Vermont State Auditor

Douglas R. Hoffer

Report to the Vermont Legislature and the Agency of Natural Resources

State Land Leases Boost Ski Industry, but Are Dated and Inconsistent

1/20/2015 • Office of the Vermont State Auditor • Non-Audit Report 15-01

Mission Statement

The mission of the Vermont State Auditor's Office is to hold government accountable. This means ensuring taxpayer funds are used effectively and efficiently, and that we foster the prevention of waste, fraud, and abuse.

Principal Investigator

Andrew C. Stein

Non-Audit Inquiry

This is a non-audit report. A non-audit report is a tool used to inform citizens and management of issues that may need attention. It is not an audit and is not conducted under generally accepted government auditing standards. A non-audit report has a substantially smaller scope of work than an audit. Therefore, its conclusions are more limited, and it does not contain recommendations. Instead, the report includes information and possible risk-mitigation strategies relevant to the entity that is the object of the inquiry.

DOUGLAS R. HOFFER
STATE AUDITOR

STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

January 20, 2015

The Honorable Shap Smith
Speaker of the House of Representatives

The Honorable John Campbell
President Pro Tempore of the Senate

The Honorable Peter Shumlin
Governor

Deb Markowitz
Secretary of Natural Resources

Dear Colleagues,

More than 70 years ago, the State decided to catalyze a new industry by leasing public land to companies willing to invest in the infrastructure necessary for downhill skiing. By most measures, this partnership has been successful, and our iconic mountains are now home to world-famous ski areas.

Today's ski resorts, however, barely resemble their humble beginnings with a few lifts and modest facilities. They now operate year-round and have lodges, hotels, condominiums, retail stores, golf courses, waterparks, and other high-end amenities. These dramatic changes suggest the need for a review of the current leases, the first of which was adopted when Dwight D. Eisenhower was president.

In the beginning, lift tickets were the primary source of revenue for the ski areas. Not surprisingly, lease payments to the State are based on a percentage of lift ticket revenue. But the State was clearly hoping for more from these leases. For example, one of the leases referred to the State's desire "to promote winter sports <u>and summer and winter recreational facilities</u> within its boundaries…" (emphasis added).

Many of the resorts have grown significantly in recent years, as is evidenced by increased tax revenues from sales of retail merchandise, rooms, meals, and alcohol. Real estate development has mushroomed at some resorts. Although their hotels and condominiums are on private land,

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this real estate derives considerable value from its proximity to the slopes, which stretch across the spectacular high-elevation land leased by the State.

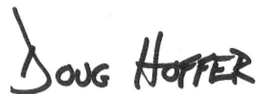
In contrast to this growth, inflation-adjusted lease payments have actually declined over the last 20 years. Clearly, the growth and diversification of the resorts has produced many new sources of revenue, none of which are captured for lease payments.

Our review points to old lease terms that may not be suitable for today and questions whether taxpayers are receiving fair value for these unique public assets. In addition to the core question about lease fees, the report addresses other issues of importance, including a number of curious and inconsistent lease terms that concern tax exemptions, municipal taxes, state PILOT payments, reporting requirements, liability insurance, and the role of the Department of Forests, Parks, and Recreation (FPR), which is responsible for overseeing the leases.

It is my hope that this report will stimulate a discussion about these issues, improve the program's uniformity, and find ways to make better use of taxpayer dollars that are being used to give certain ski resorts an advantage over others.

Finally, we appreciate the assistance provided by staff at ANR, the Tax Department, and numerous ski towns.

Sincerely,



Douglas R. Hoffer
Vermont State Auditor

Jay Peak
Smugglers' Notch
Burke
Stowe
Killington
Okemo
Bromley
Seven Ski Resorts Leasing Vermont Public Land

Executive Summary

In 2014, the Vermont State Auditor's Office initiated an inquiry of the State's land leases with seven ski resorts. The central aim of the investigation was to evaluate the direct financial return to the public for its unique land assets.

The 50- to 100-year leases stem from agreements made in the mid-20th century. The leaseholds include a total of roughly 8,500 acres of public land on some of Vermont's most famous mountains, such as Mount Mansfield, Jay Peak, and Killington Peak. Since the State began leasing land to ski resorts, a key goal of these arrangements has been to develop and promote recreational sports and facilities in Vermont. To this end, the arrangement has been very successful.

The leases were crafted to help the resorts grow on and around state land, while generating revenues for state forests and parks. Over the last half-century, locally owned resorts with several lifts and a few facilities have transformed into year-round enterprises – some of which are now owned by large out-of-state corporations. Today's resorts feature new lodges, hotels, condominiums, retail stores, golf courses, waterparks, and other high-end amenities. Between 2003 and 2013, development at the seven resorts spurred increases in sales of goods and services, property values, and revenues from excise taxes.

Meanwhile, lease payments over this decade fell when adjusted for inflation. The leases were designed to capture a certain percentage of the primary revenue source, which 50 years ago was lift tickets. But, as the resorts have evolved, that revenue source has become one of many. The result is that revenues from lease payments have not kept pace with development as measured by the sale of goods and services, property values, and revenues from excise taxes.

Since state lands are not subject to local property taxes, Vermonters pay for land and facilities used by the ski areas through the Payment in Lieu of Taxes programs. These payments for property used and developed by the resorts reduce the value of the lease revenues to the State.

The leases were written in non-standard terms and are inconsistent across key criteria, such as lease lengths, indemnity clauses, remedies for a breach of contract, and audit provisions. The lack of uniformity between the leases has produced a system that is difficult to administer and generates added costs for taxpayers. One of the most problematic of the inconsistencies is the variation in assigning title to property on state land, which obstructs two towns' power to tax and gives some resorts a tax advantage because property that belongs to the State is tax-exempt. The dated liability insurance language in the leases also poses potential risk for the State.

Finally, when the State negotiated the lease agreements, it made a crucial error by not stipulating regular opportunities to update the agreements, as the federal government does in its standardized 40-year permits with ski areas. Despite this impediment, the State and the ski resorts could work together to update and improve the leases.

Overview

The State of Vermont currently leases roughly 8,500 acres of public land to seven private ski resorts. The General Assembly is responsible for approving the leases, and the Agency of Natural Resources' (ANR) Department of Forest, Parks, and Recreation (FPR) oversees their execution.[1]

The leases date back to 1942, when Bromley Mountain's management struck a deal with then-State Forester Perry Merrill. The Bromley lease paved the way for seven other ski areas to lease land from Vermont over the ensuing decades, and all of these resorts – except Hogback ski area – continue to lease public land today.

From the outset, the State has sought to use these leases to develop and promote recreational sports and facilities in Vermont. Some variation of this promotional language appears in nearly every lease document. The 1972 agreement with Stowe Mountain Resort, for example, states: the "State desires to promote winter sports and summer and winter recreational facilities within its boundaries and to provide for the public good and benefit by the utilization of State-owned lands in recreational areas."[2]

There is a wealth of evidence that shows the program has successfully achieved its goal of promoting recreational activities and facilities in the Green Mountain State. Vermont has steadily attracted more skiers over the past several decades, and many resorts have evolved into four-season businesses, featuring assets such as golf courses, mountain bike parks, performing arts centers, adventure courses, and waterparks.[3] Real estate has become a central element of the ski resort growth model in Vermont, as resorts expand their lodges, condominiums, retail space, conference centers, and other developments.

At the seven resorts that lease land from the State, most real estate development has occurred on private land adjacent to the State leaseholds. In some cases, the State swapped land and paid for property as part of exchanges that gave certain companies developable land for resort villages at the bases of some of Vermont's most iconic mountains.[4]

Between 2003 and 2013, private property values at the seven ski areas grew by almost 150%, and, in 2013, the seven ski resorts generated nearly $5.3 million in property taxes for the State's education fund, which pays for Vermont public schools. During that same decade, inflation-adjusted sales of meals at these resorts grew by 40%, alcohol sales grew by 49%, and rooms' sales grew by 61%. The growth in combined sales has resulted in greater tax revenue for the State, and much of this tax burden is exported to non-residents who come to Vermont as tourists.

Meanwhile, the resorts' inflation-adjusted lease payments to the State fell by 14% over the same decade. These are payments the resorts make to the State for renting public land, which is where many of the resorts' ski slopes and the majority of their lifts are located.[5] The revenues from these leases go to the

[1] See: 10 V.S.A. §2606.
[2] Lease between the State of Vermont and Mt. Mansfield Company, Inc., 1972.
[3] Data on skier visits were provided by the Vermont Ski Areas Association.
[4] See Appendix A for more on the land exchanges.
[5] As Graph 2 shows, less than half of the linear lift feet at Stowe and Bromley are on state land. This statement references the fact that 57% of combined ski lifts at the seven resorts are on state land.

Forest Parks Revolving Fund, which is the largest contributor to the budget of FPR's Parks Division.[6] The lease revenues have been a declining share of the Parks Division budget over the last 12 years, dropping from 41% to 32% of the division's expenditures.[7]

As the seven ski areas have grown on and around state land, the Vermont State Auditor's Office (SAO) decided to initiate an inquiry aimed at evaluating the financial return that the public receives for these land assets. The report does not attempt to quantify ancillary economic benefits or costs of these resorts, such as local business and job growth on the benefit side and additional public infrastructure on the cost side (e.g., the maintenance and expansion of roads, water systems, wastewater facilities, etc.)

The report aims to quantify and contextualize the direct monetary return the State receives for its assets. The document begins with a background of the ski resorts and the lease terms, including the fee structures on which the lease payments are based. We then looked at fluctuations in lease payments over 10- to 20-year periods and compared those trends with shifts in tax revenues, sales, and property values, among other factors. The SAO calculated tax exemptions that the resorts received and analyzed inconsistences in the different lease provisions – some of which create added costs for taxpayers and place the ski resorts and certain towns on an unequal playing field when it comes to tax liability.

Our inquiry also examined recommendations made in 2007 by the firm Economic & Policy Resources, Inc. (EPR) and the extent to which FPR has implemented EPR's policy proposals.[8] This inquiry is in many ways a follow-up to the work that the department commissioned EPR to do, when EPR assessed and compared the structure of Vermont's ski area leases with similar agreements in other states and at the federal level. EPR's analysis explicitly excluded consideration of whether the leases returned a fair market value to the State. While the EPR report centered on comparing the agreement structures, this report focuses on comparing lease-payment trends with other indicators of the resorts' development.

This report concludes with a series of appendices that analyzes trends at each of the resorts and describes the SAO's scope and methodology for this inquiry.

Lease Terms

The seven ski resorts that lease state land are spread out across Vermont, with Bromley being the southern-most resort in Bennington County and Jay Peak being the furthest north, in Orleans County (see map on page 5). The ski resorts stretch across 10 towns, and they lease public land in six state forests and parks (see Table 1).

The resorts are owned by companies that range from individual proprietors to multinational firms – such as American International Group, Inc. (AIG), which owns Stowe – to a real estate investment trust that owns ski and golf resorts across the U.S. – CNL Lifestyle Properties, Inc., which owns Okemo as CLP Okemo

[6] See: V.S.A. 10 §2609 Forest parks revolving fund. Park user fees account for the majority of the revolving fund.

[7] FPR's accounting software does not include revenue and expenditure data prior to 2002, which is why this analysis begins in FY2002.

[8] EPR, *A Review and Comparative Assessment of the Vermont Ski Area Land Lease Fee Structure*, 2007, 23-26.

Mountain, LLC. The current leases stretch back to the 1960s and are based on initial 10-year terms, with numerous extensions of 10-year increments.

Table 1: Present Lease Holders and Resort Locations			
Ski Resort	**Lease Holder**	**Resort Location**	**Forest/Park Leasehold**
Bromley Mountain	Bromley, Inc.	Peru	Hapgood State Forest
Burke Mountain	Burke 2000, LLC	Burke	Darling State Park
Jay Peak	Jay Peak, Inc.	Jay and Westfield	Jay State Forest
Killington Mountain	Killington/Pico Ski Resort Partners, LLC	Killington	Calvin Coolidge State Forest
Okemo Mountain	CLP Okemo Mountain, LLC	Ludlow and Mt. Holly	Okemo State Forest
Smugglers' Notch	Smugglers' Notch Management Company, Ltd.	Cambridge, Morristown, and Stowe	Mt. Mansfield State Forest
Stowe Mountain	Mt. Mansfield Company, Inc.	Stowe and Cambridge	Mt. Mansfield State Forest

A key element of the leases is that the sole authority to extend the contracts rests with the resorts. This creates a situation where the ski resorts have long-term leases that range from 50 to 100 years (see Table 2). For example, Killington ski resort had an initial lease of 10 years, from 1960 to 1970, with an option to extend the lease nine times for a maximum term of 100 years. The State has no authority to deny or amend requested extensions absent certain breaches of contract.[9]

Table 2: Lease Terms			
Ski Resort	**Year of Initial Lease**	**Current Lease's Max Term[10]**	**Amendments by Year[11]**
Bromley Mountain	1942	1982-2032	N/A
Stowe Mountain	1946	1967-2057	N/A
Okemo Mountain	1955	1963-2053	1967, 1994, 2002, 2009
Burke Mountain	1956	1974-2054	2008
Jay Peak	1957	1976-2056	2010
Killington Mountain	1957	1960-2060	1973, 1997, 2002
Smugglers' Notch	1962	1987-2058	1990, 1996, 2005

While long lease terms may be necessary to justify large capital investments, the United States Forest Service (USFS) uses 40-year terms. The USFS has permit agreements with 122 ski resorts across the U.S. to

[9] A 1973 amendment to the Killington lease expanded the extension period to equal a maximum term of 100 years.

[10] The column that shows the maximum lease terms is based on the terms outlined in the leases – not the dates when the leases were executed. In every lease except for the Smugglers' Notch lease, the leases were executed at a later date than that identified as the start date in the lease.

[11] These amendments pertain only to the current lease. There have been other amendments to prior leases.

use national forest land, including several in Vermont. Unlike Vermont's leases, the USFS standardizes the terms of its agreements, and the USFS permits give the federal government numerous opportunities to update or revise a lease.

The USFS reserves the right to revoke a permit "for specific and compelling reasons in the public interest."[12] In the event of an ownership change, the USFS maintains the right to "modify the (the permit) terms, conditions, and special stipulations to reflect any new requirements" of federal and state law.[13] Additionally, any improvement made to a ski area on federal land must be approved by the USFS. At the time of such improvements, the USFS requires an amendment of the permit to bring the terms up to the most current standard terms (if the permit is out of date).[14] Therefore, for a resort to gain approval for an improvement, it must accept the most up-to-date USFS lease terms. Although the chief USFS administrator for this program could not cite an instance when the "public interest" revocation language had been used, the USFS regularly takes advantage of the other two amendment opportunities.

By contrast, the State of Vermont included no such language in its long-term leases. The State didn't give itself opportunities to update its agreements with ski resorts, like the USFS did.[15] Two of the Vermont leases also lack a blanket remedies clause for a violation of lease terms, which might affect the State's ability to deal with a breach of contract for two ski areas.[16]

The amendment language in the USFS permits has not hampered ski industry growth on federal lands, and 60% of downhill skiing in the U.S. occurs within national forest boundaries.[17] Some of the most prosperous and well-known ski areas in the U.S. are on federal land, from Colorado's Vail, Aspen, and Steamboat resorts to Utah's Alta and Snowbird to Wyoming's Jackson Hole to Vermont's Sugarbush and Mount Snow, to name just a few.

Lastly, USFS agreements treat all improvements on federal land as property of the resort – not that of the federal government. Vermont leases are inconsistent in this regard – treating property on some leaseholds as that of the State and on other leaseholds as that of the resort.

Vermont's inconsistency on assigning title creates a system that is difficult to administer, adds costs for taxpayers, obstructs two towns' power to tax, and gives some resorts a tax advantage. The latter three issues stem from tax ramifications related to who has title to property on government land. While the State exempts ski lifts, snowmaking equipment, and other ski-resort equipment from state education taxes, many

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[12] USFS and Mount Snow, Ltd. Special Use Permit, Sec. II, VI, VIII, 1986.

[13] Ibid, Sec VI.

[14] Ibid, Sec. II.

[15] In all of the leases except that of Smugglers' Notch, there is a "Right of First Refusal" clause, which would allow the State to buy a ski resort at the price it is being sold to another entity. The Smugglers' lease does include a purchase option at the end of each 10-year lease extension period.

[16] Neither the Stowe nor Killington lease includes such a remedies clause. The Killington lease does, however, include a remedies clause for the ski shelter part of the lease and the minimum number of days that the resort must run its lifts.

[17] Memorandum of Understanding between the National Ski Areas Association and the USFS, *Promoting Year-Round Mountain Recreation*, 2014.

towns tax this property.[18] If title to this property belongs to the federal or state government, however, it is tax-exempt.[19] For more on this issue, see the subsection labeled "Not a Level Playing Field," on page 22.

Acreage, Lift Lines, and Fee Structures

The fee structures for the lease payments vary between resorts, but the central element is consistent across all leases – payments are based on lift-ticket sales and the percentage of linear lift feet on state land. Specifically, the payments are determined by multiplying total lift-ticket sales at a given resort by the percentage of linear lift footage on state land. That number is then multiplied by 5% to determine the annual lift-ticket payment.

The USFS permits use a similar fee structure for part of their payments, and the federal permits also include ski school revenues. Vermont leases do not include ski school revenues in the lease-fee structures, even though the leases give ski resorts the exclusive right to operate ski schools on the respective leaseholds.

A key distinction between Vermont's lift-fee system and the federal system is that the USFS structure uses a graduated percentage based on ticket sales, which ranges from 1.5% to 4% of sales, rather than a flat 5%, like Vermont uses.[20] The USFS permits therefore collect for less ticket revenue than the State leases.

As Graphs 1 and 2 on the following page show, there is a correlation between total leased acreage and the percentage of lifts on state land, with Stowe bucking the trend. Some of these numbers might be inaccurate, though, as ANR has not surveyed the Stowe and Burke Mountain leaseholds. The 1,400 acres that Stowe leases, for example, is a rough estimate that FPR bases on the description of the leasehold in the 1960s' lease.[21] The resorts also provide their numbers for linear lift feet to the State with very little oversight. While FPR reviews the resorts' numbers and has questioned changes, the department doesn't survey the linear lift feet to verify that what the resorts report is correct.

Table 3 on page 13 outlines the different methods that resorts use to calculate their lease payments. The middle column shows the lift-fee calculation, and the column at right describes additional fees that supplement those based on lift tickets. The information in the table represents how the lease language is implemented – not necessarily how it is written. For example, the Stowe, Okemo, and Killington leases do not explicitly limit collection of the 2.5% of gross receipts fee to facilities on state land (e.g., restaurants, sports shops, and warming shelters). But FPR only collects lease fees from receipts generated on state land.[22]

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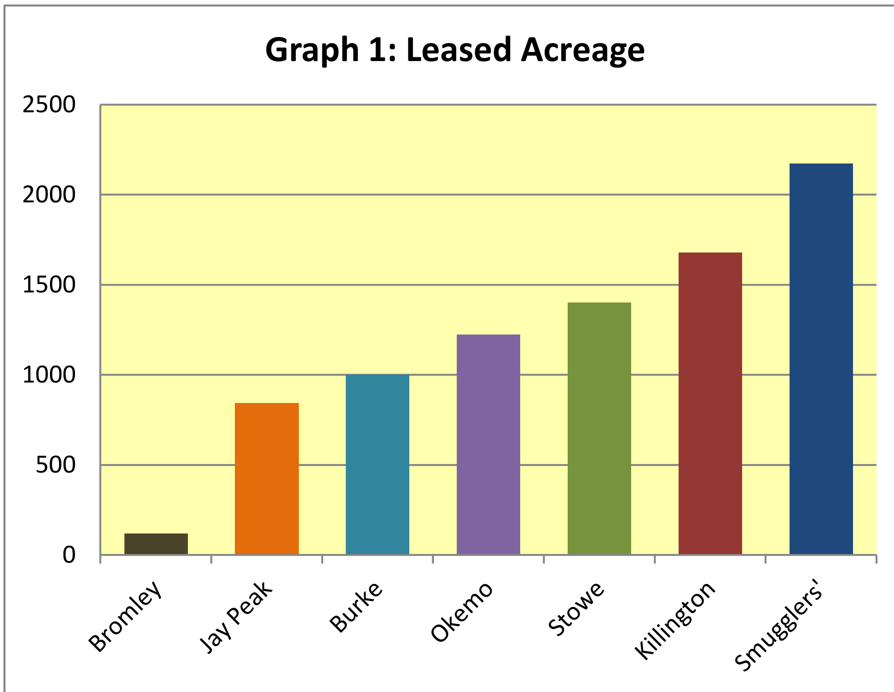
18 See: 32 V.S.A. §5401(10)(D).

