

Midway City Council
16 November 2021
Regular Meeting

Resolution 2021-25 /
Scotch Fields PUD,
Phases 3, 4, and 5
Development Agreement
Amendment



Midway

CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: November 16, 2021

NAME OF PROJECT: Scotch Fields

NAME OF APPLICANT: Probst Higley Developers, LLC

AUTHORIZED REPRESENTATIVE: Berg Engineering

AGENDA ITEM: Amendment to the Scotch Fields Phases 3, 4, & 5 Development Agreement

LOCATION OF ITEM: 1300 North Canyon View Drive

ZONING DESIGNATION: RA-1-43

ITEM: 6

Berg Engineering, agent for Probst Higley Developers LLC, is proposing is proposing to amend the Scotch Fields PUD Development Amendment. The proposed amendment would revise the landscaping plan for phases 3, 4, and 5. The property located at 1300 North Canyon View Drive and is in the RA-1-43.

BACKGROUND:

The City Council first heard this proposal on July 20, 2021. I that meeting a motion was made by Councilmember Simonsen to continue the item to allow time for the developer and homeowners to come back with more information to help the Council resolve the issue. The City Council encouraged the developer and homeowners to work out the issues before returning to the City Council. New information has been submitted to staff including the six letters from property owners in phases 3, 4, and 5 (please see attached). It is staff's understanding that there are eight property owners in those phases, not

including the developer, and six of the eight have responded to the developer's proposal. Also, attached to this report is the developer's revised CC&Rs (the developer is still the president of the HOA). The following is the original staff report from July 20, 2021:

Probst Higley Developers LLC is proposing an amendment to the approved development agreements for Scotch Fields phases 3, 4, and 5. The proposed amendment would specifically revise the landscaping plan and remove the planned bark mulch from around each of the dwelling sites and replace the bark mulch with Kentucky Bluegrass. Currently the approved plan shows that bark mulch surrounds each dwelling site and extends from the foundation of each structure approximately 10', though that varies throughout the plan.

The proposed amendment would replace 85,688 square feet (1.97 acres) of bark mulch with Kentucky Bluegrass. All bark mulch would be removed from the landscaping plan. The application describes the change as the following:

This is a minor change to the landscape plan for the common areas around units in Scotch Fields Phase 3 and 4. This change does not impact the vision of Midway City or the development."

This change would directly impact the 43 units in the three phases. Staff felt it was important to notice all the owners of property in the three phases. The developer owns 35 units in the phases but eight of the units are owned by other individuals and each one of them received a letter inviting them to the City Council discussion regarding this issue. As of the writing of this report, none of the property owners in the three phases have contacted City planning staff.

The proposed amendment is specific to phases 3, 4, and 5 and would not change the landscape plan or requirements for phases 1 or 2. There have been concerns in phases 1 and 2 about the landscaping being installed in those phases without bark mulch as is shown on the approved plans. Another concern is that the Kentucky Bluegrass has not been installed to the entire area that was approved on the landscaping plan in Phases 1 and 2. Staff has not released all the landscaping bond for those two phases at this time. All five phases in Scotch Fields PUD are part of the same Homeowners Association and the HOA is responsible for maintaining landscaping that the developer is responsible for installing.

The City Code does not have a requirement that bark mulch be included in the landscaping plan. Water rights were required and dedicated to the City for the 1.97 acres that would have bark mulch so those areas can be irrigated.

The decision to approve the proposed amendment is discretionary for the City Council. The approved agreements may only be amended if both parties, the City and the developer, agree to the amendment.

POSSIBLE FINDINGS:

- The proposed amendments would remove all bark mulch from phases 3, 4, and 5 that includes an area of 85,688 square feet (1.97 acres) and replace it with Kentucky Bluegrass
- Water rights have been dedicated to the City for the entire 1.97 acres that have been approved for bark mulch
- The City Code does not require that bark mulch be included in landscaping plans
- Amending the development agreements is discretionary and the City is under no obligation to approve the proposal even if it complies with the land use code

ALTERNATIVE ACTIONS:

1. Approval (conditional). This action can be taken if the City Council finds the proposal is in the best interest of the City.
 - a. Accept staff report
 - b. List accepted findings
 - c. Place condition(s) if needed
2. Continuance. This action can be taken if the City Council finds that 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 in the best interest of the City.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

