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## **1.0 INTRODUCTORY, LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION**

This is an application for a permit to engage in surface coal mining and reclamation operations in the State of North Dakota. This application has been compiled by Golder Associates, Inc. (Golder) for South Heart Coal LLC (SHC) for the South Heart Lignite Mine (SHLM) in accordance with the North Dakota Public Service Commission (PSC) Surface Coal Mining and Reclamation Program, and the Laws and Rules governing surface coal mining and reclamation (Chapters 38-14 and 38-18 of the North Dakota Century Code (NDCC) and Article 69-05 of the North Dakota Administrative Code (NDAC)). The proposed Permit Boundary for the mine is shown on [Figure 1.0-1](#).

The SHLM is being developed by SHC to produce coal for market. The mine plan described in this application has been designed specifically to provide coal to a planned [integrated gasification combined cycle \(IGCC\) power](#) ~~commercial-scale gasification~~ plant that would be located adjacent to the mine. 2014 is currently planned as the year that initial mine development and mining will commence. Ongoing engineering evaluations of the planned commercial-scale gasification plant indicate that a mine production rate of 2.4 million tons of coal per year will be required to fully support the plant. Where there are specific revisions to tonnages, the schedule for mining and reclamation, or any other changes specific to coal delivery that require permit revision, operations revisions to address the changes will be submitted to the PSC for approval.

### **1.1 Introductory Information**

#### 1.1.1 Application Form

[Appendix 1.1-1](#) presents the SHLM permit application form SFN 10522.

#### 1.1.2 Approval Forms

SHC is in the process of obtaining other permits and licenses applicable to the proposed operations and required by Stark County and Federal and State government agencies. A list of all other known permits and licenses that may be required for the SHLM, including type of permit or license and name and address of issuing authority, is presented in [Table 1.5-1](#).

## **1.2 Legal Information**

### 1.2.1 Legal Description of Permit Area (NDCC 38-14.1-14(1)(a))

[Appendix 1.2-1](#) presents a legal description of the SHLM Permit Area in metes and bounds. The legal description was prepared based on a survey of the Permit Area performed by Interstate Engineering Inc. in July 2008 and updated in November 2009. The survey was carried out using a North Dakota (ND) State Plane Coordinate System, North American Datum of 1927 (NAD27). Based on this survey, the SHLM Permit Area was calculated to be 4,581.4 acres. That value was used to estimate the filing fee required for this mine permit application and described in [Appendix 1.1-1](#).

### 1.2.2 Permit Area Map (NDCC 38-14.1-14(j))

[Figure 1.0-1](#) presents a Permit Area map.

### 1.2.3 Proof of Filing Fee (NDCC 38-14.1-13(b))

A copy of the application fee check filed with the PSC Reclamation Division is provided in [Appendix 1.2-2](#).

### 1.2.4 Newspaper Publication Notice (NDCC 38-14.1-18(1))

[Appendix 1.2-3](#) presents the newspaper notification that will be published in the Dickinson Press upon notification that this mine permit application is deemed complete by the PSC. The notification contains the proposed mine location, a list of surface and coal property owners within the permit boundary, the address of the commission to submit written inquiries to, and information pertaining to the public roads that may be impacted by the project. [Figure 1.2-1](#) presents a map that will be included in the newspaper notification. This map shows the location and boundaries of the Permit Area.

### 1.2.5 Certificate of Liability Insurance (NDCC 38-14.1-14(3))

A certificate issued by an insurance company authorized to do business in the State of North Dakota certifying that the applicant has a public liability insurance policy in force for the surface coal mining

and reclamation operations for which this permit is sought is included in [Appendix 1.2-4](#). The policy provides for personal injury and property damage protection in the amounts required by NDAC 69-05.2-12-20.

#### 1.2.6 Filing with County Auditor (NDCC 38-14.1-13(2))

Upon notification by the PSC that the SHLM permit application is administratively complete, a copy of the permit application will be filed at the Office of the County Auditor, in the Stark County Courthouse, located at 51 3<sup>rd</sup> Street E, in Dickinson, North Dakota.

