



Jay Peak, Burke Mountain, and AnC Bio Vermont EB-5 Fraud

An Assessment of the State's Role



Mission Statement

The mission of the Auditor's Office is to hold State government accountable by evaluating whether taxpayer funds are being used effectively and identifying strategies to eliminate waste, fraud, and abuse.

Dear Colleagues,

Vermont's Northeast Kingdom was the location of a widely publicized, multi-million-dollar fraud in the Federal government's EB-5 program. This fraud was perpetuated by three individuals (Ariel Quiros, William "Bill" Kelly, and William "Bill" Stenger) who were each convicted and imprisoned on charges brought by the U.S. Attorney's office for the District of Vermont. The eight EB-5 projects at the heart of the fraud included a biomedical research park known as AnC Bio Vermont and the Jay Peak and Burke Mountain resorts.

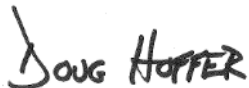
While this report contains brief descriptions of Quiros, Kelly, and Stenger's criminal acts, readers interested in the fraud itself can find court documents providing more detail on our [website](#). This report is intended to contribute to the public record of the Jay Peak scandal by providing, in a single source, a comprehensive summary of the State government's role and answers the following questions:

1. How did ACCD and others describe ACCD's oversight and what oversight actions did it take?
2. What actions did the State take regarding its approval of the AnC Bio Vermont and Burke Mountain EB-5 projects before April 2016?
3. What is the reported immigration and investment repayment status of the investors in each of the Jay and Burke EB-5 project phases?

We began this audit in 2018 at the request of a former Attorney General and received assurances that all known documentation would be made available to us. After criminal charges were brought and the State itself was sued, we deferred completing the audit until these legal proceedings were finished. This occurred in late 2023.

I would like to thank the current and former State officials that assisted with this audit, particularly the staff of the Attorney General's Office.

Sincerely,



DOUGLAS R. HOFFER
State Auditor

ADDRESSEES

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Speaker of the House of Representatives

The Honorable Phil Scott
Governor

Mr. Adam Greshin
Commissioner, Department of Finance and Management

Ms. Lindsay Kurrle
Secretary, Agency of Commerce and Community Development

The Honorable Philip Baruth
President Pro Tempore of the Senate

Ms. Kristin Clouser
Secretary, Agency of Administration

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Highlights

Three individuals (Ariel Quiros, William “Bill” Kelly, and William “Bill” Stenger) perpetuated a massive fraud in the Northeast Kingdom for which they were convicted and imprisoned. The fraud victims were foreign nationals seeking to gain lawful, permanent residency in the United States (i.e., green cards) through the Federal government’s employment-based fifth preference (EB-5) program. To be eligible for this program, each victim was required to invest \$500,000 in a new commercial enterprise that created at least 10 full-time jobs (though not necessarily all in Vermont). In this case, the new commercial enterprises were eight projects to construct and renovate guest accommodations and other facilities at the Jay Peak and Burke Mountain resorts, and to create a biomedical research park known as AnC Bio Vermont. AnC Bio Vermont was a complete fraud. In the case of the other seven projects, construction was done but not always to the specifications or at the costs told to the investors. Significant funds were simply misused.

As part of the EB-5 program, the Federal government designates regional centers to promote economic growth and oversee and monitor the sponsored projects. The vast majority of regional centers are privately owned. Vermont established one of very few state government-run federally designated regional centers, the Vermont Regional Center (VRC). The VRC is an “umbrella” regional center in that it does not undertake project development directly. Instead, private developers independently obtained EB-5 investments for specific projects approved by the VRC. Thus, investors provided funds directly to the EB-5 projects and not to the State government. Until late December 2014, the VRC was located solely in the Agency of Commerce and Community Development (ACCD), after which the Department of Financial Regulation (DFR) took over some of the VRC’s responsibilities.

Neither the criminal case nor the connected civil cases brought by the Securities and Exchange Commission (SEC) and the State of Vermont allege wrongdoing by State organizations or their employees. Nevertheless, some investors sued the State, alleging misconduct on the part of ACCD and two former employees. The State and the plaintiffs settled these lawsuits in the Summer of 2023. As part of the settlement agreement, the parties agreed that neither the State nor its current and former officials and employees engaged in fraud, self-dealing, or other intentional misconduct. The State agreed to pay a Court-appointed receiver up to \$16.5 million (\$4 million of this amount is contingent on the extent to which investors receive their green cards). In October 2023, the Court approved the settlement agreement and issued an order barring future claims against the State.

In July 2018, Vermont’s former Attorney General requested that we audit the State’s involvement with the Jay and Burke projects, stating that an audit would address the loss of trust in State government that had resulted from the fraud. We agreed to conduct this audit

to provide Vermonters with an independent and clear account of the State's role and after receiving assurances that the Attorney General's office would provide all State records of which they were aware. A Federal grand jury issued indictments in the criminal case about 10 months after we agreed to perform this audit. This, in conjunction with the investor lawsuit, caused us to defer completing the audit after consultation with the Attorney General. This is consistent with government auditing standards, which state that it may be appropriate to defer work to avoid interfering with an ongoing investigation or legal proceeding.

In 2020, we issued an [interim report](#) explaining the EB-5 program and the history and role of the VRC.¹ This is our final report on the Jay Peak EB-5 issue. While this report contains brief descriptions of the criminal acts by Quiros, Kelly, and Stenger, readers who are interested in the fraud itself can find court documents providing more detail on our [website](#). This report is intended to contribute to the public record of the Jay Peak scandal by providing, in a single source, a comprehensive summary of the State government's role. Thus, the objective in this audit report is to answer the following questions:

1. How did ACCD and others describe ACCD's oversight and what oversight actions did it take?
2. What actions did the State take regarding its approval of the AnC Bio Vermont and Burke Mountain EB-5 projects before April 2016?
3. What is the reported immigration and investment repayment status of the investors in each of the Jay and Burke EB-5 project phases?²

For purposes of this report, we are calling the eight EB-5 projects collectively the "Jay and Burke projects." Also, the State not only communicated with the offenders but also with their representatives (e.g., attorneys) so to make it easier on the reader, unless we are referring to an offender specifically, the report uses the term "Jay Peak" to refer to the offenders and/or their representatives. Lastly, this report uses the term "offering materials" to refer to the Jay and Burke projects' Private Placement Memorandum, business plan, limited partnership agreement and other documents Jay Peak provided to potential investors.

Findings

The office of the U.S. Attorney for the District of Vermont portrayed the Jay Peak case as about "greed, glory, and desperation" on the part of the three individuals who pled guilty to various felonies. These individuals actively misled State officials for years. Nevertheless, this does not mean that the State is without fault. In particular, until 2014 ACCD's oversight of the Jay and Burke projects was lax. **While**

¹ *Interim Report on EB-5 Program: History and Status of the Program in Vermont.*

² Appendix I details the scope and methodology of the audit. Appendix II contains a list of abbreviations used in this report.

ACCD officials stated that they performed various oversight activities, there is very little written documentation of their actions, and the officials acknowledge that they kept few records. ACCD did not even have written policies and procedures defining its oversight responsibilities.

Potential investors were given misleading material by Jay Peak and its close associates stating that the State was auditing the EB-5 projects even though it never did. In particular, a 2012/2013 Jay Peak video made available to potential investors showed the Governor of Vermont asserting that the State audited the EB-5 projects. Once ACCD found out about this video in June 2014, it emailed its objections to Stenger, and the video was removed. **However, we found no evidence that ACCD proactively informed investors or prospective investors that the Governor's statement about auditing was inaccurate nor did it appear that ACCD directed Jay Peak to do this either.**

As ACCD officials became more suspicious of Jay Peak, they began to ask questions, particularly about AnC Bio Vermont and its relationships with Korean entities and a Korean associate of Quiros. In addition, in April 2014, ACCD officials became aware that the SEC was investigating Jay Peak. In June 2014, ACCD began to consult with outside securities attorneys about the AnC Bio Vermont offering materials, who provided guidance about the adequacy of disclosures in the offering materials given to potential investors. **In the second half of 2014, ACCD issued a series of letters to Jay Peak demanding that certain actions be taken and warning Jay Peak that it may cancel their memorandums of understanding (MOU) for AnC Bio Vermont and Burke Mountain Resort if they were not.** MOUs are the required approval documents to be an EB-5 project of the VRC. Thus, cancelling the MOU would mean that the project could no longer accept investors as part of the EB-5 program associated with the VRC. **Ultimately, ACCD did not cancel either of these projects.**

In August 2014, ACCD recognized that it did not have the staffing and expertise to adequately oversee the EB-5 projects and requested assistance from the Governor. This request eventually led to ACCD and DFR signing an MOU in late December 2014 that transferred oversight responsibility of EB-5 projects to DFR. In early March 2015, DFR initiated an investigation into Jay Peak after receiving from Jay Peak an explanation of certain banking practices that they used that triggered DFR's suspicion. DFR then used its subpoena power and securities expertise to gather and analyze Jay Peak's banking transactions. DFR also worked collaboratively with the SEC.

During the same 2015 timeframe that it was investigating Jay Peak, DFR also allowed them to market the offering materials and subscribe new investors for the AnC Bio Vermont and Burke Mountain Resort EB-5 projects. Before giving these approvals, DFR required Jay Peak to put new investors' money into escrow. For the AnC Bio Vermont project, a criterion for releasing funds from the escrow was a satisfactorily completed financial review by an independent firm hired by DFR. Because the financial review was never completed, when the Court appointed a

receiver for the Jay Peak properties in mid-April 2016, there was almost \$18 million in escrow that the receiver returned to 36 investors.

The terms of the Burke Mountain Resort escrow arrangement were different, largely because the hotel was partially constructed. In this case, DFR allowed monies from new investors to be released from escrow upon confirmation from a third-party that there was documentation supporting that the expenses were only for construction and other specified purposes. This allowed the Burke Mountain Hotel to be completed but also put these new investments and the associated immigration goals of the investors at risk.

These risks have been realized. As of January 2024, the 121 Burke Mountain Resort investors have received only about 6 percent of their investment back and only seven investors have received their green cards. The Jay Peak fraud has also negatively affected the investment and immigration goals of the 529 investors in five of the other projects (Phases II, III, IV, V, and VI). In these cases, as of January 2024, the Jay Peak investors have received about 29 percent of their \$500,000 investments and some, but not all, have received their green cards.

The receiver paid off the 204 investors in Phases I (Jay Peak Hotel Suites) and VII (AnC Bio) investors. The 35 investors in the Jay Peak Hotel Suites (Phase I) fared the best of all the investors as they received both their investments and their green cards. The receiver also arranged for the 169 investors in AnC Bio Vermont (Phase VII) to either receive their investments back or to redeploy them to a New York project.

Background

Vermont has had a Federally approved regional center for more than 25 years. In total, the VRC approved eight Jay and Burke EB-5 projects (Phases I – VIII) and nine other projects not associated with Jay Peak. The Jay and Burke projects attracted 854 foreign investors who collectively paid \$427 million to developers to construct these projects in the Northeast Kingdom. Appendix IV contains a summary of each EB-5 project.

AnC Bio Vermont (Phase VII), which collected \$84.5 million from 169 investors, was a complete fraud and Quiros, Kelly, and Stenger misused investor funds from the other phases. Seven of the eight Jay and Burke EB-5 projects resulted in new hotels and other facilities. For example,

- Phases I to VI constructed hotels, townhouses, and cottages, a waterpark, an indoor ice rink, and a wedding chapel at Jay Peak. The Jay Peak Resort was sold for \$76 million in 2022 (investors in these phases invested \$282 million).
- Phase VIII constructed a 2-building hotel at Burke Mountain, which the receiver is currently working towards selling. Investors in the Burke Mountain Resort EB-5 project invested \$60.5 million.

That there were some successful construction projects at Jay Peak and Burke Mountain should not overshadow that investors' money was stolen nor that many investors may have lost the immigration opportunity afforded by the Federal EB-5 program.

A WORD ABOUT NAMES

Per our [Professional Standards Manual](#), we use titles, not names, in our reports. We continue this practice in this report except we (1) identify persons convicted of crimes and (2) provide the names of individuals in relevant State positions during our scope period in Appendix III. Since no State employees were found to have engaged in fraud or intentional misconduct, we use their titles in the body of the report.

Vermont's government has also been associated with these negative effects. According to individuals that work in the EB-5 field, the Jay Peak projects were closely associated with the State of Vermont (see quote to the right). The State's EB-5 role and settlement agreement with the investors has been part of national stories on the Jay Peak scandal. According to the U.S. Citizenship and Immigration Services (USCIS), such extensive publicity had "negatively affected the Regional Center's ability in the future to sponsor projects and create new jobs." We do not know the extent to which the Jay Peak fraud has affected the State's reputation, but, to quote the Governor at the time of the civil enforcement actions in April 2016, it was "a dark day for Vermont."³

"There was so much intermingling of the teams and the traveling together and the appearing at road shows together, and the governor speaking about EB-5, that it would lead to quite a lot of confusion with most people, about where the boundaries stopped ... where does the regional center stop and where does ... Jay Peak begin."

Deposition on February 27, 2023 of Douglas Hauer, a plaintiff expert in the investors lawsuits

VRC

In 1997, the USCIS's predecessor organization approved Vermont's request to designate ACCD as an EB-5 regional center. ACCD's Secretary was designated as the principal representative of the VRC and ACCD's General Counsel as the principal administrator. ACCD later added a VRC director, who was also listed as a principal administrator.

A regional center is required to promote economic growth. ACCD promoted Vermont EB-5 projects by (1) attending economic development and EB-5 events, conferences, and seminars (sometimes sharing a booth with Jay Peak), (2) communicating with trade groups, (3) traveling domestically and internationally with developers (for the Jay and Burke projects and others), as requested, and (4) communicating with immigration attorneys, brokers, agents, and interested investors. Also, as shown in the quote to the right, Vermont leadership promoted the VRC.

"It was almost unheard of to have State officials at the level that they did ... It was impressive. ... I mean you had U.S. Senators, Governors, all they (sic) way on down promoting the activity and the project, Jay Peak."

Deposition on April 6, 2023 of Michael Gibson, a plaintiff expert in the investors lawsuits

³ *How Jay Peak's Alleged Ponzi Scheme Exploited a Growth Plan Once Championed By Bernie Sanders*, Forbes, April 14, 2016.

Congressional members and Governors along with ACCD Secretaries, attended press events at Jay Peak and sent letters of support that were included in offering materials.

On December 22, 2014, the VRC underwent a major organizational change when ACCD and DFR signed an MOU. Under this MOU, ACCD retained responsibility for marketing and promoting the VRC and DFR took over approving and overseeing the EB-5 projects. Thus, the State split the responsibility for promoting the VRC's EB-5 program from the responsibility to approve and monitor the EB-5 projects.

Both the SEC and DFR investigated the Jay and Burke projects. This resulted in the [SEC](#) and the [State of Vermont](#) separately filing similar civil lawsuits against Ariel Quiros and Bill Stenger alleging fraud related to the Jay and Burke projects in mid-April 2016. In addition, the Court approved the SEC's request to establish a receivership for the Jay and Burke projects and associated companies. A receiver is a neutral third-party custodian for property and assets, who is granted powers by the court and answers to a judge. The receivership is still in place. The SEC and State of Vermont settled the civil lawsuits with Quiros and Stenger with neither of them admitting wrongdoing. Nevertheless, the settlement resulted in millions of dollars in properties and cash provided to the receiver to be used on behalf of the investors or earmarked for economic development in the Northeast Kingdom.

