



Public Service Commission State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
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E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

sent via email only

December 4, 2023

Luke Toso
U.S. Fish and Wildlife Service
Ecological Services
3425 Miriam Avenue
Bismarck, ND 58501-7926
luke_toso@fws.gov

The U.S. Fish and Wildlife Service currently has no comments or concerns regarding this project as described. If the project changes or new information becomes available, please contact this office again so potential impacts to federally listed species and other trust resources may be reevaluated.

Supervisor, North Dakota Ecological Services Field Office Date

Dear Mr. Toso:

The Public Service Commission is planning reclamation activities in 2024 at an Abandoned Mine Land (AML) site near Dickinson, North Dakota. All project work will be completed by contractors selected through competitive bidding.

As part of the project approval process, our office requests concurrence that the proposed reclamation work, which is described below, will not adversely affect any threatened, endangered, or rare plant species. Please reply regarding this proposed project by **January 4, 2024**.

The 2024 Lehigh Road Phase IX AML Project: This remote backfilling project will stabilize abandoned underground coal mine workings along Lehigh Road and other infrastructure located near Dickinson, ND. This project is a continuation of the 2022 & 2023 Exploratory Drilling projects. The recent projects revealed the extent of the underground mines along Lehigh Road is larger than expected. AML staff estimated that 2,500 cubic yards of grout will need to be pumped into these mine workings. Work is expected to be conducted between May and August 2024. The estimated cost for this project is \$1,000,000.00. The attached map provides more information and shows the proposed project location.

The project area is described as 118 acres, but we will only be disturbing approximately 0.25 acres. The construction will be conducted near roads and an industrial facility with no critical habitat. We believe that our project should have “no effect” on any threatened, endangered, or rare animal or plant species identified. Also attached is the auto-generated species list from the IPAC website.

Thank you for your assistance in this matter. If you have any questions or need more information, please contact the project manager, Brett Job, at bjob@nd.gov or 701-328-4073.

Sincerely,

Jonathan Emmer
Director
Abandoned Mine Lands Division

Enclosures

cc via email only: Jerry Reinisch (jerry_reinisch@fws.gov)

AML\2024\2024 Lehigh Road Phase IX\ATP\Concurrence Letters\2024_Advsry_auth_to_proceed_ltr_12-4-23

2024 Lehigh Road Phase IX

T139N R95W Sec 7, 8, 17 and 18
SE of Dickinson, ND
Stark County
ND PSC AML Division

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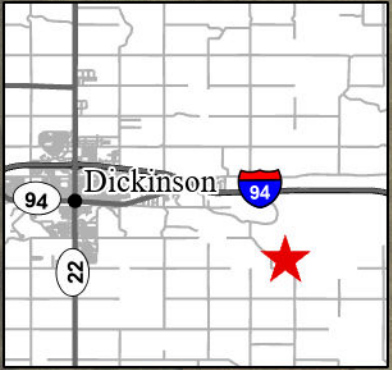


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Feet

Work Area

Lehigh Drive
Lehigh Road

38th ST SW





United States Department of the Interior



FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, ND 58501-7926
Phone: (701) 250-4481 Fax: (701) 355-8513

In Reply Refer To:
Project Code: 2024-0022156
Project Name: Lehigh Road Phase IX

December 04, 2023

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through IPaC by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological

evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at: <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts, see [Migratory Bird Permit | What We Do | U.S. Fish & Wildlife Service \(fws.gov\)](#).

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures, see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List
-

