



Public Service Commission

State of North Dakota

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August 7, 2015

Mr. Troy Leingang
Environmental Manager
Coteau Properties Company
204 County Rd. 15
Beulah, ND 58523

Dear Mr. Leingang:

The Reclamation Division has reviewed Coteau's July 6, 2015 response to our May 20, 2015 technical review letter for Revision 18 to Permit NACT-0201. The following issues must be resolved prior to this office recommending Commission action.

Section 2.2.4 – Surface Water Hydrologic Consequences

1. New item: Please revise Section 2.2.8.3 Post-Mining Ephemeral Drainageways Map to use the same stationing labeling for the map and profiles shown in Section 2.2.8.4. (FSE)

Section 2.4.1 – Pre-Mining Land Use and Vegetation

2. Follow-up to Item No. 5: Please update the permit narrative to provide ecological justification as to why tame pastureland in Tract 56 is now being considered native grassland, and clarify the ecological condition of the native grassland in this tract (56). This is required to make other information in the permit, such as the Tame Pastureland table on page 2 of Section 2.4.2 understandable and to allow one to understand species composition variability of the grasslands within this tract. If this area that was formerly classified as tame pastureland is now going to be reclassified as native grassland, then the area must be delineated on the Pre-Mining Land Use and Vegetation Map, Section 2.4.3, as “go-back land” since NRCS ecological sites descriptions do not represent areas that were previously tilled. The Reclamation Division believes that previously tilled areas that are dominated with non-native species commonly used for forage should not be considered native grassland even if the area is not fenced or managed separately from adjacent undisturbed native grassland. (NDAC 69-05.2-08-08(1)(d)) (GAW)
3. Follow-up to Item No. 7: Coteau has responded to this item (which asked for clarification of how wetlands associated with intermittent streams were accounted for in the Pre-Mining Land Use and Ownership table, Section 2.4.3, and in the Wetland Acreage Summary Table, Section 2.4.10) by simply adding the phrase “as temporary wetlands” to a sentence on page 14 of Section 2.4.2. The original language above this sentence states that the riparian areas and channels of intermittent

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streams are classified as seasonal wetlands and they are depicted as seasonal wetlands on the Pre-Mining Land Use and Vegetation Map, Section 2.4.3. As originally requested, please clarify how seasonal wetlands associated with intermittent streams are accounted for in Section 2.4.4, Pre-Mining Land Use and Ownership Table, since intermittent streams are not listed as a land use and the seasonal wetland acreage associated with the intermittent streams is not included in the wetland column. (GAW)

4. Follow-up to Item No. 8: Please either include sampling data for the two wetlands being added to the permit or clarify which wetlands with data already in the permit represent these two features as required by NDAC 69-05.2-08-08(1)(c) and (d) and Vegetation Guidelines Document (Section II-H). Information from Permit NACT-9101 can be included but will need to be updated if the description of the vegetative community is no longer current. Coteau responded to this item, page 68 of Section 2.4.2, by stating that the vegetative communities for these wetlands is similar to seasonal wetlands in Section 21. However, none of the seasonal wetlands located in cropland in Section 21 were sampled. Please revise to include the required baseline information for these wetlands. (NDAC 69-05.2-08-08) (GAW)
5. Follow-up to Item No. 9: Table 2.4.10, Wetland Acreage Summary, has been revised to show that the permit contains 250 acres of seasonal wetlands, 1.0 acres of semi-permanent wetland, 7.1 acres of seasonal wetlands associated with intermittent streams and 4.99 acres of fen wetland for a total of 263.09 acres of seasonal or more permanent wetland which needs to be classified as wetland according to our Pre- and Post-Mining Vegetation Assessments document. Please revise Table 2.4.4, Pre-Mining Land Use and Ownership Table, to show that the permit contains 263.09 acres of wetlands. (GAW)
6. Follow-up to Item No. 9: The total wetland acreage in Table 2.4.10, Wetland Acreage Summary, shows that there are 300.79 acres of wetlands in the permit but the total cumulative value listed is 297.07 acres. Please review and correct as necessary. (GAW)
7. Follow-up to Item No. 10: As previously requested, please retain the pro-rated average lbs/acre yield value at the bottom of Table 2.4.8 so one can calculate or otherwise determine an acreage amount. (GAW)
8. Follow-up to Original Item No. 11: Please clarify in Section 2.4.10, Wetland Acreage Summary, that Coteau recalculated the size of wetlands with Revision 18 and this is why the values listed in this table do not match the values listed in Section 2.4.12, Wetland Vegetation Maps, which includes line drawings of the sampled wetland. The size of fen wetland FW5-2-144-88 is being reduced from 1.26 acres to 1.00 acres with Revision 18 but the line drawing on page 17 of Section 2.4.12 continues to show this wetland as being 1.26 acres in size. Also, all of the information in Section 4.4 regarding the Fen Wetland Mitigation Plan continues to indicate that there are 5.25 acres of fen wetlands rather than the new amount listed in Section 2.4.10 which is 4.99 acres. We do not believe that it is necessary to update the line drawings in each instance where acreage differences now exist but this issue should be discussed in Section 2.4.10 and in Section 4.4 so that it is clear what has transpired. (GAW)

