

By e-mail ([eric.evans@malheurco.org](mailto:eric.evans@malheurco.org))

March 27, 2019

Malheur County Planning Commission  
c/o Eric Evans, Planning Director  
251 B Street W #12  
Vale, OR 97918

Re: Calico Gold Mine Conditional Use Permit and Sage Grouse Rule Permit Application - Malheur County Planning Department File: 2019-01-001; Public Comments and Testimony of Oregon Natural Desert Association and 1000 Friends of Oregon for Hearing of March 28, 2019

Dear Mr. Evans and Planning Commissioners:

Please accept the following comments and written testimony from the Oregon Natural Desert Association (ONDA) and 1000 Friends of Oregon regarding application # 2019-01-001 of Calico Resources USA Corp., for a conditional land use permit and sage grouse rule permit to develop an underground gold and silver mine on Grassy Mountain in Malheur County (the application). The undersigned are representatives of ONDA and 1000 Friends of Oregon and provide these comments on behalf of themselves, ONDA, 1000 Friends of Oregon and the staff, members and volunteers of ONDA and 1000 Friends of Oregon.

We appreciate the opportunity to provide comment and testimony, and value an open and complete public discussion and thorough review of the consequences of this permit application and the proposed mine development. This process, in conjunction with the related federal and state permitting processes, can ensure protection of the human and natural environment affected by such development and the associated infrastructure.

As discussed below, the application as it is currently pending before the Planning Commission—does not satisfy the legal requirements for a conditional land use permit or the legal requirements in Oregon for a sage-grouse rule permit. Full and fair consideration of the project's impacts on the lands and natural resources involved, the surrounding area and impacts to the Malheur County community and economy require additional information to understand whether the application can meet the applicable standards.

The Planning Commission should therefore deny the application because the applicant has failed to sustain its burden of proof to show that the criteria for approving the applications are met. In the alternative, at a minimum, the Planning Commission must continue its hearings on this proposal, require the applicant to gather and submit complete information regarding the proposed use and impacts of the project, accept additional public comment, coordinate with relevant state and federal agencies and require the applicant to address missing information and concerns identified by the commission and public.

Finally, before making any decision on the application, the Planning Commission must consult with the

Oregon Division of Geology and Mineral Industries (DOGAMI) to develop a complete understanding of the entirety of the proposed Grassy Mountain Mine project and the ongoing efforts to study baseline conditions and assess impacts to the environment through the coordinated review process. The Planning Commission should continue hearings on this proposal until such consultation and additional information gathering has occurred.

### **Interest of the Parties and Request for Notice of Further Proceedings**

ONDA is an Oregon non-profit, public interest, conservation organization of more than 4,500 members. ONDA works to protect, defend, and restore Oregon's high desert. ONDA actively participates in Bureau of Land Management ("BLM"), State of Oregon and county proceedings and decisions concerning the management of public lands, wildlife and other issues effecting the human environment in eastern Oregon. ONDA has a long history of monitoring both ecological conditions and wilderness values throughout eastern Oregon. ONDA and its members use and enjoy the waters, public lands, and natural resources throughout eastern Oregon for recreational, scientific, spiritual, educational, aesthetic, and other purposes. ONDA and its members enjoy fishing, hiking, camping, hunting, bird watching, study, contemplation, photography and other activities in and around this project area. ONDA and its members also participate in information gathering and dissemination, education and public outreach, commenting upon proposed agency actions, and other activities relating public lands and wildlife throughout eastern Oregon.

1000 Friends of Oregon is a nonprofit, membership organization that works with Oregonians to support livable urban and rural communities; protect family farms, forests and natural areas; and provide transportation and housing choice.

By submitting this written testimony, ONDA and 1000 Friends are individually and jointly party to proceedings on the above-captioned application. ONDA and 1000 Friends have also demonstrated that the application affects the substantial rights of the organizations and our individual members. Please notify us of any decisions related to this application, and of any further public proceedings or the availability to the public of new information related to this application, at the following address:

Oregon Natural Desert Association  
50 SW Bond St, Ste 4  
Bend, OR 97702

1000 Friends of Oregon  
133 SW Second Ave, Ste 201  
Portland, OR 97204

### **Introduction**

The application before the planning commission is not simply and solely for land use permits. In reality the application is just one aspect of an attempt to permit Oregon's first major, new hardrock chemical process mining operation in decades. Hardrock mining is one of the most intensive and impactful land uses in the western United States. Mining disturbs the land, impairs wildlife habitat and alters the hydrologic balance—affecting the quality and quantity of ground and surface waters in the vicinity of

mining operations. Abandoned mines with associated acid mine drainage (AMD) discharges are among the greatest threats to ground and surface water quality in many areas of the United States. Even where some modern mining proposals attempt to create economically feasible mining from smaller ore deposits there remain significant challenges for the management of mine waste and waste water. Some of these challenges include groundwater contamination and a greater frequency of tailings dam failures. Such impacts result in significant environmental, social and economic consequences, some of which could exist in perpetuity.

Calico Resources USA Corp (Calico) has submitted a land use application for an underground gold and silver mine on private land zoned for Exclusive Range Use (ERU) approximately 22 miles south of Vale on an approximately 62-acre parcel (the Patent Parcel) and surrounding land administered by the Bureau of Land Management (BLM). The entire Grassy Mountain project area is comprised of approximately 980 acres, of which 919 acres are public land administered by the BLM and approximately 62 acres of which constitute the Patent Parcel. 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 located on the surrounding public land. Additional project components include road access and electrical transmission lines leading to the project and Patent Parcel.

For the following reasons, the Planning Commission should deny the application, or in the alternative, continue hearings on this proposal until the application meets all applicable standards. We further request that the record be held open for fourteen days following the hearing and that the undersigned be provided an opportunity to respond to any new evidence submitted by the applicant.

### **Issue One: Procedural Flaws in Permit Application and Notice of Public Hearing**

#### **a. Inappropriate segmentation of project components and impacts**

As an initial matter ONDA and 1000 Friends dispute the applicant's assertion that only the activities within the 62 acres Patent Parcel are pertinent to the application. Instead, 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. The purposes of the Malheur County Zoning Ordinance (zoning ordinance) include promotion of a high quality environment and promotion of public health, safety and welfare, among others. MCC 6-1-2. The zoning ordinance identifies the general criteria to evaluate suitability of a conditional use, including 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. MCC 6-6-7, E,F. Because mining projects often have both direct and indirect impacts on the environment, economy and local communities these and other zoning ordinance criteria necessitate consideration of the entire mining project, and therefore 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.

