Summit County Ordinance No. 825A

An Ordinance Amending Title XIII of the Summit County Code relating to Hazardous Liquid or Material Pipelines

PREAMBLE

WHEREAS, the Natural Gas Pipeline Safety Act of 1968, as amended, (NGPSA) authorizes the United States Department of Transportation (DOT) to regulate pipeline transportation of natural (flammable, toxic, or corrosive) gas and other gases, as well as the transportation and storage of liquefied natural gas (LNG); and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, (HLPSA) authorizes DOT to regulate pipeline transportation of hazardous liquids (crude oil, petroleum products, anhydrous ammonia, and carbon dioxide), both of which are re-codified at 49 United States Code (U.S.C.) Chapter 601 and implemented at 49 Code of Federal Regulations (CFR) Parts 190 – 199; and,

WHEREAS, 49 U.S.C. 601 provides that the federal government is primarily responsible for developing, promulgating, and enforcing minimum uniform pipeline safety standards throughout the United States; and,

WHEREAS, 49 U.S.C. 60104(c) allows for an exemption from federal preemption where states assume regulatory, inspection, and enforcement responsibilities for intrastate pipelines, so long as the state participates in and is certified under the Federal/State Cooperative Gas and Hazardous Liquid Pipeline Safety Program in accordance with 49 U.S.C. 60105(a) (Certified Program); and,

WHEREAS, federal and state courts have determined that DOT exercises exclusive jurisdiction over safety standards regulating interstate transmission pipelines (Colorado Interstate Gas Co. v. Wright, 707 F.Supp.2d 1169 (D. Kansas 2010); Sneddon v. Torch Energy Services, Inc., 102 Cal.App.4th 181, 125 Cal Rptr.2d 365 (2nd Dist 2002)); and,

WHEREAS, the majority of pipeline inspections in the nation are carried out by state inspectors who work for state agencies in accordance with the Certified Program; and,

WHEREAS, in circumstances where a state has a Certified Program, a state agency is responsible for conducting inspections of intrastate pipelines that lie entirely within a state's borders; and,

WHEREAS, the state of Utah is a participant in and has certification under the Certified Program for intrastate natural gas pipelines; and,

WHEREAS, the Liquid Integrity Management Rule and 49 CFR, Parts 195.0 – 195.12, Transportation of Hazardous Liquids by Pipelines, specifies how pipeline operators must identify, prioritize, assess, evaluate, repair and validate the integrity of hazardous liquid pipelines

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that could, in the event of a leak or failure, affect High Consequence Areas (HCAs) within the United States. HCAs include: population areas; areas containing drinking water and ecological resources that are unusually sensitive to environmental damage; and commercially navigable waterways; and,

WHEREAS, the Utah Public Service Commission’s Division of Public Utilities inspects, regulates and enforces intrastate gas pipeline safety requirements in accordance with R746-409, while the Office of Pipeline Safety (OPS), within the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) inspects, regulates and enforces interstate gas and liquid pipeline safety requirements; and,

WHEREAS, 49 U.S.C. §60104(e) “does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility,” instead leaving such subject to state and local regulation (See Washington Gas Light Company v. Prince George’s County Council, 711 F.3d 412, 422 (4th Cir. 2013)); and,

WHEREAS, the HLPSA does not define “safety standard” within the federal statute; and,

WHEREAS, the protection from potential hazards is the primary purpose of regulatory standards; and,

WHEREAS, safety hazards are distinguished from environmental hazards, in that the latter generally relate to environmental health and substances which cause disease (29 CFR 1910.1200(c)); and,

WHEREAS, “[t]he Supreme Court has cautioned . . . that the presence of an express pre-emption clause in a federal statute does not immediately end the inquiry because the question of the substance and scope of Congress’ displacement of state law still remains. Indeed, when courts are called upon to address questions of express or implied pre-emption, the analysis always begins with the assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress (Island Park, LLC v. CSX Transportation and Consolidated Rail Corporation, 559 F.3d 96, 101 (2nd Cir. 2009) (citations omitted)); and,

WHEREAS, UCA §17-50-302(1)(a)(ii) expressly authorizes County’s to “provide a service, exercise a power, or perform a function that is reasonably related to the safety, health, morals, and welfare of county inhabitants, except as limited or prohibited by statute;” and,

WHEREAS, since the Utah Public Service Commission has not promulgated rules concerning intrastate Hazardous Liquid Pipelines, the County is not pre-empted from enacting non-safety excavation, environmental and engineering-related regulations on intrastate pipelines by either state or federal law (Shell Oil Co. v. City of Santa Monica, 830 F.2d 1052 (9th Cir. 1987); ANR Pipeline Company v. Iowa State Commerce Commission, 828 F.2d 465 (8th Cir. 1987); Washington Gas Light Company v. Prince George’s County Council, 711 F.3d 412 (4th Cir. 2013)); and,
WHEREAS, pursuant to that certain letter from Jeffry D. Wiese, Associate Administrator, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, to TransCanada Corporation, dated May 28, 2014, local governments are authorized to regulate excavation, adjacent land uses, setbacks, and emergency response plans for both inter and intrastate pipelines; and,

WHEREAS, conditions on permits issued pursuant to these regulations constitute "standard costs" within the meaning of UCA §54-14-103(c); and,

WHEREAS, it is in the best interests of Summit County to provide for standards and guidelines for intrastate Hazardous Liquid Pipelines located in the County so as to protect the public health and welfare of its residents;

NOW, THEREFORE, the County Council of the County of Summit, State of Utah, ordains as follows:

Section 1. Adoption. The Summit County Hazardous Liquid or Material Pipeline Regulation, Summit County Code, Title 13, is amended in accordance with Exhibit A herein.

Section 2. Effective Date. This Ordinance shall take effect fifteen (15) days after publication.

Enacted this 7th day of January, 2015.

ATTEST:

KENT JONES
Summit County Clerk

DAVID L. THOMAS
Chief Civil Deputy

SUMMIT COUNTY COUNCIL

Kim Carson, Chair

VOTING OF COUNTY COUNCIL:

Councilmember Carson
Councilmember Robinson
Councilmember Ure
Councilmember Armstrong
Councilmember McMullin
EXHIBIT A

Title 13XIII

HAZARDOUS LIQUID OR MATERIAL PIPELINE REGULATION

CHAPTER 1

13XIII-1: STATEMENT OF PURPOSE

A. The purpose of this Title is to help prevent and minimize unnecessary risk to the public health and welfare due to Transmission Pipelines. Recognizing it is impossible to eliminate risk entirely, this Title is intended to:

(1) Protect the environmental human life and health of residents;
(2) Minimize the likelihood of accidental damage to Transmission Pipelines due to external forces, such as construction activity and equipment;
(3) Avoid water quality, drainage and erosion impacts, as well as damage to Essential Public Facilities, from the siting, installation, and maintenance of Transmission Pipelines; exposing land uses with high risk on-site populations that are difficult to evacuate;
(4) Help reduce adverse environmental impacts and damage to Essential Public Facilities in the event of a pipeline failure; and
(5) Ensure compliance with and supplement existing non-safety related federal and state regulations pertaining to Transmission Pipeline Corridor management, including regulations promulgated by the Federal Energy Regulatory Commission (FERC).

13XIII-2: DEFINITIONS

Adopt means establish under State law by statute, regulation, license, certification, order, or any combination of these legal means.

Agricultural Land means property actively utilized in agriculture production consistent with the definition of agriculture set forth in Title 11, Appendix A (Eastern Summit County Planning District) or 10-11-1 (Snyderville Basin Planning District).


Commission means the Public Service Commission of Utah.

County means Summit County, a political subdivision of the state of Utah.

