May 24, 2023

Mr. Dayne Doucet
Consolidated Mining Permit Lead
Oregon Department of Geology and Mineral Industries
Mineral Land Regulation & Reclamation
229 Broadalbin St SW
Albany, Oregon 97321

RE: Submittal Response to Land Use Comments 484, 487, and 489-492 in October 20, 2022, Comments for the Consolidated Permit Application, Grassy Mountain Mine Project

Dear Mr. Doucet:

The comment response records for the above-referenced Land Use comments are attached. Please see the "Response to Comment (May 2023)" information for your consideration.

Please contact me at (775) 625-3600, glen@paramountnevada.com if you have questions or need clarification.

Sincerely,

Glen van Treek
President
Calico Resources USA Corp./Paramount Gold Nevada Corp.
(775) 625-3600
glen@paramountnevada.com

Att: Comment Response Records

Attachment
Comment Response Records

Comment Number: 484

Comment Number: 484	**Category:** 2	**Status:** B
Topic: Land Use	**CPA Reference:**	

Commentor: DOGAMI

Please provide a noise analysis consistent with the requirements of the DEQ noise rules (OAR Chapter 340, Division 35), and assess how modeled noise levels comply with Goal 6, Policy 12.

Stantec – Comment Addressed as Indicated? NA	**Stantec – Preliminary Assessment – Sufficient Response?** NA	**TRT Response:**

Response to Comment (Feb 2023):

Noise Control is covered under ORS 467 and OAR 340-035. The portion applicable to mining is 467.120 below: Mining is exempt from the provisions of 467 except as noted (see red text)

467.120 Agricultural and forestry operations; mining or rock processing. (1) Except as provided in subsection (3) of this section, agricultural operations and forestry operations are exempt from the provisions of this chapter.
(2) As used in this section:
(a) "Agricultural operations" means the current employment of land and buildings on a farm for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals, vermiculture products or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural operations or any combination thereof including the propagation and raising of nursery stock and the preparation and storage of the products raised for human use and animal use and disposal by marketing or otherwise by a farmer on such farm.
(b) "Forestry operations" means an activity related to the growing or harvesting of forest tree species on forestland as defined in ORS 526.324 (1).
(3) The following operations are not exempt from the provisions of subsections (1) and (2) of this section:
(a) The mining or processing of rock, aggregate or minerals within one-half mile of a noise sensitive area, if:
(A) The operation operates more than nine hours per day during the period subject to the daytime standards established by the Environmental Quality Commission under ORS 467.030; or
(B) The operation operates more than five days per week.
(b) Any mining or processing of rock, aggregate or minerals within one-half mile of a noise sensitive area during the period subject to the nighttime noise emission standards established by the Environmental Quality Commission under ORS 467.030. [1979 c.413 §2; 1983 c.730 §2; 1985 c.681 §1; 2005 c.657 §6]

The *Noise Baseline Report* (Appendix B11) approved by the TRT as a part of the Consolidated Permit Application identifies two noise sensitive areas. These are noted as Site B to the SE corner of the PoO where mining operations will occur is approximately 6.1 miles. From Site D to the NE corner of the PoO where mining operations will occur is approximately 15.9 miles. Thus, the mining is exempt with the distance criteria above as it relates to the ORS 467 (more than one-half mile).

A *Noise Baseline Report* (Appendix B11), was prepared for the project as a part of the Consolidated Permit Application and approved by the TRT. Maximum permissible environmental noise levels for noise sensitive properties, quiet areas, and impulsive noise levels are identified for the project. Determining the pre-existing ambient noise levels will be used to demonstrate compliance. Two sites were identified as noise sensitive properties, at Lake Owyhee State Park and a residential site along Russell Road. The baseline report proposed ambient noise limits for the Project consistent with OAR 340 Division 35. OAR 340 Division 35 also restricts blasting and impulse sounds.

Goal 6, Policy 12 requires the effects of transportation, industry and other sources of excessive noise will be considered in evaluating proposed uses and development. The County has considered the effects of noise with the approval of the land use application and staff findings for the project. As noted in the approved land use

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application, after construction the blasting and drilling activities will occur underground. This will minimize noise associated with the mine. Ongoing noise would be associated with trucks and vehicles using the haul road and mechanical sounds associated with the processing plant.

