

<b>DISTRICT COURT, EAGLE COUNTY, COLORADO</b>		DATE FILED: August 30, 2022 9:26 AM FILING ID: 87238A328AD60 CASE NUMBER: 2022CV30163
Court Address: 885 Chambers Ave. Eagle, CO 81631 Telephone No.: (970) 328-6373		
<i>Plaintiff:</i>  <b>THE VAIL CORPORATION</b> , a Colorado Corporation;  v.  <i>Defendants:</i>  <b>VAIL TOWN COUNCIL</b> , the governing body of the Town of Vail; <b>TOWN OF VAIL</b> , a home rule municipality in the State of Colorado.	<b>▲ COURT USE ONLY ▲</b>  <hr/> <b>Case No. 2022 CV _____</b>  <b>Div.:</b>	
<i>Attorneys for Plaintiff The Vail Corporation:</i> Sarah M. Kellner, No. 38111 Katharine M. Gray, No. 42331 Lindsey Folcik, No. 55167 <b>FAEGRE DRINKER BIDDLE &amp; REATH, LLP</b> 1144 Fifteenth Street, Suite 3400 Denver, CO 80202 Telephone number: 303-607-3500 Fax Number: 303-607-3600 sarah.kellner@faegredrinker.com katie.gray@faegredrinker.com lindsay.folcik@faegredrinker.com		
<b>COMPLAINT</b>		

Pursuant to C.R.C.P. 106(a)(4) and Colorado Statutes, Plaintiff The Vail Corporation (“Vail Resorts”) respectfully brings this Complaint against Defendants, the Vail Town Council and the Town of Vail, Colorado (collectively, Defendants will be referred to as the “Town”), and in support states the following:

### INTRODUCTION

1. This appeal stems from the Town’s unlawful passage of its Ordinance No. 16, Series 2022, which purported to be an “Emergency Ordinance,” and which, in effect, prohibits a private landowner’s use of its property for almost a year (“Ordinance 16”).

2. Ordinance 16 applies to a single property in the Town of Vail and impacts a single landowner within the Town of Vail.

3. And despite claiming on its face that Ordinance 16 was necessary to stop “irreparable harm,” the Town passed the Ordinance without any evidence in the record to support such alleged harm or indeed any alleged “emergency” requiring its passage.

4. Beyond that, Ordinance 16 has unlawfully taken away a landowner’s constitutional and statutory rights to protect its property interests.

5. Specifically, the Town’s Ordinance 16 attempts to circumvent the process every landowner is entitled to under C.R.S. § 38-1-101, *et seq.* and Colorado Constitution, Article II, Section 15 when a government entity seeks to condemn their property.

6. That statute and the Colorado and U.S. Constitutions require a would-be condemnor to file a Petition in Condemnation in state court and to establish it has both the right and need to condemn a property before it can take away a landowner’s possessory rights.

7. When the Town, through its Town Council, passed Ordinance 16, it violated its own Town Code, Colorado’s eminent domain statutes, and the U.S. and Colorado Constitutions. In doing so it both exceeded its jurisdiction and acted arbitrarily and capriciously, as detailed below.

### **PARTIES**

8. The Vail Corporation is a Colorado corporation that, through it or its affiliates, operates premier mountain resorts and owns property to serve its mission of creating experiences of a lifetime for its employees so they can do the same for its guests.

9. Defendant, Vail Town Council, is the governing body for the Town of Vail.

10. Defendant, Town of Vail, is a home rule municipality located in Eagle County, Colorado.

### **JURISDICTION AND VENUE**

11. This Complaint arises from the Vail Town Council’s, and therefore the Town’s, unconstitutional process and abuse of discretion in passing Ordinance 16 without sufficient, supported, or credible facts showing the urgency or need for such emergency action.

12. This Court has jurisdiction under C.R.C.P. 106(a)(4) and C.R.S. §§ 13-51.5-101 through 103.

13. Venue is proper in Eagle County pursuant to C.R.C.P. 98(a) because this action involves a decision of an elected body within Eagle County, affecting real property within Eagle County, Colorado.

