



200 - 2006 West 10th Avenue
Vancouver, BC V6J 2B3
www.wcel.org

tel: 604.684.7378
fax: 604.684.1312
toll free: 1.800.330.WCEL (in BC)
email: admin@wcel.org

August 5, 2011

Office of the Auditor General
of British Columbia
8 Bastion Square
Victoria, British Columbia, Canada V8V 1X4

***** BY MAIL & FAX @ 250-387-1230 *****

Attn. John Doyle, Auditor General

Dear Sir:

RE: Request for an audit of use of sales and leases of public lands to ski resort developers to promote the expansion of ski resort development

The provincial government has committed to double tourism revenues by 2015 and to help achieve this goal is prioritizing the expansion and development of Alpine and All Seasons Resorts.¹ We are concerned that in order to help facilitate this expansion, now as in the past, publicly-owned lands are being sold to private ski resort developers at rates that do not reflect either the true economic value of these lands or the other, non-financial, values that British Columbians receive from these lands. We believe that these sales may ultimately be to the detriment of BC residents. We request that you undertake an investigation into the provincial government's longstanding practice of leasing and offering public lands for sale to ski resort developers for real estate development at prices that are arguably well below an appropriately determined market value. In addition, there are closely related issues of accountability and transparency which should be examined. We request that you undertake this examination pursuant to your general powers to audit and report under sections 11, 12 and 13 of the *Auditor General Act*.

How it works

Most ski resorts in B.C. are built on public lands that have been designated as Controlled Recreation Areas (CRAs). CRAs are under the control of the Minister of Tourism Trade and Investment and are governed by Master Development Agreements (MDAs), which are contracts signed between private developers and the provincial government. Under MDAs, land is leased to resort developers for a modest annual rent of 2% of the gross

¹ Government of British Columbia, *Tourism Action Plan* (February 2007), available at www.jti.gov.bc.ca/tourism/docs/tourism_action_plan.pdf, pp. 8-9, last accessed 27 July 2011.

revenue of the ski hill development.² Leaseholders may build infrastructure and other “improvements” on the land but the land itself remains publicly owned.

In addition to the lease agreement, MDAs also contain a clause giving ski resort developers the option to purchase at a future date any land on which resort residences are built, and at this point the land becomes privately owned. Under MDAs, for the first ten years a developer can buy Crown land for the greater of: a) \$5,000 + value of timber per acre; or b) the appraised land value of the *unimproved* land.³

Leased Lands

As noted, the Alpine Ski Resorts Policy allows for the rental of CRA lands by a ski-resort for “2 percent of gross revenue”. Specifically the Annual rents are based on:

- 2% of Gross Revenue (minimum of \$500 per tenure);
- 2% of Independent Operator Revenue (where individual revenue exceeds \$10,000);
- 5% of Golf Revenue (\$10,000 minimum)⁴

These are 30 or 60 year leases, depending upon the type of Ski Resort, so provide a high level of security to the resort developer.

This stands in contrast to non-ski resorts, which are apparently generally leased at 8% of the land value (although the precise amount varies by use).⁵

An article by Bill Metcalfe which appeared in the *Tyee* in 2009 calculated 2% of Gross Revenue based upon ticket sales at about \$4 million **for all ski resorts in the entire province**.⁶ We are not confident in this figure, since it appears that “Gross Revenue” as defined in the All Seasons Resort Policy is not limited to ticket sales, but includes:

All consideration received by the developer for:

- Rights to use or occupy any part of the Recreational Improvements or the CRA and;
 - Commercial Recreation activities.
- [and Includes:]
- Lift fees
 - Trail pass fees
 - Guided tour fees where a lift pass is not purchased
 - Rent or revenue from facilities.

² Alpine Ski Resorts Policy, available at http://www.for.gov.bc.ca/ftp/resort_development/external/!publish/web/asr/ASR_Policy.pdf, pp. 38, last accessed 27 July 2011.