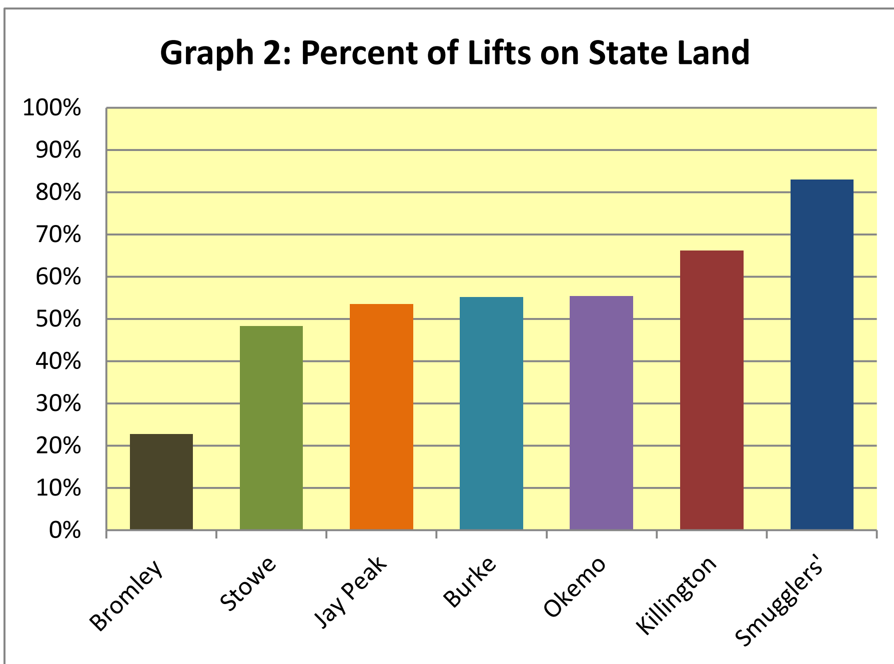
19 See: 32 V.S.A. §3802(1).

20 Both federal and Vermont lift-fee rate structures are prorated based on linear lift feet on government land.

21 It is unclear where the information came from for the leasehold description in Stowe's lease and what processes informed that description.

22 The Attorney General's Office supports FPR's current implementation of this element of these leases.





The State charges a higher rate for certain types of sales that occur in state buildings and other facilities (e.g., sports shops and restaurants in the State ski shelters at Jay Peak and Killington). The State charges 3% for gross receipts generated in Killington's state ski shelter, which is consistent with some of the other leases. Before a 1973 amendment, however, the Killington lease called for a 5% charge.

The State also uses a progressive fee structure for new trams and gondolas at select resorts, as is explained at the bottom of Table 3. Bromley, which leases significantly less land than the other resorts, is the only resort that pays for its leasehold solely from ticket sales.

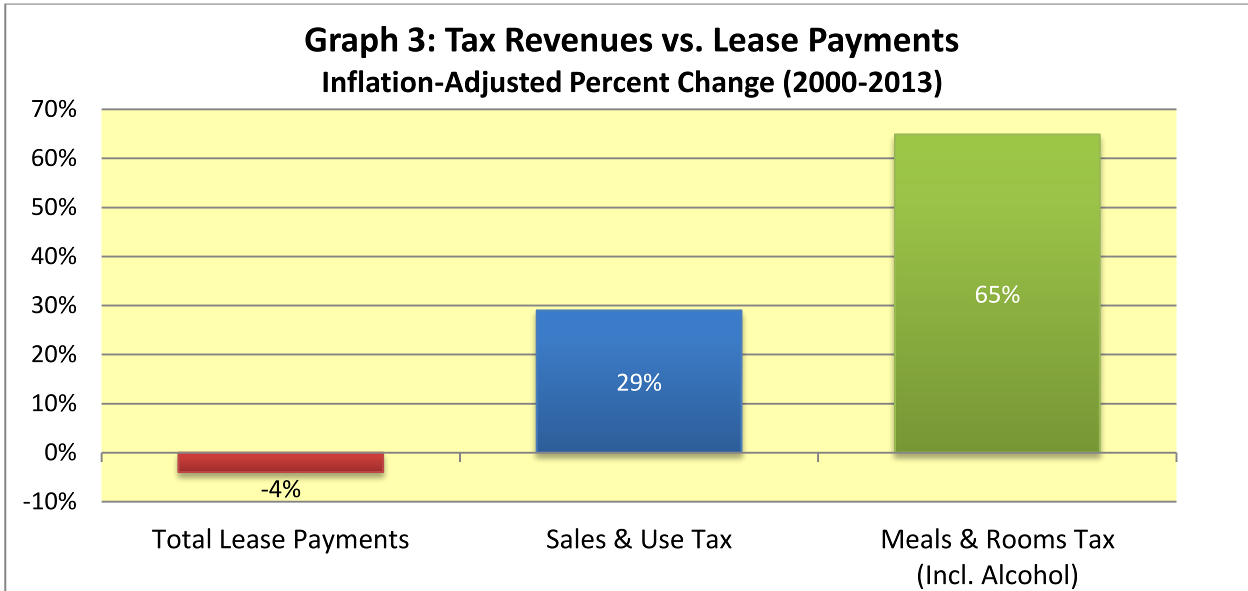
EPR's analysis of ski-resort lease and permit structures found that ski-resort land agreements across the U.S. fall into two main revenue categories: "facility based" and "gross revenue." The Vermont and USFS agreements fall into the "facility based" category, which is characterized by generating revenue from facilities based on government land. Some other agreements fell under the "gross revenue" category, which is based on gross receipts from all of a resort's operations.[23]

[23] EPR, *A Review and Comparative Assessment of the Vermont Ski Area Land Lease Fee Structure*, 2007, 5 and 21.

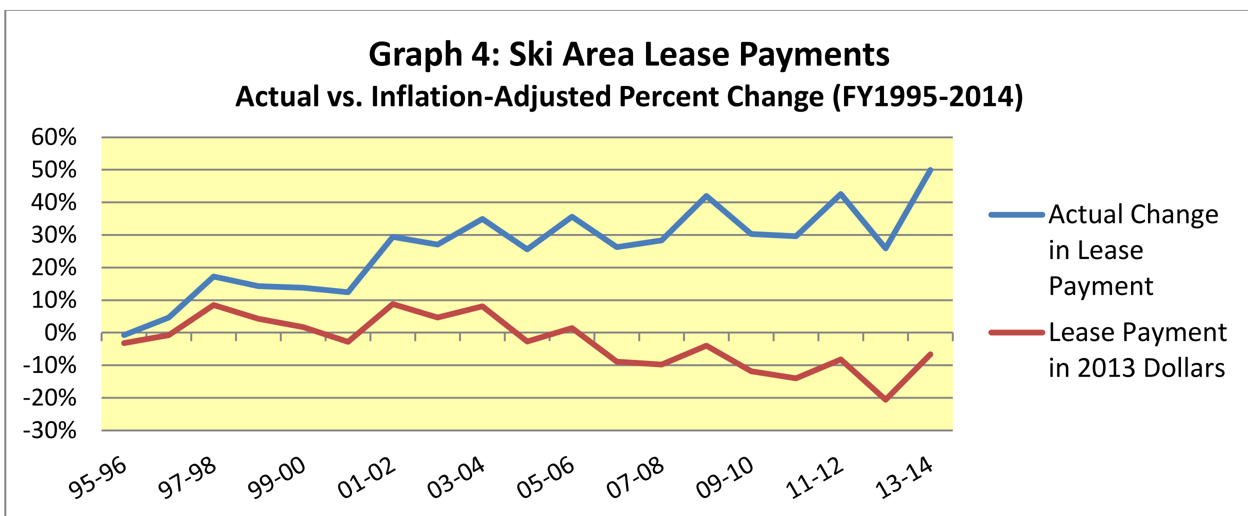
Table 3: Lease Fee Structure by Resort		
Resort	**Lift-Ticket Fees**	**Fees for Other Sales & Services**
Bromley Mountain	• 5% of gross lift ticket sales multiplied by the % of linear feet of lifts on state land.	
Burke Mountain	• 5% of gross lift ticket sales multiplied by the % of linear feet of lifts on state land.	• 2.5% of all gross receipts from restaurants, sports shops, and warming shelters built by lessee on state land. • 5% of gross receipts from other facilities, such as the toll road, campground, picnic area, etc.
Jay Peak *	• 5% of gross lift ticket sales multiplied by the % of linear feet of lifts on state land. At least 20% of lifts and trams must be on state land.	• 2.5% of all gross receipts from restaurants, sports shops, and warming shelters built by lessee on state land. • 3% of gross receipts from restaurants, sports shops and warming shelters built by state on state land.
Killington Mountain*	• 5% of gross lift ticket sales multiplied by the % of linear feet of lifts on state land.	• 2.5% of all gross receipts from restaurants, sports shops, and warming shelters built by lessee on state land. • 3% of gross receipts for food, beverage, souvenirs, and the sale, rental or repair of sporting equipment in the State ski shelter.
Okemo Mountain	• 5% of gross lift ticket sales multiplied by the % of linear feet of lifts on state land. At least 20% of lifts must be on state land.	• 2.5% of all gross receipts from restaurants, sports shops, and warming shelters built by lessee on state land.
Smugglers' Notch Resort	• 5% of gross lift ticket sales multiplied by the % of linear feet of lifts on state land. At least 20% of lifts and trams must be on state land.	• 2.5% of all gross receipts from restaurants, sports shops, and warming shelters built by lessee on state land. • 3% of gross receipts from operations of the State shelter. • $200 annually for "Employee Lodge."
Stowe Mountain Resort*	• 5% of gross lift ticket sales multiplied by the % of linear feet of lifts on state land.	• 2.5% of all gross receipts from restaurants, sports shops, and warming shelters built by lessee on state land. • 3% of gross receipts from food, beverage, souvenirs, and the sale, rental, or repair of sporting equipment in state buildings.
* The lease terms provide Jay Peak, Stowe, and Killington a separate, graduated fee structure for tram and gondola ticket sales. For the first five years, the resorts owe the State 2.5% of gross receipts from these ticket sales multiplied by the percentage of linear feet on state land. For the second five years, if tram or gondola sales exceeded $750,000, then the 2.5% of gross receipts rises to 5%. After 10 years, the percentage of gross receipts is fixed at 5%, which is the level at which these resorts currently pay.		

Lease Payments

To contextualize the lease payments over time, we compared them with other indicators of the resorts' development. The central finding of this section is that revenues from lease payments did not keep pace with the main development indicators we trended against. The resorts' excise taxes, sales of goods and services, and property values all outpaced lease payment growth over the years analyzed. Graph 3 shows how lease payments compared to tax revenues when adjusted for inflation. The Vermont Tax Department aggregated these tax figures for the lessees and certain subsidiaries.[24]

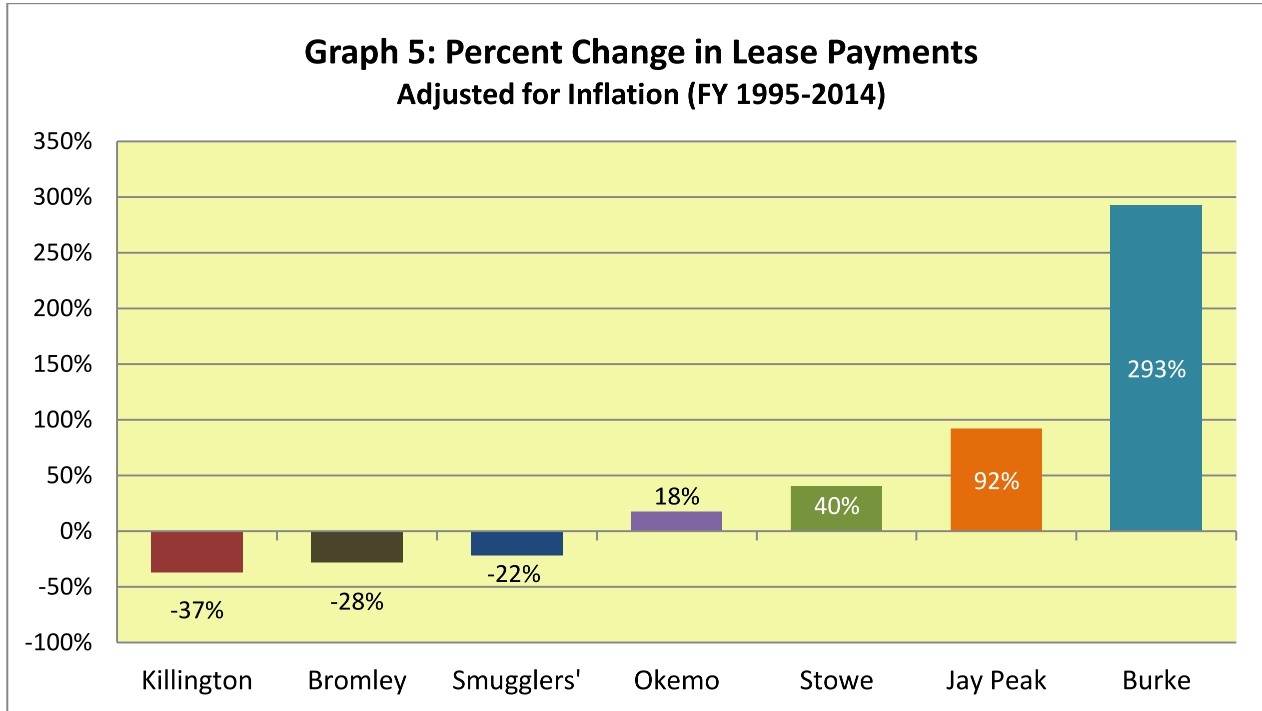


From 1995 to 2014, the resorts' total lease payments to the State grew from $1.9 million to $2.9 million annually, which represents a 50% increase. Adjusted for inflation, however, aggregate lease payments declined by 7% (see both trends in Graph 4).

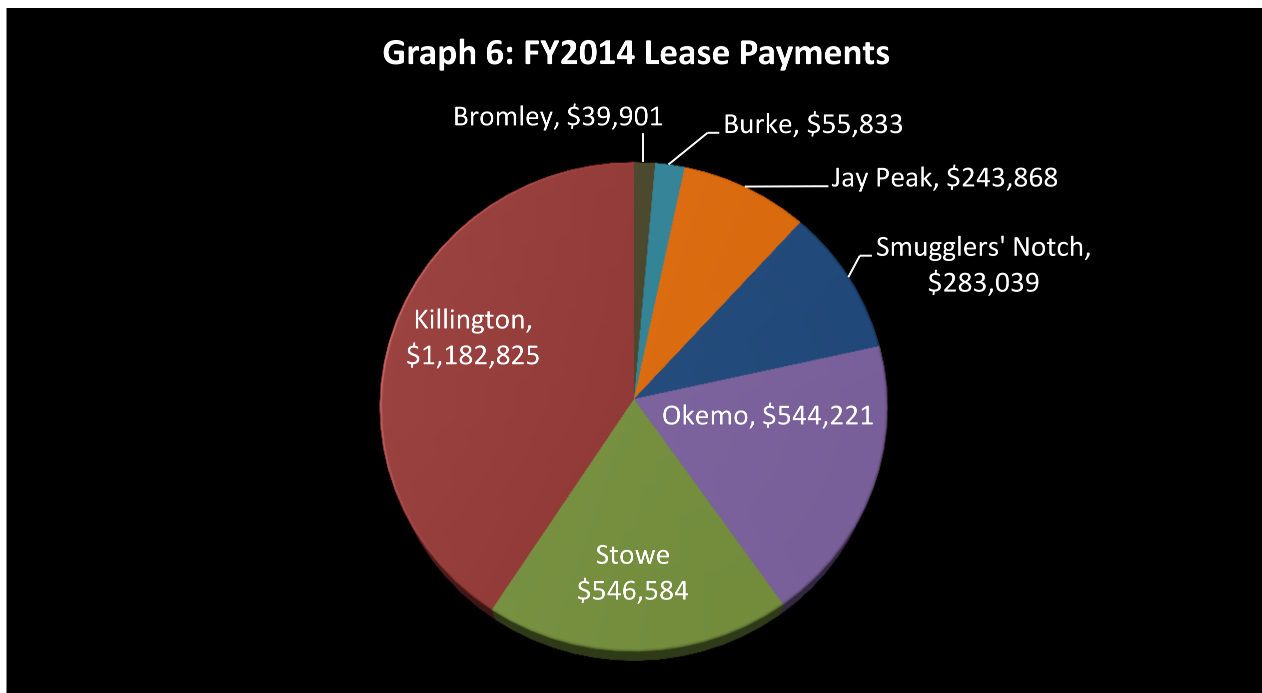


[24] The SAO used excise tax and sales data for the period of 2000 to 2013 because 2013 was the most recent year the data were available, and the Tax Department does not have reliable data for these tax types prior to 2000.

Graph 5 shows shifts in inflation-adjusted lease payments by resort over the same 20-year period. Lease payments decreased for the two resorts that lease the most public acreage and have the greatest percentage of linear lift feet on state land – Killington and Smugglers' Notch. Payments also decreased for Bromley, which leases the least amount of land.

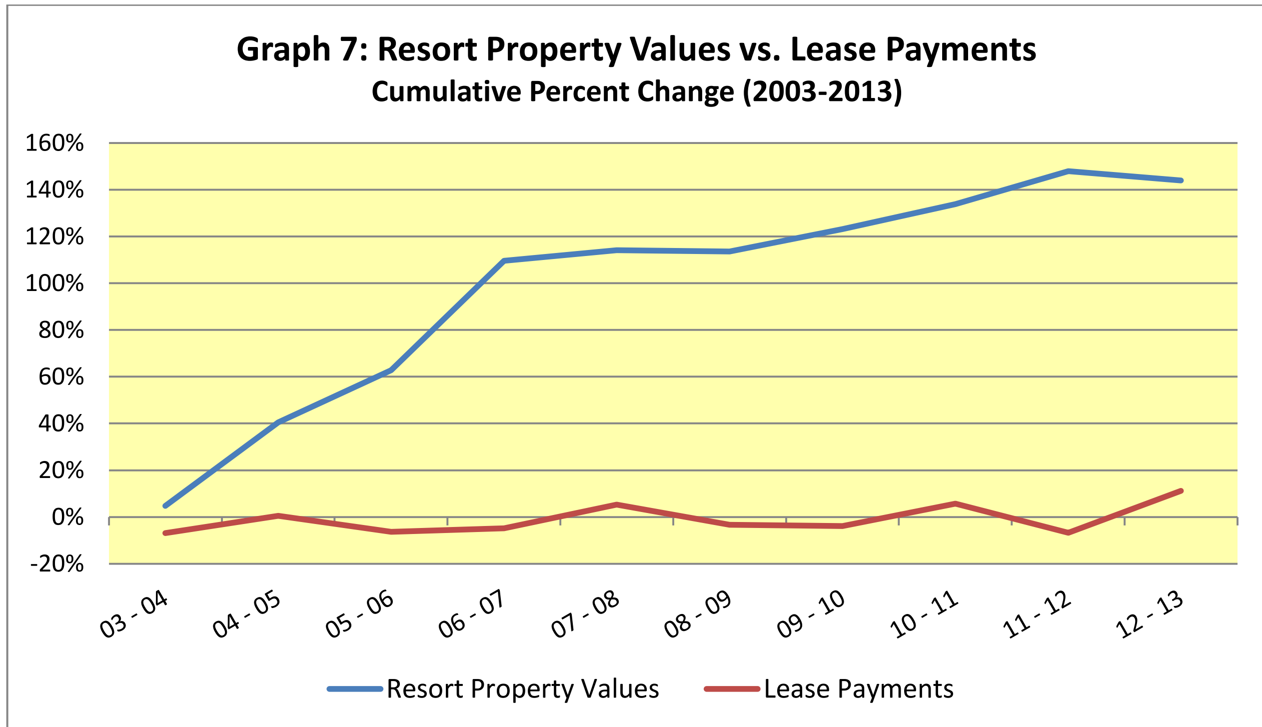


In fiscal year (FY) 2014, the largest share of lease payments to the State came from Killington, which paid 41% of the total (see Graph 6 below). Stowe and Okemo's payments each accounted for about 19% of the total. Smugglers' payments accounted for roughly 10%, Jay Peak's payments accounted for 8%, and Burke and Bromley's payments accounted for 2% and 1%, respectively. The biggest contributor of lease payments – Killington – has therefore had the largest reduction in inflation-adjusted payments over the last 20 years.