### **1.3 Business Information, Identification of Interests and Right of Entry**

#### 1.3.1 Applicant Information

The name, address, telephone number, and employer identification number of the applicant, applicant's resident agent, and person who will pay the abandoned mine land reclamation fee are described below according to NDAC 69-05.2-06-01(1)(d) and NDCC 38.14.1-14(1)(c).

- Address of Applicant:

South Heart Coal LLC (SHC)  
601 Jefferson Street, Suite 3600  
Houston, TX 77002  
(713) 751-7516

Employer I.D. No: 35-2164875

- Applicant's Resident Agent:

Capital Services Inc. (Delaware and N. Dakota)  
800 Brazos, Suite 400  
Austin, TX 78701  
(800) 345-4647

- Payment of the Abandoned Mine Reclamation Fee (NDAC 69-05.2-06-01(d))

All Abandoned Mine Reclamation fees will be paid by SHC.

### 1.3.2 Mine Information (69-05.2-06-01(1)(b))

#### Mine Name:

South Heart Lignite Mine

The Mine Safety and Health Administration (MSHA) identification number for the SHLM will be obtained before any operations begin.

### 1.3.3 Name of Officers, Directors, and Share Holders, and Organizational Structure of SHC (NDCC 38-14.1-14(1)(c)(e) and NDAC 69-05.2-06-01(1)).

[Figure 1.3-1](#) presents the organizational structure of SHC and its wholly-owned affiliates and shareholders, including their ownership or control relationship to SHC and their percentage of ownership and location in the organizational structure. In addition, [Table 1.3-1](#) presents employer identification number and registered agent of the entities presented in [Figure 1.3-1](#), and the names and addresses of their directors and officers. [Table 1.3-1](#) also presents the name and address of persons owning a record of 10 percent or more of any class of voting stock or membership interests of the applicant.

### 1.3.4 Name of other Mines Owned or Controlled Either by the Applicant or any Person Who Owns and Controls the Applicant (NDCC 38-14.1-14(1)(e) and NDAC 69-05.2-06-01(1)(f))

Neither SHC, as the permit applicant, nor any other person who owns and/or controls SHC has operated any surface coal mining operation within the preceding five years.

### 1.3.5 Permit Area Surface and Coal Interest

[Appendix 1.3-1](#), [Appendix 1.3-2](#), [Figure 1.3-2](#) and [Figure 1.3-3](#) present a tract summary and tract-by-tract delineation, respectively, of all surface and coal interest, easements and leasehold interests, other than coal, of record contained within the Permit Boundary. This section contains the information required under NDCC 38-14-1.14(1)(b), NDCC 38-14-1.14(1)(k), NDCC 38-14-06, NDCC 38-14-1-18(2), NDAC 69-05.2-06-03, and NDAC 69-05.2-08-02(1).

Each tract description includes legal description of the tract; name and address of the owner of record of surface and coal subsurface rights; percentage of ownership; right of entry documents; easement of

records; and description of leasehold interest other than coal. The right of entry agreements include signature pages for the different property owners. The signed pages have been properly notarized by a Notary Public. Please note that some of the notary stamps cannot be seen on the scanned file because a crimp was used. The original documents are on file in the SHC offices.

The Tract Summaries ([Appendix 1.3-1- Surface Tract Summary](#) and [Appendix 1.3-2 – Coal Tract Summary](#)) include a list of title reports, parcel legal descriptions and owners of record for surface or coal tracts. Signed agreements and the page number in the agreement where the owner's signature page can be found are identified on each appendix table. The percentage of signatures received for each parcel and for the Permit Area has been calculated and is based on the number of owners for each tract and a Permit Area of 4,581.4 acres. In addition, a link has been provided in each appendix table for the title reports and the signed agreements.

