



# Memo

To: Mayor and Hayden City Council

From: Lisa M. Ailport, AICP

Date: January 21, 2026

**Agenda Item: Appeal Battleground Subdivision- Extraordinary Impact Decision**

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## **Agenda Item Location**

New Business

## **Recommended Action or Motion**

Staff recommends upholding the Administrative decision regarding the Extraordinary Impact findings, finding that is in keeping with the City of Hayden subdivision process; is an allowance within Hayden City Code and Idaho Code, and wherein nothing within Idaho Code shall obligates the city to approve any development that results in extraordinary impacts in the City.

## **Summary**

Pursuant to HCC §9-2-14 and Idaho Statutes §67-8214 extraordinary impacts are an allowed accommodation that cities in Idaho can impose on subdivisions where the results of the subdivision require the need for system improvements which are not identified in the capital improvement plans and the impacts result in a lower than acceptable level of service. Both of those conditions are in fact present at the conclusion or build out of the Battleground subdivision (see 3/24/24 letter to Viking Construction).

Viking Construction timely filed for appeal within the required 30-day window pursuant to HCC9-2-14

## **Attachment**

March 24, 2025, Determination Letter

Appeal Letter dated April 23, 2024

January 20, 2026, Letter from Fennemore



March 24, 2025

Viking Construction, Inc.  
C/O Wendell Olson  
2605 W. Hayden Ave  
Hayden, Idaho 83835

**RE: Extraordinary Impact Analysis – Battleground Subdivision**

Dear Landowners,

Please accept this letter as the City of Hayden's formal determinations of an extraordinary impact, pursuant to Hayden City Code, §9-2-14(B). Hayden City Code (HCC) and Idaho Code provide for the allowance of review of extraordinary impacts to be considered as part of the approval process of developments. Most importantly is the allowance both in Idaho Code and HCC which states "*...Nothing in this chapter shall obligate the city to approve any development that results in extraordinary impact.*" This is also supported in Idaho Code §67-8214, wherein it also states: "*Nothing in this chapter shall obligate a governmental entity to approve development which results in an extraordinary impact.*"

HCC, §9-2-14 provides authority for which the City Administrator shall: "*...consider whether any extraordinary costs will be incurred in serving the development based upon an "extraordinary impact", as defined in section 9-2-2 of this chapter.*"

Under HCC 9-2-2, an Extraordinary Impact is defined as:

*EXTRAORDINARY IMPACT: An impact which is reasonably determined by the city to:*

- A. Result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by Idaho Code section 67-8214(2);*
- B. Result in the need for system improvements which are not identified in the capital improvements plan;*
- C. Have an impact which results in a lower than acceptable level of service.*

**ANAYLSIS**

In preparing the analysis below the following was relied upon for preparing this response:

- Transportation Impact Analysis (TIA) prepared by CivTrans Engineering, Inc. dated July 2, 2024.

- Peer analysis prepared by Iteris prepared on March 5, 2025.
- 2022 Development Impact Fee Methodology report prepared by FCS.
- Resolution 2024-04, FY2025-2029 Capital Improvement Plan
- Resolution 2021-02 Resolution adopting transportation policies for the city of Hayden

Within the TIA, the engineers identify the following intersections as contributing to the study area and provides their current Level of Service (CivTrans TIA page 23):

**Table 3 -2024 Existing Intersections Levels of Service**

INTERSECTION	(S)ignalized (U)nsignalized	Approach Or Overall	AM Peak		PM Peak	
			Delay (sec)	LOS	Delay (sec)	LOS
Hayden Avenue & Huetter Road	U	NB	27.0	D	48.4	E
		SB	47.2	E	80.1	F
Hayden Avenue & Carrington Street	U	NB	13.3	B	17.4	C
		SB	13.1	B	13.5	B
Hayden Avenue & Atlas Road	U	NB	24.4	C	49.5	E
		SB	15.5	C	26.9	D
Robison Avenue & Atlas Road	U	EB	10.7	B	10.8	B
Bean / Honeysuckle Ave & Atlas Road	U	EB	10.7	B	10.8	B
		WB	17.0	C	17.0	C
Prairie Avenue & Huetter Road	S	Ovr	26.1	C	26.3	C
Prairie Avenue & Carrington Lane	U	NB	28.8	D	42.3	E
		SB	23.4	C	45.8	E
Prairie Avenue & Atlas Road	S	Ovr	29.4	C	32.0	C
Prairie Avenue & Ramsey Road	S	Ovr	28.6	C	32.8	C

Within the CivTrans TIA, the plan suggests in year 2035 ambient growth with or without the project(s) will impact all intersections negatively from current levels. However, with the project, regardless of ambient conditions, the intersections will be impacted negatively. Ambient conditions include the conditions when projected build out of the following developments occur: Hayden Sky, Madison Ranch, Northwinds and Hazelnut Glen.

City of Hayden Resolution 2021-02 adopts city's standards around transportation systems and provides the acceptable baseline operating LOS for intersections as a Level D operating at peak hours. This means the intersection delay is equal or greater than 5-second per vehicle. However, there is no formal process for the city initiating improving intersections that operate below this level of service after the current day.

This means the city may maintain an intersection at pre-development levels even if that intersection is operating below the minimum threshold of service. However, if a development decreases the LOS or extends the delay by 2.5 second per vehicle from current day, the city can require system improvements as part of that subdivision approval process (Table 3.2, Significant Impact Criteria).

The following tables are taken from the CivTrans report indicating LOS **and** delay increases with the project.



**Table 6 - Year 2035 Levels of Service without Project**

INTERSECTION	(S)ignalized (U)nsignalized (R)oundabout	Approach Or Overall	AM Peak		PM Peak	
			Delay (sec)	LOS	Delay (sec)	LOS
Hayden Ave & Huetter Rd	U	NB SB	184.9 >300 (140.9)	F F (F)	>300 >300 (260.7)	F F (F)
• All-way Stop	(S)	Ovr	(11.8)	(B)	(33.1)	(D)
• Signalized						
Hayden Ave & Carrington St	U	NB SB (NB) (SB)	20.1 125.9 (16.7) (42.1)	C F (C) (E)	57.5 >300 (33.8) (178.2)	F F (D) (F)
Hayden Ave & Atlas Rd	U	NB SB	>300 27.5	F D	>300 >300	F F
• Roundabout	(R)	(Ovr)	(9.3)	(A)	(26.7)	(D)
Robison Ave & Atlas Rd	U	EB	11.8	B	14.1	B
Bean / Honeysuckle Ave & Atlas Road	U	EB WB	11.2 22.0	B D	13.4 36.4	B E
Prairie Avenue & Huetter Road	S	Ovr	149.5 (35.1)	F (D)	70.8 (30.1)	E (C)
• Retime signal, add EB right	NB SB (S)	Ovr	>300 105.6 (14.3)	F F (B)	>300 >300 (10.0)	F F (B)
Prairie Avenue & Carrington Lane						
• Signalized (by others)	S	Ovr	157.4 (38.1)	F (D)	99.1 (38.6)	F (D)
Prairie Avenue & Atlas Road						
• Retime signal, add EB/WB right turn lanes	S	Ovr	55.9 (29.4)	E (C)	79.7 (38.2)	F (D)
Prairie Avenue & Ramsey Road						
• Retime signal, add EB right turn lane, NB left turn lane						

\*level of service and delay shown in parentheses is associated with mitigated intersection

