

# STATE AUDITOR DOUG HOFFER

## Press Release

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### **Auditor Doug Hoffer Releases Audit of State Government’s Oversight Role in the Jay Peak, Burke, and AnC Bio Vermont EB-5 Frauds**

MONTPELIER, VT – State Auditor Doug Hoffer released an audit today of the State’s role in the EB-5 fraud. The audit represents the first comprehensive, one-stop accounting of how State government did (or did not) provide oversight of the EB-5 program – specifically the Jay, Burke, and AnC Bio Vermont projects.

The audit found a pattern of misplaced trust, unfortunate decision-making, lengthy delays, and missed opportunities to prevent or minimize fraud.

“At the highest level, our findings should not be entirely surprising,” said Hoffer. “From its creation, the Vermont Regional Center, the EB-5 office housed in the Agency of Commerce and Community Development (ACCD), had two competing duties – to market and promote EB-5 projects, while also regulating them. Experts and policymakers have long warned against such arrangements for fear that an agency relied upon to help a project succeed may be reluctant to fully exercise its regulatory powers. In addition, a marketing office may not have the skill sets needed to properly regulate complex financial arrangements such as EB-5. Unfortunately, this proved all too true.”

Key findings of the audit include:

- ACCD did not have written policies and procedures defining its EB-5 oversight responsibilities.
- In response to an early claim from a firm doing business with Jay Peak that they no longer had confidence in the accuracy of Jay Peak’s representations or in the financial status of and disclosures of the partnerships—and that \$13 million was missing from Jay Peak’s bank accounts—the ACCD Secretary relied on records offered by Bill Stenger and didn’t seek expert financial assistance. The U.S. Attorney later determined that the records Stenger provided, which satisfied the ACCD Secretary, covered up how the defendants misused investor funds.
- When Jay Peak refused to hire a firm to perform a financial audit as ACCD had requested, ACCD dropped the matter and didn’t require audits going forward in subsequent revisions to the State’s MOUs with Jay Peak.
- VRC kept virtually no records of its quarterly meetings with the EB-5 developers. As a result, we have no idea why alarm bells didn’t ring for ACCD officials in light of Judge Geoffrey Crawford’s biting summary that, in the case

of AnC Bio Vermont: “The project was a ghost, no products, no customers, no clean rooms, no FDA [Food and Drug Administration] approval, not so much as an application, absolutely nothing to show but empty space and missing investor money.”

- State officials were understandably dismayed with Governor Shumlin’s claim in a Jay Peak promotional video that “Vermont is the only EB-5 program that covers the entire state of Vermont and is audited by the State of Vermont” because it could be wrongly construed to mean that Vermont performed financial audits of the projects. Unfortunately, the State did not proactively communicate with current and prospective EB-5 investors that this was not the case.
- Until late December 2014, the VRC was located solely in the Agency of Commerce and Community Development, after which the Department of Financial Regulation (DFR) took over some of the VRC’s responsibilities. At this point, when the marketing/promotion duties were segregated from most regulatory duties, a shift in the State’s efforts occurred. Notably, DFR’s securities and fraud expertise resulted in more rigorous review of Jay Peak’s finances.

Hoffer said: “These are just some examples of instances in which events may have played out differently if State officials had made different decisions. Had appropriate systems been in place, with properly delineated roles and responsibilities between State agencies, addressing this historic fraud would not have been so dependent upon ad hoc decision-making by individual State officials.

Unfortunately, EB-5 is not the only program for which Vermont’s state government has assigned a state agency duties that present similar conflicts. Farm-based water quality combines both promotion and enforcement in the Agency of Agriculture, Food, and Markets. Economic development grants are frequently promoted, then reviewed and funded, by ACCD. There are likely other situations. While these conflicts do not mean that a fraud will occur, they represent the types of poor internal controls that make it more likely. We hope Vermont’s Executive and Legislative branches will dedicate themselves to reforming system flaws like these wherever they occur.”