

BURLEIGH COUNTY STATE'S ATTORNEY

JULIE LAWYER
STATE'S ATTORNEY

RECEIVED

July 31, 2023

JUL 31 2023

Steve Kahl
Executive Secretary
North Dakota Public Service Commission
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

RE: In the Matter of SCS Carbon Transport LLC
Midwest Carbon Express CO₂ Pipeline Project
Siting Application
Case No: PU-22-391

Dear Mr. Kahl:

Enclosed for filing in Case No. PU-22-391, please find the original and seven copies of the following:

1. Burleigh County's Petition to Intervene;
2. Burleigh County's Response in Opposition to SCS Carbon Transport LLC's Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted

A digital copy will also be sent via e-mail.

Sincerely,



Julie Lawyer
State's Attorney

Enclosures

361 PU-22-391 Filed: 7/31/2023 Pages: 20
Petition to Intervene and Response in Opposition to
Superseded and Preempted Motion

Burleigh County Board of Commissioners

Julie Lawyer, State's Attorney

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No: PU-22-391

BURLEIGH COUNTY'S PETITION TO INTERVENE

Pursuant to N.D.A.C. § 69-02-02-05, Burleigh County, by and through its Board of County Commissioners, hereby petitions to intervene in the above-captioned proceedings. The County makes this petition based upon the following:

1. The Board of County Commissioners has the authority to regulate and restrict "the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation and other purposes." N.D.C.C. § 11-33-01. Under that authority, on March 20, 2023, the Board of Commissioners of Burleigh County adopted zoning ordinance Article 8, Section 27 as it relates to Hazardous Liquid Pipelines. (Exhibit 1).
2. On June 1, 2023, SCS Carbon Transport LLC filed its Motion and Brief to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted. (Docket 282).
3. North Dakota law states, "A certificate of site compatibility for a gas or liquid energy conversion facility may not supersede or preempt any local land use; zoning; or building rules, regulations or ordinances, and a site may not be designated which violates local land use; zoning or building rules, regulations, or ordinances." N.D.C.C. § 49-22.1-13(2)(a). A "gas or liquid energy conversion facility" includes "[a] gas or liquid transmission line and

associated facilities designed for or capable of transporting ... carbon dioxide.” N.D.C.C. § 49-22.1-01(7)(a).

4. The brief filed by SCS Carbon Transport LLC claims the Burleigh County ordinance would ban construction of carbon dioxide within Burleigh County which is not accurate. Zoning ordinances adopted by the Board of County Commissioners only applies to those cities and townships that have not retained their own zoning authority. N.D.C.C. § 11-33-20. While the current proposed pipeline route is through areas of Burleigh County subject to the zoning ordinance, there are still accessible routes through Burleigh County that are not affected by the zoning ordinance. (Exhibit 2).
5. The legal rights and legal interests of Burleigh County and its citizens will be affected by the Public Service Commissioner’s decisions in this matter and, while our position does align with those of the prior intervenor’s and that of Emmons County, their interests are not the same as that of Burleigh County.
6. Burleigh County’s intervention will not delay the proceedings in this matter as the issues have been adequately briefed by the prior intervenor’s and Emmons County, and Burleigh County is not requesting any delay or additional public hearings on this matter.
7. Burleigh County was made aware of this motion and brief by an attorney for the intervenor. While SCS Carbon Transport LLC filed a motion challenging Burleigh County’s authority and ordinance, Burleigh County was never served with or provided a courtesy copy of the filing. Therefore, good cause under N.D.A.C. § 62-02-02-05 has been shown as Burleigh County was not properly notified of the challenge.

8. Burleigh County has a legal interest in its authority to enact ordinances and respond to challenges of that authority and those ordinances. The ordinances enacted were done so under the authority granted to Boards of County Commissioners under state law and do not conflict with state or federal laws, regulations, or rules.
9. Burleigh County opposes SCS Carbon Transport LLC's Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted.

Based on the above reasons, Burleigh County petitions to intervene in this matter.

Dated this 31st day of July, 2023.

/s/ Julie Lawyer
Julie Lawyer
Burleigh County State's Attorney
BAR ID # 05693
514 E Thayer Avenue
Bismarck, ND 58501
Phone: (701) 222-6672
E-service: bc08@nd.gov

ORDINANCE

AN ORDINANCE AMENDING ARTICLE 8 SECTION 27 OF THE BURLEIGH COUNTY ZONING ORDINANCE FOR THE REGULATION OF LAND USE WHEN TRANSPORTING HAZARDOUS LIQUID THROUGH A HAZARDOUS LIQUID PIPELINE

NOW THEREFORE, BE IT ENACTED BY THE COUNTY COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA:

SECTION 1. – TEXT AMENDMENT - Article 8: Title and Purpose, Section 27, of the Zoning Regulation, is amended by adding this section with the following:

1.1 Hazardous Liquid Pipelines – No person or property owner shall use land in any area or district in this jurisdiction for purposes of transporting hazardous liquid through a hazardous liquid pipeline except under the conditions and restrictions provided hereinafter in Article 8 Section 27 Hazardous Liquid Pipelines. For purposes this Zoning Regulation, “hazardous liquid” and “hazardous liquid pipeline” shall have the meanings as defined in Article 8.

