

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Plains Terminals North Dakota LLC  
24-Inch Crude Oil Pipeline – McKenzie County  
Siting Application

Case No. PU-16-140

AFFIDAVIT OF SERVICE REGULAR OR 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 **19th day of August, 2016**, she deposited in the United States Mail, Bismarck, North Dakota, **2** envelopes by first class mail, fully prepaid and **43** addressees electronically mailed a copy of:

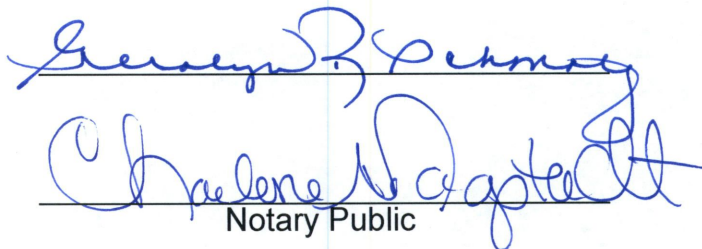
- **Order On Recommended Findings Of Fact, Conclusions Of Law And Order**

The envelopes and electronic mails respectively were addressed as follows:

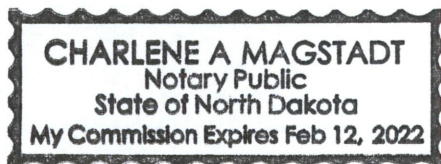
**See attached list.**

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 **19th day of August, 2016**.

  
Notary Public

SEAL



McKenzie County Auditor  
201 5th Street NW  
Watford City ND 58854

McKenzie County Commission  
201 5th Street NW  
Watford City ND 58854

ndaero@nd.gov  
Melinda Weninger  
Aeronautics Commission  
PO Box 5020  
Bismarck ND 58502-5020

masagsve@nd.gov  
Matt Sagsveen  
Attorney General's Office

jmittleider@nd.gov  
John Mittleider  
Department of Commerce  
600 East Blvd  
Bismarck ND 58505

cte@nd.gov

Dept of Career and Technical Education  
State Capitol  
Bismarck ND 58505

governor@nd.gov  
Jack Dalrymple  
Governor's Office  
State Capitol  
Bismarck ND 58505

squinnell@nd.gov  
Susan Quinnell  
Historical Society

samuele.warren.1@us.af.mil  
Sam Warren  
Minot Air Force Base

lweispfenning@nd.gov  
Linda Weispfenning  
N D Water Commission  
900 E Boulevard  
Bismarck ND 58505

ndascd@lincolnoakes.com

ND Assoc of Soil Conservation Dist  
3310 University Drive  
Bismarck ND 58504-7564

mdockter@nd.gov  
Monte Dockter  
ND Department of Transportation  
State Highway Building  
Bismarck ND 58505

goehring@nd.gov  
Doug Goehring  
Agriculture Department  
State Capitol  
Bismarck ND 58505

todd.j.lindquist@usace.army.mil  
Todd Lindquist  
Corp of Engineers  
PO Box 527  
Riverdale ND 58565-0527

dhseo@nd.gov

Department of Human Services

energyimpact@nd.gov

Energy Infrastructure and Impact Office

ppicha@nd.gov  
Paul Picha  
Historical Society

sjdavis@nd.gov  
Scott Davis  
Indian Affairs Commission  
State Capitol - 1st Floor J Wing INSIDE  
Bismarck ND 58505

gheiser@nd.gov  
Gerald Heiser  
N D Water Commission  
900 E Boulevard  
Bismarck ND 58505

jay.fuhrer@nd.usda.gov  
Jay Fuhrer  
NATURAL RESOURCE CONSERVATION SVC  
PO BOX 1458  
BISMARCK ND 58502-1458

ksonsalla@nd.gov  
Kevin Sonsalla  
ND Department of Commerce

jgisinger@nd.gov  
Jennifer Gisinger  
ND Dept. of Commerce

Larry.kotchman@ndsu.edu  
MR LARRY KOTCHMAN  
ND FOREST SERVICE  
MOLBERG CENTER 307 1ST STREET EAST  
BOTTINEAU ND 58318

tsteinwa@nd.gov  
Terry Steinwand  
ND GAME & FISH DEPT  
INSIDE MAIL

emurphy@nd.gov  
MR ED MURPHY  
ND GEOLOGICAL SURVEY

cgiesen@nd.gov  
Cheri Giesen  
ND Job Service  
P.O. Box 5507 INSIDE MAIL  
Bismarck ND 58506-5507

