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July 27, 2020

Cynda Herrick
Valley County Planning and Zoning Administrator
219 N. Main Street
Cascade, ID 83611

RE: NOTICE OF TIMELY SUBMITTED APPEAL AND BRIEF
IN SUPPORT OF APPEAL

Dear Ms. Herrick:

PLEASE TAKE NOTICE that pursuant to Valley County Code § 9-5H-12, Save the South Fork Salmon, Inc. ("SSFS"), a non-profit corporation established under the laws of the State of Idaho (P.O. Box 1808, McCall, ID 83638, tel: (208) 271-6503), hereby appeals the Valley County Planning and Zoning Commission's ("PZC") final approval of Conditional Use Permit ("CUP") application, CUP 20-12, for Midas Gold's Stibnite Gold Logistics Facility ("SGLF"), which was approved by the PZC by motion on July 16, 2020. The nature of SSFS's interest in the PZC's decision is stated in its July 8, 2020 comment letter to the PZC opposing CUP 20-12.

The appeal fee of \$300.00 was submitted to the County Clerk with this document.

On July 16, 2020, Valley County PZC held a public hearing on CUP application CUP 20-12. Four letters in support and 25 letters in opposition of the approval of CUP 20-12 were timely submitted, including a letter in opposition by Save the South Fork Salmon. In addition, after the applicant made its presentation, one person testified at the public hearing in support of the approval of the CUP, and five persons testified in opposition. As outlined in the PZC Staff Report, opponents had many concerns with the application, including, but not limited to, negative impacts to the scenic area, impacts to recreational and backcountry access, the precedent-setting nature of an approval for future industrial development, conflicts with the Comprehensive Plan, impacts to housing affordability,

adverse impacts to traffic, and the inappropriate and pre-decisional nature of an approval of the logistics facility application prior to federal approval of the larger Stibnite Gold Project (SGP). Many of the opponents also commented on the incompleteness of the CUP application.

Nevertheless, the PZC approved the application (3 in favor, 1 opposed, and 1 recused) by motion made at the hearing with 18 conditions of approval.

For the reasons discussed below, SSFS submits that the approval of CUP 20-12 was arbitrary and capricious, not in accordance with the law, and urges the Board of Commissioners to sustain the appeal and invalidate PZC's approval of the SGLF.

I. The PZC's decision to approve a project where it could not reasonably address or propose mitigation of the potential environmental, economic, or social impacts, and where it based its decision on not wanting to "hinder" the applicant's progress is arbitrary and capricious, and not in accordance with the law.

The PZC was arbitrary in approving CUP 20-12 because it could neither reasonably address the environmental, economic, and social impacts of the proposed SGLF nor propose reasonable mitigation, as required by Valley County Code. Rather, the PZC based its approval of the application on impermissible factors of not wanting to "hinder [Midas's] progress"¹ and ensuring that Midas gets "to the next step."² The PZC's decision is therefore arbitrary, capricious, and not in accordance with the law.

First, neither the applicant nor the PZC can reasonably anticipate or "address [the] potential environment, economic, and social impacts" to Valley County and its communities, and thus cannot determine "how these impacts are to be minimized" for a project whose construction timeline is speculative and unknown.³ A reasonable assessment of the potential impacts of the SGLF requires a knowledge of the baseline conditions, whether it be traffic, the economy, or the social environment. Here, the PZC recognized that the baseline conditions for a project proposed to be built a few years from now are not known:

It is going to be a few years before this [SGLF] actually happens. . . . I think we're going to have changes in the County. There is a lot of like what we brought up just now, the traffic thing, all the building that's

¹ PZC July 16, 2020 public hearing video recording at 3:03:44.

² *Id.* at 3:08:23.