SECTION 2. – TEXT AMENDMENT - Article 8: Hazardous Liquid Pipelines, of the Zoning Regulation, is amended by inserting the following new Section 27:

SECTION 27: Hazardous Liquid Pipelines

A Hazardous Liquid Pipeline may be permitted in an Agricultural District upon approval as a special use, provided the criteria and submittal requirements are met.

I. Definitions

1. “Affected person” means any Person with a legal right or interest in the property, including but not limited to a landowner, a contract purchaser of record, a Person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.
2. “Applicant” means a Pipeline Company or a Property Owner who applies for a Special Use Permit for a Hazardous Liquid Pipeline pursuant to this Article.
3. “Application” means the documents and information an Applicant submits to the County for purposes of obtaining a Special Use Permit as well as the related process and procedures for considering the application pursuant to this Article.
4. “Blast Zone” means the geographic area in the County that would be subject to a shock wave from rupture of a Hazardous Liquid Pipeline, including of a Carbon Dioxide Pipeline, that could harm or kill persons or animals due solely to physical trauma, for example from flying debris or the physical impact of a pressure wave resulting from a rupture.
5. “Special Use Permit” means a use or use of limitation authorized and approved by the Board of Burleigh County Commissioners, in the manner and according to the standards provided in Article 8 of County Zoning Ordinance.

6. "County" or "the County" means Burleigh County, North Dakota.
7. "Emergency" means a condition involving clear and immediate danger to life, health, or essential services, or a risk of a potentially significant loss of property.
8. "Facility" is any structure incidental or related to the Hazardous Liquid Pipeline and any space, resource, or equipment necessary for the transport, conveyance, or pumping of a Hazardous Liquid through a Hazardous Liquid Pipeline located in the County, including all related substations.
9. "Fatality Zone" means the geographic area in the County in which residents of the County would face a significant risk of loss of life due to a rupture of a Hazardous Liquid Pipeline, "Hazard Zone" means, in the case of a Hazardous Liquid Pipeline, the geographic area in the County in which residents of the County would likely become intoxicated or otherwise suffer significant adverse health impacts.
10. "Hazardous Liquid" means the same as crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, coal slurries, and or other products that may be considered quantifiable as a hazardous liquid.
11. "Hazardous Liquid Pipeline," means a Pipeline intended to transport Hazardous Liquids, and also includes Class 3, Class 6, Class 8, or Class 9 hazardous materials, as defined by 49 C.F.R. § 173.120, et seq., with any portion proposed to be located within the County.
12. "High Consequence Area" is any area within the Hazard Zone, the Fatality Zone, or the Blast Zone where a single rupture would have the potential to adversely affect 10 or more persons or a facility with 100 or more livestock.
13. "In-service date" is the date any Hazardous Liquid is first transported through any portion of a Pipeline located in the County.
14. "Landowner" means a Person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and includes a farm tenant.
15. "Level of Cultivation" means depth of pipe 4.5' (four and a half) feet minimum unless the landowner and Pipeline Company agrees on a greater depth.
16. "Line Location" means the location or proposed location or route of a Pipeline on a Landowner's property.
17. "NDCC" means North Dakota Century Code.
18. "NDDNR" means North Dakota Department of Mineral Resources.
19. "Occupied Structure" means a Building or Structure that has been inhabited or used for residential, commercial, industrial, at any time during the twelve (12) months preceding an application for a Special Use Permit pursuant to Article 8.

20. "PSC" means the North Dakota Public Service Commission.
21. "PHMSA" means Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation.
22. "Person" means an individual, a corporation, a limited liability company, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership or association, or any other legal entity.
23. "Pipeline" means an intrastate pipe or pipeline and necessary appurtenances with pressures greater than 1,000 PSIA and greater than 16" in diameter used for the transportation or transmission of hazardous liquids.
24. "Pipeline Company" means any Person engaged in or organized for the purpose of owning, operating, or controlling Pipelines for the transportation or transmission of any Hazardous Liquid or underground storage facilities for the underground storage of any Hazardous Liquid.
25. "Pipeline Construction" means activity associated with installation, relocation, replacement, removal, or operation or maintenance of a pipeline that disturbs agricultural land, but shall not include work performed during an emergency, tree clearing, or topsoil surveying completed on land under easement with written approval from the landowner.
26. "Property Owner" means the owner or owners, together with his, her, it's or their heirs, successors and/or assigns, of the land or property over, under, on, or through which, a Pipeline, or any part of it, including any related facilities, may be located and which is subject to the regulations and restriction of Burleigh County Zoning Ordinance. Property Owner includes a Landowner and also includes a Person with whom a Pipeline Company negotiates or offers to execute an Independent Agreement with respect to a Pipeline.
27. "Reclamation" means the restoration and repair of damaged real property, personal property, land or other areas through which a Pipeline is constructed or from where it is removed as close as reasonably practicable to the condition, contour, and vegetation that existed prior to the construction or prior to the removal of the Pipeline, as applicable.
28. "Reclamation Cost" means the cost of Reclamation and includes the cost to restore or repair roads, bridges, or county property as well as the cost to restore or repair all real and personal property of Property Owners and Affected Persons.
29. "SHPO" means State Historical Preservation Office.
30. "USGS" means United States Geological Survey.
31. "Zoning Ordinance" or "the Zoning Regulation" means the collection of land use and zoning regulations known as the Burleigh County Zoning Ordinance, as provided and made effective in Article 1 of the ordinance known as the Burleigh County Zoning Ordinance.

