

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Coyote Creek Mining Company, L.L.C.)
Revision No. 14, Permit NACC-1302)
Application)

Case No. RC-25-270

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
DATED _____, 2026

Appearances

Derrick Braaten, Attorney at Law, Braaten Law Firm, 109 North Fourth Street, Suite 100, Bismarck, North Dakota 58501, on behalf of Casey Voigt and Julie Voigt.

Wade Mann, Attorney at Law, Crowley Fleck PLLP, 100 West Broadway Avenue, Suite 250, Bismarck, North Dakota 58501, on behalf of Coyote Creek Mining Company, L.L.C.

Chris Martens, Special Assistant Attorney General, 600 E. Boulevard Avenue, 12th Floor, Dept. 408, Bismarck, North Dakota 58505, on behalf of the North Dakota Public Service Commission Advocacy Staff.

Hope L. Hogan, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Substantive Hearing Officer.

Preliminary Statement

On October 3, 2025, Coyote Creek Mining Company, L.L.C. (“CCMC”) filed an Application for Revision of Permit to Engage in Surface Coal Mining and Reclamation Operations (“Revision 14 Application”) to revise the post-mining topography in portions of Sections 23, 24, 25, 26 and 36, Township 143 North, Range 89 West; Section 31, Township 143 North, Range 88 West; and Section 6, Township 142 North, Range 88 West, and to update the introductory land use plans and topography revegetation procedures, establishment and management, and vegetation assessment and success standards section of the permit. Specific updates include updated design plans for sediment pond P24-06, the addition of design plans for diversion D25-01, post mining land use acreage adjustments in Sections 24 and 25, Township 143 North, Range 89 West to accommodate larger blocks of cropland and native grassland, and modifications to the native grassland and woodland planting seed mixtures. The revision also finalizes the location of the Section 36 farmer access road (18th Street SW) and finalizes the use of several ecological sites as native grassland reference areas. The revision is identified as Revision No. 14 and the application was assigned Case No. RC-25-270.

On February 3, 2026, the Commission issued a Notice of Receipt of Revision Application summarizing the purpose of the application and giving notice that anyone may submit written comments or objections on the proposed permit revision and request an informal conference with the Commission and the applicant on the Revision 14 Application provided the written comments, objections, or requests for informal conference must be made by March 30, 2026.

On March 30, 2026, counsel for Casey and Julie Voigt (“Voigts”) filed Comments of Casey Voigt and Julie Voigt and Request for Informal Conference (“Comments”).

The informal conference was held as scheduled, commencing at 9:00 a.m. CDT on May 12, 2026.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all the evidence presented, the undersigned Administrative Law Judge makes the following:

Findings of Fact

1. On October 22, 2014, the Commission issued Surface Coal Mining Permit No. NACC-1302 (“Permit NACC-1302”) to allow CCMC to conduct surface coal mining and reclamation operations at the Coyote Creek Mine, to supply coal to the Coyote Power Station.
2. On June 18, 2024, CCMC filed Revision No. 13 to Permit NACC-1302, identifying the next five-year coal removal subarea and updating the mining and reclamation plans prior to permit renewal (“Revision 13 Application”). Revision 13 was assigned Case No. RC-24-244.
3. On June 18, 2024, CCMC filed Renewal No. 2 to Permit NACC-1302, seeking to allow CCMC to continue to engage in surface coal mining and reclamation operations within Permit NACC-1302 until October 22, 2029 (“Renewal 2 Application”). Renewal 2 was assigned Case No. RC-24-245.
4. The Voigts filed comments and objections to the Renewal 2 Application and the Revision 13 Application and requested a formal hearing on these applications. The issues addressed at the formal hearing on December 13, 2024, included 1) **Reference Areas**, 2) **Relocated Road (18th Street SW)**, 3) Access, 4) **Compaction**, 5) Yield Maps, 6) Dust, and 7) Graded Spoil Sampling.
5. On December 30, 2024, the Commission issued its Findings of Fact, Conclusions of Law and Order in Case Nos. RC-24-244 and RC-24-245. (“Revision 13/Renewal 2 Order”). In its order, the Commission concluded in relevant part that: 1) with respect to the reference areas, CCMC has not violated provision 2(c) of the Commission’s April 14, 2015 order; 2) with respect to the relocated road (18th Street SW), that the final location of the reconstructed 18th Street SW would not be added to Permit NACC-1302 until the required

easements were acquired and that CCMC was complying with the Commission's February 7, 2020 order and N.D.A.C. 69-05.2-09-07 by describing the measures CCMC will take to ensure that the interests of landowners and the public are protected; and 3) with respect to compaction, CCMC's reclamation practices and methods to minimize compaction are adequate; therefore, no additional special conditions or permit requirements addressing compaction are warranted.

