

**2013 HOUSE ENERGY AND NATURAL RESOURCES**

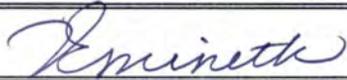
**HB 1147**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee  
Pioneer Room, State Capitol

HB 1147  
Jan 17, 2013  
17329  
3 testimonies

Conference Committee



**Relating to definitions and the procedure for siting a gas or liquid transmission line; and to declare an emergency.**

## Minutes:

Rep. Porter: The meeting was called to order on HB 1147

Rep. Keiser: This is a one of the major bills that this committee will be considering this legislative session. It is an industry bill it is being brought to you from a board spectrum of the industry that as you can see in the title is related to the siting of gas or liquid transmission lines within the state of North Dakota. Now we have a code that was written pre Bakken. It meets certain needs but it was written pre Bakken. The PSC has made a lot of policy practice decisions over the years when issues have not been directly addressed in the code. Given the level of capital involved to develop a project and the need for a reasonable return on investment by these companies that wish to come in and develop these bid projects what policy issues should the legislature be addressing? We should be establishing in code reasonable certainty so that the companies can make decisions and make process in designing, building and putting production lines into operation. (See section 2 Page 1 of HB 1147) This section is not designed to prevent the open access to providing input we have here in North Dakota or to change it. What we are addressing is that interveners should have some standing on the application. We need to be prepared to make some reasonable adjustments in this legislation these companies are ready to go but they can go other places to invest their money.

Ron Ness: President of North Dakota Petroleum Council; If you are going to comment 20,000 barrels a day to a major pipeline project that means you know that you will drill those wells you are going to produce those wells the pipeline company who is transportation company has gone out and done their due diligence they come to you and say" here is what we need we need a firm commitment from you to deliver. We need some commitment within a certain timeline because we have that oil coming on line and need that market for that oil. This bill is one of them empower commissions that was brought to this committee and we worked on it a long time. We want to make sure that this is moving up the on the discussions and the communications in the permitting process to ensure that those things are brought out on the onset. We agree that this bill needs some work this

committee has a great history in being able to work on those things and come out with a good product in the end.

Claudia Schrule: Senior Manager for Regulatory Pipeline Development for Enbridge who is a member of the Petroleum Council; Since 2005 Enbridge has increased its pipeline capacity of the North Dakota pipeline system from about 65,000 barrels a day to where we will at end of the first quarter to 475,000 barrels a day. (See testimony 2) Today route variations are handled two different ways when an applicant files a route deviation if it is within a surveyed corridor the staff approves that type of route deviation and the timeline to do that varies. We have to have the landowners' permission that is key. What we are proposing here is that if you meet that criteria and are within the surveyed corridor then this would be an action where the commission would not have to make a ruling this would be an automatic ruling.

Rep. Keiser: On the second bucket the commission always has the reserved right when you notify them. They do always maintain the authority to ask for the extension?

Claudia Schrule: yes you will find that language on page 5 lines 9-17 but it could also be in bucket number 2 the commission may have some questions they are allowed to be able to come back to the applicant and ask questions and further extend that timeline. This 15 day process is really where everything is in alignment.

Rep. Keiser: What the companies are trying to offer is these corridors that have been approved we are now under construction and somebody is for whatever reason there is a variation you have contracted employees, engineers, construction people, equipment siting outside waiting to proceed this is after everything is approved what is the concern?

Rep. Schmidt: ON page 5 line number 1 all environmental clearances have been obtained and the clearances are filed with the application. My question is from whom?

Claudia Schrule: You would go back and do your biological survey you do your ecological survey and you need also to do you wetland survey so it would be with all the agencies.

Rep. Nathe: Why wouldn't that be caught right away in the beginning of the process?

Claudia Schrule: Sometimes when working with your various agencies things like that are discovered after the fact because they are continuing to do some biological work it could be that these sites when they reviewed they determine that it is a site that they want to protect the site.

Rep. Anderson: What is the distance between the residence and the pipeline?

Claudia Schrule: The commission's rules have avoidance area and so if you are going to be within 500 feet of the residence you must have a waiver from that landowner. Under bill 1147 the industry is proposing a more simplified process that would be automated but you have to meet those criteria and if you don't meet those criteria then you cannot use this automated process.

Rep. Kelsh: Using that example how many were outside of the variance?

Claudia Schrule: I did some math on that and if can you group them together or is it an individual one by one it looks worse when you do individually but if you take on the high end the 4 weeks approved a route deviation outside the corridor or as long as 8 then your timeline goes from anywhere from 6 months to 12 months to get those approved and since we had customers that are trying to get approved to get a pipeline we have an in service date that we are trying to meet in and this blows the schedule when we have all of these delays.

Rep. Keiser: When you referred to that pipeline that was built in the variations that you requested how many were not approved?

Claudia Schrule: They were all approved. The intervener process that we are proposing here; in no way are we taking away from any of the public rights that you have today. We want to take the path where people are not going to object. We want to route that pipeline where we have the least objection we want to come to the commission with an application that is complete and everyone to the best of our ability is in favor of the application. The real need of what I am proposing is on page 3 starts with paragraph 5 line 21 in HB1147. We want to see that intervener come forward early on in the process.

Rep. Damschen: In that that subsection 5 on page 3 does the intervener have to meet all of those criteria on just one?

Claudia Schrule: Just one.

Rep. Keiser: Under the current process in the intervener stage comes during the public hearing and how much does that delay the project?

Claudia Schrule: That would be delayed now we find ourselves in the commission as well, the commission has heard the application then we find ourselves working with that particular party to resolve their issues it could be a month or much longer than that the timeline is really unknown.

Rep. Keiser: Did you say FERC uses this process and what other states use the intervener process?

Claudia Schrule: Absolutely I don't know of any states that we operate in that do not use this process.

Rep. Kelsh: The red box makes reference to section 69-02-02-05 that is not referenced in this bill can you tell me what that is.

Claudia Schrule: That is the section of the commissions procedures and this particular one section deals with the identification of what it takes to do an intervention.

Rep. Porte: Can you provide us with some examples of those states in hard copy?

Caludia Schrule: I can do that.

Rep.Nathe: During the process the landowner and the pipeline company come to a resolution do they have to follow to the end of this process?

Claudia Schrule: We ask that party to do a withdrawal so they withdraw so there is a process so the commission has a record to say we resolved these issues.

Rep. Porter: Thank You.

Daryl Dukart: I am a Dunn County Land owner and also a leader in the Dunn County mineral owner's organization that we have in Dunn County. Our organization supports this bill

Dale Niezwaag: I represent Basin Electric Power Cooperative and Dakota Gasification Company; the statue listed in this proposal affects both high voltage transmission lines and pipelines. We are affected by both of these after reading the bill we were going to be opposed to the bill we agree with some of the concepts of what they are trying to do and the ideas in the bill we disagree with the way it is worded. I would agree with Mr. Ness that the bill needs some additional work to work clean it up and make it better. We were to meet with a group of the proponents on the bill and we think we can come to agreement on the language that will work for both of us so we encourage that additional work continue and so we would give our support.

Illona A. Jeffcoat-Sacco General Counsel with the Public Service Commission; we do not have a position as this time in support or opposed. We are here today to let you know some of our concerns the commission does recognize that many of the amendments in the bill clarify existing statutory language these changes are acceptable to the commission and cause no concerns with section 3 of the bill. (See testimony 3) We also would like to clear up some misconceptions about the current process. We do try to use a very streamline process to move that route within the corridor the 6 to 14 days surprised me it is possibly that it takes that long it shouldn't take that long.

Rep. Porter: If this works for FERC and many other states why so many flags?

Illona A. Jeffcoat-Sacco: I am not familiar with the FERC process but I am going to be looking it up to see I think the process is not totally different there may be something more streamlined after the outside of the corridor type of issue.

Brian Kalk: A Public Service Commissioner I want to give my own position. I think there is opportunity here to streamline and improve things, making some additional changes and record our rulings and some of those would help out with what they need to do. I am very concerned with this intervener business because Illona set it up where for someone to request intervention we seldom grant intervener status because no one asks for it.

Rep. Keiser: You say on the one hand we don't have to anything because we are doing everything quickly if you are doing everything quickly then there is no problem in doing this.

Brian Kalk: I think the long term changes in how we do things to create more staff time is the right choice

Rep. Keiser: But we could get a commissioner that could throw projects under the truck because of some ruling they want to make? The other question I have for you is on the intervener side If in fact other states are doing this that these pipelines are operating in if FERC is doing it that doesn't mean North Dakota should do it but you mentioned all of these groups that wouldn't apply for intervener status and therefore would not be recognized. If we had intervener status they would apply don't you think?

Brian Kalk: I can't speak for other agencies but I don't believe they would request intervention status because it is easier for them to come to the hearing and say their piece and off they go.

Rep. Keiser: Have you seen the ways in the process because we haven't had some of these issues that an intervener status approach would resolve by coming in raising the issue allowing these companies to address them prior to the hearing.

Brian Kalk: It does delay the project but often times for good reason in cases where they request modification in the corridor there has been no delays. If there is a case where the Historical Society needs more time before they are going to issue a finding of no concern we will put in an order to build ABC contention upon approval of the slip.

Julie Fedorchak: I am here today as another of the Public Service Commission this is my first official testimony to the legislature in my new role. Rep. Keiser I concur with you that this is a substantive bill and it impacts is far reaching. It goes to the heart of the very sensitive infrastructure challenges in western North Dakota.

Al Anderson: I am an Commerce Commission I can't support the bill as it stands but I am also not against it as it stands because we haven't been able to get all of the empower members together to go through this in detail. We encourage the inclusion of the PSC in these discussions to work through this.

Rep. Porter: We will close the hearing on HB 1147.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1147  
February 7, 2013  
No recording

Conference Committee

*Emineth*

Relating to

**Minutes:**

[Redacted]

The subcommittee meeting for HB 1147 was held on February 7, 2013 at 8:00 a.m. at the Pioneer Room.

Present were: Rep. Damschen, Rep. Keiser, and Rep. Kelsh.

Also present were Todd Kranda, Dale Niezwaag, Shane Goettle, and Illona Jeffcoat-Sacco.

1. Relating to definitions and the procedure for siting a gas or liquid transmission line and to declare an emergency.

Time of adjournment; 8:21 a.m.

Minutes taken by Rep. Damschen

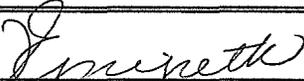
# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

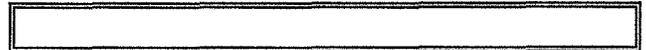
HB 1147  
February 14, 2013  
No recording

Conference Committee



Definitions and procedure for siting as or liquid transmission line and to declare an emergency

**Minutes:**



The meeting took place on Thursday February 14, 2013 at 8:35 a.m. in the Pioneer Room. Present were Rep. Damschen, Rep. Kelsh, Absent Rep. Keiser and Julie Fredorchak. The meeting adjourned at 8:50 a.m.

Topics discussed:

1. The hog house amendments.
2. Committee will receive and review changes as presented from the Legislative Council.
3. Subcommittee meeting scheduled for February 15, 2013 at 8:30 a.m. at the pioneer room.

Minutes taken by Rep. Damschen

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB1147

February 15, 2013

No recording

Conference Committee

*Emineth*

Definitions and the procedure for siting gas or liquid transmission line; and to declare an emergency.

**Minutes:**

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The meeting was held Friday February 15, 2013 at 8:35 at the pioneer room.

Adjournment 8:40

Present were Rep. Damschen, Rep. Kelsh, Rep. Keiser.

Other present were Shane Goettel, Ron Ness, Todd Kranda.

**Discussion:**

1 Amendment from LC 13.0379.03002 Motion made by Rep. Kelsh Second Rep. Keiser Passed

2. Amendments - Attachment A Motion by Rep. Kelsh Seconded Rep. Keiser Passed

Subcommittee meeting ended At 8:35

Minutes were taken by Rep. Damschen

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1147  
February 15, 2014  
19028

Conference Committee

*Minutes*

Definitions and the procedure for siting gas or liquid transmission line; and to declare an emergency.

**Minutes:**

1-3 Attachments

Rep. Porter: We have HB 1147 before us.

Todd Kranda: From Kelsh Law ND Petroleum Council; we are working with the industry group and the subcommittee and came up with these amendments which the subcommittee accepted. There was a second amendment to the legislative council amendment just to change one clause which Shane handed out that one sheet that was adopted as well. I don't think you have that. We also handed out these little charts. (1-2 Attachments)

Rep. Porter: We have the other amendment that has page 7 language and we have a 5 page bill.

Todd Kranda: Tim Dawson gave to me what is the marked up version (Attachment 3)

Rep. Keiser: Did you do the part of the intervener?

Todd Kranda: Yes during the hearing you heard some concerns about the intervener process and we have deleted that section.

Rep. Porter: In the amendment in the other proposed amendment if we change the amendment so that it reads the language off of the other handed out sheet not going to the marked up version would that change the language to what it should be?

Todd Kranda: Yes

Rep. Porter: We have a motion from Rep. Keiser and a second from Rep. Nathe to move the proposed amendment which does include the changing of page 3 number 4a sub 3 to

House Energy and Natural Resources

HB 1147

February 15, 2013

Page 2

the replacement language to utility has good cause and specific reason to impact the avoidance and a reasonable alternative does not exist. Voice voter motion carries

Rep. Damschen: I will support this bill.

Rep. Porter: We have a motion from Rep. Damschen for a do pass for HB 1147 as amended second from Rep. Keiser.

