

GRASSY MOUNTAIN MINE PROJECT

DRAFT LAND USE FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. LEGAL FRAMEWORK

For the purpose of making decisions on state-required permits for the proposed Grassy Mountain Mine Project (“Grassy Mountain” or “Project”), compliance with state and local land use laws is governed by ORS 197.180 and OAR Chapter 660, Divisions 030 and 031, which require all permitting agencies to have rules establishing state agency coordination programs. The coordination programs ensure that all agency decisions made as part of a program affecting land use must comply with the statewide land use planning goals and must be compatible with acknowledged city and county comprehensive plans and land use regulations.

Part of the Project is proposed to be located on private land and part on federal land. On May 23, 2019, Malheur County issued a conditional use permit (“CUP”) for the part of the project located on private land (identified as Tax Lot 101 of Malheur County Assessor’s Map No. 22S 44E). On July 30, 2019, the County issued a land-use compatibility statement (“LUCS”) on a form provided by the Department of Environmental Quality. The combination of the CUP and the LUCS provided to DEQ is likely sufficient to comply with each permitting agency’s state agency coordination plans; however, each permitting agency will need to confirm sufficiency while drafting its individual permits. Under the rules governing issuance of DOGAMI’s operating permit, DOGAMI will seek advice on compliance from the PCC and make its decision following receipt of that advice. OAR 660-031-0035(1), which is incorporated by reference in DOGAMI’s rules, allows DOGAMI to use the Malheur County’s compatibility determination. OAR 632-001-0015(5)(b)(D).

The County did not issue a Conditional Use Permit for the part of the project located on federal land (identified as Tax Lot 100 of Assessor’s Map No. 22S 44E). Instead, the County concluded that it did not have jurisdiction to “grant or withhold” any land-use authorization on Tax Lot 100. Malheur County Order No.: GO-05-19, Findings of Fact and Conclusions of Law, at 3 (incorporating by reference Exhibit 1, Staff Report, at 2). The CUP will serve as the basis for determining land-use compatibility for this part of the project. Nonetheless, on August 8, 2021, the County issued a second LUCS purporting to find the proposed Project compatible on both Tax Lots 100 and 101. An undated letter accompanying the second LUCS, signed by Malheur County Planning Director Eric Evans, provides the following explanation:

Calico Resources USA Corp has requested a second land use compatibility statement (LUCS) in order to support its application for a DOGAMI Consolidated Permit, which would address land uses related to the mine facilities on BLM lands, identified as tax lot 100 of Assessor’s Map NO. 22S 44E. The attached materials include findings from the Planning Commission explaining why the mine project as a whole meets all applicable criteria. These findings adopted by [the Malheur County Court] reference the application and staff report, among other documents,

which addressed the entire project area, including the processing facilities on federal land.

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

The permitting agencies decline to rely on this letter or the August 8, 2021, LUCS as evidence of the Project's compatibility on Tax Lot 100. The Malheur County Court expressly determined that Tax Lot 100 is "outside the County's land use planning jurisdiction." Malheur County Order No.: GO-05-19, Findings of Fact and Conclusions of Law, at 3 (incorporating by reference Exhibit 1, Staff Report, at 2). Planning Director Evans lacks authority to modify or reverse the Malheur County Court's final decision in this matter. Planning Director Evans' letter is therefore of no legal effect. Similarly, the portion of the August 8, 2021, LUCS that pertains to Tax Lot 100 was issued without authority and is of no legal effect. Nonetheless, the permitting agencies recognize that a significant part of the underlying facts and the County's analysis of Tax Lot 101 will also be applicable to Tax Lot 100. The following land use analysis and findings is structured similarly to the County's Final Findings of Fact and Conclusions of Law, and reflects the County's analysis when the underlying facts and applicable criteria are similar.

Notwithstanding the County Court's determination with respect to Tax Lot 100, state law does not provide an exception to the application of land-use requirements on federal lands. This means that, for the purposes of complying with ORS 197.180, rather than relying on a Malheur County permit determination or LUCS, each permitting agency will apply the provisions of its coordination program that allows for a determination of compliance with land-use requirements based on information provided by the applicant. The Applicant was required to provide all necessary land use information as part of a complete application. ORS 517.971(8)(k). The permitting agencies may also, through DOGAMI, request additional information if necessary to make determinations of compliance with land-use requirements.

DOGAMI Process

While each permitting agency's coordination program may differ in certain procedural details, the general approach will be similar. DOGAMI's coordination program is described here as an example. The procedures for a chemical process mine application are as follows:

The department shall assure goal compliance by acting compatibly with applicable acknowledged comprehensive plans in accordance with the procedures in subsection (5)(b) of this rule.

OAR 632-001-0015(5)(a).

When issuing Operating Permits and approving reclamation plans for chemical process mining under OAR 632, division 037, the Department shall consider and

may rely on the findings of the project coordinating committee authorized by ORS 517.965 as to whether or not the proposed permit and reclamation plan are compatible with the acknowledged comprehensive plan(s) in accordance with the applicable comprehensive plan compatibility procedures set forth in OAR 632-037-0045(7)(k), 660-030-0070(2), 660-031-0026(1), and 660-031-0035(1).

