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Ecotourism: Calling a Truce Between Ski Resort Developers and Environmental Groups

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Ecotourism: Calling a Truce Between Ski* Resort Developers and Environmental Groups

Audrey Kelm**

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* The term "ski" will be used as a reference to alpine skiing and snowboarding.

** J.D., University of the Pacific, McGeorge School of Law, to be conferred May, 2009; B.S. Visual Communication, Ferris State University, May, 2003. I would like to extend my gratitude to the Globe's staff, Professor Rachael Salcido, and my friends and family for their support and encouragement. I would also like to extend a special thanks to Gaz for his extraordinary patience and spirit for adventure.

I. INTRODUCTION

Ecotourism is a relatively new concept that has caught the attention of both existing and developing ski resorts. Essentially, ecotourism can be summed up as “responsible travel.”¹ When there is a conscious effort to promote responsible travel, conservation of the environment for existing and future generations will likely follow.² Ski resorts are beginning to incorporate the concept of ecotourism as an essential consideration needed to maintain economic value while preserving the environment.³

In recent years, developers have considered environment-friendly strategies when constructing ski resorts.⁴ However, regardless of the environmental considerations taken into account by developers, environmental organizations commonly accuse resort developers of destroying the environment for profit when ski resort projects are pursued.⁵ Federal and state governments have resisted development by denying permits⁶ and implementing long judicial proceedings.⁷ Despite opposition to resort expansion and development, recent progress in line with the principles of ecotourism may help guide future legislation and eventually bridge the gap between feuding developers and environmental organizations.⁸

1. The International Ecotourism Society, Definitions & Principles, http://www.ecotourism.org/web/modules/webarticlesnet/templates/eco_template.aspx?articleid=95&zoned=2 (last visited Sept. 28, 2008) [hereinafter TIES, Definitions & Principles] (some characteristics of responsible travel are defined by The International Ecotourism Society as tourism that minimizes impact, builds environmental and cultural awareness and respect, and provides direct financial benefits for conservation).

2. See *id.* (noting that those who implement ecotourism activities should follow ecotourism principles such as minimizing impact, building environmental awareness, and providing direct financial benefits for conservation).

3. See generally SUSTAINABLE SLOPES, THE ENVIRONMENTAL CHARTER FOR SKI AREAS (2006), available at http://www.nsaa.org/nsaa/environment/sustainable_slopes/charter.pdf (last visited Nov. 16, 2008) [hereinafter SUSTAINABLE SLOPES CHARTER] (environmental charter adopted by ski industry in 2000 and revised in 2005 to reflect latest technology and best management practices to preserve environment); Australian Ski Areas Association, <http://www.asaa.org.au> (last visited Nov. 16, 2008) [hereinafter ASAA] (non-profit organization conducts activities that will benefit Australian snow sports industry and patrons).

4. Bob Sachs, *National Perspective on Mountain Resorts and Ecology*, 26 VT. L. REV. 515, 521 (2002) (providing examples of how ski resorts are taking steps to mitigate environmental footprints left during expansion or new development).

5. See Mountain Wilderness—International, Ski Resorts and Glaciers, <http://mountainwilderness.org/index.php?rub=173&lg=en> (“In their quest for more and more profit, ski resorts are developing industrial ski in new virgin areas . . . [a]ll this at the expense of the last wilderness areas.”) (last visited Mar. 28, 2008); see, e.g., *Sierra Club v. Morton*, 405 U.S. 727, 729 (1972) (conservation group brought suit to prevent construction of ski resort and Court found that conservation group lacked standing); *Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012 (10th Cir. 2002) (nonprofit environment group brought action against Forest Service for violation of environmental laws relating to development of ski resort).

6. See, e.g., *R.K. Heli-Ski Panorama, Inc. v. Jumbo Glacier Resort Proj.*, [2007] 61 B.C.L.R.2d 316 (Can.) (Canadian government-required assessment process took over ten years to complete after much litigation).

7. See, e.g., James Briggs, *Ski Resorts and National Forests: Rethinking Forest Service Management Practices for Recreational Use*, 28 B.C. ENVTL. AFF. L. REV. 79, 101 (2000) (describing proposal that required over 150 public hearings and eight years of government review).

8. See, e.g., SUSTAINABLE SLOPES CHARTER, *supra* note 3; Keep Winter Cool, Winter’s Short Enough

Part I of this comment will explore existing laws and voluntary guidelines regulating ski resort land use and a proposal to implement ecotourism legislation. Under this proposed legislation, a mountainous region would be treated as its own ecosystem that would acknowledge the importance of sustainable development, including ski resort development and expansion. Under the proposed legislation, the fragility of mountain environments would be recognized and protected, pleasing environmentalists, and allowing resort development and expansion to proceed with less opposition.

Part II of this comment explains the relatively new concept of ecotourism and efforts made, particularly by the United Nations, to encourage countries to recognize the need to address climate change and sustainable development, especially in mountain ecologies. Part III examines current regulations that govern the development of ski resorts in the U.S. as well as regulations in France and Italy that specifically govern mountainous regions. Part III also discusses voluntary guidelines that many ski resorts choose to follow. These guidelines adhere to the principles of ecotourism and suggest that ski resorts do generally desire to preserve the natural mountain settings in which they are located. Many environmental organizations do not feel that ski resort developers aim to preserve the environment, and these groups' concerns, as well as the developers' concerns, are considered in Part IV. Part V looks at some recent examples of how environmental groups, governments, and developers have collaborated to achieve results that will impact the environment as little as possible. These examples are used to illustrate how each side can achieve its purpose. Finally, this comment concludes by stating that the establishment of ecotourism legislation will reduce courtroom disputes and ultimately preserve mountain ecologies.

II. ECOTOURISM: WHAT IS IT?

A. *Definition of Ecotourism*

The International Ecotourism Society ("TIES") defines ecotourism as, "responsible travel to natural areas that conserves the environment and improves the well-being of local people."⁹ Despite many other variations of this definition,¹⁰

Already, <http://www.keepwintercool.org> (last visited Sept. 28, 2008) [hereinafter KWC, Winter's Short Enough Already] (organization devoted to fighting global warming); ASAA, *supra* note 3 (the recent progress includes voluntary guidelines from organizations such as Sustainable Slopes, Keep Winter Cool, and the Australian Ski Areas Association that many ski resorts choose to follow. These guidelines can assist future legislation governing ecotourism).

9. TIES, Definitions & Principles, *supra* note 1.

10. See, e.g., The Nature Conservancy, What Is Ecotourism, <http://www.nature.org/aboutus/travel/ecotourism/about/art667.html> (last visited Sept. 28, 2008) (defining ecotourism as, "[e]nvironmentally responsible travel to natural areas, in order to enjoy and appreciate nature (and accompanying cultural features, both past and present) that promote conservation, have a low visitor impact and provide for beneficially active socio-economic involvement of local peoples"); Deirdre N. Webb-Hicks, *Eco Tourism and Spain*, TUSPAIN, <http://www.tuspain.com/env/env2.htm> (last visited Sept. 28, 2008) (adopting the definition, "travel and tourism

one thing remains certain: ecotourism is a rapidly growing trend that promotes sustainable development.¹¹

This relatively new concept¹² has attracted attention from numerous organizations.¹³ The United Nations General Assembly proclaimed 2002 as the International Year of Ecotourism ("IYE").¹⁴ The purpose of IYE was "to arrive at a comprehensive understanding of ecotourism as a contribution to sustainable development . . .".¹⁵ The World Tourism Organization ("WTO") and the United Nations Environment Program ("UNEP") led IYE by organizing conferences and conducting studies, among other things,¹⁶ to further their objectives of the IYE.¹⁷

Because the terms "ecotourism" and "sustainable development" are almost always used together,¹⁸ it is important to understand the concept of sustainable

that aids in the conservation of the environment, indigenous populations, traditions and local economy either through education or action"); Interview by Ron Mader with Hector Ceballos Lascrain, Director General of the Program of International Consultancy on Ecotourism, for Planeta.com, (May 2000) <http://www.planeta.com/ecotravel/weaving/hectorceballos.html> (Hector Ceballos-Lascrain is credited with providing one of the earliest accepted definitions of ecotourism: "[e]cotourism is environmentally responsible travel and visitation to relatively undisturbed natural areas, in order to enjoy and appreciate nature (and any accompanying cultural features—both past and present) that promotes conservation, has low negative visitor impact, and provides for beneficially active socio-economic involvement of local populations.").

11. The Secretary General, *Report of the Secretary General of the World Tourism Organization on the Assessment of the Results Achieved in Realizing Aims and Objectives of the International Year of Ecotourism*, 2, transmitted to the General Assembly (June 18, 2003), available at <http://www.world-tourism.org/sustainable/IYE/IYE-Rep-UN-GA-2003.pdf> [hereinafter *Assessment of the Results Achieved*] (report of ecotourism, assessment of results, and recommendations to further advance promotion of ecotourism); see also Nordregio: Nordic Centre for Spatial Dev., *Mountain Areas in Europe: Analysis of Mountain Areas in EU Member States, Acceding and Other European Countries*, EU Comm'n contract No 2002.CE.16.0.AT.136, i, xi (Jan. 2004), available at <http://www.mapa.es/Desarrollo/pags/RedRural/publicaciones/articulos/MountainAreas/0.pdf> ("The global importance of mountains is increasingly recognized . . ."). Also stating that since the late 1980s, several documents have proposed some type of policy for European mountain areas; but see Youtube video: Endgame (Alex Jones 2007), available at http://www.youtube.com/watch?v=1AmUiG5_8EE (last visited Nov. 10, 2007) (suggesting that world governments are exaggerating the need of environmental awareness for population control, among other reasons).

12. Allan R. Rhodes Espinoza, *Defining Ecotourism*, ECOTURISMOLATINO, <http://www.ecoturismo-latino.com/eng/ecotravellers/alternative/articles/definingecoturismecoturismolatino.pdf> (last visited Sept. 28, 2008) (ecotourism is a term that has been around for just over twenty years).

13. See, e.g., TransitionsAbroad.com, Ecotourism Organizations, <http://www.transitionsabroad.com/listings/travel/responsible/ecoturismorganizations.shtml> (last visited Sept. 28, 2008) (lists ecotourism organizations).

14. *Assessment of the Results Achieved*, supra note 11.

15. *Id.*

16. *Id.* at 6-8 (other activities include trade fairs, publications to spread recommendations about ecotourism, a published website and sponsored ecotourism events).

17. *Id.* at 2-6 (the WTO and UNEP stated four objectives: (1) create awareness about ecotourism's benefits regarding conservation of heritage while improving standards of living, (2) distribute ways to regulate and maintain sustainability, (3) encourage exchange of experiences, and (4) increase opportunities for marketing and promotion of destinations).

