

Midway City Council
1 September 2020
Regular Meeting

Mountain Spa Property /
Letter of Commitment



Midway

CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: September 1, 2020

AGENDA ITEM: Open Space Bond Funding Request

NAME OF PROJECT: Mountain Spa

NAME OF APPLICANT: Chuck Heath, in coordination with Summit Land Conservancy

LOCATION OF ITEM: 800 North 200 East

ITEM: 8

Chuck Heath, in coordination with Summit Land Conservancy Utah Open Lands, is requesting \$1,500,000 from the Midway Open Space Bond to help fund a conservation easement on approximately 34.6 acres of the historic Mountain Spa property which has a total acreage of 78.5 acres. The property is located at 800 North and 200 East and has frontage on River Road and Burgi Lane. The property is partially zoned Resort Zone (RZ) and R-1-22 zone.

BACKGROUND:

In November of 2018, Midway residents passed a 5-million-dollar open space bond. An Open Space Advisory Committee was created, criteria for participation was established based on the 2017 Midway General Plan Open Space Element, and property owners were encouraged to submit a ‘Notice of Interest’ and subsequent ‘Landowner’s Perspective’ indicating how the property meets the Midway Open Space Criteria listed in the General Plan.

The Mountain Spa is the third project being forwarded to the City Council by the Open Space Advisory Committee. While the total project encompasses 78.53 acres, as shown on the attached map, only 34.6 acres will be encumbered with a conservation easement. The remainder of the property will be developed in the area zoned RZ following the guidelines of the RZ code. The applicant has met with the Open Space Advisory Committee several times and has clarified the following information.

The Mountain Spa was established in the 1880s and operated as a resort and gathering area focused on pools, using the geothermal water found on site, and as a gathering area for the community. The resort was active until the 1980s and then shut down. The site has gone into disrepair and the recreational facilities and buildings are now dilapidated.

There has been interest in developing the property since that time. The most recent proposal that received approvals from the City was in 2008 when a large resort was proposed on the property. The approved resort included hotels, promenade, bungalows, and the Old Mountain Spa Village which was approved at 270,000 square feet. The approval also included a planned unit development (PUD) in the area zoned R-1-22 which was approved for 63 units. Since the approval, the entitlement for the resort has lapsed and there are currently no vested approvals on the property.

The Mountain Spa property itself is fascinating because of the natural environment features found on the property. The property has geothermal springs and craters filled with warm water. There is a large area of pot rock around the springs and craters which are considered a major geologic feature area by Midway City and protected as part of the sensitive lands code. There are also wetland areas on the property along with agricultural area that includes about 15 acres of irrigated field and a large pasture located on the north end of the property. Because of these features and because of the Mountain Spa's prominent location on the north end of the City, the City has planned for trails to cross the property in two locations. There is a large linear park trail that is planned to connect from the Valais Park in the north to the Watts Remund Farms PUD in the south. This trail will connect the north end of the City down to Main Street and will create a trail that will generally not parallel roads and will create a safe environment for pedestrians to travel from one area of the Midway to another. The City has also planned a trail along River Road and has recently installed a temporary trail in the River Road right-of-way. It is anticipated that with this proposal a new trail will be constructed on the Mountain Spa property along the River Road right-of-way that will be farther from the road and will create a safer pedestrian experience for the trail. The City has also discussed connecting the River Road trail with the linear park trail on the property that would run east and west.

The property fronts two of the busiest roads in midway which include River Road and Burgi Lane. These two roads act as the entry into Midway and preserving the properties as open space will ensure a beautiful and natural entry corridor to the City that will benefit residents and tourists alike.

The contract price of the property is \$10,885,000. Heath is planning to not develop the property to its full extent, which would be similar to the aforementioned plan from 2008, in exchange for a contribution from the Midway open space bond fund of 1,500,000 and \$300,000 from Wasatch County open space bond fund. The funds would be used to contribute to a conservation easement that would be held by Summit Lands Conservancy and would limit development on the easement area to five estates lots that would cover approximately 45 acres. Two of the five lots would be 20+ acres each and would be restricted from any further development. Some of the area that would be included in the estate lots is in the RZ and staff recommends that the area in the lots is rezoned to R-1-22. If the area is not rezoned, then that area is subject to the requirements of the RZ. Also, it is contemplated that the estate lots may be a rural preservation subdivision and this type of subdivision is only allowed in the residential zones.

The remainder of the property would develop in the RZ under the RZ code. This area would benefit the residents of Midway in the form of creating a tax base to cover City services and other communal benefits such as helping to keep the resort tax and helping to keep property taxes low. The added rental rooms will help the City to comply with State Code requirements to keep the resort tax.

The Midway Open Space Advisory Committee (OSAC) supports (please see attached motion and findings from the OSAC) this application because it meets all of the criteria of the Open Space Element of the General Plan as noted below, and because the Mountain Spa is one of the premier properties in Midway with many unique features. It can become a significant tourist draw, protect natural and unique natural features, and preserve the entry corridor to Midway.

The application complies with Midway's General Plan Open Space element as follows:

Vision

"The Community Vision Statement sets a goal for Midway "to be a beautiful, organized small town community based on its distinct history of agriculture, open space and recreation". (Goal 1, Community vision Goals and Guidelines). Guideline 5 seeks to implement this goal by "Encouraging the preservation of prime agricultural land and open space within Midway and the surrounding valley".

The Mountain Spa meets these goals in the following ways:

- *Preservation of 34.6 acres of the Mountain Spa property preserves scenic view sheds of the Wasatch mountains.*
- *The property will continue usage as agricultural property, with pastureland grazing, haying, and related uses.*

Effective Open Space Use

The Open Space Element cites four design objectives requiring use of open space tools. They are; preserving Inter-City Space, Preserve Midway's Unique Character, Create Local Neighborhood "Openness", and Providing Public Recreation Venues.

In addition to the citations mentioned above, the Mountain Spa meets these objectives by:

- *The agricultural land is under greenbelt protection.*
- *The Mountain Spa abuts the Albert Kohler Legacy Dairy as shown on the attached maps.*
- *Adjacent land is developable other parcels are being subdivided for residential uses. Preserving these 34.6 acres will mitigate the density created by these developments.*
- *Should this land be developed for residential purposes we estimate that approximately 63 single family homes as a Planned Unit Development) could be constructed on the 34.6 acres located in the R-1-22 area of the property which would add significantly to the density, infrastructure requirements, and demand for City/County services.*
- *In addition to the use of the land for agriculture, this property serves as a significant wildlife habitat, providing nesting locations for various birds, safe locations for deer and elk to graze, and passage for many other species of wildlife to access the Provo River and other surrounding lands.*

Identifying and Acquiring Open Space

“Open space acquisition or preservation proposals must be evaluated with the benefit of the citizens of Midway in mind.”

- *The Mountain Spa property could be developed to allow the public with access to geothermal springs and pools in a manner that would not impact the natural environment.*
- *The preservation of the entry corridor on River Road and Burgi Lane will benefit the residents by preserving an area that will keep Midway beautiful and unique. Tourists will also benefit from the preservation of the property by creating an environment that they will want to continue to visit over the years.*
- *This property is a prime view corridor for residents and visitors, many of whom traverse this road daily.*
- *The views along the River Road entry corridor and Burgi lane entry corridor over the Mountain Spa property contribute materially to Midway’s reputation as an attractive tourist destination, an important part of our local economy.*

Identifying and Acquiring Open Space

“Where possible and practical, the City will work with other organizations, agencies, groups, and individuals who will share the costs of open space preservation projects.”

The Mountain Spa meets these objectives by:

- *Heath and Summit Land Conservancy have signed a memorandum of understanding that will limit development on the property that will later be memorialized with a conservation easement that will be help by Summit Land Conservancy.*
- *The contract price of the property is \$10,885,000. Heath is planning to not develop the property to its full extent, which would be similar to the aforementioned plan from 2008 in exchange for a contribution for Midway open space bond funds of 1,500,000 and \$300,000 from Wasatch County open space*

bond funds. The funds would be used to contribute to a conservation easement that would be held by Summit Lands Conservancy and would limit development on the easement area to five estate lots that would cover approximately 34.6 acres. Two of the five lots would be 20+ acres each and would be restricted from any further development

- *The five estate lots will be sold, with restriction as described in the conservation easement, and the sales of the lots will help pay for the cost of purchasing the land.*

POSSIBLE FINDINGS:

- This project and funding request are consistent with the vision of the Open Space Element of the General Plan.
- The four to one leveraging maximizes Midway's contribution, and the continuation of an important agricultural business is an added benefit.
- The project is located along one of the three major entry corridors into Midway.
- Preservation of the Mountain Spa will keep valuable agricultural land as open space

ALTERNATIVE ACTIONS:

1. Approval. 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

PROPOSED CONDITIONS:

Midway City Council contribution to a conservation easement of \$1,500,000 based on the following conditions and understandings which provide the City's limitations regarding land use approval on the 78.5 acres:

- Mr. Chuck Heath will purchase the 78.5-acre tract from Mountain Spa, LLC, with a closing date around the first week of December 2020.
- Mr. Heath will subdivide the property into two large farm estate lots, three smaller residential lots, an "historic spa area" encompassing the old Mountain Spa, and a resort area as reflected in the map you presented to the City Council at the meeting on August 18, 2020.
- The two large estate lots will each have a designated area to build a single-family residence and associated outbuildings to support the agricultural use of the property. These estate lots will be protected from further subdivision and development and will be preserved for agricultural and pasturing use by a conservation easement held by Summit Land Conservancy.
- The three smaller residential lots will be encumbered by deed restrictions that will limit the parcels to one single family residence each and prohibit further subdivision or development.
- The historic spa area will be encumbered by a conservation easement held by Summit Land Conservancy to ensure that its designation as a sensitive geologic feature is not changed by future legislative action and that it will be available as a passive public park accessible by public trail easements across the larger tract.
- Mr. Heath will sell the two large estate lots and the three smaller residential lots subject to the conservation easements and will develop a commercial spa in the resort area of the tract.
- The conveyance of title to purchasers of the estate lots and the residential lots must include sufficient water rights to maintain the historic irrigation on the properties and meet the City's land use regulations for culinary and irrigation for the residential sites.
- In developing the resort area, Mr. Heath will comply with the Midway City Land Use regulations and processes as well as with the additional restrictions, limitations, and provisions contained in the Memorandum of Understanding between Mr. Heath and Summit Land Conservancy. Those restrictions include, but are not limited to:
 - Reducing the density in the Resort Zone by 50% from the plan approved in 2008.

- Limit the height of all structures in the Resort Zone to 35 feet above natural grade.
- The aggregate building square footage resort shall not exceed 250,000 square feet. The determination of building coverage shall include all structures in the Resort, including all floors in each building. The buildings may be clustered together within the resort, subject to setbacks and other applicable restrictions.
- Site all structures to reduce interference with the view sheds across the property from River Road and Burgi Lane.
- Construct a public trail and dedicate a 20' wide public trail easement that will pass through the property from north to south that will connect with the Midway Trail system in that area and will provide access to the historic Mountain Spa.
- Construct a public trail and dedicate a 20' wide public trail easement adjacent and parallel to the River Road right-of-way.
- Work with The Lacy Lane HOA to secure an east west public trail connection from the River Road trail to the interior north south in the Mountain Spa property. If an east west connection cannot be secured through the Lacy Lane subdivision, then the trail will be required through the Mountain Spa property.
- Midway's contribution of up to \$1,500,000 will remain in escrow and will not be disbursed until the two estate lots, the three residential lots, and the historic spa area all have been legally encumbered by conservation easements and/or deed restrictions approved by Midway's legal counsel and bond counsel.
- This conditional approval of funds for this project will be valid for 18 months from the date of this letter. Should the land described above not be legally encumbered by the conservation easements and/or deed restrictions set out, this approval will expire, and the City may, at its sole option, decline to provide funds.

