

PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

TO: Commissioners Kroshus, Fedorchak, and Christmann
Steven Kahl, Executive Secretary
John Schuh, General Counsel
DKM

FROM: Dean Moos, Zanna Brinkman and Preston Ripplinger

DATE: April 2, 2020

SUBJECT: Bond Release No. 2 for Permit NAFK-8405 held by the Falkirk Mining Company, Case No. RC-19-325

On September 23, 2019, The Falkirk Mining Company filed the application for Bond Release No. 2 to Surface Coal Mining Permit NAFK-8405 for final bond release on 87.1 acres of reclaimed land at the Falkirk Mine. The postmining land use of this 87.1-acre tract is residential and it will be used as a farmstead by Chad & Jennifer Berg. The Reclamation Division has completed its review of the bond release application and we recommend that it be approved.

The 87.1-acre tract included in Bond Release No. 2 to Permit NAFK-8405 is located in portions of Sections 23 and 24, T146N, R82W of McLean County. The tract is located about 2 miles east of Underwood, North Dakota, just south of Highway 200. Approximately 95% of the area was disturbed by mining or associated disturbances. The north boundary of the bond release tract consists of 4.2 acres that was not disturbed by mining and includes the right-of-way (south ditch area) of Highway 200. The remaining 82.9 acres of the bond release tract were mined or used for associated disturbance. The approved postmining land use is residential farmstead and a section line trail that will be used to access the farmstead. Final grading on the area was completed in 2009. Soil respread and initial seeding was completed between 2008 and 2018. The area was respread with approximately 10 inches of topsoil over 14 inches of subsoil and these soil respread depths were field verified during the bond release inspection by Preston Ripplinger and Bruce Beechie. The entire tract was initially reclaimed for cropland use and was seeded to the pre-crop seed mix of Russian Wildrye, intermediate wheatgrass, pubescent wheatgrass and alfalfa. Portions of the tract were hayed from 2008 through 2018.

In December 2017, Falkirk entered into a land swap agreement with Chad and Jennifer Berg so they could develop the 87.1-acre bond release tract into a farmstead because the Bergs former farmstead located in another area of Permit NAFK-8405 will be mined through in the near future. In October 2018, Revision 38 to Permit NAFK-8405 was approved and changed the postmining land use on the bond release tract to residential. Construction of the farmstead began in 2017 and continued into 2019. Two single family homes, several farm buildings and grain bins have been built or relocated to the bond release tract. Both family homes are occupied. The

farmstead also includes a feedlot, hay yard, spring calving lot, and future farmstead shelterbelt areas. No shelterbelts were planned for this tract; however, the landowner and Falkirk have an agreement in place to plant several shelterbelts around the perimeter of the farmstead after bond release. The shelterbelts will be planted by the local Soil Conservation District at the landowners convenience. The shelterbelts will not be subject to the Commission's vegetation success standards because no shelterbelts were included in the approved post-mine land use for this tract.

NDAC 69-05.2-12-09(2) allows for a liability period of less than ten (10) years for certain land uses including residential, provided certain requirements are met. The 10-year revegetation liability period does not pertain to the bond release tract because of the residential land use. However, ground cover standards apply to the areas not affected by the construction activities. In 2019, ground cover measured 88.4% in Section 23 and 89.8% in Section 24, which exceeds the cover standard of 73% basal cover, or 83% first-hit cover, to control erosion.

The bond release inspection was conducted on October 23, 2019. Attending the inspection were Bruce Beechie and Preston Ripplinger from the Reclamation Division and Jeremy Eckroth, Jason Frye, Luke Gilbert and Steve Cottingham from the Falkirk Mining Company. Others were invited to participate in the inspection including the landowners, County Commissioners, County and State Road Authority personnel, and Advisory committee members; however, they did not attend the inspections. An inspection report pertaining to the bond release tract and photos taken of the site are on file in the Reclamation Division. No concerns were noted during the inspection.

There have been no previous bond releases on this tract. Falkirk has requested the release of all stages of bond release, including first stage (backfilling and grading), second stage (soil respread), third stage (vegetation establishment), and fourth stage (demonstration of revegetation success) for the 87.1-acre tract.

