

**FLATHEAD COUNTY PLANNING AND ZONING
TEXT AMENDMENT TO THE FLATHEAD COUNTY ZONING REGULATIONS
STAFF REPORT #FZTA 09-02
SEPTEMBER 30, 2009**

This report to the Flathead County Planning Board evaluates a request by Gary Krueger for a text amendment to the Flathead County Zoning Regulations. The purpose of the request is to amend the Zoning Regulations by providing a definition of ‘Gravel Extraction’ at FCZR Section 7.08.025. The Flathead County Planning Board will conduct a public hearing on the proposed text amendment on October 14, 2009 in the 2nd Floor Conference Room, 1035 1st Ave West, Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will also hold a public hearing on the proposed amendments at a date and time yet to be determined. Documents pertaining to this text amendment are available for public inspection in the Flathead County Planning and Zoning Office, Earl Bennett Building, 1035 First Avenue West, in Kalispell and in the Flathead County Clerk and Records Office, 800 South Main Street, in Kalispell.

I. REPORT UPDATES:

- A. Planning Board Update:** Space reserved for summary of Planning Board public hearing and action.
- B. Commissioners Update:** Space reserved for summary of Commission public hearing and action.

II. BACKGROUND INFORMATION

A. Petitioner

Gary Krueger
805 Church Drive
Kalispell, Mt. 59901

B. Flathead County Zoning Regulation proposed to be amended

- Section 7.08 Definitions “G” (Proposal would add a definition of ‘Gravel Extraction’)

C. Requested Amendment

The applicant proposes the following addition to FCZR Section 7.08 Definitions “G”:

7.08.025 Gravel Extraction - 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 openpit 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.

D. Background to Requested Amendment

The applicant owns property in the West Valley Zoning District for which a previous Conditional Use Permit (FCU-08-19) has been obtained, under which gravel extraction and post extraction processing limited to screening, crushing, and washing are currently permitted for the operation. In 2009 the applicant was denied a request to the Board of Adjustment for a Conditional Use Permit (FCU-09-04) for a concrete batch plant (extractive industry) on property adjacent to land included in FCU-08-19. Regarding the conditions that make the proposed amendment necessary, the applicant states in the application “Flathead County Planning and Zoning Office needs a clear definition from the Board of Commissioners for ‘Gravel Extraction’ as the Planning Office has previously determined that ‘Gravel Extraction’ is not synonymous with ‘Extractive Industries’.”

E. Request Relative to MCA

Part 4 Opencut Mining Reclamation of chapter 4 of Title 82 **Montana Code Annotated** (MCA) is known and may be cited as "**The Opencut Mining Act**" (Act). The applicant cites 82-4-403(7) & (12) MCA as the source and justification of the proposed definition for ‘Gravel Extraction’, which includes industrial asphalt and concrete processing plants. 82-4-403 MCA is the Definitions section for key terms included within the entire Act. Generally, the Act requires a permit specific to mining, processing, and reclamation, including an operation plan for opencut operations resulting in the removal of 10,000 yards³ or more of materials and overburden (82-4-431 and 82-4-434 MCA). Regarding the permit, 82-4-431 MCA requires sand and gravel opencut operations to comply with local zoning regulations adopted under Title 76, chapter 2. 76-2-209 MCA states:

76-2-209. Effect on natural resources.

(1) Except as provided in [82-4-431](#), [82-4-432](#), and subsection (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except [76-2-206](#), may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest, or agricultural resource.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel **or** an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners.

(3) Zoning regulations adopted under this chapter may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel and may condition an operation that mixes concrete or batches asphalt in all zones other than residential.

Relevant to the applicant’s requested text amendment, 76-2-209 MCA is noteworthy because it clearly distinguishes between an operation that mines sand and gravel (mining or ‘gravel extraction’) and an operation that mixes concrete or batches asphalt (industrial processing or ‘extractive industry’), indicating Montana state law and the Act recognize ‘Gravel Extraction’ is not necessarily synonymous with ‘Extractive Industries’. 76-2-209 MCA also authorizes the Board of Adjustment to reasonably condition or prohibit ‘Gravel Extraction’ and ‘Extractive Industries’ in the review of a proposed Conditional Use Permit (CUP) when the opencut operation is within an area zoned as residential, as is the case of the applicant’s property in the West Valley Neighborhood Plan area and the West Valley Zoning District.