Property Value Comparison

A detailed review of private property data at the seven resorts found that while their property values increased by a combined 144% between 2003 and 2013, total lease payments (not adjusted for inflation) rose by just 11% (see Graph 7).[25] Property values therefore grew at a rate more than 13 times that of the lease payments. The resorts' property values rose from $185.5 million in 2003 to $452.6 million in 2013.[26] A breakdown of these trends by resort is included in Appendix A.



The bulk of the increase in property values stems from new real estate, such as lodges, hotels, condominium complexes, and performing arts facilities. Property value increases can also be attributed to a range of new upgrades and attractions, such as golf courses, waterparks, adventure courses, mountain bike trails, new chairlifts, and upgraded snowmaking equipment. Economic variables also affect property values, such as inflation, the timing of appraisals, and external real-estate developments.

Sales Comparison

From 2000 to 2013, the sales growth of retail merchandise, meals, rooms, and alcohol at the seven resorts outstripped lease payments (see Graphs 8 and 9). Gross retail sales at the resorts grew from $84.3 million in 2000 to $139 million in 2013, meals sales rose from $12.4 million to $24 million annually, rooms sales

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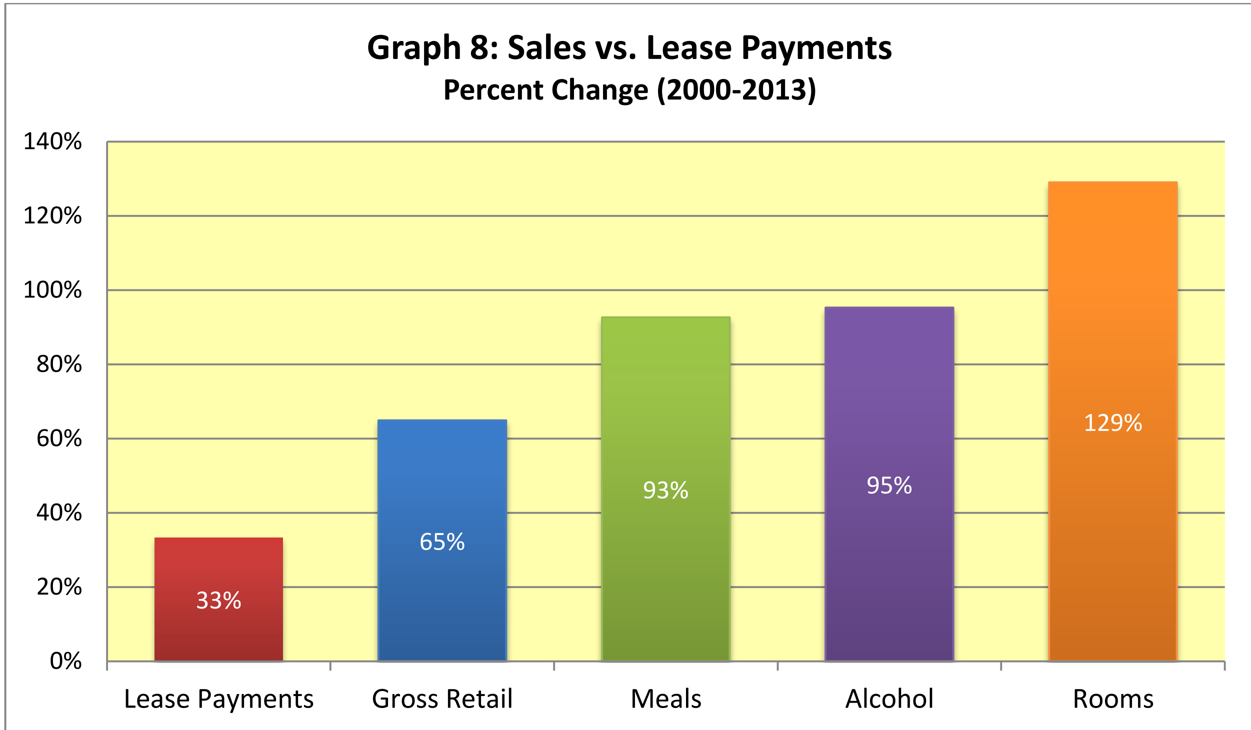
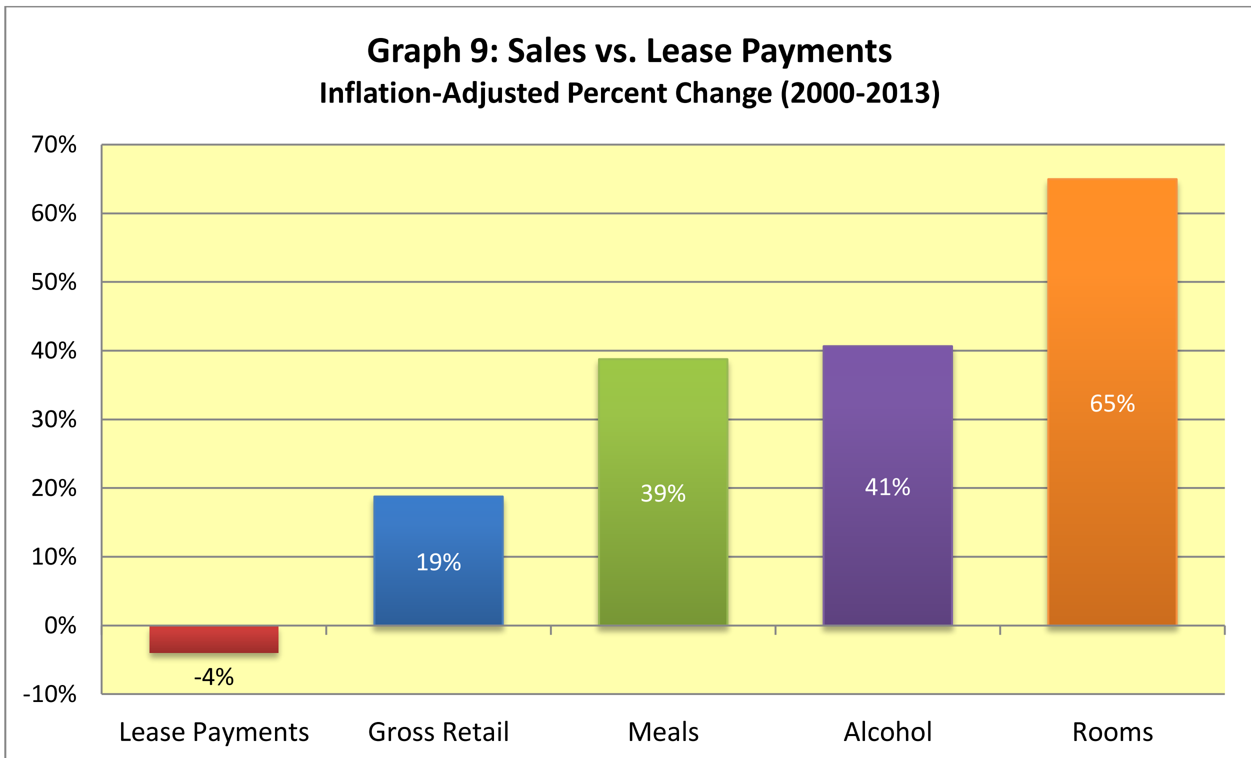
[25] We did not adjust for inflation in our property value analysis because we could not find a reliable index used by governments for real estate.

[26] Property values are based on grand list data. The earliest grand list data the Tax Department keeps in digital format dates back to 2003, and grand lists aren't finalized by the department until the end of the calendar year, which is why the SAO used the period 2003-2013. The property values included in this analysis are not equalized using the common level of appraisal.

jumped from $29.4 million to $67.2 million, and alcohol sales at restaurants and bars increased from $3.9 million to $7.6 million.

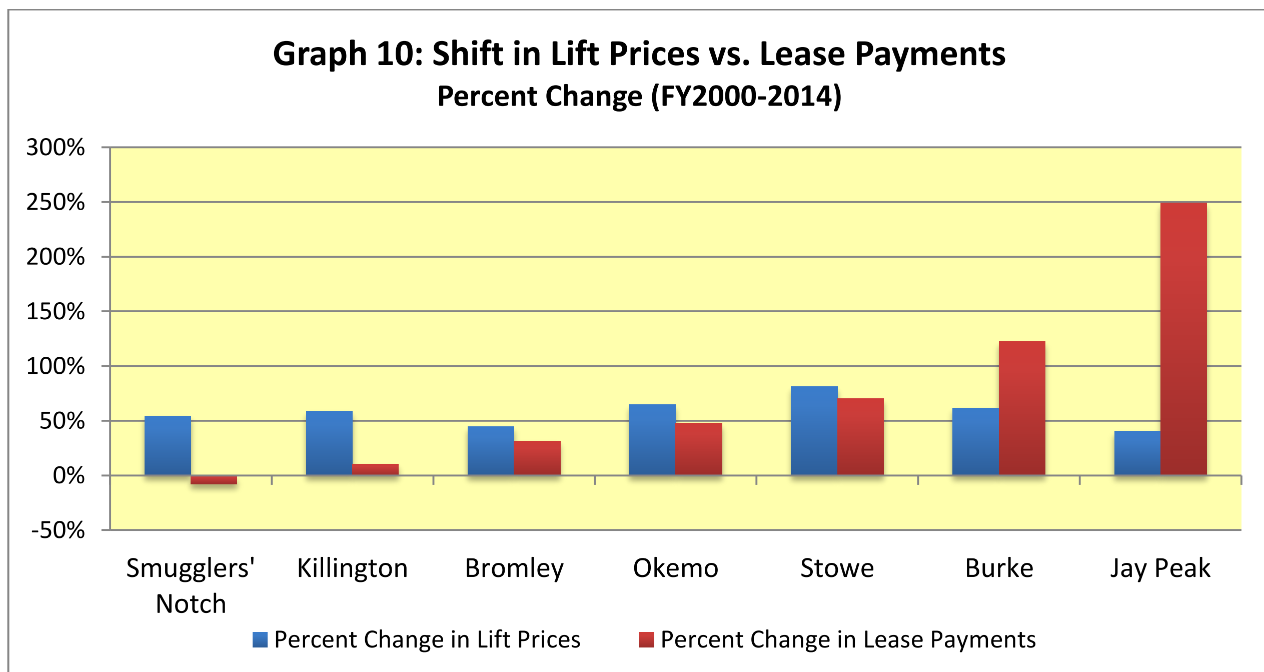


When these same figures are adjusted for inflation, all sales categories rose while the resorts' lease payments declined (see Graph 9).



The only indicator we saw growing at a lesser rate than lease payments was the weekend lift-ticket prices at two resorts. In addition to the percentage of linear lift feet on state land, the other two factors that drive the lift-ticket fees in the leases are ticket prices and sales.[27]

In Graph 10, we compared the percent-change in prices for an adult, full-day lift ticket during a regular-season weekend to the change in lease payments at the resorts. Lift tickets are sold in a range of formats, which vary substantially in price.[28] To make the comparison consistent, we decided to compare the trends using full-day lift ticket prices on weekends, which was the only type of ticket for which we had historical data. As the graph shows, Burke and Jay Peak lease payments grew at a faster rate than the change in lift-ticket prices. Meanwhile, lease payments did not keep pace with the rise in ticket prices at the other five resorts.



Tax Comparison

The growth in sales at the seven resorts has resulted in greater tax revenues for the State and two municipalities with a local options tax.[29] From 2000 to 2013, sales and use tax revenues generated at the seven ski resorts increased 79%, from $4.4 million annually to $7.9 million. Meals and rooms tax revenues – which include alcohol – rose 129%, from $4.2 million annually to $9.5 million. Meanwhile, lease payments

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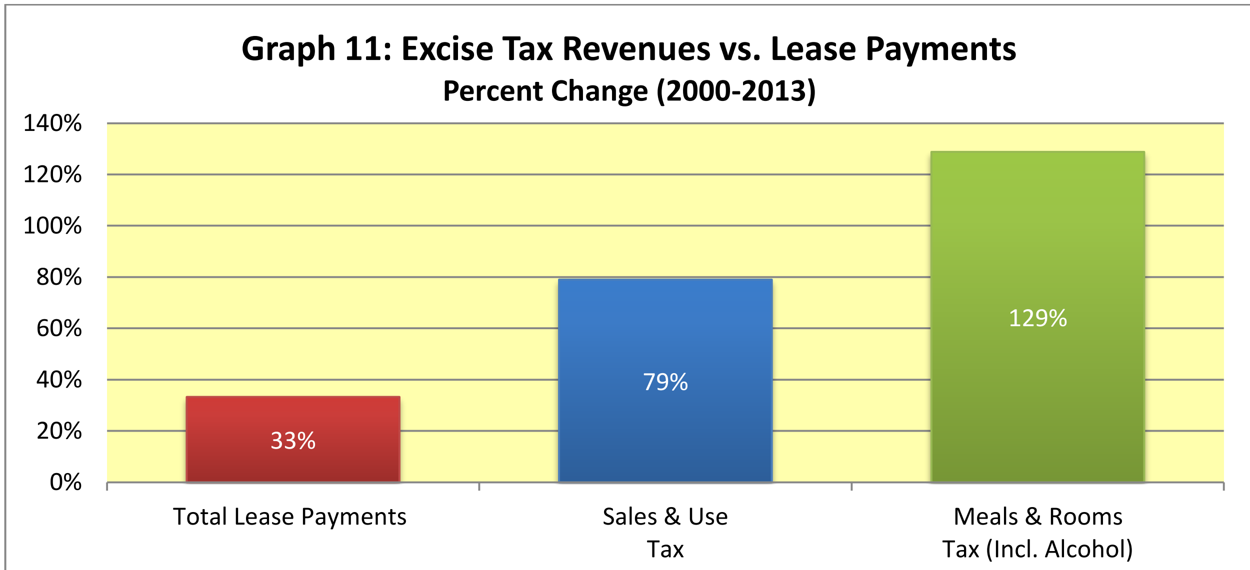
[27] The State does not track ticket sales at the resorts, but the Vermont Ski Areas Association tracks skier visits for all Vermont ski resorts, not just the State lessees. The SAO compared fluctuations in inflation-adjusted lease payments with total skier days, and the rise and fall in the two data sets paralleled each other.

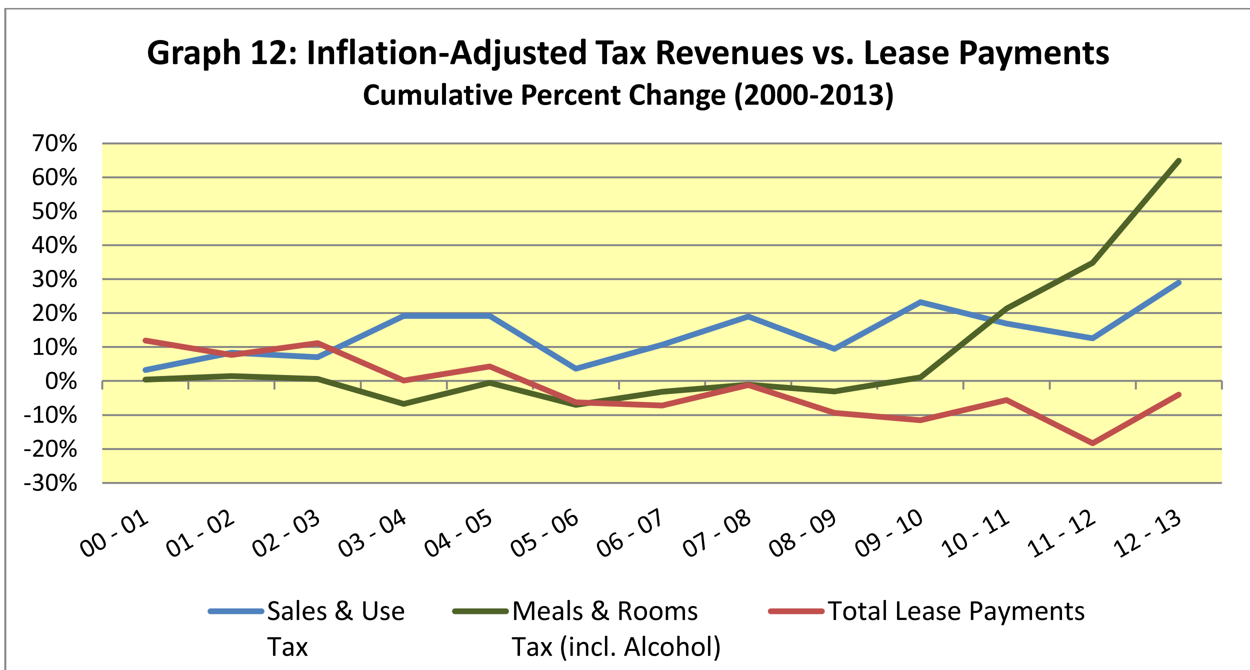
[28] FPR says that the variation in ticket prices and packages as well as those prices being available for consumers online are the reasons the department does not track this information. Since the leases were written before the advent of the Internet, the latter explanation does not explain the department's long-standing decision not to collect this information. Even though six of the leases include a provision that requires the resorts to submit this information to FPR, the department has chosen not to collect it.

[29] Killington collects an additional 1% tax on sales and meals; Stowe collects a 1% tax on meals only.

grew 33%, from $2.2 million annually to $2.9 million (see Graph 11).[30] An important difference between the revenue streams in this comparison is that they are generated by two different groups – the resort companies make lease payments to the State, and the resorts' customers technically pay excise taxes.

