



File: 30250-25/JUMBO-21

Reference: 282961

April 24, 2015

**SENT VIA EMAIL**

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Dear Mr Oberti:

I am writing to advise you of the conclusion of the investigation into condition 36 of the Environmental Assessment (EA) Certificate for the Jumbo Glacier Resort (Project) as it relates to the structures in the Day Lodge Location and Service Building Location. Condition 36 requires that "...residential and commercial structures will be located completely outside the avalanche hazard area".

Environmental Assessment Office (EAO) Compliance and Enforcement (C&E) interprets condition 36 to mean that commercial and residential structures must not be located in a zone that has an avalanche return period up to and including a 'once-in-200-to-300 year return period hazard area' as defined in the material developed during the EA. In 2002, the Canadian Avalanche Association developed Guidelines for Snow Avalanche Risk Determination and Mapping in Canada (CAA Guidelines 2002) that includes zoning that aligns with the 'avalanche hazard area' in the EA material. When considering the EA condition requirements in terms of the three zones in the CAA Guidelines 2002, EAO C&E interprets condition 36 to mean that commercial and residential structures must not be located in a blue or red zone as determined by a qualified professional.

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<sup>1</sup>Day Lodge Location and Service Building Location are defined terms in the attached Order.

After offering Glacier Resorts Limited (GRL) an opportunity to respond, EAO C&E has concluded that the partial structures at the Day Lodge Location and Service Building Location are not compliant with condition 36.

These determinations of non-compliance are based largely on the ‘Snow Avalanche Risk Zoning for a Day Lodge and Service Building’ report by Alan Jones, P.Eng of Dynamic Avalanche Consulting (Alan Jones Report) provided by GRL in response to EAO’s request of December 11, 2014. The Alan Jones Report concluded that:

- “The majority of the Service Building is located within the Red Zone (high risk); the remainder is located in the Blue Zone (moderate risk).”
- “The majority of the Day Lodge foundation is located in the Blue Zone, which represents moderate avalanche risk. The remainder is located in the White Zone (low risk).”

I understand from your April 21, 2015 response to the preliminary compliance determination that GRL does not dispute EAO C&E’s non-compliance determination for either structure nor the evidence that informed the investigation.

Enforcement:

When determining the level or type of enforcement, EAO C&E considers the likelihood of achieving compliance and the nature of the non-compliance:

- Likelihood of achieving compliance: it is EAO C&E’s view that it is not possible for GRL to achieve compliance with condition 36, with the two structures as currently located.
- Nature of the non-compliance: a key consideration is the “...seriousness of the actual or potential harm with respect to environmental, economic, social, heritage or health impacts ...”. The potential harm with respect to human safety would be high if built without constraints and/or mitigations.

On April 21, 2015, GRL advised EAO that GRL is “committed to implementing all of the recommendations in the Dynamic Avalanche Consulting report with respect to the day lodge and service building. Mitigation efforts for the day lodge will include structural reinforcement as necessary, a comprehensive avalanche control and safety plan (with frequent avalanche control via explosives and the implementation of reliable, all-weather systems such as gazex), and an evacuation plan for both employees and the general public. Likewise, the service building will be converted to a structurally reinforced storage building that will not be accessed during winter”.

It is important to note that GRL’s proposed use of the Day Lodge Location and Service Building Location would be non-compliant unless GRL seeks, and successfully receives, an amendment to the EA Certificate that would allow commercial structures in one or both of these locations subject to mitigation addressing human safety and any

other factors as determined through an amendment process. Section 19 of the *Environmental Assessment Act* (Act) states that 'A holder of an environmental assessment certificate may apply in writing to the executive director to amend the certificate....'. Through the amendment process, if GRL applies for one, EAO would assess the adequacy of the proposed mitigation in the Alan Jones Report and any other factors as determined by EAO.

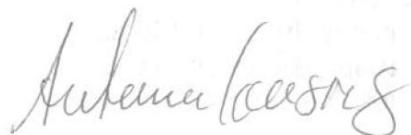
In the circumstances, it is appropriate, in my view, to take a phased approach to enforcement.

First, I am ordering, in the attached Order, that GRL cease construction of structures in the Day Lodge Location and Service Building Location in order to minimize the extent of the non-compliances.

Second, given there is no immediate risk to the environment or human safety and that there are avenues under the Act that GRL may pursue to seek EAO's assessment of the proposed mitigation in the Alan Jones Report, I will not proceed with additional enforcement immediately. I also recognize that the GRL's plans may be impacted by the Minister's determination whether the Project is substantially started. Accordingly, should the Minister determine the Project is substantially started, EAO will provide an opportunity following that determination for GRL to make a submission to the Executive Director regarding any proposed Project changes and additional detail about those plans. If GRL does not provide the required amendment information within a reasonable timeline as established by EAO or if an amendment is not approved, I may proceed with further enforcement including, but not limited to, ordering the removal of all Project related infrastructure at the Day Lodge Location and the Service Building Location and reclamation of the land to EAO's satisfaction. In the meantime, GRL must not resume construction at either the Day Lodge Location or Service Building Location for any purpose.

Finally, as you are aware, this compliance investigation is distinct from the process to determine whether the Project was substantially started by the EA Certificate deadline. The impact of this compliance determination, if any, on the substantially started question will be addressed in that process.

Yours truly,



Autumn Cousins  
Manager of Compliance

Attachment