

VAIL HOMEOWNERS ASSOCIATION

The Booth Heights MOU Donovan Park Middle Bench Update on the Bighorn Sheep A Code of Conduct and Conflict of Interests Short-Term Rentals August 12, 2020

This is a packed report as we cover a number of issues that are currently pending in the Town of Vail. They include the Booth Heights MOU, the VHA request that the Middle Bench of Donovan Park be designated as “Designated Open Space,” an update on matters concerning the bighorn sheep, an update on the potential for a Vail Code of Conduct and Conflict of Interest provisions and an examination of issues involved with short term rentals.

Update on the Booth Heights MOU

MEMORANDUM OF UNDERSTANDING **ALTERNATE HOUSING SITES INITIATIVE**

This Alternate Housing Sites Initiative Memorandum of Understanding (the "MOU") is made this _____ day of _____, 2020 (the "Effective Date") by and among the Town of Vail, a Colorado home rule municipality with an address of 75 South Frontage Road, Vail, CO 81657 (the "Town"), Triumph Development West, LLC, a Delaware limited liability company with an address of 12 Vail Road, Suite 700, Vail, Colorado 81657, and Vail Resorts, a _____ with an address of _____ (each a "Party" and collectively the "Parties")

WHEREAS, the Parties wish to implement housing and environmental stewardship actions that increase the supply of deed-restricted homes in Vail and implements wildfire fuels reduction and wildlife habitat improvements in East Vail;

WHEREAS, the Parties wish to adopt and implement the Alternate Housing Sites Initiative (the "Initiative") as described herein;

WHEREAS, the Purpose of the Initiative is to create new deed-restricted housing units to help meet a portion of the Town's adopted Vail Housing 2027 Plan goals while protecting wildlife and preserving the property located at _____ (the "Booth Heights Parcel") consistent with the adopted 2018 Comprehensive Open Lands Plan Amendment;

WHEREAS, the Initiative will ensure an increase in the supply of deed-restricted homes for employees of Vail Resorts and afford Triumph Development an equal or greater opportunity to develop homes in the Town; and

WHEREAS, in the absence of this collaborative partnership, it is highly likely each of the Parties would fall short of their intended objectives, so this MOU makes all of the Parties stronger, and in turn, is in the best interest of the Vail community.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Preamble to Booth Heights Draft MOU between the TOV, Vail Resorts and Triumph Development.

Matters continue to evolve with respect to the many issues involved in the Booth Heights MOU, including the possibility of an alternative site for the relocation of the Children's Garden of Learning Center. The initial draft of the MOU generated considerable public comment. Town officials then committed to discuss those comments with Vail Resorts and Triumph Development and to bring back an amended MOU. Since then, while the Town has been trying to adhere to its original timetable, some of the urgency seems to have dissipated as an amended MOU has not yet been prepared. This may be a result of the current economic situation.

One thing that has emerged is that there appears to be substantial agreement on many of the goals in the original MOU even though there is major opposition to any delay in the transfer of Booth Heights' title and the concept of including housing goals within the Booth Heights agreement. For its part, the VHA has continued to urge that the Booth Heights "swap" be a simple non-contingent deal which would result in a near-term, date-certain transfer of title and leave Vail Resorts free to develop the Middle Creek property as its circumstances permit.

Even though there is not yet an amended MOU, Town officials have advised that they are in discussions with Vail Resorts, that there will be an amended MOU and that they will make those amendments public as soon as they have been prepared, so the VHA is awaiting their release. Watch for future reports as VHA will provide a detailed analysis of the amended MOU as soon as it is available.

Donovan Park Middle Bench



The Upper bench area at Donovan Park. Will this become "Designated Open Space?"

In June, the VHA made a formal request that the Middle and Upper Benches of Donovan Park be designated as "Designated Open Space" (the Middle and Upper Benches are the same tract of property; the difference in names being merely a matter of local usage). That request has been held in abeyance pending the appointment of a PEC representative to the Open Space Trustees (Town Manager, Scott Robson, and Kim Langmaid, Town Council representative, are the other two members). On Monday Ludwig Kurz was appointed as the PEC representative, so the way is now clear for a hearing on the VHA request. As soon as that date has been announced, the VHA will report it as well as any other information available about the hearing.

