



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 only

January 7, 2026

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

Dear Mr. Toso:

The Reclamation Division has finalized its review of the permit application for Revision 3 and corresponding Renewal 1 to Surface Coal Mining Permit NACT-1801 held by the Coteau Properties Company for the Freedom Mine. Revision 3 updates various sections of the permit for the next 5-year permit term. Figure 1 is provided below to help you realize the location of Permit NACT-1801.

The USFWS Information for Planning and Consultation (IPaC) website indicates that seven listed or proposed species have the potential to exist in Permit NACT-1801. 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 anticipates that Commission approval of the Revision and Renewal will occur on February 5, 2026, and has prepared the draft threatened, endangered and proposed species findings, enclosed for your review. We would appreciate any comments on the enclosed threatened and endangered species finding by January 26, 2026. The Reclamation Division can provide you with a copy of the revision and renewal applications upon request.

Sincerely,

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

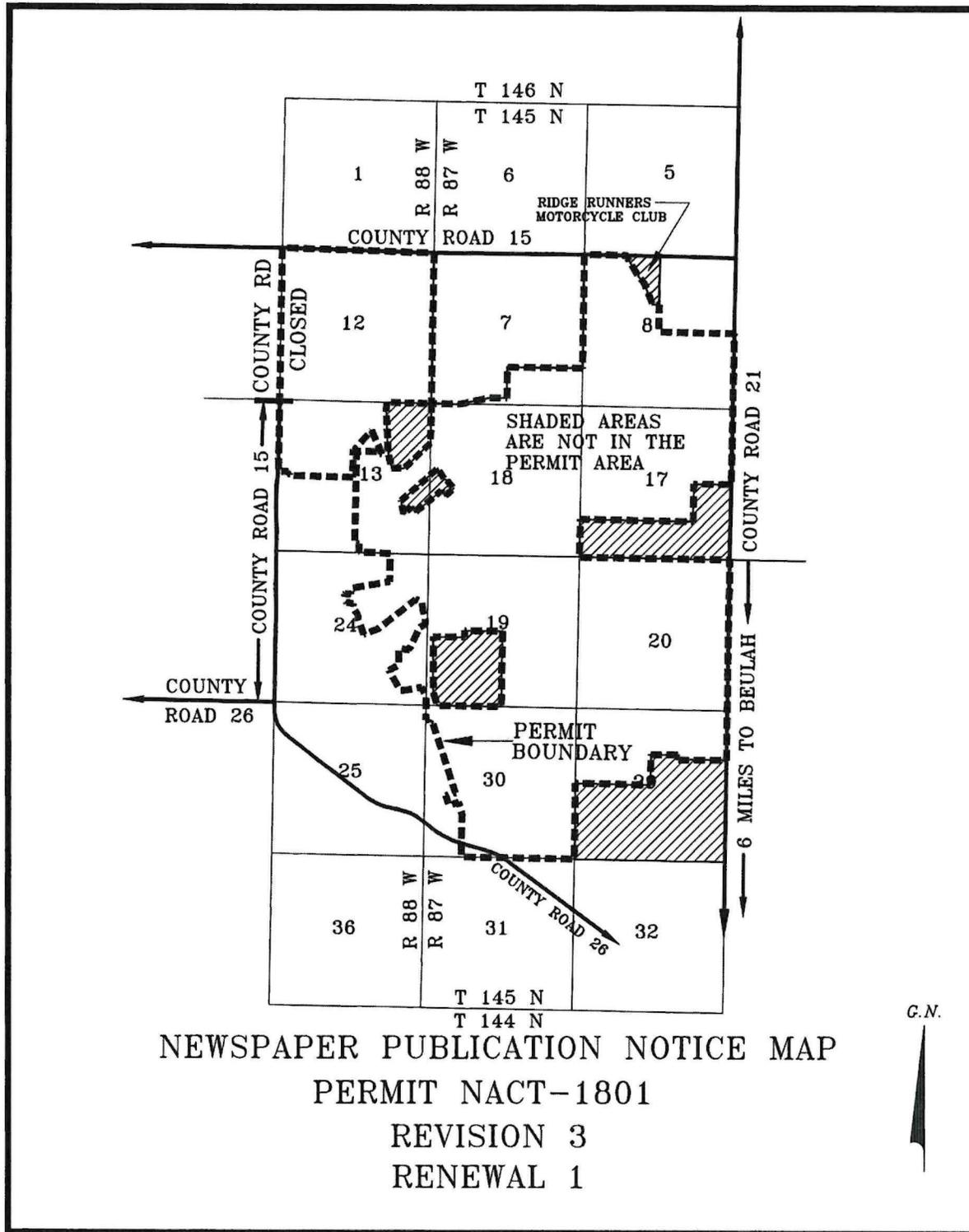
Jonathan Emmer
Director
Reclamation Division

