

ENVIRONMENTAL ASSESSMENT

Project Name: LUL – Storage of Offsite Materials within AM Welles DSL Pit

Proposed Implementation Date: Spring 2026

Proponent: AM Welles, Inc

Location: Township 5S, Range 1W Section 16

County: Madison

I. TYPE AND PURPOSE OF ACTION

AM Welles, Inc. henceforth referred to as the proponent, has applied for a land use license to store, sell and recycle asphalt, concrete and decorative rock within the boundaries of a gravel pit known as the DSL pit. These uses have occurred historically within the boundaries of the DSL pit but must now be authorized through a separate Land Use License as the result of an order by the Madison County District Court Judge Luke Berger. The pit is operated by AM Welles and is permitted through the Montana Department of Environmental Quality (DEQ) and Montana Department of Natural Resources and Conservation (DNRC) under opencut permit 674 and take and remove permit G-1273-94 respectively. This pit was recently expanded through an amendment or renewal to each of these permits. The DNRC finalized their EA and authorized expansion of the permitted area in May of 2023. Valley Garden Land and Cattle (VGLC), a neighboring landowner to the project area, promptly filed a legal challenge to the DNRC’s decision to authorize the expansion of the site. That litigation concluded with Honorable Judge Luke Berger’s order issued on July 09, 2025. Within the order, Hon. Judge Berger ordered the DNRC:

1. Secure the proper Land Use License for the asphalt and concrete recycling activities and storage of offsite materials.
2. Charge A.M. Welles fair market value, for its asphalt and concrete recycling and storage of offsite materials, which was established in their contract with Riverside

This order was in response to VGLC’s claim that the DNRC violated its trust responsibility by not charging AM Welles for the storage of offsite materials within its permitted gravel pit, and further determined that fair market value of the Land Use License should be commensurate with the amount the DNRC charged Riverside (through AM Welles), for the purposes of temporarily operating an asphalt plant within the boundaries of the pit. The Riverside agreement referenced was for approximately two months, from April 3, 2024, until June 8, 2024, and was authorized in the amount of \$4,000 total.

Four separate environmental analyses have been completed by either the Montana DEQ or the Montana DNRC in relation to activities on this site since 2022. This analysis will be the fifth in approximately three years for activities at this site. The analysis for the current DEQ permit, along with the analyses for the DNRC’s activities are linked below, these analyses are incorporated herein by reference. These documents provide valuable information that may be referenced in this document.

Montana DEQ Opencut Mining Standard Permit EA:

<https://fnds.mt.gov/DEQ/document?params=U2FsdGVkX18%2BIEGIXYshD1ySH2QCB1gyzRnlbMc9FVWVjfnY%2Fvn0Hb4Iz3svheRc5JbT%2FouVrYUYazrlv77yfNdqRkEk08RYTmsCYO4GzwXVnKQBCjbHmFNj2RlxJkLUclMXZQV7wyCi7gsgdjPIYQ%3D%3D&callback=?>

Montana DNRC Aggregate Take and Remove Expansion EA –

<https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:51a4efa9-49bf-48ee-8146-7f9aaf3a4d87>

Montana DNRC Temporary Asphalt Plant EA:

<https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:7087103c-874d-430c-90be-5fa785429008>

II. PROJECT DEVELOPMENT

1. PUBLIC INVOLVEMENT, AGENCIES, GROUPS OR INDIVIDUALS CONTACTED:

Provide a brief chronology of the scoping and ongoing involvement for this project.

The proponent applied for a Land Use License (LUL) on July 31, 2025. The DNRC’s Bozeman Unit was informed of the application. VGLC and their legal representation were also notified that an application for LUL had been received.

On September 5, 2025, The DNRC posted “Scoping Notice – Land Use License application for storage on its website. A copy of this scoping notice is attached to this document in Appendix A.

Additionally, a legal notice was published twice in the Madisonian newspaper in Ennis Montana on September 11th and September 18th, 2025. The ad is also included in this document in Appendix A.

A 30-day initial scoping period was opened on September 18th at 8 AM and closed on October 17th at 5 pm. The DNRC received 6 unique comments during this period. These comments informed the project development team of specific resource concerns important to the public. If a specific resource concern was identified through public comment, the applicable resource section will state the concern at the beginning of the resource section. If any mitigations are identified through the analysis for the action alternative, they will be listed at the end of the resource section.

A draft analysis was posted to the DNRC website on December 10, 2025. A notice of an additional comment period related to the adequacy of the draft document was published in the Ennis, MT newspaper on December 25, 2025, and January 1, 2026. The notice provided a link to the draft analysis, timelines to submit comments and instructions on how to submit a comment. At the request of the VGLC’s attorneys, the comment period was extended until February 2nd, 2026, at 5 pm. On February 2nd, an additional request was made by the VGLC’s attorneys to extend the comment period until midnight of that same day. Both requests were accommodated by the Department.

The Department utilized the scoping comments to inform the analysis. These comments are not attached as an appendix to this document but are saved in the project folder and accessible to the public at their request.

The Department received three comments during the second comment period relating to the adequacy of the draft analysis. Due to the low volume of comments made, the Department chose to respond individually. The comments, along with the reply to the comments have been included in this analysis as Appendix A.

2. OTHER GOVERNMENTAL AGENCIES WITH JURISDICTION, LIST OF PERMITS NEEDED:

There are no other permits needed specifically to store, sell and recycle asphalt, concrete, and decorative rock on State Trust Lands. However, the proponent is applying to conduct these activities within the boundaries of gravel pit. The gravel pit is authorized under a DEQ opencut mining permit and a DNRC aggregate take and remove permit.

3. ALTERNATIVES CONSIDERED:

No Action Alternative: The Land Use License would be denied, and the proponent would not be allowed to store, sell, and recycle asphalt, concrete, and decorative rock within the pit area. If the no action alternative is selected, any asphalt, concrete, and decorative rock that is currently being sold, recycled, or stored within the boundaries of the permitted area must be immediately removed from the pit area.

Action Alternative: The Land Use License would be approved, and the proponent would be allowed to continue storing, selling, and recycling asphalt, concrete, and decorative rock within the pit area. The area historically utilized for these activities is approximately 2.43 acres within the pit. The license would authorize the use of up to 2.5 acres of pit area for the storage of offsite materials.

SUMMARY OF POTENTIAL IMPACTS TO THE PHYSICAL AND HUMAN ENVIRONMENT

The impacts analysis identifies and evaluates direct, secondary, and cumulative impacts.

- **Direct impacts:** impacts that occur at the same time and place as the action that causes the impact
- **Secondary impacts:** further impacts to the human environment that may be stimulated, or induced by, or otherwise result from a direct impact of the action.
- **Cumulative impacts:** collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through preimpact statement studies, separate impact study evaluation, or permit processing procedures.

Where impacts are expected to occur, the impacts analysis estimates the duration and severity of the impact. The duration of an impact is quantified as follows:

- **Short-term:** impacts that would not last longer than the proposed operation of the site, including reclamation of the site.
- **Long-term:** impacts that would remain or occur following reclamation of the proposed site.

The severity of an impact is measured using the following:

- **No impact:** There would be no change from current conditions.
- **Negligible:** An adverse or beneficial effect would occur but would be at the lowest levels of detection.
- **Minor:** The effect would be noticeable but would be relatively small and would not affect the function or integrity of the resource.
- **Moderate:** The effect would be easily identifiable and would change the function or integrity of the

resource.

- **Major:** The effect would alter the resource

III. IMPACTS ON THE PHYSICAL ENVIRONMENT

- *RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.*
- *Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.*
- *Enter "NONE" If no impacts are identified or the resource is not present.*

4. GEOLOGY AND SOIL QUALITY, STABILITY AND MOISTURE:

Consider the presence of fragile, compactable or unstable soils. Identify unusual geologic features. Specify any special reclamation considerations. Identify any cumulative impacts to soils.

Resource Concerns from Public Comment

The proposed action may change the pH of the soils that will be used to reclaim the pit, thereby making it more difficult to properly reclaim the site.

Current conditions

The current conditions at the site related to Geology, Soil Quality, Stability and Moisture are accurately described within the Montana DEQ's analysis on pgs. 15 and 16.

Alternatives

No Action Alternative

- **Impacts:** The no action alternative is not expected to have any direct, secondary, or cumulative impacts to geology and soil quality, stability, and moisture.

Action Alternative

- **Direct Impacts:** All soil and overburden have been removed from the pit floor upon which the asphalt, concrete and decorative rock are stored. This soil and overburden is stored in piles surrounding the pit area and is being saved for reclamation. Upon reclamation of the pit, the topsoil and overburden will be replaced onto the disturbed areas. Grass seed will then be spread onto the replaced soil. Vegetation will increase the soil stability over time as it continues to grow. The storage, recycling, and sale of asphalt, concrete, and decorative rock will have no direct impact on geology, soil quality, stability, or moisture. The storage and recycling of offsite materials is occurring on the pit floor where there is no soil, this would continue under the action alternative. Because the soil is in piles surrounding the pit and the offsite materials are within the pit and not on the soil, the pH of the soil would not be impacted by the selection of the action alternative.
- **Secondary Impacts:** No secondary impacts to geology and soil quality, stability, and moisture are expected from the selection of the action alternative.
- **Cumulative Impacts:** The selection of the action alternative would not be expected to appreciably change cumulative impacts to geology or soil in the area.
- **Duration:** No impacts are expected therefore duration of impacts is not applicable.

Mitigations

If the action alternative is selected the following mitigation will be implemented into the Land Use License as a special provision:

- Activities authorized under the Land Use License may only occur in areas that have been stripped of topsoil and overburden.

5. WATER QUALITY, QUANTITY AND DISTRIBUTION:

Identify important surface or groundwater resources. Consider the potential for violation of ambient water quality standards, drinking water maximum contaminant levels, or degradation of water quality. Identify cumulative effects to water resources.

Resource Concerns from Public Comment

- Contaminants from asphalt, concrete, and decorative rock will leach into the groundwater table and contaminate the drinking water and surface water, impacting human health and wildlife.
- The proposed activities require the usage of water.

Current Conditions

The proposed project area is within the DSL gravel pit which is situated on a bench above the Madison River Valley. The Montana DEQ hired an independent professional hydrogeologist, PHD and licensed professional engineer (Dr. Nicklin) to evaluate the groundwater and surface water underlying and adjacent to the site for their July 2024 environmental analysis. The results of that study and the associated analysis may be reviewed by accessing the DEQ EA. The current conditions of both groundwater and surface water onsite are accurately described within the DEQ EA on pgs. 17-21.

Alternatives

No Action Alternative

- Impacts: The no action alternative may slightly reduce the amount of water used by the proponent at the site. The no action alternative would not be expected to have any impact on the quality of water at the site.

Action Alternative

- Direct Impacts: The action alternative is not expected to have any direct impacts on groundwater or surface water quality at the site. As mentioned within Dr. Nicklin's report and previous EA's conducted at this site, an aquifer sits approximately 20 feet below the current pit floor upon which the materials are being stored. Stormwater that is introduced at the site infiltrates the porous pit floor and then is absorbed by prevalent clay layers that underly the pit floor. It is likely that stormwater that falls upon the site never reaches the perched aquifer approximately 20 feet below the pit floor. Dr. Nicklin also notes that "asphalt stored on the site was not a significant source of a potential impact to groundwater because it is a fairly immobile substance.

Also, as mentioned within previous analyses, the DSL site does not discharge stormwater into surrounding surface water bodies. Stormwater is contained onsite by the topography of berms on the site.

As mentioned in the DEQ EA. "In May 2023, out of an abundance of caution, A.M. Welles obtained a Multi-Sector 17 General Permit for Storm Water Discharges Associated with Industrial Activity at DSL Pit, MTR000799, which allows it to discharge water into Moore Creek. However, because this is a dry pit with 20-foot high incised walls and 8-10 foot berms, no water is discharged." So, in the extremely unlikely event that stormwater was discharged from the pit, AM Welles is permitted to do so.

AM Welles operates an exempt well at the site and is authorized to utilize the water in their mining and processing operations per their water right. The Water Rights Division of the Montana DNRC is responsible for the permitting and regulation of water quantity and distribution throughout the state of Montana. AM Welles has an exempt water right for the well utilized in their operations. The water right specifies the amount of water that is permitted for use on an annual basis. A provision of the land use license is that the licensee must comply with all applicable state and federal laws and rules. Water would continue to be utilized for mining operations regardless of the selected alternative of this analysis, as permitted by the Montana DNRC's Water Rights Division.

Finally, asphalt and concrete are two building materials that are present on nearly every roadway and are in each town in Montana. These materials and any potential contaminants are well contained within the DSL pit as described above. This is contrary to many of the surrounding areas where stormwater may run directly over these same materials, and into adjacent surface water such as the Madison River, Moore Creek or other bodies of water. Bridge pillars and Dams are made from concrete and are physically within these bodies of water. Bridge decks are paved with asphalt and shed water directly into the adjacent waterbody. If any contaminants are present in these materials as described within public comment, they'd be much more likely to be introduced into surface water or ground water from sources such as those described, than from minor amounts of recycled materials that are stored within the DSL pit.

- Secondary Impacts: No secondary impacts to water quality, quantity and distribution are expected from the selection of the action alternative.
- Cumulative Impacts: The selection of the action alternative would not be expected to have significant changes to cumulative impacts of water quality, quantity, and distribution in the area.
- Duration: No impacts are expected; therefore duration is not applicable.

Mitigations

The potential selection of action alternative would include the following stipulations in the land use license:

- All equipment utilized in recycling and storage activities must be regularly maintained and inspected to ensure it is not leaking fluids, spreading noxious weeds, creating an undue fire hazard or threatening the life or property of others.

6. AIR QUALITY:

What pollutants or particulate would be produced? Identify air quality regulations or zones (e.g. Class I air shed) the project would influence. Identify cumulative effects to air quality.

Resource Concerns from Public Comment

Moving, crushing, and recycling asphalt and concrete can create airborne particulates that are harmful to human health and wildlife.

Current Conditions

The current air quality conditions at the site are accurately described in Montana DEQ's analysis on pgs. 22 and 23.

Alternatives

No Action Alternative

- **Impacts:** The no action alternative would eliminate a point source of dust emissions and greenhouse gas emissions. The gravel pit would continue to operate under the no action alternative. The point source emissions that would be eliminated are expected to be negligible and would not appreciably change the air quality in the pit or the surrounding area.

Action Alternative

- **Direct Impacts:** The movement, recycling, and crushing of concrete, asphalt, and decorative rock has the potential to generate point-source dust emissions and greenhouse gas emissions from mining equipment engines. These dust particles may or may not contain particulate matter that is harmful to human health and wildlife. However, the threshold in which this particulate matter would become harmful to human health or wildlife is not expected to be exceeded. The Montana DEQ and the US EPA regulate air quality. The proponent would be required to obtain and maintain all necessary permits and follow all federal and state regulations related to air quality standards, including the Montana Clean Air Act. These environmental regulations are specifically designed to protect human health and wildlife. The impacts to air quality resulting from the action alternative are expected to be negligible and occur mostly within the boundaries of the DSL pit. Impacts would be mitigated through the use of water sprayers.
- **Secondary Impacts:** Fugitive dust and emissions may travel offsite to the surrounding area. Any particulate or pollutant would dissipate over distance and would not be expected to be at a threshold of concern for human or wildlife health. Secondary impacts are expected to be short-term and negligible.
- **Cumulative Impacts:** Most of the particulate matter and GHG emissions created by the DSL pit are from the mining, crushing, and screening of gravel. These activities have been evaluated previously and are outside the scope of this analysis. Comparatively, the dust and emissions generated from the proposed action would create far less particulate matter and would have less impact on air quality than the gravel mining itself. It is important to note that these activities are additive, and any particulate matter or greenhouse gas emissions created by the proposed action would be in addition to what is created by other gravel mining practices. Beyond the DSL pit, the Madison Valley's primary emission sources are from vehicular travel, heating homes, and agricultural activities. The selection of the action alternative would not be expected to appreciably impact the air quality in the Madison Valley, and the cumulative impacts from the selection of the action alternative will be negligible.
- **Duration:** Impacts from dust-generating activities are expected to be short-term. Impacts from equipment GHG's are expected to be long-term, but negligible.

7. VEGETATION COVER, QUANTITY AND QUALITY:

What changes would the action cause to vegetative communities? Consider rare plants or cover types that would be affected. Identify cumulative effects to vegetation.

Current Conditions

The project area currently has no vegetation as it is within the active mine area of the DSL pit. All vegetation and topsoil have been removed from the site in accordance with the Montana DEQ open-cut mining permit.

Alternatives

No Action Alternative

- Impacts: The no action alternative is not expected to have direct, secondary, or cumulative impacts to vegetation cover, quantity, or quality.

Action Alternative

- Direct Impacts: The proposed action would not be expected to have any impact on vegetation cover, quantity and quality. The area in which the proposed action would occur has already been stripped of topsoil and vegetation which has been stockpiled in the areas designated in the DEQ permit.
- Secondary Impacts: No secondary impacts to vegetation cover, quantity and quality are expected to occur from the selection of the action alternative.
- Cumulative Impacts: The selection of the action alternative would not be expected to change cumulative impacts to vegetation.
- Duration: No impacts are expected to vegetation cover, quantity and quality from the selection of the action alternative. Therefore, duration of impacts is not applicable.

8. TERRESTRIAL, AVIAN AND AQUATIC LIFE AND HABITATS:

Consider substantial habitat values and use of the area by wildlife, birds or fish. Identify cumulative effects to fish and wildlife.

Resource Concerns from Public Comment

The proposed activities will harm fish and wildlife in the area.

Current Conditions

The project area is contained within an active open-cut mining area. The area is not regularly utilized by wildlife and does not provide suitable habitat for the species nearby. The greater Madison Valley does provide habitat for these species. A more comprehensive species list can be found in the DEQ EA on page 24.

Alternatives

No Action Alternative

- The no action alternative may slightly reduce the amount of noise generated from the pit area. However, the operations of the gravel pit would still be expected to create noise. Overall, the impacts of the no action alternative to terrestrial, and avian life would be expected to be minor. Aquatic life is not expected to be impacted by the selection of the no action alternative.

Action Alternative

- Direct Impacts: The impacts to terrestrial, avian and aquatic life resulting from the selection of the action alternative are expected to be minor. The greatest impact to birds and wildlife would be the noise that is created from recycling activities. This noise is comparable to that which is created by other mining operations such as gravel mining and crushing. This noise

disturbance has occurred for decades at the DSL site, and many animals still choose to utilize the areas adjacent to the pit. It is expected that wildlife have either been conditioned to the noise and it no longer impacts them in a significant manner, or the threshold of impacts is simply not significant enough to impact the wildlife in the area. The amount and volume of noise is expected to remain similar to current levels under the selection of the action alternative. Negligible visual disturbances to birds may occur when they are in flight over the project area. However, the area to be utilized for the proposed action would still be disturbed by the DSL pit if the no action alternative is selected. As explained earlier in this document, the action alternative is not expected to impact ground water or surface water quality. Therefore, there are no impacts to aquatic life that are expected to occur resulting from the selection of the action alternative.

- **Secondary Impacts:** The impacts described within the direct impacts section of this resource section may also be considered secondary impacts, since they occur outside of the project area. No additional secondary impacts are expected to occur beyond those identified in the direct impacts section of this resource section.
- **Cumulative Impacts:** The selection of the action alternative would be in addition to gravel mining activities. This would not be expected to increase the noise levels currently experienced at the site and nearby. The amount of time in which noise is created may be slightly greater under the action alternative than the no action alternative. Overall, the impacts to terrestrial, avian, and aquatic life from the selection of the action alternative is not expected to appreciably change.
- **Duration:** Impacts would be expected to be short-term and last until reclamation of the pit occurs.

9. UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES:

Consider any federally listed threatened or endangered species or habitat identified in the project area. Determine effects to wetlands. Consider Sensitive Species or Species of special concern. Identify cumulative effects to these species and their habitat.

Resource Concerns from Public Comment

The proposed action will harm threatened or endangered species in the area.

Current Conditions

The current conditions for the project area's unique, endangered, fragile or limited resources are included in the Montana DEQ's EA on pages 27 and 28.

Alternatives

No Action Alternative

- The no action alternative may slightly reduce the amount of noise generated from the pit area. However, the operations of the gravel pit would still be expected to create noise. Overall, the impacts of the no action alternative to unique, endangered, fragile or limited environmental resources would be expected to be minor.

Action Alternative

- **Direct Impacts:** The impacts to unique, endangered, fragile or limited environmental

resources are expected to be minor and would be identical to the impacts expected to occur to terrestrial, avian and aquatic life as described within the previous section. Individuals of the species of concern listed in the MT DEQ's EA may experience minor impacts if they are in the area. However, the impacts of the action alternative would not be expected to impact the overall health or sustainability of any of these species.

- **Secondary Impacts:** The impacts described within the Direct Impacts section of this resource section may be considered secondary impacts, since they occur outside of the project area. No additional secondary impacts are expected to occur beyond those identified in the Direct Impacts section of this resource section.
- **Cumulative Impacts:** The selection of the action alternative would be in addition to gravel mining activities. This would not be expected to increase the noise levels currently experienced at the site and nearby. Overall, the impacts to unique, endangered, fragile or limited environmental resources from the selection of the action alternative is not expected to appreciably change.
- **Duration:** Impacts are expected to be short term and last until reclamation of the pit occurs.

10. HISTORICAL AND ARCHAEOLOGICAL SITES:

Identify and determine effects to historical, archaeological or paleontological resources.

Current Conditions

The project area has been stripped of topsoil and mined for gravel. There are no archeological resources within the project area.

Alternatives

No Action Alternative

- **Impacts:** The no action alternative is not expected to have direct, secondary or cumulative impacts to historical and archeological sites.

Action Alternative

- **Direct Impacts:** There will be no impact to historical or archeological sites from the selection of the action alternative. The area in which the offsite materials are being recycled, stored and sold has been stripped of all soil and mined for gravel.
- **Secondary Impacts:** No secondary impacts to historical and archeological sites are expected.
- **Cumulative impacts:** The selection of the action alternative would not be expected to change cumulative impacts to historical and archeological sites in the area.
- **Duration:** No impacts are anticipated; therefore, duration is not applicable.

11. AESTHETICS:

Determine if the project is located on a prominent topographic feature or may be visible from populated or scenic areas. What level of noise, light or visual change would be produced? Identify cumulative effects to aesthetics.

Resource Concerns from Public Comment

The proposed action would alter the aesthetics in the Madison Valley and introduce both a visual and audible disturbance that would impact the otherwise peaceful valley.

Current Conditions

The proposed action would occur within the DSL pit, which is approximately 3 miles north of Ennis, MT. The pit is adjacent to Montana Highway 287 and is located on a bench that is situated above the Madison River Valley. The pit area has topsoil berms that almost surround it, making it difficult to see into the pit from outside of the permitted area. These berms also act as a barrier for sound waves propagating from the pit area. The Montana DEQ's EA describes what noise is, how it is measured, and lists the decibel levels for common environments on pages 30 and 31 of their EA.

Alternatives

No Action Alternative

- **Impacts:** The no action alternative may slightly decrease the amount of time noise is generated from the pit. Most of the noise produced from the pit is produced by gravel mining and processing activities which would continue regardless of the selected alternative. If the no action alternative is selected, the noise level in terms of decibel amounts would not be expected to change. However, the amount of time in which noise is created may decrease slightly if the no action alternative is selected. The decreases in noise levels associated with the selection of the no-action alternative would be expected to be negligible.

Action Alternative

- **Direct Impacts:** The selection of the action alternative would be expected to keep aesthetic impacts at their current state. Concrete and asphalt recycling does generate noise similar to what gravel crushing operations create. This noise has been occurring at the site for years and would continue to occur if the action alternative is selected. The noise created by the action alternative would not be expected to raise the decibel levels at the site but may increase the total amount of time in which noise is generated from the site compared to the no action alternative. As described within the Montana DEQ EA, the closest residents to the pit area would be expected to hear the operations within the pit at a level of up to 50 decibels, this would be expected to be less when they are indoors. 50 decibels is the equivalent to the noise of a common office environment. No changes in the impacts to aesthetics are expected to occur from the selection of the action alternative.
- **Secondary Impacts:** As mentioned in the direct impacts portion of the resource analysis, there will be impacts to offsite areas. This could be considered a secondary impact rather than a direct impact.
- **Cumulative Impacts:** The project area already experiences significant aesthetic impacts aside from those expected from the selection of the action alternative. Gravel mining and the adjacent traffic along highway 287 create noise. The selection of the action alternative would create noise in addition to these pre-existing disturbances.
- **Duration:** Impacts would be expected to be short-term.

Mitigations

The potential selection of action alternative would include the following stipulation in the land use license:

- Concrete and Asphalt crushing and recycling shall be limited to daylight hours only.

12. DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AIR OR ENERGY:

Determine the amount of limited resources the project would require. Identify other activities nearby that the project would affect. Identify cumulative effects to environmental resources.

Current Conditions

The current conditions of land, water and air are described previously in this document. Energy is abundant in the project area in the form of electricity and fuel.

