

RESOLUTION OF  
MERCER COUNTY COMMISSION

WHEREAS, Coyote Creek Mining Company, L.L.C. ("Coyote Creek") has petitioned the Board of County Commissioners of Mercer County, North Dakota ("Commission") to temporarily close the following described road, which interferes with surface coal mining operations, pursuant to the provisions of Chapters 38-01-07.1 and 38-01-07.2 of the North Dakota Century Code:

1. The road passing through the SW¼ of Section 31, T143N, R88W and the S½ of Section 36, T143N, R89W.

WHEREAS, a public hearing was held upon the Petition of Coyote Creek before the Commission on the 20<sup>th</sup> day of January, 2016, continued the 3<sup>rd</sup> day of February, 2016, the 17<sup>th</sup> day of February, 2016, and the 16<sup>th</sup> day of March, 2016, in the Courthouse in the City of Stanton, North Dakota, and the Commission having heard and considered all of the testimony and evidence presented.

NOW, THEREFORE, BE IT RESOLVED that the Commission does hereby find, conclude and determine as follows:

1. That the Commission has jurisdiction over the subject matter of the Petition and the road involved therein.
2. That the Notice of Hearing on said Petition was duly served and published as required by law.
3. That the temporary closing of said road is necessary due to the fact that said road interferes with Coyote Creek's surface coal mining and reclamation operations.
4. That said road is not required due to readily accessible alternate routes of travel.
5. That the temporary closing of said road does not deprive adjacent landowners access to their property.
6. That a public benefit exists in temporarily closing said road and that the interests of the public and affected landowners will be protected.

BE IT FURTHER RESOLVED, based on the foregoing, that the Commission hereby determines and orders as follows:

1. That the following road be temporarily closed until such time as Coyote Creek's surface coal mining and reclamation operations which affect the use of said road by the general public are completed:

**146** RC-19-189 Filed: 12/26/2019 Pages: 8  
Exhibit CCMC 2 - Mercer County Commission  
resolution dated 5/18/16

Coyote Creek Mining Company, L.L.C.

**160** RC-19-190 Filed: 12/26/2019 Pages: 8  
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resolution dated 5/18/16

Coyote Creek Mining Company, L.L.C.





a. The road passing through the SW¼ of Section 31, T143N, R88W and the S½ of Section 36, T143N, R89W.

2. That the temporary closing of the road contained in this Resolution is made subject to that certain Agreement, by and between Mercer County and Coyote Creek dated May 18, 2016, attached hereto and made a part hereof ("Agreement").

3. That Coyote Creek provide certain affected landowners access to their lands for farming and ranching purposes during the time that said road is temporarily closed in accordance with the terms and conditions set forth in the Agreement.

4. That Coyote Creek reconstruct said road in accordance with the terms and conditions set forth in the Agreement.

5. That Coyote Creek inform the Commission when the reconstruction of said road is completed at which time the Commission may accept the road for general public use.

6. That this Resolution, the Petition involved therein, the Affidavits of Service and the Affidavits of Publication of Notice of Hearing be filed with the Mercer County Auditor.

Dated this 18th day of May, 2016.

ATTEST:

Shana Brost  
Shana Brost, Mercer County Auditor

MERCER COUNTY COMMISSION

By: W. J. Jones

By: Gary Murray

By: Wes Gensel

By: Duan Scheer

By: Wayne Entel

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of the 18th day of May, 2016, by and between Mercer County, whose address is P.O. Box 39, Stanton, North Dakota 58571 ("County"), and Coyote Creek Mining Company, L.L.C., whose address is 2000 Schafer Street, Suite D, Bismarck, North Dakota 58501-1204 ("Coyote Creek").

