

Midway City Council  
5 February 2019  
Regular Meeting

Open Space  
Landowners' Packet

Dear Midway Landowner,

We are very excited about the passage of a \$5 million dollar bond to preserve open space in Midway City. As a landowner within the City we wanted to provide you information on the opportunities now available to protect your land as open space and receive compensation for the same. There are many different options, and we look forward to working with willing landowners to explore how best to accomplish your goals.

We have attached and Landowner's Information Packet and Guide to aid you in considering if applying for bond funds is right for you. This Packet includes a Notice of Interest Application (included at the back of the Packet), which is intended to determine which landowners within the City have interest in learning more. Filing a Notice of Interest Application does not commit you to any obligation but will help the City provide you with all information needed to consider dedicating your land.

The Midway City Open Space committee is currently working with non-profit organizations in an effort to obtain matching grants, and part of the application process will involve determining if your property could qualify for some of these matching funds.

The Packet also includes our policy on using the bond money for open space. Once you have determined that you would like to formally apply for consideration, there is a more in depth application process that will ultimately end up before the City Council for consideration and approval. Our open space committee is available to aid you as the land owner in every step of this process.

While we will consider Notice of Interest Applications at any time, we encourage you to file one prior to April 1, 2019 in order to take advantage of possible grants and matching funds that are only available at the beginning of the calendar year. Most matching funds are committed early in the year, and the chances of matching funds goes down the later the application.

We are so excited to explore this wonderful opportunity with you. It is rare that we have an opportunity to do something that will so profoundly affect all future generations of our City. We want to be a resource to our landowners to assure all questions you may have about the process are answered. If you have any interest, please fill out the Notice of Interest Application and return it to the City offices. Once received a member of our open space committee will contact you to answers questions and guide you in the next steps of the process.

Sincerely,

Celeste Johnson  
Mayor

## LANDOWNER'S INFORMATION PACKET AND GUIDE

Midway City

Open Space Advisory Committee

### INTRODUCTION

We are excited to work with you as a property owner in Midway City to explore available options to preserve your land as open space.

As you are aware, in the 2018 general election, Midway voters authorized the City to issue up to \$5 million dollars in bonds for the purpose of preserving open space. Midway also expects to benefit from a portion of the \$10 million dollars in open space bonds authorized in Wasatch County.

Midway hopes to expand this money even further through Federal, State, charitable and private grants. When you add in available tax incentives to willing landowners, Midway now has numerous tools and resources available to help you preserve your property as a legacy of open space.

We recognize that the process of preserving your land for open space can seem daunting and complicated. We are here to help! In fact there is a whole team available to assist you in achieving your goal of preserving a legacy of beauty and openness, while also receiving compensation for your family.

The outline below is a step by step guide to aid you in every phase of the dedication process.

### STEP ONE: UNDERSTANDING THE DEDICATION PROCESS

#### **A. Conservation Easements and Sale of Development Rights: What Does This Mean, How Does it Work, and How Does This Preserve Open Space?**

A conservation easement (also known as a conservation restriction or conservation agreement) is a voluntary, legal agreement between a willing landowner and a Land Trust or government agency that permanently limits permitted uses of the land in order to protect desired conservation values.

Landowners possess a variety of rights to their property, such as the right to farm, ranch, harvest timber, and build on the property in a manner consistent with applicable legal

regulations.

Owners may retain, sell or lease most of these rights. Conservation easements generally involve purchase of a landowner's development rights to land, whereby a willing owner is financially compensated for not developing the land. When property owners sell their development rights, they may retain other rights of ownership aside from the development rights sold, continue to own the land, pay taxes on it (often significantly lower due to the sale of development value), may sell it or pass it to their heirs, and may continue to use their land for farming or other approved uses as they always have. In some situations, owners selling development rights may contract to retain limited development rights, such as the right to build an additional homestead on the property for the owner, relatives, or other agreed upon purpose. While options available to owners abound and vary, all conservation easements seek to protect land for future generations while allowing owners to retain private property rights to live upon and use their land.

A conservation easement is legally binding whether the property is sold to third parties or passed to heirs. Conservation easements may be held only by a public body (Federal, State, County or Municipal Government) or a not-for-profit conservation organization (Land Trust). The holder of the easement is obligated to uphold and enforce the terms of the easement, which runs with the land.

**Valuation:** The value of a conservation easement equals the fair market value of the property minus the value of the rights being sold (e.g., the value of the development rights), as determined by a qualified appraiser. For example, if the full market value of a piece of property is \$500,000 when developable, but worth only \$200,000 if restricted to agricultural or other open space use, then the development rights are worth \$300,000, and the property value to the owner subject to tax assessment after sale of development rights is \$200,000.