Yes 12 No 0 Absent 1 Carrier: Rep. Damschen

1/15/13  
LSD/MC  
10/3

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1147

- Page 1, line 1, remove "a new subsection to section 49-22-03 and"
- Page 1, line 1, after the second "a" insert "new"
- Page 1, line 2, remove "definitions and"
- Page 1, line 2, replace "variances" with "adjustments"
- Page 1, line 4, remove "and sections 49-22-07.1 and 49-22-13"
- Page 1, line 5, remove "and the procedure"
- Page 1, line 5, after the semicolon insert "to repeal section 49-22-07.1 of the North Dakota Century Code, relating to a letter of intent;"
- Page 1, line 10, replace "strip" with "area"
- Page 1, line 10, remove "proposed and surveyed, as"
- Page 1, line 11, remove "applicable, by an applicant"
- Page 1 line 13, remove the overstrike over "~~designated~~"
- Page 1, remove lines 15 through 23
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 30
- Page 4, remove lines 1 and 2
- Page 4, remove lines 5 through 30
- Page 5, replace lines 1 through 25 with:

**"Route adjustment before or during construction for gas or liquid transmission line.**

1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
  - a. The construction activities will be within the designated corridor;
  - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
  - c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of a gas or liquid transmission line within the designated corridor that may affect an

2  
83

avoidance area if, before conducting any construction activities associated with the adjustment, the utility:

- a. Files with the commission certification and supporting documentation that:
    - (1) The construction activities are within the designated corridor;
    - (2) The construction activities will not affect any known exclusion areas within the designated corridor;
    - (3) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
    - (4) 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, unless the utility previously received authorization from the commission for the impact to the avoidance area;
    - (5) For an impact for which the utility does not already have approval or has not filed the approval in paragraph 4, the utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist; and
    - (6) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
  - b. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivision a of subsection 2, the route adjustment is deemed approved.
3. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line outside the designated corridor if, before conducting any construction activities associated with the adjustment, the utility:
- a. Files with the commission certification and supporting documentation that:
    - (1) The construction activities will not affect any known exclusion or avoidance areas;
    - (2) The route outside the corridor is no longer than one and one-half mile [2.41 kilometers];
    - (3) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route; and
    - (4) 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.

3/3

- b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
- 4. Before or during construction, a utility may adjust the route of a gas or liquid transmission line outside the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
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  - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
  - c. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivisions a and b of subsection 4, the route adjustment is deemed approved.
- 5. The commission may not be required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

**SECTION 3. REPEAL.** Section 49-22-07.1 of the North Dakota Century Code is repealed."

Re-number accordingly

Date: 2-15-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB1147

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep Keiser Seconded By Rep Nate

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunsakor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent: so move the amendment  
Carried

Date: 2-15-13  
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO: HB 1147

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By Rep Damschen Seconded By Rep Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh	✓	
Rep. Jim Schmidt	✓		Rep. Corey Mock	✓	
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson		✓			
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Damschen

If the vote is on an amendment, briefly indicate intent:  
Do pass as amended to HB 1147

**REPORT OF STANDING COMMITTEE**

**HB 1147: Energy and Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1147 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new subsection to section 49-22-03 and"

Page 1, line 1, after the second "a" insert "new"

Page 1, line 2, remove "definitions and"

Page 1, line 2, replace "variances" with "adjustments"

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Page 1, line 5, after the semicolon insert "to repeal section 49-22-07.1 of the North Dakota Century Code, relating to a letter of intent;"

Page 1, line 10, replace "strip" with "area"

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Page 1 line 13, remove the overstrike over "designated"

Page 1, remove lines 15 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 30

Page 4, remove lines 1 and 2

Page 4, remove lines 5 through 30

Page 5, replace lines 1 through 25 with:

**"Route adjustment before or during construction for gas or liquid transmission line.**

1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
  - a. The construction activities will be within the designated corridor;
  - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
  - c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of a gas or liquid transmission line within the designated corridor that may affect an

avoidance area if, before conducting any construction activities associated with the adjustment, the utility:

- a. Files with the commission certification and supporting documentation that:
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  - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.

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**SECTION 3. REPEAL.** Section 49-22-07.1 of the North Dakota Century Code is repealed."

Re-number accordingly

**2013 SENATE NATURAL RESOURCES**

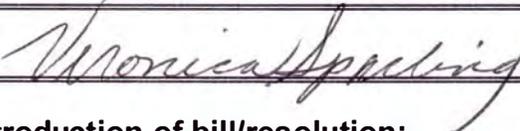
**HB 1147**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee  
Fort Lincoln Room, State Capitol

HB 1147  
March 14, 2013  
19932

Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

Relating to route adjustments for gas and liquid transmission lines; relating to definitions for siting a gas or liquid transmission line; relating to a letter of intent; and to declare an emergency

## Minutes:

attachments

All committee members were present.

Chairman Lyson opened the hearing for HB 1147.

Representative Keiser, District 47, introduced the bill. He gave the background of how the bill had evolved. The subcommittee got input from the PSC, the electrical companies, and the transmission companies. The bill deals with the steps of establishing a corridor for pipelines and transmission lines and how to address changes that need to be made when the project gets to the construction phase. This bill is agreed to by the PSC and by landowners and by industry. It deals with variances inside and outside the corridor.

Todd Kranda, lobbyist on behalf of ND Petroleum Council and attorney at Kelsch Law Firm, submitted written testimony. See attachment #1. (Ends at 08:20)

Senator Triplett: Were landowner groups involved in developing this bill?

Mr. Kranda: Yes, they should be pleased with the process.

Claudia Schrull, Senior Manager of Regulatory Pipeline Development for Enbridge Energy Company and member of the ND Petroleum Council, explained the specifics of HB 1147. See attachment #2. The purpose of the bill is to streamline the regulatory processes to make route adjustments after the ND Public Service Commission has issued its order on the pipeline route. She explained the steps that are taken to establish a corridor and then a route within that corridor. (13:40 to 15:20) She explained the route deviations depicted on pages 5 - 9 of attachment #2. (15:20 to 23:20) If in making a change to accommodate a landowner request, they go outside their permitted corridor, they would need a route adjustment from the Public Service Commission. 20:45 to 23:20 she explained what would have to be provided to the Public Service Commission to be approved for a route adjustment. If after 10 days there are no questions, then it is approved.

Senator Triplett asked about page 2, lines 11-14, subsection 4.... What length of notice would the property owners get and what type of notice is the pipeline required to submit?

Ms. Schrull said because they are within their permitted corridor they would already have been working with those environmental agencies. The agencies would have already told the pipeline company what they could and could not affect. The pipeline company would already have all of their environmental clearances.

Senator Hogue said private landowners feel they get a disproportionate amount of the underground facilities because the federal and state agencies are "heard" more often than individual landowners are.

Ms. Schrull feels Enbridge works well with land owners. She said it could be true that more end up on private lands because the federal and state agencies can erect more barriers. Ms. Schrull's explanation of the procedures for making route adjustments ends at 32:40.

Chairman Lyson asked if there are any state inspectors that check on the pipelines as they are being put in to make sure they are within the corridor.

Ms. Schrull said there are inspectors that make sure they are within the corridor or where the commission has granted approval for placement.

Ms. Schrull explained what forms are required to be filed. The commission reviews all of the paperwork. If no action is taken by the commission within 10 days, the request for a route permit would be approved. If the commission did not approve, then the applicant would have to file a siting application. (Ends at 34:50)

Ms. Schrull re caps the process 34:45 to 35:35. If the applicant meets all criteria, no public hearing is required. If they cannot meet the criteria, then public hearings would be held and the commission's rules and regulations under 49.22.13 for public notice would then be granted and issued.

Senator Triplett asked how they figure out where the exclusion areas are.

Ms. Schrull said they hire archeologists to go out as part of their field work to make sure they are not impacting any cultural resources.

Senator Triplett asked if they used only archeologists that are permitted by the State Historical Society and then they report the findings to the State Historical Society.

Ms. Schrull said that is correct.

Senator Laffen asked if the agreement with the landowner is for the entire corridor or just for the route within that corridor.

Ms. Schrull said they only ask for an easement for the route, not for the whole corridor. The typical width for a single pipeline is 40 feet, but is wider than that during the construction phase and wider than that in a wetland area. (Ends at 38:20)

Senator Laffen asked when they would use eminent domain.

Ms. Schrull said Enbridge policy is to not use eminent domain. Typically eminent domain involves a longer time span than most utility companies have to work with. Eminent domain is considered the last recourse.

Ms. Schrull's presentation ends at 41:20.

Senator Hogue asked if they do a route adjustment, do they give the easement back to the landowner whose property they no longer need to use.

Ms. Schrull said they do.

Julie Fedorchak, member of the ND Public Service Commission, stood in support of the bill. The bill supports the need for industry to have certainty and speed and understanding what they are dealing with as they move forward with a pipeline project. It covers public safety and landowner interests and the environmental and cultural oversight that the PSC is required to protect and maintain. This bill will help our state carry forward a fair and thoughtful industrialization of our state. Last year the PSC sited 1.7 billion dollars-worth of energy related infrastructure projects in the state. That included 56 million in new electric generation facilities, 707 million in liquid pipelines, nearly 406 million in new transmission lines and 550 million in wind farms. So far this year we have 3 projects underway. We have 6 letters of intent that we have received that total an estimated 420 million. There is a lot of work yet to be done and this process will help clarify everything. This bill would affect projects that are already under construction to keep them moving along. It leaves flexibility for landowners to reconsider as the pipeline is being built. It maintains the public's access to the process. The regulators are the ones who wanted to strike the letter of intent because it doesn't serve a relevant purpose any more.

Senator Murphy asked whether Ms. Fedorchak was involved with a working group so she would be aware what the public wanted. Does she see this as a good balance?

Ms. Fedorchak said the Farmers Union voiced concern over the intervener status, but taking that out addressed their concerns. She said the bill does meet the balance. It doesn't change in any way how the public can be involved in the process.

There was additional discussion about the ability for the public to be involved in the process. (48:40 to 53:30)

Ms. Fedorchak stated that the PSC is looking for ways to increase the public involvement in the process.

Senator Murphy asked what the most important part of this bill is.

Ms. Fedorchak said the most important part is that it just clarifies in law what the process is under each circumstance.

Daryl Dukart, a Dunn County landowner and a presenter on the Dunn County Energy Development Organization (a landowner organization that supports the energy development in western North Dakota) spoke in support of HB 1147. He presented last May to CSIS in Washington, DC. In June he was in Ohio at the MLS convention. He stated we have to understand that this is a world business, not just a North Dakota business. One concern is the continued flaring. We need to get pipelines in so we can save the wear and tear on our roads.

Senator Triplett asked if there had been participation from the landowners.

Mr. Dukart said they had been part of the process.

Others in favor: None

Opposition: None

Neutral: None

Chairman Lyson closed the hearing for HB 1147.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee  
Fort Lincoln Room, State Capitol

HB 1147  
March 15, 2013  
20008

Conference Committee

*Neonics*

## Explanation or reason for introduction of bill/resolution:

Relating to route adjustments for gas and liquid transmission lines; relating to definitions for siting a gas or liquid transmission line; relating to a letter of intent; and to declare an emergency

## Minutes:

*No attachments*

Chairman Lyson opened the discussion for HB 1147.

Senator Triplett made a Do Pass motion.

Senator Burckhard: Second

Senator Unruh stated she had one concern. On page 3 of the bill on line three, "the route is no longer than one and one half mile".

Senator Lyson stated that if it were longer than 1 ½ miles they would need an environmental impact statement.

Senator Burckhard said it seemed to offer a balance between landowners, utility companies, etc. and would decrease flaring.

Roll Call Vote: 7, 0, 0

Carrier: Senator Burckhard

Date: 3-15-13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1147

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Triplet Seconded By Burckhard

Senators	Yes	No	Senators	Yes	No
Senator Lyson	✓		Senator Triplet	✓	
Senator Burckhard	✓		Senator Murphy	✓	
Senator Hogue	✓				
Senator Laffen	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Burckhard