Exhibits

Exhibit 1 – Open Space Advisory Board Motion & Exhibits

Exhibit 2 – Location Map

Exhibit 3 – Proposed Site Plan

Exhibit 4 – 2008 Approved Resort and PUD Plan

Exhibit 5 – Summit Land Conservancy Presentation

Exhibit 6 – Landowner Open Space Evaluation

Exhibit 7 – Lacy Lane HOA Letter of Support

Exhibit 8 – Midway Support Letter of Intent

Exhibit 1

Midway City Open Space Advisory Committee

At a regular and duly noticed meeting of the Midway City Open Space Advisory Committee held the 5th day of August 2020, the following motion was made by Natalie Streeter, seconded by Kevin Stickleman, and unanimously approved:

WHEREAS, the Open Space Committee was duly formed by the City of Midway to assist and advise the City Council in preserving open space in accordance with the General Plan, and

WHEREAS, in the 2018 general election, Midway City voters authorized the City to issue up to five million dollars (\$5,000,000) in bonds for purposes of preserving open space, and

WHEREAS, the City of Midway has tasked the Open Space Committee with reviewing applications for use of bond funds and making recommendations to the City Council with respect to the use of bond funds in connection with such proposals, and

WHEREAS, Chuck Heath, in coordination with Summit Land Conservancy, a certified land trust working on behalf of Chuck Heath, has submitted an application for bond funds to the Open Space Committee for preservation of approximately 44 acres of open land in the area commonly referred to as the Mountain Spa area, which has been reviewed by the Committee for the purposes of making a recommendation in accordance with the City's procedure for use of open space bond funds,

NOW, THEREFORE, BE IT RESOLVED,

That the Midway City Open Space Committee, having reviewed the application and supporting documentation submitted by Summit Land Conservancy on behalf of Chuck Heath, the equitable owner of approximately 78.5 acres commonly referred to as the Mountain Spa, to place a conservation easement on two tracts of land and thereby restrict development in perpetuity upon approximately 34.6 acres of the land; having had the opportunity to visit the property as well as review photographs and aerial video of the property; and having made findings of fact based upon such review as discussed in executive and open sessions held July 1, 2020, and July 22, 2020, which findings have been reduced to writing as set out below, and based upon such findings of fact, and provided that any conservation easement satisfies the review and requirements of Legal and Bond counsel for the City, recommends that the City Council contribute up to One Million Five Hundred Thousand Dollars (\$1,500,000) of the Midway City Open Space Bond Funds toward the Mountain Spa

application and hereby forwards the application to the City Council for review, public hearing, and decision based on the following findings:

Overview of the Underlying Transaction

Chuck Heath currently has a contract to purchase the 78.5 acre “Mountain Spa” parcel from the current owners. Heath, in collaboration with Summit Land Conservancy, proposes to create two large farm “estate lots”, one along River Road and one along Burgi Lane, and protect those lands from development with conservation easements. Summit Land Conservancy, a certified land trust, will hold the conservation easements. The proposal also provides for protecting the historic Mountain Spa site (approximately 8.11 acres) and creating 3 single-family residential lots, which range in size from 1 acre to 5.59 acres. These lots will be deed restricted to limit them to one single-family residence per lot and prohibit further subdivision or development. The 5.59 acre lot includes approximately 3.11 acres of wetlands. The underlying transaction contemplates Heath selling the estate lots and the single-family lots, subject to the conservation easements and deed restrictions. Heath plans to develop the remaining property in the Resort Zone as a commercial resort. See Exhibit A.¹ Midway open space funds will be applied to purchasing the development rights of the two large estate lots and protecting the land from future development through conservation easement(s).

Vision

“The Community Vision Statement sets a goal for Midway “to be a beautiful, organized small town community based on its distinct history of agriculture, open space and recreation”. (Goal 1, Community Vision Goals and Guidelines). Guideline 5 seeks to implement this goal by “Encouraging the preservation of prime agricultural land and open space within Midway and the surrounding valley”.

The Mountain Spa application meets these goals in the following ways:

- *The Mountain Spa area was used as a recreation destination by both local residents and tourists for a number of years. It has historical significance to Midway City and the Heber Valley, generally.*
- *The spa property itself has fallen into disuse and is currently derelict and in disrepair.*

¹ Exhibit A is merely a drawing that visually identifies the various tracts of land that are referenced within this document and is offered to facilitate understanding of the underlying transaction and the land subject to conservation as opposed to land that will remain developable. Exhibit A is NOT an approved “site plan” or application for development. Any building on any portion of the 78.5 acres subject to this transaction must go through the normal development application and approval process and will be subject to the City’s land use regulations, the conservation easements, the deed restrictions, and to the terms of the Memorandum of Understanding between Heath and Summit Land Conservancy.

- *The tracts of open land in the Mountain Spa area contiguous to River Road and Burgi Lane are currently used for pastureland and grazing land, respectively.*
- *The Heath and Summit Land Conservancy proposal provides for creating an approximately 21.53 acre “estate lot” along the River Road frontage and an 18.19 acre estate lot along the Burgi Lane frontage. These “estate lots” will be subject to conservation easements granted by the beneficial owner, Chuck Heath, and held by Summit Land Conservancy. The conservation easement on the Burgi Lane tract will provide for a building envelope of 1.97 acres located in the southwest corner of the lot so as to preserve the viewsheds across the property. The only development permitted on this 1.97-acre section will be a single-family residence and associated outbuildings to support agricultural use of the property. Further development or subdivision of the property will be prohibited by the conservation easement. The conservation easement on the River Road tract will provide for a single-family residence and associated outbuilding to support agricultural use of the property building envelope of 2.99 acres located near the southwest corner of the tract so as to preserve the viewsheds across the property. The conservation easement will prohibit further development or subdivision of the property. See Exhibit A. In addition to the two large estate lots, the proposal includes three deed-restricted single-family home sites located as indicated on Exhibit A. The deed restrictions will prohibit further subdivision or development of the lots. Moreover, the Old Mountain Spa hot pot area would also be protected by a conservation easement. The land in the middle of the larger 78.5-acre tract and bordered by the estate lots and the Old Mountain Spa area will be developed as a commercial spa subject to the provisions of the Midway land use regulations and additional restrictions contained in the Memorandum of Understanding (MOU), Exhibit E, between Heath and Summit Land Conservancy, that will insure the commercial development is consistent with the goals of preserving open space. See Exhibit A.*
- *Thus, under this proposal, the land adjacent to River Road and Burgi Lane and the Old Mountain Spa sensitive lands area will remain substantially as it is today and will protect viewsheds across the land from both access corridors.*

Effective Open Space Use

The Open Space Element cites four design objectives requiring use of open space tools. They are; preserving Inter-City Space, Preserve Midway’s Unique Character, Create Local Neighborhood “Openness”, and Providing Public Recreation Venues.

The Mountain Spa proposal meets these objectives as follows:

- *All the land in question is located inside the city limits of Midway.*
- *Should these two tracts of land, labeled Lot 4 and Lot 5 on Exhibit A, be developed for residential purposes, it is estimated that approximately 100-150 single family residences could be constructed, depending on the type of*

subdivision, thereby adding significantly to the density, infrastructure requirements, and demand for City services. See Exhibit B for a development proposal that was approved for this area in 2007. See Exhibit C for a development proposal submitted in 2019.

- *The Heath and Summit Land Conservancy proposal also provides for trail easements across the land to connect with Midway's existing trail system and to provide access to the historical hot pots and springs that served as the Mountain Spa in years past.*
- *In 2007, Midway approved a development proposal for the 78.5 acres that is commonly referred to as the Mountain Spa that would have included approximately 150 single family dwelling units. See Exhibit B. The Summit Land Conservancy proposal drastically reduces the development potential of this land and protects and preserves this property as part of Midway's unique character, creating "openness" within the city's boundaries, preserving viewsheds along two major access corridors, retaining the agricultural use of the land, and preserving this unique historical site.*
- *In addition to the use of the land for pasture and grazing, this property serves as a wildlife habitat, providing venues for deer and elk to graze, as well as natural habitat for other wildlife.*

Identifying and Acquiring Open Space

"Open space acquisition or preservation proposals must be evaluated with the benefit of the citizens of Midway in mind."

- *The proposal provides for trail construction and access to the historic Mountain Spa hot pots and springs as well as connecting into the north-south Midway trail system.*
- *The preservation of the viewsheds along River Road and Burgi Lane will retain the open and beautiful scenery views that Midway citizens appreciate. It will also be attractive to visitors who bring economic benefits to the businesses and citizens of Midway.*
- *The location along the River Road is across the road from the Kohler Legacy Farm, which has been approved for preservation, and will add to the spacious and pastoral setting that one sees when entering Midway via River Road. The tract along Burgi Lane is across the road from the open space of Valais Park and adds to the sense of spaciousness and openness. See Exhibit D.*
- *The views along the River Road entry corridor over the fields of the Kohler Dairy and now the Mountain Spa area contribute materially to Midway's reputation as an attractive tourist destination, an important part of our local economy.*
- *As set out more fully below, the approval of the Heath/Summit Land Conservancy proposal will materially enhance not only the preservation of an important historical site in Midway while preserving view sheds and*

agricultural land, it will also bring significant collateral benefits to Midway's economy and tax base.

Identifying and Acquiring Open Space

“Where possible and practical, the City will work with other organizations, agencies, groups, and individuals who will share the costs of open space preservation projects.”

The Mountain Spa proposal meets these objectives by:

- *The current fee owners acquired the 78.5-acre tract when the prior owners defaulted on a financing agreement.*
- *In the ensuing years, the property has been offered for sale to developers and several development proposals have been submitted. The most recent development proposal approved by Midway envisioned a commercial spa and hotel operation surrounded by approximately 150 single family homes within the 78.5 acres. Exhibit B.*
- *The current equitable owner, Chuck Heath, is under contract to purchase the 78.5 acres. Instead of developing the 78.5 acres as previous development plans have envisioned, Heath plans to subdivide the area to carve out the above mentioned two “estate lots” and three single-family lots, protect them with conservation easements held by Summit Land Conservancy, and then sell those lots, subject to the easements and, in the case of the residential lots, deed restrictions. On the remaining acreage, which is within the resort zone and is generally in the middle of the larger tract, Heath intends to develop a commercial spa/resort. The resort development in this plan will add a number of beds to Midway's resort total and will allow Midway to maintain its eligibility to receive approximately \$700,000 per year in resort taxes. Midway risks losing the resort tax within the next 3-5 years if our ratio of resort beds to non-resort beds is not brought back into compliance with state law.*
- *From a “share the cost” perspective, the current proposal meets this criteria by virtue of the owner, Heath, agreeing to restrict development by conservation easements and deed restrictions on well over half the total acreage that he is under contract to purchase.² Midway's open space bond money will only go toward purchasing the development rights via conservation easements on the Burgi Lane and River Road tracts, consistent with the intent and authorized*

² The two estate lots, minus the building envelope portion on each lot, totals 34.6 acres of open agricultural land. The historic Mountain Spa area totals 8.11 acres, for a total designated open space area of 42.71. The residential lots, which will be deed-restricted to single family residences, total 9.68 acres, including the 3.11 acres of wetlands. The building lots associated with the farm estate lots total another 5 acres. Thus, the total acreage ultimately protected by either conservation easements or deed restrictions not within the resort zone is 57.39 acres. The remaining 21 acres will be available to Heath to develop a commercial spa in the Resort Zone. Under the underlying transaction associated with this proposal, approximately 72% of the area we know as the Mountain Spa will be protected from development other than five single-family homes and associated outbuildings to support agriculture on the two large estate lots. *Compare Exhibit A with Exhibits B and C.*

uses of open space funds. The economic benefits Midway receives by virtue of remaining eligible for the \$700,000 per year in resort tax is a collateral, but significant, aspect of the overall development plan of this property.

