

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

ONEOK Rockies Midstream, L.L.C.  
Demicks Lake Gas Processing Plant – McKenzie Cnty  
Siting Application

Case No. PU-14-764

AFFIDAVIT OF SERVICE BY REGULAR AND ELECTRONIC MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Geralyn R. Schmaltz** deposes and says that:

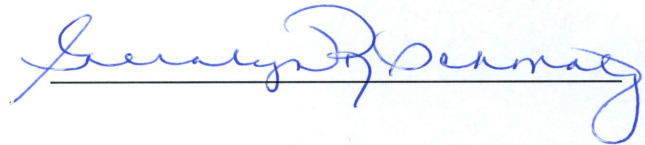
she is over the age of 18 years and not a party to this action and, on the **15th day of May 2018**, she deposited in the United States Mail, Bismarck, North Dakota, **6** envelopes by first class mail, fully prepaid and **42** addressees electronically mailed a copy of:

- **First Amended Findings of Fact, Conclusions of Law and Order**

The envelopes and electronic mails respectively were addressed as follows:

See attached list.

Each post office address shown is the respective addressee's last reasonably ascertainable post office address and each email address is the respective addressee's last reasonably ascertainable electronic mailing address.

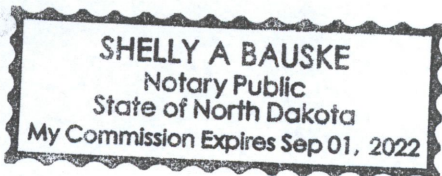


Subscribed and sworn to before me  
this **15th** day of **May 2018**.



Notary Public

SEAL



52 PU-14-764 Filed: 5/15/2018 Pages: 21  
Affidavit of Service, Reg. and E-mail - First Amended  
Findings of Fact, Conclusions of Law and Order

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

**ONEOK Rockies Midstream, L.L.C.  
Demicks Lake Gas Processing Plant – McKenzie Cnty  
Siting Application**

**Case No. PU-14-764**

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

**May 15, 2018**

**Appearances**

During the February 9, 2015 formal hearing, appearances were:

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

John W. Morrison, Attorney at Law, Crowley Fleck PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58501, on behalf of the Applicant, ONEOK Rockies Midstream, L.L.C.

Brian Schmidt, Special Assistant Attorney General, 122 East Broadway Avenue, Bismarck, North Dakota 58502, on behalf of the Public Service Commission.

Julie Prescott, Utility Analyst, North Dakota Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Wade C. Mann, Administrative Law Judge, Office of Administrative Hearings, 2911 North 4<sup>th</sup> Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

**Preliminary Statement**

On October 23, 2014, ONEOK Rockies Midstream, L.L.C. (ONEOK) filed an application for a certificate of site compatibility to authorize construction of its proposed Demicks Lake Gas Processing Plant (Project), to be located approximately 13.5 miles northeast of Watford City in McKenzie County, North Dakota. The Project will process up to 400 million standard cubic feet of gas per day.

On December 17, 2014, the Commission deemed the application of ONEOK complete and issued a Notice of Filing and Notice of Hearing scheduling a hearing for February 9, 2015, at 9:00 a.m. Central Time at Teddy's Residential Suites, 113 9<sup>th</sup> Avenue SE, Watford City, North Dakota 58854.

On February 9, 2015, the formal hearing was held as scheduled.

On January 20, 2016, the Commission adopted Findings of Fact Conclusions of Law and Order (Order) issuing Certificate of Site Compatibility Number 42.

On March 26, 2018, as required by the Order, ONEOK informed the Commission of its plans to modify the energy conversion facility. ONEOK states the project continues to be located on the designated 160-acre site and the plant still consists of two cryogenic turboexpander processing units, with each unit capable of processing 200 million standard cubic feet per day of wellhead gas. ONEOK plans to rearrange the plant design and add thermal oxidizers, add an amine gas treating system, remove storage tanks, and include a natural gas liquids (NGL) tie-in to accommodate direct transfer of NGL to an NGL pipeline. ONEOK requests approval for the modifications.