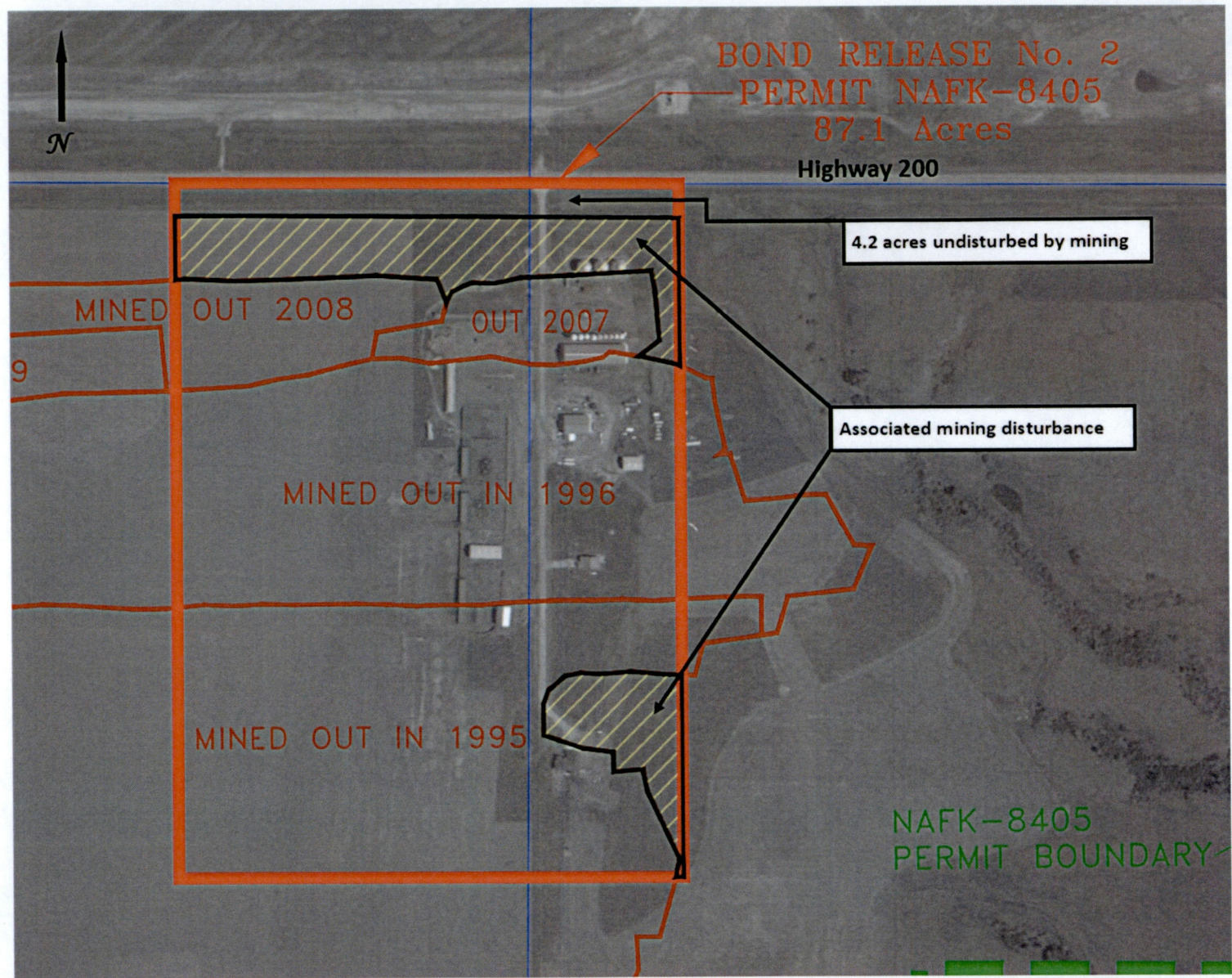
Notice of the final bond release application was published in the official county newspaper, the McLean County Independent, and in the Bismarck Tribune for four consecutive weeks, October 10, 17, 24 and 31, 2019. No objections or concerns were received regarding this bond release application.

Falkirk did not request any reduction in the bond amount for Bond Release No. 2 to NAFK-8405 since this area is currently covered by a worst-case reclamation condition. This permit is part of a consolidated bond area that includes two other permits at the Falkirk Mine. If Bond Release No. 2 to Permit NAFK-8405 is granted, Falkirk will be released from all reclamation liabilities on the 87.1-acre tract.

If approved, the bond release will become effective May 15, 2020, unless a formal hearing is requested.

Attached are the motion and award form for consideration at the April 15, 2020, Commission meeting.

Final Bond Release No. 2 to Permit NAFK-8405 in portions of Sections 23 and 24, T146N, R82W



Location of Final Bond Release No. 2
to Permit NAFK-8405

