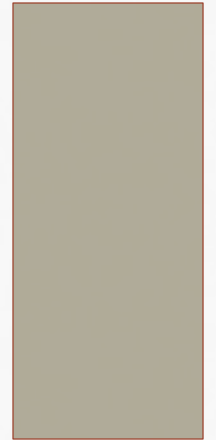


LUNDIN FARM

CONSERVATION EASEMENT



EXTENSION REQUEST

- 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 clarification 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.

JUNE 20, 2023, MOTION

City Council authorized use of up to \$1 million in open space bond funds subject to multiple conditions including:

- 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.

JANUARY 16, 2024, MOTION

The City Council extended authorization through May 15, 2024, subject to conditions, including:

- 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.
- Continue the conditions set forth on June 20, 2023, while adjusting dates to accommodate the extension through May 15, 2024:

JANUARY 16, 2024, MOTION CONT.

- An application was submitted to the LeRay McCallister Fund by June 30th,
- A commitment was received from the Lundin family and 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.
- The contribution continued for a period of three years from June 20, 2023, 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,
- A MOU containing these conditions and identifying the property that was a conservation easement, separate and apart from the rest of the family's property, by May 15, 2024.
- 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.

JANUARY 16, 2024, MOTION AMD.

City Council amended its motion to clarify that water rights would not be dedicated to the City, but rather:

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

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 not yet 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

- City Council Motion dated January 16, 2024 (Amended) provides: *“The water rights necessary for agriculture and other uses be encumbered as part of the conservation easement in perpetuity”*.
- The Lundins advise that the irrigation required for farming and livestock is less than the 64 shares represented and has proposed 40 Midway Irrigation Company shares be encumbered 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 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 conservation easement property in perpetuity.

WATER SHARES DISCUSSION

- 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 clarification may be helpful.
- 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.

WATER RIGHTS

- Water Rights. Grantor expressly retains all rights, title and interest in and to all tributary and non-tributary water, water rights, and related interests, in, on, under or appurtenant to the Property. However, Grantor acknowledges that a portion of the water rights set forth in Exhibit _____, attached hereto and by this reference made a part hereof, are necessary to the preservation of the agricultural values and existing irrigation practices and comprise a necessary element of the Conservation Values for this Easement and therefore Grantor acknowledges that the water rights in Exhibit _____ and the place of use of the Water Rights may not be removed from the Property without prior written consent of the Grantee. As such, Grantee shall be entitled to record a notice with the appropriate authority or entity of the existence of this Easement and Grantee's rights hereunder. The ability to maintain irrigation to the property from irrigation ditches and irrigation equipment whether or not on the property encumbered by this agreement shall be deemed appurtenant to this Property

EMERGENCY ACCESS

- Midway's Master Street Plan shows a road across the Lundin property that would connect Bigler Lane to Olympic Drive, creating an access for 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, especially with entitled lots, greatly exceed the current standards.

REQUEST NOT NEW

- 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.*

EMERGENCY ACCESS PART OF EVERY AUTHORIZATION

- 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, as well as budgetary constraints.

MIDWAY SENSITIVE LANDS CODE

Chapter 16.14.060, Hillsides, Slopes, and Natural Grade, provides:

- 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.

SENSITIVE LANDS CODE CONT.

