

FREEDOM MINE
THE COTEAU PROPERTIES COMPANY

September 4, 2026

Mr. Jonathan Emmer
Director Reclamation Division
Public Service Commission
600 East Boulevard Avenue
Department 408
Bismarck, ND 58505-0480

Dear Mr. Emmer:

Revision 31 to Permit NACT-0201 has been uploaded to Permit Services. Completeness items listed in your June 29, 2026 letter have been addressed, with responses listed below. All changes have been tracked in track changes and highlighted in green.

Section 1.2 – Legal Information

1. *Follow-up to Item No. 7 and Item No. 10: The Reclamation Division does not agree with Coteau's response to Item No. 7 and Item No. 10 and cannot deem this application complete until Coteau provides a complete publication notice that includes the information requested in Item No. 7 and Item No. 10 of our March 4, 2026, review letter. In accordance with NDCC 38-14.1-14(1), the permit application must be submitted in a manner satisfactory to the Commission. At a minimum, the items identified in Item Nos. 7 and 10, which would independently constitute a significant alteration to the approved permit, must be specifically listed in the publication notice. Please update Section 1.2.5.18 (Newspaper Publication Notice – Revision 31) as specified. (WWS/PJR/JWE)*

Section 1.2.5.18 has been updated as requested. However, Coteau does not agree with that NDCC 38-14.1-14(1) is applicable in the manner in which it is being applied. The statement only references a portion of the century code and not the entirety. When reading NDCC 38-14.1-14(1) in its entirety, it states "The permit application must be submitted in manner satisfactory to the commission and must contain among other things:" This eludes that the term "manner satisfactory" is the "how" it needs to be submitted (ie. Paper size, scale, compatible with open-source software, etc. most which is done in administrative code) versus the second half of century code which is the "what" needs to be submitted. Even if Coteau, were to agree that NDCC 38-14.1-14(1) applied as the Commission is suggesting, the vague language leaves the requirements up to what each individual of the reclamation staff feels is sufficient and/or is needed. In essence allowing the goal post to be moved for each publication or staffing change. This became



very evident when reviewing past public notices with Mr. Ripplinger of the PSC reclamation staff earlier this summer.

In order to be more efficient for both parties and to adapt to future staffing changes, Coteau suggest a Policy Memo be developed to clarify what information needs to be included in each public notice narrative and map.

2. *Follow-up to Item No. 8: NDCC 38-14.1-18(1) states "...the applicant shall submit to the commission a copy of the applicant's advertisement of the ownership, precise location, and boundaries of the land proposed to be affected by the permit or permit revision...". Coteau must update Section 1.2.5.19 (Newspaper Publication Notice Map – Revision 31) to depict all areas where significant alterations to the permit are being made, unless the alterations are specifically described in the narrative in Section 1.2.5.18 (Newspaper Publication Notice– Revision 31). This would include the new coal removal subarea in the S½NE¼ of Section 1 and where major post-mining topographic changes are being proposed in Mine Area 1. (WWS/JWE)*

Section 1.2.5.18 and Section 1.2.5.19 have been updated as requested.

3. *Follow-up to Item 10: Although North Dakota Administrative Code or Law does not specifically state that new tracts of federal coal planned to be mined must be specifically stated in a revision's public notice, it is the Commission's common practice to have that information included in the public notice to provide as much information as possible to the public and other government agencies about permit revisions proposed by mining companies. In accordance with NDCC 38-14.1-14(1), please add narrative in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31) stating that Coteau is adding plans to mine federal coal in the W½ of Section 12 and the S½ of Section 2, T144N, R89W. (JAR/PJR)*

Section 1.2.5.18 and Section 1.2.5.19 have been updated as requested.

Section 1.4 – Surface Owner Protection Act Compliance Information

4. *Follow-up to Item No. 1: For compliance with NDCC 38-18-06(1), please provide new surface owner protection act compliance letters with revised Section 1.4.7 (Surface Owner Notification Map – Revision 31) to enable the surface owners to evaluate the disturbance proposed by Coteau. The map provided with the December 2, 2025, surface owner notification did not depict areas of associated mining disturbance in the Revision 31 addition area (SPGM piles or sediment pond P-W11-05). The Revision 31 surface owner protection act narrative implies that the revised version of the surface owner notification map was provided to the surface owners in December of 2025, which is not correct. (GAW)*

Revised surface owner protection act compliance letters were sent May 1, 2026 accompanied by a revised Surface Owner Notification Map – Revision 31 (Section 1.4.7b). The initial surface owner protection act compliance letters were sent December 2, 2025 along with the initial Surface Owner Notification Map – Revision 31 (Section 1.4.7a). All applicable letters and maps are contained in Revision 31 (Section 1.4).

