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Via Express Delivery Service and Electronic Mail

December 14, 2018

Mr. Dean Tagliaferro
EPA Project Coordinator
U.S. Environmental Protection Agency
c/o Avatar Environmental
10 Lyman Street, Suite 2
Pittsfield, MA 01201

**Re: GE-Pittsfield/Housatonic River Site
Rest of River (GECD850)
Revised Plan for Obtaining Environmental Restrictions and Easements**

Dear Mr. Tagliaferro:

Enclosed for EPA's review and approval is a revised plan prepared by the General Electric Company (GE) entitled *Plan for Obtaining Environmental Restrictions and Easements and Inspecting Subject Properties*. This plan represents a revision of a plan that was originally submitted to EPA on November 9, 2017 to implement the requirements of Section I.B.6.b.(2)(a) of the Modified RCRA Permit issued by EPA to GE on October 24, 2016. That plan has been revised in response to comments from and communications with EPA and the Massachusetts Department of Environmental Protection. It includes, in Attachment B, a model Notice of Environmental Restriction that would apply to properties owned by the Massachusetts Division of Fisheries and Wildlife in lieu of a standard Grant of Environmental Restriction and Easement.

If you have any questions about the enclosed plan, please contact me or our outside counsel James Bieke of Sidley Austin.

Very truly yours,

Andrew T. Silfer, P.E.
GE Project Coordinator

Enclosure

cc:

Tim Conway, EPA (electronic copy)
John Kilborn, EPA (electronic copy)
Christopher Ferry, ASRC Primus (electronic copy)
Scott Campbell, Avatar (hard copy and electronic copy)
Michael Gorski, MassDEP (electronic copy)
Christine LeBel, MassDEP (electronic copy)
Andrew Cohen, MassDEP (electronic copy)
Eva Tor, MassDEP (electronic copy)
John Ziegler, MassDEP (electronic copy)
Richard Lehan, MassDFG (electronic copy)
Susan Peterson, CT DEEP (electronic copy)
Nate Joyner, Pittsfield Dept. of Community Development (electronic copy)
Rod McLaren, GE (electronic copy)
Kevin Mooney, GE (electronic copy)
James Bieke, Sidley Austin (hard copy and electronic copy)
Public Information Repository at David M. Hunt Library in Falls Village, CT (hard copy)
GE Internal Repositories (hard copy)

**Plan for Obtaining
Environmental Restrictions
and Easements and
Inspecting Subject Properties**

Housatonic River – Rest of River

General Electric Company

December 14, 2018

TABLE OF CONTENTS

	Page
I. Introduction	1
II. Properties Owned by GE	3
III. Properties Owned by the Commonwealth of Massachusetts	4
IV. Properties Owned by the City of Pittsfield	5
V. Other Properties	6
VI. Post-Recommendation Activities	8
VII. Summary of Process for the Preparation, Approval, and Recording of EREs and Notice EREs and Post-Recordation Obligations	9
Attachment A: Figures 3 and 4 of the Modified Permit	
Attachment B: Model Notice ERE	

I. 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 Site. GE and other parties filed petitions for review of the Modified Permit with the EPA Environmental Appeals Board (EAB). On January 9, 2017, EPA sent a letter to GE identifying the contested and non-severable conditions that are stayed by the EAB petitions and the uncontested and severable conditions that are not stayed, which became enforceable conditions of the Modified Permit.¹ 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 of the East and West Branches of the river, as well as Section II.H.19 of the Modified Permit insofar as it requires submission of a plan for implementing the aforementioned 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. It constitutes a revision of a plan that was initially submitted to EPA on November 9, 2017 and has been revised to reflect subsequent discussions with EPA and the Massachusetts Department of Environmental Protection (MassDEP).

Section II.B.6.b.(2)(a) of the Modified Permit requires that, for all Exposure Areas (EAs) designated by EPA in Reaches 5 through 8 of the floodplain, as generally 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 and/or register (hereafter jointly "record") a Grant of Environmental Restriction and Easement (ERE) or, for properties owned by the Commonwealth of Massachusetts, a Notice of Environmental Restriction (Notice ERE), or make best efforts to obtain an ERE, including making an offer of appropriate compensation in accordance with the CD. Figures 3 and 4 of the Modified Permit, which generally 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 PCBs are detected at 2 mg/kg or greater, if measured, up to a maximum depth of 15 feet), with no discrete concentration from a single sample in the top foot exceeding 10 mg/kg.

Following the collection and analysis of the additional floodplain soil data proposed in GE's Floodplain Pre-Design Investigation (PDI) Work Plans and any addenda thereto (as required by

¹ The EAB issued a decision on January 26, 2018, upholding the Modified Permit in part and remanding certain requirements of the Modified Permit to EPA for further consideration. That remand proceeding is currently ongoing. The EAB's decision and the remand do not affect the conditions of the Modified Permit that are currently stayed and not stayed in accordance with EPA's January 9, 2017 letter.

the Modified Permit and approved by EPA), GE will review all PCB data from the EAs to identify properties within EAs that meet the above Performance Standard for residential use under existing conditions.

In applying this standard, GE will evaluate the portion of each property within the EA from the top of the riverbank (or the river-side property boundary if the property does not extend to the riverbank) to the floodplain boundary,² with the exception that GE may apply the residential standard to an entire property with the same owner, including both the portion within the floodplain and the portion outside the floodplain, if it can show, subject to EPA approval, that (i) potential future residential exposure is equally likely throughout that entire property or is less likely in the floodplain portion than in the non-floodplain portion, (ii) adequate data exist to support such an evaluation, and (iii) the not-to-exceed level of 10 mg/kg is met.³ The procedure to be used in determining whether a property or portion would meet the Performance Standard for residential use will be specified in the applicable Work Plan(s), subject to EPA approval.

The properties or portions within EAs that are shown pursuant to the prior paragraph to meet the Performance Standard for residential use will not be subject to this plan.

In addition, for other properties or portions within the EAs, GE will review the data and evaluate whether remediation would result in achievement of the Performance Standard for residential use. Specifically, for current floodplain residential properties or portions that do not already meet that Performance Standard, GE will consider whether to conduct remediation to achieve that Performance Standard. For current non-residential properties or portions, GE will evaluate whether any proposed remediation required to meet the applicable Performance Standards for the relevant recreational or commercial exposure scenario would reduce the PCB concentrations in the properties or portions subject to such remediation to levels that would meet the Performance Standard for residential use; and if not, GE will also consider whether to voluntarily conduct additional remediation to achieve that Performance Standard. Those properties or portions within EAs where the otherwise required remediation and/or any remediation that GE elects to undertake would achieve the Performance Standard for residential use will likewise not be subject

² 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.

³ 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 residential 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).

to this plan, provided there are sufficient data to apply the residential Performance Standard, as determined or approved by EPA.

The remaining properties or property portions within the EAs – that is, those that 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 only apply to the area of the property/portion within the floodplain boundary (as defined above), which will be designated as the restricted area, but the ERE or Notice ERE will be recorded in the chain of title for the entire property.⁴

II. Properties Owned by GE

For any subject properties/portions owned by GE, GE will prepare, execute, and record 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, site-specific circumstances, or otherwise, consistent with Paragraph 54.c (ii) 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.

GE will submit drafts of such EREs and of appropriate supporting documents, such as the associated survey plan(s) and, if requested by EPA, subordination agreements or other supporting documents, to EPA (with a copy to MassDEP) for review and comment by EPA and MassDEP prior to execution. GE will also provide to EPA (with a copy to MassDEP) an abstract of any prior encumbrances and other interests on the property/portion to be subject to the ERE, based on title information of record (as well as information on the locations of any encumbrances if necessary), even if EPA does not request draft subordination agreements.

For each subject property/portion owned by GE, GE’s execution of the ERE will take place following the completion of any response actions required at the property/portion. After EPA and MassDEP have provided their concurrence with the ERE and associated documentation, GE will execute the ERE and submit the ERE, as duly executed (defined in the next sentence), to MassDEP and EPA for EPA’s final approval and for MassDEP’s final approval (as to form) and signature by the MassDEP Commissioner, along with the required supporting documents,

⁴ It is anticipated that, in most cases, the Massachusetts Department of Environmental Protection (MassDEP) will be the grantee of the EREs. MassDEP’s agreement to serve as the grantee of an ERE is subject, among other things, to its review of the proposed ERE, including any modifications to the model EREs included in the CD. As noted in Paragraph 54.b of the CD, neither the Commonwealth of Massachusetts nor any of its agencies is required to accept an ERE approved by EPA.

including the survey plan(s), evidence of signatory authority in accordance with 310 CMR 40.1071(2)(c), and Title Evidence (defined in the next sentence).

NOTE: As used throughout all sections of this plan, “duly executed” means executed by a signatory authorized to sign the document for the party involved, with evidence of such authority where required by the pertinent section of this plan; “Title Evidence” means a current title insurance commitment, a current certification of title, or other title documentation acceptable to EPA and MassDEP; and “concurrence” means staff-level approval by EPA and MassDEP.⁵

Within 10 working days after receiving the signed ERE from MassDEP, GE will record the ERE in the relevant Registry of Deeds; and it will then conduct the post-recording activities required by Paragraphs 54.g, 54.h, and 54.k of the CD.

