

**Mount Sunapee Ski Area Lease Assignment to The Sunapee Difference, LLC**  
**Summary and Response to Public Comments received as of 08.08.2018**  
*(Links are provided within the text to other supporting document.)*

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**PURPOSE.** The Department of Natural and Cultural Resources (“DNCR”) held a public information session on July 25, 2018, to provide the public with information about the proposed assignment of the Lease and Operating Agreement (“Lease”) for the ski area at Mount Sunapee State Park to The Sunapee Difference, LLC, which will be indirectly owned by VR NE Holdings, LLC (hereinafter “Vail”). DNCR sought verbal and written public comments on the proposed transfer of the Lease.

For a more thorough understanding of the proposed transfer, refer to the [letter to the Governor and Executive Council](#) from Attorney General MacDonald and DNCR Commissioner Stewart, dated June 15, 2018 (attached).

DNCR appreciates the public participation and comments received regarding the proposed transfer of the Lease. This report contains a summary analysis of the public comments received during the public comment period and the department’s response to the comments. DNCR responds to the specific areas of concern most frequently cited by respondents, including those comments related to the proposed lessee and ski area.

**Method.** Verbal comments provided at the public information session held on July 25, 2018, and written comments received up to the comment period closing date of August 8, 2018, were analyzed.

Comments were read and tallied in the following manner: 1) responses explicitly in “opposition” or “support” of the Lease transfer and 2) comments that pertained to certain topic areas regardless of the nature of the respondent’s position.

**Number of comments.** There were a total of 101 comments received during the public comment period from 86 respondents: 29 verbal comments were provided during the July 25, 2018 public information session and 72 written comments were sent in. Fifteen respondents participated both verbally at the information session and with written comments.

**Opposition or Support.** Of the 86 respondents, 44 or 51% of public comments explicitly expressed support of, or opposition to the proposed lease assignment to Vail. Of those respondents, 82% explicitly supported the lease transfer and 18% explicitly opposed the proposed lease transfer. The most important value of public feedback is not necessarily the number of responses for or against the matter at hand, but rather the substance of comments to guide the agency’s decision on the proposed Lease transfer to Vail.

**Organization of the topics cited by the public.** Comments were categorized into broad topic areas. The topics reflect the important issues expressed by the public. The comments are separated into those directly related to the proposed transfer of the Lease, and those not directly related to the Commissioner’s decision of whether to approve the proposed Lease transfer.

**Areas of concern raised in public comments.** Comments were generally interpreted and recorded under “Further Comment” of the spreadsheet entitled “[Public Comments on Proposed](#)

[Lease Transfer to Vail](#), as of 08/08/18.”<sup>1</sup> DNCR sought public comments related to the proposed transfer of the Lease. Comments not directly related to the proposed transfer were also submitted. Specific areas of concern frequently cited by respondents during the comment period are categorized as outlined below. The reported counts reflect the total number and corresponding percentage (%) that the topic was cited by respondents; therefore, the percentages may exceed 100%. The categories are:

COMMENTS DIRECTLY RELATED TO THE APPROVAL OF THE PROPOSED LEASE TRANSFER:

- I. Proposed Transfer: General comments related to the proposed lease transfer and issues to consider in the State’s review of the proposed transfer, including the issues listed below. DNCR received 62 comments (72%) from the public on this category.
  - A. “Due diligence” considerations for evaluating the proposed transfer, such as an independent audit.
  - B. Addressing the term “such approval shall not be unreasonably withheld by the State.”
  - C. Tightening the process of review for future transfers, such as Change of Control and review of lease transfers by an Overview Commission referenced in RSA 12-A:29-a,V.(b).

OTHER COMMENTS RELATED TO THE PROPOSED LESSEE & SKI AREA:

- II. WB / RE develop: Vail’s plans for the West Bowl area (WB), including real estate development, consideration of a conservation easement, and protection of the Exemplary Natural Communities and unfragmented forests. DNCR received 26 comments (30%) from the public on this category.
- III. Economic impact: Economic impacts, regardless of whether positive or negative, including local economy, jobs, rural impacts and traffic. DNCR received 22 comments (26%) from the public on this category.
- IV. Passes / Prices: Epic Pass program, discounted ticket pricing, pricing appropriate to median income for region. DNCR received 21 comments (24%) from the public on this category.
- V. Plans: Vail’s general plans for the leasehold ski area and/or as their plans apply to the state park as a whole. DNCR received 20 comments (23%) from the public on this category.
- VI. Preserve / Conserve: Preserve or conserve the “old growth forests,” the Exemplary Natural Communities, unfragmented forests, and/or the natural resources, excluding the West Bowl area (WB area is addressed in Sec II). DNCR received 18 comments (21%) from the public on this category.

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<sup>1</sup> Readers should consult the primary source for a first-hand understanding of the comments. These source documents are available for viewing at DNCR’s Concord Office.

- VII. Other topics: The “original intent” and “buffer zone” of the Lease; Mount Sunapee State Park branding and promotion.

DNCR’s response to each category of public comment is written in *italics*. Language taken directly from referenced documents is in “quotes.”

<p style="text-align: center;"><b><u>COMMENTS DIRECTLY RELATED TO THE APPROVAL OF THE PROPOSED LEASE TRANSFER</u></b></p>
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**I. Proposed Transfer** - General comments related to the proposed Lease transfer and issues to consider in the State’s review of the proposed transfer.

A summary of the areas of concern expressed by the public include:

- What does “unreasonably withheld” mean? What happens if approval is withheld?
- What are the details of the proposed transfer? Explain the details of the transfer. Make transfer documents public.
- The State should hold a formal public hearing. The hearing should be recorded. Hold a public hearing before the G&C.
- Oversee and enforce State’s written approval of transfers. Establish a process for transfers. Provide transparency throughout the transfer process. “Change of Control” language.
- State should not be rushed into a decision, but do its due diligence.
- Audit needed. Require 5 year audits. Make audit docs public.
- Oversight Commission needed in accordance w/ RSA 12-A:29-a. Oversight Commission to administer the lease. Multiple transfers w/o State approvals.
- Make decision by Labor Day for smooth transition into winter ski season. Smooth transition for employees of resort.

<p><b>Issue raised by the public: Approval of Lease transfers and “Unreasonably Withheld”</b></p>
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- ***DNCR’s authority.*** *The Lease and Operating Agreement was executed “by and between the State of New Hampshire, acting through its Department of Resources and Economic Development (hereinafter referred to as the “State” and “DRED,” respectively) and Okemo Mountain, Inc., ... (hereinafter referred to as the “Operator”).” DRED is now known as the Department of Natural and Cultural Resources (“DNCR”). The Lease authorizes the DNCR, acting for the “State,” to perform certain provisions of the Lease, including at paragraph 22, pertaining to the assignment, delegation and subcontracts of the Lease.*
- ***“Unreasonably Withheld.”*** *Lease, paragraph 22, Assignment, Delegation and Subcontracts that enables the Operator, with the prior written approval of the State, to impair or encumber its interests, and to assign or transfer any of its interest in the Lease states “[s]uch approval shall not be unreasonably withheld by the State.” As a result of this provision, the State is required to act reasonably in determining whether to consent to the proposed assignment, and is not permitted to simply refuse to consent. Consistent with that requirement, DNCR is reviewing the proposed Assignee’s ability to perform the terms of the lease, including, among other things, its financial and*

*technical ability to perform and its related history and experience. Should the State withhold its consent to the assignment, the State and the current Operator would continue under the Lease “as is.” The Operator could elect to challenge the State’s decision as unreasonable and exercise its rights under the laws of the State of New Hampshire.*

