

Midway City Council  
1 December 2020  
Regular Meeting

Albert Kohler Legacy Farm /  
Letter of Commitment

# Memo



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Date: December 1, 2020  
To: Midway City Council  
From: Michael Henke  
Re: Potential Annexation of Grant Kohler Properties

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The purpose of this memo is to discuss the possibility of annexing the Grant Kohler properties. There are several issues to analyze with this item which includes the question of is annexation even a possibility based on State code requirements and what would annexing this property, and the surrounding properties, do for Midway.

The first item to discuss is the following question, "Is annexation required?" Resolution 2018-30 (see attached) was approved by the City Council on December 4, 2018. The resolution adopts a statement of intent regarding the use of open space bond funds. It states the reasons to consider bonding for open space and then it lists the intent of the City if open space bond funds are used. Item 6 of that document states the following regarding annexation:

*It is our intention that if open space bond funds are used to acquire property within Midway Growth Boundary, we prefer and encourage the land to be annexed into the City.*

The motion (see attached) that approved another bond related resolution was Resolution 2018-27: Special Bond Election. The motion stated specifically that the bond proceeds could be used for open space within the annexation boundaries as indicated on the Land Use Map dated 13 December 2017. The two aforementioned documents both allow bond funds to be used in Midway's Growth Boundary, and one even prefers and encourages annexation, but there is no requirement for annexation if bond revenues are used towards a property.

This leaves us with the question, "Can the City require annexation of the Grant Kohler properties?" The City clearly prefers and encourages annexation, but to this point, there is not a requirement. The City has issued a letter of financial support (see attached) and the next step is to approve a letter of commitment. The City could require annexation as a requirement of the letter of commitment.

### Items of consideration:

**Unincorporated peninsulas:** Annexing only the conservation easement property or all of Grant Kohler's property creates two unincorporated peninsulas, one north of the Grant property and one south of the Grant property (see attached map). (For the purpose of this analysis, the Grant property is all the property owned by Grant Kohler, not only the property that will have the conservation easement. It is logical that if he petitioned for annexation, all his property would be included, otherwise he would need to force his other property into the City as part of the annexation.) An unincorporated peninsula is an area in county jurisdiction surrounded by land within a municipality except where it connects to and extends from the rest of the unincorporated area. There is a specific formula in State Code that basically states that at any point where a straight line may be drawn from a place where it borders a municipality to another place where it borders a municipality, is no more than 25% of the boundary of the area where it borders a municipality. Staff has identified an upper peninsula (with two islands) and a lower peninsula that would be created if the Grant property were annexed into the City.

If Grant petitioned for annexation of all of his property and the property owners in the two peninsulas did not sign the petition, then he could only annex if he met State Code requirements to force those properties in as part of the annexation. Grant would need to own at least half the land in the proposed annexation, and he would need to at least have one-third of the market tax value of all the land in the annexation area. Staff has compiled all the information and has found that Grant could force annexation of all the property in both peninsulas as can be seen with the following information (information was gathered from the County's website and acreages may not be accurate and would need to be verified):

### Both Peninsulas

Petitioner includes all of Grant Kohler's properties:

Petitioner: 74.19 acres                      Both Peninsulas: 69.39 acres

Petitioner: \$4,297,487                      Both Peninsulas: \$7,344,683

Complies with ½ land requirement: Yes (71.79 acres minimum)

Complies with 1/3 of market value: Yes (\$3,880,723 minimum)

**Land use map amendment:** Some of the property in the lower peninsula that would need to be "forced" into the annexation is not currently in Midway's Growth Boundary and therefore cannot be annexed into the City. For the property to be eligible for annexation, the Midway Land Use Map would need to be amended first and the growth boundary would need to be extended to encompass the two parcels.

**Land use and zoning control:** If the two peninsulas are annexed then the city does gain control of zoning in those areas. Issues such as density and setbacks would need to meet City standards instead of the County's standards. For example, if a large-scale subdivision were proposed on the upper peninsula area, the City's setbacks would be 100' whereas the County's setbacks would be 30'. Signage would also need to meet City standards including signs for Heber Valley Artisan Cheese and signs for the property to the south that sells produce.