- *In proposing this plan, Heath is foregoing the right to develop the 78.5 acres to the fullest extent permitted by Midway's land use regulations, and thus making an open space contribution. The contract price for the purchase of the entire 78.5-acre tract is \$10,250,000, or approximately \$130,500 per acre. Thus, the cost of just the 34.6 acres designated as the agricultural land on the two estate lots acres subject to the conservation easements is approximately \$4,515,300, based upon the arms-length transaction entered into between the current owners and Heath.³*
- *Heath is asking for \$1,500,000 from Midway open space funds and \$300,000 from Wasatch County open space funds. Assuming these contributions, Heath still would be contributing \$2,715,300 of the value of the land subject to the conservation easements. Midway's contribution is approximately 33% of the fair market value of the 34.6 acres subject to the conservation easements. Thus, Midway has "leveraged" its bond funds in the range of 3:1.⁴ While Heath intends to sell the estate lots, subject to the conservation easements, and the residential lots, subject to deed restrictions, and may recoup some or all of his "contribution," the land will still be preserved in perpetuity. In such a situation, the "contribution" of Heath actually becomes the "contribution" of the purchaser of the estate and residential lots, and Midway's expenditure of bond funds would remain leveraged in the 3:1 range. The underlying transaction contemplates a simultaneous closing where Heath receives title to the land from his seller, applies and records the easements and deed restrictions, and conveys title subject to the conservation easements and deed restrictions to his purchasers. Midway's bond funds will remain in escrow until all the closing documents are signed, recorded, and delivered. Should Heath realize more from the sale of these parcels than the estimates upon which these calculations are*

³ Because Heath intends to sell the estate lots and will not retain fee title, he has not applied for any tax exemptions or deductions. Thus, he has not expended funds to obtain a typical conservation easement appraisal. The arms-length negotiated transaction between Heath and the seller appears in line with the fair market value of property in our area.

⁴ This calculation of the leverage in this transaction is based only on the agricultural property preserved with conservation easements (Lots 4 & 5) and does not include any of the residential lots or the portions of the estate lots set aside for residence and associated buildings. Nor does it include the Mountain Spa historic zone or the wetlands area. We calculated it this way to make clear that open space money is not going to any land that is already protected by a sensitive land designation, nor is it going to "open space" around a private residence. Our land use regulations do not permit developers to count yard space around houses as "open space," so we have not included those areas in calculating the leverage achieved with Midway bond money. Even though Midway bond money is not earmarked for those excluded areas, Midway will still receive the collateral benefit of restricting development on that land.

based, Midway's contribution will be reduced and our leverage ratio will increase accordingly.

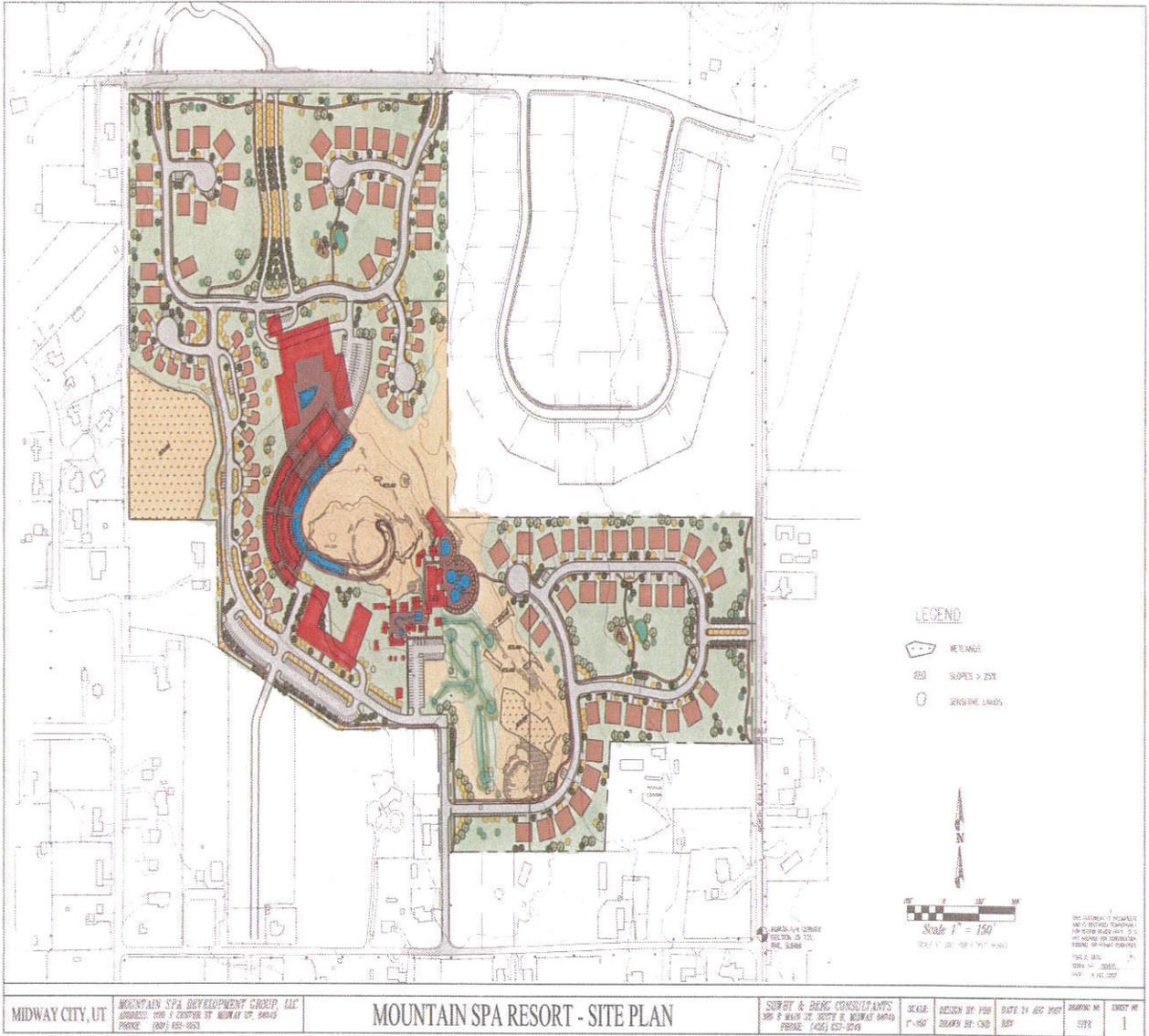
- *Attached hereto as Exhibit E is a Memorandum of Understanding between Summit Land Conservancy and Heath setting out the details of the transaction and the agreement between Heath and Summit Land Conservancy to preserve the large estate tracts, the residential home sites, and the historic spa area.*
- *Exhibit E also addresses the agreement by Heath to limit development of the commercial spa located in the middle of the 78.5 acres. The MOU limits the size and scope of the commercial spa development and requires Heath to build public trails allowing access to the historic Old Mountain Spa area, as well as perform general clean-up of the historic mountain spa area. The approval of the final development plan is a matter for the Planning Commission and is beyond the jurisdiction of the Open Space Advisory Committee, however, we note that development of the commercial spa along the lines set out in the MOU will enhance the open space goals by cleaning up and beautifying what has become a derelict and abandoned piece of property. Furthermore, the commercial spa development will be an economic boost to Midway by becoming part of our commercial tax base, a source of employment, a tourist destination that can bring visitors to other businesses in town, and will add to the number of resort beds necessary for Midway to maintain its eligibility for the \$700,000 resort tax, which would otherwise not be available, resulting in a significant shortfall to the overall City budget.*
- *This transaction is not a typical open space preservation project. As noted in the MOU, the transaction contemplates a simultaneous closing bringing Heath, Summit Land Conservancy, Midway City, Wasatch County, and purchasers for the estate lots and the three one-acre homesites to the table. In order to ensure that Midway's bond funds are appropriately used for the conservation easements on the 34.6 acres of estate lots, it is imperative that the City's commitment to participate be conditioned upon the attachment of the conservation easements to the 34.6 acres of estate lots before title is transferred from Heath to the subsequent purchasers. The Midway City staff report sets forth in detail the recordation requirements necessary to satisfy this contingency.*
- *The Open Space Advisory Committee acknowledges that the development of the entirety of the property will be subject to land use regulations and development and zoning applications that will come before the City in due course under the normal development approval process. That process will ensure compliance with the City's land use regulations and with the additional requirements and restrictions set out in the MOU (Exhibit E) between Heath and Summit Land Conservancy regarding the development of this property.*

