



Is the end of the road near for the Bighorn sheep?

VAIL HOMEOWNERS ASSOCIATION

Dèjá Vu Again II—The East Vail Housing Project Is Back

June 7, 2019

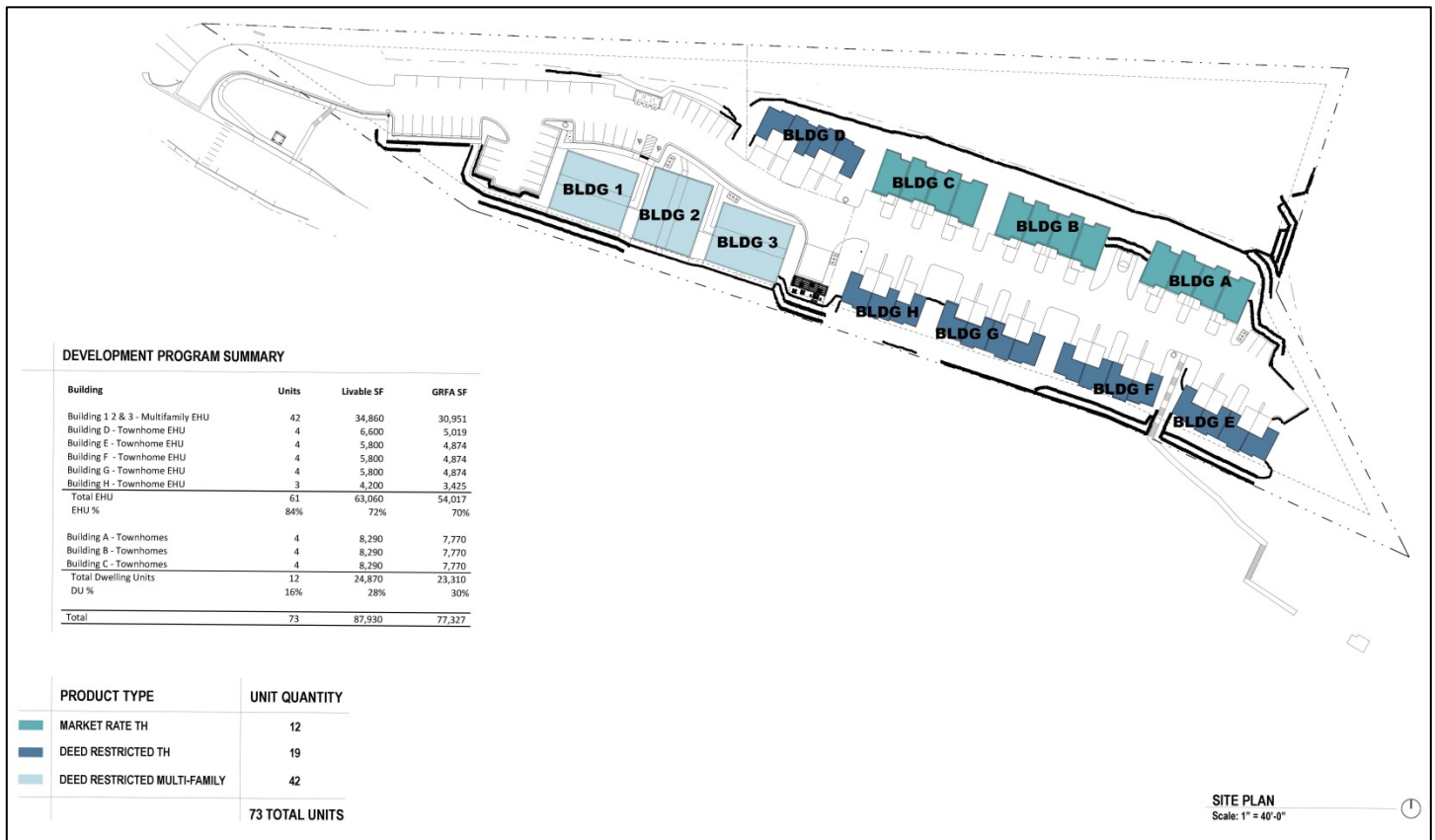
Last week, Triumph Properties filed its application to build the “Booth Heights” East Vail Housing project. Compared to prior proposals, this application is for 11 multi-story buildings with a total of 73 units, 61 of which would be deed restricted, the other 12 market-rate units. If built as planned, the project could house 270 (at two per bedroom) to 350 or more residents. Three buildings will be three and a half stories, the others two and a half stories. The development footprint of the project still covers most of the 5.4 acre site, requiring the clear cutting of a lush, existing aspen forest.

