
JUMBO GLACIER RESORT – A FEW KEY ISSUES

Through its approval process – which has lasted nearly two decades – the Jumbo Glacier Resort 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, its repetitive aspects and the changing goal posts of the various processes.**

It was the proponent’s and government’s hope that the extensive and repeated approval and review processes would eventually resolve outstanding issues to everybody’s satisfaction, but it is now clear that there is a small minority that will likely never be satisfied, **irrespective of process or fact.**

The discussions and review processes that have been undertaken are complex and have covered issues that took multiple volumes to be described by the government and responded to by project consultants. **Some of the key issues** that emerged through the approval process are:

1. The protection of Jumbo Pass and the threat of a highway project through Jumbo Pass.
2. The protection of the Grizzly Bear population.
3. Avoiding the creation of new burdens for taxpayers.
4. Continuing to maintain a profitable heli-ski operation.
5. Climate change.
6. Public involvement and democratic process.
7. “Everybody is against the project.”
8. Endless delays and repetitions in the approval process.

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, including those who were appointed to judge the outcome, are now satisfied that they have been properly addressed.**

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. However:

JUMBO PASS

The project is not on Jumbo Pass and is not visible from Jumbo Pass.

At the conclusion of the Commission on Resources and the Environment (CORE) land use process, the East Kootenay Table had protected 50% more territory (18%) than the provincial and United Nations sanctioned target of 12%, and that Jumbo Pass was deemed to become a protected area. The Ministry of Transportation confirmed that both funding and planning for a Jumbo Pass highway project have been completely eliminated, and the project’s road alignments

and design speed would not be suitable for the previously planned Jumbo Pass highway (which was not associated with the JGR proposal and whose possible cost is often cited in error). The valley corridor leading to Jumbo Pass and the pass have been protected. The resort will be located in the upper Jumbo Valley and has been designed to not be visible from Jumbo Pass. The lifts will also not be visible except with binoculars because of the distances, the locations of the lifts and the scale of the mountains.

GRIZZLY BEARS

The protection of the Grizzly Bear population has been a main object of the studies undertaken from 1990 to 2003 and was the main focus of the B.C. Environmental Assessment Office (EAO) review. No other tourism resort project has ever conducted more thorough and complete habitat mapping and field research. The final reports indicated that as planned the resort would have insignificant impacts on Grizzly Bears, which may be mitigated to achieve a zero or near zero net loss. The EAO noted that:¹

The proposed Project is located in the 4,619 km² Central Purcell GBPU, one of 49 GBPUs in the Province designated as 'viable' under the Grizzly Bear Conservation Strategy. This designation means that the population is stable and sufficiently productive to permit some hunting. The current population estimate of the Central Purcell GBPU is 150 bears. WLAP estimates that this population is currently at 93% of habitat capability (163 bears) and that would have to decline by 41% (i.e., to less than 81 bears) to be designated as 'threatened'.

[...]

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 km² 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.

TAXES AND REVENUES

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**. At the request of project opponents, provincial officials **have insisted that road improvements must be paid for by the developer, even for the public access road**. If this is a provincial policy, the developer will certainly comply. But the key issue is that mountain resorts, especially those in prime locations, are positive economic engines for provincial revenues. At the same time, the tourist populations of B.C. and Canada continue to fund an economic tourism deficit. The project as presented in the approved Master Plan will be beneficial, not detrimental to local and provincial taxpayers, and

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

the Province has not offered and the proponent has not asked for any of the large funding contributions implied by some of the opponents.

HELI-SKI

The proponent believes that a quality and unique destination resort such as Jumbo Glacier Resort will provide a ready and present market to the existing heli-ski company and can help expand its business and profitability. It has committed to cooperate with the heli-ski company, and 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. It is understood that the Province would in any event determine mandatory compensation, if the project were in fact to cause any loss to the heli-ski company.

