

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Hiland Operating, LLC**  
**6-Inch Natural Gas Pipeline – Divide & Burke Counties**  
**Siting Application**

**Case No. PU-12-190**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**December 18, 2013**

**Appearances**

Commissioners: Brian P. Kalk, Randy Christmann and Julie Fedorchak.

Jillian R. Rupnow, Attorney at Law, Fredrikson & Byron P.A., 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, on behalf of Hiland Operating, LLC.

Brian Schmidt, Special Assistant Attorney General, P. O. Box 460, Bismarck, North Dakota 58502-0460, on behalf of the Public Service Commission.

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

Bonny M. Fetch, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14<sup>th</sup> Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

**Preliminary Statement**

On January 31, 2013, Hiland Operating, LLC (Hiland) filed applications for a certificate of corridor compatibility and a route permit for its existing 6.5 mile, 6-inch natural gas pipeline (Pipeline) located in Divide and Burke Counties, North Dakota.

On January 31, 2013, Hiland filed a request for waiver of procedures and time schedules established under North Dakota Century Code (NDCC) Chapter 49-22 and North Dakota Administrative Code (Siting Rules) Chapter 69-06-06. In its application for waivers of procedures and time schedules, Hiland requests that the Commission waive the following:

1. Procedures that require separate filings of applications for a certificate of corridor compatibility and a route permit, and procedures that require separate notices of such applications,

2. Procedures that may require separate public hearings on a waiver request, a certificate of corridor compatibility application, and a route permit application.

On May 20, 2013, Hiland filed a Post-Construction Restoration Report, Post-Construction Tree Survey, and letters from federal agencies concerning the Pipeline.

On August 21, 2013, the Commission deemed the applications complete and issued a Notice of Filings and Notice of Hearing scheduling a public hearing on the applications for October 8, 2013, at 10:00 a.m. CST, at Powers Lake City Hall, 218 Main Street, Powers Lake, North Dakota, 58773.

The notice identified the following issues to be considered with respect to the 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 identified the following issues to be considered with respect to the 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 8, 2013, the public hearing was held as scheduled.

### **Discussion**

Under NDCC 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.

Hiland began operating in North Dakota in 2005, and commenced construction of this transmission pipeline three years later in 2008 without applying for or receiving a route permit or corridor certificate from the Public Service Commission as required by law. This is a serious violation of North Dakota's siting laws, which are designed to provide for environmentally sound, orderly and efficient development and use of our state's energy resources.

Hiland testified at the hearing that they were not aware of the requirement to site this facility. This is difficult to believe given the company's three years of experience in the state at the time, and reflects very poorly on the company's philosophy and approach to project development. Most importantly, ignorance of the law is not an acceptable defense. North Dakotans treasure our outdoor heritage and our environment. We have fair and reasonable laws, rules and regulations for siting projects such as this, and our state agencies are responsive and efficient in working with companies to provide necessary permits in a timely manner. Failing to follow the state's siting provisions is not tolerated.

State law provides for significant penalties for those who willfully violate state siting requirements and operate without a corridor certificate or route permit. Willfully, however, is a high standard, requiring that the company intentionally, knowingly or recklessly ignored the law. We're not sure that is the case in this matter.

Ultimately, the Commission would not have known about this pipeline at this time if Hiland had not self-reported their violation. This is a significant step in overcoming the company's original failure to permit their project. Properly reclaiming, recording and monitoring this and all other underground infrastructure, even years after construction, is the most important for public safety and for the overall goal of developing North Dakota's oil and gas resources in a manner that is efficient, environmentally sound and safe for all of the people living in this growing region.

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. Hiland is a Delaware limited liability company.
2. Hiland has been authorized to do business in the State of North Dakota since January 5, 2005, when it filed its Articles of Incorporation with the North Dakota Secretary of State, as evidenced by the corporate papers filed with the Commission on October 28, 2010 (see Public Service Commission Case No. PU-10-618).
3. In November 2008, Hiland began constructing the Pipeline and in March 2009, began operating the Pipeline. Hiland was unaware of the requirements of the Energy Conversion and Transmission Facility Siting Act, NDCC Chapter 49-22 (Siting Act), and the Siting Rules, when it constructed the Pipeline. Hiland became aware of the Siting

Act and Siting Rules and, on January 31, 2013, filed with the Commission to begin the siting process.