Citing the allegations uncovered by the SEC and DFR, on July 3, 2018, USCIS terminated the VRC's regional center designation. In March 2021, USCIS's Administrative Appeals Office withdrew this decision and remanded the matter for further consideration. There has been no change to the VRC's status since this time and it is winding down its operations.

FUNDING THE VRC

The VRC was funded by the general fund until 2011, when Act 52 authorized ACCD to impose an administrative charge on EB-5 projects and established the EB-5 Fund. As of June 30, 2023, the EB-5 fund had a balance of \$7,652.

The administrative charge was used to cover some, but not all, VRC oversight expenses for the Jay and Burke projects. For example, on the advice of DFR and the Attorney General's Office, ACCD did not bill these projects for the cost of a third-party vendor to review Burke Mountain Resort invoices. Instead, funding from DFR's Securities Regulatory Fund was used.

ACCD reported that the AnC Bio Vermont and Burke Mountain Resort projects paid about \$70,000 in fees in fiscal years 2014 and 2015. In 2016, the Legislature directed ACCD to make every reasonable effort to recover EB-5 charges previously uncollected by ACCD so taxpayers would not need to cover regulatory costs. In fiscal year 2023, ACCD wrote off as uncollectible \$18,000 owed by the Burke Mountain Resort because the project was under a Federal receivership.

Criminal Actions

The heart of the criminal cases brought by the office of U.S. Attorney for the District of Vermont (hereafter called the U.S. Attorney's Office or the U.S. Attorney's Office of Vermont) was the AnC Bio Vermont fraud (see the Court's statement to the right) but documents submitted by the U.S. Attorney's Office to the Court clearly show that the fraudulent scheme involved more than this project. Indeed, the fraud began with Quiros' purchase of the Jay Peak Resort in June 2008. Quiros fraudulently used EB-5 monies collected by the former Jay Peak owner to purchase the resort, knowingly aided by Stenger. In addition, there was extensive commingling of funds amongst the projects due to various factors, including multimillion-dollar cost overruns in the first two Jay Peak EB-5 projects overseen by Stenger.

“The [AnC Bio Vermont] 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.”

Judge Crawford at Stenger's Sentencing Hearing, April 14, 2022

The U.S. Attorney's Office of Vermont characterized this case as about “greed, glory, and desperation,” stating that the motivations and personalities of three men played a key role in the scheme (see comment to the right).

- Ariel Quiros, the former owner of Jay Peak and Burke Mountain Resorts,
- William “Bill” Kelly, a long-acting advisor to Quiros and formerly the chief operating officer of the Jay Peak Resort, and
- William “Bill” Stenger, the former president and chief executive officer of Jay Peak Resorts.

“The crimes could not have been committed without the toxic mix of these three men's personalities.”

Government's Sentencing Memorandum for Quiros, April 19, 2022

Quiros was sentenced to five years in prison and Kelly and Stenger to 18 months. These prison terms are to be followed by three years of supervised release. The judge also ordered Quiros, Kelly, and Stenger to pay restitution totaling \$8.3 million to investor-victims with Stenger's portion not to exceed \$250,000.



Photo: VermontBiz.com

| Offenses | What the U.S. Attorney’s Office Had to Say |
|---|--|
| <p>Ariel Quiros pled guilty to three felonies—conspiring in a multi-year wire fraud scheme, money laundering, and concealing material facts in a matter within the jurisdiction of a Federal agency. The government estimated that Quiros took between \$30-\$37 million in AnC Bio Vermont investor funds for personal use. He also misled AnC Bio Vermont investors about how their money would be used, the timing of job creation, and the role of a business partner.⁴</p> | <p>He “was a wheeler-dealer who was in it for the money and wanted the gravy train to keep rolling, however possible.” He “helped design a project that would line his pockets with millions in ‘legitimate’ profits and millions more in hidden profits.”</p> |



| Offenses | What the U.S. Attorney’s Office Had to Say |
|---|---|
| <p>Bill Kelly pled guilty to two felonies—conspiring in a multi-year wire fraud scheme and concealing material facts in a matter within the jurisdiction of a Federal agency. According to documents presented to the Court, Kelly received between \$1 million and \$4 million of investors’ money that was not legitimately earned. He also misled investors about how their money would be used, how many jobs would be created, and the timeline of job creation. Further, Kelly led the drafting of false documents provided to the SEC and the VRC, including documents that were backdated and designed to mislead.</p> | <p>He “used his legal training to strengthen his role as the consummate fixer. He also wanted AnC and Burke to get funded because he hoped for huge profits from his company’s ‘work’ on those two projects. He carefully attended to executing Quiros’s wishes and trying to outwit the regulators.”</p> |



Photo: Herb Swanson

| Offense | What the U.S. Attorney’s Office Had to Say |
|---|--|
| <p>Bill Stenger pled guilty to a single felony count of knowingly and willfully submitting false documents to the VRC, including a false financial projection and timeline for commercializing AnC Bio products that he had altered to conceal these falsehoods. The government’s brief on his conduct details even more lies and concealments. Unlike the other offenders, Stenger was not convicted of illegitimately taking investors’ money. However, in Stenger’s sentencing hearing, the government argued that he too had a financial motive for the crime in that he was expecting to be given a stake in the Jay Peak Resort as well as to receive over a million dollars from the AnC Bio Vermont project.</p> | <p>He “spearheaded [the] eight EB-5 projects.” “[He] was the visionary, the deluded optimist, the trusted Vermonter, and the man responsible for the Jay Peak jewel. Stenger was motivated by glory, desperation, and also partly motivated by money.”</p> |

⁴ This was Jong Weon “Alex” Choi, a South Korean citizen and a long-term business associate of Quiros. Choi was indicted on 10 felony counts for his role in the AnC Bio Vermont fraud. On June 24, 2022, the U.S. Attorney for Vermont dismissed this indictment. Choi had not entered the United States since his indictment and U.S. Attorney’s Office was unable to obtain important evidence.

Investor Lawsuits

The Barr Law Group (Barr) brought 33 lawsuits on behalf of 63 plaintiffs against the State of Vermont stemming from the Jay and Burke projects. Barr alleged (1) negligence by ACCD, (2) breach of faith and fair dealing by ACCD, (3) breach of contract by ACCD, and (4) gross negligence by two former State employees.⁵ After years of litigation, the parties reached a settlement in 2023.

Under the settlement, Vermont agreed to pay a total of up to \$16.5 million. The first payment of \$9.5 million was paid in December 2023. The second settlement payment of \$3 million is due by July 1, 2024. The third settlement payment of up to \$4 million is due by July 1, 2025. This final \$4 million payment can be reduced by an amount proportionate to the number of investors who receive their green cards by December 31, 2025.

In exchange for the settlement funds, Barr and the receiver agreed to seek a court order barring claims by any investor against the "Vermont Released Parties."⁶ The Attorney General testified before the House Appropriations Committee on January 3, 2024, that "obtaining the bar order was very important to reducing and minimizing and ultimately extinguishing our exposure to risk from the 700 additional potential plaintiffs."

The Court approved the settlement and issued the bar order on October 20, 2023. The receiver is responsible for distributing the settlement amounts. To date, the receiver has paid \$5.5 million to Barr. Named plaintiffs in the lawsuit were paid \$1,000, \$5,000, \$75,000, or \$125,000 depending upon their circumstances. The balance of the settlement amount is to be used for the benefit of the receivership estate.

⁵ The lawsuits originally included additional State employee defendants. These claims were later dismissed. For example, the [Vermont Supreme Court](#) affirmed a lower court's dismissal of claims against some of these other defendants.

⁶ This is defined as the State of Vermont, including, its current and former employees, shareholders, of counsel, agents, attorneys, insurers, officers, directors, members, managers, managing members, principals, associates, representatives, trustees, general and limited partners, partners, owners, affiliated professional corporations, as well as all other persons serving in a corporate capacity, and each of their respective administrators, heirs, trustees, beneficiaries, spouses, assigns, directors, officers, shareholders, owners, partners, affiliates, subsidiaries, predecessors, predecessors in interest, successors, and successors in interest.

Question 1: How did ACCD and others describe ACCD's oversight and what oversight actions did it take?

ACCD used terms like oversight and monitoring when describing its role related to EB-5 projects. The specific actions ACCD generally cited were that they approved the projects and held quarterly meetings with project representatives. However, ACCD lacked documentation demonstrating the basis for its approval and the dates and topics covered during the quarterly meetings. In addition, the Governor and marketing materials from Jay Peak and a close associate asserted that the State was "auditing" the EB-5 projects, which it was not. Moreover, when ACCD had the opportunity to require a true financial audit of the Jay and Burke projects in 2012, it did not seize this opportunity. Nevertheless, ACCD recognized that it needed to improve its oversight of EB-5 projects and in 2014 hired an outside securities firm and sought additional assistance, which resulted in the Governor directing ACCD and DFR to work together on the EB-5 program.

ACCD's Characterization of VRC's Oversight Role

According to a law firm hired by the State to respond to USCIS' intent to terminate its approval of the VRC, a regional center's monitoring and oversight responsibilities were not specified in law or regulation.⁷ USCIS rejected this argument in its termination notice to the VRC, citing past instructions it had provided to the VRC.⁸ For example, in a June 2007 letter to ACCD, USCIS stated that the VRC's responsibility was "to monitor all investment activities under the sponsorship of your regional center and to maintain records, data and information ... in order to report to USCIS" annually. In an April 2007 email to ACCD's General Counsel, a USCIS adjudications officer noted that the VRC "needs to have an ongoing oversight and general administrative role relating to any and all business activities that are targeted and receive immigrant investor capital investments."

On January 10, 2010, the VRC director reported to USCIS the various actions that ACCD was taking to oversee and monitor its approved EB-5 projects.

⁷ The EB-5 Reform and Integrity Act of 2022 (P.L. 117-103, Division BB) changed regional center requirements. For example, in their regional center applications, the proposed center is now required to include a description of the policies and procedures to monitor new commercial enterprises and associated job-creation entity to ensure compliance with federal immigration, criminal, and securities laws and state securities law.

⁸ USCIS's Administrative Appeals Office has since withdrawn the USCIS's termination decision based on new information submitted by the State showing that it was still promoting economic growth. The Appeals Office remanded the matter for further action and consideration.

These actions were primarily regular communications with the projects and quarterly meetings. The director also stated that the VRC is “regularly provided ‘progress reports’ on a quarterly basis measuring job creation ... as well as capital investment and construction progress.”

In communications and on its EB-5 website, ACCD typically used terms such as oversight and monitoring to describe their activities pertaining to EB-5 projects. When they noted specific actions that they took, ACCD generally cited their approval of projects and quarterly review meetings. In addition, ACCD cited the State's ownership of the VRC and its independence from the developers. Exhibit 1 is an excerpt from a VRC brochure.

Exhibit 1: Excerpt from ACCD’s VRC Brochure



Access Foreign Investment Through the EB-5 Program

The EB-5 program is a federal investment program run by the United States Citizenship and Immigration Services (USCIS). The goal of the program is to incent investment and create American jobs by setting aside a pool of green cards for qualified foreign investors that provide capital for approved EB-5 projects. Companies are able to use foreign investment for projects that meet the program’s eligibility criteria, such as business expansion, development, or adding capacity.

Vermont’s Competitive Advantage

As the only state owned, operated and managed EB-5 regional center, Vermont offers businesses unique advantages.

- **Established Infrastructure.** The Vermont Regional Center provides the oversight and infrastructure required by USCIS allowing businesses located in Vermont to access the EB-5 program without added cost or administrative burden.
- **Independent Oversight.** Operated by Vermont’s Agency of Commerce and Community Development, businesses also benefit from the added credibility that a state-run center provides. Investors are ensured that projects are approved and reviewed regularly by an independent and qualified state authority.
- **Reduced Investment Criteria.** Nearly the entire state qualifies as a “rural” area, which grants investors the same green card benefit as the standard EB-5 program, but requires only half the minimum investment (\$500,000), and has lesser job creation requirements.

Benefits of a Vermont EB-5 Regional Center project:

- *Minimum investment per investor is \$500,000 (\$1 million for standard EB-5 projects).*
- *Less restrictive job creation requirements based upon the creation of “indirect” jobs (10 direct jobs for standard EB-5 projects).*
- *Only Regional Center owned, operated and administered directly by state government officials.*
- *Each project is reviewed quarterly to ensure proper management and promote success.*

Together, these advantages differentiate Vermont Regional Center EB-5 projects from other projects across the country making them attractive options for foreign investors.

Getting Started

Vermont’s program has a proven track record to support growing businesses.

The first step is determining if the project is eligible for the EB-5 pilot program. It may be eligible if:

- It is a for-profit enterprise
- The project is an at-risk investment
- The project is located outside of the Burlington/South Burlington MSA*

Troubled business status

Additional incentives may be available if your business has had a net loss of at least 20% of net worth during the 12 or 24 months before the project begins.

* Burlington/South Burlington MSA includes:

- Within Chittenden County: Bolton, Buels Gore, Burlington, Charlotte, Colchester, Essex, Hinesburg, Huntington, Jericho, Milton, Richmond, Shelburne, South Burlington, St. George, Underhill, Westford, Williston and Winoski
- Within Grand Isle County: Alburg, Grand Isle, Isle La Motte, North Hero and South Hero
- Within Franklin County: Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield, Fletcher, Franklin, Georgia, Highgate, Montgomery, Richford, Sheldon, St. Albans City, St. Albans Town and Swanton

ACCD Oversight Activities of Jay and Burke Projects

This section provides a summary and assessment of major ACCD oversight activities conducted throughout all phases of the Jay and Burke projects. ACCD's oversight of the AnC Bio Vermont (Phase VII) and Burke Mountain Resort (Phase VIII) projects were more extensive than in Phases I through VI and are discussed in greater detail in Question 2.

Assessing and documenting ACCD's oversight activities is complicated by the passage of time (Quiros bought the Jay Peak Resort in 2008), its lack of written policies or procedures defining its oversight responsibilities, and incomplete records.

EB-5 Project Approval

Before commencing marketing and raising money from foreign investors, EB-5 projects were required to sign an MOU with ACCD. Between November 2006 and June 2013, ACCD's Secretaries signed MOUs with Stenger that denoted State approval of the eight Jay and Burke EB-5 projects. The MOUs were included in the offering materials Jay Peak provided to prospective investors.

ACCD's first MOU pertained to the Jay Peak Hotel Suites (Phase I) and directed Jay Peak to assist in the management, administration, and overall compliance with U.S. immigration laws and regulations and to provide ACCD quarterly written progress reports on their activities. This assistance to ACCD was to include: (1) providing investment information and supporting documentation to prospective investors, (2) supplying economic analysis and modeling reports, (3) providing assistance in support of individual petitions filed with USCIS by immigrant investors, and (4) providing quarterly written progress reports. The type of information to be included in the reports pertained to investors, such as the total number and the number in each stage of the immigration process. The MOUs for the other seven Jay and Burke projects also included such provisions. The AnC Bio Vermont (Phase VII) and Burke Mountain Resort (Phase VIII) MOUs also required compliance with all state and federal securities laws and regulations.

