

Vail Homeowners Association



The Fourth PEC Meeting Results and What Is Needed To Save The Sheep

August 17, 2019

Things did not get better for Triumph at the fourth PEC meeting. Even though Triumph tried to dominate the meeting, taking over two hours to make its presentation, Commissioners were still concerned about the size of the project, the absence of any rendering showing both the project and the massive rock fall berm, the location of a bus stop at the west end of the project (against the recommendations of the wildlife experts), the adequacy of parking, Triumph's insistence that some dogs be allowed on the project and other issues, but the main issue was the wildlife mitigation plan. At the end of the meeting, it appeared that the project was going to be rejected, so Triumph asked for continuance to the August 26th meeting—presumably to make more changes in the project in the hope of getting it over the finish line.

Interestingly, at this meeting, for the first time, a number of VR employees showed up, many from management, to complain about the need for more employee housing. It is more than ironic that VR management would be complaining to the TOV when they could have complained to VR. After all, VR could readily build employee housing on its Ever Vail property without causing any environmental impact.

Triumph’s Non-mitigation Plan. The biggest change that Triumph presented at this fourth PEC meeting was its Plan B mitigation plan—under which the sheep would be even worse off because it was actually no plan at all. It was just more of the same, trying to avoid the problem its project would create, since Triumph’s original plan was a bunch of smoke and mirrors that understated the potential harm to the bighorn sheep and proposed scientifically unfeasible mitigation. According to Triumph’s original plan, its project would only have a small impact which it proposed to offset by enhancement of about 15 acres in the NAP site; Triumph claimed that the plan, together with sheep foraging in displaced areas under cover of darkness, would suffice to mitigate the harm from its project. That plan ignored the fact that the sheep were not going to leave their historic foraging area to move to the NAP site, and sheep did not forage at night. Fortunately for the sheep, the TOV brought in independent wildlife experts who immediately exposed the folly of Triumph’s plan.

For its Plan B version, Triumph proposed abandoning all pretext of doing any actual mitigation and offered instead what seemed to be double speak—on the one hand, Triumph said it would give the TOV \$50,000 of “seed money” (later raised to \$100,000) which the TOV could use in a variety of ways, but if the money was not used within five years it should be returned to Triumph; on the other hand, it said it would only enhance an area that is “quantitatively equivalent to that originally proposed on the NAP Parcel—namely 14.3 acres of enhancement.” Triumph has not explained whether it is conditioning its contribution to just 14.3 acres of enhancement or whether it is making two proposals, both a contribution of \$100,000 and, additionally, funding the enhancement of 14.3 acres, but either way Triumph has not met its obligation to mitigate the harm from its project.

The Sheep are worse off under this latest “plan.” Regardless of whether Triumph intends two or just a single offer, either way there are a number of reasons why this latest plan does not meet Triumph’s obligation under the Town Code.

1. The Town Code makes it clear that it is Triumph’s obligation to identify and mitigate the harm from its project. To the extent that Triumph is only agreeing to mitigate 14.3 acres, it is continuing to understate/under identify the harm that will result from its project. The VHA has estimated that due to the “zone of influence” of the project which will extend out in all directions, the negative impacts on bighorn habitat will be upwards of 80 acres. Triumph is obligated to mitigate that entire harm.
2. Under this latest mitigation plan, Triumph is seeking to dump its mitigation obligation onto the TOV so that the TOV (and its taxpayers) will be obligated to pay all sums in excess of \$100,000. But the Town Code does not authorize a developer to “buy off” its environmental obligation nor does it authorize a “capping” of that obligation through the guise of a donation. The full extent of the required mitigation is Triumph’s obligation and its obligation alone. And it doesn’t matter that the harm is taking place on adjacent land owned by the TOV and the USFS. Triumph is not entitled to a pass because the harm falls outside its property boundaries.
3. Dumping the responsibility for developing a mitigation plan onto the TOV makes the sheep even worse off because now there is no plan at all. Triumph isn’t developing a plan nor is the TOV, and as VHA has previously reported, the USFS is at least a year away from having a plan to treat and enhance its land. This makes it clear that no mitigation is going to take place in the near-term, certainly not in the few months remaining before winter sets in. That is particularly concerning in light of the experts’ recommendation that mitigation be completed and demonstrated effective before any project approval takes place. Otherwise, the PEC is just guessing and hoping that mitigation will work and that is no plan at all.
4. Triumph is still clinging to allowing dogs in the Townhouse part of the project. The wildlife experts and CPW have recommended that no dogs (except certified service dogs) be allowed on the project.

