

# **Jumbo Glacier Resort Master Plan**

## **Appendix 6-B**

Sierra Systems Report to the  
Environmental Assessment Office  
re. R.K. Heli-Ski (2004)

**Report to**

**Environmental  
Assessment Office  
Jumbo Valley Assessment**



**Sierra**

*New thinking.*

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**Confidentiality/Validity**

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ERRATA

"Report to Environmental Assessment Office - Jumbo Valley Assessment" prepared by Sierra Systems Group, Inc. dated July 28, 2004.

p.17 - "[Reference document #6 (Letter and from Proponent to RK, 03/18/1993)]".  
The word "and" should be removed.

p.20 - "[Reference document #13 (Letter from RK to BC Lands, 12/18/1995)]"  
The date of the reference document is erroneous -  
the correct date is 12/28/1995.

p.37 - "[Reference document #14 (RK License of Occupation #402612, 12/03/1996)  
and #2 (RK Management Plan, 03/1990)] should read [Reference  
document **#16** (RK License of Occupation #402612, 12/03/1996) and #2 (RK  
Management Plan, 03/1990)]

"[Reference document #14 (RK License of Occupation #402612)]" should  
read [Reference document **#16** (RK License of Occupation #402612)]

p.38 - "[Reference document #31 (Rod Gibbon's Personal Guide Log, 02/03/1998)]"  
should read "[Reference document **#30** (Rod Gibbon's Personal Guide Log,  
02/03/1998)]"

(07.29.2004)

## 1. EXECUTIVE SUMMARY

This report re-assesses the competing tenure interests of R.K.Heli-Ski (RK) and Glacier Resorts Ltd. (Proponent) respecting the Proponent's intention to develop a ski resort in the Jumbo Valley area. Specifically, this report evaluates the level of impact, if any, that would be suffered by RK should the Proponent's development proceed, and the extent to which RK might be due compensation as a result of such impact.

It is clear that RK presently derives approximately 80% of its operating revenues from the Jumbo Valley and the Farnham Glacier. These two zones would be significantly impacted should the Proponent's development proceed. The Jumbo and Farnham zones have been important to RK's operations for the past 13 years and a loss of these areas would, at a minimum, require RK to re-locate a percentage of its operations to other areas within its tenure, and could result in the write-off of investments made in glading within the Jumbo Valley.

While RK's operations would be disrupted if the Jumbo ski resort proceeds, it is not immediately clear that:

- the loss of Jumbo/Farnham would result in the demise of the business, as is claimed by RK, or
- the disruption that would be suffered by RK is solely due to actions taken by the Proponent or the actions of the province in approving the Proponent's application.

It has taken considerable time to process the Proponent's application for the ski resort: public notice of the Proponent's intention was first given in 1990, and the approval process is still ongoing.

To evaluate the impact that would be experienced by RK, this report:

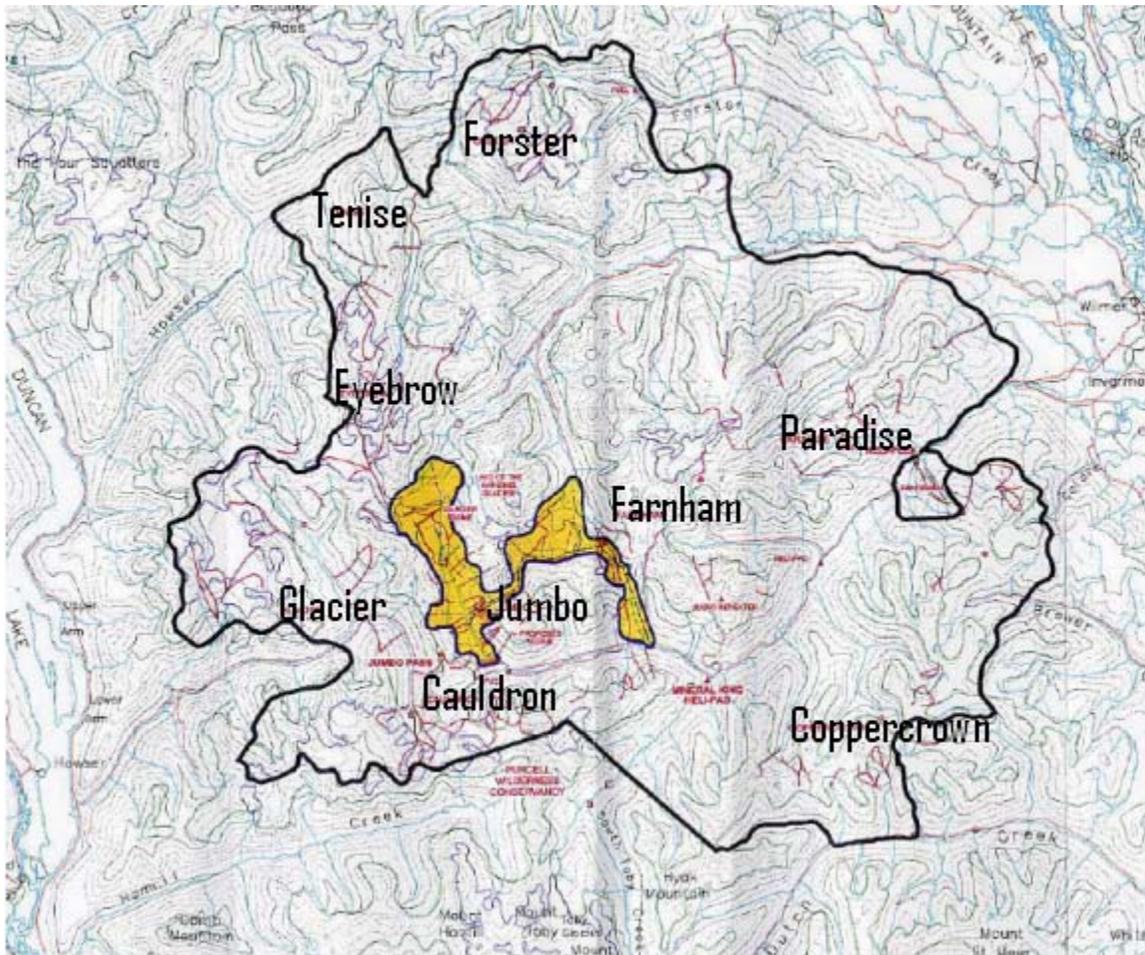
1. considers the pattern of RK's terrain usage from 1986 to 2004;
2. analyzes the pattern of usage prior to notice of the Proponent's interest;
3. identifies any immediate changes that might have occurred upon RK receiving notice; and
4. chronicles the evolution of usage patterns from the point of notice until today.

To be due compensation, it is reasonable to expect an impacted party to take viable steps to mitigate the impact suffered. To the extent reasonable mitigation activities were not undertaken, any compensation that might otherwise be due could be reduced to account for the probable effect of those mitigation activities that were not taken. Further, it is reasonable to expect that a party, in receipt of notice of a pending impact event, is required to conduct its operations in the normal course of its business, and not take actions out of the normal course that would reasonably be expected to exacerbate the impact when the event ultimately occurs.

**Terrain Usage**

It is clear from the figures provided by RK that the Jumbo Valley was used sporadically prior to April 1990, when RK received notice of the Proponent’s interest.

Year	85/86	86/87	87/88	88/89	89/90	90/91	91/92	92/93	93/94	94-03
Jumbo	3.4%	6.5%	8.4%	7.0%	2.4%	45.7%	31.3%	36.6%	60.5%	~60.0%
Cauldron	44.8%	40.7%	35.9%	45.3%	20.9%	11.5%	25.2%	22.0%	20.4%	~10.0%
Farnham	22.7%	26.9%	27.8%	22.2%	18.7%	10.6%	30.7%	26.3%	15.5%	~20.0%
Paradise	5.0%	3.0%	7.0%	6.0%	4.7%	13.0%	0.0%	.005%	0.0%	~0-4%
Coppercrown	15.1%	13.0%	10.0%	10.0%	14.2%	18.3%	3.9%	1.0%	1.4%	~1-6%
Eyebrow / Forster	2.5%	5.3%	7.0%	4.9%	7.7%	0.9%	8.9%	7.0%	2.1%	~1-6%
Glacier / Tenise	n/a	Zone merged								



**Map 1 RK’s Established Tenure Area in 2004, Ski Zones indicated**

In an action out of the historic course of its operations, following its receipt of notice (in April 1990, following the 89/90 season), RK shifted material volumes of usage into the Jumbo Valley (increasing from 2.4% of volume in 89/90 to 60.5% of volume in 93/94).

RK claims that the shift in operational volumes into the Jumbo Valley was the result of:

1. increased heli-ski capacity created by logging in the Jumbo Valley; and
2. substantial increases in customer volumes.

The Ministry of Forests confirmed that extensive logging in the Jumbo Valley did not occur until after the 1990/1991 season. RK's records confirm that significant increases in RK's annual customer volumes did not occur until the 1994/95 season. As indicated in the table above, the shift in RK's operational volumes into the Jumbo Valley occurred before either of these events.

As a result, the reasons offered by RK for its change in operating practice are not viable business explanations. After reviewing the data and information available, a reasonable observer could plausibly conclude that RK shifted material operational volumes into the Jumbo valley to evidence the importance of the valley to its business, so that fact would be considered in any review of the Proponent's pending tenure application.

***Other facts of note:***

Glading (removal of trees and under-brush) is a capital investment required of heli-ski operators. In 1993, RK sought permission to glade new runs in the north end of Jumbo Valley, in an area that would not be directly impacted by the proposed resort. Support of the Proponent was a condition for provincial approval. The Proponent supported RK's application, the glading was approved by LWBC, and RK proceeded. RK, however, did not conduct the glading in the area approved, choosing to complete the glading in the area that would be immediately impacted by the proposed resort.

During the period 1986 to 1995, RK reports significant usage of the Glacier Creek drainage area (usage is "consolidated" with the Cauldron area for reporting purposes, hence precise levels of usage cannot be confirmed). At that time, the Glacier Creek drainage was not within the tenure held by RK. In its 1990 and 1991 management plans and in its 1996 application for tenure expansion, RK confirmed:

- its active and historic usage of the area (this point was also confirmed during interviews with RK in July 2004);
- that the Glacier Creek area included sites with superior snow conditions, and quality terrain; and
- that the Glacier Creek area had predictable bad weather access.

RK asserted in its tenure expansion application that the area was vital to the ongoing expansion and viability of its business.

LWBC required that RK have the support of the Proponent for its application for tenure expansion into the Glacier/Tenise areas. The Proponent offered the required support.

