APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 23-3758 & 23-3760

WILLIAM COUSER; SUMMIT CARBON SOLUTIONS, LLC,
Plaintiffs-Appellees

v.

SHELBY COUNTY, IOWA, ET AL.,
Defendants-Appellants

IOWA FARMERS UNION, ET AL.,
Amici on Behalf of
Appellant(s)

v.

AMERICAN PETROLEUM INSTITUTE, ET AL.,
Amici on Behalf of
Appellee(s)

WILLIAM COUSER; SUMMIT CARBON SOLUTIONS, LLC,
Plaintiffs-Appellees

v.

STORY COUNTY, IOWA, ET AL.,
Defendants-Appellants

IOWA FARMERS UNION, ET AL.,
Amici on Behalf of
Appellant(s)

v.

AMERICAN PETROLEUM INSTITUTE, ET AL.,
Amici on Behalf of
Appellee(s)

Submitted: November 20, 2024

Filed: June 5, 2025

Before COLLOTON, Chief Judge, BENTON and KELLY, Circuit Judges.

BENTON, Circuit Judge.

Summit Carbon Solutions, LLC wants to build an interstate pipeline through Iowa. Two counties—Shelby and Story—passed ordinances regulating pipelines. Summit challenges the ordinances as preempted by the federal Pipeline Safety Act (PSA) and Iowa law. The district court granted summary judgment, permanently enjoining the ordinances. Having jurisdiction under § 1291, this court affirms.

I.

Summit plans to build a pipeline to transport captured carbon dioxide across five states, including Iowa. The pipeline would pass through Shelby County and Story County. Reacting to the plan, the Counties passed pipeline-related ordinances. Both ordinances impose setback, emergency response plan, and local permit requirements. *See* **Shelby County, Iowa, Ordinance 2022-4**, arts. 8.4, 8.11, 8.3, 8.5, 8.6 (Nov. 11, 2022); **Story County, Iowa, Ordinance 311**, chs. 86.16(1)(A), (1)(C), 86.16(1)(D) (May 16, 2023). Shelby County added an abandonment provision. *See* **Ord. 2022-4**, art. 8.12. And Story County added a trenchless construction requirement. *See* **Ord. 311**, ch. 86.16(1)(B).

At the federal level, the PSA regulates hazardous liquid pipelines. Its purpose is "to provide adequate protection against risks to life and property posed by

pipeline transportation and pipeline facilities." **49 U.S.C. § 60102(a)(1)**. It delegates power to the Secretary of Transportation to "prescribe minimum safety standards for pipeline transportation and for pipeline facilities." **§ 60102(a)(2)**. The minimum safety standards "may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." **§ 60102(a)(2)(B)**. Within the Department of Transportation, the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulates pipeline safety. *See* **49 C.F.R. pts. 190-99**.

The PSA expressly preempts state safety standards: "A state authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." **§ 60104(c)**. But it limits the scope of federal authority over location and routing: "This chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility." **§ 60104(e)**.

At the state level, the Iowa Utilities Commission (IUC) (formerly, the Iowa Utilities Board) grants permits for new pipelines. *See* **Iowa Code § 479B**. The IUC has "the authority to implement certain controls over hazardous liquid pipelines." **§ 479B.1**. "The commission may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper." **§ 479B.9**. After a detailed application and lengthy hearing, the IUC granted Summit a permit to build its pipeline along a specified route.

Summit sought declaratory and injunctive relief that federal and state law preempted the Counties' ordinances. In two cases, the district court granted summary judgment to Summit, permanently enjoining

the Counties from enforcing the ordinances. The Counties appeal.

This court reviews de novo the summary judgments. ***Torgerson v. City of Rochester***, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc). "Summary judgment is proper 'if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.'" ***Id.***, *quoting* **Fed.R.Civ.P. 56(c)(2)**. This court reviews permanent injunctions for an abuse of discretion. ***Randolph v. Rodgers***, 170 F.3d 850, 856 (8th Cir. 1999). "Abuse of discretion occurs if the district court reaches its conclusion by applying erroneous legal principles or relying on clearly erroneous factual findings." ***Id.*** "A trial court's determination of whether a local ordinance is preempted by state law is a matter of statutory construction and is thus reviewable for correction of errors at law." ***City of Davenport v. Seymour***, 755 N.W.2d 533, 537 (Iowa 2008), *citing* ***State v. Tarbox***, 739 N.W.2d 850, 852 (Iowa 2007).

II.

Story County passed an ordinance months before it enacted Ordinance 311. *See* **Story County, Iowa, Ordinance 306** (Oct. 25, 2022). Story County "repealed and replaced" the previous ordinance so that it would "not survive regardless of any determination of the validity of Ordinance No. 311." The County acknowledges that the previous ordinance would be preempted. Over Story County's assertion of mootness, the district court addressed Summit's challenge to the repealed ordinance to "avoid confusion" about whether it "would survive the invalidation of" the replacement ordinance. "When a law has been amended or repealed, actions seeking declaratory or injunctive

relief for earlier versions are generally moot unless the problems are capable of repetition yet evading review." ***Phelps-Roper v. City of Manchester***, 697 F.3d 678, 687 (8th Cir. 2012) (en banc) (cleaned up) (holding challenges to earlier versions of an ordinance are moot when "the record does not support a reasonable expectation that [the local government] will reenact the earlier versions because the current ordinance was purposefully amended to correspond with . . . constitutional law"). Because Story County repealed the previous ordinance, Summit's challenge to it is moot.

III.

"The Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that interfere with, or are contrary to, federal law." ***Kinley Corp. v. Iowa Utilities Bd.***, 999 F.2d 354, 357 (8th Cir. 1993), *quoting* ***Hillsborough Cnty. v. Automated Med. Labs., Inc.***, 471 U.S. 707, 712, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985), *citing* ***Gibbons v. Ogden***, 22 U.S. (9 Wheat.) 1, 211, 6 L.Ed. 23 (1824) (Marshall, C.J.) (cleaned up). "Congress is empowered to pre-empt state law by so stating in express terms." ***Id.***, *quoting* ***Hillsborough Cnty.***, 471 U.S. at 713, 105 S.Ct. 2371. "Pre-emption fundamentally is a question of congressional intent . . . and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one." ***English v. General Elec. Co.***, 496 U.S. 72, 78-79, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990), *citing* ***Schneidewind v. ANR Pipeline Co.***, 485 U.S. 293, 299, 108 S.Ct. 1145, 99 L.Ed.2d 316 (1988) (internal citation omitted).

Under the PSA: "A state authority may not adopt or continue in force *safety standards* for interstate pipeline facilities or interstate pipeline transportation."

49 U.S.C. § 60104(c) (emphasis added). "Congress has expressly stated its intent to preempt the states from regulating in the area of safety in connection with interstate hazardous liquid pipelines." ***Kinley***, 999 F.2d at 358. "Congress intended to preclude states from regulating *in any manner whatsoever* with respect to the safety of interstate transmission facilities." ***ANR Pipeline Co. v. Iowa State Com. Comm'n***, 828 F.2d 465, 470 (8th Cir. 1987) (emphasis added). "This Congressional grant of exclusive federal regulatory authority precludes state decision-making in this area altogether and leaves no regulatory room for the state to either establish its own safety standards or supplement the federal safety standards." ***Kinley***, 999 F.2d at 359.[1]

The Counties argue that their ordinances are not preempted because they are not "safety standards." In *Kinley*, this court ruled that nominally non-safety provisions are preempted by federal law if they nevertheless regulate safety. ***Id.*** This court rejected the state's contention that it prohibited a pipeline due to financial concerns. ***Id.*** Instead, it looked to evidence of the law's safety purpose—a letter expressing Iowa's "strong interest in the safety and integrity of the

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[1] Contrary to the Counties' arguments, *ANR* and *Kinley* are applicable although they interpret the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act, respectively. Congress enacted the PSA to combine and recodify these statutory predecessors "without substantive change." **Pub. L. No. 103-272, 108 Stat. 745**, preamble. Congress's reenactment of the same preemption provision in the PSA strengthens these cases' precedential value. *See* ***Lorillard v. Pons***, 434 U.S. 575, 580, 98 S.Ct. 866, 55 L.Ed.2d 40 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change . . . .") (internal citation omitted).

pipelines." ***Id.*** Because it regulated pipeline safety, the state's law was preempted. ***Id.***

The text of the Shelby and Story ordinances focuses on safety. The Shelby ordinance repeatedly discusses pipeline safety risks. For example, the preamble states "there are several factors that would influence human safety in the event of a rupture of such a pipeline." **Ord. 2022-4**. When Story County adopted its later-repealed ordinance, it made clear its ordinance regulated "hazardous materials pipelines that pose . . . health and safety risks." It then repealed that ordinance, replacing it with Ordinance 311, now claiming the new ordinance "doesn't have to do with safety."

Specifically, Summit challenges three provisions of the Shelby ordinance as preempted by the PSA: setback, emergency plan, and abandonment requirements. *See* **Ord. 2022-4**, arts. 8.4 ("Separation Requirements"), 8.11 ("Emergency Response and Hazard Mitigation Plans for Hazardous Liquid Pipelines"), 8.12 ("Abandonment, Discontinuance, and Removal of Hazardous Liquid Pipelines"). It challenges two provisions of the Story ordinance as preempted by the PSA: setback and emergency plan requirements. *See* **Ord. 311**, chs. 86.16(1)(A) ("Setbacks Required"), (1)(C) ("Emergency Plan").

A.

Most ardently, the Counties argue the setbacks fall within their traditional zoning authority.[2] According to them, the setbacks are not "safety standards" under

[2] The district court found the PSA preempted the Story ordinance's setbacks. It did not address whether the PSA preempted the Shelby ordinance's setbacks, having found them preempted by Iowa law.

§ 60104(c), and are "location or routing" regulations under § 60104(e).

The first question is: Are the setbacks "safety standards"? The Counties admit that their setbacks *consider* safety but argue they are not safety *standards*. This court looks beyond the rationale offered to evidence of the law's purpose. *See generally* ***Kinley***, 999 F.2d at 359 (rejecting a non-safety rationale when evidence did "not support this position").

Other circuits have assessed whether setbacks, specifically, constitute safety standards. The Fifth Circuit held that a challenged local setback was not a safety standard. ***Texas Midstream Gas Servs. v. City of Grand Prairie***, 608 F.3d 200, 212 (5th Cir. 2010). The court observed that the setback "primarily ensures that bulky, unsightly, noisy compressor stations do not mar neighborhood aesthetics" while acknowledging the "requirements affect fire safety." ***Id.*** at 211. But the court differentiated between an incidental effect and a direct and substantial effect: "A local rule may incidentally affect safety, so long as the effect is not 'direct and substantial.'" ***Id.***, *quoting* ***English***, 496 U.S. at 85, 110 S.Ct. 2270, *citing* ***Schneidewind***, 485 U.S. at 308, 108 S.Ct. 1145 ("Of course, every state statute that has some indirect effect on . . . facilities of natural gas companies is not pre-empted."). When an effect "is neither direct nor substantial," it "does not undermine Congress's intent in promulgating the PSA." ***Id.***, *citing* ***English***, 496 U.S. at 85, 110 S.Ct. 2270. Because the challenged ordinances' "primary motivation" was aesthetic and the effect on safety was only "incidental," the PSA did not preempt them. ***Id.***

The Fourth Circuit similarly held that a challenged local setback was not a safety standard. ***Washington Gas Light Co. v. Prince George's Cnty. Council***,

711 F.3d 412, 421-22 (4th Cir. 2013). The court upheld county zoning plans because "[a]t their core" the plans were "land use provisions designed to foster residential and recreational development." ***Id.*** at 421. Relying on *Texas Midstream*'s "incidental" distinction, the court concluded any safety concerns "would have been merely incidental to the overall purpose" which "is insufficient to justify a finding that the County Zoning Plans were, in fact, safety regulations." ***Id.*** at 421-22, *citing* ***Texas Midstream***, 608 F.3d at 211.

This court holds that the Counties' setbacks are safety standards. They apply alike to economically developed and remote areas. This blanket application undercuts aesthetic, land-use, and development rationales. It suggests the effect on safety is not incidental, but rather the "primary motivation." ***Texas Midstream***, 608 F.3d at 211. Further, the Shelby ordinance requires larger setbacks from buildings with vulnerable populations (*i.e.*, "a church, school, nursing home, long-term care facility, or hospital"). And the Story ordinance mentions similar facilities (*i.e.*, "retirement and nursing homes, family homes, schools, childcare homes and centers, group homes, hospitals . . . ."). The evidence supports that, at their core, the setbacks regulate safety. ***Washington Gas***, 711 F.3d at 421. Their direct and substantial effect on safety undermines Congress's express "intent to preempt the states from regulating in the area of safety." ***Kinley***, 999 F.2d at 358.

This holding does not prohibit local governments from considering safety, nor prevent them from enacting all zoning ordinances, as the Counties suggest. This court emphasizes the distinction between safety *standards*—which the PSA preempts—and safety *considerations*—which the PSA does not preempt.

The Counties frame a second question: Do the setbacks regulate "location or routing" under § 60104(e)? Even if the setbacks were safety standards, the Counties argue they *relate to* location and routing, thus outside the PSA's preemptive scope. But the PSA does not limit federal authority over all "location or routing," just the Secretary's authority to "*prescribe* the location or routing of a pipeline facility." **49 U.S.C. § 60104(e)** (emphasis added). "Prescribe" means: "To dictate, ordain, or direct; to establish authoritatively (as a rule or guideline)." *Prescribe*, **Black's Law Dictionary** (12th ed. 2024). Congress uses "prescribe" to connote rules, regulations, standards, and similar directives that are particularized. *See*, *e.g.*, ***Chao v. Mallard Bay Drilling, Inc.***, 534 U.S. 235, 122 S. Ct. 738, 742, 151 L.Ed.2d 659 (2002) (considering the preemptive scope of a statute, which provides: "Nothing in this [statute] shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority *to prescribe or enforce standards or regulations* affecting occupational safety and health.") (emphasis added). "Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted." ***Cipollone v. Liggett Grp., Inc.***, 505 U.S. 504, 517, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992) ("a variant of the familiar principle of *expression unius est exclusio alterius*"). When "the federal government has occupied the entire field," local regulation is preempted "except the limited powers expressly ceded to the states." ***Pac. Gas & Elec. Co. v. State Energy Res. Conserv'n & Dev. Comm'n***, 461 U.S. 190, 212, 103 S.Ct. 1713, 75 L.Ed.2d 752 (1983).

As discussed, Congress expressly preempted the entire field of hazardous liquid pipeline safety in § 60104(c). *See* ***Kinley***, 999 F.2d at 359. Section 60104(e) excepts the limited power to *prescribe* location or routing. Here, the agency (PHMSA) has not dictated the location or route of Summit's pipeline. True, PHMSA regulations relate to the pipeline's location or route. But Congress's statutory language expresses its intent: the PHMSA may not adopt safety standards that prescribe location or routing; it may adopt safety standards that *relate to* location or routing. Section 60104(e) does not save the Counties' setbacks from preemption.

B.

The Counties argue their emergency plans provisions do not "adopt . . . safety standards" but require only an "exchange of information." The Fifth Circuit held that an analogous federal law preempted a local requirement "to provide specified procedures and safeguards to warn and protect the general public against the accidental release" of hazardous gas. ***Nat. Gas Pipeline Co. of America v. R.R. Comm'n***, 679 F.2d 51, 52 (5th Cir. 1982). The parties there did not dispute that the law was a "safety regulation" under the PSA's predecessor. ***Id.*** at 53. Today's PSA specifically provides that the authority to "prescribe minimum safety standards" "may apply to . . . emergency plans and procedures." **49 U.S.C. § 60102(a)(2)**.

Both Counties' ordinances require documentation of compliance with PHMSA regulations. **Ord. 311**, ch. 86.16(1)(C) ("The plan may be a preliminary or draft version of an emergency response plan that would meet the requirements of the federal Pipeline and Hazardous Materials Safety Administration."); **Ord. 2022-4**, art. 8.11 (if the "PHMSA has adopted

regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning," the pipeline company "shall submit . . . documentation of compliance with the PHMSA regulations.").

But the Counties also adopt requirements above and beyond those of the PHMSA. For example, the Shelby ordinance requires "a detailed plan describing how the Pipeline Company will work with the County's law enforcement, emergency management personnel, and first responders in the event of a[n] . . . emergency or disaster." **Ord. 2022-4**, art. 8.11. The Story ordinance provides: "The County will determine whether the information in the plan is sufficient for the County to plan its own emergency response . . . ." **Ord. 311**, ch. 86.16(1)(C). These additions require more than an exchange of information; they adopt safety standards.

C.

The Counties read the Shelby ordinance's abandonment provision as outside the scope of the PSA. The PSA grants the PHMSA authority to regulate safety "for pipeline transportation and for pipeline facilities." **49 U.S.C. § 60102(a)(2)**. It defines a "pipeline facility" as "a gas pipeline facility and a hazardous liquid pipeline facility"; a "'hazardous liquid pipeline facility' includes a pipeline, a right of way, a facility, a building, or equipment *used or intended to be used* in transporting hazardous liquid." **§§ 60101(a)(18), (5)** (emphasis added). The Counties say that abandoned pipelines are not "used or intended to be used" for hazardous liquid transportation, thus beyond the scope of the PHMSA's authority.

The issue hinges on the meaning of "used." The Counties' argument is logical only if "used" means "*presently* used." But the more natural reading of

"used" here includes "past or completed action even when it is placed after the noun it modifies." ***Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.***, 554 U.S. 33, 39, 128 S.Ct. 2326, 171 L.Ed.2d 203 (2008) (comparing, as an example, "baked beans" and "beans baked in the oven"). As a past participle, "used" could describe a "*formerly* used" pipeline. In the statutory context, the addition of "or intended to be used" suggests Congress intended the PSA to apply more broadly than to pipelines while in use. "[I]ntended to be used" extends the PSA's reach to structures with the potential for use, even in the *future*. More generally, this court has repeatedly recognized Congress's intent that the PSA sweep broadly. *See* ***ANR Pipeline Co.***, 828 F.2d at 470 ("Congress intended to preclude states from regulating in any manner whatsoever with respect to the safety of interstate transmission facilities.").

The Shelby ordinance incorporates the PSA's scope, deeming a pipeline abandoned "whenever the use of the Hazardous Liquid Pipeline has been discontinued such that there is no longer regulatory oversight of the Pipeline by PHMSA." **Ord. 2022-4**, art. 8.12. Because PHMSA oversight extends to abandoned and discontinued pipelines, the provision can never deem a pipeline abandoned and never become applicable.

* * *

The PSA preempts the Shelby and Story ordinances' setback, emergency response, and abandonment provisions.

IV.

Iowa preemption emanates from its Constitution's prohibition of county laws "inconsistent with the laws of the general assembly." ***Goodell v. Humboldt***

Cnty., 575 N.W.2d 486, 492 (Iowa 1998), *quoting* **Iowa Const. art. III, § 39A**. Its Constitution also grants counties "home rule power and authority . . . to determine their local affairs and government." Iowa Const. art. III, § 39A. Implementing "home rule," state law provides: "An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law." **Iowa Code § 331.301(4)**. "A county shall not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise." **§ 331.301(6)(a)**.

The Counties argue that the district court misapplied Iowa's "demanding" conflict preemption standard. ***Seymour***, 755 N.W.2d at 539. They contend that the "possibility" of compliance with both their ordinances and an IUC-approved pipeline route is sufficient to hold their ordinances not preempted.

But Iowa's preemption jurisprudence instructs otherwise. "When a state law merely sets a standard, a local law setting a higher standard would not conflict with the state law . . . ." ***Goodell***, 575 N.W.2d at 501. However, when "the local ordinance would prohibit an activity absent compliance with the additional requirements of local law, even though under state law the activity would be permitted because it complied with the requirements of state law . . . the local regulation would be inconsistent with state law and preempted." ***Id.***

Goodell exemplifies a statutory scheme in the second category. There, the issue was whether state regulation of animal feeding operations impliedly preempted a county ordinance requiring permits for

livestock facilities. ***Id.*** at 502. Under Iowa law, a state agency had authority to "adopt rules relating to the construction or operation of animal feeding operations" including "requirements for obtaining permits." ***Id.*** (internal quotations omitted). The agency's rules required animal feeding operations to obtain a state permit to construct and operate. ***Id.*** Under the challenged county ordinance, livestock facilities had to obtain a local permit to construct or operate, in addition to complying with state regulations. ***Id.***

> [A]ssume an operation meets state law requirements, but not the county's additional requirements. Under these circumstances, the state rules would allow construction and operation of the facility, but the county ordinance would prohibit it because the operation would not have met the additional requirements of the county's ordinances.

Id. at 503. Due to this conflict, the ordinance was inconsistent with state law and preempted. ***Id.*** The court's determination hinged on the possibility that a facility could comply with state law while not complying with local law, not the possibility that a facility could comply with both state law and local law.

By urging the possibility-of-complying-with-both approach, the Counties ask this court to invert Iowa's preemption analysis. Instead, *Goodell* instructs asking: Is it possible that a pipeline company could comply with an IUC-granted permit while not complying with a County's ordinance? If this possibility exists, the ordinance is inconsistent with state law and thus preempted. ***Goodell***, 575 N.W.2d at 501.

That possibility exists here. Iowa law gives the IUC "the authority to implement certain controls over hazardous liquid pipelines . . . to approve the location and route of hazardous liquid pipelines." **Iowa Code**

§ 479B.1. "The commission may grant a permit [to construct, maintain, and operate a new pipeline] in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper." **§ 479B.9**. The IUC could determine (and has determined) a pipeline route through Shelby and Story Counties to be just and proper. The Counties' ordinances could (and do) prohibit pipeline construction along that route absent compliance. So, a pipeline company could comply with the IUC's permit while not complying with the Counties' additional restrictions (as in Summit's predicament). This possibility makes the ordinances inconsistent with state law and thus preempted. *See* ***Goodell***, 575 N.W.2d at 501. In the words of *Goodell*, the Shelby and Story ordinances are "additional requirements" that "would prohibit" building the pipeline "absent compliance," even though Iowa law would permit building the pipeline. ***Id.***

The Counties heavily rely on the *Seymour* case. The court there considered whether a county's traffic ordinance was preempted by state traffic regulations. ***Seymour***, 755 N.W.2d at 537. The challenged county ordinance authorized an automatic traffic enforcement system. ***Id.*** at 536-37. The ordinance imposed civil penalties on vehicle owners for speeding and traffic-light violations detected by the system. ***Id.*** The state regulations imposed criminal penalties on drivers for various conduct, including speeding and traffic-light violations. ***Id.*** at 539-40. State law forbade inconsistent local traffic regulation but expressly authorized local governments to regulate conduct on the roads through additional regulations. ***Id.*** at 540. And state law authorized municipalities to establish civil infractions and provide for enforcement. ***Id.***

The court explained: "In order to be 'irreconcilable,' the conflict must be unresolvable short of choosing one enactment over the other." ***Id.*** at 541. "[W]hether a municipal ordinance is in conflict is . . . determined by . . . whether the ordinance permits or licenses that which the state prohibits or forbids or vice versa." ***Id.*** at 542. The laws in question presented "no such bitter choice." ***Id.*** The county's ordinance did not prohibit conduct on the roads that the state permitted; rather both prohibited the same conduct—speeding and traffic-light violations. Finding no irreconcilable conflict, the *Seymour* court held that the ordinance was not preempted by state law. ***Id.*** at 545.

The Shelby and Story ordinances do present a "bitter choice." The ordinances prohibit what the state permits—building a pipeline along a specified route. Unlike the state law in *Seymour*, Iowa law does not expressly cede power to local governments. Far from it, § 479B grants the IUC "the authority" to grant permits "in whole or in part" and "as it determines to be just and proper." **Iowa Code §§ 479B.1, 479B.9**. This delegation of power is singular, sweeping, and cedes nothing to the counties. By *Seymour*'s logic, Iowa law and the Counties' ordinances irreconcilably conflict.

Specifically, Summit challenges the Shelby ordinance's permitting requirements as preempted by Iowa Code § 479B. *See* **Ord. 2022-4**, arts. 8.3 ("Conditional Use Permits Required"), 8.5 ("Permit Application Requirements for Pipeline Companies"), 8.6 ("Permit Application Requirements for Property Owners"). It challenges the Story ordinance's authorizations and trenchless construction requirements. *See* **Ord. 311**, chs. 86.16(1)(D)

("Authorizations Required"), (1)(B) ("Critical Natural Resource Area Protections Required").[3]

A.

Regarding pipeline company permitting requirements, the Counties argue the provisions merely impose higher standards. The Shelby ordinance requires companies to "submit an Application to the County Zoning Administrator for a Conditional Use Permit" after petitioning the IUC for a permit. **Ord. 2022-4**, art. 8.31. *See also* art. 8.5 (specifying the information pipeline companies must submit when applying, including details of the pipeline's proposed location). "[T]he County Zoning Administrator and the Board of Adjustment shall consider the Application according to the process and standards set forth in" the ordinance. Art. 8.33. If Shelby County denies the application, it would prohibit a pipeline company from building in a certain location, even if the IUC permits construction there. That possibility makes the pipeline company permitting requirements inconsistent with state law and thus preempted. *See* ***Goodell***, 575 N.W.2d at 501.

The Story ordinance similarly requires local permits. Its authorizations requirement prohibits construction until a pipeline company "obtain[s] all required federal, state, and local permits and any private easements or other land use permissions." **Ord. 311**, ch. 86.16(1)(D). Because of the same possibility—that Story County would prohibit construction, even if the IUC permits it—the provision is inconsistent with state law and thus preempted. *See* ***Goodell***, 575 N.W.2d at 501.

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[3] Summit also challenges both Counties' setback requirements as preempted by Iowa law. Having found their setbacks preempted by the PSA, this court need not address state law.

Regarding landowner permitting requirements, the Counties argue the Shelby ordinance does not prohibit Summit from negotiating with landowners. Rather, they say it merely requires a permit to execute an agreement. Iowa law requires IUC-permitted pipeline companies to negotiate in good faith with landowners before exercising their right of eminent domain. **Iowa Code § 6B.2B** (an individual acting with agency approval must "make a good faith effort to negotiate with the owner to purchase the private property or property interest before filing an application for condemnation or otherwise proceeding with the condemnation process"); **§ 479B.16** (a pipeline company with an IUC permit "shall be vested with the right of eminent domain"). The Shelby ordinance requires property owners contemplating an easement agreement to "submit an Application to the County Zoning Administrator for a Conditional Use Permit" before executing the agreement. **Ord. 2022-4**, art. 8.32. *See also* art. 8.6 (specifying the information property owners must submit when applying, including details of the pipeline's proposed location). "[T]he County Zoning Administrator and the Board of Adjustment shall consider the Application according to the process and standards set forth in" the ordinance. Art. 8.33. If Shelby County denies the application, it would prohibit the negotiated agreement, even though Iowa law permits—even requires—good faith negotiation. That possibility makes the landowner permitting requirements inconsistent with state law and thus preempted. *See* ***Goodell***, 575 N.W.2d at 501.

B.

The Story ordinance's trenchless construction requirement fares no better. The Counties argue the ability to use trenchless construction along the route approved

by the IUC saves the provision. The provision requires trenchless construction of pipelines in critical natural resource and buffer areas. **Ord. 311**, ch. 86.16(1)(B). But the IUC's authority extends "to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline." **Iowa Code § 479B.1**. Through its trenchless construction provision, Story County proports to exercise authority to protect from environmental damages resulting from construction. An IUC permit could provide alternative protection or construction methods, which the Shelby ordinance would prohibit. That possibility makes the trenchless construction requirement inconsistent with state law and thus preempted. *See* ***Goodell***, 575 N.W.2d at 501.

* * * * * * *

The judgment in 23-3758 is affirmed. The judgment in 23-3760 is affirmed but vacated and remanded for modification to the extent it addresses Ordinance 306.

KELLY, Circuit Judge, concurring in part and dissenting in part.

I concur in the court's conclusions in Parts II, III.B, and IV, but I write separately because I disagree that the PSA preempts the setback and abandonment provisions.

It is undisputed that the PSA grants the federal government the authority to "prescribe minimum safety standards for pipeline transportation and for pipeline facilities," 49 U.S.C. § 60102(a)(2), and that these standards "may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities," *id.* § 60102(a)(2)(B).

And all agree that "[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." *Id.* § 60104(c). But the PSA also expressly states that "[t]his chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility." *Id.* § 60104(e). So which section of the PSA governs the Counties' setback provisions?

For purposes of preemption under the PSA, we have limited guidance on what constitutes a safety standard, as opposed to a safety consideration embedded in a location proscription. *Compare Tex. Midstream Gas Servs., LLC*, 608 F.3d at 211 (concluding that the PSA did not preempt city ordinance where "setback requirement . . . require[d] a *greater* distance between the compressor station and adjacent buildings than [federal law] would . . . alone" because the setback requirement's "incidental salutary effect on . . . safety d[id] not undermine Congress's intent in promulgating the PSA, as it [was] neither direct nor substantial"), *and Wash. Gas Light Co.*, 711 F.3d at 421-22 (determining that PSA did not preempt county zoning plans because, "[a]t their core," the plans were "local land use provisions designed to foster residential and recreational development" and "[e]ven assuming safety concerns played some part in the[ir] enactment . . . , those concerns would have been merely incidental to the overall purpose of the . . . [z]oning [p]lans"), *with ANR Pipeline Co.*, 828 F.2d at 470-73 (concluding Iowa statute was preempted where it expressly "adopt[ed safety] standards identical to the federal standards," "interpret[ed] those standards," and implemented a "hearing, permit, and inspection" regime allowing the state "to impose safety conditions upon" pipelines). In order for preemption to apply, the

effect on safety must be "direct and substantial." *See Tex. Midstream Gas Servs., LLC*, 608 F.3d at 211 (quoting *English*, 496 U.S. at 85, 110 S.Ct. 2270). But I am not convinced that the Counties' setback requirements fall on the side of a preempted safety standard. True, as the court points out, the setback requirements apply equally to developed and remote areas, and setback distances may vary based on the nature of the facility along the pipeline route. But the setback requirements also fit comfortably within a local land use ordinance. And such ordinances are typically, and understandably, driven by multiple concerns, including economic, environmental, and safety. The question is close. But I would conclude the setback requirements are location and routing standards that, though animated in part by safety considerations, do not have a "direct and substantial" effect on safety and thus do not amount to the type of standards that Congress expressly reserved for federal regulation.

I also disagree that the PSA preempts Shelby County's abandonment provision. Section 8.12 of the ordinance defines a hazardous liquid pipeline as "abandoned" "whenever the use of the . . . Pipeline has been discontinued such that there is no longer regulatory oversight of the Pipeline by PHMSA." In my view, § 60101(a)(5), which defines "hazardous liquid pipeline facilit[ies]" to include pipelines that are "used or intended to be used," does not cover pipelines that have been abandoned. The dictionary defines "abandoned" as "left to fall into a state of *disuse*." *Abandoned*, *Merriam-Webster.com*, https://www.merriam-webster.com/dictionary/abandoned (last visited May 29, 2025) (emphasis added). And PHMSA defines "abandoned" as "permanently removed from service." 49 C.F.R. § 195.2. Shelby County's abandon-

ment provision expressly applies only after any pipeline is no longer in use (or intended to be used) and federal regulatory governance has ceased.[4] It is, therefore, not expressly preempted.

[4] Summit points out that one subsection of Shelby County's abandonment provision, Section 8.121, requires that it take action prior to a pipeline's disuse by notifying the County and anyone affected by the pipeline of its "intent to discontinue the use of the [p]ipeline." This may be true, but Summit fails to articulate how this subsection has a "direct and substantial" effect on safety.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

Case No. 1:22-cv-00020-SMR-SBJ

SUMMIT CARBON SOLUTIONS, LLC,
Plaintiff,

v.

SHELBY COUNTY, IOWA, ET AL.,
Defendants.

[Signed December 4, 2023]

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

STEPHANIE M. ROSE, CHIEF JUDGE

Last year, the Shelby County Board of Supervisors ("the Board") promulgated Shelby County Ordinance 2022-4 ("the Ordinance") in response to planned construction of a hazardous liquid pipeline. Plaintiff Summit Carbon Solutions, LLC ("Summit") filed this suit to enjoin enforcement of the Ordinance on the grounds that it is preempted by federal and state law. When the Board sought to enforce the Ordinance during the course of this litigation, Plaintiff obtained a preliminary injunction. On August 4, 2023, the parties filed cross-motions for summary judgment. For the reasons discussed in detail below, Plaintiff's Motion is GRANTED and Defendants' Motion is DENIED.

I. BACKGROUND[1]

On November 15, 2022, Plaintiff filed this suit against Defendants Shelby County, Iowa, the Board, and each Shelby County Supervisor in their official capacities.[2] The lawsuit alleges that the Ordinance is preempted by the Pipeline Safety Act ("PSA"), a federal law regulating many aspects of pipeline safety, and Iowa Code § 479B, which provides the Iowa Utilities Board ("IUB") with authority to issue permits approving the construction of pipelines. Plaintiff seeks a declaratory judgment that the Ordinance is preempted by federal and state law and injunctive relief restraining Defendants from: (i) "enforcing or implementing Ordinance No. 2022-4," (ii) "enforcing or implementing any other ordinances on the permitting, construction, or development of Summit's pipeline project," and (iii) "enforcing or implementing any resolution, ordinance, moratorium, ban, or other regulation that purports or intends to regulate any safety or permitting aspect of Summit's pipeline project." [ECF No. 1 at 18].

On January 26, 2023, the Shelby County Planning and Zoning Commission sent letters to local landowners. The letters stated the landowners had recorded an easement conveying certain rights of access to property, but they had not received the appropriate conditional use permit prior to conveyance. The letters explained that "the county may assess penalties against any person who violates the ordinance" and

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[1] The Court refers to its Preliminary Injunction Order, ECF No. 51, for other facts relevant to the parties' cross-motions.

[2] The complaint was originally filed by Summit and William Couser. The Preliminary Injunction Order dismissed Couser for lack of Article III standing. The action proceeds with Summit as the sole plaintiff.

fine them $750.00 per day. [ECF No. 26-3 at 3]. The notices concluded by stating, "[i]f the easement agreement is not terminated by 02/10/2023 in addition to the penalties described above, the county may seek involuntary termination of the easement agreement by a court." *Id.*

In response to those letters, Plaintiff requested a preliminary injunction to enjoin enforcement of the Ordinance until a final resolution of this action. On March 31, 2023, the Court held a hearing in this matter. At the end of argument, the Court asked the parties to provide more information. The requested information was subsequently submitted. [ECF Nos. 47; 48].

Prior to the hearing, Defendants filed a counterclaim against Summit for failure to comply with sections 8.31 and 8.32 of the challenged Ordinance. "Under section 8.31 of the Ordinance, Summit was required to submit an application to the County for a conditional use permit by November 18, 2022." [ECF No. 44 at 2]. Under section 8.32, Summit was prohibited from executing easement agreements with landowners before it obtained a conditional use permit from the County. *Id.* at 2-3. Defendants claimed Summit violated both sections and requested infraction penalties against Summit. Plaintiff resisted.

On July 10, 2023, the Court issued an Order granting Plaintiff's request for a preliminary injunction. [ECF No. 51]. In that Order, the Court found that the issuance of a preliminary injunction was appropriate due in part because Summit was likely to prevail on its preemption claims. The Court ordered that (i) "Defendants Shelby County, Iowa, the Shelby County Board of Supervisors, and each of the Supervisors in their official capacities are enjoined from enforcement

of Shelby County Ordinance No. 2022-4 effective immediately," (ii) "Defendants shall immediately issue a written notice to all employees in the County who are involved in enforcing Ordinance No. 2022-04 or have oversight of such enforcement and notify them of the injunction prohibiting enforcement of the Ordinance," and (iii) "Defendants shall demonstrate its compliance with the Order by submitting an affidavit detailing its efforts to the Court within ten (10) days of entry of this Order." *Id.* at 37.

On August 4, 2023, the parties filed cross-motions for summary judgment. Defendants also filed a supplement briefing to which Plaintiff responded.[3] For the reasons discussed in detail below, Plaintiff's Motion is GRANTED and Defendants' Motion is DENIED.

II. SUMMARY JUDGMENT STANDARD

"Summary judgment is proper if the movant 'shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *United States v. Meyer*, 914 F.3d 592, 594 (8th Cir. 2019) (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the outcome of the case." *Amini v. City of Minneapolis*, 643 F.3d 1068, 1074 (8th Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). "If the moving party has met this burden . . . the non-moving party must set forth specific facts showing that there are genuine issues for

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[3] On that same day, Defendants filed a notice of appeal to the United States Court of Appeals for the Eighth Circuit from this Court's Preliminary Injunction Order. As of the date of this present Order, the appeal remains pending.

trial." *Bankston v. Chertoff*, 460 F. Supp. 2d 1074, 1085 (D.N.D. 2006) (citations omitted). To preclude the entry of summary judgment, the nonmovant must make a sufficient showing on every essential element for which it has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). When considering a summary judgment motion, a court must view "evidence in the light most favorable to the non-moving party and draw[] all reasonable inferences from that evidence in favor of the nonmoving party." *Cullor v. Baldwin*, 830 F.3d 830, 836 (8th Cir. 2016) (quoting *Smith v. URS Corp.*, 803 F.3d 964, 968 (8th Cir. 2015)). However, a court must reject an interpretation of events in favor of a party if it is blatantly contradicted by the record. *Wallingford v. Olson*, 592 F.3d 888, 892 (8th Cir. 2010) (quoting *Scott v. Harris*, 550 U.S. 372, 380, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007)). Summary judgment is most appropriate when the "issues are primarily legal rather than factual" in nature. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Shirley*, 96 F.3d 1108, 1111 (8th Cir. 1996).

III. ANALYSIS

In the Preliminary Injunction Order, the Court found Summit was likely to prevail on its preemption claims under federal and state law. [ECF No. 51]. For the state preemption claims, Defendants contend on summary judgment that the Court erred in finding the distance and siting requirements, the permitting requirement, and the landowner permitting requirement were conflict preempted. Concerning the claim of preemption under federal law, Defendants argue the Court erred in granting the injunction by finding any provision under the Ordinance was expressly preempted, taking the position that none of the county

requirements qualify as "safety standards" within the meaning of the federal statute. [ECF No. 62 at 36-37]. Specifically, they claim the Ordinance's Hazard Safety Plan "[does] not dictate the contents of the pipeline company's federally mandated, internal response plan" and merely request "information necessary to allow the County to perform its legal obligations under Iowa Code chapter 29C to engage in emergency response and hazard mitigation planning." *Id.* at 40-41. Put another way, they appear to argue that the Ordinance's Hazard Safety Plan is akin to an information sharing requirement, not a safety standard. Defendants also claim that the Ordinance's abandonment and discontinuation requirements are not federally preempted, arguing that regulations of abandoned or discontinued pipeline facilities fall outside of federal jurisdiction. *Id.* at 42.

The Court disagrees. For reasons fully articulated in its Preliminary Injunction Order, the Court finds the Ordinance is preempted by federal and state law. Notwithstanding Defendants' assurances that the Ordinance and Iowa Code § 479B are not irreconcilable, the challenged restrictions impose severe limitations that will lead to a situation where the IUB may grant a permit to construct a pipeline and Summit is unable to do so. This situation is the one that preemption is designed to avoid; so long as the situation exists, the Ordinance is unenforceable under implied preemption. *City of Davenport v. Seymour*, 755 N.W.2d 533, 538 (Iowa 2008).

For the federal law preemption claims, Defendants' argument that the Ordinance's emergency preparedness requirements are merely requests for information, not components dictating safety standards, is unconvincing. As noted in the Preliminary Injunction

Order, an application for a conditional use permit by a pipeline company must include extensive information on emergency response and hazard mitigation. If PHMSA regulations exist, pipeline companies must still provide documentation of compliance with those regulations. The companies must also include "a detailed plan describing 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 the Pipeline." [ECF No. 59-2 at 14]. If no PHMSA regulations exist and the pipeline is a carbon dioxide pipeline, the pipeline companies must "submit a plan that meets the requirements of this section." *Id.* The requirements include a map and description of the proposed route, a description of the health risks, an estimate of the worst-case scenario for a carbon discharge, a list of structures and facilities in a fallout zone, a list of "high consequence areas" where a rupture would be more likely to result in the loss of life, alternative routes through the county designed to minimize risk, and "all information needed by county first responders . . . to engage in local emergency management." *Id.* at 14-15. Lastly, the pipeline companies may need to provide "a Carbon Dioxide Pipeline rupture emergency response training program" and equipment for "response personnel." *Id.* at 15.

As plainly evident, the Ordinance's Hazard Safety Plan imposes restrictions beyond merely information sharing to assist the County with its own emergency preparedness planning. Because the statute provides the Secretary of Transportation with the authority to enact emergency response and hazard mitigation plans, and local governments are preempted from regulating the safety of facilities addressed by federal law, "from

regulating in any manner whatsoever with respect to the safety of . . . facilities," the Court reiterates its earlier conclusion that express preemption invalidates the Ordinance's emergency response and hazard mitigation provisions. 49 U.S.C. § 60102(a)(2)(B); *see also ANR Pipeline Co. v. Iowa State Com. Comm'n*, 828 F.2d 465, 470 (8th Cir. 1987) (holding that, in the context of interstate transmission facilities, that local governments are precluded "from regulating in any manner whatsoever with respect to the safety" when Congress has set federal standards).

Defendants' unusual argument that the PSA jurisdiction does not extend to abandoned or discontinued pipeline facilities is equally unconvincing. The statute provides the Secretary with authority to promulgate regulations on construction and maintenance of pipelines. 49 U.S.C. § 60102(a)(2)(B). The regulations require the companies to implement procedures on the abandonment of pipelines. *See* 49 C.F.R. § 195.402(c)(10) (requiring that a pipeline company must have a plan for "[a]bandoning pipeline facilities" that includes "safe disconnection from an operating pipeline system, purging of combustibles, and sealing abandoned facilities . . . to minimize safety and environmental hazards."). They must also provide a report to the Secretary establishing its compliance with the statutory and regulatory provisions. 49 U.S.C. § 60108(b)(6)(A). In light of this, the Court finds that PSA does extend to abandoned and discontinued pipelines. As put forth in the Preliminary Injunction Order, the Ordinance's abandonment requirements are expressly preempted by the PSA.

IV. CONCLUSION

For the reasons above and for reasons more fully articulated in its Preliminary Injunction Order,

Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendants' Motion for Summary Judgment is **DENIED**. [ECF Nos. 58; 59].

Under Federal Rule of Civil Procedure 65(d), every order granting an injunction "must . . . state its terms specifically . . . and describe in reasonable detail . . . the act or acts restrained." Fed. R. Civ. P. 65(d)(1)(B-C). The scope of the permanent injunction is defined as follows:

1. **IT IS ORDERED** that Defendants Shelby County, Iowa, the Shelby County Board of Supervisors, and each of the Supervisors in their official capacities are permanently enjoined from enforcement of Shelby County Ordinance No. 2022-4 effective immediately. They may not enforce Arts. 8.3, 8.4., 8.5. 8.6., 8.7., 8.8., 8.9., 8.10., 8.11., or 8.12 of the law in any capacity or through any instrumentality available to them.
2. **IT IS FURTHER ORDERED** that Defendants shall immediately issue a written notice to all employees in the County who are involved in enforcing Ordinance No. 2022-4 or have oversight of such enforcement and notify them of the permanent injunction prohibiting enforcement of the Ordinance.
3. **IT IS FURTHER ORDERED** that Defendants shall demonstrate its compliance with the Order by submitting an affidavit detailing its efforts to the Court within ten (10) days of entry of this Order.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 4:22-cv-00383-SMR-SBJ

WILLIAM COUSER AND
SUMMIT CARBON SOLUTIONS, LLC,
Plaintiffs,

v.

STORY COUNTY, IOWA, ET AL.,
Defendants.

[Signed December 4, 2023]

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

STEPHANIE M. ROSE, CHIEF JUDGE

On May 16, 2023, the Story County Board of Supervisors ("the Board") promulgated Story County Ordinance No. 311, repealing an earlier enactment, Story County Ordinance No. 306, that imposed setbacks and other requirements for hazardous materials pipelines. Plaintiffs William Couser and Summit Carbon Solutions, LLC (collectively, "Plaintiffs") originally filed this suit in November 2022 to enjoin the enforcement of Ordinance No. 306, asserting that it was preempted by federal and state law. They later amended their complaint after the enactment of Ordinance No. 311 claiming invalidity on the same grounds. The parties filed cross-motions for summary judgment. For the

reasons discussed in detail below, Plaintiffs' Motion is GRANTED and Defendants' Motion is DENIED.

I. BACKGROUND

A. Carbon Capture Technology in Iowa

The State of Iowa's most valuable agricultural commodity is corn. A significant volume of the corn produced in the state is used for ethanol fuel production. Many byproducts are created during the production of ethanol. One of those byproducts is carbon dioxide ("CO_2"), a greenhouse gas that traps heat in the atmosphere and impacts the global temperature. Consequently, the release of large quantities of CO_2 into the atmosphere poses significant environmental concerns.

An alternative to the release of CO2 into the atmosphere is a three-step process known as carbon capture and sequestration ("CCS"). The three steps in the CCS process entail capturing, transporting, and storing CO_2 in another location. This CCS technology uses an extensive network of pipelines to transport the captured CO_2 from its original source to its desired destination. Plaintiff Summit Carbon Solutions, LLC ("Summit") has initiated a multi-state project to develop an interstate network of pipelines to receive, transport, and deliver captured CO_2 from more than thirty facilities—primarily ethanol and fertilizer plants. The extensive network spans more than two thousand miles of underground pipelines, traveling across five Midwest states: South Dakota, North Dakota, Minnesota, Nebraska, and Iowa. In Iowa, Summit's project will lead to the construction of more than seven hundred miles of pipeline through thirty counties, including Story County.

B. Application Process with the Iowa Utilities Board

In accordance with Iowa law, Summit began the process to obtain a siting permit for a new pipeline by holding informational meetings in each of the thirty counties identified as being impacted by the project, including in Story County. After the meetings, Summit filed a Petition for a Hazardous Liquid Pipeline Permit with the Iowa Utilities Board ("IUB") on January 28, 2022. The petition included, among other things, (a) the purpose of the proposed project; (b) a description of the proposed main line route; (c) an overview of the land uses of the areas impacted by the pipeline; (d) a consideration of alternative routes generated by software programs based on various datasets; and (e) information on present and future land use. [ECF No. 31-1 at 108-120]. Summit explained that "[a]pproximately 94% of the proposed route is in agricultural lands" and anticipated "[n]o significant impacts . . . as a result of the construction and operation of the Project and associated facilities, and the Project can be constructed and operated consistent with present and future land uses." *Id.* at 115. It also wrote how the company "performed extensive analyses utilizing Geographic Information Systems . . . to avoid or minimize features identified as moderate risk, and exclude features identified as high risk." *Id.* The permit application has also been in the subject of extensive administrative proceedings before the IUB since its submission.[1]

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[1] The docket for the proceedings before the IUB may be found at this link: https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=HLP-2021-0001 (last visited November 28, 2023).

C. Enactment of the Story County Ordinance No. 306

While the IUB proceedings were ongoing, the Board conducted a hearing on October 18, 2022 on a proposed ordinance establishing setbacks and other requirements for hazardous materials pipelines. Specifically, this hearing concerned the enactment of Ordinance No. 306, a predecessor of Ordinance No. 311.

Before the hearing, the Story County Planning and Development Department drafted a memorandum to the Board, explaining that the Board should adopt Ordinance No. 306 to address safety concerns surrounding the recently proposed hazardous materials pipeline that would run through Story County. [ECF No. 30-3 at 21]. At the hearing, the Planning and Development Director, Amelia Schoeneman, presented the proposed ordinance to the Board and stated it would be limited to requirements that regulate "hazardous materials pipelines that pose . . . health and safety risks."[2] After her presentation, the Board opened the hearing for public comment and then unanimously approved the proposed ordinance on first consideration. A week later, the Board conducted a second public hearing on Ordinance No. 306. The Board approved the ordinance on second consideration and waived third consideration. With this approval, Ordinance No. 306 officially amended Chapters 85 and 86 of the Story County Code of Ordinances.

In response, Summit filed this suit on November 14, 2022 against Story County (the "County"), the Board, and each Story County Supervisor in their official

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[2] Audio of Story Cnty. Bd. of Supervisors Meeting at 53:28 (Oct. 18, 2022). The audio may be found at this link: https://www.storycountyiowa.gov/Archive.aspx?AMID=54 (last visited November 28, 2023).

capacities. Summit sought to enjoin the enforcement of Ordinance No. 306 on the grounds it is preempted by federal and state law.

D. Components of the Challenged Ordinance No. 306

Ordinance No. 306 contains numerous sections that are directly challenged by Plaintiffs and are relevant to the motions for summary judgment. The Court briefly reviews each below.

i. Setback Requirements

Ordinance No. 306 establishes a complex distance and siting scheme for all new hazardous materials pipelines. This scheme first categorizes new hazardous materials pipelines based on type and use. The three categories are gas, liquid, and carbon dioxide (dense or supercritical phase). Each of the three categories is further divided into two sub-categories based on a pipeline's distance from: (1) residential developments and places of public assembly and (2) dwellings and other developments.

For gas pipelines, the ordinance provides a setback formula based on the size of the pipeline and its maximum operating pressure. Natural gas has its own specific inputs to determine setbacks distinct from those of other gas pipelines.

For liquid pipelines, the ordinance requires setbacks as established under 49 C.F.R. § 195.210, as follows: "[n]o pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in 49 C.F.R. § 195.248." [ECF No. 30-3 at 18-19].

For carbon dioxide (dense or supercritical phase) pipelines, the ordinance provides a different setback formula based on a pipeline's size. The formula again varies based on location. For example, a setback from a place of public assembly, such as a school or golf course, is greater than that from other developments.

ii. Emergency Plan Option

Ordinance No. 306 also includes an option to reduce these minimum setbacks "to the point at which no occupied structure is located within a risk area." *Id.* at 16. A "risk area" is defined as "the area where a professionally accepted level of concern threshold (where the concentration or other effect of a material is immediately dangerous to life or health) may be exceeded." *Id.* This option is triggered by the submission of an emergency plan. A proposed emergency plan that complies with Ordinance No. 306 must include a copy of all emergency plans required by federal regulations; outline potential emergency events (including the operator's ability to respond to such emergency); describe in detail the immediate response procedures; lay out a notification process to local authorities (including identifying potential concerns for the local authorities); attach computer models that predict the chemical reactions and risks to potential emergencies; outline an evacuation plan for affected areas; and describe a consultation process with applicable cities to discuss the relationship of the proposed pipeline routes to the city's future growth plans. The plan must also describe in specified detail any unique concerns that may affect local emergency responders and any specialized equipment that may be needed. The pipeline companies are required to provide drills and training to local emergency responders.

iii. Minimum Cover Requirement

Ordinance No. 306 details a minimum cover requirement for all new hazardous materials pipelines, which dictates the depth in which an underground pipeline must be buried beneath certain landmarks. If there is an applicable federal standard, the ordinance requires the pipeline operator to abide by those minimum depth of cover standards. If there are no governing federal regulation, the ordinance requires a "minimum depth of 36 inches or greater" for agricultural land. *Id.* at 20. The ordinance also includes the following catch-all provision: "[a] greater depth shall be required when determined necessary to withstand external loads anticipated from deep tillage of 18 inches, as required by Iowa Administrative Code Chapter 9.5(6), Restoration of Agricultural Lands During and After Pipeline Construction." *Id.*

iv. Critical Natural Resource Area Protections Requirement

Ordinance No. 306 establishes additional standards for new hazardous materials pipelines in ordinance-designated "Critical Natural Resource Areas." First, a hazardous materials pipeline is prohibited in such areas unless specifically permitted by ordinance. This includes the maintenance of buffer areas. Second, the pipeline operator must explain "why rerouting around a Critical Natural Resource Area is unavoidable." *Id.* Once a determination is made that rerouting is unavoidable, the pipeline operator may only build a pipeline in Critical Natural Resource Areas, including in the undisturbed buffer areas, by utilizing trenchless construction methods.

v. Rezoning Consultation Requirement[3]

The last provision under Ordinance No. 306 is an obligation on the County, not on pipeline operators. When new developments are proposed near the pipeline facilities, the County is required to consult with the pipeline operators to discuss potential risks.

E. Enactment of the Story County Ordinance No. 311

During the pendency of this litigation, the Board held a public hearing on May 9, 2023 to consider Ordinance No. 311, a new amendment that would repeal Ordinance No. 306. Schoeneman presented the newest amendment to the Board and recommended a standard one-quarter mile setback from dwellings, various residential and commercial areas, certain places of assembly, city boundaries, and urban expansion areas. Ordinance No. 311 also included a trenchless construction requirement in Critical Natural Resource Areas; the submission of an emergency response or preparedness plan to assist the County with its emergency response planning; and an authorization requirement that prohibits the commencement of construction until the applicant "obtain[s] all required federal, state, and local permits and any private easements or other land use permissions prior to commencing construction and submit[s] documentation of such authorizations." [ECF No. 30-3 at 8-9]. The new ordinance eliminated all prior standards for hazardous *materials* pipelines and only established new requirements for hazardous *liquid* pipelines.

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[3] Summit argues the Rezoning Consultation Requirement is preempted by state law. [ECF No. 30-1 at 17 n.6]. It is unclear, however, how an obligation *on the County* affects the IUB's permit process or Summit's ability to construct an IUB-approved pipeline.

The avowed purpose of the proposed regulation also changed. By admission of the parties, the primary purpose of Ordinance No. 306 was to address the safety concerns of hazardous materials pipelines. [ECF No. 34 at 26]. Seven months later, the Board entertained a new amendment with an entirely different interest for regulating hazardous liquid pipelines. In recommending the approval of Ordinance No. 311, Schoeneman now claimed a general interest in regulating hazardous liquid pipelines consistent with "how Story County has developed historically."[4] Schoeneman reiterated this sentiment at the next hearing before the Board:

> I just want to clarify one point on the ordinance ... that it is about orderly development of land. It doesn't have to do with safety. We're looking at historic patterns of development here, ... coordinating with our cities and how they're going to grow in the future, preserving the County's rural character, and [ensuring there is] adequate spacing [for] uses that ... could interfere with each other.[5]

On May 16, 2023, the Board convened for a second public hearing. At the close of the hearing, the Board waived third consideration to approve Ordinance No. 311.

F. Components of the Challenged Ordinance No. 311

Ordinance No. 311 contains numerous sections that are directly challenged by Plaintiffs and are relevant

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[4] Audio of Story Cnty. Bd. of Supervisors Meeting at 1:23:17 (May 9, 2023). The audio may be found under the same link provided in footnote 2.

[5] Audio of Story Cnty. Bd. of Supervisors Meeting at 1:10:49-1:11:12 (May 16, 2023). The audio may be found under the same link provided in footnote 2.

to the motions for summary judgment. The Court briefly reviews each below.

i. Preamble

The newly passed Ordinance No. 311 also contains a four-page preamble that describes the purported historical background and legal authority behind this amendment, and ultimately sets forth what the Board believes favors the validity of Ordinance No. 311 against federal and state preemption. The Board concludes the preamble by stating the new purpose for regulating hazardous liquid pipelines:

> [T]o adopt standards, including setbacks, for hazardous liquid pipelines consistent with (1) historic patterns of development; (2) goals of the Plan for protection of (a) the County's rural character, (b) reduction of incompatibilities between land uses including utilities, (c) intergovernmental coordination related to future urban development, (d) appropriate siting of new development, (e) preservation of existing rural residential development, (f) communication and collaboration with partnering agencies and organizations on emergency preparedness; and (3) to achieve the intent and purpose of the Ordinance to ensure orderly growth and development and address social, economic, and environmental concerns related to conflicts between different uses of land.

[ECF No. 30-3 at 5-6]. The lengthy preamble is followed by a brief section describing the purpose of the ordinance, the proposed amendments, a repealer and severability clause, and the effective date of the ordinance.

ii. Setback Requirements

The parties' dispute largely centers on the validity of the new standards for hazardous liquid pipelines. Four new standards are challenged. The first of those standards is the setbacks.

The new setbacks eliminated the formula-based setbacks of the previous ordinance and, in its place, provided a standard one-quarter mile setback from various locations. Specifically, the new setback standards provide:

> A setback of one-quarter mile shall be required from dwellings, areas zoned A-R Agricultural Residential, R-1 Transitional Residential, R-2 Urban Residential, RMH Residential Manufactured Housing District, C-LI Commercial/Light Industrial District, HI Heavy Industrial District, retirement and nursing homes, family homes, schools, childcare homes and centers, group homes, hospitals, detention facilities, human service facilities, campgrounds, day camps, cemeteries, stables, amphitheaters, shooting ranges, golf courses, stadiums, parks, houses of worship, and auditoriums . . . [and] from city boundaries and areas identified as Urban Expansion by the C2C Plan Future Land Use Map.

Id. at 8. The ordinance also states the "setback shall be measured from the pipeline to the closest point of the building or property line, depending on the identified use type." *Id.*

iii. Critical Natural Resource Area Protections Requirement

The second standard is a trenchless construction methods requirement in areas designated as Critical Natural Resource Areas under ordinance. This provision under Ordinance No. 311 restricts the

construction of a hazardous liquid pipeline in Critical Natural Resource Areas in the same manner as Ordinance No. 306. The new ordinance similarly requires a pipeline company may only utilize trenchless construction methods to install its pipeline in such areas, including in its buffer areas.

iv. Emergency Plan Requirement

The third standard is a narrower version of the previous ordinance's emergency planning requirement. Under this narrower version, a pipeline operator proposing to construct a hazardous liquid pipeline within Story County must submit a copy of an emergency response or preparedness plan "to assist with the County's emergency response planning." *Id.* at 9. "The plan may be a preliminary or draft version of an emergency response plan that would meet the requirements of the federal Pipeline and Hazardous Materials Safety Administration." *Id.* Importantly, the "County will [then] determine whether the information in the plan is sufficient for the County to plan its own emergency response and may request additional information." *Id.*

v. Authorization Requirement

The fourth and last standard is an authorization requirement. It imposes a strict prohibition against commencing construction until "all required federal, state, and local permits and any private easements or other land use permissions" are obtained. *Id.* A pipeline operator must also "submit documentation of such authorizations with the permit application." *Id.*

II. PROCEDURAL HISTORY

The original complaint alleged that Ordinance No. 306 is preempted by the Pipeline Safety Act ("PSA"), a federal law regulating many aspects of pipeline safety,

and Iowa Code § 479B, which provides the IUB with authority to issue permits approving the construction of pipelines.

After the Board passed Ordinance No. 311, which repealed many of the provisions in Ordinance No. 306, Plaintiffs filed an Amended Complaint alleging that the new ordinance was also preempted. The Amended Complaint takes the position that both ordinances are invalid because they are preempted by federal and state law.

On August 21, 2023, both parties filed a Motion for Summary Judgment. Plaintiffs ask the Court to prohibit the County: "(1) from enforcing Ordinance No. 311 or its predecessor (Ordinance No. 306); (2) from implementing other ordinances on the permitting, construction, or development of Summit's pipeline project; and (3) from implementing any ordinance (or comparable regulation) that regulates any safety, permitting, or siting aspect of Summit's pipeline project." [ECF No. 30 at 2].

On the other hand, Defendants request that the Court to find: "(A) Plaintiffs' challenges to Ordinance No. 306 are moot; (B) the County's hazardous liquid pipeline ordinance is not preempted by state law, and (C) the County's hazardous liquid pipeline ordinance is not preempted by federal law." [ECF No. 31 at 2].

On October 27, 2023, Defendants filed a supplementary briefing informing the Court that Summit is working closely with counties in South Dakota to ensure it complies with their local ordinances, and they suggest that Summit could similarly work with counties in Iowa, including Story County. Defendants argue Summit's conduct in South Dakota shows "it is not impossible for Summit to likewise comply with Iowa Code chapter 479B and the County's ordinance"

and thus no conflict preemption exists. [ECF No. 46 at 2].

In their supplement, Defendants also include two additional updates: (1) Summit's recent changes to its pipeline routes in North Dakota and South Dakota outside of the landowner easement process, which they argue undercuts Summit's earlier contention that it cannot do the same in Iowa, and (2) Pipeline and Hazardous Materials Safety Administration ("PHMSA") recently issued a letter to Summit, which Defendants argue supports a different, more collaborative, understanding of the roles of the different levels of government in addressing safety concerns associated with hazardous liquid pipelines. Plaintiffs respond that Summit's conduct in other states is irrelevant to the legal issues before the Court and that the content of the PHMSA letter was fully briefed in prior filings, as the federal administration's recent letter mirrors a 2014 letter that was already submitted to the Court.

For the reasons below, Plaintiffs' Motion for Summary Judgment is GRANTED and Defendants' Motion for Summary Judgment is DENIED.

III. GOVERNING LAW

A. Summary Judgment Standard

"Summary judgment is proper if the movant 'shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *United States v. Meyer*, 914 F.3d 592, 594 (8th Cir. 2019) (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the outcome of the case." *Amini v. City of Minneapolis*, 643 F.3d 1068, 1074 (8th Cir. 2011) (quoting *Anderson v. Liberty*

Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). "If the moving party has met this burden . . . the non-moving party must set forth specific facts showing that there are genuine issues for trial." *Bankston v. Chertoff*, 460 F. Supp. 2d 1074, 1085 (D. N.D. 2006) (citation omitted). To preclude the entry of summary judgment, the nonmovant must make a sufficient showing on every essential element for which it has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). When considering a summary judgment motion, a court must view "evidence in the light most favorable to the nonmoving party and draw[] all reasonable inferences from that evidence in favor of the nonmoving party." *Cullor v. Baldwin*, 830 F.3d 830, 836 (8th Cir. 2016) (quoting *Smith v. URS Corp.*, 803 F.3d 964, 968 (8th Cir. 2015)). However, a court must reject an interpretation of events in favor of a party if it is blatantly contradicted by the record. *Wallingford v. Olson*, 592 F.3d 888, 892 (8th Cir. 2010) (quoting *Scott v. Harris*, 550 U.S. 372, 380, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007)). Summary judgment is most appropriate when the "issues are primarily legal rather than factual" in nature. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Shirley*, 96 F.3d 1108, 1111 (8th Cir. 1996).

B. Relationship Between Iowa Home Rule Authority and Preemption

In 1978, an amendment to the Iowa Constitution granted local authorities the power "to determine their local affairs and government." *Goodell v. Humboldt Cnty.*, 575 N.W.2d 486, 492 (Iowa 1998) (quoting Iowa Const. art. III, § 39A). This power, known as home rule authority, allows counties and local authorities to enact ordinances on matters of their choosing

"unless a particular power has been denied [to] them by statute." *City of Des Moines v. Master Builders of Iowa*, 498 N.W.2d 702, 703-04 (Iowa 1993). The Iowa Legislature may preempt or deny local municipalities authority to enact measures on certain subjects in an express or an implied manner. *Goodell*, 575 N.W.2d at 492. Express preemption occurs when the Iowa Legislature has directly prohibited local action in an area. *Chelsea Theater Corp. v. City of Burlington*, 258 N.W.2d 372, 373 (Iowa 1977) (holding a law passed by the Iowa Legislature preempted local regulation of obscene materials because the statute imposed "uniform[ity]."). Implied preemption occurs if a municipality "prohibits an act permitted by a statute, or permits an act prohibited by a statute." *City of Des Moines v. Gruen*, 457 N.W.2d 340, 342 (Iowa 1990) (citation omitted). It may occur if the Legislature has "cover[ed] a subject by statutes in such a manner as to demonstrate a legislative intention that the field is preempted by state law." *City of Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983).

C. Iowa Regulation of Pipelines

The Iowa Legislature has enacted a statutory scheme to govern the construction of pipelines. *See* Iowa Code § 479B *et seq.* Under Iowa law, "[a] pipeline company shall not construct, maintain, or operate a pipeline or underground storage facility under, along, over, or across any public or private highways, grounds, waters, or streams of any kind . . . except in accordance with this chapter." *Id.* § 479B.3. To receive permission to construct a pipeline, the company must "file a verified petition with the board asking for a permit to construct, maintain, and operate a new

pipeline." *Id.* § 479B.4(1).[6] The permit application must include, among other information, a "legal description of the route of the proposed pipeline and a map of the route," "[a] general description of the public or private highways, grounds, waters, streams, and private lands of any kind," "the possible use of alternative routes," and "the relationship of the proposed project to the present and future land use and zoning ordinances." *Id.* § 479B.5(3-7).

Once a petition is filed, the statute directs the IUB to "fix a date for a hearing." *Id.* § 479B.6(1). Prior to the hearing, any individual or entity "whose rights or interests may be affected by the proposed pipeline or hazardous liquid storage facilities may file written objections . . . not less than five days before the date of the hearing on the application." *Id.* § 479B.7. At the hearing, the board shall consider the petition, any objections, or testimony "in making its determination regarding the application." *Id.* § 479B.8. At the hearing, "[t]he board may [also] examine the proposed route of the pipeline and location of the underground storage facility." *Id.*

After a hearing, the IUB "may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper." *Id.* § 479B.9. A permit "shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity." *Id.* The applicant is responsible for "all costs of the informational meetings, hearing, and necessary preliminary investigation . . . [and] the actual unrecovered costs directly

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[6] Iowa Code § 479B's usage of "the board" refers to the Iowa Utilities Board.

attributable to inspections conducted by the board." *Id.* § 479B.10.

D. Federal Preemption

The Supremacy Clause of the United States Constitution states that "the laws of the United States" are "the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. This means state laws that conflict with federal laws or regulations are invalid, unenforceable, and unconstitutional. *Malone v. White Motor Corp.*, 435 U.S. 497, 504, 98 S.Ct. 1185, 55 L.Ed.2d 443 (1978). This rule applies "in several different ways." *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985). First, Congress may engage in express preemption by stating its intent to do so. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 97 S.Ct. 1305, 51 L.Ed.2d 604 (1977). Second, Congress may preempt state laws "where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation." *Hillsborough Cnty.*, 471 U.S. at 713, 105 S.Ct. 2371 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947)). Third, federal law nullifies state law if they conflict. *Id.* (citing *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43, 83 S.Ct. 1210, 10 L.Ed.2d 248 (1963)). Fourth, implied preemption occurs when Congress "intended to oust state law in order to achieve its objective." *Kinley Corp v. Iowa Util. Bd.*, 999 F.2d 354, 358 n.3 (8th Cir. 1993). Both federal statutes and regulations can preempt state law. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699, 104 S.Ct. 2694, 81 L.Ed.2d 580 (1984).

E. Federal Legislation and Regulation of Pipelines

Federal statutes and regulations govern nearly every part of the construction and operation of hazardous liquid pipelines. In 1994, Congress enacted the Pipeline Safety Act ("PSA") in an attempt to provide uniformity to the federal laws governing the construction of various types of pipelines.[7] Under the PSA, the Secretary of Transportation "shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities." 49 U.S.C. § 60102(a)(2). Authority given to the Secretary of Transportation is, in turn, delegated to PHMSA. *See id.* § 108. The PHMSA promulgates regulations on "the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." *Id.* § 60102(a)(2)(B).

The PHMSA has promulgated many pipeline regulations that are relevant to this dispute. One regulation states that "[p]ipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly." 49 C.F.R. § 195.210(a). In addition, "[n]o pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in § 195.248." *Id.* § 195.210(b).

Pipeline companies must also abide by certain construction standards. These include minimum

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[7] The statute incorporated previous statutes into its framework. 49 U.S.C. § 60102(a)(1). This means that decisions interpreting said statutes are relevant to interpreting the PSA. *Id.*

cover standards. *Id.* § 195.248 (mandating covers by pipeline location and excavation type); § 195.210(b) (near private dwellings, industrial buildings, or places of public assembly); *Id.* § 192.327 (transmission lines).

Other relevant regulations describe how pipelines must prepare for emergencies. *Id.* § 195.402(e) (requiring pipeline operators to implement emergency procedures, including "[r]eceiving, identifying, and classifying notices of events that need immediate response," "[h]aving personnel, equipment, instruments, tools, and material available as needed at the scene of an emergency," and "assisting with evacuation of residents.").

In addition to regulations, the statute provides a "[s]tate authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." 49 U.S.C. § 60104(c). This language is understood to preclude "state decision-making in this area altogether." *Kinley Corp.*, 999 F.2d at 359. The statute "leaves no regulatory room for the state to either establish its own safety standards or supplement the federal safety standards." *Id.* (citing *ANR Pipeline Co. v. Iowa State Com. Comm'n*, 828 F.2d 465, 472 (8th Cir. 1987)). Put simply, the PSA is a sweeping exercise of express preemption. *Id.*

IV. PRELIMINARY QUESTIONS

A. Enforcement of Ordinance No. 306

Plaintiffs' Motion addresses both ordinances to avoid confusion regarding whether Ordinance No. 306 would survive the invalidation of Ordinance No. 311. Defendants respond in their Motion that Ordinance No. 306 has been "repealed and replaced" so any challenges to it are "moot." [ECF No. 34 at 11-12]. Given these representations to the Court, and Defendants' concession that the challenged provisions of

Ordinance No. 306 are preempted anyway, the Court's analysis will include both ordinances but focus primarily on Ordinance No. 311. Such analysis would apply equally to any subsequent effort to enforce Ordinance No. 306. For the sake of clarity, the Court will rely on Defendants' representations that Ordinance No. 306 do not survive regardless of any determination of the validity of Ordinance No. 311.

B. The Intent of Ordinance No. 311

Much enthusiastic debate in the summary judgment record, albeit ultimately irrelevant, was aimed at dissecting the real intent of the Board underlying the adoption of Ordinance No. 311. Plaintiffs argue that "Story County enacted both Ordinance No. 306 and Ordinance No. 311 for the very purpose of regulating pipeline safety," regardless of the purported reasons under the Ordinance No. 311 and at the Board's public hearings. [ECF No. 30-1 at 13]. Defendants disagree. Defendants acknowledge that Ordinance No. 306 imposed safety standards to regulate interstate hazardous materials pipelines, stating that "[a]t the time Ordinance No. 306 was enacted, safety was a primary consideration and the specifications reflected that focus." [ECF No. 34 at 26]. They argue instead that the two ordinances are distinct amendments with an entirely different intent behind their approval and should be examined by the Court as such. This argument, in its most credulous iteration, would ask the Court assessing the validity of the new ordinance: (1) to ignore the Board's admittedly singular focus of regulating pipeline safety when passing Ordinance No. 306 and (2) accept that the Board's new regulations under Ordinance No. 311 were adopted approximately seven months later—*in the middle of litigation*—for reasons other than regulating pipeline safety. This argument is particularly unconvincing when the

"changes" comprise substantially the same components as those in the repealed ordinance: the ordinances establish (a) distance and siting requirements, (b) certain other controls over hazardous liquid pipelines delegated to the IUB through its permitting process, and/or (c) emergency planning requirements.[8] Ultimately, the intent of the County in passing Ordinance No. 311 is not relevant for the determination at summary judgment. The Board could pass an ordinance which is specifically intended to fall within the bounds of preemption under federal or state law but fails to do so. It could also enact an ordinance with the purest motives but ultimately conflicts with federal law or transgresses the boundaries of Iowa home rule authority. Intent of the Board is not the issue when considering whether either ordinance is preempted. For reasons set forth in this Order, the challenged components of both ordinances are expressly or impliedly preempted by federal and state law, as both Congress and the Iowa Legislature did not envision a role for local governments to impose these restrictions on pipelines.

V. STATE PREEMPTION ANALYSIS

A. Statutory Interpretation Under Iowa Law

"A trial court's determination of whether a local ordinance is preempted by state law is a matter of statutory construction." *City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 339 (Iowa 2015) (quoting *City of Davenport v. Seymour*, 755 N.W.2d 533, 537 (Iowa 2008)). "In construing statutes, [the] goal is to ascertain legislative intent." *Mall Real Estate, L.L.C v. City*

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[8] The Court cautions that Defendants' proposition, if adopted by other courts, could lead to the regular use of superficial repeals and amendments by state or local governments to evade federal preemption challenges in the middle of litigation.

of Hamburg, 818 N.W.2d 190, 194 (Iowa 2012) (citation omitted). "In ascertaining legislative intent, we consider the language used in the statute, the object sought to be accomplished, and the wrong to be remedied." *Swainston v. Am. Fam. Mut. Ins. Co.*, 774 N.W.2d 478, 482 (Iowa 2009) (quoting *Mortensen v. Heritage Mut. Ins. Co.*, 590 N.W.2d 35, 39 (Iowa 1999)). "We consider all parts of an enactment together and do not place undue importance on any single or isolated portion." *Id.* "In the context of state-local preemption, the silence of the legislature is not prohibitory but permissive." *Bellino Fireworks, Inc. v. City of Ankeny, Iowa*, No. 4:17-cv-212-RGE-CFB, 2017 WL 11446135, at *6 (S.D. Iowa June 29, 2017) (quoting *Seymour*, 755 N.W.2d at 543).

B. Iowa State Law Claims

Summit argues two components of Ordinance No. 306 and one component of Ordinance No. 311 are preempted by Iowa Code § 479B. For Ordinance No. 306, it contends the components pertaining to (i) distance and siting and (ii) certain other controls over hazardous liquid pipelines under the IUB permitting scheme are unenforceable because Iowa Code § 479B delegates authority over such matters to the IUB.

For Ordinance No. 311, it contends the distance and siting components are unenforceable for the same reason. Defendants argue the disputed provisions of both ordinances are not preempted because Iowa Code § 479B does not limit their ability to engage in ordinary zoning and "does not directly contradict any provision in chapter 479B or rewrite the state regulatory scheme." [ECF No. 39 at 6-8].[9] The Court

[9] Defendants' resistance to Plaintiffs' Motion addresses Ordinance No. 311 but is equally applicable to Ordinance No. 306.

finds that the challenged components under this subsection cannot be enforced because of implied preemption.

i. Distance and Siting Requirements

The first issue is whether the two ordinances' distance and siting requirements are impliedly preempted by Iowa Code § 479B. The Court finds that they are.

Both ordinances impose many limitations on the placement of pipelines. Ordinance No. 306 requires Summit to lawfully place a pipeline based on a complex distance and siting scheme that varies depending on the type and use of the pipeline and its distance from certain areas and developments. For liquid pipelines, it adopts the federal setback standards under 49 C.F.R. § 195.210. For all other pipelines, formulas are utilized with inputs based on the size of the pipeline, its maximum operating pressure, and other factors. The limitations under Ordinance No. 311 are restrictive as well. Ordinance No. 311 provides numerous situations where a one-quarter mile setback is required.[10] Both ordinances also impose severe restrictions on construction of a pipeline in areas designated as Critical Natural Resource Areas.

These restrictions significantly limit the land in Story County on which an IUB-approved pipeline

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[10] These includes, dwellings, areas zoned A-R Agricultural Residential, R-1 Transitional Residential, R-2 Urban Residential, RMH Residential Manufactured Housing District, C-LI Commercial/Light Industrial District, HI Heavy Industrial District, retirement and nursing homes, family homes, schools, childcare homes and centers, group homes, hospitals, detention facilities, human service facilities, campgrounds, day camps, cemeteries, stables, amphitheaters, shooting ranges, golf courses, stadiums, parks, houses of worship, auditoriums, city boundaries, and Urban Expansion Areas.

may be built. The restrictions by Ordinance No. 306 on hazardous *liquid* pipelines do not eliminate all or almost all land in Story County, as these restrictions mirror the federal minimum setback standards. However, all other pipelines are restricted significantly enough to prevent their operators from completing, or even beginning, to construct a pipeline in Story County after the approval from IUB. The same problem exists with the restrictions under Ordinance No. 311.

Defendants argue that Plaintiffs have not offered any evidence proving it is impossible to build a pipeline in Story County. [ECF No. 34 at 21-22]. They state that "[t]he County consists of 572 square miles," while the "largest setback in the ordinance is one quarter mile." *Id.* at 21. Defendants' statement, however, misunderstands the nature of an interstate pipeline. An interstate pipeline is not a single structure that may be placed in one location within the 572 square miles of the County's land area. The largest setback of one-quarter mile applies to numerous areas as recounted by the Court above. The ordinance requires a setback from each of those areas while, at the same time, the pipeline must traverse through Story County, eventually connecting to twenty-nine counties in Iowa and many more counties in the four other Midwest states. It will create a serious possibility the IUB would approve the construction of the pipeline but Summit would be unable to build because it could not comply with the requirements of the ordinances. Put another way, the ordinances would prohibit "an act permitted by a statute." *Gruen*, 457 N.W.2d at 342. This situation is the one that preemption is designed to avoid, and the ordinances are unenforceable under implied preemption. *Seymour*, 755 N.W.2d at 538 (citation omitted).

Other portions of the statute support this interpretation. Specifically, the statute directly assigns a role to the county boards of supervisors in some provisions but not in others. A notable example requires a board of supervisors to consider certain topics, hire a professional engineer, and conduct detailed inspections for the purposes of land restoration. Iowa Code § 479B.20. This stands in sharp contrast to the location provisions of the statute, which do not mention local governments. *See id.* §§ 479B.8, 479B.9. This omission is evidence that the Legislature did not envision a role for local governments in regulating the location of pipelines. *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001) ("the express mention of one thing implies the exclusion of other things not specifically mentioned"); *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995) (same). Defendants argue that the permit-prohibit test, as reiterated by the Iowa Supreme Court in *Goodell*, should be narrowly interpreted. Under the permit-prohibit test, implied preemption exists when a local regulation "prohibits an act permitted by a statute, or permits an act prohibited by a statute." *Goodell*, 575 N.W.2d at 493.

Defendants points out a tension with the permit-prohibit test and a municipal's home rule authority under the Iowa Constitution. They claim that a municipality's home rule authority under Iowa Code § 331.301, which allows local governments to "set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise," is utterly eroded under a strict interpretation of the permit-prohibit test. They reason that any higher or more stringent standards or requirements imposed by local governments would prohibit an act permitted by state statute. To harmonize this tension, Defendants cite to a post-

Goodell case that included a caveat to the permit-prohibit test. In 2002, the Iowa Court of Appeals held that a city tire disposal ordinance is not preempted by state statute unless the two are irreconcilable and not merely adding further restrictions. *BeeRite Tire Disposal/Recycling, Inc. v. City of Rhodes*, 646 N.W.2d 857, 860 (Iowa Ct. App. 2002). Defendants argue the ordinances and Iowa Code § 479B are not irreconcilable and thus no implied preemption exists.

The Court disagrees. The *BeeRite* court considered the subject matter of the ordinance as an important part of its reasoning. The court stated:

> [T]he subject matter here is not livestock confinement as it was in *Goodell* . . . unlike the problem of livestock confinement waste where resulting pollutants enter air and water and thus flow freely throughout the state, *tire piles are confined to one area, and there is consequently less of an inherent need for regulations throughout the state to be uniform in order to make any one regulation enforceable*.

Id. at 861 (citations omitted) (emphasis added). Put another way, a strict interpretation of the permit-prohibit test in *Goodell* does not erode a municipality's home rule authority for certain subject matters, as there is an inherent need for uniform regulations across the state for matters such as livestock confinement (or interstate pipelines). Of course, many legal principles can inadvertently supersede related laws if interpreted too strictly. However, in this case, Defendants do not offer such an unduly restrictive interpretation of home rule authority. The ordinances contain a laundry list of distance and siting requirements—complete with setbacks of one-quarter mile—which apply throughout the County that make the siting of a pipeline essentially impossible.

The aforementioned discussion provides support that the subject matter at issue here is critical for ascertaining the breadth of home rule authority in regulating the location of pipelines. The very nature of the case necessitates a uniform distance and siting standard throughout the state. Pursuant to the above discussion, the Court concludes the distance and siting requirements of both ordinances are implicitly preempted by Iowa Code § 479B.

ii. IUB's Permitting Scheme

The next issue concerns whether the following three requirements are preempted by the IUB's permitting scheme under Iowa Code § 479B: the minimum cover requirement, trenchless construction requirement, and authorization requirement. For the reasons discussed below, these provisions are impliedly preempted by Iowa Code § 479B.

Iowa law provides that "[a] pipeline company doing business in this state shall file a verified petition with the board 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 . . . in this state." Iowa Code § 479B.4(1). The petition must include information about the company filing the application, a legal description of the pipeline, locations of storage facilities, alternative routes, and potential interactions with "present and future land use and zoning ordinances." *Id.* § 479B.5. The IUB "may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper." *Id.* § 479B.9.

This permitting scheme also includes two components that are relevant for this discussion. First, the implementing regulations of Iowa Code § 479B

requires an applicant to submit information related to the construction methods of a proposed pipeline, such as "engineering specifications covering the engineering features, materials and manner of construction of the proposed pipeline." Iowa Admin. Code 199-13.3(479B). Second, the implementing regulations of Iowa Code § 479B also require a pipeline company to submit documentation to show it obtained all necessary permissions from the appropriate authorities to begin construction of a pipeline. Iowa Admin. Code 199-13.3(1)(e)(479B). If all necessary permissions have not been obtained, a pipeline company may alternatively submit statements ensuring they will get them. *Id.* The authorization requirement under the federal regulations is relatively flexible. Specifically, the federal regulations allow pipeline companies to "request board approval to begin construction on a segment of a pipeline prior to obtaining all necessary consents for construction of the entire pipeline." *Id.* (emphasis added).

The ordinances include three requirements that are relevant to this discussion. First, Ordinance No. 306 provides that a pipeline company must maintain either the federal minimum cover requirements or, if none exists and the land is in agricultural production, maintain a "minimum depth of 36 inches or greater." [ECF No. 30-3 at 20]. In addition, "[a] greater depth shall be required when determined necessary to withstand external loads anticipated from deep tillage of 18 inches," as currently required by Iowa regulations. *Id.* Second, both ordinances require only trenchless construction methods in areas designated as Critical Natural Resource Areas. *Id.* Third, Ordinance No. 311 contains an authorization requirement that prohibits construction until the pipeline company submits documentation that it has "obtain[ed] all required

federal, state, and local permits and any private easements or other land use permissions prior to commencing construction." *Id.* at 9.

The Court finds that Iowa Code preempts the ordinances to the extent they interfere with the construction of an IUB-approved pipeline. First, the components pertaining to minimum cover and trenchless construction methods interfere with the IUB's authority because it requires pipeline companies to maintain the County's construction standards after the submission of a petition to the IUB. By their own admission, Defendants envision Summit changing the route of the pipeline during or after the IUB process to comply with the ordinances. [ECF No. 34 at 9]. In fact, they argue that any rerouting due to the county's restrictions are "a standard part of the pipeline planning process." *Id.* However, this will lead to a situation where the IUB may grant a permit to construct a pipeline and Summit is unable to do so. Such a situation renders a local law irreconcilable with state law and thus unenforceable under preemption. *Goodell*, 575 N.W.2d at 500 (explaining the "well established" principle of law that "[a] local law is 'irreconcilable' with state law when the local law 'prohibits an act permitted by statute, or permits an act prohibited by a statute.'") (citations omitted).

A similar conclusion is appropriate for the County's authorization requirement. Under its permitting scheme, the IUB may allow a pipeline company to commence construction prior to obtaining "all necessary consents for construction of the entire pipeline." Iowa Admin. Code 199-13.3(1)(e)(479B). Under Ordinance No. 311, a pipeline company that obtains all necessary permissions in Story County from the appropriate authorities, if any, will be nonetheless

prohibited from commencing construction until it has "obtain[ed] all required federal, state, and local permits and any private easements or other land use permissions prior to commencing construction." [ECF No. 30-3 at 9]. This will once more lead to a situation where the IUB may grant permission to Summit to begin construction of a pipeline in Story County and Summit is unable to do so. As set forth earlier, such a situation renders a local law unenforceable under preemption.

This conclusion is supported by other provisions under the implementing regulations of Iowa Code § 479B. Iowa Admin. Code 199-13.3(479B). Under these regulations, pipeline companies must seek and receive permission from numerous entities and submit this information with their application for a petition. Iowa Admin. Code 199-13.3(1)(e). They must obtain consent from "appropriate public highway authorities, or railroad companies" who would be affected by the pipeline. Iowa Admin. Code 199-13.3(1)(e)(1). They shall list and acquire any permits required by "federal agencies" or "state agencies." Iowa Admin. Code 199-13.3(1)(e)(3)-(4). The regulations do not mention permits from local municipalities as being required for consideration for building a pipeline. Put another way, the exclusion of municipalities from these regulations suggests that they were intended to not have a role in the permitting process.

It is important to note at this juncture that the Court reaches a different conclusion for the last provision under Ordinance No. 306, which requires the County to consult with the pipeline companies when new developments are proposed within the setback areas. Specifically, the provision states that "[w]hen a rezoning, minor or major subdivision, or

other permit for a place of public assembly, as defined by Table 86-11 is proposed within the required setback for new pipelines, consultation with the pipeline operator on the potential risks shall be required." [ECF No. 30-3 at 20]. Summit argues that this mandatory consultation requirement is preempted by state law because "the IUB already considers rezoning in the permit process." [ECF No. 30-1 at 17 n.6]. Specifically, the IUB considers rezoning in the permitting process by requiring a permit to include "the relationship of the proposed project to the present and future land use and zoning ordinances." Iowa Code § 479B.5(7). The issue, however, is not whether IUB considers rezoning at any point under its permitting scheme. The issue on preemption is whether the ordinance's requirements will lead to a situation where the IUB may grant a permit to construct a pipeline and Summit is unable to do so. Plaintiffs have not offered such a scenario in this case. Any failure to abide by the mandatory consultation requirement will neither impact the IUB's ability to grant a permit to construct a pipeline, nor Summit's ability to construct an IUB-approved pipeline. Therefore, the mandatory consultation requirement under Ordinance No. 306 is not preempted.

Given this discussion of Iowa law and its implementing regulations, the Court concludes the minimum cover requirement, trenchless construction methods requirement, and authorization requirement in the ordinances are preempted by Iowa Code § 479B.

VI. FEDERAL PREEMPTION ANALYSIS

The Court next considers whether other components of the ordinances are preempted by federal law. An examination of federal law supports a permanent injunction of these components.

A. Statutory Interpretation Under Federal Law

Statutory analysis begins "with the plain language of the statute." *Owner-Operator Indep. Drivers Ass'n, Inc. v. Supervalu, Inc.*, 651 F.3d 857, 862 (8th Cir. 2011) (citing *United States v. I.L.*, 614 F.3d 817, 820 (8th Cir. 2011)). The main question is "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute." *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450, 122 S.Ct. 941, 151 L.Ed.2d 908 (2002) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997)). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson*, 519 U.S. at 341, 117 S.Ct. 843. The inquiry ends if "the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171, 136 S.Ct. 1969, 195 L.Ed.2d 334 (2016) (quoting *Barnhart*, 534 U.S. at 450, 122 S.Ct. 941).

B. Federal Law Preemption Claims

Summit alleges that two provisions of the ordinances are preempted by federal law. It claims that the emergency plan requirements under the ordinances, as well as the setback requirements, are unenforceable because of the PSA. As mentioned earlier, Defendants acknowledge that the provisions under Ordinance No. 306 are preempted by federal law. [ECF No. 34 at 26]. However, they argue the two provisions under Ordinance No. 311 are not preempted by the PSA because the federal statute governs safety standards, not zoning. For the reasons discussed below, the two provisions under both ordinances are preempted by the PSA and its implementing regulations.

i. Setbacks and Emergency Plan Requirements under Ordinance No. 306

The parties agree that the two provisions under Ordinance No. 306 are preempted by federal law. [ECF No. 34 at 26]. Therefore, the Court will briefly explain its findings that the setbacks and emergency plan requirements of Ordinance No. 306 are unenforceable.

The PSA provides, "[a] [s]tate authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." 49 U.S.C. § 60104(c). The statute delegates sole authority to enact safety provisions to the PHMSA. *Id.* § 60102(a)(2). The standards cover "the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." *Id.* § 60102(a)(2)(B). This includes setback requirements. *See* 49 C.F.R. § 195.210(a) (stating "[p]ipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly."); § 195.210(b) ("[n]o pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble.").

Using this authority, the PHMSA requires pipeline operators to implement a manual describing its process for responding to "emergencies." *Id.* § 195.402. The operator must have certain materials on hand, the ability to provide an effective response to different types of emergencies, and an emergency shut-off valve. *Id.* § 195.402(e)(2)-(4). The safety procedures must include steps to control the release of materials during "an accident" and minimize "public exposure to injury." *Id.* § 195.402(e)(5)-(6).

Ordinance No. 306 requires pipeline companies to maintain setback requirements based on the type and use of the pipelines, as well as their size and/or maximum operating pressure. As plainly evident in the statute, the specifications to determine the setbacks reflect a focus on safety. This is also supported by comments made during the October 18, 2022 meeting of the Board where Schoeneman clarified that these setbacks would be limited to requirements that regulate "hazardous materials pipelines that pose . . . health and safety risks."[11]

Ordinance No. 306 also requires a pipeline company seeking to reduce the minimum setbacks to submit an emergency plan "meeting the following requirements." [ECF No. 30-3 at 16]. The emergency plan must identify potential emergency events, the company's immediate response to those emergencies, a notification process with local emergency responders, and additional information to assist local emergency response. The plan must "establish a liaison and emergency contact for the pipeline operator in case local authorities need to notify the operator of an emergency or other issue." *Id.* at 20. A company must also submit models about certain emergency scenarios and include an evacuation procedure, as well as consultation process with cities in areas designated as future growth areas.

The PSA provides the Secretary of Transportation with the authority to enact emergency response plans. 49 U.S.C. § 60102(a)(2)(B). This authority is delineated by the statute, which provides a framework for the regulations which include setback requirements.

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[11] Audio of Story Cnty. Bd. of Supervisors Meeting at 53:28 (Oct. 18, 2022). The audio may be found under the same link provided in footnote 2.

Id. § 60102(r); 49 C.F.R. § 195.210. Courts have understood the statute to provide the Secretary with "exclusive authority to regulate the safety . . . of interstate hazardous liquid pipelines." *Kinley Corp.*, 999 F.2d at 359. This language precludes states and municipalities "from regulating in any manner whatsoever with respect to the safety of" pipeline facilities. *ANR Pipeline Co.*, 828 F.2d at 470. The Secretary's exclusive authority is even understood by courts to preclude state authorities from "adopt[ing] standards identical to the federal standards." *Id.* at 472. In light of this, the Court concludes that express preemption invalidates Ordinance No. 306's setback and emergency plan provisions.

ii. Setback Requirements under Ordinance No. 311

The parties sharply contest whether Ordinance No. 311 regulates safety standards. Defendants argue the setbacks fall under a county's ordinary zoning authority, whereas Plaintiffs claim the true purpose of the setbacks is to regulate the safety standards of pipelines. Notwithstanding the avowed intent of the Board, the Court finds the setback provision is unenforceable, as the ordinance creates a dual safety regulation that competes with the Secretary of Transportation's broad spectrum of duties and "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377, 135 S.Ct. 1591, 191 L.Ed.2d 511 (2015).

The PSA delegates authority to enact safety provisions to the Secretary of Transportation. *See* 49 U.S.C. § 60102(a)(2). The statute provides the Secretary with authority to promulgate regulations on the construction of pipeline facilities. *Id.* § 60102(a)(2)(B). These regulations "prescribe[] minimum requirements for constructing new pipeline systems with steel pipe,

and for relocating, replacing, or otherwise changing existing pipeline systems that are constructed with steel pipe." 49 C.F.R. § 195.200. One of those minimum requirements provides that a "[p]ipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly." *Id.* § 195.210(a). The requirement also provides that "[n]o pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in § 195.248." *Id.* § 195.210(b).

By contrast, the setback requirements under Ordinance No. 311 provide a one-quarter mile setback from dwellings, various residential and commercial areas, and certain places of assembly, such as schools, campgrounds, stadiums, and houses of worship. [ECF No. 30-3 at 8]. The county's ordinance also requires a one-quarter mile setback from "city boundaries and areas identified as Urban Expansion by the C2C Plan Future Land Use Maps." *Id.*

Defendants point to what appears to be conflicting language in the PSA and the PHMSA regulations. Under the PSA, the Secretary of Transportation cannot dictate the location or route of a pipeline facility. 49 U.S.C. § 60104(e). The PHMSA regulations, however, require pipeline companies "to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly," and prohibits pipelines "within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble," unless certain cover requirements are met. 49 C.F.R. § 195.210.

In light of this purported tension, Defendants argue the "[PHMSA] regulation is unenforceable" because it "expand[ed] the unambiguously expressed preemptive scope set by Congress" that prohibited the federal government from prescribing the location or routing of pipelines. [ECF No. 39 at 21-22]. Defendants claim that "the field of safety standards is distinct from the field of location and routing of pipelines," and that the ordinances' setbacks fall into the latter category. [ECF No. 34 at 4].

The Court disagrees. Federal law preempts Ordinance No. 311 to the extent it serves as an obstacle to the Secretary's authority to promulgate regulations on the construction of pipeline facilities. The inclusion of setbacks under the federal regulations gives support to a more sensible explanation: while the Secretary cannot dictate where a pipeline should go through Story County or along a specific location within the area, once a location or routing of a pipeline is chosen, the PHMSA regulations dictate it cannot be within the setback requirements set forth in the regulation. Put another way, setbacks are within the field of safety standards, not within the field of location and routing.[12] As setbacks are safety standards, the

[12] While Iowa Code § 479B "gives the [IUB] primary authority over the routing of pipelines," nowhere in the state statute or its implementing regulations is the authority *over routing* understood to give the IUB the authority *to establish setbacks*. Iowa Admin. Code 199-13.12(479B). The provision under Iowa Admin. Code 199-13.3(479B) requiring companies to submit maps that include "[a]ny buildings or places of public assembly within six tenths of a mile of the pipeline," is not equivalent to a standard prohibiting a pipeline within six tenths of a mile from any building or places of public assembly. As set forth earlier, however, the effect of the ordinances' setbacks would severely limit the available locations for a proposed pipeline in Story County, and consequently create a situation where the IUB would approve the

ordinances' competing requirements intrude upon the Secretary's exclusive authority to regulate the safety of interstate hazardous liquid pipelines and is preempted. *Kinley Corp.*, 999 F.2d at 359.

iii. Emergency Planning Requirements under Ordinance No. 311

Summit argues that any emergency planning requirement under Ordinance No. 311 is preempted by the PSA. Defendants resist. The Court finds that this emergency planning requirement is a "standard," not merely an informational requirement, and is expressly preempted by the PSA and its regulations.

Under the PSA, the Secretary of Transportation "shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities." 49 U.S.C. § 60102(a)(2) (emphasis added). "Standard" is defined as "[a] model accepted as correct by custom, consent, or authority" or "[a] criterion for measuring acceptability, quality, or accuracy." *Standard* Black's Law Dictionary (11th ed. 2019).

Ordinance No. 311's emergency planning requirement fits this definition. It requires pipeline companies to submit a "copy of an emergency response or preparedness plan . . . to assist with the County's emergency response planning." [ECF No. 30-3 at 9]. Companies are allowed to submit "a preliminary or draft version of an emergency response plan that would meet the requirements of the federal Pipeline and Hazardous Materials Safety Administration." *Id.* In isolation, this exchange of information is not a "standard." However, the remaining portion of this

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construction of the pipeline but Summit would be unable to build it. Therefore, the reasons for state preemption of the ordinances' setbacks differs from those for federal preemption of the same requirements.

requirement is a "standard" that can be fairly read as to set a criterion for regulating the safety of pipelines. Specifically, the remaining portion states that "[t]he County will determine whether the information in the plan is sufficient for the County to plan its own emergency response and may request additional information." *Id.* This language puts the County in the position to determine whether the information provided in the emergency plan meets its expectations or, in other words, its "standards." As the exclusive authority to regulate pipeline safety standards fall squarely with the Secretary of Transportation, the emergency plan provision is preempted.

VII. CONCLUSION

For the reasons discussed above, Plaintiffs' Motion for Summary Judgment is GRANTED[13] and Defendants' Motion for Summary Judgment is DENIED. [ECF Nos. 30; 31].

Under Federal Rule of Civil Procedure 65(d), every order granting an injunction "must . . . state its terms specifically . . . and describe in reasonable detail . . . the act or acts restrained." Fed. R. Civ. P. 65(d)(1)(B)-(C). The scope of the preliminary injunction is defined as follows:

1. **IT IS ORDERED** that Defendants Story County, Iowa, the Story County Board of Supervisors, and each of the Supervisors in their official capacities are permanently enjoined from enforcement of Story County Ordinances No. 306 and 311 effective immediately. They may not enforce Ordinance No. 306's setback requirements,

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[13] To the extent that Ordinance No. 306 is operative, its mandatory consultation requirement is not preempted and not encompassed by the injunction.

emergency plan requirement, minimum cover requirement, and critical natural resource area protections requirement in any capacity or through any instrumentality available to them. They may not enforce Ordinance No. 311's setback requirements, critical natural resource area protections requirement, emergency plan requirement, and authorizations requirement in any capacity or through any instrumentality available to them.

2. **IT IS FURTHER ORDERED** that Defendants shall immediately issue a written notice to all employees in the County who are involved in enforcing Ordinance No. 306 and Ordinance No. 311 or have oversight of such enforcement and notify them of the permanent injunction prohibiting enforcement of the ordinances.
3. **IT IS FURTHER ORDERED** that Defendants shall demonstrate its compliance with the Order by submitting an affidavit detailing its efforts to the Court within ten (10) days of entry of this Order.

IT IS SO ORDERED.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 23-3758

WILLIAM COUSER; SUMMIT CARBON SOLUTIONS, LLC,
Appellees

v.

SHELBY COUNTY, IOWA, ET AL.,
Appellants

IOWA FARMERS UNION, ET AL.,
Amici on Behalf of
Appellant(s)

v.

AMERICAN PETROLEUM INSTITUTE, ET AL.,
Amici on Behalf of
Appellee(s)

No. 23-3760

WILLIAM COUSER; SUMMIT CARBON SOLUTIONS, LLC,
Appellees

v.

STORY COUNTY, IOWA, ET AL.,
Appellants

IOWA FARMERS UNION, ET AL.,
Amici on Behalf of
Appellant(s)

v.

AMERICAN PETROLEUM INSTITUTE, ET AL.,
Amici on Behalf of
Appellee(s)

Appeal from U.S. District Court for the
Southern District of Iowa - Central

(1:22-cv-00020-SMR)
(4:22-cv-00383-SMR)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 28, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

CONSTITUTION, STATUTES, AND ORDINANCES INVOLVED

1. The Supremacy Clause of the United States Constitution, art. VI, cl. 2, provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

2. Relevant provisions of the Pipeline Safety Act, Pub. L. No. 103-272, subtit. VIII, 108 Stat. 745, 1301 (as amended), provide:

49 U.S.C. § 60101 provides in part:

§ 60101. Definitions

(a) GENERAL.—In this chapter—

* * *

(5) "hazardous liquid pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid;

* * *

(18) "pipeline facility" means a gas pipeline facility and a hazardous liquid pipeline facility;

* * *

49 U.S.C. § 60102 provides in part:

§ 60102. Purpose and general authority

(a) PURPOSE AND MINIMUM SAFETY STANDARDS.—

(1) PURPOSE.—The purpose of this chapter is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

(2) MINIMUM SAFETY STANDARDS.—The Secretary shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The standards—

(A) apply to any or all of the owners or operators of pipeline facilities;

(B) may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities; and

(C) shall include a requirement that all individuals who operate and maintain pipeline facilities shall be qualified to operate and maintain the pipeline facilities.

(3) QUALIFICATIONS OF PIPELINE OPERATORS.—The qualifications applicable to an individual who operates and maintains a pipeline facility shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits. The operator of a pipeline facility shall ensure that employees who operate and maintain the facility are qualified to operate and maintain the pipeline facilities.

* * *

49 U.S.C. § 60104 provides:

§ 60104. Requirements and limitations

(a) OPPORTUNITY TO PRESENT VIEWS.—The Secretary of Transportation shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments when prescribing a standard under this chapter.

(b) NONAPPLICATION.—A design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.

(c) PREEMPTION.—A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation. Notwithstanding the preceding sentence, a State authority may enforce a requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61.

(d) CONSULTATION.—**(1)** When continuity of gas service is affected by prescribing a standard or waiving compliance with standards under this chapter, the Secretary of Transportation shall consult with and advise the Federal Energy Regulatory Commission or a State authority having jurisdiction over the affected gas pipeline facility before prescribing the standard or waiving compliance. The Secretary shall delay the effective date of the standard or waiver until the

Commission or State authority has a reasonable opportunity to grant an authorization it considers necessary.

(2) In a proceeding under section 3 or 7 of the Natural Gas Act (15 U.S.C. 717b or 717f), each applicant for authority to import natural gas or to establish, construct, operate, or extend a gas pipeline facility subject to an applicable safety standard shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain a gas pipeline facility under those standards and plans for inspection and maintenance under section 60108 of this title. The certification is binding on the Secretary of Energy and the Commission except when an appropriate enforcement agency has given timely written notice to the Commission that the applicant has violated a standard prescribed under this chapter.

(e) LOCATION AND ROUTING OF FACILITIES.—This chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility.

3. Shelby County, Iowa Ordinance 2022-4 provides:

ORDINANCE NO. 2022-4

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE SHELBY COUNTY ZONING ORDINANCE NO. 2006-6 FOR THE PURPOSE OF REGULATING AND RESTRICTING THE USE OF LAND FOR THE TRANSPORT OF HAZARDOUS LIQUID THROUGH A HAZARDOUS LIQUID PIPELINE

WHEREAS, the Supervisors of Shelby County Iowa ("the County"), under the authority of IA CONST Art. 3, § 39A, Iowa Code § 331.301, and Iowa Code § 335.3, the County has adopted Ordinance No. 2006-6 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 adopted a comprehensive plan in 1998 which among other things (1) sets forth a master land use plan; (2) community planning goals for each city in the county; (3) goals and objectives for economic development, housing, land use, and public facilities; and (4) an implementation plan for achieving the goals of the plan; and

WHEREAS, the comprehensive plan states (1) that "Communities where development is proposed within the two-mile planning jurisdiction should participate with the county in the development oversight of these areas to assure the compatibility with the development

standards of the city, service provisions by the city and potential future growth patterns of the city"; and (2) that "Without exception, the greatest priority in the urban portion of the county is the preservation and improvement of basic infrastructure, and the creation of new housing opportunity.";

WHEREAS, the County's comprehensive plan also states that "Hazard mitigation planning is necessary to assess the on-going mitigation goals in the community, to evaluate mitigation alternatives that should be undertaken, and to outline a strategy for implementation;" and

WHEREAS, the considerations and objectives of land use and zoning regulations 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;

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 or emergency in Shelby County; and

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

WHEREAS, the transport of hazardous liquid through an 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 states 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 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;

WHEREAS, the State of Iowa and its political subdivisions may and must consider the risks 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; 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 alternative 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;" (3) specifically requires the County to hire a "county inspector" to enforce all land restoration standards, including the provisions of the independently executed agreements; and (4) specifically requires that independent agreements on "line location" between the landowner and the pipeline company must be provided in writing to the county inspector; and

WHEREAS, the construction of a hazardous liquid pipeline constitutes a use of land for trade, industry, or other purposes which the County has not heretofore regulated or restricted through the use of zoning or other ordinances; and

WHEREAS, Summit Carbon Solutions, LLC ("the Company") 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 the Company; and

WHEREAS, the Permit application proposes to locate and route a portion of the pipeline in the County; and

WHEREAS, there are several factors that would influence human safety 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) at concentrations of 25% volume, CO2 is lethal to humans within 1 minute; and

WHEREAS, the Shelby County Board of Health has issued a Public Health Position Statement ("Statement") that (1) expresses concern for the risk of CO2 exposure to humans, the environment, and to livestock; (2) states that CO2 must be under tremendous pressure to be in liquid form for transport, creating the potential for a pipeline rupture; (3) states that CO2 is an asphyxiant and a toxicant that is odorless and colorless, making a slow leak difficult to detect; (4) states that CO2 freezes skin on contact and that in high concentrations, CO2 will kill humans, pets, and livestock; (4) states that first responders and hospitals may not be prepared for a mass toxic gas incident; and (5) recommends that CO2 pipeline routes be kept at least 1,000 feet from all residences until an updated emergency response plan is approved and recommended otherwise; 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 and 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 a carbon dioxide pipeline near a populated area could cause a mass casualty event; and

WHEREAS, on February 22, 2020, a 24-inch diameter carbon dioxide pipeline ruptured approximately one (1) mile from the town of Satartia, Mississippi ("the Satartia Incident"), and caused a number of residents to become unconscious or intoxicated, required the hospitalization of forty-nine (49) persons and the evacuation of more than two hundred (200) persons, and also put the lives and welfare of local emergency response personnel at risk; and

WHEREAS, on May 26, 2022, PHMSA announced new safety measures to protect Americans from carbon dioxide pipeline failures after the Satartia Incident, 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 onshore 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 of 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 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 land restoration and line location; and (2) for purposes of facilitating the least dangerous route through the County of a hazardous liquid pipeline, including requiring the completion of an emergency response and hazard mitigation plan; and

WHEREAS, the adoption of such land use and zoning regulations is (1) consistent with 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, in Exhibit F to the application for the Permit, the Company states that it will "work with local county officials to verify if any additional permits or approvals are needed prior to construction of the Project…"; and

WHEREAS, the County intends to establish a process under the Ordinance for permitting and approving the use of land in Shelby County for the transport of hazard liquid through a hazard liquid pipeline that is not inconsistent with federal law, including the Hazardous Liquid Pipeline Safety Act, and not inconsistent with Iowa law, including Iowa Code chapters 479B, 331, and 335.

NOW THEREFORE, BE IT ENACTED BY THE SUPERVISORS OF SHELBY COUNTY, IOWA:

SECTION 1. – TEXT AMENDMENT - Article 1: Title and Purpose, section 1.2, of the Zoning Regulation, is amended by repealing and replacing the section with the following:

> 1.2 The Ordinance, as amended, is effective as of January 1, 2023.

SECTION 2. – TEXT AMENDMENT - Article 4: General Provisions, of the Zoning Regulation, is amended by inserting the following new section:

> 4.20 <u>Hazardous Liquid Pipelines</u> – 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 8 – Hazardous Liquid Pipelines. For purposes this Zoning Regulation, "hazardous liquid" and "hazardous liquid pipeline" shall have the meanings defined in Article 8.

SECTION 3. – TEXT AMENDMENT - Article 8: Hazardous Liquid Pipelines, of the Zoning Regulation, is amended by inserting the following new Article:

ARTICLE 8: HAZARDOUS LIQUID PIPELINES

8.0 Purposes

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

The purposes of the regulations provided in this Article are:

8.01 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) 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.

8.02 To implement section 8.01 with regard to the community planning goals of cities in the County by protecting the area within each city's two-mile planning jurisdiction (1) for purposes of encouraging local economic development, preserving and improving basic infrastructure, and creating new housing opportunities; and (2) for purposes of ensuring that communities where development is proposed within the two-mile planning jurisdiction can participate with the county in the development oversight of these areas to assure the compatibility with the devel-

opment standards of the city, service provisions by the city and potential future growth patterns of the city.

8.03 To implement section 8.01 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.

8.04 To implement section 8.01 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., the Iowa Constitution, and Iowa Code chapters 29C, 479B, 331, and 335.

8.05 To implement section 8.01 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.

8.06 To implement section 8.01 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.

8.1 Definitions

For purposes of this Article, 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 Article.

"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 Article.

"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 Shelby County Board of Adjustment established pursuant to Iowa Code chapter 335 and Article 23 of this Zoning Regulation.

"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 used to transport a gas, liquid, or supercritical fluid comprised of 50 percent or more of carbon dioxide (CO2).

"Conditional Use Permit" means a conditional use or use limitation authorized and approved by the Board of Adjustment in the manner and according to the standards provided in sections 23.21 and 4.15 of this Zoning Regulation.

"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.

"County" or "the County" means Shelby 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 a 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.

"Fatality Zone" means the geographic area in 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 the 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 exposure.

"Hazardous Liquid" means the same as defined in Iowa Code § 479B.2 and, unless otherwise defined there, means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied 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.2(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 Article.

"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 section 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 there, 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 restriction of this Zoning Regulation. 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 of 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.

"Zoning Regulation" or "the Zoning Regulation" means the collection of land use and zoning regulations known as the Shelby County Zoning Regulation, as provided and made effective in Article 1 of the ordinance known as the Shelby County Zoning Regulation.

8.2 Conditional Use Class Created and Use Limitations Imposed on Hazardous Liquid Pipelines

8.21 As provided in section 4.0 of this Zoning Regulation, all land in the County must be used in accordance with this Zoning Regulation. As provided in section 4.15 of this Zoning Regulation, the County may create a class of uses that have conditions or other 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.

8.22 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.

8.3 Conditional Use Permits Required

8.31 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.

8.32 A Property Owner that intends to negotiate or sell an easement to a Pipeline Company by means of an Independent Agreement shall submit an application to the County Zoning Administrator for a Conditional Use Permit before executing the Independent Agreement with the Pipeline Company. If a Property Owner executes an Independent Agreement with a Pipeline Company on or after the effective date of this Article without obtaining a Conditional Use Permit, the County may exercise all lawful remedies as provided in section 22.11 of this Zoning Regulation.

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

8.4 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 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. 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:

8.41 From the city limits of an incorporated city, not less than two miles.

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

8.43 From a public park or public recreation area, not less than one quarter of one mile.

8.44 From any Occupied Structure, not less than 1,000 feet.

8.45 From a confined animal feeding operation or facility, not less than 1,000 feet.

8.46 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 1,000 feet.

8.5 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:

8.51 The information required for a Conditional Use Permit as described in section 4.151 of this Zoning Regulation, including all required forms prescribed by the County Zoning Administrator.

8.52 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.

8.53 A map identifying each proposed crossing of a County road or other County property.

8.54 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.

8.55 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.

8.56 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 section 8.12 of this Article.

8.57 An Emergency Response and Hazard Mitigation Plan as required pursuant to section 8.11 of this Article.

8.58 All applicable fees required pursuant to section 8.7 of this Article.

8.59 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.

8.6 Permit Application Requirements for Property Owners

A Property Owner 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:

8.61 The information required for a Conditional Use Permit as described in section 4.151 of this Zoning Regulation, including all required forms prescribed by the County Zoning Administrator.

8.62 A copy of the Independent Agreement the Property Owner proposes to execute with the Pipeline Company, including a map and a legal description of the proposed Line Location and a statement of verification of compliance with the separation requirements of this Article.

8.63 All applicable fees required pursuant to section 8.7 of this Article.

8.7 Fees and Assessments

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

8.71 A Pipeline Company seeking a Conditional Use Permit shall pay the following fees and assessments:

a. An application fee in the amount of $100 for each Affected Person identified in the Application.

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 County roads or using the public right-of-way in the County.

8.72 A Property Owner seeking a Conditional Use Permit shall pay a $50 application fee.

8.8 Public Hearing Requirements and Permit Approval

8.81 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 are met and shall make a report to the Board of Adjustment recommending approval, denial, or modification of the Application. Upon the verification and report of the County Zoning Administrator, the Board of Adjustment shall set the date of one or more public hearings in the County on the question of granting a Conditional Use Permit to the Pipeline Company. Once the public hearing dates have been set, the Board of Adjustment shall publish notice in a local newspaper pursuant to Iowa Code § 331.305, and the Pipeline Company shall send notice of each scheduled public hearing to each Affected Person identified in the Application by United States Mail.

8.82 A public hearing shall not be required in the case of a Property Owner applying for a Conditional Use Permit. Upon receipt of an application for a Conditional Use Permit from a Property Owner, the County Zoning Administrator shall verify that the Property Owner permit application requirements are met and shall make a report to the Board of Adjustment recommending approval, denial, or modification of the Application. Upon the verification and report of the County Zoning Administrator, the Board of Adjustment shall consider the application at a regular meeting of the Board of Adjustment.

8.83 Once the application, public hearing, and other requirements of this Article are met, the Board of Adjustment shall consider each application for a Conditional Use Permit according to the standards set forth in section 23.211 regarding the powers of the Board of Adjustment and in section 4.152 of this Zoning Regulation regarding the standards and findings required of conditional uses. The Board of Adjustment shall issue a permit if the Board of Adjustment finds that all applicable standards are met. The burden of establishing that all applicable standards are met shall be on the Applicant for the Conditional Use Permit.

8.84 A Conditional 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 Conditional Use Permit whenever the Hazardous Liquid Pipeline is transferred or its use is materially or substantially changed or altered.

8.9 Appeals and Variances

A Pipeline Company or a Property Owner may appeal an adverse determination on a Conditional Use Permit, or may seek a special exception or variance from the Board of Adjustment, as provided in Article 23 of this Zoning Regulation.

8.10 Applicability and Compliance

8.101 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; 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 Article; (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 Article.

8.102 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.

8.103 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.

8.11 Emergency Response and Hazard Mitigation Plans for Hazardous Liquid Pipelines

As stated in the Purposes section of this Article, this Article 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 in emergency response and hazard mitigation planning pursuant to this section.

8.111 If the Pipeline is a Carbon Dioxide Pipeline and PHMSA has adopted regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning for Carbon Dioxide Pipelines, then the Pipeline Company operating the Carbon Dioxide Pipeline shall submit a plan that meets the requirements of this section. A plan submitted in compliance with this section shall include: (1) documentation of compliance with the PHMSA regulations; and (2) a detailed plan describing how the Pipeline Company will work with the County's law enforce-

ment, emergency management personnel, and first responders in the event of a spill, leak, rupture or other emergency or disaster related to the Pipeline.

8.112 If the Pipeline is a Carbon Dioxide Pipeline and PHMSA has not adopted regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning for Carbon Dioxide Pipelines, then the Pipeline Company operating the Carbon Dioxide 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 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 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 pressures, 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 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 numbers 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 100 or more 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 a 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 with 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 data safety 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 human occupied structure;

4. response equipment needs for emergency response personnel, such as carbon dioxide and other chemical detectors; respirators; personal protective equipment; communications equipment; road barriers and traffic warning signs; and non-internal combustion engine evacuation vehicles;

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.

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

1. a Mass Notification and Emergency Messaging System;

2. evacuation plans;

3. evaluation equipment needs especially for mobility impaired individuals;

4. carbon dioxide detectors, and respirators.

8.113 If the Pipeline is a Hazardous Liquid Pipeline of a type other than a Carbon Dioxide Pipeline, then the Pipeline Company operating the Pipeline shall submit a plan that meets the requirements of this section. A plan submitted in compliance with this section shall include: (1) documentation of compliance with PHMSA regulations for the applicable type of Pipeline; and (2) a detailed plan describing 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 the Pipeline.

8.12 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 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.

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.

8.121 A Pipeline Company granted a Conditional 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.

8.122 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 Shelby County Recorder's office and a copy delivered to the County by the Pipeline Owner.

8.123 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.

8.124 Upon the 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 4. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5. 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 6. 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: _____

Passed and adopted this ____ day of _____, 2022.

_____
Chair

ATTEST:

_____
Mark Maxwell, County Auditor

4. Story County, Iowa Ordinance 311 provides:

STORY COUNTY IOWA

ORDINANCE NO. 311

AN ORDINANCE AMENDING CHAPTER 85, GENERAL PROVISIONS AND DEFINITIONS, AND CHAPTER 86, DISTRICT REQUIREMENTS OF THE STORY COUNTY LAND DEVELOPMENT REGULATIONS, OF THE STORY COUNTY CODE OF ORDINANCES.

WHEREAS, under Section 335.3, Code of Iowa, the Board of Supervisors may by ordinance regulate and restrict the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, located within the county but lying outside of the corporate limits of any city; and

WHEREAS, under Section 335.4, Code of Iowa, the Board of Supervisors may divide the county, or any area or areas within the county, into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of the chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land; and

WHEREAS, on September 2, 1958, the Board of Supervisors of Story County, Iowa, adopted a Land Development Regulations Ordinance ("the Ordinance") in accordance with a comprehensive plan and as permitted and specifically authorized in Chapter 335 and Chapter 354 of the Code of Iowa; and

WHEREAS, the Ordinance is intended and designed to meet the specific objectives of Section 335.5, Code of Iowa, including to encourage efficient urban development patterns and to prevent the overcrowding of land; and

WHEREAS, under Section 85.02 Scope and Purpose of the Ordinance, it is the purpose of the Ordinance to provide for a balance between the review and regulation authority of Story County governmental agencies concerning the division and subdivision of land and the rights of landowners; and

WHEREAS, under Section 85.02 Scope and Purpose of the Ordinance, it is, therefore, determined to be in the public interest to provide for a balance between the land use rights of individual landowners and the economic, social, and environmental concerns of the public when a city or the county is developing or enforcing land use regulations outside corporate limits; and

WHEREAS, under Section 85.02 Scope and Purpose of the Ordinance, it is, therefore, determined to be in the public interest to insure orderly development and provide for the regulation and control of the extension of public improvements, public services, and utilities, the improvement of land, and the design of subdivisions, consistent with approved comprehensive and/or other specific area plans outside corporate limits; and

WHEREAS, in order to carry out the purpose and intent of the Ordinance, the unincorporated area of Story County, Iowa, is divided into the following base district classifications:

A-1 Agricultural District
A-2 Agribusiness District
A-R Agricultural/Residential District
R-1 Transitional Residential District
R-2 Urban Residential District
RMH Residential Manufactured Housing District
C-LI Commercial/Light Industrial District
HI Heavy Industrial
GB-C Greenbelt-Conservation District; and

WHEREAS, 98% of the unincorporated area of Story County is zoned A-1 Agricultural; and

WHEREAS, on May 18, 1785, the United States Continental Congress adopted what is known as the Land Ordinance of 1785 to lay out the process by which the lands west of the Appalachian Mountains, were to be surveyed and sold, known as the Public Land Survey System; and

WHEREAS, the Public Land Survey System divided land into townships of six square miles, each township divided respectively into thirty-six sections of one-square mile, and each section further divided by half and quarter sections, and each quarter section further divided by half and quarter sections, resulting in the smallest division of land being a quarter-quarter of a section or one-quarter mile by one-quarter mile (40-acres); and

WHEREAS, recognizing this established, historic pattern of land division, on June 30, 1977, the Board of Supervisors of Story County, Iowa, amended the Ordinance and adopted a 35 net-acre minimum lot size in the A-1 Agricultural Zoning District; and

WHEREAS, under Section 85.02 Scope and Purpose of the Ordinance, the Ordinance is also intended and designed to meet, to the greatest extent possible within its scope, the vision, goals, objectives, principles and policies of the Cornerstone to Capstone (C2C) Comprehensive Plan ("the Plan"); and

WHEREAS, the Board of Supervisors adopted the Cornerstone to Capstone (C2C) Comprehensive Plan on June 7, 2016, for orderly growth and development in the unincorporated areas of Story County including through the Plan's goals and strategies for Story County to guide future actions and decisions, provide predictability and consistency over time, and create

and delineate future land use designations for unincorporated areas of the County; and

WHEREAS, to facilitate the orderly development, use, and preservation of land in unincorporated Story County, the Board of Supervisors established a Future Land Use Map with a set of land use designations and strategies specific to each designation as part of the adoption of the Plan; and

WHEREAS, the Plan has adopted the areas identified by communities in Story County for future growth and identified them with the Urban Expansion Area Designation on the Future Land Use Map; and

WHEREAS, the Plan has also adopted areas known as Agricultural Conservation Areas to preserve prime farmland, identified them on the Future Land Use Map, and adopted principles for the designation including "design areas identified for development to limit conflicts between agricultural uses and rural residences and other types of land uses. Through development practices preserve and protect prime agricultural lands and the ability to engage in agricultural activities;" and

WHEREAS, the Plan has also adopted areas known as Rural Residential Areas and identified them on the Future Land Use Map to offer rural housing market choices and identify existing residential land uses that "provide a desirable housing market worthy of both protection and cultivation; and

WHEREAS, the Plan's goals provide for emergency planning, and an associated strategy, to collaborate with local agencies and organizations to inform Story County about disaster preparedness; and

WHEREAS, the State of Iowa through Iowa Code chapter 29C requires the County and cities within the

County to participate in and fund county-level emergency response planning for natural and human-caused disasters through the emergency management commission and agency, to support disaster response and establish emergency communication measures to alert County residents of threats to their lives and wellbeing; and

WHEREAS, the Plan's adopted goals for cultural resources include "new development in the unincorporated areas of Story County respects and enhances the area's rural character" and an associated strategy is to "encourage utilities to be sited and designed to minimize impacts on adjacent uses;" and

WHEREAS, the Plan's adopted goals for infrastructure and utilities are to "ensure utility infrastructure protects public health, as well as the county's natural and agricultural resources and rural character;" and

WHEREAS, the Plan's adopted goals include those for intergovernmental coordination, to coordinate with cities' long-term growth plans and to "identify existing and potential conflicts, especially regarding land use planning, and establish procedures to address them" and a related strategy to "encourage an efficient and compatible land use pattern that minimizes conflicts between land uses across municipal boundaries and preserves farming and natural resources in mutually agreed areas;" and

WHEREAS, the Plan's adopted goals include for land use and to "ensure that land use transitions are gradual or designed to reduce potential incompatibilities among land uses" with an associated strategy to "establish design and development standards to enhance collaboration between development, agriculture, and natural and recreation resources;" and

WHEREAS, the Plan's adopted goals for land use also include an associated strategy to "ensure new development is setback an adequate distance from existing and proposed major utility transmission lines and 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 states 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; 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; 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, Story County's zoning regulations in effect prior to October 2022 did not provide that a

hazardous liquid pipeline is a principal permitted use in A-1 Agricultural or other zoning districts; and

WHEREAS, the County intends to amend the Ordinance to adopt standards, including setbacks, for hazardous liquid pipelines consistent with (1) historic patterns of development; (2) goals of the Plan for protection of (a) the County's rural character, (b) reduction of incompatibilities between land uses including utilities, (c) intergovernmental coordination related to future urban development, (d) appropriate siting of new development, (e) preservation of existing rural residential development, (f) communication and collaboration with partnering agencies and organizations on emergency preparedness; and (3) to achieve the intent and purpose of the Ordinance to ensure orderly growth and development and address social, economic, and environmental concerns related to conflicts between different uses of land.

NOW THEREFORE, BE IT ENACTED BY THE SUPERVISORS OF STORY COUNTY, IOWA:

Section 1. Purpose. An Ordinance amending Chapter 85, General Provisions and Definitions, and Chapter 86, District Requirements, of the Story County Code of Ordinances – Land Development Regulations to establish setback requirements for hazardous liquid pipelines.

Section 2. Proposed Amendments. The amendments are as shown in Attachment A of this ordinance and are summarized below.

Chapter 85.08: Definitions: Striking definitions related to hazardous materials pipelines, adopting a new definition of pipeline, and adopting a definition of hazardous liquid.

Chapter 86: Adopting hazardous liquid pipelines as a principal permitted use in the A-1 Agricultural District and striking hazardous materials pipelines as a principal permitted use. Adopting supplemental standards for hazardous liquid pipelines including a quarter-mile setback and a requirement to submit a copy of any emergency response or preparedness plan, if required by the Pipeline and Hazardous Materials Safety Administration.

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. Effective Date. This ordinance shall be effective after its final passage, approval and publication of the ordinance or a summary thereof, as provided by law.

Action upon FIRST Consideration: _____
DATE: **May 16, 2023**

Moved by: _____

Seconded by: _____

Voting Aye: _____

Voting Nay: _____

Not Voting: _____

Absent: _____

Action upon SECOND Consideration: _____
DATE: May 23, 2023

Moved by: _____

Seconded by: _____

Voting Aye: _____

Voting Nay: _____

Not Voting: _____

Absent: _____

Action upon THIRD Consideration: _____
DATE: May 30, 2023

Moved by: _____

Seconded by: _____

Voting Aye: _____

Voting Nay: _____

Not Voting: _____

Absent: _____

ADOPTED THIS ____ day of _____, _____.

_____
Chairperson, Board of Supervisors

Attest:

_____
County Auditor

ROLL CALL FOR ALLOWANCE	Latifah Faisal Yea___ Nay___ Absent___
	Lisa Heddens Yea___ Nay___ Absent___
	Linda Murken Yea___ Nay___ Absent___
ALLOWED BY VOTE OF BOARD	Yea___ Nay___ Absent___
_____ CHAIRPERSON	Above tabulation made by ___

Attachment A

CHAPTER 85

LAND DEVELOPMENT REGULATIONS: GENERAL PROVISIONS AND DEFINITIONS

85.07 EXEMPTIONS.

The following exemptions may apply to certain types of development located in unincorporated Story County; however, such uses shall not be exempt from the standards set forth in Chapter 87 – Land Division Requirements, or exempt from adopted Floodplain Management Ordinance (codified in Chapter 80 of this Code of Ordinances).

3. Public Utilities Exempt. No requirement, restriction, or regulation contained in the Ordinance shall be construed to control the type or location of any poles, towers, wires, water or sewer lines, gas mains, cables, or any other similar distributing equipment of a public utility. County, state, and federal road projects for the maintenance and/or construction of public roads and public road right-of-way shall also be considered exempt.

85.08 DEFINITIONS.

~~"Hazardous Materials" means those materials listed on the Hazardous Materials Table in 49 Code of Federal Regulations (CFR) § 172.101.~~

"Hazardous Liquid" means the same as defined in Iowa Code § 479B.2, as amended, and includes crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

"Pipeline" means the same as defined in Iowa Code § 479B.2, as amended, and includes an interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquid. ~~means all parts of those physical facilities through which a gas or liquid moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.~~

~~"Immediately Dangerous to Life or Health" means an atmospheric concentration of any toxic, corrosive, or asphyxiant substance that poses an immediate threat to life or would cause irreversible or delayed adverse health effects or would interfere with an individual's ability to escape from a dangerous atmosphere, as determined by the National Institute for Occupational Safety and Health or other professionally accepted source.~~

~~"Professionally accepted level of concern threshold" means those levels of a hazardous material that federal regulatory agencies, such as the Occupational Safety and Health Administration (OSHA), National Institute for Occupational Safety and Health (NIOSH), or industry professionals have recognized as the threshold for being immediately dangerous to life or health. If industry professionals or federal regulatory agencies differ on a recognized threshold, whichever threshold is stricter shall apply.~~

"Public Utility" means a public utility as defined in the Iowa Code Chapter 476.1 and municipally owned waterworks or wastewater facilities, waterworks having less than two thousand customers, joint water utilities established pursuant to Iowa Code Chapter 389, rural water districts incorporated and organized

pursuant to Iowa Code Chapters 357A and 504, cooperative water associations incorporated and organized pursuant to Iowa Code Chapter 499, districts organized pursuant to Iowa Code Chapter 468, or a person furnishing electricity to five or fewer customers either by secondary line or from an alternate energy production facility or small hydro facility, from electricity that is produced primarily for the person's own use.

CHAPTER 86

LAND DEVELOPMENT REGULATIONS: DISTRICT REQUIREMENTS

Amending the following Principal Permitted Use in 86.04(2), A-1 Agricultural District:

Hazardous ~~Materials~~ Liquid Pipelines, meeting the supplemental standards in 86.16.

Amending the following Principal Permitted Use in 86.05(2), A-2 Agribusiness District; 86.10(2), C-LI Commercial/Light Industrial District; and 86.11(2) HI Heavy Industrial District:

~~Hazardous Materials Pipelines, meeting the supplemental standards in 86.16.~~

Amending 86.16 as follows:

86.16 Supplemental Standards for Certain Principal and Accessory Uses.

1. Hazardous ~~Materials~~ Liquid Pipelines. Proposed hazardous ~~materials~~ liquid pipelines shall meet the following standards. These standards do not apply to ~~pipelines operated by public utilities or~~ existing pipelines.

A. Setbacks Required.

(1) A setback of one-quarter mile shall be required from dwellings, areas zoned A-R Agricultural Residential, R-1 Transitional Residential, R-2 Urban Residential, RMH Residential Manufactured Housing District, C-LI Commercial/Light Industrial District, HI Heavy Industrial District, retirement and nursing homes, family homes, schools, childcare homes and centers, group homes, hospitals, detention facilities, human service facilities, campgrounds, day camps, cemeteries, stables, amphitheaters, shooting ranges, golf courses, stadiums, parks, houses of worship, and auditoriums.

(2) A setback of one-quarter mile shall also be required from city boundaries and areas identified as Urban Expansion by the C2C Plan Future Land Use Map.

(3) The setback shall be measured from the pipeline to the closest point of the building or property line, depending on the identified use type.

B. Critical Natural Resource Area Protections Required. If installation of a hazardous liquid pipeline is permitted by Chapter 88.05, only trenchless construction methods shall be permitted including in required buffer areas from a critical natural resource.

C. Emergency Plan. A copy of an emergency response or preparedness plan shall be submitted to assist with the County's emergency response planning. The plan may be a preliminary or draft version of an emergency

response plan that would meet the requirements of the federal Pipeline and Hazardous Materials Safety Administration. The County will determine whether the information in the plan is sufficient for the County to plan its own emergency response and may request additional information.

D. Authorizations Required. Any person proposing to construct a hazardous liquid pipeline shall obtain all required federal, state, and local permits and any private easements or other land use permissions prior to commencing construction and submit documentation of such authorizations with the permit application.

~~The setbacks listed in Table 86-11 shall apply to all new hazardous materials pipelines. When an emergency plan is submitted meeting the following requirements, the minimum setback may be reduced to the point at which no occupied structure is located within a risk area. A risk area is the area where a professionally accepted level of concern threshold (where the concentration or other effect of a material is immediately dangerous to life or health) may be exceeded. The Story County Emergency Management Coordinator shall review the emergency plan with local emergency personnel, as applicable, to ensure standards are met. An emergency plan shall include the following:~~

~~(1) A copy of all emergency plans required by 49 CFR § 195 and/or 49 CFR § 192.~~

(2) Identification of Emergency Events. The plan shall outline the types of potential emergency events, the operator's ability to respond, and when local emergency response may be needed.

(3) Immediate Actions Identification. The Plan shall identify immediate actions to be taken by the operator in emergency events, including immediate shut down or pressure reduction.

(4) Notification. The plan shall identify how the operator will promptly and effectively notify local emergency responders. The plan shall also establish a liaison and emergency contact for the pipeline operator in case local authorities need to notify the operator of an emergency or other issue.

(5) Local Emergency Response. In the case that local emergency response is needed, the plan shall identify:

i. Unique risks or hazards associated with a leak of a hazardous material transported by the pipeline that may affect the local emergency response or require additional precautions.

ii. Specialized equipment that may be needed to assist in response and potential evacuations, including, but not limited to, breathing apparatus, personal protective equipment, harnesses, instruments, detectors, or other specialized tools. It is strongly recommended that the pipeline opera-

~~tor provide any specialized equipment to local emergency responders.~~

iii. ~~Drills and training, including their frequency, to be provided to local emergency responders by the pipeline operator.~~

~~(6) Modeling. The plan shall contain model(s) of plume dispersion, leaks, vapor cloud, or overpressure for the potential range of loss-of-containment events. The model(s) shall be based on prevailing weather conditions. The model(s) shall also account for any unique topographic or other local conditions that may influence the area impacted. The model(s) shall include professionally accepted level of concern thresholds and the radius or other distance from the center of the loss-of-containment event where they are predicted to be found. Thresholds should be based on levels of a given hazard (thermal, radiological, asphyxiation, chemical, etiological, mechanical, etc.) that are immediately dangerous to life or health.~~

~~(7) Evacuation. The plan shall provide a list of dwellings and places of public assembly, as defined by Table 86-11, within one (1) mile of the pipeline to be used by local emergency responders in case an evacuation is needed. The pipeline operator shall also mail notice to the identified dwellings and places of public assembly at the time of the permit application, including information on risks, precautions, and~~

what to do in case of loss-of-containment. Annual notifications are recommended.

Table 86-11 Setback Requirements for Hazardous Materials Pipelines

Hazardous Materials Pipeline Type and Use Type	**Setback***
Gas	
Residential Developments and Places of Public Assembly**	For natural gas, the circle formed around the center point of a pipeline, the radius of which is $r = .69 \times (\sqrt{p} \times d^2)$ where r is the radius in feet, p is the maximum operating pressure, and d is the nominal diameter of the pipeline in inches. For other gases, the factor used in the equation (.69) shall instead be the factor in section 3.2 of ASME/ANSI B31.8S. For example, a 24 inch, 1,200 psi natural gas pipeline would require a setback of 574 feet.
Dwellings and Other Development	For natural gas, the circle formed around the center point of a pipeline, the radius of which is $r = .69 \times (\sqrt{p} \times d^2)$

	~~where *r* is the radius in feet, *p* is the maximum operating pressure, and *d* is the nominal diameter of the pipeline in inches when using the aforementioned formula and the computed radius is over 660 feet. For other gases, the factor used in the equation (.69) shall instead be the factor in section 3.2 of ASME/ANSI B31.8S.~~
~~**Liquid**~~	
~~Residential Developments and Places of Public Assembly**~~	~~As established in 49 CFR § 195, no pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in 49 CFR § 195.248.~~
~~Dwellings and Other Development~~	~~As established in 49 CFR § 195, no pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of~~

	~~public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in 49 CFR § 195.248~~
~~Carbon Dioxide, Dense or Supercritical Phase*~~**	
~~Residential Developments and Places of Public Assembly**~~	~~The circle formed around the center point of a pipeline, the radius of which is $r = (155.80 \times d) + 738.19$ where r is the radius in feet, and d is the nominal diameter of the pipeline in inches. For example, a six inch pipeline would require a setback of 1,673 feet.~~
~~Dwellings and Other Development~~	~~The circle formed around the center point of a pipeline, the radius of which is $r = (107.65 \times d) + 328.08$ where r is the radius in feet, and d is the nominal diameter of the pipeline in inches. For example, a six inch pipeline would require a setback of 974 feet.~~

~~* The setback shall be the distance identified under the setback column in Table 86-11 measured from the pipeline to the closest point of the building or property line, depending on the identified use type.~~

~~** As referenced in Table 86-11, Residential Developments and Places of Public Assembly are areas zoned A-R Agricultural Residential, R-1 Transitional Residential, R-2 Urban Residential, or RMH Residential Manufactured Housing District; areas where there are more than four dwellings per quarter quarter section; places of public assembly where evacuation of occupants may present difficulties, including, but not limited to, retirement and nursing homes, family homes, schools, childcare homes and centers, group homes, hospitals, detention facilities, or human service facilities; outdoor places of public assembly, including, but not limited to, campgrounds, day camps, cemeteries, stables, amphitheaters, shooting ranges, golf courses, stadiums, and parks that may be occupied by 20 or more persons at least 50 days per year; and indoor places of public assembly including, but not limited to stores, workplaces, houses of worship, and auditoriums that may be occupied by 20 or more persons five days per week.~~

~~***Supercritical or dense phase carbon dioxide is that which is held above its critical pressure and temperature in a fluid state.~~

~~B. Minimum Cover Required. Minimum cover requirements, as established by 49 CFR § 192.327 and § 195.248 shall be met. Where federal law does not define a minimum depth of cover and land is in agricultural production, a minimum depth of 36 inches or greater shall be maintained. A greater~~

~~depth shall be required when determined necessary to withstand external loads anticipated from deep tillage of 18 inches, as required by Iowa Administrative Code Chapter 9.5(6), Restoration of Agricultural Lands During and After Pipeline Construction.~~

~~C. Critical Natural Resource Area Protections Required. An undisturbed buffer meeting the requirements of Chapter 88.05 Environmental and Natural Resource Standards shall be maintained from a Critical Natural Resource Area. An application for a pipeline shall demonstrate why rerouting around a Critical Natural Resource Area is unavoidable, if proposed. When unavoidable, and if permitted by Chapter 88.05 Environmental and Natural Resource Standards, only trenchless construction methods shall be permitted. When trenchless construction is permitted, trenchless methods are also required to be used in the undisturbed buffer areas established in Chapter 88.05 Environmental and Natural Resource Standards.~~

~~D. New Development Consultation Required. When a rezoning, minor or major subdivision, or other permit for a place of public assembly, as defined by Table 86-11 is proposed within the required setback for new pipelines, consultation with the pipeline operator on the potential risks shall be required.~~

5. Grand Prairie, Texas Unified Dev. Code art. 4, § 10 (amended July 2008) provides:

ARTICLE 4

PERMISSIBLE USES

* * *

SECTION 10 — NATURAL GAS COMPRESSOR STATIONS

4.10.1 Natural Gas Compressor Stations (the station complex) shall require a Specific Use Permit (SUP) in those zoning districts depicted in the Use Charts of this Article under Public Utility Uses.

A. A building permit shall be required for the station complex.

B. The station complex shall be situated on a platted lot approved by the City and recorded in the local County jurisdiction.

4.10.2 A minimum building setback for all compressor station buildings and equipment shall be established and maintained for all yards at the distances specified for the zoning district adjoining the station complex as shown in Section 4.10.2.A below.

A. Table of building setbacks for compressor station buildings and equipment.

Adjoining Zoning District (applied to both base zoning and PD districts)	Required Building Setback (in feet — applied to all yards)
SF-E	300
SF-1	300
SF-2	300
SF-4	300
SF-5	300
SF-6	300
SF-ZLL	300
SF-A / TH	300
2F	300
MF-1	300
MF-2	300
MF-3	300
AG/OPEN SPACE	300
MR	300
MU	300
OFFICE	200
NS	200
GR	200
GR-1	200
C	200
C-1	200
CBD-1	200

CBD-2 / CA	200
CBD-3	100
CBD-4	100
HC	100
LI	100
HI	50

B. Where an adjoining Planned Development (PD) district contains more than one base zoning district, the most restrictive building setback shall be applied.

C. Where a compressor station site adjoins a street right-of-way, the required building setback along that right-of-way shall be established by the zoning district designated for the property situated on the opposite side of the right-of-way.

4.10.3 The boundary of the compressor station site shall be enclosed by a security fence that is a minimum of eight (8) feet in height.

A. A wrought iron type fence shall be required along boundary lines that front a dedicated public street right-of-way of any type, or that front a private street right-of-way dedicated for public use. Brick or stone columns shall be constructed on approximate fifty (50) foot centers for such fence.

4.10.4 All compressor station equipment and sound attenuation structures shall be enclosed within a building. Such building shall have a portion of its exterior walls constructed of

masonry as defined in Article 6 of this Code and be designed with the following elements:

A. A four (4) foot high masonry bulkhead wall shall be constructed on least two (2) building facades most visible to the public.

B. At least two (2) building facades, specifically those most visible to the public, shall be constructed with a brick or stone accent that is at least twenty (20) feet in width, and extends vertically to the roof line of the building and terminates with a sloped or arched profile.

C. The roof shall be sloped with a pitch of no less than 5:12 and shall contain at least one raised structure in the form of a cupola, steeple tower, clear-story element or similar structures. No flat roofs shall be permitted.

D. The non-masonry wall surfaces may be constructed of painted metal, stucco or cementious fiber board material. Engineered wood paneling shall not be permitted for the finished exterior.

E. The architectural design of the building shall be compatible with the visual context of the surrounding development. Such buildings may be designed as a representation of, but not be limited to, the following building types:

1. Barn structure or equestrian facility
2. Estate residence
3. School facility or similar institutional use
4. Gazebo or picnic area enclosures
5. Club house or recreational facility

6. Retail or office building

7. Any combination of the above as approved by the City

F. Vehicular access to the boundaries of the station complex from the street thoroughfare shall be paved with a concrete surface at a thickness and design approved by the Engineering Division of the Development Department or designee. This provision shall also apply to those areas inside the boundaries of the station complex where vehicular traffic and parking is to occur.

4.10.5 The operation of the equipment shall not create any noise that causes the exterior noise level to exceed the pre-development ambient noise levels as measured within three hundred (300) feet of the compressor station building(s). The Operator shall be responsible for establishing and reporting to the City the pre-development ambient noise level prior to the issuance of the building permit for the station complex.

A. The operator of the station complex shall also meet the noise standards contained in the City's Code of Ordinance, Chapter 13, Article XIII. If the adjoining property is residential, these standards shall apply at the property boundary of a residence on a normal residential lot or at a compliance point selected by the Environmental Services Director for a residence on an oversized lot. In the case of the later, the director will strive to select a compliance point that balances the residential property owner's rights and the operational

characteristics of the station complex. The determination of the compliance point shall be at the sole discretion of the City's Environmental Services Director.

4.10.6 The compressor station site shall be landscaped in a manner that is compatible with the environment and existing surrounding area.

A. Landscaping, irrigation and street tree planting requirements shall be provided as required in Article 8 of this code as applied to non-residential development for a Light Industrial (LI) District.

1200 New Jersey Avenue, SE
Washington, DC 20590

U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

9/15/2023

Mr. Lee Blank
CEO
Summit Carbon Solutions
2321 N Loop Dr. Suite 221
Ames, Iowa 50010

Dear Mr. Blank:

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has received several inquiries regarding the ability of federal, state, and local governments to affect the siting, design, construction, operation, and maintenance of carbon dioxide pipelines. The widespread interest in understanding PHMSA's authorities underscores a need to reiterate the message we shared in 2014 with a company proposing a high-visibility interstate pipeline, a message directly related to current pipeline projects proposed by your companies.

As was the case in 2014, PHMSA continues to support and encourage all three levels of government—federal, state, and local—working collaboratively to ensure the nation's pipeline systems are constructed and operated in a manner that protects public safety and the environment.

Congress has vested PHMSA with authority to regulate the design, construction, operation, and maintenance of pipeline systems, including carbon dioxide pipelines, and to protect life, property, and the environment from hazards associated with pipeline operations. While the Federal Energy Regulatory Commission has exclusive authority to regulate the siting of interstate gas transmission pipelines, there is no equivalent federal agency that determines siting of all other pipelines, such as carbon dioxide pipelines. Therefore, the responsibility for siting new carbon dioxide pipelines rests largely with the individual states and counties through which the pipelines will operate and is governed by state and local law.

The Role of PHMSA

Under the federal pipeline safety laws (49 U.S.C. § 60101 *et seq.*), PHMSA is charged with carrying out a nationwide program for regulating the country's pipelines that transport gas, hazardous liquids, and carbon dioxide. With passage of the federal pipeline safety laws, Congress determined pipeline safety is best promoted through PHMSA's development of nationwide safety standards.

PHMSA takes this responsibility seriously and has promulgated comprehensive safety regulations at 49 C.F.R. Parts 190-199. Dozens of current federal requirements regulate the safety of carbon dioxide pipelines' design,[1] construction,[2] testing,[3] operation

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[1] 49 CFR part 195, subpart C (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-C).

[2] Subpart D (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-D).

[3] Subpart E (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-E).

and maintenance,[4] operator qualification,[5] corrosion control,[6] and emergency response planning.[7] PHMSA inspects compliance with these requirements and enforces these standards through administrative and judicial enforcement processes.

Recently, PHMSA promulgated new, more stringent standards for automatic and remote shut off valves that affect carbon dioxide pipelines (Additional information: "New rule will help improve public safety and reduce greenhouse gas emissions following pipeline failures").[8] PHMSA also announced a number of additional actions to strengthen current pipeline safety requirements for carbon dioxide pipelines (Additional information: "PHMSA announces new safety measures to protect Americans from carbon dioxide pipeline failures"),[9] including a new rulemaking which is currently under way.

While rulemakings like this involve meticulous crafting of highly technical updates, PHMSA also retains broad authority to address imminent risks to the public posed by a pipeline—even if not specifically

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[4] Subpart F (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-F).

[5] Subpart G (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-G).

[6] Subpart H (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-H).

[7] *E.g.*, Subpart F, §§ 195.402, 195.403, 195.408.

[8] https://www.phmsa.dot.gov/news/phmsa-announces-requirements-pipeline-shut-valves-strengthen-safety-improveresponse-efforts.

[9] https://www.phmsa.dot.gov/news/phmsa-announces-new-safety-measures-protect-americans-carbon-dioxidepipeline-failures.

delineated in a rule or standard. To this extent, PHMSA will engage with all carbon dioxide pipeline project developers to ensure any unique and imminent risks from such projects are adequately mitigated pursuant to PHMSA's statutory safety authority.

The Role of State Pipeline Regulators

Federal safety standards apply to both interstate and intrastate pipeline facilities. Only PHMSA can regulate the safety of interstate pipelines, and federal pipeline safety laws expressly prohibit states from enacting or enforcing pipeline safety standards with respect to interstate pipelines (except one-call notification program regulations). However, through an agreement with PHMSA, a state authority may be authorized to inspect interstate pipelines as an agent of PHMSA, and to refer violations to PHMSA for enforcement. Thus, PHMSA's state partners play an important role in assisting to oversee the safety of the nation's interstate pipelines.

PHMSA's state partners also play a critical role in regulating the safety of intrastate pipelines. A state authority that submits a certification to PHMSA may assume exclusive regulatory authority for the safety of its intrastate pipelines. The certification must document, among other things, that the state has appropriate jurisdiction under state law; has adopted the federal safety standards to which the certification applies; inspects operators for compliance with those standards; and enforces the standards to address non-compliance.

PHMSA's national regulatory program relies heavily on the efforts of these state partners, who employ roughly 70 percent of all pipeline inspectors and whose jurisdiction covers more than 80 percent of

regulated pipelines. As noted above, federal law requires certified state authorities to adopt safety standards at least as stringent as, and compatible with, the federal standards. The state authorities will also inspect, regulate, and take enforcement action against operators of intrastate pipelines within their borders.

The Role of Local Governments

Federal preemption of pipeline safety means that states do not have independent authority to regulate pipeline safety but derive that authority from federal law through a certification to PHMSA.

In the case of local governments that are not subject to federal certification of pipeline safety authority, they may still exercise other powers granted to them under state law but none that adopt or enforce pipeline safety standards or contradict federal law.

However, PHMSA cannot prescribe the location or routing of a pipeline and cannot prohibit the construction of non-pipeline buildings in proximity to a pipeline. Local governments have traditionally exercised broad powers to regulate land use, including setback distances and property development that includes development in the vicinity of pipelines. Nothing in the federal pipeline safety law impinges on these traditional prerogatives of local—or state—government, so long as officials do not attempt to regulate the field of pipeline safety preempted by federal law.

PHMSA recognizes local governments have implemented authorities under state law that contribute in many ways to the safety of their citizens. We have seen localities consider measures, such as:

1. Controlling dangerous excavation activity near pipelines.
2. Limiting certain land use activities along pipeline rights-of-way.
3. Restricting land use and development along pipeline rights-of-way through zoning, setbacks, and similar measures.
4. Requiring the consideration of pipeline facilities in proposed local development plans.
5. Designing local emergency response plans and training with regulators and operators.
6. Requiring specific building code design or construction standards near pipelines.
7. Improving emergency response and evacuation plans in the event of a pipeline release.
8. Participating in federal environmental studies conducted under the National Environmental Policy Act (NEPA) and similar state laws for new pipeline construction projects.

Each state treats these issues differently, so pipeline operators should be prepared to deal directly with each locality and state body interested in the siting and construction process.

Collaboration Among Stakeholders

PHMSA believes pipeline safety is the shared responsibility of federal and state regulators as well as all other stakeholders, including pipeline operators, excavators, property owners, and local governments. In 2010, PHMSA launched the Pipelines and Informed Planning Alliance (PIPA)—available at https://primis.phmsa.dot.gov/comm/pipa/LandUsePlanning.html—to help pipeline safety stakeholders define their

respective roles related to land use practices near pipelines and to develop best practices.

The PIPA documents are 13 years old, but they remain of value today. PHMSA looks forward to you, along with other private and public stakeholders, engaging with PHMSA in updating these documents to focus on the unique circumstances of new pipeline construction. I encourage all pipeline operators to carefully consider and adopt, as appropriate, these best practices to protect their existing and proposed rights-of-way, and to engage all stakeholders in promoting the safety of interstate pipelines.

Each community affected by an existing or proposed pipeline faces unique risks. The effective control and mitigation of such risks involves a combination of measures employed by facility operators, regulatory bodies, community groups, and individual members of the community. As a pipeline release can impact individuals, businesses, property owners, and the environment, it is important that all stakeholders carefully consider land use and development plans to make risk-informed choices that protect the best interests of the public and the individual parties involved. Sharing appropriate information with state or local governments and emergency planners, which may include dispersion models or emergency response plans, may help stakeholders make risk-informed decisions.

Bringing a pipeline into a community is often a complicated endeavor that requires tremendous coordination and open communication among stakeholders to be successful. We greatly value the efforts of pipeline operators who spend the time and energy to make sure the process goes smoothly and are responsive to all

parties involved. Thank you for your cooperation in this effort.

Sincerely,

Alan K. Mayberry
Associate Administrator for Pipeline Safety