

COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT
OF THE TRIAL COURT

WORCESTER, SS

CIVIL ACTION NO.20MISC 00467

TOWN OF HOPEDALE

Plaintiff

vs.

JON DELLI PRISCOLI and MICHAEL R.
MILANOSKI, as Trustees of the ONE HUNDRED
FORTY REALTY TRUST and
GRAFTON & UPTON RAILROAD
COMPANY,

Defendants

SETTLEMENT TERM SHEET

This Settlement Term Sheet is made and entered into this 25th day of January, 2021, by and between the following parties (the "Parties"): plaintiff Town of Hopedale, by and through its Board of Selectmen (the "Town"), and defendant Jon Delli Priscoli and Michael Milanoski, Trustees of the One Hundred Forty Realty Trust (the "Trust") and Grafton and Upton Railroad Company ("G&U") (collectively the Trust and G&U shall be the "Defendants").

WHEREAS, on or about October 28, 2020, the Town filed & sought preliminary relief in the action entitled Town of Hopedale v. Jon Delli Priscoli, et al, Massachusetts Land Court No. 20MISC00467 (the "Land Court Matter");

WHEREAS, on or about November 22, 2020, G&U filed a Petition for Declaratory Order with the federal Surface Transportation Board, Docket No. FD 36464, (the "STB Matter", together with the Land Court Matter, the "Litigations").

WHEREAS, on November 24, 2020, the Land Court referred the Land Court Matter to Pre-Mediation Screening process offered by the Real Estate Bar Association of Massachusetts;

WHEREAS, the Parties agreed to mediate the issues in the Litigations on January 8, 2021 before former Land Court Judge Lombardi (the “Mediation”);

WHEREAS, the Parties attended mediation sessions on January 8 and January 21 and have reached a preliminary agreement on the principal terms of a settlement of the Litigations, which cannot be finalized until they are formally voted on at an open session of the Town’s Board of Selectmen, which is scheduled to take place on Monday, January 25, 2021;

WHEREAS, the Parties seek to memorialize their understanding of the terms of the settlement agreement so that there is no confusion or ambiguity regarding the terms of the agreement reached at Mediation;

WHEREAS, the Town and the Defendants have authorized their respective counsel to draft and execute this Settlement Term Sheet, the purpose of which is to accurately memorialize the terms of the preliminary agreement reached by the Parties;

NOW, THEREFORE, the Parties memorialize the terms of their Mediation agreement in this Settlement Term Sheet as follows:

1. Division of Property: The property subject to division by the contemplated settlement is located at 363 West Street and 364 West Street, and is depicted as Parcels A, B, C, D and E on a document entitled Conceptual Lotting Exhibit – January 24, 2021, which is attached hereto as Exhibit 1. The Defendants collectively are the current record owners of Parcels A, B, C D and E. The Defendants agree that they will take such action so as to effectuate ownership of these parcels as follows:

- a. The Defendants, or their designee shall retain ownership in fee Parcels B, C and E, which shall not be subject to Chapter 61 of the Massachusetts General Laws.
- b. In consideration of the payment of \$587,500, the Defendants shall effectuate the conveyance of Parcel A to the Town, or its designee, reserving to the grantor(s), and their successors a slope / grading, utility easement, in the general location depicted on Exhibit 1 and further reserving to the grantor(s) a 100-foot wide easement for a bridge to facilitate the stream crossing over the Mill River at the general location depicted on Parcel A in Exhibit 1, and an easement for installation of a water supply well (to be abandoned when public water supply becomes available and operational to such Parcel A). The consideration of \$587,500 being paid by the Town represents a net number which includes any roll back taxes that may be due by the Trust as a result of land being classified as forestry land under Chapter 61.
- c. G&U shall donate Parcel D to the Town, or its designee, as is, including but not limited to with all existing encumbrances, municipal liens and tax obligations to be used for conservation purposes in collaboration with Upton and Milford Conservation Commissions.
- d. With respect to Parcels A and D, these parcels will be transferred to the Town, or its designee, subject to an Army Corp of Engineers no-build easement, so long as such easement will not preclude development of Town's new water supply well, and for the purpose of maintaining and preserving said property and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes, subject to the aforementioned easements.

