



## Before the City of Buckley Hearing Examiner

**DECISION DATE:** October 3, 2011

File No.: LP 2011-01 Amendment

PLAT/PROJECT NAME: Van Sickle Landing

APPLICANT/ LANDOWNER: Elkhorn, LLC, Investco Financial Corporation  
1302 Puyallup Street, Sumner WA 98390

TYPE OF REQUEST: Preliminary Plat Amendment

**DECISION SUMMARY:** **Approved subject to Conditions**

### **BASIC INFORMATION**

**GENERAL LOCATION:** The subject property is located at or near 1560 Ryan Road, Buckley, Washington. The legal description is: A portion of the W. ¼ of the S.W. ¼ of the S.W. ¼ of Section 2, Township 19 N., Range 6 E., W.M. City of Buckley, Pierce County, Washington.

**ACREAGE:** 60.47 acres

**NUMBER OF LOTS:** The proposal is to change the approved preliminary plat from 260 residential lots (single family, cottage and future townhomes) to 177 single family residential lots with 10 tracts (including open space, an easement for a pedestrian trail, critical areas and stormwater tracts).

**LOT SIZE:** 11,815 square feet to 6,000 square feet; Average Lot: 6,518 s.f.

**ZONING:** R-6,000

**UTILITIES:** Water, Sewer, Gas, Fire: City of Buckley  
Electrical Power: Puget Sound Energy

**SCHOOL DISTRICT:** White River School District #416

**STAFF RECOMMENDATION:** *Approve, Subject to Conditions*

Based on all of the evidence in the record and being fully informed in the proceedings, the Hearing Examiner hereby enters the following Findings of Fact and Conclusions of Law as proven by a preponderance of the evidence:

### **FINDINGS OF FACT**

1. **The Record.** The official record for this proceeding consists of the Exhibits entered into evidence at the open record hearing (Exhibits 1 through 26), as well as the testimony of witnesses received at the open record hearing. The record in this proceeding was closed on September 21, 2010 at the end of the open record hearing. The entire record was considered by the Examiner in reaching the decision herein.
2. **Parties of Record.** The Parties of Record are set forth in the Parties of Record Register and include citizens and interested parties who testified at the open record hearing, along with parties that sent in written comments to the City on or before the close of the record on issues relating to the project.
3. **Hearing Examiner Process.** The Hearing Examiner held the rescheduled open record hearing on September 21, 2010, beginning at City Hall in the Multi-Purpose Room. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. In attendance at the hearing for the City was Planning Director and City Administrator, Dave Schmidt and Dominick Miller, City Engineer. For the Applicant, Lisa Klein and Matt Weber appeared and testified. In addition, several members of the public appeared and testified including Marvin Sundstrom, Cindy Maas and Gary Burley, as shown on the City of Buckley's Parties of Record Roster. An electronic recording of this hearing is available through the City Clerk, is part of the record in this matter, and is incorporated herein by this reference as if set forth in full.
4. **Determination of Completeness and Vesting.** The Applicant submitted a Master Land Use Application (Exhibit 2) on May 12, 2011. The application was determined to be complete for purposes of vesting on June 7, 2011. The City's determination of the date of completeness was made as required by BMC 20.01.030.
5. **Site Description.** The Van Sickle Landing site (hereinafter "the site" or "subject property") is located on the north side of Ryan Road approximately one-half mile east of Spiketon Road at or near address 1560 Ryan Road within Quarters 33 & 44, Section 02, Township 19, Range 6, W.M., Buckley, Washington. Together, the properties consist of approximately 60.47 acres, of which 36.47 acres is primarily undeveloped pasture and 24 acres of forested habitat that contains approximately 11.85 acres of Category III and IV forested wetlands. The site is relatively flat and is comprised of 60% pasture land and 40% forested land, with a series of fourteen Category III and IV wetlands located in the northwest corner of the property, which is interspersed with upland areas. The property is bounded to the north by single-family residences at urban densities. To the east, the site is bounded by large undeveloped tracts of pasture land. At its western edge, the property is adjacent to an undeveloped City property purchased for a park, and to the southwest, by a church. Across the street from the site's southern boundary at Ryan Road, there are two single-family residences at rural densities, surrounded by large undeveloped tracts of pasture land.
6. **Summary of the Proposed Amendments to the Approved Preliminary Subdivision.** Elkhorn, LLC, a company of Investco Financial Corporation (hereinafter "the Applicant") proposes to change its

approved preliminary plat and subdivide 60.47 acres of property into a maximum of 177 single family residences and 10 tracts to support the development. Specifically, the proposed amendment to the preliminary plat of Van Sickle Landing proposes the following changes from the original approved design:

A. Reduction in number of lots/dwelling units: the original plat of Van Sickle Landing was approved for a total of 260 dwelling units, including 36 cottage housing lots, 113 single-family lots, and two future development tracts planned for 111 townhome units. The plat amendment proposes reducing this total number to 177 dwelling units, all of which would be single-family residences. Though the Comprehensive Plan contains language encourages development of higher-density and alternative forms of housing (i.e. townhomes and cottage units), there is no requirement for inclusion of these types of units in a residential development such as this. The proposed single-family lots all meet the minimum size and configuration standards in the zoning code.

B. Revised street design: the proposed amendment would change the street design to a predominately grid pattern. The Buckley Comprehensive Plan identifies Jefferson and Couls Avenues extending in an East/West alignment through the project site. Jefferson Avenue was proposed not to be extended in the original plat design because of impacts to wetlands and buffers. This remains the case under the proposed amendment. Rather than curving to the north to connect with Sergeant Street, Couls Avenue will be extended across almost the entirety of the project site, to the east property boundary and within 125 feet of the west property boundary. This is consistent with the Future Streets Map in the Comprehensive Plan. In addition, it shows that Spruce Street and Sergeant Street will be constructed in a North/South alignment through the plat, connecting to existing streets on the north and to Ryan Road on the south. There will be two cul-de-sacs remaining within the plat, at the end of roads "B" and "D" as shown on the plat map.

Under the City regulations (BMC 18.20.010), cul-de-sacs are only allowed where adjoining land is restrictive (i.e. steep slopes, wetlands), or where connection to the existing grid system is otherwise illogical. The two remaining cul-de-sacs in the proposed street design meet these criteria as extending them to connect to the grid system would conflict with the city's minimum standards for separation between intersections. However, due to the lack of connectivity of Road "B" to a North/South connecting street to the west, there would be an unacceptably long distance for pedestrians to travel to reach Ryan Road. To address that issue, City staff recommended the creation of a pedestrian walkway adjacent to open space/storm tract "D" between lots 8 and 9. This walkway will be paved, and provide an alternate access to Ryan Road.

C. Reduction in wetland impacts: The proposed amendment eliminates wetland impacts by eliminating wetland fill that was proposed under the original design, limiting impacts to the wetland buffer areas. Under the plat amendment, 42,449 square feet of lost wetland buffer will be replaced by 43,169 square feet of new buffer. The proponent's representative has submitted a letter prepared by a Natural Resources Ecologist, which describes the revised design leading to the elimination of wetland fill and wetland buffer mitigation. (Exhibit 8) Proposed lot 164 appears to include a portion of the wetland buffer within the lot boundaries (See Sheet C.2.1). Although this is permitted by BMC 12.09.050(2), staff recommended this amendment be conditioned to require the final plat show a correction to the boundaries of lot 164, placing the wetland buffer outside of the lot. At the public hearing, the Applicant demonstrated that the lot is

allowed as shown pursuant to BMC 12.09.050, and staff conceded that proposed Condition F.15 could be eliminated. (Exhibit 26).

Pursuant to the "Elkhorn Development Critical Areas Report" prepared by Watershed Dynamics on December 10, 2007 the site contains a total of fourteen individual Category III & IV wetlands totaling 11.85 acres. Three (3) of the wetlands are rated as Category III and the remaining eleven (11) were rated as Category IV. According to the Report, the wetlands do not have high habitat functions and are essentially isolated from areas with significant habitat value. These wetlands and their buffers are proposed to be protected within Open Space Tract E. The wetland buffer mitigation plan for the amendment is a revision of the original mitigation plan, and is likewise based on the original 2007 Critical Areas Report. Clearing, grading and fill of the site is proposed to be in accordance with the "Preliminary Geotechnical Report", prepared by ABPB Consulting, October, 2005, and the City's Development Guidelines and Public Works Standards.

**D. Stormwater management:** The original design proposed using Low Impact Development (LID) measures for reduction of stormwater flows from new roadways. The proposed amendment would revert to City standards for stormwater management and roadway cross-section. The City Engineer has indicated all items in the original letter of comment dated 6/9/11 have been addressed (see memo from D. Miller dated 7/26/11). Development of the subdivision has vested to the 1992 Department of Ecology Stormwater Manual standards. The City Engineer has requested that the amendment be conditioned to comply with requirements 1-10 in BMC 14.30.01; these are the 11 minimum requirements for stormwater management for all new development. In addition, he recommends that a geotechnical engineer be on site during filling and grading activities, to ensure that geotechnical recommendations are followed.

There are no other changes proposed to the approved design, utility requirements and roadway improvements. Transportation infrastructure within the proposed plat and the Ryan Road frontage is planned to meet current City of Buckley Development Guidelines and Public Works Standards that include but shall not be limited to roadway construction, full curb & gutter, sidewalks, planter strips, bicycle lanes, street lighting, signage, pavement marking, stormwater drainage and landscaping.

**E. Utilities.** Utilities proposed to serve the development consist of the City of Buckley public sewer, public water, natural gas and stormwater conveyance. The applicant proposes to extend utility infrastructure from existing termination points to provide service to the development. Extension/construction of the utilities shall comply with the City of Buckley Development Guidelines and Public Works Standards. Power shall be provided by Puget Sound Energy (PSE) and telephone by Qwest. Stormwater drainage of the entire site is proposed in accordance and in conformity to the "Preliminary Technical Information Report", prepared by AHBL in May, 2011, and the City's Stormwater Regulations BMC 14.30 thru 14.40.

**F. Elimination of interpretive pedestrian trail.** As part of this amendment, the construction of an interpretive trail originally proposed by the applicant for the preliminary plat would be eliminated. The applicant proposes instead to provide an easement to the City providing the City with the right to design, permit and construct the trail at a future time. The easement would provide a future connection from within the plat to the City's planned Miller Park.

7. **Application Notice.** Notice of the Application was issued by the City on June 9, 2011. (Exhibit 10, 18, 20) The notice was published on June 22, 2011 with a two-week public comment period ending on July 7, 2011.