**Issue raised by the public: Provide the public with the details of the proposed Lease assignment.**

*All of the details of the proposed lease assignment are being provided to the public. See attached written request for consent from Vail, dated August 30, 2018. Should consent be given, all rights under the Lease held by the current Operator not otherwise rendered null and void by the termination of the sublease would be transferred to Vail. In all other respects, the Lease would continue but with a new tenant.*

**Issue raised by the public: Hold public hearings on the proposed Lease transfer.**

*Public hearings for a proposed transfer of the Lease are not prescribed in the Lease; however, DNCR has elected to hold a public information session to seek public comments on the proposed assignment of the Lease to Vail. DNCR plans to hold a second public information session regarding its decision on the proposed assignment. If the proposed assignment is approved by DNCR, any related amendments to the Lease would require a public meeting before the Governor and Executive Council pursuant to the [Lease](#), paragraph 27, see below.*

- *Lease, Part 22, Assignment, Delegation and Subcontracts states “[t]he Operator may assign, or otherwise transfer any interest in this Agreement with the prior written approval of the State. Services required under this Agreement may be delegated or subcontracted by the Operator with the prior written approval of the State. Such approval shall not be unreasonably withheld by the State.” The Lease does not include a provision for holding a public hearing for these actions.*
- *Lease, Part 27, Amendment states “[t]his Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.” The Lease does not include a provision for holding a public hearing for these actions, however, it is the purview of the Governor and Executive Council should a public hearing be held for these actions.*

**Issue raised by the public: Add Change of Control language in the Lease.**

*The State is seeking to amend the Lease to strengthen the process for State approvals of assignment, delegation and subcontracts of the Lease from the current process found in paragraph 22, pertaining to the assignment, delegation and subcontracts of the Lease. Should the assignment occur, Vail has indicated its willingness to agree to an amendment to add change of control language to the Lease.*

**Issue raised by the public: Due diligence review by the State.**

*The State, through the DNCR and the Office of the Attorney General, is completing its review of the technical and financial capability of Vail and to determine if the company is capable of performing*

consistent with the lease terms, particularly as it relates to compliance with other ski area leases and laws and regulations.

**Issue raised by the public: Conduct an audit. Conduct an independent audit.**

- *Lease, Part 3* states in part “[t]he Operator shall maintain an accounting system, including a ticket identification and control system designed to accurately account for the revenues received by the Operator. The Operator shall provide the State a certified public accountant’s statement verifying the amount due and paid at the time of payment of the rent.”
- *Lease, Part 19, “INSPECTION OF OPERATOR’S RECORDS.* The Operator agrees to permit the State, or any agency of the United States, access to any of the Operator’s books, records and accounts for the purpose of ascertaining compliance with any statutes, regulation and order, and with the terms and conditions of this Agreement.”
  - DNCR’s Business Office received the Operator’s audited consolidated financial statements for fiscal years 2011 to present.
  - In addition, DNCR’s internal auditor has conducted an audit of the Operator’s accounting records, see [DNCR Auditor Report](#), dated December 12, 2017.
- *Independent Audit on behalf of the State.* As announced at the July 25, 2018, public information session, the State is conducting an independent audit to verify compliance with the Lease terms, including rental amounts.
- *Vail’s statement on lease payments.* “The lease payments will not change or be interrupted in connection with the assignment of the lease. All of the prorations are handled through the working capital adjustment in the main purchase agreement. It should be seamless from the State’s perspective.” See attached “Supplemental Due Diligence” report from Vail, dated August 28, 2018.

**Issue raised by the public: Oversight Commission per RSA 12-A:29-a,V.(b).**

The existing Mount Sunapee Advisory Committee (MSAC) was established under the [Public Involvement and Oversight Policy for Mount Sunapee Ski Area](#) (PIOP) at the time the Lease was entered into. However, the establishment of the MSAC was not reflected as a lease term. Should the assignment occur, Vail has indicated its willingness to agree to propose an amendment to accomplish the provisions of RSA 12-A:29-a. The MSAC will continue to advise the Commissioner of DNCR, the agency that is responsible for overseeing and administering the Lease.

**Issue raised by the public: Timing of decision on the Lease transfer.**

The State is completing its due diligence review of the proposed transfer of the Lease. The Commissioner will announce her decision on the proposed transfer at a public information session scheduled on September 26, 2018, at 6 p.m. at Mount Sunapee Resort, Mount Sunapee State Park. Following the decision of the Commissioner, any lease amendments would need to be submitted to the Governor and Executive Council for approval. As soon as the decision and any necessary approvals are made, the parties can plan and prepare for the 2018-2019 winter operating season.

## **OTHER COMMENTS RELATED TO THE PROPOSED LESSEE & SKI AREA**

### **II. West Bowl / Real Estate development – Vail’s plans for the West Bowl area (“WB”), including real estate (“RE”) development and consideration of a conservation easement.**

A summary of the areas of concern expressed by the public include:

- Vail said WB is not Vail’s focus at this time. Hold Vail accountable to its statement that they are not interested in real estate development. Real estate is part of Vail’s mix of earnings: slope-side development will occur. Vail claims not interested in real estate, yet Vail Resort Development is a sister company. See Vail’s Corporate Strategy docs “real estate is a critical part of our mission and core business.”
- Prohibit WB development. WB still in controversy.
- Mueller said no plans for RE development, but purchased Goshen lands.
- Enable public input prior to construction and development projects, incl. for West Bowl. Require operator to notify local communities of any changes at the resort. Regional impacts, including traffic.
- Conservation easement on the 600 acres in Goshen. If Vail is not interested in developing 600 acres in Goshen, SPNHF is interested in talking w/ Vail about conserving area. Vail should work with SPNHF to conserve private west-side lands. Protect the WB area from real estate development via a conservation easement. Have easement held by third party.
- Forest fragmentation of WB development will bisect and degrade forest community. Assess environmental impact of RE development to forest community. Permanently protect ENC against development.
- Preserve and protect the highlands and western slopes. Preserve natural sites. Preserve and conserve undeveloped lands.

#### **Issue raised by the public: West Bowl and real estate development.**

*The West Bowl expansion and the issue of real estate development are addressed in the DRED’s (now, DNCR) [Public Comment Analysis & Response Update Report](#), dated March 17, 2016. Please refer to that Report for more information about the agency’s review of public comment received during the review and approval of Mount Sunapee Resort’s Master Development Plan 2015-2019 that included the West Bowl expansion.*



An excerpt of that Report's Table of Contents pertaining to the West Bowl is provided for quick reference:

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DRED approved Mount Sunapee Resort's [Revised MDP/EMP 2016-2020](#) on March 17, 2016, after over a year and a half of public involvement including two public hearings. The Revised MDP (RMDP) included the West Bowl proposal. See Commissioner Rose's "[Letter of Approval with Conditions](#)" that outlines 23 specific provisions that governs the Revised MDP (RMDP) approval.

In addition, there is a **summary of the West Bowl expansion and changes to the West Bowl expansion proposal** found in [Commissioner Rose's Mount Sunapee MDP/EMP Decision Summary](#), dated March 30, 2016.

The Commissioner of the DRED (now DNCR) approved the Revised Master Development Plan (RMDP) including the West Bowl Expansion with conditions by [letter dated March 11, 2016](#). The letter acknowledges that the Department's approval was conditional upon Governor and Council approval of the lease amendment, which was granted on April 6, 2016. However, the lease amendment contained language providing that the amendment, except for the provision that extends the term of the lease, will be null and void if the sublease is terminated. If the proposed assignment is approved, the sublease will terminate. Vail has indicated that it is purchasing the West Bowl Expansion Land and, if the assignment is approved, it will agree to enter into a new lease amendment with the same terms and conditions as the lease amendment approved on April 6, 2016. This new lease amendment would require Governor and Council approval. Because the assigned lease with the new lease amendment would contain the same terms and conditions as the original lease and amendment, projects approved under the Master Development Plan and the Revised Master Development Plan would not need to be approved again by the Commissioner.

