

ORDER No.: GO-05-19

BEFORE THE MALHEUR COUNTY COURT

An ORDER APPROVING a quasi-judicial land use application by Calico Resources USA Corp. pursuant to OAR 660-023-0115 (the “Sage Grouse Permit” or “SGP”) for an underground gold and silver mine located on tax lot 101 of Malheur County Assessor’s Map 22S 44E.

WHEREAS, Calico Resources USA Corp. (“Calico”) submitted an application (the “Application”) for a Sage Grouse Permit on February 14, 2019;

WHEREAS, on March 28, 2019 the Malheur County Planning Commission held a duly-noticed public hearing, which was continued to April 25, 2019;

WHEREAS, the Planning Commission voted on April 25, 2019 to recommend that the County Court approve the Sage Grouse Permit and adopted findings on May 23, 2019 memorializing the same;

WHEREAS, on June 26, 2019 the County Court held a duly-noticed public hearing to consider the Planning Commission’s recommendation;

WHEREAS, at the conclusion of the June 26, 2019, the County Court voted unanimously to approve the Application because it satisfies all applicable criteria; and

WHEREAS, the County Court voted unanimously to adopt the enclosed findings of fact and conclusions of law (the “Findings”).

NOW, THEREFORE, THE MALHEUR COUNTY COURT ORDERS AS FOLLOWS:

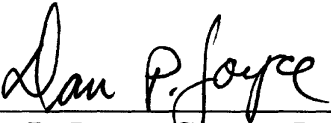
1. The enclosed Findings are hereby adopted and constitute the County Court’s Decision in the above-identified matter.
2. The County Court hereby APPROVES the Applicant’s Sage Grouse Permit application with the following condition:

The applicant shall comply with OAR Chapter 660, Division 023 and OAR Chapter 635, Division 140. The applicant must coordinate with ODFW and apply the mitigation hierarchy of avoidance, minimization and compensatory mitigation to address direct and indirect impacts of the

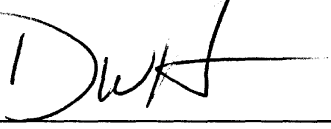
development to low-density habitat for sage grouse. A compensatory mitigation plan shall be developed by the applicant and approved by the ODFW through DOGAMI's consolidated permit process (OAR Chapter 632, Division 37) and other applicable rules, including OAR Chapter 635, Division 420 and OAR Chapter 635, Division 415, prior to any construction or ground disturbing activities.

ADOPTED and effective this 3rd day of July, 2019.

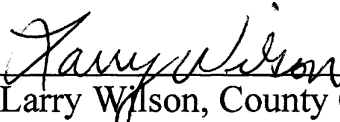
MALHEUR COUNTY COURT:



Dan P. Joyce, County Judge



Don Hodge, County Commissioner



Larry Wilson, County Commissioner

ATTEST:



Kim Ross, Recording Secretary

BEFORE THE COUNTY COURT
FOR MALHUR COUNTY, OREGON

In the Matter of an Application for a Sage Grouse Rule Permit pursuant to OAR 660-023-0115, to establish an underground gold and silver mine on property identified as tax lot 101 of Malheur County Assessor's Map 22S 44E.

**FINAL FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

I. INTRODUCTION

Calico Resources USA Corp. ("Calico") proposes an underground gold and silver mine on private land zoned for Exclusive Range Use ("ERU"), and is known as the "Grassy Mountain Gold Project" (the "Project"). The project is proposed on an approximately 62-acre parcel (the "Patent Parcel") located roughly 22 miles south of Vale, which is surrounded by federal land administered by the Bureau of Land Management ("BLM"). The Patent Parcel is identified as tax lot 101 of Malheur County Assessor's Map 22S 44E. The Patent Parcel is coterminous with Calico's patented mining claims and is the subject of the Application. The Patent Parcel is accessed via Russell Road, Cow Hollow Road, and Twin Springs Road.

Conditional Use Permit ("CUP") and Sage Grouse Permit ("SGP") applications were submitted on February 14, 2019. The Project is described in the Application as follows:

"The Project will involve several elements: the mine site itself and its entry portal, which are located on the Patent Parcel; a processing facility; a tailings storage facility; a waste rock storage facility; borrow pits for production of backfill rock; and various support and administrative buildings. The entire Project Area will be fenced. Of these facilities, only the mine portal and related elements will be located on the Patent Parcel surface (the mine itself will be located beneath the Patent Parcel).

[***]

“[D]evelopment on the Patent Parcel will primarily involve construction of a mine portal near the northwest corner, improved gravel surface roadways that will allow access to the mine portal/decline, ventilation shafts, and laydown/storage areas.” App. at 2-3.

The Applicant submitted a site plan showing the Project and proposed facilities on the Patent Parcel. App. Ex. 2.

II. PROCEDURAL HISTORY

The Planning Commission (the “Commission”) held a duly-noticed public hearing on March 28, 2019, which was continued to April 25, 2019. A letter clarifying the positions of the Oregon Department of Fish and Wildlife and Department of Land Conservation and Development (together, the “State Agencies”) was received on March 25, 2019. On March 27, a 21-page letter and 563 pages of exhibits were submitted by the Oregon Natural Desert Association and 1000 Friends of Oregon (together, the “Opponents”). Opponents requested that the Commission deny the Application, or, in the alternative, continue the hearing and/or hold the record open for fourteen days.

Three individuals offered oral testimony before the Planning Commission in favor of the Application and one person testified in opposition. At the conclusion of the Applicant’s rebuttal testimony, the Applicant requested that the hearing be continued to the next scheduled Planning Commission meeting. The Commission closed public testimony, deliberated on the continuance request, and announced that the hearing would be continued to April 25, 2019.

On April 22, the Applicant submitted a 26-page letter and approximately 300 pages of exhibits in response to Opponents’ submittal. On April 23, the Applicant submitted bios and curricula vitae for its consultants. The same day, the County Road Master submitted a letter revising his recommendations for county road improvement. The Snake River Economic Development Alliance submitted a letter in support of the Application on April 24. The Commission received no other written testimony on the Applications.

The Commission held a continued hearing on April 25, 2019 and accepted oral testimony from the Applicant and one individual who testified in favor of the Application. The Commission then deliberated on the Applications and unanimously voted to adopt staff’s recommendation for approval, with conditions recommended by Staff. On May 23, 2019, the Commission adopted final findings

and conclusions of law approving the CUP and recommending approval of the SGP.

At the conclusion of the hearing, the Commission voted unanimously to approve the CUP and to recommend that the County Court approve the SGP. No person appealed the CUP or the Commission's recommendation on the SGP. The CUP approval became effective at 5:00 PM on June 3, 2019.

The County Court held a duly-noticed public hearing on June 26, 2019 to consider the Planning Commission's recommendation on the SGP. Pursuant to Malheur County Code ("MCC") 6-13-5.C, the County Court hearing was on the record developed before the Planning Commission and new evidence was not admitted, although argument was allowed. The Applicant's representative testified in support of the Application. One person testified orally and asked factual questions about the proposal. At the conclusion of the hearing, the Court voted unanimously to approve the SGP application.

III. DECISION

A. The Sage Grouse Permit is approved, subject to the following condition:

- 1. The applicant shall comply with OAR Chapter 660, Division 023 and OAR Chapter 635, Division 140. The applicant must coordinate with ODFW and apply the mitigation hierarchy of avoidance, minimization and compensatory mitigation to address direct and indirect impacts of the development to low-density habitat for sage grouse. A compensatory mitigation plan shall be developed by the applicant and approved by the ODFW through DOGAMI's consolidated permit process (OAR Chapter 632, Division 37) and other applicable rules, including OAR Chapter 635, Division 420 and OAR Chapter 635, Division 415, prior to any construction or ground disturbing activities.*

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Compliance with Applicable Criteria

The Court hereby adopts and incorporates as part of its findings the Staff Report (**Exhibit 1**), Application Narrative (**Exhibit 2**), and Applicant's April 22, 2019 letter in response to ODFW's and DLCD's comments (**Exhibit 3**), and finds that these sufficiently explain how the SGP application satisfies all applicable

criteria. The Court also hereby adopts and incorporates the Planning Commission's findings dated May 23, 2019. **Exhibit 4**. In particular, the Court adopts the Commission's interpretations of law concerning the following:

- OAR 635-140-0025(2) and -0025(3). **Exhibit 4** at 5–7.
- OAR 660-023-0115(8). **Exhibit 4** at 7.
- OAR 660-023-0115(10). **Exhibit 4** at 17.

B. Response to Public Testimony

Ms. Jennifer Applegate testified at the hearing and raised concerns regarding removal of mine tailings from the Project Area. The Applicant explained in response that the Application before the Court was for a Sage Grouse Permit and did not address mine processing activities. The Applicant went on to explain that the Project will store all mine tailings onsite in the tailings storage facility. Ms. Applegate did not identify any criteria that the Application failed to meet.

The Court finds that Ms. Applegate's testimony sought project information and did not raise concerns with how the Application satisfies the applicable criteria.

V. CONCLUSION

Based upon the parties' arguments and evidence in the whole record, and in particular the documents incorporated herein, the County Court finds that the SGP Application meets all applicable criteria and should be APPROVED on that basis.

STAFF REPORT

Planning Department File No. 2018-10-012

CONDITIONAL USE APPLICATION FOR CONDITIONAL USE PERMIT AND SAGE GROUSE RULE PERMIT PURSUANT TO OAR 660-023-0115 FOR AN UNDERGROUND GOLD AND SILVER MINE

Planning Commission Meeting Date: March 28, 2019

- 1. APPLICANT:** Calico Resources USA Corp.
665 Anderson St.
Winnemucca, NV 89445
- 2. OWNER OF RECORD:** Same as above.
- 3. PROPOSED ACTION:** (1) Conditional Use Permit and (2) Sage Grouse Rule Permit pursuant to Oregon Administrative Rule (“OAR”) 660-023-0115 for an underground gold and silver mine located approximately 22 miles south of Vale on 62 acres of private property in the Exclusive Range Use zone.
- 4. PROPERTY IDENTIFICATION:** Tax lot 101 of Malheur County Assessor’s Map 22S44E.
- 5. PROPERTY LOCATION AND DIRECTIONS:** The property (the “Patent Parcel”) is located approximately 22 miles south of Vale. It is accessed by driving south from Highway 20 on Russell Road approximately 2.7 miles, then continuing south on Cow Hollow Road approximately 4.1 miles to Twin Springs Road, then continuing south for approximately 15.2 miles to the Patent Parcel.
- 6. ZONING:** Exclusive Range Use (ERU).
- 7. PARENT PARCEL:** The total parcel size is 61.98 acres.
- 8. PARCEL USE:** The Patent Parcel is currently vacant. A number of testing wells are located on the parcel, as well as access roads constructed to access test drilling and well sites.
- 9. SURROUNDING PARCEL USE:** The surrounding land is entirely federal and managed by the Bureau of Land Management (BLM). Land uses primarily include open cattle range, hunting, and other recreation activities.
- 10. ACCESS:** The primary access is located at the intersection of Highway 20 and Russell

Road. Access between Twin Springs Road and the mine site within the Patent Parcel is provided by a driveway.

11. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system is required.
12. **FIRE PROTECTION:** The parcel is within the boundaries of the Vale Rangeland Fire Protection Association (letter attached).
13. **NATURAL HAZARDS:** None identified.
14. **WATER RIGHTS:** The Applicant has water rights explained in Oregon Water Resource Department (OWRD) Permit G-10994. Water will be used for mining/industrial purposes under Permit G-10994 or any later-issued superseding authorization.
15. **SOIL TYPE:** Soil on the Patent Parcel is class VI or VII, un-irrigated.
16. **ZONING HISTORY:** The Patent Parcel was created within BLM land through the patenting of Calico's mining claim in 1986.
17. **PROCEDURAL REQUIREMENTS**

The Application is for an underground mine on private property. The Patent Parcel is surrounded by a larger mining claim area on federal Bureau of Land Management (BLM) land which is outside of the County's land use planning jurisdiction. This larger area is proposed to be developed with a processing facility, tailings storage facility, and other supporting accessory uses, and is referred to below as the "Project Area."

Mining operations on BLM land are subject to approval under the Federal Land Policy and Management Act (FLPMA) and state and federal environmental statutes. Overall approval of the mine on both federal and County land is the responsibility of the Oregon Department of Geology and Mineral Industries (DOGAMI) through its Chemical Process Mining permitting process. Mining activities on non-federal lands, including the Patent Parcel, are subject to Oregon land use laws, the Malheur County Comprehensive Plan, and the Malheur County Code (MCC).

The Application includes two parts: a Conditional Use Permit (CUP) and a permit under the State's "Sage Grouse Rule," OAR 660-023-0115 (the Sage Grouse Permit or "SGP"). The Planning Commission is required to make an initial decision whether or not to approve the CUP.

The Sage Grouse Rule is not yet incorporated into the MCC, but it applies by operation of state law.¹ However, no procedures are set forth in the MCC for the SGP. The Sage Grouse Rule requires certain findings by the County, which is an action by the County Court. Therefore, the Planning Commission is directed to review the Application for compliance with the Sage Grouse

¹ OAR 660-023-0115(4) provides: "Until the commission has acknowledged a county amendment to its comprehensive plan and land use regulations to be in compliance with Goal 5 and equivalent to this rule with regard to protecting sage-grouse habitat, sections (5) to (12) shall apply directly to county land use decisions affecting significant sage-grouse habitat."

Rule and make a recommendation to either approve, approve with conditions, or deny the SGP, which final decision will be made by the County Court.

The Applicant originally requested an initial hearing before the Planning Commission on both the CUP and SGP to be followed by final decisions by the County Court. However, Staff and County legal counsel have reviewed the applicable provisions of the MCC and recommend that the Planning Commission make a decision on whether to approve the CUP (subject to appeal to the County Court) and a recommendation to the County Court on whether it should approve the SGP.

18. APPLICABLE CRITERIA

GENERAL CONDITIONAL USE CRITERIA

MCC 6-6-7 - GENERAL CRITERIA TO EVALUATE SUITABILITY: In considering the suitability of proposed conditional uses, the Planning Commission shall base its decision upon the following criteria:

A. Comprehensive Plan goals and policies, as applicable.

Staff finds that the following Comprehensive Plan Goals and Policies are applicable:

- Goal 3 “Agricultural Lands,” Policies 1, 2, and 6–8.
- Goal 5 “Open Space, Scenic and Historic Areas, and Natural Resource,” “Mineral and Aggregate Resources” Policy 3, “Fish and Wildlife Habitat” Policy 2, “Water Resources” Policies 3 and 4,
- Goal 9 “Economy,” Policies 4, 5, and 7.
- Goal 11 “Public Facilities and Services,” “Fire and Police Protection” Policy 2, “Water and Sewage” Policy 1.
- Goal 12 “Transportation,” Policy 20.

B. Specific plan recommendations.

C. Existing development and viewpoints of property owners in the surrounding area.

D. Availability of services and utilities.

E. The effect of the proposed use on the stability of the community’s social and economic characteristics.

F. It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the Fish and Wildlife Habitat Protection Plan for Malheur County.

G. General Criteria

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.
2. Landscaping improvements for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.
3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.
4. Visual screening of outdoor waste and storage areas.

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.
6. Special criteria listed below, as applicable:
7. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title shall be approved only where it is found that the use will not:
 1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
 2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

SPECIFIC CONDITIONAL USE CRITERIA

MMC 6-4-7: MINING IN EXCLUSIVE FARM USE ZONE:

- A. A land use permit is required for mining more than one thousand (1,000) cubic yards of material or
- B. A permit for mining of aggregate shall be issued only for a site included on an inventory in the Malheur County Comprehensive Plan. (Ord. 86, 12-7-1993)

SAGE GROUSE PERMIT CRITERIA

OAR 660-023-0115(10) and (11)

(10) Program to achieve the goal of protecting significant sage-grouse habitat in a low density area.

(a) A county may approve a large-scale development in a low density area upon applying the mitigation hierarchy as follows:

(A) Avoidance. Before proceeding with large-scale development activity that impacts a low density area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within a low density area. If the proposed large-scale development can occur in another location that avoids both direct and indirect impacts within a low density area, then the proposal must not be allowed unless it can satisfy the following criteria:

(i) It is not technically or financially feasible to locate the proposed large-scale development outside of a low density area based on accepted engineering practices, regulatory standards, proximity to necessary infrastructure or some combination thereof; or

(ii) The proposed large-scale development is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations, or it is a linear use that must cross significant sage-grouse habitat in order to achieve a reasonably direct route.

(B) Minimization. If the proposed use cannot be sited by avoiding a low density area

altogether, including direct and indirect impacts, it shall be located to minimize the amount of such habitat directly or indirectly disturbed, and to minimize fragmentation of the low density area(s) in question by locating the development adjacent to existing development and at the edge of the low density area when possible. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction.

(C) Compensatory Mitigation. Required consistent with the provisions of paragraph (9)(a)(D) above.

OAR 660-023-0115(9)(a)(D):

Compensatory Mitigation. To the extent that a proposed large-scale development will have direct or indirect impacts on a core area after application of the avoidance and minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and indirect impacts of the development to any core area. The required compensatory mitigation must comply with OAR chapter 635, division 140.

(b) A county may approve a conflicting use as identified at subsection (7)(b) above when found to be consistent with the provisions of subsection (9)(b).

OAR 660-023-0115(9)(b):

A county may approve a conflicting use as identified at subsection (7)(b) above upon either:

*(A) Receiving confirmation from ODFW that the proposed conflicting use does not pose a threat to significant sage-grouse habitat or the way sage-grouse use that habitat; or
(B) Conditioning the approval based on ODFW recommendations, including minimization techniques and compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat.*

(11) Program to achieve the goal of protecting significant sage-grouse habitat on general habitat.

(a) A county may approve a large-scale development on significant sage-grouse habitat in general habitat upon requiring:

(A) General Habitat Consultation. Minimizing impacts from development actions in general habitat shall include consultation between the development proponent and ODFW that considers and results in recommendations on how to best locate, construct or operate the development action so as to avoid or minimize direct and indirect impacts on significant sage-grouse habitat within the area of general habitat. A county shall attach ODFW recommendations as a condition of approval; and

(B) Compensatory Mitigation. Required consistent with the provisions of paragraph (9)(a)(D) above.

OAR 660-023-0115(9)(a)(D):

Compensatory Mitigation. To the extent that a proposed large-scale development will have direct or indirect impacts on a core area after application of the avoidance and minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and indirect impacts of the development to any core area. The required compensatory mitigation must comply with OAR chapter 635, division 140.

(b) A county may approve a conflicting use identified in subsection (7)(b) above when found to be consistent with the provisions of subsection (9)(b).

OAR 660-023-0115(9)(b):

A county may approve a conflicting use as identified at subsection (7)(b) above upon either:

*(A) Receiving confirmation from ODFW that the proposed conflicting use does not pose a threat to significant sage-grouse habitat or the way sage-grouse use that habitat; or
(B) Conditioning the approval based on ODFW recommendations, including minimization techniques and compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat.*

19. PROPOSED FINDINGS OF FACT

For this report, Staff reviewed all the evidence in the record to date to determine whether, based on that evidence, the Application satisfies all applicable criteria. Thus far, the evidence in the record demonstrates that the Application meets all applicable criteria. Staff's analysis could change in some respects if new evidence is submitted into the record.

The Applicant provided a complete narrative explaining how the project meets all applicable criteria. Staff incorporates that narrative into this Staff Report and generally concurs with the Applicant's conclusions, and finds all applicable criteria are met for the reasons stated in the Applicant's narrative and in this report.

Staff does not repeat below the entirety of the Applicant's application. To aid the Planning Commission, Staff provides the following findings:

a. MCC 6-6-7 - GENERAL CRITERIA TO EVALUATE SUITABILITY: Goals and Policies of the Comprehensive Plan

The Applicant provided a complete explanation of how the Application satisfies applicable Goals and Policies of the Comprehensive Plan. Staff concurs with the Applicant's conclusions regarding the Goals and Policies.

Of the Applicable Goals and Policies, the most important in Staff's view are Goal 3 "Agricultural Land," Goal 5 "Open Space, Scenic and Historic Areas, and Natural Resources,"

Goal 9 “Economy,” and Goal 11 “Public Facilities and Services.”

Goal 3: Agricultural Lands

Goal: To preserve and maintain the agricultural land in the county for agricultural purposes.

- 1. Public and private land classified by the Natural Resources Conservation Service (formerly U.S. Department of Agriculture Soil Conservation Service) as being in Capability Classes I through VI, as well as High Value Farmland as defined by applicable Oregon Revised Statutes and Oregon Administrative Rules and any other lands determined to be necessary and required for farm use, are considered to be agricultural lands.**
- 2. High Value Farmlands (ORS and OAR designated) shall be given the greatest protection. Lands classified by the Natural Resources Conservation Service, as Capability Classes I through VI shall be afforded the next highest protection with Class I having the highest protection and Class VI the least.**

APPLICANT’S RESPONSE:

“The Patent Parcel has not been classified by the U.S. NRCS as having Type I through Type VI soils. While the Patent Parcel has been considered to be suitable for range use, it is barren and unirrigated; therefore, no additional protection from non-farm uses are warranted on the Patent Parcel.”

*[***]*

“[A] site-specific soil study was conducted in 1989 and 1991. It characterized the soils on the Patent Parcel to be ‘Farmell-Rock outcrop complex, 8 to 30 percent slopes’ and ‘Farmell-Chardoton very cobbly soil, 15 to 30 percent slopes.’ [...] Even without slopes and substantial gravel and rock inclusions—which the Patent Parcel soils have in abundance—these soils have an unirrigated rating of VI or VII, and both soil types are mild to moderately alkaline.”

STAFF FINDING: Staff finds that the Patent Parcel is not located on high-value farmland, or farmland that could become high-value with irrigation.

- 6. The County will review and consult with the irrigation and drainage districts on land use decisions to assure they will not negatively impact the integrity or operation of water for irrigation or drainage purposes.**

APPLICANT’S RESPONSE:

“This policy is for the County to implement and is not directly applicable to the Application. The Patent Parcel is unirrigated and process water will be provided

by wells pursuant to water rights issued by the Oregon Water Resources Department. Therefore, the County can find that the Project will have no impact on water distribution or drainage district resources in the County.”

STAFF FINDING: Staff concurs that this policy is met. The Parcel is not part of any irrigation or drainage district.

7. In addition to county code and the State of Oregon's land use laws and administrative rules for non-farm dwellings, it is the policy of Malheur County that there be no net loss of farmlands listed on the High Value Farmlands Soils list or soils classified as types I-III by the Natural Resources Conservation Service.

APPLICANT’S RESPONSE: *“As explained above, the Patent Parcel is not composed of soil classes I-III; therefore, this policy does not apply.”*

STAFF FINDING: Staff agrees that the above policy does not apply because the Patent Parcel is not composed of high-value farmland or soil classes I-III.

8. Normal farming and ranching activities will be allowed to exist and continue without interference from non-farm users of the land.

APPLICANT’S RESPONSE:

“There are no surrounding or nearby farming or year-round ranching activities adjacent to the Patent Parcel. The Access Road within the area of active farming will be within an existing County right-of-way. To the extent that surrounding open range is used for seasonal ranching in the vicinity of the Project Area, interference between livestock and mining activities will be prevented by fencing that will enclose the entire Project Area. For the above reasons, the County can find that the Project is consistent with this policy.”

STAFF FINDING: Staff finds that the above policy does not prohibit a change of use from farming or ranching activities on land owned or otherwise controlled by an applicant to a different use. Staff also finds that the Applicant owns the Patent Parcel and can obtain control of the entire project area through a mining lease with BLM. Therefore, Staff finds that if any of the Patent Parcel or land within the larger project boundary is used for open range, the above Policy does not prohibit a conversion of such land use to mining, processing, tailings management, and reclamation activities.

Staff also finds that the Project will not interfere with surrounding range uses for the following reasons:

- The mine will be located underground, preventing impacts from blasting on wildlife and livestock.
- The project area will be surrounded by a fence that will prevent livestock from accessing the project area and Patent Parcel.

- After review of the proposed draft reclamation plan, Staff finds that the Patent Parcel can ultimately be placed back into rangeland use after mining and reclamation are completed.

Goal 5: Open Space, Scenic and Historic Areas, and Natural Resources

Goal: To conserve open space and protect natural and scenic resources.

Mineral and Aggregate Resources

1. The county will continue to study mineral and aggregate sites throughout the county to determine the precise location, quality and quantity of these resources.

APPLICANT'S RESPONSE:

"This policy is a mandate for the County to determine the location, quality, and quantity of mineral resources. For this reason, the above policy does not apply to the Application. However, even if it did, the County can find that this Application is consistent with this policy because it precisely identifies the location, quality, and quantity of the gold and silver resources proposed for mining."

STAFF FINDING: Staff finds that this policy is a planning statement for the County and does not apply to the Application.

2. The county will establish land use regulations that protect mineral and aggregate resources from incompatible uses.

APPLICANT'S RESPONSE: *"This policy is a planning mandate for the County, and does not apply to the Application. As the surrounding property is entirely under the jurisdiction of the BLM, Calico does not request re-zoning of surrounding lands to protect the Patent Parcel from incompatible uses."*

STAFF FINDING: Staff finds that this policy is a planning statement for the County and does not apply to the Application.

3. The county will cooperate with other government agencies in the enforcement of mining regulations.

APPLICANT'S RESPONSE:

"This policy is a coordination mandate for the County and does not apply to the Application. However, Calico notes that the County has been and will continue to cooperate with BLM, DOGAMI, DEQ, and ODFW as necessary for this and all other permitting actions necessary for the Project, including for determination of any mitigation necessary under the SGR and completion of the Consolidated Permit."

STAFF FINDING: Staff finds that this policy is a planning statement for the County and does not apply to the Application.

Fish and Wildlife Habitat

2. The county will consider the impacts of proposed development on fish and wildlife habitats when making land use decisions.

APPLICANT'S RESPONSE:

"The requirement that the County "consider" the Project's impacts on fish and wildlife habitats does not require a specific showing in the application and does not require affirmative actions or decisions from the County, and therefore does not apply directly to the Application. The Commission can find that the County's consideration of land use impacts on fish and wildlife habitats is implemented through the MCC.

*"However, Calico has conducted a complete Wildlife Resources Baseline Report (the "Wildlife Report"), which is enclosed in this Application [***]. Even if this policy does apply, the County can find that activities on the Patent Parcel will not cause any detrimental or permanent harm to fish and wildlife. Thus, the County can find, in the alternative, that the Project is consistent with this Policy."*

STAFF FINDING: Staff agrees that the above policy requires the County to consider the impacts of proposed development on fish and wildlife habitats, not that it must make specific findings that the Project does not adversely impact such habitats. Staff finds that the Applicant's Wildlife Resources Baseline Report provides substantial evidence that the proposed mine on the Patent Parcel will not have a significant permanent adverse effect on fish or wildlife habitat.

- Fish habitat. There are no fish-bearing streams or water bodies on the Patent Parcel.
- Wildlife Habitat. According to the Applicant's Wildlife Report, there are no federally-listed species or species proposed for listing on the Patent Parcel. Some wildlife habitat was identified outside of the Patent Parcel and Project Area, but because of its location, it will not be directly affected by the Project (See Application, Ex. 7 on page 24).

Mule deer and prong horned antelope are present within the study area of the Wildlife Report, but only at "low densities," and only near the northern portion of the study area. They were not observed on the Patent Parcel. It also found that "use of the 0.5 mile buffer [...] is low by water-dependent species, such as the migratory waterfowl and shorebirds that travel within the Pacific Flyway." (See Application, Ex. 7 on page 40).

The Applicant's draft reclamation plan indicates that the mine portal will be demolished, all surface openings will be closed, and the Patent Parcel will be completely re-vegetated. (Application, Ex. 3 on pages 22-25). The Applicant's draft reclamation plan also explains that

“the same land use of mineral exploration and development, livestock grazing, wildlife habitat, and dispersed recreation will remain following closure with an emphasis on the last three uses.” (Application, Ex. 3 on page 15).

For these reasons, as well as those explained throughout the Application and exhibits, Staff finds that the Project is consistent with this policy.

3. The Oregon Department of Fish and Wildlife's "Fish and Wildlife Habitat Protection Plan" will be recognized as a guideline for planning decisions.

APPLICANT'S RESPONSE:

“While the above policy may recognize the “Fish and Wildlife Habitat Protection Plan” (“FWHPP”) as a “guideline,” it does not by its own terms impose the provisions of that plan as applicable criteria. The Commission can find that this policy does not apply.