Project construction will create a substantial amount of noise due to blasting for the mine portal, and construction machinery. This has been considered in the land use application and staff findings. As noted in the land use application, the nearest population center, Vale, is approximately 22 miles to the north and the nearest cultivated farmland, outside of Owhee is approximately 10 miles to the east. A single farm is located approximately five miles away on the other side of Grassy Mountain.

Agency Comment (Apr 2023): Needs discussion. The legal argument is unpersuasive. Mining is only exempt to the extent that it can be considered as part of an agricultural or forestry operation. That is not the case here. The issue is that DOGAMI has good baseline data, but I am not aware that the company has performed modeling to demonstrate that its operations will comply with the DEQ noise rules. It may be possible to craft conditions that avoid the need for modelling, but I'd need more information to figure that out.

Response to Comment (May 2023):

The *Noise Baseline Report* (Appendix B11) approved by the TRT as a part of the Consolidated Permit Application (CPA) identifies two noise-sensitive areas, noted as Site B and Site D. The distance from Site B to the SE corner of the Plan of Operations (PoO) where mining operations will occur is approximately 6.1 miles. The distance from Site D to the NE corner of the PoO where mining operations will occur is approximately 15.9 miles. Thus, the mining is exempt with the distance criteria above as it relates to the ORS 467 (more than 0.5 mile).

A *Noise Baseline Report* (Appendix B11) was prepared for the project as part of the CPA and approved by the TRT. Maximum permissible environmental noise levels for noise-sensitive properties, quiet areas, and impulsive noise levels are identified for the Project. Pre-existing ambient noise levels will be determined and used to demonstrate compliance. Two sites were identified as noise-sensitive properties – Lake Owyhee State Park and a residential site along Russell Road. The baseline report proposed ambient noise limits for the Project consistent with OAR 340 Division 35. OAR 340 Division 35 also restricts blasting and impulse sounds.

Goal 6, Policy 12 requires the effects of transportation, industry, and other sources of excessive noise be considered in evaluating proposed uses and development. Malheur County has considered the effects of noise with the approval of the land use application and staff findings for the Project. The applicant has also modeled noise levels for the Project during construction, blasting, and operational phases. After construction, blasting and drilling activities will occur underground, as noted in the approved land use application. This will minimize noise associated with the Mine. Ongoing noise would be associated with trucks and vehicles using the haul road and mechanical sounds associated with the Processing Plant.

BKL, acoustics consultant, conducted a noise analysis for the proposed Project. BKL's *Noise Model Summary*[1] is a part of CPA new Appendix D19, *Noise Monitoring Plan*. This project predicted noise levels for the proposed Project for both the construction and operational phases. Details of the modeling software, noise metrics, and noise sources included are found in the report as an appendix to the *Noise Monitoring Plan*.

The metrics regulating noise produced by the project during construction and during operation are cited in OAR 340 Division 35 and detailed in the *Noise Baseline Report* (Appendix B11) as Table 1, Table 2, and Table 3. All metrics in accordance with OAR 340 Divisions 35 are to be measured at an appropriate measurement point, with those measurement points further being classified as Noise-Sensitive Property, and the more restrictive Quiet Area. For the Grassy Mountain Mine, two points are applicable to the regulation. Lake Owhyee State Park is considered a Quiet Area and is located approximately 6.5 miles from the Permit Area. The other noise-sensitive property is a residence located at 2025 Bishop Road, Vale, Oregon.

For the analysis, noise contours as decibels were developed to illustrate projected noise for construction, operation, and blasting. The most restrictive metric for the project is the Nighttime Quiet Area L50 at 45 dBA.

[1] BKL. 2023. Grassy Mountain Mine, Oregon, Noise Model Summary correspondence. April 5.

