

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC
Midwest Carbon Express CO2 Pipeline
Project Siting Application

Case No.
PU-22-391

TRANSCRIPT OF FORMAL HEARING

June 2, 2023

Bismarck, North Dakota

APPEARANCES

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Substitute Decisionmaker Timothy J. Dawson

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LLC

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and Chad Wachter

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Intervenors/Landowners

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1 ADMINISTRATIVE LAW JUDGE HOGAN: Looks like
2 we're going to get started. Good morning. My name is
3 Judge Hope Hogan. I'm an administrative law judge
4 that's been designated at the request of the Public
5 Service Commission to serve as the hearing officer for
6 today's hearing. Let the record show that it's
7 8:31 a.m. on June 2, 2023. This is the time, date, and
8 place set by notices of filing and notice of hearing
9 issued by the North Dakota Public Service Commission on
10 February 1st and March 30th for hearings in Case No.
11 PU-22-391. This hearing today is being held at the
12 Heritage Center and State Museum in Bismarck, North
13 Dakota.

14 As we begin our hearing today, I'd ask everybody
15 to please check your cell phone to make sure it's either
16 on silence or shut off so that we don't have cell phone
17 interruptions throughout our hearing today.

18 I know that most people in attendance today have
19 strong feelings regarding this case and the subject
20 matter. With that said, I would ask everybody in our
21 audience to please refrain today from any clapping,
22 cheering, or groaning during the hearing. Likewise, I
23 would kindly ask that the signages be removed from our
24 hearing room today. If they're not voluntarily removed,
25 I'm going to request that security please ask you to

1 remove the signs from our hearing room. This is an
2 administrative hearing and so we must administer
3 decorum. This cheering, clapping, groaning, comments
4 from the audience is not appropriate and I'd ask that
5 you please be respectful of everybody in attendance and
6 all our witnesses even if you disagree with what they're
7 saying today.

8 There are several attendance sheets. I think
9 there's one that might be being passed around. I'd ask
10 you to please sign the attendance sheet so that the
11 Commission has a record of all who attended this
12 hearing. Likewise, if you do wish to provide public
13 comment today, I would ask that you please note that on
14 the attendance sheet just so I have an idea of how
15 much -- or how many people would like to speak today and
16 the amount of time we need to devote to public comment.

17 This is the last of five days scheduled for
18 hearing on the application of SCS Carbon Transport LLC
19 for a certificate of corridor and route permit
20 concerning an approximate 320-mile pipeline for carbon
21 dioxide ranging from 4.5 to 24-inch diameter and the
22 associated facilities located in Burleigh, Cass, Dickey,
23 Emmons, Logan, McIntosh, Morton, Oliver, Richland, and
24 Sargent counties. This hearing has been scheduled to
25 focus primarily on the portions of the project located

1 in Oliver, Morton, and Burleigh counties.

2 This is also a continuation of our March 14th
3 Bismarck hearing. We did not have enough time to devote
4 to the intervenors' witnesses so a second day was
5 scheduled primarily to hear those witnesses.

6 I would also note that yesterday afternoon a
7 petition to schedule another hearing date was filed with
8 the Commission, but the Commission has not yet ruled on
9 that request. So as of now, or currently, this is the
10 last scheduled hearing date in this matter.

11 The notice of filing and notice of hearing
12 specified the following issues to be considered
13 concerning the application for waiver of procedures and
14 time schedules:

15 Number one. Are the proposed facilities of such
16 length, design, location, and purpose that they will
17 produce minimal adverse effect and that the adherence to
18 applicable procedures, requirements, and time schedules
19 may be waived?

20 And number two. Is it appropriate for the
21 Commission to waive any procedures, requirements, and
22 time schedules as requested in the application?

23 Concerning the applications for certificate of
24 corridor compatibility and route permit, the following
25 issues are to be considered:

1 Number one. Will construction, operation, and
2 maintenance of the facility at the proposed locations
3 produce minimal adverse effect on the environment and
4 upon the welfare of the citizens of North Dakota?

5 Number two. Is the proposed facility compatible
6 with environmental preservation and the efficient use of
7 resources?

8 And number three. Will construction, operation,
9 and maintenance of the facility at the proposed location
10 minimize adverse human and environmental impact while
11 ensuring continuing system reliability and integrity and
12 ensuring that energy needs are met and fulfilled in an
13 orderly and timely fashion?

14 I'm now going to ask the parties to make their
15 appearance for the record.

16 Mr. Bender, do you want to please state your
17 appearance for the record and introduce anybody that's
18 attending with you today?

19 MR. BENDER: Certainly. Thank you, Your Honor.
20 Lawrence Bender, PO Box 1855, Bismarck, appearing on
21 behalf of the Applicant. Also with me here today is
22 Mr. Patrick Mahlberg. He's also with the firm of
23 Fredrikson & Byron.

24 ALJ HOGAN: And, Mr. Bender, it's my
25 understanding that Summit does not intend to call any

1 witnesses for today's hearing?

2 MR. BENDER: That's correct. We submitted some
3 written testimony as was encouraged by the hearing
4 officer.

5 UNIDENTIFIED SPEAKER: Speak up, use the
6 microphone. We can't hear you.

7 ALJ HOGAN: All right. We will try to do that.
8 Thank you.

9 Mr. Pelham, would you like to state your
10 appearance for the record and introduce Commission staff
11 that's appearing with you today?

12 MR. PELHAM: Thank you. Good morning, Your
13 Honor. Zachary Pelham, special assistant attorney
14 general on behalf of the Public Service Commission.

15 To my left is Victor Schock, public utilities
16 director. Victor may have some questions. We ask that
17 he be able to ask questions today. Thank you.

18 ALJ HOGAN: All right. Thank you.

19 And either Mr. Leibel or Mr. Jorde, would you
20 like to state your appearance for the record?

21 MR. JORDE: Yes. Thank you. Good morning, Your
22 Honor and Commissioners. Brian Jorde and Steve Leibel
23 on behalf of landowner intervenors.

24 ALJ HOGAN: And, Mr. Jorde, do you know how many
25 witnesses you'll be calling today?

1 MR. JORDE: Not exactly. We think it's going to
2 be about seven or eight landowners, and we might have a
3 couple more witnesses depending how it goes.

4 ALJ HOGAN: All right. Thank you.

5 Mr. Pranis, would you like to state your
6 appearance for the record and indicate the number of
7 witnesses you intend to call today?

8 MR. PRANIS: Thank you, Your Honor. Kevin
9 Pranis on behalf of LIUNA, Minnesota and North Dakota.
10 And we intend to call one witness today.

11 ALJ HOGAN: All right. Thank you.

12 Mr. Bakke, would you like to state your
13 appearance for the record and indicate the number of
14 witnesses you intend to call today?

15 MR. BAKKE: Yes. Good morning, Your Honor. I
16 represent John Warford, Chad Moldenhauer, and Chad
17 Wachter. And with me here today is Paralegal Lori
18 Steckler. And we'll be calling four to five witnesses.

19 ALJ HOGAN: All right. Thank you.

20 We'll now take opening comments from the
21 commissioners.

22 Commissioner Christmann.

23 COMMISSIONER CHRISTMANN: Thank you, Your Honor,
24 and thanks everyone for being here.

25 For those that were here last time, you heard me

1 say this before. It would be a lot simpler for us to
2 just read the evidence and make a decision, have a
3 hearing over in the hearing room and not do this kind of
4 thing, but we know this is a long case, long in number
5 of miles, so we initially scheduled four hearings:
6 Bismarck, Linton, Gwinner, and Wahpeton.

7 And the reason we did that is because this
8 Commission is not about figuring out a way to see that
9 something gets built or to figure out a way to stop
10 something from being built. Our responsibility is to
11 follow the law that is in place for the siting of energy
12 infrastructure, and if something meets the standards of
13 the law, to issue a siting certificate, and if it
14 doesn't meet the standards of the law, to deny a siting
15 certificate. That's our responsibility. Whether we
16 think a project is good or not, it's the standards of
17 the law that we base our decision on.

18 But we can make the best decision if we have
19 lots of information. That's why we take the show on the
20 road and go out and try to hear from people, because
21 many times people have brought things to us that us or
22 the company didn't see out there, that weren't aware of.
23 And so a lot of the responsible build-out of energy
24 infrastructure in North Dakota has been the result of
25 information we got at public hearings. So we scheduled

1 four. The first one in Bismarck went so long we've
2 added a fifth because we want to hear from you.

3 And I believe Your Honor has decided to kind of
4 intersperse testimony from the attorneys with public
5 testimony throughout the day. So certainly looking
6 forward to that.

7 I paid you all a compliment this morning if
8 anybody -- for whoever was watching KX News network.
9 They asked me how do we prevent public testimony from
10 going off the rails and turning into violence or
11 something like that like we see around the nation. And
12 I said the way we prevent that is by living in North
13 Dakota.

14 UNIDENTIFIED SPEAKER: Amen.

15 COMMISSIONER CHRISTMANN: Because in ten and a
16 half years in North Dakota, we have had emotional
17 testimony, these are serious issues we deal with, but
18 people have been respectful. That includes the things
19 that the judge was talking about: not hollering, not
20 clapping, not booing, not running around with signs.
21 That stuff can be done outside. But we have had
22 respectful North Dakota people come and allow us to run
23 a respectful North Dakota hearing so that everyone can,
24 in fact, be heard without being shouted down or
25 intimidated.

1 And so thank you all for that and I look forward
2 to a good hearing today.

3 ALJ HOGAN: Thank you.

4 Commissioner Haugen-Hoffart.

5 COMMISSIONER HAUGEN-HOFFART: Good morning
6 everyone. Commissioner Christmann summarized a lot of
7 things very eloquently and I ditto that.

8 Looking at this right now, we have 14 witnesses
9 coming up as part of the intervenors, but I know a lot
10 of you are out there regarding the public. We're glad
11 you're here. You're showing interest in -- and I'm sure
12 you want an opportunity to speak too. So I look forward
13 to hearing from you.

14 Like Randy said, we look at all the information
15 that's gathered to make the best decision based on the
16 rules or the law that is before us as a Public Service
17 Commissioner. So I thank you. It could be a long day,
18 but I guess if you really believe in something, that's
19 the dedication or the commitment we're willing to do the
20 job the best. So thank you.

21 UNIDENTIFIED SPEAKER: Start with the public.
22 We don't need to hear all the --

23 ALJ HOGAN: Okay, okay. This is -- I'm going to
24 ask -- I don't know if we're starting off on a very good
25 foot here. We can't have comments coming from the

1 audience. We have to maintain decorum today. So I'm
2 going to ask you to refrain from that.

3 And following the comments from the
4 commissioners, I'm going to go through the schedule or
5 procedure for how we're going to move through witnesses
6 today so I'd ask that you just be patient so I will
7 shortly go through that information.

8 Mr. Dawson.

9 SUBSTITUTE DECISIONMAKER DAWSON: Good morning,
10 Judge Hogan.

11 I am Tim Dawson. I am the director of the
12 Office of Administrative Hearings and act as an
13 administrative law judge much like Judge Hogan does but
14 not today. Today I am a substitute decisionmaker. I am
15 sitting in for Julie Fedorchak who recused herself.

16 And I look forward to the information that I
17 will receive today and have received some very good
18 information in the past. So I look forward to a good
19 hearing.

20 ALJ HOGAN: Thank you.

21 Because today is a continuation of our previous
22 Bismarck hearing, this hearing will be focused on
23 intervenor witnesses and public comment. The goal of
24 today's hearing is for the Commission to hear from as
25 many people as possible and to balance the needs of both

1 the parties to present their witnesses and the members
2 of the public that wish to provide testimony. We will
3 be doing blocks of public testimony that will be
4 interspersed throughout the day. So we will begin our
5 hearing this morning with a one -- approximately
6 one-hour block of public testimony and then other blocks
7 will be interspersed when there's either natural breaks
8 in the testimony or breaks, lunch breaks or other rest
9 breaks.

10 Following our first one-hour block of public
11 testimony this morning, we'll then move to the
12 intervenor witnesses. The order for intervenors will be
13 in reverse order from our previous hearings. So the
14 labor union will present its witness first, followed by
15 the witnesses from Attorney Jorde and Leibel, and then
16 finally we will move to Mr. Bakke's witnesses.

17 We will plan to take a lunch break around noon
18 today and a supper break as well if we go that long.
19 Also, we will have a short morning break and afternoon
20 break.

21 Before we move to public comments, I'm just
22 going to address a couple more preliminary issues. As I
23 mentioned at the previous hearings, I am maintaining one
24 exhibit list, which is currently six pages long so I
25 won't go through all the exhibits that have been

1 admitted, but if there's any questions regarding
2 exhibits, please free to talk to me at a break.

3 And I'm just quickly going to go around and ask
4 the parties if they have any other preliminary matters
5 we need to discuss.

6 Mr. Bender.

7 MR. BENDER: No, Your Honor.

8 ALJ HOGAN: Mr. Pelham.

9 MR. PELHAM: No, Your Honor.

10 ALJ HOGAN: Mr. Jorde.

11 MR. JORDE: One moment, Your Honor.

12 We would just join Mr. Bakke's motion to
13 reconsider on the late-filed prefiled testimony, that
14 there's been no opportunity to cross-examine or test
15 that testimony. So landowner intervenors join that
16 motion.

17 ALJ HOGAN: Okay. Thank you.

18 And Mr. Bakke.

19 MR. BAKKE: Did you want us to introduce our new
20 exhibits at this time or wait?

21 ALJ HOGAN: Maybe if you want to do that with
22 your witnesses --

23 MR. BAKKE: Okay.

24 ALJ HOGAN: -- that might work better.

25 MR. BAKKE: Okay. Thank you.

1 ALJ HOGAN: Any other preliminary matters?

2 MR. BAKKE: No, Your Honor.

3 ALJ HOGAN: All right. So we will now move to
4 public testimony. And I just want to provide a few
5 instructions before we start that process.

6 If you would like to provide public testimony
7 during this first block, I'd ask that you please start
8 making your way down to the first couple rows so that we
9 can expedite the process of getting people up to the
10 witness stand.

11 If you choose to testify today or provide public
12 comment, you'll have to come up to the witness table.
13 You will be sworn in and subject to questions from the
14 parties along with the commissioners. If you represent
15 a group or entity, I'd ask that you please identify the
16 group and your relationship with the group. Also, if
17 you're a landowner, if you could specify where your land
18 ownership is located, that would be helpful.

19 I just want to remind everybody that public
20 comments or public testimony, this is an evidentiary
21 hearing so it's not an opportunity to ask the parties or
22 the commissioners any questions. It's your opportunity
23 to provide information or evidence to the Commission.
24 I'd ask that you please limit your testimony to the
25 construction and effect of the pipeline and refrain from

1 discussing issues the commissioners do not have
2 jurisdiction over such as eminent domain.

3 I'd also ask that you please not repeat concerns
4 that have been previously stated by a prior witness,
5 especially someone that's similarly situated to you. If
6 the point has been made, the Commission will consider
7 it.

8 I'm not sure exactly how many people wish to
9 provide public comment today, but I anticipate it's a
10 lot. So I'd ask that you please try to limit your
11 testimony to ten minutes. If your testimony runs longer
12 than that, I will kindly ask you to try to wrap it up.
13 We do have a limited amount of hearing time today, and
14 like I mentioned, the Commission would like to hear from
15 as many people as possible today.

16 So with that said, we will begin public
17 testimony. So do we have somebody that would like to go
18 first?

19 MARVIN LEPP: Good morning, everybody.

20 ALJ HOGAN: Good morning. Can I have you state
21 your full name and spell your last name for the record?

22 MARVIN LEPP: Marvin Lepp, L-E-P as in "Paul," P
23 as in "Paul."

24 ALJ HOGAN: Can you spell that one more time for
25 me?

1 MARVIN LEPP: L-E-P-P.

2 ALJ HOGAN: Thank you. And before you testify
3 this morning, I'm required by law to advise you on the
4 penalties for perjury in the state of North Dakota.

5 Perjury is a Class C felony, punishable by a
6 maximum fine of \$10,000, a maximum five years'
7 imprisonment, or both.

8 Do you understand what perjury is?

9 MARVIN LEPP: Absolutely.

10 ALJ HOGAN: And being advised of the potential
11 penalties for perjury, do you promise to tell the truth
12 in this case today?

13 MARVIN LEPP: Absolutely.

14 ALJ HOGAN: All right. Thank you. Go ahead.

15 MARVIN LEPP,

16 being first duly sworn, testified as follows:

17 MARVIN LEPP: Hello everybody. My name is --

18 ALJ HOGAN: I'm going to -- sorry, I don't want
19 to interrupt you. Can you pull the mic a little bit
20 closer to you?

21 MARVIN LEPP: Yeah, I get that all the time.

22 Sorry.

23 ALJ HOGAN: Thank you.

24 MARVIN LEPP: My name is Marvin Lepp. I'm here
25 for a couple different reasons this morning. First, I'm

1 here because I grew up on the land that this proposed
2 pipeline is to run across. Our family spent from 1987
3 to the early 2000s working JW Cattle Company. I know
4 every peak, every valley, every low-lying area that this
5 pipeline is going to cross.

6 My concern about this is, if you look at the
7 incident that happened in Mississippi, February 22nd,
8 2020, a small community, approximately 200 people were
9 forced to evacuate due to a pipeline rupture; 45 people
10 were injured, three people died. Because of the amount
11 of carbon that released into the air, vehicles stopped
12 working, hindering public -- the emergency responders'
13 ability to get to where they are.

14 As somebody who currently works in the
15 automotive industry, understands combustion, what a
16 rupture would cause in a community as big as Bismarck
17 and how drastically it would affect the outlying areas
18 and the low-lying areas which this carbon will hang in
19 is detrimental. 45 people were injured and three people
20 died in a small community. What's that going to do to
21 our outlying area?

22 Further, the reason that I'm here is not only
23 does this affect the land that I grew up on, but it
24 affects my mother and father-in-law's land, because the
25 pipeline's chasing right outside theirs. It's also

1 affecting the fact that my wife and I were considering
2 moving back out into the Naughton Township to buy
3 farmland to raise our youngest daughter there where she
4 would have the opportunity to grow, expand, be part of
5 4-H, where we could raise and grow our own food sources.
6 This proposed project greatly causes us to reconsider
7 what we're going to do.

8 But that's the emotional side of it. The
9 factual part of this is on February 21st, 2021 -- I'm
10 going to pull up the picture here -- the "White House
11 Environmental Justice Advisory Committee, Final
12 Recommendations for Justice40, Climate and Economic
13 Justice Screening Tools for Executive Order 12898
14 Revisions." Page 59 of that, examples of projects and
15 types of projects that will not benefit a community.
16 No. 2, carbon capture and storage, carbon capture,
17 utilization, and storage. This was released to
18 President Biden. No. 5, establishment and advancement
19 of carbon markets, including cap and trade. And No. 14,
20 creations, expansions, and maintenance.

21 What we're doing -- and pardon the lack of
22 emotion -- this is going to turn North Dakota into a
23 waste dumping ground. They're already talking about
24 nuclear waste back up in Sawyer, which was shot down in
25 what, 1995? Now we're going to be pumping carbon into

1 our soil. Meanwhile, our natural resources are
2 pillaged, sent out of state, places that the people of
3 North Dakota will never benefit from again. And in this
4 last legislative session, they went so far as to reduce
5 the oil tax cap. So we're not seeing any of these
6 credits. We're not seeing any of this money coming into
7 our state. All we see is it leave.

8 How are we supposed to continue as a small rural
9 community where we intentionally live where the air
10 hurts our face because we know this is where we want to
11 raise our families? At the end of the day, it's not
12 about eminent domain. It's about not turning North
13 Dakota into the nation's dumpsite.

14 Thank you.

15 ALJ HOGAN: Thank you.

16 Mr. Bender, any questions?

17 MR. BENDER: Thank you, Your Honor. In an
18 effort to promote what the Commission is trying to
19 accomplish today and hear as much testimony from the
20 public as possible, I'm going to have very few
21 questions. So I have no questions for this witness.
22 Thank you.

23 ALJ HOGAN: Mr. Pelham.

24 MR. PELHAM: No.

25 ALJ HOGAN: Mr. Jorde.

1 MR. JORDE: Yes.

2 Sir, you said you're a directly affected
3 landowner; is that right?

4 MARVIN LEPP: My in-laws will be.

5 MR. JORDE: Okay. Understood. And I don't know
6 if you're aware, sir, but Summit has yesterday put forth
7 some alleged evidence here that it claims potential
8 buyers of residential property exhibit little to no
9 preference in choosing between lots that either have a
10 hazardous pipeline or don't. Would you agree or
11 disagree with that? And if it was up to you, would you
12 purchase or locate a home by this hazardous pipeline or
13 choose not to?

14 MARVIN LEPP: Absolutely not. We're looking at
15 a full section of land, which is 640 acres, or a half
16 section, which is 320 acres. I'd like to stay on the
17 97th Avenue area which, again, is right along the path
18 line of this pipeline. I'm not going to put my family
19 at risk to purchase land. I'm sorry. We'll move
20 someplace else if that's the case.

21 MR. JORDE: And that's my point. If someone
22 like you, you relocate your family, you move somewhere
23 else, possibly even out of Bismarck, would you agree
24 that that's a negative economic effect on the community
25 of Bismarck?

1 MARVIN LEPP: 100 percent.

2 MR. JORDE: And you had mentioned a concern
3 about North Dakota becoming the dumping ground. One of
4 the elements that -- the legal elements that this
5 Commission has to evaluate is whether or not this
6 particular pipeline ensures that North Dakota's energy
7 needs are met and fulfilled. What is your opinion of
8 whether or not this pipeline has anything to do with
9 energy needs being fulfilled when it's permanently
10 putting CO2 in the ground?

11 MARVIN LEPP: The even proposed route, where
12 they're going to be dumping it, if they were really,
13 truly trying to promote energy needs, this would be
14 going up to the Bakken where this carbon could be
15 captured and used for fracking in order to expand North
16 Dakota's infrastructure for oil. We're not doing that.
17 We're dumping it up by Underwood and Beulah; right?
18 What purpose does it serve there? All it's going to do
19 is create undo pressure underneath the ground soil.

20 MR. JORDE: Thank you. Nothing further.

21 ALJ HOGAN: Mr. Bakke, any questions?

22 MR. BAKKE: No questions.

23 ALJ HOGAN: Commissioner Christmann.

24 COMMISSIONER CHRISTMANN: I do not have any
25 questions, but thank you for being here, Marvin.

1 MARVIN LEPP: All right. Thank you very much.

2 ALJ HOGAN: Commissioner Haugen-Hoffart.

3 COMMISSIONER HAUGEN-HOFFART: Yes. Mr. Lepp,
4 can you repeat the document and what you said, what was
5 released on November 21st?

6 MARVIN LEPP: Oh, yeah, absolutely. It was the
7 U.S. -- it was White House Executive Order -- sorry,
8 glasses -- 12898, which was the final report for White
9 House Executive Order 14008. 12898 was released
10 May 21st, 2021. And if you want, I have a link I can
11 provide for you.

12 COMMISSIONER HAUGEN-HOFFART: Thank you. Thank
13 you.

14 ALJ HOGAN: Mr. Dawson?

15 SUBSTITUTE DECISIONMAKER DAWSON: Mr. Lepp,
16 thank you for coming today and for your testimony.

17 MARVIN LEPP: Thank you.

18 ALJ HOGAN: Thank you, Mr. Lepp.

19 MARVIN LEPP: You have a good day.

20 ALJ HOGAN: You too. Thank you.

21 LIANNE ROCKSTAD: I'd like to apologize to
22 Burleigh and Oliver. I'm from Richland County and I'll
23 only take five minutes of your time. Thank you.

24 ALJ HOGAN: Ms. Rockstad, can you state your
25 full name and spell your last name for the record?

1 LIANNE ROCKSTAD: My name is Lianne Rockstad,
2 R-O-C-K-S-T-A-D.

3 ALJ HOGAN: And, Ms. Rockstad, I know you were
4 sitting right there so you heard me go through the
5 penalties for perjury. And do you understand what
6 perjury is?

7 LIANNE ROCKSTAD: I do.

8 ALJ HOGAN: And being advised of the potential
9 penalties for perjury, do you promise to tell the truth
10 in this case today?

11 LIANNE ROCKSTAD: I do.

12 ALJ HOGAN: All right. Thank you. Go ahead.

13 LIANNE ROCKSTAD: Thank you.

14 **LIANNE ROCKSTAD,**

15 being first duly sworn, testified as follows:

16 LIANNE ROCKSTAD: And thank you to the
17 Commission for hearing me. My name is Lianne Rockstad.
18 I live at 15950 County Road 2, Walcott, North Dakota, in
19 Richland County. I want to be respectful of everybody's
20 time and the need for others to speak so I'll try to
21 only take just a very few minutes.

22 I am here because the Summit Carbon Solutions
23 hazmat pipeline is coming down the full length, which
24 equals one mile or 1/338th of North Dakota's entire
25 pipeline. These are two separate quarters of land that

1 are two miles apart. The proposed pipeline comes down
2 the center of my best-producing cropland, coming on the
3 east side of County Road 29, which is Exhibit B, section
4 14, and two miles further north, what I refer to as the
5 "home quarter." That pipeline would then be on the west
6 side of County Road 29, exhibit B, section 3.

7 One quarter is located in the fast expanding --
8 due to the FM diversion -- Kindred School District,
9 leapfrogging home building south of Fargo. This quarter
10 has the greatest commercial value to future generations
11 of heirs, which is several times the value of what
12 Summit proposes.

13 My family's ownership of this land is the same
14 as owning CDs, certificates of deposit. By having bad
15 pipeline routing that compromises the value of your
16 land, it is like being forced to take early withdrawal
17 on your CDs through no fault of your own. My heirs and
18 three more generations will never benefit from the full
19 maturity of what I believed was a sound savings plan:
20 keeping my land intact.

21 If this was a public utility, I'm confident the
22 said entity's pipeline would come down the road and not
23 through the center of well-producing cropland. It's
24 disruptive and it's not necessary. They are doing the
25 same -- they are doing the same unnecessary route to my

1 neighbor to the south.

2 I'm asking the Commission to please consider
3 section 14 rerouted to the least intrusive path, which
4 is along County Road 29.

5 Investors have paid Summit Carbon Solutions to
6 route hazmat disposal in North Dakota. Let's call it
7 what it is. It's the cheapest route for the maximum
8 return to investors regardless of the impact to North
9 Dakota residents like myself and the damage to
10 generational farms like the one that's been in my family
11 for 83 years.

12 In good conscience, who would go through the
13 center of a well-producing quarter of land? A public
14 utility I do not think would do this, but it appears
15 that an investment group would.

16 Summit Carbon, in my experience, has not acted
17 in good faith. They will not return phone calls and,
18 frankly, they act as if this route is sewn up. I know
19 this Commission doesn't deal with the financial aspect
20 but the routing only, but the lack of a fair financial
21 value of these two quarters on top of the investors' and
22 Summit's refusal to engage leaves me only with the hope
23 that you as North Dakota residents also can assist with
24 a common sense route which would follow County Road 29.

25 Thank you for listening.

1 ALJ HOGAN: Thank you.

2 (Applause)

3 ALJ HOGAN: Again, I cannot -- I'm going to ask
4 the audience to refrain from any clapping or commenting,
5 please.

6 Mr. Bender, any questions?

7 MR. BENDER: Just a few questions.

8 Ms. Rockstad, I noticed that Mr. Jorde has as a
9 client James Rockstad. Is that any relative of yours?

10 LIANNE ROCKSTAD: That is my brother. And I did
11 not know he was a client.

12 MR. BENDER: Okay. You are not a client of
13 Mr. Jorde's?

14 LIANNE ROCKSTAD: I am not.

15 MR. BENDER: Okay.

16 LIANNE ROCKSTAD: I am not. And I did not know
17 that he was a client of his.

18 MR. BENDER: Do you know, is James Rockstad here
19 today?

20 LIANNE ROCKSTAD: I have not seen him. I -- I
21 think he's -- I'm guessing --

22 MR. BENDER: If you don't know, that's fine.
23 Thank you.

24 I don't have any more questions.

25 ALJ HOGAN: Mr. Pelham, any questions?

1 MR. PELHAM: Yeah, I have a few.

2 Good morning, Ms. Rockstad. I think it's clear,
3 but I just want to be sure. You haven't signed an
4 easement with Summit Carbon Solutions; correct?

5 LIANNE ROCKSTAD: No, I have not.

6 MR. PELHAM: And you own the property yourself
7 or is it owned by a family trust? How is it owned?

8 LIANNE ROCKSTAD: No. It's owned by my brother
9 who lives in a different area than I do.

10 MR. PELHAM: Okay. So --

11 LIANNE ROCKSTAD: I live 2,000 feet from where
12 the pipeline is proposed.

13 MR. PELHAM: I see. So your brother would have
14 been -- would your brother have been the one to have the
15 contact with the company or would you have had the
16 contact with the company?

17 LIANNE ROCKSTAD: Well, I've not been able to
18 make contact with the company. And we're not a close
19 family.

20 MR. PELHAM: Oh, I see.

21 LIANNE ROCKSTAD: So I really can't answer for
22 him.

23 MR. PELHAM: And that's fine. I'm just trying
24 to understand a little bit, and forgive me for prying a
25 bit.

1 So the specific -- you included a couple maps
2 here. This land, section 14, township 135, range 51
3 west, is this --

4 LIANNE ROCKSTAD: We own it jointly.

5 MR. PELHAM: Oh, you do? Okay.

6 LIANNE ROCKSTAD: We own it jointly. And have
7 for many years.

8 MR. PELHAM: So I want to know a little bit more
9 about the discussions that you've had with the company
10 as to this reroute request that you're here talking
11 about. What -- can you explain that a little bit more
12 in detail for us?

13 LIANNE ROCKSTAD: Yes. I have called. They
14 sent a letter. They've never stopped to see me that I
15 know of. There's never been a note left on my door.
16 I've called the number that was on the -- the letter
17 that I received. And when I got that number, it went to
18 voicemail. And that voicemail led to another voicemail
19 with a 299 prefix, and nobody returned that call.

20 MR. PELHAM: And do you know or do you recall
21 approximately when you would have made those calls?

22 LIANNE ROCKSTAD: One was probably two or three
23 months ago, one a month ago, and one just on Tuesday or
24 Wednesday.

25 MR. PELHAM: Do you know whether -- is it

1 yourself and your brother and anyone else that owned the
2 property?

3 LIANNE ROCKSTAD: No. It's just himself and
4 myself.

5 MR. PELHAM: Do you know if he's had contact as
6 to the reroute request?

7 LIANNE ROCKSTAD: I do not know that.

8 MR. PELHAM: Thank you, Ms. Rockstad. I don't
9 have any other questions for you.

10 LIANNE ROCKSTAD: Okay.

11 ALJ HOGAN: Mr. Jorde.

12 MR. JORDE: Ma'am, has Summit sent you an
13 easement offer on this?

14 LIANNE ROCKSTAD: Yes.

15 MR. JORDE: Okay. And in terms of dealing with
16 them to potentially move it, you're saying they haven't
17 called you back. Have they ever stopped out at your
18 house to try to talk to you about your concerns?

19 LIANNE ROCKSTAD: No.

20 MR. JORDE: Okay. You may not be aware, but
21 yesterday Mr. Powell filed some statements here and he
22 claims that he's engaged or the company's engaged with
23 discussions with landowners to change the proposed
24 location of the pipeline. Are you aware if they've
25 talked to your brother at all about --

1 LIANNE ROCKSTAD: I have -- I have no idea.

2 MR. JORDE: Are you aware if they've talked to
3 anybody in your community about changing the route?

4 LIANNE ROCKSTAD: Not to my knowledge.

5 MR. JORDE: Okay.

6 LIANNE ROCKSTAD: I haven't heard any of that
7 from my neighbors and I live there.

8 MR. JORDE: And you had made the statement that
9 you didn't think it was the Commission's job to look at
10 financial concerns, but one of the factors that the
11 Commission considers is the effect, the adverse effects,
12 on the welfare, the general welfare, well-being of the
13 citizens of North Dakota, including yourself. So would
14 you agree that taking into account financial
15 considerations in terms of reduced land value would fall
16 under that category?

17 LIANNE ROCKSTAD: I am -- I'm positive -- I'm
18 more than positive that one quarter of land, the value
19 would be diminished significantly and the other one
20 moderately.

21 MR. JORDE: And Summit also yesterday put forth
22 a statement from someone who claims to be an expert in
23 real estate valuation claiming that there would be
24 little or no economic impact. But from your standpoint,
25 if you had the choice to purchase ground, say a quarter

1 section, that has a hazardous CO2 pipeline or one that
2 does not, which would you be more likely to purchase?

3 LIANNE ROCKSTAD: Of course the one that was
4 not.

5 MR. JORDE: And do you believe -- would you
6 criticize someone who would bid on your property if you
7 had to sell it with a CO2 pipeline, if they offered you
8 less money than market value?

9 LIANNE ROCKSTAD: I'm assuming that they would
10 offer less money.

11 MR. JORDE: All right. Thank you. Nothing
12 further.

13 ALJ HOGAN: Mr. Pranis, any questions?

14 MR. PRANIS: No, Your Honor.

15 ALJ HOGAN: Mr. Bakke?

16 MR. BAKKE: Just briefly.

17 Ms. Rockstad, am I correct in understanding you
18 tried to call Summit three times, left voicemails each
19 time, and never got a return call?

20 LIANNE ROCKSTAD: I left my phone number.

21 MR. BAKKE: All three times?

22 LIANNE ROCKSTAD: Yes. I left my phone number.

23 MR. BAKKE: Okay. And they never returned your
24 calls, any of them?

25 LIANNE ROCKSTAD: They did not.

1 MR. BAKKE: Okay. And that's over a period of
2 months?

3 LIANNE ROCKSTAD: Three times in like maybe five
4 months.

5 MR. BAKKE: Okay. Thank you. Nothing further.

6 ALJ HOGAN: Commissioner Christmann.

7 COMMISSIONER CHRISTMANN: Thanks, Lianne, for
8 being here.

9 You said something to the effect about they
10 should move it along Highway 29; right?

11 LIANNE ROCKSTAD: Correct.

12 COMMISSIONER CHRISTMANN: In our general
13 pipeline and power line siting over the years, there's
14 great resistance to having these things in the road
15 easements because then road construction occurs and the
16 taxpayers have to pay for moving things in.

17 LIANNE ROCKSTAD: Correct.

18 COMMISSIONER CHRISTMANN: Are you saying you
19 want it in the right of way or on your land but just
20 parallel to the right of way?

21 LIANNE ROCKSTAD: Parallel to the right of way.
22 It's really detrimental to come down the very center of
23 the quarter of land.

24 COMMISSIONER CHRISTMANN: Am I -- I tried to
25 find in our bigger maps that the company provided your

1 sections of land. It looks like in section 3, to me,
2 they are running parallel to the section line. Am I
3 wrong?

4 LIANNE ROCKSTAD: No. That's in Rauser
5 (phonetic) directly to the south of me. And it comes
6 across their land and then -- and then it comes -- in
7 section 14 here, you'll see where they're coming down
8 the center of my land.

9 COMMISSIONER CHRISTMANN: It's kind of in the
10 middle of two quarter --

11 LIANNE ROCKSTAD: Correct.

12 COMMISSIONER CHRISTMANN: But on 3, you're kind
13 of more okay with that running parallel --

14 LIANNE ROCKSTAD: On 3 it's running parallel to
15 County 29, correct.

16 COMMISSIONER CHRISTMANN: You'd be comfortable
17 with that part?

18 LIANNE ROCKSTAD: I'm not comfortable with it,
19 but it makes the most sense if they have to come.

20 COMMISSIONER CHRISTMANN: Thank you for being
21 here and providing the information.

22 LIANNE ROCKSTAD: Thank you.

23 COMMISSIONER CHRISTMANN: Long trip.

24 ALJ HOGAN: Commissioner Haugen-Hoffart.

25 COMMISSIONER HAUGEN-HOFFART: I have a question.

1 I know we've talked a lot about the voicemails and you
2 left a message, but how did you communicate to Summit
3 the idea of the reroute? Was that left in your
4 voicemail messages?

5 LIANNE ROCKSTAD: No, it was not. I left my
6 phone number that I was returning -- they had contacted
7 me. I'm returning the contact back with my phone
8 number. And I did not hear.

9 COMMISSIONER HAUGEN-HOFFART: Okay. So this is
10 the first time you're able to present your idea of a
11 reroute to Summit?

12 LIANNE ROCKSTAD: Correct. Absolutely. Yes.

13 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.

14 LIANNE ROCKSTAD: Thank you.

15 ALJ HOGAN: Mr. Dawson.

16 SUBSTITUTE DECISIONMAKER DAWSON: I have no
17 questions. Thanks for coming today.

18 LIANNE ROCKSTAD: Thank you.

19 ALJ HOGAN: All right. Thank you.

20 Who would like to go next?

21 Good morning.

22 MICHELLE JUNDT: Good morning.

23 ALJ HOGAN: I'll have you state your full name
24 and spell your last name for the record.

25 MICHELLE JUNDT: Michelle Jundt, J-U-N-D-T.

1 ALJ HOGAN: And, Ms. Jundt, were you in the room
2 this morning when I went through the penalties for
3 perjury?

4 MICHELLE JUNDT: Yes.

5 ALJ HOGAN: And do you understand what perjury
6 is?

7 MICHELLE JUNDT: Yes.

8 ALJ HOGAN: And being advised of the potential
9 penalties for perjury, do you promise to tell the truth
10 in this case today?

11 MICHELLE JUNDT: I do.

12 ALJ HOGAN: All right. Thank you. Go ahead.

13 **MICHELLE JUNDT,**

14 being first duly sworn, testified as follows:

15 MICHELLE JUNDT: What our governor, state, and
16 federal politicians have done to we the people of this
17 nation and the states affected by this money grab of
18 dangerous CO2 pipeline being built by first-ever,
19 newly-formed companies and paid for by all federal and
20 state taxpayers is just another example of how elitists,
21 you billionaires and millionaires, put politics, profit,
22 and power over people.

23 The CO2 sequestration boom forced and burdened
24 upon the American people is being done on a false
25 premise, that this will somehow save the environment

1 from ourselves. It won't. And while our adversaries
2 like China and Iran continue to build coal-fired plants
3 to increase their use of fossil fuels by 20 percent each
4 year, our federal and state politicians think that
5 pulling CO2 out of the air, which is life-giving to
6 trees, crops, plants needed to feed the world,
7 7.5 billion people, is going to save the planet.

8 The only purpose here is nothing more than just
9 another politician-created problem so that you
10 self-serving politicians can stand on your pedestals and
11 shout to we the people that you are our savior. You
12 have only one savior and it's not any of you.

13 And not any of you Summit people, the
14 commiserating politician leaders who have touted this
15 crazy idea, the EERC including Mr. Gorecki, the North
16 Dakota Department of Minerals, the North Dakota
17 Geological Survey, UND professors of any legitimate,
18 honest scientist will ever be able to show any of us how
19 the 1.5 billion of federal tax dollars each year you all
20 plan to take along with some \$51 million of North Dakota
21 tax dollars over the next ten years will ever provide
22 one iota of benefits in return for the significant
23 taxpayer investment.

24 It's our investment, money -- our money you're
25 taking from us from absolutely zero return to us. Not

1 to mention the CO2 pipeline and its bullied, defiant,
2 and arrogant approach is sociopathically forcing
3 landowners and nearby citizens to accept the
4 considerable health, safety, and economic liabilities
5 and risk for what? From our perspective, it's all risk
6 and no reward. Sounds like a one-sided equation while
7 not one of you Summit people or your supporters are
8 living anywhere near your 2,100-mile-and-growing
9 dangerous CO2 pipeline.

10 And so it's pretty easy for you and the 450 or
11 more wealthy local, state, national, foreign, and
12 anonymous investors to remain steadfast in your talking
13 points of significantly safer than any other pipeline
14 running through Burleigh County. That's total hogwash.
15 And every one of you know it. Not any of you or your
16 families are being negatively affected by this or any of
17 the other 3,600 miles of CO2 pipeline now currently
18 proposed to be built in at least six states including
19 North Dakota, Iowa, Nebraska, South Dakota, Minnesota,
20 and Illinois.

21 Furthermore, the talking points you are all
22 continuing to spew out to the public are disingenuous.
23 You deceptively hide any plume modeling and emergency
24 response plans that include equipment and training
25 needed for not only first responders but the citizens as

1 well. Your reasoning of terrorism threat is a bunch of
2 BS, which the true threat to all of us is you. You know
3 as well as every citizen here today that your pipeline
4 is not more safe than a natural gas, oil, or even
5 refined product pipeline.

6 I view your approach and treatment of all of us
7 as insulting, thuggish, and full of smoke and mirrors.
8 You even have the head of the EERC trying to use the CO2
9 sequestration in North -- in the North Sea as an example
10 of how safe it will be in North Dakota. North Sea,
11 North Dakota? Come on, man. Another huge disingenuous
12 comparison. We are not stupid to know there is a
13 considerable difference in geology between the two.

14 Routing this pipeline as you all have defiantly
15 done east and north of Bismarck demonstrates how none of
16 you Summit stakeholders could give two ounces of care
17 for any of our citizens' lives being affected,
18 your first ever of its kind, longest haul, largest
19 capacity, closest ever to highly populated metropolis
20 areas being built by a group of executives and
21 collective team members who have not ever even built an
22 operating sewer line together.

23 We all know why you are in such a rush to get
24 this done. Greedy taxpayer money grab and regulations.
25 Shameful. I for one have zero confidence in you,

1 Summit, doing the right thing if it means costing more
2 money for you and your ethanol, agricultural, oil, and
3 coal industries, foreign investors. If this were a
4 pipeline project welcomed and needed by we the people,
5 you wouldn't have needed a litany of lawyers and
6 politicians pulling your wagon down the dry, dusty trail
7 as you tramp across our land.

8 It's shameful what our federal and state
9 politicians have once again done to us like they did
10 with Covid to mislead and bamboozle the American people
11 while greedy corporate executives who continue to take
12 the American taxpayer money and throw our country even
13 further into debt. We have doubled our national deficit
14 in just under ten years and are on a national economic
15 debt spiral, that projects like these have subsidized
16 ethanol and CO2 pipeline money grabs only continue the
17 debt spiral. Truth be told, we need none of these two.
18 They are not providing any benefits to we the people.

19 They are extremely -- these are extremely sad
20 times for our country when policies are laid upon we the
21 people by political leaders working in concert with
22 greedy, private corporate types that allow crazy
23 projects like these to be built all on a false premise
24 and hopes. It's shameful.

25 Let's hope, in addition to the financial costs

1 all of we citizens along the route are being forced to
2 pay, we won't have to pay with our lives of our family
3 and friends, livestock and pets so you can all live high
4 and mighty.

5 If I were one of Summit's employees hearing and
6 knowing the negative impact and risk that this proposed
7 pipeline projects as one of -- projects has on the tens
8 of thousands of innocent people, I would not risk my
9 reputation or soul. I would just quit.

10 These are my First Amendment opinions and I will
11 not be taking any questions. Good day.

12 ALJ HOGAN: All right.

13 COMMISSIONER CHRISTMANN: Your Honor?

14 ALJ HOGAN: Yes.

15 COMMISSIONER CHRISTMANN: Just a response, and
16 if Ms. Jundt wants to respond to me, she can. I just
17 want to say that even though you apparently view me as a
18 self-serving politician and a terrorist threat, I am
19 still proud to spend the day here and am glad to hear
20 from you and allow you to voice your opinions.

21 ALJ HOGAN: All right. Go ahead. Please come
22 up.

23 LINDA HAGEN MATHERN: My name is Linda. Can you
24 hear me? Is it okay? My name is Linda Hagen Mathern
25 and I live in Bismarck at 928 North 32nd Street.

1 ALJ HOGAN: Before you start, I've got to swear
2 you in. Were you in the room this morning when I went
3 through the penalties for perjury?

4 LINDA HAGEN MATHERN: Yes.

5 ALJ HOGAN: And do you understand what perjury
6 is?

7 LINDA HAGEN MATHERN: Yes.

8 ALJ HOGAN: And being advised of the potential
9 penalties for perjury, do you promise to tell the truth
10 in this case today?

11 LINDA HAGEN MATHERN: Yes.

12 ALJ HOGAN: All right. Thank you. Go ahead.

13 **LINDA HAGEN MATHERN,**

14 being first duly sworn, testified as follows:

15 LINDA HAGEN MATHERN: First, I do believe I have
16 an interest, just a very, very tiny one, because it is
17 government funds and there's a lot of people from North
18 Dakota -- we're not a big state, but we are providing
19 payments to this Summit.

20 I want to know if you're aware of the fault line
21 in North Dakota. If there was an earthquake, would that
22 affect CO2 erupting after it has been stored?

23 Did you know that CO2 is plant food? It can be
24 used to make fake meat, diamonds, tires, food for fish,
25 and assist in oil -- oil field? CO2 is not permanently

1 buried as it was first portrayed. We now know -- we are
2 now known as the dump state. Who is going to use CO2 in
3 the future? I wonder who gains down the road, which
4 people, and who will say that CO2 will be used again.

5 I want the public to know the true facts about
6 CO2. Trent Loos did research. We are headed down a
7 one-way street of destruction and nobody seems to be
8 standing up to say carbon dioxide is an essential
9 element of life. I'd like to repeat that. Carbon
10 dioxide is an essential element of life.

11 A long-time friend just called Trent Loos --
12 these are Trent Loos's words now -- called me to tell me
13 how difficult it is to access CO2. Yes, he buys CO2
14 that not long ago was 17 cents per pound. Now the cost
15 is 70 cents per pound. He is concerned enough about
16 access, he is putting his own CO2 capture facility in
17 place. Folks, CO2 is primarily plant food, but there
18 are at least 12 other products that CO2 is a major
19 component in. In short, if the global plan to bury
20 three trillion tons of CO2 takes place, then life stops.

21 Time Magazine, on February 22nd, '23, had an
22 article about the last chance the corn industry has to
23 survive. It is entitled "Corn Industry Climate Friendly
24 Has Turned Into a Political Melee in the Midwest."

25 What I don't understand is how farmers, farm

1 groups, and many others are falling prey to this -- I
2 won't repeat that -- simply for a payment.

3 Here is the hidden truth. Corn is the answer.
4 The U.S. corn crop during the growing season provides
5 four times photosynthesis than the entire Amazon
6 rainforest. Corn fields generate starch that is turned
7 into fuel ethanol that fuels our nation domestically.
8 The byproduct of that is fed to livestock as a great
9 protein source that contributes greatly to a healthy
10 life cycle.

11 Did you know initially tires were made only from
12 a natural product sap-like substance collected from
13 trees? Through a complex chemical process, rubber was
14 made. Soon the demand for tires outpaced the capacity
15 of the trees so synthetic rubber was made from oil. It
16 is widely reported that one car tire requires five
17 gallons of oil to make and another two gallons of oil
18 for the manufacturing process. A semi truck tire
19 requires 22 gallons of oil plus the manufacturing
20 process. So you can see how the transportation industry
21 has long been very dependent on oil.

22 I discovered corncobs combined with methane and
23 CO2 can actually be used to create tires. In 2017 the
24 University of Minnesota Associate Professor Paul
25 Dauenhauer and his team set out to use starches derived

1 from sources like corn as well as grass and trees
2 because they are almost identical to the size of the
3 isoprene molecule found in tires. The research clearly
4 indicates that corn fodder or soy oil can be blended
5 with methane and CO2 to create a tire without using
6 petroleum products.

7 The answer to planet health is not to demonize
8 corn and soybeans and bury essential elements of life
9 called methane and carbon dioxide but rather to capture
10 them and use them to improve human lives. And sometimes
11 I wonder if that's not what's being done now. It sure
12 seems that all this science about the essential aspect
13 of CO2 is being hidden from the public and it's a little
14 fishy.

15 Aquaculture also relies on CO2. Fish food
16 providers have estimated that 4 million tons of CO2 is
17 -- is in a year. The amount a large cement plant
18 produces could be used to produce 2 million tons of
19 protein meal that, when fed to fish, expands human
20 availability of protein.

21 Folks, God didn't put these elements in the
22 atmosphere because they were dangerous. He knew what he
23 was doing and now he's listening to a bunch of several
24 worshippers tell us we need to bury CO2 a mile deep in
25 the earth. I guess it really does make sense, the devil

1 is trying to get access to another of earth's golden
2 gems.

3 I was here at the first meeting we had. I sat
4 from 8:30 to a quarter to 5 and I left because I had
5 another meeting to attend to. So I thank you for having
6 another meeting. And I just -- I'm very concerned and I
7 thank you for allowing me the opportunity to share.

8 ALJ HOGAN: All right. Thank you.

9 Mr. Bender, any questions?

10 MR. BENDER: No questions.

11 ALJ HOGAN: Mr. Pelham.

12 MR. PELHAM: Good morning. I just have one
13 question. I just want to clarify, did you -- did you
14 say that you do not have any land on the proposed route?

15 LINDA HAGEN MATHERN: No, I do not.

16 MR. PELHAM: All right. Are you a Burleigh
17 County resident?

18 LINDA HAGEN MATHERN: I'm sorry?

19 MR. PELHAM: Are you a Burleigh County resident?
20 Where do you live?

21 LINDA HAGEN MATHERN: Yes. Burleigh County. I
22 live in Bismarck.

23 MR. PELHAM: Okay. Thank you.

24 ALJ HOGAN: Mr. Jorde, any questions?

25 MR. JORDE: Yes.

1 Ma'am, would you purchase a home located on a
2 CO2 hazardous pipeline?

3 LINDA HAGEN MATHERN: No.

4 MR. JORDE: And would you understand that such a
5 hazardous pipeline could decrease property values?

6 LINDA HAGEN MATHERN: I -- I believe it could.
7 And I -- I really wonder down the road if people will
8 know the pipeline is there if they come to purchase
9 land. Is that something that they would be told when
10 they would want to purchase property?

11 MR. JORDE: Okay. Thank you. Nothing further.

12 ALJ HOGAN: Mr. Pranis, any questions?

13 MR. PRANIS: Just one, Your Honor.

14 I appreciate the comments on the potential
15 beneficial uses of carbon dioxide, which we completely
16 agree. Would you agree, though, that -- I mean, in
17 order to actually make use of that carbon dioxide, we
18 need to get it from where it's being emitted, as you
19 point out, a cement plant, could be an ethanol plant, to
20 the facilities that would actually make beneficial use
21 of it, whether it's for fertilizer, fuel to make tires,
22 etcetera?

23 LINDA HAGEN MATHERN: Well, we were told that it
24 was going to be permanently made a mile deep. So I
25 don't see how that would benefit the use of it to get it

1 anywhere in North Dakota.

2 MR. PRANIS: So just to clarify, your objection
3 is to the sequestration of it, not to the use and
4 transport of CO2 but to the sequestration of it?

5 LINDA HAGEN MATHERN: Both. Because you have --
6 it doesn't -- one will impact the other. Because if
7 you're storing it -- and I still think you should look
8 for the fault line. I know there is a fault line. And
9 I really am concerned. My biggest concern is if all
10 this CO2 is buried within a certain amount of area, what
11 would happen? We have had earthquakes in the past. And
12 I believe it would affect it.

13 MR. PRANIS: Thank you.

14 ALJ HOGAN: Mr. Bakke, any questions?
15 Commissioner Christmann.

16 COMMISSIONER CHRISTMANN: I do not, but thank
17 you for being here, Linda.

18 ALJ HOGAN: Commissioner Haugen-Hoffart.

19 COMMISSIONER HAUGEN-HOFFART: I don't have any
20 questions, but thank you for your time.

21 ALJ HOGAN: Mr. Dawson.

22 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
23 Thank you.

24 ALJ HOGAN: All right. Thank you.

25 LINDA HAGEN MATHERN: Thank you.

1 ALJ HOGAN: We'll take one more person in this
2 block and then we'll move to our other scheduled
3 witnesses and then we'll continue with public testimony
4 at a later time today.

5 Good morning. Can I get your name and if you'll
6 spell your last name for the record, please.

7 CLINT FELAND: Yes, good morning. I'm Clint
8 Feland, F-E-L-A-N-D, and I reside at 11605 Edgewood
9 Drive, which I believe is less than a couple of miles or
10 just in the valley directly below where this is crossing
11 the Missouri River.

12 ALJ HOGAN: Okay. Before you go any further,
13 I've got to swear you in. Were you in the room this
14 morning when I went through the penalties for perjury?

15 CLINT FELAND: Yes, ma'am.

16 ALJ HOGAN: And do you understand what perjury
17 is?

18 CLINT FELAND: Yes, ma'am.

19 ALJ HOGAN: And being advised of the potential
20 penalties for perjury, do you promise to tell the truth
21 in this case today?

22 CLINT FELAND: Yes.

23 ALJ HOGAN: All right. Thank you. Go ahead.
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CLINT FELAND,

being first duly sworn, testified as follows:

CLINT FELAND: So part of the PSC's mission statement on the State's website is generating solutions by turning new and imaginative ideas into sound policies and regulations that protects citizens and promote orderly development. And my question to the PSC is: how can it be that locating a high pressure CO2 pipeline through a populated area be protecting its citizens?

I also question why were not all residents contacted letting them know of potentially dangerous CO2 lines passing by their property? How many people today are unaware of this pipeline and that it may be passing in very close proximity of their home? Does the public not have a right to know?

We're told that this gas, if there was ever a rupture, is going to follow a low-lying area. And in a conversation with my wife last night out on our pontoon on the river as we're passing Hogue Island, I'm looking at all these people and I'm thinking the only reason that I know about this is my involvement in business and, being a landowner, I follow things like this, but I think about a young family on Hogue Island, they're probably not here today because they don't know about it.

1 Summit alleges that it is not diminishing the
2 value of rural farmland. I say that, in my opinion,
3 Summit is, in fact, condemning that property. And when
4 I say "condemning it," outside of normal agricultural
5 use, this land can never be used for anything ever
6 again. And that goes back to your statement of orderly
7 development.

8 The corridor this is going in is some very
9 valuable ground, and what is the highest and best use of
10 that land today may not be in 10, 15, or 20 years. But
11 when this pipeline is there, I'm not saying that there
12 might not be somebody that will build or buy next to it,
13 but you cut this across at an angle across somebody's
14 land -- look at how disorderly the lady that was here
15 earlier talking about it following a roadway.

16 You know, these pipelines, I've got an oil
17 pipeline on some land. They start in the northwest
18 corner and come out the southeast. It's condemned for
19 agricultural use. What are you ever going to use it
20 for? The path of that pipeline greatly diminishes the
21 property value.

22 And to force somebody through eminent domain,
23 that pipeline should go around. It should absolutely
24 have to go around. There's no way they should be able
25 to cut across somebody's land. Because I -- I truly

1 believe in the landowner rights and we're kind of
2 forgetting about some of those in North Dakota.

3 I also question, when we talk about -- and you
4 didn't want to talk about eminent domain, but I think we
5 need to bring up that this is not truly critical
6 infrastructure. Nobody is going to die if this pipeline
7 does not happen. Some crazed loons in Washington or
8 Minnesota or wherever may say "We can't buy this
9 electricity anymore," and that's sad, but I think when
10 they can't plug their car into the wall and nothing
11 comes out of it anymore, maybe they'll have a different
12 stance on our coal-fired power.

13 The CO2 emission isn't really a problem.
14 Patrick Moore, one of the founders of Greenpeace, he was
15 part of the group, was going to save the world. Well,
16 he changed his mind now and he thinks -- he's gone on
17 record thinking that the earth, plant life, possibly
18 needs exactly twice as much CO2 as it's currently
19 getting. Is he right or wrong? Which side of him was
20 right or wrong?

21 Who's dreaming this up? I guess I'd like it to
22 be proved to me beyond a reasonable doubt that this
23 really has to happen. People like the youthful Greta
24 Thunberg in 2018 said the world was ending in five years
25 because of emissions. "How dare you?" Well, we're here

1 today. Five years later we're still here. We didn't
2 die.

3 Big hired guns with long résumés don't impress
4 me. 12 hours of my life were wasted listening to
5 Summit's paid propaganda and we the people, we're not
6 allowed to speak. And I think it is long past the time
7 for we the people to remind every politician you're
8 working for us.

9 ALJ HOGAN: All right. Thank you.

10 Mr. Bender, any questions?

11 MR. BENDER: No questions.

12 ALJ HOGAN: Mr. Pelham.

13 MR. PELHAM: I don't have any questions. Thank
14 you.

15 ALJ HOGAN: Mr. Jorde.

16 MR. JORDE: Sir, you mentioned you're concerned
17 about condemnation or that effectively, if a hazardous
18 CO2 pipeline is placed on ground, it's your opinion that
19 that's essentially condemnation. Was that --

20 MR. BENDER: Your Honor, I'm going to object.
21 You mentioned at the outset of the hearing that we
22 weren't going to get into condemnation areas and we're
23 heading down that path with Mr. Jorde's questions.

24 ALJ HOGAN: Yeah. There's no jurisdiction over
25 eminent domain so I think if -- if that's where your

1 question is going --

2 CLINT FELAND: So --

3 ALJ HOGAN: Hang on.

4 If that's where your question is going, I would
5 ask you not to ask about that. I'm not positive that
6 that's what you were asking about, though.

7 MR. JORDE: Well, I'm just looking at Jimmy
8 Powell's testimony of yesterday where he says it's
9 Summit's goal to come to voluntary agreements with a
10 hundred percent of the landowners. So, I mean, they're
11 putting that out there.

12 And I was just going to ask this gentleman, are
13 you aware that in South Dakota they have condemned over
14 a hundred families for eminent domain?

15 CLINT FELAND: So I'd like to answer your
16 question in this fashion. I'm a real estate broker.
17 And I talked to a family yesterday that's being bullied
18 into signing or selling. They -- this pipeline is
19 coming across their land and they don't want it. And
20 they asked me, their -- one of their biggest concerns,
21 outside of safety, is what's this going to do to the
22 value of their land?

23 And my take was this: There's all kinds of
24 people that are buying pasture and farmland. And do I
25 believe that their quarter of land -- and it's out far,

1 rural Burleigh County. I don't think that my grandkids
2 will probably see development there. I don't know that.
3 But I will say that its highest and best current use is
4 agricultural land.

5 And do I believe that this is going to hurt if
6 that land is sold at public auction or it's listed? Do
7 I believe that it's going to bring less? As
8 agricultural land I don't, but has nothing to do with
9 eminent domain. That pipeline condemned that land.
10 There will never be a structure built in the footprint
11 of that pipeline. Maybe I want to put a tree grove
12 there. They're going to come out on the exact footprint
13 of that pipeline and forever tell me what I can and
14 can't do there and I can till the ground.

15 Do I believe that a house is going to be
16 affected? Is it a buyers' market or a sellers' market?
17 So I'm going to say this. If it's a buyers' market,
18 there's probably a very good chance that you're going to
19 be bullied when you sell your house that you're within
20 the proximity of this natural gas pipeline.

21 MR. JORDE: Do you think at any time that it
22 would be the highest and best use --

23 CLINT FELAND: CO2 pipeline. I'm sorry.

24 MR. JORDE: -- highest and best use of
25 residential property within Burleigh County to locate a

1 hazardous CO2 pipeline on that land?

2 CLINT FELAND: Absolutely not.

3 MR. JORDE: And let's see. In terms of the
4 family, their concerns obviously about safety, but given
5 your experience as a broker and being in this line of
6 work, do you have an opinion based on your education,
7 experience, and background of whether or not it -- more
8 likely than not the value of a residence located on a
9 CO2 pipeline route would be more or less than an
10 identical residence not located on that route?

11 CLINT FELAND: I'm going to -- I'm going to say
12 worth less in most cases. I don't know that we have an
13 exact science.

14 There's -- I always think of, when I drive up
15 83, there's a couple of homes directly under a
16 transmission line. I own property on Highway 83
17 directly under a transmission line. I don't want to
18 build directly under a transmission line. And if I own
19 land and you want to cut at an angle across my ag land
20 with a transmission line, I'm going to kind of feel the
21 same way. Not a safety concern, but, in fact, you are
22 potentially condemning my ground for future use so I
23 believe you are affecting the highest and best use of
24 this land.

25 MR. JORDE: You may not be aware of this, but a

1 couple days ago Summit claimed that they reviewed the
2 possibility of a southern reroute around Burleigh County
3 and further away from the residences and the development
4 area that they currently plan to go through, but they
5 had concluded that that would take allegedly two years
6 of review.

7 Do you have any sympathy for the fact that to
8 pick a different route would take them two years to
9 review it?

10 CLINT FELAND: So my sympathy is to North Dakota
11 coal, North Dakota oil, North Dakota natural gas. The
12 same people that are dreaming this nonsense up with
13 carbon sequestration are the same people that in states
14 like New York are not going to allow you to have a
15 natural gas range anymore. They're not quitting.
16 They're coming after your furnace next.

17 MR. JORDE: All right, sir. Thank you.
18 Appreciate that.

19 ALJ HOGAN: Mr. Pranis, any questions?

20 MR. PRANIS: No, Your Honor.

21 ALJ HOGAN: Mr. Bakke, any questions?

22 MR. BAKKE: Yes, Your Honor.

23 Mr. Feland, you mentioned lack of information
24 being provided to the public by Summit, that you were
25 concerned that they weren't providing information to

1 individuals about the pipeline and property owners and
2 others that might be affected by the pipeline; is that
3 correct?

4 CLINT FELAND: Yes.

5 MR. BAKKE: Okay. And were you aware that
6 Summit, in North Dakota, has refused to release any
7 information about a plume model study? In other words,
8 what would happen if there was a leak in the pipeline,
9 God forbid --

10 MR. BENDER: I'm going to --

11 MR. BAKKE: -- what would happen in that
12 situation? Were you aware of that?

13 MR. BENDER: Excuse me. I'm going to object.
14 That's a mischaracterization of what Summit has done.
15 Summit has filed that information with the Commission.
16 We've requested that the Commission treat it as
17 confidential, but it has been filed.

18 MR. BAKKE: And I can rephrase.

19 Were you aware that we can't see it, the public
20 can't see it, Mr. Jorde and his clients can't see it, my
21 client, Mr. Warford, cannot see it? Were you aware of
22 that, that they're saying that is national security
23 information and can't be seen by anyone --

24 MR. BENDER: Objection. That was never a claim,
25 that it was national security. Totally

1 mischaracterizing that.

2 (Audience members speaking simultaneously.)

3 ALJ HOGAN: Hang on, hang on.

4 Well, I'm not going to allow this question. The
5 petition for confidential status of that information is
6 still pending. That issue hasn't been addressed or
7 decided by the Commission yet so I think we need to move
8 on from that issue.

9 MR. BAKKE: I will.

10 Do you think that's important information for
11 the public and the intervenors in this lawsuit to see,
12 the people in the community, the economic --

13 MR. BENDER: Your Honor, object. He's --

14 MR. BAKKE: -- effect and what health --

15 MR. BENDER: -- ignoring your ruling.

16 ALJ HOGAN: Yep. We need to move on from the --
17 Mr. Bakke, your position on that issue has been
18 documented. It's in the record. And I think we've had
19 other witnesses testify on that issue so I think the
20 Commission is well aware of what public sentiment is on
21 accessing that information. So if you would kindly move
22 on if you have other questions for Mr. Feland.

23 MR. BAKKE: And I'll just note for the record
24 that I think that is important public health information
25 for the Commission to consider and to be available to

1 the public and the landowners. Recently, and this is
2 something that has happened since that motion has been
3 submitted, in Iowa, in the equivalent of the Public
4 Service Commission, they did release their plume model
5 there publicly and, in fact, they made a witness
6 available to be questioned, and I think that's
7 appropriate in North Dakota as well, but we don't have
8 that.

9 ALJ HOGAN: And, again, I'll just note that the
10 Commission is in the process of scheduling a hearing on
11 that application so I don't think we're here to discuss
12 that particular issue today.

13 Commissioner Christmann, any questions?

14 COMMISSIONER CHRISTMANN: I just appreciate you
15 being here, Clint.

16 CLINT FELAND: Thank you.

17 ALJ HOGAN: Commissioner Haugen-Hoffart.

18 Oh, hang on.

19 COMMISSIONER HAUGEN-HOFFART: You can't run away
20 yet, Clint.

21 Thank you for your testimony. I just have one
22 question and then Tim needs to ask you a question yet.

23 CLINT FELAND: Okay.

24 COMMISSIONER HAUGEN-HOFFART: You said that you
25 were talking with two landowners yesterday regarding

1 real estate?

2 CLINT FELAND: I talked with a landowner
3 yesterday.

4 COMMISSIONER HAUGEN-HOFFART: And the pipeline
5 runs through their land?

6 CLINT FELAND: They have not signed a lease, but
7 it would potentially run through their land.

8 COMMISSIONER HAUGEN-HOFFART: Well, hopefully,
9 we can hear from them today.

10 CLINT FELAND: I hope so.

11 COMMISSIONER HAUGEN-HOFFART: Thank you. I'm
12 going to refer to Tim before you leave.

13 ALJ HOGAN: Mr. Dawson, any questions?

14 SUBSTITUTE DECISIONMAKER DAWSON: One question.
15 How close is the pipeline to your land?

16 CLINT FELAND: I can't say exactly, but I'm
17 going to say less than two miles. It's basically up on
18 top of a hill. Double Ditch, if you're familiar with
19 the area, we live directly next to Double Ditch, and
20 it's just shortly north of there. It's crossing on a
21 high point and we're down in the valley directly below
22 it.

23 SUBSTITUTE DECISIONMAKER DAWSON: Thank you. No
24 further questions.

25 ALJ HOGAN: All right. Thank you, Mr. Feland.

1 CLINT FELAND: Thank you.

2 ALJ HOGAN: All right. We are now going to move
3 to intervenor witness testimony. So can I just by a --
4 I haven't had a chance to look at the attendance sheets.
5 By a show of hands, can I get an idea of how many more
6 people wish to provide public comments today?

7 (Pause)

8 ALJ HOGAN: Okay. Thank you. That's helpful.
9 Mr. Pranis, would you like to call your witness?

10 MR. PRANIS: Yes, Your Honor. I'd like to call
11 Mr. Lucas Franco.

12 ALJ HOGAN: Good morning.

13 LUCAS FRANCO: Morning.

14 ALJ HOGAN: I'll have you start by stating your
15 full name and spelling your last name for the record.

16 LUCAS FRANCO: Yes. My name is Lucas Franco,
17 L-U-C-A-S, F-R-A-N-C-O.

18 ALJ HOGAN: And, Mr. Franco, were you in the
19 room earlier when I went through the penalties for
20 perjury?

21 LUCAS FRANCO: I was.

22 ALJ HOGAN: And do you understand what perjury
23 is?

24 LUCAS FRANCO: I do.

25 ALJ HOGAN: And being advised of the potential

1 penalties for perjury, do you promise to tell the truth
2 in this case today?

3 LUCAS FRANCO: I do.

4 ALJ HOGAN: All right. Thank you.

5 Go ahead, Mr. Pranis.

6 MR. PRANIS: Thank you, Your Honor.

7 Commissioners.

8 LUCAS FRANCO,

9 being first duly sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. PRANIS:

13 Q. So, Mr. Franco, if you'd please state your name,
14 the name of your employer, and your business address.

15 A. Yes. My name is Lucas Franco. I currently
16 serve as the research manager for the Laborers Union of
17 Minnesota and North Dakota. We represent 13,000 skilled
18 construction laborers engaged in a wide range of
19 infrastructure work across Minnesota and North Dakota.
20 And my building address -- my business address is 81
21 East Little Canada Road, St. Paul, Minnesota 55117.

22 Q. Thank you. And can you briefly describe your
23 qualifications?

24 A. Yes. For the past five years I've managed
25 LIUNA's strategic research in Minnesota and North Dakota

1 and have conducted research on a wide range of energy
2 infrastructure projects including analysis of the
3 impacts of gas and oil pipelines and wind and solar
4 installations. Prior to my current position with LIUNA,
5 I spent seven years at the University of Minnesota
6 completing a Ph.D. in political science and have
7 authored and participated in the development of numerous
8 published, both peer reviewed and non-peer reviewed,
9 reports.

10 Q. Thank you.

11 Could you briefly summarize LIUNA's position on
12 the proposed Summit Carbon capture pipeline project?

13 A. Yes. We believe this project has the potential
14 to greatly benefit North Dakota's economy and
15 environment and we'd like to see it move forward. We
16 also believe, however, that it's critically important
17 that the project is properly built, maintained, and
18 operated in order to maximize the benefits and minimize
19 the risk to residents.

20 Q. And, Mr. Franco, have you reviewed the economic
21 analysis that was provided by Summit touting the
22 potential benefits of their project in North Dakota and
23 other states along the project footprint?

24 A. Yes, I have.

25 Q. All right. And can you speak to the question,

1 just briefly summarize your analysis of their treatment
2 of -- their treatment of local and non-local
3 construction hiring and whether that's accounted for in
4 that analysis?

5 A. Yes, I can. In looking at the Ernst & Young
6 analysis, we had serious questions about the assumptions
7 around local hire and, in particular, the core estimate
8 of the analysis was an assumption of 90 percent local
9 hire, which is highly unrealistic. And so we thought
10 that the report really didn't sufficiently grapple with
11 local versus non-local hiring. And we also had real
12 questions around the pay and benefit, the fringe
13 benefit, estimates within that report.

14 Q. In your experience, Mr. Franco, does the level
15 of local hiring vary significantly based on the
16 contractors' hiring workforce strategy?

17 A. Yes. There's substantial difference based on
18 contractors and the workforce strategy that they deploy.

19 Q. And what, in your estimation, is the economic
20 difference in a job -- a local economic impact of a job
21 filled by a local worker versus a non-local worker?

22 A. In conducting analysis specifically to this
23 project and oil pipelines more generally, we found that
24 local pipeline construction workers contribute, roughly,
25 four times more over the short term to the local economy

1 and five times more over the long term as you
2 incorporate a fringe benefit component of sort of
3 long-term retirement savings. So four to five times
4 more depending on the time range of your analysis.

5 Q. So speaking about the main line portion of the
6 project, this would be the portion of the project in --
7 I believe in Logan and Emmons County, Burleigh, Morton,
8 and Oliver County. Are you aware of what contractor has
9 been selected to build that portion of the project?

10 A. Yes. My understanding is that Pumpco has been
11 selected to build that portion of the project.

12 Q. All right. And are you aware of any
13 requirements, goals, commitments, or expectations that
14 Summit has set for Pumpco in terms of hiring of local
15 workforce along those sections of the project?

16 A. I am not.

17 Q. All right. And in your research into Pumpco,
18 have you identified any information that might give us a
19 clue about the level of workforce, local workforce, that
20 Pumpco might be expected to employ?

21 A. Yes. In looking at Pumpco's past performance,
22 particularly on the Double E Pipeline, we found -- I
23 found FERC filings that indicated that they employed,
24 roughly, 15 percent local workers on that specific
25 project. So that's the best information that I have

1 about what would possibly occur on this portion of the
2 pipeline project.

3 Q. And where was that project located?

4 A. My understanding, it was Texas and New Mexico
5 for the Double E.

6 Q. And is it also true that the majority of
7 Pumpco's work of which you're aware is based in Texas?

8 A. Yes.

9 Q. So would it be reasonable -- would you infer
10 then that if a project based in Texas used 15 percent
11 workforce, it would be unlikely that a project in a
12 state where the company works less would have a higher
13 percentage of local workforce?

14 A. Yes. I would assume that the highest level of
15 local workforce would be in the region where the
16 contractor is based just based on the existing
17 relationships in that area and that it would be even
18 more challenging outside of their core territory.

19 Q. Do you have any estimate of the economic impact
20 if the pipeline is built, say, with 10 to 15 percent
21 local labor rather than as a report that's already in
22 the record indicates 50 percent, which might be more
23 realistic for a project like Dakota Access, do you have
24 an estimate of how much lost economic activity would
25 result?

1 A. I do. I looked specifically at the segment you
2 referred of Logan, Burleigh, Morton, Oliver, and Emmons
3 County. And the potential losses would be 23 to 26
4 million in lost economic investment if the 10 to
5 15 percent range of local workers was used versus the
6 50 percent range that we've seen on other similar
7 pipelines such as the Line 3 in Minnesota and the Dakota
8 Access where it was much closer to 50 percent local
9 workforce.

10 Q. And are there any steps that Summit could take
11 in order to maximize local employment and make sure that
12 the benefits resulting from the project are comparable
13 to those projected in the economic analysis?

14 A. Yes. One of the best steps, in my opinion, to
15 both ensure the use of local workers but then also
16 invest in the long-term development of skilled
17 construction workers across the state of North Dakota is
18 partnering with registered apprenticeship programs.
19 These registered apprenticeship programs have a deep
20 track record of recruiting and training highly skilled
21 construction workers. There are numerous across a wide
22 range of trades across Minnesota and North Dakota. And
23 partnering with a contractor that works with the
24 registered apprenticeship program is the number one best
25 way to ensure high levels of local employment.

1 Q. Apart from use of registered apprenticeship
2 programs, are there other steps that the company could
3 take in terms of either setting goals or requiring
4 transparency from their contractors regarding local
5 hire?

6 A. I think both of those measures would be
7 excellent steps, setting goals similar to, for example,
8 the Line 3 project that set a 50 percent local workforce
9 utilization goal very explicitly and worked hard to
10 achieve that goal, as well as partnering with local
11 contractors when possible, and also providing data
12 transparency so that the public has an opportunity to
13 see progress towards a particular workforce goal. I
14 think those are all key tools that could help achieve
15 high levels of local employment.

16 Q. So I want to turn to the question of contractor
17 capabilities. And, first, just to sort of like set a
18 baseline, is it LIUNA's view that Summit should be
19 required to use a union contractor to build this
20 project?

21 A. No. We do not believe that whether a contractor
22 uses union or non-union should be relevant in this
23 proceeding and, really, that the only relevant question
24 is if the contractors that they do select are capable
25 and can be relied on to deliver on the promises made by

1 the applicant and meet the applicable legal
2 requirements.

3 Q. What efforts has LIUNA made to assess the
4 capabilities of the contractors that have been selected
5 by Summit to build the project?

6 A. Summit has stated that Precision Pipeline based
7 in Eau Claire, Wisconsin, and Pumpco pipeline
8 construction based in Texas, as I mentioned, will be the
9 two contractors for this project.

10 Our organization, the Laborers Union, has
11 extensive knowledge of Precision's work. Precision has
12 built large pipeline projects similar to this one across
13 the Upper Midwest, including Dakota Access, the Enbridge
14 Line 3 project. And our members have firsthand
15 knowledge of Precision's operations and we're confident
16 that the company has demonstrated capability and
17 reliability around pipeline construction.

18 Pumpco is a different story for us. To our
19 knowledge, they do not have a comparable track record of
20 building similar large projects in the Upper Midwest.
21 And our observations to date of their work in North
22 Dakota, which was shared by my colleague, Mr. Whiteford,
23 have raised troubling questions.

24 We've also requested a list of projects
25 completed by Summit which might substantiate Summit's

1 assertions about their capabilities, but we've -- so far
2 Summit has refused to provide such a list. And in the
3 absence of such information, I have taken some time to
4 investigate past Pumpco projects where Pumpco has served
5 as a prime contractor across the United States.

6 Q. And what have you discovered, in summary, so far
7 in your investigation of past Pumpco projects?

8 A. Yes. In my investigation so far, I found
9 evidence of problems on recent past projects where
10 Pumpco was the prime contractor. Specifically, I found
11 repeated instances where inspection reports from the
12 Federal Energy Regulatory Commission documented impacts
13 resulting from contractor failure to keep construction
14 activities within the approved right of way. And I also
15 found a concerning case where a local water authority
16 had to take legal action following damage to irrigation
17 canals that were apparently caused by pipeline
18 construction. Those are just based on my initial
19 research of relatively recent cases.