Section 2.1 – Geology

5. *Follow-up to Item No. 26: Please fix the hyperlinks for Sections 2.1.6.6, 2.1.6.7, 2.1.6.15, 2.1.8.5, 2.1.8.6, 2.1.9.9, and 2.1.9.10 so they connect with the intended source. The appropriate .pdf files are all in their correct location; however, the hyperlinks are still broken and trying to link from Coteau's internal files. Please correct this error. (PJR/TLD)*

Hyperlinks have been updated as requested.

6. *Follow up to Item No. 27: As required by NDAC 69-05.2-08-05(2), please revise Section 2.1 (Geology) to provide test boring and overburden sample results for the S½ of Section 2, T144N, R89W, and the NW¼ and S½ of Section 12, T144N, R89W. This information must be added to permit before the revision application is sent to advisory committee members and other interested parties. (PJR/MLJ)*

Test boring and overburden sample results for the listed locations have been added to Section 2.1 as requested.

Section 2.2 – Surface Water Hydrology

7. *Follow-up to Item 31: As previously requested, please update the standalone Consolidated Surface Water Monitoring Plan to include updated information as part of the Revision 31 expansion to permit NACT-0201. This information is necessary to meet the requirements of NDCC 38-14.1-14(1)(o). (JAR)*

The standalone Consolidated Surface Water Monitoring Plan and correlating map (B-7) have been updated. New location numbers are 38 (replacing 32) and 39 (replacing 33). These locations are already reserved for potential monitoring sites. In addition, Table 1 Section B-5 was also updated.

8. *The water quality parameter summaries in paragraphs 3 and 4 of page 2 of Section 2.2.3 (Surface Water Features and Water Quality Data) does not include data collected from new monitoring sites MS-32 and MS-33 established with the Revision 31 permit expansion area. Please update the narrative for the water quality parameter*

summaries in Section 2.2.3 to reflect results from monitoring sites MS-32 and MS-33. (JAR)

Paragraphs 3 & 4 on page 2 have been updated to include 2026 snowmelt data. Paragraph 6 on page 1 and paragraph 1 on page 2 have also been revised to indicate MS-32 and MS-33 to reflect MS-38 and MS-39 respectively. 2-2-3-2 has also been updated to include MS-38 and MS-39 2026 snowmelt figures

9. *Please revise the permit acreage in the 2nd paragraph on page 1 of Section 2.2.4 (Surface Water Probable Hydrologic Consequences) from 19,396 to 19,075.7 since the permit expansion area was reduced. (JAR)*

Section 2.2.4 has been updated as requested.

Section 2.3 – Ground Water Hydrology

10. *Follow-up to Item No. 32: As previously requested, please update the standalone Consolidated Ground Water Monitoring Plan to include the Revision 31 addition area in Permit NACT-0201. As required by NDCC 38-14.1-14(1)(o), a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems must be provided so that an assessment can be made by the Commission of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability. If no updates are to be made until October, no assessment can be made by the Commission on potential for impacts of mining. Revision 31 cannot be considered complete until the required information for permit approval is submitted and reviewed. (PJR)*

Please reference the July 2026 Update to the Consolidated Ground Water Monitoring Plan, which includes the Revision 31 addition area on the maps in Section B-3, Section B-4, and Section C-3.

Section 2.4 – Pre-Mining Land Use and Vegetation

11. *Follow-up to Item No. 40: Please revise Section 2.4.12 (Wetland Maps and Photos) so that the Revision 31 Wetland drawings can be readily opened and reviewed. This 462,851 KB pdf file needs to be reduced in size to enable prompt viewing. (GAW)*

Coteau understands the size of the file. However, reducing the size of the file will degrade its integrity. Links embedded in each map allow the user instant access to photos, complete wetland species list, and water quality data for each wetland.

Section 2.5 – Soil Resources

12. *Follow-up to Item No. 59: Test borings and overburden sample results were not included in Section 2.1 (Geology) and are omitted from Section 2.5.12 (Projected Soil Respread Depth Map) for the S½ of Section 2, T144N, R89W, and the NW¼ and the S½ of Section 12, T144N, R89W. Since the Revision 31 application cannot be deemed complete with the omission of this data, as stated in Item No. 6 above, please revise Section 2.5.12 to include this information. Also, please make any necessary corresponding updates to Section 2.5.6.2 (Table 2 – Soil Volume Summary). (TLD/MLJ/GAW)*

Sections 2.5.12 and 2.5.6.2 have been updated as requested.