In addition, if subordination agreements are necessary and have been obtained, GE will submit the subordination agreements, as duly executed, to MassDEP and EPA along with the executed EREs, and will subsequently record the subordination agreements concurrently with the EREs. GE will request evidence of signatory authority from entities executing subordination agreements (other than individuals signing on their own behalf); and if obtained, such evidence will be submitted to MassDEP and EPA and subsequently recorded. If such evidence of signatory authority is not obtained, GE will provide a final title insurance policy that provides affirmative coverage against any loss or damage arising from the interests subject to the subordination agreements.

For the above-mentioned activities through ERE execution, GE will conduct those activities in general accordance with a schedule to be agreed upon with EPA, after a reasonable opportunity for review and comment by MassDEP.

III. Properties Owned by the Commonwealth of Massachusetts

For subject properties/portions owned by the Commonwealth of Massachusetts, which are specifically owned by the Massachusetts Department of Fish and Game and its Division of Fisheries and Wildlife (jointly referred to herein as the “Owning State Agency”), GE will prepare and record Notice EREs in accordance with Paragraphs 56.f 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. Each Notice ERE will be in a form consistent with the Model Notice ERE attached hereto as Attachment B, with any additional modifications to the Model Notice ERE agreed upon by GE and EPA, after a reasonable opportunity for review and comment by MassDEP and the Owning State Agency, to reflect the Rest of River Remedial Action, site-specific circumstances, or otherwise.

⁵ MassDEP final approval (as to form) and the Commissioner’s signature on EREs will be subject to review of a complete submittal package of the ERE and appropriate supporting documents, notwithstanding any such prior concurrence.

GE will submit draft Notice EREs and other supporting documents, such as the associated survey plan(s) and other supporting documents requested by EPA, to EPA (with copies to MassDEP and the Owing State Agency) for review and comment by EPA, MassDEP, and the Owing State Agency. In addition, GE will provide to EPA (with copies to MassDEP, and the Owing State Agency) an abstract of any prior encumbrances and other interests on the property/portion to be subject to the Notice ERE, based on title information of record (as well as information on the locations of any encumbrances if necessary).

For each subject property/portion owned by the Commonwealth, the execution of the Notice ERE will take place following the completion of any response actions required at the property/portion. After EPA, MassDEP, and the Owing State Agency have provided their concurrence with the ERE and all supporting documents, GE will present the Notice ERE to the Owing State Agency for execution, along with the supporting documents such as the associated survey plan(s) and Title Evidence. After receiving the executed Notice ERE, GE will submit the Notice ERE, as duly executed, to EPA (with copies to MassDEP and the Owing State Agency) for formal approval and signature by the Director of the Office of Site Remediation and Restoration or his/her designee.⁶

Within 10 working days after receiving EPA's formal approval of and signature on the executed Notice ERE, GE will record the Notice ERE in the relevant Registry of Deeds; and it will then conduct the post-recording activities required by Paragraph 56.f 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 as soon as possible (but no later than seven days) after the recordation of the Notice ERE.

For the above-mentioned activities through execution of the Notice ERE, GE will conduct those activities in general accordance with a schedule to be agreed upon with EPA, after a reasonable opportunity for review and comment by MassDEP and the Owing State Agency.

IV. Properties Owned by the City of Pittsfield

For subject properties/portions owned by the City of Pittsfield (the City), GE will prepare EREs in accordance with Paragraph 54 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, site-specific circumstances, or otherwise.⁷

⁶ Separate evidence of signatory authority will not be necessary for Notice EREs.

⁷ Paragraph 66 of the CD provides that, for any property owned by the City, Paragraph 54 applies except that each reference to "Settling Defendant" shall be read as a reference to "the City."

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.

GE will submit drafts of such EREs and of appropriate supporting documents, such as the associated survey plan(s) and, if requested by EPA, subordination agreements or other supporting documents, to EPA (with a copy to MassDEP) for review and comment by EPA and MassDEP prior to execution. GE will also provide to EPA (with a copy to MassDEP) an abstract of any prior encumbrances and other interests on the property/portion to be subject to the ERE, based on title information of record (as well as information on the locations of any encumbrances if necessary), even if EPA does not request draft subordination agreements.

For each subject property/portion owned by the City, the execution of the ERE will take place following the completion of any response actions required at the property/portion. After EPA and MassDEP have provided their concurrence with the ERE and associated documentation, 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 ERE, as duly executed, to MassDEP and EPA for EPA's final approval and for MassDEP's final approval (as to form) and signature by the MassDEP Commissioner, along with the required supporting documents, including the survey plan(s), evidence of signatory authority (in the form of a City Council order), and Title Evidence.

Within 10 working days after receiving the signed ERE from MassDEP, GE will record the ERE in the Berkshire Middle District Registry of Deeds; and it will then conduct the post-recording activities described in CD Paragraphs 54.g, 54.h, and 54.k.

In addition, if subordination agreements are necessary and have been obtained, GE will submit the subordination agreements, as duly executed, to MassDEP and EPA along with the executed EREs, and will subsequently record the subordination agreements concurrently with the EREs. GE will request evidence of signatory authority from entities executing subordination agreements (other than individuals signing on their own behalf); and if obtained, such evidence will be submitted to MassDEP and EPA and subsequently recorded. If such evidence of signatory authority is not obtained, GE will provide a final title insurance policy that provides affirmative coverage against any loss or damage arising from the interests subject to the subordination agreements.

For the above-mentioned activities through ERE execution, GE will conduct those activities in general accordance with a schedule to be agreed upon with EPA, after a reasonable opportunity for review and comment by MassDEP.

V. 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 after a reasonable opportunity for review and comment by MassDEP. 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.

GE will provide the notice described in Paragraph 56.e of the CD (regarding the ERE status of properties within the Rest of River) for properties not owned by GE, the Commonwealth, or the City according to a schedule to be discussed with and approved by EPA, after a reasonable opportunity for review and comment by MassDEP.

For each property/portion for which the owner agrees to execute an ERE, GE will prepare and record 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, site-specific circumstances, 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.⁸

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.

GE will submit drafts of such EREs and of appropriate supporting documents, such as the associated survey plan(s) and, if requested by EPA, subordination agreements or other supporting documents, to EPA (with a copy to MassDEP) for review and comment by EPA and MassDEP prior to execution. GE will also provide to EPA (with a copy to MassDEP) an abstract of any prior encumbrances and interests on the property/portion to be subject to the ERE, based on title information of records (as well as information on the locations of any encumbrances if necessary), even if EPA does not request draft subordination agreements.

⁸ 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.

For each subject property/portion for which the property owner has agreed to execute an ERE, the ERE will be executed following the completion of any required response actions at the property/portion. After EPA and MassDEP have provided their concurrence with the ERE and all supporting documents, GE will present the ERE to the property owner for execution. After receiving the executed ERE from the property owner, GE will submit the ERE, as duly executed, to MassDEP and EPA for EPA's final approval and for MassDEP's final approval (as to form) and signature by the MassDEP Commissioner, along with the required supporting documents, including the survey plan(s), evidence of signatory authority where required by 310 CMR 40.1071(2)(c), and Title Evidence.

Within 10 working days after receiving the signed ERE from MassDEP, GE will record the ERE in the relevant Registry of Deeds; and it will then conduct the applicable post-recording activities required by Paragraph 57 of the CD, as they pertain to EREs without a Notice of Completion.

In addition, if subordination agreements are necessary and have been obtained, GE will submit the subordination agreements, as duly executed, to MassDEP and EPA along with the executed EREs, and will subsequently record the subordination agreements concurrently with the EREs. GE will request evidence of signatory authority from entities executing subordination agreements (other than individuals signing on their own behalf); and if obtained, such evidence will be submitted to MassDEP and EPA and subsequently recorded. If such evidence of signatory authority is not obtained, GE will provide a final title insurance policy that provides affirmative coverage against any loss or damage arising from the interests subject to the subordination agreements.

For the above-mentioned activities through ERE execution, GE will conduct those activities in general accordance with a schedule to be agreed upon with EPA, after a reasonable opportunity for review and comment by MassDEP.

VI. 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.⁹ GE will thereafter submit a report on that inspection to EPA and MassDEP, with a copy to the property owner, within 30 days after such inspection (or such other time as is approved by EPA). That

⁹ If, in the future, a property currently owned by GE, the Commonwealth, or the United States that is subject to an ERE or Notice ERE is transferred to a third party (that is, a party that is not GE, the Commonwealth, or the United States), GE will inspect that property for compliance with the ERE or consistency with the Notice ERE. In addition, in the event of such a transfer by the Commonwealth to a private party, GE will also propose to EPA for approval, after a reasonable opportunity for comment by MassDEP, whether GE should make best efforts to obtain and record an ERE on such property.

