

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**CONDITIONAL USE PERMIT REPORT (#FCU-16-03)**  
**DANIEL AND DENISE MILDREN**  
**APRIL 18, 2016**

This is a report to the Flathead County Board of Adjustment regarding a request from Daniel and Denise Mildren for an after the fact conditional use permit for a ‘home occupation’ for a plumbing business on the subject property. The property is located within the Bigfork Zoning District and is zoned ‘SAG-10 Suburban Agricultural.’

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on May 3, 2016 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**

This space is reserved for an update regarding the April 28, 2016 Bigfork Land Use Advisory Council.

**B. Board of Adjustment**

This space is reserved for an update regarding the May 3, 2016 Flathead County Board of Adjustment review of the proposal.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Landowner and Applicant**

Daniel and Denise Mildren  
PO Box 2256  
Bigfork, MT 59911

**B. Property Location and Size**

The subject property is located at 395 Swan River Road east of Bigfork. (see Figure 1 below). The property is approximately 19.3 acres in size and can be legally described as Tract 2AA in Section 21, Township 27 North, Range 19 West, P.M.M., Flathead County, Montana.

**Figure 1:** Subject property (outlined in red)



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

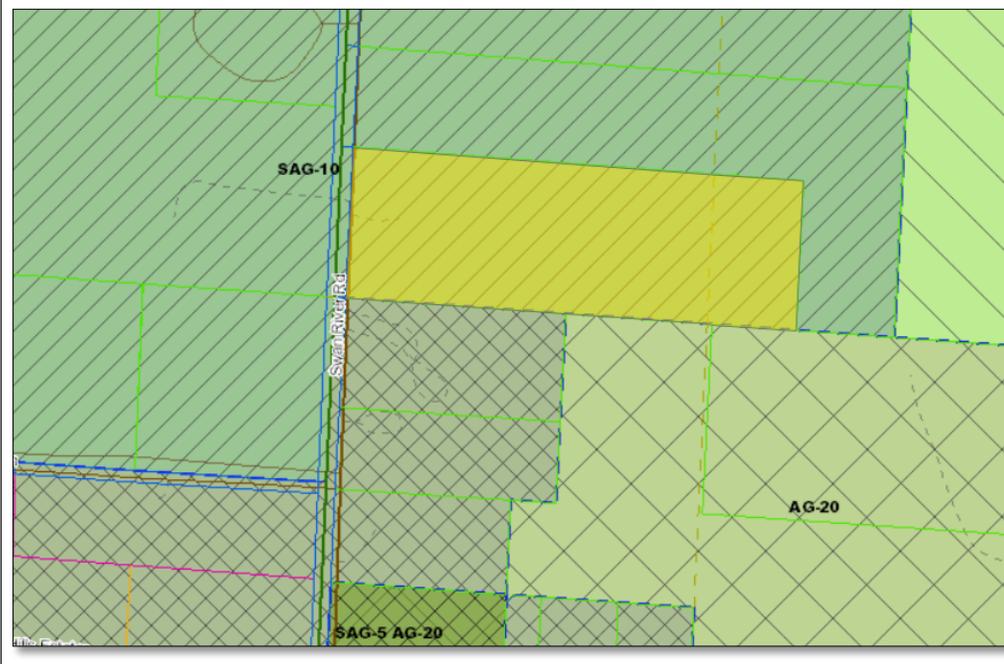
The property is located within the Bigfork Zoning District and is zoned ‘SAG-10 Suburban Agricultural.’ SAG-10 is defined as, “*A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development*” per Section 3.07.010 FCZR.

The property is currently contains the applicant’s house, a detached garage and a shop building. The property is open and relatively flat.

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

The properties that surround the subject property to the north, east and west are similarly zoned SAG-10. To the south property is zoned AG-20 and SAG-5. The general character of the surrounding area is a large lot residential.

**Figure 2:** Zoning surrounding the subject property (highlighted in yellow)



**E. Summary of Request**

The applicant is requesting an after the fact conditional use permit for a ‘home occupation’ in an accessory structure on the subject property for a plumbing business on the subject property. The review of which is subject to specific guidelines set forth under Section 2.06.080 FCZR regarding criteria for the issuance of a conditional use permit and the performance standards for a home occupation found in Section 5.06 FCZR.