Section 2.5.12 – Projected Soil Respread Depth Map

9. Follow-up to item No. 14: Please revise the line type and color representing the mining disturbance boundary in the legend (solid black line) on Section 2.5.12 to match the line type and color representing the mining disturbance boundary on the map (dashed blue line). (WTG)

Section 2.7 – Fish and Wildlife Resources

10. Follow-up to Item No. 23: In the Northern Long-Eared Bat (NLEB) narrative on page 5 of Section 2.7.3, please clarify how many woodland acres could be considered as suitable habitat for the NLEB in the permit area and how much of this acreage is located on tracts containing Federal coal. Then clarify approximately how many acres of potentially suitable habitat are to be disturbed by mining related activities and include a breakdown about how many acres are to be disturbed on each tract of federal coal where mining is being proposed with this revision. This information is needed to develop the required threatened and endangered species permit finding. (GAW)
11. Original Item No. 22: Coteau needs to include an assessment of whether or not the permit and adjacent area contains habitat suitable for the Northern Long-Eared Bat and include plans for conducting surveys if recommended by the USFWS. The assessment should also discuss the likelihood of species presence, whether any suitable habitat is going to be impacted that could result in a “taking” of the species and the protective measures that will be implemented to reduce the chance of a “taking” and destruction or adverse modification of suitable habitat. Verbal and written communications with state and federal wildlife agencies regarding this matter should be documented and included in the permit. If this species may be present, please include a Northern Long-Eared Bat species specific Protection and Enhancement Plan and either include it in this permit, or concurrently in the stand-alone Consolidated Wildlife Habitat and Management Plan. We suggest using the Northern Long-Eared Bat Interim Conference and Planning Guidance document dated January 6, 2014, or other guidance recommended by the USFWS. Coteau has responded to this repeated request (Original Items 54 & 55) by stating that this issue will be addressed in the Consolidated Wildlife Habitat and Management Plan document submitted with Revision 29/Renewal 2 to Permit NACT-0401. However, the May 27, 2015 version of the Consolidated Wildlife Habitat and Management Plan submitted with Revision 29 to NACT-0401 has not been updated to address this issue. The Reclamation Division believes this issue needs to be addressed in Section 2.7.3, Mining Impacts, of Permit NACT-0201 since the Consolidated Wildlife Habitat and Management Plan is simply a habitat and species monitoring plan and is not designed as a permit protection and enhancement plan for compliance with NDAC 69-05.2-09-17 and NDAC 69-05.2-13-08. (GAW)
12. Original Item No. 24: Please revise the new Sprague’s pipit narrative in Section 2.7.3 with summary results of the 2011 survey and clarify what is meant by the statement that “While other grassland sites within the study area may appear to contain suitable habitat for Sprague’s pipits, none were observed during the sampling period”. The 2012-2013 Wildlife Monitoring Report (page 13 of 64) states that the next Sprague’s pipit survey will be completed in 2014. Please include a summary of the results of the 2014 survey and clarify what is meant by the statement that surveys utilizing transects will begin in 2015. Maps showing the locations where surveys were conducted and where sightings occurred should be included since this was not included in the most recent Biennial Wildlife Report. (GAW)

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13. Follow-up to Item No. 70: Please update Section 2.7.3, Mining Impacts, to discuss the 22 migratory birds of concern listed in OSM's letter dated March 13, 2015. Please clarify if each of these species are known to exist in the permit area and if present identify potential or existing project-related impacts to migratory birds and their habitat and develop and implement conservation measures that avoid, minimize, or compensate for these impacts. (GAW)