Exhibit

A

Exhibit

B



MIDWAY CITY, UT

MOUNTAIN SPA DEVELOPMENT GROUP, LLC
 ADDRESS: 1000 S CENTER ST. MIDWAY UT, 84242
 PHONE: (801) 632-2244

MOUNTAIN SPA RESORT - SITE PLAN

SUNDT & BERG CONSULTANTS
 305 S MAIN ST. SUITE 200, MIDWAY 84242
 PHONE: (435) 637-2149

SCALE: 1"=150'
 DESIGN BY: PFB
 DRAWN BY: LKB
 DATE: 24 DEC 2007

PROJECT NO: 11111
 SHEET NO: 1

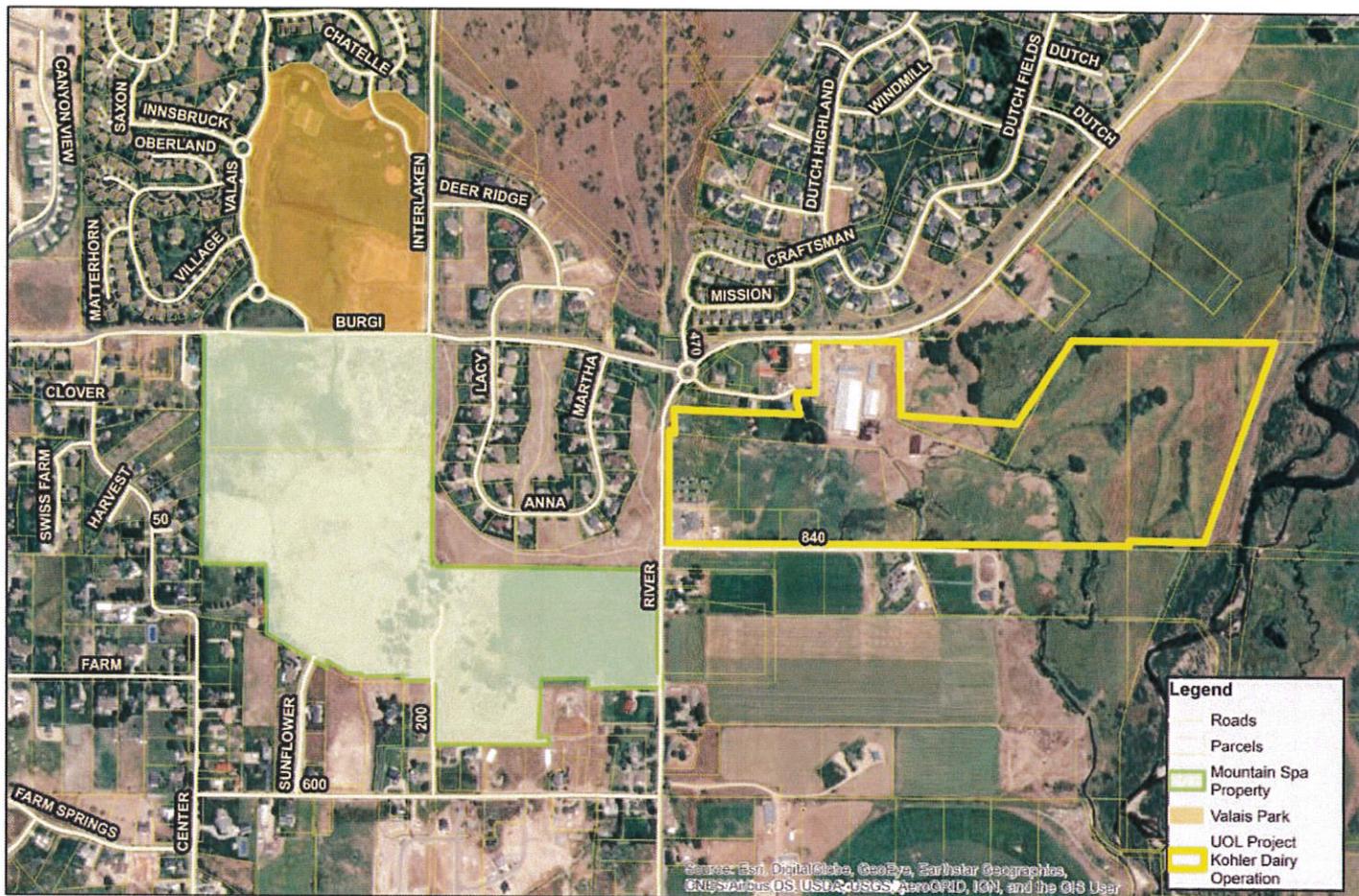
Exhibit

C



Exhibit

D



Mountain Spa Map



Cartographer: Brett Denney, Land Protection Specialist, Summit Land Conservancy.
 Date: 7/13/2020



Exhibit

E

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this 4th day of August, 2020 (“Effective Date”) by and between the Summit Land Conservancy, a Utah nonprofit corporation, (“Conservancy”), and Chuck Heath (“Heath”) collectively “parties”

RECITALS

A. The 78-acre parcel in Midway, Utah, known and hereafter described as the “Mountain Spa Property” is comprised of natural craters historically fed by hot spring water, derelict historic buildings, and derelict modern buildings and swimming pools once used as a resort. The Mountain Spa Property also has open, part-irrigated, agricultural land used for hay/alfalfa, and open land that supports livestock grazing and wildlife.

B. Conservancy has pursued the conservation of the Mountain Spa Property in collaboration with Pure Midway and the Midway City Open Space Advisory Committee.

C. Heath in collaboration with the Summit Land Conservancy has entered into a contract for purchase of the Mountain Spa Property with an effective date of June 4, 2020

(“Purchase Contract”) for the purpose of developing a holistic European-style spa facility with a hotel and nightly-rental cottages, in a natural and largely undeveloped setting. Heath’s spa development is in partnership with spa operators known as The Goddess Spa.

D. Conservancy and Heath have common goals for the preservation of open space qualities of the larger Mountain Spa Property, and wish to maintain conservation values that include open space views from public gateway roads to Midway, natural wildlife

habitat, and continued agricultural use of the land. The parties also wish to provide for the

public recreational use of trails across the Mountain Spa Property, and for limited public access to the natural hot spring water through the development of spa amenities.

E. The parties intend to facilitate Heath’s long-term ownership of approximately 20 acres of the Mountain Spa Property for the development of the spa and hotel amenities,

subject to restrictions that protect conservation values. The approximately 9 acre pot rock area zoned as sensitive and protected lands (“Protected Pot Rock Area”) shall be permanently protected and made available for passive public recreational use, with longterm

ownership to be determined; the parties are amenable to Midway City owning the Protected Pot Rock Area. The balance of the Mountain Spa Property will be sold for residential and agricultural purposes, subject to perpetual conservation easements and restrictions to limit the impact to conservation values and provide for public trails

NOW, THEREFORE, the parties state the following MEMORANDUM OF UNDERSTANDING:

1. Purpose of MOU. Based on the facts stated above in the Recitals, which

are hereby incorporated as part of this MOU, the parties enter this MOU to provide a record of the parties' agreement as herein described. The parties intend that this MOU will establish the terms and conditions for their activities relative to the acquisition, development, use and management of the Mountain Spa Property. The terms of this MOU

are not comprehensive and additional terms and further clarifications may be incorporated into a formal agreement.

2. Project Objectives. The parties intend that the conservation project will accomplish the following objectives, all of which the parties deem to be beneficial. The objectives sought are to:

(a) Permanently limit future development on the Mountain Spa Property by reducing the current density allowed by zoning laws and regulations. Owners of the Mountain Spa Property obtained a 2007 development plan approval for a resort facility and in comparison with said plan, the parties intend to cluster buildings and reduce construction on the Mountain Spa property by approximately fifty percent.

(b) Protect and maintain the open-space viewshed from River Road and Burgi Lane by limiting residential development to two Farm Estate lots, each with approximately 21-24 acres ("Estate Lot 1" and "Estate Lot 2") and up to three smaller lots (approximately 1 acre) ("Subdivision Lots"). Estate Lots 1 and 2 shall be sold subject to conservation easements that allow for continued agricultural use of the land as open space, with house and large building construction limited to defined building envelopes. The Subdivision Lots shall be subject to deed restrictions that cluster house locations through defined building envelopes.

(c) Develop a commercial spa facility within a development pad of approximately 20 acres ("Spa Parcel") for use by residents and visitors to Midway. Structures for said facility shall be limited to 35' in height above natural grade (two stories) and total raw building area shall not exceed 250,000 SF in the aggregate, including all back-of-house

space, swimming pools, hot-tubs and interior garage space, but excluding any underground parking.

(d) Restore and maintain the historic "Mountain Spa" pole sign.

(e) Construct natural-surface recreational trails, to facilitate public access from Burgi Lane to 200 East, along River Road and to the Protected Pot Rock Area.

(f) Restore natural hot spring water to at least one of the craters in the Protected Pot Rock Area.

(g) Demolish and clean up the old buildings and derelict swimming pools in and around the Protected Pot Rock Area, leaving the two-story historic stone building intact.

(h) Provide for the preservation of natural wildlife habitat, particularly the wetland areas on the north-west part of the Mountain Spa Property.

3. Land Acquisition Financing: The parties shall fund the land acquisition purchase price and associated project costs (\$10,890,000) pursuant to the draft Project Budget, attached as Exhibit A, which may be modified upon mutual agreement of the parties. Funding sources and approximate contributions are:

- (a) Heath and (Spa Entity) for purchase of the Spa Parcel - \$3,000,000.
- (b) Farm Estate Buyer (Lot 1) - \$2,400,000
- (c) Farm Estate Buyer (Lot 2) - \$2,400,000
- (d) Buyer(s) for development of subdivision lots (1-acre parcels) - \$1,095,000
- (e) Funds raised from public and private entities for the permanent protection of open space, including the Protected Pot Rock Area (9 acres) - \$1,990,000

4. Financing Responsibilities. Heath shall facilitate the purchase of the Spa Parcel by The Goddess Spa and shall pay any brokerage fees, title insurance and closing costs associated therewith. Conservancy shall facilitate the purchase of the Estate Lots and Subdivision Lots, and shall pay associated brokerage fees, title insurance and closing costs. The Conservancy will work with the Midway City and Wasatch County open space advisory committees and Councils to obtain commitments for open space bond money funding. The Conservancy, in collaboration with Pure Midway, shall engage in a fundraising campaign and grant writing.

5. Time of Transactions. The parties shall facilitate a simultaneous closing of Heath's purchase of the Mountain Spa Property, the Spa Parcel sale, Estate Lot 1 sale, Estate Lot 2 sale and the Subdivision Lots sale, along with the procurement of additional funds raised by the Conservancy for the protection of open space. To facilitate the recording of conservation deed restrictions enforceable by the Summit Land Conservancy,

upon payment by Conservancy for its share of the land purchase, Heath shall quitclaim the Mountain Spa Property to the Conservancy at closing, prior to the conveyance of lands to third parties.

6. Development Responsibilities. The entities who own the Spa Parcel, Estate Lots and Subdivision Lots shall be responsible for all costs and tasks associated with the construction of improvements. Heath shall be responsible for clean-up and demolition of the buildings and swimming pool within the Hot Pot Protected Area, with the exception of the historic building. Heath shall construct trails across the Spa Parcel, and Conservancy, in collaboration with the City of Midway, shall facilitate the construction of trails across the Farm Estates and the Hot Pot Protected Area.

7. Site Plan and Planning Approvals. Heath and the Conservancy shall work jointly with (Paul Burg) and the City of Midway to obtain approvals for the subdivisions as contemplated by this MOU. Conservancy shall work with Heath and Burg

to determine and depict the location of building envelopes for the Estate Lots and Subdivision Lots. The location and design of improvements within the Spa Parcel shall be

determined by Heath and/or The Goddess Spa. Conservancy shall review spa amenity plans prior to finalization, to ensure compliance with the conservation restrictions hereafter described. The parties agree and acknowledge that any Conservancy approval of Heath's development plans shall not be considered a representation that said plans are, or will be, approved by Midway City.

8. Conservation Restrictions: Upon sale of the Spa Parcel, Estate Lots and

Subdivision Lots, the following documents to protect conservation values and public benefits shall be recorded:

(a) Spa Parcel: A deed restriction consistent with the following terms:

- i. The "Mountain Spa" pole sign shall remain in its current location, buffered by open space sufficient to maintain its integrity.
- ii. Derelict buildings, swimming pools and trash within the Protected Pot Rock Area shall be removed, with the exception of the two story historic stone building. Public access passive recreational trails to the Protected Pot Rock Area shall be built and maintained.
- iii. The height of buildings shall be limited to 35 feet above natural grade.
- iv. The finished spa facility shall be open to the public for fee-use on a daily basis. Occasional closure to limit use to private parties or for hotel guests is permitted.
- v. The size and footprint of the buildings and parking lots shall be as generally described in the site plans reviewed and approved by the Conservancy prior to the date of this Warranty Deed, where the total footprint of buildings is not to exceed 250,000 SF of raw built space. Conservancy's approval of the site plans shall be limited in scope to matters which are relevant to maintaining conservation values on adjacent protected lands,, such as the size and footprint of the buildings and parking lots, and shall not extend to the style and design.
- vi. New structures shall not be constructed, unless approved by the Conservancy in writing prior to construction, which review shall be limited in scope to matters which are relevant to compliance with the objectives of this deed restriction such as the footprint of the structures. Modifications to buildings or parking lots that result in an increase in size by more than five percent, shall be subject to review and prior written approval by the Conservancy.

