Jumbo Glacier Resort Master Plan

Appendix 8-P

Responses from the Office of the Auditor General of Canada to Project Opponents

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Commissioner of the Environment and Sustainable Development of Canada
Commissaire à l'environnement et au développement durable du Canada
Office of the Auditor General of Canada • Bureau du vérificateur général du Canada

APR 07 2005

4 April 2005

Mr. Oberto Oberti
President
Pheidias Project Management Corporation
Suite 1660-1188 West Georgia Street
Vancouver, British Columbia
V6E 4A2

Dear Mr. Oberti:

As Commissioner of the Environment and Sustainable Development of Canada, I am responsible for managing the environmental petitions process which was established under the *Auditor General Act* in 1995.

The process is a formal avenue for Canadians to bring their concerns about the environment and sustainable development to the attention of federal ministers and their departments. One of my responsibilities is to coordinate petitions, monitor departmental replies and provide a report to the House of Commons on environmental petitions.

We publish petitions and ministerial responses in both official languages in the Petitions Catalogue, subject to the consent of petitioners. We wish to notify you that petition no(s). 123 and/or the reply/replies contain(s) a reference to you/or your organization. The Petitions Catalogue can be accessed at www.oag-bvg.gc.ca/domino/petitions.nsf/english.

As Ministers and their departments have 120 days to reply to a petition, responses may not be posted for several months on the Petitions Catalogue. We invite you to periodically view the catalogue on our Web site to determine whether the reply/replies have been posted and whether you/or your organization are referenced in the responses.

Yours sincerely,

Johanne Gélinas

Johanne Gélinas
Commissioner of the Environment
and Sustainable Development

Encl.

240 rue Sparks Street, Ottawa, Ontario K1A 0G6

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Petitioner(s): Jumbo Creek Conservation Society

Date Submitted: 07/26/2004

Status: Completed

Petition No. 123 - Resort development near Invermere, British Columbia

Summary: This petition concerns the possible environmental effects from the development of a four-season resort in the Jumbo Valley near Invermere, British Columbia. The petitioners are concerned that water quality, aquatic habitat, fisheries resources, wildlife populations, and the water supply to the Columbia River and adjacent wetlands will be negatively affected if the project goes forward as proposed. The petitioners also question whether Indian and Northern Affairs Canada should be involved, given that the project site is located within an area of interest for treaty negotiations. **(Full Text)**

Federal Departments Responsible for Reply: Environment Canada (EC) **(Reply)**, Fisheries and Oceans Canada (DFO) **(Reply)**, Foreign Affairs Canada (FAC) **(Reply)**, Indian and Northern Affairs Canada (INAC) **(Reply)**, Transport Canada (TC) **(Reply)**

Minister's Response: Foreign Affairs Canada (FAC)

December 10, 2004

Ms. Meredith P. Hamstead
Jumbo Creek Conservation Society
P.O. Box 2455
Invermere, British Columbia
V0A 1K0

Dear Ms. Hamstead:

This is in response to your environmental petition no. 123 of July 21, 2004, addressed to the Office of the Auditor General of Canada and Commissioner of the Environment and Sustainable Development (the Commissioner), concerning the proposed Jumbo Glacier Resort (JGR) Development.

The Commissioner has, by letter dated August 10, 2004, referred the petition to me and my colleagues the Minister of the Environment, the Minister of Indian and Northern Affairs, the Minister of Fisheries and

Oceans, and the Minister of Transport.

I am responding to request number seven under the heading *Impacts to water supply, quality and to fisheries*, which reads:

> "Does the possibility that the JGR proposal may exacerbate already accelerated glacial ablation, thus possibly compromising water supply in the Columbia River require that the proposal be reviewed under the terms of the *Treaty between Canada and the United States Relating to Co-operative Development of the Water Resources of the Columbia River Basin?*"

The assessment by Foreign Affairs Canada is that the proposed project would have an insignificant impact on the levels or flows on streams flowing from the project into the Columbia River. Therefore, there is no need to review the proposal under the terms of the *Treaty between Canada and the United States Relating to Co-operative Development of the Water Resources of the Columbia River Basin*.

My colleagues will provide responses on matters within their respective areas of responsibility.