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 inspection checklist. Any determination of whether activities or uses that have occurred at a property are in fact contrary to the restrictions on activities and uses, the requirements applicable to permitted activities and uses, and/or the obligations and conditions stated in the ERE will be made by MassDEP and/or EPA. In addition, regardless of the provisions of this Plan, EPA and MassDEP will retain the right and authority to inspect any parcel with an ERE or a Notice ERE.

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. Copies of the letters referenced in this paragraph will be provided to EPA and MassDEP.

VII. Summary of Process for the Preparation, Approval, and Recording of EREs and Notice EREs and Post-Recordation Obligations

Without limiting the above or any of the requirements of the CD, the following summarizes the typical process that GE will follow to prepare, obtain approval of, and record EREs and Notice EREs for the individual properties and to perform its post-recordation obligations.

- A. Establish substantive requirements. GE will first consult with EPA (which will consult with MassDEP) regarding the nature of the restricted activities and uses, permitted activities and uses, and obligations and conditions (if any) to be stated in the ERE or Notice ERE, and the boundaries of any restricted area that are less than the entire property.
- B. Prepare and submit draft for Agency review. GE will prepare and then submit to EPA (with a copy to MassDEP) a draft ERE or Notice ERE, as appropriate, and supporting documents, including metes and bounds descriptions, the associated property survey plan(s), and, if EPA so requests, draft Title Evidence.
- C. Evaluate need for subordination agreements. GE will also consult with EPA (which will notify and consult with MassDEP) regarding any required subordination agreements and provide to EPA (with a copy to MassDEP) an abstract of any encumbrances and other property interests on the subject property/portion, based on title information of record, as well as copies of any referenced encumbrances or other interests requested by EPA (after consultation with MassDEP) or draft subordination agreements requested by EPA (after consultation with MassDEP). Subject to EPA approval (after an opportunity for review and comment by MassDEP), GE may propose that a property interest does not require a subordination

agreement if GE can demonstrate that such property interest does not impact the restricted area under the ERE or otherwise does not require subordination.

- D. Agency comment on draft documents. After providing MassDEP and, for a Notice ERE, the Owing State Agency with a reasonable opportunity for review and comment, EPA will provide GE with comments on the ERE or Notice ERE, supporting documents, and (for an ERE) entities from which subordination agreements will be required.
- E. Submit final draft documents. GE will resubmit the draft ERE or Notice ERE and the other supporting documents revised to reflect any Agency comments to EPA (with a copy to MassDEP and, for a Notice ERE, the Owing State Agency) to obtain EPA and MassDEP concurrence with the ERE or Notice ERE and any required documentation.
- F. Property owner review. After EPA and MassDEP have indicated their concurrence with a draft of an ERE for non-GE-owned property, that draft will be submitted to the property owner for his or her review. (This step is not necessary for a Notice ERE on Commonwealth property, because the Owing State Agency will have already reviewed and concurred with the Notice ERE.)
- G. Respond to property owner comments. GE will notify EPA (with a copy to MassDEP) of any comments or revisions requested by the property owner. EPA will review and approve or disapprove such property-owner-requested revisions, after giving MassDEP a reasonable opportunity to review and comment. MassDEP review and concurrence will be required for any proposed ERE that has MassDEP as the proposed grantee.
- H. Obtain executed documents.
 - 1. EREs. For EREs, after GE obtains EPA's concurrence with the final ERE and supporting documentation, having given MassDEP a reasonable opportunity for review and comment (and, where MassDEP is the grantee, MassDEP concurrence), GE will obtain the property owner's signature on the ERE – or, for GE-owned property, will sign the ERE.
 - 2. Notice EREs. For Notice EREs, after EPA, MassDEP, and the Owing State Agency have concurred with the draft of the final Notice ERE and the supporting documentation, GE will present the Notice ERE to the Owing State Agency for execution, along with the supporting documents such as the associated survey plans and Title Evidence.
- I. Submit documents for Agency approval.
 - 1. EREs. GE will submit the duly executed ERE to MassDEP and EPA, together with all supporting documentation, including the survey plan(s), evidence of signatory authority (where required), and Title Evidence. EPA will determine (after consultation with MassDEP) whether the ERE and supporting documentation are acceptable. If EPA determines that they are acceptable, EPA will provide final approval of the ERE and

supporting documentation and will request MassDEP to accept the ERE for any ERE for which MassDEP is the proposed grantee. If MassDEP approves the ERE (as to form), MassDEP acceptance will be indicated by signature of the MassDEP Commissioner.

2. Notice EREs. For Notice EREs, after obtaining the Owing State Agency's signature on the Notice ERE, GE will submit the duly executed Notice ERE to EPA (with copies to MassDEP and the Owing State Agency) for formal approval and signature by the Director of the Office of Site Remediation and Restoration or his/her designee.
- J. Record documents. Within 10 working days after receiving the fully executed ERE signed by the MassDEP Commissioner or EPA's formal approval of and signature of an executed Notice ERE, GE will record at the appropriate registry of deeds¹⁰ the fully executed ERE or Notice ERE together with any relevant supporting documentation, such as the associated survey plan(s), evidence of signatory authority (where required), and (for an ERE) subordination agreements (and evidence of signatory authority for subordination agreements, if obtained).
- K. Perform post-recording obligations. After recording the ERE or Notice ERE, GE will perform all post-recording activities required by the CD, the ERE or Notice ERE, and this Plan. These will include the following:
1. Copies. GE will provide EPA and MassDEP with certified copies of the recorded ERE or Notice ERE and any other recorded documents showing the recording information within 30 days of recording. In addition, within the same time frame, GE will provide the property owner (if not GE) with copies of the recorded ERE or Notice ERE and recorded associated survey plan(s) showing the recording information.
 2. Final title insurance policy or updated title certification. For recorded EREs, within 30 days after recordation, GE will provide EPA and MassDEP with a final title insurance policy (in an amount approved by EPA after reasonable opportunity for review and comment by MassDEP) or title certification updated through the time of recording of the ERE. Any such title insurance policy will name MassDEP (or other grantee) as the insured and will name EPA as an additional insured to the extent of its interests in the ERE; and any such title certification will run to MassDEP (or other grantee) and to EPA to the extent of its interests in the ERE. If the final title insurance policy or certification indicates that there are encumbrances or other property interests that are not subordinate to the ERE, then, upon written notice from EPA (after a reasonable opportunity for review and comment by MassDEP), GE will use best efforts (as defined in Paragraph 60.b of the CD) to obtain subordination agreements for such interests, or will demonstrate, subject to review and approval by EPA and MassDEP, that such new encumbrance(s) or property interest(s)

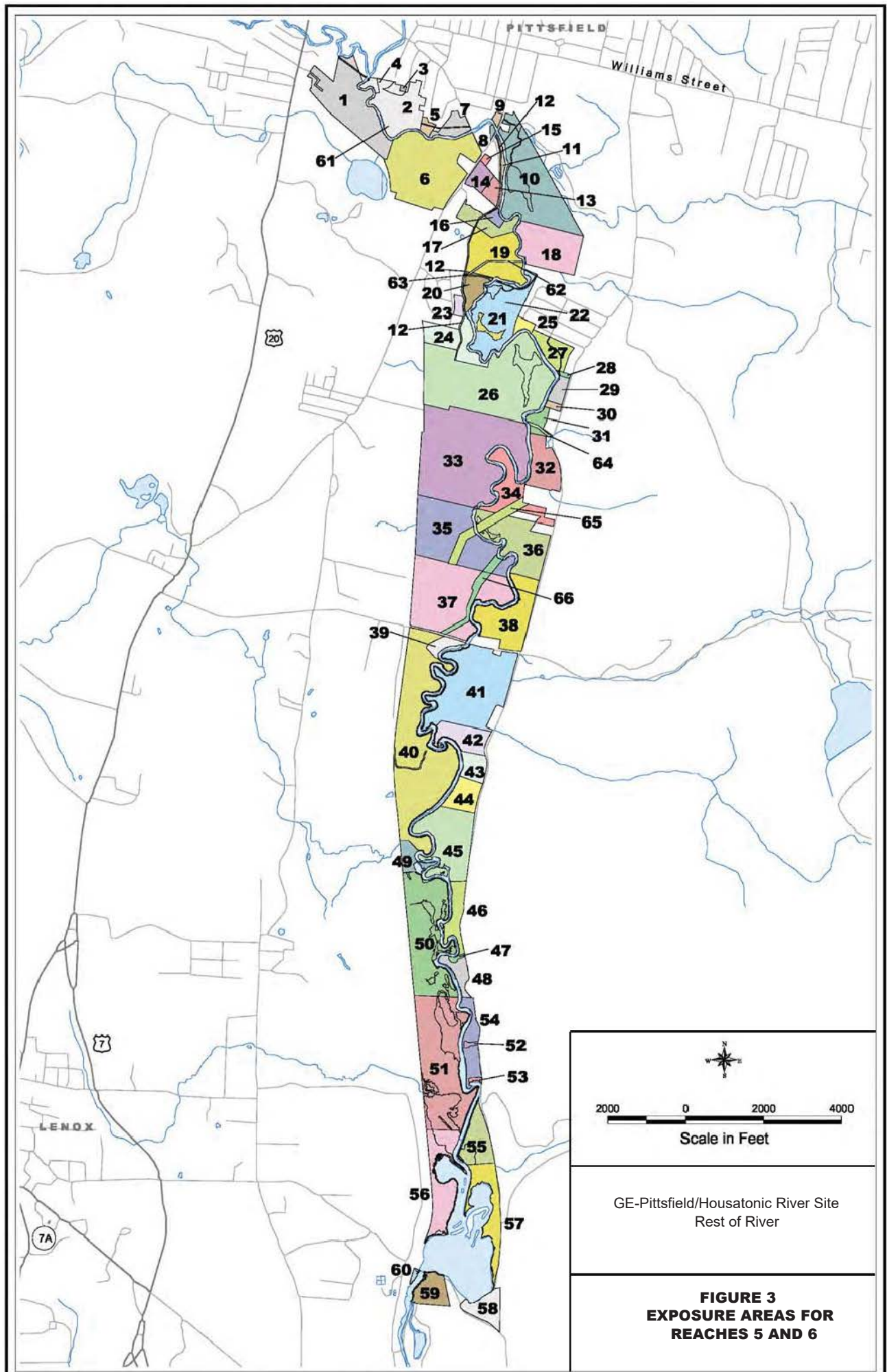
¹⁰ As noted above, in this Plan, "record" and its conjugations also include, for registered land, registration by filing of the required documents at the land registration office in the Registry of Deeds.

