

## STAFF REPORT

Planning Department File No. 2018-10-012

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

Planning Commission Meeting Date: March 28, 2019

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

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

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

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

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

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

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

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

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

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

## **18. APPLICABLE CRITERIA**

### **GENERAL CONDITIONAL USE CRITERIA**

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

A. Comprehensive Plan goals and policies, as applicable.

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

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

B. Specific plan recommendations.

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

D. Availability of services and utilities.

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

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

G. General Criteria

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

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

## **SPECIFIC CONDITIONAL USE CRITERIA**

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

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

## **SAGE GROUSE PERMIT CRITERIA**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **19. PROPOSED FINDINGS OF FACT**

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

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

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

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

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

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

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

### **Goal 3: Agricultural Lands**

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

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

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

APPLICANT’S RESPONSE:

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

[\*\*\*]

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

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

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

APPLICANT’S RESPONSE:

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

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

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

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

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

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

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

APPLICANT’S RESPONSE:

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

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

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

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



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

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

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

#### **Mineral and Aggregate Resources**

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

APPLICANT’S RESPONSE:

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

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

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

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

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

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

APPLICANT’S RESPONSE:

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

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

### **Fish and Wildlife Habitat**

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

##### APPLICANT’S RESPONSE:

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

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

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

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

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

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

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

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

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

**APPLICANT’S RESPONSE:**

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

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

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

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

## **Water Resources**

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

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

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

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

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

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

## **Goal 9: Economy**

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

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

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

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

## **Goal 11: Public Facilities and Services**

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

### **Fire and Police Protection**

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

#### **APPLICANT’S RESPONSE:**

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

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

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

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

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

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

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

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

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

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

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

## **Water and Sewage**

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

### **APPLICANT’S RESPONSE:**

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

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

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

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

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

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

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

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

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

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

###### **APPLICANT’S RESPONSE:**

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

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

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

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

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

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

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

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

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

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

**G. General Criteria**

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

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



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

**APPLICANT’S RESPONSE:**

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

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

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

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

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

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

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

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

increase the cost of accepted farm practices on surrounding lands.

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

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

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

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

**1. Noise, dust, traffic and visual screening.**

**APPLICANT'S RESPONSE:**

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

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

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

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

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

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

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

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

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

### **APPLICANT’S RESPONSE:**

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

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

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

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

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

### **3. Location of vehicular access points.**

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

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

### **4. Fencing needs.**

APPLICANT'S RESPONSE:

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

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

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

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

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

APPLICANT'S RESPONSE:

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

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

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

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

*See Rec. Plan at 8.*

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

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

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

### **APPLICANT’S RESPONSE:**

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

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

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

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

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

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

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

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

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

APPLICANT’S RESPONSE:

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

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

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

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

#### **e. Sage Grouse Permit**

##### **Introduction.**

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

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

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

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

##### **Applicable Criteria.**

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

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

impacts.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **20. CONCLUSION**

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

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

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

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

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

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

## **21. PLANNING COMMISSION'S DECISION:**

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

### **I.**

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

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

### **II.**

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

## **EXHIBITS**

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