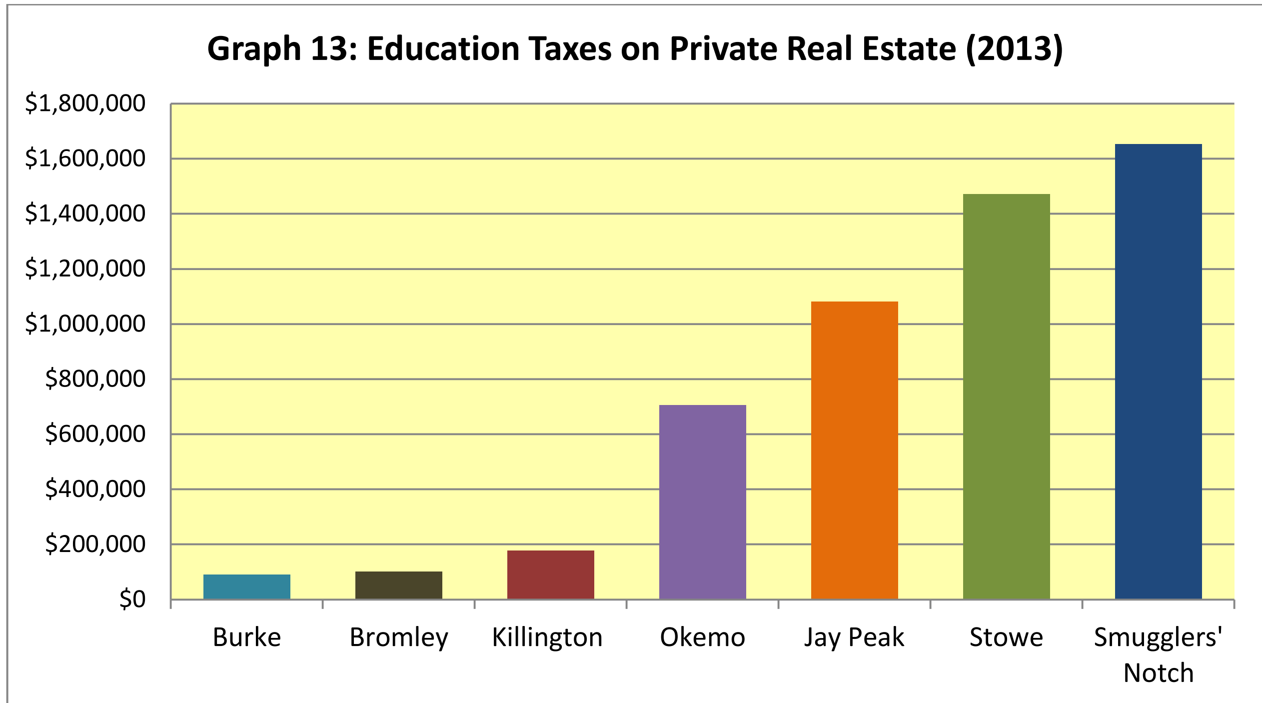


When adjusted for inflation during this period, sales and use tax revenues grew 29%, meals-and-rooms taxes grew 65%, and lease payment revenues fell by 4% (see Graphs 3 and 12). The upswing in meals, rooms, and alcohol tax revenues parallels the real estate expansion and opening of new lodges at Stowe and Jay Peak.



[30] From 2000 to 2013, meals and rooms tax rates remained steady at 9%, as did the alcohol tax rate at 10%. In 2003, however, Vermont's sales and use tax rate increased from 5 to 6%.

In addition to these sales-based tax revenues, development on private property around the leaseholds generates revenue for the State's education fund and for municipalities. Due in large part to the real estate development on private lands, the seven resorts generated $5.3 million in education taxes in 2013, and the resorts generated an additional $1.5 million in municipal property taxes. Graph 13 shows a breakdown by resort of education taxes billed in 2013.



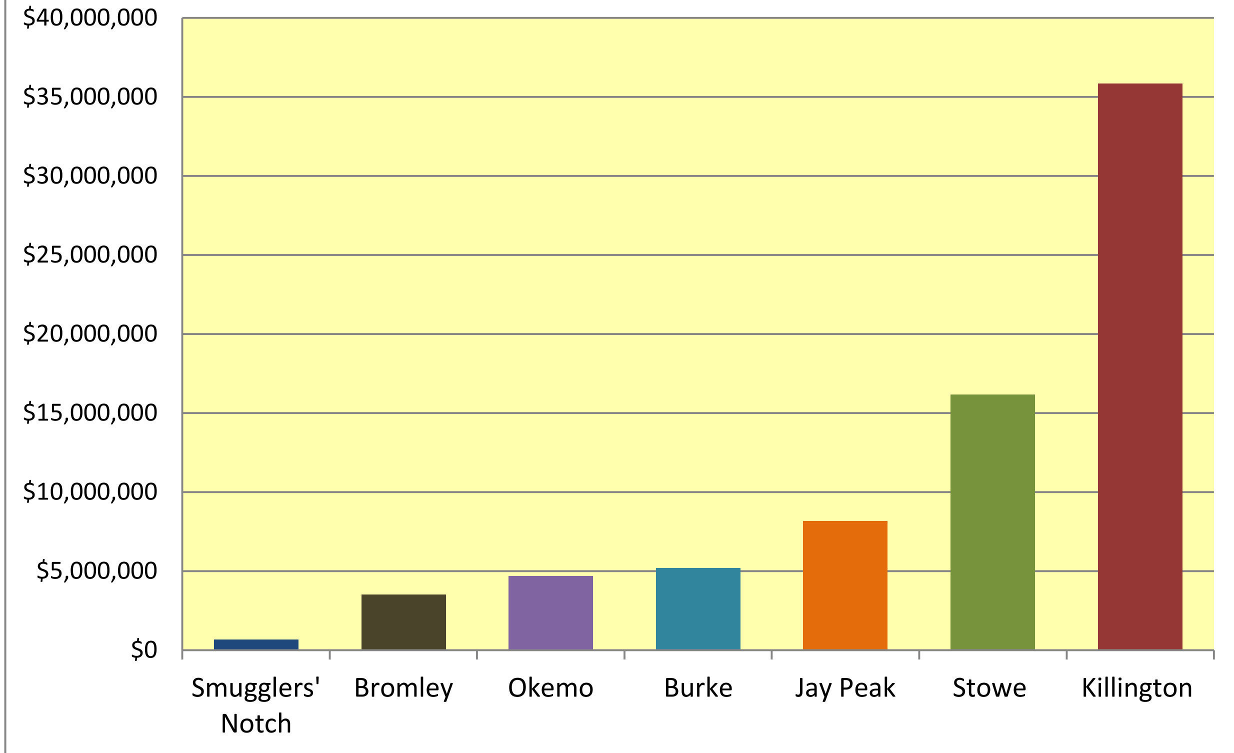
Tax Exemptions

Vermont statute exempts ski lifts, snowmaking equipment, and other resort machinery from state education taxes. [31] Tax bills for the seven resorts show that $74.2 million in property was exempt from education taxes in 2013. That figure accounts for 16.4% of the resorts' combined 2013 property values.

This exemption resulted in roughly $1.1 million in foregone tax revenues for these seven resorts in 2013, while the total amount of these foregone tax revenues for all Vermont ski resorts would be much higher. Graph 14 shows a resort breakdown of property values that are exempt from education taxes due to the ski equipment exemption.

There are several issues with these exempt property values. The exempt property amount on Killington's grand list appears to be overvalued due to an error. According to the terms of the lease, some of the resort's equipment technically belongs to the State and would not be taxable even if the equipment exemption did not exist, yet the town appears to be including the value of this equipment on state land. Okemo's exemption amount, on the other hand, appears to be undervalued, and the Ludlow Board of Listers is not certain if the town valued Okemo's lifts on state land. Both of these matters are explained in greater detail in the following section of the report and in Appendix A.

[31] See: 32 V.S.A. §5401(10)(D).



The exemption for Stowe resort was about $1.1 million more than it should have been in 2013. Rather than receiving the $15,742,200 exemption, which Graph 14 reflects, the resort should have had a $14,647,400 exemption for ski lifts and snowmaking equipment. This error was caused during a recalculation of the parcel that was prompted by the resort's appeal of the town's valuation. The overall value of the parcel was reduced, but the exemption was not. This issue resulted in the loss of $16,355 to the education fund in 2013. The error was discovered as a result of this inquiry and has been corrected by the town for 2014.[32]

The reason Smugglers' Notch has the smallest exempt value for lifts and snowmaking equipment is that most of this property is on state land, and – like Killington – its lease gives the State title to property on state land. The town of Cambridge appears to be dealing with this property correctly.

The SAO estimates that the total value of ski lifts and snowmaking equipment at the seven resorts equaled about $85 million in 2013.[33] The additional $11 million – on top of the $74 million exempted from

[32] Vermont statute calls for a Selectboard to approve errors and omissions by December 31, and so Stowe applied this correction to tax year 2014, but could not apply the revision to the previous tax year. See: 32 V.S.A. §4261.

[33] The total Smugglers' Notch lift values were taken from an ANR spreadsheet that shows the insured values of those lifts. Our calculation does not include snowmaking equipment values and therefore undervalues this property. The SAO also adjusted for the Stowe exemption errors and reduced equipment values at Stowe resort by roughly $1.1 million. Footnote 34 explains how the SAO calculated Okemo's property values.

education property taxes in 2013 – is derived from estimates of Okemo and Smugglers' property values, minus the Stowe adjustment.[34]

Table 4: Current-Use Reductions	
Ski Area	**Reduction**
Stowe	$1,327,400
Smugglers' Notch	$942,600
Burke	$393,000
Jay Peak	$333,400
Bromley	$0
Killington	$0
Okemo	$0
Total	**$2,996,400**

In addition to the ski equipment exemption, the resorts have collectively reduced their property values $3 million by enrolling property in Vermont's Use Value Appraisal Program, better known as current use (see Table 4). Four of the resorts have enrolled property in this program, and Stowe receives the largest reduction, followed by Smugglers' Notch, Burke, and Jay Peak. The program aims to "preserve the working landscape and the rural character of Vermont" by encouraging long-term forest management, farming, and conservation practices. Land enrolled in the program is assessed based on a lower forestry or agricultural value, not fair market value. [35]

Not a Level Playing Field: Municipal Taxes and PILOT Payments

The leases are inconsistent regarding who holds title to property on state land. The documents give title to either a resort or the State. The Smugglers' Notch and Killington leases assign title to property on state land to the State, which is exempt from municipal taxes. This language therefore gives those two ski areas an edge over others in the marketplace because their improvements on state land are exempt from municipal taxes. This situation also puts their host towns at a revenue disadvantage, and it creates an added cost for taxpayers because the State must pay the host towns for the resorts' improvements in the form of a Payment in Lieu of Taxes (PILOT).

PILOT payments are made to towns for state-owned properties. The two PILOT programs that concern the leaseholds are for ANR land and state-owned buildings within the leased boundaries. The land included in all of the leaseholds belongs to the State, and the State pays a PILOT payment to the towns for this property. The State includes some of the improvements on the leaseholds in the buildings PILOT payment, depending on the lease language and the structural nature of the property. The Legislature's annual

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[34] The town of Ludlow initially informed our office that the apparent undervaluation of lifts and snowmaking equipment for Okemo was due to the town not valuing that property on state land. The SAO used this information as the basis for the estimate of the total value of lifts and snowmaking equipment at the seven resorts. To calculate Okemo's lift and snowmaking equipment values, the SAO divided the value of this equipment on Ludlow private land by 0.45. Since all of Okemo's property in Mount Holly is on State land, all of Okemo's private land is in Ludlow. We used a factor of 0.45 because the percentage of lifts on private land is 45%. If $4,309,723=.45X (where $4,309,723 is Okemo's property value on private land, and X is the total value of lifts and snowmaking equipment), then X=$9.7 million. This estimate assumes that all lifts and snowmaking equipment are of the same value, and it could be skewed by factors such as different valued machinery and the placement of snowmaking equipment.

[35] See: The Use Value Appraisal Program Manual.

appropriation for building PILOT payments does not cover the full amount of the program (or lost municipal tax revenue), and, as a result, the Tax Department prorates the payments. [36]

Since the ski lifts and other property at Smugglers' Notch and Killington are in the State's name, the State must make a PILOT payment to the towns for this property instead of the resort paying taxes on its own improvements. In FY2014, the State paid $72,344 in PILOT payments for lifts at Killington and Smugglers' Notch. When warming huts, ski school buildings, and lodges were included, the State paid more than $100,000 in PILOT payments for property the two resorts use on state land.[37] In addition to these payments, the State also made PILOT payments to the towns for the land that these two resorts and the other lessees use (as well as for select structures at other ski resorts).

These exceptions for Smugglers' Notch and Killington are also contributing to confusion between state and local governments. This issue has led to apparent flaws in the administration of tax provisions concerning property at these two resorts. In Killington, it appears the town is taxing for property on state land that it should not, while the State has continued to make PILOT payments for this same property (see Appendix A4). In the case of Smugglers' Notch, the State's PILOT payment for the resort's property appears to be skewed due to the inclusion of private property in that calculation and the fact that only one town is receiving a payment for property that is located in two towns (see Appendix A6).

Table 5: Property Title Divisions

Ski Resort	Title to Property on Leasehold Belongs to:[38]	Municipality Taxing Property on State Land?
Bromley	Lease is Silent	Yes
Burke	Burke	Yes
Jay Peak	Jay Peak	Yes
Killington	State of Vermont	Yes
Okemo	Okemo	Ludlow: Unsure; Mount Holly: Yes
Smugglers' Notch	State of Vermont	No
Stowe	Stowe	Yes

Table 5 shows how the leases determine property ownership on the leaseholds and how the towns are applying municipal taxes to this property. The Killington and Ludlow cells in the right column indicate that there is evidence to suggest those towns are not taxing in accordance with the lease titles. Ludlow is not certain if it is taxing for this property and has told our office it will properly tax the resort in 2015.

The Burke, Jay Peak, and Stowe leases are clear that "title to all property of whatsoever nature" on the leaseholds belongs to the resorts.[39] All of the towns where these resorts are located collect municipal taxes

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[36] For more on this matter, read: Sara Teachout and Nathan Lavery, *Vermont Legislative Joint Fiscal Office Brief on Vermont PILOT Programs*, 2007. Read the brief here.

[37] These figures do not include the additional PILOT amount that is paid to towns for the ANR land that all seven ski resorts use. ANR doesn't organize its parcel data around state leaseholds and therefore we could not accurately estimate the PILOT payments for the land that the leaseholds comprise.

[38] There are two exceptions to these property titles. First is that several structures at Stowe, including the State Ski Shelter and the base lodge, belong to the State. Second, buildings at Okemo, such as the ski patrol building and summit lodge, belong to the State.

[39] All three leases use this exact language. Before 2008, the title to this property at Burke belonged to the State, but a 2008 amendment shifted this property title to the resort.

on this property. This situation is essentially the same for ski areas that have a permit to use USFS land. The USFS permits put the title to property on federal land in the name of a resort. In the case of Sugarbush Resort, for example, the town of Warren is able to and does collect municipal taxes for the value of the resort's ski lifts and snowmaking equipment on federal land.[40]

The Bromley lease is silent on what entity holds the title to property on State land, and the town treats it as that of the resort and collects taxes for it.

Okemo's lease includes similar language to the Burke, Jay Peak, and Stowe agreements, with one crucial difference – it excludes "permanent buildings."[41] This language would then indicate that Okemo improvements on state land that are not permanent buildings are property of the resort and would therefore be taxable by the town.

The State of Vermont does not consider Okemo improvements that are not clearly buildings, such as ski lifts, to be state property for PILOT payment purposes, which means the State treats Okemo property (except buildings) on state land as belonging to Okemo.[42] While Mount Holly assesses for Okemo's property on state land, it is unclear if Ludlow is assessing for this property on state land, even though it appears Ludlow has the authority to do so.

Additionally, the State has licensed two ski clubs to use buildings on state land for 20-year periods. The ski clubs pay an annual payment of $250 to use those facilities, and the Smugglers' Notch Ski Club has exclusive use of a lodge on state land from November 1 to April 30 every year. That $250 payment Smugglers' Notch Ski Club pays does not cover the cost of an annual PILOT payment to Cambridge for that building, which was $572 for FY2014. In the case of Killington, FPR treats that ski club building as property of the club (this means the State does not make a PILOT payment on it), which appears to contradict lease language that says within the leasehold "all buildings … shall be deemed to be the property of the State."

EPR Recommendations and Reporting Requirements

When Economic & Policy Resources, Inc. (EPR) was commissioned in 2007 to analyze and compare the structures of the Vermont leases, the firm made five key recommendations to FPR. In the seven-plus years since EPR submitted its report to FPR, the department has made little progress toward implementing the recommendations. The department cites a lack of capacity to expand administrative oversight of the leases in the face of tight state budgets. Department personnel also say that Tropical Storm Irene interrupted efforts to improve oversight in 2011.

A list of EPR's recommendations with an italicized explanation of FPR's progress in implementing each suggestion is below.[43]

1. **Create a Uniform Reporting Structure**: "The current process is based on historic practice by specific lease. Over time, staffing at both the lessee and State change and the process has evolved without

[40] USFS and Summit Ventures NE, LLC Special Use Permit, 1986.
[41] State of Vermont Lease to Okemo Mountain, 1963, Condition 10.
[42] The State includes two Okemo buildings in its PILOT payments to Ludlow.
[43] All of FPR's quotes in this section came from an official correspondence with our office in October 2014.

uniformity," EPR wrote. The firm specifically recommended creating a standardized form and worksheet to help lessees calculate their annual payments. EPR also recommended creating a standard set of definitions, such as the USFS does.

Due to the variation in resorts and their lease terms, FPR claims that it is challenging to standardize the reporting structure. The department's administrators "recognize the need to improve consistency," and say they will strive to do so this year. The SAO found that the lack of a uniform reporting structure made it difficult for FPR to adequately monitor factors that affected a lessee's lease payments. Prior to this inquiry, FPR did not collect data on linear feet for each lift to substantiate and monitor the percentage of lift feet on state land – a key factor that affects lease payments. FPR obtained this information during our investigation and has vowed to continue collecting this information moving forward.

2. **Provide for a Means to Validate Lease Payments – Trust but Verify:** "At the time of origination of the current leases state government and ski area operators functioned in a relatively less complicated world than exists in today's environment … Most ski areas were locally owned, consisted of the operation of a ski lift and a few amenities and were operated by the same people year after year. Today's ski industry environment is dramatically different. Ski area operation has evolved to encompass a much broader range of activities including real estate development. Many of today's ski areas are operated by large corporations, employing professional managers that come and go and often ownership changes hands during the term of the lease," EPR wrote. Specifically, EPR recommended an independent review and validation of the lessee's lease-payment calculations.

   While the department says that it conducts a detailed review of the lease payments and associated documentation, it has not contracted for an independent audit of the financial reports submitted by the ski areas. The department notes that it could not require greater financial reporting without amending the ski leases, which would require legislative approval. The SAO has seen no indication that the department has ever attempted to amend the ski leases (by going to the resorts and the Legislature) to strengthen oversight provisions.

3. **Undertake Periodic Audits:** "Several of the Vermont ski area leases have a provision for auditing by the State, which has not been utilized in the past … The Department from time to time should commission an independent audit of a lessee's payment determination. This could be undertaken on a revolving but random basis to avoid increased workload," EPR wrote.

   The department says that it supports this recommendation, though it has never implemented it. The department has conducted an extensive review of financial records with assistance from the Attorney General's Office and Agency of Administration when resorts have changed ownership. While this review of a company's finances is important, it does not directly address factors that affect lease payments, such as sales of tickets and goods. Since EPR commissioned this report, there has been a change of ownership at several of the resorts.

4. **Review of the Killington Lease:** EPR identified an inflation-adjusted decrease in lease payments at Killington over a 17-year period and recommended that FPR investigate the issue.

   The department met with Killington's new owners in the winter of 2008 to discuss this trend. The department says the new owners were not certain what caused this trend, as they didn't oversee the resort during most of that time. Between FY08 and FY14, however, lease payments continued to decline by 6.2% when adjusted for inflation. No audit or independent review of the situation has ever been conducted.

5. **Reexamine the Fee Structure**: EPR points out that while lift tickets once accounted for the bulk of ski area revenues, this is not presently the case. The firm recommended consideration of a graduated revenue structure, such as the USFS uses.

   The department agrees that this issue should be considered when negotiating new ski leases and says it is open to considering new approaches for renewing the leases. But since the lease soonest to expire is Bromley's in 2032, the department says it has not "put much effort into this recommendation." Since the EPR recommendations were made in 2007, the department has had opportunities to renegotiate lease terms. The leases with Burke and Okemo were amended in 2008 and 2009, respectively (see Table 2).

Reporting Requirements

Under the current lease provisions, the State can only audit the books and records of four of the seven ski resorts' rental payments, and that audit would be limited to records solely concerning those payments. Audits of these payments, which have never been conducted, would help verify numbers that have only been questioned on topical levels. They would also help ensure that the terms of the leases are being met, such as liability insurance levels meeting lease provision standards. Table 6 on the following page outlines the audit provisions and reporting requirements in the different leases.

