



Memorandum

TO: Planning and Environmental Commission

FROM: Community Development Department

DATE: August 26, 2019

SUBJECT: A request for the review of a Development Plan, pursuant to Section 12-6I-11, Development Plan Required, Vail Town Code, for a new housing development located at 3700 North Frontage Road East/Lot 1, East Vail Workforce Housing Subdivision ("Booth Heights Neighborhood"), and setting forth details in regard thereto. (PEC19-0018)

Applicant: Triumph Development
Property Owner: Vail Corporation
Planner: Jonathan Spence

I. SUMMARY

Triumph Development has submitted an application for the development of the East Vail "Booth Heights Neighborhood", located at 3700 N. Frontage Road East, near the East Vail I-70 Interchange (Exit 180). The Development Plan proposes the construction of 61 residential units, including 49 units of deed-restricted employee housing units (EHUs), (30 EHUs in 3 multi-family apartment buildings, and 19 EHUs in townhomes), plus 12 unrestricted townhomes.

A separate application for a Conditional Use Permit to allow for 30% of the Gross Residential Floor Area (GRFA) on this site to be constructed as Dwelling Units (not employee housing units) has also been submitted. *(Please see the staff memo on PEC19-0019 for more information.)*

Based upon Staff's review of the criteria outlined in Section XI of the August 12, 2019 Staff Memorandum and the evidence and testimony presented, the Community Development Department recommends **approval, with conditions**, of this application subject to the findings noted in Section IV of this memorandum.

II. PREVIOUS ACTION

On August 12, 2019, following extensive public comment and deliberation by the PEC, this application was continued to the August 26, 2019 public hearing. As a continuance,

the public hearing will reconvene to discuss new information or clarification of existing information followed by deliberations and action on the application.

III. NEW INFORMATION/CLARIFICATION OF EXISTING INFORMATION

Parking/Unit Count/Bedroom Mix

The applicant has proposed to reconfigure the square footage within the three connected multi-family buildings to bring the project into conformance with the parking requirements of The Vail Town Code. The proposal originally included 42, two (2) bedroom apartments requiring 84 parking spaces (2 per unit). The application now proposes to reduce the overall unit count in the multi-family buildings to 30 by converting 24 of the proposed units from two (2) bedroom units to four (4) bedroom units. The final unit count/mix would be 18 two (2) bedroom units and 12 four (4) bedroom units. The Vail Town Code parking requirements are based not on bedroom counts but on GRFA with all units between 500 and 2,000 square feet requiring two (2) spaces per unit. The reconfiguration lowers the parking requirement per code from 84 spaces to 60 spaces.

While the reconfiguration does not change the overall square footage or number of bedrooms proposed, the allowable occupancy is reduced as the Vail Town Code permits an occupancy level of two (2) persons per bedroom, plus an additional two (2) persons per unit. The maximum occupancy of the multi-family buildings has been reduced from 252 persons to 228 persons.

Wildlife Mitigation Plan/Timing of Contribution and Improvement Measures

The applicant has provided an updated Wildlife Mitigation Plan that provides greater detail on the following topics:

- Design Criteria Reducing Potential Impacts
- Wildlife Mitigation Plan Winter Range Enhancement
- Wildlife Enhancement on Public Lands/Use of Triumph's Financial Commitment
- Construction Related Minimization Measures
- Wildlife Restrictions for Residents of Booth Heights
- Enforcement

This plan has been included with memorandum as Attachment B.

Kristin Bertuglia, Environmental Sustainability Manager for the Town of Vail has provided a memo concerning current and proposed environmental actions related to the Bighorn Sheep Habitat Improvement Project and Offsite Mitigation. This memo has been included as Attachment A. Kristen will also be providing a short presentation concerning the memo and will be available for any questions related to the memo or the Mitigation Plan.

Conservation Easement Qualifications

As outlined in the updated Wildlife Mitigation Plan and included in the recommended Conditions of Approval, the applicant has committed to working with the Town of Vail in good faith to pursue a conservation easement to permanently restrict the use of the 17.9 acre NAP parcel by obtaining a conservation easement from a land trust. The applicant and staff are in agreement that certain activities including geotechnical monitoring and soil stabilization may be necessary within the easement. However, it is the Town of Vail's position that the primary purpose with the conservation easement, and the underlying Natural Area Preservation Zoning, is the protection and enhancement of the land for wildlife.

Additional Information concerning Enforcement Provisions

Concern has been expressed that relying solely on Home Owner Association documents that the Town of Vail is not a party to as the means of ensuring compliance with certain elements of the proposal and/or conditions of approval is inadequate. Furthermore, concern has also been voiced over the ability of the Association to modify their documents as to bring them out of conformance with any approval or associated conditions of approval. Activities of concern include trespass into the adjacent NAP parcel, a prohibition on short term rentals, dog ownership other than that protected by law, outdoor dog activities by those dogs that are permitted, prohibition on outdoor food gardens or bird feeders.

