



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 1  
FIVE POST OFFICE SQUARE – SUITE 100 (MAIL CODE OES04-3)  
BOSTON, MA 02109-3912

VIA EMAIL AND FIRST CLASS MAIL

April 23, 2012

Corydon L. Thurston, Executive Director  
Pittsfield Economic Development Authority  
81 Kellogg Street  
Pittsfield, MA 01201

Re: First Amendment of Agreement and Covenant Not to Sue: PED A

Dear Mr. Thurston:

This letter concerns the *First Amendment of Agreement and Covenant Not to Sue: Pittsfield Economic Development Authority* ("PPA Amendment"). The thirty-day public comment period under the PPA Amendment has expired, and EPA has not received any comments. Accordingly, this letter is EPA's written notice to PED A under Paragraph 8 of the PPA Amendment that the PPA Amendment is now effective. The effective date of the PPA Amendment shall be April 23, 2012.

A fully executed copy of the PPA Amendment is attached for your files.

We appreciate your work on this matter. If you have any questions, please contact us.

Sincerely,

A handwritten signature in black ink that reads "John W. Kilborn".

John W. Kilborn  
Senior Enforcement Counsel

Enclosure

cc: Barbara Landau, Counsel for PED A  
Dave Dickerson, EPA  
Dean Tagliaferro, EPA  
Addie Fiske, DOJ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

_____ )	
IN THE MATTER OF: )	
GE-PITTSFIELD HOUSATONIC RIVER SITE )	Docket No. CERCLA 01-2002-0007
_____ )	
UNDER THE AUTHORITY OF THE )	AGREEMENT AND
COMPREHENSIVE ENVIRONMENTAL )	COVENANT NOT TO SUE:
RESPONSE, COMPENSATION, AND )	
LIABILITY ACT OF 1980, 42 U.S.C. )	PITTSFIELD ECONOMIC
§ 9601, <u>et seq.</u> , as amended )	DEVELOPMENT AUTHORITY
_____ )	

**FIRST AMENDMENT OF AGREEMENT AND COVENANT NOT TO SUE:  
PITTSFIELD ECONOMIC DEVELOPMENT AUTHORITY**

WHEREAS, the United States, on behalf of the Environmental Protection Agency (“EPA”), and the Pittsfield Economic Development Authority (“Settling Respondent” or “PEDA”) made and entered into an Agreement and Covenant Not to Sue (“Agreement”) that became effective on January 3, 2002.

WHEREAS, the Agreement sets forth certain covenants not to sue relating to approximately 52 acres of the GE-Pittsfield Housatonic River Site located in the City of Pittsfield, Massachusetts, which approximately 52 acres are defined in the Agreement by the term “Property.”

WHEREAS, under a Consent Decree entered into by the General Electric Company (“GE”), the United States, the Commonwealth of Massachusetts, PEDA, the City of Pittsfield, and other parties, GE is required, *inter alia*, to respond to contamination at the Site, including

contamination on the Property. United States of America et al. v. General Electric Company, CA No. 99-30225 (D. Mass., October 27, 2000).

WHEREAS, GE has completed the response to contamination on the Property and has conveyed the Property to PEDA.

WHEREAS, GE is required under the Consent Decree to respond to contamination at Silver Lake, including contamination on a strip of land located between Silver Lake and Silver Lake Boulevard, defined as the “Silver Lake Parcels” herein and described in more detail in Paragraph 1 below. GE is also required to implement certain natural resource restoration and enhancement work, including planting trees and constructing a public walkway on the Silver Lake Parcels.

WHEREAS, to facilitate the implementation of GE’s natural resource restoration and enhancement work, PEDA intends to acquire the Silver Lake Parcels. The Silver Lake Parcels are located opposite the 30s Complex portion of the Site that PEDA now owns. (The 30s Complex is a 15.75 acre parcel of land in Pittsfield bordered by East Street to the south and Silver Lake Boulevard to the west, as further described in Exhibit 1 of the Agreement.)

WHEREAS, PEDA agrees to impose on the Silver Lake Parcels an Environmental Restriction and Easement (“ERE”), as described in the Consent Decree.

WHEREAS, PEDA’s ownership of the Silver Lake Parcels will provide a public benefit, including maintenance of the natural resources restoration and public access to restored open space, and will improve PEDA’s redevelopment of the Property. Accordingly, resolution of potential liability related to the Silver Lake Parcels, in exchange for provision by PEDA to EPA of a substantial benefit, is in the public interest.