**Lack of concept planning of the two peninsulas:** When the City annexes property, a concept plan is required for the petitioner's property but other properties that are "forced" into the City do not submit a plan. They are simply annexed in with the density as shown on the Land Use Map. The City also cannot require any conditions of these properties whereas the petitioner's properties can be annexed with conditions. An annexation agreement is created between the City and the petitioner where the concept plan and any conditions are memorialized and can be enforced. Any nonpetitioner properties do not enter into an annexation agreement therefore the City has less control of the future development of those properties. Also, the City requires fees from the petitioners that include application fees and special discretionary fees from the petitioner, but all other properties do not pay any fees, and none can be required of them.

**Tax impacts:** Generally, the City gains revenue for commercial, non-developed, and agricultural properties but loses revenue on residential properties. The City will gain some sales tax of the property because of Heber Valley Artisan Cheese. The City will also gain some property tax with the annexation but may also lose overall positive revenue on the property tax because of the services the City would need to provide (though the main source of cost for the City is maintaining public roads but the only public road that would require service is River Road which is already fully maintained by the City). If the properties are annexed into the City and then are developed as residential except for where the conservation easement encumbers the property, then the final impact will, most likely, be a net loss for Midway.

**Wasatch County:** If Midway annexes the Grant property and both peninsulas then Wasatch County will no longer receive the sales tax from Heber Valley Artisan Cheese. They have expressed concern regarding losing this tax. Ultimately, Wasatch County does not have the ability to stop the property from annexing. It is important to consider that Wasatch County recently helped Midway to annex part of Wasatch Mountain State Park. This annexation helped Midway with the resort tax and the annexation, the way it was approved, was only possible because of Wasatch County's approval, which in that annexation they did have the ability to veto.

**Ability for further annexations along River Road to the north:** The Midway Land Use map's growth boundary extends to the northeast from the Grant Kohler property. It appears that even if the Grant Kohler property is not annexed, other properties to the northeast could still annex into Midway without creating an unincorporated peninsula.

In conclusion, there currently is not a requirement that the conservation easement property be annexed in to Midway. Based on the information gathered, it appears that Grant Kohler could petition for annexation, but the two peninsula areas would also need to be annexed. The City would have to amend the Land Use map before annexation to cover all the southern peninsula. The City would also gain land use authority over the area but there would only be an annexation agreement for the petitioner's property. The ability to require concept plans and any other conditions from the other annexed areas would not be possible. The tax impact on Midway could possibly be a negative. These are all items that should be considered regarding this potential annexation.

Please let me know if you have any questions.

Below is some of the information gathered for this analysis:

Conservation Easement Property	61 acres	\$2,312,961
Grant Kohler's Property	74.19 acres	\$4,297,487
Other Kohler Property	2.96 acres	\$1,008,206
All Kohler Property	77.15 acres	\$5,305,693
Lower Peninsula	32.63 acres	\$4,381,219
Upper Peninsula without Other Kohler	33.8 acres	\$1,955,258
Upper Peninsula with Other Kohler	36.76 acres	\$2,963,464

Requirement that the petitioner owns at least half of the land.

Requirement that the petitioner owns at least 1/3 of the market tax value.

