

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Enbridge Pipelines (North Dakota) LLC
Berthold Station Expansion Project – Ward County
Siting Application**

Case No. PU-11-232

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

May 30, 2012

Appearances

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

Brian Bjella, Attorney at Law, Crowley Fleck PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58501, on behalf of Enbridge Pipelines (North Dakota) LLC (“Enbridge”).

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

Christopher A. Marohl, Public Utility Analyst, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Patrick Ward, Administrative Law Judge, Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, North Dakota 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

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

On December 21, 2011, Enbridge Pipelines (North Dakota) LLC (“Enbridge”) filed its application for a certificate of corridor compatibility and an application for route permit with the Public Service Commission (“Commission”) to authorize construction of a crude oil pipeline and associated facilities (“Project”) located in Ward County, North Dakota.

Enbridge also filed an application for waivers on the following requirements: (1) that the Commission hold separate hearings on Enbridge's waiver request, Certificate of Corridor Compatibility application and Route Permit application; and (2) separately file applications for a Corridor Certificate and a Route Permit, and separate publication of notices of filing the applications.

On February 12, 2012, the Commission deemed the application of Enbridge complete and issued a Notice of Filings and Notice of Hearing scheduling a public hearing for April 3, 2012, at 10:00 a.m. CDT at the Berthold Sportsmens Club, 210 Main Street, Berthold, North Dakota 58718.

The Notice of Filings and Notice of Hearing identified the following issues to be considered:

1. Is the proposed facility of such length, design, location, or purpose that it will produce minimal adverse effects, or, does a demonstrable emergency exist which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system?
2. 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?
3. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
4. Will the proposed facility locations minimize adverse human and environmental impacts while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On March 21, 2012, Enbridge filed a supplemental filing to the application for Corridor Certificate and Route Permit with the Commission including the Army Corps of Engineers Jurisdictional Determination; correspondence from U.S. Fish and Wildlife Service, North Dakota Game and Fish Department and North Dakota Parks and Recreation Department; and an updated list of required permits.

On March 21, 2012, Enbridge filed with the Commission its Certification Relating to Order Provisions: Transmission Facility Siting, binding Enbridge to requirements to be set forth by the Commission in this Order.

On April 3, 2012, the public hearing was held as scheduled.

On April 18, 2012, Enbridge filed Late Filed Exhibit No. 4 describing its requested corridor and route within what is described hereinafter as the Berthold South Property and adjacent railroad right-of-way.

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. Enbridge is a Delaware limited liability company authorized to transact business in the State of North Dakota.

Size, Type and Preferred Location of Facility

2. The Project consists of three pieces described by Property. The first piece is the existing Berthold Station as approved by this Commission in Case No. PU-10-130 comprising of approximately 106 acres. The major facilities to be constructed include two transfer pumps and motors, a new control building, new custody transferring metering, a new quality sampling building and other miscellaneous piping and equipment.

3. The second piece of property is described as the Berthold West Property comprising of approximately 92 acres. The major facilities to be constructed on this property are five transfer pumps and motors, a sample building, a control building, a 4,000 gallon sump tank along with miscellaneous piping and equipment. In addition two 150,000 barrel tanks will be constructed.

4. The third piece of property is what is known as the Berthold South Property. While this property consists of approximately 319 acres, the majority of which is part of a non-jurisdictional rail transfer facility. The only jurisdictional facilities to be constructed on this piece of property are station piping for connectivity to the rail transfer facility, a 20-inch diameter pipeline approximately 5,000 feet in length, and a valve site.

5. The new rail transfer facility to be constructed on the South Property was not part of the application and is non-jurisdictional with respect to North Dakota Century Code Chapter 49-22. This rail transfer facility will include a double rail track loop unit train loading facility capable of housing two 118 car unit trains, an operation building with maintenance shop, a loading building with 14 meter rail car loading arms and vapor collection and combustion systems. The rail transfer facility will be owned by a wholly-owned entity of Enbridge Energy Partners, LP. The rail transfer facility will be operated by Berthold Farmers Elevator.

6. The Berthold Station Expansion Project is designed to offer an additional 80,000 barrels per day of crude oil export capacity.

7. Enbridge has entered into agreements for the acquisition of all properties to accommodate construction and operation of all jurisdictional and non-jurisdictional facilities on both the Berthold West and Berthold South Properties. Enbridge is already the owner of the property comprising the existing Berthold Station.