Alternatives**No Action Alternative**

- The no action alternative would not be expected to have any impacts to the demands on environmental resources of land, water, air, or energy.

Action Alternative

- **Direct Impacts:** The impacts to land, water, and air have been previously identified in this document. Energy in the form of electricity or fuel is abundant in the area and can be easily obtained from local sources. Diesel fuel is used to power machinery that is necessary for the activities of the action alternative. The proponent's use of diesel fuel does not impact its availability locally for other industrial or personal use. Impacts to energy from the selection of the action alternative are expected to be negligible.
- **Secondary Impacts:** No secondary impacts to environmental resources of land, water, air, or energy are expected.
- **Cumulative Impacts:** The selection of the action alternative is not expected to appreciably change the impacts on land, water, air or energy
- **Duration:** The impacts to limited environmental resources would be expected to last until the pit is reclaimed.

13. OTHER ENVIRONMENTAL DOCUMENTS PERTINENT TO THE AREA:

List other studies, plans or projects on this tract. Determine cumulative impacts likely to occur as a result of current private, state or federal actions in the analysis area, and from future proposed state actions in the analysis area that are under MEPA review (scoped) or permitting review by any state agency.

Current Conditions

The proposed project area is contained fully within what is known as the DSL gravel pit. The pit is operated by the proponent of this application. A competing Land Use License application was filed by Valley Garden Land and Cattle (VGLC) and requests the ability to store hay within the pit area. VGLC is the lessee of the adjacent grazing lease on the same trust lands tract. The LUL application from VGLC has been denied because the proposed use in their application conflicts with the gravel mining operations that are currently permitted.

Alternatives**No Action Alternative**

- The no action alternative is not expected to have direct, secondary or cumulative impacts to other studies, plans or projects on the tract.

Action Alternative:

- Direct Impacts: The selection of the action alternative would not have any impact on the other studies plans or project on this tract.
- Secondary Impacts: No secondary impacts are expected.
- Cumulative Impacts: The selection of the action alternative would not be expected to change cumulative impacts to other studies plans or projects on the tract.
- Duration: No impacts are expected; therefore duration is not applicable.

IV. IMPACTS ON THE HUMAN POPULATION

- *RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.*
- *Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.*
- *Enter "NONE" if no impacts are identified or the resource is not present.*

14. HUMAN HEALTH AND SAFETY:

Identify any health and safety risks posed by the project.

Resource Concerns from Public Comment

The proposed action will create particulate matter that contains radioactive and carcinogenic materials that will be harmful to public health.

Current Conditions

The site is currently operated as an opencut mine. Heavy machinery and other equipment on the site pose occupational risks for the employees of the proponent. Mine Safety and Health Administration (MSHA) oversees the operations of opencut sites in Montana and provides training to the proponent's employees.

Alternatives

No Action Alternative

- The no action alternative is not expected to have direct, secondary, or cumulative impacts to human health and safety.

Action Alternative

- Direct Impacts: The proposed action will create minor amounts of particulate matter as previously described within the air quality section of this document. This particulate matter may or may not contain the elements described within public comment. As stated within the air quality portion of this document, the proponent must comply with all state and federal regulations regarding air quality. Air quality regulations are developed specifically to protect human health and the surrounding environment. Therefore, by abiding by state and federal air quality regulations, the selection of the action alternative is not expected to have any impact to public health. The occupational health and safety risks associated with the activities of the action alternative are well known by the proponent and their employees. Employees of the proponent are required to take annual training through the Mine Safety and Health Administration which informs them of the risks of their jobs and ways to mitigate those risks. They are also provided with personal protective equipment to ensure risks are

mitigated. The selection of the action alternative is not expected to have any impact on public health.

- Secondary Impacts: The impacts to public health described in the direct impacts of this section could also be considered secondary impacts as they would not occur within the project area.
- Cumulative Impacts: The selection of the action alternative would not be expected to change cumulative impacts to human health and safety.
- Duration: Occupational health impacts are expected to last until the reclamation of the gravel pit.

15. INDUSTRIAL, COMMERCIAL AND AGRICULTURE ACTIVITIES AND PRODUCTION:

Identify how the project would add to or alter these activities.

Current Conditions

Gravel mining and the associated activities that occur at the DSL pit are considered both industrial and commercial in nature. Most of the land surrounding the pit area is utilized for agricultural purposes. Other uses in the valley include small commercial businesses in the town of Ennis as well as tourism industries such as lodging and guiding.

Alternatives

No Action Alternative

- Impacts: The no action alternative would eliminate commercial and industrial use that the proponent has been utilizing within the pit for years. The selection of the no action alternative would force consumers of recycled asphalt, concrete, and decorative rock to find alternative sources. It is unknown whether these materials could be sourced nearby in the valley or if consumers would have to transport it from outside the area.

Action Alternative

- Direct Impacts: By selecting the action alternative, the proponent would be allowed to continue the activities as described. Consumers of this material would have a local and reliable source of material to utilize for their needs. Reliable and affordable building materials are essential to industrial, commercial and agricultural activities and production. The selection of the action alternative would be expected to continue to have a net positive impact on these activities.
- Secondary Impacts: No secondary impacts to industrial, commercial, and agricultural activities are expected.
- Cumulative Impacts: The selection of the action alternative would not be expected to change cumulative impacts on industrial, commercial and agricultural activities.
- Duration: Any impacts would be expected to last the duration of the pit until final reclamation.

16. QUANTITY AND DISTRIBUTION OF EMPLOYMENT:

Estimate the number of jobs the project would create, move or eliminate. Identify cumulative effects to the employment market.

Current Conditions

The closest town to the project area is Ennis, Montana. Most of Ennis' employment is in government, agricultural, or tourism-based industries. The DSL pit supports all of these industries with their product.

Alternatives

No Action Alternative

- Impacts: The no action alternative is not expected to have direct, secondary or cumulative impacts the quantity and distribution of employment.

Action Alternative

- Direct Impacts: The selection of the action alternative is not expected to have any impact on the quantity and distribution of employment.
- Secondary Impacts: No secondary impacts to quantity and distribution of employment are expected.
- Cumulative Impacts: The selection of the action alternative is not expected to change the cumulative impact of quantity and distribution of employment
- Duration: No impacts are expected; therefore, duration is not applicable.

17. LOCAL AND STATE TAX BASE AND TAX REVENUES:

Estimate tax revenue the project would create or eliminate. Identify cumulative effects to taxes and revenue.

Current Conditions

Trust land is exempt from property tax. Operators and lessees conducting business on Trust Lands must pay business taxes.

Alternatives

No Action Alternative

- Impacts: The no action alternative would be expected to lower the amount of business taxes that AM Welles would pay for the proposed action. The impacts to the local and state tax base would be negligible.

Action Alternative

- Direct Impacts: The proponent would be expected to continue paying approximately the same local and state business taxes if the action alternative is selected.
- Secondary Impacts: No secondary impacts are expected to local and state tax base or revenues.
- Cumulative Impacts: The cumulative impacts to local and state tax base and revenues are not expected to change from the selection of the action alternative.
- Duration: No impacts are expected, therefore duration is not applicable.

18. DEMAND FOR GOVERNMENT SERVICES:

Estimate increases in traffic and changes to traffic patterns. What changes would be needed to fire protection, police, schools, etc.? Identify cumulative effects of this and other projects on government services.

Resource Concerns from Public Comment

The proposed action is a fundamental change in use of the permit area and requires re-evaluation by the Montana Department of Transportation.

Current Conditions

The pit currently has two approaches to Highway 287 which are permitted with Montana Department of Transportation. The northern approach accommodates traffic entering the pit, while the southern approach is utilized by traffic exiting the pit. Any emergency services would come from Ennis.

Alternatives

No Action Alternative

- Impacts: The no action alternative may decrease the amount of traffic that enters and exits the pit onto Highway 287. The decrease would be expected to be negligible as the proposed action is not a primary use of the DSL pit. Most of the traffic entering and exiting the pit is associated with gravel mining and not the proposed activities.

Action Alternative

- Direct Impacts: The selection of the action alternative would not be expected to change the impacts to traffic patterns. The proposed action has occurred at the site for years and if it were to continue by selecting the action alternative, the traffic patterns would not be expected to change. Any emergency services would be provided by Ennis. No changes to need for emergency services would be expected.
- Secondary Impacts: No secondary impacts to demand for government service would be expected.
- Cumulative Impacts: The selection of the action alternative would not be expected to change cumulative impacts to the demand for government services.
- Duration: No impacts are expected, therefore duration is not applicable.

19. LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS:

List State, County, City, USFS, BLM, Tribal, and other zoning or management plans, and identify how they would affect this project.

Current Conditions

There are no known environmental plans or goals for this tract or in the project vicinity.

Alternatives

No Action Alternative

- Impacts: The no action alternative is not expected to have direct, secondary, or cumulative impacts on locally adopted plans or goals.

Action Alternative

- Direct Impacts: No direct impacts are expected; there are no known zoning or management plans that are applicable for this tract.
- Secondary Impacts: No secondary impacts are expected to any locally adopted environmental plans.
- Cumulative Impacts: The selection of the action alternative would not be expected to change cumulative impacts to any adopted environmental plans.
- Duration: There are no expected impacts, therefore duration is not applicable.

20. ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES:

Identify any wilderness or recreational areas nearby or access routes through this tract. Determine the effects of the project on recreational potential within the tract. Identify cumulative effects to recreational and wilderness activities.

Current Conditions

This tract is publicly accessible but only has minor recreational use. The tract is not designated as wilderness, nor does it provide access to wilderness areas.

Alternatives

No Action Alternative

- Impacts: The no action alternative would not be expected to have any direct, secondary, or cumulative impacts to access and quality of recreational and wilderness activities.

Action Alternative

- Direct Impacts: The selection of the action alternative would not be expected to have any impacts on access to and quality of recreational and wilderness activities.
- Secondary Impacts: No secondary impacts to quality of recreational and wilderness activities are expected.
- Cumulative Impacts: The selection of the action alternative would not be expected to change cumulative impacts to the quality of recreational and wilderness activities.
- Duration: No impacts are expected, therefore duration is not applicable.

21. DENSITY AND DISTRIBUTION OF POPULATION AND HOUSING:

Estimate population changes and additional housing the project would require. Identify cumulative effects to population and housing.

Current conditions

The closest population center to the project is Ennis, MT.

Alternatives

No Action Alternative

- Impacts: The no action alternative is not expected to have any direct, secondary or cumulative impacts to the density and distribution of population and housing.

Action Alternative

- Direct Impacts: No direct impacts to the density and distribution of population and housing are expected.
- Secondary Impacts: No secondary impacts are expected to density and distribution of population and housing.
- Cumulative Impacts: The selection of the action alternative is not expected to change cumulative impacts to density and distribution of population and housing
- Duration: No impacts are expected; therefore, duration is not applicable.

22. SOCIAL STRUCTURES AND MORES:

Identify potential disruption of native or traditional lifestyles or communities.

Current conditions

There are no known native or traditional lifestyles or communities nearby.

Alternatives

No Action Alternative

- Impacts: The no action alternative is not expected to have any direct, secondary, or cumulative impacts to native or traditional lifestyles.

Action Alternative

- Direct Impacts: No impacts are expected to native or traditional lifestyles.
- Secondary Impacts: No secondary impacts to native or traditional lifestyles are expected.
- Cumulative Impacts: The selection of the action alternative would not be expected to have significant cumulative impacts to native or traditional lifestyles in the area.
- Duration: No impacts are expected; therefore, duration is not applicable.

23. CULTURAL UNIQUENESS AND DIVERSITY:

How would the action affect any unique quality of the area?

Current Conditions

There are no known unique qualities in the area.

Alternatives

No Action Alternative

- Impacts: The no action alternative is not expected to have any direct, secondary or cumulative impacts to the cultural uniqueness and diversity.

Action Alternative

- Direct Impacts: No direct impacts are expected to cultural uniqueness or diversity.
- Secondary Impacts: No secondary impacts to cultural uniqueness and diversity are expected.
- Cumulative Impacts: The selection of the action alternative would not be expected to have cumulative impacts to the cultural uniqueness and diversity of the area.
- Duration: No impacts are expected; therefore duration is not applicable.

24. OTHER APPROPRIATE SOCIAL AND ECONOMIC CIRCUMSTANCES:

Estimate the return to the trust. Include appropriate economic analysis. Identify potential future uses for the analysis area other than existing management. Identify cumulative economic and social effects likely to occur as a result of the proposed action.

No Action Alternative

- The no action alternative would not have any direct, secondary or cumulative impacts to the trust. It would not generate any economic value.

Action Alternative

- **Direct Impact:** Judge Berger’s order specifically stated that the DNRC must “Charge A.M. Welles fair market value, which was established in their contract with Riverside, for its asphalt and concrete recycling and storage of offsite materials.” The contract that Judge Berger is referring to, was an amendment to the gravel permit for this site which allowed Riverside, through AM Welles, the ability to operate an asphalt plant from April 3, 2024 until June 8, 2024 for a rental amount of \$4,000. This equates to approximately \$2,000 per month. Therefore, to comply with the order issued by Judge Berger, the selection of the action alternative would create a license that would charge AM Welles \$2,000 on the first of each month as long as the license remains active. Judge Berger issued his order on July 9th, 2025. If the action alternative is selected and the license is issued. AM Welles shall remit back-payment for all months since the order was given beginning with August 2025. The payments made by AM Welles will be distributable and will be appropriated bi-annually by the Montana legislature to the Common Schools.
- **Secondary Impact:** There are no secondary impacts from the selection of the action alternative
- **Cumulative Impacts:** Annually, the Forestry and Trust Lands Division of the Montana DNRC contributes millions of dollars to the trust lands beneficiaries of Montana. The revenue created from the proposed activity would add to this total.
- **Duration:** The land use license’s term may be up to ten years, but the proponent must hold an active aggregate take and remove permit from the Department as a provision of the license. If the aggregate take and remove permit expires without renewal or is cancelled or terminated, the license shall also expire, cancel or terminate.

EA Prepared By:	Name: Zack Winfield	Date: 3/20/25
	Title: Petroleum Engineer	

V. FINDING

25. ALTERNATIVE SELECTED:

I have reviewed this document, Judge Luke Berger's order, the project files, and the applicable laws and rules that govern Montana trust lands. I have decided to select the action alternative. The action alternative implements a solution that was ordered by Montana's Madison County District Court. It aligns with the Montana trust lands' mandate of generating revenue for the trust beneficiary. The selection of the action alternative will not impair the future income generating capacity of the land.

26. SIGNIFICANCE OF POTENTIAL IMPACTS:

The significance of potential impacts are adequately evaluated within this document in the applicable resource sections. As described, the impacts of selecting the action alternative will either be none, negligible or minor. The significance of impacts will also be reduced by the implementation of mitigations identified within the analysis. Those mitigations will be included as special provisions within the Land Use License. The special provisions to be included in the license are:

- Activities authorized under the Land Use License may only occur in areas that have been stripped of topsoil and overburden.
- All equipment utilized in recycling and storage activities must be regularly maintained and inspected to ensure it is not leaking fluids, spreading noxious weeds, creating an undue fire hazard or threatening the life or property of others.
- Concrete and Asphalt crushing and recycling shall be limited to daylight hours only.
- Each January 1st, that the license remains in effect, the licensee shall report to the Department the source of all offsite materials that enter the licensed premises.

• 27. NEED FOR FURTHER ENVIRONMENTAL ANALYSIS:

EIS

More Detailed EA

No Further Analysis

EA Approved By:	Name: Trevor Taylor Title: Minerals Management Bureau Chief
Signature:	 Date: 3/20/2026

Appendix A: Scoping Notice, Legal Advertisements, Public Comments and Response

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Initial Scoping Notice Published in Ennis, MT Madisonian September 11 & 18, 2026

The Department of Natural Resources and Conservation (DNRC) is seeking public comment on a Land Use License application made by A.M. Welles, Inc. The application is to utilize a portion of the area authorized under Montana DNRC Aggregate Take and Remove Permit G-1273-94 and Montana DEQ Opencut Permit 674 for the purpose of storing, selling and recycling, recycled asphalt and concrete; also, storing and selling decorative rock. The comment period will begin on Thursday September 18th, 2025 at 8 AM and it will close on October 17th, 2025 at 5 PM. To make a comment, please utilize the following link: <https://forms.office.com/g/QSzL58R2QH> --- If you are unable to utilize the link, please mail your comment to ATTN: Zack Winfield, DNRC, 1539 11th Ave, Helena, MT 59602. For more information about the project, a full scoping letter can be found on the DNRC Website at: <https://dnrc.mt.gov/TrustLand/subsurface-resources/Documents/Scoping-Letter-AM-Welles-Storage-LUL.pdf>

GOVERNOR GREG GIANFORTE



DNRC DIRECTOR AMANDA KASTER

September 2, 2025

Initial Proposal Scoping Notice**AM Welles Storage of Offsite Materials LUL**

The Department of Natural Resources and Conservation (DNRC) is seeking public comment regarding a land use license application made by A.M. Welles, Inc. to store, sell and recycle, recycled asphalt and concrete; and also, to store and sell decorative rock within the boundaries of what is known as the "DSL Pit." The DSL Pit is a gravel pit located on State of Montana Trust Lands north of Ennis on Section 16, Township 5S, Range 1W. The operation of the gravel pit is authorized under DNRC aggregate take and remove permit G-1273-94 and Montana DEQ opencut permit number 674; the activities authorized by these permits are not being considered for comment during this scoping period.

DNRC is soliciting public comment in accordance with the Montana Environmental Policy Act for the storage of offsite materials within the boundaries of the pit. Substantive comments should be related solely to storage activities and any comments or portions of comments outside the scope of storage activities will not be considered by the DNRC within their analysis. The analysis will consider two alternatives:

1. **No Action Alternative:** The no action alternative would deny A.M. Welles request to utilize the pit area to store, sell and recycle, recycled asphalt and concrete; and store and sell decorative rock.
2. **Action Alternative:** The action alternative would grant the land use license to A.M. Welles to store, sell and recycle, recycled asphalt and concrete; and store and sell decorative rock.

A 30-day comment period for the project will begin on September 18th, 2025 at 8 AM and will stay open until October 17th, 2025 at 5 PM. Comments may be submitted electronically by utilizing the following link:

<https://forms.office.com/g/QSzL58R2QH>

If an individual is unable to submit comments electronically, they may mail their comment to ATTN: Zack Winfield, Montana DNRC, 1539 11th Ave, Helena, MT 59602.

Sincerely,

Zack Winfield, PE

Petroleum Engineer – Minerals Management Bureau – MT DNRC



Notification of Draft, Second Comment Period published in Madisonian Dec 25, 2025 and Jan 1, 2026

The Department of Natural Resources and Conservation (DNRC) is seeking public comment on the adequacy of a draft environmental analysis. The document analyzes impacts of an action and no-action alternative related to an application for Land Use License made by A.M. Welles, Inc., to store and recycle offsite materials within the DSL gravel pit. The DSL pit is located on State Trust Land, approximately 3 miles North of Ennis, MT. The comment period will begin on December 26, 2025 at 8 AM and it will close on January 26, 2026 at 5 PM. To make a comment, please utilize the following link:

<https://forms.office.com/g/QSzL58R2QH> --- If you are unable to utilize the link, please mail your comment to ATTN: Zack Winfield, DNRC, 1539 11th Ave, Helena, MT 59602. The draft analysis can be accessed using the following URL:

https://dnrc.mt.gov/docs/environmental-documents/minerals/12-09-2025_Draft-EA-LUL-for-Offsite-Storage-and-Recycling-AM-Welles-DSL-Pit.pdf



January 22, 2026

Zack Winfield, DNRC
1539 11th AVE
Helena, MT 59602

RE: Land Use License – draft environmental analysis

Dear DNRC:

Please accept this public comment regarding the above-referenced LUL application for off-site materials storage. This comment is submitted by the applicant, A.M. Welles.

A.M. Welles has maintained an agreement with the DNRC for more than 20 years that allows the storage and processing of off-site construction materials. This agreement provides an important service to local contractors who perform essential work throughout the Madison Valley, including road construction and maintenance. The stone materials (“riprap”) stored at the site have been used by Madison County and its contractors to repair stream channels and ditches during flooding events. In addition, the recycling of concrete and asphalt at this location diverts material from being dumped in a landfill.

A.M. Welles acknowledges and accepts the Order issued by the Madison County District Court on July 9, 2025, which directed DNRC to “charge A.M. Welles fair market value, which was established in their contract with Riverside, for its asphalt and concrete recycling and storage of off-site materials.”

However, it is important to clarify A.M. Welles’ opinion that the Riverside contract referenced in the Order did not, in fact, establish fair market value for asphalt and concrete recycling or for the storage of off-site materials. The \$4,000 payment in that contract was negotiated specifically for Riverside to operate an asphalt hot plant on-site on a one-time basis. That price reflected unique contract restrictions and the limited timeframe associated with Riverside’s contract with the Montana Department of Transportation.

The concrete and asphalt recycling and the storage of off-site materials conducted by A.M. Welles at the DNRC (DSL) site are NOT related to asphalt hot-plant operations and are not comparable in size, scope, or scale to paving operations.

A.M. Welles believes that fair market value for processing and storing off-site materials at the DSL site is appropriately established by the royalty rate set forth in the DNRC permit. DNRC increased the site royalty in 2026 to \$1.75, and A.M. Welles is willing to pay the same rate for the storage and processing of off-site materials as is paid for gravel under the existing royalty structure.

A.M. Welles encourages DNRC to review all relevant contracts and sites to ensure consistency across similar activities when determining fair market value and to carefully distinguish operations that are directly related to mining from those that are not.

Thank you for your consideration and attention to this matter.

Sincerely,

Tim Hokanson
A.M. Welles, Inc.

GALLIK & BREMER, P.C.

Attorneys at Law
777 East Main Street, Suite 203
Post Office Box 70
Bozeman, Montana 59771-0070

VIA EMAIL ONLY

February 2, 2026

Zach Winfield, PE
Montana Department of Natural Resources and Conservation
Minerals Management Bureau
1539 Eleventh Avenue
Post Office Box 201601
Helena, MT 59601
Zackary.winfield@mt.gov

RE: AM Welles Storage of Offsite Materials LUL: Public Comment Opposing the AM Welles DSL Gravel Pit Land Use License to Allow Processing of Offsite Materials – Montana State Trust Lands, Section 16, Township 5 S, Range 1 W, Madison County Montana

Dear Mr. Winfield:

We represent the Channels Ranch, Inc., which owns property at 120 Ennis Lake Road, Ennis, Montana 59729 (“Channels Ranch”) and Frazor “Ty” Edmondson, owner of 144 Ennis Lake Road, Ennis, Montana 59729, both of which are directly across the Madison River from the DSL Gravel Pit operated by AM Welles. This is not the first time you have heard from these owners and this law firm about issues related to the extraction and processing activities at the AM Welles DSL Gravel Pit (“DSL Gravel Pit” or “DSL Pit”). Our clients are now faced with unpermitted and correspondingly unlawful activities at the DSL Gravel Pit, which DNRC now seeks to rubberstamp through an inadequate process and another incomplete Environmental Assessment.

The Environmental Assessment for the project titled DRAFT LUL – Storage of Offsite Materials within AM Welles DSL SITE (“EA or “Environmental Assessment”) prepared by the Department of Natural Resources and Conservation (“DNRC”) does not adequately address the impacts resulting from the storage of offsite materials, fails to even identify those materials, and the location from which the offsite materials are being imported. The EA does not adequately address the impacts from recycling and processing of asphalt and concrete, the location from which they are being transported, and unknown materials and contaminants contained therein. The EA also failed to specify the equipment being used for the processing and recycling and whether that is the same equipment being used for the processing of raw materials being excavated, raising the potential for cross-contamination.

For the reasons described herein and in Mr. Edmondson’s October 2025 comments in response to the Scoping Notice, the Channels Ranch and Ty Edmondson adamantly and unequivocally oppose AM

Welles' Land Use License ("License" or "LUL") to process and recycle asphalt and concrete, and store offsite materials, within the boundaries of the DSL Gravel Pit, located on Montana State Trust Lands off US Highway 287, in Madison County, Montana near the Madison River and Ennis Lake ("Subject Property").¹

In the EA, DNRC dismisses the enhanced environmental risks and dangers associated with these storage and processing uses, which risks and dangers were pointed out in our client's comments on the Scoping Notice. The EA justifies the proposed activities, relying on the uses having occurred historically within the boundaries of the DSL Pit, despite those use not being permitted.² AM Welles cannot benefit from its own wrong and the uses must be discontinued, at the very least until an adequate EA is prepared and DNRC has complied with its obligations under the Montana Environmental Policy Act and obtained the License for the asphalt and concrete processing and recycling activities and storage of offsite materials as ordered by the Court in Cause No. DV-29-2023-37 ("Court Order").³ AM Welles has undertaken and benefitted from these activities for an untold years unlawfully and without a permit, and should not be allowed to continue to benefit from its own wrongdoing.