2. Criteria for Streets and Driveways Traversing Steep Slopes.

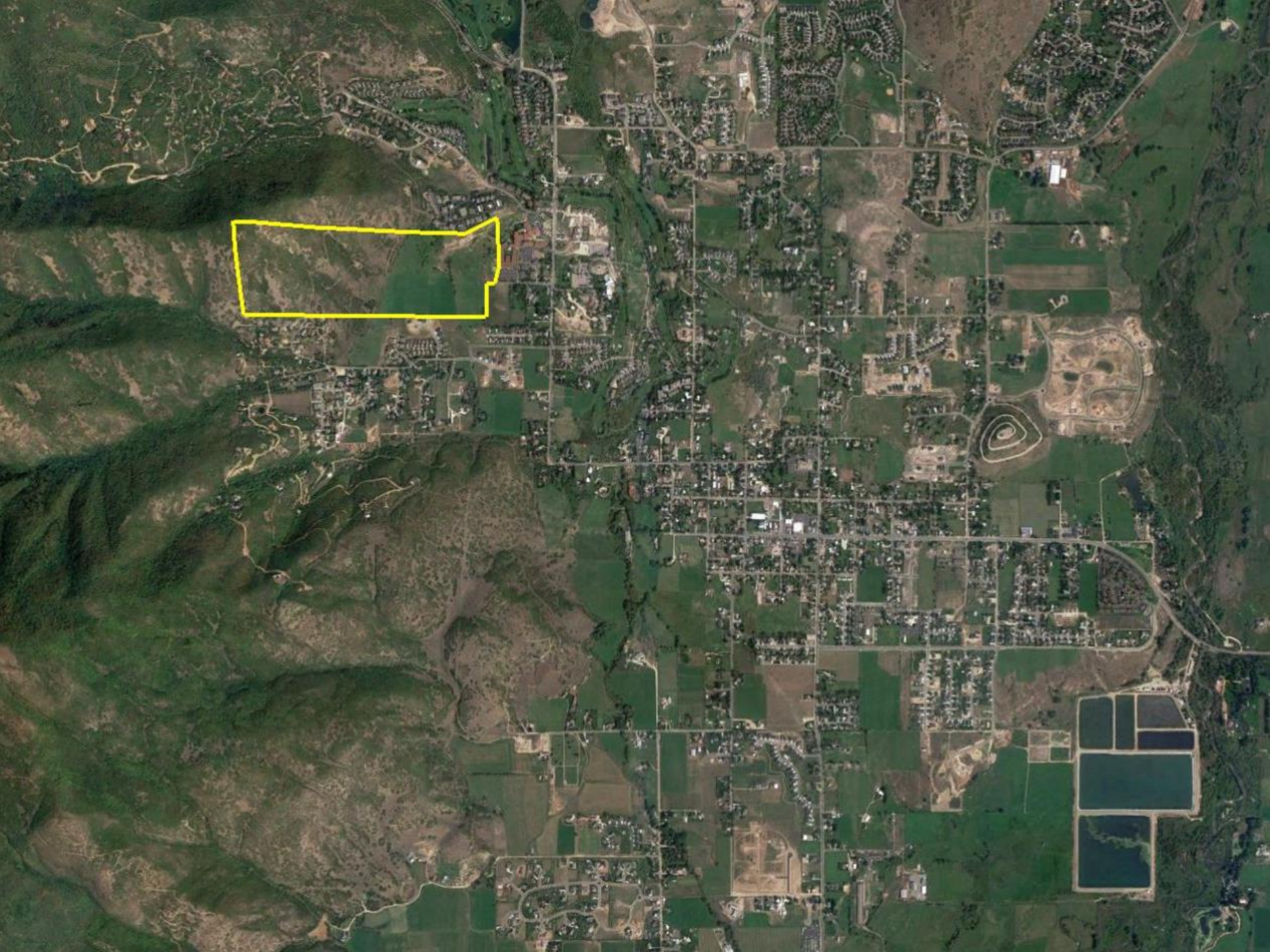
All roads and driveways in hillside areas must receive full review from the City Engineer and Staff, and final approval from the City Council. Sensitivity to the land forms, erosion, plant life, wildlife and view shed are key considerations. Streets, roads, private access roads, driveways and other vehicular 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.