14. Vail Resorts' claim is timely and ripe for relief, as the Town's actions occurred at a public hearing held on August 2, 2022, which actions included a final decision rendered by a hearing body of the Town in a quasi-judicial proceeding.

### **BACKGROUND**

15. Mountain towns across Colorado are in critical need of affordable workforce housing.<sup>1</sup> And the Town of Vail is no exception.<sup>2</sup>

16. Vail Resorts has been working with the Town of Vail for over 5 years in an attempt to fill at least part of that need by developing a single, 5.4-acre parcel known as Lot 1 East Vail Workforce Housing Subdivision into affordable housing units for its employees (the "Project").

17. In furtherance of the Project, Vail Resorts has invested substantial time and sums to obtain the needed approvals from the Town to construct the first phase of its Project, which will provide affordable housing for up to 165 employees.<sup>3</sup>

18. As part of those entitlements, Vail Resorts has also worked with the Town to preserve the wildlife habitat surrounding the Project, including agreeing to the Town's request to re-zone almost 18 acres of its property adjacent to the Project as Natural Area Preservation (referred to as Tract A East Vail Workforce Housing Subdivision), and among other efforts associated with the Project to preserve wildlife around it, has paid \$100,000 to the Town for wildlife enhancements within the Town. Collectively, Lot 1, which will include the Project, and Tract A, which will consist of the area designated for preservation, will be referred to as the "Property."

19. As of April this year, Vail Resorts had obtained all but one approval from the Town to move forward with its Project.

---

<sup>1</sup> See e.g. "In Colorado mountain towns, where affordable housing is scarce, even living out of your car is gentrified" at <https://www.denverpost.com/2022/08/07/colorado-mountain-town-housing-safe-parking-salida/>.

<sup>2</sup> Eagle County's most recent study in 2018 projected that the Eagle River Valley must add 5,900 housing units by 2025 in order to sustain employees and employers and stabilize housing prices. See "Eagle River Valley Housing Needs and Solutions" at: [https://static1.squarespace.com/static/5e4aa4c870139842dc315ab6/t/5fb56bec3c02f469f9dc1579/1605725168419/2018+Eagle+Valley+Housing+Needs+and+Solutions+FINAL.pdf%20\(1\)](https://static1.squarespace.com/static/5e4aa4c870139842dc315ab6/t/5fb56bec3c02f469f9dc1579/1605725168419/2018+Eagle+Valley+Housing+Needs+and+Solutions+FINAL.pdf%20(1))

<sup>3</sup> Planned townhomes have the capacity to house additional employees.

20. Specifically, by April of 2022, after five years of working through the entitlement process for the Property with the Town including defending a C.R.C.P. 106 action relating to those approvals, Vail Resorts had obtained approvals from the Design Review Board, the Planning and Environmental Commission, and the Vail Town Council for the Project.

21. Many of these prior approvals, which were granted primarily in 2019 and 2020, included conditions that needed to be addressed with modified plans for the Property.

22. Ultimately, those modifications required one last review by the Design Review Board before Vail Resorts could move forward with acquiring the requisite permits to start preparatory work at the Property.

23. Vail Resorts thus submitted an application to the Design Review Board in April 2022 for that final review (the “Application”).

24. Shortly after Vail Resorts filed its Application, the Town Council sought to thwart the Project, first by voting on April 18, 2022 to direct the Town attorney to prepare a resolution of intent to condemn the full 23.2-acre Property, and then by passing Resolution No. 22, Series of 2022 on May 3, 2022, which authorizes the Town to move forward with eminent domain proceedings under C.R.S. § 38-1-101 *et seq.* to acquire the Property for Open Space under Section 13.11 of the Town’s Home Rule Charter (the “Condemnation Resolution”).

25. In the almost four months since passing the Condemnation Resolution, however, the Town has not filed a condemnation case, despite having sent The Vail Corporation a Notice of Intent to do so.

26. Instead, the Town Council has used its threat of condemnation to put pressure on Vail Resorts to abandon its Project in exchange for other employee housing options that the Town is either building or intends to build elsewhere in the Town.

27. Since passing the Condemnation Resolution, the Town has not submitted any offer to Vail Resorts to purchase the Property outright.

