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VIA CERTIFIED MAIL

Mayor Colleen Bonner
Midway City Council
Midway City Planning Commission
Midway City Planner, Michael Henke
75 North 100 West
P.O. Box 277
Midway, Utah 84049

Re: Midway Springs – Watts Enterprise
600 North 200 East, Midway, Utah

Dear Midway City:

We represent several concerned citizens neighboring the proposed development Midway Springs by Watts Enterprise. This letter requests Midway City to deny the development application due to the City's countervailing public interests, the applicant's failure to satisfy the current land use regulations, and the City's pending text amendments to the Land Use Code.

As highlighted in Midway City's General Plan, an "essential characteristic of Midway is its beautiful natural surrounds." Gen. Plan at 4. Indeed, Midway has declared that the "primary purpose" of its plans, ordinances, and regulations "is to maintain this identity while accommodating new growth." *Id.* at 5. While Midway recognizes the value of increased growth, a balance "must be maintained between development, recreational activities and the natural environment for our community to continue enjoying a desirable quality of life." *Id.* at 45. Thus, preserving, protecting, and enhancing these essential resources must be regarded as a "high priority" of City officials. *Id.*

Most alarmingly, the Midway Springs application appears to violate the sensitive lands requirements, including but not limited to, disruptions to wildlife breeding grounds without proper buffers, destruction of native vegetation, wetland encroachments without proper permits or approvals, and interference with natural waterways and geothermal springs. Ultimately, the development proposes a wall of more than 70 track homes in violation of the open space and PUD regulations, which will destroy Midway's scenic vistas. The proposed development does

not preserve, protect, enhance or beautify Midway's natural surroundings. Therefore, we urge Midway City to consider the following in rendering its decision:

I. The Application Should be Denied due to the City's Countervailing Interests.

A land use application should be denied where "a compelling, countervailing public interest would be jeopardized by approving the application." Utah Code Ann. § 10-9a-509(1)(a)(ii)(A); *see also Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388, 396 (Utah 1980). The Midway City Municipal Code declares that the "protection for the unique sensitive lands features" are of "major interest to the City." 16.14.1. The proposed development is contrary to this public interest. Midway City should deny the application if it does not satisfy and promote all of the purposes outlined in the Sensitive Lands Overlay Zone - 16.14.1.B.

The application by Watts Enterprise does not provide sufficient protections to Midway City and its citizens. Specifically, the proposed development shows risk of water runoff and erosion that may flood the existing neighboring properties, which will definitely occur with the mounds of dirt that are already being amassed on the property. 16.14.1.B.1. The development will disrupt wildlife habitat and natural breeding grounds that have existed on this property for more than 50 years. 16.14.1.B.3. Midway City previously approved single-family PUD developments for out-of-state residents (Scotch Fields and Appenzell), and this proposed Midway Springs development is not new, creative, or compatible with the goals and guidelines for Midway City. 16.14.1.B.9. This proposed development destroys the natural beauties of Midway by developing a solid row of more than 30 PUD homes extending along the entire southern border of the property. 16.14.1.B.11, 17.

In addition to the foregoing substantive requirements, Watts Enterprise has not complied with the following procedural requirements of the Sensitive Lands Overlay Zone:

- a) There is no evidence of a sensitive lands analysis checklist, along with "supporting data for each section of the checklist concerning its applicability to the property." 16.14.4
- b) There are no approvals from the Army Corps, Utah State Engineers Office, and U.S. Environmental Protection Agency for all 3 phases of the proposed development regarding impacts to streams, waterways, and ditches. 16.14.8.E.1-3.
- c) The application lacks approvals from a licensed engineer or licensed surveyor approving elevation and set back distance for development in the flood zones for all three phases. 16.14.8.C.1-4.
- d) The application requires grading within several of the identified stream corridors and within 25 feet of the wetland areas that will naturally disturb the water, soils, and vegetation. This is prohibited. 16.14.8.G, 16.14.9.D-E.

e) The proposed development appears to fill or dredge watercourses, streams, creek beds, rivers, washes, drainages, swells, wetlands, gullies, or other storm water runoff channels without proper permits or approvals. 16.14.8.I.

f) The property contains springs, wells, and other geothermal water sources. The application does not explain how it will protect such water sources, historical water flows, hot pots, and existing water rights. 16.14.10, 12.

g) The application provides no buffers between human activity and wildlife habitat, and there is no evidence of a biological review. 16.14.13.B-D.

Midway City is required to protect its sensitive lands and promote the health and safety of its citizens. Because of the substantial endangerment to the sensitive lands within this development, the application should be denied. *See Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388, 396 (Utah 1980).