Exhibits

Exhibit 1 – Location Maps

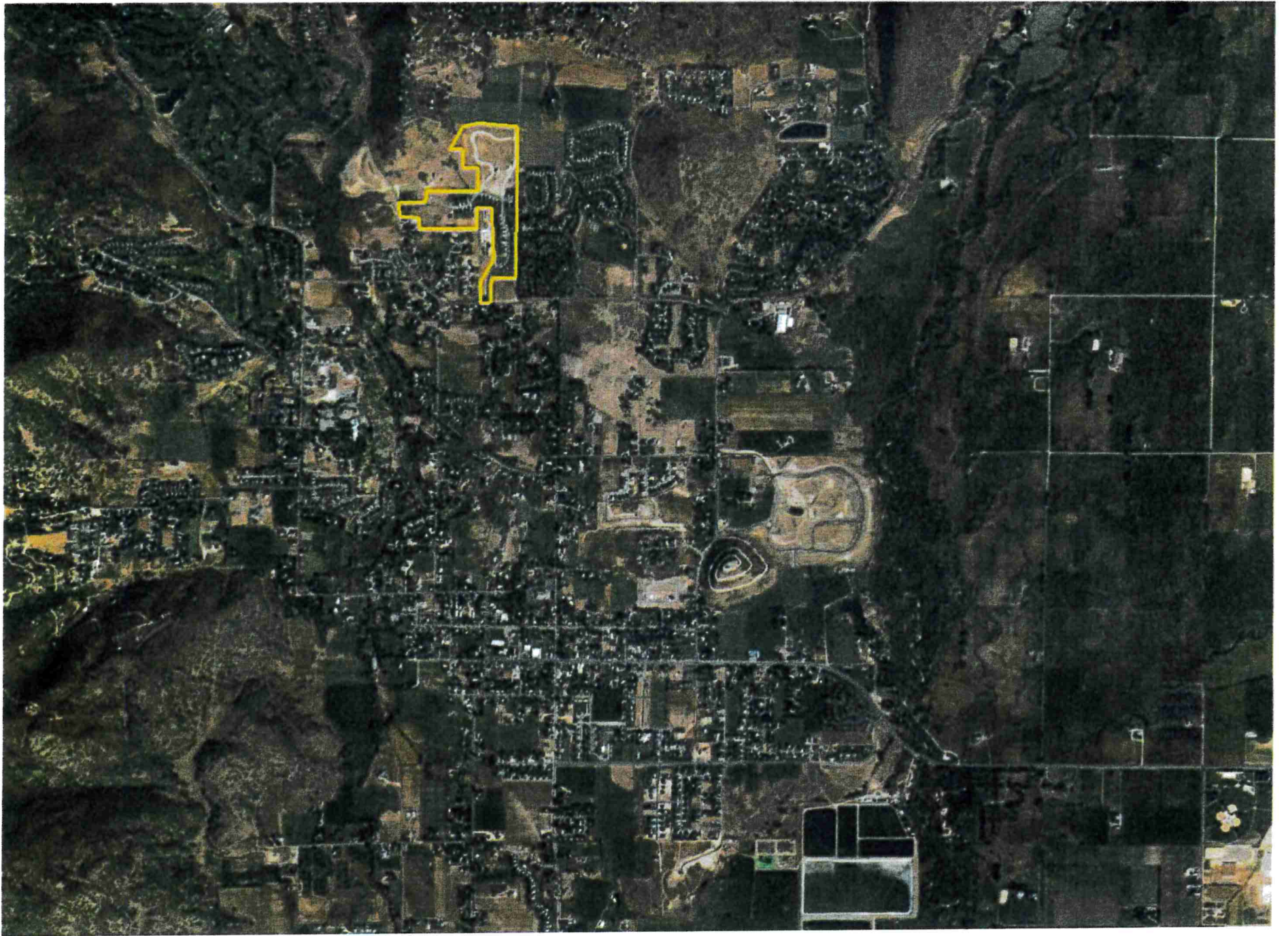
Exhibit 2 – Approved Landscaping Plan

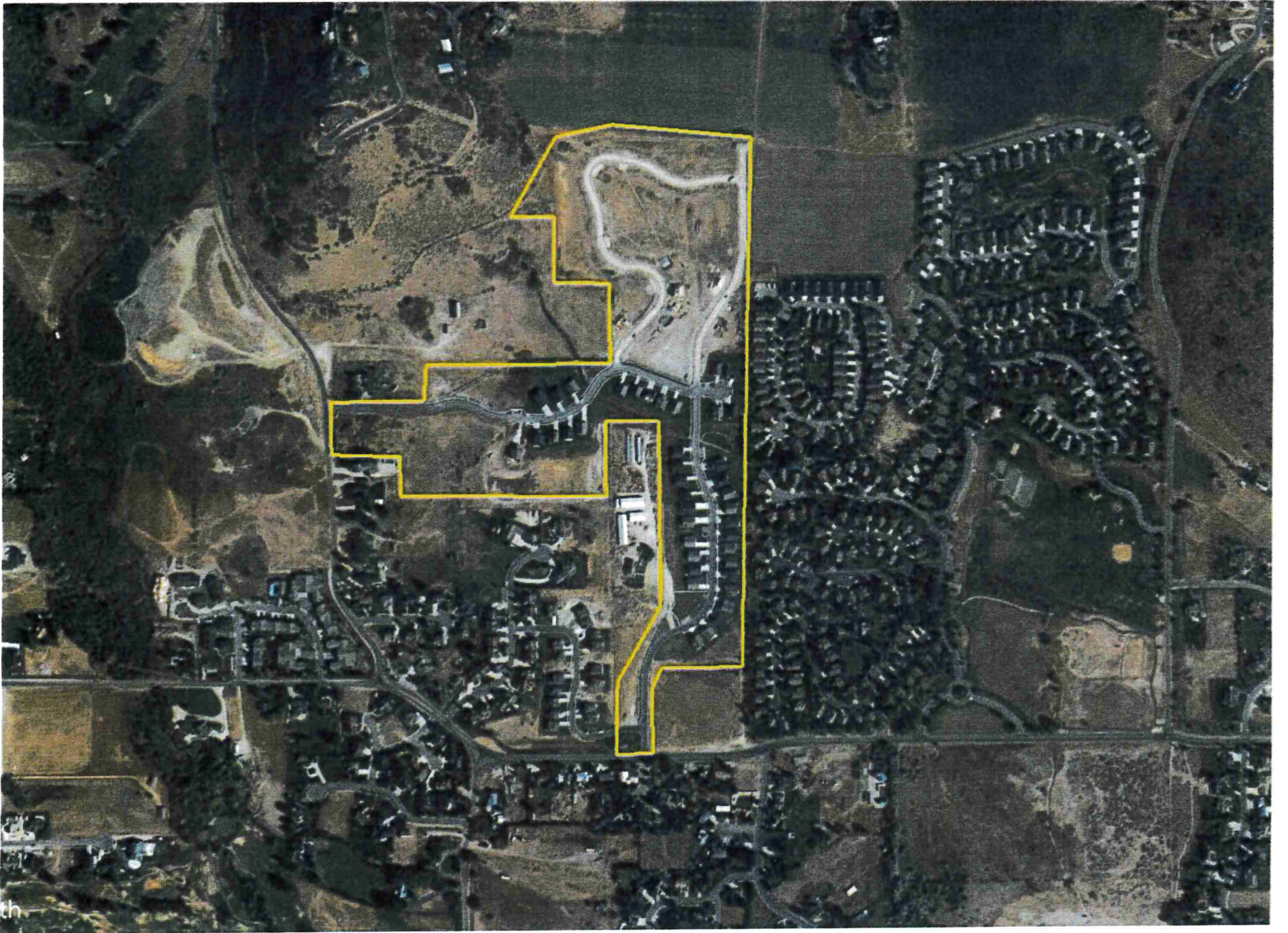
Exhibit 3 – Proposed Landscaping Plan

**Exhibit 4 – Letters from developer's representative and
from property owners**

Exhibit 5 - Revised Scotch Fields CC&Rs

Exhibit 1

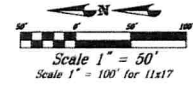






Google Earth

Exhibit 2



LANDSCAPE NOTE:
 LANDSCAPERS TO INSTALL PHASES 3 & 4 AS
 SHOWN ON THIS PLAN IN ADDITION TO AREAS
 NOT LANDSCAPED IN PHASE 2 DUE TO
 CONSTRUCTION STAGING.