2. Parcel A:

- a. The Town has identified Parcel A as the most likely parcel to source and develop a future water supply well or well field after consultation with its environmental engineer, as shown on the attached Exhibit 2. The Town agrees to initially commence any hydrogeological analysis for the purpose of establishing a public drinking water supply well pursuant to 310 CMR 22, including, but not limited to, activities to support a Site Screening for Siting a New Public Water Supply and pumping test pursuant to applicable state regulations (collectively the “Hydrological Analysis”) for a bedrock well in the general area depicted on Exhibit 2 within Parcel A, and more than 400 feet (or 250 feet for a wellfield) from Parcel E, Parcel C and Parcel B. Any such hydrogeological analysis must be performed by a licensed professional engineer and any results from such analysis must be shared with the Trust.
- b. Only after testing for a bedrock well in the area depicted on Exhibit 2 has failed, may the Town commence any additional Hydrogeological Analysis for a potential drinking water supply, including testing for a potential water supply well that may be within 400 feet (or 250 feet for a wellfield) of Parcel E, Parcel C or Parcel B.
- c. In the event that such analysis performed under 2(a) or (b) indicates the feasibility and financial viability of a public water supply well or wellfield the Trust and its successors will work in good faith with the Town to satisfy DEP drinking water regulations so that a well or well field may be developed; provided however, that nothing herein shall require the Trust, or its successors to convey

any land in Parcels, B, C and E to the Town, or its designee to satisfy its commitment to work in good faith.

- d. It is agreed that the intent of this agreement is to provide appropriate mitigation measures to assist the Town, but it is not intended to stop or curb development of adjoining Parcels, B, C or E.
- e. The Trust agrees to collaborate with the Hopedale Board of Selectmen in good faith to establish a formula to share costs and expenses associated with any such testing, on a pro rata basis.
- f. Trust at its own determination, and in its sole discretion, will install appropriate monitoring wells on Parcels B, C and E.

3. Parcel B:

- a. The Trust, and/or its designee/successor agrees to construct an enclosed building/structure, or multiple enclosed buildings / structures on Parcel B.
- b. The Trust, its designee and/or successor agrees to record a deed restriction on Parcel B for groundwater protection, in the form attached hereto as Exhibit 3.
- c. The Defendants agree to record a 50-foot easement restricting building in a “riparian buffer zone” area marked on Exhibit 1, but reserving the right to use this easement area for stormwater management features providing infiltration (i.e. – not oil-water separators or other contaminant removal structures) and/or driveway(s).
- d. Consistent with their established practice, Defendants agree to keep state and local authorities apprised of any development plans/intentions.

4. Parcel C: Defendants intend to construct a bridge to facilitate the stream crossing over the Mill River at the general location depicted on Parcel C on Exhibit 1. The Trust, its designee and/or successor agree to record a 50-foot easement restricting building in a riparian buffer zone area marked on Exhibit 1, but reserving the right to use this easement area for stormwater management features providing infiltration (i.e. – not oil-water separators or other contaminant removal structures) and/or driveway(s). Defendants agree to record a deed restriction on Parcel C for groundwater protection, in the form attached hereto as Exhibit 3. Consistent with their established practice, Defendants agree to keep state and local authorities apprised of any development plans/intentions.

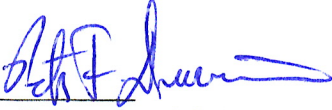
5. Parcel E: The Trust, its designee and/or successor agrees not to construct any buildings on the approximately 300 foot by 1000-foot rectangular area marked on Exhibit 1 for a period of five years, or until the Town identifies a financeable and feasible public drinking water supply well area on the adjacent Parcel A. For consideration of 5-year easement in Parcel E, the Town agrees to grant a five-year replication easement of approximately 3 acres on Parcel A benefitting the Trust for potential wetlands replication in the area shown on Exhibit 1.

6. Miscellaneous:

- a. Should the Town's well testing result in the identification of a well area suitable for public drinking water that is determined to be feasible and financeable, the Defendants will work in good faith with the Town to comply with applicable state regulations regarding New Source Approval; provided however, that nothing contained herein shall require the Defendants, and any and all successors to convey any land in Parcels B, C and E to the Town, or to any designee of the Town to satisfy its commitment to work in good faith.