OAR 632-001-0015(5)(b)(D).

OAR 632-037-0045(7)(k) is not an existing DOGAMI rule. OAR 660-031-0035(1) governs reliance on the decisions of local governments, which as described above does not apply to the part of the Project on Tax Lot 100. OAR 660-030-0070(2) among other things establishes OAR Chapter 660, Division 031, as a permissible means of determining compliance with a local government's acknowledged comprehensive plan. Therefore, DOGAMI will follow the procedures set forth in 660-031-0035(1):

State Agency Coordination Agreements shall describe the process the agency will use to assure that permit approvals are in compliance with Statewide Planning Goals and compatible with Acknowledged Comprehensive Plans:

(1) Class A Permits: In their review of Class A permits state agencies shall:

(a) Include in the notice for the proposed permit a statement that the proposed activity and use are being reviewed for compliance with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan as part of the permit review;

(b) Insure that the notice for the proposed permit is distributed to the affected city(ies) or county(ies) and its citizen advisory committee;

(c) When there is a public hearing on a proposed permit, consider testimony on compliance of the proposed activity and use with the Statewide Planning Goals and compatible with the Acknowledged Comprehensive Plan;

(d)(A) Based on comments received from the public and other agencies, determine whether or not the proposed permit complies with the Statewide Planning Goals and is compatible with the Acknowledged Comprehensive Plan;

(B) If a state agency's existing process for administration of Class A permits is substantially equivalent to the process required by this section, the agency may request LCDC approval of its existing process as described in its agency coordination agreement.

This process is consistent with the procedural requirements of the chemical process mining statutes. Each permitting agency must provide its draft permits and permit conditions to DOGAMI. ORS 517.981(1). DOGAMI must then issue a notice of an opportunity for public comment and of a consolidated public hearing. ORS 517.981(2). To comply with OAR 660-031-0035(1), this notice must include a statement that the part of the Project on Tax Lot 100 is being reviewed for compliance with statewide planning goals and the County's acknowledged

comprehensive plan. The notice must be sent to Malheur County and its citizen advisory committee. The public hearing must accept and consider testimony on compliance with land-use requirements. Finally, each permitting agency's final permitting decision must, based on information in the record, including comments timely received, determine compliance with land-use requirements.

As noted above, pursuant to OAR 632-001-0015(5)(b)(D), DOGAMI shall also consider and may rely on any findings made by the Project Coordinating Committee concerning compliance with land-use requirements. The Project Coordinating Committee is not, however, required by statute or rule to make land-use findings.

DEQ Process

The Applicant must obtain several Project permits from DEQ. DEQ's state agency coordination program is primarily governed by OAR Chapter 340, Division 043. In addition, DEQ's water quality rules for chemical process mines allows DEQ to rely on the determinations "made by the project coordinating committee authorized by ORS 517.965 and by the Department of Geology and Mineral Industries pursuant to their State Agency Coordination Program and OAR 632, divisions 1 and 37." OAR 340-043-0020(3).

DEQ's coordination rules governing hazardous waste storage provides that if the local government does not act with respect to a LUCs, DEQ will make its own determination of compliance. State Agency Coordination Program Document at 30.¹

DEQ's coordination rules governing air contaminant discharge permits and solid waste disposal permits initially appear to require a LUCS for approval of all applications, without exception for a situation where a local government refuses to act. State Agency Coordination Program Document at 26-27, 29. However, OAR 340-081-0050(2) provides:

(2) The Department shall rely on the compatibility procedures described in Section III, subsection (3), and Section IV, subsections (2), (3), and (4) of the SAC Program document to assure compatibility with an acknowledged comprehensive plan, which include but may not be limited to the procedures described below:

(d) The Department provides notice to local government prior to initiating land use planning actions of statewide application, or notice to affected local governments prior to initiating an action of site-specific or area-wide application. Dispute resolution procedures pursuant to OAR 340-018-0060 are applied when the Department and local government disagree on plan compatibility;

The rule provides that notice to the local government, and by inference, a determination of compliance by DEQ, is an option available to all permit applications if the local government refuses to act on a LUCS.

¹ [odeq_sac.pdf\(oregon.gov\)](http://odeq.sac.pdf(oregon.gov))

Summary

As described above, state permitting agencies are required to determine goal compliance by determining compatibility with Malheur County's acknowledged comprehensive plan. This requires an evaluation of the proposed Project's compliance with Malheur County's zoning ordinance and comprehensive plan. The following draft findings make this evaluation and recommend conditions required for compliance.

II. PROJECT DESCRIPTION

The following Project description was provided by the Applicant and will serve as the basis for the land-use analysis:

The Project Access Area is located on public land administered by BLM, and private land controlled by others. The main access to the Mine and Process Plant Area will utilize an upgrade of the existing BLM road and County easements across private land. This road will need to be upgraded to include straightening and widening in portions of the road and have a gravel roadbed. The Road Design Report (Appendix C1) describes the alterations with the road design.

