ORDINANCE No. _24-1__

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE OF DICKINSON COUNTY, IOWA, ORDINANCE NO. 102, FOR THE PURPOSE OF REGULATING AND RESTRICTING THE USE OF LAND IN THE COUNTY FOR THE TRANSPORT OF HAZARDOUS LIQUID THROUGH A HAZARDOUS LIQUID PIPELINE

WHEREAS, the Supervisors of Dickinson County, Iowa ("the County"), under the authority of IA CONST ART. 3, § 39A, Iowa Code § 331.301, and Iowa Code § 335.3, adopted and made effective as of September 1, 1998, Ordinance No. 102, pertaining to county zoning and land use controls ("the Ordinance"); and

WHEREAS, the County may by Ordinance lawfully regulate and restrict the use of land for trade, industry, residence, or other purposes in accordance with a comprehensive plan and designed to further the considerations and objectives set forth in Iowa Code § 335.5; and

WHEREAS, the County updated its comprehensive plan in 2006, and the update stated that the following overall goal was the most significant element underlying the comprehensive plan: "To provide long term planning, growth, and balanced developments, which together with land use controls, will minimize the number of conflicting land uses, consider the impact on the natural environment, and preserve the character and intent of urban and rural developments. The County shall recognize and achieve a sensitive balance between urban and rural land uses which facilitate the economic potential of the county while at the same time preserving sensitive environmental resources of the region and facilitating necessary and required services to residents of the county;" and

WHEREAS, the comprehensive plan also sets forth the following: (1) a master land use plan; (2) goals and objectives for land use planning, agricultural land and farming operations, residential development, commercial development, industrial development, transportation, natural resources and environment, public facilities and services, conservation and recreation, and historical and cultural preservation; and (3) an implementation plan for achieving the goals of the plan; and

WHEREAS, the comprehensive plan states, among other things, that the County's land use goals are: (1) with regard to physical setting "Future developments should be scrutinized for potential effects it may have upon the physical setting and natural resources of the county;" (2) with regard to agricultural lands, the soils of the county "are an extremely valuable and nonrenewable natural resource" that must be protected from "soil erosion, soil manipulation, and soil contamination" and furthermore that "lands should be considered for development if the proposed development will not be detrimental to other existing developments or nearby sensitive natural resource areas;" (3) with regard to county development, "Overall development of the county must not become stagnant. At a minimum, existing businesses and housing should be maintained and encouraged to expand. One primary objective for countywide development involves focus on increasing the county's existing tax base through the promotion of new

opportunities. New development, especially those related to the tourism and recreational nature of the county, should be encouraged in order to strengthen and promote the continued economic viability of Dickinson County;" (4) with regard to city development, "City growth in Dickinson County must be encouraged in order to strengthen the overall community, economic and tourism vitality;" (5) with regard to residential development, "Adequate space for future residential development must be maintained if the county will continue to grow;" (6) with regard to industrial development, "Hazardous industrial uses (i.e. farm or agricultural chemicals) along with those industries promoting the harnessing or production of natural energy sources should be considered, upon careful review and consideration, to locate in agricultural zoned areas where zoning protection can be implemented to keep residential uses at a safe distance;" and (7) with respect to land use mixing, "Zoning practices should allow a separation of land use types in order to give all uses protection from incompatible types;" and

WHEREAS, the County's comprehensive plan establishes a set of land use policies for agricultural land that includes the following principle: "To prevent the proliferation of non-agricultural land uses through predominately rural sectors of the county."

WHEREAS, the considerations and objectives of the land use and zoning regulations adopted under Iowa Code § 335.5 require counties to design the regulations (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; and

WHEREAS, the County and the several municipalities within the County employ a number of emergency response personnel, including local sheriffs, police, firefighters, and emergency medical service responders, and are responsible for ensuring the safety of these public servants through adequate training, knowledge, and access to personal protective equipment; and

WHEREAS, the State of Iowa through Iowa Code chapter 29C requires the County and the several cities within the County to participate in and fund county-level and regional emergency response planning for both natural and human-caused disasters through its joint county-municipal local emergency management commission and agency, to support response to disasters in other Iowa Counties, and to establish emergency communication measures to alert County residents of threats to their lives and wellbeing; and

WHEREAS, the County has authority under Iowa law to require information from a company that proposes to construct a hazardous liquid pipeline in the County that will enable the County to fulfill its statutorily required emergency planning duties and protect county emergency response personnel; and