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For construction, the 45 dBA contour tends to average approximately or within the property boundary to 0.5 mile away. For the operation, the 45 dBA contour tends to average approximately 0.5 mile away. Both Lake Owhyee State Park and the residence are several miles away and far beyond the predicted 45 dBa contour. Compliance with OAR 340 Division 35 is expected based on model predictions for both construction and operation scenarios. For blasting, the maximum allowable noise level during the day is 98 dBC, with the predicted dBC contour completely within 0.5 mile of the property boundary, so compliance with OAR 340 Division 35 is also expected during blasting activity.

Goal 6, Policy 12 of the Malheur County Comprehensive Plan requires consideration of the Project's noise productions without specifying metrics. Goal 6, Policy 13 requires, for the County's purposes, compliance with the State's regulations around noise. The modeling performed (BKL, 2023) predicts compliance with OAR 340 Division 35. Additionally, the State's regulations are expected to be adhered to within approximately 0.5 mile of the project, so consideration for the County's goals is also expected.

A noise monitoring program is proposed. This is included in CPA new Appendix D19, *Noise Monitoring Plan*. This program is largely focused on CPA Appendix D15, *Wildlife Mitigation Plan,* and is more restrictive than OAR 340 Division 35. The program identifies measurement sites to be monitored during the modeled activities of construction, operation, and blasting.

Comment Number: 487

Comment Number: 487	**Category:** 2	**Status:** B
Topic: Land Use	**CPA Reference:**	

Commentor: DOGAMI

Consistent with MCC 6-6-7.G., please provide an assessment of the potential impacts of project lighting on fish and wildlife and recreation on the BLM parcel.

Stantec – Comment Addressed as Indicated? NA	**Stantec – Preliminary Assessment – Sufficient Response?** NA	**TRT Response:**

Response to Comment (Feb 2023):

In considering the suitability of proposed conditional uses, the planning commission shall base its decision upon the following criteria:
G. General Criteria:
1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

A code provision that lists additional conditional use restrictions that a county may impose to protect certain resources is an approval standard only in the sense that it authorizes the county to impose additional conditions ***if*** found to be necessary. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009). Malheur County Code (MCC) 6-6-7(G)(1) is not an approval criterion, rather it is one of six (6) provisions which the Commission must weigh in determining whether conditions of approval are necessary to enhance the suitability of the proposed use based on surrounding uses. Similar to the other criteria in Subsection G – lighting, driveway placement, and landscaping - the Planning Commission may, but is not required to, utilize increased setbacks to enhance the suitability of the proposed use. However, until setbacks are determined as necessary conditions of approval to "reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances," the additional restriction remains discretionary and Applicant does not need to propose a site plan with increased setbacks. Notably, Subsection G does not indicate exactly how far the potential increased setbacks must be, indicating a discretionary assessment by the Commission effectuated via a condition of approval.

Agency Comment (Apr 2023): The applicant contends that the county code provision doesn't apply unless additional conditions are found to be necessary. I agree. That is why we are asking if additional conditions are necessary. The applicant is going to have to address this issue to comply with ODFW's habitat mitigation policy anyway.

Comment Number: 487	**Category:** 2	**Status:** B

Response to Comment (May 2023): Most project lighting is related to the underground mine workings; thus, lighting is underground or within enclosed buildings during the time of use, reducing the impacts of night-time lighting and glare. Consistent with OAR Chapter 437-002-0144, the Project will have adequate general and local lighting for work areas during the time of use. Calico will follow both indoor and outdoor criteria for lighting; this includes freedom from shadows and extreme contrasts. Calico will follow the practices presented in the BLM's Technical Note 457 *Night Sky and Dark Environments: Best Management Practices for Artificial Light at Night on BLM-Managed Lands* (Sullivan et al., 2023)[1], and DOGAMI can require that all site light be directed downward to avoid spillover outside of the Project Area. Calico will also follow the *Wildlife Protection Plan* and *Wildlife Mitigation Plan,* as approved by ODFW.

To further minimize impacts:

- Skyward lighting will be avoided except in cases where it is needed to maintain safe conditions (e.g., signal lights on moving equipment).
- Stationary external lights will be shielded and use motion detectors, timers, or dimmers where appropriate.
- Lighting will also be directed only onto the work area and away from adjacent areas not in use, with safety and proper lighting of the active work areas being the primary goal.

