

**NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Coyote Creek Mining Company, L.L.C.  
Revision 14, Permit NACC-1302  
Application**

**Case No. RC-25-270  
OAH File No. 20260129**

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
SUBMITTED BY CASEY AND JULIE VOIGT**

[¶1] Casey and Julie Voigt submitted written comments and a request for informal conference on March 30, 2026. An informal conference was held on May 12, 2026.

**I. Findings of Fact**

**A. Section 4.3.1**

[¶2] The revision to NACC-1302 proposed by Coyote Creek Mining Company would delete the following language: Coyote Creek “is currently working with Casey Voigt to setup a field visit to review and discuss the proposed reference sites. The plan is to conduct this field visit in the late summer/early fall of 2024. If weather or schedules do not allow, the field visit would then take place in 2025. After Casey Voigt and the PSC review the proposed reference area sites and they have been approved, they will be added to the permit as ‘approved reference areas’.”

[¶3] The revision then replaces this language with the following: “...conducted a field review of the “proposed” reference area sites on October 8, 2024. Participants on the field review were CCMC representatives (Jeremy Eckroth and Jason Freidt), Casey Voigt, PSC staff (Guy Welch and Warren Swenson), and KDK Consulting (Kelly Krabbenhof). Mr. Voigt also arranged to have NRCS staff members Jonathan Fettig, John Kempenich, and Selin Petrosian to participate in the inspection. There was concurrence on five of the six proposed reference areas (Cp, Sa, Sy, Ly, & TCp) that they represented the ecological sites they were intended to represent. There was not

concurrence on the proposed Shallow Loamy site. The five sites that had universal concurrence represent approximately 70% of the native ecosites on the Voigt lands and State of North Dakota lands grazed by the Voigts. Therefore, CCMC is proposing to utilize these five ecological reference sites to demonstrate reclamation success of the reclaimed native grasslands tracts.”

[¶4] Coyote Creek Mining Company selected the previously proposed reference area for Shallow Loamy soils prior to requesting input from the Voigts.

[¶5] The revision still correctly states: “Additionally, as part of the 2015 orders issued in response to the formal hearing on NACC-1302, Casey Voigt will be consulted on the selection and management of reference areas to be used to demonstrate reclamation success of reclaimed native grasslands that he owns.”

[¶6] Coyote Creek Mining Company has not yet identified a suitable reference area for Shallow Loamy (SwLy) soils. Mr. Voigts consultants and NRCS staff members Jonathan Fettig, John Kempenich, and Selin Petrosian did not agree that the Shallow Loamy site previously selected by Coyote Creek Mining Company was representative.

[¶7] No reference area for Clayey (Cy) soils has been selected at this time.

[¶8] Shallow Loamy soils and Clayey soils each constitute just over 7% of the soil types on the Voigt acreage.

[¶9] The Voigts also rent and utilize State of North Dakota lands within the mined area. Clayey soils constitute just over 14% of the lands they rent from the state, and Shallow Loamy soils constitute just over 7% by soil type.

## **B. Compaction concerns**

[¶10] The Voigts expressed concern at the informal conference that compaction will impact the success of reclamation on their property.

[¶11] PSC staff acknowledged that Coyote Creek Mining Company has conducted compaction testing and has results and data available, but that staff has only been allowed to review this data vis a shared screen during a live webconference or by visiting the Coyote Creek Mining Company office and viewing it on computers at that office.

[¶12] PSC staff has not requested that the Coyote Creek Mining Company share this compaction data with the PSC or the Voigts.

### **C. Section 1.2.8 and 4.1.1**

[¶13] In Section 4.1.1 the following language has been deleted in Revision 14: “CCMC has verbal agreement from the Voigts and the ND Dept of Trust Lands on an alignment for the reclaimed farmer access road through Section 36, T143N, R183W. Revision 12 updated the road alignment in the Post-Mining Topography and Land Use Map - Section 4.1.2. CCMC is continuing to work with Mercer County to obtain the easements required for construction of the road. Once all easements have been obtained and mining progresses, the farmer access road will be constructed of subsoil.”