“However, if the Commission concludes that it should examine the Project guided by the FWHPP, that review would demonstrate that the Project is consistent with this policy. The objective of the FWHPP (now titled the “Fish and Wildlife Habitat Mitigation Policy” or the “Habitat Policy”) is to “mitigate impacts to fish and wildlife caused by land and water development actions.” OAR 635-415-0000. Under the Policy, development applications are reviewed by ODFW for potential impacts, then ODFW makes recommendations for mitigating impacts, if any. OAR 635-415-0015. Because Calico's Project will be reviewed by ODFW under the Policy, the Project can be considered consistent with the FWHPP. This is particularly true because Calico's Wildlife Report identified no endangered or threatened species or sage grouse within the Patent Parcel.

*“The Wildlife Report [***] is based on a Wildlife Study Area (“WSA”) that includes the Access Corridor and Permit Area, and either a 0.5 mile or two mile buffer, depending on the species. Species which were surveyed within a two-mile buffer include greater sage-grouse, golden eagle, nesting raptors, and general observations of special status (i.e. endangered or threatened) and non-special status species. Surveys were conducted in 2014, 2017, and 2018. Wildlife Report 8. Habitat was categorized in accordance with the ODFW Fish and Wildlife Habitat Mitigation Policy. Wildlife Report 8. No endangered or threatened species, or sage grouse or sage grouse leks were observed within the WSA or are identified in official records. Some species identified as “Sensitive” by the BLM are present in the study area. Wildlife Report 16–19.”*

STAFF FINDING: The original Fish and Wildlife Habitat Protection Plan upon which this criterion is based is no longer supported by ODFW. As the Applicant notes above, it has been superseded with the “Fish and Wildlife Habitat Mitigation Policy.” Staff agrees with the Applicant that ODFW will be obligated to review the project in its entirety and can request mitigation as appropriate.

Water Resources

3. The county will continue to consult the County Sanitarian in land use decisions.

APPLICANT'S RESPONSE: *"This policy establishes an affirmative duty on the County and not the Applicant; therefore, the County can find that it does not apply. To the extent that the County finds otherwise, it can find that this policy can be met by notifying the County Sanitarian of the Project upon this Application being deemed complete."*

STAFF FINDING: Staff agrees that the County will notify the County Sanitarian in land use decisions. The County provided public notice of the Application to the County Environmental Health Department per the requirements of this policy. The county Sanitarian did not raise any concerns with this application.

4. The county will notify and consult with appropriate state agencies during review of development proposals that might affect surface or groundwater quality.

APPLICANT'S RESPONSE: *"This policy establishes an affirmative duty on the County and not the Applicant; therefore, the County can find that it does not apply. To the extent that the County finds otherwise, it can find that this policy can be met by notifying appropriate state agencies of the Project upon this Application being deemed complete."*

STAFF FINDING: The County notified the appropriate state agencies. Also, the Applicant has provided documentation of appropriate water rights for mining and processing purposes.

Goal 9: Economy

Goal: To diversify and improve the economy of Malheur County.

STAFF FINDING: The Applicant provided a complete response to applicable Goal 9 policies on pages 21–22 of the Application. In summary, the Applicant explained that the Project will be consistent with Goal 9 by doing the following:

- "Developing the County's gold and silver reserves;
- Adding an estimated 110 new full-time jobs for no less than seven years;
- Adding a substantial number of construction jobs (estimated to be at least 150) for at least a year after work begins;
- Providing good family-wage jobs through 2034.
- Broadening the County's tax base by substantially increasing the value of the patent parcel, which is subject to County property taxation;
- Building on the County's mining heritage; and
- Creating a new chemical mining industry in the County."

Staff concurs that the Application is consistent with Goal 9 for these reasons.

Goal 11: Public Facilities and Services

Goal: To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Fire and Police Protection

2. The county will require all major development projects to have an adequate fire protection plan.

APPLICANT'S RESPONSE:

"The Project will proceed under the following Fire Protection Plan, outlined in the PFS Report at 193:

'Water for fire protection will be distributed from the fire water tank located at the base of Grassy Mountain via a network of piping and will be maintained under a constant pressure with a jockey pump. The piping will be looped and sectionalized to minimize loss of fire protection during maintenance. Where located outside buildings, fire water piping will be buried below the ground surface to eliminate the potential of pipes freezing.

Yard hydrants will be limited to the fuel storage tank area. Wall hydrants will be used in lieu of yard hydrants, and these will be located on the outside walls of the buildings in cabinets that will be heated during winter months.

Fire protection within buildings will include standpipe systems, sprinkler systems, and portable fire extinguishers. Standpipe systems will be provided in all structures that exceed 46 feet in height, as well as where required by building code, local authorities, or the insurance underwriter.

Sprinklers will be provided at the following locations or to protect the following items:

- *Truck workshop;*
- *Assay laboratory;*
- *Over hydraulic or lube packs that contain more than 120 gallons of fluid;*
- *Lube-storage rooms;*
- *Any conveyor belts that are within tunnels or other enclosed spaces which would be hazardous to fight fires manually;*
- *Transformers (excluding the substation); and*
- *Warehouse.'*

"Although there are no standards within the MCC that define an "adequate" fire protection plan, the County can find that that the proposed fire protection plan provides for adequate fire protection because it includes a complete standpipe

system with adequate pressure to address fire hazards on the Property. For this reason, the County can find that the Project is consistent with this policy.”

STAFF FINDING: Staff concurs with the above statement, and observes that the Applicant will have its own separate onsite fire suppression system, which is consistent with this policy. Staff also notes that the Applicant has been in contact with the Vale Rangeland Fire Protection Association, which has had the opportunity to review the Application. An email from Bobby McElroy, Association secretary, indicated that the Association would allow the Applicant to become a member of the Association (Exhibit 1).

Condition 1: The Applicant will subscribe to the Vale Rangeland Fire Protection Association.

Condition 2: The Applicant must collaborate with the Malheur County Sheriff's Office in regards to a security plan as well as law enforcement and emergency response plans (Exhibit 4).

Water and Sewage

1. The county, in considering land use proposals, will ensure that the physical characteristics of the land that affect sewage disposal, water supply, and water quality are carefully considered.

APPLICANT'S RESPONSE:

“Water supply is anticipated to come from two sources: (1) wells drilled near SPR 02 about three miles north of the proposed mine site and (2) the SPR 01 well between the plant and the borrow source. Two wells will be drilled in the area of SPR 02, and water from these wells will be pumped along the main access road through a pipeline to the mine site. The majority of water will come from the SPR 02 area. SPR 01 is expected to be low producing and will primarily be used as a backup well. Storage tanks will be placed at both the SPR 01 and SPR 02 locations to allow for temporary storage as needed, as shown on the enclosed site plan.

“The siting and design of the Project sewage system will follow all State (DEQ) and County requirements for construction and permitting. Based on the Site Evaluation Report (Malheur County Environmental Health Department), Calico will design the required acceptable wastewater treatment system. The onsite sewage system will accept only domestic wastewater or a waste stream from the water treatment plan (no mine processing or related waste). Processing will occur 24 hours per day, 7 days per week. The final site will meet system setback requirements and be based on the Site Evaluation Report.”

STAFF FINDING: The Applicant submitted a water resources permit which demonstrates that it has sufficient water rights to meet the needs of the Project (Exhibit 2). It has also submitted a map which shows the location of the two wells that will be developed to serve the Project.

The County Department of Environmental Health has reviewed the Application and explained as follows:

“The Grassy Mountain Mine Project's wastewater will be permitted by the Oregon Department of Environmental Quality (DEQ) as a Water Pollution Control Facility (WPCF) under Oregon Administrative Rules Chapter 340, Division 071. Malheur County Environmental Health, as an authorized DEQ agent, has agreed to perform the Site Evaluation for this project. As a condition of approval, Calico Resources must follow all the requirements of the DEQ permitting process.”

Environmental Health did not raise any concerns regarding the Application (Exhibit 3).

b. MCC 6-6-7 - GENERAL CRITERIA TO EVALUATE SUITABILITY

C. Developments And Viewpoints: Existing development and viewpoints of property owners in the surrounding area.

STAFF FINDING: Staff finds that the Project Area is isolated from surrounding property owners other than the federal government. A map provided by the Applicant demonstrates that there are no occupied private properties within 5 miles of the patent parcel. See Application on page 31. For this reason, Staff finds that the Project will not affect the viewpoints of property owners in the surrounding area.

D. Services And Utilities: Availability of services and utilities.

APPLICANT'S RESPONSE:

“Initial power for the Project will be provided by diesel power generators. These generators are anticipated to be used during the first 1.5 years of construction and initial mining. During the construction period, Idaho Power will install a new power line along the access roads to the Project Area based on a power purchase agreement with Calico.

The new Idaho Power service will include a 23-mile distribution circuit (power line), a new 69/34.5 kV to 14 MV transformer, and a new 34.5-kV 167-amp regulator. The line will connect at the Hope Substation near Vale, Oregon and run to the mine site along the main BLM access roads. The mine substation will be located on adjacent BLM land. The power distribution from the powerhouse will be provided by overhead power lines.

Underground power distribution will serve the underground facilities, which will supply power to electrical equipment used to develop the main decline and portable fans. This system will include a 480 V transformer placed near the entrance to the portal during the initial stages of decline construction. Once development has advanced far enough that carrying power at 480 V becomes too inefficient, a main underground power line will be installed along the rib of the

decline to carry 4.16 kV and connected to the transformer, which will be moved underground. Upon completion of the decline to 3224 feet AMSL elevation, and the initiation of production-mining activities, a second underground transformer will be installed for use in the lower areas of the mine. Line power will also be carried up the hill to the two ventilation shafts to supply power to the ventilation fans.

At completion of mining, the main BLM access road power line will be controlled by the power company, which may either maintain it or remove it. The Project power supply equipment and all associated lines within the Project Area will be removed and reclaimed.”

STAFF FINDING: Electrical power is the only offsite utility which must be extended into the Patent Parcel. Staff has received a copy of a power purchase agreement between the Applicant and Idaho Power, which demonstrates that Idaho Power can serve the Project. Calico will be required to apply for right-of-way permits to install new power lines within County rights-of-way, including Russell Road.

E. Effect: The effect of the proposed use on the stability of the community's social and economic characteristics.

STAFF FINDING: The Project will have beneficial effects on Malheur County's social and economic characteristics for the reasons explained on pages 26-28 of the Application.

F. Fish and Wildlife: It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the fish and wildlife habitat protection plan for Malheur County. (Ord. 86, 12-7-1993)

STAFF FINDING: As noted in the Comprehensive Plan's Goal 5 element, discussed above, the County does not have its own current fish and wildlife habitat protection plan. However, as demonstrated by the Applicant's Wildlife Report there are no identified critical or sensitive habitats within Patent Parcel or the Project area, generally. For these reasons, Staff finds the demonstrated absence of sensitive species on the Patent Parcel demonstrates that the Project will not “interfere with traditional fish and wildlife use” of sensitive habitats.

G. General Criteria

STAFF FINDING: The General Criteria address site design, including buffering from surrounding properties, landscaping improvements, driveways, visual screening, and outdoor lighting. The Applicant addresses them on pages 28–29 of the Application and Staff concurs with the Applicant's conclusions. The site's isolation from any nearby occupied private properties ensures that the General Criteria are met.

H. Allowance of Certain Uses: A use allowed under section 6-3A-3 of this title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

APPLICANT'S RESPONSE:

"There are no farming activities, grazing activities, or forests on the Patent Parcel. Although range uses are present on surrounding BLM land, such lands are not subject to County jurisdiction, and the County can find that this standard does not apply to farm or forest practices on BLM lands.

Regardless, range uses on BLM land will only be curtailed within the Project Area and after the mine has been reclaimed, the entire Project Area will be available for range use. Given the size of the surrounding BLM open range area compared with the size of the 62-acre Patent Parcel, the County can find that the Project will not force a significant change on farm or forest uses on surrounding lands."

STAFF FINDING: Staff concurs with the Applicant's response above. Uses within the surrounding area consist of open range and recreation. Given that the surrounding BLM land is multi-use, the surrounding lands are not devoted to farm or forest uses.

Even if the surrounding lands were devoted to a farming use, Staff finds that outside of the Project Area, the Project will cause no change to accepted farm activities. This is for several reasons. First, the Project is not sensitive to open range uses—as long as cattle are prevented from entering the fenced area, there is no reason to believe that the Applicant would attempt to discourage or prevent use of the surrounding rangeland for cattle ranching. Second, as the mining activity will occur below ground, there is no reason to believe that very loud noises from blasting could spook or stress cattle. Third, the Project Area boundary will be fenced, which will prevent harm to cattle that might stray into the area. Fourth, substantial evidence in the record demonstrates that all chemical processing will be conducted in enclosed vessels which are placed on foundations with basins capable of capturing all slurry from each vessel in the case of a spill. See Application on page 10. Finally, the Application explains that the mine will be re-vegetated and returned to open range uses after reclamation.

For the above reasons, Staff finds that this criterion is met.

2. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

APPLICANT'S RESPONSE: *"The County can find that the Project will not significantly increase the cost of accepted farm or forest practices for the same reasons that it will not force a significant change on those practices."*

STAFF FINDING: Staff concurs with the Applicant. Given that the evidence in the record tends to show that the project will have little or no effect on the surrounding open range land uses, Staff believes the same evidence supports a finding that the Project will not "significantly

increase the cost of accepted farm practices on surrounding lands.

c. 6-6-8: SPECIFIC CRITERIA TO EVALUATE SUITABILITY:

In addition to the general criteria above, the specific criteria listed below and the standards for the zone in which the conditional use is to be established shall govern the following conditional uses.

d. 6-6-8-4: MINERAL, AGGREGATE OR GEOTHERMAL RESOURCE EXPLORATION, MINING AND PROCESSING:

A. Submitted plans and specifications shall contain sufficient information to allow the planning commission to set standards pertaining to:

1. Noise, dust, traffic and visual screening.

APPLICANT'S RESPONSE:

"Project construction will create a substantial amount of noise and minor dust due to blasting for the mine portal, noise from construction machinery, and dust created by both. However, the nearest population center, Vale, is approximately 22 miles to the north, and the nearest cultivated farm land, outside of Owyhee, is approximately 10 miles to the east. A single small farm is located approximately five miles away, on the other side of Grassy Mountain. These substantial distances will prevent nuisances to occupied properties caused by noise and dust. These distances also provide sufficient visual screening from surrounding private properties.

After construction is completed (approximately one year), all blasting and drilling activities will take place underground, substantially limiting or eliminating blasting noise and dust emissions from the project. Noise generated from the project during operational phases will include trucks and vehicles using the haul road and mechanical sounds issued from the processing plant.

Throughout the project, dust suppression will be provided with water spray or palliatives during all construction and operations, and disturbed areas will be seeded with an interim seed mix to minimize fugitive dust emissions from surfaces without vegetation, including all stockpiled soil. Dust suppression will be conducted according to a Fugitive Dust Control Plan required by the Oregon Department of Environmental Quality ("DEQ"). See Rec. Plan 7.

For the above reasons, the County can find that no additional conditions are required to limit noise and dust.

After construction is completed, vehicle trips will consist of employee transportation, approximately three to five material and chemical trucks per

week, approximately one refuse truck per day, and approximately one armored product truck per week. As demonstrated by the enclosed trip generation estimate (Exhibit 9), the Project will not generate enough daily vehicle trips to warrant a full TIA as required by MCC 6-5-3. Nevertheless, the Project will include a shuttle service to reduce the number of single-occupancy vehicle trips coming into the Project Area. For these reasons, County can find that no additional conditions related to traffic generation are warranted."

STAFF FINDING: Staff concurs with the Applicant's response. Staff notes that any road improvements necessary to serve the Project must be constructed according to County design standards to the satisfaction of the County Road Master (Exhibit 5). Staff does not recommend any additional conditions relating to noise, dust, traffic, or visual screening.

Condition 3: Any road improvements necessary to serve the Project must be constructed according to County design standards to the satisfaction of the County Road Master.

2. Setbacks from property lines.

APPLICANT'S RESPONSE:

"Setback requirements in the ERU zone are as set forth in MCC 6-3A-6, as follows:

'A. Setbacks: No building or sight obscuring fence, other than a fence or facility associated with irrigation activities, shall be located closer than forty feet (40') from a street or road right of way line and fifteen feet (15') from any other property line. No sight obscuring fence exceeding three feet (3') in height shall be placed within the forty foot (40') street setback, also within this setback shrubbery other than trees shall be maintained at heights not exceeding three feet (3'). Dwellings and inhabitable structures, including associated sewage disposal facilities and removal of vegetation, shall be prohibited within one hundred feet (100') of rivers, streams, lakes, reservoirs and other wetlands, unless topographic features make such setback unnecessary to protect riparian habitat.'

The Property is several miles away from the nearest County road right-of-way. The only structure proposed to be built on the Patent Parcel is the mine portal, which will be located more than 15 feet from the boundaries of the Patent Parcel.

For the above reasons, the County can find that the Project satisfies County setback requirements and no additional setback conditions need to be imposed on the Project."

STAFF FINDING: Staff concurs with the Applicant's response and finds that there is no basis to require specific setbacks.

3. Location of vehicular access points.

APPLICANT'S RESPONSE: *The final access point to the Project Area and Patent Parcel are located on BLM land. No changes to existing county road access points are proposed. Therefore, the County can find that no additional conditions related to vehicle access points need to be imposed.*

STAFF FINDING: Staff concurs with the Applicant's Response and does not recommend any additional conditions pertaining to vehicular access points.

4. Fencing needs.

APPLICANT'S RESPONSE:

"The entire Project Area will be fenced as described in the Rec. Plan:

'A perimeter fence, approximately 22,358 feet in length, will be constructed around the Project facilities to prevent access by livestock, wildlife, and the public (Figure 3). In general, three-strand barbed wire fences will be constructed in accordance with BLM fencing standards per BLM Handbook 1741-1. The area within the perimeter fence is approximately 540 acres. Within the perimeter fence in areas where a higher level of security is needed, chain-link fences will be erected. Gates or cattle guards will be installed along roadways within the Project Area, as appropriate. The perimeter fence will be monitored on a regular basis and repairs made as needed.'

No fencing of the Patent Parcel is proposed within the Project Area. Given that Calico proposes a complete perimeter fence around the Project Area, the County can find that no additional fencing of the Patent Parcel is necessary."

STAFF FINDING: Staff concurs with the Applicant's response and finds that no additional conditions regarding fencing are warranted.

5. Prevention of the collection and stagnation of water at all stages of the operation.

APPLICANT'S RESPONSE:

"Some water impoundment will be necessary in the TSF in order to manage mine tailings. Calico recommends that the County apply the Best Management Practices for Reclaiming Surface Mines in Washington and Oregon (DOGAMI 1997) and the requirements of the forthcoming Tailings Facility and Ancillary Facilities Design Report to ensure that surface water impoundments are correctly managed.

Best Management Practices (BMPs) will be used to limit erosion and reduce sediment in precipitation runoff from Project facilities and disturbed areas during

construction, operations, and initial stages of reclamation. BMPs may include, but are not limited to, diversion and routing of storm water using accepted engineering practices, such as diversion ditches, and the placement of erosion control devices, such as sediment traps, and rock and gravel cover.

Surface water diversion channels and ditches will be constructed as necessary around surface facilities and waste rock storage areas to control storm water run-on to these sites. Surface water control ditches and sediment retention ponds will be constructed in accordance with BMPs as outlined in the Best Management Practices for Reclaiming Surface Mines in Washington and Oregon (DOGAMI 1997) and in the Tailings Facility and Ancillary Facilities Design Report (refer to the DOGAMI Consolidated Permit Application). Sediment ponds and diversion ditches are sized to contain a 100-year, 24-hour precipitation event. Run-on diversion channels and ditches will remain as permanent features after final reclamation and mine closure.

See Rec. Plan at 8.

For these reasons, the County can find that the Best Management Practices for Reclaiming Surface Mines in Washington and Oregon (DOGAMI 1997) and the requirements of the forthcoming Tailings Facility and Ancillary Facilities Design Report are sufficient to provide adequate standards for preventing stagnant water.”

STAFF FINDING: Staff finds that some standing water will be an unavoidable aspect of mining operations. However, there is no evidence that water stagnation will occur on the Patent Parcel. Staff also finds that the geographic isolation of the Project Area will greatly reduce the vector danger posed by mosquitos. For this reason, Staff does not recommend any additional conditions to avoid water stagnation (see Exhibit 6).

6. Rehabilitation of the land upon termination of the operation.

APPLICANT’S RESPONSE:

“The Rec. Plan includes a preliminary mine reclamation plan which is summarized in Section II.D of this Application and attached hereto as Exhibit 3. A final reclamation plan is required to be submitted and approved by DOGAMI prior to issuance of the Consolidated Permit. The primary alteration on the Patent Parcel will be the mine portal, which will be plugged, regraded, and revegetated during the reclamation period.² Rec. Plan 17. Vent shafts will be plugged and onsite haul roads will also be regraded and revegetated. Revegetation of any denuded areas on the Patent Parcel will be conducted as generally described in the Rec. Plan on pages 20–25.

² Note that the mine portal structure may remain, but it will be plugged and the landing at the portal entrance will be re-graded to reduce its visual impact.

For these reasons, the County can find that the Application includes a plan for rehabilitation of the Patent Parcel upon termination, and that the Patent Parcel will be adequately rehabilitated after mine reclamation is completed.”

STAFF FINDING: The Applicant proposes complete mine closure, surface re-contouring, and re-vegetation. While Staff finds that this could have the effect of returning the land to a roughly pre-mining state, the County has no specific requirements or standards pertaining to reclamation plans. Staff finds that DOGAMI will require a complete final reclamation plan according to state standards. To ensure that the reclamation plan is completed prior to mining, Staff recommends the following conditions of approval:

Condition 4: The Applicant shall obtain approval for its reclamation plan from the Oregon Department of Geology and Mineral Industries (DOGAMI) prior to beginning mining operations. Unless otherwise prohibited by DOGAMI, the Applicant may conduct pre-construction and construction activities prior to obtaining approval of its reclamation plan.

B. In zones where processing is permitted, it shall be located no closer than two hundred feet (200') from residential or commercial uses.

APPLICANT’S RESPONSE: *“There are no residential or commercial uses within 200 feet of the Patent Parcel or the broader Project boundary. This standard is met.”*

STAFF FINDING: Staff concurs with the Applicant’s Response.

C. Equipment and access roads shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noise, vibration or dust that is injurious or substantially annoying to livestock being raised in the vicinity.

APPLICANT’S RESPONSE:

“Before beginning construction, Calico will be required to obtain DEQ approval of a Fugitive Dust Control Plan that will provide for water or palliative application of haul roads and other disturbed areas, chemical dust suppressant application (such as magnesium chloride) where appropriate, and other dust control measures as per accepted and reasonable industry practice. Also, disturbed areas will be seeded with an interim seed mix to minimize fugitive dust emissions from surfaces without vegetation, where appropriate. Rec. Plan 7.

The Project will create a minimal amount of traffic outside of the Project Area boundary, as explained above and in Calico’s Trip Generation Estimate. Exhibit 9. Movement of ore and tailings within the project site will be conducted by trucks moving between the mine portal and the processing plant; this haul road is located far within the Project Area boundary and therefore, dust emissions from the use of this road are not expected to cross the Project Area boundary.

For the above reasons, the County can find that this criterion is met.”

STAFF FINDING: Staff concurs with the Applicant's Response. The Applicant's trip generation estimate letter, prepared by a civil engineer, demonstrates that the Project will not generate more than 400 average daily trips under a reasonable worst-case scenario. Also, the Applicant will be required to obtain an air permit from the Oregon Department of Environmental Quality (DEQ), which will address dust emissions.

e. Sage Grouse Permit

Introduction.

The Sage Grouse Rule applies to "large scale developments," which include mining uses. The SGR requires local certain counties, including Malheur, to consider the impacts of "conflicting uses" (a definition the Project meets) on certain types of sage grouse habitat. The habitat types are "core area," "low density," and "general habitat," ranked in descending order of importance. The SGR imposes requirements for avoidance, minimization, and mitigation depending on the identified habitat type.

The requirements for core sage grouse habitat focus on avoidance. In low density and general habitat areas, the criteria allow more flexibility for minimizing and mitigating impacts.

The County's roll in applying the SGR is to determine (1) whether a property is located in "core area" or "low density" sage grouse habitat, (2) whether a proposed project constitutes a "conflicting use" within that habitat, (3) if so, whether the project must be located in the proposed location due to some special characteristic of the property or location, and (4), if so, whether the proposed project can minimize potential impacts on sage grouse. Habitat mitigation requirements are imposed by the Oregon Department of Fish and Wildlife (ODFW). In essence, the County must determine whether a project should be located in sage grouse habitat and if so, ODFW will impose habitat mitigation as necessary.

As explained in more detail below, the Patent Parcel is located within a small amount of "low density" habitat and a large amount of general habitat. Given that the mineral resources are located on the Patent Parcel, Staff finds that all the locational dependency requirements of the SGR are met. Staff also finds, based on the Applicant's Wildlife Report, there is no evidence of sage grouse habitat within two miles of the Project Area.

Applicable Criteria.

The Applicant's narrative explaining how the Project satisfies the SGR is set forth below:

"Criteria. As the SGR development criteria are more restrictive in "low density" areas than in "general habitat," the following addresses the criteria for development in "low density" areas only. The SGR requires a tiered conservation approach, in a descending order of priority. First, impacts to Sage Grouse Habitat should be avoided, if possible. If impacts cannot be avoided, they should be minimized. ODFW can require mitigation of any remaining

impacts.

- **Avoidance.** *A major development located in a “low density” habitat area must first try to avoid disturbance of the habitat, as OAR 660-023-0115(10)(a)(A) provides below:*

Before proceeding with large-scale development activity that impacts a low density area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within a low density area.

APPLICANT’S RESPONSE: The Project resource has only been identified on the patented mining claim, which is coterminous with the Patent Parcel boundaries. Therefore, the County can find that there is no other appropriate or feasible location for the Project.

If the proposed large-scale development can occur in another location that avoids both direct and indirect impacts within a low density area, then the proposal must not be allowed unless it can satisfy the following criteria:

- (i) It is not technically or financially feasible to locate the proposed large-scale development outside of a low density area based on accepted engineering practices, regulatory standards, proximity to necessary infrastructure or some combination thereof; or***

APPLICANT’S RESPONSE: The Project resource has only been identified on the patented mining claim, which is coterminous with the Patent Parcel boundaries. Therefore, the County can find that there is no other appropriate or feasible location for the Project.

- (ii) The proposed large-scale development is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations, or it is a linear use that must cross significant sage-grouse habitat in order to achieve a reasonably direct route.***

APPLICANT’S RESPONSE: As the Project satisfies (i), above, (ii) is inapplicable. However, to the extent that the County finds that it does apply, it can find that the Project is dependent on the geographic and physical features containing the mineral resource, which is certainly less common at other locations.

- **Minimization.** *As the Project cannot avoid low density habitat, we proceed to the next step, which OAR 660-023-0115(10)(a)(B) provides as follows:*

If the proposed use cannot be sited by avoiding a low density area altogether, including direct and indirect impacts, it shall be located to minimize the

amount of such habitat directly or indirectly disturbed, and to minimize fragmentation of the low density area(s) in question by locating the development adjacent to existing development and at the edge of the low density area when possible. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction.

APPLICANT'S RESPONSE: As explained above, the Project cannot avoid the low density area because it is geologically dependent on the proposed location. Within the Patent Parcel, the Project will be primarily located underground, with the only above-ground improvements being the entry portal for the underground improvements and gravel stockpiling, and improved existing circulation roads. The Project design minimizes to the extent practicable the uses with the low-density habitat.

- ***Mitigation. If impacts to the habitat are unavoidable, compensatory mitigation will be required:***

To the extent that a proposed large-scale development will have direct or indirect impacts on a core area after application of the avoidance and minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and indirect impacts of the development to any core area. The required compensatory mitigation must comply with OAR chapter 635, division 140. OAR 660-023-0115(10)(a)(C); (9)(a)(D).

APPLICANT'S RESPONSE: ODFW will review the Application and determine what mitigation requirements, if any, should be imposed.

- ***Findings for Approval. Once the above analysis is completed, the County may approve the "conflicting use" (i.e. the mine) as follows:***

(b) A county may approve a conflicting use as identified at subsection (7)(b) above upon either:

(A) Receiving confirmation from ODFW that the proposed conflicting use does not pose a threat to significant sage- grouse habitat or the way sage-grouse use that habitat; or

(B) Conditioning the approval based on ODFW recommendations, including minimization techniques and compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat. OAR 660-023-0115(9)(b).