³ Government of British Columbia, All Seasons Resort Policy (March 30, 2011), available at http://www.for.gov.bc.ca/ftp/resort_development/external/!publish/web/asr/ASR_Policy.pdf, p. 31, last accessed 27 July 2011.

⁴ *Ibid.*, at p. 38.

⁵ *Ibid.*, at p. 36.

⁶ Bill Metcalfe, “Jumbo Ski Resort Carves New Legal Tracks” *Tyee* (October 26 2009) online: <http://thetyee.ca/News/2009/10/26/JumboSkiMunicipality/>, last accessed 27 July 2011.

[But does not include:]

- Food, beverage and retail sales;
- Fees from lessons and equipment rentals;
- Rent or revenue from restaurant/cafeteria facilities, weddings, banquets or similar functions;
- Golf Revenue and Independent Operator Revenue [which is calculated and included in the rental calculation separately];
- Taxes;
- Discounts or complimentary passes including those to employees and their families.

That being said, ticket sales would represent a significant portion of this revenue, and Mr. Metcalfe's calculation raises important questions about how much compensation British Columbians are receiving under these long-term leases, and whether it reflects fair value.

Is \$5000 fair market value?

We are equally concerned, however, with the sale of lands associated with the development for real estate. As noted above, these lands are sold (for the first 10 years of a resort) at the greater of the market value of the undeveloped land or \$5000/acre.

According to the Policy:

The purchase price for Base Area land will be:

- For years 1 to 10, the greater of \$12,355 per ha (\$5000 per acre) or the appraised land value based on un-serviced land, plus the value of any remaining Merchantable Timber at the time of sale;
- For years 11 to 15, the greater of \$12,355 per ha (\$5000 per acre) or 5% of the appraised land value based on its intended use as fully serviced land, plus the value of any remaining Merchantable Timber at the time of sale;
- For years 16 to 20, the greater of \$12,355 per ha (\$5000 per acre) or 10% of the appraised land value based on its intended use as fully serviced land, plus the value of any remaining Merchantable Timber at the time of sale;⁷

For years 20 to 30 the right to purchase further land depends upon meeting various conditions of the Master Development agreement and the Resort Master Plan, but if these conditions have been satisfied the Developer may purchase the lands at \$5000 per acre or (if greater) "10% of the appraised land value based on its intended use as fully serviced land plus the value of any remaining Merchantable Timber..."⁸

How are these prices determined? Terry Pratt, a Major Projects Manager with the Resort Development Branch of the Ministry of Natural Resource Operations, explained to us in an email communication that:

The price of \$5000/acre is based on land appraisals which are done from time to time. For example, [prior to the current 1997 policy

⁷ Above, note 3, p. 31.

⁸ Ibid., p. 32.

which set a minimum price of \$5000 per acre] the 1996 Commercial Alpine Ski Policy ... had pricing for] base area land at the greater of \$2500/acre for Interior ski hills or \$5000/acre for Coastal ski hills.⁹

As we understand it, the land appraisals in question during the first 10 year period relate not just to the market value of undeveloped, unserviced lands, but to wilderness lands – ie. not lands next to lands that will imminently be developed as a ski resort.

Since large areas of wilderness lands are generally not available for private sale in BC, it may be difficult to find properties against which to appraise such lands. However, even assuming that the appraisals do accurately reflect the market value of such wilderness lands, there are important questions as to whether these lands should be appraised as undeveloped and unserviced, and whether other public values received from the land should be considered in the appraisals (as well as the fundamental question of whether and when public lands should be sold for these purposes in the first place).

