

STATE OF 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

RECOMMENDED FINDINGS AND RULING
AND RECOMMENDED ORDER

June 8, 2026

Appearances

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

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

Christopher Martens, Special Assistant Attorney General, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

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

Preliminary Statement

[1] On October 3, 2025, the Public Service Commission (Commission) received the application for Revision 14 to Surface Coal Mining Permit NACC-1302 from Coyote Creek Mining Company, L.L.C., (CCMC) for its Coyote Creek Mine south of Zap in Mercer County, North Dakota. Revision 14 revises the post-mining topography in portions of Sections 23, 24, 25, 26, and 36, T143N, R89W; Section 31, T143N, R88W; and Section 6, T142N, R88W. Revision 14 also updates the introductory information, pre-mining land use, general operations, surface water management, post-mining land use plans and topography, revegetation procedures, establishment and management, and vegetation assessment and success standards sections of the permit. Specific updates include updated design plans for sediment pond P24-06, the addition of

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design plans for diversion D25-01, post-mining land use acreage adjustments in Sections 24 and 25, T143N, R89W 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.

[2] On February 3, 2026, the Commission issued a Notice of Receipt of Revision Application for Revision 14 to Permit NACC-1302 informing the public that written comments, objections, or requests for an informal conference must be filed with the Commission by March 30, 2026.

[3] On March 30, 2026, Derrick Braaten of Bismarck, counsel for Casey and Julie Voigt (hereinafter collectively referred to as “the Voigts”), filed comments, objections, and a request for an informal conference (Conference). The Voigts expressed concerns about the native grassland reference areas, the Section 36 farmer access road (18th Street SW), compaction testing, and the productivity of reclaimed land.

[4] On April 2, 2026, the Commission requested the designation of an administrative law judge (“ALJ”) to preside as hearing officer at the Conference. The Office of Administrative Hearings designated ALJ Hope L. Hogan to conduct the hearing, make recommended findings of fact and conclusions of law, and issue a recommended order to the Commission.

[5] On April 8, 2026, the Commission issued a Notice of Informal Conference scheduling the Conference for 9:00 a.m. CDT, on May 15, 2026, in the Fort Totten Room of the State Capitol, Bismarck, North Dakota. The issues listed in the notice were the native grassland reference areas, the Section 36 farmer access road (18th Street SW), compaction testing, and the productivity of reclaimed land.

[6] On April 14, 2026, the Commission issued a Notice of Informal Conference Date Change, due to a scheduling conflict, modifying the Conference date to 9:00 a.m. CDT, on May 12, 2026, in the Fort Totten Room, State Capitol, Bismarck, North Dakota. The issues listed in the notice were the native grassland reference areas, the Section 36 farmer access road (18th Street SW), compaction testing, and the productivity of reclaimed land.

[7] On April 28, 2026, the Commission issued a Notice of Informal Conference Room Change, modifying the conference location to 9:00 a.m. CDT, on May 12, 2026, in the Sakakawea Room, State Capitol, Bismarck, North Dakota. The issues listed in the notice were the native grassland

reference areas, the Section 36 farmer access road (18th Street SW), compaction testing, and the productivity of reclaimed land.

[8] The Conference was held as rescheduled. Casey and Julie Voigt appeared, represented by Attorney Derrick Braaten and accompanied by this assistant Desirae Zaste. CCMC was represented by Attorney Wade C. Mann. CCMC brought Donn Steffen, President, and Jeremy Eckroth, Environmental Manager, to participate. Special Assistant Attorney General Christopher Martens and the Director of the Reclamation Division, Jonathan W. Emmer, appeared representing the Commission's Reclamation Division. One other member of the Reclamation Division participated in the discussion, Guy A. Welch, Environmental Scientist. Other members of the Reclamation Division were present, but they did not participate in the discussion. The Commission was the only party that offered exhibits that the ALJ made exhibits labeled PSC-4 through PSC-7 part of the record.

[9] N.D.C.C. § 38-14.1-19 requires the Commission to issue a ruling on this alternative public participation procedure within thirty days of the close of the Conference. N.D.C.C. § 38-14.1-20 provides for further review by the Commission at a formal hearing in accordance with N.D.C.C. § 38-14.1-30. N.D.C.C. § 38-14.1-30(3)(f) incorporates the restriction in the Surface Mining Control and Reclamation Act (SMCRA), Public Law 95-87, that no person who presides at an informal conference shall participate in the decision-making process at the appeal level. No Commissioners participated in the Conference to allow for their full involvement at a formal hearing should further review be requested.

[10] Consideration of the presentations of the parties, the exhibits included in the record, the applicable statutes, rules, and case law, supports the following findings and ruling.

Recommended Findings of Fact

[11] On October 22, 2014, the Commission issued Surface Coal Mining Permit NACC-1302 to allow CCMC to conduct surface mining and reclamation operations at the Coyote Creek Mine.