[¶14] This language is replaced with the following language: “Mercer County has acquired an easement from the Voigts to reclaim the farmer access road through Section 36, T143N, R183W, following the original pre-mine road alignment. Revision 14 updated the road alignment in the Post-Mining Topography and Land Use Map - Section 4.1.2. Mercer County is working with the ND Dept of Trust Lands to secure the final easement through the trust lands. The farmer access road is planned to be built with subsoil in late fall 2025 or early 2026.”

[¶15] Section 1.2.8 of Revision 14 is titled “Mercer County Section Line Right-of-Way Closure and Setback Waiver Documents” and includes two easements purporting to grant a road easement from Julie Anne Voigt and Casey Lee Voigt as Trustees of the Julie Anne Voigt Living Trust to Mercer County, dated September 17, 2025.

[¶16] At the informal conference, the Voigts indicated that Mercer County has failed to tender the agreed-upon consideration for the easements it attempted to acquire from the Voigts in order to reclaim the farmer access road. The Voigts contend that these easements are not legally valid or enforceable.

## **II. Conclusions of Law**

### **A. Section 4.3.1**

[¶17] Coyote Creek Mining Company has not provided any rationale or justification for dropping the Shallow Loamy reference areas from Revision 14 other than the fact that the Voigt’s experts disagreed that the reference area selected without the Voigt’s input was appropriate.

[¶18] Casey Voigt must be consulted on the selection and management of reference areas to be used to demonstrate reclamation success of reclaimed native grasslands that he owns, and specifically he must be consulted on the selection and management of a reference area for Shallow Loamy soils. This consultation must begin before Coyote Creek Mining Company selects the reference area.

[¶19] Casey Voigt must be consulted on the selection and management of reference areas to be used to demonstrate reclamation success of reclaimed native grasslands that he owns, and specifically he must be consulted on the selection and management of a reference area for Clayey soils. This consultation must begin before Coyote Creek Mining Company selects the reference area.

### **B. Compaction concerns**

[¶20] The PSC has broad authority to regulate coal mines and require mines to maintain and share data and information related to reclamation, including the authority “[t]o exercise general supervision and administration and enforcement of [N.D.C.C. Chapter 38-14.1] and all regulations and orders promulgated thereunder and all incidental powers necessary to carry out the purposes

of [Chapter 38-14.1].” N.D.C.C. § 38-14.1-03(14). The PSC may require any mine to “[e]stablish and maintain appropriate records” and share those records with the PSC.

[¶21] The PSC has reviewed data maintained by Coyote Creek Mining Company related to its compaction testing and it has authority to require Coyote Creek Mining Company to provide this data to the PSC for its records and analysis.

### **C. Section 1.2.8 and 4.1.1**

[¶22] The PSC does not have authority to determine the legal validity of the road easements included in Section 1.2.8 of Revision 14.

[¶23] With regard to the statement in Section 4.1.1 of Revision 14 that “Mercer County has acquired an easement from the Voigts to reclaim the farmer access road through Section 36, T143N, R183W...”, the PSC does not take a position on whether the referenced easement is legally valid or binding.

### **III. Order**

[¶24] Coyote Creek Mining Company will consult with Casey and Julie Voigt to find appropriate reference areas for Shallow Loamy soils and Clayey soils and this consultation will begin before Coyote Creek Mining Company selected the reference areas.

[¶25] Coyote Creek Mining Company will provide all compaction testing results and data for the Coyote Creek Mine to the PSC within 30 days of this Order.

[¶26] Approval of Revision 14 does not provide, convey, or transfer any property rights associated with the documents contained in Section 1.2.8, and any disputes over the validity of the relevant road easements are between the parties to those agreements.

Dated: June 3, 2026.

Respectfully submitted,

*/s/ Derrick Braaten*

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