- b. The Town shall support G&U's application for state and federal grants.
 - c. The Town shall contribute 50 percent of the engineering costs associated with surveying Parcels, A, B, C, D and E.
 - d. All land transferred by the Trust shall be subject to an Army Corps of Engineers no-build restriction.
 - e. The parties agree to make best efforts to close the contemplated transactions within 60 days of this agreement (the "Closing").
 - f. The Board of Selectmen shall be designated as the sole decision-making body for the Town for the purpose of implementing the provisions of this Agreement.
7. Waiver of Right of First Refusal: The Town agrees to waive any and all claimed right of first refusal to purchase the subject Chapter 61 land at 364 West Street.
8. Roll Back Taxes: The Town agrees to waive any and all claims to any roll-back taxes that may be owed as a result of land being registered under Massachusetts Chapter 61.
9. Execution of Purchase and Sale Agreement/ Settlement Agreement: The Parties shall executed a Purchase and Sale Agreement and/or Settlement Agreement confirming the terms of this Settlement Term Sheet on or before February 9, 2021.
10. Dismissal of Litigations:
- a. Attorneys for the Parties shall file a Stipulation of Dismissal With Prejudice in the Land Court Matter within five (5) business days of the execution of the Purchase and Sale Agreement and/or Settlement Agreement.
 - b. Attorneys for the Defendants shall file a Request to Withdraw its Petition for Declaratory Order in the STB Matter within five (5) business days of the execution of the Purchase and Sale Agreement and/or Settlement Agreement.

TOWN OF HOPEDALE

/s/ 

Peter F. Durning, BBO# 658660

Peter M. Vetere, BBO# 681661

Mackie Shea Durning, PC

20 Park Plaza, Suite 1001

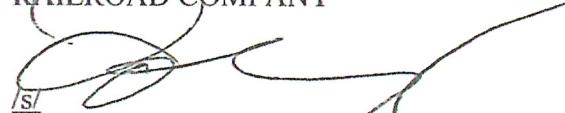
Boston, MA 02116

617-266-5104

pdurning@mackieshea.com

pvetere@mackieshea.com

JON DELLI PRISCOLI and MICHAEL
R. MILANOSKI, as TRUSTEES of the
ONE HUNDRED FORTY REALTY
TRUST and GRAFTON & UPTON
RAILROAD COMPANY