II. The Application Should be Denied Under Midway's Land Use Regulations.

A land use application should be denied unless "the application conforms to the requirements of the municipality's land use regulations." Utah Code Ann. § 10-9a-509(1)(a)(ii); *see also Scherbel v. Salt Lake City Corp.*, 758 P.2d 897, 900 (Utah 1988).

Chapter 16.16.4.A.20 states that Watts Enterprise has the burden of demonstrating the feasibility of the entire plan (each phase) and its compliance with Title 16 of the Land Use Code. Thus, the application is not severable, and the application may not proceed in phases or parts. If one phase of the application fails to comply with the Land Use Code, the application must be denied. *See Utah Code Ann. § 10-9a-509(1)(a)(ii)*. It appears that Watts Enterprise requests Midway City to approve Phase I only without demonstrating that all three phases satisfy Midway's land use regulations. This is not allowed, and the application should be denied.

Further, the application does not comport with the PUD requirements in Chapter 16.16 of the Midway Code. First, the area proposed for a PUD or standard subdivision must "be in one ownership during development to provide for full supervision and control of said development and to insure conformance with these provisions and all other conditions recommended by the Planning Commission and set by the City Council." 16.16.7.3. The contemplated phases are titled in the names of multiple owners, not solely by Watts Enterprise.

In addition, Section 16.16.8 mandates that setbacks be "staggered at seven and one-half feet variances, with 25 feet the minimum setback." Yet, the application maintains walls of more than 75 pads with no staggered setbacks.

Moreover, the application violates the open space requirements in Chapter 16.16.10–11. The tennis courts, park and other open spaces in the middle of the development are not visible because of the walls of PUD track homes.

Finally, the Midway Springs application is subject to the Supplementary Requirements in Chapter 16.13.1–46. The application does not appear to satisfy several of these provisions, including the maximum height restrictions and the trail connectivity. 16.13.10, 24.

The neighbors are not alone in their concerns with this proposed development. In fact, the July 17, 2017 Staff Report states that “it is unknown if the Midway Springs phasing plan does meet the requirements.” The Staff Report further stressed that the developer failed to prove sufficient water rights or approval from the Midway Water Board for this development.

The Midway Springs application fails to comply with Midway’s land use requirements. Therefore, Midway City must deny the application.

III. The Application Should be Delayed Until Midway Finalizes Zoning Ordinances.

Where a “municipality has formally initiated proceedings to amend the municipality’s land use regulations,” an applicant is not entitled to approval of a land use application if the changes would “prohibit approval of the application as submitted.” Utah Code Ann. § 10-9a-509(1)(a)(ii)(B).

Midway City surveyed its citizens in 2016 regarding the General Plan. 66% of the 483 responses stated that rural atmosphere was “very important,” and 88% felt that preserving open space was “very important.” As a result, Midway City adopted its revised General Plan in January 2017. The 2017 General Plan incorporated protections for the City’s rural atmosphere and open space. Midway City is now seeking public input on various text amendments to Title 16 to codify material elements of the 2017 General Plan.

In February 2017, text amendments were proposed for the Midway Rural Preservation Subdivision. In August 2017, text amendments were proposed for the Sensitive Lands Overlay Zone and setbacks for PUDs. In September 2017, text amendments were introduced for frontage and acreage requirements. In October 18, 2017, the Midway City Planning Commission proposed amendments that would “amend the ability of sensitive lands to be included as required open space,” “amend densities in Planning Unit Developments,” “amend open space requirements for large-scale standard subdivisions and Planned Unit Developments,” as well as the “requirements for setbacks of planned unit developments, large-scale and small-scale subdivisions.”

Midway’s General Plan was substantially updated in January 2017 with Land Use Goals and Guidelines that incorporate substantial protections for open spaces, sensitive lands, water and wetlands, and wildlife. Midway City is in the process of codifying these goals and guidelines. Approving the Midway Springs development application that was submitted in June 2017 based on outdated ordinances at that time would deprive Midway City and its citizens of the benefits of the protective measures outlined in the January 2017 General Plan. At this time there is no way for Midway City to determine that any changes would “prohibit approval of the application as submitted.” The General Plan demands that “[s]pecial care should be used to assure all land use decisions are” consistent with the General Plan. P.12. Thus, any action on the

Midway Springs application should be delayed until the Land Use Code is amended to reflect all material goals and guidelines of the 2017 General Plan.

Regards,
PIA ANDERSON MOSS HOYT
/s/ Jared W. Moss

Cc:
Army Corps of Engineers
Environmental Protection Agency
Utah Division of Water Rights
Utah Division of Water Quality
Utah Division of Wildlife Resources