

APPENDIX P

EASEMENT/ACQUISITION TEMPLATE

APPENDIX P

LANGUAGE TO BE INCLUDED IN REAL PROPERTY CONVEYANCES

Real property deeds, transfers, and conservation easements take a variety of forms. To provide uniformity and consistency when implementing the MSHCP mitigation requirements, this Appendix presents the legal text to be included when drafting those conveyances. Where indicated, there may be flexibility in terms of the language used or the content of a particular provision.

Listed first are the provisions common to all conveyances, regardless of the species being conserved. The Appendix is roughly ordered to reflect the organization and content of a standard conveyance: recitations, purpose, rights, interpretation and miscellaneous provisions. Restrictions on uses and reserved rights appear at the end, ordered by species.

RECITALS

These legal recitals must be included in any legal document conveying a real property interest over conservation lands. Due to the variations in state law, the type of conveyance that may be used, and preferences of the parties as to the format their documentation, wording of these recitations may need to change, but must be substantially similar in content. The parties are entitled to include other recitals that are not contradictory.

This _____ [insert type of real property conveyance] made this _____ day of _____ by and between _____ [name], a _____ [description of entity], Grantor, with an address of _____, and _____ [name], a _____ [description of entity], Grantee, with its headquarters _____, as follows:

WHEREAS, the Grantor, is the owner in _____ [describe ownership (e.g., fee simple)] of, or the current holder of a(n) [easement or lease, over, through and across, certain real property, hereinafter called the "Protected Property," which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development or exploitation [or describe status with respect to development or exploitation], which property is located in _____ and is more particularly described in Exhibit A, attached hereto and incorporated by this reference; and

[If applicable] WHEREAS, the Grantee, is a nonprofit corporation incorporated under the laws of [State, Commonwealth, or District] as a tax-exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto ("IRC"), qualified under section 170(h) of the IRC to receive qualified conservation contributions, whose purpose is to preserve natural areas for scientific, charitable, educational and aesthetic purposes; and

WHEREAS, the Protected Property is a significant natural area which qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated

thereunder; specifically the Protected Property is habitat for the _____ [ESA listed species for which mitigation is required]; and

WHEREAS, the Protected Property consists of _____ [general description of habitat]; and

WHEREAS, the Protected Property will protect and enhance _____ [describe habitat values to be conserved], particularly as it relates to the [ESA listed species] with regard to _____ [discuss species needs and behaviors (e.g., breeding, feeding, sheltering, migration, etc.)]. The Protected Property's _____ [describe habitat values], provides [or will provide] suitable _____ habitat for the _____ [ESA listed species]; and

WHEREAS, the United States Fish and Wildlife Service (the "Service") within the United States Department of the Interior, is authorized by federal law to administer the federal Endangered Species Act (hereinafter "ESA"), 16 U.S.C. § 1531 et seq., and other laws and regulations; and

WHEREAS, the _____ [ESA listed species] has been listed as _____ [insert species listing status; e.g., endangered or threatened] by the Service under the ESA; and

WHEREAS, Columbia Gas Transmission, LLC, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Central Kentucky Transmission Company, and NiSource Gas Transmission and Storage Company (collectively "NiSource") applied to the Service for the issuance of an Incidental Take Permit (the "ITP"), submitted a Multi-Species Habitat Conservation Plan ("MSHCP") pursuant to ESA Section 10 regarding its multi-state gas transmission pipeline, and was issued an ITP on _____ [insert date], respectively; and

WHEREAS, as conditioned by the ITP, NiSource is required to mitigate for take of ESA listed species, including _____ [species to be conserved through this conveyance] and agreed to acquire and permanently preserve certain real property interests in a manner and amount consistent with the terms of its MSHCP, in order to conserve the wildlife habitat features of the Conservation Area in their natural condition; and

WHEREAS, the specific conservation values of the Protected Property are documented in an Easement Documentation Report, prepared by _____ [insert name of entity preparing report] and signed and acknowledged by the Grantor, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation; and

WHEREAS, the Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity; and

[If through a conservation easement] WHEREAS, the State [or Commonwealth] of _____ has authorized the creation of Conservation Easements pursuant to _____ [insert citation to state law] and Grantor and Grantee wish to avail themselves of the provisions of that law;

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift [or consideration of \$1], does hereby give, grant, bargain, sell and convey unto the Grantee, a _____ [insert type of conveyance] in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

The following provisions below should be incorporated in their entirety. Any deviation must be both substantially similar and approved by U.S. Fish and Wildlife Service prior to execution and recording.

PURPOSE

Purpose. It is the primary purpose of this _____ [insert type of conveyance] to assure that the Protected Property will be retained forever in its _____ [insert type of habitat] as suitable for the _____ [insert ESA listed species], irrespective of the federal listing status of the species; and also to the extent consistent with the primary purpose, to protect any other rare plants, animals, or plant communities on the Protected Property, and to ensure the Protected Property remains permanently in a natural, scenic and _____ [describe habitat , e.g., forested, etc.] condition; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above. Grantor intends that this _____ [insert type of conveyance] will confine the use of the Protected Property to such activities as are consistent with the purpose of this _____ [insert type of conveyance].

U.S. FISH AND WILDLIFE SERVICE THIRD-PARTY BENEFICIARY RIGHTS

The U.S. Fish and Wildlife Service as Third-Party Beneficiary; Enforcement and Remedies.

X.1. The parties hereto agree that, because of the Service's duties and powers arising under the ESA and consistent with NiSource's commitments to its MSHCP and ITP, the Service has a clear and substantive interest in the preservation and enforcement of this _____ [type of conveyance]. Therefore, the parties grant to the Service, its agents, successors and assigns, the rights and standing to be noticed, to enter the Property, to approve or disapprove requests, and to enforce this _____ [type of conveyance] as described in this section and according to its terms.

X.2. Grantor shall notify the Service in writing of the names and addresses of any party to whom the Protected Property, or any part thereof, is to be granted, conveyed or otherwise transferred at or prior to the time said transfer is consummated.

X.3. This _____ [type of conveyance] does not convey a general right of access to the public, except that the Service, its agents, contractors, and assigns, may enter onto the Protected Property at any time upon 24 hours notice to Grantor for the purpose of conducting inspections to determine compliance with the terms contained herein, for the purpose of assessing the _____ [ESA listed species] population status and vegetative habitat suitability, in accordance with the terms of the ITP, MSHCP and the ESA implementing regulations at 50 C.F.R. Parts 13,

Subparts C and D, or for the purposes of conducting _____ [specific management or monitoring activities] in accordance with the terms of the MSHCP.

