



Historic East Vail wildlife corridor and critical winter range for big horn sheep. Will it be there in the future?

VAIL HOMEOWNERS ASSOCIATION

Lessons From History

Promises Kept and Unintended Consequences

and

The Need For More Transparency

April 2, 2019

In the never-ending push to develop more of Vail, its history is being dangerously forgotten or intentionally ignored, especially the decisions that guided Vail into becoming an international world-class resort. Recent events, particularly the East Vail housing “deal” and the application to rezone open space land in the heart of Vail to expand the VailPoint development, point out the need to remember and revisit that history. While these are separate proposals, the underlying principles are very much entwined. At the same time, the East Vail

housing deal underscores the need for more transparency in Vail's government. This is also a time for promises to be kept and the Town Council to act to avoid unintended consequences.

The Importance of Wildlife

The Battle Is Far From Over. After the recent vote tabling the East Vail housing project package, Triumph's COO said that it intended to proceed on its own. At the same time Vail Resorts rejected an overture to buy the property and convert it into open space stating that they were "proceeding as planned," i.e., a massive housing project on the East Vail parcel. That begs the question: If VR is so intent on building employee housing, why not site it on the Ever Vail property? The Ever Vail Master Plan already envisions employee housing on the site and using Ever Vail will not endanger any wildlife—continuing the legacy of wildlife protection of its predecessor. It would also have the added benefit of not requiring traffic infrastructure improvements and transportation upgrades. VR has made it clear it does not want to be a developer but it could strike the same kind of East Vail deal with Triumph or any other developer.

Apparently VR has ruled out that solution and has also ruled out anything for the East Vail site except a massive employee housing project. That means that wildlife protection and conservation will remain on the table. Since the East Vail housing project is likely to return, even if in another form, it is important to remember Vail's history of wildlife protection and conservation and Vail Associates role in that.

The Early Days. From Vail's very beginning, its forefathers recognized the importance of protecting wildlife and the natural environment. Vail's founders had come to the valley to enjoy its natural wonders and habitat. They realized that protection of that environment and the wildlife that lived in it was a key foundational element to Vail's success. This is not to say that community values and goals can't change if the community as a whole so decides but that is not the case with Vail. In the most recent community survey, protection of the environment and local wildlife was a top tier goal and it is still a key element of Vail's mission statement. That however seems at risk of being lost in the drive to build more employee housing.

Establishing Migration Corridors. Much of the valley wildlife migrates with the seasons and a good bit of the migration is cross-valley. In the 1970s, as construction of I-70 was beginning, wildlife conservationists and State wildlife officials raised concerns about the impact of Interstate 70 upon wildlife migration corridors. It was recognized that it was important to the survival of elk, deer and other animals that certain cross-valley wildlife corridors be maintained and a collaborative effort was launched. It involved the TOV, CDOT, Vail Associates and others.

