



Public Service Commission

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sent via email only

October 5, 2026

Mr. Michael Berg
Environmental Manager
Coteau Properties Company
204 County Rd. 15
Beulah, ND 58523-9475
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Dear Mr. Berg:

The Reclamation Division has reviewed Coteau Properties Company's September 4, 2026, response to our June 29, 2026, completeness review of the Revision No. 31 application to Surface Coal Mining Permit NACT-0201 for the Freedom Mine. The following items must be adequately addressed before the application can be deemed complete and approval is granted to begin publication of the permit revision newspaper notice. Please note that follow-up items reference the item as numbered in our June 29, 2026, completeness review letter.

Items No. 8 through No. 17 below are technical in nature. These items may be addressed at this time or during the technical review period. If the items are not addressed at this time, please indicate that in your response letter.

Section 1.2 - Legal Information

1. As required by NDCC 38-14.1-18, please update the first sentence of the last paragraph on page 23 of the public notice in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31) to contain a statement about designating lands unsuitable for mining since land is being added to the permit. The first sentence should read "*A petition to designate an area as unsuitable for surface coal mining operations that is within the proposed permit area, written comments, objections, or requests for an informal conference on the revision may be submitted by any person with an interest that is or may be adversely affected, to the North Dakota Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, within 30 days after the last publication of this notice.*" (JWE)

Section 2.2 – Surface Water Hydrology

2. Please depict the fen wetland that is currently part of Seasonal Wetland 25_WET22B in the SE¼ of Section 2, T144N, R89W in Section 2.2.2 (Surface Water Features Map) and update the applicable subsections of Sections 2.2 (Surface Water Hydrology) and 2.3 (Ground Water Hydrology) accordingly. Additionally, please reevaluate the drainage area associated with Wetland WET22B to determine whether the drainage should be classified as an intermittent stream. Intermittent flow is currently depicted south of this wetland in the NW¼ of Section 12; however, Reclamation Division staff believe that a larger portion of this drainage may warrant evaluation based on the apparent long-term flow. Please provide the results of this evaluation and update the

permit application, including the applicable maps and supporting documentation, as necessary. [N.D.A.C. 69-05.2-08-04 and 69-05.2-08-07] (PJR, GAW)

Section 2.3 – Groundwater Hydrology

3. Please update all applicable portions of Section 2.3 (Ground Water Hydrology) to account for the developed spring located in the SE1/4 of Section 2, T144N, R89W. The spring should also be addressed in the annual CGWMP submittal, as applicable. Additionally, please update Section 2.2.2 (Surface Water Features Map) to accurately depict the location of the developed spring. [N.D.A.C. 69-05.2-08-04, 69-05.2-08-06, 69-05.2-08-07, 69-05.2-09-12, 69-05.2-16-14] (PJR, GAW)

Section 2.4 – Pre-Mining Land Use and Vegetation

4. Follow-up to Item Nos. 18 and 26: Please depict the Dennis and Corrine Flemmer pre-mine livestock water delivery system (pipeline) on Section 2.4.3 (Pre-Mining Land Use and Vegetation Map) to document the design characteristics of the water delivery system that must be replaced as required by NDCC 38-14.1-24(9) or provide this information on a separate map in an appropriate location of the permit. Baseline pipeline delivery system information is needed to document what must be repaired, altered or reconstructed if disturbed. (GAW)
5. Please update Section 2.4.2 (Narrative) to include a detailed narrative describing the nature and variability of the vegetation in the seasonal wetland drainageway (wetlands 16B, 17B, 18B and 22B) based on a thorough reconnaissance and qualitative assessment as required by NDAC 69-05.2-08-08(1)(b), NDAC 69-05.2-08-08(1)(c)(5), NDAC 69-05.2-08-08(1)(d), and as recommended in Section II-H-6 of the Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments. The Reclamation Division's July 10, 2025, wetland sampling plan approval letter reminded Coteau that this information would be required. The narrative should also describe the relationship between vegetation, soils, and the surface and ground water hydrology in the wetlands. Section 2.2.3.5 (Table 5 – Pre-Mining Wetland Water Quality) should be updated to include the 2026 wetland water quality data, as the approved plan indicates seasonal wetlands would be sampled in 2025 and 2026. (GAW)

Section 2.7 – Fish and Wildlife Resources

6. Follow-up to Item No. 13: The Revision 31 baseline fish and wildlife plan states that a qualitative assessment of the habitats will be provided. Please revise the Revision 31 addition narrative in Section 2.7.2 (Fish and Wildlife Summary) to include this information or reference where this information can be found in the permit. Please also include a map in Section 2.7.2 that depicts the habitat types in the Revision 31 addition and adjacent areas. This map should also depict the actual locations of sharp-tailed grouse observation points, grassland and woodland bird survey locations, and the waterfowl and shorebird survey wetland (25_WET14B). (GAW)

Section 2.8 – Cultural Resources

7. Follow-up to Item No. 14: 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)

Additional Items – More Technical

Section 2.2 – Surface Water Hydrology

8. Please update Section 2.2.1.1 (Table 1 – Comprehensive Surface Water Features) to include the developed spring located in the southeast corner of Section 2, T144N, R89W and the fen wetland that is currently depicted as part of seasonal wetland 25_WET22B in the SE¼SE¼ of Section 2, T144N, R89W. (GAW)