(b) Estate Lot 1 and Estate Lot 2: Conservation easements to be negotiated by and between the Summit Land Conservancy, Heath and the Estate Lot owner(s). The conservation easements shall be based on the Summit Land Conservancy's template conservation easement.

(c) Subdivision Lots: The three 1-acre Subdivision Lots shall be subject to a deed restriction to protect the integrity of the Mountain Spa pole sign.

(d) Recreational Trail Easements: Easements to the City of Midway shall be recorded, to provide for non-motorized public recreational access (such as hiking and biking) across the Spa Parcel, Estate Lot 1 and Estate Lot 2.

9. Planning Tasks and Costs. The parties will engage in the following activities prior to Heath's purchase, to determine the viability of the project and prepare for the intended development and protection of the Mountain Spa Property.

(a) Water Rights Determination: Conservancy consulted with Riley Water with regard to water rights appurtenant to the Property, and Heath, at Heath's cost, will conduct further investigations as to the availability of water for the development and irrigation of the Spa Parcel, Subdivision Lots and Estate Lots.

(b) Survey: Heath will arrange for an ALTA survey and pay the cost thereof, pursuant

to the Purchase Contract.

(c) Site Conditions for Spa Parcel development: Heath shall be responsible for determining the viability of the Spa Parcel for the intended use, including but not limited to the condition and availability of hot spring water.

(d) Site Planning and Subdivision Plats: Heath shall contract with Paul Burg and pay for site planning work. Conservancy shall provide input to Burg to design and describe building envelopes for the Estate Lots and Subdivision Lots and to plan public access trails across the Mountain Spa Property.

(e) Midway City Planning Approvals: The parties will work together to have subdivision plats approved, with Conservancy primarily responsible for approvals for the Estate Lots and Subdivision Lots, and Heath primarily responsible for the Master Planned Development Plan for the Spa Parcel.

(f) Conservation Protection Documents: Conservancy staff shall negotiate and draft the conservation easements and deed restrictions described in section 8 of this MOU, which shall be subject to Heath's commercially reasonable approval.

(g) Title Review: Heath shall be responsible for review of the title commitment pursuant to the terms of the Purchase Contract, and provide Conservancy with a copy of the title commitment.

(h) Baseline Studies: Conservancy staff shall prepare Baseline Documents for the conservation easements.

(i) Open Space Funding: Conservancy shall be responsible for the procurement of funds from Midway City, Wasatch County and other public and private donors that fund the protection of open space for the public benefit.

10. Publicity and Outreach. Conservancy shall be responsible for communications with regard to Heath's purchase of the Mountain Spa Property and plans

for development of the Mountain Spa Parcel, Estate Lots and Subdivision Lots. For the purpose of this section, "communications" shall include interactions with Midway City and Wasatch County staff and councilors, media and social media communications, and discussions of the project in the Midway community. Site and development plans for the Mountain Spa Property shall not be disclosed unless approved in advance by the Conservancy's Executive Director.

11. Term of Agreement. The parties agree to cooperate and act in good faith to achieve the goals and objectives described in this MOU. Either party may terminate the

agreement upon written notice to the other party. Should Heath elect to terminate the MOU, but Heath, an affiliated entity and/or The Goddess Spa purchases the Mountain Spa

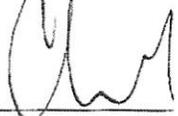
Property without Conservancy involvement, Heath will reimburse Conservancy for its actual, reasonable, and documented hard-costs paid to third-parties in an amount not to exceed \$5,000. In the event that Heath elects to discontinue the pursuit of the Mountain Spa Property, Heath shall give Conservancy notice and the opportunity have the Purchase Contract assigned to the Conservancy. Conservancy shall notify Heath in writing of its intention to accept an assignment of the contract within the earlier of 10 days of Heath's

notice, or the Feasibility Deadline (as defined in the Purchase Contract).

12. Amendment and Execution. This MOU may be amended upon mutual written agreement of the parties. This MOU may be signed in counterparts, and executed copies transmitted via email may be enforceable and treated as an original document.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding to be effective as of the date first written above.

Cheryl Fox Director
Summit Land Conservancy



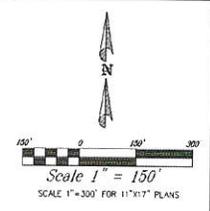
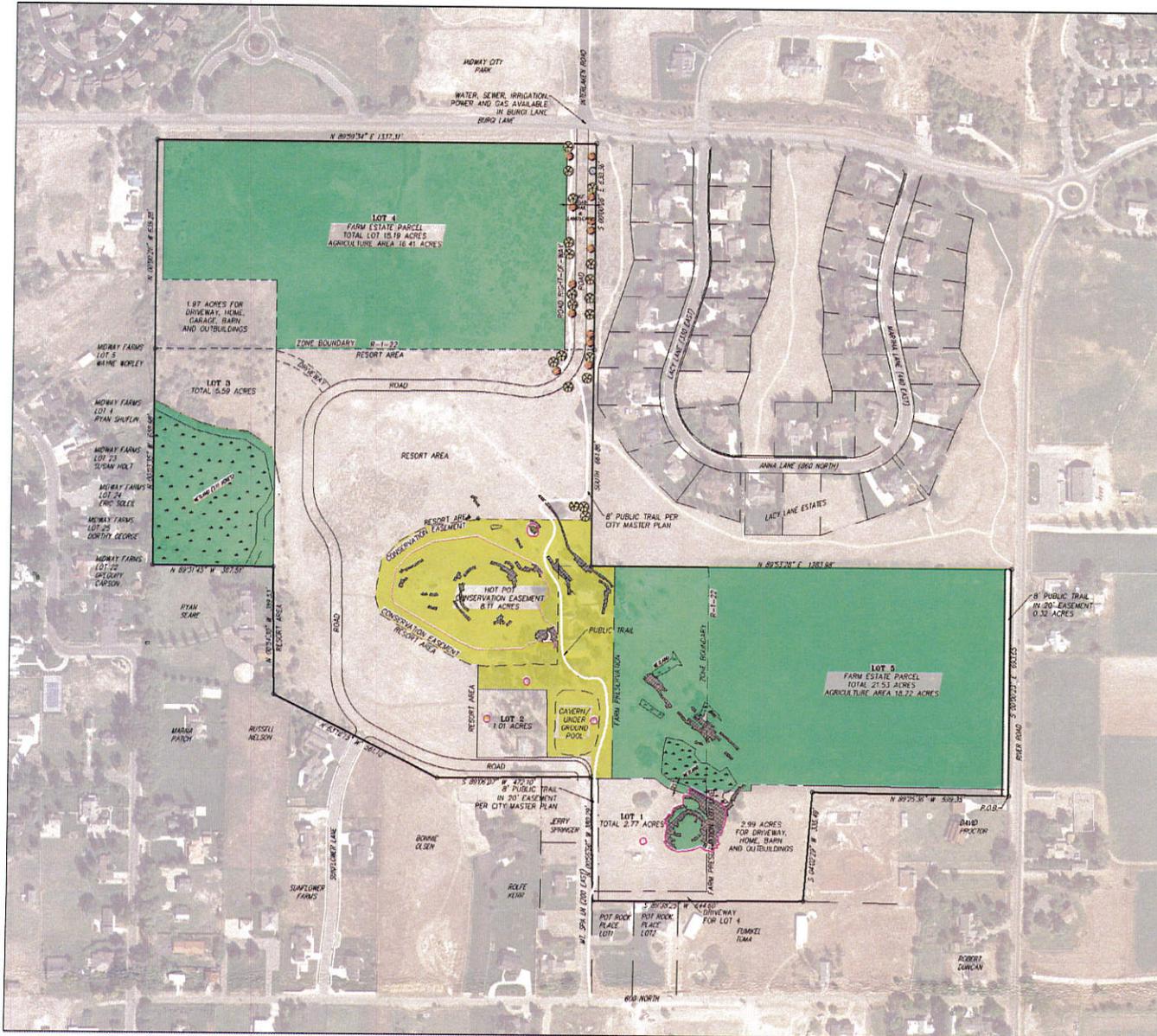
Cheryl Fox



Chuck Heath

Exhibit 2

Exhibit 3



THIS DOCUMENT IS RELEASED FOR REVIEW ONLY. IT IS NOT PRELIMINARY FOR EXECUTION UNLESS SIGNED AND SEALED.
 PAUL D. BERRY, P.E.
 SERIAL NO. 220595
 DATE: 8 AUG 2020

CHUCK HEATH
 MOUNTAIN SPA
 OPEN SPACE EXHIBIT

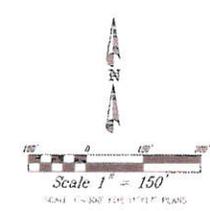
BERG ENGINEERING
 2008 E. 80th Ave. Suite 204
 Greenwood, CO 80438
 ph 435.657.9748

DESIGNED BY: PDB DATE: 8/17/2020 SHEET: 1
 DRAWN BY: PDB RELY:

Exhibit 4



- LEGEND**
-  WETLANDS
 -  SLOPES > 25%
 -  SENSITIVE LANDS



THIS DOCUMENT IS UNCLASSIFIED
 DATE 05-20-2010 BY 60322 UCBAW/BSP/STP
 FOR RELEASE UNDER E.O. 13526
 UNCLASSIFIED//FOR OFFICIAL USE ONLY
 DRAWING NO. 2007-001
 DATE 24 AUG 2007

