



Public Service Commission

Sheri Haugen-Hoffart

Randy Christmann

Jill Kringstad

600 East Boulevard Ave
Dept. 408
Bismarck, ND 58505-0480
701-328-2400
ndpsc@nd.gov

sent via email and inside mail

April 22, 2025

Mr. David Glatt, P.E.
Director
North Dakota Department of Environmental Quality
4201 Normandy Street
Bismarck, ND 58503-1324
dglatt@nd.gov

Dear Mr. Glatt:

Enclosed is a flash drive containing the permit application for Revision 52 to Surface Coal Mining Permit NACT-0401 held by the Coteau Properties Company for the Freedom Mine. Revision 52 updates various sections of the permit for the next 5-year permit term, including the introductory information, legal information, business entity/compliance information, identification of interests and rights of entry, ground water hydrology, fish and wildlife resources, general operations, transportation facilities, surface water management, post-mining land use plans, and post-mining wetlands. All updates to the permit are listed in Section 1.1.2 (Revision Summary Pages).

Please review the revision application with regard to your agency's areas of responsibility and technical expertise, and for compliance with NDAC 69-05.2-16-02. Please provide any revision application review comments by June 9, 2025 in accordance with NDAC 69-05.2-10-01(2).

If you have any questions, please contact this office.

Sincerely,

Jonathan Emmer
Director
Reclamation Division

Enclosure

Freedom Mine\Permits\NACT - 0401\Revisions & Renewal\Rev52_Ren4\Rev52_Advsry_rvw_rqst_ltr_4-22-25



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April 22, 2025

North Dakota Department of Water Resources
C/O Project Review
1200 Memorial Highway, Dept 770
Bismarck, ND 58504
dwrprojectreview@nd.gov

Dear Project Review Team:

Enclosed is a flash drive containing the permit application for Revision 52 to Surface Coal Mining Permit NACT-0401 held by the Coteau Properties Company for the Freedom Mine. Revision 52 updates various sections of the permit for the next 5-year permit term, including the introductory information, legal information, business entity/compliance information, identification of interests and rights of entry, ground water hydrology, fish and wildlife resources, general operations, transportation facilities, surface water management, post-mining land use plans, and post-mining wetlands. All updates to the permit are listed in Section 1.1.2 (Revision Summary Pages).

Please review the revision application with regard to your agency's areas of responsibility and technical expertise, and for compliance with NDAC 69-05.2-16-03. Please provide any revision application review comments by June 9, 2025 in accordance with NDAC 69-05.2-10-01(2).

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan Emmer".

Jonathan Emmer
Director
Reclamation Division

Enclosure

Freedom Mine\Permits\NACT - 0401\Revisions & Renewal\Rev52_Ren4\Rev52_Advsry_rvw_rqst_ltr_4-22-25



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Dept. 408
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April 22, 2025

Mr. Jeb Williams, Director
North Dakota Game and Fish Department
100 North Bismarck Expressway
Bismarck, ND 58501-5095
jwilliam@nd.gov

Dear Mr. Williams:

Enclosed is a flash drive containing the permit application for Revision 52 to Surface Coal Mining Permit NACT-0401 held by the Coteau Properties Company for the Freedom Mine. Revision 52 updates various sections of the permit for the next 5-year permit term. All updates to the permit are listed in Section 1.1.2 (Revision Summary Pages). Figure 1 is provided below to help you realize the location of Permit NACT-0401.

The USFWS Information for Planning and Consultation (IPaC) website indicates that seven listed or proposed species have the potential to exist in Permit NACT-0401. No designated or proposed critical habit is within or immediately adjacent to the permit. The listed species include the Piping Plover, Rufa Red Knot, Whooping Crane, and Dakota Skipper. The proposed species are the Monarch Butterfly, Western Regal Fritillary and Suckley's Cuckoo Bumble Bee.

The Reclamation Division has prepared the draft threatened, endangered, and proposed species finding attached for your review. Please provide any revision application review comments and/or comments on the attached threatened and endangered species finding by June 9, 2025 in accordance with NDAC 69-05.2-10-01(2).

