

Resolution # 3815 of the  
Seward County Board of Commissioners

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WHEREAS, the Seward County Board of Commissioners adopted the current Seward County Zoning Regulations ("Regulations") on June 26, 2007 by way of Resolution 2567;

WHEREAS, pursuant to Section 11.01 of the Regulations, the Board is authorized to make amendments to the Regulations upon motion of the Planning Commission and after public hearing;

WHEREAS, on July 15, 2024, the Seward County Planning Commission held a public hearing on a proposed amendment to add a Carbon Dioxide Overlay District to the Seward County Zoning Regulations. After the close of the public hearing, the Seward County Planning Commission made and passed a motion to recommend the Carbon Dioxide Overlay. The recommended changes are reflected Exhibit "A", which is attached hereto and incorporated herein by reference;

WHEREAS, the Planning Commission voted 7 – 0, with 1 absent and not voting, to recommend approval of the amendments reflected in Exhibit "A";

WHEREAS, on August 6, 2024 the Board, after publication of notice and public hearing, voted to approve the amendment;

NOW, THEREFORE, BE IT RESOLVED by the Board, that the Seward County Zoning Regulations are amended as described herein.

Dated this 6th day of August 2024.

MOTION BY: Zabrocki

SECONDED BY: Hoin

AYES:

[Signature]  
[Signature]  
[Signature]  
[Signature]

Chairperson, Board of Commissioners

NAYS:

[Signature]

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Chairperson, Board of Commissioners

ATTEST:

[Signature]  
Seward County Clerk



## CARBON DIOXIDE RECOVERY PIPELINE OVERLAY DISTRICT

### Purpose

The Seward County Planning Commission and the Board of County Commissioners recognize: 1) the carbon dioxide recovery pipeline is critical to the long-term economic survival of ethanol plants in Nebraska and other states, and that 2) Seward County can implement safety measures to protect its citizens and sensitive environmental areas within the borders of Seward County through Nebraska State Statutes 23-174.10, 81-543, 57-1402.

The Seward County Planning Commission and the Board of County Commissioners recognize: 1) that third-party damage and pipeline right of way (ROW) encroachment are significant threats to pipeline safety; 2) that transmission pipelines may pose a risk to public safety and or the environment if ruptured or damaged; 3) that certain land use practices can reduce the likelihood of accidental damage to carbon dioxide pipelines and reduce adverse impacts of pipeline failures located within Seward County.

The purpose of the Carbon Dioxide Recovery Pipeline Overlay District is to protect the public health and safety by reducing the likelihood of pipeline damage and reducing the adverse impact of pipeline failures through risk-based land management decisions. It is the intent to accomplish this, as much as possible by public education, early consultation among stakeholders and securing public cooperation.

The Carbon Dioxide Recovery Pipeline Overlay District will be incorporated into Seward County Geographic Information Systems (GIS) mapping and used primarily when issuing Zoning and Building permits to facilitate discussions among developers, landowners, and pipeline operators.

The CORPOD will enhance and not preclude the requirement of the Nebraska Call Before You Dig System.

The CORPOD and the provisions of this article will be applied to federally and state regulated transmission pipelines but will exclude gas gathering or distribution pipelines.

Seward County reserves the right to implement the CORPOD on new direct pipelines constructed for non-agricultural and non-residential facilities such as power plants.

Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations.

### DEFINITIONS *(to be incorporated into the existing definitions)*

Carbon Dioxide: a chemical compound occurring as a colorless gas with a density about 53% higher than that of dry air. Carbon dioxide molecules consist of a carbon atom covalently double bonded to two oxygen atoms. It occurs naturally in Earth's atmosphere as a trace gas. Carbon dioxide has a sharp and acidic odor and generates the taste of soda water in the mouth, but at normally encountered concentrations it is odorless.

Consultation zone: An area extending a minimum of 500 feet from each side of the transmission pipeline.

Development Permit: For the purposes of the Consultation Zone requirements, means any permit for development activity that involves construction, grade modification, excavation, blasting, land clearing, or the deposit of earth, rocks or other materials that places an additional load upon the soil. Construction that involves work totally within an existing building footprint and does not involve excavation, such as residential remodeling projects, is specifically exempted from these Construction Zone requirements.

Easement: (1) a legal instrument giving a transmission pipeline operator a temporary or permanent right to use a right-of-way for the construction, operation, and maintenance of a pipeline. It may also include temporary permits, licenses, and other agreements allowing the use of one's property. (2) an easement is an acquired privilege or right, such as a right-of-way, afforded a person or company to make limited use of another person or company's real property. For example, the municipal water company may have an easement across your property for the purpose of installing and maintaining a water line. Similarly, oil and natural gas pipeline companies acquire easements from property owners to establish rights-of-way for construction, maintenance, and operation of their pipelines. (3) A legal right, acquired from a property owner, to use a strip of land for installation, operation, and maintenance of a transmission pipeline.

Encroachment: (1) A human activity, structure, facility, or other physical improvement that intrudes onto a transmission pipeline right-of-way. (2) Encroachment refers to the unauthorized use of a right-of-way in violation of the easement terms.

Ethanol Plant: An agricultural processing facility which converts corn or other plants into ethanol for use in powering motorized vehicles.

