



**CITY COUNCIL MEETING STAFF REPORT**

**DATE OF MEETING:** November 5, 2024

**AGENDA ITEM:** Open Space Bond Funding Extension Request and review for clarification and/or revision of conditions precedent for grant of Open Space Bond Funds and Review of Language of Proposed Conservation Agreement

**NAME OF PROJECT:** Lundin Farms

**PROPERTY OWNER:** Lundin Farms LLC

**NAME OF APPLICANT:** Utah Open Lands

**LOCATION OF ITEM:** Approximately 950 West Bigler Lane

**ITEM: 6**

Utah Open Lands, on behalf of Lundin Farm LLC, requests an extension in time to complete conditions precedent set by the City Council in its resolutions dated June 20, 2023, and January 16, 2024, and review for clarification and/or possible revision of such conditions precedent, with respect to approval to use up to \$1,000,000 from the Midway Open Space Bond to help fund a conservation easement on the 119 acres of the Lundin Farm that lies within the Midway Growth Boundary (annexation area). The property is located at approximately 950 West Bigler Lane.

**BACKGROUND:**

Utah Open Lands, on behalf of Lundin Farms, LLC, applied for funding through the 2018 Midway Open Space Bond Funds. The Open Space Advisory Committee recommended that the City Council commit up to One Million dollars toward

placement of a conservation easement on the 119 acres known as the Lundin Farm and located at approximately 950 Bigler Lane in Midway.

### **CITY COUNCIL APPROVAL AT ITS JUNE 20, 2023, MEETING**

At its regularly scheduled meeting held June 20, 2023, the City Council took the following action:

**Motion:** Council Member Payne moved to approve a commitment using bond funds to preserve open space on the property owned by the Lundin family, located at approximately 900 West Bigler Lane, in the amount of \$1 million subject to the following conditions:

- An application was submitted to the LeRay McCallister Fund by June 30th,
- A commitment was received from the Lundin family from their August 25th meeting,
- The contribution was for a period of three years then an extension would be needed from the City Council,
- There was a floating easement to deal with the emergency access point with a preferred location, if it could be worked out, on the west boundary which was favored and had been summarized by the family,
- An MOU contained these conditions and identified the property that was a conservation easement separate and apart from the rest of the family's property,
- The required water for irrigation would be encumbered as part of the conservation easement,
- The parties would diligently work together to create the trail and firebreak as mentioned for public and scenic access,
- The form of the conservation easement would comply with the MOU.

**Second:** Council Member Orme seconded the motion.

**Vote:** The motion was approved unanimously.

### **CITY COUNCIL EXTENSION AT ITS JANUARY 16, 2024, MEETING**

At its regularly scheduled meeting held January 16, 2024, the City Council took the following action:

**Motion:** Council Member Simonsen moved to grant an extension of the previous approval with the following findings and conditions:

- The land was used for open space as discussed and proposed to the Council.
- The extension would be until May 15<sup>th</sup>.
- Hoped that the Lundin family could work out their remaining issues.

- This project and funding request remained consistent with the vision of the Open Space Element of the General Plan.
- The committed funds from Wasatch County and from other potential sources would maximize Midway's contribution through leveraging, and the continuation of an important agricultural business was an added benefit.
- The project was visible from much of Midway and from many areas of the Heber Valley.
- Preservation of the farm would keep valuable agricultural land as open space and the farm would continue to provide agricultural products to the community.
- If the connector road was built on the Lundin property, the community, and particularly the communities serviced by Swiss Alpine and Lime Canyon, would benefit from the safety it would provide.
- The applicant stated that the community would benefit because of public trail easements that would be provided that would connect to the existing trail network.
- There were Midway Irrigation Company shares that were being used on the property which needed to be identified, included in any agreement, and dedicated to Midway City so they remained with the property.
- Public trail easements were clarified before approval.
- Continued the conditions set forth on June 20, 2023, while adjusting dates to accommodate the extension through May 15, 2024:
  - An application was submitted to the LeRay McCallister Fund by June 30th,
  - A commitment was received from the Lundin family from their August 25th meeting,
  - The contribution was for a period of three years then an extension would be needed from the City Council,
  - There was a floating easement to deal with the emergency access point with a preferred location, if it could be worked out, on the west boundary which was favored and had been summarized by the family,
  - An MOU contained these conditions and identified the property that was a conservation easement separate and apart from the rest of the family's property,
  - The required water for irrigation would be encumbered as part of the conservation easement,
  - The parties would diligently work together to create the trail and firebreak as mentioned for public and scenic access,
  - The form of the conservation easement would comply with the MOU.

