

Plan for Obtaining Environmental Restrictions and Easements

Housatonic River – Rest of River

General Electric Company

November 9, 2017

Introduction

On October 24, 2016, pursuant to the Consent Decree (CD) for the GE-Pittsfield/Housatonic River Site (the Site), the U.S. Environmental Protection Agency (EPA) issued to the General Electric Company (GE) a modification of GE's Corrective Action Permit (the Modified Permit) under the Resource Conservation and Recovery Act (RCRA), setting forth EPA's selected Remedial Action for the Rest of River within the GE-Pittsfield/Housatonic River Site (the Site). GE and other parties filed petitions for review of the Modified Permit in the EPA Environmental Appeals Board. On January 9, 2017, EPA sent a letter to GE identifying the contested and non-severable conditions that are stayed and the uncontested and severable conditions that are not stayed, which became enforceable conditions of the Modified Permit. Those non-stayed conditions include Section II.B.6.b.(2)(a) of the Modified Permit relating to obtaining Environmental Restrictions and Easements on certain properties within the floodplain of the Housatonic River downstream of the Confluence, as well as Section II.H.19 of the Modified Permit insofar as it requires submission of a plan for implementing that provision on Environmental Restrictions and Easements.

This document presents GE's plan to comply with Section II.B.6.b.(2)(a) of the Modified Permit. That provision requires that, for all Exposure Areas (EAs) designated by EPA in Reaches 5 through 8 of the floodplain, as shown on Figures 3 and 4 of the Modified Permit, that do not meet the Performance Standard for residential use, GE shall, for the portion of the property within the EA, prepare and record a Grant of Environmental Restriction and Easement (ERE) or a Notice ERE or make best efforts to obtain an ERE, as appropriate under the CD. Figures 3 and 4 of the Modified Permit, which show the EPA-designated EAs (including portions both inside and outside the floodplain), are reprinted in Attachment A hereto. The Performance Standard for residential use, as set forth in Table 3 of the Modified Permit, is an average PCB concentration of 2 mg/kg in the top foot of soil and in the 1- to X-foot depth increment (where X equals the depth to which PCB are detected at 2 mg/kg or greater, if measured), with no discrete concentration in the top foot exceeding 10 mg/kg.

Following the collection and analysis of the additional floodplain soil data proposed in the Floodplain Pre-Design Investigation (PDI) Work Plans¹ and any addenda thereto, GE will review all PCB data from the EAs to identify EAs that meet the above Performance Standard for residential use under existing conditions. In doing so, GE will determine the average exposure point concentration (EPC), for purposes of comparison to the 2 mg/kg Performance Standard, as the 95% Upper Confidence Limit on the spatially weighted mean of the data, using the previously approved calculation method, as provided in footnote 12 on page 45 of the Modified

¹ GE submitted a Floodplain PDI Work Plan for Reach 5A on October 6, 2017. A separate Floodplain PDI Work Plan or Work Plans will be submitted in the future to cover the remaining reaches of the floodplain that are subject to investigation under the Modified Permit.

Permit.² Further, in applying this standard, GE will evaluate the EAs from the edge of the Housatonic River to the floodplain boundary,³ with the exception that GE may apply the 2 mg/kg standard to an entire property with the same owner, including both the portion within the floodplain and the portion outside the floodplain (consistent with Figures 3 and 4), if it can show that (i) potential future residential exposure is equally likely throughout that entire property, (ii) adequate data exist to support such an evaluation, and (iii) the not-to-exceed level of 10 mg/kg is met.⁴ The EAs or, in the latter case, properties that are thus shown to meet the Performance Standard for residential use will not be subject to this plan. Subsequently, after GE has evaluated the data from the EAs and developed remedial action plans to meet the other applicable Performance Standards for floodplain properties for the relevant recreational or commercial exposure scenarios, GE will evaluate whether the proposed remediation would reduce the PCB concentrations in any additional EAs, properties, or portions to levels that would meet the Performance Standard for residential use. Those EAs, properties, or portions will likewise not be subject to this plan.

In addition, for the remaining EAs, GE may propose to EPA, on a case-by-case basis, to exclude from the need to impose or seek EREs or Notice EREs certain EAs or portions of EAs that could not feasibly ever be used for residential purposes due to their physical condition (e.g., steep slope or wet nature). If EPA approves that proposal, those EAs or portions would also be excluded from this plan.