The existing powerline will be upgraded, and a new power line will be constructed along the BLM and county roads. New power poles will be constructed for approximately 25.2 miles from the connection to the existing powerline to the Mine and distribution powerlines within the Permit Area. Details of the power line work are described in HDR's report, Calico – Grassy Mountain, 34.5kV Line (Appendix C6).

In general, the proposed mining and metal processing operations will consist of an underground mine, located in the private parcel, and ore processing facilities, including a conventional mill and TSF, a TWRSF, and other support facilities on BLM-administrated land.

The Project as described in Section 1.3 of the CPA, will include the following major components:

On Private Parcel

- An underground mine, with Mine portal, decline, and ventilation shaft;

On BLM Parcel

- TSF with Tailings Embankment, Tailings Impoundment, and Reclaim Pond;
- TWRSF;
- Process Plant Area, which includes the Process Plant building, control room, crushing facilities,

- conveyors, ore bins, control rooms, CIL processing plant, reagent storage building (including • chemical and reagent storage), gold room, and Collection Pond;
- Infrastructure and ancillary facilities that include Project site main gate and guard house,
- administration office and change house, assay laboratory and sample preparation area, truck
- workshop and warehouse, wash pads, Process Plant workshop and warehouse, meteorological
- station, explosive magazines, parking areas, ore stockpiles, solid and liquid hazardous waste
- storage, and fuel storage and dispensing area;
- Roads, including upgrades to the Twin Springs and Cow Hollow roads, and construction of the
- Mine access, internal access, and Mine haul roads;
- Yards and laydown areas;
- Growth Media Stockpiles;
- Water supply, including Production Wellfield, water pipeline, raw water storage tank, and
- Potable Water Treatment Plant;
- Power supply that includes a power substation (on Idaho Power land), upgraded 14.4 kilovolt (kV) overland power
- transmission system, new 14.4 kV overland power transmission system, onsite power lines, and generators;
- Permanent and temporary stormwater diversion channels;
- Other areas, including the exploration areas, septic system, and perimeter fence;
- Quarry; and
- Reclamation Borrow Areas.

Response to Land Use Comments 480-492 and 494, dated January 30, 2023.

III. APPLICABLE CRITERIA

The County identified the criteria applicable to the Project on Tax Lot 101. The permitting agencies' analysis of Tax Lot 100 includes each of the County's identified criteria. In addition, the permitting agencies have identified certain additional criteria that are applicable to Tax Lot 100. The complete list of criteria applicable to Tax Lot 100 are listed below.

As with Tax Lot 101, Tax Lot 100 of Malheur County Assessor's Map 22S 44E is zoned as Exclusive Range Use (ERU; GIS Code C-A2).² Mining and processing of mineral resources is a conditional use in the ERU Zone and is subject to Malheur County Zoning Ordinance (MCZO) Section 6-4-7. MCZO 6-3A-3(E).

² [Malheur County Online Map \(arcgis.com\)](https://arcgis.com)

1. General Conditional Use Criteria MCC 6-6-7 – General Criteria to Evaluate

Suitability: In considering the suitability of proposed conditional uses, the Planning Condition shall base its decision on the following criteria:

A. Comprehensive Plan goals and policies, as applicable.

For its evaluation of the Project on Tax Lot 101, the County identified the following Comprehensive Plan Goals and Policies as applicable

Goal 3 “Agricultural Lands” Policies 1, 2, 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” Policy 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.

In addition, the permitting agencies have identified the following Comprehensive Plan Goals and Policies as applicable:

Goals 6, Policies 12 and 13

Goal 7, Policy 12

Goal 8, Policies 3 and 8

Goal 13?

B. Specific Plans: Specific plan recommendations.

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

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

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

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)

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 benefit 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 consistent with the adopted county road standards or the standards of the appropriate road district and the access management standards of the Malheur County transportation system plan.
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. (Ord. 125, 6-20-2000)

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
2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

2. 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.

IV. FINDINGS OF FACT

MCC 6-6-7 - GENERAL CRITERIA TO EVALUATE SUITABILITY

In considering the suitability of proposed conditional uses, the permitting agencies shall base their decision upon the following criteria:

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

GOAL 3: To preserve and maintain the agricultural land in the county for agricultural purposes.

Policy 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.

Policy 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.

The lands within the Project Area in Tax Lot 100 are not high-value farmlands.

“High Value Farmland” is not defined in the County’s Comprehensive Plan or the MCZO. Instead, the policy relies on unspecified “applicable Oregon Revised Statutes and Oregon Administrative Rules.” Accordingly, the permitting agencies rely on the definition of high-value farmland in ORS 215.710:

(1) For purposes of ORS 215.705, high-value farmland is land in a tract composed predominantly of soils that, at the time the siting of a dwelling is approved for the tract, are:

- (a) Irrigated and classified prime, unique, Class I or Class II; or
- (b) Not irrigated and classified prime, unique, Class I or Class II.

(2) In addition to that land described in subsection (1) of this section, for purposes of ORS 215.705, high-value farmland, if outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. For purposes of this subsection, “specified perennials” means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa.

ORS 215.710.