28. It is well settled law that landowners are entitled to continue using and improving their property until a condemning entity obtains possession of the property, in part because of the possibility that the condemning entity will change course and abandon the acquisition.

29. And as is the case in many mountain towns in Colorado, the Town of Vail desperately needs affordable housing. Employees of businesses throughout the Vail Valley are struggling to find long term housing within reasonable driving distance of their jobs, which are an

essential part of the ski industry that contributes billions of dollars to Colorado's economy year over year.

30. The Town of Vail therefore needs to move forward with *all* of the workforce housing options available to it if the Town wants to make a meaningful dent in the employee housing crisis.

31. Accordingly, because the Town did not file any condemnation case following the Condemnation Resolution - or even extend an offer to purchase the Property following that Resolution - Vail Resorts was hopeful that like many would-be condemnors, the Town was reconsidering condemnation, and instead willing to evaluate options to spend its financial reserves for something other than blocking affordable housing (including perhaps using such funds to benefit the wildlife with much needed habitat enhancement efforts in the East Vail area).

32. To date, Vail Resorts still hopes to find a viable resolution with the Town that can avoid terminating the Project the Town so desperately needs, and so Vail Resorts continued with its Application, which the Design Review Board approved on May 18, 2022.

33. Following that approval, and with still no condemnation filed by the Town, Vail Resorts submitted a permit to conduct soils testing on the Property.

34. The soils testing application sought to conduct the exact same soils testing previously conducted on the Property in 2018 and 2019 ahead of prior entitlement approvals, which soils testing Town staff previously approved and which has never been claimed, let alone shown, to have had any negative impact on the herd of bighorn sheep that the Town Council purports it needs to protect with Ordinance 16.<sup>4</sup>

35. But the Town Council blocked Vail Resorts' soil testing on its private property by staying the permit application when certain neighbors of the Property appealed the Design Review Board's approval.

36. After a month-long continuance of the Design Review Board appeal, the Town Council finally heard that appeal on August 2, 2022 and acknowledged that Vail Resorts' Application complied with the conditions of its prior approvals and the Town's Code and upheld the Design Review Board's May 18, 2022 decision.

---

<sup>4</sup> Notably, the Town permitted this earlier soils testing in *January* of 2019, in the middle of the bighorn sheep's winter foraging season. The work Vail Resorts' sought to permit in 2022 and which was at issue in Ordinance 16 could be completed well before the November 14, 2022 heavy construction cut-off date included in the mitigation plan discussed below.

37. Accordingly, as of August 2, 2022, Vail Resorts' Project was fully entitled and ready to build.

### ORDINANCE 16

38. Apparently concerned that Vail Resorts would move forward with its soils testing permit or otherwise conduct other activity on its Property following the Application's approval, the Vail Town Council posted a proposed ordinance titled "Ordinance No. 16, Series 2022, an Emergency Ordinance Suspending the Issuance of Permits for the Booth Heights Property" at 3:00 pm on the Friday before its Tuesday, August 2, 2022 hearing on the Design Review Board appeal. A true and accurate copy of the proposed and ultimately enacted Ordinance 16 is attached hereto and incorporated herein as **Exhibit A**.

39. The proposed Ordinance suspended the issuance of any permits for the Property from its effective date through November 1, 2022. *See Exhibit A at Section 1.* And that suspension applies to any activity on the property, including "grading permits, soils permits, building permits, right-of-way permits, sign permits, fence permits and any other permits, licenses or approvals that would allow disturbance of the Property." *Id.*

40. On August 2, 2022, following the Town Council's decision to uphold the Design Review Board's approval of the Application, the Vail Town Council passed Ordinance No. 16 in a 6-1 vote.

41. Unlike other Ordinances considered in the Town of Vail, which require significantly more public notice as well as two readings, "Emergency Ordinances" do not require any notice and can be passed in a single hearing without public comment.

