

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**CONDITIONAL USE PERMIT REPORT #FCU-10-13**  
**CINDY MARVIN**  
**JULY 20, 2010**

A report to the Flathead County Board of Adjustment regarding a request by Cindy Marvin for a conditional use permit to allow for a motocross track as a Low-impact Recreation Facility in the AG-80 West Valley Overlay of the Westside Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on August 3, 2010 beginning at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed land use is within the advisory jurisdiction of the West Valley Land Use Advisory Committee. At a public meeting to be held on July 27, 2010 at 7:00 PM at the Stillwater Grange Hall, 1810 West Reserve Drive Kalispell the Committee will review the proposal and forward a recommendation to the Flathead County Board of Adjustment.

**B. Board of Adjustment**

The Flathead County Board of Adjustment will hold a public hearing regarding the proposed land use on August 3, 2010 at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building. This space is reserved for a summary of the Flathead County Board of Adjustment's discussion and decision at that hearing.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicant**

Tanner Marvin  
1775 West Valley Drive  
Kalispell, MT 59901  
(406) 257-4161

**ii. Landowner(s)**

Grosswiler Dairy Inc.  
c/o Cindy Marvin  
290 West Valley Drive  
Kalispell, MT 59901  
(406) 752-3708

**iii. Technical Assistance**

(none provided)



### C. Existing Land Use(s) and Zoning

The property was used as a dairy in the past, and is currently developed with various residential and farm structures as well as the motocross track which is the subject of this review.

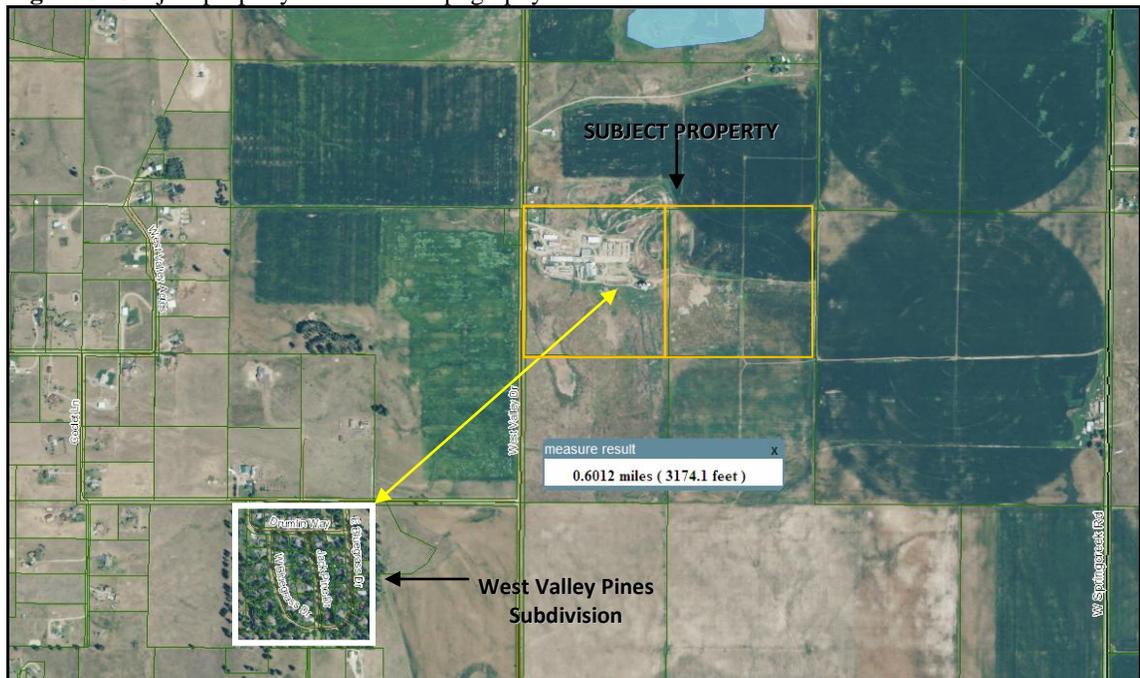
The motocross track and subject property are located within the Westside zoning district and is zoned “AG-80 West Valley Overlay (WVO)”.

- AG-80 Agricultural is a district intended “to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.”
- West Valley Overlay (WVO) is “a district to extend the provisions relating to the Land Use Advisory Committee and Residential Clustering of the WV West Valley Zoning District to other properties outside that district but within the jurisdiction of the West Valley Neighborhood Plan, County Resolution #1226-A.”

### D. Adjacent Land Use(s) and Zoning

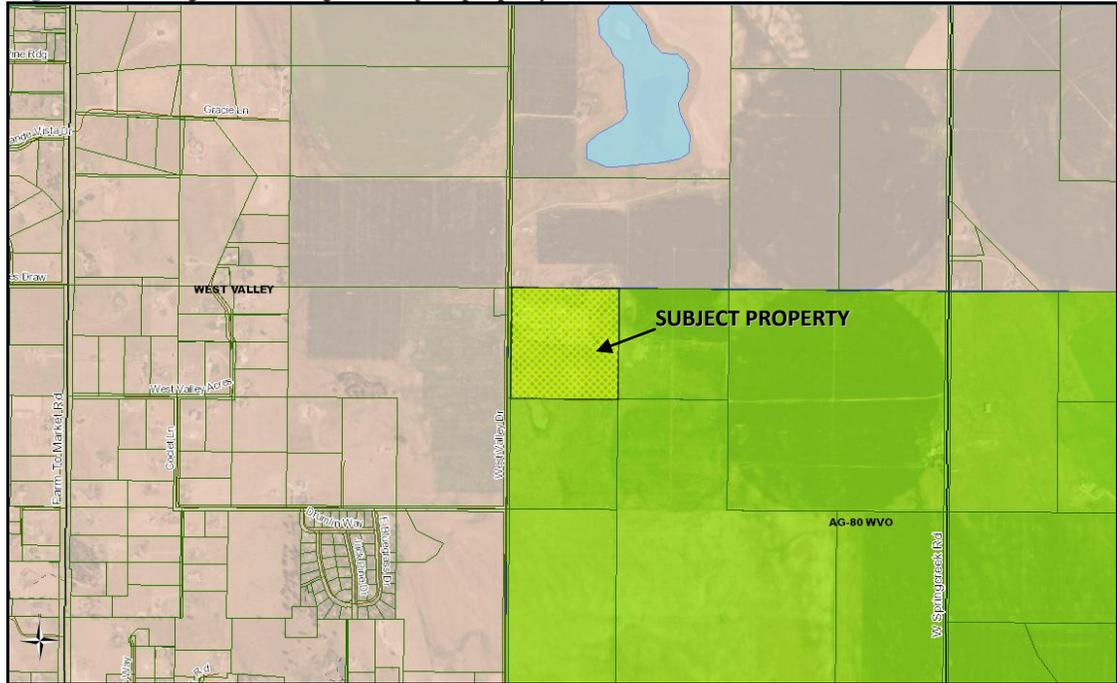
All directly adjacent properties and the general area surrounding the subject property are used for agricultural purposes with limited residential development. The nearest instances of residential development occur approximately .5 miles from the site, including residences within ‘West Valley Acres to the west, residences along West Springcreek Drive, and Valley Pines, a 48 lot residential subdivision situated approximately .5 miles southwest of the motocross track (track) on the subject property (see Figure 3 below).