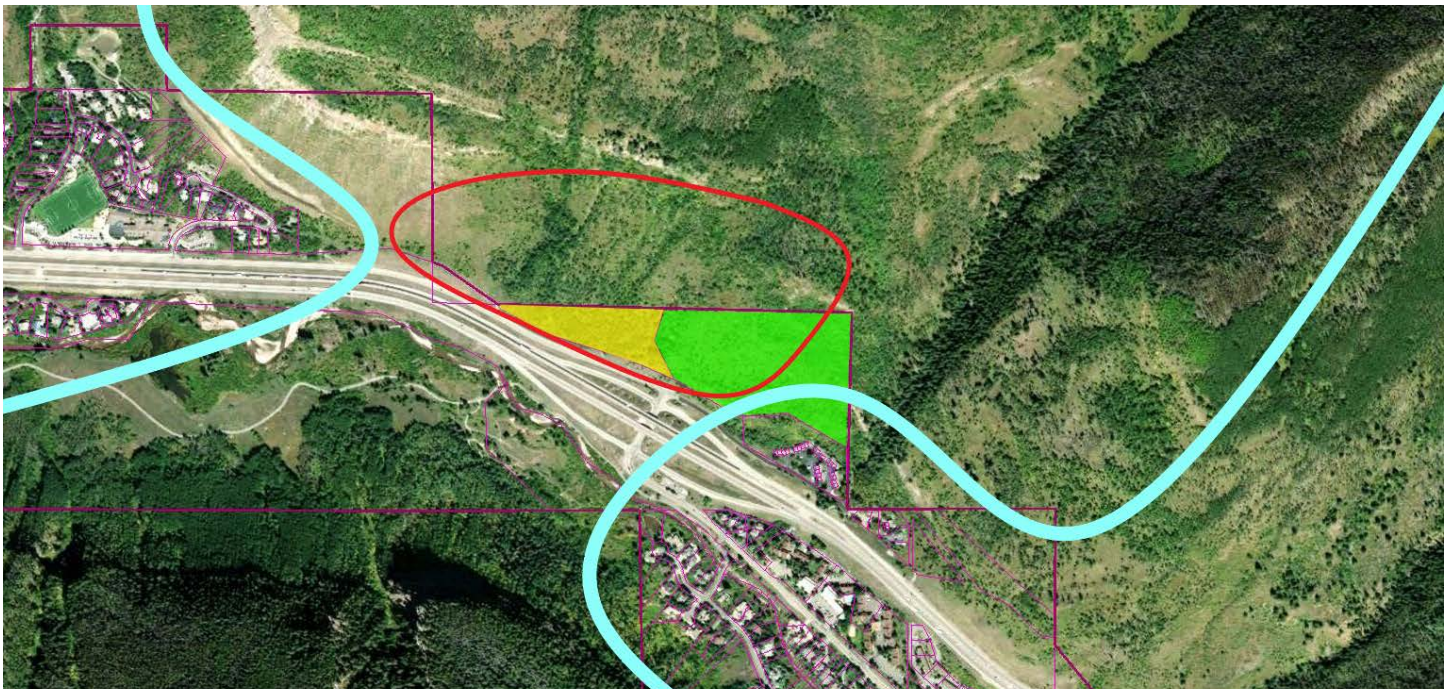
One of those migration corridors was in East Vail (The only other in the Town of Vail is at Dowd Junction). At the time, VA had acquired a significant portion of the old Katsos Ranch and was intent on developing their holdings adjacent to the East Vail Interchange as an Interstate service center. The remainder of the VA Katsos Ranch holdings was to become either low density residential or remain undeveloped. A Chicago landowner/developer had acquired another portion of the Katsos Ranch and was intent on developing it as well. At this time, the TOV eastern boundaries extended only as far as the East Vail Interchange and the TOV had made known what at the time was its highly controversial intent to annex the remainder of East Vail.

The TOV and VA smartly worked together and applied environmental sciences to their land use planning. Both concluded that to avoid urban sprawl, residential neighborhoods should be separated by open space tracts and

that those open spaces as well as steep slopes, flood plains, avalanche and landslide areas, wetlands and waterways should be set aside as wildlife and nature preserves. The TOV and VA were heavily influenced by the advocacy of wildlife conservationists and the Colorado Division of Wildlife, as it was known at the time. Wildlife officials maintained that mitigation measures needed to be taken. It was agreed that large swaths of land needed to be kept free of development on both sides of the interstate.

CDOT made concessions to accommodate wildlife migration habits, one of which was to lengthen the span of the East Vail Underpass so that wildlife could use it during the night to migrate under the Interstate. VA voluntarily set aside large tracts as open space and the TOV began acquiring large areas of undeveloped land, including portions of the Katsos Ranch on the south side of the highway for the purpose of protecting sensitive natural habitats and reducing development densities. It also acquired the parcel held by the Chicago developer. And, VA relented on their demand to build a highway service center and agreed to the TOV position of allowing minimal development density on the Interchange parcel.