20 Q. And do you have those documents available today
21 for the Commission parties?

22 A. I do.

23 Q. Thank you.

24 MR. PRANIS: No further questions.

25 ALJ HOGAN: Mr. Bender, any questions?

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CROSS EXAMINATION

BY MR. BENDER:

Q. Just a few questions, Mr. Franco. What's the mission statement of LIUNA?

A. The mission statement?

Q. Yeah.

A. I'm not sure offhand.

Q. What's your purpose?

A. I can provide that --

To fairly represent construction workers that are part of our collective bargaining agreement with signatory union contractors.

Q. Is it a fair statement that it's the goal of LIUNA to promote union labor?

A. Yes.

Q. Okay. And I believe you said you did some investigation of Pumpco and found certain problems with Pumpco. Is that a fair statement of your testimony?

A. That is.

Q. Okay. And did you do any investigation of any union shop pipeline operators?

A. I have just focused on Pumpco thus far.

Q. Okay. And I believe -- and I may misquote your testimony, and please correct me if I do, but I think you said that, in response to a question by your

1 counsel, that you were not here to recommend that Summit
2 not hire entities that are not union labor. I know I
3 didn't quote you exactly, but can you tell me what that
4 statement was, about what your recommendation was?

5 A. The statement that I made was that whether or
6 not a contractor is union or non-union is not relevant
7 to this proceeding. Rather, my focus is on the
8 performance of particular contractors.

9 Q. Okay. So you're not making a recommendation to
10 this Commission today that Summit -- or that the order
11 should provide that Summit can only build this pipeline
12 with union labor?

13 A. I am not.

14 Q. Okay. And you understand that the Commission,
15 even if you made that recommendation, does not have the
16 authority to enter that in its order?

17 A. Yes.

18 MR. BENDER: Okay. That's all the questions I
19 have.

20 ALJ HOGAN: Mr. Pelham, any questions?

21 MR. PELHAM: Thank you.

22 CROSS EXAMINATION

23 BY MR. PELHAM:

24 Q. Good morning, Mr. Franco. Just so I'm clear,
25 following up Mr. Bender's questions, is LIUNA's position

1 in favor of the application of Summit Carbon Solutions
2 or opposed to the application?

3 A. In favor.

4 Q. All right. Thank you.

5 MR. PELHAM: No further questions.

6 ALJ HOGAN: Mr. Jorde or Mr. Leibel.

7 MR. JORDE: Yes. Thank you.

8 CROSS EXAMINATION

9 BY MR. JORDE:

10 Q. You had said Summit failed to provide you
11 information or a list. What was that information?

12 A. That is correct, of past Pumpco projects or past
13 contractor projects, information that I will say would
14 be incredibly helpful in better understanding
15 performance issues of selected contractors and comparing
16 those issues.

17 Q. Do you have any understanding why they're hiding
18 that information?

19 A. I do not. No, I do not understand and think
20 that it would be profoundly helpful not only for us but
21 for the public at large and for the Commission.

22 Q. Are you aware if SCS Carbon Transport LLC, the
23 applicant here, owns a single backhoe or bulldozer?

24 A. I am not aware, no.

25 Q. Okay. Are you aware if they employ a single

1 welder or anyone certified to do work on a hazardous
2 pipeline?

3 A. I am not.

4 Q. When you talked about promises made, would you
5 agree, sir, that all the promises and all the
6 promotional material that's out front and everything
7 that Summit says is really only as good as the low-bid
8 contractors they hire to do the work?

9 A. Yes.

10 Q. And would you agree that this Commission, if
11 they approve this project, they're de facto approving
12 all of the unknown would-be potential contractors and
13 workers that Summit will third-party hire to build this
14 project?

15 A. Yes. Potentially, yes.

16 Q. And would you agree, therefore, that without
17 sufficient information on those contractors and their
18 background, experience, and success or failure and
19 workmanship on other projects, that this Commission
20 would not be in a position to approve this application
21 until that information is known?

22 A. I would say that without a higher level of
23 transparency to better understand past performance of
24 the contractors building this project, that I do have
25 serious concerns and think that information would be

1 incredibly helpful in evaluating the project and the
2 performance of the contractors building the project.

3 Q. And is it your opinion that based on the Ernst &
4 Young economic analysis where they -- they relied on a
5 90 percent local labor rate, that if, in fact, that's
6 closer to a 15, 1-5, that all of the promises of the
7 economic benefits would be substantially less than what
8 they claim it would be?

9 A. Substantially undercut, yes.

10 Q. Thank you.

11 MR. JORDE: Nothing further.

12 ALJ HOGAN: Mr. Bakke, any questions?

13 MR. BAKKE: Just a few questions.

14 CROSS EXAMINATION

15 BY MR. BAKKE:

16 Q. Is it concerning to you, Mr. Franco, that this
17 is the first pipeline of any type that Summit is
18 proposing to build?

19 A. It's not necessarily concerning if there was
20 more information about the contractors performing the
21 project. I have no concern necessarily that it's the
22 first one as long as there's clear information that the
23 contractors that are building it are ones that can be
24 trusted and have a strong track record of performance.

25 Q. With Summit wanting to build their first

1 pipeline, is it particularly important to make sure that
2 they hire a capable pipeline contractor?

3 A. I believe absolutely yes.

4 Q. Okay. And the information you have researched
5 is that the contractor, the prime pipeline contractor,
6 they propose to hire, Pumpco, has a documented history
7 of improper construction of energy-related pipelines?

8 A. I would say of one of their two prime
9 contractors, between Precision, which we know has a
10 strong track record of executing large scale pipeline
11 projects, and Pumpco, that I do have substantial
12 concerns about Pumpco's past performance and, thus, have
13 concerns about executing this project.

14 Q. Okay. And would you agree with me that
15 oftentimes work that's not done properly on energy
16 pipelines you won't know about until there's actually a
17 failure that occurs?

18 A. That is correct.

19 Q. Okay. And oftentimes there are construction
20 practices that are deficient in pipelines that aren't
21 even reported; correct?

22 A. I can't -- I can't speak to that assertion. I'm
23 not -- I'm not sure. There are certainly issues that
24 occur. And I think just in the review of FERC documents
25 that I observe looking specifically at Pumpco, there

1 were many documented instances of issues with pipeline
2 construction. So in terms of looking at FERC documents,
3 you can find something on issues of past construction
4 challenges on pipeline projects.

5 Q. And when you say construction challenges on
6 pipeline, you mean inadequate work, unsafe --

7 A. Mistakes.

8 Q. Okay. And would you agree with me that if a
9 contractor is used to build the pipeline who has a
10 history of unsafe practices in building that pipeline,
11 that enhances the possibility of a leak occurring?

12 A. That is precisely my concern about past concern
13 and part of the reason why I'd like to see a more
14 complete set of information on both Pumpco and Precision
15 to have even a better understanding of possible outcomes
16 based on past performance.

17 Q. Okay. Have you seen any information to indicate
18 that Summit, who's going to own this pipeline, has the
19 capability to supervise any pipeline contractor to know
20 whether or not the pipeline practices they're using to
21 construct the pipeline are done properly?

22 A. I would say I certainly have questions as I've
23 raised today. I do have confidence in the selection of
24 Precision, and that is one of the prime contractors that
25 the company selected so that gives me optimism, but I do

1 have concerns specifically around Pumpco.

2 Q. Okay. And I'm not asking specifically about the
3 pipeline companies who will build it. I'm asking about
4 Summit. Have you seen any information to suggest that
5 Summit itself has the capability to make sure this
6 pipeline is constructed safely? Who is that person?
7 Who is that engineer? Do they have anybody that you
8 know of?

9 A. Not that I know of. I will just say that the
10 selection of Precision is a vote of confidence in the
11 ability to effectively execute the construction of this
12 project. So I do have a degree of confidence, but I
13 have concerns, as I've raised today.

14 MR. BAKKE: Okay. I have no further questions.

15 ALJ HOGAN: Commissioner Christmann.

16 COMMISSIONER CHRISTMANN: We've discussed this
17 in previous cases, but would you refresh me, when you
18 talk about local hires and the economic impact, what
19 does LIUNA -- what is the distance at which LIUNA
20 considers someone a local hire?

21 THE WITNESS: We will often say living within
22 the state of North Dakota or within 150 miles of the
23 project.

24 COMMISSIONER CHRISTMANN: Either one.

25 THE WITNESS: Either/or.

1 COMMISSIONER CHRISTMANN: Someone from Mobridge
2 is local?

3 THE WITNESS: Yeah, yep. So a North Dakota
4 resident or within a relatively close proximity of the
5 project.

6 COMMISSIONER CHRISTMANN: Okay. And, I mean, I
7 think it's pretty obvious, but to be clear that's an
8 arbitrary number, that -- really, 149 miles compared to
9 151 would be the same economic impact, but you had to
10 draw a line; right?

11 THE WITNESS: Yes. Yep.

12 COMMISSIONER CHRISTMANN: In the case that you
13 cited in Texas, I think you said that the 15 percent
14 that that company was using was based on something you
15 read, a FERC filing; is that correct?

16 THE WITNESS: That is correct.

17 COMMISSIONER CHRISTMANN: And can you verify or
18 have you verified that whoever wrote that report was
19 using that same somewhat arbitrary guideline?

20 THE WITNESS: I don't know offhand and can
21 provide supplemental information, what their methodology
22 was for sort of quantifying local in that instance. In
23 the FERC filing, it was --

24 COMMISSIONER CHRISTMANN: I would like that.

25 THE WITNESS: Yeah.

1 COMMISSIONER CHRISTMANN: Just because someone
2 else might have defined it at 20 miles, at which point,
3 yeah, you'd have a lot of non-local.

4 THE WITNESS: Absolutely. How we generally
5 conceive of it is sort of within a somewhat reasonable
6 commuting distance. I mean, that's a far commuting
7 distance, but also our members drive far and a lot to
8 commute to work. So we're trying to sort of think of it
9 in terms of what is the outer bounds of a reasonable
10 commuting distance.

11 COMMISSIONER CHRISTMANN: I think since you made
12 a comparison to a specific company and a specific case,
13 we should know what the -- what guidelines they were
14 using.

15 THE WITNESS: Absolutely. Yes, we will provide
16 that.

17 COMMISSIONER CHRISTMANN: No other questions.

18 ALJ HOGAN: All right. Commissioner
19 Haugen-Hoffart.

20 COMMISSIONER HAUGEN-HOFFART: Just a couple.

21 I think Mr. Christmann wanted clarification. Do
22 you know, that FERC filing, is it a number or can you
23 reference for us that FERC filing?

24 THE WITNESS: Yes. And I will submit that
25 document. It is a number that they quantified within --

1 it was analyzing the socioeconomic impacts of the
2 project and they provided a specific number of
3 15 percent local workers.

4 COMMISSIONER HAUGEN-HOFFART: Okay. How many
5 CO2 pipelines has LIUNA helped build or assisted with?

6 THE WITNESS: Zero. Many oil and gas pipelines,
7 but this would -- this would be our first CO2 pipeline.

8 COMMISSIONER HAUGEN-HOFFART: Okay. No further
9 questions. Thank you.

10 ALJ HOGAN: Mr. Dawson.

11 SUBSTITUTE DECISIONMAKER DAWSON: When you say
12 15 percent, are you saying 15 percent of the people
13 or 15 percent of the money spent or how is that
14 measured?

15 THE WITNESS: My understanding is it would be
16 work hours were performed -- 15 percent of the work
17 hours were performed by local workers within their
18 definition of local workers.

19 SUBSTITUTE DECISIONMAKER DAWSON: And you're
20 also saying, if I understood you correctly, that
21 50 percent of the work hours could be completed by a
22 local workforce?

23 THE WITNESS: Yes.

24 SUBSTITUTE DECISIONMAKER DAWSON: Okay.

25 THE WITNESS: Which was similar on the Enbridge

1 Line 3 Pipeline in northwest -- northeast Minnesota.
2 And Dakota Access also had high numbers of local
3 workers. So we know there's a track record of
4 successfully achieving high numbers of local workers.

5 SUBSTITUTE DECISIONMAKER DAWSON: Thank you. No
6 further questions.

7 THE WITNESS: Thank you.

8 ALJ HOGAN: Mr. Pranis, any redirect?

9 MR. PRANIS: Yes, Your Honor, a few questions.

10 REDIRECT EXAMINATION

11 BY MR. PRANIS:

12 Q. So, Mr. Franco, you previously testified that
13 your organization has extensive knowledge of Precision
14 Pipeline's projects in the Upper Midwest; is that
15 correct?

16 A. Yes.

17 Q. All right. So you actually have much more
18 information or the organization has much more
19 information about Precision's projects, their successes
20 and failures, than about Pumpco already?

21 A. Yes. That is correct.

22 Q. All right. And, therefore, the research, in
23 other words, your effort and research in Pumpco, was to
24 fill in gaps that are already filled by the
25 organization's extensive knowledge of Precision's work?

1 A. That is correct. Yes. To have equivalent
2 information on both contractors.

3 Q. Thank you.

4 And I think to maybe Mr. Jorde's question,
5 Mr. Bakke's question, your organization, through
6 Mr. Whiteford and others, has documented construction
7 problems on pipelines and other projects that were not
8 identified by inspectors; is that correct?

9 A. Yes.

10 Q. So it is certainly possible for problems to
11 occur beyond what might show up in inspection reports?

12 A. Yes.

13 Q. Thank you.

14 And then in terms of the definition of local
15 workers, is it fair to say that the 150 miles, which I
16 think Commissioner Christmann correctly points out is a
17 somewhat arbitrary number, is based roughly on a
18 commuter shed, the idea that, you know, a rough distance
19 at which construction workers might drive back and forth
20 to work on a project?

21 A. Exactly. Yes.

22 Q. Thank you.

23 And in terms of the document, you mentioned the
24 15 percent. Is it accurate that that number, at least
25 as it is presented, appears to be based on the counties

1 in which the pipeline is located?

2 A. That is my understanding, yes.

3 Q. Right. And so to be clear, you're not asserting
4 that the local hire percentage on this project will be
5 15 percent. You are instead stating that the only
6 available information for this contractor suggested
7 15 percent, but really this is a question that only the
8 contractor or Summit could answer in terms of what the
9 real percentage will be?

10 A. That is correct. Yes.

11 MR. PRANIS: No further questions.

12 ALJ HOGAN: Mr. Bender, any additional
13 questions?

14 MR. BENDER: No questions.

15 ALJ HOGAN: Mr. Pelham.

16 RECROSS EXAMINATION

17 BY MR. PELHAM:

18 Q. Just a point of clarification. I think
19 Mr. Pranis just asked you, sir, about the document, the
20 FERC document I believe he was referring to, that we
21 don't have a number -- or copy of, but it's based on the
22 counties where the workers are located in? So is that
23 15 percent number from the local workers as defined by
24 the county in which the line is -- in Texas was built
25 on? I'm unclear on that.

1 A. That's my understanding. And we have copies
2 that I will share and submit. That is my understanding
3 of how they quantified in that case a local worker,
4 whether or not they were a resident of the county within
5 the project footprint.

6 Q. So that differs then from the local worker
7 vernacular that you're using which was 100 to 150 miles
8 of the project here in North Dakota of the proposed
9 line?

10 A. Yes.

11 Q. Is that fair to say?

12 A. Yes.

13 MR. PELHAM: Okay. So, Mr. Pranis, are you
14 going to offer something or --

15 MR. PRANIS: For an exhibit?

16 MR. PELHAM: Yes.

17 MR. PRANIS: I have a set of exhibits related to
18 the testimony here that I'm happy to offer today.

19 MR. PELHAM: I don't have any other questions.

20 ALJ HOGAN: All right. We'll address that after
21 questions maybe.

22 Mr. Jorde, any additional questions?

23 MR. JORDE: Nothing further.

24 ALJ HOGAN: Mr. Bakke.

25 MR. BAKKE: Nothing further.

1 ALJ HOGAN: Any further commissioner questions?

2 All right. So the exhibits, do you have more
3 than that FERC study that you want to offer?

4 MR. PRANIS: I have the FERC study and I have
5 references for the FERC inspection reports that were
6 provided that were referenced by Mr. Franco regarding
7 projects under construction by Pumpco.

8 ALJ HOGAN: Is that information commissioners
9 would want, the underlying inspection, or just the
10 study? Do you have a preference?

11 COMMISSIONER CHRISTMANN: Your Honor, I would
12 just like to know what the guidelines were that they
13 used to establish local versus non-local.

14 ALJ HOGAN: I think probably the study will be
15 sufficient.

16 MR. PRANIS: Fine.

17 ALJ HOGAN: And I think you offered an exhibit
18 at a previous hearing, Mr. Pranis, because I do have an
19 L1 already. So can we label the study L2?

20 MR. PRANIS: Yes, Your Honor.

21 ALJ HOGAN: Okay. So we'll label that as L2 and
22 that will be received.

23 All right. Thank you, Mr. Franco.

24 THE WITNESS: Thank you.

25 ALJ HOGAN: We are going to take our morning

1 break. We will reconvene at 10:35.

2 And, Mr. Jorde, you're going to present your
3 witnesses next so if you want to get your first witness
4 prepared and up at the witness stand so we can move
5 right into that testimony, I'd appreciate that.

6 (Recess)

7 ALJ HOGAN: Mr. Jorde, do you want to call
8 your first witness?

9 MR. JORDE: Yes. James Powell, COO of Summit.

10 ALJ HOGAN: Is Mr. Powell here?

11 MR. BENDER: I haven't seen him.

12 ALJ HOGAN: I don't think he's here.

13 MR. JORDE: Yeah, I saw him this morning. He's
14 in a separate room watching; watching these proceedings
15 in a room next door.

16 MR. BENDER: I guess if he is here and Mr. Jorde
17 intends to call him, I'm going to object. Mr. Jorde and
18 Mr. Bakke have had four opportunities to cross-examine
19 Mr. Powell. I indicated I was going to present
20 testimony through written testimony. In fact, Mr. Bakke
21 even indicated that if I wanted to present written
22 testimony, he had no problem with it at all.

23 UNIDENTIFIED SPEAKER: Use the microphone.

24 MR. BENDER: That he had no problem with it at
25 all. So I'm going to object to him calling Mr. Powell,

1 if he's here.

2 UNIDENTIFIED SPEAKER: We cannot hear you.

3 ALJ HOGAN: Well, I haven't seen him. I think
4 -- I know we have a lot of landowners and client
5 witnesses, Mr. Jorde. Could we address -- have them
6 testify first and if we have time --

7 MR. JORDE: No.

8 MR. BAKKE: And, Your Honor, for the record, we
9 were told at the May 9 hearing in Linton, it came from
10 counsel for Summit, they said somebody would be here
11 today to testify regarding the investors in the
12 pipeline. Mr. Powell said he had limited information on
13 that topic, but they specifically said they would have
14 someone to testify on that topic here in Bismarck. And
15 then later, after that hearing, they changed course and
16 said "We're going to have no witness." So we relied on
17 that in asking our questions of -- not asking further
18 questions of Mr. Powell.

19 MR. BENDER: And, Your Honor, if I may respond,
20 I gave both Mr. Jorde and Mr. Bakke an opportunity when
21 I made the suggestion that we have some limited time
22 involved with the witnesses that we call, that we limit
23 direct to 20 minutes, to cross to 20 minutes, and
24 questions from the Commission to 20 minutes, and they
25 rejected that and indicated that if I wanted to go

1 forward with written testimony, I could do that, and
2 that's why I changed my position.

3 ALJ HOGAN: Well, I don't see Mr. Powell so, I
4 mean --

5 MR. JORDE: Okay. Well, Mr. Bender knows he's
6 here. I mean, I saw him standing outside and they're
7 standing up there. I mean -- so, I mean, he's here. If
8 he's afraid to come testify, that's -- I don't know what
9 the position is.

10 MR. BENDER: No. I do not know that he's here.
11 I have not seen him this morning.

12 MR. JORDE: All right. Okay. Well, maybe I'll
13 catch him at the break and see if he would like to tell
14 his side of the story.

15 Micah Rorie with Summit Carbon Solutions.

16 MR. BENDER: I do know that Micah Rorie is not
17 here.

18 MR. JORDE: All right. Jeffrey Skaare, Summit
19 Carbon Solutions.

20 MR. BENDER: I do not know if Jeffrey Skaare is
21 here. I have not seen him.

22 MR. JORDE: Okay. And then Wade Becker.

23 MR. BENDER: Who's that?

24 MR. JORDE: Wade Becker, one of your witnesses
25 who gave you an opinion in a letter directed to you, he

1 apparently had an opinion on valuations of land with
2 pipelines, dated May 30th, a couple of days ago.

3 MR. BENDER: I have never seen Mr. Becker so I
4 wouldn't know if he's here or not.

5 MR. JORDE: Okay. All right. All right. Well,
6 so this gentleman who wrote a letter to you, you've
7 never seen him, you don't know him?

8 MR. BENDER: Tell me a little bit more about the
9 letter.

10 MR. JORDE: Well, it says Boulder Appraisal.

11 MR. BENDER: Oh, okay. I have talked with
12 Mr. Becker on the phone, but I've never met him.

13 MR. JORDE: Oh.

14 MR. BENDER: When I say I've never met him, I've
15 never seen him.

16 MR. JORDE: I see. Okay. All right. Well,
17 then we'll call Marilyn Bryan, please.

18 MR. BAKKE: And, Your Honor, just for purposes
19 of speeding up things so that I don't have to repeat the
20 same request, I join in Mr. Jorde's request in our case
21 that those same witnesses be called and appear to
22 testify here today from Summit.

23 ALJ HOGAN: All right. Can I have you state
24 your full name for the record and spell your last name,
25 please.

1 MARILYN BRYAN: My name is Marilyn Bryan,
2 B-R-Y-A-N.

3 ALJ HOGAN: And, Ms. Bryan, were you in the room
4 earlier when I went through the penalties for perjury?

5 MARILYN BRYAN: Yes, I was.

6 ALJ HOGAN: And do you understand what perjury
7 is?

8 MARILYN BRYAN: Yes, I do.

9 ALJ HOGAN: And being advised of the potential
10 penalties for perjury, do you promise to tell the truth
11 in this case today?

12 MARILYN BRYAN: I do.

13 ALJ HOGAN: All right. Thank you.
14 Go ahead, Mr. Jorde.

15 MARILYN BRYAN,
16 being first duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. JORDE:

20 Q. Good morning. How are you?

21 A. I'm fine. Thank you.

22 Q. Okay. Don't be nervous.

23 Ma'am, you are an owner of an entity that is
24 potentially directly affected by this hazardous
25 pipeline; is that correct?

1 A. I am.

2 Q. And what's the name of that entity?

3 A. N -- 8N2E Properties, LLP.

4 Q. And the partners of that entity, is it fair it's
5 you and your family members?

6 A. Yes. There are seven partners in our -- our --

7 Q. Okay. And some of the other partners are here
8 today and they'll offer testimony --

9 A. Yes.

10 Q. -- on different aspects?

11 A. My sister, my brother-in-law, and my niece.

12 Q. So just to kind of set the stage of where the
13 property is, I understand you've prepared an exhibit
14 here that I'd like to have marked and passed around; is
15 that right?

16 A. I did.

17 Q. All right.

18 MR. JORDE: And, Your Honor, would this then be
19 MB1? Is that okay?

20 ALJ HOGAN: That's what I would propose.

21 MR. JORDE: All right.

22 Q. (BY MR. JORDE) And we'll just pass this
23 around, ma'am. And do you have a copy in front of you
24 there?

25 A. I do.

1 Q. And just to set the stage, as I said, can you
2 help the commissioners understand specifically where the
3 property in question that we're going to talk about is
4 located?

5 A. Okay. On your map, at the very bottom center is
6 the property that I'm going to speak about today.

7 Q. And what's the general size of that property?

8 A. It is 504 acres, partly cropland, partly
9 pasture.

10 Q. And approximately is that a little north of the
11 city limits of Bismarck?

12 A. Yes. It's northeast of Bismarck. It's
13 approximately five miles from Costco.

14 Q. Okay. Very good.

15 Now, tell me a little bit and give some context
16 to the Commission, please, about the history of this
17 ground and its importance.

18 A. Okay. My testimony here today is -- to me it is
19 the -- this property is a love story. And this love
20 story dates back to 1914 when my father, Robert Morris,
21 was born to William and Anna Morris. And they lived on
22 what was called "the homeplace," which is currently
23 North 26th Street.

24 And if you refer to the map, the heart with the
25 blue around this property, that was where my father was

1 born. In 1918, just four years later, my mother, Marian
2 Schonert, was born three miles from my father. And that
3 circle or heart is noted with the pink around it. They
4 grew up as neighbors, friends, classmates. They both
5 attended Arnold School, which is a one-room schoolhouse
6 that my brothers and sister also attended later on.
7 They dated, they fell in love, and they got married.
8 And after my parents were married, they lived in
9 Bismarck for a short time where my father drove Bismarck
10 city bus and was the first delivery person for Sears and
11 Roebuck.

12 But my parents had a dream that one day they
13 wanted to own and operate their own farm and ranch and
14 raise their family in the country. So for three years
15 in a row, in the late 1940s, my father, my mother,
16 my two brothers and me, we did custom combining and we
17 drove from North Dakota down to South Dakota, Nebraska,
18 Kansas, Oklahoma, only a few short miles from the Texas
19 border, so my mother and father could save the money
20 that they made from custom combining to buy that dream
21 home, that dream farm north of Bismarck. That was
22 in 1950. And they were fortunate enough to have the
23 cash to pay for that farm.

24 And they lived on that dream farm until 1976 and
25 that is when they retired. But they loved that land so

1 much that they couldn't leave it. They wanted to stay
2 there. And so they built a house right on the corner on
3 top of a hill so they could be in the country but see
4 the Bismarck city lights. And they lived there for
5 another 21 years until they moved to Bismarck after the
6 severe winter of the 1996, 1997, similar to our winter
7 we just experienced.

8 So what does this land mean to me? This land
9 means everything to me. It was a gift. It was the most
10 precious thing that we have ever owned. The partners of
11 8N2E feel a grave responsibility to preserve and protect
12 this land and use this land for what it was intended,
13 for agriculture.

14 And I say "agriculture" because there's this
15 theory or argument out there somewhere that if you're
16 against the pipeline, then you're also against coal and
17 you're against natural gas and you're against lignite
18 and other energy sources, and agriculture was one of
19 them. We are the face of agriculture. We are
20 agriculture. We grow the crops, we raise the cattle, we
21 feed everyone here. Our tables are full of what we do
22 out there.

23 So we know that the future growth of Bismarck is
24 headed that way. We accept that. We are -- on the
25 other hand, we have promised our parents that we would

1 take good care of this land. We will do whatever we
2 have to to save it. And by having a pipeline on this
3 property, this would ruin our dreams and those dreams of
4 our children and our grandchildren. We want to do great
5 things with this land, and a pipeline is not great.

6 Q. If I could just interrupt. I understand your
7 other owners are going to talk a little bit more about
8 the development.

9 A. Yes, they are.

10 Q. But if you could just give a preview of, given
11 Bismarck's expansion your direction, what generally the
12 intent is and then we'll go into more detail --

13 A. Sure.

14 Q. -- with your sibling.

15 A. Okay. Sure. Fine. Thank you.

16 So our family has a strong history of developing
17 property for residential purposes. I have three
18 uncles -- that's my dad's brothers -- who have done just
19 that in the past. My Uncle Virgil Morris developed the
20 Grand Prairie Estates on 43rd Avenue. My Uncle Billy
21 Morris and Uncle Leonard Morris developed Shamrock Acres
22 and the 4Ks on 26th Street. The 4Ks was the first
23 subdivision in the Bismarck area dating back to the
24 1970s. And it was named after my uncle's grandchildren:
25 Kelly, Kristen, Kari, and Kent.

1 We want to be able to decide for ourselves what
2 is the best future of this land. And as far as the
3 development, like Mr. Jorde said, that will be covered
4 later, but if we should develop this land, it would be
5 like no other. At this point our thoughts and our
6 preliminary plans are for 40 plats at ten acres each
7 with green space, meadows, a place for a windmill, horse
8 riding paths, etcetera. It would be country living at
9 its very best. We are very excited about this
10 possibility.

11 So in summary, what are the negatives I have to
12 having a pipeline on this property? Just to name a few,
13 that the proposed pipeline serves no public good. Our
14 beloved state of North Dakota should not be used as a
15 dumping ground for hazardous toxic waste. And without a
16 doubt, this proposed pipeline would devalue the
17 property.

18 And what insurance company would insure the
19 property against the damages of a leak or rupture? And
20 I refer to the letter from our insurance company saying
21 that this is a -- we have a pollutant exclusion in our
22 liability policy. Who is going to insure us?

23 Q. And, ma'am, let me just stop you there. We're
24 passing out what's been marked as MB2, which is a copy
25 of that letter. And let me just ask you a few

1 questions --

2 A. Sure.

3 Q. -- about that if I can. So due to your concern
4 about potential liability and risk should this pipeline
5 be forced upon you against your will, you reached out to
6 your insurance company to get opinions of whether or not
7 there would be liability coverage for you in certain
8 circumstances; is that correct?

9 A. That is correct.

10 Q. All right. And I don't know if you're aware or
11 if you listened to a prior hearing, but an easement
12 agreement, a proposed easement agreement, is in the
13 record and there's something in that that's called an
14 indemnification clause.

15 Are you aware that Summit claims to indemnify
16 landowners in certain circumstances but not if the
17 landowner or any of its tenants or invitees, if there's
18 a claim that you did something wrong, do you understand
19 then Summit does not hold you harmless?

20 A. I understand that.

21 Q. And because of that, you then went to get an
22 opinion from the insurance company that you pay annual
23 premiums to --

24 A. Correct.

25 Q. -- to see if you could, essentially, pay to

1 protect yourselves from their risk to you; correct?

2 A. Correct.

3 Q. And the ultimate opinion was that there would be
4 no liability coverage and they wouldn't even provide the
5 defense of a lawyer to you?

6 A. That's correct.

7 Q. And then you would be out in the cold on your
8 own to fund out of pocket any claim or allegation that
9 you, a tenant, a farm tenant, did anything that led to a
10 leak, rupture, or spill?

11 A. That's correct.

12 MR. BENDER: Madam Examiner, I know this isn't a
13 jury trial and we're very loose with the rules of
14 evidence, but I think the leading is getting a little
15 bit more than we probably should have even in this type
16 of hearing.

17 MR. JORDE: We can slow down as you want to,
18 real down. I mean, whatever you want, Mr. Bender.

19 ALJ HOGAN: Yeah, I'd ask that you please ask
20 more open-ended questions.

21 MR. JORDE: Okay.

22 Q. (BY MR. JORDE) So did we kind of cover your
23 concerns about the lack of coverage or do you want to
24 expand on the fact that you'd have no coverage under
25 certain instances of you being alleged to take some

1 action that led to a release or spill?

2 A. I am not aware that there will be any other
3 recourse to take.

4 Q. And do you know if there's even a policy or a
5 rider or additional coverage you could even purchase if
6 you, theoretically, could afford that?

7 MR. BENDER: Same objection.

8 ALJ HOGAN: You can answer.

9 Your objection is noted.

10 A. I do not know where we will obtain insurance
11 coverage.

12 Q. (BY MR. JORDE) And did your insurance company
13 offer you "Well, your current policy doesn't have
14 coverage, but I can sell you this," or did they just say
15 "No option"?

16 A. He said he would look into it to see if possibly
17 there might be some other insurance that would cover.

18 Q. But, ma'am, you haven't heard from him?

19 A. No.

20 Q. And that conversation was in early April;
21 correct?

22 A. Yes, that's correct. Uh-huh.

23 Q. All right.

24 A. I'm afraid that we would not be able to afford
25 another insurance company to cover our property so...

1 Q. So do you have an opinion then on whether or
2 not, if this proposed hazardous pipeline was located on
3 your land, if that would have more than minimal negative
4 impacts on yourself, your family, and the land itself?

5 A. Would you repeat that, please?

6 Q. Yes. Do you have an opinion of whether or not,
7 should the Commission approve this pipeline which cuts
8 right through -- would cut right through your ground;
9 correct?

10 A. Yes. Diagonally.

11 Q. Yes. Do you have an opinion on whether or not
12 that is a negative impact to you and the land?

13 A. It is most definitely negative.

14 Q. And what about -- is it a negative economic
15 impact?

16 A. It is a negative economic impact because it
17 affects all seven of the current descendants of this
18 property. And as my sister will elaborate on that,
19 there are 29 descendants that it will affect eventually.

20 Q. And do you have an opinion on whether or not
21 it's an efficient use of the land resources of prime
22 residential development land in greater Bismarck to
23 bisect that land with a hazardous CO2 pipeline?

24 A. It is of no benefit.

25 Q. All right. And you said you can't think of any

1 reason how this pipeline would serve the public use or
2 public good?

3 A. No, I cannot.

4 Q. Have you heard any reasons why it would? Any
5 good arguments?

6 A. No, I have not.

7 Q. Ma'am, is there anything else you'd like to
8 expand on here today about the property or your
9 concerns?

10 A. No, other than I guess I would just like to ask
11 the Commission to think about this decision very
12 seriously. I know you have already, but ask yourselves,
13 would you want this pipeline in your backyard? And I'd
14 also like to just thank you for listening to us today.
15 I appreciate it a lot. Thank you.

16 MR. JORDE: Nothing further. Thank you.

17 ALJ HOGAN: Mr. Jorde, did you want to mark this
18 insurance letter as MB2?

19 MR. JORDE: Yes. I'm sorry, I thought I said
20 that. I'd like to mark that and then I'll, of course,
21 offer both MB1 and MB2.

22 ALJ HOGAN: Okay. First off, Mr. Bender, any
23 objection to the exhibits?

24 MR. BENDER: No objection.

25 ALJ HOGAN: And do you have any questions?

1 MR. BENDER: Yeah, just a few.

2 CROSS EXAMINATION

3 BY MR. BENDER:

4 Q. Ma'am, I apologize, maybe you covered this, but
5 I just want to make sure I understand. You have three
6 hearts on this exhibit?

7 A. Yes.

8 Q. Does 8N2E Properties own the property in yellow
9 under the red heart?

10 A. No.

11 Q. Okay.

12 A. It was my mother's original place.

13 Q. But you no longer own that; is that correct?

14 A. We do not, no.

15 Q. Okay.

16 A. We own the -- where the green heart is in the
17 center of the bottom of the page.

18 Q. Okay. Section 24; is that correct?

19 A. Yes, that's correct.

20 Q. All right. And then this particular exhibit, it
21 depicts the proposed location of the pipeline; is that
22 right?

23 A. Yes. The pipeline goes --

24 Q. I'm sorry?

25 A. -- diagonally across our property.

1 Q. But I thought you said you didn't own any
2 property in the red heart?

3 A. The red heart is owned by another family.

4 Q. Okay. But you said the pipe goes diagonally
5 through that area?

6 A. The pipeline goes diagonally through the green
7 heart.

8 Q. Okay. You don't have that on this map?

9 A. Yes, it is on the map.

10 Q. Okay. I guess you didn't understand my
11 question. The pipeline isn't depicted on this map?

12 A. No. The pipeline is not depicted on the map,
13 no.

14 Q. Okay.

15 A. Sorry.

16 Q. I understand. Thank you.

17 MR. BENDER: I don't have any other questions.

18 ALJ HOGAN: Mr. Pelham, any objection to the
19 exhibits?

20 MR. PELHAM: No objection.

21 I have a couple questions for you, ma'am.

22 ALJ HOGAN: Go ahead.

23 CROSS EXAMINATION

24 BY MR. PELHAM:

25 Q. As to communication with the company, have you

1 had any communication with the company yourself?

2 A. Not directly.

3 Q. Okay.

4 A. Other than the fact that we did invite them to
5 sit down with us -- this was back in September -- just
6 to let them know how we feel about our land and how we
7 didn't want anyone on our land to survey.

8 Q. What was their response to that?

9 A. They asked us, was there any other place around
10 our land that would be more desirable to put this
11 pipeline. And we said we didn't want to name that
12 because that's like putting somebody else in the same
13 position we are in right now. We weren't going to do
14 that. That was their job.

15 Q. As far as any potential reroute on property
16 owned by the LLP, was that discussed ever?

17 A. With them?

18 Q. Right.

19 A. No, not really. No.

20 Q. And safe to say no easement has been executed by
21 the LLP?

22 A. No. There's been no easement.

23 Q. Thank you. I don't have any other questions for
24 you. Thank you.

25 A. Okay.

1 ALJ HOGAN: Mr. Pranis, do you have any
2 objection to the exhibits?

3 MR. PRANIS: No, Your Honor.

4 ALJ HOGAN: And do you have any questions?

5 MR. PRANIS: No, Your Honor.

6 ALJ HOGAN: Mr. Bakke, any objection to the
7 exhibits?

8 MR. BAKKE: No, Your Honor.

9 ALJ HOGAN: All right. MB1 and MB2 will be
10 admitted.

11 Do you have any questions for Ms. Bryan,
12 Mr. Bakke?

13 MR. BAKKE: Just a few.

14 CROSS EXAMINATION

15 BY MR. BAKKE:

16 Q. Turning to this exhibit, Ms. Bryan, MB2, this is
17 a letter dated April 10, 2023, that you received from
18 your insurance agent from Northern States Insurance
19 Services?

20 A. Uh-huh.

21 Q. Correct?

22 A. Yes, that's correct.

23 Q. Okay. And they tell you that CO2 transported in
24 the Summit pipeline would be considered a pollutant;
25 correct?

1 A. That's correct.

2 Q. Okay. But they go on to tell you that other
3 gases or things that have a beneficial use on your
4 property are not considered under your insurance policy
5 to be a pollutant; correct?

6 A. That's correct.

7 Q. So things that you would use on your property,
8 oil, natural gas, agricultural chemicals, those types of
9 things would be covered under your policy with Northern
10 States in the event there was some loss or catastrophic
11 event?

12 A. Yes.

13 Q. Okay. And so do you understand this indemnity
14 provision means that if somebody else -- let's say you
15 had somebody on your property working, caused the
16 pipeline -- and it's on your property -- to leak, that
17 potentially you could be sued and you'd have no attorney
18 hired for you to defend you against a lawsuit or claim
19 and no coverage whatsoever?

20 A. That's true.

21 Q. Okay. And if we had a leak in the pipeline and,
22 God forbid, it went to neighboring properties and
23 someone got seriously injured or died, everything you've
24 worked for your whole life would be at risk; correct?

25 A. That is correct.

1 Q. And that's what Summit's telling you, is they'll
2 only cover if they cause the damage or cause the leak;
3 correct?

4 A. Yes.

5 Q. That doesn't give you any reassurance, does it?

6 A. It does not.

7 Q. Okay. And your agent, Mr. West, from Northern
8 States also tells you that not only do they not provide
9 an attorney to defend you if there's an event with this
10 pipeline, but they also tell you they don't even have
11 coverage available because he says there's no
12 endorsement or rider that would provide this type of
13 liability coverage?

14 A. That is correct.

15 Q. So you can't even go out and buy insurance to
16 protect you? If it goes on your land, Summit's telling
17 you you should take all the risk, your family should
18 risk bankruptcy, losing everything so they can put the
19 pipeline on your property?

20 A. That's correct.

21 Q. And were you aware that yesterday Summit
22 submitted a letter from Farmers Union, and that's W173,
23 and even the insurance agent or claims officer they
24 consulted from Farmers Union Insurance said this means
25 that there may be no coverage from your policy in the

1 event there's a release of pollutants, meaning CO2?

2 A. Yeah, I -- I do understand that.

3 Q. Okay. They've determined the same thing that
4 your agent's telling you, is there's not going to be any
5 coverage in the event of a release of CO2 from that
6 pipeline?

7 A. Correct.

8 Q. Now, you understand that lawyers being like they
9 are, sometimes they start lawsuits and claims where the
10 party's ultimately determined not to be at fault in any
11 way; correct?

12 A. Yes, I am.

13 Q. And so even if you did absolutely nothing wrong,
14 you could be drug into a lawsuit that could drag on for
15 years and have to incur expensive attorney's fees to
16 fight that lawsuit if --

17 A. Yes.

18 MR. BAKKE: I have nothing further.

19 ALJ HOGAN: Commissioner Christmann.

20 COMMISSIONER CHRISTMANN: I think I understood
21 your points. I just want to make sure my notes are
22 correct. 8N2E Properties, that's the number 8, N as in
23 "Nancy," the number 2, E as in "echo"?

24 THE WITNESS: Correct.

25 COMMISSIONER CHRISTMANN: Got it. Thank you for

1 being here.

2 THE WITNESS: It actually stands for eight miles
3 north and two miles east, but that was before the growth
4 of Bismarck has gone way beyond --

5 COMMISSIONER CHRISTMANN: Now you gave away your
6 code.

7 THE WITNESS: It's like four miles now instead
8 of eight.

9 ALJ HOGAN: Commissioner Haugen-Hoffart.

10 COMMISSIONER HAUGEN-HOFFART: Yes, I have a
11 couple questions.

12 THE WITNESS: Sure.

13 COMMISSIONER HAUGEN-HOFFART: So for
14 clarification, in September you did sit down with Summit
15 and have communication?

16 THE WITNESS: Yes. We asked them to come and
17 visit with us.

18 COMMISSIONER HAUGEN-HOFFART: And during that
19 time, what was discussed? You didn't want to sign the
20 easement or --

21 THE WITNESS: We just told them what the land
22 meant to us.

23 COMMISSIONER HAUGEN-HOFFART: Okay. So you
24 offered no reroute to them because you indicated that
25 it's the company's job. What further communication have

1 you had with Summit since that meeting in September?

2 THE WITNESS: I will have to say none other than
3 we were sued. That was -- that was actually before our
4 meeting with them. We were sued for not voluntarily
5 giving permission for the survey.

6 COMMISSIONER HAUGEN-HOFFART: So that's been
7 your last correspondence with them?

8 THE WITNESS: Yes. Uh-huh.

9 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.
10 No further questions.

11 ALJ HOGAN: Mr. Dawson, any questions?

12 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
13 Thank you.

14 ALJ HOGAN: Any redirect, Mr. Jorde?

15 MR. JORDE: Yes, just a moment.

16 REDIRECT EXAMINATION

17 BY MR. JORDE:

18 Q. Ma'am, has Summit since offered you any
19 alternatives or suggestions? They've listened to your
20 concerns and have they come back with anything in terms
21 of a new or better plan?

22 A. No.

23 Q. All right. Do you think that it's unwise for
24 the current route, not only through your property but
25 through greater Bismarck, that's proposed and do you

1 believe it would be more wise, if they're going to do
2 this at all, to go on the southern side of Bismarck?

3 A. Yes. I would definitely prefer that.

4 Q. And are you aware that Summit has claimed "Well,
5 shucks, we can't do that because it would take" --
6 allegedly -- "two more years to review that
7 possibility"? Are you aware of that?

8 A. I am.

9 Q. And do you think that should be on you, that the
10 fact that they might have to spend a little more money
11 to have the privilege of this hazardous pipeline across
12 all of North Dakota, that that's just part of their
13 business decision to locate in the first place?

14 A. I -- I don't know why. I don't know why they
15 want to do what they want to do, but I don't think
16 they're looking at the landowners' rights. And we, as
17 of this great state of North Dakota, are having to give
18 up our own land that we love. They're not looking at
19 that.

20 Q. Do you think it's fair when balancing the
21 equities and the considerations of this Commission
22 relative to net impacts, that a single ethanol plant
23 should be able to profit off sequestering carbon dioxide
24 at the expense of 300-plus miles of North Dakota land?

25 A. No. I think we're -- we're using North Dakota

1 as a dump ground. And I think every state that is
2 involved with this pipeline should take care of their
3 own. Why should it all come up here and be dumped in
4 our precious ground?

5 Q. Thank you.

6 MR. JORDE: Nothing further.

7 ALJ HOGAN: Mr. Bender, any additional
8 questions?

9 MR. BENDER: Just a couple questions.

10 RECROSS EXAMINATION

11 BY MR. BENDER:

12 Q. Ma'am, I think in response to your counsel's
13 question you indicated that you haven't received any
14 recent contact from Summit about rerouting the pipeline.
15 Is that a fair statement of your testimony?

16 A. Not -- not personally, not --

17 Q. And do you know your counsel contacted Summit
18 and said we were to have no contact with you?

19 A. Did --

20 Q. Are you aware of the fact that your counsel
21 contacted me and said we are to have no contact with his
22 client?

23 A. No, I'm not aware of it.

24 Q. Do you think we should have contacted you even
25 though your counsel instructed us not to contact you?

1 A. I'm not aware that my counsel contacted you.

2 Q. Well, what do you think? Do you think if your
3 counsel did contact us and tell us not to have contact
4 with you, should we have still contacted you?

5 MR. JORDE: Objection. It's irrelevant and
6 hypothetical.

7 ALJ HOGAN: She can answer it.

8 A. I already answered.

9 Q. Pardon me?

10 A. I've already answered.

11 Q. What was your answer?

12 A. I am not aware of the fact that my counsel
13 contacted --

14 Q. I'm saying if your counsel did contact Summit
15 and indicate that we should not have any contact with
16 you, do you think Summit should still have contacted
17 you? Pardon me?

18 A. No.

19 Q. All right. Thank you.

20 MR. JORDE: Well, I have to have a follow-up on
21 that and that's why we need to have Jimmy Powell to come
22 out of his room where he's hiding in and come here and
23 testify, because you know my email, you know my number,
24 and no one's contacted me.

25 ALJ HOGAN: Okay. We're taking testimony. I

1 ask the attorneys not to engage each other in this back
2 and forth. I don't think that's a productive use of our
3 time today.

4 Mr. Pelham, any questions?

5 MR. PELHAM: I don't have any other questions.
6 Thank you.

7 THE WITNESS: Thank you.

8 ALJ HOGAN: Mr. Pranis, any questions?

9 MR. PRANIS: No, Your Honor.

10 ALJ HOGAN: Mr. Bakke?

11 MR. BAKKE: No, Your Honor.

12 ALJ HOGAN: Any other commissioner questions?

13 COMMISSIONER CHRISTMANN: No.

14 COMMISSIONER HAUGEN-HOFFART: No.

15 ALJ HOGAN: All right. Thank you, Ms. Bryan.

16 THE WITNESS: Thank you.

17 ALJ HOGAN: All right. Mr. Jorde, you can call
18 your next witness.

19 MR. JORDE: Yes, Your Honor. Thank you.

20 Roberta Klusmann.

21 ALJ HOGAN: Good morning. I'll have you start
22 by stating your full name and spelling your last name
23 for the record.

24 ROBERTA KLUSMANN: Roberta Klusmann,
25 K-L-U-S-M-A-N-N.

1 ALJ HOGAN: And, Ms. Klusmann, were you in the
2 room earlier when I went through the penalties for
3 perjury?

4 ROBERTA KLUSMANN: Yes.

5 ALJ HOGAN: And do you understand what perjury
6 is?

7 ROBERTA KLUSMANN: Yes, ma'am.

8 ALJ HOGAN: And being advised of the potential
9 penalties for perjury, do you promise to tell the truth
10 in this case today?

11 ROBERTA KLUSMANN: I do.

12 ALJ HOGAN: All right. Thank you.

13 Go ahead, Mr. Jorde.

14 MR. JORDE: Thank you, Your Honor.

15 **ROBERTA KLUSMANN,**

16 being first duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. JORDE:

20 Q. Ma'am, what's your relation to Ms. Bryan who
21 just testified?

22 A. That's my sister.

23 Q. All right.

24 A. She's our manager.

25 Q. Manager of the --

1 A. Of the 8N2E Properties, uh-huh.

2 MR. JORDE: And, Your Honor, I've passed around
3 what's been marked RL1, and I think that's finding its
4 way to everybody.

5 Q. Ma'am, before we go through what you've
6 prepared, I'd like to turn to the very last page just to
7 set the stage for the Commission of exactly where the
8 affected property is. So if I could just ask you to
9 turn there. Is the last page of Exhibit RL1 a true and
10 accurate copy of information provided to you, to the
11 entity, by Summit of where their proposed hazardous
12 pipeline would diagonally dissect your property?

13 A. Yes, it is. It's diagonally straight through
14 504 acres.

15 Q. All right.

16 A. Right in the middle.

17 MR. BENDER: Ms. Examiner, may I --

18 Excuse me for interrupting, Mr. Jorde.

19 I believe this witness has testified previously.
20 And in the interest of time, I don't think people should
21 be --

22 THE WITNESS: No.

23 MR. BENDER: -- given the opportunity to testify
24 more than once.

25 THE WITNESS: I've never testified. Ever.

1 MR. BENDER: You never testified?

2 THE WITNESS: This is the first time.

3 MR. BENDER: Okay.

4 THE WITNESS: All right.

5 MR. BENDER: Sorry.

6 THE WITNESS: Uh-huh.

7 Q. (BY MR. JORDE) So, again, we're at RL1, the
8 very last page --

9 ALJ HOGAN: Hang on, Mr. Jorde.

10 Ms. Klusmann, can you tell us, give us a legal
11 description of where this property is?

12 THE WITNESS: Yes, I can. Township 140, Burnt
13 Creek, the range is 80 west, section 24.

14 ALJ HOGAN: Is it -- on MB1, is it the green
15 heart? Do you know?

16 THE WITNESS: Yeah, it would be the green.
17 Uh-huh.

18 ALJ HOGAN: Okay. Thank you.

19 Sorry, Mr. Jorde, for the interruption.

20 THE WITNESS: No problem.

21 MR. JORDE: Totally fine.

22 Q. (BY MR. JORDE) So, again, the total number of
23 acres in yellow on this last page of RL1, as you said,
24 over 500.

25 A. Yes. 504 acres.

1 Q. And is it fair to say you have concern about the
2 pipeline generally but specifically about the route
3 they've chosen to dissect three separate of your
4 parcels?

5 A. Yes.

6 Q. Okay. All right. So now that we've kind of set
7 the stage of where it's at, I notice that you have here
8 a demonstrative in front of you. Can you -- we don't
9 have to go through every single photo, but if you give
10 us a little flavor about what that is and why it's
11 important.

12 A. All right. So you all have pictures so I wanted
13 you to be able to --

14 COMMISSIONER HAUGEN-HOFFART: Can you move the
15 microphone up to you?

16 THE WITNESS: Sure.

17 COMMISSIONER HAUGEN-HOFFART: Thank you.

18 A. You all do have these pictures, but I did want
19 to let you see them up close because I knew I'd be
20 having this back here.

21 Anyway, I'm the fourth child born to Robert and
22 Marian Morris. I was born on that farm. And this has
23 been my life for 71 years. And as long as I have legs,
24 I will walk this land. As long as I have legs to walk.
25 This land means everything to me. This is where I

1 vacation. This is where I get joy. This is where I get
2 peace, tranquillity. This is where I picnic. This is
3 where I pick chokecherries.

4 This is where I picnic on the rock foundation of
5 the first Burleigh County country school. The rock
6 foundation is still there. This is where I walk the
7 land to find other rock foundations that we believe is a
8 poet Francis Boyner's (phonetic). This is the land I
9 walk, that Linda Slaughter walked. And she was the
10 first postmistress of Bismarck and the first
11 superintendent in Burleigh County and teacher. You'll
12 see cow paths. I walk the cow paths.

13 I guess what's probably most important is in the
14 middle. This is the 29 descendants of this property.
15 These are real people. This is what they look like
16 today. And these people, we are the inheritants to this
17 land. This was a gift from my parents to us upon their
18 passing.

19 You'll see pictures of me enjoying this land. I
20 have thousands of pictures. I take thousands of
21 pictures of this land. That's how much I love it.
22 You're only seeing a taste of it. Look at the cattails.
23 I pick crocuses just like dad did for mother all those
24 years. All those years. All these flowers that you
25 see, you have -- they're all native prairie flowers.

1 This means something to me. And I sure don't
2 want a pipeline going and messing up our beautiful
3 property. This is God's country. This land is sacred
4 to our family. The state flower of North Dakota grows
5 on this land.

6 This land is cropland and this land is native
7 prairie grass that's unbroken. Unbroken prairie grass
8 can be up to 12 feet deep. 12 feet deep. If you mess
9 with the roots of -- 12 feet deep is just as deep as my
10 love for this land. And if you mess with that kind of
11 -- the root system, you can goof up the ecosystem of the
12 watershed which we have on our land.

13 Q. Let me just ask a question there while we
14 continue to go through this.

15 A. Okay.

16 Q. With native prairie grassland, are you aware of
17 the difficulties of getting that to grow back? If a
18 trench is dug, a pipeline is built, you have
19 infrastructure that's emitting more heat and messing up
20 with the soil chemistry, do you have any opinions on how
21 devastating that would be?

22 A. I can't imagine how devastating that would be.
23 I mean, it would -- it would be awful. It would be
24 totally awful. We picked artifacts off this land. My
25 sister, she found what we believe held the school bell

1 on the rock foundation. We found -- we just love
2 looking for things.

3 The land that is broken, this prairie breaker
4 plow, on your noon hour you can go over and look at it.
5 It's -- my dad donated it to the Heritage Center in 1989
6 after the Centennial. It's right here. This is the
7 kind of man my father was. We are going to honor him.
8 He donated that to this Heritage Center. He gave virgin
9 soil from this land to the governor's mansion lawn. He
10 gave virgin soil for the 1989 Centennial, all the
11 flowers that could spell out Bismarck, North Dakota,
12 whatever it was. This is the kind of man he was. We're
13 going to keep honoring him.

14 Q. And, ma'am, did you and your family make a
15 promise to your parents to be the best stewards of this
16 ground that you possibly could, whether it's keeping
17 areas as native grassland or the wildflowers or whether
18 in the future it includes developing it so other people
19 can enjoy it?

20 A. Yes, we did. We -- we said we would -- he -- he
21 just said do something great with this land. Some day
22 do something great with this land.

23 Q. And is any part of that promise and any part of
24 what your parents' legacy and your legacy will be, does
25 any part of that have to do with allowing a hazardous

1 high pressure carbon dioxide pipeline to dissect the
2 land?

3 A. No. It would be devastating to this land. This
4 is all we have. This is my retirement, this land, my
5 portion of this land. I don't have a pension. I don't
6 have a retirement. But this land is the only thing I
7 have in my name. And I plan to use it in my old age.
8 If I have to go to a nursing home, I plan to use it some
9 day.

10 Q. And are you aware if Summit or their third-party
11 contractors have been on your land here in question and
12 surveying it?

13 A. I'm aware that they've been on there four times,
14 but I have no idea how many times because I just don't
15 know.

16 Q. And have they provided you or Mr. Leibel or I as
17 your counsel the findings of any of their surveys?

18 A. No. They've never contacted us to even ask to
19 go on it.

20 Q. And have they provided us any findings of any of
21 the examinations, whether to confirm artifacts and
22 historical places of significance on your land?

23 A. They haven't. They just don't -- they have
24 never called us.

25 Q. Okay.

1 A. We called them to invite them in to my home here
2 in Bismarck to tell them why we love -- just like I'm
3 telling you why I love this land, that's what we told
4 them.

5 Q. And when you told them that, did it have an
6 impact? Did they do anything with that information?

7 A. No. They walked out the door. It was a very
8 fine conversation. It was nothing wrong. I mean, they
9 just --

10 Q. Just led nowhere?

11 A. It led nowhere.

12 Q. Okay.

13 A. No.

14 Q. All right. And do you think that's part of
15 their kind of PR campaign, to be able to say "Well, we
16 talked to them," check the box, but it ultimately goes
17 nowhere?

18 MR. BENDER: Objection. Calls for speculation.

19 ALJ HOGAN: I agree.

20 Q. (BY MR. JORDE) Well, what was your impression?
21 What was your impression of the purpose of them being
22 there? Did you --

23 MR. BENDER: Same objection.

24 MR. JORDE: No. It's her impression. That's
25 not speculation.

1 A. I --

2 ALJ HOGAN: Hang on. She can answer as to her
3 understanding of their purpose there.

4 A. Of their purpose coming to my home?

5 Q. (BY MR. JORDE) Yeah, the real --

6 ALJ HOGAN: Your impression of why they came.

7 A. Well, I invited them so that they would move
8 this pipeline route off our land. I -- I'm -- I told
9 them they put it in the wrong place.

10 Q. And did you form an impression that they were
11 taking you seriously or that they were going to do
12 anything about your concerns?

13 MR. BENDER: Objection. Leading.

14 ALJ HOGAN: It is leading. You've got to ask
15 open-ended questions.

16 MR. JORDE: All right.

17 Q. (BY MR. JORDE) This is form -- this is a yes
18 or no question. Did you form an opinion, yes or no,
19 about the truthfulness or the willingness of them to
20 listen and then to actually do something to protect this
21 ground?

22 A. No. There wasn't any willingness. And we never
23 heard back from them.

24 Q. Okay. All right. Are there any other
25 particularly important images other than the ones that

1 we've talked about that you'd like to address before we
2 wrap up?

3 A. Well, I mean, it's just beautiful. You should
4 all go out there. When you look at the rocks and you
5 look at nature, it's breathtaking. It's absolutely
6 breathtaking. This is where nature lives too.
7 Beautiful animals.

8 We rent this. Right now it's being rented. And
9 we sure don't want any danger to our renter's cattle.
10 That's for darn sure.

11 Q. Ma'am, I notice that if you kind of page towards
12 the back, it's the fourth to last page on our exhibit
13 here, and you've got a gentleman holding what appears to
14 be native prairie grass and showing the roots. What was
15 your intent with that photo?

16 A. I wanted to show how deep the roots are of
17 native prairie -- unbroken native prairie grass compared
18 to agricultural roots, which there's a difference. This
19 shows this. So this is the only picture -- other than
20 the words on here, everything else is straight from that
21 land or pictures of my family.

22 Q. And is it your understanding then to not
23 interfere with the native prairie grass that Summit
24 would have to place its pipeline up to 12 feet below the
25 surface?

1 A. They can't do that to us.

2 Q. I understand that. I understand that but --

3 A. No. I don't want them to do anything to that
4 land.

5 Q. Understood.

6 A. If anybody does anything to that land it will be
7 us because we've made that decision to do it.

8 Q. I don't have anything further. Thank you.

9 ALJ HOGAN: Mr. Bender, any objection to the
10 exhibit?

11 MR. BENDER: No objection.

12 ALJ HOGAN: Do you have any questions?

13 MR. BENDER: I do, just a few questions.

14 CROSS EXAMINATION

15 BY MR. BENDER:

16 Q. First of all, ma'am, I apologize for suggesting
17 that you testified before this body before, but did you
18 testify before the Burleigh County board of county
19 commissioners?

20 A. Yes.

21 Q. Okay. I think that's where I saw you.

22 A. That could be.

23 Q. So I apologize. I don't think I have any
24 questions.

25 ALJ HOGAN: All right. Mr. Pelham, any

1 objection to the exhibit?

2 MR. PELHAM: No objection.

3 It must have taken you a while to put that
4 together so thank you for doing that.

5 THE WITNESS: Uh-huh.

6 MR. PELHAM: I don't have any other questions.

7 ALJ HOGAN: All right. Mr. Pranis, any
8 objection to the exhibit?

9 MR. PRANIS: No, Your Honor.

10 ALJ HOGAN: Any questions?

11 MR. PRANIS: No.

12 ALJ HOGAN: Mr. Bakke, any objection to the
13 exhibit?

14 MR. BAKKE: No objection.

15 ALJ HOGAN: All right. The exhibit is received,
16 and I marked it as RK1.

17 Mr. Bakke, any questions?

18 MR. BAKKE: Just briefly.

19 CROSS EXAMINATION

20 BY MR. BAKKE:

21 Q. Ms. Klusmann, you've indicated that your family
22 has plans to develop this property?

23 A. We do.

24 Q. And is it your family's intent and yours to
25 develop it in a way that respects your parents' wishes?

1 A. Yes.

2 Q. Okay. And is it your intention and your
3 family's intention to develop it so that the native
4 prairie grass system will remain intact as part of the
5 development?

6 A. Yes. My husband will be speaking more on that,
7 but yes. These are going to be big lots so it's going
8 to preserve and we're going to be preserving all the
9 different little historical areas too.

10 Q. Okay.

11 A. It's all been set aside.

12 Q. Okay. Thank you. I have nothing further.

13 A. Yeah.

14 ALJ HOGAN: Commissioner Christmann.

15 COMMISSIONER CHRISTMANN: For clarification, I
16 know that part of this was not your testimony, it was
17 your sister's, but her testimony shows all but the
18 northeast 80 acres of section 24 as being -- it's not
19 real clear. I think John B. Racek?

20 THE WITNESS: That's who my father bought from.
21 When my father bought the farm in 1950, the year before
22 I was born --

23 COMMISSIONER CHRISTMANN: Okay.

24 THE WITNESS: -- he bought it from Mr. Racek.

25 COMMISSIONER CHRISTMANN: And then your map, all

1 the yellow portions show it as being the LLP, but the
2 southwest quarter, it's kind of split between the LLP
3 and David Lehman.

4 THE WITNESS: Yes. He owns the farm.

5 (Simultaneous speaking)

6 COMMISSIONER CHRISTMANN: Or did he sell some of
7 that?

8 THE WITNESS: My father sold the farmhouse and I
9 think it's 41, 2 acres around there.

10 COMMISSIONER CHRISTMANN: To someone else.

11 THE WITNESS: To someone else. It was another
12 person's land, home, before David Lehman. David Lehman
13 is not the first owner.

14 COMMISSIONER CHRISTMANN: Thanks for clarifying.

15 ALJ HOGAN: Commissioner Haugen-Hoffart.

16 COMMISSIONER HAUGEN-HOFFART: Yes, I have a
17 question. I'm going to refer to this picture.

18 THE WITNESS: Yes.

19 COMMISSIONER HAUGEN-HOFFART: And it's on your
20 poster board. Are they sinkholes?

21 THE WITNESS: No.

22 COMMISSIONER HAUGEN-HOFFART: What are --

23 THE WITNESS: That is our animal holes. That's
24 their homes.

25 COMMISSIONER HAUGEN-HOFFART: Oh.

1 THE WITNESS: I have a love for animals and I
2 wanted to show you just a few of the ones that I found.
3 They're beautiful.

4 COMMISSIONER HAUGEN-HOFFART: So is that in the
5 section --

6 THE WITNESS: They're prairie dogs. You can go
7 out there now and you can see them.

8 COMMISSIONER HAUGEN-HOFFART: Is that in
9 section --

10 THE WITNESS: Could be foxes, badgers, any --
11 you know, any kind of wildlife.

12 COMMISSIONER HAUGEN-HOFFART: Is that in section
13 24 that goes right through?

14 THE WITNESS: Oh, yeah.

15 COMMISSIONER HAUGEN-HOFFART: Okay.

16 THE WITNESS: Yeah.

17 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.

18 ALJ HOGAN: Mr. Dawson, any questions?

19 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
20 Thank you.

21 ALJ HOGAN: Mr. Jorde, any redirect?

22 MR. JORDE: Just briefly.

23 REDIRECT EXAMINATION

24 BY MR. JORDE:

25 Q. So I appreciate Commissioner Christmann's

1 clarification. So the map that you have here, this is a
2 Summit-produced map where it highlights yellow, which
3 are your properties, but you also own more than the
4 majority of the portion of what's in the green in the
5 lower left-hand corner; correct?

6 A. Yeah. That's that -- it would be the -- excuse
7 me. That is -- yes. That is cropland.

8 Q. Okay. And to be clear --

9 A. It's right next -- it says -- next to David
10 Lehman, that is all cropland there.

11 Q. Understood.

12 And is it your opinion that you believe the
13 value of that land, although not shown in yellow on the
14 last page of your exhibit, would also be negatively
15 impacted by the existence of the dissecting hazardous
16 pipeline?

17 A. Yes. This whole 504 acres would be affected.

18 Q. Okay. And I'm sorry, did you have one more
19 thing you wanted to share?

20 A. Yes. I have several things I want to share.

21 Q. Okay. Go ahead.

22 A. I just want -- I want to thank you, Judge and
23 Commissioners, for listening to me today. And I want
24 you to know that I'm a lover of the land, especially
25 North Dakota land. I'm a girl of the prairie and I go

1 out there every chance I can get.

2 This land, our land, was not the original
3 pipeline route. It was moved from Mr. Dale Pahlke's
4 south of us onto our land, and we don't know why. We
5 were never notified the route was on our land. Ever.
6 We found out about it on television watching the
7 Burleigh County Commission meeting. You can imagine
8 what a shock it was. We said, "I think that's our land
9 they've moved it on."

10 Summit Carbon Solutions chose the wrong land and
11 they need to find a new route for this pipeline. If
12 they moved it 3,000 times, they can move it 3,001. This
13 proposed pipeline serves no public good whatsoever.

14 This land is our land. It's not Summit's. We
15 want the pipeline out of our life. It's ruined our life
16 for the past year. And I mean ruined our life. We have
17 our own plans for this land. Plans for us and not for
18 Summit.

19 Our partnership is always going to be opposed to
20 this pipeline. We don't want the responsibility of a
21 pipeline on our land with a 99-year lease. That's
22 totally unacceptable. This CO2 proposed pipeline is not
23 just an invasion; it's an infiltration into our privacy.
24 Our partnership will never ever agree to an easement
25 with Summit Carbon Solutions. They are not to be

1 trusted. And I do not trust their investors. I've been
2 studying.

3 We have been victimized in this political
4 movement and I'm sick of it. I want the committee to
5 know what carbon -- Summit Carbon Solutions has done to
6 us for a year. The stress has been monumental. It has
7 affected our mental, our emotional, our physical health,
8 and our financial livelihood. This land, on the other
9 hand, gives me peace and tranquility and joy and has
10 given me freedom that we have here in the United States
11 of America. I feel broken and violated and I feel like
12 I've been raped.

13 The proposed pipeline is just too close to
14 Bismarck. What were they thinking? They weren't
15 thinking. We can't move our land so they're just going
16 to have to move their pipeline. And I mean it. As
17 Bismarck grows, this is the direction it's going to
18 grow. We have plans for this land. This land has
19 unlimited potential development for residential and in
20 the near future.

21 Summit Carbon Solution is trying to steal that
22 from us. Do you see that? They're trying to steal it
23 from us. From all 29 descendants. I'm here for our
24 partnership. I'm not here for Summit. A CO2 pipeline
25 would devalue our prime real estate at 8N2E Properties

1 LLP, totally diminishing the value.

2 This land was a gift to us, to me, from our
3 parents, grandparents. I'm counting on this land as
4 income in my old age. This is the only thing I have in
5 my name. Summit's name is not there. I'm sure my
6 partners feel the same. It's just not right and I think
7 our partnership knows better what to do with our own
8 land, not Summit. That's for sure.

9 This land is our inheritance. We're here to
10 honor our parents and grandparents. Our partnership is
11 -- our partnership plan is to secure our future. Prime
12 development is already in progress. They instilled in
13 us -- my folks, grandparents, they instilled in us a
14 love for land. They didn't give it to Summit. They
15 gave it to us. They asked us to take care of it and do
16 something good with it.

17 I'm here today to protect our land. I'm here
18 for my country neighbors that live close to this land.
19 I'm here for the native prairie grassland and all the
20 flowers that are native to North Dakota that grow on
21 there. I'm here for the wildlife. I'm here for the
22 well and the dam that my dad built. I'm here for the
23 people of Burleigh County and the city of Bismarck, for
24 Pete's sake. I'm here for the air I breathe when I'm
25 out there.

1 My husband and I won't ever be able to replace
2 the time we've taken away from our family this past
3 year, from our kids and our grandkids, just so we could
4 defend this land. They're so understanding.

5 The people of Burleigh County and Bismarck have
6 spoken. They do not want this pipeline. The Burleigh
7 County Commission, the planning and zoning committee,
8 the City of Bismarck, the Homebuilders Association, the
9 Bismarck Public Schools, the children. Think of the
10 children. I believe I heard that the Realtors
11 Association is in on it here. I can't confirm, but I
12 think they are too.

13 This is we the people. You know everything is
14 fine and dandy when it doesn't happen to you. I ask
15 you, the Public Service Commission, to deny access or
16 deny a permit to Summit Carbon Solutions. No one should
17 have to be going through this against their will. This
18 land is a God-given gift to our family and a real
19 blessing for all of us.

20 So, again, I ask you, the Commission, to reject
21 the Summit Carbon Solutions application.

22 MR. JORDE: Thank you. I don't have any further
23 questions.

24 ALJ HOGAN: Mr. Bender, any additional
25 questions?

1 MR. BENDER: No questions.

2 ALJ HOGAN: Mr. Pelham. Mr. Pranis.

3 MR. PRANIS: No, Your Honor.

4 ALJ HOGAN: Mr. Bakke.

5 MR. BAKKE: No, Your Honor.

6 ALJ HOGAN: Any further Commission questions?

7 All right. Thank you, Ms. Klusmann.

8 THE WITNESS: You're welcome. Thank you too.

9 ALJ HOGAN: Mr. Jorde, do you want to call your
10 next witness?

11 MR. JORDE: We call Teresa Yarlott.

12 ALJ HOGAN: Good morning. I'll have you start
13 by stating your full name and spelling your last name
14 for the record.

15 TERESA YARLOTT: Teresa Mae Yarlott, Y-A-R.

16 ALJ HOGAN: You're going to have to pull the mic
17 closer.

18 TERESA YARLOTT: Sorry.

19 ALJ HOGAN: That's okay.

20 TERESA YARLOTT: Teresa Mae Yarlott,
21 Y-A-R-L-O-T-T.

22 ALJ HOGAN: Ms. Yarlott, were you in the room
23 earlier when I went through the penalties for perjury?

24 TERESA YARLOTT: Sure. Yes.

25 ALJ HOGAN: And do you understand what perjury

1 is?

2 TERESA YARLOTT: I do.

3 ALJ HOGAN: And being advised of the potential
4 penalties for perjury, do you promise to tell the truth
5 in this case today?

6 TERESA YARLOTT: I do.

7 ALJ HOGAN: All right. Thank you.

8 Go ahead, Mr. Leibel.

9 MR. LEIBEL: Yes.

10 ALJ HOGAN: Go ahead.

11 TERESA YARLOTT,

12 being first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. LEIBEL:

16 Q. Good morning, Teresa.

17 A. Good morning.

18 Q. Can you first identify your relationship to 8N2E
19 and the witnesses who have testified so far?

20 A. My grandparents owned the land and my father,
21 which is their brother, and my uncle over there, but I'm
22 the daughter, so I'm the niece of Aunt Roberta and
23 Marilyn.

24 Q. Okay. Now, your Uncle Lon is going to be the
25 next witness and he's going to discuss the development.

1 I would like you just to provide the Commission a little
2 bit of history as to the development and your family's
3 -- your immediate family's role in the development.

4 A. Well, as long as I can remember my father was in
5 real estate. He sold land. There was always plans to
6 develop. It's been a special piece of my life. It's
7 tearing our family apart. I'm trying not to cry. I --
8 I hope that you understand. My father helped develop
9 Fox Island so he was very competent. He's not here
10 anymore. My father passed away and now I'm a partner.
11 And I have lost enough. Please stop. This is all I
12 have. I apologize.

13 Q. And I know this is hard, Teresa.

14 A. I flew here yesterday to be present. I flew
15 here from Phoenix, Arizona, connected in Minneapolis. I
16 hate traveling. But I felt it was important.

17 I want you to know I love North Dakota. I've
18 had plans to move back here. I had plans to retire here
19 with my retirement. It's all going to be gone. All my
20 family, all my history, my Christmases. We'd go to the
21 farm. You guys are stealing it.

22 And we're going to pay taxes to keep it going?
23 What's happening? Why is tax money being used for
24 something like this and then we're losing land too?

25 I work hard. I'm a single woman. I am tired of

1 this. Look what it's doing to my family. Please, I beg
2 of you, think of the future. I'm so scared that the
3 future, they're going to look at us and laugh. Because
4 this is not good use of the land. What's happening to
5 America? Please, please take consideration, not just
6 for my family but for America.

7 Q. Now, Teresa, did you -- like I said, your uncle
8 is going to talk a little bit more about the specifics
9 of the development your family had been working on. Is
10 that something that you personally feel like you have a
11 financial --

12 A. Oh, my goodness, yes.

13 Q. -- of?

14 A. Yes.

15 Q. Okay. Can you --

16 A. I'm working hard for my future and this is going
17 to help me. I have medical issues. This is going to
18 help me in my later years when I can't work anymore.
19 It's going to help my son. It's going to help my
20 cousins, all 29 of us.

21 And I hope you can sleep well at night with your
22 decision and think of my family, our future, our past.
23 This -- everywhere I go in Bismarck has history. We're
24 sitting right in this building that has all of our
25 family's future and past.

1 I don't know what more to say. Money is evil.
2 I'm not -- I could care less about money, but I need it
3 to survive and that's all we're trying to do.

4 Q. Okay.

5 A. I hope I answered your question. I'm just
6 emotional. I traveled all night to be here and I fly
7 out tomorrow.

8 I need to make a statement. I need you to
9 understand. This means the world to me. And to see my
10 aunts going through this for the past year. And we
11 didn't ask for this. We did not. We were happy. And
12 the past year has been hell.

13 Q. Okay. Thank you, Teresa. I don't have any
14 further questions.

15 A. Thank you.

16 Q. No, you got to wait.

17 ALJ HOGAN: Wait, wait, wait. Hang on.

18 THE WITNESS: I just want to run.

19 ALJ HOGAN: We might have other questions for
20 you.

21 Mr. Bender, any questions?

22 MR. BENDER: No questions.

23 ALJ HOGAN: Mr. Pelham.

24 MR. PELHAM: Thanks for being here. No
25 questions.

1 THE WITNESS: Thank you very much.

2 ALJ HOGAN: Mr. Pranis.

3 MR. PRANIS: No, Your Honor.

4 ALJ HOGAN: Mr. Bakke.

5 MR. BAKKE: No questions.

6 ALJ HOGAN: Commissioner Christmann.

7 COMMISSIONER CHRISTMANN: I do not either, but
8 thank you for your efforts to be here.

9 THE WITNESS: Thank you.

10 ALJ HOGAN: Commissioner --

11 Hang on, hang on.

12 Commissioner Haugen-Hoffart.

13 THE WITNESS: I want to run.

14 COMMISSIONER HAUGEN-HOFFART: I really want to
15 thank you for being here. And, yes, we do hear you and
16 I wish you a good night's sleep tonight.

17 THE WITNESS: Thank you.

18 ALJ HOGAN: And Mr. Dawson, any questions?

19 SUBSTITUTE DECISIONMAKER DAWSON: Thanks for
20 your efforts to be here today. Much appreciated.

21 ALJ HOGAN: Thank you, Ms. Yarlott.

22 All right. Next witness.

23 MR. LEIBEL: Sure. We would call Lon Klusmann,
24 please.

25 ALJ HOGAN: Good morning.

1 LON KLUSMANN: Good morning.

2 ALJ HOGAN: Can I have you state your name for
3 the record and maybe if you want to spell your first and
4 last name for me.

5 LON KLUSMANN: It's Lon Klusmann, L-O-N,
6 K-L-U-S-M-A-N-N.

7 ALJ HOGAN: And, Mr. Klusmann, were you in the
8 room earlier when I went through the penalties for
9 perjury?

10 LON KLUSMANN: Yes, ma'am.

11 ALJ HOGAN: And do you understand what perjury
12 is?

13 And being advised of the potential penalties for
14 perjury, do you promise to tell the truth in this case
15 today?

16 LON KLUSMANN: Absolutely.

17 ALJ HOGAN: All right. Thank you.

18 Go ahead, Mr. Leibel.

19 **LON KLUSMANN,**

20 being first duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. LEIBEL:

24 Q. Good morning, Lon.

25 A. It's my family.

1 Q. I know.

2 Can you first, I guess, identify for all of us
3 your relationship to the women who testified?

4 A. Well, I can. My wife, Roberta, my sister-in-law
5 Marilyn, and my niece Teresa. Those three are three of
6 the seven partners of 8N2. And they have all given
7 written approval for me to speak on their behalf in any
8 manner relative to this proceeding.

