



Open Space and Trails Advisory Committee

*Minutes
July 25, 2019*

Meeting Summary

OSTAC members were presented with the Vive Project Eagle Conservation Plan and made some adjustments to the phasing of work. OSTAC then discussed new developments regarding the Broomfield Business Center project and the nearby eagles. Finally, OSTAC received updates on oil and gas, the December meeting details, and upcoming events.

OSTAC (Open Space and Trails Advisory Committee)

Present:

Ray Churgovich, Vice-Chair
Doug Grumann
Terra Lenihan
Chris Petrizzo
Chris Kassel (alternate)
Councilmember Guyleen Castriotta

Absent:

Patrick Tennyson, Chair
Todd Cohen
Michael McLane
Councilmember Stan Jezierski

Interested Citizens:

Laurie Anderson, Broomfield resident
Nicole Huntley, Broomfield resident
Roxy Juul, Broomfield resident
Janet Kern, Broomfield resident
Carson Peat, Broomfield resident
Katie Peat, Broomfield resident
Ben, Broomfield resident
Annalyn Houten, Aurora resident
Pam Wanek, unincorporated Adams County resident
Rebecca Watson, Welborn Sullivan Meck & Tooley
Ann Nguyen, Landscape Architect, Otak Inc.
Anthony Pratt, Landscape Architect, Otak Inc.

Other staff, presenters, and consultants in attendance:

Kristan Pritz, Open Space and Trails Director
Pete Dunlaevy, Open Space and Trails Manager
Ellie Lanaghan, Open Space and Trails Technician
Meghan Daly, Open Space and Trails Intern
Kevin Standbridge, Deputy City and County Manager
Ron Beane, Senior Wildlife Biologist, ERO Resources, Inc.
Libby Mojica, Certified Wildlife Biologist for EDM International, Inc.
Glenn Nier, Vice President of Meritage Homes
Katie Cooley, MLC Holdings, Inc.

Agenda Minutes

1. Call to Order by Ray Churgovich, 5:31 p.m.

2. Introduction of Interested Citizens

>Nicole Huntley, I just wanted to say thank you for your recommendation for the prairie dog relocations at Great Western and Rocky Flats.

All other citizens held comments for items on the agenda.

3. Review and Comment on Eagle Conservation Measures for the Vive Housing Project

Kristan introduced the representatives for the Vive Housing Project near Via Varra- Libby, Katie, and Glenn. She explained that the eagle conservation measures that they are proposing are similar to those that the Broomfield Business Center established- except that they chose to not obtain a U.S. Fish and Wildlife Incidental Take Permit and a hay bale wall is not included in the mitigation measures. Open Space and Trails will also continue to monitor the nest with the help of ERO and staff has requested that the developer pay for some if not all of the monitoring costs Broomfield will incur. This issue is yet to be resolved and staff will be working more with development team on this aspect.

Libby Mojica introduced herself. She is a certified wildlife biologist for EDM International and has worked with bald eagles for 25 years, monitoring hundreds of nests and banding many individuals. Katie Cooley explained that the Vive project is the newly proposed development at Via Varra. It will incorporate individually owned 3-story townhomes in the center of the development, with 2-story units on on west side along with a public park. Katie added that their goal will be to build the central development first to create a visual buffer for the eagles from the rest of the project, and to also begin park construction right away. Libby went on to describe the project timeline. She began working on the project last November in order to understand the goals and where the eagle nest was in relation to the site.

Libby explained that she reached out to the US Fish and Wildlife Service (USFWS), Colorado Parks and Wildlife (CPW), and the City and County of Broomfield for their recommendations on the project. The USFWS estimates that 55-60% of the breeding area for the eagles is on protected open space and notes that the nest already has significant human disturbances in the area. Within the 660-foot buffer from the nest, there is an oil and gas well, railroad tracks, and portions of Del Corso Park and the Broomfield Business Center development. Within the quarter-mile buffer there is even more surface occupancy, including farms and more apartments. Within the half-mile buffer there is the Northwest Parkway, residential farms, and the rest of the Via Varra developments. The Vive project area is beyond the quarter-mile buffer and it seems that the eagles do not actively use this area. So far, there has been no indication that an incidental take caused by human activity has occurred within either the 660-foot or quarter-mile buffer, and there is even less risk of a take occurring within the half-mile buffer zone. CPW's general recommendations for eagles include no surface occupancy within a quarter-mile of a nest, and no human encroachment within a half-mile during the breeding season, but they recognize that this pair of eagles tolerates a high level of human encroachment and recommended that the developers work with USFWS. The USFWS recommends that no activity occurs within 660 feet of a nest and to provide landscape buffers during the breeding season. For this project, USFWS recommended that an eagle take permit was not needed due to the distance from the nest. Broomfield added recommendations for year-round monitoring and eagle-awareness training for staff. The Vive project has agreed to the same monitoring protocol as the Business Center, and to most of the same minimization measures- except for the speed limit within the quarter-mile delineation, a fence at the 660-buffer line, and the access road location since the project is outside of the quarter-mile buffer zone. The phasing of the project will strive to make a visual buffer for the rest of the project first, and will begin activity in the central area outside of the breeding season. Ideally, all of the construction would begin at the same time, with the goal of ensuring normal breeding conditions for the