II. Purposes

The purposes of this ordinance are:

1. To lawfully regulate the use of land in the County for the transport of Hazardous Liquid through a Hazardous Liquid Pipeline in a manner that is in accordance with the County's current comprehensive plan and that is designed to (1) to secure safety from fire, flood, panic, and other dangers; (2) to protect health and the general welfare; (3) to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirement.
2. To implement Section 27 with regard to the County's legal obligation to engage in emergency response and hazard mitigation planning, including furthering the comprehensive plan's goals and objectives for assessing ongoing mitigation, evaluating mitigation alternatives, and ensuring there is a strategy for implementation and including the need to protect the health and welfare of both residents and emergency response personnel.
3. To implement Section 27 in a manner that is not inconsistent with federal or state law, including the United States Constitution, the federal Pipeline Safety Act in 49 U.S.C. § 60101 et seq., NDCC Chapters 38-22, 49-02, 49-19 and 49-22.1-13 or applicable provisions within NDCC.
4. To implement Section 27 in a manner that treats all Hazardous Liquid Pipelines in a similar manner, to the extent they are similarly situated, and to utilize to the greatest extent feasible the land use and zoning regulations and processes already utilized in the County.

III. Special Use Class Created and Use Limitations Imposed on Hazardous Liquid Pipelines

1. As provided in Article 1 Section 1 of this Zoning Ordinance, all land within the jurisdiction of Burleigh County must be used in accordance with this Zoning Ordinance. As provided in Article 8 Section 1 of this Zoning Regulation, the County may create a class of uses that have conditions or other special use limitations attached to approval. Such conditions are established in order to protect the health, safety, and welfare of the public and to preserve property values.
2. The County hereby establishes a class of use for Hazardous Liquid Pipelines, and no land or property interest in this County, regardless of the zone or area, shall be used for purposes of a Hazardous Liquid Pipeline except in conformity with this Article.

IV. Special Use Permits Required

1. A Pipeline Company that has filed a verified petition with the PSC asking for a permit to construct, maintain, and operate a new Pipeline along, over, or across land in the jurisdiction of this County shall apply to the Burleigh County Planning and Zoning Department for a Special Use Permit. The Pipeline Company shall submit the application for a Special Use Permit within seven (7) days of filing the petition with the PSC, unless the petition was filed with the PSC prior to the effective date of this Article in which case the Pipeline Company shall apply and make application for a Special Use Permit under this Article within seven (7) days of the effective date of this Article.

2. Upon receiving an Application for a Special Use Permit from a Pipeline Company or from a Property Owner, the Planning Director and Burleigh County Board of Commissioners shall consider the Application according to the process and standards set forth in this Article.

V. Separation Requirements

The use of land for purposes of transporting Hazardous Liquids through Pipelines poses a threat to the public health, safety and welfare, to the productivity of agricultural lands, and to the property values of residential, commercial, and industrial property in the County. The separation requirements of this section are designed to further the goals and objectives of the County's comprehensive zoning plan, including to protect public health and welfare, to preserve existing infrastructure and future development, and to maintain property values.

A Hazardous Liquid Pipeline shall not be constructed, used, sited, or located, in violation of the separation requirements listed below. All distances shall be measured from the centerline of the proposed Hazardous Liquid Pipeline to the portion of the existing use nearest the centerline of the proposed Hazardous Liquid Pipeline.

VI. The minimum separation distances for a Hazardous Liquid Pipeline are:

1. From the extra-territorial line of an incorporated city, not less than 10 miles.
2. From a church, school, nursing home, long-term care facility, or hospital, not less than 4 miles.
3. From a public park or public recreation area, not less than 2 miles.
4. From any Occupied Structure, not less than 2 miles.
5. From a confined animal feeding operation or facility, not less than 1 mile.
6. From an electric power generating facility with a nameplate capacity of 5MW or more, an electric transmission line operating at 69kV or higher, an electric transmission substation, a public drinking water treatment plant, or a public wastewater treatment plant, not less than 10 miles
7. Setback from Missouri River: Pipeline shall be set back not less than one (1) mile parallel to the ordinary high-water mark, unless a non-development flood plain permit is required.

VII. Permit Application Requirements for Pipeline Companies

A Pipeline Company applying for a Special Use Permit for a Hazardous Liquid Pipeline pursuant to this Article shall submit the following documents and information to the Burleigh County Planning Department.

1. The information needed for a Special Use Permit as described in Article 8 of this Zoning Ordinance, including all required forms prescribed by the County Planning Director, in addition to any easements prepared by a licensed professional land surveyor of North Dakota.

