



Summit Carbon Solutions Pipeline

*The following document was prepared by
attorneys at Ohnstad Twichell, P.C.*

1. Is Summit required to restore the property after the pipeline is constructed as part of the easement?

Yes, the easement form that we've reviewed contains a clause where Summit agrees to restore the property and to "construct and maintain soil conservation devices on the easement property...to prevent soil erosion." However, these restoration measures do not guarantee the impacted and affected soil will be immediately as productive as it was prior to the pipeline being constructed.

The negative impact on soil productivity should be addressed when negotiating compensation. The depth at which the pipeline is installed will also likely be an important factor in the amount of time it takes the impacted soil to regain its pre-pipeline easement productivity. Summit has agreed to bury the pipeline to a depth of no less than four (4) feet but landowners who want the pipeline buried to greater depths will need to revise their easement to specify the appropriate depth. Landowners will also want to consider the appropriate restoration requirements they will need included in the easement for their respective parcels of land to ensure the land is restored as close to the original condition as possible.

2. Is it possible to negotiate the path of the proposed pipeline to avoid damage to existing tile lines?

This is dependent on several factors, including

1. Where a landowner's property is located in relation to the project,
2. The direction of the pipeline compared to the tile, and
3. Whether there is other land within the approved path nearby that could be used to avoid or minimize disturbance to tile lines.

Even if damage to existing tile lines cannot be avoided, Summit has informally confirmed it will restore damaged tile at its sole expense or reimburse landowners if landowners have a particular tile contractor they want to use. To make this binding on Summit, it must be specifically identified in the easement that Summit will restore or reimburse landowner for damage that was done to landowner's tile as a result of Summit being on landowner's property.

3. How big will the pipe be?

The actual pipe will be between 4 inches for smaller gathering lines and 24 inches in diameter for the main line. Pipe size on each person's land will depend on where your property is located in relation to the sequestration sights and CO2 storage facilities.

4. What are the setback requirements from the pipeline?

The pipeline cannot be built within 500 feet of an inhabited rural residence, but it can be waived by the owner of the inhabited rural residence in writing.

5. What is the typical duration for this type of easement?

North Dakota law allows for easements up to 99 years. From Summit's perspective, the longest lease possible ensures it has the necessary real estate secured for the entirety of its project. From a landowner's perspective, it makes sense to have an easement with a shorter term for multiple reasons, including:

1. To ensure that issues that arise under the original easement terms are addressed and resolved in a subsequent easement, and
2. to potentially obtain additional compensation.

6. Regarding compensation, is an annual payment or a one-time, upfront payment more typical for this type of project?

Compensation structure can and should be negotiated by the landowners and their respective counsel and Summit.

7. Will landowners be compensated for damage to crops?

Summit's proposed easement packages that we've seen so far include a calculation sheet that offer to pay the equivalent of 240 percent of one year's crop damage. However, because it is still unknown as to how long it will take the compacted soil of the pipeline easement property and temporary construction easement property to return to pre-pipeline easement productivity, 240 percent may not accurately reflect the actual damages suffered by the land being compacted and less productive. The restoration practices used will be a factor in how quickly the land returns to its previous level of productivity.

8. How can landowners ensure they are receiving just compensation?

Talk with your neighbors, NDFB, and your attorney to obtain as much information as possible. "Just compensation" will likely differ from landowner to landowner based on

1. The quality of the parcel of land and
2. Each person's personal view of what they feel just compensation looks like to them and their families.

9. Can Summit use eminent domain to take legal interests in my property for the pipeline?

The short answer is "not yet." However, the N.D. Public Service Commission ("PSC") must first declare that Summit is a "common carrier" and approve Summit's project application prior to using eminent domain. Eminent domain would then only be used if Summit and the landowner cannot agree on the terms (including compensation) of an easement. Summit would also be required to provide the landowner with certain notices prior to taking an interest in the land. Summit also has a duty to attempt to acquire the property via negotiation prior to condemning the property and must offer an amount it believes to be just compensation.

If the landowner and Summit are unable to successfully negotiate terms of an easement because the landowner believes the compensation being offered is not just and Summit commences with eminent domain, North Dakota law allows the judge/Court to require Summit to reimburse landowners for their attorney's and appraiser's fees and costs in defending the eminent domain action even if the landowner is not successful in obtaining a judgment that provides for increased compensation.

10. From the landowner's perspective, are there any red flags in the easement to look for?

Yes, while compensation is always an important factor in any transaction, other factors that should be considered are:

1. Liability and limiting one's liability,
2. Indemnification and insurance,
3. The requirement to restore real and personal property,
4. Easement duration,
5. Easement route, and
6. Factors that are unique/important to each parcel of land.

11. Will the path of the pipeline cut diagonally through my field or will it 'stair-step' along the boundary of my fields/property?

Currently, the proposed project maps the pipeline company has made available show the pipeline running diagonally in a northwesterly direction from southeast North Dakota to the center of the state. Whether the easement is to run diagonally through a landowner's property is something that should be negotiated between the parties.

12. Is there a benefit in landowners working as a group to negotiate as a single unit?

Like anything, there are benefits and drawbacks to working as a group. One of the benefits of landowners banding together is that it strengthens the group's bargaining power/position because there are more acres at stake for the pipeline company to acquire, which in theory, should incentivize the pipeline to be willing to entertain the group's terms.

On the other hand, it may be difficult to get out of the group if some members wish to accept certain terms and other group members do not.

13. Describe the importance of ensuring the legal description of the easement property conforms with North Dakota law.

Some easements are blanket easements that do not sufficiently define the route of the easement. Instead, on the date the easement is signed:

1. The legal description of the easement area should be surveyed by a North Dakota-licensed land surveyor, and
2. The legal description should be definite and specific and evidenced by a certificate of survey.

This is beneficial to both the landowner and the pipeline company because both parties are then aware at the outset as to the location of the easement. This also allows the landowner to plan where other utilities, buildings, etc. may go on his/her property.