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Sent via email

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Attention: Autumn Cousins, Paul Craven, and EAO Compliance

Re: Proposed Jumbo Glacier Resort Project – Comments on March 19, 2015 Dynamic Avalanche Consulting “Snow Avalanche Risk Zoning for a Day Lodge and Service Building”

Introduction

We write on behalf of the Jumbo Creek Conservation Society (“JCCS”) and Wildsight regarding the March 19, 2015 Dynamic Avalanche Consulting report titled “Snow Avalanche Risk Zoning for a Day Lodge and Service Building” (the “Avalanche Report”).

The findings in the Avalanche Report raise serious concerns about public safety, compliance with condition 36 of environmental assessment certificate TD04-01 (the “Certificate”) for the proposed Jumbo Glacier Resort (the “Proposed Project”), compliance with the Canadian Avalanche Association’s *Guidelines for Snow Avalanche Risk Determination and Mapping in Canada 2002* (the “Avalanche Safety Guidelines”), and the works asserted by the proponent to demonstrate a substantial start to the Proposed Project.

Moreover, the Avalanche Report’s recommendations fail to address a key direction from the *Guidelines for Snow Avalanche Risk Determination and Mapping in Canada 2002* (the “Avalanche Safety Guidelines”), which undermines the report’s recommendations and may lead to jeopardized public safety. To be clear, JCCS and Wildsight accept the Avalanche Report’s findings regarding avalanche hazards at the proposed day lodge and service building locations.

However, the JCCS and Wildsight have a serious concern about the recommendations in the Avalanche Report that stem from the findings.

The floating slabs are located in avalanche hazard areas

The Avalanche Report found that the floating slabs poured for the day lodge and service building are in avalanche hazard areas:

- “The majority of the Day Lodge foundation is located in the Blue Zone, which presents moderate avalanche risk. The remainder is located in the White Zone (low risk).”¹
- “The majority of the Service Building is located within the Red Zone (high risk); the remainder is located in the Blue Zone (moderate risk).”²

The proposed day lodge location violates Certificate condition 36

Violation of Condition 36

Certificate condition 36 states that “Residential and commercial structures will be located completely outside the avalanche hazard area.”³ There is no question that the proposed day lodge would be a commercial structure in an avalanche hazard area.

While avalanche hazard area was not defined in the Certificate, the December 11, 2014 letter from Ms. Autumn Cousins (Ref: 104869) properly identifies the Avalanche Safety Guidelines as the baseline for determining avalanche hazard areas:

...we understand the Guidelines for Snow Avalanche Risk Determination and Mapping in Canada from the Canadian Avalanche Association (Guidelines) set out the generally accepted standard for evaluating avalanche risk.⁴

The Avalanche Report assessed avalanche risk using the Avalanche Safety Guidelines which reinforces the importance and relevance of these guidelines for determining avalanche risk. The Avalanche Safety Guidelines set out risk categories for avalanche hazard: “White zone” (low risk); “Blue zone” (moderate risk); and “Red zone” (high risk).

¹ Avalanche Report at p. 25.

² Avalanche Report at p. 25.

³ July 28, 2004 Letter to Project Assessment Director regarding Jumbo Glacier Resort and attaching the Compendium of Proponent Commitments (the “Compendium”). The Compendium commitments are referentially incorporated as Certificate conditions through paragraph 45 of Schedule A of the Certificate.

⁴ Cousins Letter, p. 2.

The Avalanche Report found that the proposed day lodge location is in the Blue Zone.⁵ The day lodge would certainly be a commercial structure.⁶ As such, there should be a finding that the Proponent is not in compliance with condition 36.

The non-compliance issue related to condition 36 is not the only concern with Certificate compliance. As stated in the EAO's October 9, 2014 letter (Ref: 104635), the Proponent has already been confirmed to be in non-compliance with conditions 57, 72, and 146. There appear to be multiple, significant non-compliance issues that cannot be overlooked. Given that the Proponent appears to have repeatedly, and seriously, ignored Certificate conditions to advance its corporate interests, the EAO should consider enforcement action pursuant to s. 41 of the *Environmental Assessment Act*, SBC 2002, c. 43 (the "Act"). Such action will hopefully impress upon the proponent the importance of complying with the Certificate conditions and help restore public trust in the environmental assessment process.