8. Public Hearing Notice. Notice of the public hearing originally scheduled for August 30, 2011 was sent via first class mail to residents within 300 feet of the site. Notice was also published in the City's official newspaper, the Enumclaw Courier Herald. (See Exhibits 21 and 22) On the date of the hearing, the hearing examiner was ill and unable to appear. City staff posted notice of the continuance of the hearing to September 21, 2011 at the City's Multi-Purpose Room. The hearing was held on September 21, 2011 at approximately 7:00 p.m.
9. Environmental Review under SEPA. According to the State Environmental Policy Act (SEPA) and Chapter 12.04 BMC, the Applicant is required to complete a SEPA Checklist to identify any significant adverse environmental impacts of the proposed development. On May 12, 2011, the Applicant submitted an updated SEPA Checklist dated May 10, 2011. (Exhibit 5) A Notice of Adoption of Existing Environmental Document was published by the City on June 22, 2011. (Exhibit 19) The Notice adopted the Mitigated Determination of Non-Significance (MDNS) issued for the Preliminary Plat. As the SEPA responsible official, the Planning Director imposed certain conditions to mitigate significant adverse environmental impacts that are anticipated as a direct result of the development proposal. The mitigation requirements are set forth in Exhibit 22 of the original record for the Van Sickle Landing Preliminary Plat, and entitled, "SEPA Notice: Mitigated Determination of Non-Significance (MDNS)," issued on March 4, 2009. Exhibit 22 from File No. LP 2008-01 "Van Sickle Landing Preliminary Subdivision Approval" is hereby adopted and incorporated herein by this reference as set forth in full. An MDNS is authorized by BMC 12.04.110. There was no public comment period. The appeal period for the Notice ended on July 6, 2011. No appeals were received. Accordingly, the hearing examiner finds that the requirements of SEPA have been met.
10. Criteria for Approval of Subdivisions – Chapter 18.20 BMC. Each subdivision application shall be reviewed for conformity with the standards and policies set forth in Chapter 18.20 BMC, including: the City's Comprehensive Plan; Buckley Municipal Code; public health, safety and welfare; public facility area exclusivity; dedication of new right-of-way; cemetery area; public areas; conformance to zoning regulations; subdivision of inadequate land; roads; lots; public spaces; street lighting; and tree planting. In addition, plat alterations (amendments) are subject to BMC 18.33.010, "Plat alterations and vacations." It provides: "The alteration or vacation of any subdivision, as well as the alteration or vacation of any short subdivision that involves a public dedication, shall be subject to the requirements of RCW 58.17.212 and 58.17.215, as now or hereafter amended."

RCW 58.17.212 applies to plat vacations and is inapplicable here. RCW 58.17.215 provides that "Upon receipt of an application for alteration, the legislative body shall provide notice of the application to all owners of property within the subdivision, and as provided for in RCW 58.17.080 and 58.17.090. The notice shall either establish a date for a public hearing or provide that a hearing may be requested by a person receiving notice within fourteen days of receipt of the notice." Under Buckley Municipal Code, the application is being reviewed in accordance with the procedures established for Type C-2 applications, which require a pre-decision hearing by the City's Hearing Examiner, followed by a final decision. The procedures for Type C-2 applications are described in Chapter 20.01 BMC, "Administration of Land Use and Zoning Applications and Development Regulations."

11. Consistency with the City's GMA Comprehensive Plan The subject property is zoned R-6,000 and is located within an Urban Growth Area (UGA). Land in this category may be developed at a density of 1 dwelling unit per 6,000 square feet, with certain exceptions (such as for cottage

housing). The original decision in this matter analyzed and found that the proposed development was consistent with the City's Comprehensive Plan.<sup>1</sup> In the current record, the Staff Report (Exhibit 23 at pp. 5-6) analyzes the proposed plat amendment's consistency with the Comprehensive Plan in light of the proposed changes to the approved plat. Based on the entire record and a review of the City's Comprehensive Plan and staff analysis, the Hearing Examiner finds that the proposed amendment to the Van Sickle Landing preliminary plat as conditioned by the MDNS and additional conditions is consistent with the Goals and Policies of the City of Buckley's Comprehensive Plan.

12. Compliance with the Subdivision Code. As noted above, the subdivision must be consistent with the City's Subdivision standards and policies set forth in Chapter 18.20 BMC. The Hearing Examiner will review each requirement in turn.

A. Conformance to the Comprehensive Plan as to Streets – BMC 18.20.010. As noted in Paragraph 12(i) below, the proposed subdivision has proposed a grid system street layout that is consistent with the City's adopted Comprehensive Plan. The discussion set forth in that Section is incorporated herein by this reference as if set forth in full. Accordingly, the Hearing Examiner finds that the subdivision proposal conforms to the requirements of the Comprehensive Plan and meets the requirements of BMC 18.20.010.

B. Public health, safety, convenience, general welfare and quality of life are to be protected – BMC 18.20.020. The plat amendment proposes to subdivide the 60.47 acres of Pierce County tax parcels #0619038002, #0619023005 into a maximum of 177 residential units to support the development of single family homes. The property is located on the north side of Ryan Road approximately one-half mile east of Spiketon Road at or near address 1560 Ryan Road and is within the City's R-6000 Residential Zone. In addition, the application proposes to create ten (10) other tracts consisting of: two (2) open space tracts totaling 19.73 acres, three (3) open space/stormwater detention tracts totaling .28 acres, four (4) stormwater detention tracts totaling 3.1 acres, and one (1) active/passive recreation tract totaling .09 acres.

Through adherence to adopted regulations and conditions of approval, implementation of the project will result in the installation of adequate roadway(s), with related improvements consisting of vertical curb, gutter, sidewalks, street lighting, planter strips with street trees, signage, pavement markings, bicycle lanes and all related utility extensions necessary to serve the development, including the construction of an approved stormwater drainage system that maintains off-site surface runoff to predevelopment conditions. No wetlands will be impacted as a result of the plat amendment and critical areas will be permanently protected. Mitigation for impacts to wetland buffers will be provided.

Installation of frontage improvements that include sidewalks along Ryan Road will complete missing pedestrian links that are desired by the City. The Applicant's payment of their proportionate share of impact fees related to parks and recreation, schools and traffic will minimize and mitigate potential adverse impacts and aid in the development of the City's future capital projects. Installation and/or upgrade of the proposed sewer, water, stormwater and natural gas system facilities "as conditioned" will provide adequate service and fire flows to the development and the replacement of the water main along Ryan Road will contribute to future service and structural viability of the existing water system.

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<sup>1</sup> That analysis, set forth in File No. LP 2008-01, "Van Sickle Landing Request for Preliminary Subdivision Approval," is adopted and incorporated herein by this reference as if set forth in full. (See, Exhibit 58 at pp. 3-23 in File No. LP 2008-01).

In conformance with the Comprehensive Plan, the application proposes to develop with a variety of housing lot sizes from medium (6,000 square feet) to large lots (11,815 square feet) providing a moderate mix of housing stock that benefits the community and provides varying degrees of affordability. Accordingly, the Hearing Examiner finds that the plat amendment provides for the public health, safety and welfare, and quality of life for the citizens of Buckley.

- C. Future Public Facilities – BMC 18.20.030. BMC 18.20.030 provides that land proposed to be subdivided shall not be a part of, nor encroach upon, any area designated in the comprehensive plan for future public facilities. Pierce County tax parcels #0619038002, #0619023005 has not been designated or identified by the City for future public facilities. In addition, the subject property is not adjacent to areas identified by the City for future public facilities, except for the area identified as the “Miller” property which the City currently owns and has designated it for a future active park and recreation facility.

The applicant is proposing to eliminate the construction a new interpretive trail through Open Space Tract E to connect to this future public facility. The justification for this change is set forth in Exhibit 25, a letter dated September 21, 2011 prepared for the Hearing Examiner by the Applicant. In Option 1 set forth in Exhibit 25, the applicant proposes instead to provide an easement to the City providing the City with the right to design, permit and construct the trail at a future time. The easement would provide a future connection from within the plat to the City's planned Miller Park. Accordingly, the Hearing Examiner finds that the subdivision complies with BMC 18.20.030, with the acceptance of the easement for the construction of a future interpretive trail connecting to Miller Park.

- D. Dedication of New Right-of-Way – BMC 18.20.040. BMC 18.20.040 provides that where the comprehensive plan or the city's official road plan indicates the necessity of new right-of-way of a required width or a portion thereof for street purposes whether within a new plat or new subdivision, or along the boundaries of a new plat, new subdivision or new lot, such required right-of-way or portion thereof shall be dedicated to the City by the filing of a plat. In addition to right-of-way dedication and acceptance by the City Council, the streets shall be developed as per City street standards. The Van Sickle Landing development proposal will require significant infrastructure improvements and utility extensions to serve the new residential units.

The City's future street plan located in Chapter 5, Figure 9 of the Comprehensive Plan Transportation Element identifies four (4) future streets through this parcel. On the north/south grid Spruce Street is designated as local access street and is to extend from Ryan Road north to Mason Avenue. Sergeant Street is designated as a collector street and is to connect in a similar manner. On the east/west grid both Couls Street and Jefferson Street which are designated local access streets are to extend from the west boundary of the property to the east boundary where they are to terminate in a manner that would allow future extensions. Due to the existence of wetlands and the remote possibility of future extensions to the west, both Couls Street and Jefferson Street are proposed to terminate in a cul-de-sac near Lot 171 on the west side of the plat just short of the critical area boundary, where impacts will be minimized. These new public streets, roads and alleys will be dedicated to the City on the face of the plat map. Accordingly, the Hearing Examiner finds that the development, as currently proposed, meets Section 4.06 of the City's Street Standards for dedication of new right-of-way and BMC 18.20.040.

- E. Cemetery Areas – BMC 18.20.050. The Hearing Examiner finds that the provisions of BMC 18.20.050 relating to cemetery areas are not applicable to the proposed development because the subject parcels are not being proposed as a cemetery, nor are they located in proximity to one.
- F. Public Areas may be Required on Plats BMC 18.20.060 This provision of the Municipal Code provides that the Applicant may place restrictive covenants on the face of the plat so long as they are not contrary to existing regulations. The preliminary plat application identifies that ten (10) individual tracts consisting of two (2) open space tracts totaling 19.73 acres, three (3) open space/stormwater detention tracts totaling .28 acres, four (4) stormwater detention tracts totaling 3.1 acres, and one (1) active/passive recreation tract totaling .09 acres, will be created through development of this subdivision. Ownership of these tracts is to remain under common ownership of the homeowner's association. The Hearing Examiner finds that notes and/or language should be affixed to the plat map indicating ownership of these tracts and any other restrictive covenants desired by the Applicant to the extent they are consistent with the provisions of BMC 18.20.060.
- G. Conformance with Zoning Regulations – BMC 18.20.070. BMC 18.20.070 provides that "no final plat of land under force and effect of existing zoning regulations shall be approved unless it is in conformance with zoning regulations adopted by the city at the time of plat application. Whenever there is a discrepancy between minimum standards of dimensions noted in this title and those contained in zoning regulations, building codes or other official regulations, the highest standard shall apply." The Van Sickle Landing plat amendment application proposes to subdivide the 60.47 acres of Pierce County tax parcels #0619038002, #0619023005 into a maximum of 177 residential units to support the development of single family homes. The subject property is within the City's R-6000 Residential Zone.

The R-6,000 Zone is governed by four standards: (1) the general requirements of BMC 19.20.010; (2) the performance standards of BMC 19.20.020; (3) the City's Use Matrix, set forth in BMC 19.20.130; and (4) the City's bulk requirements, set forth in Chapter 19.22 BMC. In the R-6,000 zone, BMC 19.20.020 requires that the lot area of each single family residence shall be at least 6,000 square feet, except for cottage housing, which no longer applies to this development. Building setbacks for the R-6,000 zone are generally:

- 15-foot front yard
- 22-foot yard-to-the-garage
- 15-foot street side yard (on corner lots)
- 8-foot side yard on all others lots
- 15-foot rear yard

Flag lots are permitted subject to Chapter 19.22 BMC. Lot coverage of primary dwelling units shall be 35 percent, while the maximum lot coverage of all structures cannot exceed 45 percent. The maximum of all impervious coverage, including sidewalks and driveways, shall be 60 percent. (See, BMC 19.20.020(2)(a)(ii)) The Hearing Examiner has reviewed the proposed lot configuration for the plat as it relates to the zoning requirements set forth in Chapters 19.20, 19.22, and 19.24 BMC. The application proposes to create 177 single-family lots. Lot sizes vary from 6,000 to 11,815 square feet. Staff has reviewed the lot layouts for conformity with the performance standards of BMC 19.20.020 and confirmed that all lots are in conformance with the exception of the lots fronting along Ryan Road and Road B (lots 71-22, 22-30 and 84-87). The layout of those lots based on the street grid system result in

"double-frontage lots," which are discouraged, but not prohibited, in the City's regulations. (BMC 18.20.120) The Hearing Examiner finds that the layout is the logical result of the street system design and largely unavoidable. Any negative effects encountered by future homeowners of those lots can be mitigated by fencing along the backyard portion of the lots fronting Ryan road.