Section 3.1.1.2 – Mining Methods Narrative

14. New Item: Please add to the narrative in Section 3.1.1.2 to provide more details on the proposed development of Mine Area 3. We recommend adding a subheading for Mine Area 3 and provide more details on the scheduling of construction activities and also discuss the federal mine plan modification that is needed. (JRD)

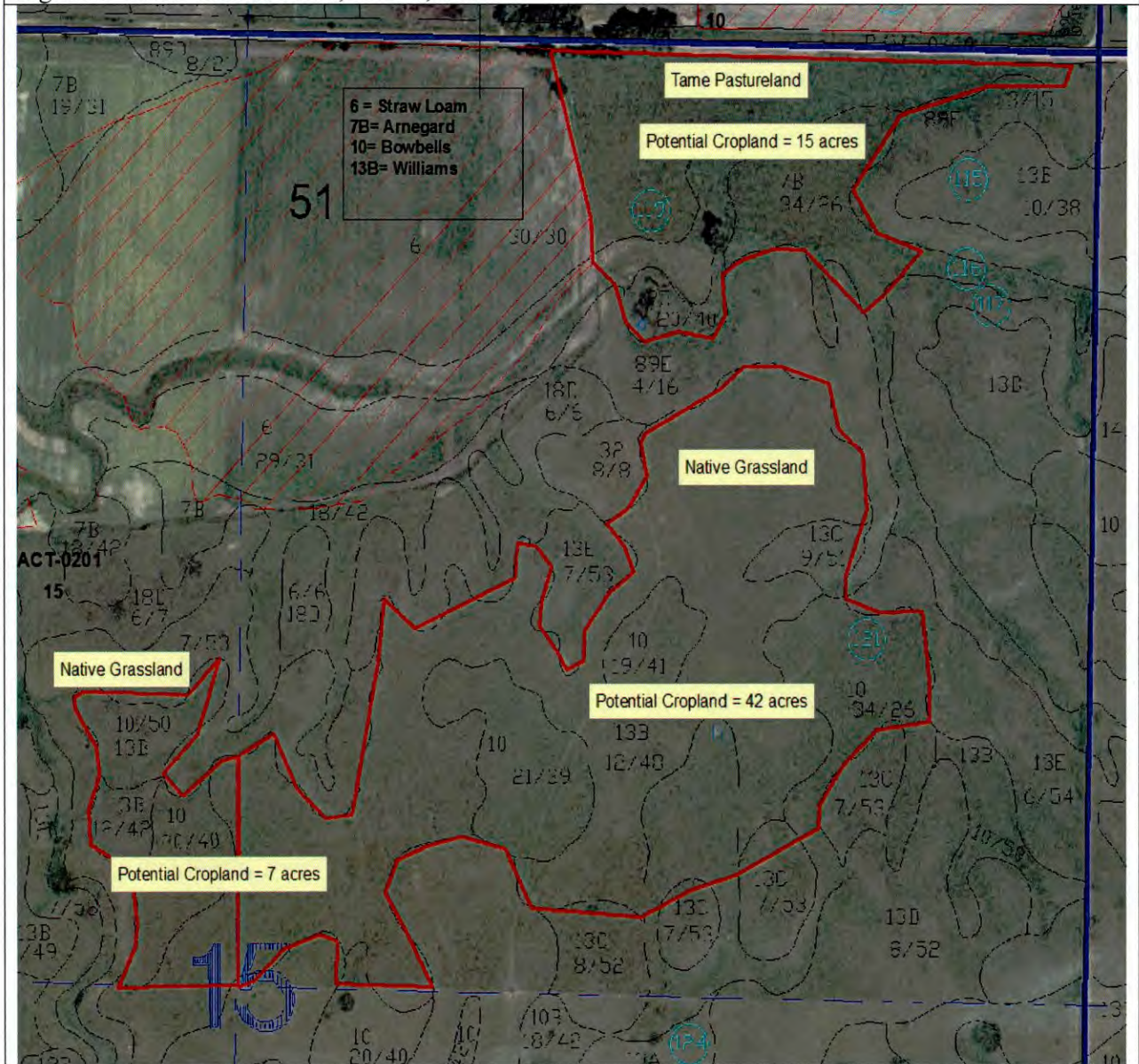
Section 3.1.1.3 – Reclamation Procedures and Schedule