Per Section 7.09.020 a ‘Home occupation’ is defined as, “*Any use conducted entirely within the dwelling and carried on by the members of the family which use is clearly incidental and secondary to the dwelling for dwelling purposes and does not change the character thereof and in connection therewith are no commodities sold from the premises except that which is produced thereof, except as provided for in Section 5.06. Such uses may include, but are not limited to, art and/or photography studios, computer programming, insurance sales, and handicrafts provided that the use does not involve more than one-third of the total square footage of the dwelling.*” Per Section 5.06.020(2)(B) “*An occupation in an*

*AG-80, AG-40, AG-20, SAG-10, R-2.5, R-1, or R-2 district, which meets one or more of the following criteria, shall be deemed a conditional home occupation and shall be required to obtain a Conditional Use Permit: B. Outbuildings or accessory structures are used for the home occupation.”*

According to the site plan submitted the home occupation occurs in a 2100 square foot accessory building. The actual storage of plumbing supplies is less than one half of the square footage of the shop. Therefore, the applicant is requesting an after the fact conditional use permit to allow the use of an outbuilding or accessory structure to be used for a home occupation and to allow for more than one person other than a family residing on the premises to be engaged in such occupation, per Section 5.06.020(2).

#### **F. Compliance With Public Notice Requirements**

Notification was mailed to property owners within 150 feet of the subject property on April 15, 2016, pursuant to Section 2.06.040(3) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application will be published in the April 17, 2016 edition of the Daily Interlake.

#### **G. Agency Referrals**

Referrals were sent to the following agencies on March 29, 2016:

- Flathead County Solid Waste (FCSW)
  - Reason: The property is located within the department’s jurisdiction and has the potential to impact county facilities.
- Bigfork Volunteer Fire District
  - Reason: The property is located within the department’s jurisdiction and has the potential to impact Bigfork Fire Department response times.
- Flathead City-County Environmental Health Department
  - Reason: The property is located within the department’s jurisdiction.
- Flathead County Road and Bridge Department
  - Reason: The property is located within the department’s jurisdiction and new construction could impact County facilities.
- Flathead County Weeds and Parks Department
  - Reason: The property is located within the department’s jurisdiction and new construction could lead to the development of weeds on the subject property.
- Bonneville Power Administration
  - Reason: The BPA has requested a copy of all agency referrals.

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

To date, thirteen written public comments have been received in support of the conditional use permit request. It is anticipated any individual wishing to provide verbal comment on the proposal will do so during the public hearing scheduled for May 3, 2016. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

#### **B. Agency Comments**

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

- Bonneville Power Administration
  - Comment: “In reviewing the proposed plan, it appears this request will not affect any BPA facilities located within this area. BPA does not have any

objections to the approval of this request at this time.” Email dated April 4, 2016.

- Flathead City-County Health Department
  - Comment: “We have no objection to the issuance of the Conditional Use Permit. The septic system was recently replaced at the property and the proposed addition of the home occupation would not trigger additional review under the Sanitation in Subdivisions Act.” Letter dated April 14, 2016
- Flathead County Solid Waste
  - Comment: “The district views no negative impact with solid waste issues at this time. The District requests that all solid waste generated at the proposed location be hauled by a private hauler to the landfill. Allied Waste is the licensed (PSC) Public Service Commission licensed hauler in this area.” Letter dated April 14, 2016
- Bigfork Fire District
  - Comment: “The state of Montana Building inspector...or the state of Montana Assistant Fire Marshall...are the ones that we consult with. Bigfork Fire does not have the authorization to make these decisions. We have no building codes.” Letter dated April 5, 2016
- Flathead County Road and Bridge Department
  - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated April 1, 2016

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

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

##### **A. Site Suitability**

###### **i. Adequate Usable Space**

The subject property currently contains a house, detached garage and shop building. The applicant is currently using the shop for the home occupation. The lot is approximately 19.3 acres and in an SAG-10 zone the permitted lot coverage is 20%. The existing shop on the property is 30 feet by 70 feet and covers approximately 2,100 square feet. The use of the shop by the business is less than half. One half of the coverage of the building is 1,050 square feet. At this time the applicant is not proposing to construct any additional buildings for use by the building. The half of the existing structure in use covers approximately 1,050 square feet or .0012% of the lot.