18. See, e.g., Center on Ecotourism and Sustainable Development, <http://www.ecoturismcesd.org/index.html> (last visited Sept. 28, 2008); WORLD TOURISM ORGANIZATION, WORLD ECOTOURISM SUMMIT—FINAL REPORT (World Tourism Organization & UNEP 2002), available at <http://www.gdrc.org/uem/ecotour/Final-Report-WES-Eng.pdf> [hereinafter WORLD ECOTOURISM SUMMIT—FINAL REPORT].

development. The United Nations Department of Economic and Social Affairs, Division for Sustainable Development, defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹⁹ In other words, a sustainable development program seeks to create harmony with the environment, the economy, and social equity.²⁰ Because ecotourism also seeks harmony with the environment, it is no wonder that the WTO referred to sustainable development as “the basis for ecotourism.”²¹

B. The Ecological Environment of the Mountains

Until a couple of decades ago, mountain ranges were considered fixed, unshakable land formations, resilient to most change.²² Now it is understood that increased tourism, pollution, and global warming are a few examples of threats that seriously endanger the pristine ecology of the mountain environment.²³ Indeed, part of the intention of the IYE was to draw attention to the declining state of ecosystems, including mountain ecosystems.²⁴

The International Year of the Mountains (“IYM”) was established by the U.N. in 2002, the same year as the IYE.²⁵ The IYM’s stated objectives included raising awareness of the fragile mountain ecosystem and encouraging sustainable development for the existing communities as well as future generations.²⁶ The United Nations assigned the Food and Agriculture Organization (“FAO”) as the lead agency to promote the IYM and accomplish its objectives.²⁷ To do this, the

19. U.N. Dept. of Econ. & Soc. Affairs, Div. for Sustainable Dev., About the United Nations Division for Sustainable Development, http://www.un.org/esa/sustdev/about_us/aboutus.htm (last visited Sept. 28, 2008).

20. Mohan Munasinghe, *Sustainomics and Sustainable Development*, ENCYCLOPEDIA OF EARTH (Adil Najam ed. 2007), http://www.eoearth.org/article/Sustainomics_and_sustainable_development; see generally Jeffrey Brown, *What is Sustainable Development?*, GLOBAL LEARNING, INC., http://www.globallearningnj.org/global_ata/What_is_Sustainable_Development.htm (last visited Sept. 28, 2008).

21. WORLD ECOTOURISM SUMMIT – FINAL REPORT, *supra* note 18, at 10.

22. *Global Warming Triggers Glacial Lakes Flood Threat*, U.N. CHRONICLE, Sept. 1, 2002, available at 2002 WLNR 9131226 [hereinafter *Global Warming Triggers Flood Threat*].

23. See, e.g., Casey J. Caldwell, *The Black Diamond of Harmonization: The Alpine Convention as a Model for Balancing Competing Objectives in the European Union*, 21 B.U. INT’L L.J. 137, 145-47 (2003).

24. *Global Warming Triggers Flood Threat*, *supra* note 22.

25. Conference on International Year of the Mountains, Rome, Italy, Nov. 2-13, 2001, *Information Note*, ¶ 27, U.N. Doc. C2001/INF/21 (this was not a coincidence as members of the Committee on Forestry urged the FAO to collaborate with the organizers of the IYE because much of tourism takes place in the mountains.); see also Mountain Partnership, Welcome to the Mountain Partnership, <http://www.mountainpartnership.org> (last visited Nov. 16, 2008) [hereinafter Mountain Partnership, Welcome] (voluntary alliance of partners dedicated to improving lives of mountain people and protecting mountain environments around world).

26. Twenty-sixth FAO Regional Conference for the Near East, Tehran, Iran, March 9-13, 2002, *The International Year of the Mountains*, 2, U.N. Doc. NERC/02/INF/7 available at <ftp://ftp.fao.org/unfao/bodies/nerc/26nerc/Y2688e.doc> (other stated objectives include “promote and defend the cultural heritage of mountain communities” and “pay attention to frequent conflicts in mountain areas, with special focus on promotion of peace-making in those regions”).

27. *Id.*

FAO developed an official logo, slogan, and “toolkits”²⁸ that were disseminated to countries to assist in campaigns at a national level.²⁹ Simultaneous observance of the IYE and the IYM allowed the WTO and UNEP to work closely with the FAO. The relationship proved to be quite favorable to all parties because much ecotourism takes place in mountainous regions, aligning with the objectives of the IYE with those of the IYM.³⁰

One prominent issue explored during the IYM is the effect of global warming on mountain ranges. As a consequence of warming temperatures, local mountain economies have suffered.³¹ Scientists affiliated with UNEP and the International Center for Integrated Mountain Development (“ICIMOD”) disclosed more than forty-four lakes in the Himalayas that are at risk to overflow within five years due to rapidly melting mountain glaciers running into the lakes.³² If this trend continues, the surrounding mountain villages are in jeopardy of severe flooding, which carries the potential for catastrophic harm to both lives and property.³³

For example, Tsho Rolpa Lake in Nepal has grown to over six times its size since the late 1950s because global warming is causing a nearby glacier to melt at an alarming rate.³⁴ It is feared that if this lake were to flood, thousands of lives, land, and buildings that make up a nearby village may be lost.³⁵ In the Western Hemisphere, the warming climate is responsible for the erosion of riverbanks and floods.³⁶ This flooding has already caused some Alaskan villages to relocate and continues to threaten more local communities.³⁷

Nepal and the U.S. are not the only mountainous regions affected by global warming.³⁸ Increasingly, resorts across the world are closing early each season because of shorter and warmer winters.³⁹ These warming conditions are even forcing events at the World Cup to be cancelled.⁴⁰ Because of the shorter winters,

28. *Id.* (the “toolkits” provided information to help assist countries begin an implementation process to help support the IYM).

29. *Id.* at 2-3.

30. *Id.* at 4.

31. *Global Warming Triggers Flood Threat*, *supra* note 22.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. Associated Press, *Advancing Water Poses Threat to Eskimo Villages*, N.Y. TIMES, Dec. 27, 2006, available at <http://www.nytimes.com/2006/12/27/us/27alaska.html>.

37. *Id.*

38. See, e.g., *UN Reports Global Warming Effects on Ski Resorts*, CHINA DAILY, Dec. 3, 2003 http://www.chinadaily.com.cn/en/doc/2003-12/03/content_287005.htm [hereinafter *UN Reports Global Warming Effects*]; PisteHors.com Ski and Snowboard News, *The Effects of Global Warming on Skiing*, <http://pistehors.com/backcountry/wiki/Weather/The-Effects-Of-Global-Warming-On-Skiing> (last visited Nov. 16, 2008) [hereinafter *PisteHors, Effects of Global Warming on Skiing*].

39. See, e.g., *PisteHors, Effects of Global Warming on Skiing*, *supra* note 38; Isabel Teotonio et al., *Blue Mountain Lays Off 1300*, TORONTO STAR, Jan. 6, 2007, <http://www.thestar.com/News/article/168483>.

40. *Hopes of a Snowy Winter Ski Season Melt Away*, SWISSINFO.CH, Dec. 4, 2006, <http://www.swiss>

many ski resorts depend on artificial snow to extend their ski seasons and maintain a profit.⁴¹ For smaller resorts, producing snow is often too much of an economic burden to bear because their profits are simply incomparable with those of larger resorts that can afford to produce artificial snow.⁴²

On the other hand, some resorts look forward to a promising future.⁴³ Many ski resorts are still expanding their operations despite dismal snowfall amounts in recent seasons.⁴⁴ Furthermore, many loyal resort goers continue to insist that the lack of snowfall in recent years could very well be cyclical, citing record highs and lows in just the past two decades.⁴⁵ Consistent with a persistent optimism found among the locals of ski resorts,⁴⁶ the winter of 2007-2008 began with epic snowfall in the Western U.S. For example, Kirkwood Mountain, which is located near South Lake Tahoe, California, recorded over 400 inches of snow by the end of February 2008.⁴⁷ This surpassed the entire 2006-2007 season, which only resulted in 376 total inches.⁴⁸ Because of this snowfall, some would argue global warming is not an issue at all; however, ski resorts driven to close their doors early would likely disagree.

With all of the efforts of the IYE and the IYM to raise awareness about ecotourism and the fragility of mountain ecosystems, the major question is, has there been a significant impact on community—even global—awareness? It appears that there has.⁴⁹ As a result of the IYE, several of the participating countries⁵⁰ continue to

info.org/eng/front/detail/Hopes_of_a_snowy_winter_ski_season_melt_away.html?siteSect=105&sid=7316986&cKey=1165240249000&ty=st (2006-2007 World Cup women's alpine ski events in St. Moritz, Switzerland scheduled for December 2006 cancelled due to lack of snow); *St. Moritz Cancels Alpine Ski Races*, CNN.COM, Nov. 25, 2006, <http://edition.cnn.com/2006/SPORT/11/25/skiing.stmoritz/index.html> (men's events at the beginning of the season scheduled to be held in Soelden, Austria were cancelled due to lack of snow).

41. See Timothy Hildebrandt, Op-Ed., *Even Fake Snow Can't Disguise Real Problems in China*, CHI. TRIB., Mar. 2, 2004, reprinted in Woodrow Wilson International Center for Scholars, http://www.wilsoncenter.org/index.cfm?fuseaction=news.print&news_id=62079&stoplayout=true (highlighting how resorts in China and elsewhere depend on manmade snow).

42. *UN Reports Global Warming Effects*, *supra* note 38.

43. See Jen Ross, *Mountain of Money: Chile's Ski Resorts Spend Big To Make More Money on Foreign Vacationers*, LATIN TRADE, Nov. 2005, http://findarticles.com/p/articles/mi_m0BEK/is_11_13/ai_n15866980.

44. See, e.g., E-mail from Kirkwood Mountain Resort, to Audrey Kelm, Law Student, University of the Pacific, McGeorge School of Law (Oct. 4, 2007, 17:46 PDT) (on file with author) (Kirkwood's Expedition Lodge broke ground on a new residential development at the base of the mountain slated for completion in 2009 despite less than 400 inches of snowfall the previous season when the posted yearly average on the resort's website is over 600 inches).

45. John W. Anderson, *Shortage of Snow Leaves Alps Buried in Debate*, WASH. POST FOREIGN SERVICE, Jan. 21, 2007, at A15, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/20/AR2007012001472.html>.

46. See, e.g., Jeffrey Weidel, *What's New for the 2008 Ski Season?*, ROCKLIN & ROSEVILLE TODAY, Nov. 30, 2007, http://www.rocklintoday.com/news/templates/community_news.asp?articleid=5690&zoneid=4.

47. E-mail from Kirkwood Mountain Resort to Audrey Kelm, Law Student, University of the Pacific, McGeorge School of Law (Feb. 24, 2008, 15:49 PDT) (on file with author).

48. Kirkwood Mountain Resort, *Kirkwood Mountain Facts*, http://www.kirkwood.com/winter/mountain_facts.php (last visited Mar. 5, 2008).

49. See generally *Assessment of the Results Achieved*, *supra* note 11.

recognize ecotourism by the establishment of a national plan for ecotourism development.⁵¹ The objective of raising awareness about the benefits of ecotourism endures as well.⁵² Some countries reported implementing campaigns consisting of educating tourism employees, teachers, and students about ecotourism, clean-up campaigns, public marches, and cycling or hiking events.⁵³ Perhaps the most important measure of success is that twenty percent of countries reporting to the IYE have indicated a strong likelihood of implementing specific legislation based on ecotourism principles.⁵⁴

The IYM has also proven to have lasting positive effects regarding awareness of the mountain ecosystem.⁵⁵ These lasting effects have been realized with the help of organizations such as Mountain Partnership, launched at the 2002 World Summit for Sustainable Development.⁵⁶ Mountain Partnership is a coalition of members⁵⁷ who “support positive change in mountain areas.”⁵⁸ Recognizing the diverse needs for different mountain regions, Mountain Partnership advocates for an ad hoc-type analysis of each area to be developed.⁵⁹ This means that each resort development will be analyzed according to characteristics that are unique to that specific geographic area.⁶⁰

The environment and climate are changing.⁶¹ Warmer temperatures inevitably affect mountain regions and communities as evidenced by flooding, low snowfall, and record warm winters.⁶² These circumstances are forcing ski resorts to rethink whether to develop at all, and to explore new construction alternatives when there is development.⁶³ With recent efforts to raise awareness of the fragile state of mountain

50. *Id.*

51. *Id.* at 22.

52. *Id.* at 16.

53. *Id.*

54. *Assessment of the Results Achieved*, *supra* note 11, at 17.

55. *See, e.g.*, Mountain Partnership, Welcome, *supra* note 25 (describing how Mountain Partnership has brought countries together to develop knowledge and provide assistance for those that need it).

56. *Id.*

57. Mountain Partnership, Members of the Mountain Partnership, http://www.mountainpartnership.org/members/members_en.asp (last visited Nov. 16, 2008) (the members include 49 countries, 16 inter-governmental organizations and 90 major groups and NGO's).

58. Mountain Partnership, Welcome, *supra* note 25.

59. Mountain Partnership, Tourism, <http://www.mountainpartnership.org/issues/tourism.html> (last visited Nov. 16, 2008).

60. *Id.*

61. *See* NAT'L INST. OF ECON. & INDUS. RESEARCH, SUMMARY REPORT: THE ECONOMIC SIGNIFICANCE OF THE AUSTRALIAN ALPINE RESORTS 7 (2006), available at http://www.arcc.vic.gov.au/documents/aes_summaryreporttext.pdf; *see also* Keep Winter Cool, Climate Facts, http://www.keepwintercool.org/climate_facts.html [hereinafter KWC, Climate Facts].

62. NAT'L INST. OF ECON. & INDUS. RESEARCH, *supra* note 61, at 8 (four-season strategies are being explored so that resorts can be used year-round).

63. *Id.*

ecosystems,⁶⁴ the world can look forward to an environment that embraces and fosters sustainable development.

C. Ski Resorts As An Ecotourist Attraction

The prefix “eco-” has a buzz-worthy appeal that marketers are often eager to exploit.⁶⁵ This is precisely why TIES advocates the use of certification programs.⁶⁶ Still, there are no set principles that clearly distinguish what is really worthy of being labeled an “ecotourist attraction.”⁶⁷ Despite the lack of a precise definition, statistics show that ecotourism has been growing twenty to thirty-four percent per year since 1990 globally.⁶⁸ So how do ski resorts fit into this category?

To begin with, several ski resorts take part in certification programs such as Sustainable Slopes and Keep Winter Cool that focus on environment-friendly and sustainable strategies to lower the impact on the surrounding environment.⁶⁹ This is discussed in further detail below.

Tourists have a heightened awareness of responsible travel. For example, more than two-thirds of U.S. and Australian travelers believe that it is a hotel’s duty to protect the environment.⁷⁰ Further, ninety percent of British tourists share this same belief and seventy percent of those travelers are even willing to pay up to \$150 more to stay two weeks at an environmentally-aware hotel.⁷¹ Such powerful statistics must not be ignored. If ski resorts expect to partake in tourism growth, they must address travelers’ concerns and expectations by taking an active role in preserving the environment.

Whether or not ski resorts desire to take a proactive role in conserving the mountain environment, it appears that it is in their best economic interest to do so. Establishing ecotourism legislation will provide guidelines for resorts to follow, which will likely lead to increased profitability for the resorts from

64. See, e.g., Mountain Partnership, Welcome, *supra* note 25 (this organization promotes awareness and action to protect mountain ranges through the efforts of endorsing countries).

65. See, e.g., The International Ecotourism Society, Ecotourism and Certification, http://www.ecotourism.org/webmodules/webarticlesnet/templates/eco_template.aspx?articleid=46&zoneid=8 (last visited March 4, 2008) [hereinafter TIES, Ecotourism and Certification]; Gene C. Sager, *Ecotourism: I Came, I Saw, But I Did Not Conquer*, NATURAL LIFE MAG., <http://www.articlegarden.com/Article/Ecotourism—I-Came-I-Saw-But-I-Did-Not-Conquer/1478> (last visited March 4, 2008).

66. TIES, Ecotourism and Certification, *supra* note 65.

67. *Id.* (stating that the use of certification programs helps distinguish true ecotourist attractions from places that use “eco-” for marketing).

68. THE INTERNATIONAL ECOTOURISM SOCIETY, FACT SHEET: GLOBAL ECOTOURISM 2, available at http://www.ecotourism.org/webmodules/webarticlesnet/templates/eco_template.aspx?articleid=15&zoneid=2 (follow “Global Ecotourism” hyperlink) (last visited Nov. 16, 2008) [hereinafter TIES, FACT SHEET: GLOBAL ECOTOURISM].

69. For examples of resorts that have taken part in such certification programs, see SUSTAINABLE SLOPES CHARTER, *supra* note 3, at 18-19.

70. TIES, FACT SHEET:GLOBAL ECOTOURISM, *supra* note 68.

71. *Id.*

increasing tourism and economic growth for the surrounding communities while vigorously protecting the mountain ecology.

III. CURRENT LAWS GOVERNING MOUNTAIN LAND USE

Local communities will be affected by the development of ski resorts. However, a vast majority of governments give little guidance to assisting ski resort developers in achieving an optimal balance with the environment and mountain communities.⁷² This is especially shocking in many European countries. The European Commission found that of the fifteen Member States analyzed, mountain municipalities cover approximately forty percent of the total area and nearly twenty percent of the population resided in these communities.⁷³

On the other hand, a few countries have already recognized the need for mountain-specific legislation.⁷⁴ Italy's 1948 Constitution cited specific needs of mountainous regions and in 1994 Italy passed laws exclusively governing mountains.⁷⁵ France passed a mountain law in 1985 to regulate tourism facilities and the management of ski resorts.⁷⁶ These are promising examples that other governments should follow.

Most current laws regulate the development of government-owned land and some consider environmental impacts of proposed developments.⁷⁷ Certain processes, including obtaining permits for the rights to develop on federal land, are found in nations across the world.⁷⁸ However, there is little, if any, mountain-specific legislation on a national or international level that aims to protect the ecological environment of mountain ranges while promoting sustainable development and ecotourism.⁷⁹ Therefore, ski resort developers must adhere to general laws with little guidance for sustainable development.

72. See Nordregio: Nordic Centre for Spatial Dev., *supra* note 11 (claiming a lack of data for a statistical analysis of developing policies in European mountain regions); A. CASTELEIN ET AL., *FAO LEGISLATIVE STUDY, MOUNTAINS AND THE LAW, EMERGING TRENDS 1* (U.N. Food and Agric. Org. 2006), available at <http://www.mountainpartnership.org/common/files/pdf/LS75ERev1.pdf>; see generally Mountain Wilderness—International, *Implementing Knowledge—Benefiting From Regional Potentials*, June 11, 2007, <http://mountainwilderness.org/index.php?rub=171&art=60> (commenting on the general lack of knowledge in existing European laws of the climate and environment in relation to sustainability).

73. Nordregio Nordic Centre for Spatial Dev., *supra* note 11 (to be considered a “mountain municipality,” a municipality was required to have at least fifty percent of its area within an area delineated as “mountain;” several parameters were utilized to define what area would be considered “mountain” to obtain accurate statistical data).

74. *Id.*

75. *Id.*

76. CASTELEIN ET AL., *supra* note 72, at 31; see also Nordregio Nordic Centre for Spatial Dev., *supra* note 11, at 151.

77. See, e.g., 42 U.S.C. § 4331 (2000).

78. CASTELEIN ET AL., *supra* note 72, at Foreword.

79. *Id.*

A. Existing Regulations and Legislation

Ski resorts exist throughout the world, but few of the countries that are home to these tourist destinations provide guidance for development and expansion. The process that a ski resort in the U.S. must go through when looking to develop a new resort or expand an existing one is examined below. Also, because France and Italy have enacted legislation at a national level,⁸⁰ the mountain legislation for each of these countries is considered. Similarities and differences exist, but by combining certain elements of each, a foundation may be laid for ecotourism legislation.

B. The United States

In the U.S., the National Environmental Policy Act ("NEPA") was enacted by Congress in 1969 to address the need to maintain environmental welfare while focusing on the economic and social needs of present and future generations.⁸¹ To achieve the harmony of man and nature, NEPA requires that government agencies, first, take into account all impacts of a proposed development, and, second, make public the potential environmental impacts of proposed developments.⁸² In meeting these mandates, an agency is required to prepare an Environmental Impact Statement ("EIS").⁸³

The agency that is generally in charge of formulating an EIS for ski resort development is the U.S. Forest Service ("USFS").⁸⁴ The USFS prepares an EIS in separate phases.⁸⁵ First, the USFS starts "scoping," which invites input from the public and other agencies to address environmental implications, and distinguish specific issues that will be dealt with in the EIS.⁸⁶ Afterwards, a draft statement will be issued "in accordance with the scope decided upon in the scoping process."⁸⁷ This draft is then submitted to the public for purposes of notice and obtaining feedback before a final EIS is prepared.⁸⁸ If an essential component of the development proposal is altered or new information relevant to environmental concerns is obtained after the final EIS is issued, the USFS is authorized to issue a supplemental EIS.⁸⁹ Environmental groups often attack USFS development

80. CASTELEIN ET AL., *supra* note 72, at 17.

81. 42 U.S.C. § 4331(a) (2000).

82. Citizens' Comm. to Save Our Canyons v. U.S. Forest Serv., 297 F.3d 1012 (10th Cir. 2002).

83. 42 U.S.C. § 4332(2)(C) (2000).

84. Sierra Club v. Morton, 405 U.S. 727, 729 (1972) ("The United States Forest Service . . . is entrusted with the maintenance and administration of national forests . . .").

85. 40 C.F.R. § 1502.9 (2006); *see also* Citizen's Comm. to Save Our Canyons, 297 F. Supp. at 1022.

86. 40 C.F.R. § 1501.7 (2006).

87. *Id.* § 1502.9(a).

88. *Id.* §§ 1502.9(b), 1503.1.

89. *Id.* § 1502.9(c)(1); *see also* Citizen's Comm. to Save Our Canyons, 297 F. Supp. at 1012.

proposals during the EIS and approval process for improper land use and dangers posed to animal habitats.⁹⁰

Although current U.S. statutes provide some guidance for resort developers, they leave room for a great deal of controversy. The USFS enjoys a large amount of discretion when deciding whether to approve or deny a development proposal.⁹¹ Environmental groups often attack and debate the decision, although courts frequently defer to the USFS's conclusion.⁹² Statutes currently enacted provide a general guidance when weighing environmental interests in land-use regulation.⁹³ If ecotourism legislation were enacted that specifically addressed the careful balance of the environment and resort development, there would be less debate regarding ski resort proposals.