**Figure 3:** Subject property and related topography



Adjacent tracts located to the east and south of the subject property are zoned “AG-80 WVO” and area to the immediate west and north of the subject property are zoned “West Valley” within the West Valley zoning district (see Figure 4 below).

**Figure 4:** Zoning surrounding the subject property.



## E. Summary of Request

### Background

- The prior use of the property for dairy purposes has been discontinued, and the applicant has been developing and operating a motocross track (track) on-site with the intent of providing a practice and racing facility for local and non-local motocross enthusiasts.
- On April 8, 2010, a zoning complaint (FZT-10-04) was submitted to the Flathead County Planning and Zoning Office (FCPZ) due mainly to noise disturbance experienced by residents of the West Valley Pines Subdivision, which is located within the West Valley zoning district approximately 0.5 miles southwest of the actual track location. The alleged zoning violation is based on the premise that the operation was a commercial endeavor for which the operators engaged in broad promotion and race event planning via an internet social networking site, onsite posting of track rules, and collection of fees.
- In investigating the zoning complaint per FCPZ policies and procedures, communication was established between FCPZ staff, the property owner, and the current applicant.

- In addressing the zoning complaint the applicant met with FCPZ staff on May 19, 2010 when it was clarified that the track was established on portions of property lying partially within the West Valley zoning district and AG-80 WVO zoning district. It was made clear to the applicant that operation of a commercial motocross track on property within the West Valley Zoning District would not be allowable due to the applicable provisions of that district. It was further identified that operation of such a facility may be allowable as a ‘recreation facility’ on property located within the AG-80 WVO zoning district only if recreational facility threshold criteria could be met and upon issuance of a conditional use permit by the Board of Adjustment. Regarding an application for a conditional use permit, it was clearly communicated that the applicants would have to prove that all applicable criteria can be met.
- The May 19, 2010 discussion between FCPZ staff and the applicant concluded with of a ‘plan of action’ signed by those present which outlines specific terms agreed upon by the applicants in order to reach a resolution regarding the alleged zoning violation. The signed ‘plan of action’ (attached for reference) calls for a finite timeframe to attain zoning compliance through either ceasing all commercial track activity or taking appropriate action toward obtaining a valid conditional use permit for the facility, removing the portion of commercial track occurring within the boundary of the West Valley zoning district, voluntarily reducing and limiting hours of track riding with friends/acquaintances, voluntarily abstaining from use of amplified music and loudspeakers on the track, and communicating with neighbors, if willing, to understand and address their concerns.

#### Request

The applicant has requested a conditional use permit for a ‘low-impact recreational facility’ in order to 1) comply with requirements pertaining to the alleged non-compliance with the applicable zoning, and 2) allow the further development and operation of the motocross facility on the subject property. Proposed limited operation hours of the track facility include three practice times per week and five race events annually, details of which are further discussed below in Section IV.D.v of this report.

Pursuant to Section 3.04.030(17) of the Flathead County Zoning Regulations (FCZR), *low-impact recreation facilities* are listed as a conditional use the AG-80 zoning district.

According to the definition, a ‘recreational facility’ is “*A structure or use of property not otherwise listed in these regulations to accommodate the enjoyment, healthful activities, and leisure of the facility’s users. Such a use may be enclosed by walls and roof (indoor) or an open-air (outdoor) arrangement. Recreational facilities are also defined as being either “high impact” or “low impact”, based on the following criteria:*

1. *Land Intensity – the amount of land necessary to operate the facility.*

*Examples: High impact – golf course, ski area*

*Low impact – archery range, video game arcade*

*Threshold: Facility requires more than twice the “minimum lot size” determined by district classification.*

2. *Traffic Generation – the amount of motor vehicle traffic created by use.*

*Examples: High impact – water slide, fairgrounds*

*Low impact – golf driving range, dude ranch*

*Threshold: Traffic greater than or equal to 20 trips per hour at peak hours or 75 trips per day.*

3. *Visibility – the visual impact of the facility; how obvious its presence is.*

*Examples: High impact – water slide, ski area*

*Low impact – dude ranch, day camp*

*Threshold: Structures unusual compared to surrounding uses are visible from adjacent roadways.*

4. *Risk – the possibility of danger to adjacent landowners or property.*

*Examples: High impact – zoos, rifle ranges*

*Low impact – bike rental, fishing*

*Threshold: Reasonable chance of danger or damage to nearby property or people.*

*If a facility is determined to have a “high” rating in any of these categories, it shall be considered a “high-impact” recreational facility.*

Whether the proposal conforms to all applicable criteria for granting of a Conditional Use Permit and whether or not the motocross facility actually meets the definition of a low-impact recreational facility may be determined through adequate review and evaluation of the proposal relative to all applicable criteria by the Board of Adjustment.

**F. Compliance With Public Notice Requirements**

Notification was mailed to property owners within 150 feet of the subject property on July 7, 2010, pursuant to Section 2.06.040 (3) of the Zoning Regulations. Legal notice of the public hearing on this application was published in the July 18, 2010 edition of the Daily Interlake.

**G. Agency Referrals**

Referrals were sent to the following agencies on May 21, 2010:

- Flathead County Public Works Department
  - Reason: The proposal has the potential to impact County facilities.
- Flathead County Solid Waste
  - Reason: The proposal has the potential to impact County facilities.
- Flathead City-County Health Department
  - Reason: Approval and implementation of the proposal would necessitate availability of proper sanitation facilities for track users and spectators, and review and permitting of such facilities is administered by the department.
- Flathead County Sheriff

- Reason: The proposal has the potential to impact public health and safety.
- West Valley Fire District
  - Reason: The property is located within the department's jurisdiction.

### III. COMMENTS RECEIVED

#### A. Public Comments

Eleven written public comments have been received as July 20, 2010 opposing the proposed motocross track facility. No written public comments have been received to date supporting the proposed motocross track facility. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

The following is a *summarized* list of public comment and concerns received as of the date of the completion of this staff report:

- Eight written letters from area residents opposed to the motocross track.
  - Concerns regarding impacts from noise which limit the peaceful enjoyment of their home-life during non-working hours and weekends.
  - Concerns regarding impacts from noise which may affect their property values.
  - Concerns regarding impacts from noise which may affect the ability to re-sell their homes and properties.
  - Concerns regarding impacts from dust.
  - Concerns regarding impacts to health due to exposure of sound frequencies caused by motorcycles operating together in a group.
  - Concerns regarding increased traffic and signage associated with the proposed operation.
  - Concerns regarding incompatibility of the proposed operation with the applicable West Valley Neighborhood Plan.
  - Concerns regarding future enforcement of conditions, if the proposal is approved.
- Letter from Henning, Keedy & Lee P.L.L.C. Attorneys at Law - retained by the West Valley Pines Homeowner's Association, LLC.
  - Concerns echo and reinforce the comments and concerns voiced in the written letters from landowners.
  - The letter is accompanied by a report from a 'noise expert' on the effects of noise exposure on the physical and psychological health of people and its impact on the quality of life. Also attached to the letter is a DVD of movie clips documenting typical crowd, dust, and sound impacts from a motocross racing event.
  - Regarding the established conditional use permit criteria, the letter cites Section 2.06.090 FCZR stating "the burden of proof for satisfying the aforementioned criteria shall rest with the applicant and not the Board of Adjustment."
  - The letter suggests the applicant cannot meet the required burden of proof that there would be no negative impact to surrounding

neighborhoods, and that stopping the proposed use at this time would negate the likelihood of expensive and protracted future litigation.