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eagles while also providing reasonable working conditions for the project. Glenn added that Meritage has submitted their third round of plans for review, and that it will be going to the planning commission in September or October and hopefully on to City Council in October of this year. Once all of the plans have been approved, the goal will be to start grading and begin vertical construction on the central area and the park as soon as possible.

>Chris P, How long will the central project area (Zone A) take to complete?

>Glenn, The vertical construction will consist of five different buildings, with 10-20 units framed and built at the same time. It would take from 4-6 months until the building is complete. The outside work can be done within the first 2 months, and then workers can move inside of building. It typically takes three to four weeks to frame one building. Roofing takes one week, and siding another week. This is all dependent on the time of year and weather conditions, however.

>Chris P, If construction for Zone A is approved in November, but the breeding season starts in December, the construction could continue to be going on during that more sensitive time.

>Libby, Starting construction earlier in that window would be ideal, and would be less of a shock to the eagles. We definitely don't want to start heavy machinery when the eagles are on eggs, which would be in February.

>Chris K, Would you be putting all occupied units for sale at once?

>Glenn, We would probably start selling about 20 units per month in each product category as they are built, that way they can all be built out even if there is a downturn in the market.

>Terra, Can you please talk more about the eagle training that you would do for staff? Also, what power do people have for stopping work in response to eagle disturbance?

>Glenn, We intend to use the same training program from the Broomfield Business Center project. We have a good relationship with them and they will be sharing some information with us. Our team is also already well aware of the eagles' presence.

>Libby, The stop work order will be similar to what Garrett is following, and we will keep communication protocols similar as well.

>Ray, What is the benefit of having the take permit from USFWS, and are the ramifications for not having the permit?

>Libby, A take permit gives the permittee permission to incidentally affect the eagles, and typically includes action steps to mitigate any chances of a take occurring. The chances are already so low for this project to affect the eagles, that the USFWS did not recommend we apply for a permit. We have done everything that USFWS recommended, and the chances of prosecution are very low.

>Ray, It seems like you might want the assurance, but USFWS said you don't need it because of other factors.

>Rebecca, The USFWS will not give out a take permit if it is not needed. They determined that the risk of a take occurring because of this project is so low that the permit process was not deemed necessary.

>Ron, Will the grading be done in phases, or all at once?

>Glenn, It will be done all at once in order to minimize disturbance and the presence of heavy equipment.

>Kristan, So grading on all properties could occur at any time, including the sensitive period for the eagles.

>Glenn, Yes.

>Kristan, Clarified that the staff understanding was that the construction as noted in Table 2 included grading during the specified time periods and grading was not allowed to occur at any time.

OSTAC, staff, and Meritage representatives discussed the issue of grading year-round. Committee members were concerned about the impact of grading in Zone A during the sensitive breeding period for the eagles, and recommended that Zone A only be graded between August 1 and December 1. Meritage representatives confirmed that monitoring and stop work authority would continue year-round for the project.

Ray asked if OSTAC desired to make a motion to approve the plan with this change to the grading phasing.

Doug motioned to approve the plan; Chris P seconds; The Vive Eagle Conservation Plan was passed unanimously on the condition that Zone A of the project only has grading occur from August 1 to December 1. The plan will be updated to show the change related to grading and the issue of covering monitoring costs will be addressed in the next review of the plan.