In summary, SHC has lease agreements signed for 100 percent of the surface area within the Permit Boundary and the right to mine 81.6 percent of the total coal within the Permit Boundary. This exceeds the 75 percent that is required in NDCC 38-18-05. For example, in [Appendix 1.3-2](#), Coal Tract Title ID C-1399822-B has 18 owners and represents 312.2 acres out of the total 4,581.4 acres in the Permit Area. Two of the 18 owners did not sign lease agreements (Robert Jr. Erdahl and Karla H. Erdahl) and together those two owners hold 4 percent ownership in the property. Thus, 96 percent of the parcel has signed lease agreements which represents 6.5 percent of the Permit Area with signed agreements.

[Appendix 1.3-3 - Surface and Coal Lease Agreements](#) presents a list of the separate lease agreements that pertain to the property within the Permit Boundary and within ¼ mile of it. These are the same leases that are accessed through the separate parcel descriptions in [Appendix 1.3-1](#) and [Appendix 1.3-2](#).

Title records, right of entry documents, easements of record and leasehold interests other than coal that have been presented in this section were obtained by a title search performed by Contex Energy Company in the Office of the Stark County Recorder. The following efforts were also made to gather contact information for property owners, business entities and/or principals, officers and resident agents presented in [Appendix 1.3-1](#) and [Appendix 1.3-2](#):

- A compilation of available parcel owner contact information was performed using data from the title search conducted by Contex Energy Company;

- An Internet search was conducted using the company name;
- A business records search was performed using the North Dakota Secretary of State department's website;
- If a business address was given and it was outside North Dakota State then the given State's Secretary of State department website was searched; and
- When an address or P.O Box was provided in the title report, a reverse address search was performed using the Dex White Pages website to determine if there was any information about the current users of the P.O. Box or address listed for the company.

[Figure 1.3-2](#) and [Figure 1.3-3](#) show the tracts within the Permit Area, and surface and coal ownership information per each tract.

1.3.6 Adjacent Surface and Coal Interest (NDCC 38-14.1-14(d), NDAC 69-05.2-06-01 (1)(a)(c), and NDAC 69-05.2-08-02(1))

[Appendix 1.3-1](#) and [Appendix 1.3-2](#) present information for all adjacent surface and coal interests, respectively, in lands contiguous to the proposed Permit Area and within one-fourth mile of the Permit Boundary. Those appendices include legal descriptions of the tract area, names and addresses of the owners of record of adjacent surface and coal subsurface rights, percentages of ownership, rights of entry documents or consent documents, and easements of record.

Title records, right of entry documents, easements of record and leasehold interests other than coal that have been presented in this section were obtained by a title search performed by Contex Energy Company in the Office of the Stark County Recorder. Contact information for property owners, business entities and/or principals, officers and resident agents reflected in [Appendix 1.3-1](#) and [Appendix 1.3-2](#) was obtained via the efforts described in Section 1.3.5.

[Figure 1.3-2](#) and [Figure 1.3-3](#) show the location of each tract within one-fourth mile of the Permit Boundary.

1.3.7 Certificate of Authenticity (NDAC 69-05.2-06-03)

A certificate of authenticity stating that the copies of the instruments submitted in this application (in Sections 1.3.5 and 1.3.6) are true and correct duplications of the original instruments that are on



file in the Houston Office of SHC located at 601 Jefferson Street, Suite 3600, Houston, TX 77002, is included in [Appendix 1.3-4](#).

#### **1.4 Surface Owner Protection Act Compliance Information (NDCC 38-18-06(1))**

##### 1.4.1 Surface Owner Consent

Certified copies of the leases which constitute surface owner consent are provided in Section 1.3.5.

##### 1.4.2 Surface Owner Notification Letters

[Appendix 1.4-1](#) presents copies of the surface owner notification letters sent to surface owners on February 26, 2010. Letters contain the plan of work and operations for the SHLM and are accompanied by an enlarged United States geological survey topographic map showing the specific locations to be covered by the mining operation ([Figure 1.4-1](#)). [Appendix 1.4-1](#) also contains the post-mining preference statements and the surface owner notification letters that were sent with them on August 29, 2008.