WHEREAS, the County, in coordination with the State of Iowa, other counties, and the several cities within the County, has adopted a Comprehensive Emergency Management Plan in order to provide for a coordinated response to a disaster and emergency in Dickinson County; and

WHEREAS, the existing emergency response plan for the County does not currently evaluate the risk of or plan for the County's response to the rupture of a carbon dioxide pipeline passing through the County; and

WHEREAS, the transport of hazardous liquid through a hazardous liquid pipeline constitutes a threat to public health and the general welfare such that the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation ("PHMSA") has the authority to prescribe safety standards for such pipelines; and

WHEREAS, the federal Pipeline Safety Act in 49 U.S.C. § 60101 et. Seq. authorizes the United States Department of Transportation to regulate safety standards for the design, construction, operation, and maintenance of hazardous liquid pipelines, including those that transport supercritical carbon dioxide, but § 60104(e) of this law provides that "[t]his chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility," such that no federal regulation determines the location or route of a hazardous liquid pipeline; therefore, the State of Iowa and its municipalities may determine the route or location of a federally regulated hazardous liquid pipeline based on such policy factors that the State of Iowa deems relevant; and

WHEREAS, the State of Iowa and its political subdivisions may and must consider the risks to present and future land uses of a hazardous liquid pipeline when selecting a route for it, so as to prevent its construction overly near to residential buildings, existing and future public and private infrastructure, high and vulnerable population buildings such as schools and nursing homes, future housing or industrial developments, and confined animal facilities; and

WHEREAS, In Iowa, the Iowa Utilities Board ("the IUB") has authority pursuant 49 U.S.C § 60104(e) of the Hazardous Liquid Pipeline Safety Act and under Iowa Code chapter 479B to implement certain controls over hazardous liquid pipelines, including the authority to approve the location and routing of hazardous liquid pipelines prior to its construction; and

WHEREAS, under Iowa Code § 479B.4, a pipeline company must file a verified petition with the IUB asking for a permit to construct, maintain, and operate a new pipeline along, over, or across the public or private highways, grounds, waters, and streams of any kind in this state; and

WHEREAS, Iowa Code § 479B.5 requires that each petition for a permit must state the relationship of the proposed project to the present and future land use and zoning ordinances; and

WHEREAS, Iowa Code § 479B.20: (1) specifically provides for the application of provisions for protecting or restoring property that are different than the provisions of section 479B.20 and the administrative rules adopted thereunder, if those alternate provisions are contained in agreements independently executed by the pipeline company and the landowner; (2) specifically contemplates that such agreements will pertain to "line location and (3) specifically requires that the independent agreements on "line location" between the landowner and the pipeline company must be provided in writing to the county; and

WHEREAS, the use of land for a hazardous liquid pipeline constitutes a use of land for trade, industry, or other purposes which the County has not heretofore specifically regulated or

restricted through the use of zoning or other ordinances; but which constitutes an industrial use of the land that is not currently a permitted use in any of the County's zoning districts and which currently requires an addition to the zoning Ordinance according to the Ordinance's amendment procedures; and

WHEREAS, Summit Carbon Solutions, LLC ("Summit") has submitted to the IUB a Petition for a Hazardous Liquid Pipeline Permit ("the Permit") and proposes to build a carbon capture and sequestration project ("Project") that would transport up to 12 million metric tons of carbon dioxide ("CO2") annually from participating industrial facilities in Iowa, as well as CO2 from facilities in Minnesota, North Dakota, South Dakota, and Nebraska to a sequestration site in North Dakota, where the CO2 will be permanently stored; and

WHEREAS, the IUB has not yet issued a permit to Summit; and

WHEREAS, there are several factors that would influence human health and public welfare in the event of a rupture of such a pipeline, including CO2 parts per million (ppm) concentration, wind speed and direction, velocity of the gas exiting the pipe, and thermodynamic variables; and

WHEREAS, (1) a sudden rupture of a CO2 pipeline may lead to asphyxiation of nearby people and animals, (2) CO2 is lethal if inhaled for 10 minutes at a concentration larger than 10% by volume, (3) the National Institute for Occupational Safety and Health ("NIOSH") has set the Immediate Dangerous to Life and Health (IDLH) limit of CO2 at 4% by volume; and (4) the concentrations of 25% volume, CO2 is lethal to humans within 1 minute; and