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan Emmer".

Jonathan Emmer
Director
Reclamation Division

Enclosures

Freedom Mine\Permits\NACT - 0401\Revisions & Renewal\Rev52_Ren4\Rev52_Advsry_rvw_rqst_ltr_4-22-25

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Revision 52 and Renewal 4 to Permit NACT-0401 – Species Specific Effects Finding

Finding No. 9. The operations will not adversely affect the continued existence of threatened, endangered or proposed species or result in the destruction or adverse modification of designated or proposed critical habitats [NDAC 69-05.2-10-03(6)(d)].

Whooping Crane - Endangered

Mercer County and the permit area are within the principal migration route of the Whooping Crane. Designated Whooping Crane critical habitat does not exist in or adjacent to the permit area. Whooping cranes use shallow seasonal and semi-permanent wetlands for roosting, and agricultural lands and emergent wetlands for feeding during migration. The permit area contains wetlands and croplands that could be utilized by Whooping Cranes as stopover habitat during their migration periods. The permit area contains approximately 80 acres of seasonal wetlands that range in size from 0.1 acres to 18.16 acres and one semi-permanent wetland that is approximately 11 acres in size. Whooping Crane feeding sites are often near roosting sites and it has been well documented that Whooping Cranes avoid human disturbances. Reclaimed and undisturbed lands in and adjacent to the permit area are used for agricultural purposes. Mining activities and mining support features such as sediment ponds, stockpiles and haul roads affect a significant portion of the permit area. The permit area contains graveled County roads, paved County Road No. 21, and State Highway 1806 borders the west side of the permit area. The Commission concludes mining and reclamation activities proposed during the next term of the permit, Renewal No. 4 and Revision No. 52 **“may affect but is not likely to adversely affect”** the continued existence of Whooping Cranes.

Piping Plover - Threatened

The Piping Plover is a migratory bird that can occur in North Dakota from mid-April through August. Suitable habitat for the Northern Great Plains population is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands and sandbars and shorelines associated with major river systems. In Mercer County North Dakota, this species can be found along the Missouri River and Lake Sakakawea, which are areas designated as critical habitat. The designated critical habitat at Lake Sakakawea is located approximately 1.5 miles northwest of the permit area. There are no seasonal or more permanent prairie pothole wetlands with barren shorelines in the permit area. It is conceivable that Piping Plover habitat (barren areas) could be created by activities associated with surface mining and reclamation. Piping Plovers were sighted at the Freedom Mine in 2011 when Lake Sakakawea and Missouri River water levels were high. The Commission and USFWS are to be notified when Piping Plovers are sighted at the mine.

The Commission concludes the area to be affected during the next term of the permit does not contain designated, suitable, or potential habitat for this species and the proposed mining and reclamation activities proposed with Renewal No. 4 and Revision 52 **“may affect but is not likely to adversely affect”** the continued existence of the Piping Plover.

Rufa Red Knot - Threatened

The Rufa Red Knot is a medium sized shorebird that migrates annually between its breeding grounds in the central Canadian Arctic and several wintering regions, including the Southeast United States and Northeast Gulf of Mexico. This species could potentially migrate over North Dakota. Available information indicates this species may use inland saline lakes as stopover habitat during its migration. There are no saline lakes in the permit area or adjacent to the permit area. Therefore, the mining and reclamation activities proposed with Renewal No. 4 and Revisions 52 will have “**no effect**” on the continued existence of the Rufa Red Knot.