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

North Dakota Ecological Services Field Office

3425 Miriam Avenue

Bismarck, ND 58501-7926

(701) 250-4481

PROJECT SUMMARY

Project Code: 2024-0022156

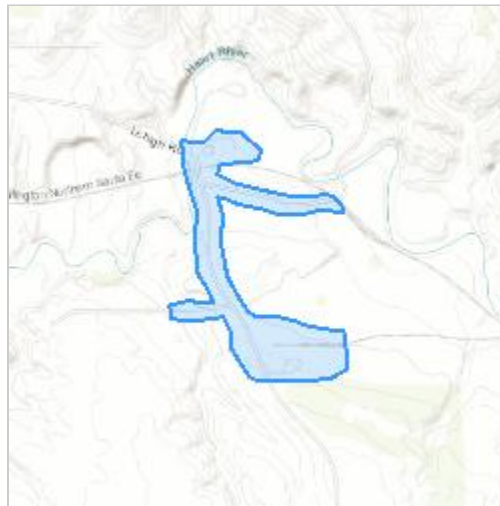
Project Name: Lehigh Road Phase IX

Project Type: Subsurface Reclamation - Coal

Project Description: This remote backfilling project will stabilize abandoned underground coal mine workings along Lehigh Road and other infrastructure located near Dickinson, ND. This project is a continuation of the 2022 & 2023 Exploratory Drilling projects. The recent projects revealed the extent of the underground mines along Lehigh Road is larger than expected. AML staff has estimated 2,500 cubic yards of grout will be pumped into these mine workings. Work is expected to be conducted between May and August 2023. Work will take place along roadways and in industrial areas.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@46.8644678,-102.7059434478579,14z>



Counties: Stark County, North Dakota

ENDANGERED SPECIES ACT SPECIES

There is a total of 3 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Endangered

BIRDS

NAME	STATUS
Whooping Crane <i>Grus americana</i> Population: Wherever found, except where listed as an experimental population There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/758	Endangered

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

IPAC USER CONTACT INFORMATION

Agency: State of North Dakota
Name: Brett Job
Address: 600 E Boulevard Ave.
Address Line 2: 13th Floor, Dept 408
City: Bismarck
State: ND
Zip: 58505
Email: bjob@nd.gov
Phone: 7019894041



Public Service Commission

State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

sent via email only

December 4, 2023

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

William Peterson, Ph.D.
State Historic Preservation Officer
State Historical Society of North Dakota
612 East Boulevard Avenue
Bismarck, ND 58505-0830
billpeterson@nd.gov

Dear Dr. Peterson:

The Public Service Commission is planning reclamation activities in 2024 at an Abandoned Mine Land (AML) site near Dickinson, North Dakota. All project work will be completed by contractors selected through competitive bidding.

As part of the project approval process, our office requests concurrence that the proposed reclamation work, which is described below, will not adversely affect any threatened, endangered, or rare plant species. Please reply regarding this proposed project by **January 4, 2024**.

The 2024 Lehigh Road Phase IX AML Project: This remote backfilling project will stabilize abandoned underground coal mine workings along Lehigh Road and other infrastructure located near Dickinson, ND. This project is a continuation of the 2022 & 2023 Exploratory Drilling projects. The recent projects revealed the extent of the underground mines along Lehigh Road is larger than expected. AML staff estimated that 2,500 cubic yards of grout will need to be pumped into these mine workings. Work is expected to be conducted between May and August 2024. The estimated cost for this project is \$1,000,000.00. The attached map provides more information and shows the proposed project location. We have attached an updated map delineating the working area, which your agency approved in 2023 (ND SHPO Ref: 22-0657).

Thank you for your assistance in this matter. If you have any questions or need more information, please contact the project manager, Brett Job, at bjob@nd.gov or 701-328-4073.

Sincerely,

Jonathan Emmer
Director
Abandoned Mine Lands Division

Enclosure

AML\2024\2024 Lehigh Road Phase IX\ATP\Concurrence Letters\2024_Advsry_auth_to_proceed_ltr_12-4-23

2024 Lehigh Road Phase IX

T139N R95W Sec 7, 8, 17 and 18
SE of Dickinson, ND
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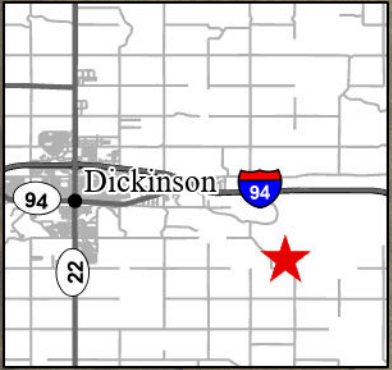
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Work Area

Lehigh Road

Lehigh Drive

38th ST SW





December 21, 2023

Jonathan Emmer
Abandoned Mine Lines Division, PSC
600 East Boulevard, Dept 408
Bismarck, ND 58505-0480

ND SHPO Ref: 24-0064 2024 Lehigh Road Phase IX AML Project in portions of [T139N R95W Sections 7, 9, 17, and 18] Stark County, North Dakota

Dear Jonathan,

We reviewed the project ND SHPO Ref 24-0064 2024 Lehigh Road Phase IX AML Project in portions of [T139N R95W Sections 7, 9, 17, and 18] Stark County, North Dakota as received by our office on December 4, 2023, with supplemental information on December 18, 2023. Exploratory drilling for this project was previously reviewed under ND SHPO Ref 23-0168.