2. A complete copy of the application for a permit filed with the PSC pursuant to or within applicable provisions in NDCC, and as the application for the PSC permit is amended or changed, the Pipeline Company shall provide updated information and documents to the County, including USGS Hazard Inventory, Class 3 Cultural Resource Study, NDDNR Reports and SHPO Archeology Reports.
3. A map identifying each proposed crossing of a County road or other County property.
4. A map and a list containing the names and addresses of all Affected Persons in the County. The map and list shall include all Property Owners who have executed an Independent Agreement or who have been or will be contacted about the execution of an Independent Agreement.
5. A set of plans and specifications showing the dimensions and locations of the Pipeline, including plans and specifications for all related facilities, and above-ground structures, such as pumps, valve sites and shutoff valves located at 26,400 lineal feet, with fracture arrestors approximately half-way between each shutoff valves.
6. An Emergency Response and Hazard Mitigation Plan as required pursuant to Section VII of this Article.
7. All applicable fees required pursuant to Section VIII of this Article.
8. A statement identifying any Confidential Information in the Application and a request, if any, to withhold such information from public examination or disclosure as provided in, and to the extent permitted pursuant to or within applicable code in NDCC. A failure to identify Confidential Information in the Application may result in the County treating such information as a public record.
9. Insurance Requirement. The owner/operator of a pipeline or pipeline facility must provide proof of liability insurance at the time of application. Burleigh County shall be listed as a certificate holder. Certificates shall provide not less than thirty (30) calendar days' notification to the certificate holder prior to cancellation or material change in coverage. Throughout the duration of this special use permit, the owner/operator of a pipeline or facility agrees to provide evidence of insurance coverages not less than the types and amounts specified below:
 - a. Workers' Compensation: Statutory
 - b. Employer's Liability

Each Accident:	\$1,000,000
Disease, Policy Limit:	\$1,000,000
Disease, Each Employee:	\$1,000,000
 - c. General Liability

General Aggregate:	\$2,000,000
Each Occurrence	
Bodily Injury and Property Damage):	\$1,000,000
 - d. Excess Umbrella Liability

Each Occurrence:	\$5,000,000
General Aggregate:	\$5,000,000

- e. Automobile Liability
 - 1) Combined Single Limit (Bodily Injury and Property Damage):
Each Accident \$1,000,000
 - f. Construction Bonding
 - 1) Provide a Surety Bond for the protection against disruptions or financial loss due to a contractor's failure to complete a project or failure to meet project specifications.
 - g. Other Conditions (specify):
 - 1) A Commercial General Liability policy shall be endorsed to add Burleigh County, its employees, officers, agents and contractors as additional insured.
 - 2) Excess umbrella liability shall follow form of underlying insurance.
 - 3) Certificates evidencing required insurance shall be provided to Burleigh County upon approval of the special use permit and prior to commencement of construction.
 - 4) Escalation: A fee and assessment escalation provision to largely offset the rising costs of insurance coverage.
10. Contact Information. The applicant must provide a local contact authorized by the applicant to receive service and respond to all notices, demands, complaints, concerns or other requests. Local contact information must include the name of the local representation, local phone number and physical address. Said contact information must be filed with the County Auditor\Treasurer prior to commencement of construction of the pipeline facility.

VIII. Fees and Assessments

The following fees and assessments apply to a Special Use Permit for a Hazardous Liquid Pipeline pursuant to this Article:

- 1. A Pipeline Company seeking a Special Use Permit shall pay the following fees and assessments:
 - a. An application fee in the amount of \$300.00 for the special use permit.
 - b. An annual assessment fee in the amount of \$116.92 per mile of Pipeline constructed, operated, and maintained in the County, or an amount equal to the most current user fee assessed to the operators of Hazardous Liquid Pipelines by PHMSA, whichever is greater. This assessment shall be due each year on the anniversary of the Pipeline's In-Service Date, and the County shall apply this assessment towards its emergency planning and hazard mitigation costs, including expenses for law enforcement and emergency response personnel.
 - c. All other applicable user or permit fees required for crossing Burleigh County roads or using the public right-of-way in the County.

IX. Public Hearing Requirements and Permit Approval

Upon receipt of an application for a Special Use Permit by a Pipeline Company, the County Planning Director shall verify that the Pipeline Company permit application requirements of this Article are met and shall complete staff reports to the Planning Commission recommending

approval, denial, or amendments of the permit application. Upon the verification and report of the County Planning Director, a date shall be set of one or more public hearings in the County on the question of granting a Special Use Permit to the Pipeline Company. Once the public hearing dates have been set, Burleigh County Planning and Zoning Department shall publish notice in a local newspaper pursuant to the applicable provisions of NDCC, and shall send notice of each scheduled public hearing to all affected person within a minimum 1,250 ft. of proposed pipeline including each person identified in the Application by United States Mail.