[12] CCMC filed the application for Revision 14 to Surface Coal Mining Permit NACC-1302 on October 3, 2025. Revision 14 revises the post-mining topography in portions of Sections 23, 24, 25, 26, and 36, T143N, R89W; Section 31, T143N, R88W; and Section 6, T142N, R88W. Revision 14 also updates the introductory information, pre-mining land use, general operations, surface water management, post-mining land use plans and topography, revegetation procedures,

establishment and management, and vegetation assessment and success standards sections 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, T143N, R89W 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.

[13] At the Conference, the Voigts brought forth the following issues: (a) timing of the notice of receipt for Revision 14; (b) native grassland reference areas; (c) the easement for the Section 36 farmer access road (18th Street SW); (d) compaction testing; and (e) productivity of reclaimed land.

Timing of the Notice of Receipt for Revision 14

[14] Mr. Braaten stated that the Commission sent a review letter to CCMC in November 2025, so the Commission was aware of the permit revision application for Permit NACC-1302. He inquired if the Voigts could be noticed before the Commission sends the official notice to the surface owners informing them of the opportunity to submit comments or objections on the proposed permit application.

[15] Mr. Emmer clarified that the November 2025 review letter was a completeness review letter for Revision 14 and stated that the Commission does not distribute the Notice of Receipt of an application until the application is deemed administratively complete. He further explained that if the notice is sent out before an application is deemed complete, it would create confusion since it could be missing information or contain conflicting information.

[16] N.D.A.C. § 69-05.2-05-01(2) states “the Commission will notify the applicant in writing, within thirty days after the application is filed, as to whether the application is complete and whether public notice required by N.D.C.C. § 38-14.1-18 may be initiated or specify deficiencies which must be corrected in order to make the application complete and acceptable for further review.”

[17] Mr. Braaten also offered that the newspaper advertisement, as required by N.D.C.C. § 38-14.1-18(1), was published in the Hazen Star, but the Voigts only have a subscription to the Beulah Beacon and not the Hazen Star.

[18] N.D.C.C. § 38-14.1-18(1) states “the permit applicant shall place such advertisement in the official newspaper of each county wherein land to be included within the permit area lies and in other daily newspapers of general circulation in the locality of the proposed surface coal mining operation at least once a week for four consecutive weeks from the date of filing the application for a permit.”

[19] Mr. Emmer offered that once the Commission notifies the applicant that an application is deemed administratively complete, the applicant provides the newspaper publication dates and then the Commission can distribute the Notice of Receipt of an application to affected landowners. The newspaper publication dates are needed for the Notice of Receipt because it states the deadline for requesting an informal conference, which is thirty days after the last day of publication. *See* N.D.C.C. § 38-14.1-18.

[20] Mr. Emmer discussed the procedures for scheduling an informal conference outlined in N.D.C.C. § 38-14.1-19.

[21] The Voigts, CCMC, and the Commission discussed additional options for ensuring the Voigts are made aware when CCMC files a permit revision application. These options included submitting monthly open records requests, reviewing the Commission’s case management system, and having CCMC notify the Voigts when an application is filed.

[22] Mr. Emmer explained the Commission’s process for assigning a case number to a permit application and once a case number is assigned, the docket for the application will be available on the Commission’s website. Furthermore, he explained the difference between significant and insignificant permit revisions and that public notice is not provided for insignificant permit revisions.

[23] N.D.A.C. § 69-05.2-11-02(5)(a) provides that “insignificant permit revisions are not subject to the notice, hearing, and procedural requirements” outlined in N.D.A.C. § 69-05.2-10, and N.D.C.C. §§ 38-14.1-18, 38-14.1-19, and 38-14.1-20.

Native Grassland Reference Areas

[24] Mr. Braaten stated that it was their understanding from the Commission’s April 14, 2015, order that the Voigts would be consulted on the selection of reference areas, and they felt that the Voigts were not consulted because CCMC consulted the Voigts after CCMC hired a consultant to select potential reference areas. He further discussed that the consultants Mr. Voigt invited to the

October 8, 2024, inspection of the proposed reference areas did not agree on the proposed location of the Shallow Loamy ecological site.

[25] Mr. Braaten stated there was no follow-up regarding the issues raised at the October 8, 2024, inspection and that CCMC submitted Revision 14 to Permit NACC-1302 to remove the Shallow Loamy reference area. The Voigts were under the impression that there would be further discussion regarding a suitable Shallow Loamy ecological site.

[26] Mr. Braaten stated that the Voigts agree with the Reclamation Division's April 30, 2026, technical review letter for Revision 14, which indicated that a Clayey ecological site might be required. He requested that the Voigts be consulted when CCMC selects a Clayey ecological site.