Three of the buildings, with 42 units, would be walk-up, two-bedroom rental apartments that will be master leased to Vail Resorts. They will provide housing for 168 employees (at two per bedroom); the report concedes, however, that number could go up as high as 254, depending on how many people would choose to live in a unit. The remaining eight buildings would be for-sale town homes, with mostly three bedroom units, for an additional 102 residents (again at two per bedroom).

The plan includes an outdoor gathering space for the entire community with barbeques, picnic areas, fire pit, basketball hoop and pergola. Most of the town homes will have an outdoor rear yard space. Transportation

service for the project will require additional bus stops and landscape access steps to Frontage Road at the east and west ends of the project. The proposed plan can be viewed online at:

<https://vailgovcomdev.sharefile.com/share/view/sf6dc8eb56004bd19/fobcf38f-c928-4984-913f-97691003984c>



Site Plan and Development Program

Accompanying the plan is an Environmental Impact Report and a report from a biologist hired by Vail Resorts, both claiming that adequate safeguards will be provided for wildlife protection, especially for the protection of the resident herd of bighorn sheep. Each of those documents has serious flaws which this report addresses.

This report also addresses misstatements and misleading aspects of the application as well as the omission of critical facts and erroneous assumptions in it, explaining that, if built, it will result in the probable extinction of the East Vail bighorn sheep herd and the shutting down of the east Vail North/South wildlife migration corridor. And this report will address how this project is still incompatible with the surrounding neighborhood.

Hearing Set. A hearing has already been scheduled for less than two weeks from now on June 24th in front of the PEC. When the site for this project was before the Town Council in 2017 for rezoning, VHA and other citizens sought to raise environmental and neighborhood compatibility issues. Contrary to statements in Triumph’s application which portray that process as considering development and resource issues, those issues were put off with a promise from the Council that they would be addressed when an application for a project was received. Many believed that meant that those issues would be considered by the Council.

Now, however, the PEC hearing may be the only hearing on this project. That is because PEC decisions are final unless appealed to the Council by an “aggrieved party” or “called up” by a majority of the Council. An aggrieved party is someone who has suffered an adverse effect that is different from adverse effects that may affect the community as a whole. Therefore, as a practical matter, the only way that this project may come back before the Council is through a Council call up. Given the earlier commitment of the Council and the

transcendent nature of the issues involved, the VHA has asked that [Council members pledge to bring any decision by the PEC back to the Council](#), but so far, none have done so.

Flawed Biology Report—Bighorn Sheep. [VHA earlier reported](#) on some of the flaws in the report that the VR biologist gave to the Town of Vail last March. At that time, he declined to reveal his conclusions. Now that his report has been made public, we learn, unsurprisingly, that notwithstanding the impact of this project, he believes that safeguards can be adopted that will protect the sheep. That conclusion is, however, based on errors, misleading assumptions and the mistaken belief that Triumph would follow the recommendations in the report, including the recommendation that where there is a conflict between wildlife protection and the project, wildlife protection should prevail.

The East Vail bighorn sheep herd is one of the most stressed animal populations on the western slope. Although it numbered as many as 150 animals in the 1990s, a severe winter in 2007-2008 reduced the population to around 40, and the herd has not been able to bounce back since then. Triumph, however, ignores the implications of that reduction in size, i.e., what it means for the herd's survival. As independent experts have explained, the herd is close to the tipping point of a "small population" size, whereby it can no longer regenerate itself. It will not take much more to push it over the edge.