- H. Subdivision of Inadequate Land – BMC 18.20.080. According to the Municipal Code, land which the City Council has found to be unsuitable for subdivision due to flooding, bad drainage, steep slopes, rock formations, or other features likely to impact the safety, welfare and the general health of future residents, and which the city council considers inappropriate for subdivision, shall not be subdivided unless adequate corrective steps are formulated by the developer and approved by the city council and the city engineer. BMC 18.20.080

The Van Sickle Landing subdivision site is relatively flat and is comprised of 60% pasture land and 40% forested land, with 14 Category III and IV wetlands located in the northwest corner of the property, which are interspersed with upland areas. The new design proposes to permanently protect all of the wetlands on the site and will only impact a portion of a wetland buffer for road and stormwater construction (for which mitigation will be provided).

There is a high water table in the area during the Winter and Spring months. The plat is located with a Zone "C" flood zone. This zone is characterized by shallow flooding during the 100-year flood event. The site is proposed to be filled to a depth averaging approximately four feet above existing grade. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned and modified, the plat will meet all design standards for roads.

The Hearing Examiner finds that based on a review of the entire record, and the provisions made to protect wetlands, provide for stormwater detention and other features as set forth in the "Preliminary Technical Information Report", prepared by AHBL in May 12, 2011, Wetland Buffer Mitigation Plan and the City's Stormwater Regulations BMC 14.30 thru 14.40, that the site is not "inadequate land" within the meaning of BMC 18.20.080. (Exhibits 7, 8, 9)

- I. Roads – BMC 18.20.110. The City's Subdivision Code requires streets and roads to be designed in conformance with the City's adopted GMA Comprehensive Plan. Where a proposed street and/or lot pattern for any district in the city has been made by the City Council, the street layout of any new plan submitted shall be in general conformance to said pattern or plan. Otherwise, proposed streets in new subdivisions shall conform to the comprehensive plan as adopted, or to the existing pattern of roads in the city. (See, BMC 18.20.010) In addition, BMC 18.20.110 provides additional criteria that must be met in designing the roads for a particular subdivision. Those criteria include:

(1) The arrangement, character, extent, width, grade and location of all roads shall conform with the comprehensive plan and shall be considered in their relation to existing and planned roads, to topographic conditions, to public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such roads.

(2) Cul-de-sacs are only allowed where adjoining land is restrictive (steep slopes, wetlands, etc.), or where connection to the existing grid system is otherwise illogical in accordance with determination from the planning commission. When cul-de-sacs are permitted, the cul-de-sac shall have a pedestrian pathway to provide pedestrian access to

public parks, trails, open spaces and/or recreation facilities when the topography, etc., permits and there are existing or proposed facilities to access.

(3) Alleys. Where the City deems it necessary due to smaller lots, narrower streets, limited access and restricted on-street parking, alleyways may be required within a subdivision in order to direct driveways and driveway ingress/egress away from residential street frontage.

Finally, the proposed subdivision must be consistent with the City's adopted Development Guidelines and Public Works Standards (latest edition February 26, 2008). In particular, Section 4 sets forth the City's Street Standards. Section 4.01 provides that "the overall goal of this chapter is to encourage the uniform development of an integrated, fully accessible public transportation system that will facilitate present and future travel demand with minimal environmental impact to the community as a whole." (Street Standards at 4.01(A)) The Hearing Examiner will consider each of these policies, regulations and standards in turn.

I.1. New Transportation Infrastructure for the Subdivision. The application proposes to construct four (4) new streets. Public access roads are designed to meet emergency vehicle access standards (EVA). New streets have been configured to meet either a general grid design. According to BMC 18.20.010 and 18.20.110, the new transportation infrastructure must be consistent with the City's Transportation Goals and Policies set forth in the Comprehensive Plan and the general design standards described in BMC 18.20.110. The Hearing Examiner will examine each of these requirements separately below.

(A) Consistency with the Comprehensive Plan Transportation Goals and Policies. The City's Comprehensive Plan includes transportation goals and policies, which are used to guide the review of subdivisions under the City's adopted design standards, regulation and when imposing conditions to mitigate significant adverse environmental impacts under SEPA. In particular, the City has included three Goals in the Comprehensive Plan that are relevant to this development proposal. First, Goal 1.7 states that the City's transportation systems should "enhance the appearance, quality and function of residential and commercial districts, provide connectivity between adjacent developments and ensure safe and easy multi-modal access to goods and services." To effectuate this Goal, the City has included Policies 1.7.1, 1.7.2, 6.1.2, 6.1.3, 6.1.4, 6.2.2, 6.2.4, 6.2.5, 6.2.6, 6.2.7, 6.2.8, and 6.2.9. Second, Goal 6.3 states that the City should "minimize negative transportation impacts to the environment." To effectuate this Goal, the City has included Policy 6.3.3 which requires "new roads to be routed to avoid transversing natural preserves, parks and recreation areas, significant historical and cultural resources, and areas identified as critical wildlife habitat." Finally, Goal 6.4 states that "transportation systems should enhance the appearance, quality and function of residential and commercial districts." To effectuate this Goal, the City has included Policies 6.4.3, 6.4.4, and 6.5.5.

Development of the Van Sickle Landing site will require significant infrastructure improvement and utility extensions to serve the new residential units. The application proposes to construct four new streets and extension of four others. Based on an analysis of the Comprehensive Plan and the preliminary subdivision proposal, the Hearing Examiner finds that the street layout and transportation design is consistent with the Comprehensive Plan.

(B) Compliance with BMC 18.20.110. With the inclusion of certain mitigating conditions required by the City's Engineer, the Transportation infrastructure within the proposed plat and the Ryan Road frontage is planned to meet current City of Buckley Development Guidelines and Public Works Standards that include, but are not limited to, roadway construction, full curb & gutter, sidewalks, planter strips, bicycle lanes, street lighting, signage, pavement marking, stormwater drainage and landscaping. In particular, the City Engineer has determined that the following conditions should be imposed related to utility construction, right-of-way and landscape responsibilities, traffic analysis data, performance bonding and final plat phasing to meet the requirements of BMC 18.20.110:

*D. Streets*

- 1. All proposed private accesses and public roadways shall be required to comply with City emergency access requirements.*
- 2. The applicant shall provide half street improvements from the centerline of the existing roadway to the northern right-of-way line to Ryan Road along property frontage consistent with the City of Buckley "Development Guidelines and Public Works Standards," and may include but shall not be limited to pavement widening (from centerline of existing roadway to right-of-way line), meandering sidewalk, curb and gutter, planter strip, landscaping, storm water drainage and street lighting.*
- 3. The right-of-way of the proposed interior plat public roads and alley shall be dedicated to the City upon recording of the Final Plat.*
- 4. All roadway improvements shall be designed and constructed per AASHTO standards and in accordance with the City of Buckley "Development Guidelines and Public Works Standards" adopted by Ordinance 20-95, July, 1995, and amended February 26, 2008, which includes the allowance of low impact development techniques for certain road features and adjacent areas. Beyond such identified features, if the City adopts a modified road section consistent with the modified LID road section proposed on the preliminary plat, the modified road section shall be an allowed optional design.*
- 5. Street lighting shall be required and located at all street intersections and at approximately 150' intervals per Puget Sound Energy Standards, as adopted by the City. The spacing, design and style of fixtures shall be pursuant to adopted City Standard.*
- 6. The design standards, including but not limited to geometry, features, materials, signage, and channelization, for roundabouts or neighborhood traffic circles shall comply with applicable current AASHTO and MUTCD standards and Publication No. FHWA-RD-00-067 "Roundabouts: An Informational Guide", dated June, 2000. The applicability of the various standards, guidelines, and recommendations to the proposed plat shall be determined by the City during construction review.*
- 7. The developer shall submit a right of way and landscape maintenance agreement with the Final Plat to verify public street and landscape maintenance responsibilities.*
- 8. The applicant shall prepare a supplement to the project Traffic Impact Analysis (TIA) to evaluate warrants for traffic control at the intersection of Couls Street and Sergeant*

*Street. The evaluation shall include a future condition for the connection of Sergeant Street north to Collins Road. Intersection improvements shall be constructed pursuant to the TIA Supplement, as approved by the City during construction review.*

The Hearing Examiner finds that as submitted and conditioned through the SEPA MDNS issued March 4, 2009, and with subsequent amendments recommended by the City Engineer, and demonstrated compliance by the Applicant with the recommended conditions of approval identified herein, the preliminary plat application satisfies the review criteria of BMC 18.20.110 for Roads.

1.2 Traffic Impacts to the City's Transportation System—Street Standards Section 4.05(B). As noted above, development of the site will require significant infrastructure improvement and utility extensions to serve the new residential units. Given that the development will generate more than 25 peak hour trips per day, the Applicant was required to perform a Traffic Study to determine appropriate traffic controls and to provide mitigation for impacts on City's transportation system as required by the Buckley Municipal Code and the City's Development Guidelines and Public Works Standards. (See, Street Standards at Section 4.05(B)). The Traffic Impact Analysis (TIA) performed for the original plat in May, 2009 found that the proposed project will develop up to 262 single-family residential units which are anticipated to generate approximately 2,520 daily trips, with approximately 255 occurring during the PM peak hour. This estimate was changed in May, 2009 after the project design was changed. The approved proposal sought to develop 149 single family homes and cottage houses, along with 111 future townhomes, which was projected to generate 37 fewer PM peak hour trips (218 trips). Based on the new plat amendment proposal, the updated traffic analysis dated May 9, 2011 found that the 177-unit plat would generate approximately 1,760 daily trips, with approximately 79 fewer peak hour PM trips (139 trips) than in the approved plat. (Exhibit 6)

Currently, the intersections studied perform at the City's Level of Service (LOS) "D" Standard, except for the intersections of SR 165 with Ryan Road and South River Avenue, as well as the intersection of SR 410 where it merges with 112<sup>th</sup> Avenue East. These two intersections are projected to continue to perform poorly in the PM peak hour condition according to the Comprehensive Plan under future (2013) conditions without the proposed project. In addition, according to the future conditions projected in the Comprehensive Plan, the SR 410/112<sup>th</sup> Avenue East and River Avenue intersection with "A" Street will not meet the City's LOS D standard during PM peak hours. The City previously identified improvement projects to mitigate these traffic conditions as part of the original plat record.

