

Section 600.3. Conditional Uses

18. Carbon Dioxide Pipelines

Introduction

Carbon dioxide pipelines if approved pursuant to this section shall be considered a permitted use in all zoning districts of Dakota County.

A. Definitions.

Applicant. As used herein, "Applicant" shall mean any entity that applies for a Pipeline Construction Permit and shall include any successor, employee, agent, representative, assignee, contractor, lessee, or sublessee, Applicant, licensee, invitee, guest, or permittee of Applicant, or any other person or entity that has obtained or hereafter obtains rights or interests from Applicant, or Property Owner to Property Owner's land.

CFR. Code of Federal Regulations

Property Owner. Property Owner, as used herein, shall mean the owner of the land over which or through which, the pipeline will ultimately go, together with his, her, or its heirs, successors and/or assigns. The Property Owner shall be identified by, and limited to, the owner listed on the County's property tax records.

Pipeline. "Pipeline" means a pipe with a nominal diameter of six inches or more, located in the county, that is used to transport carbon dioxide.

B. Compliance with Applicable Laws

Pipeline owners, operators and/or contractors, and their employees, agents, contractors, and invitees, must comply with all applicable local, state and federal laws and regulations in construction and operation of the Pipeline.

- a. Federal regulations. The provisions of 49 CFR Part 195 are hereby incorporated by reference.
- b. To the extent any regulations within this section conflict with state or federal regulations or laws regulating Hazardous Liquids or Materials Transmission Pipelines, those state or federal regulations and laws shall take precedence over these regulations.

C. Pipeline Construction Permit.

1. Pre-Construction Filing Requirements.
 - a. Applicant must file with the Planning Commission the Pipeline Construction Permit Form including the following information:
 - i. Applicant contact information
 - ii. Description of project
 - iii. Proposed Project Location Maps
 - iv. Landowner line list (filed as confidential)
 - v. Planned typical best management practices

- b. Each Pipeline Construction Permit application shall be accompanied by at least two (2) sets of plans showing dimension and locations of the Pipeline, related items or facilities within the subject right-of-way or easement, and all proposed lift stations, pumps or other service structures related to such Pipeline, and the location, type and size of all known existing utilities, right-of-way, and roadway improvements. Also required for submittal are:
 - i. Cross-section drawings for all public street right-of-way and easement crossings;
 - ii. The maximum design capacity of the proposed transmission facility;
 - iii. The proposed maximum operating pressure, expressed in pounds per square inch gauge (psig), not to exceed the manufacturer's recommended operating pressure.

2. Hearings

- a. Appearance before the Planning Commission is required for the Pipeline project. The Planning Commission will hold a public hearing to review the permit information and will recommend approval or denial, and require any modifications and/or conditions, to the Dakota County Board of Commissioners. Ten (10) days prior to the Public Hearing date, a notice shall be published in a legal newspaper of the County.
- b. After a review of the Pipeline Construction Permit along with accompanying documents, maps, and recommendations by the Planning Commission, a Public Hearing date will be set by the Dakota County Board of Commissioners. Ten (10) days prior to the Public Hearing date, a notice shall be published in a legal newspaper of the County.
- c. The Applicant shows proof to establish that the proposed Pipeline will comply with all applicable ordinances along with applicable laws and regulations

3. One Pipeline

Conditional Use approval for a Project shall be issued for the information provided in the application only, additional pipeline(s) would require a separate permit application or amendment.

4. Topsoil.

- a. Applicant at its own expense shall, unless otherwise agreed upon with the Property Owner, abide by all guidelines and recommendations of the local or regional field office of the United States Natural Resources Conservation Service or best management practices regarding the removal, storage, and replacement of topsoil.