1. Once the application, public hearing, and other requirements of this Article are met, the Planning Commission shall consider each application for a Special Use Permit according to the standards set forth in Article 8 regarding the powers of the County Commission and in Section 27 of this Zoning Regulation regarding the standards and findings required of Special Use permits. The Burleigh County Board of Commissioners shall issue a permit if the Board finds that all applicable standards are met. The burden of establishing that all applicable standards are met shall be on the Applicant prior to the issuance of the Special Use Permit.
2. A Special Use Permit granted to a Pipeline Company pursuant to this Article is not transferrable to any Person. A Pipeline Company, or its successors in interest, shall apply for a new Special Use Permit whenever the Hazardous Liquid Pipeline is transferred or its use is materially or substantially changed or altered.
3. Access Roads and Protection of Agricultural Operations. The location and construction of access roads and other infrastructure shall, to the extent reasonably possible, not disrupt farming, agricultural operations, or the landscape within Burleigh County. In order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting, the applicant shall work with the landowner to determine the most appropriate routing of access road locations.
 - a. Access roads shall be low profile roads with in-slopes and backslopes of 10:1 or flatter so that farming equipment can cross them and roadway surfacing shall be Class 5 gravel or similar material, unless otherwise negotiated with the landowner.
 - b. A plan outlining the location and design of all access roads shall be provided to the County Planner for determination as to whether the plan conforms to the other terms of this section.
 - c. If the applicant wishes to build an access road on a section line, in accordance with North Dakota Century Code (NDCC) Section 24- 07-05, the applicant shall first petition the township board or the Board of County Commissioners (in unorganized townships). If the petition is granted, the applicant must build the road to township or county standards under the supervision of the township district roadway overseer.
 - d. The applicant must protect and segregate topsoil from subsoil on all lands unless otherwise negotiated with the affected landowner. The applicant must minimize soil compaction of all agricultural lands during all phases and confine soil compaction to as small of an area as possible.

- e. The applicant shall, during all phases of construction, abide by the approved soil erosion control plan in accordance with Section 11 of Article 33 of the Burleigh County Zoning Ordinance.
- f. Fence and Gate Repair. The applicant shall promptly repair or replace all fences and gates removed or damaged during all phases of the pipelines life unless otherwise negotiated with the affected landowner.
- g. Drainage Tile Repair. The applicant shall consider, avoid, promptly repair or replace all drainage tiles broken or damaged during all phases of project life unless otherwise negotiated with the affected landowner.
- h. Road Repair (Private Roads). The applicant shall promptly repair any damaged private roads, driveways or lanes to a condition at least equal to the condition prior to construction of the installing pipe, unless otherwise negotiated with the affected landowner.
- i. Hazardous Waste. The applicant shall be responsible for compliance with all federal, state and local laws applicable to the generation, storage, transportation, clean up and disposal of hazardous wastes generated during any phase of the project's life.
- j. Chemicals. The use of chemicals is limited to those herbicides and methods approved by the North Dakota Department of Agriculture and the North Dakota Department of Health. The applicant must contact the affected landowners prior to application.
- k. Temporary Staging Areas. The applicant shall negotiate with landowners to locate sites for temporary equipment staging or lay down areas.
- l. Tree Removal. The applicant shall minimize the removal of trees and shall not remove groves of trees or shelter belts without the written approval of the affected landowner. Trimming or removal of trees within the public right-of-way to allow for safe construction of power lines shall be allowed.
- m. Waste Removal. The applicant shall remove all waste and scrap that is the product of construction, operation, restoration and maintenance from the site and properly dispose of it upon completion of each task. Personal litter, bottles, and paper deposited by site personnel shall be removed on a daily basis.
- n. Land Restoration. The applicant shall, as soon as practical following construction of the pipeline, considering the weather and preferences of the affected landowner, restore the area affected by any construction activities to the condition that existed immediately before construction began. The time period may be no longer than eight (8) months after completion of construction of the pipeline. Restoration shall be compatible with the safe operation, maintenance, and inspection of the pipeline and or pipeline facility.
- o. Complaints. Prior to the start of construction, the applicant shall submit to the County Planner the company's procedures to be used to receive and respond to complaints.

- p. **Public Safety Plan.** The applicant is to provide educational materials to landowners within the site boundaries and, upon request, to interested persons, about the project and any restrictions or dangers associated with the project. The applicant is encouraged to also provide any necessary safety measures, such as warning signs and gates for traffic control or to restrict public access to pipeline access roads. The applicant shall comply with provisions outlined in their public safety plan.
- q. **Road Use Arrangements.** Prior to construction, the applicant shall make satisfactory arrangements (including obtaining permits) for road use, access road intersections, maintenance and repair of damages with governmental jurisdiction with authority over each road. The applicant shall notify the County Planner of such arrangements upon request.
- r. **Overweight Load Permits.** The applicant is responsible for abiding by the state and local overweight load permitting processes in accordance with NDCC Chapter 39-12. A special use permit issued under this ordinance to install a hazardous material pipeline does not negate a hauler's obligation to obtain overweight load permits prior to hauling.
- s. **Approach Permits.** The applicant is responsible for obtaining an approach permit from the County Engineer or the affected township for any new or reconstructed approach.
- t. **Road Repair (Public Roads).** Any road damage caused by the applicant, its independent contractor, employee, agent, contractor, or subcontractor shall be promptly repaired at the applicant's expense to current standards set out in the North Dakota Department of Transportation's (NDDOT) Standard Specifications for Road and Bridge Construction. If it is reasonably foreseeable that continued trips will make prompt repair to this standard unreasonable, intermediary measures must be taken by the applicant, if approved by the political subdivision in charge of the road, to ensure the public road remains passable and useable as has been the tradition in the community. Final repairs to these standards must be made promptly after the completion of the construction of the pipeline.