All ski areas must file a financial report of their lease payments by a certified accountant or auditor, though the frequency of these reports varies between leases. Six of the resorts are required to provide an annual list of lift fees, but the State has not enforced this provision due to the range of lift-ticket prices and packages.[44] Additionally, FPR does not survey lift lines to verify the lengths and percentages that the resorts submit. These figures form the basis of the lease payments and have never been vetted by the State.

Three of the leases also require a resort to provide liability insurance certificates to the State. In practice, FPR collects these certificates from all of seven resorts.

[44] When FPR asked the ski resorts for this information as part of this inquiry (see Graph 10), all seven resorts complied in a timely manner.

Table 6: Reporting Requirements and Audit Provisions							
Provision	Bromley	Burke	Jay	Killington	Okemo	Smugglers' Notch	Stowe
Lessee must file a financial report by a public accountant for lease payments	✓	✓	✓		✓	✓	
Lessee must file a certified Auditor's report with lease payments.				✓			✓
State can audit lessee's books and records for rental payments.	✓		✓			✓	✓
Lessee shall publish annually a list of fees for the use of all lifts.	✓		✓	✓	✓	✓	✓
Lessee shall provide liability insurance certificates	✓					✓	✓

Liability Insurance

All seven leases require the resorts to procure and maintain public liability insurance to protect the State and its officials. The SAO worked with the Agency of Administration's Office of Risk Management to evaluate this coverage and identify deficiencies.

The liability insurance language in the leases is inconsistent from one lease to another. Not only do required coverage levels vary, but so does the language that is intended to indemnify and hold the State harmless from any claims that arise from incidents on the leaseholds.

Of concern to the SAO is that the minimum levels of coverage stipulated in the leases appear to be inadequate. The Director of the Vermont Risk Management Office stated that minimum per-occurrence coverage of $10 million would be reasonable and coverage below $5 million per occurrence would not responsibly cover the State. Only one lease – Bromley – requires coverage levels above that $5 million threshold (see Table 7).

Additionally, six of the seven leases don't consider inflation. Since the leases were adopted, inflation has risen by 100% to 630% – depending on the year the agreements began.

Smugglers' Notch has the only lease that includes an inflation provision, which calls for adjusting coverage every five years.[45] But it appears from the resort's insurance certificate submitted to the State that the

[45] The lease calls for adjusting coverage in accordance with the Consumer Price Index (CPI).

coverage level has not increased, and FPR has not enforced this provision.[46] Insurance certificates for several other resorts show coverage levels that appear to be out of compliance with those stipulated in the lease, but resorts may have additional coverage not displayed on the certificates. There also appears to be a difference of opinion between the Office of Risk Management and an insurance agent for several ski areas as to how to interpret the terms of these dated leases. FPR should resolve these issues to ensure that liability insurance coverage is at least compliant with those levels stipulated in the leases.

Table 7 shows how liability insurance coverage would rise if it were adjusted for inflation. The middle column shows the minimum liability insurance levels required by each lease to protect the State. According to the Office of Risk Management, five of the seven leases call for two levels of coverage, often expressed as per-person/per-occurrence protection – an insurance structure that has been modified over time. For that reason, the Office of Risk Management interprets the number on the right of those slashes as the minimum per-occurrence coverage level. The right column in Table 7 shows what the minimum liability coverage would be if it were adjusted for inflation.

Table 7: Public Liability Insurance Coverage

Ski Resort	Minimum Liability Insurance Coverage required by Lease	Minimum Lease Coverage Adjusted for Inflation[47]
Bromley Mountain	$10,000,000	$26,000,000
Burke Mountain	$100,000 / $3,000,000 (lifts)	$481,000 / $14,500,000
Jay Peak	$500,000 / $3,000,000 (lifts) & $100,000 / $500,000 (buildings)	$2,110,000 / $12,700,000 & $422,000 / $2,000,000
Killington Mountain	$100,000 / $300,000 (lifts except chairlifts) & $100,000 / $500,000 (chairlifts)	$732,000 / $2,200,000 & $732,000 / $3,660,000
Okemo Mountain	$100,000 to $300,000 (lifts except chairlifts) & $100,000 to $1,000,000 (chairlifts)	$732,000 / $2,200,000 & $732,000 / $7,320,000
Smugglers' Notch	$3,000,000 (adjusted every five years based on CPI)	$6,440,000
Stowe Mountain	$100,000 / $3,000,000 (lifts) & $10,000 / $100,000 (buildings)	$732,000 / $22,000,000 & $73,200 / $732,000

Table 7 shows that the amount of per-occurrence coverage stipulated in the leases would in some instances be well below that recommended by the Office of Risk Management, even when adjusted for inflation. The

[46] It is possible that Smugglers' Notch has higher levels of liability insurance coverage not displayed on the insurance certificate submitted to the State. FPR, for its part, has not required Smugglers' Notch to show liability insurance levels commensurate to those stipulated by the resort's lease.

[47] To adjust for inflation, we used the Northeast Consumer Price Index (CPI), which begins in 1967. Since the index does not stretch back to the start of the Killington and Okemo leases in 1960 and 1963, we drew from 1967 for those adjustments. This method should produce a smaller adjustment.

Risk Management Director recommends bringing all of the leases under common liability insurance terms and including a provision to adjust for inflation on five- to ten-year intervals.

FPR should conduct a comprehensive review of the lease's liability insurance language and the resorts' policies to ensure that the State and its taxpayers are adequately protected from potential incidents on the leaseholds.

Conclusion

The Vermont ski industry of today represents a dramatic evolution from its humble beginnings. Many of the small, locally owned resorts that began leasing land from the State in the mid-20th century have become year-round enterprises owned by large corporations. The ski mountains of yesterday, with several lifts and a few amenities, have transformed into real estate powerhouses, featuring large hotels, retail stores, golf courses, waterparks, and other high-end amenities.

Without the critical land at higher elevations that the State leases to the resorts, their world-class ski facilities would not exist. While the resorts have created many attractions of their own, the central draw has always been their mountain locations. Public land forms the foundation of one of Vermont's greatest business success stories.

Although the state's public land leases have enabled these resorts to flourish, the industry has outgrown the terms of those decades-old documents. The leases were meant to capture a certain percentage of the primary revenue source to ensure a return to the public, while – at the same time – helping the resorts grow. But, as the resorts have evolved, that revenue source has become one of many. The result is that revenues from lease payments have not kept pace with development as measured by the sale of goods and services, property values, and excise taxes. Vermonters also pay for land and facilities used by the ski areas through the PILOT program, which reduces the value to the State of the lease payments.

While much of the new economic activity at the resorts occurs on private land, its value is enhanced by its immediate proximity to public lands. By most measures, this public-private partnership has been successful, but the question of whether Vermonters are receiving fair value for these unique public assets is worthy of reconsideration.

The dated nature of the leases also poses a greater potential risk to the State. The State made a critical error in not stipulating regular opportunities for it to update the lengthy 50- to 100-year leases, like the USFS does with its 40-year permits. Despite this decision of the State, ANR, the Vermont General Assembly, and the ski resorts could work together to update and improve the leases.

Lastly, the lack of uniformity between the leases has produced a system that is difficult to administer and generates added costs for taxpayers. One of the most problematic of the inconsistencies is the variation in assigning title to property on state land, which obstructs two towns' power to tax and gives some resorts a tax advantage because property that belongs to the State is tax-exempt. Ultimately, improving consistency across leases with regard to property titles would help level the playing field for the ski industry in Vermont and across towns where the resorts are located.

Appendix A: Resort Breakdown

This appendix provides key details about the resorts, includes maps of the ski areas and leaseholds, and shows how individual resort lease payments changed in relation to their property values.

To determine how property values shifted over time, we worked with grand list data to identify parcels that belong (or belonged) to the resorts' management companies and their subsidiaries. In some cases, we excluded properties. For example, Killington's parent company also owns Pico Mountain. Our office identified the parcels on and around Pico and removed them from the Killington analysis. In some cases, we found that a ski resort's parent company or subsidiary owned parcels that did not relate directly to the resort, and so we removed those properties.

Except for Bromley and Burke, the analysis included an accounting of resort property values dating back at least 20 years. The SAO's inquiry was limited to 10-year analyses for Bromley and Burke due to resource and state data constraints. The Vermont Tax Department keeps grand list data stretching back 10 years. To gather data before 2003 required an SAO representative going to individual town offices to acquire the necessary records to calculate total property values. Bromley and Burke's lease payments have consistently accounted for a small percentage of the total, and our analysis found that development at these two resorts has been limited compared to the other five. The analysis of this data ends in 2013 because that is the last full tax year for which we had data.

Most of the total property value increases at the seven resorts occurred over the past 10 years.[48] For the aggregated property value analysis in the main body of the report, this 10-year period was sufficient. To put the property fluctuations into perspective, the SAO also analyzed Act 250 applications stretching back to the beginning of the State's governing land-use law.

To create the maps included in this section, our office obtained files from state mapping professionals for the leaseholds, the lift lines, and town boundaries. We then applied these mapping layers to satellite images using Google Earth software.

Five of the resorts have engaged in land exchanges with the State, and Appendices A3 through A7 briefly outline those agreements. Appendices A4, A5, and A6 – for Killington, Okemo, and Smugglers' Notch – explain taxation issues related to those leases.

[48] Six of the seven leases do not allow overnight lodging within the leasehold, which has led to lodging around the periphery. Although Stowe's lease does not contain this language, FPR says they do not permit the resort to build lodges on state land.

Appendix A1: Bromley Mountain Resort

Bromley Mountain leases roughly 118 acres of Hapgood State Forest in the town of Peru. The resort was the first mountain to lease land from the State in 1942, and its current 50-year lease expires in 2032.

Of all seven ski resorts, Bromley leases the fewest public acres and has the smallest percentage of lifts on state land at 23%. As a result, Bromley's payments to the State are the lowest of all resorts that have leaseholds with the State. Bromley is also the only resort that leases land from both the State and the USFS.

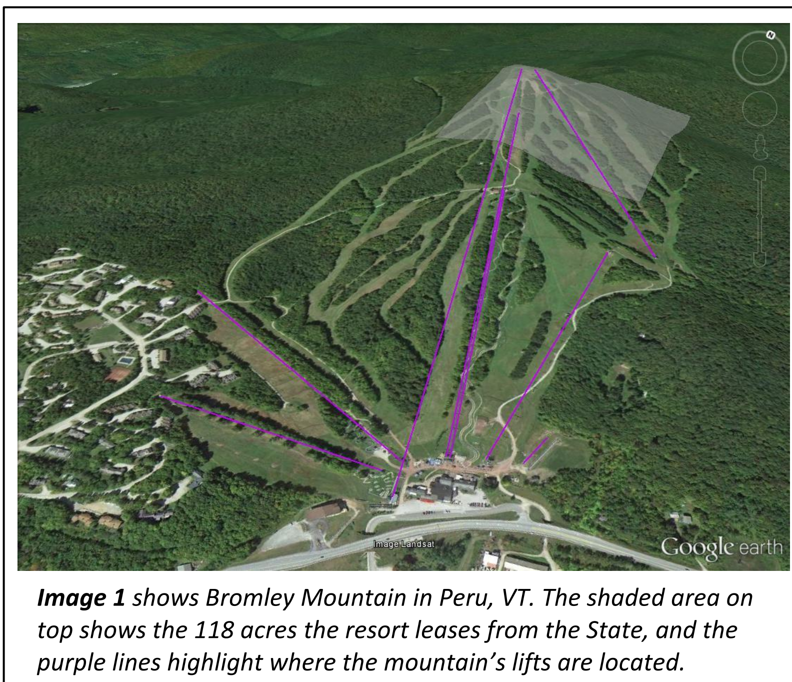
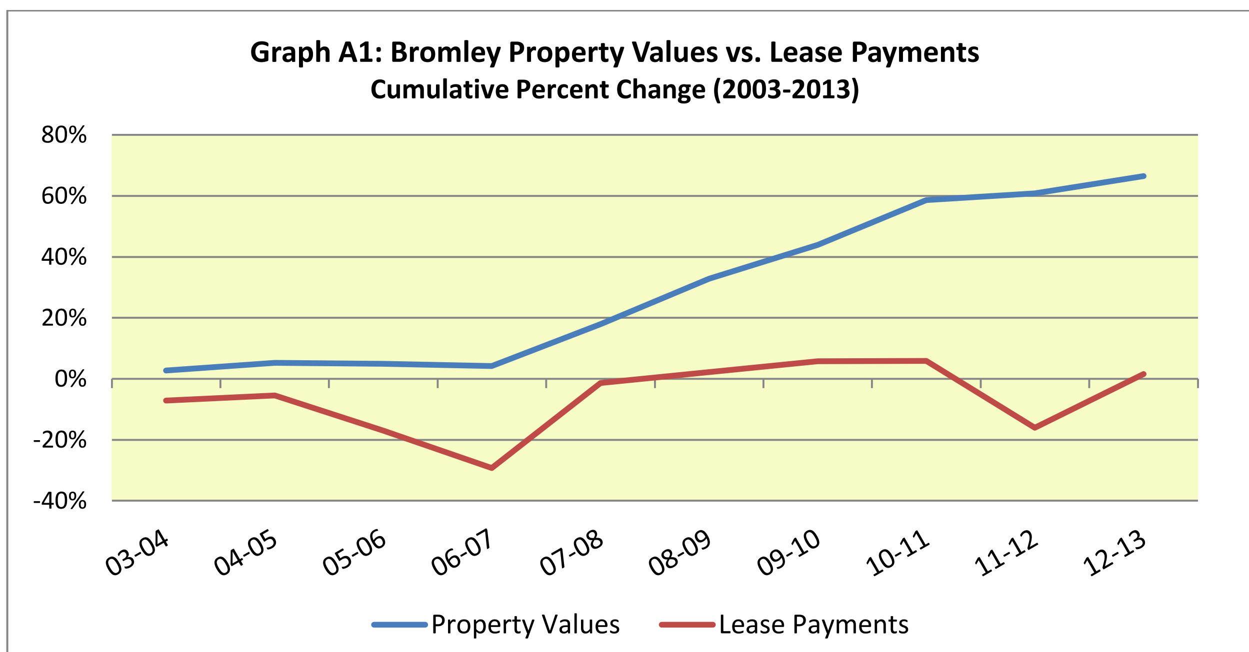


Image 1 *shows Bromley Mountain in Peru, VT. The shaded area on top shows the 118 acres the resort leases from the State, and the purple lines highlight where the mountain's lifts are located.*

Between 2003 and 2013, Bromley's lease payments grew at a rate of 2%, while property values rose at 67%. Bromley's property values rose from $9.1 million in 2003 to $15.2 million in 2013.

As graph A1 shows, the resort's property values began to rise in 2006. Unlike some of the other ski areas that lease land from the State and have undertaken major real estate developments, most of Bromley's increase appears to stem from reappraisals and regular upgrades to facilities. Major developments at Bromley – such as waterslides, improvements to Bromley's clubhouse, and summer attractions – predate this period.



Appendix A2: Burke Mountain Resort

Burke Mountain leases an estimated 1,000 acres of Darling State Forest in the town of Burke, and roughly 55% of the resort's ski lifts are on state land. The resort began leasing land from the State in 1956, and its current lease expires in 2054. Burke's $56,000 lease payment in FY14 accounted for 2% of the $2.9 million total. Burke's payment was the second smallest next to Bromley.

Of all seven ski areas that lease land from the State, Burke has the lowest per-acre payment. Burke's lease payments, however, rose at the highest rate over the past two decades (see Graph 5 in the report). From 2003 to 2013, Burke's lease payments grew at the second highest rate – only surpassed by Jay Peak. But the 70% increase in lease payments over this period pales in comparison to the 600% increase in the resort's property values. The total value of Burke's property grew from $1.7 million in 2003 to $11.9 million in 2013.

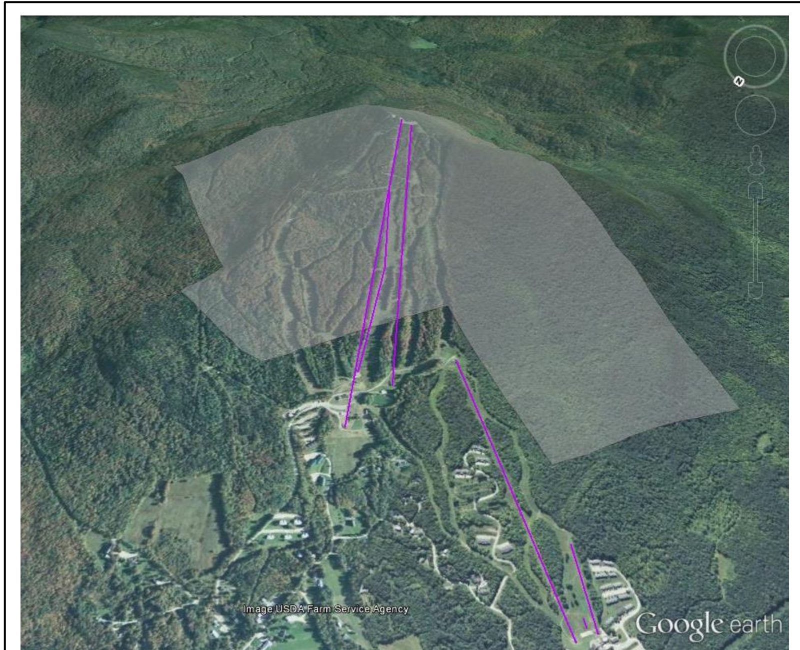
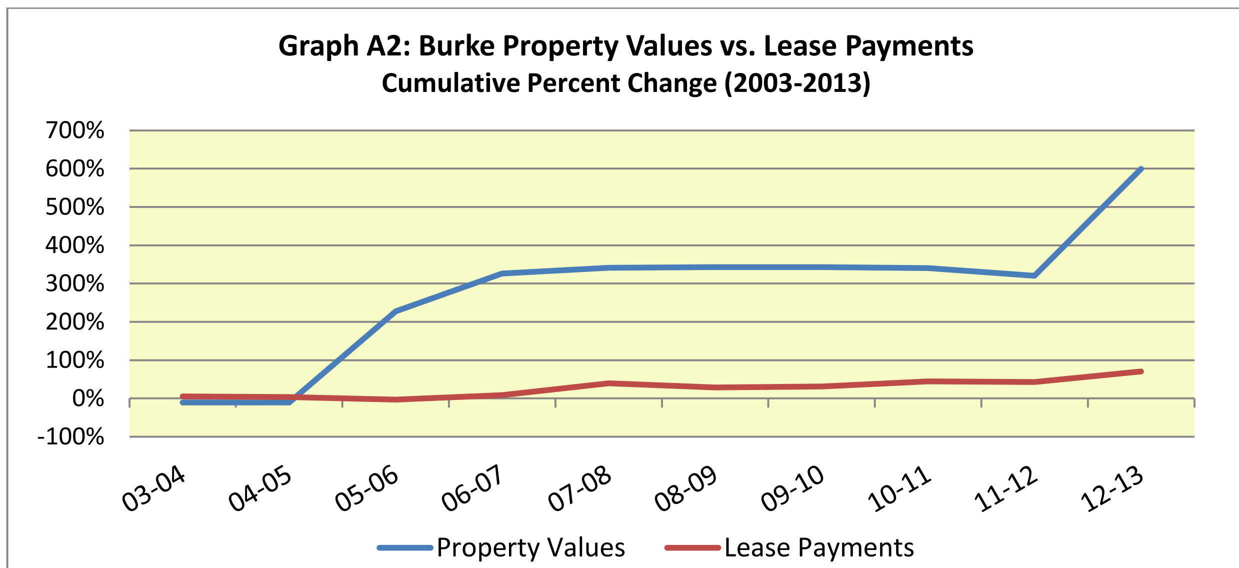


Image 2 *shows the estimated 1,000 acres of Darling State Forest that Burke Mountain Resort leases from the State. The leasehold is represented by the shaded area, and the purple lines show where the resort's lifts are located.*

Burke parcels and their values have increased over the last decade, and the resort is planning a major expansion. In 2013, Burke received a permit to construct a new five-story hotel and trail expansion, which is part of a master plan to develop roughly 1,000 residential units, expand its base lodge, and develop new recreational facilities.