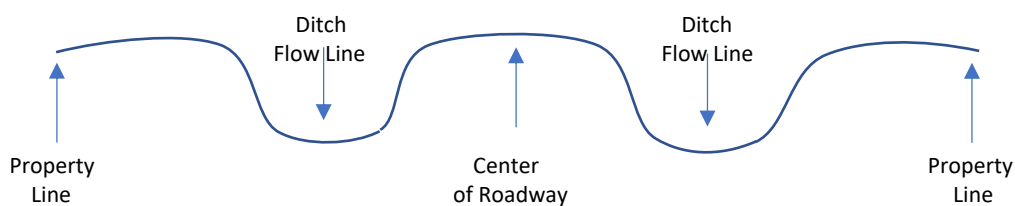
- b. At a minimum, the applicant shall strip the topsoil from the trench line and area where sub soil will be stored in the Pipeline right-of-way or easement area and segregate all topsoil from the other excavated soil material, prior to construction and installation of any section of the Pipeline placed in the Pipeline right-of- way or easement area. Following the construction and installation of each section of the Pipeline, the topsoil shall be replaced, to the extent feasible, as near as practicable to its original location and condition. Topsoil deficiency shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the Property. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement in accordance with recommendations of the United States Natural Resources Conservation Service

5. Trash Cleanup

Construction related debris and material which is not an integral part of the Pipeline will be promptly removed from the Property Owner's property at Applicant's expense. Such material to be removed includes all litter generated by Applicant's employees, agents, contractors, or invitees, including construction crews. Following the completion of Applicant's construction activities on the Property Owner's property, Applicant shall keep the Property Owner's property clean and free of all trash and litter which may have been produced or caused by Applicant or its employees, agents, contractors or invitees or its operations on the property. Under no circumstances will Applicant bury or burn any trash, debris or foreign material of any nature on the Property Owner's property.

6. Pipeline Depth

Except for above-ground piping facilities, such as mainline block valves, pump stations, etc., the Pipeline shall be installed and maintained at 4 foot minimum throughout the county and 5 foot minimum under flow line of county roadway ditches.



7. Location of Pipeline

The location of the Pipeline shall be consistent with 49 CFR 195.210 (a) and (b). Distances from residences should be maximized where practical while accounting for other routing factors. The Pipeline shall not pass within a distance of three hundred and thirty (330) feet from an existing residence unless otherwise agreed upon with the affected Property Owner. The Applicant shall implement the following protections in residential areas:

- a. Applicant shall notify affected residential owners of work prior to the start of construction in the area of the residences.

- b. Applicant shall maintain access to residences at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Applicant and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with affected residential owners and occupants, to the extent possible.
- c. Applicant shall install temporary safety fencing, when reasonably requested by the owner or occupant, to control access and minimize hazards associated with an open trench and heavy equipment on a residential tract.
- d. Applicant shall notify affected residents in advance of any scheduled disruption of utilities and limit the duration of such disruption.
- e. Applicant shall separate topsoil from subsoil and restore all areas disturbed by construction to at least their preconstruction condition.
- f. Except where practicably infeasible, final grading and topsoil replacement, installation of necessary permanent erosion control structures and repair of fencing and other structures shall be completed in residential tracts within ten (10) days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Applicant's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigating measures shall be maintained until conditions allow completion of cleanup and reclamation.
- g. Should a potable water well, or water supply, be damaged (diminishment in quantity or quality) by pipeline installation or operations, a comparable water supply will be immediately provided to the owner of the potable water well, or water supply and the potable water well, or water supply shall be restored or replaced at Applicant's expense.

8. Reclamation of Obligations

Following the completion of the Pipeline construction, Applicant will restore the area disturbed by construction as best as practicable to its original preconstruction topsoil, vegetation, elevation, and contour, unless otherwise agreed upon with the Property Owner.

9. Abandonment of Pipeline

Abandonment of the pipeline shall follow all applicable federal and state laws and regulations relative to removal, reclamation, and dissolution of the easement.

10. Change of Location of Pipeline

- a. County and Applicant acknowledge that the actual location of the Pipeline right-of-way or easement area may change because of various engineering factors. In the event, during the application review process or after a permit has been issued, the Pipeline area will be moved more than one hundred (100) feet, Applicant must submit an amendment to the Pipeline Permit Application or Permit to the Planning Commission. Said document and amendments to the Pipeline Construction Permit, as required, will be prepared by Applicant at its expense. All amendment submissions will be reviewed, and may be approved, by the Zoning Administrator or Planning Commission.
- b. Once installation of the Pipeline is complete, Applicant will deliver to the Planning Commission within six (6) months of completion, an "as-built" map that will show

exactly where the Pipeline is located, in addition to any other improvements or facilities, whether located above-ground or below-ground.