Update on the Bighorn Sheep

Environmental Assessment Underway. Kudos to the TOV. The Challenge Cost Share agreement for an Environmental Assessment (EA) of the bighorn sheep winter habitat has now been approved, and a first phase contract has been let. This EA is the first step to the restoration and enhancement of the sheep's habitat. If all

goes according to plan, restoration will begin in the winter of '21 through the spring of '22. This will be a huge development that, together with the Booth Heights land swap, is hoped will provide for the survival of the herd. With that project now underway, it is time to turn to next steps.

The Challenges of East Vail. Wildlife management in East Vail is challenging because there are conflicting needs. On the one hand, due to the presence of road salt, the bighorn sheep tend to graze next to Frontage Road and in the swale between Frontage Road and I-70. That leads to sheep wandering on the roadways and vehicular collisions. Last year three sheep were killed, and in an already depressed herd, if that were to continue, it could lead to disastrous consequences. There is, therefore, a need to keep the sheep off the roads, and last year, the TOV had to erect temporary fencing for that purpose.

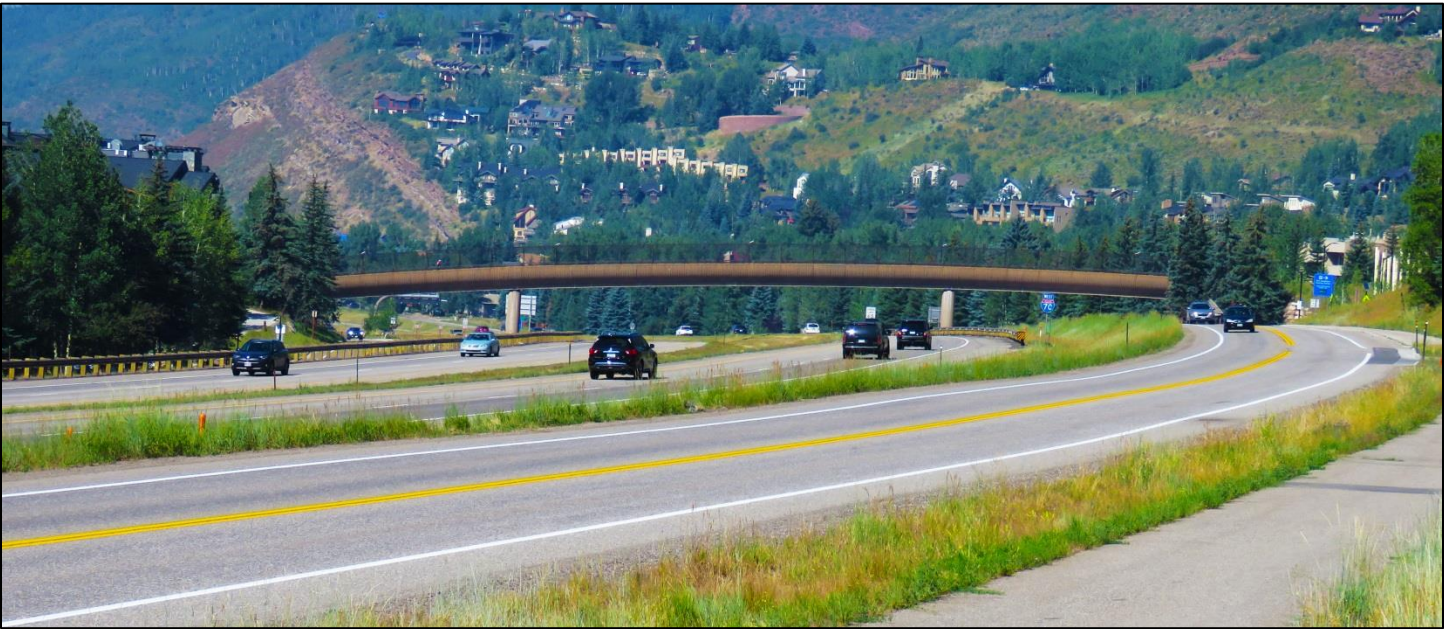
On the other hand, the East Vail area is an historic and natural migration corridor that is regularly used by other migrating species, most notably deer, elk, and bears (the sheep are also migratory animals, but they do not seek to cross I-70). There is, therefore, a need to maintain connectivity between the north and south sides of I-70, but there is no safe passage in that area resulting in animal/vehicle collisions. This unfortunate situation will only get worse as more animals opportunistically, move into the restored habitat. And fencing that blocks north/south movement can exacerbate the situation by trapping animals out on the roadways.