15. Follow-up to Item No. 28: As previously requested, please update the narrative of subsection "Overburden Pile Reclamation" to include the overburden pile located in the N½ of Section 11. (FSE)
16. Follow-up to Item No. 30: Please review the acreage listed for the MA3 mining block under Area Slope Comparison Table of Section 3.1.1.3. This subsection still indicates MA3 mining block is 2893 acres; however, the Post Mining Area Slope Map, Section 3.1.5, indicates the MA3 mining block consists of 2925 acres. (FSE)

Section 4.1 – Postmining Land Use Plans

17. Follow-up to Item 37: The Reclamation Division has reviewed the pre-mine land use capabilities of the non-cropland/hayland areas that will be disturbed through the current mine plan period, 2034, and has determined that an area of native grassland and tame pastureland comprising about 64 acres located in the NE1/4 of Section 15 is potential cropland. Therefore, please revise the permit to address restoring the pre-mine capabilities of this acreage as required by NDCC 38-14.1-24(2). This can be accomplished by identifying an area of similar size in the NE1/4 of Section 15 where suitable topsoil depths will be restored and slopes no steeper than that which

Figure 1: NE1/4 of Section 15, T145N, R88W



18. Follow-up to Item No. 42: Please include an updated Landowner Preference Statement from the Department of Trust Lands that clarifies that they now do not want 2.5 acres of trees in each 80 tract within the SW1/4 of Section 36 as is stated in Section 4.1.5 of the permit. The information currently listed in preference statement in Section 4.1.4 will continue to have precedence until revised. (GAW)

Section 4.1.2 – Post Mining Topography and Land Use Map

19. Follow-up to item No. 47: Please review and revise as necessary the potential postmine prime farmland landscape acreage added to portions of Section 10, T145N, R88W (Tracts 56 and 57) on Section 4.1.2 with the July 6th response. It appears that most of the potential postmine prime

farmland landscape acreage added to the N $\frac{1}{2}$ S $\frac{1}{2}$ and the S $\frac{1}{2}$ N $\frac{1}{2}$ of Section 10 occupies a convex runoff landscape position that is contrary to the requirement of NDAC 69-05.2-26-04(1). Please revise Section 4.1.2 to depict equivalent potential postmine prime farmland landscape acreage in a concave run-on landscape position in these tracts or others of Coteau postmine cropland ownership. Please also revise Section 4.1.2 to remove the potential postmine prime farmland landscape acreage north of, and parallel to, the grassed waterway in the S $\frac{1}{2}$ of Section 11, T145N, R88W, (Tracts 60 and 61) where the postmine cropland slope was increased with the July 6th response, and depict equivalent potential postmine prime farmland landscape acreage in a concave run-on landscape position with slopes less than 6% in these tracts or others of Coteau postmine cropland ownership. While revising the potential postmine prime farmland landscape acreage in portions of Sections 10 and 11, please also review and revise as necessary the following potential postmine prime farmland landscape acreages on Section 4.1.2 that were overlooked in previous submittals:


- a. Please remove the potential postmine prime farmland landscape acreage that lies outside of the mining disturbance boundary in Section 4, T145N, R88W (Tract 48).
 - b. Please revise the potential postmine prime farmland landscape acreages in the N $\frac{1}{2}$ of Section 35, T145N, R88W (Tracts 105 and 106), and a very small portion of neighboring Section 26, occupying a convex runoff landscape position by combining them into one unit that is confined to a concave run-on landscape position within the same tracts.
 - c. Please revise the potential postmine prime farmland landscape acreage in the NW $\frac{1}{4}$ of Section 5, T144N, R88W (Tract 10) occupying a convex runoff landscape position by confining it to a concave run-on landscape position within the same tract.
 - d. Please revise the potential postmine prime farmland landscape acreage in the S $\frac{1}{2}$ of Section 6, T144N, R88W (Tract 15) occupying a convex runoff landscape position by confining it to a concave run-on landscape position within the same tract.
 - e. Please revise the potential postmine prime farmland landscape acreage in the NW $\frac{1}{4}$ of Section 6, T144N, R88W (Tract 14) occupying a convex runoff landscape position by confining it to a concave run-on landscape position within the same tract. (WTG)
20. Follow-up to Item No. 48: Consider designating the post mining cropland planned for the NW $\frac{1}{4}$ of Section 14 as "Cropland (Hayland)" as has been done on a similar tract located to the northeast in the SW $\frac{1}{4}$ of Section 15. This would also be consistent with designation used for the pre-mine cropland acres located in Section 14. (RLK)
21. Follow-up to Item No. 48: Please review and correct the following label items on the Post-Mining Land Use Map. The "Tame Pasture" label appearing in the NE $\frac{1}{4}$ of Section 15 should be removed. Areas presumably cropland in the SW $\frac{1}{4}$ of Section 11 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15 are not labeled. (RLK)
22. Follow-up to Item No. 51: Please use a color other than green for the shelterbelt and woodland labels on the Post Mining Land Use and Topography Map, Section 4.1.2. The green font is very difficult to see on this map. (NDAC 69-05.2-05.2) (GAW)
23. Original Item No. 53: The Post Mining Land Use and Topography Map, Section 4.1.2, shows an undisturbed wetland where sediment pond P-W07-01 is to be located. Please correct this error. (GAW)

