

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
CONDITIONAL USE PERMIT REPORT (#FCU-20-04)
SCHELLINGER CONSTRUCTION
August 4, 2020

I. GENERAL INFORMATION

A. Project Description

This is a report to the Flathead County Board of Adjustment regarding a request from Rob Koelzer, Schellinger Construction Co. on behalf of Section 16 Family Limited Partnership to modify a condition of approval from previously approved Conditional Use Permits (FCU-05-07, FCU-08-07) to allow concrete and asphalt batch plants on an existing gravel extraction operation.

B. Application Personnel

1. Owner

Section 16 Family Limited
Partnership
2335 West Valley Drive
Kalispell, MT 59901

2. Applicant

Rob Koelzer, Schellinger Construction
Co.
P.O. Box 39
Columbia Falls, MT 59912

C. Process Overview

1. Land Use Advisory Committee/Council

The proposed land use is located within the West Valley Land Use Advisory Committee jurisdiction. The West Valley Land Use Advisory Committee held a public meeting to review this proposal and forward a recommendation to the Board of Adjustment on May 21, 2020 at 5:30 P.M. at the Expo Building at the Flathead County Fairgrounds.

UPDATE: The West Valley Land Use Advisory Committee held a meeting to consider this request on May 21, 2020 at the Expo Building at the Flathead County Fairgrounds. The meeting was attend by four board members: Barbara Long, Paul McKenzie, Steve Alejandro, and Bruce Colburn. The applicant, Rob Koelzer, presented the request and explained that the asphalt plant requested would be portable and able to produce 400 tons of asphalt per hour. He further explained the DEQ requirements for the containment of the hazardous materials that would be used on the site for the batching of asphalt. In addition, he stated that the proposed plant would be in use intermittently as the need for asphalt presented itself. The applicant also stated that there were no immediate plans to bring in a portable concrete batch plant but wanted the opportunity to consider that in the future. He did submit a site plan, showing the proposed location of both the asphalt and concrete batch plants. There were approximately 70 members of the public who attended. Fifteen attendees spoke in opposition of this request. The relevant points that were raised included the appearance the batch plants we create an industrial area in an area that is agricultural and residential in nature, the increase in traffic, the adverse effect on the immediate neighborhood with the increase in potentially harmful materials contaminating ground water, the potential decrease in air quality, and the vague nature of the request. The applicant did not present any rebuttal. The committee spent some time discussing this application, revised findings of fact and forwarded a recommendation to deny the request.

2. Board of Adjustment

This request was originally scheduled for the May 5, 2020 Board of Adjustment hearing. Because of the multitude of public comments received after the adjacent property owner mailing was received, requesting this item be heard first by the West Valley Land Use Advisory Committee, this request was postponed until the June Board of Adjustment meeting in order to receive a recommendation from the committee. On May 22, 2020, an appeal was

filed arguing the Stipulated Consent Decree and Final Judgment negotiated between the property owner and Flathead County, any deviation regarding the approved Conditional Use Permit for gravel operations on the property would need to be addressed by the District Court and this application for a condition modification to FCU-05-07 should not have been accepted and processed. The Board of Adjustment heard the appeal at their June meeting. On a 2-2 vote by the Board, the appeal was denied, allowing this application to move forward.

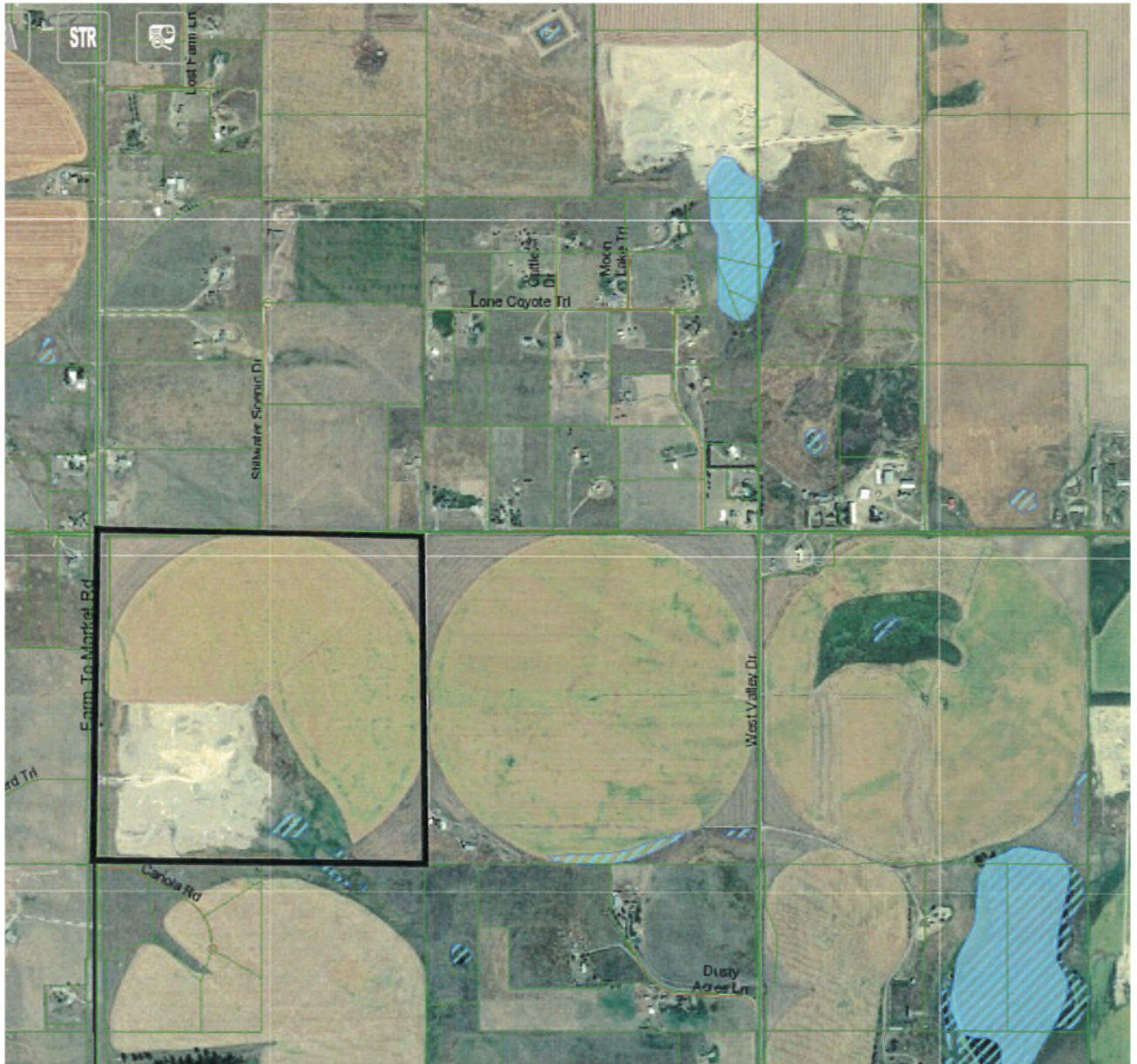
The Flathead County Board of Adjustments will conduct a public hearing on the proposed condition modification on August 4, 2020 at the Flathead County Fairgrounds. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, located on the second floor of the South Campus Building.

