

ATTACHMENT 10
ENVIRONMENTAL ASSESSMENT FORM

Appendix D: Preliminary Permittee Responsible Mitigation Plan



Preliminary Permittee Responsible Mitigation Plan

Introduction

On behalf of National Fuel Gas Supply Corporation (National Fuel or Permittee) and in consultation with Tetra Tech, Resource Environmental Solutions, LLC (RES) has been contracted to support National Fuel's mitigation obligations for the Tioga Pathway Project (Project). This document outlines the key factors and proposed approach for the proposed mitigation solution. Upon review and approval of this preliminary plan, a final plan will be developed and submitted to the USACE and PADEP for approval.

Background

National Fuel is proposing to construct and operate the proposed Tioga Pathway Project (Project) and to abandon certain pipeline facilities. The purpose of the Project is two-fold: (1) to provide incremental firm transportation service from the abundant Marcellus and Utica shale production area in Tioga County, Pennsylvania to various points on the interstate pipeline system grid and (2) to modernize a portion of National Fuel's existing Z20 Pipeline system in Potter County, Pennsylvania (PA). The Project is located in Potter, Tioga, and McKean counties, PA, and consists of the construction and operation of the following facilities:

- Z20 Replacement Pipeline: Replace approximately 3.84 miles of 12-inch-diameter 1936-vintage bare steel pipeline with new 20-inch-diameter coated steel pipeline in National Fuel's existing right-of-way (ROW) in Potter County;
- YM59 Mainline Pipeline: Install approximately 19.48 miles of new 20-inch-diameter coated steel pipeline beginning at the east end of the 3.84-mile Z20 Pipeline replacement, traversing Potter and Tioga counties, and ending at the NFG Midstream Covington, LLC (Midstream) Lee Hill Interconnect;
- Auxiliary Facilities:
 - McCutcheon Hill Over-pressure Protection (OPP) Station: Construct a new OPP station at the interconnection between the eastern terminus of the Z20 Replacement Pipeline and the western terminus of the YM59 Mainline Pipeline in Potter County;
 - Measurement equipment at Midstream's Lee Hill Interconnect: Install gas measurement, gas quality, flow control, OPP devices, a pig launcher, and associated appurtenances (Measurement Facilities) at Midstream's Lee Hill Interconnect to connect the proposed YM59 Mainline Pipeline to Midstream's facilities at the east end of the Project in Chatham Township, Tioga County;
 - Perform minor modifications at National Fuel's existing Ellisburg Compressor Station (CS) including replacing/installing measurement, OPP devices, flow control, and other associated appurtenances in Potter County;
 - Construct one new remote-control valve (RCV) setting at a location along the YM59 Pipeline in Tioga County;
 - Perform modifications to an existing valve setting on the Z20 Replacement Pipeline in Potter County; and
 - Install a new cathodic protection ground bed at a location along the YM59 Pipeline in Tioga County.¹

To support construction activities and operation of the Project, National Fuel estimates that approximately 3.96 miles of temporary access roads (TARs) and 1.76 miles of permanent access roads (PARs) will be used. In addition, three (3) previously used staging areas (Port Allegany Pipe Yard, Harrison Valley

¹ Two cathodic protection ground bed locations are being considered as potential siting alternatives, but the Project will only require construction of one ground bed.

Contractor Yard, and Middlebury Contractor Yard) will be used to store materials and equipment.

Compensatory Mitigation Summary

Compensatory mitigation is required as a result of unavoidable palustrine emergent (PEM), scrub-shrub (PSS) and palustrine forested (PFO) wetland conversion and fill impacts associated with the Project. Resource impacts requiring mitigation are outlined in Table 1: Mitigation Summary. The impact ratios presented in Table 1 are based on previously permitted projects of similar nature.

Table 1. Estimated Off-Site Mitigation Required						
Wetland Type	Ch. 93 Designation	Total Conversion Impact (Acres)	Total Fill Impacts	Ratio Applied	PRM Mitigation Acres Needed	Mitigation Bank Credits Applied
PSS	EV	0.000	0.000	1.5:1	0.000	-
	Non-EV	1.907	0.000	1:1	1.907	-
PFO	EV	0.000	0.000	2.25:1	0.000	-
	Non-EV	1.145	0.000	2.0:1	2.290	-
PEM	EV	0.000	0.000	n/a	0.000	-
	Non-EV	0.000	0.002	2:1	0.000	0.01*
Totals		3.052	0.002		4.197	0.01