The application was submitted to the Malheur County Planning Director on January 11, 2019, acknowledged by letter on January 15, 2019 and scheduled for a public hearing on March 28, 2019 indicating that Malheur County has accepted the application and determined it to be complete.

However, the application is not complete because all pertinent issues have not been addressed in the application and additional information is needed before complete consideration of whether the application meets all criteria can be given. In accordance with Malheur County Code 6-9-6 the county should make a determination that additional information is needed and additional criteria must be met.

**b. Future issuance of a DOGAMI Chemical Process Mining Permit is not a permissible substitute for county land use authority**

In numerous instances the application refers to the ongoing Chemical Process Mining permit process coordinated by the Oregon Division of Geology and Mineral Industries (DOGAMI) and various reviews and studies that will be completed during that review process, prior to a DOGAMI permitting decision. This coordinated process is intended to ensure robust, coordinated consideration of applications for chemical process mines. Here, the application references and relies on, the presumed DOGAMI review and eventual approval of most aspects of the proposal. This approach is flawed.

For instance, the application acknowledges the Malheur County standard requiring cooperation with other government agencies in the enforcement of mining regulations. (Application at 19.) Yet, the application construes that cooperation in an artificially narrow manner. Critical items such as the site reclamation plan (Application at 34.) and sage-grouse mitigation plan (Application at 40.) are not designed in cooperation with DOGAMI but instead deferred entirely to the DOGAMI permitting process. Such deference inappropriately limits Malheur County jurisdiction over the proposed mine project and exposes the county to potential environmental and financial liabilities from mining impacts and pollution that require more detailed consideration.

Problematically the DOGAMI coordinated review process is not complete and both the application and staff report contain numerous references to information and studies that *will* be performed as part of the DOGAMI review, but are not complete or have not yet begun. The absence of this information and documents from the application and pre-hearing record available to the public is further evidence that the application is not complete, and the absence of this evidence in the record means that the applicant has no basis for sustaining its burden of proof on the criteria where only *future* evidence is promised. The applicant has the burden of supplying proof *with* a land use permit application for inspection by the public and the Planning Commission, and without proof, which does not exist in the application as it currently stands, the application does not meet *any* of the criteria for approval by the Planning Commission.

The application and staff report suggest that the Malheur County land use change permit can be conditioned on the future issuance of and compliance with the DOGAMI chemical process mining permit reclamation plan (Application at 11, 34) (Staff Report at 26). However, because DOGAMI has not completed its review of the project and because associated baseline data and plans are not complete and agreed to by participating state agencies, the planning commission should deny the application until the applicant can provide evidence showing completion of baseline studies and issuance of a DOGAMI permit that meaningfully satisfies Malheur County Code. For these reasons alone, the Planning Commission should deny this permit application and require the filing of a *complete* application before any further proceedings.

**c. The application is incomplete and requires a continuance for further review**

Given the size of the project and the complex nature of the material that will be presented in support of and in opposition to the application, ONDA and 1000 Friends hereby request a continuation of the hearing as required by ORS 197.763 to allow the public an opportunity to respond to any new evidence expected to be presented at the hearing or introduced into the record. As parties, ONDA and 1000 Friends hereby request that we be provided a reasonable opportunity to submit responses to any new testimony or evidence presented at the hearing or filed with the Planning Department or Planning Commission related to this application.

The Planning Commission is also obligated under the Oregon land use statutes to allow public written testimony to be presented up to and including the time of this and any subsequent hearing, and may not legally impose a requirement for submission of written testimony in advance of the hearing. ORS 197.763(6)(b), see generally ORS 197.763.

**Issue Two: The applicant has not carried its burden of proof to show that the application satisfies the criteria for the requested land use permit.**

“A conditional use is a use of land expressly authorized if the general and specific criteria set forth in this chapter are met. The applicant for the conditional use must show that the use will not create problems that call for denial or special conditions. The use should be in character with existing development in the zone and approval may be conditioned with requirements which are intended to make the use and the facilities it requires an asset to the area.” MCC 6-6-1.

The Malheur County Comprehensive Plan further specifies that “The burden of proof is upon the one seeking change.” MCC 6-11-5. The application, as it currently stands, includes no or insufficient evidence to show that the following criteria and the applicant’s burden of proof are met:

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

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

The applicant has failed to demonstrate how the proposed use is consistent with comprehensive plan goals and policies.

As to Goal 3, the applicant has not established that this land is not agricultural land that deserves protection. Applicant admits there is no soils data for the property from NRCS. Yet the staff report makes a conclusory statement that the property contains Class VI and VII soils that are unsuitable for agriculture. Class VI soil is not unsuitable for agriculture; in fact in many areas of eastern Oregon Class VI soils are good grazing land. Further, the staff report appears to defer to an unreviewed, outdated soils report taken from an unidentified report that does not even appear to contain a soil map. (see Exhibit 5 of the application). Additionally there is evidence in the record that the land *has* been used for grazing. Thus it is a rebuttable presumption that the land is agricultural land that should be protected in accordance with Goal 3 of the comprehensive plan. Thus, the County must analyze what sorts of protections might be warranted based on potential impacts from the mining operation. The county’s analysis of consistency is insufficient.

Policy of Goal 3 states “Normal farming and ranching activities will be allowed to exist and continue without interference from non-farm users of the land.” The county must analyze interferences from noise, air pollution, dust, odor, effects from dust mitigation tactics, groundwater pollution, groundwater depletion, potential cyanide spills, potential tailings and dam leakage containing cyanide and acid mine drainage constituents, potential fuel spills, fencing, or the dangers from increased frequency of large trucks and mine employee transportation on the roadway. Calico’s answer addresses the interference of livestock from their perspective but does not address interference from the perspective of the rancher(s) who use the surrounding open range. It is also unclear whether the applicant has addressed impacts to grazing on surrounding federal lands.

Goal 5 of the comprehensive plan is to “conserve open space and protect natural and scenic resources.” Policy 3 of the subsection on Mineral and Aggregate Resources states: “the County will cooperate with other government agencies in the enforcement of mining regulations.” Policy 1 of the Fish and Wildlife Habitat subsection states: “the county will continue to cooperate with local, state and federal agencies to identify the location, quality and quantity of fish and wildlife habitat.” Policy 4 of the Water Resources subsection states: “The county will notify and consult with appropriate state agencies during review of development proposals that might affect surface or groundwater quality.” The County has not met these criteria in its process of evaluating this proposal. The staff report states that these policies are planning statements and that they do not apply but the county must act in a manner that is consistent with and in furtherance of its comprehensive plan. In this case, coordination with other agencies to protect water and natural resources is necessary and there is no indication in the record of what coordination has occurred. For example, the application states that there will be predicted dewatering rate of 250 to 600 gallons per minute. There is no analysis of what the impacts of either groundwater withdrawals for mining use or dewatering will be on hydraulically connected surface water or other groundwater, including any groundwater used for irrigation (which is also implicated by Goal 3 policies). In fact, page 77 of the application notes that there has been no testing of hydraulic connectivity or transmissivity within the area.