## **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- David Prunty and Guy Foy, Flathead County Road and Bridge Department
  - The primary access from West Valley Drive should be utilized because it is paved, alleviating the need for the applicant to provide dust abatement on the county road (West Springcreek Drive).
  - West Springcreek Drive is a gravel county road and the access onto this road appears to be an unimproved dirt/gravel road and actions should be taken to control dust both on the access and the county road if utilized for ingress/egress.
- Glen Gray, Environmental Health Services
  - The applicant is proposing “four stationary outhouses throughout the property”. If this refers to permanent outhouses they must be vaulted privies that meet applicable construction standards- a site evaluation and permit is required prior to installation.
  - If porta-potties are proposed, a permit is not needed, but they are only acceptable for temporary activities which have an end point.
  - Dust control is proposed by the applicant - dust control is not optional due to Flathead County Air Quality Regulations.
  - For food service, any vendor must be licensed as a mobile food service by the Department of Public Human Services, subject to inspection at any time.
- James Chilton, Flathead County Solid Waste District
  - After reviewing the application the Solid Waste District views no negative impact with solid waste issues at this time.
  - The district requires that all solid waste generated at the proposed location be hauled by private hauler; Evergreen Disposal is the licensed Public Service Commission licensed hauler in the area.

## **IV. CRITERIA REQUIRED FOR CONSIDERATION**

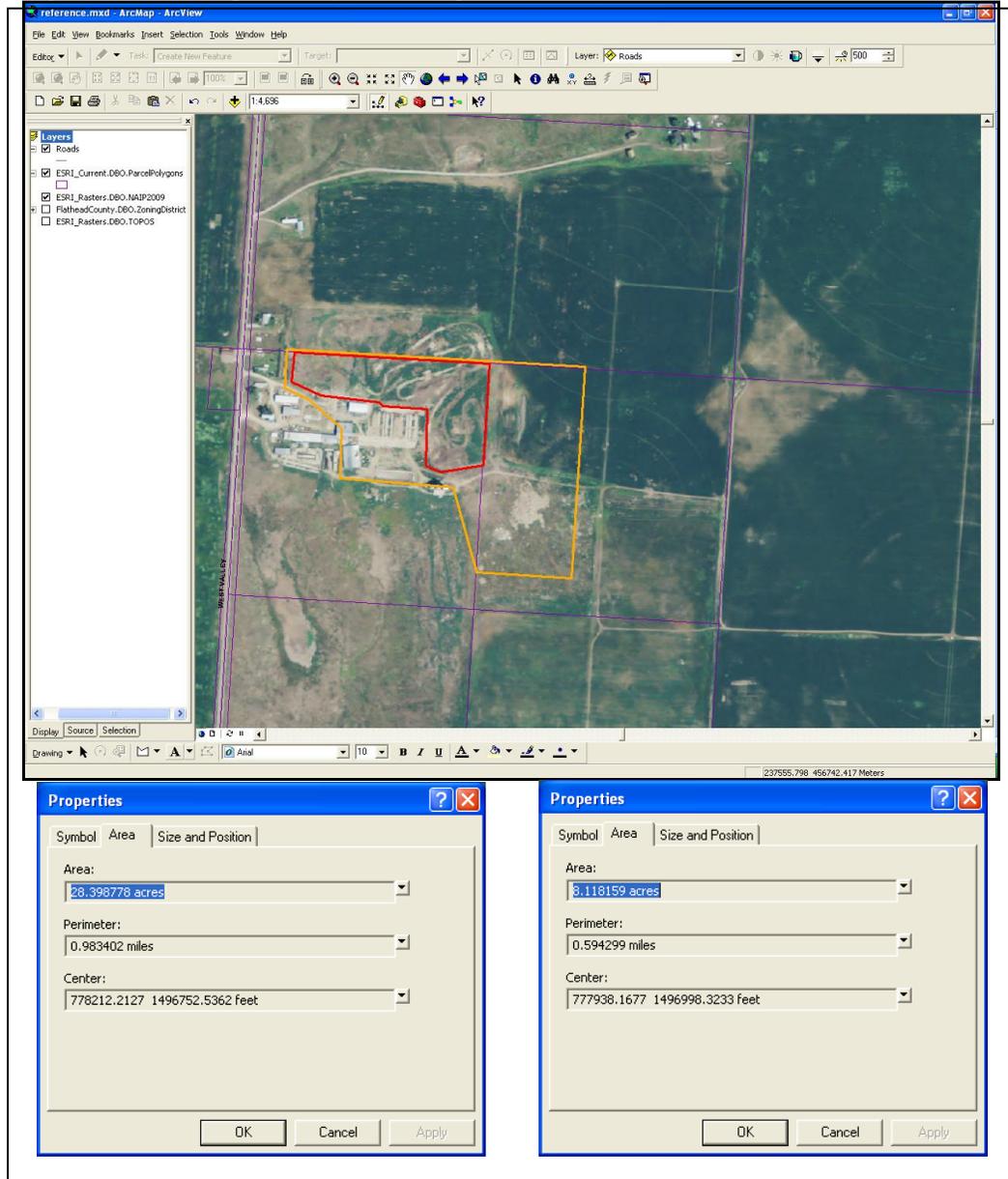
Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations (FCZR) establish the general criteria required for consideration of a Conditional Use Permit. Per Sections 2.06.080(1) other applicable criteria for the review of a low-impact recreational facility include the Conditional Use Standards for Recreational Facilities found in Section 4.15.010 FCZR and the threshold criteria for low and high impact recreational facilities found in Section 7.17.040 FCZR. What follows are the applicable criteria required for consideration of a Conditional Use Permit for a low-impact recreational facility and suggested findings of fact based on review of each criterion.

### **A. Site Suitability**

#### **i. Adequate usable space**

The submitted application includes a site plan indicating the ‘area of operation’, ‘track area’, and ‘parking area’. As proposed, the current track is situated on Tract 4 of the subject property, while the area of operation would include portions of Tract 4A of the subject property to accommodate parking and potential future track re-configuration.

