



Tract E Recreational Open Space Tract, a portion of which may be sold to a developer by VRI.

VAIL HOMEOWNERS ASSOCIATION, INC.

The Slippery Slope of Fiddling with Vail's Open Spaces Kicking the Parking Can Down the Road

November 22, 2016

Vail is blessed with generous open spaces, both within and surrounding the town. That is part of Vail's charm, and it is no accident that it exists. It was part of the original vision for the community, one that was protected by restrictive covenants that pre-dated the formation of the Town of Vail (TOV). That vision also informed the original zoning when the Town was formed in 1966. Now 50 years later, that vision may be at risk by proposals that are working their way forward on the Town Council agenda, some with astonishing speed. They are: (1) plans to acquire and develop currently open space U.S. Forest Service land, (2) the possible use of the Donovan Park Middle Bench for affordable housing and (3) a plan to develop a private lodge on Hanson Ranch Road where the developer seeks to acquire and use "Tract E" open space. All three of these proposals run head-on into decades of community commitment to avoid the conversion of open space for development or private ownership.

At the same time, the Town Council has once again kicked the parking issue down the road. The public safety issues arising from on-street parking continue to grow and will, once again, not be addressed for almost another year or longer. Should an expensive housing initiative for middle income residence take precedent over the pressing public life safety issue of Frontage Road parking?

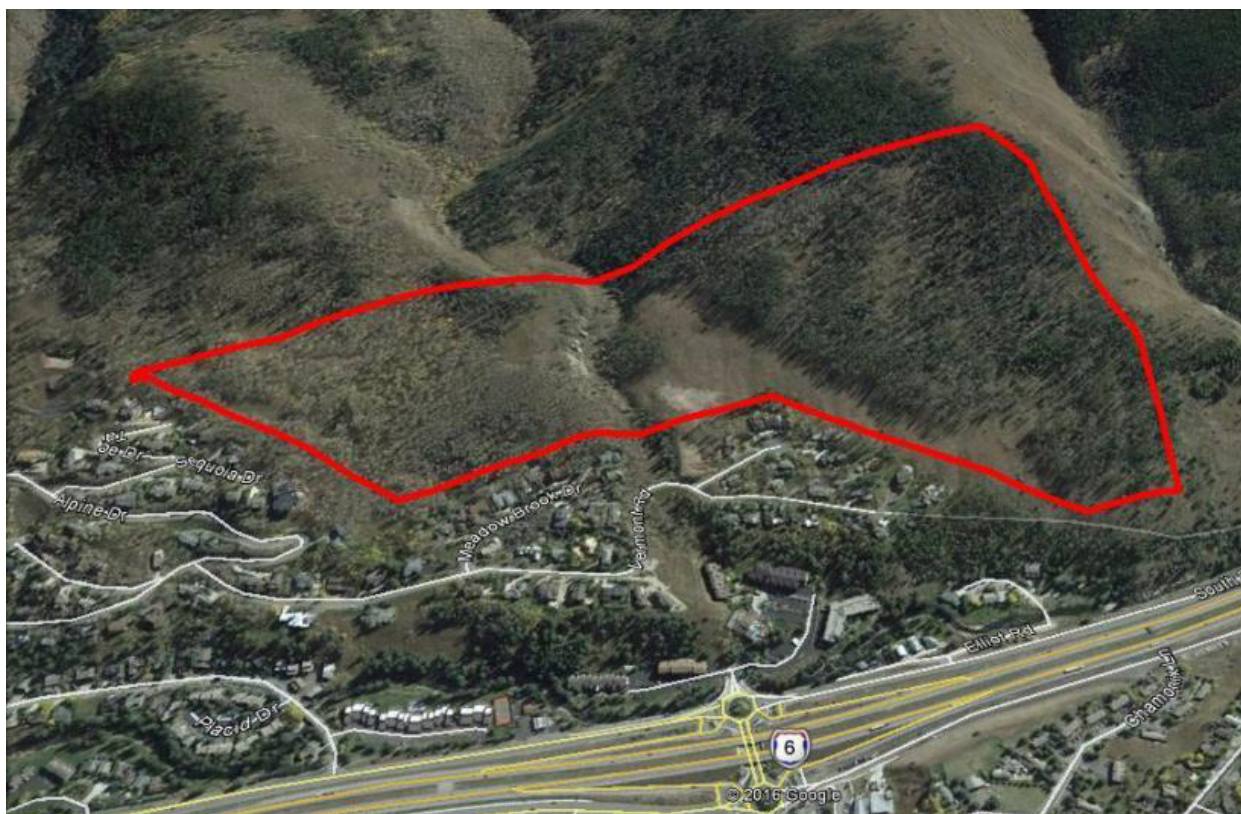
U.S. Forest Service Land Acquisitions. At a recent Town Council meeting, it came to light that many months ago the TOV [initiated consideration of acquiring USFS land](#) for the purpose of building affordable housing for local residents. Apparently, the TOV has concluded that there is insufficient available land within the Town to adequately address affordable housing. In keeping with long-standing town policy to provide housing within the Town's boundaries, the TOV is apparently seeking to increase its borders so that more affordable housing can be developed.