C. France

France is one of the few countries that has established mountain-specific laws at a national level.⁹⁴ Possibly the most significant act passed by the French Parliament is Act 85-30 of 1985 ("Mountains Act").⁹⁵ The Mountains Act replaced a decree⁹⁶ that recognized a need for better protection of the French mountains.⁹⁷ The Act is comprised of over one hundred Articles under seven Titles,⁹⁸ covering a broad range of issues including agriculture, tourism, forests, water, and soil.⁹⁹

90. See, e.g., *Citizen's Comm. to Save Our Canyons*, 297 F. Supp. at 1012 ("At issue is whether the Forest Service complied with the National Environmental Policy Act" NEPA only applies when the federal government considers a project. It commonly applies because most ski areas fall within national forest lands); *Colorado Env'tl. Coalition v. Dombeck*, 185 F.3d 1662 (10th Cir. 1999) ("[V]arious groups that promote the protection of the environment . . . present . . . on appeal . . . whether the Forest Service violated the National Environmental Policy Act, 42 U.S.C. § 4332 (2000), and its implementing regulations . . . in analyzing the environmental impacts of the proposed expansion.").

91. Jay Wilkinson, *The New Competing Uses: Balancing Recreation with Preservation in Utah's Wasatch Mountains*, 24 J. LAND RESOURCES & ENVTL. L. 561, 585 (2004) ("[T]he Forest Service will ultimately have the greatest say as to how recreation is managed in the Wasatch.").

92. *Citizen's Comm. to Save Our Canyons*, 297 F. Supp. at 1023 (the court must find the decision of the USFS to be arbitrary and capricious to overturn a conclusion).

93. See, e.g., 42 U.S.C. § 4331 (2000).

94. Nordregio Nordic Centre for Spatial Dev. *supra* note 11, at 151.

95. Law No. 85-30 of Jan. 1985, *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], Jan. 10, 1985, p. 320, available at <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000317293&fastPos=1&fastReqId=1171892581&categorieLien=id&oldAction=rechTexte>; E-mail from Laurent Burget, Pole Environment, to Audrey Kelm, Law Student, University of the Pacific, McGeorge School of Law (Feb. 17, 2007, 07:53 PDT) (on file with author) ("la loi montagne de 1985").

96. Decree 77-1281 of Nov. 22, 1977, *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], Nov. 24, 1977, p. 5513; CASTELET ET AL., *supra* note 72, at 61.

97. CASTELET ET AL., *supra* note 72, at 61.

98. *Id.*

99. *Id.* at 65-70.

Outlined in the Act's tourism chapter are specific policies that preside over management of ski lifts and runs.¹⁰⁰ These policies were then incorporated into the Town Planning Code¹⁰¹ on matters relating to land use and new complexes.¹⁰² The process for development approval is quite similar to processes seen elsewhere, such as the U.S.¹⁰³ The Town Planning Code¹⁰⁴ sets out a procedure that involves economic and environmental studies that must be submitted to a committee for approval before construction begins.¹⁰⁵

First an application is submitted to the designated municipal department.¹⁰⁶ The application is then given to a committee for initial examination.¹⁰⁷ Upon approval, the general public is permitted to comment.¹⁰⁸ Finally, the Prefect¹⁰⁹ of the region grants authorization¹¹⁰ after examining potential ecological hazards pursuant to the Environment Code.¹¹¹

The implementation of the Mountain Act is a tremendous step in the advancement of ecotourism laws regarding mountainous regions. However, molding the Mountain Act into other countries' codes may not be the best solution because existing procedures will remain the same.¹¹² Regardless, French mountain law recognizes the significance of preserving mountainous regions through creating a legislative framework that addresses tourism, something that most other countries have yet to do.¹¹³

D. Italy

Italy is also a leader in mountain law.¹¹⁴ In fact, Italy recognized the ecology of mountain regions in its Constitution as early as 1947.¹¹⁵ Italy further sets itself

100. *Id.* at 31.

101. C. DE L'URBANISME art. L145-1 (panning code implementing Law No. 85-30 in the mountain areas).

102. CASTELEIN ET AL., *supra* note 72, at 69.

103. 40 C.F.R. § 1502.9 (2006); *see also* Citizens' Comm. to Save Our Canyons v. U.S. Forest Serv., 297 F.3d 1012, 1022 (10th Cir. 2002).

104. C. DE L'URBANISME art. L111-1-1, L145-7.

105. *See, e.g.*, E-mail from Laurent Burget, Pole Environment, to Audrey Kelm, Law Student, University of the Pacific, McGeorge School of Law (Feb. 17, 2007, 07:53 PDT) (on file with author) (Unité Touristique Nouvelle).

106. C. DE L'URBANISME art. R145.

107. *Id.*

108. *Id.*

109. BLACK'S LAW DICTIONARY 1217 (8th ed. 2004) ("n. 1. A high official or magistrate put in charge of a particular command, department, or region.").

110. CASTELEIN ET AL., *supra* note 72, at 70.

111. Act No. 2005-157 of Feb. 2005, art. 190 V, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Feb. 24, 2005.

112. *Compare* C. DE L'URBANISME art. R145 with 40 C.F.R. § 1502.9 (2006).

113. CASTELEIN ET AL., *supra* note 72, at 17.

114. Nordregio Nordic Centre for Spatial Dev., *supra* note 11, at 151.

115. CASTELEIN ET AL., *supra* note 72, at 81 (the Constitution was effected in 1948).

apart from other nations by establishing a unique approach of distributing power amongst municipalities to regulate the vast mountainous regions.¹¹⁶ Act 1102 of 1970 (“Act 1102”)¹¹⁷ disperses the authority to create legislation specific to the needs of each locality among municipalities and other entities.¹¹⁸ Act 1102 essentially creates another form of authoritative government called “Mountain Communities” that are created according to geographic and demographic criteria.¹¹⁹ The Communities are responsible for identifying socio-economic issues and using funds provided by the National Mountain Fund¹²⁰ to achieve goals concerning mountain zones.¹²¹

In meeting these objectives, the Communities are obliged to weigh developmental and environmental considerations.¹²² Communities are specifically required to consider water balance, natural and cultural heritage, and enhancement of the environment when deliberating on a development proposal.¹²³

Italy’s distinctive approach of forming governmental bodies for the sole purpose of ensuring sustainable development and ecotourism in mountain regions is progressive, but it also has its faults. Having too many government entities involved in the process may create conflicts of law and authority.¹²⁴ However, the fact that a separate authority has been created exclusively to promote socio-economic interests in mountain regions is an incredible example for other countries to follow.

E. Other Considerations

In addition to national legislation, Member States of the European Union (EU) must also abide by the EU’s enacted directives.¹²⁵ If a Member does not fulfill an obligation under these directives, it may be brought in front of the European Court of Justice.¹²⁶ This happened to the Italian Republic in 2007 for allowing the expansion of a ski resort after a negative environmental assessment had been conducted in violation of Directive 92/43/EEC.¹²⁷ The Court ultimately held that the Italian Republic violated

116. COST. art. 117 (as amended in 2001); *see also* CASTELEIN ET AL., *supra* note 72, at 83.

117. Legge N. 1102, Dec. 3, 1971, Gazz. Uff., Dec. 23, 1971, n. 324, Lex FAOC032716.

118. CASTELEIN ET AL., *supra* note 72, at 83.

119. *Id.* at 84.

120. Legge N. 97, January 31, 1994, Gazz. Uff., Feb. 9, 1994, n. 33, ordinary supplement n.24, Lex FAOC039759 (created the National Mountain Fund).

121. CASTELEIN ET AL., *supra* note 72, at 87.

122. *Id.*

123. Legge N. 97, Jan. 31, 1994, Gazz. Uff., Feb. 9, 1994, n. 33, ordinary supplement n.24, Lex FAOC039759.

124. *Id.*

125. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 3, *incorporating changes made by* Treaty on European Union, Feb. 7, 1992, 31 I.L.M. 247.

126. *See, e.g.*, Case C-304/05, Comm’n of the European Communities v. Italian Republic, 2007 E.C.R. 00, CELEX 62005J0304 (Italian Republic charged with violating Directives 92/43/EEC and 79/409/EEC).

127. *Id.* ¶¶ 65, 69, 71, 73, 94.

Articles 6(2) and (3) of the Directive for not composing the proper assessments¹²⁸ with definitive findings as to environmental effects of the resort expansion.¹²⁹

Although there are multiple layers of existing laws that ensure preservation of natural environments, there is almost no regulation that promotes preservation *in addition to* promoting ecotourism in mountains.¹³⁰ The interplay of preservation of mountains while maintaining a strong economic mountain community is essential. Countries with legendary ski attractions, such as Switzerland and Italy, are showing stable or declining mountain tourism figures.¹³¹ The populations that surround ski resorts appear to be declining because of decreased job opportunities.¹³² If passed, ecotourism laws would balance ski resort development and promote tourism while still preserving the unique mountain environment. Thus, mountain economies would be stimulated while achieving sustainable development.

F. Voluntary Guidelines

Globally, many ski resorts recognize the urgent need for eco-friendly guidelines governing mountain use and development.¹³³ These resorts have chosen to follow a voluntary course of action instead of waiting for appropriate legislation.¹³⁴ Several organizations¹³⁵ have taken a proactive role by crafting their own guidelines and principles in response to the delicate state of mountain environments.¹³⁶ Ski resorts then *choose* to follow these guidelines and conduct research to further the initiatives of the eco-conscious organizations.¹³⁷ In return for compliance with the guidelines, resorts often bear a badge that signifies their commitment to environment awareness.¹³⁸ An underlying connection with ecotourism is clear in each organization's mission to protect the environment while providing a place for individuals to escape urban environments and appreciate the beauty of mountains.

128. *Id.* ¶¶ 65, 69 (the Court held that a study and resulting report had “gaps and lack[ed] complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed”).

129. *Id.*

130. Nordregio Nordic Centre for Spatial Dev., *supra* note 11, at 159.

131. *Id.* at 158.

132. *Id.* at 176.

133. Sachs, *supra* note 4.

134. *See, e.g.*, SUSTAINABLE SLOPES CHARTER, *supra* note 3, at 18-19.

135. *See, e.g.*, SUSTAINABLE SLOPES CHARTER, *supra* note 3; ASAA, *supra* note 3.

136. *See, e.g.*, SUSTAINABLE SLOPES CHARTER, *supra* note 3, at 7-14 (“Voluntary Environmental Principles for Ski Area Planning, Operations and Outreach”).

137. *See, e.g., id.* at 2.

138. *See, e.g.*, Kirkwood Mountain Resort, Environmental Initiatives & Sustainability Measures, <http://www.kirkwood.com/winter/environmentalindex.php> (last visited Jan. 5, 2007); Resort Information, Perisher Blue and the Environment, <http://www.perisherblue.com.au/winter/info/environment.html> (last visited Jan. 5, 2007); Squaw Valley USA, <http://www.squaw.com> (last visited Jan. 5, 2007).

