

To: Town of Vail PEC
From: Michael O'Connor, Triumph Development West
RE: Booth Heights Revised Wildlife Mitigation Plan with TOV Biologist Recommendations
Date: August 16, 2019

This memo serves to outline the process and outcomes that resulted from the Town of Vail's review of the Booth Heights Wildlife Mitigation Plan. This review was conducted by Town Staff, Colorado Parks and Wildlife, and the three wildlife biologists engaged by the Town of Vail, as well as the applicant and its biologist, Rick Thompson. This discussion was conducted via three meetings of the group on July 19, July 26 and August 5 – with the final results of the review provided to the applicant on August 7.

The discussion of the group was comprehensive in nature – focusing first on potential challenges encountered by the big horn herd on its entire winter range and enhancements that can be pursued on public lands, as well as specific design recommendations for the Booth Heights plan and options that would allow the applicant to improve upon its proposed offsite mitigation plan to increase the benefits to the bighorn winter range in partnership with the Town of Vail.

In the paragraphs below, Triumph has summarized its support for the recommendations of this roundtable on the steps that can help address the long-term health of wildlife in the Booth Creek vicinity, as well as the components of the applicant's proposed revisions to the mitigation plan based on these conversations (items that are changes to the original proposed triumph mitigation plan are highlighted in *green italics*).

Booth Heights Design Criteria Reducing Potential Impacts:

- Development Clustering – Concentrate development onto the front of the Housing Parcel.
- Parcel Access – Vehicular access from the west to work with natural grade.
- Rockfall Berm – Utilize the rockfall berm as a buffer and physical barrier between wildlife and the new development. *At the recommendation of the Town of Vail's biologists, this berm will be screened from townhomes with a row of aspens and replanted with native grasses and forbs that could provide additional sheep winter foraging habitat.*
- Development Buffer – In addition to the berm, *add landscape screening at the west and north of the driveway to provide additional screening.*
- Aspen Screening - Utilize the existing aspen forest to the north and west of the site to buffer the development improvements.
- Setback from the Right of Way – Setback 20' from the property line. *The applicant has also adjusted the landscape plan to identify areas that trees can be saved in this front setback and ROW.*
- Minimize Internal Parks and Parking - To keep the footprint of development small.
- Tree Clearing - along and above the berm to allow east-west wildlife passage.

- Do Not Inhibit East West Wildlife Movement at the Right of Way – Applicant is proposing no major cut slope, structures or paths across the front of the site.
- *Fencing – At the recommendation of the Town’s biologists, the proposed fencing has been removed from the initial site plan. CPW has asked to maintain the ability to add a fence at a later date. The applicant proposes that this can be accomplished by granting an easement to the Town of Vail on the Housing District parcel for the installation and maintenance of a wildlife fence at CPW’s election.*

Wildlife Mitigation Plan Winter Range Enhancement

- *Conservation Easement on the NAP Parcel – At the recommendation of the Town’s biologists, Triumph will commit to placing a Conservation Easement on the NAP parcel prior to any building permit permanently restricting the parcel for wildlife and open space. This Conservation Easement will retain the right to make certain work on the NAP parcel that facilitates the development of the Housing Parcel, including but not limited to wildlife enhancements, geotechnical monitoring, and soil stabilization and the work required to perform such measures.*
- *Enhancement on the NAP Parcel – While the CPW and the Town of Vail’s wildlife biologists all agree that the NAP parcel is valuable wildlife habitat – particularly for elk, deer, bears, and birds – they concluded that resources should be focused on other higher-quality winter range for bighorn sheep – the biologist do not recommend enhancement on this parcel.*
- *Equivalent Wildlife Enhancement on Higher Quality Bighorn Winter Range – The biologist roundtable recommended that treatments and habitat enhancements be focused around prime bighorn sheep ranges that are not on the Booth Heights development site (e.g. Booth Creek cliffs on the east and west sides of Booth Creek TOV and USFS habitat). Triumph will work with the Town of Vail Staff and CPW to identify alternate areas of enhancement that can be pursued by the Town of Vail with funds provided by Triumph as outlined below. This work could be extended onto Forest Service property with USFS permission at the Town’s. As an example, the team identified these areas between the upper and lower band of booth cliffs that have been overgrown with Aspen as shown on the below photo:*