Dakota Skipper - Threatened

The USFWS listed the Dakota Skipper threatened on October 24, 2014, and the final rule became effective on November 24, 2014. The Dakota Skipper is a small butterfly that requires high quality mixed or tallgrass prairie. According to the 2024 Dakota Skipper Survey Protocol there are two habitat types, Type A Habitat and Type B Habitat, or types of prairies suitable for this species. Type A Habitat consists of a moist lowland mesic prairie habitat type with prairie lily, bluebell bellflower, and mountain deathcamas or smooth camas species. Type B Habitat consists of a relatively dry upland prairie habitat type found on ridges and hillsides dominated with bluestem grasses, needlegrasses, and desirable native forbs such as purple coneflower. In the Missouri Coteau region of North Dakota, on the western edge on the known range of the species, Dakota Skippers inhabit a variant of Type B habitats. These habitats typically contain an association of little bluestem, big bluestem, and needlegrasses that are often invaded by Kentucky bluegrass. These prairies also typically contain prairie lily, bluebell bellflower, coneflowers, and aster species. There is no designated critical habitat for Dakota Skippers in Mercer County according to the USFWS IPaC site. A USFWS County Occurrence of Endangered, Threatened, Proposed and Candidate Species and Designated Critical Habitat in North Dakota dated January of 2023 indicates this species has been observed in Mercer County.

In 2022, the Coteau Properties Company hired Carlson McCain, Inc., Bismarck, ND to conduct a Dakota skipper field habitat survey for future disturbance areas at the Freedom Mine. The survey area included all the undisturbed land in Permit NACT-0401 (2,298 acres), which was referred to as the East Freedom Mine Future Disturbance Area. The scope of the project was to conduct a botanical evaluation for the purpose of identifying potentially suitable Dakota skipper habitat. The field survey identified one unique habitat (Habitat 6) comprising 6 parcels within the NW¼ of Section 36, T146N, R87W. The combined acreage of Habitat 6 was 7.3 acres. A botanical survey of the site ranked Habitat 6 as “Good” because all elements of required habitat were found. The native grassland in the NW¼ of Section 36 is part of an isolated tract of native grassland that is surrounded by cropland. Thus, the likelihood of Dakota skipper presence on Habitat 6 is low.

However, the Coteau Properties Company is committed to having properly certified consultants conduct Dakota Skipper occupancy surveys prior to mining related disturbance. The potential Dakota skipper habitat in the NW¼ of Section 36 is anticipated to be affected by mining activities in 2028. In 2024, Dakota skipper habitat surveys were completed on 1,663 acres at the Freedom Mine (Permit NACT-0201) and 49.13 acres of suitable habitat were identified. Three separate rounds of occupancy surveys were conducted, and no Dakota skippers were found.

The Commission finds the planned mining and reclamation activities proposed with Revision 52 and Renewal No. 4 to Permit NACT-0401 **“may affect but is not likely to adversely affect”** to the continued existence of the Dakota Skipper.

Monarch Butterfly – Proposed Threatened

The monarch butterfly was listed as a proposed threatened species December 12, 2024. There are three monarch butterfly populations within continental North America and species associated with the eastern migratory population may pass through North Dakota during the summer months while migrating between northern United States and Canada to central Mexico where it overwinters. Four to five monarch butterfly generations are produced annually to complete the migrations cycle.

Monarch butterflies may be found throughout North Dakota, and they may periodically be present in the permit and adjacent areas. Monarch butterflies lay their eggs on milkweeds plants and larvae feed exclusively on milkweed plants. Designated critical habitat has been proposed for the species outside of North Dakota. Surface coal mining and reclamation operations may disturb suitable habitat for the monarch butterfly but topsoil removal operations are usually completed outside of the species reproduction period. The Commission finds the planned mining and reclamation activities proposed with Revision 52 and Renewal No. 4 to Permit NACT-0401 **“may affect but is not likely to jeopardize”** the continued existence of the monarch butterfly.