Goal 5, Policy 2 states: “the county will consider the impacts of the proposed development on fish and wildlife habitats when making land use decisions.” As discussed below, the county must adequately identify the fish and wildlife habitats that might be impacted by the proposed use and determine what those impacts will be and whether they can be mitigated. Further, the staff report agrees that ODFW is obligated to review this project in its entirety and may request mitigation as appropriate.

Policy 1 of the Water and Sewage Subsection of Goal 11 states: “The county, in considering land use proposals, will ensure that the physical characteristics of the land that affect sewage disposal, water supply, and water quality are carefully considered.” The county must carefully analyze the potential water quality impacts of the proposed use. The applicant has provided little to no information on how the mining operation could affect groundwater and water quality in the area. The applicant’s groundwater monitoring is not described. It is unclear where the tailings facility will be located on the site and how any drainage from that facility will be managed (Attachment A - TRT Meeting Summary – November 28, 2018). Cyanide fate and transport can vary and it is possible for it to end up in the soil, air, surface water or groundwater. The applicant has not completed an approved plan for disposal of tailings. The County should not find that the application is consistent with this provision of the comprehensive plan until that work is completed and approved by DEQ and DOGAMI and until applicant

discloses potential impacts so that the county can ensure consistency with this criterion, if that is possible.

*B. Specific Plans: Specific plan recommendations.*

The application asserts that there are no specific plans applicable to the Patent Parcel. (Application at 25). The application also fails to address whether there are specific plans applicable to the entirety of the project. Despite listing specific plan recommendations as an applicable criterion, the staff report fails to include a specific finding or explanation as to whether or how the application is consistent with this comprehensive plan policy.

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

There is nothing in the application to indicate whether the applicant has conferred with surrounding property owners, including but not limited to the owner of the small farm 5 miles away.

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

The application fails to demonstrate the availability of services and utilities and the staff report does not explain whether or how the applicant will meet this policy. The application asserts that: "Idaho Power will install a new power line along the access roads to the Project Area based on a power purchase agreement with Calico. The new Idaho Power service will include a 23-mile distribution circuit (powerline), a new 69/34.5 kV to 14 MV transformer, and a new 34.5-kV 167-amp regulator. The line will connect at the Hope Substation near Vale, Oregon and run to the mine site along the main BLM access roads. The mine substation will be located on adjacent BLM land." (Application at 25-26). However, the application fails to show that the proposed power line has or will obtain required approvals for the proposed power service.

The staff report addresses this policy in a too-limited fashion, stating: "Calico will be required to apply for right-of-way permits to install new power lines within County rights-of-way, including Russell Road." (Staff Report at 16.) This condition of approval is insufficient. The extension of a new 23 mile powerline will entail potentially significant impacts to wildlife and other resources and land uses that aren't evaluated in the application or staff report.

If new right-of-way permits are sought and/or considered they must evaluate impacts to wildlife species and habitat along their length, including Greater sage-grouse Core habitat and habitats and occurrences of Golden Eagle, Ferruginous Hawk, Western Burrowing Owl or other species. All wildlife habitat impacts must be considered in conjunction with the entire project and the Oregon Fish and Wildlife Habitat Mitigation Policy must be applied to such permits. This evaluation should be conducted in conjunction with the entire project and a condition of approval should require issuance of the right-of-way permits prior to and pre-construction or construction activities on the Patent Parcel or project area. The Planning Commission should deny this permit application and require the filing of a complete application containing detailed information about the proposed powerline, right-of-way applications and impacts to other resources before any further proceedings.

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

The possible adverse effects to the environment and human health from a new hardrock mining operation are enormous and myriad. (Boulanger and Gorman, 2004.) These impacts stem from modern, industrial technology used to extract ore, chemicals used in the mining process, harmful constituents in the mined material, air and water pollution resulting from mine waste, safety risks inherent to large-scale industrial operations and cyclical economics of the mining industry and the specific project. In short, hardrock mining has significant potential to effect the stability of Malheur County's environment and its social and economic characteristics which requires careful examination before the application could be approved. As submitted, the application contains insufficient information for the planning commission to rigorously evaluate the project's likely environmental, social and economic impacts and for this reason, the Planning Commission should deny this permit application and require the filing of a *complete* application before any further proceedings.

### **1. Hardrock mining is particularly susceptible to negative effects of 'boom and bust' economics**

Analyses of employment data in mining-dependent counties has found higher levels of unemployment than in agriculture-dependent counties even during periods with high levels of mining activity and depressed economic activity in the agricultural sector. In addition, there is at least suggestive evidence that mining communities' economic problems tend to become increasingly pronounced over time, exacerbated by the volatility of commodity prices, the potential for a cost-price squeeze, and the problem of "flickering" (i.e., the periodic shutting down of extractive operations, as prices fluctuate above and below the costs of operation in specific locations). This flickering can contribute to problems of unemployment and poverty, given that laid-off workers will often choose to remain in the area, sometimes for extended periods, in the hope or belief that the high-wage jobs will ultimately return. (Attachment B - Freudenberg and Wilson, 2002.)

The lack of major hardrock mining operations in Oregon in the modern era has shielded the state and local communities from the well-documented boom and bust phenomenon in mining communities throughout the rest of the western United States. In numerous instances the boom and bust cycle of mining has led to troubling social and economic outcomes that are important for the planning commission to carefully consider. For example, two mines in Leadville and Empire, Colorado owned by Freeport McMoran Copper and Gold have a lengthy history of closures, proposed re-opening, delays and cyclical impacts to local economies. Mining operations are frequently proposed to re-start and are then delayed or not pursued resulting in deeply felt economic and social impacts in local communities.<sup>1,2,3</sup> This type of cyclical economic effect is the type of critical effect to Malheur County's social and economic characteristics that the county is uniquely positioned to evaluate and protect against. The application and staff report fail to thoroughly consider these issues relevant to this county policy.

---

<sup>1</sup> <https://www.aspentimes.com/news/reopening-of-climax-mine-excites-leadville/> Last accessed March 26, 2019.

<sup>2</sup> <https://www.aspentimes.com/news/leadvilles-climax-mine-reopening-delayed/> Last accessed March 26, 2019.