4. Update on the Broomfield Business Center Apartments

Kristan directed OSTAC to the email that Dana Bove sent today regarding the eagles near the Broomfield Business Center. She explained that he could not be here tonight because he is at the Boulder County Open Space meeting to discuss prairie dog control. She added that Dana provided information on the removal of the hay bale wall and importance of the fields in the area for eagle hunting habitat. Front Range Nesting Bald Eagle Studies would also like to share their findings with OSTAC. Kristan then went on to explain the removal of the hay bale wall. On the evening of July 15, Open Space and Trails was informed that some of the northern hay bales on the wall appeared to be gone at the Broomfield Business Center Apartments construction site. The hay bale wall's purpose is to provide a protective barrier between the project's construction activity and the eagles' nest to the east of the project. The developer's representative was contacted and was asked to report back on the status of the wall. In a later conversation, the developer's representative indicated that it appeared that some or part of the wall was removed. The representative explained that the wall was obstructing the contractor's ability to complete the grading along the eastern property line. After consulting with the legal staff, Open Space and Trails sent an email to the developer's representative to stop all work on the hay bale wall. Meanwhile, it appears that the hay bale wall may have already been removed earlier that morning. The timing of the total wall removal is not definitive at this time. Open Space and Trails staff visited the site later that day and found that the entire hay bale wall was removed. Open Space and Trails is working on the appropriate steps to resolve the issue. At this time, the developer has agreed to stop exterior work on the east elevations of the buildings along the east property line, the trail and park abutting the east property line, and the Northwest Parkway Trail (the permit is still pending from the Northwest Parkway Authority). Broomfield's chief building official confirmed this understanding with the construction team on-site on July 24. Next, staff will issue a Stop Work Letter to stop exterior work on the east elevations of the buildings along the east property line, the trail and park adjacent to the east property line, and the Northwest Parkway Trail (The construction on the remainder of the project will continue). Staff wants to address this issue, but also wants to get construction of the trail going so that the project does not extend into another breeding season. At this time, ERO monitoring is not finding any adverse reaction to the removal of the wall by the eagles and staff will update OSTAC on this issue at the August 22 meeting.

Ron explained that monitoring efforts are curtailed this time of season based on the monitoring plan. The nestling fledged on June 10 and it is nearing the time for it to disperse. ERO did increase monitoring when the hay bale wall issue came up, but the juvenile was found to be in the nest tree and did not seem too concerned. There could be an increased risk of keeping the adults away from the nest, but ERO monitors did see adults feeding the juvenile on June 17 and 18. They do tend to venture out more this time of year, and no eagles have been seen since last Friday. Monitors will continue looking for the eagles, but the juvenile from 2018 dispersed in early July.

>Kristan, We are working closely with Garrett to rectify this issue. We have asked Garrett to give a report on the eagles from their biologist.

Rebecca explained that Garrett has worked really hard to protect the eagles from impacts. On July 2, there was a concern with trash accumulation on the east side and USFWS gave Garrett permission to go into the 660-foot buffer to remove the trash. At this time, the eaglet had fledged and the sensitive time period according to USFWS was over. It was determined that work on the trail and swale needed to begin in order to maintain the project schedule. Garrett needed to remove the wall to begin working on the trail. Garrett is sorry that this miscommunication happened, but there was a lot of concern that any delay might prevent the project from getting done in 2019. Both nesting seasons for the eagles have been successful during the project, and Garrett will need to get back into the hay bale wall area before the project is done, and this must get started within the next two weeks. If not, it will not be possible to make the deadline.

Kristan, We are in negotiations for starting the trail, and are needing to get a maintenance agreement approved with specific assignment language back to Garrett. We agree that Garrett companies has been a good partner on the eagle issue, and they have met many conditions. We will continue to work together to get this worked out.

>Terra, Will ERO be increasing the monitoring amount in response?

>Ron, We would recommend increasing monitoring at this time. It is hard to see where the eagles are this time of year with all of the foliage, and we want to make sure they are still around.

>Doug, When will work on the trail begin?

>Kristan, Once the Northwest Parkway permit is approved, and this is currently being reviewed by the authority. We don't know the exact timing, but the drawings have been approved in the engineering department. The trail to Via Varra requires retaining walls, and construction within the right of way of the Northwest Parkway.

>Chris P. So practically speaking, the only ramifications are if the juvenile is still relying on the adults to be fed. The worst case scenario is that the juvenile leaves the area sooner.

>Ron, We have not observed any self feeding yet, although we expect it is occurring. The adults will still feed to some extent and the juvenile will disperse eventually.

>Libby, I tracked 70 nestlings for research and found the dependency period to be fed by adults. The behavior can be different every year, and the juvenile could be fed elsewhere from the nest without anything having to do with construction.

>Doug, Dana pointed out in his email that the hay bale wall also served as a barrier for people trespassing onto the conservation easement.

>Ron, A fence should be put on on edge of the property. People will be moving in, and the biggest risk is that this could encourage the juvenile to move on sooner.

>Kristan, There is still a wire fence along the east side of the trail. The developer offered to build a 12-foot mesh fence in the meantime to have a kind of buffer during construction.