<b>Issue raised by the public: What are Vail's plans for the West Bowl lands?</b>
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- **Vail on land conservation.**

*"Vail Resorts has a long history of working with community stakeholders and believes it is a critical element for our success. We are open to hearing views on land conservation options, including through meeting with the Forest Society. We would note that we have conducted initial outreach to multiple environmental and conservation organizations throughout this process.*

*"As we stated at the public meeting, Vail Resorts does not intend to develop real estate at Mount Sunapee. It's simply not what brought the company to New Hampshire.*

*"We look forward to operating the resort and taking the time necessary to learn from the community. Only then can we make an informed decision about West Bowl. It is not our focus right now." See attached "Supplemental Due Diligence" report from Vail.*

- **Vail's clarification on real estate development.**

*"We are focused on operating our resorts and base areas, having shifted away from developing real estate projects in recent years. Instead of developing prime parcels of Vail Resorts' land ourselves, we're looking for third parties who can lend their expertise in development by working with our communities and local governments. We have a vested interest in ensuring that projects enhance the entire resort community and carefully consider our guests and local residents.*

*"Evidence of this strategic shift is present in our Annual Report financials: Real Estate development is a separate reporting segment, and it has steadily reduced over the years. In 2012-2014, it was 4% of VRI's net revenue, 2015-26, it was 3% and 2016-2017, it has gone down to 1% (see page 41 of 2017 10-K). As our company has grown, real estate development has actually declined. We have updated the outdated language on our corporate website to reflect the above." See attached "Supplemental Due Diligence" report from Vail.*



<b>Issue raised by the public: Public Process related to the West Bowl expansion.</b>
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DNCR's [Public Involvement and Oversight Policy](#) (PIOP) outlines the public process for review of the Operator's proposed master development plans. However, the following is a summary of the public involvement process related to the Operator's development plans.

DRED (now, DNCR), in collaboration with the Upper Valley Lake Sunapee Regional Planning Commission (UVLSRPC), took over a year and a half of public process to solicit public input on the Mount Sunapee Resort MDP/EMP 2015-2019, that included Mount Sunapee Resort's proposal for expanding the ski facilities onto their privately-owned West Bowl land.

- ***In accordance with the Public Involvement and Oversight Policy (PIOP)*** for public review of the Operator's Master Development Plan (MDP) and Environmental Management Plan (EMP), DRED published a notice in a paper of general circulation, the Union Leader, and in a paper of local circulation in the Sunapee region, the Inter-Town Record, that the MDP and EMP were available for public review and comment. In addition, the notices announced a public hearing scheduled for August 26, 2014, and request for written comments due by September 26, 2014. The notices also informed the public that the MDP and EMP were available for viewing by appointment and were posted online from the website at [www.NHStateParks.org](http://www.NHStateParks.org).
- ***In accordance with the PIOP***, copies of the MDP/EMP were delivered to the Town of Newbury, the Town of Goshen, the Regional Planning Commission, DES, and the Mount Sunapee Advisory Committee. As stated above, the MDP/EMP were also posted on DRED's website.
- ***In accordance with the PIOP, DRED & the UVLSRPC held a public hearing on August 26, 2014*** on the MDP/EMP 2015-2019, and requested written public comments by September 26, 2014. DRED considered the over 300 public comments it received and released its report entitled, "[Summary and Response to Written Public Comments received as of 12/31/2014](#)."
- ***Commissioner Rose's written draft decision, April 16, 2015***. After careful consideration of the comments received from the public and the MSAC, Commissioner Rose released his [written draft decision on the MDP/EMP 2015-2019](#). In accordance with the PIOP, Commissioner Rose called for a public hearing on May 5, 2015, and written public comment period for the purpose of seeking public input on his draft decision and proposed amendments to the Lease that would expand the leasehold area, provide for land donation, and other changes to the Lease.
- ***In accordance with the PIOP, DRED & the UVLSRPC held a public hearing on May 5, 2015*** on Commissioner Rose draft decision of April 16, 2015, and requested written public comments through July 30, 2015. DRED considered approximately 750 comments from over 675 people, plus petitions, and released its report entitled, "[Public Comment Analysis & Response Update](#)," dated March 17, 2016.
- ***Commissioner Rose's final decision of March 17, 2016***. At the MSAC meeting, Commissioner Rose released his [final decision of March 17, 2016](#), in which he requested among other things, amendments to the Lease, revisions to the MDP/EMP and his "[Letter of Approval with Conditions](#)" that outlines 23 specific provisions that governs the Revised MDP (RMDP) approval.

- *At the Executive Council Public Briefing on March 30, 2016, Commissioner Rose briefed the Executive Councilors on his final decision on the MSR RMDP/EMP 2016-2020, with a [“Statement to the Executive Councilors”](#) and [“Mount Sunapee MDP/EMP Decision Summary.”](#)*
- *On April 6, 2016, the Governor and Executive Council approved the additional 10 year option to extend the Lease and the Lease Amendment to accept land and provide for the expansion of Mount Sunapee State Park, see G&C Agenda for [April 6, 2016, Item #40](#).*

**Issue raised by the public: Local review of West Bowl construction & local impacts, including traffic.**

*The Operator would be subject to local site plan review regulations and permitting processes for the Towns of Newbury and Goshen for the development of the public recreational facilities within Mount Sunapee ski area, including the West Bowl area, and any private development occurring on private lands if permitted by the Town of Goshen.*

**Issue raised by the public: Conservation of ENC, forest communities and highlands located in the West Bowl.**

- ***Vail on land conservation.***

*“Vail Resorts has a long history of working with community stakeholders and believes it is a critical element for our success. We are open to hearing views on land conservation options, including through meeting with the Forest Society. We would note that we have conducted initial outreach to multiple environmental and conservation organizations throughout this process.*

*“As we stated at the public meeting, Vail Resorts does not intend to develop real estate at Mount Sunapee. It’s simply not what brought the company to New Hampshire.*

*“We look forward to operating the resort and taking the time necessary to learn from the community. Only then can we make an informed decision about West Bowl. It is not our focus right now.” See attached “Supplemental Due Diligence” report from Vail.*

- *Refer to the DRED (now, DNCR) [Public Comment Analysis & Response Update Report](#), dated March 17, 2016, for more information about the agency’s review of public comment received during the review and approval of Mount Sunapee Resort’s Master Development Plan 2015-2019 that included the conservation of Exemplary Natural Communities and forest communities and highlands located in the West Bowl area.*
- *In addition, there is a summary of the West Bowl expansion and changes to the West Bowl expansion proposal found in [Commissioner Rose’s Mount Sunapee MDP/EMP Decision Summary](#), dated March 30, 2016.*

**III. Economic impact** – Economic impacts, whether positive or negative, including local economy, jobs.

A summary of the areas of concern expressed by the public include:

- Vail has the capital / financial resources needed. Vail invests in its properties. Vail is qualified. Vail has been beneficial to the local economy.
- The lease is an economic engine for the area. Local businesses are doing well. Property values are rising. The operator provides jobs.
- The lease has saved two ski areas. The lease benefits Cannon and the park system.
- Mt Sunapee needs to compete and stay economically strong

**Issue raised by the public: Vail's financial resources to operate Mount Sunapee ski area.**

*This issue will be covered as part of the State's "due diligence" review of the technical and financial capability of Vail.*

**Issue raised by the public: The Lease's positive economic impact to the local area.**

- Refer to the DRED (now, DNCR) [Public Comment Analysis & Response Update Report](#), dated March 17, 2016, for more information about the agency's review of public comment received during the review and approval of Mount Sunapee Resort's Master Development Plan 2015-2019 that included the economic impact of the Lease.
- Refer to Mount Sunapee Resort's "[Update of Economic & Fiscal Impacts as part of the Five-Year Master Development Plan 2015-2019](#)", completed by RKG Associates, dated April 7, 2015, (p.7):
- Refer to the [RMDP 2016-2020](#) (p. 4) for information on the local economic impact of the Lease.