As a first step, a study was commissioned by a prominent land acquisition firm, and it has now been completed. The study evaluated [the feasibility of eleven USFS parcels](#) (see [location maps](#) and [parcel evaluations](#)) distributed

throughout the community along the Town's boundary. As a result, it was recommended that the Town select three or so sites for acquisition and development. Two of the more prominent areas in the study are:



The red area, just to the east of Potato Patch is one of the parcels. The area in green, although not one of the parcels evaluated, has similar topographic characteristics that could make it desirable for even more development.



Three of the parcels (contained within the red outlined area) are located on the slopes above the Matterhorn and Highland Meadow neighborhoods in West Vail, south and west of Donovan Park, which if consolidated, would create a significant housing development opportunity.

Overwhelming the Public Process: The TOV is moving very quickly with the process to acquire the parcels it selects. The Council has already conducted site visits to narrow the choices, although the selected locations have not

yet been publicly revealed. The Council has also initiated proceedings to amend the Comprehensive Open Lands Plan. That plan was created as part of the 1994 TOV/USFS boundary adjustment proceeding (LOA). The LOA proceeding was sparked when the community was blindsided by a USFS exchange associated with the Lodge at Vail. The purpose of that proceeding was to transfer ownership of Forest Service lands that were within the TOV boundaries to the Town and to remove certain USFS parcels from within the Town through boundary adjustments. In doing so, the TOV and USFS were careful not to engage in any transaction that would compromise the Town's self-imposed prohibition against acquiring exchange land for development purposes, and certain lands were not transferred over because it was believed that they would be better protected as open space under Federal control.

Incrementally reversing the intent of a Town Plan: The Comprehensive Open Lands Plan that was completed as part of that process identified several USFS parcels beyond, but in close proximity to the Town boundary that the Town of Vail and the USFS might consider as part of a future land exchange. Only two of the current eleven parcels on the proposed list for resident housing acquisition were included in that plan, thus, the necessity to amend the Plan. What those amendments are going to be and what land Vail will seek to include has not yet been revealed. (See discussion below concerning the Donovan Park Middle Bench).

Despite that, Vail is moving quickly, acquisition of federal land is a complex process. Federal authorities require that "fair market value" be paid for the land, as determined by an official appraisal. The usual acquisition method is by "inholding" trades; whereby, the purchaser buys privately owned "inholding" property within or adjacent to the national forest to exchange for the desired USFS land. Also, not yet revealed is how Vail intends to acquire the USFS lands.

Keeping the Public in the Dark: So far, the TOV has not asked neighbors or the community what they feel about such acquisitions or more development, even though the preliminary analysis indicates that some of the parcels may become political "hot buttons." There also has been no disclosure about the nature or extent of public participation in this process.