VRC reviews of project documentation prior to approving the MOUs for the Jay and Burke Projects were undocumented. The VRC director until May 2012 stated that before the Secretary approved a MOU, he and ACCD's General Counsel would review the results of job creation models and business plans of projects to see whether a project could realistically create the jobs investors needed. However, he did not create a record of this review. In addition, the next VRC director stated the VRC would require a prospective project to submit an economic analysis completed by a third-party showing

that it had the capacity to create the requisite number of jobs. He added that if the VRC believed that the economic analysis was prepared by a reputable consultant and the projections were based on a proper methodology, the VRC would enter into an MOU with the project.

Quarterly Reports and Meetings

ACCD's MOUs with the Jay and Burke projects required them to submit quarterly reports on their progress. These reports were supposed to address the (1) project's efforts to promote investment, (2) number of investors and the status of their investments, and (3) activity of the limited partnership in furtherance of the project. This language does not articulate a clear requirement to review the financial activities of the Jay and Burke projects, which was part of the State's defense in the investor lawsuits.

During the trial for the investor lawsuit, the State asserted "ACCD never promised anyone that it would monitor funds as it made its way through the project ... There's nothing in the MOU that says they have to do that."⁹ In addition, ACCD officials cited the limited State role outlined in the MOUs and/or offering materials when explaining decisions (see quote to the right) and when responding to investor complaints. **While the MOUs may not have created a legal requirement on the part of the ACCD to perform robust financial oversight, this does not mean that it did not have at least an implied duty to maintain the level and type of oversight that would prevent or mitigate inappropriate actions on the part of its approved EB-5 projects.**

"Because of the MOUs, lots of things that I felt should be provided I was told couldn't be provided to ACCD and ... I was told they would not be provided by various projects, including Jay Peak."

August 20, 2018 deposition of the VRC director from mid-2012 to mid-2015

ACCD did not require that written reports be submitted until July 2014, which it required to be weekly at that time. According to the ACCD Secretary, VRC did not require formal written reports earlier because they felt that they were getting information without such reports. A VRC director stated that he was told that "it was management discretion as to whether or not we collected quarterly reports and that we fulfilled our responsibilities under USCIS by meeting quarterly with projects and reviewing various materials." He added that the MOUs allowed record maintenance to be done by the projects themselves.

⁹ A jury trial in one of the investor lawsuits began on June 19, 2023 but the parties reached a settlement and the trial was discontinued.

One of VRC's oft-cited oversight actions was holding quarterly meetings with the projects. However, while there is documentation showing that meetings were held with Stenger, ACCD kept no overall record of when they were held nor what was reviewed at each meeting. **Thus, it is impossible to determine how often ACCD officials held "quarterly" meetings with Jay Peak or what was discussed.**

ACCD officials stated that during the meetings with Jay Peak they checked on the status of construction, including touring the sites. However, it appears that these checks were not thorough because DFR's August 2016 inspection of the early Jay Peak projects described significant discrepancies between what investors had been told would be built per the offering materials and what was actually built.

- Jay Peak did not build a bowling alley and spa facilities that were specified in the Phase II offering materials.
- The number and quality of the rooms were less than promised in the Jay Peak Hotel Suites, Phase II and the Jay Peak Penthouse Suites (Phase III) projects. In total, 102 fewer bedrooms were built for these two projects than investors were told.

ACCD did not document what they reviewed during meetings with Jay Peak in written reports so we cannot determine whether or how the topics required by the MOUs were covered. According to ACCD officials, they would be shown financial or investor-related materials during their meetings at Jay Peak. However, they generally did not keep copies of the materials shown and their reviews appeared cursory. For example, the VRC director until May 2012 stated that he was shown spreadsheets of individual investments and expenditures that would match the investment amounts but admitted that Jay Peak did not provide documentation showing that investor funds would be used for a specific project (e.g., not commingled). **In depositions, the next VRC director acknowledged that he never reviewed detailed financial records, stating that he was not qualified to do such a review.**

Follow-up on Allegations and Complaints

In February 2012, a close associate of Jay Peak who had created and promoted the original offering materials publicly terminated their relationship. His company sent an email to immigration attorneys stating that it "no longer has confidence in the accuracy of representations made by Jay Peak, Inc. or in the financial status of and disclosures made by the various limited partnerships" (i.e., at the time, this was Phases I through VI). In response to a VRC inquiry, the associate's

attorney sent the VRC director (forwarded to the ACCD Secretary and General Counsel) a 1-paragraph email (excerpt to the right). This email also forwarded a February 2012 email the attorney had sent to Stenger and Kelly requesting financial documentation and written assurances that EB-5 and securities laws were being complied with.

The company had “concerns with the expenditure and use of funds by the limited partnerships and reconciliation of accounts, including transfers of funds.”

Email to ACCD from an attorney explaining reason for close associate's termination of its relationship with Jay Peak, April 16, 2012

In early May 2012, the ACCD Secretary, General Counsel, VRC Director, and others met with the associate and his attorney. According to State attendees, the associate and his attorney would not detail their concerns. In a separate telephone call in the Spring of 2012, the associate told the ACCD Secretary that \$13 million was missing from Jay Peak's bank accounts but provided no substantiating documentation. The ACCD Secretary queried Stenger about the associate's allegations. Stenger denied the allegations and showed him records in support. The ACCD Secretary emailed Stenger that he was satisfied with the documentation provided. **According to the U.S. Attorney's Office, the financial documents Stenger provided to ACCD (balance sheet, sources and uses of funds, and trial balance for each of Phases II - VI as of December 31, 2011) falsely captured a snapshot in time and covered up how the defendants had misused investor funds.** The VRC director also visited Jay Peak, spoke with Stenger about the termination (who claimed it was a business dispute), and met with an accountant who showed him spreadsheets and lists of investors.

ACCD intervened when investors contacted them with complaints about the Jay and Burke projects although the results were mixed. An example of a successful VRC intervention occurred in early 2014. In this case, investors in AnC Bio Vermont approached the VRC director while he was on an international trip in March 2014 and complained that they had been unable to obtain refunds promised by Stenger in early February. The VRC director exchanged several emails and phone calls with Stenger following up on the complaints and ultimately was able to help secure the investors' refunds a few days later.

Because of the investors' allegations and the difficulty Jay Peak had paying the refunds, the VRC director also requested that Quiros and Stenger provide scanned copies of all February 2014 statements for any account that held AnC Bio Vermont investor and administrative funds. Later that day, Stenger provided the February statement for one account. In a 2022 deposition, the VRC director stated that he did not identify any concerns with the statement and that he could not recall if he followed up on Stenger's response.

On other occasions, ACCD's response to investor complaints left investors dissatisfied. For example, a Jay Peak Hotel Suites (Phase I) investor contacted the VRC several times in mid-2014 alleging malfeasance by Stenger concerning his investment (other Phase I investors made similar complaints). ACCD requested information from the investor and contacted Jay Peak and reminded them of their obligations to the investor. In this instance, ACCD concluded that Stenger's actions appeared to be allowed. Some Phase I investors were dissatisfied with ACCD's response to their complaints and hired a forensic accountant to look at Jay Peak's financial records. However, Stenger put barriers in the path of this effort. The ACCD Secretary stated that she and the VRC director called Stenger and urged him to give the forensic accountant the information. However, this intervention was unsuccessful, so the investors were not able to conduct a financial review of Jay Peak.

In November 2014, the same Phase I investor sent 4 pages of excerpts from statements about a Jay Peak account at a financial institution to the ACCD Secretary and VRC director that raised concerns about whether investor funds were being used consistent with the offering materials. On November 18, 2014, ACCD's General Counsel sent a letter to Jay Peak requesting information about this account. In December, ACCD sent four emails to Jay Peak, again asking for explanations about this account. In January 2015, DFR took over following up on this issue after the ACCD Secretary forwarded to DFR the statements from the financial institution. According to the lead investigator, DFR questioned Jay Peak about these statements and its responses led DFR to issue subpoenas to financial institutions for Jay Peak account records.

Marketing

Part of ACCD's oversight of the Jay and Burke projects was to review their marketing materials. For example, in October 2012, the VRC director requested that EB-5 projects provide all marketing materials, including websites, pamphlets, and videos. A Jay Peak staff member's response to this request included links to the Jay Peak website and a ShareFile site. Because this was an inactive link, we could not determine the specific marketing materials that were provided to the VRC. Nevertheless, as shown in the following section, the Jay and Burke marketing materials significantly misstated the VRC's oversight of EB-5 projects. **It is unclear the extent to which ACCD officials either ignored or did not notice the misstatements in a timely manner.**

As another check on the Jay and Burke marketing, in September 2012, ACCD hired a person who spoke Chinese. This employee was assigned part time to the VRC and checked Chinese websites to see how the State's EB-5 projects were being marketed.

Some Investors Were Led to Believe that ACCD Was Auditing Jay Peak

ACCD never audited the Jay and Burke EB-5 projects, nor did it require audits be conducted by others (see quote to the right). At least some investors in the Jay and Burke projects believed otherwise. Some investors appeared to interpret language such as “oversight,” “monitoring,” or “review” in marketing materials as including auditing. Other investors claim that Stenger, another Jay Peak representative, or, in one case, the VRC director until May 2012, explicitly used that term and/or that it was included in marketing materials. The VRC director denied telling this investor that the State conducted financial audits of EB-5 projects.

“Our job, as I understood it from reading the federal regulations at the time, was to promote the project, promote job creation, promote economic development, assure that there was compliance with the correct documentation ... it was never my understanding that we had an audit or securities obligation as well.”

Deposition given on June 21, 2021 by ACCD's Secretary, June 2014 – September 2016

There is evidence that State officials, Jay Peak, and others claimed that the State was auditing the EB-5 projects. However, even though the term “audit” was used, we did not find that this term was defined. Under private sector and government auditing standards there are multiple types of audit engagements, and the term is also used in a generic manner (i.e., not related to the application of a particular standard or expertise). State officials who used this term indicated that they were not referring to financial audits and we did not find written evidence to the contrary. Nevertheless, because they did not specify what they meant by the term “audit” in their statements, people understandably could have been misled. This is illustrated by the statement to the right by an attorney who has worked with developers of EB-5 projects and regional centers who was retained as an expert by Barr in the investors' lawsuits.

“The normal, plain meaning of the word audit, means that you have third party engaged, who is qualified to perform a review under normal accounting and auditing procedures of the finances of the projects.”

Deposition on February 27, 2023 of Douglas Hauer, retained as an expert by Barr in the investors lawsuits

State's Use of Audit Terminology

In a deposition, the director of the VRC between 2006 and May 2012 stated that "I think the term 'audit' was used in certain circumstances, but it wasn't a regular term that we used." See his explanation to the right. (The individual who took over as director of the VRC in mid-2012 said that he did not make such statements.)

On September 27, 2012, Stenger directed the Governor of Vermont in a video in which the Governor asserted that the State audited its EB-5 projects (see quote from the video to the right). The Governor stated that he was under the impression at the time that the VRC oversight amounted to a performance audit of the EB-5 projects and that he did not mean that the State was performing financial audits of the projects. The Governor asserted that he did not check his statement with the VRC nor tell VRC officials about this statement. When Vermont media reported on the video, the Governor's Office released a statement to the press acknowledging that ACCD did not audit the EB-5 projects instead providing "independent oversight."

"The use of 'audit' within our office was based on an auditing of the job creation for each project specifically. And that was the only use of the term, was in that context ... because that was the sole purpose of a regional center."

Deposition on December 6, 2022 of the VRC director (2006 – May 2012)

"Vermont is the only EB-5 program that covers the entire state of Vermont and is audited by the State of Vermont. We make sure that our EB-5 program offerings are good investments for the investor and good economic development job creators for the state of Vermont."

Governor of Vermont, September 27, 2012, included in Jay Peak marketing video

In February 2013, Stenger had a marketing video created for potential AnC Bio Vermont investors that included the Governor's video statement asserting that the State audits EB-5 projects and used this video until at least mid-2014. According to a Jay Peak associate, this video was translated into Chinese and was used at trade shows and provided to prospective investors. Stenger stated that the Governor's video was shown all over the world for years and it was created precisely as a promotion directed to immigrant agents. Stenger further stated that this video was the key pivotal selling device that attracted many investors.

ACCD found out about this video in June 2014 via emails from Jay Peak's Jay Peak Hotel Suites (Phase I) investors. The ACCD General Counsel and VRC director emailed Stenger the same day that they received the video objecting to statements in the video and he removed it. ACCD's General Counsel understood that the Governor's statement could be misconstrued (see quote to the right).

There was no proactive effort on the part of the VRC to clarify the Governor's statement directly to investors or potential investors. For example, **the VRC did not print a retraction on its website. The ACCD Secretary stated that he did not think that this would be effective. The Secretary also stated that it would be the responsibility of Jay Peak to inform the investors. However, the VRC did not direct Stenger to proactively inform investors or prospective investors that the Governor's statement was incorrect.** A Jay Peak associate stated that, to her knowledge, Stenger did not send out letters or other correspondence advising prospective investors that the Governor's statement was incorrect.

In February 2013, Vermont media also quoted the Governor as stating during a press conference about a planned trip to Miami with Stenger that Vermont was the only regional center that acts as "sort" of an auditor. ACCD officials conveyed their concern about this statement to the Governor's Office and provided talking points that were forwarded to the Governor for use during the Miami trip. These talking points did not include statements that the State audited EB-5 projects.

The managing director of a firm that specializes in the analysis of the EB-5 marketplace asserted that State officials stated or implied that they were auditing the EB-5 projects or were in the presence of Jay Peak officials who made such representations at events without correcting them. Stenger also contended that State officials were at events when marketing materials were distributed that claimed that the State conducted audits of EB-5 projects. The individual who took over as director of the VRC in mid-2012 stated that he was never in the presence of Jay Peak representatives who asserted that the VRC audited its projects.

"No matter how many different ways one could interpret [the Governor's] use of the term 'audit,' we have consistently advised the governor and anyone else not to describe the regional center's oversight role as involving the performance of financial audits."

ACCD General Counsel June 24, 2014 email to Bill Stenger

Other Marketing Materials Asserted the VRC Audited EB-5 Projects

Brochures used to market the Jay Peak projects stated that the State audited the EB-5 projects. For example, a major promotor of the Jay Peak EB-5 projects from their inception until early 2012 used a brochure asserting that “the State audits each EB-5 Project on a quarterly basis, requiring the Project to provide written reports to the State” (see Exhibit 2). These brochures were translated into the language of target countries. In addition, in April 2011, an investment firm developing a different EB-5 project sent the VRC director materials that it was presenting to agents and investors that stated, “The Regional Center itself monitors and audits each project after it has received funds from investors.” **We did not find documentation that the VRC asked that these statements be corrected.**

Exhibit 2: Excerpt from a Brochure Used by a Jay Peak Promotor Until February 2012

So what does having a State of Vermont Owned and Operated Regional Center really mean?

Independent and Qualified Government oversight of EB-5 Projects

➔ **Owns**

The State of Vermont Regional Center was designated by USCIS in 1997 with then Governor, Howard Dean being instrumental in obtaining the State designation. The State now holds the designation and authority for all EB-5 Projects. The State also benefits at Federal level in the US Senate, with Senator Patrick Leahy of Vermont having a keen interest in the EB-5 program and related USCIS regulations, being enthusiastically supportive of the State's EB-5 Projects. Senator Leahy is also Chairman of the Senate Judiciary on Capitol Hill in Washington DC.

➔ **Controls**

The State must review and approve each and every EB-5 Project to utilize the State Regional Center designation. Upon State approval of each EB-5 Project, the State requires the Promoter to enter into a "Memorandum of Understanding" with the State which imposes strict duties and obligations upon the Promoter. Failure to comply, if not remedied, could result in the Project losing the State approval and use of the Regional Center designation.