On April 4, 2018, ONEOK filed a request to amend the Commission's Order to modify paragraph 30 of the Certification Relating to Order Provisions, incorporated by reference into the Order, to provide the Commission flexibility to approve facility modifications without requiring that a notice and opportunity for hearing be issued in instances where notice is not otherwise required by rule or statute.

On April 5, 2018, the Commission issued a Notice of Opportunity for Hearing providing until May 3, 2018 for comments and request for hearing.

The Notice identified the following issues to be considered for the request for approval of plant modifications:

1. Will the location and operation of the proposed facility produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility location 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?

The Notice identified the following issues to be considered for the request to amend the Order:

1. Will the Order as modified continue to result in minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Will the Order as modified continue to be compatible with ensuring environmental preservation and the efficient use of resources?

3. Will the Order as modified continue to 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?

The Notice of Opportunity for Hearing indicated that, if deemed appropriate, the Commission can determine the matter without a hearing.

On April 19, 2018, the North Dakota Department of Health filed comments with the Commission. No requests for hearing were received.

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

### **Findings of Fact**

1. ONEOK is a registered North Dakota foreign limited liability company with offices located at 100 W 5th Street, Tulsa, Oklahoma 74103.
2. ONEOK is authorized to do business in the State of North Dakota, as evidenced by corporate papers filed with the Commission on November 2, 2011, in Case No. PU-11-684.

### **Size, Type, and Preferred Location of Facility**

3. The Project will consist of two cryogenic turboexpander processing units, with each unit capable of processing 200 million standard cubic feet per day of wellhead gas gathered from local crude production wells. The anticipated cost of the Project is \$642 million.
4. The Project will be constructed on approximately 160 acres of land owned by ONEOK, located in the NE $\frac{1}{4}$  of Section 20, Township 151 North, Range 96 West (Site).
5. The Project will process natural gas liquids (NGLs) to produce propane, butane, natural gasoline, pipeline grade natural gas, methane, and ethane.
6. The Project will include underground piping, above-ground piping, and above-ground gas processing facilities.
7. On March 26, 2018, ONEOK informed the Commission of its plans to modify the energy conversion facility to rearrange the plant design and add thermal oxidizers, add

an amine gas treating system, remove storage tanks, and include a NGL tie-in to accommodate direct transfer of NGL to an NGL pipeline.

#### Need for Facility

8. ONEOK concluded there is a need for the Project, based on recent and significant increases in natural gas production in the Williston Basin that have exceeded available regional processing capacity.

9. ONEOK considered expansion of existing facilities at its Grasslands Plant near Sidney, Montana, and at its Garden Creek and Lonesome Creek gas plants near Watford City, North Dakota, and determined that further expansion of these facilities is not feasible. ONEOK indicated that insufficient space and limited capacity of peripheral equipment at the Grasslands Plant, along with a lack of capacity in ONEOK's high pressure gathering system to deliver a significant volume of wellhead gas to the plant, preclude expansion at that facility. ONEOK indicated that expansion at its Garden Creek Gas Plant is similarly constrained by available space and therefore also not a feasible option. Regarding its Lonesome Creek Gas Plant, currently under construction, ONEOK has determined that available space at the facility should be reserved for future local processing needs.

#### Study of Preferred Location

10. ONEOK studied an area one mile in diameter centered on the Site (Study Area) for cultural and natural resources.

11. ONEOK conducted a Class I Cultural Resources Literature Search of the Study Area and a Class III Cultural Resource Inventory of the Site. One previously unrecorded cultural resource was identified within the Site during the Class III field investigation and was recommended by ONEOK as not eligible for the National Register of Historic Places.

12. ONEOK contacted the United States Army Corps of Engineers (USACE), the United States Fish and Wildlife Service (USFWS), the North Dakota Game and Fish Department (NDGFD), the North Dakota Parks and Recreation Department (NDPRD), the North Dakota State Historic Preservation Office (SHPO), the North Dakota Department of Trust Lands (NDDTL), and the North Dakota Department of Health (NDDOH) regarding potential impacts to cultural and natural resources within the Study Area.

13. In a response dated September 25, 2014, the USACE indicated that the wetland present within the Study Area was not subject to its jurisdiction.

14. In a response dated October 6, 2014, the USFWS indicated its concurrence with ONEOK's natural resource study report conclusion that the siting of the Project will not

adversely affect endangered, threatened, proposed and candidate species, or designated critical habitat within the Study Area.