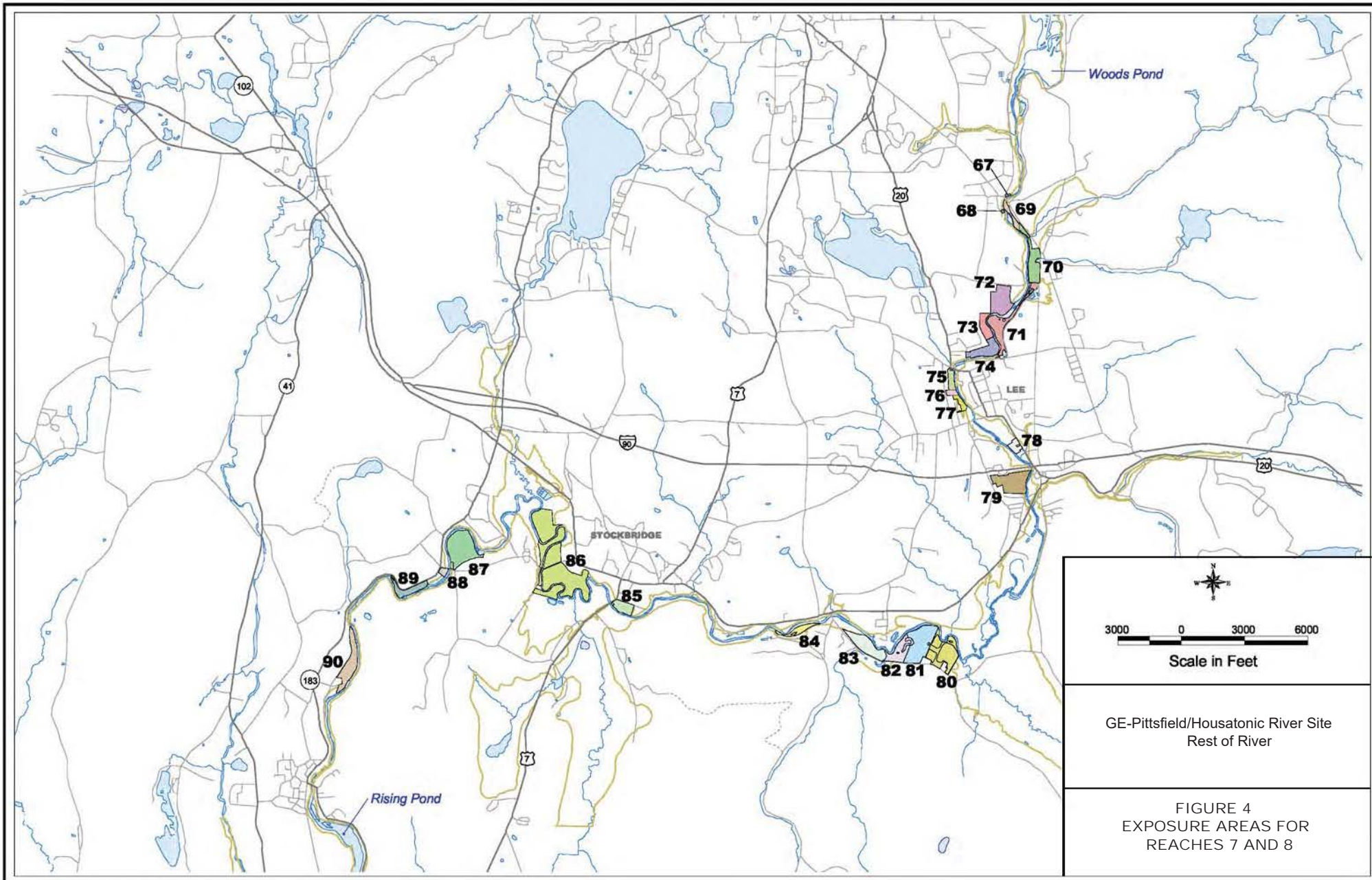
does(do) not impact the restricted area of the property or otherwise does(do) not require subordination.

3. Notice to record interest holders. For EREs, GE will provide the interest holders that executed subordination agreements for the ERE (if any) with copies of the recorded ERE and of the interest holder's subordination agreement as recorded. For Notice EREs, GE will provide record interest holders with written notice of the recording of the Notice ERE as soon as possible (but no later than seven days) after recording, and within 10 days of providing such notice, will provide written confirmation to EPA and MassDEP that it has notified all such record interest holders.
4. Notice to local officials and the public. GE will notify local officials and the public of the recording of an ERE or a Notice ERE within 30 days of recording the ERE or the Notice ERE, in accordance with the requirements set forth in 310 CMR 40.1403(7) as amended.

ATTACHMENT A
(Figures 3 and 4 of the Modified Permit)

ATTACHMENT A





ATTACHMENT B
(Model Notice ERE)

MODEL NOTICE OF ENVIRONMENTAL RESTRICTION

NOTICE OF ENVIRONMENTAL RESTRICTION

[Note: This Notice is provided as an institutional control as part of the remedy for the GE-Pittsfield/Housatonic River Site under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.]

This NOTICE OF ENVIRONMENTAL RESTRICTION (the “Notice”) is made as of this ____ day of _____, 20__, by the United States Environmental Protection Agency (“EPA”) and the Commonwealth of Massachusetts, Division of Fisheries and Wildlife *[or other state agency]* (“Owner”) to identify activities and uses that, if conducted on the Restricted Area within the Property subject to this Notice, as defined below, may result in a significant risk of harm to health, safety, public welfare, or the environment.

W I T N E S S E T H :

WHEREAS, Owner is the owner in fee simple of a certain parcel of vacant land located in _____ *[City/Town]*, Berkshire County, Massachusetts, numbered generally as Tax Parcel No. _____ on the _____ *[City/Town]* Tax Assessor’s Map, and situated _____ *[describe location]*, pursuant to a deed from _____ *[seller]* to _____ *[Owner]* dated _____, and recorded in the Berkshire Middle District Registry of Deeds on _____ *[date]*, in Book ____, Page ____; *[revise this paragraph as appropriate for the specific property]*

WHEREAS, said parcel of land is more particularly bounded and described in Exhibit A attached hereto and made a part hereof (the “Property”) and shown on a plan entitled “Plan of Property _____,” prepared by _____ *[survey firm]*, dated _____, 20__, which was recorded in the Berkshire Middle District Registry of Deeds, on _____, 20__, in Plat ____, No. ____, and a copy of which is attached hereto as Exhibit B and made a part hereof;

WHEREAS, the Property contains a restricted area (“Restricted Area”) *[if there are multiple restricted areas, revise to read: contains certain restricted areas, referred to herein as {list the applicable restricted areas, which may include a Frequently Use Subarea, an Open Soil/Vegetated Area, and possibly others}, as defined below, collectively comprising the “Restricted Area”]*, which is more particularly bounded and described in Exhibit C attached hereto and made a part hereof and shown on a plan entitled “Plan of Restricted Area _____,” prepared by _____ *[survey firm]*, dated _____, 20__, which was recorded in the Berkshire Middle District Registry of Deeds, on _____, 20__, in Plat ____, No. ____, and a copy of which is attached hereto as Exhibit D and made a part hereof; *[Note: If the entire Property will be subject to this Notice, this paragraph will be revised to state that the entire Property constitutes the Restricted Area*

subject to this Notice, and Exhibits C and D will be omitted. However, if Exhibit B is an existing survey of record, a new survey of the Property may be required – e.g., if remedy components need to be shown.]