[27] When asked if the Voigts proposed a Clayey ecological site to CCMC, Mr. Voigt stated that they have not proposed a potential site to CCMC because they were not aware that it was an option for them.

[28] Mr. Emmer provided that the Commission's 2015 order and the surface coal mining permit requires the Voigts to be consulted when selecting a Clayey ecological site.

[29] Mr. Braaten requested that adding additional ecological sites to CCMC's permit remain an option in the future since it was his understanding that ecological sites could not be added to CCMC's permit once Revision 14 is approved.

[30] Mr. Welch stated that no reference sites are currently approved and that additional sites may be required after the Reclamation Division's analysis. He further provided that the Reclamation Division's April 30, 2026, technical review letter for Revision 14 recommended that a Clayey ecological site be established and agreed that the Voigts will be consulted during the selection of this site.

[31] Mr. Welch described the areas in Permit NACC-1302 where potential Clayey ecological sites exist. He also provided that these sites need to be in areas where no mining disturbance is planned, and reviewing the vegetation present at these sites is an important part of the Commission's analysis.

[32] Mr. Eckroth stated that CCMC is not opposed to including a Clayey ecological site reference area in the permit. He also stated that potential sites have not been selected, but they have reviewed the permit to determine where sites could be located. He also stated that CCMC can provide the Voigts with the location of potential sites for their review.

[33] When asked whether the Clayey ecological site needs to be finalized before Revision 14 can be approved, Mr. Welch stated that Revision 14 would likely be updated to include language indicating that CCMC will address the Clayey ecological site over the next year. He also stated that it would be unreasonable to expect CCMC to finalize the Clayey ecological site before Revision 14 is approved, especially since the vegetation data cannot be sampled until the summer.

[34] Mr. Welch also offered that a Clayey ecological site would not be needed to demonstrate vegetation success for the next six to nine years.

[35] When asked whether the Voigts remain concerned about the Shallow Loamy ecological site, as stated in their March 30, 2026, informal conference request, Mr. Braaten stated that their primary concern is the Clayey ecological site. However, he stated that the Voigts would also like a Shallow Loamy ecological site if it represents a significant amount of the area to be reclaimed.

[36] Mr. Welch stated that a Shallow Loamy ecological site is not needed to demonstrate bond release on the Voigts' land at the Coyote Creek Mine. He offered his analysis of the five ecological sites that would be approved if Revision 14 is approved as currently submitted. The analysis from Section 2.4.7.2, "Ecosite Acres by Owner," of Permit NACC-1302 shows that the five ecological sites outlined in Revision 14—Claypan, Loamy, Sands, Sandy, and Thin Claypan—comprise 67.6% of the land on tracts the Voigts own or manage that will be disturbed by mining. The analysis also shows that the Shallow Loamy ecological site is not one of the top three ecological sites on land the Voigts own or manage and comprises only 7% of the total area.

[37] Mr. Welch also provided maps depicting: the total area represented by the five ecological sites; the areas represented by the Shallow Loamy ecological site; and areas outside the mining disturbance boundary where a Shallow Loamy reference area could be selected, if determined to be necessary.

[38] Mr. Welch provided that the five ecological sites proposed with Revision 14 sufficiently represent the Voigts' ownership in the permit area.

[39] Mr. Eckroth agreed with Mr. Welch's analysis that a Shallow Loamy reference area is not needed.

Section 36 Farmer Access Road (18th Street SW)

[40] Mr. Braaten stated that Revision 14 indicates that there is an easement to replace the farmer access road through Section 36, T143N, R89W which has been discussed over the course of

numerous permit revision applications and was part of a dispute related to county authorizations and litigated at the Supreme Court.

[41] Mr. Braaten admitted that the Voigts signed an easement with Mercer County but expressed that the county has not paid for the easement; therefore, he alleges it is not a valid easement. He further requested that the findings for Permit NACC-1302 indicate that there is a dispute as to the validity of this easement and the Commission is not taking a position on the property rights issue. Mr. Braaten also stated that he is not asking the Commission to rule on this dispute.

[42] When asked if the Voigts still want the farmer access road through Section 36, T143N, R89W, Mr. Voigt stated that he wants the road but would like compensation for the easement.

[43] Mr. Eckroth stated that CCMC has been waiting to reconstruct the farmer access road for over a year, and it will delay reclamation if this road is not constructed.

[44] Mr. Martens stated that he has no issue stating that the Commission has no authority over the easement in question.

Compaction Testing and Productivity of Reclaimed Land

[45] Mr. Braaten stated that the Voigts have concerns about reclamation and that is why they have been involved in proceedings with the Commission. The Voigts recognize that there are times when the Commission is required to follow the regulations and when the Voigts express concerns about reclamation, it is not always intended to imply that the Commission is not following regulations, but just to express concern.