Finding:

‘Gravel Extraction’ and ‘Extractive Industries’ Conditional Uses are not synonymous, as evidenced by language contained in the "The Opencut Mining Act", 72-2-209 MCA, and a relevant ruling by the Montana Supreme Court on January 3, 2008.

F. Request Relative to the Flathead County Zoning Regulations

The West Valley Zoning District regulations are based upon guidance provided by the West Valley Neighborhood Plan. Flathead County Zoning Regulations (FCZR) Section 3.03 (9) and (10) apply the intent of 76-2-209 MCA by addressing sand and gravel extraction as well as asphalt and concrete batch plant use within residential and agricultural zoned areas and the associated applicability of zoning regulations. FCZR contains one instance of a defined District (Section 3.34 WV West Valley) that specifies ‘Gravel Extraction’ as a Conditional Use, in contrast with ‘Extractive Industries’ which is specified as a Conditional Use in eight defined Districts (AG-80 Agricultural, AG-40 Agricultural, AG-20 Agricultural, SAG-10 Suburban Agricultural, SAG-5 Suburban Agricultural, I-2 Heavy Industrial, LL Labrant/Lindsey Lane, and NF North Fork).

‘Gravel Extraction’ is not defined in FCZR Chapter 7 Definitions, while ‘Extractive Industries’ is defined in FCZR 7.06.040 as “Commercial or industrial operations involving the removal and processing of natural accumulations of sand, rock, soil, gravel, or any mineral”. Where the applicant contends “...the Planning Office has previously determined that ‘Gravel Extraction’ is not synonymous with ‘Extractive Industries’, note the definition of ‘Extractive Industries’ includes industrial processing, of which cement and asphalt processing are included upon review and approval of a Conditional Use Permit for such proposed uses.

Impacts commonly associated with ‘Gravel Extraction’ include dust, noise, visual impacts, and impacts to area roads. Impacts commonly associated with ‘Extractive Industries’ include dust, noise, visual impacts as well as odors, potential for groundwater contamination from chemical products introduced to the site for use in certain processing and products, and additional offsite impacts to area roads resulting from increased heavy vehicle traffic associated with commercial cement and asphalt operations. Crushing, screening, and washing of gravel are generally interpreted as being included in both ‘Gravel Extraction’ and ‘Extractive Industries’ CUPs, as impacts from these processes may typically be adequately mitigated through reasonable conditions, and allowing these processes onsite minimizes impacts associated with increased gravel hauling. Odors, offsite road wear and dust, and impacts to area residential property values are anticipated with industrial cement and asphalt processing, and are more difficult to reasonably mitigate through the imposition of conditions.

- The County interpretation of ‘Gravel Extraction’ as a Conditional Use is more permissive than the ‘Mining’ component of the opencut operation permit required by the Act in that ‘Gravel Extraction’ includes site preparation, extractive activities, and post extraction processing limited to crushing, screening, and washing when the crushing, screening, and washing results in end-product and minimizes multiple gravel haul transport trips.
- The County interpretation of ‘Extractive Industries’ as a Conditional Use is that ‘Extractive Industries’ includes gravel extraction activities and may also include industrial asphalt and concrete processing activities consistent with the ‘Processing’ component of the opencut operation permit required by the Act, dependent upon variables such as whether operation impacts can be adequately mitigated through

reasonable conditions and whether the operation site is within an area zoned as residential or other.

Finding:

The West Valley Neighborhood Plan Zoning provides the foundation of the West Valley Zoning District regulations. ‘Gravel Extraction’ is not defined in FCZR, while ‘Extractive Industries’ is defined in FCZR 7.06.040 as “Commercial or industrial operations involving the removal and processing of natural accumulations of sand, rock, soil, gravel, or any mineral”. The proposed definition for ‘Gravel Extraction’ is duplicative because it essentially includes the same provisions as the existing definition of ‘Extractive Industries’.