**Second:** Council Member Drury seconded the motion.

**Discussion:** None

**Vote:** Unanimously approved.

## MOTION AMENDMENT ON JANUARY 16, 2024:

At the same City Council meeting on January 16, 2024, Councilman Simonsen indicated that the motion for the Lundin properties needed to be amended to clarify that the water rights would not be dedicated to Midway City.

**Motion:** Council Member Simonsen moved to grant an extension of the previous approval with the following findings and conditions:

- The land was used for open space as discussed and proposed to the Council.
- The extension would be until May 15<sup>th</sup>.
- Hoped that the Lundin family could work out their remaining issues.
- This project and funding request remained consistent with the vision of the Open Space Element of the General Plan.
- The committed funds from Wasatch County and from other potential sources would maximize Midway's contribution through leveraging, and the continuation of an important agricultural business was an added benefit.
- The project was visible from much of Midway and from many areas of the Heber Valley.
- Preservation of the farm would keep valuable agricultural land as open space and the farm would continue to provide agricultural products to the community.
- If the connector road was built on the Lundin property, the community, and particularly the communities serviced by Swiss Alpine and Lime Canyon, would benefit from the safety it would provide.
- The applicant stated that the community would benefit because of public trail easements that would be provided that would connect to the existing trail network.
- **The water rights necessary for agriculture and other uses be encumbered as part of the conservation easement in perpetuity.**
- Public trail easements were clarified before approval.
- Continued the conditions set forth on June 20, 2023, while adjusting dates to accommodate the extension through May 15, 2024:
  - An application was submitted to the LeRay McCallister Fund by June 30<sup>th</sup>,
  - A commitment was received from the Lundin family from their August 25<sup>th</sup> meeting,
  - The contribution was for a period of three years then an extension would be needed from the City Council,
  - There was a floating easement to deal with the emergency access point with a preferred location, if it could be worked out, on the west boundary which was favored and had been summarized by the family,
  - An MOU contained these conditions and identified the property that was a conservation easement separate and apart from the rest of the family's property,
  - The required water for irrigation would be encumbered as part of the conservation easement,

- The parties would diligently work together to create the trail and firebreak as mentioned for public and scenic access,
- The form of the conservation easement would comply with the MOU.

**Second:** Council Member Drury seconded the motion.

**Discussion:** None.

**Vote:** Unanimously approved.

## **CURRENT STATUS AND ISSUES FOR REVIEW:**

- **Extension:** The City Council motions on January 16, 2024, which continued the conditions of June 20, 2023, detailed several conditions to be completed by May 15, 2024. While most conditions appear to have been met, the condition that *“the applicants entered into an agreement with Utah Open Lands committing to sell the development rights for 119 acres of property by May 15, 2024”* appears to be in process but has not yet been completed.

Utah Open Lands, on behalf of Lundin Farms, LLC, has requested an extension of time through and inclusive of December 31, 2024, to complete the Purchase Agreement referenced in the above stated condition.

- **Water Shares:** Early materials submitted to the City and County in connection with applications for Open Space Funds represented there were 64 shares of water.

### **CITY COUNCIL RESOLUTION DATED JUNE 20, 2023**

The resolution approved by the City Council on June 20, 2023, with respect to water, provided: *“The required water for irrigation would be encumbered as part of the conservation easement”*.

