

Midway City Council
15 January 2019
Work Meeting

Open Space Committee /
Procedures

Memo



Date: January 15, 2019
To: Midway City Council
From: Michael Henke
Re: Open Space Committee Bond Documents

Following this memo are four documents prepared by the Open Space Committee and staff regarding open space bond documents and are for the City Council's consideration. They have been prepared to help create a potential process that will be used to consider how to best use bond monies that will be the most beneficial for the residents of Midway. The four documents included are the following:

- A letter from the City to Midway City landowners inviting them to consider learning more about open space conservation options.
- A notice of interest that interested landowners may submit to the City that will give basic information about their property and would start the process of learning more about potentially protecting open space on their property.
- A land owner's information pack and guide that will inform and guide interested landowners through the application process of their property being considered as receiving open space bond funds.
- An alternate letter that would be the land owner's information pack guide preface.

The Open Space Committee is seeking guidance from the City Council on how best to proceed. The committee is open to any suggestions that the City Council members have regarding how best to move forward. A presentation will be given in the coming City Council Work meeting and will explain the documents.

Please contact me if you have any questions about this item.
435-654-3223 ext. 105
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Midway City Corporation

Mayor: Celeste T. Johnson
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Jeff Drury • Lisa Orme
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Dear Midway Landowner,

Thank you for considering an open space conservation solution. Protecting Midway's unique heritage and community character is dependent, in part, on protecting our open space. It is this protection of our small town value that galvanized support for the passage of an open space bond for Midway for \$5 million dollars.

We are fortunate that our citizens agreed to approve a bond to save open lands in our community. We feel that it is our additional duty to leverage these funds to the greatest extent possible. Working with non-profit organizations and other open land programs like the Federal farm bill, we hope to be able to increase the amount of funding available to safeguard our town's open spaces.

We are providing interested landowners with a Notice of Interest application (NOI) as an important part of the process of assessing open land opportunities in our community. Preference will be given to projects that incorporate 50%, or more from matching funds. This could be achieved either through contributions of land value or actual cash matches. All projects will need to go through a process that will include: substantiating value through a qualified appraisal, title insurance review, evaluation of conservation values and additional criteria, which are common requirements for land conservation.

We feel this is an exciting time for Midway; a time to ensure that we save something for the next generation and protect the well being of our community today. Thank you for joining us in this effort.

Sincerely,

Celeste Johnson
Mayor



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

Open Space Advisory Committee Landowner's Information Packet and Guide

I. Introduction

Thank you for your interest in open space in Midway and for considering land preservation options for this purpose. The commitment of landowners like you to preserving the beauty and pristine environment of Midway will help insure that the quality of life we enjoy will be maintained for future generations.

In the 2018 general election, Midway voters authorized the City to issue up to five million dollars in bonds for purposes of preserving open space. Midway also expects to benefit from a portion of the ten million dollars in open space bonds authorized in Wasatch County. By leveraging this capital with funds available through Federal, State, charitable and private sources, together with available tax incentives to willing landowners, Midway has new tools and resources available to use toward open space projects meeting the vision and goals outlined in the Midway General Plan.

The process of preserving land for identified open space purposes can seem daunting and complicated. Due to the unique nature of land, each project is a bit different and requires the participation of several entities to accomplish the desired result. We would like to help. In fact, as explained in this pamphlet, there is a whole team available to assist you in achieving your goal of preserving the beauty and openness of your land while also providing for your family and leaving a legacy for them and the greater Midway community.

Midway's involvement in this process is two-fold: First, as your local government tasked with working toward preserving the rural nature of Midway and its quality of life, we have developed and provided to all property owners this information guide and notice of interest form to assist landowners in this process. Second, mindful of our responsibility to our taxpayers to spend the limited authorized open space funds wisely and transparently, we have outlined generally the criteria we will consider in reviewing projects brought before us to insure open space funds are used prudently on projects best meeting the vision and goals outlined in the Midway General Plan and which provide the best opportunity to leverage funds from other sources.