**Issue raised by the public: The Lease saved two ski areas.**

- **History of Lease:**
  - [HB 369, 1995](#) – originally filed as "relative to capital improvements at the Mount Sunapee and Cannon Mountain ski areas and making an appropriation therefor" was amended to "establishing a committee to study the feasibility of leasing the Mount Sunapee and Cannon Mountain ski areas."
  - [HB 1620, 1996](#) – originally filed as "relative to the information required in any contract to lease the Cannon Mountain and Mount Sunapee ski areas" was amended by adding "authorizing the services of a consultant to develop a prototype lease and making an appropriation therefor."
  - [HB 628, 1997](#) – originally filed as "relative to leasing Mount Sunapee and Cannon Mountain ski areas based on the prototype lease developed pursuant to prior legislation was amended to "relative to an agreement or contract for the Mount Sunapee or Cannon Mountain ski area operations, or both, establishing a committee to develop a proposal and review responses, and requiring review of any agreement or contract by the capital budget overview committee."
  - [HB 1291, 1998](#) – "relative to management of the state ski areas at Mount Sunapee and Cannon Mountain" repealed certain laws, incl. admission without charge, reduced NH season ticket

rates; established the CMAC, the Cannon Capital Improvement Fund, and required DRED to develop a master plan for Cannon Mountain.

○ **Capital investments at Mount Sunapee ski area**

- “Mount Sunapee has invested over twenty-two (22) million dollars in capital improvements since July 1, 1998. The summer of 2018 will be our twenty-first (21st) summer of capital improvements and capital maintenance projects at Mount Sunapee.” [AOP 2018-2019](#), p. 36
- See AOP Section M, Implementation of the MDP, for planned improvements during the 2018-2019 AOP timeframe.
- See [RMDP 2016-2020](#), for Mount Sunapee Resort’s report on the current conditions of the ski area facilities:
  - Existing Lifts, p. 12                      - Existing Ski Terrain, p. 13                      - Maintenance Facilities, p. 21
  - Utilities, p. 22                      - Snowmaking Coverage, p. 24                      - Skier Services Buildings, p. 24
  - Summer Adventure Park, p. 28                      - Parking and Roads, p. 30

○ **Pursuant to [RSA 12-A:29-c](#), the Lease payments are allocated to the Cannon Mountain Capital Improvement Fund, enabling the State to make capital investments at Cannon Mountain ski area, including:**

- \$5.1 million energy-efficiency initiative with over 400 state-of-the-art tower guns
- \$250K upgrades to snowmaking
- \$135K warming hut located in the Mittersill ski area
- \$200K lift upgrades, including the Mittersill Double Chair
- \$150K state-of-the-art tuning machine

○ **A strong and viable Cannon Mountain ski area enables the greater NH State Park System to address its long-standing deferred maintenance, to make significant park improvements generating more revenue and improving the visitor experience, and to offer the public more recreational opportunities by lengthening its operating season. Most notable are:**

- The \$2.6 million deficit carried forward each year was eliminated in FY 2012.
- The Division has addressed a third of the needs identified in its 2010 [ten year strategic plan](#), including reducing the \$28.5 million in deferred maintenance and the \$71 million needed for replacement and redevelopment of facilities.
- With the support of legislature and Governors for its capital budgets:
  - Nansen Ski Jump restoration
  - Umbagog Campground redevelopment
  - Jenness State Beach redevelopment
  - North Hampton Beach redevelopment
  - White Lake improvement project
  - Lafayette Brook acquisition
  - Mount Sunapee Campground improvements

**Issue raised by the public: Mount Sunapee needs to compete and stay economically strong**

Refer to the DRED (now, DNCR) [Public Comment Analysis & Response Update Report](#), dated March 17, 2016, for more information about the agency's review of public comment received during the review and approval of Mount Sunapee Resort's Master Development Plan 2015-2019 that included the comments about Mount Sunapee ski area and the NH ski industry.

**IV. Passes / Prices – Epic Pass program, discounted ticket pricing, pricing appropriate to median income for region.**

A summary of the areas of concern expressed by the public include:

- Vail's Epic Pass will be a benefit. Epic Passes reduce overall cost to ski multiple Vail properties. Epic Passes will increase skiers resulting in negative impacts. Concerned about pass exchange programs.
- Will Vail honor season passes already sold? Will Vail continue current senior pass programs?
- Vail's percentage of ticket sales versus real estate development.
- Vail's single day lift tickets are too high. Vail does not offer lift ticket deals. Vail will increase ticket prices. Concerned about price of tickets and season passes.
- Vail's market demographic vs. NH's local demographic comparison
- Prices are comparable. Compared pricing in-state & national competitors. Affordable prices for NH. Discounts for NH citizens, incl. seniors, for school programs, for the disabled. Prices should be comparative to Cannon.
- Negotiate lease to keep skiing and outdoor recreation affordable. Ticket prices determine who has access.

**Issue raised by the public: Comments related to Vail's pass programs and its revenue allocation.**

○ ***Vail's statement on its Epic Pass – Triple Peaks Pass Alliance***

*"This pass alliance with the Triple Peaks resorts was announced in March 2018 before the acquisition of Triple Peaks, LLC was announced in June 2018. Upon the acquisition closing, the alliance agreement terminates. If the acquisition does not close, the alliance agreement would stay in effect. The alliance provides Epic Pass holders with 7 days at Mount Sunapee.*

*"The announcement may be viewed at: <http://news.vailresorts.com/corporate/cbmr.htm>" See attached "Supplemental Due Diligence" report from Vail.*

*Vail has indicated that if the assignment occurs, Mount Sunapee ski area will be fully included in the Epic Pass.*

○ ***Vail's statement on its Epic Pass revenue allocation***

*"It is our policy that no individual may obtain access to a mountain/lift without a valid Pass/ticket product. Each Epic Pass has a radio-frequency identification (RFID) chip which is scanned each day during the point-of-entry at the base of each mountain/resort. As each Epic Pass is the visit is*



recorded and revenue is then allocated to the resort on a monthly basis. Epic Pass revenue recognition policy is consistently applied in each resort in which we operate. The revenue is recognized throughout the ski/ride season based on where the pass holder utilizes the Epic Pass. By the end of the ski/ride season each resort gets its proportioned Epic Pass revenue based on Epic Pass scans at the specific resort over total Epic Pass scans for all resorts. Vail Resorts, Inc. is a public company registered on the New York Stock Exchange and is audited annually by the accounting firm of PricewaterhouseCoopers LLP.” See attached “Supplemental Due Diligence” report from Vail.

<p><b>Issue raised by the public: Pricing, incl. discounts for seniors, school groups and the disabled. Pricing should be similar to Cannon.</b></p>
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- See [Lease](#), **part 4. Ski Area Operations**. “This Lease and Operating Agreement shall entitle the Operator to the right to operate a commercial recreational facility (including all of its support activities) on Mount Sunapee in the Towns of Newbury and Goshen.”
- See **Lease, part 13. Rate Schedule**. “All rates and prices charged by the Operator for ski lift tickets, admission fees, permit or license fees or other fees to be paid by members of the general public shall be submitted to DRED for its review and approval. All rates and prices charged by the Operator shall be competitive with similar privately operated facilities. DRED’s approval shall be automatic unless DRED makes a determination that the rates are not competitive and so notifies the Operator” (*emphasis added*).
- In accordance with the Lease, DNCR will request that the operator submit its ski lift tickets, admission fees, permit or license fees or other fees to be paid by members of the general public to DNCR for review and approval and that DNCR will make a determination that the rates are competitive and so notify the operator.
- DNCR has brought these pricing concerns and this related Lease provision to the attention of Vail.
- **Legislation related to fees at Mount Sunapee ski area and the State Park fees**
  - See [HB 1291, 1998](#) that:
    - Explicitly exempts state-owned ski areas operated by a lessee from the admission without charge law of 218:5-c, and
    - Explicitly repealed RSA 227:14, the application of reduced season ticket rates for NH residents, at Mount Sunapee ski area.
  - See [RSA 216-A:3-g](#), **Fees for Park System** (*emphasis added*)
 

“The fees approved by the commissioner, after prior approval of the fiscal committee, shall not be subject to the provisions of RSA 541-A, so as to provide the department with the ability to maximize revenues and to adjust fees according to market conditions and trends as is the common practice in private industry.