G. Convention on the Preservation of the Alps

Perhaps the closest thing to ecotourism legislation in mountainous environments is the Convention on the Preservation of the Alps ("Alpine Convention") signed by seven countries in Salzburg on November 7, 1991.¹³⁹ The purpose of the Alpine Convention was to curb hazardous pollution and the injurious effect tourism was having on the Alpine region of Europe.¹⁴⁰ Through the Alpine Convention, mountain communities hope to achieve a harmonization of local economies and preservation of the Alpine ecology.¹⁴¹ Signing parties meet every other year¹⁴² to exchange information, address common regional economic and environmental issues,¹⁴³ and to ratify protocols¹⁴⁴ when an agreement is reached.¹⁴⁵ One such proposed protocol dealt specifically with tourism.¹⁴⁶ The stated objective of the protocol deals with maintaining sustainable development in the Alpine region while encouraging tourism that is in line with environmentally-friendly strategies.¹⁴⁷ In addition, economic incentives and strategies to achieve these objectives are outlined with a specific article dedicated to ski lifts.¹⁴⁸ A protocol such as this, if signed and implemented, has the potential to place the ski industry and other mountain destinations at the forefront of ecotourism.

This type of agreement between nations presents several benefits.¹⁴⁹ Large governing bodies such as the United Nations and the European Union have several sectors governing a multitude of issues, which may lead to an over-extension of resources.¹⁵⁰ By designating a single body to regulate the specific issue of ecotourism, nations will be able to more effectively address urgent

139. Convention on the Protection of the Alps, Nov. 7, 1991, 31 I.L.M. 767 (the seven countries were Austria, France, Germany, Italy, Liechtenstein, Switzerland, and Yugoslavia (now Slovenia)).

140. Caldwell, *supra* note 23, at 137.

141. Convention on the Protection of the Alps, *supra* note 139, at 769. "The contracting parties . . . shall maintain a comprehensive policy of protection and preservation of the Alps, taking into account . . . the interests of . . . Alpine regions, as well as those of the European Economic Community in using resources wisely and exploiting them in a sustainable way." *Id.* art. 2(1).

142. *Id.* art. 5(2).

143. *Id.* art. 4(2)-(3).

144. See, e.g., Protocol on the Implementation of the Alpine Convention of 1991 in the Field of Tourism, Oct. 16, 1998, 2005 O.J. (L 337) 43.

145. Convention on the Protection of the Alps, *supra* note 139, art. 11(1)-(4).

146. Protocol on the Implementation of the Alpine Convention of 1991 in the Field of Tourism, *supra* note 144.

147. *Id.* art. 1.

148. *Id.* art. 12 (article 12(1) states that parties to the treaty will go beyond economic and safety needs by bearing in mind ecological and countryside considerations. 12(2) addresses replacing misused and unused chairlifts with new ones (as opposed to just further developing and leaving them to waste) and runs no longer used being returned to its natural state).

149. Caldwell, *supra* note 23, at 154.

150. *Id.*

concerns of interested regions and entities.¹⁵¹ Furthermore, more precise regulations can be implemented and enforced as opposed to general environmental regulations that do not address the specific needs of mountain ranges.¹⁵²

Despite the apparent benefits of the Alpine Convention, it is not without faults.¹⁵³ A frequently repeated criticism is the failure to implement protocols because some countries refuse to sign and ratify them.¹⁵⁴ These countries refuse to sign the protocols because they would conflict with existing national legislation and disturb current development plans.¹⁵⁵ Without the implementation of protocols, the Alpine Convention seems to be only a charade for countries to pretend concern for the protection of Alpine regions.¹⁵⁶

Perhaps this disparagement is due to the fact that each country has its own national interests,¹⁵⁷ making it hard to collaborate and agree on a protocol that will benefit all countries. However, in the U.S. this would not be the case if federal regulation were stricter and preempted state regulation. By establishing federal legislation, and a separate enforcement agency, the problems that can occur when regulations attempt to govern several countries or states with differing economies and interests would not be a concern.

Besides the Alpine Convention, other avenues discussed below are being pursued to ensure the preservation of mountain ecology. Because they have such a large stake in any new legislation, ski resorts are heading several of the organizations responsible for mountain ecotourism and conservation.

H. Keep Winter Cool

Keep Winter Cool is a partnership formed in 2003 between the Natural Resources Defense Council ("NRDC") and the National Ski Areas Association ("NSAA")¹⁵⁸ aimed at controlling global warming.¹⁵⁹ With the support of scientists and environmental specialists of the NRDC and backing from the NSAA, Keep Winter Cool educates ski resort management about what can be done to curb the effects of global warming.¹⁶⁰

151. *Id.*

152. *Id.*

153. *Id.* at 145.

154. *Id.*

155. *Id.* (in 1994 France, Italy, and Switzerland refused to sign a protocol regulating transportation and tourism).

156. *Id.*

157. *Id.* (one given national objective is industrial development).

158. Press Release, National Ski Areas Association and The National Resources Defense Council, Ski Industry Teams With Top Environmental Group NRDC on New "Keep Winter Cool" Campaign to Fight Global Warming (Feb. 19, 2003), available at <http://www.nrdc.org/media/pressreleases/030219.asp>.

159. KWC, Winter's Short Enough Already, *supra* note 8.

160. Keep Winter Cool, About Us, <http://www.keepwintercool.org/about.html> (last visited Jan. 6, 2007).

Highlighting global warming is something that captures the attention of ski resorts because of their dependence on snowfall.¹⁶¹ Scientists acting for Keep Winter Cool estimate that winters will continue to become shorter and warmer if nothing is done to reverse the warming climate.¹⁶² This is especially true at higher elevations, which are most sought after by skiers and snowboarders looking for the best powder.¹⁶³

However, there are some indications that this warming trend may be shifting.¹⁶⁴ Resorts are using the latest energy-efficient methods and working with Keep Winter Cool to pass legislation encouraging the use of renewable resources such as wind and solar energy.¹⁶⁵ Sixty-three U.S. ski resorts¹⁶⁶ support the U.S. Climate Action Partnership,¹⁶⁷ which proposes legislation requiring emission reduction of sixty to eighty percent by 2050.¹⁶⁸ Many ski resorts are leading by example; well over fifty resorts purchase renewable energy and over twenty are powered entirely by green, renewable power.¹⁶⁹

I. National Ski Areas Association: Sustainable Slopes

Sustainable Slopes, overseen by the NSAA, first developed its Environmental Charter in 2000.¹⁷⁰ The Charter, which outlines guiding principles for ski resort ecotourism, was revised in 2005 to keep up with technological and managerial developments.¹⁷¹ Sustainable Slopes' mission statement, achieved by adherence with the principles outlined in the Charter, reads: "We are committed to improving environmental performance in all aspects of our operations and managing our areas *to allow for their continued enjoyment by future generations.*"¹⁷² Recognizing that not all ski resorts are capable of implementing identical strategies due to size, unique environment, and accessibility to resources, several different options are offered so resorts of all sizes are able to

161. See, e.g., Keep Winter Cool, Ski Area Action, <http://www.keepwintercool.org/skiareaaction.html> (last visited Feb. 4, 2008) [hereinafter KWC, Ski Area Action] (ski resorts endorsing Keep Winter Cool are "setting the clean energy example" by taking proactive steps to improve energy efficiency at the resorts).

162. KWC, Climate Facts, *supra* note 61.

163. *Id.*

164. The Green Room, The Ski Industry Environmental Database, http://www.nsaa.org/nsaa/environment/the_greenroom/index.asp?mode=greenroom&topic=T07 (last visited Feb. 4, 2008) (posts the latest developments from U.S. ski resorts that have improved several different types of efficiency at the resorts).

165. KWC, Ski Area Action, *supra* note 161.

166. Press Release, National Ski Areas Association, 458 U.S. Ski Resorts in Operation During 2006-2007 Season, *available at* <http://www.nsaa.org/nsaa/press/operating-ski-areas.asp>.

167. Letter from Endorsing Resorts to Senator Barbara Boxer, Chairwoman, Env't and Public Works Comm., and Representative John Dingell, Chairman, House Energy & Commerce Comm. (May 25, 2007), *available at* <http://www.keepwintercool.org/pdfs/USCAPsupportletter.pdf>.

168. KWC, Ski Area Action, *supra* note 161.

169. Letter from Endorsing Resorts to Senator Barbara Boxer, *supra* note 167.

170. SUSTAINABLE SLOPES CHARTER, *supra* note 3, at 2.

171. *Id.*

172. *Id.* (emphasis added).

achieve each of the outlined principles.¹⁷³ This enables all resorts to share in the responsibility of maintaining a sustainable environment.

With a clear understanding of the importance of sustainable development, Sustainable Slopes boasts 181 participating resorts,¹⁷⁴ well over a quarter of the total ski areas in the U.S.¹⁷⁵ These resorts, which abide by the principles, are instrumental to achieving the mission of Sustainable Slopes but are not alone responsible for the success and progressive standards set forth in the charter.¹⁷⁶

Partnering organizations are essential to the research and development that leads to the strategies and guidelines outlined in the charter.¹⁷⁷ The U.S. Department of Energy, the U.S. Forest Service, and Wildlife Habitat Council are just a few of the organizations that provide expertise to Sustainable Slopes.¹⁷⁸

J. Australian Ski Areas Association

Sustainable Slopes and the NSAA's initiatives have made such a successful impact that other organizations have taken notice. For example, the Australian Ski Area Association ("ASAA") seeks to accomplish essentially the same environmental goals as the NSAA.¹⁷⁹ Its Environmental Mission Statement is identical to that of the NSAA, and in turn, Sustainable Slopes.¹⁸⁰

The ASAA does not focus solely on eco-friendly policies to be implemented by each member.¹⁸¹ ASAA,¹⁸² strives to ensure that the government and general public understand the importance of issues such as skier and snowboarder safety and the economic significance of snow tourism.¹⁸³ ASAA also makes certain that environmental provisions are established and followed, and signs charters such as Keep Winter Cool, which illustrates the ASAA's commitment to ensuring that ski resorts leave as little of a footprint as possible on the environment.¹⁸⁴

Organizations and ski resorts are making substantial strides to preserve the environment and promote the idea of eco-tourism. Almost certainly, the chief problem with voluntary guidelines is the lack of repercussions for a resort that fails to adhere to the guiding principles.¹⁸⁵ There are only limited potential

173. *Id.*

174. *Id.* at 18-19.

175. Press Release, National Ski Areas Association, *supra* note 166.

176. SUSTAINABLE SLOPES CHARTER, *supra* note 3, at 2.

177. *Id.* at 3.

178. *Id.*

179. *Id.*

180. *Id.*

181. Australian Ski Areas Association, About ASAA, http://www.asaa.org.au/templates/asa/page/page_standard.php?secID=793 (last visited Oct. 19, 2007) [hereinafter About ASAA].

182. *Id.*

183. See NAT'L INST. OF ECON. & INDUS. RESEARCH, *supra* note 61, at 7.

184. About ASAA, *supra* note 181.

185. E-mail from Andrew Ramsey, Chief Executive Officer, Australian Ski Areas Association, to Audrey Kelm, Law Student, University of the Pacific, McGeorge School of Law (Oct. 15, 2007, 11:07 PDT)

consequences for failure to abide by outlined principles such as taking away the seal given by an organization and criticism from other parties like the media.¹⁸⁶ The Alpine Convention has been targeted for similar deficiencies.¹⁸⁷ It has been suggested that the Convention merely “pays lip service” to environmental issues. This is because countries that signed the Convention have refused to sign protocols addressing tourism¹⁸⁸ because it would frustrate the individual country’s industrial development.¹⁸⁹ This is further indication of the necessity of concrete laws regulating and promoting sustainable development and ecotourism in mountainous environments.

