

VAIL HOMEOWNERS ASSOCIATION

Updates On:
East Vail Booth Heights Housing Project
Avanti Lodge Proposed Rezoning
Golf Course Housing Project
July 11, 2019



Will new reports save them?

East Vail Booth Heights Housing Project

New reports refute Triumph's EIR and mitigation plan. For some time, the VHA has been calling for independent reviews of the environmental harm from the Booth Heights housing project. Finally, two weeks before the hearing on those issues, three independent experts were retained by the TOV to review the project, and their reports have been filed. At the same time, the CPW (Colorado Parks and Wildlife) also filed

comments on the project. In addition to those reports, the USFS reported to the Town Council on its plans for the Forest Service lands adjacent to the project.

Because the independent experts were only hired two weeks before the hearing, they only had a few days to work, but even then, as VHA expected, the reports of all three experts, as well as the CPW report, were game changers that showed the dangers for the bighorn sheep are much greater than ever envisioned. The reports also exposed the many flaws in Triumph's EIR and mitigation plan and showed that the dangers for the sheep would not be offset by Triumph's mitigation plan. The VHA has long believed that the project would not stand up to independent review; kudos to the Town personnel who finally authorized those reports.

Triumph, however, was not pleased with these reports and has complained mightily, including about the fact that it was not notified about the appointment of the experts, as though there was something unfair or improper about the TOV wanting independent assurances that a project (or this project in particular) could be built in an environmentally sound way. Triumph has no one to blame but itself. If it had produced a sound and responsible environmental protection plan, there would have been no need for independent expert reviews. Likewise, if Triumph had followed the recommendations of CPW, there would have been no reason for CPW to further comment. But Triumph did not, and its complaints now only underscore the importance of these reports.

Taken together, the reports of the independent experts and the comments from the CPW make a number of key points, none of them favorable to the proposed development:

Contrary to Triumph's claims, the winter range of the sheep is only 150 acres. The CPW report should, categorically, put to rest one of the most outrageous and heavily promoted of Triumph's claims which forms the foundation of its entire approach to mitigation that the bighorn sheep have a winter range of 1,800 acres. According to the CPW, the so-called "1,800 acre winter range polygon" for bighorn sheep "is not representative of current available habitat," and the actual effective winter habitat number is "less than 150 acres," a number far less than Triumph's biologist claimed. That totally changes the analysis of the potential harm to the sheep.

Contrary to Triumph's claims, the area from which the sheep would be displaced is 80 acres or more. Triumph has been trying to gloss over the full extent of the loss of range for the sheep. These reports, however, make clear that the sheep will be displaced from far more than just the 5 acres of the project and the 2 acres between the project and Frontage Road. According to CPW and all three experts, the impact of indirect or offsite habitat loss from human disturbances at the site would be much greater than the direct loss of the site itself. As explained by Rick Kahn, a bighorn sheep expert with over 40 years' experience, bighorn sheep are very susceptible to human disturbances, and sheep can be impacted up to ¼ mile (440 yards) away, meaning that the loss of habitat from this development extends outward all around project site, displacing the sheep from upwards of 80 acres. That means the sheep will lose over 50% of their range which will be devastating. This is a point that VHA has been making from the beginning, although VHA's estimates didn't capture the full the extent of that loss.

Those impacts will be even greater during construction of a project of this size when heavy equipment, compressors, nail guns, power tools and other construction equipment are in constant use and banging and hammering is always going on somewhere.

Triumph's EIR and mitigation plan are based on pseudo-science. Rick Kahn also examined the so-called '17-'18 winter sheep study done by Triumph's biologist which formed the basis for Triumph's EIR and mitigation plan. He found that the study was not adequate in design or results; it was "highly speculative" due to its short duration (7 months), and its recommendations "should be considered speculative." As he noted,

professionals use spatial collars, not trail cameras, to collect information, and studies should be over much longer durations for data to be reliable.

More pseudo-science is Triumph's claim that the sheep will forage at night. Both Rick Kahn and another of the experts, Gene Byrne, a wildlife biologist with 30 years' experience, confirmed what VHA has been repeatedly saying, that bighorn sheep are not nocturnal animals, so that claims the sheep will forage at night is, at best, speculation and should not be used as a justification for inadequate mitigation plans.