Section 2.4 – Pre-Mining Land Use and Vegetation

9. Please include the results of the sampling that was done to determine the ecological site similarity index in Section 2.4.9.1 (Range Site Assessments/Ecological Similarity Index) for landowners in the Revision 31 addition area as stated in Item No. 4 on Page II-D-2 of our Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-Mining Vegetation Assessments. Narrative on page 6 of Section 2.4.1 (Methods) states that green weights were adjusted for dry weight using a growth curve, a grazing adjustment factor ND-CPA-33 was used and that a plot size conversion factor was used to convert sample data to pounds per acre. Please include dry weights, growth curve, grazing adjustment factor and plot conversion factor information in Section 2.4 of the permit. (GAW)
10. Please depict the fen wetland in the SE¼SE¼ of Section 2, T144N, R89W in Section 2.4.3 (Pre-Mining Land Use and Vegetation Map), and account for the fen wetland in Sections 2.4.10 (Wetland Acreage Summary), 2.4.11 (Wetland Species List), and 2.4.12 (Wetland Maps and Photos). (GAW)
11. Please depict and label the acreage associated with roads on Section 2.4.3 (Pre-Mining Land Use and Vegetation Map). [N.D.A.C. 69-05.2-08-02(1) and 69-05.2-08-08(3)] (GAW, WWS)

Section 4.1 – Post-Mining Land Use Plans

12. Coteau is proposing to convert native grassland to tame pastureland in the NE¼SW¼ of Section 5, T144N, R88W with Revision 31. Section 4.1.2 (Post-Mining Land Use and Topography Map) depicts the entire E½SW¼ of Section 5, T144N, R88W as tame pastureland but this land use acreage change is not reflected in Section 4.1.3 (Pre- and Post-Mining Land Use Comparison Table). Please correct this error. (GAW, WWS)
13. Section 4.1.3 (Pre- and Post-Mining Land Use Comparison Table) indicates the pre-mining and post-mining road acreage in the Revision 31 addition area will be the same, but the road passing through the E½ of Sections 2 and 11 is not depicted on Section 4.1.2 (Post-Mining Land Use and Topography Map), and the Flemmer post-mining land use preference statement requests the road through Section 2 not be replaced. Please depict and label post-mining road acreage on Section 4.1.2 and update Section 4.1.3 accordingly. (GAW)
14. Section 4.1.3 (Pre- and Post-Mining Land Use Comparison Table) lists 25.24 acres of pre-mine woodland in tracts 113, 114, 116, 116-A, 117, 118, 119, 120 and 121 but only 4.2 acres are being

replaced in tracts 117 and 122. Woodland acreage must be replaced on an acre-for-acre basis. Please review and revise to ensure the information provided in Section 4.1.3 is consistent with the woodland information provided in Sections 2.4.4 (Pre-Mining Land Use and Ownership Table) and 2.4.17 (Pre-Mining Woodland Acreage Table). Perhaps Section 2.4.13 (Native Tree and Shrub Map) needs to be revised to more clearly distinguish areas considered woodland acreage. Tall and low shrub communities associated with trees must be considered woodland acreage. (GAW)

15. Section 4.1.2 (Post-Mining Land Use and Topography Map) depicts an undisturbed woodland within the mining disturbance boundary in the SW¼NW¼ of Section 12. Please correct this error by either not showing disturbance in the woodland or depict this area with the symbol for replacement native shrub and tree planting. (GAW)
16. Follow-up to Item No. 26: According to Lease No. 06028, "Lessor agrees to include the locations of the buried water pipelines, tanks and fencing that exist on the Leased Premises in the surface owner's preference statement requested by Lessee at the time Lessee submits an application to the North Dakota Public Service Commission for a surface mining permit covering all or any portion of the Leased Premises." Dennis and Corrine Flemmer submitted their map to the Reclamation Division on May 13, 2026, therefore making the map a part of the public record, not private information. In your response to Item No. 26, Coteau stated that pre-mining water features and facilities are documented in Sections 2.2 and 2.4, but stock tanks are missing from the SW¼ of Sections 1 and 2 on the map in Section 2.2.2 (Surface Water Features Map) and no mention of stock tanks is included in Section 2.4 (Pre-Mining Land Use and Vegetation). Section 2.4.2 (Narrative) mentions that fencing is present in tracts 115, 116, and 116-A, but the location is not depicted in the permit. In accordance with NDAC 69-05.2-09-13(3) and the request of the landowners, Coteau must include the previously included map in Section 4.1.4 (Landowner Post-Mining Preference Statements). If Coteau does not want to include the EQUIP map due to concerns over confidentiality, Coteau can create a map depicting the locations of the buried water pipelines, tanks and fencing and include the map in Dennis and Corrine Flemmer's preference statement in Section 4.1.4. (WWS, JWE)

Section 4.2 – Revegetation Procedures, Establishment and Management

17. Please consider diversifying the tame pastureland seed mixture in Section 4.2.2 (Seed Mixes) to promote soil health, provide season-long livestock palatability and enhance the wildlife habitat value of the grassland by including a diverse mixture of native and/or introduced cool and warm season grass and forb species that provide season long growth and flowering capabilities. (GAW)

If you have any questions, please contact this office.

Sincerely,

Jonathan Emmer

Digitally signed by Jonathan Emmer
DN: C=US, E=jemmer@nd.gov,
O=North Dakota Public Service
Commission, CN=Jonathan Emmer
Date: 2026.10.05 13:48:55-05'00'

Jonathan Emmer
Director
Reclamation Division

cc via email only: Dillon Belisle (dillon.belisle@nacoal.com)