Essential Public Facilities means those public facilities which are required in order to provide basic health and safety services to residents and visitors of Summit County,
including, without limitation, water sanitation plants, water treatment plants, sewer treatment plants, water storage facilities, telecommunication towers, police stations, fire stations, emergency operations centers, jails, courthouses, public health facilities, and critical water sources.

*Excavation* means an excavation activity defined in 49 CFR Part 195.4422.614, which includes excavation, grading, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

*Excavator* means any person intending to engage in an excavation activity.

*Gas* means natural gas, flammable gas, or toxic or corrosive gas.

*Gas Transmission Pipeline* means a “transmission line” as defined by 49 CFR, Part 192.3.

*Haul Road* means any County road, bridge, or other structure which is used for transporting items including, but not limited to products, equipment, materials, and/or supplies, and as a result incurs deterioration.

*Haul Road Agreement* means an agreement as to the use of Haul Roads by the Transmission Pipeline Operator, Owner or contractor.

*Haul Route* means the system of Haul Roads between a source site and the destination and/or the source site and the nearest major intersection as determined by the County.


*Hazardous Liquid Pipeline Company* means a person or entity constructing, owning, or operating a hazardous liquid pipeline. "Hazardous Liquid Pipeline Company" does not include excavation contractors or other contractors that contract with a Hazardous Liquid Pipeline Company.
Hazardous Liquid Pipeline means a pipeline designed for the transmission of a “hazardous liquid”, as defined by 49 CFR Part 195.2.

Hazardous Materials Transmission Pipeline or Transmission Pipeline means (a) a Hazardous Liquid Pipeline, whether above or below ground, which transports or is designed to transport Hazardous Liquids or Materials; and (b) all Gas Transmission Pipelines larger than 6 inches in diameter that operate at over 500 psi. As used herein, a Transmission Pipeline includes all parts of those physical facilities through which gas or hazardous liquid moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, pumping stations, metering stations, regulator stations, delivery stations, holders, breakout tanks, fabricated assemblies, and other surface pipeline appurtenances.

One-call Notification System means a communication system that qualifies under this Title and the one-call damage prevention program of the State in which an operational center receives notices from Excavators of intended Excavation activities and transmits the notices to operators of Underground Pipeline Facilities and other underground facilities that participate in the system. The State of Utah uses Blue Stakes of Utah (811 or 1-800-662-4111).

Person means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

PHMSA means the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration.

Pipeline means a tube, usually cylindrical, through which a hazardous liquid or gas is transported from one point to another.

Pipeline Company, without further qualification, means a Hazardous Liquid Pipeline Company or a Gas Pipeline Company.

Pipeline Permit means an official action of the County Engineer under this Title having the effect of permitting the installation of a Transmission Pipeline in the County.

Transmission Pipeline Corridor or Hazardous Materials Transmission Pipeline Corridor means the pipeline pathway defined by rights-of-way and easements in which the pipelines and facilities of a Transmission Pipeline Operator are located, including rights-of-way and easements over and through public or private property.

Transmission Pipeline Operator means the company or person responsible for the operation, maintenance and management of the Transmission Pipeline.
Transmission Pipeline Owner means the company or person which owns the Transmission Pipeline.

The County means Summit County, Utah.

Underground Pipeline Facilities means buried pipeline facilities used in the transportation of gas or hazardous liquid subject to the pipeline safety laws (49 U.S.C. 60101 et seq.).

13XHI-1-3: STATE AND FEDERAL REGULATIONS

A. State. The provisions of R746-409, Pipeline Safety, are hereby incorporated in their entireties by reference.


C. 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.

CHAPTER 2

13XHI-2-1: PIPELINE PERMITTING PROCEDURES AND REQUIREMENTS

A. Permit Required; Application

1. A Pipeline Permit issued by the County Engineer shall be required prior to the commencement of any work to install a Transmission Pipeline within the County.

2. An application for a Pipeline Permit shall be accompanied by three (3) sets of plans showing dimensions and locations of the pipelines, related items or facilities within the subject right-of-way and roadway improvements. Also required for submittal are:
   a. Detailed cross section drawings for all public street right-of-way, and easements, wetland, and waterway crossings;
   b. A flow diagram showing daily design capacity of the proposed Transmission Pipeline;
   c. Changes in flow in the Transmission Pipeline; and
   d. The proposed maximum operating pressure, expressed in pounds per square inch gauge (psig) at all points of change in elevation greater than 500 feet, or every 500 feet in length as a minimum;

B. Haul Road Agreement; Bonding
1. Haul Road Agreement

Transmission Pipeline Owners, Operators and/or contractors must have an approved Haul Road Agreement for Haul Routes that will be used in the County. The County Engineer shall approve all cross-cuts, Haul Routes, and crossings within public rights-of-way, including, without limitation, the crossing of irrigation ditches. Each crossing of a public right-of-way shall be calculated in the Haul Road Agreement as equaling one (1) lineal mile of Haul Road, either gravel or asphalt, depending on the surface material at the crossing.

2. Bonding

The Transmission Pipeline Owner, Operator, and/or contractor must post a cash bond or its equivalent, in an amount to be determined by the County Engineer consistent with the size and impact of the project on public roads and rights-of-way. The bond will warrant the County against any damage that may occur beyond the normal wear and tear to public roads and rights-of-way. The bond shall be in effect for the duration of construction of the Transmission Pipeline and for a period of one year thereafter in order to warranty the County against latent damages to roads and rights-of-way used for Haul Routes or crossings within the County. Transmission Pipelines that are directly regulated by the Utah Public Service Commission and that require statewide road/street bonding are exempt from the bonding requirements hereunder.

C. The Transmission Owner, Operator, and/or contractor has the burden to establish that the proposed Transmission Pipeline complies with all applicable local, state and federal laws and regulations in the construction and operation of the Transmission Pipeline.

**13XHI-2-2: TEMPORARY HOUSING:**

Information must be submitted to the County Engineer which sets forth the plan for temporary housing of workers during the construction of the Transmission Pipeline project, including the estimated number of workers and family, the location of proposed housing, water and sewer management, and a site map showing access lane widths for emergency vehicles and their ability to serve each housing unit.

**13XHI-2-3: DRAINAGE**

Any discharge of water into the public Summit County right-of-way from dewatering the pipeline trenches or pipeline must be approved by the County Engineer.
CHAPTER 3

13XIII-3-1: GENERAL PROVISIONS

A. Design General

1. Materials for pipe and other components of Transmission Pipelines shall be:
   a. Able to maintain the structural integrity of the pipeline under temperature, pressure, and other conditions that may be anticipated.
   b. Compatible with the substances to be transported.
   c. Locatable by a tracer line or location device placed adjacent to or in the trench of all buried nonmetallic pipelines to facilitate the location of such pipelines.

2. Design
   Each component of a Transmission Pipeline shall be designed and installed to prevent failure from corrosion and to withstand anticipated operating pressures and other loadings without impairment of its serviceability. The pipe shall have sufficient wall thickness or be installed with adequate protection to withstand anticipated external pressures and loads that will be imposed on the pipe after installation.

1. The Transmission Pipeline Operator or Owner shall design the pipeline alignment such that the pipeline will comply with all applicable requirements of the Code, including, without limitation, setback requirements of the Code.

2. The Transmission Pipeline Operator shall follow Utah State and County standards for weed control. A weed control plan shall be submitted to the Weed Division Supervisor for review and approval.

3. Seed and mulch shall be Certified Weed Free. The Weed Free Certificate shall be submitted to the County Engineer and the Weed Division Supervisor.
   a. All valves must be automated. Valve placement must be reviewed and pre-approved by the County Engineer.