Appendix A3: Jay Peak Resort

Jay Peak leases 845 acres of Jay State Forest in the towns of Jay and Westfield, and roughly 53% of the resort's lifts are on state land. The resort began leasing land from the State in 1957, and its current 80-year lease expires in 2056. Jay Peak's FY14 lease payment of $243,868 accounted for roughly 8% of the total.

Between 2003 and 2013, Jay Peak property values grew at the highest rate of any resort that leases land from the State – a rate of 827%. Meanwhile, the resort's lease payments also grew at the highest rate of 92%, or about one-tenth of the resort's rate of property value growth.

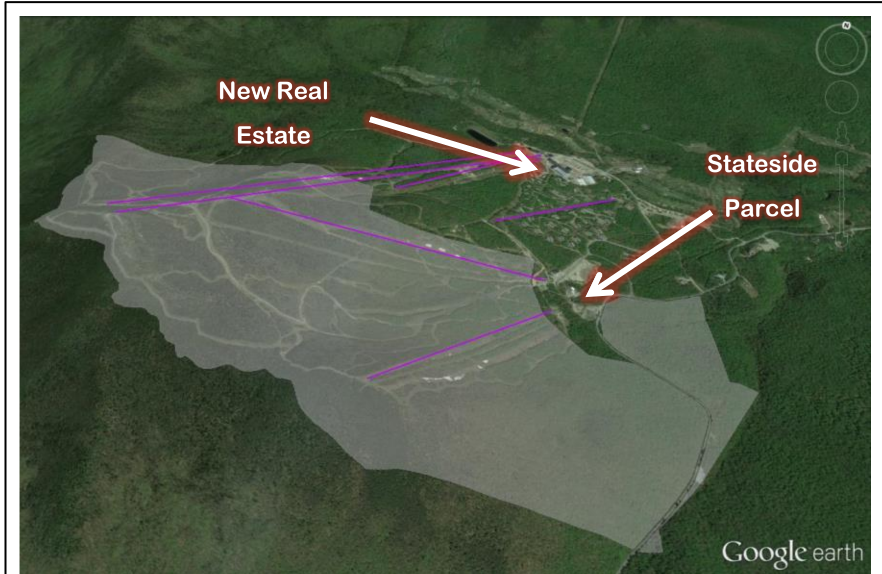
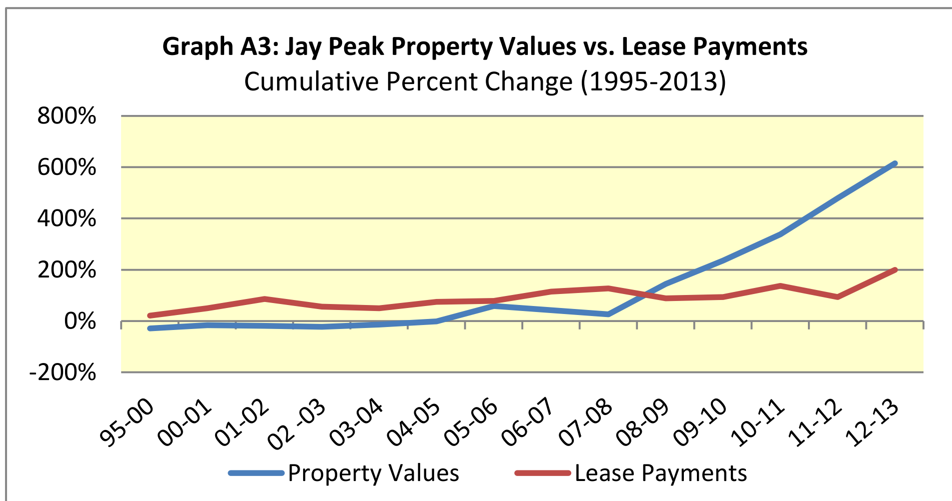


Image 3 *is a view looking down from the summit of Jay Peak. The shaded area represents the resort's 845-acre leasehold, and the lift lines are highlighted in purple. The golf course stretches across the upper right area of the photo, and new lodges and other real estate developments are viewable above the leasehold area.*

Graph A3 shows how Jay Peak property values and lease payments shifted between 1995 and 2013. During this period, property values rose 615% to $85.7 million, and lease payments rose 199%. Property values remained relatively flat until 2008 when Jay Peak's expansion plans started to come to fruition. At that time, construction began on new hotels, condominiums, lodges, an ice rink, and an indoor waterpark.

In 2010, the State and Jay Peak struck a deal that included the exchange of three parcels and a payment. Jay Peak received a 59-acre parcel at its base in exchange for a 151-acre ridgetop parcel by the Long Trail and 418 acres released back to the State from the leasehold. The State paid Jay Peak $53,589 as part of the deal, and the Green Mountain Club, which maintains the Long Trail, was a major driver of this exchange. The 59-acre plot is often referred to as the "Stateside Parcel," and the resort has plans and permits to build a new lodge, hotel, indoor recreation facility, and ski school on this land.



Appendix A4: Killington Mountain Resort

Killington leases 1,680 acres of Calvin Coolidge State Forest in the town of Killington. This leasehold is the second largest next to that of Smugglers' Notch. Killington began leasing land from the State in 1957, and the resort holds the longest state lease of 100 years, which expires in 2060.

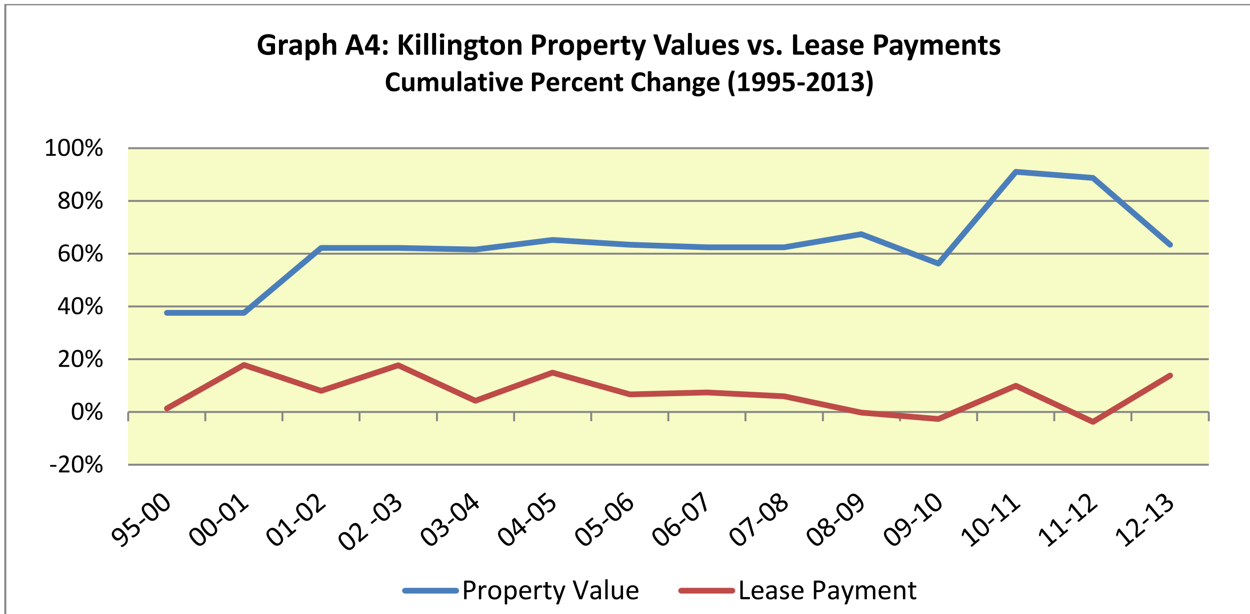
Killington's FY14 payment to the State of about $1.2 million is the largest and represents 41% of the total FY14 lease payments. When adjusted for inflation, Killington's lease payment has declined by 37% over the past 20 years.

Image 4 *shows the 1,680 acres Killington leases from the State. The leasehold is shaded in, and purple lines show where the resort's lifts are located.*

Between 1995 and 2003, Killington property values rose 63% to $51.6 million, while lease payments rose 14% (see Graph A4). Killington's property values are only for Killington's management companies and its subsidiaries over this period. SP Land Company is a partial owner of the resort, and the SAO did not account for the development company's property values around the resort for this analysis. SP Land is planning a Killington real estate development at the base of the mountain, with more than 2,000 housing units, more than 200,000 square feet of retail space, and a 77,000 square-foot skier services building.

From 2003 to 2013, Killington's property values grew a mere 1% and the resort's lease payments declined 3%. Between 2009 and 2013, the resort's property values fluctuated by about $10 million – up and then down. It is unclear exactly what is driving this trend, but between 2012 and 2013 a parcel with a golf course and a mixed-use development dropped in value from $13.8 million to $1.4 million.

In 1997, the State exchanged 1,050 acres of forest land at the base of Killington in return for 2,948 acres of black bear habitat. As part of this deal, Killington paid the State $375,000 to acquire an adjacent parcel of land. The State then conveyed a conservation easement for part of the land it acquired to the National Park Service for protection of this part of the Long Trail/Appalachian National Scenic Trail. The resort also agreed to release part of the leasehold to create a larger cushion between the conservation zone and the resort's development. Killington received the land where its village development will be located and a corridor to eventually connect the Killington and Pico ski resorts.



During our inquiry, we found evidence to suggest the town is improperly taxing the resort, while the State is making a PILOT payment to the town in lieu of those taxes. The Killington lease states: "All lifts, including towers, cables, chairs, railings, platforms and all buildings, shall be deemed to be real estate immediately upon construction and erection and that hereafter the same shall be deemed to be the property of the State."[49]

According to the Killington Board of Listers, the town assessed all of the resort's ski lifts and snowmaking equipment, which totaled $35.8 million in 2013. Killington town tax bills show that the town taxed all of this property. While the town can tax for ski lifts on private land, the lease language above makes it so that the town cannot tax for ski lifts on State land (but it appears the town could tax for snowmaking equipment).

This issue came before the Vermont Supreme Court in 1965 in the case of *Sherburne Corp. v. Town of Sherburne* (the former names for the resort and town).[50] The court ultimately concluded in a split-decision that the lifts were real estate owned by the State and were thus exempt from taxation.[51]

In addition to the town taxing property that it apparently should not, the State has made PILOT payments for some of this same property on State land. If there is an agreement by which the resort is paying taxes to the town when it does not need to (something that our office was not informed of), then it appears the State should not reimburse the town with PILOT payments.

Also of note is that the value at which the town of Killington assesses ski lifts and snowmaking equipment is significantly lower than that level at which the resort insures this equipment. According to the values the resort submitted to the State for PILOT payments, ski lifts on state land were insured for $37.8 million in 2013. That amount is for 66% of the resort's ski lifts (the ones on state land) and is $2 million more than the total amount that the town values all of the resort's lifts and snowmaking equipment.

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[49] State of Vermont Lease to Sherburne Corporation, 1960, Condition 11.

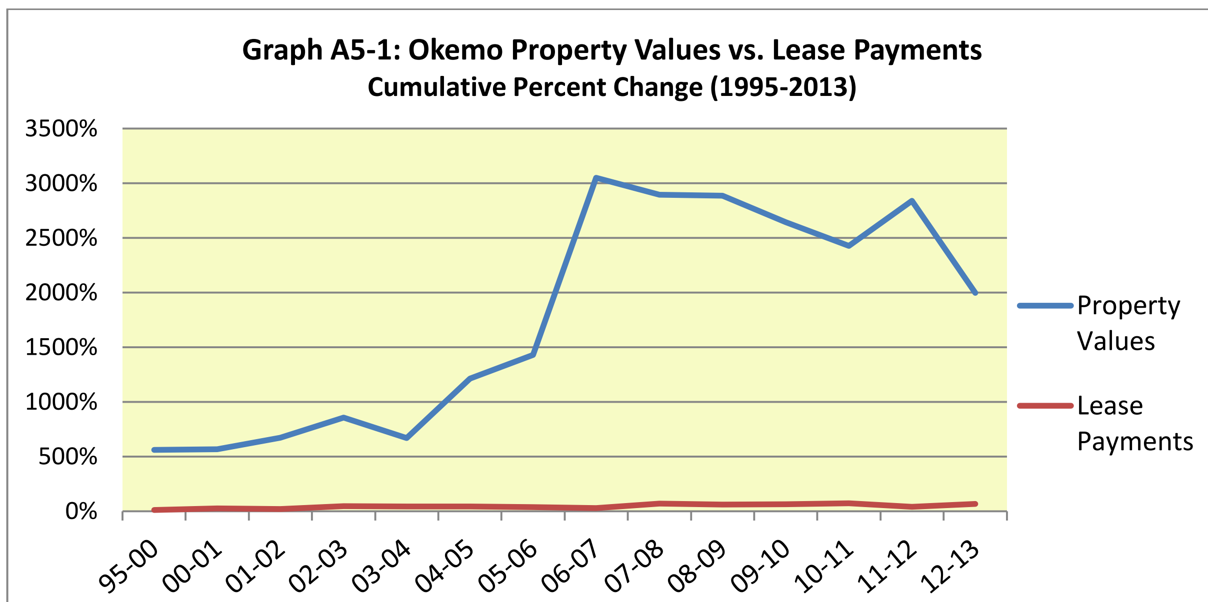
[50] To read the opinion, click here.

[51] See: 32 VSA 3802(1).

Appendix A5: Okemo Mountain Resort

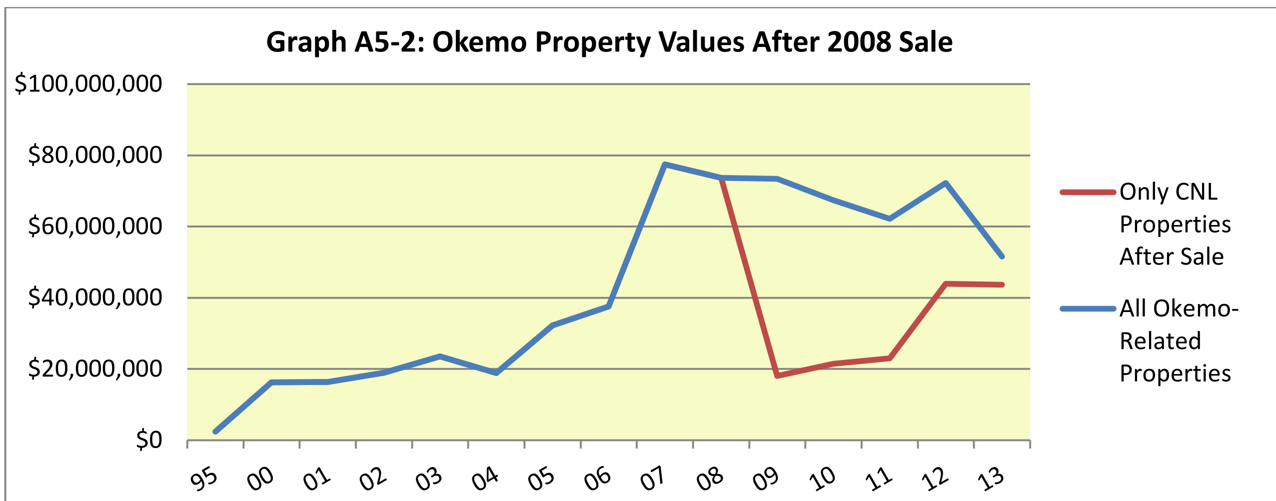
Okemo Mountain Resort leases 1,223 acres of Okemo State Forest in the towns of Ludlow and Mount Holly. Okemo began leasing land from the State in 1955, and the resort's current 90-year lease expires in 2053. Okemo's FY14 lease payment to the State of $544,221 was the third-largest payment and represented almost 20% of the total lease payments made to the State.

From 2003 to 2013, Okemo's property values rose 119%, while its lease payments rose 15%. From 1995 to 2013, Okemo's total property values rose 1,997% to $51,553,419, and lease payments rose 67% (see graph A5-1). The Ludlow Board of Listers explained to our office that the reason why Okemo property values grew from $2.5 million in 1995 to $16.2 million in 2000 is that the town had not appraised the resort's property in roughly a decade, and the resort's property values were therefore undervalued for some part of the 1990s. What appears to have driven the upward and downward trends in property values between 2003 and 2013 is the development and selling off of real estate. For example, one $20 million property that was developed during this period shifted ownership from a development company associated with the resort to a condo owner's association.



In 2008, the Mueller family – long-time owners of Okemo – sold the resort to CNL Lifestyle Properties, which is a real estate investment trust. The new arrangement made it so that the Muellers would continue to manage the resort on a lease from CNL, and the family would hold onto much of the developable land around the resort.[52] The property values shown in Graph A5-1 include the Mueller companies' properties associated with the resort. A breakout of how these property values compare with those solely owned by CNL is included in Graph A5-2.

[52] FPR does not have documentation detailing this situation. For more on this arrangement, read: Vermont Public Radio's Story, the Rutland Herald Story, and this Denver Post story.



An area of concern surrounding Okemo's property values is the town of Ludlow's valuation of ski lifts and snowmaking equipment. The Ludlow Board of Listers initially informed our office that the town had not appraised this equipment on state land, where most of Okemo's lifts are located. When our office informed the town that it appeared this property was taxable, the Listers took a closer look at the valuation. They concluded that the property values were the result of negotiations with the ski area based on 2008 values, and they were unsure if equipment on state land was included in the valuation.

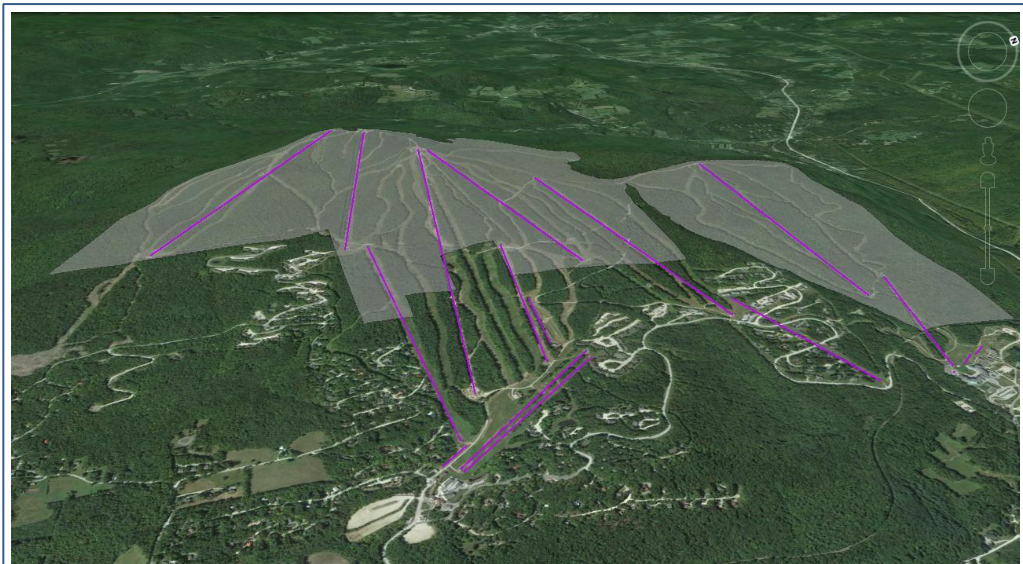


Image 5 *shows the 1,223 acres of Okemo State Forest that Okemo leases from the State. The leasehold is shaded in, and the resort's lift lines are highlighted in purple.*

Our office initially flagged what appeared to be an undervaluation of equipment, as the estimated value per linear lift foot of $95 was significantly lower than any other resort's.[53] Okemo's 2013 total values for lifts and snowmaking equipment of $4.6 million were second lowest next to Bromley's $3.5 million. A key distinction is that Bromley has about 21,000 feet of lift line, and Okemo has more than twice that amount, with 49,000 linear feet.