APPLICANT'S RESPONSE: As part of the DOGAMI Consolidated Permit process, ODFW will be completing a review of the impact of the Project on sage grouse within the entire Project Area. Construction and mining will not begin until the DOGAMI Consolidated Permit is issued. To avoid unnecessary

duplication of ODFW's review process, the Applicant requests that the County impose a condition requiring compensatory mitigation for threats to significant sage grouse habitat within the Patent Parcel, as follows:

"The Applicant shall comply with ODFW minimization and compensatory mitigation requirements, if any, for threats to significant sage-grouse habitat on the Patent Parcel."

With this condition, the County may approve a conflicting use on the Patent Parcel.

STAFF FINDING: Staff concurs with the Applicant's statement. The resources proposed to be mined are only located on the Patent Parcel; therefore it cannot be located to avoid the habitat, nor can the facilities thereon be located to "minimize" impacts within the habitat. However, Staff notes that the complete absence of sage grouse activity or habitat, within the Patent Parcel or within the greater Project Boundary, is substantial evidence that the Project will have few impacts, if any, on sage grouse habitat. Staff also notes that the vast majority of the surface of the Patent Parcel is not proposed to be altered, further reducing the likelihood that the Project will impact sage grouse.

To satisfy OAR 660-023-0115(9)(b), Staff recommends the following condition:

Condition 5: The Applicant shall comply with ODFW minimization and compensatory mitigation requirements, if any, addressing significant sage-grouse habitat on the Patent Parcel.

With the above condition, Staff finds that the Application satisfies the applicable SGR regulations.

20. CONCLUSION

Staff recommends that the Planning Commission APPROVE the Application with the following conditions of approval:

Condition 1: The Applicant will subscribe to the Vale Rangeland Fire Protection Association.

Condition 2: The Applicant must collaborate with the Malheur County Sheriff's Office in regards to a security plan as well as law enforcement and emergency response plans.

Condition 3: Any road improvements necessary to serve the Project must be constructed according to County design standards to the satisfaction of the County Road Master.

Condition 4: The Applicant shall obtain approval for its reclamation plan from the Oregon Department of Geology and Mineral Industries (DOGAMI) prior to beginning mining operations. Unless otherwise prohibited by DOGAMI, the Applicant may conduct pre-construction and construction activities prior to obtaining approval of its reclamation plan.

Condition 5: The Applicant shall comply with Oregon Department of Fish and Wildlife (ODFW) minimization and compensatory mitigation requirements, if any, addressing significant sage-grouse habitat on the Patent Parcel.

21. PLANNING COMMISSION'S DECISION:

The Planning Commission may approve the application, approve the application with conditions, or deny the application. The Planning Commission may impose conditions different than, or in addition to, the conditions recommended by Staff. To aid the Planning Commission, Staff offers the following example motions:

I.

- Move to adopt Staff's recommendation for approval, with the Conditions of Approval recommended by Staff.
- Move to approve the Application with the following additional conditions of approval: [list conditions].
- Move to deny the Application for failing to satisfy the following criteria: [list criteria].

The Planning Commission's decision must be reduced to written findings of fact and law to be adopted by the Planning Commission at a subsequent meeting. The Applicant has the burden of proof in the Application. Therefore, if the Planning Commission approves the Application, the Applicant will be required to prepare proposed written findings for review and approval by the Planning Commission. If the Planning Commission votes to deny the Application, it must identify any criteria which the Application fails to meet and reasons why it fails to meet them. Staff will then prepare written findings for consideration by the Planning Commission.

II.

- Move to recommend that the Malheur County Court approve the Sage Grouse Rule Permit.

EXIHIBITS

1. Email from the Vale Rangeland Fire Protection Association
2. Applicant's Water Right Permit
3. Letter from the County Environmental Health Department
4. Letter from Malheur County Sheriff's Office
5. Letter from Malheur County Road Master and Engineer
6. Letter from Malheur County Vector Control District

**BEFORE THE COUNTY COMMISSION AND COUNTY COURT
FOR MALHEUR COUNTY, OREGON**

An Application for a Conditional Use Permit and Sage Grouse Rule Permit pursuant to OAR 660-023-0115 to establish an underground gold mine on property identified as tax lot 101 of Malheur County Assessor's Map 22S 44E.

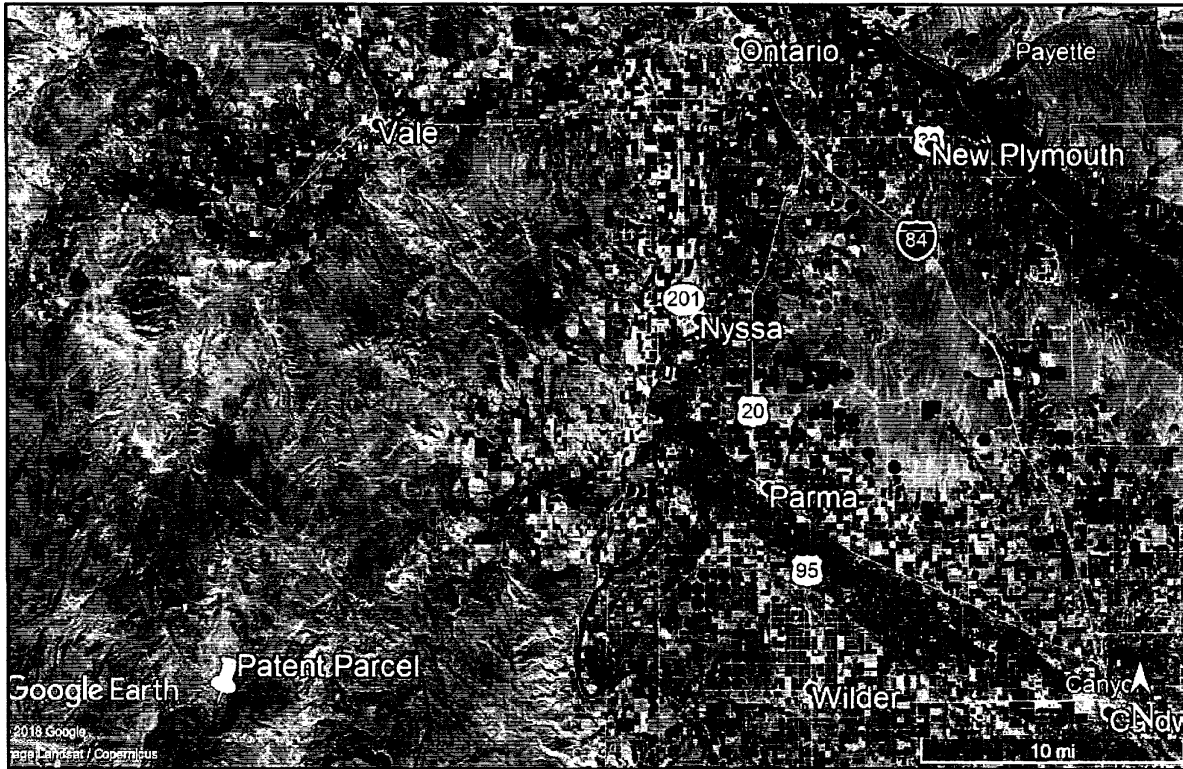
**APPLICANT'S STATEMENT IN
SUPPORT OF APPLICATION**

I. INTRODUCTION

This application (the "Application") is respectfully submitted by Calico Resources USA Corp. ("Calico") for an underground gold and silver mine on private land zoned for Exclusive Range Use ("ERU"). The project is known as the "Grassy Mountain Gold Project" (the "Project") and will be located approximately 22 miles south of Vale on an approximately 62-acre parcel (the "Patent Parcel") and surrounding land administered by the Bureau of Land Management ("BLM").¹ The Patent Parcel is coterminous with Calico's patented mining claims and is the subject of this Application. It is entirely surrounded by federal land managed by the BLM. The Patent Parcel location is shown on the map below:

¹ For purposes of this application narrative, the term "Patent Parcel" refers to the private land subject to this Application, the term "Project Area" refers the geographic extent of the entirety of the Project, and the word "Project" refers to the entirety of the mine and processing operation.

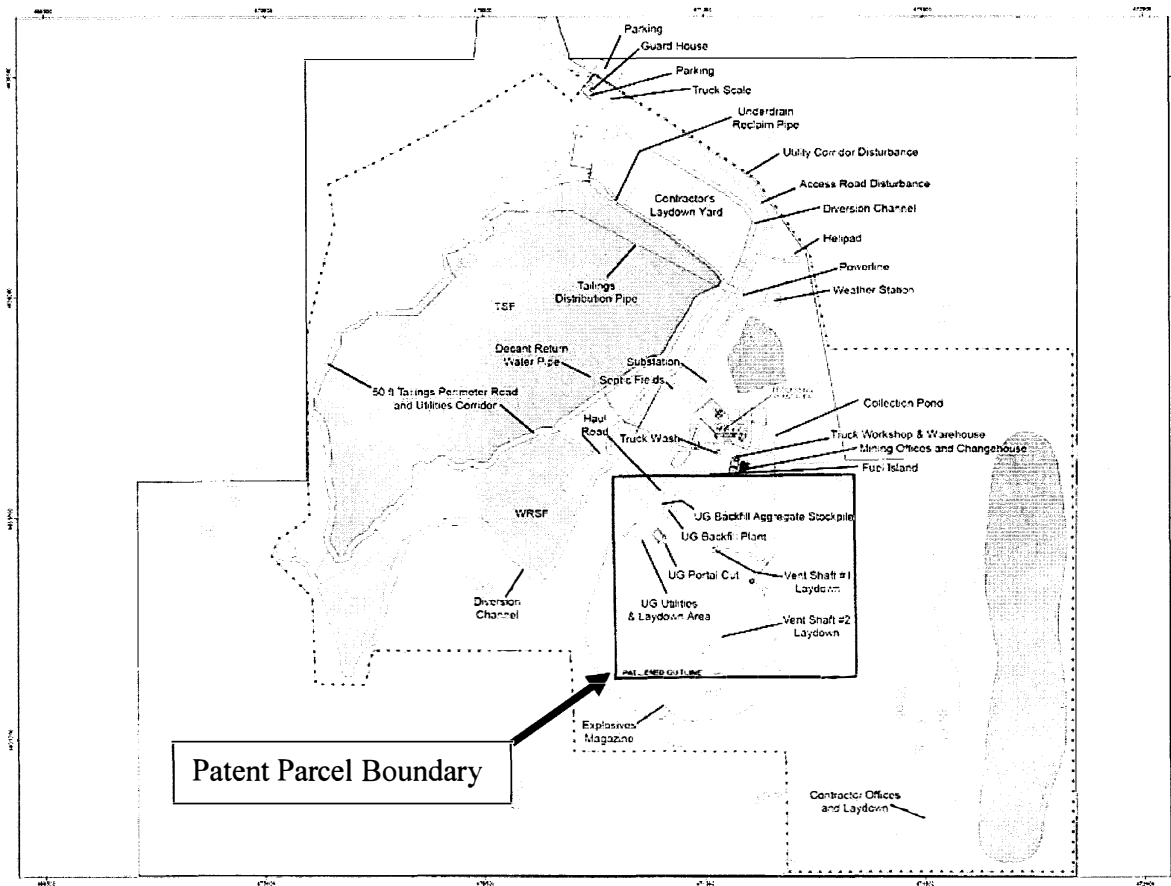
Figure 1 - Overview Map



A. Project Description

The Project will involve several elements: the mine site itself and its entry portal, which are located on the Patent Parcel; a processing facility; a tailings storage facility; a waste rock storage facility; borrow pits for production of backfill rock; and various support and administrative buildings. The entire Project Area will be fenced. Of these facilities, only the mine portal and related elements will be located on the Patent Parcel surface (the mine itself will be located beneath the Patent Parcel). A concept site plan showing the entirety of the Project is below. Note that the Patent Parcel subject to this Application is outlined in red.

Figure 2 - Site Plan

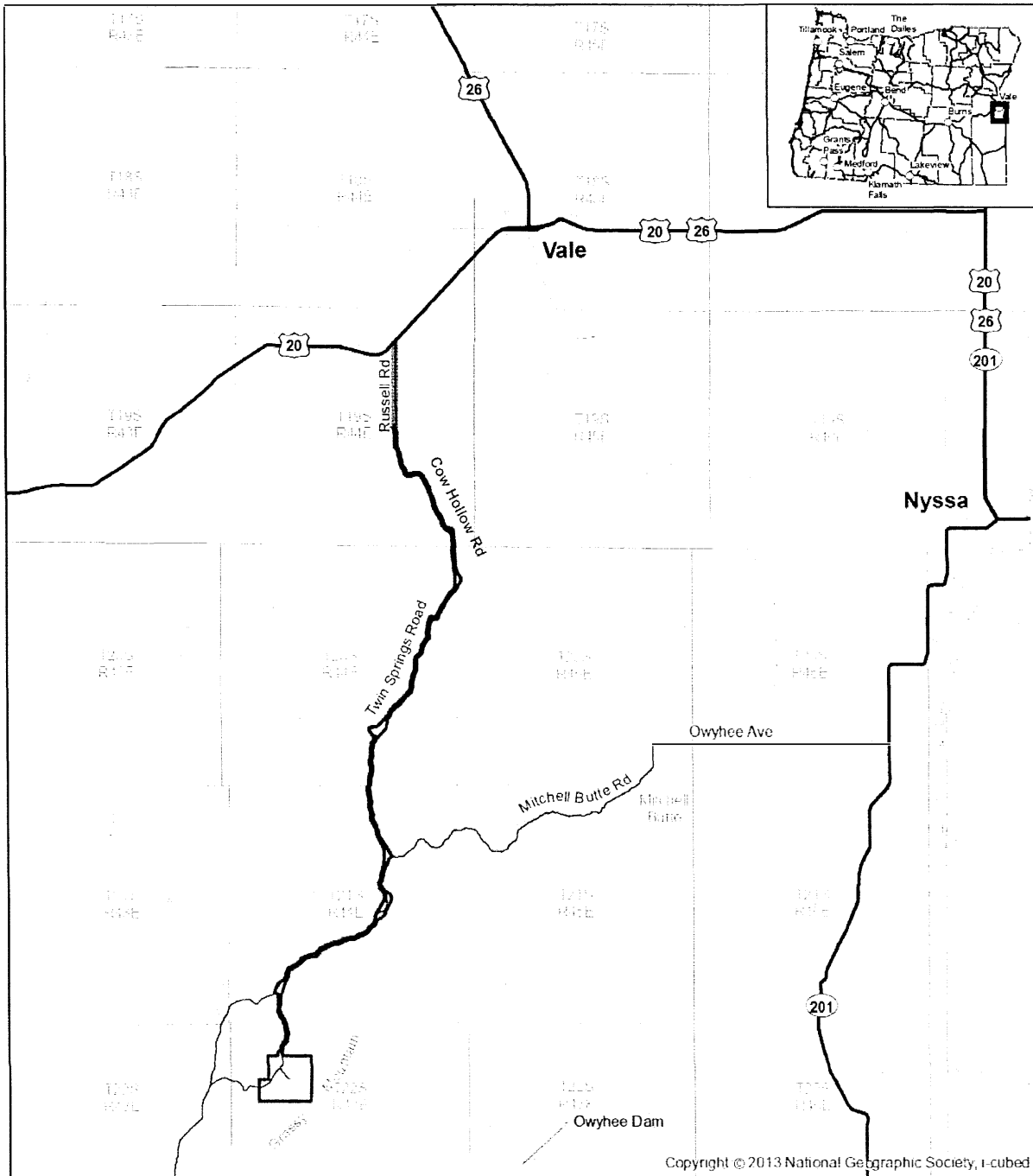


As demonstrated on the above site plan, development on the Patent Parcel will primarily involve construction of a mine portal near the northwest corner, improved gravel surface roadways that will allow access to the mine portal/decline, ventilation shafts, and laydown/storage areas.

B. Road Access

The Project will be accessed via “Russel Road,” “Cow Hollow Road” and “Twin Springs Road,” as shown in the following figure:

Figure 3 - Primary Project Access Route



Russell Road is a county road that is used as part of the main access route from the City of Vale. It extends approximately four miles to connect US 20 to Cow Hollow Road. Approximately two miles of Russell Road is paved, after which it becomes

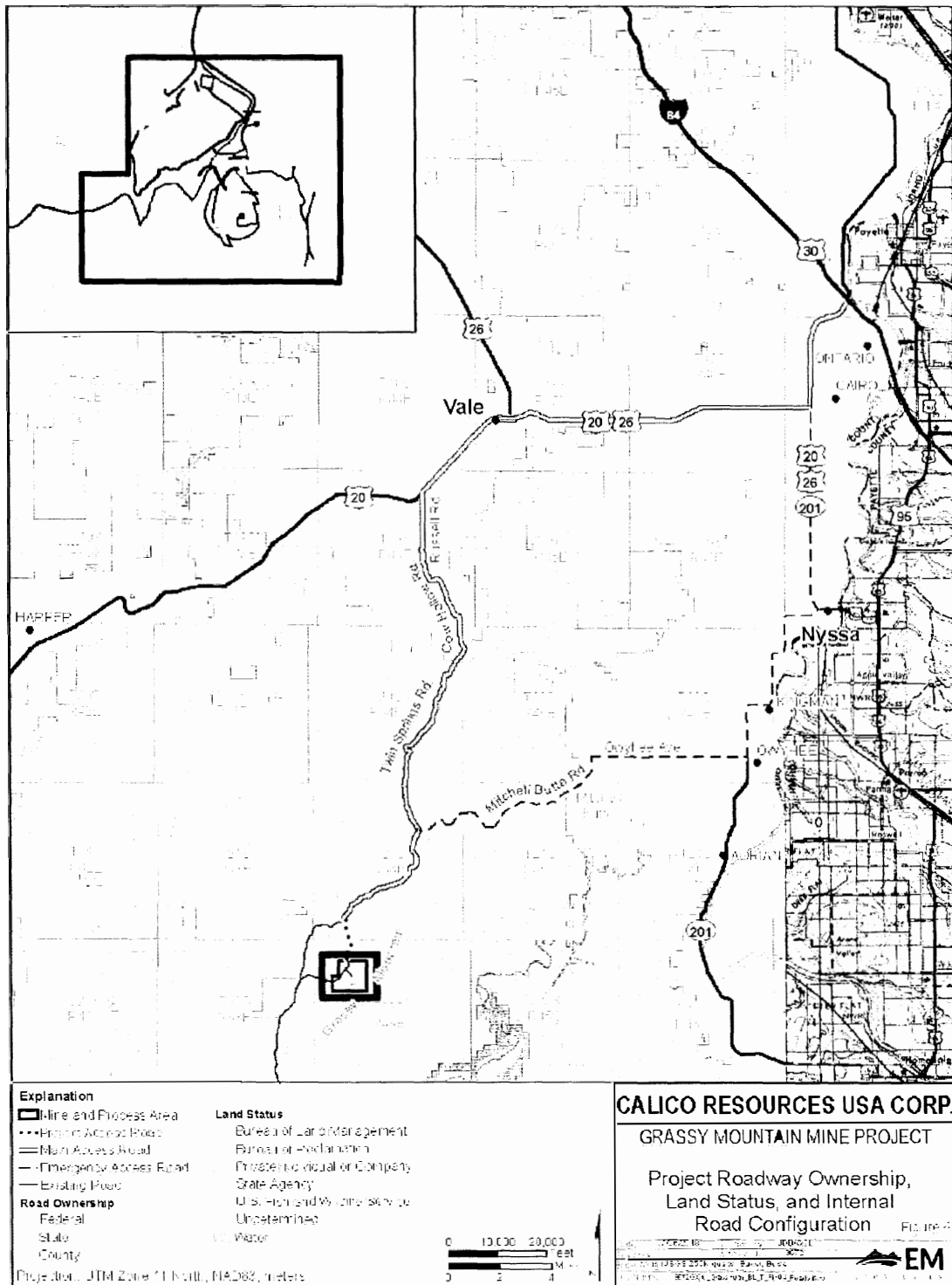
gravel as it extends south. The paved section passes through irrigated farmland and dispersed farmsteads.

The Oregon Department of Transportation (“ODOT”) and the County’s Transportation System Plan (1998) (the “TSP”) classify Russell Road as a Minor Collector. The four-mile segment is managed and maintained by the County’s Road Department. Russell Road consists of an approximately 22-foot wide improvement within a 60-foot wide right-of-way. The County does not propose any improvements to Russell Road in its current capital improvement program.

Cow Hollow Road connects Russell Road to Twin Springs Road via a four-mile section of unpaved (gravel) road. Cow Hollow Road is designated as a county local street by the County’s TSP and is maintained by the BLM. It passes through undeveloped land, most of which is privately owned, continues past the intersection with Twin Springs Road, and eventually connects into the road network around the town of Owyhee to the east.

Twin Springs Road is the last section of the main access road, and is also designated as a local street by the TSP. The section of Twin Springs Road that is part of the proposed Project will provide a connection between Cow Hollow Road and the Mine and Process Area. Twin Springs Road is unpaved (gravel) and passes through BLM land. The BLM manages and maintains Twin Springs Road.

Figure 4 - Road Ownership in the Project Area



The unpaved portion of the county road system that provides access to the Project will be improved according to County road standards, as determined by the County Roadmaster, and as roughly proportional to the impacts of the Project. All roadway improvements will be provided at Calico's expense. Calico will coordinate with the County Roadmaster to obtain any necessary permits for improvement of the County roadways.

C. Surface and Subsurface Drainages

The Project Area is rolling hill terrain that drains toward, and into, Negro Rock Canyon, which is located to the northwest of the Project Area. The highest surface elevation is about 4,800 feet above mean sea level ("AMSL") along the west flank of Grassy Mountain. Elevation of the Project Area decreases to the north (about 3,250 AMSL at Negro Rock Canyon). The Patent Parcel and Project Area do not feature any permanent or consistently periodic surface drainages. There are no jurisdictional waters within the Project Area. Negro Rock Canyon contains an intermittent drainage that only flows in response to snowmelt or heavy precipitation.

On the Patent Parcel, subsurface water is located within an aquifer generally located below 3,000 feet AMSL, approximately 500-800 feet below the mine surface.

II. RESOURCE DESCRIPTION AND PROJECT PLAN

The entire Grassy Mountain project area is comprised of approximately 981 acres, of which 919 acres are public land administered by the BLM and approximately 62 acres of which constitute the Patent Parcel. The Patent Parcel surrounds a loose rock outcropping approximately 22 miles south-southwest of Vale.

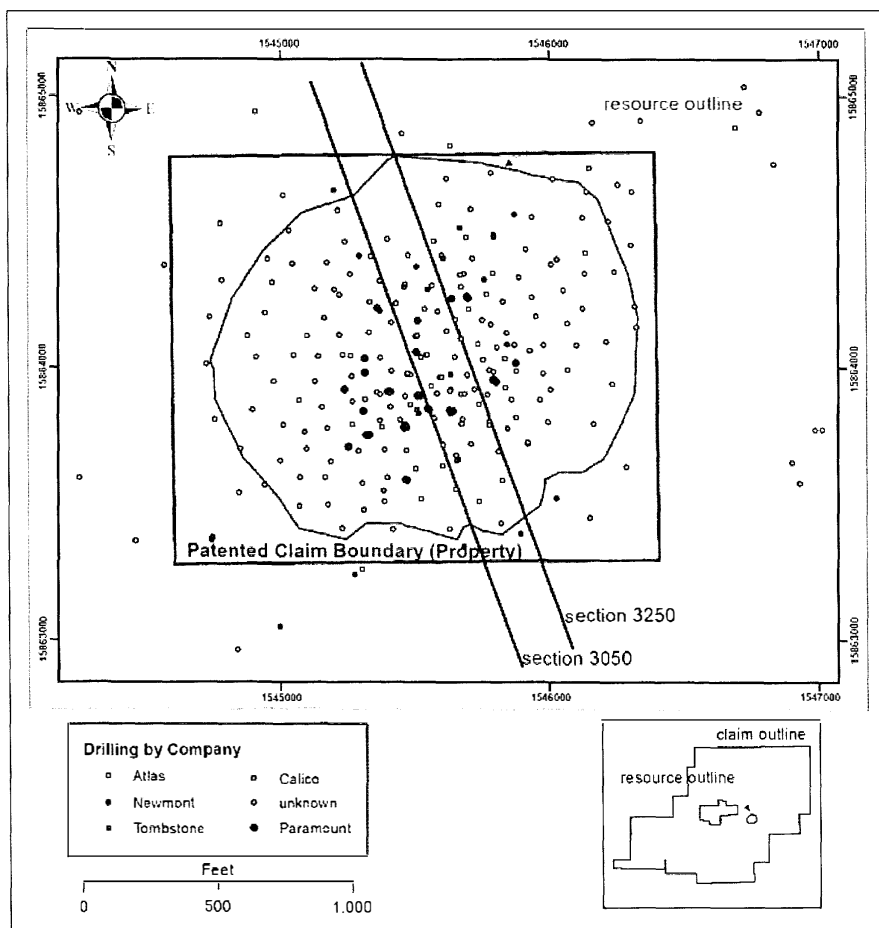
Both gold and silver were discovered in the Project Area by two independent geologists in 1986, who staked and patented the claim area that became the Patent Parcel. Calico became the Project owner in 2011 after the claim was transacted a number of times. Low gold and silver prices and high production costs have prevented mining on the site until it became economically feasible over the last half-decade, as mining techniques developed and the price of gold and silver increased.

A. Resource Description

The gold and silver resources at Grassy Mountain are not exposed on the surface, but are located roughly 500–700 feet below the surface of the Patent Parcel.

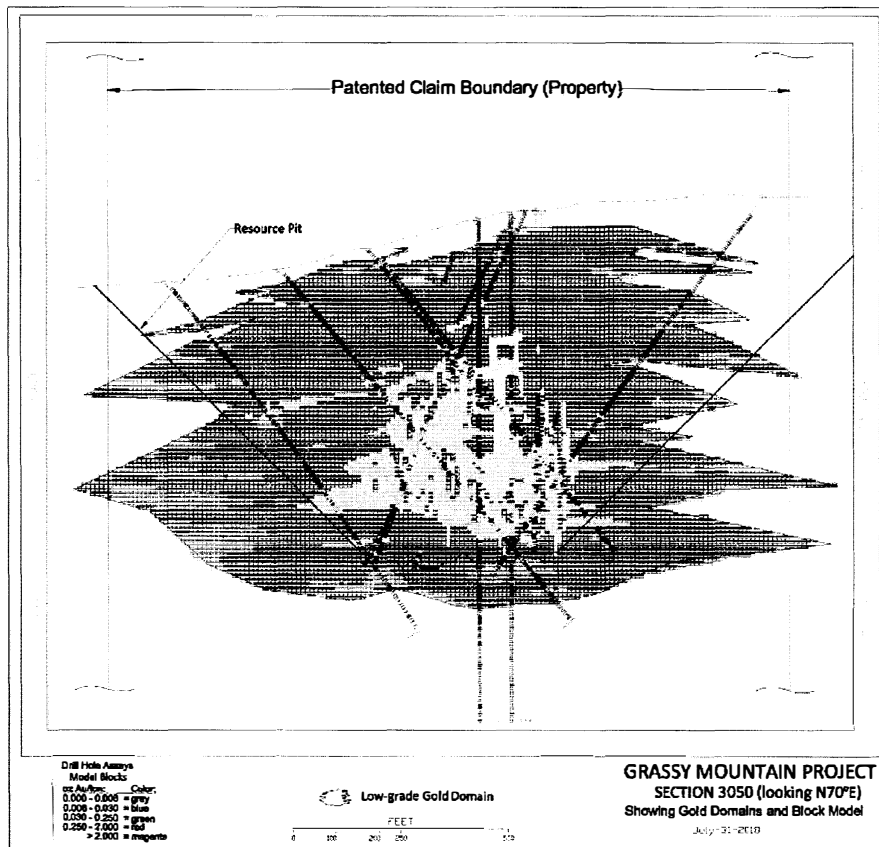
Figure 5, below, provides a plan-view of the deposit as its outline would appear on the surface.

Figure 5 - Location of Grassy Mountain Gold and Silver Resource



The Figures 6 and 7, below, provide an isometric view of the gold resource.