That is because bighorn sheep are easily stressed by human activity, and this project would place a great deal of activity in the sheep's winter range. Even small disturbances, where grazing is interrupted, harmfully increases heartbeat, respiration and calorie consumption. And the impact is greater if the sheep run off, even if for only a few yards; it will add up over the course of the winter in calories burned. The project will also impact the sheep's feeding time, and for bighorns during the winter, that can have serious effects. In addition, ewes are pregnant during the winter, and any impacts to their overall health impacts the unborn lambs. Lambs that are born sub-par are at a greater risk of not surviving their first year. If the ewes do not regain their overall health, they will not breed the next year. So the impacts from one winter can impact the population for 2 or more years, and impacts from continuous human activities will be forever.

A major factor in the inability of the herd to bounce back has been loss of winter foraging habitat. Winter is a time of starvation for bighorn sheep when any reduction in habitat or stress in foraging can have catastrophic consequences. In that context, the report claims that bighorn sheep have a winter range of 1,800 acres which would make it seem that taking away just 5 acres can't possibly make a difference. That would be laughable if not so misleading. The 1,800 acres includes all of the Booth Falls homes, interconnecting roads and infrastructure, the VMS campus, the TOV bus maintenance facility as well as many other areas that haven't seen a sheep in years. Buried in the report is the fact that "only 15% (266.68 acres)" of that range is actually used by the sheep. As residents in the area know and as has been documented by other independent experts, those acres include the project site.

And it's not just 5 acres that are being taken away. The report recommends against building a bus stop and bus shelter at the east end of the project or any connecting sidewalks because doing so would block the sheep from foraging on about 2 acres between the site and Frontage Road which they often do during the critical winter months. But Triumph needs those transportation improvements to justify the scarcity of parking on the project, so notwithstanding the recommendations in the report, it plans on building both the bus stop and shelter as well as landscape steps down to Frontage Road at both ends of the project. As the report drily notes, it might "not be possible to save" that area.

Of even more significance, although the report concedes that sheep will be "displaced" from "adjacent foraging areas," it does not describe the amount of that displacement, choosing to ignore the basic scientific fact that the "zone of influence" of human activity at the site will extend outward in all directions for several hundred yards.

Together with the loss of the Frontage Road foraging area, that means the sheep could be driven out of upwards of 80 acres which would be 30% of their effective winter range.

To offset that loss of habitat, Triumph proposes the enhancement of foraging on the 17.9 acre site to the east of the project. According to the application, that would be done in the fall of 2019 and spring of 2020, so that new foraging grounds would be available in the winter of 2020 – 2021. That, however, is wishful thinking as those acres are on the site of a landslide that is dominated by dislocated and uneven land that hasn't seen a sheep in years, and it is within the zone of influence of the human activity on the project site. How sheep are going to be enticed into that area and caused to ignore the impact of the human activity next door is not explained, probably because that area is not useable for human development or wildlife foraging. And, even if the sheep could be induced to move there and use all 17.9 acres, notwithstanding the next door human impacts, those 17.9 acres would not come close to replacing the up to 80 acres that they will be losing by this development.

Another way the report seeks to offset the impact of the project on the surrounding area is to cling to the discredited idea that sheep will forage in the areas around the project “under cover of darkness.” As residents and anyone else who has driven by the area during the winter foraging months knows, as a matter of predator protection, the sheep mostly forage in the daytime.

More wishful thinking is the recommendation to “screen” the project during winter construction (Nov. 15 to Apr. 15) so as not to disturb the sheep, as though it were only visual impacts that effect the sheep. The noise, smells and activity from building 11 structures and related in-ground and above-ground infrastructure, including the impacts from necessary heavy equipment, will be huge. Blocking the sheep's view of that, even if possible, is not going to eliminate the impact. The only way that can be done effectively is to prevent any outside construction during the winter season.