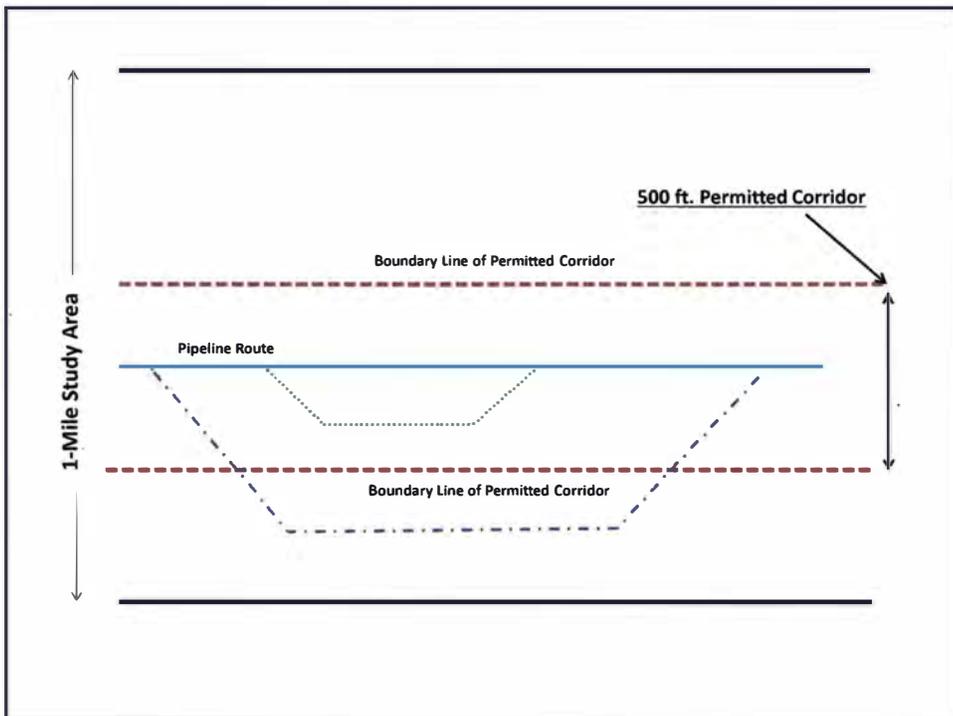
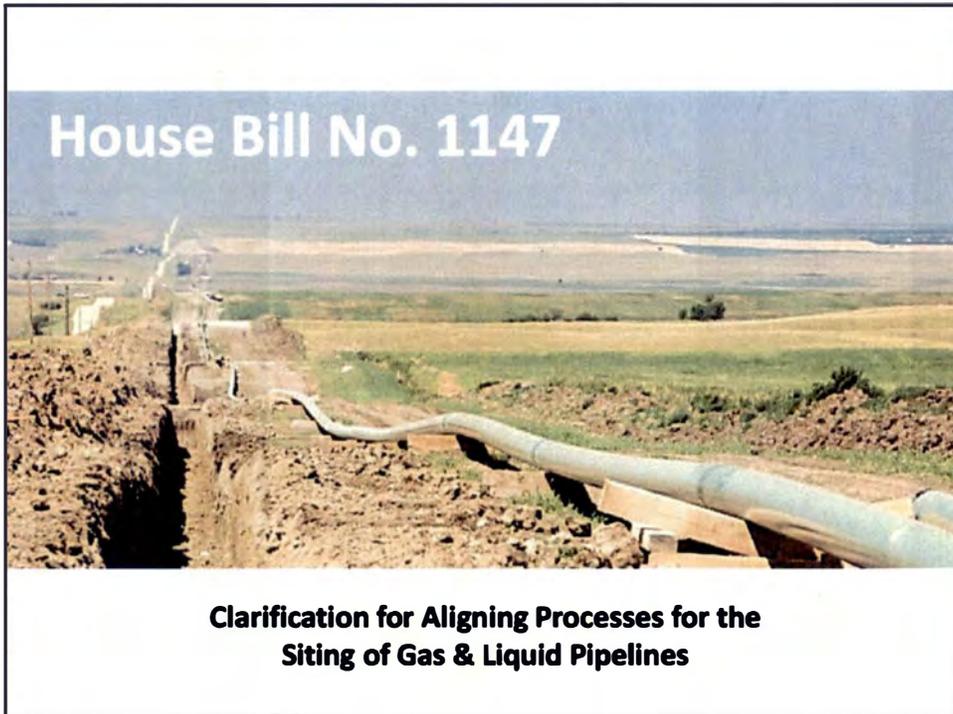
If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

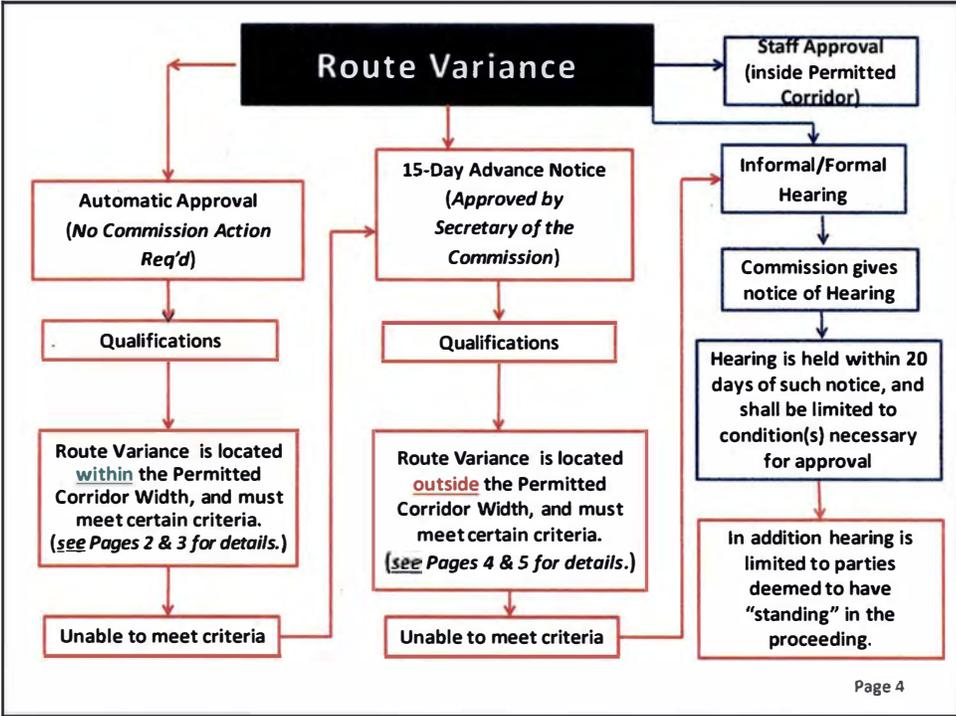
**HB 1147, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman)**  
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1147 was placed on the Fourteenth order on the calendar.

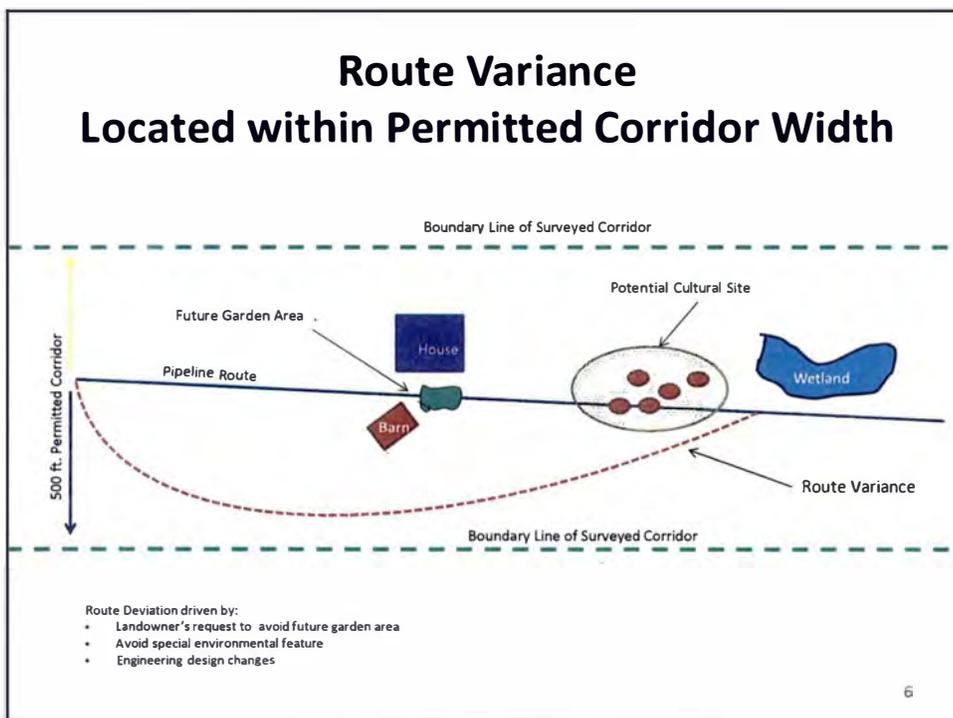
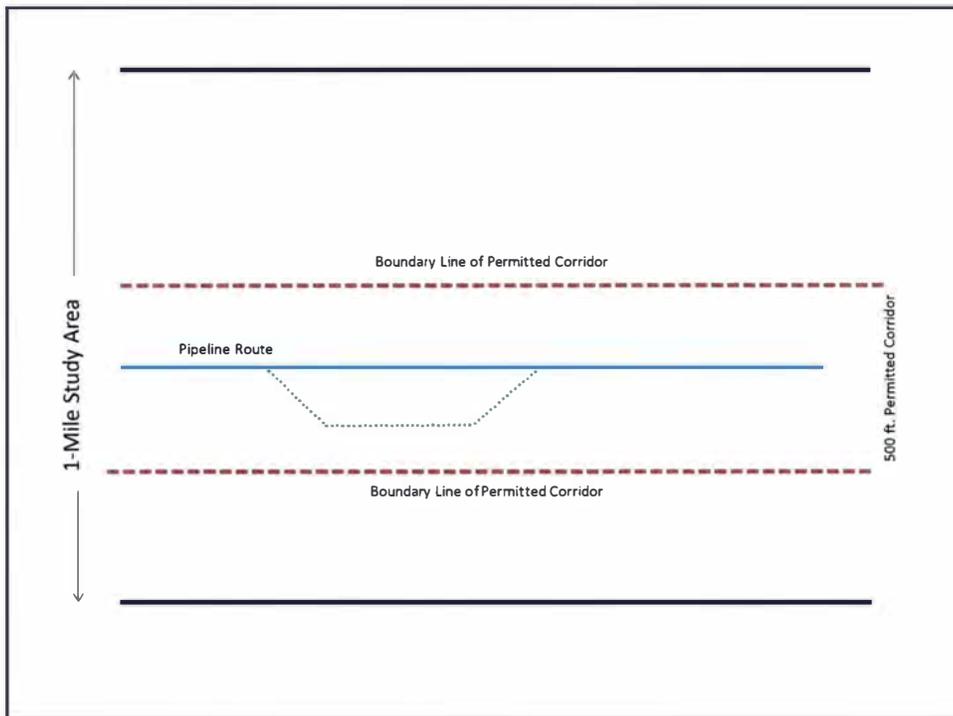
**2013 TESTIMONY**

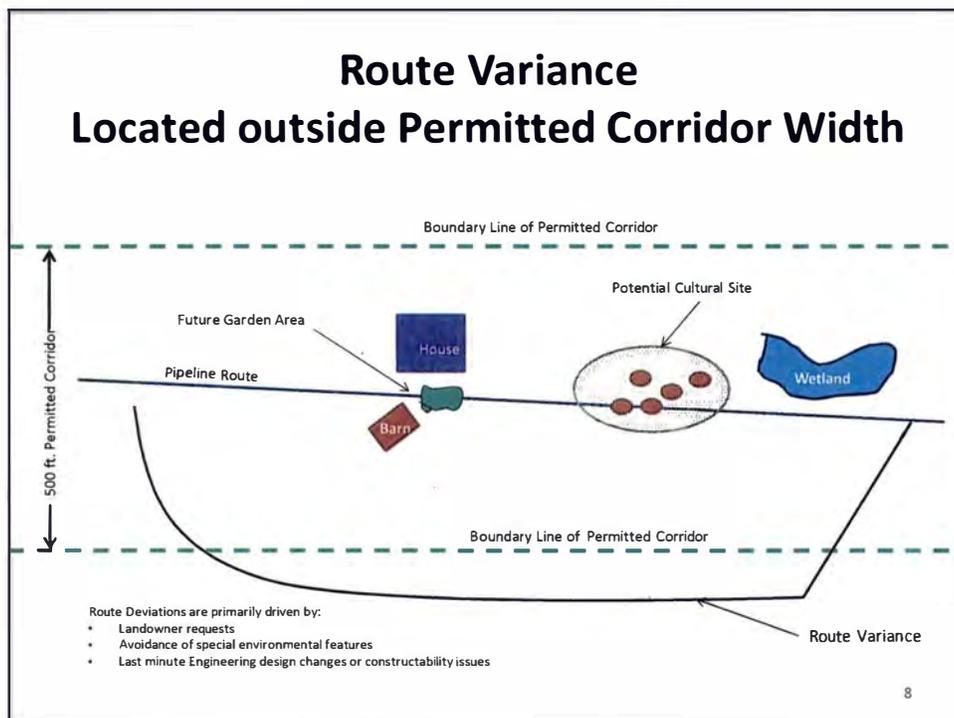
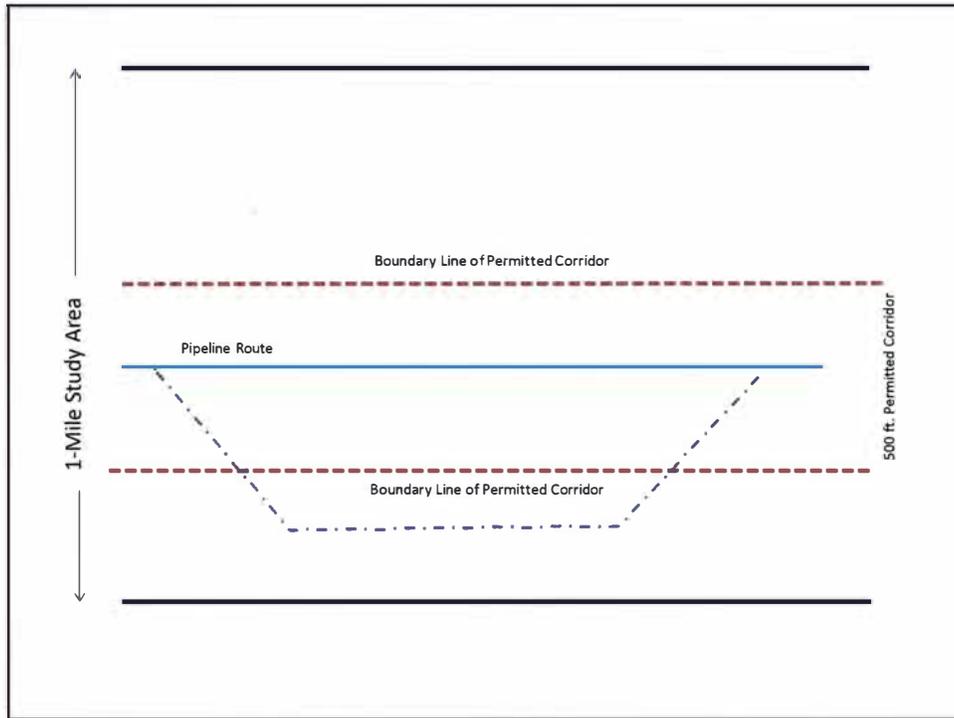
**HB 1147**