15. In a response dated October 15, 2014, the NDGFD indicated that the siting of the Project will not adversely affect wildlife or wildlife habitat, including species of conservation priority.

16. In a response dated September 19, 2014, the NDPRD indicated that no occurrences of species or ecological communities of concern have been documented within the Study Area, and that the Project will not affect state park lands managed or Land and Water Conservation Fund recreation projects coordinated by the NDPRD.

17. In a response dated September 23, 2014, the SHPO indicated their concurrence with a "No Significance Sites" determination by for the Site.

18. ONEOK submitted, or is in the process of submitting, applications for a conditional use permit with McKenzie County, and air and water quality permits with the NDDOH. ONEOK will obtain these permits prior to engaging in construction activity for which the various permits are required.

#### Siting Criteria

18. The Commission has established criteria pursuant to North Dakota Century Code section 49-22.1-03 to guide the Commission in evaluating the suitability of granting a certificate of site compatibility. The criteria, as set forth in North Dakota Administrative Code section 69-06-08-01 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

19. ONEOK evaluated the Study Area and the Site for the Exclusion, Avoidance, Selection, and Policy criteria of the Commission.

20. With the exception of prime and unique farmland, an energy conversion facility must not be sited within an Exclusion Area. ONEOK determined that 8.7 acres of prime farmland exist within the Site, which is approximately 5% of the Site area.

21. An energy conversion facility must not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances no reasonable alternative exists. 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.

22. An area of 0.02 acres of woodlands exists within the Site. Trees and shrubs removed during Project construction will be replaced pursuant to the Commission's Tree and Shrub Mitigation Specifications.

## Measures to Minimize Impact

23. ONEOK has made other representations and covenants as indicated in the Certification Relating to Order Provisions - Facility Siting as executed by ONEOK and filed with the Commission.

24. ONEOK will coordinate with local authorities and emergency managers regarding emergency response measures. ONEOK's emergency response plan will include the Project.

25. ONEOK testified that based on the blast study performed by ONEOK, no impacts to occupied residences located at least one-half mile from the Project are expected to occur.

26. ONEOK's environmental consultant testified that stormwater runoff at the Site will be adequately contained within an on-site detention pond designed specifically for this purpose.

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

### Conclusions of Law

1. The Commission has jurisdiction over ONEOK and the subject matter of this application under North Dakota Century Code chapter 49-22.1.
2. ONEOK is a utility as defined in North Dakota Century Code section 49-22.1-03(12).
3. The Project is a gas or liquid conversion facility as defined in North Dakota Century Code section 49-22.1-03(6).
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 Project is 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.

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

## Order

The Commission orders:

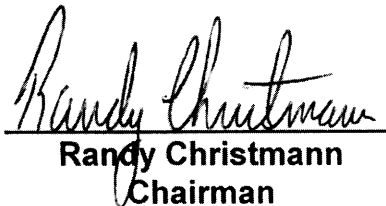
1. ONEOK's March 26, 2018, Site Plan and Facility Modifications are approved.
2. First Amended Certificate of Site Compatibility Number 42 is issued to ONEOK Rockies Midstream, L.L.C., for the construction, operation, and maintenance of its Demicks Lake Gas Processing Plant. For the purposes of this Certificate, the designated site consists of the 160-acre Site.
3. The April 4, 2018, request to amend paragraph 30 of the Certification Relating to Order Provisions, incorporated by reference into the Order is modified as follows:

Company understands and agrees that it shall inform the Commission in writing of any plans to modify the energy conversion facility, or of any plans to modify the site plan for the energy conversion facility. Company will either comply with the requirements of Section 49-22.1-01(3) or, if the modification is not within the parameters established by Section 49-22.1-02(3), obtain written approval from the Commission prior to any modifications to the site plan or the energy conversion facility, associated facilities, and roadway locations. Upon review of the modification, the Commission may require a notice and opportunity for hearing.
4. The Certification Relating to Order Provisions - Energy Conversion Facility Siting with attached Tree and Shrub Mitigation Specifications executed by ONEOK on February 5, 2015, is incorporated by reference and attached to this Order.
5. To the extent there are any conflicts or inconsistencies between ONEOK's application and the Certification, the Certification provisions control.
6. ONEOK will obtain a conditional use permit from McKenzie County prior to engaging in construction activity for which the permit is required.