NOW, THEREFORE, the Agreement is hereby modified as follows:

1. The term "Property," as defined in Paragraph 10(L) of the Agreement, shall include, in addition to the 52 acres described in Exhibit 1 of the Agreement, a strip of land running between Silver Lake and the edge of the pavement of Silver Lake Boulevard, along the northern and eastern sides of Silver Lake, located in Pittsfield, Massachusetts. This property contains approximately 2.7 acres and is shown on the figure and surveys attached hereto as Attachment A. Such property shall be referred to herein as the "Silver Lake Parcels."
2. As shown on Figure 1-3 of Attachment A, PEDDA agrees to acquire the parcels contained in Recreational Areas 2-5 by transfer of title and agrees to make best efforts to acquire the parcels contained in Recreational Area 1 by eminent domain or otherwise.
3. In addition to and notwithstanding any other requirement in the Agreement or the Consent Decree, Settling Respondent agrees that the Silver Lake Parcels that PEDDA acquires shall be subject to Institutional Controls in the form of an ERE. After acquiring the Silver Lake Parcels and within thirty days after EPA's written request, Settling Respondent shall record and/or register an ERE on the applicable parcels and shall comply with the provisions of Paragraph 54 of the Decree, except for Paragraph 54.a and except that each reference to "Settling Defendant" shall be read as a reference to "PEDDA." PEDDA shall not be required to record and/or register an ERE on the parcels conveyed from GE if GE has already recorded and/or registered an ERE on such parcels.
4. EPA may terminate this Amendment if PEDDA does not acquire, as described above in Paragraph 2, (i) the portion of the Silver Lake Parcels owned by the Western Massachusetts Electric Company within six months after the effective date of this Amendment, (ii) the portion

of the Silver Lake Parcels owned by GE within six months after EPA issues a certificate of completion for GE's removal action at Silver Lake, and/or (iii) if PEDA does not make best efforts to acquire the other portions of the Silver Lake Parcels located in Recreational Area 1 no later than eighteen months after EPA issues a certificate of completion for GE's removal action at Silver Lake. EPA may also terminate this Amendment if PEDA does not record and/or register an ERE requested by EPA and as described above in Paragraph 3. EPA may extend the deadlines described in this Paragraph in its sole, unreviewable discretion.

5.a. In addition to and notwithstanding any other requirement in the Agreement or the Consent Decree, PEDA shall not take, and shall not allow its employees, agents, representatives, contractors, or lessees to take, any of the following actions within the areas containing natural resource Restoration Work (as defined in the Consent Decree) within the Silver Lake Parcels (the "Restoration Areas"):

- (i) Construction or placement within such Restoration Areas of any structure, pavement, or other types of materials or items that would materially impact the habitat created by the Restoration Work;
- (ii) Removal or destruction of any vegetation installed within such Restoration Areas; or
- (iii) Any other activity within, or use of, such Restoration Areas that would materially impair or have material adverse impacts on the habitat created by the Restoration Work in such Restoration Areas.

5.b. The restrictions and prohibitions set forth in Paragraph 5.a (above) shall not apply to prohibit or restrict the following:

- (i) Any response actions undertaken by GE, EPA, the Massachusetts Department of Environmental Protection or their employees, agents, representatives, or contractors pursuant to the Consent Decree;
- (ii) Any monitoring and maintenance activities undertaken by GE or its employees, agents, representatives, or contractors as part of the Restoration Work component pursuant to the Consent Decree;
- (iii) The destruction, removal, or cutting of vegetation as part of maintenance of such vegetation, or as necessary to implement disease prevention measures, to eliminate a threat to public safety, to remove invasive nuisance species, or as necessary to provide solar energy to the properties abutting the Silver Lake Parcels;
- (iv) Activities necessary to respond to an emergency at or near the Silver Lake Parcels, such as fire, flood, or other situation that poses a danger to public health, welfare, or the environment;
- (v) Actions, activities or work permitted or approved by the Trustees (as defined in the Consent Decree), including without limitation, the walkway and picnic areas described in the Statement of Work to the Consent Decree; and/or
- (vi) Any other activities or uses not otherwise prohibited by Paragraph 5.a above.