# Route Deviation Process







## Route Variance Located outside Permitted Corridor Width

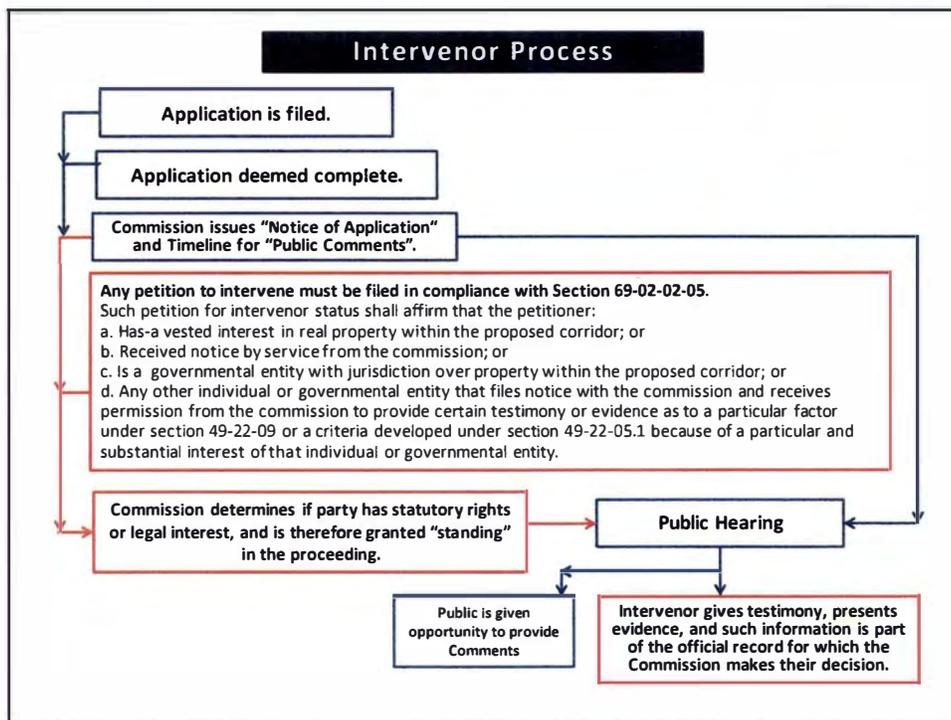


**Legend**

- Permitted Corridor
- Route Variance
- Township Co. Road
- Zoning Boundary
- Village Boundary
- Village Boundary

9

## Intervenor Process



## House Bill 1147

**Presented by:** Illona A. Jeffcoat-Sacco  
General Counsel  
Public Service Commission

**Before:** House Energy and Natural Resources Committee  
Honorable Todd Porter, Chairman

**Date:** January 17, 2013

### TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The Commission asked me to appear today to let you know some of our concerns with House Bill 1147.

The Commission recognizes that many of the amendments in House Bill 1147 simplify, clarify and correct existing statutory language. These changes are acceptable to the Commission and cause no concern.

The Commission also has no concerns with the changes in Section Three of the bill, shortening the time frame between filing a letter of intent and filing a siting application. In fact, the existing letter of intent requirement no longer serves the original purpose envisioned when the siting act was created. For this reason, the Commission would not object if the letter of intent requirement is repealed.

The Commission's concerns involve two general concepts in the bill, indicated by several specific amendments and new language. I will address

these two concerns generally, and will offer our assistance in drafting amendments to the bill to address these concerns specifically.

The first area involves changes in Sections Two and Four of the bill that substantially affect how interested persons and entities can participate in siting hearings and cases, and the effect of that participation. Existing general and specific statutes, rules and case law govern how and when an interested party can become an intervenor and the consequences or effect of formal intervention. The changes proposed in the bill substantially muddy the water regarding intervenor status, unnecessarily raising the potential for adverse, unintended consequences.

The changes in Section Two and Four also severely limit any interested party's right to testify at a siting hearing and the Commission's right to incorporate that testimony into its decision-making process. Many interested parties come to siting hearings and provide valuable information the Commission needs to make a decision. These include landowners and representatives of other state and federal entities, such as the United States Department of Defense, United States Fish and Wildlife Service, North Dakota Game and Fish Department, the State Historical Society of North Dakota, the North Dakota Department of Health, and cities, counties, and townships. To say that these entities must formally intervene before their concerns and comments can be considered by the Commission in deciding a case imposes an undue burden on these entities, ties the Commission's hands, and effectively negates a central purpose of the siting act.

The Commission's other major concern is with the language in Section Five of the bill. We believe this language is intended to streamline the process a company needs to use to make adjustments to approved gas and liquid transmission line routes during construction. The Commission does not totally disagree with what we believe is the objective of Section Five. However, we would like to point out to the Committee that the language in the section raises more problems than it solves. We also hope to clear up some apparent misconceptions about existing siting law and rules.

Today an entity can easily move a route during construction within a designated corridor by contacting Commission staff and providing information staff requests about the move. Staff reviews the request and makes a recommendation to the Commission. Most often, there is no need for any further Commission action, and these requests are approved by staff in a few days. The Commission's existing rules allow for this streamlined process (copy of relevant rule attached), making the first part of Section Five of the bill unnecessary, and even more restrictive than the existing process.

When a company wants to move a route during construction outside a designated corridor, a different process applies. We understand that this is a more lengthy process for the company. However, moving a route outside a designated corridor also raises other concerns for parties other than the company. Moving a route outside a designated corridor may substantially impact landowners and other entities that may have no knowledge whatsoever that a pipeline was ever going to impact them. This, we believe, is the issue that the

rest of Section Five attempts to address. The language concerns us, both because it is confusing and internally inconsistent, and because it restricts both the rights of potentially impacted entities and the Commission's discretion to address legitimate concerns of those entities. We request an opportunity to work with the drafters on better, less restrictive language that still provides the company an efficient process for reacting to conditions in the field and the Commission sufficient discretion to protect against negative impacts.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions you may have.

- d. The state senators and representatives of each legislative district in which any part of the designated corridor is located.

History: Amended effective August 1, 1979; \_\_\_\_\_ 2012.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

**69-06-05-02. Designation of corridor and route.**

1. **Issuance of a permit.** An order approving the issuance of a permit shall must:
  - a. Describe the authority granted.
  - b. Contain any special conditions that the commission may require.
  - c. Specify any required modifications in the type, design, routing, right-of-way preparation, or construction of the facility.
  - d. Contain findings that the application, with modifications, if any, meets the corridor evaluation process requirements of the Act, and any special conditions the commission may require.
2. Issuance of a certificate. When a corridor is approved, the commission shall issue a certificate in accordance with the order.
3. Deviations. A The Commission may permit a deviation from the designated route be permitted before or during construction if the deviation does not violate any of the exclusion and avoidance area criteria of this article. After construction is complete a deviation is governed by North Dakota Century Code section 49-22-03.
34. **Variance from permit conditions.** The commission may allow a variance from any special condition upon a request ~~which demonstrates~~ demonstrating the existence of good cause.
5. Corridor width. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless otherwise determined by the commission.

History: Amended effective August 1, 1979; \_\_\_\_\_ 2012.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1147

- Page 1, line 1, remove "a new subsection to section 49-22-03 and"
- Page 1, line 1, after the second "a" insert "new"
- Page 1, line 2, remove "definitions and"
- Page 1, line 2, replace "variances" with "adjustments"
- Page 1, line 4, remove "and sections 49-22-07.1 and 49-22-13"
- Page 1, line 5, remove "and the procedure"
- Page 1, line 5, after the semicolon insert "to repeal section 49-22-07.1 of the North Dakota Century Code, relating to a letter of intent;"
- Page 1, line 10, replace "strip" with "area"
- Page 1, line 10, remove "proposed and surveyed, as"
- Page 1, line 11, remove "applicable, by an applicant"
- Page 1 line 13, remove the overstrike over "designated"
- Page 1, remove lines 15 through 23
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 30
- Page 4, remove lines 1 and 2
- Page 4, remove lines 5 through 30
- Page 5, replace lines 1 through 25 with:

**"Route adjustment before or during construction for gas or liquid transmission line.**

1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
  - a. The construction activities will be within the designated corridor;
  - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
  - c. The utility will comply with the commission's order, laws and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of a gas or liquid transmission line within the designated corridor that may affect an

avoidance area if, before conducting any construction activities associated with the adjustment, the utility:

- a. Files with the commission certification and supporting documentation that:
    - (1) The construction activities are within the designated corridor;
    - (2) The construction activities will not affect any known exclusion areas within the designated corridor;
    - (3) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
    - (4) 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, unless the utility previously received authorization from the commission for the impact to the avoidance area;
    - (5) For an impact for which the utility does not already have approval or has not filed the approval in paragraph 4, the utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist; and
    - (6) The utility will comply with the commission's order, laws and rules designating the corridor and designating the route.
  - b. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivision a of subsection 2, the route adjustment is deemed approved.
3. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line outside the designated corridor if, before conducting any construction activities associated with the adjustment, the utility:
- a. Files with the commission certification and supporting documentation that:
    - (1) The construction activities will not affect any known exclusion or avoidance areas;
    - (2) The route outside the corridor is no longer than one and one-half mile [2.41 kilometers];
    - (3) The utility will comply with the commission's order, laws and rules designating the corridor and designating the route; and
    - (4) 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.

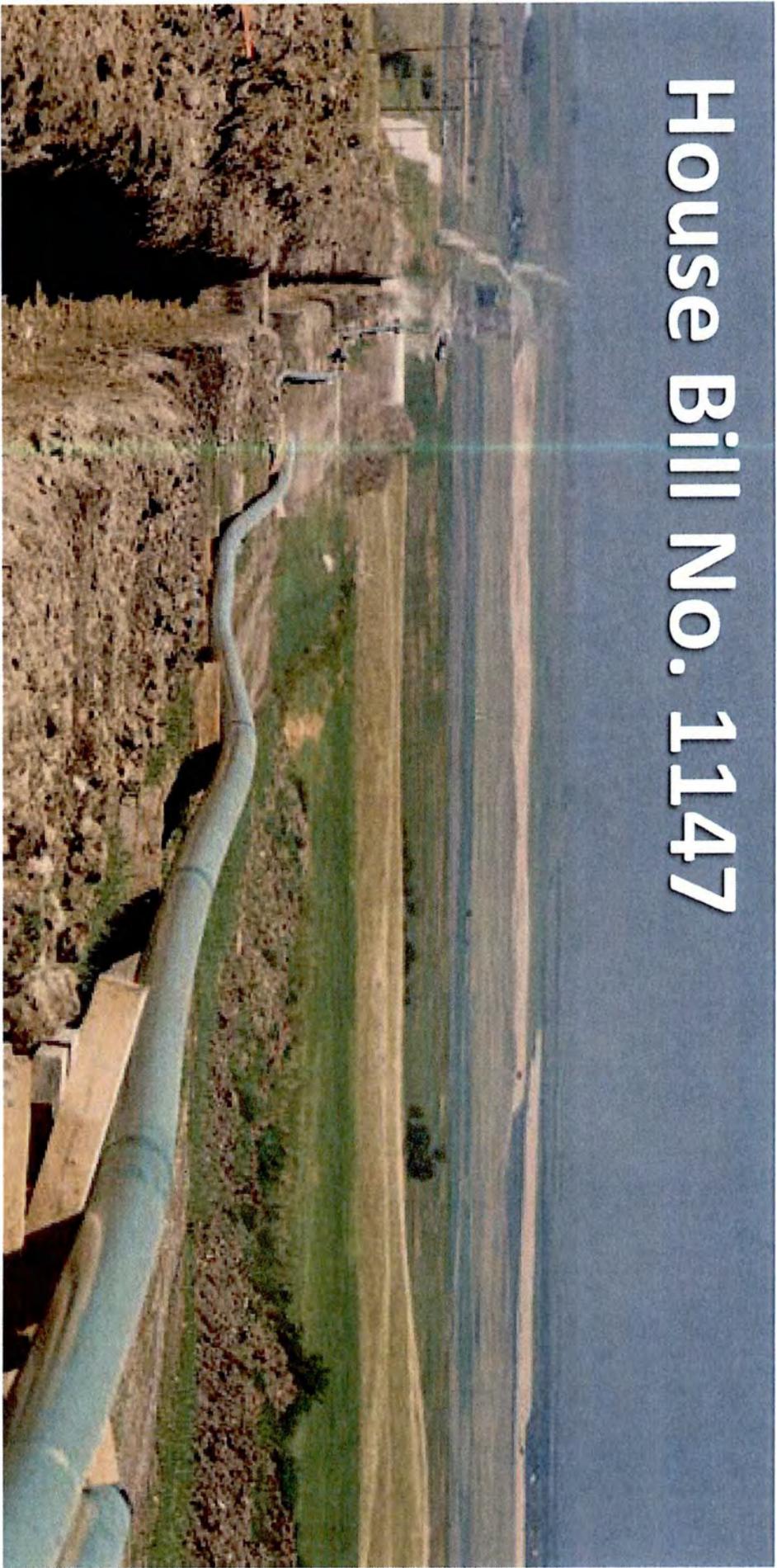
- 1
- b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
4. Before or during construction, a utility may adjust the route of a gas or liquid transmission line outside the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
- a. Files with the commission certification and supporting documentation that:
    - (1) The construction activities will not affect any known exclusion areas;
    - (2) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
    - (3) The specific reasons why the utility has good cause to impact the avoidance area and why a reasonable alternative does not exist;
    - (4) The route outside the corridor is no longer than one and one-half mile [2.41 kilometers];
    - (5) The utility will comply with the commission's order, laws and rules designating the corridor and designating the route; and
    - (6) 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.
  - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
  - c. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivisions a and b of subsection 4, the route adjustment is deemed approved.
5. The commission may not be required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

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UP  
Version  
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**SECTION 3. REPEAL.** Section 49-22-07.1 of the North Dakota Century Code is repealed."

