

STAFF REPORT
COMMUNITY DEVELOPMENT DEPARTMENT



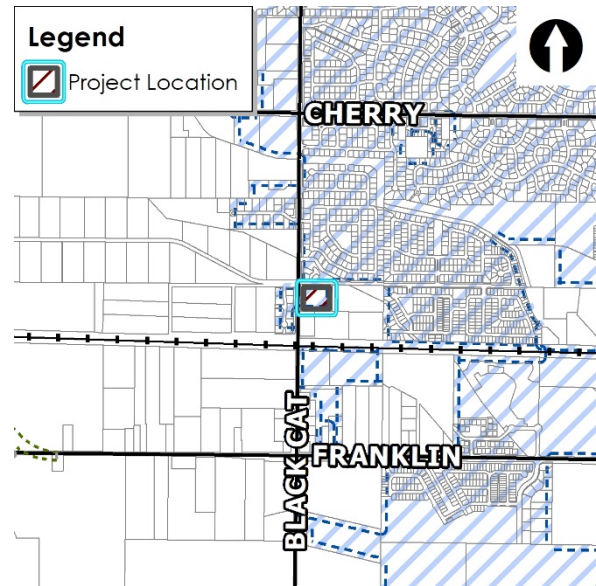
HEARING DATE: 8/24/2021 9/28/2021

TO: Mayor & City Council

FROAM: Joseph Dodson, Associate Planner
208-884-5533

SUBJECT: H-2021-0050
Horse Meadows MDA

LOCATION: The site is located at 710 N. Black Cat, at the southeast corner of N. Black Cat Road and W. Pine Avenue, in the NW ¼ of the NW ¼ of Section 10, Township 3N., Range 1W.



I. PROJECT DESCRIPTION

Development Agreement Modification to amend the draft agreement approved with Horse Meadows Rezone and Preliminary Plat (H-2020-0060), by Riley Planning Services.

II. SUMMARY OF REPORT

A. Applicant:

Penelope Constantikes, Riley Planning Services – PO Box 405, Boise, ID 83701

B. Owner Representative:

Black Cat 30 LLC – 1420 S. Mills Avenue, Ste. M, Lodi, CA 92542

C. Representative:

Same as Applicant

III. STAFF ANALYSIS

The Applicant proposes to amend the draft Development Agreement (DA) for the approved Horse Meadows Subdivision (H-2020-0060) to modify DA provisions, add provisions, and subsequently update the approved concept plan. See Section V for Staff's recommended changes to the existing DA provisions.

History: The subject site was granted approval for a Rezone and Preliminary Plat in 2020 (H-2020-0060) for a rezone to the R-8 zoning district and a plat consisting of 26 building lots on 4.71 acres of land. The property's existing access is via a private access to Black Cat Road, W. Quarterhorse Lane, that also provides access for three (3) other parcels to the east and southeast (Parcels S1210325555, S1210325800, & S1210325710). To help ensure that this access was removed consistent with UDC 11-

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3A-3 and ACHD policies, a DA provision was included that required all servient parcels to relinquish their rights to the private lane easement prior to this project prior to submitting for final plat approval. To date, three (3) of the four (4) servient sites (including the subject site) have signed an Easement Modification Agreement (see public record for document) to relinquish their access rights and take access through the approved public street connection to Pine Avenue; one (1) of the servient sites has declined to relinquish their easement rights. **Therefore, the Applicant is requesting to modify the draft DA so that they may submit a signed DA, officially rezone the property, and continue platting this subject site while maintaining the Quarterhorse Lane access for the one easement holder until such time that property redevelops in the future.**

Because Quarterhorse Lane is a private easement, ACHD cannot require its closure (as detailed throughout the original staff report and ACHD staff report). However, the City attempted to reduce an access to Black Cat (an arterial) by including a DA provision requiring its closure prior to final plat submittal via each easement holder relinquishing their access rights. Per the Applicant, the refusal of one of the easement holders to relinquish their easement rights functionally renders this property useless with the current DA language regarding the access.

Following the August 24th hearing, the Applicant obtained legal counsel regarding their proposal as well as potential alternatives. On September 16, 2021, the City received a [letter from Kronberg Law](#), a land use legal firm, dated August 27, 2021, outlining the existing conditions, the requested changes proposed for the August 24th hearing, and other potential remedies for the subject access easement issue.

In response to this legal determination, the Applicant is now proposing to move the easement from its existing location along the south boundary to overlay the proposed new public street approved with the Horse Meadows Preliminary Plat. This proposal is in lieu of the original proposed changes to the site plan and the DA and Staff supports this alternative based on review of the information provided within the letter from Kronberg Law.