X.4. In addition to any other rights and remedies available to the Service at law or in equity, the Service shall have the right, but not the obligation to enforce this _____ [type of conveyance] and is entitled to exercise the same remedies available to Grantee, identified in paragraph _____ [paragraph in that lists Grantee enforcement rights]. The Service may do so upon the written request of Grantee or if Grantee fails to enforce the _____ [type of conveyance]. Prior to taking any enforcement action, the Service shall notify Grantee in writing of its intention and shall afford Grantee a reasonable opportunity to negotiate a remedial action and settlement with Grantor or commence its own enforcement action. No failure on the part of the Service to enforce any term, condition, or provision hereof shall discharge or invalidate such term, condition, or provision to affect its right or that of Grantee or Grantor to enforce the same.

OTHER MANDATORY PROVISIONS

Assignment. The parties hereto recognize and agree that the benefits of this _____ [type of conveyance] are in gross and assignable, and the Grantee hereby covenants and agrees that in the event it transfers or assigns _____ [property interest], it shall obtain written concurrence of the USFWS, and the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the IRC (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the IRC, and Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

Subsequent Transfers. The Grantor agrees that the terms, conditions, restrictions and purposes of this grant or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which the Grantor divests any retained, reserved or reversionary interest and by Grantee if Grantee subsequently transfers any fee simple title or possessory interest in the Protected Property; and Grantor and Grantee further agree to notify Grantee or Grantor, as appropriate, and the Service of any pending transfer at least thirty (30) days in advance.

Government Permits and Approvals. The conveyance of this _____ [type of conveyance] by the Grantor to the Grantee does not replace, abrogate, or otherwise set aside any local, state or federal laws, requirements or restrictions applicable to the Property or Conservation Area and shall not relieve Grantor of the obligation and responsibilities to obtain any and all applicable federal, state, and local governmental permits and approvals, if necessary, to exercise Grantor's retained rights and uses of the Protected Property even if consistent with the conservation purposes of this _____ [type of conveyance].

Eminent Domain. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this _____ [type of conveyance], the Grantor and the Grantee shall join in appropriate actions

at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided _____ [insert method], and _____ [discuss how proceeds will be spent]. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds

Interpretation. This _____ [type of conveyance] shall be interpreted and performed pursuant to the laws of the State of _____, the federal Endangered Species Act, and other applicable federal laws.

Severability. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this _____ [type of conveyance] that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this _____ [type of conveyance] or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this _____ [type of conveyance] and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

Successors and Assigns. The term "Grantor" shall include the Grantor and the Grantor's successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use. The term "Grantee" shall include _____ and its successors and assigns.

Notices. Any notices, consents, approvals or other communications required in this _____ [type of conveyance] shall be sent by registered or certified mail to the appropriate party or its successor in interest at the following address or such address as may be hereafter specified by notice in writing:

Grantor:
Grantee:
Service:
[Others:]

Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this _____ [type of conveyance] and shall have no effect upon construction or interpretation.

Additionally, each conveyance must include provisions to address the following topics. The contents of these provisions must be negotiated by the parties. They may therefore differ considerably depending on the property, values to be conserved, and the intensity of management and monitoring required. There is no prescribed template for the following provisions:

Monitoring and Management;
Endowment [if applicable];
Cost and Liabilities;
Taxes;
Title;
Standing;
Extinguishment;
Merger;
Parties subject to the conveyance; and,
Grantee Rights of Entry and Enforcement [which must include, at a minimum, the right to: 1) prevent any activity on or use of the Protected Property that is inconsistent with the purpose of the conveyance and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use; 2) bring an action at law or equity in a court of competent jurisdiction to enforce the terms of the conveyance; 3) to require the restoration of the Protected Property to its previous condition; 4) to enjoin such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or, 5) to recover any damages arising from such noncompliance.]

Also, each conveyance must include the following text regarding force majeure, or where applicable for a particular species, a modified version of the italicized portion that explicitly incorporates the contingencies for adaptive management and changed circumstances, as specifically identified in Chapters 7 and 10 of the MSHCP, respectively:

X. Neither absence of [ESA listed species] from the Conservation Area nor a loss of or significant injury to conservation values for the _____ [ESA listed species] due to circumstances including, but without limitation, fire, flood, storm, disease, or seismic events, shall be construed to render the purpose of this Conservation Easement impossible to accomplish and shall not terminate or extinguish this Conservation Easement in whole or in part. In the case of loss of or significant injury to any of the conservation values for the [ESA-listed species] due to fire, flood, storm, disease, seismic events or similar circumstances, the Grantor or Grantee may, but shall not be required to, seek to undertake measures in consultation with the Service to restore such conservation values.

**AQUATIC SPECIES
USE RESTRICTIONS AND RESERVED RIGHTS**

[Nashville crayfish, Clubshell, Northern Riffleshell, Fanshell, Sheepnose and James spinymussel]

RESTRICTIONS

General Description

Legal Description to be included in Conveyance

No Industrial Use

No industrial activities, including but not limited to the construction or placement of buildings or parking areas, shall occur on the Protected Property.

No Residential Use

No residential structures or appurtenances, including but not limited to the construction or placement of homes, mobile homes or storage sheds, shall be constructed on the Protected Property.

No Commercial Use

No commercial activities shall occur on the Protected Property, except for low impact recreational use (e.g., bird watching, hiking) identified explicitly as a Reserved Right, providing it does not cause erosion and does not involve the creation or maintenance of trails.

No Agricultural Use

No agricultural activities shall occur on the Protected Property, including the use of the Protected Property for cropland, waste lagoons, detention or collection ponds, or pastureland.

No Vegetative Clearing

No forestry or timbering activities shall occur on the Protected Property, except that 1) Grantee maintains the right to conduct silvicultural modifications with the intent to improve listed species habitat within the Protected Property through reforestation, afforestation or silvicultural management to improve the health of the conserved habitat; and 2) limited vegetative clearing may occur only as described for reserved uses only.

**Development Rights
Extinguished**

No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

No Subdivision

The Protected Property may not be divided or subdivided. Further, the Protected Property may not be divided, partitioned, or nor conveyed except in its current configuration as an entity.