The State of Vermont holds the Regional Center Designation for the EB-5 Projects

The State must approve each project and is responsible for continual EB-5 compliance

➔ **Supervises**

The State Agency of Commerce and Community Development supervises, oversees and administers the Vermont EB-5 projects for compliance with USCIS EB-5 regulations. The State Secretary of Commerce Lawrence Miller has overall responsibility for the EB-5 program reporting to Governor Peter Shumlin; the State EB-5 director of projects is James

Vermonts Agency of Commerce is the Gov. Department that oversees Vermont EB-5 Projects

State representatives visit and monitor Vermont EB-5 projects every 90 days

Candido; Attorney John Kessler is the State Commerce Department attorney with one of his primary functions being the legal oversight and acting as intermediary for legal and USCIS matters for EB-5 projects. The State Governor and his EB-5 staff make regular visits, both in Vermont and on overseas trips to educate and inform prospective investors of the benefits of the State of Vermont EB-5 Visa Program.

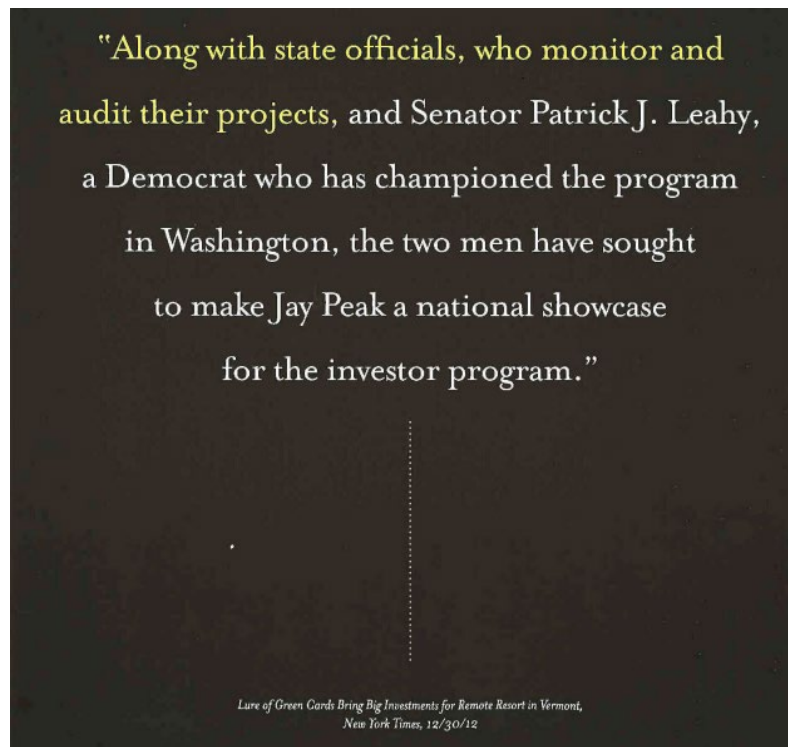
➔ **Audits**

State officials visit the EB-5 projects on an almost monthly basis to monitor not only the progress of development but also to provide any kind of help and support at both State and Federal level that an EB-5 project may need to further implement the program. The State audits each EB-5 Project on a quarterly basis, requiring the Project to provide written reports to the State covering issues such as investor activity, job creation, status of alien investor capital, compliance with regulatory requirements, progress of project pursuant to business plan and the expertise of personnel operating the project.

AUDITOR-EMAIL00216688

Jay Peak itself also used marketing materials stating that the State audited EB-5 projects. In a statement to the court, Stenger acknowledged that “for many years, our materials referenced the State’s role as providing ‘auditing’ for our projects.” Exhibit 3 is an excerpt of a Jay Peak marketing brochure quoting a New York Times article published on December 30, 2012 that stated that State officials audit EB-5 projects. Both the New York Times article and the Jay Peak brochure were emailed to VRC officials. **We found no documentation showing that the State corrected this error with the New York Times nor that it told Stenger not to use this quote in marketing materials.** According to the U.S. Attorney’s Office, Jay Peak used this quote in its marketing through 2016.

Exhibit 3: Excerpt from a Jay Peak EB-5 Brochure Used to Market AnC Bio Vermont and the Burke Mountain Resort EB-5 Projects (highlight added by SAO)



ACCD Missed Opportunity to Require Financial Audit

After the May 2012 meeting with Jay Peak's close associate and his attorney about their concerns, the ACCD Secretary verbally requested Stenger have a financial audit conducted, to which he agreed. According to the individual who became the VRC director in mid-2012, he was surprised that audits were not required of all EB-5 projects (see quote to the right) and that he was the one who recommended

“My opinion, was there was enough money flowing through these projects that an independent and qualified auditor should be performing audits on an annual basis.”

August 20, 2018 deposition of the VRC director from mid-2012 to mid-2015

to the Secretary that audits of Jay Peak be performed. ACCD's General Counsel even subsequently informed an investor's attorney that Jay Peak's projects and partnerships would be audited by an independent audit firm. On September 7, 2012, several months after the audit agreement, the VRC director at the time followed up with Stenger who told him that no audit had been performed. Stenger reneged on his agreement to have a financial audit conducted, claiming that it would be too expensive.

The MOUs for the first six Jay Peak EB-5 projects do not explicitly require audits and ACCD did not insist that Stenger hold to his agreement to have a financial audit performed. The ACCD Secretary and General Counsel stated they did not believe that the language of the MOUs provided the VRC with the authority to require an audit, which was part of the State's defense in the investors' lawsuits.

Even if the interpretation that a financial audit could not be required was correct, ACCD signed MOUs for the last two projects *after* finding out that Stenger had not taken action to obtain an audit. In a September 20, 2012 letter to ACCD, Stenger requested that the Secretary sign an updated MOU for AnC Bio Vermont (the original was signed in 2009) because he planned to release the offering materials and begin accepting investors shortly. In this same letter, Stenger also requested an MOU for a new project for Burke Mountain.

The ACCD Secretary signed MOUs for these two projects in October 2012. ACCD made a change to these MOUs to require that the AnC Bio Vermont and Burke Mountain Resort EB-5 projects be compliant with State and Federal securities laws and regulations. However, ACCD did not use Stenger's request for new MOUs as leverage to obtain a financial audit of the Jay and Burke projects since these two new MOUs did not include language explicitly requiring an audit. Moreover, in June 2013, ACCD's Secretary signed an updated MOU for Burke Mountain Resort that also did not contain a financial

audit requirement. **Thus, ACCD had three opportunities after the State became aware that Jay Peak had not arranged for an audit for prior phases as previously requested and agreed upon. They failed to do so.** Neither the ACCD Secretary at the time nor the ACCD General Counsel could recall why an audit provision was not added to the AnC Bio Vermont or Burke Mountain Resort MOUs.

ACCD Sought Oversight Assistance

ACCD sought assistance to improve the VRC's oversight of EB-5 securities. While ACCD eventually obtained the assistance it sought, it took months for it to happen.

Outside Securities Counsel

In mid-September 2012, ACCD's general counsel contacted the Attorney General's Office (AGO) requesting assistance related to securities oversight of EB-5 projects. On October 30, 2013, thirteen months after the initial contact, ACCD's General Counsel followed up on previous discussions with a memo to the Deputy Attorney General on "the Agency's need to employ specialized legal services to assist us in our administration of Vermont's federally designated EB5 Regional Center for immigrant investment." This memo specified three areas in which compliance advice was needed: (1) EB-5 federal laws and regulations, (2) state laws and regulations applicable to the use of immigrant investors, and (3) federal and state laws and regulations applicable to financial and accounting methods and procedures employed by economic development projects funded by immigrant investors.

The ACCD Secretary approved the use of outside counsel in March 2014. In June 2014, ACCD engaged and held its first meeting with outside securities counsel, about 20 months after their first request. The written record does not explain why it took so long for ACCD to obtain the outside securities counsel and the Secretary and General Counsel did not recall. Ultimately, ACCD used a firm under contract to the Office of the State Treasurer.

This outside counsel was primarily used to review the AnC Bio Vermont materials. Additional information on ACCD's use of this outside counsel is covered in our second question.

DFR

The problems with the Jay and Burke projects caused the ACCD Secretary to notify the Governor in early August 2014 that the EB-5 projects required more oversight and staff and expertise than was available at ACCD (see quote to the right). Shortly thereafter, the Governor's Office, ACCD, and DFR began discussions about involving DFR in the VRC.¹⁰ On August 5, 2014, the ACCD Secretary suggested that that ACCD and DFR should enter into an arrangement similar to how the State handles the captive insurance industry, in which ACCD is in charge of marketing and DFR in charge of regulating.

“If we are to remain viable as a Regional Center, we need to rethink our operations. ... We will have to require audits regardless of the expense. We simply do not have the resources to effectively do our due diligence. Further, we are running our staff ragged with travel and responding to inquiries and now complaints.”

ACCD Secretary in a weekly report to the Governor, August 1, 2014

On September 29, 2014, the Governor directed ACCD and DFR to work together to administer the VRC. In October and November 2014, ACCD and DFR staff worked together to decide how to divide the VRC's responsibilities. On December 22, 2014, ACCD and DFR signed an MOU in which ACCD retained responsibility for: (1) reporting to USCIS, (2) marketing and promoting the VRC, and (3) fielding and responding to inquiries from investors and prospective investors or their respective attorneys. DFR became responsible for: (1) determining whether to approve or deny a project's application, (2) conducting on-going compliance of approved projects, (3) revoking a project's MOU due to noncompliance, and (4) investigating investor complaints and determining whether such allegations warrant the filing of administrative or civil charges and/or referral of the matter to another regulatory or law enforcement agency.

¹⁰ There were also earlier conversations between ACCD and DFR on EB-5 issues. For example, in early July 2014, the ACCD Secretary and DFR Commissioner had discussed DFR's securities jurisdiction. ACCD officials had also met with officials in DFR's predecessor State department in 2012 as part of following-up on allegations that Jay Peak was using an unlicensed broker-dealer and other securities issues.

Question 2: What actions did the State take regarding its approval of the AnC Bio Vermont and Burke Mountain Resort EB-5 projects before April 2016?

During mid-to-late 2014, ACCD threatened to cancel the MOUs for AnC Bio Vermont and Burke Mountain Resort EB-5 projects over concerns about their offering materials. Ultimately, ACCD never cancelled these projects, but it did prohibit AnC Bio Vermont from marketing to, and signing up, new investors. After DFR took over oversight responsibility and approved the release of updated AnC Bio Vermont offering materials, DFR allowed this project to subscribe investors again. However, the funds from these new investors were required to be put in escrow until certain conditions were met, including that a financial review be successfully completed. Thus, when the receiver took over responsibility for AnC Bio Vermont, there was almost \$18 million in escrow that the receiver used to reimburse the new investors. DFR also required that the Burke Mountain Resort offering materials be revised to include additional disclosures to investors. However, once it had approved the release of updated offering materials, DFR treated the Burke Mountain Resort EB-5 project differently than the AnC Bio Vermont project. In this case, although DFR required new investors' funds be put into escrow, the condition for the Burke Mountain Resort to access these funds hinged on a third-party review of construction invoices and *not* on the successful completion of a financial review.

Although EB-5 oversight responsibilities were transferred to DFR, ACCD still played a role. In particular, the ACCD Secretary attended meetings and was a part of internal emails discussing the State's approach to AnC Bio Vermont and Burke Mountain Resort. In addition, in May 2015, ACCD contracted for a third-party review of the job creation economic analyses for these two projects. The economist, who delivered a report in June 2015, found "no fatal flaws" in the AnC Bio Vermont and Burke Mountain Resort job creation analyses.

Jay Peak also used personal relationships to try and influence State officials. For example, Quiros visited the Governor at his house on New Year's Day, 2015 to discuss the State's EB-5 oversight. The Governor told the Federal Bureau of Investigation (FBI) that at this meeting he told Quiros to provide the information requested. Internal Jay Peak emails show that they were trying to use the Governor's former campaign manager and deputy chief of staff (who became a consultant to Jay Peak) to call or email the

Governor and members of his staff. According to the former campaign manager, on one occasion she helped arrange a meeting between the Governor and Quiros, Kelly, and Stenger.

The quote to the right illustrates how Jay Peak tried to influence other State officials, in this case trying to limit what the scope of DFR's financial review would be before the department approved the release of the AnC Bio Vermont offering materials. The ACCD Secretary believes that Stenger also tried to take advantage of personal relationships.

“I expressed my dismay to them [Jay Peak representatives] at having yet another Jay Peak-hired entity put the press on me. In this case, their lobby firm. Wow.”

DFR Commissioner March 15, 2015 email to the Governor's Chief of Staff

AnC Bio Vermont

In November 2012, about a month after the ACCD Secretary signed an MOU approving the project, the first investor subscribed to the AnC Bio Vermont EB-5 project. ACCD provided oversight of this project until DFR took over this responsibility. DFR's oversight continued until April 2016 at which time the receiver took over responsibility for all Jay and Burke projects after civil lawsuits alleging fraud were filed by the SEC and the State of Vermont. In the criminal cases against Quiros, Kelly, and Stenger the court found that the AnC Bio Vermont was a complete fiction from beginning to end. Appendix V contains a timeline of major events pertaining to State actions related to AnC Bio Vermont.

Records show that ACCD officials started to be concerned about AnC Bio Vermont and began researching the background of its relationships with Korean interests in late 2013. In addition, ACCD seems to have found out about the SEC's investigation in early April 2014. According to the U.S. Attorney's Office, Quiros, Kelly, and Stenger kept the SEC investigation secret until the SEC contacted ACCD.

In early June 2014, ACCD began consulting with outside securities counsel about the AnC Bio Vermont offering materials. The outside counsel provided guidance about the adequacy of the disclosures in the offering materials given to investors. On June 27, 2014, the ACCD's Secretary, General Counsel, and VRC director met with Quiros, Kelly, and Stenger to express the following concerns about AnC Bio Vermont: (1) adequacy of disclosures in the offering materials, (2) adequacy of business projections, (3) status of Food and Drug Administration (FDA) approval, and (4) its relationship to a Korean affiliate.

Quiros, Kelly, and Stenger agreed to stop taking subscriptions from investors for the AnC Bio Vermont project during this meeting.

In August and September 2014, ACCD sent two letters to Quiros, Kelly, Stenger or their representative warning that it may cancel the AnC Bio Vermont MOU if certain materials were not provided within agreed-upon timeframes (see an excerpt from the first letter to the right). Cancelling the MOU would mean that the project could no longer accept investors as part of the EB-5 program associated with the VRC.

Jay Peak provided some, but not all requested materials in response to these letters. For example, Jay Peak provided draft updated AnC Bio Vermont offering materials on October 10, 2014, the agreed-upon date, but did not provide a requested independent third-party marketing study by this date. Stenger did not provide preliminary findings of the marketing study to ACCD until January 2015. In addition, the outside securities counsel advising ACCD found significant issues in the offering materials, which ACCD conveyed to Jay Peak in November 2014.

“AnC BIO VT's inaction to cure the inadequacies of its offering leaves ACCD with no other reasonable option than to warn that the MOU may be cancelled if AnC BIO VT fails to cure the material breach for more than fourteen (14) days after receipt of this communication.”