WITNESSETH:

WHEREAS, Coyote Creek is conducting surface coal mining operations in the area of Township 143 North, Range 89 West, Township 143 North, Range 88 West, Township 142 North, Range 89 West, and Township 142 North, Range 88 West, and plans to continue such operations in the future;

WHEREAS, by Petition dated December 16, 2015, Coyote Creek requested that the County temporarily close the road passing through the SW $\frac{1}{4}$  of Section 31, T143N, R88W and the S $\frac{1}{2}$  of Section 36, T143N, R89W, hereinafter called the "Closed Road", the location of which is depicted on Exhibit A, which is attached hereto and made a part hereof;

WHEREAS, as a condition of the County's approval to temporarily close the Closed Road, Coyote Creek shall provide certain affected landowners access, through its active mining areas, to allow them access to their property located adjacent to or in the vicinity of the Closed Road, until the Closed Road is reconstructed in accordance with the terms and conditions of this Agreement; and

WHEREAS, during its surface coal mining and reclamation operations in the area of the Closed Road, Coyote Creek shall reconstruct the Closed Road, hereinafter called the "Reconstructed Closed Road", at the location depicted on Exhibit A in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the County and Coyote Creek hereby agree as follows:

1. Coyote Creek shall construct phased temporary access trails, hereinafter called the "Access Trails", through its active mining areas at the approximate locations and times depicted on Exhibit B, which is attached hereto and made a part hereof. Coyote Creek will secure the entrance of the Access Trails on the west end near County Road 13 and on the east end near the quarter line between the SW $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 31, Township 143 North, Range 88 West with either padlocked metal gates or solar powered electronic gates with card key pads, at the sole discretion of Coyote Creek. The gates will be installed on flattened surfaces large enough to accommodate a pickup pulling a cattle trailer.

2. Coyote Creek and the County have designated Casey Voigt and Julie Voigt; Shawn Unruh and SheVele Unruh; Austin Jensen and Destinee Jensen; Sharon Unruh; Mardee Reich; Jim Swenson; Trent Martin; Jason Erickson; Richard Scheid; and Nancy Scheid as landowners needing

to use the Access Trails to access their properties located adjacent to or in the vicinity of the Closed Road, hereinafter called the "Affected Landowners". Coyote Creek shall provide keys to access and use the Access Trails without an escort to properly trained Affected Landowners with MSHA and hazard training. All other Affected Landowners will be allowed to use the Access Trails with an escort with only hazard training. In the event another landowner desires to use the Access Trails as an Affected Landowner, they must provide documentation supporting their need to use the Access Trails to access their properties located adjacent to or in the vicinity of the Closed Road to Coyote Creek and the County. Coyote Creek and the County shall determine if this Agreement will be amended to include such landowner as an Affected Landowner. If any Affected Landowner transfers property to a third party who requires similar access, Coyote Creek and the County hereby agree to consider amending this Agreement accordingly.

3. Prior to accessing and using the Access Trails, the Affected Landowners must agree to, complete and comply with the safety requirements established by Coyote Creek as set forth on Exhibit C attached hereto and made a part hereof, along with all other applicable federal, state and County laws and regulations. It is understood and agreed that the safety requirements identified on Exhibit C may be changed, modified or amended at any time or from time to time at the sole discretion of Coyote Creek. If the safety requirements are changed, modified or amended by Coyote Creek, the County and Coyote Creek shall execute an amendment to this Agreement to replace the existing Exhibit C with a revised Exhibit C incorporating the changed, modified or amended safety requirements and inform the Affected Landowners.

4. Coyote Creek shall construct the Reconstructed Closed Road on the east-west quarter line between the N $\frac{1}{2}$  and the S $\frac{1}{2}$  of Section 36, T143N, R89W; on the north-south section line between the SE $\frac{1}{4}$  of Section 36, T143N, R89W and the SW $\frac{1}{4}$  of Section 31, T143N, R88W; and on the current location of the Closed Road through the SW $\frac{1}{4}$  of Section 31, T143N, R88W; the location of which is depicted on Exhibit A. The Reconstructed Closed Road shall be constructed to a condition similar to the then existing condition of the road connecting the Reconstructed Closed Road to the paved portion of 17<sup>th</sup> Street SW as depicted on Exhibit A.