LWBC indicated at the time that this tenure expansion was also considered to be mitigation for any loss of tenure that would be experienced should the Proponent's application proceed. While RK disputed the fact that Glacier/Tenise should be considered as mitigation for the possible loss of Jumbo/Farnham, the province confirmed this understanding as a condition in RK's modified tenure lease.

After receiving approval of the tenure expansion, RK reported minor usage of Glacier as an initial "test" to prove viability. RK then reported that Glacier was not suitable and could not be accessed in bad weather (notwithstanding the area had been used extensively over a protracted period before the tenure was granted, and notwithstanding RK had confirmed both bad weather access and quality of snow and terrain in its management reports and tenure expansion application). RK has not reported specific usage of the area since the "test". The "test" was reported in RK's terrain usage reports as occurring during the year prior to the approval of the tenure expansion.

As noted above, during the period 1990 to 1994, RK appears to have changed from the normal course of its operations in response to the notice of the Proponent's interest in the Jumbo and Farnham areas, increasing its reliance on the Jumbo area from 2.4% to 60.5% of its usage. If the Proponent's application had been approved in 1994, the change in RK's operation would have been amply apparent. As the final decision on the Proponent's application is still outstanding, RK can now demonstrate long-term, stable usage of the Jumbo and Farnham areas. While RK's current terrain usage is not in dispute, the Province should not lose sight of the fact that RK shifted work volumes into the area after receiving notice that the area was at risk, and in reasonable anticipation that the action would exacerbate the impact of the Proponent's application on RK.

At the time of notice of the Proponent's interest in Jumbo/Farnham, RK's tenure was confirmed as "non-exclusive", with no mention of a compensation mechanism in the tenure document. This situation remained until October 2001, when the tenure document indicated that Glacier/Tenise was considered to be mitigation for the possible loss of Jumbo/Farnham. In the December 2001 tenure extension, a new clause was introduced indicating compensation could be available if the tenure was "materially" impacted.

A detailed analysis of terrain usage confirms that RK has options available to mitigate the impact potentially caused by the approval of the Proponent's application. To the extent any residual impact on RK's operations could remain, that impact would not be material.

Moreover, a second analysis of the overall capacity of the tenure reveals that RK has the ability to shift the volumes impacted by the CRA to other areas in the tenure. These other areas in RK's tenure display proven heli-ski capacity based on RK's historic operating records. The impact to RK would likely not be material if RK re-organizes its ski visits (to pre-1990 operations) within its tenure.

Nevertheless, the approval of the CRA will still result in a disruption to RK's operations. The Proponent has a responsibility to moderate any impact to RK's operations as a result of its proposed resort.

The Proponent has already committed to a number of measures that would mitigate the impact on RK's operations. Two of the Proponent's proposed measures appear especially viable at offsetting the impact to RK's operations:

1. allowing RK to operate inside its approved Commercial Recreation Area (CRA) subject to safety and reasonable management precautions; and
2. sharing a synergistic relationship with RK, potentially enhancing RK's operations.

### Conclusion

Should the Proponent's application be approved, we would expect no material impact to occur to RK's operations, as RK has reasonable opportunities to mitigate impacts by making better use of other regions of its tenure, notably the Glacier and Tenise areas.

While a compensable impact will likely not occur, the conditions of approving the Proponent's application should specifically confirm the Proponent's responsibility to mitigate the disruption to RK's operations caused by the new resort.

Given a current high level of acrimony between the Proponent and RK, we recommend the institution of a formal process whereby the Proponent must offer "co-existence opportunities" similar to those set out in correspondence. The province should engage a mediator to facilitate the process and to ensure the Proponent presents bona fide options for RK to consider.

## 2. REVIEW OF INFORMATIONAL SOURCES

The issue of competing tenure interests between RK and the Proponent surfaced during their first meeting shared in April 1990 (between the Proponent and Roger Madsen, the founder of RK). At this meeting, the Proponent presented its intention to develop a ski resort in the Jumbo Valley area. Since then, each group has stated their respective positions regarding the impact the proposed resort would have on RK's operations.

Each group has presented contrasting positions. Moreover, the gap between the positions taken by the two groups has widened over time. RK presents ski visit and ski run information, reported over time to the province. Beyond these usage records, each group has justified their positions by using evidence that should be regarded as anecdotal and potentially biased. The respective arguments presented by each group are diametrically opposed to one another - it is clear that the proof offered and opinions expressed should be regarded as self-serving.

Specifically, statements made by both groups pertaining to weather patterns, snow pack, terrain slope, and bad weather access to tenured areas are inconsistent and contradictory. Reports based on usage information are at times inconsistent. Unfortunately, there is no independent or truly objective source of information that can be relied upon to validate the evidence provided or the positions taken by *either* group. For instance, Environment Canada and the Ministry of Sustainable Resource Management cannot verify either group's statements about weather patterns or snow pack. With regards to terrain usage, neither Transport Canada nor Land and Water B.C. Inc. require the maintenance of flight records that include precise drop points (at specific ski runs). As a result, no analysis can independently corroborate statements and reports regarding RK's specific operations inside tenured zones. The personal logs of RK's guides appear to be the most valid record, but their availability is inconsistent, as they are not required to comply with any established regulation. Without access to independent sources of information relevant to the issue at hand, it is unreasonable for this independent assessment to take either group's supporting evidence at face value.

In the absence of corroborating, independent evidence, an appropriate method to examine this tenure conflict is to:

1. complete a detailed chronology of tenure usage based on reports submitted by RK in the relevant time periods and relevant historical events affecting tenure usage; and
2. analyze this chronology as a "reasonable observer" within the backdrop of relevant contractual agreements and statements made by the parties in correspondence.

The following sections of this report provide such a detailed chronology and subsequent analysis.

### 3. CHRONOLOGY OF TERRAIN USAGE AND RELEVANT EVENTS

Figure 1. Annual Skier Visits by Zone

Year	85/86	86/87	87/88	88/89	89/90	90/91	91/92	92/93	93/94	94/95	95/96	96/97	97/98	98/99	99/00	00/01	01/02	02/03	03/04
Jumbo	3.4%	6.5%	8.4%	7.0%	2.4%	45.7%	31.3%	36.6%	60.5%	58.0%	43.6%	54.7%	58.1%	58.0%	59.5%	41.9%	65.1%	60.0%	
Cauldron	44.8%	40.7%	35.9%	45.3%	20.9%	11.5%	25.2%	22.0%	20.4%	19.1%	23.3%	19.6%	19.2%	13.0%	10.4%	22.3%	10.0%	10.9%	
Farnham	22.7%	26.9%	27.8%	22.2%	18.7%	10.6%	30.7%	26.3%	15.5%	17.5%	18.1%	15.2%	20.0%	17.2%	22.3%	26.9%	21.9%	23.3%	
Paradise	5.0%	3.0%	7.0%	6.0%	4.7%	13.0%	0.0%	.005%	0.0%	1.0%	3.8%	4.1%	0.06%	1.7%	0.5%	0.0%	0.0%	0.0%	
Coppercrown	15.1%	13.0%	10.0%	10.0%	14.2%	18.3%	3.9%	1.0%	1.4%	1.7%	2.6%	2.8%	0.06%	4.6%	5.5%	5.9%	1.2%	3.1%	
Eyebrow / Forster	2.5%	5.3%	7.0%	4.9%	7.7%	0.9%	8.9%	7.0%	2.1%	2.6%	4.7%	3.6%	1.5%	5.6%	1.7%	3.1%	1.7%	2.8	
Glacier / Tenise	n/a	n/a	n/a	n/a	n/a	n/a	N/a	n/a	n/a	n/a	3.8%	0%	Zone merger	Zone merger	Zone merger	Zone merger	Zone merger	Zone merger	
Tenure Agreements	Occupation Agreement (Pre-1991)					Renewed Occupation Agreement (Jan. 1991)						Agreement granting occupation in Glacier and Tenise Creek (Dec. 1996)				Renewed Agreement Dec 2001			



Apr. 1990 - Proponent announces application for Jumbo Glacier resort



Mar. 1993 - RK requests the Proponent's support for new bad weather runs in Jumbo Creek area



Mar. 1993 - The Proponent provides support for RK's new bad weather runs in Jumbo Creek



Apr. 1995 - The Proponent offers RK to co-locate in Jumbo



Oct. 1995 - RK requests that the Proponent support its expansion into Glacier and Tenise Creek



Nov. 1995 - The Proponent provides support for RK's expansion into Glacier and Tenise Creek; other mitigation requests supported



1996/1997 - RK does not utilize Glacier and Tenise Creek

Terrain Usage: RK March 1990 Management

Plan, RK terrain usage records submitted to the Ministry, BHA Report, & RK Response to Jumbo Resort Proposal, 04/2004

## 1985 – 1990

### 1) Low Jumbo terrain usage

From 1985/86 to 1989/90, prior to any public pronouncement of interest in the Jumbo Creek drainage area by the Proponent, the Jumbo Creek area accounted for 2.4% to 8.4% of RK's ski days/visits (ski days = ski visits; RK stated in a July 2004 interview that the difference in ski days and ski visits was immaterial). For the 1989/90 season, RK's Management Plan reported that the Jumbo Creek area accounted for 2.4% of all skier days/visits.

[Reference document #1 (RK Licence of Occupation #401670, 01/31/1991) and #2 (RK Management Plan, 03/1990)]