MCC 6-6-7

G. General Criteria:

DOGAMI should note that MCC 6-6-7 is intended to mitigate the impacts of development on existing development within same zone. See, MCC 6-6-1 " 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." Given the significant distance between Grassy Mountain and the nearest developed areas and County roads, there is little or no reason to set specific standards or conditions as allowed under the standards in this section. Please also note that in certain cases DOGAMI's own rules cover mining-specific considerations, such as mine reclamation and financial guarantees. Therefore, where DOGAMI standards govern the same considerations as in MCC 6-6-1 or 6-6-8-4, the Applicant's approach is to demonstrate compliance with those county code provisions by satisfying DOGAMI's more specific standards.

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

   RESPONSE: This standard applies to impacts on "adjoining properties" and "nuisances," and does not relate to impacts on agricultural activities. There are no continuously occupied structures within 5 miles of the Project Area, and the nearest periodically occupied property is Camp Hycliff, which is 4.6 miles away. There are no nearby structures, people, or fixed operations that will be affected by the Project's noise, odor, or night-lighting. Therefore, DOGAMI need not impose any increased setbacks for structures or activities.

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 continuously occupied structures within 5 miles of the Project Area, and the nearest periodically occupied property is Camp Hycliff, which is 4.6 miles away. Therefore, landscaping improvements will only benefit the personnel that work at the site. 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 site landscaping. For these reasons, DOGAMI need not impose any additional conditions requiring site landscaping.

[1] Sullivan, R., N. Glines-Bovio, K.N. Rogers, J.H. McCarty, D. Korzilius, and H. Hartmann. 2023. Night Sky and Dark Environments: Best Management Practices for Artificial Light at Night on BLM-Managed Lands. Tech Note 457. U.S. Department of the Interior, Bureau of Land Management, National Operations Center, Denver, CO. https://www.blm.gov/sites/default/files/docs/2023-04/Library_BLMTechnicalNote457_final.pdf (Accessed May 22, 2023).

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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: This standard is intended to control the impacts of new development on the County's road system. The site's primary access road is via Cow Hollow and Twin Springs roads. Within BLM's lands, these are noted as local roadways on the Malheur County Transportation System Plan (1998), which goes on to explain that "local roads were not inventoried as part of the Malheur County TSP." Furthermore, the TSP explains that "the Bureau of Land Management (BLM) owns and maintains its own network of roads." Malheur County Transportation System Plan, Sec. 4-9, 4-12, March 1998.[2] This is consistent with the County Roadmaster's testimony, which states that "Cow Hollow Road can be constructed to match the BLM specifications for Twin Springs Road." As the Project Area directly accesses only BLM-owned roadways, no new access points or rights-of-way on County roads are proposed. The internal circulation system proposed for Project Area is completely isolated from the Malheur County-controlled transportation system by approximately 13.5 miles of BLM roads. No new intersection is proposed that would be subject to Malheur County access management standards. For these reasons, DOGAMI can find that the proposed access points are not subject to Malheur County regulations and that no Malheur County roadway need be widened or improved. The roads should be improved to BLM roadway standards, as applicable.

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 Project Area, except those associated with the Project. Calico intends to secure waste and storage areas from intrusion by wildlife, but that is not considered "visual screening," which is intended to protect views of the site from adjacent populated areas. For this reason, DOGAMI 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. Calico will follow the practices presented in the BLM's Technical Note 457 *Night Sky and Dark Environments: Best Management Practices for Artificial Light at Night on BLM-Manage Lands* (Sullivan et al., 2023)[1], and DOGAMI can require that all site lighting be directed downward to avoid spillover outside of the Project Area.

[2] W&H Pacific. 1998. Malheur County Transportation System Plan. Malheur_County_Transplan.pdf. Accessed May 18, 2023.

Comment Number: 489

Comment Number: 489	**Category:** 2	**Status:** B
Topic: Land Use	**CPA Reference:**	

Commentor: DOGAMI

Consistent with MCC 6-6-7.H. and MCC 6-6-8-4.C., please provide a noise analysis consistent with the requirements of the DEQ noise rules and describe the effects of project noise on grazing practices, including the costs of grazing.