To address these concerns, staff and the applicant are proposing that the Town of Vail enter into a private covenant, to be reviewed and approved by the Vail Town Council, that will bind the property, its current owners and all subsequent owners, to restrictions and prohibitions on certain activities as described above. Although this does not address the effectiveness of enforcement, it does prevent future owners and residents from amending homeowner association documents in such a way as to not be in conformance with elements of the proposal or conditions of approval.

Tobacco Smoking

Concern was expressed at the August 12, 2019 meeting that there was a perceived wildfire risk associated with residents and guests smoking tobacco products outdoors. This concern led to some members of the PEC advocating a ban on all outdoor smoking. In response, the applicant has proposed a designated outdoor smoking location to confine this activity and decrease wildfire risk. A prohibition on outdoor smoking may result in residents and guests smoking closer to natural areas to avoid detection, resulting in an increased risk of wildfire. Community Development Staff finds the applicant's proposal to be pragmatic and reasonable.

IV. STAFF RECOMMENDATION AND MODIFIED CONDITIONS OF APPROVAL

The Community Development Department recommends **approval, with conditions**, of the Booth Heights Development Plan for a new housing development located at 3700 North Frontage Road East/Lot 1, East Vail Workforce Housing Subdivision ("Booth Heights Neighborhood") (PEC19-0018).

Should the PEC choose to approve the proposed Development Plan, the Community Development Department recommends the following motion:

*"The Planning and Environmental Commission **approves** this request for the Booth Heights Development Plan, pursuant to Section 12-6I-11, Development Plan Required, Vail Town Code, for a new housing development located at 3700 North Frontage Road East/Lot 1, East Vail Workforce Housing Subdivision ("Booth Heights Neighborhood") (PEC19-0018) subject to the following conditions of approval:*

General Conditions of Approval

1. Certificates of Occupancy for this project will only be issued in a manner that maintains a minimum of 70% of the total built Gross Residential Floor Area (GRFA) as deed-restricted employee housing units. At no time shall the unrestricted units for which Certificates of Occupancy are issued exceed 30% of the total built GRFA.
2. This property is within a geologically sensitive area pursuant to Chapter 12-21 Hazard Regulations, Vail Town Code. Prior to issuance of any building permit for construction within the geologically sensitive areas, the owner shall submit a written, signed and notarized affidavit certifying acknowledgement of receiving personal notice of the fact that that said building or structure is in an area of geologic sensitivity and notice of the studies conducted to date with regard thereto.
3. All plans submitted with the building permit application for property within geologically sensitive areas shall be stamped by the applicant "Geologically Sensitive Area" together with the applicable zone designation.

Prior to Issuance of any Building Permit

4. Prior to Issuance of any Building Permit, the Applicant shall submit, for review and approval by the Town of Vail, a slope monitoring program, during construction activities, near the ancient landslide deposits at the east end of the site, in a form and manner to be determined by the applicant's professional geologist.
5. Prior to Issuance of any Building Permit the applicant shall submit, for review and approval by the Town of Vail a plan for monitoring system with video recordings for enforcement of wildlife mitigation measures and trespass in prohibited areas and take

corrective action to remedy trespass, which recording and records of enforcement shall be made available to the Town of Vail upon request. This condition shall continue with the property owner and manager of the Homeowners Association responsible for the property.

6. Prior to creation of a curb cut and installation of improvements (bus stop and sidewalk) in Colorado Department of Transportation (CDOT) the right-of-way, applicant shall obtain written approval from the Colorado Department of Transportation. A copy of such approval or permit shall be provided to the Town of Vail prior to related construction activities commencing.

Prior to Issuance of the First Certificate of Occupancy

7. In lieu of the previously proposed on-site wildlife habitat mitigation plan, the applicant shall perform the commitments outlined in the August 16, 2019 memo titled "Booth Heights Revised Wildlife Mitigation Plan Incorporating TOV's Biologist Recommendations" submitted by the applicant. This includes a \$100,000 financial contribution by the applicant made prior to April 15 in the year that the applicant will pull a building permit, to the Town of Vail or other such agency or entity determined in consultation with the Town of Vail and Colorado Parks and Wildlife, for the purpose of ongoing wildlife habitat improvements, monitoring and study. If said funds are not in fact spent within five (5) years of the date of the contribution, the funds shall be returned to the applicant within 30 days after the expiration of the 5-year period.