As the EIR concedes, the long-term vitality of the herd really depends on enhancement of the uphill land on the north side of the project, and the report expresses hope that will be done. However, as far as Triumph is concerned, it plans to do nothing in that regard. Instead, it is leaving that to the USGS, CPW and the TOV to work out. What needs to be done is no secret; the undergrowth needs to be trimmed, the fallen trees need to be removed and the land needs to be fertilized. The question is how will that be paid for, and on that point, Triumph has offered nothing.

Other Animals and the Wildlife Migration Corridor. As the EIR also acknowledges, Peregrine fFalcons use this area for hunting and elk, deer and black bears use it for foraging, although the times of those uses vary from the use by the sheep. Prime time for Peregrine Falcons is from March 15 to July 31; for elk and deer, it is winter range, and black bears use the area as summer foraging grounds. As with bighorn sheep, those animals, especially elk which are most susceptible to human activity, will lose the use of the project site and surrounding areas in the zone of influence from human activity, although the effects of that loss will not be a potential extinction event or as severe.

But that is only one aspect of the impact on other animals. The report fails to mention the important function of this area as a north/south corridor for migrating animals. [As VHA reported](#), in the early days of Vail, the TOV, CDOT and Vail Associates came together to create a wildlife migration corridor through the area in question. There is only one other such corridor, and it is in Dowd Junction. As that VHA report detailed, the project site sits at a choke point in that corridor. If the project is built as intended, it will effectively close off that corridor. Migrating animals are still going to migrate, but losing this corridor will place more stress on those populations which have already been severely depressed and may result in higher road-kill mortality as the animals seek other ways to cross I-70.

The Environmental Impact Report. Much of the EIR is based on the biologist's report, so the same flaws, unfounded assumptions and errors underlie the EIR. Without question, there will be irreversible negative environmental impacts if the project is built, from both the construction activities as well as compounding effects from the long-term habitation of the project.

From a wildlife perspective, the impacts would be most severe for bighorn sheep and elk. For the sheep, the project could be an extinction event; for elk, it would further depress an already severely depressed population. Impacts would also be felt by other animals that are currently native to the area, including Peregrine Falcons, deer, black bears and other smaller animals.

Those impacts have been understated or ignored in the EIR, but they cannot be sidestepped by false claims, for example, that the sheep have an 1,800 acre winter range or that the sheep will forage in affected areas at night under cover of darkness. And the magnitude of the impacts will be exacerbated by Triumph's refusal to follow some of the biologist's recommendations. Nor will those impacts be offset by the proposed enhancement of the 17.9 acres to the east of the project. Those enhancements are in the wrong location to make a meaningful impact for sheep foraging or to help the other animals.

Thus, from an environmental impact standpoint, the proposed project will have severe impacts that cannot be mitigated away by anything proposed by Triumph and which will result in cumulative, long-term irreversible environment damage. This is a matter that must be addressed and eliminated or the project should not go forward.

Other Concerns -- Inadequate Parking. The plan also does not provide adequate parking for the projected number of residents, in particular for the VR employees who will be residing in the apartment units. Instead of the standard two parking spaces per unit (for units between 500 and 2,000 GRFA) for those residents, only 35 surface parking spaces exist for the 42 VR apartments which at 2 persons per bedroom could house 168 employees or more¹. (The application states there would be 45 spaces for those apartments but the Parking Diagram for the project, sheet A.006, shows only 35 spaces, and there is no room to add more; however, even at 45 spaces, there would be woefully inadequate parking for the VR employees.)

Triumph tries to by-step this problem in two ways: (1) by using the parking spaces for the town homes to calculate an overall ratio and (2) by claiming that most residents will use public transportation.

Doing a project-wide calculation for parking ignores the fact that there are two different classes of residents in the project--VR workforce employees and permanent town house homeowners, and that for each, the parking requirements are different. Mixing them together at the lower ratio for the apartment units misstates the needed number of spaces. And it is further misleading because the apartments and townhomes each have their own separately designated parking spaces. VR employees will only be allowed to park in their assigned parking spaces, i.e., the 35 spaces set aside for them.²

The public transportation justification is equally unavailing because it depends on the unfounded assumption that 133 of the VR employees (or 219, if the apartments were maxed out) would use public transportation to get

¹ The report acknowledges that, depending on how many people would choose to live in a unit, the number of employees in the VR apartments could go as high as 254, making the parking deficit even worse.