Figure 6. Cross-Section View of Grassy Mountain Mineral Resources

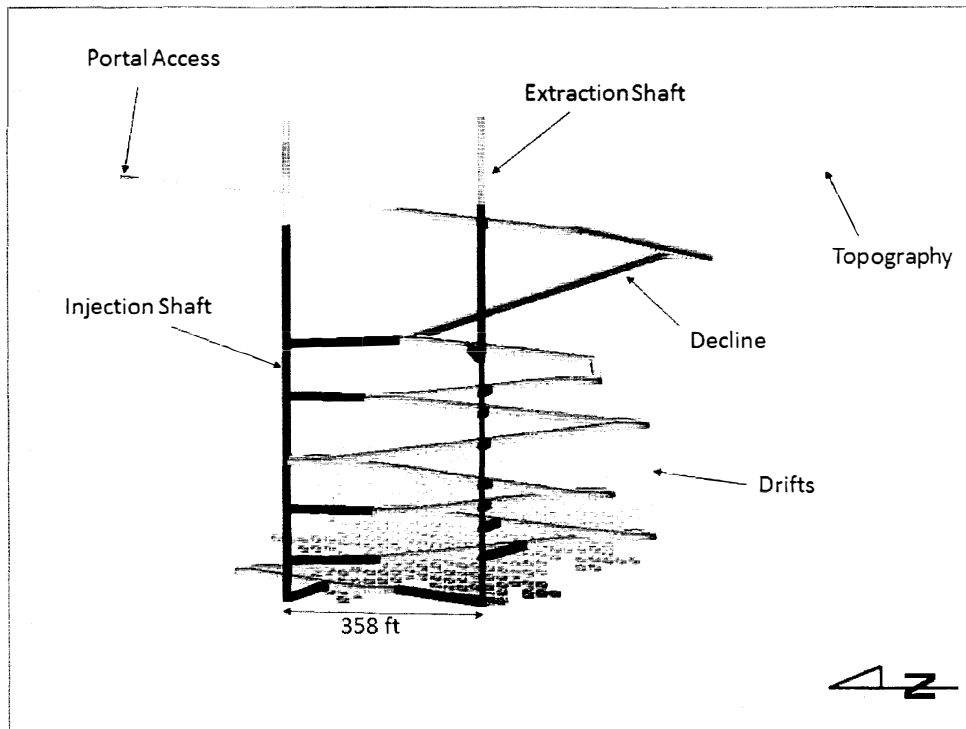


Based on Calico’s July, 2018 Preliminary Feasibility Study and Technical Report (the “PFS Report”) (**Exhibit 1**), the deposits include approximately 362,000 oz of gold and 516,000 oz of silver, based on proven plus probable reserves. PFS Report at 5.

B. Mining and Processing Methods

Initial surface access to the mineralized zone, which lies at a depth between 500 and 700 feet from the surface, will be via a portal (mine entrance) and decline (underground ramp). This portal will start in the northwest corner of the Patent Parcel and proceed on a downward gradient in a generally south-southeast direction. Once mine development reaches the initial mining levels, ventilation shafts will be installed. The following figure provides an isometric view of how the mine will be constructed.

Figure 7 – Mine Access and Decline Plan



The mine is designed to produce 1,300 to 1,400 tons of raw ore per day. In general, the ore body will be mined out from the bottom to the top using a combination of explosives and mechanical mining techniques. As mining proceeds, the mine decline and drifts will be back-filled with waste rock extracted early in the mine development and aggregate mined from pits located on federal land, adjacent to the Patent Parcel.

The raw ore will be removed from the mine drifts by trucks and sent through a staged mineral recovery (i.e. processing) plant. The ore will first be crushed and placed into a centrifugal gravity concentrator to separate gold and silver. Afterwards, the resulting tails will be sent through an enclosed carbon-in-leach ("CIL") process. During this process, the ore will be deposited into agitated tanks where leaching reagents (sodium cyanide), lime to adjust the pH, and oxygen are added. The resulting chemical reaction dissolves (leaches) the precious metals and allows them to go into solution (dissolve into the slurry flow). These tanks are situated on bermed concrete floors, which are designed to contain 110 percent of each tank's maximum storage capacity in order to avoid contamination if an accidental spill were to occur.

The next step in the CIL process involves the addition of activated carbon to the gold solution. The activated carbon is added to the last tank, and moved counter-current to the slurry flow. Activated carbon has the ability to recover gold and silver from solution by adsorbing it onto carbon particles. The gold- and silver-loaded carbon is transferred from the first leach tank to the carbon handling area for further treatment. The leached tailings slurry from the final leach tank will be transferred to a cyanide destruction circuit, which will destroy the cyanide before the tailings are deposited in a storage containment facility. None of the cyanide processes are conducted outside of slurry tanks or other enclosed systems.

The remaining tailings and process water are then pumped to an engineered tailings storage facility ("TSF") for final disposal. The TSF will be an approximately 102-acre impoundment, which will be located entirely on federal land. The TSF will include an underdrain system comprised of perforated pipe being set in a coarse development rock drainage blanket. This will be constructed above a compacted natural fill on a synthetic impoundment liner. Seepage will be limited due to the permeability of the tailings. Process water will settle through the tailings, into the drainage system, and recovered and reused in the CIL process.

C. Surface Alterations of the Patent Parcel

As the bulk of the processing, tailings management, and stockpiling activities will occur outside of the Patent Parcel, Calico proposes few surface alterations on the Patent Parcel. Surface alterations will primarily include the mine portal, associated utility and laydown areas, and backfill aggregate plant and stockpiling areas. Ventilation shafts, utility lines, and associated laydown areas are also proposed. A high-definition site plan showing these facilities is enclosed as **Exhibit 2**.

D. Reclamation

The State of Oregon requires that a reclamation plan be developed for any new mining project and for expansions of existing operations (OAR 632-037-0070). A preliminary reclamation plan (the "Rec. Plan") is part of a preliminary Plan of Operation and is enclosed as **Exhibit 3**.² For the Patent Parcel, the principal reclamation will be the plugging of the portal and vent shafts. Surface facilities, such as tanks wells and power lines will be removed. Reclaimed surfaces will be

² Note that some materials include earlier draft site plans that may conflict with the one in the PFS Report and attached hereto. Any conflicts between site plans in the supporting materials should be resolved in favor of the Site Plan enclosed herein as **Exhibit 2**.

re-vegetated to control runoff, reduce erosion, provide forage for wildlife and livestock, and reduce visual impacts. During reclamation, growth media suitable for revegetation will be spread over the disturbed areas of the Project—including the TSF—to a depth of 12-24 inches. Rec. Plan 15. Suitable growth media will be salvaged and stockpiled during the development of the facilities, during construction of the waste rock storage areas and the TSF, and construction of other Project facilities. Rec. Plan 9. After the growth media is spread, it will be graded to resemble natural contours and seed will be applied during the spring. Rec. Plan 9. Seeded species will include sagebrush, wheatgrass, and squirreltail. Rec. Plan 16.

The proposed Project will be active for approximately 14 years, which includes two years of construction and pre-production, ten years of mining and processing, and three years of closure and reclamation. Ground water may be monitored for up to seven years after that, extending to some 20 years from the beginning of the Project. The same land uses of mineral exploration and development, livestock grazing, wildlife habitat, and dispersed recreation, and all other uses permitted by the ERU zone will remain following mine closure.

E. Operational Timeframe

The proposed Project will be active for approximately 14 years, which includes two years of construction and pre-production, ten years of mining and processing, and three years of closure and reclamation. Three years of closure and reclamation are estimated with several years beyond anticipated for ground water monitoring. This schedule may be modified based on the rate of mining and future commodities prices.

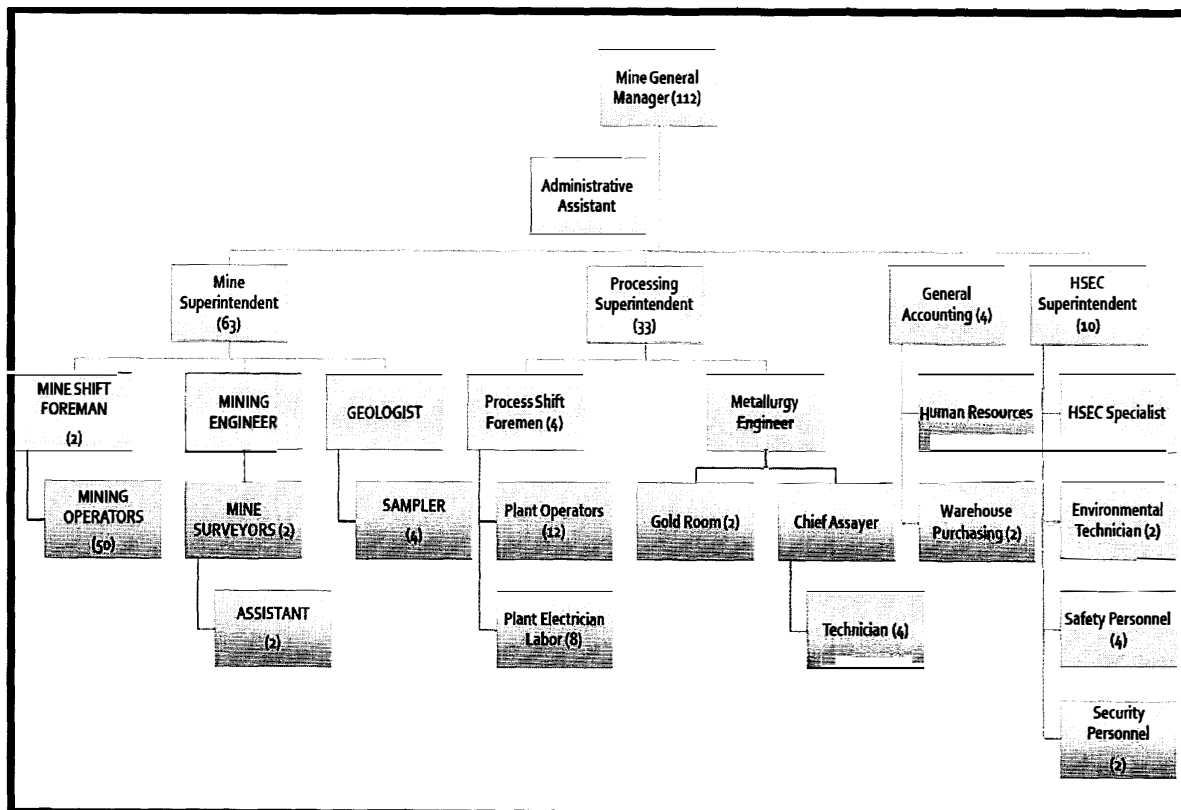
Construction is anticipated to begin in 2020, meaning that active construction, mining, and reclamation activities will continue through at least 2034.

F. Mine Staffing

During its 10-year processing duration, the Project is anticipated to employ up to 110 employees at its peak, which comprises approximately 63 mine workers, 35 plant operations and maintenance workers, and 12-15 administrative staff. The Project will provide employment opportunities through 2034 or longer, depending on economic conditions. PFS Report 209, Rec. Plan 15.

Calico intends to source jobs from the local community, primarily including the Malheur County and Treasure Valley areas, to supply the expertise reinforcing the site's experience level. In previous projects, Calico has gained substantial expertise in creating and maintaining partnerships with local community colleges and vocational schools whereby "mining expertise" is developed through "partnership curriculums." For this project, partnerships are likely to be made with Treasure Valley Community College in Ontario, Eastern Oregon University in LaGrande, and the College of Western Idaho in Boise, in order to provide workforce training. Mine employees will be provided a daily bus shuttle option from Vale to limit the number of personal vehicles travelling to the site.

Figure 8 - Mine Organization Chart



G. Construction Staffing

Construction will be performed by contractors over a one- to two-year period. The peak number of construction workers is estimated to be approximately 150.

III. REGULATORY STRUCTURE AND PROCEDURAL REQUIREMENTS

Mining operations on BLM land are subject to approval under the Federal Land Policy and Management Act (“FLPMA”) and state and federal environmental statutes. Overall approval of the mine on both federal and County land is the responsibility of the Oregon Department of Geology and Mineral Industries (“DOGAMI”) through its Chemical Process Mining permitting process, set forth in OAR Chapter 632, Division 37 (the “Consolidated Permit”). Other state environmental laws apply on federal land through that process.

FLPMA accords land planning responsibilities for federal land under the jurisdiction of the Department of Interior to BLM. Therefore, only the project elements proposed on the Patent Parcel are within the scope of this Application.

Mining activities on non-federal lands, including the Patent Parcel, are subject to Oregon land use laws, the Malheur County Comprehensive Plan (the “Plan”), and the Malheur County Code (“the MCC”). Pursuant to MCC 6-3A-3, “mining of aggregate and other mineral resources or other subsurface resources” is a Conditional Use in the ERU zone, meaning that a Conditional Use permit (“CUP”) will be required.³

In addition to this proposed CUP, OAR 660-023-0115, the state “Sage Grouse Rule” (or “SGR”), applies to the Application, although it is not incorporated into the MCC. The Application includes findings of fact supported by substantial evidence demonstrating that the Project can satisfy the SGR.

Decisions on a CUP are made after a hearing before the Planning Commission. MCC 6-6-6. Appeals of a Planning Commission decision are conducted before the County Court. No procedures are set forth in MCC for considering a permit issued under the SGR (OAR 660-023-0115). However, by providing that approvals under that rule are to be issued by a county, the rule apparently requires a final decision by the governing body of a county; in this case, the County Court. MCC 6-9-11

³ The MCC provides that permits to mine for *aggregate* resources may issue only if the Patent Parcel is “included on an inventory in the Malheur County Comprehensive Plan.” MCC 6-4-7 (**Exhibit 4**); *see also* ORS 215.298(2). This “inventory” refers to the County’s inventory of significant Goal 5 mineral and aggregate resources. *Beaver State Sand and Gravel, Inc. v. Douglas County*, 43 Or LUBA 140, 170–75 (2002), *aff’d*, 187 Or App 241, 247–53 (2003). However, this Application is for a mine for a *mineral* resource and not an aggregate resource; therefore, inclusion on the County’s inventory of significant Goal 5 resources is not required.

requires that “where other provisions of the Malheur County ordinances specify procedures with greater opportunity for public notice and comment, those procedures shall apply.” In light of the above, the Applicant requests an initial hearing before the Planning Commission with a recommendation to the County Court on the CUP and SGR permit. The County Court should then hold an on-the-record hearing on the Application,⁴ after which it may either approve, approve with conditions, or deny the Application.

IV. CONDITIONAL USE PERMIT

6-6-7: General Criteria to Evaluate Suitability:

In considering the suitability of proposed conditional uses, the planning commission shall base its decision upon the following criteria:

A. Comprehensive Plan Goals: Comprehensive plan goals and policies, as applicable.

RESPONSE: The Patent Parcel is zoned for Exclusive Range Use, which is a sub-designation of the County’s Goal 3 “Agricultural Lands.” As the Project will create a substantial number of jobs in Malheur County, Goal 9 “Economy,” also applies. Goals 11 and 12 apply because the project will generate a small increase in traffic and will require service by public utilities. Finally, a number of miscellaneous policies may apply. Please note that Statewide Planning Goal 5 does not apply because the Property is not listed by the County as a Goal 5 resource. However, Calico addresses Goal 5 of the Comprehensive Plan without conceding that it applies.

Goal 1: Citizen Involvement

Goal: To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the Planning Process.

9. All planning activities will be publicized to make residents aware of upcoming decisions that may affect them.

⁴ The County Court is required to hold its hearings on-the-record unless the applicant or Opposing Party shows good cause. MCC 6-9-4.D.

RESPONSE: Pursuant to the County's administrative requirements in the MCC and ORS 197.763, the County shall provide adequate notice of this Application. Therefore, the County can find that the Project is consistent with this policy.

11. Copies of the comprehensive plan and all other planning documents will be available to all residents.

RESPONSE: A copy of the Application and official record in this matter shall be made available for the public at County offices and can be accessed upon request. Therefore, the County can find that the Project is consistent with this policy.

Goal 3: Agricultural Lands

Goal: To preserve and maintain the agricultural land in the county for agricultural purposes.

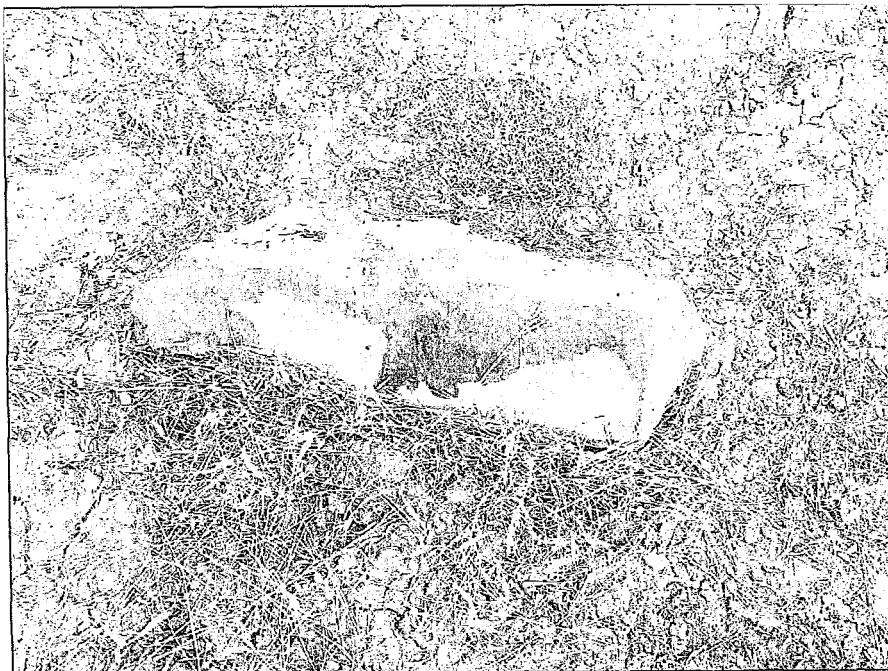
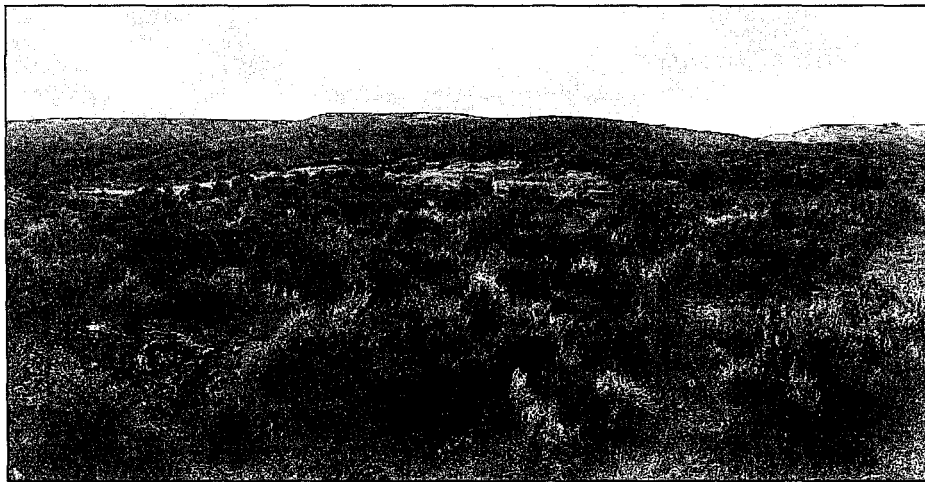
1. Public and private land classified by the Natural Resources Conservation Service (formerly U.S. Department of Agriculture Soil Conservation Service) as being in Capability Classes I through VI, as well as High Value Farmland as defined by applicable Oregon Revised Statutes and Oregon Administrative Rules and any other lands determined to be necessary and required for farm use, are considered to be agricultural lands.

RESPONSE: The Patent Parcel has not been classified by the U.S. NRCS as having Type I through Type VI soils. In fact, the NRCS has not characterized the soil types on Project Area or in the vicinity. While the County considers the Patent Parcel to be suitable for range use, it is barren and unirrigated; therefore, no additional protections from non-farm uses are warranted on the Patent Parcel.

2. High Value Farmlands (ORS and OAR designated) shall be given the greatest protection. Lands classified by the Natural Resources Conservation Service, as Capability Classes I through VI shall be afforded the next highest protection with Class I having the highest protection and Class VI the least.

RESPONSE: The Patent Parcel has not been classified by the U.S. NRCS as having Type I through Type VI soils. While the Patent Parcel has been considered to be suitable for range use, it is barren and unirrigated; therefore, no additional protection from non-farm uses are warranted on the Patent Parcel.

Note that a site-specific soil study was conducted in 1989 and 1991. It characterized the soils on the Patent Parcel to be “Farmell-Rock outcrop complex, 8 to 30 percent slopes” and “Farmell-Chardoton very cobbly soil, 15 to 30 percent slopes.” (See excerpt of Mine Plan of Operations, Volume I of III dated August 2017 at 22-23 enclosed herein as **Exhibit 5**.) Even without slopes and substantial gravel and rock inclusions—which the Patent Parcel soils have in abundance—these soils have an unirrigated rating of VI or VII, and both soil types are mild to moderately alkaline. **Exhibit 6**. The following photos of the soils and terrain on the Patent Parcel illustrate the rockiness of the soils and its unsuitability for cultivation.



6. The county will review and consult with the irrigation and drainage districts on land use decisions to assure they will not negatively impact the integrity or operation of water for irrigation or drainage purposes.

RESPONSE: This policy is for the County to implement and is not directly applicable to the Application. The Patent Parcel is unirrigated and process water will be provided by wells pursuant to water rights issued by the Oregon Water Resources Department.⁵ Therefore, the County can find that the Project will have no impact on water distribution or drainage district resources in the County.

7. In addition to county code and the State of Oregon's land use laws and administrative rules for non-farm dwellings, it is the policy of Malheur County that there be no net loss of farmlands listed on the High Value Farmlands Soils list or soils classified as types I-III by the Natural Resources Conservation Service.

RESPONSE: As explained above, the Patent Parcel is not composed of soil classes I-III; therefore, this policy does not apply.

8. Normal farming and ranching activities will be allowed to exist and continue without interference from non-farm users of the land.

RESPONSE: There are no surrounding or nearby farming or year-round ranching activities adjacent to the Patent Parcel. The Access Road within the area of active farming will be within an existing County right-of-way. To the extent that surrounding open range is used for seasonal ranching in the vicinity of the Project Area, interference between livestock and mining activities will be prevented by fencing that will enclose the entire Project Area. For the above reasons, the County can find that the Project is consistent with this policy.

Goal 5: Open Space, Scenic and Historic Areas, and Natural Resources

Goal: To conserve open space and protect natural and scenic resources.

Mineral and Aggregate Resources

⁵ Water quantity considerations are the sole purview of the Oregon Water Resources Department and the County may not consider water quantity in deciding whether to approve the application. *Ashland Drilling, Inc. v Jackson County*, 168 Or App 624, 643 (2000).

1. The county will continue to study mineral and aggregate sites throughout the county to determine the precise location, quality and quantity of these resources.

RESPONSE: This policy is a mandate for the County to determine the location, quality, and quantity of mineral resources. For this reason, the above policy does not apply to the Application. However, even if it did, the County can find that this Application is consistent with this policy because it precisely identifies the location, quality, and quantity of the gold and silver resources proposed for mining.

2. The county will establish land use regulations that protect mineral and aggregate resources from incompatible uses.

RESPONSE: This policy is a planning mandate for the County, and does not apply to the Application. As the surrounding property is entirely under the jurisdiction of the BLM, Calico does not request re-zoning of surrounding lands to protect the Patent Parcel from incompatible uses.

3. The county will cooperate with other government agencies in the enforcement of mining regulations.

RESPONSE: This policy is a coordination mandate for the County and does not apply to the Application. However, Calico notes that the County has been and will continue to cooperate with BLM, DOGAMI, DEQ, and ODFW as necessary for this and all other permitting actions necessary for the Project, including for determination of any mitigation necessary under the SGR and completion of the Consolidated Permit.

Fish and Wildlife Habitat

2. The county will consider the impacts of proposed development on fish and wildlife habitats when making land use decisions.

RESPONSE: The requirement that the County “consider” the Project’s impacts on fish and wildlife habitats does not require a specific showing in the application and does not require affirmative actions or decisions from the County, and therefore does not apply directly to the Application. The Commission can find that the County’s consideration of land use impacts on fish and wildlife habitats is implemented through the MCC.

However, Calico has conducted a complete Wildlife Resources Baseline Report (the “Wildlife Report”), which is enclosed in this Application as **Exhibit 7**. Even if this policy does apply, the County can find that activities on the Patent Parcel will not cause any detrimental or permanent harm to fish and wildlife. Thus, the County can find, in the alternative, that the Project is consistent with this Policy.

3. The Oregon Department of Fish and Wildlife's "Fish and Wildlife Habitat Protection Plan" will be recognized as a guideline for planning decisions.

RESPONSE: While the above policy may recognize the “Fish and Wildlife Habitat Protection Plan” (“FHWPP”) as a “guideline,” it does not by its own terms impose the provisions of that plan as applicable criteria. The Commission can find that this policy does not apply.

However, if the Commission concludes that it should examine the Project guided by the FHWPP, that review would demonstrate that the Project is consistent with this policy. The objective of the FWHPP (now titled the “Fish and Wildlife Habitat Mitigation Policy” or the “Habitat Policy”) is to “mitigate impacts to fish and wildlife caused by land and water development actions.” OAR 635-415-0000. Under the Policy, development applications are reviewed by ODFW for potential impacts, then ODFW makes recommendations for mitigating impacts, if any. OAR 635-415-0015. Because Calico’s Project will be reviewed by ODFW under the Policy, the Project can be considered consistent with the FHWPP. This is particularly true because Calico’s Wildlife Report identified no endangered or threatened species or sage grouse within the Patent Parcel.

The Wildlife Report (**Exhibit 7**) is based on a Wildlife Study Area (“WSA”) that includes the Access Corridor and Permit Area, and either a 0.5 mile or two mile buffer, depending on the species. Species which were surveyed within a two-mile buffer include greater sage-grouse, golden eagle, nesting raptors, and general observations of special status (i.e. endangered or threatened) and non-special status species. Surveys were conducted in 2014, 2017, and 2018. Wildlife Report 8. Habitat was categorized in accordance with the ODFW Fish and Wildlife Habitat Mitigation Policy. Wildlife Report 8. No endangered or threatened species, or sage grouse or sage grouse leks were observed within the WSA or are identified in official records. Some species identified as “Sensitive” by the BLM are present in the study area. Wildlife Report 16–19.

Water Resources

3. The county will continue to consult the County Sanitarian in land use decisions.

RESPONSE: This policy establishes an affirmative duty on the County and not the Applicant; therefore, the County can find that it does not apply. To the extent that the County finds otherwise, it can find that this policy can be met by notifying the County Sanitarian of the Project upon this Application being deemed complete.

4. The county will notify and consult with appropriate state agencies during review of development proposals that might affect surface or groundwater quality.

RESPONSE: This policy establishes an affirmative duty on the County and not the Applicant; therefore, the County can find that it does not apply. To the extent that the County finds otherwise, it can find that this policy can be met by notifying appropriate state agencies of the Project upon this Application being deemed complete.

Goal 9: Economy

Goal: To diversify and improve the economy of Malheur County.

4. County land use regulations and land use decisions will encourage the continuation and expansion of existing industry and promote the development of new industry in Malheur County whenever possible.

RESPONSE: The Commission can find that the Application satisfies this policy by providing over 100 new jobs and creates a new, large-scale gold and silver mining industry in the County.

5. The county may not arbitrarily prohibit, deter, delay or increase the cost of appropriate development, but shall enhance economic development and opportunity for the benefit of county citizens.

RESPONSE: The Commission can find that prompt review and approval of the Application furthers this Policy.

7. In implementing land use regulations and making land use decisions, the county will strive to achieve the following:

- a. Develop available natural resources.**
- b. Create employment opportunities.**
- c. Expand and maintain existing industry.**
- d. Diversify agricultural products and the economic base.**
- e. Broaden the tax base.**

RESPONSE: As explained above, the Project will create a substantial positive economic impact in Malheur County by:

- Developing the County's gold and silver reserves;
- Adding an estimated 110 new full-time jobs for no less than seven years;
- Adding a substantial number of construction jobs (estimated to be at least 150) for at least a year after work begins;
- Providing good family-wage jobs through 2034.
- Broadening the County's tax base by substantially increasing the value of the patent parcel, which is subject to County property taxation;
- Building on the County's mining heritage; and
- Creating a new chemical mining industry in the County.

For the above reasons, the County can find that the project furthers sub-policies a-c and e. The Project does not relate to sub-policy d because it is not an agricultural use, although the County can find that by creating a new type of mining use in the County, it will diversify the County's economic base.