* Mitigation credits are rounded the nearest hundredth

Regulated aquatic resource impacts associated with the proposed Project will occur within the Upper Susquehanna Watershed (8-Digit Hydrologic Unit Code (HUC) #02050104) of the Tioga-Cowanesque Rivers Subbasin (Watershed 4). Compensatory mitigation required for the Project within this watershed is due to permanent conversion of PSS and PFO wetlands to PEM wetlands within the Project footprint. In addition, 0.002 acre of PEM wetland loss will occur due to fill. Consistent with the *Compensatory Mitigation Final Rule* ("Final Rule"), which establishes mitigation credits as the preferred method of compensatory mitigation for impacts to aquatic resources of the U.S. (332.3(b)(2)), the Permittee first sought to purchase approved mitigation credits from an existing mitigation bank, however bank credits are not anticipated to be available in the amounts or time frame needed for the entire Project. However, a small amount of credits needed to compensate for the wetland loss due to fill will be available. As such, RES proposes to mitigate for the wetland fill of 0.002 acres of wetland utilizing bank credits and mitigate for the conversion impacts through the PRM site. As the required approved mitigation credits will be not be available within the Tioga-Cowanesque Subbasin, and because no In Lieu Fee programs are active within the Watershed, Permittee Responsible Mitigation (PRM) is proposed to offset the wetland conversion impacts associated with the Project.

The PRM site will be located at an appropriate off-site restoration location within Tioga County and within the Tioga-Cowanesque Rivers Subbasin (Appendix A. Figures. Figure 1). RES currently has land control of the proposed PRM site, which is characterized by anthropomorphically-degraded (primarily as a result of grazing/agriculture) emergent wetlands. Mapping of one of the potential PRM locations is included in Appendix A. Figures. Figure 2.

At the proposed PRM site, the wetland enhancement process will involve diligent invasive species management and native seeding and planting efforts. If wetland enhancement areas will require initial weed controls, that work will be conducted either early or late in the growing season, while native species are dormant, with mowing and/or chemical herbicide to control non-native and/or invasive species. After this initial treatment, spot spraying and follow-up control will be completed on an as-needed basis. Invasive shrub species, if present, will be cut, and the cut stumps treated with a dicot specific chemical herbicide applied directly to the cut surface. Follow-up control will be applied in a similar manner, again with a dicot-specific chemical herbicide. After the initial weed control efforts, the site will be prepared for planting. A variety of large and small native trees and shrubs will be installed in the wetland enhancement areas and these areas will be seeded with a native seed mix. Trees and shrubs will be planted at an approximate density of 500 stems/acre and per their hydrologic needs and adaptability, with trees and shrubs that are able to tolerate wetter conditions installed in and around the lower gradient areas and more facultative species installed within the slightly higher wetland areas.

Site Selection and Mitigation Approach

Mitigation Banking

Consistent with the Compensatory Mitigation Final Rule ("Final Rule"), which establishes mitigation bank credits as the preferred method of compensatory mitigation for impacts to aquatic resources of the U.S. (332.3(b)(2)), the Permittee first sought to purchase approved mitigation credits from a mitigation bank within the Tioga-Cowanesque Rivers Subbasin (Watershed 4) to compensate for the anticipated conversion and fill wetland impacts resulting from the Project. Credits within the required subbasin are limited at the existing USRMB I and II Mitigation Banks within Watershed 4, RES does not anticipate that enough bank credits in this watershed will be available within the Project's permitting timeframe. However, it is anticipated that enough credits will be available to cover the 0.01 credit need to offset the 0.002 acre of wetland fill that is anticipated.

In-Lieu Fee

In-Lieu fee crediting was not an option for the Project because no active In-Lieu fee programs were or are available.

On-Site Mitigation

To minimize impacts to aquatic features and habitat areas, the Permittee implemented construction and engineering avoidance and minimization measures within the limit of disturbance (LOD) and permanent easements to the greatest extent practicable. While some onsite mitigation is being proposed, due to space constraints complete onsite mitigation was deemed impractical.

In addition, completing on-site mitigation would also create multiple, small, spatially separate PRM projects. These smaller isolated projects have been shown to be less ecologically beneficial, have a lower likelihood for long-term success and are more susceptible to invasive species due to increased edge effect. They also create an increased number of maintenance plans to be reviewed, increasing the long-term regulatory burden on the agencies by requiring reviews and field visits to multiple small restoration sites.

The Permittee therefore has determined that the on-site mitigation opportunities are less conducive to complying with the "no net loss" and/or "watershed approach" policy(s) commensurate with the Final Rule.

Local Watershed Restoration

The Project is linear, with impacts being spread out across an area over twenty miles long which crosses multiple local watersheds. It would not be feasible or ecologically beneficial to distribute the mitigation locally across small piecemeal sites in all of the impacted watersheds. The selected mitigation site is located in the same HUC 08 watershed (Subbasin 4) as the impacts.