Sincerely,

[Original signed by Pierre S. Pettigrew, Minister of Foreign Affairs]

Pierre S. Pettigrew

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Petitioner(s): Jumbo Creek Conservation Society

Date Submitted: 07/26/2004

Status: Completed

Petition No. 123 - Resort development near Invermere, British Columbia

Summary: This petition concerns the possible environmental effects from the development of a four-season resort in the Jumbo Valley near Invermere, British Columbia. The petitioners are concerned that water quality, aquatic habitat, fisheries resources, wildlife populations, and the water supply to the Columbia River and adjacent wetlands will be negatively affected if the project goes forward as proposed. The petitioners also question whether Indian and Northern Affairs Canada should be involved, given that the project site is located within an area of interest for treaty negotiations. **(Full Text)**

Federal Departments Responsible for Reply: Environment Canada (EC) **(Reply)**, Fisheries and Oceans Canada (DFO) **(Reply)**, Foreign Affairs Canada (FAC) **(Reply)**, Indian and Northern Affairs Canada (INAC) **(Reply)**, Transport Canada (TC) **(Reply)**

Minister's Response: Indian and Northern Affairs Canada (INAC)

November 24, 2004

Ms. Meredith Hamstead
Jumbo Creek Conservation Society
PO Box 2455
INVERMERE BC
V0A 1K0

Dear Ms. Hamstead:

This is in response to Environmental Petition No. 123 dated July 21, 2004, concerning the proposed Jumbo Glacier Resort Development. The petition was addressed to the Office of the Auditor General of Canada and the Commissioner of the Environment and Sustainable Development (the Commissioner).

The Commissioner has, by letter dated August 10, 2004, referred the petition to my colleagues, the Minister of the Environment, the Minister of Fisheries and Oceans, the Minister of Foreign Affairs, the Minister of

Transport, and to me. I am responding to request No. 2 under concerns related to public process, which reads:

"Given that the treaty process between the Provincial Government of British Columbia and the Ktunaxa Kinbasket Tribal Council is at stage four of six, and that the land in question for the Jumbo Glacier Resort proposal is included in those treaty negotiations, are there any provisions for federal review of the Jumbo Glacier Resort proposal through the Department of Indian Affairs."

My statutory responsibilities are limited to environmental assessments of projects on Indian reserves, or likely to impact Indian reserves.

Consequently, there are no provisions for a federal environmental review of the Jumbo Glacier Resort proposal through Indian and Northern Affairs Canada.

The treaty negotiations to which you refer involve three parties: the Government of Canada, the Province of British Columbia, and the Ktunaxa Kinbasket Treaty Council. Although the land in question for the Jumbo Glacier Resort proposal is within the area identified by the Ktunaxa Kinbasket Treaty Council's Statement of Intent to negotiate a treaty, filed with the British Columbia Treaty Commission, the parties are not scheduled to begin land-selection discussions until early next year. As a result, the specific land in question for the proposal has not been discussed in these negotiations; furthermore, these lands are provincial Crown lands.

I trust that this response addresses your question as it applies to my responsibilities.

Yours sincerely,

[Original signed by Andy Scott, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians]

The Honourable Andy Scott, PC, MP

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Petitioner(s): Jumbo Creek Conservation Society

Date Submitted: 07/26/2004

Status: Completed

Petition No. 123 - Resort development near Invermere, British Columbia

Summary: This petition concerns the possible environmental effects from the development of a four-season resort in the Jumbo Valley near Invermere, British Columbia. The petitioners are concerned that water quality, aquatic habitat, fisheries resources, wildlife populations, and the water supply to the Columbia River and adjacent wetlands will be negatively affected if the project goes forward as proposed. The petitioners also question whether Indian and Northern Affairs Canada should be involved, given that the project site is located within an area of interest for treaty negotiations. **(Full Text)**

Federal Departments Responsible for Reply: Environment Canada (EC) **(Reply)**, Fisheries and Oceans Canada (DFO) **(Reply)**, Foreign Affairs Canada (FAC) **(Reply)**, Indian and Northern Affairs Canada (INAC) **(Reply)**, Transport Canada (TC) **(Reply)**

Minister's Response: Transport Canada (TC)

December 1, 2004

Ms. Meredith Hamstead
Jumbo Creek Conservation Society
PO Box 2455
Invermere, British Columbia
V0A 1K0

Dear Ms. Hamstead:

I am writing in response to your letter to the Commissioner of the Environment and Sustainable Development of Canada (CESD), which was forwarded to the Minister of Transport on August 10, 2004, as an environmental petition (petition no. 123) pursuant to section 22 of the *Auditor General Act*, seeking information concerning the proposed Jumbo Glacier Resort Development in East Kootenay, British Columbia. As Parliamentary Secretary to the Minister of Transport, the Honourable Jean-C. Lapierre has asked me to respond on his behalf.

Your petition has been carefully reviewed by Transport Canada officials relative to the department's mandate and its responsibilities under the *Navigable Waters Protection Act* (NWPA) and the *Canadian Environmental Assessment Act* (CEAA). With respect to concerns identified in the petition that are related to Transport Canada's mandate, I am pleased to provide you with the following information.