Goal 11: Public Facilities and Services

Goal: To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Fire and Police Protection

2. The county will require all major development projects to have an adequate fire protection plan.

RESPONSE: The Project will proceed under the following Fire Protection Plan, outlined in the PFS Report at 193:

“Water for fire protection will be distributed from the fire water tank located at the base of Grassy Mountain via a network of piping and will be maintained under a constant pressure with a jockey pump. The piping will be looped and sectionalized to minimize loss of fire protection during maintenance. Where located outside buildings, fire water piping will be buried below the ground surface to eliminate the potential of pipes freezing.

Yard hydrants will be limited to the fuel storage tank area. Wall hydrants will be used in lieu of yard hydrants, and these will be located on the outside walls of the buildings in cabinets that will be heated during winter months.

Fire protection within buildings will include standpipe systems, sprinkler systems, and portable fire extinguishers. Standpipe systems will be provided in all structures that exceed 46 feet in height, as well as where required by building code, local authorities, or the insurance underwriter.

Sprinklers will be provided at the following locations or to protect the following items:

- Truck workshop;
- Assay laboratory;
- Over hydraulic or lube packs that contain more than 120 gallons of fluid;
- Lube-storage rooms;
- Any conveyor belts that are within tunnels or other enclosed spaces which would be hazardous to fight fires manually;
- Transformers (excluding the substation); and
- Warehouse.”

Although there are no standards within the MCC that define an “adequate” fire protection plan, the County can find that the proposed fire protection plan provides for adequate fire protection because it includes a complete standpipe system with adequate pressure to address fire hazards on the Property. For this reason, the County can find that the Project is consistent with this policy.

Water and Sewage

1. The county, in considering land use proposals, will ensure that the physical characteristics of the land that affect sewage disposal, water supply, and water quality are carefully considered.

RESPONSE: Water supply is anticipated to come from two sources: (1) wells drilled near SPR 02 about three miles north of the proposed mine site and (2) the SPR 01 well between the plant and the borrow source. Two wells will be drilled in the area of SPR 02, and water from these wells will be pumped along the main access road through a pipeline to the mine site. The majority of water will come from the SPR 02 area. SPR 01 is expected to be low producing and will primarily be used as a backup well. Storage tanks will be placed at both the SPR 01 and SPR 02 locations to allow for temporary storage as needed, as shown on the enclosed site plan.

The siting and design of the Project sewage system will follow all State (DEQ) and County requirements for construction and permitting. Based on the Site Evaluation Report (Malheur County Environmental Health Department), Calico will design the required acceptable wastewater treatment system. The onsite sewage system will accept only domestic wastewater or a waste stream from the water treatment plan (no mine processing or related waste). Processing will occur 24 hours per day, 7 days per week. The final site will meet system setback requirements and be based on the Site Evaluation Report.

Goal 12: Transportation

Goal: To provide and encourage a safe, convenient, and economic transportation system.

20. Developers creating a demand for improvement of unimproved county or public use road rights-of-way will be responsible for those improvements. After the improvements have been made, the developer may petition the County Court to accept such roads, upon meeting county standards, into the county road maintenance program.

RESPONSE: As explained above, the improved road corridor will be 40 feet wide, which includes a 24-foot wide road travel width (12 feet on either side of the road centerline), four-foot wide shoulders on each side of the road, minimum one-foot wide ditches on each side of the road, and appropriate cut and fill. The Access Road Area totals approximately 876 acres.

All necessary road improvements will be constructed and/or paid for by Calico. This includes improvement of Russel Road within County Jurisdiction. Russel Road and Cow Hollow Road are County Roads with 60 feet of public right-of-way (**Exhibit 8**). All improvements to roadways within County jurisdiction will remain after mining is complete, unless the County requires otherwise.

The main access road to Grassy Mountain will utilize existing private and BLM roads to the Patent Parcel, with BLM maintenance throughout. The primary roadway is approximately 17 miles long and will need to be upgraded to include some straightening and widening in sections. This BLM-maintained access road will remain under the jurisdiction of the BLM following closure of the Project. The improved roads on BLM land will either remain or be reclaimed after mining has been completed, according to BLM requirements. Roads constructed for the Project within the Project Area will be reclaimed in accordance with the final approved reclamation plan to be included in the DOGAMI Consolidated Permit.

For these reasons, the County can find that the Project is consistent with this policy.

B. Specific Plans: Specific plan recommendations.

RESPONSE: There are no specific plans applicable to the Patent Parcel. This policy does not apply.

C. Developments And Viewpoints: Existing development and viewpoints of property owners in the surrounding area.

RESPONSE: There is no adjacent or nearby development around the Patent Parcel. All abutting land is under federal ownership and under the jurisdiction of the BLM. Therefore, the County can find that the Project will neither impact existing development nor the viewpoints of property owners, and in so doing, can find that the Project is consistent with this policy.

D. Services And Utilities: Availability of services and utilities.

RESPONSE: Initial power for the Project will be provided by diesel power generators. These generators are anticipated to be used during the first 1.5 years of construction and initial mining. During the construction period, Idaho Power will

install a new power line along the access roads to the Project Area based on a power purchase agreement with Calico.

The new Idaho Power service will include a 23-mile distribution circuit (power line), a new 69/34.5 kV to 14 MV transformer, and a new 34.5-kV 167-amp regulator. The line will connect at the Hope Substation near Vale, Oregon and run to the mine site along the main BLM access roads. The mine substation will be located on adjacent BLM land. The power distribution from the powerhouse will be provided by overhead power lines.

Underground power distribution will serve the underground facilities, which will supply power to electrical equipment used to develop the main decline and portable fans. This system will include a 480 V transformer placed near the entrance to the portal during the initial stages of decline construction. Once development has advanced far enough that carrying power at 480 V becomes too inefficient, a main underground power line will be installed along the rib of the decline to carry 4.16 kV and connected to the transformer, which will be moved underground. Upon completion of the decline to 3224 feet AMSL elevation, and the initiation of production-mining activities, a second underground transformer will be installed for use in the lower areas of the mine. Line power will also be carried up the hill to the two ventilation shafts to supply power to the ventilation fans.

At completion of mining, the main BLM access road power line will be controlled by the power company, which may either maintain it or remove it. The Project power supply equipment and all associated lines within the Project Area will be removed and reclaimed.

E. Effect: The effect of the proposed use on the stability of the community's social and economic characteristics.

RESPONSE: The Project will have beneficial effects on Malheur County's social and economic characteristics. Currently, Malheur County has the lowest median income of all Oregon Counties.⁶ The most common jobs in the County are in the following industries: "Agriculture, Forestry, Fishing, and Hunting" (15.1%),

⁶ Mark Graves, "Which Oregon County has the Highest Median Income," The Oregonian (March 13, 2018), available at https://www.oregonlive.com/pacific-northwestnews/index.ssf/2018/03/which_oregon_county_has_the_hi.html.

“Healthcare and Social Services” and “Manufacturing” (10.5%), “Accommodation and Food Service,” (10.2%), and “Retail Trade” (10.1%).⁷ While the unemployment rate in the County is low, many of the County’s largest industries are relatively low-paying and offer comparatively few benefits as compared to more urban counties in Oregon.

The Project will be active for approximately 14 years, which includes one year of construction, ten years of mining and processing, and three years of closure and reclamation. Several years beyond that date may be anticipated for ground water monitoring. The Project will provide three classes of jobs available to local residents: construction, operation, and post-closure/reclamation jobs. The Project is anticipated to create approximately 150 construction jobs, approximately 110 operational jobs, and numerous closure/reclamation jobs. Operational and post-closure/reclamation jobs are anticipated to pay a (median/average) of \$79,518, which is significantly higher than the median wage for the County.⁸

Through its intended partnerships with local community colleges and training opportunities, Calicos hopes the Project will provide a base of expertise in the County that can be levered for future mining projects in Malheur County and will provide employees with technical skills that can be applied to different industries.

The project will provide significant road improvements to County and BLM roadways, which will benefit the County both during and after mining operations are concluded.

The Project Area is separated from the nearest home, a small farm on the Owyhee River, by five miles and numerous hills and ridges. It is 10 miles from the nearest populated farming area, outside of Owyhee, and 22 miles from the nearest population center (Vale). Therefore, no residences in the County will be impacted by noise, dust, or other externalities. Moreover, as demonstrated by the enclosed trip generation estimate, the Project will not generate enough daily vehicle trips to warrant a full Transportation Impact Analysis (“TIA”) as required by MCC 6-5-3 (**Exhibit 9**), and therefore, the Project will have a negligible impact on the County’s transportation system.

⁷ American Community Survey 2016 dataset. Data USA, <https://datausa.io/profile/geo/malheur-county-or/#economy> (retrieved on September 29, 2018).

⁸ According to the U.S. Census Bureau, the median household income in Malheur County was \$34,720 in 2016. <https://www.census.gov/quickfacts/fact/table/malheurcountyoregon/AFN120212>

For the above reasons, the County can find that the Project will substantially benefit the County's social and economic characteristics.

F. Fish and Wildlife: It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the fish and wildlife habitat protection plan for Malheur County. (Ord. 86, 12-7-1993)

RESPONSE: As demonstrated by the Wildlife Report (**Exhibit 7**), there are no identified critical or sensitive habitats within Patent Parcel or the Project area, generally.

G. General Criteria:

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

RESPONSE: There are no adjacent structures, people or operations within five linear miles that will be affected by the Project's noise, odor or night-lighting. Therefore, the County can find that this criterion is met.

2. Landscaping improvements for the visual benefit of the subject site and for the improved appearance of the neighborhood and county.

RESPONSE: There are no private structure within five miles of the Project and therefore landscaping improvements will only be benefit the personnel that work at the site. However, as landscaping is not necessary for any business purpose and because it would have to be reclaimed after mining operations have concluded, Calico does not propose any landscaping on the Patent Parcel. For these reasons, the County can find that this criterion is met.

3. Location and size of driveway access points and right of way widening and improvement for present and future traffic circulation consistent with the adopted county road standards or the standards of the appropriate road district and the access management standards of the Malheur County transportation system plan.

RESPONSE: No new access points or rights-of-way on County Roads are proposed. The internal circulation system proposed for the Patent Parcel is completely isolated from the Malheur County transportation system by approximately 17 miles of BLM roads. For these reasons, the County can find that this criterion is met.

4. Visual screening of outdoor waste and storage areas.

RESPONSE: Visual screening is intended to protect the public from views of unsightly or messy work areas. However, there are no structures or populated activities within several miles in any direction from the Patent Parcel, except those associated with the Project. For this reason, the County can find that the project does not need to screen outdoor waste or storage areas.

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

RESPONSE: Outdoor lighting will be used to safely and efficiently conduct the mining operations on the Project. There are no occupied structures or dwellings within several miles of the Project, except those associated with the mining operation. For this reason, the County can find that specific lighting requirements need not be applied to the Project.

6. Special criteria listed below, as applicable.

RESPONSE: The special criteria applicable to the Project are located in subsection H, which is addressed below. As demonstrated therein, the County can find that all special criteria are satisfied.

H. Allowance of Certain Uses: A use allowed under section 6-3A-3 of this title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

RESPONSE: There are no farming activities, grazing activities, or forests on the Patent Parcel. Although range uses are present on surrounding BLM land, such lands are not subject to County jurisdiction, and the County can find that this standard does not apply to farm or forest practices on BLM lands.

Regardless, range uses on BLM land will only be curtailed within the Project Area and after the mine has been reclaimed, the entire Project Area will be available for range use. Given the size of the surrounding BLM open range area compared with the size of the 62-acre Patent Parcel, the County can find that the Project will not force a significant change on farm or forest uses on surrounding lands.

2. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

RESPONSE: The County can find that the Project will not significantly increase the cost of accepted farm or forest practices for the same reasons that it will not force a significant change on those practices.

6-6-8: Specific Criteria to Evaluate Suitability:

In addition to the general criteria above, the specific criteria listed below and the standards for the zone in which the conditional use is to be established shall govern the following conditional uses.

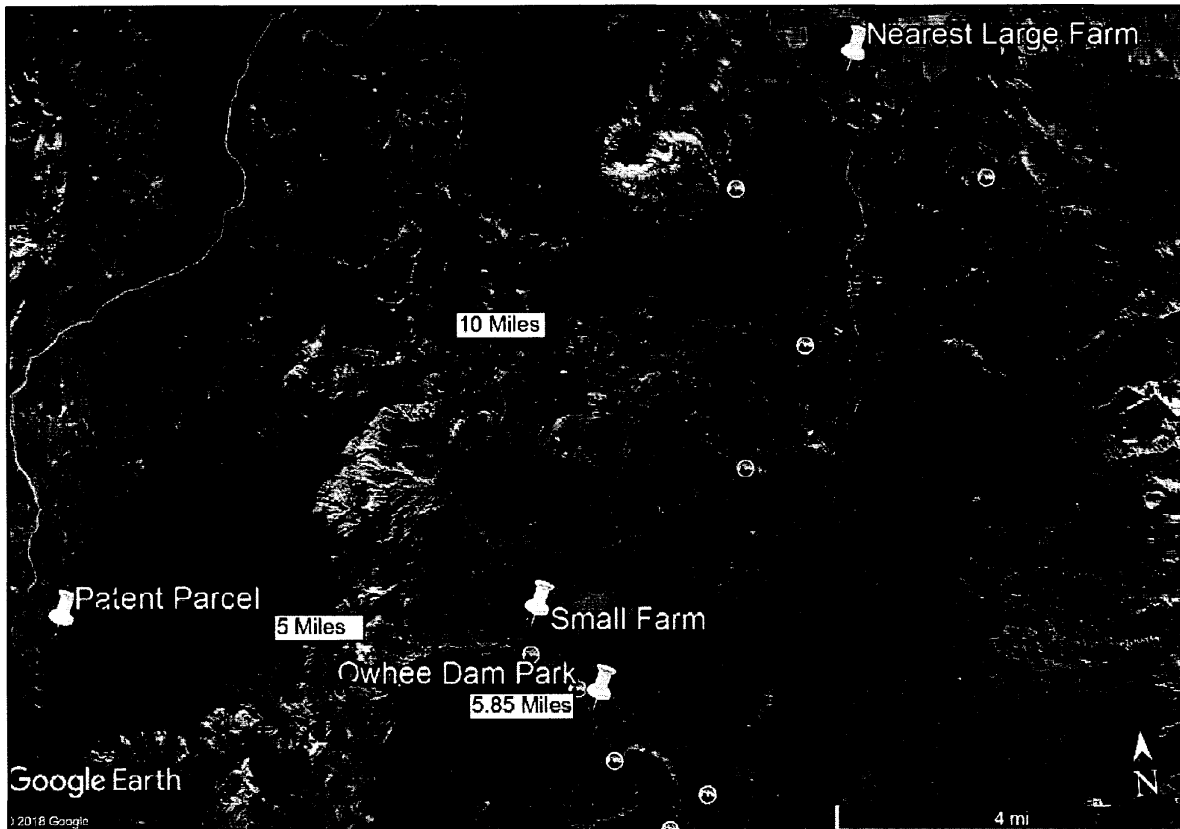
6-6-8-4: Mineral, Aggregate or Geothermal Resource Exploration, Mining and Processing:

A. Submitted plans and specifications shall contain sufficient information to allow the planning commission to set standards pertaining to:

1. Noise, dust, traffic and visual screening.

RESPONSE: Project construction will create a substantial amount of noise and minor dust due to blasting for the mine portal, noise from construction machinery, and dust created by both. However, the nearest population center, Vale, is approximately 22 miles to the north, and the nearest cultivated farm land, outside of Owhyee, is approximately 10 miles to the east. A single small farm is located approximately five miles away, on the other side of Grassy Mountain. These substantial distances will prevent nuisances to occupied properties caused by noise and dust. These distances also provide sufficient visual screening from surrounding private properties.

Figure 9 - Nearest Developed Areas



After construction is completed (approximately one year), all blasting and drilling activities will take place underground, substantially limiting or eliminating blasting noise and dust emissions from the project. Noise generated from the project during operational phases will include trucks and vehicles using the haul road and mechanical sounds issued from the processing plant.

Throughout the project, dust suppression will be provided with water spray or palliatives during all construction and operations, and disturbed areas will be seeded with an interim seed mix to minimize fugitive dust emissions from surfaces without vegetation, including all stockpiled soil. Dust suppression will be conducted according to a Fugitive Dust Control Plan required by the Oregon Department of Environmental Quality (“DEQ”). See Rec. Plan 7.

For the above reasons, the County can find that no additional conditions are required to limit noise and dust.

After construction is completed, vehicle trips will consist of employee transportation, approximately three to five material and chemical trucks per week, approximately one refuse truck per day, and approximately one armored product truck per week. As demonstrated by the enclosed trip generation estimate (**Exhibit 9**), the Project will not generate enough daily vehicle trips to warrant a full TIA as required by MCC 6-5-3. Nevertheless, the Project will include a shuttle service to reduce the number of single-occupancy vehicle trips coming into the Project Area. For these reasons, County can find that no additional conditions related to traffic generation are warranted.

2. Setbacks from property lines.

RESPONSE: Setback requirements in the ERU zone are as set forth in MCC 6-3A-6, as follows:

“A. Setbacks: No building or sight obscuring fence, other than a fence or facility associated with irrigation activities, shall be located closer than forty feet (40') from a street or road right of way line and fifteen feet (15') from any other property line. No sight obscuring fence exceeding three feet (3') in height shall be placed within the forty foot (40') street setback, also within this setback shrubbery other than trees shall be maintained at heights not exceeding three feet (3'). Dwellings and inhabitable structures, including associated sewage disposal facilities and removal of vegetation, shall be prohibited within one hundred feet (100') of rivers, streams, lakes, reservoirs and other wetlands, unless topographic features make such setback unnecessary to protect riparian habitat.”

The Property is several miles away from the nearest County road right-of-way. The only structure proposed to be built on the Patent Parcel is the mine portal, which will be located more than 15 feet from the boundaries of the Patent Parcel.

For the above reasons, the County can find that the Project satisfies County setback requirements and no additional setback conditions need to be imposed on the Project.

3. Location of vehicular access points.

RESPONSE: The final access point to the Project Area and Patent Parcel are located on BLM land. No changes to existing county road access points are

proposed. Therefore, the County can find that no additional conditions related to vehicle access points need to be imposed.

4. Fencing needs.

RESPONSE: The entire Project Area will be fenced as described in the Rec. Plan:

“A perimeter fence, approximately 22,358 feet in length, will be constructed around the Project facilities to prevent access by livestock, wildlife, and the public (Figure 3). In general, three-strand barbed wire fences will be constructed in accordance with BLM fencing standards per BLM Handbook 1741-1. The area within the perimeter fence is approximately 540 acres. Within the perimeter fence in areas where a higher level of security is needed, chain-link fences will be erected. Gates or cattle guards will be installed along roadways within the Project Area, as appropriate. The perimeter fence will be monitored on a regular basis and repairs made as needed.”

No fencing of the Patent Parcel is proposed within the Project Area fence. Given that Calico proposes a complete perimeter fence around the Project Area, the County can find that no additional fencing of the Patent Parcel is necessary.

5. Prevention of the collection and stagnation of water at all stages of the operation.

RESPONSE: Some water impoundment will be necessary in the TSF in order to manage mine tailings. Calico recommends that the County apply the Best Management Practices for Reclaiming Surface Mines in Washington and Oregon (DOGAMI 1997) and the requirements of the forthcoming Tailings Facility and Ancillary Facilities Design Report to ensure that surface water impoundments are correctly managed.

Best Management Practices (BMPs) will be used to limit erosion and reduce sediment in precipitation runoff from Project facilities and disturbed areas during construction, operations, and initial stages of reclamation. BMPs may include, but are not limited to, diversion and routing of storm water using accepted engineering practices, such as diversion ditches, and the placement of erosion control devices, such as sediment traps, and rock and gravel cover.

Surface water diversion channels and ditches will be constructed as necessary around surface facilities and waste rock storage areas to control storm water run-on to these sites. Surface water control ditches and sediment retention ponds will be constructed in accordance with BMPs as outlined in the Best Management Practices for Reclaiming Surface Mines in Washington and Oregon (DOGAMI 1997) and in the Tailings Facility and Ancillary Facilities Design Report (refer to the DOGAMI Consolidated Permit Application). Sediment ponds and diversion ditches are sized to contain a 100-year, 24-hour precipitation event. Run-on diversion channels and ditches will remain as permanent features after final reclamation and mine closure.

See Rec. Plan at 8.

For these reasons, the County can find that the Best Management Practices for Reclaiming Surface Mines in Washington and Oregon (DOGAMI 1997) and the requirements of the forthcoming Tailings Facility and Ancillary Facilities Design Report are sufficient to provide adequate standards for preventing stagnant water.

6. Rehabilitation of the land upon termination of the operation.

RESPONSE: The Rec. Plan includes a preliminary mine reclamation plan which is summarized in Section II.D of this Application and attached hereto as **Exhibit 3**. A final reclamation plan is required to be submitted and approved by DOGAMI prior to issuance of the Consolidated Permit. The primary alteration on the Patent Parcel will be the mine portal, which will be plugged, regraded, and revegetated during the reclamation period.⁹ Rec. Plan 17. Vent shafts will be plugged and onsite haul roads will also be regraded and revegetated. Revegetation of any denuded areas on the Patent Parcel will be conducted as generally described in the Rec. Plan at pages 20–25.

For these reasons, the County can find that the Application includes a plan for rehabilitation of the Patent Parcel upon termination, and that the Patent Parcel will be adequately rehabilitated after mine reclamation is completed.

B. In zones where processing is permitted, it shall be located no closer than two hundred feet (200') from residential or commercial uses.

⁹ Note that the mine portal structure may remain, but it will be plugged and the landing at the portal entrance will be regraded to reduce its visual impact.

RESPONSE: There are no residential or commercial uses within 200 feet of the Patent Parcel or the broader Project boundary. This standard is met.

C. Equipment and access roads shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noise, vibration or dust that is injurious or substantially annoying to livestock being raised in the vicinity.

RESPONSE: Before beginning construction, Calico will be required to obtain DEQ approval of a Fugitive Dust Control Plan that will provide for water or palliative application of haul roads and other disturbed areas, chemical dust suppressant application (such as magnesium chloride) where appropriate, and other dust control measures as per accepted and reasonable industry practice. Also, disturbed areas will be seeded with an interim seed mix to minimize fugitive dust emissions from surfaces without vegetation, where appropriate. Rec. Plan 7.

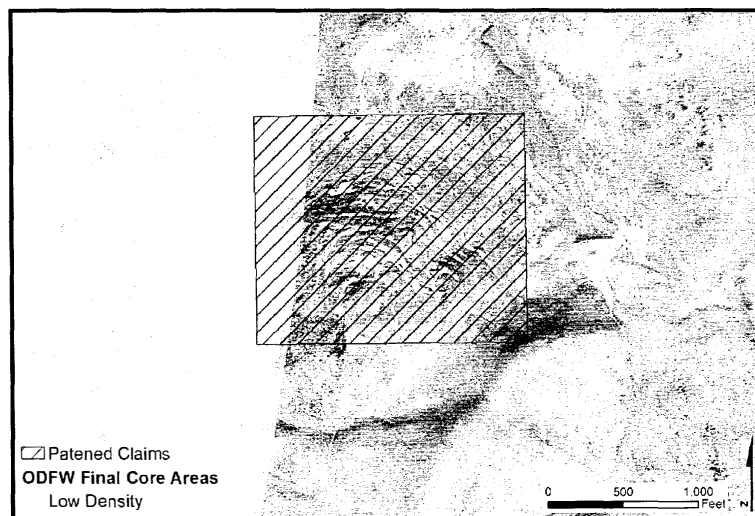
The Project will create a minimal amount of traffic outside of the Project Area boundary, as explained above and in Calico's Trip Generation Estimate. **Exhibit 9.** Movement of ore and tailings within the project site will be conducted by trucks moving between the mine portal and the processing plant; this haul road is located far within the Project Area boundary and therefore, dust emissions from the use of this road are not expected to cross the Project Area boundary.

For the above reasons, the County can find that this criterion is met.

V. SAGE GROUSE RULE PERMIT

The Sage Grouse Rule (“SGR”) applies to “large scale developments,” which include mining uses. The SGR imposes requirements for avoidance, minimization, and mitigation depending on the identified habitat type. The habitat types are “core area,” “low density,” and “general habitat,” ranked in descending order of priority. Most of the Patent Parcel is designated as “general habitat,” with some “low density” located to the west, as demonstrated on the ODFW map below.

Figure 10. ODFW Greater Sage Grouse Habitat Map



Calico commissioned a consulting firm, EM Strategies, to characterize the wildlife resources within and around the Patent Parcel and broader Project area. **Exhibit 7.** As explained above, the Wildlife Report is based on a WSA that includes the Access Corridor and Permit Area, and either a 0.5 mile or two mile buffer, depending on the species. Greater sage grouse habitat was surveyed within a two-mile buffer area and categorized in accordance with the ODFW Fish and Wildlife Habitat Mitigation Policy. Wildlife Report 9. No sage grouse or sage grouse leks were observed within the WSA or are identified in official records. Wildlife Report 32. The Wildlife Report’s findings are excerpted below:

“Greater sage-grouse brood-rearing surveys were conducted on June 25, 2013, and July 25, 2013. No sign of use of the Two-Mile Buffer WSA by greater sage-grouse was detected. No birds were encountered, nor were any feathers, tracks, or scat found. No greater sage-grouse or their sign were encountered during any other field

surveys. Scat of this species can persist for many months and even years; therefore, the lack of such sign is indicative of little or no use of the Two-Mile Buffer WSA by this species in recent years.”

“Winter use surveys were conducted on December 20, 2013, and January 14 and 15, 2014; the latter were done under ideal conditions, clear days with a covering of snow on the ground. No sign of use of the survey area by greater sage-grouse was detected. No birds were encountered, nor were any feathers, tracks, or scat found.

“No known greater sage-grouse leks are known to exist within the Two-Mile Buffer WSA (Milburn 2014). No sign of this species was found during any surveys prior to the April lekking season; therefore, there were no areas of potential concentration to be checked for leks. Listening for drumming males during the hour before and after sunset (on April 10 and April 28, 2014) yielded no detections of greater sage-grouse or their leks.”

Wildlife Report 31-32.

The low-density habitat area is described by the Wildlife Report as follows:

“Based on actual habitat type and condition, however, little or none of this area constitutes high quality sage-grouse habitat. The vegetation community is poor-quality big sagebrush shrub-steppe with an understory of exotic grasses.”

Criteria. As the SGR development criteria are more restrictive in “low density” areas than in “general habitat,” the following addresses the criteria for development in “low density” areas only.¹⁰ The SGR requires a tiered

¹⁰ The criteria for allowing a large-scale development on “general habitat” are set forth in OAR 660-023-0115(11), as follows:

“(a) A county may approve a large-scale development on significant sage-grouse habitat in general habitat upon requiring:

(A) General Habitat Consultation. Minimizing impacts from development actions in general habitat shall include consultation between the development proponent and ODFW that considers

conservation approach, in a descending order of priority. First, impacts to Sage Grouse Habitat should be avoided, if possible. If impacts cannot be avoided, they should be minimized. ODFW can require mitigation of any remaining impacts.

- **Avoidance.** A major development located in a “low density” habitat area must first try to avoid disturbance of the habitat, as OAR 660-023-0115(10)(a)(A) provides below:

Before proceeding with large-scale development activity that impacts a low density area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within a low density area.

RESPONSE: The Project resource has only been identified on the patented mining claim, which is coterminous with the Patent Parcel boundaries. Therefore, the County can find that there is no other appropriate or feasible location for the Project.

If the proposed large-scale development can occur in another location that avoids both direct and indirect impacts within a low density area, then the proposal must not be allowed unless it can satisfy the following criteria:

(i) It is not technically or financially feasible to locate the proposed large-scale development outside of a low density area based on accepted engineering practices, regulatory standards, proximity to necessary infrastructure or some combination thereof; or

and results in recommendations on how to best locate, construct or operate the development action so as to avoid or minimize direct and indirect impacts on significant sage-grouse habitat within the area of general habitat. A county shall attach ODFW recommendations as a condition of approval; and

(B) Compensatory Mitigation. Required consistent with the provisions of paragraph (9)(a)(D) above.”

As these criteria only require consultation with ODFW and that the Project comply with relevant ODFW minimization and mitigation requirements, and because the County can find that the Project meets the conflicting use requirements for “low-density habitat” as explained herein, which includes consultation with ODFW, the County can find that it need not specifically address the “general habitat” criteria.

RESPONSE: The Project resource has only been identified on the patented mining claim, which is coterminous with the Patent Parcel boundaries. Therefore, the County can find that there is no other appropriate or feasible location for the Project.