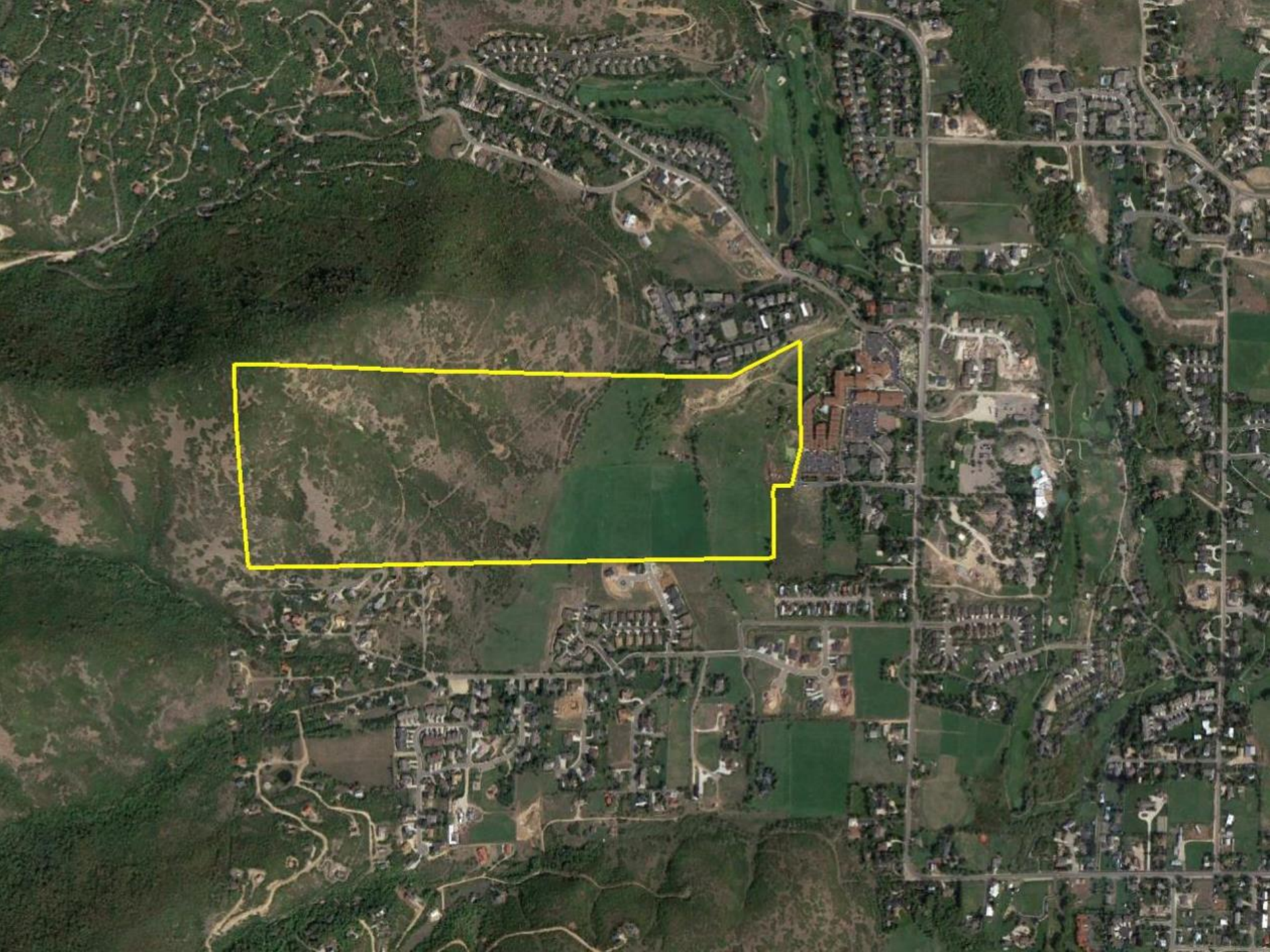
SENSITIVE LANDS CODE CONT.