X. Appeals and Variances

A Pipeline Company or a Property Owner may appeal an adverse determination on a Special Use Permit, or may seek a special exception or variance from the Board of County Commissioner, as provided in Article 1 Section 7 and Article 26 Section 1 of this Zoning Ordinance.

XI. Applicability and Compliance

- 1. The permit requirement in section 8.3 and the separation requirements in section 8.4 of this Article shall not apply to (1) a Hazardous Liquid Pipeline that is already permitted, constructed, and placed in-service on or before the effective date of this Article.
- 2. If a Property Owner has executed an Independent Agreement prior to the effective date of this

Article and the Independent Agreement does not meet the separation requirements of this Article, then notwithstanding the Independent Agreement, the Pipeline Company shall comply with the separation requirements of this Article.

3. If a Property Owner has executed an Independent Agreement prior to the effective date of this Article and the Independent Agreement provides for separation requirements that are greater than the separation requirements this Article, then the Pipeline Company shall comply with the terms of the Independent Agreement with the Property Owner.

XII. Emergency Response and Hazard Mitigation Plans for Hazardous Liquid Pipelines

The County requires Hazardous Liquid Pipelines Companies to provide information to assist in emergency response and hazard mitigation planning pursuant to this section.

1. If PHMSA has adopted regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning for the Hazardous Liquid Pipeline, then the Pipeline Company operating the Hazardous Liquid Pipeline shall submit a copy of the emergency response and hazard mitigation plan to Burleigh County Emergency Management.
2. If PHMSA has not adopted regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning for Hazardous Liquid Pipelines, then the Pipeline Company operating the Hazardous Liquid Pipeline shall submit a plan that meets the requirements of this section. A plan submitted in compliance with this section shall include the following:
 - a. A map and legal description of the proposed route for a Hazardous Liquid Pipeline showing all human occupied structures and animal husbandry facilities, by type, within two miles of the centerline of the proposed route including addresses.
 - 2.a.1 An estimate of the worst-case discharge of hazardous liquid released in metric tons and standard cubic feet from a rupture of a pipeline considering the interior volume of the pipeline, the location of emergency valves that limit release of hazardous liquid, the location of crack arrestors, operating pressures, operating temperatures, and other relevant factors.
 - 2.a.2 A rupture dispersion modeling report containing the results of computational fluid dynamic computer model estimates of the maximum geographic ranges of the Fatality Zone and Hazard Zone for the Hazardous Liquid Pipeline in the event of its rupture in a range of weather conditions and representative topography in County, as well as in low elevation areas of the County where released hazardous liquid may settle.
 - 2.a.3 A computer model report showing the Blast Zone for the Hazardous Liquid Pipeline.
 - 2.a.4 A list of structures and facilities within the Hazard Zone, Fatality Zone, and Blast Zone for the proposed route of a Hazardous Liquid Pipeline that in the preceding

year have contained humans or livestock, and an estimate of the numbers of persons and livestock in each structure and facility.

- 2.a.5 A list of High Consequence Areas. A High Consequence Area is any area within the Hazard Zone, the Fatality Zone, or the Blast Zone where a single rupture would have the potential to adversely affect 10 or more persons or a facility with 100 or more livestock.
 - 2.a.6 A description of the potential adverse impacts of a rupture of a Hazardous Liquid Pipeline on the humans, livestock, and other real and personal property within the Hazard Zone, the Fatality Zone, and the Blast Zone for the route of a Carbon Dioxide Pipeline.
 - 2.a.7 Identification of alternative routes through the County designed to minimize risks to humans and animals from a rupture of the Hazardous Liquid Pipeline with County, and an analysis of the risks of these alternative routes relative to the proposed route.
 - 2.a.8 All information needed by county first responders, emergency response personnel, and law enforcement personnel in order to engage in local emergency management and hazard mitigation planning, equipment, and training needs. Such information includes but is not limited to:
 - 1) a material data safety sheet for the materials transported in the Hazardous Liquid Pipeline;
 - 2) agency-specific response plans for law enforcement, emergency medical responders, and other response agencies;
 - 3) gas detectors and evacuation plan for each human occupied structure; response equipment needs for emergency response personnel, such as chemical detectors; respirators; personal protective equipment; communications equipment; road barriers and traffic warning signs; and noninternal combustion engine evacuation vehicles;
 - 4) Hazardous Liquid Pipeline rupture emergency response training program to ensure safe and effective response by county and municipal law enforcement, emergency medical services, and other responders during the operational life of the Hazardous Liquid Pipeline.
3. Identification of residential and business emergency response needs, including but not limited to:
 - a. a Mass Notification and Emergency Messaging System; evacuation plans; evacuation equipment needs especially for mobility impaired individuals; gas detectors, and respirators.