Montana Environmental Policy Act and Adequacy of Review Required

One [unstated] purpose of the Montana Environmental Policy Act ("MEPA") is to ensure state agencies to take into consideration their constitutional obligations under Article II, section 3⁴ and Article IX⁵ of the Montana Constitution. Section 1 of Article IX charges that the "state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations."⁶

MEPA requires the adequate review of state actions to ensure "the public is informed of the anticipated impacts in Montana of potential state actions."⁷ Given the EA's deficiencies, addressed herein and in other public comments, the public has not been informed of the anticipated impacts resulting from the storage of unknown offsite materials and processing and recycling of asphalt and concrete, containing unknown materials, at the DSL Gravel Pit.

¹The Subject Property is more particularly described as the Southeast Quarter of Section 16 T5S R1W, Madison County, Montana.

² Environmental Assessment: DRAFT LUL – Storage of Offsite Materials within AM Welles DSL Pit ("EA"), page 1.

³ Section 1-3-208, MCA Own wrong -- no advantage. A person may not take advantage of the person's own wrong.

⁴Constitution of Montana, Article II, Declaration of Rights, Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

⁵Article IX. Environment and Natural Resources, Part IX, Sections 1 – 7.

⁶ Article IX. Environment and Natural Resources, Part IX, Section 1.

⁷Mont. Code Ann. § 75-1-102(1)(b).

DNRC failed to take a “hard look” at the environmental impacts of processing offsite materials, including asphalt and concrete.⁸ Again, the EA fails to identify the offsite materials, the locations from which the offsite materials are being imported, and unknown materials and contaminants contained therein. The EA also failed to describe equipment being used for the processing and recycling and consider potential cross-contamination, if it is same equipment being used for processing of raw materials being excavated onsite.

And the EA does not contain relevant information, much less adequate relevant information, nor was all pertinent data considered,⁹ much less any real data. The DNRC’s reliance on four other environmental analysis prepared by the Montana Department of Environmental Quality (“DEQ”) or DNRC for other opencut mining activities on the DSL Gravel Pit Site since 2022 to justify the conclusions in this EA was insufficient, given the lack of information described above, the difference in the activities and potential impacts, and taking into account “[t]he Opencut Mining Program does not regulate, and does not have the expertise nor the authority to approve the handling, stockpiling, treatment, crushing or disposal of contaminated materials or solid wastes.”¹⁰ One of the environmental assessments relied upon, the most recent, dated July 2024 for Opencut Permit #674 AM Welles, Inc. DSL Pit (“July 2024 EA”), comes as a surprise. Despite commenting on this DSL Pit for at least the last three years, neither this firm, nor our clients were notified of the July 2024 EA, nor afforded the opportunity to comment on it. Moreover, notwithstanding the hefty length of the July 2024 EA relied upon by DNRC for justifying this License it does not address all of the activities contemplated by the LUL. For example, that EA mentions the recycling of “materials containing asphalt” and “concrete debris from construction or demolition projects imported to the site and stockpiled” but does not analyze those activities in any detail nor the materials contained therein, and it does not address storage of offsite materials, nor decorative rock.¹¹ The July 2024 EA states “[a]n operation that imports materials containing asphalt must be permitted to store the debris awaiting recycling. Note: Imported debris may be a mixture of various materials (e.g. asphalt, concrete, soil, gravel, etc.). However, if the debris contains asphalt, it must be permitted as asphalt storage.”¹² Do the offsite materials contemplated for storage and processing include asphalt and if so, has this been permitted and bonded? It also contemplates burial of “on-site generated asphalt that has never left the site” at the DSL Pit “as long as it is buried at least 25 feet above the ordinary high water table and under 3 feet of clean fill material suitable for sustaining the postmining vegetation” with no analysis of what the onsite generated asphalt may contain.¹³ These are just a few of the inadequacies of relying on that EA for the activities contemplated by the License.

⁸ *Clark Fork Coalition v. Mont. Dep't of Env'tl. Quality*, 2008 MT 407, ¶ 47.

⁹ “Implicit in the requirement that an agency take a hard look at the environmental consequences of its actions is the obligation to make an adequate compilation of relevant information, to analyze it reasonably, and to consider all pertinent data.” *Ravalli Cty. Fish & Game Ass'n, Inc.*, 273 Mont. at 381, 903 P.2d at 1369 (1995) (citing *Sierra Club v. U. S. Army Corps of Engrs.*, 701 F.2d 1011, 1029 (2nd Cir. 1983)).

¹⁰ See August 2, 2012 email from Monte Mason, then Minerals Management Bureau Chief, Montana DNRC, to Mr. Bob Waller and Chris Cronin, among others, a copy of which is attached as Exhibit A.

¹¹ Environmental Assessment July 2024 for Opencut Permit #674 AM Welles, Inc. DSL Pit, pages 88-89.

¹² *Id.* at 88.

¹³ *Id.*

DNRC has not meaningfully addressed the significant environmental issues related to processing of offsite materials – concrete and asphalt in particular, and potentially other unknown materials and rock, thus DNRC has not fulfilled its obligations under MEPA. An updated EA is necessary to address the deficiencies and inadequacies identified herein.

Unauthorized Activities at the DSL Site

AM Welles is undertaking the unauthorized activities at the DSL Site without a license, when it knew, and DNRC should have known, the storage of offsite materials and processing of asphalt and concrete were not allowed under permits held by AM Welles. In 2012, Monte G. Mason, then Minerals Management Bureau Chief, specified the AM Welles permit does not authorize it to bring in any offsite material onto the site (“Mason Determination”).¹⁴ AM Welles has been on notice since that time that it was not permitted to bring offsite material to the site, much less store it there. AM Welles was also on notice that “[t]ransporting, handling, stockpiling, and processing contaminated soil is not allowed under the current Opencut Mining Permit.”¹⁵

Despite this and the recent Court Order, we understand AM Welles has continued to these activities within the boundaries of the DSL pit without the required license or permit.¹⁶

The EA, states that no other permits are needed for the storage of offsite materials and recycling and processing of asphalt and concrete on these State Trust Lands, which is contradicted elsewhere in the EA as DNRC relies on the applicant to have a DRNC permitted water right and air quality permits at a minimum.¹⁷

Public Participation

*“One of the central premises of MEPA is informed decisionmaking. Without public participation, a truly informed decision is unobtainable.”*¹⁸

Importing, storage, and processing of offsite, unidentified, unknown, and potentially contaminated materials, including asphalt and concrete DSL Gravel Pit are matters of significant public interest as demonstrated by the numerous substantive comments submitted by nearby property owners, residents, and the public in response to the Scoping Notice and with respect to the License application, including comments from Mr. Edmondson. Many of those comments were not addressed by the EA. Our clients were not informed of the July 2024 EA nor afforded the opportunity to comment on it, thus unable to participate in the process, thus neither DEQ nor DNRC are relying on informed decision making.

¹⁴ See August 2, 2012 email from Monte Mason, then Minerals Management Bureau Chief, Montana DNRC, to Mr. Bob Waller and Chris Cronin, among others, a copy of which is attached as Exhibit A.

¹⁵ See August 2, 2012 email from Chris Cronin, then DEQ Opencut Mining Program Supervisor, to Mr. Bob Waller included at Exhibit A.

¹⁶ EA, page 1.

¹⁷ EA, page 2.

¹⁸ Stockwell, Hope, *A Guide to the Montana Environmental Policy Act*, 2021, page 44.

Will DNRC be providing a public meeting to take oral testimony on this matter, to allow nearby property owners, residents, and the public a meaningful and effective opportunity to participate in those substantive issues consistent with their constitutional rights¹⁹, and providing the public with the necessary information and responses to questions. “The philosophical underpinnings of public participation lie in the notion that government derives its power and legitimacy from the consent of the governed. Public involvement is not a separate component of the MEPA process. Rather, public involvement is integral to each step of environmental review.”²⁰ Absent responding to the questions raised herein and by our clients and the public, DNRC cannot be fully informed with respect to adverse impacts and concerns related to the LUL for processing, recycling and storage of unknown and unidentified offsite materials, including asphalt and concrete and potential contaminants therein.

Lack of Information and Detailed Analysis Cannot Form the Basis of a Well-Informed Decision

The EA lacks the information and analysis to adequately evaluate the Action and No Action Alternatives as required by MEPA as well as the Direct, Secondary and Cumulative Impacts, and it relies on the ongoing though unlicensed thus unlawful operations to justify impacts.

The level and depth of analysis and the appropriate detail required to adequately evaluate the proposed action are determined from an assessment of the complexity of the proposed action, the environmental sensitivity of the area, the **degree of uncertainty** that the proposed action will have a significant impact, and the need for and complexity of mitigation required to avoid the presence of significant impacts (MEPA Model Rule V(2)).²¹

We remind you again that the DSL Gravel Pit is located in an ecologically sensitive rural residential and agricultural area of the Madison Valley, as further described below. The lack of information regarding the materials being imported and stored and composition of the asphalt and concrete being processed, the location from which they are being transported along with other offsite materials being transported to the DSL Pit create a **significant degree of uncertainty** as to whether the proposed action will have a significant impact.

The EA does not describe the “affected environment” as required under MEPA and its Model Rules for the Action Alternative nor the so called No Action Alternative.²² In most cases the consideration of

¹⁹ Constitution of Montana, Article II, Declaration of Rights, Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law; Constitution of Montana, Article II, Declaration of Rights, Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

²⁰ Stockwell, Hope, *A Guide to the Montana Environmental Policy Act*, 2021, page 44.

²¹ Stockwell, Hope, *A Guide to the Montana Environmental Policy Act*, 2021, page 42.

²² The “affected environment” describes those aspects of the existing environment that are relevant to the identified issues. The description of the affected environment should be concise but thorough.

impacts is limited only to the DSL Gravel Pit rather than offsite impacts. The DSL Gravel Pit site is located in a rural residential and agricultural area of the Madison Valley, proximate to the Valley Garden Land and Cattle Company, a longstanding and ongoing agricultural operation, the neighboring Channels Ranch, and Ty Edmondson's home, among other nearby rural residential housing between Ennis and McAllister, including the Troutdale residential subdivisions. This is an ecologically sensitive area with numerous water bodies, as recognized by the DSL Gravel Pit EA, including the Madison River, Moose Creek, Ennis Lake, and related wetlands. DNRC has previously acknowledged the abundance of wildlife, including elk, white tail deer, moose, and antelope, fish, including the rare Arctic Grayling, and area bird populations including Tundra Swans, Sandhill Cranes, and Hungarian Partridge, yet seeks to disregard them now. Human health and wildlife concerns were identified by the public in the comments to the Scoping Notice, and the entire affected environment is the baseline from which impacts should have been assessed in the EA.

The MEPA Model Rules require an analysis of the environmental effects in terms of the direct, secondary, and cumulative impacts on the physical and human environment. This analysis should be completed for all resources that are raised and identified as relevant issues in the initial scoping process.²³

Many statements in the EA are cursory or conclusory at best, with no supporting data, studies, or references in support, further undermining the sufficiency of the Environmental Assessment. Reliance on EAs prepared by DEQ and DNRC for other activities on the site or which do not take into account the actual materials being processed and stored onsite does not cure the deficiencies. The EA did not provide, address, or adequately consider many of the direct impacts to the affected environment due to the activities and unknown and potential contaminated materials, concrete and asphalt, much less cumulative and secondary impacts, nor impacts that may extend offsite given the processing and recycling activities. With the lack of identified materials and potential contaminants, the failure to specify equipment being used for the processing and recycling raises concerns regarding potential cross-contamination if it is the same equipment being used for the processing of raw materials being excavated.

The cursory level of analysis provided is particularly egregious given Mr. Edmondson's comments in response to the Scoping Notice, as well as concern expressed and issues raised by the public in recent years regarding the expansion of industrial and extraction activities and the asphalt and batch plant at the DSL Gravel Pit. The processing and recycling of concrete and asphalt, importing and storage of unknown offsite materials, coupled with the prior expansion of the mine area and ongoing mining operations, crusher, pug mill, screen, conveyor, and wash plant, all collectively have environmental impacts beyond just mining extraction or the current LUL and proposed uses considered individually.

The description should emphasize those aspects of the human environment that are relevant to each identified issue. The description of the affected environment serves three purposes: (1) it provides a baseline from which to analyze and compare alternatives and their impacts; (2) it ensures that the agency has a clear understanding of the human environment that would be impacted by the proposed action; and (3) it provides the public with a frame of reference in which to evaluate the agency's alternatives, including the proposed action. Stockwell, Hope, *A Guide to the Montana Environmental Policy Act*, 2021, pages 38-39.

²³ Stockwell, Hope, *A Guide to the Montana Environmental Policy Act*, 2021, page 39.

These are the cumulative impacts that should have been addressed in the EA. Instead, they were dismissed with conclusory statements, no evidence, or reliance on EAs that do not address the activities and unknown materials that are the subject of this EA.

The title of the EA, that is the project name, is misleading in that it refers to a “DRAFT LUL – Storage of Offsite Materials within AM Welles DSL Pit.” This title does not take into account the processing and recycling of concrete and asphalt, storage thereof and related impacts, nor does it afford notice of the contents of the EA to the public. The location of the processing and recycling of offsite materials is also incorrect and misleading as the County is listed as Roosevelt, when the location is actually Madison County. Moreover, large boulders and rocks are located outside the DSL Pit boundaries, rather than within the current activity area described by the EA as “approximately 2.43 acres within the pit.”²⁴ Mitigation provided in the EA requires that “[a]ctivities authorized under the Land Use License may only occur in areas that have been stripped of topsoil and overburden.” However that does not reflect the current conditions. Will the License require those to be relocated within the “up to 2.5 acres of pit area for storage of offsite materials.”

DNRC simply cannot make a well-informed decision based on the EA, and any decision relied on would be legally indefensible.

Adverse Impacts from Concrete and Asphalt Processing and Recycling and Storage of Offsite Materials at the AM Welles DSL Gravel Pit

The Channels Ranch and Mr. Edmondson own property to the east of the DLS Gravel Pit near the Madison River, and they are justifiably concerned about the inadequacy of the Environmental Assessment as related to the LUL for storage of offsite materials and asphalt and concrete processing in this environmentally sensitive area of Madison County, including impacts to water quality, air quality, soils, wildlife, noise and dust, quality of life, and public health and safety. Processing and recycling asphalt and concrete “can emit plumes of fine dust” and exposure to particulate matter²⁵ which can be transported by prevailing winds offsite and to the surrounding environment. It is not only the immediate negative impacts that are of great concern, but also the secondary and cumulative impacts resulting from the combined industrial processing and extraction operations on the AM Welles DSL Gravel Pit site.

The introduction of offsite sourced materials for processing and storage, including asphalt and concrete create and unknown and potentially unacceptable risk of environmental contamination from Polycyclic Aromatic Hydrocarbons (PAHs), and Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM), which can be present in concrete and asphalt, and are carcinogenic to humans. As raised comments on the Scoping Notice, these materials necessitate a level of rigorous and perpetual testing and oversight by DNRC that the agency has never met in the past.

²⁴ EA at page 3.

²⁵ *Bill Aims to Protect Communities of Color from Polluting Concrete Factories*, by Naveena Sadasivam, April 26, 2017, Texas Observer. <https://www.texasobserver.org/bill-aims-to-protect-communities-of-color-from-polluting-concrete-facilities/>.

As raised by Mr. Edmondson in October 14, 2025 comments in response to the Scoping Notice, heavy metals like lead, chromium, and cadmium may be contained in recycled concrete aggregate (RCA) and reclaimed asphalt pavement (RAP) and, if these materials are not properly tested and managed, the metals can leach out into the surrounding soil and groundwater, posing a risk to human health and the environment.²⁶ Those comments are attached as Exhibit B, and with the sources included therein are incorporated by reference. As he also observed, contamination can also be present in the original source concrete or asphalt, particularly when recycling commercially sourced concrete or when materials are used in highly acidic environments like mines with sulfur-containing minerals and raised numerous other particularized concerns about the contents of the concrete and asphalt being processed.²⁷ None of these specific comments and issues raised in the comments to the Scoping Notice were addressed by the EA.

Questions were also raised about operational and public safety hazards that were not addressed in the EA, including traffic and highway safety, potential for increased wildfire hazards, which is of particular concern given the unknown nature and potential contaminants in the materials being stored onsite and processed, as well as dust and fumes generated by this activity. With the prevailing winds in the Madison Valley, there is a risk of dust and particulates being transported offsite. Concerns about the numerous wildlife species in the area and potential offsite impacts from the processing and recycling were dismissed by the EA. The lack of time limitation or duration of the processing and storage of offsite materials was also raised as a concern, with no response in the EA other than to state the uses would be during daylight hours. It is commonly known that daylight hours are long in Montana in the summer. This does not give neighboring owners any information on the potential duration of these potential contaminating industrial uses. For example, can the offsite materials remain onsite after reclamation of the DSL site? Can the sale of the potentially contaminated processed asphalt and concrete continue beyond permit end date of 2032? The questions remain unanswered.

Water Quality and Quantity Impacts

Public comment in response to the Scoping Notice, raised concerns regarding contaminants from asphalt, concert and decorative rock leaching into the groundwater table and contaminating drinking water and surface water, impacting human health and wildlife and the LUL activities required usage of water. Despite this, water quality and quantity impacts were inadequately addressed in the EA. See in particular the detailed concerns raised Mr. Edmonson's comments attached hereto at Exhibit B.

A.M Wells has previously admitted in applications that “asphalt is considered to have the potential to impact water quality.”²⁸ (Emphasis added.) DNRC's Environmental Statement for the DSL Gravel Pit renewal and expansion acknowledged the significant water resources in the immediate area, stating “[s]ection 16 contains an ephemeral drainage that is a tributary of Moore Creek, an already degraded waterway. Moore Creek drains into Fletcher channel, which ultimately drains into Ennis

²⁶ See, Leaching characteristics of metals from recycled concrete aggregates (RCA) and reclaimed asphalt pavements (RAP), Hung, Vu Quoc, et al. (2024), Heliyon, 10(9), Article number: e30407. <https://eprints.qut.edu.au/248371/>

²⁷ See Exhibit B, footnote 5.

²⁸ See Section D6(1) of the Asphalt Plant application on file and of record with DNRC. Given DNRC's reliance on those previous EAs, it is reasonable to raise DNRC's admissions therein.

Lake.”²⁹ DNRC further admitted that “[r]unoff from large rain events may collect and distribute particles from the pit area to the ephemeral drainage.”³⁰ And the Asphalt Plant EA recognized the location of surface waters proximate to the DSL Gravel Pit, including the main channel of the Madison River and Ennis Lake, Moore Creek (a jurisdictional waterway, 303(d) listed, water quality impaired stream and tributary of the Madison River that drains into Ennis Lake within 1000 of the DSL Gravel Pit), Fletcher Chanel, an unnamed tributary, and other water bodies.³¹ Despite this, DNRC concluded no direct impacts to groundwater or these surface waters was expected, relying on Dr. Nickin’s report for a previous EA that did not address processing and recycling of asphalt and concrete containing unknown other materials and the storage of offsite materials, nor potential leaching therefrom. The Water Quality section of the July 2024 EA acknowledges “storage of asphalt awaiting recycling” as “actions that may result in negative impact to fisheries resources in the project area” but does not otherwise address surface water impacts.³² Neither that EA nor the EA at issue address the hazardous materials and contaminants raised in the Scoping Notice comments attached as Exhibit B.

Again, no information was included in the EA at issue regarding equipment being used to process and recycle asphalt and concrete, nor was the potential for offsite migration offsite adequately addressed. This is despite DNRC’s acknowledgment in the Air Quality analysis that “[f]ugitive dust and emissions may travel offsite to the surrounding area.”³³ Taking into prevailing winds in the Madison Valley, this is a likelihood. DNRC’s analogies to bridge decks, bridge pillars and dams (made of concrete) is inaccurate as those are solid encased forms of concrete – not processed and recycled concrete and asphalt which release dust and particulates that are not encased nor necessarily contained. Crushed and recycled concrete and asphalt, and resulting dust and particulates were not addressed by the EA, despite DNRC’s acknowledgement of dust emissions.³⁴ Leaching was not even considered, despite potential for semi-volatile organic compounds (Naphthalene, butylated hydroxytoluene (BHT) and dibutyl phthalate (DBP)) leachates from recycled asphalt pavement.³⁵ In studies, a major leaching mechanism was dissolution of organic contaminants from the surface of asphalt gravels.³⁶ Taking into consideration the foregoing, potential direct impacts to water quality were not thoroughly and adequately addressed. And the current conditions and health of the aforementioned water bodies were likewise not considered in the EA.

The present EA fails to address water usage for the processing and recycling operations, though admits “impacts would be mitigated through water sprayers”³⁷ with no quantification. If the same machinery

²⁹ See Section D6(1) of the Asphalt Plant application on file and of record with DNRC. Given DNRC’s reliance on those previous EAs, it is reasonable to raise DNRC’s admissions therein.

³⁰ Id.

³¹ See Section D6(1) of the Asphalt Plant application on file and of record with DNRC. Given DNRC’s reliance on those previous EAs, it is reasonable to raise DNRC’s admissions therein.

³² July 2024 EA at page 325.

³³ EA, page 7.

³⁴ EA, page 7.

³⁵ *Leaching of organic contaminants from storage of reclaimed asphalt pavement*, <https://pubmed.ncbi.nlm.nih.gov/15176747/>.

³⁶ *Leaching of organic contaminants from storage of reclaimed asphalt pavement*, <https://pubmed.ncbi.nlm.nih.gov/15176747/>.

³⁷ EA, page 7.

is being used as for the Asphalt Plant, at a minimum water usage for dust suppression and irrigation of stockpiles should have been addressed by the EA, not just a passing reference to mitigation. Furthermore, the EA failed to address whether there is water sufficient to address fire, explosion, and other catastrophic events that may result from the increased risks associated with processing of asphalt and concrete, unknown materials therein and storage of unknown offsite materials. The EA notes the no action alternative “may slightly reduce amount of water used by proponent at the site” without addressing the amount of water necessitated by the uses, nor the amount of water allowed under the water right.

DNRC’s Environmental Assessment for the DSL Gravel Pit renewal and expansion was inadequate for the reasons previously raised and should not be relied upon by DNRC here. The EA at issue here failed to effectively and meaningfully address effects to groundwater and surface waters, and the sufficiency of water relative to the exempt well and amount of water currently being utilized and that may be needed for the uses contemplated by the LUL. The exempt well is relied upon; however no quantification of water usage was provided to ensure adequacy. Having previously allowed AM Welles to operate without a water right provides no assurances that DNRC is complying with its permitting responsibilities. The secondary and cumulative impacts on water quality were also not adequately assessed, in particular given the unknowns associated with the offsite materials being processed, recycled and stored. The LUL should not be approved unless and until an adequate analysis of water impacts has been provided, and until the concerns raised in the attached comments have been addressed.

Air Quality Impacts, Dust, Particulates; Impacts on Human Population

“Concrete crushing plants, which recycle concrete from demolished roads and buildings, can emit plumes of fine dust...” and “[c]oncrete recycling plants emit dust containing silica, which can lead to lung cancer and tuberculosis.”³⁸

Crushing and processing during the recycling can release particulates, which necessitates management and mitigation of air quality impacts. Note again, the heavy metals and sources of contamination addressed previously and in the attached comments. “These plants are also often found near sand and gravel pits, concrete batch plants, and asphalt mixing units, which also release fine particulate matter. As a result, residents are exposed to multiple sources of pollutants that can cumulatively take a toll on their health.”³⁹

The July 2024 acknowledges “residents of a subdivision located a mile and a half north of the site have complained about dust during periods of high wind” however the potential for dust migration was not addressed by the current EA.⁴⁰ This is despite public concerns in response to the Scoping Notice, raised concerns regarding airborne particulates harmful to human health and wildlife and that the proposed action will create particular matter that contains radioactive and carcinogenic materials harmful to public health. The EA acknowledges that the no action alternative would eliminate a point source of

³⁸ *Bill Aims to Protect Communities of Color from Polluting Concrete Factories*, by Naveena Sadasivam, April 26, 2017, Texas Observer. <https://www.texasobserver.org/bill-aims-to-protect-communities-of-color-from-polluting-concrete-facilities/>.

³⁹ Id.

⁴⁰ July 2024 EA, page 287.

dust emissions and greenhouse gas admissions, however its conclusions are based on expectations – with no analysis.⁴¹ DNRC relies on applicant to obtain necessary permits and follow federal and state regulations, despite knowing and being complicit in applicant’s failure to obtain a LUL for the use the is the subject of this EA. DNRC relies on DEQ and EPA as the regulatory agencies, acknowledged an Air Quality Permit was needed for the Asphalt Plant, but failed to confirm the necessary permit was obtained. Evidence of an air quality permit for the current operations at the AM Welles DSL Gravel Pit should have been included and addressed in the EA. Despite recognizing that “[f]ugitive dust and emissions may travel offsite to the surrounding area”⁴² DNRC did not consider the unknown materials from which the dust and emissions may come, much less the toxic and hazardous chemicals that make up asphalt and concrete, including bitumen, a heavy residue by-product of oil refining – and failed to give the public comment meaningful consideration.

