

**Planning Board Requested Staff Assessment of
Gary Krueger's 10/14/09 Rebuttal to Staff Report FZTA-09-02**

Assessment Format:

For each of the staff report findings of fact the assessment will include a copy of the staff report finding followed by staff discussion on the basis of the finding (as needed), the petitioner's comment, and petitioner's 'alternate' finding. Board members will need to cross reference between the assessment and the petitioner rebuttal. Following the assessment of the rebuttal will be a brief summary of the staff stance on the requested amendment and recommendations.

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.~~

The staff presentation at the October 14 public hearing entered onto the record and clarified a formatting mistake regarding this finding, whereby the reference to the Supreme Court hearing should be stricken from this finding.

For all practical purposes, as related to gravel mining and processing, the proposed definition for 'Gravel Extraction' mirrors the definition for 'extractive industries' in the Flathead County Zoning Regulations (FCZR) in terms of standard allowable activities associated with the Conditional Uses. Discussion in Section II.E of the report and finding #1 address instances of language contained in the MCA and the Opencut Mining Act indicating statute recognizes differentiation between operations that mine and process gravel (interpreted as 'Gravel Extraction') and operations that mix concrete and/or batch asphalt (interpreted as 'Extractive Industries'). Staff interpretation is that an operation permitted to mine/extract gravel is not necessarily entitled to other processing activities just because the act also addresses those activities.

This issue (whether allowable provisions of 'Gravel Extraction' are intended to be synonymous with 'Extractive Industries') is pertinent because it has been a point of continuous and unresolved contention in previous Conditional Use applications reviewed by the Board of Adjustment, which have precipitated legal reviews of the matter by the District Court and the Montana Supreme Court. The Board of Adjustment has found 'Gravel Extraction' and 'Extractive Industries' Conditional Uses are not synonymous, however, that determination does not change the applicable zoning regulations, as that function requires action by the Planning Board and Commission. The requested definition would include concrete and asphalt processing as standard allowable activities included in the issuance of a 'Gravel Extraction' Conditional Use Permit (CUP). The proposed definition's provisions for concrete and asphalt processing activities have thus far been interpreted by the County's Planning and Zoning Office and Board of Adjustment as representing non-agriculturally related industrial activities or uses not supported by the applicable West Valley Neighborhood Plan, and have been proposed in contrast to the finding and determination made by the Board of Adjustment in FCU-08-07.

The petitioner comment cites differences in the definition of 'materials' as defined in MCA 82-4-303 (Metal Mine Reclamation) and 82-4-403 (Opencut Mining Reclamation), aimed to indicate the proposed definition is not redundant and duplicative with that of the existing definition for 'extractive industries'.

- Staff notes the zoning regulations are more general in the definition of 'Extractive Industries', with that Conditional Use potentially applying to the mining of other substances, such as minerals, in addition to those addressed in the Opencut Mining Act.

- Staff notes the Opencut Mining Act definitions cited address ‘Materials’, and the ‘Materials’ definition does not include petroleum products and other chemicals imported to operation sites to be used in the industrial processing of asphalt and cement.
- Staff notes the petitioner citing of FCU-07-12 doesn’t appear applicable because that request was for a CUP to allow ‘**Extractive Industries**’ extraction and processing on a tract of land zoned AG-40 Agricultural, and located in the **HWY 93 North Zoning District (68)**. West Valley Zoning District does not include ‘Extractive Industries’ as a Conditional Use nor does it include AG-40 zoning.

Regarding Alternate Finding (1), the language addresses ‘material’ as defined in the Opencut Mining Act, proposes a definition for ‘Gravel Extraction’ limited to mining and processing of ‘material’ obtained on-site, and states “Processing materials obtained from an on-site mine is not an industrial activity”.