Okemo also engaged in a land swap with the State in 1989. The exchange hinged on numerous acquisitions and centered around eight swathes of land.

[53] That calculation includes Mount Holly's appraisal of resort equipment on state land and compares to about $500 per foot for Killington, $350 for Stowe, and $280 for Burke.

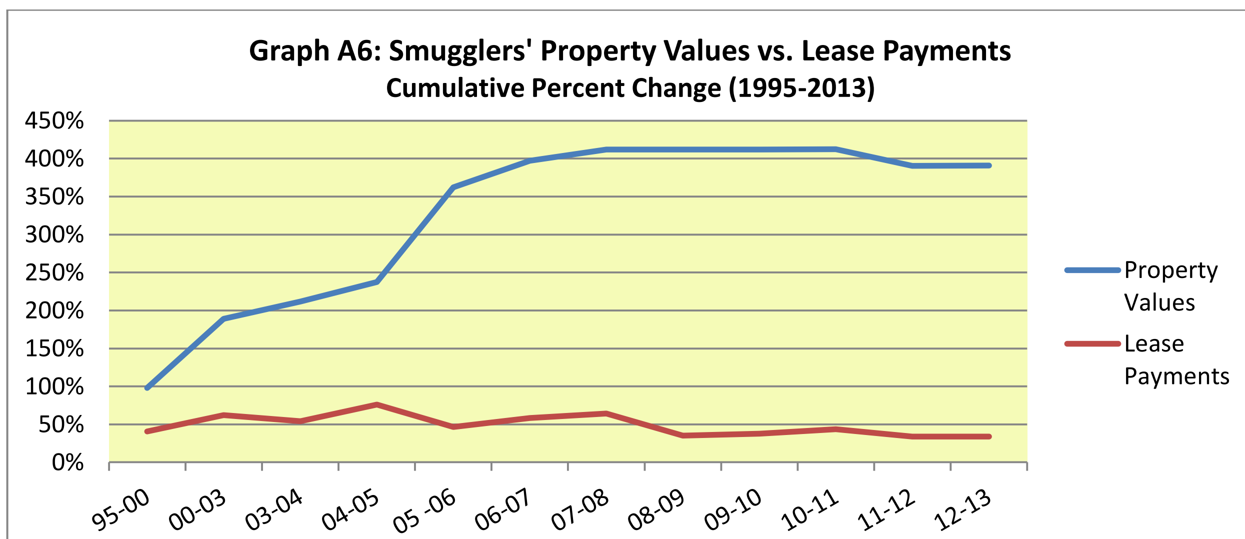
Appendix A6: Smugglers' Notch Resort

Smugglers' Notch leases 2,170 acres from the State – more than any other ski area. Smugglers' Notch began leasing land from the State in 1962, and the resort's current lease expires in 2058. The leasehold on Mount Mansfield State Forest land is located in the towns of Cambridge, Morristown, and Stowe.

Roughly 83% of the resort's lifts are on state land. Despite most of the resort being on state land, Smugglers' Notch paid more in education property taxes last year than any other resort that leases state land (see Graph 13 in the body of the report). In FY14, Smugglers' Notch paid $283,039 in lease payments, which accounts for 10% of the seven-resort total.

From 2003 to 2013, Smugglers' property values grew 70% to $117,116,300. Meanwhile, the resort's lease payments declined 17%. A longer range view, from 1995 to 2013, shows that the resort's property values grew 391%, and lease payments grew 34% (see Graph A6). Most of Smugglers' property value during this period is associated with timeshare complexes that the management company pays taxes on. We included these property values because the town's grand list attributes ownership of these properties to Smugglers' Notch Management Company.

In 1988, the State, Smugglers' Notch, the Nature Conservancy, and Wagner Woodlands, Inc. entered into a complicated land deal that gave the State roughly 3,000 acres of land around a seven-mile stretch of the long trail, and the State shifted 70 acres of leasehold to Smugglers' Notch for the continued use of a spray sewage disposal area. The deal also involved a state payment of $58,375, and the State agreed to cover The Nature Conservancy's costs associated with the transaction. According to FPR, the Cambridge portion of the Wagner land was sold to Smugglers' Notch by The Nature Conservancy. Additionally, an annual $2,000 fee for an effluent waste disposal site was removed from the resort's lease payment when Smugglers' Notch acquired that land as part of an exchange.



As explained in the report, the Smugglers' Notch and Killington leases give title to property on state land to the State, not the resorts. The Smugglers' Notch lease language for property titles is more comprehensive than Killington's. The lease states: "All lifts and snowmaking equipment (including towers, cables, chairs,

railings, platforms) and all buildings on the Premises shall be deemed to be real estate immediately upon construction and erection, and thereafter each shall be deemed to be property of the STATE."[54]

Unlike Killington's lease, the Smugglers' title language includes snowmaking equipment, which gives title for that equipment to the State. Since the State doesn't include this equipment in PILOT payments, towns do not get compensated for this property.

One of the main issues with the State's PILOT payment for Smugglers' property is that the insured ski lift values that the State uses to calculate PILOT payments include all of the ski lifts, not just those on State land. That means the State is paying PILOT payments for property that it should not. Cambridge is also collecting taxes for ski lifts on private land and receiving extra taxpayer dollars through PILOT for the same property, which is ultimately an error of the State.

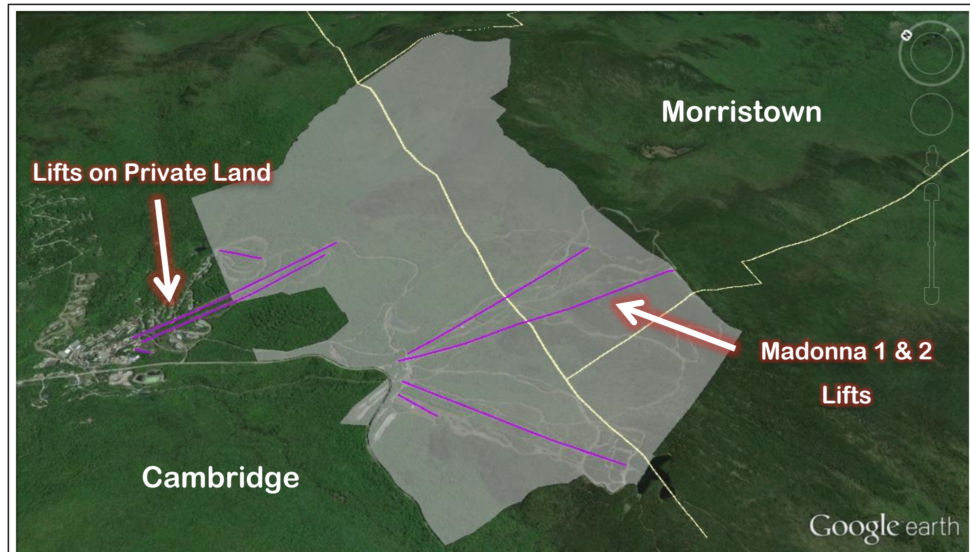


Image 6 *shows the Smugglers' Notch leasehold in the shaded area. The town boundaries are highlighted in pale yellow, and the lift lines are highlighted in purple. The image shows two lift lines clearly on private land to the left and two lift lines that are in Morristown at right.*

The other chief problem with the PILOT payment for Smugglers' Notch property is that it is paid solely to Cambridge, when part of it should be paid to Morristown. Therefore, Morristown does not receive a Payment in Lieu of Taxes for the portions of the Madonna 1 and 2 lifts on its land, and Cambridge receives the portion that should be going to Morristown (see Image 6).

[54] State of Vermont Lease with Smugglers' Notch Food and Beverage Company, Inc., 1987, Condition 9.

Appendix A7: Stowe Mountain Resort

Stowe Mountain Resort leases an estimated 1,400 acres of Mount Mansfield State Forest, and roughly 48% of the resort's lifts are on state land. The leasehold is on one side of Mount Mansfield, and the resort owns the adjacent mountain, called Spruce Peak. Stowe began leasing land from the State in 1946, and the resort currently has a 90-year lease that expires in 2057. Stowe's lease payment of $546,584 was the second highest in FY14 and accounted for about 19% of the total lease payments.

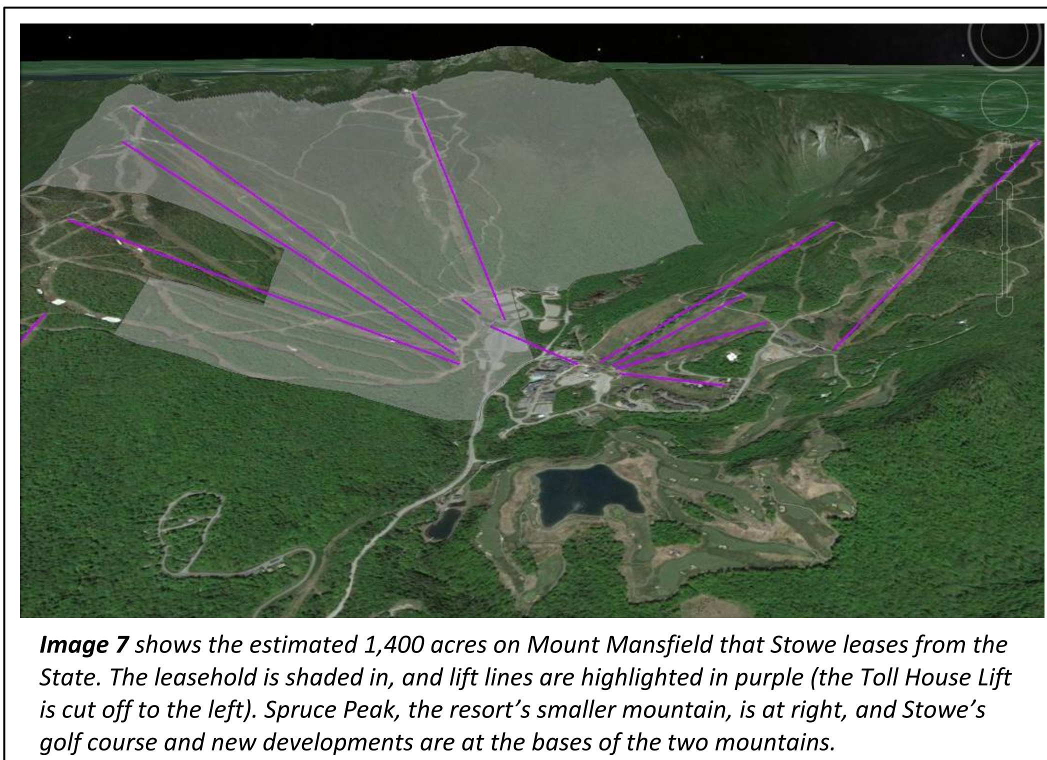
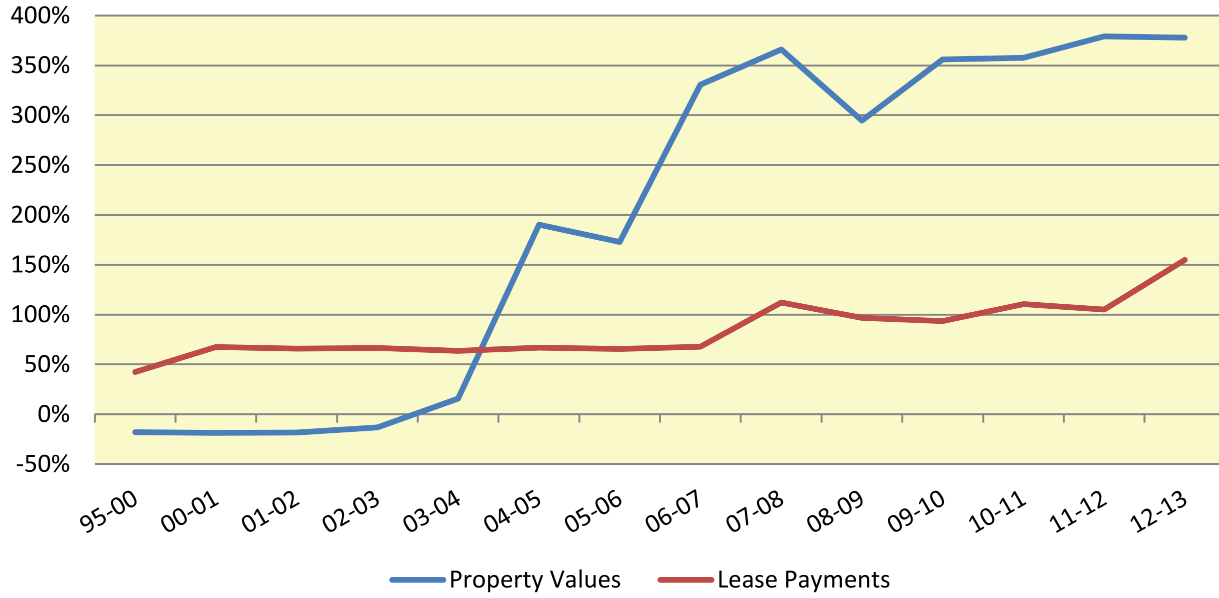


Image 7 *shows the estimated 1,400 acres on Mount Mansfield that Stowe leases from the State. The leasehold is shaded in, and lift lines are highlighted in purple (the Toll House Lift is cut off to the left). Spruce Peak, the resort's smaller mountain, is at right, and Stowe's golf course and new developments are at the bases of the two mountains.*

Between 2003 and 2013, Stowe resort's property values grew 451% to $119,595,600. Meanwhile, lease payments grew 53%. From 1995 to 2013, property values grew at a lesser rate of 378% due to a dip in values between 1995 and 2004 (see Graph A7). Lease payments over this period, however, grew at a higher rate of 155% — the second highest growth rate next to Jay Peak's, but still considerably less than the rise in property values.

The hike in Stowe's property values over the past 10 years can be attributed mainly to the development of new real estate and attractions, such as a new golf course, lodge, luxury cabins, and a performing arts center. The resort is continuing to develop its village at the base of the mountain, and while real estate development has fueled the rise in Stowe's property values, it is clear that changes in property values can be misleading because properties are sold off and disappear from the resort's grand list entries.

Stowe also entered into a 1995 land swap with the State. The resort traded 1,234 acres of land along ridgeline and the Route 108 corridor for about 155 acres of land that included the former Smugglers' Notch Campground and several smaller parcels on Mount Mansfield and the top of Spruce Peak. FPR explained that Stowe received a critical parcel at the base of Spruce Peak where their new development – lodge, condos, and resort village – is located, and the resort developed the Smugglers' Notch State Park for the State as it exists today.



Graph A7: Stowe Property Values vs. Lease Payments
Cumulative Percent Change (1995-2003)
400%
350%
300%
250%
200%
150%
100%
50%
0%
-50%
95-00
00-01
01-02
02-03
03-04
04-05
05-06
06-07
07-08
08-09
09-10
10-11
11-12
12-13
Property Values
Lease Payments

Appendix B: Scope and Methodology

The SAO drew from a broad range of federal, State, and municipal data sources to perform the analyses that comprise this report. The analyses were also informed by hundreds of documents from various government entities. An overview of the sources and methods we used throughout this investigation is organized below into two sections: Lease Terms and Lease Payments.

Lease Terms

ANR staff provided us unfettered access to all files concerning the leases. Agency personnel were extremely helpful and transparent about documentation and their processes.

These files enabled us to identify current and past leaseholds, the locations of the leaseholds, and the areas within state forests and parks that the leaseholds occupy. The files ranged in nature from spreadsheets to mapping files for Geographic Information Systems (GIS) to PDF files of historic documents.[55] Past and current lease documents provided our office with a long-range view of how the agreements had evolved.

USFS administrators for ski resort permits on federal land provided our office with valuable insights and numerous documents to explain the implementation of those permits.

The fee-structure comparisons for the different resort leases, including Table 3 in the report, were accomplished via a detailed review of all identifiable lease documents. Graph 1, which details leasehold acreage, drew from the actual leases and other documentation that FPR had for those lands. Graph 2, which compares the percent of lifts on state land, drew from lease-fee payment documents that the ski areas submitted to FPR, as well as specific spreadsheet breakdowns of the lift lines that FPR requested of certain ski resorts during this inquiry. Those figures were not readily available for all of the ski areas at the beginning of our investigation.

Lease Payments

The lease payment data used in Graphs 4, 5, and 6 drew from a spreadsheet that the ANR Lands Administration Director provided for tracking lease payments. This spreadsheet details every lease payment ever made to the State as part of these leases.

The inflation index we used for all inflation adjustments was the U.S. Bureau of Labor Statistics Consumer Price Index (CPI) for all items in the Northeast. One caveat of using this index is that annual index points are based on a calendar year and lease payments are organized by state fiscal year (FY).[56] We paired state fiscal years with the preceding calendar year for analyses. FY14 lease payments, therefore, were adjusted based on the calendar year 2013 annual CPI level.

This same timeline inconsistency presented itself with tax data, which is also based on a calendar year. All sales, excise tax, property tax, and property value data is based on a tax year (calendar year), and we compared this tax data with lease payments from the following fiscal year. Tax year data for 2013 was

[55] The ANR Atlas and Google Earth were instrumental software programs for this project.

[56] The state fiscal year begins July 1 and ends June 30 of the following calendar year.

therefore paired with FY14 lease payment data for comparative purposes, as the two timelines overlap by six months.

Graph 7, which compares resort property values to lease payments, is an aggregation of grand list data used for the analyses in Appendix A. To identify and compile the resorts' property values, the SAO conducted a detailed review of grand lists from the towns where the resorts are located. We worked with staff from all 10 towns where the resorts are located, and we worked closely with the Vermont Tax Department to organize this information. More information on this analysis is available in Appendix A.

The Tax Department also provided us with aggregated data for excise taxes and the sales of goods and services, which were used in Graphs 3, 8, 9, 11, and 12. We worked closely with the Tax Department to identify what companies should be included in the sample, but we did not receive company-specific values because of the sensitive nature of this data.

The education tax and tax exemption data used in Graphs 13 and 14 were compiled from hundreds of tax bills. Data points were then validated with towns' grand lists. The current-use reductions were also identified using tax bills and were cross-referenced with ANR documentation and grand lists.

Data provided to FPR by resorts on weekend lift-ticket prices were used to compare the percentage change in ticket prices to the change in lease payments. This comparative analysis is displayed in Graph 10. We asked FPR to help us validate this information, and all of the resorts quickly complied.

To examine property title divisions and municipal tax implementation based on those titles (outlined in Table 5), we drew from the lease documents, grand lists, town lister records, and discussions with town listers (and sometimes their contractors).

Natural Resources Board staff at commissions across the state also provided us with extremely helpful insights and data sets that gave us a better understanding of how the resorts developed on and around state land. The Montpelier office allowed us to use the central Act 250 database for this project.

Appendix C: FPR Comments on Draft Report

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Department of Forests, Parks and Recreation
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Agency of Natural Resources

(802) 371-7472
mike.fraysier@state.vt.us

December 31, 2014

Douglas R. Hoffer, State Auditor
132 State St.
Montpelier, VT 05633-5101

Dear Doug,

Thank you for the opportunity to review and provide comment on the draft "non-audit inquiry" of the State's ski area lease program. We appreciate the effort you and your staff put into this project and believe the report, when finalized will be a great resource and will prove useful in developing and administering the next generation of Vermont ski area leases. Additionally, the report also highlights some issues that the Department will work to address in the short term. The following comments and suggestions are intended to provide clarification and context where needed and hopefully will be considered and incorporated into the final report.

- **Title of Report "State Land Leases Boost Ski Industry, but are Dated and Inconsistent",-** While this may be factually correct, this statement may be misleading without the context of the report narrative. This title also fails to mention the benefits received by the State resulting from the ski area leases, and thus presents an incomplete overview. Consider changing the report title to something more neutral like "An Investigation of Vermont Ski Area Leases" and leave the conclusions for the body of the report.

- **P. 4, ¶5** – The first sentence of this paragraph states that "most real estate development has occurred on private lands adjacent to the State leaseholds." Actually, all of the leases prohibit overnight lodging within the leasehold. Consequently, there are no hotels, condos, second homes, inns, etc. located within any of the state ski lease areas. All such real estate development is located on private lands. This should be made clear in the report.