#### Lower Peninsula

Petitioner includes all of Grant Kohler's properties:

Petitioner: 74.19 acres      Lower Peninsula: 32.63 acres

Petitioner: \$4,297,487      Lower Peninsula: \$4,381,219

Complies with ½ land requirement: Yes

Complies with 1/3 of market value: Yes

#### Upper Peninsula

Petitioner includes all of Grant Kohler's properties:

Petitioner: 74.19 acres      Upper Peninsula: 36.76 acres

Petitioner: \$4,297,487      Upper Peninsula: \$2,963,464

Complies with ½ land requirement: Yes

Complies with 1/3 of market value: Yes

#### Both Peninsulas

Petitioner includes all of Grant Kohler's properties:

Petitioner: 74.19 acres      Both Peninsulas: 69.39 acres

Petitioner: \$4,297,487      Both Peninsulas: \$7,344,683

Complies with ½ land requirement: Yes (71.79 acres minimum)

Complies with 1/3 of market value: Yes (\$3,880,723 minimum)

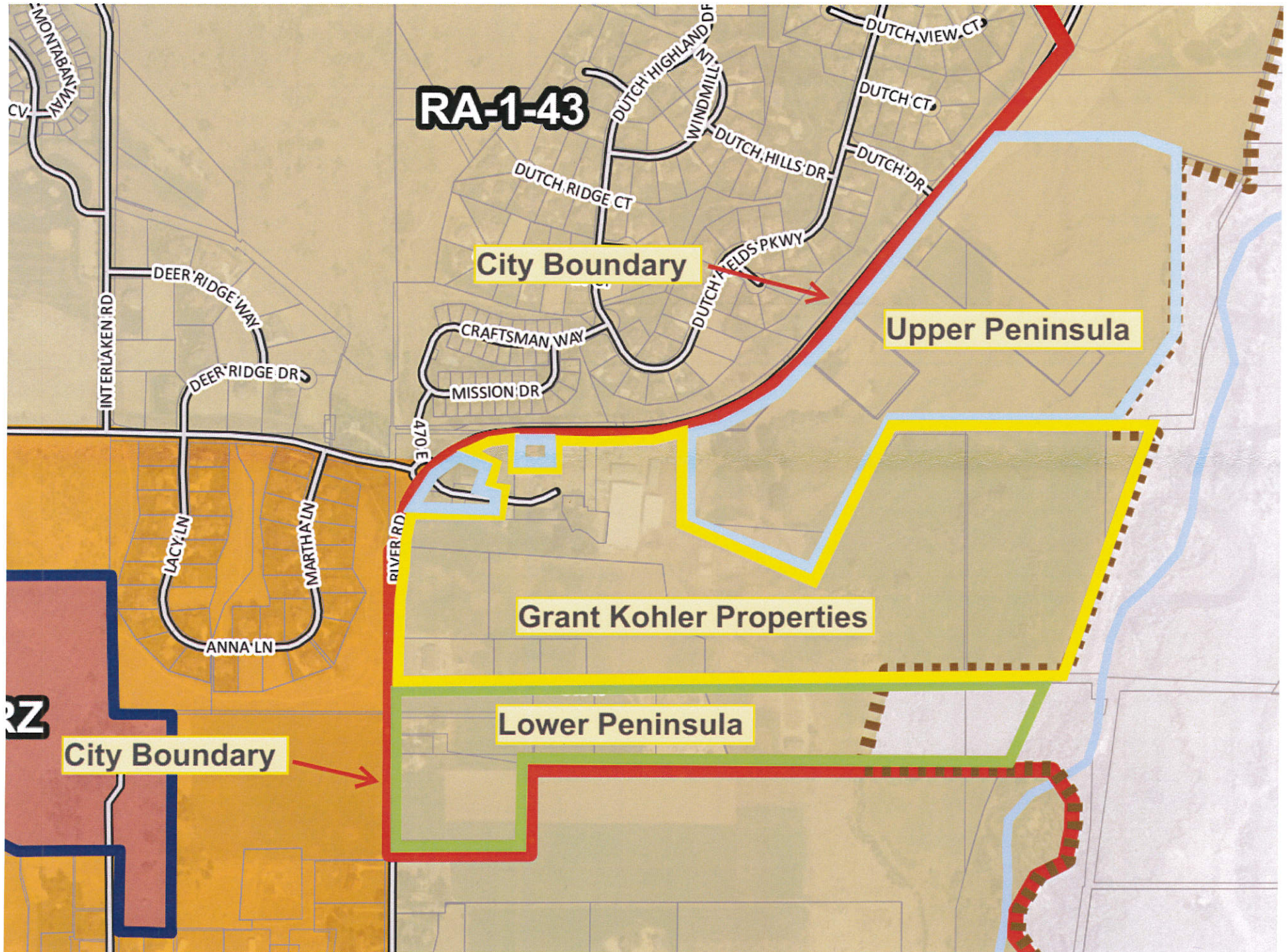
















## RESOLUTION 2018-30

### **A RESOLUTION ADOPTING A STATEMENT OF INTENT REGARDING THE PROPOSED USE OF OPEN SPACE BOND PROCEEDS, AND RELATED MATTERS.**

**WHEREAS**, the City Council finds that open space is a high priority issue for Midway City residents; and

**WHEREAS**, the City Council believes that it is important to inform the citizens of Midway of the plans, policies and procedures that are being developed for the acquisition and preservation of open space in and around Midway City; and

**WHEREAS**, the City Council believes that additional information may be helpful to the public and to potential voters regarding the intent of the City with respect to open space funds that may be forthcoming depending upon the outcome of the vote.

**NOW THEREFORE**, the City Council has determined that there is an important public interest in providing the statement of intent contained herein and the Council of the City of Midway, Wasatch County, Utah, hereby adopts, passes and publishes the following:

**BE IT RESOLVED**, by the City Council of Midway City, Wasatch County, State of Utah:

#### STATEMENT OF INTENT

*WE THE CITY COUNCIL DO HEREBY DECLARE THE  
FOLLOWING AS OUR INTENT REGARDING THE OPEN  
SPACE BOND:*

*1) We state our intention that the General Plan will continue to  
be a guiding document regarding planning for the future,  
including regarding potential uses of bond money.*

*2) We state our intention that the Open Space Committee will  
continue to define and refine the definitions and priorities  
regarding open space in the General Plan and other more*