Triumph's plans to mitigate 14.6 acres in the NAP parcel will not help the sheep. The CPW and all three experts also agreed that, while Triumph's proposed mitigation plan might benefit elk and deer, it will not benefit the sheep. As Gene Byrne explained, the area Triumph plans to mitigate is too far from the sheep's escape cover for the sheep to take advantage of it. And as Rick Kahn noted, ewes and lambs have "very high site fidelity," making it pure speculation to think that they will move to the NAP area, and he concluded that the proposed mitigation could result "in further loss and potential extirpation" of the herd. Gene Byrne's conclusion was that the actual winter range "is probably the most critical factor for the herd's long-term vitality, and this area must be protected." And the third expert, Melanie Woolever, a wildlife biologist with over 30 years' experience, over 20 years of which was in bighorn sheep conservation, found the scale and approach to habitat improvement was "inadequate and will not ensure persistence" of the herd.

Real mitigation requires habitat restoration in the areas north and west of the project site. What is really needed according to CPW is large-scale mitigation to the north and west of the project and that should take place as soon as possible which is another point that VHA has repeatedly made. That land is owned by the TOV and the USFS, and so far, nothing has been done by either. The TOV, apparently, does not have any current plans to treat its land, although it may have been waiting on the USFS plans. According to a recent report to the Town Council, the USFS is now moving forward with the planning process to clean and treat its land, but due to wilderness regulations and budgetary and manpower limitations, no actual work can take place until FY 20/21 at the earliest or even perhaps later. That means, under a best case scenario, work cannot begin until the fall of 2020. Since improved areas need a year of growth to yield results, as a practical matter that means that winter habitat on USFS land (and perhaps also on the TOV land) will not see any improvement until the winter of 21/22. If construction were authorized before then at the East Vail site, the implications for bighorn sheep are huge.

Mitigation needs to take place before any construction. Triumph was going to start construction and mitigation at the same time. The CPW recommended that mitigation work should take place before any construction, so it can be evaluated before proceeding further. As stated by Melanie Woolever, habitat improvement needs to be completed before any construction, and demonstrated effective, before it can be said that losses due to the project have been mitigated.

There should be no construction during winter months. With the sole exception of clearing and excavation, Triumph planned to build year-round. The CPW and all three experts concurred that there should be no construction during the winter months; construction should be limited to the summer and fall (a "July 31st to a November 15th time frame") because there is no meaningful way to minimize construction impacts on the sheep.

There should be no site access from the west end of the project. Triumph planned to locate the main access to the project—a road, pedestrian walkway, bus tops and a bus shelter—at its western end. Because of the proximity of prime grazing land to the immediate west of the project and also between the project site and

Frontage Road, the CPW and all three experts recommended that all access to the project be from only the eastern end and that the proposed driveway, pedestrian access and bus stops at the western end of the project be eliminated. The same is true for sidewalks; the experts recommended no sidewalks along Frontage Road.

There should be no dogs at the project. Contrary to what Triumph has planned—to only prohibit dogs in the apartment units--the experts agreed with the Vail Community Development Department’s recommendation that there should be no dogs allowed in any part of the project.

There should be funding for on-going mitigation maintenance. In earlier iterations of this project, there were provisions for some on-going mitigation funding; Triumph dropped that in the current version. The CPW noted that mitigation is not a “one-and-done” proposition and that it requires continual maintenance. In that regard, CPW recommended that there be annual funding for mitigation. The experts should be further consulted to develop a realistic mechanism and an appropriate amount (not the paltry \$5,000 per year that Triumph earlier proposed).

The Second PEC Hearing. Against this background, the PEC held its hearing on the environmental issues involving the project on July 8th. In preparation for the hearing, PEC staff issued a lengthy memorandum. Most of it, almost 8 pages, consisted of uncritically relating Triumph’s proposal, although the report did note that for shielding purposes the Community Development Department requested preservation of south side tree clusters (which Triumph planned to clear cut), and for wildlife protection, there should be no dogs allowed in the project.

Unfortunately, the staff report did not include very much about the CPW or independent experts’ reports; they were only briefly mentioned in just two short paragraphs, each at the very end of the memo. Perhaps that was because they were received only at the last minute due to the short time they had to work, but regardless of the reason, the staff memorandum did not present a balanced review of the project since most of the critical comments of the CPW and independent experts that undercut the legitimacy of Triumph’s EIR and mitigation plan were not mentioned.

As the hearing progressed, it also became apparent that at least some of the Commission members had not even read the experts’ reports and/or the CPW report, so the one-sidedness of the staff memorandum became even more significant.