<sup>3</sup> <https://www.denverpost.com/2016/03/17/clear-creek-rejects-devastating-tax-proposal-by-henderson-mine-owner/> Last accessed March 26, 2019.

Additional examples from around the west are informative for the future of Malheur County. In Questa, New Mexico the permanent closure of mining operations there led not only to job losses and economic impacts, but also to extensive and extraordinarily costly reclamation and remediation efforts accompanied by a Superfund site designation with expected costs of nearly \$800 million.<sup>4</sup> The significant and oftentimes permanent environmental impacts of hardrock mining are counterpart to economic and social impacts that warrant careful consideration and planning if new mining is to be permitted. Very few projects or industries could result in such significant effects to the community's social and economic characteristics. The planning commission must require additional, reliable information before it can adequately consider the project's effects on the Malheur County social and economic characteristics and for this reason, the Planning Commission should deny this permit application and require the filing of a *complete* application before any further proceedings.

## 2. Malheur County employment and missing workforce skillsets

Malheur County does not have a mining work force. The most recent State of Oregon Employment Department statistics indicate such a small number of people employed in the mining sector that the data is redacted to protect proprietary information. (Attachment C – 2018 Malheur County Employment and Wages by Industry) In stark contrast, the application cites a need for at least 260 new jobs required for mine planning, construction, operation and reclamation. (Application at 27.) Of these positions, approximately 110 are operational jobs presumably requiring technical mining training and expertise. Such a workforce does not exist in Malheur County, therefore requiring either training for the existing workforce, importing outside third-party contractors or recruiting employees to relocate to the county. If some or all of these positions required outside contractors or recruiting employees to relocate to Malheur County, there would be significant social and economic effects, such as demand for housing, that require consideration by the County irrespective of whether those effects would be considered positive or negative.

Mining projects may create jobs, roads, schools, and increase the demands of goods and services in remote and impoverished areas, but the benefits and costs may be unevenly shared. If communities feel they are being unfairly treated or inadequately compensated, mining projects can lead to social tension and conflict. (Attachment D – ELAW, 2010.) Examples across the western U.S. show the negative social and economic effects that can result when natural resource extraction creates high levels of demand for housing and social services over relatively short periods of time. One need only look to the Marcellus Shale play in the Appalachian Basin, the Bakken formation in North Dakota or other historical examples to learn about the effects that high levels of demand for a specialized workforce can create in a community. The planning commission has a direct and substantial interest in these local effects and an obligation to consider such effects under the General Criteria to Evaluate Suitability. (MCC 6-6-7 E.)

The application attempts to address these social and economic effects with an inadequate and unsubstantiated statement regarding workforce training: "Through its intended partnerships with local community colleges and training opportunities, Calico hopes the Project will provide a base of expertise in the County that can be levered for future mining projects in Malheur County and will provide employees with technical skills that can be applied to different industries." (Application at 27.) Not only

---

<sup>4</sup> [https://www.santafenewmexican.com/news/business/shutdown-of-molybdenum-mine-hits-questa-hard/article\\_1bc7fca2-178b-5222-bee6-30c8a219ce53.html](https://www.santafenewmexican.com/news/business/shutdown-of-molybdenum-mine-hits-questa-hard/article_1bc7fca2-178b-5222-bee6-30c8a219ce53.html) Last accessed March 26, 2019.

does the statement rely on the intention to provide such training in the future, it lacks any evidence the planning commission can rely on to demonstrate any ameliorating effect on the social and economic characteristics of Malheur County. The planning commission can't base a decision on the incomplete employment evidence in the record before it and should deny this permit application and require the filing of a *complete* application before any further proceedings.

### **3. The application contains unsupported assertions about wages and the economic benefits of the project**

The application repeats one of the most common and unfortunate assertions made by mining proponents – namely that the project will have beneficial effects on Malheur County's social and economic characteristics. (Application at 26.) This assertion is not supported by the economic literature concerning hardrock mining operations or by numerous examples from mining operations across the western United States. Findings from Freudenbeg and Wilson highlight what has been called a "curious anomaly"—with mining-dependent counties sometimes having higher median incomes, but also higher proportions of households living in poverty. Their results, in other words, indicate that even when higher incomes are associated with mining, those incomes do not prove sufficient to alleviate the problems of poverty and unemployment so often associated with mining-dependent regions. (Freudenberg and Wilson, 2002.)

The application exacerbates this unsupported claim, stating that there are no known social or community issues that would have a material impact on the project's ability to extract mineral resources. Identified socioeconomic issues (employment, payroll, services and supply purchases, and state and local tax payments) are anticipated to be positive. (Application Exhibit 1 at 105.) The application also states that operational and post-closure/ reclamation jobs are anticipated to pay a (median/average) of \$79,518, which is significantly higher than the median wage for the County. (Application at 27.) However, this wage figure is unsupported by data available from the U.S. Bureau of Labor Statistics (BLS) for the Metal Ore Mining sector. The most recent annual mean wage data from BLS is \$62,560 for all metal ore mining occupations. (Attachment E - Metal Ore Mining - May 2017 OES Industry-Specific Occupational Employment and Wage Estimates.) This significant and unexplained discrepancy paints an overly rosy picture of likely wages associated with the project and leads to overly optimistic conclusions about the project's beneficial effects on Malheur County's social and economic characteristics.

The staff report offers no evaluation of the claims made about effect of the proposed use on the stability of the community's social and economic characteristics. Instead the staff finding merely reiterates the unsupported claims made in the application, stating "The project will have beneficial effects on Malheur County's social and economic characteristics for the reasons explained on pages 26-28 of the Application." (Staff Report at 16.)

The lack of evidence supporting these assertions about wages, number of jobs, project duration and the positive economic effects of the project or any staff evaluation of these claims whatsoever makes a thorough assessment of the project's actual effects to Malheur County's social and economic characteristics difficult, if not impossible. The planning commission must require additional, reliable information before it can adequately consider the project's effects on the Malheur County social and economic characteristics and for this reason, the Planning Commission should deny this permit application and require the filing of a *complete* application before any further proceedings.

#### 4. Effects to social services, and community facilities and housing

Natural resources extraction projects can create an influx of a new workforce leading to impacts on community facilities and social services. Examples from natural gas plays around the country are common.<sup>5,6</sup> Housing shortages can lead to increased demands on shelters and other forms of short-term housing.<sup>7</sup> Short-term workforce housing known as man camps are sometimes utilized.<sup>8</sup> Regardless of differing opinions on these issues and solutions, the possibility of such impacts as a result of the project requires thorough consideration.