#### Size and Type of Facility

4. The Pipeline is approximately 6 miles in length, originates at the Norse Gas Plant in Divide County, North Dakota, and terminates at a WBI Energy Transmission, Inc. (WBI) transmission line tie-in in Burke County, North Dakota.
5. The Pipeline utilizes 6-inch nominal diameter steel pipe and the maximum operating pressure is 1,200 pounds of pressure per square inch gauge. The maximum capacity is 20 MMCF per day.
6. Aboveground facilities include block valves, pig launching and receiving stations, rectifiers, and pipeline markers.
7. The Pipeline provides an additional means of transporting Bakken and Three Forks natural gas to WBI's transmission line, from which the gas can be transported to key markets within the United States.

#### Study of Preferred Location(s)

8. In its Application, Hiland defined a one-mile-wide study area centered on the preferred pipeline route. Hiland identified an area a minimum of 250 feet wide for the purpose of conducting cultural resource field surveys, biological and wetland and water body field surveys, and other environmental field assessments (field survey area). Field surveys were also conducted for all Pipeline facility locations and temporary workspace areas. The field survey area for the Pipeline, which encompasses the final proposed Pipeline route, is identified in the maps provided in Appendix 4 to the route application.
9. Hiland analyzed a number of alternatives and factors, including engineering, economic, and environmental factors for the route. The alternatives considered included a larger or smaller diameter pipeline, as well as an alternative pipeline route from Hiland's Norse Gas Plant to the Prairie Rose Pipeline that is operated by Pecan Pipeline (North Dakota), LLC.
10. Hiland conducted a post-construction restoration inspection and post-construction tree survey. At the time of the inspection, the degree of revegetation varied considerably due to an adjacent and more recent pipeline project. Many looped areas had bare soil with no vegetation colonizing the area. At the hearing, Hiland confirmed it would accept responsibility for satisfactory restoration of the corridor.
11. The following agencies were contacted by Hiland and provided comments: North Dakota Department of Health, State Historical Society of North Dakota, State Historic Preservation Office (SHPO), North Dakota Game and Fish Department, North Dakota Geological Survey Division, North Dakota Parks and Recreation Department, North

Dakota State Water Commission, U.S. Fish and Wildlife Service North Dakota Field Office, Lostwood Wetland Management District.

12. Hiland conducted a Class I literature search on a two-mile-wide area centered on the Pipeline route, and a Class III cultural resource inventory was completed on a narrower 250-foot-wide field survey corridor. Additionally, environmental data collected included information on soils, land use, wetlands and water body crossings, noxious weeds, trees, saplings, and shrubs, and protected species and habitats.

13. The SHPO concurred that no historic properties or significant sites will be affected by the Pipeline so long as the Pipeline remains of the nature and in the location described in the Class I and Class III Cultural Resource Inventory Report, and Hiland follows any site avoidance measures set forth in those reports.

#### Siting Criteria

14. The Commission has established criteria pursuant to NDCC Section 49-22-05.1 of the to guide the Commission in evaluating the suitability of granting a Certificate of Corridor Compatibility and Route Permit. The criteria, as set forth in Section 69-06-08-02 of the Siting Rules, 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 will be impacted by the Pipeline.

16. 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. No avoidance areas will be impacted by the Pipeline.

17. In accordance with the Commission's selection criteria, a transmission facility 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. Hiland has analyzed the impacts of the Pipeline in relation to all of the relevant selection criteria. The Pipeline will have no significant adverse impacts on the Commission's selection criteria.

18. A wetlands and water bodies inventory was completed along the proposed route. Eleven wetlands or waterbodies are present within the study area. All wetlands were bored to avoid impacts. One tree row was crossed during Pipeline construction. However, the row was bored and it is believed that no trees were impacted. Any trees or shrubs removed during construction of the Pipeline will be replaced in accordance with the Commission's Tree and Shrub Mitigation Specifications.

19. The Pipeline may have resulted in temporary modification of habitat and temporary displacement of wildlife, due to clearing and construction. The Pipeline will have no significant impact on fish and wildlife resources and no impacts are anticipated to endangered, threatened, or 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. Hiland has analyzed the relevant policy criteria and has 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 Pipeline to take advantage of economies of scale; achieving capacity in the most minimally intrusive and most efficient way possible; and coordinating with state and local officials. Hiland submitted evidence to demonstrate its commitment to maximize the benefits of the transmission facility to the extent possible so as to meet the policy criteria.