The TIA from 2008 indicated that the proposed subdivision will contribute to the poor traffic conditions at the intersections of (1) SR 165/ Ryan Road/South River Avenue, (2) the SR 410/112<sup>th</sup> Avenue East merge, (3) SR 410/112<sup>th</sup> Avenue East and (4) River Avenue/"A" Street. In addition, the 2008 TIA found that the subdivision would degrade pedestrian operations from LOS D to LOS E along Ryan Road. In terms of the proposed site access, the original design of the subdivision proposed that the development take its access along Ryan Road, and found that the access points will operate at a LOS B. The access along Ryan Road was found to meet the City and AASHTO Standards for site distance. After the design revisions to the plat, the Applicant performed an update to the Traffic Impact Analysis (May 2009) and analyzed the access to the subdivision at Spruce Street. It is anticipated that with the new design, approximately 70 percent of traffic to and from the West would likely use Spruce Street to access the development. (Exhibit 54) The Applicant performed a

left-turn lane warrant analysis at the request of the City staff and determined that although the traffic counts are approaching the Washington State Department of Transportation (WSDOT) standard for providing a left-turn lane, the traffic analysis shows that those warrants are not met as a result of the proposed Van Sickle Landing subdivision. With the 2011 revisions to the plat, no new analysis was entered into the record to update the analysis set forth above. However, given that the total lot yield has been significantly reduced and the traffic information shown in Exhibit 6 shows less trips than in the original plat, the Hearing Examiner finds that it is reasonable to conclude that no additional turn-lane analysis is necessary.

In order to mitigate the impacts of the proposed development on the City's transportation system, the Applicant should be required and has agreed to pay traffic impact fees in an amount to be determined by the City at the time of building permit approval to mitigate impacts to both traffic operations and non-motorized impacts to pedestrian operations. In the December 2008 TIA, it was estimated that that the impact fee would likely be approximately \$1,088,100.00 based on the original 262-residential units. The proposed plat amendment should base the impact fee on the reduced number of 177 residential units.

Based on an analysis of the impacts of the project on the City's transportation system, and the Applicant's proposal to construct certain street improvements, comply with the requirements of the City's street and other development standards, and pay road impact fees as required by the City, the Hearing Examiner finds that the preliminary subdivision proposal is consistent with the City's Comprehensive Plan and development standards.

- J. Lot Access. BMC 18.20.120 In addition to the Zoning Code provisions set forth above, the Subdivision Code also establishes specific access standards for lots in a plat that must be met. In particular, Section 18.20.120(2) provides:

*(3) Double frontage and reverse frontage lots shall be avoided, except where essential to provide separation of residential development from traffic arterials or to overcome specific disadvantages of topography and orientation. . . .*

As noted above, the Van Sickle Landing subdivision will require significant transportation infrastructure improvements to serve the new residential units. New streets have been configured to meet either a general grid or modified grid pattern. The double-frontage lots cannot be avoided. Accordingly, lot access requirements have been met.

- K. Public Spaces (Open Space) – BMC 18.20.130. BMC 18.20.130 provides that where a proposed park, playground, school, trail or other public use shown in the adopted comprehensive plan is located in whole or in part in a subdivision, the city council may require the dedication or reservation and construction in compliance with adopted plan. Due regard shall be shown for the preservation of outstanding natural and cultural features such as scenic spots, watercourses, historic sites and other features as deemed appropriate by the City. In addition, BMC 18.20.060 provides that public areas may be required on plats. Restrictive covenants not contrary to existing regulations regarding the use of land, governing and binding all future owners of lots or tracts, may be shown on any plat.

Here, the preliminary plat application identifies ten (10) individual tracts totaling 23.11 acres which will be created through development of this application. Ownership of these tracts is to remain under common ownership of the homeowner's association. The Hearing Examiner

finds that the Applicant should be required to provide the offered public areas and separate tracts and that notes and/or language should be affixed to the plat map indicating the ownership of these tracts upon final plat approval.

In lieu of requiring the construction of a public park or open space dedication as part of the development approval process, the City has adopted park impact fees pursuant to BMC 3.50.040. Upon making application for a building permit for construction of a dwelling unit upon any lot within the proposed plat, adopted park impact fees shall be paid to the City of Buckley. Based on compliance with the City's Municipal Code and payment of park impact fees pursuant to BMC 3.50.040 at the time of seeking building permit, the Hearing Examiner finds that the preliminary plat application satisfies the review criteria of BMC 18.20.130 and is in conformance with the Public Spaces requirement.

L. Street Lighting – BMC 18.20.140. BMC 18.20.140 provides that street lights of appropriate design, as determined by adopted city standards, shall be located on opposite sides of each street intersection and all new dedicated streets and/or new developments adjacent to existing streets without street lights shall have street lights installed in accordance with the City of Buckley Development Guidelines and Public Works Standards, Section 4.21. SEPA MDNS condition D(5) provides "Street lighting shall be required and located at all street intersections and at approximately 150' intervals per Puget Sound Energy Standards, as adopted by the City. The spacing, design and style of fixtures shall be pursuant to adopted City Standard." As conditioned, the Hearing Examiner finds that the application makes adequate provision for street lighting and meets the requirements of BMC 18.20.140.

M. Tree Planting – BMC 18.20.150. BMC 18.20.150 provides that the planting of all street trees shall conform with adopted landscaping standards for street trees. The Applicant is required to submit a landscaping and planting plan that complies with the City's landscaping standards and street tree list to the City for review and approval prior to construction of the development. With the inclusions of a standard condition requiring the submittal of such a landscaping plan, the proposed subdivision will be in compliance with BMC 18.20.150.

Based on the Hearing Examiner's consideration of each of the requirements of Chapter 18.20 BMC as set forth in Paragraph 12(A) through 12(M) herein, the Examiner finds that the Van Sickle Landing Subdivision meets the requirements of the Zoning Code.

13. Additional Approval Criteria for Preliminary Subdivision Approval – Chapter 58.17 RCW and BMC 18.16.020(4). In addition to the requirements of Chapter 18.20 BMC, the City is required to inquire into the public use and interest to be served by the establishment of the proposed plat. Accordingly, in making this decision, the Hearing Examiner must determine if appropriate provisions are made for, but not limited to, the public health safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks, trails, and recreation, playgrounds, schools and school grounds, and shall consider all other relevant facts, including sidewalks, crosswalks/pathways and other planning feature that assure safe walking conditions for students who only walk to and from school, and that the public use and interest will be served by the platting of such subdivision and dedication. To the extent such issues were not addressed above, the Hearing Examiner will review them here.

A. Public Transit Stops.

Public transportation service is provided to the City's residents by Pierce Transit, which plans and provides service on a regional basis. Typically, Route 406 circulates through Buckley, connecting it with the City of Bonney Lake. However, at present, service has been suspended by Pierce Transit due to budget constraints.

The City's Comprehensive Plan calls on the City to examine opportunities for (a) increasing the frequency and coverage of public transportation service in cooperation with Pierce Transit; (Policy 6.2.7) and (b) examining opportunities for combining bus stop locations with a variety of land use activities to enhance the convenience of bus travel. (Policy 6.2.8) In addition, Policy 6.2.9 states that the City should ensure convenient access to transit facilities by prioritizing areas around transit facilities for pedestrian and bicycle facility improvements.

Despite these policies in the Comprehensive Plan, the City has no adopted development regulations that require transit stops or bus pull-outs or shelters as a condition of preliminary subdivision approval. In the SEPA Checklist, the Applicant disclosed that the site can be served by Pierce Transit, noting that Route 406 passes the project site on Ryan Road, making a stop at the Rainier School approximately .65 miles north of the project site. (See, Exhibit 14 in the original plat record). The Applicant is required to provide a bus pullout as required by the City Engineer and Pierce Transit along Ryan Road. However, the requirement is conditioned upon Pierce Transit resuming bus service to the area prior to the completion of the last phase of the development. If no bus service has resumed at that time, then the requirement is eliminated. As conditioned, the Hearing Examiner finds that the development makes adequate provision transit stops.

**B. Public Facilities and Other Utilities (Water, Sewer, Electricity, Stormwater Drainage, Natural Gas, and Telephone Service)**

The City has adopted General Utility Policies in the Comprehensive Plan that guide the provision of utility services to all new developments within the City. A description of each applicable Utility policy is set forth in the Staff Report which is part of the record of the original plat. (Exhibit 58 of the original plat record) That analysis is incorporated herein as if set forth in full and adopted by the Hearing Examiner. The public utilities that will be provided to the plat by the City of Buckley are water, sewer, and natural gas. The City provided a Certificate of Water Availability for the subdivision in the original plat record. (Exhibit 27) This availability has not changed. In addition, telephone service will be provided to residents within the plat by Qwest, and electrical power will be provided by Puget Sound Energy. The Applicant provided conceptual utility plans as part of the Plat Maps (Sheet C4.1 through C4.4)

In addition, the Applicant will be required to provide stormwater control and drainage facilities that are connected to the City's drainage system. Stormwater drainage of the entire site is proposed in accordance and in conformity to the "Preliminary Technical Information Report", prepared by AHBL in May, 2011 (Exhibit 9), and City's Stormwater Regulations set forth in Chapters 14.30 thru 14.40 BMC. (A detailed discussion of the Applicant's stormwater designs is set forth below).

The application proposes to extend utility infrastructure from existing termination points to provide service to the development. Extension, construction and installation or upgrading of all utilities shall comply with the City's Development Guidelines and Public Works Standards.

The application was reviewed for compliance with SEPA. An MDNS was issued on March 4, 2009. The MDNS contained forty-four (44) conditions imposed to mitigate impacts resulting from the development of this application. The categories addressed consisted of stormwater and water quality; clearing, grading and erosion control; utilities and fire protection; streets; critical areas; and other environmental impacts and general requirements. The City Engineer reviewed the application in accordance with adopted local, State and Federal regulations and determined that modifications to SEPA MDNS conditions C(7), D(1), D(2), D(3), E(1) and F(1) should be made in order to bring the current application into compliance. Those modifications and conditions are included in the Conditions set forth herein.

The Hearing Examiner has examined the City's Development Guidelines and Public Works Standards and Comprehensive Plan Utility and Public Facility Policies, along with the conditions proposed by the City Engineer and finds that they are consistent with the City's plans, policies and development regulations and, if imposed, the development proposal will be consistent with the City's requirements.

### C. Parks and Recreation, Playgrounds and Trails

The City's Comprehensive Plan Policies for Parks and Recreation are set forth in Chapter 6 of the Comprehensive Plan. The Plan calls for a well-maintained, interconnected system of multi-functional parks, recreation facilities and open spaces that are attractive, safe and available to all segments of the city's population, and supports the community's established neighborhoods and small town atmosphere. (Goal 1.6)

The City has adopted specific Policies to effectuate that Goal, including Policies 1.6.3, 1.6.8, 1.6.9, and several pre-goals and objectives. Policy 1.6.6 provides that in conjunction with the approval of any development project involving more than four new dwelling units, the City shall require the onsite (or nearby off-site) development of recreation facilities or appropriate and usable park land. Additionally, Policy 1.6.9 requires new development to provide a link to community paths and neighborhood trails. Consistent with this Policy, PRE-Goals (8) and (10) specifies that the City should develop and promote a high quality system of multi-purpose pedestrian trails and corridors that access significant environmental features, public facilities and developed urban neighborhoods, and connect a coordinated open space system of linkage to major recreation areas via trails, paths, and other travel corridors that separate vehicular and non-vehicular transportation where feasible. The City has recently adopted a trail and corridor plan, however it is not yet included as a SEPA policy document or GMA-based planning document, either of which would allow implementation of the City's Comprehensive Plan policies and provide regulatory guidance for development. Without such adoption(s), the plan is presently voluntary.