Wildlife Enhancement Recommendations From Biologists for Enhancement on Public Lands as Options for the Spending of Triumph's Financial Commitment

- Establish a mitigation fund for enhancement and protection of bighorn sheep habitat. *Triumph will contribute \$100,000 in seed money for the establishment of this fund and these funds could be used on items outlined below. These funds will be provided by April 15, 2019 of the year that the applicant intends to start construction, and will be paid to the Town of Vail or other such agency or entity determined by the Town of Vail for the purposes of ongoing wildlife enhancements. These funds will be spent at the direction of Town of Vail staff and Town Council. If said funds are not in fact spent within five (5) years of the date of contribution, the funds shall be returned to the applicant within 30 days of the expiration of the 5-year period.*
- Consider fertilization. It might be wise to do a treatment/control study to determine efficacy of treatments. *[Possible use of Triumph seed money]*
- Treat burn areas with herbicide effective in preventing native vegetation from being replaced by cheatgrass and other noxious weeds post-burn. *[Possible use of Triumph seed money]*
- Burn or cut, stack, and burn to open-up aspen woodlands to create and maintain important surrounding wildlife areas. Burning will be most effective and cheapest alternative. Investigate methodologies to allow for prescribed fire. *[Possible use of Triumph seed money as discussed above]*
- Cut/maintain winter sheep movement corridors suggested in the 1998 USFS habitat plan. *[Possible use of Triumph seed money]*
- Fund a bighorn sheep movement study in cooperation with CPW, USFS, and the proponent to determine how sheep are using the Booth Creek areas. *[Possible use of Triumph seed money]*
- Consider using salt or other supplements to keep bighorn sheep away from the frontage road and I-70. *During construction of the development and in the event of a severe winter, Triumph*

will share the cost of feeding the bighorn herd in the immediate vicinity of the Booth Cliffs at the election and direction of CPW.

- Extension of these concepts onto USFS property through a Categorical Exception pursued by TOV.

Construction-Related Minimization Measures

- Heavy site construction including clearing, excavation, grading, retaining wall construction, and berm construction will only be performed from *June 1 through November 14. The June 1 start date will be reviewed and modified with CPW based on the severity of the winter and availability of other forage and lambing areas.*
- Prohibit construction personnel from bringing animals onto the site as allowed by law, feeding wildlife, and certified bear-proof trash receptacles for food refuse.
- No rock blasting will be performed until July 31 or until peregrine fledging of nearby nests.

Wildlife Protection Restrictions for Residents of Booth Heights

- *Short-term rentals will be prohibited.*
- No planting of garden fruit/nut bearing trees *and bird feeders will not be allowed.*
- Education program for the residents of Booth Heights about the important Surrounding Wildlife areas and wildlife protections incorporated into all leases and HOA Documents.
- Prohibition of resident and animal access to the surrounding important wildlife habitat including the Town of Vail parcel to the west, USFS property to the north, and NAP parcel to the east.
- No additional roads or trails will be built on the undeveloped portion of the entire East Vail Workforce Housing Subdivision. Social trails will be deconstructed and the neighboring landowner (e.g. Town of Vail) will be notified of the trespassing.
- Signage around the property notifying residents and guests of the Important Surrounding Wildlife Area and the prohibition of access to these properties from the site. Electronic monitoring with game cameras to help determine violations.
- No outside overnight storage of garbage or trash at the residences.
- Implement a weed management program to discourage the growth of noxious weeds.
- Prohibition of flying drones on or around the property.
- All pets will be prohibited at rental properties, except as required by law.
- Pets of guests, families and contractors will be prohibited, except as required by law.
- *No resident-occupied townhome will have more than one dog, except as required by law.*
- Animals must be under direct control of its owner at all times on a leash of no more than 12 feet (unless the duties of the service animal require it to be unleashed).

- The walking of animals within the property shall be confined to the developed areas below the berm. All residents will pick up after their animal. Pets shall not be fed outside. No pets shall be permitted to chase animals, nor leave the development parcel.
- No animal will be permitted to be a public nuisance, such as excessive barking, as determined by the HOA at its discretion.