We concur with a determination of “No Historic Properties Affected” for the project provided it takes place in the manner described in the documentation and all borrow comes from an approved source.

Thank you for the opportunity to review this project. For future correspondence regarding this project, please include the ND SHPO Reference number indicated in this letter. If you have any questions, please contact Margie Patton, Research Archaeologist at 701-328-3576 or mmpatton@nd.gov.

Sincerely,

for William D. Peterson, PhD
State Historic Preservation Officer
(North Dakota)

24-0064



Public Service Commission

State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

sent via email only

December 4, 2023

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

Kathy Duttenhefner
Natural Resources Management Coordinator
ND Parks & Recreation Department
1600 East Century Ave. Suite 3
Bismarck, ND 58503
kgduttenhefner@nd.gov

Dear Ms. Duttenhefner:

The Public Service Commission is planning reclamation activities in 2024 at an Abandoned Mine Land (AML) site near Dickinson, North Dakota. All project work will be completed by contractors selected through competitive bidding.

As part of the project approval process, our office requests concurrence that the proposed reclamation work, which is described below, will not adversely affect any threatened, endangered, or rare plant species. Please reply regarding this proposed project by **January 4, 2024**.

The 2024 Lehigh Road Phase IX AML Project: This remote backfilling project will stabilize abandoned underground coal mine workings along Lehigh Road and other infrastructure located near Dickinson, ND. This project is a continuation of the 2022 & 2023 Exploratory Drilling projects. The recent projects revealed the extent of the underground mines along Lehigh Road is larger than expected. AML staff estimated that 2,500 cubic yards of grout will need to be pumped into these mine workings. Work is expected to be conducted between May and August 2024. The estimated cost for this project is \$1,000,000.00. The attached map provides more information and shows the proposed project location.

Thank you for your assistance in this matter. If you have any questions or need more information, please contact the project manager, Brett Job, at bjob@nd.gov or 701-328-4073.

Sincerely,

Jonathan Emmer
Director
Abandoned Mine Lands Division

Enclosure

2024 Lehigh Road Phase IX

T139N R95W Sec 7, 8, 17 and 18
SE of Dickinson, ND
Stark County
ND PSC AML Division