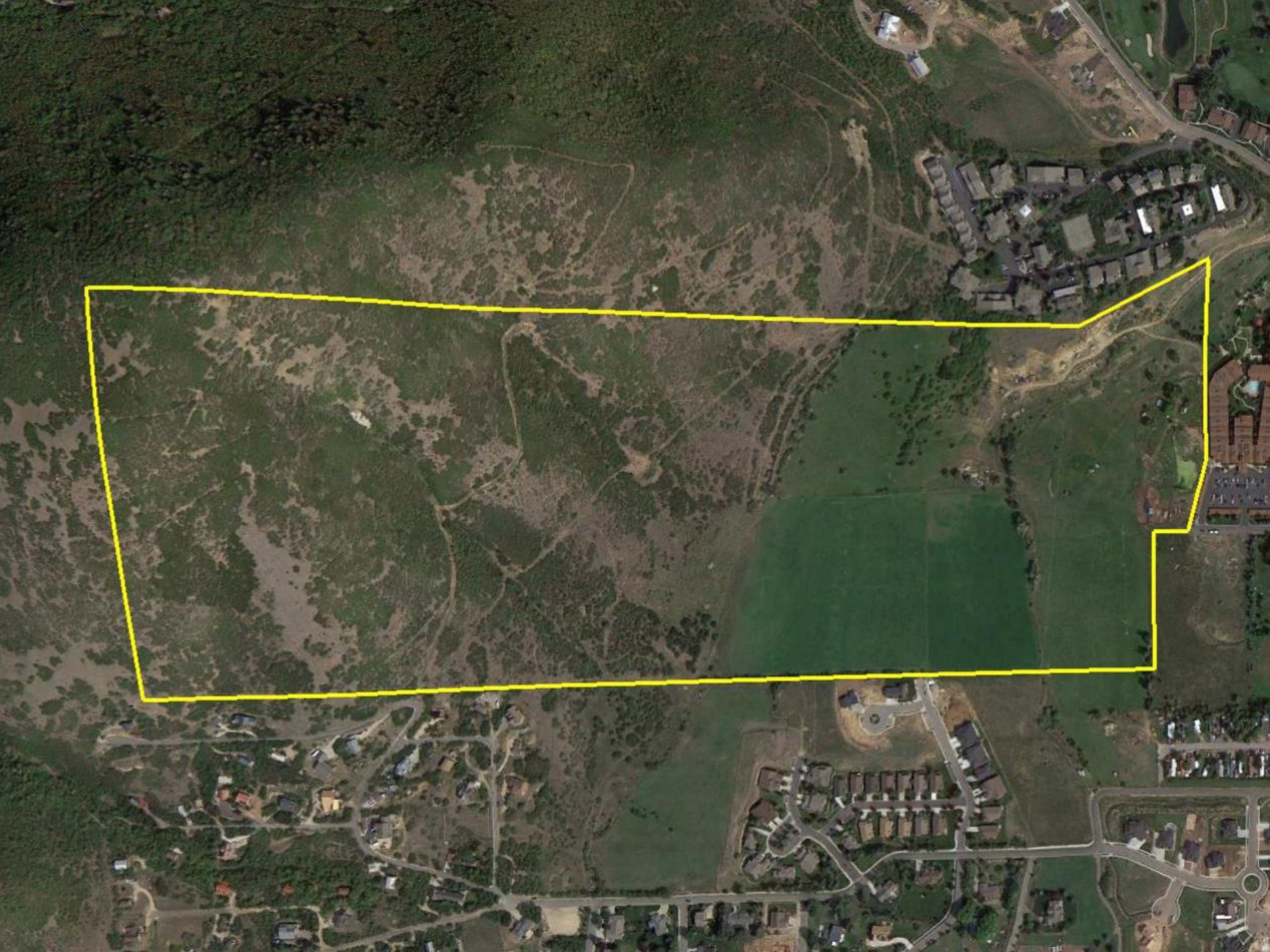
- a. **“No alternative location for access is feasible or available.** (emphasis added)
- b. No individual segment of the street, road, private access road, driveway or other vehicular route that will cross slopes between 25 and 50 percent shall exceed 100 feet in length or, if greater than 100 feet, 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.