No Utilities (except for existing encumbrances)¹	No new utilities, including pipes, pipelines, transmission lines, whether aboveground or underground, shall be constructed or installed on the Protected Property.
No Construction	There shall be no building, facility, mobile home, or other structure, temporary or permanent, constructed or placed on the Protected Property, except as deemed necessary to [carry out the purposes of this Conservation Easement, the MSHCP and the ITP].
No Littering or Dumping	No dumping of soil, trash, ashes, sawdust, garbage, waste, abandoned vehicles, appliances or machinery, dredge spoil, or other material shall occur on the Protected Property.
No Burning of Waste or Open Fires	No burning of trash or waste, or building of open-air fires, including fires for cooking purposes and campfires, shall occur on the Protected Property.
No Disposal of Hazardous Waste	No dumping, disposal, or storage of hazardous materials shall occur on the Protected Property, including but not limited to used motor oil, household chemicals, insecticides, herbicides, or similar chemicals, or of containers of such materials, except to the extent such materials or containers are used for the purposes of managing the conservation values of the Protected Property and are securely stored and/or maintained.
No Grading, Mineral Use, Excavation, Dredging	No grading, excavation, dredging, mining, or drilling and no removal of topsoil, sand, gravel, rock, peat, minerals, or other material shall occur on the Protected Property except to the extent that such activities are necessary and consistent with other reserved rights.
Placement of Spoils	No filling or placement of dredged spoil, topsoil, or other materials in or near [specify waterbody, if any] or on Protected Property shall occur, except as necessary for stream bank restoration or

¹ Through Chapter 5 of the MSHCP, the ITP and IA, the Service will reserve the right to review mitigation proposals prior to approval. These provisions will require the project proponent to identify existing encumbrances. Specifically, this will allow FWS and NiSource to determine whether existing rights-of-way or other encumbrances (e.g., mineral estates) interfere with the conservation value of the proposal. Assuming they do not, it will be the responsibility of the third parties exercising their rights under these pre-existing interests to independently ensure compliance with applicable local, state and federal laws and permits, including the ESA. Such uses, however, would not be covered activities under this MSHCP, and NiSource would therefore not be responsible for the actions of third-parties. This critical evaluation of underlying encumbrances is discussed in Chapter 5 of the MSHCP, and will be further memorialized in the ITP and IA.

protection measures approved by the USFWS through its ITP, and which is consistent with local, state and federal law.

Limited Signage

No signs shall be permitted on the Protected Property except interpretive signs describing restoration activities and the Conservation Values of the Conservation Area; signs along hiking, biking or cross-country skiing trails *[if uses are reserved]*; signs identifying the owner of the Protected Property and the holder of this Conservation Easement; any signage required by applicable federal, state or local laws; and signs giving directions or prescribing rules and regulations for the use of the Protected Property.

No Fencing

No fences shall be erected on the Protected Property, except to exclude livestock from riparian areas or limit access to off-road vehicles or other potential erosion causing uses.

**Fishing/Hunting/Trapping/
Collection Prohibitions**

No fishing or removal of aquatic species is permitted on or from the Protected Property, except as determined to be necessary by the Grantee, its agents, its contractors, and its assigns, and the Service, its agents, its contractors and assigns, in furtherance of the purpose of this conveyance or as determined to be necessary by the Grantor, its contractors or assigns in order to conduct monitoring or similar activities as required by the ITP and the MSHCP or as otherwise conducted in accordance with applicable federal and state laws. Upland hunting and trapping is permitted by Grantor's assigns, lessees, tenants or invitees, so long as Grantor has expressly warned the assigns, lessees, tenants, or invitees about the fishing prohibitions and provided a copy of this Conservation Easement, and any amendment hereto.

**Pesticide, Herbicide
Prohibitions**

No rodenticides or other small mammal control measures that may adversely affect the purpose of this Conservation Easement shall be used or undertaken on the Protected Property. No pesticides or fertilizers will be used on the Protected Property, except in those instances when the conservation values of the Protected Property are threatened to the extent that the conservation values may be extirpated or lost without aggressive management and stewardship activities being implemented. The Grantee, on consultation with the Grantor, and with the written concurrence of the Service, may use pesticides when conservation values may be so affected.

No pets

No pets will be allowed on the Protected Property unless under the physical control of the owner.

Prohibitions on mechanized vehicles/equipment

No off-road, all-terrain or similar vehicles are permitted to operate on the Protected Property, except for emergency vehicles or where necessary to effectuate the terms of this Conservation Easement. Use of mechanized vehicles shall be allowed for tree and herbaceous plant installation, mowing, and herbicide application where otherwise authorized.

RESERVED RIGHTS

Recreational Use

No recreational activities shall occur in the Conservation Area, except for low impact recreational activities, including but not limited to, walking, jogging, biking, cross-country skiing, snowshoeing, wildlife observation, photography, horseback riding, and use of interpretive trails, so long as these activities:

- 1) are consistent with the Purpose of this _____[type of conveyance]; and,
- 2) do not result in the destruction of, or harm the viability of, trees or other vegetation in the Protected Property, except that the limited clearing or cutting of vegetation is permissible in accordance with the limitations below; and,
- 3) do not cause erosion of riparian areas; and,
- 4) do not involve the creation or maintenance of trails.

Educational Use

The Grantor reserves the right to conduct educational activities within the Protected Property, such as site visits, studies and observations. Any educational activities involving attempts to capture _____[insert species] or activities that could otherwise result in the take of _____[insert species], as that term is defined by the ESA, may be undertaken only in accordance with applicable federal and state laws.

Vegetative Management

No cutting, removing, mowing, destroying, harming, harvesting, pruning, planting or relocating of trees, shrubs, or other vegetation shall occur in the Protected Property except that the removal of vegetation is authorized in connection with:

1) The removal of any trees that present a safety hazard, so long as Grantor first attempts to remedy the hazard by removing any limbs or branches in lieu of removing the entire tree.

2) Restoration or management of the Protected Area as identified in a Service-approved management plan that is consistent with the ITP and MSHCP.

**Restoration and
Maintenance
Of Conservation
Values**

Any restoration and maintenance activities must be deemed suitable and necessary by the Grantee and the Service to maintain or improve the conservation values of the Protected Property, and shall not diminish the mitigation ratios, quality or quantity specified in the ITP and accompanying MSHCP. Any restoration activities to be conducted by the Grantor must be proposed in writing to the Grantee, or by Grantee as part of a Service-approved management plan, consistent with the ITP and MSHCP.

**INDIANA BAT (SUMMER/SWARMING HABITAT)
USE RESTRICTIONS AND RESERVED RIGHTS**

RESTRICTIONS

General Description

Legal Description to be included in Conveyance

No Industrial Use

No industrial activities, including but not limited to the construction or placement of buildings or parking areas, shall occur on the Protected Property

No Residential Use

No residential structures or appurtenances, including but not limited to the construction or placement of homes, mobile homes or storage sheds, shall be constructed on the Protected Property.