“I. Fees for the use of park areas shall be designed to recover a reasonable portion of budget expenses consistent with the purposes of RSA 216-A:1 and 216-A:3.

“II. Fees for the use of campgrounds and ski lifts shall be comparable with the fees for use of similar privately owned facilities. The operation of all enterprise functions within the park

*system, including ski lifts, food service, retail facilities, campgrounds, and other concession activities, shall be as profitable as possible, within the purposes of the park system.*

○ **Vail's statement pricing and special programs**

*"We have made significant investments near Vail Resorts mountains, including granting \$9.5 million to local community and environmental nonprofits and providing local kids with no-cost opportunities to ski, ride, and learn at each of our resort locations. It is our intention to establish similar programs at Mount Sunapee to meet the needs and interests of the community." See Letter from Pat Campbell, President, Mountain Division, Vail Resorts, Inc., dated August 27, 2018 (attached).*

<b>Issue raised by the public: More opportunities for free and non-fee areas for use by the general public.</b>
---

○ Refer to Mount Sunapee Resort's [\*Annual Operating Plan 2018-2019\*](#).

- Summer recreational activities available to the public without charge, p. 8-9.
  - South Peak Interpretive Hiking Trails developed in collaboration with the Upper Valley Trails Alliance (maintained by MSR)
  - Summit Trail and Lake Solitude Trail, as part of the Sunapee-Ragged-Kearsarge Greenway (maintained by volunteer trail groups with Spring cleanup of the Summit Trail by MSR)
  - Hiking on the ski trails in summer and fall
  - Walking: Visitors can take extended walks around the premises and stay on relatively flat ground.
  - Dog friendly access: Dogs must be leashed and owners must clean up after their dogs. MSR provides "doggie stations" with bags and disposal cans.
  - Birding, with a variety of habitat for spring and fall migration and summer residents
  - Picnics: Tables and grills are available along Beck Brook in the South Peak area
  - Restrooms in the Adventure Center building are open seven days a week from Memorial Day weekend through Columbus Day weekend.
  - Use of the parking lots by the general public.
- Winter recreational activities available without charge, p. 13.
  - Snowshoe Trails
- Summer recreational activities available for a fee, p. 4-10.
  - Adventure Park
  - Summit Chairlift Rides
  - Freestyle Ski Training Camps
  - Kids Mountain Adventure Day Camp
  - Yoga classes at the summit

- *Food & Beverage Services and Facility Rental for Weddings, Receptions, Banquets & Meetings*
- *Summer Specialty Dinners, such as Lobster Bakes and Family Fun Nights*
- *Outdoor Concerts, such as country, classical, jazz, pop, rock or folk concerts (an admission fee may be charged)*
- *Shows, Fairs and Events:*
  - *Sunapee Lions Club Antique Car Show*
  - *League of New Hampshire Craftsmen's Fair*
  - *Fall Foliage Festival and Pig Roast BBQ*
- *Winter recreational activities available for a fee, p. 11-13.*
  - *Alpine and Telemark Skiing*
  - *Snowboarding*
  - *Ski-related special events*
- ***Mount Sunapee State Park areas outside the Leased Premises.***
  - *Recreational activities available without charge*
    - *Hiking along [Sunapee-Ragged-Kearsarge Greenway](#)*
    - *Hiking along the [Monadnock-Sunapee Greenway](#)*
    - *Hunting outside the lease premises, excluding areas where otherwise prohibited such as the campground and beach area.*
  - *Recreational activities available for a fee*
    - *Mount Sunapee [State Park Beach](#), includes swimming, boat rentals, picnicking, playground and retail store.*
    - *Mount Sunapee [State Park Campground](#)*

**V. Plans for leasehold area** – Vail's plans for the ski area and/or as their plans apply to the state park as a whole.

A summary of the areas of concern expressed by the public include:

- Vail has not done its due diligence to provide information about its planned development. What are Vail's plans for growing the sport?
- Look to Okemo and Vail CO to see area "cluttered" beyond recognition
- Vail has done great things for the ski industry. Vail stewardship has been positive. Vail is a leader in the ski industry and a great choice to continue operations at Mt Sunapee
- Vail would enhance area structure and create opportunity for a great area to live, work, play

- Will the League of NH Craftsmen's Fair continue? Will Vail honor current special events that have been booked?
- Continued public outreach; Community representation; Collaborative process; Public process w/ focus on natural resources; Monitoring of all projects
- Mt Sunapee ski area improvements were intended to benefit region and its residents, not a higher income demographic. Review SUPs to protect state property
- Need for balanced use. Improve non-ski & no-fee facilities, including campground road and picnic areas
- Remove 3D course
- Raise ADA accessibility at park. Oversee / enforce safety of equipment and safety for all users
- Look at state park as a whole. Continue state beach use. Operator should incorporate more of the state park's amenities in its promos

<b>Issue raised by the public: Vail's plans for ski area.</b>
---

○ ***Vail's commitment to land conservation.***

*"Vail Resorts has a long history of working with community stakeholders and believes it is a critical element for our success. We are open to hearing views on land conservation options, including through meeting with the Forest Society. We would note that we have conducted initial outreach to multiple environmental and conservation organizations throughout this process.*

*"As we stated at the public meeting, Vail Resorts does not intend to develop real estate at Mount Sunapee. It's simply not what brought the company to New Hampshire.*

*"We look forward to operating the resort and taking the time necessary to learn from the community. Only then can we make an informed decision about West Bowl. It is not our focus right now." See attached "Supplemental Due Diligence" report from Vail.*

○ ***Vail's commitment regarding DNCR's Natural Heritage Bureau.***

*"Vail Resorts is aware of the work of the Natural Heritage Bureau and is open to further conversation and dialogue with the DNCR, along with other stakeholders, as it relates to Mount Sunapee State Park and the ski area." See attached "Supplemental Due Diligence" report from Vail.*

<b>Issue raised by the public: MSR planned development for the ski area.</b>
--

- See Commissioner Rose's [final decision of March 17, 2016](#), in which he approved the plans outlined in the RMDP 2016-2020, except for the mountain coaster.
- See the [RMDP/EMP 2016-2020](#) (p. 32-62) for approved upgrading plan projects:
  - Lifts, p. 38-39   - Ski Terrain, p. 40-46   - Maintenance Facilities, p. 49   - Utilities, p. 49
  - Snowmaking System, p. 49-50   Skier Services Buildings, p. 51-55   - Parking and Roads, p. 55
  - Summer Adventure Park, p. 56-57
  - See also "Overview of the revised West Bowl ski area expansion proposal" p. 32

- See Mount Sunapee Resort's [AOP 2018-2019](#) for proposed projects to be implemented over the 2018-2019 season (p.38)
- See Commissioner Stewart's [written response](#) regarding the AOP 2018-2019.
- For prior projects approved under previous AOPs, see the [Mount Sunapee Advisory Committee webpage](#).