Further, JCCS and Wildsight respectfully submit that the Minister ought to issue an order to force the proponent to mitigate the effects of non-compliance by removing the slabs and remediating the two locations. The Minister has authority to order remediation pursuant to s. 34 of the *Act*.

Violation of Avalanche Safety Guidelines

The proposed locations for both the day lodge and the service building violate the Avalanche Safety Guidelines. While these guidelines are not legally binding, they provide important guidance to ensure public safety. The guidelines should not be disregarded.

The Day Lodge

Pursuant to the Avalanche Safety Guidelines, "[s]pecial structures where large numbers of people may gather... **must be placed only in a White zone** and where there is a high confidence

⁵ Avalanche Report at p. 25.

⁶ See for example, Pheidias Group's submissions "Jumbo Glacier Resort Making the "Substantially Started Determination" November 7, 2014 at the Appendix 3, page 8 of 17, where the area calculations identify multiple commercial spaces such as a cafeteria and several retail spaces including a convenience store and ski and snow equipment store.

that the avalanche risk is low.”⁷ Other parts of the Avalanche Safety Guidelines regarding building location are often written in permissive or discretionary language.

The direction regarding special structures is written as an absolute requirement – that such structures **must be placed only** in White zones. It is a clear indication of the seriousness of placing special structures like a day lodge in an avalanche hazard area. Avalanche risk can literally be a matter of life and death - buildings where large numbers of people gather must be located properly. The Blue zone, wherein most of the slab for the proposed day lodge is situated, is in an area with a moderate risk of avalanche. To ensure public safety and compliance with the Avalanche Safety Guidelines, the day lodge must not be built in a Blue avalanche hazard area.

The Avalanche Report states that the “majority of the Day Lodge foundation is located in the Blue Zone, which presents moderate avalanche risk. The remainder is located in the White Zone (low risk).”⁸ As such, to ensure public safety and to comply with the Avalanche Safety Guidelines, the day lodge must not be built where its slab is currently located.

The Service Building

The Avalanche Safety Guidelines state that in a Red zone “Construction of new buildings *not normally permitted*”⁹ (emphasis original). Further, as noted in the Avalanche Report, in red zones:

Construction of new buildings not normally permitted. This recommendation is intended to apply to occupied structures, either temporarily or permanently occupied. **Based on this guideline, if a structure is to be constructed at this location, it is recommended that it not be used or routinely accessed during the winter season** (see Section 4.4 for duration).¹⁰

As the single service building for the Proposed Resort’s desired start-up, it is clear that the service building would be used in the winter. As such, the service building must not be located in a Red zone.

⁷ Avalanche Safety Guidelines at pp. 12-13.

⁸ Avalanche Report at p. 25.

⁹ Avalanche Safety Guidelines at page 12.

¹⁰ Avalanche Report at p. 27.

The Avalanche 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).”¹¹ As a result, constructing the service building at the proposed location would pose a significant risk to the life of anyone working there and would violate Avalanche Safety Guidelines. The service building cannot be built where its slab is currently located. If the slab is used for a non-winter structure, then non-winter use may be considered.

2015 Avalanche Report’s recommendations should not be accepted

The JCCS and Wildsight accept most of the 2015 Avalanche Report’s findings but object to several recommendations made on the basis of those findings. As set out below, the recommendations do not reasonably interpret “temporarily occupied structure” and most seriously, fail to consider a key guideline regarding the location of gathering places like day lodges.

The interpretation of “temporarily occupied structure” is unreasonable

The 2015 Avalanche Report unreasonably suggests that the day lodge may be considered a temporarily occupied structure. The day lodge will be occupied throughout the day during the entire avalanche season – it is not ‘temporarily’ occupied. “Temporarily occupied structures” ought to be interpreted as structures that are occupied infrequently.

The Avalanche Report correctly references the Avalanche Safety Guidelines and that for Blue zones, “...construction of new buildings, such as industrial plants and temporarily occupied structures, possibly permitted with specified conditions.” The Avalanche Report then unreasonably states: “[a]ssuming the Day Lodge would be used only during limited (working) hours during the day, it may be considered a temporarily occupied structure”. This is an unreasonable interpretation of “temporarily occupied”. The day lodge will be occupied throughout every day (when avalanche risk is higher) during the entire avalanche season. A “temporarily occupied structure” is a structure that is mostly unoccupied – such as a storage shed or emergency shelter which is only occupied for brief periods of time.