## **B. Willing Landowner Prerequisite**

Preservation of open space through a conservation easement using Open Space Bond funds requires a landowner who is willing to divest his or her land of the development rights and grant a conservation easement to a qualified land trust organization that will project the land from development in perpetuity. Combining tax deductible donations by the landowner of a portion of the value of the development rights, grants from private donors, government grants, and open space bond money, the land can be preserved in perpetuity and the landowner can realize the value of the land without selling it outright for development. In fact, in most conservation easement projects, the title to the land remains in the landowner or the landowner's family and the land is used for its existing purpose.

It is important to stress that government, whether local, state, or national, cannot force a landowner to "preserve" land for open space. Ownership of land carries with it a bundle of

rights, one of which is to sell the land for development. Government cannot take away the landowner's right to sell or dispose of land as the owner sees fit without paying just compensation. Thus, any open space preservation project that will use Midway Open Space bond funds must have a landowner who is willing to participate in a rather complex land transaction that will involve several different entities. Because all land is unique, every open space preservation project is unique; one size does not fit all.

### **C. Available Resources**

The following diagram illustrates the team of players, resources, and benefits available to assist you, the landowner, in realizing your goal of preserving open space and providing for your family's heritage. All of these team members play important roles in pulling together public and private funds to preserve open space while facilitating your own estate plan to provide for your family.

### **D. Roles and Responsibilities of the Team Members**

1. **Willing Landowner:** The most important player is you, the landowner. Without your desire to preserve the beauty and open space value of your land there can be no team nor roles for the other players. But with your willingness to consider the importance of preserving open space, while at the same time providing for continued productive use of the land and/or providing for your heirs to enjoy the land as you do, we can work together and accomplish something none of us could do alone.
2. **Accredited Land Trust:** An accredited land trust is an organization that meets national quality standards for protecting important natural places and working lands forever. The Land Trust Alliance Accreditation Commission ( <http://www.landtrustaccreditation.org/>) inspects, monitors, and accredits organizations that demonstrate a commitment to working with willing landowners to protect and preserve natural places, sensitive lands, working agricultural lands, and wildlife habitats. These organizations have a demonstrated record of not only assisting the landowner in working through the process, but also assisting in raising funds and securing grants to make the project work. Most importantly, the land trusts insure that the land is preserved in perpetuity. In our area, Utah Open Lands (<http://utahopenlands.org/>) and Summit Land Conservancy (<http://wesaveland.org/>) are both accredited by the Land Trust Alliance and both have successful records of protecting and preserving the natural beauty of our area. Both organizations have experience working with government agencies, securing private

donors, and applying for grants from foundations to realize the landowner's desire to preserve the land and provide for his or her family.

3. **Internal Revenue Service:** The Internal Revenue Service (IRS) plays an important role in preserving open space through conservation easements by regulating when and how much of a tax deduction the landowner may take when the landowner donates a portion of the value of the land in the form of a conservation easement. The tax incentives of donating a conservation easement may include:

- Tax deduction of up to 50% of income;
- Tax deduction of up to 100% of income for qualifying agricultural land
- Allows carry-forward deductions for voluntary conservation easement up to 15 years.

The tax ramifications of any donation of a conservation easement are complicated and unique to the property involved, and this information guide is not intended and must not be considered as tax advice.

4. **Financial/Tax Counsel:** In light of the important tax considerations of conservation easements and the impact those tax incentives may have on a landowner's estate plan and overall financial plan, advice from a competent financial planner and/or tax expert is highly recommended. Every landowner is different, and every open space preservation project is unique. Thus, it is important for landowners to obtain independent financial and tax advice that focuses on their specific situations.

5. **Legal Counsel:** Because the transfer of property rights is a legal transaction, it is important that it be done right in order to achieve the goals of the transfer and protect the remaining rights of the landowner. Competent legal counsel experienced in land transfers and open space preservation is necessary to draft and review the critical paperwork, including the deed of conveyance and contract language, to insure the project is closed properly and appropriately.

6. **Private Foundations:** Philanthropic foundations are often interested in preserving open space and routinely donate some of their funds to such projects. Depending upon the specific nature and use of the land and the mission and goals of the foundation, a grant from a foundation can go a long way in providing seed money to facilitate the project. Because foundations have different interests and

different goals, not every foundation will be interested in every open space project. An accredited Land Trust has experience in dealing with various foundations in these projects and can help with grant proposals to secure funding.