Enclosure

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

Freedom Mine\Permits\NACT - 1801\Revisions & Renewals\Rev3_Ren1\Rev3_Advsry_rvw_rqst_ltr_USFWS_1-7-26

Figure 1: Freedom Mine Permit NACT-1801



STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Revision 3 and Renewal 1 to Permit NACT-1801 – Species Specific Effects Finding

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

Permit NACT-1801 consolidated five existing old permit areas at the Freedom Mine where mining has been completed and all reclamation activities have been completed on affected areas that are not being used to support mining occurring elsewhere (mine haul roads, sediment ponds, a coal loading facility, and the shop office complex). The USFWS Information for Planning and Consultation (IPaC) website indicates that three threatened, one endangered and three proposed species could potentially be affected by activities in the permit area. The listed species are: Whooping Crane (*Grus americana*), Piping plover (*Charadrius melodus*), Rufa Red Knot (*Calidris canutus rufa*) and the Dakota Skipper (*Hesperia dactotae*). The species proposed for listing that could be potentially affected are the Monarch Butterfly (*Danaus Plexippus*), Suckley's Cuckoo Bumble Bee (*Bombus suckleyi*) and the Western Regal Fritillary (*Argynnis Idalia occidentalis*). Detailed species-specific information is provided below.

Whooping Crane – Endangered

Mercer County and the permit area are within the principal migration route of the Whooping Crane. The likelihood of Whooping Cranes occurring in the area is very low because desirable stop-over roosting habitat does not exist in the area and Whooping Crane feeding sites are often found adjacent to roosting sites. It has been well documented that Whooping Cranes avoid human disturbances. Wetlands in and adjacent to the permit area are primarily associated with reconstructed wetlands and ephemeral linear wetlands. The permit area contains a 14-acre reconstructed wetland and a few smaller, generally less than 4 acres, reclaimed and undisturbed wetlands. A 68-acre reclaimed wetland is located approximately ½ mile north of the permit area in the S½ of Section 6, T145N, R87W but no whooping crane sightings have ever been documented at this wetland. The permit area does not contain any large seasonal or more permanent wetlands that have an open water zone suitable as Whooping Crane stopover habitat. The Dakota Gasification Plant, Antelope Valley Power Plant, and paved county roads are located adjacent to the permit area. Undisturbed lands adjacent to the permit area are used for agricultural purposes. The Reclamation Division concludes mining and reclamation activities proposed with Revision No. 3 and Renewal No. 1 will have “**no effect**” on 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 of designated critical habitat. The designated critical habitat at Lake Sakakawea is located about four miles north of the permit area. There are no seasonal or more permanent prairie pothole wetlands with barren shorelines in the permit area. Piping Plovers were sighted at the Freedom Mine in 2011 when Lake Sakakawea and Missouri River water levels were high and could potentially be sighted in the permit area. The Reclamation Division and USFWS are to be notified when Piping Plovers are sighted at the mine. The Reclamation Division concludes the permit area does not contain designated, suitable, or potential habitat for this species and the mining and reclamation activities proposed with Revision No. 3 and Renewal No. 1 will have “**no effect**” on 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 the 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 Revision No. 3 and Renewal No. 1 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 26, 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 North Dakota Survey Protocol there are two habitat types, Type A Habitat and Type B Habitat. Type A Habitat consists of 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 ranges 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. The 2022 Dakota Skipper North Dakota Survey Protocol indicates this species had not been observed in Mercer County through 2021.