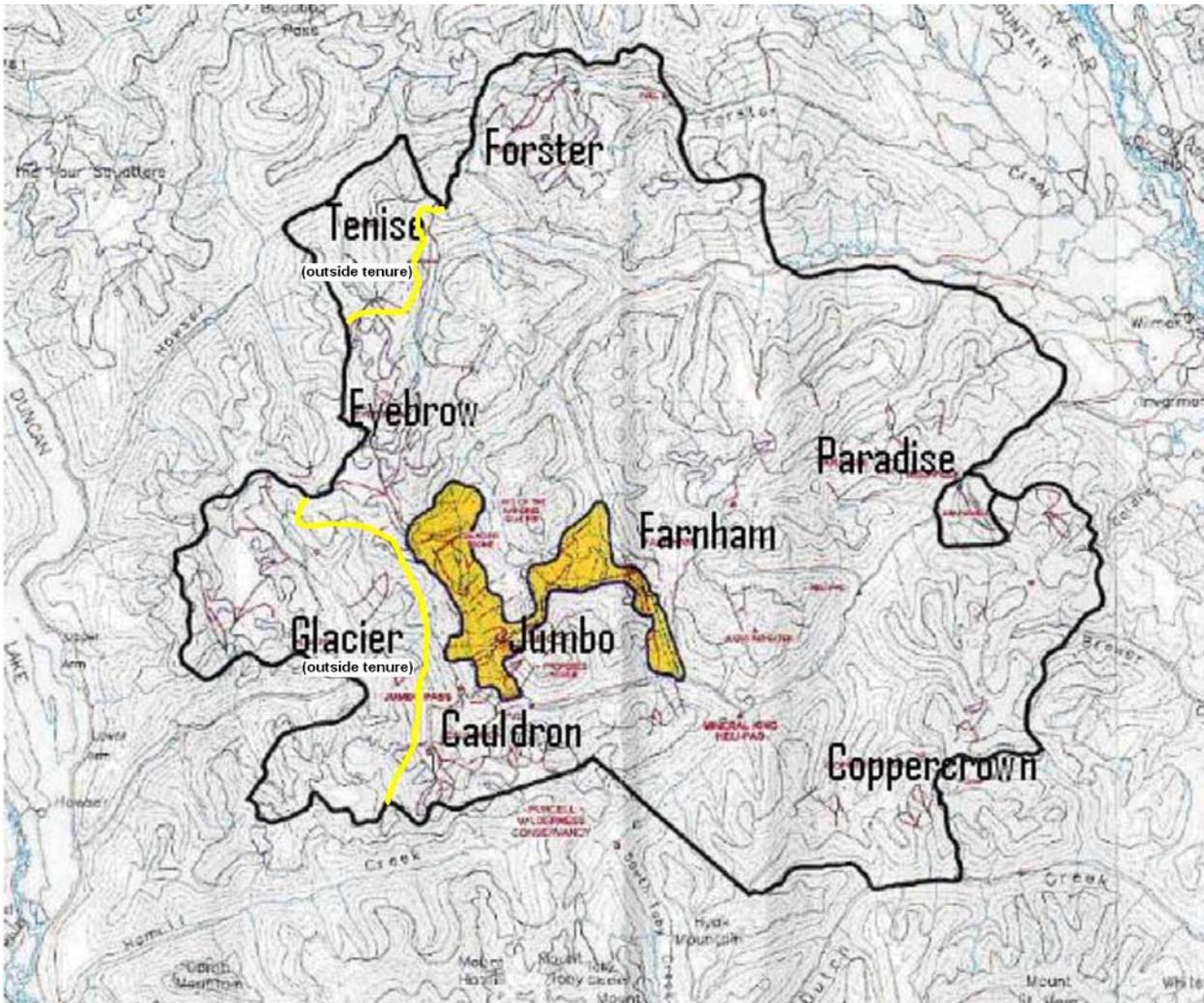
### 2) RK states that its heli-ski operations include the Glacier Creek area

In its March 1990 Management Plan, RK stated that the Glacier Creek drainage:

“has historically been an integral part of an existing operation”.

-RK Management Plan, 03/1990, p. 2

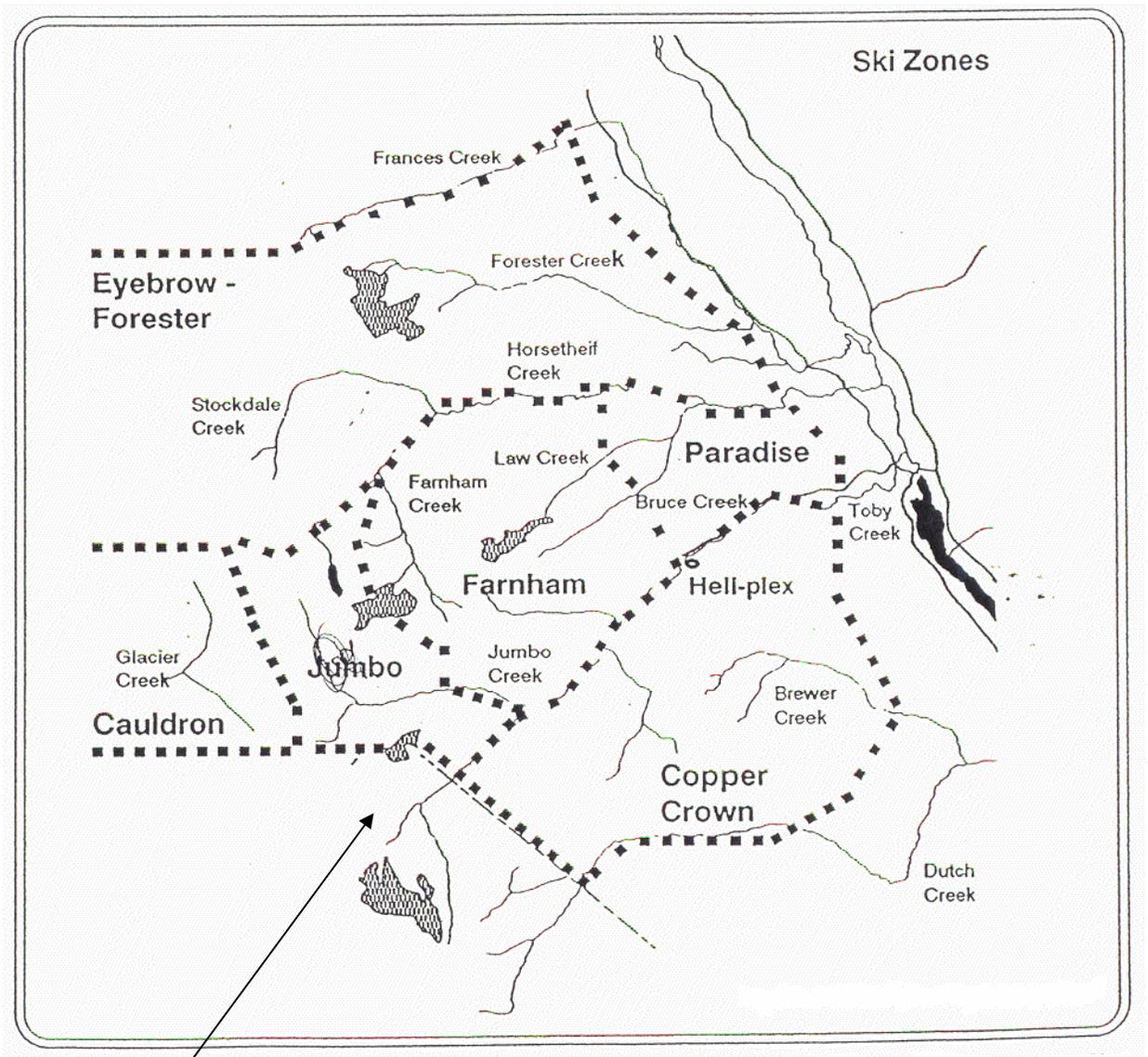
However, as displayed in Map 2 below, the Glacier Creek area is clearly located *outside* of RK's tenured area, and entirely separate from the area within the tenure that was designated the “Cauldron” zone.



**Map 2 RK's Established Tenure in 1990 – Glacier Creek Area excluded**

The Glacier Creek drainage was not added to RK's tenure or approved for RK's commercial activities until December 1996. As a result, RK has a clear history of operating in the Glacier Creek area without authorization.

It is interesting and noteworthy to compare Map 2 (above) with Map 3 (below). Map 3 was created by RK and was included in RK's 1990 management plan. This map references and graphically displays the Glacier Creek area as being the "Cauldron" zone. This is an inaccurate representation of the geographic area. An arrow indicates where the "Cauldron" zone should actually be represented.



Actual location of the "Cauldron" zone  
within established tenure

### Map 3 RK's Map of Operational Areas 1990

RK's 1990 map of its operational areas is misleading - it incorrectly asserts that the Glacier Creek drainage is within RK's 1990 tenured area.

Nevertheless, RK reported that the "Cauldron" zone, being the Glacier Creek drainage area, accounted for 20.9% of RK's skier visits in 1989/90, the year prior to the Proponent's first public announcement of interest in the Jumbo Creek area.

As will be demonstrated, it is significant that RK operated extensively in the Glacier Creek area before BC Lands approved usage of this terrain, and included this area in RK's tenure.

(During July 2004 interviews with RK staff, operational usage of the Glacier Creek drainage, prior to tenure, was confirmed.)

[Reference document #2 (RK Management Plan, 03/1990); Reference document #32 (RK operational map prior to tenure expansion)]

### 3) The Proponent meets with RK

In April 1990, the Proponent met with Roger Madsen, the founder of RK, to discuss its planned application submission to BC Lands. The Proponent communicated its intention to pursue a ski resort development permit in the Jumbo Creek Valley. Ideas surrounding the ski resort's operational plans were also discussed at this meeting.

[Reference document #3 (Letter from Proponent to Sierra Systems, 06/17/2004)]

## 1991 – 1993

### 4) Major discrepancy in reporting Jumbo terrain Usage

As indicated in Point 1 (1985-1990), RK's March 1990 Management Plan reported that the Jumbo Creek area accounted for 2.4% of all skier days for the 1989/90 season. However, RK restated usage in its January 1991 Management Plan, reporting that the Jumbo Creek area accounted for 26.6% of all skier days for that same 1989/90 season.

It is interesting to note that the March 1990 management plan was submitted before RK received notice of the proponent's interest in Jumbo. The wide discrepancy in reported Jumbo terrain usage occurred with the January 1991 Management Plan, *after* the Proponent had notice of the Proponent's intention of pursuing sole proponent status in the Jumbo Creek area.

[Reference document #1 (RK Licence of Occupation #401670, 01/31/1991) and #2 (RK Management Plan, 03/1990)]

### 5) Timber harvesting in the Jumbo Creek area

RK was granted a license to cut timber in the Jumbo zone in May 1990. The original license was amended several times and the final total area authorized for harvest in the Jumbo zone was 49 hectares. RK did not start harvesting timber in the Jumbo zone until October 1991. RK stated

that the clearing of land within the Jumbo Valley enabled the area to accommodate a much greater number of skier visits. This suggests that the capacity for RK to substantially increase skier visits in the Jumbo Valley occurred in time for the 1991/1992 season.

It is important to note that RK's significant shift into the Jumbo area started in the 1990/1991 season before major timber harvesting occurred and after the Proponent met with RK to announce its intention of pursuing sole proponent status in the Jumbo Creek area.

The conclusion drawn is that timber harvesting was not a necessary prior condition to the increase in usage of the Jumbo Valley, as claimed by RK.

[Reference document #33 (e-mail from LWBC – Forests to Sierra Systems 07/21/2004)]

## **6) An increase in Jumbo terrain Usage**

During 1990/91 to 1992/93, the Jumbo area accounted for an average of 37.9% of RK's ski visits. The average for these seasons represents almost a 1600% increase in Jumbo area usage when compared with the 1989/90 season. Comparing the 89/90 and the 90/91 ski seasons only, ski visit volumes to the Jumbo area rose from 2.4% to 45.7% - an increase of approximately 1900%.