The lands within the Project Area in Tax Lot 100 are not classified as Class I through Class VI soils by the USDA’s Natural Resources Conservation Service. The lands are not irrigated and do not have the characteristics necessary to qualify as either “prime” or “unique” farmland as defined by the USDA. Finally, the land is managed by the BLM for grazing, so is not used for the growing of “specified perennials.” Response to Land Use Comments 480-492 and 494, dated January 30, 2023, at 5; Appendix B7 at 201; Appendix B10 at 11. The conclusions are consistent with the County’s findings with respect to Tax Lot 101.

Policy 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.

With respect to Tax Lot 101, the County found that the parcel was not part of any irrigation or drainage district. Exhibit 1 at 7-8. Tax Lot 100 is not irrigated. Response to Land Use Comments 480-492 and 494, dated January 30, 2023, at 5. Process water for the Project will be provided by wells under permits that must be obtained from the Water Resources Department

before commencing water use. Exhibit 1 at 7-8. The part of the Project on Tax Lot 100 will not negatively impact the integrity or operation of water for irrigation or drainage purposes.

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

As described in the analysis of Policies 1 and 2, above, Tax Lot 100 does not have soils that qualify as high-value farmland soils or soils classified as types I-III by the NRCS.

Policy 8. Current and future accepted farming and ranching practices and activities shall have priority and continue without interference.

The County, in evaluating Tax Lot 101, interprets this policy not to outright prohibit a change of use on farming or ranching land owned or controlled by the Applicant. Instead, the policy is intended to ensure the future viability of farming and ranching practices on surrounding lands. Exhibit 1 at 8.

The Applicant provided the following information to the County concerning the effects of the Project on surrounding farming and ranching activities:

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.

Exhibit 1 at 8.

The County concluded that this policy is met on Tax Lot 101, because the mine is underground, thus mitigating impacts of blasting on livestock, the Project Area will be fenced to exclude livestock, and the draft reclamation plan provided by the Applicant supports the conclusion that the Patent Parcel can be returned to grazing upon the completion of Reclamation.

All the factors listed by the County are equally applicable to Tax Lot 100. In addition, the permitting agencies conclude that it is necessary to evaluate the effects of noise and dust on grazing livestock.

The Applicant has provided the following evidence in support of noise impacts:

Sound levels contours developed by BKL (2023) for the Project do not project levels expected to impact grazing by livestock. According to Dr. Salah Hamed Esmail (2017), “Cattle may tolerate moderate levels of noise and may easily adapt to an intensity level of 60-90 dB.” He further concludes a behavioral response for cattle is expected between 80 and 90 dB. Owen (2017) reported that livestock can habituate reasonably quickly to loud sounds 90-120 dBA based on rail train

development studies in the UK. Grazing is not expected to be impacted with noise based on model predictions. Noise monitoring will be conducted to confirm model predictions, as noted in CPA Appendix D19, Noise Monitoring Plan.

Submittal Response to Land Use Comments 484, 487, and 489-492, dated May 24, 2023, at 8 (Internal citations omitted). Based on this evidence, the permitting agencies find that noise impacts from the facility will not interfere with current farming and ranching practices in the vicinity of the Project.

Noise impacts are primarily addressed through the Air Contaminant Discharge Permit (ACDP) that the Applicant must obtain in order to construct and operate the Project. Among other provisions, OAR 340-208-0300 requires that “air contaminants from any source,” including dust emissions, not cause a nuisance. The permitting agencies find that a condition requiring the Applicant to obtain and comply with the ACDP is sufficient to conclude that dust emissions will not interfere with current farming and ranching practices in the vicinity of the Project.

GOAL 5: To conserve open space and protect natural and scenic resources.

With respect to Tax Lot 101, the County identified certain applicable policies within Goal 5. The permitting agencies address each of these policies. The permitting agencies have identified additional Goal 5 policies applicable to Tax Lot 100, each of which is addressed below.

Mineral and Aggregate Resources

Policy 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.

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

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

With respect to Tax Lot 101, the County determined that each of these three policies are planning statements applicable to the County and not to individual applications. The permitting agencies concur with respect to Tax Lot 100.

Fish and Wildlife Habitat

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

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.

With respect to part of the Project on Tax Lot 101, the County cursorily concluded that the Project “will not have a significant permanent adverse effect on fish or wildlife habitat.” The

County noted that ODFW's "Fish and Wildlife Habitat Protection Plan" has been superseded by ODFW's Fish and Wildlife Habitat Mitigation Policy, and that the Applicant must comply with the Habitat Mitigation Policy.

The permitting agencies conclude that compliance with the Habitat Mitigation Policy is sufficient evidence of compliance with Goal 5, Fish and Wildlife Habitat Policies 2 and 3. The permitting agencies incorporate the findings and conditions with respect to the Habitat Mitigation Policy herein.

Water Resources

Policy 2. The county will implement its water quality management plan.

The County did not address this policy in its review of the part of the Project on Tax Lot 101. The permitting agencies find that it is applicable to Tax Lot 100, but that the county's water quality management plan will be addressed through the water quality permits that the Applicant will be required to obtain through the Department of Environmental Quality. The permitting agencies incorporate the findings and conditions with respect to the required DEQ permits herein.

