



Oregon

Kate Brown, Governor

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March 25, 2019

Malheur County Planning Department
Attn: Eric Evans, Planning Director
251 B. Street West, Vale, Oregon 97918



RE: ODFW/DLCD Comments on the Conditional Use Permit Application for Calico
Resources USA Corp/Grassy Mountain Mine Project

Dear Director Evans,

The Oregon Department of Land Conservation and Development (DLCD) and the Oregon Department of Fish and Wildlife (ODFW) appreciate the opportunity to review the Malheur County Conditional Use Permit (CUP) Application for Calico Resources USA/Grassy Mountain Mine Project (Calico), dated January 15 2019. DLCD and ODFW are *Cooperating Agencies* per the Chemical Process Mining statutes and rules administered by the Department of Geology and Mineral Industries (DOGAMI)¹, and staff within our agencies have been participating in the planning and pre-application phase of the mine project. We will continue to work collaboratively with DOGAMI through the state's Consolidated Application Process, including compliance with ODFW's Chemical Process Mining Rules². Please include the following comments and recommendations in the record for the local land use hearing scheduled for March 28, 2019.

DLCD and ODFW understand that Malheur County is only asserting jurisdiction and Conditional Use Permit review to the patented parcel of the project, which includes the underground gold and silver mine on approximately 62 acres of land zoned Exclusive Range Use. As the CUP application outlines, the proposed underground mine within the patented claim area is one element of the larger Project Area that includes federal land managed by the Bureau of Land Management and will require state and federal permitting. The other interrelated project elements includes the processing facility, tailings storage facility, waste rock storage facility, borrow pits for production of backfill rock, ancillary buildings and facilities, interior circulation roads, on-site septic systems, and the access roads to the site. The entire project, including elements associated with the patented claim area, have direct and indirect impacts to wildlife and habitat resources of the state, as described below, which will be addressed through the consolidated permit process.

The proposed project elements of the Conditional Use Permit Application located on the patented parcel includes mapped low density sage-grouse habitat and requires compliance with the administrative rules³ adopted for the purpose of implementing the Oregon Sage-Grouse

¹ ORS 517; [OAR Chapter 632, Division 037](#)

² OAR Chapter 660, Division 420: <https://www.dfw.state.or.us/OARs/420.pdf>

³ <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=175722>;
<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2977>

Action Plan and Executive Order 15-18, including the Greater Sage-Grouse Conservation Strategy for Oregon. Per OAR 660-023-0115, Greater Sage-Grouse habitat is identified as a Significant Goal 5 resource. Large-scale developments, such as mining, are considered a conflicting use that require application of the mitigation hierarchy set forth at OAR 660-023-0115(10) and OAR Chapter 635, Division 140. This three step process has been designed to foster coordination between an applicant, the county and ODFW.

To properly apply the mitigation hierarchy, the county must find that impacts within Significant Sage-Grouse habitat cannot be avoided. If this test is satisfied, the county must then find that the proposal has been minimized to the extent possible. If a project proposal is suitably minimized, and direct or indirect impacts remain outstanding, the county must then proceed to consideration of compensatory mitigation. In this context, the compensatory mitigation shall be responsive to direct and indirect impacts to all levels of significant sage-grouse habitat, including general, low-density and core habitat. Compensatory mitigation requirements consistent with OAR Chapter 635, Division 140 must be attached to the county decision as a condition of approval.

The CUP application references these requirements, but it does not sufficiently demonstrate how OAR 660-023-0115(10) and OAR 635-140-0025(2) and -0025(3) are satisfied. In an effort to demonstrate findings for approval, Calico approached DLCD and ODFW with a proposal to defer mitigation requirements to be addressed through DOGAMI's consolidated permit process. In order to comply with OAR 660-023-0115(9)(b), Calico proposed a condition that requires compliance with ODFW requirements (page 40 of the CUP application⁴). Given that the DOGAMI consolidated permit process requires local land use approval, DLCD and ODFW are willing to consider this proposed approach if the county approves the following condition of approval to address significant sage-grouse habitat. The Departments' willingness to consider this approach is due to both the unique nature of the State's chemical mining process and rules as well as factors unique to the proposed Grassy Mountain Project, such as the project's location on both private land (over which the County asserts jurisdiction) and federal land (where the County does not assert jurisdiction). This approach However, this alternate proposal should not be considered applicable or in compliance with OAR Chapter 660, Division 23 for any other project without DLCD's and ODFW's review and consent. DLCD and ODFW requests that the County adopt the following condition to address significant sage-grouse habitat:

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

⁴ See page 40 of CUP application, "ODFW will review the Application and determine what mitigation requirements, if any, should be imposed."

Division 420 and OAR Chapter 635, Division 415, prior to any construction or ground-disturbing activities.