labor@nd.gov  
Tony Weiler  
ND Labor Dept  
600 E Blvd Ave  
Bismarck ND 58505

mhaupt@nd.gov  
Mike Haupt  
ND Land Department

jjkringstad@ndpipelines.com  
ND Pipeline Authority

ndicinfo@nd.gov  
North Dakota Industrial Commission

markzimmerman@nd.gov  
Mark Zimmerman  
North Dakota Parks & Rec  
1600 E Century Ave, Ste. 3 INSIDE MAIL  
Bismarck ND 58503-0649

andreastomberg@lignite.com  
Andrea Stomberg  
North Dakota Transmission Authority

tsando@nd.gov  
Todd Sando  
State Engineer  
ND Water Commission

krockema@nd.gov  
Karl Rockeman  
State Health Department

pwax@nd.gov  
Peter Wax  
State Health Department

dglatt@nd.gov  
Dave Glatt  
State Health Department

dzubke@nd.gov  
Denton Zubke  
State Representative  
PO Box 927  
Watford City ND 58854-0927

kkempenich@nd.gov  
Keith Kempenich  
State Representative  
9005 151st Ave. SW  
Bowman ND 58623-8857

bbowman@nd.gov  
Bill Bowman  
State Senator  
408 First St. SW  
Bowman ND 58623-9753

bill whitworth@nps.gov  
Chief of Resource Management  
Theodore Roosevelt National Park  
P O Box 7  
Medora ND 58645-0007

wendy ross@nps.gov  
Wendy Ross  
Theodore Roosevelt Nat'l Park  
PO Box 7  
Medora ND 58645

sschwenke@fs.fed.us  
Sherri Schwenke  
U S Forest Service  
240 W Century Ave  
Bismarck ND 58501-1494

gjwiche@usgs.gov  
District Chief  
U S Geological Survey  
821 E Interstate Ave  
Bismarck ND 58501

cenwo-de@usace.army.mil  
District Engineer  
US Army Engineer District Omaha  
1616 Capitol Ave  
Omaha NE 68102

managementauthority@fws.gov

US Fish & Wildlife Service  
3425 Miriam Ave  
Bismarck ND 58501

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Plains Terminals North Dakota LLC  
24-Inch Crude Oil Pipeline – McKenzie County  
Siting Application**

**Case No. PU-16-140**

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

**August 17, 2016**

The evidence of record has been considered and appraised.

The Commission Orders:

1. The Hearing Officer's July 18, 2016 Recommended Findings of Fact, Conclusions of Law and Proposed Order, a copy of which is attached to and made a part of this Order, is ADOPTED as the Public Service Commission's Findings of Fact, Conclusions of Law and Order.
2. Certificate of Corridor Compatibility No. 191 is issued to Plains Terminals North Dakota LLC designating a Corridor for the construction, operation, and maintenance of approximately 3.5 miles of 16-inch outside diameter crude oil transmission pipeline and associated facilities in McKenzie County, North Dakota. The Corridor will consist of a 250-foot-wide area centered on the route.
3. Route Permit No. 203 is issued to Plains Terminals North Dakota LLC designating a Route for the construction, operation, and maintenance of approximately 3.5 miles of 16-inch outside diameter crude oil transmission pipeline and associated facilities in McKenzie County, North Dakota. The designated route for this purpose is depicted in Hearing Exhibit 2.
4. Thirty days prior to commencing construction, the Company shall inform the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration of the intent to start construction.
5. Prior to commencing construction of any portion of the proposed Project, Plains Terminals North Dakota LLC shall obtain all other necessary licenses and permits for construction of such portion, and provide copies to the Commission prior to construction of that portion of the Project.

PUBLIC SERVICE COMMISSION

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chairman

  
Brian P. Kalk  
Commissioner

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

**Certificate of Corridor Compatibility Number 191**

*This is to certify that the Commission has designated a transmission facility corridor for Plains Terminals North Dakota LLC for the construction, operation, and maintenance of approximately 3.5 miles of 16-inch outside diameter crude oil pipeline and associated facilities in McKenzie County, North Dakota.*

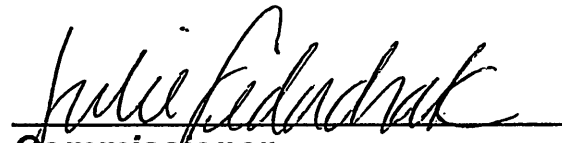
*This certificate is issued in accordance with the Order of the Commission dated August 17, 2016 in Case No. PU-16-140 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, August 17, 2016.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Route Permit Number 203**