**Figure 5:** ‘Area of Operation’ (shown orange +/- 28 acres) & ‘Track Area’ (shown red +/- 8 acres)



The subject property (Tracts 4 and 4A combined) is approximately 80 acres in size. The submitted text portion of the application states the track would use two acres of land area, however staff analysis using ARC GIS mapping technology indicates the proposed ‘area of operation’ of the track facility would cover approximately 28 acres and the current track configuration actually covers approximately 8 acres of land (refer to Figure 5 above).

While there is a discrepancy regarding the amount of land involved with the proposed use, the total land area of the subject property is still considered to be large relative to either estimate and the property area is adequate to accommodate the proposed track, parking and circulation required of the use.

**Finding #1** – The subject property is suitable for the proposed use because there is adequate useable space to accommodate the proposed ‘area of operation’ of the motocross track facility and the proposal complies with the applicable bulk and dimensional requirements of the zoning in place.

**ii. Adequate access**

The subject property has an existing gravel approach onto West Valley Drive proposed as primary ingress/egress for the facility. Additionally, the site plan and submitted text indicates the ability to use an unimproved dirt road across the owners property for additional egress onto West Springcreek Road, located east of the subject property. Comment received from the Flathead County Road and Bridge Department indicates the existing approach is preferable for all facility use because West Valley Drive is paved and West Springcreek Road is not. Airborne dust is a concern of two departments who submitted comment, and the applicant would be required to implement dust mitigation on the access road and West Springcreek Road if that route would be used for facility purposes. It is not clear whether or not an existing approach permit exists for the existing approach onto West Valley Drive. The applicant would be required to either obtain an approach permit specifically applicable for the proposed use from Flathead County Road and Bridge Department if one does not already exist, or amend the existing permit, as applicable, to accommodate the proposed use if one does already exist.

**Finding #2** - The site is suitable for the proposed use because the property has direct access onto paved West Valley Drive via an existing gravel approach which may be adequately permitted and improved to accommodate the vehicle traffic created as a result of the proposed use.

**Finding #3** - A proposed additional egress for facility use via West Springcreek Road does not presently appear to be appropriate for facility use because it is relatively unimproved in terms of width and construction and would cause the generation of airborne dust from increased vehicular use of both the access road across the owner’s land and West Springcreek Road.

**iii. Absence of environmental constraints**

The subject property and ‘area of operation’ has been used for extensive dairy purposes in the past. There are no streams, rivers, wetlands or riparian areas in the ‘area of operation’, and the site does not appear to be subject to shallow ground water as it occurs near the top of a topographic rise. The site doesn’t appear conducive to substantial wildlife use and has no apparent critical wildlife habitat.

**Finding #4** – The property is suitable for the proposed use because the property is absent of environmental constraints including steep topography, critical wildlife habitat, riparian areas and high groundwater.

**B. Appropriateness of design**

**i. Parking scheme**

The applicant has proposed parking in specific dirt lot areas on both tracts of the subject property, as indicated on the submitted site plan. Generally, the majority of parking would occur on a portion of Tract 4A in an area approximately 500'X600' in size covering 300,000 ft<sup>2</sup>. Chapter VI FCZR addresses parking, and indicates the standard vehicle space is 9'X20' feet in size. It is assumed a large number of track users may use large vehicles and trailers for hauling motorcycles, and dimensions required for trailers and large vehicles are not specified in the regulations. Assuming a vehicle with a trailer would need twice the space for parking required of a standard vehicle (9'X 40' - 360 ft<sup>2</sup>), the proposed parking appears adequate to accommodate participants and spectators of the proposed use assuming the operators establish adequate demarcation of all parking surfaces and associated traffic circulation aisles as required per Section 6.14.010 FCZR.

**Finding #5** – The proposed parking appears acceptable because adequate space is available for participant and spectator parking onsite, on-street parking on the public road is unnecessary, and the proposed parking areas may be adequately demarcated to define parking spaces and associated traffic circulation aisles in compliance with applicable parking standards outlined in Chapter VI FCZR.

**ii. Traffic circulation**

Vehicle traffic would enter and exit the site using the existing gravel approach onto West Valley Drive. The applicant has proposed a conceptual and non-specific internal traffic circulation scheme as indicated on the submitted site plan. Generally, internal traffic circulation would involve vehicles accessing the site through the established gated entrance, proceeding eastward through the farm infrastructure to gain access to the proposed parking areas, as depicted on Figure 6 below (created by staff for reference).

**Figure 6:** Internal traffic circulation.



As proposed, access to the parking areas would entail two-way traffic circulation which requires a 20 foot wide roadway pursuant to Section 6.16.020(3) FCZR. Based upon observations from the staff site visit and from measurements derived from available imagery, the internal access route is less than 20 feet wide in several locations, and would be required to be improved to at least a 20 foot width in its entirety. Per Section 6.14.010 FCZR, the entire internal access route should be required to be adequately demarcated prior to operation of the facility involving use by the general public.

**Finding #6** – The proposed site plan does not meet the design guidelines set forth in the Flathead County Zoning Regulations requiring minimum width for two-way traffic circulation because portions of the proposed internal access route are between 10-15 feet in width and roadways for two-way traffic are required to be 20 feet in width.

**Finding #7** - The proposal for traffic circulation would present a hazard to public health and safety because the proposed internal access route follows an irregular and confusing path, is not adequately demarcated, and is not of sufficient width to allow for safe passing of oncoming two-way traffic.

**iii. Open space**

As previously stated, the proposed ‘area of operation’ of the track facility would cover approximately 30 acres with the current track configuration covering approximately 7 acres of land, and the site is developed with numerous existing farm-related and residential structures. A substantial portion of the 80 acre subject property remains open as undeveloped and farmed land. The proposal

complies with the applicable threshold criteria regarding land intensity (#1) for recreational facilities which infers a low-impact recreational facility should not require twice the minimum lot size determined by district classification (80 acre minimum lot size in the AG-80 WVO district).

**Finding #8** – There is adequate open space associated with the proposed low-impact recreational facility because the proposed ‘area of operation’ is able to be developed with the proposed motocross track in compliance with applicable land intensity threshold criteria for recreational facilities and in such a way that the subject property has remaining open space in excess of 50 acres.

**iv. Fencing/screening**

The site is located on a topographic rise causing the location to be very visible from West Valley drive and surrounding area properties. The site plan indicates fencing along West Valley Drive and along the southwest periphery of the ‘area of operation’. The application does not include any text description of proposed fencing/screening, and it is unclear whether the applicant is simply acknowledging existing farm fencing or if the applicant intends to construct new fencing to serve as a visual and/or sound barrier between the proposed motocross track and affected area residents.

The proposed motocross track is not anticipated to be highly visible unto itself, as it is generally low level in relation to the surrounding terrain and existing structures which may act as a visual screen. While it is not anticipated that regular practice times would create a visual nuisance, participant and spectator vehicles, spectator crowds, and potential sponsor advertising banners typical of motorized racing events would be highly visible during race events and may become a potential visual nuisance.