WHEREAS, the rupture of a carbon dioxide pipeline in the County would likely release large amounts of carbon dioxide that could rise to dangerous levels near the rupture that could threaten the health and lives of county residents, emergency response personnel, and animals, including but not limited to valuable livestock in confined animal feeding facilities; and

WHEREAS, a rupture of carbon dioxide pipeline near a populated area could cause a mass casualty event; and

WHEREAS, on May 26, 2022, PHMSA announced new safety measures to protect Americans from carbon dioxide pipeline failures, including (1) initiating a new rulemaking to update standards for CO2 pipelines, including requirements related to emergency preparedness, and response; (2) issuing an advisory bulletin to remind owners and operators of gas and hazardous liquid pipelines, particularly those with facilities located on shore or in inland waters, about the serious safety related issues that can result from earth movement and other geological hazards; and (3) conducting research solicitations to strengthen pipeline safety of CO2 pipelines; and

WHEREAS, the rulemaking initiated by PHMSA to update safety and emergency preparedness standards for CO2 pipelines is not yet complete; and

WHEREAS, the IUB does not have jurisdiction over emergency response in Iowa and has no expertise in emergency response planning; and

WHEREAS, the County does not have access to scientific assessments for the area of risk that would result from a rupture of the carbon dioxide pipeline proposed to be constructed in the County, which can be estimated through the use of computer modeling; and

WHEREAS, the County seeks to require the preparation of an estimate of the hazard zone resulting from a rupture of a carbon dioxide pipeline proposed to pass through the County, for the purpose of planning the County's emergency response and of facilitating the least dangerous route through the County; and

WHEREAS, the County may adopt land use and zoning restrictions (1) for purposes of regulating the use of land in the County, including the execution of independent agreements between landowners and pipeline companies regarding line location; and (2) for purposes of planning the County's emergency response and of facilitating the least dangerous route through the County of a hazardous liquid pipeline, including requiring the submission of an emergency response and hazard mitigation plan; and

WHEREAS, the adoption of such land use and zoning regulations is (1) consistent with and not preempted by Iowa Code chapter 479B, including Iowa Code §§ 479B.5(7) and 479B.20, and (2) necessary to facilitate the IUB's approval of a permit, in whole or in part upon terms, conditions, and restrictions as to location and route that are "just and proper"; and

WHEREAS, the County intends to establish a process under the Ordinance for permitting and approving the use of land in Dickinson County for the transport of hazardous liquid through a hazardous liquid pipeline that is not inconsistent with or preempted by federal law, including the Hazardous Liquid Pipeline Safety Act at 49 U.S.C. § 60101 et seq., and not inconsistent with or preempted by Iowa law, including Iowa Code chapters 479B, 331, and 335.

WHEREAS, the County Planning and Zoning Commission held a public hearing on the proposed Ordinance on _____, 2024 and on _____, 2024 recommended approval of the Ordinance.

NOW THEREFORE, BE IT ORDAINED AND ENACTED BY THE SUPERVISORS OF DICKINSON COUNTY, IOWA:

SECTION 1. – TEXT AMENDMENT – Article #3 – DEFINITIONS/USE CLASSIFICATIONS, Section 1: Definitions, of the Dickinson County Zoning Ordinance, is amended by adding the following new definition after the definition of Public Notice and before the definition of Public Way:

> 117. "Public Utility" means a public utility as defined in section 476.1, and shall also include waterworks, municipally owned waterworks, joint water utilities, rural water districts incorporated under Iowa Code chapter 357A or chapter 504, cooperative water associations, and electric transmission owners as defined in Iowa Code section 476.27 primarily providing service to public utilities as defined in Iowa Code section 476.1.

SECTION 2. – TEXT AMENDMENT – Article #3 – DEFINITIONS/USE CLASSIFICATIONS, Section 2: USE CLASSIFICATIONS, Paragraph C. – GENERAL DESCRIPTION OF INDUSTRIAL USE TYPES, of the Dickinson County Zoning Ordinance, is amended by adding the following use type after Custom Manufacturing and before Light Manufacturing:

2A. Hazardous Liquid Pipelines – A use of land for purposes of transporting Hazardous Liquid through a Hazardous Liquid Pipeline. For purposes of this Zoning Ordinance, "Hazardous Liquid" and "Hazardous Liquid Pipeline" shall have the meanings defined in Article #36.