MIDWAY CITY, UT MOUNTAIN SPA DEVELOPMENT GROUP, LLC
 ADDRESS: 1070 S CENTER ST. MIDWAY UT, 84049
 PHONE: (801) 651-1058

MOUNTAIN SPA RESORT - SITE PLAN

SOWBY & BERG CONSULTANTS
 300 B MAIN ST. SUITE B, MIDWAY 84049
 PHONE: (435) 657-9749

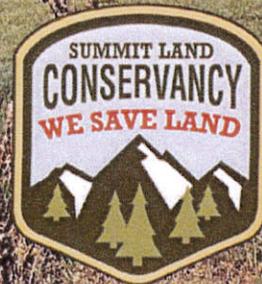
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DATE: 24 AUG 2007
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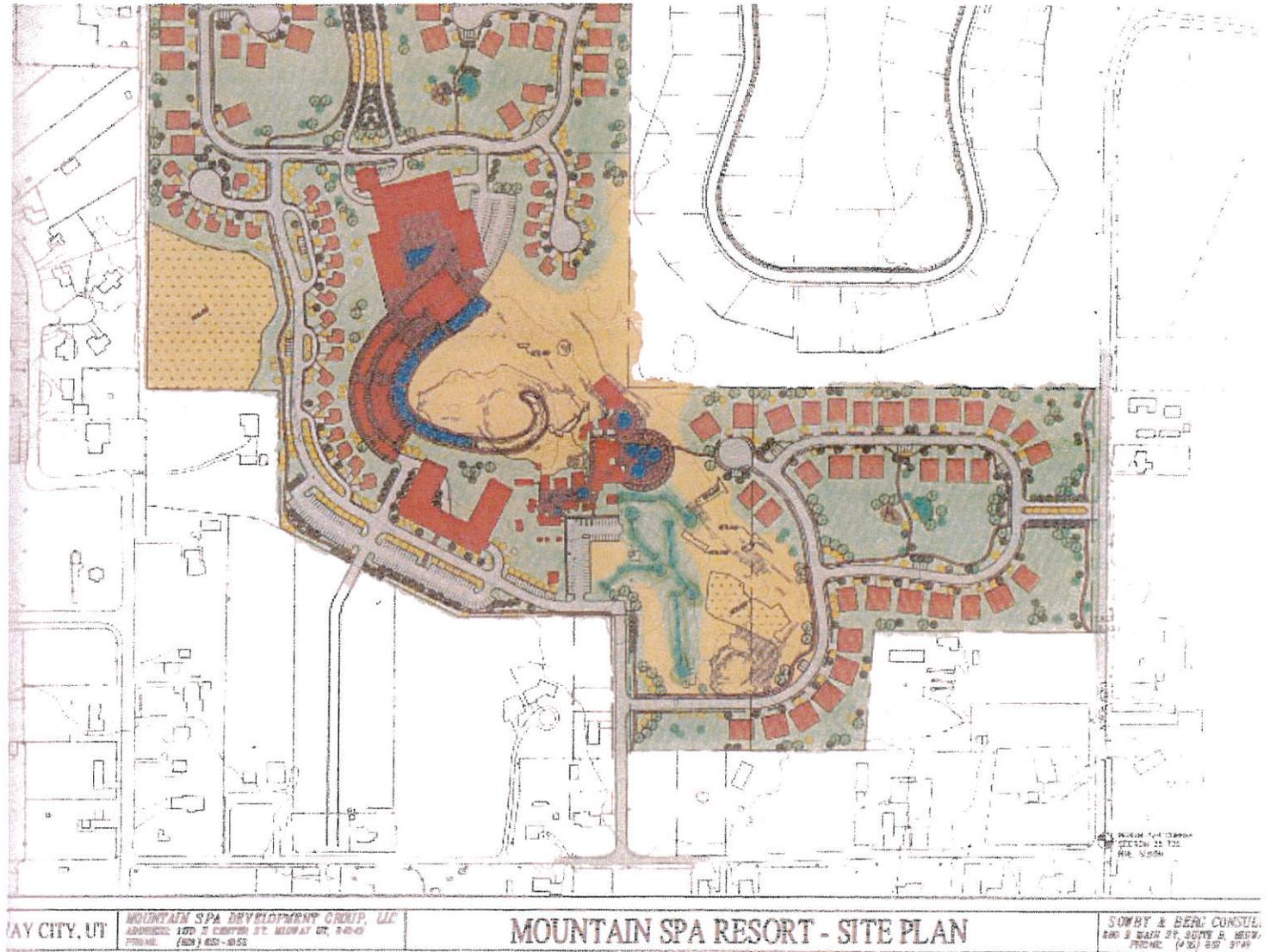
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| DRAWING NO. | SHEET NO. |
| SITE | 1 |

Exhibit 5

Can we save this view?



2007 Application



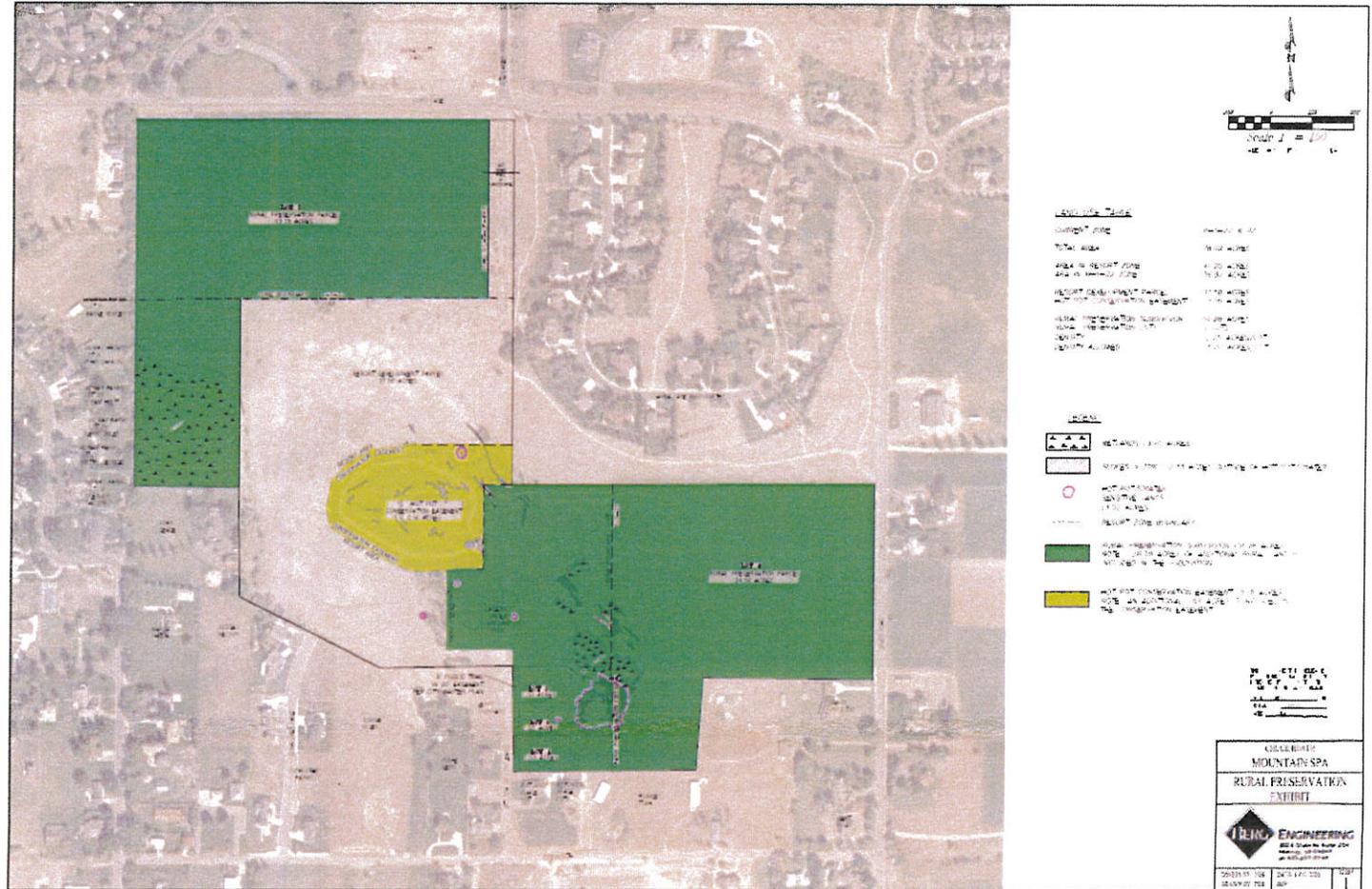
2019 Application



- LAND USE**
 CURRENT PROPOSED
 TOTAL AS
 ALLOWED PROPOSED
 REQUIRED PROPOSED
- LEGEND**
- SCALE
 - 150' SETBACK
 - 120' SETBACK
 - 80' SETBACK
 - REQUIRED PROPOSED
- LOT TYPE**
 LOTS
 CLUSTER
 BUNGALOW AREA
- NOTES**
 150' SETBACK
 120' SETBACK
 80' SETBACK
- BOUNDING BOX**

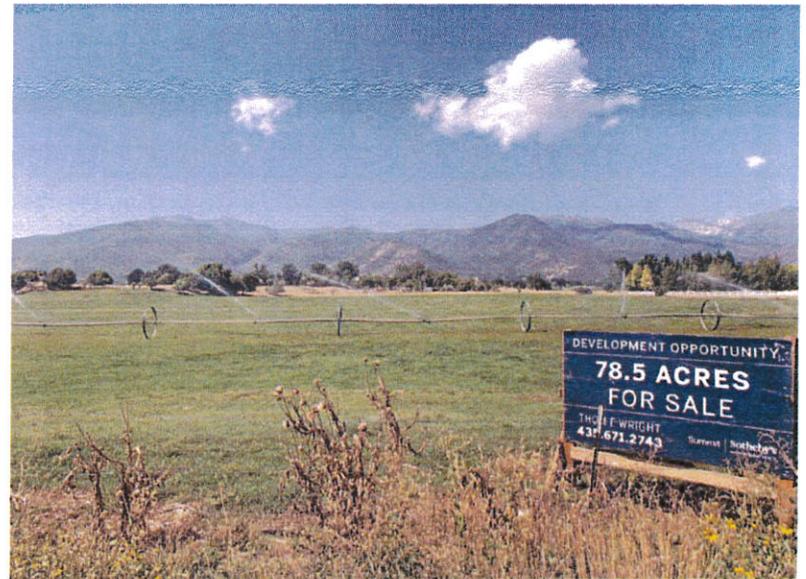


Tentative Site Plan



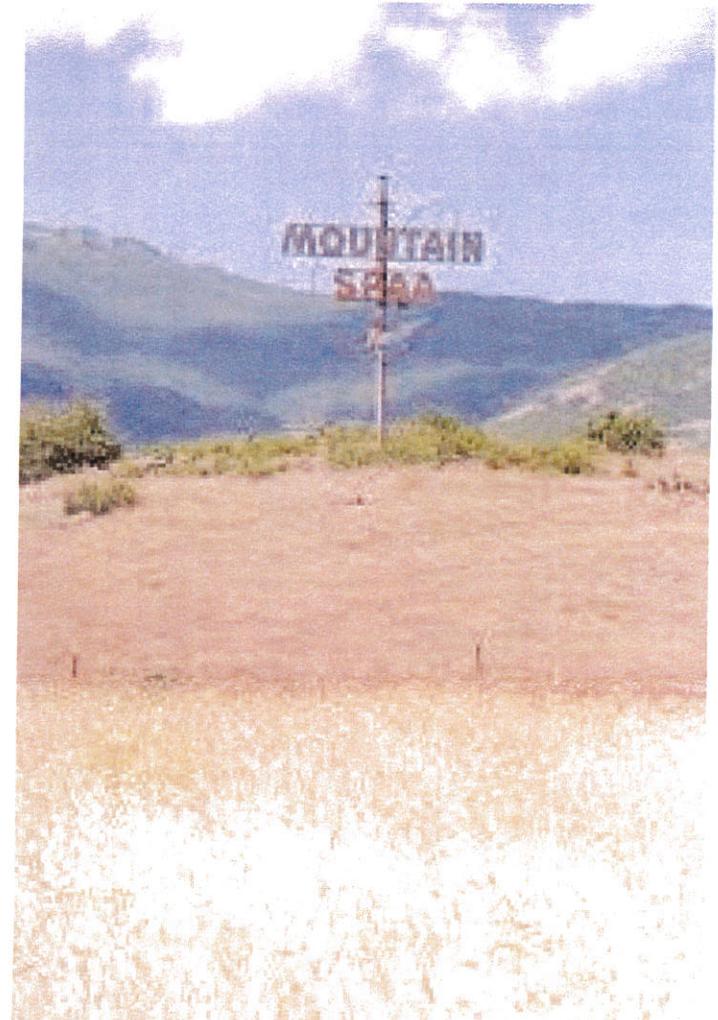
Unique Features & Conservation Values

- Hot pots
- Craters
- Highly visible from roadways
- Valuable winter wildlife habitat
- Unique and irreplaceable wetlands
- Agricultural operations will continue



Trails and Public Access

- Public access via trail that showcases the unique geologic features of the property
- Will connect with trail system at Valais Park
- Trail along River Road
- Trail from Burgi Lane to 600 N.