G. Request Relative to the West Valley Neighborhood Plan

The West Valley Neighborhood Plan (Plan), adopted by the Flathead County Board of Commissioners in 1997, acknowledges “few freestanding commercial or industrial uses are located within the planning area”, and the Plan’s Landuse Map (October 30, 1996) clearly identifies only three (3) existing gravel pit operations within the plan area. The specific inclusion of ‘Gravel Extraction’ in contrast with the specific exclusion of ‘Extractive Industries’ as a Conditional Use in the West Valley Zoning District is intentional, based upon guidance from the Plan. The Plan’s discussion on agricultural uses emphasizes the value and importance of continuing agricultural activities and maintaining the Plan area’s prime soils located on land between West Valley Drive and Montana Highway 93. The Plan discussion on Commercial/Industrial uses identifies the need to “allow opportunities for gravel extraction” while not permitting industrial activities unless they are accessory to normal farm operations. FCZR, Section 7.02.040 defines “agriculture” as “The use of land for agricultural purposes including farming, dairying, pasture, grazing land, animal and poultry husbandry, feed lots and the necessary accessory uses for packing, treating, storing or shipping of products. Raising and harvesting timber is also included.” There is no reference in the FCZR “agriculture” definition identifying gravel pits as being accessory to agricultural or farm operations. Accessory uses are intended to be subordinate to the primary agricultural or farming use, and enhance the continuation of the farming practice.

Finding:

The West Valley Neighborhood Plan provides the foundation for the West Valley Zoning District, and the West Valley Zoning District regulations are an implementation of the Plan. ‘Gravel Extraction’ is an existing Conditional Use within the West Valley Zoning District only. The proposed definition for ‘Gravel Extraction’ is erroneous because it contains provisions for industrial cement and asphalt processing, which are not accessory to agriculture and normal farm operations, and thus would be an incorrect implementation of the West Valley Neighborhood Plan.

H. Request Relative to CUP Review History and Legal Case Precedents

The requested definition assumes ‘Gravel Extraction’ is synonymous with ‘Extractive Industries’, as the proposed text includes activities consistent with both uses. Relative to prior reviews of ‘Extractive Industries’ CUP requests within the West Valley Zoning District, the question of whether ‘Gravel Extraction’ is synonymous with ‘Extractive Industries’ has been a principal issue of consideration by area opencut operators, the Flathead County Board of Adjustment (BOA), the District Court, and the Supreme Court.

Following is a summary of pertinent decisions/precedents resulting from BOA reviews of FCU-05-07, FACU-07-01 and the post Court Order FCU-08-07 and subsequent reviews relevant to those applications by the District Court and the Supreme Court, in order to provide necessary context for the adequate review of the current requested text amendment.

The BOA approved a CUP for a ‘gravel extraction’ opencut operation on June 14, 2005, allowing crushing and screening as part of the extractive process. The applicant requested concrete and asphalt batch plants but was denied. This CUP was controversial in that interpretation of the West Valley Neighborhood Plan and respective Zoning District Regulations (FCZR, Sections 3.34 and 7.06.040) differed from the applicant’s requested approval for uses consistent with ‘extractive industries’.

- The applicant and a citizen group appealed the BOA’s decision to the District Court, challenging the decision by the Board to allow a crushing operation which was not accessory to normal farm operations as stated in the neighborhood plan; not part of the extraction process; and that the West Valley Zoning District was considered a “residential area” (gravel pit operations can be mitigated or prohibited in residential zoning districts). The landowner also appealed, challenging the Board’s decision to deny the asphalt and concrete plants in the CUP, claiming the West Valley Neighborhood Plan area was not considered “residential” and a concrete and asphalt batch plant could not be prohibited by the Board.

The District Court ruled (February 13, 2006) the West Valley Zoning District was a “residential area” and found that the CUP was issued correctly.

- District Court denied the motions of the citizen group and the landowner, each appealing the decision to the Montana State Supreme Court.

The Supreme Court (January 3, 2008) reaffirmed District Court’s conclusion that the Board had the power to completely prohibit asphalt and concrete plants operations under 76-2-209, MCA.

- Supreme Court found that the Board failed to address certain issues, review criteria and provide factual findings, including any distinction between “gravel extraction” and “extractive industries” as it applies to crushing operations, and whether the gravel pit operation is an “industrial use” or incidental to normal farm operations, which is allowed under the West Valley Neighborhood Plan.
- The case was remanded back to District Court for further proceedings consistent with the Supreme Court opinion.

On May 19, 2008 District Court ordered the BOA to adopt findings of fact concerning whether on-site crushing operations are part of “gravel extraction” or constitute an “extractive industry” and whether the Regulations and the Plan permit a gravel extraction operation that is not accessory to normal farm operations.