6. The addresses for notice made pursuant to Paragraph 43 of the Agreement shall be modified as follows:

As to EPA

EPA Project Coordinator  
GE-Pittsfield Housatonic River Superfund Site  
United States Environmental Protection Agency, Region 1  
Five Post Office Square – Suite 100 (OSRR7)  
Boston, MA 02109-3912

with a copy to

Enforcement Counsel  
GE-Pittsfield Housatonic River Superfund Site  
United States Environmental Protection Agency, Region 1  
Five Post Office Square – Suite 100 (OES4)  
Boston, MA 02109-3912

As to Settling Respondent

Director, Pittsfield Economic Development Authority  
81 Kellogg Street  
Pittsfield, MA 01201

with a copy to

Barbara Landau, Esq.  
Noble and Wickersham  
1280 Massachusetts Ave # 401  
Cambridge, MA 02138-3839

7. This Amendment shall be subject to a thirty-day public comment period, after which, EPA may modify or withdraw its consent to the Amendment, if comments received disclose facts or considerations indicating that this Amendment is inappropriate, improper, or inadequate. Settling Respondent consents to the execution of this Amendment without further notice.
8. The Effective Date of this Amendment shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed this Amendment after review of and response to any public comments received. Accordingly, as for the Silver Lake Parcels, “Existing Contamination,” as defined in Paragraph 10(F) of the Agreement, shall be as of the effective date of this Amendment and not the effective date of the Agreement.
9. Except as expressly stated herein, this Amendment shall not modify or terminate any other provision of the Agreement.


10. The following Attachment is attached hereto and incorporated into this Amendment:

a. "Attachment A" is Figure 1-3 and "Metes and Bounds Survey Results," showing the Silver Lake Parcels, as the "Recreational Averaging Areas" on Figure 1-3.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

  
\_\_\_\_\_  
H. Curtis Spalding  
Regional Administrator, New England  
U.S. Environmental Protection Agency


DATE:

2/21/12



IT IS SO AGREED:

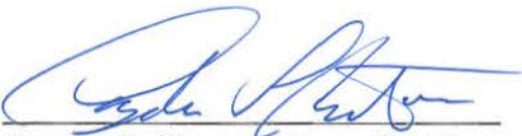
UNITED STATES DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division

BY:   
Ellen Mahan  
Deputy Section Chief  
Environmental Enforcement Section  
Washington, DC 20530

DATE: 2/22/12

IT IS SO AGREED:

PITTSFIELD ECONOMIC DEVELOPMENT AUTHORITY

BY:   
Corydon L. Thurston, Executive Director  
Pittsfield Economic Development Authority

DATE: 2-10-12

**ATTACHMENT A**

**Silver Lake Parcels**

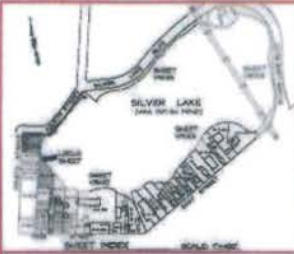
- A-1: Figure 1-3, "Removal Action Area," of the *Revised Final Removal Design/Removal Action Work Plan for Silver Lake Area*, August 2011
- A-2: Appendix B, "Metes and Bounds Survey Results," of the *Revised Final Removal Design/Removal Action Work Plan for Silver Lake Area*, August 2011