**Table 7 – Year 2035 Levels of Service with Project**

INTERSECTION	(S)ignalized (U)nsignalized (R)oundabout	Approach Or Overall	AM Peak		PM Peak	
			Delay (sec)	LOS	Delay (sec)	LOS
Hayden Ave & Huetter Rd – All-way stop	U	Ovr	145.7 (12.0)	F (B)	276.6 (42.6)	F (D)
• Signalized	(S)					
Hayden Ave & Carrington St - with Hayden widened to 5-lane road	U	NB SB	26.8 71.4	E F	189.0 >300	F F
Hayden Ave & Atlas Rd	U	NB SB	>300 30.1	F D	>300 >300	F F
• Roundabout	(R)	(Ovr)	(9.9)	(A)	33.9	(D)
Robison Ave & Atlas Rd	U	EB	12.0	B	14.5	B
Bean / Honeysuckle Ave & Atlas Road	U	EB WB	11.4 24.3	B C	13.8 41.3	B E
Prairie Avenue & Huetter Road	S	Ovr	148.0 (36.0)	F (D)	70.5 (30.5)	E (C)
• Retime signal, add EB right	NB SB (S)	Ovr	>300 105.6 (14.3)	F F (B)	>300 >300 (10.1)	F F (B)
Prairie Avenue & Carrington Lane						
• Signalized	S	Ovr	157.2 (39.2)	F (D)	99.3 (39.1)	F (D)
Prairie Avenue & Atlas Road						
• Retime signal, add EB/WB right turn lanes	S	Ovr	56.0 (29.5)	E (C)	80.6 (38.5)	F (D)
Prairie Avenue & Ramsey Road						
• Retime signal, add EB right turn lane, NB left turn lane						

\*level of service and delay shown in parentheses is associated with mitigated intersection



When reviewing the City's 2022 adopted Impact Fee Study, only two of the intersections are included in the CIP. Those include Hayden Ave and Huetter and, Hayden and Atlas intersection. The capital improvement plan as noted within the 2022 Impact Fee Study allocates the following towards the noted intersections as being attributed directly to growth.

Hayden and Huetter- \$291,000 for a 4-way intersection improvement  
Hayden and Atlas Road - \$1,979,000 for a roundabout improvement

## **FINDINGS**

Below are the findings supporting the decision regarding whether an extraordinary impact exists for each intersection established in the CivTrans TIA. Subsequent of the finding staff does provide the required developer led improvements as part of this determination.

1. **Hayden and Huetter Intersection Impact**, finding that there ***IS*** an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. Supporting this finding is the following supportive evidence:
  - All-way stop is documented as insufficient, and a full signalized intersection is desired which thus imposes a system improvement not identified within the city's capital improvement plan (CivTrans page 49)
  - Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service (Table 7, Levels of Service).

### ***Required Improvement:***

Improve intersection to full signalized access intersection.

The CivTrans TIA suggests that the intersection considered using a spanwire over the traditional pole and mast arm permanent structures.

However, it is the belief of the city that spanwire should only be considered with the improvement that are temporary in nature. The city uses a 10-year or less window to determine if an improvement will be temporary. Given the status of the Huetter Bypass on the Idaho Statewide Transportation Improvement Program (STIP) (2025-2031), the Huetter Bypass is not listed on the project list. No other indications anticipate that the project will make the STIP in future years, so it is expected that this intersection should be constructed to the full permanent intersection improvement.

Improvement should be completed and accepted by the city as part of the acceptance of the final platting process.

### ***Impact Fee Contribution***

The city will allow up to \$291,000 of impact fees to be used towards this project. Depending on the timing of this project, the city may consider entering into an impact fee reimbursement agreement for this amount, should the city not have sufficient funding at the time of construction.

2. **Hayden and Carrington Street Impact**, finding that there ***IS*** an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. Supporting this finding is the following supportive evidence:
- The improvement has not been identified within the City's 5-year capital improvement plan nor is it within the 2022 Impact Fee Study.
  - Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service and significant delays in both AM and PM traffic times (CivTrans TIA, Table 7, Levels of Service).

***Required Improvements:***

Improve intersection to full signalized access intersection.

The Developer should be prepared to illustrate how they can bring the intersection up to a full signalized access as part of the completion of the 1<sup>st</sup> phase of final platting process of this subdivision. This impact is anticipated to be part of the development agreement for this subdivision.

***Impact Fee Contribution***

No impact fees current or future can be utilized for planning, development or construction of this, pursuant to Idaho Code §67-8210 and HCC 9-2-11(A), unless a plan modification is completed, and the project is included.

3. **Prairie and Carrington Impact**, finding that there ***IS*** an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. This is based on the following:
- The improvement has not been identified within the City's 5-year capital improvement plan nor is it within the 2022 Impact Fee Study.
  - Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service (Table 7, Levels of Service).

However, due to the nature of the city's authority to require improvements, it will not impose system improvements as part of this subdivision but reserves the right to impose system improvements if land is annexed into the city and future subdivision phases have not been completed.

***Required Improvements:***

N/A- However, if land is annexed into the City making the full intersection subject to City of Hayden Authority then the following may be required of future phases of the subdivision:

- Full signalization of the intersection

***Impact Fee Contribution***

N/A

4. **Prairie and Huetter Impact**, finding that there ***IS*** an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. This is based on the following:
- The improvement has not been identified within the City's 5-year capital improvement plan nor is it within the 2022 Impact Fee Study.
  - Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service (Table 7, Levels of Service).

However, due to the nature of the city's authority to require improvements, it will not impose system improvements as part of this subdivision but reserves the right to impose system improvements if land is annexed into the city and future subdivision phases have not been completed.

***Required Improvements:***

N/A- However, if land is annexed into the City making the full intersection subject to City of Hayden Authority then the following may be required of future phases of the subdivision:

- Install eastbound right turn lanes from Prairie to Huetter.

***Impact Fee Contribution***

N/A.

5. **Prairie and Atlas Impact** finding that there ***IS*** an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. This is based on the following:
- The improvement has not been identified within the City's 5-year capital improvement plan nor is it within the 2022 Impact Fee Study.
  - Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service (Table 7, Levels of Service).

However, due to the nature of the city's authority to require improvements, it will not impose system improvements as part of this subdivision but reserves the right to impose system improvements if land is annexed into the city and future subdivision phases have not been completed.

***Required Improvements:***

N/A- However, if land is annexed into the city making the full intersection subject to City of Hayden authority then the following may be required of future phases of the subdivision:

- Install East and West bound right turn lanes
- Retime signal

***Impact Fee Contribution***

N/A



6. **Prairie and Ramsey Impact**, finding that there **IS** an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. This is based on the following:
- The improvement has not been identified within the City's 5-year capital improvement plan nor is it within the 2022 Impact Fee Study.
  - Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service (Table 7, Levels of Service).

However, due to the nature of the city's authority to require improvements, it will not impose system improvements as part of this subdivision but reserves the right to impose system improvements if land is annexed into the city and future subdivision phases have not been completed.

***Required Improvements:***

N/A- However, if land is annexed into the city making the full intersection subject to City of Hayden authority then the following may be required of future phases of the subdivision:

- Add East bound right turn lane
- Add North and South bound left turn lanes
- Retime Signal

***Impact Fee Contribution***

N/A

7. **Hayden and Atlas Impact**, finding there **IS NOT** an extraordinary impact, provided that costs for installment of the full roundabout does not exceed subsection (A) of HCC, 9-2-2.

***Required Improvements:***

None as part of this subdivision.

***Impact Fee Contribution***

\$1,979,000 for roundabout construction. The city has paid for some design work for this intersection and any remaining funds would be less those already spent on design.

8. **Robison and Atlas Impact**, finding there **IS NOT** an extraordinary impact, as defined under HCC 9-2-2 because level of service is not affected, although the delay does increase by ±5-sec post development.

The city recognizes that this intersection may change from the current CivTrans TIA and reserves the right to reevaluate the extraordinary impact given any changes that could occur between the July 2024 version and any future modified versions.

***Required Improvements:***

None as part of this subdivision.

***Impact Fee Contribution***

N/A

9. **Honeysuckle Ave and Atlas Road Impact**, finding there ***IS NOT*** an extraordinary impact, as defined under HCC 9-2-2 because LOS overall is not lessened, although delay time is anticipated to increase by 2X the current day delay.