(ii) The proposed large-scale development is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations, or it is a linear use that must cross significant sage-grouse habitat in order to achieve a reasonably direct route.

RESPONSE: As the Project satisfies (i), above, (ii) is inapplicable. However, to the extent that the County finds that it does apply, it can find that the Project is dependent on the geographic and physical features containing the mineral resource, which is certainly less common at other locations.

- **Minimization.** As the Project cannot avoid low density habitat, we proceed to the next step, which OAR 660-023-0115(10)(a)(B) provides as follows:

If the proposed use cannot be sited by avoiding a low density area altogether, including direct and indirect impacts, it shall be located to minimize the amount of such habitat directly or indirectly disturbed, and to minimize fragmentation of the low density area(s) in question by locating the development adjacent to existing development and at the edge of the low density area when possible. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction.

RESPONSE: As explained above, the Project cannot avoid the low density area because it is geologically dependent on the proposed location. Within the patent parcel, the Project will be primarily located underground, with the only above-ground improvements being the entry portal for the underground improvements and gravel stockpiling, and improved existing circulation roads. The Project design minimizes to the extent practicable the uses with the low-density habitat.

- **Mitigation.** If impacts to the habitat are unavoidable, compensatory mitigation will be required:

To the extent that a proposed large-scale development will have direct or indirect impacts on a core area after application of the avoidance and minimization standards and criteria, above, the permit must be conditioned to

fully offset the direct and indirect impacts of the development to any core area. The required compensatory mitigation must comply with OAR chapter 635, division 140. OAR 660-023-0115(10)(a)(C); (9)(a)(D).

RESPONSE: ODFW will review the Application and determine what mitigation requirements, if any, should be imposed.

- **Findings for Approval.** Once the above analysis is completed, the County may approve the “conflicting use” (i.e. the mine) as follows:

(b) A county may approve a conflicting use as identified at subsection (7)(b) above upon either:

(A) Receiving confirmation from ODFW that the proposed conflicting use does not pose a threat to significant sage- grouse habitat or the way sage- grouse use that habitat; or

(B) Conditioning the approval based on ODFW recommendations, including minimization techniques and Compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat. OAR 660-023-0115(9)(b).

RESPONSE: As part of the DOGAMI Consolidated Permit process, ODFW will be completing a review of the impact of the Project on sage grouse within the entire Project Area. Construction and mining will not begin until the DOGAMI Consolidated Permit is issued. To avoid unnecessary duplication of ODFW’s review process, the Applicant requests that the County impose a condition requiring compensatory mitigation for threats to significant sage grouse habitat within the Patent Parcel, as follows:

“The Applicant shall comply with ODFW minimization and compensatory mitigation requirements, if any, for threats to significant sage-grouse habitat on the Patent Parcel.”

With this condition, the County may approve a conflicting use on the Patent Parcel.

VI. CONCLUSION

For the above reasons, the County can find that the Project meets or exceeds all applicable criteria and should approve this Application on that basis.

VI. EXHIBITS

1. PFS Report (the complete report is available at www.paramountnevada.com)
2. Site Plan
3. Preliminary Reclamation Plan
4. Malheur County Comprehensive Plan
5. Excerpt of Mine Plan of Operations
6. NRCS Survey
7. Wildlife Report
8. Assessor's Map
9. Transportation Impact Analysis

April 22, 2019

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VIA E-MAIL

Mr. Eric Evans
Planning Director
Malheur County
251 "B" St. West #12
Vale, OR 97918

Re: Response to written public testimony of 1000 Friends of Oregon and Oregon
Natural Desert Association regarding the Grassy Mountain Gold Mine Application

Dear Eric:

This office represents Calico Resources USA Corp. ("Calico") in its application for a Conditional Use Permit ("CUP") and Sage Grouse Permit ("SGP") (together, the "Application") for an approximately 62-acre underground gold mine approximately 22 miles south of Vale, Oregon. The Planning Commission held its initial hearing on the Application on March 28, 2019. The previous afternoon, the Oregon Natural Desert Associations ("ONDA") and 1000 Friends of Oregon ("1000 Friends") (together, "ONDA") submitted a 21-page letter accompanied by 563 pages of exhibits, in opposition to the Application. At the hearing, an ONDA representative requested that the hearing be continued to the following month's Planning Commission meeting and Calico supported that request. This letter responds to ONDA's written testimony and is timely submitted prior to the close of the continued hearing on April 25, 2019. Please place this letter and its attachments before the Planning Commission for its consideration.

I. Summary

The following discussion addresses issues raised by ONDA as follows:

- Scope of the Application. The Application is for a mine on the Patent Parcel only and does not authorize processing activities on federal land. Therefore, the Commission should not apply the County's criteria to activities not proposed in the Application.

- Consistency with applicable goals and policies of the County's Comprehensive Plan. The Application is consistent with the applicable Goals and Policies because, among other reasons, it includes fencing to prevent disruption of surrounding grazing activities, will have a negligible impact on the supply of grazing lands in the County, and will include substantial water quality protection measures.
- Water quality considerations. The Patent Parcel is devoid of any identified surface water features or perennial drainages. The maximum depth of the mine is above the measured water table, and all water used in the mine, or that enters the mine, will be captured and reused prior to treatment and being placed in the Tailings Storage Facility ("TSF"). These actions will prevent infiltration of process water into groundwater. The TSF, process water ponds, and waste rock storage facility will be fully lined to prevent water seepage into groundwater, and capped to prevent water seepage as part of mine reclamation and closure.
- Acid mine drainage. Calico has determined that ore and waste rocks involved in the Project have the potential to generate acid. Consistent with state requirements, all materials with such potential will be treated with a strong base to prevent acid mine drainage prior to disposal.
- The Project's economic and social benefits. The project will create more than 100 new jobs with wages significantly higher than the County's median wage. Related economic multipliers are likely to be positive, and there is no evidence that these new jobs will cause a housing crisis.
- Fish and wildlife impacts. There are no County-designated critical habitats on the Patent Parcel or within the Project Area. The northern part of the access route, which is miles north of the Project Area, traverses deer winter range designated by the Oregon Department of Fish and Wildlife (ODFW), but such roadways already exist. The evidence in the record demonstrates that there are no sensitive species present on the Patent Parcel.
- Sage Grouse Rule requirements. A sage grouse mitigation plan is not required in order for the County to approve a Sage Grouse Permit.

- Financial guarantee. A complete financial guarantee ensuring proper mine reclamation is required by the Oregon Department of Geology and Mineral Industries (“DOGAMI”) prior to issuance of a Consolidated Permit.

II. General Observations

There are two fundamental problems with ONDA’s testimony. First, the majority of ONDA’s comments concern aspects of the Project which are not part of the Application. The Application only proposes mining activities on the Patent Parcel because this is the only property within the Project Area over which the County has jurisdiction.

Second, ONDA asks the County to duplicate permitting processes already required at the state and federal level. Indeed, ONDA raises several issues concerning mine processing activities, all of which is to occur are off the Patent Parcel, and all of which are subject to a comprehensive state and federal permitting.

As explained in detail below, the Grassy Mountain Project requires a Consolidated Permit approved by DOGAMI. The Consolidated Permit process applies all relevant state regulations set forth in the Oregon Administrative Rules (OARs) and involves multiple state agencies. The permitting process is managed by an interagency Technical Review Team which has held several meetings over the past year to scope and review studies necessary for Calico to demonstrate compliance with applicable regulations. These meeting are open to the public and ONDA has been a frequent participant.

Applicable state regulations broadly address the following:

- Protection of water quality. OAR 340 division 43.
- Protection of air quality. OAR 340, divisions 216 and 245.
- Protection of wildlife habitat, including an objective of zero mortality and no loss of existing critical habitat. OAR 632-073-0120(40, 0125(1).
- Use of the Best Available Practicable and Necessary Technology. OAR 632-037-0118.
- Mine construction and operations. OAR 632-037-0118; 340-043-0120.

- Removal, reuse, and destruction of weak-acid dissociable (WAD) cyanide. OAR 340-043-0130.
- Mill tailings disposal. OAR 340-043-0130.
- Acid mine drainage. OAR 340-043-0080, 0130, 140.
- Mine closure. OAR 632-037-0130; 340-043-0120.
- Financial security. OAR 632-037-0135.

These regulations address every external impact of chemical process mining and apply irrespective of the County's Conditional Use criteria, which themselves do not address mining in significant detail.

ONDA's position is essentially that Calico must demonstrate how each of the above regulations are met before the County may approve a CUP for the mine on the Patent Parcel. That is simply wrong: there is nothing in the County's Comprehensive Plan ("Plan") or its land use regulations which require that.

However, the larger problem with ONDA's position is that it promotes a regulatory scheme that no mining applicant could ever satisfy, for the simple reason that a County Conditional Use approval is, according to DOGAMI, required before Calico can even submit plans addressing these state regulations.

There is no legal merit to ONDA's view of the relationship between state and local mining regulation. Unlike the various environmental performance standards addressed by state regulations, the essential matter for the County to determine is whether the Application satisfies the applicable Conditional Use criteria set forth in the Malheur County Code ("MCC"), which address the impact of a proposed use on surrounding uses and development.

The MCC's purpose statement for a Conditional Use is as follows:

"A conditional use is a use of land expressly authorized if the general and specific criteria set forth in this chapter are met. The applicant for the conditional use must show that the use will not create problems that call for denial or special conditions. The use should be in character with existing development in the zone and approval may be

conditioned with requirements which are intended to make the use and the facilities it requires an asset to the area.” MCC 6-6-1.

Thus, the Conditional Use process allows the County to determine the effect of the Project on surrounding land uses and impose conditions to minimize any adverse effects. As explained in the Application, staff report, and below, the Commission can find that the Application satisfies all applicable criteria. There is nothing express or implied in those criteria that require a demonstration that the Project already complies with all applicable state regulations. However, as no mining activities will be permitted unless and until Calico obtains a Consolidated Permit and other federal approvals, the County can find that no mining will be allowed that violates applicable state environmental regulations.

III. Response to ONDA’s Arguments

The following sections provide a summary of ONDA’s arguments and Calico’s response.

A. Scope of the Application

The entire mine Project Area, including the Patent Parcel and the surrounding mine processing area, is approximately 886 acres; 824 of which are federal.

Approximately 540 acres will be fenced to enclose the mine, processing area, and TSF, and less than 266 acres are anticipated to be disturbed. Malheur County has jurisdiction over only the 62-acre Patent Parcel, which is surrounded by thousands of acres of federal BLM land and is separated from the nearest town, Vale, by over 12 miles of BLM land and several more miles of private land. Therefore, the CUP and SGP, if approved, would allow only mining on the Patent Parcel; it would neither allow nor prohibit any of the mine processing activities.

ONDA suggests “that the Planning Commission consider the likely range of environmental and social impacts from all aspects of the proposed mining operation” and implies that it must consider the land use impacts from activities on federal lands. ONDA provides no legal justification for such an approach, nor does it explain how the Conditional Use criteria would require it. The problem with ONDA’s approach is that the Application does not propose, and the County’s approval would not authorize, any of the processing activities proposed to be located on federal land.

However, this does not imply that adequate regulatory safeguards are not in place. All mine facilities, as well as the mine itself, require approval from DOGAMI, Oregon Department of Environmental Quality (DEQ), Oregon Water Resources Department (OWRD), Oregon Department of Fish & Wildlife (ODFW), and Oregon State Historic Preservation Office (SHPO), as well as other federal agencies.

DOGAMI in particular imposes very specific regulations on construction of the processing facility and TSF, and will not approve the Project unless the Project meets each requirement, which include:

“(1) Chemical process mining including extraction, processing, and reclamation, must be undertaken in a manner that minimizes environmental damage through the use of the best available, practicable, and necessary technology to ensure compliance with environmental standards.” OAR 632-037-0118(1).

“(1) Mine facilities have been designed to handle the 100-year, 24-hour precipitation event, at a minimum.” OAR 632-037-0120(1).

“An interim vegetative cover of stockpiles of topsoil or overburden materials that will be used in reclamation shall be required to prevent erosion or fugitive dust release from the overburden storage or spoils area.” OAR 632-037-0120(2).

OAR 632-037-0125 Fish and Wildlife Standards

“The Department shall require a mining operation to comply with protection standards for fish and wildlife consistent with policies of the Department of Fish and Wildlife, including:

- (1) Protective measures to maintain an objective of zero wildlife mortality.
- (2) All chemical processing solutions and associated wastewater must be covered or contained to preclude access by wildlife, or maintained in a condition that is not harmful to wildlife.
- (3) Onsite and offsite mitigation ensuring there is no overall net loss of habitat value.

(4) No loss of existing critical habitat of any state or federally listed threatened or endangered fish or wildlife species.

(5) Any other standard adopted by rule by the Department of Fish and Wildlife applicable to a mining operation.”

OAR 632-037-0130 Reclamation and Mine Closure Standards

“The Department shall require a mining operation to comply with reclamation and mine closure standards utilizing the best available, practicable and necessary technology to ensure compliance with environmental standards. The reclamation and mine closure standards shall include but not be limited to the following:

(1) Surface reclamation shall ensure environmental protection and the protection of human health and safety, as well as livestock, fish and wildlife.

(2) Surface reclamation of a mining operation shall require certification by the Department of Fish and Wildlife and the Department of Agriculture that a self-sustaining ecosystem, comparable to undamaged ecosystems in the area, has been established in satisfaction of the permittee's habitat restoration obligations.

(3) Post-closure monitoring shall be required by the Department to ensure compliance with decommissioning performance standards.”

DOGAMI and DEQ’s chemical mining regulations are included as **Exhibits 1 and 2** of this letter. Since early 2018, DOGAMI has convened a Technical Review Team (TRT) to determine how the regulations will be implemented and to guide Calico on information necessary to satisfy those regulations. ONDA has been a frequent participant in TRT meetings and is presumably aware of the studies Calico has already submitted to comply with the above regulations.

Finally, in order to obtain BLM’s approval to conduct processing and tailings management activities, Calico must also comply with federal regulations under NEPA and the Endangered Species Act (ESA).

The County does not have detailed performance and engineering standards pertaining to mining; however, the County can find that the regulations identified above, along with federal NEPA and ESA reviews, will provide adequate protection of surrounding federal lands.

B. Adequacy of Information

ONDA goes on to argue that “the applicant must provide additional and more detailed information about the entire project” and that the “application is not complete because all pertinent issues have not been addressed.” However, ONDA fails to explain what “additional and more detailed information” is required by the MMC. It fails to do so because the County’s application requirements do not require more. In fact, the application requirements require five primary elements (MCC 6-6-5):

1. Pre-Application Conference. A pre-application conference between the County and Calico was held on July 31, 2018.
2. Application Form. The Application includes a completed application form.
3. Tax Assessment Map. A tax assessment map is included in the Application as Exhibit 7.
4. Plot Plan. A plot plan is included in the Application as Exhibit 2.
5. Comments of Other Agencies. The County received comments from the Vale Rangeland Fire Protection Association, Sheriff’s Office, County Environmental Health Department, County Road Master and Engineer, and County Vector Control District. All of these letters indicate that it is feasible for the Project to meet each agency’s standards.

MCC 6-6-8-4.A also requires that “[s]ubmitted plans and specifications shall contain sufficient information to allow the planning commission to set standards pertaining to:

1. Noise, dust, traffic and visual screening.
2. Setbacks from property lines.

3. Location of vehicular access points.
4. Fencing needs.
5. Prevention of the collection and stagnation of water at all stages of the operation.
6. Rehabilitation of the land upon termination of the operation.”

In order to satisfy these requirements, Calico provided a site plan, over 100 pages of project details from its Preliminary Feasibility Study and Technical Report (Application Exhibit 1) and a 25-page summary of its draft operation and reclamation plans (Application Exhibit 3). Finally, although it is not required by the MCC, the Application includes an October 2018 Wildlife Resources Baseline Report (Application Exhibit 7).

Thus, the Commission can find that the Application includes all submittal items required by the MCC,¹ and all information reasonably required for the Commission to evaluate the Application’s compliance with the applicable criteria.

C. Comprehensive Plan Goals and Policies

ONDA argues that the Project is not consistent with a number of County Plan goals and policies. These were addressed on pages 15–25 of the Application. For the reasons therein and below, the Commission can reject ONDA’s testimony and find that the Project is consistent with all applicable Plan goals and policies.

1. Whether the Patent Parcel consists of “agricultural lands” is not in dispute.

The Patent Parcel is made up of mostly Type VII and Type VI soil, as explained in Application Exhibit 6. ONDA argues that “Class VI soil is not unsuitable for agriculture.” That argument is irrelevant because the Patent Parcel, with its Exclusive Range Use (“ERU”) zoning, is already designated by the Plan as “agricultural land,” and the Application does not propose to change that.

¹ Note that even if the Application failed to include one or more items normally required by the MCC, such an omission does not prevent the Commission from evaluating the Application’s compliance with the criteria. *Hess v. City of Corvallis*, 70 Or LUBA 283 (2014).

Soil class is addressed in the County's plan in two policies:

“1. Public and private land classified by the Natural Resources Conservation Service (formerly U.S. Department of Agriculture Soil Conservation Service) as being in Capability Classes I through VI, as well as High Value Farmland as defined by applicable Oregon Revised Statutes and Oregon Administrative Rules and any other lands determined to be necessary and required for farm use, are considered to be agricultural lands.

2. High Value Farmlands (ORS and OAR designated) shall be given the greatest protection. Lands classified by the Natural Resources Conservation Service, as Capability Classes I through VI shall be afforded the next highest protection with Class I having the highest protection and Class VI the least.”

These two policies are legislative mandates for the County in making zoning decisions and do not supply applicable standards for granting a CUP. The NRCS has not characterized the soil on the Patent Parcel – it was identified through a third party study. There is also no question that the NRCS has not designated the Patent Parcel as “high-value farmland.” Therefore, neither of the above policies directly apply to the Application.

2. The County can find that “normal farming and ranching activities will be allowed to exist and continue without interference from non-farm users of the land.”

Policy 8 of Goal 3 requires that “normal farming and ranching activities will be allowed to exist and continue without interference from non-farm users of the land.” There are no farming activities surrounding the Patent Parcel. Under BLM regulations, the area surrounding the Patent Parcel is open range, but is used for a variety of other activities, including recreation. The area within the proposed perimeter fence is located entirely within the Nyssa Grazing Allotment, which provides for 5,348 cattle animal unit months (AUMs). There is a total of 76,176 public land acres in that allotment, most of which are outside of the proposed fence (there are other state and private acres). **Exhibit 3.** The perimeter fence enclosure

is anticipated to be approximately 540 acres. There are 14.4 acres per cattle AUM² in that allotment. Based on this, the entire Project could result in the displacement of approximately 0.7 percent of allotted cattle AUMs, while the mining activity on the Patent Parcel itself would result in displacement of .08 percent of allotted cattle AUMs in the allotment. This assumes the full authorized allotment is being utilized. Therefore, this is the worst-case scenario and would only last for the life of the mine.

The Application explains that the mining will be underground and cattle will be excluded from the Project Area, and therefore the proposed mine use will not adversely impact surrounding rangeland uses. Nearest cattle watering areas are located outside of the Patent Parcel and will not be displaced by the mine.

Land outside of the Patent Parcel may be dedicated to a future mine processing use pursuant to an approved mineral lease granted by the BLM, which authority is provided for in the federal 1872 Mining Law and the Federal Land Policy and Management Act. As explained above, ONDA has offered no legal authority for the proposition that the County must consider impacts on rangeland uses from anything other than the uses proposed in the Application. Even if the County did so, to the extent that Policy 8 could be read to prohibit use of BLM open range for mining processing uses, it is likely preempted by federal law.

However, there is no evidence in the record that the Project will conflict with cattle ranching activities occurring outside of the Project Area. The proposed fence will keep cattle from straying onto the Project Area and, as described in more detail below, Calico's dewatering and tailings management plan will ensure that groundwater is not contaminated. A map of existing livestock water sources is enclosed as **Exhibit 4**. Any existing watering troughs that may be within the planned fence will be relocated outside of the fence to ensure their continued availability to cattle, unless BLM or the grazing permittees request otherwise.

Finally, given that Project would displace, even under a worst case scenario, less than 1% of the cattle AUMs in the Nyssa Allotment, and would do so for a limited period prior to mine reclamation, the Commission can find that the Project as a

² The Nyssa Grazing Allotment also provides for 534 sheep AUMs, which equate to sheep AUMs of approximately 144 acres. Thus, under the worst case scenario, the Project would displace less than 4 sheep AUMs, or 0.75 percent.

whole—and the mining activity occurring on the Patent Parcel—would have no significant effect on the capacity of rangelands in the County.

The Commission can find that the Application is consistent with the above policy for these reasons.

3. Coordination with state agencies.

ONDA argues that the County has failed to satisfy Policy 3 of Plan Goal 5, which requires the County to “cooperate with other government agencies in the enforcement of mining regulations.” The Commission can find that this policy merely requires no more than what it says, which is that the County will cooperate with other agencies when they seek to enforce their mining regulations. This Application does not affect how other government agencies will enforce their mining regulations.

ONDA also argues that the County has not complied with two other policies. First, Policy 1 of Goal 5 provides that “the county will continue to cooperate with local, state and federal agencies to identify the location, quality and quantity of fish and wildlife habitat.” As explained in the Application, this requirement is worded as a general policy and places no specific obligations on the County in reviewing a development application.

Second, Policy 4 provides that “the County will notify and consult with appropriate state agencies during review of development proposals that might affect surface or groundwater quality.” Groundwater quality is regulated by the Oregon Department of Environmental Quality. DEQ is represented on the DOGAMI consolidated permit Technical Review Team (“TRT”) by Larry Knudsen and other staff, as demonstrated on **Exhibit 5**. DEQ has been involved for a number of years in scoping and reviewing Calico’s water quality studies and proposed strategy to ensure water quality. The Commission can find that the ongoing TRT provides adequate consultation with state agencies to satisfy the above policies.

4. Water quality information.

Policy 1 of Goal 11 states that the “County, in considering land use proposals, will ensure that the physical characteristics of land that affect sewage disposal, water supply, and water quality are carefully considered.” Contrary to ONDA’s

assertion, this only requires information on the “physical characteristics of the land,” which is clearly explained in Exhibit 1 of the Application.

However, to ensure that the Commission has the full range of available information regarding water quality management, we enclose Calico’s Baseline Study Work Plan explaining how it analyzed water resources (**Exhibit 6**), Geochemical Report Summary and Report (**Exhibits 7 and 8**), and Draft Tailings Storage Facility (TSF) Design Summary and Report (**Exhibits 9 and 10**). Finally, Application Exhibit 1 at 77 explains the Project’s dewatering plan.

In summary, these documents explain the following:

- The primary groundwater aquifer is below the lowest level of the mine, so direct groundwater intrusion from the mine to the aquifer is unlikely to occur.
- The mine will be dewatered (i.e. pumped) if any water enters it, returned to the surface, treated, and re-used in the processing plant.
- The TSF facility will include a complete liner system that is capable of preventing intrusion of tailing water into the ground water. In addition, the TSF will include a piped drainage system (“Tailings Underflow Collection System”) to intercept as much water as possible before it contacts the liner.
- The TSF facility is designed so that it can handle at least a 500-year, 24-hour storm event with wave action without overflowing. Permanent and temporary stormwater diversions will collect and divert a majority of the stormwater around the facility to a natural drainage on the north side of the TSF.
- Water collected by the TSF’s drainage system will be pumped to a reclaim pond, which itself will be double-lined to prevent leakage. Water from the pond will be treated and reused in the processing plant.
- All pipes will be laid above a secondary containment system (a lined trench) composed of impermeable membranes or concrete containment structures, as appropriate.
- At mine closure, the mine itself will be backfilled with gravel and other waste rock. All mine backfill that is acid generating will be treated with a

strong base (typically lime) to neutralize the material, thereby preventing acid drainage.

- At mine closure, the TSF will be:
 - Pumped of all surface water and allowed to dry for 1-2 years.
 - Regraded and covered with gravel from non-acid generating mine waste or on-site borrow, covered with an impermeable geomembrane liner, 18 to 14 inches of growth medium, and seed mix for revegetation.
- The proposed temporary waste rock dump will have a similar underdrain collection system and liner. Any remaining waste dump material will be treated and placed in the TSF during mine closure.

The mine and facilities are designed as a closed system where any water that contacts acid-generating rocks or chemicals will be treated, contained, and recirculated through the operation. Water that is not treated and used in the processing will be intercepted before leaching into the groundwater table.

Finally, Calico will be required to comply with stringent state rules concerning the protection of groundwater, which are found in OAR 340-043, “Chemical Process Mining.” These rules address and fully regulate, among other things, the control of surface water runoff (OAR 340-043-0090), disposal of mill tailings (OAR 340-043-0130), and land disposal of wastewater (OAR 340-043-0170). **Exhibit 2.**

Water quantity is regulated by the Oregon Water Resources Department (OWRD). As noted in the Staff Report, the Applicant has provided the County with water rights certificates, and these water rights are sufficient to meet Project needs. In any case, water quantity is regulated by OWRD and not by local governments. *Ashland Drilling, Inc. v. Jackson County*, 168 Or App 624 (2000).

For the above reasons, the Commission can find that the Application is consistent with Goal 11, Policy 1.

D. Specific Plan Applicability

As explained in the Application, there are no specific County plans applicable to the Property. While the Application is not for the mine processing area outside of the Patent Parcel, the Applicant is not aware of any County plans applicable to this area, and Staff have not identified any.

E. Viewpoints

According to USGS topographic data, the crest of the proposed mine is at 3,960 feet. Grassy Mountain itself, located directly to the east, has a maximum elevation of over 4,200 feet. Based on GIS analysis, the nearest occupied structures are due east from the Patent Parcel along the Owyhee River, at an elevation of approximately 2,360 feet. **Exhibit 11.** Based on the intervening elevation between this property and the Patent Parcel, as well as the distance of over 20 miles of the Parcel from Vale, the Commission can find that the Project will have no view impacts on occupied properties.

F. Services and Utilities

ONDA claims that the installation of power lines in the County and BLM right-of-way will “entail potentially significant impacts to wildlife and other resources and land uses.” The power lines that will be constructed on public rights-of-way are not subject to a CUP requirement, and ONDA does not claim that they are. Per the proposed conditions of approval, Calico will abide by local and federal requirements pertaining to construction of electrical distribution lines within existing rights-of-way.

G. Social and Economic Effects

ONDA makes several arguments regarding the social and economic impact of the project. Each are addressed below. As an initial matter, none of the economic and social issues raised by ONDA are expressly identified in the criteria. Indeed, local governments “have considerable discretion in shaping the economic future of their community,” *Walker v. City of Dayton*, 44 Or LUBA 766 (2003), and the Commission has substantial discretion in evaluating which sorts of economic and social impacts are desirable.

1. Economic impacts on the community.

ONDA first argues that mining is susceptible “to negative effects of ‘boom and bust’ economics,” citing a 2002 economic study by Freudenburg and Wilson.

The Freudenburg and Wilson study is inapplicable to this Application because it examines *mining dependent communities*, which it defines as communities with at least 20% of total income from mining. With only 24 employees in the mining industry in the County, or 0.38% of the workforce, the County is not a mining dependent county and will not be so while the mine is in production.³

With regard to “boom and bust” economics, Calico has never asserted that the jobs the Project will bring to the County will last in perpetuity. The Commission can nonetheless find that the jobs, taxes, and economic activity generated by the Project will provide a substantial boost to the local economy during the mines construction, operation, and post-closure phases, and will not create a “boom and bust” economy in the County.

ONDA also ignores a similarly-sized body of economic studies supporting the positive economic impacts from mining, particularly when considering its direct and indirect economic effects (i.e. multipliers). For example, Malheur County will benefit from not only direct jobs, as described in the Application, but also indirect jobs created by the project. A study from Maxwell Stamp PLC and the World Gold Council found that for every direct job created by mining projects, an additional 1.8 jobs in indirect jobs are created.⁴ **Exhibit 12.** Numerous other studies, including those of other developed countries such as Sweden⁵ and Australia⁶, have emphasized that any analysis of local economic effects of mining requires a close look at local job multipliers.

2. Job creation and workforce partnerships.

³ American Community Survey 2016 dataset. <https://datausa.io/profile/geo/malheur-county-or/#economy> (retrieved on April 19, 2019).

⁴ The Social and Economic Impacts of Gold Mining, March 2015. <http://www.mining.com/wp-content/uploads/2015/06/The-social-and-economic-impacts-of-gold-mining-june2015.pdf> (retrieved on April 17, 2019).