7. **Private Donors:** Many private citizens with financial means are interested in preserving open space for future generations and are willing to make substantial donations toward those goals. As with private foundation grants, accredited land trusts have experience in raising funds from private donors to support open space preservation.
8. **Government Grants:** Government agencies at both the state and federal level often have grant money earmarked for open space preservations. Each agency has its own set of criteria and regulations to follow in determining how much and what type of project to support. The accredited land trusts are familiar with these grants and can assist the landowner in determining whether his or her land will qualify and in submitting an application for funding. See., e.g., Federal Farm Bill - reauthorized in 2018, the bill reauthorizes funds for agriculture and conservation programs and easements. For more information about the Federal Farm and Ranch Protection Program, contact the USDA Natural Resources Conservation Service: [www.nrcs.us da.gov/ programs/ fr pp/](http://www.nrcs.usda.gov/programs/frpp/)
9. **Midway City:** The voters of Midway City recently passed a \$5,000,000 open space bond authority to support the preservation of open space within the annexation boundary of the City. Like other sources of funds, Midway City has a process and criteria to determine whether a proposed project meets the open space goals and visions of the Midway City General Plan. Furthermore, Midway City will work with the landowner, the accredited land trust, and other key players in facilitating an open space project that will serve the interests of the citizens of Midway. A critical part of that process is an evaluation of the proposal in light of the goals and vision in the General Plan by the Open Space Advisory Committee. Before any public money is spent on open space preservation, there will be an opportunity for public input on the project and a vote by City Council.

#### **E. Notice of Interest Application**

1. An interested landowner will be asked to fill out a Notice of Interest Application (attached as Exhibit A) outlining the project goals and details from the landowner's perspective and submit it to the Midway City Planning

Department.

2. Once received, a member of the Planning Department and/or Midway City Open Space Advisory Committee (OSAC) will reach out to the applicant to answer any questions and to provide any needed information the applicant may need.
3. Preliminary Review: The Planning Department/OSAC will review the Notice of Interest Application and make a preliminary evaluation of whether the proposal satisfies the criteria outlined in the Midway City General Plan.<sup>1</sup> This may include a meeting with the applicant, a site visit and securing additional information from the landowner. Proposed open space projects will be evaluated to determine whether and to what degree they align with one or more of the following design objectives: (1) preservation of intra-city space; (2) preserve Midway's unique intra-city character; (3) create local neighborhood "openness;" and (4) provide public recreation value. Because land is unique and open space projects are unique, projects will not have to satisfy all four criteria. The evaluation process seeks to determine whether the "open space" value of the project is sufficiently related to Midway's General Plan vision and goals to warrant moving forward with the process insofar as it seeks use of Midway City open space bond funds.
4. Upon completion of the Preliminary Review the Planning Department/OSAC will issue a report to the Applicant that will include analysis on how well the Applicant's land meets the design objectives and purposes of the bond, and a recommendation on the likelihood of a formal application for bond funds being granted. This report will include instruction to the Applicant that the next step of the process is to appear before the City Council at a work meeting to get a general sense of interest, and that the next step will only be taken if requested by the Applicant.
5. Once the Preliminary Review is complete and the Applicant expresses a desire to proceed, the Notice of Interest Application will be placed on the agenda of a City Council work meeting. The purpose of the work meeting will be to gauge interest from the City Council in the proposal, to take input on any questions or concerns, and to avoid putting the land owner through an extensive formal application process if there is little interest in the proposal. After receiving City Council input at the work meeting, the property owner can make the decision to take the next step in the process, and to file a formal application with the City.
6. Should the Preliminary Review reveal that the proposal does not meet the

---

<sup>1</sup> The Midway General Plan is available online at <https://www.midwaycityut.org/media/uploads/files/Midway%20General%20Plan%202017%20-%20with%20Open%20Space%20Chapter.pdf>.

Midway City General Plan's design objectives, the landowner will be encouraged to contact a land trust to determine whether the proposal may satisfy the requirements for preservation without the use of Midway City open space bond funds. The OSAC will also explore with the landowner the availability of tools other than open space bond funds to preserve the open space.

## STEP 2: FORMAL APPLICATION TO BE CONSIDERED FOR BOND FUNDS

1. A formal "Application To Be Considered For Bond Funds" will be submitted by the property owner to the Planning Department. The application will be in the form created by the Planning Department. As part of the application process, the following will occur:
  - If the preliminary evaluation satisfies the criteria outlined in the General Plan, and the City Council expresses an interest in the project, the OSAC will refer the landowner to an accredited Land Trust for assistance and further evaluation if the landowner has not already established a relationship with an accredited Land Trust. The Land Trusts have their own processes and procedures, which may include but are not limited to site visits, baseline reports, title insurance, and appraisals. More specific information generally may be found on a Land Trust's website. Generally speaking, the land trusts and other funding sources have their own criteria that must be satisfied in order to secure funding or tax benefits. These criteria are in addition to the design objectives in the Midway General Plan.
  - The accredited Land Trust will assist the landowner in seeking the requisite approvals from the IRS and other government regulatory agencies that may be involved, as well as assisting in the application for private and public funding to facilitate the project.
  - The OSAC will work with and coordinate with the Accredited Land Trust in using Midway City Open Space bond funds.
  - In appropriate cases, the OSAC will consult with the Wasatch County Open Space Board to explore whether open space bond funds from Wasatch County might be available to assist in funding the project.
  - The OSAC will consult with Planning Staff as necessary.
2. The Planning Department will submit the completed application to the Midway City Council along with written findings regarding whether the proposal meets the standards set forth in the Midway General Plan and the express purposes of

