a form of political bullying that will never win against a project of lasting value and that has especially failed in this case. A comparative analysis performed by the EAO (highlights enclosed – *Tab 21*) indicates that this project has received higher than normal support among the projects reviewed by the EAO. It is normal for people who oppose projects to be vocal, and in this project less than 2% of the regional population has expressed opposition. **What is more significant is that in this project, a considerable number of people among the “silent majority” have come out and**

expressed support, including most of the local businesses and tourism organizations, and this is despite an exceptionally well organized opposition that has repeatedly distributed information that misrepresented the project for a number of years. **The Calgary Herald commented in its editorial** (enclosed – *Tab 22*) **that followed the announcement of the Environmental Certificate that the disinformation had not succeeded with those who studied the project.** All efforts to demonstrate that the local majority is opposed to the project have in fact proven the contrary, and again in 2009 **both at the provincial level** (election results with popular vote are enclosed – tab 25) **and at the regional district level**, with a majority of the Directors voting twice for the project, **the local majority proved that they support the politicians who support the project**, that they want the project and they want it now.

THE COSTS AND CHALLENGES OF DELAY TACTICS AND REPETITIVE PROCESSES

Those who have been opposed to the project have undertaken a strategy to delay it forever and have contributed to extending the on-going provincial reviews that we estimate have already cost taxpayers more than \$12 million.

To study the project takes time and effort. It is also very costly for the proponent to produce the studies and to follow complex and repeated application processes. The time and financial resources invested to follow the above noted processes have been very extensive over 19 years. There has been a great opportunity cost not only to the proponent, but also to the region and to the Province, for the delay of a project that has been defined by the EA Office (at the conclusion of the nine years' review under the EA Act) as being in "the broad public interest", and is the only proposal for a scenic year round ski area in North America.

Our current concern is what may happen once the Province concludes what will soon be a 20-year timetable of review processes – once the Province concludes a Master Development Agreement (MDA) with the proponent:

1. **Potential for new delays:** In February 2005 the Regional District of East Kootenay (RDEK) surprised the proponent by voting to rescind its request of 1996 and decided not to participate in the provincial Master Plan review completing the CASP process. Our concern is that the massive documentation prepared for the project's review would be hard to understand without participating in the MP review process. We have noted that those who wish to cause further delays seem to prepare for a new confrontation at the Regional District stage, by opposing or delaying an Official Community Plan (OCP) and a rezoning that would allow the project to proceed. **It is difficult to see what new arguments may be heard that have not been heard and responded to during the last 19 years and in the voluminous submissions that have been made and reviewed by independent parties appointed to administer a quasi-judicial process.** In 2007 the project had finally completed the review of the MP stage under CASP. While most people have appreciated the efforts made to respond to the concerns raised during the previous extensive public processes and the significant modifications made to the Master Plan, it is clear that those who oppose just don't want the project and are not persuaded by even the most extensive and comprehensive review process ever undertaken for a ski resort in British Columbia.

The intent of those who are not and will not be persuaded by the CORE, EA Act, and CASP review processes is to repeat the processes and reopen once again the controversies on the environmental, social and economic issues through the Regional District. These same issues have already been publicly and extensively reviewed under the above noted Policies and Acts and have been confirmed by the federal environmental ombudsman (*Tab 14*). The intent is **to cause further delays by putting everything into question again, causing the proponent and the government to keep the project in process until exhaustion.** The Regional District does not have the resources to review

CORE, EA and CASP and do it better. Further, the site is at the most remote location of its jurisdiction.

2. **The legal, ethical and financial challenges of a new process:** The process of creating an OCP and to re-zone is not clearly defined when it comes to the creation of a new ski resort in a remote region. The process could be very simple, for example, by adopting the MP and MDA as an OCP, or it could be very complex, if the controversies and legal challenges that are threatened will force the Regional District to review all the environmental, social and economic issues again and repeat the provincial process, effectively duplicating CORE and the efforts of EAO under the EA Act. In any event, during an OCP and rezoning process the Regional District would have to refer the project to the provincial Ministries and agencies that have already been involved in the review and in this process and the Regional District may easily find itself in a situation that will substantially require **a repeat of the quasi-judicial process followed under the EA Act, without the funding, the legal framework, the structure and the support of the EA Office.** This is why in 1996, at the start of the EA Act review, the Regional District voted to confirm the land use decision of the East Kootenay CORE Table and to request that the Province create a Mountain Resort Area designation for a future mountain resort municipality for the project.

It would very hard to justify yet another review of a ski resort proposal that has been brought forward and has strictly followed long-standing provincial policies. It has been supported by all provincial governments (sample letters attached – *Tab 23*), and confirmed after more than nine years of review under the quasi judicial process of the EA Act as a project that is “in the broad public interest”. It is also hard to believe that it would be possible to do this new process **without further injury to the right of a fair and timely process by an applicant that has already had the project reviewed very extensively under every possible point of view.**

3. **The duty of fairness:** In this process the RDEK will need to be fair to the applicant, the opponents and to the public. Surely common sense indicates that this will require a very difficult balancing act to set up a process that will accommodate conflicting requests, similar to the process under EA, and **a repetition of the EA Act process would not be fair to the public and to the applicant** who has completed nineteen years’ of public processes. It would appear that it was appropriate for the RDEK to accept in good faith the process of the last nineteen years, including the quasi-judicial process under the EA Act, and **to ask the Province to do what is necessary to provide the local governance that will allow it to complete the process in a final way following the MP approval of 2007 and the MDA that should be finally completed this year.**
4. **Justice:** justice requires the completion of the process now, as requested by the RDEK reinstating its vote of 1996. Justice is the most fundamental value to uphold in our democratic society. **Delays and more processes to overturn results clearly are not on the side of justice.**

RESPONDING TO PROJECT OPPONENTS

Project opponents have again raised the rhetoric and repeated inaccuracies and falsehoods about the project. Their issues have received a more-than-generous hearing over the last 19 years, and specifically through the Province's environmental assessment process. In some cases genuine concerns were raised and the project has been changed accordingly (*Tab 12*).

As part of the approval process under CASP, the project is currently expecting the MDA. The recent self-administered "survey" conducted by the previous local Director of Area F of the RDEK only proved that support is slightly increasing (see *Tab 24*), and this survey was proven wrong by the provincial election where the candidate supporting the project received a 52% outright majority (see *Tab 25*).

We believe we should re-affirm that the review and approval process has been more than adequate and that the project should be allowed to proceed without further avenue for controversy and delay. **Those who wanted to oppose have been heard time and again, they were given ample responses, their numbers have not increased, and their arguments have not been proven accurate. The proposal has been reviewed and shown to be good. At some point justice must prevail.**