8. Prior to Issuance of any Certificate of Occupancy, the Applicant shall develop an Environmental Education Program to educate the residents and owners of the Booth Heights Neighborhood about the environmental sensitivity of the site and the vicinity. The Education Program shall be reviewed by the Town of Vail Environmental Sustainability Manager and the Colorado Parks and Wildlife District Wildlife Manager and approved by the Town of Vail. The Education Program shall include, at a minimum, information on the mapped wildlife habitats, potential human impacts to bighorn sheep, elk, black bears, and peregrine falcon. The Education Program shall clearly describe the activities and uses that are prohibited on site (including dogs, outdoor food gardens, bird feeders, feeding or harassing of wildlife) regulations on trash enclosures, prohibition on construction new trails, and prohibition on accessing the area to the north of the berm/fence. A copy of the Environmental Education Program shall be an attachment to all leases and provided to all tenants prior to occupancy, and shall also be recorded with the Eagle County Clerk and Recorder to inform future property owners. A copy of the Education Program and Wildlife Mitigation Plan shall be kept on file with the Homeowners Association and shall be provided to all leaseholders and shall be made

available within reasonable notice to any tenant, unit owner or the Town of Vail, upon request.

9. Applicant shall enter into a protective covenant with the Town of Vail, to be reviewed and approved by the Vail Town Council, that will bind the property, its current owners and all subsequent owners, to restrictions related to the prohibition of dogs other than those required to be permitted by law, prohibition on short term rentals, prohibition on the construction of trails, and prohibiting access to the 17.9 acre NAP parcel to the east.

10. Applicant shall install signs along the south side of the rockfall berm clearly stating that access to the berm and properties to the north of the development site, and to the adjacent 17.9 acre NAP parcel, is prohibited. The location, number and content of signs shall be proposed by the applicant and approved by the Town of Vail Environmental Sustainability Manager and the Colorado Parks and Wildlife District Wildlife Manager.

11. Applicant shall include a fence easement on the first subdivision plat recorded for this development, which easement shall generally be located along the south side of the rockfall berm, for the potential future installation of wildlife fencing should it be determined necessary by Colorado Parks and Wildlife.

12. Applicant shall work with the Town of Vail in good faith to pursue a conservation easement to permanently restrict the use of the 17.9 acre NAP parcel by obtaining a conservation easement from a land trust. This conservation easement will prohibit the construction of structures, but will also preserve the ability for wildlife enhancements, as well as other requirements for the development of the Booth Heights neighborhood by the applicant such as geological monitoring and testing and soil stabilization activities. The primary purpose and related allowable use of the property shall be for the preservation and enhancement of wildlife.

13. Prior to final subdivision plat approval, a copy of the Homeowners Association documents shall be provided to the Town of Vail, and shall include an inspection and maintenance plan for the rockfall hazard mitigation berm. The plan shall include an inspection schedule. A copy of the inspection schedule and maintenance activities shall be provided to the Town of Vail upon request.

14. Prior to issuance of a Certificate of Occupancy for any of the deed-restricted employee housing units, the applicant shall record with the Eagle County Clerk and Recorder, in a form acceptable to the Town Attorney, the Town of Vail Type IV employee housing deed-restriction covenant.

Recommended Findings

Should the Town of Vail Planning and Environmental Commission choose to approve, with conditions, the development plan, the Community Development Department recommends the Commission makes the following findings:

A. Building design with respect to architecture, character, scale, massing and orientation is compatible with the site, adjacent properties and the surrounding neighborhood.

B. Buildings, improvements, uses and activities are designed and located to produce a functional development plan responsive to the site, the surrounding neighborhood and uses, and the community as a whole.

C. Open space and landscaping are both functional and aesthetic, are designed to preserve and enhance the natural features of the site, maximize opportunities for access and use by the public, provide adequate buffering between the proposed uses and surrounding properties, and, when possible, are integrated with existing open space and recreation areas.

D. A pedestrian and vehicular circulation system is designed to provide safe, efficient and aesthetically pleasing circulation to the site and throughout the development.

E. Environmental impacts resulting from the proposal have been identified in the project's environmental impact report, if not waived, and all necessary mitigating measures are implemented as a part of the proposed development plan.

F. Compliance with the Vail comprehensive plan and other applicable plans

Alternative Motion and Findings

Should the PEC choose to **deny** the proposed Development Plan, the Community Development Department recommends the following motion.