DNRC assumes the comparative dust and emissions generated from the processing and recycling of asphalt and concrete and unknown materials therein “will create far less particulate matter and would have less impact on air quality than the gravel mining”⁴³ without any quantification of how much asphalt and concrete will be processed, much less any knowledge of the potential for other contaminants or toxic chemicals therein. The EA also recognizes the dust and emissions and greenhouse gas emissions will be “in addition to what is created by the other gravel mining practices” but fails to address the cumulative impacts, beyond concluding they will be negligible with no quantification or knowledge of potential for transmission of contaminants and toxic chemicals.⁴⁴ The duration is assumed by DNRC to be short term, with no reference to the actual period or term of the LUL and uses.

Asphalt recycling, crushing and processing results in Reclaimed Asphalt Paving (RAP). The process should include screening to remove contaminants, which DNRC’s EA failed to consider or mention, despite the concerns raised in public comments. A Safety Data Sheet on RAP identifies numerous hazards, health and safety concerns from dust, elevated temperatures, etc.⁴⁵ Moreover, recycled asphalt pavement (RAP) and/or recycled concrete aggregate (RCA) may include Per- and polyfluoroalkyl substances (PFAS) contaminates, and if contaminated RAP or RCA are relocated to a different site, the contractor could be considered a potential generator and transporter of hazardous materials.⁴⁶ “PFAS can accumulate in the environment and in materials at locations where the chemicals were used or through migration from an affected area or material.”⁴⁷ See PFAS exposure is known to result in health

⁴¹ EA at page 7. Direct Impacts: The movement, recycling, and crushing of concrete, asphalt, and decorative rock has the potential to generate point-source dust emissions and greenhouse gas emissions from mining equipment engines. These dust particles may or may not contain particulate matter that is harmful to human health and wildlife.

⁴² EA, page 7.

⁴³ EA, page 7.

⁴⁴ EA, page 7.

⁴⁵ Reclaimed Asphalt Pavement Safety Data Sheet included as Exhibit C and incorporated by reference.

⁴⁶ *PFAS in Recycled Asphalt and Concrete Pavements*, Cheyenne J. Dashnaw, PE Senior Engineer Atlantic Testing Laboratories, attached as Exhibit D and incorporated by reference.

⁴⁷ Id.

risks including reproductive effects, development effects, increased cancer risk, among others.⁴⁸ The EA did not consider any of this, much less include in mitigation the possibility of emission control systems that may be used to ensure emissions stay below permitted levels, thereby minimizing risk to AM Welles employees, neighboring owners and wildlife. Again, the EA does not address the location from which the concrete and asphalt to be recycled is coming, much less the materials and contaminants it may contain, nor what the actual processing may release. Nor does DNRC require AM Welles to provide this information process to consider as much in the EA – a fatal flaw.

Fine dust and particulates carried by the wind from the recycling and processing will be compounded by ongoing mine operations at the DLS Site, including heavy truck traffic, crushing, screening, stacking, truck, and loader transport on and off site, removal of overburden, construction of berms, and wind blowing over gravel stockpiles. Prevailing and often strong winds in the area will exacerbate the impacts of fugitive dust, air pollution, and dispersion of contaminants. The EA does not adequately assess environmental impacts beyond the DSL Site nor the affected environment.

Wildlife Impacts – Terrestrial, Avian, and Aquatic Life and Habitat

Channel's and Mr. Edmondson's comments on the Scoping Notice, attached hereto, and prior comments on other DSL Gravel Pit operations and expansions identify the significant wildlife in the area and concern that the LUL activities will harm fish and wildlife in the area. Public comment in the EA raises concern that action will harm threatened or endangered species in the area.

DNRC in its previous Environmental Assessment for the DSL Gravel Pit renewal and expansion (relied upon by DNRC for this EA) identified the significant wildlife in the area, recognizing "[t]he project area provides habitat for a variety of wildlife species." Thus it should have considered substantial habitat values and use of the area by wildlife, birds or fish, and identified potential impacts to fish and wildlife from the concrete and asphalt recycling, crushing and processing, unidentified and potentially contaminated materials therein and resulting therefrom, as well as storage of unknown offsite materials. However, neither that the EA nor this EA analyzed risks and potential environmental impacts on the wildlife, fish, and bird populations it previously identified – including elk, white tail deer, moose, antelope, Tundra Swans, Sandhill Cranes, and Hungarian Partridge beyond noise and visual impacts and no data was provided.

The potential offsite air quality and water quality impacts, migration of dust and emission, contaminates, and leaching previously discussed are applicable to wildlife, birds and aquatic life in the area, all of which the EA failed to address beyond concluding with no analysis that no impacts to are expected. The EA generalizes that "impacts to terrestrial, avian and aquatic life are expected to be minor" acknowledging noise impacts, though dismissing those impacts as an ongoing occurrence. The purpose of the EA is not to justify the impacts of the unlicensed and unlawful use.

Noise is acknowledged to occur beyond the DSL Site which the EA claims is comparable to gravel mining and crushing with no supporting data or noise study reference. Admitting the noise levels would

⁴⁸ US Environmental Protection Agency, Our Current Understanding of the Human Health and Environmental Risks of PFAS, <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>.

be comparable, logically the noise from these collective operations would result in some increased noise. Not according to the EA. The cumulative impacts section states the noise level is not expected to increase, which is contrary to the acknowledgement of the comparable noise impacts.⁴⁹ In terms of duration, the EA describes the impacts as short term – though until the reclamation occurs which could be as many as 5-6 years given the underlying permit is valid through 2032. Note – the term of the License of up to 10 years conflicts with the underlying Permit period as further addressed below. Having admitted to the noise impacts, the EA must adequately address those.

Neighboring Residential Uses and Noise; Aesthetics; Traffic

Public comment in response to the Scoping Notice, raised concerns regarding the introduction of visual and audible disturbances in the otherwise peaceful Madison Valley.

Again, the EA admits that concrete and asphalt recycling generates noise similar to the gravel crushing operations and that “the action alternative would create noise in addition to [the] pre-existing disturbances.”⁵⁰ However, it then dismisses that stating, “noise created by the action alternative would not be expected to raise the decibel levels at the site but may increase the total amount of time in which noise is generated from the site compared to the no action alternative.” This does not seem accurate, taking into account decibel math and human hearing facts:

- A doubling (x2) of sound pressure level *always* corresponds to an increase of 6 decibels
- Combining two sound sources (that are not coherent in phase) of the same decibel magnitude results in a 3 decibel increase
- A 10 decibel increase in sound level corresponds to a doubling of the perceived loudness of a sound.⁵¹

The EA admits to additional noise resulting from the LUL, however the only mitigation offered is that the concrete and asphalt crushing and recycling is limited to daylight hours. This would allow the cumulative noise impacts to occur from around 5:30 AM–6:00 AM to around 9:30 PM–10:00 PM during the longer days of the year. This is hardly meaningful mitigation, and fails to mitigate the cumulative noise impacts. Environmental noise is associated with annoyance, stress, sleep disturbance, and impaired cognitive performance. Epidemiological studies have found that environmental noise is associated with an increased incidence of arterial hypertension, myocardial infarction, heart failure, and stroke. Both observational and experimental studies indicate that in particular night-time noise can cause disruptions of sleep structure, vegetative arousals (e.g. increases of blood pressure and heart rate) and increases in stress hormone levels and oxidative stress, which in turn may result in endothelial dysfunction and arterial hypertension.⁵² With these impacts to human health in mind, additional mitigation in the form of true limited hours, such as 8AM to 5PM MT for example, as well as vegetative screening are mitigations that may meaningfully address the noise impacts and should be required.

⁴⁹ EA, page 9.

⁵⁰ EA, page 11.

⁵¹ <https://community.sw.siemens.com/s/article/the-wacky-world-of-acoustics-decibel-funny-math-and-human-hearing>

⁵² Munzel, Thomas, et al., *Cardiovascular effects of environmental noise exposure*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3971384/> (last accessed March 15, 2024).

The EA states the “proposed project area is contained fully within what is known as the DSL gravel pit.”⁵³ In terms of Aesthetics, large rocks and boulders with signage regarding the sale thereof have been obvious outside of the permitted DSL Gravel Pit and visible from the highway for many years and must be relocated to the licensed and permitted area.

In terms of traffic, our client’s comments in response to the Scoping Notice, included herein as Exhibit B, raise concern regarding traffic impacts. The EA is ineffective as it does not quantify the traffic resulting from the proposed activities to even allow comparison with the so-called primary use of the DSL Pit. Nor does it consider that once excavation of the DSL Gravel Pit is completed, the processing, storage and sale activities may increase and become the primary activities. Note the term of the License relative to the underlying Permit. In terms of the Action Alternative, the EA again seeks to justify the traffic related to unauthorized activities being undertaken rather than provided an actual analysis of traffic.

Fire Hazard Risks

With less than average precipitation this winter (2025-2026), the fire season ahead is an obvious concern. This too was noted in public comments in response to the Scoping Notice, including those from our client. Asphalt is a combination of aggregates and bitumen.

Bitumen — also known as liquid asphalt, or asphalt cement (AC) — is the heavy residue by-product of oil refining. It is considered a combustible material. However, bitumen contains traces of light hydrocarbons, which are flammable. The very slow breakdown of bitumen also continues to generate low levels of light hydrocarbons. Off-gassing of the light hydrocarbons occurs when asphalt is handled at the elevated temperatures (approximately 150°C or 300°F) used in asphalt plants.⁵⁴

Processing and recycling of this highly flammable material is a significant concern and was not addressed adequately in the EA. The passing mention of fire hazard in the mitigation offered under the Water Quantity, Quality and Distribution did not analysis much less sufficiently address the risk, and the equipment use for the processing and recycling remains unknown.

The Madison County Wildfire Protection Plan (“Wildfire Protection Plan”) is a locally adopted management plan the EA failed to consider. Fire mitigation and management strategies are included in the Wildfire Protection Plan, among others. As noted above, fire protection was not addressed by the EA, despite the high risk of fire and explosion associated with such operations and corresponding risks to human health and the environment. This is yet another deficiency of the Environmental Assessment.

⁵³ EA, page 12.

⁵⁴ <https://www.worksafefbc.com/en/resources/health-safety/risk-advisory/dangers-fire-explosion-asphalt-mix-plants?lang=en#:~:text=Bitumen%20%E2%80%94%20also%20known%20as%20liquid,combustible%20materials%20may%20be%20present?>

Economic Circumstances and DNRC’s Trust Obligations; Duration of License

DNRC failed to require the necessary license for this profit-making activity for an as yet unknown period, an abdication of its trust responsibilities. The charges pursuant to License must capture the true costs and fair market value, thus must begin at the time the License for storing and processing off-site material should have been required by DNRC, or at the very minimum to the date it and AM Welles should have known based on the Mason Determination interpreting the underlying permit as not allowing off-site material. As noted previously AM Welles and DNRC cannot benefit from their wrongdoing.

The duration of the License described at Section 24 of the EA conflicts with the term of the underlying license. That section provides that the term of the LUL may be up to ten years, that “proponent must hold an active aggregate take and remove permit from the Department as a provision of the license” and that “[i]f the aggregate take and remove permit expires without renewal or is cancelled or terminated, the LUL shall also expire, cancel or terminate.”⁵⁵ The Opencut Mining Permit # 674, Amendment #4 stipulates an expiration date of December 31, 2032, which is much less than 10 years from now – the time allowed under the LUL being considered. The term should be reduced to a time period consistent with the Permit, that is no more than six (6) years with the automatic termination as provided.

Conclusion

The Court observed DNRC’s duty to trust lands and its failure to properly manage them in its July 9, 2025 Order. The inadequacies of the EA do not instill confidence that DNRC changed its ways.

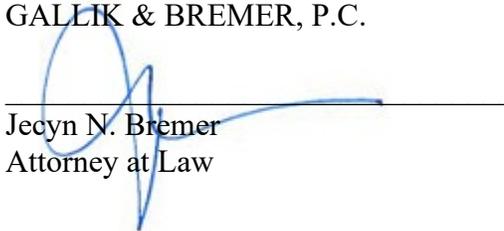
The asphalt and concrete processing and recycling (containing who knows what other materials) and storage of some unknown offsite materials have the potential for significant consequences and negative impacts on this environmentally sensitive area of the Madison Valley, the Channels Ranch, Mr. Edmondson’s, and other neighboring property owners, area residents, and the public which were not considered in the Environmental Assessment. DNRC simply cannot make an informed decision regarding the License given the deficiencies identified.

DNRC “must take a hard look at the environmental impacts of a given project or proposal” and “implicit in the requirement that an agency take a hard look at the environmental consequences of its actions is the obligation to make an adequate compilation of relevant information, to analyze it reasonably, and to consider all pertinent data.” *Ravalli Cty. Fish & Game Ass’n, Inc.*, 273 Mont. at 381, 903 P.2d at 1369 (1995) (citing *Sierra Club v. U. S. Army Corps of Engrs.*, 701 F.2d 1011, 1029 (2nd Cir. 1983)). The EA does not contain an adequate compilation of relevant information nor all pertinent data, nor is the limited information reasonably analyzed. DNRC has not undertaken a reasonable analysis, nor a hard look at the potential environmental impacts of the asphalt and concrete processing and recycling (containing unknown materials) and storage of offsite materials – again – unknown materials that may pose risk to human health and the environment.

⁵⁵ EA, page 19.

The Channels Ranch and Mr. Edmondson respectfully request that DNRC address the deficiencies in the EA described herein or, better yet, deny the request for the requested Land Use License and require the unlicensed activities to cease.

RESPECTFULLY,
GALLIK & BREMER, P.C.



Jecyn N. Bremer
Attorney at Law

Encl.

- Exhibit A – August 2, 2012 email from Monte Mason, Minerals Management Bureau Chief, Montana DNRC, to Mr. Bob Waller and Chris Cronin
- Exhibit B – Frazor “Ty” Edmondson’s October 14, 2025 Scoping Notice Comments,
- Exhibit C – Reclaimed Asphalt Pavement Safety Data Sheet
- Exhibit D – *PFAS in Recycled Asphalt and Concrete Pavements*, Cheyenne J. Dashnaw, PE Senior Engineer Atlantic Testing Laboratories

c: client
DNRC Attorney Mark Phares, CO8584@mt.gov
DNRC Attorney, Emily Obermiller, cnd404@mt.gov

Mason, Monte

From: Bob Waller [rwaller@wispwest.net]
Sent: Thursday, August 02, 2012 6:17 PM
To: Mason, Monte
Subject: Re: A.M. Welles DSL Pit (Opencut Permit #674)

Thanks Monte, much appreciated. Bob Waller

----- Original Message -----

From: Mason, Monte
To: Cronin, Chris ; rwaller@wispwest.net
Cc: Schiff, Allen ; Conner, James ; Thompson, Ricknold ; Walsh, Vickie ; Cronin, Chris ; Campbell, Craig
Sent: Thursday, August 02, 2012 5:44 PM
Subject: RE: A.M. Welles DSL Pit (Opencut Permit #674)

Mr. Waller,

AM Welles has been conducting gravel mining on the subject tract of State owned lands pursuant to gravel permit G-1273-94. The department is currently reviewing AM Welles application to renew this permit for another two years.

To confirm our phone conversation, your statements below to JJ Conner, DEQ, were not accurate. Paragraph 2. of your permit expressly provides you are to use the State property solely for the purpose of mining sand and gravel from the premises. Indirectly related activities are not authorized unless specified in Paragraph 35. Paragraph 35 of your permit does not include installation of asphalt or cement batch plants, and it does not authorize you to bring any offsite materials onto the premises.

Thank you for calling me back so quickly. If you have any further questions, please let me know.

Monte Mason

Monte G. Mason

Minerals Management Bureau Chief
Montana Department of Natural Resources & Conservation
Trust Land Management Division
1625 11th Avenue, PO Box 201601
Helena, MT 59620-1601
406.444.3843
mmason@mt.gov

From: Cronin, Chris
Sent: Thursday, August 02, 2012 4:49 PM
To: rwaller@wispwest.net
Cc: Schiff, Allen; Conner, James; Mason, Monte; Thompson, Ricknold; Walsh, Vickie
Subject: A.M. Welles DSL Pit (Opencut Permit #674)

Mr. Waller,

JJ Conner forwarded your inquiry below to me for response.

I can offer the following information based on preliminary review of the Opencut permit file:

- The Opencut Mining Permit (#674) for the A.M. Welles DSL Pit in Madison County was originally approved in 1994 and was amended in 1997 and 2000. A total of 40 acres is permitted.
- The permit area was most recently inspected by the Opencut Mining Program in July 2001. AM Welles submitted an updated pit map in January 2008.

- The surface landowner is the Department of Natural Resources and Conservation (DNRC). In a December 1996 DNRC correspondence to AM Welles the DNRC refers to the site by its Permit # G-1273-96 (T5S, R1W, Sec. 16).

Based on your email below, I can offer the following information:

- Transporting, handling, stockpiling, and processing contaminated soil is not allowed under the current Opencut Mining Permit.
- The Opencut Mining Program does not regulate, and does not have the expertise or authority to approve the handling, stockpiling, treatment, crushing, or disposal of contaminated materials or solid wastes.
- Before initiating any such activities, AM Welles must obtain all approvals that may be required by the DNRC; the DEQ Petroleum Release Section, Solid Waste Program, and Air Resources Management Bureau; as well as any other state, local, and Federal agency with jurisdiction in the matter.

Chris Cronin
DEQ Opencut Mining Program Supervisor
(406)-444-2871
ccronin@mt.gov

From: Bob Waller [<mailto:rwaller@wispwest.net>]
Sent: Thursday, July 26, 2012 10:45 AM
To: Conner, James
Cc: Schiff, Allen
Subject: A.M. Welles DSL Pit

Hello Mr. Conner, As you requested, I am sending this email to outline the disposal of up to 500 cubic yards of diesel contaminated soil from the A.M. Welles shop in Norris, MT. The project site is currently funded by the Montana Petroleum Tank Release Compensation Fund (MPTRCF) We would like to incorporate the contaminated soil into the crushing operation at the DSL pit north of Ennis with the soil ending up in a road mix product that will be used on a highway construction project. Contaminant levels in the soil are expected to be less than 2000 ppm of diesel range hydrocarbons based on past sampling. The contaminated soil will be stockpiled at the site for a short time prior to being incorporated in to the pit run material that will be crushed, hopefully less than a week if the excavation work can be timed with the crushing operation. I believe that A.M. Welles is planning to crush this fall sometime.

Disposal options are limited and significant cost savings for both A.M. Welles and the MPTRCF will be realized if the soil does not have to be hauled to Logan, MT for landfill disposal and then pit run backfill hauled to the shop site separately.

I think the permit for the DSL pit allows for stockpiling asphalt for later crushing so hopefully the permit conditions and bond that is in place will allow for this. Thanks for your assistance with this matter and feel free to call me at 406-582-8491 or email with any questions. Bob Waller

Frazor Ty Edmondson

October 14, 2025

Montana DNRC
1539 11th Ave
Helena, MT 59602

ATTN: Zack Winfield

Re: Initial Proposal Scoping Notice –
AM Welles Storage of Offsite Materials LUL at the
“DSL Pit” (the “Permit Change”)

Dear Mr. Winfield:

I in **STRONG opposition** to the proposal in the above-referenced Scoping Notice filed by A.M. Welles where they seek to expand the scope of their business at the DSL Pit into new hazardous and environmentally threatening activities. At a minimum, and as required by law, DNRC should conduct a thorough review of the environmental impact of the proposed DSL Pit changes. A real, professional and thorough review.

The potential dangers associated with a mining company expanding its operations to selling recycled asphalt and concrete primarily stem from **the risk of contamination** in the recycled material and how it is handled, processed, and used (see below for further details). These contamination risks require active, competent oversight from a State of Montana regulator. However, the Montana Fifth Judicial District Court for Madison County recently ruled that DNRC oversight of the same AM Welles DSL Pit run at issue here has for decades been feckless, arbitrary and in violation of its duties to Montanans.¹

The court also held **DNRC has a long record of being an absentee manager** of the funds that should flow from the DSL Pit to the Montana Trust for Public Schools and the interests of the people of Montana.² The now publicly established DNRC disregard for Montana and Montanans’ interests does not give hope of safe oversight of AM Welles under the proposed expanded activities in the Permit Change which increase the already considerable risk of environmental damage from the DSL Pit.³

In addition, there is nothing in the bare-bones scoping notice issued by DNRC that indicates that DNRC is taking **wildfire** risks into account. Serious wildfires recently occurred in this area (see below). This should be evaluated by DNRC.

Lastly, the published scoping notice does not specify whether, if allowed, the new business operated by AM Welles will involve direct-to-consumer sales. If it does, allowing such a site to operate on MT 287 will increase traffic, increase unsafe left turns on a highway not designed for such, and may cause advertising signs to be placed around and leading up to the site which will detract from the natural beauty of the area and cause limited sight lines for drivers and increase distractions on a busy state highway. **A thorough highway safety and impact study should be completed** before simply adding traffic to the entrances of a working mine and/or significantly increasing the current traffic into the site.

¹ “Therefore, not only did the DNRC violate its trust responsibility by allowing A.M. Welles to conduct asphalt and concrete recycling on the DSL Pit without a separate Land use Permit, but it also violated its trust responsibility by failing to secure adequate compensation for the people of Montana by not charging A.M. Welles for the recycling. Furthermore, the DNRC’s decision to now charge A.M. Welles \$250.00 is arbitrary.” Montana Fifth Judicial Dist.Ct., Cause No. DV-29-2023-37, Order on Cross Motions for Summary Judgment dated April 10, 2025, p.14, 17

² *Id.*

³ *Id.*

I will cover my objections to the expanded activities encompassed within the permit request based upon:

1. The hazards related to recycling of asphalt and concrete at the DSL Pit,
2. The health hazards these new use risks pose to people,
3. The feckless non-enforcement of environmental standards at the AM Welles site by DNRC,
4. The increased wildfire risks that increased industrial activity would bring to the area around the DSL Pit, and
5. The collision hazards associated with a commercial operation taking place on the side of a highway that is either not designed for increased turning traffic by non-professional (commercial trucking) drivers and/or from increasing the volume of traffic to the site.

1. Contamination Risks in Recycled Materials

The original source of the asphalt and concrete, especially if it was part of a larger mining or industrial operation, can introduce contaminants to the AM Welles site that are not currently present or native to the area adjacent to the Madison River.

- **Heavy Metals:** Recycled concrete aggregate (RCA) and reclaimed asphalt pavement (RAP) may contain heavy metals like **lead, chromium, and cadmium**. These can come from old paint, coatings, sealants, or even from the contamination within the mining waste used as aggregate (like mine tailings or waste rock, which may contain trace metals). If these materials are not properly tested and managed, the metals can **leach** out into the surrounding soil and groundwater, posing a risk to human health and the environment.⁴
 - **Heavy Metals Present:** Research confirms that RAP and RCA can contain heavy metals. The specific metals mentioned in the literature often include **lead (Pb), chromium (Cr), and cadmium (Cd)**, which are also listed by the U.S. Environmental Protection Agency (EPA) as hazardous metals subject to regulation.
 - **Sources of Contamination.** Heavy metals like lead, chromium, and cadmium are used in construction materials for various applications, including industrial paints, pigments, and corrosion protection coatings. In RAP, heavy metals like lead (Pb), cadmium (Cd), and zinc (Zn) can come from vehicle traffic, such as exhaust fumes, tire wear, and the corrosion of traffic barriers. Contamination can also be present in the original source concrete or asphalt, particularly when recycling commercially sourced concrete or when materials are used in highly acidic environments like mines with sulfur-containing minerals.⁵

⁴ See, Leaching characteristics of metals from recycled concrete aggregates (RCA) and reclaimed asphalt pavements (RAP), [Hung, Vu Quoc](#), et al. (2024), *Heliyon*, 10(9), Article number: e30407. <https://eprints.qut.edu.au/248371/>

⁵ Sources:

[Leaching characteristics of metals from recycled concrete aggregates \(RCA\) and reclaimed asphalt pavements \(RAP\) - Bohrium](#)

[Environmental Impacts of Reclaimed Asphalt Pavement \(RAP\) - NJ.gov](#)

[Characterization of contaminant leaching from asphalt pavements - Greenburgh, NY](#)

"Recycled concrete aggregates (RCA) and reclaimed asphalt pavements (RAP) are two construction waste products that are commonly used in the road construction industry. Besides many advantages, pollutants leaching from RCA and RAP are highlighted as the most concerning environmental issue."

"Among these samples, CENTRALRAP and NORTHRAP released levels of Pb [Lead] greater than EPA drinking water MCL of 15 ppb..."

"Moreover, pavements are subjected to some heavy metals such as nickel (Ni), chromium (Cr), copper (Cu), Cadmium (Cd), lead (Pb), and zinc (Z)... Vehicle exhaust is the main source of Pb in pavements... Z [Zinc] and Cd are mainly deposited on the asphalt surface due to vehicle tire wear..."