PLANT SCHEDULE

Symbol	Plant Name	Quantity	Notes
1	Large Tree (e.g., Redwood, Douglas Fir)	10	Plant in Phase 3
2	Medium Tree (e.g., Fir, Spruce)	20	Plant in Phase 3
3	Small Tree (e.g., Dogwood, Magnolia)	30	Plant in Phase 3
4	Shrub (e.g., Rhododendron, Hydrangea)	40	Plant in Phase 3
5	Flowering Shrub (e.g., Lilac, Forsythia)	50	Plant in Phase 3
6	Perennial Flowering Plant (e.g., Daylily, Iris)	60	Plant in Phase 3
7	Grass (e.g., Fescue, Ryegrass)	70	Plant in Phase 3
8	Groundcover (e.g., Sedum, Thymus)	80	Plant in Phase 3
9	Water Feature (e.g., Fountain, Pond)	1	Plant in Phase 3
10	Light Fixture (e.g., Street Light, Post Light)	10	Plant in Phase 3
11	Signage (e.g., Welcome Sign, Directional Sign)	5	Plant in Phase 3
12	Artwork (e.g., Sculpture, Bench)	3	Plant in Phase 3
13	Other (e.g., Fire Hydrant, Mailbox)	10	Plant in Phase 3



BILL PROBST
 SCOTCH FIELDS PUD
 LANDSCAPE PLAN
 PHASES 3 & 4

300 E. Main St. Suite 200
 Midway, UT 84049 ph: (801) 723-2000

DESIGN BY: CNB DATE: 07/15/2010
 DRAWN BY: LAM REV: 3

Exhibit 3

Scale 1" = 50'
Scale 1" = 100' for 11x17



PLANT SCHEDULE

SYMBOL	PLANT NAME	QUANTITY	NOTES
(Tree symbol)
(Shrub symbol)
(Grass symbol)
(Flower bed symbol)
(Water feature symbol)
(Light fixture symbol)
(Furniture symbol)

THIS DOCUMENT IS PREPARED FOR REVIEW ONLY. IT IS NOT TO BE USED FOR CONSTRUCTION. ALL RIGHTS RESERVED AND RESERVED.

BILL PROBST
SCOTCH FIELDS PUD
LANDSCAPE PLAN
PHASES 3 & 4

berg
LANDSCAPE ARCHITECTS
1800 E. 1st Avenue, Suite 200
Minneapolis, MN 55414-1000, (612) 338-2000
DESIGN BY: CNB | DATE: 15 MAY 2019 | SHEET
DRAWN BY: ENB | REV: 3

Exhibit 4

Michael Henke

From: Paul Berg <paul@bergeng.net>
Sent: Monday, October 25, 2021 9:43 AM
To: Michael Henke
Cc: Brad Wilson
Subject: Scotch Fields - Letters of Approval from Unit Owners in Phases 3, 4 and 5
Attachments: Letter from Amanda Peterson - Unit 88, Phase 4.pdf; Letter from Thorn - Unit 42, Phase 3.pdf; Letter from Kate Silvey - Unit 51, Phase 3.pdf; Letter from Cornelius - Unit 48, Phase 3.pdf; Letter from Francine Miller - Unit 52, Phase 3.pdf; Letter from Jennifer Barnes - Unit 50, Phase 3.pdf

Michael

Attached are letters from unit owners within Phases 3, 4 and 5 of Scotch Fields. These letters represent all units not owned by Probst Enterprises Inc. or DHi Builders LLC except for Unit 49, Ian Jack and Unit 89, Virginia Coombs who has not responded. Please note that these approval letters include home owners who complained about their landscaping during the city council meeting.

We request that the master plan amendment to change the landscape plan be presented to the city council again.

Paul Berg
Berg Engineering

To whom it may concern,

I'd like to commend Probst Enterprises for the wonderful job they did constructing my new home in Scotch Fields, Midway Utah. The attention to detail, quality construction and sub-contractors was excellent. The landscaping is on track to be completed this fall and will be similar to those phases already completed. Additionally, a non-motorized trail circulating throughout the development will delight the new homeowners. A special feature is that it connects to the Master Trail Plan for Midway City. This means that visitors and residents will be able to ride or walk to schools and the town center. A bonus.

I look forward to spending many years in the Scotch Fields community enjoying the views and neighbors.

Sincerely,

Amanda Peterson

New homeowner.