42. Accordingly, such "Emergency Ordinances" should be rare. They can only be passed with a unanimous vote of councilmembers present or a vote of five (5) councilmembers, whichever is less. Vail Town Code Section 4.11. And they are allowed only to protect the public's "health, safety and welfare." *Id.*

43. But Ordinance 16 does not protect the public at all.

44. Although on the face of Ordinance 16 it purports to prevent irreparable damage to wildlife, including a herd of bighorn sheep, and other natural resources, the actual purpose of the ordinance was relayed by the Town's attorney, Matt Mire, at the August 2, 2022 hearing. He stated that the Ordinance was necessary for the Town to, in essence, take possession of the Property because the Town's condemnation case was not yet ready despite the fact the Town Council passed its Resolution to condemn almost *three* months' prior and instructed its town attorney to prepare that Resolution almost *four* months ago:

Any permitting for the site that we are talking about has been...all activity has been on hold while the [Design Review Board] appeal was pending. Now that the appeal is over, [Vail Resorts is] allowed to receive permits... for the site in question. . . . This is inconsistent with the Resolution the council adopted in May identifying this site for acquisition and preservation of the habitat. I think that is why we are letting you consider this ordinance tonight. . . . Two things really: the Council has now determined that the protection of habitat is of utmost importance. It definitely intends to acquire the land and pay compensation for the land. I think there has been [an] either willful disregard or willful ignorance towards what communications [the Town Council has] made and what [it]already adopted as far as [its] intentions with regard for the site. ***So what we are kind of waiting for is for the appraisal to come in and to make a revised final offer on the property in the near future.*** Any work on the property pursuant to any permit before the Town acquires possession of the property would you know, first of all thwart the objective of the habitat preservation and secondly be a waste of resources since the town is going to acquire the site and any testing would not be necessary because the site is not going to be developed.

(Emphasis supplied).

45. So despite the fact the Town knew Vail Resorts was moving forward with its Design Review Board approval, and despite the fact such approval was granted by the Design Review Board on May 18, 2022 *and the appeal of that approval was continued by the Town Board for a full month*, the Town neither filed its condemnation case nor proposed a standard Ordinance under its Code before the August 2, 2022 hearing.

46. Instead, the Town waited *three months* after passing its Condemnation Resolution - until 3:00 pm on July 29, 2022, *the Friday before its Tuesday hearing* - to post its proposed “Emergency” Ordinance.

47. In doing so, the Town did not follow any of its requisite processes to enact a standard Ordinance within the Town.

48. Specifically, under the Town of Vail’s code, before the Town Board can place any burden upon or limit the use of private property, it must pass an Ordinance. *See* Town Code at Section 4.8.

49. And except for emergency ordinances and other certain ordinances not applicable here, Section 4.10 of the Town’s Code requires the following procedure to be followed whenever the Town seeks to enact any Ordinance limiting property rights:

- (a) The ordinance shall be introduced at any regular meeting of the council by any member thereof.
- (b) The ordinance shall be read in full, or in cases where copies of the ordinance are available to the council and are or have been made available to the public, said ordinance may be read by title only.
- (c) After the first reading of the ordinance, the same shall be approved with or without amendment or rejected by a vote of the council.
- (d) If the ordinance is approved on first reading, it shall be published once in full unless otherwise provided herein. The council shall set a day, hour, and place at which council shall hold a public hearing on the ordinance and notice of said day, hour, and place shall be included in the first publication.
- (e) The ordinance shall be introduced at council a second time, at a meeting not earlier than seven (7) days after first publication, for final approval, rejection, or other action as may be taken by vote of the council.
- (f) Except as otherwise provided herein, an ordinance, if amended subsequent to its last publication, shall be published in full after final passage; but if not amended, it shall be published either by title or in full as the council may determine.
- (g) Whenever an ordinance shall be published by reference or by title, the publication shall contain a summary of the subject matter of said ordinance and shall contain a notice to the public that copies of the proposed ordinance are available at the office of the town clerk. The publication of any ordinance by reference or by title as provided herein must set forth in full any penalty clause contained in said ordinance.

50. Rather than follow these processes, the Town opted to wait until a mere two business days before its hearing to post and propose Ordinance 16, claiming the Ordinance was an “emergency” because following resolution of the Design Review Board appeal, Vail Resorts would be entitled to move forward with its soils testing permit. *See* Ordinance 16 (“WHEREAS, to date, the Town's consideration of the application for a soils testing permit has been stayed, because of numerous appeals filed by adversely affected property owners, but those appeals will be concluded on August 2, 2022.”)

