

<b>DISTRICT COURT, EAGLE COUNTY, COLORADO</b> 885 Chambers Avenue, P.O. Box 597, Eagle, CO 81631	
<b>Petitioner:</b> TOWN OF VAIL, a Colorado home rule municipality,  v.  <b>Respondents:</b> THE VAIL CORPORATION, a Colorado corporation; PETER E. KATSOS, in his individual capacity; HOLY CROSS ELECTRIC ASSOCIATION, INC., a Colorado corporation; and TEAK J. SIMONTON, in her official capacity as the COUNTY TREASURER OF EAGLE COUNTY.	<b>▲ COURT USE ONLY ▲</b>
<b>Attorneys for Petitioner:</b> Attorney: M. Patrick Wilson, No. 26303 Katharine J. Vera, No. 53995 Hoffmann, Parker, Wilson & Carberry, P.C. 511 16 <sup>th</sup> Street, Suite 610 Denver, Colorado 80202 Phone: 303-825-6444 E-mail: <a href="mailto:pwilson@hpwclaw.com">pwilson@hpwclaw.com</a> ; <a href="mailto:kjv@hpwclaw.com">kjv@hpwclaw.com</a>	Case Number:  Division:
<b>PETITION IN CONDEMNATION</b>	

Petitioner Town of Vail (the "Town"), by and through its attorneys, Hoffmann, Parker, Wilson, & Carberry, P.C., for its Petition in Condemnation, alleges as follows:

1. The Town is a Colorado home rule municipality organized, existing and possessing the powers and authorities set forth in its home rule charter, as adopted by the voters of the Town on September 12, 1972 and as subsequently amended from time to time thereafter.

2. This is an eminent domain proceeding brought pursuant to the procedures set forth in Title 38, Article 1, Colorado Revised Statutes ("C.R.S."). Eminent domain proceedings are expedited proceedings pursuant to C.R.S. § 38-1-119, and are thereby entitled to preference on the Court's docket.

3. Pursuant to C.R.S. § 38-1-102, this Court has jurisdiction over this proceeding.

4. Venue is proper in this Court under C.R.C.P. 98(a) because the real property interests sought to be acquired are located entirely within the County of Eagle, State of Colorado.

5. The Town is authorized to condemn the real property described in this Petition pursuant to Sections 1.2 and 13.11 of its Home Rule Charter, Article XX, §§ 1, and 6 of the Colorado Constitution. The Town elects to follow the procedures for condemnation as outlined in C.R.S. § 38-1-101, *et seq.*

6. On May 3, 2022, the Town Council of the Town of Vail adopted Resolution No. 22, Series 2022 approving and specifically authorizing the use of eminent domain to acquire certain real property interests. By this Resolution, the Town is authorized to acquire the real property rights that are the subject of this condemnation action, as more particularly described in **Exhibit 1** (the "Subject Property"), which is attached hereto and incorporated herein by this reference.

7. The real property described in **Exhibit 1** consists of land to be acquired in fee for open space.

8. Under Resolution No. 22, Series 2022 the Town Council found, determined, and declared that the Town's acquisition of the Subject Property is necessary to preserve the same as open space.

9. The Town Council also found, determined, and declared that the acquisition of the Subject Property serves a proper public and municipal purpose and use as open space.

10. The Town's acquisition of the Subject Property is necessary in order to preserve the Town's open space and its wildlife and natural resources for the public welfare and is essential to protect, preserve, and promote the health, safety, welfare, and convenience of the public.

11. The purpose and use for which the Subject Property is needed and sought constitutes a public purpose and a public use.

12. There is a need and necessity for the Town to acquire title to, and immediate possession of the Subject Property for the intended public use.

13. The Town's exercise of eminent domain to acquire the Subject Property comports with all applicable provision of law and all pre-requisites and conditions of exercising eminent domain authority have been satisfied.

14. Respondents, who may be interested as owners or otherwise in the Subject Property, insofar as the same appear of record, are named in the caption of this Petition in Condemnation. The following parties are named herein as Respondents:

A. THE VAIL CORPORATION ("RESPONDENT-LANDOWNER"), a Colorado Corporation, may hold an interest in the Subject Property, by virtue of a Quitclaim Deed dated June 15, 2017 (Reception No. 201719306; Recorded October 10, 2017).

B. PETER E. KATSOS, in his individual capacity, may hold an undivided ½ oil, gas, and mineral interest in the Subject Property, by virtue of a Deed dated May 2, 1960 (Reception No. 93408; Recorded June 29, 1989).