D. Indemnification

The Applicant, and any successor pipeline owner(s) and/or operator(s) in interest shall indemnify, defend and hold harmless Dakota County and any Property Owners from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by Dakota County and/or the Property Owner in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of the pipeline and/or related facilities, and the products contained in, transferred through, released or escaped from said pipeline and appurtenant facilities, including the reasonable costs of assessing such damages and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any law, including all applicable environmental laws. This shall be true in all instances except for those caused by individuals or companies who intentionally, or by negligence, damage the Pipeline or related facility. No Property Owner or tenant thereof will be held responsible for a Pipeline leak that occurs as a result of his/her normal farming practices over the top of or near the Pipeline, provided no tillage or other agricultural method is used which penetrates the soil by more than two (2) feet from the undisturbed surface and they do not physically strike or impact the surface structures such as valves, etc. with machinery, equipment or other objects. This shall in no way relieve any Property Owner or tenant, agent or contractor of such Property Owner from their obligation to comply with the Nebraska One-Call Notification System Act and any amendments thereto (See Revised Reissued Statutes of Nebraska Sections 76-2301 to 76-2332), or relieve them of liability for their failure to do so. As between the Pipeline operator, the Property Owner or its tenant, a Pipeline leak which is not caused by a violation of the above provisions or other tortious conduct by Property Owner or its tenant shall not be the responsibility of said Property Owner, tenant, or invitees.

E. Protection of Proprietary Information

Dakota County will keep detailed information filed (not including the plans or Pipeline Construction Permit) restricted from public access for security purposes, to protect proprietary information, and to protect the commercial interests of the Applicant. Dakota County Emergency Management shall be notified of pipeline ownership or operator change in accordance with applicable federal and state requirements. Emergency contact information shall be kept up to date and on file with Dakota County Emergency Management at all times.

F. Variances

1. Hardship

Where the Planning Commission finds that extraordinary hardships, due to unusual topographic or other conditions, beyond the control of the Applicant, may result from strict compliance with these regulations, they may recommend a variance of the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent or purpose of the Pipeline Construction Permit, and will not be detrimental to the public health, safety or welfare or injurious to other property in the territory in which Pipeline is situated.

2. Application required

- a. The Dakota County Board of Adjustment shall hear and decide appeals and requests for variances from the terms of this Ordinance. A variance must be requested by the Applicant and approved by The Board of Adjustment. Additional conditions could be issued, as necessary, to further the purpose and objectives of this Ordinance. Applications for any such variance shall be submitted in writing by the Applicant at the time the Pre-Construction Requirements are filed with the Planning Commission, and shall state fully and clearly all facts relied upon by the and shall be supplemented with maps, plans or other additional data which may aid the Planning and Commission in the analysis of the proposed project.
- b. Applications for the variance shall be considered with the Pipeline Construction Permit application, and the Board of Adjustment will render their decision on the applied-for variance no later than sixty (60) days after the meeting at which the proposed Pipeline project application and request for variance was submitted.

3. Conditions

- a. In granting any variance, modification, and approvals, the Board of Adjustment may require such conditions as will, in their judgment, secure substantially the objectives or the standards and requirements so varied, modified, or approved. In granting any, the Board of Adjustment shall prescribe only conditions that they deem to, or desirable for, the public interest
- b. In making their findings, as required herein, the Board of Adjustment shall take into account the nature of the existing use of the land in the vicinity of the Pipeline right-of-way or easement area, and any probable effects of the proposed Pipeline on the health, safety and welfare of the surrounding residents and environment.
- c. The Board of Adjustment must ensure the preservation and enjoyment of the property rights of the Property Owner.

4. Requirements for Granting a Variance

The Board of Adjustment shall have the final authority to grant or deny a variance under this section. For each variance application, the Planning Commission shall report to the Dakota County Board of Adjustment their findings and recommendations. The Dakota County Board of Adjustment, shall hold a public hearing on all proposed variances under this Section

G. Severability and Separability.

Should any portion of this act be deemed unlawful for any reason or conflict with any existing state or federal law, that fact shall not affect any other portion or section of this act and any unaffected sections or portions of this act shall stand in effect.

H. Effective Date.

This Ordinance shall take effect and be in force from and after the date of adoption by the Dakota County Board of Commissioners.