



**Midway**

**RESOLUTION**

**2025-02**

**A RESOLUTION ADOPTING THE CONDITIONS OF APPROVAL  
FOR THE WHISPERING CREEK SUBDIVISION**

**WHEREAS**, Utah law authorizes municipalities to adopt conditions for the use and development of land within the municipality; and

**WHEREAS**, the Midway City Council finds it in the public interest of the City of Midway to adopt conditions for the use and development of the land included within the proposed Whispering Creek Subdivision;

**NOW, THEREFORE**, be it hereby **RESOLVED** by the City Council of Midway City, Utah, as follows:

Section 1: The Midway City Council approves the conditions attached hereto and authorizes the Mayor of Midway City to execute the Resolution on behalf of the City.

Section 2: The effect of this Resolution is subject to all conditions of the land use approval granted by the City for the proposed project.

**PASSED AND ADOPTED** by the Midway City Council on the \_\_\_\_ day of January, 2025.

**MIDWAY CITY**

\_\_\_\_\_  
Celeste Johnson, Mayor

**ATTEST:**

\_\_\_\_\_  
Brad Wilson, City Recorder

# WHISPERING CREEK SUBDIVISION

## CONDITIONS OF APPROVAL

### Section 1. Background

Berg Engineering, representative for MKR Properties LLC, has submitted a final application for a large-scale subdivision to be known as Whispering Creek Subdivision. The final plan includes seven lots on 4.54 acres. The seven lots proposed in the subdivision will obtain frontage along a new road built within the subdivision. The property is in the R-1-15 zone at approximately 515 West Cari Lane.

The proposed subdivision will combine two parcels—OMI-0186-0 (1.22 acres) and OMI-0550-0 (2.25 acres)—and the Cosper Subdivision (1.57 acres). The Cosper Subdivision is a one lot plat that was recorded on May 31, 2017. The Cosper Subdivision plat must be vacated before the proposed Whispering Creek Subdivision may be recorded, which requires approval by the City Council. There is one dwelling on the property that will be on Lot 2 in the Whispering Creek Subdivision.

This property was originally proposed for a subdivision in 2020 and was reviewed by both the Planning Commission and the City Council. It was discovered through the review process that some alterations were made by the applicant to the floodplain and wetlands on the property. The City Council continued the item until outstanding issues could be addressed which included restoring the FEMA floodplain and wetlands back to their original condition.

The applicant has submitted several documents, which are available for review in the Planning Office, that address the restoration of the floodplain and the wetlands on the property among other required documents. These include the following:

- Wetlands Disturbance Restoration Letter from Frontier Environmental Consultants
- Whispering Creek Geotechnical Report by Gordon
- Whispering Creek Wetlands Report & Request for Aquatic Resources Restoration
- Whispering Creek Lot 3 Floodplain Study for Proposed Bridge Report
- Stream Alteration Permit for the vehicular bridge to Lot 3 for the sewer lateral and culinary water lateral
- Army Corps of Engineer approval of the wetlands delineation on the property
- A letter verifying that the FEMA Floodplain has been restored to its original condition

### Section 2. Conditions of Approval

- I. Conditions for Current Approvals: The Developer shall comply with all of the following Conditions:
  - a) General Obligations: The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is conditioned upon and in material consideration of the Developer's agreement to perform and abide by the covenants and obligations of the Developer set forth herein.

- b) Construction and/or Dedication of Project Improvements: The Developer agrees to construct and/or dedicate Project improvements as set forth below as directed by the City, including but not limited to, driveways, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall satisfactorily complete construction of all Project improvements no later than two (2) years after the recording of the plat for the Project. All costs associated with the Project improvements shall be borne by the Developer. The Developer also agrees to comply with the terms of the Midway City Staff Report, as approved and adopted by the Midway City Planning Commission and as accepted by the Midway City Council, attached hereto and incorporated herein by this reference.
- c) Payment of Fees: Developer agrees to pay all applicable Midway City fees as a condition of developing the Project on the Property, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.
- d) Duration of Final Approval: The duration of final approval shall be for one (1) year from the date of final approval of the Project by the Governing Body. Should a final plat not be recorded by the County Recorder within the one-year period, the development's approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the Governing Body extends the time limit for plat recording, with or without reasonable conditions.
- e) Water Rights and Water Service: The required water rights for the culinary and secondary water for the Project shall be officially transferred to the City in writing before the recording of the plat for the Project. The water rights provided by the Developer shall meet all City policies and ordinances for culinary and secondary use. Culinary water service shall be provided by the City according to the rules, regulations and requirements of the City. The total quantity of water rights to be dedicated to the City for the entire Project, for both culinary and secondary use, is 6.8 acre feet. Secondary water meters must be installed on each lot.
- f) Access: Access will be from Cari Lane. A second access is not required because the cul-de-sac is less than 1,300 feet in length and there are not more than 11 lots in the subdivision. The new road will create a four-way intersection on Cari Lane and 520 West, which accesses the Lodges at Snake Creek.