Selected Mitigation Site

The selected PRM site is strategically located in the floodplains of a watershed that will benefit from the wetland enhancement efforts while ensuring optimal replacement of functions and values lost as a result of the Project. The existing conditions of the PRM Site wetland area make this an attractive site from a mitigation perspective. The PRM Site has been degraded through anthropogenic alterations including historic agricultural activities, and pasture use. Surrounding land uses consist of residential homes, with large tracts of agricultural land and supporting infrastructure (livestock buildings such as farms and sheds). The streams within the PRM Site are unnamed tributaries (UNTs) to Tributary 31028 To Camp Brook (PA DEP Historic Streams GIS Data, 2004) and are designated as Warm Water Migratory Fisheries (WWF-MF) (PA Code: Title 25: Chapter 93) and listed as impaired for aquatic life from agriculture and siltation. Camp Brook (HUC 02050104) has been classified by the PA Natural Heritage Program (PNHP) Aquatic Community Classification (ACA) as a Tier 2 Enhancement watershed, making this watershed a prime candidate for restoration.

Currently, the PRM Site is characteristic of a degraded PEM. The past land use practices have ditched streams, drained wetlands, and introduced invasive/non-native species such as musk thistle (*Carduus nutans*), Canada thistle (*Cirsium arvense*), European buckthorn (*Rhamnus cathartica*), bush honeysuckle (*Lonicera maackii*), autumn olive (*Elaeagnus umbellata*), narrow leaved cattail (*Typha angustifolia*), reed canary grass (*Phalaris arundinacea*), multiflora rose (*Rosa multiflora*), and Japanese barberry (*Berberis thubergii*). The PRM Site will build upon many of the critical components of the Final Rule including the likelihood for success and sustainability, potential to maximize ecological uplift, the significance of the restored resources within the watershed, and the proximity of the impact and mitigation sites from a watershed perspective. Providing functional benefits such as improvements to wildlife habitat, flood flow

conveyance and alteration, nutrient removal/retention, invasive species removal, and long-term land protection will support healthy flora and fauna and aquatic resources within the watershed. The likelihood of success and long-term ecological uplift were the most important factors that the Permittee considered.

The Permittee concluded that due to the ecological demands of the Project, entrusting the logistical and environmental aspects of compensatory mitigation through a combination of bank credits and offsite Permittee Responsible Mitigation to RES would ensure the greatest likelihood of success and most effectively address watershed needs through off-site mitigation.

Final PRM Plan

Pending approval or comments received from regulatory agencies regarding the location and scope of the proposed PRM plan, RES will develop the final PRM plan in December 2024. The Final PRM Plan will detail the alternatives considered for completing compensatory mitigation, how the affected resources functions and values will be offset from the proposed compensation approach and provide detailed discussions regarding maintenance and monitoring of the PRM Site to ensure that performance standards are achieved. The Final PRM Plan will also contain more detailed mapping, a final planting plan, and a formal wetland delineation report of the PRM site. An example Table of Contents for the Final PRM Plan is attached as Appendix B.

The PRM site will be protected by a permanent site protection instrument in advance of the proposed activities outlined in the Final PRM Plan, ensuring the long-term protection of the PRM Site. The site protection instrument will be recorded within 60 days in the county courthouse after USACE/PADEP approval, with subsequent approval from NFG to move forward with mitigation. An example of the copy of the site protection instrument to be filed upon permit approval is included as Appendix C. The site protection instrument restricts activities that are incompatible with the objectives of the PRM Plan.