The lack of any public information and transparency about this initiative raises a host of questions. Any type of land acquisition of this nature would unquestionably be a very expensive undertaking. Having just committed \$50 million to a ten-year housing plan, where is the money going to come from to buy USFS land? Or, is this somehow intended to be part of the ten-year housing plan? And, if so, is \$50 million sufficient to both buy the land and build the housing, or will all or most of the money have to go to land acquisition?

County Housing Tax Failed at the Polls: Given the outcome of the recent election on the Eagle County proposal to increase sales taxes to pay for affordable housing—[it was defeated by 63% of the vote](#)—is the Vail housing plan itself, which depends on tax increases to fund years four through ten, even still viable?

Who pays for Vail's housing plan? If the land is acquired, how is the necessary infrastructure going to be financed? These new neighborhoods will require utilities and roads. Providing them is also going to be an expensive undertaking. And, it is not just the roads internal to the neighborhoods; several of the parcels will have to be accessed through existing neighborhoods. Those roadways may well, also, have to be improved to handle the increased traffic. Where will the funding come from for those improvements?

What about the impact on the adjacent neighborhoods? If, for example, either the Potato Patch or Highland Meadow sites were selected, hundreds of additional people would have to transit those neighborhoods. What will that do to the character and quality of life of those neighborhoods? And, what would be the impact on the property values of those neighborhoods if a large tract of affordable housing were built in their backyards? Of course, the same questions would apply to most of the rest of the proposed sites.

Vail taking population selectivity to a new level: The housing being targeted by this initiative appears to be solely for middle income wage earners. There still does not appear to be any consideration for the housing needs of workforce employees or seasonal workers. Apparently, at least by inaction, the Town Council has taken the position that providing housing for that class of employees is going to be left to private employers. Is it prudent to expand the population of Vail without addressing those needs? Are the land exchanges for middle income housing to be followed by exchanges of land on Vail Mountain for seasonal service workers? This was an electioneering proposal that was making the rounds in the election just past.

This initiative takes the social engineering aspect of population selectivity in the Vail ten-year housing plan to a new level. What does this do to the character of Vail, or the quality of life, or the environment? Are these issues that should be addressed? Does this initiative mean that the TOV is abandoning any efforts to forge a county-wide solution to the housing crisis?

VHA does not oppose affordable housing, just the opposite. VHA has long urged that the availability of affordable housing is one of Vail's most pressing problems. There is a clear need for a comprehensive plan for both middle class and workforce housing. But, crafting that plan should be a public process, with full transparency and public input at each stage of the process. It could be argued that the recent county tax defeat was due, at least in part, to the lack of specificity in the proposal. There is no reason that Vail should find itself in the same fix.

Playing favorites in Public Hearings: Before going further, VHA believes the Town Council should make an extraordinary effort at complete transparency about this initiative, to give detailed and timely notice to all affected property owners and to conduct a balanced public hearing and review process. This would include suspending any efforts to give preference or organizational support to land exchange advocates. It should be done at the outset, not after the train has already left the station. Every effort should be made to give ample and timely public notice that will allow public input to be brought before the Council for discussion.

Donavan Park Middle Bench. Donovan Park is one of the largest areas of pristine open space within the TOV. Its purchase was funded with Real Estate Transfer Tax (RETT) funds, which were restricted to be used solely for the acquisition of open space within the TOV. Importantly, although there have been several efforts over the years to authorize the use of RETT funds for affordable housing, that was never done.

In the early 1990's there was a proposal to use part of Donovan Park for affordable housing. The proposal was aggressively opposed by neighborhood property owners. The intensity of neighborhood opposition peaked when housing for seasonal workers was one of the options being contemplated. The housing proposal went into hibernation when neighbors mounted a legal challenge. Since then Donovan Park has been maintained as an open space park.

