

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Oliver Wind III, LLC
Oliver III Wind Energy Center – Oliver & Morton
Siting Application

Case No. PU-16-123

AFFIDAVIT OF SERVICE BY CERTIFIED 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 **24th day of September 2021**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

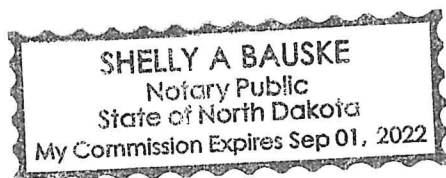
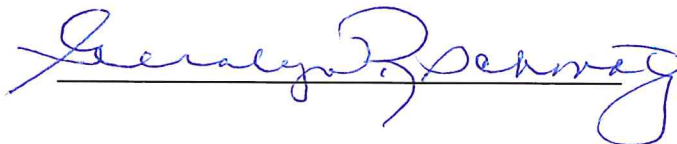
- **Order on Tree and Shrub Mitigation Specifications**

The envelope was addressed as follows:

Casey Furey
Crowley Fleck PLLP
PO Box 2798
Bismarck, ND 58502-2798
Cert. No. 7020 2450 0000 1344 2093

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **24th day of September 2021**.



SEAL



Notary Public

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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ORDER ON TREE AND SHRUB MITIGATION SPECIFICATIONS

September 22, 2021

Preliminary Statement

The Commission's June 22, 2016 Findings of Fact, Conclusions of Law and Order issued Certificate of Site Compatibility No. 49 to Oliver Wind III, LLC (Oliver III) for the location of a wind energy conversion facility in Morton and Oliver Counties, North Dakota. Attached to the June 22, 2016 Order was the Tree and Shrub Mitigation Specifications for the Project.

On March 13, 2019, the Commission revised its Tree and Shrub Mitigation Specifications to update the process for mitigation reporting.

On July 12, 2017, the Commission approved Oliver III's Tree and Shrub Inventory and Mitigation/Replacement Plan. The Commission has no record of tree and shrub annual survival inspection reports.

On June 15, 2021, Commission Staff sent a Notice of Noncompliance to Oliver III suggesting that Oliver III may wish to consider complying instead with the March 13, 2019, version of the Tree and Shrub Mitigation Specifications.

On July 15, 2021, Oliver III responded to the June 15, 2021 Commission Staff Notice of Noncompliance.

Discussion

The Tree and Shrub Mitigation Specifications (Specifications) attached to and made part of the Commission's June 22, 2016 Order required that two trees be planted for every one tree removed, and that two shrubs be planted for one shrub removed. The Specifications required that tree and shrub replacements be inspected annually, in September, for three years, with the first annual inspection at least one year from the anniversary date of the original plantings. The Specifications further required that a report of each annual inspection 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.

Oliver III's Tree and Shrub Inventory and Mitigation/Replacement Plan indicates that as a result of construction of the Oliver III Wind Energy Center and the transmission line, 113 trees/shrubs were removed.

The Commission's March 13, 2019 Specifications were conceived to be goal or purpose oriented to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefits to landowners, farmers and ranchers, the community, wildlife and the environment. In lieu of annual reporting for three years, the Commission's March 13, 2019 Specifications requires one final report filed by the company after two years that details the company's tree and shrub mitigation efforts and describes how the company's mitigation achieved the purpose stated above.

Since it appears Oliver III has not begun planting tree and shrub replacements to comply with the Tree and Shrub Mitigation Specifications, Commission Staff suggested that Oliver III consider complying instead with the March 13, 2019 version of the Tree and Shrub Mitigation Specifications.

Oliver III has indicated a desire to comply with the March 13, 2019 version of the Tree and Shrub Mitigation Specifications instead of the June 22, 2016 Tree and Shrub Mitigation Specifications.

Having considered this matter, the Commission issues the following:

Order

The Commission Orders that its June 22, 2016 Order in Case No. PU-16-123 is amended to replace the Tree and Shrub Mitigation Specifications adopted in that Order with the March 13, 2019 version of the Tree and Shrub Mitigation Specifications, attached to and made part of this Order.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chair


Brian Kroshus
Commissioner

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Tree and Shrub Mitigation Specifications

Inventory

Prior to cutting or clearing trees or shrubs for construction:

- All trees one-inch or greater in diameter at breast height must be inventoried to record the location, number, and species.
- All shrubs and all coniferous trees of any diameter must be inventoried to record the location, number, and species.

Clearing

The maximum width of tree and shrub removal is 50 feet, unless otherwise approved by the Commission.

Replacement

1. Landowners must be given the option to have trees and shrubs that are removed from their property replaced on their property. The landowner may waive this option in writing. If the landowner waives this option, the company shall plant replacement trees and shrubs in an alternate location in the same region, if practical.
2. Trees and shrubs must be replaced on a minimum two-to-one basis. The company shall develop a Tree and Shrub Mitigation Plan (Plan) in consultation with landowners who are seeking replacement trees and shrubs and in accordance with USDA-NRCS-North Dakota Field Office Technical Guide: Windbreak and Woodland Tree Care and Management. The guidelines outlined in the Technical Guide shall be followed until filing of the Plan summary outlined in number 5 below.
3. The purpose of the company's Tree and Shrub Mitigation Plan is to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to landowners, farmers and ranchers, the community, wildlife and the environment.
4. The Plan, including the proposed number, variety, type, location, and approximate date for plantings, shall be filed with and approved by the Commission.
5. Two years after completion of the plan, the company must file a summary documenting how the plan achieved the purpose outlined in number 3 above. The summary must also report the number of surviving replacement trees and shrubs.

6. The Commission will consider, on a limited basis as conditions warrant, mitigation plans that provide long-term wildlife habitat and conservation benefits but do not involve the replanting of trees and shrubs.