No Commercial Use	No commercial activities shall occur on the Protected Property, except for the low impact recreational uses explicitly identified under Reserved Rights.
No Agricultural Use	No new agricultural activities that were not previously documented as part of the baseline conditions shall occur on the Protected Property, including the use of the Protected Property for cropland, waste lagoons, detention or collection ponds, or pastureland.
No Vegetative Clearing	No forestry or timbering activities shall occur on the Protected Property, except that 1) Grantee maintains the right to conduct silvicultural modifications with the intent to improve listed species habitat within the Protected Property through reforestation, afforestation or silvicultural management to improve the health of the Indiana bat habitat; and 2) limited vegetative clearing may occur as described under Reserved Rights only.
Development Rights Extinguished	No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.
No Subdivision	The Protected Property may not be divided or subdivided. Further, the Protected Property may not be divided, partitioned, or nor conveyed except in its current configuration as an entity.
No Utilities (except for existing encumbrances)²	No new utilities, including pipes, pipelines, transmission lines, whether aboveground or underground, shall be constructed or installed on the Protected Property.
No Construction	There shall be no building, facility, mobile home, or other Structure, temporary or permanent, constructed or placed on the Protected Property, except as deemed necessary to construct artificial roosting habitat for Indiana bats.

² Through Chapter 5 of the MSHCP, the ITP and IA, the Service will reserve the right to review mitigation proposals prior to approval. These provisions will require the project proponent to identify existing encumbrances. Specifically, this will allow FWS and NiSource to determine whether existing rights-of-way or other encumbrances (e.g., mineral estates) interfere with the conservation value of the proposal. Assuming they do not, it will be the responsibility of the third parties exercising their rights under these pre-existing interests to independently ensure compliance with applicable local, state and federal laws and permits, including the ESA. Such uses, however, would not be covered activities under this MSHCP, and NiSource would therefore not be responsible for the actions of third-parties. This critical evaluation of underlying encumbrances is discussed in Chapter 5 of the MSHCP, and will be further memorialized in the ITP and IA.

- No Littering or Dumping** No dumping of soil, trash, ashes, sawdust, garbage, waste, abandoned vehicles, appliances or machinery, dredge spoil, or other material shall occur on the Protected Property.
- No Burning of Waste** No burning of trash or waste shall occur on the Protected Property.
- No Disposal of Hazardous Waste** No dumping, disposal, or storage of hazardous materials shall occur on the Protected Property, including but not limited to used motor oil, household chemicals, insecticides, herbicides, or similar chemicals, or of containers of such materials, except to the extent such materials or containers are used for the purposes of managing the conservation values of the Protected Property and are securely stored and/or maintained.
- No Grading, Mineral Use, Excavation, Dredging** No grading, excavation, dredging, mining, or drilling and no removal of topsoil, sand, gravel, rock, peat, minerals, or other material shall occur on the Protected Property except to the extent that such activities are consistent with other Reserved Rights.
- Placement of Spoils** No filling or placement of dredged spoil, topsoil, or other materials shall occur in or near [specify waterbody, if any] or on Protected Property shall occur, except as necessary for stream bank restoration or protection measures approved by the USFWS through its ITP, and which is consistent with local, state and federal law.
- Limited Signage** No signs shall be permitted on the Protected Property except interpretive signs describing restoration activities and the Conservation Values of the Conservation Area; signs along hiking, biking or cross-country skiing trails *[if uses are reserved]*; signs identifying the owner of the Protected Property and the holder of this Conservation Easement; any signage required by applicable federal, state or local laws; and signs giving directions or prescribing rules and regulations for the use of the Protected Property.
- No Fencing** No fences shall be erected on the Protected Property, except to exclude livestock from certain areas, to the extent that such an agricultural use was in existence at the time the baseline was determined, or is necessary as a habitat management tool elsewhere on the Protected Property.

Pesticide, Herbicide Prohibitions

No rodenticides or other small mammal control measures that may adversely affect the purpose of this Conservation Easement shall be used or undertaken on the Protected Property. No pesticides or fertilizers will be used on the Protected Property, except in those instances when the conservation values of the Protected Property are threatened to the extent that the conservation values may be extirpated or lost without aggressive management and stewardship activities being implemented. The Grantee, on consultation with the Grantor, and with the written concurrence of the Service, may use pesticides when conservation values may be so affected.

Prohibitions on mechanized vehicles/ equipment

No off-road, all-terrain or similar vehicles are permitted to operate on the Protected Property, except for emergency vehicles or where necessary to effectuate the terms of this Conservation Easement. Use of mechanized vehicles shall only be allowed for the construction and maintenance of artificial roosts for Indiana bats, planting vegetation, moving rocks, soil, and trail maintenance.

RESERVED RIGHTS

Recreational Use

No recreational activities shall occur in the Conservation Area, except for low-impact recreational activities, including but not limited to, hunting/fishing, walking, jogging, biking, cross-country skiing, snowshoeing, wildlife observation, photography, horseback riding, and use of interpretive trails, so long as these activities:

- 1) are consistent with the Purpose of this _____[type of conveyance]; and,
- 2) do not result in the destruction of, or harm the viability of, trees or other vegetation in the Protected Property, except that the limited clearing or cutting of vegetation is permissible in accordance with the limitations below.

In constructing trails, the Grantor shall avoid clearing trees greater than five (5) inches in diameter at breast height (dbh). To the extent that it is necessary to install a crossing of a wet seep or stream deemed to be in need of protection by the Grantee, such wet seep or stream will be protected by using appropriate structures,

such as boardwalks, as approved by the Grantee, and installed at the expense of the Grantor.

Educational Use

The Grantor reserves the right to conduct educational activities within the Protected Property, such as site visits, studies and observations. Any educational activities involving attempts to capture Indiana bats or activities that could otherwise result in the take of Indiana bats, as that term is defined by the ESA, may be undertaken only in accordance with applicable federal and state laws.

Vegetative Management

No cutting, removing, mowing, destroying, harming, harvesting, pruning, planting or relocating of trees, shrubs, or other vegetation shall occur in the Protected Property except that the removal of vegetation is authorized in connection with:

1) The construction and maintenance of trails for low impact recreational activities as identified as a Reserved Right, provided that such trails shall be no more than eight (8) feet wide and shall be vegetated or covered with grasses and/or gravel. All vegetative clearing in connection with trail construction shall occur between November 15 and March 31. No trees that are greater than five (5) inches dbh shall be removed in the course of developing such trails;

2) The removal of any trees that present a safety hazard. If removal of any potential roost trees is required between April 1 and November 14, Grantor, with the guidance of a Service or appropriate state wildlife agency or other qualified biologist must determine whether the tree is being used as a roost tree by Indiana bats and must contact the Service to coordinate prior to tree removal. If Grantor has a reasonable, objective basis to believe that a tree that provides Indiana bat roosts poses an Imminent Hazard (i.e., must be cut down immediately in order to avoid significant injury that will be realized prior to completing consultation with a qualified biologist, the Service or State wildlife agency according to the above terms), Grantor may cut such tree, provided that the Grantor shall allow a qualified biologist to examine any such tree immediately after the tree is cut down and before it is removed from the area to determine whether the tree is occupied by the Indiana bat or to allow the Service or state wildlife agency to determine how to handle any Indiana bats occupying or displaced from the tree; or

3) Restoration or management of the Protected Area as identified in a Service-approved management plan that is consistent with the ITP and MSHCP.