9 Q. Okay. Before we jump into kind of the testimony
10 that you and I had talked about, one of the
11 commissioners asked a question a little bit earlier
12 about sinkholes and I wanted to ask you whether there's
13 any sinkholes on the 8N2E property?

14 A. There are. And it's actually surprising to me
15 to see how rapidly they are expanding. You know, I've
16 been walking that land for over 50 years too. I may be
17 an in-law, but I've been on that property since I was
18 16 years old when we were dating.

19 And we would walk to a certain area near the
20 windmill, which would be actually west and south of the
21 windmill, near the section line on 41st Street. And
22 there's a natural waterway that comes through there.
23 And in the spring there's water and then throughout the
24 winter -- or throughout the summer it dries up and it's
25 beautiful green grass and it's meadow and everything.

1 But each year we come through there -- you know, because
2 we don't come out there when the cattle are in. So when
3 the renter doesn't have cattle in it, then we go out.

4 And we -- last fall and last spring, I guess it
5 was, and two springs prior to that, we were stunned at
6 the amount of standing water in an area that previously
7 we would be able to drive through. And the sinkage or
8 the sumpage did -- or I don't even know the right word,
9 slumping, I guess, that's going on, you know, the water
10 comes underground, it feeds this well or -- they call it
11 a well or a dam, but it's spring-fed. It's underground
12 water that bubbles up. And they dug a thing and made it
13 for cattle to drink from.

14 And so each year it gets worse, it gets deeper,
15 and it's tremendously unstable. It's forcing other
16 giant boulders up out of the ground that we -- each time
17 we go out there, we're shocked at how many more rocks we
18 see.

19 I mean, I can't imagine since Summit was -- you
20 know, demanded and sued us to have survey access, that
21 when they go through there, if they can -- if they can
22 actually think that this is a place for a pipeline, then
23 they are not -- they're in the wrong business. Because
24 this would be massively unstable.

25 Q. Okay.

1 A. If it's going to break, it will probably break
2 right there.

3 Q. Okay. Now, going back, so I want to kind of
4 start by talking a little bit about the genesis of the
5 development idea. And I know you had had some
6 discussions with Teresa's dad?

7 A. Oh, yeah. You know, Teresa's dad was, you know,
8 a good friend. He was more than a brother-in-law. He
9 was my friend. And we used to kid around about what are
10 we going to do with this land, you know? This was in
11 the '70s when her uncles were already building
12 subdivisions. And we used to kid around. We would say,
13 "Well, you know what? Maybe North Dakota needs a
14 prison. Maybe we'll sell it to the State and they can
15 build a new prison out here." You know, it was just a
16 joke.

17 But we always knew that it was going to be
18 developed. I mean, the geography of 140-80, section 24
19 means something, but what really means something is the
20 southern border is 110th Avenue, the western border is
21 41st Street, which is also Bismarck Expressway. It's
22 the same road. 52nd street, 123rd. These are already
23 on the city's Together 2045 plan as arterials and
24 collector streets. They already know that that --
25 they've already planned for that. So that location is

1 prime for development. It could be commercial, it could
2 be residential or industrial.

3 But as our families talked about these
4 developments over the years, we're very cognizant about
5 the agricultural heritage that's important to our
6 family. And this Dave Lehman 42-acre farm, which is her
7 original home, it's a magnificent site. Original barns,
8 corrals, houses that are 100 years old right now. It
9 was in the movie "End of the Rope." They used it as a
10 scene from there.

11 But, anyway, the man that bought that land has
12 an agrarian background and he wants to preserve it. You
13 know, he's not modernizing it. He's making it historic.
14 And so -- and we've talked to him about the subdivision
15 plan that we have. The style of homes would be
16 farmhouse style. We're doing 10-acre lots so that we
17 can provide for and be able to maintain the agricultural
18 heritage, so to speak, of the land itself and also to
19 enhance what he's doing. We were not building
20 cookie-cutter housing with half acre or 1-acre lots.
21 This is going to be the most ideal living experience in
22 Burleigh County.

23 Q. Now, before you -- before we move on, Lon, you
24 talked a little bit about the arterial streets. And for
25 a lot of us in Bismarck, you know, the -- I don't know

1 if it's fortunately or unfortunately, but Costco has
2 kind of become a north Bismarck beacon. So if I'm
3 driving out of the parking lot of Costco, how do I get
4 to 8N2E?

5 A. Well, you would go out to Highway 83. You would
6 go four miles north to 110th Avenue and you would take a
7 right and two miles later you'd be sitting at 8N2.

8 Q. Okay.

9 A. It is one mile -- maybe a mile and a half
10 directly east of Heritage Preserve's subdivision, what
11 you see on the highway as you --

12 Q. Okay. Now, we've passed out an exhibit that you
13 had provided to me and we'd like to mark that as LK1.
14 The first few pages of this exhibit has -- it looks like
15 housing plans.

16 A. Oh, yeah.

17 Q. You had talked a little bit about your interest
18 in preserving a rural heritage and providing a
19 subdivision that's rural in nature.

20 A. That's correct.

21 Q. Can you explain the significance of why this --
22 you wanted this information provided to the Commission?

23 A. Well, because we -- we know what housing styles
24 look like in Bismarck. We know what all these beautiful
25 subdivisions and the style of homes that are being

1 built. It's kind of a -- you know, there's a lot of
2 similarity between neighborhoods in Bismarck.

3 And because this division is going to be
4 different than any other subdivision in Burleigh County,
5 we wanted to be sure that the home sites looked like old
6 farmhouse-style homes. And we have an acquaintance who
7 is an architect that has all of these plans, and this is
8 -- these are pages from her book called "Farmhouse Style
9 Homes." And they run in various sizes. But it's -- you
10 know, we're not going to be the builders of them.
11 There's going to be a lot of strict rules and covenants
12 and HOA-type of rules to make sure that the agricultural
13 heritage and the pristine scenery and everything is
14 going to be maintained. Probably going to end up being
15 a gated community.

16 Q. And so the -- Lon, before we -- you were talking
17 a little bit about the plans and intentions. So the
18 next four pages of this exhibit include four separate
19 subdivision concepts. Can you explain to the Commission
20 why there are multiple concepts that are in your plan?

21 A. Well, part of it is because we -- we have such
22 -- we chose 10-acre lots for a number of reasons, but
23 one of them is, in Bismarck's Together 2045 future
24 plans, they suggest that in this outlying suburban area
25 lot sizes should be 8 to 10 acres. So we felt

1 immediately that 10 acres is going to be our goal.

2 And we wanted to include meandering roads and
3 things like that so we could use the low-lying, sinking
4 areas as park and meadow where, even though they're
5 lots, some of them are indicated as park, some of them
6 are indicated as meadow, and are probably -- you know,
7 wouldn't be sold for residential. It would be
8 maintained as rural. I mean, somebody could hay them, I
9 guess, if they -- if they wanted to.

10 So we had concept 1 and then we thought about
11 concept 2, and then we met with the county and
12 determined, you know, through procedures and zoning and
13 rules and regulations and fires and whatnot, fire people
14 and highway people, you know, that we may need more
15 entrances to the neighborhood so that changed some of
16 the layouts. So we've had four revisions. And it's
17 continuing to evolve.

18 You know, the idea now that we have -- to use an
19 area for equestrian, a community horse stable, if you
20 will, so that individual -- there is a massive pent-up
21 demand for horse acreage in this part of the country so
22 we were going to accommodate that too. So there will
23 probably be a concept 5 that's going to be worked on in
24 the next month.

25 Q. Okay.

1 A. It changes, but it is going to be spectacular.
2 It's going to take a long time. I mean, it will be
3 phase 1, phase 2, phase 3 but it -- we have 29
4 descendants. They're going to take over this. It's all
5 well established. It's on record at the county of our
6 intentions and everything.

7 Q. So you have met with county --

8 A. Oh, yeah, we've had all the meetings. The next
9 step is public hearing. As soon as we resolve exactly
10 how we want to lay this thing out, you know, we're just
11 short of that step but, yeah, regularly have
12 conversation.

13 Q. And I'm going to turn the -- direct the
14 Commission to the next -- essentially, the last page of
15 the exhibit --

16 A. Okay.

17 Q. -- which shows the proposed pipeline
18 superimposed on your concept 4. Is that accurate?

19 A. That is correct. It is -- it is entering on
20 52nd Street. It shoots directly -- you know,
21 dissectingly northwest to 41st Street.

22 This is 5,700 miles of pipe. You know,
23 2,000 miles total, we get a mile of it, we think. We're
24 not going to allow it. For 99 years? We don't want to
25 partner with these people. It's going to destroy this

1 entire thing. This land, without a pipeline, it has
2 unlimited potential. With a pipeline, it is a -- it is
3 desolate.

4 Q. And I'm going to ask some specific questions
5 about that. First of all, I don't know if you're aware,
6 Lon, I had sent it to you late last night, there was a
7 bunch of stuff filed. And one of the things Summit
8 filed was a document that suggests to the Commission
9 that it will take the City of Bismarck approximately
10 185 years to expand to the proposed pipeline route.
11 Have you had a chance to see that?

12 A. I did see it. And, of course, I broke out
13 laughing. You know, in 1776 our country was founded.
14 185 years later was 1961. We built an entire country,
15 an entire country, coast to coast, border to border
16 in 185 years.

17 Q. And just so --

18 A. So -- so for the assumption that it would take
19 185 years to go four miles north of Bismarck, it's
20 patently absurd. You know, the guy that said that must
21 have been the same guy that drew this pipeline route.

22 (Laughter)

23 A. Because they don't know diddly about Burleigh
24 County.

25 Q. Well, and I -- I just want to make sure, you

1 would disagree with the conclusion --

2 A. I would 100 percent disagree that it would take
3 185 years to go four miles north of Costco, yes.

4 Q. Okay. Do you have a -- so now I know that there
5 have been discussions in your family about the value,
6 and I know that this is still -- you know, it's not an
7 approved subdivision yet. So if you were to say to
8 8N2E -- I were to say, "Hey, I want to buy that
9 500 acres with your plan that you have," what's the
10 price?

11 A. Upwards of 30 million or beyond. I mean, the
12 value of this thing is unbelievable. First of all,
13 let's say it -- it doesn't even evolve to be, you know,
14 our one residential. Let's say it ends up being
15 commercial. This geography, these streets, these plans,
16 it could be -- it could be Kirkwood North. I mean, we
17 don't know yet. It's -- it's constantly evolving.

18 But, yeah, a neighbor subdivision to the west
19 has lots for sale, one-acre lots, acre and a half maybe,
20 for around a hundred -- a hundred thousand, a hundred
21 ten thousand dollars per acre lot.

22 Q. How far from 8N2E?

23 A. Mile and a half maybe. It's right on 83, on
24 110th Avenue.

25 Q. Do you know the name of it?

1 A. Heritage Preserve.

2 Q. What is it?

3 A. Heritage Preserve.

4 Q. So that's a mile and a half --

5 A. Yeah, they're on -- between Highway 83 and 26
6 Street when it's fully, you know, expanded and
7 developed. And we are only going to be a mile east of
8 that.

9 Q. So --

10 A. Same latitude.

11 Q. Those lots are obviously going to beat 180 --

12 A. Oh, yeah. Now, they have -- they probably have,
13 you know, infrastructure already in place and that's why
14 it's \$110,000 a lot or an acre.

15 But we know that there's infrastructure that we
16 would need to do, roadways to get into the neighborhood
17 based on county rules. But, you know, because the lots
18 are so large, they're septic tanks. They're not going
19 to be sewers. They're not going to be a community
20 sewer. This is going to be individual landowner having
21 to take care of his own septic systems and everything.
22 You know, it's different than The Ranch. That's a whole
23 different concept. This is a concept that doesn't
24 exist. It will exist, but it doesn't exist yet. And as
25 long as there's no pipeline, it will happen.

1 Q. Now, I'm going to ask a question that was
2 something that taught me a lot and I think it will help
3 the Commission understand a little bit more the dynamics
4 too. So when I was talking to you about this land, it
5 turns out that you know and your family knows all of the
6 families and all of the neighbors for 50 miles, it
7 seemed like.

8 A. We grew up there. People -- a lot of these
9 people are related. I mean, we went to grade school.
10 We went to junior high. We went to high school. We
11 went to dances together. This is a family.

12 This is -- this is why when Summit sat in our
13 kitchen and we explained to them "Look, we just can't
14 have this subdivision on this land, we just can't have
15 it --" you know, originally it wasn't on our property,
16 but somehow some people conspired and moved it off their
17 land because they didn't want it and they said, "Yeah,
18 it's fine, put it on 8N2, put it on SPLJ, put it on
19 these people." How rude.

20 So when they came to our house and we asked
21 them, you know, politely and emphatically, "We
22 understand your problem, we know the whole new green
23 deal, we know the cards we're dealt as a country, but
24 it's not going to be on section 24 for all these
25 reasons."

1 And you know what they asked us? "Well, tell us
2 who owns that land over there, that land over there.
3 Maybe they'd be receptive." And we said, "Look, we're
4 not going to tell you that. That's your job. If you
5 would have done this right in the first place, if you
6 would have come to people and said, 'We're thinking
7 about a pipeline and we would like to get a 99-year
8 lease from you,'" they probably could have had some
9 takers. They could probably be laying pipe today. But
10 instead they decided to sit in Ames, Iowa, draw a line
11 on a map across the United States and across 8N2 and all
12 the way over to the river and all the way over to Center
13 and say that's where this pipeline is going.

14 We had no advance notice. I can take you
15 through the timeline of every date of every piece of
16 contact that we received from them. And most of it is
17 disingenuous and innuendo.

18 But there's one thing that they said was true.
19 "If you don't give us your land for us to survey within
20 15 days, we're going to sue you." And so they sued us.
21 Because we didn't voluntarily give them our property.

22 And, you know, when John Hoeven made the
23 statement on July 26 of 2022 that said "Private property
24 rights must be respected and participation in the Summit
25 Carbon Solutions project should be voluntary, and I am

1 concerned about the use of litigation to compel access
2 to private property," and less than 30 days later we're
3 sued for survey and condemnation and eminent domain. So
4 they're throwing our senator under the bus. They're
5 making him look ineffective and foolish because he said
6 this on TV and they ignored it. They went and sued us
7 and everybody else on this route. Can you believe that?

8 I mean, we're asking you to just deny this
9 outright. And I know the county says let's move it ten
10 miles past the ETA, which would end up making it nine
11 miles past our house or past our land, but there's so
12 much wrong with this project. North Dakota doesn't want
13 any part of this.

14 And I know that Hoeven's been involved
15 since 2008 and they've cracked the code and all, but
16 it's all tax code. It's all taxpayer money funding
17 their private industry, private enterprise, that has no
18 commercial -- or I should say public benefit. A public
19 benefit for this land is our subdivision. It's a
20 benefit to the county. It's a benefit to the tax rolls.
21 But it's no benefit for a pipeline who --

22 Q. I just want to interrupt you real quick and ask
23 a question. You brought up the discussion with the
24 county. As it sits right now today --

25 A. Yes, sir.

1 Q. And I know that Summit has yesterday actually --
2 yesterday afternoon filed something to ask the PSC to
3 preempt both Emmons County and Burleigh County.

4 As it sits right now, does the county have a
5 setback requirement for the CO2 pipeline?

6 A. Well, and the -- the county has an ordinance
7 that they've passed back in March that says two miles
8 from a structure. Well, this whole subdivision is only
9 a mile square. So --

10 Q. As things sit right now, if they get their
11 pipeline put in diagonally across the 8N2E, you have no
12 possible --

13 A. Oh, possible. Absolutely not. But you know
14 what? The guy that got it moved off his land, he
15 wouldn't either, you know. Because he's not -- he's
16 only -- he's just across the fence. He's not a mile or
17 a half mile or two miles. He's where you are.

18 Q. So if the PSC can preempt for the pipeline, they
19 can't fix all the individual county issues everyone else
20 is left with?

21 A. I guess. I think what the PSC should do is
22 honor the grassroots government that says we have an
23 ordinance. This is our county. I know they're state.
24 This county, this commission, should have their ruling
25 authority constitutionally, in my opinion, should have

1 the determination to make its own zoning laws. And that
2 should stand.

3 Q. Do you -- and I know, Lon, that you've waited
4 for a long time. Do you have anything else you'd like
5 to say to the commissioners?

6 A. I just -- I know you saw what you've done to my
7 wife and my family. And there are seven members of that
8 partnership and there's 29 descendants and some of them
9 are here today, but I want you to understand every one
10 of these people were born, raised, educated, married, a
11 lot of them, in Bismarck, North Dakota. They all went
12 to school here in this town. They -- every one of them.
13 All seven partners.

14 Some of them have chosen to leave North Dakota
15 because they had good jobs, because they were hard
16 workers, they got promoted and they ended up out of
17 state, but their heart is on this 8N2. You don't
18 understand, I don't think, the depth of love that this
19 family had for their parents and their grandparents.

20 I know they can't comprehend it. Because if
21 they did, they wouldn't be doing things like this. They
22 wouldn't be ramming this bullying pipeline across
23 property that's, you know, selfishly for us, it's our --
24 it's our livelihood.

25 But for the whole community to be put in

1 jeopardy for this? And they can say, "Oh, it's safe,
2 it's safe, it's safe." They don't know. They've never
3 done it. And nobody knows. Is it safe just because
4 they say, "Oh, it's safe"? It's not. You know, we're
5 getting the hard sell from this. We, North Dakota, is
6 getting the hard sell. And you know when you get a hard
7 sell, something must be getting ready to turn really
8 rotten.

9 And they want you to site this thing so they can
10 get ahead of the PHMSA rules that are just being thought
11 of now. You know, they like to say that "Oh, wow, you
12 know, this pipeline, it's -- you know, every other
13 pipeline in Bismarck, we all follow the same rules."
14 But even PHMSA knows that this is not the same as
15 gasoline, natural gas, or oil. Those things break.
16 Uh-oh, clean it up, big deal, we're back together. This
17 is a whole different thing. And the Federal Government
18 understands that and they're now taking testimony and
19 trying to write the rules.

20 If nothing else, you should absolutely deny this
21 until the rules are written for CO2, not just in general
22 what a pipeline should be like. We are putting Bismarck
23 at risk and I don't think you guys want to be the people
24 that say, "Wow, jeez, we really screwed up when we put
25 that pipeline in and now it is eight years later and,

1 boom, it broke and now, oh, boy, look at Bismarck." You
2 don't want that responsibility.

3 We don't want it on our land for 99 -- do you
4 think that we want to build some kind of relationship
5 with Summit Carbon Solutions after everything they've
6 done to us and our community for 99 years? I don't even
7 want to get to the point about, you know, their
8 sequestering site. That's going to pop through too
9 eventually. It's already happened in some parts of the
10 world where CO2 just voluntarily pops out of the air.

11 You know, it's all theory. It's never been
12 done. It's just -- it's just wrong for Bismarck. I
13 know we're dealt this nationally from our country. Our
14 government now, you know, thinks that this climate is --
15 you know, it's our fault that the climate is changing.
16 Other countries don't care. They're running coal mines
17 every day. They're building new oil and coal, gas, all
18 over in the -- in Asia. But where's our country? We're
19 taking the lead in this and it's --

20 You know, I've been through all this. I've been
21 through the global warming. I've been through the
22 global cooling. I've been through acid rain. I've been
23 through it all. And this carbon capture is just the
24 next thing, except it's trillions and trillions of
25 dollars of our taxpayer money that our country doesn't

1 have, this debt ceiling thing and the whole works. You
2 know, the first thing they like to say is "Well, if we
3 don't do this, we got to cut social security, we got to
4 cut Medicare." They never say we're going to cut the
5 new green deal. And that's what put us in the hole
6 we're in now, is chasing this climate thing that God is
7 the only one that fixes the climate.

8 And, you know, I'm just going to -- I'm just
9 going to shut up after I say this. In the Bible, the
10 prophet Micah, chapter 2, verse 1 through 3, just listen
11 to this:

12 Woe to those who plan iniquity. They covet
13 fields and seize them, houses and they take
14 them, cheat an owner of a house, a man of
15 his inheritance. Therefore, says the Lord,
16 behold, I am planning against this race an
17 evil for which they shall not withdraw nor
18 shall they walk with head held high. It
19 will be a time of evil.

20 This is what this is in my opinion. This is
21 evil. And their tactics are even more ruthless and
22 evil. And I know that they're doing it because they
23 can't even comprehend the way that we think. It's
24 beyond them. They think everybody wants to monetize and
25 get this and get that.

1 This is taking CO2 out of the air that's been
2 already -- you know, how long have we been doing ethanol
3 and all this CO2 has been landing right back on the corn
4 fields and we get these lustrous crops. It's been going
5 fine all these years. Why now? You know why it's now?
6 Because the government says they can take taxpayer money
7 and put it in their pocket and they get rich and we all
8 get ripped. And it's time to stop.

9 MR. LEIBEL: No further questions.

10 ALJ HOGAN: All right. Mr. Bender, any
11 objection to the exhibit?

12 MR. BENDER: No objection.

13 ALJ HOGAN: Any questions?

14 MR. BENDER: Actually, no questions. Madam
15 Examiner, we've now had four witnesses from the
16 intervenors. That's all been on one track. We're not
17 going to get done if we continue this way. So I would
18 -- I mean, I have done what I can to limit my questions,
19 but I can't do it by myself. I'm going to need some
20 help from the hearing officer to move this along.

21 ALJ HOGAN: All right. Mr. Pelham, any
22 objection to the exhibit?

23 MR. PELHAM: No objection.

24 ALJ HOGAN: Any questions?

25 MR. PELHAM: Just briefly.

CROSS EXAMINATION

1
2 BY MR. PELHAM:

3 Q. Sir --

4 A. Yes, sir.

5 Q. -- the concept, subdivision concepts, it looks
6 like there's a date, the first one is concept 1,
7 1/19/23. Is that when this was done?

8 A. That's when the survey guy dated it. You know,
9 we -- we've had hand-drawn plans for 30 years.

10 Q. Sure.

11 A. And so -- but, you know, when we -- when we had
12 our meetings originally with the county, we had all
13 kinds of concept drawings and stuff, and they said,
14 well, you know, you got to have -- you got to have a
15 surveyor do it, a registered North Dakota surveyor, not
16 the -- you know, the kind that they use that were on our
17 land yesterday from Texas.

18 Q. And you mentioned the infrastructure, utilities,
19 etcetera. What -- if you can tell the Commission what
20 the LLP has done in terms of work to develop potential
21 infrastructure for the concept?

22 A. Well, because these are one-acre lots, the
23 infrastructure that the subdivision would be required to
24 do is to pave a road, a mile road that doesn't even
25 benefit us really. I mean we have a little bit of that

1 road, but they want us to pave the whole road and then
2 the internal roads we have to do. So there's a lot of
3 expense there. But as far as, you know, water, there's
4 rural water already on the property from the Burleigh
5 County rural southwestern water system, or whatever the
6 heck it's called. And then they would -- the landowner
7 would be responsible for their own septic system and
8 stuff.

9 Q. Okay. I don't have any other questions for you.
10 Thank you.

11 A. Okay. Thank you.

12 ALJ HOGAN: Mr. Pranis, any objection to the
13 exhibit?

14 MR. PRANIS: No, Your Honor.

15 ALJ HOGAN: Any questions?

16 MR. PRANIS: No, Your Honor.

17 ALJ HOGAN: Mr. Bakke, any objection to the
18 exhibit?

19 MR. BAKKE: No objections.

20 ALJ HOGAN: All right. The exhibit is received.
21 Do you have any questions?

22 MR. BAKKE: I do not.

23 ALJ HOGAN: And before we get to commissioner
24 questions, just to clarify, Mr. Leibel, the first two
25 pages I have in my packet are the same. I don't know if

1 that's correct or if --

2 THE WITNESS: There's two different pages.

3 MR. LEIBEL: No, the -- on this one.

4 ALJ HOGAN: It's the house designs. The two I
5 have are the same.

6 MR. LEIBEL: I just must have -- we must have --

7 ALJ HOGAN: Just doubled up? Okay. I just
8 wanted to make sure that -- clarifying.

9 THE WITNESS: It will be a booklet of choose
10 your house plan, you know. And we've actually laid --
11 the subdivision is laid out in a way that we could -- we
12 could allow for slight variances in home design and/or
13 price point depending on how the market goes over the
14 next 10, 15, 20 years.

15 ALJ HOGAN: Sure. I'm just going to -- from the
16 official exhibit, I'll just pull out the duplicate page.

17 THE WITNESS: Yeah. Those are just examples.

18 ALJ HOGAN: Commissioner Christmann, any
19 questions?

20 COMMISSIONER CHRISTMANN: No other questions.
21 Thank you.

22 ALJ HOGAN: Commissioner Haugen-Hoffart.

23 COMMISSIONER HAUGEN-HOFFART: Yes, I do.

24 You said in your testimony that you could
25 provide a timeline of dates.

1 THE WITNESS: Sure.

2 COMMISSIONER HAUGEN-HOFFART: I'm going to ask
3 you to submit that through your attorney. I would like
4 to see the timeline of the --

5 THE WITNESS: I have a dec here of a timeline
6 and every piece of correspondence from or to Summit
7 Carbon Solutions.

8 COMMISSIONER HAUGEN-HOFFART: I would like to
9 see that, please --

10 THE WITNESS: It can be --

11 COMMISSIONER HAUGEN-HOFFART: -- be submitted.

12 THE WITNESS: Sure. He already has it.

13 ALJ HOGAN: All right. Mr. Dawson, any
14 questions?

15 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

16 ALJ HOGAN: All right. Any redirect, Mr.
17 Leibel?

18 MR. LEIBEL: I have nothing.

19 Thank you, Lon.

20 ALJ HOGAN: All right. Thank you, Mr. Klusmann.

21 THE WITNESS: Thank you.

22 ALJ HOGAN: All right. We are going to take our
23 lunch break. But before we do that, I just want to
24 address your concern, Mr. Bender. You know, I -- like I
25 said at the beginning of the hearing, I viewed today as

1 the opportunity for the intervenors to present their
2 witnesses. And I think everybody is aware from our last
3 hearing, we have a hard end. This room is no longer
4 available at 11 tonight so that's a hard close. And I'm
5 not going to squeeze out public testimony. I want to
6 give the public enough time to provide their comments
7 today.

8 And with that in mind, I'd just ask the
9 intervenors to work together to manage the rest of that
10 time and the amount of witnesses you want to call to
11 make sure we have enough time to get through everybody.
12 So that's kind of my thoughts on the schedule going
13 forward today.

14 After our lunch break we will do another block
15 of public testimony. So if you're wishing to provide
16 some comments, if you want to sit in the first couple of
17 rows when you come back so that we can expedite that
18 process as much as possible, I would appreciate that.
19 And with that said, we will break until 1:00.

20 (Recess)

21 ALJ HOGAN: And if everybody can make their way
22 back to their seats.

23 Just a reminder that if you're attending the
24 hearing today and haven't signed one of the attendance
25 sheets, the Commission would ask that you please sign in

1 so that they have a record of everybody that attended
2 today.

3 And we are going to start with public testimony
4 again. So I think we have --

5 Go ahead, come on up.

6 JOSH SCHULTZ: Thank you.

7 ALJ HOGAN: Good afternoon.

8 JOSH SCHULTZ: Good afternoon.

9 ALJ HOGAN: Can I get your name and if you'll
10 spell your last name for me?

11 JOSH SCHULTZ: Josh Schultz, S-C-H-U-L-T-Z.

12 ALJ HOGAN: And, Mr. Schultz, were you in the
13 room earlier when I went through the penalties for
14 perjury?

15 JOSH SCHULTZ: Yes.

16 ALJ HOGAN: And do you understand what perjury
17 is?

18 JOSH SCHULTZ: Yes.

19 ALJ HOGAN: And being advised of the potential
20 penalties for perjury, do you promise to tell the truth
21 in this case today?

22 JOSH SCHULTZ: I do.

23 ALJ HOGAN: All right. Thank you. Go ahead.
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JOSH SCHULTZ,

being first duly sworn, testified as follows:

JOSH SCHULTZ: Thank you, Commissioners, Your Honor, for giving me the moment to speak. As I said, my name is Josh Schultz. I work with Precision Pipeline. I'm a director of engineering for them.

We support the project. The development in Iowa, Minnesota, North Dakota, South Dakota, and Nebraska will generate economic growth and help meet the rising demand for clean, reliable energy. We're reducing carbon emissions with a capacity of 18 million tons annually. That's 18 million tons annually.

Precision Pipeline is fully committed to the local workforce of North Dakota. We hire skilled union labor force per the National Pipeline Agreement from within the state, thereby contributing to the local job growth and ensuring that the benefits of this project are felt right here in the local communities.

We understand the value of local businesses and pledge to support the North Dakota economy. We will procure food, lodging, consumable supplies, fuel, and more from within the state. This initiative will contribute significantly to the local commerce and ensure that the economic benefits of this project extend beyond just direct employment.

1 Precision Pipeline is dedicated to ensuring that
2 all work performed meets the highest standards of
3 safety, environment, and quality. Our protocols and
4 procedures are designed to protect our employees, the
5 public, and the environment.

6 For these reasons, we hope you'll support the
7 project and their critical infrastructure project.
8 Thank you.

9 ALJ HOGAN: All right. Thank you.

10 Mr. Bender, any questions?

11 MR. BENDER: Thank you for your testimony. No
12 questions.

13 ALJ HOGAN: Mr. Pelham, any questions?

14 MR. PELHAM: Just briefly.

15 I'm just wondering if you've worked with Pumpco
16 pipeline company.

17 JOSH SCHULTZ: I have not --

18 MR. PELHAM: Okay.

19 JOSH SCHULTZ: -- personally.

20 MR. PELHAM: No other questions. Thank you.

21 ALJ HOGAN: Mr. Jorde or Mr. Leibel.

22 MR. JORDE: Yes. Did you say something about
23 clean, reliable energy earlier? What was that in
24 reference to?

25 JOSH SCHULTZ: Reference to some of the

1 literature you can find directly online on Summit's
2 website.

3 MR. JORDE: Okay. Do you understand that Summit
4 isn't -- there's no energy. This isn't an energy
5 pipeline, there's no energy being produced from this
6 pipeline? Do you understand that?

7 JOSH SCHULTZ: I understand that.

8 MR. JORDE: Okay. And then critical
9 infrastructure, what's critical about this?

10 JOSH SCHULTZ: In an age where we're continuing
11 to look for greener energy, we're always trying to look
12 for new ways to benefit the country, benefit the
13 environment, and I think there are different steps that
14 we're going to have to take as a nation to advance those
15 goals. I don't think we're, in my opinion, personally
16 ready to take the first step into completely wind,
17 completely battery. We have to rely on other energy
18 sources. And by reducing the carbon emissions of some
19 of the different processes, I think we buy ourselves
20 some time until the technology is available.

21 MR. JORDE: Do you think it's fair to, quote,
22 "buy ourselves some time" on a 99-year lease on the
23 backs of the North Dakota landowners who do not want
24 this?

25 JOSH SCHULTZ: I have no comment on that.

1 MR. JORDE: Okay. Thank you.

2 ALJ HOGAN: Mr. Bakke, any questions?

3 MR. BAKKE: Yes.

4 You mentioned "greener energy." This CO2 in the
5 pipeline, that's not energy at all, is it?

6 JOSH SCHULTZ: I believe I just answered that
7 question.

8 MR. BAKKE: It's not, is it?

9 JOSH SCHULTZ: No.

10 MR. BAKKE: Okay.

11 JOSH SCHULTZ: No, it is not.

12 MR. BAKKE: Okay. And then you mentioned other
13 energy sources. This isn't an energy source that's
14 going in this pipeline at all, is it?

15 JOSH SCHULTZ: This is not. It's a byproduct.

16 MR. BAKKE: And if your company's involved in
17 building this pipeline, you'll build it and you'll
18 leave; correct?

19 JOSH SCHULTZ: Correct.

20 MR. BAKKE: So you won't -- you don't live here;
21 correct?

22 JOSH SCHULTZ: That is correct.

23 MR. BAKKE: Okay. Precision Pipeline isn't
24 based here?

25 JOSH SCHULTZ: That is correct.

1 MR. BAKKE: So you won't have to live with any
2 of the dangers or significant risks that if a leak
3 occurs there's a catastrophic event. Is that true?

4 JOSH SCHULTZ: That is correct.

5 MR. BAKKE: Now, you talked about revenue, tax
6 revenue, and the economy. Do you know what type of tax
7 revenue would be lost due to rural subdivision
8 developments that are currently in plans such as the
9 Klusmanns' where they'll no longer go effect -- go into
10 effect or be built and Burleigh County would lose all
11 that tax revenue from those homes?

12 JOSH SCHULTZ: I do not know those numbers.

13 MR. BAKKE: You don't mean to suggest by your
14 testimony that any tax revenue that there might be
15 temporarily while this pipeline is being built in
16 Burleigh County would offset the long-term loss of tax
17 revenue to Burleigh County from new housing developments
18 that would have been built but for the pipeline, do you?

19 JOSH SCHULTZ: I couldn't speculate to the value
20 of either.

21 MR. BAKKE: I have no further questions.

22 ALJ HOGAN: Commissioner Christmann, any
23 questions?

24 COMMISSIONER CHRISTMANN: I sensed before that
25 there was kind of an agreement in place for a stretch

1 that each of the two companies that were mentioned
2 earlier was going to build. If that is the case, what
3 is the area that Precision Pipeline would be working on?

4 JOSH SCHULTZ: I do not have that in front of
5 me. Sorry.

6 COMMISSIONER CHRISTMANN: No other questions,
7 but thank you.

8 JOSH SCHULTZ: Yep.

9 ALJ HOGAN: Commissioner Haugen-Hoffart.

10 COMMISSIONER HAUGEN-HOFFART: Where are you --
11 where's your headquarters at?

12 JOSH SCHULTZ: Eau Claire, Wisconsin.

13 COMMISSIONER HAUGEN-HOFFART: Okay. No further
14 questions.

15 ALJ HOGAN: Mr. Dawson.

16 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

17 ALJ HOGAN: Thank you, Mr. Schultz.

18 JOSH SCHULTZ: Thank you.

19 ALJ HOGAN: Good afternoon. I'll have you state
20 your full name and spell your last name for the record.

21 SHAUN KAVAJECZ: Shaun Kavajecz. Last name is
22 spelled just like it sounds, K-A-V-A-J-E-C-Z.

23 ALJ HOGAN: And were you in the room this
24 morning when I went through the penalties for perjury?

25 SHAUN KAVAJECZ: I was.

1 ALJ HOGAN: And do you understand what perjury
2 is?

3 SHAUN KAVAJECZ: I do.

4 ALJ HOGAN: And being advised of the potential
5 penalties for perjury, do you promise to tell the truth
6 in this case today?

7 SHAUN KAVAJECZ: I do, ma'am.

8 ALJ HOGAN: All right. Thank you. Go ahead.

9 SHAUN KAVAJECZ,
10 being first duly sworn, testified as follows:

11 SHAUN KAVAJECZ: I just want to thank the
12 Commissioners, thank the panel basically, to allow us
13 just a little bit of time to come in and comment in
14 support of Summit Carbon Solutions Midwest Carbon
15 Express CO2 pipeline project.

16 Like I said, I'm Shaun Kavajecz. I'm the
17 director of environment with Precision so we're here on
18 behalf of Precision Pipeline. We're actually excited to
19 partner with Summit and execute the objectives of this
20 project and be a part of kind of the cutting-edge or the
21 first carbon capture large -- large carbon capture and
22 storage project. I guess there are obviously other
23 carbon capture lines out there right now, but this is
24 probably the world's largest. So we're excited to
25 support that and be a part of the solution for that

1 whole project.

2 Precision is a Wisconsin-based construction
3 contractor with extensive experience, successfully
4 completing numerous large-scale projects in the Midwest,
5 including North Dakota. We've been awarded scopes of
6 work in North Dakota, Minnesota, and Iowa with
7 approximately 188 miles of that specifically in North
8 Dakota. So we take exceptional pride in our ability to
9 execute large diameter pipeline projects.

10 Precision brings a strong environmental program.
11 We bring a strong team with expertise in all disciplines
12 and we team together with the client to understand their
13 objectives and work to meet the sensitivities and
14 complexities of each job. Precision has a strong
15 environmental program, an experienced team that
16 understands each project, has very many situational
17 differences depending upon the specifics of the area of
18 impact.

19 So we dovetail our programs with the client's
20 programs to try to ensure that all resources are
21 accounted for and impacts are minimized and -- and our
22 goal is obviously to leave the land in the same
23 condition preconstruction [sic] as it was in
24 preconstruction.

25 As Josh mentioned, our commitment always extends

1 beyond just building the pipeline. We have teams and
2 spreads and superintendents and foremen that come into
3 the communities and really take pride in establishing
4 themselves, looking for paths to donate to be part of
5 that community while they're here. That's their lives.
6 You know, they're on the road and they're looking to
7 make a positive impact wherever they are.

8 So as Josh mentioned, we're here to support the
9 project and look to be part of that solution.

10 ALJ HOGAN: All right. Thank you.

11 Mr. Bender, any questions?

12 MR. BENDER: No questions.

13 Thank you for your testimony.

14 ALJ HOGAN: Mr. Pelham.

15 MR. PELHAM: Sir, are you familiar with Pumpco
16 as a pipeline company?

17 SHAUN KAVAJECZ: I'm not really.

18 MR. PELHAM: All right. I don't have any other
19 questions for you. Thank you.

20 ALJ HOGAN: Mr. Jorde.

21 MR. JORDE: Sir, you just mentioned that it's
22 your goal to leave land in the, quote, "same condition,"
23 same preconstruction condition post construction. Would
24 you agree that that's impossible to do when you are
25 tearing up or trenching through native prairie grass, to

1 return it to the, quote, "same condition" it was in?

2 SHAUN KAVAJECZ: We've dealt with similar
3 situations where we have to re-establish natural
4 vegetation. We partner with the client. Obviously,
5 they're working with the agencies to ensure restoration
6 plans are in alignment. They understand the local
7 impacts, you know, and the ways to mitigate those
8 impacts. So we will certainly look to work together
9 with those agencies and the company to return and
10 restore those conditions.

11 MR. JORDE: So is another way of answering that
12 question, that you agree with me you cannot restore
13 native prairie grass to the exact condition that it was
14 before?

15 SHAUN KAVAJECZ: I guess I'm not an expert on
16 the native prairie grass so I can't really speculate on
17 whether we can -- you know, that's a collective effort,
18 as I mentioned, with responsibilities amongst the
19 various entities. And we'll execute to whatever that
20 restoration plan is to achieve that goal.

21 MR. JORDE: So who do you take your direction
22 from then? Does Summit tell you what to do in regards
23 to restoration reclamation or who does?

24 SHAUN KAVAJECZ: Well, it's a partnership. So
25 we have -- you know, all our crews, we have

1 environmental crews that do this. You know, their job
2 is to come in and restore the various environments that
3 we operate within, whether it's a wet -- sensitive
4 wetlands, whether it's sensitive farmlands, you know,
5 all resources we treat as sensitive and they all require
6 equal mitigation in some form or fashion. So our folks
7 are adept in -- in dealing with all those types of
8 environments.

9 MR. JORDE: Does your company, Precision, offer
10 a warranty or a guarantee that the ground will be put
11 back to the same --

12 SHAUN KAVAJECZ: We don't make those warranties.
13 We're not -- we're not in the client's position. You
14 know, so we're just -- have a contract with the client
15 and we'll execute what they ask us to execute.

16 MR. JORDE: The client you refer to here would
17 be Summit --

18 SHAUN KAVAJECZ: Summit.

19 MR. JORDE: -- right?

20 And so if there's something wrong, then the
21 landowner doesn't go after you. They would have to go
22 after Summit; right?

23 SHAUN KAVAJECZ: Correct.

24 MR. JORDE: Okay. Now, on the Line 3
25 replacement project that you worked on in Minnesota, are

1 you aware of how many incident reports there have been
2 on that pipeline?

3 SHAUN KAVAJECZ: How many incident reports?

4 MR. JORDE: Yeah. Do you know like when there's
5 a leak, a spill, or there's a problem with a weld, then
6 an incident report is made based upon any type of issues
7 with the particular construction of a pipeline,
8 operation of a pipeline.

9 SHAUN KAVAJECZ: Just the ones that we track and
10 manage in our spread. So we aren't responsible -- we
11 have particular spreads that we're awarded. We don't
12 get the whole pipeline. You know, we're only working
13 with the client to deliver and execute what they give --
14 what they award us from a contract perspective. And
15 that's -- that's what we'll execute.

16 MR. JORDE: All right. So even though you might
17 have the greatest intention and maybe are the greatest
18 pipeline builder in all the world, you would agree that
19 manmade pipelines and welds and manmade materials can
20 break, fail, leading to catastrophic situations;
21 correct?

22 SHAUN KAVAJECZ: I -- I believe that there's --
23 things malfunction mechanically. There has been leaks
24 in pipelines, certainly.

25 MR. JORDE: What's the value of the contract

1 your company has with Summit?

2 SHAUN KAVAJECZ: I can't speak to that. I don't
3 know the value. I'm not the estimator. I'm the
4 director of environment so I don't get into the -- the
5 contract numbers.

6 MR. JORDE: Okay. All right. Thank you, sir.

7 SHAUN KAVAJECZ: You bet.

8 ALJ HOGAN: Mr. Bakke, any questions?

9 MR. BAKKE: Yes.

10 So, Mr. Kavajecz, would you agree that
11 construction and design of CO2 pipelines is a new
12 industry?

13 SHAUN KAVAJECZ: No. It's a liquids pipeline.

14 MR. BAKKE: Okay. So how long have you been
15 involved, Precision, in constructing CO2 pipelines?
16 Have you built any before?

17 SHAUN KAVAJECZ: We've been involved with
18 constructing liquid pipelines since our inception.

19 MR. BAKKE: Okay. And I'm talking about CO2
20 pipelines specifically.

21 SHAUN KAVAJECZ: No. We haven't built a CO2
22 pipeline.

23 MR. BAKKE: Okay. And have you received any
24 training on constructing CO2 pipelines?

25 SHAUN KAVAJECZ: The training falls under PHMSA

1 190 -- Part 195, which has design, construction,
2 operation, maintenance, and emergency response
3 procedures. So we're -- we're in tune with that,
4 certainly.

5 MR. BAKKE: Well, PHMSA relates to different
6 liquid products including oil and gas, natural gas,
7 those types of things. I'm asking specifically
8 regarding CO2. Have Mr. Schultz or you received any
9 training on concerns specific to CO2 pipelines in
10 constructing them?

11 SHAUN KAVAJECZ: We certainly follow the
12 literature, yes.

13 MR. BAKKE: I didn't ask you if you follow --

14 SHAUN KAVAJECZ: Training like in -- I don't
15 understand what kind of training you're talking about.

16 MR. BAKKE: For instance, with engineers or
17 chemists, or things you need to consider in terms of the
18 joints and --

19 SHAUN KAVAJECZ: We're not designing the
20 pipeline. We're constructing --

21 MR. BAKKE: Or how they should be installed, you
22 haven't received any of that training?

23 SHAUN KAVAJECZ: We -- like I said, we've
24 constructed liquid pipelines since our inception. This
25 is classified as a liquid pipeline so, yes, we've

1 constructed those.

2 MR. BAKKE: But my questions are directed to CO2
3 pipelines.

4 So let me ask you another thing in relation to
5 warranty. Do you warranty your work if you get selected
6 to -- and this CO2 pipeline gets constructed, do you
7 warranty --

8 SHAUN KAVAJECZ: I'm the director of
9 environment. I don't -- I don't know if we warranty
10 anything.

11 MR. BAKKE: Okay. So you're not aware of any
12 warranty if something goes wrong?

13 SHAUN KAVAJECZ: No. No.

14 MR. BAKKE: Okay. Mr. Godfrey, the expert
15 proffered by Summit down in Linton, testified in South
16 Dakota when he was a witness for Summit there in
17 relation to this Summit pipeline this year that there
18 were 102 leaks in CO2 pipelines and related facilities.
19 Did you study to determine why that's such a high
20 number?

21 SHAUN KAVAJECZ: No. That would be speculating
22 and we don't study those types of issues.

23 MR. BAKKE: Okay. Are you aware there's only
24 about 5,000 miles of CO2 pipelines in the United States?

25 SHAUN KAVAJECZ: Yes.

1 MR. BAKKE: Doesn't that strike you as extremely
2 high, 102 leaks in just 5,000 miles of CO2 --

3 SHAUN KAVAJECZ: I don't know the specifics of
4 that, the construction. I don't know the geography. I
5 can't speak to that.

6 MR. BAKKE: Okay. Has Precision had leaks in
7 its pipelines before that it's constructed?

8 SHAUN KAVAJECZ: We don't own the pipelines.

9 MR. BAKKE: Pardon?

10 SHAUN KAVAJECZ: We don't own pipelines. We
11 just construct them.

12 MR. BAKKE: That's what I'm asking. The
13 pipelines that have been constructed by Precision, have
14 you had leaks before?

15 SHAUN KAVAJECZ: We don't track retroactive
16 leaks.

17 MR. BAKKE: So you may have had leaks, but you
18 don't even know about that?

19 SHAUN KAVAJECZ: Right. Like -- I don't -- I
20 couldn't comment on that.

21 MR. BAKKE: Okay. I have no further questions.

22 ALJ HOGAN: Commissioner Christmann.

23 COMMISSIONER CHRISTMANN: Did you say what your
24 spread is in North Dakota?

25 SHAUN KAVAJECZ: We have the -- it would be the

1 eastern spread, 188 miles. It's not the --

2 COMMISSIONER CHRISTMANN: Is the split like
3 where it goes down into South Dakota and then comes back
4 out?

5 SHAUN KAVAJECZ: Yes.

6 COMMISSIONER CHRISTMANN: So you don't do any
7 from when it exits South Dakota into --

8 SHAUN KAVAJECZ: You know, start and stop, I
9 can't tell you for sure, Commissioner.

10 COMMISSIONER CHRISTMANN: Mostly the east side?

11 SHAUN KAVAJECZ: Right.

12 COMMISSIONER CHRISTMANN: And then my other
13 question, with regard to reclamation, do you work with
14 local NRCS, the conservation districts, to figure out
15 the right native species, grass mixes to plant in an
16 area that --

17 SHAUN KAVAJECZ: Usually the client will work
18 with the local NRCSs, and if not, we will certainly
19 consult them --

20 COMMISSIONER CHRISTMANN: Okay.

21 SHAUN KAVAJECZ: -- to the degree that we need
22 to.

23 COMMISSIONER CHRISTMANN: No other questions.
24 Thank you.

25 SHAUN KAVAJECZ: And we actually also have an

1 internal group within our company that procures our own
2 seed. You know, we'll work with native seed suppliers,
3 ensuring that it's weed-free, those kinds of things.

4 COMMISSIONER CHRISTMANN: Okay. The last part
5 of that probably was meant as reassurance, but it caused
6 me a concern. One of the things -- because this agency
7 also oversees coal mine reclamation. One of the issues
8 I would have concern with is if the contractor or the
9 company is just contacting some national seed company --

10 SHAUN KAVAJECZ: No.

11 COMMISSIONER CHRISTMANN: -- for native species
12 grasses, because the native species grasses even in
13 South Dakota are different than here. And you need the
14 right mix if they're going to be successful.

15 SHAUN KAVAJECZ: Definitely. And, in fact,
16 where my reference really was coming from was we -- we
17 did work in Minnesota on the Line 3 project I think that
18 was referenced earlier, and they had very specific
19 native seed requirements and we had to go to specific
20 nurseries and procure that native seed. It wasn't like
21 a Pennington, you know --

22 COMMISSIONER CHRISTMANN: Okay.

23 SHAUN KAVAJECZ: -- high level seed company.

24 COMMISSIONER CHRISTMANN: Thank you.

25 ALJ HOGAN: Commissioner Haugen-Hoffart.

1 COMMISSIONER HAUGEN-HOFFART: Yeah. How many
2 employees do you have in your company, in the company?

3 SHAUN KAVAJECZ: It really depends. We're a
4 scaling company, you know, depending upon our workload.
5 So I can't answer that question, to tell you the truth.

6 COMMISSIONER HAUGEN-HOFFART: The top load, give
7 me a range.

8 SHAUN KAVAJECZ: From a management's
9 perspective, I think we'd have 150.

10 COMMISSIONER HAUGEN-HOFFART: That would be the
11 average --

12 SHAUN KAVAJECZ: That would be --

13 COMMISSIONER HAUGEN-HOFFART: -- or high?

14 SHAUN KAVAJECZ: -- the salaried people and that
15 sort of thing. And then once you procure a spread, that
16 could be up to 400 people.

17 COMMISSIONER HAUGEN-HOFFART: Okay. And how
18 many years have you been in business?

19 SHAUN KAVAJECZ: Since 2004.

20 COMMISSIONER HAUGEN-HOFFART: Okay. Just for
21 clarification, if awarded the -- you would build a
22 pipeline. So do you start on removing the topsoil and
23 the subsoil? At what point do you enter? How does your
24 work begin if you --

25 SHAUN KAVAJECZ: Sequencing of construction?

1 COMMISSIONER HAUGEN-HOFFART: Yep.

2 SHAUN KAVAJECZ: It would -- we'd kick off at a
3 certain location. You know, so there would be a spread
4 and we would designate, I don't know whether it's valve
5 to valve or some -- you know, whatever a good starting
6 point is. And that's not something that I -- I come up
7 with. But we would -- you start with clearing, grading.
8 You know, the survey is already done. We know where the
9 centerline is. You know, that's done by somebody else.
10 We come and basically initiate the clearing, the
11 grading, you know, the trenching, stringing and bending
12 and lowering.

13 COMMISSIONER HAUGEN-HOFFART: In your
14 experience, have you worked directly with PHMSA onsite
15 regarding the pipeline safety?

16 SHAUN KAVAJECZ: In -- not in this capacity. In
17 my former job I did.

18 COMMISSIONER HAUGEN-HOFFART: Okay. And just
19 give an overview in that former -- I mean, with your
20 familiarity with PHMSA, the pipeline safety, how did you
21 guys work together? What was just some of the common
22 exchange of communication and inspection?

23 SHAUN KAVAJECZ: In my previous role --

24 COMMISSIONER HAUGEN-HOFFART: Yep.

25 SHAUN KAVAJECZ: -- with a different company?

1 COMMISSIONER HAUGEN-HOFFART: Yeah.

2 SHAUN KAVAJECZ: They would -- depending upon
3 the project and when we were building pipelines with the
4 company, my previous company here, my previous
5 employment, we would -- you have to notify PHMSA
6 180 days if you have a construction project larger than
7 this hundred miles of pipe. So you would -- we were --
8 we constructed \$14 billion worth of pipeline so we were
9 always dealing with PHMSA. They were always -- you
10 know, a lot of times they would send inspectors onsite.

11 We have a quality group that we have our own --
12 Precision has our own quality inspectors. They work
13 jointly with those PHMSA folks or the client's
14 representatives. We -- we never -- we don't do any more
15 than the client wants us to do, right. So if we're --
16 we're there to monitor our own quality. And if we want
17 to dialogue or if the client wants us to actually
18 dialogue with PHMSA, we would do that.

19 COMMISSIONER HAUGEN-HOFFART: Okay. No further
20 questions. Thank you.

21 ALJ HOGAN: Mr. Dawson.

22 SUBSTITUTE DECISIONMAKER DAWSON: Can you
23 explain what you do as opposed to what temporary
24 employees do when you start construction; i.e., there
25 was talk earlier that up to 50 percent of man-hours are

1 employees that you hire from the local community. How
2 do those separate out? I take it there's a line. You
3 do something and they do something. What is that line?

4 SHAUN KAVAJECZ: All our -- all our -- we're a
5 union contractor. So I think the differentiation -- and
6 I don't want to get out of my own expertise so -- so
7 don't quote me on this but -- as I testify; right? But
8 about -- you know, we -- we have -- we hire local
9 contractors and we bring our own union contractors.

10 There's a marriage that occurs and training that
11 occurs where we have our foremen and superintendents and
12 those types of people that are more management but still
13 union management --

14 UNIDENTIFIED SPEAKER: Can't hear back here.

15 SHAUN KAVAJECZ: -- and they have -- they have
16 -- their spreads that they'll hire laborers and
17 operators and we'll bring certain of our own laborers
18 and operators that have been with us through, you know,
19 the course of many jobs. So it's a marriage of those
20 two.

21 SUBSTITUTE DECISIONMAKER DAWSON: Okay. No
22 further questions.

23 ALJ HOGAN: All right. Thank you.

24 SHAUN KAVAJECZ: Thank you.

25 ALJ HOGAN: Do we have others that would like to

1 provide public testimony?

2 Good afternoon. Could I get your name and can
3 you spell your last name?

4 JOE HILLERSON: Yes. My name is Joe Hillerson,
5 H-I-L-L-E-R-S-O-N.

6 ALJ HOGAN: And were you in the room when I went
7 through the penalties for perjury?

8 JOE HILLERSON: Yes, I was.

9 ALJ HOGAN: And do you understand what perjury
10 is?

11 JOE HILLERSON: Yes.

12 ALJ HOGAN: And being advised of the potential
13 penalties for perjury, do you promise to tell the truth
14 in this case today?

15 JOE HILLERSON: Yes.

16 ALJ HOGAN: All right. Thank you.

17 **JOE HILLERSON,**

18 being first duly sworn, testified as follows:

19 JOE HILLERSON: Again, my name is Joe Hillerson
20 and I'm the president of the Bismarck-Mandan Home
21 Builders Association here in our community. And I'm not
22 going to claim to be an expert on pipelines at all, but
23 I -- I am an expert in real estate. And I've actually
24 been a licensed salesperson in our state, in our
25 community, since '05. I've been a licensed broker since

1 '07. I've had a home building company since 2011. I
2 have had a subdividing company of subdivisions in our
3 community since 2019. And I wear all those hats every
4 day.

5 And this year I'm the president of our board for
6 the Home Builders. And we have 346 members. And we
7 have a very strong opinion on the location of the -- the
8 proposed location, I should say, of the pipeline.

9 You know, I guess just looking at it, it just
10 seems like there's a lot better options. Because I
11 think we've heard over and over and over again from
12 pretty much all the -- all of the public that it's too
13 close to our city and it's too close to our residences,
14 it's too close to our growth path. And I guess I'd like
15 our -- the Commission to hear that.

16 And I'd like -- you know, I -- I've heard things
17 today like -- like this is not going to have a negative
18 impact economically on the adjacent parcels that it runs
19 through and next to. And I just -- that is just not
20 even -- it's just not a -- it's not a complete thought.
21 It really isn't. And it's not really realistic either.
22 There's a huge negative economic impact on those people
23 and their lives and how they make their living.

24 And so I guess as a board, you know, our
25 association, we -- we came up with a resolution that --

1 that basically asked the Public Service Commission to
2 consider requiring a relocation of this pipeline a
3 further distance away from our capitol city and its ETA,
4 extraterritorial area, that it has jurisdiction over,
5 because that's our growth area.

6 And to the northeast of Bismarck and our
7 community is the highest -- that's the highest growth
8 area that we've got. You know, that's where most of the
9 growth is occurring. And we are a progressive city.
10 We're very blessed in a lot of ways economically, but
11 this is going to have a negative impact on that growth
12 with this proposed location.

13 So that's what -- we're not against the
14 pipeline. Our association isn't against the pipeline.
15 But we are against the proposed location.

16 ALJ HOGAN: All right. Thank you.

17 Mr. Bender, any questions?

18 MR. BENDER: No questions.

19 ALJ HOGAN: Mr. Pelham.

20 MR. PELHAM: Thank you, Mr. Hillerson. Just a
21 couple questions. You testified, sir, that you're an
22 expert on real estate. And I'm just wondering if you
23 could help me out and understand, in comparison -- and I
24 know that they might not be apples and oranges
25 necessarily -- or they might be apples and oranges here

1 because it's a different pipeline, it's a CO2 line
2 that's proposed, and there are currently a couple of
3 pipelines that go through communities in -- within the
4 city of Bismarck. Are you aware of those?

5 JOE HILLERSON: Yes.

6 MR. PELHAM: WBI natural gas pipeline and a
7 NuStar refined product line. Are you aware of those?

8 JOE HILLERSON: Yes, yes.

9 MR. PELHAM: I'm wondering, sir, are you able to
10 testify today what land valuation, if you know, occurred
11 from one lot that's, say, for example, adjacent to the
12 NuStar refined products line in Promontory Point in
13 Bismarck compared to a lot that's two blocks away? Is
14 there a land valuation difference on those two lots?

15 JOE HILLERSON: Well, you know, if you go to
16 Promontory Point, there is -- you see the little yellow
17 indicators of where that pipeline goes. And it's -- lot
18 to lot, you know, that pipeline -- I'm really not an
19 expert on pipelines, first of all. So I just want to
20 say that.

21 MR. PELHAM: Well, I'm not asking you about
22 that. I'm asking you about the land valuation --

23 JOE HILLERSON: Yeah.

24 MR. PELHAM: -- and your expertise, as you were
25 identified, what's -- what's the difference in price?

1 JOE HILLERSON: Yeah. I can tell you this --

2 MR. PELHAM: Can you answer that question?

3 JOE HILLERSON: -- that in those developments --
4 because I'm not going to claim to be an expert on that
5 pipeline. However, I can tell you that I've been -- had
6 my finger on the pulse in real estate in this area
7 since 2005. And those were the last lots sold, if they
8 were even sold -- and we can actually ask some other
9 people in the room if they were, but I remember driving
10 through that neighborhood and seeing that those lots
11 with those little yellow markers were unsold.

12 So what was the value? I don't know, you know,
13 but --

14 MR. PELHAM: And that was my question, if you
15 knew the value. And I didn't hear that. Do you know if
16 -- what the value is? And that's fine if you don't.
17 I'm just wondering.

18 JOE HILLERSON: I would say -- I would say it's
19 not a question that I could accurately value, but I can
20 tell you this, that that pipeline did adversely affect
21 those -- the saleability of those lots. And the reason
22 why I can tell you that is because those were the last
23 lots sold, if they even did sell, because I remember
24 driving through that neighborhood and seeing those blank
25 spots with those little yellow markers right down the

1 line, you know.

2 And so I don't think that's really a really
3 direct answer to your question, but I don't know if I
4 can answer it directly either so...

5 MR. PELHAM: And to be fair, I mean, you'd agree
6 with me that you don't know why those were the last lots
7 that were sold, do you?

8 JOE HILLERSON: I -- I don't know, but I could
9 take an educated guess.

10 MR. PELHAM: Sure.

11 JOE HILLERSON: And so could you.

12 MR. PELHAM: Yeah. Well, I mean I could, but I
13 mean I'm just asking what you know and not -- I'm not
14 asking you to guess. I'm asking what you know.

15 JOE HILLERSON: I'm not the owner of those lots
16 so I don't know for sure.

17 MR. PELHAM: Right.

18 JOE HILLERSON: But I can tell you this. I've
19 been around the block in real estate and I've watched it
20 over the last 17 years or so, 18 years now, I guess.
21 Yeah.

22 MR. PELHAM: Thank you, sir.

23 JOE HILLERSON: Yeah.

24 ALJ HOGAN: All right. Mr. Jorde.

25 MR. JORDE: Yes. Based on your education,

1 experience, background, training, and years as a real
2 estate professional, do you have an opinion to a
3 reasonable degree of professional real estate certainty
4 of whether or not a pipeline devalues land values and
5 makes it less likely that a family would like to live
6 there?

7 JOE HILLERSON: I've heard over and over and
8 over again for the last couple months as this has hit
9 the news, it is undesirable -- over and over again from
10 people in our community, and that's what I'm here to
11 tell you, is that the proposed location of this pipeline
12 is not something that our community wants. And the
13 reason why is for what you're talking about, because it
14 does stigmatize those properties to a certain extent.
15 To what extent we can't exactly say. I don't have an
16 exact figure or anything like that. However, I can tell
17 you that it is being talked about and it's not a
18 positive conversation. It's a negative one so...

19 MR. JORDE: Would you agree that in order for
20 something to factor into one's valuation decision, they
21 would have to be aware that it exists?

22 JOE HILLERSON: Absolutely. And that's one of
23 the things that I can say I really don't appreciate
24 about this process so far, is it seems that information
25 that the public needs has not been forthcoming from the

1 company that is proposing the pipeline. And so that
2 part I can say just as a person I really don't
3 appreciate. And as a resident of this community, I
4 really need that sort of information in order to have an
5 okay-feeling opinion on this, which I haven't gotten yet
6 so...

7 MR. JORDE: Have you ever had a family approach
8 you and say "Sir, please drive us around to the lots
9 that are directly on a hazardous pipeline route so we
10 can look at those"?

11 JOE HILLERSON: No. But I -- you know, I --
12 I've never -- to give them, you know -- I've never had
13 to deal with a pipeline of this nature either. I'm not
14 going to -- like I said earlier, I'm not going to claim
15 to be a pipeline expert at all, but it seems that this
16 one in particular has some potential catastrophic --
17 yeah -- the potential to be catastrophic, which really I
18 don't know that we'd ever see that of a different type
19 of pipeline so...

20 MR. JORDE: When a family comes to you or
21 consults with you of potentially where to buy a lot to
22 build a house or to build on an existing lot, is it --
23 would you agree that obviously location to services,
24 amenities, access roads, shopping, those kind of things
25 are kind of top of list?

1 JOE HILLERSON: Yeah, absolutely. Most people
2 want to live in the city and the reason why is for what
3 you're listing. Some people want to live outside of the
4 city. And we've heard from people today that -- a lot
5 of people today that actually go outside of the city.
6 But most people want those conveniences. And the closer
7 this pipeline is to those conveniences, the more
8 concentrated the density of the people are and so where
9 the population is. So yeah.

10 MR. JORDE: Based on your, again, education,
11 experience, training, background, do you believe that it
12 will take more or less than 185 years for development to
13 extend beyond Costco, residential development?

14 JOE HILLERSON: Let's see, I'm sorry, could you
15 -- that was a long question. I'm sorry. I'm trying to
16 follow -- 185 years to achieve what?

17 MR. JORDE: To develop more residential
18 development expansion, expansion of greater Bismarck, if
19 I can say that, beyond where Costco is located.

20 JOE HILLERSON: Costco?

21 MR. JORDE: Yep.

22 JOE HILLERSON: Yeah. So it's -- so just -- my
23 home building company, we don't build a lot of homes,
24 but we build about 15 homes a year. And in the last
25 three years, I've built -- if we're talking about this

1 pipeline and the -- and the proposed location of it, in
2 the last three years I've built four homes myself within
3 one mile of this proposed location. You know, a couple
4 of them were on the east side of town and a couple of
5 them were on the north side of town.

6 And so I'm looking at this and I'm hearing
7 things like it's a 99-year easement that they're looking
8 for from landowners. I'm thinking a hundred years from
9 now and I'm thinking, man, we're building up, you know,
10 pretty close to it right now. And so that's very
11 concerning to me as a resident and as a professional in
12 the real estate industry, specifically residential home
13 building. Yeah.

14 MR. JORDE: So if you were making decisions now
15 to invest your time, money into developing lots for
16 sale, would you tend to choose land to develop that's
17 near the proposed pipeline route or to avoid that?

18 JOE HILLERSON: I think, generally speaking,
19 away from it, yes. There are always exceptions. And
20 usually those would be based on economics. Like if
21 there was somebody willing to sell their property for
22 very inexpensive, maybe somebody would consider it.
23 However, that's a negative impact and we're talking
24 about that today. So yeah.

25 MR. JORDE: Exactly. So I think it's fair to

1 say from that comment that you would agree that this
2 pipeline and even the stigma of it even coming can chill
3 sales and development and economic --

4 JOE HILLERSON: Yes.

5 MR. JORDE: All right. Thank you, sir.
6 Appreciate your time.

7 ALJ HOGAN: Mr. Bakke, any questions?

8 MR. BAKKE: Yes.

9 You mentioned the growth towards the north and
10 east of Bismarck. In terms of the 346 members in your
11 group, what do you understand, based on your interaction
12 with them, what the number of homes built north and east
13 of town is versus the south? And I'm not asking
14 specific numbers, but just generally.

15 JOE HILLERSON: Yeah. Over the last ten years,
16 the growth to the north has been significantly greater
17 to the north and to the northeast, especially over the
18 last three years as we've started to run out of lots,
19 you know, that were developed and we're starting to --
20 basically, the city starts bumping up against, you know,
21 the -- where the -- it has been bumping up against, over
22 the last 15 years or so, the -- used to be rural
23 residential lots. Used to be five-acre lots up along
24 North Washington in our community, and now those are
25 being subdivided and turned into multiple parcels and

1 annexed into the city and such.

2 And so, yeah, I mean, the demand for growth to
3 the north -- well, really to the north and to the east
4 are the only directions we can go. Because to the south
5 we get blocked in by the river and the river bottoms and
6 floodplains. And to the west we have the river. To the
7 east, it's actually -- the State owns a section of land
8 that has got a lot of transmission lines and some flood
9 issues and it's -- you know, we're really going to the
10 north and northeast just naturally, and it's going to
11 continue that way. We don't have any choice really
12 so...

13 MR. BAKKE: Okay. And then, of course, people
14 are familiar there's been a downturn in the national
15 economic situation, but despite that, has Bismarck
16 continued to grow and seen rather robust growth in terms
17 of building houses and --

18 JOE HILLERSON: It is. I can't say it's not a
19 valley right now. We've always got peaks and valleys in
20 this industry. There are buyers that are -- continue to
21 come from out of state. I continue to hear it. And we
22 have to figure out a way to continue to provide housing
23 that is affordable for them and -- and really we've
24 already been bottlenecked, I guess, like I said,
25 geographically, you know, in the west and to the south

1 and so it's -- there's really not a lot of places for us
2 to go except for north and northeast.

3 So I just don't see -- I can't -- when I've seen
4 the maps of this, I can't see who could have come up
5 with this and thought that this was a good idea. It
6 just doesn't -- it looks very -- it would have been a
7 lot easier it seems to just come to the south of
8 Bismarck. And I'm not an expert. I don't know what's
9 down there other than not the city. But it just really
10 seems like it's just a poor choice of land to propose
11 the location for this pipeline.

12 MR. BAKKE: Okay. You were asked some questions
13 about a natural gas pipeline and the lots and the sales
14 of those. And I know you're not a pipeline expert, but
15 do you understand there's a significant difference
16 between what would happen with a natural gas leak in a
17 pipeline versus this CO2 leak where, if we take
18 Satartia, the plume went 24 miles and the area where
19 they had to use breathing devices in order to breathe
20 was about three miles.

21 If there's a natural gas leak, you understand
22 that people aren't going to be affected for three miles;
23 correct?

24 JOE HILLERSON: Yes. I -- you know, like I
25 said, I -- I'm not a pipeline expert at all. And I

1 would have -- until a person starts to try to get a
2 little bit educated on the differences in these
3 pipelines, you would just think they would be similar,
4 wouldn't you, but they're not. And I understand that.

5 I have been in subdivisions where gas lines have
6 been hit and -- like a 2-inch gas line and -- and
7 natural gas is shooting up in the air. And it's kind of
8 interesting. But, you know, it's not the same here as
9 what we're talking about.

10 And so -- there's a lot of other people in the
11 room and a lot of other people that are willing to
12 testify that know a lot more than I do about the hazards
13 about this pipeline, but from what I understand if -- if
14 -- I'm guessing this pipeline does get built, I hope
15 they -- that the Public Service Commission requires that
16 Summit relocate the pipeline just based on our city's
17 needs and our community's outcry, if you want to say it
18 that way. But, yeah, I -- I think it probably will get
19 built, but I hope it's built in an area where there's
20 not a lot of people. Because if there's ever a
21 catastrophe, we really don't want that near people. We
22 just don't. And it's --

23 MR. BAKKE: Okay. What effect do you think it
24 would have on the 346 home builders in the
25 Bismarck-Mandan area if people said "I'm not willing to

1 take the risk of living within two to three miles of the
2 pipeline if it was installed"?

3 JOE HILLERSON: I don't know where we're going
4 to grow to. If that's what the public thinks, and it
5 seems like today that's what they think, where is our
6 city going to grow to? And it's a great question
7 because we have some geographical limitations. And this
8 is our growth path. And so if the public rejects that
9 -- if it gets put in there and they reject that as being
10 okay, which it sure seems like from what I've heard
11 that's what they're saying, I don't know what to tell
12 you. I don't know what it will mean for our community.
13 I really don't.

14 And our membership absolutely has a vested
15 interest. We represent the home builders. Mostly on
16 the residential side. You know, there's some commercial
17 stuff that happens there a little bit, but mostly on the
18 residential side. Subdividers, developers. You know,
19 we -- we're the ones that build the residences for the
20 people so...

21 MR. BAKKE: Do you think it would have a
22 significant negative impact economically on the home
23 builders?

24 JOE HILLERSON: I do, especially the --
25 especially the people that have stuck their necks out to

1 develop big tracts of land for our -- for our housing.
2 You know, I mean our growth path is to the northeast,
3 and that was -- that trajectory has been there long
4 before Summit Carbon Solutions has been proposing
5 anything.

6 And so I guess that's why we're here to talk
7 about this. And like I said, I would really
8 respectfully request that Summit and the Public Service
9 Commission work together on a different path.

10 MR. BAKKE: Okay. That's all the questions I
11 have.

12 ALJ HOGAN: Commissioner Christmann.

13 COMMISSIONER CHRISTMANN: Are appraisers
14 typically a part of the Home Builders Association? Do
15 they participate?

16 JOE HILLERSON: They're not. They're not. No.
17 They usually are on the realtor side, which I'm a member
18 of that association as well, but not on the home
19 building side.

20 COMMISSIONER CHRISTMANN: Did you see the pretty
21 big stack of testimony that was dropped on us very late
22 in the day yesterday?

23 JOE HILLERSON: I didn't.

24 COMMISSIONER CHRISTMANN: Are you familiar with
25 Boulder Appraisal?

1 JOE HILLERSON: I am, yes.

2 COMMISSIONER CHRISTMANN: So when you talked
3 earlier about the impacts that you saw, that without
4 direct evidence, that it was just a logical
5 conclusion --

6 JOE HILLERSON: Yep.

7 COMMISSIONER CHRISTMANN: -- that existing
8 natural gas and refined products pipelines had an
9 adverse impact on development of those lots. Am I
10 assessing your testimony correctly?

11 JOE HILLERSON: Yes, yes.

12 COMMISSIONER CHRISTMANN: Okay. Would it
13 surprise you if -- and I hope I'm not mischaracterizing
14 this. We got a lot of stuff late in the day. I read it
15 quickly. But I'm picking one sentence out from Boulder
16 Appraisal. "Comprehensive analysis of the market data
17 collectively indicates that potential buyers of
18 residential property exhibit little to no preference in
19 choosing between lots encumbered and non-encumbered by
20 the noted pipelines."

21 Does that surprise you?

22 JOE HILLERSON: I would say that that is that
23 appraiser's opinion. It absolutely would be -- I don't
24 believe that's reality. I think that that's -- somebody
25 got him to write that. Yeah. Him or her, I should say.

1 COMMISSIONER CHRISTMANN: Who would -- help me
2 out. Who would have more knowledge of values of land,
3 the appraiser or the home builder?

4 JOE HILLERSON: Oh, absolutely the home
5 builders. The appraisers call me for valuations on
6 properties. They do. And it happens quite regularly
7 because I'm the boots on the ground. I'm the one that
8 knows what things actually cost. And they are analyzing
9 that information on a secondary basis as the sales come
10 through.

11 COMMISSIONER CHRISTMANN: Thank you.

12 JOE HILLERSON: Yep, you're welcome.

13 ALJ HOGAN: Commissioner Haugen-Hoffart.

14 COMMISSIONER HAUGEN-HOFFART: Yes, I have some
15 questions.

16 You indicated earlier in your testimony that
17 information has not been forthcoming.

18 JOE HILLERSON: It feels that way, yes, yeah, to
19 where --

20 COMMISSIONER HAUGEN-HOFFART: Information from
21 who?

22 JOE HILLERSON: Summit, especially regarding the
23 potential risks of the pipeline. And really as it
24 relates to the proximity of the city is really where --
25 you know, the next part of that sentence, I guess.

1 COMMISSIONER HAUGEN-HOFFART: So as home
2 builders, have you directly had any communication with
3 Summit?

4 JOE HILLERSON: I have not. Some of our
5 members, I believe, have that subdivide the land, rural
6 residential land in particular because it is basically
7 butting up -- it's actually going right through some of
8 our rural subdivisions or right between some of them
9 that we have.

10 And I mentioned that earlier, that I myself over
11 the last three years have built four -- four homes
12 myself just, you know, with zigzagging, you know, on
13 either side of the proposed route. And I just -- I look
14 20 years down the road and I'm going to probably be not
15 building houses anymore, hopefully, and -- but this is
16 going to be a hundred-year deal, you know. So yeah.

17 COMMISSIONER HAUGEN-HOFFART: So when you say
18 some members of the Home Builders have had communication
19 with Summit, can you summarize what that communication
20 is?

21 JOE HILLERSON: I really couldn't speak to it
22 because I didn't -- I don't know. Yeah.

23 COMMISSIONER HAUGEN-HOFFART: Okay.

24 JOE HILLERSON: Yeah.

25 COMMISSIONER HAUGEN-HOFFART: It would be nice

1 to know that.

2 JOE HILLERSON: I as the president have never
3 spoken to anybody from Summit. I guess I can say that.

4 COMMISSIONER HAUGEN-HOFFART: Okay.

5 JOE HILLERSON: Yeah.

6 COMMISSIONER HAUGEN-HOFFART: Okay. Have you as
7 president met with your members and thought about a
8 proposed reroute for the --

9 JOE HILLERSON: We have -- we have proposed that
10 -- we have come up with a resolution and we proposed it
11 to our municipalities on the city and the county levels
12 to -- that we -- stating that we really want this to be
13 25 miles away from our ETA. And what that looks like
14 for a pipeline to do that, I have no idea, but I can
15 tell you that I don't like what it looks like with the
16 proposed location that they've got.

17 COMMISSIONER HAUGEN-HOFFART: Has that been --
18 has that proposal been submitted to Summit?

19 JOE HILLERSON: No. I don't -- I think we
20 submitted it here, the Public Service Commission. And I
21 know we also -- during a city commission meeting, we
22 also moved forward with it there as well.

23 COMMISSIONER HAUGEN-HOFFART: Okay. No further
24 questions. Thank you.

25 JOE HILLERSON: Thank you.

1 ALJ HOGAN: Mr. Dawson, any questions?

2 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

3 ALJ HOGAN: All right. Thank you,

4 Mr. Hillerson.

5 JOE HILLERSON: Thank you.

6 ALJ HOGAN: I'll take one more public commenter.

7 Good afternoon. Can I have you state your full
8 name and spell your last name for the record?

9 SCOTT SKOKOS: Yes. My name is Scott Skokos.

10 My last name is spelled S-K-O-K-O-S. And for the

11 record, I'm the executive director of Dakota Resource

12 Council. And our business address is 1720 Burnt Boat

13 Drive, Suite 102, Bismarck, North Dakota 58503.

14 ALJ HOGAN: And were you in the room earlier

15 when I went through the penalties for perjury?

16 SCOTT SKOKOS: Yes.

17 ALJ HOGAN: And do you understand what perjury

18 is?

19 SCOTT SKOKOS: Yes.

20 ALJ HOGAN: Being advised of the potential

21 penalties for perjury, do you promise to tell the truth

22 in this case today?