Public comments have indicated great concern regarding noise from the existing and proposed motocross activities. Limited staff research (references attached with this report) leads the reviewer to doubt the effectiveness of non-specialized fencing on reducing the impacts of sound on surrounding properties, and limited research indicates vegetation does not serve as a particularly effective mitigation to the disturbing sound frequencies typical of standard motocross vehicles which appear to typically range from 86 to 120+ decibels (dbA), generally depending upon variable factors including engine size and type, muffler set-up, and rpm’s at time of monitoring.

**Finding #9** – Proposed fencing/screening that would minimize noise and visual impacts to area residents appears inadequate because the application provides no description of intended purpose, materials, or height, nor does the applicant provide proof of effectiveness of proposed fencing as a mitigation technique for the anticipated impacts.

**v. Landscaping**

No landscaping is specifically required of the conditional use permit request. Regarding this criterion, the application states ‘see attached map’, and the map indicates nothing pertaining to landscaping.

**Finding #10** –The ability for existing and/or proposed landscaping to mitigate potential visual and noise impacts to adjacent properties and area residents is not able to be reasonably evaluated because the submitted application does not address landscaping.

**vi. Signage**

Regarding this criterion, the application states ‘see attached map’, and the map indicates nothing pertaining to signage. To date, the track has used limited directional signage located across the street and signage on the gate indicating track rules. Any future signage would be required to meet applicable standards and guidelines pursuant to FCZR Section 5.11.

**Finding #11** – There would be limited visual impacts resulting from signage on the proposed facility because it is presumed future signage would be compliant with applicable requirements set forth in the Flathead County Zoning Regulations.

**vii. Lighting**

The application indicates the motocross facility will not be lighted, stating “the track will never operate in the dark hours therefor we have no lighting”. Any exterior lighting shall comply with performance standards set forth in FCZR Section 5.12.

**Finding #12** – There will be limited visual impacts resulting from lighting of the proposed facility because the track is proposed to not operate in the dark and any future exterior lighting would be required to comply with applicable provisions set forth in the Flathead County Zoning Regulations.

**C. Availability of Public Services and Facilities**

**i. Sewer**

The subject property is currently served by individual septic system(s) for the uses already established. The proposal indicates participants and spectators of the motocross facility would be served by a “minimum of four stationary outhouses throughout the property.” It is unclear as to whether the ‘stationary outhouses’ would be permanently constructed vaulted privies or portable outhouses provided by a service provider, and it is unclear whether four outhouses would adequately serve the needs of the potential number of participants and spectators that would be present on practice days and race days.

As indicated by Glen Gray of Flathead County Environmental Health Services, if permanent outhouses are established they must be vaulted privies that meet applicable construction standards and a site evaluation and permit is required prior to installation. If portable outhouses are proposed, a permit is not needed, but they are only acceptable for temporary activities which have an end point.

**ii. Water**

There are no public water services available and the subject property is currently served by existing well(s). Regarding this criterion, the application only states “numerous hydrants throughout the property”. It appears the applicant is referring to water for dust control, and it is not clear whether or not the ‘hydrants’ provide potable water. In order to provide a commercial race event to the general public it is presumed that potable water should be made available to participants and spectators in order to not create a hazard to public health and safety. If food and beverages are to be provided by mobile food vendors, any vendor must be licensed as a mobile food service by the Department of Public Human Services, subject to inspection at any time.

**Finding #13** – The proposed use would have minimal impact on public services and facilities because the facility would be served by private means for water, sewer, and food vending services, all of which would be required to be permitted, as applicable, prior to beginning operations.

**iii. Storm Water Drainage**

According to submitted statements all stormwater runoff from the subject property currently drains into the existing drainage ditches surrounding the property. Current zoning regulations do not require that stormwater management techniques be implemented, however, in the event development of the facility will cause more than 1 acre of land to be “disturbed”, the applicant is required to obtain permit coverage under the *General Permit for Storm Water Discharges Associated with Construction Activity*, issued by the Montana Department of Environmental Quality (A.R.M. 17.30.1102(28)).

**Finding #14** – Stormwater drainage has been adequately addressed for the conditional use process because the proposed use will result in no increase in impervious surface, and runoff resulting from the motocross track could be retained onsite and directed toward existing drainage ditches that appear able to accommodate additional run-off created.

**Finding #15** – It appears development of the motocross facility is subject to compliance with stormwater provisions administered by the Montana Department of Environmental Quality because track development is non-agricultural and has resulted in the disturbance of more than one acre of land.

**iv. Fire Protection**

The subject property is located within in the West Valley Fire District, with a fire station located approximately four miles east at the corner of Reserve Loop and U.S. Highway 93.

**v. Police Protection**

The subject property is served by the Flathead County Sheriff’s Department. Relatively quick response times would be anticipated given the property’s location near to a major highway and between the urbanized areas of Kalispell and Whitefish.

**vi. Streets**

As previously discussed, the subject property has direct access onto West Valley Drive via an existing gravel approach. The application proposes an additional access point which would approach onto West Springcreek Road, but comment from the Flathead County Road and Bridge Department indicates its preference for the facility to only use West Valley Drive for ingress/egress due to poor conditions on West Springcreek Road, indicating use of that route would require extensive dust control by the applicant.

Pursuant to Section 6.16.020(4) FCZR all accesses onto County roads shall have been approved by the County Road Department with the issuance of an encroachment permit. Such permits shall be obtained prior to the construction and/or use of such access. It is not clear whether the existing approach onto West Valley Drive has previously undergone review and approval from the Flathead County Road and Bridge Department.

**Finding #16** - Pursuant to Section 6.16.020(4) FCZR the applicant should obtain either a new or amended encroachment permit for the existing approach onto West Valley Drive because the proposed use would introduce significant changes in the number of ingress/egress trips which may impact functionality of the approach or introduce impacts to the paved road.

**Finding #17** - Impacts to public services and facilities are accessible because the subject property is in an area of the county served by the West Valley Fire District and the Flathead County Sheriff, and has direct access onto West Valley Drive, a paved county road adequate to serve the sporadic traffic generated by the proposed use, subject to the approval and issuance of an encroachment permit.

**D. Immediate Neighborhood Impact**

**i. Excessive traffic generation**

Regarding this criterion the application states that for practice times the facility will not exceed 75 vehicle trips per day and indicate race events will generate traffic exceeding 75 vehicle trips per day. West Valley Drive is paved 24 feet wide and the area is sparsely populated with few residential driveways directly accessing the road in the vicinity of the proposal site. It is not anticipated the estimated traffic generation would be problematic on typical 'practice times' because usage is not concentrated at a particular time of day. Traffic generation may be problematic on race event days because usage would appear to be more concentrated at particular times of day depending on race times of scheduled races of different size category, and 'bottleneck' congestion could occur with participant and spectator vehicles and trailers at the relatively narrow entrance to the facility. The application speaks very little to this matter and provides no clarifying information to the contrary of staff's assumptions.