XIII. Abandonment, Discontinuance, and Removal of Hazardous Liquid Pipelines

1. In addition to the requirements set by NDCC, a Hazardous Liquids Pipeline in the County that is abandoned shall comply with the requirements of this section. A Hazardous Liquid Pipeline shall be deemed abandoned for purposes of this section whenever the use of the Hazardous Liquid Pipeline has been discontinued such that there is no longer regulatory oversight of the Pipeline by PHMSA.

2. A Pipeline Company granted a Special Use Permit pursuant to this Article shall by certified mail notify the County and all Affected Persons in the County of the Pipeline Company's intent to discontinue the use of the Pipeline. The notification shall state the proposed date of the discontinuance of use.
3. Upon abandonment or discontinuance of use, the Pipeline Owner shall offer to each Property Owner the option to have the Pipeline and all related facilities physically wholly or partially dismantled and removed, or otherwise mitigated through filling, segmenting, or other forms of mitigation, including both the below and above ground facilities or to permanently fill the below ground pipeline with suitable flowable fill material. The removal or permanently filling Pipeline and the related Reclamation and Reclamation Costs shall be the Pipeline Company's responsibility and shall be completed within one-hundred eighty (180) days from the date of abandonment or discontinuation of use unless a Property Owner agrees to extend the date of removal. Such an extension must be by written agreement between the Pipeline Company and the Property Owner, and the agreement shall be filed at the Burleigh County Recorder's office and a copy delivered to the County by the Pipeline Owner.
4. A Property Owner shall not be required to have the Pipeline removed, but if the Property Owner agrees to the removal and Reclamation, the Property Owner shall allow the Pipeline Company reasonable access to the property.
5. Upon the removal of the Pipeline and the Reclamation, the Pipeline Owner shall restore the land pursuant to or within applicable code in NDCC to the requirements and the rules adopted thereunder including all amendments thereto.

SECTION 3. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. SEVERABILITY CLAUSE. If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 5. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

First Reading Passed: MARCH 8, 2023

Passed and adopted this 20 day of MARCH, 2023.

ATTEST:

Leo Vetter
leo Vetter, County Auditor

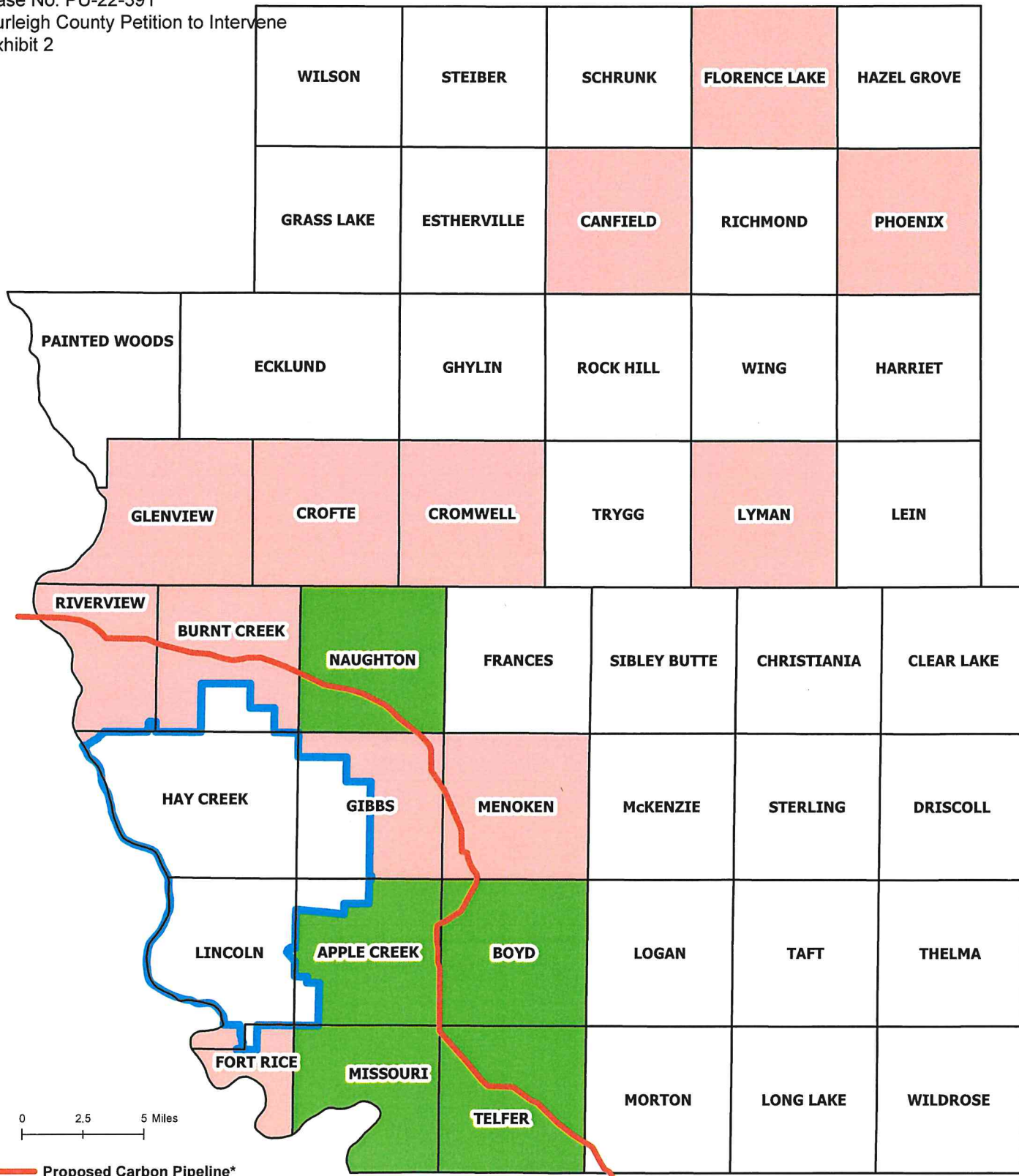
Becky Matthews
Becky Matthews Chairperson