51. But a Town cannot circumvent its own Code by creating its own emergency.

52. The Town has been well aware of Vail Resorts' intent to develop the property into workforce housing for years.

53. And it was fully aware of the Design Review Board's approval of the Project on May 18, 2022 and the Town of Vail's soil permit application submitted on June 3, 2022.

54. Accordingly, not only does Ordinance 16 fail on its face to include any stated harm to the public, it is also devoid of any actual emergency prompting its passage outside of the Code's required procedures.

55. Beyond that, there is no evidence in the record from the August 2, 2022 hearing on which to base the findings included in Ordinance 16.

56. That Ordinance claims that it was necessary to "avoid irreparable damage to [a] bighorn sheep herd[,]" based on undisclosed experts who "have recommended [to the Town] that the Booth Heights Property not be disturbed in any manner."

57. But no such experts appeared at the hearing on August 2, 2022 to provide such opinion testimony, and no expert reports were submitted to or are part of the record for that hearing.

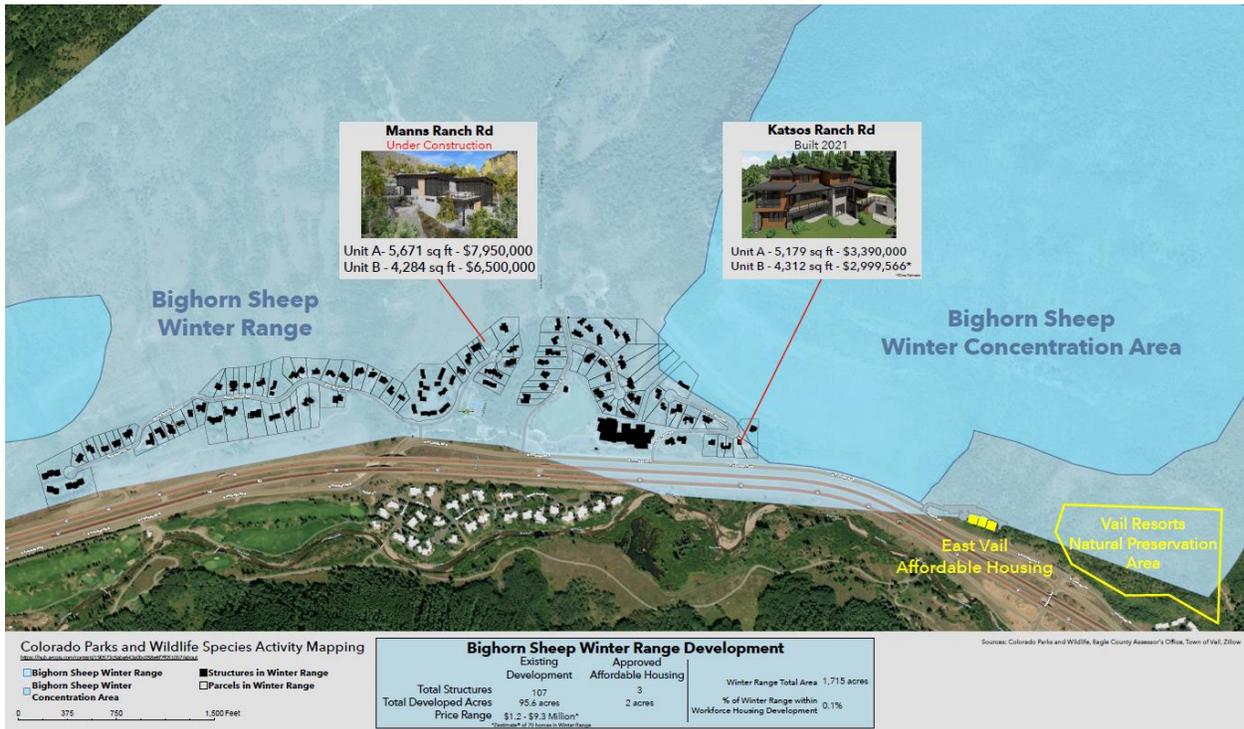
58. Vail Resorts engaged a bighorn sheep expert to evaluate whether the soils testing permit would have any impact on the bighorn sheep referenced in Ordinance 16, and she determined that it would not. She was the only bighorn sheep expert who appeared and testified at the hearing on August 2, 2022. She further testified that the Town's delay until November 1, 2022 to conduct such testing would actually be more problematic for the bighorn sheep than allowing Vail Resorts to move forward now.