Western Regal Fritillary – Proposed Threatened

The Western Regal Fritillary was listed as a proposed threatened species August 6, 2024. According to the federal register listing, the Western Regal Fritillary is typically found in tall-grass prairie remnants and other native prairie habitats. The Regal Fritillary has one generation per year. In the late summer and early fall, females lay eggs that hatch into larvae within 2 to 3 weeks. The larvae overwinter in nearby grassland vegetation before emerging in early spring to search for violet species. This species relies exclusively on native violets as a food source. Regal fritillary adults are strong and rapid flyers and may travel up to 100 miles during their months long lifespan to find suitable habitat. The southeastern portion of North Dakota provides the best habitat remaining for the species, but high quality native grassland habitat patches may be encountered state-wide. Western Regal Fritillary populations in North Dakota are relatively larger and more numerous compared to populations in the Midwest because of reduced fragmentation of suitable grassland patches according to the federal register listing. In addition, the federal register listing states that the Western Regal Fritillary currently has sufficient resiliency, redundancy and representation to withstand stochastic and catastrophic events and environmental change. Designated critical habitat is prudent but not presently determinable for the Western Regal Fritillary.

The Western Regal Fritillary has been documented to be present on permitted lands at the Freedom Mine. This species has been frequently observed while other butterfly surveys have been conducted. The Commission finds the planned mining and reclamation activities proposed with Revision 52 and Renewal No. 4 to Permit NACT-0401 **“may affect but is not likely to jeopardize”** the continued existence of the Western Regal Fritillary.

Suckley's Cuckoo Bumble Bee – Proposed Endangered

Suckley's Cuckoo Bumble Bee was proposed for listing endangered December 17, 2024. According to the federal register listing, Suckley's Cuckoo Bumble Bee is an obligate social parasite meaning it depends on social hosts for survival and raising young. This species is entirely dependent on social bumble bee hosts to collect pollen to rear their young. Suckley's Cuckoo Bumble Bee had a broad historical distribution across North America and was found in various habitat types including prairies, grassland, meadows, urban, agricultural and woodlands. The species range includes all of North Dakota. The federal register states that Suckley's Cuckoo Bumble Bee has not been observed in the United States since 2016, despite widespread historical occurrence records and increased sampling efforts for bumble bees. Thus, it is unlikely the species is present in or adjacent to Permit NACT-0401.

The Commission finds the planned mining and reclamation activities proposed with Revision 52 and Renewal No. 4 to Permit NACT-0401 **“may affect but is not likely to jeopardize”** the continued existence of Suckley's Cuckoo Bumble Bee.



Public Service Commission

Sheri Haugen-Hoffart

Randy Christmann

Jill Kringstad

600 East Boulevard Ave
Dept. 408
Bismarck, ND 58505-0480
701-328-2400
ndpsc@nd.gov

sent via email and regular mail

April 22, 2025

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

Dear Mr. Toso:

Enclosed is a flash drive containing the permit application for Revision 52 to Surface Coal Mining Permit NACT-0401 held by the Coteau Properties Company for the Freedom Mine. Revision No. 52 updates various sections of the permit for the next 5-year permit term. All updates to the permit are listed in Section 1.1.2 (Revision Summary Pages). Figure 1 is provided below to help you realize the location of Permit NACT-0401.

The USFWS Information for Planning and Consultation (IPaC) website indicates that seven listed or proposed species have the potential to exist in Permit NACT-0401. No designated or proposed critical habit is within or immediately adjacent to the permit. The listed species include the Piping Plover, Rufa Red Knot, Whooping Crane, and Dakota Skipper. The proposed species are the Monarch Butterfly, Western Regal Fritillary and Suckley's Cuckoo Bumble Bee.

The Reclamation Division has prepared the draft threatened, endangered, and proposed species finding attached for your review. We would appreciate any comments on the revision and renewal applications and on the attached threatened and endangered species finding by June 9, 2025.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan Emmer".

Jonathan Emmer
Director
Reclamation Division

Enclosures

cc via email only w/o enclosure: Jerry Reinisch (jerry_reinisch@fws.gov)

Freedom Mine\Permits\NACT - 0401\Revisions & Renewal\Rev52_Ren4\Rev52_Advsry_rvw_rqst_ltr_4-22-25

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Revision 52 and Renewal 4 to Permit NACT-0401 – Species Specific Effects Finding

Finding No. 9. The operations will not adversely affect the continued existence of threatened, endangered or proposed species or result in the destruction or adverse modification of designated or proposed critical habitats [NDAC 69-05.2-10-03(6)(d)].