Other Public Benefits

- Restoring a derelict site to a functional, publicly-accessible business
- Maintaining scenic viewsheds and open space connected to other protected areas
- Preservation of large agricultural parcels that reflect the rural character of the county

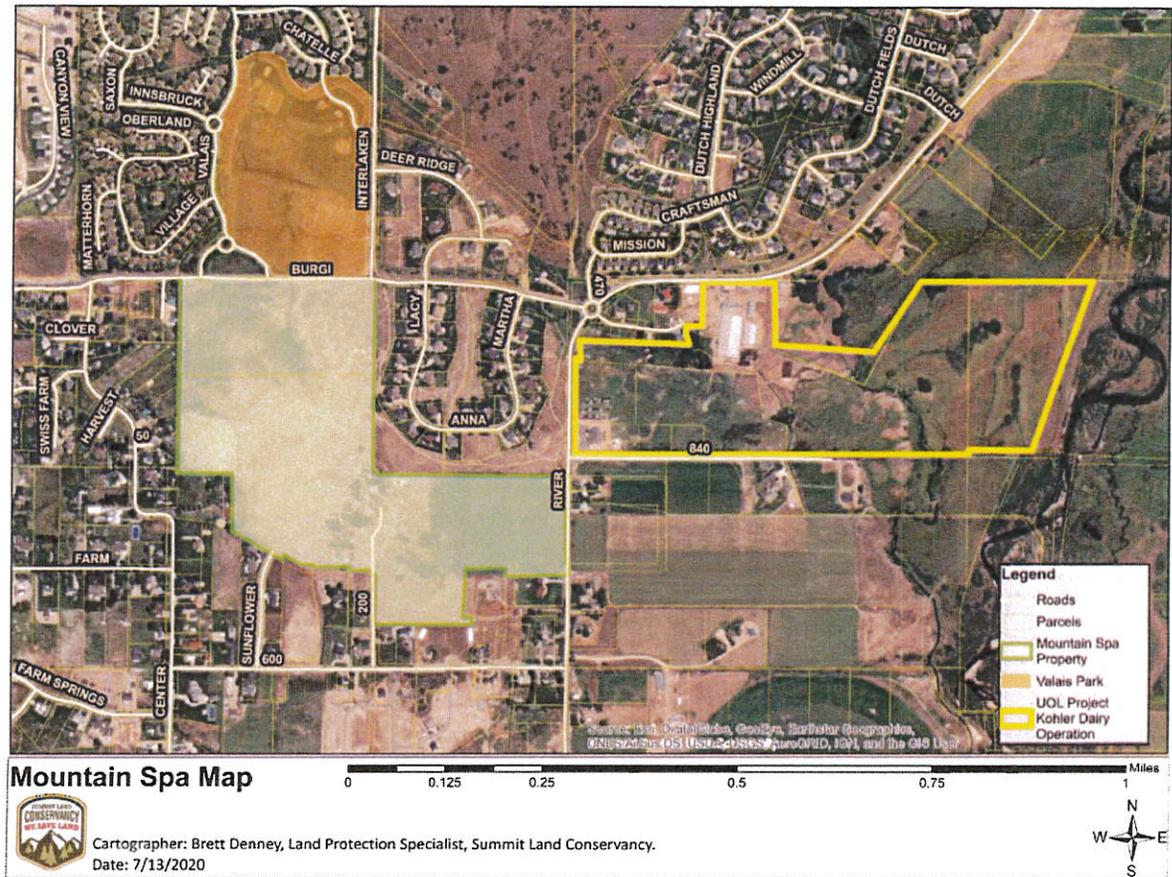


Luke's Hot Pits outdoor pool ca. 1930. Courtesy of Linda Payne.



Proximity to Protected Space

- Bordered by Valais Park on the northern border
- Kohler family future protected agricultural space on the eastern border



Type of transaction/timeline

- Unique partnership of land trust, government, and developers to place easements, preserve open space, reduce housing density, and create public benefit
- September 3 – Feasibility Deadline
- December 3 – Closing



Wasatch County Open Space criteria

- Wetlands, scenic view, visible from roadways, wildlife habitat
- Project will retain about 48 acres as farm/grazing land, and retains the agricultural corridor with Kohler Dairy property
- Project will allow public trail connections and access to hotspots
- Project will leverage government funding with private dollars



Tentative Budget

| | | | | |
|---|-------|----------------------|--|---------------------------------------|
| Mountain Spa | | 78 acres | | |
| Transaction Costs | | | | |
| In House Expenses | | | | |
| | hours | cost | | \$35 staff time/hr + \$15 overhead/hr |
| Easement | 100 | \$ 5,000 | | |
| Baseline Documents | 100 | \$ 5,000 | | |
| Fund Raising | 200 | \$ 10,000 | | |
| subtotal | | \$ 20,000 | | |
| Outsourced Expenses | | | | |
| real estate brokerage fees | | \$ 353,700 | | |
| loan expenses | | \$ 150,000 | | |
| site plan | | \$ 25,000 | | |
| outsourced legal | | \$ 3,500 | | |
| appraisal | | \$ 9,000 | | |
| Survey | | \$ 4,500 | | |
| Title & Closing costs | | \$ 4,500 | | |
| subtotal | | \$ 550,200 | | |
| Total Transaction costs | | \$ 570,200 | | |
| Stewardship Costs (from Stewardship Cost Form) | | | | |
| Annual Stewardship Endowment: | | \$ 62,460 | | |
| Legal Defence donation | | \$ 6,000 | | |
| Total Stewardship costs | | \$ 68,460 | | |
| Purchase Price | | \$ 10,250,000 | | \$131,410 per acre |
| Total Project Costs | | \$ 10,888,660 | | |
| Inflows | | | | |
| Sale of spa property: 19 acres + 9 acres | | \$ 3,000,000 | | subject to easement |
| Sale of 3 RR lots | | \$ 1,095,000 | | subject to deed restrictions |
| Sale of 2 farm estate: 44 acres | | \$ 4,800,000 | | subject to easement & trails |
| Funding Sources | | | | |
| City Funding | | \$ 1,500,000 | | |
| Community Fundraising | | \$ 150,000 | | |
| Wasatch County Open Space | | \$ 300,000 | | 3% of total budget |
| Private Foundations | | | | |
| | | \$ 25,000 | | |
| | | \$ 5,000 | | |
| | | \$ 10,000 | | |
| total foundations | | \$ 40,000 | | |
| Total Funds Committed | | \$ 10,885,000 | | |
| | | \$ 3,660 | | Funds still needed |



Exhibit 6

Midway Open Space Evaluation

Landowner's Perspective

Midway Land Owner,

Thank you for your recent submission of a NOTICE OF INTEREST, indicating an interest in the preservation of currently open land you own. As you are aware, a preservation project is a multi-step process involving various evaluations and reviews as multiple players are brought together to fund your project. The purpose of this form is to help you begin that process by providing Midway with your perspective on how well your land meets the Midway open space criteria as set out in the Midway City General Plan.

Funding for your project will most likely come from a variety of sources, including Federal, State, private foundations, etc., and Midway City (via Open Space Bond). Not all funding sources will be interested in a given project; they all (including Midway) have their own criteria for the type of projects they will fund. Each of these funding sources will review your project against its criteria. Since there will likely be more projects than money, advocacy for your project in the context of each agency's unique criteria is important. A non-profit Certified Land Trust (CLT) can assist you through that process – it's what they do. We can help you get in contact with them if you have not already done so.

Midway City will evaluate your project with respect to Midway criteria prior to committing Open Space Bond funds. To start this process, please complete this form in as much detail as possible. This will allow you to advocate the value of your project in the context of Midway criteria. It will also serve as a useful tool for Midway City to evaluate the comparative suitability of multiple projects. Although a preliminary indication of Midway City interest in your project will be valuable as you move forward, please understand that the City Council makes the final commitment after review of the entire preservation package, including funding from other sources.

Please feel free to contact any member of the Open Space Advisory Committee if you have questions, would like help with this form, or would like to further discuss related issues.

Midway City Open Space Advisory Committee

MIDWAY CITY OPEN SPACE EVALUATION CRITERIA

The Midway City General Plan – in particular Ch 10, “Open Space Element” – lays out the City’s goals, objectives, and criteria for open space preservation. Before the City Council can spend public money on an open space project, it must be satisfied that the project is consistent with the Midway City General Plan. Excerpts from the 10 Year Plan are provided below. With each of these please provide your assessment on how well your proposed project fits these criteria. Use additional pages as necessary. Please understand these are not hard “check off” requirements; rather, projects will be evaluated on the degree to which criteria are met.

The 10 Year Plan contains four open space design objectives; three are specifically focused on open land preservation that contemplates expenditure of open space bond funds.

PRESERVE INTER-CITY SPACE

Today Heber Valley-wide views – such as seen driving into the valley – provide a clear sense of separate cities: Midway, Heber, Charleston. These are connected only by expanses of “ruralness”/agriculture. As seen in many places – Wasatch front in particular – cities tend to “sprawl” together into a single urban mass. As one of the fastest growing counties in the USA, Wasatch is certainly susceptible to this. Preserving Midway City’s unique rural setting in relation to other population centers in the Heber Valley might involve, for example, acquisition of non-development buffer zones in strategically located places. These buffer zones will preclude the urban sprawl that could turn Midway into an undifferentiated collection of roof tops in an ever-expanding asphalt and concrete landscape.

Please provide your assessment on the ways your project matches the above design objective. *(Among other factors you consider relevant, please consider the size and location of the land and describe how it will further the goal of precluding “urban sprawl.” Is it adjacent to other open land that enhances your land’s use as a buffer? What specific urban centers does your land “buffer” if preserved as open space? What sort of development do you foresee overtaking your land if it is not preserved?)*

The Mountain Spa property forms a nice open space border on the northern end of Midway, bounded by 1050 N (Bergi Lane) and River Rd on its north and east sides, respectively. It is adjacent to Valais Park and Heber Valley Dairy, both open spaces that also reinforce the border between the town of Midway and the rural spaces in-between towns in the valley. Preserving this new property keeps provides more open space for this strategic border and keeps working lands available for local producers, such as the Kohler family who currently leases this land for grazing and hay production. This project will also allow the redevelopment of the derelict resort which will increase economic activity for the town while preserving the existing viewshed.

PRESERVE MIDWAY'S UNIQUE CHARACTER

Midway City has a multi-faceted character, including clearly rural older areas, and newer developments with typical suburban character. The historic rural areas provide the city with a unique character / atmosphere, supported by readily visible in-town agriculture (cow & pasture ambiance), country-feel roads (grassy shoulders, open ditches), in-town barns and other historic buildings, etc. Preserving this character may require not only acquisition of selected in-town open space currently in agricultural use but may also require city code and planning support. Unlike the concept of buffer zones to counter urban sprawl, this objective focuses on potentially non-contiguous areas where this unique character is readily visible, and is intended to prevent its destruction from further development.

Please provide your assessment on the ways your project matches the above design objective:
(Consider historic structures or barns, "in-town agriculture", leverage of adjacent properties to create larger open space, etc.)

As mentioned above, the Mountain Spa property is adjacent to the Heber Valley Dairy, which is an agricultural institution near Midway that currently provides an idealic local agro-tourism experience that provides economic activity for the region while also preserving the unique rural character of the valley. Creating more open space around this venue only enhances this rural experience, so preserving this parcel should be of high priority. The property currently houses the defunct Mountain Spa facility, which includes old pools and bath houses once used for spa treatments. Current plans for this property include renovating and reinvigorating this spa, and reopening it to the public as a boutique experience that serves current demand for local tourist destinations while also preserving an important piece of history in the Heber Valley. Opportunities to meet both open space goals and economic growth rare and should be fully supported by local planning organizations.