- Staff again notes ‘Material’ as defined by the Opencut Mining Act does not include petroleum products and other chemicals imported to an operation site to be used in the industrial processing of asphalt and cement.
- Staff notes inconsistency between the petitioners’s proposed definition and the petitioner’s Alternate Finding (1) in that the proposed definition would include processing using chemicals obtained from an off-site source brought on site, not derived from the operation site and not included in the applicable definition of ‘Material’.
- Staff agrees that processing materials obtained from an on-site mine limited to crushing, screening, and washing is not an industrial activity, and that ‘Gravel Extraction’ and ‘Extractive Industries’ are not synonymous and warrant being defined separately.

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’.

No comment regarding the basis of Finding #2. Staff believes duplicative definitions are inefficient, administratively problematic, and have the potential of creating misunderstanding.

Regarding petitioner comment, as pertaining to gravel (which is the issue in question, not to be confused with metal mining, as described on pg. 3 of the petitioner rebuttal):

- The proposed definition appears duplicative with the existing definition for ‘Extractive Industries’ because the proposed definition includes gravel extraction and a full range of processing activities including cement and asphalt processing while ‘Extractive Industries’ is already consistently interpreted by the County as including extraction and a full range of processing, including industrial cement and asphalt processing.
- The petitioner discussion cites text on p.18 of the West Valley Neighborhood Plan in a manner viewed by staff as being out of context. Text on p.18 of the West Valley Neighborhood Plan literally states “Existing industrial uses include a sawmill, gravel operations, and various agricultural-dependent uses, such as mint stills.” This reads like an inventory of the limited instances of industrial operations in existence area at the time the West Valley Neighborhood Plan was written. This notion is further supported by the Land Use Map on p. 17 of the plan which indicates the existence of three gravel operations in the plan area. The petitioner’s interpretation of the cited text on p.18 seems to be that the plan indicates the unchecked allowance of additional new gravel operations with non-agricultural related industrial cement and asphalt processing facilities

simply because a few existed at the time the plan was written. Staff considers the petitioner's interpretation an error. The error in that interpretation is evident when likened to other zoning scenarios - take for instance an automobile service station (gas station). If an automobile service station existed in a neighborhood prior to the adoption of an R-2 zoning district, that doesn't mean further instances of automobile service stations are allowed in the residential district just because one was already established as an existing use.

- Additional cited text on p.18 of the plan states "Allow opportunities for gravel extraction". Staff in no way is suggesting that opportunities for gravel extraction should be obstructed, but interprets the West Valley Neighborhood Plan as not supporting new instances of non-agriculturally related industrial cement and asphalt production facilities. An objective interpretation of the 'Gravel Extraction' appears to mean just that - extraction or mining of gravel.

Regarding Alternate Finding (2), staff disagrees with the inclusion of the second and third sentences because of the concerns with interpretation noted above.

- The plan clearly identifies limited instances of existing industrial uses in the West Valley Neighborhood Plan area at the time the plan was written.
- The important point of the Commercial/Industrial section of the West Valley Neighborhood Plan (p.18) regarding new instances of commercial/industrial uses is clearly stated "Industrial uses should not be permitted except those accessory to normal farm operations."

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.

No comment regarding the basis of Finding #3. Please note, the petitioner rebuttal's "Staff 3" is full of typographic errors and is not a copy of the staff report finding. The errors lead to reader confusion which was not inherent in the original staff report finding.

Regarding petitioner comment, it appears the conflict of interpretation is carried over to comment on staff report finding #3.

- The petitioner appears to interpret the West Valley Neighborhood Plan as limiting the introduction of new 'types' of non-agricultural industry as opposed to limiting new 'instances' of non-agricultural industry.
- The West Valley Neighborhood Plan identifies the presence of a few gravel pits as instances of industry already existing in the plan area which were not related to normal farm activities.
- The West Valley Neighborhood Plan does not state or imply existing instances of non-agricultural types of industry should be allowed to increase because some instances existed prior to the adoption of the plan. The plan appears to reinforce the interest of area residents of limiting further expansion of non-agricultural related industry.

Regarding Alternate Finding (3), staff takes exception to the choice of language and content, as it appears to be very biased toward the petitioner's interests with little consideration of the content and objectives of the applicable West Valley Neighborhood Plan. The second half of sentence 2 and the portion in parenthesis exemplify the previously discussed issue of mis-interpretation.