- g) Geotechnical Study: A geotechnical study has been submitted to the City and is available for review in the Planning Office. A copy of the entire report is available in the Planning Office for review.
- h) Sensitive Lands: There are wetlands and FEMA floodplain areas in the proposed subdivision area. A wetland map has been submitted to the City along with a wetlands delineation and inventory investigation. The code requires a 25' buffer area for any structures and disturbance from any delineated wetlands. The buffer area has been included in the plans. The study has been submitted to the City and to the US Army Corp. of Engineers for their review and approval. The US Army Corp has approved the wetlands delineation. The proposal includes FEMA flood zone areas including Zone AE (1% chance annual flood) which requires a 50' setback. The 50' setback has been marked on the plans from Zone AE. No structures may be located in this area, but the setback area may be filled and landscaped. Landscaping is allowed in the FEMA flood area, but nothing is allowed that will modify the FEMA flood zone, this includes not placing rocks or fill of any type in this area that impacts the topography of the floodplain. There is area in the subdivision that is designated Zone X which is area of the 500-year flood (0.2% annual chance flood) and is considered a low-risk area but there is flooding potential. Flood insurance is not federally required but it is recommended in the Zone X area. A note should be placed on the plat that advises future owners of lots 2, 4, and 5 of the potential flood hazards from a 500-year chance flood.
- i) Water Connection: The lots will connect to water lines that will be built by the Developer and connect to the City's water lines along Cari Lane.
- j) Sewer Connection: The lots will connect to Midway Sanitation District's sewer lines located in the area. There is a sewer lateral that crosses the property from the home at 465 West Cari Lane. The proposed plan is to reroute the lateral to the new sewer main that will be built under the new road in the subdivision. The location of the lateral will be required to be shown on the plat.
- k) Secondary Water Connection: The lots will connect to Midway Irrigation Company's secondary water system, which is already servicing the property. Laterals will be created for all seven lots. Secondary water meters are required for each lateral.
- l) Trails: There are no planned trails on the Trail System Master Plan in the proposal area. Five-foot sidewalks will be included on both sides of the proposed street and around the cul-de-sac.
- m) Public Street: The Developer will build the proposed road that will create access and frontage for the development. The right-of-way will be 56 feet

wide except where it will extend at the bulb of the cul-de-sac to 90 feet. The street will be 26 feet wide, with modified curb, 8 foot wide park strips, and 5 foot wide sidewalks.

- n) Open Space: Because the property is less than six acres there is not an open space requirement. The proposed plan does include common area on both sides of the road that will be built to access the subdivision where it connects with Cari Lane. A Homeowners' Association will need to be created to manage the common area.
- o) Setback Requirements: The R-1-15 zone requires a 100-foot setback from the edge of the right-of-way from Cari Lane for any structures. The setback line will be noted on the plat so no structures, including accessory structures, are placed in this area.
- p) Lot 3 Access: The driveway for Lot 3 will cross Snake Creek. A stream alteration permit and a zero rise analysis are required for the crossing. The Developer must build the crossing to Lot 3 as part of the subdivision infrastructure.
- q) Existing Dwelling: The existing dwelling that will be located on Lot 2 is nonconforming to the current code regarding the 50-foot setback required from the AE floodplain. If the dwelling is demolished, the new structure will need to comply with the required 50-foot setback from the floodplain as shown on the plat. If an addition is added to the existing dwelling, the new addition must comply with the 50-foot setback from the floodplain as shown on the plat.
- r) Existing Accessory Structures: The existing accessory structures of the proposed Lot 2 must comply with the required setbacks for the proposed road. The structures must either be removed or be moved to a location that complies with code requirements before the plat is recorded.
- s) Building Pads: Normally building pads are not shown on Midway subdivision plats but staff feels that they could be helpful in the proposed development. The development is in an area with sensitive land that has special setback requirements. This could be confusing to future lot owners. It would be much easier for them to see the dwelling setbacks on the plat. If a building pad is shown on the plat, it would be specifically for dwellings and not for accessory structures since setbacks for accessory structures are different than for dwellings.
- t) Weed Control: The Developer and its successors and assigns shall eradicate, mow or trim weeds and vegetation at all times in all areas of the Project. Developer shall be responsible for weed control on the remainder parcel described herein.

- u) Construction Traffic: All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
- v) Warranty: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.
- w) Bonding: Developer agrees to post performance and other bonds in amounts and types established by the City related to the performance of the Developer's construction obligations for the Project, pursuant to current City Ordinances and Regulations.
- x) City's Right to Draw From Construction Bond: If Developer is required to perform any work within the public right-of-way, and the work is not completed by the City's established deadlines, the City shall have the right to draw funds from the Developer's performance and other bonds.