23 SCOTT SKOKOS: Yes.

24 ALJ HOGAN: All right. Thank you. Go ahead.

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SCOTT SKOKOS,

being first duly sworn, testified as follows:

SCOTT SKOKOS: Hi. As I stated earlier, my name is Scott Skokos. I'm the executive director of the Dakota Resource Council. We're a statewide conservation and family farm organization that's been around since 1978.

We were founded in 1978 by farmers and ranchers who were concerned about rapid energy development infringing upon private property rights and the rural way of life. Today we find ourselves in the same position of having to defend private property rights of generational farmers and ranchers, only this time our efforts are in response to the proposed Summit Carbon Solutions pipeline.

I'm going to kind of go through some of the Century Code that you guys are -- as a Commission are tasked with adhering to in making your final decision.

So within Century Code, in Chapter 49-22.1, this is an area that outlines several areas of criteria that guide the Commission's decision-making process. While there's not enough time to go through all the areas of the act, my testimony will highlight considerations that Dakota Resource Council believes are crucial in order to properly evaluate this project.

1 So No. 1: "Available research and
2 investigations relating to the effects of the location,
3 construction, and operation of the proposed facility on
4 public health and welfare, natural resources, and the
5 environment."

6 Today and at previous hearings substantial
7 testimony has been given as to the potential adverse
8 impacts on public health and the welfare of North Dakota
9 citizens if the proposed project is approved. We have
10 heard testimony that property owners' insurance would
11 not cover the CO2 pipeline's rupture. We have heard
12 testimony that the project would negatively affect
13 property values. And we've heard testimony surrounding
14 CO2 pipeline regulatory gaps, ongoing rulemaking with
15 PHMSA, and we have heard testimony surrounding negative
16 impacts to crop yields and drain tiling. These concerns
17 are legitimate and numerous and are of a serious nature,
18 in our view.

19 No. 7 in that code is: "The direct and indirect
20 economic impacts of the proposed facility."

21 Like any project, the Summit Carbon Solutions
22 pipeline would lead to some economic benefits, namely an
23 increase in tax revenue, temporary construction jobs,
24 and a small handful of permanent positions. However, we
25 feel that it is prudent for the Commission also to

1 consider the economic impacts beyond jobs and tax
2 revenue.

3 During the Wahpeton hearing, we heard testimony
4 that included picture documentation of crop loss
5 persisting decades after a pipeline's installation.
6 Given that this is a 320-mile pipeline crossing hundreds
7 of agricultural properties in North Dakota in totality,
8 this adverse impact could be substantial.

9 The project also has -- also have negative
10 economic impacts on rural communities' growth and
11 expansion as we mentioned earlier even within urban
12 communities. Given that there are 5,000 miles of CO2
13 pipelines within the United States, the effect of such
14 projects on a community's desirability is currently
15 unknown.

16 A lot of attention to this issue has been
17 brought as it relates to Bismarck, as you guys have been
18 talking about today, and mainly north Bismarck, but
19 quality of life concerns and future economic growth
20 concerns in our rural communities must also be
21 paramount.

22 The proposed facility has also resulted in
23 dozens, if not hundreds, of landowners across North
24 Dakota being forced to retain attorneys to review
25 easement terms and compensation, not to mention the

1 dozens of lawsuits that have been filed to compel access
2 to private property rights -- or private property for
3 survey access. These legal fees come at the expense of
4 North Dakota citizens.

5 While not directly in the purview of this
6 Commission, these are real negative economic impacts.
7 The only people who benefit from that are the lawyers.
8 And that they have to pay for that due to this proposed
9 project.

10 No. 11 within that code: "Problems raised by
11 federal agencies, other state agencies, and local
12 entities."

13 The problems raised by state and local entities
14 have been numerous. We appreciate the Commission's
15 diligence in ensuring that land sites identified by the
16 North Dakota Geological Survey are thoroughly examined
17 and that the SHPO survey is completed. These are key
18 areas that should not be overlooked by Summit and should
19 only be held to the highest standards.

20 The concerns raised by local entities have been
21 substantial. Sargent, Richland, Dickey, Emmons,
22 McIntosh, and Burleigh County have all passed
23 resolutions unanimously opposing eminent domain specific
24 to this project. While this is not an area the
25 Commission has direct jurisdiction over, these

1 resolutions are a clear reflection of local entities'
2 sentiments around this project and the concerns of the
3 people that live in those communities.

4 Dickey County wrote a letter to this Commission
5 outlining a plethora of concerns that they had with the
6 project. A principal reason for the letter was Dickey
7 County does not feel that it can address some of the
8 concerns raised and that the Commission is better served
9 to do that. The Commission should closely examine the
10 Dickey County letter and identify key areas where they
11 can address local concerns, namely by requiring Summit
12 to abide by the setbacks requested in the letter and by
13 denying Summit's request for the waiver of procedures
14 and time schedules.

15 Burleigh County has also raised numerous
16 concerns. We don't necessarily have to get into all of
17 those today, but just for example, we've had -- within
18 Burleigh County, you had the Burleigh County Commission
19 pass an ordinance, a public health statement, and other
20 things, as well as the Bismarck School Board and the
21 Bismarck City Commission doing the same.

22 The second biggest city and county in North
23 Dakota has -- had not -- had a local zoning ordinance
24 for pipelines until this project was proposed, an
25 explicit reflection that the community has serious

1 concerns about the proposed pipeline.

2 Emmons County also passed a zoning ordinance
3 related to the pipeline setbacks. Before the proposed
4 Summit Carbon Solutions pipeline, the county had a
5 setback of 200 feet, not even within the State
6 compliance, and this setback likely had not been updated
7 in several decades, if not longer. Again, a county in
8 North Dakota felt compelled to pass a zoning ordinance
9 that had not been amended in decades, if ever, due to
10 the severity of the community concerns surrounding this
11 project.

12 The concerns of counties and local political
13 subdivisions must be paramount and you must consider
14 those. These are -- these are the units of government
15 closest to our citizens and the communities.

16 MR. BENDER: Excuse me, Your Honor. I'm going
17 to object. I mean, we're looking for new testimony.
18 What we're getting here is a recap of what was
19 previously presented to the Commission. The Commission
20 understands the rules and regulations under which it
21 must operate under. They understand the various
22 ordinances that have been passed. I don't think we need
23 this kind of testimony. And for that reason I would
24 object.

25 ALJ HOGAN: Sir, it sounds like you listened to

1 or were at the other hearings. And I guess if you have
2 anything new -- I mean, I agree it sounds like a lot of
3 the stuff you've been mentioning --

4 SCOTT SKOKOS: I'm almost concluding. I mean,
5 I'm just expressing the totality of all of these
6 hearings right now. I don't understand why that's --

7 MR. BENDER: Exactly. You're repeating what has
8 been presented to this Commission previously.

9 ALJ HOGAN: We just have a limited amount of
10 time and I'm just asking people not to repeat.

11 SCOTT SKOKOS: I will bring up new testimony.
12 If you want to object to my testimony, you have every
13 right to do that.

14 Okay. So I'll move on past the ordinances.
15 Okay. I will go to other concerns that we have with
16 this project. Well, two -- two. One being PHMSA is in
17 an active part -- time period right now where they're
18 looking into active rules. We would urge the Commission
19 not to make a decision until those rules are completed.
20 That's one thing that we would request for this -- for
21 the Public Service Commission.

22 The other thing is to look into the investors.
23 This company has given you five investors. We've looked
24 into that and others have looked into that. There's
25 possibly an active investigation by our attorney

1 general's office on who the investors in Summit are. So
2 we would like you guys to strongly consider that and
3 consider the implications of those potential investors,
4 some of them potentially being foreign -- foreign
5 companies that may or may not be adversaries to the
6 United States.

7 I will conclude my testimony there because I
8 don't want to waste any more of your time as you just
9 mentioned so...

10 ALJ HOGAN: All right. Thank you.

11 Mr. Bender, any questions?

12 MR. BENDER: I don't want to waste any more time
13 either. I don't have any questions.

14 ALJ HOGAN: Mr. Pelham.

15 MR. PELHAM: Thanks for being here. I don't
16 have any other questions for you. Thank you.

17 ALJ HOGAN: Mr. Jorde.

18 MR. JORDE: Sir, is the comment by Mr. Bender
19 pretty consistent with the attitude that Summit has
20 expressed to members of your group?

21 SCOTT SKOKOS: Correct. I'd say, I mean, yeah,
22 generally.

23 MR. JORDE: Yeah. And just -- just arrogant,
24 rude, bullying.

25 SCOTT SKOKOS: I mean, it's just the tactics

1 they've been using the entire time, suing our members to
2 survey -- survey land, trying to suppress testimony and
3 emotion before this hearing, etcetera. I mean, you can
4 go down the line of the litany of things that they've
5 done that -- I mean, what I would say, Mr. Jorde, is
6 that they've put out the playbook in how not to get a
7 permit -- a pipeline permitted or how to do it the wrong
8 way to make the citizens not like them.

9 MR. JORDE: Have you heard previously where
10 Mr. Powell testified that they talk to landowners and
11 hear their concerns and, you know, happy to make
12 changes, yet not a single person has come up here to
13 corroborate that. Are you aware of that?

14 SCOTT SKOKOS: I'm aware of that. I'm also
15 aware of the 185 years that Bismarck is going to move
16 four miles north. It's one of the most absurd things
17 I've ever seen in my life.

18 MR. JORDE: Do you think credibility and fitness
19 of the applicant is something this Commission should
20 consider?

21 SCOTT SKOKOS: Yes. And the documents that they
22 produced, the southern route was -- I think an eighth
23 grader could have wrote that.

24 MR. JORDE: Are you aware that they initially in
25 this process did have a southern route but then decided

1 to move to --

2 SCOTT SKOKOS: Yes. I'm aware -- I'm aware of
3 some of our members and folks that I've been working
4 with that were approached around that potential southern
5 route. And I thought we were actually going to see that
6 southern route in their filing that they had with this
7 entity. And all we saw was a book report, essentially.

8 MR. JORDE: So when we know they already had a
9 southern route they were analyzing, what is your thought
10 on their claim that it would take two years for them to
11 reanalyze a route they've already looked at?

12 SCOTT SKOKOS: I don't think that would take two
13 years. I mean, frankly, I -- I'm very close to this
14 project in the sense I have friends who have property
15 that was in north Bismarck, a family farm and ranch, and
16 I actually saw the survey documents really early on.
17 And they were using GIS maps from, like, 1977 where
18 Bismarck hasn't even grown to where it is today. They
19 made it look like they were developing this in, like,
20 rural, like, ag land that didn't exist, but it's right
21 next -- abutting residential land.

22 MR. JORDE: Are you aware of the motion filed by
23 Summit, I think yesterday, where it's asking this
24 Commission to declare the Burleigh County ordinances,
25 that they're superseded and basically to declare them

1 invalid and to --

2 SCOTT SKOKOS: Yes.

3 MR. JORDE: -- not even follow them?

4 SCOTT SKOKOS: Yes.

5 MR. JORDE: What does your membership think
6 about that?

7 SCOTT SKOKOS: We think it's essentially a --
8 the only kind way to put it is arrogant and it's an
9 insult to the citizens of Bismarck and Burleigh County.

10 MR. JORDE: Thank you, sir.

11 ALJ HOGAN: Mr. Pranis, any questions?

12 MR. PRANIS: No, Your Honor.

13 ALJ HOGAN: Mr. Bakke, any questions?

14 MR. BAKKE: No questions.

15 ALJ HOGAN: Commissioner Christmann.

16 COMMISSIONER CHRISTMANN: None.

17 ALJ HOGAN: Commissioner Haugen-Hoffart.

18 COMMISSIONER HAUGEN-HOFFART: No, but thank you
19 so much for your testimony.

20 ALJ HOGAN: Mr. Dawson.

21 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

22 ALJ HOGAN: All right. Thank you.

23 Okay. We're going to turn back to our
24 intervenors and we'll take more public testimony later
25 this afternoon.

1 Mr. Jorde or Mr. Leibel, you can call your next
2 witness.

3 MR. JORDE: Yes, thank you. MaryJo Irmen,
4 please.

5 MARYJO IRMEN: Good afternoon.

6 ALJ HOGAN: Good afternoon. I'll have you state
7 your full name and spell your last name for the record.

8 MARYJO IRMEN: MaryJo Irmen, I-R-M-E-N.

9 ALJ HOGAN: And were you in the room earlier
10 when I went through the penalties for perjury?

11 MARYJO IRMEN: I was.

12 ALJ HOGAN: And do you understand what perjury
13 is?

14 MARYJO IRMEN: I do.

15 ALJ HOGAN: And being advised of the potential
16 penalties for perjury, do you promise to tell the truth
17 in this case today?

18 MARYJO IRMEN: I do.

19 ALJ HOGAN: All right. Thank you.

20 Go ahead, Mr. Jorde.

21 MR. JORDE: Yes, thank you.

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MARYJO IRMEN,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JORDE:

Q. Ma'am, do you own or have an interest in property that's near this potentially proposed pipeline?

A. Yes. We have property that is a half a mile away.

Q. And even though you're currently a half a mile away, are you concerned that Summit could unilaterally choose to potentially move this route at any time?

A. Yes.

Q. And tell us some of your main concerns and frustrations and your involvement in this opposition.

A. For starters, we -- the pipeline was on our land. We drove out of our driveway one day and saw a stake in the ditch. It was there for about two weeks before I decided to go read the initials on the stake. Googled it, called them. And that is when I got a return phone call from them.

That return phone call was not an explanation of what is happening. It was a "Hey, can I get permission to survey?" which I obviously denied. And so they moved a half a mile east, I'm assuming, because it's vacant

1 landowners who were -- who signed easements immediately.

2 But we live in the bottom of a bowl. Like, we
3 are the lowest point in probably a mile radius and so --
4 and there's like -- it's literally a bowl. So if that
5 thing breaks or ruptures, we're first to die.

6 Q. And you're familiar, are you not, with Chief
7 Briggs' testimony from Satartia, one of Mr. Bakke's
8 witnesses, who testified again that the plume was
9 approximately -- traveled 24 miles and everything within
10 500 feet was completely frozen and people were suffering
11 adverse effects up to three miles away?

12 A. I am not familiar with the testimony, but I've
13 read a lot about Satartia and so I am familiar with what
14 happened with the plume, yes.

15 Q. Okay. And so your proximity with being lower
16 level, is it your understanding that CO2 is denser than
17 air and would seek the lowest level?

18 A. Yes.

19 Q. All right. Tell us some more of your concerns
20 or frustrations about how all this has gone.

21 A. You know, my biggest -- some of my biggest
22 issues are the way that Summit has handled the
23 questions. When I heard about it, I, very passionately,
24 as they called me, was asking them questions and they
25 did not want to answer the questions, and instead they

1 responded with "Oh, you seem very passionate about this
2 matter." Clearly. It's on my land that we had just
3 purchased. We just moved there, just got our house
4 redone, just moved in, and somebody wants to just take
5 it from underneath you, you know, and all your plans for
6 it. And so was I passionate? I sure was. But they did
7 not choose to answer those questions.

8 And so I look at it and say if we're not going
9 to answer the questions and we have horrible leadership,
10 how do we know that the leadership of the pipeline and
11 the building the pipeline and the hiring of the correct
12 people to do this pipeline is going to be done correctly
13 or the leadership is going to lead to a horribly
14 constructed pipeline?

15 Q. If how they've conducted themselves to date in
16 North Dakota has been their job interview, should they
17 be hired?

18 A. Well, being an employer, I wouldn't hire them.

19 Q. And what is it that you do for a living, ma'am?

20 A. I -- in short, I sell life insurance.

21 Q. Very good. So you --

22 A. It's much deeper than that, but that's in short.
23 And I have two employees. And I would never hire -- I
24 wouldn't -- I wouldn't hire any of them.

25 Q. On the insurance front, you're then familiar

1 with the concept of exclusions and limitations and the
2 way that insurance companies can, frankly, wiggle out of
3 coverage and those types of things; correct?

4 A. Uh-huh. Yes.

5 Q. Are you concerned about all of the various
6 testimony from multiple insurance agents, multiple
7 insurance companies that landowners cannot obtain and do
8 not have coverage should they even be alleged to have
9 done something that may have caused a leak or a rupture?

10 A. And I -- before I sold life insurance, I was in
11 the P&C world and I had seen many claims that were not
12 paid because typical -- like a life insurance company
13 will almost always pay a claim. If I die because of
14 this, they will pay the claim. But if there is an issue
15 with anything property-related, those companies do try
16 to get out of those claims because the exclusions are
17 super important to be reading in your documents.

18 Q. Correct. Is there anything else important for
19 the Commission to know from your perspective?

20 A. I -- the one thing that some people haven't
21 talked about and I would just like to point out, and you
22 guys are very smart individuals so I'm sure you've
23 noticed, but it is disheartening to me that Summit hides
24 in a room and watches these from the live stream instead
25 of sitting out with the people and talking to the people

1 that want to clearly have a conversation with them.
2 Instead they hide and they don't come out. And then
3 they go put women out in the front table because people
4 aren't going to get mad at women. So I'm sure that is
5 strategically done. But it is very disheartening to me
6 to not ever see them anywhere in this audience.

7 Q. Is it a bit ironic to you that Summit is here
8 asking for this privilege of potentially locating a
9 hazardous pipeline across over 300 miles of North Dakota
10 land, yet their COO is sitting just outside this room
11 with security guards in a conference room and not
12 participating here today?

13 A. Is it ironic, is that what you said?

14 Q. Yes.

15 A. Yes. Is it surprising? No.

16 Q. All right. Thank you, ma'am. Nothing further.

17 ALJ HOGAN: Mr. Bender, any questions?

18 MR. MAHLBERG: Mr. Mahlberg this time.

19 No, thank you.

20 ALJ HOGAN: Mr. Pelham, any questions?

21 MR. PELHAM: No questions. Thank you.

22 ALJ HOGAN: Mr. Pranis, any questions?

23 MR. PRANIS: No questions.

24 ALJ HOGAN: Mr. Bakke, any questions?

25 MR. BAKKE: No questions.

1 ALJ HOGAN: Commissioner Christmann.

2 COMMISSIONER CHRISTMANN: I'll just ask if
3 you're aware that the witness that Mr. Jorde was talking
4 about from Summit was at four previous public hearings?

5 THE WITNESS: So I'm terrible with names. I
6 probably watch -- I've watched a couple of them. I was
7 here at the last one, but I'm absolutely terrible with
8 names so it's a good thing you have a plaque to tell me
9 who you are.

10 COMMISSIONER CHRISTMANN: He was at four --

11 THE WITNESS: Then I obviously saw that because
12 I was here.

13 COMMISSIONER CHRISTMANN: Questioned by all of
14 the attorneys.

15 THE WITNESS: Okay. Thank you.

16 ALJ HOGAN: Commissioner Haugen-Hoffart.

17 COMMISSIONER HAUGEN-HOFFART: I have no
18 questions for you, MaryJo.

19 THE WITNESS: Thank you. Sure.

20 ALJ HOGAN: Mr. Dawson.

21 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

22 THE WITNESS: I do want to -- can I just say I
23 appreciate you guys hearing this, being open-minded, and
24 asking the questions, the hard questions. I very much
25 appreciate your time.

1 ALJ HOGAN: Thank you.

2 Next witness.

3 MR. LEIBEL: We would call Susan Doppler.

4 ALJ HOGAN: Good afternoon. I'll have you state
5 your full name and spell your last name for the record,
6 please.

7 SUSAN DOPPLER: My name is Susan Doppler,
8 D-O-P-P-L-E-R.

9 ALJ HOGAN: And, Ms. Doppler, were you in the
10 room earlier when I went through the penalties for
11 perjury?

12 SUSAN DOPPLER: Yes, I was.

13 ALJ HOGAN: And do you understand what perjury
14 is?

15 SUSAN DOPPLER: Yes, I do.

16 ALJ HOGAN: Being advised of the potential
17 penalties for perjury, do you promise to tell the truth
18 in this case today?

19 SUSAN DOPPLER: Yes, I do.

20 ALJ HOGAN: All right. Thank you.

21 Go ahead, Mr. Leibel.

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SUSAN DOPPLER,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEIBEL:

Q. First of all, Susan, would you please identify the partnership that you're here on behalf of?

A. Okay. So I'm representing the SPLJ, LLP partnership. It's my sister, my brother, and my deceased sister's husband.

Q. And where is the land that SPLJ, where is it located?

A. We are in Burleigh County. It's section 15, township 140 north, range 80 west. And it's approximately 400 acres.

Q. Okay. And, Susan, we handed out what I'm going to mark as SD1, so your initials with the number one, and it's the map you provided.

A. Yes, that is.

Q. Can you please explain to the Commission what this map depicts?

A. Well, first of all, it was very difficult to do the map because of the exhibits that were sent to us when Summit was suing us. The portion to the east is where the pipeline -- is where the pipeline would come

1 in. And I'm terrible with directions. And so the
2 pipeline will come straight across the acreage. And
3 then they have -- they want an easement access that is
4 coming from the north that will connect to the pipeline.
5 So, in essence, it's going to be affecting the entire
6 acreage that we have left from our parents.

7 Q. So let me ask, Susan. So there are two pieces
8 that are outlined in orange with a road down the middle,
9 it looks like, or --

10 A. That's actually a railroad down the middle.

11 Q. Okay.

12 A. That's another concern we have.

13 Q. So your property is on both sides of the
14 railroad?

15 A. That's correct.

16 Q. Now, is it your understanding that the pipeline
17 that Summit is requesting would go underneath an
18 existing railroad?

19 A. That's our understanding.

20 Q. Where is your property located with respect to
21 -- and I'll use again the Costco as the beginning point.

22 A. Well, I want to call them the Morris family
23 because that's what they were originally, they are east
24 of us. In fact, Marilyn gave you the map with the pink
25 heart. Her mom was born in the house that my nephew now

1 lives in. And her grandpa built that house, which is
2 over a hundred years old. And our -- our nephew lives
3 in that house with his wife and two young girls.

4 Q. Okay. And so you know Lon and Marilyn and --

5 A. Yes. We went to the same Arnold school
6 together.

7 Q. Okay. And that was a pretty tight -- that's not
8 a big Bismarck Century School?

9 A. No, no. It was a one-room schoolhouse.

10 Q. Okay. Okay. So --

11 A. We played games that they would never dream of
12 playing today. It was a different lifetime, I can
13 assure you.

14 Q. Okay. And so one of the things you wanted to
15 talk to the Commission about is, first of all, the --
16 how this has affected your family, the emotional toll of
17 dealing with this?

18 A. The emotional and psychological distress has
19 caused sleepless nights for our family. We have so many
20 reasons for not wanting the pipeline. We have
21 opposition because of, number one, how we've been
22 treated.

23 This -- this farmland has been in our family for
24 generations. We had plans for this for the future.
25 Eminent domain, our land is going to be taken from us?

1 My dad sacrificed for so many years. He bought it from
2 his father. I mean, it's just like -- and you're going
3 to come in and take our land and you don't even have the
4 respect of a landowner. We're smaller than a flea. I'm
5 sorry, but that's just how we've been treated.

6 My brother got a call. He referred it to my
7 sister. She takes care of our bookkeeping and etcetera
8 and etcetera and etcetera. And she called me and then I
9 go "Oh, it's a pipeline." She said, "It's a CO2
10 pipeline." Didn't mean anything to me at the time.

11 So when she received that one call, she said
12 absolutely not, we will not -- we will not authorize the
13 survey. And we got an easement -- it's like she didn't
14 say anything. We got an easement offer, I believe just
15 a few days later. And when we said no to that with no
16 uncertain terms, she was rather firm, we got paperwork
17 that we were being sued.

18 Q. Now, Susan, you've -- some of your neighbors,
19 you've heard them talk about, you know, at some point,
20 you know, the eventual goal was that they could
21 contribute their farmland or develop it as some -- you
22 know, an eventual something for their heirs just because
23 of its location with respect to Bismarck. Do you -- is
24 that consistent with your understanding of where this
25 land is?

1 A. We've had numerous opportunities to sell this
2 portion of land and we've turned all of them down at
3 this point. My daughter and her husband, who now live
4 in Wisconsin, eventually had intentions of coming back
5 to North Dakota, building a house, and retiring here.
6 My brother has children that are considering -- well,
7 were considering building eventually on this property.
8 And there's always the potential for possible
9 development. Obviously, if a pipeline is going across
10 it, that potential has been removed.

11 Currently we have approximately 232 acres that
12 are agricultural and 139 acres that are hayland. So it
13 pays the taxes and includes income for upkeep. Some of
14 the other agricultural and farming, we have -- we have
15 the home farmstead and we have a shed. And the money
16 comes in handy to help with the expenses currently.

17 Q. Now, I know that you've been following kind of
18 developments with PHMSA. And there's been a lot of
19 discussion about waiting -- at a minimum, waiting until
20 the PHMSA regulations are updated. Can you share with
21 the Commission your feelings about that?

22 A. Well, the hearing they just had -- this is from
23 the PHMSA website. So the hearing they just had is a
24 rare hearing for public input, but this is -- this is a
25 quote from PHMSA: Implement they're having -- we're

1 having this hearing to implement new measures to
2 strengthen its safety oversight of carbon dioxide CO2
3 pipelines around the country and protect communities
4 from dangerous pipeline failures.

5 So if PHMSA thinks that it's important to change
6 its rules, I cannot imagine why they are in such a rush.

7 And another thing is, in my research on a
8 government website, there's been an extension until 2032
9 for any CO2 pipeline to start construction and still
10 have a grab at our tax dollars.

11 Q. Now there's been some testimony and one of the
12 commissioners alluded to there's been submissions from
13 Summit, first of all, that they don't believe a pipeline
14 will negatively impact the land. What's your impression
15 about your land?

16 A. Okay. So my impression is, is that is nonsense.
17 I have contacted different agencies. I've contacted an
18 appraiser that appraised our land when my father passed
19 away. And I -- and we did sell a portion of land. And
20 I contacted that broker. And they all indicated they
21 felt it would be detrimental to the value of the
22 property. So in my opinion, it's going to devalue the
23 property significantly.

24 As I said, it's near our nephew, which is a half
25 mile away, which is a concern. It's three-quarters of a

1 mile away from The Ranch. And actually the Heritage
2 Reserve butts right up to section 15. They're in
3 section 22. And so all those brand-new homes, they're
4 there.

5 Q. Now as part of your investigation, did you reach
6 out to your liability insurance company about coverage?

7 A. Yes, we did.

8 Q. And we're passing around right now, Susan, the
9 May 18th letter. Can you tell us what your
10 understanding of -- is your situation with respect to
11 liability insurance?

12 A. If anything should happen concerning the
13 hazardous pipeline, our insurance company will not cover
14 anything. And she actually went -- and there's state
15 code regarding insurance. So for me reading this
16 letter, unless I'm reading it wrong, there's nobody in
17 the state of North Dakota, according to state law, that
18 can be covered in any way if there's something wrong
19 with this pipeline, something happens. If there's a
20 rupture, there's a leak, whatever.

21 Q. So if -- for example, if your tenant would
22 accidentally puncture Summit's pipeline causing a
23 catastrophic failure, both you and your tenant would
24 have no insurance coverage for that?

25 A. That's correct. And, in fact, we're concerned

1 about farming the land simply because the railroad is
2 running in between. We have no idea the depth that
3 they're going to go under the railroad. Thankfully for
4 us that that train doesn't go often, but it goes on a
5 regular basis. And they're talking four feet, four and
6 a half feet depth for putting the pipeline down. That's
7 ludicrous.

8 Q. And, Susan, before you move on, the letter --

9 A. Sorry.

10 Q. -- I've passed around is a May 18th, 2023,
11 letter --

12 A. Yes.

13 Q. -- from Renae Haug at State Farm?

14 A. Yes.

15 Q. Is that the letter you received?

16 A. Yes.

17 Q. Okay. Now, before we wrap up, you had also
18 expressed, you know, you wanted to address the
19 Commission about the list of investors --

20 A. I certainly do.

21 Q. -- Summit had submitted.

22 A. This just makes me so angry. Maybe frustrated.
23 I don't know. I don't know the right word. But Summit
24 Carbon tells us they don't know who their investors are.
25 They can't give us a plume study because it's a possible

1 security risk to release that information when it
2 happens that foreign investors like Communist China,
3 Saudi Arabia, South Korea -- and I know South Korea is
4 our ally, I'm aware of that, they're still a foreign
5 country with possible foreign investors that may have
6 access to that information, that's -- that's -- that's
7 -- there's not even a word on how we feel about that.

8 And, you know, part of this, I'm going to wander
9 off if you don't mind, Steve, there are so many fond
10 memories we have of the farm. I mean, my grandpa had it
11 before, and then my dad. The family gathered at our --
12 at the farm all the time. There's always room,
13 especially in the summer. Maybe not so much in the
14 winter, the house is very small, but it was a place for
15 gathering, the Christmases and the holidays and -- and
16 that our nephew still lives there and he would
17 potentially have to move off of that land, out of that
18 home that's over a hundred years old.

19 I mean, the crocuses were amazing this year, I
20 mean just amazing. And our dad was -- when it's time to
21 plant, you plant, no messing around. When it's time to
22 harvest, you harvest, no messing around. When it's time
23 to cut hay, you cut hay, no messing around. But the one
24 thing he -- we remember that he did, he would pick mom
25 crocuses every single -- he looked for them and picked

1 the crocuses. He'd come and make a prediction about the
2 year, what it was going to do for rain that year
3 depending on the stem of the crocus. And my sister and
4 I were talking about it and the stems were long this
5 year so that means we're going to get a lot of rain.
6 That would have been his prediction.

7 Just a second.

8 Q. So, Susan --

9 A. Go ahead.

10 Q. The -- kind of the final group of questions I
11 want to ask you is one of the things the Commission is
12 considering is the impact. And you've talked about the
13 emotional impact. What was your plan for what was going
14 to happen in this -- with this land in the future? What
15 was your future plan?

16 A. For now we were going to continue to keep it as
17 agricultural. Potentially, we would choose -- if we
18 decide to sell it, we would choose who we would sell it
19 to and how it was developed.

20 Q. Do you rely on the income from the land?

21 A. I do -- we do not. We -- we do not. We use
22 that money to cover expenses. So I guess if we didn't
23 have that money, we would have to -- that would cost us.

24 Q. Okay.

25 A. It would cost us.

1 Q. Do you have anything further you would like to
2 tell the Commission?

3 A. Well, in closing, our personal sentiment is that
4 it's an outrage that land that has been owned by our
5 family for generations can be taken away from us by a
6 private for-gain pipeline company that appears to have
7 financial backing by Communist China. What a disgusting
8 inheritance to leave future generations. Toxic land, an
9 explosive pipeline, and a possible future of forced
10 easements under the false guise of saving the
11 environment.

12 Our forefathers came to this country to have
13 freedom of religion, to own and possess and not have to
14 live under the rule of government. They came, according
15 to the United States Declaration of Independence --
16 well-known phrase -- for life, liberty, and pursuit of
17 happiness, given to all humans by their Creator and
18 which governments are created to protect.

19 My father was a World War II veteran. My
20 husband served in Vietnam. He's paid a high price for
21 that service so this country could continue the freedom
22 it was founded on. It seems we are losing the values by
23 which this country was founded on.

24 And my nephew that -- has really lost sleep. He
25 gave me this little funny blurb. And you don't have

1 this, Steve. I'm sorry. I'm going to read this for my
2 nephew if it's okay with the Commission.

3 ALJ HOGAN: How long is it?

4 THE WITNESS: It's a minute.

5 ALJ HOGAN: Okay. Go ahead.

6 THE WITNESS: It's a minute.

7 A. So my nephew Greg was reading Dr. Seuss to his
8 daughter the other night, and she wanted to read Lorax.
9 Now I'm not a Dr. Seuss profunder, so here. As he read
10 the story, he couldn't help but notice some striking
11 similarities between that story and the story Summit is
12 trying to write. Here is a quote:

13 The Once-ler says, "Look, Lorax," I said,
14 "there's no cause for alarm. I chop just one tree. I
15 am doing no harm. I'm being quite useful. This thing
16 is a thneed, a thneed, a fine something that all people
17 need. It's a shirt, it's a sock, it's a glove, it's a
18 hat, but it has other uses, yes, far beyond that. You
19 can use it for carpets, for pillows, for sheets and
20 curtains or covers on bicycle seats." The Lorax said,
21 "Sir, you are crazy with greed. There is no one on
22 earth who would buy that fool thneed."

23 See the similarities? Summit Carbon Solutions
24 is the Once-ler and this pipeline and concept as a whole
25 is a thneed. We the people are the Lorax and are being

1 told by elected officials that we need to accept this.
2 And if we do not -- and if we do not, we are against
3 energy and agriculture, which is completely absurd.

4 The facts are we definitely do not need the
5 thneed fueled by greed. Our property rights and safety
6 are far more important. In the words of Dr. Seuss,
7 unless someone like you, the Public Service Commission,
8 cares a whole awful lot, nothing is going to get better.
9 It's not.

10 THE WITNESS: And I have to tell you,
11 Mr. Bender, my opinion is Summit Carbon's attitude is
12 like yours.

13 ALJ HOGAN: Ms. Doppler, I'm going to stop you
14 there. I'm not going to allow you to address Mr. Bender
15 individually.

16 THE WITNESS: He's so rude to us and he's short
17 in his comments. I will -- I'll save it, but that's how
18 we've been treated the whole time by this company.

19 MR. LEIBEL: I would offer --

20 THE WITNESS: I'm sorry.

21 MR. LEIBEL: -- SD1 and SD2 also.

22 ALJ HOGAN: Okay. And the map I have marked as
23 1 and the letter as 2.

24 Let's see. Mr. Mahlberg, am I directing to you?

25 MR. MAHLBERG: We'll try Mr. Mahlberg.

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CROSS EXAMINATION

BY MR. MAHLBERG:

Q. Mrs. Doppler, just a couple of questions. You talked about the railroad that runs through the property, sort of bisects the property north and south.

A. Yes.

Q. And you said it doesn't go too often but it goes regularly; right?

A. Yes.

Q. What materials does that railroad carry?

A. Pardon me?

Q. What does that railroad move, if you know?

A. You have to ask the railroad. I don't know.

Q. Are you ever out there seeing the tankers going by and have ever --

A. Just cars.

Q. Just --

A. I don't know what's in the boxcars.

Q. Got it. Thank you. Okay. That was the only question I had. Thanks, Mrs. Doppler.

ALJ HOGAN: Do you have any objection to the exhibits?

MR. MAHLBERG: Absolutely not.

ALJ HOGAN: Okay. Mr. Pelham, any objection to the exhibits?

1 MR. PELHAM: I have no objections and I have no
2 questions. Thank you.

3 ALJ HOGAN: Mr. Pranis, any objection to the
4 exhibits?

5 MR. PRANIS: No. No objections, no questions.

6 ALJ HOGAN: Thank you. Mr. Bakke, any objection
7 to the exhibits?

8 MR. BAKKE: No objections.

9 ALJ HOGAN: All right. The exhibits will be
10 received.

11 Mr. Bakke, any questions?

12 MR. BAKKE: Yes.

13 CROSS EXAMINATION

14 BY MR. BAKKE:

15 Q. Could you take a look at SD2. That's the letter
16 you received from State Farm from your agent on --

17 A. From State Farm?

18 Q. Right.

19 -- dated May 18, 2023. And I see that the
20 second page discusses some exclusions. It says
21 "Exclusions" on the top and then they go through the
22 pollution exclusions which we've heard about before, but
23 I think this is the first letter we've seen from an
24 insurance company, at least that I'm aware of in this
25 case, where State Farm lists an additional grounds for

1 not providing coverage to your property. And I'm
2 looking at the bottom of the third paragraph on the
3 first page where they say "One reason is due to you not
4 'owning the pipeline' but furthermore, negligence would
5 be a factor as well."

6 So State Farm has told you there's two grounds
7 why you would not get insurance coverage if this
8 pipeline came through. One, you don't own the pipeline
9 and, second, because it carries a pollutant and would be
10 excluded --

11 A. Correct.

12 Q. -- under the pollution coverage?

13 A. Correct.

14 MR. BAKKE: Okay. That's all I have.

15 ALJ HOGAN: Commissioner Christmann.

16 COMMISSIONER CHRISTMANN: I'll try to save the
17 time for others.

18 ALJ HOGAN: All right. Commissioner
19 Haugen-Hoffart.

20 COMMISSIONER HAUGEN-HOFFART: Yes, I have a
21 question just for clarification.

22 You said in your testimony that your brother got
23 a call, then referred to your sister, your sister called
24 you, and you said no because it's a CO2 pipeline.

25 THE WITNESS: I said I wasn't concerned when she

1 first called me.

2 COMMISSIONER HAUGEN-HOFFART: Then she said no.

3 THE WITNESS: Well, no. We discussed it and she
4 -- she clarified to me that there was a difference
5 between a gas and an oil pipeline.

6 COMMISSIONER HAUGEN-HOFFART: Okay.

7 THE WITNESS: And in my own research after
8 talking to her. So we had all agreed that this was a
9 "no."

10 COMMISSIONER HAUGEN-HOFFART: Okay. I would --
11 I would agree with that. Okay. So then you went on to
12 state that this was the call, you got a call from
13 Summit; correct?

14 THE WITNESS: My sister did, yes.

15 COMMISSIONER HAUGEN-HOFFART: Yep. And then
16 there was no communication until you got paperwork that
17 you were being sued?

18 THE WITNESS: There was -- there was one -- a
19 week later we got an offer.

20 COMMISSIONER HAUGEN-HOFFART: Okay.

21 THE WITNESS: And then shortly -- then we -- and
22 we denied -- denied the offer.

23 COMMISSIONER HAUGEN-HOFFART: How did you deny
24 that to them?

25 THE WITNESS: She did it in writing, very firmly

1 telling them that we will in no way allow them to
2 survey. And it was a short time later that we then got
3 papers for suit.

4 COMMISSIONER HAUGEN-HOFFART: Okay. So just to
5 recap, here's what I heard. There was a call, then an
6 offer, you denied it, then you got paperwork you're
7 being sued?

8 THE WITNESS: Yes.

9 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.

10 ALJ HOGAN: Mr. Dawson, any questions?

11 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

12 Thank you.

13 ALJ HOGAN: Any redirect, Mr. Leibel?

14 MR. LEIBEL: I have nothing further.

15 ALJ HOGAN: All right. Thank you, Ms. Doppler.

16 THE WITNESS: Thank you. Thank you for letting
17 us speak. I appreciate it.

18 ALJ HOGAN: Next witness.

19 MR. JORDE: Yep. We'll see if they're still
20 around.

21 Connie Erickson?

22 Oh, there she is, right there. Great.

23 ALJ HOGAN: Good afternoon. Can I have you
24 state your full name and spell your last name for the
25 record?

1 CONNIE ERICKSON: Connie Erickson,
2 E-R-I-C-K-S-O-N.

3 ALJ HOGAN: And, Ms. Erickson, were you in the
4 room earlier --

5 CONNIE ERICKSON: Yes.

6 ALJ HOGAN: -- when I went through the penalties
7 for perjury?

8 CONNIE ERICKSON: I was, yes.

9 ALJ HOGAN: And do you understand what perjury
10 is?

11 CONNIE ERICKSON: I do.

12 ALJ HOGAN: And being advised of the potential
13 penalties for perjury, do you promise to tell the truth
14 in this case today?

15 CONNIE ERICKSON: So help me God.

16 ALJ HOGAN: All right. Thank you.

17 Go ahead, Mr. Jorde.

18 **CONNIE ERICKSON,**

19 being first duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. JORDE:

23 Q. Ms. Erickson, do you own either directly or
24 indirectly or have interest in land that would be
25 affected by this potential pipeline?

1 A. I do, yes.

2 Q. And just to orientate ourselves, help the
3 Commission understand where that land is located.

4 A. Well, it started out with one on 106th Street
5 that was sold to a neighbor. It's a title for deed.
6 And that's how I became aware of this. And that was in
7 April. Well, in June I got another mailing. And I
8 called up the neighbor and I said, "Did you get a new --
9 new update?" He's like, "No, they moved off my land."
10 He goes, "They're on yours to the east," which is on
11 106th Street. So that's when I started giving it to our
12 attorney.

13 And in June was when -- I think his name is
14 Dennis Sayler (phonetic) came knocking on my door, asked
15 if I would give authorization to survey the land. And I
16 said, "I don't think so." And he goes, "Well, just to
17 let you know, if they want your land, they'll get it any
18 way they want."

19 And that was the only contact I had with them.

20 Q. And --

21 A. 106th Street.

22 Q. 106th Street.

23 And after that interaction with Summit's agent
24 or employee, how did that make you feel?

25 A. I slept with my pistol on my chest again,

1 because my husband had recently passed two years before
2 that.

3 Q. And is that because of the attitude that was
4 expressed by that Summit agent?

5 A. Yes. I was terrified.

6 Q. And since --

7 A. And I've -- my son has since moved back home
8 with me.

9 Q. And since that time have you had any further
10 interaction with any Summit agent or employee?

11 A. No. I can't say for sure, but I had signs up
12 that I had made and they disappeared. Well, I got new
13 signs up now and they're still up so...

14 Q. And were you sued by Summit --

15 A. Yes.

16 Q. -- for survey access?

17 And was that an emotional and expensive process
18 fighting them?

19 A. Yeah. It's cost money. We're renting this land
20 out. It was my husband's love and he taught me the love
21 of the land. And he wanted it to continue so we rent it
22 out for now. In five years I retire. That's my
23 retirement.

24 Q. And part of your husband's legacy and as a
25 promise to him was to maintain that land as the best

1 steward as you can?

2 A. Yep. And I feel like I let him down, my in-laws
3 down, my son.

4 Q. And has Summit at any time approached you or
5 sent anything to you via Mr. Leibel or I of
6 brainstorming about any ideas and reroutes or how to
7 help you out?

8 A. Nope.

9 Q. What else concerns you about this?

10 A. Well, the one section they want, it's about a
11 mile east of the last house on the housing development.
12 And there's neighbors to the northeast and to the
13 northwest. And then when you go further down 106th
14 Street, I got neighbors that live right on that parcel.

15 And the attorney I had before Mr. Jorde, he had
16 called me up one day and he said, "Well, why don't you
17 sign the easement?" He said, "We'll see what we can get
18 you." And I said, "A life is more than money." I mean,
19 how could I rightfully say, "Okay, give me this much
20 money and I'll sign your easement and put my neighbors'
21 life --" I could never do that. There's more to a life
22 than that. You can't put money on a life.

23 Q. Do you have any understanding of why they're
24 seeking a 99-year easement when it's 12 years of tax
25 credits?

1 A. No. I -- you know, I came off of about five
2 years of attorney -- of courts and paperwork with my
3 father-in-law, my mother-in-law, and then my husband. I
4 don't even want to read anything anymore. I want to be
5 left alone.

6 Q. Ma'am, the emotional toll this has taken on you,
7 would you agree that the approval of this proposed route
8 is not in the welfare or the best interest of the
9 welfare of the citizens of North Dakota?

10 A. Oh, yeah, it's not -- no, it's not in the best
11 interest at all.

12 Q. And do you believe it would be to an economic
13 detriment to you and your future intention with your
14 land?

15 A. Yes.

16 Q. All right. Thank you, ma'am. I appreciate your
17 time.

18 ALJ HOGAN: Mr. Mahlberg, any questions?

19 MR. MAHLBERG: No, thank you.

20 ALJ HOGAN: Mr. Pelham.

21 CROSS EXAMINATION

22 BY MR. PELHAM:

23 Q. Ms. Erickson, I'm just wondering if you can be
24 more specific as to where the land is at?

25 A. Let's see. The one section is 34T-140N-R79

1 west. The other one is 27.

2 Q. 27-140?

3 A. Uh-huh. N-R79 west.

4 Q. All right. Thank you. I don't have any other
5 questions for you.

6 ALJ HOGAN: Mr. Pranis, any questions?

7 MR. PRANIS: No, Your Honor.

8 ALJ HOGAN: Mr. Bakke.

9 MR. BAKKE: No questions.

10 ALJ HOGAN: Commissioner Christmann.

11 COMMISSIONER CHRISTMANN: I couldn't find this
12 that fast but -- so they're both in 140-79 west. You
13 said section 27, and what was the other one?

14 THE WITNESS: One's 27 and one's 34T. The 27 is
15 one where my neighbors live right on it. They bought my
16 mother-in-law and father-in-law's house when they moved
17 to town.

18 COMMISSIONER CHRISTMANN: Okay. Thank you.

19 ALJ HOGAN: Commissioner Haugen-Hoffart.

20 COMMISSIONER HAUGEN-HOFFART: I have no
21 questions, but thank you for your testimony.

22 ALJ HOGAN: Mr. Dawson.

23 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
24 Thank you.

25 ALJ HOGAN: All right. Thank you, Ms. Erickson.

1 Next witness.

2 MR. JORDE: David Locken. Is David still here?

3 No. Okay.

4 MR. LEIBEL: Then Rachelle Herbel, please.

5 ALJ HOGAN: Good afternoon. I'll have you state
6 your full name and spell your last name for the record,
7 please.

8 RACHELLE HERBEL: My name is Rachelle Herbel,
9 H-E-R-B-E-L.

10 ALJ HOGAN: And, Ms. Herbel, were you in the
11 room earlier when I went through the penalties for
12 perjury?

13 RACHELLE HERBEL: Yes, I was.

14 ALJ HOGAN: And do you understand what perjury
15 is?

16 RACHELLE HERBEL: Yes, ma'am.

17 ALJ HOGAN: Being advised of the potential
18 penalties for perjury, do you promise to tell the truth
19 in this case today?

20 RACHELLE HERBEL: Yes.

21 ALJ HOGAN: All right. Thank you.

22 Go ahead, Mr. Leibel.

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RACHELLE HERBEL,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEIBEL:

Q. I'm going to start by asking, Rachelle, do you own land that is directly impacted by this proposed pipeline?

A. Yes, I do.

Q. Okay. Can you start the -- for the Commission and identify the specific legal description, what section this is?

A. It is section 13T-140N-R81W.

Q. Okay. And now can you give us an idea where this is located for those of us in Bismarck?

A. Yep. So it's north on 83. You take a left on Highway 149 and you just go to where the pavement ends, you hit the gravel and you take a left there, and we are just south of the construction landfill.

Q. Okay. Tell us -- we've heard a lot of different people who have talked about kind of, you know, decades of family history. And your position is a little bit different. Tell us how you acquired that property.

A. Oh, my -- my husband heard about the property from a gentleman that he works with. My husband is a

1 physician at Sanford. And so a good friend of his, they
2 were at work one day and told him about this great piece
3 of property that's up there. And so we went and took a
4 look at it. And this was about 2016, 2017. And went up
5 there with the real estate agent and, wow, it's like --
6 it's -- it's the -- the property is absolutely
7 breathtaking. It is truly God's country up there. It
8 just -- I swear I heard the angels singing. It is just
9 -- it is just beautiful. And so I just said, "Oh, my
10 gosh," and I --

11 Anyway, we bought the property. It's 120 acres.
12 It is just beautiful. It is breathtaking. It is -- it
13 is just incredible.

14 Q. So what's your -- let me ask first, how are you
15 currently using the property?

16 A. Well, we bow hunt and so we have a nice little
17 hunting shack on the property. And so my son and my
18 daughter and my husband, they bow hunt up there. And my
19 -- my son is really into long-range shooting and so we
20 have several targets out there. And so we're -- we're
21 up there a lot. And we just like to go up there to even
22 -- even if we're not hunting or long-range shooting,
23 just to -- just to relax. It is just -- like I said,
24 it's just God's country up there and it's -- yeah, it's
25 wonderful.

1 Q. What is your -- what was your plan? What did
2 you buy that property for? Do you have any intention to
3 build on that?

4 A. Yep. So in 2018 then we had house plans drawn
5 up. They've been ready to go. And we've just been
6 waiting for the right time. Had a road put in and
7 everything. And so that has been our plan to retire up
8 there and live up there, but certainly we can't do that
9 now. There's just no way.

10 Q. So I've circulated to the Commission --

11 A. Yep.

12 Q. -- a map that I'm going to introduce as RH1 --

13 A. Okay.

14 Q. -- which is your initials, of course, and the
15 number one. Can you tell us what this is?

16 A. So this is -- this is a map of our property, all
17 the 120 acres Summit thinks that they're going to put
18 their poison pipeline through the entire length of my
19 property, the entire length of it, to and including --
20 the first time I looked at this thing, I went, "Oh, my
21 gosh, that's about right where we're going to put our
22 house." If it's not right underneath it, it's right up
23 against it. And I -- I honestly just couldn't believe
24 my eyes. But it runs the entire length of the property,
25 which is just stunning.

1 Q. So your plan was to build your house almost
2 exactly where Summit has cited their pipeline?

3 A. Yes. Yes.

4 Q. If the Commission approves this, the current
5 site of the pipeline, and assuming you're not going to
6 build a basement, would you still build your house in
7 this location?

8 A. No. We cannot build our house there. We cannot
9 live anywhere near there. No.

10 Q. One of the things -- one of the documents that
11 Summit has prepared and submitted to the Commission
12 states that, you know, they believe that it will take
13 185 years for Bismarck's growth to reach this proposed
14 pipeline route. And this is kind of a dumb question,
15 but obviously you weren't planning on waiting 185 years.
16 Is that fair?

17 UNIDENTIFIED SPEAKER: I'm going to object to
18 the extent it mischaracterizes the evidence.

19 A. Definitely not planning to wait --

20 ALJ HOGAN: Hang on.

21 A. -- 185 years.

22 ALJ HOGAN: Hang on.

23 I'm going to note the objection, but she can
24 answer the question.

25 A. No, not going to be waiting 185 years. That's

1 absurd.

2 Q. (BY MR. LEIBEL) Is there any development in
3 the area of your piece of property?

4 A. Oh, we're surrounded by already established
5 homes. There are a bunch of families, wonderful people
6 that live out there already. Farms, livestock. We're
7 surrounded by people that already live out there. So
8 it's -- it's devastating. It is truly devastating.

9 Q. I guess the last -- couple more questions. So
10 one of the issues that the Commission has been asked is
11 to delay a decision on this until the additional safety
12 regulations are promulgated by PHMSA. Do you have a
13 position on that?

14 A. Yeah. What's the rush? Ever since the
15 explosion in Satartia, they've been actively working on
16 safety rules and regulations. And so PHMSA isn't even
17 supposed to be finished with that, with their study,
18 until, at the very earliest, 2024 maybe sometime. And
19 so I have no idea why in the world anybody would even
20 think that this is a decent project to even -- to go
21 forward with until that time.

22 Q. So, Ms. Herbel, this is kind of our last
23 opportunity. Is there anything you'd like to state or
24 say to the Commission before we close?

25 A. First of all, Commission, thank you for taking

1 the time to listen to us. My feeling is that it's bad
2 enough that beautiful -- I apologize, I get emotional
3 when I'm talking about this.

4 It's bad enough that beautiful pieces of land
5 will be destroyed and devalued and that crops will no
6 longer be able to flourish should this poison pipeline
7 actually go in the ground, but it is a complete and
8 utter disregard for life, people's property, people's
9 safety and well-being.

10 This proposed pipeline is a dangerous death
11 wish, especially if stuck in the ground along its
12 current route which essentially engulfs all of Bismarck.
13 And if there is an explosion -- actually not if, it's
14 when, it will happen -- the entire city will be covered
15 in a blanket, potentially of lethal asphyxiant. The
16 current route is the worst possible route. And all of
17 its citizens here in Bismarck are in grave danger.

18 My husband and I are actually having
19 conversations about moving out of Bismarck-Mandan should
20 this actually be allowed to go in the ground because
21 nobody will be safe. Because it's not a matter of if.
22 It's a matter of when. There will be a break, there
23 will be a leak. And how many people are going to die?
24 Hundreds? Thousands?

25 I just -- so I would implore you, Commission, to

1 really put the safety and well-being of the people of
2 this great city and state at the forefront.

3 Q. Thank you, Mrs. Herbel. I have nothing further.

4 A. Okay. Thank you.

5 ALJ HOGAN: All right. Mr. Mahlberg, any
6 objection to the exhibit?

7 MR. MAHLBERG: No objection.

8 ALJ HOGAN: Any questions?

9 MR. MAHLBERG: No questions.

10 ALJ HOGAN: Mr. Pelham, any objection to the
11 exhibit?

12 MR. PELHAM: No objections and no questions.
13 Thank you.

14 ALJ HOGAN: Mr. Pranis, any objection to the
15 exhibit?

16 MR. PRANIS: No objection, no questions.

17 ALJ HOGAN: All right. Thank you.

18 Mr. Bakke, any objection to the exhibit?

19 MR. BAKKE: No objections.

20 ALJ HOGAN: The exhibit is received.

21 Mr. Bakke, did you have any questions?

22 MR. BAKKE: Just a few.

23 CROSS EXAMINATION

24 BY MR. BAKKE:

25 Q. Ms. Herbel, am I correct in understanding your

1 husband is an interventional radiologist at Sanford?

2 A. Yes, sir.

3 Q. Okay. And there's just two interventional
4 radiologists working at Sanford presently; is that
5 correct?

6 A. Right now he has -- he has three partners, but
7 one has resigned. So there are -- currently, there are
8 a total of -- well, there are three full-time and then
9 one does IR off and on.

10 Q. Sure. And your husband has been very involved
11 in training medical students from the University of
12 North Dakota Medical School; correct?

13 A. Very much so. He loves doing that.

14 Q. In fact, he recently received an award from the
15 medical school; correct?

16 A. He did. He did.

17 Q. Fair to say that your husband could get a job
18 probably anywhere in the U.S.?

19 A. He really could. He's -- I can say with a
20 hundred percent confidence he's one of the best IR
21 physicians in the country. He just is. He's immensely
22 talented.

23 Q. Okay. And he's very highly respected in the
24 community, I can tell you that.

25 And because of this possible pipeline, your

1 husband and you are thinking about leaving the
2 community?

3 A. Yeah. We've -- we are having those discussions.

4 Q. Yeah.

5 A. It's --

6 Q. Agree with me that would be a huge loss to the
7 community here if we lost one of our best, or perhaps
8 the best, interventional radiologist in town?

9 A. Medically speaking, yes. Yes. He treats a
10 multitude of stroke patients and cancer patients. Yes.

11 MR. BAKKE: I have no further questions.

12 ALJ HOGAN: Commissioner Christmann, any
13 questions?

14 COMMISSIONER CHRISTMANN: Your Honor, what's the
15 exhibit number?

16 ALJ HOGAN: Oh, I'm sorry. RH1.

17 COMMISSIONER CHRISTMANN: Ma'am, did you say
18 what quarter your 120 acres are in out of section 13?

19 THE WITNESS: Let's see. Is it on there?
20 Quarter? I don't think I mentioned a quarter. I'm not
21 -- I just have section --

22 COMMISSIONER CHRISTMANN: It's okay. It's
23 not --

24 THE WITNESS: I'm not really -- okay. I'm not
25 certain of a quarter.

1 COMMISSIONER CHRISTMANN: No problem. No other
2 questions.

3 ALJ HOGAN: Commissioner Haugen-Hoffart.

4 COMMISSIONER HAUGEN-HOFFART: Yes.

5 When was your first communication with Summit
6 regarding the pipeline going through your property?

7 THE WITNESS: We received a letter in the mail,
8 I don't know, a couple of years ago. I don't know. We
9 -- we started receiving letters.

10 And a lady gave me a call and she was
11 explaining, you know, what it was that Summit wanted to
12 do and everything like that. And I -- and I just
13 explained nicely that we have absolutely no interest in
14 having our land destroyed or anything like that. So she
15 was -- you know, she was decent on the phone.

16 Apparently, she was fired because she was too
17 honest with people like me on the phone. They got rid
18 of her shortly thereafter because, you know, she was
19 actually helpful and said the truth. So she was
20 dismissed, I guess.

21 And so after refusing to let Summit on our
22 property, I don't know, then we got -- we got letters in
23 the mail saying that they were suing us.

24 (Noise)

25 COMMISSIONER HAUGEN-HOFFART: Does that mean my

1 time is up?

2 ALJ HOGAN: Yes.

3 (Laughter)

4 COMMISSIONER HAUGEN-HOFFART: Besides that one
5 lady, did you have any communication with anybody else
6 from Summit?

7 THE WITNESS: No. Just letters.

8 COMMISSIONER HAUGEN-HOFFART: Okay.

9 THE WITNESS: Just letters in the mail.

10 COMMISSIONER HAUGEN-HOFFART: When did you
11 receive the letter about being sued, about approximately
12 what time?

13 THE WITNESS: Oh, boy. Gosh, I don't know. I
14 don't have those things with me exactly.

15 COMMISSIONER HAUGEN-HOFFART: I was just getting
16 the timeline and the type of communication you had with
17 Summit. So you had a letter, a lady called regarding a
18 survey, you had no interest --

19 THE WITNESS: Right.

20 COMMISSIONER HAUGEN-HOFFART: -- you refused,
21 then you got a letter regarding you're being sued.

22 THE WITNESS: Yeah. We -- you know, we received
23 several letters from them. You know, there was a
24 letter. They made a monetary offer. We just said no.
25 Then they made another monetary offer. And then since

1 we weren't going to let them on our property to survey
2 it and take a peek, then they just decided to sue us.

3 So then we started -- the letters got
4 progressively just more aggressive and threatening.
5 They weren't nice letters. I mean, maybe the first one
6 was decent, but the letters got progressively
7 threatening. And so for us, that -- that was just
8 obviously a giant red flag. I mean, that's no way to do
9 business.

10 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.
11 I have no further questions.

12 ALJ HOGAN: Mr. Dawson, any questions?

13 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
14 Thank you.

15 ALJ HOGAN: Any redirect?

16 MR. LEIBEL: I just have one question.

17 REDIRECT EXAMINATION

18 BY MR. LEIBEL:

19 Q. So the Commission was asking you about
20 discussions with Summit. Did you have a recent
21 discussion with some of Summit's people?

22 A. Oh. Well, I didn't have -- well, I had an
23 encounter with some of Summit's people. Unbeknownst to
24 me, a neighbor of ours called my husband at the hospital
25 and let him know that Summit was on our property, like a

1 bunch of them were on our property, swarming our
2 property. And so --

3 Q. And just so we're clear, this is after -- so you
4 were sued and the judge ruled that Summit could have
5 access, which is something that we're currently
6 appealing?

7 A. Right.

8 Q. Just -- I wanted to make sure that was clear,
9 that Summit had a court order at that point. But you
10 can go ahead.

11 A. Yeah. I wasn't -- I wasn't certain. I didn't
12 really know about the court order at the moment that I
13 received the phone call that Summit was on our property.

14 So I went up there. And there were a bunch of
15 trucks parked on the road and there were about six or
16 seven people on the property with digging equipment and
17 all this stuff. And, I don't know, they were just very
18 rude and standoffish.

19 And I thought it was interesting that as soon as
20 I started filming the people and what the people were
21 doing on my property, they just bugged out and didn't
22 want to have anybody filming them for some odd reason.
23 So I just thought it was -- and I had overheard them, I
24 have them on videotape saying that they had been on my
25 property the day prior to me seeing them on this

1 particular day. And then they went back the day after
2 as well.

3 And I just -- I just thought "Really?" I mean,
4 "What are you doing? You don't even have permission to
5 be here but, you know, you got an emergency court
6 order."

7 It just -- it's just a gross overreach,
8 incredibly rude, and disruptive. They dug holes and, I
9 don't know, it's just very disheartening.

10 Q. Okay. Thank you.

11 ALJ HOGAN: Mr. Mahlberg, any other questions?

12 MR. MAHLBERG: No.

13 ALJ HOGAN: Mr. Pelham.

14 MR. PELHAM: No questions.

15 ALJ HOGAN: Mr. Pranis.

16 MR. PRANIS: No questions.

17 ALJ HOGAN: Mr. Bakke.

18 MR. BAKKE: No.

19 ALJ HOGAN: Any other commissioner questions?

20 All right. Thank you, Ms. Herbel.

21 All right. Any other further witnesses?

22 MR. JORDE: We'll try Jimmy Powell again if he's
23 decided to come join us yet.

24 ALJ HOGAN: I don't see him here.

25 MR. JORDE: No? Okay. No, I don't see him.

1 Okay.

2 And then Micah Rorie, has he joined us, Mr.
3 Rorie? Gave some opinions that should be
4 cross-examined. No? Okay.

5 Then I would just say if any of Mr. Leibel or
6 I's clients have sneaked in in the meantime and you
7 haven't yet talked, this would be the time to come down.
8 I'm not -- no, I'm not seeing anyone. Okay.

9 Then, with that, we would not have any more
10 witnesses at this time, Your Honor.

11 ALJ HOGAN: All right. I think we'll take our
12 afternoon break.

13 And then after our break we'll shift to you,
14 Mr. Bakke, and you can -- so if you want to get
15 your first witness ready and have them up at the witness
16 stand.

17 We'll shoot for a 15-minute break so we'll
18 reconvene at 3:20.

19 (Recess)

20 ALJ HOGAN: We're going to get started again.
21 All right. We're going to start with one last public
22 commenter before we -- before I turn to Mr. Bakke.

23 So if you want to state your full name and spell
24 your last name for the record, please.

25 TYLER IRON EYES: Hello. My name is Tyler Iron

1 Eyes, I-R-O-N E-Y-E-S, two words. I'm the tribal
2 archaeologist for the Standing Rock Sioux Tribe, Tribal
3 Historic Preservation Office. I was asked to attend
4 this meeting --

5 ALJ HOGAN: Hang on, hang on. Can I swear you
6 in real quick? Were you in the room this morning when I
7 went through the penalties for perjury?

8 TYLER IRON EYES: I was.

9 ALJ HOGAN: And do you understand what perjury
10 is?

11 TYLER IRON EYES: Yes.

12 ALJ HOGAN: And being advised of the potential
13 penalties for perjury, do you promise to tell the truth
14 in this case today?

15 TYLER IRON EYES: I do.

16 ALJ HOGAN: All right. Thank you. Go ahead.

17 **TYLER IRON EYES,**

18 being first duly sworn, testified as follows:

19 TYLER IRON EYES: All right. As I said, I'm the
20 tribal archaeologist for the Standing Rock Sioux Tribe,
21 Tribal Historic Preservation Office. I was asked to
22 attend this meeting to listen in and to report back to
23 my council what was being discussed. With that in mind,
24 this is not consultation with my government. This is
25 not consultation with my nation. I am merely here to

1 speak up because I was asked to.

2 Given repeated comments, I want to make it clear
3 that Standing Rock does not approve of a southern
4 reroute. If you move even one mile south of Bismarck,
5 you cross 1851 Fort Laramie Horse Creek Treaty
6 territory.

7 All the comments regarding generational
8 ranchers, generational farmers, my people have been here
9 millennia before that. And coast to coast, pole to
10 pole, you are in a site of significance to my people.
11 Everywhere we have walked, everywhere we have roamed is
12 important to us.

13 If you move that pipeline 1 -- again, 1 mile, 2
14 miles, 10 miles, 25 miles south of Bismarck, you're in
15 treaty territory.

16 Thank you.

17 ALJ HOGAN: All right. Thank you. Hang on, I'm
18 going to ask if there are any questions for you.

19 Mr. Bender?

20 MR. BENDER: No questions.

21 ALJ HOGAN: Mr. Pelham.

22 MR. PELHAM: I'm just wondering if the company
23 has consulted with you or your office or anything like
24 that?

25 TYLER IRON EYES: I believe we've received

1 letters. We have not engaged any further yet.

2 MR. PELHAM: Okay. And as far as those letters,
3 are they asking for anything specific or if you can
4 tell?

5 TYLER IRON EYES: I'm not at liberty to disclose
6 that right now.

7 MR. PELHAM: Fair enough. Thank you, sir.

8 ALJ HOGAN: Mr. Jorde, any questions?

9 MR. JORDE: Yes.

10 Sir, what is the southern boundary of your
11 tribal area?

12 TYLER IRON EYES: Are you asking for our
13 exterior boundaries as they currently stand or are you
14 asking for our treaty boundaries or ancestral territory?

15 MR. JORDE: The treaty boundaries.

16 TYLER IRON EYES: The treaty boundaries stretch
17 all the way down to the Platte River in Nebraska.

18 MR. JORDE: And would it be your position that
19 anywhere from south of Bismarck to the Platte River in
20 Nebraska would, therefore, be on your land? I just want
21 to understand your testimony specifically.

22 TYLER IRON EYES: Yes.

23 MR. JORDE: Okay. And do you realize -- I mean,
24 I'm sure you understand that this pipeline doesn't have
25 to go anywhere, let alone on your land; correct?

1 TYLER IRON EYES: Yes.

2 MR. JORDE: And the pipeline obviously could --
3 could it stay to the east or the west? I mean, is there
4 some possible route that they could locate this that it
5 would be off your land?

6 TYLER IRON EYES: As previously stated, coast to
7 coast, pole to pole. My people roamed from the Rocky
8 Mountains all the way to the Great Lakes. At one point
9 that was all Lakota, Dakota, Nakota territory. And it
10 still remains so to this day even if people don't
11 recognize it as such.

12 MR. JORDE: And do you have -- you said you are
13 an archaeologist?

14 TYLER IRON EYES: Yes.

15 MR. JORDE: And do you have other individuals
16 like yourself that are able to come onto the land of
17 some of the people that have talked here and to verify
18 whether or not there are cultural artifacts of
19 significance to your people?

20 TYLER IRON EYES: I do.

21 MR. JORDE: And would that be something you
22 would be willing to do if we reached out to you so that
23 you could verify those officially?

24 TYLER IRON EYES: I'll have to consult with my
25 tribe.

1 MR. JORDE: Okay. Thank you.

2 ALJ HOGAN: Mr. Bakke, any questions?

3 MR. BAKKE: Yes, briefly.

4 Would I be correct in understanding, Mr. Iron
5 Eyes, that what your tribe considers the treaty
6 boundaries does not end south of Bismarck; correct?

7 TYLER IRON EYES: The Horse Creek Territory, the
8 northern boundary of what is specifically Lakota, Dakota
9 territory, as defined in that treaty, is the Heart River
10 just south of Mandan. The treaty territory itself,
11 there are other tribes that laid claim to the land on
12 this side of the river. I'm only speaking to the
13 treaties that were made with my people.

14 MR. BAKKE: Right. But you understand that
15 another Native American tribe claims the land from that
16 point by the Heart River south of Mandan including in
17 the area north of Bismarck where the pipeline is
18 proposed to be installed; correct?

19 TYLER IRON EYES: Our territories overlap.

20 MR. BAKKE: Okay. And which tribe is that?

21 TYLER IRON EYES: I believe that's the Mandan,
22 Hidatsa, and Arikara, the Three Affiliated Tribes.

23 MR. BAKKE: So you understand that they would
24 make the same claim under treaty territory that where
25 the pipeline is proposed to go in north of Bismarck

1 falls under their treaty territory.

2 TYLER IRON EYES: Yes.

3 MR. BAKKE: Okay. That's all the questions I
4 have.

5 ALJ HOGAN: Commissioner Christmann.

6 COMMISSIONER CHRISTMANN: No questions, but
7 thank you for being here.

8 ALJ HOGAN: Commissioner Haugen-Hoffart.

9 COMMISSIONER HAUGEN-HOFFART: No questions, but
10 thank you for being here.

11 ALJ HOGAN: Mr. Dawson.

12 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
13 Thank you.

14 TYLER IRON EYES: Thank you.

15 ALJ HOGAN: Thank you, Mr. Iron Eyes.

16 All right. Mr. Bakke, do you want to call
17 your first witness?

18 MR. BAKKE: Yes. We're going to call Brian
19 Bitner.

20 And I'd like to, with the start of the
21 witnesses, offer Exhibits 180 through 198 -- excuse me,
22 through 199. And we passed out this morning copies of
23 all of them except for 199. And then there's a second
24 page to Exhibit 189 that I'll also pass around.

25 ALJ HOGAN: All right. And, Mr. Bender or

1 Mr. Mahlberg, have you had an opportunity to look at the
2 exhibits and is there any objection to them?

3 MR. MAHLBERG: Subject to laying a foundation
4 and relevance and those sorts of objections, no
5 objection to them coming in as a group right now.

6 ALJ HOGAN: Okay. Mr. Pelham, any objection?

7 MR. PELHAM: I don't have any objection. Thank
8 you.

9 ALJ HOGAN: All right. And Mr. Jorde.

10 MR. JORDE: No objection.

11 ALJ HOGAN: All right. Those exhibits are
12 admitted.

13 All right. Mr. Bitner, were you in the room
14 earlier when I went through the penalties for perjury?

15 BRIAN BITNER: No, I wasn't.

16 ALJ HOGAN: All right. So I'm required by law
17 to advise you on those. Perjury is a Class C felony
18 punishable by a maximum fine of \$10,000, a maximum five
19 years' imprisonment, or both.

20 Do you understand what perjury is?

21 BRIAN BITNER: I do.

22 ALJ HOGAN: And being advised of the potential
23 penalties for perjury, do you promise to tell the truth
24 in this case today?

25 BRIAN BITNER: I do.

1 ALJ HOGAN: All right. And can you state your
2 full name for the record and spell your last name?

3 BRIAN BITNER: My name is Brian Bitner,
4 B-I-T-N-E-R.

5 ALJ HOGAN: All right. Thank you.
6 Go ahead, Mr. Bakke.

7 MR. BAKKE: Thank you.

8 And then just one other housekeeping matter. In
9 terms of Exhibit 190, that's the Advisory Petition of
10 Citizens of Burleigh County directed to the
11 Commissioners of the PSC, Senator Hoeven, Senator
12 Cramer, U.S. Representative Kelly Armstrong, and others
13 including local legislators and also addressed to the
14 governor.

15 I wanted to note for the record that there's
16 1,634 signed petitions by residents of Burleigh County
17 who oppose the CO2 pipeline within 20 miles of the city
18 of Bismarck and also requesting financial
19 indemnification, certain requirements on pipeline
20 operators, and a rapid response plan utilizing first
21 responders and the other bullet points identified on
22 that.

23 ALJ HOGAN: And that's the packet of petitions
24 that you passed out this morning?

25 MR. BAKKE: That's correct. And there were some

1 that came in late that are not enclosed in the plastic
2 that were on top of that.

3 ALJ HOGAN: Oh, okay.

4 MR. BAKKE: And they're the ones that had the
5 W190 on it.

6 ALJ HOGAN: Okay. All right.

7 MR. BAKKE: They're the same advisory petitions
8 as in the plastic packet except for they were loose.

9 ALJ HOGAN: Sure.

10 MR. BAKKE: They weren't enclosed in the plastic
11 because they came in late, but they start with the W190
12 stamp on the bottom. They're not all stamped that, but
13 they're all the same.

14 ALJ HOGAN: All right.

15 COMMISSIONER CHRISTMANN: Your Honor, what was
16 the total number that he said?

17 MR. BAKKE: 1,634.

18 ALJ HOGAN: All right. Go ahead.

19 MR. BAKKE: Okay. Thank you.

20 **BRIAN BITNER,**

21 being first duly sworn, was examined and testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. BAKKE:

25 Q. Could you state your name, please?

1 A. Brian Bitner.

2 Q. And, Mr. Bitner, how long have you lived in
3 Burleigh County?

4 A. Most of my life. I was born here. My folks
5 lived in Devils Lake for a few years and West Fargo for
6 a year, and then I've been a resident here since I
7 attended Rita Murphy School in fourth grade.

8 Q. Okay. And do you live in Burleigh County or do
9 you live in the city of Bismarck?

10 A. I live in Burleigh County.

11 Q. And can you just tell us briefly where your
12 residence is or where you live in Burleigh County?

13 A. If you go from the North Dakota Game and Fish,
14 I'm three miles east and eight-tenths of a mile south on
15 80th Street.

16 Q. And you are the vice chair of the Burleigh
17 County Commission?

18 A. Yes.

19 Q. And have been a Burleigh County commissioner for
20 a number of years?

21 A. About 15 years, yeah.

22 Q. Okay. And in your role as a Burleigh County
23 commissioner, have you had the planning commission for
24 Burleigh County?

25 A. Yeah. Since I got elected county commissioner,

1 I've held the county commission -- county planning
2 commission seat. But prior to becoming elected, I
3 served on the Bismarck Planning and Zoning Commission
4 for some time before that.

5 Q. Okay. So you have substantial experience with
6 looking at growth plans and being involved in growth
7 planning both for the City of Bismarck and for Burleigh
8 County?

9 A. Yeah. I wrote some of them, yeah.

10 Q. And my assumption is that, in addition to
11 serving on the Burleigh County Commission, you also have
12 another full-time job; correct?

13 A. Yes.

14 Q. And what do you do in your full-time job?

15 A. Currently I'm a general contractor and have been
16 for approximately 35 years.

17 Q. Okay.

18 A. Prior to that, I was an electronics engineer
19 based on my experience and training in the Marine Corps.

20 Q. And as both the vice chairman and a Burleigh
21 County commissioner, have you been involved in
22 evaluating the request by Summit to install a CO2
23 pipeline to go through Burleigh County?

24 A. I wouldn't say that we've had an opportunity to
25 evaluate it, no.

1 Q. Okay. Have you been involved in analyzing the
2 propriety of having the pipeline go through Burleigh
3 County?

4 A. Yes.

5 Q. Okay. And so can you kind of walk us through
6 chronologically, from start to where we're at now, what
7 involvement you've had and the Burleigh County
8 Commission has in looking at the proposed Summit CO2
9 pipeline in its location in Burleigh County?

10 A. Sure. I'll try my best.

11 I think it was probably in 2021 where I first
12 started hearing about it and I had citizens calling me
13 and were asking questions about a pipeline that's being
14 proposed in Burleigh County and they wanted to know what
15 I knew about it. And I had nothing.

16 So at some point in 2022 then we started getting
17 additional information concerning the pipeline. And
18 later on in '22 we started developing ordinances related
19 to the pipelines until the final approval, I think, was
20 in probably April of this year.

21 Q. Okay. And when you say "final approval," of
22 ordinances by Burleigh County relating to pipelines?

23 A. I should have been clear. That was final
24 approval of a zoning ordinance that was adopted 4/17 of
25 '23. Prior to that we had done quite a few statements

1 and things such as a Burleigh County Board of Health
2 statement, a home rule charter ordinance relating to the
3 safety aspects of the pipeline, we developed what we saw
4 as a proposed carbon pipeline route based on information
5 from Summit, and then we moved into the actual zoning
6 ordinance.

7 Q. Okay. And is that part of the role, to your
8 understanding, of the Burleigh County Commission, is to
9 try to assess the propriety or the appropriateness of a
10 pipeline going through Burleigh County?

11 A. Sure it is. Burleigh County Commission and
12 Burleigh County in general is charged with the
13 responsibility of doing the citizens' work. And
14 anything that happens, whether it's a land use thing
15 such as subdivisions or commercial developments or
16 anything like that, always has an impact of some sort on
17 Burleigh County residents. So it's clearly in our
18 wheelhouse.

19 Q. Okay. And is part of the things that you look
20 at as the Burleigh County Commission any public health
21 risks or safety risks that might be involved in any
22 project that's proposed for Burleigh County?

23 A. Yes. We would have the same concerns whether it
24 was a pipeline or a hotdog stand, I guess.

25 Q. And you mentioned that the way you learned about

1 the possibility of there being a pipeline through
2 Burleigh County was when you were approached by some
3 citizens in Burleigh County?

4 A. Yes.

5 Q. Okay. So I take it then Summit itself never
6 approached the Burleigh County Commission or Burleigh
7 County to ask them about what procedures were required
8 by Burleigh County or how they should go about trying to
9 comply with any requirements of Burleigh County?