- The portion in parenthesis pertains to an interpretive issue regarding the applicability of zoning regulations in general. Staff asserts the statement is outside of the scope of this review. Pertaining to this text amendment review, the fact of the matter is ‘Gravel Extraction’ is a Conditional Use, currently implemented only in the West Valley Zoning District. Focus upon whether it is primary or accessory is beside the point, and distracts from the issue at hand.
- The petitioner comment appears to imply a proposed use is not subject to compliance with the applicable neighborhood plan if it is interpreted as a ‘primary’ use. That notion is unfounded, and appears to miss the point of the role of neighborhood plans in guiding informed land use decisions.

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.

At the October 14 public hearing, the petitioner complained this finding was “written by Jeff Harris”. The body of this finding is from the Board of Adjustment from FCU-08-07. FCU-08-07 begins with “**Note: This application stems from recent Supreme Court and District Court decisions and supplements FCU 05-07, approved on June 14, 2005 and FACU 07-01, approved on June 5, 2007. The Board has discretion to approve, conditionally approve or deny this application (FCU 08-07), which supplements both previously approved Conditional Use Permits.**”

As stated above, the question as to whether allowable provisions of ‘Gravel Extraction’ are intended to be synonymous with those of ‘Extractive Industries’ appears paramount in this review because it has been the point of continuous and unresolved contention in previous Conditional Use applications reviewed by the Board of Adjustment, which have precipitated legal reviews of the matter by the District Court and the Montana Supreme Court. Staff intentionally incorporated the language of the Board of Adjustments’ finding on the matter into staff report finding #4 because this finding pertains directly to discussion of that topic in section II.H of the staff report. Staff did expand the finding in the last sentence by clarifying the function of the CUP process in the determination of how impacts from processing activities would be specifically and appropriately mitigated relative to the request for an ‘Extractive Industries’ Conditional Use Permit.

Regarding petitioner comment, the first statement in parenthesis and the first sentence appear to voice the petitioner’s discontent with the most recent findings and definition of ‘Gravel Extraction’ by the Board of Adjustment in FCU-08-07.

- Staff report finding #4 displays the definition of ‘Gravel Extraction’ by the Board of Adjustment.
- Contrary to petitioner opinion expressed in sentence 2 of his comment, the Board of Adjustment’s review of FCU-08-07 included public review, and this text amendment review at hand involves the public review of the key issues - 1) a functional definition of ‘Gravel Extraction’, and 2) a determination as to whether or not ‘Gravel Extraction’ and ‘Extractive Industries’ Conditional Uses are synonymous by including the same post-extraction processing provisions in the definition of ‘Gravel Extraction’ as are interpreted by the County to be included with ‘Extractive Industries’.
- Staff report findings of fact are informed and objective recommendations to the Planning Board. The Planning Board may adopt, alter, or delete the staff report findings of fact as it deems appropriate in its recommendation to the Commission.

- The Commission hearing will constitute a 2nd public hearing on the matter.

Regarding Alternate Finding (4), staff generally agrees with the finding, and notes the following:

- Existing gravel operations or gravel pits at the time the West Valley Neighborhood Plan was written were limited to only three (3), thus they were an exception to the prevailing forested, agricultural, and residential character of the area. Figure 1 below identifies the three pre-existing gravel operation locations.
- It is not clear if all three existing gravel operations had concrete and asphalt batching plants as stated, and no evidence has been provided by the petitioner to prove or disprove the statement.