B. Cover

1. All installed Transmission Pipelines shall have cover consistent with 49 CFR 195.248 sufficient to protect them from damage. On agricultural lands, all pipelines shall have a minimum cover of four (4) feet from natural grade to the top of the pipeline.
2. Where an underground structure, geologic, or other uncontrollable condition prevents pipelines from being installed with the minimum required cover, a variance must be requested and approved by the County Engineer.

C. Excavation, Backfill and Reclamation

1. The Transmission Pipeline Operator, Owner and/or contractor shall segregate topsoil while trenching. Absent approval by both the property owner and the County Engineer, all trenches within Agricultural Lands shall be backfilled, where practicable, to 925% compaction so that the soils are returned to their original relative positions and grading, thus protecting the natural flow of water through the property while avoiding the creation of artificial pathways of water.

2. Pipeline trenches shall be maintained in order to correct subsidence and minimize erosion. Interim and final reclamation, including re-vegetation, shall be performed in accordance with Title 9, Chapter 3 of the Summit County Code.

D. Availability of Documents

1. An easement agreement and survey (and/or accurate drawing) shall be available to the affected landowner. Easement agreements and survey documents may be available from various sources, including the Transmission Pipeline Operator and the County Recorder’s Office.

13XII-3-2: HAZARDOUS MATERIAL PIPELINES

A. Notification Maintenance

1. Each Transmission Pipeline Operator shall take reasonable precautions to prevent failures, leakage, and corrosion of pipelines.

2. Whenever a Transmission Pipeline Operator discovers any condition that could adversely affect the safe and proper operation of its pipeline, the operator shall correct it within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator shall not operate the affected part of the system until it has corrected the unsafe condition.

2. In the event of a leak or failure has occurred with the Transmission Pipeline, the Transmission Pipeline Operator shall immediately notify the Summit County
Emergency Manager and all property owners within 1000-feet of the failed affected pipeline area within four (4) hours of discovery.

B. Repair

1. Each Transmission Pipeline Operator shall, in repairing its pipelines, ensure that the repairs are made in a safe manner and are made so as to prevent injury to persons and damage to property.

2. No Transmission Pipeline Operator shall use any pipe, valve, or fitting in repairing pipeline facilities unless the components meet the installation requirements of all federal and state regulations.

23. Pipeline trenches shall be maintained in order to correct subsidence and minimize erosion. Following any repairs, the area shall be re-vegetated in accordance with Title 9, Chapter 3 of the Summit County Code.

C. Marking

1. A markers shall be installed and maintained to identify the location of Transmission Pipelines.

2. Placement of Markers
   a. Locations and spacing for markers shall include, but are not limited to:
      i. Each crossing of a public or private road, utility easement, railroad, stream crossing, hilltop, major pipeline angle point, and section line (as necessary to mark pipeline location).
      ii. Spacing may vary upon conditions, but normally shall not be greater than line-of-sight distances, particularly in overgrown rights-of-way.
   b. Markers shall be placed so as to achieve the following:
      i. Markers shall not present a hazard to on-coming traffic.
      ii. Markers shall be placed directly over the pipeline whenever possible.
      iii. Markers shall face in the direction of expected activity or traffic. If travel of traffic is from more than one direction, signs shall be sited in each direction of on-coming traffic.
   c. Pipeline markers should be checked as a normal course of business as part of the Transmission Pipeline Operator's continuing surveillance program.

3. The following shall be written legibly on a background of sharply contrasting color on each line marker:
a. Warning, Caution or Danger followed by the words “oil/gas (or name of product transported) pipeline” in highly visible letters and the name of the operator and the telephone number where the operator can be reached at all times consistent with the Federal Code of Regulations, letters at least one (1) inch high with one-quarter (1/4) inch stroke and the name of the operator and the telephone number where the operator can be reached at all times.

D. “One Call” Participation

1. All Transmission Pipeline Operators must call 811 and verify with local utilities, prior to any Excavation.

13XII-3-3 EMERGENCY PREPAREDNESS PLAN

A. Transmission Pipeline Owners, Operators, and contractors must meet and coordinate with the Summit County Emergency Manager and submit a copy of its Emergency Preparedness Plan for any and all emergencies that may result in an accidental or failure incident regarding the pipeline or any supplemental equipment. Transmission Pipeline Operators shall designate a responsible local emergency response official and a direct 24-hour emergency phone number. Transmission Pipeline Operators shall, after being notified of an emergency, cooperate with Summit County officials and make every effort to respond as soon as possible to protect the public’s health, safety, and welfare.

B. The essential requirements stated in 49 CFR Parts 192.645, 195.402 and 195.403 shall be covered by the plan.

C. Emergency Response

1. Transmission Pipeline Owners and Operators shall follow Emergency Response requirements as required by 49 CFR Parts 195.402 and 195.403.

2. The Transmission Pipeline Owner or Operator shall provide adequate funding to anticipated emergency responders for training and equipment unique to the circumstances associated with a Transmission Pipeline failure.

13XII-3-4 CONSTRUCTION AND TEMPORARY DISRUPTIONS

A. The Transmission Pipeline Owner, Operator and/or contractor shall give documented notice forty-eight (48) hours prior to the commencement of pipeline construction to the
effected residents, businesses (including agricultural businesses) and to the Summit County Sheriff Dispatch Center.

B. Private property owners and business owners shall have access to their property at all times. Property owners and business owners, including owners of agricultural operations, must be given forty-eight (48) hours advanced written and oral notice of any planned disruption in pipeline operations. Such disruptions shall be kept to a minimum.

C. The Transmission Pipeline Operator shall institute mitigation measures consistent with PHMSA regulations that are intended to reduce risk and minimize impact in the event of a pipeline failure. These mitigation measures shall include, but are not limited to:

1. Emergency procedures such as emergency plans and guides, employee training and drills, and education programs for occupants and employees concerning pipeline safety, such as what to be aware of and how to respond in the event of a problem.

2. Transmission Pipeline Operators shall consult with the local Fire District regarding the level of emergency planning and procedures appropriate for the proposed development;

3. The Fire District may also require submission of plans for review and approval where deemed appropriate.

CHAPTER 4

13XHI-4-1 PIPELINE COMPANY DUTIES AFTER NOTICE OF EXCAVATION

A. A Pipeline Company that has been notified by an Excavator that Excavation work will occur near a Hazardous Liquid Pipeline shall ensure that the Pipeline Company's representative consults with the Excavator on-site prior to the Excavation. The Pipeline Company has the discretion to require that the pipeline section in the vicinity of the Excavation be fully uncovered and examined for damage prior to being reburied.

13XHI-4-2 SUBMITTAL OF INFORMATION

A. Preliminary Updated as-built information, including, without limitation, as built drawings or additional information as may be requested by the County Engineer or Director, about the upon completion of the Transmission Pipeline, including a copy of GIS shapefiles of the pipelines and all appurtenances within Summit County, will be filed within ninety (90) days before the pipeline is commissioned, with the County Engineer and the Department of Community Development.
B. Updated as-built information, including, without limitation, as built drawings or additional information as may be requested by the County Engineer or Director, about the Transmission Pipeline, including a copy of GIS shapefiles of the pipelines and all appurtenances within Summit County, will be filed within sixty (60) days after the pipeline is commissioned, with the County Engineer and the Department of Community Development.