Renumber accordingly

# House Bill No. 1147



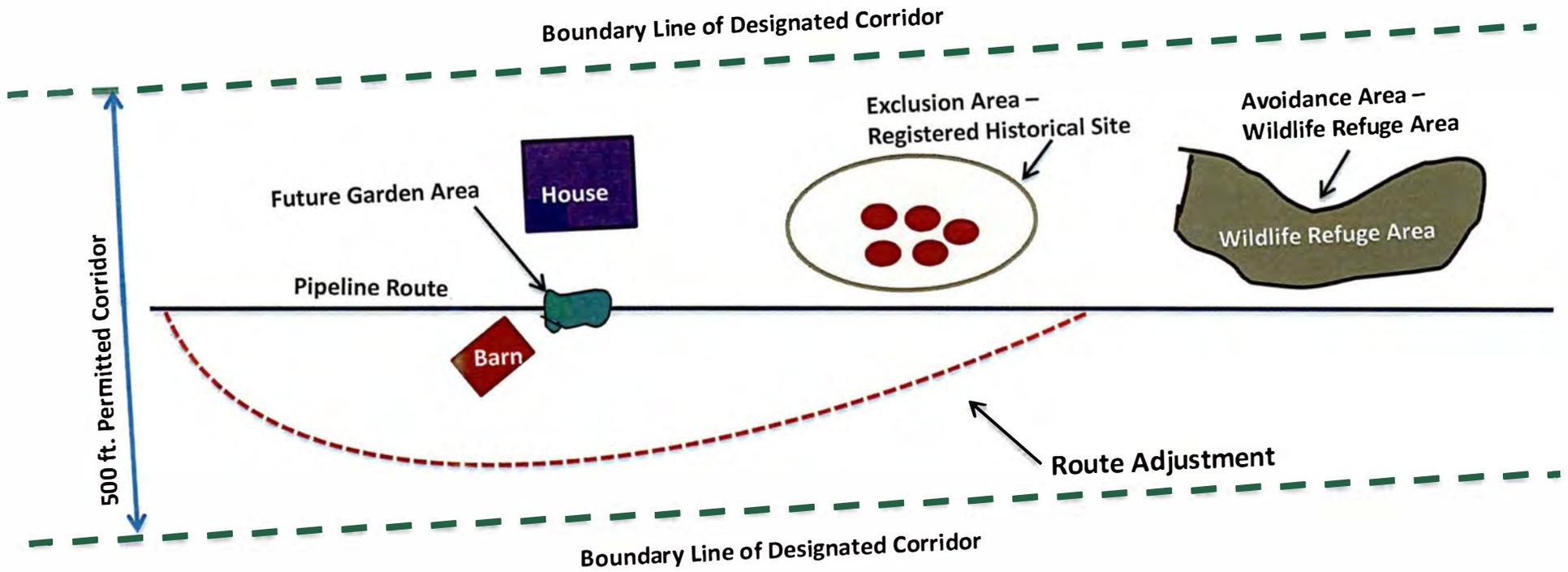
**Clarification for Aligning Processes for the  
Siting of Gas & Liquid Pipelines**

2-1

Section 2, Subsection 1

# Route Adjustment within Designated Corridor

Will Not Affect Known Exclusion or Avoidance Areas

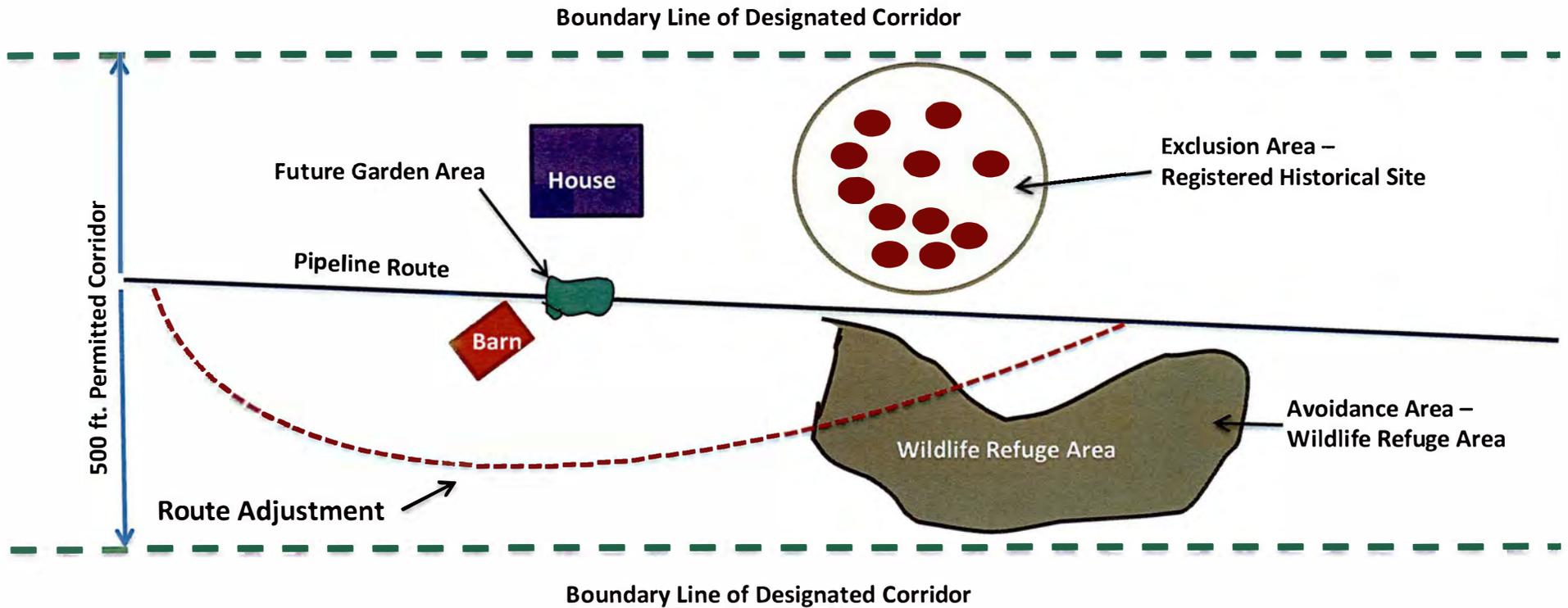


2-2

Section 2, Subsection 2

# Route Adjustment within Designated Corridor

May Affect Avoidance Area

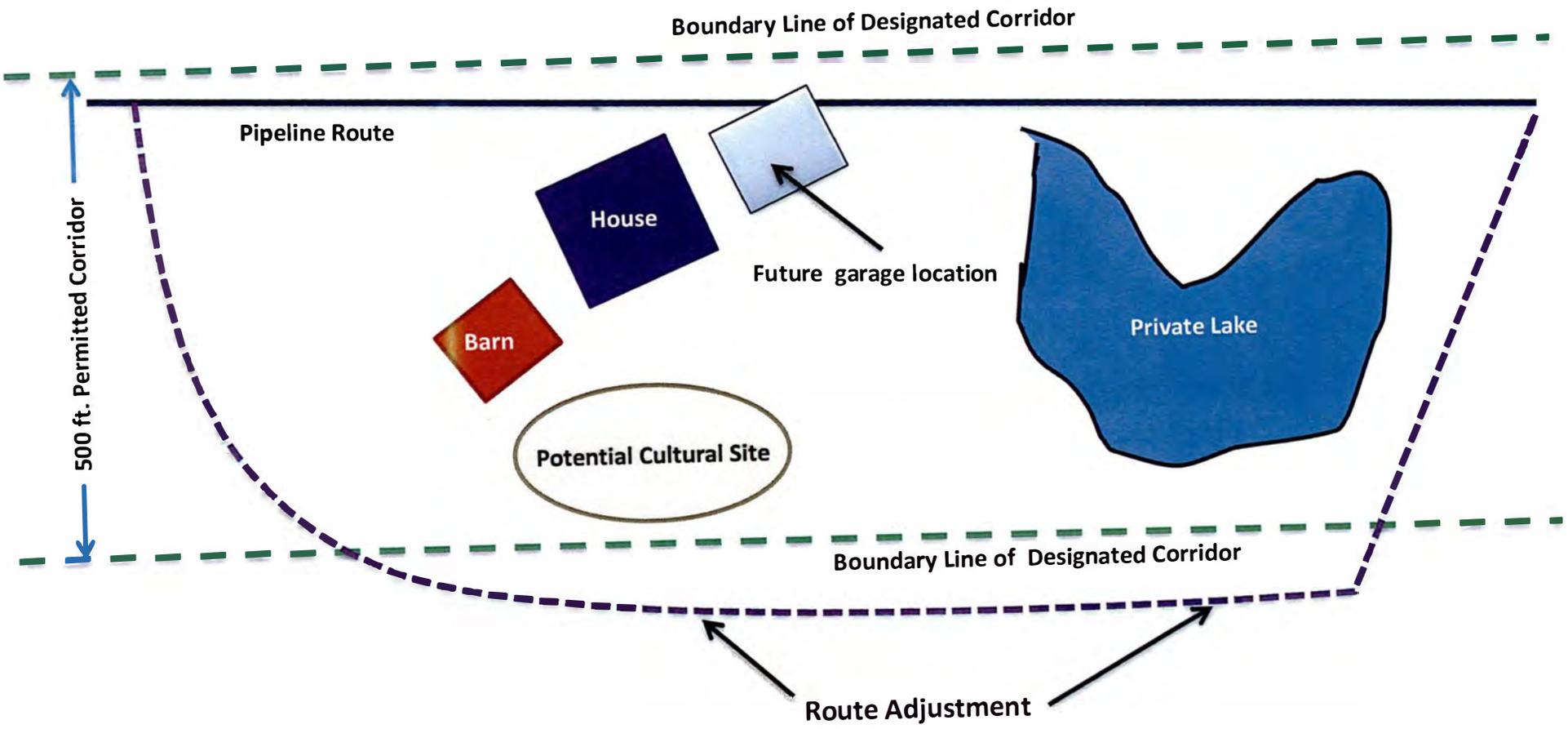


2-3

Section 2, Subsection 3

# Route Adjustment outside Designated Corridor

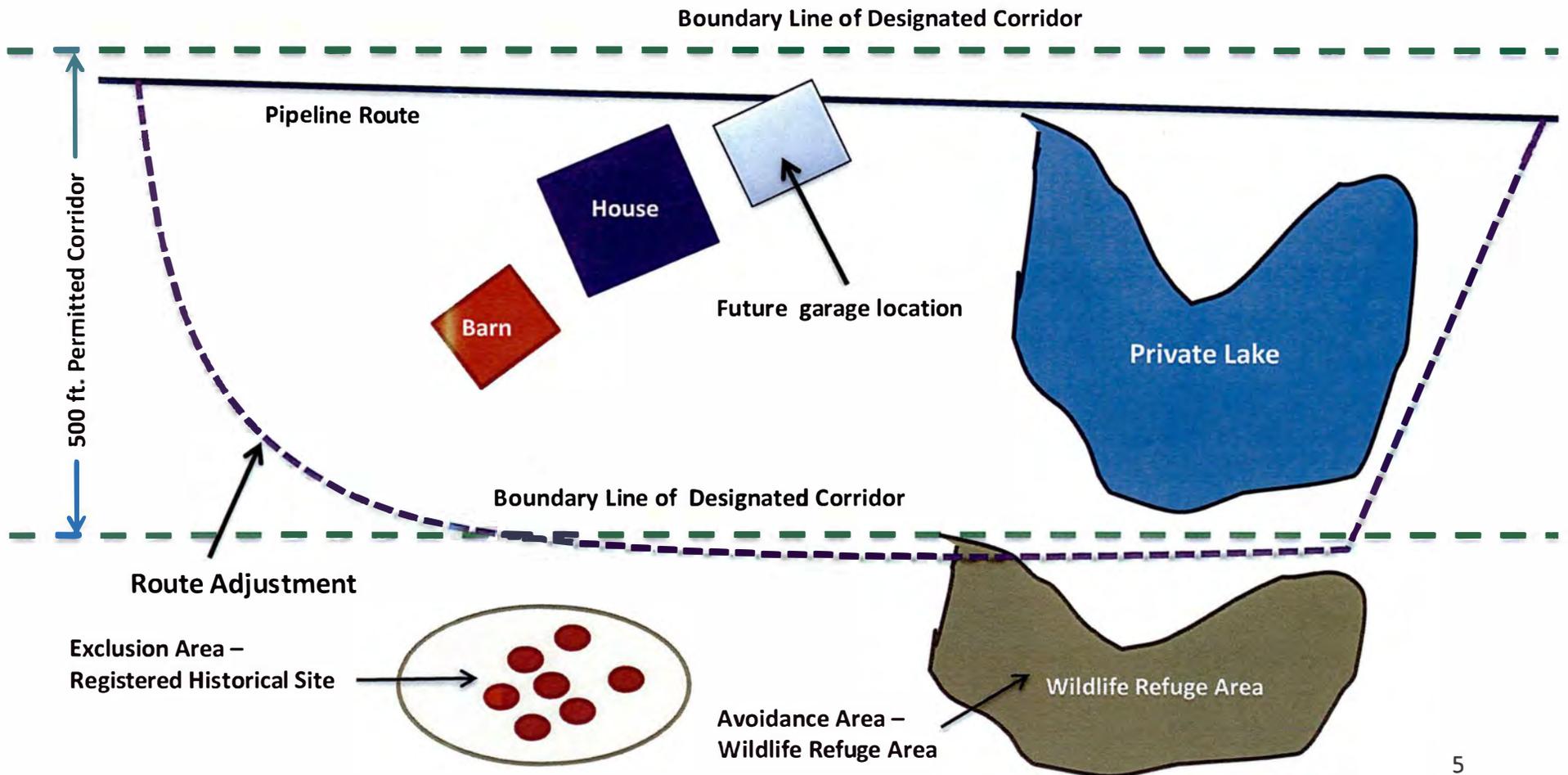
Will Not Affect Known Exclusion or Avoidance Areas



2-4

# Route Adjustment outside Designated Corridor

May Affect Known Avoidance Area



3  
From Dawson

13.0379.03002

Sixty-third  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1147**

Introduced by

Representatives Keiser, Porter

Senator Lyson

1 A BILL for an Act to create and enact ~~a new subsection to section 49-22-03 and a new section~~  
2 to chapter 49-22 of the North Dakota Century Code, relating to ~~definitions and route~~  
3 ~~variances adjustments~~ for gas and liquid transmission lines; to amend and reenact  
4 subsections 4 and 10 of section 49-22-03 ~~and sections 49-22-07.1 and 49-22-13~~ of the North  
5 Dakota Century Code, relating to definitions ~~and the procedure for siting a gas or liquid~~  
6 transmission line; to repeal section 49-22-07.1 of the North Dakota Century Code, relating to  
7 a letter of intent; and to declare an emergency.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Subsections 4 and 10 of section 49-22-03 of the North Dakota  
10 Century Code are amended and reenacted as follows:

- 11 4. "Corridor" means the ~~general location of strip area of land proposed and surveyed, as~~  
12 ~~applicable, by an applicant~~ in which a designated route may be established for a  
13 transmission facility.  
14 10. "Route" means the ~~specific~~ location of a transmission facility within a designated  
15 corridor.