**ARCADIS**

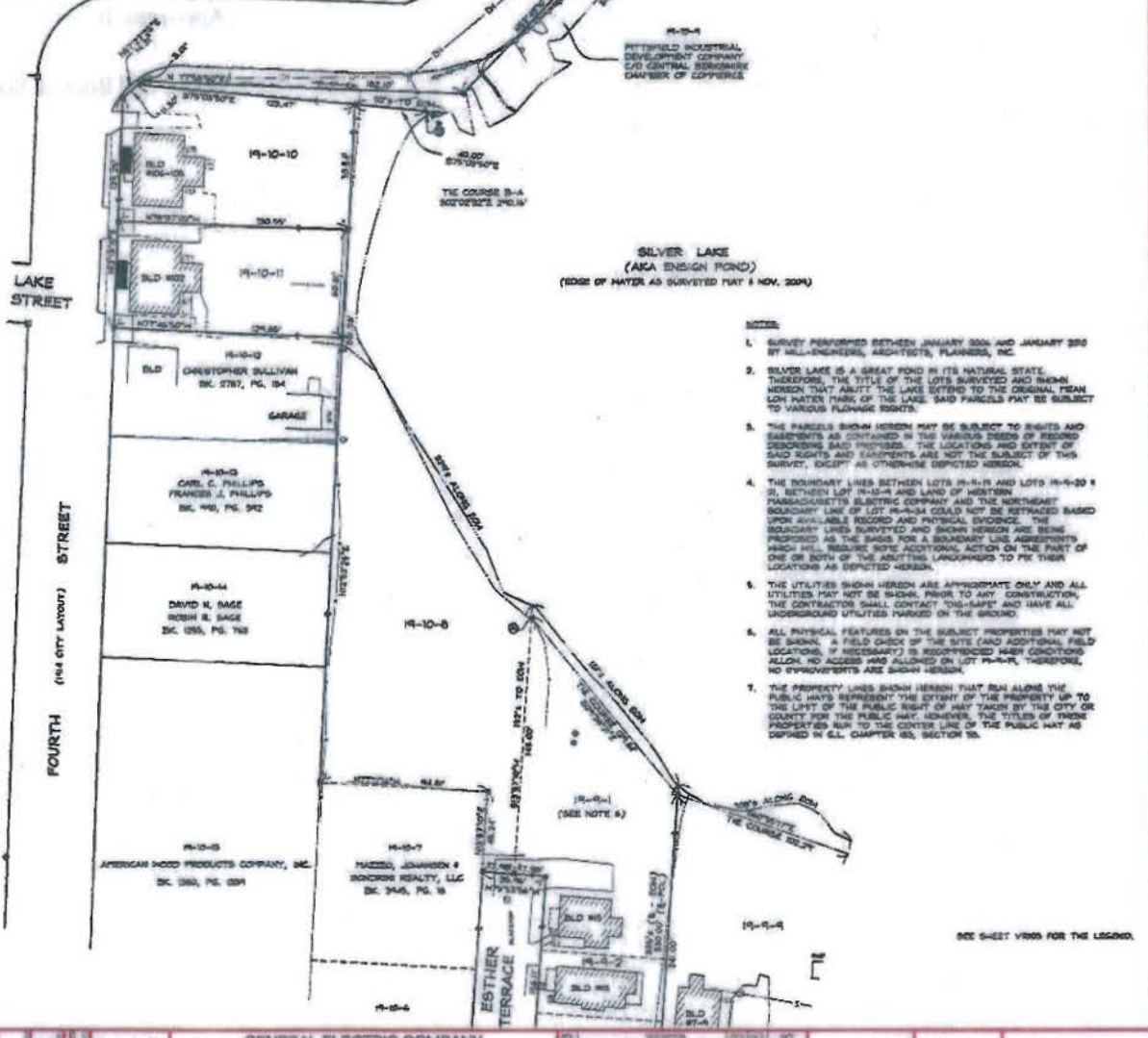
**Appendix B**

**Metes and Bounds Survey Results**



MASSACHUSETTS STATE PLANE, NAD 83 (COORD 14)

PARCELS LOT NUMBER	SUBJECT PROPERTIES OWNERS	DEED REF.	AREA
R-10-1	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-2	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-3	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-4	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-5	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-6	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-7	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-8	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-9	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-10	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-11	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-12	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-13	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-14	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-15	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-16	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-17	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-18	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-19	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-20	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-21	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-22	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-23	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-24	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-25	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-26	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-27	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-28	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-29	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>
R-10-30	MASSACHUSETTS ELECTRIC COMPANY	1912/20	11,072.00 FT <sup>2</sup>