*This is to certify that the Commission has designated a transmission facility route for Plains Terminals North Dakota LLC for the construction, operation, and maintenance of approximately 3.5 miles of 16-inch outside diameter crude oil pipeline and associated facilities in McKenzie County, North Dakota.*

*This permit is issued in accordance with the Order of this Commission dated August 17, 2016, in Case No. PU-16-140 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, August 17, 2016.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

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

**Plains Terminals North Dakota LLC  
24-Inch Crude Oil Pipeline -McKenzie County  
Siting Application**

**Case No. PU-16-140**

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

July 18, 2016

**Appearances**

Danielle M. Krause, Attorney at Law, Fredrikson & Byron, P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501, on behalf of Plains Terminals North Dakota LLC

Zachary E. Pelham, Special Assistant Attorney General, 314 E. Thayer Avenue, Bismarck, North Dakota 58502, on behalf of the North Dakota Public Service Commission.

Patrick J. Ward, Administrative Law Judge, Zuger Kirmis & Smith, 316 North Fifth Street, Bismarck, North Dakota 58502, as Substantive Hearing Officer.

**Preliminary Statement**

On March 28, 2016, Plains Terminals North Dakota LLC (Plains), filed applications for a certificate of corridor compatibility and a route permit concerning approximately 3.5-miles of 24-inch outside diameter pipeline and associated facilities for the transmission of crude oil (Project). The Project is to be located in McKenzie County, North Dakota.

Also on March 28, 2016, Plains filed an application for waiver of procedures and time schedules established under North Dakota Century Code sections 49-22-07.2, 49-22-08, 49-22-08.1, and 49-22-13, and North Dakota Administrative Code chapter 69-06-06 and section 69-06-01-02, requiring separate filings, separate notices and separate hearings on the certificate of corridor compatibility and a route permit application.

On May 5, 2016, the Commission found the applications for a certificate of corridor compatibility and a route permit complete and issued a Notice of Filings and Public Hearing (Notice) scheduling a hearing for June 27, 2016, at 11:00 a.m. Central Time at Teddy's Residential Suites, 113 9<sup>th</sup> Avenue SE, Watford City, North Dakota 58854.

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 certificate of corridor compatibility and route permit:

1. Will the location 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 June 27, 2016, the hearing was held.

On July 15, 2016, Plains filed Late Filed Exhibit LF1 – Spill History for Plains.

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

#### **Findings of Fact**

1. Plains is a Delaware limited liability company authorized to do business in the State of North Dakota since May 14, 2013, as evidenced by the corporate papers filed with the Commission on March 28, 2016 (see Case No. PU-16-139).

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

2. The Project will consist of approximately 3.5 miles of pipeline and associated facilities to be located in McKenzie County. The Project will be constructed to allow crude to flow in either direction. The Project will originate at the Plains Johnsons Corner Terminal (JCT), east of Johnsons Corner, North Dakota and will extend to the northwest to terminate at the Dakota Access Pipeline Johnsons Corner Terminal Facility (DAPL Terminal).
3. At the public Hearing, Plains testified that following the filing of the Applications, Plains determined a 16-inch diameter pipeline will meet the needs required for the Project.

Accordingly, the Project will utilize 16-inch outside diameter pipe. The pipe will have a wall thickness of 0.312-inches and the bore pipe will have a wall thickness of 0.375-inches.

4. The maximum capacity of the Project will be 150,000 barrels per day. The maximum operating pressure of the pipeline will be 1480 psig. The normal operating pressure is expected to be 1440 psig. The average daily capacity will be 50,000 barrels per day.

5. Outside of the existing terminals, above-ground facilities associated with the Project will include one mainline valve.

6. The Project will be designed, constructed, operated, and maintained in compliance with Code of Federal Regulations Title 49 Part 195 Hazardous Liquids Pipeline Safety Regulations.

7. The temporary construction right-of-way will typically be 75 feet wide. The permanent right-of-way will be 25 feet wide.

8. The total cost of the Project is estimated to be \$5 million.

#### Study of Preferred Location

9. Plains conducted a Class I cultural resource literature search on a one-mile-wide area centered on the proposed Project route (Study Area).

10. Plains conducted a Class III cultural resource inventory of a 250-foot-wide area (Survey Area) centered on the proposed Project route.

11. Field surveys were also conducted on the 250-foot-wide Survey Area to inventory any potential resource issues such as wetlands, water bodies, protected species, and/or critical habitats. Additionally, environmental data collected included information on soils, land use, wetlands and waterbody crossings, noxious weeds, trees, saplings, and shrubs, and protected species and habitats.