CHAPTER 5

13XHI-5-1 INDEMNIFICATION

A. The Transmission Pipeline Owner(s) and Operator(s) shall hold County, its officers, agents, employees, consultants, attorneys, special counsel and representatives harmless from liability: (1) for damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including, without limitation, health, and claims for property damage, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent for property damage which may arise from the direct or indirect operation, installation, maintenance, defects, leaks and/or repairs of the Transmission Pipeline, or the actions of the Transmission Pipeline Operator, Owner, contractors, subcontractors, agents, employees or other persons acting on their behalf which relates to the Transmission Pipeline; and (2) from any claim that damages, just compensation, restitution, judicial or equitable relief is due by reason of Transmission Pipeline Owners or Operator’s uncured breach of the terms of their Pipeline Permit. Transmission Pipeline Owner and Operator shall pay all costs for the defense of the County and its officers, agents, employees, consultants, attorneys, special counsel and representatives regarding any third party action for damages, just compensation, restitution, judicial or equitable relief caused or alleged to have been caused by reason of the direct or indirect operation, installation, maintenance, and/or repairs of the Transmission Pipeline or an uncured breach of the Pipeline Permit. County shall make all reasonable decisions with respect to its representation in any legal proceeding.

CHAPTER 6

13XHI-6-1 FRANCHISE AGREEMENT

A. Where the Transmission Pipeline traverses the public right-of-way, a franchise agreement in accordance with Title 7, Chapter 1 may be required.
Summit County Ordinance No. 826A

A Land Use Regulation Amending Title 11, Chapters 3 and 6 of the Summit County Code relating to Hazardous Liquids or Materials Transmission Pipelines and adopting Title 4, Chapter 6, Water Source Protection Zones

PREAMBLE

WHEREAS, the Natural Gas Pipeline Safety Act of 1968, as amended, (NGPSA) authorizes the United States Department of Transportation (DOT) to regulate pipeline transportation of natural (flammable, toxic, or corrosive) gas and other gases, as well as the transportation and storage of liquefied natural gas (LNG); and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, (HLPSA) authorizes DOT to regulate pipeline transportation of hazardous liquids (crude oil, petroleum products, anhydrous ammonia, and carbon dioxide), both of which are re-codified at 49 United States Code (U.S.C.) Chapter 601 and implemented at 49 Code of Federal Regulations (CFR) Parts 190 – 199; and,

WHEREAS, 49 U.S.C. 601 provides that the federal government is primarily responsible for developing, promulgating, and enforcing minimum uniform pipeline safety standards throughout the United States; and,

WHEREAS, 49 U.S.C. 60104(c) allows for an exemption from federal preemption where states assume regulatory, inspection, and enforcement responsibilities for intrastate pipelines, so long as the state participates in and is certified under the Federal/State Cooperative Gas and Hazardous Liquid Pipeline Safety Program in accordance with 49 U.S.C. 60105(a) (Certified Program); and,

WHEREAS, federal and state courts have determined that DOT exercises exclusive jurisdiction over safety standards regulating interstate transmission pipelines (Colorado Interstate Gas Co. v. Wright, 707 F.Supp.2d 1169 (D. Kansas 2010); Sneddon v. Torch Energy Services, Inc., 102 CalApp.4th 181, 125 Cal Rptr.2d 365 (2nd Dist 2002)); and,

WHEREAS, the majority of pipeline inspections in the nation are carried out by state inspectors who work for state agencies in accordance with the Certified Program; and,

WHEREAS, in circumstances where a state has a Certified Program, a state agency is responsible for conducting inspections of intrastate pipelines that lie entirely within a state’s borders; and,

WHEREAS, the state of Utah is a participant in and has certification under the Certified Program for intrastate natural gas pipelines; and,
WHEREAS, the Liquid Integrity Management Rule and 49 CFR, Parts 195.0 – 195.12, Transportation of Hazardous Liquids by Pipelines, specifies how pipeline operators must identify, prioritize, assess, evaluate, repair and validate the integrity of hazardous liquid pipelines that could, in the event of a leak or failure, affect High Consequence Areas (HCAs) within the United States. HCAs include: population areas; areas containing drinking water and ecological resources that are unusually sensitive to environmental damage; and commercially navigable waterways; and,

WHEREAS, the Utah Public Service Commission’s Division of Public Utilities inspects, regulates and enforces intrastate gas pipeline safety requirements in accordance with R746-409, while the Office of Pipeline Safety (OPS), within the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) inspects, regulates and enforces interstate gas and liquid pipeline safety requirements; and,

WHEREAS, 49 U.S.C. §60104(e) “does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility,” instead leaving such subject to state and local regulation (See Washington Gas Light Company v. Prince George’s County Council, 711 F.3d 412, 422 (4th Cir. 2013); and,

WHEREAS, the HLPSA does not define “safety standard” within the federal statute; and,

WHEREAS, the protection from potential hazards is the primary purpose of regulatory standards; and,

WHEREAS, safety hazards are distinguished from environmental hazards, in that the latter generally relate to environmental health and substances which cause disease (29 CFR 1910.1200(c)); and,

WHEREAS, “[t]he Supreme Court has cautioned . . . that the presence of an express pre-emption clause in a federal statute does not immediately end the inquiry because the question of the substance and scope of Congress’ displacement of state law still remains. Indeed, when courts are called upon to address questions of express or implied pre-emption, the analysis always begins with the assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress (Island Park, LLC v. CSX Transportation and Consolidated Rail Corporation, 559 F.3d 96, 101 (2nd Cir. 2009) (citations omitted)); and,

WHEREAS, UCA §17-50-302(1)(a)(ii) expressly authorizes counties to “provide a service, exercise a power, or perform a function that is reasonably related to the safety, health, morals, and welfare of county inhabitants, except as limited or prohibited by statute;” and,

WHEREAS, since the Utah Public Service Commission has not promulgated rules concerning intrastate Hazardous Liquid Pipelines, the County is not pre-empted from enacting zoning regulations which regulate land uses, setbacks, environmental hazards (such as, water quality, watershed protection, jurisdictional wetlands, ridgeline protection, revegetation of
disturbed areas, wildlife habitat and fisheries), as well as aesthetics with respect to intrastate pipelines by either state or federal law (Washington Gas Light Co. v. Prince George’s County Council, 711 F.3d 412 (4th Cir. 2013); Texas Midstream Gas Services, LLC v. City of Grand Prairie, 608 F.3d 200 (5th Cir. 2010); ANR Pipelining Company v. Iowa State Commerce Commission, 828 F.2d 465 (8th Cir. 1987)); and,

WHEREAS, pursuant to that certain letter from Jeffrey D. Wiese, Associate Administrator, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, to TransCanada Corporation, dated May 28, 2014, local governments are authorized to regulate excavation, adjacent land uses, setbacks, and emergency response plans for both inter and intrastate pipelines; and,

WHEREAS, in accordance with Utah Administrative Code, R309-600 (Source Protection: Drinking Water Source Protection for Ground-Water Sources), R309-605 (Source Protection: Drinking Water Source Protection for Surface Water Sources), that certain Weber Basin Water Conservancy District Drinking Water Source Protection Plan (August 2001; July 2014), and that certain DWSPP for the Provo River Basin Watershed (2013) (together, the “Water Source Protection Zones”), water source protection zones have been established for the Weber River, the Provo River, and their tributaries; and,

WHEREAS, these water source protection zones designate a twenty-five hundred (2,500) foot setback for Zone 1, a one thousand (1,000) foot setback for Zone 2, and a five hundred (500) foot setback for Zone 3; and,

WHEREAS, the County has engaged SWCA Environmental Consultants to perform environmental modeling of a pipeline failure with respect to the water sources within Summit County; and,

WHEREAS, the “Pipeline Spill Model Report” (SWCA, January 2015) (“Spill Analysis”); provides that the spill distance for a worst case analysis on a crude oil spill of 2,000 barrels on lands with a grade between 0% and 5% falls within a general range of 700 – 3,000 feet; and,

WHEREAS, setbacks of twenty-five hundred (2,500) feet for Zone 1, one thousand (1,000) feet for Zone 2, and five hundred (500) feet for Zone 3 are consistent with both the Water Source Protection Zones and the Spill Analysis; and,