² The town home parking is reserved for the residents of the town homes. Due to the size of those units, each unit should have 2.5 spaces or a total of 76.5 spaces. The plan, however, only provides 65 spaces for those units, a deficit of 11 spaces.

around in Vail while ignoring the inconvenient problem of what the VR employees who drive to Vail will do with their cars while working in Vail.

The public transportation justification also flies in the face of the biologist's recommendation that it should not be done because building two "pull out" bus stops and bus shelters on each side of Frontage Road at the east end of the project and constructing Frontage Road access steps at the east and west end of the project will block bighorn sheep access to the I-70 right-of-way. Although not addressed by the biologist, doing so will also contribute to closing down the east Vail wildlife migration corridor.

Other Concerns – Neighborhood Compatibility. As proposed, the density of the project will be 35.5 units per acre.³ Aside from making the project incompatible with the East Vail neighborhood, the spill-over effect of jamming that many units into the project space is that there is insufficient room left to provide adequate parking.

Under the prior (duplex) residential zoning that existed for this property, there could have only been about 15 residences or a density of three units per acre (about 45 to 60 residents). While there are no corresponding limitations in employee housing zoning, the "character, scale and massing" of employee housing "must be compatible with ... the surrounding neighborhood." It is hard to see how jamming 11 buildings and 270 to 350 residents into this site, with the attendant congestion impacts, will not change the character of East Vail. While there are some multi-family housing buildings along Bighorn Road, the densities involved nowhere come close to the density of this project, and none of those buildings are taller than 3 stories and involve hundreds of residents.

Other Concerns – Transportation Increases. Triumph plans for most residents, especially the VR workforce employees, to use public transportation. It has to do that to try to justify the scarcity of parking at the project. Currently, East Vail bus ridership stands at 80,000 per month or less, so adding another 200 riders could result in a 15%, or more, increase in peak hour ridership. That will probably require capacity increases for the East Vail route (bus capacity is 70 passengers/bus which would mean several additional busloads of traffic), but so far, there has been no assessment of those additional operational and capital costs (buses, drivers, maintenance, fuel, insurance, expansion of the bus maintenance facility, etc.). The current annual cost of the East Vail route is \$850,000, and each additional bus costs \$1 million, so the necessary transportation capacity increases could be substantial. The Town of Vail should not be left to foot that bill.

The Role of the PEC. The Housing Zoning vests broad power in the PEC to determine the scope and nature of employee housing based on its environmental impact, density, and neighborhood compatibility and to impose such conditions as necessary for such things as environmental protection. The PEC could decide, for example, that broader than proposed habitat mitigation and enhancement is necessary to ameliorate the adverse effects of proposed development and to protect native wildlife, and/or that only a handful of low density units would fit the environmental limits of the area, and/or that wildlife mitigation must be completed and certified successful before any construction could begin, and/or that construction could only occur during periods of time that would not adversely impact wildlife. The point is that everything should be on the table; independent wildlife experts should have a seat at that table and public input should be encouraged. This is too important a matter to treat it as "business as usual."

³ Triumph prefers to not count the VR employee units in calculating density but the individuals occupying those units will be residing in the space and should not be ignored.

If these are matters that concern you, the time to get ready is now. Read the proposal and plan on attending the PEC meeting on June 24th. For its part, VHA will continue to monitor any developments and report back as needed.

VHA Annual Membership Meeting Notice:

VHA Annual Membership Meeting is scheduled for 3 pm on Monday, July 15, 2019, in the Vail Town Hall.

Post Office Box 238 Vail, Colorado 81658

Telephone: (970) 827-5680 E-mail: vha@vail.net Web Site: www.vailhomeowners.com