16 ~~SECTION 2. A new subsection to section 49-22-03 of the North Dakota Century Code is~~  
17 ~~created and enacted as follows:~~

18 ~~"Intervenor" means a person, other than the applicant to a pending proceeding, who~~  
19 ~~becomes a party under rules adopted by the commission. The commission's act of~~  
20 ~~permitting a party to join a pending proceeding as an intervenor shall not be construed~~  
21 ~~as an acknowledgment or finding by the commission that the intervenor has, is, or may~~  
22 ~~suffer damages by the issuance of any order in the proceeding.~~

23 ~~SECTION 3. AMENDMENT.~~ Section 49-22-07.1 of the North Dakota Century Code is  
24 amended and reenacted as follows:

1 — ~~49-22-07.1. Letter of intent prior to construction.~~

2 — ~~Every utility which plans to construct any energy conversion or transmission facility within~~  
3 ~~this state shall submit a letter of intent to the commission in the form and manner prescribed by~~  
4 ~~the commission. A utility seeking to construct an energy conversion or transmission facility must~~  
5 ~~submit its letter of intent thirty days before filing an application for a certificate of corridor~~  
6 ~~compatibility or a route permit.~~

7 — **SECTION 4. AMENDMENT.** ~~Section 49-22-13 of the North Dakota Century Code is~~  
8 ~~amended and reenacted as follows:~~

9 — ~~49-22-13. Public hearings -- Notice.~~

10 — 1. ~~The commission shall hold a public hearing in each county in which any portion of a~~  
11 ~~site, corridor, or route is proposed to be located in an application for a certificate or a~~  
12 ~~permit. At the public hearing, any person may present testimony or evidence oral or~~  
13 ~~written comments relating to the information provided in the application, the criteria~~  
14 ~~developed pursuant to under section 49-22-05.1, and the factors to be considered~~  
15 ~~pursuant to under section 49-22-09. The applicant or an intervenor may present~~  
16 ~~testimony or evidence, or both, and only this evidence is part of the official record used~~  
17 ~~by the commission to make a decision. ~~When~~ if more than one county is involved, the~~  
18 ~~commission may hold a consolidated hearing in one or more of the affected counties.~~  
19 ~~A hearing for any county shall may not be consolidated if five or more affected~~  
20 ~~landowners in such a county file a petition with the commission within ten days of the~~  
21 ~~publication of the notice of hearing.~~

22 — 2. ~~The commission shall may not be required to hold a public hearing on an application~~  
23 ~~for the transfer of a certificate or a permit, or an application for a waiver of procedures~~  
24 ~~and time schedules, but shall publish a notice of opportunity for a public hearing in the~~  
25 ~~official newspaper of each county in which any portion of the facility or the proposed~~  
26 ~~site, corridor, or route is located. If requested by any interested person an intervenor~~  
27 ~~and good cause has been shown therefor for a hearing, the commission shall hold ~~a~~~~  
28 ~~public hearing. ~~Where~~ if more than one county is involved, the commission may hold ~~a~~~~  
29 ~~consolidated hearing in one or more of the affected counties.~~

30 — 3. ~~One~~ ~~The commission shall hold one or more public hearings shall be held at a location~~  
31 ~~or locations determined by the commission concerning the following matters:~~

Sixty-third  
Legislative Assembly

- 1 ~~\_\_\_\_\_ a. A substantial or material change in the criteria established pursuant to under~~  
 2 ~~section 49-22-05.1.~~
- 3 ~~\_\_\_\_\_ b. A substantial or material change in the rules adopted pursuant to under section~~  
 4 ~~49-22-18.~~
- 5 ~~\_\_\_\_\_ c. The revocation or suspension of a certificate or permit.~~
- 6 ~~\_\_\_\_\_ d. In this subsection, a "substantial or material change" means any alteration of a~~  
 7 ~~project which has a significant impact on any finding of fact, conclusion of law, or~~  
 8 ~~term or condition of the project's permit and which affects one or more of the~~  
 9 ~~criteria used by the commission to guide and govern the preparation of the~~  
 10 ~~inventory of exclusion and avoidance areas or the corridor and route suitability~~  
 11 ~~evaluation process.~~
- 12 ~~\_\_\_\_\_ 4. Notice~~The commission shall give notice of a public hearing shall be given by the  
 13 ~~commission by service on such persons and agencies a person or agency that the~~  
 14 ~~commission may deem appropriate and. The commission shall give notice twice by~~  
 15 ~~publication, once at least twenty days prior to such before a hearing and a second time~~  
 16 ~~within twenty days prior to such before a hearing. Notice~~The applicant shall pay for the  
 17 ~~cost of notice of a public hearing and notice of opportunity for a public hearing on an~~  
 18 ~~application for a certificate, a permit, a transfer, or a waiver shall be given at the~~  
 19 ~~expense of the applicant. In an emergency the commission, in its discretion, may~~  
 20 ~~notice a hearing upon less than twenty days.~~
- 21 ~~\_\_\_\_\_ 5. To be an intervenor at a hearing for a gas or liquid transmission line, a person shall file~~  
 22 ~~a petition to intervene in compliance with rules adopted by the commission. The~~  
 23 ~~petition for intervenor status shall affirm that the petitioner:~~
- 24 ~~\_\_\_\_\_ a. Has a vested interest in real property within the proposed corridor;~~
- 25 ~~\_\_\_\_\_ b. Received notice by service from the commission;~~
- 26 ~~\_\_\_\_\_ c. Is a governmental entity with jurisdiction over property within the proposed~~  
 27 ~~corridor; or~~
- 28 ~~\_\_\_\_\_ d. Any other individual or governmental entity that files notice with the commission~~  
 29 ~~and receives permission from the commission to provide certain testimony or~~  
 30 ~~evidence as to a particular factor under section 49-22-09 or a criteria developed~~

1                   ~~under section 49-22-05.1 because of a particular and substantial interest of that~~  
2                   ~~individual or governmental entity.~~

3           **SECTION 2.** A new section to chapter 49-22 of the North Dakota Century Code is created  
4 and enacted as follows:

5           ~~**Route variance for gas or liquid transmission line:**~~

- 6           ~~1. Without any action by the commission, a utility may adjust the location of a gas or~~  
7           ~~liquid transmission line within the approved corridor width, as specified in a route~~  
8           ~~permit and a certificate of corridor compatibility if:~~
- 9           ~~a. The activities will not affect a known exclusion or avoidance area;~~
  - 10           ~~b. Directly affected landowners do not oppose the variance;~~
  - 11           ~~c. The utility will comply with all applicable conditions and protections in siting laws~~  
12           ~~and rules and commission orders previously issued for any part of the~~  
13           ~~transmission facility; and~~
  - 14           ~~d. Upon completion of the project, the utility reports any route changes authorized~~  
15           ~~under this subsection in its final "as built" drawings of the transmission line.~~
- 16           ~~2. For a good and just cause, a utility may apply for a route variance to relocate its gas or~~  
17           ~~transmission line outside the permitted corridor width specified in the route permit and~~  
18           ~~certificate of corridor compatibility. If the applicant has filed an application for route~~  
19           ~~variance and certifies in writing the information enumerated in this subsection, the~~  
20           ~~secretary of the commission shall approve the variance within fifteen days of such~~  
21           ~~filing. The applicant shall certify the following:~~
- 22           ~~a. The activities will not affect a known exclusion or avoidance area unless the~~  
23           ~~activities affect an avoidance area for which the utility has appropriate written~~  
24           ~~approval to use and the written approval is filed with the application;~~
  - 25           ~~b. The route variance located is within the study area used to determine the~~  
26           ~~approved corridor width and there are no known additional adverse factors under~~  
27           ~~section 40-22-09 other than those considered by the commission for the initial~~  
28           ~~designated route;~~
  - 29           ~~c. There is a special condition that demonstrates the existence of good cause;~~
  - 30           ~~d. Directly affected landowners do not oppose the variance;~~

- 1 ~~e. All environmental clearances have been obtained and the clearances are filed~~
- 2 ~~with the application;~~
- 3 ~~f. A map, showing the location of the gas or liquid transmission line within the~~
- 4 ~~approved and permitted corridor width and the proposed route adjustment, is filed~~
- 5 ~~with the application; and~~
- 6 ~~g. The utility will comply with all applicable conditions and protections in siting laws~~
- 7 ~~and rules and commission orders previously issued for any part of the~~
- 8 ~~transmission facility.~~
- 9 ~~3. If the secretary of the commission does not take action with respect to the applicant's~~
- 10 ~~application for route variance within fifteen days of the applicant's filing, the route~~
- 11 ~~variance is deemed approved by the secretary unless:~~
- 12 ~~a. The applicant requests an extension of time to meet a condition in subsection 2;~~
- 13 ~~or~~
- 14 ~~b. The secretary of the commission requests an extension of time to request~~
- 15 ~~additional information. The secretary shall grant additional time as deemed~~
- 16 ~~necessary for the applicant to provide the requested information or to meet one~~
- 17 ~~of the conditions as identified by the secretary.~~
- 18 ~~4. If the applicant is unable to resolve any of the conditions raised by the secretary, then~~
- 19 ~~the secretary may schedule an informal hearing. The notice of an informal hearing~~
- 20 ~~shall be given by the commission by service on the applicant and other parties of~~
- 21 ~~record, and any other person that the commission deems appropriate. The informal~~
- 22 ~~hearing shall be scheduled twenty days after the notice is served, and shall be limited~~
- 23 ~~to the condition necessary for approval and to testimony and evidence from the~~
- 24 ~~applicant or an intervenor who has a substantial interest in the particular condition, or~~
- 25 ~~both.~~
- 26 **Route adjustment before or during construction for gas or liquid transmission line.**
- 27 ~~1. Before or during construction, a utility, without any action by the commission, may~~
- 28 ~~adjust the route of a gas or liquid transmission line within the designated corridor if,~~
- 29 ~~before conducting any construction activities associated with the adjustment, the utility~~
- 30 ~~files with the commission certification and supporting documentation that:~~
- 31 ~~a. The construction activities will be within the designated corridor;~~

- 1           b. The construction activities will not affect any known exclusion or avoidance areas  
2           within the designated corridor; and
- 3           c. The utility will comply with the commission's order, laws and rules designating the  
4           corridor and designating the route.
- 5           2. Before or during construction, a utility may adjust the route of a gas or liquid  
6           transmission line within the designated corridor that may affect an avoidance area if,  
7           before conducting any construction activities associated with the adjustment, the  
8           utility:
- 9           a. Files with the commission certification and supporting documentation that:
- 10           (1) The construction activities are within the designated corridor;  
11           (2) The construction activities will not affect any known exclusion areas within  
12           the designated corridor;  
13           (3) The construction activities are expected to impact an avoidance area with a  
14           specific description of the avoidance area expected to be impacted;  
15           (4) Each owner of real property on which the adjustment is to be located and  
16           any applicable governmental entity with an interest in the same adjustment  
17           area do not oppose the adjustment, unless the utility previously received  
18           authorization from the commission for the impact to the avoidance area;  
19           (5) For an impact for which the utility does not already have approval or has not  
20           filed the approval in paragraph 4, the utility has good cause and a specific  
21           reason to impact the avoidance area, and a reasonable alternative does not  
22           exist; and  
23           (6) The utility will comply with the commission's order, laws and rules  
24           designating the corridor and designating the route.
- 25           b. Receives the commission's written authorization that the utility may impact the  
26           avoidance area. If the commission does not authorize the impact to the  
27           avoidance area, the utility must obtain siting authority for the affected portion of  
28           the route adjustment. If the commission fails to act within ten working days of  
29           receipt of the utility's filing of the certification and supporting documentation under  
30           subdivision a of subsection 2, the route adjustment is deemed approved.