[Reference document #29 (RK terrain usage documents) and #27 (reports submitted by RK to BC Assets and Land)]

## **7) RK's renewed tenure agreement and management plan**

In 1991, RK renewed its tenure agreement with BC Lands. RK's management plan described RK's planned enhancements of existing tenured terrain to compensate for lost heli-ski areas. The loss was occurring as a result of park and wilderness areas newly identified by the Ministry of Environment, Fish and Wildlife branch. These enhancements were realized through the selective harvesting of the Jumbo zone (Leo and Leona Creek), Copper Crown Zone (Surfs Up and X-mas) and Paradise Zone (Jumbo Pass). The selective harvesting was guided by RK's approved "5-year Forest Development Plan" which stated that the intended purpose of tree cutting was to make landings and pickups safer during unclear days and to make glade tree runs skiable. No requests for additional terrain were made at that time.

[Reference document #1 (RK Licence of Occupation #401670, 01/31/1991)]

## **8) RK re-states that its heli-ski operations include the Glacier Creek area**

In its 1991 management plan (submitted with its application for tenure renewal), RK references the Glacier Creek area as part of the Cauldron zone again. As explained before, the Glacier Creek

area is clearly outside of RK's tenure, in a zone that would not be granted to RK for commercial use for another five years.

As noted in the preface to this report, the records available are not sufficiently detailed to confirm the exact area of usage. We are left to assume the usage reported by RK occurred in the area depicted on the map provided with the 1990 management plan, that is, in the untenured Glacier Creek area.

[Reference document #1 (RK Licence of Occupation #401670, 01/31/1991) and #2 (RK Management Plan, 03/1990)]

## 1993 – 1996

### 9) Usage of Jumbo Valley continues to increase

From 1993/94-1995/96, the Jumbo area accounted between 43.6% and 60.5% of RK's ski visits.

[Reference document #27 (reports submitted by RK to BC Assets and Land)]

### 10) The Proponent receives "sole proponent" status

In 1993, the Proponent received sole proponent status over terrain including the Jumbo Valley area and Farnham Glacier. This meant that any developments in the Jumbo Valley or Farnham Glacier must involve the Proponent's participation or approval.

[Reference document #4 (Brent Harley & Associates Report, 11/15/1999)]

### 11) RK requests the Proponent's support for new bad weather runs within Jumbo

In 1993, RK sought to create new bad weather runs for its operations within the Jumbo Creek area (within the Proponent's sole proponent terrain) – RK required the proponent's support. In March of that same year, RK formally requested the Proponent's support to cut new bad weather heli-ski runs in the Jumbo Creek area. The exact locations of the new runs were included in RK's formal request and were specified on a topographic map. On July 9, 2004 correspondence, RK confirmed the areas requested.

[Reference document #5 (Letter and Map from RK to Proponent, 03/17/1993) and #31 (Letter and map from RK to Sierra Systems, 07/09/2004)]

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## **12) The Proponent provides RK with its support for new bad weather runs within Jumbo**

In March 1993, the Proponent provided RK with its support for the new bad weather runs so long as the removal of debris was promised.

[Reference document #6 (Letter and from Proponent to RK, 03/18/1993)]

## **13) New bad weather runs not built to specification**

RK's creation of new bad weather runs in the Jumbo Creek area ensued after it received the Proponent's support. However, as demonstrated by historic photographs and current topographic maps, the new bad weather runs were not created in accordance with the approvals received (i.e. as per the topographic map RK submitted).

RK created the bad weather runs to the South of the approved areas, in the area where the Proponent proposed to locate its ski lodge.

[Reference document #7 (Topographic Maps and photographs) and #32 (RK operational map prior to tenure expansion)]

## **14) The Proponent outlines possibilities for affiliation between itself and RK**

In an April 1995 letter to RK, the Proponent provided a description of its resort plan, a description of the potential business synergies between the two groups and possibilities for affiliation in the future. Possible affiliations described included:

1. a buy-out arrangement;
2. RK holding an equity interest in the resort;
3. the Proponent holding an equity interest in R.K; and
4. a co-located, joint operation with organizational independence.

[Reference document #8 (Letter from Proponent to RK, 04/17/1995)]

## **15) RK communicates its interest in a buy-out arrangement**

In response to the Proponents April 1995 letter, RK communicates its interest in a buy-out arrangement.

[Reference document #9 (Letter from RK to Proponent, 04/27/1995)]

### **16) RK meets with BC Lands to discuss the Proponent's impact on its operations**

The Proponent planned to occupy terrain (Jumbo Valley, Farnham Glacier, and Commander Glacier) used extensively by RK at the time. RK met with BC Lands in the Fall of 1995 and discussed the Proponent's potential impact on its operations. An October 1995 response letter to RK from BC Lands indicated that:

1. negotiations between RK and the Proponent were indicated to address or mitigate the impacts of the Proponent's resort proposal to RK's business, and
2. BC Lands believed that there may be a number of areas where the presence of the Proponent's proposed resort may offer new opportunities for RK's business.

[Reference document #10 (Letter from BC Lands to RK, 10/04/1995)]

BC Land's letter also acknowledged RK's request for additional ski terrain. In response to this request, BC Lands stated that it would be prepared to accept RK's application for additional terrain so long that such an application addressed:

1. the mitigative issues around the Proponent's resort proposal, and
2. the needs associated with the growth of RK's business.

[Reference document #10 (Letter from BC Lands to RK, 10/04/1995)]

### **17) RK requests the Proponent's support for terrain expansion**

In order to compensate for its shrinking land base due to the Proponent's planned use of Jumbo and Farnham, and to address the needs associated with the growth of its business, RK began to pursue terrain expansion for its heli-ski operations.

In October 1995, RK formally requested the Proponent's support for its terrain expansion into the Glacier Creek and Tenise Creek areas. It is significant to note that in order to attain LWBC's approval for terrain expansion, RK requested, and required, the support of the Proponent.

RK requested the Proponent's support for terrain expansion into Glacier and Tenise Creek in a letter dated October 7th, 1995. RK also stated in its letter that it would support some form of resort development in the Jumbo area, as long as the Proponent would endorse RK's additional requests.

These requests included the Proponent:

- a) removes Farnham and Commander Glacier from the proposed resort's plan;
- b) support RK's Jumbo Ski lodge;
- c) support the cutting of additional bad weather ski runs in Leona Creek and Mt. Bastille;
- d) support RK's application for summer skiing on Farnham Glacier and snowboard camps on Delphine and Catamount Glaciers;
- e) support movie productions in the area; and
- f) supply some form of monetary compensation to RK for the skiable terrain lost due to the proposed resort.

[Reference document #11 (letter from RK to Proponent, 10/07/1995)]

### **18) The Proponent provides RK its support for terrain expansion**

Based on its understanding of BC Land's requirements for RK's terrain expansion in Point 17), the Proponent agreed to RK's request for support for terrain expansion as a mitigative action to reduce the impact of the proposed resort on RK's operations. The Proponent formally provided its support for RK's expansion into Glacier Creek and Tenise Creek in a letter dated November 9, 1995. Specifically, the Proponent supported RK's request for terrain expansion into Glacier and Tenise Creeks as a measure to mitigate the impact of its proposed resort

The Proponent also agreed to RK's additional requests so that RK could support its proposed resort:

- a) The Proponent supported the cutting of additional bad weather runs in Leona Creek and Mt. Bastille
- b) The Proponent supported RK's plans for Delphine and Catamount Glaciers
- c) The Proponent supported movie productions in the area
- d) With regards to RK's request to remove Farnham and Commander Glacier from the proposed resort's plans, the Proponent responded that it does not anticipate any lift service skiing on Farnham and Commander Glacier for 15-20 years and that it is open to excluding the area from its plans permanently but that negotiations may be indicated in the future with regards to this issue.
- e) With regards to RK's request to build a ski lodge in the Jumbo area, the Proponent suggested that the two organizations could realize mutual advantages by sharing a new base of operations and a lodge near the proposed resort.

- f) With regards to RK's request for monetary compensation, the Proponent indicated that it was willing to discuss such a possibility but that it maintained that RK stood to gain from the two organizations sharing a base of operations. Importantly, the Proponent stated that it was committed to the principle of fair compensation within the backdrop of negotiation and discussion.

[Reference document #12 (Letter from Proponent to RK, 11/09/1995)]

### **19) RK submits its application for terrain expansion**

BC Lands receives RK's formal application for terrain expansion and states that its application is based upon two key factors: the ongoing growth of RK's business and the shrinking land base due to other user growth. RK also states its optimism for a quick application process without impediment from the Proponent's proposed resort.

While RK included the Proponent's letter of support in its application to BC Lands (confirming the Proponent's position that the increase in tenure area was an act of mitigation), RK's application did not state specifically in its application that the additional terrain would replace terrain lost from the proposed resort.

[Reference document #13 (Letter from RK to BC Lands, 12/18/1995)]

### **20) BC Lands re-iterates requirements for RK's terrain expansion**

In response to RK's formal application for terrain expansion, BC Lands confirmed its requirement that RK's application must be in the context of replacing terrain that might be lost if the Proponent's proposal was to proceed. BC Lands took the position that RK's request for terrain expansion would not be considered if its application does not "hinge on what happens with Jumbo (resort)".

BC Lands instructed RK to modify its original application to reflect the requirement above along with a number of other noted specifications.

[Reference document #14 (Letter from BC Lands to RK, 01/17/1996)]

### **21) RK denies that the Proponent's support for terrain expansion is related to the proposed resort**

RK responds to the Proponent's letter of support for terrain expansion (described in Point 18) - RK stated that the Proponent's support for RK's tenure expansion is entirely unrelated to the

Proponent's proposed resort and the impact it might have on RK's operations. This is inconsistent with BC Land's requirements for RK's tenure expansion application (described in Point 20).

[Reference document #15 (Letter from RK to Proponent, 02/13/1996)]

## **22) RK re-submits its application for terrain expansion into Glacier Creek and Tenise Creek**

Notwithstanding the position RK took in Point 21), RK submitted a revised application to BC Lands in March 1996 to expand its operational terrain into Glacier Creek and Tenise Creek, stating that it had the Proponent's support for its tenure expansion application.

In this application for tenure expansion, RK described the Glacier Creek area as an area to the West of, and altogether separate from, RK's existing tenured area. This is inconsistent with RK's previous management plans – as indicated earlier, RK's 1990 management plan located the Glacier Creek drainage to the West of the Jumbo Valley, but inside the "Cauldron" zone, confirming RK's historic and extensive usage of Glacier Creek.

## **23) RK's application for terrain expansion is approved**

RK's application for terrain expansion into Glacier Creek and Tenise Creek was approved in December 1996 thus clearing the way for the company to legally use these areas.