II. PROPERTY CHARACTERISTICS

A. Property Location and Size

The subject property is located at 3427 Farm to Market Road west of Kalispell, MT (see Figure 1 below). The property is 160 acres and can legally be described as the northwest quarter of Section 16, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property (outlined in black)



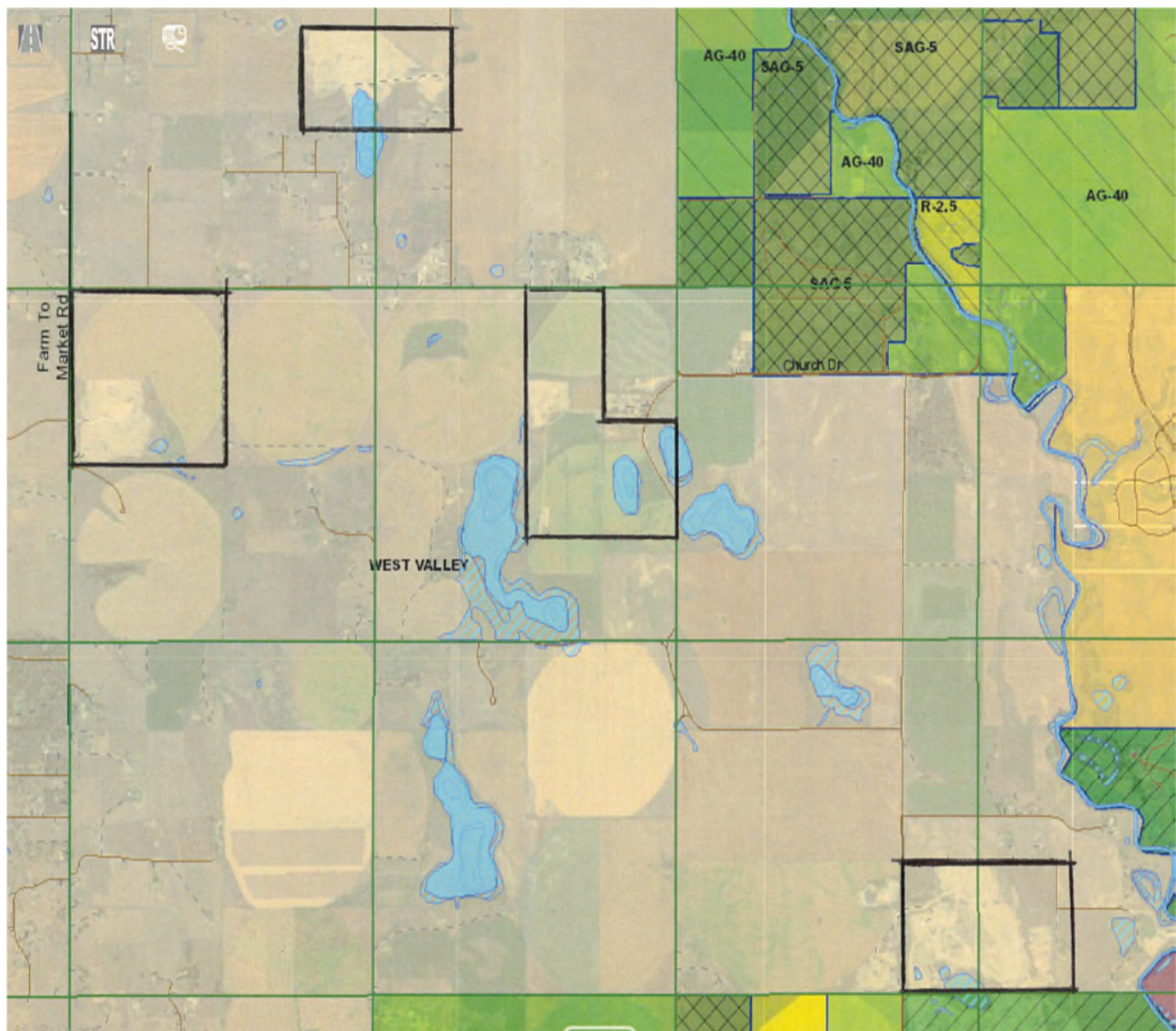
B. Existing Land Use(s) and Zoning

The property is currently under agricultural production and is being utilize as a gravel extraction operation with rock crushing operations. The property is zoned ‘WV West Valley.’ West Valley is defined as, “A district to promote orderly growth and development in the West Valley area consistent with the community vision statements as expressed by the text and map exhibits of the West Valley neighborhood Plan, County Resolution #1226-A.”