IV. ENVIRONMENTAL GROUPS V. THE CORPORATE GIANT

A. *Environmental Group Concerns*

Ski resorts have a strong impact on the environment.¹⁹⁰ It is only natural, then, that environmental groups try to prevent harm done to the environment by ski resorts.¹⁹¹ In the U.S., environmental organizations often attack the EIS of a proposal.¹⁹² Some of the most powerful and common criticisms relating to ski resort development involve water usage, destruction to wildlife habitats, and corporate debt.

B. *Water Usage*

Ski resorts depend heavily on snow-making,¹⁹³ especially with warmer seasons and less snowfall. Therefore, water usage is a major issue. When substantial amounts of water are withdrawn from a river or lake for the purpose of making snow, it creates stress on fish and other aquatic populations.¹⁹⁴ Furthermore, when water is withdrawn from a drinking source, there are often allegations that the water quality has been compromised.¹⁹⁵

(on file with author).

186. *Id.*

187. See generally Caldwell, *supra* note 23, at 145 (noting criticism and arguments against the Alpine Convention).

188. *Id.*

189. *Id.*

190. Briggs, *supra* note 7, at 98.

191. See, e.g., Mountain Wilderness – International, <http://mountainwilderness.org> (last visited Nov. 16, 2008).

192. Briggs, *supra* note 7.

193. *Dubois v. U.S. Dep’t. of Agric.*, 102 F.3d 1273, 1278 n.3 (1st Cir. 1996) (commenting that “significantly more water” has to be pumped through the systems than is actually turned into snow in order to keep pipes from freezing and to provide pressure to force the snow out of the jets).

194. Briggs, *supra* note 7, at 99.

195. *Id.*

For example, in *Dubois v. U.S. Dept. of Agriculture*, a citizen brought suit against the USFS for granting permits to Loon Mountain Ski Area (“Loon Corp.”) to continue using water from Loon Pond for snow-making.¹⁹⁶ After criticism from the public on the initial EIS, the USFS issued its final EIS with an additional alternative to the expansion of the ski resort.¹⁹⁷ Loon Corp. decided that the sixth alternative offered in the final EIS was the best option, even though it would more than double the amount of water used from Loon Pond for snow-making.¹⁹⁸ Snow-making and drinking water supplies to the nearby town of Lincoln were expected to withdraw a total of twenty feet from the pond.¹⁹⁹ Ultimately, the U.S. Court of Appeals, First Circuit, held that the EIS statement prepared by the USFS was inadequate because it failed to explore other options after public comment.²⁰⁰

Although the lawsuit stopped Loon Corp. from using the water from Loon Pond, snow-making continues all over the world. China has experienced a considerable increase in ski area visits over the past several years.²⁰¹ The increase in visits results in an increase of snow-making. On average, Chinese ski resorts produce two feet of snow per year.²⁰² One small ninety acre resort uses twenty-seven million gallons of water throughout the year—enough to sustain 5,700 people.²⁰³ Although most of this water is returned to watershed in spring, it is estimated that up to a quarter of it can be lost due to evaporation.²⁰⁴

Water is being wasted at an alarming rate to make snow.²⁰⁵ Ski resorts are pushing back with initiatives that conserve water for snowmaking.²⁰⁶ For instance, Mountain High Resort in California has upgraded its snowmaking guns to a newer design that uses less energy and conserves water.²⁰⁷ Sustainable Slopes has also outlined ways to optimize water use for snowmaking in its charter.²⁰⁸

196. *Dubois*, 102 F.3d 1273.

197. *Id.* at 1278 (the initial EIS included five alternatives versus the final EIS that had six).

198. *Id.* at 1279 (it was estimated that 138 million gallons of water would be needed for snowmaking after the expansion was finished).

199. *Id.*

200. *Id.* at 1289-90.

201. Hildebrandt, *supra* note 41.

202. *Id.*

203. *Id.*

204. *Id.*; see also PisteHors.com Ski and Snowboard News, Savoie Ski Resorts Commit “Ecological Suicide”, <http://pistehors.com/news/ski/comments/0744-savoie-ski-resorts-commit-ecological-suicide> (last visited Feb. 26, 2008) [hereinafter PisteHors, Savoie Ski Resorts] (estimating that up to a third can be lost due to evaporation).

205. See, e.g., Hildebrandt, *supra* note 41.

206. Press Release, National Ski Areas Association, *Ski Industry Releases Annual Environmental Report*, <http://www.nsaa.org/nsaa/press/0708/ssar-2007.asp> (last visited Feb. 19, 2008) (statistics showed that in 2006, resorts were conserving 2.5% more water than in 2005, indicating an awareness and effort to reduce water waste).

207. SUSTAINABLE SLOPES, ANNUAL REPORT 2007 (July 2007), available at http://www.nsaa.org/nsaa/environment/sustainable_slopes/ssar-07.pdf.

208. SUSTAINABLE SLOPES CHARTER, *supra* note 3, at 8 (some examples include installing water storage

Still, water usage and conservation are serious issues that involve not only environmentalists and resort developers, but also the surrounding communities, especially when agricultural communities are nearby.²⁰⁹ Environmental organizations and individuals are likely to continue the battle over water usage, as evidenced in *Dubois*.

C. Destruction of Wildlife

Another chief concern of environmentalists regarding resort development is the destruction of wildlife habitats, plant species, and animal populations.²¹⁰ Mount Ashland in southern Oregon has proposed an expansion, which led to a lawsuit by three environmental groups²¹¹ to halt the expansion.²¹² As in *Dubois*, this lawsuit is once again attacking the USFS's approval of the expansion.²¹³ The U.S. Court of Appeals, Ninth Circuit, granted an injunction to cease expansion until an EIS was done accurately, over objections from the USFS.²¹⁴ The Pacific fisher, a type of weasel,²¹⁵ was of particular issue.²¹⁶ The court discussed the nature of the species being "sensitive" and the potential of being listed as an endangered species²¹⁷ in accordance with the Endangered Species Act.²¹⁸ Despite the low numbers of the fisher, the final EIS boldly stated that the "ecological relationships between fisher and habitat are largely unknown" and there was even testimony from two Forest Service biologists declaring that the Forest Service lacked data about the population, quantity and quality of the fisher's habitat.²¹⁹ Because of these findings, or lack thereof, the USFS lost in court and is now required to reanalyze the project in accordance with NEPA regulations.²²⁰

Situations like Mount Ashland make clear the importance of keeping careful watch over ski resort development and expansion. The process of obtaining

facilities to recapture snowmelt runoff for reuse and using dirt or other alternative methods for constructing terrain features to minimize water use).

209. PisteHors, Savoie Ski Resorts, *supra* note 204 ("The battle is over water and the players include local farmers, permanent residents, [and] ski resorts. . . .").

210. Briggs, *supra* note 7, at 99.

211. Wild Mount Ashland, About the Proposed Mount Ashland Ski Area Expansion, <http://www.mountashland.com/info/index.html> (last visited Feb. 22, 2008) (the three groups are the Oregon Natural Resources Council, Sierra Club, and Headwaters).

212. *Id.*

213. *Or. Natural Res. Council Fund v. Goodman*, 505 F.3d 884 (9th Cir. 2007).

214. *Id.* at 898. ("[T]here remains a 'sufficient possibility of environmental harm' to justify injunctive relief.").

215. Defenders of Wildlife, Pacific Fisher, http://www.defenders.org/programs_and_policy/wildlife_conservation/imperiled_species/pacific_fisher/ (last visited July 18, 2007) (the fisher is part of the weasel family).

216. *Or. Natural Res. Council Fund*, 505 F.3d at 898-99.

217. *Id.* at 898.

218. 16 U.S.C. § 1531 (2000).

219. *Or. Natural Res. Council Fund*, 505 F.3d at 891.

220. *Id.* at 898.

permits and approval for construction is sometimes too easy for developers.²²¹ If environmental organizations did not keep such a close watch over ski resort development, harm to animals and plant species might follow. This is yet another illustration of why one body of legislation governing ecotourism and mountain ecologies would be beneficial as opposed to the current system that entrusts this highly important task to an agency like the USFS, which has reign over such a broad array of subject matter.

D. Recession and Debt

A recent concern of environmentalists is the possibility of resorts going bankrupt in the middle of a development or reducing operational capacity to maintain a profit.²²² Additionally, environmental organizations fear that if a few bad snow years strike, resort developers will do whatever is necessary to keep afloat and pay creditors.²²³ This could come at the cost of destroying the environment.²²⁴ This latest concern has thus far not raised any heavy media coverage or litigation against resort development, but with the recent downward trend of the U.S. economy, some theorize that it is a realistic threat.

Ski resorts leave an environmental footprint.²²⁵ Environmental groups provide for an excellent check on the ski industry and government approval of proposals to ensure that every eco-friendly measure possible will be taken when a developer proposes a new ski resort or expansion on an existing resort. However, if federal legislation governed land use for tourism in mountainous regions, it would lessen resistance from environmental organizations because many of their concerns would already be addressed.

E. Ski Resort Developer Concerns

Environmentalists typically view resort developers as corporate giants eager to inflict environmental damage for financial gains.²²⁶ They often file lawsuits in an effort to prevent ski resort development or expansion. As discussed below, environmental groups are only one of several considerations in the development process. Governmental compliance, local communities, and the surrounding environment are all factors that play an integral role in a completed project.

221. See, e.g., *id.* at 884 (the USFS initially found no impact on the fisher or the fisher habitat in 1999, but in 2001 and 2002 fishers were observed in the area, but the USFS ignored these findings and failed to revise the EIS until 2004 when it stated that there would be no impact).

222. Briggs, *supra* note 7, at 100.

223. *Id.*

224. *Id.*

225. *Id.* at 98.

226. See, e.g., Summitpost.org, Hidden Peak (Utah), <http://www.summitpost.org/mountain/rock/191302/hidden-peak-utah-.html> (last visited Nov. 16, 2008) ("[I]t is terrific that there are people out there . . . to scrutinize and stand up to the man.").

F. Environmental Group Resistance

Once a development project is announced, developers face a long road of delays, modifications, and probable environment-related lawsuits.²²⁷ Environmental groups²²⁸ are notorious for some of the fiercest opposition to projects.²²⁹ Some of the more familiar tactics used, such as litigation, public outcry, and protests that may involve the destruction of property, are examined below.