⁵ Moritz, Thomas, et al. The Local Employment Impacts of Mining: An Econometric Analysis of Job Multipliers in Northern Sweden. 2017. The study found that every 100 mining jobs on Norrbotten County in Northern Sweden generates nearly 100 additional jobs in other sectors, a 1 to 1 multiplier, but noting that the multiplier depends on a number of factors.

⁶ Fleming, David, et al. Local Job Multipliers of Mining. 2014. The study discusses that, because direct labor for mining is low compared to other industries, it is important to observe local job multipliers when attempting to calculate the local economic impact of mining activities.

ONDA next argues that “Malheur County does not have a mining work force” and that the Application’s description is inadequate regarding workforce training opportunities.

Malheur County does not have to have a mining workforce in order to benefit from the project. As an initial point, broadly speaking, the Maxwell Stamp study found that over 90% of gold mining operation workforces in North America consist of local employees.⁷ Indeed, not all of the jobs created by this Project will require pre-existing mining skillsets and many of the jobs only require transferable skills already found in Malheur County’s manufacturing and industrial workforce. For those jobs that may require technical skills, the applicant has described anticipated workforce training and other local partnerships intended to offer partnership curriculum.

Even so, employees who move to the area for employment at the project still provide a benefit to Malheur County, as local businesses benefit from consumer spending out of direct and indirect labor income. These indirect benefits are part of the multiplier effect, as illustrated by a 2013 economic impact study in the state of Arizona.⁸ Although Oregon currently has a limited metal mining presence of only 37 direct metal mining jobs statewide, there are 281 indirect or induced jobs from metal mining in the state, according to the National Mining Association.⁹ This ratio shows the strong indirect impacts from mining jobs.

3. Wages and economic benefits.

ONDA argues that the wages estimated in the Application are speculative and are not likely to occur because they are above the national average for mining jobs. However, the average wage data from the Bureau of Labor Statistics is just that, an *average*. Because it is an average, various operators across the country offer wages both below and above the average. The applicant’s preliminary feasibility study provides extensive information regarding the economics of the mine and how anticipated wages will be supported. As the employer that will be establishing its own wages, Calico is in the best position to describe the wages that will be offered

⁷ *Supra* note 2.

⁸ L. William Seidman Research Institute at Arizona State University. October 2013. The Economic Impact of the Mining Industry on the State of Arizona. http://www.azmining.com/uploads/2012%20AZ%20Mining%20Economic%20Impact%20Study_1.pdf (retrieved April 2019).

⁹ Oregon Fact Sheet. 2018. <https://nma.org/wp-content/uploads/2018/12/or.pdf> (retrieved April 17, 2019).

at the project. Finally, even if the wages at the mine were at the national average for all metal ore mining, this would still be significantly above the County average, as discussed in the Application. Thus, the Application contains information regarding wage and economic benefits that support a finding that the Application will improve the community's social and economic characteristics.

4. Potential impact to housing.

ONDA also argues that the Application fails to consider the impact of new workers moving to the area, particularly with regard to housing.

As an initial matter, the Planning Commission is required to consider the "stability of the community's social and economic characteristics." On its face, this general criteria does not mandate the consideration of housing supply.

Second, there is no basis to conclude that this single project will cause a housing crisis in Malheur County, for two reasons. First, it is anticipated to create in excess of 100 living-wage jobs, and there is no evidence in the record that those with these relatively higher-paying jobs will displace those in low-income housing. Second, to the extent that these jobs are taken by residents already in the region, there is unlikely to be any adverse impacts on housing supply.

Finally, ONDA discusses housing affordability challenges, but fails to consider that the family wage jobs created by the proposed use will assist local employees with being able to afford housing in Malheur County. As discussed in the Application, the average operational and post-closure/reclamation job is anticipated to pay \$79,518, which is significantly greater than the median household income in the county of \$37,112.¹⁰ Individuals employed by the project will presumably constitute a market for higher market-rate housing, not displace those already in subsidized or below-market housing.

At bottom, the implication of ONDA's economic arguments are troubling because they appear to advocate a low- or no-growth alternative in the County, which no reasonable person could expect to improve the County's existing social and economic challenges.

¹⁰ U.S. Census Bureau, 2017 dataset.

<https://www.census.gov/quickfacts/fact/table/malheurcountyvoregon/afn120212> (retrieved April 17, 2019).

H. Fish and wildlife.

MCC 6-6-7.F provides that conditional uses may not “interfere with traditional fish and wildlife use of habitats determined to be critical or sensitive in the fish and wildlife habitat protection plan for Malheur County.” ONDA argues that Calico has not “met its burden of showing that the proposal will not have a significant permanent adverse impact on fish or wildlife habitat.” ONDA misstates the criterion and attempts to widen it beyond its plain terms: the question is not whether the Application will have a significant impact on fish and wildlife, it is whether it will affect habitats determined by the County to be critical or sensitive in its fish and wildlife protection plan.

As the Staff Report clearly explained, the County does not have a “Wildlife Protection Plan.” Therefore, the Commission can find that the above criterion is inapplicable. Even if it did, the Application includes a Wildlife Report that identified no critical or sensitive habitats within the Patent Parcel.

ONDA’s additional arguments regarding ODFW’s designated big game winter range are irrelevant for two reasons. First, none of that range is identified on the Patent Parcel and in fact, none of that range is within the larger Project Area. Rather, the only designated winter range is located along the northern five-mile section of the access road, as explained in Calico’s Wildlife Report. *See* Application Exhibit 7 at 40.

Second, the fact that existing access roadways traverse state-designated habitat areas is irrelevant to the question of whether the County may approve a CUP on the Patent Parcel. This is because the access roadways already exist and there is no rational basis to believe that the small amount of anticipated new truck traffic will have substantial impacts on wildlife—especially given that the project does not even generate enough trips, under a reasonable worst-case scenario, to require a traffic impact analysis.

ONDA goes on to argue that the Migratory Bird Treaty Act prohibits a take of avian species and that pygmy rabbits are designated by federal law as “habitat specialists.” At most these are issues for consideration in Calico’s federal Environmental Impact Statement, but they are certainly not issues regulated by the County’s Plan, conditional use criteria or other land use regulations.

Finally, ONDA argues that the Application must address ODFW's mitigation policy set forth in OAR 635 division 415. It claims this is so because Policy 3 of Plan Goal 5 provides that "the Oregon Department of Fish and Wildlife's 'Fish and Wildlife Protection Plan' will be recognized as a guideline for planning decisions." The Application addressed this policy at page 20.

There are number of problems with ONDA's argument. First, there is nothing in the above policy that expressly requires the County to apply OAR 635 division 415. Second, the fact that ODFW's "Fish and Wildlife Protection Plan" (which Plan ODFW has abandoned and replaced) is a "guideline for planning decisions," does not mean that it or division 415 supply applicable criteria. Indeed, the Commission can find that this policy was intended to guide comprehensive planning decisions and is now inapplicable because ODFW has replaced its "Fish and Wildlife Protection Plan."

Finally, ODFW's rules are, by express statutory authority, for ODFW to implement and enforce. ORS 496.118(1)(c).¹¹ And, as explained above, ODFW applies its division 415 regulations to the entire Project as part of the state Consolidated Permit process (OAR 632-037-0125), and Calico will be required to provide "a fish and wildlife protection and mitigation plan developed according to standards adopted by the Department of Fish and Wildlife." OAR 632-037-0060(12).

ONDA offers no reason why the County must duplicate this effort. Given that mining activities may only begin if and when DOGAMI finds that all applicable ODFW standards are satisfied, and the only evidence in the record demonstrates that there are no threatened or endangered species, nor any sage grouse, on the Patent Parcel, the Commission can find that the Application can meet ODFW standards as they apply to the Patent Parcel.

I. Sage Grouse Rule permit.

The Sage Grouse Rule ("SGR") places the responsibility for determining habitat mitigation requirements on ODFW, even for projects under County jurisdiction. As explained in the Application and at the March 28 hearing, Calico will be required to provide a complete mitigation plan to ODFW for the entire Project

¹¹ "Subject to policy direction by the State Fish and Wildlife Commission, the State Fish and Wildlife Director shall: (c) Administer and enforce the wildlife laws of the state."

Area in order to obtain a consolidated permit, making specific mitigation proposals for the Patent Parcel duplicative and unnecessary. ODFW and the Department of Land Conservation and Development (DLCD) agreed with this approach, and recommended the following condition, which Calico accepts:

“To satisfy the requirements of approving a conflicting use within significant sage-grouse habitat, the applicant shall comply with OAR Chapter 660, Division 023 and OAR Chapter 635, Division 140. The applicant must coordinate with ODFW and apply the mitigation hierarchy of avoidance, minimization and compensatory mitigation to address direct and indirect impacts of the development to low-density habitat for sage-grouse. A compensatory mitigation plan shall be developed by the applicant and approved by the ODFW through DOGAMI's consolidated permit process (OAR Chapter 632, Division 37) and other applicable rules, including OAR Chapter 635, Division 420 and OAR Chapter 635, Division 415, prior to any construction or ground disturbing activities.”

In essence, the above condition requires a holistic look at the impacts of the Project on sage grouse habitat and requires Calico to abide by mitigation requirements imposed by ODFW.

Despite this, ONDA promotes an erroneous theory that the Patent Parcel must be considered separately for purposes of sage grouse mitigation, and consequently makes a number of legally incorrect statements. These are addressed below:

“The Wildlife Report uses an inapplicable procedure for characterizing sage-grouse habitat within the project area.”

Response: This statement mischaracterizes the Wildlife Report. The Application applied the Sage Grouse rule precisely as ONDA would have it: it relied on ODFW's habitat maps and noted that the Patent Parcel includes some “Low-Density” sage-grouse habitat. The Wildlife Report does not seek to re-draw ODFW's habitat maps, but the report itself was required by ODFW as part Calico's obligation to carefully investigate the conditions within that mapped habitat.

“Approximately half of the project area falls within low-density sage grouse habitat and will require in-kind, in-proximity mitigation as

Category 2 habitat.” “Nowhere in the application or the wildlife report does the applicant acknowledge [the Sage-Grouse Development Siting Tool] or specific mitigation techniques that would be required to approve the project.”

Response: ONDA again misstates the law. Mitigation under the sage grouse rule is required by OAR 660-023-0115(9)(D) as follows: “to the extent that a proposed large-scale development will have direct or indirect impacts on a core area after application of the avoidance and minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and indirect impacts of the development to any core area. [T]he required compensatory mitigation must comply with OAR chapter 635, division 140.”

The plain language of the above rule requires mitigation only if a large-scale development will have direct or indirect impacts on a Core Area. There is no Core Area habitat on the Patent Parcel, and the enclosed ODFW map demonstrates that the nearest Core Area habitat is over five miles away from the boundary of the Project Area, and even farther from the Patent Parcel. **Exhibit 13.** For this reason, there is no reason to believe that the Project will impact that Core Area habitat.

Moreover, OAR 660-023-0115(9)(b) places the responsibility on reviewing and approving compensatory mitigation on ODFW, not the County.

For the above reasons, the Commission can find that Calico need not provide a habitat mitigation plan before the County can approve an SGP.

J. Specific criteria to evaluate suitability

The County’s Specific Criteria to Evaluate Suitability provides that “submitted plans and specifications shall contain sufficient information to allow the planning commission to set standards” addressing a number of development considerations. MCC 6-6-8-4.

In considering the matters listed in MCC 6-6-8-4, the Commission need not find that the Application meets any specific criteria. Rather, the question before the Commission is two-fold: first, the Commission must decide whether specific standards regarding the listed development issues are necessary, and second, if it wishes to set such standards, the Commission must determine whether there is enough information in the record for the Commission to do so.

ONDA offers conclusory challenges to a number of these considerations but at no point does it argue that the Commission need impose any specific standards.

The factors are listed below:

1. **Noise, dust, traffic and visual screening.**
2. **Setbacks from property lines.**
3. **Location of vehicular access points.**
4. **Fencing needs.**
5. **Prevention of the collection and stagnation of water at all stages of the operation.**

As explained in the Application, there is no reason for the Commission to set specific standards addressing any of the above. This is so in no small part because of the sheer physical separation of the Patent Parcel and Project Area from any other developed areas. ONDA's contrary arguments require no further response.

6. **Rehabilitation of the land upon termination of the operation.**

ONDA argues that the Application is deficient because it includes only a preliminary reclamation plan. In so doing, ONDA misstates the criteria. There is no County criterion requiring a final reclamation plan; the County need only decide (1) whether it needs to set standards pertaining to "rehabilitation of the land upon termination of the operation," and (2) if so, whether it has enough information in the record to do so.

The Commission need not set specific reclamation requirements for the simple reason that DOGAMI, through its Consolidated Permit process, applies extremely detailed reclamation requirements. A complete copy of these regulations is included as **Exhibit 1**.

As to the second question, the primary reclamation approach is described in detail in the Application. In summary, this involves complete chemical treating of any acid-producing materials, backfilling the mine with materials that are either non-acid producing or have been treated with a strong base to ensure that they will not

produce acid, covering the TSF with an impermeable geomembrane, removing all plant and equipment, and covering any disturbed areas of the site with growth medium (soil) and an appropriate seed mix. Additional detail on mine closure and reclamation is provided in **Exhibit 10**.

In essence, ONDA's argument is that the County must set its own standards for mine reclamation. While the criteria allow the County to do so, they do not require it to do so. Indeed, ONDA offers no principled reason why the County cannot rely on the comprehensive reclamation requirements imposed by DOGAMI and other state agencies, and BLM.

ONDA's argument is also largely focused on the Project Area in general and not on the Patent Parcel. For these reasons, the Commission can reject ONDA's arguments and find that (1) the project will be required to provide DOGAMI with a complete reclamation plan meeting all state standards, (2) that these standards are sufficient to protect the public health, wildlife, and livability of the County, and (3) that substantial evidence in the record demonstrates that it is feasible for Calico to meet these standards.

K. Effects of Chemical Processing and Acid Mine Drainage

ONDA argues that the Application fails to include information about the impacts of chemical processing. As an initial matter, the Commission can reject this argument because Calico does not apply for a CUP permit to conduct chemical processing; rather the Application is for an underground mine on the Patent Parcel. And, ONDA offers no evidence that rebuts or contradicts evidence already in the record establishing that the mine and the Project will not "force a significant change in accepted farm or forest practices" as required by ORS 215.296.

However, Calico understands that the Commission may be understandably interested in the chemical processes that will be utilized on federal land if and when the Project is approved by the state and BLM. This is why Exhibit 1 of the Application includes an explanation of how the proposed chemical mining process will work, and **Exhibit 14** to this letter provides additional detail. As explained therein, and unlike the "heap leach" mining that has gained a poor historic reputation, the mining process proposed for Grassy Mountain utilizes an entirely enclosed system whereby all chemical processes occur in sealed vessels, and all processing chemicals, including cyanides, are destroyed and/or neutralized before process tailings are deposited in the TSF. This is done via the INCO process

explained in **Exhibit 15**. Under state law, WAD cyanide levels of the tailing are limited to 30 parts per million.¹² The INCO process has been proven for decades to reduce cyanide far below this level, as demonstrated by the case study in **Exhibit 16**.

Acid neutralization of all mining waste materials is required by state regulation.¹³ Calico has studied the acid generating potential of mine waste, as explained in the enclosed summary of its Baseline Geochemical Characterization Study (**Exhibit 7**) and the full study text (**Exhibit 8**).

L. Financial Guarantee

The County's conditional use criteria do not require a financial guarantee to provide for mine closure and reclamation. However, state law does. OAR 632-037-0135(1) requires that "[a] reclamation bond or alternative security acceptable to the Department shall be posted before the start of any construction, excavation or other ground disturbing activity associated with mining operations, other than baseline data collection." The amount of the security is required to include the actual closure and reclamation costs and must account for environmental protection costs in the event of an incident. *Id.* DOGAMI will review the surety amount annually and determine whether it must be increased based on any changes in the costs of reclamation. *Id.* at (2).

As a public company, Calico is of a sufficient size and has sufficient assets to provide the required security. However, should the Commission feel it necessary to ensure adequate security is available, Calico recommends the following additional condition of approval: "The Applicant shall comply with OAR 632-

¹² OAR 340-043-0130.

¹³ "The permittee shall determine the acid-producing and metals-release potential of the wasterock, low-grade ore or other mined materials by acid/base accounting and other appropriate static and dynamic laboratory tests. If the mined materials are shown to be potentially acid forming, or capable of releasing toxic metals, the permittee shall submit a plan for correction and disposal for Department approval prior to permanently placing the materials." OAR 340-043-0140.

"(3) If acid formation can occur, basic materials shall be added to the tailings in the amount of three (3) times the acid formation potential or to give a net neutralization potential of at least 20 tons of CaCO₃ per 1,000 tons of tailings, whichever is greater, before placing tailings in the disposal facility." "(4) The disposal facility shall be provided with a leachate collection system above the liner suitable for monitoring, collecting and treating potential acid drainage." OAR 340-043-0130.

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037-0135 prior to the start of any construction, excavation, or ground disturbing activities.”

IV. Conclusion

For the above reasons, the Commission should reject ONDA’s arguments and approve the Application.

Best regards,



Garrett H. Stephenson

Enclosures:

Exhibit 1 – OAR 632
Exhibit 2 – OAR 340
Exhibit 3 – Nyssa Allotment
Exhibit 4 – Nyssa Allotment Map
Exhibit 5 – TRT Meeting Summary
Exhibit 6 – Water Study Work Plan
Exhibit 7 – Geochemistry Summary
Exhibit 8 – TSF Summary
Exhibit 9 – Geochemical Report
Exhibit 10 – TSF Study
Exhibit 11 – OR Grassy Mountain Topo
Exhibit 12 – The Social Economic Impacts of Gold Mining
Exhibit 13 – Core Area Sage Grouse
Exhibit 14 – Processing Summary
Exhibit 15 – Cyanide Detox Summary
Exhibit 16 – Cyanide Detox

cc: Ms. Nancy Wolverson
Ms. Stephanie Williams
Mr. Carlo Buffone
Mr. Glen Van Treek
Mr. Brien Flanagan

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**BEFORE THE PLANNING COMMISSION
FOR MALHEUR COUNTY, OREGON**

**In the Matter of Applications for
Conditional Use Permit pursuant to
the Malheur County Code (“MCC”)
and Sage Grouse Rule Permit
pursuant to OAR 660-023-0115, to
establish an underground gold mine
on property identified as tax lot 101
of Malheur County Assessor’s Map
22S 44E.**

**FINAL FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

I. INTRODUCTION

Calico Resources USA Corp. (“Calico”) proposes an underground gold and silver mine on private land zoned for Exclusive Range Use (“ERU”), and is known as the “Grassy Mountain Gold Project” (the “Project”). Conditional Use Permit (“CUP”) and Sage Grouse Permit (“SGP”) applications (together, the “Applications”) were submitted on January 14, 2019. The project is proposed on an approximately 62-acre parcel (the “Patent Parcel”) located roughly 22 miles south of Vale, which is surrounded by federal land administered by the Bureau of Land Management (“BLM”). The Patent Parcel is identified as tax lot 101 of Malheur County Assessor’s Map 22S 44E. The Patent Parcel is coterminous with Calico’s patented mining claims and is the subject of the Application. The Patent Parcel is accessed via Russel Road, Cow Hollow Road, and Twin Springs Road.

The Project is described in the Application as follows:

“The Project will involve several elements: the mine site itself and its entry portal, which are located on the Patent Parcel; a processing facility; a tailings storage facility; a waste rock storage facility; borrow pits for production of backfill rock; and various support and administrative buildings. The entire Project Area will be fenced. Of these facilities, only the mine portal and related elements will be located on the Patent Parcel surface (the mine itself will be located beneath the Patent Parcel).

[***]

“[D]evelopment on the Patent Parcel will primarily involve construction of a mine portal near the northwest corner, improved gravel surface roadways that will allow access to the mine portal/decline, ventilation shafts, and laydown/storage areas.” App. at 2-3.

The Applicant submitted a site plan showing the Project and proposed facilities on the Patent Parcel. App. Ex. 2.

The Planning Commission (the “Commission”) held a duly-noticed public hearing on March 28, 2019, which was continued to April 25, 2019. At the conclusion of the hearing, the Commission voted unanimously to approve the Applications.

II. PROCEDURAL HISTORY

The Applications were submitted on January 14, 2019 and deemed complete on February 13, 2019. Public Notice of the March 28 hearing was sent to the BLM, project opponents, and state and local agencies on March 4, 2019. Public notice of the March 28 hearing and its April 25 continuation were also posted on the County’s website, and published in the Ontario Argus Observer on April 5th. All application materials were made available in hard copy at the Planning Department offices and published on the County’s website.

A letter clarifying the positions of the Oregon Department of Fish and Wildlife and Department of Land Conservation and Development (together, the “State Agencies”) was received on March 25, 2019. On March 27, a 21-page letter and 563 pages of exhibits were submitted by the Oregon Natural Desert Association and 1000 Friends of Oregon (together, the “Opponents”). Opponents requested that the Commission deny the Applications, or, in the alternative, continue the hearing and/or hold the record open for fourteen days.

On March 28, the Planning Commission declared a quorum, opened the public hearing on the Applications, and read the disclosures required by ORS 197.763. No commissioner declared any ex parte contacts, biases, or conflicts of interest. No person challenged the qualifications of any commissioner to consider the Applications. Three individuals offered oral testimony in favor of the Application and one person testified in opposition. At the conclusion of the Applicant’s rebuttal testimony, the Applicant requested that the hearing be continued to the next scheduled Planning Commission. The Commission closed public testimony, deliberated on the continuance request, and announced that the hearing would be continued to April 25, 2019.

On April 22, the Applicant submitted a 26-page letter and approximately 300 pages of exhibits in response to Opponent's submittal. On April 23, the Applicant submitted bios and curricula vitae for its consultants. The same day, the County Road Master submitted a letter revising his recommendations for county road improvement. The Snake River Economic Development Alliance submitted a letter in support of the Application on April 24. The Commission received no other written testimony on the Applications.

At the continued hearing on April 25, 2019, the required declarations were re-read and the Commission re-affirmed its qualifications to consider the Applications. No person challenged a commissioner's qualifications to consider the Applications. The Commission accepted oral testimony from the Applicant and one individual who testified in favor of the Application. The Commission then closed the public hearing and asked further questions of staff. The Commission then deliberated on the Applications and unanimously voted to adopt staff's recommendation for approval, with conditions recommended by Staff.

III. DECISION

A. The requested Conditional Use Permit is APPROVED, subject to the following conditions:

- 1. The Applicant will subscribe to the Vale Rangeland Fire Protection Association.*
- 2. The Applicant shall collaborate with the Malheur County Sheriff's Office in regards to a security plan as well as law enforcement and emergency response plans.*
- 3. Any road improvements necessary to serve the Project must be constructed according to County design standards to the satisfaction of the County Road Master.*
- 4. The Applicant shall obtain approval for its reclamation plan from Oregon Department of Geology and Mineral Industries (DOGAMI) prior to beginning mining operations. Unless otherwise prohibited by DOGAMI, the Applicant may conduct pre-construction and construction activities prior to obtaining approval of its reclamation plan.*

B. The Commission hereby recommends that the County Court APPROVE the Sage Grouse Permit, subject to the following condition:

1. *The applicant shall comply with OAR Chapter 660, Division 023 and OAR Chapter 635, Division 140. The applicant must coordinate with ODFW and apply the mitigation hierarchy of avoidance, minimization and compensatory mitigation to address direct and indirect impacts of the development to low-density habitat for sage grouse. A compensatory mitigation plan shall be developed by the applicant and approved by the ODFW through DOGAMI's consolidated permit process (OAR Chapter 632, Division 37) and other applicable rules, including OAR Chapter 635, Division 420 and OAR Chapter 635, Division 415, prior to any construction or ground disturbing activities.*

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Compliance with Applicable Criteria

The Commission hereby adopts and incorporates as part of its findings the Staff Report (**Exhibit 1**) and Application Narrative (**Exhibit 2**), and finds that these sufficiently explain how the Applications satisfy all applicable criteria. The Commission also hereby adopts and incorporates the Applicant's April 22 letter in response to Opponent's March 27 letter and oral testimony. **Exhibit 3.**

B. Response to Public Testimony

1. State Agency Testimony.

The State Agencies' March 25 letter raised the following concerns. Each concern is identified below and followed by the Commission's responsive finding(s).

- a. "Compensatory mitigation requirements consistent OAR Chapter 635, Division 140 must be attached to the County Decision as a condition of approval."

FINDING: The Commission finds that it need not accept or reject the above assertion because the Applicant voluntarily accepted the State Agencies' proposed condition, as follows:

"The applicant shall comply with OAR Chapter 660, Division 023 and OAR Chapter 635, Division 140. The applicant must coordinate with ODFW and apply the mitigation hierarchy of avoidance, minimization and compensatory mitigation to address direct and indirect impacts of

the development to low-density habitat for sage grouse. A compensatory mitigation plan shall be developed by the applicant and approved by the ODFW through DOGAMI's consolidated permit process (OAR Chapter 632, Division 37) and other applicable rules, including OAR Chapter 635, Division 420 and OAR Chapter 635, Division 415, prior to any construction or ground disturbing activities.”

The Commission observes that there appears to be insufficient evidence in the record to support a finding that sage grouse mitigation is necessary on the Patent Parcel for the reasons explained on page 22 of Applicant’s April 22 letter. However, to the extent ODFW determines that mitigation is required on the Patent Parcel, the Commission finds that such a requirements will be adequately enforced by the above condition.

- b. “The CUP application [...] does not sufficiently demonstrate how OAR 660-023-0115(10) and OAR 635-140-0025(2) and -0025(3) are satisfied.”

FINDING: The Commission finds that all applicable criteria in OAR 660-023-115(10) are satisfied as explained in the Staff Report. In addition, the Commission makes the following summary findings:

- There are no reasonable alternatives to locating the mine on the Patent Parcel because the resources sought to be mined are located beneath the Patent Parcel.
- The Project cannot avoid some limited impacts to the identified low-density habitat for the same reason.
- The proposed mine is dependent on geographic features found on the Patent Parcel – in this case, the resource geology of the Patent Parcel – and these features are not common at other locations. The Applicant has demonstrated based on substantial evidence, that the Patent Parcel contains the highest concentrations of valuable mineral resources within the Project Area and indeed, within all nearby mining claims, as explained on pages 41–55 of Application Exhibit 1. Furthermore, there is no evidence in the record of mineral resources of comparable value located entirely outside of mapped sage grouse habitat.
- The Proposed Mine and its related improvements (mine portal, ventilation shafts, circulation areas, backfill stockpile, backfill plant, and utilities) cannot be relocated to minimize impacts on low-density sage grouse habitat

because those locations are necessary to facilitate use of the mine design presented in the Application at Exhibit 1, pages 71–78. In this instance, relocating proposed facilities could involve changing the location of the mine portal and related backfill areas, existing and proposed circulation routes, and mine ventilation portals. The Commission observes that the mine’s proposed drift and fill dimensions “were defined to ensure underground stability” (Application Ex. 1, p. 71) and that the location of the above-mentioned facilities is related to the planned underground layout of the mine. The Commission finds that, in light of the obvious need to ensure the stability of the mine for safety reasons and, given the lack of evidence in the record demonstrating that a different mine design is feasible or appropriate, it is not feasible to further relocate proposed facilities on the Patent Parcel to minimize direct or indirect impacts on Sage Grouse.

In addition, the Commission adopts the following statement from the Applicant’s March 26 letter:

“For purposes of this Application, the County must apply the sage grouse rule to the Patent Parcel only. The patent parcel contains only a small sliver of “low-density” sage grouse habitat along its western edge. The Applicant’s Wildlife Report found no evidence of any sage grouse habitat within two miles of the boundary of the larger Project Area. The Application explains that [the] mine site may not be relocated to avoid the small low density habitat area, nor can it be developed differently to minimize impacts on that area. This is because the mineral resources are located only within the Patent Parcel.

The primary structure on the patent parcel, the mine portal, cannot be relocated because it must face the area where processing is proposed to be conducted. Therefore, there is no basis for a finding that the underground mine can be redesigned to “minimize” impact on sage grouse habitat. Moreover, the substantial evidence in the record demonstrates that the small portion of “low density” habitat on the Patent Parcel is not actually occupied by any sage grouse.”

In conclusion, the Commission finds that the SGP application satisfies OAR 660-023-0115(10) for the above reasons.