The remaining properties or property portions within the EAs – i.e., those that could potentially be used for residential purposes but do not and will not meet the Performance Standard for residential use – will be subject to this plan (and are referred to herein as the “subject properties/portions”). The restrictions set forth in the EREs or Notice EREs for the subject properties/portions will apply to the area of the property/portion within the floodplain boundary (as defined above), which will be designated as the restricted area.

² That footnote states that EPCs will be calculated using the methods described in Appendix D to GE’s Corrective Measures Study Proposal and subsequent revisions described in Section 4.4 of GE’s Revised Corrective Measures Study Report.

³ In accordance with the CD definition of the Rest of River, the floodplain boundary is defined as follows for purposes of this plan: in Reaches 5 and 6, the 1 milligram per kilogram PCB isopleth, which is approximated by the 10-year floodplain; and in Reaches 7 and 8, the extent of PCBs that are being addressed under the CD.

⁴ This exception is based on similar provisions in the CD for floodplain properties outside the Rest of River and for properties along Silver Lake. For the former, the Statement of Work for Removal Actions Outside the River (SOW) provides that “GE may consider the entire Actual/Potential Lawn of a residential property or the entire non-bank portion of a non-residential property (including both the portion located within the floodplain and any portion located outside the floodplain) as an averaging area provided that: (i) residential . . . exposure, as applicable, is equally likely throughout that area”; and (ii) GE meets the applicable not-to-exceed level (page 62). Similarly, for the Silver Lake Area, the SOW provides that GE may elect to address any of the residential properties along the lake comprehensively by achieving the 2 mg/kg standard “at the overall property, provided that exposure to property soils is equally likely throughout the property (or, if not, at appropriate averaging areas at the overall property)” (page 74).

Properties Owned by GE

For any subject properties/portions owned by GE, GE will prepare and execute EREs in accordance with Paragraph 54 of the CD, using the model ERE attached to the CD as Appendix L, with any modifications agreed upon by GE and EPA, after a reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection (MassDEP), to reflect the Rest of River Remedial Action or otherwise. For each such property/portion, GE's execution of the ERE will take place following the completion of any response actions required at the property/portion. GE will then submit the executed ERE to MassDEP for signature by the MassDEP Commissioner. After receiving the signed ERE from MassDEP, GE will record the ERE in the relevant Registry of Deeds and conduct the post-recording activities required by Paragraphs 54.g and 54.h of the CD.

In addition, as required by Paragraph 54.c of the CD, GE will make best efforts (as defined in Paragraph 60.b of the CD) to obtain subordination agreements from the holders of encumbrances and other interests (if any) in the restricted area of the subject properties/portions owned by GE. If obtained, GE will submit the executed subordination agreements to MassDEP along with the executed EREs, and will subsequently record the subordinations agreements concurrently with the EREs.

Properties Owned by the Commonwealth of Massachusetts

For subject properties/portions owned by the Commonwealth of Massachusetts, including any agency thereof, GE will prepare Notices of Environmental Restrictions (Notice EREs) in accordance with Paragraphs 56.f.(i) and 62.b of the CD, as amended by the Twelfth Modification of the Consent Decree, filed with the District Court on September 24, 2014. Such Notice EREs will be in a form consistent with the form attached to the Consent Decree as Exhibit P; and the permitted and prohibited activities and uses and other conditions for the restricted area will be consistent with those set forth in the model ERE attached to the CD as Appendix O, with any modifications agreed upon by GE and EPA, after a reasonable opportunity for review and comment by MassDEP, to reflect the Rest of River Remedial Action or otherwise. For each such property/portion, following the completion of any response actions required at the property/portion, GE will present the Notice ERE to the state agency that owns the property for execution. After receiving the executed Notice ERE, GE will record the Notice ERE in the relevant Registry of Deeds and conduct the post-recording activities required by Paragraph 56.f.(i) of the CD. In addition, GE will notify the holders of encumbrances and other interests (if any) in the restricted area of the property/portion of the recordation of the Notice ERE.