PROVIDE PUBLIC RECREATION VENUES

This objective primarily focuses on parks, trails, and outdoor recreational or athletic venues. A separate chapter in the General Plan addresses these. They are included here in acknowledgement of their importance in an overall open space plan, and the potential use of open space public debt financing in their acquisition / construction.

Please provide your assessment on the ways your project matches the above design objective, if applicable:

(Do you envision public access to your land? If so, to what degree, and what use do you contemplate as the public use? Please address whether your proposed project would provide trail easements.)

This proposed open space will include trail easements for walkers, hikers, and bikers. It will connect with existing trails to integrate into other public recreation opportunities offered in the Midway region.

The 10 Year Plan values “visual access”.

. . . since significant aesthetic value is a clear benefit of most of the different [open space] design objectives, the acquisition or preservation projects should ideally be located in positions of clear and frequent visibility to a maximum number of Midway citizens – for example, along main access or collector roads, roads frequented by many on day to day travel, or from viewpoints shared by many.

Please provide your assessment on the level of “visual access” your project provides: *(Consider view of the project from scenic viewpoints; from trails; from arterial, collector, or local roads. Would future development in an adjacent property impact this view? What existing viewshed(s) would be preserved by this project? How much of Midway citizenry might regularly benefit, etc.)*

This project will be highly visible from public roads and trails, primarily River Rd, 1050 N, and local trail networks that will integrate into the property itself. It will also be visible from areas such as Memorial Hill and higher elevation trails in Wasatch State Park. Considering the proximity to Heber Valley Dairy and Valais open space, protecting this property will ensure a viewshed with vast open space that leads east towards the Provo River corridor. Most Midway citizens living north and east of town will see the property frequently, as well as commuters moving along River Road to US 40.

The 10 Year Plan indicates the intent to “leverage” Midway bond funds to maximum extent possible.

Leveraging and Partnerships: Where possible and practical, the City will work with other organizations, agencies, groups, and individuals who will share the costs of open space preservation projects.

Important evaluation criteria will be 1) an assessment of the value of your property’s development rights from a Certified Land Appraiser, and 2) the percent of that appraised value that would be covered by sources other than Midway City. Certified Land Trusts (CLT) will provide great assistance with these issues.

With which CLTs are you currently speaking in regard to project funding; with which do you anticipate speaking? May we contact them regarding your project?

While appraisals are useful tools in easement purchases, the Summit Land Conservancy has learned from other municipal fee-title acquisitions that the fair market determination of price is the only valid judgment of value. In these situations, the price is determined through the buyer and sellers’ negotiation. An appraisal might justify the price, or it might determine that the purchase price is either high or low. But this outside confirmation is not binding on the parties and so it isn’t useful. What matters is the actual purchase price that is determined in a free-market agreement between the buyer and seller.

The structure of this transaction allows Midway Open Space funds to be used for only 13% of the total project cost. (\$1,500,000 of a \$10,888,960 total transaction cost)

An important aspect of open space preservation is that it be maintained generally in its current use/condition. Easements require this by contract. Please provide your view on how this maintenance would be provided.

(Please address permanently available water rights associated with the land; who would provide maintenance; can manpower and other costs of maintenance be reasonably sustained over the long term; your willingness to negotiate a maintenance contract, etc. The CLT can be of assistance with these items.)

The water rights associated with this property will be encumbered by the conservation easement to ensure successful agricultural production. The bulk of the day-to-day maintenance of the property will be conducted by the Kohler family, who will maintain their grazing and hay production lease. Part of the closing costs will involve committing funds to Summit Land Conservancy's stewardship fund to ensure yearly monitoring of the easement, which guarantees that all the conservation values of the property (agricultural production, viewshed, public access/recreation) are being property maintained.

What other collateral benefits accrue to Midway from this project?

(Consider wildlife habitat, contiguous with other open space, public education, surface water management, etc.)

Maintaining this open space will keep open a corridor for wildlife between the wet meadows and riparian habitat in the Provo River corridor and the higher elevation habitats in the Wasatch Mountains. It is particularly valuable elk and deer wintering habitat. As mentioned before, this project is connected with other protected open space.

Please describe any special conditions or reserved rights you are seeking with respect to this project
(Such as zoning variance, use permits, density reduction, etc.)

In order to protect this open space, Summit Land Conservancy will have to purchase the fee title to the property using a loan. To pay back this loan, part of the transaction will include the subsequent sale of 4-5 residential lots (adjacent to existing development) and the commercial spa property.

Are there any other issues you wish to have considered in the evaluation of your project?

This project includes a number of local partners that are committed to keeping this property as an agricultural open space with an improved spa facility. It is locally inspired and driven, and will help maintain the rural nature of the Heber Valley that is currently threatened by development.

Exhibit 7

From: Michele DeCardenas
michdecardenas@hotmail.com
Subject: Mountain Spa Property Open Space Plan - Lacy Lane Estates Approval Response
Date: Aug 18, 2020 at 9:46:25 AM
To: Celeste Johnson cjohnson@midwaycityut.org, sdougherty@miwaycityut.org, Courtland Nelson nelson.courtland@gmail.com, Michael Henke mhenke@midwaycityut.org
Cc: Cheryl Fox cheryl@wesaveland.org, Katie Noble katie.noble@sothebysrealty.com, bill mcdonald (lacey lane hoa) wjmcDonald3@gmail.com

Mountain Spa Property Open Space Plan - Lacy Lane Estates Approval Response

Mayor Johnson,

Please see the attached letter from the Lacy Lane Estates HOA President, Bill McDonald and Trustees.

The letter provides Lacy Lane Estates Trustees approval of the recommendation from Midway City Open Space Committee's to the Midway City Council for the Mountain Spa Property land west of River Road and south of Burgi Lane to be considered as Open Space.

Lacy Lane Estates ask that this approval be reflected as a part of the Midway City Council meeting on 8/18/20 discussion and comments.

Michele Decardenas
Trustee, Lacy Lane Estates HOA

pdf

2020 M...HOA.pdf
122 KB

8/18/20

Mayor Celeste Johnson, Steve Dougherty, Courtland Nelson, Michael Henke / Midway City staff
Cheryl Fox / Summit Land Conservancy, Katie Noble / Pure Midway

Midway City Council Members,

Midway City Open Space Committee Chair, Nelson Courtland and Midway City Councilman, Steve Dougherty met with the Lacy Lane Estate Trustees to discuss and explain the Mountain Spa Property Open Space plan and how it relates to Lacy Lane Estates, which is located adjacent to the Mountain Spa Property.

Lacy Lane Estates Trustees reviewed the plans for the Mountain Spa Property regarding the parcels of land west of River Road and south of Burgi Lane identified as candidates for the Midway's Open Space initiative.

Lacy Lane Trustees approves the Midway City Open Space Committee's recommendation to the Midway City Council. Lacy Lane Estates Trustees believe this land becoming Open Space will be in the best interest for Midway City, it's residents and Lacy Lane Estates.

Lacy Lane Estate Trustees also asks that our recommendation of approval for Mountain Spa Property Open Space be recorded as a part of the Midway City Council public hearing meeting comments 8/18/20.

Bill McDonald
President, Lacy Lane Estates HOA

HOA Trustees, Lacy Lane Estates

LACY LANE

ESTATES



Exhibit 8

Midway City Corporation



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

75 North 100 West
P.O. Box 277
Midway, Utah 84049
Phone: 435-654-3223
Fax: 435-654-4120
midwaycityut.org

1 September 2020

Cheryl Fox
Executive Director
Summit Land Conservancy
P.O. Box 1775
Park City, UT 84060

Dear Ms. Fox:

This letter is to inform you of the action of the Midway City Council on your open space preservation proposal for the Mountain Spa area in Midway. Midway City Council voted to fund the project up to \$1,500,000 based on the following conditions and understandings:

- Mr. Chuck Heath will purchase the 78.5-acre tract from Mountain Spa, LLC, with a closing date around the first week of December 2020.
- Mr. Heath will subdivide the property into two large farm estate lots, three smaller residential lots, an “historic spa area” encompassing the old Mountain Spa, and a resort area as reflected in the map you presented to the City Council at the meeting on August 18, 2020.
- The two large estate lots will each have a designated area to build a single-family residence and associated outbuildings to support the agricultural use of the property. These estate lots will be protected from further subdivision and development and will be preserved for agricultural and pasturing use by a conservation easement held by Summit Land Conservancy.
- The three smaller residential lots will be encumbered by deed restrictions that will limit the parcels to one single family residence each and prohibit further subdivision or development.
- The historic spa area will be encumbered by a conservation easement held by Summit Land Conservancy to ensure that its designation as a sensitive geologic feature is not changed by future legislative action and that it will be available as a passive public park accessible by public trail easements across the larger tract.

Our vision for the City of Midway is to be a place where citizens, businesses and civic leaders are partners in building a city that is family-oriented, aesthetically pleasing, safe, walkable and visitor friendly. A community that proudly enhances its small town Swiss character and natural environment, as well as remaining fiscally responsible.

- Mr. Heath will sell the two large estate lots and the three smaller residential lots subject to the conservation easements and will develop a commercial spa in the resort area of the tract.
- The conveyance of title to purchasers of the estate lots and the residential lots must include sufficient water rights to maintain the historic irrigation on the properties and meet the City's land use regulations for culinary and irrigation for the residential sites.
- In developing the resort area, Mr. Heath will comply with the Midway City Land Use regulations and processes as well as with the additional restrictions, limitations, and provisions contained in the Memorandum of Understanding between Mr. Heath and Summit Land Conservancy. Those restrictions include, but are not limited to:
 - Reducing the density in the Resort Zone by 50% from the plan approved in 2008.
 - Limit the height of all structures in the Resort Zone to 35 feet above natural grade.
 - The aggregate building square footage resort shall not exceed 250,000 square feet. The determination of building coverage shall include all structures in the Resort, including all floors in each building. The buildings may be clustered together within the resort, subject to setbacks and other applicable restrictions.
 - Site all structures to reduce interference with the view sheds across the property from River Road and Burgi Lane.
 - Construct a public trail and dedicate a 20' wide public trail easement that will pass through the property from north to south that will connect with the Midway Trail system in that area and will provide access to the historic Mountain Spa.
 - Construct a public trail and dedicate a 20' wide public trail easement adjacent and parallel to the River Road right-of-way.
 - Work with The Lacy Lane HOA to secure an east west public trail connection from the River Road trail to the interior north south in the Mountain Spa property. If an east west connection cannot be secured through the Lacy Lane subdivision, then the trail will be required through the Mountain Spa property.
- Midway's contribution of up to \$1,500,000 will remain in escrow and will not be disbursed until the two estate lots, the three residential lots, and the historic spa area all have been legally encumbered by conservation easements and/or deed restrictions approved by Midway's legal counsel and bond counsel.
- This conditional approval of funds for this project will be valid for 18 months from the date of this letter. Should the land described above not be legally encumbered by the conservation easements and/or deed restrictions set out, this approval will expire, and the City may, at its sole option, decline to provide funds.

Thank you for your support of open space and agricultural preservation in Midway.

Sincerely,

Celeste Johnson
Mayor