

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Plains Pipeline, L.P.
Crude Oil Pipeline – Williams County
Siting Application

Case No. PU-10-630

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

February 1, 2012

Appearances

Commissioners: Tony Clark, Kevin Cramer, and Brian P. Kalk.

Mollie M. Smith, Attorney-at-Law, Fredrikson & Byron, P.A., 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, on behalf of Plains Pipeline, L.P.

Mitchell D. Armstrong, Special Assistant Attorney General, Legal Counsel for the North Dakota Public Service Commission.

Patrick Fahn, Director – Compliance and Competitive Markets Division, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Al Wahl, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street – Suite 303, Bismarck, ND 58503, as Procedural Hearing Officer.

Preliminary Statement

Under North Dakota Century Code, Section 49-22-07, a utility may not begin construction of a transmission facility in the state without first having obtained a route permit. The facility must be constructed, operated, and maintained in conformity with the permit and any terms, conditions, or modifications of the permit.

On August 12, 2011, Plains Pipeline, L.P. (Plains), filed with the North Dakota Public Service Commission an application for a certificate of corridor compatibility and an application for a route permit to authorize construction of a crude oil pipeline project in Williams County, North Dakota (Project). Plains also filed an application for waivers of the following requirements: (1) that the Commission hold a separate hearing on Plains' waiver request, certificate of corridor compatibility application and route permit application; and (2) separately filed applications for a corridor certificate and a route permit, and separate publication of notices of filing the applications.

On September 7, 2011, the Commission deemed the applications complete and issued a Notice of Filing and Notice of Hearing scheduling a hearing for November 1, 2011, at 10:00 am at City Hall, 22 E Broadway, Williston, North Dakota.

The Notice of Hearing identified the following issues to be considered with respect to Plains' application for waiver of procedures and time schedules:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The Notice of Hearing identified the following issues to be considered with respect to Plains' applications for a certificate of corridor compatibility and route permit:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On October 28, 2011, Plains filed an Amendment of Application for Route Permit providing information regarding certain re-routes.

On November 1, 2011, the public hearing was held as scheduled.

On January 4, 2012, Plains filed late-filed Exhibit 9 (concurrence letter from the North Dakota State Historic Preservation Office (SHPO) regarding Addendum 2 to the Class I and Class III Cultural Resources Inventory Report) and late-filed Exhibit 10 (maps of the final proposed Project route and survey corridor) with the Commission.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Plains is a Texas limited partnership, that is headquartered in Houston, Texas.
2. Plains is authorized to transact business in the State of North Dakota, as evidenced by the testimony presented by Plains at the public hearing.

Size, Type, and Preferred Location of Facility

3. The Project will consist of an underground crude oil pipeline approximately 79 miles long that extends from the Plains Pipeline Trenton Station near Trenton, North Dakota, to an interconnection point with the existing Wascana Pipeline approximately 2.5 miles north of the town of Outlook in Sheridan County, Montana. The North Dakota portion of the Project will be approximately 32.1 miles long and will extend from the Trenton Station to the North Dakota/Montana border. The portion of the Project in North Dakota will be located entirely in Williams County. The estimated cost of the North Dakota portion of the Project is \$25 million.

4. The Project will utilize 12.75-inch outside diameter steel pipe and the maximum allowable operating pressure will be 1,468 pounds per square inch gauge. The initial capacity will be 48,000 barrels per day (bpd), with a maximum capacity of up to 75,000 bpd.

5. Surface facilities installed as part of the Project will include: two mainline pumps (approximately 1,000 horsepower each to be installed in series); one ultrasonic integrity meter; three mainline block valves and two mainline check valves located in North Dakota; miscellaneous appurtenant piping; pig launchers; a supervisory control and data acquisition system; pipeline markers; and aerial markers. Small fenced-in enclosures to house equipment will also be installed at the valve sites.

Need for the Facility

6. Plains has concluded that there is a need for the facility because there is insufficient capacity from existing and planned pipeline infrastructure to meet the anticipated future transportation needs of producers in the Bakken and Three Forks development area. The Project will provide producers in the Bakken and Three Forks development area with an additional option for transporting their crude oil to third-party pipelines with connections to key markets within the United States.

Study of Preferred Route(s)

7. In its Application, Plains defined a one-mile wide study area centered on the preferred pipeline route. For the majority of the Project, Plains identified an approximately 140-foot wide survey corridor centered on the preferred pipeline route for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys and environmental assessments. For certain areas that were re-routed after the initial application was filed, the survey corridor ranged from 70-foot wide to 200-foot wide. Field surveys were also conducted for all Project facility locations and temporary workspace areas. The field survey corridor for the final proposed Project route, which includes the Project facility locations and temporary workspace areas that were field surveyed, is identified in late-filed Exhibit 10.