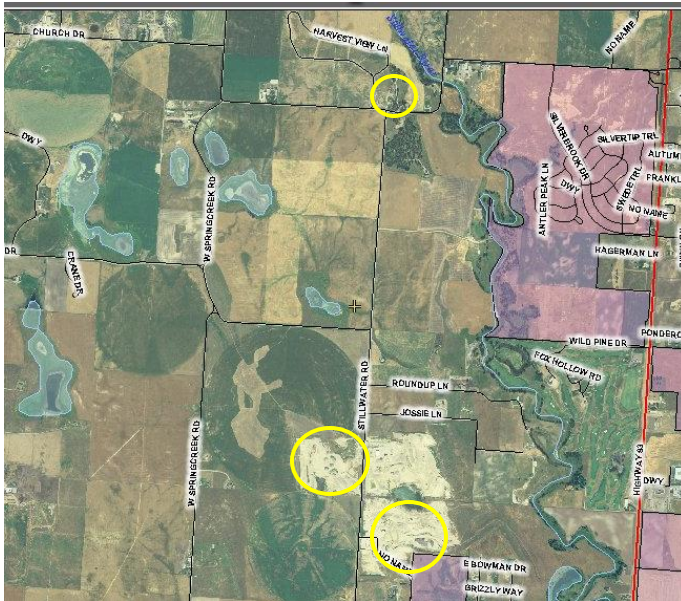


Figure 1

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.

This finding addresses the first criteria for zoning amendments - *Does the requested zoning amendment comply with the applicable Master Plan?* Finding #5 identifies new instances of non-agricultural industrial operations, such as new gravel operations that would include cement and asphalt processing, are not supported by the plan, and therefore should not be allowed from a zoning perspective based on incompatibility with the Master Plan.

Petitioner comment addresses previous Conditional Use requests and reviews (FCU-08-07 and FCU-07-04), a recent non-agricultural use (Class 3 landfill) which was adopted into the West Valley Zoning District regulations as a similar non-agricultural industrial Conditional Use, and again focuses on the distracting concept of ‘primary vs. accessory’ use.

- Regarding the Silverstone site, a Conditional Use Permit was issued (FCU-97-11). It appears the decision was successfully appealed by neighbors/area residents due to the caliber of the review and purported non-compliance with terms of approval.

- Upon review of the ‘Silverstone’ file, it’s notable staff report FCU-97-11 fails to include the words cement or asphalt- let alone discuss those issues. The report appears brief and vague and deferred to other agencies for appropriate review and mitigation of impacts.
- Class 3 landfill was adopted into the West Valley Zoning District regulations as a Conditional Use (FZTA-99-8). Important to note is the public review process included ample public review and was recommended for approval by the West Valley Land Use Advisory Committee and the Flathead County Planning Board prior to approval by the Flathead County Commission. The report, also appearing brief and vague, acknowledged the West Valley Neighborhood Plan and potential impacts to agriculture and residences. The Class 3 landfill was approved as a Conditional Use on the premise that Class III Landfills are intended to accept only inert, non-water soluble wastes such as brick, dirt, rock, concrete, wood materials and brush, lumber, and vehicle tires.
- Cited excerpts from FCU-08-07 once more introduce the concept of ‘primary use vs. accessory use’, and also indicate the need for gravel extraction in West Valley. The concept of ‘primary use vs. accessory use’ is irrelevant in the context presented, confusing the issue and distracting from the matter at hand.

Regarding Alternate Finding (5):

- The stated language appears to avoid the review criteria question ‘Does the requested zoning amendment comply with the applicable Master Plan?’. The West Valley Neighborhood Plan is the applicable plan, as West Valley is the only zoning district listing ‘Gravel Extraction’ as a Conditional Use and is also the location of the petitioner’s property and evident gravel resource interests. As noted in the staff report, provisions for cement and asphalt processing are embedded in the petitioner’s proposed definition for ‘Gravel Extraction’. The definition, which would establish a standard for ‘Gravel Extraction’, appears clearly not supported by the applicable Master Plan due to the industrial nature of cement and asphalt production.
- The petitioner’s alternate language focuses on the concept of ‘primary vs. accessory’. This concept is beside the point, as designation of ‘primary’ or ‘accessory’ would not release a zoning request from the requirement to comply with the applicable master plan.
- Simply stated, ‘Gravel Extraction’ is a Conditional Use in the West Valley Zoning District, and was not explicitly defined at the time of adoption, arguably because it was assumed there would be no question as to the intent. At the time West Valley Zoning District was adopted, six other zoning districts had already been established in Flathead County with ‘Extractive Industries’ setting the standard for gravel operations that included concrete and asphalt processing. It is illogical to assume and seems unlikely that a critical term for such a hotly debated topic would be a mistake- the result of a simple oversight- by all parties involved in the review process leading to the adoption of the West Valley Zoning District. To an objective observer, the term ‘Gravel Extraction’ appears to better fit under the guidance of the West Valley Neighborhood Plan than would ‘Extractive Industries’, and appears to have been included intentionally as a Conditional Use in the West Valley Zoning District regulations.