- Court ordered FCU-08-07, supplemental to the previously issued CUPs was reviewed and approved by the BOA on August 5, 2008.
- Reaffirmed by the District and Supreme Court findings, the BOA maintained it’s denial of the original 2005 requests from the landowner for ‘extractive industries’ concrete and asphalt batch plant uses.

- Considering gravel pits and residential development are often not compatible uses, BOA recognized the District Court and Supreme Court rulings that the West Valley Zoning District is residential for purposes of 76-2-209, MCA.
- Regarding any distinction between ‘gravel extraction’ and ‘extractive industries’ the Board found ‘Gravel Extraction’ and ‘Extractive Industries’ are not synonymous. Gravel extraction can include on-site crushing and screening as long as the crushed and screened material is end-product to avoid multiple transport trips. An extractive industry may include extraction, crushing, screening and asphalt and concrete plants, if appropriate for the site and surrounding area, where the sand and gravel material is processed physically and chemically bound to form other products.
- Regarding whether an opencut operation is an “industrial use” or incidental to normal farm operations, allowed under the West Valley Neighborhood Plan, the Board found ‘Gravel Extraction’ is a primary use in the West Valley Zoning District based on the fact that ‘Gravel Extraction’ is not defined as being accessory to normal farm operations in FCZR, Section 7.02.040 (Agriculture) and that the gravel extraction pit will ultimately remove existing farmland from agriculture to another primary use. The extractive gravel pit is not an accessory use to normal farm operations.

Finding:

‘Gravel Extraction’ and ‘Extractive Industries’ Conditional Uses are not synonymous. ‘Gravel Extraction’ includes site preparation, physical extraction of gravel and sand, and may include on-site crushing and screening as long as the crushed and screened material is end-product to avoid multiple transport trips. ‘Extractive Industries’ differs in that it may include extraction, crushing, screening, washing, and asphalt and concrete plants where the sand and gravel material is processed physically and is chemically bound to form other products, if allowable as a Conditional Use within the applicable District and found upon review to be appropriate for the site and surrounding area.

III. Evaluation based on zoning amendment criteria:

The following criteria are required to be evaluated pursuant to FCZR 2.08.040. The application includes applicant discussion on the same criteria.

1. Does the requested zoning amendment comply with the Master Plan?

Industrial asphalt and concrete processing represent primary uses on a property that are not accessory and subordinate to agriculture. Within the Flathead County Zoning Regulations, ‘Gravel Extraction’ as a Conditional Use is unique and specific to the West Valley Zoning District, and the West Valley Neighborhood Plan is the applicable plan which from which objectives and priorities based upon identified issues have been implemented. The West Valley Neighborhood Plan area encompasses lands broadly defined as agricultural and specifically identified as ‘residential’ for purposes of 76-2-209 MCA by the Montana Supreme Court on January 3, 2008.

Finding:

The requested zoning amendment does not comply with the applicable Master Plan (West Valley Neighborhood Plan) because industrial asphalt and concrete processing activities are part of the proposed definition, and are not permitted uses within the West Valley Neighborhood Plan area as they are not accessory to agriculture and normal farm operations.

2. Is the requested zoning amendment designed to lessen congestion in the streets?

The request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations is not directly applicable to lessening congestion in the streets, and is not being proposed as a means to achieve reduced congestion in the streets.

However, the requested zoning amendment may have bearing on traffic congestion because the proposed definition includes industrial asphalt and concrete processing which necessitates transport of material multiple times into the facility before the commercial end products are produced and delivered to destinations from the facility.

Finding:

The proposed amendment may contribute to an increase in traffic congestion and impact to area roads because opencut operations permitting industrial asphalt and concrete processing are associated with more additional vehicle trips on area roads than opencut operations permitting only gravel extraction.

3. Does the requested amendment give reasonable consideration to the character of the district?

Asphalt and concrete processing via batching plants are industrial primary uses, which are not accessory (or subordinate) to agriculture. As ‘Gravel Extraction’ permitted as a Conditional Use is unique and specific to the West Valley Zoning District, the request to add a definition for ‘Gravel Extraction’ which would include industrial asphalt and concrete processing to the text of the zoning regulations does not give reasonable consideration to the character of the district because the District specific regulations limit industrial uses to those which are accessory to normal farm operations, based upon the West Valley Neighborhood Plan.