Properties Owned by the City of Pittsfield

For subject properties/portions owned by the City of Pittsfield (the City), which has agreed in the CD (Paragraph 66) to impose EREs on its properties at the Site where necessary, GE will prepare EREs in accordance with Paragraph 54 of the CD, using the model ERE attached to the

CD as Appendix L, with any modifications agreed upon by GE and EPA, after a reasonable opportunity for review and comment by MassDEP, to reflect the Rest of River Remedial Action or otherwise. For each such property/portion, following the completion of any response actions required at the property/portion, GE will present the ERE to the City for approval by the City Council and execution by the Mayor. After receiving the executed ERE, GE will submit the executed ERE to MassDEP for signature by the MassDEP Commissioner. After receiving the signed ERE from MassDEP, GE will record the ERE in the Berkshire Middle District Registry of Deeds and conduct the post-recording activities described in CD Paragraphs 54.g and 54.h.

In addition, GE will make best efforts (as defined in Paragraph 60.b of the CD) to obtain subordination agreements from the holders of encumbrances and other interests (if any) in the restricted area of the subject properties/portions owned by the City. If obtained, GE will submit the executed subordination agreements to MassDEP along with the executed EREs, and will subsequently record the subordinations agreements concurrently with the EREs.

Other Properties

For subject properties/portions that are not owned by GE, the Commonwealth, or the City, GE will make best efforts, as defined in Paragraph 60.a of the CD, to obtain the owners' agreement to execute EREs, including an offer of monetary compensation as described in Paragraph 60.a. GE will make such efforts to obtain EREs in coordination with requesting access from the property owners to implement response actions on the properties/portions, where such response actions are required, or on a schedule to be discussed with and approved by EPA. For properties/portions at which remediation is required, GE will provide the property owner with a plan or plans showing the proposed remediation and restoration and allow the property owner to review such plan(s) prior to deciding whether to execute an ERE.

For each property/portion for which the owner agrees to execute an ERE, GE will prepare the ERE in accordance with Paragraph 57 of the CD, using the model ERE attached to the CD as Appendix O, with any modifications agreed upon by GE and EPA, after a reasonable opportunity for review and comment by MassDEP, to reflect the Rest of River Remedial Action or otherwise, and with the following exception: GE will prepare the ERE to be executed after the completion of any response actions required at the property/portion, rather than using the "two-step" process contemplated by Paragraph 57.d and Appendix O of the CD, in which the ERE would be executed prior to the performance of such response actions, and a Notice of Completion and, if necessary, a revised Plan of Restricted Area would be prepared and executed by GE after the completion of the response actions.⁵

⁵ The two-step process was included in the CD because, in areas outside of the Rest of River, the extent of remediation for a property with an ERE was different from the remediation for a property without an ERE (which would be subject to a Conditional Solution), and thus it was important to know prior to the remediation whether the owner would execute an ERE. That is not the case for the floodplain properties in the Rest of River.

Following preparation of the ERE and completion of any required response actions at the property/portion, GE will present the ERE to the property owner for execution. After receiving the executed ERE, GE will submit the executed ERE to MassDEP for signature by the MassDEP Commissioner. After receiving the signed ERE from MassDEP, GE will record the ERE in the relevant Registry of Deeds and conduct the post-recording activities required by Paragraphs 57.k and 57.l of the CD.