**Restoration and
Maintenance
Of Conservation
Values**

Any restoration and maintenance activities must be deemed suitable and necessary by the Grantee and the Service to maintain or improve the conservation values of the Protected Property, and shall not diminish the mitigation ratios, quality or quantity specified in NiSource's ITP and accompanying MSHCP. Any restoration activities to be conducted by the Grantor must be proposed in writing to the Grantee, or by Grantee as part of a Service-approved management plan, consistent with the ITP and MSHCP.

**INDIANA BAT (HIBERNACULA)
USE RESTRICTIONS AND RESERVED RIGHTS**

RESTRICTIONS

General Description

Legal Description to be included in Conveyance

No Industrial Use

No industrial activities, including but not limited to the construction or placement of buildings or parking areas, shall occur on the Protected Property

No Residential Use

No residential structures or appurtenances, including but not limited to the construction or placement of homes, mobile homes or storage sheds, shall be constructed on the Protected Property.

No Commercial Use

No commercial activities shall occur on the Protected Property except for the recreational uses explicitly identified under Reserved Rights.

No Agricultural Use

No agricultural activities shall occur on the Protected Property, including the use of the Protected Property for cropland, waste lagoons, detention or collection ponds, or pastureland.

No Vegetative Clearing No forestry or timbering activities shall occur on the Protected Property, except that 1) Grantee maintains the right to conduct silvicultural modifications with the intent to improve listed species habitat within the Protected Property through reforestation, afforestation or silvicultural management to improve the health of the Indiana bat habitat; and 2) limited vegetative clearing may occur as described for reserved uses only.

Development Rights Extinguished No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

No Subdivision The Protected Property may not be divided or subdivided. Further, the Protected Property may not be divided, partitioned, or nor conveyed except in its current configuration as an entity.

No Utilities (except for existing encumbrances)³ No new utilities, including pipes, pipelines, transmission lines, whether aboveground or underground, shall be constructed or installed on the Protected Property.

No Construction There shall be no building, facility, mobile home, or other Structure, temporary or permanent, constructed or placed on the Protected Property, except as deemed necessary to construct artificial tree roosting habitat for Indiana bats.

No Littering or Dumping No dumping of soil, trash, ashes, sawdust, garbage, waste, abandoned vehicles, appliances or machinery, dredge spoil, or other material shall occur on the Protected Property.

No Burning of Waste or Open Fires No burning of trash or waste, or building of open-air fires including, fires for cooking purposes and campfires shall occur on the Protected Property.

³ Through Chapter 5 of the MSHCP, the ITP and IA, the Service will reserve the right to review mitigation proposals prior to approval. These provisions will require the project proponent to identify existing encumbrances. Specifically, this will allow FWS and NiSource to determine whether existing rights-of-way or other encumbrances (e.g., mineral estates) interfere with the conservation value of the proposal. Assuming they do not, it will be the responsibility of the third parties exercising their rights under these pre-existing interests to independently ensure compliance with applicable local, state and federal laws and permits, including the ESA. Such uses, however, would not be covered activities under this MSHCP, and NiSource would therefore not be responsible for the actions of third-parties. This critical evaluation of underlying encumbrances is discussed in Chapter 5 of the MSHCP, and will be further memorialized in the ITP and IA..

No Disposal of Hazardous Waste No dumping, disposal, or storage of hazardous materials shall occur on the Protected Property, including but not limited to used motor oil, household chemicals, insecticides, herbicides, or similar chemicals, or of containers of such materials, except to the extent such materials or containers are used for the purposes of managing the conservation values of the Protected Property and are securely stored and/or maintained.

No Grading, Mineral Use, Excavation, Dredging No grading, excavation, dredging, mining, or drilling and no removal of topsoil, sand, gravel, rock, peat, minerals, or other material shall occur on the Protected Property except to the extent that such activities are consistent with other reserved rights (e.g., managing Protected Property for Indiana bats).

Placement of Spoils No filling or placement of dredged spoil, topsoil, or other materials in or within 100 feet of hibernacula entrance and associated sinkholes, fissures, or other karst features on Protected Property shall occur, except as protection measures approved by the USFWS through its ITP, and which is consistent with local, state and federal law. A greater distance will be required if results of Adaptive Management under section 10 of the MSHCP reveals that 100 feet is not sufficiently protective of Indiana bats.

Limited Signage No signs shall be permitted on the Protected Property except interpretive signs describing restoration activities and the Conservation Values of the Conservation Area; signs along hiking, biking or cross-country skiing trails for Reserved Rights; signs identifying the owner of the Protected Property and the holder of this Conservation Easement; any signage required by applicable federal, state or local laws; and signs giving directions or prescribing rules and regulations for the use of the Protected Property.

No Fencing No fences shall be erected on the Protected Property, except to exclude access to hibernacula entrances if the hibernacula is not gated.

No pets No pets will be allowed within the hibernacula on the Protected Property.

Prohibitions on mechanized vehicles/equipment (tailored to species/purpose)

No off-road, all-terrain or similar vehicles are permitted to operate on the Protected Property, except for emergency vehicles or where necessary to effectuate the terms of this Conservation Easement. Use of mechanized vehicles shall be allowed only for the construction and maintenance of artificial roosts for Indiana bats, planting vegetation, moving rocks, soil, and trail maintenance.

RESERVED RIGHTS

Recreational Use

No recreational activities shall occur in the Conservation Area, except for low-impact recreational activities, including but not limited to, hunting/fishing, walking, jogging, biking, cross-country skiing, snowshoeing, wildlife observation, photography, horseback riding, and use of interpretive trails, so long as these activities:

1) are consistent with the Purpose of this _____[type of conveyance]; and,

2) do not result in the destruction of, or harm the viability of, trees or other vegetation in the Protected Property, except that the limited clearing or cutting of vegetation is permissible in accordance with the limitations below.3) do not include the entry of protected hibernacula. In constructing trails, the Grantor shall avoid clearing trees greater than five(5) inches in diameter at breast height (dbh) and construction within 100 feet of hibernacula entrances and associated sinkholes, fissures, or other karst features.