The requested amendment is likely to impact the character of the district because it would allow for the conversion of agricultural uses on agricultural lands to industrial uses on lands that would no longer be suitable for the range of agricultural uses currently functioning in the area.

Finding:

The West Valley Zoning District regulations are based upon guidance of the West Valley Neighborhood Plan. The requested amendment does not give reasonable consideration to the character of the district because the proposed definition includes industrial asphalt and concrete processing which conflict with the guidance of the Plan because those uses are not accessory to agriculture and normal farm operations, and would contribute to the conversion of agricultural uses on agricultural lands to industrial uses on lands that would no longer be suitable for the range of agricultural uses currently functioning in the area.

4. Will the requested zone amendment secure safety from fire, panic and other dangers?

The request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations would not likely impact the public’s safety from fire, panic and other dangers.

5. Will the requested amendment promote health and general welfare?

The addition of an accurate definition for the established Conditional Use of ‘Gravel Extraction’ would improve general welfare of the public by improving the administrative clarity and consistency of the Flathead County Zoning Regulations.

The West Valley Neighborhood Plan identifies a significant residential component within the plan area, documenting the liberal use of occasional sales and family transfer exemptions and the granting of variances, which have transformed the character of the Plan area into that of rural residential. Further, the district has been ruled as ‘residential’ by both the District Court and Supreme Court for purposes of 76-2-209 MCA.

As requested, the proposed definition for ‘Gravel Extraction’, which includes industrial asphalt and concrete processing, would not promote health and general welfare of the public and residents living within the West Valley Zoning District because industrial asphalt and concrete operations would contribute additional heavy equipment traffic on area roads, industrial asphalt and concrete processing would contribute to a reduction of land suitable for normal farming operations which are a primary source of livelihood within the West Valley Neighborhood Plan area, and noise, odor, and offsite impacts to roads and residences are difficult or impossible to reasonably mitigate through conditions.

Finding:

As proposed, the requested amendment would not promote health and general welfare of the public and residents living within the West Valley Zoning District because the proposed definition includes commercial provisions for industrial processes that would introduce additional heavy equipment traffic on area roads, would contribute to a reduction of land suitable for normal farming operations which are a primary source of livelihood within the West Valley Neighborhood Plan area, and would introduce additional noise, odor, and offsite impacts to area roads and residences which are difficult or impossible to reasonably mitigate through conditions.

6. Does the requested amendment prevent the overcrowding of land?

The request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations has no bearing on the overcrowding of land.

7. Does the proposed amendment avoid undue concentration of people?

The request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations has no bearing on the concentration of people.

8. Does the new zoning provide for adequate light and air?

From an administrative perspective the request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations has little or no bearing on preserving the adequacy of light and air.

From an implementation perspective the requested definition does have bearing on preserving the adequacy of light and air. Prior Supreme Court and District Court rulings regarding ‘Gravel Extraction’ and ‘Extractive Industries’ determined the West Valley Neighborhood Plan area and the area encompassed by the West Valley Zoning District to be ‘residential’. Pursuant to 76-2-209 MCA the Board of Adjustment is authorized to reasonably condition or prohibit ‘Gravel

Extraction’ and ‘Extractive Industries’ in the review of a proposed Conditional Use Permit (CUP) when the opencut operation is within an area zoned as residential.

Finding:

As requested, the proposed definition for ‘Gravel Extraction’, which includes industrial asphalt and concrete processing would adversely impact the quality of light and air important to the public and area residents because industrial asphalt and concrete processing result in increased on-site and off-site dust, noise and odor impacts which are difficult or impossible to mitigate through reasonable conditions, and these impacts are not compatible with adjacent or nearby residential uses.

9. Will the requested amendment facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements?

The request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations would have no impact on the adequate provision of public requirements.

10. Does the requested amendment give consideration to the particular suitability of the property for particular uses?

The request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations has no bearing on the particular suitability of a property for particular uses because it is a text amendment that addresses administrative clarity.

11. Does the proposed zoning amendment have a view of conserving the value of property?

The request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations is not specifically being proposed as a means for conserving property values. However in regard to implementation, the proposed definition may result in an adverse impact to area residential property values due to increased industrial activities which are not desirable and compatible with residential uses.