59. And contrary to the Town's stated and "emergent concern" that property within the bighorn sheep range should "not be disturbed in any manner," both before and after the August 2, 2022 hearing, the Town has approved construction activity in a neighborhood that falls squarely in the middle of that range just down the street from Vail Resorts' Property.

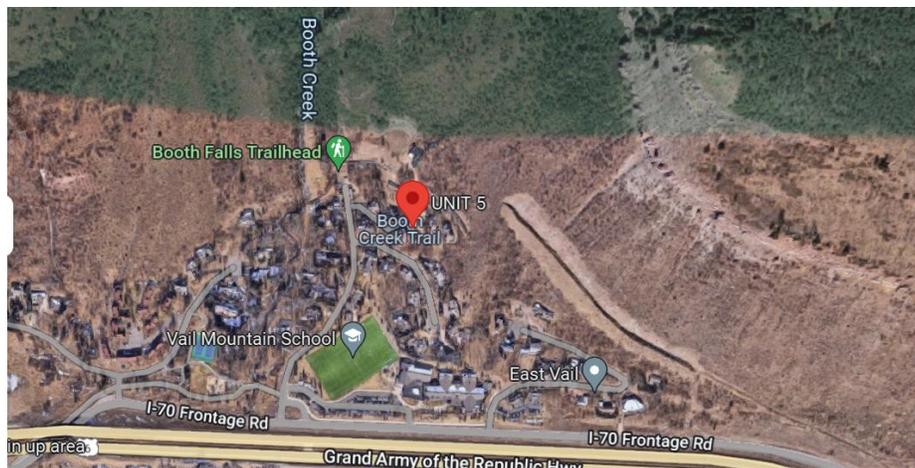
60. Specifically, as shown in the map included within **Exhibit B**,<sup>5</sup> attached and depicted on the following page, the Town has allowed significant construction to occur squarely in the middle of the bighorn sheep's range despite claiming "any disturbance" on Vail Resorts' Property sitting on the very edge of that same range would somehow cause irreparable harm.

---

<sup>5</sup> The map shown was provided to the Town Council in a letter from Bill Rock submitted before the August 2, 2022 hearing on Ordinance 16. A true and accurate copy of Mr. Rock's letter and all its attachments is attached hereto and included herein as **Exhibit B**.



61. And as recently as August 22, 2022, Town staff supported, and the Vail Planning and Environmental Commission approved, a variance for the property marked in red below (which similarly falls squarely in the middle of the Bighorn Sheep range) to build an enclosed patio within Town setbacks on that property.<sup>6</sup>



<sup>6</sup> See Vail Planning and Environmental Commission public agenda posted at [https://granicus\\_production\\_attachments.s3.amazonaws.com/vailgov/42b565748942cc66b0ad097420316f1e0.html](https://granicus_production_attachments.s3.amazonaws.com/vailgov/42b565748942cc66b0ad097420316f1e0.html).

62. Vail Resorts is not aware of any “Emergency Ordinance” being pursued by the Town Council to stop this, or any other, construction or “disturbance” within the bighorn sheep range.

63. Indeed, to the contrary, the Town itself has engaged in its own construction this summer at the Booth Falls Trailhead restrooms shown above, which construction includes “asphalt removal and replacement, utility connections (water, sewer and electric), excavation, grading and backfill, concrete walks, coordination with restroom supplier and completion of site work once restroom is installed.” See **Exhibit C**, Town Invitation to Bid for the Booth Lake Trailhead Restroom<sup>7</sup> and July 17, 2022 Town Weekly Construction Update.<sup>8</sup>

64. Accordingly, not only was no competent testimony or evidence provided to support the facts and conclusions contained within Ordinance 16, the Town’s own actions and the only evidence properly within the record of those proceedings both contradict the facts and conclusions included in Ordinance 16.