the open space bond.<sup>2</sup>

3. The City Council will review the completed application and seek input, advice, and guidance from Legal Counsel, Bond Counsel, and the funding entity.
4. The City Council will take public comment on the application and seek input from the community. Noticing for public comment shall be in accordance with the standard noticing requirements for regular City Council meetings.
5. A formal vote of a majority of the City Council shall be required to approve the application.

#### **IV. Conclusion**

We trust this summary of the open space preservation process answers some of your questions and motivates you to explore the opportunities, benefits, and possibilities that await you and your family. The OSAC is available to talk with you further about the process. The Committee meets in regular session the first Wednesday of every month at 6:00pm at the Midway City offices. You are invited to attend a meeting or if you wish to speak with a member of the OSAC outside of a regular meeting format, please call the Midway City Planning Department at 435-654-3223 or email Midway Planner Michael Henke at [mhenke@midwaycityut.org](mailto:mhenke@midwaycityut.org)

We look forward to working with you in this process.

---

<sup>2</sup> In a Statement of Intent adopted by the City Council in regular session on December 4, 2018, the City Council declared their intent to use open space bond funds "to get maximum bang for the buck available, in highly leveraged transactions that utilize some combination of the following: ... partnerships with willing landowners to acquire development rights and establish conservation easements for lands that qualify for donations under State code and IRS rules; ... to partner with other groups or individuals that will match our dollars, multiplying the value of our contribution; [and] ... we may be interested in some form of ownership or control of lands that have a high public value but low market value, possibly creating a value proposition that is attractive enough to be competitive with other options." The full text of the Statement of Intent is as <https://www.midwaycityut.org/media/uploads/files/9%20-%20Midway%20City%20Council%20-%202018-12-04%20-%20Regular%20Meeting%20-%20Statement%20of%20Intent%20-%20Info%20for%20Meeting.pdf>.



# NOTICE OF INTEREST

The following information is relevant to completing the transaction. Please answer all. Completion of this application does not constitute Midway City's approval, acceptance or denial of funding for the property specified on this application.

**Landowner's name(s), address and phone:**

If the property is owned through a trust, partnership or corporation please specify the individual(s) with legal authority to make and take legal action relative to the property:

**Preferred contact's name and address:**

**Contact phone:**

**E-mail address:**

**Approximate location and acreage of property:**

**Current uses** (check all that apply):  Farm  Dry Farm  Ranch  Grazing  Dairy  Crops  
 Hay  Irrigated  Open field  Other – specify:

**Uses and reserved rights** that you are interested in retaining:

- Grazing livestock  Farming / Ranching  Hunting / fishing  Water rights
- Timber harvesting for personal use  Resource improvement/restoration
- Family use  House/cabin build site  Relocation/renovation of existing structure(s)
- Public access  Commercial use  Other uses:

**Unique Features:**  Wetlands  Hot pots  Historic structures or land uses  
 Scenic views  Unique wildlife species  Visible features (such as from a public roadway).

**Documents in your possession you can provide:**  Legal description  Survey  Aerial map  
 Topography map  Plat map  Wildlife studies

**Are you aware** of any issues that would prevent granting a conservation easement such as liens, existing easements or rights of way? If so, please explain:

**Are you aware** of any toxic or hazardous materials on the property?

**Have you contacted**, or are you currently working with, any organization to preserve your land? If so, which ones?

I have answered the above questions to the best of my knowledge,  
Signature \_\_\_\_\_ Date: \_\_\_\_\_  
Please return application to: Midway City Offices  
PO BOX 277  
Midway, UT 84049  
You will be notified of the receipt of your application within 5 working days.  
You may also deliver application in person to: 75 North 100 West, Midway, UT 84049

# Conservation Values

Please give each of the following items a rating of 1-5 based on importance with 5 being the most important. Multiple items may be given the same rating.

Open Space Agenda Item # \_\_\_\_\_

\_\_\_\_\_ Visible from collector roads

- Entry corridor

\_\_\_\_\_ Trail corridor

\_\_\_\_\_ View corridor

\_\_\_\_\_ Development imminent

\_\_\_\_\_ Wildlife\*

\_\_\_\_\_ Agriculture\*

\_\_\_\_\_ General Open Space\*

- Scenic

\_\_\_\_\_ Historic\*

\_\_\_\_\_ Public Education and Recreation\*

\*Important items for receiving government matching funds

Any other items that should be considered:

---

---

---

---