The result was a wildlife migration corridor that is shown by the blue lines on the map below. The housing developments to the east and west of the corridor formed a natural funnel to bring the wildlife to the crossing. This was untouched “back country” with parts covered in pristine aspen forest and, for almost half a century, the corridor has remained in essentially the same state. And it also forms critical winter range for the East Vail herd of bighorn sheep, nesting and hunting areas for peregrine Falcons and summer foraging range for black bears.



Wildlife migration corridor negotiated by local officials in the early 1970’s will be blocked by the EVH project and will be lost forever.

Vail Resorts “Discovers” the East Vail Parcel. In 2016, VR discovered that it owned a large parcel of land in the corridor; apparently before then it either didn’t realize or had forgotten that it owned that land. By then VA had morphed into VR, a large ski company with headquarters in Broomfield and ski resorts throughout the U.S. and four other countries. Leadership and attitudes had changed, especially attitudes about protecting the natural environment and wildlife conservation. VR rushed to push through zoning changes to allow a mega-employee

housing project to be developed. Unlike in the past, there was no consultation with wildlife experts, except for one hired by VR, who unsurprisingly raised no concerns. [VHA warned about the consequences for wildlife migration](#) and the big horn sheep but those concerns were pushed off until a specific project was proposed.

The Corridor Will Be Blocked. As can be seen in the above map, the project site is the yellow area and the green area is the adjacent land that has been zoned Open Space. Because the “zone of influence” of human activity extends outward in all directions for several hundred yards, the red circle is the area that wildlife will be forced out of by construction and occupation of the East Vail housing project. The result is that any large scale housing project will completely block the wildlife corridor and will also push the bighorn sheep out of critical winter range.

While much of the discussion has rightly focused on the potential extinction of the resident big horn sheep herd, construction of the project would also destroy the intent and purpose of the considerable investment made to keep and enhance a cross-valley wildlife migration corridor. Elk, deer and other migrating animals, as well as peregrine Falcons who use the area for nesting and hunting and black bears that use the area for summer foraging, will not necessarily be driven to extinction but blockage of their migration corridor and loss of this critical habitat will have a major impact on those populations which have already been severely reduced.

Unintended Consequences I. So the question should be asked: Was the intent of the rezoning of VR’s East Vail parcel to block cross-valley wildlife migration, push the big horn sheep herd to extinction and severely impact other populations? And, why didn’t the PEC and the Town Council consult independent wildlife experts before rezoning this parcel? If the intent was not to block cross-valley migration and force the big horn sheep and other animals out of the corridor, then the Town Council needs to take action to make that clear. Otherwise the “right to develop” mentality (see below) will rule the day.

The Rich Get Richer I.

Lost in the rush to build more employee housing is any consideration of why the TOV needs to subsidize some of the most successful businesses in the community. Not only did VR stand to make upwards of \$4 million on sale of the East Vail parcel to Triumph Developers (the exact amount is not yet known because the sale agreement has yet to see the light of day) but 30+% of the units were to be reserved for VR. And VR weighted in trying to pack the meeting. In addition, officials from the Vail Valley Medical Center lined up to say that they also needed more employee housing. Putting aside whether medical personnel would want to live in the East Vail project, Vail Health and VR are two of the most profitable businesses in the valley. For example, Vail Health yearly racks up revenues that are 20% or more in excess of expenses. These businesses can afford to pay employees living wages so they can afford to live in the valley. They do not need to be subsidized by the TOV.

Unintended Consequences II. So the question should also be asked: Was the intent of Vail’s employee housing program to subsidize these businesses by spending millions to prop up employee housing projects? And it would not have been just \$4 million in the case of the East Vail project, as traffic infrastructure improvements, increased transportation costs and other related costs would have added millions more. If that were not the intent, the Town Council also needs to take action to make that clear.

Promises Kept?