RK estimated that the new areas would account for approximately 20% of its skier visits or 780 visits (based on 1995/96 season's usage) for the following season. This estimate is consistent with the level of usage attributed historically to the Glacier Creek drainage in previous RK management plans (see point #2).

Of note, the projected 1996/97 usage for the newly tenured Glacier Creek area (780 visits), represents a figure greater than the number of skier visits recorded in the combined Jumbo and Farnham areas in 1989/90 (prior to the Proponent's announced intention to develop a resort in these areas). The number of visits in the Jumbo and Farnham areas in 1989/90 was 688 visits.

[Reference document #16 (RK License of Occupation #402612) and #2 (RK Management Plan, 03/1990)]

A modification to the 1996 License of Occupation included an article in Schedule "C" confirming that the Glacier and Tenise areas were added to the tenure in part for mitigation.

Article 4. in Schedule "C" states that

“the Licensee is aware that this License and the terms herein granted will be considered in any discussions around compensation if any of the licensed heli-ski terrain is lost as a result of any approvals that might be granted by the Crown with respect to the Jumbo Creek Resort Proposal.”

[Reference document #22 (consolidated licence #401670, 10/04/2001)]

#### **24) RK “test” the Glacier and Tenise Areas**

RK confirms it conducted a usage “test” as to the suitability of the new Glacier and Tenise territory (notwithstanding RK had a long established and active usage of the Glacier territory prior to its formal inclusion in its license).

It was stated in the Brent Harley and Associates (BHA) report that RK found the “new” Glacier territory to be unsuitable for its operations, noting it did not provide bad weather access.

[Reference document #4 (BHA Implications Assessment, 11/15/1999)]

### **1997 – Present**

#### **25) Zero usage reported in Glacier and Tenise Creeks; Jumbo usage maintained**

During the following season, RK reported that it did not utilize the Glacier Creek and Tenise Creek areas at all. According to the BHA1999 Report, RK did not utilize Glacier Creek drainage from 1996/97-1998/99.

As the usage of the Glacier Creek drainage had been designated as the Cauldron zone in the 1990 RK management plan, we assume Mr. Harley accepted that the designation of the “Cauldron” zone was a reference to a similarly named area to the South of Jumbo, that was within the tenure at the time.

Meanwhile the Jumbo area continued to account for between 41.9% and 65.1% of ski visits from 1996/97-2001/02.

[Reference document #27 (RK terrain usage records submitted to the Ministry) and document #17 (RK response to Jumbo Glacier Resort Proposal, 04/2004)]

#### **26) The Brent Harley Report**

In September 1998, BHA was retained by the EAO to complete an independent assessment of the implications of the Proponent’s resort on RK’s operations. This independent assessment was part

of the EAO's broader assessment of the proposed resort's environmental impact. BHA submitted its report in November 1999. The two conclusions reached by BHA were the following:

1. In their current state, RK and the proposed resort cannot exist and operate together – at best, a fair weather heli-skiing operation could co-exist with the proposed resort; and
2. there is no available replacement terrain of a similar size and nature to the area that would be lost to RK if the Proponent's resort was to proceed, that could be offered to RK as mitigation.

(To gain a clear understanding of how BHA reached their conclusions, Sierra Systems consultants contacted BHA to identify the documents BHA reviewed and confirm the approach BHA pursued to complete its report. BHA did not respond to Sierra System's queries, but an individual at the BHA office indicated that BHA is currently retained as a consultant for RK.)

As stated in its report, BHA's conclusions were supported by "all available information and documents pertaining to RK's operations". This included statements made by RK to BHA.

BHA highlighted the following observations from its documentation review and interviews with RK:

- a) RK only uses the Jumbo area during bad weather;
- b) the Jumbo area accounts for 60%-65% of RK's terrain use;
- c) the Farnham area accounts for 12%-16% of RK's terrain use; and
- d) there are no available areas with the same attributes (i.e. quality powder snow, reliable snow pack, sufficient vertical drop, ideal slope gradients, reasonable access and bad weather access) that could replace the loss of the Jumbo area. (This statement included the Glacier Creek area, which had been added to RK's tenure in 1996 to meet growth requirements, to provide terrain accessible in bad weather, and as mitigation, should the Proponent's resort proceed).

[Reference document #4 (BHA Implications Assessment, 11/15/1999)]

While the BHA report effectively highlights RK's extensive usage of the Jumbo Creek area from 1990-1999, the BHA report displays a number of significant limitations:

Firstly, the BHA report did not draw attention to RK's usage of the Glacier Creek area during the 1995/96 season, which is prior to the approval of the tenure extension. Furthermore, BHA's report did not remark on RK's long-standing, historic usage of the Glacier Creek drainage area prior to its application for tenure expansion into the area. RK's 1990 and 1991 management plans clearly indicate that RK had significant operations in the Glacier Creek area prior to possessing tenure for the areas. Uncovering and reporting this information would have evidenced that RK was in the practice of using areas in a commercial capacity for which it did not hold tenure, and would have confirmed RK actively used the Glacier Creek area for bad weather skiing.

Second, and more importantly, BHA's report did not report or analyze RK's 1996 application for tenure over the Glacier Creek drainage area; in its application, RK noted the quality of Glacier Creek's snow and its accessibility. RK's application for tenure in Glacier Creek was approved in December 1996 to allow for business expansion and to allow for mitigation should the Jumbo resort proceed. The BHA report makes no mention of the caveats for RK's expansion application into Glacier Creek and does not comment on RK's 1996 findings that the Glacier Creek area provided excellent ski terrain and was accessible in bad weather. BHA's conclusions are in direct conflict with RK's 1990 and 1991 management plans, in which RK confirms Glacier Creek's accessibility during bad weather.

Thirdly, the BHA report does not analyze RK's terrain usage prior to 1991 – before the Proponent met with RK to announce its intention to pursue sole proponent status in the Jumbo Creek area. As a result, the BHA report fails to reveal RK's shift into the Jumbo Creek area after the Proponent's announcement. This is a crucial omission since the chronology of terrain usage before 1991 identifies a major change in RK's operational conduct regarding terrain usage; the BHA report makes no reference to the fact that the Jumbo area accounted for only a minor portion of RK's operations before 1990/91 and that the Jumbo area experienced a 1900% increase in usage during the following season.

BHA focused primarily on ski runs in its report to calculate the potential impact of the Proponent's resort to RK's operations. RK typically reported ski visits and ski runs, without emphasizing either. The selection of ski run data to measure potential impact is less accurate than employing ski visit data. Revenues (customer payments) to RK are determined by ski visits and not by ski runs.

The following example elucidates this point:

1 ski visit to the Cauldron zone has a factor of 3 runs, whereas 1 ski visit to the Jumbo zone has a factor of 4 runs. Therefore, 3 Cauldron runs = 4 Jumbo runs; they are equivalent in vertical drop and more importantly, equivalent in revenue (customers pay the same price for both options).

BHA's use of ski runs instead of ski visits in its calculations significantly overestimates the potential impact of the Proponent's resort on RK's operations in the Jumbo Valley. The table below demonstrates this finding.

Year	91/92	92/93	93/94	94/95	95/96	96/97	97/98
<b>Jumbo usage (by run)</b>	36.4%	45.2%	66.5%	63.9%	50.9%	60.4%	64.5%
<b>Jumbo usage (by visit)</b>	31.3%	36.6%	60.5%	58.0%	43.6%	54.7%	58.1%
<b>% overstated by BHA report</b>	5.1%	8.6%	6.0%	5.9%	7.3%	5.7%	6.4%

The BHA report concludes that 60-65% of RK's skier visits are dependent on the Jumbo area when their method of calculation actually represents the rather misleading skier run percentage. This presentation overstates the potential revenue impact that could be experienced by RK.

Finally, one of BHA's key conclusions was that RK used the Jumbo Valley *only* during bad weather. During a July 2004 interview RK confirmed the Jumbo Valley is used "extensively" but not exclusively in bad weather. Concluding that RK only used the Jumbo Valley during bad weather misrepresents RK's operational dependence on the area and unduly intensifies the potential impact of the Proponent's resort on RK.

While the BHA report correctly signals that the majority of RK's recent operations occur in the Jumbo Creek area, it is clear that the BHA report neglects to identify or effectively analyze historic management plans, terrain usage documents, and correspondence critical to assessing the impact on RK's operations accurately.

## **27) The Proponent's response to Brent Harley and Associates Report**

In June 1999, the Proponent issued a document to the EAO expressing its disagreement and dissatisfaction with the BHA report. The Proponent questioned the validity of the facts, methodology and conclusions of the BHA report; the Proponent stated a number of issues that supported its concerns. The issues stated included:

- a) incorrect operational assumptions;
- b) the overstatement of Jumbo area usage; and
- c) debatable opinions regarding access to Glacier Creek during bad weather.

[Reference document #18 (letters from Proponent to EAO, 06/24/1999)]

## **28) A Series of bilateral correspondence refuting claims and statements**

It is noted that a number of correspondences between the Proponent, RK, BHA, the EAO and other individuals ensued after the Proponent's response to the BHA report. The correspondences portray broad disagreement regarding BHA's report. Included in this correspondence is a letter from RK's in-house regional expert maintaining the accuracy of the BHA report (including statements re: bad weather skiing areas), an e-mail from an independent third-party regional expert refuting the findings of the BHA report, and various letters from the Proponent, RK and BHA expressing opposing opinions and observations.

[Reference document #19 (Letter from Rod Gibbons, 08/07/1999), #20 (Letters from BHA to EAO and Proponent to EAO, 09/15/1999), #21 (e-mail from Dan Griffith, 06/11/1999)]

### **29) RK's 1991 and 1996 Tenure agreements are consolidated**

On October 4, 2001, RK received an amended Licence from the Province that consolidated and replaced RK's 1991 and 1996 agreements encompassing all of RK's tenured terrain.

The article in Schedule "C" confirming that the Glacier and Tenise areas were added to the tenure in part for mitigation was included in this consolidated agreement.

[Reference document #22 (consolidated licence #401670, 10/04/2001)]

### **30) RK renews its Licence of Occupation agreement**

On December 2, 2001, RK renews its Licence of Occupation with the Province. No additional terrain was granted. However RK receives a license to cut timber to create new runs in the Toby and Jumbo Creek areas.

The December 2001 License of Occupation also includes the first specific statement with respect to compensation:

Article 5, part d) states that "you will make no claim for compensation, in damages or otherwise, in respect of a disposition made under subsection c), where such disposition does not materially affect the exercise of your rights under this Agreement".

Prior to the December 2001 License of Occupation, the Licenses indicated merely that RK's tenure was "non-exclusive".

[Reference document #23 (renewed licence #403340, 12/02/2001)]

### **31) RK proposes an alternative area for the Proponent's resort**

RK suggests two areas north of Jumbo as alternatives for the Proponent's resort. One area is located in the Commander Glacier and the other area is in the Catamount and North Star Glaciers.

[Reference document #24 (letter from RK to Proponent, 01/21/2004)]

## 4. ANALYSIS

As indicated at the beginning of this report, there appears to be no objective manner to independently corroborate the facts and opinions presented by the parties.

The detailed chronology of tenure usage and events is presented as a basis upon which the differences in position between RK and the Proponent can be analyzed and reconciled.

### **RK's statement of operational terrain lost and its significance**

It is RK's position that the approval of the Proponent's resort application will result in the effective elimination of a portion of its current tenure, from which RK currently derives "84%" of its operating revenue. Specifically, the development of the Proponent's resort will result in the loss of the Jumbo zone (which accounts for 60% of current revenues) and in the loss of the Farnham zone (which accounts for 24% of current revenues).

RK claims that there is no terrain nearby that could replace the Jumbo or Farnham zones and that its business would be in "immediate peril" if the Proponent's proposed resort proceeds.

The inference from these statements is that approval of the Proponent's resort will, in RK's opinion, result in the demise of RK's business.

[Reference document #25 (letter from RK to Proponent, 12/19/2003)]

### **RK's current Tenure Document, Licence #403340**

As a basic principle, for there to be any argument for compensation there must be an action that reduces or eliminates a "right" held under RK's License of Occupation.

RK's License of Occupation states in Article 2:

"tenure...is non-exclusive"

While the License of Occupation gives RK rights with respect to other Heli-ski operations, Article 2, would appear to confirm that the province could introduce other tenure holders into the area, with no compensation payable to RK.

As the License of Occupation evolved over the last 10 years, statements respecting encroachment on the tenure rights and compensation were introduced, notably in December 2001, when Article

5 first appears (note Article 5 was not a feature of the License at the time RK received notice of the potential impact, or at the time of the earlier consolidated tenure document in October 2001).

Article 5, subsection d) states in part:

“...(RK will make)...no claim for compensation in respect of a disposition, where such disposition does not materially affect the exercise of your rights...” .

[Reference document #23 (renewed licence #403340, 12/02/2001)]

While phrased in the negative Article 5 in effect says RK may make a claim for compensation where a disposition materially affects the exercise of tenure rights. Article 5 does three things:

1. it introduces a right to compensation, where none previously existed,
2. it requires an event of “impact”, in this case a disposition that encroaches on or eliminates all or part of RK’s established tenure, and
3. it places a test of materiality on the impact of such an encroachment event before compensation is payable.

### **The responsibility to mitigate**

If the Jumbo project proceeds, it will encroach on or eliminate portions of the RK tenure. The Proponent’s Jumbo resort will clearly result in an impact event; a portion of RK’s tenure will be lost.

Any tenure holder seeking compensation for an impact can be reasonably expected to mitigate the damage caused by the impact, and hence, to moderate its claim for compensation through its mitigation activities.

Such an expectation to mitigate arises at the point the tenure holder receives notice of the potential impact. The expectation is that the tenure holder will conduct itself in the normal course of its operations prior to the impact occurring, and not change its course of operations in a manner that would reasonably be expected to exacerbate the damage that would arise when the impact event occurred. When the impact ultimately occurs, the tenure holder is expected to take those mitigating actions reasonably available to it at that time.

### **Measuring the “impact”**

Given the Proponent’s resort will result in an impact, we must first estimate the extent of that impact, following reasonable mitigation by RK, and then compare the mitigated impact against the materiality test including in Article 5 of the License of Occupation.

This analysis focuses on the methods of calculation and the logic presented in RK's claim of impact.

The estimation of mitigated impact starts with RK's claim that 84% of its operating revenues will be eliminated as a result of the Proponent's resort proceeding and RK's resulting loss of access to the Jumbo and Farnham zones. This nominal impact of 84% of operating revenues is then adjusted for the following:

(+/-)

1. Adjustments to the impact estimate resulting from RK's method of calculation.

(+/- )

2. Adjustment to the impact estimate resulting from a review of the actual portions of the Jumbo and Farnham areas lost to the Proponent's resort.

(+/-)

3. Adjustment for the reduction of impact attributed to reasonable mitigation activities observed or not observed by RK

( = )

4. Adjusted Net Impact resulting from the Proponent's Jumbo resort project.

The Adjusted Net Impact from 4 is compared against an objective test as to the meaning of "material".

If the Adjusted Net Impact meets the "material" test required under Article 5, the Adjusted Net Impact would then be translated into an impact on cash flow, which is capitalized to provide an estimate of compensation potentially due.

## Adjustments to the "84%" Impact Estimate Resulting from RK's Method of Calculation

RK based its 84% impact estimate on only the 2002/03 season. It is clear from RK's reported terrain usage that ski visits to all zones vary from year to year. A more reasonable approach would be to calculate the impact based on average usage over a reasonable period of time.

Over the 5-year period to and including the 2002/03 season, from Figure 1, the Jumbo zone accounts for 56.9% of all RK's visits and the Farnham zone accounts for 22.3% of all RK's.

This implies an impact to 79.2% of RK's revenues, as opposed to 84% nominal impact estimate.

## Adjustment to the Impact Estimate Resulting from a Review of the Actual Portions of the Jumbo and Farnham Areas Lost to the Proponent's Resort

The Proponent's CRA does not overlap (and will not eliminate) the whole of RK's tenure in the Jumbo Valley and on the Farnham Glacier.

Notwithstanding the limited area of direct impact, RK states that the proposed resort (located at the bottom of Jumbo Valley) will be in the vicinity and visible to all operational areas in the Jumbo Valley.

RK states that "unblemished mountain wilderness" roots their value proposition - even the mere sight of development will render all heli-ski operations in the Jumbo zone untenable.

Taking this statement at face value, one could conclude that all runs in the Jumbo zone, regardless if they physically overlap with the CRA, would be eliminated as potential heli-ski sites.

RK's claim that a heli-ski client can see the proposed resort from anywhere in the Jumbo Valley and on the Farnham Glacier is open to question. The typical heli-ski run along the side of Jumbo Valley reportedly occurs in secondary valleys that run at right angles to the main Jumbo Valley. Once on these ski runs it is quite debatable that the resort at the bottom of Jumbo Valley would be visible.

Further, one must consider the validity of RK's statement that unblemished mountain wilderness is key to their heli-skiing operations. For instance, most of RK's runs in the Jumbo Valley have views of land that has been logged and gladded, which offers a panorama that is anything but pristine. RK also proposes to build its own lodge at the bottom of Jumbo Valley. While certainly a smaller development than the proposed Jumbo resort, it would exist in sight-lines to ski runs similar to those of the proposed Jumbo resort.

RK's presentation to the Proponent suggesting Commander Glacier as an alternative location for the proposed resort also raises questions regarding the reliability of RK's statement (that no visibility to man-made disturbances is a vital requirement for its heli-ski operation). A proposed ski resort located in the Farnham Valley, adjacent to both the Commander Glacier and the Farnham Glacier would be clearly visible to RK's clients heli-skiing on RK's Farnham runs. This raises the following question: "If pristine conditions are critical to RK, why is it willing to have the proposed resort visible in the Farnham zone but not the Jumbo zone?"

It is also important to note that several successful heli-ski operations in BC are co-located with ski resorts and operate heli-ski runs *with clear views* of ski resort development. Such heli-ski companies are co-located with the Whistler and Kicking Horse ski resorts.

As a result of the observations listed above, RK's statement that unblemished mountain wilderness roots its business is not considered fully credible. It appears the real impact in the Jumbo Valley and on the Farnham Glacier is likely contained to the areas where the Proponent's CRA directly overlaps with the RK tenure.

As indicated above, RK's operational records indicate that over the last five seasons, 56.9% and 22.3% of all of its visits occur in the Jumbo and Farnham zone respectively. RK's records also indicate that the Proponent's CRA overlaps with only 19 of Jumbo's 42 heli-ski runs (45.2%) and only 4 of Farnham's 11 heli-ski runs (36.4%).

If we assume RK makes equivalent use of all its runs in the Jumbo and Farnham areas:

### Formula 1

$$\begin{aligned} & (56.9\% \text{ of all RK visits in Jumbo zone}) \\ & \times (45.2\% \text{ of visits in the area overlapping the CRA}) \\ \hline & = 25.7\% \text{ of all RK's visits would be impacted due to loss in Jumbo} \end{aligned}$$

### Formula 2

$$\begin{aligned} & (22.3\% \text{ of all RK visits in Farnham zone}) \\ & \times (36.4\% \text{ of visits in the area overlapping the CRA}) \\ \hline & = 8.1\% \text{ of all RK's visits would be impacted due to loss in Farnham} \end{aligned}$$

### Formula 3

$$\begin{aligned} & 25.7\% \text{ impact due to tenure/CRA overlap in Jumbo} \\ & + 8.1\% \text{ impact due to tenure/CRA overlap in Farnham} \\ \hline & = 33.8\% \text{ impact due to tenure/CRA overlap in Jumbo \& Farnham} \end{aligned}$$

Based on an assumption of equivalent usage of all runs in the Jumbo and Farnham areas, it would appear that 33.8% of RK's operating revenues (and not 84%) would be impacted by the Proponent's CRA.

An alternative calculation of this same impact question was made based upon detailed records of RK run usage. These records displayed the frequency of usage of individual runs in the Jumbo and Farnham zones. As a result, it was possible to quantify and proportionate the use of the runs that overlap with the CRA.

Using RK's operational records, 54.0% of all visits (average of a 5-year period) in the Jumbo zone would be impacted while 64.5% of all visits in the Farnham zone would be impacted.

This suggests that the "real amount" of operational terrain lost to RK due to terrain physically overlapping with the proposed resort can be calculated by the following formulas:

#### Formula 4

$$\begin{aligned} & (56.9\% \text{ of all RK visits in Jumbo zone}) \\ & \times (54.0\% \text{ of visits in the area overlapping the CRA}) \\ \hline & = 30.7\% \text{ of all RK's visits would be impacted due to loss in Jumbo} \end{aligned}$$

#### Formula 5

$$\begin{aligned} & (22.3\% \text{ of all RK visits in Farnham zone}) \\ & \times (64.5\% \text{ of visits in the area overlapping the CRA}) \\ \hline & = 14.4\% \text{ of all RK's visits would be impacted due to loss in Farnham} \end{aligned}$$

#### Formula 6

$$\begin{aligned} & 30.7\% \text{ impact due to tenure/CRA overlap in Jumbo} \\ & + 14.4\% \text{ impact due to tenure/CRA overlap in Farnham} \\ \hline & = 45.1\% \text{ impact due to tenure/CRA overlap in Jumbo \& Farnham} \end{aligned}$$

Based on 5-year averages and actual runs usage records provided by RK, it would appear that 45.1% of RK's operational revenues (and not 84%) would be impacted by the Proponent's CRA.