The heli-ski company has sued the Government and the proponent in an attempt to have the project's Environmental Certification quashed. The suit was dismissed first by the Supreme Court of British Columbia and again on appeal by a unanimous panel of three Judges of the British Columbia Court of Appeal.

CLIMATE CHANGE

Climate change may be one of the most compelling reasons why this project is necessary. Only by going up to the high elevations of upper Jumbo Valley and its mountain tops it will be possible to ensure an abundance of good natural snow for skiers in the years to come. This is why experts worldwide are advocating that new ski areas should be located in the right climates and at higher elevations.

Recent statistical data on temperature in the Northern Hemisphere and in Western Canada tend to confirm a warming trend and potentially an acceleration of this warming trend. The most significant aspect of a warming trend for the Jumbo Glacier Resort project is that a change of a few degrees may substantially alter the conditions of the ski industry in Western Canada. It may render snow making uneconomic or ineffective and force skiing to occur only at higher elevations. If ski resorts at lower elevations were to become inoperable, a project like Jumbo Glacier Resort, with a base elevation of 1,700 metres and a top elevation of 3,400 metres, could become the only place in B.C. where it will be possible to ski on a consistent and economical basis.

The United Nations sponsored a World Conference on Sport and the Environment, in Turin, Italy, on December 2 and 3, 2003 at which it was stated: "The call for ski resorts with snow reliability is the main argument for the current boom in concept studies to open up high mountain regions, or, in other words, climate change is the reason for opening up high mountain regions for tourism."

Most ski resorts in B.C. already depend on snowmaking and are at 1,200 metres elevation or lower. This is too low to be assured of good quality snow and the avoidance of rain in winter.

DEMOCRATIC PROCESS AND PUBLIC REVIEW

Democracies create laws and processes that apply equally to all applicants. Mature democracies have processes that include an element of general public participation and oversight, as well as the possibility of judicial intervention.

There probably is **no other project review process that has offered a greater amount of public involvement** than the Jumbo Glacier Resort project, starting with public discussion of the question of land use in the summer of 1991, and then through the CORE process, the quasi-judicial review under the EA Act and the Master Plan approval process. **This took seventeen years.** Project opponents, who have staged a seventeen year long public campaign against the project, while having had their issues heard and mitigated via no less than four major public review processes, and having failed to overturn the results of these processes via the judicial system, are now saying that in order to be truly transparent and “democratic” the issue should now be decided through a referendum.

The referendum request is absurd after any fair consideration of its validity. First of all, why a referendum at the end rather than at the beginning of such an incredible review process – a process that entailed years of research, public as well as expert review by government and private entities, and a thirteen volume Project Report? Does this mean all this work was in vain and should have never taken place and it was the wrong process? And then what would be the area of the referendum – for a project that has provincial significance? What would be the question? What would be its validity? What would be the legal framework? Imagine a scenario where a jury and judge reach a verdict following a lengthy trial and this verdict is then subject to a referendum? This is more akin to anarchy than democracy.

Clearly, the referendum issue is largely **an attempt to generate more controversy after the issues had been delegated to a democratically legislated and quasi-judicial review process. Is this the kind of policy, of democracy and ultimately of justice that we propose for our Province?**

In addition, project opponents have been championing a new land use process under the auspices of the regional district in order to decide whether or not to allow the required land use through zoning (for a remote piece of Crown land and for which the regional district has no policy and has done no previous planning). This ignores the land use planning process done entirely by public review and by local stakeholders through the two years of East Kootenay CORE Table activity with millions of dollars of technical support provided at public expense. It also ignores the subsequent nine years of quasi-judicial review under the EA Act, as well as the two and half years of provincial Master Plan review. It thereby puts into question all previous decisions and likely making it impossible to start the project within legislated timelines.