When the East Vail parcel was up for rezoning in 2017, the Town Council promised that issues of wildlife conservation, density and neighborhood compatibility would be addressed if and when a specific project was proposed. [At the time VHA warned that pushing those issues down the road](#) while changing the zoning would make it difficult to raise them later because VR would have certain “rights” by reason of the rezoning (now passed on to Triumph). It therefore came as no surprise to hear a member of the Town Council claim that Triumph now had a “right” to develop the property as though there was nothing the TOV could do about it. And, in a hand-washing way, that member also said that the matter may never come back before the Town Council.

There is No “Right” to Build a Particular Project. In keeping with the “right to build” mentality, so far all of the discussions about the East Vail project have assumed that it will be multiple 5-story buildings comprising 135-140 units because that was Triumph’s preliminary proposal. Even the proposed LVHA deal that was recently tabled was premised on a 135 unit project. But there is nothing in Employee Housing zoning that says the developer gets to make those decisions. In fact, it is just the opposite. It is the PEC that gets to determine the scale and bulk of any project based on its environmental impact, density, and neighborhood compatibility and to impose such conditions as necessary for such things as traffic infrastructure. The PEC could decide, for example, that no building should be taller than 3-stories since that is the norm for East Vail and/or that only a handful of 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 the summer and fall when the sheep are not in their winter range and/or that the developer needs to fund traffic infrastructure so that the TOV will not get left holding the bag.

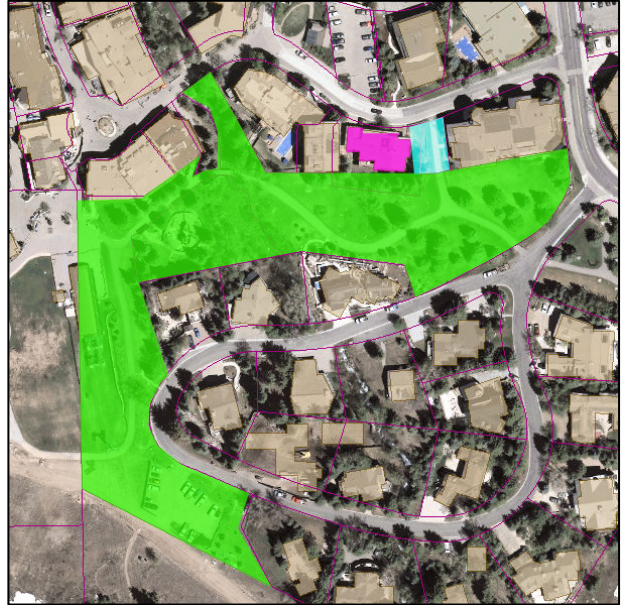
The point is that if and when a proposal is actually submitted, everything should be on the table, independent wildlife experts should have a seat at that table and public input should not be limited to just a few minutes of comment. This would be too important a matter to treat it as “business as usual.”

The Town Council Should Act. When the Town Council promised to address wildlife conservation, density and neighborhood compatibility issues, it was at least implicit that those discussions would be before the Town Council. But, as noted, one Council member has announced, that may not be the case. That is because development proposals are reviewed by the PEC and the decision of the PEC is final unless there is an appeal to the Town Council or the decision is “called up” by a majority of the Council members. Since appeals can only be taken by an aggrieved party, i.e., someone who has suffered an adverse effect that is different from adverse effects that may affect the community as a whole, as a practical matter the only way that the East Vail development may come back before the Council is through a Council call up.

This project is the only one that the PEC will ever consider that has the potential for wiping out an entire group of animals and blocking an historic wildlife corridor. The animals that may be wiped out are no ordinary animals; they are the official State of Colorado animal. And, while the elk, deer and other animals that use the corridor will not necessarily be wiped out, their populations will be severely impacted. Because of the transcendental nature of these issues, the Council should pledge now that in the event of a proposal and a decision of the PEC on this particular matter, the Council will call that matter up for consideration and review by the full Council.