Time Limitations. Once again, Triumph was given unlimited time and took over three hours to present a carefully orchestrated slide show on the project. Anticipating such a presentation, the VHA again requested additional time to respond to Triumph’s presentation. A citizens group also requested additional time. Those requests were denied, and all public comment (which was mostly in opposition to the project) was limited to just three minutes per speaker. The reason given for the public comment limitation was that, if the time was not limited, public comments would take too long. In other words, on one of the most controversial and critical community issues in recent times, the PEC did not have sufficient time for a full airing of the issues, although the PEC has now scheduled an additional meeting for the public to speak.

Citizens can, of course, file written comments, but the process that is being followed so far gives Triumph a huge advantage. Not only that, but the independent experts were not invited to speak even though Triumph was allowed to “rebut” their reports as part of its presentation. Since, at least, some of the Commission members had not even read those reports, this made for a surreal situation in which only Triumph’s views were heard. And, to top it off, after the public had commented, Triumph was allowed to speak again (without a time

limitation) to complain about the CPW and independent expert reports. The frustration with the process by those in attendance was palpable.

Triumph's presentation. Triumph's presentation, mostly, clove to its EIR and mitigation plan. It did offer to add 11 parking spaces for the apartment buildings (still leaving it 18 short of the required two spaces per unit) and said it would preserve trees outside its property lines. Triumph also floated a bus turn-around plan from Vail Public Works that had not been seen by CPW or the independent experts. Nonetheless, it seemed clear from their reports that they would all oppose that plan since it encroached even more on prime grazing areas. While Triumph brought up the possibility of other changes, such as eliminating the bus stops all together and moving the pedestrian access, it was unclear whether those or any other changes would actually be made, but Triumph was clear that it would not move the driveway access.

Triumph also stuck to its plan to mitigate 14.6 acres of the NAP parcel even though the CPW and independent experts agreed that would not help the sheep, and it declined to prohibit all dogs at the project or to provide funding for on-going mitigation or to complete mitigation before starting construction, although it said that it hoped to start mitigation before any construction if it could get the necessary "approvals." What the latter point meant was unclear—did it mean before excavation or only before building work? And what approvals it needed were not disclosed (it had earlier said that it didn't need any approvals since it would own the property).

Much of Triumph's presentation about the sheep consisted of Triumph's biologist explaining his, so-called, study which the independent experts dismissed as unscientific and "highly speculative." But, as noted, those experts were not invited to speak even though Triumph's biologist was allowed to present a slide show of his "disagreements" with their findings. In an obvious effort to rescue his reputation, Triumph's biologist finally admitted he was wrong in his persistent claims that sheep will graze at night (which he had used to dismiss off-site displacement of the sheep due to construction and/or resident activities). According to the independent experts, that displacement can extend outward from the project for up to ¼ mile (440 yards). In an effort to blunt that fact, Triumph's biologist touted out a new "theory"--that the sheep will become habituated to the project and, therefore, will not be harmed by it. Hopefully, the PEC will ask the independent experts what they think about that theory. Most telling, Triumph's biologist offered no dispute of the CPW and independent experts' reasons of why the planned mitigation in the NAP parcel would not benefit the sheep or offset the loss of habitat that will be caused by the project.

The CPW and independent experts' reports require a new EIR and mitigation plan. The project EIR and any mitigation plans must accurately identify all environmental impacts and offer plans to mitigate their impact. One thing that the CPW and independent experts' reports make clear is that a new EIR and mitigation plan is necessary. The dangers to the bighorn sheep are not accurately described in the EIR, and the proposed mitigation plan will not offset those dangers.

The mass and scale of this project needs to be changed. The CPW and independent experts' reports, which were not available at the first PEC hearing concerning the mass and scale of the project also raise new questions about the size of the project. Triumph is trying to squeeze as many residents as possible onto the site. On the other hand, the PEC has the authority and responsibility to determine the parameters of the project. VHA urges that in carrying out those duties, the PEC should consult with the independent experts to determine the carrying capacity of this parcel that is concomitant with the surrounding environment; that way the PEC can balance what are obviously competing considerations. It seems clear from these reports that the carrying capacity is far less than what Triumph has planned. A reduction in size would have the salutary effects of not only protecting

the environment but also keeping the project compatible with the East Vail community and eliminating the visual pollution of massive box-like apartment buildings looming over Frontage Road and I-70.