Appendix A: Figures

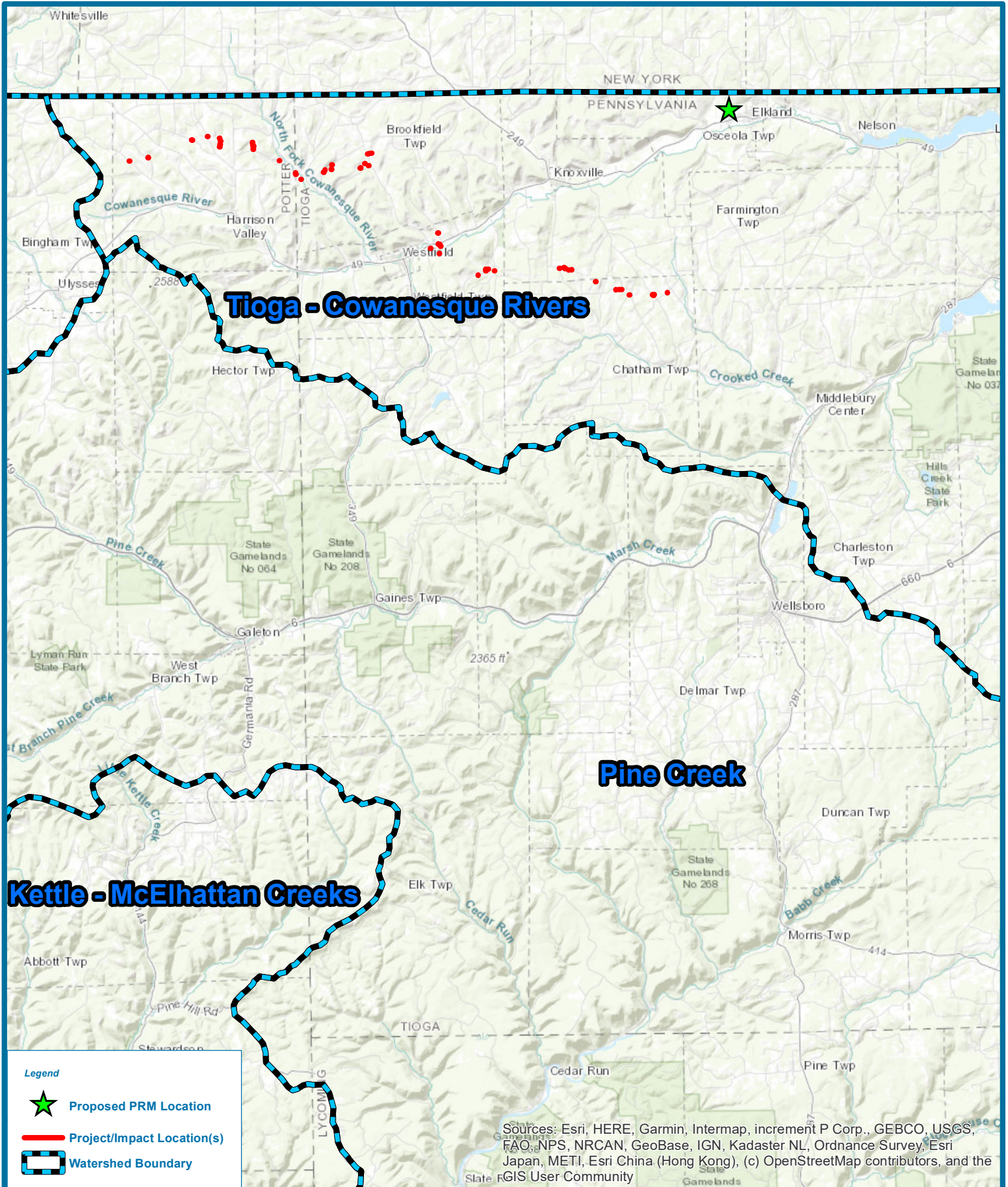
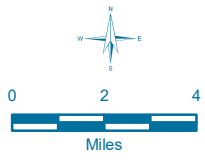
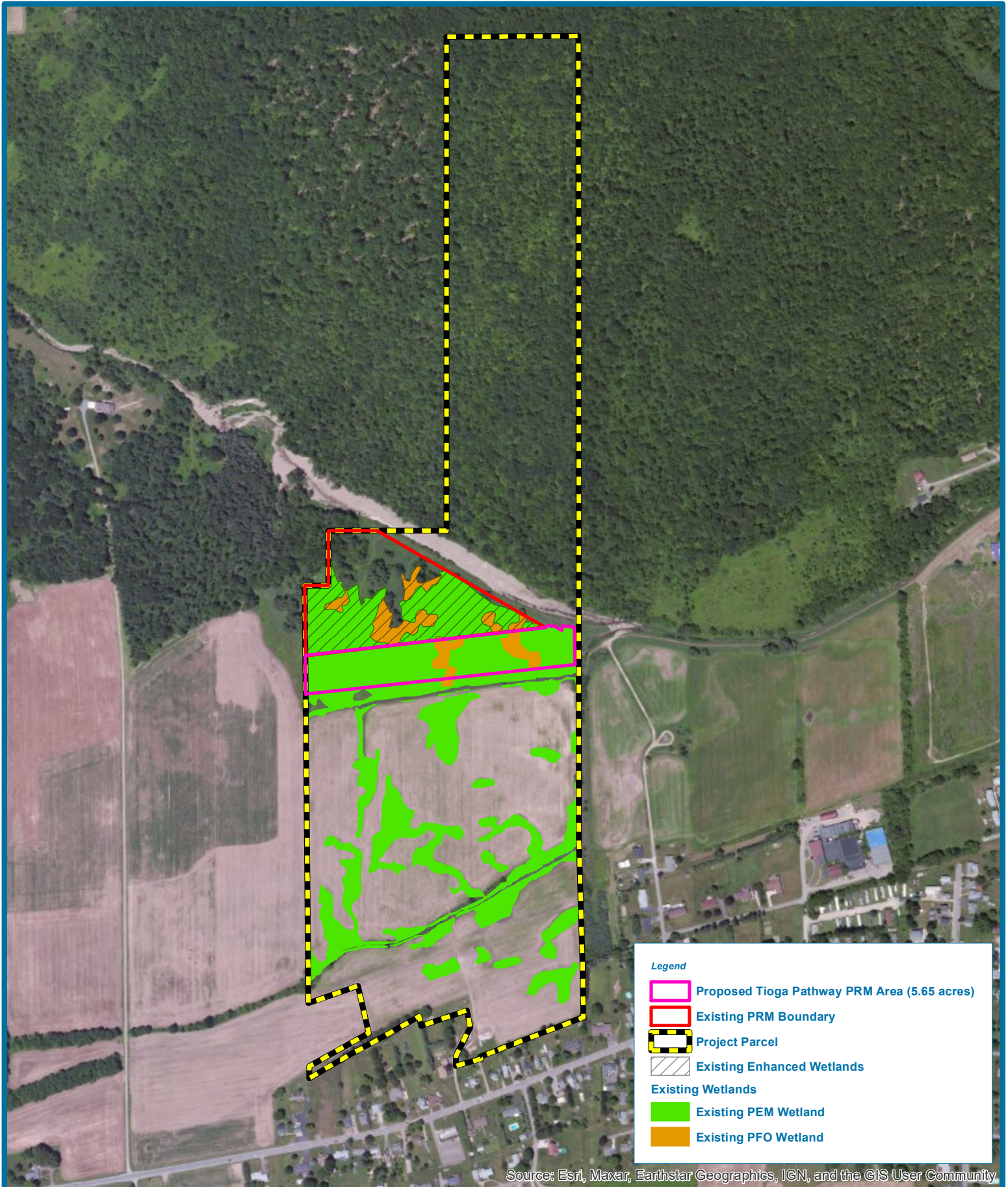