**Finding #18** – Increased amounts of additional vehicle traffic on race event days may result in congestion causing traffic to 'jam' on West Valley Drive at the facility entrance because multitudes of participants and spectators will likely

arrive in vehicles with or without trailers at key times relative to scheduled races of different size category.

**ii. Noise or vibration**

The application states “dirt bikes and ATV’s are required to have silencers which average the sound level to be at 93 dB which is below the State regulations...”. Flathead County does not have an adopted noise ordinance, nor are there any adopted standards regarding maximum allowable decibel levels in the Flathead County Zoning Regulations.

Numerous complaints regarding noise from motocross activity and a recent zoning violation regarding purported ‘commercial use’ of the motocross track and its associated noise have been submitted to the Flathead County Planning and Zoning Department. Noise impact to area residents in the West Valley Pines Subdivision, located approximately .5 miles from the track, is the primary concern regarding the proposal. Numerous voiced concerns regarding noise generally include impacts to enjoyment of home-life during non-working hours and weekends, perceived adverse impacts to property values, and impacts to health. Figure 2 (above) indicates the topography of the subject property relative to the surrounding immediate neighborhood. As seen in Figure 2 the terrain directly southwest of the proposal site descends in a bowl-like depression which appears to direct noise from the motocross track toward the West Valley Pines Subdivision much like a funnel.

It appears from general research on the topic that motocross facilities are often designed and planned with the assistance of professional consultants who plan and design track locations and configuration with built-in sound mitigation measures such as ‘berming’ and ‘digging-in’ to attenuate the intensity of sound traveling off-site. In attempting to mitigate noise impacts the applicant:

- has situated the starting line against a north facing wall of a building to prevent the loudest concentration of sound, caused by cumulative high rpm’s with simultaneous acceleration, to be blocked from direct exposure to the southwest direction where affected residences are located; and
- proposes no noise after 8:00 pm on practice times and strictly enforced “quiet time” from 10:00pm - 6:00 am on race events.

Aside from these considerations it doesn’t appear there have been any other substantial design elements implemented to mitigate noise impacts to the immediate neighborhood. The proposed limited hours of operation (see section v. of the report below) happen to coincide with times that residents are typically at home, namely evenings and weekends. It appears no compelling proof has been presented by the applicant that there will be no detrimental noise impacts to the surrounding neighborhood.

**Finding #19** – Numerous comments and concerns regarding noise impacts to residents living within the West Valley Pines Subdivision have been submitted alleging the peaceful enjoyment of their homes, their property values, and their general health and well being are being adversely impacting by the motocross

activities occurring on the proposal site because the noise travels, unimpeded by topography or other barriers, from the source to the location of their homes.

**Finding #20-** Applicant attempts to mitigate motocross related noise impacts to area residents are relatively ineffective because the track is located on a hill above the subdivision, no professional consultation has been used to deliberately design the track to minimize noise impacts, and proposed limited hours of operation coincide with times when residents are typically home in the evenings and on weekends.

**iii. Dust, glare or heat.**

The proposed use is not anticipated to generate glare or heat, but it is anticipated to generate substantial dust unless active dust mitigation is implemented. For this purpose, the track has been developed with a system of water valves and sprinkling devices to minimize generation of airborne dust from track use. The application indicates a watering truck will frequently water the track to minimize dust, but does not address the need for dust mitigation on the approach, internal traffic circulation areas, and parking areas.

**Finding #21** – The proposed use has the potential to create substantial environmental impact due to generation of airborne dust because motocross activity agitates exposed soils and the approach and all internal access, parking areas, and traffic circulation areas are comprised of dirt and gravel.

**iv. Smoke, fumes, gas, or odors**

The application indicates motorcycles pass emission tests before being sold, and due to the fact that current trends in motocross racing involve mainly motorcycles with 4-cycle engines, the facility won't create unreasonable impacts due to smoke, fumes, gas, or odors. There is no requirement to use motorcycles with 4-cycle engines, and it is assumed there would be 2-cycle engines riding on-site which use gas mixed with oil, producing fumes, smoke, and odors. However direct impacts to area residents are not anticipated as the nearest off-site residences are located at least .5 miles from the proposal site.

**Finding #22** – Immediate neighborhood impacts resulting from smoke, fumes, and odors are not anticipated to be significant due to the approximate half mile distance between the track and area residents, and the likelihood that fumes, smoke, and odors would dissipate in the air within that distance.

**v. Inappropriate hours of operation**

Proposed operation hours of the track facility include:

Open Practice Time (pending CUP approval)

- Tuesdays and Thursdays from 3:30 PM to 8:00 PM during the school year
- Tuesdays and Thursdays from 10:00 AM to 6:00 PM during the summer
- Saturdays from 10:00 AM to 6:00 PM

Race Events (pending CUP approval)

- Two in summer 2010 - June 19 (cancelled), August 21-22
- Five annually (pending CUP approval)

As discussed above, the proposed hours of operation generally coincide with times when residents and their families are home, which may be considered a burden to the resident who is subjected to constant disturbing noise during the hours of operation, weekly throughout the spring, summer, and fall months of the year.

**Finding #23** - While the proposed hours of operation may appear a compromise from full time motocross activity, they would have an impact on the surrounding neighborhood because the hours of operation coincide with evening and weekend hours residents are typically at home.

**E. Conditional Use Standards For Recreational Facilities (per 4.15.010 FCZR)**

Section 4.15.010 FCZR states: *Due to the diverse nature of the potential recreational facilities that may be proposed or developed in the planning jurisdiction, no specific standards are established. However, proposed uses that must obtain a Conditional Use Permit may be reviewed subject to a number of criteria. These criteria may include, but are not limited to, traffic generation, parking availability, impact on surrounding uses, landscaping, noise generation, and accessibility. Mitigation strategies for the possible impacts of recreational facilities that must obtain a Conditional Use Permit may be submitted with the permit application materials.*

The submitted application includes a text element that is an expanded discussion of the applicant's perspective on the criteria listed above, which has been addressed in this report under sub-headings A-D above. The applicant discussion includes perspective on the benefits that providing a motocross facility would provide to the Flathead Valley and its residents including:

- economic benefit by attracting racers and spectators to the area from distant places;
- providing family-oriented recreation and fun;
- providing a drug and alcohol free riding opportunity;
- providing riding opportunity for people of all ages;
- providing a place to legally ride dirt bikes and ATVs; and
- providing a riding opportunity that's close to town and affordable.

**Finding #24-** The proposed use would offer some important benefits to Flathead County because it would potentially be a draw for tourists, spectators, and racers to visit the county and contribute to the local economy and it would provide a form of recreation not readily available within the Flathead Valley.