³ Valley County Code § 9-5-3(D)(2).

going on. There's a huge amount of things happening. We've got Trident [inaudible]. We're growing. And I don't particularly feel good about permitting something 2 or 3 years in advance of it actually happening.⁴

For example, without knowing what the baseline conditions will be in a few years, it is impossible to “[c]ontrast existing [traffic conditions] with the changes the proposal will bring . . . after completion . . .,” or to “[s]tate how the proposed development will impact existing developments . . .,”⁵ or to know if the impacts are acceptable to “the people who are sitting in these seats and in the County Commissioner’s at that time” and who “are the people most immediately concerned with this permit.”⁶ This is perhaps why Valley County Code § 9-5H-8(B)(1) requires “approval [of a CUP] shall be for a period of one year from the date of the hearing, after which time, the approval will expire and be null and void unless the applicant has substantially complied with the provisions thereof or has applied for an extension of time. . .”

Similarly, the PZC cannot make a reasonable assessment of the impacts of the SGLF because, without approval of the larger mine project (or at a minimum, knowing what the preferred alternative is), the scope and thus, impacts, of the SGLF are not known.

The SGLF is not a stand-alone project, but planned--and needed--only as part of the larger SGP.⁷ In fact, “[m]ine permitting . . . [will] take into account the impacts of those activities at the logistics facility.”⁸ The PZC, moreover, recognized not only that the scope of the SGLF could change based on the federal environmental review process,⁹ but, if approval for the SGP is not obtained, the SGLF would not be built.¹⁰ Adding the condition to the CUP approval that “[t]he use shall not be started until approval of mining activities is approved” does little to rectify this problem of not knowing now exactly what the scope and

⁴ PZC July 16, 2020 public hearing video recording at 2:37:17.

⁵ Valley County Code § 9-5-3(D)(2)(a), (p).

⁶ PZC July 16, 2020 public hearing video recording at 2:36:22. *See also id.* at 1:49:26 (“Nothing to my knowledge has been asked for prior to getting approval for an operational plan for a project.”).

⁷ The SGLF is “[t]he off-site administrative offices, transportation hub, warehousing and assay laboratory **needed for the Project . . .**” SGP Plan of Restoration and Operation (“PRO”) at ES-14.

⁸ PZC July 16, 2020 public hearing video recording at 2:17:56 (Midas Gold representative speaking).

⁹ *Id.* at 2:43:49.

¹⁰ *Id.* at 1:40:00 (Midas Gold stating that “if we don’t get the mining permit, we’re not going to construct the logistics facility.”).

impacts of the SGLF will be. Of more concern, separating the impacts of the SGLF from the larger SGP attenuates the County's ability to adequately address and mitigate these impacts to the services and infrastructure within Valley County. Approving the CUP application without this knowledge and knowing that there is a possibility that the scope of the SGLF may change based on the federal environmental review is, point blank, arbitrary and capricious.

Finally, seeking approval for the SGLF now is not unlike the Community Agreement proposal, where Midas Gold sought a premature "endorsement" of its proposed mining operation from local municipalities and governments. The SGLF is "where the County has the only jurisdiction we'll have [over the larger mining project] is with this type of thing, just facilities."¹¹ Other than the federal government, the County is "the ones . . . that are most closely associated with the actual operations."¹² Approving the CUP application now gives "the impression that the County is right now weighing in on behalf of Midas Gold."¹³ Indeed, Midas Gold has utilized the Community Agreement as a selling point to its investors in its most recent investor presentation.¹⁴

The impropriety of approving the SGLF prior to the SGP approval is implied in Valley County's contractual relationship with the Payette National Forest and other state and federal agencies, which "provides a framework for the Parties to cooperate and efficiently process three proposals by Midas Gold" including "new and/or upgraded offsite infrastructure" and "operational, reclamation, and post-closure monitoring that will occur over a minimum of 20 years."¹⁵ Unilaterally approving the SGLF before the other agencies have a chance to weigh in on the impacts **fails to adhere to this framework**. Moreover, National Environmental Policy Act ("NEPA") regulations imply that local agencies and governments be involved in the NEPA process to better facilitate the decision making process without abdicating their authority by undermining the legally required analysis of a major Federal action.¹⁶

¹¹ PZC July 16, 2020 public hearing video recording at 2:35:30.

¹² *Id.* at 2:37:24.

¹³ *Id.* at 2:38:42.

¹⁴ See Midas Gold Corp Investor Presentation July 2020 at 32 "Community Agreement." See also "Social License" and "Government and Public Support" at 29, 30. <https://www.midasgoldcorp.com/site/assets/files/2384/2020-07-08-cp-max.pdf>

¹⁵ Forest Service Agreement No. 2017-0412-Stibnite Gold-MU-02a.

