State of Oregon Department of Environmental Quality

Land Use Compatibility Statement

What is a Land Use Compatibility Statement?

A LUCS is a form developed by DEQ to determine whether a DEQ permit or approval will be consistent with local government comprehensive plans and land use regulations.

Why is a LUCS required?

DEQ and other state agencies with permitting or approval activities that affect land use are required by Oregon law to be consistent with local comprehensive plans and have a process for determining consistency. DEQ activities affecting land use and the requirement for a LUCS may be found in Oregon Administrative Rules (OAR) Chapter 340, Division 18.

When is a LUCS required?

A LUCS is required for nearly all DEQ permits and certain approvals of plans or related activities that affect land use prior to issuance of a DEQ permit or approval. These permits and activities are listed in section 1.D on p. 2 of this form. A single LUCS can be used if more than one DEQ permit or approval is being applied for concurrently.

Permit modifications or renewals also require a LUCS when any of the following applies:

1. Physical expansion on the property or proposed use of additional land;
2. Alterations, expansions, improvements or changes in method or type of disposal at a solid waste disposal site as described in OAR 340-093-0070(4)(b);
3. A significant increase in discharges to water;
4. A relocation of an outfall outside of the source property; or
5. Any physical change or change of operation of an air pollutant source that results in a net significant emission rate increase as defined in OAR 340-200-0020.

How to complete a LUCS:

Step	Who does it?	What happens?
1.	Applicant	Applicant completes Section 1 of the LUCS and submits it to the appropriate city or county planning office.
2.	City or County Planning Office	City or county planning office completes Section 2 of the LUCS to indicate whether the activity or use is compatible with the acknowledged comprehensive plan and land use regulations, attaches written findings supporting the decision of compatibility, and returns the signed and dated LUCS to the applicant.
3.	Applicant	Applicant submits the completed LUCS and any supporting information provided by the city or county to DEQ along with the DEQ permit application or approval request.

Where to get help:

For questions about the LUCS process, contact the DEQ staff responsible for processing the permit or approval. DEQ staff may be reached at 1-800-452-4011 (toll-free, inside Oregon) or 503-229-5630. For general questions, please contact DEQ land use staff listed on our Land Use Compatibility Statement page online.

Cultural resources protection laws:

Applicants involved in ground-disturbing activities should be aware of federal and state cultural resources protection laws. ORS 358.920 prohibits the excavation, injury, destruction, or alteration of an archeological site or object or removal of archeological objects from public and private lands without an archeological permit issued by the State Historic Preservation Office. 16 USC 470, Section 106, National Historic Preservation Act of 1966 requires a federal agency, prior to any undertaking, to take into account the effect of the undertaking that is included on or eligible for inclusion in the National Register. For further information, contact the State Historic Preservation Office at 503-378-4168, ext. 232.

Land Use Compatibility Statement

Section 1 – To be completed by the applicant	
1A. Applicant Name: Glen van Treek	1B. Project Name: Grassy Mountain Gold Mine
Contact Name: Garrett Stephenson	Physical Address: N/A
Mailing Address: 1211 SW Fifth Avenue, Ste 1900	City, State, Zip: Vale, OR 97918
City, State, Zip: Portland, OR 97204	Tax Lot #: 100, 101
Telephone: 503-796-2893	Township: 22S Range: 44E Section:
Tax Account #:	Latitude:
	Longitude:

1C. Describe the project, include the type of development, business, or facility and services or products provided (attach additional information if necessary):

Gold and silver mine (to be located on tax lot 101); Mineral processing facility, tailings storage facility, waste rock facility, and accessory roadway improvements, and other facilities (located on tax lot 100) to support gold and silver mine.

1D. Check the type of DEQ permit(s) or approval(s) being applied for at this time.