One thing is clear; the sheep must be prevented from getting onto Frontage Road and I-70, and it seems the only way that can be accomplished is by fencing. Kudos are also in order for CDOT in that regard because it has now initiated the internal process to create a permanent fencing project and obtain funding for it. That, however, is a lengthy process which will take at least two years to accomplish, and in the meantime, temporary fencing to block sheep access to the roadways will continue to be needed. [The appearance of such fencing could be improved if it were painted brown to blend in with the surrounding area.]

The Need for a Comprehensive Fencing Plan. Permanent fencing in the East Vail area implicates a number of issues which should be addressed in a comprehensive fashion. First is the question of the area that should be covered by the plan. Sheep habitat covers an area from mile markers 176.5 to 180. However, to determine the optimum terminuses for the fencing, the plan should study the area from mile markers 176 (the TOV I-70 interchange) to 182 (the I-70 Gore Creek bridge). To be effective, the fencing plan needs to provide for that entire area; shorter fencing (as, for example, just in the area of sheep activity) will only serve to move crossings to other locations as migrating animals will find a way around the ends of any fence.

Next is the extent of the fencing, i.e., should only one side or both sides of I-70 be fenced? If only the north side were fenced, while it would protect the sheep, even with escape ramps, it would trap animals migrating from the south out on the roadways. The result would increase vehicle collisions, and those numbers will grow as greater numbers of migrating populations move into the restored habitat. And there is also the question of the location of fencing on the north side of I-70. It would be simpler if the fencing were adjacent to I-70 and didn't include Frontage Road, but that location would allow sheep to wander on to Frontage Road.

The efficiency of the fencing system will also depend on how it is integrated into adjacent areas, particularly the residential areas and the TOV bus maintenance facility, and the numerous intersecting streets. Equally important is how connectivity is maintained between the north and south sides of I-70.



The Lionshead pedestrian overpass—a potential design for an animal overpass.

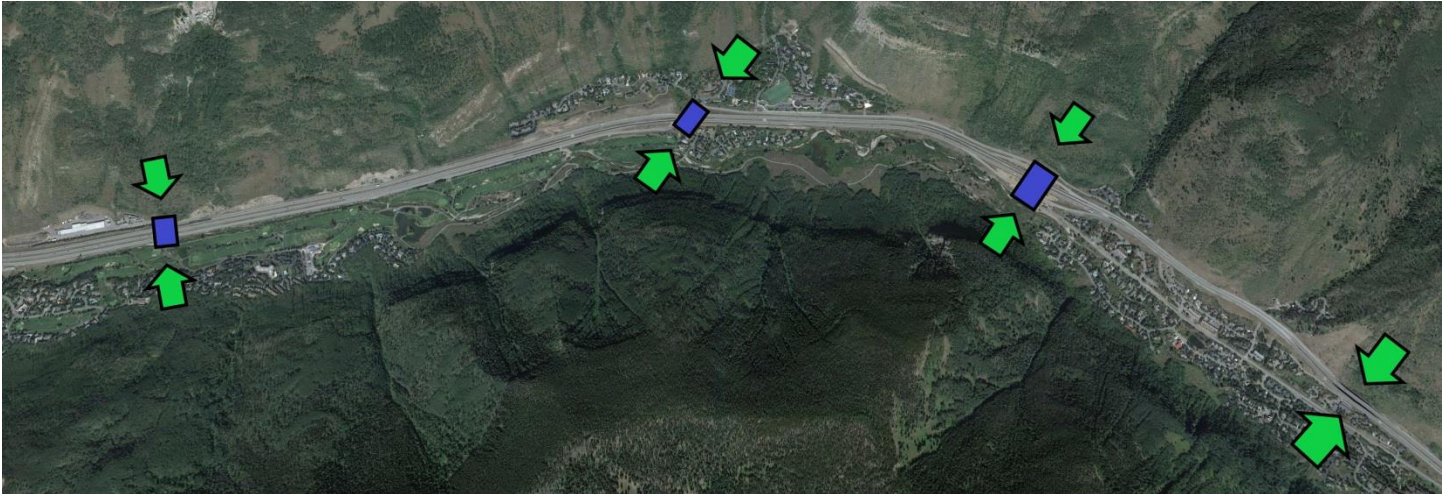
Connectivity Must be Included. While permanently fencing the sheep habitat to prevent access to the roadways would solve one problem, it could create other problems if it was just a fencing plan, i.e., fencing could choke off all migration across I-70. Migrating populations are already severely depressed; cutting off migration would only compound the situation. What is needed instead is a comprehensive plan that addresses both sheep protection and animal connectivity between the north and south sides of I-70 so that other species can safely migrate and wildlife/vehicular collisions can be reduced or eliminated.