To the extent that it is necessary to install a crossing of a wet seep or stream deemed to be in need of protection by the Grantee, such wet seep or stream will be protected by using appropriate structures, such as boardwalks, as approved by the Grantee, and installed at the expense of the Grantor.

Educational Use

The Grantor reserves the right to conduct educational activities within the Protected Property, such as site visits, studies and observations. Any educational activities involving attempts to view and capture Indiana bats or activities that could otherwise result in the take of Indiana bats, as that term is defined by the ESA, may be undertaken only in accordance with applicable federal and state laws.

Vegetative Management

No cutting, removing, mowing, destroying, harming, harvesting, pruning, planting or relocating of trees, shrubs, or other vegetation shall occur in the Protected Property except that the removal of vegetation is authorized in connection with:

1) The construction and maintenance of trails for low impact recreational activities as identified as a Reserved Right, provided that such trails shall be no more than eight (8) feet wide and shall be vegetated or covered with grasses and/or gravel. All vegetative clearing in connection with trail construction shall occur between November 15 and March 31. No trees that are greater than five (5) inches dbh shall be removed in the course of developing such trails;

2) The removal of any trees that present a safety hazard. If removal of any potential roost trees is required between April 1 and November 14, Grantor, with the guidance of a Service or appropriate state wildlife agency or other qualified biologist must determine whether the tree is being used as a roost tree by Indiana bats and must contact the Service to coordinate prior to tree removal. If Grantor has a reasonable, objective basis to believe that a tree that provides Indiana bat roosts poses an Imminent Hazard (i.e., must be cut down immediately in order to avoid significant injury that will be realized prior to completing consultation with a qualified biologist, the Service or State wildlife agency according to the above terms), Grantor may cut such tree, provided that the Grantor shall allow a qualified biologist to examine any such tree immediately after the tree is cut down and before it is removed from the area to determine whether the tree is occupied by the Indiana bat or to allow the Service or state wildlife agency to determine how to handle any Indiana bats occupying or displaced from the tree.

**Maintenance
Of Conservation
Values**

Any restoration and maintenance activities must be deemed suitable and necessary by the Grantee and the Service to maintain or improve the conservation values of the Protected Property, and shall not diminish the mitigation ratios, quality or quantity specified in NiSource's ITP and accompanying MSHCP. Any restoration activities to be conducted by the Grantor must be proposed in writing to the Grantee, or by Grantee as part of a Service-approved management plan, consistent with the ITP and MSHCP.

**BOG TURTLE
USE RESTRICTIONS AND RESERVED RIGHTS**

RESTRICTIONS

- No Industrial Use** No industrial activities, including but not limited to the construction or placement of buildings or parking areas, shall occur on the Protected Property.
- No Residential Use** No residential structures or appurtenances, including but not limited to the construction or placement of homes, mobile homes or storage sheds, shall be constructed on the Protected Property. Residential use of structures existing at the time the baseline condition of the Protected Property is determined is allowed.
- No Commercial Use** No commercial activities shall occur on the Protected Property, except for low-impact recreational use (e.g., bird watching, hiking) identified explicitly as a Reserved Right, providing it does not cause erosion and does not involve the creation or maintenance of trails.
- No Agricultural Use** No agricultural activities shall occur on the Protected Property, including the use of the Protected Property for cropland, waste lagoons, detention or collection ponds, or pastureland, except to the extent that such use is necessary or desirable to maintain or enhance bog turtle habitat.
- No Vegetative Clearing** No forestry or timbering activities shall occur on the Protected Property, except that 1) Grantee maintains the right to conduct silvicultural modifications with the intent to improve bog turtle habitat within the Protected Property through reforestation, afforestation or silvicultural management to improve the health of the conserved habitat; and 2) limited vegetative clearing may occur only as described for reserved uses only.
- Development Rights Extinguished** No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.
- No Subdivision** The Protected Property may not be divided or subdivided. Further, the Protected Property may not be divided, partitioned, or nor conveyed except in its current configuration as an entity.

No Utilities (except for existing encumbrances)⁴	No new utilities, including pipes, pipelines, transmission lines, whether aboveground or underground, shall be constructed or installed on the Protected Property.
No Construction	There shall be no building, facility, mobile home, or other Structure, temporary or permanent, constructed or placed on the Protected Property, except as deemed necessary to [carry out the purposes of this Conservation Easement, the MSHCP and the ITP].
No Littering or Dumping	No dumping of soil, trash, ashes, sawdust, garbage, waste, abandoned vehicles, appliances or machinery, dredge spoil, or other material shall occur on the Protected Property.
No Burning of Waste or Open Fires	No burning of trash or waste, or building of open-air fires including, fires for cooking purposes and campfires shall occur on the Protected Property.
No Disposal of Hazardous Waste	No dumping, disposal, or storage of hazardous materials shall occur on the Protected Property, including but not limited to used motor oil, household chemicals, insecticides, herbicides, or similar chemicals, or of containers of such materials, except to the extent such materials or containers are used for the purposes of managing the conservation values of the Protected Property and are securely stored and/or maintained.
No Grading, Mineral Use, Excavation, Dredging	No grading, excavation, dredging, mining, or drilling and no removal of topsoil, sand, gravel, rock, peat, minerals, or other material shall occur on the Protected Property except to the extent that such activities are necessary and consistent with other reserved rights.
Placement of Spoils	No filling or placement of dredged spoil, topsoil, or other materials shall occur in or near [specify waterbody, if any] or on Protected Property, except as necessary for stream bank restoration or protection measures approved by the USFWS through its ITP, and which is consistent with local, state and federal law.

⁴ Through Chapter 5 of the MSHCP, the ITP and IA, the Service will reserve the right to review mitigation proposals prior to approval. These provisions will require the project proponent to identify existing encumbrances. Specifically, this will allow FWS and NiSource to determine whether existing rights-of-way or other encumbrances (e.g., mineral estates) interfere with the conservation value of the proposal. Assuming they do not, it will be the responsibility of the third parties exercising their rights under these pre-existing interests to independently ensure compliance with applicable local, state and federal laws and permits, including the ESA. Such uses, however, would not be covered activities under this MSHCP, and NiSource would therefore not be responsible for the actions of third-parties. This critical evaluation of underlying encumbrances is discussed in Chapter 5 of the MSHCP, and will be further memorialized in the ITP and IA.