¹⁶ NEPA regulations provide: 1) project segmentation, which bars independent analysis of "interdependent parts of a larger action [that] depend on the larger action for their justification;" 2) "prejudicing the ultimate decision on a program;" and 3) "better integrat[ion of] environmental impact statements into State and local planning processes..." 40 C.F.R. §§ 1508.25(a)(1), 1506.1(c)(3), 1506.2 (d).

By approving the SGLF prior to the federal government's consideration of the SGP as a whole, it appears, as PZC Commissioner Allen noted, like the "County is weighing in on Midas Gold," and undermines the public's confidence in its local government to administer the authority given to it by Idaho's Local Land Use PLanning Act ("LLUPA") to "promote the health, safety and general welfare of the people."¹⁷

Rather, the PZC was more concerned with furthering Midas Gold's own business prerogatives than on the issues at hand in CUP 20-12. Instead of knowing, or seeking what the actual impacts this facility will have on the local communities, the PZC decision indicated a strong bias towards Midas Gold and its progress, which inhibited the PZC's ability to act in a manner consistent with the quasi-judicial expectations required in the local land use and planning decision making process.¹⁸

If we approve it, then it moves it to the Commissioners. It gets [Midas] to the next step. . . . Or if we make them put it off until the EIS is approved, then we're going to start over. It will get appealed. It will go to court. And then they're out another year and a half. We're hindering their progress. That would be a bad deal.¹⁹

The decision to approve the SGLF was impermissibly rooted--as stated in the motion made to approve the CUP--in the "understanding, knowing this will get appealed to County Commissioners."²⁰ The basis for the rationale to approve the CUP is not a permissible factor under Valley County Code, or elsewhere. It makes the PZC's decision arbitrary and capricious, and not in accordance with the law. The Board of Commissioners should, therefore sustain this appeal.

II. The PZC failed to address the conflicts between traffic information in the CUP application and the Transportation Impact Study, and failed to consider all future traffic volume that will travel on the Warm Lake Road corridor.

The PZC erred in regard to concluding that traffic due to the SGLF will not have a negative impact on Highway 55 and the surrounding community. The PZC failed to resolve conflicting data for traffic volume between the CUP application and the Transportation Impact Study ("Traffic Study"); it failed to consider fully how additional

¹⁷ Idaho Code § 67-6502.

¹⁸ See Valley County Code § 9-2-1(B)(2). See also Idaho Code §§ 74-401 to 74-406.

¹⁹ PZC July 16, 2020 public hearing video recording at 3:03:14.

²⁰ *Id.* at 3:09:27.

traffic would impact Warm Lake Road; and it failed to consider that there will be additional future traffic from the mine that will travel down that same transportation corridor. The lack of full consideration of these issues renders PZC's decision arbitrary and capricious.

The PZC failed to resolve conflicting data between the CUP application and the Traffic Study, which severely underestimated the impact the SGLF will have on traffic on Highway 55 and in and around Cascade. The CUP application states that approximately 26 to 30 employees will live in the surrounding community and work at the SGLF, and that it is expected that anywhere from 20 to 50 percent of the 524 to 670 employees--or 104 to 335 employees--working for mining operation (including those working at the SGLF) will live in Valley or Adams Counties.²¹ Based on that information, the potential maximum number of employees traveling to the SGLF is 335, and the daily trips they will take are calculated as follows:

- About 28 will commute daily to the SGLF, making one round-trip to and from the SGLF, or two daily trips, for a total of 56 daily trips;
- About 307 employees will commute to the SGLF for further transport to the mine in two week shifts, each making two daily trips every two weeks (10 total weekdays), for a total of 614 daily trips per employee, or an average of 61.4 trips per weekday.

The total daily trips of employees living in Valley and Adams Counties and taking Highway 55, through Cascade, and up Warm Lake Road to the SGLF appears to be approximately 117 daily weekday trips for light vehicles only.