8. Plains analyzed a number of alternatives and factors, including engineering, economic, and environmental factors to determine the most feasible route. The

alternatives considered included a no action alternative, a trucking alternative, a rail alternative, and routing alternatives.

9. The following agencies were contacted by Plains and provided written comments: North Dakota Game and Fish Department; North Dakota Parks & Recreation Department; North Dakota State Land Department; and the SHPO.

10. Plains conducted a Class I literature search on the one-mile wide study area, and a Class III cultural resource inventory was completed on the narrower field survey corridor, including all areas that will be used in conjunction with construction of the Project. Additionally, environmental data collected included information on soils, land use, wetlands and waterbody crossings, noxious weeds, trees and shrubs, and protected species and habitat.

11. The SHPO has concurred with the determination that no historic properties or significant sites will be affected by the Project so long as the Project area remains as described collectively in the Class I and Class III Cultural Resource Inventory, the Addendum to the Class I and Class III Cultural Resource Inventory, and Addendum 2 to the Class I and Class III Cultural Resource Inventory, and any avoidance measures for unevaluated and/or eligible sites set forth in the reports are followed.

12. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22-05.1 to guide the Commission in evaluating the suitability of granting an application for a Certificate of Corridor Compatibility and Route Permit. The criteria, as set forth in North Dakota Administrative Code Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria.

13. A transmission facility route must not be sited within an Exclusion Area. One type of Exclusion Area, state archaeological sites, is present within the corridor, but all archaeological sites are avoided by the route.

14. A transmission facility route must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there are no reasonable alternatives. In determining whether an Avoidance Area shall be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. The route will pass within 500 feet of one occupied residence. Plains has obtained a written waiver of the Avoidance Area criteria from the owner of the residence.

15. In accordance with the Commission's Selection Criteria, a transmission route shall be approved if it is demonstrated that any significant adverse impacts that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum or managed and maintained at an acceptable minimum. Plains has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. The Project will have no significant adverse impacts on the Commission's Selection Criteria.

16. Wetland delineations were completed along the proposed route. Wetlands are present within the study area and will be crossed by the route. Plains will take steps to protect wetlands and waterbodies, and no permanent impacts to wetlands or waterbodies are anticipated. Some woodlands are present within the study area, and have been avoided by the route to the extent practicable. An inventory of trees and shrubs that would be affected by the Project has been completed. Trees and shrubs have been counted and will be replaced in accordance with the Commission's tree and shrub mitigation specifications.

17. The Project may result in modification of habitat and temporary displacement of wildlife, due to clearing and construction. The Project will have no significant impact on fish and wildlife resources and no impacts are anticipated to endangered, threatened or sensitive plant or animal species.

18. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Plains has analyzed the relevant Policy Criteria and has expressly committed to designing, constructing and operating the pipeline in accordance with all applicable federal, state and local laws and regulations; energy conservation through the facility's location, process and design; training and utilizing available labor in the state; constructing the Project to take advantage of economies of scale; achieving transmission capacity in the most minimally intrusive and most efficient way possible; and coordinating with state and local officials. Plains submitted evidence to demonstrate commitment to maximize the benefits of the proposed transmission facility as far as is possible so as to meet the Policy Criteria.

19. It is appropriate to authorize a corridor only for the area for which Plains performed the more thorough cultural resource study.

Measures to Minimize Impact

20. Plains has agreed to a number of steps to mitigate the impact of the Project, as indicated by the October 28, 2011 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is attached to this Order.

21. The Project's permanent right-of-way (ROW) will be 30 feet wide, while the temporary ROW will generally be 70 feet wide. Additional temporary workspace may be required at certain locations (e.g., road, railroad and waterbody crossings), while a narrower temporary ROW will be used in environmentally sensitive areas as described at the hearing and in the application. The construction ROW will be reduced to 50 feet wide in wooded areas. Plains will generally use existing public roads to access the ROW, but may need to construct short gravel roads to access valve sites.

22. The design, construction and operation of the pipeline will be in accordance with the United States Department of Transportation regulations governing the transportation of crude oil, as prescribed under 49 CFR Parts 194 and 195.