Certainly there is some reason to believe that the Resort Development industry values these lands more highly than the appraised \$5000/acre. A real estate brochure prepared by Landquest Realty Corp. looking for a developer for Mt. Baldy Ski Resort near Osoyoos, states that:

Under the Master Development Agreement...dated May 19, 2006, Mount Baldy Ski Corporation (MBSC) is granted the exclusive right to purchase deeded acreage from the Crown for base area development at a substantial discount to fair market value... \$5,000 per acre plus appraised timber value, which is substantially below current fair market value (current fair market value is \$240,000 per acre as estimated in the December 2006 Appraisal Report).¹⁰

This same brochure claims there is “considerable profit for an owner of the resort”¹¹

We asked the government to explain this discrepancy, which would appear to operate greatly to the disadvantage of the public. Government staff confirmed for us that the appraisal done for Mount Baldy set the value of the land at less than \$5000/acre (which explains why the MDA sets the sale value at the minimum \$5000/acre level). When we asked about the difference between this figure and the \$240,000/acre evaluation given by Landquest Realty Corp – 48 times more than the government’s set minimum – we were told:

⁹ Terry Pratt, email to Erin Scraba, dated March 8 2011, in response to questions from Riley Denoon of our office (forwarded to Mr. Denoon via email on March 10, 2011).

¹⁰ Landquest Realty Corporation, “Mt Baldy Recreational Resort” [brochure], available at <http://www.landquest.com/OKANAGAN/09135/09135web.pdf>, p 6, last accessed 27 July 2011. The Master Development Agreement signed between the province and the Mount Baldy Ski Corporation (a copy of which we were able to obtain from the government, which is available at <http://wcel.org/sites/default/files/file-downloads/MtBaldyMDA.pdf>) does indeed specify that Crown land can be purchased at \$5000/acre plus the timber value for the first 10 years of the agreement, with no reference to appraised land value.

¹¹ Ibid, p 7.

Land can be appraised for different purposes with different Terms of Reference and for different time periods, which likely explains the discrepancy you're referring to between Mt. Baldy's appraisal and our historic valuation.¹²

Officially, the BC government recognizes that when it sells public lands, it must ensure that it does not under-price those lands. The government's *Land Policy on Pricing* states, in section 2.2, that:

In setting prices for Crown land, the Province will not distort private land markets...The Province will use the best available information...in establishing appropriate prices ... [T]he methods used to establish pricing will be clearly explained, well documented, and communicated.¹³

Furthermore, in specific reference to the issue of the sale of public lands for ski resort development, the provincial government's *All Seasons Resort Guidelines (ASRG)* states that "the skiing component of any successful mountain resort should be economically viable in its own right, without having to depend on the potential ongoing economic support of real estate development and sales"¹⁴ (emphasis added).

However, in an article published by *BC Business Magazine* in 2008, Psyche Brown, a ski-resort specialist and Major Projects Manager with the Province's Resort Development Branch, is quoted as acknowledging that

No one would build resorts if they couldn't help pay for them with real estate. It would take a long time to get return on investment from lift tickets. The province recognizes that.¹⁵

This frank admission is clearly consistent with anecdotal evidence on the importance of real estate sales in the Ski-Resort industry. Indeed, the same *BC Business Magazine* article quotes industry spokespeople in reaching the conclusion that the real estate boom is largely responsible for the ongoing growth of BC's Ski Resort industry, despite unfavourable projections.

However, this contradicts the government's policy of promoting Resort development, but would seem to contradict the government's official position that the ski component of a

¹² Email from Terry Pratt to Andrew Gage of our office dated June 17 2011.

¹³ Government of British Columbia, *Land Policy on Pricing* (July 18 2007), available at http://www.agf.gov.bc.ca/clad/leg_policies/policies/pricing.pdf, section 2.2, last accessed 27 July 2011.

¹⁴ Government of British Columbia, *All Seasons Resort Policy* (March 30 2011), available at http://www.for.gov.bc.ca/ftp/resort_development/external!/publish/web/asr/ASR_Policy.pdf, p. 39, last accessed 27 July 2011.

¹⁵ Ryan Stuart, "BC Ski Resorts Haven't Hung Up Their Poles" *BC Business Magazine*, (January 1 2008) available at <http://www.bcbusinessonline.ca/bcb/top-stories/2008/01/01/bc-ski-resorts-haveno39t-hung-their-poles>, p 2, last accessed July 27 2011.

mountain resort should be economically viable in its own right, and not be dependent on the sale of real estate.