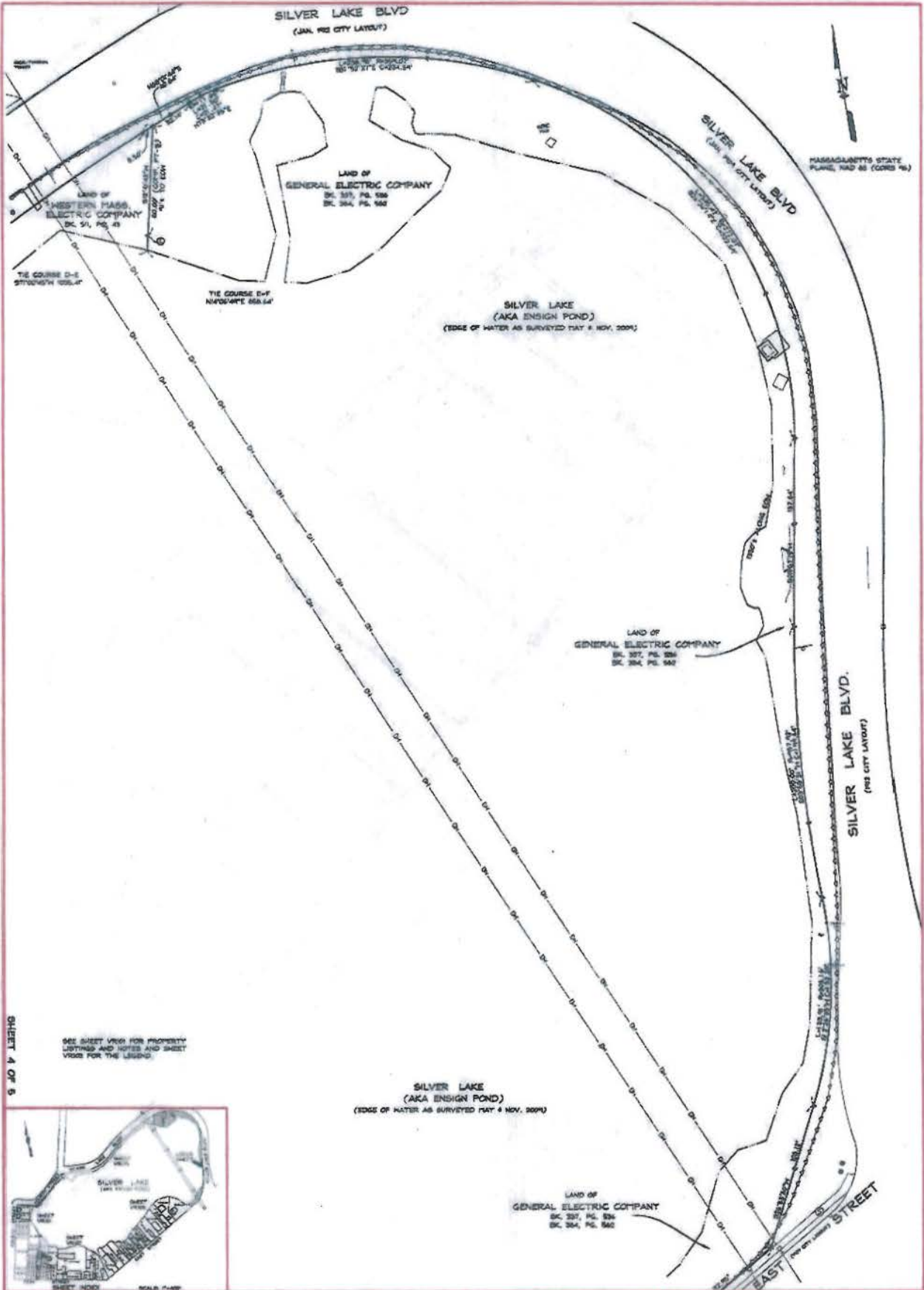


- NOTES**
1. SURVEY PERFORMED BETWEEN JANUARY 2004 AND JANUARY 2005 BY MILL-ENGINEERS, ARCHITECTS, PLANNERS, INC.
  2. SILVER LAKE IS A GREAT POND IN ITS NATURAL STATE. THEREFORE, THE TITLE OF THE LOTS SURVEYED AND SHOWN HEREIN THAT ADJUT THE LAKE EXTENDS TO THE ORIGINAL MEAN LOW WATER MARK OF THE LAKE. SAID PARCELS MAY BE SUBJECT TO VARIOUS FLOODING RISKS.
  3. THE PARCELS SHOWN HEREIN MAY BE SUBJECT TO RIGHTS AND EASEMENTS AS CONTAINED IN THE VARIOUS DEEDS OF RECORD DESCRIBING SAID PARCELS. THE LOCATIONS AND EXTENT OF SAID RIGHTS AND EASEMENTS ARE NOT THE SUBJECT OF THIS SURVEY, EXCEPT AS OTHERWISE DEPICTED HEREIN.
  4. THE BOUNDARY LINES BETWEEN LOTS R-10-19 AND LOTS R-10-20 & 21, BETWEEN LOT R-10-4 AND LAND OF WESTERN MASSACHUSETTS ELECTRIC COMPANY AND THE NORTHEAST BOUNDARY LINE OF LOT R-10-18 COULD NOT BE RE-TRACED BASED UPON AVAILABLE RECORD AND PHYSICAL EVIDENCE. THE BOUNDARY LINES SURVEYED AND SHOWN HEREIN ARE BEING PROPOSED AS THE BASIS FOR A BOUNDARY LINE AGREEMENT. SAID B.L.A. REQUIRES FURTHER ADDITIONAL ACTION ON THE PART OF ONE OR BOTH OF THE ADJUTING LANDOWNERS TO FIX THEIR LOCATIONS AS DEPICTED HEREIN.