- 1 3. Before or during construction, a utility, without any action by the commission, may  
 2 adjust the route of a gas or liquid transmission line outside the designated corridor if,  
 3 before conducting any construction activities associated with the adjustment, the  
 4 utility:
- 5 a. Files with the commission certification and supporting documentation that:
- 6 (1) The construction activities will not affect any known exclusion or avoidance  
 7 areas:
- 8 (2) The route outside the corridor is no longer than one and one-half mile [2.41  
 9 kilometers];
- 10 (3) The utility will comply with the commission's order, laws and rules  
 11 designating the corridor and designating the route; and
- 12 (4) Each owner of real property on which the adjustment is to be located and  
 13 any applicable governmental entity with an interest in the same adjustment  
 14 area do not oppose the adjustment.
- 15 b. Files detailed field studies indicating exclusion and avoidance areas for an area  
 16 encompassing the route outside the designated corridor equal to the length of the  
 17 adjustment of the proposed corridor.
- 18 4. Before or during construction, a utility may adjust the route of a gas or liquid  
 19 transmission line outside the designated corridor that may affect an avoidance area if,  
 20 before conducting any construction activities associated with the adjustment, the  
 21 utility:
- 22 a. Files with the commission certification and supporting documentation that:
- 23 (1) The construction activities will not affect any known exclusion areas;
- 24 (2) The construction activities are expected to impact an avoidance area with a  
 25 specific description of the avoidance area expected to be impacted;
- 26 (3) The specific reasons why the utility has good cause to impact the avoidance  
 27 area and why a reasonable alternative does not exist;
- 28 (4) The route outside the corridor is no longer than one and one-half mile [2.41  
 29 kilometers];
- 30 (5) The utility will comply with the commission's order, laws and rules  
 31 designating the corridor and designating the route; and

- 1                   (6) Each owner of real property on which the adjustment is to be located and  
2                   any applicable governmental entity with an interest in the same adjustment  
3                   area do not oppose the adjustment.
- 4                   b. Files detailed field studies indicating exclusion and avoidance areas for an area  
5                   encompassing the route outside the designated corridor equal to the length of the  
6                   adjustment of the proposed corridor.
- 7                   c. Receives the commission's written authorization that the utility may impact the  
8                   avoidance area. If the commission does not authorize the impact to the  
9                   avoidance area, the utility must obtain siting authority for the affected portion of  
10                  the route adjustment. If the commission fails to act within ten working days of  
11                  receipt of the utility's filing of the certification and supporting documentation under  
12                  subdivisions a and b of subsection 4, the route adjustment is deemed approved.
- 13                  5. The commission may not be required to hold a public hearing or publish a notice of  
14                  opportunity for a public hearing for any route adjustment under this section.
- 15                  **SECTION 3. REPEAL.** Section 49-22-07.1 of the North Dakota Century Code is repealed.
- 16                  **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1147**  
**(MARKED UP VERSION 13.0379.03002)**

Page 7, replace lines 26 through 27 with:

“(3) The utility has good cause and a specific reason to impact the avoidance area, and  
a reasonable alternative does not exist;”

Renumber accordingly

#1

**Testimony in Support of  
ENGROSSED HOUSE BILL NO. 1147  
Senate Natural Resources Committee  
March 14, 2013**

Chairman Lyson, Senate Natural Resources Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Law Firm in Mandan and I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council to support Engrossed HB 1147.

As you may know, the North Dakota Petroleum Council represents more than 400 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. The North Dakota Petroleum Council has been representing the industry since 1952. The North Dakota Petroleum Council has arranged for an expert witness to present to you the specific details of HB 1147 but before I introduce her I would like to make a couple comments about the history of this legislation.

The North Dakota Petroleum Council is in support of HB 1147 because it is significant legislation that streamlines the process with route adjustments. You may recall that there was legislation in the 2009 Session that streamlined the siting process for additional and new facilities which was referred to as the "Footprint Bill" (HB 1032). This legislation is similar to the Footprint Bill but relates to route

adjustments as the project is being constructed.

HB 1147 was initially presented to the House Energy and Natural Resources committee and following the hearing a subcommittee was appointed to work with interested and affected groups to work out any concerns that existed. There was also a working group of interested parties established and several work sessions held to rework the bill into the form that you have before you today which best serves the needs of the State, the industry and the stakeholders.

I will conclude my testimony at this point, request that you give HB 1147 a favorable **Do Pass** recommendation and I would try to answer any questions.

Otherwise, on behalf of North Dakota Petroleum Council, I am pleased to be able to present to you an expert who will walk through the specific provisions of the bill and explain how the bill will work. Accordingly, I now introduce **Claudia Schrull** who is the Senior Manager Regulatory Pipeline Development for Enbridge Energy Company to review with you the specifics of HB 1147.

#2

# House Bill No. 1147



## Streamlining Pipeline Route Adjustments

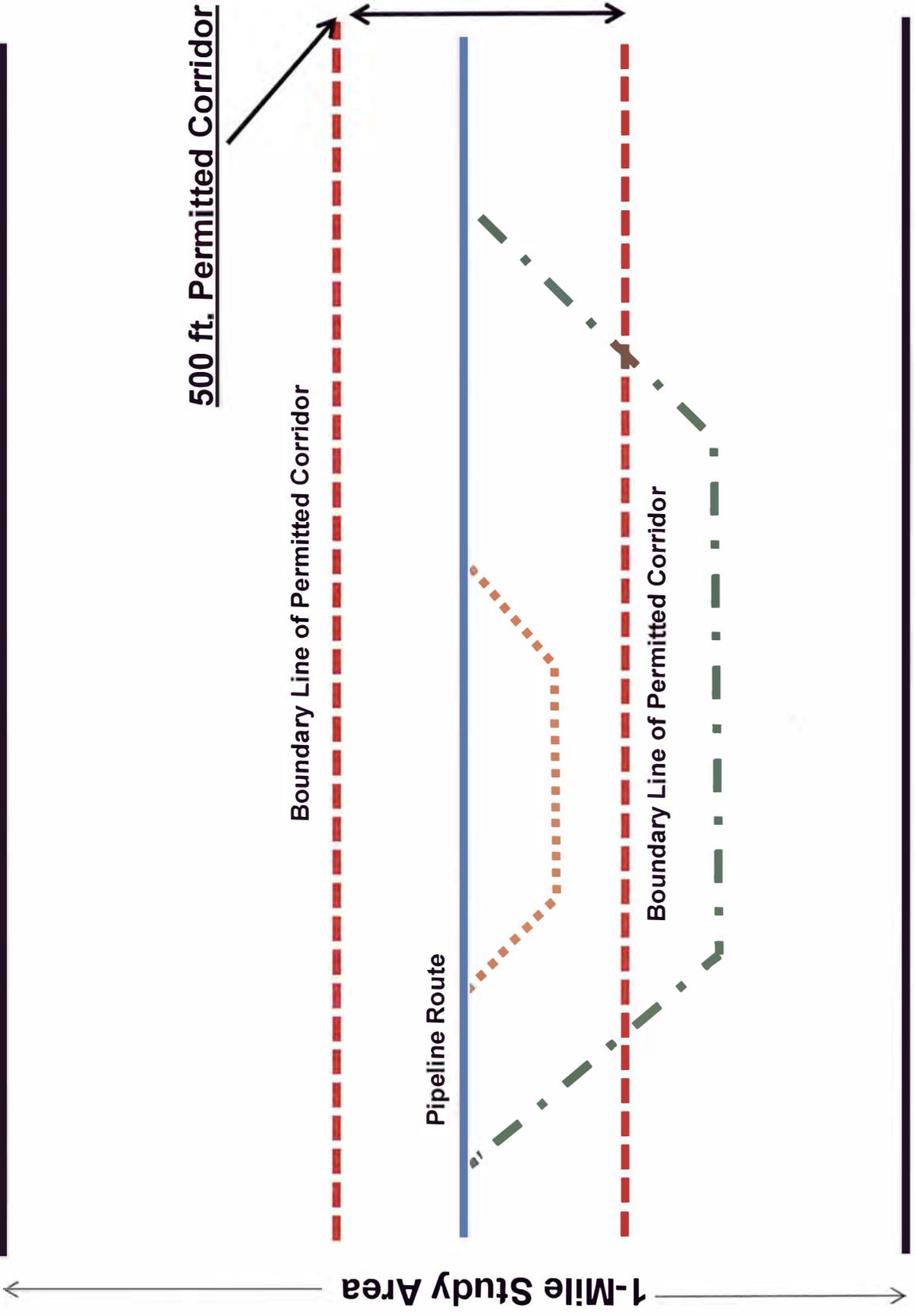
#2

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# Section 1. Amendment

- **Corridor** - means general area in which a designated route may be established for a transmission facility.
- **Route** – means the location of a transmission facility within a designated corridor.

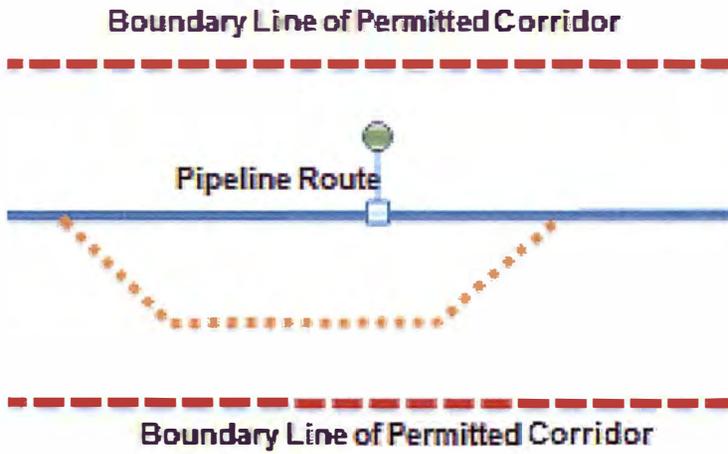


# **Section 2. New Section for Route Adjustments**

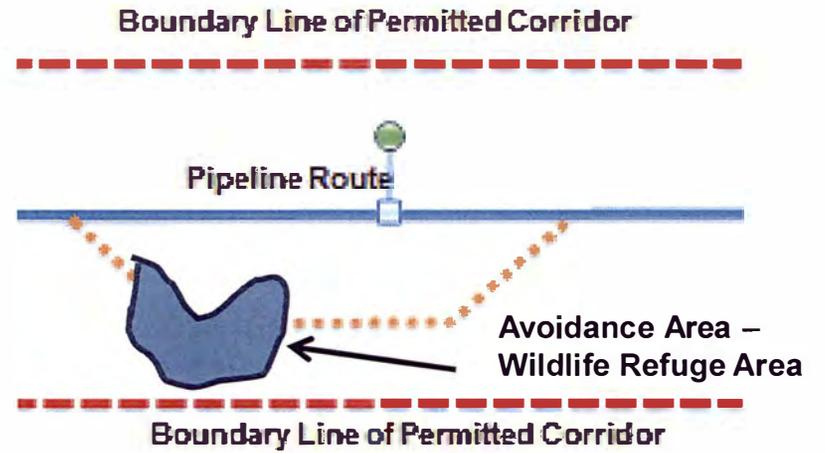
**Route Adjustments are primarily driven by:**

- Landowner requests**
- Avoidance of special environmental features**
- Unforeseen circumstances encountered during the detailed engineering design process or constructability issues**