The original application proposed new passive and/or active recreation areas. These included an interpretive trail through portions of Open Space Tract E. The interpretive trail was offered as voluntary mitigation by the Applicant. The applicant proposes to remove the trail to reduce their costs as part of the plat amendment. Instead, they would offer an easement for such a trail which could be built later by the City providing a connection to a future City park. City staff disagreed and testified that the trail is an important connection to the future park. However, City Manager Dave Schmidt testified that although the pedestrian trail is not included in the cost basis of the City's park impact fee, the City has not adopted its Trail Plan as part of any planning document, which would allow the City to impose a condition requiring the construction of trails as a condition of development approval. Mr.

Schmidt also testified that in the original plat decision he did not believe the City had the authority to require the trail had it not been offered as voluntary mitigation. Here, the Applicant now proposes to provide voluntary mitigation in the form of an easement in favor of the City that would allow it to construct an interpretive trail at a later date, shown "Option 1" in their letter dated September 21, 2011. (Exhibit 25) City staff testified that such an Option would need to be modified to require the Applicant to provide the easement legal description at its cost, and that the City would choose the easement alignment. The Hearing Examiner finds that based on the evidence in the record, no interpretive trail can be mandated, but the offered voluntary easement for a future trail construction can be accepted as described in Exhibit 25 (Option 1), subject to the modifications suggested by City staff.

Finally, the Van Sickle Landing Subdivision plat amendment meets the City's Comprehensive Plan because it will provide payment of park impact fees toward the City's future park sites (one of which, Miller Park, is an 8-acre site adjacent to the development site). In lieu of requiring park or open space dedication through development the City has adopted park impact fees pursuant to BMC 3.50.040. Upon application for a building permit for construction of a dwelling unit upon any lot within the proposed plat, adopted fees associated with impacts to the City's parks shall be paid to the City of Buckley.

Based on the project as proposed, the conditions recommended by the City Staff, and the payment of park impact fees, the Hearing Examiner finds that the Applicant has made adequate provision for parks and recreational opportunities.

D. Schools and School Grounds, and Sidewalks, crosswalks/pathways and other planning feature that assure safe walking conditions.

The City has adopted impact fees to mitigate the impacts of new development on the White River School District. Upon making application for a building permit for construction of a residential dwelling unit, school impact fees will be collected from the Applicant according to the fee schedule in effect at the time as set forth in BMC 3.50.050. The City has no additional development regulations making additional provisions for schools or school grounds on new development.

The proposed plat provides sidewalks and walking trails and pathways throughout for pedestrians, including school children walking to bus stops. No information was provided in the record to the Hearing Examiner that would reveal whether the White River School District will bus school children, where the location of school bus stops are planned or whether school children will be required to walk to school. The City has no additional development regulations making special provisions for safe walking conditions for school children, however, the City's adopted Development Guidelines and Public Works Standards do provide for pedestrian improvements. The City Engineer has requested that certain conditions be imposed with regard to the construction of street and sidewalks, which the Examiner finds are sufficient to provide safe walking conditions throughout the subdivision and along Ryan Road.

E. Protection of Critical Areas and Resource Areas. (Fish and Wildlife Habitat Conservation Areas, Wetlands, Geologically Hazardous Areas, Critical Aquifer Recharge Areas and Frequently Flooded Areas)

In the original plat decision, critical areas were evaluated in the "Elkhorn Development Critical Areas Report" prepared by Watershed Dynamics on December 10, 2007. They

found that the only critical areas present on the site are wetlands. However, the author noted that there is wildlife use in the forested portion of the site and along existing trails including elk, black-tailed deer, coyotes, a variety of song birds, as well as crows, ravens and hawks within or in close proximity to the site.

In addition, the MDNS that was issued on March 4, 2009 contained conditions imposed to mitigate impacts resulting from the development of this application, including critical areas, and other environmental impacts. Both the City and Applicant responded to the concerns and subsequent modifications were made to the preliminary plat layout and the wetland mitigation plan to address the concerns.

At the public hearing, citizens testified about protecting critical areas. Marvin Sundstrom, who appeared and testified in the original plat decision, again noted the presence of an elk herd and other wildlife on the site. Mr. Sundstrom requested that the City impose requirements to protect the areas on the site where the elk herd grazes, calves, and through which it migrates. He noted that there is a great need for wildlife corridors otherwise there will be no way to protect the elk herd and no one will know where the protected areas are located.

While the Hearing Examiner finds that it is desirable to provide a migration corridor for the elk herd, and it is desirable to require protection of the habitat areas on the site in which the elk currently graze, calve and seek shelter, the City's development standards and critical areas regulations do not provide the Examiner with such authority. Although the forested areas are clearly used by elk, deer, coyote and certain birds, none of these species is listed as endangered, threatened or sensitive, nor has the habitat or species been designated as having "local importance." In order to create such protections in the future, the City must designate the elk herd as a "species of local importance," which would then bring them under the protection of the City's critical areas regulations. To date, this has not occurred and the Hearing Examiner lacks the authority to impose special protections for the elk herd.

As to the wetlands, the site contains a total of fourteen individual Category III & IV wetlands totaling 11.85 acres. Development of the amended plat proposes to protect the wetlands and no filling will occur. This is a change from the original plat. (Exhibit 8, 23) The only impacts that will occur are to some of the buffer areas of the wetlands for road and stormwater system construction. Mitigation for those buffer impacts is at greater than 1:1 ratio and is acceptable to the City.

The City's Comprehensive Plan has adopted Goals and Policies for the protection of natural resource areas, including critical areas and other environmentally sensitive areas.

- GOAL 1.4 provides that critical areas and environmentally sensitive areas should receive consideration when designating areas for more intensive development. Preserve development potential by allowing clustering of development in areas with environmental constraints.
- In furtherance of this Goal, Policy 1.4.1 states that the city should develop approaches that allow for clustered development in order to: Preserve sensitive (critical) natural features and to provide flexibility to the property owner; Encourage the maximization of view opportunities, and Preserve contiguous portions of development sites in permanent open space.

Other policies adopted in the Comprehensive Plan include:

- Policy 1.4.3 Identify and conserve critical wildlife habitat including nesting sites, foraging areas, and migration corridors within or adjacent to natural areas, open spaces, and the developed urban areas to capitalize on and capture resource tourism (such as birding).
- Policy 1.4.4 Site development regulations should be reviewed to ensure that they reduce erosion, promote immediate re-vegetation, and reduce the amount of sediment leaving a construction site to protect waterways and other properties.
- Policy 1.5.1 Preserve habitats for species that have been identified as endangered, threatened or sensitive by the federal government or the State of Washington.
- Policy 1.5.2 Identify and protect wildlife corridors prior to and during land development through development restrictions, public education, and incentives.
- Policy 1.5.3 Protect native plant communities by encouraging management and control of nonnative exotic and invasive species, including both terrestrial and aquatic plants.

(See, City of Buckley Comprehensive Plan: Resource Protection Policies, at LU-13). The wetland impact avoidance is specifically described as follows:

- Jefferson Street – The City's Transportation Plan Future Street map illustrates Jefferson Street extending east/west through the on-site Category III wetlands (wetland BB) to Rainier Street. The road location would have created an interrupted buffer allowing for lot development on the north side of the street. The total impact to Category III wetlands that was avoided by not extending Jefferson Street to Rainier Street is estimated to be 41,707 SF (0.96 acres).
- Rainier Street – The City's Transportation Plan Future Street map illustrates Rainier Street extending north/south on the property's west boundary through the wetlands from Jefferson to Couls Street. The map illustrates the road in an area that would have impacted Wetland B, a Category III wetland by approximately 7,470 SF and Wetland S, a Category IV wetland by approximately 1,000 SF. The total impact to Category III and IV that was avoided by not extending Rainier Street is estimated to be 8,470 SF (0.19 acres).
- Couls Street - The City's Transportation Plan Future Street map illustrates Couls Street extending east/west through the south boundary of the wetlands to the project's on-site Spruce Street. The map illustrates the road in an area that would have impacted Category III wetland resulting in an interrupted buffer and allowing for lot development on the south side of Couls Street. The entire impact to Category III wetlands that was avoided by not extending Couls Street is estimated to be 110,861 SF (2.55 acres). The total amount of wetland avoidance is approximately 161,038 SF (3.7 Acres).
- Spruce Street - The project proposal will construct Spruce Street, a north/south road shown on the city's Future Streets map to meet minimum traffic circulation requirements. The Spruce Street alignment minimizes impacts to the higher functioning Category III Wetland B, allows for all mitigation to be onsite and allows for the creation of one larger higher functioning wetland complex.

The Hearing Examiner finds that the proposed changes to the transportation design of the Van Sickle Landing Subdivision meet the intent of the City's Comprehensive Plan and Critical Areas Regulations.

The Hearing Examiner further finds that the "Elkhorn Development Critical Areas Report" prepared by Watershed Dynamics was developed in accordance with BMC 12.08.210. The AHBL Wetland buffer Mitigation letter dated June 6, 2011 (Exhibit 8) was developed in accordance with BMC 12.08, 250. Impacts to wetlands have been avoided. Impacts to wetland buffers are minimized where feasible. As indicated in the Mitigation Plan the project minimizes impacts to wetlands by implementing the following:

- Avoiding impacts. The proposed extension of Spruce Street avoids impacts to the higher functioning Category III Wetland B. The remaining impacts are to smaller, lower functioning, fragmented wetlands in order to extend Spruce Street with fronting lots.
- Eliminating the construction of the interpretive trail through the wetland.
- Eliminating direct fill of wetlands.
- Eliminating ORV access to the wetland and buffer system to remain on the site.
- Using erosion control fencing and other Best Management Practices throughout the duration of the construction project to minimize the chance for sediment transport to wetlands that are not proposed to be impacted. Erosion control measures will be maintained on site until bare soils have been successfully vegetated.
- Minimizing light into the wetland and buffer habitat by directing light away from the system.
- Routing surface water runoff to detention systems that will treat, detain and disperse surface water to levels that match existing hydrology.
- Establishing restrictive covenants to limit pesticide use within 150 feet of the wetland system to remain on the site.
- Providing critical area fencing and signs at the outer edge of the wetland and buffer tract to reduce pet and human disturbance.
- Unavoidable impacts to wetland buffer areas will be mitigated on-site, monitored for 5 years and preserved in an open space tract under the ownership of the proposed Homeowner's Association.

The Applicant is also required to comply with all other State and/or Federal regulations and obtain relevant permits that may govern the critical areas on the site. It is the sole responsibility of the applicant to contact the other jurisdictions and secure any and all other permits required for this proposed project.

The City staff recommends the imposition of certain conditions imposed through the MDNS, except as amended by the City Engineer's recommendation as described in the Staff Report (Exhibit 23), as important for the mitigation of adverse environmental impacts caused by the development proposal. The Hearing Examiner agrees and finds that the proposed conditions, as amended, should be imposed as a condition of preliminary plat approval.

Based on the foregoing, the complete record and the testimony received at the public hearing, the Hearing Examiner finds that the amended plat with the inclusion of the City Staff's recommended conditions, meets the requirements of the Comprehensive Plan, as well as Chapter 12.08 thru 12.13 BMC, the City's Critical Areas Regulations.