*detailed documents and guiding vision principles, and the public will continue to have input into the definitions and process as time goes on. It is our intention that those definitions and processes will become the basis upon which the City Council will consider options.*

*3) We state our intention that prior to bonds being issued there will be additional public meetings, where the specific community benefit is clearly identified and citizen input is taken.*

*4) In addition to using bond money appropriately, we state our intention to use all other appropriate tools we have available to preserve open space and the rural character of Midway in accordance with the General Plan as development proceeds in the City.*

*5) We state our intention that the bond money is intended to get maximum value available, in highly leveraged transactions that utilize some combination of the following:*

*- We are interested in partnerships with willing landowners to acquire development rights and establish conservation easements for lands that qualify for donations under State code and IRS rules.*

*- We want to partner with other groups or individuals that will match our dollars, multiplying the value of our contribution.*

*- 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 specific community benefit that is attractive enough to be competitive with other options.*

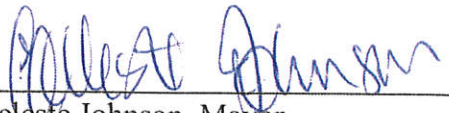
*6) It is our intention that if open space bond funds are used to acquire property within the Midway Growth Boundary, we prefer and encourage the land to be annexed into the City.*

This resolution shall be effective immediately upon passage. A copy of this resolution shall be posted at each of three (3) public places within the corporate limits of Midway City and a summary published in a paper of local circulation.

**PASSED AND ADOPTED** by the Midway City Council on the 4<sup>th</sup> day of December 2018.



MIDWAY CITY

  
Celeste Johnson, Mayor

ATTEST:

  
Brad Wilson, Recorder







# Memo

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**Date:** 13 December 2018  
**To:**  
**Cc:** File  
**From:** Brad Wilson, City Recorder/Financial Officer  
**RE:** Resolution 2018-30 / Statement of Intent

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The resolution was originally considered and then tabled by the Midway City Council prior to the special bond election. It was reconsidered and approved with revisions after the election. Some language in the resolution reflects its original consideration and incorrectly indicates that the election was yet to be held.