10 A. Not in the early stages at all. At some point I
11 think there was one meeting between the county planning
12 director and I think one meeting between the emergency
13 management director, which was probably maybe the middle
14 of last year, I think maybe July, that time frame. But
15 with respect to the meetings with the county planning
16 director, our county planning director is in attendance
17 and I would refer to him for those specifics.

18 Q. And did anyone from Summit ever come to Burleigh
19 County to inquire about what procedures or requirements
20 or ordinances Summit would need to consider or apply in
21 terms of their proposal to build a pipeline through
22 Burleigh County?

23 A. Again, not early on, but at some point that may
24 have been part of a meeting, may or may not have been
25 part of the meeting with our planning director.

1 Q. Okay. Have there been a number of Burleigh
2 County Commission meetings where the topic of the
3 proposed Summit pipeline has come up?

4 A. Yes.

5 Q. Okay. Do you recall when the earliest one was
6 chronologically, approximately?

7 A. You know, approximately, probably about, you
8 know, this time, maybe a little bit earlier, last year.

9 Q. Okay. And have those been meetings that have
10 been attended by the public?

11 A. Oh, yes.

12 Q. Okay. And has the topic of the Summit pipeline
13 come up at these county commission --

14 A. Yes.

15 Q. -- meetings and the public has been allowed to
16 comment?

17 A. Yes.

18 Q. Okay. And in terms of the meetings where the
19 Summit pipeline has come up, can you tell us
20 approximately how many meetings there have been where
21 there has been some public discussion about the proposed
22 Summit pipeline?

23 A. Well, I believe there's been four, possibly five
24 meetings that were specifically relative to the pipeline
25 and probably some additional ones that referred to it.

1 Q. Okay. So let's focus on the meetings before the
2 county commission. Can you give us an approximation of
3 how many public citizens from Burleigh County have
4 attended those meetings which you understand to be
5 people who were interested in commenting upon and
6 listening to Burleigh County's analysis of the proposed
7 pipeline?

8 A. Right. I asked the question earlier of staff
9 and I didn't get a real good answer, but the capacity of
10 the Tom Baker Meeting Room where we hold our meetings in
11 the City County Building is probably around a hundred
12 people, give or take. I think that's a safe number.
13 And virtually every one of these meetings have been
14 standing room only. So I hope to answer your question
15 that the meetings have been very well attended.

16 Q. Okay. And in terms of the individuals who were
17 there commenting on the Summit pipeline, have those
18 individuals been some in favor, some against the
19 pipeline?

20 A. There's two sides to that. We have had two
21 or three Summit representatives that have attended those
22 meetings and so those two or three or possibly four
23 total over a few meetings may have been there to support
24 the pipeline. But I can't recall a single citizen in
25 Burleigh County supporting the pipeline --

1 Q. Okay.

2 A. -- at any of our meetings -- at any meetings.

3 Q. So all of the -- all the citizens of Burleigh
4 County that attended the Burleigh County Commission
5 meetings where the topic of the Summit pipeline came up
6 were uniformly opposed to the pipeline?

7 A. Yes.

8 Q. Okay.

9 A. Which I should point out, that's a very unusual
10 thing in Burleigh County. We've had a number of real
11 controversial issues over the years, such as wind
12 turbine sitings, such as refugee issues, such as -- you
13 know, several things like that. And there's always been
14 two sides to the issue, some citizens feel this way,
15 some citizens feel that way, and you have to make a
16 decision based on that. This is a completely different
17 thing. This is 100 percent of the citizens that are
18 presenting to us that are not affiliated with that
19 company have been opposed to this.

20 Q. And in addition to the public comments sessions
21 at the Burleigh County Commission meetings, have you
22 also personally received telephone calls and had
23 personal meetings or encounters with Burleigh County
24 citizens about the Summit pipeline?

25 A. Yes.

1 Q. Okay. And tell the commissioners about that.

2 A. I can't remember an issue where I've gotten more
3 comments. I would estimate starting out at least a
4 hundred, if not more, individual comments. I get --
5 people pull me aside on the street, people I've never
6 seen before, and they come up and they're shaking my
7 hand for the interest that I've had in the pipeline
8 thing. And I never wanted to know anything about
9 pipelines. But people are of a common frame of mind
10 here.

11 Q. Okay. And have any of those comments you've
12 received by citizens of Burleigh County, whether by
13 telephone or personal encounters, have any of those been
14 in favor of the Summit pipeline?

15 A. None.

16 Q. Have you also discussed that topic with the
17 other Burleigh County commissioners?

18 A. Not outside of any meetings, but, yes, we've
19 talked about that at commission meetings.

20 Q. Okay.

21 A. Mainly because it stands out so much to us.
22 This is -- I can tell you, if you were going to run for
23 election to the Burleigh County Commission and you were
24 going to support this pipeline, you don't have a chance
25 of getting elected in this county.

1 Q. Okay. And how many Burleigh County
2 commissioners are there?

3 A. There's five.

4 Q. Okay. And at the meetings you've had where the
5 topic of the Summit pipeline has come up and been
6 discussed with the other county commissioners, have any
7 county commissioners at all told you they've received
8 any comments from any citizen in Burleigh County who was
9 in favor of the Summit pipeline?

10 A. No one's expressed that to me.

11 Q. Okay. Have they -- the other county
12 commissioners told you they have also received an
13 overwhelming number of contacts and had personal
14 encounters with citizens in Burleigh County all opposed
15 to the Summit pipeline?

16 A. That's my understanding, yes.

17 Q. Have all of these comments been comments that
18 have been received by what I'll call people who have
19 skin in the game, people who own land where the pipeline
20 is coming across or close to where their land is?

21 A. No. No. I've gotten contacts from, for lack of
22 a better word, retired ladies that live in town and they
23 pay attention to the meetings and they watch things on
24 TV and -- and a number of them don't even have internet
25 access, but they'll watch it on TV. And they've been

1 calling, expressing concerns about what could happen in
2 Burleigh County. Some of them were with like a --
3 Bureau of Land Management retirees and some were other
4 agency types that have had involvement in
5 government-related stuff in the past.

6 Q. Are you familiar with the Together 2045,
7 Bismarck's comprehensive plan?

8 A. I've read it cover to cover, but I wouldn't say
9 I'm familiar with it, but I know of it, yeah.

10 Q. Okay. And could you turn to that? That's
11 Exhibit W167 in your binder there.

12 A. 167? Okay. Not in mine. I'm struggling with
13 that one, sir.

14 Q. Did you find it?

15 A. No. It's not in mine. 167? Okay.

16 Q. Do you recognize that as the Together 2045,
17 Bismarck's Comprehensive Plan?

18 A. Yes.

19 Q. Okay. And what's your understanding of what the
20 purpose of the 2045 plan is by the City of Bismarck?

21 A. Well, the purpose is generally to lay out the
22 concepts and procedures that would kind of guide in a
23 general fashion the future development of the city of
24 Bismarck.

25 Q. Okay. And does the 2045 plan include what

1 developments are present or planned or may occur outside
2 of Bismarck's extraterritorial limits?

3 A. I don't think so.

4 Q. Okay. So this would be -- the 2045 plan would
5 be limited to either development within the city of
6 Bismarck or their extraterritorial limits?

7 A. I think that would be appropriate, yeah.

8 Q. And then is it Burleigh County then who would
9 account for the growth outside of the extraterritorial
10 limits --

11 A. Correct.

12 Q. -- of the city?

13 A. Right. In Bismarck, Burleigh County, we -- we
14 have a division of the extraterritorial area. There's
15 an actual four-mile extraterritorial area. But in years
16 past I was part of negotiations where the City of
17 Bismarck maintains sole jurisdiction in the zero to two
18 mile and Burleigh County is the lead jurisdiction in the
19 two to four, and anything outside of the two to four
20 that's in unorganized townships is Burleigh County
21 zoning.

22 Q. Okay. And so Burleigh County then, I think
23 through Mr. Flanagan's office, prepares a growth plan
24 specific to Burleigh County?

25 A. Yes, correct.

1 Q. Okay. And could you look at Exhibit W191?

2 A. I just had it, but I know what you're talking
3 about, but you can go ahead.

4 Q. It should be in the same binder we just gave you
5 and it should have a tab on the side that says 191.

6 A. I see a 191.

7 Q. Right. That's it. It's one page.

8 A. Yes. Okay.

9 Q. Do you recognize that to be a copy of the growth
10 plan for Burleigh County?

11 A. Yes, it is.

12 Q. And in the upper right-hand corner, it says
13 "March 8, 2023"?

14 A. Right. That is not the adoption date, but that
15 was the date that this particular map was put together.
16 Because this map was drawing out the proposed route
17 based on information that was provided by Summit.

18 Q. Okay. And then we can see on there the Summit
19 pipeline, the proposed route, is identified on
20 Exhibit 191 by the red line?

21 A. Yes.

22 Q. Okay. And who put that on there?

23 A. That would have been a Burleigh County GIS staff
24 working with the county planning director.

25 Q. With Mr. Flanagan?

1 A. Yes.

2 Q. And do you believe this to show, based on GIS
3 information, the location of the Summit proposed
4 pipeline?

5 A. Right. It shows the approximate location based
6 on information from Summit. And there is a disclaimer
7 printed on it that said, you know, due to the map scales
8 and the PDF map, there could be up to a half mile
9 location error, but it's reasonably accurate for this
10 purpose.

11 Q. Okay. And this is something that Burleigh
12 County had to prepare on its own. Summit didn't give
13 Burleigh County a map showing where the pipeline was
14 going to go through Burleigh County; correct?

15 A. I don't know that you could call it a map but
16 they -- I would say a PDF map was used.

17 Q. Okay.

18 A. PDF, yeah.

19 Q. And then can we see on here the developments in
20 Burleigh County that exist which are rural developments
21 which would be outside of the extraterritorial limits of
22 Bismarck?

23 A. I couldn't say that it's complete on that.

24 Q. Okay. But you can see some of them --

25 A. Yes.

1 Q. -- that are outside the extraterritorial limits?

2 A. Yes.

3 Q. Okay.

4 A. Clearly. I mean, Burleigh County has over 350
5 subdivisions.

6 Q. Okay.

7 A. And that goes anywhere from 1 to 2 lot
8 subdivisions up to 4, 500 homes in a subdivision.

9 Q. So in Burleigh County, there are 350
10 subdivisions --

11 A. Approximately, yes.

12 Q. -- in Burleigh County?

13 And would most of them be closer in to Bismarck
14 itself?

15 A. Most of them.

16 Q. Okay. Now in terms of these developments -- and
17 I see on here that they can be identified different ways
18 by the colors. We have yellow which is "Outlying
19 Suburban." What does that mean when we see on the
20 growth map the yellow and it's identified as "Outlying
21 Suburban"?

22 A. That would generally refer to what we would call
23 large lot subdivisions. Sometimes an acre and a half,
24 maybe up to as much as five acres per lot.

25 Q. And can we see on the growth plan for Burleigh

1 County that there's yellow that's on both sides of the
2 proposed path of the Summit pipeline, particularly
3 directly to the north of Bismarck, both on the east and
4 west side of Highway 83?

5 A. Right.

6 Q. Okay.

7 A. I can see that. But I should point out, based
8 on my knowledge here, that existing subdivisions up in
9 that area are not on this map. We've -- I think this
10 map is maybe 2014, maybe 2015 vintage.

11 Q. Okay. But that's the most current growth map
12 that Burleigh County has?

13 A. Yes.

14 Q. Correct?

15 A. Correct. It's due to be reviewed. Try to get
16 this done every five, ten years, but, you know, we're
17 busy too.

18 Q. So this would be -- what we're seeing on there
19 for the existing subdivisions would be as of 2014, 2015?

20 A. Yes.

21 Q. Many more closer to the pipeline or on both
22 north and south of that that are already built?

23 A. Oh, yes.

24 Q. Okay.

25 A. And not only that, I asked the planning director

1 if we have subdivisions in the works that haven't made
2 the agenda yet, and there's anywheres from -- I think
3 there's up to possibly eight subdivisions that are in
4 the planning stages right now.

5 Q. Okay. And we heard from Mr. Klusmann and his
6 family about their development. Is that one of the ones
7 that are in the works right now?

8 A. Based on my knowledge of that, I'd have to say
9 yes. I'm not sure what you heard on that. I wasn't
10 here.

11 Q. Okay. And are there other ones that you're
12 aware of that are in process now in terms of other rural
13 subdivisions?

14 A. Yes. According to the planning director. I
15 specifically asked him that question about ten minutes
16 ago.

17 Q. And according to Mr. Flanagan, how many are in
18 process right now of rural subdivisions in Burleigh
19 County?

20 A. I believe he told me approximately eight, but
21 he's here and I'm sure he'll give exact information.

22 Q. And do you know approximately where those eight
23 subdivisions in process are located at --

24 A. No.

25 Q. -- in relation to Bismarck?

1 A. I don't know.

2 Q. Okay. And then the other thing that's
3 identified on Exhibit 191 is kind of a darker shade of
4 yellow, or perhaps gold would be a better way to
5 describe it, which is described as "Suburban." What is
6 suburban areas in --

7 A. That's what we would anticipate becoming part of
8 city limits in the real near future.

9 Q. Okay.

10 A. For example, like one that really comes to mind
11 would be Silver Ranch Subdivision.

12 Q. Because on this map, that location would be on
13 here, but it wouldn't be shown as being in the city and,
14 in fact, now portions of Silver Ranch --

15 A. Right. Because, yeah, Silver Ranch just became
16 a subdivision in the last year or two, and this map, of
17 course, is 2014 so...

18 Q. And then please look at Exhibit W195.

19 A. Okay.

20 Q. And that's a map showing the location of the
21 pipeline by the red line and then the -- Mr.
22 Moldenhauer's development, Heritage Reserve, directly
23 adjacent to the southern portion of the pipeline. It's
24 got a large block that says "Heritage Reserve." And
25 then it's got the location of the extraterritorial

1 limits in a lighter shade of blue. Do you see that?

2 A. Yes, I do.

3 Q. Okay. And do those appear to be the accurate
4 extraterritorial limits for the city of Bismarck?

5 A. I would say yes.

6 Q. Okay. And then on this map we have actually
7 identified some of the subdivisions that are already
8 existing.

9 A. Uh-huh.

10 Q. Yes?

11 A. Yep.

12 Q. And I mean this is just in this location, but it
13 appears there's close to 20 subdivisions already in
14 existence in that area south of Heritage Reserve, both
15 on the east and west side of Highway 83?

16 A. Okay. I won't count them, but I'd say that's
17 pretty close.

18 Q. Okay. And we can see by the measurement which
19 was done on GIS that if we take, for instance, Prairie
20 Crest 1st Subdivision, that's 1.65 miles from the
21 proposed Summit pipeline; correct?

22 A. Yes.

23 Q. Okay. And Mr. Moldenhauer's development is
24 1,900 feet from the pipeline; correct?

25 A. Yes.

1 Q. Okay. And the Northwood Estates existing
2 subdivision is 1.4 miles south of the pipeline; correct?

3 A. Yes.

4 Q. And then 4K's Replat, we heard about that
5 from one of the witnesses earlier today, is something
6 less than two miles from the pipeline; correct?

7 A. It looks that way on this map, yeah.

8 Q. Okay. So there's already in existence multiple
9 subdivisions with many homes in them located within two
10 miles and some much less than two miles from the
11 proposed Summit pipeline; correct?

12 A. Yes.

13 Q. And that continues to be the case as we work our
14 way east along the proposed pipeline route and we get to
15 Country Hills and Country -- Country Hills 2nd
16 Subdivision; correct?

17 A. Yes.

18 Q. Okay. Do you know that to be a rather large
19 subdivision, Country Hills?

20 A. That's some of the bigger ones, yes.

21 Q. Do you know, roughly, how many homes are in the
22 Country Hill --

23 A. No.

24 Q. -- Subdivision?

25 A. I don't, but I'm sure it's in the hundreds.

1 Q. Okay. And those are all existing homes?

2 A. Yes.

3 Q. Okay. Now, as being the vice chair of the
4 county commission, being involved in planning and growth
5 for over 15 years, both for Burleigh County and for the
6 City of Bismarck, do you know something about the value
7 of the rural acreage in these areas?

8 A. I know a little bit about it, yes.

9 Q. Okay. And is Burleigh County one of the few
10 counties in the state that allows rural subdivisions?

11 A. I think Burleigh County is one of the only
12 counties in the state that allows rural subdivisions.

13 Q. Okay. So the Bismarck area is somewhat unique
14 from the rest of the state and the cities and counties
15 in the respect that it's one of the only ones where
16 these rural subdivisions are allowed to be built?

17 A. Yes.

18 Q. Okay. And how did that come about? Why is
19 that?

20 A. I -- I think people got together, landowners
21 probably, at some point in the past. And it's my
22 opinion -- I don't have any fact on this, but they
23 pressured the government, the local government, enough
24 to where the government really didn't have a choice but
25 to allow rural subdivisions. There was a demand.

1 People want it. People like me. I didn't want to live
2 in town. I wanted to live out on 15 acres or something
3 and have some space and have room for the kids and toys
4 and those sort of things.

5 Q. And how long has that been the case that
6 Burleigh County has consistently been allowing rural
7 subdivisions to be built and developed?

8 A. Since at least the '70s, if not earlier.

9 Q. Okay. And do you expect that practice to
10 continue in the future?

11 A. Yeah. Absolutely.

12 Q. Okay. Now, one of the concerns, and I think
13 someone talked about it, one of the witnesses earlier
14 today, is that as the city moves more outward, there's a
15 concern about tying in city services to whatever
16 services might exist in rural subdivisions that are
17 outside the city limits.

18 A. Okay.

19 Q. Do you agree with that, that is a concern?

20 A. Yeah, absolutely. We've taken great efforts in
21 Burleigh County to try to address that. Because one of
22 the things that has happened in the past where rural
23 subdivisions were being developed and nobody knew how to
24 incorporate them into the city when the city grew to
25 that point.

1 And there's a few of us that had a conversation
2 and -- well, I can tell you it was on The Ranch
3 subdivision. It was Dave Andahl and it was Jim Small
4 and it was me. And we came up with a way. And Jim
5 Small found a company that was making these systems that
6 are called a community septic system so that what this
7 does is it builds infrastructure in these rural
8 subdivisions that's exactly like the city. You got your
9 city water and, essentially, city sewer where the
10 effluent and whatnot is going to the central sewer
11 system, so when the city ultimately gets there, there's
12 no increased cost for infrastructure because the
13 infrastructure is already built. And that was hugely
14 successful for the county and the city to address that
15 kind of concern.

16 Q. And so the central sewer system is intended to
17 allow the subdivision, as the city grows, to be able to
18 integrate with existing city services?

19 A. Exactly right, yeah. The pipes, the sizes, the
20 everything is exactly what you would do in the city, but
21 it's out in the rural subdivisions.

22 Q. Okay. And then we talked about values of land
23 in rural Burleigh County. And if we talk about these
24 areas south of the pipeline, you know, three, four miles
25 out from the city of Bismarck, do you know generally

1 what development land is -- has been selling for in
2 those locations?

3 A. Yeah. I've bought a bit of it myself. I think
4 there's a range of land depending on the quality of the
5 land -- range in value based on the quality of the land.
6 Some of the stuff has got wetlands and some of it's got
7 a lot of hills and it might not be as preferable. But,
8 generally speaking, I see prices anywheres from 10,000
9 to \$25,000 an acre.

10 Q. Okay. And then you mentioned the other places
11 in North Dakota. So if we take, as an example, Fargo,
12 are there other challenges there that Burleigh County
13 doesn't have in terms of rural subdivisions such as
14 water table issues?

15 A. Yeah. That was -- that would be a clear issue
16 out in Fargo and certainly probably even the Grand Forks
17 area because of the kind of flooding and stuff they
18 have. Groundwater is a big deal to them.

19 East of Bismarck, groundwater starts to become a
20 problem so that's going to kind of limit the development
21 of the city moving to the east. And, of course, the
22 south is more floodplain and we know from 2011 that we
23 want to avoid floodplains where we can.

24 So, yeah, there's -- those other cities have
25 probably more challenges and, plus, their ag land is

1 probably more valuable than ours.

2 Q. Since you've been involved in planning both for
3 the City of Bismarck and then the last 15 years for
4 Burleigh County, what has the direction of growth been
5 for the City of Bismarck into Burleigh County?

6 A. There's been limited growth on the south out
7 around the University of Mary area. Limited growth to
8 the east kind of out around me, around Highway 10
9 extending out now three miles -- I'm pretty much on the
10 end of -- nearly on the edge of the subdivisions to the
11 east. And then the growth has been focusing north and
12 northeast.

13 Q. Okay. And do you expect that to be the path of
14 growth for Bismarck continuing in the future --

15 A. Oh, yes.

16 Q. -- for the foreseeable time, to the north and
17 east?

18 A. Yes.

19 Q. Okay. Let's turn to your communications with
20 Summit and what Summit has done, if anything, to try to
21 determine the safest and best route around Bismarck.
22 Has anyone from Summit at any time contacted you or the
23 Burleigh County Commission as to what the safest route
24 would be around Bismarck for the Summit pipeline?

25 A. No.

1 Q. Has anyone from Summit ever contacted you or
2 contacted the Burleigh County Commission or anyone at
3 Burleigh County, to your knowledge, to ask what would be
4 the best route to provide the minimal adverse effects on
5 public health and the economy for Bismarck and Burleigh
6 County?

7 A. No.

8 Q. When a pipeline company -- and I'm assuming
9 there's been a number of pipeline companies over the
10 years that you've been a Burleigh County commissioner
11 that have installed or expanded on existing pipelines;
12 correct?

13 A. I don't know that any of them have expanded or
14 added on, but there's been a number of pipelines in the
15 county, yes.

16 Q. Sure. And when pipelines are going to be
17 installed in Burleigh County, is it typical that the
18 pipeline company would contact Burleigh County,
19 including the commission, about constructing and routing
20 a pipeline through Burleigh County?

21 A. It wouldn't have been the case in the past
22 necessarily because we didn't have a county planning and
23 zoning -- separate planning and zoning department until
24 I created it. And so that wouldn't have been a part of
25 the ordinance thing. We didn't have ordinances that

1 applied to pipelines or hazardous liquid pipelines until
2 final adoption this year.

3 Q. Okay. How long has there been a planning and
4 zoning department?

5 A. I'm drawing a blank on that one but eight years,
6 ten years maybe.

7 Q. Is that who would typically be consulted in
8 regards to gas and sewer and oil or any type of
9 pipelines, is county planning and zoning?

10 A. It will now, yes. Wouldn't have been before, I
11 don't think.

12 Q. Okay. Well, would it have been since there's a
13 planning and zoning department? Is that who they would
14 typically go to?

15 A. In most cases you would.

16 Q. Okay.

17 A. And I'm thinking that probably in almost every
18 one of those pipeline issues that would have been at the
19 city planning and zoning commission, because all those
20 pipelines are inside that extraterritorial area, if not
21 inside the existing city limits. So that wouldn't have
22 necessarily been a county issue to begin with.

23 Q. Okay. If there's pipelines that get installed
24 in the city and would also go into Burleigh County, is
25 that something that you would learn about as a Burleigh

1 County commissioner?

2 A. I probably wouldn't learn about it at the county
3 commission, but I would definitely learn about it at the
4 city planning commission.

5 Q. Okay. And the mayor does, in fact, sit -- or
6 attend the Burleigh County Commission meetings; is that
7 correct?

8 A. Say that again.

9 Q. The mayor of the City of Bismarck, does he have
10 some role in relation to the Burleigh County Commission?

11 A. No, not the county commission. He does have a
12 seat, him and one additional city commissioner, on the
13 county planning commission.

14 Q. Okay. So the county planning commission then
15 would typically learn from the mayor interaction there
16 about what is happening in the city and vice versa?

17 A. Possibly.

18 Q. Okay. Has Summit ever expressed willingness or
19 approached Burleigh County about the possibility of
20 looking at an alternative route for the Summit pipeline?

21 A. No. I would say the opposite is true.

22 Q. And when you say "the opposite is true," what do
23 you mean by that?

24 A. Well, based on testimony at the last meeting
25 before this commission, the pipeline company said they

1 were not going to relocate that pipe.

2 Q. Has Summit ever provided any information to
3 suggest that it's not feasible or it's too costly to
4 move the Summit pipeline further away from the path of
5 development in Burleigh County?

6 A. Well, I think I received a copy of something
7 yesterday or the day before that referred to that but
8 not before that.

9 Q. Okay. And I think what you're referring to
10 there is, I believe it was on May 30 or 31st they --
11 Summit provided to the PSC a pipeline analysis where
12 they came to the conclusion that they didn't think it
13 was feasible to pursue a southern route through Burleigh
14 County. Is that what you're referring --

15 A. That's what I'm referring to, yes.

16 Q. Now, am I correct in understanding that Burleigh
17 County has taken a position in opposition to the
18 proposed route by Summit of the pipeline through
19 Burleigh County?

20 A. Yes.

21 Q. And tell me how that was taken up by the
22 Burleigh County Commission?

23 A. Based on the -- based on the series of meetings
24 that we've had, public sentiment from the citizens is
25 very clear to us as a commission that this is not a

1 route that the citizens of Burleigh County approve of.
2 And my responsibility as a county commissioner is to
3 respond to the citizens of Burleigh County.

4 Q. And could you look at Exhibit 114?

5 A. You guys killed a lot of trees here, didn't you?
6 Okay, I got it.

7 Q. And that's Exhibit W114. And is that a copy of
8 the ordinance adopted by Burleigh County on March 6,
9 2023?

10 A. It appears to be, yes.

11 Q. And that's in relation to hazardous liquid
12 pipelines?

13 A. Yes.

14 Q. Okay. And then before this ordinance would have
15 passed and been adopted on March 6, 2023, would there
16 have been a series of meetings before that where this
17 ordinance was discussed and public comment was allowed?

18 A. Yes. There was quite a few meetings that
19 involved this.

20 Q. Okay.

21 A. First of all, in order to do an ordinance for
22 Burleigh County that would have any teeth to it, we had
23 to make a -- we had to go to the electors of Burleigh
24 County for an amendment to the Burleigh County Home Rule
25 Charter, which the only time we've ever dealt with the

1 home rule charter was when we put a sales tax up for the
2 jail. It was a half cent sales tax for the Burleigh
3 County jail.

4 And so the citizens came to us asking for an
5 ordinance related to pipelines. And this safety
6 ordinance was the soonest that we could do based on the
7 home rule charter change that was at our last election
8 in Burleigh County.

9 So we actually did the home rule charter change
10 to create ordinances under the home rule charter because
11 of a totally different issue. The issue at that point
12 was motorcycles and ATVs in the public right of ways
13 tearing up the ditches. You've probably seen all the
14 ruts out in the ditches.

15 But the ordinance, this kind of took priority
16 over that because of the urgency and the thing coming up
17 before the Public Service Commission so that became the
18 focus.

19 Q. Okay. And from start until March 6, 2023, when
20 that ordinance was adopted, was that a somewhat lengthy
21 process?

22 A. Yes.

23 Q. Approximately how long before when the
24 discussion about the request by the citizens for an
25 ordinance to when it was ultimately --

1 A. I'd say the home rule charter ordinance
2 discussion happened probably a year before anything came
3 up with the pipeline.

4 Q. And so there's this -- and I'm jumping ahead a
5 bit, but there's this -- this hazardous liquid pipeline
6 ordinance from Burleigh County, W114, and then there's
7 the one dated April 17, 2023, which is W186. And it's
8 also called "Hazardous Liquid Pipelines." What's the
9 difference between those two ordinances?

10 A. That's a good question. The first one, the home
11 rule charter ordinance, is specifically related to
12 safety and safety expectations of the county. In there
13 I think we're clear that we're asking for your
14 companies' safety plans, mitigation plans, and things
15 like that so that we can prepare our county emergency
16 management for what you would expect as a hazard or how
17 you'd respond to a situation with a pipeline. And then
18 the zoning ordinance gets into more detail that talks
19 about distances from structures or distances from, you
20 know, the water plant and things like that. More
21 details in the second one.

22 Q. And then looking at the March 6, 2023,
23 ordinance, if we turn to the second page, there's
24 different headings. There's a listing of the
25 "Purposes." You see that there?

1 A. Yes, I do.

2 Q. Okay. And then there's certain items that are
3 supposed to be followed up by pipeline companies in
4 terms of information and documents they're supposed to
5 provide to the Burleigh County; is that correct?

6 A. Yes.

7 Q. And so if we look at, as an example, subsection
8 Roman Numeral III, one of the things the pipeline
9 company who is applying to build a pipeline in Burleigh
10 County is supposed to do is submit a public safety plan?

11 A. Yes.

12 Q. After this ordinance went into effect on
13 March 6, 2023, did Summit file or provide a public
14 safety plan to Burleigh County?

15 A. Not that I'm aware of, no.

16 Q. One of the other things that Summit was supposed
17 to do after March 6, 2023, was provide Burleigh County
18 with an emergency action plan, information disclosure
19 requirements. Did Summit do that?

20 A. Not that I'm aware of, no.

21 Q. One of the other things, Roman Numeral V, that
22 Summit is supposed to do with Burleigh County is provide
23 an emergency response and hazard mitigation plans for
24 hazardous liquid pipelines. Did they do that?

25 A. No.

1 Q. Okay.

2 A. Not that I'm aware of.

3 Q. And --

4 A. I was going to add something, but I won't.

5 Q. And there was a letter sent to the Burleigh
6 County Planning Department by Summit, by Mr. Jeff
7 Skaare, on March 8, 2023, on behalf of Summit objecting
8 to this ordinance. Were you aware of that?

9 A. Yes.

10 Q. Okay. So rather than complying with the
11 requirements of the new -- by Burleigh County on
12 hazardous liquid pipelines, Summit just said they
13 objected to it?

14 A. Yeah. I'm amazed by that. I can't imagine why
15 anybody would have an objection to providing us with
16 your safety plan. Our concerns as a county is for the
17 citizens. You know, we put this in here so we have some
18 way to know what's going on with this thing.

19 And if you can't provide me with any sort of
20 safety plan, am I supposed to task our staff with
21 creating a safety plan? And we don't know the hazards,
22 we don't know the things. We're learning those hazards
23 now.

24 But I'm very stunned that anybody would have an
25 issue and protest providing a safety plan. I'm a

1 general contractor. We're -- on many jobs we're
2 required to have a safety plan and have that available
3 on the job site. This is nothing new. So I can't
4 imagine why you wouldn't want to have a safety plan.

5 And, further, I read in the application for this
6 permit that this company says the applicant will obtain
7 and comply with any ordinances or local land use and
8 permits and things like that. And yet here we are.
9 We're getting notice that they're either objecting to
10 them or they've asked you guys to just disregard our
11 ordinances. How is that possible?

12 We developed ordinances based on public input,
13 not knee-jerk reactions to anything. But these guys are
14 acting like we don't have any reason to be concerned
15 about safety. And I've got a news flash for you. We
16 are concerned about the safety for the citizens in
17 Burleigh County.

18 I have to be able to, at the best, protect the
19 interest of the citizens and I need to be able to
20 evacuate. How do I evacuate people when they won't even
21 tell me what the hazard is? They don't have any kind of
22 odorant or colorant in this stuff. And we're supposed
23 to just do what? Sit on our heels?

24 We've got very, very good emergency response in
25 Burleigh County. We've got outstanding sheriff's

1 department and fire department and our emergency
2 management is second to none. And we just don't have
3 any information outside of speculation on how we deal
4 with this. And that's a concern for me as a
5 commissioner.

6 Q. Okay.

7 A. I need to know how am I going to evacuate close
8 to however many thousands of people that could be
9 affected by this depending on what direction this thing
10 would go if it had a problem.

11 Q. Okay. And you just mentioned the application.
12 Could you turn to Exhibit Summit 1? It's not in that
13 same binder. It's a Summit binder with their exhibits
14 in it.

15 A. Okay.

16 Q. And Summit 1 is the application by Summit that
17 they submitted to the Public Service Commission back on
18 October 17, 2022. And let's turn to page 61.

19 A. I must be looking at the wrong thing here.

20 Q. Yeah, it's got various parts. We can maybe help
21 you find page 61.

22 Do you have that in front of you?

23 A. Yes.

24 Q. Okay. So let's turn to Summit's application,
25 section 10.9, "Land Use." And that says "The

1 Applicant --" meaning Summit "-- The Applicant will
2 obtain and comply with applicable county permits and
3 zoning and land use regulations. Permits for the
4 project may include, but are not limited to, building
5 permits, grade and fill permits, ditch crossing permits,
6 road and utility permits, and conditional use permits."

7 Have I read that correctly?

8 A. Yes.

9 Q. Okay. And the ordinance, the March 6, 2023,
10 ordinance and the April 17, 2023, ordinance, would that
11 fall under zoning and land use regulations?

12 A. Absolutely.

13 Q. Okay. That Summit told the PSC in their
14 application on October 17, 2022, they will comply with?

15 A. That's what it says in the application.

16 Q. Okay. And even up to today Summit has not done
17 that in Burleigh County; correct?

18 A. No.

19 Q. Okay.

20 ALJ HOGAN: Is your mic -- did your microphone
21 turn off? It should be just that --

22 THE WITNESS: Okay. How's that?

23 ALJ HOGAN: That's better.

24 THE WITNESS: I hit it with one of these.

25 ALJ HOGAN: I know, right.

1 Q. (BY MR. BAKKE) And yesterday, with the PSC,
2 the attorneys for Summit filed a motion to declare
3 Emmons County and Burleigh County ordinances superseded
4 and preempted. Are you aware of that?

5 A. I'm aware of that, yes.

6 Q. And one of the claims that they're making in
7 their motion is they say, because the county ordinances
8 ban hazardous liquid pipelines in Emmons and Burleigh
9 County, they are, by definition, unreasonably
10 restrictive and conflict with North Dakota law.

11 Do either of these ordinances by Burleigh
12 County, either on March 6, 2023, or April 17, 2023, ban
13 hazardous liquid pipelines?

14 A. No. That was never the intention of Burleigh
15 County. The only thing is at one point we submitted
16 some documentation to the PSC about where we were at
17 with the process. And staff from PSC notified Burleigh
18 County that under the terms of the thing at that -- the
19 draft or the proposed final was that, based on the
20 distance from transmission lines, that it looked like we
21 could ban the pipelines entirely. But that was not the
22 intent of the plan.

23 So what I did is I made the motion to
24 reconsider, after we got that information, at the next
25 meeting after the final approval, made a motion to

1 reconsider and we changed that to some other distance
2 because we were -- we were working with Capital Electric
3 Cooperative on what would be an appropriate distance
4 should there be a -- one of those blast-zone type of
5 things from a pipeline, and we want to try to make sure
6 that the critical infrastructure in Burleigh County was
7 not damaged by a problem with that pipeline.

8 So, you know, we -- we never intended that a
9 pipeline be banned in Burleigh County if that -- sorry
10 it's a long answer.

11 Q. Sure. And one of the things that's mentioned in
12 the March 6, 2023, ordinance is PHMSA. And what is
13 Burleigh County's position in relation to the Summit
14 pipeline and PHMSA regulations?

15 A. Well, our -- based on conversations at the
16 county commission, and of course I'm not speaking for
17 the county commission today, but our position is that
18 due to the information we've gotten from PHMSA and from
19 the Federal Government, is that their own regulations
20 are insignificant, or insufficient, I should say, to the
21 regulation of the CO2 pipelines. That's my
22 understanding from the actual government agency.

23 Q. Okay. And is it your understanding that the
24 PHMSA regulations are in the process of being reexamined
25 and reconsidered to have some rules and regulations that

1 apply specifically to CO2 pipelines?

2 A. Yes. I've read that in official government
3 documents.

4 Q. Okay. And is Burleigh County requesting that
5 before the PSC might give due consideration to the
6 application by Summit, that they should wait until those
7 new PHMSA regulations that are supposed to come out as
8 early as 2024 specifically relating to CO2 be in place
9 and considered?

10 A. Yeah. We think it would be prudent to either
11 deny the route permit as it currently stands or, at the
12 very least, delay it until these new regulations are in
13 place so we can see if this thing complies with the
14 known risks and the advice from the Federal Government.

15 Q. Let's turn to the April 17, 2023, ordinance. In
16 advance of that ordinance, which is W186, was there also
17 a similar public comment session to discuss that
18 proposed ordinance?

19 A. Yes.

20 Q. And that ordinance was passed on April 17, 2023;
21 correct?

22 A. Yes.

23 Q. Okay. Both the March and April ordinances, what
24 was the vote on that by the five county commissioners?

25 A. Unanimous.

1 Q. And --

2 A. Unanimous to support the ordinance.

3 Q. Have any of the county commissioners in any of
4 these meetings expressed support for the Summit
5 pipeline?

6 A. No.

7 Q. Okay. Is the reason, to your understanding,
8 that the Burleigh County commissioners, to a person, are
9 opposed to the Summit pipeline is due to the public
10 health risk should a leak occur?

11 A. That's certainly one of the reasons.

12 Q. Okay. And what are the other reasons that the
13 Burleigh County commissioners are opposed to the Summit
14 pipeline and its proposed location in Burleigh County?

15 A. You know, there's been a long list of reasons
16 given by people. And it's everything from fear of the
17 unknown to concerns based on what people have learned
18 from the Satartia incident. I had a list here someplace
19 where I was keeping some of those things. You know,
20 there's -- somebody said, "Well, we bury our family
21 below six feet so they don't surface in the winter."

22 Before I get sidetracked on that one, I did a
23 little research on -- you know, there were some people
24 that were mentioning a concern about frost heave with
25 these pipelines. And I would tend to agree that there's

1 less of a risk of frost heave with this pipeline simply
2 because they've got an operating temperature that would
3 probably offset some of that. I don't know that it
4 would be sufficient, but I do know that they run at a
5 little warmer temperature.

6 During my research, one of the bigger concerns
7 for ag land is that the increased temperature in the
8 soil, based on NDSU research, has a negative impact on
9 the soil biome and it will decrease production because
10 it affects the microorganisms down in the soil and
11 increases the drying of the soil so it's less likely to
12 be productive farmland. That caught me by surprise
13 because I was researching the opposite. So sorry I got
14 off on that.

15 But there's other things. You know, questions
16 whether it meets the National Environmental Policy Act.
17 How about the U.S. Fish and Wildlife? The road
18 crossings are a big concern. You know, somebody's
19 coming along, driving along, in the middle of the night.
20 You could have a thing like happened down in Sioux
21 County where this thing blows a road out overnight, and
22 in the dark or the fog and somebody's coming driving
23 along. People get concerned about those kind of things
24 because they worry about their family.

25 And especially if there's a break and you can't

1 tell what it is, how do you know to protect yourself?
2 I'm a certified scuba diver and I own five scuba tanks
3 that are within walking distance of me when I'm at home.
4 And if I can't tell what the problem is and I'm suddenly
5 choking out in my own yard, I wouldn't even be able to
6 save my own life, let alone evacuate citizens and save
7 them. And I'm sorry, but that's unacceptable to me as a
8 commissioner.

9 I'm sorry I blew up.

10 Q. So turning back to the April 17, 2023,
11 ordinance, let's look at that. That's W186. Do you
12 have that available to you?

13 A. 186?

14 Q. Yes.

15 A. Yes.

16 Q. And that's the one passed on April 17th?

17 A. Yes.

18 Q. Okay.

19 A. Yeah, I verified that because we changed the
20 wording on that statement for the setback from
21 electrical --

22 Q. And that's what I was going to ask you about.
23 In addition to the other requirements that Summit is
24 supposed to comply with, there are some additional
25 provisions contained in the April 17 ordinance. And I

1 am looking at subpart Roman Numeral IX. And this isn't
2 paginated, but it would be the fourth page in under the
3 heading "Special Use Permits."

4 A. Yes.

5 Q. Do you see that?

6 A. Yes.

7 Q. Okay. And so has Summit complied with that
8 "Special Use Permit Required"?

9 A. Not that I know of.

10 Q. Okay. And then if you turn to the next page,
11 there's also separation requirements that were adopted
12 in the ordinance and minimum separation distances for a
13 hazardous pipeline.

14 A. Yes.

15 Q. Correct?

16 A. Yes.

17 Q. And the ordinance says that the minimum
18 separation distance from the extraterritorial line of an
19 incorporated city is not less than ten miles.

20 A. Yes.

21 Q. And so that would include Bismarck because
22 that's an incorporated city?

23 A. Yes.

24 Q. Okay. So there's been in existence since
25 April 17, 2023, a Burleigh County ordinance indicating

1 that there's supposed to be at least ten miles between
2 the extraterritorial limits of Bismarck and the location
3 of any Summit pipeline or other hazardous pipeline?

4 A. Yes.

5 Q. Okay. And this proposed route would not comply
6 with that provision in the ordinance?

7 A. No.

8 Q. Not even close?

9 A. No.

10 Q. Okay. Incidentally --

11 A. I should point out that I read something
12 recently that was handed to me where Summit was
13 challenging these ordinances. And in their challenge
14 they referred to ten miles from an electric power
15 generating facility. They provided that to you folks.
16 And I don't know where they came up with that because,
17 like I said, we changed that to a more -- more
18 reasonable thousand foot so that, you know, it wasn't
19 zoning out a pipeline.

20 Q. And that was to the electrical generation?

21 A. Correct.

22 Q. But this ten mile from the extraterritorial line
23 still is the ordinance?

24 A. Yeah. That stands.

25 Q. Incidentally, before these ordinances were

1 adopted by Burleigh County, was the county attorney,
2 Ms. Lawyer, involved in assisting the county in
3 determining whether these ordinances were legal and in
4 compliance with law?

5 A. Definitely. Yes.

6 Q. And did she review these and have a hand in the
7 drafting of these before these were adopted?

8 A. Absolutely. And she made significant changes of
9 her own. Yes.

10 Q. Another minimum separation requirement under the
11 ordinance is subpart 2: From a church, school, nursing
12 home, long-term care facility, or hospital, not less
13 than four miles; correct?

14 A. Yes.

15 Q. Okay. And the current proposed route that is
16 within several miles of Silver Ranch School and less
17 than two miles from the Naughton School, that would not
18 be in compliance with this ordinance?

19 A. No, no. There's, I think, three or four schools
20 that are closer than that, if not five.

21 Q. And then the distance between any occupied
22 structure, not less than two miles. The proposed route
23 would not be in compliance with that portion of the
24 ordinance?

25 A. No.

1 Q. Okay. I think we've seen on Exhibit 137, put
2 together by Mr. Flanagan, there's an identification of
3 about 1,200 911 points within less than two miles of the
4 Summit pipeline. Do those 911 points mean there's an
5 occupied structure?

6 A. Yes.

7 Q. Okay. So they would have violated at least that
8 provision or that provision in the ordinance at least
9 1,200 times --

10 A. Yes.

11 Q. -- by their proposing to place the pipeline?

12 A. Yes.

13 Q. And then there's a requirement of a setback from
14 the Missouri River, setback not less than one mile
15 parallel to the ordinary high-water mark, unless a
16 non-development floodplain permit is required. Do you
17 know whether they've complied with that or not?

18 A. No, I don't know, because they haven't built the
19 pipeline yet.

20 Q. Okay.

21 UNIDENTIFIED SPEAKER: Your Honor, I'm going to
22 interrupt here. I don't know if we can short-circuit
23 this a little bit. It seems to me that the testimony is
24 going to be there hasn't been compliance with this
25 ordinance. I don't know that we need to go through

1 every single provision in here --

2 MR. BAKKE: And that's not my plan. I'm just
3 going through some of the ones that I think are more
4 important that he is able to testify there was
5 non-compliance, but I'm trying to speed this up as much
6 as I can.

7 COMMISSIONER CHRISTMANN: Your Honor?

8 ALJ HOGAN: Yes?

9 COMMISSIONER CHRISTMANN: On that topic, I will
10 just throw out that if over an hour with one witness is
11 sped up, if that's as much as Mr. Bakke can speed things
12 up, and I think he wanted to call four or five
13 witnesses, he will essentially have frozen out any more
14 chance for public testimony.

15 ALJ HOGAN: Well, and my intent is, because
16 we're going to go past the dinnertime, is to take our
17 dinner break, and then after dinner we're going to take
18 all the rest of the public testimony, and then whatever
19 time is left, Mr. Bakke, you'll have for the rest of
20 your witnesses. So just so you're aware.

21 MR. BAKKE: I think Mr. Bitner will be one of my
22 longer witnesses so I'm expecting the others won't be
23 quite as long.

24 THE WITNESS: I'm just a lucky guy, aren't I?

25 (Laughter)

1 ALJ HOGAN: You and I have different definitions
2 of "lucky."

3 (Laughter)

4 THE WITNESS: Like dodging bullets.

5 Q. (BY MR. BAKKE) One other thing I wanted to ask
6 you about in terms of the April 17 ordinance is there is
7 a public hearing requirement and permit approval process
8 that Summit has to go through with Burleigh County.

9 A. Yes.

10 Q. Okay. And have they applied for a permit
11 approval with Burleigh County?

12 A. Not that I'm aware of, but our planning director
13 could address that.

14 Q. So this process of them obtaining a permit will
15 allow for public comment and the public can come in and
16 weigh in and voice their concerns either for or against
17 the permit approval by Summit?

18 A. Yes.

19 Q. As part of that permit approval process, would
20 they have to show they complied with the requirements of
21 the ordinance?

22 A. Yes.

23 Q. And one other area I'd like to touch on briefly
24 in the ordinance is if you turn to, I believe it's
25 subsection 12, it's towards the end, it deals with

1 hazard mitigation plans for hazardous liquid
2 pipelines --

3 A. Emergency response, yes.

4 Q. Yes. And part of the requirement is 2.a.2,
5 which is referred to as "A rupture dispersion modeling
6 report containing the results of computational fluid
7 dynamic computer model."

8 Is that what you understand has been referred to
9 in this proceeding as a "plume model"?

10 A. Yes.

11 Q. Okay. And why is it that Burleigh County has
12 requested that any hazardous pipeline company like
13 Summit provide a plume model or a rupture dispersion
14 model?

15 A. Well, that's pretty simple, because we'd like to
16 be able to train our staff in expectations and have
17 plans and policies in place that would address "If this
18 happens, do this." Because what we do in emergency
19 management is we address the hazard, such as flooding,
20 and we make plans on how do you deal with it. So
21 something like that information would inform our
22 policies and procedures manual for how we would respond
23 in the event of an accident or a catastrophe.

24 Q. Okay. And is that for the public health and
25 safety so that you can look at that plume model and

1 provide information to the public or the company with
2 the pipeline could provide information to the public as
3 to what they should do, what they should plan for, how
4 they should react --

5 A. Right.

6 Q. -- in the event there was a leak?

7 A. Yeah. Because we'd certainly want to try to do
8 some kind of education program or something for what
9 people do. I mean, we've got a city here. Can we rely
10 on building managers and people within their individual
11 buildings to know to turn off your air intake systems or
12 something like that? I don't know how we'd train people
13 to do that.

14 And we don't -- you know, we've got a reverse
15 911 system here, but I'm not sure we have -- well, I
16 know for a fact we don't have everybody involved in it
17 because you had to voluntarily sign up and a lot of
18 people don't want to give their cell phone numbers to
19 the government. So there would be people -- there's no
20 way that we could reach some people.

21 And so having those plans in place would enable
22 us to understand the risk and deal with it.

23 Q. Okay. And it would be fair to say Summit has
24 not provided this rupture dispersion model or any plume
25 study to Burleigh County?

1 A. Correct. They have not -- they said at a
2 meeting that they would provide that to us, but they
3 never said when. You know, I could speculate on why
4 not.

5 Q. Okay. And so far they haven't provided it?

6 A. No, not that I'm aware of.

7 Q. Okay. There's also, in this same section under
8 emergency response, a requirement that the pipeline
9 company provide a list of high consequence areas. And
10 Summit has indicated in this application that there are
11 two high consequence areas in North Dakota along the
12 pipeline, but they refuse to identify where those are.

13 And in terms of this list of high consequence
14 areas, would I be correct in understanding that has not
15 been provided to Burleigh County either?

16 A. No. And I want to elaborate a little bit on
17 that particular subject. A high consequence area in
18 Burleigh County, that's probably open to interpretation
19 on what that is, but I think your house, your house, and
20 your house is still a high consequence area.

21 I don't want to go out there and be collecting
22 up bodies in the event of an accident. I want to know
23 more about what do we do, how do we prevent it, things
24 like that.

25 But I don't know. Who's going to determine what

1 a high consequence area is? Is it one body? Is it ten
2 bodies? What is high consequence? Nobody has defined
3 that for us.

4 I'm sorry. I understand about the time thing
5 but...

6 Q. Let's turn to the Burleigh County Board of
7 Health statement. Did Burleigh County, before these
8 ordinances were passed, issue a Board of Health
9 statement?

10 A. Yes.

11 Q. Okay. And is that Exhibit W104 in your binder?

12 A. Yes.

13 Q. Okay. And just quickly, what did the Board of
14 Health statement by Burleigh County indicate?

15 A. Well, it basically indicates that we're
16 concerned about the public health in Burleigh County as
17 it relates to hazardous liquid pipelines.

18 Q. And is that due to the public health risk should
19 there be a leak?

20 A. Yes.

21 Q. Okay. Let's turn to one final topic and that is
22 the economics, whether there's any economic benefit to
23 Burleigh County to this proposed Summit pipeline using
24 its proposed route. I'm assuming, like most counties,
25 Burleigh County is reliant upon its tax revenue from

1 residents for its budget and for its spending?

2 A. Yeah. That's not an assumption. That's a fact.

3 Q. Okay. And so what, if any, tax benefits would
4 there be to Burleigh County in the event that the Summit
5 pipeline was built in its proposed route or anywhere in
6 Burleigh County?

7 A. Well, at this point I'd be relying on
8 information that was provided to Burleigh County by that
9 company. That company said that there may be some tax
10 benefit to Burleigh County, but I'm not aware of what
11 that amount would be and what it would be based on. And
12 it's my understanding that those tax dollars aren't
13 being spent by Summit anyway. I think the State of
14 North Dakota is going to be paying those property taxes
15 for the first ten years. So it looks like it's my tax
16 dollars paying it but...

17 They did discuss some benefit at one of the
18 meetings and there was some reference to a benefit to
19 local farmers who may be selling corn to ethanol plants.
20 But, you know, I know a lot of large operators and they
21 -- they pretty much have their crops committed to either
22 Richardton or Underwood or over there by Fargo.

23 They said there would be some possible tax
24 benefit. I think they referred to some 400 and some odd
25 thousand dollars per year of property taxes.

1 Q. Okay.

2 A. But I don't know that that -- that doesn't make
3 my tail wag because I have information here from our tax
4 director that on two subdivisions that were located
5 right on this -- on this map that you showed me
6 earlier -- I want to deviate a little bit and I'll take
7 some liberty, but The Ranch subdivision up north of the
8 pipeline and this Heritage Reserve that's south of the
9 pipeline, when those two subdivisions are built out
10 completely and looking at the average price of a home in
11 those subdivisions, The Ranch subdivision, they have the
12 potential of \$63 and a half million worth of residential
13 value and \$3.4 million of commercial value.

14 So the potential tax revenue for The Ranch when
15 it's completely built out, for the residential values
16 it's 505,055.60, for the 3,400 -- or three million four
17 hundred commercial values, it's 30,030, for a total
18 estimated at current mill rates of 535,086.10.

19 And then for the Heritage Reserve subdivision on
20 the other side of the pipeline, when those hundred to
21 hundred and fifty lots are fully built out, at their
22 average price of approximately 750,000 -- and we know
23 there are some that are a little bit less and some that
24 are more -- they're looking at an additional tax revenue
25 of 596,193.75 per year.

1 So just those two subdivisions -- you might
2 remember I mentioned we have probably 350 subdivisions,
3 but just those two, we're looking at over a million
4 dollars in tax revenue per year for Burleigh County.
5 And that's without the pipeline in place.

6 Q. And there are, as you said, in the Burleigh
7 County area, in the path of this, literally dozens of
8 other subdivisions and more that would be built if the
9 pipeline isn't there?

10 A. Yeah, clearly. Yes.

11 Q. So we're talking about Summit contributing,
12 supposedly, up to 400,000 a year, not paid by them, paid
13 by the State of North Dakota, versus many millions of
14 dollars being paid by rural subdivisions that would
15 continue to develop or develop in the area of the
16 pipeline?

17 A. Right. As a Burleigh County commissioner, I'll
18 take one Ranch subdivision over a CO2 pipeline. It's
19 more valuable to the county.

20 Q. Okay.

21 MR. BAKKE: That's all the questions I have.

22 ALJ HOGAN: All right. Mr. Mahlberg, any
23 questions?

24 MR. MAHLBERG: I do. Thank you.

25 ALJ HOGAN: Go ahead.

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CROSS EXAMINATION

BY MR. MAHLBERG:

Q. Let's -- Mr. Bitner, it's good to see you again. We'll start at the back end there. I just want to understand the testimony you just gave about the tax revenues. The information you're providing there is assuming that development stops immediately upon approval of a pipeline or doesn't continue, you're going to lose the --

A. No.

Q. -- 500,000 apiece in each of those two --

A. That's not what I said.

Q. Okay. So thanks. Clarify it for me because I thought I heard you saying nobody's going to build those anymore if this pipeline gets built.

A. No, I didn't say that.

Q. Okay.

A. I didn't say anything of the sort. I said that on full build-out of The Ranch subdivision, we would anticipate, based conservatively on the value of what we think it would be, The Ranch would provide approximately 535,086.10 per year. And the full build-out of the Heritage Reserve would be five hundred ninety-six thousand one hundred -- okay. So I didn't refer to anything, whether they're built or not.

1 Q. Thank you. And I had caught that as -- as you
2 were relaying, that was the estimated lost revenue that
3 was --

4 A. No, absolutely.

5 Q. Maybe if we stay there for a second. You've
6 been in Burleigh County a long time. You're aware that
7 there are hazardous liquids, natural gas transmission
8 lines in the city of Bismarck and through Burleigh
9 County; right?

10 A. I don't -- I kind of question your reference to
11 hazardous liquids and applying that to natural gas or
12 even oil. I paid money to have the natural gas line run
13 up to my shop and to my house. I don't consider that a
14 hazardous liquid. That's a necessity to me. I just
15 spent, I don't know, ten grand on getting that done.

16 But I -- when I first started hearing about
17 pipelines, just so we can head that off, I wasn't all
18 that worried about it because I thought we have
19 pipelines and the pipelines have not been much of a
20 problem in Burleigh County. It wasn't until your guys
21 told me about the Satartia, Mississippi, thing and
22 handed me this brief 10- or 12-page summary of Satartia
23 that I started to get concerned and I researched it.

24 Q. Sure. So let's be clear about one thing too, I
25 guess. When I talk about a transmission line, a

1 hazardous liquid or a natural gas transmission line,
2 we're not talking about the service line for gas that
3 comes to your house. You understand that; right?

4 A. Well, I think I understand the difference
5 between the gas line to my house and a pipeline, yeah.

6 Q. Well, they're both pipelines. One's a
7 transmission line and one's a service line. You
8 understand that there are transmission pipelines --

9 A. Of course.

10 Q. -- in Bismarck and in Burleigh County; right?

11 A. Yes. Sure.

12 Q. And those are the -- the natural gas lines would
13 be the MDU and the WBI and the NuStar pipeline has
14 refined products; right?

15 A. Yeah.

16 Q. And so when I say a transmission line, that's
17 what I'm talking. I just want to make sure we're using
18 the same concepts. You've been around --

19 A. So you're not -- yeah, I understand you're not
20 referring to a residential line versus a commercial
21 line. Okay.

22 Q. Sure. We can make that -- that's a fine --

23 A. Fine.

24 Q. You've been around long enough that you've
25 watched Bismarck grow and you've watched Burleigh County

1 grow despite the presence of those transmission lines;
2 right?

3 A. Yes.

4 Q. Growth has gone on unimpeded by those
5 transmission lines; right?

6 A. You would say that. I don't know that I would.

7 Q. Do you disagree with that?

8 A. Yeah.

9 Q. So your position, Mr. Bitner, is that the
10 transmission lines that exist have impeded development?

11 A. Look, I think if you're a developer, and I do
12 know of pretty much every one of them, I think you're
13 less likely to develop a property around any pipeline if
14 you can. That's not their preferred land. I mean, I
15 don't -- I don't think it's a -- I don't think most
16 Burleigh County citizens are overly concerned about
17 those particular lines you're talking about, but we're
18 here talking about a CO2 pipeline.

19 Q. Fair. So you're drawing a distinction. You're
20 saying that the CO2 pipeline presents a different risk,
21 and to you most Burleigh County residents see it
22 differently. Is that what you're saying?

23 A. I'm saying it's a different risk to me based on
24 information that we see from the Satartia incident,
25 yeah.

1 Q. Sure. So you personally, Mr. Bitner, don't have
2 a background in pipeline safety; right?

3 A. Well, actually, I kind of do. At one point I
4 had a contract for maintaining the nitrogen plant out at
5 the refinery, which is actually probably more of an
6 asphyxiant -- well, I know it's more of an asphyxiant
7 than carbon dioxide. So in that case one breath you're
8 dying, two breaths you're dead because your body goes
9 into what's called "reverse aspiration." So I actually
10 do have experience in hazardous liquids.

11 Q. But that wasn't my question. My question was
12 about pipelines.

13 A. Okay.

14 (Audible response from audience)

15 ALJ HOGAN: Okay. I asked at the beginning of
16 the hearing and I'm just going to remind everybody in
17 the audience, please refrain from commenting, laughing,
18 groaning, those types of things. We need to maintain
19 decorum. This is an administrative hearing. So please
20 refrain from those types of behaviors. Thank you.

21 Q. (BY MR. MAHLBERG) And I'm just trying to be
22 precise with it, Mr. Bitner, so that we have a clear
23 record. If I ask you about pipelines and I get an
24 answer about something else, I'm just going to circle
25 back on it.

1 From a pipeline perspective, you don't have an
2 expertise in pipelines; right?

3 A. Well, you know, I have the technical background
4 and training to where I am an expert in a few different
5 things. And when I maintained that nitrogen plant at
6 the refinery, I was the expert.

7 Q. In pipelines.

8 A. On-call expert. We were putting hazardous
9 liquid in the pipeline that serviced the refinery. Not
10 the type of pipeline -- not a 24-inch CO2 pipeline, if
11 that's your question.

12 Q. And that is. I'm talking about the sort of
13 pipeline diameters and pressures that we're talking
14 about here. You're not an expert in that. I think we
15 can agree on that. You've got your expertise, no doubt
16 -- not questioning that.

17 You're also not an expert in the way that PHMSA
18 regulates transmission pipelines like this; right?

19 A. Correct.

20 Q. You understand, correct, that PHMSA does, in
21 fact, regulate emergency response and public awareness
22 programs, and a lot of the topics that the ordinance
23 that you led in adopting for the county are overlapping
24 with; right?

25 A. No, I'm not aware of that.

1 Q. You're not aware when you were passing your
2 ordinances of the scope of PHMSA's regulatory authority
3 and jurisdiction?

4 A. No.

5 Q. Okay.

6 A. Nope. I don't know anything about PHMSA.

7 Q. Okay.

8 A. I just know what happens in Burleigh County.

9 Q. And that's fair. And so when Burleigh County
10 was going about enacting its ordinances, it wasn't
11 taking into account PHMSA's regulatory authority; right?

12 A. I think we were taking it into account. You
13 were --

14 Q. You just said you knew nothing about it.

15 A. -- asking if I know anything -- I'm not
16 personally concerned with PHMSA, but yes --

17 MR. BAKKE: Your Honor --

18 A. -- we're taking it into account.

19 MR. BAKKE: Your Honor, can he be allowed to
20 finish his answer before he gets interrupted by
21 Mr. Mahlberg?

22 ALJ HOGAN: I just ask both of you not to talk
23 over each other because that's an issue when we try to
24 make a transcript.

25 THE WITNESS: It got a little combative here and

1 I apologize that I react that way.

2 Q. (BY MR. MAHLBERG) Mr. Bitner, if we talk about
3 the ordinance, in the reconsideration piece that you
4 talked about there was a provision -- you'll correct me
5 on the date if I'm wrong, I'm sure -- on the April 17th,
6 I think, ordinance that had the change in electric lines
7 and generating plants, the setback went from ten miles
8 down to a thousand feet.

9 A. Right.

10 Q. Right?

11 Where is it, with the setbacks that were passed,
12 that a hazardous liquid pipeline can be sited -- a
13 pipeline can be sited in Burleigh County?

14 A. I'm not -- I don't know. We didn't look for an
15 area and say, well, if we write this thing a certain
16 way, that it can go someplace. We were writing this
17 concerning the public safety and things like that and
18 based on citizen input and public meetings. We weren't
19 picking a route for you, if that's what you're asking.

20 Q. So Burleigh County does not know whether a
21 hazardous liquids pipeline could be sited under its
22 current ordinance?

23 A. No. It does not know.

24 Q. Okay.

25 A. Because I testified earlier that it was not our

1 intention of zoning it out.

2 Q. Right. You just don't know whether you did or
3 didn't?

4 A. No, I don't.

5 Q. If I understand it correctly, you changed the
6 setback on an electric line from a ten-mile distance
7 down to a thousand feet for some reason, and I'm not
8 asking the reason, to get into that, but so long as
9 there's a crossing, there can be no crossings of a
10 hazardous liquid pipeline with a 69kV or higher
11 transmission line; right?

12 A. You know, I can't answer that because that
13 wouldn't have been the intent that -- that I'm sure of.
14 The point would be if there was a disruption in -- in
15 the pipeline that could cause a disruption in the power,
16 that's something that would be concerning to us.

17 Q. But that's not what that says; right? It says
18 you cannot have a hazardous liquids pipeline within a
19 thousand feet of and so, therefore, certainly not
20 crossing a 69kV or higher transmission line; right?

21 A. You know, thinking about it, I guess you could
22 draw that conclusion. That was not our intent, but I
23 hear what you're saying.

24 Q. Right. And we can only figure out the intent by
25 looking at the words that you passed. And you've gone

1 through a series of actions to pass ordinances midstream
2 of a project. And I hear Mr. Bakke saying did they
3 comply with the ordinance that you passed two months ago
4 several months after they filed their application in the
5 first place?

6 You don't actually expect that Summit will come
7 in to you on April 18th and say, "Here's our route that
8 now complies with the ordinance you passed yesterday,"
9 do you?

10 MR. BAKKE: I --

11 A. I think I would be speculating.

12 MR. BAKKE: I'm going to object to the form of
13 the question. That's not what I said. He had about
14 four things he incorporated into the question so perhaps
15 he could rephrase it.

16 MR. MAHLBERG: That's fine. I'll move on.

17 Q. (BY MR. MAHLBERG) On the issue of PHMSA, I
18 want to just make sure I didn't hear it right or that
19 the record is going to reflect this clearly. I thought
20 I heard your testimony, Mr. Bitner, to be that PHMSA,
21 the agency, has told you or some representative of the
22 county that its rules and regulations are insufficient?

23 A. No. I said I've read that.

24 Q. Okay. You have read that. You are not saying
25 that the regulator has come to you and pronounced "Our

1 regulations are insufficient"?

2 A. Correct.

3 Q. And they haven't done that; right?

4 A. They'll put that in print, yeah.

5 Q. PHMSA has not put that --

6 (Simultaneous speaking)

7 A. (Indiscernible).

8 Q. -- in print for itself?

9 A. I believe they have.

10 Q. Okay. Has PHMSA put a moratorium on pipeline
11 development?

12 A. Not that I'm aware of.

13 Q. In your history and being -- growing up and
14 living here, you're also familiar with the way hazardous
15 liquids and natural gases have been transmitted by
16 railroads; right?

17 A. Not overly, no.

18 Q. You don't notice them?

19 A. No. I live within, I think, a mile of the
20 railroad, but I don't really think about that.

21 Q. You're aware that the number of transmission
22 pipeline incidents in Burleigh County from the year 2000
23 on -- incidents, fatalities, injuries -- there's a grand
24 total of one. Are you aware of that?

25 A. No.

1 MR. BAKKE: Lack of foundation.

2 MR. MAHLBERG: I was asking him if he was aware
3 of it.

4 MR. BAKKE: Well, you're suggesting that there's
5 some basis for that.

6 ALJ HOGAN: Is that an objection for foundation?

7 MR. BAKKE: Yes, it is. There's no foundation
8 for that.

9 ALJ HOGAN: I'll note the objection, but I think
10 he's already answered the question so we'll move
11 forward.

12 Q. (BY MR. MAHLBERG) You'd agree, Mr. Bitner,
13 that transportation of goods and materials and hazardous
14 chemicals and hazardous liquids takes place by railroad
15 through Burleigh County, through heavily-populated
16 areas; right?

17 A. No. I don't know what goes on those railroad
18 cars. Nobody has ever explained it to me.

19 Q. It's never been important to you to look into
20 what's traveling through areas of your county?

21 A. No.

22 Q. Because you're taking a position that what's in
23 these things matters and if there's a release it really
24 matters, and at the same time you're disregarding an
25 industry that has far more accidents, far more releases.

1 sufficient to me based on what the government has
2 provided us. Now, if they come back in 2024 or some
3 point in the future and say, "Okay, we have determined
4 this is safe and that's safe and that's not," then we'll
5 probably likely to be okay with that because I would
6 trust them.

7 Q. Are you aware, Mr. Bitner, as part of the 2045
8 plan, the ETA is projected by the city to have 50 plus
9 years' worth of growth area to be taken up?

10 A. No.

11 Q. Are you aware of the amount of available land
12 between currently developed portions of Bismarck and the
13 ETA boundaries on the northeast northeast? Are you
14 aware of the amount of land that could be developed out
15 there?

16 A. Not to any specific amount of acres, no. I just
17 know it's a lot of land, yeah.

18 Q. You're aware that residents of Burleigh County
19 have signed easements for the pipeline; right?

20 A. Yes.

21 Q. And so earlier when you said that in Burleigh
22 County -- I'll paraphrase because I won't get the
23 language exactly right, but I think you said there's a
24 common mind, it's a hundred percent agreement against
25 this pipeline.

1 A. No. I said that people that have contacted
2 me --

3 Q. Right, the ones --

4 A. -- have been 100 percent in opposition, yeah.

5 Q. The ones that --

6 A. I didn't say anything about easements.

7 Q. The ones that you have talked to; right?

8 A. Right.

9 Q. So you're not representing anything about the
10 way the ones that you haven't talked to view the
11 pipeline; right?

12 A. How would I?

13 Q. You haven't talked to --

14 A. Why -- why would I -- why would I speculate
15 about somebody that didn't talk to me, sir? No. The
16 folks that signed easements -- look, I have friends and
17 family members that have signed easements. This is not
18 about easements.

19 Q. So the people that you're talking about -- no,
20 that's all right.

21 I don't have anything else. Thanks, Mr. Bitner.

22 ALJ HOGAN: Mr. Pelham, any questions?

23 MR. PELHAM: Yes. Thank you.

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CROSS EXAMINATION

BY MR. PELHAM:

Q. Sir, you mentioned the emergency services director. The company submitted some documentation yesterday indicating that it's contacted all the emergency service directors in counties affected by the proposed line. Do you know whether or not the Burleigh County emergency services director has been contacted by Summit?

A. Yes.

Q. And what do you know about that?

A. I do know -- I could show you the email. It goes way back. I just looked at --

Q. I don't need to see that.

(Simultaneous speaking)

Q. I'm just wondering what it is --

A. There was one --

Q. -- that was discussed, yeah.

A. -- contact in, I think, July it was, June or July of last year --

Q. Okay.

A. -- where the meeting had to do with a request or a comment from them that led to a request where our emergency manager contacted the rural fire to see what kind of equipment that they might need and that was the

1 extent of it.

2 Q. So any discussion as to potential training,
3 response plans, anything like that that you're aware of?

4 A. Not that I'm aware of, no.

5 Q. As to the April 2023 ordinance, which is Exhibit
6 W186, I'm wondering, sir, what involvement that you
7 would have had in the drafting of the ordinance?

8 A. I would have had general oversight and general
9 directional authority on it. And I -- I directed that
10 the planning director create an ordinance.

11 Q. So I'm wondering generally if you know section
12 6, which is "The minimum separation distances for the
13 hazardous liquid pipeline are," and then it lists 1
14 through 8, do you know how those distances were
15 determined?

16 A. Uh-huh.

17 Q. And can you explain that to me?

18 A. Sure. It started out with -- basically, it
19 started out with a conversation between myself and Mitch
20 concerning what's -- what appears to be an appropriate
21 placeholder number based on information that we've
22 gotten from, example, the Satartia, Mississippi,
23 incident and things like that. And we kind of
24 extrapolated a little bit and we go, well, let's start
25 with these numbers based on what we know and we'll move

1 forward to a public hearing and see what the public
2 thinks.

3 Q. So when you say "Mitch," Mitch Flanagan, the --

4 A. Planning director, yes.

5 Q. Planning director. And so anyone else? Any
6 discussion as to the distances as to determining what
7 they would be?

8 A. You know, I'm not sure how many people might
9 have had input on that. I'm certain -- like, for
10 example, we contacted Capital Electric for distance
11 setback from transmission facilities. And so we, I'm
12 sure, contacted others, but that would be a question for
13 the planning director.

14 Q. Fair enough.

15 And do you know if this ordinance was crafted
16 originally or was it based upon another jurisdiction's?
17 I'm just curious as to where this came from generally,
18 if you know?

19 A. Yeah, I do know. The general outline started
20 out with some input from Shelby County, Iowa. I don't
21 know how much of their outline survived, though, but
22 that was the first that I recall hearing about.

23 MR. PELHAM: Thank you, sir. I don't have any
24 other questions for you.

25 THE WITNESS: Okay. Thank you.

1 ALJ HOGAN: Mr. Jorde, any questions?

2 MR. JORDE: Yes. Thank you.

3 CROSS EXAMINATION

4 BY MR. JORDE:

5 Q. Sir, do you understand that PHMSA regulations in
6 terms of emergency response only apply to the minimum
7 standards the operator must follow and that PHMSA has no
8 jurisdiction or oversight nor can it tell a county that
9 it can't also have its own emergency response plan?

10 A. I'm not aware of that, but thanks.

11 Q. Yeah. Well, it just was getting real confusing,
12 I thought, with the questions you were being asked.

13 A. I'm not aware of that.

14 Q. Yeah. So you understand that your county is
15 fully 100 percent in its right to develop its own
16 emergency response plans?

17 A. Well, I believe that, yes.

18 Q. Yes. Okay.

19 Now, the property tax, were you saying that
20 that's -- the property tax that Summit claims as a
21 benefit of its pipeline is actually being subsidized by
22 the North Dakota citizens, taxpayers, for ten years?

23 A. That's my understanding, yes.

24 Q. And is it your understanding that the tax
25 credits, the 45Q tax credits, of \$1.53 billion per year

1 to Summit's profit is being subsidized by all of the
2 taxpayers of the U.S.?

3 A. I don't know that for a fact, but I'm going to
4 take your word for it because it's probably --

5 Q. All right.

6 A. -- true.

7 Q. And then now they want to locate a proposed
8 hazardous pipeline and then have the local emergency
9 responders, first responders, subsidize their pipeline
10 in case of an explosion and put that burden on the
11 taxpayers; right?

12 A. That's the way it sounds.

13 Q. Now, in the March 6th ordinance, it's entitled
14 "A Burleigh County Ordinance For Safety Regulations When
15 Transporting Hazardous Liquid Through a Hazardous
16 Pipeline."

17 And I just want to be clear, are you aware that
18 Summit is suing multiple counties in multiple states on
19 the basis of the argument that anything having to do
20 with safety is somehow preempted by the Federal
21 Government? Are you familiar with that?

22 A. I am.

23 Q. And to be clear, nothing in your March 6th
24 ordinance that may have the word "safety" in the title
25 goes to any restrictions or regulations or criteria of

1 thickness of pipe, number of welds, anything to
2 construction standards?

3 A. Absolutely not. We were very clear -- we tried
4 to thread a fine needle at that so we didn't get into
5 that turf.

6 Q. And is it true that one of the important
7 considerations of the Burleigh County Commission when
8 authoring the setbacks that you have decided upon was
9 the concept of intelligent land use and looking forward
10 to the orderly development of the land and protecting
11 that natural process?

12 A. I'd agree with that, yes.

13 Q. All right. And you understand you're well
14 within your rights as a county to regulate land use via
15 setbacks?

16 A. Certainly believe that, yes.

17 Q. Is it your job, do you believe, to write
18 ordinances that accommodate a private for-profit
19 corporation or to best serve the needs of the people in
20 this community?

21 A. My job is to represent the citizens of Burleigh
22 County, and a lot of times that includes Burleigh County
23 businesses. But it's kind of easy for me because this
24 isn't a Burleigh County company and it's not a North
25 Dakota company so I'm -- I'm doing my best to represent

1 Burleigh County and its citizens.

2 Q. Okay. Thank you so much, sir. Appreciate your
3 time.

4 ALJ HOGAN: Commissioner Christmann.

5 COMMISSIONER CHRISTMANN: In your years as
6 county commissioner, are you an active participant in
7 the North Dakota Association of Counties?

8 THE WITNESS: I wouldn't say "active," no. I
9 just don't have time.

10 COMMISSIONER CHRISTMANN: So then I'm just going
11 to guess at your answer, but I'll ask you the question
12 anyway. Over these last couple years that this topic
13 has come up of a CO2 pipeline, have you ever talked to
14 any of -- probably the commissioners from probably six
15 or eight counties that host CO2 pipelines to see if they
16 view the pipeline as problematic or beneficial to their
17 taxpayers?

18 THE WITNESS: No.

19 COMMISSIONER CHRISTMANN: Okay.

20 THE WITNESS: No, but I could elaborate a little
21 bit. I think that in respect to Burleigh County and
22 North Dakota businesses that generate carbon, and if our
23 goal is to do something with it, which I don't know that
24 that's an appropriate goal or not, that's not the point,
25 but with the incidence of the carbon dioxide pipeline

1 coming out of the basin -- Great Plains Plant, I don't
2 have a problem with that because we're doing a benefit
3 for North Dakota businesses.

4 I personally have interest in mineral rights and
5 land in Mercer County and we own mineral rights and pore
6 space and surface on the same lands, and I would like to
7 see North Dakota continue to develop oil, coal, and gas.
8 Obviously that's a benefit for the citizens of North
9 Dakota.

10 So if this particular pipeline was dealing with
11 our own companies' problem -- not problem but their
12 carbon, I would probably have a little bit more of a
13 view. I know it would be a smaller pipeline so it would
14 be a lot easier, the decision would be easier, because
15 it wouldn't be nearly as dangerous.

16 COMMISSIONER CHRISTMANN: And in your role here
17 on the planning commission part, I think you said you
18 had been doing that for a few years.

19 THE WITNESS: Yes.

20 COMMISSIONER CHRISTMANN: I wish my memory were
21 more precise, but I think in 2017, maybe '15 or '19, do
22 you recall -- well, first of all, let me ask, do you
23 watch legislation that might impact zoning and those
24 types of issues?

25 THE WITNESS: Somewhat.

1 COMMISSIONER CHRISTMANN: Do you have any
2 recollection of legislation, maybe six years ago about,
3 that changed or would have proposed to change how we
4 base our decisions in dealing with local ordinances on
5 transmission lines versus generation facilities?

6 THE WITNESS: No, sir, I don't recall that.

7 COMMISSIONER CHRISTMANN: Okay. I don't have
8 any other questions. Thank you.

9 THE WITNESS: Thank you.

10 ALJ HOGAN: Commissioner Haugen-Hoffart.

11 COMMISSIONER HAUGEN-HOFFART: Yes.

12 Hi. I have a question or two. Mr. Bitner, in
13 your testimony you talked about PHMSA, and I'm going to
14 paraphrase this so if I get it wrong, I apologize for
15 that. You kind of disregard that based on some of their
16 CO2 regulations based on something you've read; correct?