  5. THE UTILITIES SHOWN HEREIN ARE APPROPRIATE ONLY AND ALL UTILITIES MAY NOT BE SHOWN. PRIOR TO ANY CONSTRUCTION, THE CONTRACTOR SHALL CONTACT "DIG-UP" AND HAVE ALL UNDERGROUND UTILITIES MARKED ON THE GROUND.
  6. ALL PHYSICAL FEATURES ON THE SUBJECT PROPERTIES MAY NOT BE SHOWN. A FIELD CHECK OF THE SITE (AND ADDITIONAL FIELD LOCATIONS, IF NECESSARY) IS RECOMMENDED. HARD CONDITIONS ALLOW. NO ACCESS WAS ALLOWED ON LOT R-10-18, THEREFORE, NO IMPROVEMENTS ARE SHOWN HEREIN.
  7. THE PROPERTY LINES SHOWN HEREIN THAT RUN ALONG THE PUBLIC WAYS REPRESENT THE CENTER OF THE PROPERTY UP TO THE LEFT OF THE PUBLIC RIGHT OF WAY TAKEN BY THE CITY OR COUNTY FOR THE PUBLIC WAY. HOWEVER, THE TITLES OF THOSE PROPERTIES RUN TO THE CENTER LINE OF THE PUBLIC WAY AS DEPICTED IN G.L. CHAPTER 80A, SECTION 10.

SHEET 1 OF 9

<p><b>GENERAL ELECTRIC COMPANY</b> 150 PLASTICS AVE. PITTSFIELD, MA</p>		<p>DATE: 01/20/05 BY: [Signature] CHECKED: [Signature]</p>
<p><b>PARCELS ADJOINING SILVER LAKE IN PITTSFIELD, MA</b></p>		<p><b>SURVEY PLAN</b></p>
<p>A COPY OF THIS PLAN IS ON FILE AT THE OFFICE OF THE REGISTRAR OF DEEDS, 100 STATE STREET, PITTSFIELD, MA 01201.</p>		





SHEET 4 OF 5

SEE SHEET FOUR FOR PROPERTY  
LETTERS AND NOTES AND SHEET  
FIVE FOR THE LEGEND.



SILVER LAKE  
(AKA ENSIGN POND)  
(EDGE OF WATER AS SURVEYED MAY 4 NOV. 2009)