**Issue raised by the public: Remove archery course.**

- The archery course was proposed by Mount Sunapee Resort in its [AOP 2017-2018](#) (p.8). Commissioner Rose did not approve the proposal outright, but added additional conditions to its approval, see [June 29, 2017](#), approval letter containing certain conditions including compliance with the National Field Archery Association (NFAA) design and safety guidelines.
- Mount Sunapee Resort designed the archery course in accordance with the NFAA guidelines. They received review of the course by the NH Fish and Game Department and implemented all the recommendations of the NHFG. They met with the Town of Goshen Planning Board to discuss the archery range and the Planning Board voted that a site plan review would not be necessary. Mount Sunapee Resort met the department's conditions for the archery range.
- This activity complements the archery course at Bear Brook State Park and the Owl Brook Hunter Education Center, both operated by the NH Fish and Game Department (NHFG). The availability of these types of recreational activities is supported by the State through NHFG and DNCR.

**Issue raised by the public: Public Process and Involvement pertaining to site development.**

- The Operator's Annual Operating Plan (AOP), through the Mount Sunapee Advisory Committee (MSAC), is reviewed and approved by the DNCR. The department welcomes the questions and comments it receives from the MSAC and public during its review of the AOP.
- Specific site plan development is subject to state and local site plan review. The Operator would be subject to local site plan review regulations and permitting processes for the Towns of Newbury and Goshen for the development of the public recreational facilities within Mount Sunapee ski area, including the West Bowl area, and any private development occurring on private lands if permitted by the Town of Goshen.
- Refer to DNCR's [Public Involvement and Oversight Policy](#) (PIOP) that outlines the public process for review of the Operator's proposed development plans.

**VI. Preserve / Conserve** - Preserve or conserve the "old growth forests," the Exemplary Natural Communities, unfragmented forests, and/or the natural resources within the leasehold area.

A summary of the areas of concern expressed by the public include:

- Revisit decision on Exemplary Natural Communities (ENC). Urge Vail to protect ENC.
- State should work w/ SPNHF for conservation easement of "old growth" forest on east side. Protect old, ancient, "old growth" forests. Protect the county's oldest trees.



- Protect natural heritage and diversity. Preserve and conserve undeveloped lands. Protect natural assets. The natural world is the more important resource.
- Protect the Monadnock-Sunapee Greenway

<b>Issue raised by the public: Conservation of the ENC in the East Bowl area.</b>
---

- **Further discussion.** *The State and Vail have committed to discussions with the Society for the Protection of New Hampshire Forests regarding the conservation of the ENC located in the East Bowl.*

- **Vail's commitment to land conservation.**

*"Vail Resorts has a long history of working with community stakeholders and believes it is a critical element for our success. We are open to hearing views on land conservation options, including through meeting with the Forest Society. We would note that we have conducted initial outreach to multiple environmental and conservation organizations throughout this process.*

*"As we stated at the public meeting, Vail Resorts does not intend to develop real estate at Mount Sunapee. It's simply not what brought the company to New Hampshire.*

*"We look forward to operating the resort and taking the time necessary to learn from the community. Only then can we make an informed decision about West Bowl. It is not our focus right now." See attached "Supplemental Due Diligence" report from Vail.*

- **Vail's statement regarding the Natural Heritage Bureau.**

*"Vail Resorts is aware of the work of the Natural Heritage Bureau and is open to further conversation and dialogue with the DNCR, along with other stakeholders, as it relates to Mount Sunapee State Park and the ski area." See attached "Supplemental Due Diligence" report from Vail.*

- Refer to the [\*"Public Comment Analysis & Response on Mount Sunapee MDP/EMP"\*](#) dated March 17, 2016, for more information about the agency's review of public comment received during the review and approval of Mount Sunapee Resort's Master Development Plan 2015-2019 that included the conservation of exemplary natural communities located in the East Bowl area.

## **VII. Other topics – Public access and process in general. Renegotiate/revise the lease, including "original intent" and "buffer zone," protect ENC, remove WB, pricing, etc. State Park branding.**

A summary of the areas of concern expressed by the public include:

- Operator should be part of state park branding in its promos, signage
- Negotiate/Revise lease:
  - To its original intent, including the original lease area and the "buffer zone"
  - Remove WB area
  - Revise the lease to increase commission payment for increased ski area footprint
  - Lease to non-profit or cooperative like Mountain Riders Alliance and Mad River Glen

- Lease has been beneficial to Mount Sunapee, region & taxpayers, Cannon and state park system

<b>Issue raised by the public: Mount Sunapee State Park branding, signage and joint promotions.</b>
---

- **Statement from Vail on marketing and signage.**

*“Vail Resorts has a strong history of collaboratively working with our land agency partners such as the US Forest Service (USFS). We strive to recognize and reflect the unique characteristics and history of each of our mountains and communities.*

*“There are several examples of how Vail Resorts highlights the partnership with USFS, including signage on the mountain, trail maps, and websites. Attached are photos that illustrate how Vail Resorts has worked to create guest awareness environmental education opportunities as part of our summer activities program, Epic Discovery (Exs. B and C). These signs were collaboratively developed by Vail Resorts, the US Forest Service, and our partners at The Nature Conservancy. Vail Resorts funded the development and installation of the signs.*

*“Other signs welcoming guests to their National Forest were developed by the USFS.*

*“Vail Resorts also includes reference to our land agency partners on the trail maps and websites of our individual resorts.*

*“We welcome the opportunity to collaborate on these issues with the NH Department of Natural and Cultural Resources.” See attached “Supplemental Due Diligence” report from Vail.*

- *DNCR will post separately from this report the photos from Vail that are referenced in their statements above.*

- *The Division of Parks and Recreation and Mount Sunapee Resort, through a Joint Promotional Agreement, offers the visiting public a multi-activity summer day pass known as the “Play All Day” that allows entry into the Mount Sunapee State Park beach and the Mount Sunapee Resort’s Adventure Park.*

<b>Issue raised by the public: Renegotiate/Revise Lease.</b>
--

- **Relative to revising the Lease to its original intent, including the “buffer zone.”** *The State must comply with the Court Order. The Merrimack County Superior Court decision of July 8, 2014, found that the western and northern leasehold boundaries are the same as the State Park boundaries.*

- *See “[Revised Map of Lease Premises](#)”*

- **Relative to removing the West Bowl from the Lease.** *The DNCR, after a long public involvement process and significant changes to the Operator’s original Master Development Plan request, approved the West Bowl expansion in good faith with the intent that the West Bowl would be developed. It is not the intent of the agency to revisit the MDP and the West Bowl expansion plans, given the balance it struck with the Operator, the additional recreational opportunities that the MDP and West Bowl expansion provides, the additional protections of the natural communities, and the addition of public lands.*

- *See Commissioner Rose's [final decision of March 17, 2016](#), in which he requested, among other things, amendments to the Lease, revisions to the MDP/EMP and*
- *See Governor and Executive Council approval the additional 10 year option to extend the Lease and the Lease Amendment to accept land and provide for the expansion of Mount Sunapee State Park, see G&C Agenda for [April 6, 2016, Item #40](#). See also the explanation above regarding the lease amendment.*
- *See Section II. WB/RE development of this report for other historical documents and resources.*
- ***Relative to an increase in the rental payment based on revenues.** Pursuant to the Lease, the Lease assignment can be approved by the DNCR Commissioner and cannot be unreasonably withheld. Any proposed amendment to the Lease would require agreement by both parties to the lease as well as Governor and Executive Council approval. The term of the current Lease expires on June 30, 2028, with two additional options to extend for ten years each.*
- ***Relative to leasing the ski area to a non-profit entity.** Approval of the Lease assignment cannot be unreasonably withheld. The State remains contractually bound to the current lease despite the request to consent to assignment. Therefore, the State cannot solicit for bids to operate the ski area during its consideration of the proposed assignment.*

**Issue raised by the public: Lease has been beneficial to Mount Sunapee, region & taxpayers, Cannon and state park system.**

*Refer to Section III., of this report regarding the economic impact of the Lease to the local area and the economic impact of the Lease on Cannon Mountain and the NH State Park System.*

- ### -

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD  
ATTORNEY GENERAL



ANN M. RICE  
DEPUTY ATTORNEY GENERAL

June 15, 2018

His Excellency, Governor Christopher T. Sununu  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

Governor Sununu and Members of the Council:

This letter follows up on the discussion at the June 6, 2018 Breakfast Meeting regarding the transaction involving the Mount Sunapee Resort. On June 4, 2018, VR NE Holdings, LLC ("Vail") announced that it had entered into an agreement to purchase Triple Peaks, LLC (Triple Peaks"), from the Mueller family and its affiliated entities. The parties to this transaction have since provided further details to us. We write to share our understanding of the basic structure of the transaction, its implications for the State's right to consent to transfer of the Lease and Operating Agreement, as well as to set forth the outline of a public process going forward.