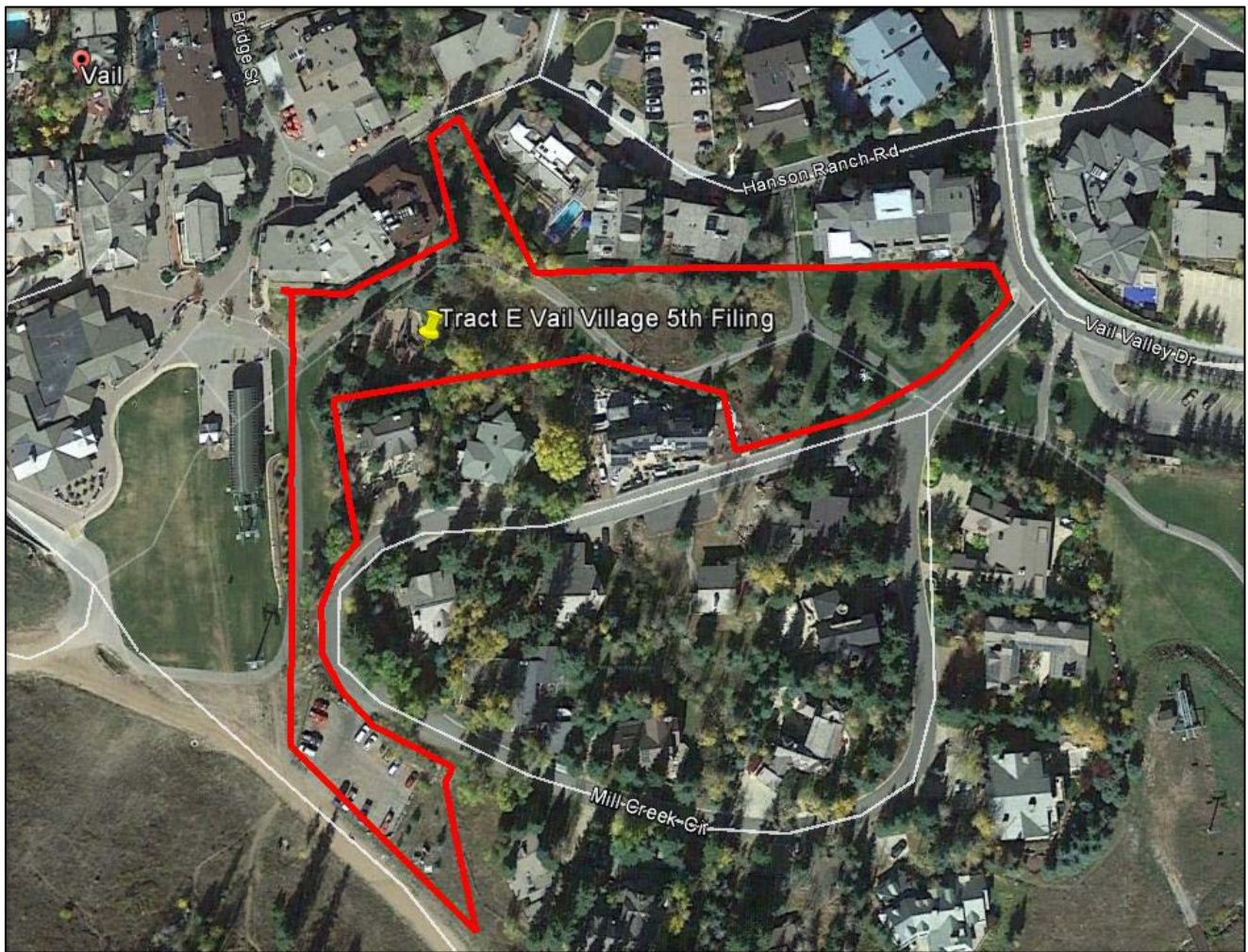


The Middle Bench of Donovan Park, right of roadway, is being put at play in the Town's residential housing strategies.