- 6. 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.**

Staff agrees that specific road impacts should be addressed within the review of a specific Conditional Use request. Regarding the intent of the finding, it appears logical that certain additional vehicle trips are required when a product is necessary to be brought onsite for a given processing activity. Perhaps the associated increase in road usage is negligible, and perhaps it is not. If 'Gravel Extraction' within West Valley is determined to include cement and asphalt processing, it seems logical and reasonable to assume more lands will be converted to such a use, increasing heavy vehicle road usage on roads within the district.

Staff considers Alternate Finding (6) to be reasonable in its intent, although the spelling, grammar, and language merit revision.

- 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.**

No comment regarding the basis of Finding #7.

The petitioner commented "this is not the stand the County has taken in other proceedings and the West Valley Plan states gravel operations are an existing industrial use."

- Staff contends the requested zoning text amendment has been reviewed appropriately and objectively. Reviewing planning staff is not required to 'take the stand' from previous reviews. Conversely, to limit the specificity and quality of a current review to the semantics and review standards of predecessors and prior files is inappropriate and defeats the integrity and purpose of the review process itself. This point is especially pertinent considering prior gravel related Conditional Use reviews concerning requests in the West Valley Zoning District have resulted more in strife and conflict than in clarification and resolution.
- The comment "... and the West Valley Plan states gravel operations are an existing industrial use" represents another case of what appears to be the petitioner's mis-interpretation of the plan as it relates to zoning. The plan indicates a limited number of gravel operations existing at the time the plan was written. The existence of three (3) gravel operations does not define the character of West Valley, nor should it be interpreted to imply additional new gravel operations with non-agricultural related industrial cement and asphalt processing facilities are allowable simply because a few existed at the time the plan was written.

Regarding Alternate Finding (7):

- There is currently one (1) affected zoning district-West Valley. Regarding whether the requested amendment gives reasonable consideration to the character of the district, Alternate finding (7) appears to widely ignore the residential character of the district, focusing instead on gravel operations, farming operations, agricultural processing facilities, and landfills. Regarding the

substantial residential component of the district, Alternate finding (7) simply states “... residents can expect impacts from “Gravel Extraction” operations.”

- Page 16 of the West Valley Neighborhood Plan addresses Residential Land Use. According to the plan, there were approximately 828 dwelling units and 2,135 residents within the plan area in 1990, and the number has likely been stable or increased since then. Among ‘Issues’ discussed, none address industrial impacts or involve ‘expecting impacts from gravel operations.’
- Staff strongly opposes alternate finding (7) because the proposed definition includes industrial asphalt and concrete processing which conflict with the guidance of the Plan in regard to not only agriculture but also the substantial residential character of the district.
- In order to give reasonable consideration to the character of the district, it appears the proposed definition should be limited to non-industrial processing of materials obtained on-site, or the Land Use section of the Plan should be revisited and amended where appropriate in regard to residential, agricultural, and industrial uses prior to including industrial processing use provisions in the definition for ‘Gravel Extraction’. An amended plan would be considered by the public residing in the district, the West Valley Land Use Advisory Council, as well as the governing body, and a subsequent zoning amendment which has the possibility of adversely impacting thousands of people would then be in accord with the character of the district as perceived by those potentially impacted.

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.

No comment regarding the basis of Finding #8.