>Rebecca, Garrett will be installing landscaping in that area as well to provide a visual buffer. There is also a sign requirement to help educate people on the sensitivity of the eagles.

>Doug, With the new trail leading up there, trespassing could be much more likely.

>Terra, I propose that at the next meeting we discuss additional signage about not getting too close to the eagles.

5. Review and Approval of the June 27, 2019 OSTAC Meeting Minutes

Terra motioned to approve the minutes; Chris P seconds; Minutes were passed unanimously.

6. OSTAC Updates

- Prairie Dog Management on Trillium Open Space in Boulder County

Kristan explained that seven burrows appear to have been exterminated by Boulder County on Boulder County open space land that is in agricultural use to the east of the bald eagle nest. Her understanding at this time is that the Boulder County land is leased to an individual for ranching/ag purposes. Kristan also explained that the Broomfield prairie dog policy has provisions for private landowners of agricultural property to request a pro forma permit to exterminate prairie dogs to allow for the ag and farming related activities to continue. She noted the email from Front Range Nesting Bald Eagles Studies (FRNBES) dated July 25 that was emailed to OSTAC early today and also included as part of the OSTAC meeting packet. The FRNBES email expressed concerns about the prairie dogs and relationship to the eagles.

- Proposed Charter Amendment for Change of Use on Open Space

Guyleen explained that the City Charter currently allows an exception for mineral extraction on open space so that it is not considered a change of use. This circumstance allowed Extraction to place wells on open space property without going through the change of use process. The taxpayers fund land acquisition for public land conservation, so she is proposing to remove that exception for oil and gas extraction on city-owned open space now that state law permits local municipalities to have more control over oil and gas well placements. The City Council did not approve the amendment to be added to the ballot, so the measure will now need to use the process where citizen signatures are collected to put the measure on the ballot. She noted that it is possible that the council may also revisit this issue at an upcoming council meeting.

- Oil and Gas Updates - Pig Launcher

Guyleen showed the site plan and photos of the pig launcher receiver at Nordstrom Open Space. She explained that it was not made clear to Council or residents how large and conspicuous the pig launcher would be.

>Kristan, It covers about half of an acre.

>Terra, Will it always be above ground?

>Kristan, Yes. A 10-foot wall made of natural brown stone was proposed to be put around the pig launcher to block it from view. During this process, we learned that a citizen whose property is right next to the site does not like the idea of the wall. We are currently working with the citizen on perhaps a barrier that still keeps the views open. This could include some bollards that are a neutral color. Staff is working with the neighbors on this.

>Pam, How can I be put on the list to be part of this discussion? I live in that neighborhood, and there are hundreds of other residents in that area as well. The whole group is very invested in what has been going on out there, but Extraction does not respond to any emails.

>Kristan, We will talk with them and have them contact you about this issue.

- OSTAC December Meeting Date

Kristan, The meeting will be held on Thursday, December 5 at the Butterfly Pavilion in Classroom A. The address is 6252 W 104th Ave.

- Upcoming Events

Kristan presented the upcoming Open Space events:

- National Night Out
 - Tuesday, August 6 at Broomfield County Commons from 5 to 8 p.m.
- Broomfield Open Space Foundation Brewfest Fundraiser

- Saturday, August 24 at Brunner Farmhouse from 5 to 7:30 p.m.
- o Wildlife Masters Outreach
 - Saturday 8/10 at Home Depot from 9 a.m. to 12 p.m.
 - Tuesdays 8/13 and 9/24 at Broomfield Farmer's Market from 4 to 7 p.m.
- o Broomfield Nature Programs
 - Friday Kids' Classes, Wednesday Preschool Walks, and Family Sunset Hikes

7. Other Topics as Desired by OSTAC

>Kristan, Another issue arose relating to the eagles. There are agricultural landowners in Broomfield with prairie dog issues near the eagle nest. They are having issues with the burrows and want them removed in order to get the land back into full agricultural use. Staff is currently looking into solutions. We are considering buying the land, relocation, and using PERC instead of aluminum phosphide. We will be talking more about this issue at our meeting on August 22.

>Roxy, We need to discuss prairie dogs as soon as possible. I have prairie dogs in my front yard and it affects me, my husband, and my animals.

>Kristan, Please give us a call so that we can learn more about your concern.

>Kristan, We have also issued citations on the United Power, Crestone, and Extraction projects regarding wildlife disturbance.

No other topics were desired by OSTAC.

The meeting was adjourned at 7:09 p.m.

Minutes were prepared by Ellie Lanaghan.