/s/ 

Donald C. Keavany, Jr., BBO#631216

Andrew P. DiCenzo, BBO#689291

Christopher, Hays, Wojcik & Mavricos,
LLP

370 Main Street, Suite 970

Worcester, MA

508-792-2800

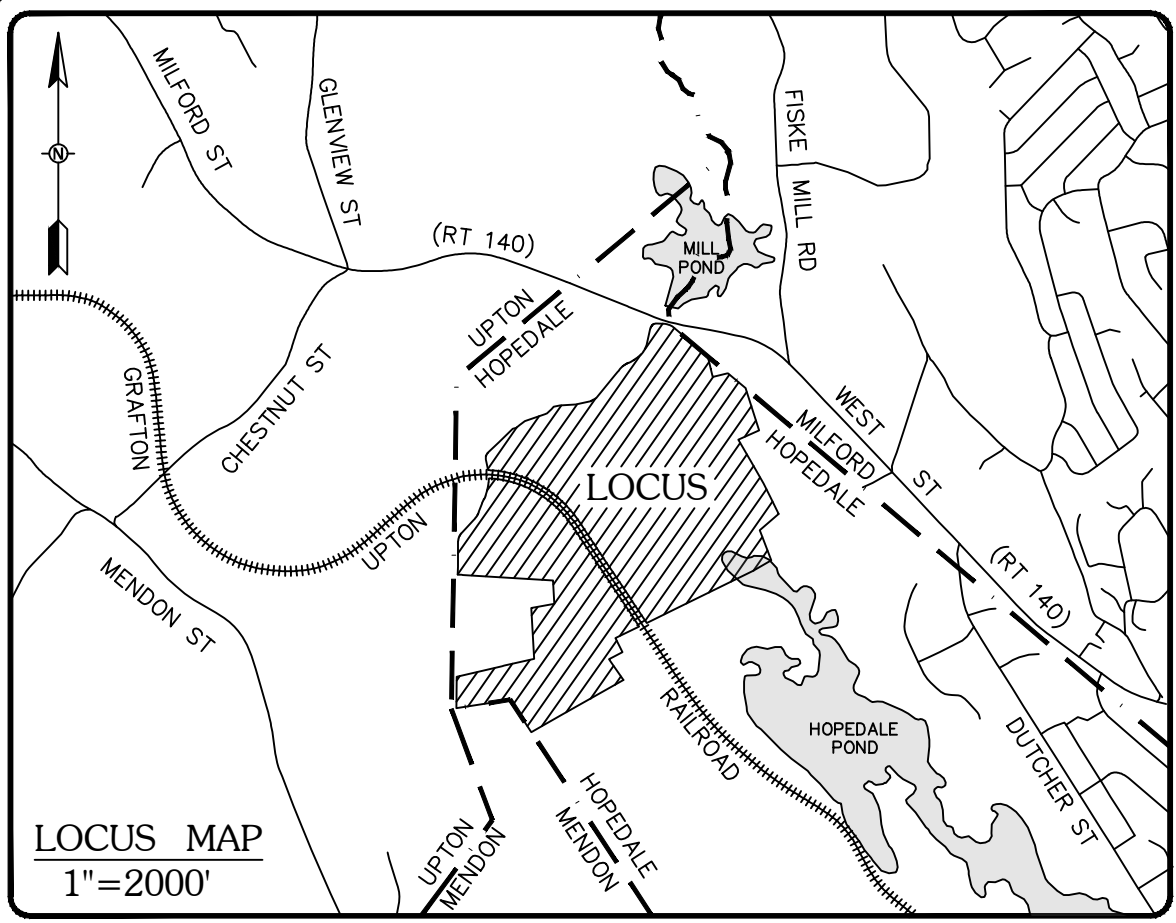
dkeavany@chwmlaw.com

adicenzo@chwmlaw.com

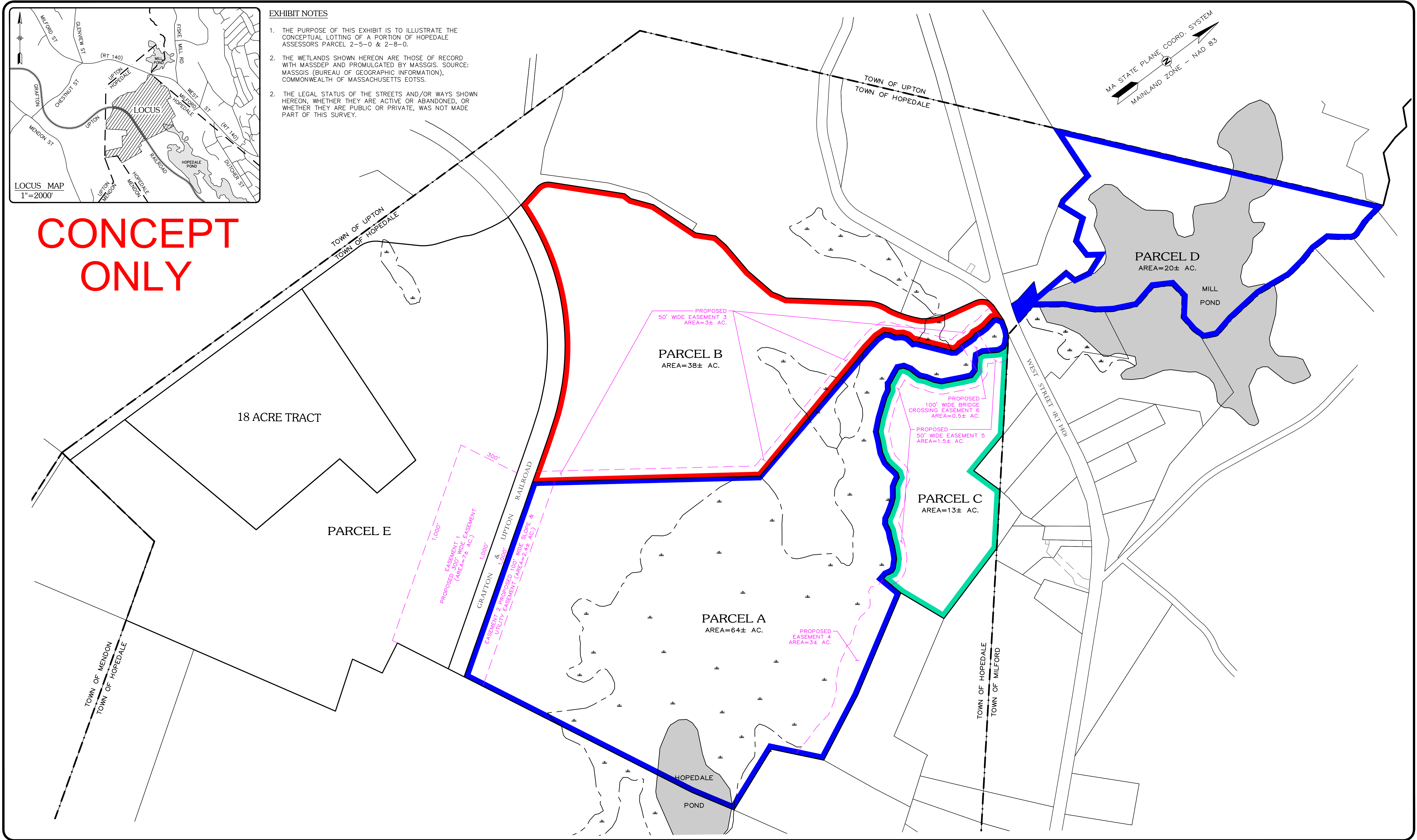
Exhibit 1

EXHIBIT NOTES

1. THE PURPOSE OF THIS EXHIBIT IS TO ILLUSTRATE THE CONCEPTUAL LOTTING OF A PORTION OF HOPEDALE ASSESSORS PARCEL 2-5-0 & 2-8-0.
2. THE WETLANDS SHOWN HEREON ARE THOSE OF RECORD WITH MASSDEP AND PROMULGATED BY MASSGIS. SOURCE: MASSGIS (BUREAU OF GEOGRAPHIC INFORMATION), COMMONWEALTH OF MASSACHUSETTS EOTSS.
2. THE LEGAL STATUS OF THE STREETS AND/OR WAYS SHOWN HEREON, WHETHER THEY ARE ACTIVE OR ABANDONED, OR WHETHER THEY ARE PUBLIC OR PRIVATE, WAS NOT MADE PART OF THIS SURVEY.