FIGURE 1
TIOGA PATHWAY PROJECT
POTENTIAL PRM LOCATION
IMPACT VICINITY MAP
TIOGA COUNTY, PA

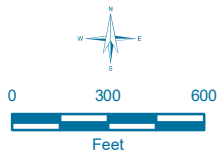




Legend

- Proposed Tioga Pathway PRM Area (5.65 acres)
- Existing PRM Boundary
- Project Parcel
- Existing Enhanced Wetlands
- Existing Wetlands**
- Existing PEM Wetland
- Existing PFO Wetland

Source: Esri, Maxar, Earthstar Geographics, IGN, and the GIS User Community



PROPOSED TIOGA PATHWAY PRM CONCEPT
CAMP BROOK PRM SITE
TIOGA COUNTY, PA



Appendix B: Example PRM Plan Table of Contents

Permittee-Responsible Mitigation Plan for the Tioga Pathway Project Camp Brook Restoration Site

Tioga County, Pennsylvania
National Fuel Gas Supply Corporation



Prepared By:

First Pennsylvania Resource, LLC.
a wholly-owned subsidiary of
Resource Environmental Solutions, LLC.
33 Terminal Way, Suite 445A
Pittsburgh, PA 15219

October 2024



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DECLARATION OF RESTRICTIVE COVENANT FOR CONSERVATION

This DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION (“Declaration”) is made and entered into as of [date] by and between FIRST PENNSYLVANIA RESOURCE, L.L.C., a Pennsylvania limited liability company, with a business address at 33 Terminal Way, Pittsburgh, PA 15219 (“Grantee”) and _____, an [individual/corporation/other organization] with a mailing address at [_____] (“Grantor”).

RECITALS

WHEREAS, Grantor owns certain real estate located in _____ County(ies), Pennsylvania, consisting of _____ acres, more or less, as described more specifically in **Exhibit A** hereto (the “Property”); and

WHEREAS, Grantee is a Pennsylvania company in the business of stream and wetland mitigation in the Commonwealth of Pennsylvania; and

WHEREAS, the Grantor has agreed to make a _____ acre portion of the Property, delineated in **Exhibit B**, where certain [stream and/or] wetland resources exist or may be created and/or enhanced (the “Conservation Area”), subject to this Declaration; and

WHEREAS, the Grantor agrees to the creation of the Conservation Area described herein and intends that the Conservation Area shall be preserved and maintained in perpetuity in an enhanced or natural condition, which will include functioning [streams and/or] wetlands; and

WHEREAS, the Conservation Area, or a portion thereof, is intended to be used in the future as mitigation for impacts to waters of the United States and/or waters of the Commonwealth of Pennsylvania authorized under U.S. Army Corps of Engineers (“Corps” to include any successor agency) or Pennsylvania Department of Environmental Protection (“PADEP” to include any successor agency) permit(s). Before, or at the time a Corps or PADEP permit or verification or a Mitigation Banking Instrument approves using this Conservation Area as mitigation: (1) the Mitigation Plan approved/required by such permit or Banking Instrument must contain a legal description of the portion of the Conservation Area to be used as mitigation or a Mitigation Bank; and (2) Grantee must record an addendum to this Declaration containing a legal description of the portion of the Conservation Area associated with each permit or Mitigation Bank, which references the applicable Corps and/or PADEP permit/verification number(s) or Mitigation Bank Site Name and any associated Corps/PADEP authorization/approval number(s). A form of the addendum to be used is attached to this Declaration as **Exhibit C**; and