**Water Withdrawals,
Impacts to Hydrology**

No withdrawals of either surface water or groundwater shall occur on the Protected Property or on adjacent lands [upstream/gradient] of the Protected Property to which the Grantor holds title ; notwithstanding any exceptions or Reserved Rights herein, no activity shall occur that is likely to adversely alter the quality, quantity, or flow of groundwater or surface water hydrology upon which the bog turtle or its habitat depends.

Limited Signage

No signs shall be permitted on the Protected Property except interpretive signs describing restoration activities and the Conservation Values of the Conservation Area; signs along hiking, biking or cross-country skiing trails as Reserved Rights; signs identifying the owner of the Protected Property and the holder of this Conservation Easement; any signage required by applicable federal, state or local laws; and signs giving directions or prescribing rules and regulations for the use of the Protected Property.

No Fencing

No fences shall be erected on the Protected Property, except to exclude livestock from riparian areas or limit access to off-road vehicles or other potential erosion causing uses.

**Hunting/Collection
Prohibitions**

No collection or removal of amphibians or reptiles, including bog turtles, is permitted on or from the Protected Property, except as determined to be necessary by the Grantee, its agents, its contractors, and its assigns, and the Service, its agents, its contractors and assigns, in furtherance of the purpose of this conveyance or as determined to be necessary by the Grantor, its contractors or assigns in order to conduct monitoring or similar activities as required by the ITP and the MSHCP or as otherwise conducted in accordance with applicable federal and state laws. Upland hunting, fishing, and mammal trapping is permitted by Grantor's assigns, lessees, tenants or invitees, so long as Grantor has expressly warned the assigns, lessees, tenants, or invitees about the collection prohibitions and provided a copy of this Conservation Easement, and any amendment hereto.

**Pesticide, Herbicide
Prohibitions**

No rodenticides or other small mammal control measures that may adversely affect the purpose of this Conservation Easement shall be used or undertaken on the Protected Property. No pesticides or fertilizers will be used on the Protected Property, except in those

instances when the conservation values of the Protected Property are threatened to the extent that the conservation values may be extirpated or lost without aggressive management and stewardship activities being implemented. The Grantee, on consultation with the Grantor, and with the written concurrence of the Service, may use pesticides when conservation values may be so affected.

No pets

No pets will be allowed on the Protected Property unless under the physical control of the owner.

Prohibitions on mechanized vehicles/equipment

No off-road, all-terrain or similar vehicles are permitted to operate on the Protected Property, except for emergency vehicles or where necessary to effectuate the terms of this Conservation Easement. Use of mechanized vehicles shall be allowed [to effectuate the purposes of the Conservation Area], including for tree and herbaceous plant installation, mowing, and herbicide application where otherwise authorized, and management of the Protected Property for the bog turtle.

RESERVED RIGHTS

Recreational Use

No recreational activities shall occur in the Conservation Area, except for low-impact recreational activities, including but not limited to, walking, jogging, biking, cross-country skiing, snowshoeing, wildlife observation, photography, horseback riding, and use of interpretive trails, so long as these activities:

1) are consistent with the Purpose of this Conservation Easement; and,

2) do not result in the destruction of, or harm the viability of, trees or other vegetation in the Protected Property, except that the limited clearing or cutting of vegetation is permissible in accordance with the limitations below; and,

In constructing trails, the Grantor shall avoid clearing trees greater than five (5) inches in diameter at breast height (dbh). To the extent that it is necessary to install a crossing of a wet seep or stream deemed to be in need of protection by the Grantee, such wet seep or stream will be protected by using appropriate structures, such as boardwalks, as approved by the Grantee, and installed at the expense of the Grantor.

Education al Use

The Grantor reserves the right to conduct educational activities within the Protected Property, such as site visits, studies and observations. Any educational activities involving attempts to capture bog turtle or activities that could otherwise result in the take of bog turtle, as that term is defined by the ESA, may be undertaken only in accordance with applicable federal and state laws.

Vegetative Management

No cutting, removing, mowing, destroying, harming, harvesting, pruning, planting or relocating of trees, shrubs, or other vegetation shall occur in the Protected Property except that the removal of vegetation is authorized in connection with:

1) The removal of any trees that present a safety hazard, so long as Grantor first attempts to remedy the hazard by removing any limbs or branches in lieu of removing the entire tree.

2) Restoration or management of the Protected Area as identified in a Service-approved management plan that is consistent with the ITP and MSHCP.

**Restoration and
Maintenance
Of Conservation
Values**

Any restoration and maintenance activities must be deemed suitable and necessary by the Grantee and the Service to maintain or improve the conservation values of the Protected Property, and shall not diminish the mitigation ratios, quality or quantity specified in the ITP and accompanying MSHCP. Any restoration activities to be conducted by the Grantor must be proposed in writing to the Grantee, or by Grantee as part of a Service-approved management plan, consistent with the ITP and MSHCP.

**MADISON CAVE ISOPOD
USE RESTRICTIONS AND RESERVED RIGHTS**

RESTRICTIONS

<u>General Description</u>	<u>Legal Description to be included in Conveyance</u>
No Industrial Use	No industrial activities, including but not limited to the construction or placement of buildings or parking areas, shall occur on the Protected Property
No Residential Use	No residential structures or appurtenances, including but not limited to the construction or placement of homes, mobile homes or storage sheds, shall be constructed on the Protected Property.
No Commercial Use	No commercial activities shall occur on the Protected Property except for the recreational uses explicitly identified under Reserved Rights.
No Agricultural Use	No agricultural activities shall occur on the Protected Property, including the use of the Protected Property for cropland, waste lagoons, detention or collection ponds, or pastureland.
No Vegetative Clearing	No forestry or timbering activities shall occur on the Protected Property, except that 1) Grantee maintains the right to conduct silvicultural modifications with the intent to improve listed species habitat within the Protected Property through reforestation, afforestation or silvicultural management to improve the health of the Madison Cave isopod or its habitat; and 2) limited vegetative clearing may occur as described for reserved uses only.
Development Rights Extinguished	No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.
No Subdivision	The Protected Property may not be divided or subdivided. Further, the Protected Property may not be divided, partitioned, or nor conveyed except in its current configuration as an entity.