### PUBLIC SERVICE COMMISSION



**Brian Kroshus**  
Commissioner



**Randy Christmann**  
Chairman



**Julie Fedorchak**  
Commissioner

**PUBLIC SERVICE COMMISSION**

**STATE OF NORTH DAKOTA**

**First Amended  
Certificate of Site Compatibility Number 42**

*This is to certify that the Commission has designated an energy conversion facility site for ONEOK Rockies Midstream, L.L.C., for the construction, operation, and maintenance of a gas processing plant in McKenzie County, North Dakota.*

*This certificate is issued in accordance with the Order of the Commission dated March 25, 2015, and amended by the Order of the Commission dated May 15, 2018, in Case No. PU-14-764, and is subject to the conditions and limitations noted in those Orders.*

*Bismarck, North Dakota, May 15, 2018.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**



**Executive Secretary**



**Commissioner**

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

ONEOK Rockies Midstream, LLC  
Demicks Lake Gas Processing Plant – McKenzie Cnty.  
Siting Application

Case No. PU-14-764

CERTIFICATION RELATING TO ORDER PROVISIONS - ENERGY CONVERSION  
FACILITY SITING

I am J. BRIAN BOULTER, a representative of ONEOK Rockies Midstream ("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 the Certificate of Site Compatibility will be issued by the Commission 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 proposed energy conversion 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 energy conversion 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 energy conversion 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 of construction activities on a weekly basis.
6. Company understands and agrees that the Certificate of Site Compatibility 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.

7. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order and the Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
8. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
9. Company agrees to construct and operate the energy conversion 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 or near the approved site of any critical habitat of threatened species, endangered species, bald eagles, or golden eagles that Company becomes aware of 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 by the State Historical Society, a report of such examination is filed with the Commission, and clearance to proceed is given by the Commission.
13. Company understands and agrees that all buried facility crossings of graded roads shall 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 energy conversion 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. During construction, at least 12 inches of topsoil, where available (or topsoil to the depth of cultivation, whichever is greater), over and along areas where facilities will be placed must be stripped and segregated from subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must not be placed within the footprint of the facilities, and must be placed over areas containing topsoil.
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 approved site will continue throughout the life of the energy conversion facility.
19. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
20. 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 proposed energy conversion facility.
21. 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 proposed energy conversion facility.
22. Company 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 energy conversion 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 agrees that it shall, as soon as practicable upon the completion of the construction of the energy conversion 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 energy conversion facility.
27. Company understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the energy conversion facility, including injuries to any person, the death of any threatened or endangered species, within five business days of such event.
28. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company
29. Upon request, Company agrees to provide the Commission with engineering design drawings showing surveyed structure prior to construction.
30. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the energy conversion facility, or of any plans to modify the site plan for the energy conversion facility. Company will either comply with the requirements of Section 49-22-03(3) or, if the modification is not within the parameters established by Section 49-22-03(3), obtain written approval from the Commission prior to any modifications to the site plan or the energy conversion facility, associated facilities, and roadway locations. Except as otherwise provided in Section 49-22-03(3)(b), which does not require notice and hearing for approval, 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 site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion 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 site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion 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 the Certificate of Site Compatibility for the energy conversion 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 site granted by a Certificate of Site Compatibility in this proceeding, an energy conversion facility that was not requested in Company's application in this proceeding, Company shall either comply with the requirements of Section 49-22-03(3), if applicable, or apply for a Certificate of Site Compatibility 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. The certificate of site compatibility is 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 5<sup>th</sup> day of February, 2015.

ONEOK ROCKIES MIDSTREAM, LLC

By J. Brian Boulter  
J. BRIAN BOULTER

Its VICE PRESIDENT CONSTRUCTION PROJECTS



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

**ONEOK Rockies Midstream, LLC  
Demicks Lake Gas Processing Plant – McKenzie Cnty.  
Siting Application**

**Case No. PU-14-764**

**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. 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.
14. 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.
15. 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).