Stantec – Comment Addressed as Indicated? NA	**Stantec – Preliminary Assessment – Sufficient Response?** NA	**TRT Response:**

Response to Comment (Feb 2023): Noise Control is covered under ORS 467 and OAR 340-035. The portion applicable to mining is 467.120 below:
Mining is exempt from the provisions of 467 except as noted (see red text)

467.120 Agricultural and forestry operations; mining or rock processing. (1) Except as provided in subsection (3) of this section, agricultural operations and forestry operations are exempt from the provisions of this chapter.
(2) As used in this section:
(a) "Agricultural operations" means the current employment of land and buildings on a farm for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals, vermiculture products or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural operations or any combination thereof including the propagation and raising of nursery stock and the preparation and storage of the products raised for human use and animal use and disposal by marketing or otherwise by a farmer on such farm.
(b) "Forestry operations" means an activity related to the growing or harvesting of forest tree species on forestland as defined in ORS 526.324 (1).
(3) The following operations are not exempt from the provisions of subsections (1) and (2) of this section:
(a) The mining or processing of rock, aggregate or minerals within one-half mile of a noise sensitive area, if:
(A) The operation operates more than nine hours per day during the period subject to the daytime standards established by the Environmental Quality Commission under ORS 467.030; or
(B) The operation operates more than five days per week.
(b) Any mining or processing of rock, aggregate or minerals within one-half mile of a noise sensitive area during the period subject to the nighttime noise emission standards established by the Environmental Quality Commission under ORS 467.030. [1979 c.413 §2; 1983 c.730 §2; 1985 c.681 §1; 2005 c.657 §6]

The *Noise Baseline Report* (Appendix B11) approved by the TRT as a part of the Consolidated Permit Application identifies two noise sensitive areas. These are noted as Site B to the SE corner of the PoO where mining operations will occur is approximately 6.1 miles. From Site D to the NE corner of the PoO where mining operations will occur is approximately 15.9 miles. Thus, the mining is exempt with the distance criteria above as it relates to the ORS 467. (more than one-half mile).

6-6-8.4.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. (Ord. 86, 12-7-1993)

Performance standards are not necessary prerequisites to issuance of a conditional use permit. *Simonson v. Marion County*, 21 Or LUBA 313 (1991). The above requirement is a performance standard, not a condition of approval, and compliance with it can be required through a condition of approval.

MCC 6-6-7.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:*

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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)

Applicant is not required to address how the DEQ fugitive dust control plan will prevent changes in grazing practices or prevent significant grazing cost increases because there was no evidence in the Record that there would be a change in grazing practices/costs. The scope and depth of the Farm Impacts Analysis that Applicant is held to address depends on the scope and depth of the farm impact issues brought into the Record. The Board in *Gutoski v. Lane County*, in assessing farm impacts test, recognized that not all applications require the same level of farm impact searching inquiry: it qualified the inquiry to situations "when the parties dispute whether a nonfarm use will force a significant change to a particular accepted farm practice or significantly increase the cost of that practice *Gutoski v. Lane County*, 34 Or LUBA 219 (1998). Applicant is not required to expand its analysis to issues not raised in the Record.

Agency Comment (Apr 2023): Needs discussion. The legal argument is unpersuasive. Mining is only exempt to the extent that it can be considered as part of an agricultural or forestry operation. That is not the case here. The issue is that DOGAMI has good baseline data, but I am not aware that the company has performed modeling to demonstrate that its operations will comply with the DEQ noise rules. It may be possible to craft conditions that avoid the need for modelling, but I'd need more information to figure that out.