C. Adjacent Land Use(s) and Zoning

The property is surrounded by property also zoned West Valley. The prominent land use in close proximity to the property appears to be agriculture and single family dwellings on large parcels. There is a newly developed subdivision adjacent to the south and another new subdivision across Farm to Market Road. There are three other gravel extraction operations within three miles of the subject property all zoned West Valley.

Figure 2: Zoning surrounding the subject property and nearby gravel operations (outlined in black)



D. Summary of Request

The original Conditional Use Permit for the gravel operation was approved on June 14, 2005. The approval was appealed in District Court. The Court rendered a decision that was appealed to the Montana Supreme Court. Ultimately, a Stipulated Consent Decree and Final Judgement was issued on November 22, 2010. While the approval was in litigation, several text amendments were made to the Flathead County Zoning Regulations regarding gravel extraction operations, residential areas, the status of the Growth Policy and neighborhood plans as they relate to regulations that were all issues brought up by the Court during the litigation proceedings.

With that said, this particular application is requesting a modification of one of the conditions of approval of the original permit (FCU-05-07). That condition reads, “Asphalt and concrete batch plant operations are prohibited.” This request is to modify that condition in order to be permitted to operate portable asphalt and concrete batch plants in this gravel operation. It

should be noted that “gravel extraction” is a conditional use in the West Valley zoning district. At the time of the original approval, there was no definition of “gravel extraction” in the regulations. On March 1, 2010, the regulations were amended to include a definition which reads, “Gravel Extraction– includes the following activities, if they are conducted for the primary purpose of sale or utilization of materials: 1) removing the overburden and mining directly from the exposed natural deposits or mining directly from natural deposits of materials; 2) mine site preparation, including access; 3) processing of materials within the area that is to be mined or contiguous to the area that is to be mined or the access road; 4) processing materials within the area that is to be mined through crushing, screening, asphalt, wash, and concrete plants, and utilizing other equipment used in processing open-cut materials; 5) transportation of materials on areas referred to in subsections 1 - 3; 6) storing or stockpiling of materials on areas referred to in subsections 1 - 3; 7) reclamation of affected land; and 8) any other associated surface or subsurface activity conducted on areas referred to in subsections 1 - 3.”

This request is only to modify that condition. The rest of the conditions outlined in FCU-05-07 and the Stipulated Consent Decree and Final Judgement will remain in effect. In addition, the applicant has gone through the process with the Department of Environmental Quality to extend the mining operation to include approximately 80 acres. Moreover, there is at least one other gravel extraction operation in close proximity that has been permitted to include batch plants. It should be noted that these operations were issued Conditional Use Permits after the litigation for this particular operation had concluded and the associated amendments to the zoning regulations were adopted.

There were a multitude of issues considered by the Court during the litigation of the appeal of the approval of FCU-07-05. Many of those issues are outlined in more detail in the attached Exhibit A of this report. This exhibit which is the staff report for FCU-08-07 reviews, in depth, issues regarding traffic and water quality concerns the District Court ruled were lacking in the original FCU-05-07 report and findings of fact. It should be noted that the findings adopted by the Board of Adjustment regarding traffic issues and the quality of the transportation network is discussed in the attached exhibit is for the current operation that does not include asphalt and concrete batch plants. Later in this report, traffic issues are evaluated only for the anticipated increase in traffic as a result of the requested portable asphalt and concrete batch plants. As to water quality issues, additional information was considered by the Board of Adjustment at that time and additional finds were adopted regarding water quality for the current operation. With this request, the Planning and Zoning Department will rely on the expertise of the Department of Environmental Quality to administer all appropriate environmental safeguards for the operation of asphalt and concrete batch plants.

With that said, there are three issues that were addressed by both the District and Supreme Courts that have appeared to generate a fair amount of attention in the public comments received so far regarding this request. It is anticipated that these issues will be routinely mentioned in both the West Valley Land Use Advisory Committee meeting as well as the Board of Adjustment hearing. The first issue is the Supreme Court determination that West Valley is a residential zone. This is important because both Montana Code Annotated and the Flathead County Zoning Regulations specifically requires gravel operations in residential area, including asphalt and concrete batch plants, to be critically reviewed during the Conditional Use Permit process and even denied if the Board so decides. And while there was considerably less residential development in close proximity to this operation in 2007, since that time, and indeed, within the last two years, two residential subdivisions have been developed in the area. Lost Hills subdivision consists of six residential lots and is located immediately adjacent to the

gravel operation to the south. Some of the lots in this subdivision have been recently developed with single family dwellings. The other subdivision, Homes on a Thousand Hills is a ten lot residential subdivision located on the west side of Farm to Market Road with the subdivision road directly across the road from the gravel operation entrance. On July 8, 2020, the Planning Board recommended approval to replat two of the lots in this subdivision which, when a final plat is recorded, will create seven additional lots. The fact that the area has become increasingly residential has the potential to have additional immediate neighborhood impacts that will need to be mitigated in order to approve this request.