What's next? The next PEC hearing was originally scheduled for August 12th but there will now be an additional meeting on July 22nd. That meeting will be for public comment. In the meantime, Triumph still has not provided the renderings of the project as seen from the east, west and Frontage Road/I-70 nor is it known when Triumph will present any revised plans or even if there will be any. If the same process is followed, the public will not see anything from Triumph until only a few days before the next meeting, when the meeting agenda is published, leaving little time to review and make an intelligent response. And, if the three minute rule stays in effect and the public is effectively limited to written comment, there will be no time to comment before a decision on this project is made. None of this bodes well for the sheep, notwithstanding the CPW and independent experts' reports.



**Proposed Avanti Lodge – 366 Hanson Ranch Road – Developer: VailPoint LLC.
Contesting Open Space Covenant Protections**

Avanti Lodge Proposed Rezoning

At the same PEC meeting, Avanti Lodge was back again in its on-going efforts to build a luxury lodge on Hanson Ranch Road. This time it was seeking to rezone the infamous “fenced in” part of its property, to change it from Agriculture and Open Space (A) to Public Accommodation (PA). The effect would be to create a “use by right” zoning that Avanti Lodge could then claim justified a large luxury lodge. As [VHA has previously reported](#), the “fenced in” property is covenant protected open space land that is supposed to be maintained “at all times as a vacant and undisturbed open area in its natural condition.”

This particular land has a long history of aborted efforts to change it to commercial use. Most recently, Avanti Lodge requested a work session with the PEC to explore what it could build. That meeting ended with the PEC asking for more information about how the proposed designs impacted/crowded the surrounding open space and adjacent buildings, how parking was to be accommodated and for shading studies on building's effect on Hanson Ranch Road. To date, there has been no response from VailPoint. Instead, it sought the zoning change to put itself in a position to claim that it had a "right" to use the open space land for its building.

VailPoint's argument for the rezoning was that its property carried two zonings, and to clean up matters, the fenced in portion should be changed to Public Accommodation. But, as one Commissioner noted, they were asking the PEC to fix a problem that they created. Compounding matters, Avanti Lodge seemed to be trying to slip this through before responding to the PEC's request for additional information about the project. As a result, the rezoning request was tabled by a 6-1 vote (Lockman voting no).

This, of course, is not the end of this matter, so VHA will continue to follow next steps and report accordingly.



Is this to become another housing project?

The Secret Golf Course Housing Project

The VHA has also continued to investigate the clandestine golf course housing project and has learned that, in addition to what it has already reported, this is to be a massive project that will cost many millions of dollars. The plan is to move the entire back nine holes of the golf course, shifting them and Gore Creek south, to create 11 acres of space adjacent to Frontage Rd. (where the 12th fairway and hole now exist) and then to convert that land to a housing project. Because this land is owned by the Town, apparently, the LVHA and some members of the Town Council believe they can disregard that this land is expressly dedicated "as open space, or for use by the public for recreational purposes," and that they can do with it as they please.

[When we exposed this secret project in our last report](#), the developer, Viele Development, made the usual "spreading misinformation" response. But we have now confirmed what we previously reported; the project has been secretly under development for at least six months. It is to consist of at least 80 units, and to lay the ground work for the project there was a clandestine meeting on June 6th between a delegation from the Town (consisting of Council members Greg Moffit and Jen Mason, the Town Attorney, the Acting Town Manager,

the Housing Director, and LVHA members, Steve Lindstrom and Molly Morales) plus the developer and his attorney with the Vail Recreation District Recreational Subcommittee. That meeting violated both the letter and the spirit of the Colorado Sunshine Law which requires that all meetings of two or more members of any state public body where any public business is discussed must be open to the public. The TOV is a state public body, and a secret meeting involving such a delegation of the Vail government should not have taken place without public notice and access.

The VHA also confirmed that notwithstanding the secret meeting, the VRD is opposed to the project. As the VRD stated to the TOV, it “unanimously determined that it is adamantly opposed to the Proposed Development.” Notwithstanding the opposition of the VRD, it appears that it is still full speed ahead for the proponents of the project. In the meantime, the proponents have now clamped down on any further release of information about the project or their activities to move it forward. Where they plan to get the money is unknown, although we do know that the LVHA is seeking to promote new taxes to fund its activities. We say again, this is no way to do the public’s business. The VHA will continue to try to discover what is going on and report on what we learn.

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

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