Finding:

Owners of residential properties within the West Valley Zoning derive little or no benefit from area opencut operations, are likely to have considered the agricultural and residential character of the District an ‘attractor’ when making investment decisions, and may have considered the West Valley Neighborhood Plan and West Valley Zoning District regulations as protecting the value of their investments. The requested amendment may result in an adverse impact to area residential property values because the proposed definition includes industrial activities which are not compatible with residential uses.

12. Will the requested zoning amendment encourage the most appropriate use of land throughout the jurisdiction?

Unto itself the request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations would have no impact on encouraging the most appropriate use of land throughout a jurisdiction because it is an administrative amendment. However, the proposed definition would currently be applicable only within the West Valley Zoning District, and would not be an accurate implementation of the West Valley Neighborhood Plan because the Plan specifically emphasizes agricultural and residential priorities and specifies that any new industrial uses should be accessory to agriculture.

Finding:

The West Valley Zoning District is the only zoning District within Flathead County that specifies ‘Gravel Extraction’ as a Conditional Use. The inclusion of ‘Gravel Extraction’ in the Flathead County Zoning Regulations, as it applies within the jurisdictional area of the West Valley Zoning District is an intentional implementation of the West Valley Neighborhood Plan. Accordingly, consistent interpretation of the meaning of ‘Gravel Extraction’ has intentionally been just that - the limited extraction/mining of gravel.

Finding:

The requested zoning amendment would not encourage the most appropriate use of land throughout the jurisdiction because it would not be an accurate implementation of the West Valley Neighborhood Plan as the Plan specifically emphasizes agricultural and residential priorities and specifies that any new industrial uses should be accessory to agriculture.

IV. Summary of Findings:

1. ‘Gravel Extraction’ and ‘Extractive Industries’ Conditional Uses are not synonymous, as evidenced by language contained in the "The Opencut Mining Act", 72-2-209 MCA, and a relevant ruling by the Montana Supreme Court on January 3, 2008.
2. The West Valley Neighborhood Plan Zoning provides the foundation of the West Valley Zoning District regulations. ‘Gravel Extraction’ is not defined in FCZR, while ‘Extractive Industries’ is defined in FCZR 7.06.040 as “Commercial or industrial operations involving the removal and processing of natural accumulations of sand, rock, soil, gravel, or any mineral”. The proposed definition for ‘Gravel Extraction’ is duplicative because it essentially includes the same provisions as the existing definition of ‘Extractive Industries’.
3. The West Valley Neighborhood Plan provides the foundation for the West Valley Zoning District, and the West Valley Zoning District regulations are an implementation of the Plan. ‘Gravel Extraction’ is an existing Conditional Use within the West Valley Zoning District only. The proposed definition for ‘Gravel Extraction’ is erroneous because it contains provisions for industrial cement and asphalt processing, which are not accessory to agriculture and normal farm operations, and thus would be an incorrect implementation of the West Valley Neighborhood Plan.
4. ‘Gravel Extraction’ and ‘Extractive Industries’ Conditional Uses are not synonymous. ‘Gravel Extraction’ includes site preparation, physical extraction of gravel and sand, and may include on-site crushing and screening as long as the crushed and screened material is end-product to avoid multiple transport trips. ‘Extractive Industries’ differs in that it may include extraction, crushing, screening, washing, and asphalt and concrete plants where the sand and gravel material is processed physically and is chemically bound to form other products, if allowable as a Conditional Use within the applicable District and found upon review to be appropriate for the site and surrounding area.
5. The requested zoning amendment does not comply with the applicable Master Plan (West Valley Neighborhood Plan) because industrial asphalt and concrete processing activities are part of the proposed definition, and are not permitted uses within the West Valley Neighborhood Plan area as they are not accessory to agriculture and normal farm operations.