The Commission finds that ODFW regulations set forth in OAR 635-140-0025(2) and -0025(3) are not directly applicable to land use applications in the

County because OAR chapter 635 is not part of the rules implementing the Statewide Planning Goals, set forth in OAR chapter 660, and is not incorporated into the County's land use regulations. The Commission also finds that any project design or approval criteria that OAR chapter 635 might impose were not expressly incorporated into the County's land use regulations or OAR 660-023-0115(10). Indeed, the only provision in the Sage Grouse Rules that references chapter 635 is related to mitigation, which according to those rules, is imposed at the discretion of ODFW. OAR 660-023-0115(9)(b)(B).

- c. "The Applicant did not conduct a pre-application conference."

FINDING: The Commission finds that OAR 660-023-0115(8) provides only that an Applicant "should" conduct a pre-application conference, it does not *require* such a conference. The Commission further finds that the Applicant effectively conducted such a conference as explained in the Applicant's March 26 letter.

- d. "The access road bisects ODFW designated "big game winter range" for approximately five miles on the north end."

"ODFW recommends a condition of approval that requires bussing from Vale."

FINDING: The Commission adopts as its finding the following excerpt from the Applicant's March 26 letter:

"All roads leading to the Patent Parcel are already in place and a proposal for reconstruction of that road is not currently before the Commission. While Calico does intend to provide shuttles, potential changes to the processing area may make this more or less difficult. The Applicant's trip generation estimate is conservatively based on a "worst case scenario" in which each employee drives his or her own vehicle. Even under this scenario, trip generation is anticipated to be no more than 250 average daily trips, which is far below the County's 400 trip threshold for requiring a full transportation impact analysis. The state agencies have not identified any County criterion that the Application fails to meet that could only be met with this condition; therefore, the Commission can find that such condition is unnecessary."

The Commission does not recommend ODFW's requested condition for the above reasons.

- e. "ODFW and DLCD recommend the County include a condition of approval that Calico reapply to the County if there are inconsistencies identified or significant modifications."

FINDING: The Commission does not recommend such a condition of approval for the reasons stated in the Applicant's March 26 letter, excerpted below:

"[T]he agencies have not identified any basis in the County's Plan or land use regulations to require "reapplication." Similarly, they have not identified any provisions of the County's Plan or land use regulations that would require such a condition. [...].

Moreover, the condition is unnecessary: if the activity on the Patent Parcel changes with respect to any of the applicable County land use regulations, the County can review and approve a modification of the conditional use permit, provided that the permit is still valid."

The Commission also finds that such a condition would inappropriately delegate County authority to the State Agencies, which may or may not have the authority to unilaterally require changes to the Project during its review. The CUP application is subject to County land use standards. Unless project changes are of such magnitude so as to significantly change or diminish how the Application satisfies the County's applicable land use regulations, mitigation or other design modifications required by State Agencies should not serve to automatically invalidate permits issued by the County.

- f. "It is important to note that the [the Applicant's] Wildlife Resources Baseline Report is a draft report and has not yet been accepted [...] as part of the DOGAMI consolidated permitting process."

FINDING: The Commission finds that the Applicant's Wildlife Report is the best and indeed only site-specific evidence in the record demonstrating the nature and extent of wildlife and wildlife habitat on the Patent Parcel and the larger Project Area. The Commission finds that, because the Wildlife Report is site

specific and was updated a number of times based on field surveys conducted in 2013, 2014, 2017, and 2018 (Application Ex. 7 at 22), it is a more reliable depiction of onsite habitat than the GIS data upon which ODFW's habitat mapping is based. The fact that the State Agencies have not yet accepted the Wildlife Report is irrelevant to the criteria and does not reflect on the Report's value as substantial evidence supporting a conditional use approval. The Commission also observes that the State Agencies offered no evidence to rebut the Report's findings.

- g. "The CUP application includes narratives or statements that propose compliance or findings of fact to support County approval. DCLD and ODFW believe that the proposed actions are not sufficient, and recommend that the county adopt specific standards and conditions."

FINDING: The Commission rejects this argument for several reasons. First, it fails to identify any CUP criteria which the Application fails to meet. Second, it fails to identify which "proposed actions are not sufficient," and why. Third, it fails to explain which specific standards the County should adopt to ensure the Application meets the CUP criteria.

2. Opponent Testimony.

The Opponents' (Oregon Natural Desert Association and 1000 Friends of Oregon) March 27 letter raised a number of concerns. Each concern is identified below and followed by the Commission's responsive finding(s). In addition to those findings, the Commission adopts the Applicant's April 22, 2019 letter to the Commission as part of these findings. **Exhibit 3.**

a. Scope of the Application

Opponents argue that Applicant improperly constrains its responses to application criteria to activities on the Patent Parcel, and does not address the remainder of the Project Area. "ONDA and 1000 Friends suggest that the Planning Commission must consider the likely range of environmental and social impacts from all aspects of the proposed mining operation." In so arguing, Opponents cite the purpose of the MCC as including "promotion of a high quality environment and promotion of public health, safety and welfare." Opponents also argue that MCC 6-6-7-E and F require the Commission to evaluate the "effect of the proposed use on the stability of the community's social and economic characteristics and that a proposed use not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the fish and wildlife

protection plan for Malheur County,” and that “the applicant must provide additional and more detailed information about the entire project for the planning commission to adequately consider the suitability of the proposed use.”

FINDING: The Commission finds that the uses proposed in the Applications are on the Patent Parcel. The County does not have land use planning jurisdiction over federal lands, which are managed by the Bureau of Land Management (“BLM”) under the Federal Land Policy and Management Act (FLPMA), which imposes its own mandate for land use planning for BLM lands. 43 USC §1712. As the County does not have land use permitting jurisdiction on federal lands, the Applications’ approval would neither authorize nor prohibit processing and support activities on surrounding federal land.

Nonetheless, the Commission finds that the processing facilities shown on Application Exhibit 2 and discussed in the Application would likely satisfy the applicable criteria for several reasons, not the least of which is the sheer geographic isolation from any nearby occupied parcel. Indeed, evidence in the record demonstrates that the nearest private structure is over five miles away and separated from the site by substantial intervening geography, including Grassy Mountain itself. See App. at 30, Applicant’s April 22 letter at 15.

And, the Project as a whole would satisfy most if not all applicable CUP criteria as explained in the Application. Virtually every one of the Applicant’s responses apply to the Project generally. For example, responses to the Specific Criteria to Evaluate Suitability set forth in MCC 6-6-8 were based on the project as a whole. App. 30–35. So too were the Applicant’s responses to applicable Comprehensive Plan goals and policies (particularly those related to Goals 9, 11, and 12), with the possible exception of certain discussions of soil type and other Goal 5 resources, which are necessarily site-specific. App. 15–28. However, based on the Applicant’s Wildlife Report (App. Ex. 7) and Applicant’s April 22 letter at pages 19–22, the Commission finds that the Project as a whole satisfies 6-6-7-F and the County’s Goal 5 policies. Finally, the Commission finds that the project as a whole would satisfy all remaining General Criteria to Evaluate Suitability set forth in MCC 6-6-7 for the reasons stated in **Exhibits 1, 2, and 3**.

The Commission finds that the purpose statement of MCC 6-1-2 is not an applicable criterion.

As noted above, the Commission finds that the Application satisfies MCC 6-6-7-E and F as explained in the Staff Report (**Exhibit 1**), Application (**Exhibit 2**), and Applicant’s April 22 letter (**Exhibit 3**).

b. Application Completeness

The Commission finds that it has sufficient information upon which to find that the applicable criteria are met, including:

- A site plan (App. Ex. 2);
- A Wildlife Report (App. Ex. 7);
- Supporting GIS maps that identify the nearest apparently occupied dwellings and intervening topography;
- A water rights certificate;
- Excerpts of the Applicant's Preliminary Feasibility Study, which addresses geology, mining methods, Project design, utilities, water quality, and fire risk management (App. Ex. 1);
- A summary of the Applicant's operation, closure, and reclamation plans (App. Ex. 3);
- A TSF summary and study (Applicant's April 22 letter, Ex. 9 and 10);
- A geochemistry Summary and Report (Applicant's April 22 letter, Exs. 6 and 7);
- Information on the affected livestock allotment (Applicant's April 22 letter, Exs. 3 and 4);
- Detailed information on chemical processing, chemical waste management, and acid mine drainage prevention (Applicant's April 22 letter, Exs. 7, 8, 14, 15, and 16);
- Data on the potential social and economic effects of the Project (App. at 21-22, Applicant's April 22 letter at 15-18, Ex. 12);
- Written communications from the Vale Rangeland Fire Protection Association, County Environmental Health Department, Sheriff's Office, Road Master and Engineer, and Vector Control District.

c. Comprehensive Plan Goals and Policies

FINDING: the Commission adopts the Applicant's response to Opponents' arguments concerning Comprehensive Plan Goals and Policies stated on pages 9–

14. As explained therein, the Commission finds that the Application is consistent with the following Goals and Policies raised by Opponents, or that such Goals and Policies do not apply:

- Goal 3, Policies 1 and 2 are legislative mandates for County planning and do not apply to a quasi-judicial land use application.
- Goal 3, Policy 8 is satisfied for several reasons. First, there are no farming activities on or around the Project Area, and there is no evidence the record that any of the soils on the Patent Parcel or Project Area are suitable for farming. Second, the County finds that Opponents have not identified any legal basis upon which the County must consider either impacts to grazing uses on the Patent Parcel, which is owned by the Applicant, or the surrounding federal lands, which under FLPMA are managed for multiple uses (not just farm and grazing uses).

Even if the County must consider impacts of the project on surrounding grazing uses on federal land, it finds that the Project will neither force a significant change nor significantly increase the costs of such grazing operations. The project as a whole could potentially displace, at most, 0.7 percent of the maximum cattle and 0.75 maximum sheep Animal Unit Months (“AUMs”) in the Nyssa Grazing Allotment. Applicant’s April 22 letter at 10–11, Ex. 4. The Commission finds that such a worst-case scenario would have an insignificant effect on allowable grazing activities throughout the Nyssa Allotment.

The Commission also finds that the proposed fencing and water quality management methods will ensure that sheep and cattle do not stray into the Project Area and that their water sources will not be contaminated by the Project. This latter point is supported by the Applicant’s geochemical studies, water quality information discussed on pages 12–14 of the Applicant’s April 22 letter, and the Applicant’s oral testimony at the continued hearing on April 25, in which the Applicant clarified that the water table directly below the mine is below the lowest level of proposed mining.

Finally, to the extent that Policy 8 could be read to prohibit use of BLM open range for mining processing uses, it would likely be preempted by federal law.

- Goal 5, Policy 3, requires the County to “cooperate with other government agencies in the enforcement of mining regulations.” The County finds that approval of this Application does not affect how other government agencies will enforce their mining regulations and that DOGAMI did not submit any written or oral testimony claiming otherwise.
- Goal 5, Policy 1, which provides that “the county will continue to cooperate with local, state and federal agencies to identify the location, quality and quantity of fish and wildlife habitat” is a general land use planning policy and does not require any specific action or finding with respect to a conditional use permit application.
- Goal 5, Policy 4 provides that “the County will notify and consult with appropriate state agencies during review of development proposals that might affect surface or groundwater quality.” The Commission finds that the Application satisfies this Policy for the reasons stated in Applicant’s April 22 letter and observes that no state agency complained of a lack of notice of the Application.
- Goal 11, Policy 1 provides that the “County, in considering land use proposals, will ensure that the physical characteristics of land that affect sewage disposal, water supply, and water quality are carefully considered.” The Commission finds that the Application contains more than enough information for it to carefully consider the issues listed above, and it did so.

d. Specific Plan Applicability

FINDING: The Commission finds that there are no specific County plans applicable to the Patent Parcel and observes that Opponents did not identify any.

e. Viewpoints

FINDING: MCC 6-6-7-C requires the Commission to consider “existing development and viewpoints of property owners in the surrounding area.” The Commission finds that the project will not have any adverse impacts to views from existing development and property owners in the surrounding area for the reasons stated in the Application at page 25 and Applicant’s April 22 letter at 15.

f. Services and Utilities

FINDING: MCC 6-6-7-D requires the Commission to consider the “availability of services and utilities.” The Commission finds that the Applicant has sufficient water rights to provide adequate process water, based on the water rights certificate in the record. The Commission finds that Idaho Power has committed to providing service to the Patent Parcel based on a power purchase agreement referenced in the Staff Report. The Commission finds that testimony from the County Public Health Division indicates that the Applicant will be required to provide a septic system to treat any wastewater generated on the Project. The Commission finds that there is sufficient information in the record to demonstrate that the Project will be served by the Vale Rangeland Fire Protection Association and that the Project will have an on-site fire suppression system which includes fire hydrants, standpipes, and sprinkler systems. App. Ex. 1 at 91. Finally, the Commission finds that road access to the Patent Parcel is already in place, and that to the extent that the Project will require upgrading of County Roads, Condition 3 ensures that those improvements will be constructed to the satisfaction of the County Road Master. In so finding, the Commission relies on the written comments of the Road Master dated February 4 and April 23.

The Commission rejects Opponents’ assertions that the new power line extension will “entail significant impacts to wildlife and other resources” and that if “new right-of-way permits are sought and/or considered they must evaluate impacts to wildlife species and habitat along their length.” There is nothing in MCC 6-6-7-D which requires consideration of habitat areas, and certainly not habitat areas that are not designated in the County’s plan. And, Opponents make no attempt to identify a basis in the MCC or Comprehensive Plan supporting the premise that MCC 6-6-7-D requires a conditional use application to analyze the habitat impacts of linear infrastructure to be extended to serve the Project.

The Commission also rejects Opponents’ comments that joining the fire protection association may not be sufficient to address fires that might release cyanide because such comments do not appear to acknowledge the Applicant’s proposed onsite fire suppression system or explain how that system may be insufficient.

g. Social and Economic Effects

FINDING: The Commission finds that the Project is likely to have positive social and economic effects on Malheur County because it is anticipated to create approximately 110 mining jobs for the duration of the mine (14 years) and approximately 150 construction jobs. App. 27. The Commission also finds that these jobs are likely to lead to indirect job creation and other economic multipliers.

Applicant's April 22 letter at 16, Ex. 12. The Commission further finds that the Project is likely to have beneficial social and economic effects because of the jobs created and the relatively high wages of these jobs indicated by the Applicant.¹

These positive effects are necessarily balanced against any harmful environmental externalities potentially caused by the Project. However, the Commission finds that the environmental risks are relatively low given the closed-circuit chemical process proposed to be utilized, the water capture and treatment techniques proposed to be used, the methods required to prevent acid mine drainage (April 22 letter at 24–25), the proposed reclamation measures, and the sheer geographical separation of the Project from any population centers. See Applicant's April 22 letter, Exs. 7–10, 14–16.

Stated simply, the Commission finds nothing in the record which gives it a reason to believe that the Project will have negative health impacts on the County's populated areas. For these reasons, the Commission finds that on balance, the Project will have positive social and economic effects.

The Commission rejects Opponents' contrary arguments regarding MCC 6-6-7-E, which concern the "effect of the proposed use on the stability of the community's social and economic characteristics" for the reasons stated on pages 15–18 of the Applicant's April 22 letter. In so doing, the Commission finds that evidence offered by Opponents concerning the "boom and bust" impacts of mining dependent communities is not persuasive because there is no evidence that Malheur County is a "mining dependent community." In fact, evidence offered by Applicant indicates the opposite: as of 2016, Malheur County had only 24 employees in the mining industry. Applicant's April 22 letter at 16. The Commission specifically finds that the Freudenburg and Wilson article has little or no applicability in Malheur County for these reasons. Further, the Commission finds no evidence that the increase in these jobs by the 100 plus jobs potentially created by the Project will turn the County into a mining dependent community. And, the Commission finds that a positive economic impact is beneficial to the community even if it exists for a discrete amount of time (in this case, approximately 14 years). On the other hand, Opponents have not explained how the absence of the mine's positive economic effects will be more beneficial to the community.

¹ The Commission does not find Opponent's arguments that average wages anticipated by the Applicant cannot be relied upon because they are higher than the average wages for mining jobs; the Commission finds that the Applicant is the best source for information concerning the wages it intends to pay.

The Commission does not agree that the Project will cause affordable housing displacement for three reasons. First, there is no evidence that the Project will require all employees to be imported to the County—indeed, the Applicant’s stated intention is to establish workforce training in the County to provide opportunities for County residents. Although Opponents argued that the lack of mining jobs in Malheur County indicates the need to import employees from other markets, the County finds that workforce training would likely mitigate this.

Second, even if all employees come from outside of the County, the Commission finds no evidence that 110 new jobs will exacerbate a shortage of affordable housing and indeed, the average wage that the Applicant proposes to pay is unlikely to create an increased demand for subsidized housing because it exceeds the median household income of the County by more than \$40,000. Applicant’s April 22 letter at 18.

Third, the Commission finds that increased housing demand is not necessarily a negative socioeconomic impact to the extent that increased housing production constitutes a positive economic multiplier.

h. Fish and Wildlife Impacts

FINDING: MCC 6-6-7.F provides that conditional uses may not “interfere with traditional fish and wildlife use of habitats determined to be critical or sensitive in the fish and wildlife habitat protection plan for Malheur County.” ONDA argues that Calico has not “met its burden of showing that the proposal will not have a significant permanent adverse impact on fish or wildlife habitat.”

As an initial matter, the Commission agrees with the Applicant that “the question is not whether the Application will have a significant impact on fish and wildlife, it is whether it will affect habitats determined by the County to be critical or sensitive in its fish and wildlife protection plan.” Applicant April 22 letter at 19.

The Commission also finds that the County does not have a “fish and wildlife habitat protection plan” and that the Comprehensive Plan does not designate any critical or sensitive habitats on the Patent Parcel or Project Area. Therefore, the Commission finds that the above criterion does not apply.

Even if the Criterion did apply, the Commission finds that the Wildlife Report submitted by the Applicant demonstrates that there is no evidence of critical or sensitive wildlife habitat on the Patent Parcel that would otherwise be designated by the Comprehensive Plan. In fact, the Commission finds that the only habitat area on the Project Area designated by ODFW is greater sage grouse, the

protection of which is not required by the Comprehensive Plan or Land Use Regulations, and is separately addressed by OAR 660-023-0115.²

As noted by the Applicant in its April 22 letter, Opponent's arguments regarding ODFW's designated big game winter range are irrelevant because none of that range is identified on the Patent Parcel or Project Area, and Opponents have not explained why public improvements outside of the Project Area must be analyzed for impacts on winter range. Similarly, the Commission finds that the criteria do not require analysis of federal wildlife issues related to the Migratory Bird Treaty Act or pygmy rabbits.

Finally, the Commission finds that ODFW's mitigation policy set forth in OAR 635 division 415 is not an applicable criterion for each of the reasons stated on page 20 of the Applicant's April 22 letter.

i. Sage Grouse Permit

FINDING: Opponents argue that "the Wildlife Report uses an inapplicable procedure for characterizing sage-grouse habitat within the Project Area" and that the Applicant should have been required to apply ODFW's "Sage Grouse Development Siting Tool." The Commission rejects this argument for the reasons stated in its response to the State Agencies' comments regarding the Application's consistency with the Sage Grouse Rules, above. The Commission also finds that nothing in the findings required by OAR 660-023-0115(10) require the County to apply ODFW's Sage Grouse Development Siting Tool.

j. Specific Criteria to Evaluate Suitability

FINDING: Opponents raised a number of arguments concerning the Specific Criteria to Evaluate Suitability in MCC 6-6-8-4, which require that "submitted plans and specifications shall contain sufficient information to allow the planning commission to set standards" concerning a number of issues, which are addressed below. In considering the matters listed in MCC 6-6-8-4, the Commission need not find that the Application meets any specific criterion. Rather, the question before the Commission is two-fold: first, the Commission must decide whether specific standards regarding the listed development issues are necessary, and second, if it wishes to set such standards, the Commission must

² ODFW's March 25 letter identified only big game winter range north as a designated habitat area, but noted that it is located north of the Project Area, and only potentially impacted by improvement and use of existing roads.

determine whether there is enough information in the record for the Commission to do so.

The Commission's response to these factors is below.

1. Noise, dust, traffic and visual screening.

FINDING: The Commission finds that the geographical separation of the project from any nearby developed or inhabited property (explained in App. at page 30), coupled with a fugitive dust control plan to be approved by the Oregon DEQ (explained in App. at page 31), and the limited number of vehicle trips generated by the Project under a reasonable worst scenario (see App. Ex. 9), adequately protect other properties from dust, traffic, and visual impacts. The Commission also finds that the underground mining method chosen for the Project will limit most blasting noises, as explained in the Application at Page 31, and geographic separation of the Project from developed areas will further limit noise impacts. For these reasons, the Commission finds that additional standards related to noise, dust, traffic, or visual screening are unwarranted.

2. Setbacks from property lines.

FINDING: The Commission finds that the geographic separation of the Project from the nearest developed areas, explained on page 30 of the Application, obviates the need for the Commission to set additional standards related to setbacks.

3. Location of vehicular access points.

FINDING: The Commission finds that the geographic separation of the Project from the nearest developed areas, explained on page 30 of the Application, as well as the limited number of daily trips that it could generate (App. Ex. 9), the low speeds traveled on BLM roads, and the absence of traffic near the Project Area obviate the need for the Commission to set additional standards related to vehicular access points.

4. Fencing needs.

FINDING: The Commission finds that the proposed fencing around the Patent Parcel, described on Application page 33, is sufficient to address any fencing needs, and notes that Opponents did not explain why this fencing would be insufficient. For these reasons, the Commission finds that additional fencing standards are unwarranted.

5. Prevention of the collection and stagnation of water at all stages of the operation.

FINDING: The Commission finds that this consideration is related to vector control. The Commission finds that no additional standards concerning collection and stagnation of water are warranted because of the geographical separation of the Project from populated areas, as explained by the letter from the Malheur County Vector Control District, noted as Exhibit 6 of the Staff Report.

6. Rehabilitation of the land upon termination of the operation.

FINDING: Opponents argue that the Application is deficient because it includes excerpts of a preliminary, rather than final, mine reclamation plan. The Commission finds that there is no County criterion requiring a final reclamation plan; the County need only decide (1) whether it needs to set standards pertaining to “rehabilitation of the land upon termination of the operation,” and (2) if so, whether it has enough information in the record to do so.

The Commission finds a complete reclamation plan will be required by the Oregon Department of Geology and Mineral Industries (“DOGAMI”) according to detailed state regulations, as explained in the Applicant’s April 22 letter at Page 23, and set forth in OAR 632-037-0130. There is no evidence in the record that such regulations would be insufficient to ensure safe termination of the mining operation and adequate rehabilitation of the land. Further, the Applicant has provided a summary of its current draft reclamation plans (App. Ex. 3) and substantial detail on its tailings facility design (Applicant’s April 22 letter, Exhibit 9 and 10). For the above reasons, the Commission finds that applicable DOGAMI regulations will ensure adequate rehabilitation of the land upon termination and the Applicant has offered substantial evidence that it can satisfy those regulations.

To ensure that an adequate reclamation plan is in place prior to the start of mining activities, the Commission imposes the following condition of approval:

“The Applicant shall obtain approval for its reclamation plan from Oregon Department of Geology and Mineral Industries (DOGAMI) prior to beginning mining operations. Unless otherwise prohibited by DOGAMI, the Applicant may conduct pre-construction and construction activities prior to obtaining approval of its reclamation plan.”

- k. Financial Assurance

FINDING: The Commission finds MCC 6-6-11 does not obligate the County to require financial assurance for mine closure and reclamation. However, the Commission finds that OAR 632-037-0135 requires that “[a] reclamation bond or alternative security acceptable to the Department shall be posted before the start of any construction, excavation or other ground disturbing activity associated with mining operations, other than baseline data collection.” This amount must include the actual cost of reclamation and environmental protection costs in the event of an incident and must be reviewed annually for adequacy. Id. The Commission finds no reason to require an additional guarantee and notes that Opponents have not explained either how this guarantee requirement is not sufficient or what additional financial guarantees the County should require.

Finally, the Commission finds that the financial guarantee required by OAR 632-037-0135 must be in place before mining can begin, which makes unnecessary Opponent’s argument that the Application should not be approved until financial security is in place. DOGAMI has represented that an approved CUP is required before the Applicant can apply for its consolidated permit, thus it is probably not possible for DOGAMI to determine the final bonding level(s) before the County grants a CUP. Applicant’s April 22 letter at 3–4.

1. Cyanide Leach Chemical Processing and Acid Mine Drainage

FINDING: Opponents argue that “[t]he application and any review by the Planning Commission of the impacts of the project are necessarily incomplete because the application does not include any information about potential impacts of chemical process mining or acid mine drainage.” As an initial matter, the Commission rejects this argument for two jurisdictional reasons. First, it finds that there are no conditional use criteria addressing specific mining methods and technologies. Second, to the extent that this argument addresses ore processing, it finds that processing activities are proposed on federal land which are not under the County’s jurisdiction.

With regard to the potential relevance of the mining and processing methods proposed and acid mine drainage to the significant change/significant cost tests in ORS 215.296 and MCC 6-6-7, the Commission finds the following:

- There is no legal basis upon which the Commission must apply the above sections to activities on BLM land.

- There is no evidence in the record that the proposed chemical processes and acid mine drainage treatment techniques will significantly change or significantly increase the costs of accepted farm activities on private or federal land.
- The Commission finds that no person engaged in accepted farm activities has raised any objections to the Applications.
- The Commission finds that the proposed cyanide leach mining process is entirely enclosed within vessels and is conducted through a closed-loop system. App. at 10–11, Ex. 1. The Commission finds that all reaction tanks will be constructed upon catch basins sufficient to contain 110 percent of the volume of the tank, in case a tank fails. Id. The Commission also finds that all system pipes will be constructed within lined ditches capable of preventing leakage from percolating into the ground. Applicant’s April 22 letter at 13.
- The Commission finds that the lowest proposed level of the mine is above the identified ground water level. Applicant’s April 22 letter at 13.³ The Commission also finds that the mine itself will be dewatered as needed if ground water intrudes and to remove any collected process water. Id.
- The Commission finds that the Applicant has developed a complete ground water monitoring plan designed to characterize the base-line ground water quality. Ex. 6, pages 21–46
- The Commission finds that the tailings storage facilities and waste rock facilities will be adequately lined, will have adequate water drainage, and will be sufficiently reclaimed to ensure protection of ground water, as explained in the Applicant’s April 22 letter at 13–14 and the Application at Ex. 3.
- Acid neutralization of mined material is required by state regulations. OAR 340-043-0130. The Applicant’s April 22 letter provides a detailed explanation of how the Project has characterized the acid-generating characteristics of waste rock and ore, and has explained how the Project will avoid acid mine drainage as follows:

³ The Commission notes that ground water in some areas of the Project Area is above the lowest level of the mine. However, oral testimony at the April 25, 2019 continued hearing explained that the ground level underneath the mine itself is lower than the proposed bottom level of the mine.

“All material that will be put on the Tailings Site Facility or backfilled into the mine will be neutralized to at least the levels required by the regulations stated above.

“Prior to neutralization, acid generating material will be in full containment (see Tailings Design Report summary).

“Tests have also been conducted (or are in progress) to determine the NAG on the borrow material that will be backfilled into the mine and used for construction purposes. These tests are still in progress, but no acid generating borrow material will be used for mine backfill, unless it is neutralized in compliance with Oregon regulations (as stated above).”

Applicant’s April 22 letter at Exhibit 7.

- The Applicant has provided evidence of water rights to serve the Project. Staff Report Ex. 2. To the extent that Project could impact surrounding water quantity available for range uses, such considerations are under the jurisdiction of the Oregon Water Resources Department, not the County. *Ashland Drilling, Inc. v. Jackson County*, 168 Or App 624 (2000).
- The Applicant proposes to relocate any stock watering facilities that might be included within the fenced area. Applicant’s April 22 letter at 11.

Even if ORS 215.296 and MCC 6-6-7 could be construed to turn on issues of mine processing technology or acid mine drainage, in light of the facts above the Commission finds in the alternative that those issues will not force a significant change to accepted farm practices surrounding the Project Area. To summarize, this is because the Project includes adequate measures to ensure ground water quality and protection against acid mine drainage.

V. CONCLUSION

Based upon the parties’ arguments and evidence in the whole record, the Planning Commission finds that the Applications meet all applicable criteria.

VI. ORDER

The Commission hereby approves the Applicant's Conditional Use Permit application and recommends approval of the Applicant's Sage Grouse Permit application, with the conditions identified above. These findings constitute the Commission's decision on the Applications, which decision is adopted by vote of the Commission as affirmed by the signature of the Planning Commission chairperson or acting chairperson below. The Commission's decision is effective upon the date indicated below.

Dated this 23 day of May, 2019.

By: Kathy Clavin

Malheur County Planning Commission Chair