

Summit Carbon Solutions Testimony on House Bill 1384
February 9, 2023, 9:00 A.M.
House Energy and Natural Resource Committee
Representative Todd Porter, Chairman

Jeff Skaare – Director of Land Summit Carbon Solutions

Opposition to HB 1384

Chairman Porter, and fellow Representative Committee Members.

My name is **Jeffrey Skaare**. I am the **Sequestration Director of Land Legal and Regulatory Affairs** for **Summit Carbon Solutions**. I am an attorney by education, and a certified professional landman by trade. Born, raised and educated in North Dakota, I have dedicated the majority of my professional career to the development of ND's vast mineral resources. I have witnessed first-hand the need for, and the buildout of, the necessary infrastructure to develop North Dakota's vast natural resources. I have personally overseen the acquisition, build out and operation of over 300 miles of pipeline within North Dakota. In my past employment, I was involved in the acquisition, reclamation, and operation of those same pipelines. I became involved in the Summit Carbon Solutions project because I believe that the two most important industries to North Dakota, namely Agriculture & Energy, will need to find a carbon management solution to continue to thrive. We have reviewed proposed House Bill No. 1384 and we oppose for the following reasons:

- 1.) The enactment of this Bill will only encourage additional eminent domain lawsuits.
- 2.) The enactment of this Bill will negatively impact economic development in North Dakota and will harm the development of infrastructure including infrastructure commissioned by the State.
- 3.) The enactment of this Bill is essentially an unlawful taking from the State or private entities.

I would like to address each of these points in turn.

First, by creating a percentage increase on the fair market value of land needed for infrastructure, you will have incentivized litigation. Landowners will have less incentive to negotiate fair

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market value easements when the perception is that a windfall is achieved through litigation. The legal community would embrace such legislation and would encourage legal action because pursuant to N.D.C.C. 32-15-32 the court may award costs and attorney's fees against the Petitioner (i.e., the party initiating the action for condemnation) in favor of the Respondent (landowner). This would create an additional incentive for the legal community to draw out the legal action to recover additional attorney's fees. Currently an eminent domain action creates a level playing field for both sides. It is level because the landowner is guaranteed to receive the highest fair market value of their land based upon a Trier of fact. By increasing the judgment by 33% you are incentivizing additional eminent domain actions.

Secondly, the enactment of this legislation will have a negative impact on all future projects. For North Dakota to continue to develop its vast natural resources, additional infrastructure is needed. North Dakota has long been a state open for business and the enactment of this legislation will send a clear signal to all those interested in developing infrastructure that North Dakota is no longer encouraging development. This bill negatively impacts economic development.

Third, the enactment of this bill is tantamount to an unlawful taking from State or Private Entities. It is picking the winners and losers and is the State Legislatures finger on the scales of justice. Assume for a moment that this Bill requested the opposite, a 33% reduction in the Tier of Facts' fair market value determination. If such a bill was introduced, the pushback would be tremendous and the cry from landowners would be heard nationwide. Such a bill would likely fail a legal challenge as an unlawful taking of property. How does this change when you flip from the Landowner to the State or

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Private entity? The answer is simple. It does not. Justice needs to be equal and influencing the legal outcomes is, in essence, placing your fingers on the scale of justice and creating an unlawful taking. A recommendation of Pass on this bill sends a clear message that North Dakota is not interested in economic development.

It is for these reasons that **we oppose** the enactment of House bill number 1384 and ask you to forward a **DO NOT PASS** recommendation. Thank you.