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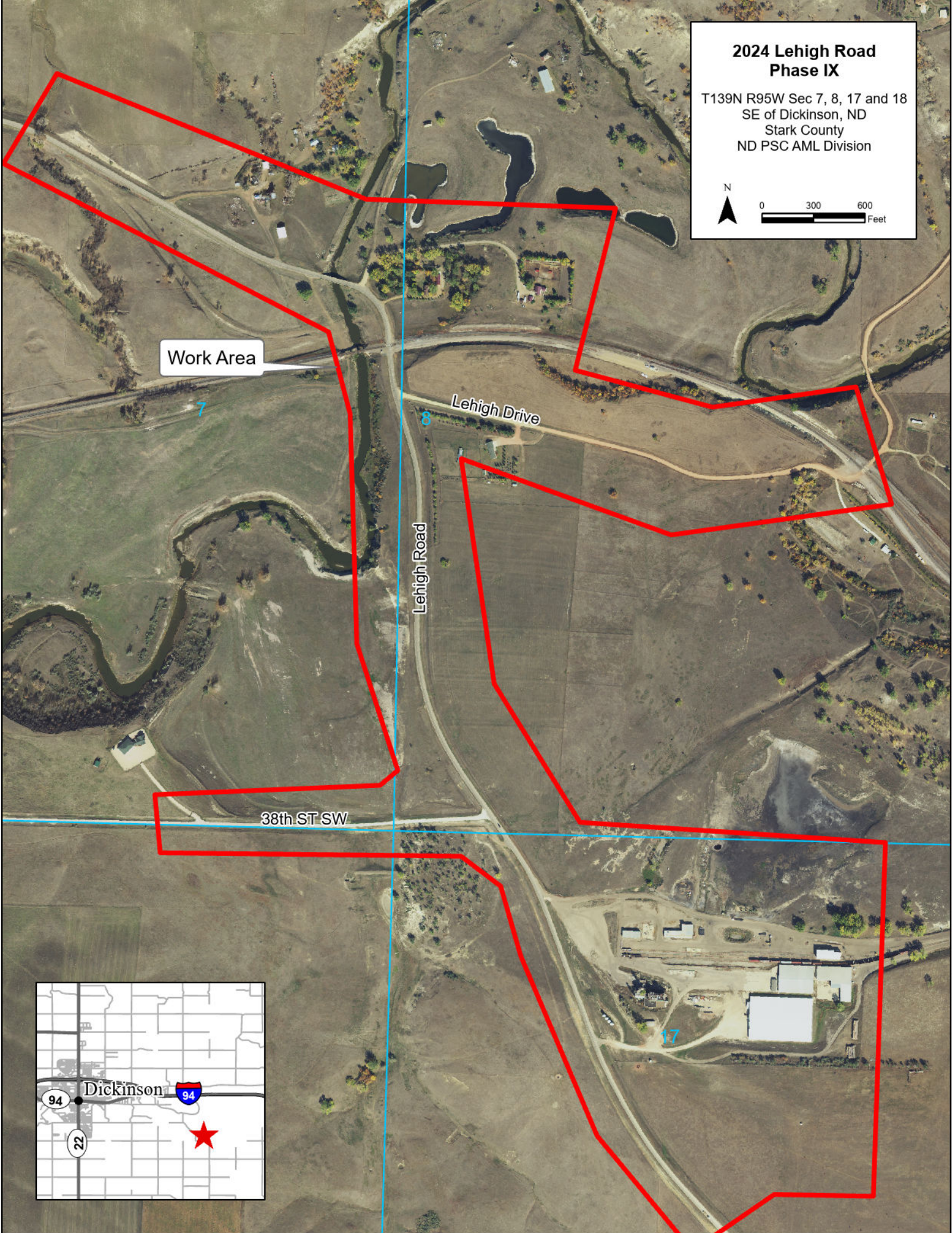
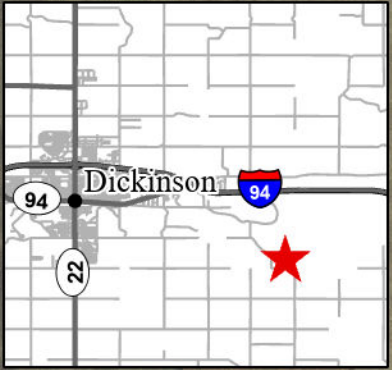
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Work Area

Lehigh Road

Lehigh Drive

38th ST SW



December 20, 2023

Jonathan Emmer
NDPSC
600 East Boulevard Dept 408
Bismarck, ND 58505

Re: AML Site Near Dickinson

Dear Jonathan,

The North Dakota Parks and Recreation Department (NDPRD) has reviewed the above-proposed Abandoned Mine Land sites near Dickinson.

NDPRD's scope of authority and expertise covers properties that NDPRD owns, leases, or manages; properties protected under Section 6(f) of the Land and Water Conservation Fund (LWCF); rare plants; and ecological communities established through the Natural Heritage Program.

The project does not appear to affect properties NDPRD owns, leases, or manages.

The projects does not appear to affect properties protected under Section 6(f) of the LWCF.

A North Dakota Natural Heritage biological conservation database query determines if any current or historical plant or animal species of concern or other significant ecological communities are known to occur within an approximate one-mile radius of the project area. Based on this review, no known plant or animal species of concern or significant ecological communities are documented within or immediately adjacent to the project site.

We appreciate your commitment to rare plant, animal, and ecological community conservation, management, and inter-agency cooperation. For additional information, contact Natural Resources Division Chief Kathy Duttenhefner at 701-328-5370, 701-220-3377 (cell), or kgduttonhefner@nd.gov.