Response to Comment (May 2023):

Please see the response to Comment 484 regarding the noise analysis in accordance with DEQ noise rules and response regarding MCC 6-6-7 General Criteria. Regarding grazing practices, the *Grazing Management Baseline Report* (Appendix B8) identifies grazing authorizations for cattle and sheep. Fencing will be installed around the facilities to prohibit grazing livestock and wildlife from entering the Project site. Sound levels contours developed by BKL (2023)[1] for the Project do not project levels expected to impact grazing by livestock. According to Dr. Salah Hamed Esmail (2017)[2], "Cattle may tolerate moderate levels of noise and may easily adapt to an intensity level of 60-90 dB." He further concludes a behavioral response for cattle is expected between 80 and 90 dB. Owen (2017)[3] reported that livestock can habituate reasonably quickly to loud sounds 90-120 dBA based on rail train development studies in the UK. Grazing is not expected to be impacted with noise based on model predictions. Noise monitoring will be conducted to confirm model predictions, as noted in CPA Appendix D19, *Noise Monitoring Plan*.

The entire Project Area will be fenced as described in CPA Appendix D1, *Reclamation 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. 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."

[1] BKL. 2023. Grassy Mountain Mine, Oregon, Noise Model Summary correspondence. April 5.
[2] Esmail, Salah Hamed. 2017. Effects of noise on cattle performance - Dairy Global. November 23. Accessed May 3, 2023.
[3] Owen, D. 2017. High speed 2 limited, phase one: Noise effects on livestock (No. 236118-57/ ROI- Issue 2). Ove Arup & Partners Ltd. February 1. Report (publishing.service.gov.uk). Accessed May 3, 2023.

Comment Number: 490

Comment Number: 490	**Category:** 2	**Status:** B
Topic: Land Use	**CPA Reference:**	

Commentor: DOGAMI

Consistent with MCC 6-6-8-4.A., please provide a noise analysis consistent with the requirements of the DEQ noise rules and describe the effects of project noise on recreation within the BLM parcel.

Stantec – Comment Addressed as Indicated? NA	**Stantec – Preliminary Assessment – Sufficient Response?** NA	**TRT Response:**

Response to Comment (Feb 2023):

Noise Control is covered under ORS 467 and OAR 340-035. The portion applicable to mining is 467.120 below: Mining is exempt from the provisions of 467 except as noted (see red text)

467.120 Agricultural and forestry operations; mining or rock processing. (1) Except as provided in subsection (3) of this section, agricultural operations and forestry operations are exempt from the provisions of this chapter.
(2) As used in this section:
(a) "Agricultural operations" means the current employment of land and buildings on a farm for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals, vermiculture products or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural operations or any combination thereof including the propagation and raising of nursery stock and the preparation and storage of the products raised for human use and animal use and disposal by marketing or otherwise by a farmer on such farm.
(b) "Forestry operations" means an activity related to the growing or harvesting of forest tree species on forestland as defined in ORS 526.324 (1).
(3) The following operations are not exempt from the provisions of subsections (1) and (2) of this section:
(a) The mining or processing of rock, aggregate or minerals within one-half mile of a noise sensitive area, if:
(A) The operation operates more than nine hours per day during the period subject to the daytime standards established by the Environmental Quality Commission under ORS 467.030; or
(B) The operation operates more than five days per week.
(b) Any mining or processing of rock, aggregate or minerals within one-half mile of a noise sensitive area during the period subject to the nighttime noise emission standards established by the Environmental Quality Commission under ORS 467.030. [1979 c.413 §2; 1983 c.730 §2; 1985 c.681 §1; 2005 c.657 §6]

The *Noise Baseline Report* (Appendix B11) approved by the TRT as a part of the Consolidated Permit Application identifies two noise sensitive areas. These are noted as Site B to the SE corner of the PoO where mining operations will occur is approximately 6.1 miles. From Site D to the NE corner of the PoO where mining operations will occur is approximately 15.9 miles. Thus, the mining is exempt with the distance criteria above as it relates to the ORS 467. (more than one-half mile).

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.
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.