The minimum yard requirements within the SAG-10 zone are 20 feet for the front, rear, side and side corner for the principal structure. Detached accessory structures are required to be setback 20 feet from the front and side corner and 5 feet from the rear and side property line. The existing buildings appear to meet applicable setback requirements, based on the submitted site plan.

Based upon staff’s site visit and the submitted site plan, it appears the subject property has adequate useable space to accommodate the existing buildings.

###### **ii. Adequate Access**

The subject property is located off of Swan River Road. Swan River Road is a paved two lane local county road within a 60 foot easement. The applicant states, “Access is

via a private driveway off of Swan River Road. Swan River Road is a county maintained, paved road. The driveway provides excellent site distance and adequate width for the use. At a maximum, with the three employees and two deliveries during the day, there would be a 10 vehicle trips attributed to the business use. The Flathead County Zoning regulations would allow up to 16 vehicle trips without a conditional use permit and up to 32 vehicle trips with a conditional use permit. The applicants have excellent access for the home and business.” Comment from the Flathead Road and Bridge Department states, “At this point the County Road Department does not have any comments on this request.”

The existing approach is off of Swan River Road and as the applicant states, “widens to approximately a 47 foot by 110 foot graveled area in front of the shop used by the Mildren’s business trucks to access the shop and turn around and leave.” (see figure 3) The existing access would continue to provide ingress and egress to the property. All access shall be approved by the County Road and Bridge Department with the issuance of an approach permit, per Section 6.16.020(4) [FCZR].

**Figure 3:** Access off of Swan River Road



**iii. Absence of Environmental Constraints**

The subject property is relatively flat with no significant elevation changes and is located on FEMA FIRM panel 2310J. The lot is designated as un-shaded Zone X. The un-shaded Zone X is classified as an area determined to be outside the 0.2% annual chance floodplain. There are no wetlands, streams, or creeks located on the property, and there appears to be no other environmental constraints.

**Finding #1** – The site appears suitable for the home occupation because the existing structures meet applicable bulk and dimensional requirements, there appears to be adequate access via a paved county road which may require a revised approach permit and there are currently no environmental impacts present on site.

## **B. Appropriateness of Design**

### **i. Parking Scheme**

The applicant states, “As this is a small home occupation on a 20 acre parcel there is more than adequate parking. Given that the general public/clients do not come to the Mildren’s property for business only minimal parking is needed for the owner’s truck and the occasional deliveries.” Section 6.01.010(2)(A) [FCZR] indicates a parking space for standard vehicles measures 9 feet by 20 feet. The parking area in front of the shop is approximately 47 feet long by 110 feet wide and three parking spaces are identified on the site map. One measures 43 feet by 20 feet, the second measures 31 feet by 14 feet and the third measures 37 feet by 22 feet. The existence of a two car garage on the property along with the three parking spaces appear to be adequate to serve the dwelling and home occupation.

### **ii. Traffic Circulation**

The subject property is located on Swan River Road. Swan River Road is a paved two lane local county road within a 60 foot easement. The existing driveway will be utilized by the home occupation. The existing approach is off of Swan River Road and as the applicant states, “widens to approximately a 47 foot by 110 foot graveled area in front of the shop used by the Mildren’s business trucks to access the shop and turn around and leave.” (see figure 3) The existing access would continue to provide ingress and egress to the property.

### **iii. Open Space**

The subject property currently contains a residence, detached garage and shop building. The lot is approximately 19.3 acres. In an SAG-10 zone the permitted lot coverage is 20%. The application states, “The Mildren’s plumbing business occupies less than half of the 2100 square foot shop. The remaining 20 acres of property is used for the Mildren’s home, two car garage, gardens, pastures for stock and cattle, pig pen and chicken coop. There is an abundance of open space on the property.” (See figure 1) The existing shop used for the home occupation on the property is 30 feet by 70 feet and covers approximately 2,100 square feet.

