

JUMBO GLACIER RESORT APPROVAL PROCESS

- SUMMARY -

August 2009

SUMMARY OF PROJECT APPROVAL HISTORY

1. Pheidias Project Management Corporation formally started the project for Nikken Canada Holdings Ltd. in March 1990. It introduced the project to B.C. Lands in Cranbrook in the Summer of 1990 and prepared the studies for an Expression of Interest and a Formal Proposal according to the Commercial Alpine Ski Policy (CASP). A sole purpose company, Glacier Resorts Ltd., was formed as Managing Partner of the Glacier Resorts Limited Partnership to carry out the Jumbo Glacier Resort (JGR) project.
2. The Expression of Interest, a volume including studies equal to those for a Formal Proposal, was presented in June 1991 and was accepted in July 1991.
3. The Ministry of Lands and Parks decided not to proceed with the CASP process but to open a public input period on the land use issue during the summer of 1991. It was completed with an Open House held by the Ministry at the end of September 1991 in Invermere.
4. The public input, despite the opposition of the local environmental society, was deemed to be positive and following the provincial elections of November 1991 and the new NDP government the Ministry decided to start the CASP process leading to a Proposal Call and selection of Proponent.
5. The Province in 1992 initiated a public and local land use designation process called the Commission on Resources and the Environment (CORE), designed to generate a decision making process by local stakeholders that would resolve land use issue in a local forum, and it funded the East Kootenay CORE Table. It invited the representatives of the JGR to participate in the CORE process in the caucus of the tourism sector stakeholders. JGR was the only site-specific project in the Province admitted to a local CORE land use decision-making process. JGR was also advised by the Deputy Minister of Environment, Lands and Parks that the CORE land use decision would be the basis on which the project would or would not go ahead.
6. At the beginning of 1993 the Province finally did the Call for Proposals and in March 1993 it recognized Glacier Resorts Ltd. as the project proponent and signed the Interim Agreement, allowing GRL the exclusive right to study the project and to do it subject to the necessary approvals.
7. In October 1994 the East Kootenay CORE Report provided written approval for the land use for the project, which was given the green light subject to the completion of an

environmental review process under the proposed new Environmental Assessment Act (EA Act) review process.

8. Despite the agreement of the Commissioner that objectives of the CORE decisions could be met also through the environmental review available through the existing CASP process, communicated by letter by the Commissioner to the Ministers in December 1994, the Ministers decided that the project should be reviewed under the new EA Act.
9. The project was transitioned into the EA Act review process in June 1995. According to the letter of the East Kootenay CORE Table written report and recommendation the project was deemed to be **APPROVED (by a local stakeholder public process deemed to be final by the Province – the process included the regional district’s chair and its planner) regarding the land use, with a specific land use approval recommendation, and with special management description giving the highest value given for tourism including resorts. The approval was subject only to the environmental review according to the EA Act.**
10. 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
11. Following the initial public presentation and comment period of the summer 1995, the Project Committee established by the EA Office starting in October 1995 spent two and half years preparing the Project Specifications.
12. This two and half year’s process **was public, with public records, public meetings and public presentations.** The “public” was given special status with the selection of a “Public Advisory Committee” (PAC) of volunteers deliberately selected by the Project Director with a majority of declared opponents.
13. During this time the applicant’s representatives did an enquiry under the Freedom of Information and Protection of Privacy Act (FOI) and in March 1996 received **written evidence of collusion among opponents and government staff deliberately planning to make the proponent study the project forever.** The Deputy Ministers were informed, and after several meetings they promised to take the necessary action. Mr. Ray Demarchi, who in 1993 at a CORE meeting had physically threatened project representatives, eventually left government staff, but others were later promoted.
14. In **September 1996 the Regional District of East Kootenay requested unanimously the creation of a mountain resort municipality** for the project and the Minister

responded that this would not be considered during the Environmental Assessment Act process.

