

RESOLUTION NO. 48
Series 2020

**A RESOLUTION OF THE VAIL TOWN COUNCIL AUTHORIZING THE
EXERCISE OF THE TOWN'S EMINENT DOMAIN AUTHORITY TO
ACQUIRE OPEN SPACE ADJACENT TO GORE CREEK**

WHEREAS, the Town of Vail, Colorado (the "Town") possesses the power of eminent domain pursuant to Article II, § 15 and Article XX, §§ 1 and 6 of the Colorado Constitution, Sections 1.2 and 13.11 of the Town's Home Rule Charter, C.R.S. § 38-1-101, *et seq.*, C.R.S. § 38-6-101, *et seq.*, C.R.S. § 31-25-201, *et seq.*, and C.R.S. § 29-7-104, *et seq.*;

WHEREAS, the Town may exercise the power of eminent domain for the public purpose of acquiring open space;

WHEREAS, in 1999, Vail Resorts conveyed to the Town a fee interest in Tract C, Vail Village, Eleventh Filing ("Tract C"), described in the recorded plat for Tract C, a copy of which is attached hereto as **Exhibit 1**;

WHEREAS, when the Town acquired Tract C, the Protective Covenants of Vail Village Eleventh Filing, a copy of which is attached hereto as **Exhibit 2** (the "Protective Covenants"), limited the use of Tract C to natural open space;

WHEREAS, Tract C generally follows the banks of Gore Creek;

WHEREAS, in 2015, the Town adopted Chapter 14 of Title 5 of the Vail Town Code (the "Stream Tract Protection Ordinance") to regulate sensitive stream tract areas in the Town, prohibit private encroachments in such areas, and ensure that such areas remain natural open space;

WHEREAS, in 2016, the Town approved the Gore Creek Action Plan to address water quality impairments and aquatic health issues affecting Gore Creek and its tributaries and to protect riparian and streamside vegetation;

WHEREAS, in 2017, 18 years after the Town acquired Tract C, 2 years after the Town adopted the Stream Tract Protection Ordinance, 1 year after the Town approved the Gore Creek Action Plan, and without the Town's consent, the property owners in the Eleventh Filing amended the Protective Covenants to expand the allowed uses in Tract C to allow for private encroachments and the maintenance of non-native vegetation;

WHEREAS, in order to preserve Tract C as natural open space that is devoid of any privately-owned improvements or non-native vegetation, as originally intended, the Town now seeks to remove the Protective Covenants from Tract C and acquire unencumbered title to Tract C;

WHEREAS, C.R.S. § 38-1-105 (5) authorizes the Town to condemn all property interests in Tract C held by other persons; and

WHEREAS, the Town's acquisition of an unencumbered fee interest in Tract C for its preservation as natural open space is necessary, serves a public purpose, and is consistent with the Gore Creek Action Plan and other Town efforts to restore Gore Creek and its tributaries and protect sensitive riparian landscapes.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF VAIL:

Section 1. The above recitals are incorporated herein by reference and adopted as findings of the Town Council.

Section 2. The term "Tract C" means the real property more particularly described in the attached **Exhibit 1**, or certain interests in same, which are necessary for Tract C to remain natural open space.

Section 3. The Town Council hereby finds the acquisition of an unencumbered fee interest in Tract C will serve a proper, public and municipal purpose and use, and that such acquisition is necessary and essential to this public purpose and use. The Town Council hereby declares its intent to acquire an unencumbered fee interest in Tract C for the purposes stated herein and, if necessary, to do so through the exercise of the power of eminent domain.

Section 4. The Town Manager, the Town Attorney, the Town Manager's designated representative(s), and any and all persons retained or employed by the Town in the prosecution of this matter are hereby directed to comply with all notice and good faith negotiation requirements set forth in C.R.S. § 38-1-101, *et seq.*

Section 5. The Town Manager is authorized to make reasonable and good faith offers to offers to purchase from the affected landowners the necessary interests in Tract C, and the Town Manager is further authorized to execute agreements for the acquisition of same.

Section 6. If, after engaging in good-faith negotiations, the Town is unable to acquire the necessary property rights, the Town Attorney and the Town's special counsel are hereby authorized to institute and prosecute eminent domain proceedings in the name of the Town so as to acquire an unencumbered fee interest in Tract C by condemnation. In the prosecution of any eminent domain actions to acquire an unencumbered fee interest in Tract C, the Town shall have and retain all rights and powers lawfully delegated to it by Article II, § 15 and Article XX, §§ 1 and 6 of the Colorado Constitution, Sections 1.2 and 13.11 of the Town's Home Rule Charter, C.R.S. § 38-1-101, *et seq.*, C.R.S. § 38-6-101, *et seq.*, C.R.S. § 31-25-201, *et seq.*, and C.R.S. § 29-7-104, *et seq.*

Section 7. If eminent domain proceedings are instituted, the Town Manager or designee, in consultation with the Town Attorney and the Town's special counsel, is

authorized to retain such expert witnesses, including appraisers, as the Town determines are necessary for the eminent domain proceedings.

Section 8. The Town Manager or designee, in consultation with the Town Attorney and the Town's special counsel, are hereby specifically authorized to make such reasonable or necessary amendments and corrections to the terms and legal descriptions of the property interests to be acquired, including authorization to include such additional or other property rights necessary or desirable for the Town. The Town Manager and Town Clerk are hereby authorized and directed to execute an acceptance of the interests in real property when acquired.

Section 9. The Town Council hereby finds, determines and declares that this Resolution is promulgated under the general police power of the Town, that it is adopted for the health, safety and welfare of the public, and that this Resolution is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Resolution bears a rational relation to the proper legislative object sought to be obtained.

Section 10. If any clause, sentence, paragraph or part of this Resolution or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 11. This Resolution shall become effective immediately upon adoption.

INTRODUCED, READ, APPROVED AND ADOPTED this 17th day of November 2020.

Dave Chapin, Mayor

ATTEST:

Tammy Nagel, Town Clerk