- Polycyclic Aromatic Hydrocarbons (PAHs):** These are a significant concern in recycled asphalt. PAHs are organic compounds formed during incomplete combustion and are present in bitumen (asphalt binder). A major issue arises if the original pavement contained **coal tar** instead of crude oil-based bitumen, as coal tar has significantly higher, and often carcinogenic, PAH levels. PAHs can leach out into surface and groundwater, which is a major environmental and public health concern, especially if the material is used in unbound applications (like unpaved roads or fill).⁶
- Naturally Occurring Radioactive Materials (NORM) and Technically Enhanced NORM (TENORM):** Mining waste, particularly from certain ore types, can contain radioactive elements. If this waste is used as aggregate in the recycled product, it could pose a risk. The hazard is radiation exposure risks to workers and end-users if not properly managed.
 - Sources of NORM:** Radioactive elements like uranium, thorium, and potassium are naturally present in the Earth's crust, rock, and soil.

Environmental Impacts of Reclaimed Asphalt Pavement (RAP)(see above)

[Environmental effects of leachate extracts from reclaimed asphalt pavement: determination of metals, polycyclic aromatic hydroca - SciELO](#)

[Hazardous Waste Management Of RCRA 8 Metals](#)

[Concrete Pavement Recycling Series: Protecting the Environment during Construction - Institute for Transportation](#)

[Heavy Metal Pollution in the Environment and Its Impact on Health: Exploring Green Technology for Remediation - PubMed Central](#)

[Environmental Impacts of Reclaimed Asphalt Pavement on Leaching of Metals into Groundwater - OSTI](#)

[Environmental Considerations in Concrete Recycling](#)

"Among these samples, CENTRALRAP and NORTHRAP released levels of Pb [Lead] greater than EPA drinking water MCL of 15 ppb, with the highest level being released by NORTHRAP..."

"The samples showed concentrations of Cd, Cr, and Pb, which are on the list of substances that render waste hazardous... Two samples of RAP could be classified as hazardous waste, pointing out that these materials have the potential to leach hazardous substances to the environment."

"Cadmium is a soft, malleable, bluish white metal... it's also handy as a sacrificial corrosion-protection coating for iron and steel... Up until 1978, lead was used as an additive to paints and primers... Wastes that meet or exceed these levels [RCRA 8] must be treated as RCRA hazardous."

"RCA leachate and runoff will also typically include small amounts of pollutant materials, including "heavy" metals such as vanadium, chromium, and lead... dilution of the runoff and leachate... have been consistently shown to mitigate the impact on receiving waters..."

"Heavy metals such as mercury (Hg), cadmium (Cd), lead (Pb), chromium (Cr), and arsenic (As) are considered to pose a significant threat to untargeted living entities due to their toxicity character... Cd often originates from industries like battery manufacturing, paint pigments... Pb, an extremely toxic metal, commonly originates from substances like Pb-based paints, gasoline and mobile batteries."

"North-RAP and central-RAP released levels of Pb greater than the United States Environmental Protection Agency (USEPA) primary drinking water maximum contaminant level (MCL) of 15 µg/L."

"Leachate from RCA in-situ, AND runoff from stockpiles... Can contain chemical contaminants... Salts, heavy metals, metalloids, and polycyclic aromatic hydrocarbons (PAHs)... Lead, asbestos, other chemicals... Chemical contaminants can be... Toxic to humans [and] Harmful to ecosystems."

⁶ See, Environmental impact of rejuvenators in asphalt mixtures containing high reclaimed asphalt content, Taylor & Francis Online (IARC Working Group on the Evaluation of Carcinogenic Risks to Humans, 2010; Birgisdóttir et al., 2007); Human Health Concerns Associated with Exposure to PAHs & Coal-Tar-Sealed Pavement, [NALMS LAKELINE](#) (Various)(2017).

- **TENORM Overview:** Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) is NORM where the radioactive material has been concentrated, processed, or altered by human activities, increasing the potential for exposure.
- **Mining and Extraction:** The extraction and processing of minerals from the Earth's crust can concentrate radionuclides. Mining is a major industrial sector that generates TENORM, including hard rock metal mining wastes and wastes from the extraction of non-metallic ores. NORM/TENORM-containing materials can be found in building materials, including concrete blocks, granite countertops, and waste from the phosphate industry that has been used in highway construction aggregate.
- **Worker Risk:** Workers in TENORM-producing industries may be occupationally exposed to ionizing radiation. The processing of raw materials may increase the concentration of radioactive substances to levels where special precautions are needed for handling and storing. Workers are exposed to ionizing radiation from materials naturally present in the environment.
- **Public/End-User Risk:** The release of radioactive material into the environment from TENORM industries poses a potential for widespread exposure to the general public.
- **Exposure Pathways:** Risks to the public include direct gamma radiation, inhalation of contaminated dust, and the ingestion of contaminated well water or food. Inhaling radon gas and radioactive dust particles is a primary route of exposure.
- **Health Hazards:** Exposure to low levels of radiation can cause an increase in the risk of cancer over a lifetime.
- **Need for Management:** The International Atomic Energy Agency (IAEA) has established requirements for NORM industries to control these materials, noting that they pose a risk to workers, the public, and the environment if not managed correctly. Proper management, storage, transportation, and disposal are essential to prevent environmental contamination and human exposure.⁷

⁷ List of Sources:

1. [Naturally occurring radioactive material](#) - International Atomic Energy Agency (IAEA)
2. [Naturally Occurring Radioactive Material \(NORM\) and Technologically Enhanced \(TENORM\)](#), Missouri Department of Natural Resources
3. [Naturally-Occurring Radioactive Materials \(NORM\)](#), World Nuclear Association
4. [Natural-Occurring Radioactive Materials \(NORM\)](#), U.S. EPA
5. [Naturally occurring radioactive material](#), Canadian Nuclear Safety Commission (CNSC)
6. [Technologically Enhanced Naturally Occurring Radioactive Materials \(TENORM\)](#) | U.S. EPA
7. [Radioactive waste and NORM waste in construction and demolition](#), European Demolition Association (EDA)
8. [Technologically enhanced naturally occurring radioactive materials](#), PubMed
9. [TENORM: Oil and Gas Production Wastes](#), U.S. EPA
10. [Ionizing Radiation - Hazard Recognition](#), Occupational Safety and Health Administration (OSHA)
11. [NORM/TENORM INFORMATION SHEET](#), Ohio Department of Health
12. [Understanding TENORM Waste](#), Baranko Environmental
13. [UNDERSTANDING RADIATION, NORM AND TENORM](#) | Colorado General Assembly
14. [TENORM: Fertilizer and Fertilizer Production Wastes](#), U.S. EPA

◦

- **Other Contaminants:**

- **PFAS (Per- and polyfluoroalkyl substances):** If the asphalt/concrete came from specific industrial sites like airports or fire training facilities where firefighting foam was used.
- **Asbestos:** Can be present in old construction or demolition debris mixed into the concrete or asphalt source.
- **High pH (Alkalinity):** Runoff or leachate from recycled concrete aggregate stockpiles can be highly alkaline (high pH), which can negatively impact local water bodies and vegetation.

All of these contaminants would be harmful to the important wildlife in the area.⁸ Yet DNRC has, time and again, refused to take seriously its duty to protect the humans and wildlife around the AM Welles

⁸ **Large and Mid-Sized Mammals**

The Madison Valley is well-known for large numbers of wildlife. Species commonly seen in the general area, especially near the Madison River and surrounding foothills, include:

Elk	Can be seen in large numbers, especially during winter months.
Moose	Often found near water, along the river and sloughs.
White-tailed Deer	Common, especially along river banks and in wooded areas.
Mule Deer	Common in the area.
Pronghorn	Frequently seen in the open, grassy areas of the valley.
Black Bear	Present in the Beaverhead-Deerlodge National Forest and surrounding forested areas
Coyote	Common canid in the valley.
Beaver	Furbearer often found along the Madison River and its tributaries.
River Otter	Furbearer found along the Madison River and its tributaries.
Grizzly Bear	While more common in areas further south, they are present in the greater ecosystem and are a consideration when recreating.

Birds (Avi-Fauna)

The Madison Valley, from Ennis Lake to Hebgen Lake, is an Important Bird Area designated by the National Audubon Society, making the area a "bird-watching jackpot."

Waterfowl & Water Birds

- Trumpeter Swan
- Canada Goose
- Ducks (various species, including Surf Scoter, White-winged Scoter, Red-breasted Merganser)
- Common Loon and Pacific Loon
- Western Grebe and Clark's Grebe
- American White Pelican
- American Coot

Raptors

- Bald Eagle
- Osprey
- Ferruginous Hawk
- Golden Eagle
- Great Horned Owl

mining operation. There is no reason to think that DNRC would now suddenly change its ways and adequately monitor the AM Welles operations if the asphalt and concrete recycling is allowed. See *Montana Fifth Judicial Dist. Ct., Cause No. DV-29-2023-37, Order on Cross Motions for Summary Judgment dated April 10, 2025.*

Will DNRC finally produce considered environmental and safety studies examining the human and wildlife health questions raised by the DSL Pit, or will they repeat the 2023-24 process of trying hard not to review the AM Welles site in any meaningful way?

2. Occupational and End-User Health Hazards (Dust and Fumes)

There is no record of DNRC or any Montana public health agency having evaluated this proposal from AM Welles for safety of the workers, public consumers, or neighbors from the activities covered by the proposed permit, such as:

- **Inhalation of Dust:** The crushing and processing of recycled asphalt and concrete creates significant dust. Inhaling fine particles and **silica dust** (from crushing concrete and asphalt aggregate) is a

Shorebirds & Songbirds

- Sandhill Crane
- Long-billed Curlew
- Willow Flycatcher
- Magpies
- Snipes
- Dippers
- Woodpeckers
- Hummingbirds
- Larks
- Finches

Fish

Ennis Lake is a popular destination for anglers, with the Madison River flowing into and out of it. The main game fish found in the lake and river include:

- Brown Trout
- Rainbow Trout
- Mountain Whitefish
- Brook Trout
- Arctic Grayling

Sources for the wildlife list around Ennis Lake, Montana:

1. Birds (Montana Audubon)
 - Source: Montana Audubon, Madison Valley Important Bird Area (IBA) information.¹
 - Link: [Madison Valley IBA - Montana Audubon](#)
2. Fish (Montana Fish, Wildlife & Parks - FWP)
 - Source: Montana FWP Waterbody Details for Ennis Lake (MyFWP).
 - Link: [Where to Fish Ennis Lake - montana - MyFWP](#)
3. Large Mammals
 - Source A (Management): Montana FWP Wildlife Management Areas in the Region.
 - Link: [Bear Creek WMA Detail \(FWP\)](#)
 - Source B (Ecosystem Data): Montana Natural Heritage Program (MTNHP) Animal Field Guide.
 - Link: [Montana Natural Heritage - Animal Field Guide](#)

major occupational hazard, leading to serious respiratory diseases like **silicosis** and **pneumoconiosis** for workers at the processing site or those using the material.

- **Fumes and Vapors:** When recycled asphalt pavement (RAP) is heated for hot-mix applications, it can release asphalt fumes and potentially trace amounts of gases like **hydrogen sulfide**, which can be irritating or harmful.

DNRC has, time and again, refused to take seriously its duty to protect the human and natural environment in the area of the AM Welles mining operation and ignored its own regulations. There is no reason to think that DNRC would adequately monitor the AM Welles operations if the asphalt and concrete recycling at issue here is allowed. *See Montana Fifth Judicial Dist. Ct., Cause No. DV-29-2023-37, Order on Cross Motions for Summary Judgment dated April 10, 2025, p.14.*

3. Decades of Failure of DNRC Oversight

A. DNRC Historic Oversight Failures of AM Welles.

DNRC has failed to show that the materials that AM Welles is considering for recycling or for sale have been tested in any way to eliminate the environmental harms noted above. The primary safeguard against these hazards is **rigorous and ongoing testing** of the source materials and the final product, adherence to strict processing and handling protocols, and ensuring the material is only sold for appropriate uses (e.g., encapsulated in new asphalt or concrete, which locks in potential contaminants, versus being used as unbound fill). One would think that this would be top of mind for DNRC, but their decades-long failure to oversee the AM Welles operation outside of Ennis in violation of the trust of the people of Montana leads more to the conclusion that, if permitted, this recycling and consumer sales operation will once again endanger the people and wildlife of Montana without any net benefit to the State. *See Montana Fifth Judicial Dist.Ct., Cause No. DV-29-2023-37, Order on Cross Motions for Summary Judgment dated April 10, 2025, p.14, 17.*

The Montana Fifth Judicial District Court has already found that DNRC does not follow its own regulations when it comes to AM Welles: “Whether it was intentional, or negligent, the DNRC failed to abide by its own regulations.” *Id.*, p. 17. (finding against DNRC’s for its “trust violations in part as to the asphalt and concrete recycling, failure to receive compensation for the asphalt and concrete recycling, and violation of the Water Use Act.”). With a track record of ignoring its duties to Montanans and Montana wildlife over decades, **how can DNRC be trusted again at the same site?**

B. The Proposed Permit is a Fundamental Change in Use

Allowing the sale of decorative rocks together with recycling concrete and asphalt are both novel uses of the AM Welles site and deserve a through DNRC review under all relevant standards, such as MEPA. Furthermore, should AM Welles propose transitioning from a private industrial entrance to a consumer retail location, a Montana Department of Transportation (DOT) review is required as there is a change in use of the property served by an existing approach.

The Administrative Rules of Montana (ARM) clearly state: Any person proposing a **change in use of property served by an existing approach must obtain a new approach permit** from the department.⁹ A shift from a private, controlled industrial/mining entrance (where only company trucks enter and exit) to include a retail-style consumer business (where numerous, smaller, and less predictable customer

⁹ Mont. Admin. r. 18.5.104 - APPROACH PERMIT

vehicles are making frequent turns) or for purposes different than those currently permitted constitutes a significant change in use and traffic generation, triggering the need for a new permit and review.

C. Allowing this Permit Change Will (Again) Violate DNRC's Duty To Montana and It's Schools

DNRC will, again, violate its trust duties to Montana and its schools if it allows this Permit change. The litigation fees that will be generated by this change and born by the State will dwarf the economic return, if any, from allowing the permit change to go forward. **The net benefit to the Montana School Trust will be NEGATIVE.** DNRC has a legal obligation to take this into account and deny the permit change request.

4. Wildfire Risks

McAllister, Montana just dealt with a significant, 3,500 acre wildfire. See, ["Too much trauma: McAllister fire had residents on edge;"](#) Bozeman Daily Chronicle, August 18, 2025. It is incomprehensible to add more hazardous industrial activity in the neighborhood without a significant, professional review of the incremental wildfire risks posed by this increased mining and processing activity at the DSL Pit. This is, after all, on the border of McAllister and the populations of the Troutdale community¹⁰ around Ennis Lake.

Wildfires are dangerous to humans and all area wildlife. Has DNRC studied this with respect to the Permit Change?

5. Hazards Of Allowing Increased Traffic to AM Welles Site

The situation of a business (like selling recycled materials and decorative rock) at a mine pit entrance on a high-speed rural highway (like MT Highway 287) outside Ennis presents a number of traffic safety hazards. The dangers are amplified by the combination of high-speed traffic, heavy commercial vehicles, and the potential for inexperienced consumer drivers performing one of the most dangerous road maneuvers: an **unprotected left turn**.

The most significant and probable danger is a severe vehicle collision due to the conflict between different types of traffic. This is particularly enhanced if consumers are part of the intended customer base of the AM Welles site.

A. Unprotected Left-Turn Collisions (The Highest Risk)

- **Customer Deceleration/Stop:** Small business customers (in passenger vehicles) will have to slow down or stop completely on the high-speed highway to wait for a gap in oncoming traffic to turn left into the pit site. This creates a high risk of being rear-ended by fast-moving traffic on MT 287, especially any of the many large commercial haulage trucks, coming down from the Bozeman Pass – which is a notorious driving hazard. Drivers making a left turn after coming down from the pass will sit on the highway (there is only one lane in each direction) and while they wait to accurately judge the speed of approaching vehicles, large, heavily-laden, rock-carrying trucks will be descending from the Bozeman Pass at speed right behind them. On a rural highway with high posted speed limits (65 mph on this stretch), this

¹⁰ "Troutdale Subdivision is located near Ennis Lake and McAllister, Montana 10 minutes north of Ennis." <https://bozemanrealestate.group/subdivisions/troutdale>

is extremely dangerous and, between the risk of rear-impact and being T-boned (side-impact) making a turn, presents something that needs serious safety study.

- **Heavy Truck Slowing/Acceleration:** The large, heavily loaded mining trucks (haul trucks, dump trucks, delivery semi-trucks) traveling to and from the pit move much slower than the highway's normal traffic flow. This “slow leaver” but “fast through traffic” combination can be deadly.
- **Obstructed View and Signage Issues.** The MT-287 highway entrances are often not designed with the same sight distance and deceleration lanes as major commercial intersections. Hills, curves, or vegetation can limit a driver's ability to see a vehicle stopped for a turn. The entrance itself, with signage, large equipment, and stockpiles, dust and other visual obstacles can be a distraction for drivers on the highway, delaying their reaction time to a stopped vehicle. This will be especially true if AM Welles decides to put up new business advertising or the like.

B. Secondary and Operational Hazards

- Even without a direct collision, the new business operation introduces other dangers. **AM Welles is operating a WORKING INDUSTRIAL MINE.** Potentially adding consumer traffic to the mix of large industrial trucks operating in the area in combination with the high speeds of vehicles coming off of the Bozeman Pass would be reckless and needs thorough evaluation by competent professionals.

There is already a significant risk on MT 287 of trucks coming downhill at speed without enough control to make sudden stops. This has been an issue for years and the amount of traffic is building steadily. The area around the entrance / exit to AM Welles has a 65-mph speed limit and does not have dedicated traffic calming features. There is no decreased speed limit like within the Ennis, MT borders (45-mph / 35-mph / 25-mph limits) or as implemented in McAllister (45-mph limits). The very fact that both Ennis and McAllister have introduced such limits where traffic is intersecting with MT 287 shows that **it is INADEQUATE to simply increase heavy haulage truck traffic to the site or even add consumer traffic to the site and increases the odds of collision between and among enormous haulage vehicles and small passenger vehicles.** At the very least this needs to be studied by responsible, competent professionals.

Summary

The proposed Permit Change would introduce new, enhanced toxic activity to the DSL Pit. These are incremental risks to those already present in the operation of the pit. As this is a new set of hazardous risks: Where is the DNRC safety plan for the potential contamination and the plan for DNRC to comply with its obligations to the Montana School Trust Fund oversight by DNRC?

And where are the considerations of the increased wildfire and traffic hazards? Where is the analysis that the proposed Permit Change will be to the net benefit of Montana and Montanans?

Why is it DNRC has been found to be historically operating arbitrarily in AM Well's favor when it is supposed to be conducting oversight of the operation on behalf of all Montanans?¹¹ Why has a court found it to be this way **for decades**?¹² Given this, how can DNRC be trusted again to do what is in the best interests of the State?

For these and other reasons, I strongly oppose the noted Permit Change and urge NDRC – for the first time - to conduct a robust, scientifically legitimate MEPA environmental review.

Sincerely,

DocuSigned by:

A677306426B4423...

Frazor Ty Edmondson
144 Ennis Lake Road
Ennis, MT 59729

Cc: Zackary.Winfield@mt.gov

TTaylor2@mt.gov

¹¹ Montana Fifth Judicial Dist.Ct., Cause No. DV-29-2023-37, Order on Cross Motions for Summary Judgment dated April 10, 2025, p.14, 17.

¹² *Id.*

SAFETY DATA SHEET

OSHA HCS (29 CFR 1910.1200)

SECTION 1: PRODUCT AND COMPANY IDENTIFICATION

Product identifier Reclaimed Asphalt Pavement (RAP)
 Chemical Name Mixture
 CAS No. Mixture
 Trade Name(s) Reclaimed Asphalt Pavement, RAP, Millings, Recycled Asphalt Pavement

Relevant identified uses of the substance or mixture and uses advised against

Identified Use(s) RAP is used as an aggregate substitute and asphalt cement supplement in hot mix asphalt. Used as a granular base, fill material and other construction applications.
 Uses Advised Against None.

Details of the supplier of the safety data sheet

Manufacturer information:

Company: APAC – Kansas Inc., Shears Division
Address: 1600 N. Lorraine, STE One
Telephone: (620) 662-3307
Website: <http://www.apac-kansas.com/>
Emergency phone number: Alex Blecha (620) 200-6928

Issue Date: March 27, 2017

SECTION 2: HAZARDS IDENTIFICATION

Classification of the substance or mixture

OSHA HCS (29 CFR 1910.1200) / GHS Classification Not classified as dangerous for supply/use.

Label elements

Hazard Symbol



Signal Word(s)
 Hazard Statement(s)

GHS08
 Danger
 H350 – May cause cancer.
 H372 – Causes damage to organs through prolonged and repeated exposure.
 P201 – Obtain special instructions before use.
 P202 – Do not handle until all safety precautions have been read and understood.
 P260 – Do not breathe dust or vapors.
 P264 – Wash hands, forearms, and other exposed areas thoroughly after handling.
 P270 – Do not eat, drink, or smoke when using this product.
 P280 – Wear protective gloves, protective clothing, and eye protection.
 P308+P313 – If exposed or concerned: Get medical advice/attention.
 P314 – Get medical advice/attention if you feel unwell.
 P405 – Store locked up.
 P501 – Dispose of contents/container in accordance with local, regional, national and international regulations.

Precautionary Statement(s)

RECLAIMED ASPHALT PAVEMENT (RAP)

Other hazards

Dust from Reclaimed Asphalt Pavement (RAP) can cause irritation to eyes, nose, throat, lungs. Direct contact with the eyes can cause mechanical damage. Inhalation can aggravate pre-existing conditions, such as, bronchitis, COPD, emphysema, etc.

At elevated temperatures, RAP can cause thermal burns and release Hydrogen Sulfide (H₂S). Hydrogen Sulfide has a "rotten eggs" smell. Hydrogen sulfide is a fatal and highly flammable gas. Concentration of Hydrogen Sulfide in an enclosed area can result in an explosive atmospheric condition.

Additional Information

Avoid breathing dust/fume/gas/mist/vapors/spray.

As necessary, Wear protective gloves/protective clothing/eye protection/face protection.

Wash hands and exposed skin after use.

SECTION 3: COMPOSITION/INFORMATION ON INGREDIENTS

Composition/information on ingredients	% wt.	CAS No.
Aggregate (crushed stone, sand, gravel, slag)	70 - 97	Various
Petroleum asphalt / bitumen [^]	3 - 7	8052-42-4
Quartz	1 - 3	14808-60-7
Polymers and Natural Rubbers	< 0.5	Various
Process oils (inherent in refined petroleum asphalt)	< 0.1	Various
Anti-strip or other amine-based additives	< 0.1	Various
Warm-mix additives	< 0.1	Various

[^]Contains: <0.05% of 3 - 7 ring Polycyclic Aromatic Hydrocarbons (PAHs).

Other Substances in the product which may present a health or environmental hazard, or which have been assigned occupational exposure limits, are detailed below. Please see Section 8 of SDS for more details.

- Contains: <0.1% airborne crystalline silica (inherent in aggregate) and <0.1% hydrogen sulfide.
- Hydrogen sulfide gas can accumulate in the head space of containers of certain asphalt products.
- Heated product releases asphalt fume.

Additional Information - None

SECTION 4: FIRST AID MEASURES



Description of first aid measures

General

Never give anything by mouth to an unconscious person. Seek medical advice if you feel unwell.

Inhalation

Move the person to fresh air. If symptoms persist, obtain medical attention.

Skin Contact

Remove the contaminated clothing. Wash the area with large amounts of water. If irritation persists, obtain medical attention. If the material is heat, thermal burns are possible. Do not attempt to remove from skin after cooling. Seek medical attention.

RECLAIMED ASPHALT PAVEMENT (RAP)

Eye Contact	Flush eyes with water for at least 15 minutes while holding eyelids open. Remove contact lenses, if present and easy to do. Continue rinsing. If irritation develops and persists, get medical attention. If the material is heated, thermal burns are possible. Do not attempt to remove from eye after cooling. Seek medical attention.
Ingestion	Rinse mouth. Do not induce vomiting. Do not give anything by mouth to an unconscious person. Immediately contact a Poison Center or physician.
Most important symptoms and effects, both acute and delayed	Inhalation: Exposure to fumes, vapors, or dust may cause irritation to the nose, throat, and respiratory system. Heating RAP can release fumes or vapors that can irritate the nose, throat, and respiratory system. Cutting, crushing, or grinding RAP will release dust. Breathing the dust can irritate and silicosis. Silicosis is caused by the inhalation of respirable silica. Acute and chronic exposure to respirable silica can cause silicosis. Heating RAP may cause the release of Hydrogen Sulfide gas. Hydrogen Sulfide exposure can result in severe injury or death. Skin Contact: RAP dust can cause skin irritation, including dry skin, discomfort, and dermatitis. When subjected to high heat, RAP can cause severe burns. Eye Contact: Eye contact with dust can cause immediate and delayed symptoms. Including eye irritation and possible irreparable mechanical damage to the eye. First Aid and medical assistance are needed to prevent permanent damage. Ingestion: Do not ingest RAP. Ingestion of small quantities of RAP is not known to be harmful. Ingestion of large quantities of RAP can cause intestinal distress. Chronic Symptoms: Exposure to emissions from asphalt containing material are suspected of causing cancer. If dust is generated, repeated exposure to the dust may cause skin irritation, respiratory irritation or lung disease.
Indication of any immediate medical attention and special treatment needed	If medical assistance is needed, have the SDS and other product information on hand. If burned by hot RAP, cool the area immediately with large amounts of cool water. Do not attempt to remove solidified product from the skin, eyes or other body parts. Seek medical attention immediately.