23. Plains will utilize environmental monitors and inspectors to comply with all applicable permits.
24. Plains will participate in the North Dakota One-Call Excavation Notice System.
25. Plains will prepare an Emergency Response Plan and make it available to local authorities and first responders.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Plains Pipeline, L.P., and over the subject matter of this application under North Dakota Century Code Chapter 49-22.
2. Plains is a utility as defined in North Dakota Century Code Section 49-22-03(13).
3. The proposed pipeline is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).
4. The location, construction, and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The location, construction and operation of the Project are compatible with environmental preservation and the efficient use of resources.
6. The Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
7. The Project is of such design and location that it will produce minimal adverse effects, in accordance with North Dakota Century Code Section 49-22-07.2.
8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application and provided under North Dakota Century Code Section 49-22-07.2.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now issues its:

Order

The Commission orders:

1. Plains Pipeline, L.P.'s application for a waiver of procedures and time schedules is granted.

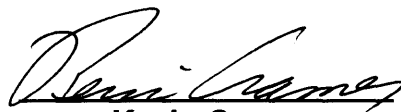
2. Certificate of Corridor Compatibility Number 127 is issued to Plains Pipeline, L.P., designating a corridor for the construction, operation, and maintenance of the proposed pipeline and associated facilities in Williams County, North Dakota. For purposes of the Certificate, the Corridor consists of the field survey corridor identified in late-filed Exhibit 10, which is incorporated by reference.

3. Route Permit Number 136 is issued to Plains Pipeline, L.P., granting authority to construct and operate a 12.75-inch crude oil pipeline and associated facilities in Williams County, North Dakota. For purposes of the Permit, the Route is identified in late-filed Exhibit 10, which is incorporated by reference.

4. The October 28, 2011 Certification Relating to Order Provisions – Transmission Facility Siting (Certification) is incorporated by reference and attached to this Order.

5. To the extent there are any conflicts or inconsistencies between the Application and the Certification provisions, the Certification provisions control.

PUBLIC SERVICE COMMISSION



**Kevin Cramer
Commissioner**



**Tony Clark
Chairman**



**Brian P. Kalk
Commissioner**

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Corridor Compatibility Number 127

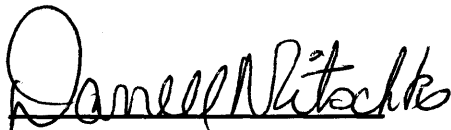
This is to certify that the Commission has designated a transmission facility corridor for Plains Pipeline, L.P. for the construction of 32.1 miles of 12.75-inch outside diameter pipeline and associated facilities in Williams County, North Dakota, for the transmission of crude oil.

This certificate is issued in accordance with the Order of this Commission dated February 1, 2012 in Case No. PU-10-630 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, February 1, 2012.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

STATE OF NORTH DAKOTA

Route Permit Number 136

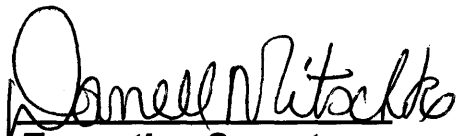
This is to certify that the Commission has designated a transmission facility route for Plains Pipeline, L.P. for the construction of 32.1 miles of 12.75-inch outside diameter pipeline and associated facilities in Williams County, North Dakota, for the transmission of crude oil.

This permit is issued in accordance with the Order of this Commission dated February 1, 2012 in Case No. PU-10-630 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, February 1, 2012.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Plains Pipeline, L.P.
Crude Oil Pipeline – Williams County
Siting Application

Case No. PU-10-630

CERTIFICATION RELATING TO ORDER PROVISIONS
TRANSMISSION FACILITY SITING

I am Daniel Nerbonne, a representative of Plains Pipeline, L.P. ("Plains Pipeline") with authority to bind Plains Pipeline to requirements to be set forth by the Commission in its Order and I certify the following:

1. Plains Pipeline understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Plains Pipeline shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Plains Pipeline agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Plains Pipeline representative, its construction supervisor, and a representative of Commission Staff, to ensure that Plains Pipeline fully understands the conditions set forth in the Commission's order.
3. Plains Pipeline agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
4. Plains Pipeline understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
5. Plains Pipeline agrees to inform the Commission of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Plains Pipeline shall keep the Commission updated on construction activities on a weekly basis.
6. Plains Pipeline understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.
7. Plains Pipeline understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in

an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.

8. Plains Pipeline agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
9. Plains Pipeline agrees to construct and operate the transmission facility in the manner described in Plains Pipeline's application, in any late filed exhibits and supplemental materials, and in accordance with all applicable safety requirements.
10. Plains Pipeline agrees to report promptly to the Commission the presence in the permit area of any critical habitat or threatened species, endangered species, bald eagles, or golden eagles of which Plains Pipeline becomes aware and which were not previously reported to the Commission.
11. Plains Pipeline understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
12. Plains Pipeline understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.
13. Plains Pipeline understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Plains Pipeline to open cut the road.
14. Plains Pipeline understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
15. Plains Pipeline understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.
16. Plains Pipeline understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be stripped and segregated from the subsoil. Except along segments of the line using the double ditching method, any area on which excavated subsoil will be placed

must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.