Comment Number: 490	**Category:** 2	**Status:** B
The items listed in MCC 6-6-8-4(A) are not standards or criteria because MCC 6-6-8-4(A) is a list of submittal requirements. "[S]ubmittal or pre-application requirements . . . do not constitute 'criteria.'" *Knapp v. City of Jacksonville*, 70 Or LUBA 259, (2014). Here, the list in MCC 6-6-8-4(A) provides context for guiding Applicant is the type of content to provide in its submittal plans but does not create isolated approval criteria.		
Agency Comment (Apr 2023): Needs discussion. The legal argument is unpersuasive. Mining is only exempt to the extent that it can be considered as part of an agricultural or forestry operation. That is not the case here. The issue is that DOGAMI has good baseline data, but I am not aware that the company has performed modeling to demonstrate that its operations will comply with the DEQ noise rules. It may be possible to craft conditions that avoid the need for modelling, but I'd need more information to figure that out.		
Response to Comment (May 2023): Please see the response to Comment 484 regarding the noise analysis in accordance with DEQ noise rules and response regarding MCC 6-6-7 General Criteria. The noise contours as described in the BKL 2023 modeling report[1] illustrate the projected levels are not expected to impact noise on recreation within the BLM parcel. The *Recreation Baseline Report* (Appendix B14) states that there are no developed recreation sites in the Study Area. Noise monitoring will be conducted to confirm model predictions as noted in CPA Appendix D19, *Noise Monitoring Plan*.		

[1] BKL. 2023. Grassy Mountain Mine, Oregon, Noise Model Summary correspondence. April 5.

Comment Number: 491

Comment Number: 491	**Category:** 2	**Status:** B
Topic: Land Use	**CPA Reference:** N/A	
Comment: Consistent with MCC 6-6-8-4.A., please assess the visual impacts of the facility on recreational uses on the BLM parcel and whether visual screening is required to mitigate impacts.		
Stantec – Comment Addressed as Indicated? NA	**Stantec – Preliminary Assessment – Sufficient Response?** NA	**TRT Response:**

Response to Comment (Feb 2023):

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.*
   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.*

The items listed in MCC 6-6-8-4(A) are not standards or criteria because MCC 6-6-8-4(A) is a list of submittal requirements. "[S]ubmittal or pre-application requirements . . . do not constitute 'criteria.'" Knapp v. City of Jacksonville, 70 Or LUBA 259, (2014). Here, the list in MCC 6-6-8-4(A) provides context for guiding Applicant is the type of content to provide in its submittal plans but does not create isolated approval criteria.

Agency Comment (Apr 2023): This is non-responsive. Although this the code provision is a set of application requirements, we can't get to completeness unless the applicant meets those application requirements. DOGAMI is having to stand in the shoes of the County since the County won't assert authority over the BLM lands.

Response to Comment (May 2023):

DOGAMI should note that MCC 6-6- 7 (general criteria) and MCC 6-6-8 (specific criteria) intended to mitigate the impacts of development on existing development within the same zone. *See,* MCC 6-6-1, "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 if requires an asset to the areas." Given the significant distance between Grassy Mountain Mine and the nearest developed areas, there is little or no reason to set specific standards or conditions as allowed under the standards in this section. The *Recreation Baseline Report* (Appendix B14) states that there are no developed recreation sites in the Study Area.

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 Project Area, except those associated with the Project. The nearest periodically occupied property is Camp Hycliff, which is 4.6 miles away. Calico intends to secure waste and storage areas from intrusion by wildlife, but that is not considered "visual screening," which is intended to protect views of the site from adjacent populated areas. For this reason, DOGAMI can find that the Project does not need to screen outdoor waste or storage areas or other visual screening.

Outdoor lighting will be used to safely and sufficiently conduct the mining operations on the Project. Calico will follow the practices presented in BLM's Technical Note 457 *Night Sky and Dark Environments: Best Management Practices for Artificial Light at Night on BLM-Managed Lands* (Sullivan et al., 2023)[1], and DOGAMI can require that all site light be directed downward to avoid spillover outside of the Project Area.

[1] Sullivan, R., N. Glines-Bovio, K.N. Rogers, J.H. McCarty, D. Korzilius, and H. Hartmann. 2023. Night Sky and Dark Environments: Best Management Practices for Artificial Light at Night on BLM-Managed Lands. Tech Note 457. U.S. Department of the Interior, Bureau of Land Management, National Operations Center, Denver, CO. https://www.blm.gov/sites/default/files/docs/2023-04/Library_BLMTechnicalNote457_final.pdf (Accessed May 22, 2023).