6. The Voigts did not appeal the Commission's December 30, 2024, Revision 13/Renewal 2 Order.

7. On March 30, 2026, the Voigts filed Comments objecting to CCMC's Revision 14 Application, specifically referencing reference areas, the road replacement and compaction testing as a basis for the objection. These objections were all thoroughly addressed by the Commission's December 30, 2024, Revision 13/Renewal 2 Order.

Public Notice

8. The Voigts indicated at the informal conference that they are not satisfied with the current requirements for providing them with notice of CCMC's filings. They acknowledged receiving notice of the Revision 14 Application but requested that in the future they receive early personal notice of applications filed by CCMC. Reclamation Director Jonathan Emmer explained the current public notice requirements and why they are appropriate.

9. The Voigts have not contended, and there is no evidence to suggest, that the Commission or CCMC have not complied with the current notice requirements set forth in statute or administrative rule.

10. There is no basis to impose additional notice requirements upon CCMC that go beyond the current notice requirements set forth in statute and administrative rule.

Reference Areas

11. The Voigts have raised the issue of consultation on reference areas on multiple occasions dating back to 2015. The Commission found in its Revision 13/Renewal 2 Order that "CCMC has not violated the Commission's April 14, 2015 order and the reference areas have not been approved by the Commission." Revision 13/Renewal 2 Order at ¶19. That order also provided that "The Commission finds that CCMC has not violated provision 2(c) of the Commission's April 14, 2015 order." *Id.* at ¶20. The Voigt's acknowledge in their Comments that they did not appeal the Revision 13/Renewal 2 Order.

12. The Voigts' Comments reference a January 6, 2016 letter from James Deutsch, as well as a partial AI generated transcript from the January 2, 2015 hearing. None of this information is new and the claims raised in the Comments were thoroughly addressed and refuted by the Commission in Case Nos. RC-24-244 and RC-24-245.

13. The Voigts contend that CCMC should be required to work with them to find a suitable reference area for Shallow Loamy soils. In response to this request, Guy Welch, Permit Administrator with the Commission's reclamation division, explained that a Shallow Loamy reference ecological site was unnecessary and provided a table and four maps supporting his position. *See* PSC-4 through PSC-7. The Voigts did not present any credible basis to contradict Mr. Welch's conclusion that a Shallow Loamy site was not necessary but still refused to drop their request for a Shallow Loamy ecological site.

14. Mr. Welch noted that the Clayey ecological site was prevalent on multiple tracts on the Voigts' land and State of North Dakota Lands grazed by the Voigts. CCMC agreed to include a Clayey reference ecological site in place of the unnecessary Shallow Loamy site. No additional action is required for CCMC with respect to the ecological reference sites.

Relocated Road (18th Street SW)

15. The Voigts claim that there is no binding easement for the relocated road through Sections 31 and 36, Township 143 North, Range 89 West. They acknowledge that they signed the easement with Mercer County for the road but claim that they were not paid the agreed-upon consideration for the easement. Two County Road Easements executed by Casey Lee Voigt and Julie Anne Voigt, as Trustees of the Casey Lee Voigt Living Trust dated January 26, 2023 and as Trustees of the Julie Anne Voigt Living Trust dated January 26, 2023, to Mercer County, appear of record in the Mercer County Recorder's Office, dated September 17, 2025, and recorded September 18, 2025, as Doc. Nos. 230214 and 230215, granting a road easement to the County.

16. Casey Voigt is a Mercer County Commissioner but declined to explain why Mercer County has allegedly not paid the Voigts the agreed-upon consideration.

17. Any dispute regarding consideration for the easement between the Voigts and Mercer County is beyond the jurisdiction of the Commission.