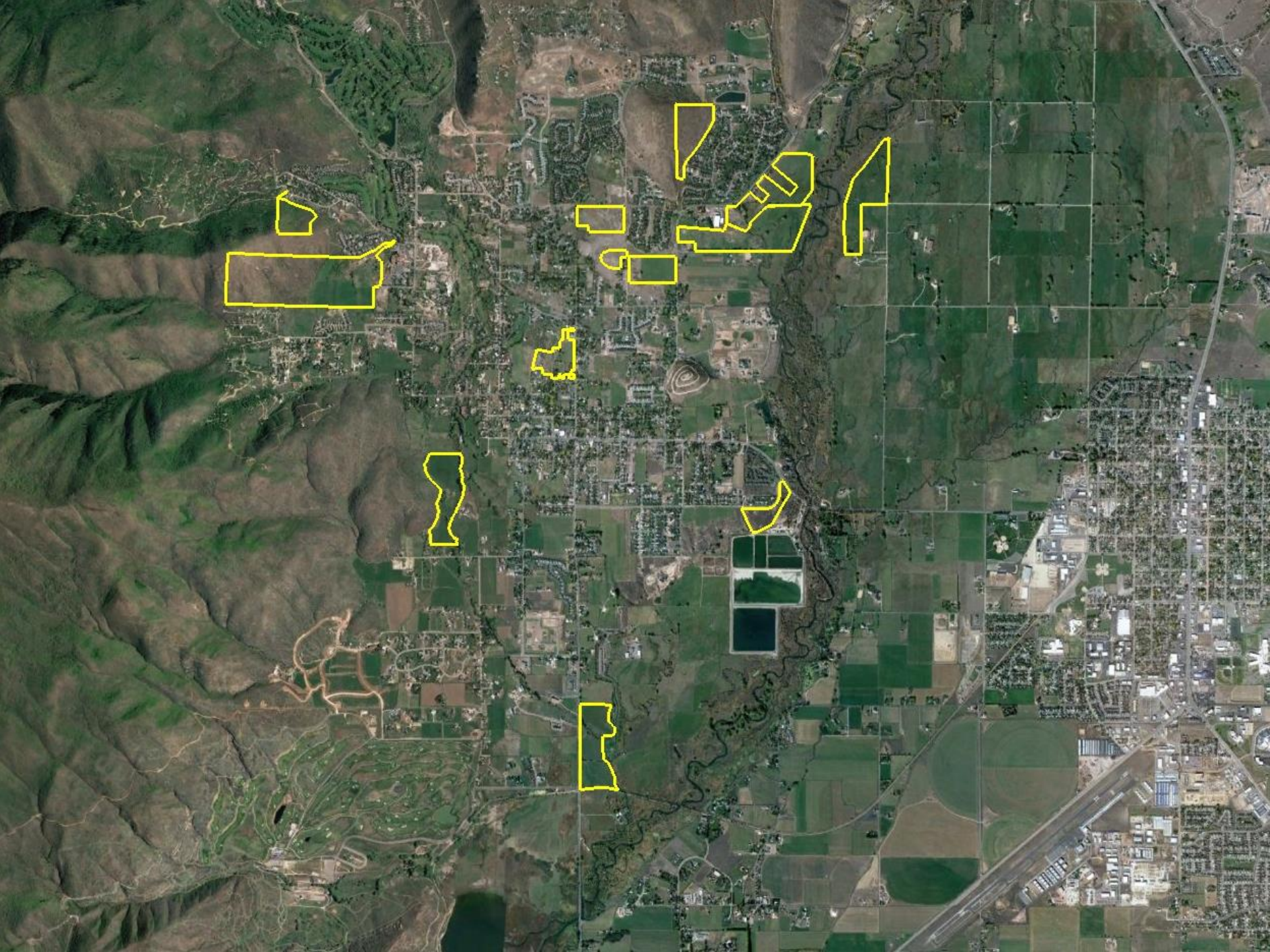
PEDESTRIAN TRAIL

- As part of the open space bond grant, the Lundins agreed to permit access by the public for a trail across the property.
- The City Council motion of June 20, 2023, provided: *“The parties would diligently work together to create the trail and firebreak as mentioned for public and scenic access.”*
- The City Council motion of January 16, 2024, provided: *“Public trail easements were clarified before approval”*.