- F. Clearing and Grading. Clearing, grading and fill of the site proposes to import approximately 107,000 cubic yards of fill material. The Applicant has previously applied for and been approved for stockpiling and grading of 350,000 cubic yards of fill material under LDA Permit # 2007-05 issued by the City. (Exhibit 53 of the original plat record)

Terms and conditions imposed by the City related to this permit approval shall be incorporated into the Conditions of approval. Clearing, grading and fill of the site is proposed to be in accordance with the "Preliminary Geotechnical Report", prepared by ABPB Consulting, October, 2005, as amended, and the City's Development Guidelines and Public Works Standards. As a requirement of preliminary subdivision approval, the following Condition should be imposed:

F (1). All on-site activity must comply with the terms and conditions of approval for LDA Permit #2007-05 to include but not limited to, offsite requirements or conditions of LDA #2007-05 (i.e. Condition #10 regarding Ryan Road).

In addition, as with the original plat approval, the City Staff recommend that following additional conditions should be imposed on the Applicant as part of approval of the amended plat:

1. *The applicant shall identify the source of all imported fill material and provide written documentation that the material is free of environmentally hazardous substances. All grading and filling must utilize only clean fill, i.e., dirt or gravel. All other materials, including waste concrete and asphalt, are considered to be solid waste and permit approval must be obtained through the Tacoma-Pierce County Health Department (TPCHD) prior to filling.*

2. *Sedimentation and erosion control measures shall be installed prior to any clearing or grading on-site and shall remain in place until the City Engineer approves removal. Silt fencing shall be required in all down slope areas of clearing and grading activities. Other than access construction, the remainder of all lower story vegetation removal shall be staged so that exposed soils will be minimized until absolutely necessary as approved by the City.*

3. *The City shall inspect all temporary erosion and stormwater control structures during the construction period and sediment shall be removed from sedimentation ponds as necessary to ensure proper functioning. Disposal of sediment materials shall be subject to the approval of the City in accordance with applicable Federal, State and City regulations. Enhanced inspection and maintenance may be required at the City's discretion. The developer shall pay for the cost of inspection for temporary erosion and stormwater control structures during construction period.*

4. *Clearing and grading of the site shall be limited to the dry season only (April 1-September 30), without prior city approval. The site shall be stabilized for the wet season (Oct. 1-*

March 31) by October 1, unless otherwise approved by the City. Stabilization shall occur by using recommended measures within BMC 14.30 and 14.40, Stormwater Management and Stormwater Maintenance Ordinances. The applicant shall identify and flag in the field, prior to start of work, the clearing limits of the project and maintain said flagging for the duration of the project. Clearing and grading of the site shall not start until the City has inspected and approved of the TESC measures in place and has issued a permit.

5. Tracking of mud and debris onto City sidewalks and roadways shall be minimized. Any mud, soil or debris tracked or deposited onto public property shall be cleaned up immediately and not allowed to accumulate.

6. Prior to the initiation of filling and grading, the applicant shall provide supporting documentation from the Geotechnical Engineer identifying their review of the proposed permitting activities and providing any applicable amendments to the original geotechnical report prepared for the project.

7. The proponent shall designate a geotechnical engineer who shall be responsible for ensuring compliance with the geotechnical recommendations. The geotechnical engineer shall be on site during all filling and grading activities and shall ensure that grading, filling, site stabilization, excavating and testing shall be consistent with the geotechnical recommendations for the site. Geotechnical reports shall be provided to the City for review and approval prior to completion and acceptance of the site work approved under this application for preliminary plat.

8. Filling and/or excavation of the site which results in elevation changes between the site and adjacent properties shall require the applicant to provide adequate stormwater conveyance measures as approved by City staff and the City engineer to prevent flooding or ponding of water on adjacent properties.

With the addition of the foregoing conditions, the Hearing Examiner finds that the proposed plat amendment meets the City's requirements for clearing, grading and erosion control.

G. Fire Protection. The International Fire Code (Ch. 16.24 BMC) governs the design and provision of fire flow to the proposed subdivision, along with the required fire access standards (street width, slope and turning radii). The City Staff recommend that the following conditions be imposed as a condition of preliminary plat approval for fire protection purposes:

1. The Applicant will be required to comply with the City's requirements for adequate water supply for fire flow and fire protection.

2. A hydraulic analysis shall be performed on the proposed water system to ensure the availability of fire flow in accordance with the Buckley Municipal Code and the City of Buckley Comprehensive Water Plan.

3. In order to provide for the extension of utility services to the development the applicant will be required to pay for and install any necessary extensions to the natural gas, water, sewer or stormwater system that are necessary in order to serve the proposed subdivision.

4. All public utility lines proposed to serve the development shall be extended to the plat boundaries and dedicated to the City of Buckley.

5. All utilities shall be designed and constructed in accordance with the "City of Buckley Development Guidelines and Public Works Standards", unless otherwise modified herein.

6. Utility plans submitted for preliminary short plat are conceptual "only" and must be resubmitted as formal construction drawing for review and approval by the City Engineer prior to any on-site construction being performed.

7. Utility easements for utility maintenance and replacement shall be dedicated to the City of Buckley in all areas where utilities extend onto private property and/or private roads/accesses and shall be a minimum of fifteen (15') feet in width.

8. The applicant shall be required to pay for all general facility and/or connection charges pertaining to each City utility as required by adopted city code.

The roads shown on the preliminary plat map (Exhibit 10) meet the minimum requirements of the IFC for width and slope and turn around radii for the streets, roads, access ways shown on the plat map. Additional requirements for fire prevention and safety, including fire flow based on group occupancy, will be imposed by the Fire Marshal during the construction phase of the subdivision according to BMC 16.24.030.

Fire department connections shall be in accordance with the City's Fire Department standards applicable to the system design. (BMC 16.24.115). The location of fire hydrants shall be as specified in BMC 16.24.120.

Based on the preliminary subdivision design, the imposition of recommended Conditions by City Staff, and the Applicant's proposal to comply with all required conditions in the Buckley Municipal Code relating to fire protection, including the DGPWS, the Hearing Examiner finds that the proposed plat amendment makes adequate provision for fire protection.

#### H. Stormwater Drainage and Water Quality Control

With respect to stormwater, the City's Comprehensive Plan provides that the City should:

- "Coordinate management of the stormwater system with property owners to prevent property damage from flooding, protect water quality, maintain recharge of aquifers, provide for the safety and enjoyment of citizens, and preserve and enhance habitat and sensitive areas." (Policy D-1)
- "Enforce surface water controls in order to protect surface and groundwater quality." (Policy D-2)

Consistent with these policies, the City has adopted Chapters 14.30 thru 14.40 BMC, including Section 5 of the City's Development Guidelines and Public Works Standards ("DGPWS"), to govern the management of stormwater drainage and the protection of water quality. The Hearing Examiner finds that the proposed plat amendment has been designed in a manner that is consistent with these development regulations and design standards.

According to the Applicant's "Preliminary Technical Information Report" dated May, 2011, the existing site hydrology is predominantly sparse grass covering and bare soil. The northern portion of Parcel 0619038002 consists of second-growth forest with moderately dense underbrush. The site has been historically used for agriculture. An existing single family residence with several

associated accessory buildings is located on the south-central portion of Parcel 0619023005. A dirt/gravel driveway provides access from Ryan Road to the existing buildings.

Existing drainage ditches completely surround Parcel 0619023005 including the ditch adjacent to Ryan Road. With the exception of the Ryan Road ditch, the existing ditches do not provide a constant slope in any particular direction. According to the Applicant's hydraulic report, standing water was observed in portions of the ditches during site visits. The report concludes that stormwater flow from the site ditches must meet a certain level before positive flow occurs. A portion of the stormwater flow in the pre-development condition flows into the ditch at Ryan Road to the south, while the remainder of the existing runoff flows north into the existing ditch from the northeast corner of the project site north to Mason Avenue. A small ditch is located adjacent to the existing driveway to the house. This ditch discharges to the Ryan Road ditch. (Exhibit 9)

In order to match pre-development flows, the Applicant intends to develop the project site by separating it into three main basins to match existing downstream drainage patterns. The Rainier Basin is further split into two sub-basins. During final engineering, the project may be further separated into additional basins based on stormwater volumes and site design elevations. The original plat proposed to use low impact stormwater development techniques, including the use of bio-retention swale and rain gardens in portions of the site. The plat amendment proposes to eliminate the use of LID for stormwater control and will instead, meet the City's stormwater regulations. (Exhibits 9, 23) Stormwater detention tracts totaling 3.10 acres will be created as part of the development. Ownership and control of the three stormwater ponds (Storm Tracts G, H, I and J) will be dedicated to the City. Additional stormwater control will be provided by Open Space/Stormwater Tracts B, C and D totaling .29 acres.

Stormwater drainage of the entire site is shall be in accordance and in conformity to the "Preliminary Technical Information Report", prepared by AHBL in May, 2011, and the City's Stormwater Regulations Chapters 14.30 thru 14.40 BMC, including Section 5 of the City's Development Guidelines and Public Works Standards ("DGPWS").

The standards set forth in Section 5 of the DGPWS are intended to provide the minimum standards for the design and construction of storm drainage facilities. Greater or lesser requirements may be mandated by the City due to localized conditions. (Section 5.01 DGPWS)

At the public hearing, several citizens testified about groundwater and stormwater concerns. Their concerns are summarized as follows:

- Cindy Maas testified that the subdivision borders her property on three sides. She testified that the existing drainage ditch system helps drain the Van Sickle property and she is concerned that fill brought in for the development will cause her property to flood.
- Gary Burley testified as to his concerns about the stormwater impacts of the development and the manner in which the ponds will function. A small development was previously approved at the end of his street. Now, the eastern portion of his property (amounting to about one acre is now underwater from Mid-October to June of each year. This never happened before the development. He is concerned about the stormwater impacts of this development.

Matt Weber, P.E. of AHBL, Inc., the Applicant's stormwater representative, testified that the design and release of stormwater should result in a net improvement and decrease the off-site drainage in the area.

A final engineered drainage and stormwater plan and report shall be submitted to the City Engineer for review and approval. The drainage plan must incorporate the storm drainage requirements of the D.O.E. Stormwater Management Manual for the Puget Sound Region (1992 edition), Volume 2. The stormwater control plan shall provide for extension of the storm conveyance/collector system to the plat boundary and include any additions of impervious surface to Ryan Road. The stormwater plan must also address compliance with minimum requirements Nos. 1 through 11 in BMC 14.30.723 through BMC 14.30.733. The City Staff recommended the imposition of the following conditions as a requirement of approval of the amended plat:

1. *A final engineered drainage and storm water plan and report shall be submitted to the City Engineer for review and approval. The drainage plan must incorporate the storm drainage requirements of the D.O.E. Stormwater Management Manual for the Puget Sound Region (1992 edition), Volume 2. The stormwater control plan shall provide for extension of the storm conveyance/collector system to the plat boundary and include any additions of impervious surface to Ryan Road. The stormwater plan must also address compliance with minimum requirements Nos. 1 through 11 in BMC 14.30.051.*

2. *The proponent shall establish a maintenance covenant as part of the Restrictive Covenants to ensure that any constructed drainage system is maintained in accordance with City of Buckley requirements. The Maintenance Covenant shall be reviewed and approved by the City Engineer prior to final plat approval.*

3. *Applicant shall be required to obtain a Construction Stormwater General Permit (NPDES) from the State of Washington prior to any construction activity on-site.*

4. *In order to minimize impacts related to on-site stormwater runoff, all structures shall be required to install roof drain systems that incorporate proper application of flow control best management practices (BMPs).*

