



Tract E Covenant Protected Privately Owned Publicly Accessible Open Space, Located Between Vail Village and Mill Creek Circle.

# *Letters to Vail*

## **VAIL HOMEOWNERS ASSOCIATION**

### **Resource Management**

#### **Protection of Privately Owned Covenant Protected Open Space**

**December 11, 2023**

Illustrated above in lemon yellow are portions of Tract E and Lot D-1 covenant protected, publicly accessible, privately owned open space that were acquired by the owner of the adjacent lot through a claim of adverse possession and was proposed to be rezoned from Agriculture/Open Space to Public Accommodations.

Rust colored area was being considered to be sold to the same adjacent land owner by Vail Resorts, who owns Tract E, but the TOV rejected the redevelopment proposal in 2017. The light green area is the TOV's Pirate Ship Park.

The landscape character of the lemon-yellow portion of Tract E was significantly altered by the landowner in the Spring of 2023 without first receiving prior approval by the Town of Vail. Approval was subsequently authorized by the TOV. Litigation seeking an injunction against the property owners, alleging covenant violations, was brought by adjacent property owners to halt the construction. The property owner completed the construction and responded to the claim for an injunction after the fact.

The status of open space protection for privately owned open space remains an unresolved matter for which VHA has requested the TOV to take action to defend against and permanently protect privately owned open space from incursion by the land owner and adjacent property owners that are inconsistent with the protective covenants.

**Preservation of Private Covenant Protected Opens Space:** [VHA is acutely concerned about the enforcement of Vail Village Tract E and D-1 open space covenant provisions.](#) VHA requested that the TOV TC consider the applicable protective covenants within the context of the Tap Room Deck Colorado Court of Appeals decision and the 1971 TOV/VA(VRI) covenant agreement for Tract E and D-1. The court decisions regarding the Tap Room and the 1971 covenant agreement between the Town and Vail Resorts, if enforced by the TOV and adjacent property owners, protects the public right of access to this valuable piece of open space between Golden Peak and Vail Village.

Decisions affecting the open space status of covenant protected open space apply to large tracts of land throughout Lionshead, Vail Village and eastward to the East Vail Interchange. VHA is concerned with the outcome of court decisions affecting property that may have similarities to the Tract E situation. Concern is that there may be a domino effect should an adverse court's ruling create copycat instances that further erode the integrity of the TOV oversight of both public and privately owned open space. If this were to occur, the result would profoundly change the character of Vail.

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VHA strives to provide clear and concise discussions of matters affecting the Vail community in the belief that an informed citizenry will be an engaged citizenry. Our intent is to promote more citizen involvement and community discussions of issues facing the Town. If these are issues that concerns you, please make your views known to candidates and [town officials](#). By joining with VHA, as a member, paid-subscriber or reader, you can add your voice to sustain what is good about our community and to shine a spotlight on important issues. See back editions of VHA communications on the Association's website.

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To receive VHA letters and reports as a Reader, Paid-Subscriber or Member.

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