Permit NACT-1801 does not contain any undisturbed native grassland and there is no undisturbed native grassland immediately adjacent to the permit area. It is unlikely the reclaimed native grassland in the permit area provides suitable habitat for the Dakota skipper. The Coteau Properties Company had Meadowlark Environmental, LLC, Carson, ND and KC Harvey, Sheridan, Wyoming conduct the Dakota Skipper habitat assessment and occupancy surveys in 2022 and 2023, respectively, in other permitted areas at the Freedom Mine. The surveys were conducted in a three-step approach, which includes a desktop analysis, habitat surveys, and adult occupancy surveys in accordance with USFWS guidelines. No Dakota Skippers were observed during these surveys. Copies of these reports are included in the 2022-2023 Biennial Wildlife Monitoring Report for the Freedom Mine.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 3 and Renewal No. 1 will have “**no effect**” on the continued existence of the Dakota Skipper.

Monarch Butterfly – Proposed Threatened

The Monarch Butterfly is a proposed threatened species. The Monarch requires habitat with Milkweed as a larval host plant and floral nectar sources for adults. Monarchs found in North Dakota are comprised of the eastern range Monarchs, found east of the Rocky Mountains. These Monarchs overwinter in central Mexico and then migrate and disperse throughout North America. No designated critical habitat is currently proposed for the eastern range Monarchs.

The Coteau Properties Company had Meadowlark Environmental, LLC, Carson, ND conduct Dakota Skipper habitat assessment and occupancy surveys in 2022. One Monarch Butterfly was observed during

this survey. No Monarchs were observed during the 2023 Dakota Skipper habitat assessment and occupancy surveys conducted by KC Harvey, Sheridan Wyoming. These surveys were conducted in an adjacent permit area.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 3 and Renewal No. 1 “**may affect but is not likely to jeopardize**” the continued existence of the Monarch Butterfly provided that Coteau follow future guidance from the USFWS.

Western Regal Fritillary – Proposed Threatened

The Western Regal Fritillary is a proposed threatened species. The Western Regal Fritillary prefers tallgrass prairie and other sunny, open locations such as damp meadows, marshes, wet fields, and mountain pastures. Regal Fritillary butterflies depend on three main habitat components: violet hostplants for larvae, nectar plants for adults, and native warm-season bunch grasses that provide protective sites for all life stages. No designated critical habitat is currently proposed for the Western Regal Fritillary.

The Coteau Properties Company had Meadowlark Environmental, LLC, from Carson, ND and KC Harvey, from Sheridan, Wyoming conduct the Dakota Skipper habitat assessment and occupancy surveys in 2022 and 2023, respectively. Western Regal Fritillary and Fritillary species were noted during both the 2022 and 2023 adult occupancy surveys. These surveys were conducted in an adjacent permit area.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 3 and Renewal No. 1 “**may affect but is not likely to jeopardize**” the continued existence of the Western Regal Fritillary provided that Coteau follow future guidance from the USFWS.

Suckley’s Cuckoo Bumble Bee – Proposed Endangered

The Suckley’s Cuckoo Bumble Bee is a proposed endangered species. The Suckley’s Cuckoo Bumble Bee is an obligate social parasite and is entirely dependent on social bumble bee hosts to collect pollen and rear their young. Since they are entirely dependent on host bumble bee colonies, host colony availability is critical for the species’ survival and overall viability. The species has a broad historical range and has been found in various habitat types including prairies, grasslands, meadows, urban and agricultural areas, and woodlands. The last confirmed sighting in the United States of the Suckley’s Cuckoo Bumble Bee was in 2016 in Oregon and is considered functionally extirpated from North Dakota by the North Dakota Outdoor Heritage Data Base Partnership (OHDB).

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 3 and Renewal No. 1 will have “**may affect but is not likely to jeopardize**” the continued existence of the Suckley’s Cuckoo Bumble Bee.