LAND OF  
GENERAL ELECTRIC COMPANY  
BK. 337, PG. 536  
BK. 304, PG. 562

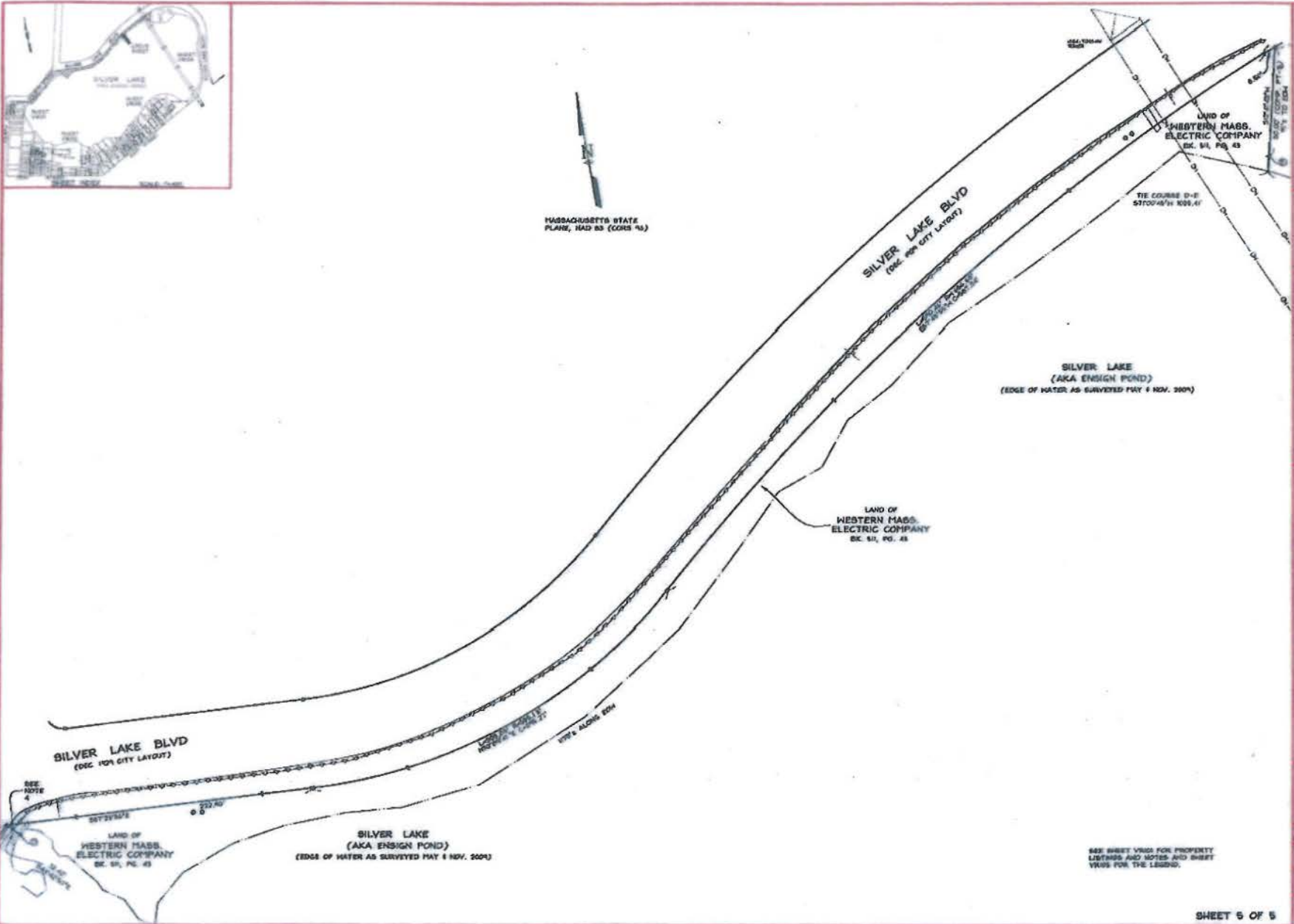
**GENERAL ELECTRIC COMPANY**  
150 PLASTICS AVE.  
PITTSFIELD, MA

PARCELS ADJOINING SILVER LAKE IN PITTSFIELD, MA SURVEY PLAN

NO.	DESCRIPTION	DATE	BY
1	FIELD		
2	REV PER "CORRECTED" SET & 2ND SETTING		







NO.	DATE	DESCRIPTION
1	1-18-05	ISSUED FOR PERMITTING
2	2-17-05	REVISED PER COMMENTS FROM PERMITTING
3	3-23-05	REVISED PER COMMENTS FROM PERMITTING
4	4-14-05	REVISED PER COMMENTS FROM PERMITTING
5	5-11-05	REVISED PER COMMENTS FROM PERMITTING
6	6-8-05	REVISED PER COMMENTS FROM PERMITTING
7	7-6-05	REVISED PER COMMENTS FROM PERMITTING
8	8-3-05	REVISED PER COMMENTS FROM PERMITTING
9	9-1-05	REVISED PER COMMENTS FROM PERMITTING
10	10-1-05	REVISED PER COMMENTS FROM PERMITTING
11	11-1-05	REVISED PER COMMENTS FROM PERMITTING
12	12-1-05	REVISED PER COMMENTS FROM PERMITTING

GENERAL ELECTRIC COMPANY  
156 PLANTING AVE.  
PITTSFIELD, MA

SURVEY PLAN

PARCELS ADJOINING SILVER LAKE IN PITTSFIELD, MA

DATE:	02/01/05
JOB NO.:	12-25138
SHEET:	1730
JOB BY:	
SCALE:	AS SHOWN
PROJECT NO.:	GE-1105-008
DRAWN BY:	VR/OS
CHECKED BY:	