The application lacks critical information about social and economic impacts likely to result from the project, if approved. The absence of information about effects on the Malheur County housing market is one such deficiency. The application makes only one passing mention of housing, suggesting that the State of Oregon and Federal NEPA process will evaluate potential impacts to the Malheur County housing market. (Application, Exhibit 1 at 105.) This ignores the very real social effects increased housing demand could have on Malheur County and defers to future permitting processes unlikely to evaluate housing impacts or require conditions of approval to address housing impacts. Malheur County faces housing availability and affordability challenges.<sup>9</sup> (Attachment F – Malheur County Demographic and Housing Profile.) The prospect of short or long-term housing for an additional 100-200 mine workers and their families would almost certainly impact housing availability and affordability. The Planning Commission should deny this permit application and require the filing of a *complete* application addressing these issues before any further proceedings.

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

##### 1. Fish and Wildlife Resources

The application contains incomplete, inadequate and incorrect information regarding fish and wildlife resources. For that reason alone, the Planning Commission should deny the application, because the applicant has not met its burden of showing that the proposal will not have a significant permanent adverse effect on fish or wildlife habitat.

The application asserts that the County can find that activities on the Patent Parcel will not cause any detrimental or permanent harm to fish and wildlife. (Application at 19.) This is not the case. The project,

---

<sup>5</sup> <https://www.foxnews.com/us/bakken-oil-booms--and-so-does-crime-on-the-plains> Last accessed March 22, 2019.

<sup>6</sup> [https://missoulian.com/news/local/drug-arrests-spike-as-bakken-oil-patch-booms/article\\_3af0b4d4-32ca-11e3-ba72-0019bb2963f4.html](https://missoulian.com/news/local/drug-arrests-spike-as-bakken-oil-patch-booms/article_3af0b4d4-32ca-11e3-ba72-0019bb2963f4.html) Last accessed March 22, 2019.

<sup>7</sup> <https://www.cbc.ca/news/canada/north/whitehorse-housing-crisis-sparks-potential-solutions-1.1006484> Last accessed March 22, 2019.

<sup>8</sup> <https://www.houstonchronicle.com/business/energy/article/Man-camps-Nevada-style-13579993.php> Last accessed March 22, 2019.

<sup>9</sup> <https://www.malheurenterprise.com/posts/4784/in-ontario-solutions-to-housing-shortage-elusive> Last accessed March 22, 2019.

including activities on the patent parcel, will cause detrimental and permanent harm to fish and wildlife from long-term habitat modification and loss as well as impacts from proposed mine project activities. As such, the Malheur County Code clearly requires consideration, presumably leading to findings, of the impacts of proposed development on fish and wildlife habitats and conditions of approval to avoid, minimize and mitigate for such impacts. The county must require the applicant to more accurately describe the project's wildlife impacts and proposed mitigation strategies. Approving the application without identifying all affected species and their habitats and the appropriate mitigation(s) for those impacts will only exacerbate the already dire situation of many of these species.

The application identifies six BLM and state sensitive species and their habitats found within the 2-mile Wildlife Study Area buffer that should be further considered. (Application at 24.) The staff report suggests that because those habitats and species occurrences are outside of the Patent Parcel and Project Area these species and their habitats will not be directly affected by the project. The staff finding is that the Applicant's Wildlife Resources Baseline Report provides substantial evidence that the proposed mine on the Patent Parcel will not have a significant permanent adverse effect on fish or wildlife habitat. This is an incorrect conclusion unsupported by evidence in the Application or the Wildlife Resources Baseline Report.

The application fails to acknowledge mapped ODFW big game winter range on and surrounding the project area, including the proposed powerline and road access (Attachment G – ODFW Deer and Elk Winter Range.) Much like sage-grouse low-density habitat, big game winter range are considered to be Category 2, essential and limited habitats. The planning commission should require additional information concerning big-game habitat in and surrounding the project area and require the applicant to work with ODFW to develop appropriate in-kind, in-proximity mitigation pursuant to the mitigation policy.

The Migratory Bird Treaty Act prohibits that take of avian species protected under the Act without a permit issued by USFWS. Avian species are a critical concern for the project due to the storage of acid-generating waste rock, tailings and water as well as the potential for cyanide exposures from all project elements both on and off the Patent Parcel. The application makes no mention of the potential for lethal or sub-lethal impacts to avian species from the project and the planning commission must require additional information about cyanide and acid mine drainage effects to all wildlife, including avian species, in order to weigh whether the proposal will not have a significant permanent adverse effect on fish or wildlife habitat

The application also downplays potential effects on pygmy rabbits and their habitat. Pygmy rabbits, like sage grouse, are dependent on large areas of intact sage-steppe habitat for their survival. Any activities that fragment pygmy rabbit habitat—such as the development of mining infrastructure, roads and powerlines through previously-undisturbed or minimally-disturbed habitat— could lead to increased pressure on the species and its continued existence. An extensive body of science shows that the pygmy rabbit is an imperiled, “extreme” sagebrush-obligate species that responds negatively to the destruction of its habitat. FWS describes the pygmy rabbit as a “habitat specialist.” 70 Fed. Reg. at 29,265. There is no evidence in the application that the proposed use will be designed and operated so as to protect pygmy rabbits, nor that the proposed use will not materially jeopardize habitat areas which are necessary to sustain local or migratory populations of this imperiled species. In fact, the opposite is true: most of the site covered by this application are or could be suitable habitat for pygmy rabbits and

require further consideration (Attachment H – Pygmy Rabbit Habitat Quality).

The applicable fish and wildlife standard is that the project does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the fish and wildlife habitat protection plan for Malheur County. (MCC 6-6-7 F.) As acknowledged in the staff report the Oregon Fish and Wildlife Habitat Mitigation Policy (the Mitigation Policy) supersedes the Fish and Wildlife Habitat Protection Plan referenced in this standard. (Staff report at 11.) The Mitigation Policy not only addresses minimization and compensatory mitigation, but also goals and standards for general application to individual development actions. (OAR 635-415-0000.) Here, the staff report suggestion that ODFW can request mitigation requirements is not sufficient. Malheur County must require application of the Mitigation Policy and the applicant must produce evidence of proposed mitigation as condition of approval that must be met *prior to project approval or, in the alternative, prior to the commencement of any pre-construction or construction activities.*

**2. Sage-grouse - The application mischaracterizes existing sage-grouse habitat and is inconsistent with the Oregon Sage-grouse Action Plan, Oregon Wildlife Habitat Mitigation Policy and Oregon Administrative Rules concerning sage-grouse.**

While the Malheur County Code does not contain procedures for considering a permit application pursuant to the sage-grouse rule, both the project and the intertwined land use change application are, by definition and by rule, a development action and a large-scale development within significant sage-grouse habitat. As specifically outlined in OAR 660-033-0115 (3) and 635-140-0000 the applicant must adhere to the Oregon Sage-grouse Plan and the Oregon Fish and Wildlife Habitat Mitigation Policy.