5. The County shall secure the right-of-way easements necessary to construct the Reconstructed Closed Road.

6. Coyote Creek anticipates that the Reconstructed Closed Road will be available for use by the Affected Landowners subject to the safety requirements set forth on Exhibit C by the year 2024 and with no restrictions to the general public by year 2040. Coyote Creek shall meet with the County annually to review the then existing status of the Access Trails and the Reconstructed Closed Road.

7. Any notices required or permitted hereunder shall be given by mailing the same, postage prepaid, to the other party as follows:

To the County:

Mercer County  
P.O. Box 39  
Stanton, ND 58571  
Attention: Mercer County Auditor

To Coyote Creek:

Coyote Creek Mining Company, L.L.C.  
2000 Schafer Street, Suite D  
Bismarck, ND 58501-1204  
Attention: Land Manager

Either party may amend the name or address to which notices shall be sent by furnishing such new name and address to the other party in the manner herein provided for giving other notices.


8. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.


ATTEST:

MERCER COUNTY

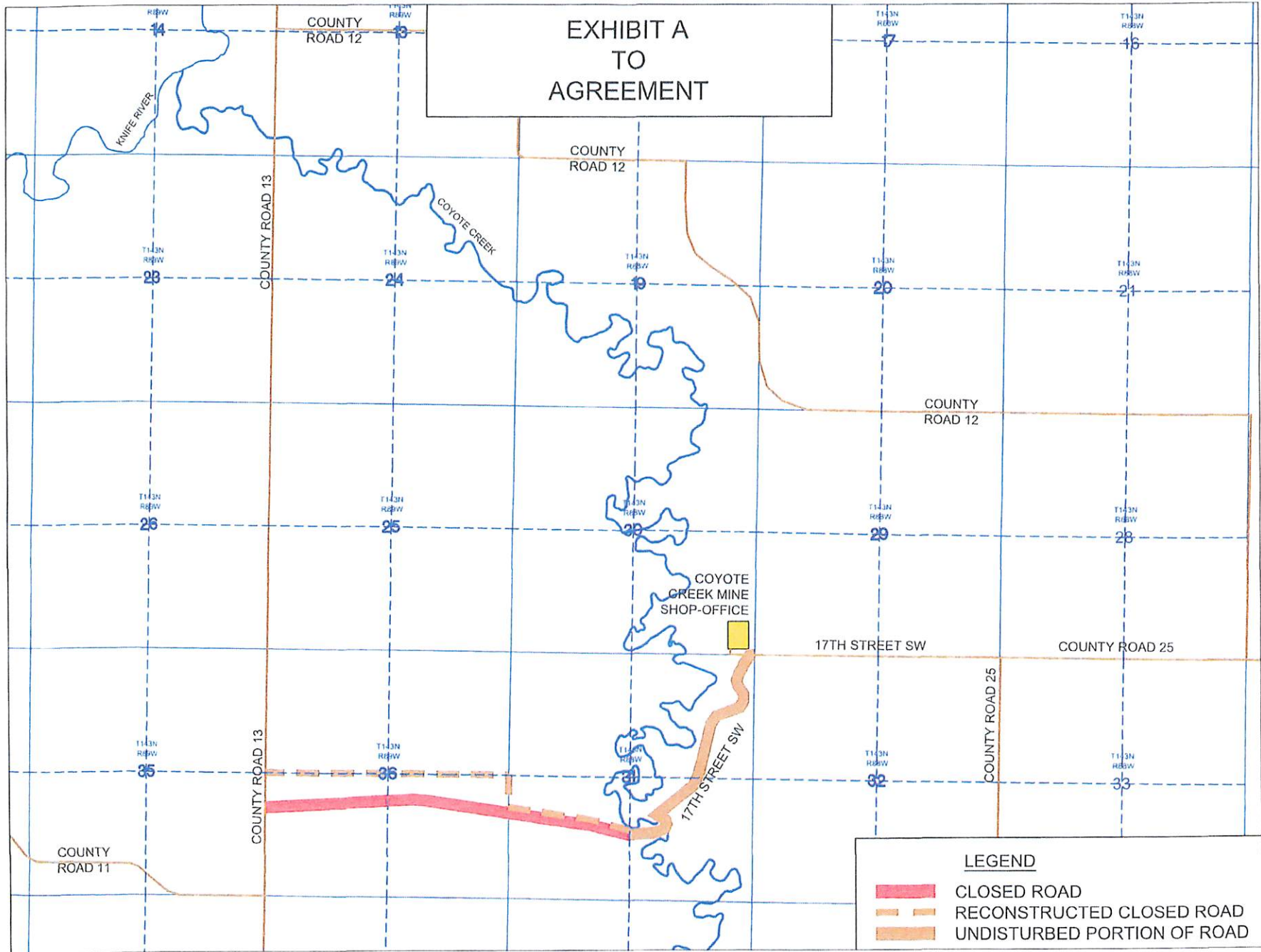
  
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Shana Brost, County Auditor

By:   
\_\_\_\_\_  
Bill Tveit, Chairman, Board of County  
Commissioners

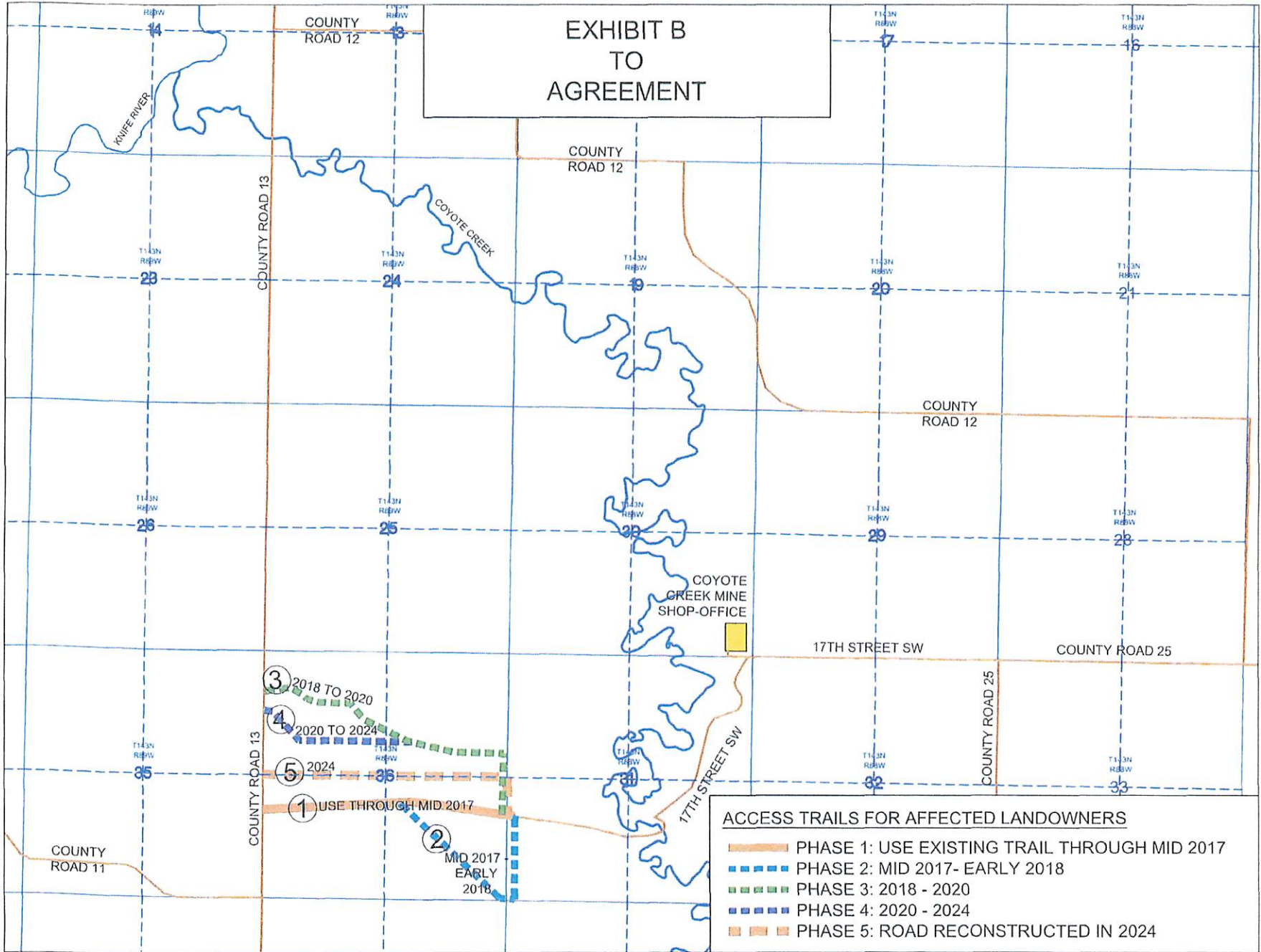
COYOTE CREEK MINING COMPANY, L.L.C.

