

Friends of Mount Sunapee



Board of Directors:

Mount Sunapee from Gunnison Lake, Goshen

Jolyon Johnson, DVM
President
Sunapee

To: Governor John Lynch
From: Tom Elliott, Friends of Mount Sunapee
Delivered via email

Linda Dennis
Vice President
Newport

August 11, 2005

Re: Potential for Sunapee Ski Lease Transfer

Randy Richards
Secretary
Sunapee

Friends of Mount Sunapee would like to offer the following perspective and information regarding the potential transfer of the Mount Sunapee Ski Area lease from the current lease operator to another unknown entity.

Steven Edes
Treasurer
Newbury

FOMS believes that such a lease transfer could occur any time with no public involvement and minimal state oversight. We hope that the information contained in this letter will be helpful to you as we all move beyond your rejection of the lease expansion and toward an uncertain future for our ski area, park, and region.

Brenda Shapiro
Sunapee

Catherine Bushueff
Sunapee

Lucretia Hanna
Warner

CAUSE FOR CONCERN

Staff:

Thomas Elliott
Executive Director
Sunapee

In addition to the threats of legal action made against the state by Okemo in June, an August 4th *Union Leader* DiStaso column suggested that regarding Okemo's next move, "you can expect an answer shortly." DiStaso has been correct in the past at foreshadowing the actions of the lease operators. Additionally, bits of news and rumor circulating both publicly and privately suggest that Okemo may not be committed to running the ski area within Mount Sunapee State Park for the long-term. On May 25th, 2005 the *Concord Monitor* reported:

Friends of Mount Sunapee advocates for protection of Mount Sunapee State Park for its essential public values; conservation of the Lake Sunapee watershed and Sunapee highlands; and preservation of the unique character and natural beauty of the rural communities in the mountain's shadow.

The Muellers have received offers from other ski area operators who want to do business with them. "The deal of a century seems to come along every other week," Gamble said. He would not specify what those offers were but said they make investing in Mount Sunapee seem less appealing.

This quote is consistent with what General Manager Jay Gamble reportedly told several dozen mountain employees last November. According to multiple attendees of the pre-season meeting of employees, Gamble made the somber prediction that "if the expansion doesn't go through, we likely won't be here for much longer."

WHY WOULD OKEMO LEAVE?

Gamble's prediction is understandable in light of many profitable developments elsewhere for his employers this summer. The Sunapee ski lease is owned by Triple Peaks LLC, the parent company of the NH-registered Sunapee Difference LLC as well as two other sister holding firms for Okemo Mountain Resort and Crested Butte Mountain Resort. Despite a disciplined media message by TPLLC owners Tim and Diane Mueller that their business is "not about the real estate, it's about the skiing," TPLCC is stunning the ski world and residents of Crested Butte, Colorado with an aggressive and profitable real estate strategy. Numerous news articles about the exploding real estate activities of TPLLC are readily accessible through a simple Google News search. One story in particular will make this point most explicit:

The Denver Business Journal
Monday, July 25th, 2005

Resort complex a fast sell: An 89-unit luxury condominium project at Crested Butte Mountain Resort's new Mountaineer Square base development sold out this weekend for \$80 million.

Buyers put the units at The Lodge at Mountaineer Square under contract in only six hours, creating Gunnison County's largest one-day real estate sale. The previous record was \$7 million in 2002 for 14 ski-in, ski-out lots at the Crested Butte ski area, located near the town of Gunnison in southwestern Colorado.

The condo project is the first phase of the ski area's new Mountain Square base development. The project also will include retail shops, restaurants, a spa/fitness facility, conference center and amphitheater.

The condos were sold by VIP lottery at the home of the Crested Butte ski area's owners, Tim and Diane Mueller, at 11 a.m. Sunday, July 24. The last property went under contract just before 5 p.m. that day.

More than 300 reservations had been made for the 89 available units. The properties range in size from small studios to four-bedroom residences, and prices went from \$325,000 to \$1.9 million.

The Lodge at Mountain Square is scheduled to break ground July 27.

The Muellers of Vermont purchased the Crested Butte Ski Resort from former, longtime owners, the Callaway family of Georgia, in 2004 for undisclosed terms. The Colorado resort's new ownership entity is Triple Peaks LLC.

Soon after the sale, the Crested Butte resort's president and CEO, John Norton, resigned and Tim Mueller replaced him in those jobs. [emphasis added]

Since taking over Crested Butte in March of 2004, TPLLC has announced its intentions to develop more than 1,000 units of housing and custom-build house lots in Crested Butte. By the end of the decade, assuming federal approvals for additional ski terrain and a continued strong resort real estate market, TPLLC will easily gross over a billion dollars in real estate sales in Colorado alone. This reflects and magnifies the very same strategy used to turn Okemo Mountain in Ludlow, Vermont into a real estate gold mine during the previous five years.

Operating a small and marginally profitable (estimated at less than \$1 million/year) Sunapee ski area confined to the limits of the current leasehold boundary is clearly not the business model Okemo prefers. Without the leasehold expansion and connected real estate, the Sunapee lease may become an afterthought in the TPLLC empire- or more likely, a managerial headache to be shed.