### **CITY COUNCIL RESOLUTION DATED JANUARY 16, 2024**

City Council granted an extension by resolution dated January 16, 2024, which provided, with respect to water shares, that:

*“There were Midway Irrigation Company shares that were being used on the property which needed to be identified, included in any agreement, and dedicated to Midway City so they remained with the property.”*

At the same meeting, City Council amended the resolution with respect to water shares to provide that water shares would NOT be dedicated to the City of Midway, but rather:

*“The water rights necessary for agriculture and other uses be encumbered as part of the conservation easement in perpetuity”.*

The Lundins have advised that the irrigation required for farming and livestock is less than 64 shares and has proposed 40 Midway Irrigation Company shares be encumbered in perpetuity as part of the conservation easement for the 119 acres, and an additional 10 Midway Irrigation Company shares (40 shares + 10 additional shares = total of 50 shares) be encumbered in a manner acceptable to the parties and the municipalities as security to the City of Midway and Wasatch County for their investments of open space funds in the amount of \$1,000,000 and \$2,000,000 respectively pending recording of the Conservation Easement. The 40 shares will remain permanently encumbered after recordation of the easement and be bound to the property in the conservation easement in perpetuity.

**Discussion Items:**

1. 40 shares, even with an additional 10 shares as security pending recording of the easement, is less than the original numbers discussed by the County and City so approvals may need to be clarified and/or revised.
  2. The 50 water shares to be used as security for the bond funds from the City of Midway (\$1 Million) and Wasatch County (\$2 Million) pending recordation of the conservation easement (at which point only 40 of the shares will remain encumbered as part as part of the conservation easement), should be restricted to serving as security for the City and County contributions of open space funds only.
- **Emergency Road:** Midway’s Master Street Plan shows a required road across the Lundin property that would connect Bigler Lane to Olympic Drive, creating a second emergency access for all the lots located in the City that access on Swiss Alpine Road.

Current Fire Code regulations would allow up to 30 units on one access and current City regulations would allow up to 11 on one access. Current units, and certainly potential entitled unity, greatly exceed the current standards.

Staff reports dating back to September 6, 2022, include the following language:

*The connecting road is very important to address the safety concern of the ability for residents and visitors to evacuate the area in case of an emergency. Currently, there are hundreds of units in the area that include the neighborhoods of*

*Sunburst, Alpenhof, Maisons De Saint Prex, and Swiss Mountain Estates that only have one access which is Swiss Alpine Road. If the connector road is built on the Lundin property, the community will benefit from the safety it will provide. It may be that only a road base emergency access road is built which will only be used in an emergency. The road could be built on the edge of the field to limit disturbance of the agricultural operations. The City has approximately \$110,000 in place to build the road.*

The Lundins agreed as part of the original approval process to allow an emergency access/wildfire evacuation route on the property. At the City Council meeting on June 20, 2023, the Lundins expressed a preference to locate the road along the Probst Ditch on the west side of the property. Hearing this for the first time and in the absence of specific details about the proposed route or whether it was feasible and would meet City standards, the resolution approved by the City Council on June 20, 2023, with respect to the emergency access road, provided there be: *“a floating easement to deal with emergency access point with a preferred location, **if it could be worked out**, on the west boundary which was favored and had been summarized by the family.”* (emphasis added)

“Workable” is understood to mean compliant with applicable laws, City Code, including road standards, acceptable grade, and sensitive lands provisions of the Code.

#### **CITY COUNCIL RESOLUTION DATED JUNE 20, 2023**

City Council, by resolution dated June 20, 2023, granted approval for use of \$1,000,000 in Midway Open Space Bond Funds toward a conservation easement on 119 acres of the Lundin property, provided several conditions were met, including an easement for an emergency road, the required water for irrigation would be included with the land, and the Lundins would allow a trail and firebreak for public and scenic access.

With respect to the emergency road, the resolution provided: *“There was a floating easement to deal with the emergency access point with a preferred location, if it could be worked out, on the west boundary which was favored and had been summarized by the family”*.

#### **CITY COUNCIL RESOLUTION DATED JANUARY 16, 2024**

City Council granted an extension by resolution dated January 16, 2024, which provided, with respect to the Emergency Road, that a condition of approval was: continuation of the conditions set by the Council on June 20, 2023 (i.e., a floating easement with preference for western route if it was workable), as well as that “Public trail easements were clarified before approval.”

**ANALYSIS:**

The Lundins have not demonstrated to date that an emergency access road along the western side of the Lundin property at or near the Probst Ditch is feasible, “workable”, or guaranteed.