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

With respect to Tax Lot 101, the County stated that it "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." Exhibit 1 at 12. Similarly, and consistent with applicable state agency coordination program requirements, the permitting agencies will provide notice of these draft land use findings to the County Environmental Health Department when the draft permits are issued and noticed.

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

The County noted its compliance with this policy for Tax Lot 101. This policy is inapplicable to the state permitting agencies.

Historic Sites

Policy 3. The county will cooperate with the Bureau of Land Management in its efforts to preserve and protect the archeological and historic sites located on public land.

The County did not address this policy in its review of the part of the Project on Tax Lot 101. The permitting agencies find that it is applicable to Tax Lot 100. The permitting agencies are cooperating with the Bureau of Land Management through the Project Coordinating Committee.

Policy 4. The county will protect its significant historic structures from conflicting uses, including major exterior alteration and demolition, by proceeding through steps 2 and 3 of the Goal 5 rule process on a site-specific basis at such time as conflicting uses are proposed. All

alternatives for protection will be examined and the State Historic Preservation Office will be notified and permitted to comment.

The County did not address this policy in its review of the part of the Project on Tax Lot 101. The permitting agencies find that it is applicable to Tax Lot 100. The Applicant has prepared a Baseline Data Reports applicable to cultural resources: A Cultural Resource Inventory of 830 Acres for the Grassy Mountain Mine Project (Appendix B4). The Applicant has prepared an Inadvertent Discovery Plan (Appendix D16).

GOAL 6: To maintain and improve the quality of Malheur County's air, water and land resources.

The County did not address any Goal 6 policies in its review of the part of the Project on Tax Lot 101. The permitting agencies find policies 12 and 13 applicable to Tax Lot 100.

Policy 12. The effects of transportation, industry, and other sources of excessive noise will be considered in evaluating proposed uses and development.

The Applicant has provided the following evidence pertaining to the sources and effects of noise from the Project³:

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

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

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

³ Noise baselines and Project noise are also addressed in Section 2.11 of the Consolidated Permit Application.

Mine. Ongoing noise would be associated with trucks and vehicles using the haul road and mechanical sounds associated with the Processing Plant.

BKL, acoustics consultant, conducted a noise analysis for the proposed Project. BKL's Noise Model Summary¹ is a part of CPA new Appendix D19, Noise Monitoring Plan. This project predicted noise levels for the proposed Project for both the construction and operational phases. Details of the modeling software, noise metrics, and noise sources included are found in the report as an appendix to the Noise Monitoring Plan.

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

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

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

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

A noise monitoring program is proposed. This is included in CPA new Appendix D19, Noise Monitoring Plan. This program is largely focused on CPA Appendix D15, Wildlife Mitigation Plan, and is more restrictive than OAR 340 Division 35.

The program identifies measurement sites to be monitored during the modeled activities of construction, operation, and blasting.

Submittal Response to Land Use Comments 484, 487, and 489-492, dated May 24, 2023, at 2-3.

Policy 13. The county will require all developments and land uses to comply with state and federal environmental quality statutes, rules and standards.

This requirement is shared by the permitting agencies in issuing each of their own permits. The permitting agencies will include a condition requiring compliance with all applicable state and federal environmental quality statutes, rules, and standards in each of their individual permits. The following is suggested condition language:

***CONDITION X.Y:** Throughout the construction, operation, and reclamation of the Project, the Permit Holder must comply with all applicable state and federal environmental quality statutes, rules, and standards. Noncompliance constitutes a violation of this Permit.*

GOAL 7: To protect life and property from natural disasters and hazards.

The County did not address any Goal 7 policies in its review of the part of the Project on Tax Lot 101. The majority of the County's policies under Goal 7 concern development in designated floodplains. The proposed facility is not located in a designated floodplain. In addition, the Malheur County Multi-Jurisdictional Natural Hazard Mitigation Plan (OPDR 2014) does not contain any action items (mitigation measures) that apply specifically to land use for grazing or mining. As a result, the permitting agencies agree that none of the County's Goal 7 policies are applicable to the Project.

GOAL 8: To meet the park and recreation needs of the citizens of Malheur County and visitors.

The County did not address any Goal 7 policies in its review of the part of the Project on Tax Lot 101. The Permitting agencies agree that none of the County's Goal 8 policies are applicable to the Project.

GOAL 9: To diversify and improve the economy of Malheur County.

The County identified Policies 4, 5, and 7 as applicable to the part of the Project on Tax Lot 101, but did not analyze consistency with each policy separately. Instead, the County relied on evidence provided by the applicant pertaining to the economic development benefits of the Project in concluding that the Project would generally be consistent with Goal 9. The permitting agencies agree that the Project would be consistent with Goal 9 generally, and provide policy-specific analysis, below.

Policy 4. County land use regulations and land use decisions will encourage the continuation and expansion of existing industry and promote the development of new industry in Malheur County whenever possible.

The Applicant has provided evidence of the economic benefits of Project development. This includes the estimated creation of 110 full-time jobs for no less than seven years, at least

150 construction jobs (projected to last for at least a year during facility construction), and an increase in the County's tax base as a result of increased assessed value of Tax Lot 101. Exhibit 1 at 12.