Even without leasehold expansion in the short or even long term, there are several potential business reasons for TPLLC to retain the Sunapee lease. One is the ski area's proven success and profitability, albeit small when compared to other company revenue sources. As explained in greater detail below, the lease serves as important collateral for the company's substantial debt load. Sunapee's prominence in the Boston skier market greatly aids TPLLC in its efforts to attract skiers to its sister resorts as well.

SUNAPEE LEASE TERMS AND TRANSFER LANGUAGE

On page 10 of the Sunapee lease (available at:

http://friendsofmountsunapee.org/categories/resources/pdf_files/SunapeeLease.PDF)

Section 22 reads:

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

[As defined in the first paragraph of the lease, the word “State” refers to the State of NH's delegated agent, the Department of Resources and Economic Development. Associated DRED policy documents further delegate responsibility to the Commissioner of DRED.]

No other precedent-setting decisions, written DRED policy, or lease language further control the lessee's authority to transfer its full or partial interest in the Sunapee lease. As guaranteed by the contract, **Okemo can sell or assign the Sunapee lease to any other entity, at any time, and with no required public involvement or process.** It appears that no approval from Governor & Council is required. It is unclear whether or not the Attorney General's office is required to review a lease transfer.

HISTORY OF LEASE TRANSFERS BY OKEMO TO DATE

Since the lease commenced on July 1, 1998, it has been assigned four times:

July, 1998: Okemo Mountain, Inc. assigns a collateral interest in the lease to BankBoston to secure financing for improvements to Mount Sunapee ski area.

April, 1999: Okemo assigns full interest to a new NH-based entity, Sunapee Difference LLC

November, 2001: Sunapee Difference, LLC assigns a collateral interest to KeyBank of Ohio to secure a \$30 million mortgage loan.

[March, 2002: Newly-formed Triple Peaks, LLC acquires Sunapee Difference LLC. No lease transfer recorded, though the parent company TPLLC essentially owns the lease.]

March, 2004: Sunapee Difference, LLC assigns a collateral interest to KeyBank of Ohio to secure an undisclosed refinancing related to TPLLC's acquisition of Crested Butte Mountain Resort.

Lease transfers are recorded in both Sullivan and Merrimack County Registry of Deeds, giving the public only one way to learn about their state park's involvement in the leaseholder's various financial dealings, after the fact.

In each case, DRED Commissioners Robb Thompson and George Bald approved the lease transfers with no public input process or information release. Members of the Mount Sunapee Ski Area Advisory

Committee, appointed by Governor and Council to aid the Commissioner in reviewing all leaseholder actions, learned of the lease transfers in the newspaper as late as six months after their approval. The initial leasing process subjected Okemo to a rigorous (though non-public) review of its fiscal fitness. Whether subsequent lease transfer processes likewise protected the public interest is indiscernible.

It should be noted that Commissioner Bald did obtain the signature of an assistant Attorney General for the fourth assignment to KeyBank of Ohio in March 2004. The previous three transfers show no record of AG approval on the documents recorded with the county registry. It remains unclear if AG approval or even review is required before the DRED Commissioner approves a lease transfer.

CONCLUSIONS AND RECOMMENDATIONS

Should TPLLC decide to transfer the Sunapee lease again, it appears that it can do so with only the minimal public oversight provided by the DRED Commissioner's signature. An agreement to sell or sublet the Sunapee ski area lease to any entity of Okemo's choosing could come quickly and with little warning. If leasehold expansion is as essential to Okemo's continued viability at Sunapee as they claim, it would be understandable for them to unload the lease and concentrate on other more profitable ventures. When weighed against the company's enormous opportunities in Colorado and with only so many hours in the day, TPLLC may simply become too successful to bother with Sunapee much longer.

This history and the lease language itself lead to the troubling conclusion that Okemo can negotiate a new arrangement with any lawful entity of its choice in secret, present a lease transfer to DRED Commissioner O'Kane at will, and demand its approval in short order under the "shall not be unreasonably withheld" clause of the contract. The DRED Commissioner appears free to grant the state's approval in secret without any process or consultation with your office or the Attorney General.

While there could be positive results from the ski area within Mount Sunapee State Park being in the hands of a different operator, the potential negative consequences merit proactive research and engagement. The ramifications of a having new leaseholder thrust upon our mountain, park, region, and state are enormous, and deserve a full understanding before a single signature by an unelected department head seals such a critical decision.

In preparation, the state should explore and verify the history, authority, and background of the four times that the Mt. Sunapee Ski Area lease was assigned since the agreement commenced on July 1, 1998. The state should also be prepared for a lease transfer request in the near future, and be ready to take action to prevent a non-public transfer of our essential public trust resource. If one is proposed, DRED must be compelled to conduct an open public process. The Mount Sunapee Ski Area Advisory Committee should be consulted, and a full independent vetting of the new lease operator should be conducted before any assignment is approved.

Thank you for your continued vigilance in the protection of Mount Sunapee State Park and all our state's treasured state parks and lands. Please let me know if FOMS can be of any further assistance.

[original signed]

Tom Elliott
Executive Director