WHEREAS, in accordance with UCA §19-4-113(1), the Summit County Council has (a) considered Utah Administrative Code, R309-600 and R309-605, (b) consulted with Weber Basin Water Conservancy District, a wholesale water supplier, and Mountain Regional Water Special Service District, a retail water supplier, both of whom have drinking water source within Summit County, (c) considered the effect of any proposed source protection ordinance on agriculture production, manufacturing operations, industrial operations, and mining operations, and (d) held a public hearing on January 7, 2015, in accordance with the Utah Open and Public Meetings Act as set forth herein; and,
WHEREAS, UCA §19-4-113(3) & (4) provide statutory authority to designate drinking water source protection zones and regulate through zoning "the storage, handling, use or production of a hazardous or toxic substance," within those zones; and,

WHEREAS, pre-existing Summit County regulations regarding natural resources and infrastructure design and maintenance are applicable to Hazardous Liquids or Materials Transmission Pipelines, and were established to “protect the county’s rural, agricultural, small town character and lifestyle,” as well as to “protect the natural resources and ecology and environment,” while “facilitate[ing] the efficient use of the land” (Summit County Code §11-2-1); and,

WHEREAS, the Eastern Summit County Planning Commission held a lawfully noticed public hearing with respect to Hazardous Liquids or Materials Transmission Pipelines on November 20, 2014 and December 18, 2014, and thereafter forwarded a negative recommendation on such to the Summit County Council on December 18, 2014; and,

WHEREAS, the Summit County Council held a lawfully noticed public hearing with respect to Hazardous Liquids or Materials Transmission Pipelines and water source protection zones on January 7, 2015; and,

WHEREAS, conditions on permits issued pursuant to these regulations constitute “standard costs” within the meaning of UCA §54-14-103(c); and,

WHEREAS, it is in the best interests of Summit County to provide for standards and guidelines for intrastate Hazardous Liquid Pipelines located in the County so as to protect the public health and welfare of its residents;

NOW, THEREFORE, the County Council of the County of Summit, State of Utah, ordains as follows:

Section 1. Adoption of Water Source Protection Zones. Title 4, Chapter 6, Water Source Protection Zones, is adopted in accordance with Exhibit A herein.

Section 2. Adoption of Land Use Regulations. The Amendments to Title 11, Chapter 6, Hazardous Liquids or Materials Transmission Pipeline, and the Use Table, Title 11, Chapter 3, are adopted in accordance with Exhibit B herein.

Section 3. Severability. If any provision of this ordinance or the application of any such provision thereunder to any person or circumstance, shall be held invalid by a court of competent jurisdiction, the remainder of the ordinance or the application of such provision thereunder to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 4. Repealer. Ordinance 826 is hereby repealed in its entirety.
Section 5. **Effective Date.** This Ordinance shall take effect fifteen (15) days after publication.

Enacted this 7th day of January, 2015.

ATTEST:

Kent Jones
Summit County Clerk

SUMMIT COUNTY COUNCIL

Kim Carson, Chair

APPROVED AS TO FORM

David L. Thomas
Chief Civil Deputy

VOTING OF COUNTY COUNCIL:

Councilmember Carson
Councilmember Robinson
Councilmember Ure
Councilmember Armstrong
Councilmember McMullin
11-6-19: HAZARDOUS LIQUIDS OR MATERIALS TRANSMISSION PIPELINES:

A. Purpose: The purpose of this section is to mitigate the aesthetic and environmental impacts while minimizing potential damage to essential public
facilities from Hazardous Liquids or Materials Transmission Pipelines by:

1. Minimizing the likelihood of inadvertent or accidental damage from and to Hazardous Liquids or Materials Transmission Pipelines due to external forces, such as construction activity, by ensuring early communication between those developing property and Hazardous Liquids or Materials Transmission Pipeline Operators.

2. Minimizing the risk of injury or damage to essential public facilities in the event of a Hazardous Liquids or Materials Transmission Pipeline failure.


5. Ensuring there is adequate protection of existing Hazardous Liquids or Materials Transmission Pipelines from damage.

6. Limiting the exposure of land uses with on-site populations that are difficult to evacuate, as well as land uses that serve emergency functions from the effects of a pipeline failure.

7. Supplementing existing federal and state regulations related to Transmission Pipeline Corridor management.

B. Applicability: Regulations in this section apply to all proposed pipelines. Applications to install Hazardous Liquids or Materials Transmission Pipelines shall be processed as Conditional Uses in all zone districts. 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. The County adopts by reference the definitions set forth in the Hazardous Liquid Pipeline Safety Act of 1979, as amended, and re-codified in 49 USC 601 and 49 CFR 190-199.

C. Definitions:

1. **Essential Public Facilities** means those public facilities which are required in order to provide basic health and safety services to residents and visitors of Summit County, including, without limitation, water sanitation plants, water treatment plants, sewer treatment plants, water storage facilities, telecommunication towers, police stations, fire stations, jails, courthouses, public health facilities, and emergency operations centers.

3. **Hazardous Liquids or Materials Transmission Pipeline or Transmission Pipeline** means a pipeline, whether above or below ground, which transports or is designed to transport Hazardous Liquids or Materials. As used herein, a Transmission Pipeline includes all parts of those physical facilities through which hazardous material moves in transportation, including pipes, valves, and other appurtenances attached to pipes, compressor units, pumping stations, metering stations, regulator stations, delivery stations, holders, breakout tanks, fabricated assemblies, and other surface pipeline appurtenances. A Hazardous Liquids or Materials Transmission Pipeline includes a Hazardous Liquid Pipeline as defined in 13-1-2.

4. **High Consequence Land Use** means a land use that if located in the vicinity of a Hazardous Materials Transmission Pipeline represents an unusually high risk to life in the event of a Transmission Pipeline failure due to the characteristics of the inhabitants or functions of the use. High Consequence Land Uses include:

   a. Commercial Child Care;
   
   b. Houses of Worship, including churches and other religious institutions;
   
   c. Hospitals;
   
   d. Residential Care Facilities;
   
   e. Institutional Uses including private schools and public or quasi-public buildings; and
f. Essential Public Facilities.

5. **Hazardous Liquids or Materials Transmission Pipeline Corridor or Transmission Pipeline Corridor** means the pipeline pathway defined by rights-of-way and easements in which the pipelines and facilities of a Hazardous Liquids or Materials Transmission Pipeline are located, including rights-of-way and easements over and through public or private property.

6. **Source Protection Zone** means the surface water source protection zones designated as Water Source Protection Zone 1, Zone 2 and/or Zone 3, as set forth in Title 4, Chapter 6.

7. **Transmission Pipeline Operator** means the company or person responsible for the operation, maintenance and management of the Transmission Pipeline.

8. **Quasi-Public Buildings** means buildings that are open to the general public.

9. **Jurisdictional Wetlands** means an area delineated and approved as a wetland by the United States Army Corps of Engineers consistent with UCA §17-27-a-520.

10. **Man-Made or Natural Reservoir** means a natural or artificial water body where water is collected and stored for use.

D. **Development Standards for the Construction of new Hazardous Liquids or Materials Transmission Pipelines:**

1. **Hazardous Liquids or Materials Transmission Pipeline Corridor:** A fifty (50) foot easement or right-of-way (or such other widths as shall be approved and accepted by the Director and County Engineer for any given property along the course of the Transmission Pipeline, based upon individual topographical and/or site condition requirements) shall be recorded in the office of the County Recorder for all new Hazardous Liquids or Materials Transmission Pipelines.