The Application mischaracterizes sage-grouse habitat as well as key provisions of the State of Oregon Sage Grouse Action Plan and the Oregon Fish and Wildlife Habitat Mitigation Policy requiring additional and corrected information before the planning commission can adequately consider the application and make a recommendation to the County Court.

The application also fails to make clear the likely impacts of the proposal on important sage-grouse habitat from the additional 9,500 acres of mining claims controlled by the applicant and described as potential future additions to the project.<sup>10,11</sup> Because these parcels are controlled by the Applicant their future development would be a connected action and one with serious consequences for core sage-grouse habitat and connectivity among habitat types within the project area. The application must include information about these potential impacts to avoid partial and segmented review of likely project impacts to sage-grouse.

*Oregon Sage-Grouse Action Plan*

As described in the scientific literature on sage-grouse and encapsulated in the Oregon Sage Grouse Action Plan, Sage grouse need contiguous, undisturbed areas of high-quality habitat. Habitat loss and

---

<sup>10</sup> <http://www.paramountnevada.com/paramount-gold-nevada-acquires-strategic-land-package-at-its-grassy-mountain-gold-project-in-eastern-oregon/> Last accessed March 26, 2019.

<sup>11</sup> <http://www.paramountnevada.com/paramount-gold-nevada-acquires-promising-high-grade-gold-prospect-near-grassy-mountain-project-eastern-oregon/> Last accessed March 26, 2019.

fragmentation are the two leading causes for the long-term decline in sage-grouse populations. Land management decisions need to examine landscape patterns of sagebrush habitat and seek strategies to ensure that large connected patches of sagebrush are maintained and protected to minimize the impacts of habitat loss and fragmentation. The low-density and general sage-grouse habitats found in the project area are important components to maintain connectivity between core habitats and minimize further habitat fragmentation. Surface mining and appurtenant facilities within sage-grouse habitats result in the direct loss of habitat, habitat fragmentation, and indirect impacts from disturbance (e.g., noise, dust). (Attachment I – COT Report, USFWS, 2013). The applicant has not met its burden of proof that the proposed use will be designed and operated so as to protect sage grouse and not jeopardize sage grouse habitat areas.

The Oregon Action Plan for Sage-Grouse specifies requirements for county permitting of large-scale developments within significant sage-grouse habitat as established in administrative rule through the Land Conservation and Development Commission. The application fails to demonstrate consistency with these procedures and requirements found in OAR 660-023-115 (the Sage-Grouse Rule). Despite the applicant's assertion that the Property is not listed by the County as a Goal 5 resource the Sage-Grouse Rule applies and provides clear standards for the review and approval of large-scale developments including mineral uses. (OAR 660-023-115 (3)(i)) (Application at 14.)

#### *Inapplicable sage-grouse habitat delineation*

As an initial matter the planning commission and county court should affirm that the proposal falls partly within low density sage-grouse habitat and partly within general habitat as identified and mapped by the Oregon Department of Fish and Wildlife (ODFW) and, as acknowledged in the application, that the Sage-Grouse Rule (*inclusive of OAR 635-140-0000 and OAR 660-023-0115*) applies to this proposal. (Application at 14.) The planning commission and county court must disregard the applicant's other characterizations of sage-grouse habitat as found in the Applicant's Wildlife Baseline Report included as Exhibit 7 to the Application (the Wildlife Report). The Wildlife Report uses an inapplicable procedure for characterizing sage-grouse habitat within the project area leading to incorrect assertions about habitat extent and quality, specifically:

“The final habitat assessment depended on a site-specific determination of whether these areas either contain habitat upon which sage-grouse depend or contain signs of use by this species. Where neither applied, the habitat categorization was based on vegetation characteristics or the presence of other sensitive species.” (Wildlife Report at 14).

“The ODFW GIS data layer for greater sage-grouse Core and Low Density Areas (ODFW 2013a) (Figure 4) served as the foundation for characterizing habitat for this species. Suitable habitat was defined by the structure and quality of sagebrush shrub-steppe and its proximity to meadows, springs, or riparian areas.” (Wildlife Report at 18).

ODFW has developed and maintains the maps that identify core area, low density and general sage-grouse habitats. (ORS 635-140-0015). The applicant's characterization of sage-grouse habitat in the Wildlife Report is an impermissible attempt to modify those maps. The location and type of sage-grouse habitat is solely determined by the map produced by ODFW. (Attachment J – ODFW Sage-Grouse Core

Areas, 2011.)

The Wildlife Report also misconstrues how sage-grouse habitat is to be considered through the sage-grouse rule. Irrespective of any site-specific determination about habitat or use by sage-grouse, all sage-grouse low density areas are considered to be Category 2, essential and limited habitats. Approximately half of the project area fall within low-density sage-grouse habitat and will require In-kind, in-proximity mitigation as Category 2 habitat.

The application fails to meaningfully evaluate likely mitigation requirements or to demonstrate the applicant's understanding and acceptance of likely mitigation requirements. The State of Oregon has developed a Sage-Grouse Development Siting Tool<sup>12</sup> designed to help developers site projects within and adjacent to sage-grouse habitat in a general manner consistent with the Oregon Sage-Grouse Action Plan and ODFW Mitigation Policy. Nowhere in the application or the wildlife report does the applicant acknowledge this tool or specific mitigation techniques that would be required to approve the project.

In accordance with OAR 660-023-0115(9)(b) a county may only approve a conflicting use upon:

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

Here, the application suggests that "the Applicant requests that the County impose a condition requiring compensatory mitigation for threats to significant sage grouse habitat within the Patent Parcel, as follows: 'The Applicant shall comply with ODFW minimization and compensatory mitigation requirements, if any, for threats to significant sage-grouse habitat on the Patent Parcel.'" (Application at 40.) Mirroring the applicant's request, the staff report recommends that the planning commission include as a condition of approval for the project a requirement that "the Applicant shall comply with Oregon Department of Fish and Wildlife (ODFW) minimization and compensatory mitigation requirements, if any, addressing significant sage-grouse habitat on the Patent Parcel." (Staff Report at 27.)