WHEREAS, in recognition of the continuing benefit to the Property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, the Grantor and Grantee have agreed to place certain restrictive covenants on the Property, in order that the Conservation Area shall remain substantially in its natural condition forever; and

WHEREAS, the Grantor and Grantee agree and acknowledge that this Declaration, including the rights authorized to Grantee herein, shall be assignable and transferrable to Grantee's subsequent heirs, successors, and assigns, [if Holder known: including the _____]; and

[If Holder known: WHEREAS, the _____, a 501(c)(3) tax-exempt entity registered with the Bureau of Charitable Organizations of the Pennsylvania Department of State, is a holder of this Declaration] and

WHEREAS, this Declaration is constructed and covenanted to meet the requirements for conservation easements under the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, and as amended thereafter; and

NOW, THEREFORE, for good and valuable consideration and in consideration of the mutually held interests in enhancement and preservation of the environment, as well as the terms, conditions, and restrictions contained herein, and pursuant to the laws of the Commonwealth of Pennsylvania, Grantor does agree to the following terms and conditions:

A. PURPOSE

The purpose of this Declaration is:

- (1) To preserve, protect, and enhance the native flora, fauna, soils, water table, aquifer, drainage patterns, wetland resources and other related environmental functions and values of the Conservation Area;
- (2) To maintain the natural view shed of the Conservation Area in its native, enhanced, scenic and open condition;
- (3) To assure that the Conservation Area, including its air space, streams and other aquatic resources on or beneath the Conservation Area, and including, but not limited to, subsurface aquifers, springs, and the water table, will be maintained in perpetuity in its natural condition, as that may be enhanced, as provided herein; and
- (4) To prevent any use of the Conservation Area that threatens to or will impair, interfere with, or otherwise negatively affect its natural resource functions and values.

Grantor and Grantee [If known: and Holder] intend and agree that this Declaration will confine the use of the Conservation Area to such activities as are consistent with the purposes set forth herein.

B. ACCESS

In order to achieve the purposes of this Declaration, the following rights are created in accordance with Pennsylvania law:

(1) The Grantee shall have the right and Grantor acknowledges the right of [the holder(s) of this Declaration,] the Corps, the PADEP, and other government agencies with legal authority to enter upon the Property for purposes related to this Declaration, to inspect the Conservation Area at reasonable times to monitor compliance with this Declaration. Except in cases of a threat of a physical or public safety emergency, such entry shall, when practicable, be upon reasonable prior notice to Grantor or its successors and assigns, and such entry shall not unreasonably interfere with the Grantor's or its successors' and assigns' use and quiet enjoyment of the Property.

(2) The Grantor, Grantee, [holder(s) of this Conservation Declaration,] the Corps, the PADEP and other government agencies with legal authority to enter upon the Property for purposes related to this Declaration, each shall have the right to enter upon the Property to access the Conservation Area at reasonable times and upon prior notice to the Grantor; and upon notice and written approval by the Corps may take appropriate environmental or conservation management measures within the Conservation Area consistent with the terms and purposes of this Declaration, including, but not limited to:

- (a) planting of native vegetation (i.e. trees, shrubs, grasses, and forbs); and
- (b) restoring, altering or maintaining the topography, hydrology, drainage, structural integrity, streambed(s), streambank(s), water quantity, water quality, any relevant feature of a stream, wetland, water body, or vegetative buffer within the Conservation Area.

(3) The Grantor and Grantee, [holder(s) of this Declaration], the Corps, PADEP, and other government agencies with legal authority to enter upon the Property for purposes related to this Declaration, shall each have the right to enforce the terms of this Declaration by appropriate legal proceedings in accordance with applicable law so as to prevent any activity on or use of the Property that is inconsistent with the purposes of this Declaration and to require the restoration of such areas or features of the Conservation Area that may be impaired or damaged by an inconsistent activity or use.

C. DURATION

This Declaration shall remain in effect in perpetuity, shall run with the land regardless of ownership or use, and is binding upon and shall inure to the benefit of the Grantor and Grantee's [if known – and holder's] heirs, executors, administrators, successors, representatives, devisees, and assigns, as the case may be, as long as said party shall have any interest in any portion(s) of the Conservation Area.

D. RESTRICTIONS

Any activity in or use of the Conservation Area that is inconsistent with the purposes of this Declaration by the Grantor; subsequent property owner(s); and the personal representatives, heirs, successors, and assigns of either the Grantor or subsequent property owner(s), is prohibited. Without limiting the generality of the foregoing, and except when an approved purpose under B.(2) above, or as necessary to accomplish mitigation approved under the any permit(s) reliant upon this Declaration, the following activities and uses are expressly prohibited in, on, over, or under the Conservation Area, subject to the express terms and conditions below:

(1) **Structures.** The construction of man-made structures including, but not limited to, the construction, removal, placement, preservation, maintenance or alteration of any buildings, roads, utility lines, billboards, or other advertising. This restriction does not include deer stands, bat boxes, bird nesting boxes, bird feeders, duck blinds, and the placement of signs for safety purposes or boundary demarcation.