### **IMPACT OF ORDINANCE 16**

65. Ordinance 16 has the impact of preventing Vail Resorts from using its Property for any purpose. It not only prohibits all permitting for the site, it also appears to preclude any disturbance of the Property.

66. And while the Ordinance on its face extends only to November 1, 2022, as the Town Council is well aware, the Property’s mitigation plan prohibits any “[h]eavy site construction including clearing, excavation, grading, [or] retaining wall construction” after November 14 and until June 1. This effectively closes down Vail Resorts for the entire mountain building season until next summer.

67. Accordingly, while Vail Resorts may be able to seek and obtain permits following November 1, 2022, and while it may be able to conduct soils testing between November 14, 2022 and June 1, 2023, the Town Council has effectively precluded Vail Resorts from moving forward with its fully entitled affordable housing Project until June of next year.

---

<sup>7</sup> Available at <https://www.vailgov.com/Home/Components/RFP/RFP/58/> .

<sup>8</sup> Available at <https://www.vailgov.com/Home/Components/News/News/838/> :

**Booth Lake Trailhead Restrooms**

The parking lot has reopened for drop-off/pick-up only. No unattended parking is allowed, and violators will be towed. Phase 2 of the project will occur in August when the restroom facility will be placed on the foundation. Portable restroom facilities will be in place at the trailhead during the summer. For details, visit [www.hikevail.net](http://www.hikevail.net). Town of Vail contact is Gregg Barrie, 970-390-3286.

68. The Town took this action: (1) without following its own Code with respect to passing Ordinances that impact property rights; (2) without filing any condemnation case to take the Property; (3) without proving in a court of law that it is entitled to take the Property through eminent domain; and (4) without obtaining possession following such a finding and after making a deposit of the estimated just compensation for its taking.

69. This action – and inaction – by the Town exceeds its jurisdiction and violates Vail Resorts’ rights as guaranteed by the Town’s Code, Colorado’s statutes and the U.S. and Colorado Constitutions.

70. For these reasons, the Town Council’s decision to pass Ordinance 16 exceeded its jurisdiction, was an abuse of discretion, and should be overturned.

**FIRST CLAIM FOR RELIEF**  
**(Judicial Review Under C.R.C.P. 106(a)(4): Abuse of Discretion)**

71. Vail Resorts incorporates the allegations stated above.

72. Ordinance 16 was purportedly enacted “[p]ursuant to §4.11 of the Vail Town Charter[.]” Exhibit A, p. 2.

73. Section 4.11 of the Vail Town Charter says that the Town Council may approve with a vote of at least five councilmembers certain “[e]mergency ordinances for the preservation of public property, health, welfare, peace, or safety[.] . . . The facts showing such urgency and need shall be specifically stated in the measure itself.”

74. The Town has not explained or provided evidence of any kind to support its use of Section 4.11 to pass Ordinance 16.

75. First, on its face, Ordinance 16 fails to preserve the public’s “health, safety, or welfare.”

76. Second, there is no emergency other than one of the Town’s own making from its delay in filing its condemnation case.

77. Finally, there was no evidence in the record to support the Ordinance’s findings that any disturbance of the Property would result in “irreparable harm.”

78. To the contrary, the only evidence in the record was that Vail Resorts’ proposed soils testing would have no impact on the bighorn sheep referred to in Ordinance 16.

79. The Town Council's final decision relating to Ordinance 16 is a quasi-judicial action because: (1) it affects the protected property interests of a single landowner and a single property/project within the Town; and (2) it purports to be based upon the Town Council's application of its stated policy considerations to alleged (but unsupported) facts specific to that the Property.

80. In taking such quasi-judicial action, the Town failed to follow its own rules and Code.

81. There is insufficient competent evidence in the record to support the Town's action.

82. Therefore, the Town acted arbitrarily and capriciously and abused its discretion.

83. Vail Resorts has no other plain, speedy, and adequate remedy otherwise provided by law; therefore, Vail Resorts is entitled to relief under Rule 106.