## Animal Control / Quarterly Report

Council Member Simonsen reported that there were no abnormalities in the latest animal control report.

- 5. Resolution 2018-27 / Special Bond Election** (Bond Counsel – Approximately 15 minutes)
- Discuss and possibly adopt Resolution 2018-27 providing for a Special Bond Election to be held on 6 November 2017, for the purpose of submitting to the qualified electors of Midway City, Utah, a proposition regarding the issuance of not to exceed \$5,000,000 General Obligation Bonds to finance open space and all related improvements; and related matters.

Corbin Gordon reviewed the proposed resolution and indicated several changes that still needed to be made.

Mark Anderson, Zions Public Finance, reviewed the financial impact of the resolution. He thought that the impact would be less when the bonds were issued. He noted that the individual impact would decrease as the population increased.

Council Member Simonsen stated that the City wanted to be transparent and provide correct information.

Council Member Probst recommended that the proceeds of any bond only be used for open space within city limits. Council Member Van Wagoner said that the proceeds should be limited to at least the annexation boundary for the City. He worried that some people would want to use it outside of the City.

Council Member Simonsen disagreed with limiting the proceeds to within the City. He said that it should be used where the residents thought it would be most beneficial. However, he would agree to limiting it to the annexation boundary.

The dates in the resolution were changed to coincide with the proposed council meeting dates.

**Motion:** Council Member Simonsen moved to approve Resolution 2018-27 providing for a special bond election as just reviewed by the Council with the following changes:

- Page 1, paragraph 2, line 3: "City" changed to "City Council".
- The bond proceeds could be used for open space within the annexation boundaries as indicated on the Land Use Map dated 13 December 2017.
- The public meeting would be held on 2 October 2018.
- The public hearing would be held on 18 September 2018.
- The ballots would be canvassed on 20 November 2018.
- Any non-substantive clerical or scrivener's errors could be corrected.

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

**Discussion:** None



**Vote:** The motion was approved with the Council voting as follows:

Council Member Christen	Excused from the Meeting
Council Member Drury	Aye
Council Member Probst	Aye
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

**6. Ordinance 2018-16 / Theaters in Commercial Zones** (City Planner – Approximately 15 minutes) – Discuss and possibly adopt Ordinance 2018-16 amending Title 16 of the Midway City Municipal Code to allow theaters in the C-2 and C-3 zones. Recommended without conditions by the Midway City Planning Commission.

Michael Henke gave a presentation regarding the request and reviewed the following items:

- Code proposal
- Locations of the commercial zones
- Points of discussion
- Proposed findings

Mr. Henke indicated that no proposal for a theater had been submitted.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

Council Member Drury said that a lot of issues, such as parking, needed to be addressed before theaters should again be considered for the commercial zones.

**Motion:** Council Member Drury moved to deny Ordinance 2018-16, amending Title 16 of the Midway City Municipal Code to allow theaters in the C-2 and C-3 zones, because a lot of issues like parking needed to be addressed. He further moved that the Planning Commission reconsider theaters in the commercial zones once these issues had been more thoroughly considered.

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

**Discussion:** Council Member Probst made the following comments:

- He attended the planning commission meeting when the proposal was discussed.
- The proposal should have been recommended with conditions.
- Members of the Commission who had a financial interest or involvement in a potential theater project should have recused themselves from discussion and action on the item.
- The base of Memorial Hill was not the best place for a theater. A local resort or Soldier Hollow were better locations.
- The scope and cost of the potential project was too much.