17 THE WITNESS: I don't disregard -- no, I didn't
18 disregard. I'm not quite sure I follow.

19 COMMISSIONER HAUGEN-HOFFART: I'm going to have
20 you turn to W147, because this has come up. And maybe
21 where you're looking at your ordinance.

22 THE WITNESS: Okay.

23 COMMISSIONER HAUGEN-HOFFART: And I'm going to
24 have you read that first paragraph and see if that's
25 what you have read and why you're looking at local

1 Burleigh County ordinance.

2 THE WITNESS: Okay. Which paragraph?

3 COMMISSIONER HAUGEN-HOFFART: First one.

4 THE WITNESS: Do you want me to read it out loud
5 or --

6 COMMISSIONER HAUGEN-HOFFART: You can.

7 THE WITNESS: I'm not that great at reading
8 out --

9 COMMISSIONER HAUGEN-HOFFART: You can read it
10 out loud so they hear it.

11 THE WITNESS: "The U.S. Department of
12 Transportation's Pipeline and Hazardous Materials Safety
13 Administration (PHMSA) today announced it is taking
14 steps to implement new measures to strengthen its safety
15 oversight of carbon dioxide (CO2) pipelines around the
16 country and protect communities from dangerous pipeline
17 failures. The new measures, as well as an enforcement
18 action taken today, are a result of PHMSA's
19 investigation into a county pipeline failure in
20 Satartia, Mississippi, in 2020 that resulted in local
21 evacuations and caused almost 50 people to seek medical
22 attention."

23 COMMISSIONER HAUGEN-HOFFART: So have you read
24 that before?

25 THE WITNESS: Yes. This is what I was referring

1 to, Commissioner, when I said I -- you know, information
2 presented by the government. This is what I was
3 referring to.

4 COMMISSIONER HAUGEN-HOFFART: And that's what I
5 was going to get to, is what you've read --

6 THE WITNESS: Yes.

7 COMMISSIONER HAUGEN-HOFFART: -- and why you
8 pursued this.

9 THE WITNESS: Yes.

10 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.
11 I have no further questions.

12 ALJ HOGAN: Mr. Dawson, any questions?

13 SUBSTITUTE DECISIONMAKER DAWSON: I have no
14 questions.

15 THE WITNESS: Thank you.

16 ALJ HOGAN: Mr. Bakke, do you have any redirect?

17 MR. BAKKE: Just briefly.

18 ALJ HOGAN: I'll just note that it's almost 5:30
19 and I'm starting to have time concerns before you start
20 so...

21 MR. BAKKE: I'll be brief. There was quite a
22 bit of cross-examination.

23 REDIRECT EXAMINATION

24 BY MR. BAKKE:

25 Q. In relation to this discussion with Mr. Mahlberg

1 about railcars and if something happens in terms of if
2 there's oil or gas in there, did you hear about the
3 incident in Palestine, Ohio, where some railcars with
4 chemicals essentially caused the evacuation of the town
5 and some serious effects to the citizens?

6 A. Yes.

7 Q. I mean, is it important to compare apples to
8 apples? In other words, if you have grain spill out of
9 a grain car or perhaps coal or perhaps something else
10 could be far different than a leak in a CO2 pipeline
11 that can cover miles where people could have serious
12 health effects or even die?

13 A. That sounds a fair statement, yes.

14 Q. And Mr. Mahlberg asked about easements. Were
15 there people, citizens from Burleigh County, who came to
16 you and indicated that there were threats of eminent
17 domain by Summit?

18 A. Oh, yes. Uh-huh. Too many. That really
19 offends me as a county commissioner that somebody would
20 come into the county and attempt to do something that
21 would threaten and intimidate my citizens. I take that
22 personal.

23 Q. Okay. You responded to a question in regards to
24 carbon dioxide, CO2, pipelines in western North Dakota,
25 and you gave the example of the Great Plains Synfuels

1 Plant and you talked about a smaller pipeline might be
2 okay if it's used for enhanced oil recovery or something
3 like that.

4 You're not suggesting by that comment that this
5 pipeline -- any CO2 pipeline would be appropriate in the
6 location that Summit is proposing in Burleigh County,
7 are you?

8 A. Oh, no. No. I was not trying to make that --

9 Q. Okay. That's all the questions I had.

10 ALJ HOGAN: Mr. Mahlberg, any other questions?

11 MR. MAHLBERG: Yeah. Sorry.

12 RECROSS EXAMINATION

13 BY MR. MAHLBERG:

14 Q. I have two follow-up issues. On the issue of --
15 on the issue of rail transportation, you're aware,
16 right, that hazardous chemicals are shipped by rail
17 through Burleigh County, anhydrous ammonia, other
18 chemicals; right?

19 A. No, I'm not aware of that. I just -- I can just
20 make that assumption.

21 Q. Right. So in the --

22 A. I'm not personally aware of it. Okay?

23 Q. Sorry. I don't mean -- I don't mean to step
24 over you.

25 So you're not aware. And so the questions, when

1 you're talking to be comparing apples to apples, and the
2 suggestion is that railcars in Bismarck and Burleigh
3 County only move grain and coal, you have no idea. Is
4 that fair?

5 A. Yeah, that's fair. I don't know what they move.

6 Q. You've never seen the tankers?

7 A. Say again.

8 Q. You've never seen the tanker cars?

9 A. I have not, no.

10 Q. Okay. Then the other one, there was a question
11 about the genesis of the setback provisions in your
12 April 17th ordinance, and I think you said it was from
13 Shelby County, Iowa, was your template or your starting
14 spot?

15 A. We -- see, what we do when we start to develop a
16 new ordinance, and I think our planning director could
17 speak to that and I would think he should, is we gather
18 information from as many sources as possible. They were
19 one. I don't know how many others we might have had.
20 But we -- we tend -- we try to do due diligence here.

21 Q. And that's helpful. And the reference to Shelby
22 County, Iowa, was helpful because we can look at their
23 ordinance and it looks very close in terms of setbacks
24 with some exceptions. They took -- do you know that
25 their setback was at two miles from the city limits?

1 A. No, I don't know.

2 Q. And --

3 MR. BAKKE: Your Honor, excuse me. I didn't ask
4 my questions about Shelby, Ohio, or in terms of the
5 ordinance on my redirect. His examination has to be
6 limited to my redirect.

7 MR. JORDE: Join.

8 MR. BAKKE: I didn't ask anything about that.

9 ALJ HOGAN: Well, normally with these type of
10 hearings, if there's topics that are asked by the
11 commissioners or PSC counsel, I allow follow-up
12 questions on that, and it was brought up by Mr. Pelham
13 so I'll allow the question.

14 Q. (BY MR. MAHLBERG) So the question, Mr. Bitner,
15 is what analysis took place to have the county go from a
16 template that said not less than two miles from a city
17 limit to not less than ten miles from an
18 extraterritorial jurisdiction --

19 MR. BAKKE: Excuse me. I'm going to object for
20 lack of foundation. Can you show him the Shelby,
21 Iowa --

22 Q. Are you --

23 A. You know what? I don't have to see Shelby
24 County, Iowa. I can tell you that the ten miles was
25 based on public input. That was a change. Originally I

1 suggested, I think, something on the fashion of, like,
2 four miles from the extraterritorial line, but the
3 public requested that distance at one of the early
4 meetings. So they were real clear that they wanted it
5 further.

6 Q. Got it. So these just incorporate the feedback
7 that you took at your meetings, not necessarily based on
8 a further study of the science or things like that, it
9 was the sentiment that led to these numbers?

10 A. No. The sentiment that led to that one number,
11 yeah.

12 Q. Okay. And the others, I guess. I mean, we --
13 each of these, the 6, 1, 2, 3, 4, 5, they go from city
14 limits, they go from certain types of structures,
15 certain areas, and they take the Shelby, Iowa -- the
16 Shelby County, Iowa, example and they multiply them by
17 eight times or ten times further distances that -- that
18 you landed on in your ordinance and what Shelby --

19 MR. BAKKE: Object --

20 A. Yeah. And what's your point, sir?

21 Q. I'm trying to understand --

22 A. I don't know if I can help you understand.

23 Q. -- if you have the information to explain how
24 you went and made a ten-times change off the template or
25 if it was public sentiment. It's a fine answer.

1 A. Right.

2 MR. JORDE: Relevance.

3 A. It was public input --

4 MR. BAKKE: Excuse me. I'm going to object for
5 lack of foundation. He won't even show him what they
6 did in Shelby, Iowa, to -- we don't know the population.
7 We don't have any of the foundation. Now he's saying
8 it's ten times. I mean --

9 MR. JORDE: Well, and I'm going to object to
10 relevance on this whole line of questioning. The
11 ordinance is what it is. It's not relevant, these
12 questions.

13 ALJ HOGAN: Perhaps you -- I think what you're
14 trying to ask -- perhaps you could rephrase your
15 question. I mean, I think you ended with "Can you
16 provide an explanation of background for the changes?"

17 Q. (BY MR. MAHLBERG) Of why the difference. And
18 if the answer is "public sentiment," that's a -- I can
19 stop there and I won't ask any others.

20 A. Yeah, it was -- these meetings were super well
21 attended. People got themselves educated in a hurry on
22 this thing and they came to us demanding ordinances and
23 they demanded these protections, and that's where we
24 ended up based on those hearings.

25 Q. Got it. It --

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RECROSS EXAMINATION

BY MR. JORDE:

Q. Are you aware of any conflict with state or federal law in your ordinance based on it being modeled after Shelby County, Iowa, which was vetted by their county attorney and then you having additional legal input?

A. No, I'm not aware of any.

Q. And do you believe that your ordinance is unreasonably restrictive in any way?

A. No.

Q. All right. Thank you. Nothing further.

ALJ HOGAN: Any other commissioner questions?

All right. That's it, Mr. Bitner.

THE WITNESS: I feel like --

ALJ HOGAN: Short and sweet, right?

(Laughter)

THE WITNESS: Thank you, Commission.

ALJ HOGAN: And just so I know, planning for the rest of our day, by show of hands can I see how many people want to provide public testimony yet?

Nine. I think I got nine. Okay. Thank you.

All right. Mr. Bakke, you can call your next witness, but just so you know, we're going to break for lunch -- lunch? -- supper, dinner, at about 6:15.

1 MR. BAKKE: Okay.

2 ALJ HOGAN: So go ahead.

3 MR. BAKKE: I'll call Mr. Chad Wachter.

4 ALJ HOGAN: Let's do it now. Okay. Okay. We
5 got to take a short break. They have to change out the
6 CDs for recording.

7 (Recess)

8 ALJ HOGAN: All right. While Mr. Bakke is
9 making his way down, I'll just swear you in. So, Mr.
10 Wachter, can you state your full name and spell your
11 last name for the record.

12 CHAD WACHTER: My name is Chad Wachter,
13 W-A-C-H-T-E-R.

14 ALJ HOGAN: And, Mr. Wachter, were you in the
15 room this morning when I went through -- I guess I did
16 it this afternoon too -- went through the penalties for
17 perjury?

18 CHAD WACHTER: Yes.

19 ALJ HOGAN: And do you understand what perjury
20 is?

21 CHAD WACHTER: I do.

22 ALJ HOGAN: And being advised of the potential
23 penalties for perjury, do you promise to tell the truth
24 in this case today?

25 CHAD WACHTER: I will, yes.

1 ALJ HOGAN: All right. Thank you.

2 Go ahead, Mr. Bakke.

3 MR. BAKKE: And just a recordkeeping matter,
4 previously we had provided an Exhibit 193, but that's
5 actually now 194. It's a map. So I'll be referring --
6 oh, okay. So the 194 needs to be replaced with the one
7 that -- that I'm going to hand out now.

8 Oh, it's already handed out.

9 ALJ HOGAN: So it's an updated copy of 194.
10 Thank you.

11 **CHAD WACHTER,**

12 being first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. BAKKE:

16 Q. Mr. Wachter, could you state your name for the
17 record, please?

18 A. My name is Chad Wachter.

19 Q. And where do you live?

20 A. I live in Burleigh County.

21 Q. And how long have you lived in Burleigh County?

22 A. I've lived in Burleigh County for 50 years.

23 Q. And could you --

24 A. All my life.

25 Q. Can you tell the commissioners a little bit

1 about your background and your family and the nature of
2 your business?

3 A. My family came here in 1880. We've been very
4 active in the real estate development business for over
5 a hundred years. Very entrepreneurial family. And I am
6 the fifth generation in my business, my family business.

7 Q. And can you tell some of the -- the
8 commissioners some of the projects, the development
9 projects, your family has been involved with in the
10 Bismarck area?

11 A. My -- my family has developed pretty much the
12 entire south side of the city of Bismarck. Not the
13 entire south side, but I would say over 90 percent of
14 it. We built the Kirkwood Shopping Center, numerous
15 hotels, and started Kirkwood Bank & Trust back in the
16 '70s. We've been involved in a lot of real estate
17 development projects in Bismarck.

18 The ones that I have been specifically involved
19 in the last 32 years, which is how long I've been doing
20 this -- would you like me to provide those or --

21 Q. Yeah, that would be great.

22 A. So inside the city limits of Bismarck,
23 Cottonwood Lake Development; Dakota Sand 1st Addition,
24 which is along Washington Street in south Bismarck;
25 Pebble Creek 1 through 8, all eight additions, which is

1 off of Century Avenue in north Bismarck; Promontory
2 Point 4, 5, 6, and 7, which is located in northwest
3 Bismarck; the present project which is Silver Ranch
4 addition, which is located in northeast Bismarck; and
5 most recently completed a development called South
6 Meadows which is actually located in southwest Bismarck
7 right by South Bay; and then the development around
8 Solheim Elementary School which is referred to as
9 Washington Meadows 1 and 2.

10 And then my Burleigh County developments that
11 I've done are Copper Ridge 1 through 3, there were three
12 additions; Faulkner Estates, which is one of my earlier
13 ones that I did in my early 20s; and then Prairiewood
14 Estates 1 and 2, which are located directly to the
15 southeast of the city of Lincoln, and that's in Burleigh
16 County; and then Southridge subdivision, which is
17 located directly to the east of the University of Mary.

18 Q. Okay. And then in addition to the real estate
19 development business, are you also involved in owning or
20 having partial ownership in a number of other businesses
21 in the Bismarck area?

22 A. Yes.

23 Q. Okay. And could you just very briefly explain
24 which ones those are?

25 A. Yes. I have the -- I own the Bismarck Big Boy.

1 I'm a partner in the Blarney Stone here in Bismarck and
2 a few others across the state. My development company
3 that I own is called Investcore. My family partnership
4 with my parents is called Santa Fe LLP. And then I'm
5 involved with my wife in a project in downtown Bismarck
6 called The Domain.

7 I own a real estate brokerage company in town
8 called Trademark Realty. We have about 40 real estate
9 agents at that company. I also own a company called
10 Triton Homes. We've probably built about 2,000 homes
11 over the last 25, 30 years with that company. I've got
12 a plumbing and excavating business that we do -- or that
13 we own. And then as part of all this, I'm also an
14 employee of my father's company, Wachter Development,
15 where I help him with his projects that he has going.
16 And then a real estate holding company called WW
17 Investments.

18 Q. Okay. And approximately, at the present time,
19 how many employees in your various companies do you
20 employ in the Bismarck area?

21 A. I would say, roughly, around 200.

22 Q. So you mentioned Silver Ranch. And is that the
23 development that you believe is impacted by the proposed
24 Summit pipeline route?

25 A. Yes.

1 Q. Okay. So let's approach this chronologically.
2 Could you tell the commissioners when you first had any
3 contact with anyone from Summit in relation to your
4 Silver Ranch development?

5 A. On July 24th of 2021.

6 Q. Okay. And can you just tell us what that
7 contact was?

8 A. I received a letter from Summit inquiring about
9 surveying property that I owned up in Silver Ranch. And
10 then it was followed up with various phone calls with a
11 gentleman by the name of Erik Schovanec. I don't know
12 if I'm saying that right.

13 Q. Okay. And was there an initial request by
14 Summit that they wanted the pipeline to go through
15 Silver Ranch?

16 A. That's correct, yes.

17 Q. Okay. And what did the representative from
18 Summit tell you about that?

19 A. Well, he explained a little bit about the
20 project. And to be honest, I didn't really know a lot
21 about CO2. So I was somewhat intrigued by it. I was
22 open to having a discussion about it just because I
23 initially thought it was, you know, like other pipelines
24 that we deal with. And then as I learned more about CO2
25 and how they are different, I just didn't believe it was

1 in the best interest of my company, the best interest of
2 our community, to have something located in our
3 development and that close to the city.

4 Q. Okay. Was there any discussion with the Summit
5 representative on how they plan to acquire an easement
6 or land from your property to construct the Summit
7 pipeline?

8 A. Yeah. After the -- after I had started
9 communicating with -- with Erik, it was -- it was a
10 pleasant conversation for the first couple of weeks, and
11 then it kind of turned into a real hard sell where -- I
12 mean, he was just extremely pushy and kind of demanding
13 to come out and survey. You know, "Hey, we just want to
14 come out and take a look, you know, we just want to take
15 a look at the topography." And I'm like, "You know
16 what? As I've learned more about this, I just think
17 it's a waste of your time to do that because I'm really
18 not interested in having a conversation about this."
19 And then it turned into, "Well, you know, we -- we could
20 just come out there and survey it anyways, we really
21 don't need your permission, so it would be just better
22 if you would just cooperate with us." And I was a
23 little surprised by that. And -- and I said I'm just
24 not interested in it and I -- I wouldn't -- I don't want
25 the pipeline there. And then there was a brief

1 statement about, "Well, you know, this pipeline is going
2 to get routed where -- where we need to put it and --
3 you know, and we can use eminent domain to do that if
4 necessary."

5 And then at that point I decided that I wanted
6 to be done with this conversation and so I sent Summit a
7 certified letter, and that letter was sent to them on
8 October 3rd of 2021, and I informed them that if they
9 stepped foot on my property or my company's property,
10 that I would charge them -- I would have them charged
11 with trespassing. And that was the extent of that
12 letter.

13 Q. Okay. Okay. And let's talk about the Silver
14 Ranch development. And Exhibit 194, do you have a copy
15 of that available to you?

16 A. I do.

17 Q. Okay. And does that show the Silver Ranch
18 development in the purple outlining there?

19 A. That's correct. That is the -- that is the
20 boundary of -- of the Silver Ranch development that --
21 that we plan to develop, yes.

22 Q. And in case people aren't familiar with the
23 development, can you just give us some landmarks on
24 where it would be in relation to some other well-known
25 businesses or landmarks?

1 A. Well, it's located about a mile north of the
2 interstate of I-94. And it would be boundaried on the
3 west side by 52nd and on the east side by 80th. It
4 would actually come south of 43rd Avenue too in one of
5 the sections about -- there's about a half a section in
6 there that would also encompass Silver Ranch.

7 Q. Okay. And how many acres does the Silver Ranch
8 development consist of?

9 A. So the Silver Ranch development consists of
10 about 1,750 acres, but with all the different option
11 agreements that we have in place, you know, it's closer
12 to -- it's a little over 2,000 acres.

13 Q. Okay. And how many currently existing homes are
14 there in the Silver Ranch development?

15 A. So presently there's approximately 250 homes
16 that we've -- we've done in phase one of the
17 development.

18 Q. And how are you developing the phases? If we
19 look at Exhibit 194, are you working from a certain
20 direction and then proceeding from there?

21 A. Well, yeah. We've been trying to do it as
22 orderly as possible, but we did, about two years ago,
23 get a request from Bismarck Public Schools for an
24 elementary school, which kind of pushed us to have to
25 develop on the north side of 43rd a little bit quicker

1 than was intended.

2 And then most recently we -- we were working
3 with the Bismarck Public Schools on a new
4 55,000-square-foot career technical education facility
5 that they intend on building in Silver Ranch as well.

6 Q. And what is the purpose of that career academy?

7 A. So for the last seven or eight years my -- my
8 family has partnered with Bismarck Public Schools and
9 with Bismarck State College and we build -- we -- we
10 fund the houses for the students to build so they can
11 learn those trades. And then we -- the houses are sold
12 and then the lot portion is donated back to either
13 Bismarck Public Schools or the Bismarck State College
14 Foundation to provide scholarships to Bismarck Public
15 School students that wish to learn construction trades.

16 So the purpose of this career academy is to kind
17 of expand on that whole program and allow -- allow
18 students to learn more about the construction trades:
19 HVAC, framing, concrete, siding, roofing, trades like
20 that.

21 Q. Okay. And there's actually a planned facility
22 to be constructed for that career academy?

23 A. Yes, that's correct. Actually, they received a
24 grant, matching grant. And the Federal Government was
25 not able to fund it on time so the North Dakota

1 legislature agreed to gap-fund it until that all worked
2 out with the Treasury Department.

3 Q. Okay. And will that be located at Silver Ranch?

4 A. That's correct, yes. Silver Ranch, on the north
5 side of 43rd.

6 Q. Okay. And then you said there's 250 existing
7 homes. How many homes are planned for the entire Silver
8 Ranch development through completion?

9 A. Yeah. So we're -- typically, my goal is to have
10 a density of about two and a half lots per acre so, you
11 know, we're -- we're hoping to get about 4,500 lots out
12 of the entire development. Not necessarily lots. 4,500
13 dwellings. We might have some areas where we'll go --
14 where there will be some vertical, you know, so it might
15 not all be horizontal.

16 Q. Okay. So how long have you been involved in
17 developing Silver Ranch?

18 A. Started back around 2016, 2017.

19 Q. So you're about seven years into the project?

20 A. Yes. That's correct.

21 Q. Okay. And how many more years is it expected to
22 take to complete Silver Ranch to have the 4,500 homes or
23 whatever dwellings they turn out to be?

24 A. Well, a lot of it depends on the economy. It's
25 -- you know, we're hoping about 25 years left to do it,

1 but a lot of that will be determined by what the
2 absorption rate is. So we are -- the absorption rate
3 that we're using is a minimum of 150 to 200 per year for
4 growth.

5 Q. Okay. So how many more years are you projecting
6 depending on the absorption rate? Do you have a range
7 of years before it will all be completed?

8 A. I would say we could probably do it in about
9 anywhere between 22 to -- 22 to 25 years left.

10 Q. Okay. And in terms of your financial commitment
11 in Silver Ranch, how much, approximately, have you spent
12 so far investing in the Silver Ranch development?

13 A. So right now we have about \$18 million invested.

14 Q. And how much more do you project it will take to
15 fully develop the entire Silver Ranch development?

16 A. I would say that based on today's dollars
17 without inflation, we'd probably have about another \$112
18 million to invest.

19 Q. And then in terms of -- let's say,
20 hypothetically, there's 4,500 homes at the end of this
21 project. How much money would that add to the tax base
22 for the City of Bismarck and Burleigh County?

23 A. Sure. So here's how I kind of look at that. If
24 we build 4,500 homes and say that the average price per
25 unit is \$400,000, that's -- it's getting tough to even

1 build something for 400 grand these days -- but that
2 would add a real estate tax base to the City of Bismarck
3 of \$1.8 billion.

4 Q. \$1.8 billion?

5 A. Correct. \$1.8 billion. And based on today's
6 calculations, that would generate annual real estate
7 taxes to the City of Bismarck of about \$22 and a half
8 million.

9 Q. And so for the six plus years you've been
10 working on developing and building the Silver Ranch
11 projects, approximately how many hours have you spent
12 per week on this project versus your other business
13 ventures?

14 A. Well, I would -- I would say 40, but my wife
15 would probably say 60.

16 So, yeah, you know, what's interesting about
17 developing is, like I told you, we have 250 homes in
18 there now, but before you could even start building, it
19 took us about three years just to get the approvals. So
20 once we were able to get our approvals, it was -- it was
21 -- houses went up quick and they sold quick and it's
22 been a really great project and seems to be some real
23 momentum for north and northeast Bismarck.

24 Q. Would it be fair to say you put a lot of your
25 financial eggs in this Silver Ranch basket?

1 A. Well, I've had a lot of people that have asked
2 me why don't you, you know, go to Sioux Falls or Fargo
3 or -- and I do have some stuff in Fargo but a lot of
4 different areas and -- I love Bismarck. I want to live
5 here my whole life. I have three kids that are -- that
6 want to take over this business. My oldest son is here
7 today. He is 25.

8 And, you know, we -- yeah, we probably do have
9 90 percent of our eggs in one basket because this is a
10 family project. This is something that -- that I hope
11 is going to continue to be a generational thing in our
12 family.

13 Q. So in terms of where we see on Exhibit 194 the
14 Silver Ranch development, we see the green line on
15 there. Is that the current extraterritorial limits of
16 the City of Bismarck?

17 A. Yes, that's correct.

18 Q. And so Silver Ranch, at least in what would be
19 the northeast corner, is directly to the
20 extraterritorial limits of the city of Bismarck?

21 A. Yes, that would be accurate. Yes.

22 Q. And then we can see outside the extraterritorial
23 limits Country Hills 2nd subdivision, Rock Creek
24 subdivision, Country Creek 2nd subdivision, a number of
25 -- East Meadows Estates. Those are already existing

1 subdivisions where there are homes?

2 A. Yes, that's correct. Yeah, those are rural
3 subdivisions.

4 Q. And so from the Silver Ranch development -- and,
5 incidentally, where we see through Silver Ranch the red
6 colored line going to the -- east to the west, is that a
7 road or is that a section line? Is there a road on
8 that?

9 A. Are you talking starting at the northeast corner
10 and going west?

11 Q. No. I'm talking about right through the larger
12 rectangle on Exhibit 194 within Silver Ranch, is that a
13 section line in red through the middle of it? Further
14 to the east, the largest eastern rectangle, kind of
15 makes an L, the Silver Ranch development. Do you see --
16 within the purple?

17 Let me ask it a different way. What I'm trying
18 to understand is where on this map is the Silver Ranch
19 school located?

20 A. Oh, okay. So the Silver Ranch school is
21 located, if you look at the box of where Silver Ranch
22 is, if you look at that south -- let's see here. Look
23 at the southwest corner. And Silver Ranch is just north
24 of 43rd, in that southwest corner there. And actually
25 -- let's see here.

1 I just noticed that this diagram actually needs
2 to come down a little bit into that section to the south
3 about a half a section too. So -- and I apologize that
4 I didn't catch that earlier.

5 Q. So it's actually bigger than what's shown in the
6 purple area?

7 A. Yes, that's correct.

8 Q. Okay. And how many students are at the Silver
9 Ranch school and what are the ages?

10 A. So there's 364 students that are enrolled. I --
11 I don't know all the ages. I apologize. And the
12 capacity of the school is 535.

13 Q. And how long has the Silver Ranch school been
14 opened?

15 A. Silver Ranch school just completed its -- its
16 first year.

17 Q. Okay. And is it a grade school?

18 A. Yes. It's a grade school.

19 Q. Okay. And so you said your contact with Summit,
20 they threatened eminent domain, you told them no. What
21 happens next with Summit?

22 A. Other than a conversation I had a few weeks ago
23 with them, that was the end of the discussion with them.
24 I -- I had no further discussion with Summit.

25 Q. And what do you believe the effect of the Summit

1 pipeline being located approximately three miles to the
2 north and then a bit further distance directly to the
3 east would have on the Silver Ranch development?

4 A. Well, based on what I know about CO2 pipelines
5 and based on what happened in Mississippi, I believe
6 that -- that if the pipeline were to go in where it's
7 been sited on this map, that it would be pretty
8 detrimental to that area of Bismarck. I'm sure there
9 will be people that will question whether or not they
10 want to live that close to the pipeline. I think it
11 will have a very detrimental -- it could have a very
12 negative impact to Silver Ranch. And I think it's going
13 to very negatively affect our growth in Burleigh County
14 outside of the extraterritorial limits where we're
15 seeing a lot of growth.

16 Q. And what effect as a developer of Silver Ranch
17 would it have on you if the Summit pipeline goes in its
18 present location in terms of your plans to continue to
19 develop Silver Ranch?

20 A. Well, I -- worst-case scenario, I suppose nobody
21 wants to live there and we're not able to continue to
22 develop the property and we'll be out a substantial
23 amount of money.

24 Q. You mentioned before that you've personally
25 developed a number of rural subdivisions in Burleigh

1 County?

2 A. Yes, I have.

3 Q. Okay. And is that in various different parts of
4 Burleigh County?

5 A. Mostly in the south part of Burleigh County,
6 south of Bismarck.

7 Q. Okay. And if the Summit pipeline were to be
8 installed, would you as a developer be willing to spend
9 the money to develop rural subdivisions in areas close
10 to this Summit pipeline?

11 A. So a couple things about that. Number one, I --
12 I really think we need more rural developments in
13 Burleigh County because there's a huge demand for it.
14 Special assessments in Bismarck are getting to be really
15 high and people want more space.

16 I think that if this pipeline were to go in and,
17 you know, people are very scared of it, you know, seeing
18 what happened down in Mississippi, and I think that it
19 would be very detrimental to any type of development.

20 Q. You were here and heard Commissioner Bitner's
21 testimony on emergency services and on the procedures
22 that he said Summit did not follow in terms of emergency
23 services and getting approval for any aspect of the
24 pipeline. As a developer, are there county requirements
25 and city requirements that you have to follow before you

1 pursue a development of any type?

2 A. Yeah, absolutely. So what we will do is -- I
3 will just walk you through the process as quickly as I
4 can.

5 We will go and have a meeting with the city or
6 the county, depending on the jurisdiction that we're
7 going to be developing in. It's typically called a plat
8 review meeting or a plat -- plat review, yeah, plat
9 review meeting.

10 And at that meeting, typically you will see
11 police, fire, public works, community development, and
12 finance, and actually there's other departments that
13 come to that meeting as well. And we talk about, you
14 know, whether the city or the county has the ability to
15 respond in a timely manner to any type of emergency that
16 could potentially happen in that development, you know,
17 where the proposed development would be.

18 And we do things such as talking about ingress
19 and egress. So, like, for an example, in the city of
20 Bismarck, you -- for every 30 lots that you develop, you
21 have to have a minimum of two ways in and out. So if
22 one particular spot would be blocked, a fire truck and
23 police could get in the other direction.

24 In the county it's slightly different and it's
25 -- I don't remember off the top of my head what it is,

1 but we have a lot of those conversations. We talk about
2 emergency response times and, you know, even do water
3 modeling to make sure there's water pressure. I mean,
4 there's just a lot of things that go into it.

5 Q. What are the specific concerns that you have in
6 relation to the Summit pipeline being constructed this
7 close to Silver Ranch development and the already
8 existing rural subdivisions to the north and east of
9 Silver Ranch?

10 A. What concerns me about the CO2 pipeline -- and I
11 am not against pipelines and I'm not anti-energy. I'd
12 hope that you don't think that about me because I -- I'm
13 a supporter of that.

14 But CO2 -- the CO2 pipeline, my understanding is
15 that -- is if there's a rupture, that the person that
16 hits it pretty much will be dead instantly and that the
17 CO2 then will travel to the lowest areas and most likely
18 suffocate everything in its path, that you can't see it,
19 you can't smell it. I -- I just see that as something
20 that is going to be a real problem for a community.
21 That risk, I think, is a huge issue.

22 Q. In relation to your Silver Ranch development,
23 I'm assuming you're out there on an extremely frequent
24 basis and have been for the last six or seven years or
25 perhaps longer?

1 A. Yes.

2 Q. Okay. Do you know what the prevailing wind
3 directions are in that area?

4 A. The winds are typically out of the north to
5 northeast.

6 Q. So they would go to the south and go to the
7 southwest towards the city?

8 A. Yep. So it would go -- yeah, out of the north
9 to northeast traveling to the south to the southwest.

10 Q. Do you believe there's a better route for the
11 Summit pipeline around the city of Bismarck that would
12 provide less adverse effects on your development and the
13 city of Bismarck?

14 A. Well, there has to be. I can't believe that
15 this is the best route. I mean, when you look at this,
16 I don't know who would think that it's acceptable to put
17 this route this close to such a highly populated area.
18 So, I mean, there's -- you know, I really feel bad about
19 saying, hey, let's push it out and make it somebody
20 else's problem, I struggle with that and I feel bad
21 about that, but this pipeline, with the growth that we
22 have and the direction that we have to grow as a
23 community and the population that we have, this is the
24 wrong spot for this pipeline.

25 Q. And if this pipeline is allowed to be built in

1 that location in Burleigh County, what do you believe
2 the economic effect will be, not only on your
3 development at Silver Ranch but in other developments
4 and to the growth of the city of Bismarck and Burleigh
5 County?

6 A. So thinking about that a little bit, I guess I
7 ask myself, if this pipeline were to go in, what would I
8 pay for property, you know, alongside it or in the
9 vicinity of it. And my answer to that is I don't think
10 I would be willing to buy anything.

11 I -- you know, right now property values for
12 land close to the city limits of Bismarck are anywhere
13 from 10 to \$25,000 per acre, 25 being on the high side,
14 for land that could potentially be developed. And I
15 think that those -- those values would diminish.

16 Q. There's been an appraisal provided by Boulder
17 Appraisal, by Mr. Wade Becker, that we've received
18 yesterday from Summit. And he basically indicated in
19 this appraisal that he does not feel there's any price
20 differential or preference that homeowners or landowners
21 who are going to build a home will have if there's a
22 pipeline on their property or no pipeline. In other
23 words, it doesn't really, in his opinion, make any
24 difference in the value that will be obtained for that
25 property for a home. Do you agree with that?

1 A. I don't agree with that, no.

2 Q. Okay. And why not?

3 A. So up in Promontory Point we have a pipeline
4 going through our development up there, and I can tell
5 you that the lots that the pipeline are on, a lot of
6 them we have not sold. The ones that we have sold,
7 we've gotten substantially less for those lots.
8 Typically, nobody wants to build on those lots and they
9 just add them as additional property to their adjacent
10 house that they have.

11 Q. And for Promontory Point 6, what percentage of
12 those lots are sold and/or built on?

13 A. Are you talking the whole development?

14 Q. Yes.

15 A. I would say that we're probably about 75,
16 80 percent sold.

17 Q. Okay. And of the lots that are remaining, are
18 those the ones that have the pipeline through them?

19 A. Yeah. We have a lot of pipeline lots that --
20 that have not sold that we still have in our inventory.
21 That would be correct, yes.

22 Q. And in the meantime, as a developer, you've
23 developed the infrastructure to those lots and I assume
24 you can continue to have to pay for the taxes and
25 specials on those lots even though they're unsold?

1 A. Yes, that's correct.

2 Q. Okay. Plus, as a developer in Bismarck at
3 least, you have to front the money yourself for all of
4 the infrastructure for those developments, the road, the
5 curb, the sewer, the gutter, the engineering, the
6 paving, all of that?

7 A. Yes.

8 I think there's a really big misconception when
9 it comes to real estate development. I think people
10 think that the city pays for everything and then we
11 just, you know, sell the lot and -- but that's really
12 not how it works. We have to pay for the land,
13 obviously. We have to pay for all of the engineering,
14 all of the dirt work, all of the stormwater, all of the
15 trunklines, all of the infrastructure, everything.

16 Regarding the streets, those we -- we -- the
17 curb, gutter, street and asphalt, sidewalks and
18 streetlights get special assessed, but we're paying the
19 special assessments on those. So we're still paying for
20 that. If we sell the lot -- when we sell the lot, then
21 the new buyer assumes that portion of those development
22 costs.

23 Q. Is there anything else you would like to tell
24 the commissioners about the effect of the Summit
25 pipeline on Silver Ranch that you haven't already

1 discussed?

2 A. I would just say that this pipeline is -- we
3 have Silver Ranch School up there. It's too close to
4 the school. It's too close to our development. It's
5 too close to the extraterritorial limits of our city.

6 You know, you've got to remember that we grow --
7 our growth isn't just in -- you know, on the city side
8 of those extraterritorial limits. Our growth -- we grow
9 in the county too. And that is not in the 2045 plan
10 that -- you know, that the city did that I'm sure Summit
11 relied on. They probably didn't know any better.

12 It just -- CO2, it's dangerous. The perception
13 of that CO2 pipeline in regards to other pipelines,
14 there's a significant risk difference in opinion to the
15 average person.

16 So I just think that -- I'm really concerned
17 about the fact that, you know, when we develop land, we
18 have -- we have to go through all these processes to
19 make sure that before we can -- before we can even plat
20 the property into lots, we have to demonstrate that --
21 you know, that there's the ability for police and fire
22 to be able to respond and emergency services to be able
23 to -- you know, to be able to respond in a timely
24 manner. And I have a lot of concerns that a lot of the
25 things that Summit should do as part of this whole

1 process they haven't done and -- at least I'm not aware
2 of them -- of them doing it.

3 And, you know, sometimes people are a lot more
4 scared of what they don't know than what they do know.
5 And I think there are a lot of unknown things out there
6 such as why can't we see the plume study? Why would
7 they allow the plume study to be released in one state
8 but we can't see it up here? It doesn't make sense to
9 me. And when I -- when I think about everything, you
10 know, I'm not a genius when it comes to pipelines, but
11 if you just use commonsense and look at this, this does
12 not make sense to have it this close.

13 Q. And you mentioned people's perception of the
14 risk. If we take, for example, south Bismarck where we
15 had a major flood in 2011, has that had a lasting effect
16 on real estate development on the south side, that
17 perception of risk of a flood?

18 A. Yeah, that flood that we had is -- is -- we --
19 yeah, it stigmatized south Bismarck. We have people
20 that will not live in south Bismarck, which has really
21 pushed the growth up in north Bismarck. I mean, we
22 really can't grow any further south anyways, we're kind
23 of -- we can't grow south, we can't grow west, we have a
24 lot of constraints growing east. So with the
25 infrastructure and everything, north and northeast is

1 really the only direction that we can grow as a
2 community.

3 Q. And when we compare the risk of flood, at least
4 with flood there are things you can do. You can -- you
5 can minimize that risk by building your foundation
6 higher. You can provide landscaping that can provide
7 mitigation in the event of a flood. You can sandbag.
8 You can move your family out of the house. You get
9 advance warning.

10 Do you understand if there's a CO2 leak, you'd
11 have none of those things that you could do to mitigate
12 the risk?

13 A. Right. Yeah. I mean, it's like I don't know --
14 you know, how do you mitigate a risk against a CO2
15 pipeline rupture? How do you do that?

16 MR. BAKKE: I have no further questions.

17 ALJ HOGAN: All right. Well, as I indicated,
18 we're going to take our dinner break at 6:15 so we're
19 going to do that and then we'll come back and finish
20 Mr. Wachter's testimony. And then we're going to move
21 to public testimony and finish that up.

22 And then, Mr. Bakke, you can present the rest of
23 your witnesses.

24 As far as public testimony, I know we have a
25 number of people that still want to testify. And I just

1 want to -- over a break, if you could think about your
2 testimony. I mean, we've heard of -- all the concerns
3 are valid, but we've heard a lot of the same things.
4 So, you know, if somebody's already expressed the same
5 concern you have, that's something the Commission is
6 going to take into consideration so I would ask that you
7 try not to repeat testimony that's already been provided
8 today. You know, in efficiency of time, I would ask
9 that if you feel like you still need to come up and
10 provide that, perhaps you could just say you agree with
11 the previous comments that were made.

12 So with that, let's -- we will break until 7:00.

13 (Recess)

14 ALJ HOGAN: All right. We have everybody back,
15 it looks like, so we are going to get started.

16 And, let's see, Mr. Mahlberg, you're next. Do
17 you have questions for Mr. Wachter?

18 MR. MAHLBERG: Only a few.

19 CROSS EXAMINATION

20 BY MR. MAHLBERG:

21 Q. Mr. Wachter, I put in front of you a visual.
22 It's an aerial depiction. Do you recognize what's shown
23 in that photo?

24 A. Yes, I do.

25 Q. And it's the -- it's the Promontory park

1 development?

2 A. Right. Promontory Point, yes.

3 Q. I'm sorry, Promontory Point development. And
4 it's the same development you were talking about earlier
5 that has the NuStar pipeline running through it; is that
6 right?

7 A. That is correct, yes.

8 MR. MAHLBERG: Offer Exhibit 6.

9 ALJ HOGAN: Any objection, Mr. Bakke?

10 MR. BAKKE: I'm trying to figure out the green
11 is -- who put that on there? Is this an official, like,
12 city map showing the location or did someone add that?

13 MR. MAHLBERG: That would be added by a data
14 layer, but like Mr. Wachter just testified, that it's
15 the NuStar pipeline running through Promontory park.

16 MR. BAKKE: Right. But he didn't say this is
17 the location. So that's my only objection --

18 MR. MAHLBERG: Sorry. I can ask that question
19 better.

20 Q. (BY MR. MAHLBERG) Based on your knowledge of
21 this property, does that line fairly and accurately
22 depict the location of the NuStar pipeline that goes
23 through the development?

24 A. I would say that it would be better to look at a
25 plat that actually shows the easement on it.

1 Q. That's a fine answer, but does this fairly and
2 accurately represent where you understand the NuStar
3 pipeline to be?

4 A. Yeah, I think it's in this area, but I don't
5 know if that line is in the correct spot, I guess is
6 what I'm trying to say.

7 Q. Okay.

8 MR. MAHLBERG: I think that's adequate
9 foundation to get it in.

10 MR. BAKKE: Well, I don't, but that's my
11 objection, lack of foundation. He just said he can't
12 say this is where it's at. He would need a plat map.

13 ALJ HOGAN: All right. The objection is noted.
14 Mr. Pelham, any objection to the map?

15 MR. PELHAM: I don't. What exhibit number did
16 we say it was?

17 ALJ HOGAN: This is going to be 6.

18 MR. PELHAM: Thank you.

19 ALJ HOGAN: Mr. Jorde, any objection?

20 MR. JORDE: Well, I'll just join, lack of
21 foundation. And, I mean, we don't know who put this
22 together and how accurate it is so...

23 ALJ HOGAN: All right. The objections are
24 noted. I am going to admit the exhibit and the
25 Commission can weigh those objections when it considers

1 this map and the testimony associated with it.

2 MR. MAHLBERG: I appreciate that. And, look, we
3 have a bunch of Google maps that are in the series of
4 exhibits that have hand-drawn marks on them. It will be
5 faster if we can just move along with it.

6 Q. (BY MR. MAHLBERG) But this picture now of
7 Promontory Point, this is a development that you did;
8 right?

9 A. That is --

10 Q. Sorry. That Santa Fe did?

11 A. Yeah. It was Wachter Development and Santa Fe,
12 which are entities I do with my parents. Those are a
13 partnership with my mom and dad.

14 Q. Right. And so you were involved in this -- in
15 the purchase of this land, the development of this land?

16 A. Yes. That's true.

17 Q. And you bought it, knowing that there was a
18 transmission pipeline running through it; right?

19 A. True, yes.

20 Q. And if I hear what you're saying correctly, the
21 presence of a transmission line like this may have an
22 impact on values, a negative one; is that right?

23 A. Yes. That would be correct.

24 Q. And so when you were looking at this property
25 for development purposes, even though you knew that

1 parts of it some of the market may devalue, you still
2 bought the property and then developed it; right?

3 A. Yes.

4 Q. And that's consistent with other developments
5 that you've done that are crossed by other
6 infrastructure in Bismarck; right?

7 A. Yes.

8 Q. And that's the way the market treats things, is
9 there can be discounts?

10 A. Yes.

11 Q. In your testimony, I thought I heard reference
12 to you saying the plume study or something like the
13 plume study had been released in another state,
14 Mr. Wachter. Was that your testimony?

15 A. Yes. I testified that's what I had heard,
16 correct.

17 Q. Which state?

18 A. I believe it was -- I can't remember what state.

19 Q. Where did you hear it?

20 A. I heard it from my attorney.

21 MR. BAKKE: Your Honor, if we need to
22 corroborate that, I have --

23 ALJ HOGAN: Is your microphone off again?

24 MR. BAKKE: If we need to corroborate that, I
25 have the testimony of John Marney (phonetic), an expert

1 offered on the plume study in Iowa at the equivalent of
2 the PSC there. And in Iowa they call their pipeline
3 "Navigator" because the name "Summit," I believe, was
4 already taken on the Secretary of State's website.

5 MR. MAHLBERG: The Navigator pipeline is not
6 this Summit pipeline. Navigator is an entirely
7 different company doing an entirely different project.
8 And so if there's testimony about what Navigator has
9 done, it's not relevant.

10 Q. (BY MR. MAHLBERG) In any event, your --

11 MR. BAKKE: That's not true. Summit was already
12 used by --

13 ALJ HOGAN: Okay, okay. We're not -- you both
14 have made your -- put your statements on the record on
15 that issue so I think that's beyond the scope of what
16 Mr. Mahlberg was asking about.

17 So go ahead, you can continue.

18 MR. MAHLBERG: Thanks.

19 Q. (BY MR. MAHLBERG) You have no personal
20 knowledge of Summit Carbon Solutions releasing a plume
21 study in any state. Is that fair?

22 A. Well, based on what you've told me now, that
23 would be fair, but I think there's a question as to
24 whether or not Summit is involved with that particular
25 pipeline.

1 Q. Fine. And the way this works, I'm not going to
2 be answering questions.

3 Just to be clear, you don't know --

4 A. I didn't ask you a question. I just made a
5 statement.

6 Q. Fine.

7 To be clear, Mr. Wachter, you don't have
8 knowledge that a Summit Carbon plume study has been
9 publicly released in any state, do you?

10 A. I have not seen the plume study from any other
11 state.

12 Q. And your lawyer, when he said it had been
13 publicly released, didn't provide it to you?

14 A. No.

15 MR. MAHLBERG: I don't have anything else.
16 Thanks.

17 ALJ HOGAN: Mr. Pelham, any questions?

18 MR. PELHAM: I just have a couple, I think.

19 CROSS EXAMINATION

20 BY MR. PELHAM:

21 Q. Good evening, Mr. Wachter. Just wondering if --
22 in your testimony, you testified that there's a
23 potential impact on the proposed line through the Silver
24 Ranch in the -- in the Silver Ranch development. Have
25 you received any comments, questions, concerns from

1 people interested in purchasing lots in Silver Ranch as
2 to the proposed line?

3 A. Yeah. I've been made aware through my real
4 estate brokerage company that there were two potential
5 sales where people decided not to purchase in the Silver
6 Ranch area because of the potential for this pipeline.

7 Q. In those two specific instances, the specific
8 reason stated, just to be clear, was because of the
9 potential buyers' concern with the potential line and
10 the proximity of the line to the lot that they were
11 looking at potentially buying; is that correct?

12 A. Yes, sir, that is correct.

13 Q. Any other (indiscernible) along those lines that
14 you're aware of?

15 A. From potential buyers?

16 Q. Right.

17 A. Just two so far.

18 Q. Sir, I think you testified that while you didn't
19 have further discussions with Summit Carbon Solutions, I
20 think you said that there was maybe a conversation
21 recently? Did I hear that right or am I mistaken?

22 A. No. That is -- that is correct. I did say
23 that.

24 Q. Can you tell us about the recent conversation
25 that you had with Summit?

1 A. Yeah. So it was two or three -- probably closer
2 to three weeks ago, John Warford, Chad Moldenhauer, and
3 myself met with -- with carbon -- I'm sorry, Summit
4 Carbon Solutions at their office.

5 Q. And the purpose of the meeting was what?

6 A. We wanted to visit with them to see if they
7 would reconsider moving the pipeline.

8 Q. And what was the result of that meeting?

9 A. They told us that -- they showed us a couple
10 different routes. They said that if they moved it more
11 than so many miles from the route that they had shown
12 you, that they would have to -- it would -- I think they
13 said it would delay it an extra couple months and -- and
14 they told me that -- or they told us, I should say, that
15 they didn't have the authority to make that decision,
16 they would have to go to their board of directors. They
17 had told us that they were meeting with their board the
18 following week and that they were going to get back to
19 us on whether or not they would be willing to move the
20 pipeline.

21 We -- I showed them the Silver Ranch
22 development. Mr. Moldenhauer talked about his --

23 MR. MAHLBERG: I'm going to interrupt only to
24 the extent that I -- I can't tell whether this is a
25 confidential settlement communication that is going to

1 be testified to or not. I don't know enough about the
2 nature of the meeting that was had and I don't --

3 Q. (BY MR. PELHAM) Do you know if there were any
4 attorneys present at the meeting?

5 A. There were no attorneys present.

6 Q. So in the discussions then, when did this
7 meeting take place?

8 A. I'll look in my phone and give you an exact --

9 Q. I mean I -- yeah. I mean, if you have that
10 information, that would be great to be specific.

11 (Pause)

12 A. It was at 2:00 p.m. on Monday, May 15th, at 3442
13 East Century Avenue.

14 Q. So May 15th. And since that meeting, have you
15 heard anything specific in response to the request for
16 -- well, I guess they weren't requests but there was
17 potential for rerouting?

18 A. They said that they were going to get back to us
19 after they met with their board the following week. And
20 I did not hear anything from them and, to my knowledge,
21 I don't believe that Dr. Warford or Mr. Moldenhauer
22 heard anything either, but I can't -- I'm not a hundred
23 percent sure.

24 Q. You can only speak for yourself.

25 And then, sir, as to what was being discussed as

1 moving the line, it was -- was it still in Burleigh
2 County?

3 A. Well -- okay, to be perfectly honest, my
4 recollection of the conversation was -- and that -- and
5 the reason why I'm hesitating is because when we had
6 this conversation, I didn't realize it was going to get
7 repeated because they had asked us not to repeat part of
8 the conversation I'm going to tell you.

9 They said -- told us at that meeting that there
10 would be no way that they could move the pipeline south
11 of Bismarck, that they don't want another DAPL
12 situation, and that the pipeline where -- that they
13 would -- that it has to be close to where it's at or,
14 you know, they could move it within a certain vicinity
15 without having to trigger, I guess, some type of new
16 potential dates with the Public Service Commission, and,
17 again, that they didn't have the authority to make that
18 decision. And then there was also some GIS data that
19 was shown which showed some of the archaeological sites
20 that they were trying to work around.

21 Q. Without committing to specifically, was that --
22 did you view that as a positive development, a positive
23 meeting in terms of movement or not?

24 A. Well, I -- I was optimistic about it. I was
25 pretty happy after I left, the fact that they were

1 willing to have a conversation and willing to consider
2 to move it.

3 Dr. Warford told me that -- I mean, he seemed
4 optimistic too, but I know that he had had -- and I
5 should probably not be talking about his conversations,
6 I should let him talk about his conversations, but I was
7 told that -- that these conversations had happened
8 before and that there had really been no results.

9 Q. Thank you, sir. I don't have any other
10 questions for you.

11 ALJ HOGAN: Mr. Jorde, any questions?

12 MR. JORDE: Yes. Thank you.

13 CROSS EXAMINATION

14 BY MR. JORDE:

15 Q. So, sir, as a result of that conversation, was
16 it your understanding that Summit would not move it or
17 that they could not move it?

18 A. My understanding is that they would not move it
19 south of Bismarck because they did not want to have to
20 deal with another DAPL-type situation.

21 Q. And so was it reasonable to take away from that
22 that they thought, by avoiding going on Native American
23 land, it would be easier to essentially slam it through
24 Bismarck because the people wouldn't protest as much?

25 A. That was how I felt about it.

1 Q. Okay. Now, Summit's lawyer spent several
2 questions asking you about this potential plume model
3 that you thought maybe was released. And the takeaway I
4 got there is that Summit has been consistent in their
5 refusal to be transparent with every community in every
6 state in which they want to go through. Is that what
7 you got from that?

8 MR. MAHLBERG: Objection to the relevance about
9 Mr. Wachter, the witness, agreeing with the lawyer's
10 impressions of questions. It has nothing to do with the
11 decision the Commission is making.

12 ALJ HOGAN: I'm not really sure what you're
13 asking. Like if his impression is that they don't want
14 to offer this information or disclose the plume study?
15 I think we're all aware that that's Summit's position so
16 I don't know that we need to spend time asking witnesses
17 repeatedly about disclosing the plume study. And we're
18 having another hearing on that. That's the other part
19 of this.

20 MR. JORDE: Is that going to be a public hearing
21 on that item?

22 ALJ HOGAN: I don't know that the Commission has
23 made a decision of how that -- well, any time they meet
24 together, it has to be a public hearing. The scope of
25 what they're going to allow at that hearing, I don't

1 think that decision has been made.

2 MR. JORDE: And that's just my concern. Because
3 if it's not going to be able to have public input, then
4 this is our only chance to get that input on their
5 repeated failure to inform the public of the risks.

6 ALJ HOGAN: Well, we've had multiple witnesses
7 testify about this already. We need to move on.

8 MR. JORDE: Okay.

9 Q. (BY MR. JORDE) Well, would you be surprised to
10 know, sir, that Navigator, which is a different
11 pipeline, a CO2 pipeline, has -- I personally have a
12 copy of their plume modeling. I can't share it,
13 unfortunately, but would you be surprised to know that
14 they, unlike Summit, have released that?

15 ALJ HOGAN: Again, Mr. Jorde, this is the same
16 issue. We know Summit's position and we know what the
17 public feels about that issue so can we please move to
18 other topics?

19 MR. JORDE: I suppose so.

20 Q. (BY MR. JORDE) Let's go to Summit's
21 threatening behaviors and when they threatened you with
22 eminent domain after the one or two somewhat nice
23 conversations. How did you take that threat?

24 A. Well, at that point I just -- I had decided that
25 I didn't want to deal with it anymore and, therefore, I

1 sent them a letter that they were not allowed on the
2 property, they would be -- I would file trespassing
3 charges against them, and not to have any more
4 communication with us.

5 Q. And, sir, you're obviously an expert in this
6 area and you had touched on the concept of perception,
7 of buyer perception and stigmas. Would you agree with
8 me that even if everyone here somehow agreed that this
9 is going to be the safest pipeline on earth, if the
10 stigma and the perception of something different is
11 already out there, that that will have and continue to
12 have a negative effect on the marketability of any
13 properties near that pipeline?

14 A. Yes.

15 Q. All right. Thank you, sir. Nothing further.

16 ALJ HOGAN: Commissioner Christmann.

17 COMMISSIONER CHRISTMANN: So the map that you
18 handed out that shows Silver Ranch, you mentioned a
19 correction to where the line should be. I just want to
20 make sure I understand it right. Do you still have that
21 in front of you?

22 THE WITNESS: Yes, sir, I do.

23 COMMISSIONER CHRISTMANN: So what I'm seeing on
24 here is kind of -- what's drawn on here is a two-mile
25 wide block, and on the west mile it's one mile north to

1 south and on the east mile it's one and a half miles
2 north to south as it's drawn on here; correct?

3 THE WITNESS: That's the way it's drawn, yes,
4 but it's --

5 COMMISSIONER CHRISTMANN: In reality, it should
6 go another half mile south, the full two miles?

7 THE WITNESS: That's correct. If you look at
8 that southwest corner there, you'll see that there's a
9 little area where there are some rural homes. Kind of
10 hard to see.

11 COMMISSIONER CHRISTMANN: Yes.

12 THE WITNESS: Silver Ranch kind of carves out
13 that little piece and then it comes down half a section
14 and then goes east a quarter, down -- it's hard to
15 describe -- it comes down a little bit and then it comes
16 all the way across to 66. You can kind of see there's
17 like a little rectangle in that southeast corner there
18 of where there's some trees. And so it comes -- it
19 comes down close to that area there.

20 COMMISSIONER CHRISTMANN: So for most of the way
21 it's a half a mile north of the interstate?

22 THE WITNESS: That would be a fair statement.

23 COMMISSIONER CHRISTMANN: Okay. And the -- I
24 think it's the old refined products pipeline that runs
25 kind of somewhere there by Century High School. I'm

1 assuming that's coming out here somewhere too. Can you
2 tell me about where that is?

3 THE WITNESS: Yeah, I'm not -- I'm not really
4 sure where that pipeline comes through this area here.
5 I haven't had to deal with that pipeline through --

6 COMMISSIONER CHRISTMANN: You don't believe it's
7 in Silver Ranch?

8 THE WITNESS: I'm -- I don't believe it is.

9 COMMISSIONER CHRISTMANN: Okay. The last thing
10 isn't really a question -- well, you haven't testified
11 to the PSC in our hearings before, have you?

12 THE WITNESS: I never have. No, sir.

13 COMMISSIONER CHRISTMANN: Okay. So I'm just
14 going to say, you're kind of my model witness now. I
15 appreciate your insightful but yet succinct answers.
16 And so if your son's looking to getting into this
17 business, I hope he was paying attention. Thank you.

18 THE WITNESS: Thank you, Commissioner. I
19 appreciate that.

20 ALJ HOGAN: Commissioner Haugen-Hoffart.

21 COMMISSIONER HAUGEN-HOFFART: I have a couple
22 questions for you. On that May 15th meeting, you
23 indicated that yourself, Chad Moldenhauer, and Dr. John
24 Warford were there. Who were the representatives from
25 Summit that were in the meeting?

1 THE WITNESS: Jimmy Powell, and the two other
2 individuals, I have to apologize, I don't remember their
3 names. I'm sure Mr. Moldenhauer would probably be able
4 to answer that better than I would when it's his turn.

5 COMMISSIONER HAUGEN-HOFFART: Okay. And my last
6 question, bear with me, being the owner of Big Boy on
7 East Main Avenue, do you prefer purple cow or brown cow?

8 THE WITNESS: I think I prefer brown cow.

9 COMMISSIONER HAUGEN-HOFFART: Okay.

10 (Laughter)

11 COMMISSIONER HAUGEN-HOFFART: Well, you just did
12 the survey so I had to ask.

13 THE WITNESS: All right.

14 COMMISSIONER HAUGEN-HOFFART: No further
15 questions.

16 THE WITNESS: Thank you, Commissioner.

17 ALJ HOGAN: Mr. Dawson, any questions?

18 SUBSTITUTE DECISIONMAKER DAWSON: I have no
19 questions. Thank you.

20 THE WITNESS: Thank you.

21 ALJ HOGAN: All right. And, again, I'm
22 concerned about time, but Mr. Bakke, do you have any
23 redirect?

24 MR. BAKKE: Yeah, just briefly.
25

REDIRECT EXAMINATION

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BY MR. BAKKE:

Q. In relation to this NuStar pipeline, in your mind, is there a significant difference between the product in that pipeline, the NuStar pipeline, and CO2 in a CO2 pipeline?

A. Yes, there is.

Q. And what is the commodity that runs through the NuStar pipeline?

A. I believe that is a -- it's either an oil or a gas line.

Q. And then the routes that were being discussed with Mr. Powell at the meeting on May 15, was he -- as he's showing you, that was on an interactive map so they could move it on a screen for you?

A. Yes, that's correct.

Q. Okay. And were they moving it north, further north of Bismarck?

A. It seemed like -- my impression was that it was very difficult for them to go any further north because of the crossing that they have over the river. It seemed like the flexibility was more on the east side.

Q. And then they said something about not wanting it to go south of Bismarck because they were concerned of a DAPL-type protest; is that correct?

1 A. Yes, sir, that's correct.

2 Q. And to be clear, there are what, 35, 40 miles
3 south of Bismarck before you hit the Standing Rock Tribe
4 location so there is a substantial amount of land south
5 of Bismarck that's privately owned and not on the
6 reservation; correct?

7 A. That's my understanding, yes.

8 Q. So if Summit was to take the time and effort to
9 try to find a route to the south, it wouldn't be because
10 it would cross over tribal land; correct?

11 MR. MAHLBERG: Object as to form.

12 ALJ HOGAN: Can you rephrase?

13 MR. BAKKE: Yes.

14 Q. (BY MR. BAKKE) If they wanted to take the time
15 and effort, there would be an area south of Bismarck
16 they could have that pipeline go and cross the river and
17 it wouldn't be on the Standing Rock Reservation;
18 correct?

19 A. That's what it appears, yes.

20 MR. BAKKE: I have nothing further.

21 ALJ HOGAN: Mr. Mahlberg, any additional
22 questions?

23 MR. MAHLBERG: No.

24 ALJ HOGAN: Mr. Pelham. Mr. Jorde.

25 MR. JORDE: No.

1 ALJ HOGAN: Any further commissioner questions?

2 All right. Thank you, Mr. Wachter.

3 THE WITNESS: Thank you.

4 ALJ HOGAN: All right. Next we will move back
5 to public testimony, and I'm again going to ask that
6 anybody providing public testimony not repeat stuff
7 that's already been stated today. And I see we have a
8 couple of people that have already testified as part of
9 this case. So if you're testifying again, please only
10 provide new information, anything that wasn't -- that
11 you haven't already testified to.

12 So do we have somebody that would like to go
13 first? And I guess my last instruction is, if you can
14 please try to limit your testimony to under ten minutes,
15 I would really appreciate that.

16 KARL RAKOW: It will be shorter than that.

17 ALJ HOGAN: Great. All right. Can I get your
18 name and will you spell your last name, please?

19 KARL RAKOW: My name is Karl Rakow, "Karl" with
20 a "K," last name is R-A-K-O-W.

21 ALJ HOGAN: And, Mr. Rakow, were you in the room
22 previously when I went through the penalties for
23 perjury?

24 KARL RAKOW: Yes, I was.

25 ALJ HOGAN: And do you understand what perjury

1 is?

2 KARL RAKOW: Yes, I do.

3 ALJ HOGAN: Being advised of the potential
4 penalties for perjury, do you promise to tell the truth
5 in this case today?

6 KARL RAKOW: Yes, ma'am.

7 ALJ HOGAN: All right. Go ahead.

8 KARL RAKOW,

9 being first duly sworn, testified as follows:

10 KARL RAKOW: Your Honor and commissioners, thank
11 you for your time and thank you for, when we had the
12 other meeting, of extending another one to have more of
13 the public heard. And, again, mine will be short and
14 sweet.

15 And I have something new, what I said. At the
16 city commission, the county commission, all the zoning,
17 they start out with statements in general, you know, of
18 concern of the health, safety, and welfare of Burleigh
19 County residents and Bismarck residents. There is
20 information out there that gives accurate incidents that
21 have happened before.

22 The Satartia, just going over that quickly, the
23 plume study of the Denbury pipeline, you know, they have
24 the size of that and what it is. So the -- what I have
25 here is a Burleigh County map and the plume in -- as

1 Attorney Bakke mentioned too was 24 miles long. This
2 plume, this is what that was. You know, there was a lot
3 of numbers, a lot of figures, the safety issue.

4 I mean, if you -- I live in Burnt Creek Valley
5 five miles north of Costco. And if this happened here,
6 this 24 miles would encompass all of Bismarck with
7 northwest winds, which seems to be the winds of where I
8 live, but if the winds were coming from the southeast
9 and this were further over here, it would go over the
10 schools we're talking about, it would go over the
11 hospitals.

12 So the bottom line is in Satartia, with the size
13 of the community -- and you obviously were there when
14 the fire marshal was there from -- explaining the
15 situation of the three of them and not (indiscernible)
16 what they had to do, and that would be impossible in
17 Bismarck. In 1986, in Lake Nyos, Cameroon, there was a
18 natural explosion of CO2 that went 16 miles and there
19 were 1,720 people that died and 3,500 animals. And that
20 was 16 miles.

21 So this is 24 miles and this is going over
22 Bismarck, I think, with 72,000, Mandan 26, over a
23 hundred thousand people. The time that -- again, we've
24 heard this. You know, after six, eight minutes, you get
25 woozy. I mean, this is serious stuff.

1 Whether it's Summit, whether it is Bismarck, we
2 cannot get emergency services if something like this
3 would happen. The hospitals couldn't handle the Covid
4 crisis. What if this were here and people could get in?
5 How could they possibly handle it?

6 You know, to have this pipeline running just
7 does not -- as I said, does not make sense. So
8 sometimes visuals are more important than numbers. I
9 mean, this to me, this concerns me.

10 And I believe the pipeline should be south.
11 Obviously people there would be affected, but certainly
12 not 90,000 people potentially here so emergency and --
13 could potentially get to a smaller group of people.

14 So just thank you for your time. And this is
15 serious. This is life-threatening. I mean, a plume
16 that was smaller than what was in Satartia. You know,
17 1,700 people.

18 ALJ HOGAN: All right. Thank you.

19 Mr. Bender.

20 MR. BENDER: No questions.

21 ALJ HOGAN: Mr. Pelham.

22 MR. PELHAM: Thank you, sir. Just trying to
23 understand how you created the plume that you have on
24 the map. How did you go about that, if you could just
25 describe that?

1 KARL RAKOW: Okay. Well, the graph on this is
2 one mile to this distance. And from the -- the Denbury
3 pipeline and the studies that were done at the time, you
4 know, they had -- and this is modeled after the size of
5 what they said that that plume was. And so that's --
6 and this is 24 miles and this is as close to,
7 conceptually, what a plume like this would be. And my
8 concern is it would be going over, no matter where it
9 is, you know, our community.

10 MR. PELHAM: If the hypothetical -- on the
11 proposed line, hypothetically there's a breach, you just
12 move that left to right or down or up and that's where
13 you're saying the plume --

14 KARL RAKOW: Well, it --

15 MR. PELHAM: Oh, dependent on the direction of
16 the wind.

17 KARL RAKOW: Correct. You know, I mean that is
18 the bottom line. I mean, if the wind were absolutely
19 from the south here, well, we go up to Wilton.

20 MR. PELHAM: Sure.

21 KARL RAKOW: I mean, but those are things that
22 we don't know what it's going to be. You could also ask
23 questions, well, what was the temperature in Satartia?
24 What was the temperature here when it -- all of those
25 things are somewhat variables.

1 But the bottom line is where this is running is
2 running through the second largest city of the state.
3 All the testimony of we're going -- we can only go east
4 or north, just logic says why would we put that at risk?
5 Property values -- last comment I'll make.

6 We have a family friend who, in fact, is a
7 legislator in South Dakota fighting this in Sioux Falls.
8 When we lived in Sioux Falls in late '78, I was six
9 houses from the cornfield in the southeast part of town.
10 Now Sioux Falls, Harrisburg, was like 12, 15 miles away.
11 The Sioux Falls suburbs are almost out there. And this
12 family, they're very large farmers and they were going
13 to try to sell a piece of outlying property and they got
14 two low -- farmland that close to Sioux Falls is very
15 expensive. Potential development land is like it would
16 be here. They got two lowball offers on that property,
17 that was it, because they had to disclose that the
18 pipeline route was going through that property. So
19 there is an impact.

20 Any other questions?

21 ALJ HOGAN: Hang on.

22 MR. PELHAM: I do not have any other questions.

23 ALJ HOGAN: Mr. Jorde, any questions?

24 MR. JORDE: And you were just referring to the
25 Peterson Ag and Carl Lemme's (phonetic) family?

1 KARL RAKOW: Yes.

2 MR. JORDE: Yes. And there was actually a no
3 sale because the bids were so low on where the pipeline
4 would be?

5 KARL RAKOW: That's correct.

6 MR. JORDE: All right. Thank you.

7 ALJ HOGAN: Mr. Bakke, any questions?

8 MR. BAKKE: No questions.

9 ALJ HOGAN: Commissioner Christmann.

10 COMMISSIONER CHRISTMANN: I'm not sure how much
11 of a difference it makes, I'm still studying that, but
12 are you aware that the makeup of the CO2 mixture at
13 Satartia is significantly different than what is being
14 proposed in this case?

15 KARL RAKOW: No, I'm not.

16 COMMISSIONER CHRISTMANN: Okay.

17 KARL RAKOW: But just the fact that CO2, we've
18 all heard of numbers of how much a body can withstand
19 before there's an impact. You know, I mean these --

20 COMMISSIONER CHRISTMANN: I just wanted to bring
21 up that the comparisons might not be completely apples
22 to apples.

23 KARL RAKOW: And even if they're not apples to
24 apples, they're a little bit different, it is still
25 something with exposure as an effect and why have that

1 running through where Bismarck is developing? I mean,
2 that just -- to me is just, you know, logical. And it's
3 not just another pipeline, as everyone said. It's
4 carrying a totally different substance.

5 ALJ HOGAN: All right. Commissioner
6 Haugen-Hoffart.

7 COMMISSIONER HAUGEN-HOFFART: Thank you for your
8 testimony. I have no questions.

9 ALJ HOGAN: Mr. Dawson.

10 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
11 Thank you.

12 ALJ HOGAN: Great. Thank you, Mr. Rakow.
13 You're next.

14 All right. Can I get your name, please.

15 ALTON NITSCHKE: Alton Nitschke. It's
16 A-L-T-O-N, Nitschke is N-I-T-S-C-H-K-E.

17 ALJ HOGAN: And were you in the room earlier
18 when I went through the penalties for perjury?

19 ALTON NITSCHKE: Yes.

20 ALJ HOGAN: And do you understand what perjury
21 is?

22 ALTON NITSCHKE: Yes.

23 ALJ HOGAN: And being advised of the potential
24 penalties for perjury, do you promise to tell the truth
25 in this case today?

1 ALTON NITSCHKE: I do.

2 ALJ HOGAN: Okay. Go ahead.

3 ALTON NITSCHKE,

4 being first duly sworn, testified as follows:

5 ALTON NITSCHKE: Thank you. My wife and I live
6 about two miles south of where the pipeline is going to
7 cross. And we also live on Hay Creek.

8 So when Mr. Rakow made that presentation, I
9 think it's a pretty vivid example of what happens to
10 people downstream. And we have planted a lot of trees.
11 We know that they need CO2.

12 And as I'm hearing this, Summit appears to deny
13 liability even though they may have liability, but the
14 treatment is not what you'd expect from a professional
15 company. And with that, I say if -- if they're doing
16 this to people now, what will they do when some event
17 happens that makes a tragedy occur? It's not going to
18 get any better.

19 And then the second thing is do we really want
20 this here? I mean, North Dakota is known for its
21 pristine land, cattle industry, oil industry, and a
22 number of other good businesses. Do we really want to
23 turn it over to being a wasteland? I mean, that's the
24 bottom line.

25 And so given the lack of transparency at this

1 point that I'm hearing about and I'm appalled at several
2 things that even happened at the meeting today. One is
3 that nobody from Summit was here to defend anything.
4 And you would think that they would want to be here to
5 defend what their position is. By the fact that they're
6 not here tells you quite a bit, speaks volumes in my
7 mind as to who you're dealing with so -- and also
8 appalled that -- at the lack of respect for the city and
9 Burleigh County given how dangerous this might be, I
10 don't think anybody wants to be responsible for that.

11 That's all I have.

12 ALJ HOGAN: Mr. Bender, any questions?

13 MR. BENDER: No questions.

14 ALJ HOGAN: Mr. Pelham.

15 MR. PELHAM: No questions. Thank you.

16 ALJ HOGAN: Mr. Jorde.

17 MR. JORDE: Sir, are you aware that, in fact,
18 Jimmy Powell, John Godfrey, Jess Vilsack are all here,
19 they're just hiding in a room about 20 feet away?

20 ALTON NITSCHKE: That makes it even more
21 appalling.

22 MR. JORDE: Okay. Thank you.

23 ALJ HOGAN: Mr. Bakke, any questions?

24 MR. BAKKE: No questions.

25 ALJ HOGAN: Commissioner Christmann.

1 COMMISSIONER CHRISTMANN: I'm just going to let
2 it go. No questions. Thank you for being here, Alton.

3 ALJ HOGAN: Commissioner Haugen-Hoffart.

4 COMMISSIONER HAUGEN-HOFFART: No questions.
5 Thank you for your testimony.

6 ALJ HOGAN: Mr. Dawson.

7 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
8 Thank you.

9 ALJ HOGAN: All right. Thank you.

10 All right. Can I get your name and if you'll
11 spell your last name, please.

12 SUANN OLSON: My name is SuAnn Olson, O-L-S-O-N.

13 ALJ HOGAN: And, Ms. Olson, were you in the room
14 earlier when I went through the penalties for perjury?

15 SUANN OLSON: Yes.

16 ALJ HOGAN: And do you understand what perjury
17 is?

18 SUANN OLSON: Yes.

19 ALJ HOGAN: And being advised of the potential
20 penalties for perjury, do you promise to tell the truth
21 in this case today?

22 SUANN OLSON: I will.

23 ALJ HOGAN: All right. Thank you.

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SUANN OLSON,

being first duly sworn, testified as follows:

SUANN OLSON: Okay, thank you. Commissioners, my name is Representative SuAnn Olson. I'm a CPA and I've spent my career working with all types of business entities.

I think that it is important that the PSC understand and consider who the beneficial owners of Summit Carbon Solutions are. You might ask "Why do we care who the owners are?" To answer that question, let's roll all the way back to what an LLC is and why businesses choose to operate as an LLC.

Compared to corporations, LLCs, which are limited liability companies, are relatively new. Wyoming was the first state to authorize LLCs in 1977 and most other states passed LLC legislation in the mid 1990s, including North Dakota in 1993.

I would guess that most new business entities that are formed today are formed as LLCs. Why is that? There are several reasons. They offer:

Flexibility. LLCs are generally taxed as partnerships and they have broad discretion in how income, deductions, and tax credits are allocated among the LLC members. Their owners can be anyone: other corporations, LLCs, partnerships, trusts, or

1 individuals.

2 LLCs offer one level of taxation. As I said,
3 they're most often treated as partnerships. And that
4 means that those income, deductions, and tax credits
5 pass out to the underlying owners. A corporation, on
6 the other hand, pays tax at the corporate level and
7 shareholders pay tax again when money or property comes
8 out of the corporation. LLCs essentially pay tax at
9 just the owner level.

10 LLCs offer limited liability. For most
11 investors, they cannot be called upon to contribute more
12 money into the LLC beyond their original contribution
13 unless they have agreed to it in the beginning.

14 Now, these factors would be very important to
15 Summit's operation. Their activities are driven by the
16 federal tax credit under Code Section 45Q. At full
17 capacity, as noted on Summit's website, they could
18 generate one and a half billion dollars of tax credits
19 per year. These credits can be a direct pay from the
20 Federal Government, regardless of the members' ability
21 to use the credits against their own U.S. income tax
22 liability, for up to 5 of the 12 years of the credit.
23 The credits can also be sold to others. The LLC has
24 tremendous flexibility in how they claim, allocate, or
25 sell those credits.

1 Limited liability is also extremely important to
2 Summit investors. Limited liability means that
3 liabilities of the company can't trace through to the
4 owners. The only thing investors can lose is their
5 original contribution. The impact of limited liability
6 is incredibly important to our North Dakota citizens and
7 to the State of North Dakota if there is a catastrophic
8 failure. Who will be responsible for the damage to life
9 and property? An LLC can be a pretty empty pocket.

10 Most of us think in terms of main street
11 businesses. If something goes wrong, the business has
12 to stand behind their product or service; right?

13 In terms of pipelines, we are most familiar with
14 pipelines that our local utilities own. We know where
15 their place of business is. Many of us may drive by it
16 every day. We know that if there is a problem even
17 decades after a pipeline has been placed in service, we
18 can actually stop by their office to seek a resolution.
19 This type of business also has other assets that are at
20 risk if the company fails to fulfill its promise of safe
21 operation. A publicly traded corporation, like the PSC
22 probably normally deals with, also has the additional
23 check and balance of being accountable to its
24 shareholders.

25 This may not be the case with Summit. Unless

1 the affected states require a significant bond against a
2 catastrophic event, there may not be anyone to turn to
3 as a remedy. I would envision that very little capital
4 will be retained in the entity.

5 Some undisclosed portion of Summit's underlying
6 owners appear to be private equity investors. Private
7 equity investors are typically promised a particular
8 return on investment. Therefore, cash that is not
9 needed to pay for easements, construction, and operating
10 costs will be distributed to the investors. And since
11 this is an LLC, the underlying owners cannot, in most
12 cases, be required to come up with cash to pay a
13 settlement for damages. I think this may be
14 particularly true after the 12 years of the tax credit
15 have expired. At that point, most of the investors will
16 likely roll out of the entity with just a shell
17 remaining as the owner.