Enforcement

- Resident Education Plan as described in the Thompson May 2019 Wildlife Mitigation Plan
- *Recordation of a covenant to the Town of Vail outlining terms of Wildlife Protection Restrictions for Residents of Booth Heights as outlined in the approved Development Plan. Covenant will prohibit modifications to the commitments without Town of Vail approval, as well as grant the Town of Vail the ability to enforce provisions as outlined below on its behalf of the owner and HOA at the Town of Vail's election.*
- Enforcement Actions to Include:
 1. The TOV can use its authority as a municipality and property owner to enact and enforce protective restrictions on TOV and private property that is important wildlife habitat at appropriate times during the year, including but not limited to, closing all or portions of parcels to access by the public, including residents of the East Vail Workforce Housing Subdivision, and policing and preventing trespassing violations.
 2. Housing Management staff will enact and enforce the above restrictions regarding pet ownership as allowed by Federal and Colorado law. These items will be included in any leases and the community's rules and regulations and HOA documents, as well as the covenant discussed above, as applicable.
 3. Residents of the Workforce Housing parcel will ultimately be responsible for costs related to any damage done by pets or service and emotional support animals.
 4. Housing Management and HOA management will provide assistance to the TOV in enforcing violations of restrictions to TOV property by the timely reporting of observed violations of those restrictions, including providing evidence of the violation(s) to TOV authorities, who can take appropriate action.
 5. Upon the occurrence of a violation of these policies by a Responsible Party, Housing Management or the HOA Manager, as applicable, shall give written notice ("Notice of Violation") to the Responsible Party (and a copy to the owner and Master Lessee of the unit, if the owner or Master Lessee is not the Responsible Party) regarding the occurrence of the violation, stating with reasonably detailed information concerning the violation, noting, among other things, the facts and circumstances surrounding the violation as well as the day, approximate time, and approximate location of the violation.

6. Housing Management should maintain a file of Wildlife Requirement violations by Responsible Parties. The TOV and CPW may periodically request summarized wildlife-related violation records to evaluate compliance with the Wildlife Requirements and determine if any adaptive management is needed to increase compliance.
7. East Vail Workforce Housing Subdivision residents and tenants are encouraged to report Wildlife Requirement violations associated with recreation and pet controls to Housing Management or the HOA, as appropriate, along with documentation (e.g., photos or video) of the violation, if possible. It is in the best interest of residents, owners, and tenants of the project, and the larger East Vail community to report violations to minimize impacts to wildlife so residents can continue appreciating the wildlife in this special setting and so more stringent requirements are not developed and implemented.
8. The Housing Manager and HOA is authorized, empowered, and obligated to impose the following fines and enforcement measures for violations of these Wildlife Requirements.
 - a. Upon the occurrence of the first violation, a fine in the amount of \$250.00 will be assessed to the owner or Master Lessee of the unit.
 - b. Upon the occurrence of the second violation, a fine in the amount of \$500.00 will be assessed to the owner or Master Lessee of the unit.
 - c. Upon the occurrence of a third and all subsequent violations, a penalty will be assessed according to ownership status of the Responsible Party as follows:
 - i. A Responsible Party who is a tenant in the Workforce Housing Parcel will be given a one-month notice in writing to vacate their premises, regardless of hardship.
 - ii. A Responsible Party who owns a home in the Workforce Housing Parcel will be assessed a fine of \$750.00.
 - d. Notwithstanding the above, for violations by residents whose occupancy at the East Vail Workforce parcel is a component of their employment, and subject to federal and state labor laws, fines and enforcement actions will be determined by and imposed solely through their employer, and include fines and enforcement measures up to and including the loss of housing at the East Vail Workforce Housing Subdivision.
9. The Owner or HOA of the East Vail parcel will retain any fines collected by the Housing Manager or HOA and use these funds for future wildlife-related enhancement on the parcel or otherwise valid enhancement that would benefit the local sheep herd. All fine assessments shall be due and payable to Housing Management within 30 days of written notice of such fine or assessment, as described below. All unpaid fines are subject to the imposition of liens on the unit as may be provided by the community's governing documents. If any fine assessment is not paid within ten days after the due date, a late

charge in the amount of \$100 shall be assessed to compensate Housing Management for the expenses, costs, and fees, including attorney fees, involved in handling such delinquency. Responsible Parties shall be personally, jointly, and severally liable for all fines/penalty assessments.