ANYON RD

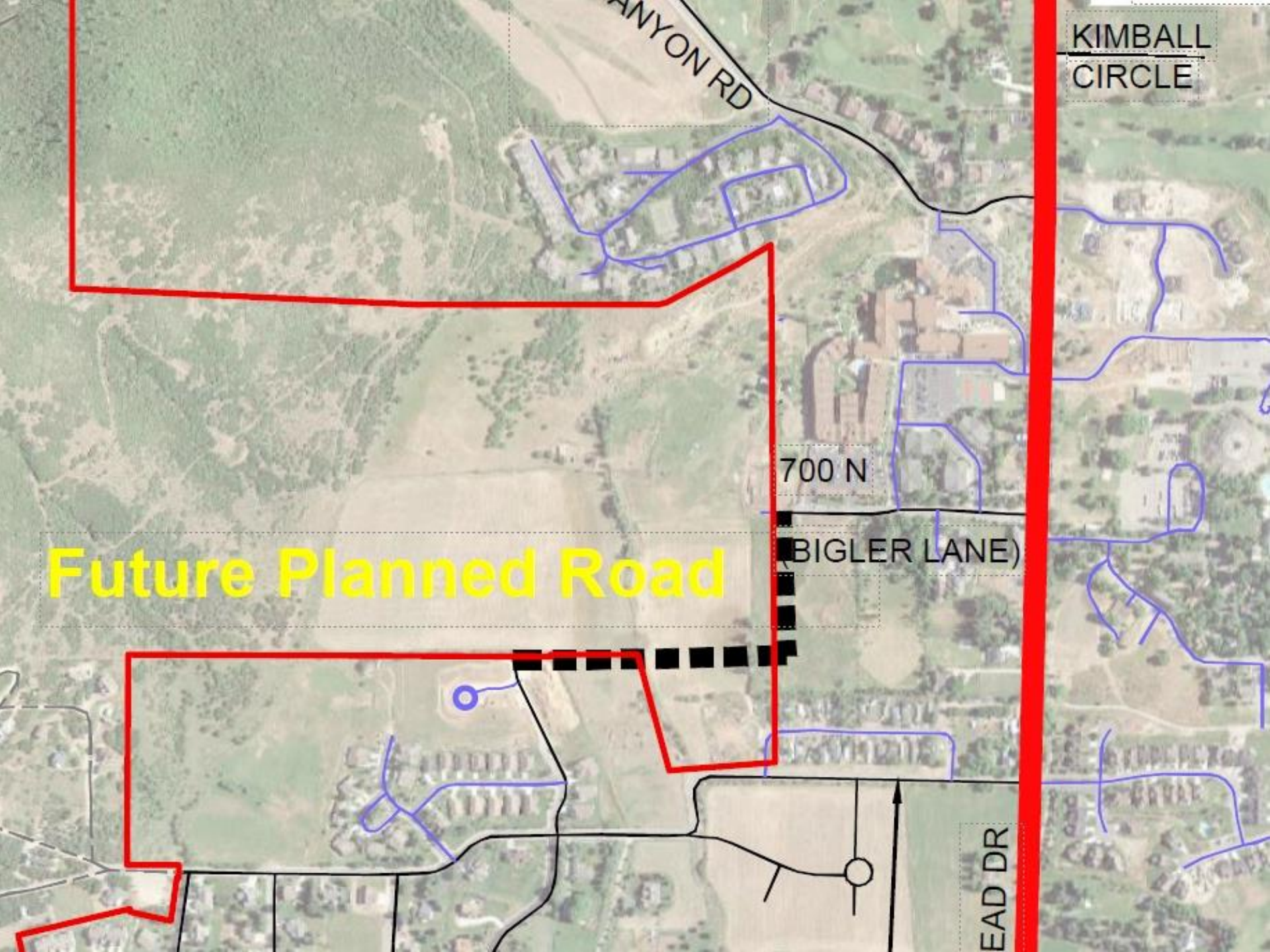
KIMBALL
CIRCLE

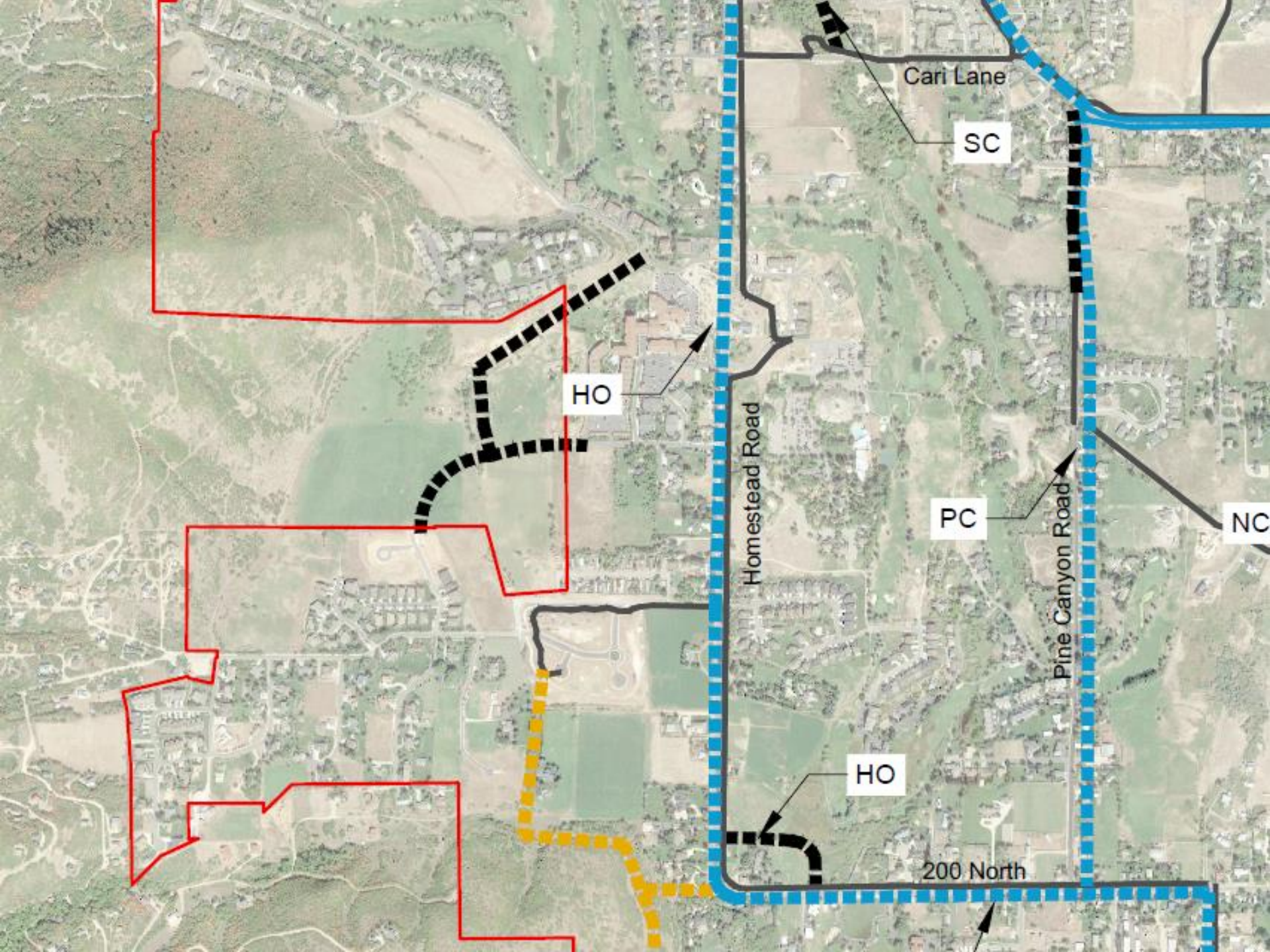
700 N

(BIGLER LANE)

Future Planned Road

EAD DR





Cari Lane

SC

HO

Homestead Road

PC

NC

Pine Canyon Road

HO

200 North







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.

POSSIBLE FINDINGS

- 40 Shares of unencumbered Midway Irrigation water 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.

POSSIBLE FINDINGS

- Per agreement of the parties, the conservation easement will include an emergency access/evacuation route serving Swiss Alpine Road at least as high up (west) as Olympic Drive, which will need to support emergency vehicles but need not be a hard surface, and which shall not exceed 20 feet in width but shall meet fire code standards.
- Midway's Master Plan locates the emergency access road connecting to Olympic Drive on the south side of the Property, then running eastward along the southern boundary of the Conservation Easement to the east boundary, then north to Bigler Lane ("default eastern route"). The Seller has expressed preference for a western route along the Probst ditch, which has not yet been demonstrated as feasible, guaranteed, or within budgetary and engineering constraints of the City and County.
- UOL and Midway shall continue to work cooperatively and in good faith with Sellers to identify and determine solutions that could provide for a western route complying with applicable laws, engineering requirements, budget constraints, and required easements prior to the conservation easement being recorded with the hope that a western route may be identified and accomplished, but if not, the parties will proceed with the default eastern route unless modified by further written agreement of the parties.

POSSIBLE FINDINGS

- A public trail and firebreak across the Lundin property will benefit residents and was a condition of approval.
- The trail may be soft surface.
- Midway's Master Trail Plan shows a route running along the eastern emergency access road then continuing north along the eastern boundary of the Property to the West Bench Ditch, then proceeding to Lime Canyon Road along such Ditch ("default eastern trail route"). Sellers have expressed preference for a western route along the Probst Ditch. The parties agree that a higher trail on the western side, especially if it could interconnect with other trails, is desirable.
- Sellers and UOL have identified several potential options which may be acceptable to the City and County if required easements could be obtained and budgetary and engineering constraints met.
- Since timing is less critical than with emergency access, the City may continue to work in good faith with the Lundins and UOL on trail location acceptable to the parties, which shall be specified 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

MOTION TO EXTEND

- **RESOLUTION**

To extend 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 water will be encumbered and restricted in perpetuity 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.
2. An additional 10 unencumbered 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 any other funding sources.

PROPOSED CONDITIONS CONT.

3. The conservation easement will include an emergency access/evacuation route serving Swiss Alpine Road at least as high up (west) as Olympic Drive, which will need to support emergency vehicles but need not be a hard surface, and which shall not exceed 20 feet in width but shall meet fire code standards.

PROPOSED CONDITIONS CONT.

4. Midway's Master Plan locates the emergency access road connecting to Olympic Drive on the south side of the Property, then running eastward along the southern boundary of the Conservation Easement to the east boundary, then north to Bigler Lane ("default eastern route"). The Seller has expressed preference for a western route along the Probst ditch, which has not yet been demonstrated as feasible, guaranteed, or within budgetary and engineering constraints of the City and County. UOL and Midway shall continue to work cooperatively and in good faith with Sellers to identify and determine solutions that could provide for a western route complying with applicable laws, engineering requirements, budget constraints, and required easements prior to the conservation easement being recorded with the hope that a western route may be identified and accomplished, but if not, the parties will proceed with the default eastern route unless modified by further written agreement of the parties.

PROPOSED CONDITIONS

5. 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 20 feet in width, with crash gates and appropriate signage, so long as it meets fire code.

6. A public trail and firebreak across the Lundin property will benefit residents and was and is a condition of approval. Although the Midway Master Trail Plan shows the trail as paved, a soft (more natural surface) in keeping with the environment is acceptable.

PROPOSED CONDITIONS

7. Midway's Master Trail Plan shows a route running along the eastern emergency access road then continuing north along the eastern boundary of the Property to the West Bench Ditch, then proceeding to Lime Canyon Road along such Ditch ("default eastern trail route"). Sellers have expressed preference for a western route along the Probst Ditch. The parties agree that a higher trail on the western side, especially if it could interconnect with other trails, is desirable. Sellers and UOL have identified several potential options which may be acceptable to the City and County if required easements could be obtained and budgetary and engineering constraints met. Since timing is less critical than with emergency access, the City may continue to work in good faith with the Lundins and UOL on trail location acceptable to the parties, which shall be specified in the Conservation Easement.

PROPOSED CONDITIONS

8. 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.