Council Member Simonsen made the following comments:

# Midway City Corporation

Mayor

Celeste Johnson

City Council

Steve Dougherty • Jeff Drury  
Lisa Orme • Kevin Payne  
JC Simonsen



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8 June 2020

Wendy Fisher  
Executive Director  
Utah Open Lands  
1488 Main Street  
Salt Lake City, Utah 84115

Ms. Fisher:

On 3 March 2020, the Midway City Council approved this letter of financial support for the Albert Kohler Legacy Farm. The Council made the following findings in approving the letter:

- The project and funding request were consistent with the vision of the open space element of the Midway City General Plan.
- The 5.5 to one leveraging of Midway's contribution would assist in the continuation of an important agricultural business.
- The project was located along one of the three major entry corridors into Midway.
- The preservation of the dairy would keep valuable agricultural land as open space and the dairy would continue to provide agricultural products to the community.

The Council committed up to \$1 million for the project.

Thank you for your support of open space and agricultural preservation in the Heber Valley.

Sincerely,

Celeste Johnson  
Mayor

A handwritten signature in blue ink, appearing to read "Celeste Johnson", is written over the printed name and title.

Cc: File



# Midway City Corporation

Mayor: Celeste T. Johnson  
City Council Members  
Lisa Christen • Jeffery Drury  
J.C. Simonsen • Steve Dougherty  
Kevin Payne



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midwaycityut.org

December 2, 2020

Wendy Fisher  
Executive Director  
Utah Open Lands  
1488 Main Street  
Salt Lake City, UT 84115

Re: Albert Kohler Legacy Farm

Ms. Fisher:

Midway City, by formal motion by its City Council on December 1, 2020, approves and commits to pay \$1,000,000.00 from its open space bond for the Albert Kohler Legacy Farm.

The Council made the following findings in approving this Letter of Commitment:

1. The project and funding request is consistent with the vision of the open space element of the Midway City General Plan.
2. The outside donations including the contribution of conservation easement value made by the landowners toward the project roughly equate to \$10.00 dollars for every \$1 dollar given by Midway City thus leveraging the City's donation and maximizing its impact on the community as a whole.
3. Donation to the Albert Kohler Legacy Farm will have a broader impact on open space than just the project because the Kohler Dairy is currently a functioning business, and hay from many other fields within Midway City and the County is used to support the dairy.
4. The preservation of the Dairy also keeps valuable land as open space and assures the dairy will continue to provide agricultural products to the community.
5. The project is located along one of the three major entry corridors in Midway and preserving its use as agricultural and agrarian fits the purposes of the open space bond to preserve Midway's rural roots.

Sincerely,

Celeste Johnson  
Mayor, Midway City

# Midway City Corporation



Mayor: Celeste T. Johnson  
City Council Members  
Lisa Christen • Jeffery Drury  
J.C. Simonsen • Steve Dougherty  
Kevin Payne

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December 2, 2020

Wendy Fisher  
Executive Director  
Utah Open Lands  
1488 Main Street  
Salt Lake City, UT 84115

Re: Albert Kohler Legacy Farm

Ms. Fisher:

In the event insufficient funds are raised by private donation that are needed to complete the Albert Kohler Legacy Farm purchase, Midway City, by formal approved motion of its City Council on December 1, 2020, commits to pay up to, and not to exceed, an additional \$221,000.00 beyond Midway City's commitment of \$1,000,000.00 dollars from its open space bond for the Albert Kohler Legacy Farm.

The Council made the following findings in approving this Letter of Commitment:

1. The project and funding request is consistent with the vision of the open space element of the Midway City General Plan.
2. The outside donations including the contribution of conservation easement value made by the landowners toward the project roughly equate to \$10.00 dollars for every \$1 dollar given by Midway City thus leveraging the City's donation and maximizing its impact on the community as a whole.
3. Donation to the Albert Kohler Legacy Farm will have a broader impact on open space than just the project because the Kohler Dairy is currently a functioning business, and hay from many other fields within Midway City and the County is used to support the dairy.
4. The preservation of the Dairy also keeps valuable land as open space and assures the dairy will continue to provide agricultural products to the community.
5. The project is located along one of the three major entry corridors in Midway and preserving its use as agricultural and agrarian fits the purposes of the open space bond to preserve Midway's rural roots.

Sincerely,

Celeste Johnson  
Mayor, Midway City