Thank you for the opportunity to comment on the proposed project.

Sincerely,


Kathy Duttenhefner, Chief Natural Resources Division



Public Service Commission

State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

sent via email only

December 4, 2023

Mr. Karl Rockeman, P.E.,
Director, Division of Water Quality
North Dakota Department of Environmental Quality
4201 Normandy Street
Bismarck, ND 58503
krockema@nd.gov

Dear Mr. Rockeman:

The Public Service Commission is planning reclamation activities in 2024 at an Abandoned Mine Land (AML) site near Dickinson, North Dakota. All project work will be completed by contractors selected through competitive bidding.

As part of the project approval process, our office requests concurrence that the proposed reclamation work, which is described below, will not adversely affect any threatened, endangered, or rare plant species. Please reply regarding this proposed project by **January 4, 2024**.

The 2024 Lehigh Road Phase IX AML Project: This remote backfilling project will stabilize abandoned underground coal mine workings along Lehigh Road and other infrastructure located near Dickinson, ND. This project is a continuation of the 2022 & 2023 Exploratory Drilling projects. The recent projects revealed the extent of the underground mines along Lehigh Road is larger than expected. AML staff estimated that 2,500 cubic yards of grout will need to be pumped into these mine workings. Work is expected to be conducted between May and August 2024. The estimated cost for this project is \$1,000,000.00. The attached map provides more information and shows the proposed project location.

Thank you for your assistance in this matter. If you have any questions or need more information, please contact the project manager, Brett Job, at bjob@nd.gov or 701-328-4073.

Sincerely,

Jonathan Emmer
Director
Abandoned Mine Lands Division

Enclosure

2024 Lehigh Road Phase IX

T139N R95W Sec 7, 8, 17 and 18
SE of Dickinson, ND
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ND PSC AML Division

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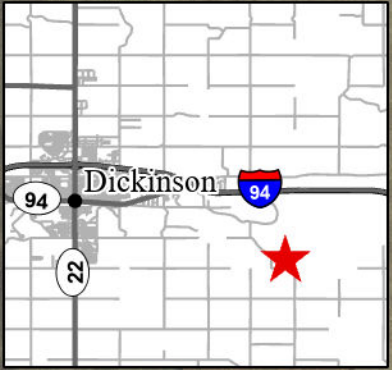


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Feet

Work Area

Lehigh Drive
Lehigh Road

38th ST SW



January 8, 2024

Mr. Jonathan Emmer
Director
Abandoned Mine Lands Division
Public Service Commission
600 East Boulevard Avenue
Dept 408
Bismarck, ND 58505-0408