5. *To mitigate and avoid significant impacts to water quality, the proponent shall provide on-site water quality monitoring and temporary erosion and sedimentation control during construction. A water quality monitoring plan (WQM Plan) and temporary erosion and sedimentation control plan (TESC Plan) shall be submitted by the applicant for review and approval and approval by the City Engineer prior to commencement of any clearing, grading, or filling on the site. The WQM and TESC Plans shall be developed in accordance with the City of Buckley Municipal Code Chapters 14.30 and 14.40, Stormwater Management and Stormwater Maintenance Ordinances and shall incorporate erosion and sediment controls, preservation of natural drainage discharge locations, source controls, runoff treatments, stream bank erosion controls and performance bonding to ensure compliance with the standards set forth therein during project clearing, grading and construction. The WQM and TESC Plans shall indicate measures to be taken to avoid untreated stormwater discharges to any and/or all critical areas, and the treatment necessary to meet the State Water Quality Standards, Chapter 173-201 WAC and shall address each of the following:*

- shall provide for additional and/or upgraded protections and measures as necessary; and*
- shall identify requirements of and frequency of reporting to the City; and*
- shall include monitoring at appropriate stations; and*
- shall allow for adjustment of monitoring and water quality monitoring parameters depending on location of development activity; and*

- *on-going monitoring shall include evaluation of the proposed BMP's and testing of sediment as appropriate;*
- *shall stipulate that if water quality standards are exceeded then all on-site activity shall "stop" until additional measures have been developed, reviewed and approved by the City to prevent further non-compliance.*

*6. The proponent shall designate a qualified individual or firm who shall be responsible for ensuring compliance with the WQM and TESC Plans. The individual/firm shall ensure that erosion and sedimentation control devices and other such soil protection are correctly installed, that Best Management Practices (BMP's) are correctly implemented, and that BMP methods and maintenance schedules are followed; for monitoring and evaluating the effectiveness of practices and recommending modifications to the WQM and TESC Plans as necessary if monitoring reveals that practices are not effective; and for ensuring that reports and inspections are coordinated with the City.*

*7. Stormwater runoff rate leaving the site shall not exceed pre-development conditions for quality or quantity.*

*8. All open ditches receiving runoff directly adjacent to and immediately downstream of the site must be mowed, cleaned, channelized (if necessary) and stabilized prior to construction, to insure that adequate capacity exists and/or is maintained for runoff leaving the site.*

*9. The proponent shall establish a maintenance covenant as part of the Restrictive Covenants to ensure that any constructed drainage system is maintained in accordance with City of Buckley requirements. The Maintenance Covenant shall be reviewed and approved by the City Engineer prior to final plat approval.*

The Hearing Examiner finds that the Applicant is vested to the City's regulations as adopted on the date of completeness. Accordingly, the Applicant is authorized to use the 1992 DOE Stormwater Manual to design the stormwater drainage system improvements for the proposed plat. Based on the plans and designs submitted by the Applicant in Exhibit 9, and the conditions set forth above proposed by the City Staff to require certain actions by the Applicant that will ensure compliance with the City's stormwater regulations and design standards, the Hearing Examiner finds that the City and citizen's concerns about stormwater flows from the site are adequately addressed by the proposed subdivision.

14. Subdivision Code The Hearing Examiner finds that the proposed plat, as conditioned, meets the general requirements of RCW 58.17.110, and BMC 18.16.020(4) with respect to providing for the public health, safety and general welfare.

There is a high water table in the area during the winter and spring months. The plat is located with a Zone "C" flood zone. This zone is characterized by shallow flooding during the 100-year flood event. The site is proposed to be filled to a depth averaging approximately four feet above existing grade. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned and modified, the plat will meet all design standards for roads.

The plat amendment has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. Such criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops,

potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students. The proposed plat amendment conforms to all applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of open space tracts, wetlands, and buffer areas.

Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to the City of Buckley's Municipal Code and the City's Development Guidelines and Public Works Standards. The plat, as conditioned, will conform to the Buckley Municipal Code and, as condition, makes adequate provision for parks and recreation, traffic, roads and walkway design standards, and schools, including safe walking conditions for school children. All required utilities are available to the plat, including potable water, electricity, sewer, telephone service, fire service and natural gas.

15. Any Finding of Fact in this Recommendation of the Hearing Examiner which should be deemed a Conclusion, is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Applicant's application for a plat amendment to the approved subdivision of the Van Sickle Landing was deemed to be complete on June 7, 2011.
2. Notice of the application was properly given as required by BMC 20.01.140 and BMC 20.01.100.
3. Notice of the public hearing on the request for preliminary subdivision approval was properly given as required by BMC 20.01.100 and BMC 20.01.140.
4. Review of the project pursuant to SEPA was properly accomplished.
5. The Hearing Examiner concludes that the plat amendment to the approved Van Sickle Landing subdivision proposal is consistent with the requirements and intent of the Comprehensive Plan and the Buckley Municipal Code. It further meets the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
6. Adequate public services and utilities exist to serve the proposed subdivision as amended. The project is not detrimental to the public health, safety and welfare.
7. The plat amendment application, with the imposition of the recommended conditions, makes adequate provisions for the public health, safety and general welfare, and provides for the public interest, use and convenience and meets the requirements of RCW 58.17.110 and BMC 18.16.020(4).
8. The project adequately mitigates impacts identified under Chapter 12.04 BMC, State Environmental Policy Act, and Chapter 12.08 BMC, Critical Areas – General Provisions, as amended.
9. Any Conclusion in this Final Decision and Order, which should be deemed a Finding of Fact, is hereby adopted as such.

## DECISION

The plat amendment to the Van Sickle Landing Subdivision is **approved, subject to the following Conditions<sup>2</sup>**:

### CONDITIONS:

#### A. Stormwater and Water Quality Control:

1. A final engineered drainage and storm water plan and report shall be submitted to the City Engineer for review and approval. The drainage plan must incorporate the storm drainage requirements of the D.O.E. Stormwater Management Manual for the Puget Sound Region (1992 edition), Volume 2. The stormwater control plan shall provide for extension of the storm conveyance/collector system to the plat boundary and include any additions of impervious surface to Ryan Road. The stormwater plan must also address compliance with minimum requirements Nos. 1 through 11 in BMC 14.30.051.

2. The proponent shall establish a maintenance covenant as part of the Restrictive Covenants to ensure that any constructed drainage system is maintained in accordance with City of Buckley requirements. The Maintenance Covenant shall be reviewed and approved by the City Engineer prior to final plat approval.

3. The Applicant shall be required to obtain a Construction Stormwater General Permit (NPDES) from the State of Washington prior to any construction activity on-site.

4. In order to minimize impacts related to on-site stormwater runoff, all structures shall be required to install roof drain systems that incorporate proper application of flow control best management practices (BMPs).

5. To mitigate and avoid significant impacts to water quality, the proponent shall provide on-site water quality monitoring and temporary erosion and sedimentation control during construction. A water quality monitoring plan (WQM Plan) and temporary erosion and sedimentation control plan (TESC Plan) shall be submitted by the applicant for review and approval and approval by the City Engineer prior to commencement of any clearing, grading, or filling on the site. The WQM and TESC Plans shall be developed in accordance with the City of Buckley Municipal Code Chapters 14.30 and 14.40, Stormwater Management and Stormwater Maintenance Ordinances and shall incorporate erosion and sediment controls, preservation of natural drainage discharge locations, source controls, runoff treatments, stream bank erosion controls and performance bonding to ensure compliance with the standards set forth therein during project clearing, grading and construction. The WQM and TESC Plans shall indicate measures to be taken to avoid untreated stormwater discharges to

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<sup>2</sup>Note: The conditions listed include the original conditions of preliminary plat approval for Van Sickle Landing subdivision as modified by this amendment, in addition to conditions specific to this proposed plat amendment.

any and/or all critical areas, and the treatment necessary to meet the State Water Quality Standards, Chapter 173-201 WAC and shall address each of the following:

- The Plans shall provide for additional and/or upgraded protections and measures as necessary;
- The Plans shall identify requirements of and frequency of reporting to the City;
- The Plans shall include monitoring at appropriate stations;
- The Plans shall allow for adjustment of monitoring and water quality monitoring parameters depending on location of development activity;
- On-going monitoring shall include evaluation of the proposed BMPs and testing of sediment as appropriate; and
- The Plans shall stipulate that if water quality standards are exceeded then all on-site activity shall "stop" immediately until additional measures have been developed, reviewed and approved by the City to prevent further non-compliance.

6. The proponent shall designate a qualified individual or firm who shall be responsible for ensuring compliance with the WQM and TESC Plans. The individual/firm shall ensure that erosion and sedimentation control devices and other such soil protection are correctly installed, that Best Management Practices (BMP's) are correctly implemented, and that BMP methods and maintenance schedules are followed; for monitoring and evaluating the effectiveness of practices and recommending modifications to the WQM and TESC Plans as necessary if monitoring reveals that practices are not effective; and for ensuring that reports and inspections are coordinated with the City.

7. Stormwater runoff rate leaving the site shall not exceed pre-development conditions for quality or quantity.

8. All open ditches receiving runoff directly adjacent to and immediately downstream of the site must be mowed, cleaned, channelized (if necessary) and stabilized prior to construction, to insure that adequate capacity exists and/or is maintained for runoff leaving the site.

**B. Clearing, Grading and Erosion Control:**

1. The applicant shall identify the source of all imported fill material and provide written documentation that the material is free of environmentally hazardous substances. All grading and filling must utilize only clean fill, i.e., dirt or gravel. All other materials, including waste concrete and asphalt, are considered to be solid waste and permit approval must be obtained through the Tacoma-Pierce County Health Department (TPCHD) prior to filling.

2. Sedimentation and erosion control measures shall be installed prior to any clearing or grading on-site and shall remain in place until the City Engineer approves removal. Silt fencing shall be required in all down slope areas of clearing and grading activities. Other than access construction, the remainder of all lower story vegetation removal shall be staged so that exposed soils will be minimized until absolutely necessary as approved by the City.

3. The City shall inspect all temporary erosion and stormwater control structures during the construction period and sediment shall be removed from sedimentation ponds as necessary to ensure proper functioning. Disposal of sediment materials shall be subject to

the approval of the City in accordance with applicable Federal, State and City regulations. Enhanced inspection and maintenance may be required at the City's discretion. The developer shall pay for the cost of inspection for temporary erosion and stormwater control structures during construction period.

4. Clearing and grading of the site shall be limited to the dry season only (April 1-September 30), without prior city approval. The site shall be stabilized for the wet season (Oct. 1-March 31) by October 1, unless otherwise approved by the City. Stabilization shall occur by using recommended measures within BMC 14.30 and 14.40, Stormwater Management and Stormwater Maintenance Ordinances. The applicant shall identify and flag in the field, prior to start of work, the clearing limits of the project and maintain said flagging for the duration of the project. Clearing and grading of the site shall not start until the City has inspected and approved of the TESC measures in place and has issued a permit.

5. Tracking of mud and debris onto City sidewalks and roadways shall be minimized. Any mud, soil or debris tracked or deposited onto public property shall be cleaned up immediately and not allowed to accumulate.

6. Prior to the initiation of filling and grading, the applicant shall provide supporting documentation from the Geotechnical Engineer identifying their review of the proposed permitting activities and providing any applicable amendments to the original geotechnical report prepared for the project.

7. The proponent shall designate a geotechnical engineer who shall be responsible for ensuring compliance with the geotechnical recommendations. The geotechnical engineer shall be on site during all filling and grading activities and shall ensure that grading, filling, site stabilization, excavating and testing shall be consistent with the geotechnical recommendations for the site. Geotechnical reports shall be provided to the City for review and approval prior to completion and acceptance of the site work approved under this application for preliminary plat.