As you may be aware, effective March 29, 2004 responsibility for administration of the NWPA was transferred from Fisheries and Oceans Canada (DFO) to Transport Canada-Marine Branch (TC).

The NWPA states in part that "no work shall be built or placed in navigable waters unless the work and the site and plans thereof have been approved by the Minister". Construction of a bridge in navigable waters would require approval pursuant to Section 5(1) of the NWPA. Section 5(1) of the NWPA is a CEAA law list trigger requiring that an environmental assessment be conducted prior to an NWPA approval being issued.

In June of 2003, a Navigable Waters Protection (NWP) Officer visited the site of the proposed development and determined that the waters of Jumbo Creek and Toby Creek were considered navigable for the purposes of the NWPA.

At that time new bridges were contemplated to access the proposed resort, therefore NWPD (Navigable Waters Protection Division) became actively involved in the review of this project. However on November 19, 2003 the Navigable Waters Protection Division (NWPD) received an "Updated Proposed Master Plan Drawing, Project No. 2016" from Pheidias Project Management Corporation that indicated the access route will now stay on the North East side of Jumbo Creek. Therefore no new bridge construction was contemplated as part of the project under review.

Subsequently, the NWPD advised the Canadian Environmental Assessment Agency that Transport Canada was no longer a Responsible Authority pursuant to CEAA. At this time, no new information has come to light that would lead NWPD to reconsider this determination. As there was no CEAA trigger, there was no requirement for Transport Canada to conduct an environmental assessment.

Thank you for bringing your concerns to Transport Canada's attention. I trust the forgoing has clarified the department's position. It is my understanding that your petition was also addressed to the Ministers of Fisheries and Oceans, Environment, Foreign Affairs, and Indian and Northern Affairs and that each will be providing you with a response to your petition.

Yours sincerely,

[Original signed by Jim Karygiannis, Parliamentary Secretary to the Minister of Transport]

Hon. Jim Karygiannis, P.C., M.P.

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Petitioner(s): Jumbo Creek Conservation Society

Date Submitted: 07/26/2004

Status: Completed

Petition No. 123 - Resort development near Invermere, British Columbia

Summary: This petition concerns the possible environmental effects from the development of a four-season resort in the Jumbo Valley near Invermere, British Columbia. The petitioners are concerned that water quality, aquatic habitat, fisheries resources, wildlife populations, and the water supply to the Columbia River and adjacent wetlands will be negatively affected if the project goes forward as proposed. The petitioners also question whether Indian and Northern Affairs Canada should be involved, given that the project site is located within an area of interest for treaty negotiations. **(Full Text)**

Federal Departments Responsible for Reply: Environment Canada (EC) (Reply), Fisheries and Oceans Canada (DFO) (Reply), Foreign Affairs Canada (FAC) (Reply), Indian and Northern Affairs Canada (INAC) (Reply), Transport Canada (TC) (Reply)

Minister's Response: Environment Canada (EC)

December 9, 2004

Ms. Meredith P. Hamstead
Jumbo Creek Conservation Society
P.O. Box 2455
Invermere BC
V0A 1K0

Dear Ms. Hamstead:

I am writing in response to your Environmental Petition No. 123 to the Commissioner of the Environment and Sustainable Development concerning the proposed Jumbo Glacier Resort development. Your petition was received in the Department on August 10.

With reference to the issues raised in your Petition under the heading "Impacts to water supply, quality and to fisheries", I would respond as follows:

It should be noted that the decision that the Jumbo project would not trigger

a review under the *Canadian Environmental Assessment Act*, although conveyed by the Canadian Environmental Assessment Agency, was made by Fisheries and Oceans Canada, who at the time of the decision had responsibility for both the *Fisheries Act* and the *Navigable Waters Protection Act*. The responsibility for administering the *Navigable Waters Protection Act* has subsequently been transferred to Transport Canada. The decision not to trigger an environmental assessment pursuant to the *Canadian Environmental Assessment Act* was based on the project information available at that time. Neither Transport Canada nor Fisheries and Oceans Canada are aware of any changes to the project design that would change the decision not to trigger an environmental assessment pursuant to the *Canadian Environmental Assessment Act*.

Should there be any changes to the project that could act as a trigger for an environmental assessment, then either or both of these departments would re-examine their responsibilities under their respective legislation and the *Canadian Environmental Assessment Act*.

With reference to the issue raised in your petition under the heading "Impacts to species that are threatened or of special concern", I would advise that the potential impacts to species listed by Committee on the Status of Endangered Wildlife in Canada as threatened or of special concern does not trigger a review under either the *Canadian Environmental Assessment Act* or the *Species at Risk Act*.

I appreciate your interest in this issue and trust that my comments are helpful.

Yours sincerely,

[Original signed by Stéphane Dion, Minister of the Environment]

Stéphane Dion

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Petitioner(s): Jumbo Creek Conservation Society

Date Submitted: 07/26/2004

Status: Completed

Petition No. 123 - Resort development near Invermere, British Columbia

Summary: This petition concerns the possible environmental effects from the development of a four-season resort in the Jumbo Valley near Invermere, British Columbia. The petitioners are concerned that water quality, aquatic habitat, fisheries resources, wildlife populations, and the water supply to the Columbia River and adjacent wetlands will be negatively affected if the project goes forward as proposed. The petitioners also question whether Indian and Northern Affairs Canada should be involved, given that the project site is located within an area of interest for treaty negotiations. **(Full Text)**

Federal Departments Responsible for Reply: Environment Canada (EC) **(Reply)**, Fisheries and Oceans Canada (DFO) **(Reply)**, Foreign Affairs Canada (FAC) **(Reply)**, Indian and Northern Affairs Canada (INAC) **(Reply)**, Transport Canada (TC) **(Reply)**

Minister's Response: Fisheries and Oceans Canada (DFO)

December 7, 2004

Ms. Meredith Hamstead
Jumbo Creek Conservation Society
PO Box 2455
INVERMERE, BC
V0A 1K0

Dear Ms. Hamstead:

This is in response to your petition no. 123 of July 21, 2004 addressed to the Office of the Auditor General of Canada and the Commissioner of the Environment and Sustainable Development (CESD) concerning the proposed Jumbo Glacier Resort Development.

CESD has by letter dated August 10, 2004 referred the petition to myself and my colleagues the Minister of the Environment, the Minister of Indian and Northern Affairs, the Minister of Foreign Affairs and the Minister of Transport.

Below I have provided responses on matters within the areas of responsibility of Fisheries and Oceans Canada (DFO).

Under the heading "Impacts to water supply, quality and to fisheries" I am responding to requests no. 2, no. 3, no. 4, and no. 5.

Request no. 2 reads:

> "Expert technical review of the JGR proposal suggests that numerous potential negative impacts to aquatic habitat and fisheries resources have not been adequately addressed in the JGR project reports to the Provincial EAO. Included are potential negative impacts to endangered bull and west slope cutthroat trout, as well as concerns about quality/completeness of related research. Do these concerns merit further review by federal departments, including specifically the Department of Fisheries and Oceans?"

DFO staff in Pacific Region have reviewed the Jumbo Glacier Resort proposal specifically to determine if the development has the potential to impact fish habitat. After considering the information with respect to the proposed road alignment and the resort development, DFO has concluded that the Jumbo Glacier Resort development would not cause a harmful alteration, disruption or destruction (HADD) of fish habitat.

Request no. 3 reads:

> "Associated with the above, accepting that concerns about the completeness/quality of fisheries related research and/or potential impacts to west slope cutthroat and bull trout habitat and populations are legitimate, should decisions of Fisheries & Oceans Canada and the Canadian Environmental Assessment Agency, as outlined in letters to Oberto Oberti, be reviewed and reconsidered?"

DFO is satisfied that the proposed development is far enough removed from fish habitat that there will not be a HADD associated with development activities if the works are carried out with due care and as proposed.

Request no. 4 reads:

> "Did, or should have, the Fisheries & Oceans Canada (Coast Guard) and Canadian Environmental Assessment Agency decisions noted above at item no. 3 take into consideration the Federal Court of Canada ruling in the case of *Friends of the West Country Association v. Canada (Minister Fisheries and Oceans) Court File No. A-550-98 (appended*)?*"

The Navigable Waters Protection Division (NWPD) of the Canadian Coast Guard (CCG) now resides with Transport Canada. I will leave the NWPD response to this question to my colleague, the Minister of Transport.

Request no. 5 reads:

> "Given the contradictions in the proponent's communications with the public and the Provincial EAO, should Fisheries and Oceans and the CEAA undertake a more detailed assessment of the proposed road alignment and potential need for bridge realignment and/or construction that would necessitate works in, on, over, under, across, or through Jumbo or Toby Creeks and thus, the need for further federal review?"

Review by DFO officials has determined that there will be no HADD associated with the Jumbo Glacier Resort development and thus no requirement for a *Fisheries Act* (FA) authorization. Accordingly, DFO has no environmental assessment trigger under the *Canadian Environmental Assessment Act*.

My colleagues will provide responses on matters within their respective areas of responsibility.

Yours sincerely,

[Original signed by Geoff Regan, Minister of Fisheries and Oceans]

Geoff Regan

*[attachment not posted]

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