Policy 5. The county may not arbitrarily prohibit, deter, delay or increase the cost of appropriate development, but shall enhance economic development and opportunity for the benefit of county citizens.

Although identified by the County, this policy bears on the County's actions, not the Applicant's, and is not an application standard.

Policy 7. In implementing land use regulations and making land use decisions the county will strive to achieve the following: a. Develop available natural resources. b. Create employment opportunities. c. Expand and maintain existing industry. d. Diversify agricultural products and the economic base. e. Broaden the tax base.

The permitting agencies have described the evidence provided by the Applicant in support of elements (b) and (e). In addition, as a gold mine, the Project would develop natural resources, expand the types of industry in Malheur County (as the County's first chemical process mine), and for the same reason, diversify the County's economic base.

GOAL 11: 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.

The County identified Fire and Police Protection Policy 2 and Water and Sewage Policy 1 as applicable to Tax Lot 101. These policies are evaluated below. In addition, the permitting agencies have identified Education Policy 2 and Irrigation Policy 1 as applicable to Tax Lot 100.

Fire and Police Protection

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

The County addressed this requirement with respect to Tax Lot 101. The permitting agencies find that the fire protection program proposed by the Applicant and approved by the County with respect to Tax Lot 101 also meets the policy on Tax Lot 100. The evidence provided by the Applicant, the County's analysis, and the conditions adopted by the County, are reprinted here for convenience.

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 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).

The conditions adopted by the County are also adopted by the permitting agencies:

CONDITION X, Y: *The Applicant will subscribe to the Vale Rangeland Fire Protection Association.*

CONDITION X, Y: *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

Policy 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.

The Applicant provided the following evidence with respect to Water and Sewage Policy 1 for the part of the Project on Tax Lot 101:

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.

Exhibit 1 at 14. The County found that compliance with the permitting requirements of the Water Resources Department for an adequate water supply and the Department of Environmental Quality for compliance with water quality requirements established consistency with this policy. The permitting agencies find that this analysis is equally applicable to the part of the Project on Tax Lot 100.

Education

Policy 2. The county will seek and consider information about school services, including bus service, in making land use proposals and decisions.

Irrigation

Policy 1. When evaluating proposals for residential and other non-farm development, the county will consider water rights and the potential impact of the proposed development on nearby irrigated lands.

Although this policy was not identified by the County in its review of the part of the Project on Tax Lot 100, the considerations underlying the policy are addressed in the Goal 3 policies, above. None of the lands within or immediately surrounding the part of the Project on Tax Lot 100 are irrigated or part of an irrigation or drainage district; therefore, the Project will

not have effects on “nearby” irrigated lands. The Project does involved the acquisition of water rights to supply water for the project. The Water Resources Department will make a determination of water availability as part of the permit application process. Under these circumstances, the permitting agencies find that the part of the Project on Tax Lot 100 is consistent with Irrigation Policy 1.

GOAL 12: To provide and encourage a safe, convenient, and economic transportation system.

The County identified Goal 12, Policy 20 as applicable to the part of the Project on Tax Lot 101, but did not provide any analysis of consistency with the policy. The permitting agencies have also identified Policy 2 as applicable, and addresses both policies below.

Policy 2. All county road activities (except those concerning state highways) will comply with the Malheur County road design, construction, and improvement standards.

The permitting agencies adopt the following condition to ensure consistency with Policy 2:

CONDITION X, Y: *The Permit Holder must acquire any necessary permits from Malheur County prior to construction affecting county roadways, and must comply with all Malheur County road design, construction, and improvement standards.*

Policy 20. Developers creating a demand for improvement of unimproved county or public use road rights-of-way will be responsible for those improvements. After the improvements have been made, the developer may petition the County Court to accept such roads, upon meeting county standards, into the county road maintenance program.

The Applicant provided the following information with respect to Policy 20:

[T]he improved road corridor will be 40 feet wide, which includes a 24-foot wide road travel width (12 feet on either side of the road centerline), four-foot wide shoulders on each side of the road, minimum one-foot wide ditches on each side of the road, and appropriate cut and fill. The Access Road Area totals approximately 876 acres.

All necessary road improvements will be constructed and/or paid for by Calico. This includes improvement of Russel Road within County Jurisdiction. Russel Road and Cow Hollow Road are County Roads with 60 feet of public right-of-way (Exhibit 8). All improvements to roadways within County jurisdiction will remain after mining is complete, unless the County requires otherwise.

The main access road to Grassy Mountain will utilize existing private and BLM roads to the Patent Parcel, with BLM maintenance throughout. The primary roadway is approximately 17 miles long and will need to be upgraded to include some straightening and widening in sections. This BLM-maintained access road will remain under the jurisdiction of the BLM following closure of the Project. The improved roads on BLM land will either remain or be reclaimed after mining has

been completed, according to BLM requirements. Roads constructed for the Project within the Project Area will be reclaimed in accordance with the final approved reclamation plan to be included in the DOGAMI Consolidated Permit.