- ☐ Air Quality Notice of Construction
- ☑ Air Contaminant Discharge Permit
- ☐ Air Quality Title V Permit
- ☐ Air Quality Indirect Source Permit
- ☐ Parking/Traffic Circulation Plan
- ☐ Solid Waste Land Disposal Site Permit
- ☐ Solid Waste Treatment Facility Permit
- ☐ Solid Waste Composting Facility Permit (includes Anaerobic Digester)
- ☐ Conversion Technology Facility Permit
- ☐ Solid Waste Letter Authorization Permit
- ☐ Solid Waste Material Recovery Facility Permit
- ☐ Solid Waste Energy Recovery Facility Permit
- ☐ Solid Waste Transfer Station Permit
- ☐ Waste Tire Storage Site Permit
- ☐ Pollution Control Bond Request
- ☐ Hazardous Waste Treatment, Storage or Disposal Permit
- ☐ Clean Water State Revolving Fund Loan Request
- ☐ Wastewater/Sewer Construction Plan/ Specifications (includes review of plan changes that require use of new land)
- ☐ Water Quality NPDES Individual Permit
- ☑ Water Quality WPCF Individual Permit (for onsite construction-installation permits use the DEQ Onsite LUCS form)
- ☑ Water Quality NPDES Stormwater General Permit (1200-A, 1200-C, 1200-CA, 1200-COLS, and 1200-Z)
- ☐ Water Quality General Permit (all general permits, except 600, 700-PM, 1700-A, and 1700-B when they are mobile)
- ☐ Water Quality 401 Certification for federal permit or license

This application is for: ☐ Permit Renewal ☑ New Permit ☐ Permit Modification ☐ Other:

Section 2 – To be completed by city or county planning official	
Applicant name: Glen van Treek	Project name: Grassy Mountain Gold Mine

Instructions: Written findings of fact for all local decisions are required; written findings from previous actions are acceptable. For uses allowed outright by the acknowledged comprehensive plan, DEQ will accept written findings in the form of a reference to the specific plan policies, criteria, or standards that were relied upon in rendering the decision with an indication of why the decision is justified based on the plan policies, criteria, or standards.

2A. The project proposal is located: ☐ Inside city limits ☐ Inside UGB ☑ Outside UGB

2B. Name of the city or county that has land use jurisdiction (the legal entity responsible for land use decisions for the subject property or land use):

2C. ☐ This project is not within the jurisdiction of any other land use, zoning, or planning entity
☑ This project is also within the jurisdiction of the following land use, zoning, or planning entity US Bureau of Land Management

2D. Is the activity allowed under Measure 49 (2007)? ☑ No, Measure 49 is not applicable ☐ Yes, if yes, then check one:

☐ Express; approved by DLCD order #:

☐ Conditional; approved by DLCD order #:

☐ Vested; approved by local government decision or court judgment docket or order #:

2E. Is the activity a composting facility?
☑ No ☐ Yes; Senate Bill 462 (2013) notification requirements have been met.

2F. Is the activity or use compatible with your acknowledged comprehensive plan as required by OAR 660-031?
Please complete this form to address the activity or use for which the applicant is seeking approval (see 1.C on the previous page). If the activity or use is to occur in multiple phases, please ensure that your approval addresses the phases described in 1C. For example, if the applicant's project is described in 1C. as a subdivision and the LUCS indicates that only clearing and grading are allowed outright but does not indicate whether the subdivision is approved, DEQ will delay permit issuance until approval for the subdivision is obtained from the local planning official.

☐ The activity or use is specifically exempt by the acknowledged comprehensive plan; explain:

☐ Yes, the activity or use is pre-existing nonconforming use allowed outright by (provide reference for local ordinance):

☐ Yes, the activity or use is allowed outright by (provide reference for local ordinance):

☐ Yes, the activity or use received preliminary approval that includes requirements to fully comply with local requirements; findings are attached.

☑ Yes, the activity or use is allowed; findings are attached.

☐ No, see 2D. above, activity or use allowed under Measure 49; findings are attached.

☐ No, (complete below or attach findings for noncompliance and identify requirements the applicant must comply with before compatibility can be determined):
Relevant specific plan policies, criteria, or standards:

Provide the reasons for the decision:

Additional comments (attach additional information as needed):

Planning Official Signature: Title: Planning Directo

Print Name: Eric Evans Telephone #: 541-473-5185 Date: 2/27/2023

If necessary, depending upon city/county agreement on jurisdiction outside city limits but within UGB:

Planning Official Signature: Title:

Print Name: Telephone #: Date:

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

MALHEUR COUNTY PLANNING DEPARTMENT

251 B Street West, #12 Vale, Oregon 97918 **Phone (541)473-5185**

To Whom it may Concern:

The County approved the Grassy Mountain Mine project on May 23, 2019. This decision granted a conditional use permit for a mine on tax lot 101 of Malheur County Assessor's Map no. 22S 44E. The County issued a land use compatibility statement for this permit on July 30, 2019. The County took the position that, because the surrounding land is owned and managed by the U.S. Bureau of Land Management (BLM), it did not have the regulatory authority to grant or withhold land use authorizations on the lands surrounding the mine's patent parcel. However, the application included complete descriptions of the mine facilities on surrounding lands and the decision considered whether or not the mine project as a whole satisfied the applicable criteria on both federal and private lands.