#### **1.5 Other Compliance Information**

##### 1.5.1 Current and Previous Permits and Permit Applications, including Pending Applications (NDAC 69-05.2-06-02(1) and NDCC 38-14.1-14(1)(f))

Neither SHC, any subsidiary, nor persons controlled by or under common control with the permit applicant has held any Federal or State mining permit during the five-year period prior to the date of submission of this application.

##### 1.5.2 Permit Suspensions or Revocations and Bond Forfeitures (NDCC 38-14.1-14(1)(h) and NDAC 69-05.2-06-02(2))

Neither SHC, any subsidiary, nor persons controlled by or under common control with the permit applicant has held any Federal or State mining permit which in the five-year period prior to the date of submission of this application has been suspended or revoked, or had a mining bond or similar security forfeited.

### 1.5.3 Violation Identification (NDCC 38.14.1-14(1)(g) and NDAC 69-05.2-06-02(3)(4)(5))

Neither SHC, any subsidiary, nor persons controlled by or under common control with the permit applicant has been in violation of Chapter 3.14-1, the Surface Mining Control and Reclamation Act of 1977, or any law, rule or regulation of the United States or of the State of North Dakota, or of any department or agency in the United States or of the State of North Dakota pertaining to air or water environmental protection, during the three-year period prior to the date of submission of this application.

### 1.5.4 Other Licenses and Permits

In addition to the requirements of the PSC Reclamation Division, SHC will comply with all other Federal, State and local laws and regulations pertaining to the construction and operation of the mine that is the subject of this application. [Table 1.5-1](#) presents a current list of the permits, approvals and authorizations required for the initial construction and operation of the SHLM, and includes those which prescribe the closure requirements applicable to the SHLM. The current status of each of these permits is also presented in [Table 1.5-1](#).

### 1.5.5 Relationship to Areas Designated Unsuitable (NDCC 38-14.1-05, NDCC 38-14.1-07, NDCC 38-14.1-21(3)(d) and NDAC 69-05.2-04)

The surface coal mining operations proposed for this Permit Area are not:

- Within an area designated as unsuitable for all or certain types of surface coal mining operations or under study for such designation in an administrative proceeding;
- On any lands within the boundaries of units of the North Dakota State Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, or National Recreation Areas designated by Act of the U.S. Congress;
- On any federal lands within boundaries of any National Forest;
- Within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Sites;

- Within 300 feet of any public building, school, church, community or institutional building, or within 100 feet of a cemetery;

Several existing structures including residential homes, farm buildings, farm structures, storage containers and barns exist within the proposed Permit Boundary and will, if necessary, be removed prior to any mining activities. A removal plan for the structures described below is included in [Section 3.2](#). Location of these structures are presented in [Figure 3.2-1a](#).

- Farmstead 1: NW1/4 of Section 21 and SW1/4 of Section 16, T139N and R98W. The occupied dwelling and farm buildings will, if necessary, be removed prior to mining that area.
- Farmstead 2: NE1/4 of Section 22 and SE1/4 of Section 15, T139N and R98W. The occupied dwelling and farm buildings will, if necessary, be removed prior to mining that area.
- Farmstead 3: NW1/4 of Section 23, T139N and R98W. The occupied dwelling and farm buildings will, if necessary, be removed prior to mining that area.
- Farmstead 4: SE1/4 of Section 22, T139N and R98W. The occupied dwelling and farm buildings will, if necessary, be removed.
- Farmstead 5: Between SW1/4 and NW1/4 of Section 27, T139N and R98W. The occupied dwelling and farm buildings will, if necessary, be removed prior to mining that area.

Signed coal lease and surface use agreements between the owners of the dwellings and farm buildings, and SHC, which grant SHC the right to demolish or remove the existing dwellings, farm buildings and related structures within the Permit Boundary and constitute surface owner consent to SHC, are provided in [Appendix 1.3-1](#).