Staff disagrees with the petitioner interpretation that “the County has taken the stand that “Gravel Extraction” is a primary use in the district and not a reduction of farmland”. The petitioner statement is an example of how various interpretations of terms taken out of context lead to confusion and distract from the issue at hand.

Regarding Alternate Finding (8)

- The second sentence is not applicable or appropriate because neither the West Valley Neighborhood Plan nor the West Valley Zoning District intentionally identified appropriate areas for gravel extraction opportunities. Arguably, most gravel extraction operations have occurred simply due to desires of landowners of properties with abundant accumulations of gravel.
- Regarding whether or not the requested amendment would promote health and general welfare of the public and residents living within the West Valley Zoning District, Alternate finding (8) appears to assume the zoning regulations solely would safeguard health and general welfare, and the alternate finding cites FCZR 3.03.020(10). Staff urges moderation in the Planning Board’s recommendation to the Commission, beyond the confidence in the regulations the petitioner’s stance appears to rely upon. In the case concrete and asphalt processing are recommended to the

Commission by the Planning Board to be included as standard provisions in the definition for 'Gravel Extraction', it appears reasonable at a minimum the applicable Plan supporting such a definition would at least identify appropriate areas for those activities, and the affected zoning district would include designations which intentionally implement such a Plan.

- Alternate finding (8) suggests impacts due to industrial cement and asphalt processing be deferred to an actual Conditional Use review for mitigation of anticipated impacts. Impacts such as visual disturbances, dust, and even sound may be reasonably mitigated, but it appears questionable as to whether pervasive noxious odors and toxicity of fumes from asphalt processing are able to be adequately mitigated. Gauging by perceived odor impacts of asphalt processing facilities, these impacts appear not able to be reasonably mitigated, and may result in adverse impacts to residential health and general welfare, as well as property values.
 - FCZR Section 3.03.020(9) designates all of the West Valley zoning district as 'Residential'. In 'residential' districts FCZR Section 3.03.020(10) indicates sand and gravel extraction, associated operations, processing of sand and gravel, or asphalt and/or concrete batch plant uses may be prohibited if negative impacts on the surrounding area cannot be reasonably mitigated. It doesn't appear prudent to include industrial processing provisions which have by-product impacts which cannot be expected to be reasonably mitigated, especially when such industrial processing uses are not supported by the existing applicable neighborhood plan.
 - Staff opposes alternate finding (8) because the proposed definition includes industrial asphalt and concrete processing which conflict with the guidance of the Plan in regard to not only agriculture but also the substantial residential character of the district.
 - In order to promote health and general welfare of the public and residents living within the West Valley Zoning District, the Land Use section of the Plan is recommended to be revisited and amended, where appropriate, in regard to residential, agricultural, and industrial uses, and until such a time, a workable definition for 'Gravel Extraction' should be limited to site preparation, physical extraction of gravel and sand, on-site crushing, screening, washing, and reclamation because impacts associated with these limited activities are known to be able to be adequately mitigated through reasonable and practical means.
- 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.**

This finding addresses the criteria for zoning amendments - *Does the new zoning provide for adequate light and air?* Staff report discussion on the issue acknowledges from an implementation perspective the requested definition does have bearing on preserving the adequacy of light and air. However, as the district is designated residential and is comprised of a substantial number of residences, Finding #9 is based upon anticipated adverse impacts of on-site and off-site dust, noise and odor to area residents.

Petitioner comment on the matter and citing of a portion of a definition from the Act ("within the area that is to be mined or contiguous to the area that is to be mined or the access road") suggests he believes anticipated impacts to air quality would be limited to the operation site. Petitioner stance, that anticipated

impacts are better addressed at the Conditional Use review level than by limiting allowable provisions within the definition is based upon his interpretation of the cited excerpts from FCZR.

Alternate finding (9) addresses the petitioner's proposed definition for 'Gravel Extraction' as it pertains to potential impacts to light and air, and the finding suggests review of impacts to light and air be deferred to specific Conditional Use reviews.