Again, what kind of democracy is it where applicants are repeatedly subjected to retroactive changes of goal posts **making it impossible to achieve an incremental approval process** and in which the relationship between governments is not one of harmony, but one of conflict, where the approvals of one government mean nothing to the subordinate level of government? Who would want to live in a society where there are no applicants’ rights, where there is never certainty of outcome, where it is not possible to expect that by following government policies the promised outcomes are achievable, and where review processes are arbitrarily and endlessly repeated with the expressed intent to frustrate the applicant into giving up? This is not democracy.

“EVERYBODY IS AGAINST IT”

Those who cannot be convinced of the value of the project have tried to convey an image of general opposition to it, making the argument that “90% of the people oppose it,” but this is far

from the truth and is highly misrepresentative. A comparative analysis performed by the EAO stated that this project received “a smaller percentage of opposition than is typically experienced” 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 so-called “silent majority” have come out and expressed support, including most of the local businesses and tourism organizations, as well as 7 out of 10 local councillors – 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 that followed the announcement of the Environmental Certificate that the disinformation had not succeeded with those who studied the project** (*BC glacier resort clears giant hurdle* – Calgary Herald, October 14, 2004).

- THE COSTS OF DELAY TACTICS AND REPETITIVE PROCESSES -

Project opponents have had a long-standing strategy to delay the project’s approval by means of endless and repetitive review processes. This has contributed to extending the on-going provincial reviews that we estimate have cost taxpayers more than \$10 million.

Studying the project takes time and effort. It is also very costly for the proponent to produce the necessary studies and to follow complex and repeated application processes. The time and financial resources invested to follow the above noted processes have been substantial and extensive over 17 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 as being in “the broad public interest” by the Environmental Assessment Office and its Minister.

THE POTENTIAL FOR NEW DELAYS

A fundamental concern is what may happen once the Province concludes what will soon be a 17-year timetable of review processes – following the Master Plan (MP) approval and once the Province concludes a Master Development Agreement (MDA) with the proponent.

In February 2005 the Regional District surprised the proponent by voting to rescind its 1996 request asking the Province to declare the resort area a mountain resort municipality (which had been placed on hold by the Province pending the issuance of an environmental assessment certificate) and decided not to participate in the provincial Master Plan review process in accordance with CASP (Commercial Alpine Ski Policy).

The proponent was reasonably concerned that the Regional District would have a hard time understanding the project and its impacts without participating in the review of the massive documentation prepared for the Master Plan process.

Following the issuance of an environmental certificate for the project, those who continued to oppose it seemed intent to cause additional delays and prepared for a new confrontation at the Regional District stages of the approval process, by opposing or delaying an Official Community Plan (OCP) and a rezoning that would allow the project to proceed, and fundamentally starting a philosophical debate purely on the question of land use as if no other process had weighed and

decided this issue already. It is difficult to see what new arguments may be heard that have not been heard and responded to during the last 17 years and in the voluminous submissions that have been made and reviewed by independent parties appointed to administer a quasi-judicial review process. The project has finally completed the review at 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 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. The intent is to cause further delays and to cause the proponent and the government to keep the project in process until exhaustion, or to create such controversy that politicians will be exhausted or intimidated to the point of denying to the proponent the right to complete the process.

The intent is not "defend" democracy at the local level, but to subvert a democratically established process and to destroy the democratic right of the applicant to a fair and timely process.

WOULD DEMOCRATIC PRINCIPLES BE SERVED WELL BY 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 an undeveloped region. It could be very simple, for example, by adopting the Master Plan and Master Development Agreement 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 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 legal framework, the structure and the support of the EA Office.

It is 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, and confirmed after more than nine years of review under 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.

THE DUTY OF FAIRNESS

In this process the RDEK would 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, and a repetition of the EA Act process would not be fair to the applicant who has completed nearly two decades of public processes. It would appear that it would be appropriate for the RDEK to accept in good faith the process of the last 17 years, including the quasi-judicial process under the EA Act, and the proponent has no other choice but to ask the Province to do what is legally necessary to provide the local **governance that will allow it to complete the process in a final way following the Master Plan approval and the MDA.**