The Traffic Study, in contrast, states that the daily weekday trip volume for light vehicles is expected to be only 19 trips, only about 16 percent of the expected traffic based on the above analysis.²²

The PZC's neglect to address and resolve this discrepancy in daily trips results in a failure to understand and provide information to the public about the full extent of "changes the proposal will bring . . . after completion [and] full occupancy of the proposed development" to the "traffic volume, character, and patterns including adequacy of existing or proposed street width, surfacing, alignment, gradient, and traffic control features or divides, and maintenance," as required under Valley County Code.²³ These potential

²¹ Project Description for the SGLF (August 2019) ("Impact Report") at 2-2 (document submitted with CUP application CUP 20-12, and thus incorporated by reference).

²² Traffic Study at 14 (Table 1) (document submitted with CUP application CUP 20-12, and thus incorporated by reference).

²³ Valley County Code § 9-5-3(D)(2)(a).

changes to the traffic volume and patterns are increasingly important to understand because, as recognized by PZC Commissioner Cooper “traffic in Valley County is going nuts here. . . . The corridor from Horseshoe Bend to McCall needs to have something done to it, to alleviate some of the congestion problems we have and some of the frustration we have trying to navigate through this . . . this County.”²⁴

A lack of understanding of the true impacts due to the increased number of vehicles travelling on the highway and up Warm Lake Road is problematic because it impacts the County’s ability to ensure that the application, if approved, “will not place any unreasonable burden on the public infrastructure,”²⁵ and compromises the County’s ability to negotiate “an agreement ...to mitigate impacts to the road system . . .”²⁶ This lack of understanding was articulated by Commissioner Benton: “The easement getting on and off in that area is **not** going to be a problem, it’s going to be cars, it’s **not** going to be semis.”²⁷ It is especially worrisome considering Midas Gold’s stated desire to fund upgrades to the Warm Lake Road/Highway 55 intersection in order to accommodate an increase in WB-67 truck traffic. The estimated daily heavy vehicle traffic during construction and mine operations is significant.²⁸ It will constitute a significant impact to county infrastructure that must be analyzed and potentially mitigated for accordingly.^{29,30} As mentioned above, traffic on the thoroughfares through Valley County is already problematic.

Moreover, even if the PZC reasons that the information in the Traffic Study is correct, this study, prepared in 2017, is already outdated and does not provide a accurate picture of how the SGLF will further impact traffic, or which improvements are necessary. Warm Lake Road is not only the “western gateway to Idaho’s wildlands,” but recreational traffic has increased in the past few years due to the popularity of the hot springs of the road, mushrooming near Warm Lake, and the recent renovation of the Warm Lake Lodge.³¹

There is also a failure of the Traffic Study and the PZC to take into account new traffic, particularly heavy vehicles (supply and haulage traffic), that will be travelling up and down the Warm Lake Road corridor to the tune of an average of 48 trips per day for a total

²⁴ PZC July 16, 2020 public hearing video recording at 2:31:30.

²⁵ Valley County Code § 9-5H-7(B)(3).

²⁶ PZC Staff Report: CUP 20-12 at 7 (Condition of Approval #17).

²⁷ PZC July 16, 2020 public hearing video recording at 2:41:48 (emphasis added).

²⁸ See Midas Gold PRO at 12-6.

²⁹ *Id.* at 1:41:00 (discussing the type of heavy truck traffic that will regularly be turning at the Warm Lake Road/Highway 55 intersection due to increased traffic activity from the proposed SGP).

³⁰ See *infra* at 10 (discussing volume of heavy truck traffic carrying hazardous materials).

³¹ PZC July 16, 2020 public hearing video recording at 2:16:26.

of 17,118 single trips per year to the mine that may or may not be stopping at the SGLF, but will pass through that same corridor on the way out to Highway 55.³²

The PZC failed to address this discrepancy of daily trips of light vehicles, and the lack of data of daily trips of heavy vehicles, and instead erroneously focused on how the SGLF will alleviate traffic from the SGLF to the mine site itself.³³ Although the mitigation of daily trips going from the SGLF to the mine site itself is an issue that the PZC should consider, that consideration does not alleviate the need to ensure that there is a complete understanding of other traffic impacts that placing the SGLF on Warm Lake Road will have on that road to the highway, and throughout the County. It's conclusion that the CUP application and Midas Gold "covered concerns" relating to the impact of the SGLF is arbitrary and not based on substantial evidence. The Board of Commissioners should therefore sustain the appeal.

