

May 28, 2015

*Sent via email*

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File No: 510

Attention: Honourable Minister Polak, Mr. Craven, and Ms. Cousins

**Re: Proposed Jumbo Glacier Resort – Effect of significant repeated non-compliance with Certificate conditions**

“We knew perfectly well [the day lodge] was in an avalanche path when we sited it”  
Tommaso Oberti, vice-president of the resort’s project management group<sup>1</sup>

We write on behalf of the Jumbo Creek Conservation Society and Wildsight (the “Societies”). These submissions are provided in addition to the comments the Societies have already made regarding non-compliance.<sup>2</sup> The proponent has repeatedly failed to comply with significant Certificate conditions. The non-compliance relates to both pre-construction conditions and the location of Day Lodge and Service building. The non-compliance is likely unlawful and it would be unlawful for the Minister to use any non-compliant act a basis for deciding the project is substantially started.

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<sup>1</sup> Calgary Herald, April 28, 2015 “Day lodge for controversial Jumbo resort located in avalanche path”, by Colette Derworiz.

<sup>2</sup> Our other non-compliance submissions are found in the Societies’ “Submissions regarding the determination under s. 18(5) of the *Environmental Assessment Act*, SBS [sic] 2002, c 43 as to whether the Jumbo Glacier Project has been substantially started”, submitted on November 10, 2014; and in the Societies’ April 23, 2015 letter regarding the March 19, 2015 Dynamic Avalanche Consulting report.

The EAO has twice determined that the Proponent did not comply with Certificate conditions:

- On October 9, 2014 the EAO advised that it had confirmed non-compliance with Certificate conditions 57, 72, and 146.
- On April 24, 2015, the EAO advised that the partial structures at the day lodge and service building locations were not compliant with condition 36.

The fact that not only have there been two non-compliance determinations on the little construction that has occurred, but also that the proponent seems to have deliberately disregarded the Certificate conditions is alarming. The apparent disregard is demonstrated by the resort management group's vice-president statement in the Calgary Herald:

“We knew perfectly well [the day lodge] was in an avalanche zone when we sited it,” said Tommaso Oberti, vice-president of the resort's project management group.<sup>3</sup>

It can be reasonably inferred that the proponent, or the 'resort's project management group', knew that Certificate condition 36 prohibited construction of the day lodge in an avalanche path. It appears that the proponent knew about, and disregarded, an important human safety condition required by the Certificate. Such disregard for the Certificate conditions cannot be countenanced, let alone used as justification to give the proponent a permanent right to build the project.

Proponents cannot be allowed to rely on unlawful construction to meet statutory requirements for substantially starting projects. Allowing the proponent to rely on activities conducted in violation of a certificate would set an iniquitous precedent. It would act as an encouragement to proponents to violate certificates and the *Act* if helpful in obtaining the permanent right to pursue a project. It would send a troubling message to groups like the Societies who are committed to opposing objectionable project proposals through the established legal process. And finally, relying on unlawful activities to affirm a legal right would, in itself, likely be unlawful.

Furthermore, the Societies respectfully submit that any unlawful construction must be remediated. As such, and assuming the construction to date is in fact unlawful, the construction actually detracts from a substantial start because significant costs and effort will need to be expended to undue the unlawful acts.

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<sup>3</sup> Calgary Herald, April 28, 2015 “Day lodge for controversial Jumbo resort located in avalanche path”, by Colette Derworiz.

The Societies submit that where a proponent shows a flagrant disregard of Certificate conditions, it is imperative that the EAO and the Minister not condone this behavior by rewarding the proponent with a determination that the non-compliant work counts toward a substantially started decision.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Morgan Blakley and Randy Christensen', written in a cursive style.

Morgan Blakley and  
Randy Christensen  
Barristers and Solicitors

Copied to Jeff Huberman, counsel for the Ktunaxa Nation Council