The city recognizes that this intersection may change from the current CivTrans TIA and reserves the right to reevaluate the extraordinary impact given any changes that could occur between the July 2024 version and any future modified versions.

***Required Improvements:***

None as part of this subdivision.

***Impact Fee Contribution:***

N/A.

**DECISION SUMMARY**

Pursuant to the authority provided for within HCC, it has been determined that extraordinary impacts ***DO EXIST*** based on development impacts that are not either identified within the 2022 Impact Fee study *and* on impacts to system design that reduce level of service or increase the delay on the following intersections:

1. Hayden and Huetter
  - a. Full Signalized intersection shall be installed- Mast and Arm System
2. Hayden and Carrington
  - a. Full Signalized intersection shall be installed- Mast and Arm System

Idaho Code is very specific on how the use of Impact Fees can be invested as part of system improvements.

§67-8210(2) states: *Expenditures of development impact fees shall be made **only for the category of system improvements and within or for the benefit of the service area for which the development impact fee was imposed as shown by the capital improvements plan and as authorized in this chapter.***

This is further supported within HCC, §9-2-11(A) specifically states:

*“Credit or reimbursement shall not be given for project improvements unless those improvements are identified in the "report" as a system improvement. In that event, the credit given will only be given for those project improvements that are specifically listed in the 'report...'”*

Since HCC and Idaho Code prevent the city from using transportation impacts fees that are not identified within the current adopted impact fee capital plan, the only other way to pay for transportation system improvements is by:

- Requiring extraordinary transportation impacts be paid for by developers,

- Shifting funds away other municipal services,
- Seeking state or federal grants or,
- Saving for capital improvements.

With extraordinary impacts areas identified above, the city requires those impacts be fully funded and mitigated by the developer(s) to the satisfaction of the City of Hayden. The city does make available to the Developers the opportunity for reimbursement of Transportation Impact Fees for Hayden and Huetter of up to, but not to exceed \$291,000, or any remaining dollars not yet spent on this intersection by the city. A separate agreement with the city is required to make funds eligible for reimbursement.

Since the CivTrans plan is still in review, the city also reserves the right to make changes to their determination of extraordinary impacts should the plan change in a way that results in new/additional impacts being identified.

Pursuant to HCC §9-2-14(D), D, the applicant may appeal the determination of an extraordinary impact or the amount of extraordinary costs incurred in writing by filing a notice of appeal to the city council with the city clerk pursuant to the terms set forth in section 9-2-13, "Appeals", of HCC. When filing an appeal, the requestor shall submit a letter providing the reason for the appeal along with supporting documentation. The city council shall consider the appeal and make a final determination within ninety (90) days of receipt of the written appeal.

Regards,



Lisa Ailport, AICP  
City Administrator

Cc: Via Electronic Mail: Fonda Jovick, Lake City Law, Donna Phillips, Hayden Community Development Director, Rob Wright, PE City of Hayden Engineer, Scott Krajack, Viking Construction.

Reference Documents:

7/2/2024 TIA

3/5/2025 Peer Review

2022 FCS Impact Fee Study

Resolution 2024-04- Adoption of the FY2025-2029 Capital Improvement Plan

Resolution 2021-02 Resolution adopting transportation policies for the city of Hayden

References Code/Statutes:

I.C. §67-8214 (1), (3-5)

HCC §9-2-2 Definition of Extraordinary Impact

HCC §9-2-14

HCC§-9-2-1



**FENNEMORE.**

Received  
04/23/2025  
as

Peter J. Smith IV  
Director  
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Coeur d'Alene, Idaho 83814  
PH (208) 956-0145  
fennemorelaw.com

April 23, 2025

Via Hand Delivery

Abbi Sanchez  
Hayden City Clerk  
8930 North Government Way  
Hayden, ID 83835

**Re: Appeal of Proportionate Share Analysis Determination**

Dear Ms. Sanchez,

I represent Viking Construction, Inc.

**Introduction**

Pursuant to Hayden City Code § 9-2-13, Viking Construction, Inc. hereby appeals the City's written determination regarding the applicability and amount of the development impact fee, as well as other discretionary actions and inactions by the City. This appeal is filed within thirty (30) days following the City's determination, as required by the ordinance. We submit this letter to provide a full explanation of our request, the reasons for our appeal, and all supporting documentation. We respectfully request that the City Council reconsider the proportionate share analysis methodology used in the determination of extraordinary impacts, the requirement for a full permanent signalized intersection at Huetter/Hayden, and the conflicting statements regarding the Traffic Impact Analysis (TIA) review. Additionally, if desired by the City, Viking Construction, Inc. is willing to engage in mediation with a qualified independent party to resolve any disagreements related to the impact fee for the proposed development, with mediation costs to be shared equally between Viking Construction, Inc. and the City.

**Background**

On March 24, 2025, the City of Hayden issued a determination of extraordinary impact for the Battleground Subdivision. The City's analysis, based on the Transportation Impact Analysis (TIA) prepared by CivTrans Engineering, Inc., identified several intersections that would be negatively impacted by the new development.

## **FENNEMORE.**

Abbi Sanchez, Hayden City Clerk

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The purpose of a TIA is to identify impacts generated by a particular development. Given the regional growth of our community, it is immutable that every major intersection will reach a point of operational failure at some point in the future. The TIA helps parse out the timing of such failures that may result from a particular development project, giving the City the tools needed to properly plan for and mitigate these failures at the appropriate time. In this case, the TIA identified intersection improvements that have not been contemplated in the City's current Capital Improvement Plan (CIP). This lack of foresight means that the project impact mitigation largely falls into the "Extraordinary Impacts" category as defined by the Code.

The City found that the intersections at Hayden and Huetter, Hayden and Carrington Street, Prairie and Carrington, Prairie and Huetter, Prairie and Atlas, and Prairie and Ramsey would experience extraordinary impacts due to the new development. These findings were based on the insufficiency of current traffic control measures and the lack of identification of necessary improvements in the capital improvement plan. The City required full signalized intersections or other improvements at these locations, with limited or no impact fee contributions available for some intersections.

### **Proportionate Share Analysis**

The City's current methodology for calculating the proportionate share of traffic impacts for new developments is fundamentally flawed and unjust. By only considering the increase in traffic caused by the new development, the City unfairly places the entire burden of improvement costs on the developer. This approach is not only inequitable but also violates the principles set forth in the Hayden City Code and Idaho statutes.

The impact fee charged by the City of Hayden blatantly violates the language of the ordinance in several ways. The ordinance clearly states, "A development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with Idaho Code section 67-8207" (Section 9-2-8(B)). The City's current method grossly exceeds this proportionate share by placing the entire cost burden on the developer. Furthermore, "Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs" (Section 9-2-8(B)). The City's calculation method fails to accurately reflect the actual system improvement costs attributable to the new development.

Idaho Code § 67-8203(9) defines "development impact fee" as "a payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve development". Furthermore, Idaho Code § 67-8204(1) states that "a development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with section 67-8207, Idaho Code". This statutory framework unequivocally supports the argument that Viking Construction, Inc. should only be

## **FENNEMORE.**

Abbi Sanchez, Hayden City Clerk

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responsible for a proportionate share of the street improvement costs, as the fee is intended to cover the proportionate share of the cost of system improvements needed to serve the new development. The Idaho Development Impact Fee Act (IDIFA) establishes uniform standards by which local governments may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities. This principle is reinforced by the definition of “proportionate share” in Idaho Code § 67-8203(23), which means “that portion of the cost of system improvements determined pursuant to section 67-8207, Idaho Code, which reasonably relates to the service demands and needs of the project”.

The purpose of development impact fees is to ensure that adequate public facilities are available to serve new growth and development. Idaho Code § 67-8202 states that “new growth and development should be required to pay a proportionate share of the cost of new public facilities needed to serve new growth and development”. This ensures that the costs are distributed equitably among those who benefit from the new development.