The second issue the District Court grappled with was at the time of the original application, gravel extraction was a conditional use in the West Valley zone but there was not a definition of “gravel extraction” anywhere in the regulations. There was, however, a definition of “extractive industry” which states, “Commercial or industrial operations involving the removal and processing of natural accumulations of sand, rock, soil, gravel, or any mineral.” At that time, the Board of Adjustment implicitly concluded that gravel extraction and extractive industries were synonymous. One of the reasons this request was remanded to the Board of Adjustment and what is discussed in Exhibit A was to adopt an appropriate finding related to these two terms. However, as noted above, a definition of gravel extraction was adopted into the Flathead County Zoning Regulations on March 1, 2010. This definition appears to include not only the existing gravel operation on the subject property but also includes the potential addition of asphalt and concrete batch plants.

The final issue that was discussed in the Supreme Court decision and that is mentioned in more than a few comments regarding this request is the function of the West Valley Neighborhood Plan and whether that plan has any regulatory authority. At the time of the original approval of FCU-05-07, Section 1.04.020 of the Flathead County Zoning Regulations stated, “In cases where a neighborhood plan, addendum to a Master Plan, or other adopted document contains aspects related to zoning and is under the jurisdiction of these regulations, the provisions that are more restrictive shall control.” It was argued at the time and it is still argued that the West Valley Neighborhood Plan contemplates “industrial” development or activity only if that industrial activity is very closely related to agricultural operations. And while the gravel operation is being conducted on a portion of a parcel of land that is also under agricultural production, the gravel operation is certainly not closely related to any kind of agricultural operation. Indeed, in its decision, the Supreme Court referenced Section 76-1-605(2) M.C.A. which states, “(a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law. (b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.” In its 2008 decision, the Supreme Court ruled that the zoning regulations in effect at the time of FCU-05-07 approval specifically authorized regulatory functions of the West Valley Neighborhood Plan.

On October 9, 2008, the Board of Commissioners adopted a text amendment to the zoning regulations specifically dealing with this issue. Section 1.04.020 now states, “The growth policy and neighborhood plans are not regulatory and do not confer any authority to regulate. The growth policy and neighborhood plans are intended to provide direction and guidance when consideration is given to adopting, amending, and interpreting zoning regulations.” This regulation change stripped the growth policy and any neighborhood plans the authority to regulate.

III. COMMENTS

A. Agency Comments

1. Agency referrals were sent to the following agencies on May 27, 2020:
 - West Valley Fire Department
 - Flathead County Road and Bridge Department
 - Montana Department of Transportation
 - Flathead City-County Environmental Health Department
 - Flathead County Weeds & Parks Department
 - Montana Department of Environmental Quality—Open Cut Section
 - Montana Fish, Wildlife & Parks.
2. The following is a summarized list of agency comments received as of the date of the completion of this staff report:
 - West Valley Fire Department
 - “I have reviewed the emergency plans, spill containment plan and access to the gravel pit. Everything meets the expectations of the fire department. Our apparatus are equipped with class A foam for fire suppression and our personnel are trained in handling fire suppression and assisting in spill containment. We maintain a supply of Class B foam if the need becomes necessary.” Letter received June 26, 2020 from Fire Chief Russel Sappington.
 - Montana Department of Transportation
 - “The only comment we have is that if there will be a significant increase in trips using the access they should contact MDT to update the existing approach permit.” Email received June 22, 2020.
 - Flathead City-County Environmental Health Department
 - “Operation of an asphalt and concrete batch plant operations would fall under State of Montana DEQ permitting requirements. This Department has no comment at this time.” Letter received June 5, 2020.
 - Flathead County Road and Bridge Department
 - “At this point the County Road Department does not have any comments on this request.”

B. Public Comments

1. Notification was mailed to property owners within 150 feet of the subject property on July 17, 2020, 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 July 19, 2020 edition of the *Daily Interlake*.
2. Public Comments Received

To date, the Department has received a multitude of public comments regarding this request. The comments received so far will be provided to both the West Valley Land Use Advisory Committee and the Board of Adjustment. To briefly summarize the comments, the vast majority stated opposition to the request and requested the May hearing be postponed until June. There was one comment in favor of the request. It is anticipated any individual wishing to provide public comment on the proposal will do so during the public hearing scheduled for June 2, 2020. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing. It should be noted that due to the novel coronavirus, the Board of Adjustment hearing will take place via teleconferencing. Any written comments received prior to Board information material mailed to the Board members will be included with the other application materials. Any written comments received after the Board receives the application information will be supplied to the Board the night of the hearing.

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.

Section 2.06.050(2) of the Flathead County Zoning Regulations states, “ A minor modification to a previously approved Conditional Use Permit may be granted by the Zoning Administrator if it is determined that the requested modification would not constitute a substantial change to the findings of fact in the original approval, and that the proposed location, size, design, and operating characteristics of the proposed use and the original conditions of approval would not be altered or be detrimental to the public health, safety, or general welfare. The Zoning Administrator shall deny the requested modification upon finding the request constitutes a substantial change. In such cases, the applicant may apply for approval of a use or condition modification, as appropriate, in accordance with the procedures set forth in this section.”

The Zoning Administrator determined that because asphalt and/or concrete batch plants were specifically prohibited with the original request, the condition modification request constitutes a substantial change. However, because of the complexity of how the original Conditional Use Permit ultimately received approval and because of the evolution of Planning and Zoning Department staff over the past fifteen years, the original Findings of Fact are, for the most part, either not applicable or do not contain adequate information. Moreover, as mentioned above, changes were made to the zoning regulations as a result of this original request.

Because this request is to modify one condition of approval of a previously approved Conditional Use Permit, review of the required criteria will exclusively focus on the requested change of the condition that asphalt and concrete batch plants or prohibited. In addition, the Findings of Fact will also concentrate exclusively on the request to modify that condition.