12. The following agencies were contacted by Plains regarding the Project and provided comments regarding the Project: the North Dakota Game and Fish Department (NDGFD), the North Dakota Parks and Recreation Department (NDPRD), the North Dakota Department of Trust Lands, and the North Dakota State Historical Preservation Office (SHPO). Copies of the responses are provided in Appendix C of Hearing Exhibit No. 1. Input provided includes the following:

- The Department of Trust Lands indicated that no North Dakota School Trust land will be affected by the Project.
- The Department of Trust Lands, Mineral Management Division, agreed with the approximate location of the Project and the proximity of mineral interests to the Project.

- The NDPRD indicated that the Project will not affect state park lands managed by or Land and Water Conservation Fund recreation projects coordinated by their agency.
- The NDGFD indicated that the Project should not have any significant adverse effects on wildlife or wildlife habitat, including species of conservation priority, provided the recommendations of the NDGFD are implemented where appropriate.
- The SHPO concurred with the determination that no significant sites will be affected by the Project, so long as the Project remains of the nature and in the location described in the Class III Cultural Resource Inventory Reports.

### Siting Criteria

13. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22-05.1 to guide the Commission in evaluating the suitability of granting a certificate of corridor compatibility and route permit. The criteria, as set forth in North Dakota Administrative Code Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

14. Plains evaluated the Project with respect to the Exclusion, Avoidance, Selection, and Policy Criteria of the Commission.

Exclusion Areas may be located within a corridor but at no given point may such an area or areas encompass more than fifty percent (50%) of the corridor unless there is no reasonable alternative. No Exclusion Areas are present within the Survey Area.

15. An Avoidance Area is a geographic area that may not be considered in the routing of a transmission facility unless the applicant shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission 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.

16. A transmission facility must not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there are no reasonable alternatives. Economic considerations alone are not sufficient to establish no reasonable alternative.

17. No Avoidance Areas are present within the Survey Area.

18. Wetland determinations were completed along the proposed route. Two (2) streams were identified within the Survey Corridor, and one of the streams will be crossed by the proposed route. Plains will take steps to protect wetlands and waterbodies, and no permanent impacts to wetlands or waterbodies are anticipated.

19. In accordance with the Commission's Selection Criteria, a transmission facility route shall be designated if it is demonstrated that any significant adverse effects 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.

20. Plains has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. No significant adverse impact will result from the location, construction, and operation of the Project.

21. In accordance with the Commission's Policy Criteria, preference may be given to an application demonstrating certain benefits of the transmission facility. Plains has analyzed the relevant policy criteria and has committed to: designing and constructing the pipeline in accordance with all applicable federal, state, and local laws and regulations; energy conservation through the facility's location, process, and design; training and utilizing available labor in the state; constructing the Project to take advantage of economies of scale; achieving capacity in the most minimally intrusive and most efficient way possible; and coordinating with state and local officials. Plains 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.

#### **Measures to Minimize Impact**

22. Plains testified that a supervisory control and data acquisition system will be installed as part of the Project, which will monitor pressure, flow and temperature twenty-four (24) hours per day, seven (7) days per week at a control center in Midland, Texas. The control center will have the ability to remotely shut-down the Project.

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

24. The design, construction, and operation of the pipeline will be in accordance with the United State Department of Transportation regulations governing the transportation of crude oil, including U.S. Department of Transportation regulations as set forth in 49 C.F.R. Part 195.

From the foregoing Findings of Fact, the Hearing Officer now makes the following:

#### **Conclusions of Law**

1. The Commission has jurisdiction over Plains and the subject matter of these applications under Chapter 49-22 of the North Dakota Century Code.

2. Plains is a utility as defined in Section 49-22-03(13) of the North Dakota Century Code.

3. The Project proposed by Plains 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 Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The location, construction, and operation of the Project are compatible with environmental preservation and the efficient use of resources.
6. The Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
7. The Project is of such design and location that it will produce minimal adverse effects, in accordance with 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 pursuant to North Dakota Century Code Section 49-22-07.2.