Connectivity via an overpass and the bus maintenance underpass

One alternative would be a dedicated safe passage. The logical choice for the location of such a passage would be in the middle of the historic migration corridor in East Vail. Due to the topography of that area, the crossing would probably have to be an overpass which could be similar in design to the Lionshead pedestrian overpass. Modern construction techniques would allow most of it to be built offsite and trucked in, thereby, reducing construction costs. Due to the length of the proposed project area, there would probably need to be an

additional crossing to the west, perhaps the bus maintenance underpass. To provide safe passage, that underpass would require upgrades to facilitate animal use.



Connectivity via existing vehicle underpasses and the bridge at mile marker 181

Because the cost of an animal overpass might be a moonshot scenario, the plans should include a less costly alternative. That alternative would involve using the three existing I-70 vehicle underpasses and the bridge at mile marker 181. Because none of those vehicle underpasses were designed to accommodate animal crossings, all three would need to be upgraded for animal use.

The important point, however, is that under either alternative, connectivity would be maintained and animal mortality (and the dangers associated with vehicular collisions) would be drastically reduced (the highly successful Highway 9 Safety Project in Grand and Summit counties reduced wildlife mortalities by 90%).

Financing. A final issue that needs to be considered is financing. This will undoubtedly be a very large project, one that could easily exceed CDOT budget capacity. Alternative governmental funding sources need to be explored, and consideration needs to be given to a public/private partnership and/or a public campaign for additional funding. The Highway 9 Safety Project was, as an example, a private/public partnership that included a very successful public fundraising campaign.

Town Leadership is Needed. With a two-year or longer timeline to a CDOT fencing project, there is time to get this right. What is needed is to bring interested parties together in a collaborative effort to tackle the necessary planning. Since this project will be within the TOV, it has important wildlife stewardship responsibilities in seeing that it is done right. Through the creation of the Bighorn Sheep Restoration Working Group, the TOV has already played a crucial role in bringing together representatives from the Town and USFS, CPW, biologists and other interested parties to plan how to restore the sheep's winter range. That same leadership is needed now to address the I-70 wildlife issues. The Town could, for example, expand that working group to include CDOT and public representatives and then undertake a collaborative process to determine the best solution.

If the Town did this, everything should be on the table, from the possibility of a dedicated overhead safe passage, to the use of existing vehicle underpasses, to the best use of fencing. Consideration should be given to whether the disturbed land in the old landside area is a natural barrier to east/west movement through the area or

whether the landslide segregated the northside into two distinct areas, and if either is so, what are the implications for migration patterns? For fencing, there should be consideration of whether it should be on both sides of I-70 and how best to deal the many other issues involved in trying to effectively fence the area. Any use of existing underpass structures should include consideration of whether there should be improvements to facilitate animal usage. The work should be scientifically driven and could be informed by the results of the recently approved EA. And other safe passage projects should be considered such as the highly successful Highway 9 Safety Project in Grand and Summit counties and the current plans to install up to three safe passages for the eastbound lanes of I-70 between Copper Mountain and Vail Pass. Such a collaborative should also consider potential means of financing the resulting project.