If the county does not adopt the above recommendation to address compliance with OAR Chapter 635, Division 140 and OAR Chapter 660, Division 023, ODFW recommends the county require Calico to apply the mitigation hierarchy including developing a compensatory mitigation plan to address the threats to significant sage-grouse habitat (i.e., core, low density, general habitat within 3.1 mile of a lek). Since Calico has not initiated development of the mitigation plan or thoroughly addressed the avoidance and minimization standards and criteria in the CUP application, the absence of a condition to satisfy these requirements would render the CUP application incomplete. In addition, it is important to note that approval of the required habitat mitigation plans by the State is a prerequisite to a *Consolidated Permit Application* being deemed complete.

As discussed above, DLCD and ODFW would like to highlight some additional elements of the CUP application:

Greater Sage-Grouse: DLCD and ODFW acknowledge that Calico has been coordinating through DOGAMI's consolidated permit application process, per OAR Chapter 632, Division 37, and as a requirement will need to satisfy the rules for compliance with the Greater Sage-Grouse Conservation Strategy. However, per OAR 660-023-0115(8), a pre-application conference was not convened by the county to discuss the conflicting use in significant sage-grouse habitat. The CUP application does not thoroughly evaluate or address the requirements for avoidance, minimization and compensatory mitigation to fully offset the direct and indirect impacts of the development action to low-density or general sage-grouse habitat. This includes the demonstration that reasonable alternatives have been considered. The State will be reviewing the Consolidated Application, where Calico will be required to address the wildlife requirements on both the patented claim area and larger Permit Area.

Wildlife Resources Baseline Report: Calico has included a Wildlife Resources Baseline Report (Report) in Exhibit 7 of the CUP application, which the county references this document to support findings. It is important to note that the Wildlife Resources Baseline Report is a draft report that has not yet been accepted by the Technical Review Team as part of the DOGAMI consolidated permitting process. Moreover, the express purpose of the Report, per the approved Baseline Data Work Plans in 2017, is to document existing conditions of wildlife habitat and populations – not to draw conclusions in project impacts, mitigation, or permitting.

As ODFW understands it, Calico will be providing an amended Report to DOGAMI to address ODFW concerns. However, we are concerned that it appears as if the county referenced this Report to demonstrate compliance with the Fish and Wildlife Habitat Protection Plan, and ultimately OAR Chapter 660, Division 23 and OAR Chapter 635,

Division 140. For example, the CUP application states that habitat was characterized in accordance the ODFW Fish and Wildlife Habitat Mitigation Policy and includes references to habitat categories based solely on vegetation, which have not been verified or concurred with by ODFW. Final habitat characterization will require consideration for mapped or known special status species occurrence or other factors that will modify a habitat category. Examples include but are not limited to mapped sage-grouse habitat, big game winter range, burrowing owls or sensitive raptor nest locations.

Wildlife Habitat: DLCD and ODFW acknowledge that the county comprehensive plan and implementing ordinances do not designate Goal 5 resources, other than Greater Sage-Grouse per OAR Chapter 660, Division 23, on the patented parcel. However, ODFW would like to acknowledge this does not demonstrate the absence of wildlife habitat, and specifically wildlife habitat that should be considered for planning decisions. For example, while the patented claim area does not include county acknowledged winter range for big game through the Goal 5 process, the access road bisects ODFW designated big game winter range⁵ for approximately 5 miles on the north end. In addition, there are many other wildlife species, such as raptor nests and burrowing owls, which will need to be addressed during DOGAMI's consolidated permit application. This includes compliance with ODFW's chemical mining rules (OAR Chapter 635, Division 420) and compliance with the Fish and Wildlife Habitat Mitigation Policy (OAR Chapter 635, Division 415).

Consistency with Local and State Conditions: The CUP application includes narratives or statements that propose compliance or findings of fact to support county approval. DLCD and ODFW believe that proposed actions are not sufficient, and recommend that the county adopt specific standards and conditions. For example, the CUP application references that mine employees will be provided a daily bus shuttle option from Vale to limit the number of personal vehicles travelling to the site. ODFW recommends the county include a condition of approval that requires bussing employees from Vale. In addition, improvements to Mitchell Butte Road have not been discussed in the DOGAMI or county processes thus far, however, a requirement to bus from Vale could alleviate potential traffic concerns and specifically concerns related to wildlife.

ODFW and DLCD will continue to coordinate with DOGAMI and Calico during the consolidated permit application process to address the concerns raised in this letter. During that review process, there may be significant modifications to the proposed project referenced in the CUP application. Therefore, ODFW and DLCD recommend the County include as a condition of approval, a requirement for Calico to reapply to the County if there are inconsistencies identified or significant modifications, such as but not limited to access routes, power and water, fire

⁵ <https://nrimp.dfw.state.or.us/DataClearinghouse/default.aspx?p=202&XMLname=885.xml>

protection, water sourcing and employee bussing. Thank you for the opportunity to include these comments in the record. If you have any questions, please contact our office at any time.

Sincerely,

A handwritten signature in blue ink that reads "Trevor Watson". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Trevor Watson
Oregon Department of Fish and Wildlife
Klamath and Malheur District Manager

A handwritten signature in blue ink that reads "Jon Jinings". The signature is stylized and cursive, with the first name and last name clearly distinguishable.

Jon Jinings
DLCD Community Services Specialist