The Booth Heights project still does not meet the design criteria. Beyond the environmental harm that has not been mitigated and for which there is no realistic plan, the Booth Heights project fails to meet the other design criteria.

Criteria A. Triumph still has not made any reduction in the mass, scale or density of the project. There are still four-story elements fronting and just off of Frontage Road, still a massive project where there is now pristine forest and way too many people (270 to 350 residents) would be shoehorned into the project. Booth Heights would stand out like a sore thumb at the gateway to Vail.

Criteria B. The renderings produced, so far, make it clear that the project is incompatible with East Vail, and Triumph has yet to produce renderings showing the project and the rock fall berm together, probably because it will appear even more incompatible with East Vail. In addition, one Commissioner requested that this be a “no smoking” project to guard against wildfires. It is unclear whether Triumph is willing to do so.

Criteria C. Although Triumph has agreed to save the few trees to the south of the project (between the project and Frontage Road), there are no provisions for any south-side landscaping to screen the project, thus making it appear even more massive.

Criteria D. There are a number of deficits for this criterion. (1) Parking for the apartment units is still woefully inadequate. (2) At the behest of the Public Works department, Triumph plans to build a bus turn-around stop at the west end of the project in the most environmentally damaging location for the sheep. This is contrary to the recommendations of the wildlife experts and CPW. Putting a bus stop and pedestrian access at the west end of the project will effectively cut the sheep off from two acres of prime winter grazing land, making their situation even direr. (3) The traffic analysis, claiming there will be just 17 morning peak-hour trips and 24 evening peak-hour trips from the project, is on its face absurd. That becomes clear when it is revealed that the apartment resident trips are based on Lions Ridge and Timber Ridge observation—core town properties within job walking distance for many residents and Town House trips are based on the unfounded assumption that most will use the bus service. (4) There also is not yet a plan to provide safe pedestrian transit under the East Vail I-70 interchange. This should be the responsibility of Triumph Development, not the TOV.

Criteria E. As explained above, Triumph has not presented a realistic and sound mitigation plan, and it has understated the harm its project will cause. Triumph’s EIS should be rejected, and it should be required to submit a new EIS before any further consideration of this project. The new EIS should expressly mandate that the mitigation plan should start and be completed before any construction commences. In addition, there has not been a proper evaluation of whether the planned massive excavation on the site could trigger a land or mud slide nor does it appear that the proposed rock fall berm is adequate.

Criteria F. Triumph has ignored the many provisions in TOV planning documents about the necessity to protect and sustain the natural environment, including its wildlife.

In other words, as one Commissioner observed, this is the wrong project, in the wrong place and at the wrong time.

What about the sheep? One positive effect of the Booth Heights proposal is that it has shined a much needed spotlight on the bighorn sheep that has raised community awareness about the plight of the herd. Quite apart from, and in addition to Triumph's obligation to mitigate the harm from its project, it is now clear that a more comprehensive effort is required to save the sheep. It is no longer a matter of 14.3 acres or even 80 acres. Sheep habitat has been shrinking for decades and has now reached a critical point where major habitat restoration of the entire winter range is needed. If Triumph's project were approved and there was restoration of a full 80 acres, that may not be enough. There is now strong evidence that the entire remaining sheep habitat needs restoration. According to the wildlife experts, there is "high importance" to do at least the following:

1. A GPS collar movement study of the herd needs to be done to provide base-line data about the sheep's movement and use of the area to better inform future mitigation efforts. It should involve at least 10 to 12 sheep. At least 3 rams should be included because rams forage in the area above the Vail bus maintenance facility, and Vail is on the verge of a massive expansion of that facility which will include 144 housing units and an uphill solar farm. The movements of the sheep should be tracked over at least a two-year period, and the resulting data should be periodically posted to a publically accessible website.
2. The TOV foraging area to the west of the project site needs to be enhanced. That will require removal of any jackstraw logs, trimming of shrubs and undergrowth and thinning of woodland areas to provide more open space for sheep foraging. (Sheep will not forage in forested terrain because of predator danger). A controlled burn would be most effective at clearing and rejuvenating the area but may not be acceptable to the surrounding community. If a controlled burn is not possible, logs and trimmings should be stacked and burned in place, and the open space foraging areas should then be fertilized. Fertilization should be repeated three years later, and burned and/or fertilized areas should be periodically treated with herbicide to prevent native vegetation from being replaced by cheat grass or other noxious weeds.
3. The USFS foraging area to the north and west of the project site also needs to be enhanced. Rather than waiting for the USFS to create an enhancement plan for its land, permission should be sought from the USFS to authorize a third-party to treat and enhance the USFS foraging areas that are below (to the south of) the wilderness boundary. Wilderness rules will probably prevent any meaningful enhancements in areas with that designation, but much of the foraging area on USFS land is outside the wilderness boundary making enhancement possible. In those areas enhancement should entail clearing of jackstraw logs, trimming of shrubs and thinning or cutting back of woodland areas to create more open space. Because of USFS rules, controlled burns and/or fertilization may not be possible, but the logs and trimmings should be stacked and burned, and burn areas should be periodically treated with herbicide to prevent native vegetation from being replaced by cheat grass or other noxious weeds.

This would be a large-scale project that would require the input of experts to dart and install the GPS collars and track the sheep movement: perhaps other experts to map and plan the clearing and enhancement that needs to be accomplished on the TOV and USFS land, perhaps even more experts for burns and fertilizing and a workforce to do the actual work. Most important it requires a supervisor or supervising entity with authority to coordinate and direct the entire process. And finally, it needs a funding source. While Triumph would presumably contribute \$100,000 if its project is approved, that will not be enough to do the full scope of work, and there is a probability that Triumph's proposal will be rejected, in which case all the funding will have to come from elsewhere.

If the Booth Heights project is approved, the supervisory role for at least 80 acres should be filled by Triumph; after all, that is its obligation. However, the remainder of project will still need supervision, and if Booth Heights is rejected, the entire project will need supervisory control. It would seem that

would be the responsibility of the TOV, but so far, aside from some trail clearing, not much has been done in that regard.

While such a large-scale project is outside the confines of the Triumph proposal, the PEC does have environmental responsibility for the entire community. The VHA urges that regardless of what it does with the Booth Heights proposal, the PEC should urge the TOV to spring into action and develop a plan, complete with funding, to enhance the bighorn sheep winter range.

What's next. The next (and fifth) PEC meeting will be held on **Monday, August 26, beginning at 1 p.m.** The agenda will not be posted until Friday, August 23, so only then will the public learn what, if any, revisions Triumph will propose. Nonetheless, this will be a very important meeting because, in all probability, the Booth Heights proposal will get approve or rejected at that meeting.

IF THIS IS A MATTER THAT CONCERNS YOU, THE VHA URGES YOUR ATTENDENCE AND FOR YOU TO MAKE YOUR VIEWS KNOWN. THE PEC CANNOT CONSIDER YOUR VIEWPOINT IF YOU DO NOT EXPRESS IT.

MARK YOUR CALENDAR FOR NEXT MONDAY, AUGUST 26th, 1 PM.

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