6. The proposed amendment may contribute to an increase in traffic congestion and impact to area roads because openpit operations permitting industrial asphalt and concrete processing are associated with more additional vehicle trips on area roads than openpit operations permitting only gravel extraction.
7. The West Valley Zoning District regulations are based upon guidance of the West Valley Neighborhood Plan. The requested amendment does not give reasonable consideration to the character of the district because the proposed definition includes industrial asphalt and concrete processing which conflict with the guidance of the Plan because those uses are not accessory to agriculture and normal farm operations, and would contribute to the conversion of agricultural uses on agricultural lands to industrial uses on lands that would no longer be suitable for the range of agricultural uses currently functioning in the area.
8. As proposed, the requested amendment would not promote health and general welfare of the public and residents living within the West Valley Zoning District because the proposed definition includes commercial provisions for industrial processes that would introduce additional heavy equipment traffic on area roads, would contribute to a reduction of land suitable for normal farming operations which are a primary source of livelihood within the West Valley Neighborhood Plan area, and would introduce additional noise, odor, and offsite impacts to area roads and residences which are difficult or impossible to reasonably mitigate through conditions.
9. As requested, the proposed definition for 'Gravel Extraction', which includes industrial asphalt and concrete processing would adversely impact the quality of light and air important to the public and area residents because industrial asphalt and concrete processing result in increased on-site and off-site dust, noise and odor impacts which are difficult or impossible to mitigate through reasonable conditions, and these impacts are not compatible with adjacent or nearby residential uses.
10. Owners of residential properties within the West Valley Zoning derive little or no benefit from area openpit operations, are likely to have considered the agricultural and residential character of the District an 'attractor' when making investment decisions, and may have considered the West Valley Neighborhood Plan and West Valley Zoning District regulations as protecting the value of their investments. The requested amendment may result in an adverse impact to area residential property values because the proposed definition includes industrial activities which are not compatible with residential uses.
11. The West Valley Zoning District is the only zoning District within Flathead County that specifies 'Gravel Extraction' as a Conditional Use. The inclusion of 'Gravel Extraction' in the Flathead County Zoning Regulations, as it applies within the jurisdictional area of the West Valley Zoning District is an intentional implementation of the West Valley Neighborhood Plan. Accordingly, consistent interpretation of the meaning of 'Gravel Extraction' has intentionally been just that - the limited extraction/mining of gravel.
12. The requested zoning amendment would not encourage the most appropriate use of land throughout the jurisdiction because it would not be an accurate implementation of the West Valley Neighborhood Plan as the Plan specifically emphasizes agricultural and residential priorities and specifies that any new industrial uses should be accessory to agriculture.

13. The request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations has little or no bearing on the overcrowding of land, the concentration of people, or the particular suitability of a property for particular uses because it is a text amendment that addresses administrative clarity and the review of specific Conditional Use requests would consider those potential impacts.
14. The request to add a definition for ‘Gravel Extraction’ to the text of the zoning regulations would not impact the public’s safety from fire, panic and other dangers, the adequate provision of public requirements because it is a text amendment that addresses administrative clarity and the review of specific Conditional Use requests would consider those potential impacts.
15. The addition of an accurate definition for the established Conditional Use of ‘Gravel Extraction’ would improve general welfare of the public by improving the administrative clarity and consistency of the Flathead County Zoning Regulations.

IV. Recommendation:

Staff recommends the Flathead County Planning Board adopt staff report FZTA-09-02 as Findings of Fact and recommend denial of the requested text amendment to the County Commission. The recommendation for denial is based upon Findings of Fact associated with the evaluation criteria for zoning amendments, particularly regarding non-compliance with the applicable Master Plan and the interpretation as to whether or not ‘Gravel Extraction is synonymous with ‘Extractive Industries’.

Staff recognizes the absence of an effective definition for the ‘Gravel Extraction’ Conditional Use in the Flathead County Zoning Regulations, which may lead to confusion in interpreting the applicability of regulations. Should the Flathead County Planning Board and the County Commission wish to amend the zoning regulations by adding a definition for ‘Gravel Extraction’, Staff recommends a definition compliant with the intent of the West Valley Neighborhood Plan, the West Valley Zoning Regulations, and the ‘Opencut Mining Act’ to FCZR Section 7.08 Definitions “G” as follows:

7.08.025 Gravel Extraction - Personal and/or Commercial operations involving the removal and preparation of natural accumulations of sand and gravel, and reclamation of affected land. ‘Gravel Extraction’ specifically includes site and access preparation, physical extraction of gravel and sand, on-site crushing, screening, and washing as long as the crushed, screened, and washed material is end-product to minimize multiple gravel-haul transport trips, and site reclamation.