ACCD General Counsel in an August 21, 2014 letter to Jay Peak

ACCD's General Counsel and the VRC director advised the Secretary to cancel the MOU (see excerpts of emails to the right). **Ultimately, the ACCD Secretary did not cancel the AnC Bio Vermont MOU. The Secretary told us that this decision was made in conjunction with the Governor's office**, explaining that while ACCD suspected that there was a problem with AnC Bio Vermont it did not have the evidence to support cancelling the MOU and that the State would not get it until DFR got involved.

On January 28, 2015, DFR held a meeting with Jay Peak representatives in which it went over a series of questions and followed up on unresolved ACCD issues. Shortly thereafter, DFR met with the SEC and requested access to their investigative and non-public files (which the SEC granted on February 24, 2015).

State securities laws provided DFR with the authority and tools (e.g., the

power to issue subpoenas) to use in overseeing EB-5 projects. In early March 2015, DFR initiated an investigation into Jay Peak after receiving from Jay Peak an explanation of their use of certain banking practices that triggered DFR's suspicion. A month later, DFR began issuing subpoenas to banks and brokerage firms for Jay Peak records.

"I also recommend [ACCD General Counsel] draft a letter for your signature indicating their AnC Bio MOU is cancelled."

VRC Director in a September 9, 2014 email to the ACCD Secretary

"We should be very concerned about protecting whatever remains of the investor funds. ... Were we again [to] defer giving notice of cancellation ... we would be rejecting expert advice from [outside securities counsel], compounding the financial and citizenship risks to the investors."

ACCD General Counsel in a December 4, 2014 email to the ACCD Secretary

According to its lead investigator, DFR worked collaboratively with the SEC in developing the Jay Peak investigation between the Summer of 2015 through April 2016, when the State filed a lawsuit against Quiros and Stenger alleging fraud in the Jay Peak and AnC Bio projects (later settled). Between these two dates, DFR allowed AnC Bio Vermont to market revised offering materials, albeit with conditions. New investments were required to be put into escrow to be released to the developers only upon the completion of a financial review or when the investor was approved for conditional permanent residency (see reason for this arrangement to the right).

“If it had turned out that the SEC serious concerns were proven out and... actionable fraudulent behavior, we wouldn't want to send new money into that project ... So the escrow agreement was sort of a backstop to protect against that.”

Lead DFR investigator in a May 30, 2023 deposition explaining the reason for the AnC Bio Vermont escrow arrangement

At the time the receiver took over the Jay and Burke projects, there was about \$17.8 million in the AnC Bio Vermont escrow account that was returned to 36 investors. However, the administrative fees paid by the AnC Bio Vermont investors (up to \$50,000) were not placed in escrow so to date investors have lost this amount.¹¹ The DFR Commissioner testified that the administrative fee was not part of the escrow arrangement because she was uncertain about whether she had the authority to require that it be added because the fee was not intended to be paid back at the conclusion of the deal.

Burke Mountain Resort

Jay Peak initially requested ACCD prioritize the AnC Bio Vermont project over Burke Mountain Resort. Thus, there was less activity between ACCD and Jay Peak about Burke Mountain Resort than with AnC Bio Vermont before DFR took over oversight. Appendix VI contains a timeline of major events pertaining to ACCD and DFR actions related to the Burke Mountain Resort.

Like the AnC Bio Vermont project, (1) Stenger agreed not to accept new investor subscriptions until an updated offering document was accepted by ACCD and (2) ACCD threatened to cancel the MOU but did not do so. Unlike the AnC Bio Vermont project, ACCD (1) did *not* have its outside counsel review the revised Burke Mountain Resort offering materials (the offering materials were not submitted until December 2014, just before oversight responsibility was turned over to DFR) and (2) did *not* prohibit spending of

¹¹ The receiver proposed distributing \$500,000 to AnC Bio Vermont investors who did not redeploy their funds into another project for partial reimbursement of their administrative fee, but the Court deferred ruling on this proposal.

investor funds, which allowed construction of the Burke Mountain Hotel to continue. According to the ACCD Secretary and the VRC director, ACCD did not have the same level of concern with Burke Mountain Resort as with the AnC Bio Vermont project although ACCD thought that they needed to update their offering materials.

The record is unclear about whether and when the Burke Mountain Resort EB-5 project was prohibited from marketing to and subscribing new investors. In a July 2014 letter, ACCD stated that its continued approval of marketing to investors was contingent on certain conditions being met by August 18, 2014 and that they had not yet been met. Also, in July 2014 and April 2015, Stenger and Kelly both acknowledged that ACCD had prohibited marketing of the Burke Mountain Resort project, respectively. Yet, internal and external ACCD emails and letters sometimes stated that a hold had been placed on new subscribers and sometimes indicated that no such hold was in place.

In March 2015, DFR turned its attention to the Burke Mountain Resort EB-5 project. DFR wanted to treat the Burke Mountain Resort project in the same manner as AnC Bio Vermont (e.g., additional disclosures in offering materials, same escrow terms for new investors). However, a major difference between the two projects was that the AnC Bio Vermont project never started construction (site preparation and groundbreaking did occur) while the Burke Mountain Hotel was partially built. In April 2015 Kelly objected to using the same escrow terms as the AnC Bio Vermont project, stating that if agreement could not be reached that construction at the resort would cease and hundreds of workers would be immediately laid off.

State officials disagreed about how to handle this dispute. On April 11, 2015, DFR's Commissioner sent an email to the Governor's Office in which she suggested that the State refuse to let the Burke Mountain Resort project go forward because of Kelly's refusal to set up an escrow account like that established for AnC Bio Vermont. In response, the Governor's Chief of Staff asked the Commissioner to consider that the Burke Mountain Resort differed from the AnC Bio Vermont project in that it was a tangible project that was under construction. The DFR Commissioner later stated that she "hesitantly" agreed to a different approach in which the Burke Mountain Resort project could raise additional funds from EB-5 investors to continue construction under certain conditions. There were disagreements within DFR about this decision (see email string to the right).

In mid-July 2015, the Commissioner and Quiros signed an agreement in which funds from new investors in the Burke Mountain Resort project would be escrowed but could be released for construction and other specified costs after a third-party review of these costs. However, unlike the AnC Bio Vermont project, escrow funds could be released *without* successful completion of a financial review, which DFR planned to conduct.

According to the DFR Commissioner, the decision to allow the Burke Mountain project to raise more money and allow the project to go forward was to create an asset and create the jobs that would allow investors to get their green cards. The lead investigator told us that at the time that DFR and Quiros agreed to implement a Burke Mountain Resort

"The deal is the money only goes to construction, nothing goes to Stenger/Kelly/Quiros. We continue our review ... the thing moves closer to being built so that there is actually SOMETHING to grab later in receivership or conservatorship."

DFR Commissioner's email to staff, April 26, 2015

"With what we know, I don't see how we can let them bring on another investor. They can't be trusted; we open ourselves up as a department to liability, a lost (sic) of integrity and [reputational] harm if we walk down this path with them."

DFR Deputy Commissioner of Securities (lead investigator) reply, April 26, 2015

"All valid points, although we have no idea the actual amount needed to complete the construction. I suspect it is less than they claim, since they have padded all of the projects' costs."

DFR General Counsel reply, April 26, 2015

escrow arrangement in July 2015, DFR had completed enough of its investigation to know that the project did not have the same commingling issues as the Jay Peak projects. Nevertheless, the lead investigator stated that he still had concerns at the time of the July 2015 agreement because it was the same principals involved—Quiros, Kelly, and Stenger—who DFR knew could not be trusted.

Disagreements between DFR and Jay Peak as well as within DFR (see quote to the right) continued after the July 2015 Burke Mountain Resort agreement. These disagreements pertained to the wording of the escrow arrangement and the release of escrow funds for construction costs. The final escrow language was not agreed upon until mid-September 2015 after several exchanges between DFR and Jay Peak.

Once the escrow language was agreed-upon, the State used a multi-step, multi-organizational process to approve the release of funds based on the construction manager's invoices. The ACCD Secretary worked with a third-party reviewer, sometimes seeking legal advice from the AGO and DFR, to verify that the billed amounts were allowable. Once this determination was made, DFR's Commissioner notified the escrow agent about how much could be released to pay specific expenses.

“It feels like the Developers are getting exactly what they want without delivering: an acceptable escrow agreement, escrow account statements, or a single document for financial review ... The Developers know that they can get money they need (want?) without properly complying with what is asked of them, as it works every time.”

DFR Director of Capital Markets in an August 26, 2015 email to the Commissioner

There were disagreements between the State and Jay Peak and/or the construction manager about what expenses could be paid out of the Burke Mountain Resort escrow account. On November 4, 2015, Stenger requested that the July 2015 agreement be amended to allow for additional types of costs (e.g., equipment, hotel operations staff) to be paid. DFR's Commissioner denied this request (see excerpt to the right) because Jay Peak had not provided requested financial records.

The construction manager and its attorney as well as legislators sent letters and emails to ACCD, DFR, and the Governor's Office about payments for construction and other costs.

In addition, there were multiple threats from the construction manager to stop work and lay off workers. The holdup on paying the construction manager seemed to be linked, at least in part, to insufficient funds in the escrow account since DFR's approval to release funds sometimes noted that the amount in the account was less than the amount authorized. Even after the hotel was finished, it could not open because the construction manager withheld the certificate of occupancy due to non-payment by the developers (the receiver opened the hotel in early September 2016).

At the time when ACCD warned Jay Peak that it may cancel the Burke Mountain Resort MOU on August 21, 2014, there were 55 investors and construction of the hotel was still in its early stages (Exhibit 4). By the time, DFR approved the release of updated Burke Mountain Resort offering materials on July 13, 2015, there were an additional 37 investors and significant progress had been made on the hotel (Exhibit 5). This progress and the related jobs played a major role in the State's decision to allow Burke Mountain Resort to continue, albeit with conditions. Twenty-nine investors subscribed to the Burke Mountain Resort project after DFR approved the release of updated offering materials. By the time the SEC and State brought enforcement actions against Quiros and Stenger, the Burke Mountain Resort investors were left with an unfinished project (e.g., the planned tennis complex, indoor aquatic center, and mountain bike park were never constructed). In addition, as of January 23, 2024, almost all of the investors were without a green card.

“The Department does not consider the documents received to date to be a complete response to our longstanding request for financial information ... DFR will not consider renegotiating amendments to our Letter Agreement until you have delivered all of the requested documents.”

DFR Commissioner letter to Stenger, November 16, 2015

Exhibit 4: Burke Mountain Resort, July 15, 2014



Exhibit 5: Burke Mountain Resort, June 25, 2015



As to Burke Mountain Resort's role in the fraud, Quiros purchased the resort using funds from other phases. Although consideration was given by DFR, the AGO, and the SEC to incorporating the Burke Mountain Resort project as part of the civil fraud complaints, it was not included. The lead DFR investigator concluded that Burke Mountain Resort investor funds were not commingled with investor funds of other EB-5 projects and were used in a manner substantially consistent with the representations in the offering materials. Instead, in its civil lawsuit, the SEC named the Burke Mountain Resort as a "relief defendant," or an entity that is not accused of wrongdoing but has received property obtained illegally and the Resort was placed under the protection of the receiver on April 22, 2016.

Role of the Governor and Governor's Office

ACCD began informing the Governor and his office of its concerns about AnC Bio Vermont no later than June 13, 2014. Throughout the remainder of 2014, ACCD's Secretary laid out the VRC's concerns and actions, and the developers' responses (or lack thereof) to the Governor and/or his staff. See examples of ACCD's communications to the right.

Once DFR took over oversight of EB-5 projects at the Governor's impetus, there were several meetings between DFR and the Governor and/or his staff (sometimes including Jay Peak) as well as emails. This includes a September 2015 meeting with the Governor at which DFR's Commissioner and lead investigator briefed him and his staff on the status and results of its investigation to date.

In addition, both ACCD and DFR submitted draft correspondence to the Governor's Office intended to be sent to Jay Peak. The ACCD Secretary stated that she was directed to provide the drafts to the Governor's Office. The DFR Commissioner explained that she

"We remain deeply concerned about AnCBio."

ACCD Secretary June 13, 2014 weekly report to the Governor

"We are seeing a pattern of communication being incomplete or telling us what we want to hear and learning later that it is not true. This is very disturbing. We are deeply concerned about both projects but particularly AnCBio given what we know had not been disclosed to potential and current investors."

ACCD Secretary August 22, 2014 weekly report to the Governor

"We see this whole thing is heading for a train wreck."

ACCD Secretary September 18, 2014 email to Governor's Chief of Staff

would “bounce ideas” off the Governor’s chief of staff and sometimes asked her to read and comment on draft communications.

The Governor’s Office sometimes suggested changes to draft correspondence to Jay Peak. For example, the Governor’s Chief of Staff suggested the following changes to a late April 2015 DFR letter about the Burke Mountain Resort project. The additions are shown in bold and the deletions through strikeouts.

“In the event that **DFR’s financial review causes investors obtained during the period of review to be entitled to a return of investor funds**, ~~a QBurke investor requests or is entitled to a refund~~, the Developers will **not satisfy that return of funds through the use of other investor funds** ~~use non-investor money to satisfy the claim.~~”

The Chief of Staff told the Commissioner that she suggested this change, which was made verbatim in the final letter, to tie requests for refunds directly to DFR’s planned financial review.

In another example, the Chief of Staff added wording to a draft email about the AnC Bio Vermont project. The following wording was added verbatim by the DFR Commissioner in the final email sent to Stenger on March 8, 2015:

“We very much want this project to be among the Vermont EB-5 success stories. We recognize the positive impact a successful project would have in the Northeast Kingdom and throughout our State. But, we cannot simply turn aside our review.”

At times there were disagreements between DFR and the Governor and his staff about how to proceed. The DFR Commissioner told the FBI that the Governor did not want any restrictions on the Jay Peak projects. In early April 2015, the DFR Commissioner had a private meeting with the Governor because Jay Peak was not following through with their agreement to set up an escrow account for the AnC Bio Vermont project. At this meeting, the DFR Commissioner threatened to resign if no escrow arrangement was put in place to protect new AnC Bio Vermont investors (one was later put in place).

In court testimony, the DFR Commissioner took responsibility for lifting the various holds on the AnC Bio Vermont project. When asked about the Governor's role in this decision, the Commissioner stated that the Governor did not want DFR to unnecessarily delay a project but denied that she was pressured or ordered to lift the holds on AnC Bio Vermont.

There were also conflicts between DFR and the Governor's Office pertaining to the Burke Mountain Resort project. See excerpts to the right from emails exchanged between the Governor's Chief of Staff and legal counsel regarding DFR's approach to this project.

"It is so counter-intuitive to me that we come down hard on any project on behalf of foreign investors without (1) totally clear evidence of a significant misuse of funds or fraud, ... and/or (2) only doing something in lock step with SEC, and/or possibly (3) knowing that a private law suit by investors is actually coming ... I think the risk of being wrong is greater than the risk of any successful 'negligence on the part of the State' suit for taking more time to consult with SEC/USCIS and figure this out."

Governor's legal counsel email to the Chief of Staff, April 8, 2015

"Go speak with her and keep gov out of it. But we do want to prevent it from getting worse if indeed for years something that shouldn't have gone on has gone on." And "I spoke to the governor briefly tonight. He wants her to do what is right ... [and] wants to make sure what she's doing is well justified."