**Midway City Code, Chapter 16.14.060 Hillside, Slopes, and Natural Grade** provides as follows:

- I. Allowable streets, Driveways and Grade Crossings. The following restriction shall be placed upon the development of streets and driveways in a hillside sensitive area:
  - 1. Maximum Grades.
    - a. All streets shall be constructed at a maximum of twelve percent grade. Streets in grade between 10 percent and 12 percent shall be no more than 250 feet in length and only upon written approval from both the City Engineer and Fire Marshall.
    - b. Driveways to all residential dwellings shall be constructed at a maximum grade of 15 percent grade. However, driveways may be approved at a grade above 15 percent only if they receive written approval from the City engineer.
  - 2. Criteria for Streets and Driveways Traversing Steep Slopes. All roads and driveways in hillside areas must receive full review from the City Engineer and Staff, and final approval from the City Council. Sensitivity to the land forms, erosion, plant life, wildlife and view shed are key considerations. Streets, roads, private access roads, driveways and other vehicular routes shall not be allowed to traverse slopes between 25 percent and 50 percent unless specifically authorized by the City Council upon recommendation from the Planning Commission. Any drive so authorized shall meet the following criteria.
    - a. **No alternative location for access is feasible or available.** (emphasis added)
    - b. No individual segment of the street, road, private access road, driveway or other vehicular route that will cross slopes between 25 and 50 percent shall exceed 100 feet in length or, if greater than 100 feet, 10 percent of the total length of the street, road, private access road, or other vehicular route.
    - c. No significant adverse visual, environmental, or safety impacts will result from the crossing.



- d. Fifty percent slope crossings. Under no circumstances shall any street, road, private access road, driveway or other vehicular route cross slopes greater than 50 percent.
- e. Natural Contour. Streets, roads, private access roads, driveways and other vehicular routes shall follow the natural contour lines as much as possible. No street or road shall either traverse or follow a ridge or follow up a ridge line.

**Application to Emergency Access/Wildfire Evacuation Route proposed by the Lundins:**

The Lundins' ability to grant an access/evacuation easement is necessarily limited to land they own. If the trail remains completely on the Lundin property and traverses along the Probst Ditch on the western side, it would have to then proceed eastward at the northern end of the property to intersect Lime Canyon Road at or near the West Bench Ditch. This would involve traversing grades more than double that allowed by Code for distances many times greater than those allowed in the Code.

The Lundins propose continuing the emergency access over properties owned by third parties, including property belonging to Swiss Oaks and Brett Walker to the north. Even if the issues of grade could be addressed, Mr. Walker has advised that access over his property would come at the cost of density – i.e., releasing the deed restrictions on his Rural Preservation Subdivision in Lime Canyon. Such precedent could and likely would open the door to other landowners with Rural Preservation Subdivisions seeking to remove the restrictions to gain greater density, or HOAs seeking to reduce or “sell” open space (which the Council has seen in the past).

The Lundins also have suggested that the City could condemn land necessary to complete a western route, but not only does the City view condemnation as a last resort, it is unlikely the City could meet the requirements of a condemnation action at this time, particularly if another route is available and it does not have the funds earmarked for such a difficult and lengthy traverse.

**ANALYSIS:**

- A second emergency access/evacuation route to and from Swiss Alpine, as set forth in the City Master Plan, at least as high up (west) as Olympic Drive, will provide safety benefits to those serviced by Swiss Alpine and was a condition of approval. If access could be extended to Lime Canyon, it would provide safety benefits to these communities as well. In the absence of a documented, workable western road, with required easements meeting road standards and grade, and funding for improvements, however, a western route is a hypothetical option

rather than a certain option. Until or unless the western option becomes feasible and definite, Midway City would benefit from easements allowing an emergency route from Olympic Drive to Bigler Lane following the southern to eastern boundary of the proposed Conservation Easement area. Since the Lundins own access to this route, this route is a guarantee in hand pending pursuit of a hypothetical alternate route. However, since the Lundins prefer a western route and the opportunity to connect Lime Canyon is desirable, the parties could continue to consider and work toward this option. If the Lundins identify an alternate route which is “workable” and definite (i.e., complies with applicable laws, City and County codes, and budget constraints, with landowners ready, willing, and able to give required easements) before the conservation easement is recorded, the City will in good faith work with them to make it happen. The Lundins would be expected to provide easements for any agreed upon new route at which point any original easements for an eastern route would be released.

- **Pedestrian Trail:** As part of the open space grant fund, the Lundins agreed to permit access by the public for a trail across the property.