Open Space Land

In addition to protecting the natural environment and wildlife, Vail's forefathers also recognized the importance of open spaces to the success of the community and they acted, first through protective covenants and then through zoning, to preserve generous amounts of open space. [With the recent VailPoint application](#) to change the zoning on parts of Tract E and the accompanying Lot D-1, a narrow 50 foot wide strip of land between the Tivoli Lodge and the old Kindel house (now the site of the proposed VailPoint luxury lodge), from open space to Public Accommodation so they can be developed into a bigger luxury lodge, the focus is once again on open space land. And, once again Vail's history is illuminating.



In the early days of Vail, the land that comprises Tract E (colored green) was originally conceived as a parking area for the town to provide access to the Tract E area, hence its 50 foot width. The Kindel's however objected to the public passing near their home (colored pink) and they built the encroaching fence to keep the public away from the side of their house.

Parking needs increased as Vail grew and by 1971 the TOV and VA had agreed that the Town would build parking structures along the Frontage Road. VA however wanted to keep Lot D-1 as a potential right-of-way in case Tract E was needed for parking, because the first bond issue election to build a town parking structure had failed to win approval in a public election.

Nonetheless, when the protective covenants on Tract E and Lot D-1 were revised in 1971, the TOV prevailed. Tract E was dedicated as open space and Lot D-1 was designated for a public use as an access easement for a pedestrian path that was to connect Golden Peak with the town core. To this day all of Tract E and Lot D-1 remain under protective covenants that require those lands remain open space for all the public to use.

The Rich Get Richer II

It's understandable that VailPoint wants to incorporate open space land into its development. That would allow it to build a bigger building and presumably make greater profits. But that is no excuse for invading open space. As Vail's history makes clear, there was a deliberative decision to protect these lands from any development or commercial use. There is no legal basis to ignore those designations.

The Need For More Transparency

In recent years the TOV has made great strides in providing more transparency in its actions e.g. airing Town Council and more recently PEC and DRB meetings on local television and the internet, but one area lags far

behind: the Local Vail Housing Authority. Not only are LVHA meetings not available on TV or the internet but much of their work is done in secret. The Authority claims that it acts transparently but that is not so. LVHA agendas routinely contain an “Executive Session” item, from which the public is excluded, and there is no disclosure of any subject that will or could be discussed. This is contrary to the Town Council agenda where the subject of executive sessions is fully set forth. In addition, developer related funding is always discussed in Executive Session. As a result the public has no idea of what is being proposed, how funds are being allocated or what is going on behind the scene at the LVHA.

The Rich Get Richer III

That is what happened with the recent East Vail housing project deal. Had the “deal” been approved, Triumph would have gotten a very lucrative deal to build the project. But no one knew that was in the offing. From the little information that was available it appeared that Triumph was seeking to sell deed restrictions to the TOV but not even the “ask” was revealed. That however was not what was happening. Behind closed doors the LVHA was actually secretly negotiating a sweetheart financing package that only saw the light of day when it had been completed. The deal was a complete surprise; there was no public disclosure that such a deal was coming. Then to compound matters, it was scheduled for a vote before the Town Council 14 days later. All of that was wrong. The public should have known that a “deal” to purchase the land was being negotiated, there should have been opportunities for public input and, once announced, there should have been more time for the public to analyze its particulars.

End Secret Governance. VHA is not opposed to people making money and businesses thriving; it is only opposed to them doing so using the public’s money or property that was dedicated to a public purpose and working deals out “in the dark.” Secret deliberations should have no place in Vail’s government. The LVHA has authority over a large amount of the public’s money. What it does with that money should always be fully disclosed as it is happening. All matters for LVHA executive sessions should be listed on the agenda, only those subjects should be allowed to be discussed and there should be opportunities for public input. The Town Council should act to end the LVHA’s practice of secret governance.

Copyright 2019

Post Office Box 238 Vail, Colorado 81658

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