A hypothetical is helpful to illustrate the analysis. Imagine an intersection that already has 1,000 cars passing through it daily. A new development adds 100 more cars. The City's current method calculates the developer's share based only on the 100 new cars. This means the developer would be responsible for the entire cost of improvements, which for the sake of discussion we'll assume is \$1,000,000.

The calculation should consider all 1,100 cars (1,000 existing + 100 new). By including all traffic in the calculation, the developer's share of the cost would be smaller and more equitable. This approach ensures that the cost of improvements is shared fairly among all users of the intersection, not just the new development.

Under our suggested method, the developer's share of the cost would be calculated based on the proportion of new traffic to total traffic. For example, under the current method, the developer pays \$1,000,000 (entire cost of improvements). The developer pays \$90,909.09 (proportionate share based on new traffic). This method allocates the “proportional share” to the developer and distributes the cost more equitably among all users of the intersection.

By considering all traffic contributing to the intersection, the calculation reflects the actual usage and impact on the infrastructure. This approach aligns with principles of equity and fairness, ensuring that developers are not disproportionately burdened with costs that should be shared among all users.

### **Requirement for Full Permanent Signalized Intersection at Huetter/Hayden**

The City's mandate for a full permanent signalized intersection at Huetter/Hayden should be re-evaluated in light of the consultant's recommendation for a less expensive traffic signal. The



## **FENNEMORE.**

Abbi Sanchez, Hayden City Clerk

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CivTrans TIA suggests that the intersection be improved using a spanwire over the traditional pole and mast arm permanent structures. This recommendation provides a cost-effective solution that addresses the traffic impact without resorting to high-cost measures like full signalization. Given the uncertainty of the Huetter Bypass on the Idaho Statewide Transportation Improvement Program (STIP) (2025-2031), and the fact that the Huetter Bypass is not listed on the project list, it is reasonable to consider the spanwire solution as a viable alternative. Therefore, we urge the City to adopt the solution proposed by CivTrans, which ensures effective traffic management while being mindful of costs.

### **Conflicting Statements Regarding the TIA Review**

The City's letter contains conflicting statements regarding the status of the Traffic Impact Analysis (TIA). On one hand, it represents the City's final decision based on the TIA, while on the other hand, it states that the TIA is still under review with no specified timeline for completion. This ambiguity could potentially allow the City to change its decision at any time, creating uncertainty for Viking Construction, Inc. It is crucial to address this inconsistency, emphasizing the need for a clear and final determination to avoid any future disputes or changes in requirements.

### **Conclusion**

We propose that the City use the TIA and those of surrounding developments to refine the CIP and include the now known issues expected to arise in the future. By including these mitigation projects in the CIP and making appropriate adjustments to the City's traffic impact fees, it ensures that all builders are treated fairly and equitably. This approach also gives the City the ability to provide impact fee credits to any builder/developer that completes the construction of a traffic mitigation project.

We demand that the City Council reconsider the proportionate share analysis methodology used in the determination of extraordinary impacts. The current method is unjust, inequitable, and in direct violation of the Hayden City Code and Idaho statutes. Additionally, we request a re-evaluation of the requirement for a full permanent signalized intersection at Huetter/Hayden and a resolution to the conflicting statements regarding the TIA review.

**FENNEMORE.**

Abbi Sanchez, Hayden City Clerk

April 23, 2025

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Thank you for your attention to this matter. Please let me know if you would like to discuss this further.

Sincerely,

FENNEMORE CRAIG, P.C.

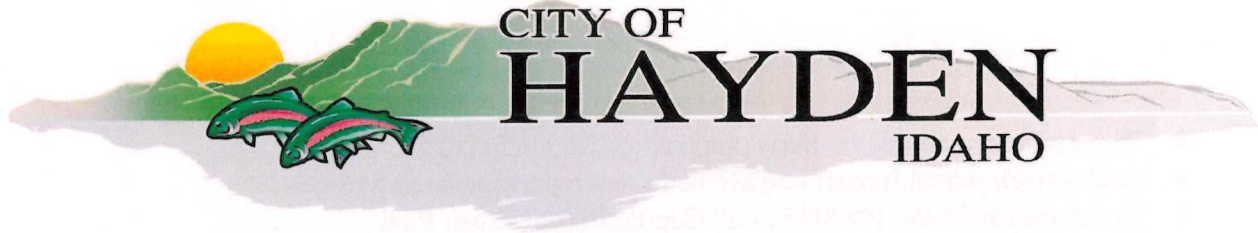


Peter J. Smith IV

cc: Via Email: City Attorney Fonda Jovick, Esq.  
Lake City Law Group, PLLC  
435 W. Hanley Avenue  
Suite 101  
Coeur d'Alene, ID 83815

Enclosure: March 24, 2025 Letter from City of Hayden

PJS



March 24, 2025

Viking Construction, Inc.  
C/O Wendell Olson  
2605 W. Hayden Ave  
Hayden, Idaho 83835

**RE: Extraordinary Impact Analysis – Battleground Subdivision**

Dear Landowners,

Please accept this letter as the City of Hayden's formal determinations of an extraordinary impact, pursuant to Hayden City Code, §9-2-14(B). Hayden City Code (HCC) and Idaho Code provide for the allowance of review of extraordinary impacts to be considered as part of the approval process of developments. Most importantly is the allowance both in Idaho Code and HCC which states "*...Nothing in this chapter shall obligate the city to approve any development that results in extraordinary impact.*" This is also supported in Idaho Code §67-8214, wherein it also states: "*Nothing in this chapter shall obligate a governmental entity to approve development which results in an extraordinary impact.*"

HCC, §9-2-14 provides authority for which the City Administrator shall: "*...consider whether any extraordinary costs will be incurred in serving the development based upon an "extraordinary impact", as defined in section 9-2-2 of this chapter.*"

Under HCC 9-2-2, an Extraordinary Impact is defined as:

**EXTRAORDINARY IMPACT:** *An impact which is reasonably determined by the city to:*

- A. Result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by Idaho Code section 67-8214(2);*
- B. Result in the need for system improvements which are not identified in the capital improvements plan;*
- C. Have an impact which results in a lower than acceptable level of service.*

**ANAYLSIS**

In preparing the analysis below the following was relied upon for preparing this response:

- Transportation Impact Analysis (TIA) prepared by CivTrans Engineering, Inc. dated July 2, 2024.



- Peer analysis prepared by Iteris prepared on March 5, 2025.
- 2022 Development Impact Fee Methodology report prepared by FCS.
- Resolution 2024-04, FY2025-2029 Capital Improvement Plan
- Resolution 2021-02 Resolution adopting transportation policies for the city of Hayden

Within the TIA, the engineers identify the following intersections as contributing to the study area and provides their current Level of Service (CivTrans TIA page 23):

**Table 3 -2024 Existing Intersections Levels of Service**

INTERSECTION	(S)ignalized (U)nsignalized	Approach Or Overall	AM Peak		PM Peak	
			Delay (sec)	LOS	Delay (sec)	LOS
Hayden Avenue & Huetter Road	U	NB	27.0	D	48.4	E
		SB	47.2	E	80.1	F
Hayden Avenue & Carrington Street	U	NB	13.3	B	17.4	C
		SB	13.1	B	13.5	B
Hayden Avenue & Atlas Road	U	NB	24.4	C	49.5	E
		SB	15.5	C	26.9	D
Robison Avenue & Atlas Road	U	EB	10.7	B	10.8	B
Bean / Honeysuckle Ave & Atlas Road	U	EB	10.7	B	10.8	B
		WB	17.0	C	17.0	C
Prairie Avenue & Huetter Road	S	Ovr	26.1	C	26.3	C
Prairie Avenue & Carrington Lane	U	NB	28.8	D	42.3	E
		SB	23.4	C	45.8	E
Prairie Avenue & Atlas Road	S	Ovr	29.4	C	32.0	C
Prairie Avenue & Ramsey Road	S	Ovr	28.6	C	32.8	C

Within the CivTrans TIA, the plan suggests in year 2035 ambient growth with or without the project(s) will impact all intersections negatively from current levels. However, with the project, regardless of ambient conditions, the intersections will be impacted negatively. Ambient conditions include the conditions when projected build out of the following developments occur: Hayden Sky, Madison Ranch, Northwinds and Hazelnut Glen.