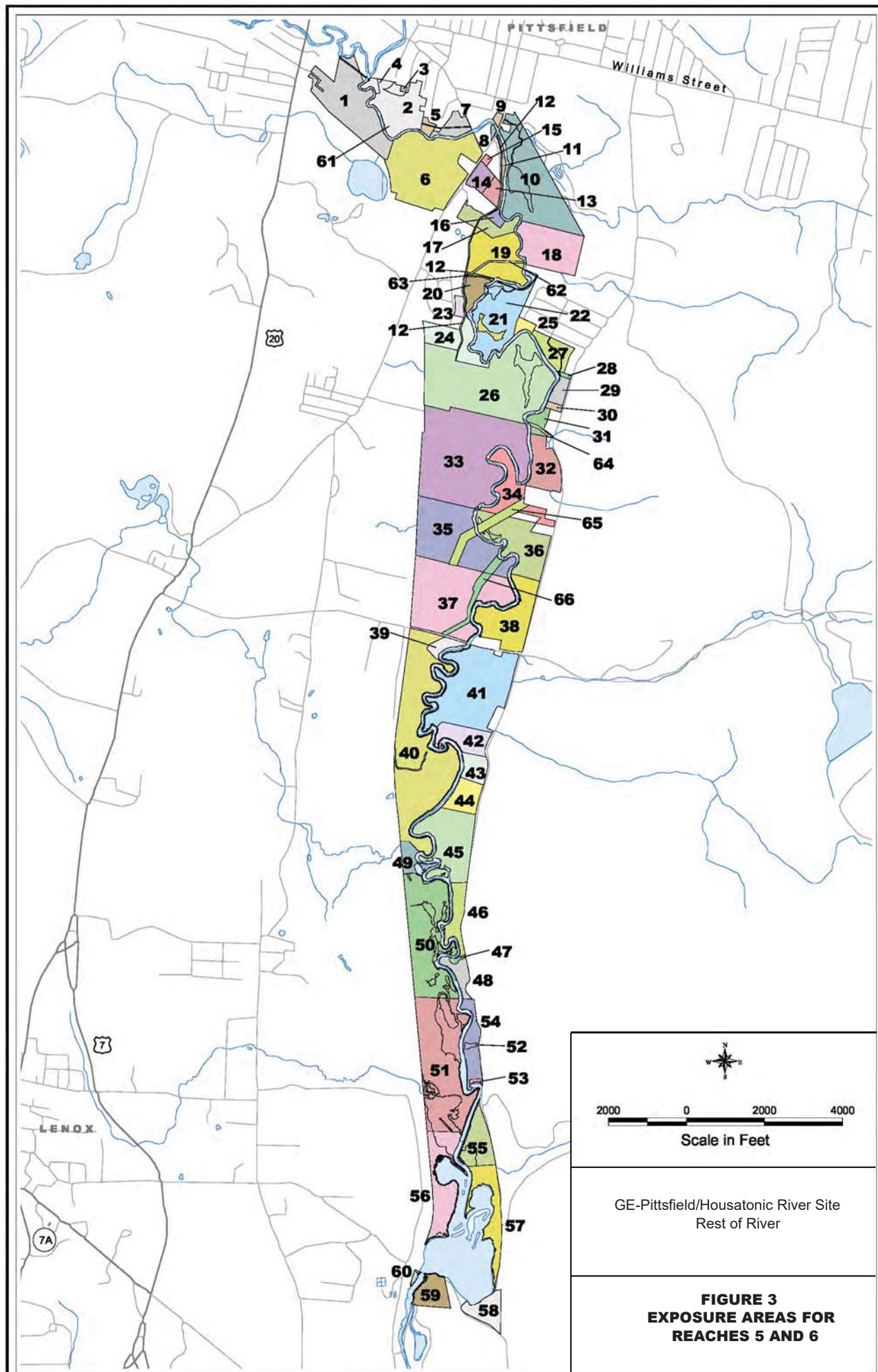
In addition, as required by Paragraph 57.d of the CD, GE will make best efforts (as defined in Paragraph 60.b of the CD) to obtain subordination agreements from the holders of encumbrances and other interests (if any) in the restricted area of the subject properties/portions. If obtained, GE will submit the executed subordination agreements to MassDEP along with the executed EREs, and will subsequently record the subordination agreements concurrently with the EREs.