Exhibit 2 at 24-25. With the adoption of the following conditions, the permitting agencies find that the part of the Project on Tax Lot 100 complies with Policy 20:

***CONDITION X, Y:** All necessary road improvements will be constructed and/or paid for by the Permit Holder.*

***CONDITION X, Y:** Roads constructed for the Project within the Project Area will be reclaimed in accordance with the final approved reclamation plan included in the DOGAMI Operating Permit.*

GOAL 13

B. Specific Plans: Specific Plan Recommendations

The County did not identify any specific plan recommendations applicable to the part of the Project on Tax Lot 101. The permitting agencies are not aware of any specific plans applicable to the part of the Project on Tax Lot 100.

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

The Project is isolated from surrounding property owners. A map provided by the Applicant demonstrates that there are no permanently occupied private properties within five miles of proposed Project structures. The nearest seasonally occupied property, Camp Hycliff (a church-owned youth camp) is 4.6 miles away. The permitting agencies conclude that the Project will not affect viewpoints from existing development or of property owners in the surrounding area.

D. Services and Utilities: Availability of services and utilities

The Applicant provided the following information to the County with respect to the part of the Project on Tax Lot 101. The permitting agencies find that this information is equally applicable to the part of the Project on Tax Lot 100.

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.

Exhibit 1 at 15-16. Electrical power is the only offsite utility required for the Project. As noted above, water for the Project will be provided by wells for which the Applicant must obtain permit from the Water Resources Department. The permitting agencies have received a copy of the power purchase agreement between the Applicant and Idaho Power Company, which demonstrates that Idaho Power can serve the Project.

***CONDITION X. Y:** Prior to commencement of construction, the Permit Holder must obtain all necessary right-of-way permits to install new power distribution lines within County rights-of-way.*

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

F. Fish and Wildlife

As discussed above, the Applicant must comply with the Oregon Department of Fish and Wildlife's Habitat Mitigation Policy as a condition of the permitting agencies' permits. Compliance with the policy will satisfy compliance with this provision.

G. General Criteria

The County reviewed the General Criteria listed below and concluded, with respect to Tax Lot 101, that "[t]he site's isolation from any nearby occupied private properties ensures that the General Criteria are met." Final Findings of Fact and Conclusions of Law, Exhibit 1 at 16. As described below, the permitting agencies generally agree, but have included a condition, proposed by the Applicant, minimizing the leakage of light outside the Project Area.

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

ERU setback requirements are described in response to MCZO 6-6-8-4(A)(2), below. The permitting agencies conclude that no additional setbacks of structures are required for the part of the Project located on Tax Lot 100. The Project is isolated from surrounding property owners. A map provided by the Applicant demonstrates that there are no occupied private properties within five miles of proposed Project structures. The nearest seasonally occupied property, Camp Hycliff (a church-owned youth camp) is 4.6 miles away. The Project Area and associated structures are separated from the nearest road (Twin Springs Road) by a 2.48-mile private access road. Vicinity and Access Map, dated November, 2022.

2. Landscaping improvements for the visual benefit of the subject site and for the improved appearance of the neighborhood and county.

The Project is isolated from surrounding property owners. A map provided by the Applicant demonstrates that there are no occupied private properties within five miles of proposed Project structures. The nearest seasonally occupied property, Camp Hycliff (a church-owned youth camp) is 4.6 miles away. The Project Area is separated from the nearest road (Twin Springs Road) by a 2.48-mile private access road. Vicinity and Access Map, dated November, 2022. The Applicant correctly notes that landscaping improvements would be removed as part of reclamation. The permitting agencies conclude that no improvements are required for the visual benefit of the subject site or the 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 consistent with the adopted county road standards or the standards of the appropriate road district and the access management standards of the Malheur County transportation system plan.

The 2.48-mile private road that provides access to the Project Area does not connect directly with a county-owned road. Instead, the private road connects to the BLM-owned and maintained Twin Springs Road, which runs approximately 13.5 miles before connecting with the County-owned and maintained Cow Hollow Road. The County considers Twin Springs road to be a “local roadway” and “local roads were not inventoried as part of the Malheur County [Transportation System Plan (1998)].” Submittal Response to Land Use Comments 484, 487, and 489-492, dated May 24, 2023, at 6. Therefore, no new intersection is proposed that is subject to Malheur County access management standards, and the permitting agencies conclude that no condition of approval is necessary. The permitting agencies defer to BLM’s determination with respect to its own roadway standards.

4. Visual screening of outdoor waste and storage areas.

Visual screening is intended to provide an aesthetic benefit to surrounding land uses. The Project is isolated from surrounding property owners. A map provided by the Applicant demonstrates that there are no occupied private properties within five miles of proposed Project structures. The nearest seasonally occupied property, Camp Hycliff (a church-owned youth

camp) is 4.6 miles away. The Project Area is separated from the nearest road (Twin Springs Road) by a 2.48-mile private access road. Vicinity and Access Map, dated November, 2022. Recreational opportunities on the BLM-owned Tax Lot 100 are referred to as “dispersed,” rather than concentrated on particular viewpoints. The permitting agencies conclude that no condition of approval is necessary for compliance with this criterion.

