

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

ONEOK Rockies Midstream, L.L.C  
Bear Creek Gas Plant Expansion Project – Dunn Cnt  
Siting Application

Case No. PU-18-21

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 **12th** day of **April, 2018**, she deposited in the United States Mail, Bismarck, North Dakota, **3** envelopes by first class mail, fully prepaid and **48** addressees electronically mailed a copy of:

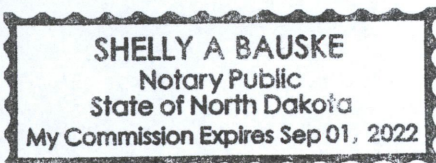
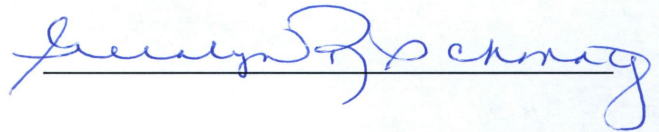
- **Findings of Fact, Conclusions of Law and Order**

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 **12th** day of **April, 2018**.

  
Notary Public

SEAL

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

**ONEOK Rockies Midstream, L.L.C.**  
**Bear Creek Gas Plant Expansion Project – Dunn County**  
**Siting Application**

**Case No. PU-18-21**

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

**April 11, 2018**

**Appearances**

Commissioners Randy Christmann and Brian Kroshus.

Wade C. Mann and Casey A. Furey, Attorneys at Law, Crowley Fleck, PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58502, on behalf of the Applicant, ONEOK Rockies Midstream, L.L.C.

Mitchell D. Armstrong, Special Assistant Attorney General, 122 East Broadway Avenue, Bismarck, North Dakota 58502, as Counsel for the Public Service Commission.

Timothy Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street-Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

**Preliminary Statement**

On January 10, 2018, ONEOK Rockies Midstream, L.L.C. (ONEOK) filed an application for a certificate of site compatibility concerning the location of a gas processing plant in Dunn County, North Dakota. ONEOK is proposes to increase the gas processing capability of its existing Bear Creek Gas Plant.

On January 25, 2018, ONEOK filed a Migratory Bird Conservation and Compliance Plan.

On February 14, 2018, the Commission deemed complete the application of ONEOK.

Also on February 14, 2018, the Commission issued a Notice of Filings and Public Hearing (Notice) scheduling a hearing for March 21, 2018, at 10:00 a.m. Central Time at the High Plains Cultural Center, 194 Central Avenue South, Killdeer, North Dakota 58640.

The Notice identified the following issues to be considered with respect to the Amended Application:

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?

On March 20, 2018, Commissioner Julie Fedorchak recused herself from Case No. PU-18-21.

On March 21, 2018, the hearing was held as scheduled.

On April 3, 2018, ONEOK filed Late-Filed Exhibit 8, an executed Certification Relating to Order Provisions-Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.

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:

### **Findings of Fact**

1. ONEOK is a Delaware Limited Liability Company authorized to do business in the State of North Dakota as evidenced by the corporate papers filed with the Commission on January 10, 2018, in Case No. PU-11-684.

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

2. ONEOK owns and operates the Bear Creek Gas Plant (Plant) located approximately five miles north of the City of Killdeer. The Plant is located on a 76-acre parcel of land owned by ONEOK in the northeast quarter of Section 28, Township 146 North, Range 95 West, Dunn County, North Dakota (Site).
3. ONEOK proposes to increase the wellhead gas processing capacity of the existing Bear Creek Gas Plant from 80 million standard cubic feet per day (MMscfd) up to 175

MMscfd (Project). ONEOK testified the Project may include the addition of an amine treating system.

4. Natural gas liquids (NGLs) produced by the facility will be sold and transported by pipelines. Residue gas produced by the facility will be delivered to a pipeline owned by Northern Border Pipeline Company.
5. The estimated cost of the Bear Creek Gas Plant, including the proposed expansion, is \$250 million.

#### Study of Preferred Location

6. ONEOK conducted cultural and natural resource desktop surveys, as well as field surveys on the 76-acre Site prior to the Plant's construction.
7. ONEOK conducted a Class I Cultural Resource Literature Search of a 1-mile wide buffer area centered on the Site to identify any previously recorded cultural resources.
8. ONEOK conducted a Class III Cultural Resource Inventory of 145 acres, which included the Site.
9. The following agencies provided comments regarding the Project: (i) U.S. Army Corps of Engineers; (ii) U.S. Department of Defense; (iii) U.S. Fish and Wildlife Service; (iv) North Dakota Department of Trust Lands; (v) North Dakota Game and Fish Department; (vi) North Dakota State Historic Preservation Office (SHPO); and (vii) North Dakota State Water Commission. The North Dakota State Water Commission commented on the Plant in Exhibit 5. Exhibit 6 is a letter from the North Dakota State Water Commission related to another project, and therefore is not relevant to this decision.