We are not, of course, appraisers, and we recognize that there are different ways to determine the market value of a property. However, it appears to us that:

- An appraisal of large tracts of wilderness lands is inherently challenging in light of the lack of private land sold on an open market in BC for ski-resort development;
- The practice of setting CRA rent based upon Revenue, rather than the value of the land, may effectively subsidize industry during the start-up period, and divorces the economics of the resort from the market value of the leased lands;
- Having made large areas available for ski-resort development through what appears to be a generous lease, it seems doubly-generous to assess the market value of lands to be sold without reference, during the first 10 years, to the planned development of a ski-resort pursuant to that lease.
- The land sales seem generous to the Developers through-out the life-time of the lease, permitting the developer to capture 90% of the revenue from residential development even after 15 years of resort development, at which point ski infrastructure will presumably in place.
- It is apparent that, notwithstanding the stated desire not to distort the market, the sale of real estate is driving some or all of the ski-resort development in the province.
- The policy may, as raised in the BC Business article, result in a ski-resort industry which is ultimately unsustainable, leading to the suggestion that BC “might one day be left with overgrown ski runs and ghost towns.”¹⁶

Environmental & Public Values

In addition to the economic questions, there are many unanswered questions about whether the environmental and cultural values of British Columbians are considered in the leases and land sales that are driving the development of ski-resorts.

- The construction of large communities in geographically remote areas is likely to increase greenhouse gas emissions;
- Building resorts up-slope from existing communities may in some cases represent a threat to downstream drinking water supplies;
- Large scale resorts have significant impacts for wildlife habitat and other environmental features.

Under the Alpine Resort Policy there is no process for identifying areas which are not suitable for resort development, or are otherwise off-limits for resort development, due to public values. Nor is there any effort to capture such values through full cost accounting. Rather, the real estate sale prices are based entirely on the market appraisal.

The Jumbo Glacier Resort, which is proposed to be built in the Purcell Mountains west of Invermere, provides an illustrative example. For the past twenty years, Glacier Resorts Ltd of Vancouver has been proposing the construction of a billion-dollar, year-round glacier skiing resort at the foot of Jumbo Mountain and Jumbo Glacier. The proposed

¹⁶ Ibid.

resort is planned in three phases to ultimately include 5,500 bed units (plus 750 beds for staff accommodations) in a 104 hectare base area.¹⁷ However, the project has met with sustained local opposition¹⁸ as well as strong opposition from the Ktunaxa First Nations¹⁹, and from wildlife biologists who have expressed concerns that the resort may endanger critical grizzly bear habitat.²⁰

Thus far, although the resort has not yet been finally approved, Jumbo Glacier Resort Ltd, has fulfilled every requirement and successfully completed the province's environmental assessments.²¹ During the environmental assessment of the proposed Jumbo Glacier Resort, Ministry of Environment grizzly experts warned that the resort would have a significant adverse effect on grizzly habitat. However, other (non-grizzly experts) within the Ministry subsequently determined that the impact on the grizzlies should not be considered significant because the resort would not by itself result in so great a "reduction of the grizzly bear population ... that the population in the Central Purcells GPBU [Grizzly Bear Population Unit] would become threatened." The Environmental Assessment Office, on the strength of this rather odd framing, determined that the impacts of the project on grizzlies would not be significant.²²

If the resort does proceed, then the province will be largely responsible for trying to mitigate the negative effects that the development will have on wildlife. Given that an already threatened population of grizzly bears would lose access to large areas of critical habitat, the government would be forced to consider closing access to adjacent public lands.²³ The government will also be responsible for defending any lawsuits brought by the Ktunaxa First Nations, who have expressed adamant and consistent opposition to the construction of the resort.