WHEREAS, EPA has identified a site, comprising the General Electric Company (“GE”) facility in Pittsfield, Massachusetts, the Housatonic River adjacent to and downstream of the GE facility, and other areas, all as more particularly described in the Consent Decree (described below), known as the “GE-Pittsfield/Housatonic River Site” (the “Site”), as a result of the release of hazardous substances at or from the GE facility, as such terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. 9601 *et seq.*;

WHEREAS, GE has entered into a Consent Decree in connection with the Site with the United States, the State of Connecticut, and the Commonwealth of Massachusetts (the “Commonwealth”) in *United States of America, State of Connecticut, and Commonwealth of Massachusetts v. General Electric Company*, Civil Action No. 99-30225-MAP *et seq.*, entered by the United States District Court for the District of Massachusetts (the “Court”) on October 27, 2000 (the “Consent Decree”);

WHEREAS, a portion of the Property containing the Restricted Area [*if the whole Property is within the Site, change to just “the Property”*] is situated within the Site and specifically within an area of the Site known in the Consent Decree as the Rest of River;

WHEREAS, pursuant to the Consent Decree, EPA has issued a Modified Permit to GE under the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6901 *et seq.*, dated _____ [*insert final date of permit after appeals*] (RCRA facility I.D. No. MAD002084093) (“Modified RCRA Permit”), a copy of which is available on EPA’s website at _____ [*add link to website*], requiring GE to conduct certain Response Actions (as defined below) at the Rest of River portion of the Site as the Rest of River Remedial Action (as defined in the Consent Decree);

WHEREAS, Response Actions are ongoing at the Site and include or have included, as part of the Rest of River Remedial Action, Response Actions at the Restricted Area, including: [*provide a short description of the Response Actions that were conducted at the Restricted Area; if only sampling and/or evaluation, note that*];

WHEREAS, EPA has determined that the Restricted Area contains chemicals in the soil that could pose a risk of harm to human health, safety, public welfare, or the environment if certain activities or uses were to be conducted at the Restricted Area; that notice of those activities and uses would mitigate that risk and help to ensure the protectiveness and integrity of the Rest of River Remedial Action; and that the establishment of this Notice in the public land records is thus part of the Rest of River Remedial Action;

WHEREAS, the Massachusetts Department of Environmental Protection (“MassDEP”) has provided EPA with review and comment on the Rest of River Remedial Action, and agrees that the notice of activities and uses that could pose a risk of harm to human health, safety, public

welfare, or the environment would mitigate the risk and help to ensure the protectiveness and integrity of the Rest of River Remedial Action;

WHEREAS, the Consent Decree, as modified by the Twelfth Modification of Consent Decree (filed with the Court on September 24, 2014), provides that a Notice of Environmental Restriction may be substituted for a Grant of Environmental Restriction and Easement (as defined in the Consent Decree) at any property owned by the Commonwealth of Massachusetts at the Site; and the United States, the Commonwealth of Massachusetts, and GE have agreed that this Notice will be substituted for a Grant of Environmental Restriction and Easement at the Property;

WHEREAS, this Notice does not, and is not intended to, create any right, title, or interest in real estate in favor of EPA or the United States or create a lien against the Property, but is intended to provide notice and information that, due to contamination remaining in the Restricted Area, certain activities and uses may, if implemented at the Restricted Area, result in a significant risk of harm to health, safety, public welfare, or the environment;

NOW, THEREFORE, EPA and Owner provide notice of the following regarding activities and uses at the Restricted Area:

1. Definitions. For purposes of this instrument, the following terms shall have the following meanings: *[Note: A given Notice ERE will list only the relevant definitions. Note that if the Property contains a Frequently Used Subarea, that area will be a separately surveyed Restricted Area.]*

A. *[Add the following definition only if applicable:]* “Frequently Used Subarea” shall mean that area of the Property designated as such on the Plan of Restricted Area attached hereto as Exhibit D, as more particularly bounded and described in Exhibit C attached hereto and made a part hereof. This area has been designated by EPA in the Modified RCRA Permit as an area subject to frequent use by humans and has been subject to Response Action *[if no active remediation, add “consisting of sampling and/or evaluation”]* applicable to the top three feet of the surface of the ground.

B. “Health and Safety Protocol” shall mean the Health and Safety Protocol attached hereto as Exhibit E and incorporated herein by reference.

C. “Licensed Site Professional” or “LSP” each shall mean a hazardous waste site cleanup professional, as defined in M.G.L. c. 21A, § 19, holding a valid license issued by the Board of Registration of Hazardous Waste Site Cleanup Professionals, pursuant to M.G.L. c. 21A, §§ 19 through 19J.

D. *[Add the following definition only if there are multiple types of restricted areas on the Property (including a Frequently Use Subarea); otherwise omit:]* “Open Soil/Vegetated Area” shall mean, collectively, all those areas of the Property designated as such on the Plan of Restricted Area attached hereto as Exhibit D, as more particularly bounded and described in Exhibit C attached hereto and made a part hereof. These areas have been subject to Response

Action [if no active remediation, add “consisting of sampling and/or evaluation”] applicable to the top one foot of the surface of the ground.

E. “Recorded” and “Registered” and their various conjugations shall mean, respectively, (1) as to unregistered land, recorded with the Berkshire Middle District Registry of Deeds, and (2) as to registered land, filed with the Berkshire County Land Registration Office in the Berkshire Middle District Registry of Deeds, each conjugated as appropriate.

F. “Response Actions” shall mean the environmental response actions undertaken or required to be undertaken at the Rest of River portion of the Site or portions thereof pursuant to the Consent Decree and the Modified RCRA Permit, including (but not limited to) sediment and soil sampling, evaluation of the need for and extent of active remediation, sediment and soil removal, capping of contaminated sediment and soil, other actions to address existing contamination, institutional controls in the nature of restrictive covenants to prevent certain activities and uses at various properties and/or notice of activities and uses that may present risks, and certain operation and maintenance activities necessary to maintain the effectiveness of the response actions.

G. “Soil Management Protocol” shall mean the Soil Management Protocol attached hereto as Exhibit F and incorporated herein by reference.

H. “Utility Work” shall mean the maintenance and/or repair of pipes, lines and other such conveyances for water, sewer, storm-water, steam, gas, fuel oil, electricity, and communications, but not the installation of new pipes, lines, or other such conveyances.

[Note: If the Restricted Area contains other specific restricted areas, add definitions of each.]

2. Activities and Uses That May Present Risks. Except as provided in Paragraphs 3 and 4, any of the following activities or uses in, on, upon, through, over or under the Restricted Area, or portions thereof, may result in a significant risk of harm to health, safety, public welfare, or the environment:

- A. Residential activity or use;
- B. Day care and educational (for children under eighteen (18) years of age) activity or use;
- C. Agricultural activity or use;
- D. Excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil or sediments; and
- E. Any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, operation, or maintenance of any aspect or component of the Response Actions already constructed or under construction.

3. Activities and Uses That Will Not Present Risks. The following activities and uses in, on, upon, through, over or under the Restricted Area will not result in a significant risk of harm to health, safety, public welfare, or the environment:

[Note: If the Restricted Area contains a Frequently Use Subarea and an Open Soil/Vegetated Area, use the alternative language in italics below. If there are other types of restricted areas and some of the following provisions apply only to certain of those restricted areas, revise those provisions to so specify.]

A. Non-Restricted Activities/Uses. Any activity or use that is not identified in Paragraph 2 as potentially resulting in a significant risk of harm to health, safety, public welfare, or the environment, including (among other activities and uses) use of the Restricted Area for recreational purposes, will not be considered to present such a risk.

B. Surface Excavation of Ten (10) Cubic Yards or Less. Notwithstanding subparagraph 2.D, excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil, solely within the top one (1) foot of the surface of the ground *[note: if the Restricted Area contains a Frequently Use Subarea and an Open Soil/Vegetated Area, revise to read “solely within the top one (1) foot of the surface of the ground in the Open Soil/Vegetated Area and solely within the top three (3) feet of the surface of the ground in the Frequently Used Subarea]*, of no more than ten (10) cubic yards of such materials, in the aggregate, on a per project basis, will not be considered to present significant risk of harm to health, safety, public welfare, or the environment, provided that Owner does not segment a project to avoid the ten (10) cubic yard limitation established by this subparagraph 3.B, and provided further that Owner meets the following conditions:

- i. Such surface excavation is conducted in a timely fashion so as to minimize the time when excavated areas are open and/or excavated materials are stored in the Restricted Area to the minimum time practicable for such activity or use; provided, however, that the duration of such activity or use, including all excavation or storage, does not exceed fourteen (14) days;
- ii. Owner takes appropriate measures to secure stored soil and to control erosion, dust, and runoff.
- iii. Owner (a) backfills excavations to the original surface grade with clean soil or with soil excavated from the Restricted Area solely from the top one (1) foot of the surface of the ground; and (b) reestablishes any disturbed vegetation.
- iv. Owner provides EPA and MassDEP with written notice of each such surface excavation project no later than thirty (30) days after completion, using the form attached hereto as Exhibit G, as such form may be modified in writing from time to time by EPA; provided, however, that such notification will not apply to any such project where the total amount of soil that has been or will be excavated is less than five (5) cubic feet; and

v. Owner does not store or dispose of any excavated material outside of the Restricted Area.