17. Plains Pipeline understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
18. Plains Pipeline understands and agrees that its obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the transmission facility.
19. Plains Pipeline understands and agrees that its obligation for reclamation and maintenance of the transmission facility, associated facilities, and roadways will continue throughout the life of the transmission facility.
20. Plains Pipeline agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
21. Plains Pipeline understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the transmission facility.
22. Plains Pipeline understands and agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
23. Plains Pipeline understands and agrees that it shall repair or replace all broken or damaged drainage tile during all phases of construction and operation of the transmission facility.
24. Plains Pipeline understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Plains Pipeline unless otherwise negotiated with landowners.
25. Plains Pipeline understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
26. Plains Pipeline understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
27. Plains Pipeline understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.
28. Plains Pipeline understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the transmission facility, including


injuries to any person, or the death of any threatened or endangered species on the site within five business days of such event.

29. Plains Pipeline understands and agrees that it shall implement a procedure for how complaints concerning the transmission facility will be handled by Plains Pipeline
30. Upon request, Plains Pipeline agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
31. Plains Pipeline understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility. Plains Pipeline understands and agrees to obtain written approval from the Commission prior to any modifications to the site plan or the transmission facility. Approval may be granted after notice and opportunity for hearing.
32. Plains Pipeline agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission, and will provide this information within three months of the Commission order approving the corridor. Plains Pipeline also agrees to provide an electronic version of the approved corridor that can be imported into ESRI GIS mapping software within 3 months of the Order. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
33. Plains Pipeline agrees to provide the Commission with both an electronic and a paper copy of the design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within three months of the completion of the construction. Plains Pipeline also agrees to provide an electronic version of the as-built facility design specifications that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
34. Plains Pipeline understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.
35. Plains Pipeline understands and agrees that in the event Plains Pipeline desires to construct, within any corridor granted by a Certificate of Corridor Compatibility in this proceeding, a transmission facility or energy conversion facility that was not included in Plains Pipeline's application in this proceeding, Plains Pipeline shall apply to the Commission for a Route Permit or Site Certificate for the facility.

36. Plains Pipeline shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Plains Pipeline shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined and clearance to proceed has been given by the Commission or Commission staff.
37. Plains Pipeline understands and agrees that the corridor certificate and route permit are subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota Century Code Chapter 49-23, the conditions and criteria of the certificate or permit or subsequent modification, or failure to comply with applicable statutes, or rules, regulations, standards, and permits of other state or federal agencies.

Dated this 28 day of October, 2011.

PLAINS PIPELINE, L.P.

By 

Its VP Engineering

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Plains Pipeline, L.P.
Crude Oil Pipeline – Williams County
Siting Application**

Case No. PU-10-630

Tree and Shrub Mitigation Specifications

Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), shall be inventoried before cutting. The inventory shall record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts, and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, shall be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1-inch diameter at breast height (dbh) or greater shall be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way shall be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs shall be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil shall be preserved and replaced after construction. Shrubs shall be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared shall be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by sampling method that will properly represent the woody vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission), and approved prior to the start of construction shall define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots shall be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

Clearing for Construction

7. Trees and shrubs shall be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 50 feet or less unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced shall be noted on the inventory.

Replacement

10. Prior to replacement, documentation identifying the number and variety of trees removed as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings shall be filed with the Commission for approval.
11. Tree replacement shall be on a 2 to 1 basis with 2-year-old saplings. Shrub replacement shall be on a 2 to 1 basis with stem cuttings.
12. Trees and shrubs shall be replaced by the same species or similar species, except in the case of invasive species or noxious weeds, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.
13. Landowners shall be given the option of having replacement trees or shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing those replacement trees or shrubs to be planted at alternative locations.
14. At the conclusion of the project, documentation identifying the actual number, variety, type, location, and date of the replacement plantings shall be filed with the Commission.
15. Tree and shrub replacements shall be inspected once a year for three years, on or about the anniversary of the plantings, and, on or shortly before October 1 of each year, a report shall be submitted to the Commission documenting the condition of replacement planting and any woodlands work completed. If after three years from the anniversary of the plantings the survival rate is less than 75%, the Commission may order additional planting(s).