- Staff notes although the petitioner's intent seems plausible, the proposed definition does not appear to realistically set up a Conditional Use review for flexibility in terms of permitted provisions because the eight (8) use provisions included in the proposed definition for 'Gravel Extraction' are all-inclusive.
- The notion that certain use provisions within a Conditional Use be permitted or not based upon whether impacts may be adequately mitigated seems less practical to implement if the provisions are included in the definition of the particular Conditional Use than by simply constraining the definition when the definition is adopted.
- If the proposed definition is adopted, Staff's interpretation is at the time of a specific Conditional Use review, the options of the Board of Adjustment would be limited to either fully permitting concrete and asphalt processing on site with the issuance of a Conditional Use Permit, or outright denying the application. In the case a substantial majority of criteria are found to be sufficiently met in a Conditional Use review, it appears likely the Board of Adjustment would be placed in the awkward position of approving the Conditional Use without specific impacts actually being mitigated.

10. 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.

This finding addresses the criteria for zoning amendments - *Does the proposed zoning amendment have a view of conserving the value of property?* The question appears to have direct bearing on whether side-effects of the implementation of the proposed definition would adversely impact value of properties within the district, particularly residential and agricultural properties located near a permitted gravel operation that performs concrete and asphalt processing. Finding #10 addresses that point.

Petitioner comment equates noise, dust, and odor impacts of gravel processing with those of agriculture, specifically focusing on dust and fines.

- Petitioner comment fails to address the toxic and noxious character of fumes associated with the industrial petroleum products used in asphalt production.
- Submitted materials from prior reviews indicate most residences in West Valley derive well water from a shallow aquifer. Petitioner comment fails to acknowledge or address the potential for adverse impacts to water quality which may result from industrial cement and asphalt production.
- Petitioner comment cites findings from FZTA-07-04. Again, staff is not obligated to limit the scope of findings of a current review to the scope and detail exhibited in past reviews. Staff considers citing of FZTA-07-04 inapplicable and out of context because West Valley is not designated as AG-40 or AG-80. Instead of Euclidean designations such as AG-40 or AG-80, the West Valley Zoning District represents performance based zoning, intentionally implementing

limited types of uses and different density standards aimed at preserving the area's prime agricultural soils.

Regarding Alternate Finding (10):

- The language is copied from a discussion point from FZTA-07-04, and appears taken out of context. FZTA-07-04 was not applicable to West Valley, and the section quoted was addressing gravel extraction operations in AG-40 and AG-80 zones. To demonstrate the context being referred to, the associated finding to that discussion is **“The request is expected to conserve the value of buildings in the AG-40 and AG-80 zones.”**

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.

No comment regarding the basis of Finding #11.

Petitioner comment highlights a statement by the Supreme Court regarding the lack of definition for ‘Gravel Extraction’, and cites an excerpt from FCU-06-17 also addressing the issue of no definition for ‘Gravel Extraction’.

- Staff agrees a functional definition for ‘Gravel Extraction’ is needed in the FCZR.
- Subsequent to the Supreme Court review, the issue went back to the District Court, and was then remanded back to the Board of Adjustment, specifically to adequately address issues the courts had outlined, among which was defining ‘Gravel Extraction’. The Board of Adjustment subsequently revisited the issue in FCU-08-07 and defined ‘Gravel Extraction’ as represented in the current staff report finding #4, and specifically not including industrial cement and asphalt processing.

Petitioner’s Alternate Finding (11) implies the inclusion of ‘Gravel Extraction’ in the West Valley Zoning District was a mistake- a term “...likely coined by the author of the development standards”.