**A. Background**

In 1998, the State entered into a Lease and Operating Agreement (the "Lease") with Okemo Mountain, Inc., an entity controlled by the Mueller family. That Lease provides:

The Operator may assign, or otherwise transfer any interest in this Agreement with the prior written approval of the State. Services required under this Agreement may be delegated or subcontracted by the Operator with the prior written approval of the State. Such approval shall not be unreasonably withheld by the State.

1998 Lease and Operating Agreement, at paragraph 22.

There have been a series of transactions affecting the Lease since 1998, including the assignment of the lease to The Sunapee Difference, LLC ("TSD") on December 1, 1998. As of 2016, the State was the owner and CLP Mount Sunapee, LLC ("CLP Mount

Sunapee”) was the tenant under the Lease. TSD was the operator, under a sublease agreement. TSD is owned by Triple Peaks. In 2017, the ownership interest in CLP Mount Sunapee was acquired by Och-Ziff Real Estate. Pursuant to paragraph 22 of the Lease, that transaction did not require state approval. The current term of the Lease runs through June 30, 2028, with two 10-year extension options, through June 30, 2038 and June 30, 2048.

**B. The Proposed Transaction.**

We understand that, as a condition of the sale of Triple Peaks to Vail, CLP Mount Sunapee will assign its interest as the tenant under the Lease to TSD and the sublease will be terminated. This assignment of the Lease will require approval by the State under paragraph 22 of the Lease.

In addition, all of the site improvements and personal property owned by CLP will be transferred to TSD. We further understand that Vail will acquire all real estate owned by Sunapee Land Holdings, LLC, which is owned by the Mueller family. This real estate includes the so-called West Bowl Expansion lands, which are referenced in the 2016 Lease amendment. Sunapee Land Holdings, LLC is a signatory to that amendment.

In sum, it is our understanding that, after the transaction is complete, TSD will be the tenant under the State Lease and will own the site improvements and personal property on the premises previously owned by CLP. It will also own the lands needed for the West Bowl Expansion. TSD will also be the operator of the Mount Sunapee Resort. Through its ownership of Triple Peaks, the TSD parent, Vail will be the new owner of TSD. Attached is a schematic depicting the post-transaction operating structure.

**C. The Process Going Forward.**

The approval under paragraph 22 of the Lease must be given by the Department of Natural and Cultural Resources, as successor to the Department of Resources and Economic Development. Our Departments will work with the parties to the transaction to obtain and review carefully all information necessary, prior to any approval. That process has started and the parties, through their attorneys, have been cooperative.


In addition, we have communicated to the parties the importance of transparency and public involvement with respect to this transaction. To that end, DNCR will be making information and documents available on its website. In addition, it will schedule at least one public information session at which the details of the transaction will be presented by the parties to the transaction and the public will have an opportunity to be heard and to ask questions. We expect that Executive Councilors will want to participate in that session and we will work with you with respect to scheduling.

We will certainly keep you informed as this process unfolds.



His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 3 of 3

Respectfully submitted,



Gordon J. MacDonald  
Attorney General



Sarah Stewart  
Commissioner, DNCR

**VAIL RESORTS, INC. – POST ACQUISITION OPERATING STRUCTURE - NH**



August 30, 2018

Sarah Stewart, Commissioner  
State of New Hampshire  
Department of Natural and Cultural Resources  
172 Pembroke Road  
Concord, NH 03301

Gordon MacDonald, Attorney General  
State of New Hampshire  
Department of Justice  
33 Capitol Street  
Concord, NH 03301

Re: Mount Sunapee Resort – Request for Consent to Lease Assignment

Dear Commissioner Stewart and Attorney General MacDonald:

I am writing on behalf of my client, VR NE Holdings, LLC (“Vail NE”), wholly owned (indirectly) by Vail Resorts, Inc., which is a publicly traded company and, through its subsidiaries, is owner and operator of a number of ski resorts in the United States. This letter follows the several months of discussions between representatives from your offices and my client’s representatives regarding the anticipated transaction by which Vail NE would become the indirect owner of The Sunapee Difference, LLC (“TSD”), which is the operator of Mount Sunapee Resort.

The Department of Natural and Cultural Resources (“DNCR”), as the successor-in-interest to the Department of Resources and Economic Development, holds responsibility for Mount Sunapee and is the landlord under the 1998 Lease and Operating Agreement (as amended, the “State Lease”) by which Mount Sunapee Resort is privately operated. The current tenant under the State Lease, CLP Mount Sunapee, LLC (“CLP”) is owned by private equity funds at Och-Ziff Real Estate and subleases Mount Sunapee Resort to TSD, which has been the operator since 1998.

Pursuant to a Purchase Agreement dated June 4, 2018, Vail NE has agreed to purchase 100% of the membership interests in Triple Peaks, LLC, the parent company of TSD as well as Crested Butte, LLC and Okemo Limited Liability Company (the “Transaction”). As a condition of closing of the Transaction, CLP will assign its interest as tenant under the State

August 30, 2018  
Page 2

Lease and transfer all of its site improvements and personal property at Mount Sunapee to TSD. Concurrently, TSD will also acquire certain real estate owned by Sunapee Land Holdings, LLC, including the so-called West Bowl Expansion lands referenced in the 2016 Amendment to the State Lease.

In short, after the transaction is complete, TSD will continue to be the operator of Mount Sunapee Resort but will also be the direct tenant under the State Lease. The current tenant, CLP, will no longer have any involvement with Mount Sunapee Resort. TSD will own all of the site improvements and personal property necessary to operate Mount Sunapee Resort, as well as all lands needed for the West Bowl Expansion. Through its ownership of TSD's parent, Vail NE will indirectly be the new owner of TSD and responsible for operation of Mount Sunapee Resort.

As you know, the State Lease provides that "[t]he Operator may assign, or otherwise transfer any interest in this Agreement with the prior written approval of the State. Services required under this Agreement may be delegated or subcontracted by the Operator with the prior written approval of the State. Such approval shall not be unreasonably withheld by the State." State Lease, ¶22. Accordingly, the contemplated assignment of the State Lease from the current tenant CLP to TSD requires the approval of DNCR. Among other contingencies, the closing of the Transaction will not occur unless and until DNCR has granted its approval.