III. Location of the SGLF on Warm Lake Road is completely out of character with the existing area and not consistent with the Comprehensive Plan.

The proposed SGLF is inconsistent with the Comprehensive Plan's goal to retain rural and small town character and to preserve agricultural land.³⁴ This inconsistency is in violation of LLUPA, § 67-6512(a), which provides that a local government may grant a conditional use permit "when it is not in conflict with the [comprehensive] plan."

The SGLF, a light industrial complex, is proposed to be located along Warm Lake Road, on a currently vacant parcel surrounded by other vacant parcels that are used for agricultural purposes.³⁵ There is no other industrial development along the 8.5 miles of Warm Lake Road (except for Granite Excavation, which is adjacent to Highway 55) headed toward Cascade, and minimal development (the Warm Lake Lodge) on or around Warm Lake Road heading out to the mine site. PZC Commissioner Allen, in no uncertain terms, stated that locating the SGLF along Warm Lake Road is not consistent with the Comprehensive Plan.³⁶ He further recognized that this facility will be "a big impact for a rural area" and will cause "industrial creep."³⁷

³² See SGP PRO at 12-6.

³³ PZC July 16, 2020 public hearing video recording at 2:32:04 (Commissioner Cooper stating, "My concern is from the logistics facility to the mine itself.").

³⁴ Valley County Comprehensive Plan at 11, 73.

³⁵ PZC Staff Report at 4.

³⁶ PZC July 16, 2020 public hearing video recording at 1:33:40.

³⁷ *Id.* at 2:59:44; 2:44:26.

The Comprehensive Plan is a forward-looking document that establishes, with input from the public, visionary and aspirational goals for local government. The inconsistency with the Comprehensive Plan is compounded by the fact that approval of this application **now** is extraordinarily premature given that construction timing of the SGLF is (1) speculative; (2) not inevitable until the mine is approved;³⁸ and (3) may not be constructed at all.³⁹ By approving the SGLF in an incompatible area, the PZC has predetermined the future development of this land and the 8.5 mile corridor leading to Cascade⁴⁰--which is particularly egregious given Valley County has no specific zoning designations--with incomplete and inadequate information of the growth and development patterns of the Cascade and the County, the traffic volume and patterns, and whether maintaining the existing rural character of the site and Warm Lake Road corridor is more desirable than having an industrial complex. The proposed location of the SGLF is also inconsistent with the County's policy to achieve the goals of the Comprehensive Plan by locating "industrial development . . . in commercial hubs, villages, or near existing established incorporated communities with similar characteristics and infrastructure to serve the more intense land use needs."⁴¹

Not having this information on the future character of the surrounding communities and how the proposed SGLF will impact them, and the fact that the proposed SGLF is inconsistent with the Comprehensive Plan, makes the decision to approve this CUP now unreasonable, arbitrary, and capricious; this appeal should be sustained.

IV. The PZC failed to consider the impacts of the SGLF on affordable housing.

Midas Gold, both in its CUP application and at the public hearing, and the PZC failed to address concerns regarding the impacts of the proposed SGLF on the affordability of housing in Cascade and Valley County. By approving the CUP application without consideration of this issue, and ensuring that the CUP is consistent with the Comprehensive Plan and Valley County Code, the PZC's grant of the CUP is arbitrary and not in accordance with the law.

³⁸ *See supra* at 2-5.

³⁹ PZC July 16, 2020 public hearing video recording at 1:40:00.

⁴⁰ It is conceivable that the County will receive other building permits and applications for land surrounding the proposed SGLF. Having the SGLF CUP already approved in advance--whether or not it ultimately is constructed--will color this and future PZC decisions.

⁴¹ Valley County Code § 9-5-2(B)(3).