RK's records indicate that the likely impact from the Proponent's resort is actually higher (45.1% versus 33.8%) than would be suggested based on an assumption that all runs received equivalent usage.

It is important to note that RK's detailed records display omissions: RK's list of runs in the Jumbo zone that do not overlap with the CRA is incomplete. Based on maps provided by RK, Jumbo runs named "RK's", "Triple M", and "Stress M" do not overlap with the CRA but are not included in the appropriate category. The omission of these runs in Formulas 1-6 tend to overstate the Proponent's impact on RK's operations.

[Reference document #26 (document and maps from RK to Proponent, (01/14/2004)]

### Accuracy of RK's reporting of terrain usage raises further questions

In addition to omitting runs not overlapped by the Proponent's CRA, audits of RK's annual skier-run reports uncover a number of inconsistencies with RK's management plans and other published documents.

For example, in RK's 1999/2000 report to the Province, the company indicated that it made 2,119 visits to the Jumbo zone. In its 2004 response to the Proponent's proposal, RK indicated that it made 3,304 visits in that same 1999/2000 period.

[Reference document #27 reports submitted by RK to BC Assets and Land, (1991-2003) & document #17 (RK response to Jumbo Glacier Resort Proposal, 04/2004)]

This represents a reporting difference of 56% in RK's reported usage of the Jumbo Valley area.

There are over 12 such documented inconsistencies (see table below for referenced discrepancies) between RK's submitted reports and its 2004 response to the Proponent's proposal involving terrain usage. These discrepancies raise questions about the accuracy of the company's record keeping, its reporting based on those records, and the conclusions it draws in those reports.

Discrepancies noted by Zone and Year (RK's 2004 Response vs. Reports Submitted to Province):

	2002/03	2001/02	2000/01	1999/00	1998/99
Jumbo			✓	✓	✓
Cauldron		✓	✓		
Farnham				✓	✓
Coppercrown					✓
Paradise					✓

	2002/03	2001/02	2000/01	1999/00	1998/99
Forster/Eyebrow		✓	✓	✓	

[Reference document #27 reports submitted by RK to BC Assets and Land, (1991-2003) & document #17 (RK response to Jumbo Glacier Resort Proposal, 04/2004)]

As revealed in the chronology, a more important reporting inconsistency involves RK's stated terrain usage of the Jumbo zone in its March 1990 management plan and its report submitted to the province in 1990.

RK's March 1990 management plan stated that the Jumbo zone accounted for only 2.4% or (63 days) of all its skier days. However, in its 1991 Licence #401670 application to the province – prepared after the Proponent announced its proposal – RK stated that the Jumbo zone accounted for 26.6% of all skier runs in that same year. This restatement appears not to be possible as it implies each skier would have to make almost 50 runs on each day to account for the skier runs reported to the Province.

These observations raise valid questions regarding the quality of RK's record keeping and/or any motivation behind RK's apparent overstatement of its operations in the Jumbo zone, following the announcement of the Proponent's interest.

[Reference document #1 (RK Licence of Occupation #401670, 01/31/1991) and #2 (RK Management Plan, 03/1990)]

Finally, RK's report to the Province in May 1996 indicates that it operated commercially in the Glacier Creek and Tenise Creek areas during the 1995/1996 season. This does not match the company's tenure rights for the 1995/1996 season – that is, RK only possessed an exploration permit to survey the terrain in Glacier Creek and Tenise Creek areas for potential operational use in the future. RK was not granted tenure to operate in Glacier Creek and Tenise Creek in December 1996 – the beginning of the 1996/97 season.

This discrepancy between operational usage reported and tenured terrain either contribute to the questions surrounding RK's record keeping, or support that RK has a demonstrated practice of using for commercial purposes, areas outside the boundary of its tenure (as seen in the 1990 management reports the identified active usage of the Glacier Creek drainage).

[Reference document #27 reports submitted by RK to BC Assets and Land, (1991-2003)]

## Adjustment Attributed to Reasonable Mitigation Activities not Observed by RK

For any impacted asset holder to sustain a claim for compensation, the holder is expected, during the period of notice leading to the point of impact and during the period following the point of impact, to conduct itself in a prudent manner.

Prudence requires that the tenure holder:

1. operate in the normal course of its business during the period of notice leading to the point of impact, and
2. following the point of impact, attempt, wherever possible, to take those actions that would reasonably be expected to mitigate the impact on its assets and operations.

It is reasonable to expect RK, as the impacted tenure holder, to mitigate.

To the extent compensation is due, the amount payable assumes that:

- no actions outside of the normal course of business operations have occurred during the period of notice leading up to the point of impact (that would be expected to exacerbate the situation on impact), and
- reasonable mitigation actions have occurred following the point of impact.

Where reasonable attempts not to exacerbate and reasonable attempts to mitigate were not undertaken, the compensation amount could be reduced by the probable impact of the more reasonable actions that were not undertaken.

The chronology identifies significant changes in the course of RK's business coinciding with notice that the Proponent had a specific interest in the Jumbo/Farnham areas.

Upon receiving notice of the Proponent's interest in the Jumbo/Farnham areas, RK shifted a material amount of customer usage into the Jumbo area. From the 1989/90 season, to the 1990/91 season, RK increased its usage of the Jumbo area from 2.4% of its total skier visits to 45.7%.

As mentioned earlier, RK claimed that the shift in operational volumes into the Jumbo Valley was the result of 1) increased heli-ski capacity created by logging in the Jumbo Valley; and 2) significant increases in customer volumes. However, extensive logging in the Jumbo Valley did not occur until after the 1990/1991 season and significant increases in RK's annual customer volumes did not occur until the 1994/95 season. The shift in RK's operational volumes into the Jumbo Valley occurred before either of these events. Given the timing and the direction of this shift in business focus, it would appear that a reasonable conclusion to draw was that RK was moving customer volume into the areas sought by the Proponent for its resort, to increase its

bargaining position with the Proponent, and to establish significant potential impact, should the resort application proceed.

### Glading in the Jumbo area

RK was also presented with another reasonable opportunity to mitigate in 1993.

During 1993, RK sought permission to cut new bad weather runs for its operations in the Jumbo zone. RK required the Proponent's support to do so. After reviewing RK's map for its new bad weather runs, the Proponent provided its support for glading in the valley to the north of the proposed resort; this is in an area that may not have been immediately impacted by the proposed resort.

However, in contravention of the approvals received, RK built the new runs in the area immediately adjacent to the proposed location of the Proponent's resort, should its application be ultimately approved. RK's own topographic maps provided in July 2004 confirm this finding.

By this action, RK created a capital investment (cost of glading) that would be "eliminated" if the Proponent's new resort were approved.

[Reference document #7 (Topographic Map A and photograph A) and Reference #32 (RK operational map prior to tenure expansion)]

### Glacier and Tenise Creek Expansion

RK sought additional terrain in Glacier and Tenise starting in October 1995. Based on the information provided by RK's management plan, terrain expansion into Glacier and Tenise Creeks would provide RK with highly desirable (e.g. appropriate slope angles and snow pack) and bad weather access ski terrain. RK estimated that this terrain would represent 15%-25% of its skier visits for the following season. With regards to its application, RK's request needed to be based, in part, on mitigative issues around any terrain lost to the Proponent's resort proposal.

### WHY THE GLACIER CREEK AREA WAS CHOSEN

According to RK's management plan, RK was shifting its focus of operations to the west (of the tenured terrain) due to the quantity of snow and quality of skiing. Specifically, RK reported that the Glacier Creek area was picturesque and provided higher snow pack and better ski conditions; the area is stated to be 80% skiable with ideal glacier and gladdened tree skiing. In addition, the management plan also indicated that the Glacier Creek area could provide additional bad weather terrain. The management plan asserts that glaciers are unskiable due to poor vertical reference in bad weather; the request to access Glacier Creek through Jumbo Pass (which was stated as having good vertical reference and where access was still allowable in bad weather wind) would allow

more gladed skiing and alleviate some of the growth pressure on existing gladed terrain in Jumbo Creek where the bulk of bad weather skiing took place. The MacBeth Icefield within Glacier Creek was specifically noted as being accessible in bad weather and offered a variety of excellent intermediate to advanced ski terrain.

[Reference document #14 (RK License of Occupation #402612, 12/03/1996) and #2 (RK Management Plan, 03/1990)]

### WHY THE TENISE CREEK AREA WAS CHOSEN

According to RK's management plan, existing travel and fueling operations made the Tenise Creek area feasible. As a result, RK would have access to a watershed of glacier skiing with good snow conditions and tree covered slopes ideal for gladed powder skiing; the area is stated to be 60% skiable. The terrain also possessed ideal helicopter transport conditions and some of the longest glacier skiing terrain in RK's existing tenure. Tenise Creek would also serve as a critical user area when RK's closer to home terrain became "skied out" during prime time of business. Given Tenise Creek's close proximity to Forster Creek, the area represented an alternative operational area, which would relieve some of the user pressure from the Forster Creek watershed.

[Reference document #14 (RK License of Occupation #402612)]

After a number of application revisions, LWBC approved RK's request on December 3rd, 1996. RK was authorized to use Glacier Creek and Tenise Creek areas to mitigate against the loss of terrain from the Proponent's proposed resort.

However, RK's did not use the Glacier Creek and Tenise Creek areas after it was granted operational usage of these self-declared important areas.

The BHA report noted that RK made no use of the Glacier Creek and Tenise Creek areas from 1996-1999. Meanwhile, RK's usage of the Jumbo zone increased.

Not only did RK shift customer volumes into Jumbo and Farnham in 1990 after receiving notice of the Proponent's interest in the area, RK did not take advantage new tenured areas, (Glacier/Tenise) which RK itself declared as superior locations, and which LWBC awarded to RK specifically to provide it with an opportunity to mitigate any potential impacts of the Proponent's resort.

A prudent tenure holder would not have:

- transferred customer volumes into the area of proposed impact after receiving notice of a pending permit application,

- invested in capital assets (gladed runs) in the exact area where the proposed resort would be constructed, if approved, and
- declined a specific mitigation opportunity approved for it by LWBC.

By these three specific acts, RK managed its operations outside of the normal course, with the specific result that its reliance on the Jumbo and Farnham would increase, possibly to improve its position in opposition to the Proponent's resort proposal.

RK offers a reason for not using the Glacier Creek and Tenise Creek areas after tenure was awarded.