(2) **Demolition.** The demolition of fencing structures constructed by the Grantee for the purpose of demarcation of the Conservation Area or for public safety.

(3) **Soils.** The removal, excavation, disturbance, or dredging of soil, sand, peat, gravel, or aggregate material of any kind; or any change in the topography of the land, including any discharges of dredged or fill material, ditching, extraction, drilling, driving of piles, mining or excavation of any kind.

(4) **Drainage.** The drainage or disturbance of any aquifer, the surface water level or the water table.

(5) **Waste or Debris.** The storage, dumping, depositing, abandoning, discharging, or releasing of any gaseous, liquid, solid, or hazardous waste substance, materials or debris of whatever nature on, in, over, or underground or into surface or ground water.

(6) **Non-Native Species.** The planting or introduction of non-native or invasive species.

(7) **Herbicides, Insecticides, and Pesticides.** The use of herbicides, insecticides, or pesticides, or other chemicals, except for as may be necessary to control invasive species that threaten the natural character of the Conservation Area. State-approved municipal application programs necessary to protect public health and welfare are not included in this prohibition.

(8) **Removal of Vegetation.** The mowing, cutting, pruning, removal; disturbance, destruction, or collection of any trees, shrubs, or other vegetation, except for pruning, cutting or removal for:

- a) safety; or
- b) control in accordance with accepted scientific forestry management practices for diseased or dead vegetation; or
- c) control of non-native species and noxious weeds; or
- d) scientific nature study.

(9) **Agricultural Activities.** Unless currently used for agricultural or similarly related purposes, the conversion of, or expansion into, any portion of the Conservation Area for use of agricultural, horticultural, aquacultural, silvicultural, livestock production or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g. from agricultural to silvicultural).

(10) **Subdivision of Conservation Area.** Subdivision of real property within the Conservation Area into multiple parcels.

(11) **Other.** Other acts, uses, excavation, or discharges, which adversely affect fish or wildlife habitat or the preservation of lands, waterways, or other aquatic resources mentioned herein and located within the Conservation Area.

E. INSPECTION, ENFORCEMENT AND ACCESS RIGHTS

As set forth in Section B, above, the Grantee, holder(s) of this Declaration, the Corps, PADEP and other government agencies with legal authority to enter upon the Property for purposes related to this Declaration have the right to enter the Property to observe the Conservation Area and to take actions necessary to verify compliance with and to enforce this Declaration. When practicable, such entry shall be upon prior reasonable notice to the property owner. No violation of this Declaration shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as other authorized judicial remedies such as civil penalties. Nothing herein shall be interpreted to limit the right of the Corps to modify, suspend, or revoke any permit issued or authorized by Corps.

F. RECORDING AND EXECUTION BY PARTIES

Within thirty (30) calendar days of execution of this Agreement, the Grantee shall record this Declaration in the County office where land records are retained and shall provide proof of recordation to Grantor, the Corps, and PADEP within ten (10) business days of execution. Further, if anticipated activities in the Conservation Area are agreed upon for future phases of the site, as set forth in Section H (Reserved Rights) herein, the Grantee must submit plans to the Corps and PADEP for review and approval prior to any work in the Conservation Area.

G. NOTICE OF TRANSFER OF PROPERTY INTERESTS

No transfer of the rights set forth in this Declaration, or action to void or modify this Declaration, including transfer of title to or establishment of any other legal claims over the Conservation Area or the underlying Property it occupies, shall occur without sixty (60) calendar days' prior written notice to the Corps and the PADEP.

H. RESERVED RIGHTS

(1) This Declaration will not prevent the Grantor, or any subsequent owner of the Property and/or portions of the Property, from making use of the area(s) outside of the Conservation Area or from uses that are consistent with the purposes of this Declaration, including, but not limited to the following:

(a) **Existing Agreements.** Uses that Grantor is required to allow under valid, existing, recorded agreements are permitted, to the extent they do not interfere with, threaten, or degrade the Conservation Area and only to the extent they are consistent with the purposes of this Declaration. The Grantor[, holder(s) hereof,] and any holders of easements or other property rights for the operation and maintenance of pre-existing or project-related structures or infrastructure, such as roads, utilities, drainage ditches, or stormwater facilities that are present on, over, or under the Conservation Area, reserve the right, within the terms and conditions of their permits, agreements, and the law, to continue with such operation and maintenance. All pre-existing or approved project-related structures or infrastructure, if any, shall be shown on the accompanying plat map or approved plan and attached to this Declaration as **Exhibit D**.