- **P. 4, ¶5** – The last sentence of this paragraph mentions that ski areas received developable land from the state as part of an exchange, but it does not mention what the State received in return for this land (e.g., miles of Long Trail permanently protected, many hundreds of acres of critical wildlife habitat coming into state ownership and permanently protected, a new developed state campground, paid for by the ski area, etc.). These exchanges would never have been approved by the legislature if it could not be demonstrated that they provided substantial public benefits. It's important that the report not simply characterize the exchanges as being a benefit to the ski area, but a benefit to the state as well.

- **P. 5, top line** – While all of the ski lease revenue goes into the Department's Parks Revolving Fund, it is not the largest contributor to the State Parks budget. State Park user fees (camping fees, day use fees) constitute about 60% of the annual revenue into this fund. Ski lease revenues are typically half of this.

- **P. 7** – The narrative on this page compares and contrasts the state ski leases with the USFS ski permits. This comparison is enlightening and useful, but it leaves one with the impression that the USFS ski permits are vastly superior to the state ski leases. This is clearly not true in terms of the lease revenue they generate. Vermont's flat 5% lease formula, if applied at USFS ski areas such as Sugarbush, would almost certainly result in a significantly higher annual lease payments than what is paid under the current federal formula which uses a graduated percentage ranging from from 1.4% to 4%. While the EPR report more or less confirmed this, we feel it would be important to restate it briefly to provide a more accurate comparison of the USFS ski permits and the state ski leases.

- **P. 8, 2nd full ¶** - In some cases, ski areas have allowed separate entities to operate a ski school within the lease area. Killington and Smugglers Notch are examples. In both cases, separate ski clubs have negotiated individual license agreements with the Department with the approval of the ski areas. The revenue from these license agreements accrue to the Department.

- **P. 9, 1st full ¶** - While several state ski leases do not explicitly limit collection of the 2.5% of gross receipts to facilities on state lands, FPR's interpretation of this provision is that it is limited to facilities located in the leasehold area or "demised premises" as described within each lease and was not meant to extend to facilities on adjacent private land, over which, the State has no ownership or control. To interpret this provision any differently would be inconsistent with the other ski area leases and a significant departure from what we believe to be the intent of this provision.

- **P. 10, * at bottom of Table 3** – The explanatory note regarding the graduated fee structure for tram and gondola ticket sales at Jay Peak, Stowe, and Killington is written so that it could be implied that it is still in effect. In reality, this graduated percentage has long since expired at all three resorts. Jay Peak, Stowe, and Killington have paid at the standard fixed 5% of gross receipts for more than twenty years.

- **P. 15, Graph 10** - This graph compares percent change in prices for adult, full-day weekend lift ticket prices to changes in lease payments at the ski resorts. This analysis shows that lease payments did not keep pace with the rise in ticket prices at five of the seven ski resorts. This analysis is misleading however because it fails to account for the wide variety in how lift tickets are sold. Resorts commonly offer reduced ticket pricing for groups, children, seniors, college students, provide season passes, offer reduced rates for midweek, special events, early, and late season, and provide various other discounts. Taken as a whole, the gross lift ticket income divided by the number of skiers who skied in a given year (or "average" lift ticket price) is considerably less than the full price weekend ticket. Changes in lease payments would likely compare much more favorably to changes in resorts' average lift ticket prices. While such an analysis may not be possible to include in the report at this time, Graph 10 should be qualified somehow so that the results are not misconstrued.

- **P. 15, Footnote #25** – This note states that FPR does not require ski resorts to submit their ticket price information to the Department annually, even though this is a requirement of the lease. While the great variation in ticket price packages is one of the reasons why this would be difficult to administer, the main reason we do not require the resorts to manually submit this information is because the basic ticket price information is readily available and constantly updated on the resorts' websites.

- **P. 19, last sentence** – This sentence states that both the State Buildings and ANR Lands PILOT programs began in the late 1990's. This is not true, at least in regards to the ANR Lands PILOT program. The ANR lands PILOT program has been around in some form since at least 1980, when the 1% of fair market value formula for determining PILOT was initiated. I believe the State was previously making PILOT payments for state land before this time as well.

- **P. 20, Table 5** – This table indicates that title to property within the leasehold at Okemo and Stowe belongs to the ski area. This is not entirely true. At Stowe, title to the base lodge at Mansfield belongs to the State. At Okemo, title to the summit restaurant belongs to the State. Both buildings are included in the annual State PILOT payment. (While this distinction at Okemo is made clear on the following page, it should be clarified for Stowe as well.)

- **P. 21, Response under EPR Recommendation #1** – It is not accurate to state that ... "in at least one case, FPR did not know what percentage of a resort's lifts was on state land." This information is provided by each ski resort in justification of their annual lease fee payment. It would be more accurate to say that FPR relies on the lift percentages as provided by the ski areas and questions this information as new lifts are built or lifts are replaced.

- **P. 22, Response under EPR Recommendation #2** – It is true that the Department has not specifically attempted to amend the ski leases to strengthen oversight provisions. This would initially require the support of the ski areas. Even then, there is no guarantee that the changes we propose would ultimately be approved by the legislature. While the ski leases may be dated and inconsistent, they have generally served the Department and the State well. There is a potential danger in opening up these leases in the legislature in that other changes would be approved that could conceivably weaken the State's position. For this reason, the Department has generally avoided proposing amendments to the ski leases (other than those that modify the lease area as a result of an approved land exchange, or extend the terms in an attempt to make all ski leases have equal terms.)

- **P. 22, Response under EPR Recommendation #3** – While the Department has not undertaken periodic audits of the ski areas in recent history, we do conduct an extensive review of financial information every time a ski area changes ownership. It should be noted that this review is done with the assistance of the Attorney General's Office and the Agency of Administration, Department of Finance and Management because FPR doesn't have the financial/accounting expertise to conduct such a review on its own. While this is different than a formal audit, it is nonetheless a substantive review that is conducted to insure the new owner has the capacity to perform their obligations under the lease.

- **P. 22, Response Under EPR Recommendation #4** – The first sentence in this response is true as far as it goes, but it should also be noted that POWDR also speculated that the decrease was likely due to different operating philosophy between the old owner (American Ski Company) and POWDR. Specifically, ASC's focus was primarily on quantity (i.e., getting as many skiers and riders to the area as possible) while neglecting needed upgrades and deferring maintenance. POWDR's focus was to improve quality of the experience and consciously raised ticket prices to reduce some of the crowding that was occurring and was a common complaint at the area, while investing in needed improvements. The result of this change in operating philosophy could account for the inflation-adjusted drop in lease payments at the resort.

- **P. 22, Response to EPR Recommendation #5** – Both the Okemo and Burke lease amendments were for extending the lease terms. While this represented a potential opportunity to re-examine

the ski lease payment structure, this would be a fundamental change to the lease that would first need to be approved by the ski areas. Amending the lease fee formula, without the active support and commitment from the ski areas themselves would not be possible. Even with the ski areas' support, this would be a major undertaking, and probably should not be pursued in a piecemeal fashion without a wholesale review, renegotiation and revision of all the lease terms for all ski area leases. (Also, see FPR response to EPR Recommendation #2 above).

- **P. 23, ¶ 1** – It should be pointed out that FPR requires each ski area to provide an updated Certificate of Insurance each year with their lease payment, to insure that liability insurance levels meet the requirements of the lease.

- **P. 23, 2nd ¶** - The second sentence of this paragraph implies that the only reason the Department has not enforced the lease requirement to provide an annual list of lift fees is because of the range of lift ticket prices and packages. As previously stated, however, the main reason this information this is not required by the Department is because this information is readily available from each ski area's website.

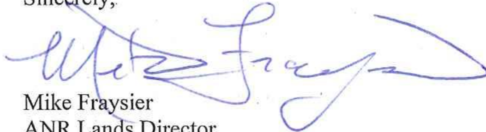
- **P. 23 -24 (Report Conclusions)** – The report conclusions are all valid and important. However, one could also easily conclude that state ski lease revenue has played a significant role in developing Vermont's outstanding system of state parks. Vermont is recognized as having one of the best state park systems in the country – a major accomplishment for such a small state. The annual economic impact of Vermont's 52 developed state parks is estimated at over $85 million. Vermont's state park system is partly the result of the unique partnership between the Department and the ski areas as formalized within the lease agreements. Additionally, one could also conclude that when compared to the USFS ski permits on the Green and White Mountain National Forests, Vermont ski area leases produce significantly more revenue with significantly less staff than the Forest Service can claim.

- **P. 30, Appendix A, Killington** – This page describes how the Town of Killington is apparently taxing the resort for equipment that is considered state property under the lease and for which the Town receives a PILOT payment. Thank you for bringing this issue to our attention. We will follow-up with the Town and the ski resort to resolve this.

- **P. 34 – Appendix A, Smugglers' Notch** – This page describes some discrepancies in ANR PILOT payments for lifts and buildings within the Smugglers' Notch leasehold. We appreciate these issues being brought to our attention and we will work with the ski area and affected towns to remedy this situation.

Thanks again for your good work on this report. As always, please let me know if you have any questions or would like to discuss any of these comments.

Sincerely,



Mike Fraysier
ANR Lands Director

Enc. Deb Markowitz, ANR Secretary
Michael Snyder, FPR Commissioner

Appendix D: SAO Management Response

The SAO responded to 17 comments from FPR. Our responses are italicized below FPR's comments on the draft report, which are printed verbatim from the FPR letter that is displayed in Appendix C.

1. **P.4, ¶5-**The first sentence of this paragraph states that "most real estate development has occurred on private lands adjacent to the State leaseholds." Actually, all of the leases prohibit overnight lodging within the leasehold. Consequently, there are no hotels, condos, second homes, inns, etc. located within any of the state ski lease areas. All such real estate development is located on private lands. This should be made clear in the report.

   This sentence was not intended to suggest that overnight lodging is permitted on state land. We have added a footnote in Appendix A about the prohibition of overnight lodging within the leasehold. While six of the leases contain language that prohibits lodging on state land, the Stowe lease does not.

2. **P. 4, ¶5 -**The last sentence of this paragraph mentions that ski areas received developable land from the state as part of an exchange, but it does not mention what the State received in return for this land (e.g., miles of Long Trail permanently protected, many hundreds of acres of critical wildlife habitat coming into state ownership and permanently protected, a new developed state campground, paid for by the ski area, etc.). These exchanges would never have been approved by the legislature if it could not be demonstrated that they provided substantial public benefits. It's important that the report not simply characterize the exchanges as being a benefit to the ski area, but a benefit to the state as well.

   An explanation of each land exchange is included in Appendix A, as the footnote states.

3. **P. 5, top line** – While all of the ski lease revenue goes into the Department's Parks Revolving Fund, it is not the largest contributor to the State Parks budget. State Park user fees (camping fees, day use fees) constitute about 60% of the annual revenue into this fund. Ski lease revenues are typically half of this.

   The sentence says that the Forest Parks Revolving Fund is the largest contributor to the Parks' Division. We added a sentence to the accompanying footnote that says, "Park user fees account for the majority of the revolving fund."

4. **P. 7 -**The narrative on this page compares and contrasts the state ski leases with the USFS ski permits. This comparison is enlightening and useful, but it leaves one with the impression that the USFS ski permits are vastly superior to the state ski leases. This is clearly not true in terms of the lease revenue they generate. Vermont's flat 5% lease formula, if applied at USFS ski areas such as Sugarbush, would almost certainly result in a significantly higher annual lease payments

than what is paid under the current federal formula which uses a graduated percentage ranging from from 1.4% to 4%. While the EPR report more or less confirmed this, we feel it would be important to restate it briefly to provide a more accurate comparison of the USFS ski permits and the state ski leases.

We mention the difference between the USFS's graduated formula (1.5% to 4% of tickets) and the State's flat 5% rate on the proceeding page. We a a sentence that says, "The USFS permits therefore collect for less ticket revenue than the State leases." The USFS ski permits are significantly more uniform than the State's leases, which creates a leveler playing field for its participants and a system that is easier to administer. The USFS leases also collect for revenue that the State does not, such as that generated by ski schools. A more detailed analysis of the federal system would be necessary to determine which system ultimately generates more revenue.

5. **P. 8, 2nd full ¶**- In some cases, ski areas have allowed separate entities to operate a ski school within the lease area. Killington and Smugglers Notch are examples. In both cases, separate ski clubs have negotiated individual license agreements with the Department with the approval of the ski areas. The revenue from these license agreements accrue to the Department.

   The documentation shows that the State has licensed two ski clubs to use buildings on state land for 20-year periods. The ski clubs pay an annual payment of $250 to use those facilities, and the Smugglers' Notch Ski Club has exclusive use of a lodge on state land from November 1 to April 30 every year. That $250 payment Smugglers' Notch Ski Club pays does not cover the cost of an annual PILOT payment to Cambridge for that building, which was $572 for FY2014. In the case of Killington, FPR treats that ski club building as property of the club (this means the State does not make a PILOT payment on it), which appears to contradict lease language that says within the leasehold "all buildings … shall be deemed to be the property of the State."

6. **P. 9, 1st full¶**- While several state ski leases do not explicitly limit collection of the 2.5% of gross receipts to facilities on state lands, FPR's interpretation of this provision is that it is limited to facilities located in the leasehold area or "demised premises" as described within each lease and was not meant to extend to facilities on adjacent private land, over which, the State has no ownership or control. To interpret this provision any differently would be inconsistent with the other ski area leases and a significant departure from what we believe to be the intent of this provision.

   We added a footnote to this sentence that says, "The Attorney General's Office supports FPR's current implementation of this element of these leases."

7. **P. 10, * at bottom of Table 3**-The explanatory note regarding the graduated fee structure for tram and gondola ticket sales at Jay Peak, Stowe, and Killington is written so that it could be implied that it is still in effect. In reality, this graduated percentage has long since expired at all three resorts. Jay Peak, Stowe, and Killington have paid at the standard fixed 5% of gross receipts for more than twenty years.

The leases read so that if these resorts were to add a gondola or tram today, they would pay based on the graduated fee structure. We have added a sentence clarifying that the gondolas/trams at these resorts have all reached the 5% point on the graduated scale.

8. **P. 15, Graph 10** - This graph compares percent change in prices for adult, full-day weekend lift ticket prices to changes in lease payments at the ski resorts. This analysis shows that lease payments did not keep pace with the rise in ticket prices at five of the seven ski resorts. This analysis is misleading however because it fails to account for the wide variety in how lift tickets are sold. Resorts commonly offer reduced ticket pricing for groups, children, seniors, college students, provide season passes, offer reduced rates for midweek, special events, early, and late season, and provide various other discounts. Taken as a whole, the gross lift ticket income divided by the number of skiers who skied in a given year (or "average" lift ticket price) is considerably less than the full price weekend ticket. Changes in lease payments would likely compare much more favorably to changes in resorts' average lift ticket prices. While such an analysis may not be possible to include in the report at this time, Graph 10 should be qualified somehow so that the results are not misconstrued.

   We included the sentence, "Lift tickets are sold in a range of formats, which vary substantially in price." Since FPR does not catalogue lift-ticket prices, as the leases call for, we were unable to conduct a more comprehensive analysis without expending considerable resources. We added the extra qualifier that this "was the only type of ticket for which we had historical data." We do not feel this statement is misleading, as we acknowledge that lift tickets are sold in a wide variety of formats and prices. We cannot speculate about shifts in average lift ticket prices without the data to conduct the necessary analysis.

9. **P. 15, Footnote #25** -This note states that FPR does not require ski resorts to submit their ticket price information to the Department annually, even though this is a requirement of the lease. While the great variation in ticket price packages is one of the reasons why this would be difficult to administer, the main reason we do not require the resorts to manually submit this information is because the basic ticket price information is readily available and constantly updated on the resorts' websites.

   This lease requirement to collect lift-ticket prices existed long before the advent of the Internet. This statement implies that the primary purpose of the reporting requirement is to allow FPR to report price information to the public. The leases are silent on this matter, but it seems unlikely that the State included this language in the leases with the intention to provide ski area price information to the general public. FPR could collect this information for the purpose of evaluating the return to the public of these leases. We did change the term "enforce" to "collect."

10. **P. 19, last sentence** -This sentence states that both the State Buildings and ANR Lands PILOT programs began in the late 1990's. This is not true, at least in regards to the ANR Lands PILOT program. The ANR lands PILOT program has been around in some form since at least 1980,

when the 1% of fair market value formula for determining PILOT was initiated. I believe the State was previously making PILOT payments for state land before this time as well.

Thank you for pointing this out. The current statute, 32 V.S.A. §3708, is from the 1990s. While the terminology was different, the concept was the same before this statute, and we have therefore deleted this sentence.

11. **P. 20, Table 5** – This table indicates that title to property within the leasehold at Okemo and Stowe belongs to the ski area. This is not entirely true. At Stowe, title to the base lodge at Mansfield belongs to the State. At Okemo, title to the summit restaurant belongs to the State.

    Both buildings are included in the annual State PILOT payment. (While this distinction at Okemo is made clear on the following page, it should be clarified for Stowe as well.)

    We have added a footnote about these exceptions.

12. **P. 21, Response under EPR Recommendation #1** – It is not accurate to state that … "in at least one case, FPR did not know what percentage of a resort's lifts was on state land." This information is provided by each ski resort in justification of their annual lease fee payment. It would be more accurate to say that FPR relies on the lift percentages as provided by the ski areas and questions this information as new lifts are built or lifts are replaced.

    We clarified the situation by writing: "Prior to this inquiry, FPR did not collect data on linear feet for each lift to substantiate and monitor the percentage of lift feet on state land – a key factor that affects lease payments. FPR obtained this information during our investigation and has vowed to continue collecting this information moving forward."

13. **P. 22, Response under EPR Recommendation #3** – While the Department has not undertaken periodic audits of the ski areas in recent history, we do conduct an extensive review of financial information every time a ski area changes ownership. It should be noted that this review is done with the assistance of the Attorney General's Office and the Agency of Administration, Department of Finance and Management because FPR doesn't have the financial/accounting expertise to conduct such a review on its own. While this is different than a formal audit, it is nonetheless a substantive review that is conducted to insure the new owner has the capacity to perform their obligations under the lease.

    The report mentioned that ANR conducts an "extensive review of financial records during a change of ownership," and we added language about the involvement of the Attorney General's Office and the Agency of Administration. While ANR's review is important, it does not directly address factors that affect lease payments, such as sales of tickets and goods.

14. **P. 22, Response to EPR Recommendation** #5 – Both the Okemo and Burke lease amendments were for extending the lease terms. While this represented a potential opportunity to re-

examine the ski lease payment structure, this would be a fundamental change to the lease that would first need to be approved by the ski areas. Amending the lease fee formula, without the active support and commitment from the ski areas themselves would not be possible. Even with the ski areas' support, this would be a major undertaking, and probably should not be pursued in a piecemeal fashion without a wholesale review, renegotiation and revision of all the lease terms for all ski area leases. (Also, see FPR response to EPR Recommendation #2 above).

We are not suggesting that ANR should (or could) have amended the lease without the ski areas' support. Those two amendments provided an opportunity to update the leases and reexamine the lease structure, which FPR chose not to do. Consideration of fundamental changes to the leases is reasonable in light of fundamental changes to the resort industry over the past several decades.

15. **P. 23, ¶1 –** It should be pointed out that FPR requires each ski area to provide an updated Certificate of Insurance each year with their lease payment, to insure that liability insurance levels meet the requirements of the lease.

    We added a subsection on liability insurance. We worked with the Agency of Administration's Office of Risk Management to evaluate the policies and identify deficiencies.

16. **P. 23, 2nd ¶** - The second sentence of this paragraph implies that the only reason the Department has not enforced the lease requirement to provide an annual list of lift fees is because of the range of lift ticket prices and packages. As previously stated, however, the main reason this information this is not required by the Department is because this information is readily available from each ski area's website.

    See number 9.