In the U.S., intense courtroom battles between environmental organizations and ski resorts occurred during a Walt Disney development project in the southern Sierra Mountains.²³⁰ In 1969, the Sierra Club opposed the Forest Service's approval of Disney's proposed thirty-five million dollar, eighty-acre resort complex.²³¹ The Sierra Club sought a declaratory judgment against the Forest Service in the U.S. District Court for the Northern District of California.²³² The Sierra Club wanted the court to declare that the development was in breach of national park and forest laws and regulations.²³³ The Supreme Court ultimately dismissed the case based on lack of standing.²³⁴

The dismissal did not end the Sierra Club's fight to stop the development of the resort.²³⁵ Because of the public uproar created by media coverage, Disney eventually deserted the project.²³⁶ Although the Sierra Club lost the fight in the courtroom, it was able to use public influence as a channel for opposition.²³⁷ Using local opposition to development has proven a successful tactic in other instances of resort developments.²³⁸

Other environmental groups have followed the Sierra Club's lead by using *Sierra Club v. Morton* as a springboard for litigation that opposes ski resort development.²³⁹ Although it was outside of the courtroom, the environmentalists'

227. See, e.g., Sachs, *supra* note 4, at 522 (fighting ski area growth is the sole objective for some environmental groups).

228. Some of the organizations that keep a very close watch on development within mountainous and protected areas include: the Sierra Club, Save Our Canyons, and the Colorado Environmental Coalition.

229. See, e.g., Sachs, *supra* note 4, at 522 (fighting ski area growth is the sole objective for some environmental groups).

230. Briggs, *supra* note 7, at 100.

231. *Sierra Club v. Morton*, 405 U.S. 727, 729 (1972).

232. *Id.* at 730.

233. *Id.*

234. *Id.* at 739-41 (the Court held that there was no standing because the Sierra Club did not have a "special interest" in which to consider the Club "adversely affected").

235. Briggs, *supra* note 7.

236. *Id.* at 100-101.

237. *Id.* at 101.

238. See generally Mountain Wilderness—International, *supra* note 191 (the international environmental group, Mountain Wilderness allows members to solicit for upcoming protests as well as post outcomes from earlier protests).

239. Briggs, *supra* note 7.

eventual victory in *Sierra* increased challenges against ski resort proposals.²⁴⁰ In *Citizens' Committee to Save Our Canyons v. U.S. Forest Service*, the nonprofit group Save Our Canyons ("SOC") was among the plaintiffs who claimed that a USFS decision to approve a structural expansion and renovation by Snowbird Ski and Summer Resort ("Snowbird"), a resort just south of Salt Lake City, Utah, was not in accordance with NEPA guidelines.²⁴¹ SOC argued that that a transaction of land "swapping" was in violation of NEPA guidelines.²⁴² Because it is on federal land, Snowbird was required to seek a permit from USFS, who in turn must comply with NEPA by issuing an EIS statement.²⁴³ The USFS began the EIS process in May 1997.²⁴⁴ On December 12, 1999, the USFS issued a permit to Snowbird to construct an altered version of the complex.²⁴⁵ After SOC challenged the authorization in early 2000, their argument was rejected, and they then filed suit in May 2000 in federal district court.²⁴⁶ The district court rejected SOC's arguments and held that the USFS acted lawfully.²⁴⁷ The U.S. Court of Appeals affirmed the district court's decision and vacated all injunctions, setting Snowbird free of SOC's persistent opposition.²⁴⁸

Environmental groups bringing lawsuits to prevent ski resort development are not uncommon. After *Sierra* demonstrated the potential of preventing a resort from developing, other groups gained confidence to fight the corporate giant in court.²⁴⁹ Even prolonging a project can be considered a victory for environmentalists because it may force the developer to abandon or scale back the project due to loss of economic incentive.²⁵⁰

One of the most widespread international environmental groups that seeks to protect mountainous environments is Mountain Wilderness.²⁵¹ This organization views itself as "a Greenpeace of the mountains, interfering with environmentally damaging projects and campaigning hard, where necessary, to promote the environmental view wherever new projects are considered in mountainous areas."²⁵² An illustrative example of a development project challenged by Mountain Wilderness was a lawsuit brought to prevent a ski resort from being developed on Mt. Olympus in Greece.²⁵³ Mountain Wilderness took advantage of

240. *Id.*

241. *Citizens' Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1022 (10th Cir. 2002).

242. *Id.*

243. *Id.* at 1018.

244. *Id.*

245. *Id.* at 1019.

246. *Id.* at 1012, 1020.

247. *Id.* at 1020-1021.

248. *Id.* at 1036.

249. Briggs, *supra* note 7.

250. *Id.* at 100-101.

251. See generally Mountain Wilderness—International, *supra* note 191.

252. Mountain Wilderness—International, What is Mountain Wilderness?, <http://mountainwilderness.org/index.php?rub=132&art=24&lg=en> (last visited Mar. 28, 2008).

253. Mountain Wilderness—International, *Mountain Wilderness Struggle to Save Mount Olympus Continues!*, Oct. 1, 2005, <http://mountainwilderness.org/index.php?rub=171&art=11&lg=en> [hereinafter Mountain Wilderness,

its far-reaching European presence in an attempt to prevent resort development.²⁵⁴ Using media coverage and threats of lawsuits, Mountain Wilderness has succeeded in forestalling any type of public resort development on Mt. Olympus.²⁵⁵ This type of ardent objection “wherever new projects are considered”²⁵⁶ is certainly something that developers must consider when proposing to develop or expand a ski resort.²⁵⁷ Fierce resistance from environmental groups generally involves ecotourism principles, such as preserving the environment as much as possible instead of leaving an unnecessary footprint.²⁵⁸ Legislation governing ecotourism would force developers to comply with these goals, ultimately creating a compromise between the environmental groups and developers. This would prevent resistance and delay for the developers, promote judicial economy for the courts, and comply with the values of environmental groups.

In an extreme case, an environmental organization will resort to the destruction of the environment, often referred to as eco-terrorists.²⁵⁹ This is a seemingly counter-intuitive approach to prevent developers from proceeding with plans for an expansion. In 1998, the radical environmental group Earth Liberation Front (“ELF”) took credit for setting buildings and chairlifts ablaze after a court granted Vail Resorts permission for an expansion.²⁶⁰ ELF stated that it acted in defense of a lynx population²⁶¹ and to warn skiers to stay away from Vail.²⁶²

In relation to the same Vail expansion, another environmental group, The Coalition to Stop Vail Expansion, physically protested by blocking construction crews with upright logs and a person hanging from the top of the logs.²⁶³ A human blockade stopped the Forest Service in an attempted response.²⁶⁴ Individuals then chained themselves under the Forest Service’s vehicles,

Struggle to Save Mount Olympus]; see also Mountain Wilderness—International, Olympus Mount: A Summary, <http://mountainwilderness.org/index.php?rub=133&art=28&lg=en> (last visited Mar. 28, 2008).

254. Mountain Wilderness, *Struggle to Save Mount Olympus*, *supra* note 253.

255. *Id.*

256. Mountain Wilderness—International, The Goals of Mountain Wilderness, <http://mountainwilderness.org/index.php?rub=132&art=23&lg=en> (last visited Mar. 28, 2008) (in describing who Mountain Wilderness is and what they do, it includes in its objectives, “[r]eactions to problems posed by the adventure tourism in the massive European ranges” and looks to “denounc[e] projects which can precisely destroy what they are supposed to offer.”).

257. See generally Sachs, *supra* note 4, at 522 (“[T]here have been innumerable lawsuits over a wide variety of environmental impacts resulting from ski resort operation and development.”).

258. See, e.g., *id.* at 521-22 (“Many [lawsuits] have been waged over water withdrawals for snowmaking, wetland impacts, and construction on federal lands.”).

259. Briggs, *supra* note 7.

260. Tim W. Rhodes, *American Eco-Terrorism: Another Threat? Or Is It a Promise?*, 5 ERRI DAILY INTELLIGENCE REP., Jan. 4, 1998, as excerpted at EmergencyNet News, <http://www.emergency.com/1999/ecoter99.htm>.

261. Briggs, *supra* note 7, at 103 (a single lynx had not been seen in the area for twenty-five years).

262. Rhodes, *supra* note 264.

263. Briggs, *supra* note 7, at 102.

264. *Id.*

ultimately causing them to retreat.²⁶⁵ These protests lasted for several days²⁶⁶ and resulted in nearly twelve million dollars worth of damage.²⁶⁷ Vail persisted in the development process and Blue Sky Basin is now available to skiers and snowboarders.²⁶⁸

Environmental organizations all over the world deeply oppose ski resort development.²⁶⁹ Before a party considers whether to develop or expand, repercussions of opposition from environmental groups whether inside or outside of the courtroom must be measured against the expected gains. Enacting ecotourism legislation that considers the objectives of developers and environmental groups will help avoid such fierce and destructive opposition.

G. Governmental Compliance

Governments often pose substantial barriers to ski resort development as well.²⁷⁰ The process of obtaining government permits to expand or construct new development is often very lengthy and costly—sometimes costing millions of dollars over a span of several years.²⁷¹ Most frequently, plans will be stalled for several years while awaiting some form of an EIS prepared by the government.²⁷² Once the government agency submits an EIS, development plans may still be delayed based upon the need to redesign in accordance with government suggestions or litigation.²⁷³ *Sunshine Village Corp. v. Canada* provides an example of the type of meticulous litigation that simply becomes too costly and time consuming for developers to maintain an economic incentive.²⁷⁴ In that case,

265. *Id.*

266. *Id.*

267. Jeff Barnard, 'Prime Suspect' Named in Two Elk Fire, VAIL DAILY, Dec. 14, 2005, <http://www.vaildaily.com/article/20051214/NEWS/51213008>.

268. Barbara Lloyd, *The Ski Report; Vail's Blue Sky Basin Still Touches Nerves*, N.Y. TIMES, Feb. 10, 2000, <http://query.nytimes.com/gst/fullpage.html?res=9C06EED7133EF933A25751C0A9669C8B63>.

269. See, e.g., Sachs, *supra* note 4.

270. See, e.g., *Sunshine Vill. Corp. v. Canada*, [1998] F.C. 1779, 1998 WL 1729657 (Can.).

271. See Briggs, *supra* note 7 ("[O]nly very well-funded and brave individuals can withstand the costly and time-consuming process, such as developer Dan McCarthy, who spent more than \$3 million on EIS's in an attempt to develop a resort in Colorado.").

272. See *R.K. Heli-Ski Panorama, Inc. v. Jumbo Glacier Resort Proj.*, [2007] 61 B.C.L.R.2d 316 (Can.) (ski resort developer went through environmental assessment process for over ten years); Briggs, *supra* note 7 ("As of 1994, the proposal had undergone eight years of environmental reviews and over 150 public hearings at a cost of more than \$10 million.").

273. See Case C-304/05, *Comm'n of the European Communities v. Italian Republic*, 2007 E.C.R. 00, CELEX 605J0304 (the Commission of European Communities brought suit against the Italian government for allowing a resort to be developed without adhering to the proper environmental assessment process in accordance with Articles 6(2), (3), and (4) of Directive 92/43/EEC and Articles 4(1) and (2) of Directive 79/409/EEC. The Court held that the Italian Republic did, in fact, fail to take the appropriate measures to protect the natural environment and was therefore in violation of Articles 6(2) through (4) of Directive 92/43/EEC. The complaint arising under Directive 79/409/EEC was dismissed due to the Commission not fulfilling its burden of proof).