City of Hayden Resolution 2021-02 adopts city's standards around transportation systems and provides the acceptable baseline operating LOS for intersections as a Level D operating at peak hours. This means the intersection delay is equal or greater than 5-second per vehicle. However, there is no formal process for the city initiating improving intersections that operate below this level of service after the current day.

This means the city may maintain an intersection at pre-development levels even if that intersection is operating below the minimum threshold of service. However, if a development decreases the LOS or extends the delay by 2.5 second per vehicle from current day, the city can require system improvements as part of that subdivision approval process (Table 3.2, Significant Impact Criteria).

The following tables are taken from the CivTrans report indicating LOS and delay increases with the project.

**Table 6 - Year 2035 Levels of Service without Project**

INTERSECTION	(S)ignalized (U)nsignalized (R)oundabout	Approach Or Overall	AM Peak		PM Peak	
			Delay (sec)	LOS	Delay (sec)	LOS
Hayden Ave & Huetter Rd	U	NB	184.9	F	>300	F
		SB	>300	F	>300	F
• All-way Stop			(140.9)	(F)	(260.7)	(F)
• Signalized	(S)	Ovr	(11.8)	(B)	(33.1)	(D)
Hayden Ave & Carrington St	U	NB	20.1	C	57.5	F
		SB	125.9	F	>300	F
• Hayden widened to 5-lane road		(NB)	(16.7)	(C)	(33.8)	(D)
		(SB)	(42.1)	(E)	(178.2)	(F)
Hayden Ave & Atlas Rd	U	NB	>300	F	>300	F
		SB	27.5	D	>300	F
• Roundabout	(R)	(Ovr)	(9.3)	(A)	(26.7)	(D)
Robison Ave & Atlas Rd	U	EB	11.8	B	14.1	B
Bean / Honeysuckle Ave & Atlas Road	U	EB	11.2	B	13.4	B
		WB	22.0	D	36.4	E
Prairie Avenue & Huetter Road	S	Ovr	149.5	F	70.8	E
• Retime signal, add EB right			(35.1)	(D)	(30.1)	(C)
Prairie Avenue & Carrington Lane	NB		>300	F	>300	F
	SB	Ovr	105.6	F	>300	F
• Signalized (by others)	(S)		(14.3)	(B)	(10.0)	(B)
Prairie Avenue & Atlas Road	S	Ovr	157.4	F	99.1	F
• Retime signal, add EB/WB right turn lanes			(38.1)	(D)	(38.6)	(D)
Prairie Avenue & Ramsey Road	S	Ovr	55.9	E	79.7	F
• Retime signal, add EB right turn lane, NB left turn lane			(29.4)	(C)	(38.2)	(D)

\*level of service and delay shown in parentheses is associated with mitigated intersection

**Table 7 – Year 2035 Levels of Service with Project**

INTERSECTION	(S)ignalized (U)nsignalized (R)oundabout	Approach Or Overall	AM Peak		PM Peak	
			Delay (sec)	LOS	Delay (sec)	LOS
Hayden Ave & Huetter Rd – All-way stop	U	Ovr	145.7	F	276.6	F
• Signalized	(S)		(12.0)	(B)	(42.6)	(D)
Hayden Ave & Carrington St - with Hayden widened to 5-lane road	U	NB	26.8	E	189.0	F
		SB	71.4	F	>300	F
Hayden Ave & Atlas Rd	U	NB	>300	F	>300	F
		SB	30.1	D	>300	F
• Roundabout	(R)	(Ovr)	(9.9)	(A)	33.9	(D)
Robison Ave & Atlas Rd	U	EB	12.0	B	14.5	B
Bean / Honeysuckle Ave & Atlas Road	U	EB	11.4	B	13.8	B
		WB	24.3	C	41.3	E
Prairie Avenue & Huetter Road	S	Ovr	148.0	F	70.5	E
• Retime signal, add EB right			(36.0)	(D)	(30.5)	(C)
Prairie Avenue & Carrington Lane	NB		>300	F	>300	F
	SB	Ovr	105.6	F	>300	F
• Signalized	(S)		(14.3)	(B)	(10.1)	(B)
Prairie Avenue & Atlas Road	S	Ovr	157.2	F	99.3	F
• Retime signal, add EB/WB right turn lanes			(39.2)	(D)	(39.1)	(D)
Prairie Avenue & Ramsey Road	S	Ovr	56.0	E	80.6	F
• Retime signal, add EB right turn lane, NB left turn lane			(29.5)	(C)	(38.5)	(D)

\*level of service and delay shown in parentheses is associated with mitigated intersection



When reviewing the City's 2022 adopted Impact Fee Study, only two of the intersections are included in the CIP. Those include Hayden Ave and Huetter and, Hayden and Atlas intersection. The capital improvement plan as noted within the 2022 Impact Fee Study allocates the following towards the noted intersections as being attributed directly to growth.

Hayden and Huetter- \$291,000 for a 4-way intersection improvement  
Hayden and Atlas Road - \$1,979,000 for a roundabout improvement

## **FINDINGS**

Below are the findings supporting the decision regarding whether an extraordinary impact exists for each intersection established in the CivTrans TIA. Subsequent of the finding staff does provide the required developer led improvements as part of this determination.

1. **Hayden and Huetter Intersection Impact**, finding that there *IS* an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. Supporting this finding is the following supportive evidence:
  - All-way stop is documented as insufficient, and a full signalized intersection is desired which thus imposes a system improvement not identified within the city's capital improvement plan (CivTrans page 49)
  - Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service (Table 7, Levels of Service).

### ***Required Improvement:***

Improve intersection to full signalized access intersection.

The CivTrans TIA suggests that the intersection considered using a spanwire over the traditional pole and mast arm permanent structures.

However, it is the belief of the city that spanwire should only be considered with the improvement that are temporary in nature. The city uses a 10-year or less window to determine if an improvement will be temporary. Given the status of the Huetter Bypass on the Idaho Statewide Transportation Improvement Program (STIP) (2025-2031), the Huetter Bypass is not listed on the project list. No other indications anticipate that the project will make the STIP in future years, so it is expected that this intersection should be constructed to the full permanent intersection improvement.

Improvement should be completed and accepted by the city as part of the acceptance of the final platting process.

### ***Impact Fee Contribution***

The city will allow up to \$291,000 of impact fees to be used towards this project. Depending on the timing of this project, the city may consider entering into an impact fee reimbursement agreement for this amount, should the city not have sufficient funding at the time of construction.

2. **Hayden and Carrington Street Impact**, finding that there *IS* an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. Supporting this finding is the following supportive evidence:

- The improvement has not been identified within the City's 5-year capital improvement plan nor is it within the 2022 Impact Fee Study.
- Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service and significant delays in both AM and PM traffic times (CivTrans TIA, Table 7, Levels of Service).

***Required Improvements:***

Improve intersection to full signalized access intersection.

The Developer should be prepared to illustrate how they can bring the intersection up to a full signalized access as part of the completion of the 1<sup>st</sup> phase of final platting process of this subdivision. This impact is anticipated to be part of the development agreement for this subdivision.

***Impact Fee Contribution***

No impact fees current or future can be utilized for planning, development or construction of this, pursuant to Idaho Code §67-8210 and HCC 9-2-11(A), unless a plan modification is completed, and the project is included.

3. **Prairie and Carrington Impact**, finding that there *IS* an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. This is based on the following:

- The improvement has not been identified within the City's 5-year capital improvement plan nor is it within the 2022 Impact Fee Study.
- Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service (Table 7, Levels of Service).