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

#### **Recommended Order**

1. Plains's application for a waiver of procedures and time schedules is granted.
2. A Certificate of Corridor Compatibility shall be issued to Plains Terminals North Dakota LLC designating a corridor for the construction, operation, and maintenance of an approximately 3.5-mile, 16-inch crude oil pipeline and associated facilities in McKenzie County, North Dakota. For purposes of the Certificate, the designated corridor will consist of a 250-foot-wide corridor centered on the pipeline route as surveyed and depicted in Hearing Exhibit No. 2.
3. A Route Permit shall be issued to Plains Terminals North Dakota LLC designating a route for the construction, operation, and maintenance of an approximately 3.5-mile, 16-inch crude oil pipeline and associated facilities in McKenzie County, North Dakota. For purposes of the Permit, the designated route is the proposed route depicted in Hearing Exhibit No. 2.
4. The June 24th, 2016 Certification Relating to Order Provisions – Transmission Facility Siting ("Certification"), with accompanying Tree and Shrub Mitigation Specifications, is incorporated by reference and attached to this Order.

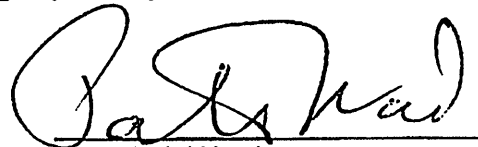
5. To the extent there are any conflicts or inconsistencies between Plains's Applications and the Certification, the Certification provisions control.

6. One year after the Project is placed in service, Plains shall file with the Commission a summary of the status of restoration activities related to the Project, including any restoration-related issues raised by landowners or identified by Plains.

7. If a spill by Plains requires notification to any other state or federal agency, Plains will also inform the Commission of such spill within 24 hours of occurrence by leaving a message at the Commission's Toll Free Number, with a follow-up email to the Commission's Executive Secretary.

8. Plains is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the application within the corridor granted in this proceeding.

Dated at Bismarck, North Dakota this 14<sup>th</sup> day of July, 2016.



Patrick J. Ward  
Administrative Law Judge  
Office of Administrative Hearings

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Plains Terminals North Dakota LLC  
24-Inch Crude Oil Pipeline – McKenzie County  
Siting Application

Case No. PU-16-140

CERTIFICATION RELATING TO ORDER PROVISIONS  
TRANSMISSION FACILITY SITING

I am William Dean Cize, a representative of Plains Terminals North Dakota LLC ("Company") with authority to bind the 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 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.
3. 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.
4. 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.
5. 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.
6. 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.

**Construction:**

7. 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.
8. 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.
9. Company understands and agrees that topsoil removal will begin when the Commission's third-party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. Company shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
10. 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 monthly basis.
11. 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.
12. 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 carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil 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.

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 staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
15. 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.
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 are taken by Company.
17. Company understands and agrees that the Commission has authority to stop Project construction activities in the event of a probable violation of the siting laws, siting rules, or applicable Commission Orders if, in the opinion of the Commission, construction activities are likely to result in irreparable or significant harm.

**Restoration and Maintenance:**

18. 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.
19. 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.
20. Company understands and agrees that reclamation, fertilization, and reseedling is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.

21. Company will fulfill its obligation for reclamation and maintenance of the approved transmission facility right-of-way, transmission facility, and associated facilities continuing throughout the life of the transmission facility.
22. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
23. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
24. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
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 provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.

**Communication with Landowners and PSC:**

27. Company understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.
28. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
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 advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the transmission facility, including injuries to any person.
31. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered species of which Company becomes aware and which were not previously reported to the Commission.

32. 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.
33. 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.
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.

**Route Adjustments Before or During Construction:**

35. 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:
36. Company will specifically identify which subsection of NDCC 49-22-16.3 it is requesting the adjustment under. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
37. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22-16.3(1), the Company will file:

- a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

**38. ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(2), within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
  - i. the designated corridor, route and the route adjustment;
  - ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment
- b. Certification and supporting documentation affirming:
  - i. That construction activities will be within the designated corridor
  - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- f. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

39. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(3), outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;
- c. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

40. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(4), outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:

- i. the designated corridor, corridor adjustment, route and the route adjustment;
- ii. all exclusion and avoidance areas within the adjustment area
- b. Certification that construction activities will not affect any known exclusion area;
- c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;
- d. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- e. Provide specific information about any mitigation measures Company will take within the adjustment area;
- f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.


Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
- 2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

- 41. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 21<sup>st</sup> day of June, 2016.

PLAINS TERMINALS NORTH DAKOTA LLC

By   
William Dean Gore

Its V.P., ENVIRONMENTAL & REG. COMPLIANCE

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

**Plains Terminals North Dakota LLC  
24-Inch Crude Oil Pipeline – McKenzie County  
Siting Application**

**Case No. PU-16-140**

**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).