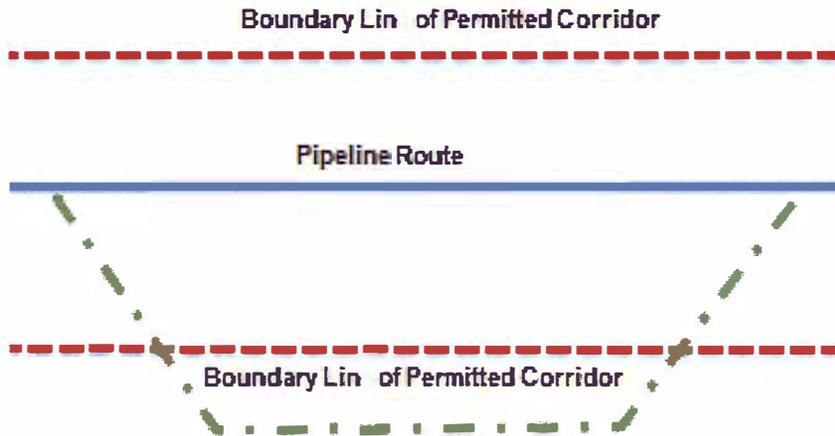
### Bucket 1 – Inside Corridor



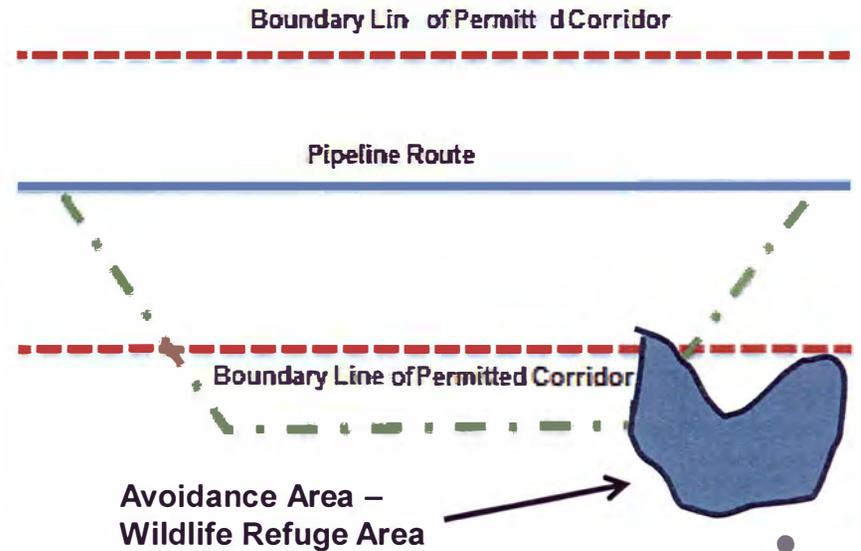
### Bucket 2 – Inside Corridor



### Bucket 3 – Outside Corridor



### Bucket 4 – Outside Corridor



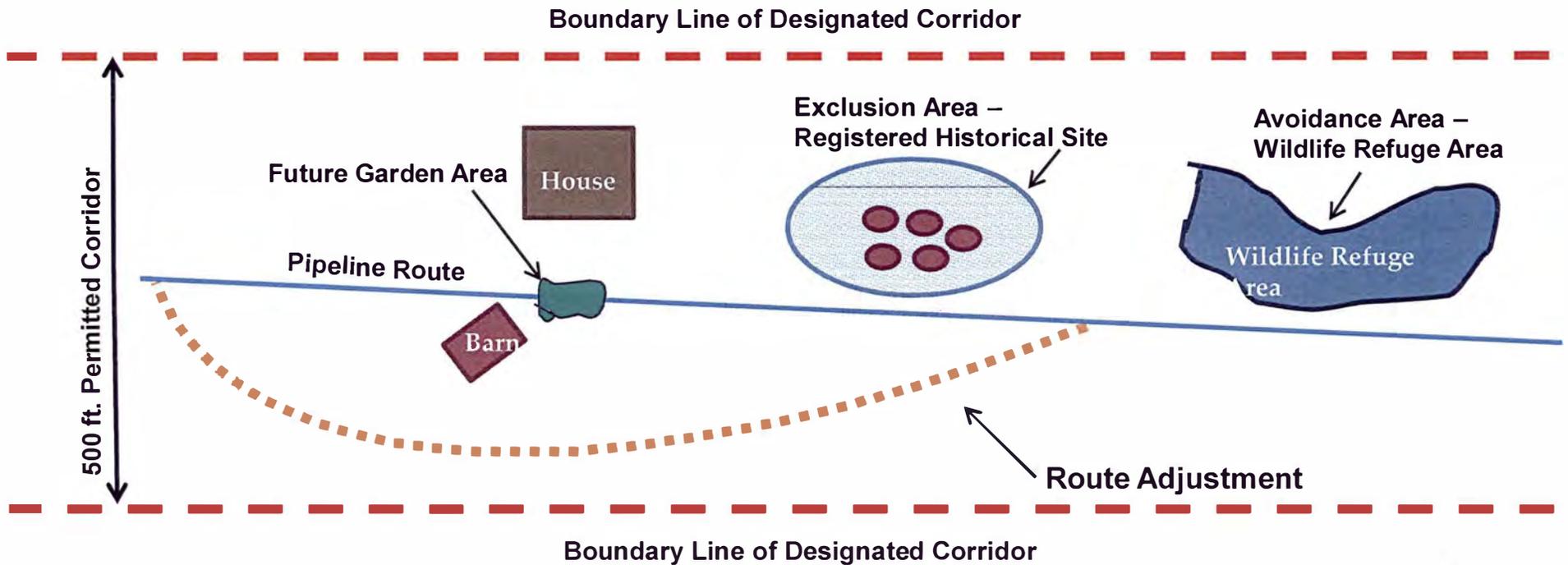
page 5

# Bucket 1

(Section 2, Subsection 1: Page 1, Lines 16-24)

## Route Adjustment within Designated Corridor

Will Not Affect Known Exclusion or Avoidance Areas

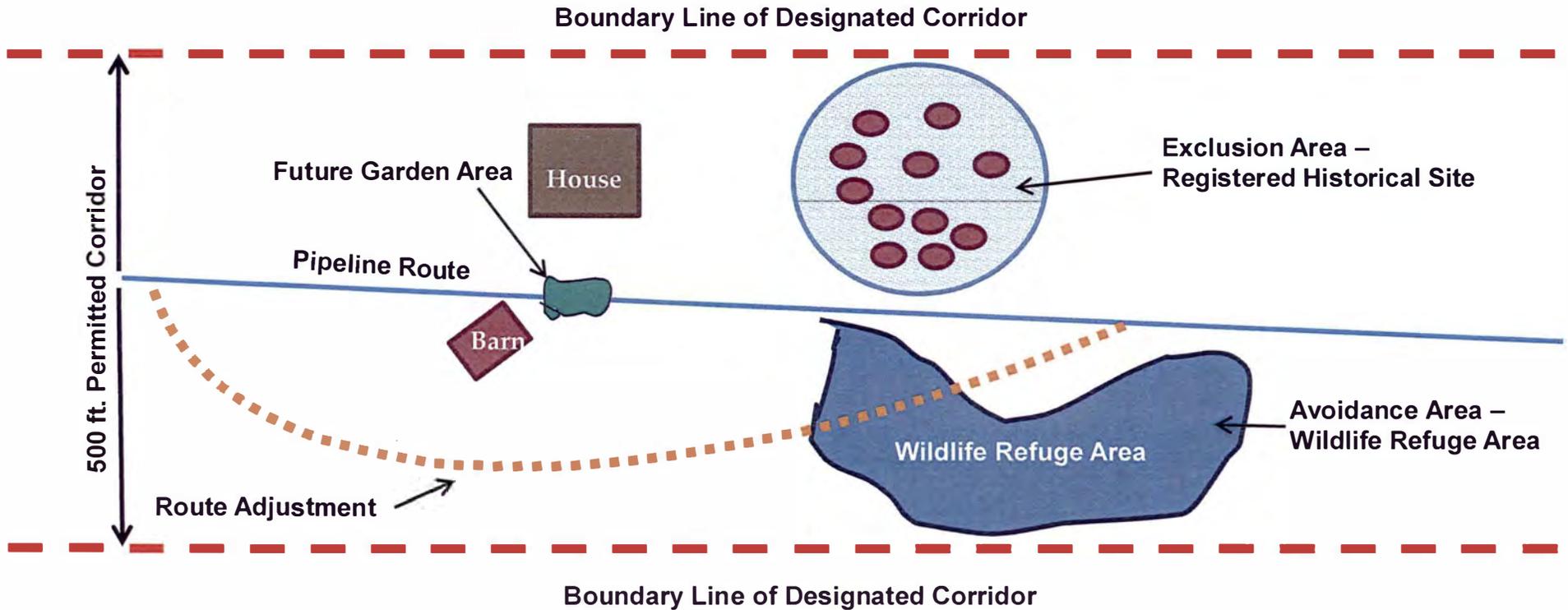


# Bucket 2

(Section 2, Subsection 2: Page 2, Lines 1-26)

## Route Adjustment within Designated Corridor

### May Affect Avoidance Area



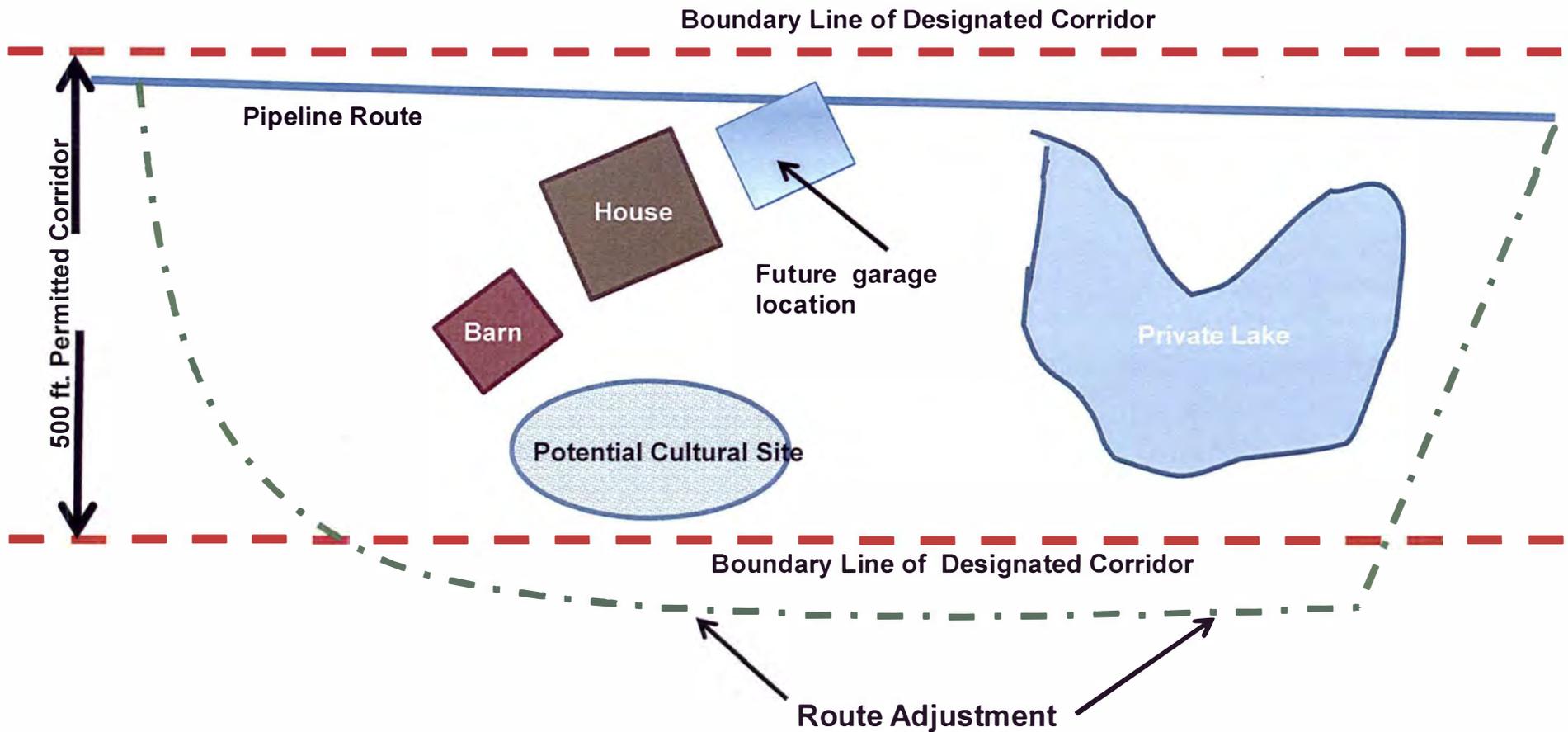
page 7

# Bucket 3

(Section 2, Subsection 3: Page 2, Lines 27-31 & Page 3, Lines 1-12)

## Route Adjustment outside Designated Corridor

Will Not Affect Known Exclusion or Avoidance Areas



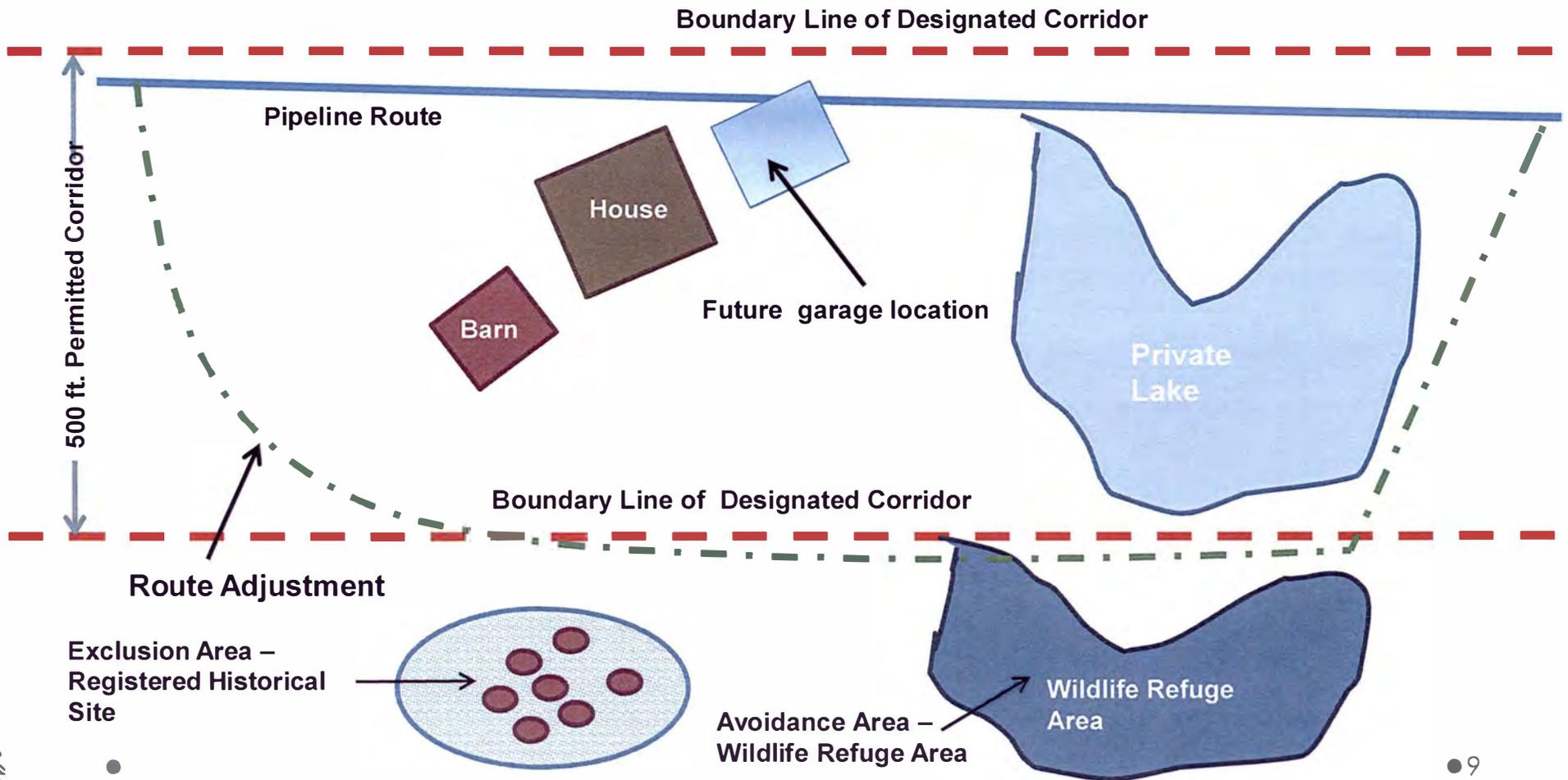
page 8

# Bucket 4

(Section 2, Subsection 4: Page 3, Lines 13-29 & Page 4, Lines 1-9)

## Route Adjustment outside Designated Corridor

### May Affect Known Avoidance Area



page 9

# Sections 3 and 4

- **Section 3.** Repeals the “Letter of Intent” requirement in Section 49-22-07.1 of the North Dakota Code.
- **Section 4.** Declares HB 1147 to be an emergency measure.