C. Surface Excavation of any Volume. Notwithstanding subparagraph 2.D, excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil, solely within the top one (1) foot of the surface of the ground [*note: if the Restricted Area contains a Frequently Use Subarea and an Open Soil/Vegetated Area, revise to read “solely within the top one (1) foot of the surface of the ground in the Open Soil/Vegetated Area and solely within the top three (3) feet of the surface of the ground in the Frequently Used Subarea*], of any volume of such materials will not be considered to present significant risk of harm to health, safety, public welfare, or the environment, provided that Owner meets the conditions listed above in subparagraphs 3.B.i through 3.B.iv, and the following additional conditions:

- i. Owner utilizes an LSP to oversee the surface excavation permitted pursuant to this subparagraph; and
- ii. Owner does not store any excavated materials on the Property outside of the Restricted Area and disposes of any excavated materials that cannot be returned to the Restricted Area by shipping them off of the Property, provided that an LSP oversees such disposal and that Owner complies with the provisions of Paragraph 10 of the Soil Management Protocol regarding off-Property disposal of soil and other materials.

D. Surface and/or Subsurface Excavation of Ten (10) Cubic Yards or Less. Notwithstanding subparagraph 2.D, excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil, at any depth, of no more than ten (10) cubic yards of such materials, in the aggregate, on a per project basis, will not be considered to present significant risk of harm to health, safety, public welfare, or the environment, provided that Owner does not segment a project to avoid the ten (10) cubic yard limitation established by this subparagraph 3.D, and provided further that Owner meets the following conditions:

- i. Owner utilizes an LSP to oversee the excavation permitted pursuant to this subparagraph, including without limitation, the disposal of soil and other material;
- ii. Owner conducts these activities and uses in accordance with the Soil Management Protocol and the Health and Safety Protocol;
- iii. Such excavation is conducted in a timely fashion so as to minimize the time when excavated areas are open and/or excavated materials are stored on the Property to the minimum time practicable for such activity or use; the duration of such excavation does not exceed fourteen (14) days; and any materials (e.g., soils, sediments, and personal protective equipment) excavated, collected, placed, used and/or stored on the Property or elsewhere, in connection with such excavation, are properly disposed of, or shipped or removed from the Property for proper disposal, within ninety (90) days

from the date of such initial storage or within such longer time as is permitted under any applicable state or federal law or regulation; and

iv. Owner provides EPA and MassDEP with written notice of each such project no later than thirty (30) days after completion, using the form attached hereto as Exhibit G, as such form may be modified in writing from time to time by EPA.

E. Surface and/or Subsurface Excavation for Utility Work. Notwithstanding subparagraph 2.D, excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil, at any depth, for the purpose of Utility Work, will not be considered to present significant risk of harm to health, safety, public welfare, or the environment, provided that, in conducting the Utility Work, Owner meets the following conditions:

i. All such Utility Work is conducted in accordance with the Soil Management Protocol and, for excavations that are deeper than one (1) foot from the surface of the ground, the Health and Safety Protocol, and Owner utilizes an LSP to oversee all such activities and uses, including without limitation, the disposal of soil and other materials;

ii. Such Utility Work is conducted in a timely fashion so as to minimize the time when excavated areas are open and/or excavated materials are stored on the Property to the minimum time practicable for such activity or use; the duration of such excavation does not exceed fourteen (14) days; and any materials (e.g., soils, sediments, and personal protective equipment) excavated, collected, placed, used and/or stored on the Property or elsewhere, in connection with such excavation, are properly disposed of, or shipped or removed from the Property for proper disposal, within ninety (90) days from the date of such initial storage or within such longer time as is permitted under any applicable state or federal law or regulation;

iii. Owner gives EPA and MassDEP fifteen (15) days' advance written notice prior to conducting any activities and uses pursuant to this subparagraph 3.E; and

iv. Owner provides EPA and MassDEP with written notice of each such project no later than thirty (30) days after completion, using the form attached hereto as Exhibit G for such notice, as such form may be modified in writing from time to time by EPA.

F. Emergency Surface and/or Subsurface Excavation. Notwithstanding subparagraph 2.D, excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil, at any depth, as part of a response to an emergency (e.g., repair of utility lines or responding to fire or flood) will not be considered to present a significant risk of harm to health, safety, public welfare, or the environment, provided that Owner meets the following conditions:

i. The actual disturbance involved in such excavation is limited to the minimum reasonably necessary to adequately respond to the emergency;

ii. Owner implements all measures necessary to limit actual or potential risk to the public health and environment arising from the emergency and the response thereto;

iii. Owner undertakes precautions to minimize exposure of workers and neighbors of the Property to the hazardous substance or material;

iv. Owner notifies EPA and the MassDEP Western Regional Office Emergency Response Section, or such other party as EPA or MassDEP may identify in writing to Owner, of such emergency as soon as possible but no more than two (2) hours after having learned of such emergency;

v. Owner utilizes an LSP to oversee the excavation, if practicable given time constraints, unless EPA agrees, upon Owner's request, that use of an LSP is not necessary; and

vi. Owner promptly restores the affected area to a condition consistent with its condition before the emergency excavation took place, with minimal disturbance of the contaminated soils, pursuant to a written restoration plan prepared and implemented by an LSP; provided that said plan is consistent with the Soil Management and the Health and Safety Protocols, as applicable, and is submitted to EPA and MassDEP within ten (10) days of its performance, together with a completed Post-Work Notification Form, attached hereto as Exhibit G, with a statement from said LSP that the affected area has been restored to said condition; and provided further that in cases where only minimal excavation has occurred such that there has been no significant impact on the protectiveness of the Response Actions, Owner may request and EPA may agree (after a reasonable opportunity for review and comment by MassDEP) that this condition can be met without utilizing the services of an LSP.

G. Response Actions. Notwithstanding subparagraph 2.D, any activities specified therein that are part of (i) Response Actions conducted by EPA or MassDEP or their representatives, contractors, subcontractors, or employees pursuant to CERCLA or M.G.L. c. 21E ("Chapter 21E") and their respective implementing regulations, or (ii) Response Actions conducted by GE under the Consent Decree and the Modified RCRA Permit as part of the Rest of River Remedial Action will not be considered to present significant risk of harm to health, safety, public welfare, or the environment.

H. Sampling. Notwithstanding subparagraph 2.D, soil and groundwater sampling activities that are not covered by subparagraph 3.G will not be considered to present significant risk of harm to health, safety, public welfare, or the environment; provided that Owner utilizes an LSP to oversee such sampling and that all such activities and uses are conducted in accordance with the Health and Safety Protocol and the Soil Management Protocol to the extent applicable.

4. Proposed Changes in Activities and Uses. In the event that Owner proposes any temporary changes in activities and uses at the Restricted Area that would involve any of the activities and uses set forth in Paragraph 2, Owner may present information to EPA, with a copy

to MassDEP, describing the particular proposed changes and their proposed duration and demonstrating that, under the conditions described, they will not present a significant risk of harm to health, safety, public welfare, or the environment. In such a case, based on review of that information and consultation with MassDEP, EPA may determine and notify Owner that the proposed temporary changes in activities and uses will not present a significant risk of harm to health, safety, public welfare, or the environment.

5. Incorporation into Deeds, Mortgages, Leases and Instruments of Transfer. It is intended that this Notice be incorporated, either in full or by reference, into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Property, or any portion thereof, is conveyed.

6. Amendment and Termination.

A. Amendment. EPA and Owner may amend this Notice, after reasonable opportunity for review and comment by MassDEP, based upon changed circumstances, including, without limitation, new analytical and engineering data or an Owner proposal to perform additional remediation at the Restricted Area; provided that both EPA and Owner agree on such amendment. Such amendment shall become effective upon its Recordation and/or Registration.

B. Termination. EPA and Owner may terminate this Notice, after reasonable opportunity for review and comment by MassDEP, based upon changed circumstances, including, without limitation, new analytical and engineering data or an Owner proposal to perform additional remediation at the Restricted Area; provided that both EPA and Owner agree on such termination. Such termination shall become effective upon its Recordation and/or Registration.

C. Recordation and/or Registration. Owner has agreed to Record and/or Register, or to cooperate with GE to Record and/or Register, any amendment to or termination of this Notice. Unless Owner has requested the amendment to or the termination of this Notice, GE has agreed to be responsible for and bear the cost of Recording and/or Registering the amendment or termination, including ensuring that such amendment or termination is marginally referenced on the deed if the Property is unregistered land.