Section 2.7 – Fish and Wildlife Resources

13. *Follow-up to Item No. 61: Please revise the Revision 31 Baseline Fish and Wildlife Report in Section 2.7.2 (Fish and Wildlife Summary) to address whether the permit addition area contains any Conservation Reserve Program (CRP) lands, conservation easements, and habitats of unusually high value, since it is stated that this would be done in the plan for completing baseline fish and wildlife inventory information for the Revision 31 permit addition area. The Revision 31 baseline fish and wildlife plan also states that qualitative assessments of each habitat's suitability for wildlife will be included in the permit. Please revise the permit to include this information. (GAW)*

Section 2.7.2 has been updated as requested.

Section 2.8 – Cultural Resources

14. *Follow-up to Item No. 66 and Item No. 67: Please update Section 2.8 (Cultural Resources) with cultural resource information for the proposed addition and adjacent area as required by NDCC 38-14.1-14 (1)(u) and include a statement evidencing compliance with the requirements of Chapter 55-03. The cultural resource inventory should include all buildings, structures, and objects referred to in Section 55-03-01 and an evaluation of each cultural resource that will be affected by surface coal mining operations in accordance with guidelines developed by the State Historic Preservation Officer (SHPO) and superintendent of the State Historical Board. Revision 31 cannot be deemed complete until Section 2.8 (Cultural Resources) has been submitted and verified in accordance with NDCC 38-14.1-14(u) and NDAC 69-05.2-05-02(3). (PJR)*

Due to delays associated with the third-party contractor responsible for the cultural resource review, the cultural information for this revision is currently under review by the State Historic Preservation Office (SHPO). To facilitate timely approval of this revision, Coteau has elected to submit these updates prior to completion of Section 2.8. Upon receipt of the finalized cultural resource documentation, Coteau will promptly update Section 2.8 accordingly.

Section 2.9 – Climatological Data

15. *Follow-up to Item No. 68: As previously requested, please update section 2.9.1 (Climatological Information) to include up to date information as required by NDCC 38-14.1-14(1)(p). The information is still required even if Coteau sees no need for an update. (PJR)*

Section 2.9.1 has been updated as requested.

Section 3.1 – Operations – General

16. *Follow-up to Item No. 72: As previously requested, please update the Human Burials and National Register of Historic Places Eligible Sites narrative on page 7 of Section 3.1.1.2 (Mining Method Narrative) to include cultural resource information for the Revision 31 addition area and depict cultural resource sites in the addition area in Section 3.1.3 (Pit Layout and Facilities Map) as required by NDAC 69-05.2-08-02(1)(h). (GAW)*

As noted in Item 14, the cultural resource documentation prepared by Coteau's third-party contractor is currently under review by SHPO. Upon receipt of the finalized documentation, Coteau will promptly update Sections 3.1.1.2 and 3.1.3 accordingly.

Section 3.3 – Surface Water Management

17. *Since the E½ of Section 32 has been eliminated from the Revision 31 expansion area for Permit NACT-0201, please remove the E½ of Section 32 from the narrative in the last paragraph on page 7 of Section 3.3.1 (Surface Water Management Plan). (JAR)*

The E½ of Section 32 was removed from the narrative on page 7 of Section 3.3.1.

Section 4.1 – Post-Mining Land Use Plans

18. *The Reclamation Division understands that Dennis and Corrine Flemmer have a pre-mine livestock water delivery system (pipeline) installed on their property in Sections 1*

and 2, T144N, R89W. For compliance with NDCC 38-14.1-24 (9), please provide a narrative in Section 4.1 (Post-Mining Land Use Plans) explaining Coteau's plans for restoring the quality and quantity of water in this pre-mine water delivery system. The Summary of Livestock Water Supply Replacement subsection in Section 2.2.4 (Surface Water Probable Hydrologic Consequences) should also be updated to explain Coteau's plans for replacing this water delivery system. Also, Table 1, Pre-Mining Native Grassland Management Units and Water Sources Permit NACT-0201, in Section 2.4.2 (Narrative) should include this livestock water delivery system. (GAW)

Information has been added to the narrative in Section 4.1, Section 2.2.4 and Table 1 in Section 2.4.2 to include documentation of the water pipeline delivery system.

Consolidated Blasting Plan

19. *Follow-up to Item No. 77 and Item No. 83: As previously requested, please update the standalone Consolidated Blasting Plan to include plans for blasting in the Revision 31 addition area. The Consolidated Basting Plan submitted on April 30, 2026, was not an updated version of Coteau's Consolidated Blast Plan. The Blasting Map (Section B-2) should be updated to include the Revision 31 addition area with updates to the boundary of Permit NACT-0201. The plan should identify protected and unprotected structures in and adjacent to the Revision 31 addition area with limited and alternate blast weights and provided blast weight isopleths for occupied buildings in the Revision 31 addition area. Please also update Section C-4 (Owners of Structures Who Have Received a Pre-blast Notice and Opportunity for Pre-blast Survey) and Section D-1 (Ground Vibration and Airblast Monitoring Program Narrative) if necessary. Section B-6 should be updated as the Blast Design Certification technically expired in 2020, and portions of Section C-4 are still showing highlights updated in 2018 with Revision 22. Please update Section D-1 as requested on Item No. 83. (PJR/GAW/JAR)*

Consolidated Blasting Plan has been updated as requested.