Accordingly, as we near completion of DNCR's due diligence in evaluating Vail NE as a potential partner in operating Mount Sunapee Resort, we are formally requesting that DNCR consent to the assignment of the State Lease to TSD. By their execution below, CLP and TSD acknowledge that, subject to the satisfaction of the certain conditions to the closing of their transaction, CLP and TSD intend to effectuate the assignment of the State Lease and each hereby request that DNCR consent to the assignment of the State Lease to TSD. We have previously provided to Attorney General MacDonald a draft assignment, which includes a consent provision, and look forward to your response.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Kelly Ovitt Puc

Cc: Anne Edwards, Esq.  
Dianne Martin, Esq.  
Larry Slason, Esq.  
John Lewis, Esq.  
Brendan McGuire

Acknowledged:

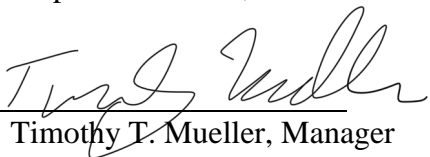
**CLP:**

CLP Mount Sunapee, LLC

By: \_\_\_\_\_  
Name:  
Title:

**TSD:**

The Sunapee Difference, LLC


By:   
\_\_\_\_\_  
Timothy T. Mueller, Manager  
Of Triple Peaks Finance, LLC,  
Sole member manager of Triple Peaks, LLC



Acknowledged:

**CLP:**

CLP Mount Sunapee, LLC

By:   
Name: Steven Orbach  
Title: Authorized Person

**TSD:**

The Sunapee Difference, LLC

By: \_\_\_\_\_  
Name:  
Title:

# VAIL RESORTS®

EXPERIENCE OF A LIFETIME™

Pat Campbell  
President, Mountain Division  
Vail Resorts, Inc.  
390 Interlocken Crescent  
Broomfield, CO 80021

August 27, 2018

Sarah Stewart  
Commissioner, Department of  
Natural and Cultural Resources  
State of New Hampshire  
172 Pembroke Road  
Concord, NH 03301

Dear Commissioner Stewart:

It is my understanding that the legal teams for Vail Resorts, Inc. and the State of New Hampshire are making progress in reviewing the documents necessary for completing a successful and timely transfer of the lease for Mount Sunapee. I appreciate the time and effort you and your team are dedicating to this matter.

I write to personally address several common themes that have arisen through the public process: environmental stewardship; Vail Resorts as a collaborative partner; the promotion of public land; and recognizing the unique character of Mount Sunapee as a place and State park. We have an excellent track record on these issues and are eager to bring it to bear in New Hampshire.

Let me begin with a simple commitment: we will continue discussions already initiated with the Mt. Sunapee community on important environmental issues. Vail Resorts welcomes this opportunity for exchange with you and any interested groups.

Further, we understand that some believe there is inadequate recognition that Mount Sunapee is located on public land. The story of Vail Resorts is inseparable from the enduring partnerships we have forged with federal and state land management agencies and the trust we have worked to maintain with local communities and the broader public. Should consent be granted, we are prepared to work collaboratively with Mount Sunapee State Park and all of its New Hampshire partners on how to best promote the new partnership.

There are also concerns, as voiced in the July public meeting, that Vail Resorts operating the mountain might diminish the unique character of Mount Sunapee. I appreciate this

*Vail Resorts  
390 Interlocken Crescent  
Broomfield, CO 80021  
303-404-1800*

concern and take it very seriously. Please know we recognize that people choose to live in and visit our resort communities for a reason. In partnership with local residents, we will honor what makes Mount Sunapee special by doing everything we can to ensure that the mountain reflects the community.

As our leadership team often says, the success of our company and our communities are inextricably linked. We have made significant investments near Vail Resorts mountains, including granting \$9.5 million to local community and environmental nonprofits and providing local kids with no-cost opportunities to ski, ride, and learn at each of our resort locations. It is our intention to establish similar programs at Mount Sunapee to meet the needs and interests of the community.

We are excited at the prospect of partnering with you and your team to operate Mount Sunapee. If there are any concerns that you continue to have that are not addressed by my team, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat Campbell". The signature is fluid and cursive, with the first name "Pat" and last name "Campbell" clearly distinguishable.

Pat Campbell

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<sup>1</sup> The terms “we” or “our” used in the due diligence responses refer to Vail Resorts, Inc.

## **RESPONSES TO PUBLIC COMMENTS**

### **1 Land Conservation.**

Vail Resorts has a long history of working with community stakeholders and believes it is a critical element for our success. We are open to hearing views on land conservation options, including through meeting with the Forest Society. We would note that we have conducted initial outreach to multiple environmental and conservation organizations throughout this process.

As we stated at the public meeting, Vail Resorts does not intend to develop real estate at Mount Sunapee. It's simply not what brought the company to New Hampshire.

We look forward to operating the resort and taking the time necessary to learn from the community. Only then can we make an informed decision about West Bowl. It is not our focus right now.

### **2 Clarification on Real Estate Development.**

We are focused on operating our resorts and base areas, having shifted away from developing real estate projects in recent years. Instead of developing prime parcels of Vail Resorts' land ourselves, we're looking for third parties who can lend their expertise in development by working with our communities and local governments. We have a vested interest in ensuring that projects enhance the entire resort community and carefully consider our guests and local residents.

Evidence of this strategic shift is present in our Annual Report financials: Real Estate development is a separate reporting segment, and it has steadily reduced over the years. In 2012-2014, it was 4% of VRI's net revenue, 2015-26, it was 3% and 2016-2017, it has gone down to 1% (see page 41 of 2017 10-K). As our company has grown, real estate development has actually declined. We have updated the outdated language on our corporate website to reflect the above.

### **3 Marketing and Signage.**

Vail Resorts has a strong history of collaboratively working with our land agency partners such as the US Forest Service (USFS). We strive to recognize and reflect the unique characteristics and history of each of our mountains and communities.

There are several examples of how Vail Resorts highlights the partnership with USFS, including signage on the mountain, trail maps, and websites. Attached are photos that

illustrate how Vail Resorts has worked to create guest awareness environmental education opportunities as part of our summer activities program, Epic Discovery (Exs. B and C). These signs were collaboratively developed by Vail Resorts, the US Forest Service, and our partners at The Nature Conservancy. Vail Resorts funded the development and installation of the signs.

Other signs welcoming guests to their National Forest were developed by the USFS.

Vail Resorts also includes reference to our land agency partners on the trail maps and websites of our individual resorts.

We welcome the opportunity to collaborate on these issues with the NH Department of Natural and Cultural Resources.

**4 NH DNCR Natural Heritage Bureau.**

Vail Resorts is aware of the work of the Natural Heritage Bureau and is open to further conversation and dialogue with the DNCR, along with other stakeholders, as it relates to Mount Sunapee State Park and the ski area.

**5 Epic Pass – Triple Peaks Pass Alliance (March, 2018).**

This pass alliance with the Triple Peaks resorts was announced in March 2018 before the acquisition of Triple Peaks, LLC was announced in June 2018. Upon the acquisition closing, the alliance agreement terminates. If the acquisition does not close, the alliance agreement would stay in effect. The alliance provides Epic Pass holders with 7 days at Mount Sunapee.

The announcement may be viewed at: <http://news.vailresorts.com/corporate/cbmr.htm>

**6 Epic Pass Revenue Allocation.**

It is our policy that no individual may obtain access to a mountain/lift without a valid Pass/ticket product. Each Epic Pass has a radio-frequency identification (RFID) chip which is scanned each day during the point-of-entry at the base of each mountain/resort. As each Epic Pass is the visit is recorded and revenue is then allocated to the resort on a monthly basis. Epic Pass revenue recognition policy is consistently applied in each resort in which we operate. The revenue is recognized throughout the ski/ride season based on where the pass holder utilizes the Epic Pass. By the end of the ski/ride season each resort gets its proportioned Epic Pass revenue based on Epic Pass



scans at the specific resort over total Epic Pass scans for all resorts. Vail Resorts, Inc. is a public company registered on the New York Stock Exchange and is audited annually by the accounting firm of PricewaterhouseCoopers LLP.

**7 Rent Payment and Lease Assignment.**

The lease payments will not change or be interrupted in connection with the assignment of the lease. All of the prorations are handled through the working capital adjustment in the main purchase agreement. It should be seamless from the State's perspective.