[Section 3.5 and Figure 3.5-11a and Figure 3.5-11b present a plan for the county and section line roads that will be temporarily closed, removed and ultimately replaced over the life of the mine. Once mining is complete and reclamation has begun, all of the section line rights-of-way and county roads affected during mining activities will be reclaimed to a condition equal to or better than their pre-mining conditions. Unless otherwise noted, all sections are within Township 139 North, Range 98 West.](#)

[Operations within 100 feet of the outside rights-of-way of the following section lines will be necessary during the planned mining of this permit area.](#)

The north-south section lines between:

- Sections 14 and 15
- Sections 22 and 23

During the term of the permit, mining and related construction activities will need to be located across several section lines. SHC proposes close some or all of the following section line rights-of-way during the term of mining and reclamation.

The east-west section lines between:

- Sections 9 and 16
- Sections 10 and 15
- Sections 14 and 23
- Sections 15 and 22
- Sections 16 and 21
- Sections 17 and 20
- Sections 21 and 28
- Sections 22 and 27
- Sections 27 and 34
- The eastern  $\frac{3}{4}$  of Sections 28 and 33
- The eastern  $\frac{1}{4}$  of Sections 20 and 29

The north-south section lines between:

- Sections 9 and 10
- Sections 16 and 17
- Sections 15 and 16
- Sections 21 and 22
- Sections 20 and 21
- Sections 27 and 28

- Sections 33 and 34
- The northern ¼ of Sections 28 and 29

Due to the section line right-of-way closures and the associated road closures, SHC proposes to construct three new road segments along the following section line rights-of-way. The closures will not take place until after the new road segments are in place.

The east-west section lines between:

- Section 33 and Section 4 of Township 138 North, Range 98 West
- Section 34 and Section 3 of Township 138 North, Range 98 West

The north-south section line between:

- Sections 32 and 33

SHC proposes to construct an overpass on 122<sup>nd</sup> Avenue in order to allow a planned mine haul road to pass under 122<sup>nd</sup> Avenue. The overpass will run north to south along 122<sup>nd</sup> Avenue near the south half of the section line between Sections 22 and 23. All changes to the public rights-of-way, final road designs and construction will be subject to approval of the Stark County Board of Commissioners. SHC will comply with all Stark County road construction guidelines.

~~Mine layout and related construction activities will be conducted within 100 feet of the Right of Way of several public county and section line roads. Section 3.5 and Figure 3.5-11a, Figure 3.5-11b, and Figure 3.5-11c present a relocation plan for the county and section line roads that will be temporarily closed, removed and ultimately replaced over the life of the mine. SHC will obtain approval from the Stark County Board of Commissioners before making any changes to the public rights of way. All final road designs and construction will be subject to approval from the Stark County Board of Commissioners and will comply with all county road construction guidelines.~~

~~The following county and section line roads will be affected during certain periods of the mine life:~~

~~In Section 16 and 15 of Township 139 North, Range 98 West there is one unpaved road that will be closed during mining and is listed below:~~

- ~~East west road located along the south section line.~~

~~In Section 22 of Township 139 North, Range 98 West there is one unpaved road that will be closed during mining and is listed below:~~

- ~~North south road located along the west section line.~~

~~In Section 20 of Township 139 North, Range 98 West there is one unpaved road that will be closed during mining and is listed below:~~

- ~~East west road located along the north section line; and~~

~~In Section 27 of Township 139 North, Range 98 West there are three unpaved roads that will be closed during mining and are listed below:~~

- ~~East west road located along portions of the north section line;~~
- ~~North South road located along the southern portion of the west section line;~~
- ~~North South road located along the northern portion of the west section line.~~

~~In Section 33 of Township 139 North, Range 98 West there are two unpaved roads that will be closed during mining and are listed below:~~

- ~~East west road located along the north section line;~~
- ~~North South road located along the east section line.~~

~~These roads will be closed and relocated as shown on [Figure 3.5 11b](#) and [Figure 3.5 11c](#).~~

~~SHC will construct a temporary road connecting the northern section line road in Section 33 with a temporary road that runs along the south section line in Section 33. [Figure 3.5 11c](#) shows the proposed new road location that SHC has designed. Upon approval of the road closings and the new road location by the Stark County Board of County Commissioners, approximately 10,500 ft of new road will be constructed in Section 33 as shown on [Figure 3.5 11c](#).~~