**F. Recreational Facilities Threshold Criteria (per 7.17.040 FCZR)**

A 'recreational facility' is *"A structure or use of property not otherwise listed in these regulations to accommodate the enjoyment, healthful activities, and leisure of the facility's users. Such a use may be enclosed by walls and roof (indoor) or an open-air (outdoor) arrangement. Recreational facilities are also defined as being either "high impact" or "low impact", based on the following criteria:*

1. *Land Intensity – the amount of land necessary to operate the facility.*  
*Examples: High impact – golf course, ski area*

*Low impact – archery range, video game arcade*

*Threshold: Facility requires more than twice the “minimum lot size” determined by district classification.*

2. *Traffic Generation – the amount of motor vehicle traffic created by use.*

*Examples: High impact – water slide, fairgrounds*

*Low impact – golf driving range, dude ranch*

*Threshold: Traffic greater than or equal to 20 trips per hour at peak hours or 75 trips per day.*

3. *Visibility – the visual impact of the facility; how obvious its presence is.*

*Examples: High impact – water slide, ski area*

*Low impact – dude ranch, day camp*

*Threshold: Structures unusual compared to surrounding uses are visible from adjacent roadways.*

4. *Risk – the possibility of danger to adjacent landowners or property.*

*Examples: High impact – zoos, rifle ranges*

*Low impact – bike rental, fishing*

*Threshold: Reasonable chance of danger or damage to nearby property or people.*

*If a facility is determined to have a “high” rating in any of these categories, it shall be considered a “high-impact” recreational facility.*

Following is a description of how the proposed facility does or does not meet the recreation facility threshold criteria based on evaluation of the submitted application:

1) Land Intensity: The facility does not require more than twice the “minimum lot size” of the AG-80 district, as that would require 160 acres of land. This criterion is met.

2) Traffic Generation: During practice time traffic would most likely be less than 20 trips per hour at peak hours and less than 75 trips per day. For typical motocross race events traffic would likely be greater than or equal to 20 trips per hour at peak hours or 75 trips per day, as stated by the applicant. This criterion is not met.

3) Visibility: No structures are proposed; therefore *structures* visible from adjacent roadways are not unusual compared to surrounding uses. If the intent of this provision is simply structures, the criterion is met, however, if visibility is interpreted to mean prominence, such as the degree to which something is easily noticed by and catches the attention of the public or a group of people, the criterion would not be met due to the degree of disturbing noise generated by the proposed use. This criterion may be met or not met, depending on interpretation - while the motocross track’s presence is not necessarily visually obvious, the track is audibly obvious during hours of operation due to unmitigated noise impacts.

4) Risk: If reasonable chance of danger or damage to nearby property or people includes damage to property values or impact on neighboring residents’ physical and emotional well being this criterion appears not met, based on public comments submitted and evaluated.

**Finding #25-** Subject to compliance with the threshold criteria for low and high impact recreational facilities outlined in 7.17.040 FCZR, the proposed motocross track meets the definition of a high-impact recreational facility because the low impact recreational facility threshold criteria for *traffic generation* has a high rating and is not met as race event traffic would be greater than or equal to 20 trips per hour at peak hours or 75 trips per day, as stated by the applicant.

**Finding #26-** Subject to compliance with the threshold criteria for low and high impact recreational facilities outlined in 7.17.040 FCZR, the criteria for *visibility* appears to not be met as the motocross track's presence is audibly obvious during hours of operation due to unmitigated noise impacts

**Finding #27-** Based on submitted comments, there is reasonable cause to believe property values would be negatively impacted by continued operation of the motocross track in its current location on the subject property. Subject to compliance with the threshold criteria for low and high impact recreational facilities outlined in 7.17.040 FCZR, the criteria for *risk* appears to not be met as operation of the facility would damage neighboring residents' property values and impact their physical and emotional well being due to frequent and persistent noise impacts from the motocross activities.

## V. SUMMARY OF FINDINGS

1. The subject property is suitable for the proposed use because there is adequate useable space to accommodate the proposed 'area of operation' of the motocross track facility and the proposal complies with the applicable bulk and dimensional requirements of the zoning in place.
2. The site is suitable for the proposed use because the property has direct access onto paved West Valley Drive via an existing gravel approach which may be adequately permitted and improved to accommodate the vehicle traffic created as a result of the proposed use.
3. A proposed additional egress for facility use via West Springcreek Road does not presently appear to be appropriate for facility use because it is relatively unimproved in terms of width and construction and would cause the generation of airborne dust from increased vehicular use of both the access road across the owner's land and West Springcreek Road.
4. The property is suitable for the proposed use because the property is absent of environmental constraints including steep topography, critical wildlife habitat, riparian areas and high groundwater.
5. The proposed parking appears acceptable because adequate space is available for participant and spectator parking onsite, on-street parking on the public road is unnecessary, and the proposed parking areas may be adequately demarcated to define parking spaces and associated traffic circulation aisles in compliance with applicable parking standards outlined in Chapter VI FCZR.

6. The proposed site plan does not meet the design guidelines set forth in the Flathead County Zoning Regulations requiring minimum width for two-way traffic circulation because portions of the proposed internal access route are between 10-15 feet in width and roadways for two-way traffic are required to be 20 feet in width.
7. The proposal for traffic circulation would present a hazard to public health and safety because the proposed internal access route follows an irregular and confusing path, is not adequately demarcated, and is not of sufficient width to allow for safe passing of oncoming two-way traffic.
8. There is adequate open space associated with the proposed low-impact recreational facility because the proposed 'area of operation' is able to be developed with the proposed motocross track in compliance with applicable land intensity threshold criteria for recreational facilities and in such a way that the subject property has remaining open space in excess of 50 acres.
9. Proposed fencing/screening that would minimize noise and visual impacts to area residents appears inadequate because the application provides no description of intended purpose, materials, or height.
10. The ability for existing and/or proposed landscaping to mitigate potential visual and noise impacts to adjacent properties and area residents is not able to be reasonably evaluated because the submitted application does not address landscaping.
11. There would be limited visual impacts resulting from signage on the proposed facility because it is presumed future signage would be compliant with applicable requirements set forth in the Flathead County Zoning Regulations.
12. There will be limited visual impacts resulting from lighting of the proposed facility because the track is proposed to not operate in the dark and any future exterior lighting would be required to comply with applicable provisions set forth in the Flathead County Zoning Regulations.
13. The proposed use would have minimal impact on public services and facilities because the facility would be served by private means for water, sewer, and food vending services, all of which would be required to be permitted, as applicable, prior to beginning operations.
14. Stormwater drainage has been adequately addressed for the conditional use process because the proposed use will result in no increase in impervious surface, and runoff resulting from the motocross track could be retained onsite and directed toward existing drainage ditches that appear able to accommodate additional run-off created.
15. It appears development of the motocross facility is subject to compliance with stormwater provisions administered by the Montana Department of Environmental Quality because track development is non-agricultural and has resulted in the disturbance of more than one acre of land.
16. Pursuant to Section 6.16.020(4) FCZR the applicant should obtain either a new or amended encroachment permit for the existing approach onto West Valley Drive because the proposed use would introduce significant changes in the number of