Need for Facility

8. The production of oil from the Bakken and Three Forks Formations within the Williston Basin of North Dakota is increasing at a rapid rate. This creates a need for additional capacity to transport the oil to refining markets. Without increased transportation capacity out of the Williston Basin, crude oil production could be curtailed. The purpose of the Project is to create additional transportation capacity for crude oil produced primarily from the Bakken and Three Forks Formations in the Williston Basin of North Dakota. Upon completion of the Project, the shippers utilizing this increased capacity will have additional access to refinery markets. Enbridge's existing 210,000 barrel per day pipeline system is full and experiencing apportionment. This Project provides producers of crude oil in the Williston Basin with additional export capacity in order to further develop their current and future production profiles.

Study of Preferred Location(s)

9. In its application, Enbridge studied all land within the perimeter of the existing Berthold Station and Berthold West Property, and also all land within one-half mile of the perimeter of these properties. For that portion of the Project located in the Berthold South Property, Enbridge identified a 400-foot wide survey corridor centered on the preferred pipeline route. These study areas were for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys.

10. Enbridge analyzed a number of alternatives and factors, including engineering, economic, and environmental factors. The alternatives considered included a no action alternative, a trucking alternative, and routing alternatives.

11. The following agencies were contacted by Enbridge and provided written comments: North Dakota Game and Fish Department; North Dakota Parks & Recreation Department; North Dakota State Land Department; and the State Historic Preservation Office ("SHPO"). Enbridge also consulted with the North Dakota Department of Transportation ("NDDOT") with respect to local traffic crossing of U.S. Highway 2.

12. A Class I literature search and a Class III cultural resource inventory were completed, 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.

13. The SHPO has concurred with the determination by Enbridge that no historic properties will be affected by the Project.

14. The Commission has established criteria pursuant to North Dakota Century Code § 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 § 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria.

15. A transmission facility route must not be sited within an Exclusion Area. No Exclusion Areas are present within the Project.

16. A transmission facility must not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there is no reasonable alternative. 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. No avoidance areas are present within the Project.

17. In accordance with the Commission's Selection Criteria, a corridor or route shall be designated only when it is demonstrated that any significant adverse effects which will result from the location, construction, and maintenance of the facility will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. Any adverse effects from the Project will be at an acceptable minimum or managed and maintained at an acceptable minimum.

18. Wetland delineations were completed along the proposed route and within the associated facilities. The delineations found that no permanent impacts to any wetlands are anticipated as a result of the Project. The Corps of Engineers responded to Enbridge's Jurisdictional Determination Request on September 9, 2011, and January 11, 2012, concluding that the delineated features in the Project are not jurisdictional waters of the United States and therefore not subject to the Corps' regulatory authority or permitting.

19. A habitat assessment and raptor nest survey was completed. The assessment did not reveal any threatened and endangered species or critical habitat areas of concern. No raptors or raptor nests were observed during the survey. While Project

construction may result in wildlife habitat removal, due to clearing and construction, the Project will have no significant impact on fish and wildlife resources, and no impacts are anticipated to endangered or threatened sensitive plant or animal species.

20. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Enbridge has analyzed the relevant Policy Criteria and is expressly committed to conducting its business in compliance with all applicable environmental laws and regulations; committing to 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. Enbridge 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.

Measures to Minimize Impact

21. Enbridge has agreed to a number of steps to mitigate the impact of the Project as indicated by the March 22, 2012, Certification Relating to Order Provisions-Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications.

22. Enbridge has developed an Environmental Mitigation Plan for the Project, which provides guidelines and mitigation measures that Enbridge will implement during Project construction. In addition, Enbridge has developed a Spill Prevention, Containment and Control Plan that describes the planning, prevention and control measures to minimize impacts of any Project related spills.

23. The design, construction and operation of the transmission facility will be in accordance with the United States Department of Transportation ("DOT") regulations governing the transportation of crude oil, as prescribed under Parts 194 and 195 of Title 49 of the Code of Federal Regulations.

24. Enbridge will implement an emergency response program in compliance with standards set by the DOT Pipeline and Hazardous Materials Safety Administration. Enbridge's emergency response plan has been submitted to and accepted by the federal DOT. Enbridge seeks input from local first responders in conjunction with the implementation of its emergency response program.

25. Enbridge will use environmental monitors and inspectors to comply with all applicable permits.

26. Enbridge will participate in the North Dakota One-Call Excavation Notice System.

27. It is appropriate to authorize a corridor in the Berthold South Property and adjacent railroad right-of-way limited to 400 feet in width.