24. Follow-up to Item No. 53: The Post Mining Land Use and Topography Map, Section 4.1.2, shows an undisturbed wetland where an overburden stockpile is to be located in the N1/2 of Section 16. Please correct this error. (GAW)
25. Follow-up to Item No. 55: Please consider using diversions or terraces on the long steep slopes located on the cropland that is to be reclaimed in Tracts 58, 59 and 60, Section 11, to ensure protection from water erosion. See NRCS Conservation Practice 362, http://efotg.sc.egov.usda.gov/references/public/ND/362_Standard.pdf. Coteau is proposing to convert approximately 75 acres of native grassland in this area with a slope length (LS) factor that exceeds that which is commonly seen on cropland soils. (GAW)
26. Follow-up to Items 56 and 57: Please revise the Pre- and Post-Mining Land Use Comparison Table, Section 4.1.3, to accurately identify the post-mining land use acreages. Fifteen additional acres of trees are to be planted on Section 36, Tract 108, but this acreage is not listed in the table in Section 4.1.3. Please correct this inconsistency by showing this acreage in Section 4.1.3. Coteau's response that the pre-mine woodland acreage is being retained in this table is incomprehensible. Section 2.4 of the permit documents pre-mine baseline information. (GAW)
27. Follow-up to Items 56 and 57: Please revise the Post Mining Topography and Land Use Map, Section 4.1.2, to depict the 2.3 acres of woodlands that are to be replaced in Section 36, Tract 108. (GAW)
28. Follow-up to Item No. 56: The legend on the Post Mining Topography and Land Use Map is being revised to remove the symbol of the pre-mine shelterbelt plantings that are not going to be disturbed by mining (Undisturbed Shelterbelt Plantings) but pre-mine shelterbelts continue to be depicted on this map. Please retain the symbol in the legend and consider revising the legend to more accurately describe what the symbol represents as "Undisturbed Shelterbelt Plantings" implies that a planting is planned on undisturbed land. Perhaps, "Undisturbed Shelterbelt" would be more descriptive. (GAW)
29. Follow-up to Item No. 58: The Pre- and Post- Mining Land Use Comparison Table, Section 4.1.3, shows that Rudolph Sasse's land contains 6.4 acres of premine wetlands and 6.8 acres of postmine wetlands but Table 4.4.2.1, Undisturbed and Disturbed Wetland Acreage Summary Table, indicates that Mr. Sasse only has 4 acres of premine wetlands of which only 1.7 is to be disturbed. Please review this table and revise as necessary so the information listed is consistent with Sections 2.4 and 4.1. (GAW)
30. Follow-up to Items No. 31, 33 and 58: The Pit Layout and Facilities Map, Section 3.1.3, has been revised to show associated disturbance on all lands located beyond 100 feet of the south side of West Antelope Creek in Section 27, Tracts 92, 93 and 94. However, the Postmine Land Use Map, Section 4.1.2, identifies undisturbed woodlands in this area. Please review and either revise the associated disturbance boundary on the Pit Layout and Facilities Map, Section 3.1.3 or Section 4.1 of the permit so that the information is consistent. (GAW)

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If you have any questions, please contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Deutsch".

James R. Deutsch
Director
Reclamation Division

cc: Mercer County Auditor

Minedata/Freedom/Permits/NACT-0201/Revisions/No.18/Rev18_Tech3_rvw_ltr_8-7-15