(b) **Subsequent Agreements Allowing Subsurface Activity.** Subject to review by Grantee [if holder known – and holder of this Declaration], and only to the extent they are consistent with the purposes of this Declaration, agreements for the extraction of natural gas (regardless of source) or oil, and injection or release of water and other substances to facilitate such extraction, but excluding injection wells subject to state or federal underground injection control programs. The activities subject to such agreement may only occur at subterranean depths at which there can be no impairment of or detectable impact to water quality or quantity, native flora, fauna, soils, water table, aquifer, drainage patterns, and other related environmental functions and values of the Property, or on other resources described in this Declaration. No surface activities or uses, incident to such extraction are permitted in the Conservation Area. Grantor and Grantee shall provide the Corps and PADEP notice of Grantor's intent to enter into an agreement allowing subsurface activities at least sixty (60) days prior to executing the agreement.

(2) If the success of a compensatory mitigation project required or authorized by the Corps and PADEP requires any related or unanticipated infrastructure modifications, utility relocation, drainage ditches, or stormwater controls within the identified Conservation Area, or if a situation requires measures to remove threat to life or property within the identified Conservation Area, said activities must be approved in writing by the Corps and PADEP subject to terms and conditions set forth in the written approval. Approval is subject to the Corps's and PADEP's discretion. If approved, said activities must be identified on an amended **Exhibit D** and must be recorded and specifically noted as an "amendment" and copies of the recorded **Amended Exhibit D** must be provided to the Corps and PADEP within sixty (60) days of Corps approval. Approval of said activity by the Corps is in addition to any Clean Water Act, Section 404 permit, or other authorization, which may be required in order to legally implement said activity. The Grantor and Grantee accept the obligation to place any other and/or subsequent responsible party on reasonable prior notice of their need to request such Corps approval.

(3) **Enhancements, Maintenance and Repair.** This Declaration is not intended to prohibit future necessary or desired maintenance, repair, or enhancements to the

Property, where such actions are approved by the Corps and PADEP as appropriate, either through an approved mitigation plan (Section K below) or by a separate permit.

[I. The Grantor has mortgaged the Property subject to this Declaration. The lender has executed Subordination of Mortgage instruments related to the parcels subject of this Declaration for the sole purpose of subordinating their respective liens, dignity and priority interests to this Declaration. The executed Subordination of Mortgage instruments are attached hereto as **Exhibit E**: Mortgage Subordination Documents, and incorporated fully herein.]

J. SEVERABILITY

If any portion of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

K. MITIGATION

If the work required by a mitigation plan approved by the Corps and PADEP, including maintenance or remedial work, occurs within the Conservation Area, then the Grantee is allowed to construct and undertake the mitigation work in accordance with an authorized mitigation plan.

L. ASSIGNMENT

The Grantee [If Holder exists: and/or Holder each] is authorized to assign or transfer its rights and obligations under this Declaration to an organization that is a qualified organization under Section 170(h) of the Internal Revenue Code at the time of transfer.

M. COAL RIGHTS NOTICE

The following notice is given to and accepted by Grantor for the purpose and with the intention of compliance with the requirements of the Pennsylvania Conservation and Preservation Easements Act. Nothing herein shall imply the presence or absence of workable coal seams or the severance of coal interests from the Property.

NOTICE:

THIS DECLARATION may impair the development of coal interests including workable coal seams or coal interests which have been severed from the Property.

EXAMPLE

IN WITNESS WHEREOF, intending to be legally bound, the Parties have executed this Declaration the day and year first above written.

GRANTOR:

GRANTEE:

First Pennsylvania Resource, L.L.C.
a Pennsylvania limited liability company

By: Resource Environmental Solutions,
LLC, its sole manager

David L. Specht

By: _____
Name: _____
Title: _____

WITNESS:

WITNESS:

HOLDER:

WITNESS:

By: _____

COMMONWEALTH OF PENNSYLVANIA :
 : SS
COUNTY OF _____ :

On _____, before me, a Notary Public for the Commonwealth aforesaid, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public
My commission expires:

[SEAL]

COMMONWEALTH OF PENNSYLVANIA :
 : SS
COUNTY OF _____ :

On _____, before me, a Notary Public for the Commonwealth aforesaid, personally appeared _____, who acknowledged himself/herself to be the _____ of the _____ known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public
My commission expires:

[SEAL]

COMMONWEALTH OF PENNSYLVANIA :
 : SS
COUNTY OF _____ :

On _____, before me, a Notary Public for the Commonwealth aforesaid, personally appeared _____, who acknowledged himself/herself to be the _____ of Resource Environmental Solutions, LLC, as manager of First Pennsylvania Resource, L.L.C., a Pennsylvania limited liability company, and that s/he, in the capacity set forth above, on behalf of the Grantee, being authorized to do so, executed, in my presence, the foregoing Declaration for the purposes herein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public
My commission expires:

[SEAL]

EXAMPLE