SECTION 3. – TEXT AMENDMENT – Article #3 – DEFINITIONS/USE CLASSIFICATIONS, Section 2: USE CLASSIFICATIONS, Paragraph D. – GENERAL DESCRIPTION OF CIVIC USE TYPES, Subparagraph 17 – Local Utility Services, is amended by striking the subparagraph and replacing it with the following:

17. Local Utility Services: Services, such as Public Utilities, which are necessary to support principal development and which involve only minor structures such as lines, poles, transformers, control devices and junction boxes which are necessary to support principal development. "Local Utility Services" does not include a Hazardous Liquid Pipeline nor facilities or infrastructure that do not serve either retail customers or public utilities that serve retail customers.

SECTION 4. – TEXT AMENDMENT – Article #4 - DISTRICTS, Section 6: GENERAL REGULATONS, is amended by adding the following new Paragraph F:

F. No person or property owner shall use land in any area or district in this county for purposes of transporting Hazardous Liquid through a Hazardous Liquid Pipeline except under the conditions and restrictions provided hereinafter in Article #36 – Hazardous Liquid Pipelines. For purposes of this Zoning Ordinance, "Hazardous Liquid" and "Hazardous Liquid Pipeline" shall have the meanings defined in Article #36.

SECTION 5. – TEXT AMENDMENT – Article #5 – AGRICULUTURAL DISTRICT (A-1), Section 3: CONDITIONAL PRINCIPAL USES, Letter D: INDUSTRIAL USES is amended by adding the following use before Resource Extraction:

Hazardous Liquid Pipelines

SECTION 6. – TEXT AMENDMENT – Article #21 – CONDITIONAL USES, Section 5: SUPPLEMENTAL STANDARDS, is amended by adding the following new Paragraph E:

E. Hazardous Liquid Pipelines: Any person proposing to use land for purposes of locating or constructing a Hazardous Liquid Pipeline shall submit an application for a conditional use permit according to the regulations set forth in Article #36 of this Zoning Ordinance.

SECTION 7. – TEXT AMENDMENT – This Zoning Ordinance is amended by adding the following new Article #36 to this Zoning Ordinance:

ARTICLE #36
HAZARDOUS LIQUID PIPELINES

Section 1. Intent: The intent of this Article #36 is to specify the regulations that apply to the use of land in various zones or districts for purposes of a Hazardous Liquid Pipeline and the conditions upon which the County will permit such uses. The intent of this Article shall not be interpreted or construed as regulating "safety standards" for the design, construction, operation, and maintenance of hazardous liquid pipelines, as the term "safety standards" is defined and used for purposes of the federal Pipeline Safety Act in 49 U.S.C. § 60101 et. seq. The intent of this Article also shall not be interpreted or construed as an attempt to prevent or prohibit the Iowa Utilities Board in the exercise of authority to approve the location and routing of a pipeline under Iowa Code Chapter 479B, as expressly reserved to state and local governments by 49 U.S.C. § 60104(e).

Section 2. Regulations and Conditions for the Use of Land for Hazardous Liquid Pipelines.

A. Purposes

This Article prescribes and imposes the appropriate conditions and setbacks when using land in this County for purposes of a Hazardous Liquid Pipeline.

The purposes of the regulations provided in this Article are:

1. To lawfully regulate and restrict 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) secure safety from fire, flood, panic, and other dangers; (2) protect health and general welfare; and (3) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirement.

2. To implement subsection A(1) with regard to the community planning and land use goals of the County, including cities, as contemplated in the County's Comprehensive Plan and as provided in Iowa Code chapters 335 and 414. In particular, the purpose of this Article is to further the following specific goals of the County: (1) with regard to physical setting "Future developments should be scrutinized for potential effects it may have upon the physical setting and natural resources of the county;" (2) with regard to agricultural lands, the soils of the county "are an extremely valuable and nonrenewable natural resource" that must be protected from "soil erosion, soil manipulation, and soil contamination" and furthermore that "lands should be considered for development if the proposed development will not be detrimental to other existing developments or nearby sensitive natural resource areas;" (3) with regard to county development, "Overall development of the county must not become stagnant. At a minimum, existing businesses

and housing should be maintained and encouraged to expand. One primary objective for countywide development involves focus on increasing the county's existing tax base through the promotion of new opportunities. New development, especially those related to the tourism and recreational nature of the county, should be encouraged in order to strengthen and promote the continued economic viability of Dickinson County;" (4) with regard to city development, "City growth in Dickinson County must be encouraged in order to strengthen the overall community, economic and tourism vitality;" (5) with regard to residential development, "Adequate space for future residential development must be maintained if the county will continue to grow;" (6) with regard to industrial development, "Hazardous industrial uses (i.e. farm or agricultural chemicals) along with those industries promoting the harnessing or production of natural energy sources should be considered, upon careful review and consideration, to locate in agricultural zoned areas where zoning protection can be implemented to keep residential uses at a safe distance;" (7) with respect to land use mixing, "Zoning practices should allow a separation of land use types in order to give all uses protection from incompatible types;" and (8) with respect to land use policies for agricultural land: "To prevent the proliferation of non-agricultural land uses through predominately rural sectors of the county."

3. To implement subsection A(1) 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 hazards, emergencies, and disasters and including the need to protect the health and welfare of both residents and emergency response personnel.

4. To Implement subsection A(1) in a manner that is not inconsistent with or preempted by federal or state law, including the United States Constitution, the federal Pipeline Safety Act at 49 U.S. C. § 60101 et seq., the Iowa Constitution, and Iowa Code chapters 29C, 479B, 331, and 335.

5. To implement subsection A(1) 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.

6. To implement subsection A(1) in a manner (1) that facilitates the approval of a permit by the Iowa Utilities Board, in whole or in part upon terms, conditions, and restrictions, as to location and route that are "just and proper," and (2) that creates a process that allows a Hazardous Liquid Pipeline operator to work with local county officials to obtain all local permits or approvals prior to the construction of the pipeline.

B. Definitions

For purposes of this Section, unless the context otherwise requires:

“Affected Person” means the same as defined in Iowa Administrative Code 199-13.1(3) and, unless otherwise defined in that rule, 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.

“Applicant” means a Pipeline Company or a Property Owner who applies for a Conditional Use Permit for a Hazardous Liquid Pipeline pursuant to this Section.

“Application” means the documents and information an Applicant submits to the County for purposes of obtaining a Conditional Use Permit as well as the related process and procedures for considering the application pursuant to this Section.

“Blast Zone” means the geographic area in 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.

“Board of Adjustment” means the Dickinson County Board of Adjustment established pursuant to Iowa Code chapter 335 and Article #28 of this Dickinson County Zoning Ordinance.

“Carbon Dioxide Pipeline” means a Hazardous Liquid Pipeline intended to transport liquified carbon dioxide and includes a Pipeline of 4 inches or more in diameter to transport liquid or supercritical fluid comprised of 50 percent or more of carbon dioxide (CO_2).

“Conditional Use Permit” means a special exception, conditional use, use exception, or use limitation authorized and approved by the Board of Adjustment in the manner and according to the standards provided in Article #21 and Article #25 of this Zoning Ordinance.

“Confidential Information” means information or records allowed to be treated confidentially and withheld from public examination or disclosure pursuant to Iowa Code chapter 22 or other applicable law.

“Conservation Area” means a County Park, natural resource area, wildlife area, or similar areas established or designated for such purposes by the County prior to the effective date of this Section.

“County” or “the County” means Dickinson County, Iowa.

“Emergency” means the same as defined in Iowa Administrative Code 199 rule 9.1(2) and, unless otherwise defined in that rule, means a condition involving clear and immediate danger to life, health, or essential services, or a risk of potentially significant loss of property.

“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 and emergency shut off valves.

“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, taking into consideration, in the case of a Carbon Dioxide Pipeline, the dispersion of CO2 from a rupture, taking into consideration CO2 concentration and duration of exposure.

“Hazard Zone” means, in the case of a Carbon Dioxide Pipeline, the geographic area in the County in which residents of the County would likely become intoxicated or otherwise suffer significant adverse health impacts due to a rupture of a Carbon Dioxide Pipeline, taking into consideration the dispersion of CO2 from a rupture, taking into consideration CO2 concentration and the duration of the exposure.

“Hazardous Liquid” means the same as defined in Iowa Code § 479B.2 and, unless otherwise defined there, means crude oil, refined petroleum products, liquified petroleum gases, anhydrous ammonia, liquid fertilizers, liquified carbon dioxide, alcohols, and coal slurries.

“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.

“In-service date” is the date any Hazardous Liquid is first transported through any portion of a Pipeline located in the County.

“Independent Agreement” means alternative provisions regarding land restoration or Line Location contained in agreements independently executed by a Pipeline Company and a Landowner or a Property Owner as described in Iowa Code § 479B.20(10).

“IUB” means the Iowa Utilities Board created within the Iowa Department of Commerce pursuant to Iowa Code chapter 474.

“Landowner” means the same as defined in Iowa Code §§ 479B.4(4) and 479B.30(7), and, unless otherwise defined there, 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.

“Line Location” means the location or proposed location or route of a Pipeline on a Landowner’s property.

“Occupied Structure” means a Building or Structure that has been inhabited or used for residential, commercial, industrial, or agricultural purposes at any time during the twelve (12) months preceding an application for a Conditional Use Permit pursuant to this Section.

“PHMSA” means Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation.

“Person” means the same as defined in Iowa Administrative Code 199-13.1(3) and, unless otherwise defined in that rule, 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 as defined in Iowa Code § 4.1(20).

“Pipeline” means the same as defined in Iowa Code § 479B.2 and, unless otherwise defined there, means an interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids.

“Pipeline Company” means the same as defined in Iowa Code § 479B.2 and, unless otherwise defined in that rule, 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.

“Pipeline Construction” means the same as defined in Iowa Administrative Code 199-9.1(2) and, unless otherwise defined in that rule, 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.

“Property Owner” means the owner or owners, together with his, her, its 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 restrictions of this 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.

“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 or the Pipeline, as applicable.

“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.

“Sensitive Area” means any area designated by the County as an environmentally sensitive area in accordance with the comprehensive plan.

"Zoning Ordinance" or "the Zoning Ordinance" means the collection of land use and zoning regulations known as the Dickinson County, Iowa Zoning Ordinance, as provided and made effective in the Dickinson County, Iowa Zoning Ordinance.

C. Conditional Use Class Created and Use Limitations Imposed on Hazardous Liquid Pipelines

1. All land in the County must be used in accordance with this Zoning Ordinance. Pursuant to Iowa Code chapter 335, the County may establish a use or class of uses that have conditions or use limitations, and the Board of Adjustment may authorize a use exception or permit various uses upon conditions or other use limitations as may be initiated, considered, and approved pursuant to Article #21 and Article #25 of this Zoning Ordinance. Such conditions or use limitations 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 shall be used for purposes of a Hazardous Liquid Pipeline except in conformity with this Article. The regulations applicable to the class of use established in this Article are applicable to land or property interests in each zone or district in the County.

D. Conditional Use Permits Required

1. A Pipeline Company that has filed a verified petition with the IUB asking for a permit to construct, maintain, and operate a new Pipeline along, over, or across land in this County shall submit an Application to the County Zoning Administrator for a Conditional Use Permit. The Pipeline Company shall submit the application for a Conditional Use Permit within seven (7) days of filing the petition with the IUB, unless the petition was filed with the IUB prior to the effective date of this Article, in which case the Pipeline Company shall submit an application for a Conditional Use Permit under this Article within seven (7) days of the effective date of this Article. The Zoning Administrator may extend the time for filing the Application for good cause shown.

2. Upon receiving an Application for a Conditional Use Permit from a Pipeline Company, the County Zoning Administrator and the Board of Adjustment shall consider the Application according to the process and standards set forth in this Section.

E. Separation Requirements

The use of land for purposes of transporting Hazardous Liquids through Pipelines poses a threat to the public health and welfare, to the productivity of agricultural lands, and to the property values of residential, commercial, and industrial Property Owners in the County. The separation requirements of this subsection 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. In addition, the terms of an Independent Agreement regarding a Line Location shall conform to 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.

The minimum separation distances for a Hazardous Liquid Pipeline are:

1. From the city limits of an incorporated city, not less than 1600 feet.

   The owner of a Human Occupied Residence may waive the distance setback established above, said waiver must be in a written instrument signed by all owners and included with the Application.

2. From a church, school, nursing home, long-term care facility, or hospital, not less than one half of a mile.

3. From a public park, Conservation Area, Sensitive Area, or public recreation area, not less than one half of a mile.

4. From any Human Occupied Structure, not less than 1600 feet.

   The owner of a Human Occupied Residence may waive the distance setback established above, said waiver must be in a written instrument signed by all owners and included with the Application.

5. From any animal feeding operation or facility, not less than 1,000 feet.

6. From an electric power generating facility with a nameplate capacity of 5MW or more, an electric transmission substation, a public drinking water treatment plant, or a public wastewater treatment plant, not less than 1,000 feet.

7. From any public water system or any nonpublic water supply well subject to the rules of the Iowa Department of Natural Resources pursuant to 567 IAC chapter 43 or 567 IAC chapter 49, not less than 200 feet. private water supply wells, not less than 200 feet.

F. Permit Application Requirements for Pipeline Companies

A Pipeline Company applying for a Conditional Use Permit for a Hazardous Liquid Pipeline pursuant to this Article shall submit the following documents and information to the County Zoning Administrator.

1. The information required for a Conditional Use Permit as described in this Article of the Zoning Ordinance, including all required forms prescribed by the County Zoning Administrator.

2. A complete copy of the application for a permit filed with the IUB pursuant to Iowa Code chapter 479B. This requirement is an ongoing requirement, and as the application for the IUB permit is amended or changed, the Pipeline Company shall provide updated information and documents to the County.

3. A map identifying each proposed crossing of a County road or other County property and map identifying each crossing of Conservation Areas or Sensitive Areas.

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, lift-stations, or substations.

6. A copy of the standard or template Independent Agreement the Pipeline Company proposes to execute with Property Owners in the County. The standard or template for the Independent Agreement shall include terms and conditions that comply with the Abandonment, Discontinuance, and Removal requirements of this Section.

7. The emergency response and hazard mitigation information, as required pursuant to Subsection K of this Section.

8. All applicable fees required pursuant to this Section.

9. 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 by, Iowa Code chapter 22. A failure to identify Confidential Information in the Application may result in the County treating such information as a public record.

G. Fees

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

1. A Pipeline Company seeking a Conditional Use Permit shall pay the following:

   a. An application fee is $350.00 dollars

   b. An annual 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 fee shall be due each year on the anniversary of the Pipeline's In-Service Date, and the County shall apply this fee 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 County roads or using the public right-of-way in the County.

H. Public Hearing Requirements and Permit Approval

1. Upon receipt of an application for a Conditional Use Permit by a Pipeline Company, the County Zoning Administrator shall verify that the Pipeline Company permit application requirements of this Article. The County shall send notice of each to each Affected Person identified in the Application by United States Mail.

2. A Pipeline Company, or its successors in interest, shall apply for a new Conditional Use Permit whenever the Hazardous Pipeline's use is materially or substantially changed or altered.

I. Appeals and Variances

A Pipeline Company or Property Owner may appeal an adverse determination on a Conditional Use Permit, or may seek special exception or variance from the Board of Adjustment, as provided in Article #21 and Article #28 of this Zoning Ordinance.

J. Applicability and Compliance

1. The permit requirement in Subsection D and the separation requirements of Subsection E of this Section of the 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 Section; however, a Pipeline Company shall comply with the abandonment, Reclamation, and decommissioning requirements for a Pipeline that is decommissioned on or after the effective date of this Section; (2) a Pipeline owned and operated by a Public Utility that is furnishing service to or supplying customers in the County; or (3) a Property Owner that has already executed an Independent Agreement with a Pipeline Company prior to the effective date of this Section.

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 Section, then notwithstanding the Independent Agreement, the Pipeline Company shall comply with the separation requirements of this Section.

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

This subsection is intended to implement local zoning regulations in a manner designed to facilitate the comprehensive plan's goals and objectives for assessing ongoing mitigation, evaluating mitigation alternatives, and ensuring there is a strategy for implementation. This goal is consistent with the County's legal obligation under Iowa Code chapter 29C to engage in emergency response and hazard mitigation planning and with the need to protect the health and welfare of both residents and emergency response personnel. For these reasons, the County requires Hazardous Liquid Pipelines to provide information to assist the County in its emergency response and hazard mitigation planning as required by Iowa code chapter 29C. The requirement to provide emergency

response and hazard mitigation information pursuant to this subsection is not intended to constitute a safety standard and is not intended to conflict with any PHMSA safety standards applicable to a Pipeline Company which regulate the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities.

1. If an Applicant for a permit pursuant to this Article is a Pipeline Company and if the proposed pipeline is a Carbon Dioxide Pipeline, then the Applicant shall provide the following information to the County for purposes of assisting the County with its emergency response and hazard mitigation planning efforts:

a. A map and legal description of the proposed route for a Carbon Dioxide Pipeline showing all human occupied structures and animal husbandry facilities, by type, within two miles of the centerline of the proposed route including addresses.

b. A description of the health risks resulting from exposure of humans and animals to carbon dioxide released from a pipeline, considering the concentrations of carbon dioxide in the air near to a rupture, the duration in the time of exposure, and the presence of other harmful substances released from a rupture. The description shall identify the exposure level and duration of time that may cause a fatality of persons or animals, and the exposure level and duration that may cause intoxication or other significant adverse health effects.

c. An estimate of the worst-case discharge of carbon dioxide 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 carbon dioxide, the location of crack arrestors, operating pressure, operating temperatures, and other relevant factors.

d. 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 Carbon Dioxide Pipeline in the event of its rupture in a range of weather conditions and representative topography in the County, as well as in low elevation areas of the County where released carbon dioxide may settle.

e. A computer model report showing the Blast Zone for the Carbon Dioxide Pipeline.

f. A list of structures and facilities within the Hazard Zone, Fatality Zone, and Blast Zone for the proposed route of a Carbon Dioxide Pipeline that in the preceding year have contained humans or livestock, and an estimate of the number of persons and livestock in each structure and facility.

g. 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 livestock.

h. A description of the potential adverse impacts of a rupture of a Carbon Dioxide 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 the Carbon Dioxide Pipeline.

i. Identification of alternative routes through the County designed to minimize risks to humans and animals from a rupture of the Carbon Dioxide Pipeline within the County, and an analysis of the risks of these alternative routes relative to the proposed route.

j. 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 safety data sheet for the materials transported in the Carbon Dioxide Pipeline;

2. Agency specific response plans for law enforcement, emergency medical responders, and other response agencies;

3. Carbon dioxide detectors and evacuation plans for each Affected Person and human occupied structure;

4. Response equipment needs for emergency response personnel, such as carbon dioxide and other chemical detectors, closed circuit self-contained breathing apparatus, personal protective equipment; communications equipment' road barriers and traffic warning signs.

5. A Carbon Dioxide 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 Carbon Dioxide Pipeline.

6. All information and costs are required to be reviewed by the Dickinson County Emergency Management office.

k. Identification of residential and business emergency response needs, including but not limited to:

1. A Mass Notification and Emergency Response Messaging System;

2. Evacuation plans;

3. Evaluation equipment needs especially for mobility impaired individuals;

4. carbon dioxide detectors, and self-contained breathing apparatus.

2. If an Applicant for a permit pursuant to this Article is a Pipeline Company and if the proposed pipeline is a type other than a Carbon Dioxide Pipeline, then the Applicant shall provide (1) a draft emergency response plan or facility response plan for the proposed pipeline; and (2) a detailed description of how the Pipeline Company will work with the County's law enforcement, emergency management personnel, and first responders in the event of a spill, leak, rupture, or other emergency or disaster related to pipeline.

3. The Board of Adjustment may include a condition in a Conditional Use Permit granted pursuant to this Ordinance that requires an applicant to reimburse the County for all costs and expenses incurred for purposes of emergency response or hazard mitigation planning, equipment acquisition or repair, training, and communications if such costs and expenses are reasonably related to the Pipeline.

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

In addition to the requirements set by Iowa Code § 479B.32, 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 subsection whenever the use of the Hazardous Liquid Pipeline has been discontinued such that there is no longer regulatory oversight of the Pipeline by PHMSA.

For purposes of the land restoration standards of Iowa Code § 479B.20, the term "construction" includes the removal of a previously constructed pipeline, and the County will treat the removal of a pipeline in the same manner as the Pipeline's original construction for purposes of the County's obligations under Iowa Code chapter 479B.

1. A Pipeline Company granted a Conditional Use Permit pursuant to this Article shall by certified mail notify the County and all Affected Person 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.

2. 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 dismantled and removed, including both the below and above ground facilities. The removal of the 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 Dickinson County Recorder's office and a copy delivered to the County by the Pipeline Owner.

3. 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.

4. Upon removal of the Pipeline and the Reclamation, the Pipeline Owner shall restore the land according to the requirements of Iowa Code § 479B.20 and the rules adopted thereunder at 199-9.1(479,479B). including all amendments thereto.

SECTION 9. REPEALER. All Ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 10. 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 11. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

First Reading Passed: _____

Second Reading Passed: _____

Third Reading Passed: _____