Subject: Lehigh Road 2024 Proposed Mine Reclamation Project

Mr. Emmer,

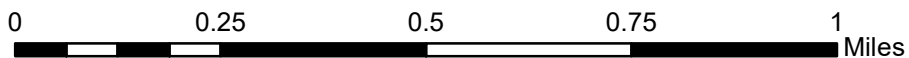
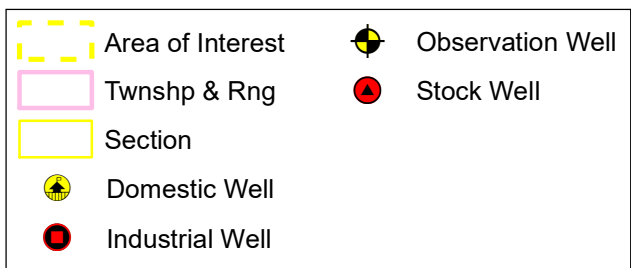
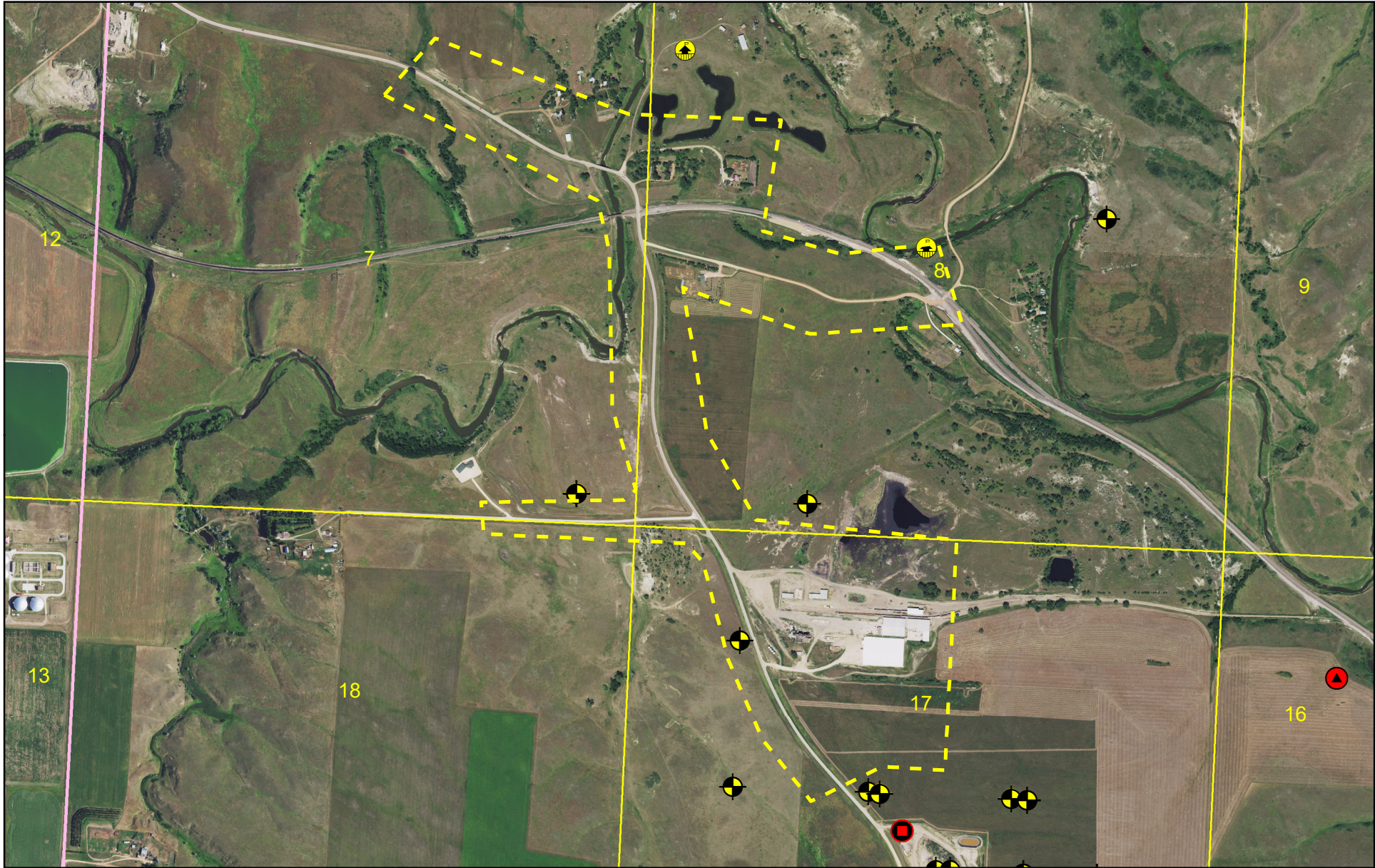
The North Dakota Department of Environmental Quality (NDDEQ) has reviewed the proposed mine reclamation project summarized in your December 4, 2023, letter. The proposed exploratory drilling areas have been mapped in relation to aquifers, wellhead protection areas, and existing wells (map attached). Based our review, it does not appear that the proposed activities will significantly impact groundwater quality. However, all reclamation activities should be conducted in a manner that minimizes potential impacts to water supply wells located in the vicinity of the sites.

We appreciate the opportunity to review the planned exploratory drilling activities. If you have any questions, please contact me at 701-328-5213.

Sincerely,



Carl Anderson
Groundwater Protection Manager
NDDEQ – Division of Water Quality



2024 Lehigh Road Phase IX
 T139N R95W Sec. 7, 8, 17, 18
 SE of Dickinson, ND
 Stark County
 ND PSC AML Division