D. Notice to Local Officials. Owner has agreed to cooperate with GE in notifying local officials and the public of the amendment or termination of this Notice in accordance with the requirements set forth in 310 C.M.R. 40.1403(7), as amended, in the same way that would be applicable to an Activity and Use Limitation established pursuant to the Massachusetts Contingency Plan, 310 CMR 40.0000. A copy of said regulation is attached hereto as Exhibit H.

7. Acknowledgement. This Notice is an institutional control that is being used as part of the Rest of River Remedial Action to help reduce potential future exposures to contaminants in soil. A person or entity may incur liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and/or Section 59a of Chapter 21E, if the person or entity conducts activities at the Property which, among other things, causes the further release or spreading of existing contamination.

8. Reservations of Rights. EPA and Owner have agreed that:

A. This Notice will not operate to bar, diminish, or in any way affect any legal or equitable right that EPA or MassDEP or its assigns may otherwise have to issue any future order or take response action with respect to the Property or in any way affect any other claim, action, suit, cause of action, or demand which Owner or its assigns may otherwise possess or hereafter acquire with respect thereto;

B. Nothing in this Notice will limit or otherwise affect any rights that the United States or the Commonwealth may otherwise have to obtain access to, or restrict the use of, the Property pursuant to CERCLA, Chapter 21E, or any other applicable statute or regulation; and

C. Nothing in this Notice will waive such liability as Owner may otherwise have for any release or any threat of a release of hazardous substances or of oil or hazardous materials occurring as a result of Owner's exercise of any of its rights hereunder.

D. No provision of this Notice will excuse compliance with CERCLA, Chapter 21E, or any other applicable federal, state or local laws, regulations, or ordinances with respect to any activity or use at the Property.

9. Notices. The addresses of EPA, MassDEP, and Owner are as follows:

A. EPA: U.S. Environmental Protection Agency
 Office of Site Remediation and Restoration
 Five Post Office Square
 Suite 100
 Boston, MA 02109-3912
 Attn: GE-Pittsfield/Housatonic River Site

B. MassDEP: Department of Environmental Protection
 Western Regional Office
 436 Dwight Street
 Springfield, MA 01103; and

 Department of Environmental Protection
 Bureau of Waste Site Cleanup
 One Winter Street
 Boston, MA 02108

C. Owner: *[To be added]*

10. Effective Date. EPA and Owner consent to the filing and Recordation and/or Registration of this Notice by GE. This Notice shall become effective upon its Recordation and/or Registration.

WITNESS the execution hereof under seal this _____ day of _____, 20__.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: _____

Print Name

Director of Office of Site Remediation and Restoration

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss.

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, Director of the EPA New England Office of Site Remediation and Restoration, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she is authorized to execute the foregoing instrument on behalf of the Commonwealth of Massachusetts and has done so before me of his/her free act and deed.

Notary Public
My Commission Expires: _____

[Seal]

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF FISHERIES AND WILDLIFE

By: _____

Print Name

Director

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss.

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, Director of the Massachusetts Division of Fisheries and Wildlife, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she is authorized to execute the foregoing instrument on behalf of the Commonwealth of Massachusetts and has done so before me of his/her free act and deed.

Notary Public
My Commission Expires: _____

[Seal]

List of Exhibits

[Note: A given Notice ERE will list and include only the relevant Exhibits]

Exhibit A Legal Description of the Property by Metes and Bounds

Exhibit B Plan of Property

Exhibit C Legal Description of Restricted Area by Metes and Bounds

Exhibit D Plan of Restricted Area

Exhibit E Health and Safety Protocol

Exhibit F Soil Management Protocol

Exhibit G Post-Work Notice of Excavation Form

Exhibit H Copy of 310 C.M.R. 40.1403(7): Notice of Amendments or Releases

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY BY METES AND BOUNDS

[To be added]

EXHIBIT B

PLAN OF PROPERTY

EXHIBIT C

LEGAL DESCRIPTION OF RESTRICTED AREA BY METES AND BOUNDS

[To be added.]

EXHIBIT D

PLAN OF RESTRICTED AREA

EXHIBIT E

HEALTH AND SAFETY PROTOCOL

1. This Health and Safety Protocol is an Exhibit to a certain Notice of Environmental Restriction (the “Notice”) relating to the GE-Pittsfield/Housatonic River Site. All terms used in this Protocol shall have the same meaning as defined in the Notice.
2. This Protocol applies in situations where certain activities specified in subparagraphs 3.D, 3.E, 3.F, or 3.H of the Notice are conducted in accordance with the Health and Safety Protocol.
3. Where this Protocol is applicable, Owner shall prepare a Health and Safety Plan (“HSP”) and submit it to EPA, with a copy to MassDEP, fifteen (15) days or more before conducting activity to which this Protocol applies. If appropriate, Owner may submit a pre-existing health and safety plan in lieu of preparing a new plan to address this requirement and/or incorporate by reference a previously submitted HSP. Further, where this Protocol is applicable, Owner shall comply with the HSP when conducting any activity to which the Protocol applies.
4. The HSP shall be prepared in accordance with the occupational health and safety provisions of 29 Code of Federal Regulations (“CFR”) § 1910.120 otherwise applicable to hazardous waste operations and emergency response, as amended, and, any other applicable federal, state or local law. For any utility repair, maintenance or installation in confined spaces, the HSP shall also be prepared in accordance with the provisions of 29 CFR § 1910.146, otherwise applicable to work in confined spaces, as amended.
5. In addition to the requirements of Paragraph 4 of this Protocol, the HSP shall, without limitation, include the following items:
 - a. General information on the nature, extent, and concentrations of hazardous substances (as defined by CERCLA) and hazardous materials and oil (as defined by Chapter 21E) anticipated in the media to be impacted by the permitted activity and use, based upon existing information;
 - b. Description of tasks which may involve exposure to hazardous substances, hazardous materials, or oil;
 - c. Description of anticipated actions to protect the health, safety, and welfare of workers and the general public, including, but not be limited to, dust control, odor control, personal protective equipment, and erosion and sedimentation control measures (as needed for the particular permitted activity and use);
 - d. Discussion of relevant physical, chemical, and biological hazards (which discussion may incorporate relevant portions of Material Safety Data Sheets as appropriate);
 - e. A requirement that all persons engaged in the work read and acknowledge the provisions of the HSP and document compliance with said provisions; and

f. A requirement that all persons engaged in the work receive appropriate training in matters of health and safety in accordance with 29 CFR § 1910.120, as amended, and, any other applicable federal, state, or local law.

6. The HSP shall be approved by a Certified Industrial Hygienist.

7. This Health and Safety Protocol is in addition to and does not supersede or relieve Owner, Owner's contractors or subcontractors, or any other person or entity performing work at the Restricted Area of the Property from complying with any applicable federal, state, or local laws, rules or regulations regarding health and safety. Notwithstanding the Notice and this Health and Safety Protocol, it remains the responsibility of such parties to comply with any applicable federal, state, or local laws, rules or regulations regarding health and safety, even if they are more stringent than the requirements of this Health and Safety Protocol.

EXHIBIT F

SOIL MANAGEMENT PROTOCOL

1. This Soil Management Protocol is an Exhibit to a certain Notice of Environmental Restriction (the “Notice”) relating to the GE-Pittsfield/Housatonic River Site. All terms used in this Protocol shall have the same meaning as defined in the Notice.

2. This Protocol applies in situations where certain activities specified in subparagraphs 3.D, 3.E, 3.F, 3.H (or, for disposal, 3.C) of the Notice are conducted in accordance with the Soil Management Protocol.

3. Where this Protocol applies, soil sampling and excavation activities shall be conducted with the oversight of a Licensed Site Professional (“LSP”) to the extent specified in Paragraph 3 of the Notice.

[Note: The following provisions assume that the Restricted Area does not contain multiple types of restricted areas. If the Restricted Area contains a Frequently Use Subarea and an Open Soil/Vegetated Area (or potentially other types of restricted areas), these provisions will need to be revised and expanded as appropriate to specify the requirements for each type of restricted area. For a Frequently Used Subarea, the provisions otherwise applicable to the top foot will apply to the top three feet.]

4. Soil and materials which have been excavated solely within one (1) foot of the surface of the ground may be: (i) disposed of in the Restricted Area, with no sampling required; (ii) disposed of off-Property, in accordance with Paragraph 10 of this Protocol; (iii) returned to the original excavation for use as backfill, with no sampling required; or (iv) a combination of the management options listed in this Paragraph 4 of this Protocol.

5. Soil and materials which have been excavated below one (1) foot of the surface of the ground may be: (i) returned to the original excavation, with no sampling required, to within one (1) foot of the surface of the ground, with the remaining one (1) foot of the original excavation backfilled with clean soil or soil excavated solely from the top one (1) foot of the original excavation; (ii) disposed of off-Property, in accordance with Paragraph 10 of this Protocol; or (iii) a combination of the management options listed in this Paragraph 5 of this Protocol.