18 For example, one of the disclosed investors,
19 Summit Agricultural Group, highlights past investments
20 that they got in and out of within a five-year time
21 frame. At least several of the currently disclosed
22 investors' websites indicate that they are utilizing
23 private equity funds. These funds usually have a
24 targeted duration at the onset. They are not in it in
25 the long haul.

1 Clearly, North Dakota needs to understand how
2 our citizens are made whole if the project has a
3 failure. Members of the Commission, if it hasn't
4 already been provided, you should request and review any
5 and all prospectuses that are utilized to attract
6 investors. A prospectus typically explains the
7 business, operations, and expected timeline of an
8 investment and would provide a great deal of useful
9 information.

10 Are there other reasons why it matters who the
11 owners are? Well, yes. The State recognizes that
12 foreign ownership of North Dakota property may be a
13 threat. That's why House Bill 1135 and Senate Bill 2371
14 passed by wide margins in the legislature and were
15 signed into law by the governor. Make no mistake, a
16 99-year easement is an acquisition of a property right
17 and allowing such a pipeline to potentially fall under
18 foreign control is something we should be very cautious
19 about.

20 Interestingly, the Federal Government is also
21 aware that they don't know enough about potential bad
22 actors doing business in the U.S. The Corporate
23 Transparency act was passed in 2021 with final rules
24 issued early this year. Starting in 2024, most
25 businesses will have to report their owners to the

1 Federal Government. The two bills that were passed by
2 our legislature are a start in this direction too and
3 the legislature plans to continue studying foreign
4 ownership in the interim.

5 Given the enormity of this project, it only
6 makes sense for North Dakota to be very clear and very
7 intentional about whom we are dealing with. This is why
8 the attorney general has been asked to investigate who
9 the owners of Summit Carbon Solutions are.

10 And I have just a couple of observations. As a
11 CPA, I would always promise my clients I will tell them
12 what I think. They didn't have to listen, but I felt
13 obligated to tell them.

14 You know, under 45Q, I think somebody earlier
15 had stated it, but January 1st, 2033, is the deadline
16 for starting construction in order to get the 12 years
17 of credits. It certainly feels like to me that this
18 project has been presented with a great deal of urgency
19 that there just isn't time to take that very measured
20 and careful approach, and that seems odd to me.

21 I think the potential for foreign ownership is
22 something we need to be very careful about, just from an
23 economic standpoint. And I know that's beyond the
24 scope, but we're taking federal money -- it's our
25 taxpayer money, essentially, or will eventually when we

1 pay for it -- to send money as this credit to the
2 investors. And to the extent it's foreign money, it
3 just rankles, because at least if money stays in the
4 U.S. there would be some turnover of those dollars and
5 there would be some additional economic benefit. And
6 when we're sending money to foreign owners, I mean that
7 just isn't the case.

8 And there's just, you know, real -- my concern
9 about it being an LLC with nobody really being
10 responsible. Because certainly in all the tax planning
11 I've done, I mean you layer one LLC on top of another
12 and you make it so hard that you can't really get to the
13 ultimate owner who might actually have a pocket that
14 could make things right.

15 And we seem to be focusing a lot on the
16 economics, but there is real danger in what this
17 pipeline is. And the other piece that was handed out to
18 you was some information that had been requested by a
19 law firm here in town related to a CO2 pipeline not
20 nearly as big as what we're talking here, but you'll see
21 the pictures, which are quite telling.

22 This is on a ranch in Montana where they've had
23 a number of failures, you know, that have happened over,
24 I think, a period of several years. So to think somehow
25 that it isn't possible that there's a breach somewhere,

1 and it may not be someone punching a hole, but, you
2 know, whoever builds this pipeline is also hiring
3 contractors. We all know the problem with hiring good
4 people. If there's a poor weld somewhere, I mean it's
5 hard to predict where. There's so much threat that can
6 happen with this that to think that it just isn't
7 possible that there would be a failure doesn't seem to
8 be borne out. I'm sure the people in this project were
9 quite certain there wouldn't be a failure either and yet
10 on this ranch they've had multiple -- I mean, you can
11 hardly describe it differently than explosions almost,
12 what they've done to the -- to the property, that this
13 is real.

14 And the fact that I think it would be quite easy
15 in how they're set up, that there's no one really that
16 will become terribly accountable for this just by nature
17 of who the owners are and how you set these things up.

18 So I feel like this was valid information for
19 you also to think about as we move forward. So that
20 would conclude my statement.

21 ALJ HOGAN: All right. Thank you.

22 Mr. Bender, any questions?

23 MR. BENDER: No questions.

24 ALJ HOGAN: Mr. Pelham.

25 MR. PELHAM: No questions. Thank you.

1 ALJ HOGAN: Mr. Jorde, any questions?

2 MR. JORDE: Yes, thank you.

3 Will you agree that it would be irresponsible
4 for this Commission to approve this application until
5 and unless they know all of the beneficial owners and
6 the layers of ownership so they know exactly who they
7 would be permitting?

8 SUANN OLSON: Oh, I think that absolutely should
9 happen. And, again, the -- when you're talking private
10 equity investors, there's a prospectus out there --
11 there may be several -- that talks about the expected --
12 how long these people are in or whatever. But to really
13 have an understanding, who is the planned owner? And
14 not that they can even entirely predict that with real
15 accuracy, but if they're promising all the investors
16 "Oh, hey, in 12 years you get out," it starts telling
17 you who's left. And there would be nothing -- really no
18 assets, nothing to help cover a problem that might have
19 -- might pop up.

20 MR. JORDE: Would you be surprised to learn that
21 their private placement memorandum has an exit strategy
22 of five to seven years?

23 SUANN OLSON: Well, it doesn't surprise me. I
24 figured it shouldn't be longer than 12, the 12 years of
25 the credit.

1 MR. JORDE: And are you aware that they in their
2 own discretion could sell any portion of the entity and
3 any landowner subject to it would have a new pipeline
4 owner that they may not know anything about?

5 SUANN OLSON: Yeah. I mean -- again, I would
6 guess that the documents allow for a transfer of the
7 easements so yes.

8 MR. JORDE: And the exhibit that you passed
9 around, is it your understanding that these are
10 depicting ruptures of CO2 and then the aftereffect of a
11 CO2 rupture in the ground and the soil?

12 SUANN OLSON: Yes. I mean, this is -- this is
13 Montana property so I don't know exactly what the whole
14 thing looked at -- looked like pre breach, but they're
15 rather startling and wouldn't make you think that you
16 could use that particular piece of ground for anything
17 afterwards. I mean, there's no grass, there's nothing
18 for grazing. Yeah, it looks like it's, you know, the
19 moon.

20 MR. JORDE: I paged through all these photos and
21 I didn't see any first responders, I didn't see anyone
22 from the pipeline company here to address this. Do you
23 have any idea where they were after these breaches?

24 SUANN OLSON: I don't. And you can see the
25 cover letter that went with that. They had requested a

1 great deal of information from Montana.

2 MR. JORDE: Okay.

3 SUANN OLSON: And, luckily, these things are out
4 where there's not a population and this wasn't a big
5 line so we weren't talking anything that would come
6 close to, I'm sure, the size of a 24-inch pipe, but it
7 has -- it has an effect if there's a breach for sure.

8 MR. JORDE: Would you purchase a property in or
9 near a CO2 pipeline similar to this, similar to what's
10 proposed here, knowing what you know and the obvious
11 evidence that we have before us?

12 SUANN OLSON: Well, no. When you look at those
13 pictures, when you look at what the ground -- what would
14 you use it for? It has -- it has no agricultural value,
15 I would say, at that point, and certainly no one would
16 want to actually live in those areas.

17 MR. JORDE: All right. Thank you very much.

18 ALJ HOGAN: Mr. Bakke, any questions?

19 MR. BAKKE: No questions.

20 ALJ HOGAN: Commissioner Christmann.

21 COMMISSIONER CHRISTMANN: I don't have any
22 questions. Thank you, Representative Olson, for being
23 here.

24 And I'll take this opportunity, since I
25 neglected it -- this is something I try and always do --

1 I neglected both you and Senator Magrum as well. So
2 call out to you as well. Thank you for being here on an
3 issue that's important to your constituents.

4 ALJ HOGAN: Commissioner Haugen-Hoffart.

5 COMMISSIONER HAUGEN-HOFFART: No questions, but
6 thank you so much for being here, Representative.

7 ALJ HOGAN: And Mr. Dawson.

8 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

9 ALJ HOGAN: All right. Thank you. Go ahead.

10 All right. Can I get you to state your name and
11 spell your last name for the record?

12 JACKIE ANDAHL: Jackie Andahl, A-N-D-A-H-L.

13 ALJ HOGAN: And, Ms. Andahl, were you in the
14 room earlier when I went through the penalties for
15 perjury?

16 JACKIE ANDAHL: I'm sorry, I was not. I did sit
17 through the entire first hearing here in Bismarck and
18 heard it plenty but if you --

19 ALJ HOGAN: I've got to run through it. I'm
20 required by law.

21 So perjury is a Class C felony punishable by a
22 maximum fine of \$10,000, a maximum five years'
23 imprisonment, or both.

24 Do you understand what perjury is?

25 JACKIE ANDAHL: I do.

1 ALJ HOGAN: And being advised of the potential
2 penalties for perjury, do you promise to tell the truth
3 in this case today?

4 JACKIE ANDAHL: I do.

5 ALJ HOGAN: All right. Thank you. Go ahead.

6 **JACKIE ANDAHL,**

7 being first duly sworn, testified as follows:

8 JACKIE ANDAHL: Okay. So I'm a realtor here in
9 Bismarck and one of the original developers of The Ranch
10 subdivision north of town. I'm no longer a part of that
11 development group that built The Ranch, but I continue
12 to act as the realtor for the developers, Ron and Pat
13 Andahl.

14 The Ranch is a rural development consisting of
15 120 lots in phases 1 and 2. The vast majority of those
16 lots are already filled with beautiful homes and
17 families. The Ranch was designed around a series of
18 coulees and draws that empty into the Burnt Creek
19 Bottoms at the southeast end of the ranch. Those areas
20 have walking trails and are designated as green space.
21 This is located just one-half mile north of the proposed
22 pipeline route.

23 Upon learning of the close proximity to the
24 proposed pipeline, many of the residents at The Ranch
25 expressed huge concern for the safety of their families

1 and their neighbors, especially when considering
2 testimony that if there were a CO2 pipeline breach, the
3 concentration of CO2 would be higher in low-lying areas
4 like the Burnt Creek Bottom and the coulees and the
5 draws at the ranch. And also the testimony, you know,
6 that individuals, I believe it was, within three miles
7 of the pipeline break in Satartia were affected.

8 The Ranch is just a half mile from that pipeline
9 route. Some of The Ranch residents did provide public
10 testimony here in front of the Commission, and I know
11 many, many of them signed the petition asking that the
12 pipeline be moved.

13 In addition to concerns for the safety of family
14 and neighbors, the residents of The Ranch are very
15 concerned about the potential effect the pipeline will
16 have on property values. I had one individual who
17 purchased a lot last year extremely upset when he
18 learned of the close proximity to the pipeline route for
19 the lot that he planned to build his dream home on. And
20 I say "planned to" because, although it was my
21 understanding he planned to start construction early
22 this spring, we haven't seen anything from him, no plans
23 for the architectural review committee. I believe he's
24 waiting the outcome of this hearing and the Commission's
25 decision before building at The Ranch. And are there

1 others doing the same thing? Perhaps.

2 When asked about my thoughts of the potential
3 effect the pipeline will have on property values at The
4 Ranch, I refer individuals back to the effect the flood
5 of 2011 had in our area. The affected properties did
6 suffer a stigma, the stigma of the flood and the fear of
7 another one. And those areas did suffer economically.
8 There were limited number of buyers who wanted to
9 purchase in that area and prices dropped as a result.
10 And over time some individuals forgot about the flood
11 and are moving back to purchasing in those areas, but
12 many did not forget.

13 There's a lot of fear and stigma surrounding
14 this proposed CO2 pipeline and all of the unknowns. If
15 the pipeline is built, the areas near it will be
16 affected. And as with the flood, some will forget over
17 time, but many will not.

18 In addition to the commercial lots and a couple
19 of residential lots that the Andahls still offer for
20 sale at The Ranch, there's another 177 acres zoned
21 residential and it was slated for development of phases
22 3 and 4 at The Ranch that would add another hundred or
23 so lots.

24 The Andahls recently decided to list this land
25 for sale, looking for a developer to continue developing

1 in that area. They're very concerned about the stigma
2 and fear surrounding the proposed pipeline and its
3 potential effect on values and the actual sale of their
4 property, and for good reason. The very first developer
5 we met with regarding a potential purchase of that phase
6 3 and 4 land brought up at the proposed pipeline at
7 the first meeting.

8 Will it have an adverse effect? We believe it
9 will. I ask that you consider the adverse economic
10 impact this pipeline will have on the city of Bismarck
11 and the residents of Burleigh County. It will affect
12 the value and use of prime development land in the
13 city's only real development path to the north and east.

14 I ask that you require Summit Carbon Solutions
15 to move the pipeline route out of Bismarck's development
16 path and away from the densely populated surrounding
17 areas.

18 And when you consider the testimony regarding
19 how long it will take the city of Bismarck to reach the
20 proposed pipeline route, please keep in mind that it
21 actually runs right through the heart of rural Bismarck.
22 The residents of those areas, including the residents at
23 The Ranch, consider themselves as much a resident of the
24 city of Bismarck as those who live within the city
25 limits. They send their kids to school here. They shop

1 here. They work here. They pay taxes. Don't forget
2 them.

3 And that's all I have to say.

4 ALJ HOGAN: All right. Thank you.

5 Mr. Bender, any questions?

6 MR. BENDER: No questions.

7 ALJ HOGAN: Mr. Pelham.

8 MR. PELHAM: Yes.

9 Ms. Andahl, I'm just wondering about any
10 specific instances. I think you gave a couple of
11 examples of transactions being impacted as a result of
12 the potential line. I'm wondering, are you aware of any
13 transactions that did not go through as a result of the
14 proposed pipeline?

15 JACKIE ANDAHL: Not yet.

16 MR. PELHAM: And when you say "not yet," what do
17 you mean by that?

18 JACKIE ANDAHL: Well, I -- I have not, but I do
19 anticipate that there will be some issues.

20 MR. PELHAM: And I understand that you
21 anticipate there will be issues. As to what everyone
22 has been testifying to, the location, the proximity, the
23 safety issues, those issues, is that what you mean?

24 JACKIE ANDAHL: Yes.

25 MR. PELHAM: Thank you. I don't have any other

1 questions.

2 ALJ HOGAN: Mr. Jorde, any questions?

3 MR. JORDE: Yes.

4 Ma'am, were you here when Mr. Wachter testified?

5 JACKIE ANDAHL: I actually stepped out.

6 MR. JORDE: Oh, okay. That's fine.

7 Would you agree that a stigma or a negative
8 perception that, in your experience, once a buyer,
9 prospective buyer, has it in their mind, it's very hard
10 to get it out of their mind?

11 JACKIE ANDAHL: It is. We saw that with the
12 flood of 2011. And there are still -- I'm working as a
13 realtor. I work with people who wouldn't consider
14 purchasing anywhere near areas that were affected.

15 MR. JORDE: And would you agree that for a
16 stigma to be present, that often is a result of people
17 being educated and aware of potential issues; correct?

18 JACKIE ANDAHL: Yes.

19 MR. JORDE: And that this issue, this pipeline,
20 as we heard many people testify, this community is very
21 concerned about it. Would you agree with that?

22 JACKIE ANDAHL: The people I've talked to are.

23 MR. JORDE: Okay. And do you believe that will
24 directly result in negative economic impacts in either
25 delayed sales, less sales, or potentially no sales at

1 all in areas directly affected by this pipeline?

2 JACKIE ANDAHL: I believe it may, yes.

3 MR. JORDE: All right. Thank you. Nothing
4 further.

5 ALJ HOGAN: Mr. Bakke, any questions? Your
6 microphone is not on.

7 MR. BAKKE: There should be a binder straight in
8 front of you or just to your right that has a listing of
9 exhibits.

10 JACKIE ANDAHL: Okay.

11 MR. BAKKE: And I want you to look at Exhibit
12 W196.

13 ALJ HOGAN: I don't think it's that one, is it?
14 That one? Okay.

15 JACKIE ANDAHL: I'm sorry, which number?

16 MR. BAKKE: 196.

17 JACKIE ANDAHL: Okay.

18 MR. BAKKE: Are you there?

19 JACKIE ANDAHL: Yep.

20 MR. BAKKE: And there's an aerial view showing
21 the location of the pipeline. We can see Heritage
22 Reserve and then we see the pipeline and it indicates
23 that Prairie View Landscaping, it's .45 of a mile. Is
24 Prairie View Landscaping part of The Ranch or just south
25 of there?

1 JACKIE ANDAHL: It's not. It's just directly
2 across the street to the south.

3 MR. BAKKE: Okay. And then .5 of a mile to The
4 Ranch subdivision; is that correct?

5 JACKIE ANDAHL: That's correct. That's 136th
6 Avenue. That's the south border of The Ranch.

7 MR. BAKKE: Okay. And how many existing homes
8 are there in The Ranch?

9 JACKIE ANDAHL: There are 120 lots. I'm
10 thinking it's about 80 percent built-out.

11 MR. BAKKE: Okay. And of those 120 lots, how
12 many of those are for sale?

13 JACKIE ANDAHL: The developer still owns two of
14 them and offers those for sale. There are a few other
15 lots for sale by other parties, maybe another five
16 or six.

17 MR. BAKKE: Okay. But the developer has sold
18 118 out of 120 lots before the pipeline was something
19 that was on the radar screen?

20 JACKIE ANDAHL: Correct. Over the last ten
21 years.

22 MR. BAKKE: And in terms of lost sales in The
23 Ranch, you indicated that the Andahls, the owner of the
24 other 177 acres, do have a desire to sell the rest of
25 that land to another developer so the project can be

1 continued?

2 JACKIE ANDAHL: Yes, they do.

3 MR. BAKKE: And if that was done, that would add
4 another hundred lots?

5 JACKIE ANDAHL: Depending on what a developer
6 decided to do with it, but yes.

7 MR. BAKKE: And you had the one interested party
8 in purchasing that 177 acres; correct?

9 JACKIE ANDAHL: We did have an interested party,
10 yeah.

11 MR. BAKKE: Okay. And you spoke with that
12 person --

13 JACKIE ANDAHL: We met with them.

14 MR. BAKKE: -- or met with them?

15 How soon in the conversation did they bring up
16 the topic of the Summit pipeline possibly being located
17 a half a mile away?

18 JACKIE ANDAHL: They indicated that there were
19 several things that they needed to look into. The first
20 thing they mentioned was the pipeline.

21 MR. BAKKE: And that sale never happened?

22 JACKIE ANDAHL: It did not.

23 MR. BAKKE: Okay. And when they -- the first
24 thing they brought up that they were concerned about was
25 the pipeline. What did you tell them?

1 JACKIE ANDAHL: We told them that they could
2 certainly look into all of the things they were
3 concerned about.

4 MR. BAKKE: Did you ever hear back from that
5 potential buyer as to why they walked away?

6 JACKIE ANDAHL: We did visit with the agent for
7 that buyer. There were several things mentioned. They
8 did not mention the pipeline, but I don't know if that
9 means that they determined it was an issue or not. They
10 decided it wasn't feasible to do what they wanted to do.
11 I don't -- I don't know the exact conditions of that.

12 MR. BAKKE: Okay. So they said it wasn't
13 feasible, but they didn't explain the specifics as to
14 why it wasn't feasible?

15 JACKIE ANDAHL: No.

16 MR. BAKKE: That's all the questions I have.

17 ALJ HOGAN: Commissioner Christmann.

18 COMMISSIONER CHRISTMANN: I do not have any
19 questions. Thank you for being here.

20 ALJ HOGAN: Commissioner Haugen-Hoffart.

21 COMMISSIONER HAUGEN-HOFFART: No questions.

22 Thank you.

23 ALJ HOGAN: Mr. Dawson.

24 SUBSTITUTE DECISIONMAKER DAWSON: Thank you. No
25 questions.

1 ALJ HOGAN: All right. Thank you for your
2 testimony tonight.

3 JACKIE ANDAHL: Thank you for your time.

4 ALJ HOGAN: Do we have somebody that wants to go
5 next?

6 I'll have you state your full name and spell
7 your last name for the record, please.

8 JOHN LEE: John Lee, L-E-E.

9 ALJ HOGAN: And, Mr. Lee, were you in the room
10 earlier when I went through the penalties for perjury?

11 JOHN LEE: Just now I was, yeah.

12 ALJ HOGAN: Okay. And do you understand what
13 perjury is?

14 JOHN LEE: I do.

15 ALJ HOGAN: And being advised of the potential
16 penalties for perjury, do you promise to tell the truth
17 in this case tonight?

18 JOHN LEE: I do.

19 ALJ HOGAN: All right. Thank you. Go ahead.

20 JOHN LEE,
21 being first duly sworn, testified as follows:

22 JOHN LEE: Okay. Your Honor and Commissioners,
23 I appreciate the opportunity to be here tonight. And to
24 start off, I'm a purple cow guy. I think there's more
25 of us than brown cows so make note of that.

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(Laughter)

JOHN LEE: Currently I serve as the president of the Bismarck Public School Board. I am here on my own behalf. I'm not representing the board.

Obviously been involved extensively through looking at demographics and working with demographers and looking at how our city is growing and where we're putting our schools. So when I saw the proposed pipeline and how close it was to the -- to the northeast and the northern side, I do have some concerns about the growth of our city and what that may mean in the future, where we plan to put schools, where people decide to live.

Thinking of Silver Ranch in particular, we have a proposed CDE building that will be going up there within the next year, as well as Silver Ranch Elementary and Sunrise Elementary which isn't that far away. So I think the concerns as a parent and as a stakeholder and a resident of the city really is for the safety of our citizens and, in particular, the least among us, our kids.

It does frighten me a little bit that this is a new product that's moving through a pipeline. We're -- we're kind of a pipeline city so I think everybody's pretty used to pipelines, but not -- but not this

1 product moving through a pipeline.

2 And when you hear information from both sides,
3 it's tough to make sense of everything, but, you know,
4 when you think of evacuating a place -- and we talk
5 about safety plans all the time with our kids and all
6 the terrible scenarios that could come up, but you think
7 about evacuating a school, you would really need a fleet
8 of EV vehicles, electric vehicles, to get people out.
9 And that concerns me a little bit because -- and I
10 haven't really been privy to a plan of how that would
11 work with residents or with our schools. So my concern
12 is that. And just the growth of our city. The two
13 biggest things that I wanted to get across tonight.

14 There's just that potential barrier it could
15 create. And I would just -- you know, what's -- what's
16 best for our community? It doesn't make sense to me
17 that we would run the pipeline right up to the edge of
18 one of the most populous areas in the state. Not
19 opposed to the project, per se, personally not opposed
20 to pipelines, but just wonder why it has to be so close.

21 I want to end by saying these are really tough
22 issues and I wholeheartedly trust our elected officials
23 to keep our community safe and I really do thank you for
24 your service. Whatever happens with this, my trust is
25 in you and I appreciate what you do. That's all I have.

1 ALJ HOGAN: All right. Thank you.

2 Mr. Bender, any questions?

3 MR. BENDER: I don't have any questions.

4 ALJ HOGAN: Mr. Pelham.

5 MR. PELHAM: Good evening, Mr. Lee. Has, to
6 your knowledge, Summit communicated at all with Bismarck
7 Public Schools?

8 JOHN LEE: Not to my knowledge, no.

9 MR. PELHAM: Do you know whether or not there's
10 any type of safety plan or training plan or anything
11 like that as far as this proposed line?

12 JOHN LEE: There is none that I've seen. And I
13 would expect to have seen it being the president of the
14 school board.

15 MR. PELHAM: Thank you, sir. I don't have any
16 other questions.

17 ALJ HOGAN: Mr. Jorde, any questions?

18 MR. JORDE: Yes, thank you.

19 Given the known risks and foreseeable risks of
20 this potential pipeline, would you be more or less
21 likely to support a -- locating a new school on or near
22 the pipeline?

23 JOHN LEE: I would -- I would not personally
24 support that. I'm one-fifth of the governing body, but
25 I'm having a little bit of regret having built Silver

1 Ranch where it's at knowing that this could happen.
2 Yeah, it -- I'm not going to lie, I've lost sleep at
3 night.

4 MR. JORDE: Thank you, sir. Thank you for your
5 concern.

6 ALJ HOGAN: Mr. Bakke, any questions?

7 MR. BAKKE: Yes.

8 Mr. Lee, the Bismarck School Board recently
9 passed a resolution in regards to the location of this
10 pipeline. What was the nature of that resolution?

11 JOHN LEE: The nature of the resolution was
12 really to support what the county and city has done.
13 And the board was very uncomfortable with making a
14 strong statement, not feeling equipped with enough
15 information to do so, but the resolution really said
16 that we support what the city and county has -- has done
17 in regards to this, even as far as we support our Public
18 Service Commission.

19 MR. BAKKE: That's all I have.

20 ALJ HOGAN: Commissioner Christmann.

21 COMMISSIONER CHRISTMANN: I don't think I have
22 any questions. Thank you for being here, John.

23 ALJ HOGAN: Commissioner Haugen-Hoffart.

24 COMMISSIONER HAUGEN-HOFFART: Yes, I have a
25 couple.

1 First of all, thank you for your service to the
2 school board and our children.

3 So serving on the school board, have you
4 received calls from parents from the Silver Ranch
5 Elementary regarding the CO2 pipeline?

6 JOHN LEE: I have.

7 COMMISSIONER HAUGEN-HOFFART: About how many
8 calls have you received?

9 JOHN LEE: One call, but if we're talking all
10 communication, maybe four. Not -- not -- it's not
11 overwhelming.

12 COMMISSIONER HAUGEN-HOFFART: Okay. But what's
13 the consensus of the communication you're receiving from
14 parents?

15 JOHN LEE: Well, it's like most things. People
16 don't speak up unless they feel really strong about it.
17 And most of them are just concerned, the safety of their
18 kids if the pipeline were to go where it's proposed.

19 COMMISSIONER HAUGEN-HOFFART: Have you as a
20 school board discussed, if this pipeline is approved,
21 action plans or anything?

22 JOHN LEE: Not at this point. I think it would
23 have to be -- certainly be talked about as we look at
24 our strategic plan and facilities and what this means,
25 but we have not had any discussions so far.

1 COMMISSIONER HAUGEN-HOFFART: Okay. No further
2 questions. Thank you, John.

3 ALJ HOGAN: Mr. Dawson, any questions?

4 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
5 Thank you.

6 ALJ HOGAN: All right. Thank you, Mr. Lee.

7 JOHN LEE: Thank you.

8 ALJ HOGAN: And ma'am, do you want to go next?
9 I saw you get up a couple of times already.

10 Good evening, could I have you state your name
11 and spell your last name for the record?

12 DANIELLE BUCKINGHAM: My name is Danielle
13 Buckingham, B-U-C-K-I-N-G-H-A-M.

14 ALJ HOGAN: And, Ms. Buckingham, did you hear me
15 go through the penalties for perjury earlier?

16 DANIELLE BUCKINGHAM: Yes.

17 ALJ HOGAN: And do you understand what perjury
18 is?

19 DANIELLE BUCKINGHAM: Yes, I do.

20 ALJ HOGAN: And being advised of the potential
21 penalties for perjury, do you promise to tell the truth
22 in this case today?

23 DANIELLE BUCKINGHAM: Yes.

24 ALJ HOGAN: All right. And do you just want to
25 pull the mic a little bit closer? Thank you. Go ahead.

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DANIELLE BUCKINGHAM,

being first duly sworn, testified as follows:

DANIELLE BUCKINGHAM: My name is Danielle Buckingham. I live at 14301 10th Avenue Southeast. I have 40 acres of land that was purchased for the purpose of building and pursuing my family's American dream. The Summit pipeline is proposed to be located a little over 500 feet from the home where my four children live and sleep. The line is approximately one mile from the school they attend in Menoken.

Summit first contacted us around August or September of last year. We met in a public area where my husband and I were given a contract. I gave you copies of that. My name is spelled incorrectly, our address is wrong, and they had the land still listed under the previous owner's name. We were told -- well, we told Summit we were not interested because the line would destroy any future plans that we had for our property. It goes right through the whole property, right through the middle.

We were not contacted again until the Saturday following the PSC meeting in Linton. I think it was the 13th of May, I believe, we received a FedEx package. Once again, not sent to our home address. The letter stated that because of the decision made by the court in

1 the group of cases, Summit clearly has the authority to
2 enter your property to conduct the survey work. They
3 also stated they would enter between May 15th and
4 June 14th. I also provided you a copy of that letter.

5 We are in the process of building where this
6 pipeline is proposed to go. We have building permits,
7 locations are built, trenching is dug. We are finally
8 getting to where we can move forward with our
9 construction projects on our land. We would also like
10 to one day tree our property. If this pipeline goes
11 through, we can't fully tree our 40 acres. We can't
12 plant trees where this is going to go. It will just be
13 a whole area we can't do anything with.

14 If this line comes through, to me, my property
15 is worthless. I never would have bought it knowing what
16 I know now, and that's sad. If you want to know if it
17 lowers property values, I'll tell you that, to me, yes,
18 it does. I would -- I would not live anywhere or buy a
19 property with this pipeline through it.

20 I love it here. My children, they love it here.
21 They -- they actually said goodbye to their teachers and
22 classmates at the end of this year because we told them
23 we don't know if they'll go back to Menoken School. If
24 this pipeline goes through, we will move. I will not
25 have my children live in a wasteland. And that is what

1 Summit wants to do to our state. They want to make us
2 guinea pigs, a dumping ground, test subjects.

3 How can a family work so hard to build up their
4 American dream, your house is paid for, your land is
5 paid for, you're ready to start building. I, as an
6 American citizen, should be able to say, "No, I don't
7 want that on my land," and that should be the end of it.

8 Now, we all know there's two sides to every
9 story. All we hear is that we have to lower CO2, we
10 have to reduce our carbon footprint. Why is that all we
11 hear? Well, money talks. Just follow the money. We
12 all know that.

13 There's also many well-respected individuals out
14 there who could tell you about this noble lie. Now, you
15 can look up a "noble lie." A noble lie is a myth or an
16 untruth propagated by an elite to maintain social
17 harmony or to advance an agenda.

18 There is a well-known man, Dr. William Happer.
19 He's the cofounder and chair of the CO2 Coalition. He's
20 also a professor at Princeton University. I've listened
21 to several of his speeches and I would encourage anyone
22 who wants to know the other side of CO2 to do the same
23 thing. He will tell you about this noble lie that
24 they're telling all of us when it comes to CO2.

25 And that's all I have to say and I want to thank

1 you for your hard work and time.

2 ALJ HOGAN: All right. Thank you.

3 Mr. Bender, any questions?

4 MR. BENDER: I have no questions.

5 ALJ HOGAN: Mr. Pelham.

6 MR. PELHAM: Yes.

7 You testified that you had a building permit?

8 DANIELLE BUCKINGHAM: Yes. I included it there
9 in the -- I don't know if you got a packet.

10 MR. PELHAM: Right. And do you know, the
11 proposed location of the line in comparison to where you
12 are planning to build your home, do you know
13 approximately how far away that is?

14 DANIELLE BUCKINGHAM: Pretty much it's going to
15 go right through one of the corners of the building
16 location so yeah.

17 MR. PELHAM: Fair to say within 500 feet then?

18 DANIELLE BUCKINGHAM: If you look on the map
19 there, it's -- yeah, it's definitely within the
20 500 feet. It's only about -- it's a little over
21 500 feet from the corner of our home.

22 MR. PELHAM: Have you had any discussions with
23 Summit Carbon Solutions?

24 DANIELLE BUCKINGHAM: We met with them once and
25 we told them no, we didn't want that anywhere near our

1 property.

2 MR. PELHAM: Did you explain to him or them --

3 DANIELLE BUCKINGHAM: Yep.

4 MR. PELHAM: -- that you were planning --

5 DANIELLE BUCKINGHAM: Yep.

6 MR. PELHAM: -- what you were planning? Yeah?

7 DANIELLE BUCKINGHAM: Yes.

8 MR. PELHAM: What was the response?

9 DANIELLE BUCKINGHAM: We -- nothing really. I
10 mean, it was only the one communication and then this
11 letter that we received May 12th.

12 MR. PELHAM: And nothing aside from that?

13 DANIELLE BUCKINGHAM: No.

14 MR. PELHAM: Thank you. I don't have any other
15 questions.

16 ALJ HOGAN: Mr. Jorde, any questions?

17 MR. JORDE: Yes.

18 Other than being the cheapest route for Summit,
19 did they advise you why they are dissecting your
20 property at an angle?

21 DANIELLE BUCKINGHAM: Well, the property
22 straight to the east of us is all organic so they can't
23 go through theirs because it's organic. And I don't
24 understand that but --

25 MR. JORDE: Well --

1 DANIELLE BUCKINGHAM: That's really the only
2 reason we were given.

3 MR. JORDE: Meaning they're afraid that would be
4 more costly for them to go through?

5 DANIELLE BUCKINGHAM: Yeah, I'm not sure.

6 MR. JORDE: Okay. All right. Thank you, ma'am.
7 Appreciate it.

8 ALJ HOGAN: Mr. Bakke, any questions?

9 MR. BAKKE: Yes.

10 Your home that you're building there, when did
11 you start that?

12 DANIELLE BUCKINGHAM: Well, our home is already
13 built. We are working on livestock facilities and a
14 shop and a riding arena for our girls.

15 MR. BAKKE: Okay. And how long ago did you
16 complete the home?

17 DANIELLE BUCKINGHAM: The home was -- we bought
18 the home finished when we bought the property about
19 three years ago, three and a half years ago.

20 MR. BAKKE: And where Summit is proposing to put
21 the pipeline is 500 feet away from your existing --

22 DANIELLE BUCKINGHAM: A little over 500, yeah.
23 I believe between 500 and 530.

24 MR. BAKKE: You mentioned that your children go
25 to Menoken School?

1 DANIELLE BUCKINGHAM: Yep. The closest school
2 to the pipeline.

3 MR. BAKKE: Okay. And it's about a mile from
4 the pipeline?

5 DANIELLE BUCKINGHAM: I think it's a little over
6 a mile from the pipeline, yeah.

7 MR. BAKKE: And how many students go to Menoken
8 School?

9 DANIELLE BUCKINGHAM: Between 50 and 60. I'm
10 not sure.

11 MR. BAKKE: Plus staff?

12 DANIELLE BUCKINGHAM: Plus staff, yep. There's
13 four teachers and several helpers and stuff there.

14 MR. BAKKE: Have there been any discussions at
15 the school --

16 DANIELLE BUCKINGHAM: Yep.

17 MR. BAKKE: -- about the pipeline?

18 DANIELLE BUCKINGHAM: Yeah. We had several
19 school board meetings. They had a few speakers. We
20 actually had -- the rural fire department came and spoke
21 during some of the teacher conferences and stuff so...

22 MR. BAKKE: Okay. And have there been
23 discussions among the parents at those school board
24 meetings or otherwise about concerns --

25 DANIELLE BUCKINGHAM: Between a few of the

1 parents.

2 MR. BAKKE: -- about the Summit pipeline?

3 DANIELLE BUCKINGHAM: Yeah, between a few of the
4 parents.

5 MR. BAKKE: Okay. And are there other parents
6 that are concerned as well?

7 DANIELLE BUCKINGHAM: Oh, yes.

8 MR. BAKKE: Okay. And what have they expressed
9 to you or what have you heard from them?

10 DANIELLE BUCKINGHAM: They -- yeah, they're just
11 concerned about the closeness to the school, and several
12 of them, distance to their house. They live in Menoken
13 so yeah.

14 MR. BAKKE: And how far away from the town or
15 city of Menoken is the pipeline?

16 DANIELLE BUCKINGHAM: I'd say a little over a
17 mile. Because the school's kind of in the center of
18 town so...

19 MR. BAKKE: And how many residents are there in
20 Menoken, approximately?

21 DANIELLE BUCKINGHAM: I'm not sure. I'm not
22 sure. I would say not many.

23 MR. BAKKE: I'm sorry?

24 DANIELLE BUCKINGHAM: Not many. I'm not sure
25 how large Menoken is.

1 MR. BAKKE: Okay.

2 DANIELLE BUCKINGHAM: It's a rural school so...

3 MR. BAKKE: Okay. That's all the questions I
4 have.

5 DANIELLE BUCKINGHAM: Okay.

6 ALJ HOGAN: Commissioner Christmann.

7 COMMISSIONER CHRISTMANN: I didn't understand
8 one part of your testimony. I thought you were talking
9 about not being able to plant trees and stuff.

10 DANIELLE BUCKINGHAM: Yeah, within --

11 COMMISSIONER CHRISTMANN: And did Summit say you
12 can't plant them by their pipeline or are you thinking
13 they won't grow or what was that?

14 DANIELLE BUCKINGHAM: You -- you can't plant
15 them over the top is what we've come to believe.

16 COMMISSIONER CHRISTMANN: Did they say how close
17 you could plant them?

18 DANIELLE BUCKINGHAM: I think it's a 50-foot
19 stretch, but I'm not a hundred percent sure on that,
20 that you can't plant in.

21 COMMISSIONER CHRISTMANN: Okay. Thank you --

22 DANIELLE BUCKINGHAM: Yeah.

23 COMMISSIONER CHRISTMANN: -- for clarifying.

24 ALJ HOGAN: Commissioner Haugen-Hoffart.

25 COMMISSIONER HAUGEN-HOFFART: Thank you. I have

1 no questions.

2 ALJ HOGAN: Mr. Dawson.

3 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

4 Thank you.

5 ALJ HOGAN: All right. Thank you for your
6 testimony. And I think your clip fell down there.

7 You'll be next, Senator.

8 All right. Can I have you state your name and
9 spell your last name for the record?

10 ANDREW VARVEL: Andrew Alexis Varvel. That's
11 V-A-R-V-E-L.

12 ALJ HOGAN: And were you in the room earlier
13 when I went through the penalties for perjury?

14 ANDREW VARVEL: Yes.

15 ALJ HOGAN: And do you understand what perjury
16 is?

17 ANDREW VARVEL: Yes.

18 ALJ HOGAN: Being advised of the potential
19 penalties for perjury, do you promise to tell the truth
20 in this case today?

21 ANDREW VARVEL: Yes.

22 ALJ HOGAN: All right. Thank you. Go ahead.

23 **ANDREW VARVEL,**

24 being first duly sworn, testified as follows:

25 ANDREW VARVEL: I live in Bismarck. I oppose

1 the pipeline. As a matter of full disclosure, I
2 graduated from the University of North Dakota in 1996
3 with a Bachelor's of Science in geology and a Bachelor
4 of Arts in history. I am a member of the Dakota
5 Resource Council. I'm not an officer, though, so I
6 speak for myself and not for the organization.

7 As a dreamer, I have a vested interest in the
8 Burnt Butte district north of Bismarck because I have a
9 long-term dream to -- that north of Bismarck there
10 should be an academic suburb.

11 The Public Service Commission should deny
12 permission for the Summit Carbon Solutions carbon
13 dioxide pipeline, full stop. Pipelines should exist for
14 the public good, not for private evil. From my point of
15 view, this pipeline of death is a greenwash boondoggle.
16 Now, if you were looking at having some kind of dry ice
17 plant, I think it would make more sense to have it in
18 Chicago or St. Louis than in Oliver County and -- in
19 terms of using carbon dioxide for feedstock, but I don't
20 see that happening.

21 But in any case, when you talk about
22 greenwashing, greenwashing is when a corporate polluter
23 creates a false impression that it is actually clean and
24 green. For example, when Volkswagen cheated on its car
25 emissions tests. Now, greenwashing exists because some

1 people actually believe it.

2 And one prominent supporter of this pipeline in
3 the entire state, probably the most prominent supporter,
4 calls it progress and continues to have a Pavlovian
5 reaction to the symbolic word "progress." Well,
6 scientific racism was once called progress. Eugenics
7 was once called progress. Asbestos was once called
8 progress. Thalidomide was once called progress. And
9 the Enron Corporation was once called progress. In
10 fact, in the late 20th century, its television
11 commercials could get downright preachy saying that if
12 you disagreed with them, you were somehow mired in the
13 past. Well, it's Enron that's a laughingstock now.

14 The thing is, is that this -- the reason I call
15 it "a pipeline of death" is because 100 percent carbon
16 dioxide is deadly; it kills living things. And insofar
17 as I can tell, it seems to be a proven -- a proven
18 concept. In Satartia, it was proven -- this -- in terms
19 of concept, it seems to be proven to leak.

20 Now, pore space in Oliver County is not
21 infinite. Under pressure, it seems fairly obvious that
22 the footprint of gas expands and that gas, even
23 underground, does not always stay put. And,
24 furthermore, carbon dioxide acidifies groundwater. So I
25 think we need to have some investigation on the

1 underground chemistry of acid groundwater.

2 On top of that, can we really be sure that a
3 carbon dioxide pipeline will be so thoroughly dehydrated
4 that carbonic acid won't be eating through the steel? I
5 mean, the fact is are we sure that there won't be any
6 accident that dozens of ethanol plants feeding into
7 this, any one of them having water coming into it would,
8 insofar as I could tell, would probably cause a
9 disaster?

10 But in any case, I would like to compare and
11 contrast this with the Dakota Access Pipeline. Back in
12 August 22nd, 2019, I wrote a letter to the editor of the
13 -- to The Bismarck Tribune saying that the City of
14 Mandan and the University of Mary should have the Dakota
15 Access Pipeline rerouted through them. The reason is
16 that they accepted money from Energy Transfer Partners,
17 they benefit from the pipeline, and it makes sense that
18 those who -- who benefit should accept the risks. In
19 contrast, I wouldn't want -- I wouldn't want a carbon --
20 this carbon dioxide pipeline to go anywhere near
21 Bismarck, not even anywhere near our state.

22 It is -- insofar as I can tell, it's designed to
23 boost the numbers of ethanol. And given present
24 circumstances concerning the Russo-Ukrainian War, we
25 need to consider the intrinsic morality of the ethanol

1 industry itself. Because the fact is, as important as
2 it may be to mitigate global warming, pushing poor
3 people throughout the world into starvation is not the
4 way to do it. With the Russo-Ukrainian War in its
5 second year now, there are parts of Africa that are
6 already teetering on starvation. I think that farmers
7 should be focused on planting food crops with an eye to
8 alleviating human hunger, and focusing on energy crops
9 for ethanol in comparison is not a good idea.

10 And the fact is, insofar as I can tell about
11 this particular project, it -- I don't think North
12 Dakota should be greenwashing Iowa's ethanol industry,
13 and certainly not at our own expense.

14 In fact, there's a simpler form of carbon
15 sequestration. It's called plant greenia -- plant
16 greenery. Let it grow, bury it, then plant more green
17 around top, rinse and repeat, keep doing it. That's how
18 coal seams back in the Salerian and Devoian Periods
19 started out.

20 Another concern is that I very much hope that
21 Summit Carbon Solutions has reached out to the Mandan,
22 Hidatsa, Arikara Nation on this because its proposed
23 waste disposal site, as well as its route, goes well
24 within its treaty territory and I -- and given that the
25 MHA Nation has been expanding its boundaries recently,

1 this -- I can see things heading in an interesting
2 direction. Beyond that, the foot -- if the footprint of
3 the pressurized underground carbon dioxide crosses the
4 reservation boundary, it will be definitely of concern
5 to them. And we can't assume that, you know, one mile
6 down, that this pressurized carbon dioxide, put enough
7 in there and the foot -- insofar as I can tell, I think
8 the footprint is going to expand.

9 Now, I live close to I-94. There are many, many
10 thousands of people between me and any possible leak. A
11 lot of people are going to die before I do, but that
12 doesn't mean I don't care. Those are my neighbors. I
13 want them to live.

14 Yes, this pipeline of death would restrict --
15 restrict future expansion of Bismarck but -- and, yes,
16 property developers oppose it, yet I also have a vested
17 interest which I hadn't been talking about until just
18 now. You see, Burnt Butte is just west of U.S. 83 and
19 just west of Burnt Creek. It is approximately where
20 123rd Avenue Northeast would be (indiscernible)
21 location. It's also right next to a railroad line. So
22 construction costs could be kept down.

23 See, for over a decade I've been looking at that
24 area and I was thinking what a wonderful spot for a
25 major university which could become the heart of a new

1 academic suburb. It would be -- admittedly, the suburb
2 would require a zoning carveout because, to be high
3 density, pedestrian friendly, you'd need some changes
4 to -- you know, parking lots. But in any case,
5 envisioning this near this -- this proposed suburb, a
6 work college could be where students could plant crops
7 for the school cafeteria.

8 I have many other ideas I could go into more
9 detail on, but the important thing is that I'd imagine
10 that place as a future location for the biggest library
11 in the world, as a place for an academic suburb. And
12 it's not just a matter of present ideas of development.
13 I'm proposing an alternative.

14 Furthermore, concerning Oliver County, I had
15 hoped that either Oliver County or Morton County could
16 become the site of a major observatory. Now, back
17 in 1883 University of North Dakota was supposed to have
18 an observatory, concrete was poured for it, but the site
19 was so close to the railroad tracks that there's no way
20 the observatory could function. It was just too much --

21 ALJ HOGAN: Can I interrupt you?

22 ANDREW VARVEL: Sure.

23 ALJ HOGAN: I think we're getting a little far
24 from the purpose of this hearing.

25 ANDREW VARVEL: Sure, fine. My point -- go on.

1 Okay.

2 ALJ HOGAN: Yep, I --

3 ANDREW VARVEL: I'm nearly finished.

4 ALJ HOGAN: Okay.

5 ANDREW VARVEL: Basically, I'm simply concerned
6 that any astronomical observatory in Oliver County could
7 be interfered with quite possibly by this facility.

8 Now, in any case, I'm presenting this
9 alternative view simply because I don't think -- I think
10 people need to know that there are other ideas of what
11 development north of Bismarck could be.

12 And to sum up, a pipeline should exist for the
13 public good, not for private evil. This pipeline does
14 nothing good for Bismarck, nothing good for this region,
15 and I urge the Public Service Commission to deny
16 permission for this pipeline of death.

17 Thank you.

18 ALJ HOGAN: All right. Thank you.

19 Mr. Bender, any questions?

20 MR. BENDER: Thank you, Judge. No questions.

21 ALJ HOGAN: Mr. Pelham.

22 MR. PELHAM: No questions. Thank you.

23 ALJ HOGAN: Mr. Jorde.

24 MR. JORDE: Were all of your concerns about the
25 sequestration area and the potential spread and

1 inability to actually control and sequester the CO2
2 based on your geology training and education?

3 ANDREW VARVEL: To a limited extent.

4 MR. JORDE: Okay.

5 ANDREW VARVEL: Partly, it's just common sense.

6 MR. JORDE: All right. Thank you.

7 ALJ HOGAN: Mr. Bakke, any questions?

8 MR. BAKKE: No questions.

9 ALJ HOGAN: Commissioner Christmann.

10 COMMISSIONER CHRISTMANN: Since I'm from that
11 area, I'm just wondering who all you're working with
12 from Oliver County on that observatory project.

13 ANDREW VARVEL: Actually, nobody. In fact, this
14 is probably the first time I've been talking about it in
15 public. I -- I have -- it's only with a few people in
16 Bismarck that I've even been talking about the idea of
17 an astronomical observatory, but I very much -- but if
18 anybody from Oliver County is interested in that sort of
19 thing, I'd be very happy to talk with them.

20 COMMISSIONER CHRISTMANN: Okay. No other
21 questions.

22 ALJ HOGAN: Commissioner Haugen-Hoffart.

23 COMMISSIONER HAUGEN-HOFFART: No questions.
24 Thank you.

25 ALJ HOGAN: Mr. Dawson.

1 And after studying this, there's at least five
2 of them I don't think that Summit has met, and that's
3 No. 1, 4, 7, 8, and 11.

4 And No. 1 is: "Available research and
5 investigations relating to the effects of the location,
6 construction, and operation of the proposed facility on
7 public health and welfare, natural resources, and the
8 environment."

9 And then No. 4: "Adverse direct and indirect
10 environmental effects that cannot be avoided should the
11 proposed site or route be designated."

12 No. 7 is: "The direct and indirect economic
13 impacts of the proposed facility."

14 No. 8 is: "Existing plans of the state, local
15 government, and private entities for other developments
16 or in the vicinity of the proposed site, corridor, or
17 route."

18 And then No. 11 is: "Problems raised by federal
19 agencies, or other -- other state agencies or -- and
20 local entities."

21 So it seems like they haven't addressed many of
22 these issues that are in code. So I just wanted to
23 bring that to your attention, Commissioners. I don't
24 want to tell you your job. I'm just pointing out that
25 there are laws that -- that are to be looked at.

1 And then in Linton -- I know this is my third
2 time in front of you so the third time must be the
3 charm, is what the old saying is, and I -- I did bring
4 up that the Senate had passed Senate Bill 2371 and House
5 Bill 1135 and we talked about asking the Attorney
6 General for an investigation. So we took it upon
7 ourselves, some of us legislators, and we asked the
8 Attorney General, and I'll read the letter quick. It's
9 a short letter that --

10 ALJ HOGAN: Can I ask you not to read it?

11 JEFF MAGRUM: Not to read it? Okay.

12 ALJ HOGAN: We're just --

13 JEFF MAGRUM: I was just going to read it for
14 the public to hear --

15 ALJ HOGAN: We don't have much time left and I
16 know Mr. Bakke's got a couple witnesses yet.

17 JEFF MAGRUM: Oh, okay. Sorry about that.

18 Yeah. And we did have 31 legislators that
19 signed on. And yesterday another senator, Merrill
20 Piepkorn, reached out to me and asked if he could be
21 added to the letter so we have 32 state legislators that
22 signed on and want an investigation.

23 I talked to the Attorney General yesterday
24 evening at the North Dakota Right to Life banquet and he
25 assured me that they have two lawyers looking at what --

1 how the laws work and how they can apply the laws to
2 this type of project. And so he's not investigating it
3 yet, but he asked me if I would reach out to the
4 Burleigh and Emmons County Commissions and if they would
5 ask for an investigation, because 2371 does have a
6 component in there for the county commissioners to ask
7 for an investigation. So I'll be attending their
8 meetings this coming week and I'm sure that they'll both
9 ask for an investigation as well.

10 And another document -- well, I just found
11 something out recently that's a little disturbing. I
12 don't know if it's fact and I would like to have this
13 investigated too, because they've been talking about
14 Pumpco as a JV contractor in the piping business,
15 supposedly owned by the Cubans. I don't know. I don't
16 know if that's fact or fiction, but it came up. And so
17 if the Chinese are investors in the pipeline and the
18 Cubans are building it, we have two out of six foreign
19 adversaries working on this project. So that's kind of
20 a scary thought.

21 And so the last document is the American
22 Accountability Foundation. They're a third party that's
23 been looking at this project. And I'll just read bullet
24 point No. 4. It's short.

25 ALJ HOGAN: Thank you.

1 JEFF MAGRUM: And it just -- I thought this one
2 really jumped out. It says: "There are serious
3 national security concerns arising from Bruce Rastetter
4 being in a business partnership to operate an ethanol
5 plant with a Chinese firm that is financed by the China
6 Development Bank, an arm of the Chinese Communist
7 Party."

8 Now, Bruce Rastetter is the founder of Summit
9 Ag, I do believe, and he's also -- Summit Ag is the
10 mother company to Summit Carbon Solutions. So Bruce
11 Rastetter is someone who needs to be looked at as if
12 he's a foreign agent or is he just using them for their
13 money. I don't have any idea, but these are some of the
14 things that we're concerned about.

15 And that's why the legislature passed those two
16 bills, 1135 and 2371, so overwhelmingly because the -- I
17 think the state -- the people in this state have an
18 appetite to control foreign investment in North Dakota
19 going forward.

20 So okay. Thanks. I'd sit for any questions.

21 ALJ HOGAN: All right. Mr. Bender, any
22 questions?

23 MR. BENDER: Thank you. I don't have any
24 questions.

25 ALJ HOGAN: Mr. Pelham, any questions?

1 MR. PELHAM: No questions. Thank you.

2 ALJ HOGAN: Mr. Jorde, any questions?

3 MR. JORDE: No. Thank you.

4 ALJ HOGAN: Mr. Bakke, any questions?

5 MR. BAKKE: Just a couple.

6 I should know this, but how many total
7 legislators are there in the North Dakota Legislature?

8 JEFF MAGRUM: Mr. Bakke, there's 141. So we're
9 at right around 20 percent.

10 MR. BAKKE: And that was my question. So
11 20 percent of the legislators in North Dakota have
12 signed a letter to the Attorney General asking for more
13 information about the investors in the Summit pipeline?

14 JEFF MAGRUM: Yes, sir.

15 MR. BAKKE: That's all I have.

16 ALJ HOGAN: Commissioner Christmann.

17 COMMISSIONER CHRISTMANN: No questions.

18 Thanks for being here, Senator.

19 ALJ HOGAN: Commissioner Haugen-Hoffart.

20 COMMISSIONER HAUGEN-HOFFART: You guys are
21 asking the Attorney General for the owners, right, not
22 the investors, the ownership?

23 JEFF MAGRUM: Yeah. We want to know who owns
24 the company. Who's the majority owner?

25 COMMISSIONER HAUGEN-HOFFART: So with your

1 letter to Attorney General Drew Wrigley, isn't that
2 enough to -- for him or his office to investigate?

3 JEFF MAGRUM: Yeah. I think -- I think he's
4 willing.

5 COMMISSIONER HAUGEN-HOFFART: Okay.

6 JEFF MAGRUM: He hasn't started anything.
7 They're just -- he told me that he's got two lawyers
8 looking at how to apply the law, because there's many
9 layers to the investors in this company so to determine
10 who the majority owner is could be a task, the way it
11 sounds, because there's so many layers to the onion, so
12 to speak. And so he's wondering how to apply the law to
13 this type of situation.

14 It's not like China's just coming in by
15 themselves. They're a major investor, but they're not
16 the only owners so there's a lot more to this type of
17 project, apparently, than -- and I -- and as
18 Representative Olson mentioned that there's a study
19 going during the interim that was part of 2371 and these
20 questions will be brought up as to, going forward, about
21 these multiple investors in one project, how we're going
22 to tackle that. I'm sure that we'll discuss that.

23 COMMISSIONER HAUGEN-HOFFART: Okay. No further
24 questions.

25 ALJ HOGAN: Mr. Dawson, any questions?

1 SUBSTITUTE DECISIONMAKER DAWSON: Thank you,
2 Senator. No questions.

3 JEFF MAGRUM: Okay.

4 ALJ HOGAN: All right.

5 JEFF MAGRUM: Thanks for all your hard work,
6 folks. I appreciate it.

7 ALJ HOGAN: Do we have anybody else that wants
8 to provide public comment? I know Mr. Bakke still has
9 some witnesses.

10 Can I have you state your full name and spell
11 your last name for the record?

12 BARBARA KOCH: Barbara Koch, K-O-C-H.

13 ALJ HOGAN: And, Ms. Koch, did you hear me go
14 through the penalties for perjury?

15 BARBARA KOCH: Yes, I did.

16 ALJ HOGAN: And do you understand what perjury
17 is?

18 BARBARA KOCH: Yes, I do.

19 ALJ HOGAN: And with that in mind, do you
20 promise to tell the truth in this case today?

21 BARBARA KOCH: I do, so help me God.

22 ALJ HOGAN: Thank you. Do you want to pull the
23 mic a little bit closer?

24 BARBARA KOCH: I will.

25 ALJ HOGAN: And you can go ahead.

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BARBARA KOCH,

being first duly sworn, testified as follows:

BARBARA KOCH: I'm just here as a concerned citizen of Burleigh County to address our PSC Commission and ask you to please investigate this company.

It was a little over a year ago I was invited to a luncheon at Summit Carbon Solutions here in Bismarck. They were training a young person to go out and present to landowners their proposals to lease the land. And at that time it was very clear the people that presented this luncheon said "We are not going to follow what other pipeline companies have done and bully people into rendering or leasing their land. It's apparent by today's testimony -- I'm not affected as a landowner with this particular pipeline, but I empathize with the people who have been bullied and now are being sued because they refused to let this company survey their land.

And I empathize with that in the fact that we had surveyors on our land for a totally different reason, but I felt violated. How dare people come on and measure our land without even the decency, the consideration to come and talk to us, tell us what they were doing, what they needed, why they were there. We didn't have to go through a lawsuit when I told them to

1 please leave our land.

2 We have men upstairs -- and I walked into that
3 room. They're sitting there and they're watching me on
4 their big screen with their coolers sitting around.
5 They've been here all day. But they don't have --
6 there's plenty of room for them in here. They could be
7 sitting in here. I'm not sure if they're afraid.

8 You mentioned -- and you, attorney for them,
9 when asked if somebody was here, and you specified a
10 name, you said, "Well, I haven't seen him" evasively,
11 knowing that that person was probably here but "I
12 haven't seen him" so you wouldn't give a yes or a no.

13 I'm really concerned that we are being pressured
14 by who knows who, these secret investors who are trying
15 to put a pipeline through five states, I understand, how
16 many thousands of miles, to sequester CO2 in Fedorchak
17 land. I'm just very concerned.

18 If these ethanol plants in all these states for
19 all these years haven't been concerned about
20 sequestering their ethanol or if it hasn't been at a
21 level where their state was concerned about the
22 pollution, why should it need to be piped thousands of
23 miles up here to be sequestered? I do feel like we are
24 becoming a dumping ground. And I really would like you
25 to do some serious investigation.

1 And then when I hear that -- and they get their
2 money out of it, the federal funds, whatever the big
3 bucks that they are getting out of this, they can dump
4 it to some unknown company in a matter of years after
5 they get tired of it or they get the money out of it
6 that they want, I guess I -- I hope that you seriously
7 consider an investigation of this company and their
8 honest reasons.

9 I know that just recently we had an entity in
10 North Dakota who was given permission to sequester their
11 own CO2. Why can't these other companies sequester
12 their own if they're emitting more CO2 than is
13 environmentally safe?

14 Please, please investigate.

15 ALJ HOGAN: All right.

16 BARBARA KOCH: Seriously look at this company.

17 ALJ HOGAN: Thank you.

18 Mr. Bender, any questions?

19 MR. BENDER: No questions.

20 ALJ HOGAN: Mr. Pelham, any questions?

21 MR. PELHAM: No.

22 ALJ HOGAN: Mr. Jorde, any questions?

23 MR. JORDE: Ma'am, would you be surprised to
24 learn that in response to what you brought up of
25 questioning or wanting to question Mr. Powell but him

1 not being available, but he today, in this very
2 building, gave a quote to The Bismarck Tribune of the
3 excuse of why he didn't testify?

4 BARBARA KOCH: I'm sorry, I'm hard of hearing so
5 if you --

6 MR. JORDE: You had raised the point of
7 Mr. Powell not testifying; correct?

8 BARBARA KOCH: Yes.

9 MR. JORDE: Are you aware that there's a
10 Bismarck Tribune article about this very hearing today
11 where the reporter who was here got a quote from him in
12 this very building?

13 BARBARA KOCH: I was not aware of that.

14 MR. JORDE: Okay. All right. Well, you can
15 read the article later.

16 BARBARA KOCH: I will do that.

17 I would like to make one other point. When they
18 can ask you to disregard our Burleigh County Commission,
19 it is just unfathomable that -- that our ordinances mean
20 so little to a huge company that they think they can
21 walk in and tell you to ignore our Burleigh County
22 ordinances. That's just...

23 ALJ HOGAN: Mr. Bakke, any questions?

24 MR. BAKKE: No questions.

25 ALJ HOGAN: Commissioner Christmann.

1 COMMISSIONER CHRISTMANN: I'm a little confused.
2 Something you mentioned, I'd say a half a dozen times or
3 more, that you hope we seriously consider this. And
4 this is our fifth day of hearing from both sides, from
5 as many as we can possibly squeeze in. Do you feel
6 we're not taking this seriously?

7 BARBARA KOCH: No, I don't. This is -- this is
8 the first meeting I've been to. And I know you've been
9 to Wahpeton. I do -- I do feel like you're taking it
10 seriously. I just needed to reaffirm that. And I do
11 appreciate the time that's been spent today in listening
12 to all this testimony.

13 COMMISSIONER CHRISTMANN: Thank you for staying
14 so late with us.

15 ALJ HOGAN: Oh, hang on, hang on.
16 Commissioner Haugen-Hoffart.

17 COMMISSIONER HAUGEN-HOFFART: I'm sorry, I
18 didn't catch your name.

19 BARBARA KOCH: Barbara Koch.

20 COMMISSIONER HAUGEN-HOFFART: Barbara, thank
21 you. And you said you do not have any land that's
22 affected?

23 BARBARA KOCH: I do not.

24 COMMISSIONER HAUGEN-HOFFART: Okay. So clarify
25 for me, you were invited to a lunch hosted by Summit?

1 Do you remember when that was?

2 BARBARA KOCH: No, I don't.

3 COMMISSIONER HAUGEN-HOFFART: Okay.

4 BARBARA KOCH: It was -- I think it was about a
5 year ago. It seems to me it was in the spring.

6 COMMISSIONER HAUGEN-HOFFART: And tell me again,
7 what was the purpose of that lunch?

8 BARBARA KOCH: Well, as I understood it, it was
9 training and they were training a person to go out and
10 talk to landowners and to give presentations to the
11 public about what the pipeline was, what sequestration
12 was. And basically they had a couple of elements, one
13 that soaked up water, is what we had, and one that
14 didn't. So they were trying to show us too what -- I
15 honestly don't --

16 COMMISSIONER HAUGEN-HOFFART: Did you say --

17 BARBARA KOCH: -- liquid CO2, what was --

18 COMMISSIONER HAUGEN-HOFFART: -- there was an
19 educational component?

20 BARBARA KOCH: The components of the property
21 where they were going to be --

22 COMMISSIONER HAUGEN-HOFFART: Sequestering.

23 BARBARA KOCH: -- sequestering, correct.

24 COMMISSIONER HAUGEN-HOFFART: Were any of the
25 participants at that luncheon landowners?

1 BARBARA KOCH: No.

2 COMMISSIONER HAUGEN-HOFFART: Okay. And then
3 one last question. You said a Summit representative
4 said something about not following. Not following what?
5 Guidelines? Protocols?

6 BARBARA KOCH: Not following in the path of what
7 other pipeline owners had done as far as pressuring or
8 bullying landowners to submit to this 99-year -- or they
9 didn't say 99 --

10 COMMISSIONER HAUGEN-HOFFART: They were not
11 going to pressure --

12 BARBARA KOCH: Pardon?

13 COMMISSIONER HAUGEN-HOFFART: Let me repeat what
14 I thought you said, that Summit was not going to
15 pressure other landowners into signing? They said that
16 at that luncheon?

17 BARBARA KOCH: Yes.

18 COMMISSIONER HAUGEN-HOFFART: Okay.

19 BARBARA KOCH: And specifically using what other
20 pipeline companies had done in the past. And I don't
21 know if that meant oil pipelines or gas pipelines. I --
22 that wasn't specified.

23 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.
24 I'll refer to Tim now.

25 ALJ HOGAN: Mr. Dawson, any questions?

1 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

2 ALJ HOGAN: All right. Thank you.

3 All right. Do we have anybody else wishing to
4 provide public comment?

5 All right. Can I have you state your name and
6 spell your last name for the record?

7 JUSTIN BUCKINGHAM: My name is Justin
8 Buckingham, B-U-C-K-I-N-G-H-A-M.

9 ALJ HOGAN: And, Mr. Buckingham, were you in the
10 room earlier when I went through the penalties for
11 perjury?

12 JUSTIN BUCKINGHAM: I was.

13 ALJ HOGAN: And do you understand what perjury
14 is?

15 JUSTIN BUCKINGHAM: Yes.

16 ALJ HOGAN: And being advised on the potential
17 penalties for perjury, do you promise to tell the truth
18 in this case today?

19 JUSTIN BUCKINGHAM: I do.

20 ALJ HOGAN: Was it your spouse that testified
21 earlier?

22 JUSTIN BUCKINGHAM: Yes.

23 ALJ HOGAN: Okay. Just because we're really
24 tight on time tonight, if you can try to just address
25 any --

1 JUSTIN BUCKINGHAM: You can be -- you can be
2 tight, but I'm on the line so it's my life, not yours.

3 ALJ HOGAN: I'm sorry, what was that?

4 JUSTIN BUCKINGHAM,
5 being first duly sworn, testified as follows:

6 JUSTIN BUCKINGHAM: My name is Justin
7 Buckingham, 14301 10th Avenue Southeast, Bismarck, North
8 Dakota. I'm testifying here under duress.

9 My wife and I have four children, 12 down to 6,
10 who attend Menoken School. Our family was born and
11 raised in North Dakota. I'm honorably discharged from
12 the United States Army National Guard 164th Engineer
13 Battalion out of Williston. I also have 15 years oil
14 and gas experience. Former consultant, directional
15 driller at the highest levels in the field. I also have
16 former CO2 experience working for Chevron in Rangely,
17 Colorado, on injection wells. I'm also under
18 confidentiality for life.

19 In the military I was gassed in the gas chamber.
20 When I lived in Minot, I was gassed from the anhydrous
21 train derailment. I did get my \$1,500 check. You know,
22 who knew better when you were young? In the oil field I
23 was masked up on workover rigs working on H2S Mission
24 Canyon zones, masked up in air packs in Rangely,
25 Colorado, masked up on drilling rigs, and here I am now

1 before you all.

2 This common carrier byproduct supercritical high
3 pressure CO2 line is proposed over 500 foot from our
4 house, one mile from our school where our children
5 attend.

6 I've seen plume models of CO2 ruptures. I grew
7 up in Keene, North Dakota. Our land was near the CO2
8 line. Even though there was a leak on that line in
9 Canada, knowing what I know now, you couldn't pay me
10 enough to move back to that area. I trusted oil and gas
11 companies, all the pipeline easements I signed and oil
12 and gas leases I signed. It got so bad in the area.
13 Companies quit caring for landowners. We were very
14 overburdened. I was forced -- I wasn't for sale. I was
15 forced off my land when I started to stand up and speak
16 out.

17 As a consultant we worked with landowners.
18 Never have we used tactics like Summit. If the oil
19 leases and the pipeline leases, your road agreements and
20 locations used Summit's tactics on landowners, we would
21 not have oil fields in North Dakota. Only recently have
22 we seen these tactics used over in that area, most
23 notably Continental Resources with Harold Hamm getting
24 restraining orders on landowners and 20-day notices.

25 Summit wanted me to sign the invalid easement

1 with the wrong address, misspelled name. The price for
2 the easement is \$35,917.65, which I could almost write a
3 check to you to just leave us alone, to cut across a
4 corner, taking up most of our buildable property. I
5 figure the losses by having the line through our
6 property would be about a million dollars, but it would
7 be more than 99 million in damages to our children and
8 what this will take place for threatening the life and
9 the liberty and the pursuit of happiness.

10 Our children will not be attending school due to
11 the proximity of the line to Menoken School. We will be
12 forced to evacuate our home. This is the fifth property
13 we have lost due to tactics between companies, Federal
14 Government. This is our fifth. We're tired of moving.

15 So now wrapping this speech up, here's my
16 hypothesis. Summit is building and using the advanced
17 artificial intelligent legal system to break through all
18 of our grassroot laws. Obviously Bismarck is the state
19 capitol of North Dakota. The line appears to have
20 carbon captured your state capitol and 90,000 people at
21 risk from the controlling state of Iowa. So tell me
22 what control does North Dakota have over Iowa which
23 controls this line?

24 In my opinion, this 2,000 proposed CO2 line has
25 the potential to be the second largest threat directly

1 at Bismarck, our state capitol of North Dakota. The
2 first is obviously Garrison Dam. And I do hope Summit
3 is working on the SCADA system for potential hacking.

4 And we witnessed the China balloon fly over on
5 TV and we all know Summit has investors with those
6 foreign countries. Also don't forget the Nord Stream
7 sabotage. It doesn't take a rocket scientist to see
8 that this line is too close to Bismarck, but then again,
9 Burgum wants electric vehicles for -- the CO2 would make
10 that happen. Gates is about depopulation and the World
11 Economic Forum and everybody is prepared for mass -- I
12 can't wait to have oxygen tanks for emergency ruptures,
13 but then again wouldn't even have time to put one on. I
14 guess if you risk -- if this is the risk you're willing
15 to take, where have we heard that before?

16 To the PSC, hear this: how much money does each
17 landowner need to combat a billion dollar company like
18 Summit who threatens to seize it every time they want
19 to? No wonder they have so many forced easements. Most
20 landowners can't afford legal advice. It's been hard
21 times for many of us. Not to mention, once we get sued
22 for eminent domain, well, that's got to be over a
23 million dollars when you're looking at supreme courts.
24 If the scales of justice was truly balanced, Summit
25 would be investigated, lose, and not build the line,

1 period.

2 Lastly, I'm concerned the PSC has sold out to
3 Burgum. Don't even know why I wasted my time
4 testifying. I guess I was hoping you would remove the
5 death sentence and let me have life, liberty, and the
6 pursuit of happiness on the land that I worked hard for
7 and paid for free and clear with no debts. I wish now I
8 had a loan so I could stop paying taxes and give it back
9 to the bank. It's a worthless property and a death
10 sentence to anyone except China or some foreign country
11 would be interested. I offered it all to Summit
12 already.

13 It seems the only right I have left is the
14 Second Amendment, and I do quote: "A well regulated
15 militia, being necessary to the security of a free
16 state, the right of the people to keep and bear arms
17 shall not be infringed."

18 And I thank you for your time and I do not take
19 further questions.

20 ALJ HOGAN: All right. Well, that concludes
21 public testimony for this hearing.

22 Mr. Bakke, I'm going to give you whatever time
23 we have left. I think we need to conclude testimony by
24 no later than 10:30 because I think we have some
25 housekeeping matters to deal with before we conclude and

1 we need to be out of this room by 11.

2 MR. BAKKE: (Inaudible).

3 ALJ HOGAN: No. Call your witness and turn your
4 mic on again.

5 MR. BAKKE: I'll call John Warford.

6 ALJ HOGAN: Good evening.

7 JOHN WARFORD: Good evening, Commissioners.

8 ALJ HOGAN: Is it Dr. Warford?

9 JOHN WARFORD: Yes, that's me.

10 ALJ HOGAN: Well, I have to apologize because
11 I'm pretty sure I've referred to you as "Mr. Warford" --

12 JOHN WARFORD: Okay.

13 ALJ HOGAN: -- in documents. So can you state
14 your full name and spell your last name for the record?

15 JOHN WARFORD: It's John Warford, W-A-R-F-O-R-D.

16 ALJ HOGAN: And, Dr. Warford, were you in the
17 room earlier when I went through --

18 JOHN WARFORD: Yes, I was.

19 ALJ HOGAN: -- the penalties for perjury? And
20 do you understand what perjury is?

21 JOHN WARFORD: Yes, I do.

22 ALJ HOGAN: And being advised of the potential
23 penalties for perjury, do you promise to tell the truth
24 in this case today?

25 JOHN WARFORD: Yes, I will tell the truth.

1 ALJ HOGAN: All right. Thank you.

2 Go ahead, Mr. Bakke.

3 MR. BAKKE: Did you want me to wait for
4 Commissioner Christmann?

5 COMMISSIONER HAUGEN-HOFFART: I'm going to make
6 the executive decision. He can review the recording.
7 Let's move forward.

8 MR. BAKKE: Thank you.

9 COMMISSIONER HAUGEN-HOFFART: Thank you for
10 asking.

11 MR. BAKKE: Okay.

12 JOHN WARFORD,

13 being first duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. BAKKE:

17 Q. Dr. Warford, could you tell the PSC
18 commissioners a bit about your background, specifically
19 relating to your relationship with the city of Bismarck?

20 A. Sure. Thank you. I moved to Bismarck; my wife
21 and I moved to Bismarck in 1973. I established Warford
22 Orthodontics. I'm proud to say that this September 18th
23 will be my 50th year in practice here in Bismarck. I
24 bought cattle in 1976, got in the cattle business.
25 Bought the ranch in 1980. That's the property that is

1 -- that has been affected by the pipeline.

2 In 2002 I was elected mayor of Bismarck. I
3 served three terms. The mayor of Bismarck, of course,
4 sits on the Burleigh County Planning Commission, sits on
5 the Bismarck City Planning Commission, also on the
6 Metropolitan Planning Organization, which is mostly
7 transportation. After -- instead of running for
8 my fourth term, I was persuaded to be the dean of the
9 Gary Tharaldson School of Business out at the University
10 of Mary. I was there for four years. I'm currently on
11 the State Board of Higher Education. And last week I
12 was elected vice chair.

13 Q. And how many years did you serve as the Bismarck
14 mayor?

15 A. 12 years.

16 Q. Okay. And as the mayor, were you involved in
17 development issues relating to the city of Bismarck?

18 A. Yes. The mayor is very closely related to and
19 interested in the development issues. I talked about
20 the Burleigh County planning, the Bismarck city
21 planning. I had two initiatives: Mayor's Economic
22 Development Advisory Group, Mayor's Planning Group, both
23 visionary groups for the city of Bismarck. One was in
24 '03, the other was in 2011. I developed a strategic
25 plan for the city of Bismarck and -- so I was closely

1 involved with the city, the growth of the city.

2 Bismarck has been having extraordinary growth
3 over the years. Bismarck has -- was the only small
4 metro area in the United States in 2008 or 2009 not to
5 go into recession. So we've got a trajectory of growth
6 that's been really unprecedented and really not
7 predicted.

8 Q. And during the time that you were the mayor, was
9 the area of growth in the north and in the east?

10 A. Yes, it was. It's been stated, you know, quite
11 often, all day today, that it's north and northeast.

12 Q. And let's talk about the land that you own where
13 Summit has requested an easement on your property. And
14 to be clear, you have not granted an easement to Summit;
15 correct?

16 A. I have not granted an easement. The land is
17 in 140-79, the west -- west half of 27. That was the
18 original route. And then when they did the second
19 route, the west half of 29 was added in 140-79.

20 This is a ranch property. I'll just be very
21 brief. I bought the ranch for a family property. I was
22 in the cattle business. My cattle were up in Williston.
23 I wanted to establish a cattle facility here close to
24 Bismarck. Jenny and I have four kids. I wanted to have
25 my kids be raised in the agrarian lifestyle. And they

1 talk about that forever. It's a beautiful property.

2 Commissioner Christmann will be interested to
3 know I bought the property because it has no leafy
4 spurge on it and I get two more inches of rain there
5 than St. Anthony. So I thought it would be a good buy.
6 And it has turned out to be a good buy. So it was a
7 functioning cattle ranch. We ran 250 cows up until
8 my second year as being mayor. I just couldn't handle
9 it with an orthodontic practice, four kids, and the
10 ranch. So at that time I sold the cows and I've been
11 renting it out ever since. I rent out the grass and I
12 rent out the hay as well.

13 Q. Okay. And one of the factors that's supposed to
14 be considered in relation to the criteria for the
15 pipeline is whether the property involved has any
16 particular scenic or historical value. Can you --

17 A. Yeah, it's a beautiful property. I'm actually
18 the second owner of the property. I -- I bought it from
19 the Solberg family. Has Solberg Butte on it, one of
20 the four buttes up in northern Burleigh County. I am a
21 steward of the land. Planted a lot of trees. I've
22 developed many, many areas of water. No herbicides, no
23 pesticides. Got a lot of wildlife there. Family enjoys
24 it. It is a sustainable property. And I'm very proud
25 of how I've taken care of it and the native grasses on

1 the property.

