

## **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, (HLPESA) 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.4<sup>th</sup> 181, 125 Cal Rptr.2d 365 (2<sup>nd</sup> 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 (4<sup>th</sup> 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 (2<sup>nd</sup> 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 (4<sup>th</sup> Cir. 2013); Texas Midstream Gas Services, LLC v. City of Grand Prairie, 608 F.3d 200 (5<sup>th</sup> Cir. 2010); ANR Pipeline Company v. Iowa State Commerce Commission, 828 F.2d 465 (8<sup>th</sup> 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**, 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 7<sup>th</sup> day of January, 2015.

ATTEST:

SUMMIT COUNTY COUNCIL

\_\_\_\_\_  
Kent Jones  
Summit County Clerk

\_\_\_\_\_  
Kim Carson, Chair

APPROVED AS TO FORM

\_\_\_\_\_  
David L. Thomas  
Chief Civil Deputy

VOTING OF COUNTY COUNCIL:

Councilmember Carson	___Aye_____
Councilmember Robinson	___Aye_____
Councilmember Ure	___Aye_____
Councilmember Armstrong	___Nay_____
Councilmember McMullin	___Aye_____

EXHIBIT A

# TITLE 10

## SNYDERVILLE BASIN DEVELOPMENT CODE

### 10-2-10

#### A.

Hazardous Liquids or Materials Transmission Pipelines	C	C	C	C	C	C	C	C	Section 10-8-3
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### 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.
  3. Mitigating potential adverse aesthetic impacts from the siting, construction, operation, and maintenance of a Hazardous Liquids or Materials Transmission Pipeline.
  4. Ensuring adequate protection of the environment 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.
  2. **Hazardous Liquids or Materials** means any hazardous or toxic waste, substance or material, including petroleum, petroleum products, and anhydrous ammonia as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et seq.; the Hazardous Liquid Pipeline Safety Act, 49 U.S.C.A. Section 60101, et. seq.; the Utah Safe Drinking Water Act, Utah Code Ann. §19-4-101, et. seq.; the Utah Water Quality Act, Utah Code Ann. §19-5-101, et. seq.; the Utah Solid & Hazardous Waste Act, Utah Code Ann. §19-6-101, et. seq., 49 CFR 195.2, and any successor State or Federal environmental laws which define hazardous substances. Hazardous Material, without limiting the scope of the foregoing, shall include, without limitation, Hazardous Liquids as defined by 49 CFR Part 195.2, but shall not include natural gas, including liquefied natural gas.
  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.