SECTION 5: FIRE-FIGHTING MEASURES

Extinguishing Media

- Suitable Extinguishing Media
- Unsuitable Extinguishing Media

Using extinguishing media appropriate for the surrounding material.
Do not use water if the material is molten. Water contacting molten material can result in the violent release of steam.

Special hazards arising from the substance or mixture

Combustion causes toxic fumes. Combustion products: Carbon monoxide, Carbon dioxide, Nitrogen oxides, Sulfur oxides

Advice for fire-fighters

A self contained breathing apparatus and suitable protective clothing should be worn in fire conditions.

SECTION 6: ACCIDENTAL RELEASE MEASURES

Personal precautions, protective equipment and emergency procedures

Avoid contact with skin and eyes. Avoid inhalation of dust.

Environmental precautions Methods and material for containment and cleaning up

Prevent entry into sewers and public waters.
Avoid cleanup procedures that can result in dust. If the product is heated, let the product cool and solidify before attempting clean up.

Reference to other sections

See Section 8 for PPE requirements. See Section 13 for Disposal Considerations.

RECLAIMED ASPHALT PAVEMENT (RAP)

Additional Information

None.

SECTION 7: HANDLING AND STORAGE

Precautions for safe handling

Avoid contact with skin and eyes. Avoid inhalation of dust. When heated, the product may release Hydrogen Sulfide. Contact with heated product can result in thermal burns. Refer to Section 4 for First Aid Measures.

Conditions for safe storage, including any incompatibilities

- Storage temperature
- Incompatible materials

Store at temperatures not exceeding the product's flashpoint. Strong oxidizing agents.

SECTION 8: EXPOSURE CONTROLS/PERSONAL PROTECTION

Control parameters

Occupational Exposure Limits

SUBSTANCE.	CAS No.	(8hr TWA)		(STEL)		Note:
		PEL (OSHA) *	TLV (ACGIH)	PEL (OSHA)	TLV (ACGIH)	
Asphalt fume	-----	-----	0.5 mg/m ³ ⁽¹⁾	-----	-----	See below
Crystalline Silica (respirable particulate)	-----	$\frac{10 \text{ mg/m}^3}{\% \text{SiO}_2 + 2}$	0.025 mg/m ³ ^	-----	-----	See below
Hydrogen sulfide	7783-06-4	-----	1 ppm	20 ppm ceiling	5 ppm	50 ppm peak

⁽¹⁾ Inhalable benzene-soluble fraction; ^Suspected Human Carcinogen; *Refer to OSHA 29 CFR 1910.1000 & 29 CFR 1926.55; 8hr TWA = 8 hour time-weighted average; STEL = Short Term Exposure Limit.

Recommended monitoring method

NIOSH 5042 (Asphalt Fume), NIOSH 7500 (Crystalline Silica), Electrochemical sensor (hydrogen sulfide).

Exposure controls

Appropriate engineering controls

Use only outdoors or in a well-ventilated area.

Personal protection equipment

Eye/face protection



The following to be used as necessary: Safety Glasses

Skin protection (Hand protection/ Other)



The following to be used as necessary: Leather or thick textile gloves.

Respiratory protection



In case of inadequate ventilation wear respiratory protection. Use NIOSH approved respiratory protection. Air-purifying respirator with combination organic vapor cartridge / particulate filter may be sufficient. Check with protective equipment manufacturer's data.

Thermal hazards

Use gloves with insulation for thermal protection, when needed.

RECLAIMED ASPHALT PAVEMENT (RAP)

Environmental Exposure Controls

Do not discharge waste and/or cleaning water via public sewer system. Ensure waste is collected and contained.

SECTION 9: PHYSICAL AND CHEMICAL PROPERTIES

Information on basic physical and chemical properties

Appearance	Solid
Color	Dark brown / Black
Odor	Asphalt / Bitumen, Slight odor
Odor Threshold (ppm)	Not available.
pH (Value)	Not available.
Melting Point (°C) / Freezing Point (°C)	Not available.
Boiling point/boiling range (°C):	> 371 (>700 °F)
Flash Point (°C)	> 232 (> 450 °F)
Evaporation Rate	Not available.
Flammability (solid, gas)	Not applicable.
Explosive Limit Ranges	Not applicable.
Vapor pressure (Pascal)	Not determined.
Vapor Density (Air=1)	Not determined.
Density (g/ml)	2.2 - 2.7
Solubility (Water)	Negligible
Solubility (Other)	Not known
Partition Coefficient (n-Octanol/water)	Not available.
Auto Ignition Point (°C)	Not available.
Decomposition Temperature (°C)	Not available.
Kinematic Viscosity (cSt) @ 40°C	Not available
Explosive properties	Not explosive.
Oxidizing properties	Not oxidizing.
Other information	Not available.

SECTION 10: STABILITY AND REACTIVITY

Reactivity	Stable under normal conditions. May release Hydrogen Sulfide when heated.
Chemical stability	Stable.
Possibility of hazardous reactions	May react violently with: Strong oxidizing agents
Conditions to avoid	Incompatible materials. Open Flame.
Incompatible materials	Oxidizers
Hazardous decomposition product(s)	Combustion causes toxic fumes. Combustion products: Carbon monoxide, Carbon dioxide, Nitrogen oxides, Sulfur oxides. Hydrogen Sulfide.

SECTION 11: TOXICOLOGICAL INFORMATION

Exposure routes: Inhalation, Skin Contact, Eye Contact

Information on toxicological effects

Acute toxicity	LD50 (rat): >5000 mg/kg bw LD50 (dermal): >2000 mg/kg bw LC50 (inhalation, fume): >94.4 mg/m ³
Irritation/Corrosivity	May cause irritation to skin, eyes and respiratory system.
Sensitization	Not to be expected
Repeated dose toxicity	NOAEL(rat): 28 mg/m ³ LOAEL (rat): 149 mg/m ³
Carcinogenicity	Not to be expected during typical construction activities.

RECLAIMED ASPHALT PAVEMENT (RAP)

NTP	IARC	ACGIH	OSHA
No.	2B*	No.	No.

Mutagenicity	Not to be expected.
Reproductive toxicity	Not to be expected.
Other information	Heating of this product may release Hydrogen Sulfide. Hydrogen Sulfide exposure can cause serious injury or death.

SECTION 12: ECOLOGICAL INFORMATION

Ecotoxicity

Short term	LL50 (48 hour): >1000 mg/l (Fish) LL50 (48 hour): >1000 mg/L (Aquatic Invertebrates) EL50 (48 hour): >1000 mg/L (Aquatic Plants)
Long Term	No data

Persistence and degradability

The product is poorly biodegradable.

Bioaccumulative potential

The product has low potential for bioaccumulation.

Mobility in soil

The product has low mobility in soil.

Results of PBT and vPvB assessment

Not classified as PBT or vPvB.

Other adverse effects

None known.

SECTION 13: DISPOSAL CONSIDERATIONS

Waste treatment methods	Disposal should be in accordance with local, state or national legislation. Consult an accredited waste disposal contractor or the local authority for advice.
Additional Information	None known.

SECTION 14: TRANSPORT INFORMATION

Ground or Water Domestic Voyage (DOT): Not regulated when transported below 240°C (464 °F).

SECTION 15: REGULATORY INFORMATION

Safety, health and environmental regulations/legislation specific for the substance or mixture:

TSCA (Toxic Substance Control Act) - Inventory Status: All components listed or polymer exempt.

RCRA Hazardous Waste Number (40 CFR 261.33): None

US RCRA Hazard Class: Not applicable.

Designated Hazardous Substances and Reportable Quantities (40 CFR 302.4):

Chemical Name	CAS No.	Typical %wt.	RQ (Pounds)
None	-----	-----	-----

SARA 311/312 - Hazard Categories: None

Fire Sudden Release Reactivity Immediate (acute) Chronic (delayed)

SARA 313 - Toxic Chemicals (40 CFR 372):

Chemical Name	CAS No.	Typical %wt.
None	-----	-----

SARA 302 - Extremely Hazardous Substances(40 CFR 355):

Chemical Name	CAS No.	Typical %wt.	TPQ (pounds)
None	-----	-----	-----

RECLAIMED ASPHALT PAVEMENT (RAP)

SECTION 16: OTHER INFORMATION

Additional Information

The following sections contain revisions or new statements: 1-16.

Information contained in this publication or as otherwise supplied to Users is believed to be accurate and is given in good faith, but it is for the Users to satisfy themselves of the suitability of the product for their own particular purpose. The manufacturer gives no warranty as to the fitness of the product for any particular purpose and any implied warranty or condition (statutory or otherwise) is excluded except to the extent that exclusion is prevented by law. The manufacturer accepts no liability for loss or damage (other than that arising from death or personal injury caused by defective product, if proved), resulting from reliance on this information. Freedom under Patents, Copyright and Designs cannot be assumed.



WBE certified company

PFAS in Recycled Asphalt and Concrete Pavements



Cheyenne J. Dashnaw, PE
Senior Engineer
Atlantic Testing Laboratories

Recycled building materials are being used at a higher frequency than ever before. The benefits of using recycled building materials are the conservation of natural resources, energy savings, reduction in landfill waste, and reduction in emissions. However, there can be unintended consequences of using recycling building materials. Contractors milling at airports and other locations with a history of using firefighting foam could unknowingly encounter per- and polyfluoroalkyl substances (PFAS) contamination in the recycled asphalt pavement (RAP) and/or recycled concrete aggregate (RCA). If contaminated RAP or RCA are relocated to a different site, the contractor could be considered a potential generator and transporter of hazardous materials. Additionally, if the materials are used as fill or an ingredient in new pavements, there is a risk of contaminating multiple other sites. Another factor to consider is potential contamination of milling equipment, loading equipment, transportation vehicles, and asphalt and concrete plants that could then require decontamination.

PFAS are a group of man-made chemicals, including perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), used in the production of a wide variety of consumer goods. PFAS have been commonly found in food packaging, household cleaning products, stain repellents, pesticides, and firefighting foam. PFAS can accumulate in the environment and in materials at locations where the chemicals were used or through migration from an affected area or material. PFAS from firefighting foam is of specific concern for recycled materials originating from locations where these products were utilized for firefighting or related training operations, such as airfields, firefighter training facilities, oil refineries, etc.

The New York State Department of Transportation's (NYSDOT) requirements and policies for the development of asphalt mixture designs (Materials Method 5.16) allow for the use of up to 30% RAP. Additionally, NYSDOT Standard Specifications section 703-09 states that "the aggregate component of the RAP shall meet the requirements of section 703, Aggregates. The bitumen component of the RAP shall be asphalt cement and shall be free of significant contents of solvents, tars, or other contaminating substances that will make the RAP unacceptable for recycling as determined by the Department".



Photo courtesy of Rifenburg Construction Inc.

In January 2021, via regulatory oversight given by the United States Environmental Protection Agency (USEPA), the New York State Department of Environmental Conservation (NYSDEC) Division of Environmental Remediation (DER) released a technical guidance document titled, "Sampling, Analysis, and Assessment of Per-

and Polyfluoroalkyl Substances (PFAS),” requiring sampling and analysis of environmental media for PFAS as part of remedial programs under 6 NYCRR Part 375. This guidance document has since been updated, with the current version dated April 2023. Currently, NYSDEC Division of Environmental Remediation (DER) requires the use of EPA Method 1633 for analysis of PFAS in all environmental media (not including drinking water)¹.

Guidance values for limits in soil have been developed for sites in New York State, but soil cleanup objectives (SCO) are not planned to be established until at least a proposal and approval in a future revision to 6 NYCRR Part 375-6. The current guidance gives limit values for PFOA and PFOS based on the anticipated site use for soil and groundwater. While regulations are in progress, it is important to rely on knowledgeable environmental scientists and engineers to ensure that sampling and analysis are completed reliably and in accordance with the most recent and updated regulatory standards.

If you have a project that may require sampling for PFAS or any other environmental analyte, ATL, a WBE certified company, has experienced environmental professionals located throughout New York State to perform sampling and coordinate applicable analysis.

For more information, contact Cheyenne Dashnaw, PE at [315-386-4578](tel:315-386-4578), info@atlantictesting.com, or visit AtlanticTesting.com.

¹ www.dec.ny.gov/environmental-protection/site-cleanup/pfas

ASSOCIATED SERVICES

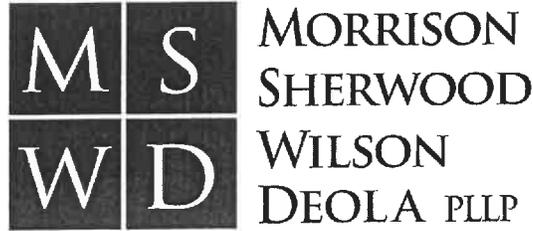
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February 2, 2026

Montana DNRC
Attn: Zack Winfield
1539 11th Ave.
Helena, MT 59601
zackary.winfield@mt.gov

Re: EA Draft Land Use License for Storage of Offsite Materials within AM Welles
DSL Pit

Greetings:

I am writing on behalf of Valley Garden Land and Cattle Company, to provide comments on the draft Environmental Assessment (LUL EA) dated 11/25/2025 for storage of off-site materials on the DSL site and made available to the public on 12/26/2025. (*Note: the County listed in the header is Roosevelt; the correct County is Madison*).

As mentioned in Valley Garden's timely submitted scoping comments, we are supportive of the action to collect revenue, for Montana's common schools (K-12) as trust beneficiaries, from A.M. Welles' storage, processing, and sale of off-site material.

However, several key issues raised in those scoping comments have not been addressed in this draft EA. First, and most notably, the LUL EA does not specify: 1) the nature of the asphalt and concrete materials and source of offsite material; 2) the nature and source of the decorative rock that Welles processes; and 3) it does not describe or analyze the additional proposed related activities such as crushing, grinding, and washing of off-site material. Indeed, the processing of off-site decorative rock is neither contemplated, analyzed, nor permitted by the related DEQ opencut mining permit. Therefore, it is essential that those activities not permitted by DEQ not be allowed here without thorough analysis by DNRC. Without this information, and without an accurate description of the "proposed action" it is impossible for the agency to take a "hard look" at AM Welles's activities as required by MEPA.

Moreover, the DNRC could and should use this license application as an opportunity to “make it right” for Montana’s schools by capturing foregone revenue that the court determined it could be entitled to. While in *Valley Garden V. DNRC*, Cause No. 29-2023-37, the court declined to vacate the permit, it recognized the DNRC’s long-standing mismanagement and warned that the failures of DNRC were of a nature that might lead to “vacating a permit in its entirety as a remedy for continued violations.” Order on Plaintiff’s Motion to Enter Judgment, p. 8

For the reasons described more fully below, we recommend that the DNRC obtain the information necessary to make an informed analysis consistent with its obligations under MEPA and to meet the state’s fiduciary duty to Montana’s K-12 schools. See, *Wild West Motors, Inc. v. Lingle*, 224 Mont. 76, 82, 728 P.2d 412, 415–16 (1986) (duty of undivided loyalty to beneficiaries)

1. DNRC needs an accurate description of the “proposed action” to determine need for additional permits and craft alternatives

MEPA “requires that an agency take a ‘hard look’ at the environmental impacts of a given project or proposal.” *Ravalli County Fish & Game Ass’n v. Montana Dep’t of State Lands*, 273 Mont. 371, 377, 903 P.2d 1362, 1366 (1995). See also *Park County Environmental Council, supra* ¶ 18. (“Accordingly, this Court ‘looks closely’ at agency decisions to determine whether the agency has taken a ‘hard look’ by fulfilling its obligation to ‘make an adequate compilation of relevant information, to analyze it reasonably, and to consider all pertinent data.’ *Clark Fork Coal. v. Mont. Dep’t. of Env’tl. Quality*, 2008 MT 407, ¶ 21, 347 Mont. 197, 197 P.3d 482.”)

But in order to take a “hard look” it is necessary to have clarity about what the actual project or proposal involves. This EA is missing the necessary clarity about the proposed action. The action proposed in this EA is stated as “a request for a license to store, sell and recycle asphalt, concrete and decorative rock” (draft EA, p. 1) within the boundaries of the DSL Pit. In the public scoping notice, the action was characterized as “storing, selling, and recycling, recycled asphalt and concrete; also, storing and selling decorative rock.” EA App A. It is unclear from either statement what crushing, grinding, or screening or other processing activities are involved with these materials and what environmental impacts those activities might have.

Having a clear proposed action is also necessary to craft reasonable alternatives as required by the DNRC MEPA regulations at ARM 36.2.525 (3)(f). In this EA, the action alternative would allow the proponent to continue storing, selling, and recycling asphalt, concrete, and decorative rock within the pit area.” EA, p. 3. But as stated above, it is unclear what that entails. For example, what does it mean to recycle decorative rock?

Throughout the EA, the DNRC’s analysis relies on the analysis in DEQ’s EA for its Permit 674, Amendment 4 (which is substantively similar to Amendment three but shortens

the permit termination date from 2042 to 2032). However, the DEQ’s 2024 EA¹ has the same problem as the DNRC’s—the summary of the proposed action is as follows:

The applicant proposes to amend an existing permit into a Standard, long-term opencut operation to continue to mine, screen, crush, wash, stockpile, and transport 300,000 cubic yards of sand and gravel from a 63.2-acre site located 3 miles north of Ennis, MT. The site has been a long-standing permitted gravel source. DEQ Permit 674 Am. 3, p. 1.

Neither the DEQ EAs for Amendment 3 nor Amendment 4 directly address the environmental impacts of crushing, grinding, washing, and screening off-site materials—only on-site, with a provision for asphalt and concrete crushing in the permit application. Therefore, in no document, other than this one, has the activity of crushing off-site material, which, according to A.M. Welles, includes “red rock and rip rap from the Yellowstone Mine”, been analyzed. (Ex. A, A.M. Welles Responses to Valley Garden First Discovery, BER Case No. 2022-04-OC. Without knowing what the material is and how it will be processed, conclusory statements like “there are no other permits needed specifically to store, sell and recycle asphalt, concrete and decorative rock on State Trust Lands” are meaningless, since the use was not even included or considered in the DEQ Permit or analyzed in either DEQ EA.

Without knowing the source and attributes of the material stored and processed, it is impossible for DNRC to take the hard look at potential impacts to specific resources required by MEPA and discussed in more detail below. As far back as a decade ago, both DEQ and DNRC expressed concern with the potential transport, storage and processing of contaminated material from offsite, and informed A.M. Welles they could not bring such material on to the DSL site. (Ex. B) For the same reasons that proposal fifteen years ago caused the agencies to prohibit such use, DNRC now must, at a minimum, require detailed information about the nature of the offsite material and its source, and if it is contaminated, consider denying the license.

2. The proposed action and development of alternatives should meet the state’s fiduciary duty to Montana’s common schools as the trust beneficiary

The project, as proposed, attempts to bring a long-standing unauthorized use into compliance with the DNRC’s regulations and constitutional obligations. While the DNRC’s

¹ Indeed, the information in the 2024 EA by DEQ is inherently suspect given that the agency admittedly did not solicit any public comment. See *Sapphire Coalition v. Ravalli County*, 2026 MT 9, ¶ 19 (“the opportunity to comment provided by the County Regulations is meaningless unless the public **receives** notice of a pending application.”) Emphasis added. See also *Gateway Conservation Alliance v. DEQ*, Montana 18th Judicial District Cause No. DV 2024-452A, Ordre on Cross Motions for Summary Judgment, where the Court found DEQ violated MEPA for failing to provide notice and opportunity to be heard under MEPA.

statement in the draft EA is true that the use “must now be authorized through a Land Use License as a result of an order by...Judge Luke Berger”; it is also true that DNRC has known since at least June 2022, if not before, that the issuance of a license would be the proper mechanism for extra-permit activities like processing off-site materials; i.e. those beyond “mining and processing of materials mined from site, which is what is allowed on the face of the permit.” *See* Ex. C. AR 1091-1092, email between Valley Garden counsel and DNRC’s Trevor Taylor.

It is a positive step forward that DNRC is requiring compensation for AM Welles’s unpermitted commercial use of the DSL site in favor of the beneficiaries. However, the DNRC could choose to interpret the judge’s order more favorably for Montana’s common schools. While the court did not specifically require the DNRC to re-capture foregone revenue retroactively for the beneficiaries, the Court certainly recognized that the DNRC should have been charging for decades-long use and for the use of water. Even if the State charged what it should have been charging since June 2022, when it explained the procedure for licensing uses beyond straight on-site mining activities, that would mean \$86,000 *additional* dollars for K-12 schools (43 months at \$2000/mo.) Arguably, DNRC could go back even further, to when the activity started in the first place, but requiring payments back to DNRC’s 2022 statement that a land use license would be required for such use is certainly justifiable under the law.

3. The proposed action lacks sufficient specificity for the DNRC to be able to analyze the potential impacts to the physical environment

As stated above, the proposed action in this EA is stated as “a request for a license to store, sell and recycle asphalt, concrete and decorative rock” with the boundaries of the DSL Pit. What is the “decorative rock”? Is the processing of decorative rock allowed under the DEQ permit? Will the unknown material be crushed? Will it be ground? Will it be transported? Will dust or particulates be generated? All of these questions go to the issue of the failure to state the type of action with sufficient specificity to evaluate the direct, secondary, and cumulative environmental impacts. *See, e.g.* MEPA rule requirements at ARM 36.2.525 (2):

The agency shall prepare the evaluations and present the information described in section (3) as applicable and in a level of detail appropriate to the following considerations:

- (a) the complexity of the proposed action;
- (b) the environmental sensitivity of the area affected by the proposed action;
- (c) the degree of uncertainty that the proposed action will have a significant impact on the quality of the human environment;

(d) the need for and complexity of mitigation required to avoid the presence of significant impacts.

Here, DNRC cannot answer these foundational questions without evaluating the nature and source of the offsite material. The EA purportedly analyzes the “storage, recycling, and sale of asphalt concrete, and decorative rock”, but DNRC cannot adequately assess impacts if it does not examine either the recycling activities (e.g. crushing and washing) or the nature of the materials. While the proposed mitigation in section III, 4 regarding storage of off-site materials is a practical suggestion, it does not address impacts from related activities such as crushing and washing. For example, if A.M. Welles is crushing and washing contaminated material, the settling pond is unlined (DEQ Permit, p. 15) and the reject fines remain on-site, (DEQ Permit, p. 16), the DNRC could be permitting the generation and burial of contaminated waste.

As a reminder, DNRC relies heavily on the DEQ EA which did not analyze the impacts of crushing or recycling even though it was proposed in the application for permit.

The applicant proposes to amend an existing permit into a Standard, long-term opencut operation to continue to mine, screen, crush, wash, stockpile, and transport 300,000 cubic yards of sand and gravel from a 63.2-acre site located 3 miles north of Ennis, MT. DEQ EA 674 Am. 4, p.

In the DEQ EA and attachments, there is no discussion of the processing of offsite material. In fact, the on-site inspection report did not even flag the existence of off-site rock. See DEQ Permit 674 Am. 4 EA, App. F. Therefore, it is up to the DNRC to determine and evaluate these activities. As stated by Minerals Management Chief Trevor Taylor in his June 2022 email, “The DEQ approves a variety of gravel, asphalt, washing, or recycling operations as a part of their permit. This does not give the operator the right to conduct all these operations under their DNRC permit, unless specifically stated in the gravel permit.” (Exhibit C, p. AR 1091.)

Without this information, it is not possible to conclude that no other permits are needed. For example, if the decorative rock and concrete contained asbestos, additional permitting may be required.

4. EA Discussions

Turning to the EA’s discussion of specific resources:

Section 1. Public Involvement:

Public Notice under MEPA: Currently, the public cannot access the LUL. On the DNRC website, when the public engages the “Download File” link on the “DRAFT EA – LUL for Offsite Storage and Recycling, AM Welles DSL Pit 2025-12-09” the link takes you to the following page “404 Error – Page Not Found”.

Access to the draft EA LUL as referenced in the public notice in the local paper *The Madisonian* https://dnrc.mt.gov/docs/environmental-documents/minerals/12-09-2025_Draft-EA-LUL-for-Offsite-Storage-and-Recycling-AM-Welles-DSL-Pit.pdf/A:DNRC results in “Server Error in ‘/’ Application” notifications.

As discussed above, the Location of the DSL Pit in the LUL EA is listed as Roosevelt County, not Madison County. Thus, Madison County citizens monitoring activity on the DSL Pit will not pick this up as the location is not correct. Under MEPA, how can the public be informed when the LUL EA is not readily available on the DNRC website, and the location of the Activities is not correct?

Section 4 – Geology and Soil Quality, Stability: As discussed above, of significant importance is the source and nature of the imported material. What is the source of the imported material? The LUL EA and associated permit do not restrict the source or nature of the imported material, nor identify where it came from. Contaminated material will leave residue. This residual effect will impact the water quality as well as the ability to reclaim the site. The topsoil overburden of 8” required in the reclamation process will be impacted by the residue of the residual material on the pit floor. Among others, recycled concrete frequently comes from older buildings with a significant asbestos presence – how will this be mitigated? Additionally, as noted, Welles attempted to bring diesel contaminated soil onto the DSL Pit in 2012, and Monte Mason, former Minerals Management Chief, stepped in and prohibited this action.