Whooping Crane - Endangered

Mercer County and the permit area are within the principal migration route of the Whooping Crane. Designated Whooping Crane critical habitat does not exist in or adjacent to the permit area. Whooping cranes use shallow seasonal and semi-permanent wetlands for roosting, and agricultural lands and emergent wetlands for feeding during migration. The permit area contains wetlands and croplands that could be utilized by Whooping Cranes as stopover habitat during their migration periods. The permit area contains approximately 80 acres of seasonal wetlands that range in size from 0.1 acres to 18.16 acres and one semi-permanent wetland that is approximately 11 acres in size. Whooping Crane feeding sites are often near roosting sites and it has been well documented that Whooping Cranes avoid human disturbances. Reclaimed and undisturbed lands in and adjacent to the permit area are used for agricultural purposes. Mining activities and mining support features such as sediment ponds, stockpiles and haul roads affect a significant portion of the permit area. The permit area contains graveled County roads, paved County Road No. 21, and State Highway 1806 borders the west side of the permit area. The Commission concludes mining and reclamation activities proposed during the next term of the permit, Renewal No. 4 and Revision No. 52 **“may affect but is not likely to adversely affect”** the continued existence of Whooping Cranes.

Piping Plover - Threatened

The Piping Plover is a migratory bird that can occur in North Dakota from mid-April through August. Suitable habitat for the Northern Great Plains population is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands and sandbars and shorelines associated with major river systems. In Mercer County North Dakota, this species can be found along the Missouri River and Lake Sakakawea, which are areas designated as critical habitat. The designated critical habitat at Lake Sakakawea is located approximately 1.5 miles northwest of the permit area. There are no seasonal or more permanent prairie pothole wetlands with barren shorelines in the permit area. It is conceivable that Piping Plover habitat (barren areas) could be created by activities associated with surface mining and reclamation. Piping Plovers were sighted at the Freedom Mine in 2011 when Lake Sakakawea and Missouri River water levels were high. The Commission and USFWS are to be notified when Piping Plovers are sighted at the mine.

The Commission concludes the area to be affected during the next term of the permit does not contain designated, suitable, or potential habitat for this species and the proposed mining and reclamation activities proposed with Renewal No. 4 and Revision 52 **“may affect but is not likely to adversely affect”** the continued existence of the Piping Plover.

Rufa Red Knot - Threatened

The Rufa Red Knot is a medium sized shorebird that migrates annually between its breeding grounds in the central Canadian Arctic and several wintering regions, including the Southeast United States and Northeast Gulf of Mexico. This species could potentially migrate over North Dakota. Available information indicates this species may use inland saline lakes as stopover habitat during its migration. There are no saline lakes in the permit area or adjacent to the permit area. Therefore, the mining and reclamation activities proposed with Renewal No. 4 and Revisions 52 will have “**no effect**” on the continued existence of the Rufa Red Knot.

Dakota Skipper - Threatened

The USFWS listed the Dakota Skipper threatened on October 24, 2014, and the final rule became effective on November 24, 2014. The Dakota Skipper is a small butterfly that requires high quality mixed or tallgrass prairie. According to the 2024 Dakota Skipper Survey Protocol there are two habitat types, Type A Habitat and Type B Habitat, or types of prairies suitable for this species. Type A Habitat consists of a moist lowland mesic prairie habitat type with prairie lily, bluebell bellflower, and mountain deathcamas or smooth camas species. Type B Habitat consists of a relatively dry upland prairie habitat type found on ridges and hillsides dominated with bluestem grasses, needlegrasses, and desirable native forbs such as purple coneflower. In the Missouri Coteau region of North Dakota, on the western edge on the known range of the species, Dakota Skippers inhabit a variant of Type B habitats. These habitats typically contain an association of little bluestem, big bluestem, and needlegrasses that are often invaded by Kentucky bluegrass. These prairies also typically contain prairie lily, bluebell bellflower, coneflowers, and aster species. There is no designated critical habitat for Dakota Skippers in Mercer County according to the USFWS IPaC site. A USFWS County Occurrence of Endangered, Threatened, Proposed and Candidate Species and Designated Critical Habitat in North Dakota dated January of 2023 indicates this species has been observed in Mercer County.