TOWNSHIPS WITH ORDINANCES RELATED TO PROPOSED PIPELINE

Case No: PU-22-391

Burleigh County Petition to Intervene
Exhibit 2



0 2.5 5 Miles

- Proposed Carbon Pipeline*
- Burleigh County Zoning Jurisdiction
- Townships With Similar Ordinances to Burleigh County**
- City of Bismarck ETA
- Civil Townships

* The proposed carbon pipeline route was digitized off of a pdf map from Summit Carbon Solutions. The map was titled "40.28 Miles of Anticipated Pipeline Burleigh County North Dakota". The pdf map also listed that the "Pipeline centerline is based on the 05/31/2022 route." Due to the map scale used on the pdf map there could be up to a half mile location error in the drawn pipeline route on this map from the actual proposed location.

** Township list obtained from the Burleigh County Building/Planning/Zoning Department.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No: PU-22-391

**BURLEIGH COUNTY'S RESPONSE IN OPPOSITION TO SCS CARBON TRANSPORT
LLC'S MOTION TO DECLARE EMMONS COUNTY AND BURLEIGH COUNTY
ORDINANCES SUPERSEDED AND PREEMPTED**

Burleigh County, in its response to SCS Carbon Transport LLC's Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted, hereby incorporates the responses of the intervenors and Emmons County. (See Dockets 345, 348, and 350). The responses and exhibits of the intervenors and Emmons County adequately address the issue and the law in this case and Burleigh County's response would mirror their law and argument in this matter.

Burleigh County adopted a county ordinance and a zoning ordinance relating to hazardous liquid pipelines which were filed with the North Dakota Public Service Commission (PSC). (Dockets 161, 206).

As stated in law cited by the incorporated briefs, Burleigh County through its Board of County Commissioners, has the authority under state law to adopt and enact ordinances and zoning ordinances relating the hazardous liquid pipelines. The ordinances enacted are not regulatory in nature and do not contravene federal or state laws, rules, or regulations.

Burleigh County's ordinances do not ban SCS Carbon Transport LLC from building its pipeline in Burleigh County nor does it regulate or create an undue hardship.

Dated this 31st day of July, 2023.

/s/ Julie Lawyer
Julie Lawyer, BAR ID 05693
Burleigh County State's Attorney
514 E Thayer Avenue, Bismarck, ND 58501
Phone: (701) 222-6672; E-service: bc08@nd.gov

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No: PU-22-391

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the following documents:

1. Burleigh County's Petition to Intervene;
2. Burleigh County's Response in Opposition to SCS Carbon Transport LLC's Motion to Declare Emmons County and Burleigh County Ordinances Superseded and Preempted

were on July 31, 2023, filed with the North Dakota Public Service Commission and served electronically to the following:

Hope L. Hogan
hlhogan@nd.gov

John Schuh
jschuh@nd.gov

John Hamre
jghamre@nd.gov

Zachary Pelham
zep@pearce-durick.com

David Knoll
david@bismarck-attorneys.com

Steven Leibel
steve@bismarck-attorneys.com

Randall J. Bakke
rbakke@bgwattorneys.com

Bradley N. Wiederholt
bwiederholt@bgwattorneys.com

Lawrence Bender
lbender@fredlaw.com

Brant Leonard
bleonard@fredlaw.com

Bret Dublinske
bdublinske@fredlaw.com

Brian E. Jorde
bjorde@dominalaw.com

Kevin Pranis
kpranis@liunagrocc.com

James Curry
jcurry@babstcalland.com

Derrick Braaten
derrick@braatenlawfirm.com

Dated this 31st day of July, 2023.

/s/ Julie Lawyer
Julie Lawyer, BAR ID 05693
Burleigh County State's Attorney
514 E Thayer Avenue, Bismarck, ND 58501
Phone: (701) 222-6672; E-service: bc08@nd.gov