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

The Applicant has represented that it will comply the practices presented in BLM’s Technical Note 457 Night Sky and Dark Environments: Best Management Practices for Artificial Light at Night on BLM-Managed Lands (Sullivan et al., 2023). In addition, the Applicant agrees to a condition requiring that all site lighting be directed downward to avoid spillover outside of the Project Area. The permitting agencies therefore adopt the following condition of approval:

***CONDITION X.Y:** During construction, operation, and reclamation of the Project, the Permit Holder will:*

- (1) comply the practices presented in BLM’s Technical Note 457 Night Sky and Dark Environments: Best Management Practices for Artificial Light at Night on BLM-Managed Lands (Sullivan et al., 2023); and*
- (2) direct all site lighting downward to minimize spillover outside the Project Area.*

6. Special criteria listed below, as applicable.

No special criteria have been identified by the County or the permitting agencies as applicable to the Project.

H. Allowance of Certain Uses

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

The permitting agencies find that the evidence and analysis pertaining to Goal 3, Policy 8 demonstrates consistency with this requirement and is incorporated by reference herein.

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

Because the evidence shows that the Project is unlikely to cause changes in accepted farm and forest practices on surrounding lands, the Project is also unlikely to significantly increase the cost of those practices. In some cases, it is necessary to consider whether the removal of a significant amount of acreage from agricultural production may increase costs, by decreasing the number of agricultural service providers and therefore increase the costs associated with obtaining those services. In this case the Project will occupy 487.9 acres of land within a much

larger BLM grazing unit. As a result, the permitting agencies find that the Project will likely not significantly increase the cost of accepted farm or forest practices on surrounding lands.

MCC 6-6-8 Specific Criterial to Evaluate Suitability

MCC 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.

Noise, dust, and visual screening are each addressed above, and the permitting agencies find that the Project, as conditioned in applicable permits, will adequately address these issues. Traffic, including a transportation baseline report and a traffic impact analysis, is addressed in Section 2.18 of the CPA. Traffic impacts are more fully discussed in Section X.Y of the Operating Permit. Based on the analysis in Section X.Y, the permitting agencies conclude that the permit, as conditioned in the Operating Permit, will adequately address this issue.

2. Setbacks from property lines.

Setback requirements in the ERU zone are governed by MCC 6-3A-6(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.

None of the listed setbacks are implicated by part of the Project on Tax Lot 100. The Project Area is well within the boundaries of the much larger Tax Lot 100, which encompasses not only Township 22 South, Range 44 East, Section 8, where the Project Area is located, but all the Sections surrounding Section 8.

As discussed in Section 6-6-7(G)(1), above, the Project does not require any additional setbacks.

3. Location of vehicular access points.

As discussed in Section 6-6-7(G)(3), above, access to the Project Area is from a BLM-owned and maintained road designated as a “local roadway” by Malheur County and not subject

to its Transportation System Plan. The Project does not require any additional conditions pertaining vehicular access points.

4. Fencing needs.

The Applicant provided the following response to the County. While it is specific to Tax Lot 101 (the Patent Parcel), it describes fencing on Parcel 100 as well.

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.

The County concurred that the fencing proposed by the Applicant is sufficient for Tax Lot 101. While fencing is discussed in other parts of DOGAMI's operating permit, the permitting agencies concur that the fencing proposed by the Applicant satisfies this section of the MCZO. The permitting agencies adopt the Applicant's representation as a condition, as follows:

CONDITION X.Y: Prior to operation of the Project, the Applicant will construct a perimeter fence around the Project Area. Three-strand barbed wire fences will be constructed in accordance with BLM fencing standards per BLM Handbook 1741-1. Cattle guards or gates, as appropriate will be installed along roadways in a manner sufficient to prevent the intrusion of cattle within the Project Area. During operation, and until completion of reclamation, the Applicant will maintain these features in a condition sufficient to prevent the intrusion of cattle within the Project Area.

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

In its Final Findings of Fact and Conclusions of Law, the County interprets this provision as a means to require conditions intended to "reduce the vector danger posed by mosquitos." Final Findings of Fact and Conclusions of Law, Exhibit 1 at 21. The County acknowledges that standing water will be an unavoidable part of the Project's construction and operation, but "the geographic isolation of the Project Area will greatly reduce the vector danger posed by mosquitos." *Id.* This is equally true of Parcel 100. Use of water on the facility is subject to permits issued by the Department of Environmental Quality and the Water Resources Department. Given that the Project must comply with all such required permits, and given the isolation of the Project, the permitting agencies concur with the County's analysis.

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

For the part of the Project on Tax Lot 101, the County included a condition requiring DOGAMI approval of a Project reclamation plan. The permitting agencies concur that the reclamation plan, included in the Operating Permit, is a sufficient standard for rehabilitation of the land upon termination of the operation.

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

There are no residential or commercial uses within 200 feet of the Project Area.

C. Equipment and access roads shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noise, vibration or dust that is injurious or substantially annoying to livestock being raised in the vicinity. (Ord. 86, 12-7-1993)

The permitting agencies find that the evidence and analysis pertaining to Goal 3, Policy 8 demonstrates consistency with this requirement and is incorporated by reference herein.

V. INCORPORATION OF FINDINGS AND CONCLUSIONS INTO PERMITS

The findings and conditions herein are incorporated into the following draft permits:

[LIST]