Based upon staff’s site visit and the submitted site plan, it appears the subject property has adequate open space to accommodate the existing buildings.

### **Fencing/Screening**

As the applicant states, ‘The Mildren’s plumbing business is located completely within the confines of the existing shop. The shop is located approximately 400 feet from the county road and is buffered by numerous trees. There is no outdoor storage of any business related material. That said, there is agricultural fencing for livestock that consists of a three rail wood fence on the front and four strand barbwire on the side and rear fences...The Mildren’s have also planted a number of trees over the years for wind breaks and visual screens. The zoning designation and home occupation standards do not require any fencing or screening. All fencing constructed shall comply with Section 5.04 FCZR.

### **iv. Landscaping**

The applicant states, ‘The property is extensively landscaped with lawn, trees, and shrubs...The rear of the shop is built into a six foot slope which lessens the height of the shop and its presence on the landscape. No landscaping is required for the home occupation based on the applicable performance standards.

**Finding #2** – The parking, traffic circulation, open space, fencing/screening and landscaping appears to be adequate for the proposed use because the gravel parking area along with three parking spaces and two car garage appears to meet applicable parking standards, while allowing for adequate traffic circulation, it appears the subject property has adequate open space to accommodate the existing buildings and there are no parking, fencing/screening or landscape requirements for home occupations.

**v. Signage**

The applicant is not proposing any signs as part of this request for a conditional use permit. Any signs installed on the property in the future, would require compliance with Section 5.03 FCZR.

**vi. Lighting**

The applicant states ‘Other than the minimal yard lighting associated with rural residential/agricultural uses, there is no outdoor light. As the applicants do not operate their business outside or in the evening, they do not propose any additional lighting.’ Exterior lighting would be required to comply with the performance standards set forth in [FCZR] Section 5.12, which require that, “*All porch and yard lighting shall be hooded, screened or directed in a manner such that the light source or the diffuser emitting the light shall not be deleterious to the adjoining property owners or occupants.*”

**Finding #3** – The signage and lighting on the subject property appear adequate because the applicant is not proposing any signage and any lighting shall be conditioned to adhere to all applicable zoning regulations.

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

**i. Sewer**

The application states, ‘The applicant has a small bathroom in the shop. The shop and the house are served by an approved septic system that was recently upgraded. Comments from the Flathead County Environmental Health Department state, “We have no objection to the issuance of the Conditional Use Permit. The septic system was recently replaced at the property and the proposed addition of the home occupation would not trigger additional review under the Sanitation in Subdivisions Act.”’

The septic system appears adequate for the use of the home occupation and to be compliant with the Sanitation in Subdivisions Act.

**ii. Water**

The applicant is proposing to utilize an existing individual well for the dwelling and the home occupation. The application states, “Water is provided by a private well. The proposed plumbing business is not a use that requires water consumption beyond what is typical of a single family residence.” Comments from the Flathead County Environmental Health Department state, “We have no objection to the issuance of the Conditional Use Permit.”

The water system appears to be adequate for the use of the home occupation.

**iii. Storm Water Drainage**

The application states “The applicants have 20 acres of land. The soils in the area are sandy loams and are well drained. Stormwater drainage is not an issue in this area.” Currently storm water run-off is handled through on-site absorption and will continue to be handled through on-site absorption in the future. The applicant shall contact the

Flathead City-County Environmental Health Department to determine if review will be required. This will be conditioned and verified after one year.

**Finding #4** – There appears to be adequate availability of sewer, water and storm drainage for the proposed use because the property will be serviced by individual on-site septic and water system and storm water run-off will be managed on-site.

**iv. Fire Protection**

The subject property is served by the Bigfork Rural Fire District, and is located approximately six miles northeast of an existing fire station. Due to the close proximity to the fire station, it is anticipated response times in the event of an emergency would be reasonable.