Additional Items – More Technical

Section 2.4 – Pre-Mining Land Use and Vegetation

20. *Please remove the shelterbelt descriptions for lands in Section 32, T145N, R89W in Section 2.4.18 (Shelterbelt Descriptions) as Section 32 is no longer being proposed to be added in this permit revision. (WWS)*

Information in Section 2.4.18 has been removed as requested.

21. *In accordance with NDAC 69-05.2-08-08(1)(c)(6), please provide a description of the associated plant species with each shelterbelt in Section 2.4.18 (Shelterbelt Descriptions), which states “a description of number and arrangement of trees and shrubs, length and number of rows, and associated plant species for shelterbelts.” This information should be provided in a similar format to the previous shelterbelts for consistency. (WWS)*

Information in Section 2.4.18 has been updated as requested.

Section 2.7 – Fish and Wildlife Resources

22. *Follow-up to Item No. 61: Survey dates associated with the species counts should be included in the Mammal and Raptor Surveys and Incidental Observations of ESA and North Dakota Species of Conservation Priority tables in the Revision 31 Addition subsection of Section 2.7.2 (Fish and Wildlife Summary). Please review and update these tables to include the survey dates associated with each species count. (AAC)*

Section 2.7.2 has been updated as requested.

Section 3.1 – Operations Plans

23. *Please review Section 3.1.5 (Post-Mining Area Slope Map) since the S½ of Section 33 currently shows cropland having upwards of 21% slopes on lands owned by Keisha Flemmer. NDCC 38-14.1-24(3) states “...grade to reshape all areas affected by surface coal mining operations to the gentlest topography consistent with adjacent unmined landscape elements in order to develop a postmining landscape that will provide for maximum moisture retention, drainage that will complement the surrounding terrain, maximum stability, minimum soil losses from runoff and erosion...” Coteau should consider changing the post-mining topography to have a more gentle slope or a land use change that will not have the same erosion potential as cropland. (WWS)*

Section 3.1.5 has been updated as requested.

24. *Section 3.1.5 (Post-Mining Area Slope Map) shows contour lines in the created wetland CW-W06-03 in the SW¼ of Section 6, T144N, R88W. Please review the contour lines on Section 3.1.5 (Post-Mining Area Slope Map) to ensure they are consistent with those depicted in Section 4.1.2 (Post-Mining Topography and Land Use Map) and that the values in the surface owner area slope comparison tables on the Post-Mining Area Slope Map are accurate. (GAW)*

Section 3.1.5 has been updated as requested.

Section 4.1 – Post-Mining Land Use Plans

25. *Please review areas depicted as potential post-mining prime farmland landscapes in the N½ of Section 35 on the Post-Mining Topography and Land Use Map (Exhibit 4.1.2) and revise to ensure all areas depicted as potential prime farmland have gradients not greater than 6 percent. Coteau should consider adding the potential prime farmland polygons to Section 3.1.5 (Post-Mining Area Slope Map) to provide a more efficient means to verify adequate potential prime farmland slopes. (GAW)*

Section 4.1.2 has been updated to ensure all areas depicted as potential prime farmland have gradients not greater than 6 percent.

Section 4.1.4 – Landowner Post-Mining Preference Statements

26. *Please include the attached map (Exhibit 1) to Dennis and Corrine Flemmer's landowner preference statement in accordance with NDAC 69-05.2-09-13(3). (WWS/GAW/JWE)*

The map (Exhibit 1 of your June 29, 2026 letter) illustrating Dennis and Corrine Flemmer's current land use and water sources will be retained in their landowner file. Maps provided by the USDA are private owner information and not available to the public. Therefore, Exhibit 1 cannot be published in a public permit. Pre-mining water features and facilities are documented in Sections 2.2 and 2.4.

To facilitate an efficient review and response process, Coteau kindly requests that future comments pertaining to technical or procedural requirements include references to the applicable North Dakota Administrative Code and/or North Dakota Century Code provisions. Thank you for your collaboration and assistance in this matter. Should you have any questions, please contact this office.

Sincerely,

THE COTEAU PROPERTIES COMPANY

/s/

Michael Berg PE
Environmental Manager

DEB: mdb
Enc.
Uploaded via Permit Services