A thorough analysis must be performed of the imported source material to confirm that the material is not contaminated. Regular inspections must be performed and results shared with the public to confirm Welles is not importing and processing contaminated material.

Section 5 – Water Quality, Quantity: The LUL EA does not do an adequate job addressing the following, keeping in mind that any water and wastewater flow into the very sensitive Madison River ecosystem and ultimately Ennis Lake and beyond: The impact to groundwater from the importation and processing of material whose source is unknown – as discussed above. If the material is contaminated, what are the impact on the groundwater and the water in the Madison River and its tributaries? Dr. Nicklin’s report referenced in the DEQ EA can’t be relied on because it doesn’t reflect the fact that third party material will now be imported and processed on the site. The DEQ EA must not be relied on with respect to any Activities as the DEQ EA did not consider the importation and processing of this third-party material. As mentioned in the LUL EA, water to process the Activities will be sourced on site. However, the same representation was made in the Asphalt Plant EA, and despite this representation in the EA, Trevor Taylor testified “*I don’t know if the water is clean*”. Moreover, there is no discussion of how much water will be needed nor whether its use falls under the certification for the well.

An analysis should be performed to confirm that the water required for the Activities coupled with the water required by the existing permit to mine Sand and Gravel will not require additional water permits from the DNRC.

The assertion in the EA *“within previous analyses, the DSL site does not discharge stormwater into surrounding surface water bodies. . . (s)tormwater is contained onsite by the topography of berms on the site”* as a mitigation to any impact on Water Quality is no longer correct for the following reasons: The DEQ EA that “supports” this claim does not consider the importation and processing of offsite material – therefore it should not be used as an analysis to mitigate this.

Importantly, the DNRC plans to eliminate the very berms that it refers to as a mitigation to stormwater flow. Consequently, the LUL EA cannot use the berm as an explanation for stopping the flow of stormwater into the Madison River ecosystem. An updated EA must be performed to analyze the impact of the new Activities.

Your mitigation statement that *“all equipment. . . . and storage activities must be regularly maintained and inspected to ensure its is not leaking fluids, spreading noxious wecks, creating an undue fire hazard or threatening the life or property of others”* rings hollow given DNRC’s history of infrequent inspections.

Section 6 – Air Quality: Here again, the LUL EA does not do a proper job addressing the Activities. Relying on the DEQ EA, an analysis that does not even mention or consider “decorative rock”, is inadequate.

Fugitive Dust from processing contaminated third-party material is extremely hazardous – residual asbestos from recycled concrete is lethal to human health and the silica residue infiltrating the Madison River ecosystem will be detrimental to the fishery and wildlife.

Sections 8, 9 and 11 acknowledges *“the noise that is created from recycling activities”* and goes on to imply the noise level from these activities is no greater that the current noise levels of the DSL Pit. Unfortunately recycling concrete is the loudest activity that can be conducted on the site. The nature of a concrete crusher with its sporadic “boom, boom, boom” is significantly greater than the noise of a constant conveyor belt moving gravel.

As previously mentioned, the DEQ EA considers only the mining and processing of Sand and Gravel not the noise from Concrete Recycling. A noise analysis should be performed to confirm that the Activities will stay below the noise levels of 50 decibels.

Section 11 – Aesthetics. The LUL EA states that *“the pit area has topsoil berms that almost completely surround it, making it difficult to see into the pit from outside the permitted area.*

These berms also act as a barrier for sound waves propagating from the pit area.” This is unfortunately not true. The North and South boundary have no topsoil berm. The Western boundary (along HWY 287) has a topsoil berm that is approximately 6 feet, well below the required berm height of 10 – to 12 feet required in Section 35 a. of the DNRC Permit. As previously discussed, the Eastern Berm currently has no topsoil berm, but the entire Eastern Wall/Berm will be removed exposing the entire mine to the Aesthetics, Noise and Runoff of the mine and its Activities onto the Madison River ecosystem.

5. EA fails to address impacts of the proposed action on the benefit to the trust beneficiaries

As the DNRC is calculating the financial benefit to the trust beneficiaries, it relies on Judge Berger’s order that DNRC must charge “AM Welles fair market value, which was established in their contract with Riverside.” DNRC goes on to explain the basis for the calculation.

What the Judge did not order is the start date of the requirement to make payments. While the start date as of the date of the court order is understandable, it is also a missed opportunity for the Trust to benefit from the decades of commercial use that AM Welles enjoyed with no compensation to the trust. We recommend that the DNRC either extend the retroactivity to at least 2022, as discussed above, or increase the license rate to recapture foregone revenue to which the beneficiaries were entitled.

Finally, the DNRC’s recommendation that the land use license for storage and processing of off-site materials is tied to an active gravel mining permit and that the license is limited in time makes sense. (*See* draft EA, p. 19.) However, the DEQ opencut mining permit expires in 2032, *less* than the ten years DNRC proposes to issue this license for. *Id.* Moreover, it appears that the pit mining is nearing completion, as was discussed at the meeting between Valley Garden and DNRC in January 2026. Accordingly, Valley Garden recommends that DNRC issue the license for two years, with the limited ability to seek a renewal at that time but based on then-current market rates. As a practical matter, if the DEQ Permit expires in 2032, reclamation will likely have to commence by 2030, which means that there will be no more than four more years of active mining. And that, in turn, means that the processing of offsite material must also cease within four years.

Conclusion

Valley Garden appreciates the lines of communication that were opened in its January 2026 meeting with DNRC and hopes to build on that “good neighbor” relationship in the future. However, we believe that the EA as issued contains many major flaws. Based on our analysis and discussion above, and based on those expectations, Valley Garden makes the following recommendations:

- 1) Ensure that all the terms of the existing DNRC Permit are fully enforced, including the Section 35 requirement for a 10-12-foot-high barrier of topsoil.
- 2) Should the Eastern berm be removed, require measures to ensure that storm runoff will not flow into the Madison River ecosystem.
- 3) Actively monitor the volume of gravel mined, and regularly (preferably quarterly) inspect, publicly available.
- 4) Specify and quantify the activities associated with the proposed action.
- 5) Determine the source and type of off-site material in order to evaluate potential impacts.
- 6) Revisit the license rate start date and amount to ensure the fullest possible benefit to the trust beneficiaries.
- 7) Impose additional limitations on days/extent of operation to benefit surrounding landowners and nearby communities.
- 8) Ensure activities are limited to daylight hours, excluding weekends, and that noise levels don't exceed 50 decibels.
- 9) Limit the license term to two years with no more than one potential renewal with rate adjustment.
- 10) Please provide the public with contact information for a main contact person with authority, for any questions or concerns about the operation.

Thank you, and please feel free to contact me with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "David K. W. Wilson, Jr.", with a long horizontal flourish extending to the right.

David K. W. Wilson, Jr.

Cc: Client
Mark Phares mphares@mt.gov
Emily Obermiller Emily.Obermiller@mt.gov

Matthew I. Sack
SACK LAW PLLC
1700 W Koch, Ste 4
Bozeman, MT 59715
Telephone: (406)587-3736
Facsimile: (406)582-4482
Attorney for Intervenor, A.M. Welles, Inc.

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

**IN THE MATTER OF: APPEAL
AND REQUEST FOR HEARING
BY VALLEY GARDEN LAND &
CATTLE LLC REGARDING
ISSUANCE OF OPENCUT
MINING PERMIT #674,
AMENDMENT #3**

Case No. BER 2022-04 OC

**A.M. WELLES, INC.'S
RESPONSES TO
PETITIONER'S FIRST
COMBINED DISCOVERY
REQUESTS**

COMES NOW, A. M. Welles, Inc. ("AMW"), Intervenor herein, and makes the following Answers and Objections to Petitioner, Valley Garden Land & Cattle LLC's ("VGLC") First Discovery Requests, fully in writing and in the manner provided in Rules 26, 33, 34, and 36 of the Montana Rules of Civil Procedure. AMW reserves the right to rely on any document produced in response to these, and other discovery requests, although not specifically identified in the particular discovery responses.

the staging of concrete and asphalt. See also DEQ's Answer to VGLC's Request for Admission No. 11.

INTERROGATORY NO. 17: Please identify all off-site materials stored on the DSL Pit site, the origin of the materials, and how the materials are processed.

ANSWER: Concrete and asphalt from AMW various outside projects is crushed and replaced as gravel. Red rock and rip rap from the Yellowstone Mine is washed.

INTERROGATORY NO. 18: When did A.M. Welles start storing, processing, and selling off-site materials on the DSL Pit site?

ANSWER: Unknown. AMW has worked with off-site materials for over 20 years.

REQUEST FOR PRODUCTION 9: Please produce legal authorization for the storage, processing, and sale of off-site materials on the DSL Pit site.

RESPONSE: See DEQ Opencut Permit, DEQ00001 through DEQ00430.

REQUEST FOR ADMISSION NO. 4: Please admit that A.M Welles does not have the legal right to conduct Opencut Operations in the 23.2 acres expansion area.

RESPONSE: Denied.

INTERROGATORY NO. 19: If the answer to the preceding Request for Admission is anything other than an unqualified admission, please provide the factual basis for your answer.

Mason, Monte

From: Bob Waller [rwaller@wispwest.net]
Sent: Thursday, August 02, 2012 6:17 PM
To: Mason, Monte
Subject: Re: A.M. Welles DSL Pit (Opencut Permit #674)

Thanks Monte, much appreciated. Bob Waller

----- Original Message -----

From: Mason, Monte
To: Cronin, Chris ; rwaller@wispwest.net
Cc: Schiff, Allen ; Conner, James ; Thompson, Ricknold ; Walsh, Vickie ; Cronin, Chris ; Campbell, Craig
Sent: Thursday, August 02, 2012 5:44 PM
Subject: RE: A.M. Welles DSL Pit (Opencut Permit #674)

Mr. Waller,

AM Welles has been conducting gravel mining on the subject tract of State owned lands pursuant to gravel permit G-1273-94. The department is currently reviewing AM Welles application to renew this permit for another two years.

To confirm our phone conversation, your statements below to JJ Conner, DEQ, were not accurate. Paragraph 2. of your permit expressly provides you are to use the State property solely for the purpose of mining sand and gravel from the premises. Indirectly related activities are not authorized unless specified in Paragraph 35. Paragraph 35 of your permit does not include installation of asphalt or cement batch plants, and it does not authorize you to bring any offsite materials onto the premises.

Thank you for calling me back so quickly. If you have any further questions, please let me know.

Monte Mason

Monte G. Mason
Minerals Management Bureau Chief
Montana Department of Natural Resources & Conservation
Trust Land Management Division
1625 11th Avenue, PO Box 201601
Helena, MT 59620-1601
406.444.3843
mmason@mt.gov

From: Cronin, Chris
Sent: Thursday, August 02, 2012 4:49 PM
To: rwaller@wispwest.net
Cc: Schiff, Allen; Conner, James; Mason, Monte; Thompson, Ricknold; Walsh, Vickie
Subject: A.M. Welles DSL Pit (Opencut Permit #674)

Mr. Waller,

JJ Conner forwarded your inquiry below to me for response.

I can offer the following information based on preliminary review of the Opencut permit file:

- The Opencut Mining Permit (#674) for the A.M. Welles DSL Pit in Madison County was originally approved in 1994 and was amended in 1997 and 2000. A total of 40 acres is permitted.
- The permit area was most recently inspected by the Opencut Mining Program in July 2001. AM Welles submitted an updated pit map in January 2008.

- The surface landowner is the Department of Natural Resources and Conservation (DNRC). In a December 1996 DNRC correspondence to AM Welles the DNRC refers to the site by its Permit # G-1273-96 (T5S, R1W, Sec. 16).

Based on your email below, I can offer the following information:

- Transporting, handling, stockpiling, and processing contaminated soil is not allowed under the current Opencut Mining Permit.
- The Opencut Mining Program does not regulate, and does not have the expertise or authority to approve the handling, stockpiling, treatment, crushing, or disposal of contaminated materials or solid wastes.
- Before initiating any such activities, AM Welles must obtain all approvals that may be required by the DNRC; the DEQ Petroleum Release Section, Solid Waste Program, and Air Resources Management Bureau; as well as any other state, local, and Federal agency with jurisdiction in the matter.

Chris Cronin
 DEQ Opencut Mining Program Supervisor
 (406)-444-2871
ccronin@mt.gov

From: Bob Waller [<mailto:rwaller@wispwest.net>]
Sent: Thursday, July 26, 2012 10:45 AM
To: Conner, James
Cc: Schiff, Allen
Subject: A.M. Welles DSL Pit

Hello Mr. Conner, As you requested, I am sending this email to outline the disposal of up to 500 cubic yards of diesel contaminated soil from the A.M. Welles shop in Norris, MT. The project site is currently funded by the Montana Petroleum Tank Release Compensation Fund (MPTRCF) We would like to incorporate the contaminated soil into the crushing operation at the DSL pit north of Ennis with the soil ending up in a road mix product that will be used on a highway construction project. Contaminant levels in the soil are expected to be less than 2000 ppm of diesel range hydrocarbons based on past sampling. The contaminated soil will be stockpiled at the site for a short time prior to being incorporated in to the pit run material that will be crushed, hopefully less than a week if the excavation work can be timed with the crushing operation. I believe that A.M. Welles is planning to crush this fall sometime.

Disposal options are limited and significant cost savings for both A.M. Welles and the MPTRCF will be realized if the soil does not have to be hauled to Logan, MT for landfill disposal and then pit run backfill hauled to the shop site separately.

I think the permit for the DSL pit allows for stockpiling asphalt for later crushing so hopefully the permit conditions and bond that is in place will allow for this. Thanks for your assistance with this matter and feel free to call me at 406-582-8491 or email with any questions. Bob Waller

Obermiller, Emily

From: Taylor, Trevor
Sent: Wednesday, November 15, 2023 8:46 AM
To: Obermiller, Emily; Phares, Mark
Subject: FW: Permit #674 DSL Pit
Attachments: DNRC Response to 6-14-22 Conversation with Diane Conradi - Trevor Taylor.pdf; G-1273-94 Pit Permit Renewal 2021.pdf

Emily, below and attached are my responses to Diane's email I received June 17th, 2022.

Trevor

From: Taylor, Trevor
Sent: Thursday, June 23, 2022 4:17 PM
To: Diane Conradi <diane@landwaterlaw.com>
Cc: Bramblett, Brian <BBramblett@mt.gov>; Phares, Mark <mphares@mt.gov>
Subject: RE: Permit #674 DSL Pit

Good afternoon Diane,

I have read through the items you recorded from our conversation and had very minor edits regarding the conversation. I also tried to clarify some of the points you had brought up during our conversation and when possible provide additional information. I have also included the renewal application for the pit as you had requested earlier. Please let me know if you have any additional questions regarding the DNRC process of gravel pit permitting.

Sincerely,

Trevor Taylor
Bureau Chief, Minerals Management Bureau
DNRC – Trust Lands Management Division
Phone: (406)-444-3843
Email: TTaylor2@mt.gov

From: Diane Conradi <diane@landwaterlaw.com>
Sent: Friday, June 17, 2022 9:06 AM
To: Taylor, Trevor <TTaylor2@mt.gov>
Cc: Bramblett, Brian <BBramblett@mt.gov>
Subject: [EXTERNAL] Permit #674 DSL Pit

Trevor,

I really appreciate you taking the time to talk with me on Wednesday about DNRC's licensing and evaluation process for the above DEQ permit. You mentioned that you are putting a letter together that describes DNRC process to evaluate the A.M. Welles gravel mining proposal in the DEQ permit, but because the flood response has pulled agency staff away you'll send it out early next week. We will look to receiving that explanation, but in the meantime, I offered to quickly

summarize our conversation. Please let me know if the summary of our conversation is incorrect and if I've omitted anything.

The permit #674 issued by DEQ raises multiple DNRC related issues re: grazing, water use and discharge, and mining rules and regulations including MEPA and public participation. It is difficult to understand the relationship and how the evaluation processes tie between the two agencies in terms of public participation and MEPA and developing a project that is in the best interest of the trust beneficiaries.

- VGLC had NO official notice of the proposed expansion, batch plant and asphalt recycling proposal until someone from DNRC called on April 18 to ask them to remove their fence. NO notice from DEQ, NO notice from operator, NO notice as grazing lessee of the proposed expansion area. All the timelines for any involvement had well passed before VGLC know about it.
- DNRC views the DEQ mining permit proposal as at least two separate transactions: 1) the mine expansion (Expansion) as authorized by G-1273-94 (2022 Renewal); and 2) the processing activities like asphalt batch plant, concrete and asphalt recycling (Processing) (and other activities) that are referenced as "special conditions" in the Aggregate License. MEPA will be conducted for each.
- DNRC issued a gravel license renewal in Feb., 2022, the operator applied for a permit in March, 2022, the permit was granted in May, 2002. DNRC treats the permit as a "proposed action" and starts its MEPA process(es) upon issuance of the permit.
- There is no authorization for any activities on the site in the expansion area. Operator may continue activities under the existing/prior (?) license (mining and processing sand and gravel from on-site) (understand correctly? Is the 40 acre permit still in place?)
- At current time, the operation is not allowed to expand its footprint without DNRC MEPA and DNRC authorization, and is not allowed to undertake any other activities (selling decorative rock, asphalt batch, other processing activities) without seeking additional authorization (land use license, etc.).
- Expansion is covered by the gravel license, while processing and related activities are authorized by a land use license. Both Expansion and Processing will require MEPA.
- RE: Expansion
 - a. Per DNRC review, the pit is nearing the end of its lifespan and it is time to remove the existing gravel headwall and reclaim the site.
 - b. DNRC is conducting its own analysis on only the pit expansion as described in the DEQ permit. No ancillary additional uses. DNRC generally does not start the analysis until it knows what the proposed use is which is what learn from the permit. The license is issued as a renewal and don't perform the MEPA until there is a proposed action—license alone is not an action.
 - c. Per DNRC, the MEPA on the Expansion will be limited because DNRC is treating the expansion as a renewal on an existing permit, assume impacts were analyzed under a prior transaction, and the additional impacts from the expansion will not be significant since it is continuing the same type of operation that has been in place for decades, and haven't had an interest from the community about the pit. Plan to do targeted outreach by reaching out the to the landowner, DNRC in-house staff re: wildlife and fisheries issues, other affected agencies like FWP, and in-house water rights. No plans for public outreach on Expansion.
 - d. DNRC MEPA may fill the gaps that DEQ EA did not address. Short time frames under new law curtail meaningful analysis by DEQ.
 - e. DNRC not aware of issues associated with the Expansion that can't be mitigated.
 - f. The gravel license generates more revenue than grazing license.
 - g. Per DNRC, there is no competitive bid process for renewal of an existing gravel license. The license has a term of 2 years and frequently renewed.
 - h. VGLC understands the operation and economics of sand and gravel production. They are also a current grazing lessee. Interested in economically beneficial solutions that balance community vitality and trust revenue.
 - i. Gravel pit and plant on highway with ready access makes good sense for road repairs.

- **RE: Asphalt Processing (batch/recycling)** Welles will need an application, the application/proposed action will be reviewed under MEPA, scoping and public participation will be more robust review. Similar proposal and objection in Paradise Valley right now re: asphalt batch. Possible solution for processing might be to move the operation somewhere else.
 - a. Little risk of contamination from batch plant given the location of the site on a terrace above the waterway.
 - b. Have drone footage from a year ago that will be part of analysis.
 - c. AM Welles has not yet applied to DNRC for license/permit for other uses like batch plant, recycling, or activities like the sale of decorative rock (assuming it comes from off-site).
 - d. DNRC anticipates that it will conduct an MEPA process with scoping, public involvement, and community engagement for asphalt plant.
 - e. Asphalt/concrete recycling can have marked sound, air quality impacts. What process with the operator have to undertake to start operating processing from DNRC regulations? DEQ? Additional permitting?
 - **RE: Water rights, usage and discharge.** Per DNRC discussion with A.M. Welles, Welles estimated usage at 5 ac. ft but might use up to 8. Not aware of a water right, but would check with water rights to confirm. Key issues for VGLC are: water quality discharge testing data, water quality diversion, metering/measuring diversion volume and flow. VGLC offered expertise of water rights specialist for VGLC Ranch as this is a key issue for senior water rights holders with water rights adjacent to the Welles's wells.
-
- I offered to share supplemental impact analyses (water quality and visual impact) and other research to help ID issues for MEPA.
 - You said it would be helpful if VGLC compiled issues relating to the permit in a letter to DNRC. I offered to do that—many of the issues re: DEQ permit were identified in the DEQ letter I emailed to you.
 - Timeline for MEPA on Expansion, maybe 2 wks to month, but flooding is really taking bandwidth from experts, engineers, etc.
 - You mentioned that MEPA documents are available on the DNRC website. Could you please let me know how to find those if you don't know the name of the project or the year? I made a public records request about 6 weeks ago but have heard nothing.

Please feel free to correct or address any outstanding issues in your letter—particularly current authorized uses. It would be helpful if you could provide direction to regulations/rules for the aggregate permitting process.

DIANE CONRADI



116 Lupfer Avenue Unit B | P.O. Box 4585 | Whitefish, Montana 59937 | diane@landwaterlaw.com | p. 406.471-5817 | f. 888.809.1474

This email message is for the sole use of the Intended recipient(s) and may contain confidential and privileged information. Any unauthorized use, review, disclosure or distribution is prohibited. If you are not the Intended recipient, please contact the sender by reply email and destroy all copies of the original message.

Trevor,

I really appreciate you taking the time to talk with me on Wednesday about DNRC's licensing and evaluation process for the above DEQ permit. You mentioned that you are putting a letter together that describes DNRC process to evaluate the A.M. Welles gravel mining proposal in the DEQ permit, but because the flood response has pulled agency staff away you'll send it out early next week. We will look to receiving that explanation, but in the meantime, I offered to quickly summarize our conversation. Please let me know if the summary of our conversation is incorrect and if I've omitted anything.

The permit #674 issued by DEQ raises multiple DNRC related issues re: grazing, water use and discharge, and mining rules and regulations including MEPA and public participation. It is difficult to understand the relationship and how the evaluation processes tie between the two agencies in terms of public participation and MEPA and developing a project that is in the best interest of the trust beneficiaries.

- VGLC had NO official notice of the proposed expansion, batch plant and asphalt recycling proposal until someone from DNRC called on April 18 to ask them to remove their fence. NO notice from DEQ, NO notice from operator, NO notice as grazing lessee of the proposed expansion area. All the timelines for any involvement had well passed before VGLC know about it.

As I understand, typically, adjacent landowners are first made aware of a proposed sand and gravel operation or modification by the Operator, as now required by DEQ. The DNRC will also notice the grazing lessee during DNRC review, and as early as the MEPA review to ensure that any modifications to the grazing lease are understood and worked out with the DNRC, the grazing lessee, and the gravel operator.

- DNRC views the DEQ mining permit proposal as at least two separate transactions: 1) the mine expansion (**Expansion**) as authorized by G-1273-94 (2022 Renewal); and 2) the processing activities like asphalt batch plan, concrete and asphalt recycling (**Processing**) (and other activities) that are referenced as "special conditions" in the Aggregate License. MEPA will be conducted for each.

The DEQ approves a variety of gravel, asphalt, washing, or recycling operations as a part of their permit. This does not give the operator the right to conduct all these operations under their DNRC permit, unless specifically stated in the gravel permit. MEPA is conducted for changes in a gravel pit if the pit is modified beyond the currently approved boundaries, or if there are other operations proposed within the pit. If other operations aren't described under the gravel permit, a Land Use License would have to be applied for, reviewed under MEPA, and approved before the gravel operator would be allowed to conduct these other operations.

AR_001091

- DNRC issued a gravel license renewal in Feb., 2022, the operator applied for a permit in March, 2022, the permit was granted in May, 2022. DNRC treats the permit as a “proposed action” and starts its MEPA process(es) upon issuance of the permit.

The DNRC received an application for gravel pit permit renewal on November 24th, 2021 and approved the permit renewal on February 4th, 2022. The DNRC is not required to conduct MEPA upon issuance of Leases, Licenses, or Permits. Instead, the DNRC conducts a MEPA evaluation at the time a project or activity is proposed that requires MEPA review. Mont. Code Ann. 77-1-121(b)

- **There is no authorization for any activities on the site in the expansion area. Operator may continue activities under the existing/prior (?) license (mining and processing sand and gravel from on-site) (understand correctly? Is the 40 acre permit still in place?)**

This is correct, even though the permit renewal increased the acreage for a future expansion, the gravel operator is not authorized to conduct operations within the 23.2-acre expansion area until a MEPA evaluation has been conducted. The gravel operator is still authorized to conduct operations under the previous 40-acre area that has already been evaluated under MEPA.