#### Siting Criteria

10. The Commission has developed criteria pursuant to North Dakota Century Code section 49-22-05.1 to guide the site, corridor, and route suitability evaluation and designation process. 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.
11. ONEOK evaluated the 76-acre Site regarding the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.
12. With the exception of prime and unique farmland as stated in North Dakota Administrative Code Section 69-06-08-01(1)(d), an Exclusion Area is a geographic area that must be excluded in the consideration of a site for an energy conversion facility. If the Commission finds that the prime farmland and unique farmland that will be removed

from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, the classification as an exclusion area does not apply.

13. The 76-acre Site includes approximately 3.22 acres of prime farmland.

14. Other than the prime farmland, ONEOK's surveys did not record any Exclusion Areas within the 76-acre Site.

15. The Commission finds that the prime farmland removed from use by the Plant is of such small acreage as to be of negligible impact on agricultural productions and is therefore not an Exclusion Area.

16. An Avoidance Area is a geographic area that may not be approved as a site for an energy conversion facility unless the applicant demonstrates that under the circumstances there is no reasonable alternative. In determining whether an Avoidance Area should 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 sites.

17. ONEOK's Class III inventory identified three historic archaeological sites within the 76-acre Site. One of the archaeological sites was not eligible for inclusion on the National Register of Historic Places. The other two archaeological sites were avoided during construction of the Plant. ONEOK testified the proposed expansion will not affect the two historic sites. In correspondence dated December 14, 2017, SHPO concurred with ONEOK's Class III survey recommendation of "No Adverse Effect to or No Significant Sites Affected."

18. Other than archaeological sites, ONEOK's surveys did not record any Avoidance Areas within the 76-acre Site.

19. The Commission's Selection Criteria is set forth in North Dakota Administrative Code section 69-06-08-01(5). A site shall be approved only if it is determined that any significant adverse effects resulting from the location, construction, and operation of the facility as they relate to the selection criteria will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum. ONEOK analyzed the effects that may result from the location, construction, and operation of Plant II to determine that no significant adverse effects will result.

20. The Commission's Policy Criteria is set forth in North Dakota Administrative Code section 69-06-08-01(6). The Commission may give preference to an application demonstrating certain benefits of the energy conversion facility. ONEOK has committed to maximizing benefits that result from implementing the policies and practices applicable to the proposed energy conversion facility.

## Measures to Minimize Impact

21. ONEOK has made representations and covenants as indicated by the Certification Relating to Order Provisions – Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.
22. The addition of processing capacity for the Plant will minimize environmental disturbance by utilizing existing infrastructure, including access roads, utilities, gathering systems, and delivery and take away pipelines.
23. All construction associated with the expansion will occur within the previously developed 76-acre Site.
24. ONEOK will obtain any necessary permits from the North Dakota Department of Health prior to construction of those portions of the Plant for which a permit is required.
25. ONEOK will continue to coordinate with local authorities and emergency managers regarding emergency response measures
26. ONEOK testified that it will perform pressure and function testing before putting new facilities into service. ONEOK further testified that it will comply with all applicable safety laws and standards.
27. ONEOK will utilize the ND One Call system during construction.
28. ONEOK testified it will work with Dunn County by communicating its construction plans to aid in the orderly use of county roads.

From the foregoing Findings of Fact the Commission makes the following conclusions of law:

### Conclusions of Law

1. The Commission has jurisdiction over the applicant, ONEOK Rockies Midstream, L.L.C., and over the subject matter of the Amended Application under North Dakota Century Code Chapter 49-22.1.
2. ONEOK is a utility as defined in North Dakota Century Code Section 49-22.1-01(12).
3. The Bear Creek Gas Plant is an energy conversion facility as defined in North Dakota Century Code Section 49-22.1-01(5).

4. The location, construction, and operation of the Bear Creek Gas Plant 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 Bear Creek Gas Plant is compatible with the environmental preservation and the efficient use of resources.
6. The Bear Creek Gas Plant 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 Findings of Fact and Conclusions of Law, the Commission makes the following order:

### **Order**

The Commission orders:

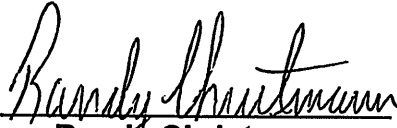
1. Certificate of Site Compatibility No. 55 is issued to ONEOK Rockies Midstream, L.L.C. designating a site for the construction, operation, and maintenance of the Bear Creek Gas Plant. For purposes of this Certificate, the designated site is the 76-acre parcel of land located approximately 5 miles north of Killdeer, Dunn County, North Dakota, as identified on Hearing Exhibit 3.
2. The Certification Relating to Order Provisions – Energy Conversion Facility Siting with attached Tree and Shrub Mitigation Specifications executed April 3, 2018, is incorporated by reference and attached to this Order.
3. To the extent there are any conflicts or inconsistencies between ONEOK's application and the Certification, the Certification provisions control.
4. Prior to commencing construction of any portion of the proposed Project, ONEOK shall obtain all other necessary licenses and permits for construction of such portion, and shall provide copies to the Commission prior to construction of that portion of the project.
5. If a spill by ONEOK requires notification to any other state or federal agency, ONEOK 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.