Governor's Chief of Staff in response referring to the DFR Commissioner, April 8, 2015

According to statements made by various State officials to the FBI, the Governor was particularly concerned about the jobs related to the ongoing construction at Burke Mountain Resort. In November 2015, Jay Peak and the attorney for the construction manager sent a letter and email to the Governor requesting that he intervene with ACCD and DFR to get disbursements from the escrow fund authorized. Both ACCD and DFR kept the Governor's office informed of the disagreements related to the release of escrow funds for construction and other payments (see example to the right).

“I haven't changed my tune: I do not respond to threats. Any potential dispute is contractual between Peak CM [the construction manager] and QBurke. Not us ... It has become way too obvious that needling the State of Vt directly results in payment.”

DFR Commissioner October 19, 2015 email to the Governor's Chief of Staff commenting on a letter from the construction manager's attorney demanding approval of payment

“I agree with [the DFR Commissioner] ... we should and will follow [the] normal process for payment of August and beyond working in collaboration with [the] AGO.”

Email response of Governor's Chief of Staff, October 19, 2015

Question 3: What is the reported immigration and investment repayment status of the investors in each of the Jay and Burke EB-5 project phases?

The fraud perpetrated by Quiros, Kelly, and Stenger put both the immigration status and investments of many investors at risk. However, this risk varied greatly depending on the phase invested in. Some investors received their green cards and/or their entire investments back. Others have received only a small part of their investment and, as of January 2024, no green card. The investors in the Jay Peak Hotel Suites (Phase 1) and AnC Bio Vermont projects were treated differently than the others because of their specific circumstances. Overall, as of January 23, 2024, 61 percent of investors in the Jay Peak and Burke Mountain resorts' EB-5 projects (not including AnC Bio Vermont because the status of these investors is unknown) have been approved for their green cards—73% for the six Jay Peak projects (Phases I-VI) and 6% for the Burke Mountain project (Phase VIII).

EB-5 projects cannot guarantee investors investments because the investments must be “at risk” to be eligible for the program. Moreover, unlike other investments, investors in EB-5 projects have priorities other than obtaining a return on their investments, namely immigrating to the United States. The importance of immigration in an EB-5 investment is illustrated by an excerpt from a letter signed by 45 investors in the Jay and Burke projects shown on the right.

Since the receiver took over the Jay Peak and Burke Mountain resorts, he has taken a variety of actions to help investors obtain green cards as well as repayment of their investments. These actions included hiring a law firm specializing in immigration, suing financial services and law firms connected to the fraud (collecting more than \$200 million), selling properties, and completing construction at the Jay Peak and Burke Mountain resorts to create the minimum number of jobs the investors needed for their green cards. Some of the proceeds from the lawsuits and

“Yes, we were willing to bear the risk of the partial or even full loss of our investment out of normal operations, but we were never willing to take the risk of losing our permanent residency because of fraud by Quiros or because of inadequate oversight by the VRC.”

Letter submitted to USCIS by 45 investors from Phases IV to Phase VIII, September 13, 2017

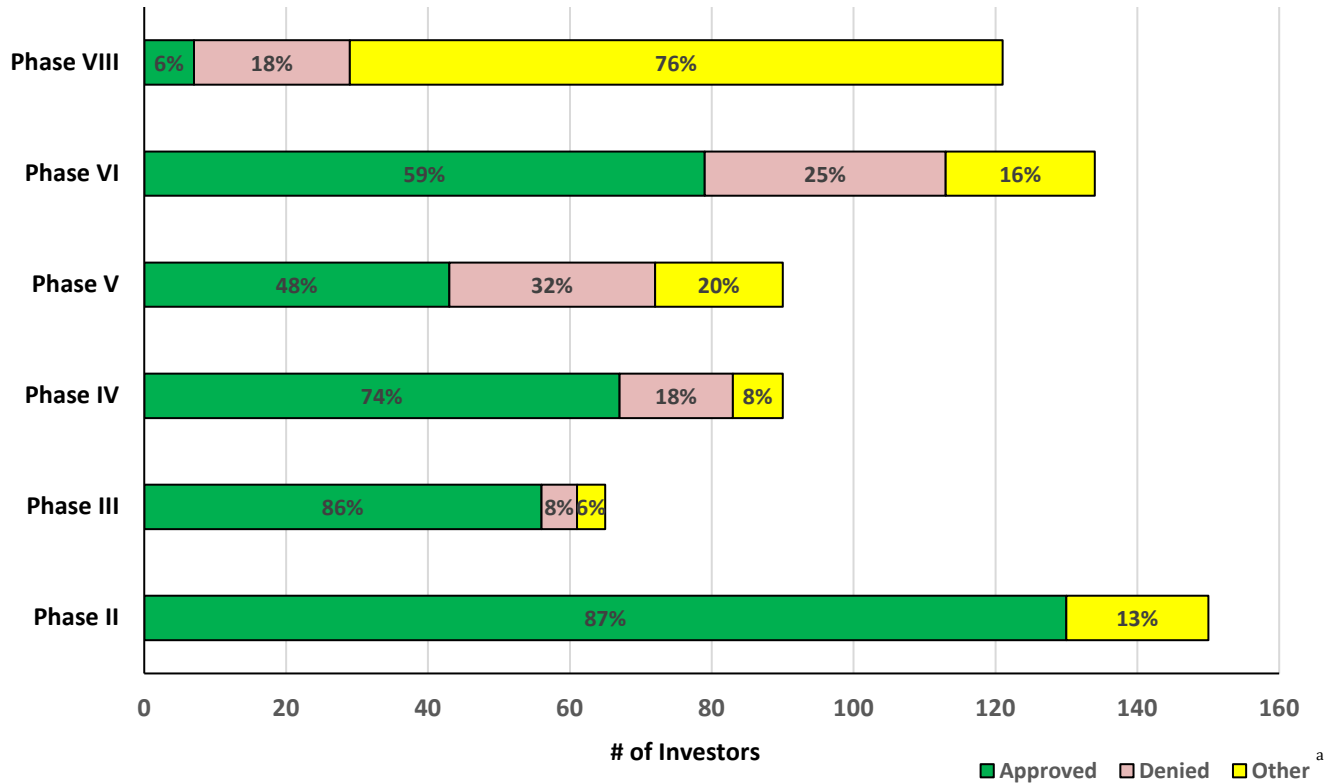
properties have gone towards other expenses, including the receiver and firms that he has employed and contractors owed money from the original construction.

In a February 2023 deposition, the receiver stated that he began working collaboratively with the State in 2016 to try and convince the USCIS that jobs had been created so investors should get their green cards. For example, in 2021, the lead DFR investigator provided an affidavit to the receiver and individual investors to demonstrate that the investor funds were used for job-creating construction work on the Burke hotel. The settlement agreement for the investors lawsuit also requires Vermont to continue to work with the receiver and/or the USCIS to obtain green cards for all investors that do not currently have one.

Status of Immigration and Investment Repayment Status for All Phases Except AnC Bio Vermont and Phase I

Exhibit 6 shows the status of Phases II, III, IV, V, VI, and VIII investors' application for permanent residency or green card status per the records kept by the receiver. This exhibit shows the proportion of approved vs. denied green cards generally got worse for every successive phase of the Jay and Burke projects. In addition, many investors' immigration goals remain in limbo because USCIS has yet to decide on their cases (particularly the Burke Mountain Resort investors). Because the receiver relies on investors reporting their status, there are some shortfalls in the reporting so the numbers in Exhibit 6 may not be entirely correct. See Appendix VII for a table that includes more detail on investor green card status.

Exhibit 6: Summary of Green Card Status of Phase II, III, IV, V, VI, and VIII Investors, as of January 23, 2024



Phase II = Jay Peak Hotel Suites II (Hotel Jay)
 Phase III = Jay Peak Penthouse Suites
 Phase IV = Jay Peak Golf and Mountain Suites
 Phase V = Jay Peak Lodge and Townhouses
 Phase VI = Jay Peak Hotel Suites Stateside
 Phase VIII = Burke Mountain Resort

^a The “Other” category is comprised of investors who have not filed for their green cards, are awaiting a decision, have withdrawn their application, or for which the investor does not have information.

Source: Receiver.

The receiver has hired immigration counsel to help investors pursue their green cards. According to the receiver’s [latest status report](#) in May 2023, USCIS has generally been denying the remaining petitions for permanent residency or asking for more evidence.

As of January 30, 2024, the receiver distributed \$79.4 million to investors in Phases II, III, IV, V, VI, and VIII, which returns part of their investments. The receiver stated that he expects to make another distribution shortly.

- Phases II through VI: The 529 investors in these Jay Peak phases received two distributions totaling \$143,329.54 for each investor or 29 percent of their \$500,000 investment.
- Phase VIII: The 121 investors in the Burke Mountain Resort project received one distribution of \$29,907.98 each or 6 percent of their investment.

The reason for the difference is that the sale of the Jay Peak Resort was distributed to only the investors in the Jay Peak phases. The receiver has not yet sold the Burke Mountain Resort.

Most of these investors were paid by check but some chose to have their distributions put into escrow. Investors who opted to put their distribution into escrow were still going through the immigration process and escrow appeared to be the safest route not to lose their EB-5 priority and eligibility to obtain permanent resident status.

Status of Immigration and Investment Repayment Status for Jay Peak Hotel Suites (Phase I) Investors

All 35 Jay Peak Hotel Suites (Phase I) investors received their green cards.

In 2014, Jay Peak converted the equity interests of Phase I investors to debt by issuing them promissory notes. The receiver paid off the balance of these notes, so these investors received their \$500,000 investment back.

Status of Immigration and Investment Repayment Status for AnC Bio Vermont (Phase VII) Investors

The immigration status of the 169 AnC Bio Vermont investors is unknown because the receiver repaid their investments. The receiver also arranged for interested investors to redeploy their funds to an EB-5 project in New York. Fifty-eight of the investors took the redeployment option.

Conclusions

Many of the investor/victims of the fraud perpetrated by Quiros, Kelly, and Stenger are still experiencing negative effects years later. Most have received only a fraction of their investments back and many have not received green cards, a principal draw of the EB-5 program. As part of the fraud scheme, the offenders lied and provided false and misleading documents to State officials. Undoubtedly this played a role in the State taking years to take action against

the Jay and Burke projects. Nevertheless, it is at least possible that a more proactive approach by ACCD (e.g., refusing to sign MOUs without financial audit clauses, going through with its warnings to cancel the AnC Bio Vermont MOU) could have mitigated investor losses. **The Governor's decision to bring the expertise and authority of DFR into the VRC was key to stopping the fraud since DFR's investigative work, in conjunction with that of the SEC, led to enforcement actions.** Even though DFR's investigation helped expose the fraud, the State's public long-term relationship with Jay Peak nonetheless caused reputational harm to Vermont. After the April 2016 filing of the SEC lawsuit, investor interests have been looked after by a receiver. **However, DFR's decision, made in conjunction with the Governor's office, to allow the Burke Mountain Resort project to market and subscribe new investors put additional investors' immigration goals and investments at risk. The Burke Mountain Resort investors have fared particularly badly in terms of getting their investments back and achieving permanent residence status.**

Management's Comments and Our Evaluation

We provided AGO, ACCD, and DFR the opportunity to provide written comments on a draft of this report.

- The Attorney General provided comments on a draft of this report dated March 25, 2024, which are reprinted in Appendix VIII.
- The Commissioner of the Department of Economic Development within ACCD provided comments on a draft of this report dated March 22, 2024. These comments are reprinted in Appendix IX and our evaluation of these comments are in Appendix X.
- On March 21, 2024, a DFR attorney sent an email stating that DFR would not be providing comments on the draft report.

Appendix I

Scope and Methodology

The scope of this audit was the time period of Quiros' control over Jay Peak and Burke Mountain Resort or June 2008 to April 2016. Beginning in October 2015, the AGO directed the Governor's Office, ACCD, and DFR to preserve all paper and electronic documents, including draft and final versions of internal and external documents, emails, texts, notes, etc., pertaining to the Jay and Burke EB-5 projects. The AGO later collected the files from these entities.

Via a series of productions, the AGO shared these files (about 790,000) with us. The productions included files from the governor and his staff, DFR, ACCD, the receiver, Quiros, and State emails. We skimmed these files and identified hundreds that contained key information used to address the questions in our objective (many of the files were not relevant or were duplicative). While the bulk of our time was spent reviewing these files, we also performed the following procedures:

- Reviewed State communications with the USCIS, including the termination documentation.
- Reviewed the SEC and DFR civil complaints against Quiros and Stenger filed on April 12, 2016 and April 14, 2016, respectively.
- Reviewed files submitted to the Court in the criminal cases against Quiros, Kelly, and Stenger. This included the indictment, plea agreements, and sentencing memorandum.
- Reviewed files submitted to the Court in the investors' lawsuits, including the complaint, investor interrogatories, and settlement agreements. Reviewed transcript of the trial that occurred prior to the settlement.
- Reviewed files submitted to the Court by the receiver, including status reports.
- Obtained spreadsheets on distributions to investors and their immigration status from the receiver. We did not verify this information.

We obtained 41 depositions and FBI and Internal Revenue Service interviews of State employees and former State employees. The thousands of pages in these documents included explanations for State decisions. State officials interviewed and/or deposed included Governors, Governor's staff, ACCD Secretaries, ACCD General Counsel, VRC directors, DFR Commissioner, DFR General Counsel, and the DFR lead investigator.

We supplemented these depositions and interviews, when necessary, by inquiring of the former Secretaries of ACCD, the ACCD General Counsel, and

Appendix I

Scope and Methodology

lead DFR investigator on specific topics. We also reviewed depositions from Stenger and Quiros taken during meetings with the SEC and depositions from experts on EB-5 and immigration requirements that were taken as part of the investors' lawsuits.

Internal control was not significant to our audit objectives because the receiver, not the State, is currently responsible for the Jay and Burke EB-5 projects. However, this report identifies internal control weaknesses (e.g., lack of ACCD written procedures for oversight of EB-5 projects) when it was a cause of a finding.

We conducted this performance audit in accordance with generally accepted government auditing standards, which require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II Abbreviations

| | |
|-------|--|
| ACCD | Agency of Commerce and Community Development |
| AGO | Attorney General's Office |
| DFR | Department of Financial Regulation |
| EB-5 | Employment-based fifth preference program |
| FBI | Federal Bureau of Investigation |
| FDA | Food and Drug Administration |
| MOU | Memorandum of Understanding |
| SAO | State Auditor's Office |
| SEC | Securities and Exchange Commission |
| USCIS | U.S. Citizenship and Immigration Services |
| VRC | Vermont Regional Center |

Appendix III State Officials

The scope period of our audit begins when Ariel Quiros bought Jay Peak (June 2008) and ends with the SEC and State filing civil action suits in April 2016. During this timeframe there were many State officials that dealt with Jay Peak. The following are officials that were relevant to our audit questions (in order by earliest to latest dates).