This recommended condition of approval is inconsistent with OAR 660-023-0115(9)(b). ODFW has not confirmed that the project does not pose a threat to sage-grouse habitat and the proposed condition of approval is too narrow and incorrectly structured to meaningfully address sage-grouse habitat impacts. Instead, the planning commission should impose a condition of approval requiring ODFW-recommended mitigation for this and all inherently connected project components *prior to project approval or, in the alternative, prior to the commencement of any pre-construction or construction activities.*

*G. General Criteria MCC 6-6-7:*

#### **1. Noise, Dust, Traffic and Visual Screening**

---

<sup>12</sup> [https://tools.oregonexplorer.info/OE\\_HtmlViewer/index.html?viewer=sage\\_grouse\\_dev\\_siting](https://tools.oregonexplorer.info/OE_HtmlViewer/index.html?viewer=sage_grouse_dev_siting). Last accessed March 21, 2019.

There is no evidence in the record demonstrating what how the view will be impacted by the proposed use.

## **2. Setbacks from property lines**

There is no evidence in the record demonstrating how the setbacks from property lines will be implemented.

## **3. Availability of services and utilities**

We support the proposed condition that the applicant be required to join the Rural Fire Protection District but it is unclear whether this will be sufficient to address potential fire impacts should a fire occur in the area. In particular, the TRT raised issues relating to potential impacts of a fire that releases cyanide. There should be an emergency response plan and the waste streams from cyanide fires can be dangerous. (See – Attachment A - TRT Meeting Summary – November 28, 2018.) There is no evidence in the record analyzing how these potential risks will be addressed.

## **4. Prevention of the collection and stagnation of water at all stages of the operation**

The application has no information on how this criterion will be satisfied. A promise to submit future evidence does not constitute substantial evidence to support the application. The applicant has not met its burden of demonstrating compliance with MCC 6-6-7 and cannot meet this criterion by the facts presented in this application.

The application describes cyanide tank leaching and that there will be a tailings storage facility where the cyanide waste will be placed (Application at 11). As mentioned previously there is very little information available as to where this storage area will be located (except that generally it will be on federal land), the processes purporting the removal of cyanide or the chemical composition of the tailings and thus it is impossible for the county to analyze how storage of these tailings in this area will impact water collection, stagnation, drainage and water quality. Tailings storage areas can, and frequently do, fail resulting in large scale contamination of groundwater and surface water. See Attachments K through O. The County should require additional information from the applicant in order to determine whether this criterion is met.

## **5. Rehabilitation of the land upon termination of the operation**

The application acknowledges that the reclamation plan is only preliminary and subject to change through the DOGAMI permitting process. (Application at 11, 34.) In sharp contrast, the application states that the county can find that the application includes a plan for rehabilitation of the Patent Parcel upon termination, and that the Patent Parcel will be adequately rehabilitated after mine reclamation is completed. (Application at 34.) Not only is this inconsistent with the zoning code, the staff finding is based on the promise of *future* evidence when there is incomplete or inaccurate evidence in the record before it. The staff report exacerbates this flaw, finding the draft reclamation plan acceptable and conditions approval on a future DOGAMI reclamation plan. This is inconsistent with the Malheur County

zoning code reclamation standard at MCC 6-6-8-4 A.6<sup>13</sup> and an impermissible delegation to the State of the Planning Commission's authority to grant and condition a land use permit. Accordingly, the applicant has failed to carry its burden of proof that the criteria required by Section 6-6-7 and 6-6-8-4 of the Malheur County Comprehensive Plan have been met.

**Issue Three: The application does not disclose any information about the potential effects of cyanide leach chemical process mining or acid mine drainage on human or animal health or surrounding farming and ranching operations**

The 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. The Planning Commission should require the applicant to submit information about potential health effects to humans, livestock, and wildlife to allow the public and the Commission to make a fully-informed decision on the long-term impacts of this project.

Specifically, ORS 215.296, as implemented by MCC 6-6-7, requires an analysis of whether the proposed use will force a significant impact in accepted farm or forest practices on surrounding lands devoted to farm and forest use. Here the applicant has not provided any information on how the proposed mining operation could result in impacts to grazing operations on the surrounding lands, including BLM lands. Applicant should disclose where cattle are grazing on the surrounding lands and what ranching practices occur, including the locations of livestock watering that could be impacted by any aspect of the proposed operation, including, but not limited to, dewatering of springs and seeps caused by project wells, acid mine drainage impacts to water quality or toxic exposures to livestock. (Attachment P – Allotment Map.)

**Issue Four: The application must quantify the necessary financial surety and any approval must require such surety as a condition of approval prior to the start of any pre-construction, construction or mining activities**

The entire Grassy Mountain project area is comprised of approximately 981 acres, of which 919 acres are public land administered by the BLM and approximately 62 acres of which constitute the Patent Parcel. Both gold and silver were discovered in the Project Area by two independent geologists in 1986, who staked and patented the claim area that became the Patent Parcel. The gold and silver resources at Grassy Mountain are not exposed on the surface, but are located roughly 500–700 feet below the surface of the Patent Parcel. (Application at 7-8.)

This description of the project area, the Patent Parcel and the location of the gold and silver resources are important for the planning commission to consider in the context of calculating appropriate financial surety for the project. As outlined in county code, the county may require an applicant to furnish the county with a performance bond or such other forms of assurance that the county deems necessary and reasonable to guarantee development in accordance with the standards established and conditions attached in granting a conditional use. (MCC 6-6-11: Assurance Requirements).

---

<sup>13</sup> Submitted plans and specifications shall contain sufficient information to allow the planning commission to set standards pertaining to rehabilitation of the land upon termination of the operation.

When taken together - the location of the ore body under the Patent Parcel, the characterization of the ore body as sulfide-bearing (See - Attachment Q - DOGAMI TRT Geochemistry Subcommittee Meeting Summary March 7, 2018) and a mine design that will contact groundwater (Application at 7, 9) mean that this proposed mine has a potential to generate acid mine drainage in perpetuity. This risk is reinforced by the fact that the project will entail groundwater monitoring for at least 20+ years. (Application at 12.) This is perhaps the most significant risk that Malheur County must consider in conjunction with this proposal. The hardrock mining literature is replete with examples of costly, permanent water quality treatment requirements at hardrock mining sites due, in large part, to mining industry efforts to shield corporations from the perpetual liability of treating acid mine drainage. Such actions leave cities, counties and other government agencies exposed to the high costs of conducting mine site remediation and permanently operating water treatment facilities.

The application makes little mention of the fact that the ore body has been characterized as acid-generating by the applicant's own consultants and that the mine workings will come into contact with ground water, creating the circumstances necessary for acid mine drainage and the potential for permanent water treatment needs and financial liability. (See - Attachment Q - DOGAMI TRT Geochemistry Subcommittee Meeting Summary March 7, 2018); (Application at 7, 9). This is a critical issue for which planning commission must require clear, comprehensive and accurate information to minimize the risk of future financial liabilities for Malheur County. In the event of a future financial default of the mine owners or its successors in interest, Malheur County could inherit direct and financial responsibility for mine site remediation and water treatment.