**v. Police Protection**

The property would be served by the Flathead County Sheriff's Department. The application states, "The subject property is served by the Flathead County Sheriff's Office. The Sheriff's Office is located in Kalispell and depending on the number of officers on duty and where they are at any given time will dictate the response time. However, the small plumbing business that stores pipe and fittings for the employees to stock their trucks should have minimal impact on the Sheriff's Offices." It is anticipated response times in emergency would not be unreasonably long given the property's proximity to a rural, developed area of the County.

**vi. Streets**

The subject property is located on and accessed from Swan River Road. Swan River Road paved, two lane, local county road within a 60 foot easement. Comment from the Flathead Road and Bridge Department states, "At this point the County Road Department does not have any comments on this request." It appears that the road is adequate to serve the proposed use.

**Finding #5** – The proposed use appears to have acceptable impacts on streets, and police and fire protection because the Bigfork Rural Fire Department and Flathead County Sheriff could provide services to the subject property with an acceptable response time and the property is accessed by Swan River Road.

**D. Immediate Neighborhood Impact**

**i. Excessive Traffic Generation**

The applicant states, "As stated previously in this application, with three employees and two deliveries per day at the maximum, there would be 10 vehicle trips associated with the proposed business. On most days, the employees do not even show up at the shop as their work trucks can haul enough materials for two to three days of work without restocking. The Flathead County Zoning Regulations allow up to 16 vehicle trips per day without triggering the conditional use permit." Section 5.06.020(1)(E), requires that, "*The home occupation shall not generate pedestrian or vehicle traffic in excess of that which is characteristic of the neighborhood in which it is located. Vehicle traffic would not be increased by more than sixteen (16) vehicle trips all day.*" Traffic generated by the proposed use would have a minimal impact on the neighborhood.

**ii. Noise or Vibration**

The application states, "The plumbing business does not create any noise or vibration." Per Section 5.06.020(C), "*No home occupation shall be conducted in a manner which will be detrimental to the residential use of said residence or cause a nuisance to*

*surrounding residences, because of vibration, noise, dust, smoke, odor, interference with radio or television reception, or other factors.*” It is anticipated that the proposed home occupation would not generate noise and vibrations due to the fact of the shop building being used as plumbing supply storage.

**iii. Dust, Glare or Heat**

The proposed use is not anticipated to create any heat or glare that would adversely impact the neighborhood. Per Section 5.06.020(C), *“No home occupation shall be conducted in a manner which will be detrimental to the residential use of said residence or cause a nuisance to surrounding residences, because of vibration, noise, dust, smoke, odor, interference with radio or television reception, or other factors.”* The application states, “The plumbing business does not create any dust. The driveway is paved and only the parking lot is graveled and as there is no client visits to the property there is little or no parking.” Minimal dust is anticipated as the driveway is paved and the parking lot is graveled. The dust would not be out of character for the neighborhood because the proposed home occupation would only increase traffic by 10 vehicle trip per day maximum and vehicles will travel at slow speeds on the driveway.

**iv. Smoke, Fumes, Gas, or Odors**

The applicant states, no smoke, fumes, gas or odors will be generated by the proposed use. Per Section 5.06.020(C), *“No home occupation shall be conducted in a manner which will be detrimental to the residential use of said residence or cause a nuisance to surrounding residences, because of vibration, noise, dust, smoke, odor, interference with radio or television reception, or other factors.”* It is anticipated no smoke, fumes, gas or odors are to be generated by the proposed home occupation other than those typical of a residential zone.

**Finding #6** – The immediate neighborhood impact from the proposed use is acceptable because the proposed facility will not create excessive traffic, noise, vibration, dust, glare, heat, smoke, fumes, gas or odors other than those typical of a residential area.

**v. Inappropriate Hours of Operation**

The applicant has stated that the proposed hours of operation for access to the shop for plumbing supplies is from 8:00 am to 5:00 pm. The property is located in a residential area however the proposed hours of operation would be daytime hours and unlikely to impact the immediate neighborhood.

**Finding #7** – The proposed hours of operation for access to the shop for plumbing supplies are not anticipated to negatively impact the neighborhood because the proposed hours of operation would be between 8:00 am and 5:00 pm.