From the foregoing Findings of Fact, the Commission makes the following:

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Enbridge, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.
2. Enbridge is a utility as defined in North Dakota Century Code § 49-22-03(13) for purposes of this Project.
3. The proposed pipeline, and associated facilities, is a transmission facility as defined in North Dakota Century Code § 49-22-03(12).
4. The location, construction, and operation of the proposed transmission facility will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The location, construction, and operation of the proposed transmission facility 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, as defined under North Dakota Century Code § 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 § 49-22-07.2.

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

Order

The Commission orders:

1. Enbridge's application for a waiver of procedures and time schedules is granted.

2. Certificate of Corridor Compatibility No. 135 is issued to Enbridge designating a corridor for the construction, operation and maintenance of the proposed Berthold Station Expansion Project encompassing all of the lands located within the existing Berthold Station; all of the lands located within the Berthold West Property; and for 400 feet in width in the Berthold South Property and adjacent railroad right-of-way; as described in Enbridge's late filed Exhibit No. 4, the application and at the public hearing.

3. Route Permit No. 146 is issued to Enbridge granting authority to construct and operate the Berthold Station Expansion Project being a crude oil pipeline and associated facilities encompassing all of the lands located within the existing Berthold Station; all of the lands located within the Berthold West Property; and pipeline route in the Berthold South Property and adjacent railroad right-of-way as described in Enbridge's late filed Exhibit No. 4, in the application and at the public hearing.

4. The March 22, 2012, Certification Relating to Order Provisions-Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, is incorporated by reference and attached to this Order.

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 135


This is to certify that the Commission has designated a transmission facility corridor for Enbridge Pipelines (North Dakota) LLC for the expansion at its existing Berthold Station in Ward County, North Dakota, for the transmission of crude oil.

This certificate is issued in accordance with the Order of this Commission dated May 30, 2012 in Case No. PU-11-232 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, May 30, 2012.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

STATE OF NORTH DAKOTA

Route Permit Number 146

This is to certify that the Commission has designated a transmission facility route for Enbridge Pipelines (North Dakota) LLC for the expansion at its existing Berthold Station in Ward County, North Dakota, for the transmission of crude oil.

This certificate is issued in accordance with the Order of this Commission dated May 30, 2012 in Case No. PU-11-232 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, May 30, 2012.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Enbridge Pipelines (North Dakota) LLC
Berthold Station Expansion Project—Ward County
Siting Application**

Case No. PU-11-232

**CERTIFICATION RELATING TO ORDER PROVISIONS –
TRANSMISSION FACILITY SITING**

I am Richard L. Adams, a representative of Enbridge Pipelines (North Dakota) LLC ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company 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 Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
3. Company 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. Company 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. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a weekly basis.
6. Company 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. Company 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. Company 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. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
10. Company agrees to construct and operate the transmission facility in the manner described in Company's application, in any late filed exhibits, and supplemental materials (Application). To the extent there are any conflicts or inconsistencies between Company's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control.
11. Company 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 Company becomes aware and which were not previously reported to the Commission.
12. Company 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.
13. Company 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.
14. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.

15. Company 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.
16. Company 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.
17. Company 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.
18. Company 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.
19. Company understands and agrees that its obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the transmission facility.
20. Company 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.
21. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
22. Company 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. Company understands and agrees that it shall repair or replace all drainage tile broken or damaged drainage tile as a result of construction and operation of the transmission facility.

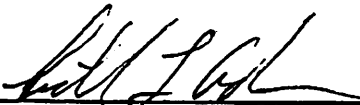
24. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
25. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
26. Company 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. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.
28. Company 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. Company understands and agrees that it shall implement a procedure for how complaints concerning the transmission facility will be handled by Company
30. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
31. Company 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. Company 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. Company 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 3 months of the Commission order approving the corridor. Company 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 Commission order approving the corridor. 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. Company 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 3 months of the completion of the construction. Company 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. Company 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. Company understands and agrees that in the event Company 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 Company's application in this proceeding, Company shall apply to the Commission for a Route Permit or Site Certificate for the facility.
36. Company 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, Company 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.
37. Company 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 22 day of March, 2012.

ENBRIDGE PIPELINES (NORTH DAKOTA) LLC

By 
Richard L. Adams

Its Vice President - U.S. Operations, Liquids Pipelines

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Enbridge Pipelines (North Dakota) LLC
Berthold Station Expansion Project – Ward County
Siting Application**

Case No. PU-11-232

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*), must be inventoried before cutting. The inventory must 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, must 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 must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must 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 must be preserved and replaced after construction. Shrubs must 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 must be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by a 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 must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must 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 must be selectively cleared, leaving mature trees and shrubs intact where practical.

8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, 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 must be noted on the inventory.

Replacement

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service. Invasive or noxious species must be replaced by similar non-invasive or non-noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.
13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).