#### **CITY COUNCIL ACTION AT ITS JUNE 20, 2023, MEETING**

At its regularly scheduled meeting held June 20, 2023, the City Council passed a resolution which provided, with respect to a trail and firebreak, the following:

*“The parties would diligently work together to create the trail and firebreak as mentioned for public and scenic access.”*

#### **CITY COUNCIL ACTION AT ITS JANUARY 16, 2024, MEETING**

The City Council granted the Lundins an extension on January 16, 2024. The resolution, with respect to a trail and firebreak, provided the following:

“Public trail easements were clarified before approval”.

Like the emergency access, the Lundins have expressed a preference for a western trail option running along the Probst Ditch, and the parties are in agreement that a higher trail on the western side, especially if it could connect with State Park trails, would be ideal.

#### **ANALYSIS:**

- A public trail and firebreak across the Lundin property will benefit residents and was a condition of approval. Like the emergency access, the Lundins have

expressed a preference for a western trail option running along the Probst Ditch, and the parties are in agreement that a higher trail on the western side, especially if it could connect with State Park trails, is desirable. Since timing is less critical than it is with emergency access, the City could continue to work with the Lundins and Utah Open Lands on trail options with the understanding that a public trail easement will be granted, with location to be set forth in the conservation easement.

**POSSIBLE FINDINGS:**

- This project and funding request remain consistent with the vision of the Open Space Element of the General Plan.
- The committed funds from Wasatch County and from other potential sources will maximize Midway’s contribution through leveraging, and the continuation of an important agricultural business is an added benefit.
- The project is visible from much of Midway and from many areas of the Heber Valley.
- Preservation of the Lundin farm will keep valuable agricultural land as open space and the farm will continue to provide agricultural products to the community.
- Extending the May 15, 2024, deadlines set forth in the January 16, 2024, motions through December 31, 2024, will not cause unreasonable delay but will allow the parties time to complete the conditions precedent, including finalizing the purchase agreement for the conservation easement.
- 40 Shares of unencumbered Midway Irrigation will be encumbered and restricted to use of the land subject to the Conservation Easement, which the Lundins represent covers their historic irrigation and livestock watering uses on the Property as well as expected future water use associated with the conservation easement.
- An additional 10 shares of Midway Irrigation (the 40 shares encumbered with the conservation easement plus 10 additional shares for a total of 50 Midway Irrigation Shares) will be escrowed or otherwise encumbered to the satisfaction of the City of Midway and Wasatch County as security for their respective Open Space Bond Fund grants pending recordation of the Conservation Easement. These shares will be free and clear of encumbrances and not be used as security for other investors.
- A second emergency access/evacuation route to and from Swiss Alpine, as set forth in the City Master Plan, will provide safety benefits to those serviced by Swiss Alpine and was a condition of approval. If access could be extended to

Lime Canyon, it would provide safety benefits to these communities as well. In the absence of a documented, workable western road, with required easements meeting road standards and grade, and funding for improvements, however, a western route is a hypothetical option rather than a certain option. Until or unless the western option becomes feasible and definite, Midway City would benefit from easements allowing an emergency route from Olympic Drive to Bigler Lane following the southern to eastern boundary of the proposed Conservation Easement area. Since the Lundins own access to this route, this route is a guarantee in hand pending pursuit of a hypothetical alternate route. However, since the Lundins prefer a western route and the opportunity to connect Lime Canyon is desirable, the parties could continue to consider and work toward this option. If the Lundins identify an alternate route which is “workable” and definite (i.e., complies with applicable laws, City and County codes, and budget constraints, with landowners ready, willing, and able to give required easements) before the conservation easement is recorded, the City will in good faith work with them to make it happen. The Lundins would be expected to provide easements for any agreed upon new route at which point any original easements for the eastern route would be released.

- A public trail and firebreak across the Lundin property will benefit residents and was a condition of approval. Like the emergency access, the Lundins have expressed a preference for a western trail option running along the Probst Ditch, and the parties are in agreement that a higher trail on the western side, especially if it could connect with State Park trails, is desirable. Since timing is less critical than it is with emergency access, the City may continue to work with the Lundins and Utah Open Lands on trail options with the understanding that a public trail easement will be granted, with location to be set forth in the conservation easement.