However, due to the nature of the city's authority to require improvements, it will not impose system improvements as part of this subdivision but reserves the right to impose system improvements if land is annexed into the city and future subdivision phases have not been completed.

***Required Improvements:***

N/A- However, if land is annexed into the City making the full intersection subject to City of Hayden Authority then the following may be required of future phases of the subdivision:

- Full signalization of the intersection

***Impact Fee Contribution***

N/A

4. **Prairie and Huetter Impact**, finding that there *IS* an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. This is based on the following:
- The improvement has not been identified within the City's 5-year capital improvement plan nor is it within the 2022 Impact Fee Study.
  - Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service (Table 7, Levels of Service).

However, due to the nature of the city's authority to require improvements, it will not impose system improvements as part of this subdivision but reserves the right to impose system improvements if land is annexed into the city and future subdivision phases have not been completed.

***Required Improvements:***

N/A- However, if land is annexed into the City making the full intersection subject to City of Hayden Authority then the following may be required of future phases of the subdivision:

- Install eastbound right turn lanes from Prairie to Huetter.

***Impact Fee Contribution***

N/A.

5. **Prairie and Atlas Impact** finding that there *IS* an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. This is based on the following:
- The improvement has not been identified within the City's 5-year capital improvement plan nor is it within the 2022 Impact Fee Study.
  - Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service (Table 7, Levels of Service).

However, due to the nature of the city's authority to require improvements, it will not impose system improvements as part of this subdivision but reserves the right to impose system improvements if land is annexed into the city and future subdivision phases have not been completed.

***Required Improvements:***

N/A- However, if land is annexed into the city making the full intersection subject to City of Hayden authority then the following may be required of future phases of the subdivision:

- Install East and West bound right turn lanes
- Retime signal

***Impact Fee Contribution***

N/A



6. **Prairie and Ramsey Impact**, finding that there **IS** an extraordinary impact based on HCC 9-2-2 (B) & (C) definition of an extraordinary impact. This is based on the following:
- The improvement has not been identified within the City's 5-year capital improvement plan nor is it within the 2022 Impact Fee Study.
  - Without the system improvement, the project will cause impacts that result in lower than acceptable levels of service (Table 7, Levels of Service).

However, due to the nature of the city's authority to require improvements, it will not impose system improvements as part of this subdivision but reserves the right to impose system improvements if land is annexed into the city and future subdivision phases have not been completed.

***Required Improvements:***

N/A- However, if land is annexed into the city making the full intersection subject to City of Hayden authority then the following may be required of future phases of the subdivision:

- Add East bound right turn lane
- Add North and South bound left turn lanes
- Retime Signal

***Impact Fee Contribution***

N/A

7. **Hayden and Atlas Impact**, finding there **IS NOT** an extraordinary impact, provided that costs for installment of the full roundabout does not exceed subsection (A) of HCC, 9-2-2.

***Required Improvements:***

None as part of this subdivision.

***Impact Fee Contribution***

\$1,979,000 for roundabout construction. The city has paid for some design work for this intersection and any remaining funds would be less those already spent on design.

8. **Robison and Atlas Impact**, finding there **IS NOT** an extraordinary impact, as defined under HCC 9-2-2 because level of service is not affected, although the delay does increase by  $\pm 5$ -sec post development.

The city recognizes that this intersection may change from the current CivTrans TIA and reserves the right to reevaluate the extraordinary impact given any changes that could occur between the July 2024 version and any future modified versions.

***Required Improvements:***

None as part of this subdivision.

***Impact Fee Contribution***

N/A

9. **Honeysuckle Ave and Atlas Road Impact**, finding there ***IS NOT*** an extraordinary impact, as defined under HCC 9-2-2 because LOS overall is not lessened, although delay time is anticipated to increase by 2X the current day delay.

The city recognizes that this intersection may change from the current CivTrans TIA and reserves the right to reevaluate the extraordinary impact given any changes that could occur between the July 2024 version and any future modified versions.

***Required Improvements:***

None as part of this subdivision.

***Impact Fee Contribution:***

N/A.

**DECISION SUMMARY**

Pursuant to the authority provided for within HCC, it has been determined that extraordinary impacts ***DO EXIST*** based on development impacts that are not either identified within the 2022 Impact Fee study *and* on impacts to system design that reduce level of service or increase the delay on the following intersections:

1. Hayden and Huetter
  - a. Full Signalized intersection shall be installed- Mast and Arm System
2. Hayden and Carrington
  - a. Full Signalized intersection shall be installed- Mast and Arm System

Idaho Code is very specific on how the use of Impact Fees can be invested as part of system improvements.

§67-8210(2) states: *Expenditures of development impact fees shall be made **only for the category of system improvements and within or for the benefit of the service area for which the development impact fee was imposed as shown by the capital improvements plan and as authorized in this chapter.***

This is further supported within HCC, §9-2-11(A) specifically states:

*“Credit or reimbursement shall not be given for project improvements unless those improvements are identified in the “report” as a system improvement. In that event, the credit given will only be given for those project improvements that are specifically listed in the ‘report...’”*

Since HCC and Idaho Code prevent the city from using transportation impacts fees that are not identified within the current adopted impact fee capital plan, the only other way to pay for transportation system improvements is by:

- Requiring extraordinary transportation impacts be paid for by developers,

- Shifting funds away other municipal services,
- Seeking state or federal grants or,
- Saving for capital improvements.

With extraordinary impacts areas identified above, the city requires those impacts be fully funded and mitigated by the developer(s) to the satisfaction of the City of Hayden. The city does make available to the Developers the opportunity for reimbursement of Transportation Impact Fees for Hayden and Huetter of up to, but not to exceed \$291,000, or any remaining dollars not yet spent on this intersection by the city. A separate agreement with the city is required to make funds eligible for reimbursement.

Since the CivTrans plan is still in review, the city also reserves the right to make changes to their determination of extraordinary impacts should the plan change in a way that results in new/additional impacts being identified.

Pursuant to HCC §9-2-14(D), D, the applicant may appeal the determination of an extraordinary impact or the amount of extraordinary costs incurred in writing by filing a notice of appeal to the city council with the city clerk pursuant to the terms set forth in section 9-2-13, "Appeals", of HCC. When filing an appeal, the requestor shall submit a letter providing the reason for the appeal along with supporting documentation. The city council shall consider the appeal and make a final determination within ninety (90) days of receipt of the written appeal.

Regards,



Lisa Ailport, AICP  
City Administrator

Cc: Via Electronic Mail: Fonda Jovick, Lake City Law, Donna Phillips, Hayden Community Development Director, Rob Wright, PE City of Hayden Engineer, Scott Krajack, Viking Construction.

Reference Documents:

7/2/2024 TIA  
3/5/2025 Peer Review  
2022 FCS Impact Fee Study  
Resolution 2024-04- Adoption of the FY2025-2029 Capital Improvement Plan  
Resolution 2021-02 Resolution adopting transportation policies for the city of Hayden

References Code/Statues:

I.C. §67-8214 (1), (3-5)  
HCC §9-2-2 Definition of Extraordinary Impact  
HCC §9-2-14  
HCC§-9-2-1

January 20, 2026

Via Hand Delivery

Abbi Sanchez  
Hayden City Clerk  
8930 North Government Way  
Hayden, ID 83835

**Re: Appeal of Proportionate Share Analysis Determination**

Dear Ms. Sanchez,

We represent Viking Construction, Inc. ("Viking"). Viking respectfully submits this letter in support of the appeal that will be heard on January 27, 2026.

**BACKGROUND**

Viking proposes to develop the Battleground Subdivision in the City of Hayden. The proposal is for 176 single family residential lots, one commercial lot, one 12-acre park, and one commercial lot with 144 multi-family dwelling units. More detail is contained in Case No. PZE-20-0193.