No Utilities (except for existing encumbrances)⁵	No new utilities, including pipes, pipelines, transmission lines, whether aboveground or underground, shall be constructed or installed on the Protected Property.
No Construction	There shall be no building, facility, mobile home, or other Structure, temporary or permanent, constructed or placed on the Protected Property, except as deemed necessary to effectively [carry out the purposes of this Conservation Easement, the MSHCP and the ITP].
No Littering or Dumping	No dumping of soil, trash, ashes, sawdust, garbage, waste, abandoned vehicles, appliances or machinery, dredge spoil, or other material shall occur on the Protected Property.
No Burning of Waste or Open Fires	No burning of trash or waste, or building of open-air fires including, fires for cooking purposes and campfires shall occur on the Protected Property.
No Disposal of Hazardous Waste	No dumping, disposal, or storage of hazardous materials shall occur on the Protected Property, including but not limited to used motor oil, household chemicals, insecticides, herbicides, or similar chemicals, or of containers of such materials, except to the extent such materials or containers are used for the purposes of managing the conservation values of the Protected Property and are securely stored and/or maintained.
No Grading, Mineral Use, Excavation, Dredging	No grading, excavation, dredging, mining, or drilling and no removal of topsoil, sand, gravel, rock, peat, minerals, or other material shall occur on the Protected Property except to the extent that such activities are consistent with other reserved rights (e.g., managing Protected Property for Madison cave isopods).
Placement of Spoils	No filling or placement of dredged spoil, topsoil, or other materials shall occur in or within 300 feet of sinkholes, fissures, or other karst features or on Protected Property, except as protection

⁵ Through Chapter 5 of the MSHCP, the ITP and IA, the Service will reserve the right to review mitigation proposals prior to approval. These provisions will require the project proponent to identify existing encumbrances. Specifically, this will allow FWS and NiSource to determine whether existing rights-of-way or other encumbrances (e.g., mineral estates) interfere with the conservation value of the proposal. Assuming they do not, it will be the responsibility of the third parties exercising their rights under these pre-existing interests to independently ensure compliance with applicable local, state and federal laws and permits, including the ESA. Such uses, however, would not be covered activities under this MSHCP, and NiSource would therefore not be responsible for the actions of third-parties. This critical evaluation of underlying encumbrances is discussed in Chapter 5 of the MSHCP, and will be further memorialized in the ITP and IA.

measures approved by the USFWS through its ITP, and which is consistent with local, state and federal law.

**Water Withdrawals,
Impacts to Hydrology**

No withdrawals of either surface water or groundwater shall occur on the Protected Property or on adjacent lands [upstream/gradient] of the Protected Property to which the Grantor holds title; no activity shall occur that is likely to adversely alter the quality, quantity, or flow of groundwater or surface water hydrology upon which the Madison Cave isopod or its habitat depends.

Limited Signage

No signs shall be permitted on the Protected Property except interpretive signs describing restoration activities and the Conservation Values of the Conservation Area; signs along hiking, biking or cross-country skiing trails for Reserved Rights; signs identifying the owner of the Protected Property and the holder of this Conservation Easement; any signage required by applicable federal, state or local laws; and signs giving directions or prescribing rules and regulations for the use of the Protected Property.

No Fencing

No fences shall be erected on the Protected Property, except to exclude access to sinkholes, fissures, or other karst features.

**Pesticide, Herbicide
Prohibitions**

No rodenticides or other small mammal control measures that may adversely affect the purpose of this Conservation Easement shall be used or undertaken on the Protected Property. No pesticides or fertilizers will be used on the Protected Property, except in those instances when the conservation values of the Protected Property are threatened to the extent that the conservation values may be extirpated or lost without aggressive management and stewardship activities being implemented. The Grantee, on consultation with the Grantor, and with the written concurrence of the Service, may use pesticides when conservation values may be so affected.

No pets

No pets will be allowed within sinkholes, fissures, or other karst features on the Protected Property.

Prohibitions on mechanized vehicles/equipment (tailored to species/purpose)

No off-road, all-terrain or similar vehicles are permitted to operate on the Protected Property, except for emergency vehicles or where necessary to effectuate the terms of this Conservation Easement. Use of mechanized vehicles shall be allowed only for the construction and maintenance of Madison Cave isopod, planting vegetation, moving rocks, soil, and trail maintenance, so long [the use complies with the ITP and MSHCP].

RESERVED RIGHTS

Recreational Use

No recreational activities shall occur in the Conservation Area, except for low-impact recreational activities, including but not limited to, hunting/fishing, walking, jogging, biking, cross-country skiing, snowshoeing, wildlife observation, photography, horseback riding, and use of interpretive trails, so long as these activities:

- 1) are consistent with the Purpose of this _____ [type of conveyance]; and,
- 2) do not result in the destruction of, or harm the viability of, trees or other vegetation in the Protected Property, except that the limited clearing or cutting of vegetation is permissible in accordance with the limitations below.
- 3) do not include the entry of sinkholes, fissures, or other karst features.

In constructing trails, the Grantor shall avoid clearing trees greater than five (5) inches in diameter at breast height (dbh) and construction within 300 feet of caves, sinkholes, fissures, or other karst features. To the extent that it is necessary to install a crossing of a wet seep or stream deemed to be in need of protection by the Grantee, such wet seep or stream will be protected by using appropriate structures, such as boardwalks, as approved by the Grantee, and installed at the expense of the Grantor.

Education al Use

The Grantor reserves the right to conduct educational activities within the Protected Property, such as site visits, studies and observations. Any educational activities involving attempts to view and capture Madison Cave isopods or activities that could otherwise result in the take of Madison Cave isopods, as that term is defined by the ESA, may be undertaken only in accordance with applicable federal and state laws.

Vegetative Management

No cutting, removing, mowing, destroying, harming, harvesting, pruning, planting or relocating of trees, shrubs, or other vegetation shall occur in the Protected Property except that the removal of vegetation is authorized in connection with:

1) The construction and maintenance of trails for low-impact recreational activities as specified as a Reserved Right, provided that such trails shall be no more than eight (8) feet wide and shall be vegetated or covered with grasses and/or gravel. All vegetative clearing in connection with trail construction shall occur between November 15 and March 31. No trees that are greater than five (5) inches dbh shall be removed in the course of developing such trails;

2) The removal of any trees that present a safety hazard, so long as Grantor first attempts to remedy the hazard by removing any limbs or branches in lieu of removing the entire tree.

3) Restoration or management of the Protected Area as identified in a Service-approved management plan that is consistent with the ITP and MSHCP.

**Restoration and
Maintenance
Of Conservation
Values**

Any restoration and maintenance activities must be deemed suitable and necessary by the Grantee and the Service to maintain or improve the conservation values of the Protected Property, and shall not diminish the mitigation ratios, quality or quantity specified in NiSource's ITP and accompanying MSHCP. Any restoration activities to be conducted by the Grantor must be proposed in writing to the Grantee, or by Grantee as part of a Service-approved management plan, consistent with the ITP and MSHCP.