[46] Mr. Voigt opined that CCMC is focusing on compliance instead of reclamation. Mr. Voigt wants his land reclaimed as good as possible and asserted that the Commission's regulations are approximately fifty years old and farming practices have evolved immensely over that time.

[47] Mr. Voigt went on to state that there has been an increase of 260% in productivity over the past 40 years and provided that the average wheat production in Beulah in 1982 was 23 bushels per acre, and the average production in 2025 was 60 bushels per acre. He stated that this creates an issue because CCMC compares pre-mine yields to the post-mine yields and this method does not account for improvements in farming practices.

[48] N.D.A.C. § 69-05.2-22-07(4)(c) states that the success of revegetation at the time of final bond release for cropland is that crop production "must be equal to or greater than that of the

approved reference area or standard with ninety percent statistical confidence for any two years after year six of the responsibility period.” N.D.A.C. art. 69-05.2 does not compare pre-mine yields to post-mine yields to demonstrate success of revegetation at the time of final bond release.

[49] Mr. Voigt stated compaction is difficult to mitigate and may persist for centuries. Amending soil with sand and deep ripping is often localized and might increase compaction under certain conditions. He discussed soil health and mentioned a study that states yields are three times lower on reclaimed land.

[50] Mr. Braaten requested that CCMC’s compaction testing data be provided to the Commission so the Voigts can request copies of the data.

[51] Mr. Emmer stated that, based on the Commission’s April 14, 2015, order and CCMC’s permit, there is no requirement for CCMC to submit compaction testing data to the Commission. He further stated that the Reclamation Division reviewed the data with CCMC at their office or virtually, but the Commission does not have a copy of the compaction testing data. Mr. Emmer also clarified that the Commission regulations do not have any specific performance standards related to compaction.

[52] Mr. Braaten stated that the Commission’s current regulatory framework focuses on soil chemistry, soil physics, and not soil health; and the Voigts would work with the Commission to update the regulations to address soil health.

Recommended Conclusions of Law

[53] The Commission has jurisdiction over CCMC’s planned mining and reclamation operations in North Dakota, including Surface Coal Mining Permit NACC-1302, and Revision 14 thereto.

[54] CCMC’s Revision 14 application to Surface Coal Mining Permit NACC-1302 meets all permit revision standards under N.D.C.C. ch. 38-14.1 and N.D.A.C. art. 69-05.2.

[55] Revision 14 to Surface Coal Mining Permit NACC-1302 complies with the notice requirements outlined in N.D.C.C. § 38-14.1-18. During the informal conference, no allegations were made that Revision 14 did not comply with the requirements of N.D.C.C. § 38-14.1-18.

[56] The Notice of Receipt of Revision Application for Revision 14 to Permit NACC-1302; Docket No. 12, Case No. RC-25-270; that informed surface owners of their right to request an

informal conference on the application did not state that the compaction testing requirements contained in Permit NACC-1302 were being revised with Revision 14.

[57] CCMC has complied with the Commission's April 14, 2015, order, item 2(c), in Case No. RC-13-850 by consulting the Voigts to provide input on the proposed reference areas.

[58] The Commission's approval of the reference areas proposed in Revision 14 does not preclude the Commission from requiring additional reference areas for Surface Coal Mining Permit NACC-1302, if deemed necessary.

[59] The Commission has no jurisdiction over the easement for the reconstructed farmer access road through Section 36, T143N, R89W.

[60] On April 14, 2015, the Commission ordered CCMC to submit a permit revision that adds plans for conducting compaction testing in the topsoil and subsoil that are replaced on reclaimed lands and describe measures that will be used to alleviate excessive compaction if detected. These plans were submitted with Revision 2 to Surface Coal Mining Permit NACC-1302 and this revision was approved by the Commission on June 27, 2018. CCMC has complied with the Commission's order. There is no reasonable basis and performance standard was not provided to require CCMC to submit compaction testing results to the Commission.

[61] The Commission does not have performance standards that define the limits of excess compaction.

[62] The Voigts did not demonstrate that CCMC is in violation of a statute, regulation, or permit condition.

[63] This ruling may be appealed to the Commission within thirty days of service of the Commission's ruling pursuant to N.D.C.C. §§ 38-14.1-19(6) and 38-14.1-20, for a formal hearing under N.D.C.C. § 38-14.1-30.

Recommended Order

[64] Coyote Creek Mining Company’s application for Revision 14 to Surface Coal Mining Permit NACC-1302 satisfies all permit revision standards, N.D.C.C. ch. 38-14.1, N.D.A.C. art. 69-05.2, and permit conditions.

[65] After the Commission completes its review of Revision 14 to Surface Coal Mining Permit NACC-1302, the Commission may approve Revision 14 with conditions or it may approve Revision 14 outright, without conditions.

Dated at Bismarck, North Dakota this 8 day of June 2026.

State of North Dakota
Public Service Commission

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