- Staff disagrees with the Petitioner’s interpretation the term ‘Gravel Extraction’ was a mistake.
- Staff interpretation of the inclusion of ‘Gravel Extraction’ in FCZR 3.34.033 is that it was intentional, based upon the character of West Valley at the time the plan and the zoning were adopted, and it means opencut operations limited to the actual mining/extraction of sand and gravel, not including industrial processing involving the use of chemical substances imported onto the site, which are not included in the definition of ‘Materials’ in the Opencut Mining Act.
- Evidence the term ‘Gravel Extraction’ was not accidental and “... likely coined by the author...” exists in the fact the standard for cement and asphalt processing industries was well established under the ‘Extractive Industries’ Conditional Use in FCZR beginning in 1993, prior to adoption of the West Valley Zoning District in 1997. Six of the eight FCZR districts which currently include ‘Extractive Industries’ as a Conditional Use included that provision at the time of their adoption in 1993, to provide an opportunity for cement and asphalt industrial operations.
- The notion the term ‘Gravel Extraction’ was accidental and actually intended to equate with ‘Extractive Industries’ appears unfounded and improbable, as it implies the West Valley Steering Committee, the Planning Office (then FRDO), the Planning Board, the County Attorney’s Office, and the Board of Commissioners were negligent in their duties to provide a quality review and assessment of this very critical detail involved in the adoption of the West Valley Zoning District.

Objectively viewed at present, and taken to mean simply mining/extraction, the term ‘Gravel Extraction’ appears to comply with the intent of the guiding West Valley Neighborhood Plan.

Petitioner’s Alternate Finding (11a) appears to condense his proposed definition into a finding based upon a goal from the Flathead County Growth Policy. Staff has no comment on Alternate Finding (11a) but notes the Flathead County Growth Policy is not specific regarding any one zoning district, and is a more general guidance document than a area-specific neighborhood plan.

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.

Finding #12 addresses the criteria for zoning amendments - *Will the requested zoning amendment encourage the most appropriate use of land throughout the jurisdiction?*

Petitioner comment cites an excerpt from a 2006 staff report FCU-06-17, and concerns perceived inconsistency in the semantics of interpretation and discussion of gravel issues amongst various different reviews that have occurred over time.

- Staff agrees a functional definition for ‘Gravel Extraction’ is needed and would promote administrative clarity and consistency.
- As previously discussed in this assessment, staff is not obligated or bound to perpetuate interpretations of predecessors involved in prior reviews or to limit the scope of an application review to that which was applied by predecessors.

Regarding Alternate Finding (12):

- Staff agrees the West Valley Neighborhood Plan indicates opportunities for gravel extraction should be allowed. Interpretation of ‘Gravel Extraction’ as identified in the staff report would continue to allow gravel extraction as an opportunity within the West Valley Zoning District.
- Again, whether ‘Gravel Extraction’ is a ‘primary or accessory’ use appears immaterial and distracts from the issue at hand.
- The West Valley Zoning District implements the West Valley Neighborhood Plan which *“examines the various physical, biological, and social elements of the area to establish a benchmark from which all future land use proposals can be measured. More importantly, the Plan presents a future vision for West Valley.” West Valley Neighborhood Plan- Implementation p. 41*
- According to guidance from the Plan, Alternate Finding (12) and the proposed definition would not encourage the most appropriate use of land throughout the jurisdiction.

Petitioner provided no comments or objections toward staff report findings 13-15 which read as follows:

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.

Summary:

- Staff has tried to provide an objective review of the petitioner’s rebuttal to staff report FZTA-09-02. Based on the content of assessment, staff generally disagrees with the petitioner’s interpretations and suggested Alternate Findings (with the exception of Alternate Findings (4) and (6)).
- Staff encourages the Planning Board to provide a quality review and assessment of the proposed definition for ‘Gravel Extraction’ and it’s implication on future land use proposals within the West Valley Zoning District and Flathead County.
- Staff continues to stand by staff report FZTA-09-02 and its Findings of Fact. The Planning Board has the ability to adopt the report and findings in full, in part, or to amend the report and findings at its discretion as a recommendation to the Commission.
- Staff recommends the Flathead County Planning Board adopt this assessment with 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 and continues to recommend adoption of the following:
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.
- In the case the Planning Board wishes to adopt a definition for ‘Gravel Extraction’ which includes the provisions suggested by the petitioner, it is recommended such a decision be made subsequent to appropriate amendments to the Land Use section of the West Valley Neighborhood Plan.