Paul Berg

From: "Bill Probst" <billtprobst@yahoo.com>
Date: Thursday, September 30, 2021 8:05 AM
To: "Paul Berg" <paul@bergeng.net>
Subject: Fwd: Landscaping

This letter is from Thorn. I don't have one from Jack. He bought his home for a rental, and has it rented. I've been told he lives out of State. I landscaped his home like the others. Peterson just moved in, and her home is not landscaped. I built her home, and told her it would be landscaped like phase's 1 and 2. She said that would be great. We have a final addendum at closing that the owner accepts the home, we are now adding to that addendum that the landscaping will be like phase's 1 and 2. I have sent a text to Corbin to amend the CC&R's to say that owners who add planting areas have to maintain them their selves. I have not heard back from him. I will check with him again. I know that he has been out of town but is back now. Do you want me as President of the HOA to write a letter saying we are amending the CC&R's?

Sent from my iPhone

Begin forwarded message:

From: Thomas Thorn <t.thorn16@gmail.com>
Date: September 24, 2021 at 3:45:16 PM MDT
To: Bill Probst <billtprobst@yahoo.com>
Subject: Landscaping

Hi Bill,

We are completely satisfied with our house and surrounding landscape. You have done an amazing job and we could not be happier with our beautiful home. We appreciate how great you have been to work with and we feel that you care a lot about your work and your clients.

Thanks again!

Tommy

Paul Berg

From: "Bill Probst" <billtprobst@yahoo.com>
Date: Friday, September 24, 2021 3:43 PM
To: "Paul Berg" <paul@bergeng.net>
Subject: Fwd: Landscaping

Sent from my iPhone

Begin forwarded message:

From: Kate Weiland <kate@waoutah.com>
Date: September 12, 2021 at 3:26:09 AM MDT
To: Bill Probst <billtprobst@yahoo.com>
Subject: Landscaping

Hi Bill,

I just wanted to email and thank you for the landscaping around our homes. After speaking with some of the neighbors we are happy with the work that has been done. Thank you to you and your crews hard work, and listening to our feedback.

Thanks,
Kate Silvey

Paul Berg

From: "Bill Probst" <billtprobst@yahoo.com>
Date: Friday, September 24, 2021 3:43 PM
To: "Paul Berg" <paul@bergeng.net>
Subject: Fwd: Scotch Fields Landscaping Follow-up

Sent from my iPhone

Begin forwarded message:

From: Daniel Cornelius <danielrcornelius@gmail.com>
Date: September 13, 2021 at 4:13:36 PM MDT
To: billtprobst@yahoo.com
Cc: Jane Thomas <thomas.janeevans@gmail.com>
Subject: Scotch Fields Landscaping Follow-up

Hi Bill,

Writing this email to memorialize the collaboration and compromises on landscaping on our lot in Scotch Fields. We appreciate the really helpful and open attitude that you have given as you and your team placed mulch around three sides of our house and for your future help in filling the slightly sunken corner of sod at our home.

The landscaping around our house is lovely and we are grateful for the professionalism and pride that you and team have in making the neighborhood a nice place to live.

Thanks,
Daniel and Jane Cornelius

Paul Berg

From: "Bill Probst" <billtprobst@yahoo.com>
Date: Friday, September 24, 2021 3:40 PM
To: "Paul Berg" <paul@bergeng.net>
Subject: Fwd: About Bill

Sent from my iPhone

Begin forwarded message:

From: Bill Probst <billtprobst@yahoo.com>
Date: September 14, 2021 at 6:39:27 PM MDT
To: Francine Miller <francinemiller@comcast.net>
Subject: Re: About Bill

Thanks Francine. Much appreciated!!

Sent from my iPhone

On Sep 14, 2021, at 5:35 PM, Francine Miller <francinemiller@comcast.net> wrote:

To whom it may concern:

This letter is from John and Francine Miller we live at 1396 N Jerry Gertsch Ln. Midway, UT 84049.

Bill Probst has done the landscaping in our subdivision and this letter is to inform anyone interested, that Bill spoke with us about our landscaping, and explained what he was planning on doing, and Bill did what he said he was going to do. Our landscaping is complete, and again expectations were met. We feel that he is a man of his word, and in other areas Bill has gone above and beyond to ensure our comfort and happiness in our new home and sub division.