This is, admittedly, a huge project but, approaching it in a comprehensive manner rather than proceeding piecemeal over the years, would not only fulfill the TOV's stewardship role but will ensure an integrated project. It may well be that financial limitations will require that the resulting project be built in stages over a several year period, but having an integrated plan ready would make this project "shovel ready" should the federal government undertake much-needed national infrastructure improvements (similar to what happened with the I-70 Simba Run underpass) or enact applicable stimulus funding. [Last month the House Committee on Transportation and Infrastructure included \$75 million per year of dedicated funding in H.R. 2, the INVEST in America Act, for states to reduce wildlife-vehicle collisions.]

The VHA, therefore, urges the TOV to convene a collaborative effort to call together all interested parties (CDOPT, USFS, CPW, etc.), expert area biologists and public representatives to chart a course forward for handling all wildlife I-70 issues in the area between mile markers 176 and 182. In this fashion, the TOV can ensure the best outcome for residents, guests and the wildlife.

A Code of Conduct and Conflict of Interests

In recent days, there has been some progress on the subject of a code of conduct and conflict of interest provisions for the TOV, a matter of long-term interest to the VHA. Recently, Council member, Brian Stockmar, circulated a draft Code, and Town officials announced that consideration of the subject will begin at the August 18 Council meeting with a briefing from the Town Attorney on existing law (there is not much). The VHA looks forward to that briefing and getting the process underway. We will closely follow developments and report as developments occur.

Short Term Rentals

Short term rentals continue to be a vexing problem for the TOV. While some Vail homeowners have always rented out their properties, everything changed in 2008 with the launch of Airbnb, VRBO and other on-line "listing" sites. Those sites facilitated the ability of property owners to mass advertise for renters. Tourists no longer had to use traditional lodging and often could obtain STR housing at greatly reduced prices. At the same time, property owners suddenly had a new source of income, and the TOV had new tax revenues.

Initially, concerns over property owner rights and overly intrusive government regulation led to few restrictions on STRs. Vail, for example, has a relatively hands-off approach. Any owner can rent short term, unless prohibited by HOA rules or covenants. All that is required is that the STR be registered with the TOV, certain minimum standards be met, an on-call representative be available and sales taxes are collected. But while the

additional revenues were a positive for many homeowners and the TOV, STRs came with a unique set of problems. While there are no exact numbers due to the lack of a database, reliable estimates are that the rush to convert historically long-term rentals to STRs caused a severe restriction in affordable housing. For Vail, it meant that much, if not all, of the gains in its 2027 Housing Plan were offset by the loss of long-term rental units. And while many STRs have operated without a hitch, short term renters have no stake in the community, and there have been a number of instances of disruptive guests who act in irresponsible ways, upsetting the peaceful enjoyment of neighborhoods.

These problems are not unique to Vail and have led to increasing restrictions as concerns with STRs have grown. Other communities have turned to restrictions that limit STRs to only host-present rentals or STRs in only certain designated zoning districts (Avon has a special zoning overlay district where STR's are permitted). Some have limited the number of days that a property can be rented on a short-term basis, ranging from 30 to 90 days per year. Others have limited STRs to only primary residences so that secondary residences cannot be short term rented. Still others have limited the number of people in a STR, typically 2 per bedroom up to a certain maximum per unit. And many regulations contain significant fines involving many thousands of dollars for first violations, on the theory that owners will not want to risk large fines for a single violation.

Compounding matters with STRs is the COVID-19 pandemic. At a minimum, STRs should be exercising the same vigor to prevent spread of the virus as area hotels. Yet, there are no requirements by either Eagle County or the TOV concerning sanitizing STRs or requiring holding units vacant for some period before and after rentals. And who is responsible for ensuring that occupants are healthy, or quarantine when they are not or determining whether incoming occupants should be tested?

The VHA suggests that it might be time to reassess Vail's STR regulations, both those for public health as well as those applicable generally. The VHA does not propose any particular regulation be adopted other than a more rigorous set of rules concerning the pandemic. But the VHA does suggest that it might be time to reevaluate STRs to see if any further regulation of STRs is warranted.

This Report is typical of VHA reports that deal with a wide variety of community issues. If you value our work, we invite you to join VHA or become a subscriber to our reports. Your support will ensure that the VHA can continue to bring such matters to the community's attention and, by doing so, make a difference for the good and the future of our community. Please stay safe and healthy.

VHA welcomes your participation and support.

For further membership information, please send an email to vailhomeownersassoc@gmail.com and for [subscriber contributions](#).

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