II. Overview

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. Resources Available

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.



III. Roles and Responsibilities of the Team Members

A. 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.

B. 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 (<https://utahopenlands.org/>) and Summit Land Conservancy (<https://wesaveland.org/>) are both accredited by the Land Trust Alliance and both have success 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.usda.gov/programs/frpp/

I. 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.

Within Midway, the process looks like this:

1. An interested landowner will be asked to fill out an Open Space Notice of Interest form outlining the project goals and details from the landowner's perspective and submit it to the Open Space Advisory Committee (OSAC). A copy of the Notice of Interest form is attached to this pamphlet.
2. The OSAC will review the Open Space Notice of Interest Form and make a preliminary evaluation of whether the proposal satisfies the criteria outlined in the Midway General Plan. This may include a site visit and securing additional information from the landowner. 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>. 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 inter-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 4 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.
3. If the preliminary evaluation satisfies the criteria outlined in the General Plan, 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. Should the OSAC's preliminary review reveal that the proposal does not meet the 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.

4. 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.
5. The Midway OSAC will work with and coordinate with the Accredited Land Trust if the project contemplates using Midway City Open Space bond funds.
6. 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.
7. The Midway OSAC will consult with the Midway City staff, and the Planning Commission, as necessary.
8. The OSAC will submit the proposal to the Midway City Council along with a recommendation on whether to use Midway City Open Space Bond funds toward funding the project.
9. The City Council will seek input, advice, and guidance from Legal Counsel, Bond Counsel, and the funding entity, and conduct a public hearing on the project to seek input from the community, and either approve or disapprove the use of Open Space Bond funds.
10. 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%20if%20Intent%20-%20Info%20for%20Meeting.pdf>.

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 Midway OSAC is available to talk with your 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 offices at 435 654 3223 or email Mayor Johnson at cjohnson@midwaycityut.org.

We look forward to working with you in this process.

Landowner Guide Preface: An Introductory Letter to Midway Land Owners

Midway Land Owners,

Thank you for taking time to consider the possibilities and benefits of preserving currently open lands which you own. The attached document has been prepared to help you better understand the details of various processes and criteria, as well as the several parties involved in an open space preservation project. While the details may seem a bit complex, the concept is rather straight forward.

In a nutshell:

- You, the land owner, choose to permanently “sell” (relinquish) your RIGHT to develop your own land, in exchange for a pre-negotiated fair market compensation (presumably cash).
 - You do not sell your land. You continue to own – hold title to – your land.
 - You continue to use / maintain / control your land as you have heretofore done.
 - You are free to sell your land, or transfer title as you wish. But no future owner will have “developments rights” – they have been permanently “sold”, for which you received an agreed upon, fair market, compensation.
- “Buyers” (funding sources) provide the funds necessary to “purchase” (permanently secure) your development rights.
 - There are a variety of funding sources, including Federal, State, private foundations, etc., AND Midway City (via Open Space Bond).
 - As a general rule, none of these (including Midway) are interested in being the sole funding source; a group of funding sources interested in your project needs be put together. There is plenty of help to do this.
 - Not all of these sources will be interested in a given project. They each (including Midway) have their own criteria for the type of preservation projects they will support. And each will require appraisals by certified land appraisers.
- In the end, the land will have been permanently preserved from future development, you will have received significant compensation for “selling” those development rights, and you will still own and control YOUR land.

So, there it is – in a nutshell. It’s your land; you are in charge. You drive this process. Hopefully the attached document will be helpful as you further consider your options. It primarily focuses on Midway specific issues, but also provides several outside resources.

Our interest is to help you successfully navigate this process should you chose to proceed. Our goal is your success, whether your project ends up receiving partial funding from Midway City (Open Space Bond) – or not. Please feel free to contact us (who?, where?, how?) if you have questions about the attached document, or would like to further discuss related issues.

Midway City Open Space Advisory Committee