2 Q. And then can you turn to Exhibit W143 in the
3 binder there?

4 A. Yes. That shows the routing of the pipeline.
5 It's a little bit misleading. It shows that it's just
6 going over a 160's of my property, but it actually goes
7 over -- I own 320 acres there.

8 Q. Okay. And so is the -- if we look on that map
9 143, in the lower right where it has your name -- well,
10 actually has "John H. Warford, Jr. Revocable Trust,"
11 that's your son; correct?

12 A. Nope. That's me. I'm actually -- I'm John
13 Warford, Jr. My son is John, III.

14 Q. Okay.

15 A. We just -- quickly, I know we're really short of
16 time, but when he joined the practice, we thought it
17 wouldn't look really great to have John Warford, Jr.
18 being, you know, me and, you know, walking in the room,
19 so we thought we're going to make me John Warford, Sr.
20 and he's Junior, but legally I'm Junior.

21 Q. Okay. And so --

22 A. You didn't even know that, did you?

23 Q. No, I didn't.

24 So in the lower right and in the upper left on
25 143, that shows the land that you own that Summit is

1 proposing to construct the pipeline?

2 A. That's correct.

3 Q. Okay. And then could you turn to Exhibit 193.

4 A. 190?

5 Q. 193.

6 A. 193.

7 Q. It's another map.

8 A. Yes.

9 Q. Okay.

10 A. I have it before me.

11 Q. Okay. And does that show the land we just
12 talked about where the Summit pipeline is proposed to go
13 and it's now drawn in a Sharpie, but it also shows some
14 of the other sections of land around you?

15 A. That's correct.

16 Q. Okay. And does that show the distance from
17 where the pipeline is from the Naughton School?

18 A. Yes, it does. It shows -- and I actually went
19 out yesterday, put it on the odometer of the pickup, and
20 it's 1.5 miles.

21 Incidentally, Naughton School is where my -- my
22 wife -- excuse me, my son, daughter-in-law, and four
23 grandchildren live on the property. You'll see that's
24 the other arrow there at 1.1 miles from the pipeline.
25 Three of the kids, grandchildren, go to Naughton School.

1 Naughton School is a Burleigh County school established
2 and it's been functioning since 1886.

3 Q. Okay. And how many students and staff are there
4 presently at the Naughton Public School?

5 A. I asked my daughter-in-law. She said 25 kids
6 that are like K through 7 or 8. They have four
7 preschoolers, three teachers, two para teachers, and a
8 principal that are there.

9 Q. And so your son and daughter-in-law and their
10 children live a mile away from the proposed route of the
11 Summit pipeline?

12 A. That's correct.

13 Q. And the school's within 1.5 miles of the
14 pipeline?

15 A. That's correct.

16 Q. Okay. Is that concerning to you from a safety
17 standpoint?

18 A. Absolutely. We've heard, you know, quite
19 extensively today about the safety and all the other
20 concerns. And I share all those concerns.

21 Q. Okay. Have you ever offered this property for
22 sale or been interested in selling this property --

23 A. No. I have no interest in selling the property.

24 Q. Okay. So let's talk about the contacts that
25 you've had with Summit. And let's start with

1 Exhibit 100. That's a letter to you and your wife dated
2 September 13, 2021?

3 A. That's correct.

4 Q. Okay.

5 A. It was my first contact.

6 Q. Okay. And so maybe to kind of speed this up,
7 could you tell us about that first contact by Summit --

8 A. Sure. Yeah, that was the first iteration at
9 that time.

10 Q. -- 2021 and then kind of bring us forward from
11 there?

12 A. Okay. That was the first iteration there at
13 that time. And you may note at the top I called in and
14 spoke to a Rick Johnson at that time and I told him that
15 I was not interested in any participation with the
16 pipeline at all. And at that time I hired a legal
17 attorney to give me some recommendations.

18 Just going off the top of my head, then I think
19 in April of '22 I received the information from, was it
20 Jamie DiMeo, I think, with regard to a proposal for the
21 easement and a proposal of money, a dollar amount.

22 Q. Okay. And is that what's been marked as
23 Exhibit 101?

24 A. Yes, that's correct.

25 Q. Okay. And that's April 2nd, 2002 (sic). And

1 that's when you received the proposed easement?

2 A. That's correct.

3 Q. Okay. And so what did you do in response to
4 that easement?

5 A. I had my attorney write a letter that I was not
6 interested, not interested in participating, and at that
7 time to communicate with my attorney rather than to just
8 send me letters.

9 Q. And what were they proposing in terms of pay for
10 the easement for your property? And, incidentally, how
11 much of an area would they be taking from your property?

12 A. It was across a half mile. So at an angle, it's
13 a little more of --

14 Q. Okay.

15 A. -- whatever the linear distance is. But it was
16 the usual things that other people have testified to
17 today with all of the -- I think it was essentially the
18 boilerplate from their proposals, but it was somewhere
19 around \$19,000 to go across that property for the
20 perpetual -- I guess it's not perpetual, but to me it
21 is, 99-year lease.

22 Q. Okay. And was it a distance of 1.5 miles and
23 7.466 total acres that they were wanting to take from
24 you?

25 A. Yeah. I think the 1.5 miles might be a little

1 long because it's just right kind of at an angle across
2 a half section so it's -- yeah.

3 Q. Okay. And there's a map attached. If we look
4 at what's labeled as Exhibit B, preliminary route -- and
5 we saw it also on Exhibit 143. It essentially cuts
6 across portions of the middle of your property and then
7 the upper third on Exhibit 143 on the parcel to the
8 left-hand side; correct?

9 A. Yes.

10 Q. Okay. And how would that affect the use and the
11 value of your land, in your opinion?

12 A. Well, as we've heard and had extensive
13 testimony, and my opinion equals what everybody else has
14 said, and that is that the property would be devalued by
15 having the hazardous pipeline on my property.

16 Q. Let's talk about the -- in addition, the written
17 communications you've had with Summit, have you had some
18 meetings directly with Summit representatives --

19 A. Yes. I've had --

20 Q. -- about the proposed Summit pipeline?

21 A. Yes. I think I had rather extensive meetings
22 with Summit. I've had two meetings with a Dave Nehring.
23 I've known Dave for quite a while. He identified me as
24 a landowner representative, that he was going to
25 represent the landowners with regard to negotiations

1 with Summit. So that was the summer.

2 So we -- I remember I got the letter in April of
3 '22, which I said no. And I met with him up at City
4 Brew here in Bismarck, had a -- had a cup of coffee and
5 just -- we just kind of -- we just kind of talked in
6 general. But I told him philosophically, Dave, where
7 I'm coming from, and that is -- and I know, point one --
8 and I've been consistent on this, Commissioners, since
9 day one. My first point, eminent domain. I know that's
10 not here, but I was opposed to the taking of the land.
11 Number two, the safety issues with regard to the
12 pipeline. And the third issue was regarding -- I
13 introduced at that time that I felt that my land, I was
14 certainly not interested in having my land taken, but
15 also that this land was too close to Bismarck. And I
16 just outlined to Dave at that time --

17 Q. Okay.

18 A. -- that's what that was.

19 Q. And then subsequent to your meetings with Dave
20 Nehring of Summit, did you have other face-to-face
21 meetings with Summit representatives?

22 A. Yes, I did. Actually, at that time I think
23 that's when they did the -- the alteration, the big
24 alteration of the line.

25 And I met in the fall of '22 with Dave. And he

1 asked for a meeting. He said he had new information for
2 me. And I said, okay, I'll meet with him. We met at
3 City Brew again. And he showed me on his phone. He
4 didn't have any real detailed maps, but he showed me on
5 the phone, which alarmed me considerably because now the
6 pipeline not only went through a half mile of section 27
7 the first time, but it now went through another half
8 mile on section 29. And so now I am faced with one mile
9 of my property of being affected.

10 And I shared with him that "Dave, this is
11 certainly unacceptable. Take this back to your folks,
12 and that -- and unless this pipeline is taken off my
13 land or it's significantly rerouted, we don't have
14 anything to talk about."

15 Q. Okay. And then after meeting with Mr. Nehring,
16 did you meet face-to-face with some other Summit
17 representatives?

18 A. Yes, I have. I had a meeting, and I don't
19 necessarily have to elaborate on all of them, but I
20 wrote them down:

21 December 22 I had a meeting actually at your
22 office, and at that meeting was Commissioner Bitner,
23 Mayor Schmitz, Wade Boeshans, and I think Jeff Skaare
24 was at that meeting;

25 Had a meeting December 27th;

1 Had a meeting January 17th, 2023, with a Jimmy
2 Powell, Bruce Rastetter, Wade Boeshans, and Jeff Skaare
3 were there;

4 And then the one that Mr. Wachter alluded to on
5 May 15th, 2023.

6 And I reemphasized that at all of those meetings
7 I made it very clear that, first of all, I was not
8 really interested in meeting to hear about Summit or the
9 economic advantages or anything like that. I was
10 interested in my three points which I talked about, but
11 especially moving this route away from Bismarck because
12 of the barrier effect and the effect on the long-term
13 economic health of the community.

14 Q. Okay. So at each of those four meetings, was
15 the topic of discussion that you brought up and what was
16 discussed with Summit was moving the pipeline further
17 away from Bismarck?

18 A. That's correct.

19 Q. Okay. Mr. Powell testified before the PSC on
20 March 14 that you never raised that topic on the meeting
21 you had with him, with Mr. Rastetter and Mr. Powell,
22 here in Bismarck on January 17, '23. Would I understand
23 from your testimony that that -- what Mr. Powell
24 testified to is false?

25 A. That's false and not accurate.

1 Q. And then let's turn to the meetings where you
2 met on December 27 and January 17. At each of those
3 meetings with the Summit representatives, did they
4 suggest to you that they were looking into an
5 alternative route around Bismarck?

6 A. Yes. They led me to believe that.

7 Q. Okay. And then finally you had the meeting on
8 May 15, 2023. And that was with Mr. Wachter, Mr.
9 Moldenhauer, and you?

10 A. Yes.

11 Q. And the representatives of Summit that were
12 there were whom?

13 A. Yeah. Wade Boeshans was there, Jimmy was there,
14 and then I didn't catch his last name, but Lee, Lee
15 somebody. I don't know what his last name was. And
16 that was over at Summit's office on the east side of
17 Bismarck.

18 Q. And out of the three of them, did Mr. Powell
19 seem to be the one that was the highest up and had the
20 most authority for Summit?

21 A. Yes. Yeah, he's the COO, I think, yeah.

22 It was interesting at that meeting, that was
23 where we first heard -- because, you know, we had
24 followed the testimony down in Emmons where he said that
25 he was going to look at the southern route, and then The

1 Bismarck Tribune said that they were going to look at
2 the southern route, and then Jimmy said that we're --
3 we're just not going to do it. Told us at that meeting.

4 They did lead us to think, the three of us,
5 Chad, Chad, and myself, to lead us to think that -- that
6 they were going to rework the northern route and to take
7 a look at moving it out a little farther. And they have
8 this computer images and things that they have over at
9 the Summit office where they can project a map up and
10 they can project some things there.

11 Q. And did he tell you, as Mr. Wachter testified
12 to, that Mr. Powell said they would need to talk to
13 their board of directors about moving the route to a
14 location further outside of Bismarck at their board
15 meeting the following week?

16 A. Yes. It was the next Tuesday.

17 Q. Okay.

18 A. Yes.

19 Q. And did Mr. Powell tell you that he would get
20 back to you about the results of that board meeting
21 about moving the pipeline?

22 A. Yes, he did.

23 Q. And did he tell you that he would get back to
24 you shortly after that meeting took place, a week later,
25 which would be, roughly, May 23, 2023?

1 A. Well, I -- you know, I was led to believe
2 there's a sense of urgency, you know, on their part.
3 They were -- they were wanting to meet and there's a
4 sense of urgency. And I think we all heard that there
5 is a sense of urgency on their part to get the permit
6 and to get, you know, things done before these hearings
7 so that they can -- they can move on so...

8 Q. Did Mr. Powell ever get back to you about what
9 the board of directors decided and what they were
10 willing to do to move the route after the May 15 --

11 A. This is kind of interesting. It has to do with
12 their customer service. No offense. But last week when
13 it was Memorial Day weekend we had our family reunion in
14 Minneapolis, and I get a picture from FedEx, my backdoor
15 with a plastic bag and a FedEx envelope hanging on my
16 backdoor, and it came from some outfit down in Texas.
17 And I told my wife, "What did you buy this time?"

18 And so we get home on Sunday night. This is
19 Sunday night, Memorial Day is the next day. And I open
20 this up and it's a letter from Jamie DiMeo -- I don't
21 know if I'm pronouncing it again -- stating that
22 Summit's going to survey my land. And then they talk
23 about the Judge Narum decision and all of this.

24 The interesting part is, is that it was hanging
25 on my door at 11:26 in the morning on Friday. I -- I

1 get the envelope Sunday afternoon. And it's that
2 Sunday, it says from Sunday to June 30th that they're
3 going to access my land. They warned me.

4 Q. And they sent it Friday afternoon and they were
5 going to come out as soon as Memorial Day?

6 A. Two days later.

7 Q. And is that what's been marked as Exhibit 187?

8 A. That's correct.

9 Q. That's the letter that was in the FedEx --

10 A. That's correct, yeah.

11 Q. And did you ever give them permission to conduct
12 a survey on your property?

13 A. No. That was actually the second time.
14 July 11th of '22, Jamie sent me a letter wanting to
15 survey and I said no. This was the second request.

16 And I can't pull it up on my phone, but I did
17 ask that you craft a letter for me, which I sent to Wade
18 and to Jeff Skaare, to Wade Boeshans and to Jeff Skaare,
19 that I have concerns about this, the timing of it. I
20 thought that it was inappropriate. I thought that I
21 would like to have this -- this forcing the survey on my
22 land investigated a little bit more further, whether or
23 not this judge's decision is in Burleigh County. I just
24 wanted some more time. And I asked some questions and I
25 have not heard back since then.

1 Q. And is that the email that you sent which is
2 Exhibit 188?

3 A. That's correct.

4 Q. And that was sent by you on May 30 so the day
5 after Memorial Day and sent to Mr. Boeshans and to
6 Mr. Skaare?

7 A. Yeah.

8 An interesting sidebar to this, Commissioners,
9 the saga gets a little thicker, and that is, is that a
10 neighbor called me here while I'm at this meeting and
11 said that "The Summit survey crew pickups are one mile
12 west of your property. It looks like they're heading
13 out to your property."

14 So I'm sitting in here, you know, waiting to
15 testify and I've got -- and, you know, the right hand
16 doesn't know what the left hand is doing. Summit is out
17 -- and I don't know if they accessed or trespassed on
18 the land or, you know, the status of that, but that's
19 alarming to me as a citizen.

20 You know, I was involved with city government
21 for 12 years and, you know, process and policy is just
22 not being adhered to. And I feel offended about that.

23 Q. Now, let's talk about the property where they're
24 proposing to take this easement from you. In terms of
25 the value of this property, you talked about Solberg

1 Butte. And that's one of the few buttes north of town
2 that has some significant elevation?

3 A. Yeah, across northern Burleigh County. There's
4 Burnt Butte, Keever Butte, which has got the big antenna
5 north of the gun club, Solberg Butte, and then Sibley
6 Butte north of Menoken, I think.

7 Q. Okay. So is that --

8 A. Steele.

9 Q. -- someplace that you and your family go, is the
10 top of Solberg Butte?

11 A. Absolutely. My kids have a camping site up
12 there.

13 Q. Okay. And what can you see from up there?

14 A. Well, I can see Emmons County. I can see nearly
15 down to St. Anthony. I can see I-94. I can see the
16 state capitol. And, you know, the view is magnificent.

17 Q. And then in terms of your property, do you have
18 any native grasses on that property?

19 A. Absolutely. My favorite grass is big bluestem,
20 and I've got quite a bit of it on there. And I try to
21 nurture that grass. If you know what big bluestem is,
22 it's a great grass to have. It's -- it shows that
23 you're taking care of the land.

24 By the way, Commissioner, I'm doing a lot of
25 NDSU's -- we're talking a little ranch talk here. I'm

1 doing a little bit of NDSU's planned grazing, the self
2 grazing, and it really works. We increased our carrying
3 capacity significantly.

4 Q. And then in terms of the -- that property and
5 the value of that land, why don't we turn to
6 Exhibit 193. That's the map we looked at before. Do
7 you have that available to you?

8 A. Getting it up here.

9 Sorry. I have to go off the top of my head.

10 Q. Okay.

11 A. Is that the full map?

12 Q. That's the map that shows the line --

13 A. Got it.

14 Q. You should have that in your binder.

15 A. Have it memorized.

16 Q. Okay. And there's a subdivision -- a few
17 existing subdivisions directly south of your land,
18 Country Hills 2nd Subdivision and Country Creek
19 Subdivision and Sky Line Estates, which are, roughly, a
20 little over a mile or so away from the proposed pipeline
21 going through your land. Those are established
22 subdivisions. Is that your understanding?

23 A. That's just south of that section 29 about a
24 mile. I think they call it Heritage Heights. That's a
25 Mariner subdivision. That land sold for 25,000 an acre.

1 The land in between my -- my half section, section 27
2 and section 29, my neighbor's, I think it's JR Land,
3 they value their land at 30,000 an acre.

4 Q. Okay. And switching topics, one of the exhibits
5 we submitted was Exhibit 116, was a letter from yourself
6 and Former Mayors Steve Bakken and Hawk Haakenson,
7 requesting the pipeline to be moved and indicating that
8 the proposed pipeline route is in the direct path of
9 development of Bismarck. How did that letter come
10 about?

11 A. I thought it would be interesting for the
12 Commission to hear what former mayors thought and so I
13 contacted those two mayors. The other -- the other two
14 mayors that were prior to this time, I could not get
15 ahold of them.

16 But I got ahold of Mayor Hawk Haakenson, you
17 know, quite a colorful character as mayor of the city of
18 Bismarck. And I took that map over that has the
19 911 points on it that the county generated. He looked
20 at that for five seconds and said, "I'm in. What can I
21 sign? This is in the wrong site for the city of
22 Bismarck." Also, Steve Bakken, Mayor Steve Bakken, he
23 is -- signed the letter as well.

24 And I didn't ask Mayor Schmitz to sign the
25 letter, but he voted for -- he sits -- as you know, the

1 mayor sits on the Burleigh County Planning Commission.
2 He voted, one of the 9-0 votes for Burleigh County
3 Planning and he was one of the unanimous votes on the
4 Bismarck City Commission for their resolution on the
5 pipeline. So I felt that he kind of had signed the
6 letter, but he really didn't.

7 Q. Okay. And then in terms of the economic impact
8 not only to you but to other individuals with property
9 which is in the path of development and is close to the
10 extraterritorial limits where this pipeline is proposed
11 to go, do you think if that pipeline would go in there,
12 it would have a significant economic impact on
13 development in that area?

14 A. You know, I -- you know, if you look at -- in
15 Burleigh County, you heard earlier, there are 1,247 dots
16 or 911 spots in Burleigh County within two miles of this
17 proposed pipeline. And, you know, you've heard
18 extensive testimony. These are people who have their
19 dreams, their retirement dreams there. These are their
20 major investment. These are homes.

21 You just take a look at my son's home. We look
22 at that as kind of our family home. You know, Jenny and
23 I have four kids, we have 15 grandchildren. That's our
24 family home there.

25 And if you translate these 1,247 -- that's not

1 1,247 people. These are 1,247 homes. I feel sorry for
2 those people. And I can see why the citizens of
3 Bismarck, why the citizens of Burleigh County are rising
4 up. This does not make sense to have them impacted like
5 this. Their lifelong dreams, have those dreams taken
6 away.

7 Q. Okay. And someone might say that you're
8 involved as an intervenor in this matter because you're
9 personally affected. Is that your motivation for
10 becoming an intervenor in this action, is just because
11 you're a property owner?

12 A. There's no doubt I'm personally affected. I
13 will say that. But I -- you know, those of you that
14 know me, those of you that don't know me, you know my
15 reputation. I'm an altruistic person. I did not sit --
16 leave my wife alone for 300 city commission meetings,
17 most with public hearings -- and I very much appreciate,
18 you know, the fact -- your attentiveness actually at
19 this time of night for public hearings.

20 You get an affinity, you know, for the citizens
21 that you represent, you know, the health and the safety
22 of your citizens. And I deeply feel this. It is from
23 the bottom of my heart. My community is being affected
24 by this. This is my community. And I -- I -- I want
25 this pipeline moved so that our community is safe, so

1 that the economic future of this community is not a
2 detriment, and that the citizens right now -- it's a
3 rural residential area. It's there right now, as
4 somebody previously said. So, yes, I'm going on and on,
5 but you get the point.

6 Q. I have no further questions.

7 A. Thank you.

8 ALJ HOGAN: All right. Mr. Mahlberg, are you
9 asking questions?

10 MR. BAKKE: I'm just going to note for the
11 record I exceeded my best time so far in the hearing.
12 32 minutes.

13 (Laughter)

14 ALJ HOGAN: Greatly appreciated.

15 COMMISSIONER HAUGEN-HOFFART: So noted.

16 ALJ HOGAN: Well, you had a good witness to work
17 with too. I won't let you take all the credit.

18 THE WITNESS: I tried to be Will Rogers. Be
19 brief, be sincere, and then be seated. That's what I
20 tried to do.

21 MR. MAHLBERG: Dr. Warford, I don't have any
22 questions for you. Thank you.

23 THE WITNESS: Thank you very much, sir.

24 ALJ HOGAN: Mr. Pelham, any questions?

25 MR. PELHAM: Yes, I have a few.

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CROSS EXAMINATION

BY MR. PELHAM:

Q. Good evening, sir.

A. Yes.

Q. Talking about that May 15th meeting, approximately how long did that meeting last?

A. About an hour.

Q. Who called the meeting again?

A. Well, it was -- it came from approximately a week earlier from a group of concerned Bismarck and Burleigh County citizens met with Senator Hoeven and Senator Cramer down at the Federal Building. And we shared our concerns with the two senators. And they -- about an hour and a half. And the conclusion of the meeting was Senator Hoeven said that "I will try to arrange a meeting with some decisionmakers at Summit for you to air your grievances with them." So that's how the meeting came about.

So then Wade Boeshans gave me an email. We came up with a time. Mr. Wachter's time was accurate. The meeting was originally at 1:00 and Mr. Powell's plane didn't -- couldn't arrive so it was at 2:00 that day.

Q. So it's interesting to me, at least the timeline that was provided. It looks like there's a December 22, 2022, meetings, two of those, a January 17th, 2023,

1 meeting between you and Summit Carbon Solutions
2 representatives, and then about five months later in
3 May. No other meetings between that January 17th, 2023,
4 meeting and the May 15th, 2023, meeting?

5 A. Well, remember, I had been threatened to be
6 sued. No news is good news to me.

7 Q. Fair enough.

8 So the meeting took place on the 15th. And I
9 believe you testified, sir, I don't mean to put words in
10 your mouth so if I'm stating this inaccurately, you were
11 led to believe that there was going to be a route
12 change. What led you to believe that?

13 A. I made that a requirement with Mr. Boeshans. I
14 said, "I'm not interested in meeting unless you want to
15 talk --"

16 Q. So at the --

17 A. "-- about movement," yes.

18 Q. You left the meeting then, so that was
19 pre-meeting. You left the meeting. What, after leaving
20 the meeting, were you led to believe that the route
21 would change? What led that --

22 A. Okay. Mr. Wachter stated that -- that I left
23 the meeting being rather happy. I was not happy.
24 Because I felt that the fact that it had to go to the
25 board -- this was not my first meeting. And I'd -- I

1 kind of heard this before. I thought they were, not
2 disingenuous but just trying to get rid of me, so to
3 speak.

4 Q. Do you believe they were leading you on then?

5 A. Say again.

6 Q. Do you believe they were leading you on --

7 A. Yes.

8 Q. -- at that meeting?

9 A. Yes. I think I was, yeah. Yeah, they said that
10 they were going to talk to the board. I mean, this is
11 the COO going to talk to the board. That's -- I felt
12 that maybe something would happen.

13 Q. Did they ask you at that meeting in May to do
14 anything or to refrain from doing anything?

15 A. No.

16 Q. Did they say anything about what they wanted
17 from you at that meeting?

18 A. No.

19 Q. And no follow-up whatsoever other than the FedEx
20 letter you got?

21 A. Yes. I got -- got the voice card and the --
22 yeah.

23 Q. And did I hear you -- your testimony today is
24 that, at the meeting today, you believe that there was a
25 survey crew at your property?

1 A. Yes. One of my neighbors, you know, said he --
2 they were a mile from the place. That alarmed me. I
3 mean, you know, you've got pickups driving around. And
4 I will state that there are cattle on both of those two
5 half sections right now, registered Angus cattle. Very
6 valuable cattle. And, you know, anecdotally, there's
7 gates left open and we've heard about that and I just --
8 as a rancher and you as a rancher, you know, you don't
9 want the gates left open and, you know, what happens.
10 So I was concerned.

11 Q. Thank you, sir. I don't have any other
12 questions for you.

13 A. Thank you.

14 ALJ HOGAN: Mr. Jorde, any questions?

15 MR. JORDE: Yes.

16 CROSS EXAMINATION

17 BY MR. JORDE:

18 Q. Doctor, you had mentioned that someone by the
19 name of Lee was also at this meeting; is that correct?

20 A. Yes. Yes.

21 Q. Does Lee Blank sound familiar?

22 A. I think that sounds right, yes.

23 Q. Are you aware if he's the chief executive
24 officer, the CEO, of Summit Carbon Solutions?

25 A. He did not identify himself as that.

1 Q. When -- so you've met -- assuming it was Lee
2 Blank and assuming that he is the CEO, at least that's
3 what their website says, you met with the CEO, the COO,
4 and Bruce Rastetter, the founder, the promoter of the
5 whole business. And so when they said they needed to
6 talk to their board, did you understand their board was
7 anyone other than the three people you had already
8 talked to?

9 A. I was led to -- this last meeting, I was led to
10 think that these were the decisionmakers and I was a
11 little disappointed that they had to go to the board. I
12 did not know all of the dynamics. I haven't looked it
13 up. But I was disappointed.

14 Q. But did they tell you who the board was or do
15 you think --

16 A. No.

17 Q. -- that was just an excuse to pass --

18 A. No.

19 Q. -- the buck?

20 A. Back in Iowa, though.

21 Q. Okay. All right. Thank you, Doctor.

22 ALJ HOGAN: Commissioner Christmann.

23 COMMISSIONER CHRISTMANN: Clarify for me. I
24 think we've had it along the way at one of the hearings,
25 but your two parcels of land, how far is that from the

1 city limits of Bismarck?

2 THE WITNESS: The city limits. Well, I can say
3 from the ETA it's about a mile. So the city limits
4 would be two miles in from the ETA. So maybe three
5 miles from the city limits.

6 COMMISSIONER CHRISTMANN: So is it fair to say
7 from your long service to the City of Bismarck, has
8 Bismarck benefitted immensely from the oil and gas
9 industry these last 10, 15 years since that really took
10 off?

11 THE WITNESS: Absolutely.

12 COMMISSIONER CHRISTMANN: And has Bismarck
13 benefitted greatly from decades of the -- of the coal
14 and synthetic natural gas industry up in Mercer --

15 THE WITNESS: Absolutely. I'm a supporter of
16 our -- the Bakken shale oil, all of that. I'm a
17 supporter of the lignite coal. I'm also a supporter of
18 utilizing carbon for oil recovery. It's just this
19 pipeline. And we've heard it almost ad nauseam here
20 today of why I'm opposed to it, Commissioner.

21 COMMISSIONER CHRISTMANN: So when you had your
22 meeting where I thought I sensed earlier that you felt
23 some potential optimism of them, not when the discussion
24 was going south of town, but just moving farther out --

25 THE WITNESS: Yes.

1 COMMISSIONER CHRISTMANN: -- was your impression
2 at that time that they were talking another mile or two
3 to give more buffer or moving way out into other
4 counties? Or what kind of distance farther did you
5 imagine --

6 THE WITNESS: I was talking miles. You know, I
7 was talking in the neighborhood of the Burleigh County
8 type of thing. Ten miles is -- you know, it is shared,
9 you know, the Satartia, you know, plume and, you know,
10 it went 24 miles in just --

11 It was kind of interesting where they said,
12 "Well, how far do you think?" And kind of my answer to
13 them was, you know, "You have all the engineers. You do
14 the siting. You know where the antiquities are. Why
15 don't you come up with a solution rather than to ask
16 me?" I'm not a pipeline expert, but I do know the --
17 sort of the economics of the area. And so that's kind
18 of how that went.

19 COMMISSIONER CHRISTMANN: So now I got to get
20 into where my concern is with really Bismarck and
21 Burleigh County --

22 THE WITNESS: Okay.

23 COMMISSIONER CHRISTMANN: -- position here.

24 THE WITNESS: Okay.

25 COMMISSIONER CHRISTMANN: That oil and gas

1 industry has taken off and benefitted Bismarck because
2 pipelines were built, because railroads were
3 double-tracked, because highways were widened and in
4 many cases four-laned, because power lines were built to
5 service all the other things I just mentioned.

6 Do you think that all that happened more than
7 ten miles from other communities' city limits or
8 territorial -- extraterritorial boundaries?

9 THE WITNESS: Commissioner, infrastructure,
10 whether it be pipelines, roads, streets, infrastructure
11 that is for the benefit of all, for the community, it
12 has an economic benefit for the community, I'm in favor
13 of. But a CO2 pipeline built by a company that's never
14 built a pipeline before, and we heard testimony that,
15 you know, they may have some issues with who they've
16 hired to build it, and it is just essentially taking
17 waste CO2 with no economic benefit to our community and
18 putting it over in your county, I have a problem with
19 that. That has nothing to do with our economic -- in
20 fact, that's a barrier. All the other infrastructure is
21 an advantage.

22 COMMISSIONER CHRISTMANN: Would you be
23 comfortable with this if it was taking CO2 from the
24 North Dakota industries and shipping it elsewhere to be
25 used for something -- you know, for greenhouses or

1 things like that but on the same route?

2 THE WITNESS: Well, you take the Blue Flint
3 which just announced this week and that's what, a
4 three-mile pipeline and, you know, they -- they said
5 that 71 percent of the landowners is voluntary, but it's
6 a three-mile pipeline just right away from the plant.

7 I'm not sure if you're saying, if it would be
8 reversed the other way, would I be happy about that?
9 No. I -- you know, the CO2 pipeline proximity, first of
10 all, through a rural residential area in the path of
11 growth of the city of Bismarck, that's my issue.

12 COMMISSIONER CHRISTMANN: Thank you for
13 explaining it.

14 THE WITNESS: Thank you very much.

15 ALJ HOGAN: Commissioner Haugen-Hoffart.

16 COMMISSIONER HAUGEN-HOFFART: Yeah, a couple
17 questions. What date did the concerned citizens meet
18 with the two senators? Do you remember the date?

19 THE WITNESS: Can't remember the date but it
20 would be -- I could get it to you. It was about two --
21 it took about --

22 COMMISSIONER HAUGEN-HOFFART: Two weeks --

23 THE WITNESS: -- two weeks, ten days to
24 two weeks to make that happen.

25 COMMISSIONER HAUGEN-HOFFART: I'm sorry, I was

1 talking over you.

2 THE WITNESS: It took me -- from the senators'
3 meeting, it took maybe 10 days to 14 days before the
4 meeting actually happened.

5 COMMISSIONER HAUGEN-HOFFART: On the 15th?

6 THE WITNESS: Correct.

7 COMMISSIONER HAUGEN-HOFFART: How many people
8 were there, the group of concerned citizens that met
9 with the --

10 THE WITNESS: 15 or 20. Filled the downstairs
11 conference room.

12 COMMISSIONER HAUGEN-HOFFART: And where did you
13 meet?

14 THE WITNESS: The downstairs conference room on
15 the first floor at the Federal Building in Bismarck.

16 I might add I'm very grateful for the senators
17 to do that. They were very good to us.

18 COMMISSIONER HAUGEN-HOFFART: Did you have any
19 follow-up with the senators after -- did you leave it --
20 like I know Senator Hoeven arranged the meeting on the
21 15th.

22 THE WITNESS: Yes.

23 COMMISSIONER HAUGEN-HOFFART: Do you have any
24 plans to meet with the senators after this meeting?

25 THE WITNESS: I did not. I texted both of them

1 "Thank you for the meeting."

2 COMMISSIONER HAUGEN-HOFFART: Okay. No further
3 questions.

4 THE WITNESS: Thank you.

5 COMMISSIONER HAUGEN-HOFFART: Thank you so much
6 for -- you've spent two long days at our hearings.

7 THE WITNESS: Thank you. But my job was not as
8 hard as what yours is so thank you.

9 ALJ HOGAN: Mr. Dawson, any questions?

10 SUBSTITUTE DECISIONMAKER DAWSON: Every time I
11 have a wonderful question, Commissioner Christmann beats
12 me to it. I have no questions.

13 THE WITNESS: Thank you.

14 ALJ HOGAN: All right. Any redirect, Mr. Bakke?

15 MR. BAKKE: Just briefly.

16 REDIRECT EXAMINATION

17 BY MR. BAKKE:

18 Q. Do you see any benefits to North Dakota in
19 having this waste CO2 come from other states to be
20 injected in the ground here?

21 A. Zero benefit.

22 Q. Okay. You were asked some questions about, you
23 know, the benefits that North Dakota has reaped in the
24 oil industry and the infrastructure and the build-out
25 and there may be locations in western North Dakota where

1 some of this oil and gas infrastructure is close to
2 town. And you explained your thoughts on that, that
3 that's a different situation, including the fact that
4 this CO2 has no value.

5 But is another significant difference between
6 western North Dakota and the advantages and benefits we
7 got, that this is CO2 not from the oil fields in western
8 North Dakota, but this is from ethanol plants, 31 out of
9 32 which are from other states and provided no benefit
10 to North Dakota because they're out-of-state ethanol
11 plants?

12 A. Just my opinion that, you know, all of this is
13 for green ethanol, which is actually the same ethanol.
14 They just get rid of the carbon so it can be sold to
15 California. And so, yeah, it's -- it's a little bit
16 mind-boggling for me that I'm having to sit before you
17 today.

18 Q. Okay. And just one final question. If you look
19 at Exhibit 192, that's an email from Mr. Boeshans at
20 Summit on January 4, addressed to you and to me. And
21 does Mr. Boeshans indicate, in regard to the meeting the
22 prior week, that the purpose of that meeting on
23 December 27 was, in fact, to discuss an alternative
24 route around Bismarck because he says, quote, "Reaching
25 resolution on the route around Bismarck is one of our

1 highest priorities," end quote?

2 A. That's correct. I received that email.

3 Q. Okay.

4 MR. BAKKE: I have nothing further.

5 ALJ HOGAN: Mr. Mahlberg, any questions?

6 MR. MAHLBERG: No, thank you.

7 ALJ HOGAN: Mr. Pelham.

8 MR. PELHAM: No, Your Honor.

9 ALJ HOGAN: Mr. Jorde.

10 MR. JORDE: No.

11 ALJ HOGAN: Any other commissioner questions?

12 All right. Thank you, Doctor.

13 All right. Mr. Bakke, you have about

14 40 minutes.

15 MR. BAKKE: Okay.

16 ALJ HOGAN: Do you have another witness you want
17 to call?

18 MR. BAKKE: I do.

19 ALJ HOGAN: Okay. Go ahead.

20 MR. BAKKE: We'll call Chad Moldenhauer.

21 ALJ HOGAN: Good evening.

22 CHAD MOLDENHAUER: Good evening.

23 ALJ HOGAN: I'll have you state your name and
24 spell your last name for the record.

25 CHAD MOLDENHAUER: My name is Chad Moldenhauer.

1 C-H-A-D, Moldenhauer, M-O-L-D-E-N-H-A-U-E-R.

2 ALJ HOGAN: Mr. Moldenhauer, you were in the
3 room earlier when I went through the penalties for
4 perjury?

5 CHAD MOLDENHAUER: Been in the room for a long
6 time so that would be yes.

7 ALJ HOGAN: Probably more than once. Do you
8 understand what perjury is?

9 CHAD MOLDENHAUER: I do.

10 ALJ HOGAN: And being advised of the potential
11 penalties for perjury, do you promise to tell the truth
12 in this case today?

13 CHAD MOLDENHAUER: Yes, I do.

14 ALJ HOGAN: All right. Thank you.
15 Go ahead, Mr. Bakke.

16 **CHAD MOLDENHAUER,**

17 being first duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. BAKKE:

21 Q. Mr. Moldenhauer, are you a lifelong resident of
22 Burleigh County and Bismarck?

23 A. Yes, I am. When I was in school, I spent some
24 time in Moorhead going to Concordia College and after
25 that Grand Forks, going to University of North Dakota

1 School of Law. But in the summers I always came back
2 and worked for our company.

3 Q. Okay. And can you tell us what your family
4 business has been including up to the present?

5 A. Sure. My -- my father, Kelly, and my mother,
6 Launa, moved to town here in Bismarck in 1978. And my
7 father was a shop teacher and built his first spec home
8 that first year in 1978, and after ten years he built
9 progressively more and more homes and retired from
10 teaching back in 1988. And for that next 30-some years
11 he had K & L Homes here in Bismarck and did some land
12 development as well. In the time that he owned the
13 company, he built over 400 homes.

14 I took over back in 2009. And since that amount
15 of time I've been -- I've been building homes in the
16 community and developing as well.

17 Q. Okay. And can you tell the commissioners some
18 of the developments that you've been involved in
19 building and your family has in the Bismarck and
20 Burleigh County area?

21 A. Sure. You know, like I said, I've been involved
22 in the company for a very long time, but our very first
23 development, the large scale development, started back
24 in 2001 prior to my ownership of the company. That
25 development is K & L's development. It was done over

1 six phases and consists of about 175 lots. The last of
2 those projects I actually finished up when I took over
3 the company in 2009 and there were probably 40 lots in
4 that last chunk of the last two years.

5 After I got done with K & L 6th Addition, I
6 moved up to Promontory Point and built some homes up
7 there for several years.

8 And then I purchased land, starting actually
9 in 2012, adjacent to 57th Avenue and west of Washington
10 in Bismarck. In 2016 actually the developments were
11 approved and we started our first homes in Heritage Park
12 and Heritage Ridge in Bismarck.

13 Heritage Park is a community that has -- caters
14 to maintenance-free living. We have a lot of
15 retirement-age people in that community. There are
16 currently two phases of that development of which we're
17 about two-thirds full. And of those two phases, we have
18 about 190 lots. And I built every one of the homes in
19 those two phases.

20 We also have a sister development right next
21 door to that. That's Heritage Ridge. That development
22 consists of 90 lots. And I think we're about two-thirds
23 of the way through that development too. We built all
24 those homes.

25 I've got some other properties that we work

1 into. I've got a new development we're doing called
2 Heritage Cottages. And then I just started back a few
3 years ago on a new development up north called Heritage
4 Reserve which is consisting of 60 lots.

5 Q. Okay. And let's focus on Heritage Reserve
6 because that is the development of yours that is very
7 close to the Summit pipeline; is that correct?

8 A. That is correct.

9 Q. Okay. And if we look at Exhibit 196 -- you have
10 that in your binder.

11 A. Okay. I apologize. There's a lot here.

12 Q. Yes, there is.

13 A. Okay. I think I'm on 196.

14 Q. Okay. And does that show the location of your
15 Heritage Reserve project?

16 A. Yes, it does.

17 Q. Okay. And we can see on the left-hand side of
18 Heritage Reserve a road. Is that Highway 83?

19 A. Yes, it is.

20 Q. And then what's shown on there for the location
21 for Heritage Reserve, is that the entire parcel of what
22 the intended development covers?

23 A. That's correct. I own 245 acres in that area,
24 which I own under my development company here, Heritage
25 Development. The first phase consists of 60 lots over

1 77 acres. The plan build-out right now is 180 lots.
2 That could be adjusted a bit given the fact that those
3 future phases haven't been approved yet so it could be
4 anywhere from, you know, 180 to 200 by the time it gets
5 done.

6 Q. Okay. And the 60 lot is -- 60 lots, is that
7 where you presently have infrastructure installed?

8 A. That's correct.

9 Q. Okay. And then how many homes have been built
10 on those 60 lots so far?

11 A. So we have ten completed homes in that
12 development right now. We have three more under
13 construction, a few others that we're designing as well.
14 Of the 60 lots that we have there, I believe we have 15
15 to 20 sold at this point.

16 Q. And then what are the size of those lots and
17 what is the typical range of the home prices in that
18 Heritage Reserve development?

19 A. Sure. So just to give you a little bit of
20 background on, you know, the reason behind Heritage
21 Reserve, I wanted to kind of have kind of an option for
22 people that maybe want larger lots than your typical
23 average city size which is a third of an acre but not
24 quite as big as maybe a 5 or 10-acre parcel which can
25 mean just a lot more maintenance for people. I thought

1 that one acre was a pretty good number to go with.
2 Anything smaller and it's like you're in a city lot.
3 Anything bigger and, like I said, it's just a little
4 more maintenance than people are looking for. So the
5 largest lot that we have in the development is about
6 1.2 acres.

7 Q. Okay. And perhaps a better map to look at would
8 be Exhibit 197. Is that the actual plat map that shows
9 the layouts of the lots and the different phases?

10 A. Yes. That's the -- that's the total build-out
11 map. So the first phase is going to be labeled in red.
12 And then the additional phases that are proposed to come
13 after that will follow to the north.

14 Q. Okay. And so is phase one the 60 lots you
15 talked about?

16 A. Correct.

17 Q. Okay. And so what is the -- for the homes, the
18 ten completed homes in phase one, what is the price
19 range for those? What is the low end and what is the
20 high end?

21 A. Sure. So a lot of times when I -- when I sell a
22 home in that subdivision, we include the lot, we include
23 the landscaping and the house itself. The least
24 expensive home that we've sold so far this year in that
25 development -- or excuse me, since the start of that

1 development, which is about two years I've been building
2 homes there, is about \$750,000. The most expensive home
3 in that development is going to be closer to about
4 1.5 million.

5 Q. Okay. And is that the expected price range, not
6 accounting for inflation, that you would expect for the
7 homes in that development moving forward?

8 A. It is. I'm a little different than most
9 developers in that I'm developing land for my company to
10 build on. And so we don't generally open up our
11 developments to other developers or builders in the
12 community. So we are, I think, a very well-respected
13 company in town and we do build a more high-end home.

14 Q. Okay. And then can you take a look at
15 Exhibit 199? That's an aerial view. I think you had an
16 extra copy. I think it's actually --

17 A. Yeah, I don't think it's --

18 Q. -- a photograph that you obtained.

19 A. So I know the document that you're referring to.
20 I haven't been in this room all day; either fortunately
21 or unfortunately, had a closing this morning up at
22 Heritage Reserve and -- and I took that opportunity to
23 take my drone out and take a picture just to give the
24 commissioners a better idea of what the land looks like
25 and kind of the surrounding area that the pipeline is

1 going to be run through.

2 Q. So take a look at Exhibit 199 and identify for
3 the commissioners what that shows.

4 A. Sure. So the development that is closest to
5 where the drone was is Heritage Reserve. You can see
6 off to the left of the entry we have -- we have some
7 signage with the granite backdrop. Off to the right we
8 have additional signage that was placed. And then just
9 right behind that is our -- is our private park that we
10 put in place last year.

11 And then the land, you know, portion of the land
12 that I own right now is actually on the other side of
13 the trees. You can see there's a field that has been
14 tilled. That would be the end of that 245 acres and
15 that 180 lot build-out.

16 I did place an arrow where the pipeline is
17 projected to be placed right now, which is right
18 adjacent to Highway 83, and there's a couple small
19 coulees that it comes out in between. That's kind of
20 how I got my reference.

21 Just past that there is the Prairie View
22 Landscaping, Nursery. And then even further past that
23 is The Ranch subdivision. And that's been discussed
24 earlier in the conversations today. I believe
25 Ms. Andahl said there were 120 lots in that subdivision

1 right now, but there could be a build-out of as many as
2 300 or so.

3 Q. And then the distance that is shown between the
4 north end of the Heritage Reserve property which is
5 identified on Exhibit 195 is approximately 1,900 feet
6 from the north end of Heritage Reserve to the pipeline,
7 where it's projected to go; correct?

8 A. That's correct.

9 Q. Okay. And so let's talk about the contacts that
10 you've had with Summit. And to kind of speed this up,
11 I'm just going to let you kind of chronologically tell
12 the commissioners about the contacts you've had with
13 Summit starting with the earliest one and then bring us
14 to the present.

15 A. Sure. I believe the first contact I had with a
16 Summit representative was back in the fall of 2021. I
17 had a gentleman reach out to me and he had said that the
18 pipeline at that time was currently being sited on 110th
19 Avenue, which is just to the south. And I should
20 probably back up and say he did -- did some cursory
21 introduction of the project that he was working on. He
22 said that he was siting a CO2 pipeline. He said CO2 is
23 expelled in the air that we breathe out. It's in our
24 pop cans. I remember he made that analogy and the CO2.
25 And so it -- to some extent it justified the reason why

1 -- that he was calling me. He said that they wanted to
2 do some surveying work through my property because they
3 were looking at some other routing options.

4 And at that time I didn't ask a lot of questions
5 because, you know, I get called by folks that are
6 possibly considering putting in electrical lines and gas
7 lines all the time in and around my development so it
8 didn't really -- didn't really alarm me. And I guess I
9 thought to myself I don't have to sign an easement.
10 Worst-case scenario, he surveys my land, I learn more,
11 and I decide later that it's not in the right interest
12 of my property.

13 It was probably about two months later that
14 actually a foreman of K & L Homes, when my father owned
15 it, reached out to me and he said, "Have you heard about
16 this CO2 pipeline?" And I said, "Well, I know that
17 there's a pipeline being proposed but not much outside
18 of that." And he talked to me about some of the dangers
19 of the pipeline, went over some of the incidents in
20 Satartia, and gave me enough information that tipped me
21 off this is not something I want anywhere near my
22 subdivision or my developments or my community, for that
23 matter.

24 So I did call that gentleman back. I had a
25 voicemail on my phone at the time. And I got him on the

1 phone and I said, "I have no interest in having this
2 pipeline on my property so please, you know, cancel your
3 surveyors." And that was, I think, the last of what I
4 thought I would hear from Summit Carbon Solutions.

5 It was that next -- that next spring that I
6 actually had a city commissioner -- or, excuse me, a
7 county commissioner reach out to me and say, "I don't
8 know if you saw the commission meeting last night, but
9 this pipeline is sited directly across your property."
10 And that was incredibly alarming to me because I thought
11 I was pretty clear with Summit and the person that I
12 reached out to.

13 So I actually got ahold of Wade Boeshans at
14 Summit Carbon Solutions. I actually had his brother, I
15 believe it was, reach out to me about some possible
16 development land and some potential there.

17 So I explained to him this is land that's going
18 to be used for residential investment. It is not
19 conducive to having a CO2 pipeline anywhere close to it.
20 And I said, you know, frankly, I couldn't stand for that
21 pipeline to be located in that area. He seemed to
22 understand and I thought I had made some headway with
23 Wade. And so I kind of, once again, forgot about it for
24 a while.

25 And then I was reading -- listening on the

1 county commission meetings and they were discussing the
2 pipeline again and they were talking about routing it
3 very close to my area and Highway 83. So I jumped onto
4 Summit's website and I pulled up their pipeline map.
5 And the map was incredibly fuzzy, not in high
6 resolution, but it looks like it was right at the corner
7 of my property at that point, on the north side of my
8 property.

9 So once again I reached out to -- I think the
10 only contact I had -- because Wade had actually called
11 me from his cell phone, I believe -- was the info line
12 at Summit Carbon Solutions. And I reached out to them
13 and said, "Hey, I had a conversation with Wade. It's
14 not good to have this close to my development. It's not
15 good for the company. It's not good for my
16 development." And I got a response back from I think it
17 was a gentleman named Alex Lange and he said that "We
18 actually have submitted our information to the PSC and
19 it's a half a mile to the north of the subdivision."

20 And certainly although I'm not pleased with that
21 distance, it just really has been a mix of emotions with
22 the pipeline because there's been a number of changes
23 and conversations that haven't led where I guess I
24 thought they would at the time.

25 Q. And now the most current location you understand

1 to be less than 2,000 feet from the north end of
2 Heritage Reserve?

3 A. That is correct.

4 Q. Okay. And so were there three different
5 versions of the pipeline in the area north of Heritage
6 Reserve over about a year or so?

7 A. That I'm aware of. One on 110th, one right
8 through the middle of the development -- actually over
9 homes that were -- that were being built at the time,
10 and then one on the north side of the development.

11 Q. Did that suggest to you that moving that
12 pipeline three times in about a year, that Summit does
13 have an ability to move that pipeline if they have the
14 desire to do so?

15 A. I believe it did.

16 Q. Okay. Now, in terms of the homes that you
17 described of -- in Heritage Reserve of being the lowest
18 priced, 750,000, the highest priced, a million five,
19 fair to say these are high-end homes?

20 A. I think that's fair to say, yes.

21 Q. Okay. You would be one of the builders in
22 Bismarck who builds higher-end homes. Is that true?

23 A. I believe so, yes.

24 Q. Okay. And so what effect do you think having
25 the pipeline less than 2,000 feet from your development

1 is going to have on your sales of homes to people who
2 are willing to pay that kind of money for a high-end
3 home?

4 A. Well, I think when people are considering
5 purchasing a lot or buying a new home, there are any
6 number of factors that they consider. Certainly, you
7 know, risks to their health is not one that's typically
8 on the radar. So my concern both directly and
9 indirectly is that the fact this pipeline is so close to
10 the development and it will potentially put people's
11 health at risk but even more so take away their peace of
12 mind. And people aren't willing to invest a lot of
13 money in real estate if they don't at least have that.

14 Q. And what communications have you had with
15 individuals about their willingness to purchase lots or
16 purchase homes in Heritage Reserve with the Summit
17 pipeline being projected to be that close?

18 A. To be honest, I haven't had many direct
19 conversations. And I've always been just a little bit
20 afraid of what that conversation would look like.
21 Because when I work with a client, you know, first and
22 foremost, I want them to know that I'm going to take
23 care of them. And that's how we get clients the second
24 time and a third time. And we have families and -- and,
25 you know, relatives, friends that build with us.

1 So I fear right now if someone were to ask me if
2 it's safe to build a home close to this pipeline, within
3 2,000 feet, I don't feel like I'd be comfortable telling
4 them that they could be safe. And that's a real concern
5 for me.

6 Q. Okay.

7 A. More so -- you know, as much or more so than the
8 monetary equivalent.

9 Q. Okay. I mean, does the possibility that this
10 pipeline will be installed just less than 2,000 feet
11 north of your subdivision put you in what could be
12 characterized as a no-win situation?

13 A. Yeah, it absolutely does. Because if I -- if I
14 stand by and I do nothing and I don't share my concerns
15 with the Public Service Commission, then I can be
16 essentially guilty of remaining silent when I should
17 have been protesting. I think there's an Abraham
18 Lincoln quote that -- something to that extent. If I
19 jump up and down and I say "You could be in danger and
20 we can't get this thing moved," then I could be
21 essentially shooting myself in the foot, which, yeah, is
22 a tough position to be in.

23 I never started Heritage Reserve with the idea
24 that it would be a one-phase development. People don't
25 -- I don't know how much you can tell from the picture,

1 but people don't invest that kind of money in -- in the
2 two separate features at the entranceway.

3 I didn't have to put in a park. There's no
4 other rural development that I know of that has a park.
5 But I wanted to do it because I thought it was something
6 the community could use and I wanted to do it because I
7 thought that it was something that would be justified by
8 future phases.

9 We have a centralized sewer system in the
10 subdivision as well. I didn't have to put in a
11 centralized sewer system, but I did it because I felt
12 like that was the best investment long term for that
13 subdivision.

14 I've invested a significant amount of money in
15 all of the infrastructure that we've put in place as
16 well as some of those features that only make sense if
17 the development continues to build out.

18 Q. And so what would the economic impact be to you
19 and your business if you're not able to carry through
20 with the development of Heritage Reserve due to the
21 installation of the Summit pipeline and concerns by
22 potential buyers that it's just too close and too risky
23 to live that near a high pressure CO2 pipeline?

24 A. I think there's the concept in our community
25 that having a development is just kind of a big money

1 grab. Anybody that could be a developer, there's a big
2 stash of money at the end of the rainbow and everybody
3 gets it.

4 Well, the trick to being a developer is you have
5 to take measured risk. You have to do your research at
6 the outset and you have to understand what the county
7 commission is doing, you have to understand what the
8 county staff expects to see in a development. And then
9 you have to put all your money out front. You have to
10 buy a chunk of land that's very, very expensive.

11 When you do something like this and put the kind
12 of infrastructure that I have in place, the -- that --
13 the end of the rainbow isn't the first phase. It isn't
14 even the second phase. I mean, it's down the road.

15 And so having an unknown like carbon
16 solutions -- Summit Carbon Solutions being within
17 2,000 feet of that -- of that land is really something
18 that could create incredible problems for this
19 development and I think our community going forward.

20 Q. Okay. And in terms of your business and you
21 personally if you're not able to develop all those lots
22 and build the homes on them, do you believe that will
23 result in a significant economic loss to you?

24 A. I think it would be hard to think of it as
25 anything other than that.

1 Q. Okay. There was some discussion by Commissioner
2 Bitner, and I think you may have been here for his
3 testimony, where he presented some information on the
4 tax impact of Heritage Reserve and I think he also
5 talked about The Ranch and what the tax contribution
6 would be to taxes in Burleigh County from Heritage
7 Reserve if all 180 lots were ultimately built on and had
8 homes. Do you recall that?

9 A. I did hear that, correct.

10 Q. Okay. And do you recall the number he gave for
11 the tax?

12 A. Yeah, I -- I have never reviewed the document
13 that he was referring to, but I believe it was like 500
14 and some thousand dollars, something like that, a year.

15 Q. And have you done a calculation as to what the
16 tax implications or benefits would be to Burleigh County
17 when this project is fully built out, the 180 lots?

18 A. So I -- you know, I think one thing that's
19 difficult about any calculation is it's essentially a
20 projection. Right now there are 180 lots planned to be
21 built out in Heritage Reserve. There could be more.
22 There's a possibility there might be a few less. You
23 know, we're asking -- trying to ask questions about, you
24 know, exactly what the tax value will be and the average
25 lot will be, the average value of the home will be.

1 So what I did to try to put it into a number for
2 the commissioners to consider was I took the homes that
3 we have completed in that subdivision right now and the
4 average tax that they're paying and it came out to about
5 \$4,800. So if all those 60 first lots are built out at
6 that price, it would be \$288,000 a year. If you add the
7 120 lots that are coming in the next phase, that would
8 be \$864,000 a year. And that's -- so that's just one
9 year of taxes for that specific subdivision.

10 And my subdivision, frankly, is one of the
11 smaller rural subdivisions out there. There are ones
12 that are much larger than mine.

13 Q. Okay. So the tax revenue to Burleigh County
14 you're projecting at this point conservatively to be
15 about 864,000 a year when all 180 lots have homes on
16 them?

17 A. That's correct.

18 Q. Okay. Did you at one point have an option to
19 buy additional land near Heritage Reserve in the event
20 you decided you wanted to add on to the development and
21 it was successful?

22 A. Yes. Yes, I did. Looking back to those
23 conversations with the landowners that I purchased the
24 initial property from, and actually you heard from
25 several of them today because they're still adjacent to

1 Heritage Reserve, they weren't entirely sure that they
2 wanted to sell all their property at one time and so
3 what -- what we agreed on was an option agreement for
4 the other pieces should -- should they decide to sell to
5 another buyer, just so that I could have some sense of
6 certainty as to what was happening with the land around
7 me.

8 Q. And where was the land that was the subject of
9 the option that you had?

10 A. It is directly to the north and the east of
11 Heritage Reserve.

12 Q. Okay. And did you end up exercising that
13 option?

14 A. I -- I didn't. No. At the time -- any time you
15 start a rural subdivision or something brand-new, it
16 takes a little bit of time to get it going. So I would
17 say lot sales were a little slower in the first year
18 than I had projected.

19 Looking back on it now, though, with everything
20 that's gone on, the fact that the pipeline is projected
21 to be right across that property, one of the owners,
22 Susan Doppler, was joking with me at one of the last
23 public hearings we were at and she said, "Boy, I sure
24 wish we would have sold that land to him now." And my
25 response was "Well, I'm sure glad I didn't buy it from

1 you." Because with all the uncertainty that this
2 pipeline causes, it just wouldn't be a secure investment
3 at this point.

4 Q. You weren't in Linton for the hearing where
5 Mr. Briggs testified, but I'm sure you've heard a lot of
6 testimony and seen information on the leak in Satartia,
7 Mississippi, from that CO2 pipeline?

8 A. Yeah. These proceedings have been incredibly
9 important to myself and my business so I was -- although
10 I was not at the Linton hearing, I was listening in.

11 Q. Okay. And Mr. Briggs testified that the area
12 where individuals could not breathe without having the
13 SCBA, the oxygen, without having some medical condition,
14 everything from passing out, vomiting, dying after a
15 certain number of minutes, down to confusion and
16 headaches and those types of things, was a distance of
17 three miles where they needed those breathing devices.

18 With this pipeline being directly to the north
19 of your development by 1,980 feet, if we go three miles
20 to the south of that and if we made the assumption a
21 leak occurred directly north of you, that would envelope
22 your whole subdivision of Heritage Reserve in CO2;
23 correct?

24 A. That's correct.

25 Q. I mean, Heritage Reserve would be directly in

1 harm's way if there was a leak in that location?

2 A. From the information that Chief Briggs
3 presented, I believe that would be true.

4 Q. Okay.

5 MR. MAHLBERG: Judge, I don't mean to interrupt,
6 but if we've got a 10:30 stop, it's 10:20. And lawyers
7 lie and say they're not going to take very long so I'd
8 like to say I'll take one minute. It might be a couple.

9 ALJ HOGAN: Right.

10 Do you have much more, Mr. Bakke?

11 MR. BAKKE: Not a lot.

12 ALJ HOGAN: Okay. Well --

13 MR. BAKKE: I'm moving on briefly to another
14 topic.

15 ALJ HOGAN: We got ten minutes, though.

16 MR. BAKKE: Sure.

17 ALJ HOGAN: And we need to save room or time for
18 other questions.

19 Q. (BY MR. BAKKE) Yeah, just one more small topic
20 and that is the wind direction in that area where
21 Heritage Reserve is. Where do the winds directly
22 normally come from and blow to?

23 A. So my observation of Heritage Reserve has been
24 much like my observation of Heritage Ridge, Heritage
25 Park development, which is that the wind typically comes

1 from the north, northwest.

2 Q. Okay. And blows to the south and southwest?

3 A. Correct.

4 MR. BAKKE: Okay. That's all the questions I
5 have.

6 ALJ HOGAN: All right. Thank you.

7 Mr. Mahlberg.

8 MR. MAHLBERG: I'll be brief.

9 CROSS EXAMINATION

10 BY MR. MAHLBERG:

11 Q. Mr. Moldenhauer, I want to talk just a little
12 bit about the Heritage Park property that you developed,
13 I think it was back in 2015. You entered into some more
14 agreements with WBI or MDU.

15 A. Uh-huh.

16 Q. That development, you were involved in it;
17 right?

18 A. Absolutely.

19 Q. It's got a compressor station right there?

20 A. It does.

21 Q. It's got two transmission pipelines bordering
22 the property, going through part of the property on two
23 sides; right?

24 A. Correct.

25 Q. Natural gas high pressure pipeline; right?

1 A. Yes.

2 Q. And you decided that you were going to develop
3 that property despite the presence of the pipeline;
4 right?

5 A. Our communities are very used to natural gas
6 pipelines. We're used to developing around natural gas
7 pipelines. But they're not like CO2 pipelines. And I
8 think this whole room could (indiscernible).

9 Q. And we're so short on time.

10 A. Okay.

11 Q. If I ask a question, if you can answer it,
12 great.

13 Again, you got transmission pipelines and a
14 compressor station running within what, 30 feet of
15 people's homes. And there's market --

16 A. I'm not sure that it's 30 feet.

17 Q. Okay. You reached agreements to go into -- into
18 the easement area itself with the walking trails and
19 setting people right on top of high pressure
20 transmission natural gas --

21 A. I disagree with setting people right on top.
22 That's not accurate at all.

23 Q. Well, it --

24 A. But once again, we're not talking about the same
25 thing. So go ahead and make your point.

1 Q. Right. I'm asking a question about a natural
2 gas pipeline. You know what happens when a natural gas
3 pipeline has an explosion; right? It's not good. We'll
4 agree on that?

5 A. (Inaudible) to me.

6 Q. Excuse me?

7 A. Explain it to me.

8 Q. Do you know what happens when a natural gas
9 pipeline ruptures?

10 A. I would assume it's something bad, yeah.

11 Q. Okay. You've not taken time to educate yourself
12 about the consequences of a natural gas pipeline
13 rupture?

14 A. Well, first you have to have a rupture, correct.
15 Then you have to have an ignition. And I actually have
16 had natural gas pipelines within developments that I've
17 worked in rupture in the past. And we've had crews
18 there right away. Because like my Heritage Park
19 development, we have a road that runs right back and
20 forth. You know, we have a fire station that's about a
21 mile away. So our community is very used to addressing
22 natural gas pipeline ruptures and leaks, unlike CO2
23 lines.

24 Q. On transmission pipelines. You're saying you
25 have had natural gas high pressure transmission lines,

1 not --

2 A. Not a transmission line.

3 Q. -- service lines --

4 A. No.

5 Q. You don't have that experience, you don't have
6 that education?

7 A. We haven't --

8 (Simultaneous speaking)

9 A. -- transmission line rupture.

10 Q. Okay. Out at the Heritage Reserve property, I
11 asked the question, I think it was to -- to the person
12 you had the option with earlier, about the railroad that
13 bounds the development on the eastern side. Customers
14 along that railroad include frack sands and power
15 plants. And it moves or has the potential to move
16 hazardous materials; right?

17 A. I don't know that to be the case.

18 Q. Okay. So that's not something that you looked
19 into when deciding to take --

20 A. I know it moves -- you're asking me to
21 speculate.

22 Q. We've got to be able to finish the question and
23 answer part.

24 A. Okay.

25 Q. You did not look into what the railroad that

1 bounds the property physically, immediately adjacent,
2 did not look into what it moves; is that right?

3 A. Have not specifically done that research, no.

4 Q. Okay. And haven't researched the relative risks
5 that go along with moving things by rail versus moving
6 things by pipe; right?

7 A. Correct.

8 MR. MAHLBERG: I don't have anything else.

9 Thanks, Mr. Moldenhauer.

10 ALJ HOGAN: Mr. Pelham, any questions?

11 MR. PELHAM: I have a few.

12 CROSS EXAMINATION

13 BY MR. PELHAM:

14 Q. Good evening, sir. The Ranch development is
15 nearby Heritage Reserve. Do you know if there are other
16 developments, residential or commercial, that are
17 planned in this area?

18 A. I -- I don't have direct knowledge short of what
19 I've been told through conversations with the planning
20 director and conversations with Commissioner Bitner,
21 that there are other developments in the works right now
22 that are in and around the pipeline, proposed pipeline
23 route.

24 Q. You were at the May 15th meeting with Summit
25 Carbon Solutions?

1 A. I was, yes.

2 Q. You heard the testimony of Mr. Wachter as well
3 as Dr. Warford. Anything that you didn't hear that you
4 believe is relevant to discussions with Summit Carbon
5 Solutions about the potential to reroute?

6 A. I think I can clarify just a couple things.

7 First of all, it was -- I was trying to take
8 some notes without -- you know, without being overly
9 rude anyway to the conversation we were having. But Lee
10 Blank was one of the members of the conversation
11 representing Summit Carbon Solutions, Jim Powell was
12 another, and then Wade Boeshans was the third. And they
13 were asking us for a statement of some sort of support
14 for the pipeline. That was the kind of interesting way
15 they -- that they led the conversation anyway.

16 They said a few different things that I took
17 notes of because I wanted to understand better what they
18 were potentially offering. And I took notes. They
19 said, "We cannot go south because we want to avoid
20 another DAPL." And my response to that was, you know,
21 the people of Bismarck, we can be a little bit frisky
22 too when we have a project around us that we're not
23 comfortable with.

24 "We can't go north and crossing the river at a
25 location other than where we're at right now in the

1 river is off the table." And so after they kind of went
2 about the process of explaining that, I said, "Well,
3 what exactly are we here to discuss?" And they wanted
4 to know our feelings about how we could move the
5 pipeline route to essentially satisfy ourselves. And it
6 put us in a really uncomfortable position because, once
7 again, we don't know what the true danger is without
8 seeing the plume model and where that travels.

9 And so I was the one that threw out "Well, why
10 don't you just respect the Burleigh County ordinance
11 that has been put in place and stay ten miles away from
12 the ETA and two miles away from structures?" And Jim
13 Powell said, "Well, that's not -- that's not going to
14 happen because it's not based on anything."

15 And I said, "Well, if you're asking us
16 individually to move the pipeline away from our
17 properties, I don't think anybody in this room is going
18 to be comfortable with that because, you know, that's
19 just going to direct it towards somebody else's property
20 and then it's going to direct us for public criticism.
21 So if you're going to do anything, you know, consider
22 moving it a certain distance away from the ETA."

23 And that was -- and that was kind of where that
24 -- the conversation ended as far as I'm concerned.

25 I never got the impression that -- that they

1 were overly serious in negotiating a reroute. I got the
2 impression they were just trying to feel us out to see
3 if they could make us go away if they made some small
4 concessions.

5 Q. What was your understanding then of, as I
6 understand it, a comment that there was going to be some
7 discussion with the board or something like that? What
8 was your understanding?

9 A. That's where the meeting was left. The three
10 people that were in the room didn't feel like they had
11 the authority to make any rerouting decision so they
12 were going to visit with their board and then get back
13 to us towards the end of the week.

14 I actually shared with them that I was going to
15 be out of town over the next week but they could -- the
16 other two could coordinate with me. And so I'm pretty
17 certain of what the time frame was and was supposed to
18 be.

19 But I -- I held out very little hope that there
20 would be any real negotiation given just the experience
21 that I've had with Summit up to this point.

22 Q. Thank you, sir. I don't have any other
23 questions.

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CROSS EXAMINATION

BY MR. JORDE:

Q. Sir, would you agree with the other developers and people that have testified that the stigma and negative perception attached to this proposed CO2 Summit pipeline is vastly different than a natural gas pipeline?

A. I would. And I would agree with it for a few reasons, and I think there's plenty of evidence of that. You know, we don't sit in PSC hearings like this over the course of two days in Bismarck. If WBI wanted to extend their transmission line, we wouldn't be here talking about it. If WBI wanted to extend their transmission line or NuStar wanted to extend one of their lines, we wouldn't have a city commission weighing in on it. We wouldn't have the Burleigh County Commission, we wouldn't have home builders, we wouldn't have people, the school board having an opinion.

Obviously, the people in this room are not comfortable with this pipeline or its location. And those are the people that make the market. Those are the people that buy our homes. Those are the people that buy our lots. And so if you can't make those people comfortable, whether or not you can have an engineer that says it's safe, it doesn't matter to those

1 people because they've already made up their minds. And
2 our community has made up their minds about this
3 pipeline.

4 MR. JORDE: Thank you.

5 ALJ HOGAN: Commissioner Christmann.

6 COMMISSIONER CHRISTMANN: I don't think I have
7 any questions, but thank you for being here.

8 THE WITNESS: Thank you.

9 ALJ HOGAN: Commissioner Haugen-Hoffart.

10 COMMISSIONER HAUGEN-HOFFART: Thanks, Chad, for
11 being here. I have no questions.

12 THE WITNESS: Thank you, Commissioner.

13 ALJ HOGAN: Mr. Dawson.

14 SUBSTITUTE DECISIONMAKER DAWSON: Thank you. No
15 questions.

16 THE WITNESS: Thank you, Commissioner Dawson.

17 ALJ HOGAN: All right. And it is 10:30 so we
18 don't have time for redirect.

19 So thank you, Mr. Moldenhauer.

20 THE WITNESS: You bet. Thank you very much,
21 Commissioners, for your time. I appreciate it very
22 much.

23 ALJ HOGAN: All right. As far as other items we
24 need to discuss before we conclude, Mr. Pelham, I think
25 you had -- well, I should note there's a couple of

1 petitions and applications that are still pending that
2 the commissioners will need to address. So that kind of
3 makes our usual wrapping up things more challenging to
4 discuss at this point. But, Mr. Pelham, I think you had
5 some thoughts on how we should handle that. Would you
6 mind --

7 MR. PELHAM: Yeah. Ordinarily, we would have
8 post-hearing briefs at this point. And I -- I think
9 that that would be appropriate still to set deadlines
10 for post-hearing briefs. Given the fact, though, that
11 there are a couple pending motions that the Commission
12 has to take up and will be setting a meeting to -- to
13 hear arguments on that from the attorneys, I think it
14 would be appropriate to set the post-hearing brief
15 schedule but then to leave it open for potential
16 supplementation depending on the decisions of the
17 Commission after the oral argument on the
18 reconsideration motion and the protected information for
19 the dispersion study.

20 ALJ HOGAN: Do you have any recommendation for
21 deadline?

22 MR. PELHAM: I don't. I'll leave that to the
23 parties.

24 ALJ HOGAN: Okay. I don't know who wants to
25 chime in.

1 Mr. Bender.

2 MR. BENDER: I mean, I have some ideas. I don't
3 know how --

4 COMMISSIONER HAUGEN-HOFFART: I can't hear you,
5 I'm sorry.

6 MR. BENDER: Sorry about that.

7 I have some ideas. I don't know how the
8 intervenors would react to this, but I think in the past
9 we've done 30 days. I know there's a lot more testimony
10 in this case than we've had in other cases so, you know,
11 perhaps a little longer than that, but that's what I
12 have in mind. And it would be simultaneous briefs,
13 would be my recommendation.

14 ALJ HOGAN: And that's normally what the
15 Commission does so --

16 Mr. Bakke.

17 MR. BAKKE: Well, from our perspective with
18 those two motions hanging out there, I think those are
19 all significant issues that would certainly affect our
20 briefing. To me, it makes more sense to have those
21 hearings and decisions on those motions and then have
22 post-hearing briefings. Otherwise, my concern is that
23 we're just not going to have all the issues addressed
24 and what happens at those hearings could, I think,
25 affect everyone's briefs.

1 ALJ HOGAN: Couldn't that be addressed through
2 supplemental briefs?

3 MR. BAKKE: That's possible but, you know, the
4 intervenors, I think, are a bit handicapped here because
5 the PSC and Summit have the information that we would
6 want to brief and we don't. And so that's the
7 difficulty that we have, the PSC and Summit with that
8 information and not us.

9 So my preference would be to just submit a
10 post-hearing brief once by all the parties but after
11 those motions are heard and decided.

12 ALJ HOGAN: I'm going to set -- I'm going to
13 take Mr. Pelham's suggestion and set a date now and then
14 leave the door open for supplemental briefs. So with
15 that, how many -- is 30 days sufficient or would you
16 like a longer time than that?

17 MR. BAKKE: Yeah, I think 45 would be more
18 appropriate. There's a lot to go through. I think 45
19 would probably be the minimum.

20 ALJ HOGAN: Any objection to that, Mr. Bender?

21 MR. BENDER: No objection.

22 ALJ HOGAN: Mr. Jorde.

23 MR. JORDE: So our preference for the record
24 would be to get the evidence we don't have. We're then
25 going to have to hire experts, review the plume

1 modeling, assuming it's released, which we, you know,
2 respectfully request it is. And so I would say we need
3 that.

4 Now if you're saying you're setting briefing,
5 then I would ask for 60 days and then we need additional
6 time after the plume modeling is released again to
7 consult with experts. We've had no opportunity to do
8 that. They've had this for a year plus and so we're --
9 we are severely handicapped. We need significantly more
10 time. Which could have all been avoided had this been
11 disclosed sooner.

12 ALJ HOGAN: Thoughts on 60 days, Mr. Bender?

13 MR. BENDER: I think 60 days is too long.

14 ALJ HOGAN: Mr. Pelham.

15 MR. PELHAM: I'm not the one that's going to be
16 writing the briefs. I mean, 45 days seems to be
17 sufficient to me, but Mr. Jorde is saying it should be
18 longer. But, you know, I -- I think 45 days would be
19 sufficient, but at the same time, like I said, I'm not
20 the one writing the briefs. And I think that there's
21 probably always opportunity for requests for extensions.
22 Then it wouldn't be simultaneous, though, so that's a
23 potential issue too.

24 ALJ HOGAN: Well, I assume -- I understand
25 there's a lot to go through, but the 45 days -- we're

1 not addressing the plume study or any of that additional
2 information. If the Commission decides to have further
3 hearings or get further evidence, then we're going to be
4 looking at supplemental briefing.

5 So I'm going to set the deadline at 45 days.
6 And I guess it's June 2nd so that makes it easier to
7 figure out what that is. Let's say July 19th. That
8 might be a little bit better than 45 days.

9 MR. PELHAM: What day of the week is that?

10 ALJ HOGAN: That's a Wednesday.

11 MR. PELHAM: I just wanted to make sure it
12 wasn't like a Sunday or something like that. Okay.

13 ALJ HOGAN: All right. I think next we will do
14 closing remarks from the commissioners.

15 So, Commissioner Christmann, do you have any
16 closing remarks?

17 COMMISSIONER CHRISTMANN: I will, I guess, only
18 say that I think this Commission has a long record of
19 being thoughtful and deliberative, and in the very
20 coming days there's a lot for us to digest here and
21 figure out some of those next steps that you've just
22 been discussing and trying to figure out what the right
23 time frame is for the other remarks from the parties.
24 And I think we will get the rest of that work handled
25 and scheduled in a fairly quick manner but deliberative

1 and thoughtful as well.

2 ALJ HOGAN: All right.

3 Commissioner Haugen-Hoffart.

4 COMMISSIONER HAUGEN-HOFFART: I first want to
5 say thank you guys for your interest. We hold these
6 meetings, these public meetings, to get your input. And
7 they're very valuable. I think I have a whole notebook
8 here of comments and questions.

9 And to what Commissioner Christmann said, we
10 will be spending a lot of time going through all the
11 evidence that has been submitted. And I'm sure that
12 there's going to be gaps where we're going to be
13 requesting additional information to make sure we make
14 the most appropriate, right, and safe decision for this
15 community and communities, the five counties in which
16 this pipeline goes through.

17 We heard you loud and clear. We heard everyone,
18 all sides, on what their issues were. And it's going to
19 be tough, but I know that you guys elected us to do the
20 right thing so thank you for your trust as we move
21 forward through this case.

22 ALJ HOGAN: Mr. Dawson.

23 SUBSTITUTE DECISIONMAKER DAWSON: Well, if these
24 hearings have been hard work, the hard work really
25 begins now. We have to look at all this and review it

1 and compare it to the law and rate charts and tables and
2 give it contemplative thought. So we haven't made up
3 our decision, not even close to it. And so we will give
4 this good, thoughtful consideration.

5 ALJ HOGAN: All right. And I'll just go
6 around one more time to see if there's anything else for
7 the record before we conclude.

8 Mr. Bender.

9 MR. BENDER: No, Your Honor.

10 ALJ HOGAN: Mr. Pelham.

11 MR. PELHAM: No, Your Honor.

12 ALJ HOGAN: Mr. Jorde.

13 MR. JORDE: No, Your Honor.

14 ALJ HOGAN: And Mr. Bakke.

15 MR. BAKKE: No, Your Honor.

16 ALJ HOGAN: All right. Well, I will note for
17 the record then that it is 10:38 p.m. and that will
18 conclude our hearing for today.

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