6. ONEOK is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different energy conversion facility than was specified in the application within the site designated in this proceeding.

**PUBLIC SERVICE COMMISSION**



**Brian Kroshus  
Commissioner**



**Randy Christmann  
Chairman**

**Recused**

**Julie Fedorchak  
Commissioner**

**PUBLIC SERVICE COMMISSION**

**STATE OF NORTH DAKOTA**

**Certificate of Site Compatibility  
Number 55**

*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 175 million standard cubic feet gas per day natural gas processing plant and associated facilities in Dunn County, North Dakota.*

*The facility may be sited in this designated location in compliance with the energy conversion facility siting criteria. This certificate is issued in accordance with the Finding of Fact, Conclusion of Law and Order of the Commission in Case No. PU-18-21 dated April 11, 2018 and is subject to the conditions and limitations noted in that order.*

*Bismarck, North Dakota, April 11, 2018.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

ONEOK Rockies Midstream, L.L.C.  
Bear Creek Gas Plant Expansion Project — Dunn County  
Siting Application

Case No. PU-18-21

CERTIFICATION RELATING TO ORDER PROVISIONS  
ENERGY CONVERSION FACILITY SITING

I am J. Brian Boulter, Vice President – Construction Projects, a representative of ONEOK Rockies Midstream, L.L.C. ("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 49-22.1 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 proposed energy conversion 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 energy conversion facility that requires said license or permit.
4. 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.
5. 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.
6. 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.

**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 approved by the North Dakota State Historic Preservation Office 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. Such provision shall only apply to third-party owned property.
10. 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 monthly basis.
11. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
12. Company understands and agrees that it shall bury all underground lines to a depth of at least 48 inches to the top of the lines. Such provision shall only apply to third-party owned property.
13. Company understands and agrees that topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas, roadways, and locations of associated facilities must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must first 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. Such provision shall only apply to third-party owned property.

14. 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 unless such areas are located on Company property.
15. 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.
16. 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.
17. 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.
18. 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:**

19. 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, unless such areas are located on Company property.
20. 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.

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. Such provision shall only apply to third-party owned property.

21. Company will fulfil its obligation for reclamation and maintenance of the approved site continuing throughout the life of the energy conversion facility.

22. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility unless such areas are located on Company property.
23. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility unless such areas are located on Company property.
24. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
25. 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.
26. 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.
27. 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.

**Communication with Landowners and PSC:**

28. Company agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.
29. 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 energy conversion facility, including injuries to any person.
30. Company agrees to report to the Commission, as soon as reasonably possible, the presence in or near the approved site of any critical habitat of threatened or endangered species that Company becomes aware of and which were not previously reported to the Commission.
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 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.
33. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company.

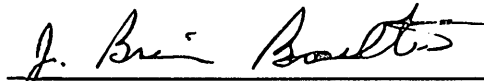
**Modification of Energy Conversion Facility or Energy Conversion Site Plan:**

34. Before conducting any construction activities for any modification within the designated site, the Company will file the name and contact information for a key contact person for the purposes of notice and communication during the site modification application and will use the following procedures:
  - A. Before conducting any construction activities for any modification within the designated site, and such **construction activities will not affect any known exclusion or avoidance areas** within the designated site, the Company will file certification and supporting documentation:
    1. Affirming that construction activities will not affect any known exclusion or avoidance areas within the designated site;
    2. Including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated site and site modification(s); and
    3. Affirming that Company will comply with the Commission's order, law and rules designating the site.
  - B. Before conducting any construction activities for any modification within the designated site, and such construction activities will not affect any known exclusion but **may affect an avoidance area** within the designated site, the Company will file:
    1. 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:
      - a. the designated site and the site modification;

- b. all exclusion and avoidance areas within the portion of the designated site containing the site modification.
  2. Certification and supporting documentation affirming that construction activities will not affect any known exclusion area.
  3. All field studies performed on the portion of the designated site containing the site modification;
  4. Specific information about any mitigation measures Company will take within the modification area;
  5. 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;
  6. Certification that Company will comply with the Commission's order, law and rules designating the site.
35. Company acknowledges and agrees that written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity.

Dated this 3<sup>rd</sup> day of April, 2018.

ONEOK Rockies Midstream, L.L.C.



J. Brian Boulter  
Vice President – Construction Projects



STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

ONEOK Rockies Midstream, L.L.C.  
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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 and approved by the Commission.
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).