**SECOND CLAIM FOR RELIEF  
(Judicial Review Under C.R.C.P. 106(a)(4): Exceeded Jurisdiction)**

84. Vail Resorts incorporates the allegations stated above.

85. The District Court, and not the Town, has jurisdiction to determine whether the Town can take Vail Resorts' Property or any stick in the bundle of rights associated with that Property. *See, e.g.* C.R.S. § 38-1-102.

86. And before any condemnor can take possession of a property owner's rights, it must deposit the estimated just compensation into the court's registry. C.R.S. §38-7-103.

87. At any hearing for possession, a condemnor must prove, among other things, that: (1) the property is necessary for the condemnor's project; (2) the petitioner negotiated in good faith for the acquisition of the property before filing its case; (2) the decision to condemn the property was made in good faith; (3) the taking is for a public purpose; and (4) the property being taken is necessary to further that public purpose. *See* C.R.S. § 38-1-101 *et seq.* and the Colorado Constitution, Article II, Section 15.

88. As of the filing of this Complaint, the Town has not filed any lawsuit to condemn the Property.

89. Nevertheless, Ordinance 16 deprives Vail Resorts of the beneficial use of its Property for almost a full year, including but not limited to its ability to proceed with development of the Project consistent with the approvals, permits, and entitlements that presently exist.

90. No court of law, however, has found that the Town can satisfy the prerequisites for doing so as is required pursuant to Title 38 of the Colorado Revised Statutes and the Colorado Constitution.

91. The Town Council's action in passing Ordinance 16 thus circumvents the legal proceeding Vail Resorts is otherwise entitled to as a matter of State statutory and Constitutional law.

92. The Town's passage of Ordinance 16 exceeded the Town's jurisdiction, making Ordinance 16 invalid and void as a matter of law.

93. Vail Resorts has no other plain, speedy, and adequate remedy otherwise provided by law; therefore, Vail Resorts is entitled to relief under Rule 106.

**THIRD CLAIM FOR RELIEF  
(Claim for Judicial Mandamus Relief Under C.R.C.P. 106(a)(2))**

94. Vail Resorts incorporates the allegations stated above.

95. As the Town's attorney admitted in the August 2, 2022 hearing, Vail Resorts' Property is fully entitled, and Vail Resorts is now allowed to receive permits necessary to develop its Project.

96. Vail Resorts submitted its application for a permit relating to its soils testing in June of 2022. That application seeks to conduct the same soils testing the Town permitted in 2018 and 2019.

97. This leaves the Town with nothing more to do than move forward with a non-discretionary, ministerial function to process that permit application.

98. The Town has a duty to perform its obligations consistent with its Code and this Court should order it to do so.

99. PSCo has no other plain, speedy, and adequate remedy otherwise provided by law.

100. Accordingly, in addition to the relief sought above under C.R.C.P. 104(a)(4), under C.R.C.P. 106(a)(2), PSCo is also entitled to mandamus relief.

WHEREFORE, Vail Resorts respectfully requests the Court grant the following relief:

A. Make the following findings:

1. The Town acted arbitrarily and capriciously and abused its discretion when it passed Ordinance 16 absent record evidence justifying the action taken;
2. The Town exceeded its jurisdiction when it heard and passed Ordinance 16 on August 2, 2022; and

B. Enter judgment in favor of Vail Resorts and against the Town:

1. Overturning the action taken by the Town at its August 2, 2022 hearing when it improperly passed Ordinance 16;
2. Invalidating as a matter of law Ordinance 16;
3. Requiring the Town to process any and all permits consistent with its Town Code which may be or already have been submitted relating to the Property;
4. Allowing the Project to proceed; and

C. Enter judgment in favor of Vail Resorts for all other just and appropriate relief.

Respectfully submitted this 30<sup>th</sup> day of August 2022.

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ Sarah M. Kellner

Sarah M. Kellner, No. 38111

*Attorneys for The Vail Corporation*

**Plaintiff's Address:**

390 Interlocken Crescent  
Broomfield, CO 80021