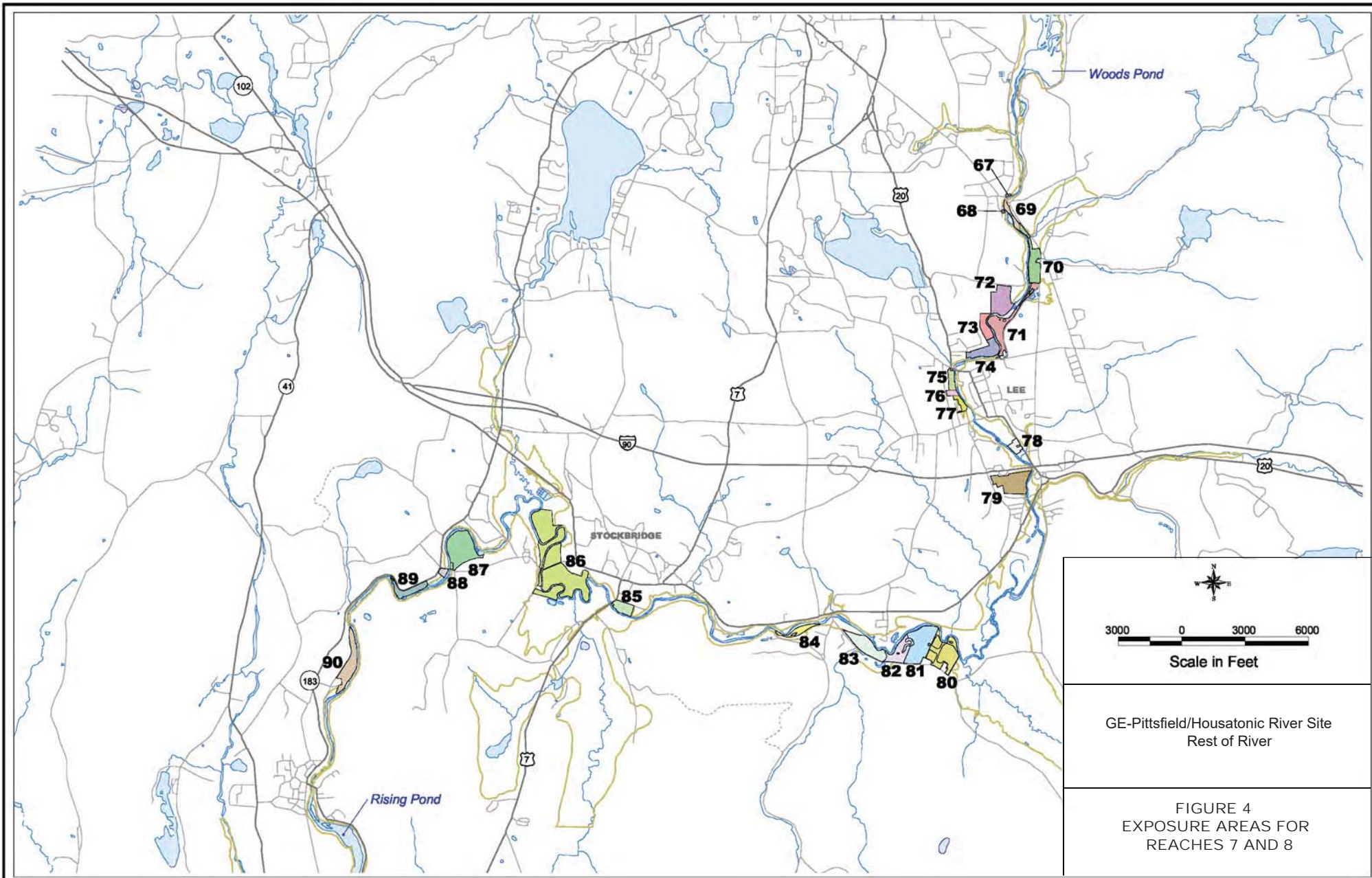
Post-Recordation Activities


Following the recordation of an ERE on a subject property/portion not owned by GE, the Commonwealth, or the United States, GE will, on an annual basis, conduct an inspection of the restricted area of the property/portion to assess compliance with the ERE in accordance with Appendix Q to the CD (including the criteria set forth therein), with any modifications agreed upon by GE and EPA, after a reasonable opportunity for review and comment by MassDEP. GE will thereafter submit a report on that inspection to EPA and MassDEP. That report will include a summary of the findings of the inspection, a description and the basis for the identification (based on the visual site inspection in conjunction with the document review) of any instances of potential non-compliance with the applicable ERE, and a copy of a completed ERE inspection checklist. Any determination of whether activities or uses that have occurred at a property are in fact contrary to the restrictions stated in the ERE will be made by MassDEP and/or EPA.

In addition, for any property/portion not owned by GE or the Commonwealth at which an ERE has been recorded, GE will, on an annual basis, also determine whether there has been any change in ownership of the property/portion subject to the ERE. Whenever there is such a change, GE will send a letter to the new owner notifying the new owner of the ERE. Additionally, regardless of any change in ownership, GE will, at two year intervals, send a letter to the owner of the property reminding the owner of the ERE.

ATTACHMENT A






 3000 0 3000 6000
 Scale in Feet

GE-Pittsfield/Housatonic River Site
 Rest of River

FIGURE 4
EXPOSURE AREAS FOR
REACHES 7 AND 8