15. In May 1998 the Project Committee gave the applicant the final draft of the Project Specifications. It took another seven years to agree on the meaning of the specifications, and respond with all the required studies, explanations and reports (**all public and made available through a special public registry run by the Environmental Assessment Office**), despite the fact that the initial application included the most detailed habitat mapping ever done for a mountain resort project and that the preliminary master plan already indicated that the project could meet or surpass all existing policies and regulations.
16. 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.
17. 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 and particularly from 1998 to 2003. It was submitted in thirteen volumes on December 31, 2003
18. In 2003 the Province passed legislation referred to as the Significant Projects Streamlining Act, and during the discussion in support of it Ralph Sultan MLA showed to the public the chart of the approval process of the Jumbo Glacier Resort project, explaining that it compared with the plumbing diagram for a submarine.
19. 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 a summary of **“Significant Changes”** which is part of the submissions.
20. In 2003 the Environmental Assessment Office (EAO) started working to meet deadlines and by the beginning of 2004 it accepted as complete the thirteen-volume submission (the “Project Report”) responding to the three volumes of project specifications. An additional public consultation of two months was initiated and the EAO placed a deadline of July 31, 2004 for the completion of its final report and recommendation.
21. Early in 2004 the Calgary Olympic Development Agency (CODA) was in contact with the representatives of Glacier Resorts Ltd. (GLR) in order to provide ski training for the Canadian downhill ski team (Alpine Canada Alpin) on Farnham Glacier, one of the four glacier in the Interim Agreement and proposed master plan for Jumbo Glacier Resort.
22. Provincial officials, CODA and GLR met several times and the Province decided to grant CODA a temporary three years’ license, after which, if CODA wanted to continue the opportunity for Farnham Glacier skiing would have to be obtained through GLR. GLR

objected to this new license intruding into the Interim Agreement area, but agreed to the arrangement for the sake of Canadian skiing.

23. In June and July 2004 the Project Director of the EAO held the final meetings at the St. Eugene Hotel near Cranbrook with government agencies and First Nations representatives, to include their responses in the final report.
24. The representative of the regional district, Bob Whetham, and the provincial representatives of the Ministry of Municipal Affairs argued for two days over the future governance of the resort. Bob Whetham argued that the Tumbler Ridge special remote project example should be the preferred model and that the resort should have its governance structure based on a mountain resort municipality. The provincial representatives instead stated that the mountain resort municipal structure was not desirable.
25. On completion of the process, at the beginning end of August 2004, the Project Director submitted its recommendation to the Deputy Minister and to the Ministers including almost two hundred conditions. Among these conditions there was one requiring the applicant to request rezoning from the regional district.
26. At that time the regional district had a long-standing resolution requesting a mountain resort municipality (a unanimous resolution). The condition requesting that the proponent obtain rezoning from the regional district was a surprise.
27. In August 2004 RK Heki-Ski attempted to block the completion of the EAO process alleging lack of due process and consultation of stakeholders like them. The Province hired an independent reviewer/arbitrator from Sierra Systems who prepared an extensive report that vindicated both the process and the applicant.
28. The Sierra report was filed on time at the end of August for the Ministers' review, but the thirty days' deadline for the required decision by the Ministers was not met and the Ministers waited until October to announce the decision.
29. In September 2004 there was considerable controversy while the project was still in limbo, but Kathryn Teneese, Chief Negotiator for the Ktunaxa, appeared to confirm in the Turtle Island Press that the Ktunaxa had placed conditions (those in the EA Certificate draft) that could make the project acceptable if met.
30. On October 12, 2004, the Certificate prepared by the EA Office was signed by the three Ministers, and on October 14, 2004, a press conference was held to announce the approval of the certificate with almost two hundred conditions.
31. In the printed press release the item that stood out was that the project would have to apply for rezoning at the regional district of East Kootenay. In the hour long press conference Minister George Abbott insisted that the Province would complete quickly the master plan approval process (he said in six months) and the Master Development