By:   
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James F. Melchior, its President

# EXHIBIT A TO AGREEMENT



# EXHIBIT B TO AGREEMENT



**EXHIBIT C  
TO  
AGREEMENT**

**SAFETY REQUIREMENTS FOR ACCESS TRAILS THROUGH ACTIVE MINING AREAS**

The safety of its employees and the public is paramount to the Coyote Creek Mine. Coyote Creek is concerned that allowing Affected Landowners to travel on Access Trails through Coyote Creek Mine's active mine areas not only compromises the safety of the Affected Landowners but also of Coyote Creek employees. As the County Commission required the Access Trails as a condition to the temporary closing of the Closed Road, Coyote Creek has compiled the following safety requirements for the Affected Landowners:

1. MSHA training will be required for the Affected Landowners that will use the Access Trails more than five times per year. This is a 24 hour MSHA class that is required for all people that enter active mine areas and coexist with mine equipment. An 8 hour refresher class will also be required annually thereafter. Company policy requires that individuals be 18 years old or older to receive training and operate in active mining areas. The MSHA training will be conducted by a certified trainer approved by Coyote Creek Mine and MSHA and will be paid for by Coyote Creek Mine.
2. Annual hazard training is required for all Affected Landowners entering the mine. This one-half hour class will be conducted at the mine by Coyote Creek Mine staff or Security.
3. Properly trained Affected Landowners with MSHA and hazard training will be allowed to travel on the Access Trails without an escort. If an untrained person is riding with them an escort will be required unless otherwise approved in writing by Coyote Creek. In such cases, those Affected Landowners will need to call Coyote Creek Mine Security to arrange for an escort.
4. Affected Landowners that only need to use the Access Trails less than five times per year can do so with only hazard training and with an escort. Those Affected Landowners will need to call Coyote Creek Mine Security to arrange for an escort.
5. Locked gates will be installed on the Access Trails near to and east of County Road 13 and on the Closed Road west of the crossing of Coyote Creek and the entrance into the Voigt farmstead. Keys will be provided to properly trained Affected Landowners with MSHA and hazard training. The gates must be closed and locked after each passing. The actual location of the Access Trails across the active mine areas may change from time to time.
6. The Affected Landowners must follow all applicable traffic signs and must stay on the Access Trails at all times. No unnecessary stopping or sightseeing will be allowed. Taking photos and videos are prohibited. No alcohol or firearms will be allowed on the Access Trails.
7. The Access Trails will be closed to traffic when the dragline deadheads across the Access Trails (approximately 6 times per year). There will also be times when mine equipment will be crossing the Access Trails at multiple locations to allow for topsoil and subsoil removal and other mining activities. Traffic signs will be posted on the Access Trails at such crossing sites.
8. Any infractions of traffic signs or the safety requirements will result in the loss of unescorted access privileges.