8. Filling and/or excavation of the site which results in elevation changes between the site and adjacent properties shall require the applicant to provide adequate stormwater conveyance measures as approved by City staff and the City engineer to prevent flooding or ponding of water on adjacent properties.

**C. Utilities and Fire Protection:**

1. The plat shall comply with City requirements for potable water use and fire protection.

2. A hydraulic analysis shall be performed on the proposed water system to ensure the availability of fire flow in accordance with the Buckley Municipal Code and the City of Buckley Comprehensive Water Plan.

3. In order to provide for the extension of utility services to the development the applicant will be required to pay for and install any necessary extensions to the natural gas, water, sewer or stormwater system that are necessary in order to serve the proposed subdivision.

4. All public utility lines proposed to serve the development shall be extended to the plat boundaries and dedicated to the City of Buckley.
5. All utilities shall be designed and constructed in accordance with the "City of Buckley Development Guidelines and Public Works Standards", unless otherwise modified herein.
6. Utility plans submitted for preliminary short plat are conceptual "only" and must be resubmitted as formal construction drawing for review and approval by the City Engineer prior to any on-site construction being performed.
7. Utility easements for utility maintenance and replacement shall be dedicated to the City of Buckley in all areas where utilities extend onto private property and/or private roads/accesses and shall be a minimum of fifteen (15') feet in width.
8. The applicant shall be required to pay for all general facility and/or connection charges pertaining to each City utility as required by adopted city code.
9. Construction of offsite utilities within City right-of-way shall include half street overlay and shall be constructed in accordance with the "City of Buckley Development Guidelines and Public Works Standards." Offsite utilities on private property that are to be dedicated to the City within easements shall include provisions for access by City Public Works vehicles for maintenance of utilities to be dedicated to the City.
10. Where feasible, as determined by the City, each proposed side sewer shall connect to sewer main line a minimum of distance 5-feet from a sanitary sewer manhole.
11. Utilities to be dedicated to the City shall be extended to the boundaries of the plat to facilitate future connections by adjacent properties. The utilities include domestic water, sanitary sewer, storm drainage, and natural gas. The locations for such extensions shall be determined by the City during construction review of the plat utilities. Utilities provided by entities other than the City shall meet the requirements of the respective entities for extensions to the boundaries of the plat.
12. All off-site utilities installed or constructed as a result of this development shall be dedicated to the City.
13. Applicant shall be required to replace the existing 10" water main with a 12" D.I. water main for 1,260 lineal feet of Ryan Road frontage to correspond with Capital Project D-3c identified in the City's Comprehensive Water System Plan.
14. An engineered natural gas system plan meeting Federal and State Regulation shall be submitted to the City Engineer for review and approval prior to construction.

**D. Streets:**

1. All proposed private accesses and public roadways shall be required to comply with City emergency access requirements.

2. The applicant shall provide ½ street improvements to Ryan Road along property frontage consistent with the City of Buckley "Development Guidelines and Public Works Standards, and may include but shall not be limited to pavement widening (from centerline of existing roadway to right-of-way line), meandering sidewalk, curb and gutter, planter strip, landscaping, storm water drainage and street lighting.

3. The right-of-way of the proposed interior plat public roads and alley shall be dedicated to the City upon recording of the Final Plat.

4. All roadway improvements shall be designed and constructed per AASHTO standards and in accordance with the City of Buckley "Development Guidelines and Public Works Standards" adopted by Ordinance 20-95, July, 1995, and amended February 26, 2008.<sup>3</sup>

5. Street lighting shall be required and located at all street intersections and at approximately 150' intervals per Puget Sound Energy Standards, as adopted by the City. The spacing, design and style of fixtures shall be pursuant to adopted City Standard.

6. The design standards, including but not limited to geometry, features, materials, signage, and channelization, for roundabouts or neighborhood traffic circles shall comply with applicable current AASHTO and MUTCD standards and Publication No. FHWA-RD-00-067 "Roundabouts: An Informational Guide", dated June, 2000. The applicability of the various standards, guidelines, and recommendations to the proposed plat shall be determined by the City during construction review.

7. The developer shall submit a right of way and landscape maintenance agreement with the Final Plat to verify public street and landscape maintenance responsibilities.

8. [Eliminated]<sup>4</sup>.

#### **E. Critical Areas:**<sup>5</sup>

1. The applicant shall comply with all other State and/or Federal regulations and obtain relevant permits. This includes the U.S. Army Corps of Engineers and the Washington State Department of Ecology (DOE). It is the sole responsibility of the applicant to contact the other jurisdictions and secure any and all other permits required for this proposed project.

2. Pursuant to BMC 12.12.100 the regulated wetland(s) and associated buffer(s) shall either be placed in a separate tract on which development is prohibited, protected by

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<sup>3</sup>This condition was modified to remove references to LID techniques for road features.

<sup>4</sup>Condition No. 8 of the original preliminary plat approval requiring a supplement to the Traffic Impact Analysis is no longer necessary and is eliminated.

<sup>5</sup>Conditions No. 1, 3 and 7 of the original preliminary plat approval are not included here as they are no longer necessary. The conditions refer to mitigation of impacted wetland areas. No impacts to wetlands are proposed under the plat amendment.

execution of an easement, dedicated to a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the city. The location and limitations associated with the wetland(s) and buffer(s) shall be shown on the face of the deed or plat applicable to the property and shall be recorded with the Pierce County assessor's office.

3. Pursuant to BMC 12.12.100 a note shall be affixed to the face of the final plat map stating "No structures or improvements shall be permitted within the buffer area, including buildings and decks except as otherwise permitted under the city's adopted sensitive areas regulations. "

4. Pursuant to BMC 12.12.100 the boundary of the sensitive area tract and associated buffer shall be permanently identified by signage, the location and size of which must be approved by the planning director. These signs shall be worded as follows: "Protection of this natural area is in your care. Alteration or disturbance is prohibited by law. Please call the City of Buckley Planning Department for more information."

**F. Other Environmental Impacts and General Requirements:<sup>6</sup>**

1. All on-site activity must comply with the terms and conditions of approval for LDA Permit #2007-05 to include but not limited to, offsite requirements/conditions of LDA #2007-05 (i.e. Condition #10 regarding Ryan Road).

2. Conversion of parcel to high-density development may require the applicant to obtain a Class IV Forest Practices permit from DNR.

3. Prior to initiation of construction, the applicant shall submit a traffic control and haul route plan to the City for review and approval to minimize traffic safety conditions on Ryan Road, SR-165 and SR-410.

4. Proponent shall be required to incorporate and install a public transit bus stop into the frontage improvements along Ryan Road. Location shall be within the Ryan Road Right of Way and design shall be coordinated and approved by Pierce Transit and the City Engineer.

5. Proponent shall grant an easement to the City of at least fifteen feet in width in the wetland area in Tract E (in an alignment to be chosen by the City) for the city's future public use as an interpretive trail. The trail shall connect to future Miller Park adjacent to the subdivision. A trail plan showing all trail dimensions and construction materials shall be submitted to the City for approval prior to construction. The Proponent shall prepare the legal description and legal documents for the easement at its expense. The design, permitting, construction and maintenance of the interpretive trail shall be the responsibility of the City. The Proponent and its successor(s) in interest shall fully cooperate with the City in

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<sup>6</sup>Conditions No. 10, 15, 16, 17, 18, and 20 of preliminary plat approval have been removed as no longer necessary in the event of approval of this proposed plat amendment.

achieving permitting, as needed. The applicant shall design the amended plat to allow access to the interpretive trail from within the plat boundaries.

6. A public walkway easement, a minimum of eight (8) feet in width, shall be dedicated adjacent to open space/storm tract "D" and shown on the face of the final plat. The walkway shall connect road "B" as shown on the preliminary plat to Ryan Road, and the Proponent shall construct it with an asphalt surface five (5) feet in width. A note shall be affixed to the final plat dedicating this easement for access by the public, and limiting any fencing erected on property boundaries adjacent to the walkway easement to a maximum height of four feet.

7. Light and glare onto adjacent properties within the subdivision shall be avoided. As approved by the City staff and City engineer, measures such as but not limited to vegetative planter strips, barriers, etc., shall be provided along roadways within the subdivision as necessary to reduce light and glare. Lights associated with residential use shall be shielded down and away from adjacent properties and open space areas. Approved measures shall be shown on construction plans.

8. Proponent shall be required to install safety railings or fencing along pedestrian corridors which are located adjacent to cut slopes with a vertical height over three (3') feet and a slope in excess of 3:1 and/or rockeries that are over three (3') feet in vertical height. Location, type and design shall be approved by the City Engineer.

9. All applicable regulatory permits shall be acquired by the applicant prior to start of construction.

10. Upon application for a building permit for construction of a dwelling unit upon any lot within the plat adopted fees associated with impacts to the City's transportation system, parks and schools shall be paid to the City of Buckley.

11. Applicant shall be responsible for payment of any and/or all costs incurred by the City for review of the project or inspection of the site during construction.

12. The applicant shall be required to submit a performance guarantee in the amount of 150% of the cost of the improvements for all work conducted within the City right-of-way.

13. The applicant shall be required to submit a maintenance guarantee/bond in the amount of 25% of the cost of the improvements for all work conducted within the City right-of-way and all improvements and infrastructure constructed and/or installed on-site at the time of completion and release of performance bonding. The maintenance guarantee shall be in place for a period of two years from the date of final acceptance by the City.

14. Any and/or all phasing of a Final Plat will require that road layouts, utilities, etc. are complete as an operable system as determined by the City engineer to prevent service conflicts to developed portions.

15. The applicant shall be required to add notes and/or language to the plat map indicating ownership of all tracts.

16. The applicant shall be required to affix a note to the final plat map that states, "No lot for residential purposes shall be divided or sold into additional lots or building sites, unless the proposed lots to be subdivided meet compliance with the existing zoning regulations."

Issued this 3<sup>rd</sup> day of October, 2011.

CITY OF BUCKLEY HEARING EXAMINER  
Buckley, Washington



Millie M. Judge, Hearing Examiner

**DISTRIBUTION:**

All Parties of Record  
Applicants Representatives  
City Clerk  
Members of the City Council

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**RECONSIDERATION AND APPEAL**

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**EFFECTIVE DATE OF THE DECISION**

The final decision of the hearing examiner shall be effective on the date stated in the decision; provided, that the appeal periods shall be calculated from the date of issuance of the land use decision, as provided in the Land Use Petition Act, Chapter 36.70C RCW. The date on which a land use decision is issued is three (3) days after a written decision is mailed by the city, or, if not mailed, the date on which the city provides notice that a written decision is publicly available.

**RECONSIDERATION**

Pursuant to BMC 20.01.230, a party of record at a public hearing may seek reconsideration only of a final decision by filing a written request for reconsideration with the director within five days after the decision has become final as defined in BMC 20.01.250(2). The request shall comply with BMC 20.01.260. The Hearing Examiner shall consider the request without public comment or argument by the party filing the request. If the request is denied, the previous action shall become final. If the request is granted, the Hearing Examiner may immediately revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. Reconsideration

should be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

### **APPEAL**

Appeals from the final decision of the Hearing Examiner on Type C-2 matters shall be made to Pierce County superior court within 21 calendar days of the date the decision or action becomes final, as defined in BMC 20.01.250(2), unless another time period is established by state law or local ordinance.

All appeals must conform with the procedures set forth in Chapter 36.70C RCW. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. Prior to the preparation of any records, the appellant shall post with the city clerk an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant. (BMC 20.01.260)