Governors

The Honorable James Douglas
The Honorable Peter Shumlin

Governor's Chief of Staff

William Lofy
Elizabeth Miller
Darren Springer

Governor's Deputy Chief of Staff

Alexandra MacLean

Governor's Legal Counsel

Sarah London

ACCD Secretary

Kevin Dorn
Lawrence Miller
Patricia Moulton

ACCD General Counsel

John Kessler

VRC Director

James Candido
Brent Raymond
Gene Fullam

DFR Commissioner

Susan Donegan

DFR Legal Counsel

David Cassetty

DFR Deputy Commissioner of the Securities Division (lead investigator)

Michael Pieciak

Appendix IV Summary of Jay and Burke EB-5 Projects

Exhibit 7: Investor and Construction Information Pertaining to the Jay and Burke EB-5 Projects

| Project Name | Year of MOU | Description of Project to Investors | Dates Subscribed | # of Investors | \$ Invested (in millions) ^a | Construction Status |
|---|-------------|---|--------------------------------|----------------|--|---|
| Jay Peak Hotel Suites Also known as Phase I or Tram Haus Lodge | 2006 | Acquire land and construct six-floor building comprising a new hotel that would contain 57 bedroom suites and commercial and service units to provide guest services, food and beverage, and recreation facilities. | December 2006 to May 2008 | 35 | \$17.5 | Completed. |
| Jay Peak Hotel Suites Phase II Also known as Hotel Jay | 2008 | Acquire land and construct a multi-story building that would contain 120 bedroom suites and a commercial unit to provide spa facilities, a conference center, restaurants and retail facilities. Construct a waterpark, a golf clubhouse, an indoor ice rink arena, a bowling center and a building that contains administrative offices, a grocery, and a deli. | March 2008 to January 2011 | 150 | \$75.0 | Hotel suites completed but DFR determined that the number and quality of the units were not as described to investors. The bowling center and spa facilities were not built. |
| Jay Peak Penthouse Suites Also known as Phase III | 2010 | Construct 55 penthouse suites on top of the Hotel Jay and build a mountain activity center. | July 2010 to October 2012 | 65 | \$32.5 | Completed, but DFR determined that the number and quality of suites were not as described to investors. |
| Jay Peak Golf and Mountain Suites Also known as Phase IV | 2010 | Construct golf cottage duplexes, wedding chapel, and other facilities. | December 2010 to November 2011 | 90 | \$45.0 | Completed. |
| Jay Peak Lodge and Townhouses Also known as Phase V | 2010 | Construct 30 vacation rental townhouses, 90 vacation rental cottages, and a café. | May 2011 to November 2012 | 90 | \$45.0 | Completed. |

Appendix IV Summary of Jay and Burke EB-5 Projects

| Project Name | Year of MOU | Description of Project to Investors | Dates Subscribed | # of Investors | \$ Invested (in millions) ^a | Construction Status |
|---|-------------------|--|---|----------------|--|---|
| Jay Peak Hotel Suites Stateside Also known as Phase VI | 2010 | Construct an 84-unit hotel, 84 vacation rental cottages, a guest recreation center, and a medical center. | October 2011 to December 2012 | 134 | \$67.0 | The hotel was completed. The receiver did not construct 24 cottages (60 were completed) and eliminated the medical center. In their stead, the receiver constructed a more comprehensive recreation center and athletic fields. |
| Jay Peak Biomedical Research Park Also known as AnC Bio Vermont and Phase VII | 2012 ^b | To purchase land and construct a biomedical research facility in Newport to rent out “clean” rooms to researchers and to produce stem cell therapy and certain types of artificial organs for which it would purchase intellectual property rights from a South Korean entity. | Started in November 2012 – not fully subscribed | 169 | \$84.5 | Monies were spent on site preparation for the proposed facility. |
| Burke Mountain Resort, Hotel and Conference Center Also known as Q-Burke or Phase VIII | 2013 ^c | Acquire land and construct two five floor buildings that would contain a hotel with 112 rooms and suites and commercial and retail condominium units. Construct a tennis complex, indoor aquatic center, and a mountain bike park. | Started in June 2013 – not fully subscribed | 121 | \$60.5 | The hotel and conference center were completed. The tennis complex, indoor aquatic center, and mountain bike park were not constructed. The receiver authorized the purchase of a ski lift and additional snowmaking capabilities. |
| Total | | | | 854 | \$427.0 | |

^a Does not include the non-refundable administrative fee charged to investors, which could be up to \$50,000.

^b The 2012 Jay Peak Biomedical Research Park MOU superseded a prior MOU dated in 2009.

^c The 2013 Burke Mountain Resort, Hotel and Conference Center MOU superseded a prior MOU dated in 2012.

Appendix V Timeline of Events Pertaining to AnC Bio Vermont

Exhibit 8: Significant Events Related to the State’s Oversight of the AnC Bio Vermont EB-5 Project

| Date(s) | Originator ^a | AnC Bio Vermont Event ^a |
|---------------------|-------------------------|--|
| October 5, 2012 | ACCD and Jay Peak | ACCD’s Secretary signs an updated MOU for AnC Bio Vermont at the request of Jay Peak. The original MOU had been signed three years earlier, but the offering materials were not completed at that time. The updated MOU did not contain an audit requirement even though at this time the State was aware that Jay Peak had not arranged for an audit for prior phases as previously requested and agreed upon. |
| November 2012 | Jay Peak | Jay Peak begins subscribing AnC Bio Vermont investors. |
| January -April 2013 | Concerned citizen | A concerned Newport citizen sent correspondence to a State Senator later forwarded to the AGO and ACCD. Using public sources, this individual raised concerns about prior business dealings of Quiros, Choi, and Kelly. The ACCD Secretary told the FBI that this document was the triggering event starting the State inquiry, which is consistent with a statement by the VRC director at the time. Quiros sent a response to the citizen’s concerns to the ACCD Secretary in April 2013. |
| May 23, 2013 | SEC | SEC’s Division of Enforcement was authorized to conduct an investigation into Jay Peak. We found no evidence that ACCD was informed of this investigation by either the SEC or Jay Peak at this time. |
| October 2013 | ACCD | ACCD interns who spoke Korean researched AnC Bio and Alex Choi in Korean media. ACCD emailed Jay Peak seeking information, such as Quiros’ and his family’s relationships with certain Korean companies and the FDA status of AnC Bio Vermont’s products. According to the U.S. Attorney’s Office, Jay Peak officials provided false and misleading responses. |
| March 2014 | Investors | A few investors approached the VRC Director in Shanghai in March 2014 about Stenger’s failure to make promised refunds of their investments. They also outlined a variety of concerns about the project, such as a \$10 million payment to a Korean firm and an inflated price of land purchased from Quiros and projected clean room lease rates. VRC followed up with Jay Peak about the refunds, which were made later in March. Because of the concerns raised by these investors, ACCD also requested that Jay Peak provide other documentation, including information on the payment to the Korean firm, a third-party economic jobs analysis, a market study, and a third-party land valuation. |
| April 7, 2014 | SEC | First meeting between SEC and VRC. According to ACCD’s General Counsel, the SEC mainly asked questions and did not disclose the substance of their interest. |
| Mid-May 2014 | ACCD | ACCD and Jay Peak officials meet. According to ACCD’s General Counsel, the focus of this meeting was on the apparent court-ordered auction of the affiliated Korean facility discovered during ACCD’s research. A few days after this issue was raised, Jay Peak emailed to ACCD a fax from a Korean law firm providing an explanation of the auction. |
| Early June 2014 | ACCD | ACCD began meeting with outside securities counsel for advice on the AnC Bio Vermont offering materials. |
| June 27, 2014 | ACCD | Meeting between ACCD and Jay Peak officials pertaining to SEC regulatory requirements, particularly the disclosures in the offering materials. At ACCD’s request, Jay Peak officials agree to provide updated offering materials and that new investors would not be subscribed until a mutually agreed upon offering is finalized. |

Appendix V Timeline of Events Pertaining to AnC Bio Vermont

| Date(s) | Originator ^a | AnC Bio Vermont Event ^a |
|-------------------------|-------------------------|--|
| July 9, 2014 | ACCD | General Counsel sends letter to Jay Peak memorializing the agreements in the June 27 th meeting, including the suspension of marketing of offering materials and assurance that disclosure of material information has been made. ACCD sets an August 1, 2014 deadline for AnC Bio Vermont's submission of materials. |
| July 31, 2014 | Jay Peak | Bill Stenger sends letter to ACCD stating that the AnC Bio Vermont offering materials are being reviewed and that no new subscriptions are being accepted until the updated offering materials are completed to ACCD's satisfaction. |
| August 21, 2014 | ACCD | General Counsel tells Jay Peak that they have not been responsive to the July 9, 2014 letter and therefore have materially breached the MOU requirements. ACCD warns Jay Peak that the MOU may be cancelled if AnC Bio Vermont "fails to cure the material breach for more than fourteen (14) days after receipt." |
| September 26, 2014 | ACCD | General Counsel tells Jay Peak that they continue to be non-responsive to its requirements. Further states that "failure to submit to ACCD on or before Friday, October 10, 2014 the complete documentation for effective third party review indicating the [offering materials are] in compliance with SEC will result in cancellation of the MOU." |
| October 1, 2014 | ACCD | ACCD meets with Jay Peak and provides them with 18 items to be addressed. |
| October 10, 2014 | Jay Peak | Jay Peak transmits revised offering materials to ACCD. |
| November 7 and 18, 2014 | ACCD | General Counsel sends letters to Jay Peak summarizing issues with revised offering materials identified by ACCD's outside securities counsel and reiterates the suspension of marketing until Jay Peak has addressed the VRC's concerns and requests and renews request for an independent audit of all EB-5 projects. |
| November 21, 2014 | ACCD | General Counsel emails Jay Peak requesting that no additional investor funds be spent unless or until ACCD is satisfied with the revised offering. |
| November 24, 2014 | Jay Peak | Jay Peak responds to ACCD's November 7 th and 18 th letters, but it does not address ACCD's request for an audit and states it either does not have or will not provide documents related to some of ACCD's requests. The U.S. Attorney's Office found that this letter contained false representations. |
| December 2014 | ACCD and AGO | ACCD seeks advice from the AGO about whether the Agency needs to renew its notice of material breach in order to cancel the MOU. The AGO advises ACCD that if it intends to cancel the MOU that it should reissue its notice because too much time has passed from ACCD's August 21, 2014 letter. ACCD and Jay Peak correspond about additional requests for information and ACCD sets January 9, 2015 as the deadline for submission of additional materials. ACCD did not cancel the MOU. |
| Early January 2015 | DFR | DFR begins document collection and transition of oversight from ACCD so that they could begin a financial review. |
| January 9, 2015 | Jay Peak | Stenger hand delivers a letter with attachments in response to ACCD's requests, including a marketing study and FDA approval timeline. These documents were the basis for Stenger's conviction. |
| January 28, 2015 | DFR | First meeting between DFR and AnC Bio Vermont. During this meeting, DFR went through ACCD's unaddressed concerns. |
| January 29, 2015 | DFR | First meeting with the SEC. DFR requests access to SEC's investigative and other non-public files, which the SEC grants on February 24, 2015. |

Appendix V Timeline of Events Pertaining to AnC Bio Vermont

| Date(s) | Originator ^a | AnC Bio Vermont Event ^a |
|---------------------------------|-------------------------|--|
| February 3, 2015 | Jay Peak | Jay Peak transmits revised offering materials. |
| February 3 and 4, 2015 | DFR | Meetings between SEC and DFR about the former's investigation and their surprise at DFR's conclusion that a revised AnC Bio Vermont offering materials was almost ready. DFR and SEC continue to communicate and coordinate throughout the course of their investigations. |
| February 10, 2015 | DFR | DFR meets with Jay Peak and proposes a side letter agreement in which the existing MOU would remain in effect. Among other items, the side letter would allow for the holds on marketing and the use of proceeds until after an audit and a final marketing study are completed. |
| February – March 2015 | DFR and Jay Peak | DFR and Jay Peak hold meetings and exchange emails about the proposed side agreement and audit. |
| Late February, Early March 2015 | DFR | Jay Peak submits information on certain accounts, which triggers suspicion and DFR initiates an investigation. |
| March 5, 2015 | Jay Peak | Stenger emails a letter to the Governor's Chief of Staff (forwarded immediately to the DFR Commissioner) complaining that DFR is not seeing the "big picture." |
| March 16-17, 2015 | Jay Peak and DFR | Jay Peak sends letter consenting to a financial review of the AnC Bio Vermont project but states that there is still no broader agreement on a financial review. DFR responds that a broader financial review is necessary and reiterates prohibition on marketing, construction, fund solicitation, and expenditure. |
| March 27, 2015 | Jay Peak | DFR Commissioner and ACCD Secretary meet with the Governor and his staff and Jay Peak officials at the project's request, The project refuses to sign the proposed side letter agreement (Jay Peak never signed the side agreement). |
| March 27, 2015 | DFR | Commissioner sends email to Jay Peak approving the release of the offering materials and agrees to approve lifting the holds on construction, use of proceeds, and marketing under the following conditions: (1) new proceeds from investors are placed in an escrow account and (2) funds from the escrow account will only be released upon the completion of a financial review or, on an investor-to-investor basis, upon USCIS approval of their petition for a conditional permanent resident. Allowing funds to be released under the latter circumstances was due to the USCIS requirement that the investment be at risk. |
| April 2015 | Jay Peak | Site preparation begins for the biomedical facility. Construction never commenced. |
| April 1, 2015 | DFR | DFR sends first subpoena. DFR subpoenaed Jay Peak's records at their brokerage firms and banks. Subpoenas went to at least 11 organizations. |
| April 11, 2015 | DFR | Commissioner shares a discussion document with the Governor's legal counsel and chief of staff in advance of a meeting with the Governor. The document stated "although DFR is in the early stages of its investigation, it has identified accounting irregularities, contractual inconsistencies and significant conflicts of interest that point to potential violations of law." |
| May 28, 2015 | DFR | DFR hires a firm to perform the financial review of the AnC Bio Vermont project. The review is to entail (1) investigating the actual use of investor funds and compare it to the representations in the offering materials, (2) determining whether any project principals or their related entities were overpaid, paid early, or used funds for non-project purposes, and (3) identifying instances where the project failed to meet accounting or control best practices. Because Jay Peak did not provide all requested documentation for this financial review, DFR later changed the firm's responsibilities to confirming DFR's investigatory results. |

Appendix V

Timeline of Events Pertaining to AnC Bio Vermont

| Date(s) | Originator ^a | AnC Bio Vermont Event ^a |
|--------------------------|-------------------------|--|
| June 22, 2015 | DFR | DFR's General Counsel submits a litigation planning document to the Commissioner and states that a complaint has been drafted. The Commissioner stated that at this time the complaint still had gaps. |
| Summer 2015 – April 2016 | DFR and SEC | According to the lead investigator, DFR worked with the SEC in developing the investigation during this timeframe. |
| September 10, 2015 | DFR | DFR briefs Governor and his staff on investigation results. The lead DFR investor estimated that the Department was about 75 percent of the way through its investigation. |
| April 12, 2016 | SEC | SEC files civil lawsuit alleging fraud by Quiros and Stenger and requests the Court appoint a receiver, which it did the next day. |
| April 14, 2016 | AGO and DFR | State files civil lawsuit alleging fraud by Quiros and Stenger. |

^a We used the term “Jay Peak” in these columns to refer to Quiros, Kelly, or Stenger or their representatives (e.g., attorneys).