2. In order to mitigate the aesthetic and environmental impacts of Hazardous Liquids or Materials Transmission Pipelines, while minimizing potential damage or interruption to Essential Public Facilities caused by Transmission Pipelines, the following setbacks shall be observed:

   a. Except as set forth in 11-6-19(D)(3) or unless approved by the County Engineer as part of the conditional use permit process, where adequate mitigation measures have been demonstrated by
the applicant to the satisfaction of the County Engineer, Hazardous Liquids or Materials Transmission Pipeline Corridors shall not be located closer than twenty-five hundred (2,500) feet in Zone 1, one thousand (1,000) feet in Zone 2, and five hundred (500) feet in Zone 3, from (i) the Weber River and its tributaries, as set forth in the established Source Protection Zone, and/or (ii) the Provo River and its tributaries, as set forth in the established Source Protection Zone. However, conditions such as slope and terrain may require additional mitigation as identified in the Conditional Use Permit process.

b. Except as set forth in 11-6-19(D)(3), Hazardous Liquids or Materials Transmission Pipelines shall not be located closer than one hundred (100) feet from (i) any Jurisdictional Wetland and (ii) any year round naturally occurring creek, stream, river, private or public well, or pond, unless approved by the County Engineer as part of the Conditional Use Permit process where adequate mitigation measures have been demonstrated by the applicant.

c. An above ground Hazardous Liquids or Materials Transmission Pipeline facility or appurtenance shall not be located closer than one thousand (1,000) feet from any High Consequence Land Use Structure or Essential Public Facility structure, unless otherwise approved by the County Engineer based upon independent modeling.

3. Crossings of jurisdictional wetlands, year round naturally occurring creeks, streams, ponds, the Weber River and its tributaries, the Provo River and its tributaries, or man-made or natural reservoirs along the Weber River may be allowed as part of the conditional use permit process, on the following basis:

a. Open cut trench excavation of jurisdictional wetlands, and year round naturally occurring creeks, streams, rivers or ponds (except for the Weber River, the Provo River, and natural or man-made reservoirs along the Weber River) based upon the best engineering practices is permitted at the discretion of the County Engineer. However, if in the opinion of the County Engineer, circumstances warrant, horizontal directional drilling or jack and bore construction methods as set forth in 11-6-19(D)(3)(b) may be required.

b. Crossing of the Weber River, the Provo River, or natural or man-made reservoirs along the Weber River, unless otherwise approved by the County Engineer, shall be by horizontal directional drilling or jack and bore construction methods. Jack and bore sending and
receiving pits must be located outside of the ten (10) year frequency storm limits and/or the required clearance distances from the thalweg, whichever is greater, and must have the approval of the FEMA Floodplain Administrator if within the 1% chance annual floodplain (100-year storm). Directional drilling pits shall be constructed well beyond the top of the bank. A soils engineering report and/or engineering geology report may be required at the discretion of the County Engineer. Armoring of the pipeline may be required as determined by hydraulic modeling and approved by the County Engineer. The consultant designing the crossing shall assure proper depth of utility to prevent exposure from localized scouring caused by improvements in the stream corridor. Applicant shall coordinate with the local Floodplain Administrator to determine appropriate scour protection depths. Pipeline minimum depth is ten (10) feet under channel grade to the top of the pipeline.

c. County Engineer shall review the engineering spill analysis and associated hydraulic reports and may require additional isolation valves immediately adjacent to both sides of Jurisdictional Wetlands, year round naturally occurring creeks, streams, rivers, ponds, the Weber River, the Provo River, or man-made or natural reservoir crossings in order to minimize spills or leaks.

4. Every effort shall be made so that pipeline related equipment enclosures and other structures shall be appropriately designed to mitigate their visual impact on the natural environment. This may include stealth design techniques and/or other visual screening methods as approved by the Director.

5. Unless otherwise modified by this section, all criteria set forth in 11-2-4 (Natural Resources) and 11-2-5 (County Infrastructure, Facilities, and Services) shall apply to Hazardous Liquids or Materials Transmission Pipelines.

a. In the event that it becomes necessary for a Hazardous Liquids or Materials Transmission Pipeline to traverse a hillside or natural grade slope of greater than thirty percent (30%), adequate mitigation shall be required to ensure the alignment is sensitively sited so as to encourage stabilization of the disturbed slopes, minimize excavation, and the conservation of the natural appearance and grade of the hillside. The Transmission Pipeline alignment shall be integrated into the site, using topography, vegetation and other reasonable techniques, in a manner that causes it to blend into the hillside.
TITLE 4
CHAPTER 6
WATER SOURCE PROTECTION ZONES

SECTION:
4-6-1: Adoption of Water Source Protection Zones:
4-6-2: Regulation:
4-6-3: Enforcement:

4-6-1: ADOPTION OF WATER SOURCE PROTECTION ZONES:
A. The surface "Water Source Protection Zones 1, 2, and 3" as identified in the following Drinking Water Source Protection Plans, as such are amended from time to time ("DWSPP"), are incorporated herein and adopted by this reference: that certain Weber Basin Water Conservancy District DWSPP (August 2001; July 2014); the DWSPP for the Provo River Basin Watershed (2013); and any other DWSPP for the protection of drinking water sources within Summit County on file with the Utah Division of Drinking Water.

4-6-2: REGULATION:
A. Zoning regulations pertaining to Water Source Protection Zones shall be as set forth in Title 10 and Title 11.
B. Engineering regulations pertaining to Water Source Protection Zones shall be as set forth in Title 13.

4-6-3: ENFORCEMENT:
A. In the event of a violation of this chapter where the County affirmatively elects not to pursue an enforcement action, the County shall provide
written notification to all retail water suppliers and/or wholesale water suppliers within the Water Source Protection Zones of the County’s election not to pursue enforcement action. Such notification shall be delivered within ten (10) calendar days of when the violation was first discovered by the County. Such notification shall have the effect of conferring judicial standing upon any retail water supplier and/or wholesale water supplier within the Water Source Protection Zones to seek enforcement of this chapter in the Third District Court in and for Summit County.

B. In the event of a violation of this chapter where (i) the County affirmatively elects not to pursue an enforcement action, and (ii) the violation may cause irreparable harm to the groundwater or surface water source, the County shall provide written notification to all retail water suppliers and/or wholesale water suppliers within the Water Source Protection Zones of the County’s election not to pursue enforcement action. Such notification shall be delivered within two (2) calendar days of when the violation was first discovered by the County. Such notification shall have the effect of conferring judicial standing upon any retail water supplier and/or wholesale water supplier within the Water Source Protection Zones to seek enforcement of this chapter in the Third District Court in and for Summit County.
Summit County Ordinance No. 827A

A Land Use Regulation Amending Title 10, Chapters 2 and 8 of the Summit County Code relating to Hazardous Liquids or Materials Transmission Pipelines

PREAMBLE

WHEREAS, the Natural Gas Pipeline Safety Act of 1968, as amended, (NGPSA) authorizes the United States Department of Transportation (DOT) to regulate pipeline transportation of natural (flammable, toxic, or corrosive) gas and other gases, as well as the transportation and storage of liquefied natural gas (LNG); and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, (HLPSA) authorizes DOT to regulate pipeline transportation of hazardous liquids (crude oil, petroleum products, anhydrous ammonia, and carbon dioxide), both of which are re-codified at 49 United States Code (U.S.C.) Chapter 601 and implemented at 49 Code of Federal Regulations (CFR) Parts 190 – 199; and,

WHEREAS, 49 U.S.C. 601 provides that the federal government is primarily responsible for developing, promulgating, and enforcing minimum uniform pipeline safety standards throughout the United States; and,

WHEREAS, 49 U.S.C. 60104(c) allows for an exemption from federal preemption where states assume regulatory, inspection, and enforcement responsibilities for intrastate pipelines, so long as the state participates in and is certified under the Federal/State Cooperative Gas and Hazardous Liquid Pipeline Safety Program in accordance with 49 U.S.C. 60105(a) (Certified Program); and,