21. In accordance with the Commission's policy criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Hiland has analyzed the relevant policy criteria and has 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 Pipeline to take advantage of economies of scale; achieving capacity in the most minimally intrusive and most efficient way possible; and coordinating with state and local officials. Hiland submitted evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facility to the extent possible so as to meet the policy criteria.

22. It is appropriate to authorize a corridor only for the area for which Hiland performed the more thorough field surveys.

#### Mitigation to Minimize Impact

22. Hiland has agreed to a number of steps to mitigate the impact of the Pipeline, as indicated by the October 7, 2013 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is attached to this Order.

24. The Pipeline's permanent right-of-way (ROW) is 50 feet wide, while its temporary construction ROW was 125 feet wide. Hiland has used existing public roads to access the ROW, and no new roads were constructed as part of the Pipeline.

25. The design, construction, and operation of the Pipeline must be in accordance with the United States Department of Transportation minimum safety requirements governing the transportation of natural gas.

26. Hiland participates in the North Dakota One-Call Excavation Notice System.

27. Hiland's existing emergency response plan includes the Pipeline.

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

### **Conclusions of Law**

1. The Commission has jurisdiction over the applicant, Hiland Operating, LLC, and over the subject matter of the applications under Chapter 49-22 of the North Dakota Century Code.
2. Hiland is a utility as defined in Section 49-22-03(13) of the North Dakota Century Code.
3. The proposed pipeline is a transmission facility as defined in Section 49-22-03(12) of the North Dakota Century Code.
4. The location, construction, and operation of the Pipeline 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 Pipeline are compatible with environmental preservation and the efficient use of resources.
6. The Pipeline 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 Pipeline is of such design and location that it will produce minimal adverse effects, in accordance with Section 49-22-07.2 of the North Dakota Century Code.
8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application and provided under Section 49-22-07.2 of the North Dakota Century Code.

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

### **Order**

The Commission orders:

1. Hiland Operating, LLC's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility Number 149 is issued to Hiland Operating, LLC, designating a corridor for the construction, operation, and maintenance of a 6-inch natural gas pipeline and associated facilities in Burke and Divide Counties, North

Dakota. For purposes of the Certificate, the Corridor will consist of the field survey corridor identified in the maps provided in Appendix 4 of the route application.

3. Route Permit Number 160 is issued to Hiland Operating, LLC, granting authority to construct and operate a 6-inch natural gas pipeline and associated facilities in Burke and Divide Counties, North Dakota. For purposes of the permit, the route is identified in the maps provided in Appendix 4 of the route application.

4. The October 7, 2013 Certification Relating to Order Provisions – Transmission Facility Siting with the accompanying Tree and Shrub Mitigation Specifications is attached to this Order and incorporated by reference,.

**PUBLIC SERVICE COMMISSION**

  
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**Randy Christmann**  
Commissioner

  
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**Brian P. Kalk**  
Chairman

  
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**Julie Fedorchak**  
Commissioner

**PUBLIC SERVICE COMMISSION**  
**STATE OF NORTH DAKOTA**

**Certificate of Corridor Compatibility Number 149**

*This is to certify that the Commission has designated a transmission facility corridor for Hiland Operating, LLC for approximately 6 miles of 6-inch pipeline in Divide and Burke Counties, North Dakota, for the transmission of natural gas.*

*This Certificate is issued in accordance with the Order of this Commission dated December 18, 2013 in Case No. PU-12-190 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, December 18, 2013.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

# STATE OF NORTH DAKOTA

## Route Permit Number 160

*This is to certify that the Commission has designated a transmission facility route for Hiland Operating, LLC for approximately 6 miles of 6-inch pipeline in Divide and Burke Counties, North Dakota, for the transmission of natural gas.*

*This permit is issued in accordance with the Order of this Commission dated December 18, 2013 in Case No. PU-12-190 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, December 18, 2013.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
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**Executive Secretary**

  
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**Commissioner**

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Hiland Operating, LLC  
6-Inch Natural Gas Pipeline – Divide & Burke Counties  
Siting Application

Case No. PU-12-190

CERTIFICATION RELATING TO ORDER PROVISIONS  
TRANSMISSION FACILITY SITING

I am MIKE HIGGINS, a representative of Hiland Operating, 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 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.