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The Commission finds the planned mining and reclamation activities proposed with Revision 52 and Renewal No. 4 to Permit NACT-0401 **“may affect but is not likely to adversely affect”** to the continued existence of the Dakota Skipper.

Monarch Butterfly – Proposed Threatened

The monarch butterfly was listed as a proposed threatened species December 12, 2024. There are three monarch butterfly populations within continental North America and species associated with the eastern migratory population may pass through North Dakota during the summer months while migrating between northern United States and Canada to central Mexico where it overwinters. Four to five monarch butterfly generations are produced annually to complete the migrations cycle.

Monarch butterflies may be found throughout North Dakota, and they may periodically be present in the permit and adjacent areas. Monarch butterflies lay their eggs on milkweeds plants and larvae feed exclusively on milkweed plants. Designated critical habitat has been proposed for the species outside of North Dakota. Surface coal mining and reclamation operations may disturb suitable habitat for the monarch butterfly but topsoil removal operations are usually completed outside of the species reproduction period. The Commission finds the planned mining and reclamation activities proposed with Revision 52 and Renewal No. 4 to Permit NACT-0401 **“may affect but is not likely to jeopardize”** the continued existence of the monarch butterfly.

Western Regal Fritillary – Proposed Threatened

The Western Regal Fritillary was listed as a proposed threatened species August 6, 2024. According to the federal register listing, the Western Regal Fritillary is typically found in tall-grass prairie remnants and other native prairie habitats. The Regal Fritillary has one generation per year. In the late summer and early fall, females lay eggs that hatch into larvae within 2 to 3 weeks. The larvae overwinter in nearby grassland vegetation before emerging in early spring to search for violet species. This species relies exclusively on native violets as a food source. Regal fritillary adults are strong and rapid flyers and may travel up to 100 miles during their months long lifespan to find suitable habitat. The southeastern portion of North Dakota provides the best habitat remaining for the species, but high quality native grassland habitat patches may be encountered state-wide. Western Regal Fritillary populations in North Dakota are relatively larger and more numerous compared to populations in the Midwest because of reduced fragmentation of suitable grassland patches according to the federal register listing. In addition, the federal register listing states that the Western Regal Fritillary currently has sufficient resiliency, redundancy and representation to withstand stochastic and catastrophic events and environmental change. Designated critical habitat is prudent but not presently determinable for the Western Regal Fritillary.

The Western Regal Fritillary has been documented to be present on permitted lands at the Freedom Mine. This species has been frequently observed while other butterfly surveys have been conducted. The Commission finds the planned mining and reclamation activities proposed with Revision 52 and Renewal No. 4 to Permit NACT-0401 **“may affect but is not likely to jeopardize”** the continued existence of the Western Regal Fritillary.

Suckley's Cuckoo Bumble Bee – Proposed Endangered

Suckley's Cuckoo Bumble Bee was proposed for listing endangered December 17, 2024. According to the federal register listing, Suckley's Cuckoo Bumble Bee is an obligate social parasite meaning it depends on social hosts for survival and raising young. This species is entirely dependent on social bumble bee hosts to collect pollen to rear their young. Suckley's Cuckoo Bumble Bee had a broad historical distribution across North America and was found in various habitat types including prairies, grassland, meadows, urban, agricultural and woodlands. The species range includes all of North Dakota. The federal register states that Suckley's Cuckoo Bumble Bee has not been observed in the United States since 2016, despite widespread historical occurrence records and increased sampling efforts for bumble bees. Thus, it is unlikely the species is present in or adjacent to Permit NACT-0401.

The Commission finds the planned mining and reclamation activities proposed with Revision 52 and Renewal No. 4 to Permit NACT-0401 “**may affect but is not likely to jeopardize**” the continued existence of Suckley's Cuckoo Bumble Bee.