~~The Applicant is proposing to amend the DA provision in question and add additional provisions to ensure the existing travel lane is maintained for the easement holder while providing assurances for the City to restrict access to only this easement holder, emergency services, and public works. Staff has included the Applicant's desired language in Exhibit V.A and has made recommended changes to their requested language in the same exhibit below.~~

~~The concept plan and preliminary plat in the existing DA depicts a portion of Quarterhorse Lane area as a public road for the benefit of the subdivision and the remaining portion closest to Black Cat as green space containing utilities and a pedestrian access to Black Cat. See Exhibit B for the existing concept plan. As part of this DA Modification and request to amend the provisions, the concept plan for the green space area abutting Black Cat must also be revised to show the travel lane remaining. In addition, to restrict access to/from Black Cat, the Applicant is proposing to install a gate approximately 100 feet into the site from the edge of pavement that will be accessed only by the City and the remaining easement holder.~~

~~*In summary, staff finds the requested changes to the concept plan are feasible under the latest circumstances and finds the proposal to gate the access to Black Cat and keep the traffic of one rural residential home through this access is appropriate. Therefore, Staff recommends approval of the modifications as requested including additional changes as noted below.*~~

IV. DECISION

A. Staff:

Staff recommends approval of the modification to the draft DA of Horse Meadows Subdivision (H-2020-0060) as recommended by Staff's analysis above and with the specific changes below.;

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~~generally consistent with the Applicant's requested language.~~

- B. The Meridian City Council heard these items on September 28, 2021. At the public hearing, the Council moved to approve the subject Development Agreement Modification request.
1. Summary of the City Council public hearing:
 - a. In favor: Penelope Constantikes, Applicant Representative
 - b. In opposition: None
 - c. Commenting: Penelope Constantikes
 - d. Written testimony: None
 - e. Staff presenting application: Joseph Dodson, Associate Planner
 - f. Other Staff commenting on application: Bill Nary, City Attorney
 2. Key issue(s) of public testimony:
 - a. Mr. Morgan, servient site neighbor – spoke about desire to change access to the proposed location with approved plat.
 3. Key issue(s) of discussion by City Council:
 - a. Can access be changed without consent of all easement holders;
 - b. Would including a gate put the City in any legal jeopardy;
 - c. Following Council continuance and legal interpretation from Kronberg Law, does Staff have concerns with proposal to move access easement.

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V. EXHIBITS

A. Development Agreement provisions from approved Draft DA (H-2020-0060):

1. Existing Provisions:

5. CONDITIONS GOVERNING DEVELOPMENT OF SUBJECT PROPERTY:

5.1. Owners/ Developer shall develop the Property in accordance with the following special conditions:

- a. Future development of this site shall be generally consistent with the submitted and revised plans and conceptual building elevations for the detached single-family dwellings included in Section VII of the Staff Report attached to the Findings of Fact and Conclusions of Law attached hereto as exhibit "B". and the provisions contained herein.
- b. The Applicant shall comply with the ordinances in effect at the time of application submittal.
- c. Direct lot access to N. Black Cat Road and W. Pine Avenue is prohibited.
- d. Upon approval of the preliminary plat and rezone, the Applicant shall relinquish their rights to use the ingress-egress easement along the south boundary known as W. Quarterhorse Lane.
- e. A final plat application shall not be submitted until the Applicant receives approval and provides documentation from all easement holders (Parcels S1210325555, S1210325800, & S1210325710) to relinquish their rights to the existing access easement once the public road connection to Pine Avenue is constructed.

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2. Staff's Recommended Changes:

5.1.a – 5.1.c: No recommended changes.

5.1d – ~~Upon approval of the preliminary plat and rezone~~ With final plat application submittal, the Applicant shall relinquish their rights to use the ingress-egress easement on the subject site along the south boundary known as W. Quarterhorse Lane.

5.1e – ~~A final plat application shall not be submitted~~ Prior to signature on the Final Plat, until the Applicant shall demonstrate that the existing easement that provides access to parcels receives approval and provides documentation from all easement holders (Parcels S1210325555, S1210325800, & S1210325710 has been extinguished or relocated to the City's satisfaction.) ~~to relinquish their rights to the existing access easement once the public road connection to Pine Avenue is constructed."~~

5.1.d: ~~"Upon approval of the preliminary plat and rezone, The Applicant has signed the Easement Modification Agreement relinquishing their rights to W. Quarterhorse Lane and, upon final plat approval, the Applicant shall relinquish their rights~~ cease ~~to use the ingress-egress easement along the south boundary known as W. Quarterhorse Lane.~~