¹¹ Avalanche Report at p. 25.

Regardless of the unreasonable interpretation of “temporarily occupied structure”, the Avalanche Report cannot be relied upon to allow construction of the day lodge at the proposed location because the report omits a key guideline from the Avalanche Safety Guidelines which prohibits construction of structures where large crowds may gather anywhere except in a White zone.

Significant omission in the Avalanche Report

We are deeply concerned that the Avalanche Report omitted the direction in the Avalanche Safety Guidelines regarding “special structures”. The Avalanche Safety Guidelines state:

Special structures where large numbers of people may gather, multi-unit residences or structures used for essential services (hospitals, schools, police and fire stations) **must be placed only in a White zone** and where there is a high confidence that the avalanche risk is low.¹² (Emphasis added)

The day lodge has a proposed occupancy load of 437 people.¹³ As such, the day lodge is a “special use structure where large numbers of people may gather”. The day lodge will have more people in and around it than many permanently occupied residential buildings and this is why the day lodge should only be allowed in a White zone. It is quite concerning that the 2015 Avalanche Report fails to take this guidance into account in its recommendations.

Given the unequivocal language of the guideline, there is only one reasonable recommendation for the day lodge: it cannot be built where the slab is currently located (in a Blue zone). As noted above, the day lodge slab is mostly in a Blue Zone. To ensure public safety and compliance with the Avalanche Safety Guidelines, the day lodge must not be built where its slab is currently located. Construction at the current location would place a special structure where large numbers of people gather in a hazardous avalanche zone.

Given that:

- 1) the Certificate prohibits the day lodge from being built at the proposed location, and
- 2) the Avalanche Safety Guidelines prohibit building the service building and day lodge from being built at the proposed locations

¹² Guidelines, pp. 12-13.

¹³ See Pheidias Group’s submissions “Jumbo Glacier Resort Making the “Substantially Started Determination” November 7, 2014 at the Appendix 3, page 17 of 17.

it is clear that the day lodge and service buildings cannot be built where the slabs were poured. This has significant ramifications for the level of work needed for the project (if service building converted to a summer use building – a new service building would have to be built) and with compliance with EAC conditions. Both of these are discussed below.

Impact on substantially started determination

The assessment of avalanche risk is occurring in the context of the determination of whether the project is substantially started. As noted in the JCCS and Wildsight’s submission of November 10, 2014, the Proposed Project is a multimillion dollar undertaking. The pouring of two concrete slabs, without foundations, constitutes a miniscule portion of the overall project.

Now, it is clear that the work done on the day lodge and service building should not be counted at all. Pursuant to condition 36 and the Avalanche Safety Guidelines, neither structure can be built where their slabs are currently located. Given the unsuitability of the proposed locations, the work done to date is actually negative work – the two slabs likely need to be removed and the two sites remediated.

At best, the only work that the Proponent should be allowed to rely upon is the pouring of a concrete slab, without foundation, for a seasonal storage structure that appears not to have been part of the original resort concept.

Moreover, proponents should not 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 the 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 also send a troubling message to the groups like JCCS and Wildsight who are committed to opposing objectionable project proposals through the established legal process.

Conclusion

JCCS and Wildsight respectfully request that:

- 1) this letter be considered by the Environmental Assessment Office (the “EAO”) in its analysis of the Avalanche Report;

- 2) the EAO accept the Avalanche Report's findings regarding avalanche hazards at the proposed day lodge and service building locations;
- 3) the EAO reject the Avalanche Report's recommendation that the day lodge can be considered a temporarily occupied structure;
- 4) the EAO reject the possibility that the day lodge can be built in a Blue zone;
- 5) the EAO enforce Certificate condition 36;
- 6) the EAO consider enforcement action for repeated non-compliance with Certificate conditions; and
- 7) the EAO ensure that the implications of the Avalanche Report be incorporated into the "substantially started" report being prepared for the Minister.

Sincerely,



Morgan Blakley and Randy Christensen
Counsel for JCCS and Wildsight