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Comment Number: 492	**Category:** 2	**Status:** B
Topic: Land Use	**CPA Reference:**	

Commentor: DOGAMI

Consistent with MCC 6-6-8-4.A., please assess the effects of project dust emissions on recreational uses on the BLM parcel, and whether the DEQ fugitive dust control plan will adequate address these effects.

Stantec – Comment Addressed as Indicated? NA	**Stantec – Preliminary Assessment – Sufficient Response?** NA	**TRT Response:**

Response to Comment (Feb 2023):

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.*
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.*

The items listed in MCC 6-6-8-4(A) are not standards or criteria because MCC 6-6-8-4(A) is a list of submittal requirements. "[S]ubmittal or pre-application requirements . . . do not constitute 'criteria.'" Knapp v. City of Jacksonville, 70 Or LUBA 259, (2014). Here, the list in MCC 6-6-8-4(A) provides context for guiding Applicant is the type of content to provide in its submittal plans but does not create isolated approval criteria.

Agency Comment (Apr 2023): This is non-responsive. Although this the code provision is a set of application requirements, we can't get to completeness unless the applicant meets those application requirements. DOGAMI is having to stand in the shoes of the County since the County won't assert authority over the BLM lands.

Response to Comment (May 2023):

Project dust emissions and particulate matter emissions have been evaluated for the Project. Impacts are not expected to impact recreational use on the BLM parcel. Particulate matter emissions and fugitive dust emitted from site activities, including ore and waste rock crushing, rock drilling, rock blasting, material transfers, and wind erosion, were included in the Air Contaminant Discharge Permit (ACDP) application (CPA Appendix E1 submitted to DOGAMI on August 31, 2022). The projected emissions were captured in air dispersion modeling and the Cleaner Air Oregon (CAO) risk assessment (which also included air dispersion modeling) and determined to be in compliance with both the National Ambient Air Quality Standards (NAAQS) and the CAO risk action levels (RALs). Note that fugitive dust emissions from unpaved roads are considered categorically insignificant activities under the Oregon DEQ air permitting regulations (OAR 340-200-0020(23)(ss)) and therefore were not included in the ACDP application.

Grassy Mountain Mine will be required to control dust at the site and was required to provide details in the ACDP application regarding how this will be accomplished. Proposed dust control measures include the following:

- Dust will be controlled by best management practices (BMPs), including periodic wetting of the borrow stockpile.
- Moisture inherent in the wet ore will aid in dust control.

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- Dust control may include water sprays, enclosures, hoods, curtains, shrouds, and movable and telescoping chutes.

Additionally, air permits issued by DEQ typically contain nuisance provisions related to particulate matter and dust. A fugitive emission control plan may also be required, which would be prepared and submitted to DEQ if required by the permit. It is expected the air operating permit for the Grassy Mountain Mine will contain permit conditions in alignment with the following air quality regulations:

- OAR 340-208-0210(1) – Permittees must take reasonable precautions to prevent particulate matter from becoming airborne. This may include precautions such as water spray, enclosure of materials, containment, coverings, and cleaning of paved areas.
- OAR 340-208-0300 – Permittees must not cause or allow air contaminants from any source to cause a nuisance.
- OAR 340-208-0450 – Permittees must not cause the deposition of any particulate matter larger than 250 microns in size at sufficient duration or quantity as to create an observable deposition upon the real property of another person.

Fugitive dust emission will also be monitored as a part of the stormwater program. The Clean Water Act requires that certain facilities, including the Grassy Mountain Mine, obtain coverage under a stormwater permit, implement a pollution prevention or management plan, and take measures to prevent the discharge of sediment, including deposition from particulate matter and dust, into the receiving water bodies.

DOGAMI can find that the geographical separation of the project from any nearby developed or inhabited property, coupled with a fugitive dust control plan to be approved by the Oregon DEQ, and the limited number of vehicle trips generated by the Project under a reasonable worst scenario, adequately protect other properties from dust, traffic, and visual impacts. For these reasons, DOGAMI can find that additional standards related to dust are unwarranted. A reasonable condition to ensure that this standard is met is that Calico must obtain approval from DEQ of its fugitive dust control plan.