RK claims that the Glacier Creek area is not accessible in bad weather and does not possess the safety conditions necessary for heli-skiing purposes. This directly contradicts RK's 1990, 1996 and current 2001 management plan and previous statements with regards to the suitability of Glacier Creek for heli-skiing purposes. It also contradicts RK's apparent commercial usage of the area, without tenure, prior to 1990 (during the period it "mis-named" the Glacier Creek drainage as part of the "Cauldron").

RK and its in-house expert maintain its revised position regarding Glacier Creek's usability at the present time. (A July 2004 review of RK records and guide logs was conducted in the course of this review. The guide log maintained by this same RK in-house expert reports that he took a group of skiers into the Glacier Creek area February 3, 1998, on a day he classified in his log as having bad weather.)

[Reference document #31 (Rod Gibbon's Personal Guide Log, 02/03/1998)]

However two third-party regional experts (Dan Griffith and John Hogg) refutes RK's statements and asserts that the Glacier Creek area is:

1. accessible in bad weather through Jumbo pass, and
2. possesses skiing potential even greater than the Jumbo area.

It is important to note that these two regional experts were both introduced to the review team by the Proponent.

[Reference document #21 (e-mail from Dan Griffith, 06/11/1999)]

Potential bias of RK, the Proponent, RK's in-house expert, and two "independent" third-party regional experts introduced to the review by the Proponent, has been noted earlier in this report.

External sources such as Environment Canada and the Ministry of Sustainable Resource Management are unable to confirm or refute statements respecting the quality of snow pack.

Environment Canada is also unable to confirm or refute statements regarding access in bad weather conditions. The ability to independently verify the partisan statements regarding any area, and statements comparing relative usability of two areas is absent.

As a result, all statements from one party with respect to the position of the other must be considered to be anecdotal, and potentially with bias.

However, statements made by one party to advance its own position can be accepted as clear statements made in that party's best interest.

Based on RK's own management plans and statements made at the time it was advancing its request for tenure in the Glacier Creek area, Glacier Creek:

1. "has historically been an integral part of (RK's) existing operation",
2. contains areas suitable for bad weather skiing, and
3. "would account for between 15%-25% of RK's operations"

would lead an independent observer to conclude that the RK accepted LWBC's requirement that Glacier Creek be considered as a mitigation opportunity with which RK could reduce the potential impact of the Proponent's proposed resort. At the very least, the area should account for greater than 0% of RK's operations, and more likely the 20+% historic usage RK achieved in the area in 1990, before tenure was granted.

[Reference document #28 (letter from RK to Ministry of Environment, Land & Parks BC , 12/02/96)]

### **Decreased usage of zones used extensively in the past and increase in Jumbo zone**

RK has clearly increased its usage in the Jumbo area over the past 15 years. By choosing to focus operations in an area that may not be available to the company in the future, RK has exposed its business to greater risk. The significant increase of Jumbo area usage is readily apparent in Figure 1 – RK has increased usage of the Jumbo area from 2.4% in 1989/90 when it first heard about the Proponent's proposal to the current 60.0% level. Shifting the focus of a business to create dependence on an area that may be lost in the future is not operationally prudent nor mitigative.

Moreover, other zones used extensively in the past have been utilized less. In 1991/92, the Forster zone was used for 9% of RK's operations and Cauldron was used for 25%. Interestingly, the Cauldron zone was used for over 45% of RK's operations in 1985 [in the period 1985 to 1990, RK records indicate the untenured usage of the Glacier Creek area was reported as Cauldron usage]. As of 2002/03, the Cauldron zone accounted for only 10.9% of RK's operations and Forster was only 2.8%.

## Alternative Analysis of Impact Based on a Review of Tenure Capacity

A second way to consider the potential impact on RK is to consider the overall proven ability of the tenure area to accommodate the aggregate volume of skier visits currently being generated by RK.

Specifically, this analysis demonstrates RK's ability to shift volumes from the areas impacted by the CRA, to other areas within the tenure having proven capacity.

	89/90 Season	01/02 Season	02/03 Season
Total Skier Visits	2151	2280	2260
Jumbo	2.4%	65.1%	60.0%
Farnham	18.7%	21.9%	23.3%
Cauldron (incl. Glacier)	20.9%		
If we assume usage of the Cauldron areas is relatively static, this implies Cauldron usage in 89/90 at 10.5%.			
The reported Cauldron usage in 89/90 included the unauthorized usage of the Glacier area, prior to that area being added to the tenure.			
This implies that Glacier accounted for 10.4% of usage in 89/90.			
Cauldron		10.0%	10.9%
Isolated Cauldron	10.5%		
Implied Glacier	10.4%		
From the calculations above we determined that actual run usage on impacted runs is as follows			
Portion of Runs Impacted			
Jumbo	54.0%		
Farnham	64.5%		
This allows us to calculate the skier visits impacted by the CRA			
Jumbo	28 (54.0% * 2.4% * 2151)	802	732
Farnham	259	322	340
Skier Visits Accommodated in Balance of Tenure	1864 (2151 – 28 – 259)	1156	1188
In 89/90, the balance of the tenure included the demonstrated usage of the Glacier area.			
RK has the ability to both, use the non-Glacier/Tenise areas to their demonstrated capacity, and to use the new Glacier/Tenise areas to the volumes RK projected in their application, based on their demonstrated historic usage.			
Less: non-tenured use of Glacier	224 (2151 * 10.4%)		

	89/90 Season	01/02 Season	02/03 Season
Net Skier Visits Accommodated in Tenure, excluding Glacier	1640 (1864 – 224)		
The tenure area, excluding Glacier/Tenise has a demonstrated capacity of 1640 skier days. This is in excess of the current use applied to these areas.			
Available Proven Capacity in Tenure, excluding Glacier		484	452
Less: Impacted Visits		1156	1188
Net Impacted Visits		672	736
<p>RK has the ability to absorb volumes in the established areas of their tenure, but that still leaves ~700 skier visits impacted.</p> <p>When RK applied for the Glacier/Tenise area, RK projected that 20% of its projected 95/96 volume would occur in the new territory.</p> <p>Based on RK's statements, the Glacier/Tenise area is able to absorb all residual impacted skier visits, with excess capacity still available.</p> <p>There is no impact of the loss of the CRA areas, after applying the Glacier/Tenise capacity.</p>			
RK Declared Capacity of Glacier/Tenise from Tenure Application		780	780
Net Impacted Visits		Nil (-108)	Nil (-144)

## 5. CONCLUSIONS:

From the analysis above, it would appear that the adjusted impact arising from the overlap of the Proponent's CRA and RK's existing tenure in Jumbo & Farnham areas would represent between 33.8% and 45.1% of RK's current revenues.

Since receiving notice of the Proponent's interest in the Jumbo & Farnham areas, RK has:

- shifted customer volumes into the areas that would be impacted if the Proponent's resort were approved,
- not observed the geographic details in permits granted and created capital investments in specific locations that would be directly impacted by the approval of the proposed resort,
- for eight years, not made substantial use of new tenured areas granted by LWBC, specifically to offer RK the opportunity to mitigate. This expanded tenure included areas RK itself designated as its preferred areas for its business expansion. In its application RK indicated future usage in this area would represent 15-25% of its overall volume, and
- failed to make use of the Cauldron zone and the Forster zone to their historic levels, prior to the point RK received notice of the Proponent's interest.

The conclusion drawn is that RK had acted over the last thirteen years in a manner that increased the potential impact of the Proponent's resort on its operations.

Should the Proponent's application proceed, RK has a number of obvious mitigation options available to it:

- Transfer 35% of its customer volumes to the Glacier Creek and Cauldron areas. Prior to 1990, Cauldron represented 45% of customer usage. At that time, RK reported Cauldron as including its unauthorized usage of the Glacier Creek drainage area. When the usage of Glacier Creek ceased, the Cauldron usage dropped first to 20% and more recently to 10%. As a result, it is conceivable that RK has the option of re-establishing 25% of its volumes in the Glacier Creek drainage, and of increasing Cauldron by 10%, to its historic level of 20%. This proposed increase of 35% does not reflect volumes that could be absorbed in the Tenise area.
- Increase the use of Forster by 8% to re-establish it at 9% of customer volume.

These changes will absorb 44% of RK's customer volume versus the 33.8% and 45.1% impact that could result from the approval of the Jumbo resort. RK also has the potential to continue its usage, and perhaps increase its usage, of Leo and Leona Creeks within the Jumbo zone – both Leo and Leona Creeks do not overlap with the CRA and both are accessible in bad weather.

Any residual impact from the approval of the Jumbo resort that might remain following only these three mitigation activities would likely not meet the test of being material in relation to the overall operation of RK.

In a second analysis of the overall capacity of the tenure, it was also demonstrated that RK can shift the volumes impacted by the CRA to other areas in the tenure, having proven capacity based upon the historic operations of RK. Again, no net impact to RK results.

It must be noted that any ultimate impact realized in RK's operations can be regarded as the result of RK's inaction. RK had the option to relocate its operation in the manner RK itself suggested in its 1996 management plan to reduce the impact from the Proponent's resort.

Regardless of the test of materiality and RK's designed actions, the approval of the CRA will still result in a disruption to RK's operations. The Proponent has a responsibility to moderate any impact to RK's operations as a result of its proposed resort.

LWBC has the option of instituting a process whereby the Proponent formally extends RK concessions to mitigate impact. The Proponent has already stated its commitment to two mitigative measures:

1. the Proponent has agreed to allow RK to operate inside the CRA subject to safety and reasonable management precautions; and
2. the Proponent has extended an offer of sharing a synergistic relationship with RK, thereby enhancing RK's operations.

Measure #1 allows RK to continue operating in Jumbo and Farnham areas inside the CRA where feasible. Furthermore, the Proponent stated that it is willing to relocate a number of its planned lifts and runs to accommodate heli-skiing within its CRA. Measure #1's end result enables RK continued access to a significant number of its current heli-ski runs inside the CRA.

Measure #2 allows RK to co-locate with the Proponent's Jumbo Glacier resort in a manner similar to RK's present arrangement with Panorama resort. This measure has the potential to broaden RK's market significantly. Firstly, RK would be able to attract Jumbo Glacier resort visitors who are interested in diversifying their skiing experience during their holiday. The BHA report confirms this likely outcome by stating that RK currently attracts about 70% of its visitors from Panorama Resort.

Measure #2 also allows RK to transform its business model from a day-skiing operation into a blended day-skiing/multi-day skiing operation. Offering multi-day packages (like all other heli-ski operations in BC) would reduce RK's dependence on bad weather terrain and reduce RK's exposure to skier days lost from extreme weather. RK would no longer be pressured to meet its clients' expectations in one day since a multi-day package can potentially make up for a bad

weather day in subsequent days of a package. Measure #2's end result increases RK's patronage and reduces the impact of incimate weather on RK's business.

We understand from the Proponent that Measures #1 and #2 are still available to RK.

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