~~An overpass will be constructed on 122<sup>nd</sup> Avenue prior to 2038. The overpass will run north to south along 122<sup>nd</sup> Avenue in the SW1/4 of Section 23 and SE1/4 of Section 22 of Township 139 North, Range 98 West as shown on Figure 3.5-11c. The overpass will stay in place and not be removed post mining.~~

~~The existing unpaved section line road (41st Street SW) running east to west along the north section line of Sections 33 and 34 of Township 139 North, Range 98 West will be closed as shown on Figure 3.5-11b. The section line public right of way (ROW) that runs north to south along the west section line of Section 34 of Township 139 North, Range 98 West will also be closed. Prior to the closure of these existing section line roads and public ROW, new section line roads will be constructed that run east to west along the south section lines of Sections 33 and 34 of Township 139 North, Range 98 West and then north south along the west section line ROW of Section 33 to intersect with existing 41<sup>st</sup> Street at the northwest corner of Section 33. Figure 3.5-11b shows the preliminary proposed road relocations that SHC has designed that will have minimal or no travel affects on residents who use these roads. Once the Stark County Board of County Commissioners has approved the SHC proposed road relocations and re-alignments, the 10,600 ft of the new section line road that will run east to west along the southern section line of Section 33 and 34 of Township 139 North, Range 98 West will be built. Also, approximately 5,300 feet of road will be constructed along the west boundary of section 33 to tie the newly constructed portion of 42<sup>nd</sup> Street to existing 41<sup>st</sup> Street.~~

~~Prior to the beginning of mine construction, the following roads will be closed throughout the entire mine life:~~

- ~~• The unpaved section line ROW along the western boundary of Section 21 of Township 139 North, Range 98 West;~~
- ~~• The eastern 1/3 of the unpaved road lying along the northern section line road in Section 27 of Township 139 North, Range 98 West;~~
- ~~• The northern and eastern unpaved section line road in Section 33 of Township 139 North, Range 98 West;~~
- ~~• The southern 1/2 of the unpaved road lying along the western section line road in Section 27 of Township 139 North, Range 98 West; and~~
- ~~• All other unpaved roads in Section 27 of Township 139 North, Range 98 West.~~

~~Once mining is complete within the Permit Area and reclamation has begun, all the section line and county roads affected during the mining activities will be reclaimed to a condition equal to or better than their pre-mining conditions or as stipulated with the Stark county Commissioners.~~

1.5.6 Entities and/or Persons Who Prepared or Who Consulted in Preparing This Application  
(NDAC 69-05.2-05-02(3))

Many entities and/or persons participated in the preparation of this application. Contact information for the companies, principal report authors and investigators involved in the preparation of each chapter is presented in [Appendix 1.5-1](#).



## **TABLES**

## **FIGURES**

## **APPENDICES**

**APPENDIX 1.1-1**

**SOUTH HEART LIGNITE MINE PERMIT APPLICATION FORM (SFN 10522)**

**APPENDIX 1.2-1**

**METES AND BOUNDS LEGAL DESCRIPTION OF PERMIT AREA**

**APPENDIX 1.2-2**

**PROOF OF FILING FEE**

**APPENDIX 1.2-3**

**NOTICE OF FILING FOR A PERMIT TO  
CONDUCT SURFACE COAL MINING OPERATIONS**

**APPENDIX 1.2-4**

**CERTIFICATE OF LIABILITY INSURANCE**



**APPENDIX 1.3-1**

**SURFACE OWNERSHIP**

**APPENDIX 1.3-2**  
**COAL OWNERSHIP**

**APPENDIX 1.3-3**

**SURFACE AND COAL LEASE AGREEMENTS**

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**CERTIFICATE OF AUTHENTICITY**

**APPENDIX 1.4-1**

**SURFACE OWNER NOTIFICATION LETTERS**

**APPENDIX 1.5-1**

**CONTACT LIST**