It now appears that the Middle Bench of Donovan Park may end up on the Town of Vail shopping list to convert land originally acquired as open space to residential development. When the Town council was discussing amending the Comprehensive Open Land Plan at the recent Council meeting, the suggestion was made that the Middle Bench of the Park should be included so it could be considered as an option for affordable housing.

No action was taken at that time, but residents should not be surprised if Donovan Park is on the list when the proposed amendments to the Plan are finally made public. As already noted, the Town Council appears to be moving very rapidly to put its housing plans in place, so the amendments to the Comprehensive Open Land Plan could be forthcoming at any time.

Mill Creek Circle Open Space. One of the key areas in the heart of town that was originally set aside as open space is Tract E of the Vail Village 5th Filing. The open space character of the tract is protected by a covenant on the land. As part of the original development of Vail, the site is now owned by Vail Resorts. It is situated between the buildings on the south of Hanson Ranch Road and the homes along the north side of Mill Creek Circle. It contains the Pirate Ship Park, and the Vail bike path and pedestrian walkway meander through it. In the past, developers have sought to infringe or acquire parts of Tract E, and those efforts have been successfully fought off. Now, there is a new proposal to acquire a portion of Tract E for private development.



Tract E, Vail Village 5th Filing is outlined in red.

The property in question is the “Kindel” home. It is situated on the south side of Hanson Ranch Road and backs up to Tract E. It was the residence of the TOV’s first mayor, Ted Kindel, and one of the first residences to be built in Vail. The property is surrounded by a split-rail fence which was erected beyond the property boundary in the open space of Tract E, and it has apparently remained there for at least 20 or more years. A private developer has now acquired the property and desires to build a 12,800 sq. ft. ultra-luxury private lodge on the site. As part of the new development, the developer seeks to acquire the “fenced area” portion of the Tract E, either by purchase or through an adverse possession lawsuit. VRI is apparently willing to concede the adverse possession of the fenced area on Tract E; as it is willing to sell the fenced-in area to the developer but is also requiring that the developer buy a much larger portion of Tract E.

The developer claims that it is not seeking to acquire the fenced-in area to increase its zoning density allowance, but its prospectus states to the contrary—that it seeks to “increase the size of the existing lot...to include the fenced area...to accommodate a slightly larger footprint”, which mean site coverage/setback allowances. The developer has also pledged that all improvements in the fenced area will comply with the existing covenants, but the prospectus states that, assuming the developer acquires the property, it wants to “address covenant issues on fenced area” and “create a new Town of Vail Zone District.”

In the photograph below, the fenced-in area is depicted in yellow. VRI wants the purchase to include not only the yellow (fenced-in) portion but, also, all of the orange area. Such a transaction would place a large portion of Tract E in the hands of a private developer. The Vail Town Council has a say whether the proposal can occur or not. VRI, when it has divested ownership of open space tracts, with few, if any exceptions, has always conveyed those tracts to the Town of Vail, including Pirate Ship Park, which is part of Tract E (shaded light green).



There may be obvious advantages for the developer to acquire the fenced-in area and seek to convert it to its own purposes. But, open space preservation advocates are questioning, why force the purchase of the larger area if there is no contest over the fenced-in area? Is part of one of the prime open spaces in the Town being put at risk for profit and cost savings? Is there anything about this transaction that is in the community's best interest?

It is a founding principle of VHA that the open space protective covenants should be rigorously and fully enforced. They are the foundational documents of the Vail community. The developer bought this property with full knowledge of the encroaching fence and the open space covenants on the fenced-in area. There may be no way to stop a sale of the orange portion of Tract E (or for that matter even the yellow portion), but regardless of who is the owner of those portions of Tract E, VHA believes that all of Tract E should be maintained in perpetuity as undevelopable open space. In addition, the Town Council should make it clear as it considers any subdivision and zoning application for that property that Tract E is to be fully and completely maintained as open space.