18. There is no basis to remove the easement executed by the Voigts from the proposed Revision 14.

Compaction

19. The Voigts raised general concerns about compaction and its impact on successful reclamation in their Comments and at the informal conference.

20. The compaction issue was extensively addressed by the parties at the formal hearing in Case Nos. RC-24-244 and RC-24-245. The Commission included more than 30 paragraphs of findings on the topic of compaction in its final order approving the renewal and revision in those cases. *See* Revision 13/Renewal 2 Order, ¶¶ 35-65. The Voigts did not appeal that order.

21. The Voigts expressed concern that deep rooting native prairie grasses will likely be unable to root to a natural depth and water infiltration will be negligible beneath the subsoil of their reclaimed property due to compaction, which could potentially lead to further complications with reclamation. *See* Comments, p. 3.

22. Mr. Welch previously addressed this very compaction issue in Case Nos. RC-24-244 and RC-24-245, testifying that “there are no requirements specified in statute or regulation or contained in CCMC’s mining permit that require the rooting depth of vegetation to obtain a certain depth.” Revision 13/Renewal 2 Order, ¶55. The Commission further found that “[t]he definitive indicator of reclamation success is the land’s productivity and its qualification for final bond release.” *Id.* at ¶58. The evidence presented by the Voigts “failed to substantiate or sufficiently challenge the mine’s ability to meet this standard under its current practices.” *Id.* The information presented by the Voigts in their Comments and presented at the informal conference again fails to substantiate or sufficiently challenge the mine’s ability to meet its standard for reclamation success under its current practices.

23. Mr. Welch also testified less than two years ago on the compaction issue that “he was not concerned with CCMC meeting the native grassland productivity performance standards.” *Id.* at ¶62. “Based on his experience working for the Commission for twenty-seven years, the productivity of native grassland has not been an issue for achieving final bond release.” *Id.* The Voigts have presented nothing new in their Comments, the attachments to their Comments, or at the informal conference to contradict Mr. Welch’s prior conclusions on compaction at the mine based on his twenty-seven plus years of experience.

24. The Commission’s conclusions with respect to the compaction issue in Revision 13/Renewal 2 Order are insightful. The Commission determined that:

According to the Commission’s October 9, 2024 approval form for Revision 13 to Permit NACC-1302, the Commission made the finding that CCMC has affirmatively demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the permit application [NDCC 38-14.1-21(3)(b)]. The reclamation methods and practices used by CCMC have proven effective in the past. Similar lands have been surface mined and successfully reclaimed at mines in Mercer County using comparable reclamation methods (PSC Exhibit 1).

Id. at ¶64. There have been no material changes to CCMC’s reclamation plan that the Commission recognized to have been proven effective in the past.

25. The Commission determined in the Revision 13/Renewal 2 Order that “CCMC’s reclamation practices and methods to minimize compaction are adequate; therefore, no additional special conditions or permit requirements addressing compaction are warranted.” *Id.* at ¶65. Since the Voigts have failed to present any new information

through their Comments or statements at the informal conference to contradict the Commission's previous findings relating to compaction, this recent determination of the Commission remains in effect and no additional special conditions or permit requirements addressing compaction are warranted as part of CCMC's Revision 14.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. That the Commission has jurisdiction over CCMC's mining and reclamation operations in North Dakota, including Permit No. NACC-1302 and Revision No. 14 thereto.
2. That CCMC's Revision No. 14 application to surface coal mining Permit NACC-1302 meets all permit revision standards under North Dakota Century Code Chapter 38-14.1 and North Dakota Administrative Code Article 69-05.2.
3. That CCMC has complied with North Dakota's mining law and mining regulations in its submittal of Revision No. 14 and that no basis has been established for the Commission to deny or delay revision of Permit NACC-1302 or to seek further amendments to the revision to the permit with respect to the comments and issues raised by the Voigts.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

Order

The Commission orders:

1. That Revision No. 14 as submitted by CCMC, with respect to the comments and issues raised by the Voigts, fulfills the requirements of North Dakota's mining law and mining regulations.
2. That Revision No. 14 be approved as scheduled to allow CCMC to continue to engage in surface coal mining and reclamation operations within the permit area until October 22, 2029.

PUBLIC SERVICE COMMISSION

Hope L. Hogan
Substantive Administrative Law Judge