On March 24, 2025, the City Administrator, Lisa Ailport, sent a letter to Viking. The letter contained the "City of Hayden's formal determinations of an extraordinary impact, pursuant to Hayden City Code, §9-2-14(B)." The City Administrator determined that:

*extraordinary impacts **DO EXIST** based on development impacts that are not either identified within the 2022 Impact Fee study and on impacts to the system design that reduce level of service or increase the delay in the following intersections:*

1. *Hayden Avenue and Huetter Road*
  - a. *Full Signalized intersection shall be installed- Mast and Arm System*
2. *Hayden Avenue and Carrington Street*
  - a. *Full Signalized intersection shall be installed- Mast and Arm System*

This determination was based on the Transportation Impact Analysis (TIA) prepared by CivTrans Engineering, Inc. dated July 2, 2024, peer analysis prepared by Iteris dated March 5, 2025, 2022 Development Impact Fee Methodology Report prepared by FCS Group, Resolution

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2024-04, FY2025-2029 Capital Improvement Plan, and Resolution 2021-02 Resolution adopting transportation policies of the City of Hayden.

The CivTrans TIA stated that Hayden Avenue and Huetter Road, and Hayden Avenue and Carrington Street had the following levels of service (“LOS”) as of 2024.

<b>Hayden Avenue and Huetter Road</b>	
<b>AM Peak</b>	<b>PM Peak</b>
NORTHBOUND – Level D	NORTHBOUND – Level E
SOUTHBOUND - Level E	SOUTHBOUND - Level F
<b>Hayden Avenue and Carrington Street</b>	
<b>AM Peak</b>	<b>PM Peak</b>
NORTHBOUND – Level B	NORTHBOUND – Level C
SOUTHBOUND - Level B	SOUTHBOUND - Level B

The City strives for an acceptable baseline operating LOS of Level D. If an intersection’s LOS is already below a Level D, the city has no formal process for improving the intersections. This means, the City “may maintain an intersection at pre-development levels even if that intersection is operating below the minimum threshold of service.” If a development “decreases the level of service or extends the delay by 2.5 second per vehicle from current day, the city can require system improvements as part that subdivision approval process.”

The CivTrans TIA also analyzed the levels of service of Hayden Avenue and Huetter Road, and Hayden Avenue and Carrington Street in 2035 with or without the Battleground subdivision.

The LOS without the Battleground subdivision in 2035 is predicted to be:

<b>Hayden Avenue and Huetter Road</b>	
<b>AM Peak</b>	<b>PM Peak</b>
NORTHBOUND – Level F	NORTHBOUND – Level F
SOUTHBOUND - Level F	SOUTHBOUND - Level F
<b>Hayden Avenue and Carrington Street</b>	
<b>AM Peak</b>	<b>PM Peak</b>
NORTHBOUND – Level C	NORTHBOUND – Level F
SOUTHBOUND - Level F	SOUTHBOUND - Level F



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The LOS with the Battleground subdivision in 2035 is predicted to be:

<b>Hayden Avenue and Huetter Road</b>	
<b>AM Peak</b>	<b>PM Peak</b>
NORTHBOUND – Level F	NORTHBOUND – Level F
SOUTHBOUND - Level F	SOUTHBOUND - Level F
<b>Hayden Avenue and Carrington Street</b>	
<b>AM Peak</b>	<b>PM Peak</b>
NORTHBOUND – <b>Level E</b>	NORTHBOUND – Level F
SOUTHBOUND - Level F	SOUTHBOUND - Level F

The **highlighted LOS** represents the only difference between the predicted LOS in 2035 with only “ambient growth” and the addition of the Battleground subdivision.<sup>1</sup>

The City Administrator found that Hayden Avenue and Huetter Road will experience an “extraordinary impact” caused by the Battleground subdivision. To mitigate this extraordinary impact, the City requires Viking to build and pay for a “full signalized access intersection.” The “full signalized access intersection” must be completed and accepted by the City as part of the final platting process.

The City Administrator also found Hayden Avenue and Carrington Street will experience an “extraordinary impact” caused by the Battleground subdivision. To mitigate this extraordinary impact, the City requires Viking to build and pay for a “full signalized access intersection.” The “full signalized access intersection” must be completed and accepted by the City as part of the 1<sup>st</sup> phase of final platting process.

### **LEGAL STANDARD**

The legal basis for the City Administrator’s findings are found in Chapter 2, Section 9 of the Hayden City Code (“City Code”). City Code Section 9-2-14 addresses “extraordinary impacts.” It states:

*A. In determining the proportionate share of the cost of system improvements to be paid by the developer, the city administrator, or his or her duly designated agent, shall consider whether any extraordinary costs will be incurred in serving the development based upon an “extraordinary*

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<sup>1</sup> Ambient growth includes the buildout of several other developments, including Hayden Sky, Madison Ranch, Northwinds, and Hazelnut Glen. See page 2 of March 24, 2025 letter from City Administrator, Lisa Ailport.

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*impact”, as defined in section [9-2-2](#) of this chapter. This determination shall be made prior to issuance of any permit for development and shall be paid prior to any such issuance except as may be provided pursuant to a private agreement between the parties as authorized by Idaho Code section 67-8214.*

*B. If the city administrator, or his or her duly designated agent, determines that the development will result in an extraordinary impact, it shall advise the fee payer in writing what the extraordinary impact is, the reason for the extraordinary impact, and the estimated costs to be incurred as a result of the extraordinary impact.*

*C. Nothing in this chapter shall obligate the city to approve any development that results in extraordinary impact.*

*D. The fee payer may appeal the determination of an extraordinary impact or the amount of extraordinary costs incurred in writing by filing a notice of appeal to the city council with the city clerk pursuant to the terms set forth in section [9-2-13](#), “Appeals”, of this chapter. When filing an appeal, the fee payer shall submit a letter providing the reason for the appeal along with supporting documentation. The city council shall consider the appeal and make a final determination within ninety (90) days of receipt of the written appeal. (Ord. 412, 3-14-2006)*

City Code Section 9-2-2 defines Extraordinary Impact. It states:

**EXTRAORDINARY IMPACT:** *An impact which is reasonably determined by the city to:*

*A. Result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by Idaho Code section 67-8214(2);*

*B. Result in the need for system improvements which are not identified in the capital improvements plan;*

*C. Have an impact which results in a lower than acceptable level of service.*

## **ARGUMENT**

The City Administrator found that the addition of the Battleground subdivision meets the definition of subsection (B) and (C) of the City Code Section 9-2-2. In short, the approval of the Battleground subdivision will “result in the need for system improvements which are not identified in the capital improvements plan” and it will “have an impact which results in a lower than acceptable level of service.” Neither of these grounds is supported by the facts for these reasons.

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First, without the Battleground subdivision, Hayden Avenue and Huetter Road will be a Level F in all directions at all peak times. Importantly, Viking causes ZERO degradation to the intersection: Level F to Level F equals no change whatsoever. How can Viking be said to cause an “extraordinary impact” when the measurable impact is, in fact, zero? The intersection will fail regardless of Viking’s development, due to ambient growth and other developments in the area. The Battleground subdivision will not “result in the need for system improvements not identified in the capital improvements plan.” Nor will it “have an impact which results in a lower level of service.” Therefore, the Battleground subdivision does not meet the definition of an extraordinary impact.

Second, without the Battleground subdivision, Hayden Avenue and Carrington Street will be at Level F in 7 out of 8 metrics all directions and times except Northbound AM Peak. Viking’s development affects only 1 out of 8 metrics: Northbound AM Peak, where the LOS degrades from Level C to Level E. Put differently, 87.5% of the intersection metrics will be at Level F regardless of whether Viking builds the Battleground subdivision. This single directional degradation during one peak period is de minimis compared to the overall Level F conditions that will exist regardless of the subdivision. Requiring full signalization for a marginal change affecting only 12.5% of intersection metrics, when 87.5% will fail regardless, is unreasonable and not supported by the extraordinary impact definition. The overall intersection operates at Level F. Therefore, the Battleground subdivision does not meet the definition of an extraordinary impact.