Thank you

John and Francine Miller

Paul Berg

From: "Bill Probst" <billtprobst@yahoo.com>
Date: Friday, September 24, 2021 3:39 PM
To: "Paul Berg" <paul@bergeng.net>
Subject: Fwd: Thank you

Paul, this one is from the lady that kept getting up and talking at that meeting. I will send 4 more right now, and the 6th one I should have this weekend. The 6 are all that we have moved in so far. Thanks
Sent from my iPhone

Begin forwarded message:

From: Jennifer Barnes <jenniferjbarnes@gmail.com>
Date: September 22, 2021 at 8:33:13 AM MDT
To: billtprobst@yahoo.com
Subject: Thank you

Hi Bill,

Thank you so much for working with us on how we wanted our lawn, especially having bark mulch up close to the window wells with our basement instead of the lawn. We really appreciate it. Thanks!

Jen

--

Jennifer Barnes

www.JenniferBarnesPhotography.com

360-831-7310

Exhibit 5

**AMENDMENT TO THE
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF SCOTCH FIELDS, P.U.D.**

(An Expandable Planned Unit Development – which is not a Cooperative)

The Declaration of Covenants, Conditions and Restrictions of Scotch Fields, P.U.D., recorded on the 3rd day of February, 2016, is hereby amended as follows:

Section 7.4 is amended to read as follows:

7.4 Landscaping. The Association shall be solely responsible for the installation and maintenance of Landscaping and except as provided herein, no Owner shall have the right to install or maintain any such landscaping even if located upon their Lot. However, if Lot Owners in Phases 3, 4 and 5 wish to install additional planting areas upon their Lot, they may seek approval to do so from the HOA with the understanding that the Lot Owner will be responsible for paying for and maintaining such areas.

Section 7.6 is amended to read as follows:

7.6 Pets. No animals other than household pets shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. Whenever a pet is allowed to leave a Lot, it shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. The exterior structure for the care, housing or confinement of any such pets shall be maintained by Owner and approved by the Architectural Control Committee. Owners are strictly prohibited from burying or otherwise installing any type of electric animal fence in the Common Areas of the Development, including those Common Areas immediately surrounding any Living Unit. Any Owner or other resident within the Development who violates this Section shall be subject to such penalties or fines as the Officers by resolution or as regulation may provide.

All other provisions of the original CC&Rs shall remain in full force and effect.

///

[Signature Page Follows]

EXECUTED this ____ day of November, 2021.

Declarant:

PROBST HIGLEY DEVELOPERS, LLC

By: Bill Probst

Its: Manager

STATE OF UTAH)

:ss

COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ____ day of November, 2021, by BILL PROBST, Manager of Probst Higley Developers, LLC, who personally appeared before me and duly acknowledged to me that he had executed the instrument.

NOTARY PUBLIC

**AMENDMENT TO THE
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PROBST HIGLEY DEVELOPERS, LLC

By: Bill Probst

Its: Manager

STATE OF UTAH)

:SS

COUNTY OF WASATCH)

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NOTARY PUBLIC



RESOLUTION 2021-25

A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING AN AMENDMENT TO THE AGREEMENTS FOR PHASES THREE, FOUR, AND FIVE OF THE SCOTCH FIELDS PLANNED UNIT DEVELOPMENT.

WHEREAS, the Midway City Council is granted authority under Utah law to make agreements in the public interest and to further the business of Midway City; and

WHEREAS, the City Council deems it appropriate to adopt an amendment to the agreements for Phases 3, 4, and 5 of the Scotch Fields Planned Unit Development.

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

Section 1: The landscaping plan for the applicable development agreements is amended as attached in Exhibit "A".

PASSED AND ADOPTED by the Midway City Council on the day of 2021.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

DRAFT

Exhibit A

DRAFT

Scale 1" = 50'
Scale 1" = 100' for 11x17



PLANT SCHEDULE

SYMBOL	PLANT NAME	QUANTITY	NOTES
(Tree symbol)
(Shrub symbol)
(Flower bed symbol)
(Grass symbol)

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BILL PROBST
SCOTCH FIELDS PUD
LANDSCAPE PLAN
PHASES 3 & 4

berg
LANDSCAPE ARCHITECTS
1800 E. 1st Avenue, Suite 200
Minneapolis, MN 55414
DESIGN BY: CNB | DATE: 15 MAY 2019
DRAWN BY: ENB | REV: 3