LLUPA provides that a local government may grant a conditional use permit “when it is not in conflict with the [comprehensive] plan.”⁴² The Comprehensive Plan not only identified affordable housing in Valley County as a “striking need,” but also included as one of its goals to provide the community with “adequate...affordable housing.”⁴³ Moreover, Valley County Code § 9-5-3(D)(2)(b) requires that a CUP applicant provide for “the mitigation of impacts on housing affordability.”

The PZC completely neglected to consider this issue and how the SGLF would impact the availability of affordable housing. The CUP application summarily and without support states that the proposed SGLF would have an “indirect positive impact on housing affordability.”⁴⁴ There was, however, no report nor data provided to support this contention.⁴⁵ In its comment letter, SSFS provided conflicting evidence that in other rural communities, providing high-paying jobs that reduce unemployment often have the negative consequence of significantly increasing the cost of housing.⁴⁶

Despite this conflict in the facts provided, both Midas Gold and the PZC completely disregarded this issue. As such, PZC’s decision to grant the CUP violates LLUPA because PZC has not shown that the CUP application is consistent with the Comprehensive Plan, and it is inconsistent with Valley County Code.

V. CUP 20-12 does not adequately address or mitigate for impacts from transportation of hazardous materials through the County.

Midas Gold described its activities at the proposed assay laboratory at the SGLF as akin to a “highschool chemistry laboratory.”⁴⁷ This analogy does not satisfy Valley County Code § 9-5-3(D)(2) requirement to “address...how these impacts are to be minimized.” While on its face, the analogy may hold some water--that is, Midas Gold is not processing mined ore at the SGLF. But more broadly, it does not accurately, or adequately describe the extent and use of hazardous material that will be transported on County roads to and from the SGLF and the SGP.

⁴² Idaho Code § 67-6512(a).

⁴³ Valley County Comprehensive Plan at 42.

⁴⁴ Impact Report at 2-2.

⁴⁵ The application references the Highlands Economic Report, but it is neither attached to the application nor is there any indication that the Planning and Zoning Commission was able to access and review this report.

⁴⁶ Save the South Fork Salmon July 8, 2020 comment letter at 5.

⁴⁷ PZC July 16, 2020 public hearing video recording at 57:50.

Midas Gold states that chemicals such as cyanide will not be stored at the SGLF.⁴⁸ However, regularly proposed transshipments, which include, among others, sodium cyanide, ammonium nitrate, and potassium amyl xanthate, will stage at the SGLF before continuing on to the mine site.⁴⁹ There is a high likelihood that during winter conditions these hazardous substances will spend some extended period of time at the SGLF when the proposed Burnt Log road to the mine, at an elevation of 8,000 feet, cannot be kept open. When the trucks arrive at the SGLF and the road is unsafe for travel, the trucks will need to stand by somewhere, presumably at the SGLF. Currently, there is no plan for safely dealing with a bulk carrier of hazardous materials sitting in the parking lot of the SGLF potentially for days or weeks. This point must be addressed prior to approval of CUP 20-12.

These hazardous chemicals transshipments will travel on state and county roadways regularly before arriving at the SGLF or SGP. These transshipments will not be the responsibility of Midas Gold before arriving at their final destination, which is assumed to be the mine site where the candid briquets will be dissolved and transferred into storage silos.⁵⁰ Estimates in the SGP PRO indicate over 5,000 round trips per year into and out of the mine site carrying ore processing supplies, over 700 round trips per year carrying explosives, and over 500 round trips per year carrying fuel.⁵¹ This amounts to roughly 85,000-100,000 round trips of hazardous materials over a 12-15 year mine life. Added to this is the over 5,000 total daily hauls of antimony concentrate out of the mine site that will not only place an immense burden on the County's road infrastructure, but also further increase risk of unintentional traffic incidents.⁵² Midas Gold notes its track record of 134 fuel hauls without incident.⁵³ While this safety record is notable, the estimated number of trips carrying hazardous materials during mine operations is 1,000 times greater, and may not have the same winter month fuel haul restrictions that were in place during Midas Gold's Golden Meadows Exploration project.

There is no mention of any risk analysis of traffic incidents anywhere in the CUP application's discussion of hazardous material, nor was there at the public hearing. If this analysis is included within the larger federal environmental analysis of the SGP, then the PZC cannot make a reasonable decision now regarding the mitigation of the impacts anticipated from these heavy vehicle loads carrying hazardous materials.