274. *Sunshine Vill. Corp.*, [1998] F.C. 1779.

the Federal Court of Canada was called upon to determine whether an environmental panel assigned by the Minister had the power to assess a previously approved development plan.²⁷⁵ While the development proposal began between the years 1989 and 1992, the court did not issue the final decision until December of 1998.²⁷⁶ This type of lengthy and costly litigation is especially powerful against smaller resorts. Smaller resorts do not have the financial or political resources to either redevelop or defend themselves in litigation that can last several years.²⁷⁷

H. Economic Considerations

Despite barriers, resorts continue to develop and expand.²⁷⁸ To some, development or expansion of resorts is not just beneficial, it is essential.²⁷⁹ The development or expansion of a ski resort has the potential to rescue local communities suffering from a failing economy because²⁸⁰ resorts create jobs and foster business growth.²⁸¹

Economic studies have been conducted to measure exactly what and how much benefit a region acquires from alpine resorts.²⁸² One study showed that resorts in Australia, Canada, and Tasmania (combined) generated approximately \$1.3 million in gross state product and 17,050 annual job opportunities.²⁸³

Furthermore, when a party seeks to develop a new resort with an accompanying village, the developer is in a position to ensure that everything in the village is eco-friendly and thus, voluntarily furthering the principle of ecotourism.²⁸⁴ In doing this, communities, environmental groups and the

275. *Id.*

276. *Id.*

277. See Briggs, *supra* note 7.

278. See, e.g., Barbara Lloyd, *THE SKI REPORT; Vail's Blue Sky Basin Still Touches Nerves*, N.Y. TIMES, Feb. 10, 2000, <http://query.nytimes.com/gst/fullpage.html?res=9C06EED7133EF933A25751C0A9669C8B63> (illustrating Vail's determined attitude to finish Blue Sky Basin despite some of the worst set-backs seen in the ski industry).

279. See, e.g., Case C-304/05, *Comm'n of the European Communities v. Italian Republic*, 2007 E.C.R. 00, CELEX 605J0304 (a study of an area in the Italian Santa Caterina region where a resort was to be expanded and remodeled showed that without the project, "the consequence could be a slow but unavoidable economic decline . . . [c]onsequently, it is essential to support the carrying out of the proposed development of the lifts and the creation of the new ski runs, with associated facilities, because of the proposal's socio-economic value, particularly from the point of view of tourism.").

280. See, e.g., *id.* ¶ 24 ("[i]f the works are not carried out, the consequence could be a slow but unavoidable economic decline").

281. See NAT'L INST. OF ECON. & INDUS. RESEARCH, *supra* note 61, at 3-6; see also *Himalayan Ski Village Planned Near Manali in Himachal Pradesh*, INRNEWS, http://www.inrnews.com/realestateproperty/himalayan_ski_village_to_open.html (last visited Nov. 13, 2008) ("The resort will have a significant impact on the regions economy from creating a year-round travel destination in Manali, to providing direct employment to 3,000 people and indirect benefits to almost 12,000 people in the area.").

282. See NAT'L INST. OF ECON. & INDUS. RESEARCH, *supra* note 61, at 2.

283. *Id.* at 4.

284. Sachs, *supra* note 4.

developer will be assured that every step possible has been taken to create an eco-friendly, sustainable environment that can still thrive economically.

In general, a developer cannot commence a project without first obtaining the necessary approval pursuant to some type of government regulation, such as obtaining the necessary permits and environmental assessments.²⁸⁵ The process of obtaining the necessary approvals is, more often than not, a very time consuming process that requires financial resources as well as developmental resources to alter plans according to specifications vis-à-vis the requisite recommendations by the proper agency.

I. Environmental Effects

One of the most important considerations facing developers is the adverse environmental impact the development or expansion will have.²⁸⁶ There are several reasons why developers should consider adverse environmental impacts.

First, resorts depend upon the environment to exist.²⁸⁷ Because of the reliance on the environment, several resorts have taken sweeping measures to disturb the ecological surroundings as little as possible.²⁸⁸

A recent example of eco-friendly development is the Himalayan Ski Village ("HSV") near Manali, India.²⁸⁹ HSV's mission statement asserts that the resort will "[s]et new social and environmental standards for [twenty-first] century responsible tourism."²⁹⁰ Developers have taken steps to ensure that HSV will have as little negative impact as possible while creating a luxury resort experience.²⁹¹ These goals are realized by consulting several environmental agencies such as the Energy and Resources Institute and the Indian Institute of Forest Management.²⁹² HSV hopes to be a paradigm for future resort development that is sensitive to the mountain ecosystem, existing mountain communities, and ecotourism in general.²⁹³ Furthermore, this resort is expected to create around 3,000 jobs and provide economic benefits to the surrounding community.²⁹⁴

285. See, e.g., 40 C.F.R. § 1502.9 (2006); C. DE L'URBANISME art. L145.

286. Briggs, *supra* note 7, at 103.

287. *Id.*

288. See, e.g., Snowbird, Peruvian Express Details, <http://www.snowbird.com/about/construction/peruvian.html> (last visited Nov. 16, 2008).

289. Himalayan Ski Village, <http://www.himalayanskivillage.com> (last visited Nov. 16, 2008).

290. *Id.*

291. See Himalayan Ski Village, Environment Management, <http://www.himalayanskivillage.com/management.htm> (last visited Nov. 16, 2008).

292. Himalayan Ski Village, Environmental Studies, <http://www.himalayanskivillage.com/consultants.htm> (last visited Nov. 16, 2008).

293. See Himalayan Ski Village, Environment Objectives, <http://www.himalayanskivillage.com/objectives.htm> (last visited Nov. 16, 2008).

294. *Himalayan Ski Village Planned Near Manali in Himachal Pradesh*, *supra* note 281; but see Ajay Bharadwaj, *Oracles Oppose Ford's Himalayan Ski Village*, DAILY NEWS & ANALYSIS, Feb. 17, 2006, <http://>

Second, global warming has had a significant and detrimental effect on the industry.²⁹⁵ Several resorts are threatened by, or have already succumbed to, shorter and warmer winters.²⁹⁶ Partly for this reason, resorts have taken measures to create an eco-friendly environment when developing, expanding, or remodeling.²⁹⁷

Finally, ski resorts seek to set an example and educate guests about ways to preserve the environment that they enjoy each time they visit the resort.²⁹⁸

In the end, one thing remains certain: ski resort development will always leave an environmental footprint.²⁹⁹ It is time to make certain that footprint is as slight as possible.

V. WHERE ARE WE NOW?

A. *Who Is Winning the Fight?*

The constant battle over the use of mountainous land has left both environmental groups and resort corporations on the winning and losing side. Development seems to be inevitable and the environment seems to be in an increasingly fragile state. One might even conclude that both sides are simultaneously losing the battle. A system that will promote desired results of each party must be created in order for the fight to ultimately end.

B. *How Can Both Sides Achieve Their Purpose?*

Instead of developers and environmental groups fighting against one another, perhaps we ought to consider the notion of working together. The environment is crucial to each party for the purpose of enjoyment of the outdoors and nature. Thus, a smaller footprint left in the mountain ecosystem will ultimately benefit both sides.

For example, an eco-activist group in Bulgaria is opposing a development named Super Borovets.³⁰⁰ The group asserts that the development will have a

www.dnaindia.com/report.asp?NewsID=1013444 (indicating that HSV may not be entirely welcomed by the surrounding village), and *Bahuguna Ups the Ante Against Ski Village*, TRIBUNE- HIMACHAL PRADESH ED., June 18, 2007, <http://www.tribuneindia.com/2007/20070619/himachal.htm#1> (discussing a recent protest by environmentalists against the development of HSV).

295. See, e.g., PisteHors, Effects of Global Warming on Skiing, *supra* note 38; Teotonio et al., *supra* note 39.

296. See, e.g., PisteHors, Effects of Global Warming on Skiing, *supra* note 38; Teotonio et al., *supra* note 39.

297. Briggs, *supra* note 7, at 103-106.

298. See, e.g., SUSTAINABLE SLOPES CHARTER, *supra* note 3, at 14.

299. Steve Barilotti, *Loved to Death: Are You Riding Over the Bones of a Murdered Mountain Habitat?*, <http://www.surfrider.org/snowrider/Barilotti2.htm> (last visited Nov. 16, 2008).

300. Eco Activists Propose Alternative to Super Borovets Project, <http://welovebulgaria.com/forums/showthread.php?t=99> (Feb. 2, 2006, 12:11 GMT).

severe impact on the environment due to massive deforestation.³⁰¹ The environmental group is offering alternatives such as adventure and rural tourism in the surrounding areas.³⁰² To show the viability of these alternatives, the group conducted research to establish that the resorts could be all-season and that the necessary resources, such as the requisite population for employment openings, are available.³⁰³

Although the Super Borovet case will still result in litigation, the alternatives proposed by the activist group are encouraging. Perhaps if more activist groups worked in conjunction with resort developers to establish the most eco-friendly means to construction, there would be less animosity and more focus on preservation of the environment.

A further encouraging situation is the establishment and refinement of guidelines for ski resorts in the National Parks of Canada.³⁰⁴ The Minister of the Environment announced that there would be flexibility in achieving goals sought by resorts with a focus on maintaining an awareness of the environmental footprint that will be left.³⁰⁵ A prominent environmental group in Canada, Canada's Voice for Wilderness ("CPAWS"), even endorsed this system of flexible guidelines.³⁰⁶ Although CPAW's support is guarded, it will provide a "watch-dog-type role" to ensure adherence to the ultimate goal of environmentally-friendly development.³⁰⁷ These are signs that both the ski industry and various governments are heading in the right direction similar to Italy and France's mountain-specific legislation. If the ski industry, governments, and environmental organizations are all headed in the same direction for the same purpose, the only question remaining is when they will collaborate to achieve the same goal.

VI. CONCLUSION

Parts of Europe have recognized mountainous regions as a separate ecosystem in need of specific laws.³⁰⁸ This type of regulation, paired with eco-friendly development, may lead to a more sustainable environment for future generations.

301. *Id.*

302. *Id.*

303. *Id.*

304. Press Release, Parks Canada Agency, Minister Ambrose Announces Refinements to National Park Ski Area Management Guidelines (Dec. 8, 2006), available at http://www.pc.gc.ca/apps/cp-nr/release_e.asp?id=1059&andorl=nr.

305. *Id.*

306. Canadian Parks and Wilderness Society, CPAWS Gives Guarded Support to New National Park Ski Area Development Guidelines, Dec. 11, 2006, <http://cpaws.org/news/archive/2006/12/cpaws-gives-guarded-support-to.php>.

307. *Id.*

308. CASTELEIN ET AL., *supra* note 72, at 17.

Instead of using existing laws that were not intended to balance mountain environments with tourism, establishing proper legislation that implements the principles of ecotourism³⁰⁹ will help diffuse battles in the courtroom. More importantly, it will protect mountain environments from destruction. Furthermore, legislative development of ecotourism covering mountain ecosystems will help both the environmental groups and ski resort developers achieve their objectives, thereby calling a truce to their heated battles.

309. Ecotourism laws might address regulation of motorized vehicle usage, stringent requirements for eco-friendly ("green") development and renovation techniques of existing structures, caps on energy and water use, powerful initiatives to promote and encourage tourism, economic diversification, and severe repercussions for violations.