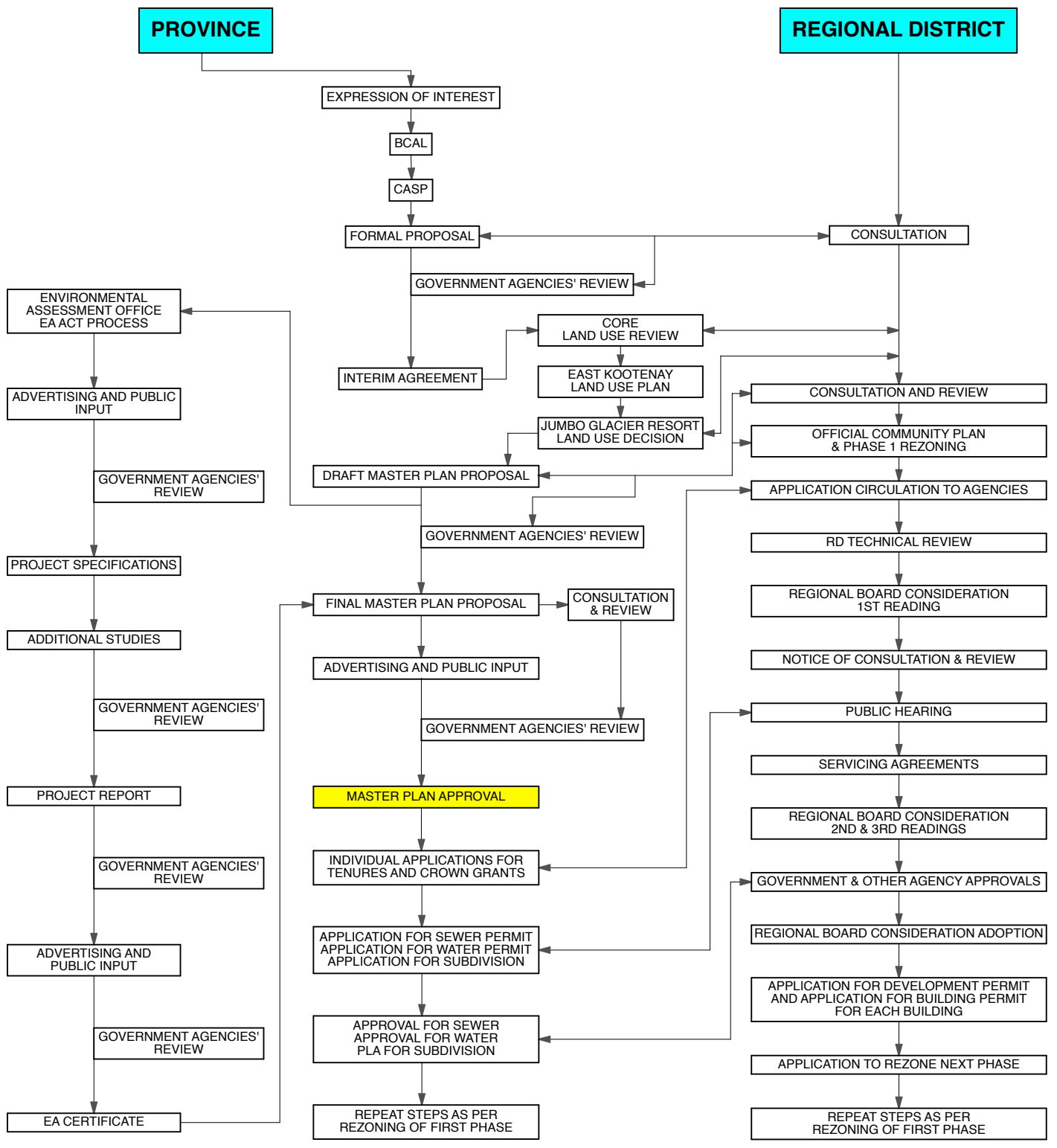
Agreement (he said in a total of twelve months), and then the project would be reviewed at the local level.

32. The applicants' representatives were surprised in view of the fact that the regional district was on record since 1996 that it did not want to do the rezoning and to administer the resort and it had requested the creation of a mountain resort municipality.
33. In December 2004 the Province granted to CODA its three years' temporary license.
34. The local situation changed: following a provincial request to participate in the final CASP master plan review process, in February 2005, in the absence of the chair, a majority of the regional district directors voted to rescind the previous request to have a mountain resort municipality formed for Jumbo Glacier Resort **and to NOT participate in the master plan review** process. A request to reverse this vote in the following year failed under an unprecedented campaign of intimidation to several regional district directors that have been known to like the project.
35. In 2005 project opponents referred the major issues reviewed during the entire EA process to **the federal Commissioner of the Environment and Sustainable Development (the federal environmental Ombudsman)**, and to the federal ministries, which responded confirming the assessments made by the EAO.
36. **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 came from Victoria representing 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. RK had made the case that natural justice had been denied to the opponents, **but it was clear that if there was any party that had been denied natural justice in the 15 years' process, it was the applicant, not the opponents.** RK appealed the decision by the Cranbrook judge. Three judges of the appeal court confirmed the decision of the Cranbrook court, with a written decision that further vindicated the applicant.
37. In March 2007 the Province passed new legislation (Bill 11 – 2007) regaining the ability to form mountain resort municipalities, and the Jumbo Glacier Resort project was the major item of discussion.
38. In July 2007 the Province completed the CASP review process with the **approval of the Master Plan on July 12, 2007.**
39. 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.

40. 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.
41. 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 at the time of 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**. The platter lift is in storage waiting for a decision while athletes continue to have to use diesel operated snow cats and tents to train on the glacier.
42. In October 2008 Glacier Resorts Ltd., the applicant, and the Shuswap Indian Band, the nearest First Nation people, completed a comprehensive **Impact Management and Benefit Agreement**. Negotiations with the Ktunaxa Nation Tribal Council based in St. Eugene near Cranbrook, to achieve a similar agreement, are continuing.
43. Following a request by the applicants and in consideration of the delays with final permits the Environmental Assessment Office has extended the Environmental Certificate's requirement of construction start by October 12, 2009 by five years, to October 12, 2014
44. On August 7th, 2009, the board of the Regional District of the East Kootenay voted 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.

Pheidias Project Management Corporation,
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Approval Process Flowchart for Jumbo Glacier Resort



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