*"The Planning and Environmental Commission **denies** this request for the Booth Heights Development Plan, pursuant to Section 12-61-11, Development Plan Required, Vail Town Code, for a new housing development located at 3700 North Frontage Road East/Lot 1, East Vail Workforce Housing Subdivision ("Booth Heights Neighborhood") (PEC19-0018) with the following findings:*

*A. Building design with respect to architecture, character, scale, massing and orientation (**is/is not**) compatible with the site, adjacent properties and the surrounding neighborhood.*

*B. Buildings, improvements, uses and activities **(are/are not)** designed and located to produce a functional development plan responsive to the site, the surrounding neighborhood and uses, and the community as a whole.*

*C. Open space and landscaping **(are/are not)** both functional and aesthetic, are not designed to preserve and enhance the natural features of the site, maximize opportunities for access and use by the public, provide adequate buffering between the proposed uses and surrounding properties, and, when possible, are not integrated with existing open space and recreation areas.*

*D. A pedestrian and vehicular circulation system **(is/is not)** designed to provide safe, efficient and aesthetically pleasing circulation to the site and throughout the development.*

*E. Environmental impacts resulting from the proposal have been identified in the project's environmental impact report, if not waived, but all necessary mitigating measures **(are/are not)** implemented as a part of the proposed development plan.*

*F. The proposal **(is/is not)** in compliance with the Vail comprehensive plan and other applicable plans.*

IV. ATTACHMENTS

- A. Memo Concerning Bighorn Sheep Habitat Improvement Project and offsite mitigation, Kristin Bertuglia, August 26, 2019
- B. Triumph Memo to PEC Concerning Wildlife Mitigation Plan, August 16, 2019
- C. Updated Booth Heights Development Plan, August 22, 2019
- D. Updated Booth Heights Plan Set, August 21, 2019
- E. Public Comment Received by August 22, 2019

Links to Previous Attachments

PEC190018_Booth_Heights_Development_Plan_Staff_Memo_081219_FINAL.pdf	PEC19-0018 Booth Heights Staff Memo
Attachment A Vicinity Map - Booth Heights Neighborhood.pdf	Attachment A - Vicinity Map
Attachment B Applicant Narrative.pdf	Attachment B - Applicant Narrative
Triumph Plan Revision Memo 080619.pdf	Attachment B-1 - Applicant Narrative Update Memo
Attachment B-2 Triumph Revised WMP 080919 FINAL.pdf	Attachment B-2 Applicant Narrative Update Memo
Architectural Plans compressed.pdf	Attachment C Architectural Plans
Architectural Renderings compressed.pdf	Attachment C1 - Architectural Renderings
Landscaping plans reduced and combined-compressed.pdf	Attachment D - Landscaping Plans (1 of 2)
Landscaping Plans compressed 5.pdf	Attachment D - Landscaping Plans (2 of 2)

[Civil Plans compressed 1 of 2.pdf](#)

[Civil Plans compressed 2 of 2.pdf](#)

[Booth Heights Approved Development Plan 080919 DRAFT.pdf](#)

[Attachment G - Survey.pdf](#)

[Attachment H Ex1 Parking Analysis.pdf](#)

[Attachment I Ex2 Environmental Impact Report.pdf](#)

[Attachment J Ex3 Wildlife Mitigation Plan.pdf](#)

[J-1 Wildlife Mitigation Plan Updated 080719.pdf](#)

[Attachment K Ex4 Wetland Delineation Report.pdf](#)

[Attachment L Ex5a Geologic Hazards Analysis.pdf](#)

[Attachment M Ex5b Geologic Hazards Memo.pdf](#)

[Attachment N Ex5c Rockfall Hazard Study-compressed.pdf](#)

[Attachment O Ex6 Traffic Impact Study.pdf](#)

[O-1 Traffic Engineer Capacity Memo 080719.pdf](#)

[Photos Combined.pdf](#)

[Public Comments Combined.pdf](#)

[2019 Workforce Survey Report Final.pdf](#)

[BRE SummaryReport v3.pdf](#)

[Booth Heights - Biologist Roundtable Final Recommendation Summary.pdf](#)

[Vail PEC Letter \(Mayville\) Aug 2019.pdf](#)

Attachment E - Civil Plans (1 of 2)

Attachment E - Civil Plans (2 of 2)

Attachment F - Draft Development Plan

Attachment G - Survey

Attachment H - Parking Analysis

Attachment I - Environmental Impact Report

Attachment J - Wildlife Mitigation Plan

Attachment J-1 Wildlife Mitigation Plan Updated

Attachment K - Wetland Delineation Report

Attachment L - Geologic Hazards Analysis

Attachment M - Geologic Hazards Memo

Attachment N - Rockfall Hazard Study

Attachment O - Traffic Impact Study

Attachment O-1 Traffic Engineer Capacity Memo

Attachment P - Site Photos

Attachment Q - Public Comments Received as of 11:00 AM August 9, 2019

Attachment Q-1 2019 Workforce Survey Report

Attachment Q-2 Business Retention and Expansion Interviews

Attachment R - Wildlife Biologists Recommendations

Attachment S - US Forest Service Letter