Third, even if an extraordinary impact exists, the City Administrator failed to calculate Viking’s proportionate share. The City Code states the purpose of the Impact Fee Ordinance in Section 9-2-1. It states:

*The provisions of this chapter shall be known as the CITY OF HAYDEN DEVELOPMENT IMPACT FEE ORDINANCE. The purpose of these regulations is to prescribe the procedure whereby developers of land shall pay an impact fee as set forth in this chapter for the purpose of providing the public facilities and system improvements needed to serve future residents and users of such development. It is further the purpose of this chapter to:*

- A. Ensure that adequate facilities are available to serve new growth and development;*
- B. Promote orderly growth and development by establishing uniform standards by which the city may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;*
- C. Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development requirements;*

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*D. Collect and expend development impact fees pursuant to the enabling powers granted by the provision of the Idaho development impact fee act, Idaho Code title 67, chapter 82;*

*E. Provide the legal and procedural basis for the implementation of development impact fees within the area of city impact; and*

*F. Ensure that any capital improvement funded wholly or in part with impact fee revenue shall first be included in an approved capital improvements plan that lists the capital improvements that may be funded with impact fee revenues as well as the estimated costs and timing for each improvement. (Ord. 412, 3-14-2006)*

(Underlining added for emphasis).

Section 9-2-8 of the City Code provides the methodology for calculating the proportional share. It states:

*A. Report: The amount of the impact fee shall be calculated using the methodology contained in the “report”.*

*B. Proportionate Share: A development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with Idaho Code section 67-8207. Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.*

*C. Developers: A developer shall have the right to elect to pay a project’s proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project’s proportionate share of system improvement costs, except as provided in Idaho Code section 67-8214(3). The schedule of development impact fees for various land users per unit of development shall be as set forth in the “report”.*

*D. Proportionate Share Determination:*

*1. All development impact fees shall be based on a reasonable and fair formula or method under which the development impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the city in the provision of system improvements to serve the new development. The proportionate share is the cost attributable to the new development after the city considers the following:*

*a. Any appropriate credit, offset, or contribution of money, dedication of land, or construction of system improvements;*

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*b. Payments reasonably anticipated to be made by or as a result of a new development in the form of user fees, debt service payments, or taxes which are dedicated for system improvements for which development impact fees would otherwise be imposed; and*

*c. All other available sources of funding such system improvements.*

*2. In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors shall be considered by the city:*

*a. The cost of existing system improvements within the service area or areas;*

*b. The means by which existing system improvements have been financed;*

*c. The extent to which the new development will contribute to the cost of system improvements through taxation, assessments, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions.*

*d. The extent to which the new development is required to contribute to the cost of existing system improvements in the future.*

*e. The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;*

*f. Extraordinary costs, if any, incurred in serving the new development;*

*g. The time and price differential inherent in a fair comparison of fees paid at different times; and*

*h. The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The city shall develop a plan for alternative sources of revenue, which shall include, but not necessarily be limited to, plans generated during the city's annual budget process, lobbying efforts, tax increment financing, implementation of user fees and various forms of utilities. (Ord. 412, 3-14-2006)*

(Underlining added for emphasis).

In addition, Idaho Code defines “proportionate share” as “that portion of the cost of the system improvements determined pursuant to section 67-8207, Idaho Code, which reasonably



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relates to the service demands and needs of the project.” Idaho Code § 67-8207 provides for how the proportionate share is determined. It states:

*Proportionate share determination. (1) All development impact fees shall be based on a reasonable and fair formula or method under which the development impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in the provision of system improvements to serve the new development. The proportionate share is the cost attributable to the new development after the governmental entity considers the following: (i) any appropriate credit, offset or contribution of money, dedication of land, or construction of system improvements; (ii) payments reasonably anticipated to be made by or as a result of a new development in the form of user fees and debt service payments; (iii) that portion of general tax and other revenues allocated by the jurisdiction to system improvements; and (iv) all other available sources of funding such system improvements.*

*(2) In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors shall be considered by the governmental entity imposing the development impact fee and accounted for in the calculation of the impact fee:*

*(a) The cost of existing system improvements within the service area or areas;*

*(b) The means by which existing system improvements have been financed;*

*(c) The extent to which the new development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions.*

*(d) The extent to which the new development is required to contribute to the cost of existing system improvements in the future;*

*(e) The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;*

*(f) Extraordinary costs, if any, incurred in serving the new development;*

*(g) The time and price differential inherent in a fair comparison of fees paid at different times; and*

*(h) The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The governmental entity shall develop a plan for alternative sources of revenue.*

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Here, the City Administrator failed to proportion the cost of the full signalized access intersections between Viking and others in the community. As shown in the TIA, if the Battleground subdivision is never built, the intersections in question will fall well below the acceptance LOS.

Even if the City were to calculate a proportionate share, the analysis would demonstrate that Viking's contribution to the need for signalization is minimal. At Hayden Avenue and Huetter Road, Viking contributes zero additional degradation because the intersection operates at Level F with or without the subdivision. At Hayden Avenue and Carrington Street, Viking's development affects only one of eight directional/temporal metrics. A proper proportionate share analysis accounting for ambient growth, contributions from other developments, and Viking's actual marginal impact would result in a significantly lower and fair allocation of costs to Viking.

Fourth, the failure to calculate proportionate share is not merely a technical oversight. It results in a fundamentally unfair allocation of costs. Viking would be required to pay 100% of the cost of signalization improvements that will primarily benefit the broader community and future developments. Meanwhile, the ambient growth and other developments that are the primary cause of the Level F conditions contribute nothing. This creates a perverse incentive structure that penalizes early developers for regional growth patterns beyond their control and effectively makes development economically infeasible. Such a result directly contradicts the express purpose of the Impact Fee Ordinance, which exists to ensure developers pay "no more than their proportionate share" of infrastructure costs.

## **CONCLUSION AND PRAYER FOR RELIEF**

For the foregoing reasons, Viking respectfully requests that the City Council:

1. Overturn the City Administrator's determination that the Battleground subdivision will result in an extraordinary impact at the intersections of Hayden Avenue and Huetter Road and Hayden Avenue and Carrington Street, as such determination is not supported by the facts or the applicable provisions of the Hayden City Code; or
2. In the alternative, if the City Council determines that an extraordinary impact exists, remand this matter to the City Administrator with instructions to:
  - a. Calculate Viking's proportionate share of the cost of any required system improvements in strict accordance with City Code Section 9-2-8 and Idaho Code Section 67-8207;
  - b. Consider and account for all mandatory factors, including but not limited to: the cost of existing improvements, ambient traffic growth, contributions from other

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- developments, impact fees already paid or to be paid by Viking, future tax contributions from the Battleground subdivision, and all other available funding sources;
- c. Provide a detailed written analysis showing the methodology and calculations used to determine Viking's proportionate share; and
  - d. Credit Viking for any system improvements that will benefit other properties in the service area.

The City Administrator's current determination violates the fundamental principle underlying both the City Code and Idaho Code: developers must pay their fair share, no more and no less. By requiring Viking to subsidize infrastructure that benefits the entire community, the City is asking Viking to bear 100% of the cost of improvements necessitated primarily by ambient growth and other developments, which is neither fair nor lawful. This approach violates both the letter and spirit of Idaho's impact fee statutes, as the extraordinary impact determination, as applied here, becomes a mechanism to circumvent the proportionate share requirements mandated by law. The Council should reject this attempt to impose disproportionate costs on Viking in violation of statutory protections.

Sincerely,

FENNEMORE CRAIG, P.C.



Peter J. Smith IV

cc: Via Email: City Attorney Fonda Jovick, Esq.  
Lake City Law Group, PLLC

Enclosure: March 24, 2025 Letter from City of Hayden

PJS