Venturing Onto The Slippery Slope Of Land Exchanges and The Sale And Use Of Open Space. The concern raised by these proposals is that the balanced relationship between the Town of Vail's development density and the open space environment may be at risk. These proposals also raise the potential for conflict between well-established existing neighborhoods in east, central and west Vail and new, out-of-character development. Importantly, once long established prohibitions are set aside, in some cases, it will signal that other neighborhoods may be likewise affected.

Community Parking and Transportation Issues Buried in Committee. While the Town Council focuses on moving forward with their housing initiative, the parking issue is being ushered off to a "task force." This means that producing a solution to the parking mess is now going to be put off for at least several years (since even once a decision is made there will be a significant planning and developmental period before any concrete steps can be taken). This notwithstanding that the TOV has a commitment from VRI for \$4.3 million for parking expansion, which would go a long way toward funding a solution to one of Vail's most pressing issues. That commitment has been outstanding for 10 years while the TOV has pondered the issue and the cost of additional structured parking has risen.

The 10-member Task force is to be appointed by January but it reportedly is not going to focus on "long-term" solutions which, if true, raise the question of when is the TOV ever going to come to grips with Vail's number one public safety issue? Is it going to take a serious accident or worse to get action on this issue?

The Task Force is to be composed of basically business interests with only one community-at-large member and no public safety advocate. As with the case of all such committees, the outcome of deliberations can be predetermined depending on who is appointed to the committee, so given its reported lack of long-term focus and composition the prospects of a solution do not appear to be great. VHA suggests this is not the way to do the public's business. Overflow parking on Frontage Road has been and continues to be the number one public safety issue for Vail. Public safety should be the highest priority of the TOV. Some have suggested that there is significant private parking inventory that goes unused on any given day. One step that could be taken would be for the Vail Parking Authority

to create a database of all such parking inventory. Given modern technology, it should be a relatively simple process to then create a public reservation system for guests. Even guests without a reservation could be directed to those spaces on a daily basis which would curtail parking on Frontage Road. With such a system in place, the Frontage Road would only have to be used when all available parking was actually being used. Such a system would have the added benefit of informing the TOV about the actual number of parking spaces available and provide the basis for an accurate accounting of the number of additional structured parking spaces that need to be financed and constructed.

At the same time, as the last few years have demonstrated, parking availability is a growing problem, and it should be forthrightly addressed. The time for action has long since passed.

What You Can Do. If these issues concern you, get informed and become involved. Government responds to the public; silence only enables those who would seek to profit in the absence of accountability. Join the Vail Homeowners Association in shining a spotlight on issues that concern everyone.

VHA [Membership:](#)

The Vail Homeowners Association has entered into a sharing relationship with the following “community building” not-for-profit organizations. In this way we increase the reach of our advocacy and together we seek to improve our community in ways that will benefit all. From time to time VHA will report on the agendas and activities of these organizations. This is a non-exclusive relationship and other “community building” not-for-profit organizations may join our endeavors.



Colorado Ski & Snowboard Museum and Hall of Fame
231 South Frontage Road East
Vail, Colorado 81657
970-476-1876
www.skimuseum.net

The museum’s purpose is to preserve and communicate the lore of the modern mountain winter sports movement in Colorado and its contribution to the evolution of Vail and the state’s mountain winter sports communities.

[Read more:](#)



PO Box 100 | Vail, CO 81658
P: 970-680-3525

C: 970-315-2675

www.vailcentre.org

The Vail Centre organization exists to provide learning experiences to those taking responsibility for inspiring Vail and the communities of the future.

[Read more:](#)



Walking Mountains Science Center
318 Walking Mountains Lane | PO Box 9469 | Avon, CO 81620
970.827.9725
www.walkingmountains.org

The mission of Walking Mountains is to awaken a sense of wonder and inspire environmental stewardship and sustainability through natural science education for the Vail community and Eagle County.

[Read more:](#)

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