Although Jumbo Glacier Resorts Ltd, is clearly confident that the resort would generate profit for the company, it is much less clear that the public will benefit. The alienation of public lands at any price, much less at the rock-bottom prices that the province is contemplating selling at to Jumbo Glacier Resorts, is a step that should not be taken lightly or in the absence of meaningful public consultation, and planning to determine if

¹⁷ Jumbo Glacier Resort Official Project Information Website., available at <http://www.jumboglacierresort.com/>, last accessed July 27 2011.

¹⁸ Perhaps the most definitive of numerous formal and informal polls and surveys is a third-party random survey by McAllister Opinion Research of Vancouver in 2008 which reported 63 per cent opposed, 19 per cent in favour and 18 per cent undecided of the proposed resort. Cited in Bruce Kirkby, "Exploring the wild frontier of Jumbo Valley, BC" *Globe and Mail* (Feb 18, 2011), available at <http://www.theglobeandmail.com/life/travel/news-and-trends/bruce-kirkby/exploring-the-wild-frontier-of-jumbo-valley-bc/article1913269/>, last accessed July 27 2011.

¹⁹ Ktunaxa First Nations, "Ktunaxa Qat'muk Declaration" (November 2010), available at <http://www.qatmuk.com/>, last accessed July 27 2011.

²⁰ Kirkby, above note 20, p. 2.

²¹ Ibid, p 3.

²² See our blog post "Jumbo resort will impact grizzlies, but does the province care?" (September 01 2010) available at <http://wcel.org/resources/environmental-law-alert/jumbo-resort-will-impact-grizzlies-does-province-care> for more information.

²³ Keep it Wild Website available at <http://www.keepitwild.ca/alienation-public-lands>, last accessed July 27 2011.

this is an appropriate location for a ski resort, and if so, what price the province should set to compensate the public (or First Nations) for the loss in other public values.

Put simply, there has been no planning to determine whether Jumbo Glacier is an appropriate location for a resort. The Policy assumes that resorts may be developed where-ever a developer wants to place it. The residents of the Kootenays may see a project which the vast majority oppose go ahead as a result of sales of their own public land to the developer.

Lack of public accountability and transparency

Although we wish to commend provincial civil servants in attempting to answer our questions in researching this issue, there were some examples of a lack of accountability and transparency.

Staff were unable to provide statistics on how much land had already been sold to private developers under the existing Master Development Agreements. Mr. Pratt explained that this information is “not easily accessible as a compilation is not required for our business needs.”²⁴ It strikes us that this figure is essential to understanding the impacts of the Alpine Ski Resorts Policy and these lands sales.

In addition, some of the agreements between the Crown and ski resort developers are not available to the public. For example, our organization requested a copy of the Master Development Agreement for Silver Star Mountain Resort which is located near Vernon, BC, but were informed that the MDA contains a clause stating that it cannot be released without permission of the resort company.²⁵ We were advised that there were a few agreements of this type, although more recent agreements are generally releasable.²⁶

In addition to these two very specific problems, we are concerned that these sales are occurring largely absent public consultation or debate. Historically, BC residents have been very reluctant to sell public lands to private developers, and approximately 90% of BC land continues to be held by the Crown.²⁷ In our view, these lands are held in trust for the benefit of BC residents and for future generations. Even if the government was selling public lands to resort developers at full market value, rather than at below market value as we suspect is happening, we believe it is inappropriate that these lands are being alienated in the absence of public consultation.

Silver Star Resort

Silver Star Mountain Resort near Vernon, is deserving of special mention as an especially egregious example of resort development involving the sale of public lands, because the Silver Star Mountain Controlled Recreation Area (CRA) was established (and subsequently added to) by removing land from Silver Star Provincial Park. While these land removals are largely historic, there are issues of accountability related to these lands which continue to this day.

²⁴ Email from Terry Pratt, above, note 9.

²⁵ Email from Erin Scraba to Riley Denoon, dated March 11, 2011; two other MDAs for Mt. Baldy and Big White Ski Resorts were released to us on request

²⁶ Email from Terry Pratt, above, note 9.