Calico Resources USA Corp has requested a second land use compatibility statement (LUCS) in order to support its application for a DOGAMI Consolidated Permit, which would address land uses related to the mine facilities on BLM lands, identified as tax lot 100 of Assessor's Map No. 22S 44E. The attached materials include findings from the Planning Commission explaining why the mine project as a whole meets all applicable criteria. These findings adopted by reference the application and staff report, among other documents, which addressed the entire project area, including the processing facilities on federal land. See, for example, the Commission's discussion on page 10 of the final findings and decision (attached).

Therefore, while the County has issued a conditional use permit for activities on tax lot 101 only, it has found that the mine site as a whole, including the BLM land components, satisfy the applicable criteria in the Malheur County Code, which implements the County's acknowledged comprehensive plan.

Please let me know if you have any questions.

Sincerely,

Eric Evans, REHS
Planning Director,
Malheur County Planning and Zoning
251 B Street W #12
Vale, OR 97918

NOTICE OF FINAL DECISION
AND
NOTICE OF MEETING OF MALHEUR COUNTY COURT
ON JUNE 26, 2019

Planning Department File No. 2019-01-001

APPROVAL OF A CONDITIONAL USE PERMIT AND RECOMMENDATION FOR APPROVAL OF A SAGE GROUSE RULE PERMIT FOR AN UNDERGROUND GOLD AND SILVER MINE

THE PLANNING COMMISSION'S RECOMMENDATION ON THE SAGE GROUSE RULE PERMIT WILL BE CONSIDERED BY THE MALHEUR COUNTY COURT IN A HEARING SCHEDULED FOR JUNE 26, 2019 AT 9:00 AM IN ROOM 106 AT THE MALHEUR COUNTY COURTHOUSE, 251 B STREET W, VALE, OREGON

1. **APPLICANT**: Calico Resources USA Corp.
665 Anderson St.
Winnemucca, NV 89445

2. **OWNER OF RECORD:** Same as above.

3. **ACTION:** (1) Approval of a Conditional Use Permit and (2) Recommendation of approval to the Malheur County Court, for a 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. **FINDINGS OF FACT:** The approved findings of fact can be found at www.malheurco.org/planning-department or can be obtained from Eric Evans, Malheur County Planning Director. They are incorporated herein by reference as though fully set out in this decision.

6. **PLANNING COMMISION'S DECISION:**

   a. Approval of a Conditional Use Permit for an underground gold and silver mine and related facilities on property identified as tax lot 101 of Malheur County Assessor's Map No. 22S 44E.

   b. Recommendation to the County Court of approval of a Sage Grouse Rule Permit pursuant to OAR 660-023-0115 for an underground gold and silver mine on property identified as tax lot 101 of Malheur County Assessor's Map No. 22S

c. **Applicable criteria for a Sage Grouse Rule Permit are set forth in OAR 660-023-0115(10).**

7. **APPEAL OF CONDITIONAL USE PERMIT:**

a. Appeals of the approved Conditional Use Permit will be heard by the Malheur County Court. **APPEALS MUST INCLUDE A COMPLETED APPEAL FORM** (available at www.malheurco.org/planning-department) **AND A $200.00 FEE, AND MUST BE SUBMITTED IN HARD COPY TO THE PLANNING DEPARTMENT BY 5:00PM ON THE TENTH (10TH) CALENDAR DAY FOLLOWING THE DATE OF MAILING OF THIS NOTICE**. The Planning Department is located at 251 B St. W. Vale, OR 97918.

b. Appeals may not be received by fax or email. The appeal notice must explain all issues relied upon for the appeal with sufficient specificity to afford the County Court an adequate opportunity to respond to each issue. Appeals shall be based on the Planning Commission decision record. Appellant must pay and submit a transcript of the Planning Commission hearing(s) to the Planning Department within ten days after the date of notice of appeal is filed or ten days after the hearing tape is provided to appellant, whichever is later.

c. NOTE: The Sage Grouse Rule Permit is not subject to appeal until after a final decision on this matter is made by the Malheur County Court on June 26, 2019.

Eric Evans
Planning Director
Malheur County
251 B Street W #12
Vale, OR 97918
541-473-5185

5/24/19
Date of Mailing

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.

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[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 <u>critical or sensitive</u> 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 Clavich

Malheur County Planning Commission Chair