#### **ALTERNATIVE ACTIONS:**

1. Approval (Conditional). This action can be taken if the City Council finds the proposal is acceptable and in the best interest of the community.
  - a. Accept staff report
  - b. List accepted findings
  - c. Place condition(s)
  
2. Continuance. This action can be taken if the City Council finds there are unresolved issues.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for continuance
    - i. Unresolved issues that must be addressed

- d. Date when the item will be heard again
3. Denial. This action can be taken if the City Council finds that the request is not acceptable and not in the best interest of the community.
- a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial

**RESOLUTION** extending the May 15, 2024, deadlines set in the January 16, 2024, City Council motions, through and inclusive of December 31, 2024, to allow the parties time to complete the purchase agreement for the conservation easement and any other outstanding conditions precedent for use of Midway Open Space Bond funds.

**PROPOSED CONDITIONS:**

1. 40 Shares of unencumbered Midway Irrigation shares will be encumbered in a form acceptable to Midway City and Wasatch County and restricted in perpetuity to use in connection with the property subject to the Conservation Easement, which the Lundins represent covers their historic irrigation and livestock watering uses on the Property and anticipated future water uses associated with the conservation easement. The Lundins represent they own title to the shares and that the shares are free of liens and encumbrances and the Lundins will ensure they remain free from liens and encumbrances.
2. The 40 shares of Midway Irrigation referenced in condition 1, plus an additional 10 shares of Midway Irrigation owned by the Lundins and warranted to be free and clear of liens or encumbrances, will be escrowed or otherwise encumbered to the satisfaction of the City of Midway and Wasatch County as security for their respective Open Space Bond Fund grants pending recordation of the Conservation Easement. These 50 shares shall not be used as security for any other funding sources.
3. An emergency public access route providing a second point of access to Swiss Alpine Road at least as far up (west) as Olympic Drive was and is a condition of approval and will be provided by the Lundins as part of the conservation easement with location to be specified in the conservation easement. Since the Lundins prefer a western route and the opportunity to connect Lime Canyon is desirable, the City may continue to work with the Lundins and Utah Open Lands toward a western option to replace the route set forth in the master plan, which is the default. If the Lundins identify an alternate route which is “workable” and definite (i.e., complies with applicable laws, City and County codes, and budget constraints, with landowners ready, willing, and able to give required easements)

before the conservation easement is recorded, the City will in good faith work with them to make it happen. The Lundins would be expected to provide easements for any agreed upon new route at which point any easements associated with an eastern route if provided would be released.

4. While the City Master Plan calls for a paved road meeting City standards, since the road is for emergency access and wildfire evacuation, the road need not be paved and can be the minimum width required by fire code (20 feet), with crash gates and appropriate signage.
5. A public trail and firebreak across the Lundin property will benefit residents and was and is a condition of approval. Like the emergency access, the Lundins have expressed a preference for a western trail option running along the Probst Ditch, and the parties are in agreement that a higher trail on the western side, especially if it could connect with State Park trails, is desirable. Since timing is less critical than it is with emergency access, City staff may continue to work with the Lundins and Utah Open Lands on trail location to be specified in the conservation easement. If the Lundins identify an alternate route which is “workable” and definite (i.e., complies with applicable laws, City and County codes, and budget constraints, with landowners ready, willing, and able to give required easements) before the conservation easement is recorded, the City will in good faith work with them to make it happen. Although the Master Trail Plan shows any trail as paved, a soft (more natural surface) in keeping with the environment is acceptable.
6. The remaining conditions set forth in the June 20, 2023 and January 16, 2024 motions, as set forth below, will be continued while adjusting dates to accommodate the extension through December 31, 2024:
  - Application submitted to the LeRay McCallister Fund by May 1, 2024,
  - A commitment received from the Lundin family and applicants enter into an agreement with Utah Open Lands committing to sell the development rights for 119 acres of property by May 1, 2024,
  - The contribution continues for a period of three years from June 20, 2023, then an extension would be needed from the City Council,
  - An MOU containing these conditions and identifying the property that was a conservation easement separate and apart from the rest of the family’s property prior to any final approval of funding.
  - The form of the conservation easement would comply with the MOU.