The park used to be significantly larger at 8939 hectares; however over the past few decades the park has fractured and shrunk due to resort expansion and now encompasses only 5573 hectares.²⁸ Over the past 30 years, mostly under previous governments, nearly 40% of the park has been deleted and added to the CRA of the privately owned Silver Star Mountain Resort.

One purpose for deleting park lands for addition to the CRA was the establishment of World Cup Nordic trails; however the majority of these trails have recently been proposed for real estate development by the park. Similarly, several former ski runs have recently been built over with hotels, condominiums and vacation homes. The Citizens' Coalition to Save Silver Star Park says land is "initially deleted from the park for recreational uses, then later rezoned for fee simple property development."²⁹ While it may be too late to examine the circumstances under which these lands were deleted from the park, it may be appropriate to examine the conversion of lands which were clearly intended to be used for ongoing public recreational use (albeit as part of the CRA) into private real estate.

Similarly, an area of land that was initially deleted from the provincial park and added to the CRA in response to the company's proposal to build a golf course, has since been transformed into a sewage reservoir to capture effluent run-off. The Gold Course was never developed, and yet there does not seem to be any mechanism to reclaim these lands for the park.

The resort, which operates several chairlifts, surface lifts, and a number of downhill and cross-country ski lifts inside the CRA, has been strongly focused on real estate development in recent decades. In 1982, the first of the company's real estate development- the resort village area - was deleted from the park. Since then, the building of numerous hotels, condominiums, and vacation homes throughout the ski resort has progressed steadily. In 2009, the company announced that it was dramatically expanding the capacity of the resort from 6400 bed units to 26,550 bed units.³⁰

The fracturing and significant loss of land to the provincial park for commercial development has occurred largely without public input.³¹ The Citizen's coalition to save the park is afraid that more land will be deleted, and notes that the Eastern portion of the park is particularly vulnerable as it has already been entirely severed from the rest of the park.³²

First Nations Lands Claims

The Ktunaxa opposition to the proposed Jumbo Glacier Resorts Ltd. is not the only example of a ski resort development experiencing conflict with local First Nations. In BC, Crown lands usually fall within unceded First Nations traditional territories where

²⁸ Citizen's Coalition to Save Silver Star Park Website, available at <http://savesilverstarpark.org/Introduction/229/>, last accessed July 27 2011.

²⁹ Ibid, <http://www.savesilverstarpark.org/>.

³⁰ Ibid, <http://savesilverstarpark.org/New-Silver-Star-Master-Plan-calls-for-26550-Beds/337/>.

³¹ Ibid <http://savesilverstarpark.org/Park-History/223/>.

³² Ibid Citizen's Coalitio <http://savesilverstarpark.org/Introduction/229/>.

Aboriginal Title may be established through litigation or negotiation. For example, the Secwepemc Nation has Title and Rights claims that cover the land where the Sun Peaks Resorts is located and have been involved in litigation in relation to that development. The claims of BC's First Nations raise further questions about how resort development should be managed.

Conclusion

Developers are clearly profiting from the government's policy of allowing ski resorts to purchase relatively cheap public lands for real estate development. It is less certain, however, that the public is benefitting. The provincial government is eager for the economic opportunities that accompany resort development, but there has never been a full and open public debate about whether public lands should be used as an economic incentive to promote ski resorts.

It appears that a significant economic incentive for BC's booming ski resorts comes from on-hill real estate development – real estate development on formerly public land – and from the related practice of leasing public lands for resort infrastructure at reduced prices.

We are concerned that the government's policy of selling and leasing public lands to developers at low prices in order to facilitate the expansion of ski resorts may not be in the long-term interest of the public good. We therefore request that you conduct an inquiry into this practice pursuant to your powers under the *Auditor General Act*.

Sincerely,



Andrew Gage,
Staff Lawyer



Hannah Askew,
Legal Intern

cc. Pat Bell, Minister of Jobs, Tourism & Innovation
cc. Spencer Herbert, Opposition Critic for Tourism