WHEREAS, federal and state courts have determined that DOT exercises exclusive jurisdiction over safety standards regulating interstate transmission pipelines (Colorado Interstate Gas Co. v. Wright, 707 F.Supp.2d 1169 (D. Kansas 2010); Sneddon v. Torch Energy Services, Inc., 102 CalApp.4th 181, 125 Cal Rptr.2d 365 (2nd Dist 2002)); and,

WHEREAS, the majority of pipeline inspections in the nation are carried out by state inspectors who work for state agencies in accordance with the Certified Program; and,

WHEREAS, in circumstances where a state has a Certified Program, a state agency is responsible for conducting inspections of intrastate pipelines that lie entirely within a state's borders; and,

WHEREAS, the state of Utah is a participant in and has certification under the Certified Program for intrastate natural gas pipelines; and,

WHEREAS, the Liquid Integrity Management Rule and 49 CFR, Parts 195.0 – 195.12, Transportation of Hazardous Liquids by Pipelines, specifies how pipeline operators must
identify, prioritize, assess, evaluate, repair and validate the integrity of hazardous liquid pipelines that could, in the event of a leak or failure, affect High Consequence Areas (HCAs) within the United States. HCAs include: population areas; areas containing drinking water and ecological resources that are unusually sensitive to environmental damage; and commercially navigable waterways; and,

WHEREAS, the Utah Public Service Commission’s Division of Public Utilities inspects, regulates and enforces intrastate gas pipeline safety requirements in accordance with R746-409, while the Office of Pipeline Safety (OPS), within the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) inspects, regulates and enforces interstate gas and liquid pipeline safety requirements; and,

WHEREAS, 49 U.S.C. §60104(e) “does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility,” instead leaving such subject to state and local regulation (See Washington Gas Light Company v. Prince George’s County Council, 711 F.3d 412, 422 (4th Cir. 2013); and,

WHEREAS, the HLPSA does not define “safety standard” within the federal statute; and,

WHEREAS, the protection from potential hazards is the primary purpose of regulatory standards; and,

WHEREAS, safety hazards are distinguished from environmental hazards, in that the latter generally relate to environmental health and substances which cause disease (29 CFR 1910.1200(c)); and,

WHEREAS, “[t]he Supreme Court has cautioned . . . that the presence of an express pre-emption clause in a federal statute does not immediately end the inquiry because the question of the substance and scope of Congress’ displacement of state law still remains. Indeed, when courts are called upon to address questions of express or implied pre-emption, the analysis always begins with the assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress (Island Park, LLC v. CSX Transportation and Consolidated Rail Corporation, 559 F.3d 96, 101 (2nd Cir. 2009) (citations omitted); and,

WHEREAS, UCA §17-50-302(1)(a)(ii) expressly authorizes County’s to “provide a service, exercise a power, or perform a function that is reasonably related to the safety, health, morals, and welfare of county inhabitants, except as limited or prohibited by statute;” and,

WHEREAS, since the Utah Public Service Commission has not promulgated rules concerning intrastate Hazardous Liquid Pipelines, the County is not pre-empted from enacting zoning regulations which regulate land uses, setbacks, environmental hazards (such as, water quality, watershed protection, jurisdictional wetlands, ridgeline protection, revegetation of disturbed areas, wildlife habitat and fisheries), as well as aesthetics with respect to intrastate pipelines by either state or federal law (Washington Gas Light Co. v. Prince George’s County
Council, 711 F.3d 412 (4th Cir. 2013); Texas Midstream Gas Services, LLC v. City of Grand Prairie, 608 F.3d 200 (5th Cir. 2010); ANR Pipeline Company v. Iowa State Commerce Commission, 828 F.2d 465 (8th Cir. 1987)); and,

WHEREAS, pursuant to that certain letter from Jeffry D. Wiese, Associate Administrator, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, to TransCanada Corporation, dated May 28, 2014, local governments are authorized to regulate excavation, adjacent land uses, setbacks, and emergency response plans for both inter and intrastate pipelines; and,

WHEREAS, East Canyon Creek, which runs through the Snyderville Basin, has been delineated since 1992 by the State of Utah under the Clean Water Act (303d listing) as an impaired water body (East Canyon Reservoir and East Canyon Creek TMDL Study (May 2010)) requiring protection from contaminants; and,

WHEREAS, pre-existing Summit County regulations regarding the environment are applicable to Hazardous Liquids or Materials Transmission Pipelines, and were established to “ensure that the quality and character of all development undertaken in the Snyderville Basin will be compatible with the mountain environment and the resort natural of the area,” while “protect[ing] the environmentally sensitive nature of the land” (Summit County Code §10-1-1(D)); and,

WHEREAS, the Snyderville Basin Planning Commission held a lawfully noticed public hearing with respect to Hazardous Liquids or Materials Transmission Pipelines on November 18, 2014 and December 16, 2014, and thereafter forwarded a positive recommendation on such to the Summit County Council on December 16, 2014; and,

WHEREAS, the Summit County Council held a lawfully noticed public hearing with respect to Hazardous Liquids or Materials Transmission Pipelines on January 7, 2015; and,

WHEREAS, conditions on permits issued pursuant to these regulations constitute “standard costs” within the meaning of UCA §54-14-103(c); and,

WHEREAS, it is in the best interests of Summit County to provide for standards and guidelines for intrastate Hazardous Liquid Pipelines located in the County so as to protect the public health and welfare of its residents;

NOW, THEREFORE, the County Council of the County of Summit, State of Utah, ordains as follows:

Section 1. Adoption of Land Use Regulations. The Amendments to Title 10, Chapter 8, Hazardous Liquids or Materials Transmission Pipeline, and the Use Table, Title 10, Chapter 2, are adopted in accordance with Exhibit A herein.
Section 2. **Severability.** If any provision of this ordinance or the application of any such provision thereunder to any person or circumstance, shall be held invalid by a court of competent jurisdiction, the remainder of the ordinance or the application of such provision thereunder to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 3. **Repealer.** Ordinance 827 is hereby repealed in its entirety.

Section 4. **Effective Date.** This Ordinance shall take effect fifteen (15) days after publication.

Enacted this 7th day of January, 2015.

ATTEST:

Kent Jones
Summit County Clerk

SUMMIT COUNTY COUNCIL

Kim Carson, Chair

APPROVED AS TO FORM

David L. Thomas
Chief Civil Deputy

VOTING OF COUNTY COUNCIL:

- Councilmember Carson
- Councilmember Robinson
- Councilmember Ure
- Councilmember Armstrong
- Councilmember McMullin

Aye
Aye
Aye
Aye
Aye
10-8-13: HAZARDOUS LIQUIDS OR MATERIALS TRANSMISSION PIPELINES:

A. Purpose: The purpose of this section is to mitigate the aesthetic and environmental impacts while minimizing potential damage to essential public facilities from Hazardous Liquids or Materials Transmission Pipelines by:

1. Minimizing the likelihood of inadvertent or accidental damage from and to Hazardous Liquids or Materials Transmission Pipelines due to external forces, such as construction activity, by ensuring early communication between those developing property and Hazardous Liquids or Materials Transmission Pipeline Operators.

2. Minimizing the risk of injury or damage to essential public facilities in the event of a Hazardous Liquids or Materials Transmission Pipeline failure.


5. Ensuring there is adequate protection of existing Hazardous Liquids or Materials Transmission Pipelines from damage.

6. Limiting the exposure of land uses with on-site populations that are difficult to evacuate, as well as land uses that serve emergency functions from the effects of a pipeline failure.