Appendix VI

Timeline of Events Pertaining to Burke Mountain Resort

Exhibit 9: Significant Events Related to the State's Oversight of the Burke Mountain Resort EB-5 Project

| Date(s) | Originator ^a | Burke Mountain Resort Event ^a |
|-------------------|-------------------------|--|
| October 31, 2012 | ACCD and Jay Peak | ACCD's Secretary signs the MOU for Burke Mountain Resort at the request of Jay Peak. This MOU did not contain an audit requirement even though at this time the State was aware that Jay Peak had not arranged for an audit for prior phases as previously requested and agreed upon. |
| June 9, 2013 | Jay Peak | Jay Peak begins subscribing Burke Mountain Resort investors. |
| June 17, 2013 | ACCD and Jay Peak | ACCD's Secretary signs an updated MOU for Burke Mountain Resort at the request of Jay Peak. This MOU also did not contain a requirement for an audit. |
| June 3, 2014 | Jay Peak | Construction of the Burke Mountain hotel and conference center begins. |
| July 9, 2014 | ACCD | General Counsel sends letter to Jay Peak memorializing agreements made during a June 27 th meeting. The letter sets conditions for ACCD's approval for Jay Peak to continue marketing and offering the Burke Mountain Resort EB-5 project to investors. Specifically, ACCD's approval for the continued marketing of this project was contingent on it providing ACCD by August 18, 2014 a written opinion by securities counsel that the marketing and offering materials complied with securities law and regulations or submits the offering materials that do the same. ^b Jay Peak never provided the written opinion. |
| July 31, 2014 | Jay Peak | Bill Stenger sends letter to ACCD stating that the Burke Mountain Resort offering materials are being reviewed and that no new subscriptions are being accepted until the updated offering materials are completed to ACCD's satisfaction. |
| August 21, 2014 | ACCD | General Counsel sends letter to Jay Peak stating that they have not met the conditions in the July 9 th letter and therefore have materially breached the MOU requirements. ACCD warns Jay Peak that the MOU may be cancelled if it "fails to cure the material breach for more than fourteen (14) days after receipt." ACCD did not cancel this MOU. |
| December 17, 2014 | Jay Peak | Jay Peak submits updated Burke Mountain Resort offering materials. |
| January 9, 2015 | ACCD | VRC director tells a Jay Peak representative that he can release the Burke Mountain Resort offering materials stating, "for various reasons we are not finished reviewing the Amendment, but that does not mean you cannot provide the original offering to potential investors." |
| March 27, 2015 | Jay Peak | DFR Commissioner and ACCD Secretary meet with the Governor and his staff and Jay Peak officials at the project's request. |
| March 27, 2015 | DFR | Commissioner sends email to Jay Peak stating DFR will (1) start work on the financial review of Burke Mountain Resort ahead of the review of AnC Bio Vermont and (2) "allow the business to continue" when DFR approves amended offering materials. |
| April 2, 2015 | DFR | Commissioner emails Kelly stating that the offering materials have not been cleared and that they should not be disseminated to potential investors. |
| April 11, 2015 | DFR | Commissioner informs the Governor's staff that any restrictions on the Burke Mountain Resort project would stem from a lack of cooperation from that project and suggested that they use the project's refusal to escrow money as a basis for not letting it go forward. |

Appendix VI

Timeline of Events Pertaining to Burke Mountain Resort

| Date(s) | Originator ^a | Burke Mountain Resort Event ^a |
|--------------------------------|-------------------------|--|
| April 21, 2015 | DFR | DFR officials meet with Jay Peak and hand-delivered a letter stating that they wanted the Burke Mountain Resort project to establish an escrow account for new investors in a manner similar to the AnC Bio Vermont project. The letter further states that until such time as the project establishes an escrow account and DFR clears amended offering materials that the Burke Mountain Resort EB-5 project should not be marketed or solicit new investor funds. |
| April 23, 2015 | Jay Peak | Kelly responds to the DFR Commissioner's April 21 st letter. Does not agree with the conditions of this letter and states that it would terminate construction on April 27 th if no solution is reached. |
| April 27, 2015 | DFR | Commissioner sends a letter to Jay Peak saying that it will allow them to raise new investor funds and use them for limited purposes under various conditions, including that amended offering materials are cleared by DFR and Jay Peak agrees to the use of a third-party consultant for construction, including a review of monthly certifications of payment and associated documentation to ensure that expenses are allowable. |
| April 30, 2015 and May 5, 2015 | Jay Peak and DFR | Jay Peak sends a letter agreeing to some of DFR's conditions. DFR reply to this letter finds it to be non-responsive to key aspects of DFR's April 27 th letter. |
| May 28, 2015 | DFR | DFR hires a firm to perform the financial review of the Burke Mountain Resort project. The review is to entail (1) investigating the actual use of investor funds and compare it to the representations in the offering materials, (2) determining whether any project principals or their related entities were overpaid, paid early, or used funds for non-project purposes, and (3) identifying instances where the project failed to meet accounting or control best practices. Because Jay Peak did not provide all requested documentation for this financial review, DFR later changed the firm's responsibilities to confirming DFR's investigatory results. |
| May 2015 – mid-July 2015 | DFR and Jay Peak | DFR and Jay Peak hold meetings and exchange emails and letters about the updated offering materials and modifications to these materials, including changes to disclosures. DFR Securities Division staff is satisfied with the offering materials on July 9, 2015. |
| July 13, 2015 | DFR and Jay Peak | Commissioner sends letter, agreed to by Quiros, that the Burke Mountain Resort may solicit new investors subject to two conditions: (1) all new funds will be placed in an escrow account and will not be available except under certain conditions and (2) DFR be provided with evidence that a resubscription letter was sent to existing investors and indicate how many investors have/have not resubscribed. |
| August 2015 – September 2015 | DFR and Jay Peak | DFR and Jay Peak exchange emails regarding the language to be used in the escrow arrangement. DFR agrees to escrow language on September 18, 2015. |
| September 29, 2015 | ACCD | ACCD contracts with a third-party for advisory and consulting services regarding disbursements of funds from the Burke Mountain Resort escrow account. The State sought advice on whether requisitions are for appropriate construction, furniture and fixture, and other authorized expenses. |

Appendix VI

Timeline of Events Pertaining to Burke Mountain Resort

| Date(s) | Originator ^a | Burke Mountain Resort Event ^a |
|----------------------------|--|--|
| October 2015 to March 2016 | DFR, ACCD, AGO, Jay Peak, and construction manager | Based on the review of the construction invoices by the third-party consultant, DFR's Commissioner authorizes releases of funds from the Burke Mountain Resort escrow account. During this timeframe, there are significant disagreements between Jay Peak, DFR, and the construction manager's attorney about what the money in the escrow account can be used for and whether the escrow account even has sufficient funds to pay for the requested amounts. The State is threatened with lawsuits as well as work stopping on construction and workers being laid off. ACCD's Secretary and the AGO also played a role in the approval of disbursements from the escrow account. |
| November 4, 2015 | Jay Peak | Stenger requests that the July 13, 2015 agreement be amended to allow the escrow account be used to cover additional costs, including equipment and staff to operate the hotel. |
| November 16, 2015 | DFR | Commissioner sends letter to Jay Peak denying its request to amend the July 13, 2015 agreement, stating that not all documents requested for the financial review have been provided. |
| February 2016 | Jay Peak | Construction of the Burke Mountain Hotel and Conference Center completed but it is not opened to the public until September 2016. |
| April 12, 2016 | SEC | SEC files civil lawsuit alleging fraud by Quiros and Stenger and requests the Court appoint a receiver, which it did the next day. Burke Mountain Resort is named as a relief defendant. |
| April 14, 2016 | AGO and DFR | State files civil lawsuit alleging fraud by Quiros and Stenger. Burke Mountain Resort is not a defendant in this lawsuit. |
| April 19, 2016 | Receiver | Files motion to add Burke Mountain Resort project to the receivership estate, which is granted on April 22, 2016. |

^a We used the term "Jay Peak" in these columns to refer to Quiros, Kelly, or Stenger or their representatives (e.g., attorneys).

^b Alternatively, the project could have submitted revised offering materials with changes advised by its securities counsel, signatures from every investor acknowledging receipt of the revised offering, and certification that the securities counsel's advice was fully implemented.

Appendix VII

Immigration Status of Investors

Because the receiver relies on investors reporting their status, there are some shortfalls in the reporting so the numbers in Exhibit 10 may not be entirely correct.

Exhibit 10: Summary of the Green Card Status of Phase II, III, IV, V, VI, and VIII Investors, as of January 23, 2024

| Project | # of Investors | # Approved Permanent Resident | Denied | Pending | Withdrawn/ Not Filed | Unknown |
|---|----------------|-------------------------------|------------|-----------|----------------------|-----------|
| Jay Peak Hotel Suites Phase II Also known as Hotel Jay | 150 | 130 | 0 | 1 | 19 | 0 |
| Jay Peak Penthouse Suites Also known as Phase III | 65 | 56 | 5 | 1 | 3 | 0 |
| Jay Peak Golf and Mountain Suites Also known as Phase IV | 90 | 67 | 16 | 1 | 4 | 2 |
| Jay Peak Lodge and Townhouses Also known as Phase V | 90 | 43 | 29 | 2 | 7 | 9 |
| Jay Peak Hotel Suites Stateside Also known as Phase VI | 134 | 79 | 34 | 7 | 14 | 0 |
| Burke Mountain Resort, Hotel and Conference Center Also known as Q-Burke or Phase VIII | 121 | 7 | 22 | 34 | 32 | 26 |
| Total | 650 | 382 | 106 | 46 | 79 | 37 |

Source: Receiver.

Appendix VIII Comments from Management – AGO

The following is a reprint of the AGO's response to a draft of this report.

CHARITY R. CLARK
ATTORNEY GENERAL



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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

March 25, 2024

Douglas R. Hoffer
Vermont State Auditor
Auditor's Office
132 State Street
Montpelier, VT 05633-5101

Re: Draft report, "Jay Peak, Burke Mountain, and AnC Bio Vermont EB-5 Fraud: An Assessment of the State's Role"

Dear Auditor Hoffer:

Thank you for the opportunity to review your draft report. We appreciate your office's work on this matter over these past several years. As you know, in 2018, one of my predecessors requested that your office conduct a comprehensive review of the State's role in the Jay Peak, Burke Mountain, and AnC Bio Vermont EB-5 projects to give the people of Vermont an impartial accounting of what transpired. We were pleased to support your efforts by providing all relevant documents, including transcripts, court filings, and other information.

We hope that this report provides an opportunity to learn from the past and to move forward for the future. We note that the State continues to work to secure immigration benefits for any foreign investors who invested in the Jay Peak projects, and we are pleased that progress continues to be made on that front.

Thank you again.

Sincerely,

A handwritten signature in blue ink that reads "Charity R. Clark".

Charity R. Clark
Attorney General
State of Vermont

Appendix IX

Comments from Management – ACCD

The following is a reprint of ACCD’s response to a draft of this report. Our evaluation of these comments is contained in Appendix X.



Agency of Commerce and Community Development
1 National Life Drive – Davis Bldg, 6th Floor
Montpelier, VT 05620-0501
accd.vermont.gov

ACCD Management Response
March 22, 2024

Thank you for the draft copy of the assessment dated March 11, 2024: ‘The Jay Peak, Burke Mountain, and AnC Bio Vermont EB-5 Fraud’. The matters discussed pertain to events that commenced in November of 2006.

The issues stated in the assessment have been litigated in State and Federal courts and at the United States Customs and Immigration Service (‘USCIS’). The USCIS reversed a ruling that had terminated the Vermont Regional Center (‘VRC’). The VRC currently retains its status as an approved regional center.

The Vermont Federal District Court sentenced William Stenger and others to prison for their willful, elaborate and prolonged scheme to defraud the EB-5 investors and deceive ACCD officials. Mr. Stenger’s deceptive conduct is described in detail in the attached memorandum. Click here: [Sentencing Memo](#). See especially pages 62, 63, 82, 87, 90, 91 and 96.

The Federal District Court and the Second Circuit Court of Appeals rejected claims that ACCD and Vermont officials engaged in misconduct. The Second Circuit observed that ‘... [A] reasonable official could have responded in any number of ways to the facts that came to light over time about the Jay Peak fraud. Officials responded to the emerging allegations about the projects by launching an investigation of the developers, requiring amendments to the offering documents, and ultimately taking control of funds and overseeing their expenditure.’ Click here: [Second Circuit Opinion](#).

Multiple state court lawsuits ended with the dismissal of more than one hundred claims that investors made against state officials. The remaining claims against ACCD were resolved in a settlement agreement between investors and the State of Vermont. That settlement, approved by the court in October 2023, partly requires Vermont to assist investors whose immigration petitions were denied. Vermont has already helped some investors to obtain legal resident status and our continued efforts will protect investors who qualify for green cards and may reduce the settlement cost to Vermont taxpayers by as much as \$4 million.

ACCD’s sole remaining responsibility is to maintain its EB5 regional center status with USCIS. Without the regional center designation, investors without green cards would need to find a new sponsor in order to obtain immigration status. Loss of the designation would harm Vermont taxpayers as well, by impeding the State’s ability to fulfill the terms of the settlement agreement.

Please note that the immigration status of Jay Peak and Burke investors is still being determined by USCIS. ACCD is working with the Receiver and investor representatives to demonstrate to the USCIS that the Jay Peak and Burke projects created more than 6,000 jobs. At least 424 of 564 Jay Peak investors have already obtained green cards, and we are working to increase the chances that many more will succeed. Evidence compiled by the Department of Financial Regulation shows that the 116 Burke investors have a very strong case for immigration status.

Thank you.

Joan Goldstein |Commissioner, Department of Economic Development



Comment 1
Comment 2
Comment 3

Appendix X

SAO Evaluation of ACCD's Comments

In accordance with generally accepted government auditing standards, the following tables contain our evaluation of ACCD's management comments.

| Comment # | Management's Response | SAO Evaluation |
|-----------|--|---|
| 1 | <i>ACCD is working with the Receiver and investor representatives to demonstrate to the USCIS that the Jay Peak and Burke projects created more than 6,000 jobs.</i> | <p>We do not opine on the accuracy of ACCD's statement, but we believe that additional context is needed so the reader does not infer that the Jay and Burke projects created 6,000 local full-time jobs. Pages 10 and 11 of our interim EB-5 report provides detail on how jobs were calculated under the EB-5 program in place at the time of the Jay and Burke projects. In brief, USCIS relied on economic models to determine the extent to which direct and indirect jobs were created. Indirect job creation numbers:</p> <ul style="list-style-type: none"> • rely on economic model estimates that accrue to numerous downstream industries, • may include induced jobs, which are created when new direct and indirect employees spend their earnings on consumer goods and services, • include jobs that may be temporary, such as those to construct the project, and • are not required to be in Vermont. <p>To illustrate, employment data reported by Vermont's Department of Labor's Quarterly Census of Employment and Wages program, shows that Orleans and Caledonia counties (where Jay Peak and Burke Mountain are located) collectively have almost the same number of private sector jobs in the third quarter of 2023 as they did in the fourth quarter of 2006 (when Jay Peak began raising EB-5 funds).</p> |
| 2 | <i>At least 424 of 564 Jay Peak investors have already obtained green cards, and we are working to increase the chances that many more will succeed.</i> | <p>The 424 Jay Peak investors with green cards reported by ACCD differs from data used in our analysis, which shows that 410 Jay Peak investors received their green card. As a result of our query of ACCD on the basis for their figure, we found that there was some ambiguity in the receiver's immigration status spreadsheet for 14 investors. Our report uses the most recent information reported by investors to the receiver while the ACCD data used older information contained in the spreadsheet. As we acknowledge in the report, because the receiver relies on investors reporting on their status, the numbers being reported may not be entirely correct.</p> |
| 3 | <i>Evidence compiled by the Department of Financial Regulation shows that the 116 Burke investors have a very strong case for immigration status.</i> | <p>The receiver provided us with a list of 121 investors in the Burke Mountain Resort.</p> |