15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
21. 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.
22. Company understands and agrees that it shall repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.

23. 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.
24. 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.
25. 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.
26. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.
27. 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.
28. Company understands and agrees that it shall implement a procedure for how complaints concerning the transmission facility will be handled by Company
29. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
30. 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.
31. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility 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 corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built 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.

32. 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.
33. 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.
34. 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.
35. 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.
36. Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22-16.3:
  - a. Company will specifically identify the subsection of N.D.C.C. §49-22-16.3 under which it is requesting the adjustment.
  - b. Before conducting any construction activities for any route adjustment within the designated corridor, Company will file with the Commission maps meeting the requirement of N.D. Admin. Code § 69-06-04-01(n) and identifying:
    1. the designated route and the route adjustment;

2. the designated corridor;
  3. all exclusion and avoidance areas within the designated corridor;
  4. all landowners and their associated property within the designated corridor;  
and
  5. all government entities with an interest in the designated corridor.
- c. Before conducting any construction activities for any route adjustment outside the designated corridor, maps filed with the Commission under paragraph 2 will include the following additional information:
1. the length of the route outside the designated corridor;
  2. the corridor adjustment for the route adjustment;
  3. the width of the adjusted corridor;
  4. identification of all exclusion and avoidance areas within the adjusted corridor;
  5. identification of all landowners and their associated property within the adjusted corridor; and
  6. identification of all government entities with an interest in the adjusted corridor.
- d. Company will provide the name and contact information for each: (1) owner of real property on which the route adjustment and any adjusted corridor will be located; (2) owner of real property within five hundred (500) feet of the route adjustment and any adjusted corridor, if different than those identified in (1) above; (3) owner of real property on which any affected avoidance area is located; and (4) any applicable governmental entity with an interest in the adjustment area, property adjacent to the route adjustment and any adjusted corridor, and any affected avoidance area. Company will also provide a description of the nature of each entity's interest sufficient for the Commission and Commission staff to evaluate potential impacts.
- e. Company will provide sufficient supporting documentation indicating that no landowner or interested government entity opposes the adjustment. If a landowner or interested government entity is opposed to the route adjustment, Company will provide documentation from the landowner or government entity stating its objection. If no documentation exists, Company will provide a description of its understanding of the nature of any landowner or government entity objection.
- f. If the construction activity associated with the adjustment will not affect any known exclusion or avoidance area, Company will certify in its filing that construction activities will not affect any known exclusion or avoidance areas and will provide all field studies performed to conclude that exclusion or avoidance areas will not be impacted within the revised corridor.
- g. If the construction activity associated with the adjustment will impact an avoidance area, Company will provide, before any construction activities are undertaken:

1. specific information describing avoidance areas expected to be impacted;
  2. all field studies performed to conclude that exclusion or avoidance areas will be impacted;
  3. specific information describing why Company asserts there is no reasonable alternative to impacting the avoidance area;
  4. specific information describing why Company asserts there is good cause to impact the avoidance area; and
  5. specific information about any mitigation measures Company will take.
- h. If Company is seeking an adjustment under subsection 2 or 4 of N.D.C.C. §49-22-16.3, Company agrees the initiation of the statutory ten working days time frame for Commission action will not start until Company has been notified in writing, including electronic mail, that all of the information required by law has been received by the Commission. Company further acknowledges that if Commission staff provides written notice, including electronic mail, to the Company within five working days after the Company's filing is complete that full Commission action is necessary to authorize an impact to an avoidance area, staff's written notice to Company that Commission action is necessary initiates the statutory ten working days time frame.
- i. If a route adjustment is granted within the original designated corridor or in an adjusted corridor, Company agrees to incorporate and follow all provisions of the Commission's Order designating the original route and corridor unless Company specifically requests relief from a specific provision, and the requested relief is specifically granted.
- j. Company certifies that it will comply with the Commission's Order and all applicable laws, rules, and regulations designating the corridor and route with respect to any adjustment.

Dated this 7<sup>th</sup> day of OCTOBER, 2013.

HILAND OPERATING, LLC

By MIKE HIGGINS  
*Mike Higgins*

Its VICE PRESIDENT NATURAL GAS OPERATIONS & MID STREAM CONSTRUCTION

**STATE OF NORTH DAKOTA**  
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**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).