7. Supplementing existing federal and state regulations related to
Transmission Pipeline Corridor management.

B. Applicability: Regulations in this section apply to all proposed pipelines. Applications to install Hazardous Liquids or Materials Transmission Pipelines shall be processed as Conditional Uses in all zone districts. 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. The County adopts by reference the definitions set forth in the Hazardous Liquid Pipeline Safety Act of 1979, as amended, and re-codified in 49 USC 601 and 49 CFR 190-199.

C. Definitions:

1. **Essential Public Facilities** means those public facilities which are required in order to provide basic health and safety services to residents and visitors of Summit County, including, without limitation, water sanitation plants, water treatment plants, sewer treatment plants, water storage facilities, telecommunication towers, police stations, fire stations, jails, courthouses, public health facilities, and emergency operations centers.


3. **Hazardous Liquids or Materials Transmission Pipeline or Transmission Pipeline** means a pipeline, whether above or below ground, which transports or is designed to transport Hazardous Liquids or Materials. As used herein, a Transmission Pipeline includes all parts of those physical facilities through which hazardous material moves in transportation, including pipes, valves, and other appurtenances attached to pipes, compressor units, pumping stations, metering stations, regulator stations,
delivery stations, holders, breakout tanks, fabricated assemblies, and other surface pipeline appurtenances. A Hazardous Liquids or Materials Transmission Pipeline includes a Hazardous Liquid Pipeline as defined in 13-1-2.

4. **High Consequence Land Use** means a land use that if located in the vicinity of a Hazardous Materials Transmission Pipeline represents an unusually high risk to life in the event of a Transmission Pipeline failure due to the characteristics of the inhabitants or functions of the use. High Consequence Land Uses include:
   a. Commercial Child Care;
   b. Houses of Worship, including churches and other religious institutions;
   c. Hospitals;
   d. Residential Care Facilities;
   e. Institutional Uses including private schools and public or quasi-public buildings; and
   f. Essential Public Facilities.

5. **Hazardous Liquids or Materials Transmission Pipeline Corridor or Transmission Pipeline Corridor** means the pipeline pathway defined by rights-of-way and easements in which the pipelines and facilities of a Hazardous Liquids or Materials Transmission Pipeline are located, including rights-of-way and easements over and through public or private property.

6. **Source Protection Zone** means the surface water source protection zones designated as Water Source Protection Zone 1, Zone 2, and/or Zone 3, as set forth in Title 4, Chapter 6.

7. **Transmission Pipeline Operator** means the company or person responsible for the operation, maintenance and management of the Transmission Pipeline.

8. **Quasi-Public Buildings** means buildings that are open to the general public.

9. **Jurisdictional Wetlands** means an area delineated and approved as a wetland by the United States Army Corps of Engineers consistent with UCA §17-27-a-520.
10. **Man-Made or Natural Reservoir** means a natural or artificial water body where water is collected and stored for use.

D. Development Standards for the Construction of new Hazardous Liquids or Materials Transmission Pipelines:

1. Hazardous Liquids or Materials Transmission Pipeline Corridor: A fifty (50) foot easement or right-of-way (or such other widths as shall be approved and accepted by the Director and County Engineer for any given property along the course of the Transmission Pipeline, based upon individual topographical and/or site condition requirements) shall be recorded in the office of the Summit County Recorder for all new Hazardous Liquids or Materials Transmission Pipelines.

2. In order to mitigate the aesthetic and environmental impacts of Hazardous Liquids or Materials Transmission Pipelines, while minimizing potential damage or interruption to Essential Public Facilities caused by Transmission Pipelines, the following setbacks shall be observed:

   a. Except as set forth in 10-8-13(D)(3) or unless approved by the County Engineer as part of the conditional use permit process, where adequate mitigation measures have been demonstrated by the applicant to the satisfaction of the County Engineer, Hazardous Liquids or Materials Transmission Pipeline Corridors shall not be located closer than twenty-five hundred (2,500) feet in Zone 1, one thousand (1,000) feet in Zone 2, and five hundred (500) feet in Zone 3, from East Canyon Creek and any other water sources as set forth in an established Source Protection Zone. However, conditions such as slope and terrain may require additional mitigation as identified in the Conditional Use Permit process.

   b. Except as set forth in 10-8-13(D)(3), Hazardous Liquids or Materials Transmission Pipelines shall not be located closer than one hundred (100) feet from (i) any jurisdictional wetland and (ii) any year round naturally occurring creek, stream, river, private or public well, or pond unless approved by the County Engineer as part of the conditional use permit process where adequate mitigation measures have been demonstrated by the applicant.

   c. An above ground Hazardous Liquids or Materials Transmission Pipeline facility or appurtenance shall not be located closer than one thousand (1,000) feet from any High Consequence Land Use structure or Essential Public Facility structure, unless otherwise approved by the County Engineer based upon independent modeling.
3. Crossings of jurisdictional wetlands, year round naturally occurring creeks, streams, ponds, East Canyon Creek and any other water sources as set forth in an established Source Protection Zone, or man-made or natural reservoirs may be allowed as part of the conditional use permit process, on the following basis:

a. Open cut trench excavation of jurisdictional wetlands, and year round naturally occurring creeks, streams, rivers or ponds (except for the East Canyon Creek, Weber River, and the Provo River) based upon the best engineering practices is permitted at the discretion of the County Engineer. However, if in the opinion of the County Engineer, circumstances warrant, horizontal directional drilling or jack and bore construction methods as set forth in 10-8-13(D)(3)(b) may be required.

b. Crossing of East Canyon Creek and any other water sources as set forth in an established Source Protection Zone, unless otherwise approved by the County Engineer, shall be by horizontal directional drilling or jack and bore construction methods. Jack and bore sending and receiving pits must be located outside of the ten (10) year frequency storm limits and/or the required clearance distances from the thalweg, whichever is greater, and must have the approval of the FEMA Floodplain Administrator if within the 1% chance annual floodplain (100-year storm). Directional drilling pits shall be constructed well beyond the top of the bank. A soils engineering report and/or engineering geology report may be required at the discretion of the County Engineer. Armoring of the pipeline may be required as determined by hydraulic modeling and approved by the County Engineer. The consultant designing the crossing shall assure proper depth of utility to prevent exposure from localized scouring caused by improvements in the stream corridor. Applicant shall coordinate with the local Floodplain Administrator to determine appropriate scour protection depths. Pipeline minimum depth is ten (10) feet under channel grade to the top of the pipeline.

c. County Engineer shall review the engineering spill analysis and associated hydraulic reports and may require additional isolation valves immediately adjacent to both sides of Jurisdictional Wetlands, year round naturally occurring creeks, streams, ponds, rivers, East Canyon Creek and any other water sources as set forth in an established Source Protection Zone, or man-made or natural reservoir crossings in order to minimize spills or leaks.

4. Every effort shall be made so that pipeline related equipment enclosures and other structures are appropriately designed to mitigate their visual
impact on the natural environment. This may include the incorporation of stealth design techniques and/or other visual screening methods as approved by the Director.

5. Unless otherwise modified by this section, all criteria set forth in 10-4-2 (Environmental Criteria) and 10-4-3 (Critical Lands) shall apply to Hazardous Liquids or Materials Transmission Pipelines.

a. In the event that it becomes necessary for a Hazardous Liquids or Materials Transmission Pipeline to traverse a hillside or natural grade slope of greater than thirty percent (30%), adequate mitigation shall be required to ensure the alignment is sensitively sited so as to encourage stabilization of the disturbed slopes, minimize excavation, and the conservation of the natural appearance and grade of the hillside. The Transmission Pipeline alignment shall be integrated into the site, using topography, vegetation and other reasonable techniques, in a manner that causes it to blend into the hillside.