⁴⁸ *Id.* at 2:19:40.

⁴⁹ *Id.* at 2:20:55.

⁵⁰ PZC July 16, 2020 public hearing video recording at 2:20:00.

⁵¹ SGP PRO at 12-6.

⁵² *Id.*; *See also* Midas Gold Corp. Presentation dated July 8, 2020 at 8, available at: <https://www.midasgoldcorp.com/site/assets/files/2384/2020-07-08-cp-max.pdf>.

⁵³ PZC July 16, 2020 public hearing video recording at 2:21:25.

The PZC's discussion about transport of hazardous materials focused on transportation between the SGLF and the proposed mine site.⁵⁴ Although the PZC Commissioners discussed briefly the regulation and chain of custody for hazardous materials,⁵⁵ PZC disregarded the fact that all of these hazardous materials **will regularly be travelling through communities and town centers** within the County's boundaries, whether coming from the north or south on State Highway 55. These materials will not be within the control of Midas Gold or its convoys from the SGLF to the proposed mine site. And, there would be no reason to elevate the risks associated with transportation of these hazardous materials through Valley County without the proposed SGP.

In its comment letter to PZC, Save the South Fork Salmon stated, "Planning and Zoning Commission would be negligent by not requesting this information and making disclosure of this information **contingent upon approving this conditional use permit.**"⁵⁶ Simply relying on a claim by the applicant is insufficient to fulfill this request. Compounding the matter is that the scale and scope of the mining project is yet to be determined, which is why **it is imperative that as a condition of CUP approval that Midas Gold disclose hazardous materials information in an easily accessible public database (such as a website specific to their operation) so the general public can be aware of what type (material safety data sheets), how much (quantities and frequencies of shipments), and when (specific dates, times, and routes) these hazardous materials are being shipped in and out of the SGLF and the proposed mining project.** As a matter of safety and the public's ability to make their own decisions regarding if and when to travel on the Warm Lake Road so to minimize their own risk of confronting these hazardous materials, readily available disclosure of this information must be incorporated as a condition of approval for CUP 20-12.

CONCLUSION

As discussed above, the approval of CUP 20-12 is arbitrary and capricious; it is not based on substantial evidence in the record; and it is not in accordance with the law. First, it is premature to approve CUP 20-12 now--years before it will be constructed--or prior to federal approval of the mine for several reasons. It is impossible to know what the true impacts of the SGLF will be without an accurate assessment of the baseline environmental, economic, and social conditions of Valley County for the time when the SGLF is proposed to be built. It is impossible to know what the scope and thus impacts of the SGLF without the federal approvals being complete. The decision to approve the SGLF based on making

⁵⁴ *Id.* at 2:32:04.

⁵⁵ *Id.* at 2:42:10.

⁵⁶ Save the South Fork Salmon July 8, 2020 comment letter at 11 (discussing the inadequacy of Midas Gold's Impact Report concerning hazardous materials transport).

sure Midas Gold's progress was not hindered is not a permissible factor to consider. Second, the discrepancies in traffic data were not addressed by the PZC, and so addressing traffic issues and mitigation can not be reasonably done, as required under Valley County Code. Third, the PZC did not resolve how approving a 25-acre industrial complex in the middle of agricultural land is consistent with the Comprehensive Plan. This incompatibility of the land use also raises the issue of the prematurity of the application; the current PZC should not commit a future PZC and the public to land use decisions for which they cannot adequately assess whether it is in the best interest for the health, safety, and general welfare of the public. Fourth, the PZC completely failed to consider the impacts to affordable housing, or require mitigation that would minimize those impacts. And, finally the PZC failed to recognize the extent of the issue of hazardous materials transport through communities within Valley County and provide any conditions to the permit that would ensure this information is readily available to the public.

Save the South Fork Salmon therefore urges the County Commissioners to sustain the appeal and invalidate the PZC's approval of CUP 20-12 at this time.

Respectfully submitted this 27th day of July 2020.



Fred Coriell

President, Save the South Fork Salmon, Inc.