Excavation: Any operation in which earth, rock or other material, in or on the ground, within 12 inches of grade level is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes, without limitation, back-filling, grading, trenching, digging, ditching, drilling, pulverizing, rubblizing, well-drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures, except that, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry. The tilling of soil for agricultural or seeding purposes shall not be deemed excavation.

Nebraska One Call Notification (also known as Diggers Hotline or 811): to protect underground facilities, the excavating public, and the public. Creates one point of communication between the excavating public and the Nebraska member underground utilities regarding any upcoming excavation projects in the State of Nebraska.

Person: Any individual, firm, joint venture, legal entity, partnership, corporation, association or cooperative, public, or private.

Petroleum: an oily flammable bituminous liquid that may vary from almost colorless to black, occurs in many places in the upper strata of the earth, is a complex mixture of hydrocarbons with small amounts of other substances, and is prepared for use as gasoline, naphtha, or other products by various refining processes

Pipeline: An underground or above ground system of pipes for the transmission of liquids or gases from one point to another.

Pipeline Facility: Means all parts of those physical facilities through which gas, hazardous liquids or carbon dioxide are moved.

Planning Zone: An area around a transmission pipeline.

Pump Station: A facility tied into the pipeline to push.

Right-of-Way (ROW): (1) A piece of property, usually consisting of a narrow, unobstructed strip or corridor of land of a specific width, which a company and the fee simple landowner both have legal rights to use and occupy. (2) A defined strip of land on which an operator has the right to construct, operate and maintain a specific use. The operator may own a right-of-way outright or an easement may be acquired for specific use of the right -of-way.

Right-of-Way agreement: see easement.

Rural: An area outside the limits of any incorporated or unincorporated city, town, village or any other designated residential or commercial area such as a subdivision, a business or shopping center or community development.

Structure: Any building including a habitable dwelling, machine shed, grain bin, livestock confinement, sheds, etc.

### **Establishment and Delineation of Carbon Dioxide Recovery Pipeline Overlay Districts**

Boundaries for the Carbon Dioxide Recovery Pipeline Overlay Districts (CORPOD) are shown on published maps entitled "Seward County Carbon Dioxide Recovery Pipeline Zone Map" dated \_\_\_\_\_ as produced by Seward County Geographic Information Systems (GIS). This map will be updated as needed. Said map is hereby adopted by reference as part of this regulation as if the map is fully described herein. The overlay district will be utilized by the Zoning Office and Planning Commission for the purpose of issuing all zoning permits, any variances that come before the Board of Adjustment and in the enforcement of the Seward County Comprehensive Plan and Zoning Regulations.

The boundaries of the overlay shall require the applicant to meet the following requirements:

1. Said overlay shall be established through the map amendment process, requiring two public hearings prior to approval.
2. All properties/property owner of record shall be a party to the rezoning.
3. Applicant shall provide all legal descriptions tied to a GIS base map.

### **Depth of pipelines**

All new pipelines built after the adoption of this regulation shall be maintained at a depth of at least five feet (meaning the top of the pipe be set at least five feet) below the existing grade unless a deeper depth is negotiated by individual landowners as part of their easement agreement and 15 feet below major waterways.

### **Setback from existing structures and water wells**

1. All new Overlay District shall maintain the following separation distances (from centerline of pipeline) from any existing:
  - a. Habitable dwelling 400 feet
  - b. Licensed business 400 feet
  - c. Other structures (Machine sheds, barns, similar structure) 400 feet
  - d. Potable and/or irrigation, livestock water wells 400 feet
  - e. Wetlands, and 400 feet
  - f. Livestock facilities 400 feet
2. Said Overlay District shall be a distance of 200 feet on each side of the centerline of the pipeline location.

All new structures and/or water wells constructed after the establishment of the CORPOD shall also maintain a 200-foot separation from the Overlay District.

### **Special Criteria For CO2 Pipelines**

1. All structures within 500 feet of the CO2 pipeline shall be equipped with exterior grade CO2 detectors.
2. The CO2 pipeline shall be required to have one alarm enabled CO2 detector on every property it crosses.
3. The pipeline owner shall be required to establish a Countywide Emergency Response Plan with the local Emergency Management Officer. The plan shall include:
  - a. Training procedures for local Fire Departments and EMS providers.
  - b. Schedules of necessary safety equipment needed to engage a CO2 leak and/or rupture.
  - c. Knowledge of the equipment being used to monitor the pressure of said pipeline.
4. Individual landowners shall be allowed to plant crops in the overlay district; however, if a leak or rupture occurs the pipeline company shall remove the minimum number of crops to access and repair the leak or rupture. Payment for the lost crop shall be determined by an independent appraiser or crop adjuster.
5. Special effort shall be made to avoid disturbing existing tiling in fields.
6. The developer shall negotiate any road crossing through or under with the County or appropriate Township Board.
7. These provisions shall be supplemented by any future legislation passed by the Nebraska Unicameral and signed into law by the Governor.

### **Decommissioning**

If the need for the CO2 capture pipeline is no longer viable for use, the development company shall be responsible for the removal of all underground pipes within Seward County within one-year of final supply movement.

In case of future defaults by the developer, the developer shall maintain a \$100,000.00 bond for every mile of pipeline in Seward County. Upon default of the initial development company, future companies shall be required to maintain the bond or relinquish all bonds to Seward County for future cleanup activities.

### **Severability**

Should any article, section or provision of this regulation be declared invalid, such decision shall not affect the validity of this regulation as a whole or any other part thereof.