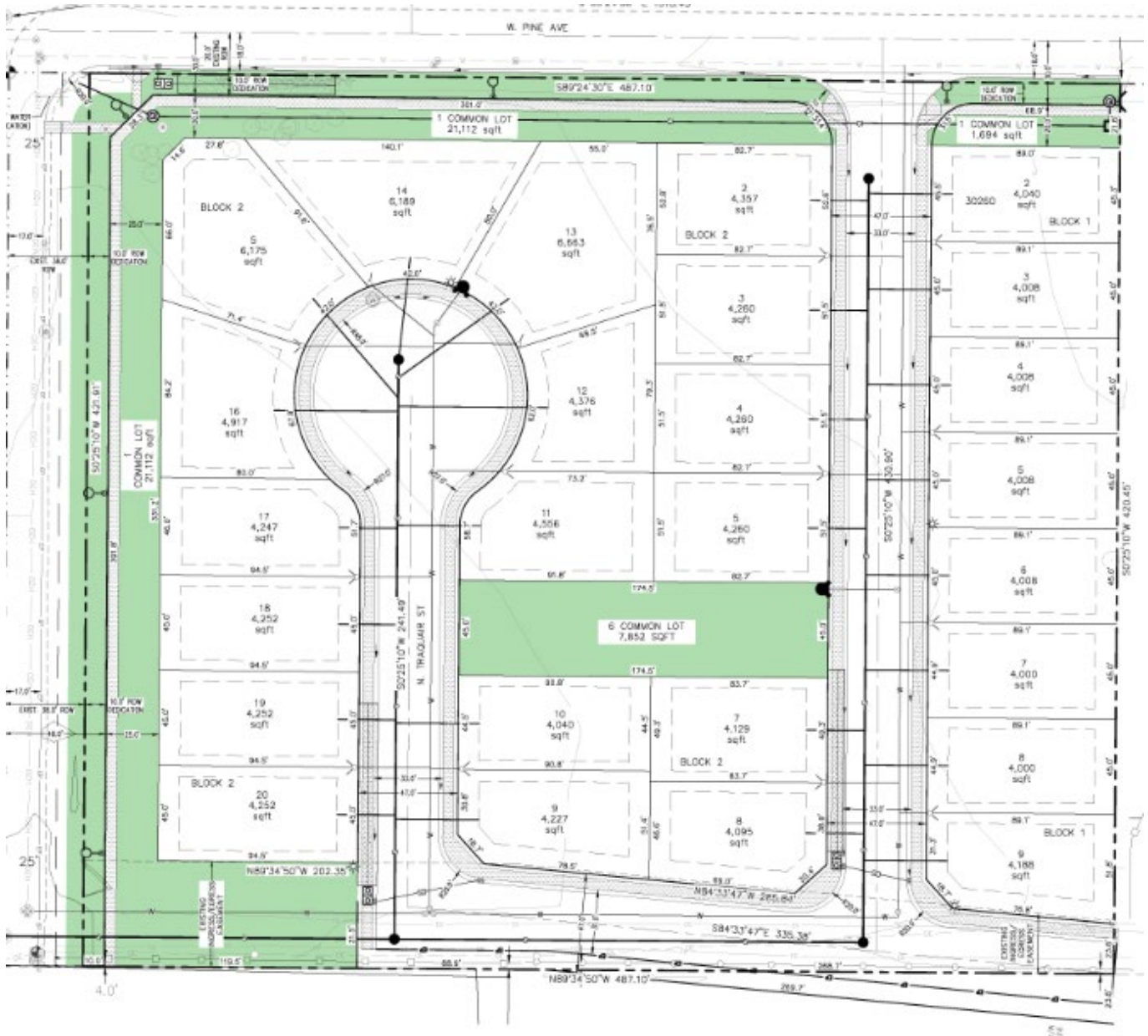
5.1.e: ~~"A final plat application shall not be submitted until the Applicant receives approval and provides Easement Modification Agreement documentation from all easement holders of (Parcels S1210325555, S1210325800, & S1210325710) to that relinquishes their rights to the existing access easement once the public road connection to Pine Avenue is constructed."~~

Add Provision: ~~"The owner of Parcel S1210325800 wishes to retain ingress and egress access to Black Cat Road via the remainder 20-foot wide travel lane of the access easement area known as W. Quarterhorse Lane where it traverses Lot 1, Block 1 of the Horse Meadows preliminary plat, a common lot. The remaining 30 feet of the easement area will include sewer and water mains to serve Horse Meadows Subdivision and a pedestrian access to Black Cat Road. The 20-foot wide travel lane will also serve as access for the City of Meridian Public Works for maintenance and repair of the sewer and water mains and for emergency access."~~

Add provision: ~~"To restrict access to the travel lane for the exclusive ingress and egress use of Parcel S1210325800, life and safety emergency vehicles, and City of Meridian Public Works access for maintenance and repair of the sewer and water mains, and provide vehicle stacking, a gate shall be installed approximately 100 feet from the edge of pavement of Black Cat Road; relevant parties, including parcel S1210325800, will be provided with a key to utilize the gate."~~

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B. Existing DA Concept Plan/Approved Preliminary Plat:



C. Revised Plan — area in question: