

Legal Notice

ORDINANCE NO. 2023-01 AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE 2013 EMMET COUNTY ZONING ORDINANCE 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 Emmet County Iowa ("the County"), under the authority of I.A. CONST. Art. 3, § 39A, Iowa Code§ 331.301, and Iowa Code§ 335.3, the County has adopted the Emmet County Zoning Ordinance (effective on March 13, 2013) 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 has adopted a comprehensive plan in 2002, which among other things sets forth (1) a master land use plan; (2) goals and objectives for agriculture and natural resources, residential and commercial development, industrial activities, utilities, recreation, environment, land use, and the role of the government; and (3) an implementation plan for achieving the goals of the plan; and WHEREAS, the comprehensive plan identified a number of goals for planning designed to provide guidance to development plans for the future of Emmet County, among which are (1) to "minimize the number of conflicting land uses while preserving the character of urban and rural development areas"; (2) to "recognize and achieve a progressive balance between urban and rural land uses that facilitates the economic development potential of the county"; (3) to protect the "irreplaceable natural resources of the county"; (4) to "facilitate the provision of required services and facilities to the residents of the county"; (5) to protect and utilize "vast areas of prime agricultural lands... for farm production uses"; (6) to permit restricted industrial uses to be allowed in agricultural zones but only after "careful examination and approval from planning and zoning, in order to keep residential uses at safe distances"; (7) to "increase the county's existing tax base through the promotion of new opportunities in the county"; (8) to protect "environmentally sensitive areas"; (9) to "ensure that the best interests of all citizens of Emmet County are protected and advanced"; 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 requirements; and WHEREAS, the County and the several municipalities within the County employ a number of emergency response personnel, including local sheriffs, police, firefighters, and emergency medical service responders, and are responsible for ensuring the safety of these public servants through adequate training, knowledge, and access to personal protective equipment; and WHEREAS, the State of Iowa through Iowa Code chapter 29C requires the County and the several cities within the County to participate in and fund county-level and regional emergency response planning for both natural and human-caused disasters through its joint county-municipal local emergency management commission and agency, to support response to disasters in other Iowa counties, and to establish emergency communication measures to alert County residents of threats to their lives and wellbeing; and WHEREAS, the County has authority under Iowa law to require information from a company that proposes to construct a hazardous liquid pipeline in the County that will enable the County to fulfill its statutorily required emergency planning duties and protect county emergency response personnel; and WHEREAS, the County, in coordination with the State of Iowa, other counties, and the several cities within the County, has adopted a Comprehensive Emergency Management Plan in order to provide for a coordinated response to a disaster or emergency in Emmet County; and WHEREAS, the existing emergency response plan for the County does not currently evaluate the risk of or plan for the County's response to a rupture of a carbon dioxide pipeline passing through the County; and WHEREAS, the transport of hazardous liquid through a hazardous liquid pipeline constitutes a threat to public health and the general welfare such that the Pipeline and Hazardous Materials 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(c) of this law provides that "[i]

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 4 79B 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 4 79B.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; but which constitutes an industrial use of the land that is not currently a permitted use in any of the County's zoning districts; and WHEREAS, Summit Carbon Solutions, LLC ("Summit") has submitted to the IUB a Petition for a Hazardous Liquid Pipeline Permit ("the Permit") and proposes to build a carbon capture and sequestration project ("Project") that would transport up to 12 million metric tons of carbon dioxide ("CO2") annually from participating industrial facilities in Iowa, as well as CO2 from facilities in Minnesota, North Dakota, South Dakota, and Nebraska to a sequestration site in North Dakota, where the CO2 will be permanently stored; and WHEREAS, Navigator Heartland Greenway, LLC ("Navigator") has also submitted to the IUB a Petition for a Hazardous Liquid Pipeline Permit ("the Petition") and proposes to build and operate a large-scale carbon capture pipeline system spanning approximately 1,300 miles across five states in the Midwest, including 811 miles in Iowa, that will capture carbon dioxide from local facilities before it reaches the atmosphere, convert it to a liquid form, and transport it via pipeline to a permanent underground sequestration site; and WHEREAS, Summit and Navigator have filed with the IUB certain maps indicating that the proposed pipelines would be located in and pass through the County; and WHEREAS, the IUB has not yet issued a permit to Summit or to Navigator; 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 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 Sartaria, Mississippi ("the Sartaria Incident"), and caused a number of residents to become unconscious or intoxicated, required the hospitalization of forty-six (46) persons and the evacuation of more than three hundred (300) 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 Sartaria 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 planning the County's emergency response and 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, Summit 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 Emmet County for the transport of hazardous liquid through a hazardous 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. WHEREAS, the County Planning and Zoning Commission held a public hearing on the Ordinance on 2-8-2023 and recommended approval of the Ordinance. NOW THEREFORE, BE IT ENACTED BY THE SUPERVISORS OF EMMET COUNTY, IOWA: SECTION 1. -TEXT AMENDMENT - General Regulations, is amended by repealing the introductory paragraph of the section and replacing it with the following: Except as hereinafter provided, no building, structure or land shall hereafter be used and no building or part thereof or structure shall be erected, constructed, reconstructed, repaired, moved, altered, or occupied, except in conformity with the regulations herein prescribed for the district in which such building, structure or land is situated and a zoning compliance permit is issued by the zoning administrator. SECTION 2. -TEXT AMENDMENT-Article XIV: General Regulations of the Ordinance, is amended by adding the following new section to the Article: 14.19 Hazardous Liquid Pipelines -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 XXV -Hazardous Liquid Pipelines. For purposes of this Ordinance, "hazardous liquid" and "hazardous liquid pipeline" shall have the meanings defined in Article XXV. SECTION 3. -TEXT AMENDMENT-Article III: Definition of Terms, Section 3.2.5: Industrial Land Use Definitions, is amended by inserting after paragraph 7 the following new definition: 7.A. Hazardous Liquid Pipeline: A building, structure or land used for 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 SECTION 4. -TEXT AMENDMENT -Articles XXV, XXVI, and XXVII are renumbered as Articles XXVI,

XXVII, and X VIII, respectively, and all of their numbered sections and subsections are renumbered accordingly. SECTION 5. -TEXT AMENDMENT -The Ordinance is amended by adding the following new Article XXV in place of the former Article XXV which is being renumbered: ARTICLE XXV: HAZARDOUS LIQUID PIPELINES 25.1 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: 1.T o 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 implement the purposes of county zoning pursuant to Iowa Code chapter 335, including all of the following: (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 requirements. 2. To implement Section 25.1(1) with regard to the county planning and land use goals of the County, including cities, as contemplated in the County's Comprehensive Plan and as provided in Iowa Code chapter 335. In particular, the purpose of this Article is to further the following specific goals of the County: (1) to minimize the number of conflicting land uses while preserving the character of urban and rural development areas; (2) to recognize and achieve a progressive balance between urban and rural land uses that facilitates the economic development potential of the county; (3) to preserve the irreplaceable natural resources of the county; (4) to facilitate the provision of required services and facilities to the residents of the county; (5) to protect and utilize vast areas of prime agricultural lands...for farm production uses; (6) to permit restricted industrial uses to be allowed in agricultural zones but only after careful examination and approval from planning and zoning, in order to keep residential uses at safe distances; (7) to increase the county's existing tax base through the promotion of new opportunities in the county; (8) to protect environmentally sensitive areas; (9) to ensure that the best interests of all citizens of Emmet County are protected and advanced. 3. To implement Section 25.1(1) with regard to the County's legal obligation to engage in emergency response and hazard mitigation planning, including furthering the comprehensive plan's goals and objectives for 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. 4. To implement Section 25.1 (1) in a manner that is not inconsistent with or preempted by federal or state law, including the United States Constitution, the federal Pipeline Safety Act in 49 U.S.C. § 60101 et seq., the Iowa Constitution, and Iowa Code chapters 29C, 479B, 331, and 335. 5. To implement Section 25.1(1) in a manner that treats all Hazardous Liquid Pipelines in a similar manner, to the extent they are similarly situated, and to utilize to the greatest extent feasible the land use and zoning regulations and processes already utilized in the County. 6. To implement Section 25.1(1) in a manner (1) that facilitates the approval of a permit by the Iowa Utilities Board, in whole or in part upon terms, conditions, and restrictions as to location and route that are "just and proper;" and (2) that creates a process that allows a Hazardous Liquid Pipeline operator to work with local county officials to obtain all local permits or approvals prior to the construction of the pipeline. 25.2 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 Emmet County Board of Adjustment established pursuant to Iowa Code chapter 335 and this Zoning Ordinance. "Carbon Dioxide Pipeline" means a Hazardous Liquid Pipeline intended to transport liquefied

carbon dioxide and includes a Pipeline of 4 inches or more in diameter used to transport liquid, or supercritical fluid comprised of 50 percent or more of carbon dioxide (CO2). "Conditional Use Permit" means a special or conditional use, or a use limitation, authorized and approved by the Board of Adjustment in the manner and according to the guidelines, requirements, and standards provided in Article XXIV of this Zoning Ordinance. "Confidential Information" means information or records allowed to be treated confidentially and withheld from public examination or disclosure pursuant to Iowa Code chapter 22 or other applicable law. "Conservation Area" means a County park, natural resource area, wildlife area, or similar areas established or designated for such purposes by the County prior to the effective date of this Article. "County" or "the County" means Emmet 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 the County in which residents of the County would face a significant risk of loss of life due to a rupture of a Hazardous Liquid Pipeline, taking into consideration, in the case of a Carbon Dioxide Pipeline, the dispersion of CO2 from a rupture, taking into consideration CO2 concentration and 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 § 4 79B.20(10). "IUB" means the Iowa Utilities Board created within the Iowa Department of Commerce pursuant to Iowa Code chapter 474. "Landowner" means the same as defined in Iowa Code§§ 479B.4(4) and 479B.30(7), and, unless otherwise defined there, means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and includes a farm tenant. "Line Location" means the location or proposed location or route of a Pipeline on a Landowner's property. "Occupied Structure" means a Building or Structure that has been inhabited or used for residential, commercial, industrial, or agricultural purposes at any time during the twelve (12) months preceding an application for a Conditional Use Permit pursuant to this 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 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. 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