As mentioned above, the West Valley Land Use Advisory Committee met on May 21, 2020. After hearing public comment, the committee discussed the proposal and recommended denial of the request. The committee also recommended changes to seven of the proposed findings. In the review below, the findings proposed by the West Valley Land Use Advisory Committee will be shown in italics.

A. Site Suitability

1. Adequate Usable Space

The subject property is approximately 160 acres in size. The current Open Cut Mining approval from DEQ includes approximately 80 acres. The site has been a gravel extraction operation for over ten years and appears to meet all of the requirements outlined by DEQ. The addition of asphalt and concrete batch plants should not alter the current or future activities on the site. The application states the batch plants will be placed on the pit floor, resulting in adequate useable space on the property.

Finding #1 – The subject property appears to contain adequate usable space because the area which has been permitted by DEQ is approximately 80 acres which appears to be adequate for portable asphalt and concrete batch plants as well as the on-going gravel extraction operation.

2. Adequate Access

Access to the property is from Farm to Market Road and will not change if this modification is granted. The Montana Department of Transportation stated in an email that if there will be a significant increase in traffic, the applicant will be required to update the existing approach permit.

Finding #2 – The access appears adequate because the access to the property will not change. The Montana Department of Transportation may require an updated approach permit.

3. Absence of Environmental Constraints

The property is not located within a Special Flood Hazard Area nor does it appear there are any other environmental constraints on the property. At the West Valley Land Use Advisory Committee meeting, comments regarding the potential negative impacts to the groundwater in the area were submitted. During the proceedings of FCU-05-07, there were questions regarding the shallow aquifer in the area and whether a gravel operation would negatively impact the aquifer. In 2008 a ground water study was conducted in the area to determine the extent, if any, a gravel operation including the storage of diesel fuel would have on the ground water quality in the area. This study concluded that “groundwater quality impacts associated with onsite fuel storage, storm water runoff, and gravel crushing would not have a deleterious effect on the shallow Lost Creek Fan aquifer.”

In addition, the applicant submitted additional information subsequent to the committee meeting to address the groundwater concerns. In addition, the applicant submitted a Spill Prevention, Control, and Countermeasure Plan as well as an Emergency Action Plan which outlines procedures to adequately address any accidental spills of hazardous materials, including diesel fuel and asphalt oil. The applicant states that the current gravel operation and fuel storage occurs 23 feet above the shallow aquifer in the area, and that single wall diesel fuel storage tanks will be placed in a secondary containment area lined with an impervious chemical liner. The applicant further states that asphalt oil is only in a flowable liquid state when it is being heated and mixed with aggregate. Finally, the applicant states that best management practices will be used to protect surface and groundwater from potential contamination by material associated with the operation of the batch plants.

Finding #3(WVLAUC): There does not appear to be environmental constraints associated with any Special Flood Hazard Area; however, potential groundwater contamination is a concern. The existing water quality report must be revised to consider the potential impacts of the modified uses adding an asphalt and concrete batch plant.

Finding #3 – There does not appear to be environmental constraints on the property because it is not located within a Special Flood Hazard Area and there does not appear to be any other

environmental constraints in the area. Ground contamination concerns appear to be addressed because the 2008 groundwater study concluded that the operation does not appear to adversely affect the water quality of the Lost Creek Fan aquifer; secondary containment of diesel fuel and asphalt oil will require storage tanks to be located within a secondary containment area lined with a chemical liner; and best management practices will be utilized to protect surface and groundwater from potential contamination.

B. Appropriateness of Design

1. Parking Scheme

It appears the nature of the operation does not require specific parking for on-site employees. There is a limited number of pieces of heavy equipment that removes the material and loads trucks to transport the material off site. However, if, with the development of batch plants there is a need for employee parking, the site plan indicates there is ample room on the existing pit floor for employee parking.

Finding #4 – Any future parking scheme appears to be acceptable because there will be a limited amount of on-site employees requiring parking spaces and the existing pit floor is approximately 30 acres.

2. Traffic Circulation

Traffic circulation for the haul trucks which transports materials off site appears to be confined to the southwest portion of the current operation. As the operation progresses to other portions of the property, that circulation will be modified to meet the conditions of the operation. Moreover, it also appears that there are a limited number of vehicles on the property at any given time.

Finding #5 – The proposal appears to accommodate traffic circulation for the proposed use because there is ample room on the property for the limited number of vehicles to circulate in an efficient manner.

3. Open Space

The subject property is approximately 160 acres in size and is currently being utilized as a gravel extraction operation and for agricultural production. The current mining activity is confined to 40 acres on the southwest portion of the property. The applicant has updated the Open Cut Mining Permit to include an additional 40 acres adjacent to the north of the existing operation. This update was issued by DEQ in 2019. When this section begins gravel production, there will still be 80 acres of open space on the property. It should also be noted that the applicant submitted a draft Open Cut Mining Permit to include the asphalt and concrete batch plants. If this request is approved, they will submit the permit to DEQ for their consideration.

Finding #6 – The proposed open space on the subject property appears adequate because when expanded, only 80 acres of the 160 acres will be under gravel extraction operations.

4. Fencing/Screening

There is currently fencing around the perimeter of the property along with an earthen berm with vegetation.

5. Landscaping

There is currently an earthen berm with vegetation around the entire area of the current and future mining operation such that the operation is somewhat buffered from Farm to Market Road or adjacent properties.

The applicant submitted additional information regarding screening and vegetation. The applicant states that the pit floor is approximately 35 feet below the natural ground surface of the property not subject to the gravel operation. The proposed batch plants would be located on the pit floor and would “effectively shield the plants from view of most of the surrounding properties.

The applicant goes on to state that the proposed asphalt plant will be a drum mix plant which can store a small amount of mixed asphalt in a load-out silo that is much smaller than the asphalt plant located approximately two miles east of the property. In addition, the applicant claims the batch plant footprint is similar to the crusher that is utilized on the property. There are top soil berms at least eight feet high along Farm to Market Road which have been seeded and the property owner has plant trees on this berm.

Finding #7 (WVLUAC): The current fencing/screening and landscaping conditions on the existing CUP appears appropriate because there is fencing around the perimeter of the property and there is a vegetated earthen berm which provides some screening of the current and future mining operations from Farm to Market Road and adjacent properties. However, with the addition of an asphalt and concrete batch plant, additional screen may be necessary.

Finding #7 – The current fencing/screening and landscaping on the subject property appears appropriate because there is fencing around the perimeter of the property and there is a vegetated earthen berm which provides some screening of the current and future mining operation from Farm to Market Road and adjacent properties.

6. Signage

There is currently a “Trucks Entering” sign within the right-of-way of Farm to Market Road. All other signage meets the requirements of the Flathead County Zoning Regulations.

7. Lighting

All lighting appears to be downward directed and are turned off when the operation closes for the day except for minimum security lighting.

Finding #8 – The proposed lighting and signage appears appropriately because the existing signage and lighting meets the requirements of the Flathead County Zoning Regulations.

C. Availability of Public Services and Facilities

1. Sewer

There is no sewage treatment system on the property. Portable toilets are used as needed.

2. Water

There is an existing irrigation well on the property that is utilized for both the agricultural production as well as for the gravel extraction operation.

3. Storm Water Drainage

Storm water within the boundaries of the gravel extraction operation is directed toward settling ponds on the pit floor. The storm water on the remainder of the property is absorbed on the property. The applicant has stated that best management practices will be utilized on the property to protect surface and groundwater from potential contamination by materials associated with operation of asphalt and concrete batch plants.

Finding #9(WVLUAC): Sewer and water facilities appear to be appropriate because portable toilets are utilized as necessary; there is not other sewage treatment facility on the site; there is an irrigation well on the property that services both the mining operation and

agricultural use. The storm water management plan appears to be inadequate to protect ground water from potential contamination from materials stored on site associated with operation of an asphalt and/or concrete batch plant.

Finding #9 – Sewer, water and storm water facilities appear to be appropriate because portable toilets are utilized as necessary, there is no other sewage treatment facility on the site; there is an irrigation well on the property that services both the mining operation and the agricultural use; best management practices will be utilized on the property to protect surface and groundwater from potential contamination.

4. Fire Protection

The property is within the boundaries of the West Valley Fire District. Impacts to the fire district appear to be minimal. There are fire extinguishers on all of the equipment and water is readily available. Additional information submitted by the applicant states that asphalt cement is not “flammable or combustible by OSHA and Workplace Hazardous Materials Information System criteria. A Spill Prevention Control and Countermeasures Plan was submitted by the applicant and is in place and has been reviewed by the West Valley Fire Department. The applicant further states that asphalt oil is easier to contain and control than diesel fuel in “the case of a spill because it hardens as it cools.”

The West Valley Fire Department submitted a letter stating that the Department apparatus is equipped with class A foam for fire suppression and the Department personnel are trained in handling fire suppression and assisting spill containment. The Fire Chief further states that the proposed batch plant operation “meets the expectations of the fire department.”

5. Police Protection

The property would be served by the Flathead County Sheriff’s Department. It is anticipated response times in emergency would not be unreasonably long given the property’s proximity to an urban, developed area of the County.

Finding #10(WVLUAC): The proposed condition modification may adversely affect fire and police protection. It is unknown if West Valley Fire Department has adequate capacity, equipment and training to respond to potential emergencies associated with the requested CUP modification and associated operation of asphalt and concrete batch plants. The Flathead County Sheriff’s Department will respond to any other emergency situations.

Finding #10 – The proposed condition modification should not adversely affect fire and police protection because the West Valley Fire District has stated that they have the equipment and training to provide firefighting services and will respond to emergency and there are fire extinguishers on the equipment and water is readily available on the site. The Flathead County Sheriff’s Department will respond to any other emergency situations.

6. Streets

There is an existing 200-foot paved access off Farm to Market Road that will continue to provide access to the gravel operation. If this request is approved to add a batch plant to the operation, it is anticipated that there will be an increase of traffic generated from the facility during times of major road improvements needing asphalt. However, this increase in traffic will be relatively short in duration. Farm to Market Road is a secondary state highway maintained by the State of Montana and is classified as a major collector road capable of accommodating large amounts of traffic, including traffic generated from the site.

Finding #11 – There appears to be adequate availability of streets for the proposed use because the property is accessed via Farm to Market Road which is a major collector maintained by the State of Montana.

D. Immediate Neighborhood Impact

1. Excessive Traffic Generation

The subject property is accessed from Farm to Market Road. The applicant submitted additional information regarding the added traffic associated with the proposed batch plants. The applicant stated that asphalt plants typically operate between April and November. Estimating the proposed asphalt plant would produce an average of 56,000 tons of asphalt per year, this would increase trips to and from the existing pit by 5.3 trips per day. However, this is an average of the entire year. Rough calculations would indicate that traffic trips associated with the asphalt plant would increase the daily traffic during the months the asphalt plant is typically in operation to approximately 100 trips per day. The applicant further estimates that, if approved, they could expect to secure at least one major project that would require approximately 20,000 tons of asphalt to complete. These large projects, according to the applicant last approximately 10 days. It appears these large projects have the potential to increase the daily trips to approximately 150 trips per day over a ten-day period. The applicant goes on to state that, although there is no “immediate need” for a concrete batch plant, this use would increase the daily trips associated with the use to 30 trips per day.

There was a traffic study conducted for the pit operations in 2008. Considering the growth of the County in general and the growth in the West Valley area in particular, this traffic study appears to be somewhat outdated. However, in 2008, this study concluded that the transportation system in the area of the operation was operating under adequate levels of service. Farm to Market Road is a secondary state highway and is constructed to handle large vehicle traffic. Some of the other roads in the area, however, may have weight limits during winter months. However, these potential weight limitations should not affect the operation of an asphalt batch plant because they are not typically in operation during the winter months when weight limits are in place. The most recent traffic counts for Farm to Market Road indicate the daily vehicle trips on the road in the location of the pit is approximately 6,500. The total increase in traffic on Farm to Market Road if both an asphalt and concrete batch plant were in operation would be approximately 130 trips during the months of April through November. This would be an increase of approximately 2%. The daily trips would increase the traffic by approximately 5% during times of a major paving project for the duration of the paving portion of the project. Traffic counts for Church Drive east of Farm to Market are approximately 5,000 per day. An increase of 130 daily trips would result in a 2.6% increase. Again, this increase would be more for the period during a major paving project.

Finding #12 (WVLUAC): Additional traffic generated by the proposed batch plant uses is expected to be significant. The limited information provided indicates traffic on Farm to Market could increase by as much as 30% periodically.

Finding #12 – Additional traffic generated by the proposed batch plant is expected because the anticipated increase in traffic on Farm to Market Road is approximately 2% and the increase in traffic on Church Drive will be approximately 2.6%. The increases will be significantly more during the duration of a major paving project.

Noise or Vibration

A gravel extraction operation, by its very nature, produces noise and vibration. The applicant states that asphalt and concrete batch plants produce less noise and vibration than the crushing plant that is currently permitted on the property. In addition, mufflers are used on all generators, and the asphalt plant will only be typically in operation between April and November. Moreover, the earthen berm and the hours of operation help mitigate the increased noise and vibration as a result of the activity on the site.

Finding #13(WVLUAC): The noise and vibration generated by the proposed batch plants is anticipated to be above and additional to the noise generated by the approved gravel operation. The earthen berm and hours of operation may need to be modified to mitigate noise and vibration impacts to nearby properties.

Finding #13 – The noise and vibrations generated by the proposed batch plant is anticipated to be minimal because there is already noise generation from the approved gravel operation. The earthen berm and hours of operation are designed to mitigate the noise and vibration impacts to nearby property owners.

2. Dust, Glare or Heat

Dust from the existing gravel operation is controlled by active watering of the site and by the paved 200-foot approach onto the site from Farm to Market Road. It is not anticipated that the proposed batch plant will generate more dust than what occurs on the site currently. Information submitted by the applicant states that “emissions from the asphalt and concrete batch plants include particulate matter, carbon monoxide and nitric oxide. These emissions are closely monitored by the EPA and DEQ to make sure they are maintained below certain operating and emitting thresholds.” The applicant also stated that the batch plants will be registered with DEQ to ensure compliance with air quality standards. According to the applicant, “baghouse filters are used to control particulate emissions and are required to meet specific performance standards outlined by the EPA and DEQ.”

3. Smoke, Fumes, Gas, or Odors

There are typically odors associated with the operation of an asphalt batch plant that are not generated on the site currently. The closest residence is located in the Lost Hills subdivision which is adjacent to the south of the proposed site of the batch plant. The applicant admits that fumes may be noticeable from neighboring properties when the asphalt plant is running. However, the applicant further states that “the chances of these fumes being noticed is greatly reduced by the limited hours of operation, occasional use at the pit and the positioning of the plant on the pit floor away from the property boundary edges.”

Finding #14 (WVLUAC): The proposed uses are anticipated to have minimal impact on the neighborhood as a result of dust, glare, and heat. Smoke, fumes, gas, or odors that contribute to air pollution caused by operation of the batch plants is a concern. The dust generated from the existing gravel operation is controlled by active watering of the site and the 200 foot paved approach off of Farm to Market Road.

Finding #14 – The proposed uses are anticipated to have an minimal impact on the neighborhood as a result of dust, glare, heat, smoke, or gas because the dust generated from existing gravel operation is controlled by active watering of the site and the 200-foot paved approach off of Farm to Market Road. Odors due to the operation of the asphalt batch plant could negatively impact area property owners.

4. Inappropriate Hours of Operation

The existing gravel extraction operation will continue to observe the original conditions of approval of FCU-05-07 as those conditions relate to hours of operation, including the

proposed batch plant. Those hours of operation are 7:00 AM to 7:00 PM Monday through Friday and 7:00 AM to 2:00 PM on Saturday.

Finding #15 – The hours of operation appear to be appropriate because the approved hours under FCU-05-07 which are 7:00 AM to 7:00 PM Monday through Friday and 7:00 AM to 2:00 PM on Saturday will continue to be required with the proposed batch plant.

V. SUMMARY OF FINDINGS

Finding #1 – The subject property appears to contain adequate usable space because the area which has been permitted by DEQ is approximately 80 acres which appears to be adequate for a asphalt and concrete batch plants as well as the on-going gravel extraction operation.

Finding #2 – The access appears adequate because the access to the property will not change.

Finding #3(WVLAUC): There does not appear to be environmental constraints associated with any Special Flood Hazard Area; however, potential groundwater contamination is a concern. The existing water quality report must be revised to consider the potential impacts of the modified uses adding an asphalt and concrete batch plant.

Finding #3 – There does not appear to be environmental constraints on the property because it is not located within a Special Flood Hazard Area and there does not appear to be any other environmental constraints in the area. Ground contamination concerns appear to be addressed because the 2008 groundwater study concluded that the operation does not appear to adversely affect the water quality of the Lost Creek Fan aquifer; secondary containment of diesel fuel and asphalt oil will require storage tanks to be located within a secondary containment area lined with a chemical liner; and best management practices will be utilized to protect surface and groundwater from potential contamination.

Finding #4 – Any future parking scheme appears to be acceptable because there will be a limited amount of on-site employees requiring parking spaces and the existing pit floor is approximately 30 acres.

Finding #5 – The proposal appears to accommodate traffic circulation for the proposed use because there is ample room on the property for the limited number of vehicles to circulate in an efficient manner.

Finding #6 – The proposed open space on the subject property appears adequate because when expanded, only 80 acres of the 160 acres will be under gravel extraction operations.

Finding #7 (WVLUAC): The current fencing/screening and landscaping conditions on the existing CUP appears appropriate because there is fencing around the perimeter of the property and there is a vegetated earthen berm which provides some screening of the current and future mining operations from Farm to Market Road and adjacent properties. However, with the addition of an asphalt and concrete batch plant, additional screen may be necessary.

Finding #7 – The current fencing/screening and landscaping on the subject property appears appropriate because there is fencing around the perimeter of the property and there is a vegetated earthen berm which provides some screening of the current and future mining operation from Farm to Market Road and adjacent properties.

Finding #8 – The proposed lighting and signage appears appropriately because the existing signage and lighting meets the requirements of the Flathead County Zoning Regulations.

Finding #9(WVLUAC): Sewer and water facilities appear to be appropriate because portable toilets are utilized as necessary; there is not other sewage treatment facility on the site; there is an irrigation well on the property that services both the mining operation and agricultural use. The storm water management plan appears to be inadequate to protect ground water from potential contamination from materials stored on site associated with operation of an asphalt and/or concrete batch plant.

Finding #9 – Sewer, water and storm water facilities appear to be appropriate because portable toilets are utilized as necessary, there is no other sewage treatment facility on the site; there is an irrigation well on the property that services both the mining operation and the agricultural use; best management practices will be utilized on the property to protect surface and groundwater from potential contamination.

Finding #10(WVLUAC): The proposed condition modification may adversely affect fire and police protection. It is unknown if West Valley Fire Department has adequate capacity, equipment and training to respond to potential emergencies associated with the requested CUP modification and associated operation of asphalt and concrete batch plants. The Flathead County Sheriff's Department will respond to any other emergency situations.

Finding #10 – The proposed condition modification should not adversely affect fire and police protection because the West Valley Fire District has stated that they have the equipment and training to provide firefighting services and will respond to emergency and there are fire extinguishers on the equipment and water is readily available on the site. The Flathead County Sheriff's Department will respond to any other emergency situations.

Finding #11 – There appears to be adequate availability of streets for the proposed use because the property is accessed via Farm to Market Road which is a major collector maintained by the State of Montana.

Finding #12 (WVLUAC): Additional traffic generated by the proposed batch plant uses is expected to be significant. The limited information provided indicates traffic on Farm to Market could increase by as much as 30% periodically.

Finding #12 – Additional traffic generated by the proposed batch plant is expected because the anticipated increase in traffic on Farm to Market Road is approximately 2% and the increase in traffic on Church Drive will be approximately 2.6%. The increases will be significantly more during the duration of a major paving project.

Finding #13(WVLUAC): The noise and vibration generated by the proposed batch plants is anticipated to be above and additional to the noise generated by the approved gravel operation. The earthen berm and hours of operation may need to be modified to mitigate noise and vibration impacts to nearby properties.

Finding #13 – The noise and vibrations generated by the proposed batch plant is anticipated to be minimal because there is already noise generation from the approved gravel operation. The earthen berm and hours of operation are designed to mitigate the noise and vibration impacts to nearby property owners.

Finding #14 (WVLUAC): The proposed uses are anticipated to have minimal impact on the neighborhood as a result of dust, glare, and heat. Smoke, fumes, gas, or odors that contribute to air pollution caused by operation of the batch plants is a concern. The dust generated

from the existing gravel operation is controlled by active watering of the site and the 200 foot paved approach off of Farm to Market Road.

Finding #14 – The proposed uses are anticipated to have an minimal impact on the neighborhood as a result of dust, glare, heat, smoke, or gas because the dust generated from existing gravel operation is controlled by active watering of the site and the 200-foot paved approach off of Farm to Market Road. Odors due to the operation of the asphalt batch plant could negatively impact area property owners.

Finding #15 – The hours of operation appear to be appropriate because the approved hours under FCU-05-07 which are 7:00 AM to 7:00 PM Monday through Friday and 7:00 AM to 2:00 PM on Saturday will continue to be required with the proposed batch plant.

VI. CONCLUSION

Upon review of this application, the request to allow for a condition modification to allow the operation of asphalt and concrete batch plants in conjunction with the existing gravel operation on the subject property could be supported by the review criteria and the Findings of Fact listed above. It should be noted, however, that there is potential for the proposed batch plants to adversely impact the immediate neighborhood, more particularly odors and air quality. The applicant has submitted additional information that have addressed many of the West Valley Land Use Advisory Committee concerns, the adequacy of which is best left to the Board. It also should be noted that Section 2.06.090 states, “The burden of proof for satisfying the criteria shall rest with the applicant and not the Board of Adjustment. The granting of a Conditional Use Permit is a matter of grace, resting in the discretion of the Board of Adjustment.” Should the Flathead County Board of Adjustment choose to adopt staff report FCU-20-04 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 gravel extraction operation is still subject to all applicable conditions of approval as outlined in FCU-05-07 and as modified by the Stipulated Consent Decree and Final Judgement.
2. Asphalt and/or concrete batch plants shall adhere to all requirements and regulations for such uses as required by the Department of Environmental Quality.

Planner: MM

July 17, 2020