6. Owner shall return the Restricted Area, or any portion thereof, to its prior condition immediately upon completion of the activity or use being conducted in accordance with this protocol. Such restoration shall include, without limitation: (i) backfilling excavations to the original surface grade with clean soil, except for any soil that may be returned to the original excavation pursuant to this Protocol; and (ii) reestablishing any disturbed vegetation.

7. Owner shall implement the management procedures and measures required by the provisions of 310 Code of Massachusetts Regulations (“CMR”) § 40.0018 (1) and (2) otherwise applicable to response actions, as amended. Excavations conducted under subparagraphs 3.D, 3.E, 3.F, and 3.H of the Notice shall be conducted in a timely fashion so as to minimize the time when

excavated areas are open and/or excavated materials are stored on the Property to the minimum time practicable for such activity; provided, however, that the duration of such excavation shall not exceed fourteen (14) days. Owner shall, during excavation, use best management practices to control contaminant migration, exposure to contaminant material, and erosion, runoff, and dust emissions.

8. Owner shall keep separate: (i) soil excavated from within the top one (1) foot of the ground at the Restricted Area; (ii) soil excavated from below the top one (1) foot of the surface of the ground in the Restricted Area; and (iii) clean backfill. The location of the storage of excavated soil and other materials shall be either (i) at the Restricted Area or (ii) as otherwise authorized by applicable state or federal laws and regulations. All soil and other material shall be stored in a manner consistent with 310 CMR § 40.0036 (as amended) and in accordance with: (a) EPA approval under 40 Code of Federal Regulations (“CFR”) § 761.61(c) (as amended); or (b) 40 CFR § 761.65 (as amended); or (c) the following requirements: Such materials shall be placed on an impermeable liner to prevent contact with the underlying ground surface, and shall then be covered by a second impermeable membrane. This cover shall remain in place at all times when the storage area is not actively being used, and shall be securely anchored to the ground using weight devices. The storage area shall be located such that potential impacts due to rainfall, wind, and surface runoff are minimized.

9. Any materials (e.g., soils, sediments, and personal protective equipment) excavated, collected, placed, used, and/or stored on the Property or elsewhere, in connection with the excavation to which this Protocol applies, shall be properly disposed of, or shipped or removed from the Property for proper disposal, within ninety (90) days from the date of such initial storage or within such longer time as is permitted under any applicable state or federal law or regulation.

10. All off-Property disposal of soil and other materials, including without limitation, used personal protective equipment, shall be at a facility licensed to accept such materials and in compliance with all applicable laws, rules, and regulations. All disposal of soil and other materials off-Property shall be conducted with the oversight of an LSP. All off-Property disposal shall comply with all applicable laws, rules, and regulations. Owner shall conduct sampling sufficient to assure adequate characterization for off-Property disposal subject to oversight by an LSP and in accordance with state and federal laws and regulations, including, without limitation, 310 CMR § 40.0017.

EXHIBIT G

**POST-WORK NOTIFICATION FORM FOR PROPERTY SUBJECT TO
NOTICE OF ENVIRONMENTAL RESTRICTION**

I. General Information

Type of work: Surface (*top foot*) excavation of greater than five (5) cubic feet and less than or equal to ten (10) cubic yards (per Para. 3.B of Notice of Environmental Restriction [“Notice”])

(*check all that apply*) Surface (*top foot*) excavation of any volume (per Para. 3.C of Notice)

Subsurface (*deeper than top foot*) excavation of ten (10) cubic yards or less (per Para. 3.D of Notice)

Surface or subsurface excavation for Utility Work (per Para. 3.E of Notice)

Emergency excavation (per Para. 3.F of Notice)

[Revise the foregoing as appropriate for a property with a Frequently Used Subarea.]

Property Address: _____

Tax Parcel ID: _____

II. Description of Excavation Activities

Start date of excavation/soil disturbance: _____

End date of excavation/soil disturbance: _____

Amount of soil excavated or moved: _____

Any soil or other excavated material moved out of the Restricted Area? Yes No

Excavation dimensions (*approximate length x width x depth, in feet*): _____

Description of project (*attach extra sheets, if necessary*): _____

Final disposition of soil: (*attach bills of lading and certificates of disposals, if applicable*): _____

Attach a plan (*e.g., a copy of the Plan of Restricted Area*) showing:

- (1) location of excavation(s) within the property
- (2) direction
- (3) major site features (*e.g., roads, buildings, edges of pavement/barriers, locations of utilities if known*)

Attach photographs of work area prior to work, during work and post-restoration work, if available (*optional*).

Was any soil sampling and analysis conducted? Yes No
If Yes, attach analytical results and show sampling locations (*and indicate depths*) on an attached plan.

Were the Health and Safety Protocol and/or the Soil Management Protocol (*as defined in the Notice*), if applicable, followed? (*check each that applies*¹)

- Health and Safety Protocol was followed
- Soil Management Protocol was followed
- Not Applicable

¹ See note 3 in Section V (“Notes About the Use of this Form”), below.

III. Additional Information for Emergency Excavation

If work was conducted as an Emergency Excavation (*see Paragraph 3.F of the Notice*):

- (1) Attach an opinion and completion report prepared by an appropriately trained and licensed professional (or, if applicable, by property owner) (*including copy of written plan for restoration*).
- (2) Date and time property owner first obtained knowledge of the emergency: _____
- (3) Date and time property owner provided oral notification of the emergency to EPA and MassDEP:

IV. Signature

Two signatures should be provided (except for excavations pursuant to Paragraph 3.B of the Notice, for which only the owner or person conducting the work must sign). The property owner, or person conducting the work if other than the property owner, and the Licensed Site Professional who has overseen the work (where applicable) must each complete and sign the statement, below.

Owner or person conducting the work if other than the property owner:

I, _____, to the best of my knowledge and belief, state that the material information contained in this submittal is true, accurate and complete.

By: _____

Signature: _____

Name/Title: _____

Organization: _____

Address: _____

Telephone #: _____

Relationship to site: _____

Licensed Site Professional:

I, _____, to the best of my knowledge and belief, state that the material information contained in this submittal is true, accurate and complete.

By: _____

Signature: _____

Name/Title: _____

Organization: _____

Address: _____

Telephone #: _____

Relationship to site: _____

V. Notes About the Use of this Form

(1) Where applicable, this form is due no later than thirty (30) days after completion of the subject activities and uses, with the exception that, for emergency excavations pursuant to Paragraph 3.F of the Notice, verbal notification should be provided as soon as possible but no more than two hours after learning of the emergency, and this form is for the post-emergency excavation notice and is due within ten (10) days after completion of the necessary restoration in accordance with Paragraph 3.F of the Notice.

(2) An additional condition for Utility Work excavation activity pursuant to Paragraph 3.E of the Notice is the provision of separate, 15 days' advance written notice.

(3) The Health and Safety Protocol and the Soil Management Protocol do not apply to the activities and uses set forth in Paragraphs 3.B and 3.G of the Notice. These protocols also do not apply to the activities and uses set forth in Paragraph 3.C of the Notice, except for off-Property disposal, to which Paragraph 10 of the Soil Management Protocol applies.

VI. Where to Submit this Form.

Submit this completed form, via certified mail, to: MA Department of Environmental Protection
Bureau of Waste Site Cleanup, Special Projects
436 Dwight Street
Springfield, Massachusetts 01103
(Attn.: GE Housatonic Removal Action Project Manager)

Submit a copy of this form, via certified mail, to: U.S. Environmental Protection Agency
Office of Site Remediation and Restoration
5 Post Office Square
Suite 100
Boston, Massachusetts 02109-3912
(Attn.: GE-Pittsfield/Housatonic River Site)

EXHIBIT H

40.1403: Minimum Public Involvement Activities in Response Actions

* * *

(7) Within thirty days after recording and/or registering any original, amended, released or terminated Activity and Use Limitation pursuant to 310 CMR 40.1070 through 40.1080, the following requirements shall be met to inform local officials and the public of the limitations which apply to activities and/or uses of the property subject to the Activity and Use Limitation:

(a) a copy of the recorded and/or registered Activity and Use Limitation shall be provided to:

1. the Chief Municipal Officer;
2. the Board of Health;
3. the Zoning Official; and
4. the Building Code Enforcement Official in the community(ies) in which the property subject to such Activity and Use Restriction is located.

(b) a public notice pursuant to 310 CMR 40.1403(2)(b) which indicates the recording and/or registering of the original, amended, released or terminated Activity and Use Limitation shall be published in a newspaper which circulates in the community(ies) in which the property subject to the Activity and Use Limitation is located.

1. This notice shall be in a form established by the Department for such purpose and shall include, but not be limited to:
 - a. the name, address, and Release Tracking Number(s) of the disposal site associated with the Activity and Use Limitation;
 - b. the type of Activity and Use Limitation;
 - c. information about where the Activity and Use Limitation instrument and disposal site file can be reviewed; and
 - d. the name, address and telephone number of the person recording and/or registering the Activity and Use Limitation from whom the public can obtain additional information.
2. A copy of this legal notice shall be submitted to the Department within seven days of its publication.