- **At current time, the operation is not allowed to expand its footprint without DNRC MEPA and DNRC authorization, and is not allowed to undertake any other activities (selling decorative rock, asphalt batch, other processing activities) without seeking additional authorization (land use license, etc.).**

The gravel operator needs the following before they can conduct operations on the expanded footprint of the gravel pit. They need approval from the DNRC for the right to mine on the expanded pit area through a permit renewal with amended acreage reflecting the expansion, which the operator has. The operator needs regulatory authorization from the DEQ for an amended DEQ permit that considers the expanded pit area, which they have. And finally, the operator can't proceed to mine gravel in the expanded footprint of the gravel pit until DNRC has conducted its MEPA review.

- Expansion is covered by the gravel license, while processing and related activities are authorized by a land use license. Both Expansion and Processing will require MEPA.

Expansion of the gravel pit is done by first renewing the gravel pit to account for the expansion, and second by conducting MEPA once the DNRC receives more detailed information regarding what activities the expansion entails. Gravel washing is considered a part of the existing gravel permit as it can be common to wash gravel before selling it. Crushing activities are also included under G-1273-94. Other activities such as an asphalt plant and asphalt and concrete recycling need additional review and approval. In this permit, an asphalt plant would need approval and MEPA review before the operator can conduct that activity (section 35, provision i). Although under the permit, the operator was not allowed to conduct asphalt or concrete recycling activities, so these activities would need to be authorized under a separate Land Use License and MEPA review.

AR_001092

- **RE: Expansion**

- a. Per DNRC review, the pit is nearing the end of its lifespan and it is time to remove the existing gravel headwall and reclaim the site.

There are only 20+/- acres left to mine on the state tract before the property line is reached. Once this mining is completed, the highwall will be reclaimed to a 3:1 slope and the berm between the pit and the Madison River valley will be removed opening the reclaimed pit area toward the Madison River.

- b. DNRC is conducting its own analysis on only the pit expansion as described in the DEQ permit. No ancillary additional uses. DNRC generally does not start the analysis until it knows what the proposed use is which is what learn from the permit. The license is issued as a renewal and don't perform the MEPA until there is a proposed action— license alone is not an action.

The DNRC issues its own gravel permit to give an operator the right to mine on Trust Lands. The permit alone doesn't authorize the operator to begin operations as MEPA must still be conducted before permitted activity begins.

- c. Per DNRC, the MEPA on the Expansion will be limited because DNRC is treating the expansion as a renewal on an existing permit, assume impacts were analyzed under a prior transaction, and the additional impacts from the expansion will not be significant since it is continuing the same type of operation that has been in place for decades, and haven't had an interest from the community about the pit. Plan to do targeted outreach by reaching out to the landowner, DNRC in-house staff re: wildlife and fisheries issues, other affected agencies like FWP, and in-house water rights. No plans for public outreach on Expansion.

MEPA on the expansion of the existing pit will be as extensive as it would with a new pit application as all the necessary items analyzed under MEPA still have to be evaluated with an expansion. As a result of the existing pit having been in operation for at least 25 years, most impacts are known and there haven't been concerns brought forth from the public. Impacts are never assumed to be insignificant; this is the reason MEPA is conducted to verify whether conditions have changed from the last time MEPA was conducted that might include new significant impacts. Given the historic lack of interest in this site and the fact that the nearest building or residence is at least a mile away from the proposed expansion area, the DNRC may choose not to scope the community regarding this action.

- d. DNRC MEPA may fill the gaps that DEQ EA did not address. Short time frames under new law curtail meaningful analysis by DEQ.

Just to clarify, the DNRC did not state that short time frames under Statute curtail meaningful analysis by the DEQ. This may have been a point made by Ms. Conradi. The DNRC is able perform an analysis that considers those issues seen as relevant to the project as it relates to impacts changes to Trust Lands has on the natural and human

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environment. Restrictions to DNRC permits are discretionary and put in place to help protect Trust Lands in ways we see fit as Trust Land managers.

- e. DNRC not aware of issues associated with the Expansion that can't be mitigated.

Upon an initial look of the MEPA review that has been conducted to date, it doesn't appear that there have been issues brought up that can't be mitigated. As the MEPA process is not complete, this conclusion could change as more information is evaluated.

- f. The gravel license generates more revenue than grazing license.

The grazing lease generates approximately \$1,166/year over 264 acres. This amounts to approximately \$4.42/year/acre of grazing. It is estimated that the gravel will produce approximately \$1-\$1.5 million over 20 acres mined, which is around \$62,500/acre. If this expansion takes 10 years to complete, gravel development would generate over 1,400 times more revenue for the trust beneficiary than grazing generates over the same acreage for a period of 10 years.

- g. Per DNRC, there is no competitive bid process for renewal of an existing gravel license. The license has a term of 2 years and frequently renewed.

This is correct, competitive bidding is conducted when there is more than one party potentially interested in acquiring the initial gravel permit for an area. Once a gravel permit to take and remove gravel is acquired from the DNRC, the gravel company has stability in knowing that the state won't bid their permit area out to a potential new operator every two years.

- h. VGLC understands the operation and economics of sand and gravel production. They are also a current grazing lessee. Interested in economically beneficial solutions that balance community vitality and trust revenue.

While the DNRC is open to discussing potential economically beneficial solutions, there is an existing demand for gravel along the Highway 287 corridor, which is being met by this gravel pit. Thinking holistically, it makes sense for the DNRC to finish mining the little remaining gravel from this pit, while generating additional revenue for public schools, then reclaiming the pit before opening an entirely new gravel mine along the highway corridor to provide gravel for the same demand.

- i. Gravel pit and plant on highway with ready access makes good sense for road repairs.

See above.

- RE: **Asphalt Processing** (batch/recycling) Welles will need an application, the application/proposed action will be reviewed under MEPA, scoping and public participation will be more robust review. Similar proposal and objection in Paradise Valley right now re: asphalt batch. Possible solution for processing might be to move the operation somewhere else.

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- a. Little risk of contamination from batch plant given the location of the site on a terrace above the waterway. This may be true, but a MEPA evaluation will help verify.
 - b. Have drone footage from a year ago that will be part of analysis. Correct.
 - c. AM Welles has not yet applied to DNRC for license/permit for other uses like batch plant, recycling, or activities like the sale of decorative rock (assuming it comes from off-site). Not that I am aware of.
 - d. DNRC anticipates that it will conduct an MEPA process with scoping, public involvement, and community engagement for asphalt plant. Correct, on something like an asphalt plant, the DNRC would be more likely to include some level of public involvement by advertising the proposal and seeking comments to take under consideration as a form of community engagement. Comments would be responded to in a final MEPA document.
 - e. Asphalt/concrete recycling can have marked sound, air quality impacts. What process with the operator have to undertake to start operating processing from DNRC regulations? DEQ? Additional permitting? Asphalt and concrete recycling can potentially cause higher noise levels to receptors near the pit. It is possible that a sound study could be required to determine what the noise attenuation would be at nearby residences as a part of the MEPA review.
- **RE: Water rights, usage and discharge.** Per DNRC discussion with A.M. Welles, Welles estimated usage at 5 ac. ft but might use up to 8. Not aware of a water right, but would check with water rights to confirm. Key issues for VGLC are: water quality discharge testing data, water quality diversion, metering/measuring diversion volume and flow. VGLC offered expertise of water rights specialist for VGLC Ranch as this is a key issue for senior water rights holders with water rights adjacent to the Welles's wells. DNRC is looking into the water usage and water right for the gravel washing activity which is a part of the gravel operations.
 - I offered to share supplemental impact analyses (water quality and visual impact) and other research to help ID issues for MEPA. The DNRC would be happy to look at results from studies conducted in the vicinity that could provide additional useful information for the MEPA review.
 - You said it would be helpful if VGLC compiled issues relating to the permit in a letter to DNRC. I offered to do that—many of the issues re: DEQ permit were identified in the DEQ letter I emailed to you. Correct.
 - Timeline for MEPA on Expansion, maybe 2 wks to month, but flooding is really taking bandwidth from experts, engineers, etc. Correct.
 - You mentioned that MEPA documents are available on the DNRC website. Could you please let me know how to find those if you don't know the name of the project or the year? I made a public records request about 6 weeks ago but have heard nothing. MEPA documents posted on the DNRC webpage over the past 30 days are located here: <http://dnrc.mt.gov/public-interest/environmental-docs> For anything older, the DNRC will have to look through records to find what is available for a specific activity.

Please feel free to correct or address any outstanding issues in your letter—particularly current authorized uses. It would be helpful if you could provide direction to regulations/rules for the aggregate permitting process.

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CERTIFICATE OF SERVICE

I, Mark C. Phares, hereby certify that I have served true and accurate copies of the foregoing Notice - Notice to the following on 11-15-2023:

Emily Obermiller (Attorney)
2705 SPURGIN RD
MISSOULA MT 59804-3111
Representing: Montana Department of Natural Resources & Conserva
Service Method: eService

Matthew I. Sack (Attorney)
1700 W Koch
Suite 4
Bozeman MT 59715
Representing: A.M. Welles Inc.
Service Method: eService

David Kim Wilson (Attorney)
401 North Last Chance Gulch
Helena MT 59601
Representing: Valley Garden Land & Cattle LLC
Service Method: eService

Diane B. Conradi (Attorney)
PO Box 4585
Whitefish MT 59937
Representing: Valley Garden Land & Cattle LLC
Service Method: eService

Electronically signed by Jean Saye on behalf of Mark C. Phares
Dated: 11-15-2023



March 20, 2026

RE: **Reply to Public Comment by AM Welles**

Storage of Offsite Materials in DSL Pit

Madison County, MT

Dear Mr. Hokanson, thank you for your comment.

Within in your comment, you state that the Madison County District Court ordered the DNRC to “charge A.M. Welles fair market value, which was established in their contract with Riverside for its asphalt and concrete recycling and storage of offsite materials.” This is correct.

Your interpretation of the order differs from the Department’s. The Department believes that the order requires DNRC to charge an amount commensurate with what “was established in their contract with Riverside...” While the Department recognizes and agrees that the activities authorized under the Riverside LUL and the pending LUL are patently different, the Court ordered the Department to use the same value “established in their contract with Riverside.”

Due to this reasoning, to comply with the order, the Department must issue a prospective Land Use License for storage at the same fee which was established in the Riverside contract.

Sincerely,

A handwritten signature in black ink that reads "Trevor Taylor". The signature is stylized and cursive.

Trevor Taylor

Minerals Management Bureau Chief

MMB-FTLD-DNRC





March 20, 2026

RE: **Reply to Public Comment by Kim Wilson on Behalf of VGLC**

Storage of Offsite Materials in DSL Pit

Madison County, MT

Dear Mr. Wilson, thank you for your comment on behalf of your client Valley Garden Land and Cattle.

First, thank you for the correction on the proper county in the header of the draft document, it has been corrected.

I will do my best to address each of your concerns as they are outlined within your comment. Your first concern is related to the nature and source of offsite materials which is carried out through your comment. In general, the recycled asphalt comes from road reconstruction projects that occur near the pit. Existing asphalt is stripped from the project area and stored in the pit until it can be reused and recycled into new asphalt. The recycled asphalt ultimately becomes an additive in the generation of new asphalt that is utilized to pave roads. Similarly, recycled concrete comes from sources nearby the pit and is also used to generate new concrete. The decorative rock is sourced from the Yellowstone talc mine south of Cameron, MT. To monitor and track the sources of offsite materials, the following special provision will be added to the Land Use License: "Each January 1st, that the license remains in effect, the licensee shall report to the Department the source of all offsite materials that enter the licensed premises."

Your comment additionally raises concerns regarding the processing of the offsite materials including crushing, sorting, grinding and washing and you say that it is not evaluated within the analysis nor contemplated in the DEQ permit or EA. The Department disagrees with this statement. In the DNRC analysis, under the Air Quality portion, the impacts of moving, recycling, crushing, and screening of concrete, asphalt and decorative rock are analyzed. The noise created by these activities is again analyzed in both Section 8 and Section 11, Wildlife and Aesthetics respectively. Additionally asphalt and concrete recycling are explicitly permitted in the DEQ's openpit mining permit in section D6. It is also evaluated in the DEQ's EA under the air quality section and in the aesthetics section. Recycled asphalt and concrete are not washed within the wash pond. The offsite decorative rock is washed on site through the wash plant for which water is stored in the lined wash pond. Washing the decorative rock in the permitted wash plant is not expected to have any impact on water quality, quantity and distribution as evaluated in the EA. The wash plant pond is lined and does not allow infiltration. Even if infiltration were to occur, environmental factors such as clay layers would help protect groundwater quality from becoming impacted as explained within multiple analyses at this site.



Next, in bold you state, “1. DNRC needs an accurate description of the “proposed action” to determine need for additional permits and craft alternatives.” The proposed action alternative and no action alternative are stated under Section 3. Alternatives Considered. These provide an accurate description of both alternatives and offer the decision maker distinct choices, to either grant the permit as applied for, grant with modifications, or to deny it. It is not within the DNRC’s authority to “craft alternatives” outside of what has been applied for by the applicant. See §75-1-220(1), MCA; *Park Cnty. Env't Council v. Montana Dep't of Env't Quality*, 2020 MT 303, ¶¶ 50-51, 402 Mont. 168, 190, 477 P.3d 288, 301–02. DNRC may either deny or approve the application (or approve with modifications) based upon the relevant facts, laws, rules and the information presented in the analysis.

Your next bold header states “2. The proposed action and development of alternatives should meet the State’s fiduciary duty to Montana’s common schools as the trust beneficiary. This section mostly focused on back payment by AM Welles to 2022.

On July 9th, 2025, Judge Luke Berger ordered the DNRC to:

1. Secure the proper Land Use License for the asphalt and concrete recycling activities and storage of offsite materials.
2. Charge A.M. Welles fair market value, which was established in their contract with Riverside, for its asphalt and concrete recycling and storage of offsite materials.

Nowhere within the order did Judge Berger contemplate back payment by AM Welles as outlined within your comment. To most effectively and fairly implement the order, the DNRC will charge AM Welles \$2,000/month beginning after the issuance of Judge Luke Berger’s order onward.

Your third header states “The proposed action lacks sufficient specificity for the DNRC to be able to analyze the potential impacts to the physical environment,” asserting that crushing, transporting, grinding and dust are not properly evaluated.

DNRC disagrees with this. Crushing/grinding, transporting, and dust from the offsite materials are all evaluated throughout the document, are permitted within DEQ’s permit, and are evaluated within the DEQ’s EA. As the decision maker for this document, I believe the analysis and the other related analyses are sufficient to make an informed decision and the impacts to the physical and human environment are well understood.

Next your comments address specific portions of the document. First you comment on public involvement and state that the link to the draft document was unavailable. Environmental Documents are posted for a duration of time to the DNRC’s website. The draft EA was likely purged from the DNRC website due to the time limitations. Your requests to extend the comment period twice led to the circumstance in which the document was no longer posted during the active comment period. Each of the four public notices published within the Madisonian gave Zack Winfield as a point of contact if links were inaccessible. Nobody reached out during the comment period requesting the document. Additionally, you cite that the draft document had Roosevelt County within the header rather than Madison, which prevented Madison County citizens from participating. Public notice for this evaluation was posted four separate times in the Madisonian Newspaper in Ennis, MT. Additionally, when the draft document was posted onto the DNRC’s website the proper county, Madison, was utilized in the query system, so that any concerned party searching for actions in Madison County would have been able to find it. A mistake



within the header of a draft document in no way prevented the public from participating in two separate comment periods, one of which was extended twice at your request.

You then comment on specific resource sections throughout the document and claim that the analysis is inadequate. DNRC disagrees with this and believes that each resource section properly evaluates the impacts to that resource either directly within the document or through the analyses linked and incorporated by reference.

Finally, in your conclusion you offer 10 recommendations, I will address each individually.

- 1) "Ensure that all the terms of the existing DNRC Permit are fully enforced, including the Section 35 requirement for a 10-12-foot-high barrier of topsoil."

DNRC Response: This is outside the scope of this analysis.

- 2) "Should the Eastern berm be removed, require measures to ensure that storm runoff will not flow into the Madison River ecosystem."

DNRC Response: This is outside the scope of this analysis. Stormwater that exits the immediate vicinity of the pit area requires a stormwater discharge permit through the DEQ and is regulated by that entity. Concerns about runoff should be addressed through DEQ.

- 3) "Actively monitor the volume of gravel mined, and regularly (preferably quarterly) inspect, publicly available [sic]."

DNRC Response: This is outside the scope of this analysis.

- 4) "Specify and quantify the activities associated with the proposed action."

DNRC Response: The activities associated with the proposed action are specified and quantified throughout the entirety of the analysis.

- 5) "Determine the source and type of off-site material in order to evaluate potential impacts."

DNRC Response: The source and type of material is known and impacts were evaluated accordingly. Specific concrete and asphalt sources will be reported yearly as mentioned previously within this reply.

- 6) "Revisit the license rate start date and amount to ensure the fullest possible benefit to the trust beneficiaries."

DNRC Response: The effective license date will be sometime shortly after the completion of this analysis. An initial lump-sum payment by the applicant for a monthly charge back until July 2025 would be required to secure the license.

- 7) "Impose additional limitations on days/ extent of operation to benefit surrounding landowners and nearby communities."



DNRC Response: The impacts from the proposed action to surrounding landowners and the community are negligible to minor as described within the analysis. Activities will be limited to daylight hours only as described within the analysis.

- 8) "Ensure activities are limited to daylight hours, excluding weekends, and that noise levels don't exceed 50 decibels."

DNRC Response: Impacts to aesthetics are properly evaluated within the corresponding resource section and recommended mitigations have been included within the analysis. As previously mentioned, activities will be limited to daylight hours. 50 decibels is the equivalent to the hum of a modern refrigerator, the activities applied for and evaluated within the document simply cannot be completed at less than 50 decibels. Additionally, traffic on Highway 287 immediately adjacent to the pit generates far more than 50 decibels.

- 9) "Limit the license term to two years with no more than one potential renewal with rate adjustment."

DNRC Response: The term of the license will be for up to ten years but will require an active DEQ opencut mining permit and DNRC aggregate take and remove permit to remain active. If either of these permits are expired, cancelled or terminated prior to the ten-year term being fulfilled, the Land Use License shall also be void.

- 10) "Please provide the public with contact information for a main contact person with authority, for any questions or concerns about the operation."

DNRC Response: DNRC has made the public aware as discussed earlier that comments on this EA & license can be directed to Zack Winfield, Petroleum Engineer, Minerals Management Bureau, zackary.winfield@mt.gov.

Sincerely,



Trevor Taylor

Minerals Management Bureau Chief

MMB-FTLD-DNRC





March 20, 2026

RE: **Reply to Public Comment by Gallik and Bremer on Behalf of Channels Ranch and Mr. Edmondson**

Storage of Offsite Materials in DSL Pit

Madison County, MT

Dear Ms. Bremer, thank you for your comment on behalf of your clients.

I will do my best to address each of your concerns as they are outlined within your comment. Your first concern is related to the nature and source of offsite materials which is carried out through your comment. In general, the recycled asphalt comes from road reconstruction projects that occur near the pit. Existing asphalt is stripped from the project area and stored in the pit until it can be reused and recycled into new asphalt. The recycled asphalt ultimately becomes an additive in the generation of new asphalt that is utilized to pave roads. Similarly, recycled concrete comes from sources nearby the pit and is also used to generate new concrete. The decorative rock is sourced from the Yellowstone talc mine south of Cameron, MT. To monitor and track the sources of offsite materials, the following special provision will be added to the Land Use License: "Each January 1st that the license remains in effect, the licensee shall report to the Department the source of all offsite materials that enter the licensed premises."

Your comment additionally raises concerns regarding the processing of the offsite materials and asks if the same equipment that is utilized for gravel mining operations will be used for recycling and processing of asphalt, concrete and decorative rock. The answer to that question is yes. You communicate that your concern is related to cross contamination within equipment. The potential for cross contamination is low, because all the materials that are being handled are solids. There may be residual dust in equipment from previous crushing, loading, washing or hauling operations, however this is not significant enough to change the nature of the produced materials.

Next, you state that the Department dismissed your client's comments related to the environmental risks and dangers with the storage and processing uses. The Department disagrees with Mr. Edmonson that the proposed activities will have significant negative impacts on the physical and human environment, which is outlined within the analysis.

Your first bold header states "Montana Environmental Policy Act and Adequacy of Review Required." Within this section you assert that "the public has not been informed of the anticipated impacts..." The Department disagrees with this statement. The impacts to all the applicable resource sections are outlined within the document. You may not agree with the Department's analysis of the impacts, but that does not mean the public has not been informed of the anticipated impacts.



DNRC utilizes four other environmental analyses recently completed at this site. These documents are relevant to the analysis and show that this pit and the associated activities that occur within it have been very thoroughly analyzed in compliance with DNRC's obligations under the Montana Environmental Policy Act. Specifically, activities that would be authorized under this license are also authorized through the Montana DEQ's open-cut mining permit and EA. The DEQ's permit authorizes asphalt and concrete recycling activities in section D6 of the permit. They also evaluate the impacts of loading, screening, and crushing these materials within their document. Also permitted through DEQ's permit, are a wash plant and settling pond. The impact for this authorization is also evaluated within the EA. This, therefore, makes the DEQ's permit and analysis very relevant to the proposed action. Despite the heightened level of scrutiny and multiple environmental reviews over an extended period, no significant impacts have ever been observed to the physical or human environment resulting from the actions authorized in the pit.

Your next bold header is "Unauthorized Activities at the DSL Site." This review and the associated license aim to remedy these unauthorized activities as ordered by Judge Luke Berger. AM Welles has been allowed to continue such activities during the review period for this license. Water rights and air quality permits have already been obtained by the licensee for their operations and are not needed in addition to the Land Use License.

The next bold header "Public Participation" states that your client was not informed of the July 2024 EA nor afforded the opportunity to comment. The EA you are referencing is a DEQ EA, the DNRC has no influence over the DEQ's public notification practices. Additionally, you ask if DNRC is going to host a public meeting in relation to this project. The answer is no. Notice was published four separate times in the *Madisonian* in Ennis, Montana relating to this proposal. Two comment periods of 30 days were conducted, and one was extended twice for more than a week at the request of an interested party. There has been ample opportunity for public participation, and a public hearing would not contribute to the analysis in any additional, meaningful manner.

Your fourth header states "Lack of Information and Detailed Analysis Cannot Form the Basis of a Well-Informed Decision." As the decision maker for the analysis, I disagree with this statement. The information outlined within the analysis and the associated linked analyses provides ample information to understand the impacts of each alternative. Because a complete analysis was conducted and the impacts are well-understood, a decision to proceed with the action alternative was made.

Your next comment mentions that the EA does not describe the "affected environment" as required under MEPA and its Model Rules for the Action, but you provide no specific citation for this assertion. This language appears to have been obtained from *A Guide to the Montana Environmental Policy Act*, an EQC publication which is out of date (there have been numerous significant changes to the MEPA statutes and environmental rules since 2021); and specifically directs the reader that it is not to be used as a legal reference (page iii of that publication). The EA is compliant with MEPA and its implementing regulations; it describes the site and the current conditions in each section, as required by ARM 36.2.529. Your next paragraph states that you believe specific resource sections of the document to be inadequate citing several, but only expanding upon air quality and dust plumes. The document recognizes within the direct impacts for air quality on page 11 of the analysis "The movement, recycling, and crushing of concrete, asphalt, and decorative rock has the potential to generate point-source dust emissions and greenhouse gas emissions from mining equipment engines. These dust particles may or may not contain particulate matter that is harmful to human health and wildlife. However, the threshold in which this particulate matter would become harmful to human health or wildlife is not expected to be exceeded. The Montana DEQ and the US EPA regulate air quality."



Your client continually raises concerns related to PAH's and TENROM in asphalt and concrete and the potential for leaching into the groundwater and soils in which it overlays. The presence of these materials is not unique to asphalt or concrete that is stored within the DSL site. It may be present in the asphalt or concrete on any highway, street, driveway, or foundation throughout the state. This also includes the bridge pillars, dams and boat ramps that are within the waterbodies your client is concerned about. The difference between these potential sources, and the potential source within the DSL pit is that the source within the DSL pit is contained by berms from stormwater runoff and an impervious layer of clay below the pit area, which protects the groundwater aquifer as described within multiple analyses. Conversely, rain that falls on the Highway 287 bridge just east of Ennis, discharges directly into the Madison River.

The prior paragraph, and the analysis provided in the EA, addresses the concerns in your next bold header Water Quality and Quantity.

The next three to four paragraphs of your public comment go on to restate the same concerns you have already communicated previously within your comment. The impacts to all these resources were adequately addressed within the analysis and it was concluded that no significant impacts will arise from the selection of the action-alternative.

It is important to note that in this unique circumstance, these activities have occurred at this exact location for years, and the environmental concerns that have been raised by your clients regarding these activities have only occurred due to DNRC's analysis and public process. In this instance, DNRC has the benefit of observing impacts, or lack thereof, over a period of time; therefore, DNRC does not have to speculate about potential impacts, because they are known. Your client has provided no evidence to support that many of the impacts in which they are concerned about have ever occurred at the site.

Sincerely,



Trevor Taylor

Minerals Management Chief

MMB-FTLD-DNRC