C. HOLY CROSS ELECTRIC ASSOCIATION, INC., a Colorado corporation may hold an interest in the Subject Property by virtue of an Easement Agreement dated August 23, 1972 (Reception No. 121164; Recorded September 14, 1972).

D. TEAK J. SIMONTON, in her official capacity as the COUNTY TREASURER OF EAGLE COUNTY, is named as a Respondent herein pursuant to C.R.S. § 39-3-134.

15. The Town has negotiated in good faith with the Respondent-Landowner who has an interest in the underlying fee interest in the Subject Property. The Town has made a final written offer to Respondent-Landowner, but the parties have been unable to reach an agreement on the voluntary acquisition of the Subject Property prior to the filing of this condemnation action.

16. Further negotiations at this time would be futile.

17. After exercising due diligence and upon information and belief, the Town believes there are no other persons or entities who may claim any right, title, or interest in or to the Subject Property, other than those named as Respondents herein.

18. Through this action, the Town does not seek to condemn or obtain any water rights or rights to use water, decreed or undecreed, permitted or unpermitted, tributary, non-tributary, or not non-tributary, designated or undesignated (collectively "Water Rights") that are owned or claimed by Respondents, or in any way associated with the Subject Property. Except for any Water Rights it already has (if any), the Town disclaims any interest in any Water Rights in any way associated with the Subject Property. Nonetheless, the Town's disclaimer of Water Rights shall not allow Respondents or any others to locate or perpetuate surface or subsurface facilities incident to Water Rights that would interfere with the Town's use of the Subject Property as described herein.

19. This proceeding is brought pursuant to the provisions of C.R.S. § 38-1-105(4), which shall apply with regard to any vein, ledge, lode, or deposit. The Town disclaims any interest in any such vein, ledge, lode, or deposit owned or claimed by Respondents or to any rights or interest in minerals, aggregates, oil, gas, shale, or other similar rights in the subsurface estate that constitute mineral rights associated with the Subject Property ("Mineral Rights"). Nonetheless, the Town's disclaimer of Mineral Rights shall not allow Respondents or any others to locate or perpetuate surface or subsurface facilities incident to the Mineral Rights that would interfere with the Town's use of the Subject Property as described herein. Furthermore, the Town maintains and reserves all rights in the Subject Property that may be necessary for the Town's use of the Subject Property as described herein, including for stability and sub-adjacent and lateral support.

20. Upon information and belief, this action does not affect the property of any persons under guardianship or conservatorship.

21. Respondents have a duty to mitigate their damages, if any, by reason of this acquisition.

22. Because acquisition of the Subject Property is required in a timely manner, the Town requires, and is entitled to obtain immediate possession of the Subject Property pursuant to C.R.S. § 38-1-105(6)(a).

23. It is necessary and in furtherance of a public use and purpose that the Town be permitted to enter upon the Subject Property and acquire immediate possession for the public use specified herein upon depositing with the Court such sums as the Court may fix in accordance with the law.

**WHEREFORE**, the Town prays this Court Orders as follows:

A. That the compensation to be paid to Respondents for the Subject Property be determined;

B. That the Town have judgment condemning the Subject Property as hereinabove described, upon payment of just compensation to Respondents or other parties in interest, as provided by law and for entry of a final rule and order conveying the Subject Property to the Town pursuant to C.R.S. § 38-1-105(3);

C. That the Court determine the proper deposit to be made by the Town into the Court Registry for the taking of immediate possession of the Subject Property pursuant to C.R.S. § 38-1-105(6)(a), and to enter an Order authorizing the Town and its contractors, agents, servants, and employees to enter into, take and retain possession of the Subject Property, during the pendency of this proceeding, without interference from Respondents, or any of them, or their successors, assigns, heirs, devisees, personal representatives, guests, or invitees, or any person or persons claiming by, through and under said Respondents, or any of them;

D. That if the ownerships or interests in the Subject Property are not herein correctly set forth, the named Respondents be required to set forth by answer the extent of his, her, its, or their respective interests and the names and addresses of any other interested persons and the nature and extent of their interests; and

E. For such other and further relief as the Court may deem proper.

DATED this \_\_\_ day of October, 2022.

**HOFFMANN, PARKER, WILSON &  
CARBERRY, P.C.**

By: /s/ M. Patrick Wilson  
M. Patrick Wilson  
Katharine J. Vera

**ATTORNEYS FOR PETITIONER TOWN  
OF VAIL**

Address of Petitioner:  
Town of Vail  
75 South Frontage Road West  
Vail, CO 81657