Advances in mining technology over the past 100 years have made it economically feasible to mine lower grades of ore against a century of declining prices and have not been counterbalanced with advances in economically efficient means of managing the exponentially expanding volume of associated environmental liabilities in waste rock, tailings and waste waters. In fact, those new technologies which do offer better management of mine wastes usually add significant cost and are often detrimental to bottom line financial feasibility. This is evidenced in a post- 1990 trend toward un-fundable environmental losses of greater consequence. An interdisciplinary review of tailing storage facility failures from 1910-2010 establishes a clear and irrefutable relationship between the mega trends that squeeze cash flows for all miners at all locations, and this indisputably clear trend toward failures of ever greater environmental consequence. (Attachment R - Bowkers and Chambers, 2015.)

As noted by Kuipers and Carlson in their extensive review of mine site permitting and bonding, calculating and requiring appropriate financial assurance can protect regulatory entities, such as counties, from exposure to "reclamation costs, which vary significantly from state to state and mine site to mine site, range from less than \$1,000 per acre to more than \$20,000 per acre. The study shows approximately 150 major hardrock metals mining operations in the western United States, with a total disturbance acreage of approximately 250,000 acres, and a reclamation and closure bonding level in total of approximately \$1.1 billion. The average bond level for all the major mines is approximately \$4,400 per acre, however the range of cost varies at the various mines studied from less than \$1,000 per acre to greater than \$50,000 per acre. In the event the state is required to perform cleanup, an increase of costs above that estimated by the operator of from 50% to more than 500% might be expected to occur. One of the primary factors affecting reclamation and closure costs is the presence of acid mine drainage at many of the mine sites, requiring costly mitigation of related environmental impacts." (Attachment S - Kuipers and Carlson, 2000.)

Previous gold mines that involved cyanide leaching have left massive unfunded clean-ups in the laps of state and local authorities. As a result of these issues several states, including Montana, have voted to ban cyanide at open-pit gold mines. (See Attachment T – Gold legacy haunts Montana.)

Here again the application is silent or relies on the DOGAMI and BLM permitting process to establish required bond amounts. The planning commission should carefully understand the process, timing, and requirements these agencies will employ to require bonding appropriate to the protect and the degree of protection, or lack thereof, that these bonds may extend to Malheur County for future mine site remediation and water treatment costs. This is the county's opportunity to assert its interest in protecting its land and citizens from future contamination from dangerous mining practices from the state's only cyanide chemical mine. Malheur County should take heed of the experiences of Montana, New Mexico and Colorado and request that the applicant delay this land use permitting process until state permitting and bonding is complete. The County should further require its own bonding by the applicant to ensure future mine reclamation and the protection of Malheur County financial interests.

### **Conclusion**

As discussed herein, the application does not satisfy the legal requirements for a conditional land use permit or a sage-grouse rule permit. The Planning Commission should therefore deny application #2019-01-001 because the applicant has failed to sustain its burden of proof to show that the criteria for approving the applications are met. In the alternative, at a minimum, the Planning Commission must continue its hearings on this proposal, require the applicant to gather and submit complete information regarding baseline data, the proposed locations and processes to be used for the mining operations, the impacts of the project, accept additional public comment, coordinate with relevant state and federal agencies and require the applicant to address missing information and concerns identified by the commission and public. We further request that the record be held open for fourteen days following the hearing and that the undersigned be provided an opportunity to respond to any new evidence submitted by the applicant. Finally, if the County approves the application, it should include a condition that the applicant be bound by its current proposal and any future changes to the mining operation require a new land use permit.

Thank you for considering these comments and testimony. We look forward to participating in further proceedings in this matter.

Sincerely,

s/ Dan Morse, Conservation Director  
Oregon Natural Desert Association  
50 SW Bond St, Ste 4  
Bend, OR 97702

s/ Meriel L. Darzen  
1000 Friends of Oregon  
133 SW 2<sup>nd</sup> Ave, Ste 201  
Portland, OR 97204

cc: Ryan Houston, Executive Director, Oregon Natural Desert Association  
Mac Lacy, Senior Attorney, Oregon Natural Desert Association  
Randy Jones, DOGAMI

**Attachments**

Attachment A – DOGAMI Technical Review Team Meeting Summary November 28,2018  
Attachment B – Freudenberg and Wilson, Mining the Data  
Attachment C – 2018 Malheur County Employment and Wages by Industry  
Attachment D – ELAW Guidebook for Evaluating Mining Project EIAs  
Attachment E - Metal Ore Mining - May 2017 OES Industry-Specific Occupational Employment and Wage Estimates  
Attachment F - Malheur County Demographic and Housing Profile.  
Attachment G - ODFW\_885\_4\_Map\_ODFW\_Deer\_Elk\_WinterRange\_2009\_2012  
Attachment H - Pygmy Rabbit Habitat Quality  
Attachment I - Greater Sage Grouse COT Report 032513  
Attachment J - ODFW Core and Low Density Sage Grouse Habitat  
Attachment K - Acid mine drainage  
Attachment L - Cyanide Destruction document  
Attachment M - Cyanide uncertainties  
Attachment N - Trends in tailings dam storage  
Attachment O - USGoldFailureReport2017  
Attachment P - Map of adjacent BLM grazing allotment  
Attachment Q - 2018-03-13\_TRT\_Geochem\_03-07\_MtgSum\_FINAL  
Attachment R - Bowker & Chambers - Risk-Public Liability-Economics of Tailings Storage Facility Failures – 23Jul15  
Attachment S - Kuipers and Carlson\_Hardrock Bonding Report  
Attachment T - Gold legacy haunts Montana \_ The State  
Attachment U – Copies of citations referenced in footnotes

## References

Bowkers and Chambers, 2015. The Risk, Public Liability, and Economics of Tailings Storage Facility Failures. Last accessed March 2019 at <http://www.csp2.org/technical-reports>

Environmental Law Alliance Worldwide (ELAW), 2010. Guidebook for Evaluating Mining Project EIAs. Last accessed March 2019 at <https://www.elaw.org/mining-eia-guidebook>

Freudenberg and Wilson, 2002. Mining the Data: Analyzing the Economic Implications of Mining for Nonmetropolitan Regions. *Sociological Inquiry*, Vol. 72, No. 4, Fall 2002, 549–75.

Kuipers and Carlson, 2000. Hardrock Reclamation Bonding Practices in the Western United States. Summary Report. National Wildlife Federation.

U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. February 2013.