**V. SUMMARY OF FINDINGS**

1. The site appears suitable for the home occupation because the existing and structures meet applicable bulk and dimensional requirements, there appears to be adequate access via a paved county road which may require a revised approach permit and there are currently no environmental impacts present on site.
2. The parking, traffic circulation, open space, fencing/screening and landscaping appears to be adequate for the proposed use because the gravel parking area along with three parking spaces and two car garage appears to meet applicable parking standards, while allowing for adequate traffic circulation, it appears the subject property has adequate open space to

accommodate the existing buildings and there are no parking, fencing/screening or landscape requirements for home occupations.

3. The signage and lighting on the subject property appear adequate because the applicant is not proposing any signage and any lighting shall be conditioned to adhere to all applicable zoning regulations.
4. There appears to be adequate availability of sewer, water and storm drainage for the proposed use because the property will be serviced by individual on-site septic and water systems and storm water run-off will be managed on-site.
5. The proposed use appears to have acceptable impacts on streets, and police and fire protection because the Bigfork Rural Fire Department and Flathead County Sheriff could provide services to the subject property with an acceptable response time and the property is accessed by Swan River Road.
6. The immediate neighborhood impact from the proposed use is acceptable because the proposed facility will not create excessive traffic, noise, vibration, dust, glare, heat, smoke, fumes, gas or odors other than those typical of a residential area.
7. The proposed hours of operation for access to the shop for plumbing supplies are not anticipated to negatively impact the neighborhood because the proposed hours of operation would be between 8:00 am and 5:00 pm hours.

## **VI. CONCLUSION**

Upon review of this application, the request to allow for an after the fact 'home occupation' on the subject property is generally supported by the review criteria and the Findings of Fact listed above. Should the Flathead County Board of Adjustment choose to adopt staff report FCU-16-03 as Findings of Fact and approve the conditional use permit, the following conditions would ensure compliance with the review criteria and appropriate measures to mitigate impacts:

## **VII. CONDITIONS OF APPROVAL**

1. The 'home occupation' on the subject property shall be in substantial conformance with the application materials and site plan as submitted and approved by the Board of Adjustment and modified by the conditions below [FCZR Section 2.06.010].
2. Changes or modifications to the approved use or the site plan shall not be affected unless specifically approved in writing by the Flathead County Board of Adjustment [FCZR Section(s) 2.06.010 and 2.06.020].
3. All fencing installed on the property shall be in compliance with Section 5.04 of the Flathead County Zoning Regulations.
4. Current and future lighting installed on the property shall be in compliance with Section 5.12 of the Flathead County Zoning Regulations.
5. All structure shall be located in accordance with the minimum yard and maximum height requirements of the SAG-10 zoning district, pursuant to Section 3.07.040 of the Flathead County Zoning Regulations.
6. The applicant shall provide 2 parking spaces for the one-family dwelling as required under Section 6.02.010 and 1 space per 2 employees on maximum shift, per Section 6.10.020 of the Flathead County Zoning Regulations.

7. The proposed use shall be reviewed and approved by the Flathead City-County Department of Environmental Health in order to obtain a well, storm drain and septic permit applicable to the home occupation. A copy of the approved permit shall be available upon request by Flathead County Planning and Zoning.
8. The proposed use shall be re-reviewed by the Flathead County Road and Bridge Department to obtain an updated approach permit. A copy of the approved permit shall be available upon request by Flathead County Planning and Zoning.
9. The home occupation shall not generate pedestrian or vehicle traffic in excess of that which is characteristic of the neighborhood in which it is located. Vehicle traffic shall not be increased by more than sixteen (16) vehicle trips all day, per 5.06.020(E).
10. The conditional use permit shall terminate twelve (12) months from the date of authorization if commencement of the activity has not begun, unless the applicant can demonstrate and maintain a continuous effort in good faith in commencing the activity. [FCZR Section 2.06.060].
11. At the end of 12 months from the date of authorization of this permit staff will inspect to verify compliance [FCZR Section 2.06.060].

Planner: DV