- ingress/egress trips which may impact functionality of the approach or introduce impacts to the paved road.
17. Impacts to public services and facilities are accessible because the subject property is in an area of the county served by the West Valley Fire District and the Flathead County Sheriff, and has direct access onto West Valley Drive, a paved county road adequate to serve the sporadic traffic generated by the proposed use, subject to the approval and issuance of an encroachment permit.
  18. Increased amounts of additional vehicle traffic on race event days may result in congestion causing traffic to 'jam' on West Valley Drive at the facility entrance because multitudes of participants and spectators will likely arrive in vehicles with or without trailers at key times relative to scheduled races of different size category.
  19. Numerous comments and concerns regarding noise impacts to residents living within the West Valley Pines Subdivision have been submitted alleging the peaceful enjoyment of their homes, their property values, and their general health and well being are being adversely impacting by the motocross activities occurring on the proposal site because the noise travels, unimpeded by topography or other barriers, from the source to the location of their homes.
  20. Applicant attempts to mitigate motocross related noise impacts to area residents are relatively ineffective because the track is located on a hill above the subdivision, no professional consultation has been used to deliberately design the track to minimize noise impacts, and proposed limited hours of operation coincide with times when residents are typically home in the evenings and on weekends.
  21. The proposed use has the potential to create substantial environmental impact due to generation of airborne dust because motocross activity agitates exposed soils and the approach and all internal access, parking areas, and traffic circulation areas are comprised of dirt and gravel.
  22. Immediate neighborhood impacts resulting from smoke, fumes, and odors are not anticipated to be significant due to the approximate half mile distance between the track and area residents, and the likelihood that fumes, smoke, and odors would dissipate in the air within that distance.
  23. While the proposed hours of operation may appear a compromise from full time motocross activity, they would have an impact on the surrounding neighborhood because the hours of operation coincide with evening and weekend hours residents are typically at home.
  24. The proposed use would offer some important benefits to Flathead County because it would potentially be a draw for tourists, spectators, and racers to visit the county and contribute to the local economy and it would provide a form of recreation not readily available within the Flathead Valley.
  25. Subject to compliance with the threshold criteria for low and high impact recreational facilities outlined in 7.17.040 FCZR, the proposed motocross track meets the definition of a high-impact recreational facility because the low impact recreational facility threshold criteria for *traffic generation* has a high rating and is not met as race

event traffic would be greater than or equal to 20 trips per hour at peak hours or 75 trips per day, as stated by the applicant.

26. Subject to compliance with the threshold criteria for low and high impact recreational facilities outlined in 7.17.040 FCZR, the criteria for *visibility* appears to not be met as the motocross track's presence is audibly obvious during hours of operation due to unmitigated noise impacts.
27. Based on submitted comments, there is reasonable cause to believe property values would be negatively impacted by continued operation of the motocross track in its current location on the subject property. Subject to compliance with the threshold criteria for low and high impact recreational facilities outlined in 7.17.040 FCZR, the criteria for *risk* appears to not be met as operation of the facility would damage neighboring residents' property values and impact their physical and emotional well being due to frequent and persistent noise impacts from the motocross activities.

## VI. RECOMMENDATION

Upon review and evaluation of this application, the request for a motocross track as a Low-impact Recreation Facility on the subject property in the AG-80 West Valley Overlay of the Westside Zoning District does not adequately conform to all applicable review criteria as required per 2.06.080(1) FCZR. Based upon the 27 Findings of Fact listed above, Staff recommends that the Flathead County Board of Adjustment adopt staff report FCU-10-13 as findings of fact and deny the conditional use permit.

Understanding the Board of Adjustment adopts Findings of Fact and approves or denies an application only after review and evaluation of all applicable criteria and information presented at a public hearing, there is a potential the Board of Adjustment may adopt Findings of Fact which differ from those proposed by staff. In the event the Board of Adjustment adopts Findings of Fact which support approval of the Conditional Use Permit the following set of draft conditions are proposed as a starting point for mitigating some impacts of the proposed use which staff has identified as being able to be adequately mitigated through conditions. Draft Findings of Fact proposed by Staff addressing criteria which appear to be inadequately mitigated or incapable of adequate mitigation would need to be changed, if adequately justified, and specific associated conditions to adequately mitigate impacts would need to be crafted by the Board of Adjustment at the time of their decision.

## VII. CONDITIONS

1. The operation of the motocross facility on the subject property shall be in substantial conformance with the original application and site plan submitted and approved by the Board of Adjustment.
2. Changes or modifications to the approved use(s) or the site plan shall not be affected unless specifically approved in writing by the Flathead County Board of Adjustment.
3. The approved use shall conform to the applicable development standards of the AG-80 WVO zoning district [FCZR Section 3.40.040].

4. All signage on the subject property shall comply with all applicable standards and guidelines set forth under Section 3.40.040 of the Flathead County Zoning Regulations.
5. All lighting on the subject property shall adhere to the performance standards set forth in Section 5.12 of the Flathead County Zoning Regulations.
6. For any structures used by the general public, the owner and applicant shall adhere to all applicable Montana State commercial building requirements as required by the Montana Bureau of Labor and Industry.
7. Prior to the commencement of additional track construction activities, the applicant shall obtain stormwater discharge permit coverage under the General Permit for Storm Water Discharges Associated with Construction Activity, issued by the Montana Department of Environmental Quality (A.R.M. 17.30.1102(28)).
8. The potable water system/source(s) for public use shall be reviewed and approved for the intended use and capacity by the Flathead City-County Health Department and the Montana Department of Environmental Quality, as applicable, prior to the operation of the motocross facility for use by the general public.
9. An approach permit for the facility approach onto West Valley Drive shall be obtained from the Flathead County Road and Bridge Department prior to the commencement of construction activities.
10. All internal vehicular access for the facility, including the approach onto West Valley Drive, access to parking, parking aisles, and parking spaces shall be established and demarcated in compliance with all applicable provisions of Chapter VI FCZR.
11. Operation of the facility for practice times and race events shall incorporate the use of dust control techniques and comply with applicable Flathead County Air Quality Regulations.
12. If permanent outhouses are used a site evaluation and permit is required prior to installation and they must be vaulted privies that meet applicable construction standards of Flathead County Environmental Health Services
13. If porta-potties are used, they are only acceptable for short term use of temporary activities which have an end point.
14. For food service at the motocross facility any vendor must be licensed as a mobile food service by the Department of Public Human Services, subject to inspection at any time.
15. A minimum number of standard vehicle parking spaces shall be clearly established on the subject property to accommodate all employee, spectator and participant traffic generated by the motocross facility, in accordance with all applicable provisions of Chapter VI FCZR.
16. The operation of the motocross facility shall commence within one year from the date of issuance of the conditional use permit. The permit may be extended for one additional year if the permittee requests additional time prior to expiration date.

Some 'key' issues not addressed

- noise mitigation
- fencing/screening
- hours of operation
- # of permitted annual racing events
- vehicle trips limitation to comply with low-impact recreational facility thresholds
- specifically permitted access - limited to West Valley Drive and not to include West Springcreek Road
- event lighting limits
- event sound amplification limits
- potential alcohol sales
- potential overnight camping