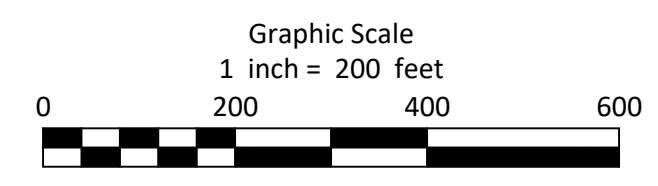


CONCEPT ONLY



| REV # | DATE | DESCRIPTION |
|-------|---------|----------------------|
| 0 | 1/26/21 | ISSUED FOR AGREEMENT |

DRWN BY: ZRB
CHK'D BY: PSB
APRVD BY: WML



PREPARED BY:
EDC Engineering Design Consultants, Inc.
32 Turnpike Road
Southborough, Massachusetts
(508) 480-0225

PROJECT:
GRAFTON & UPTON RAILROAD
364 WEST STREET
(WORCESTER COUNTY)
HOPEDALE, MASSACHUSETTS

TITLE:
CONCEPTUAL LAND DIVISION EXHIBIT

PREPARED FOR:
Grafton & Upton Railroad Company
42 Westboro Road
North Grafton, Massachusetts 01536

DATE:
JANUARY 26, 2021

1 OF 1
EDC PROJECT NUMBER
3659

3659 EXH CONCEPTUAL LOTTING R7.DWG

Exhibit 2



Milford

Hopedale

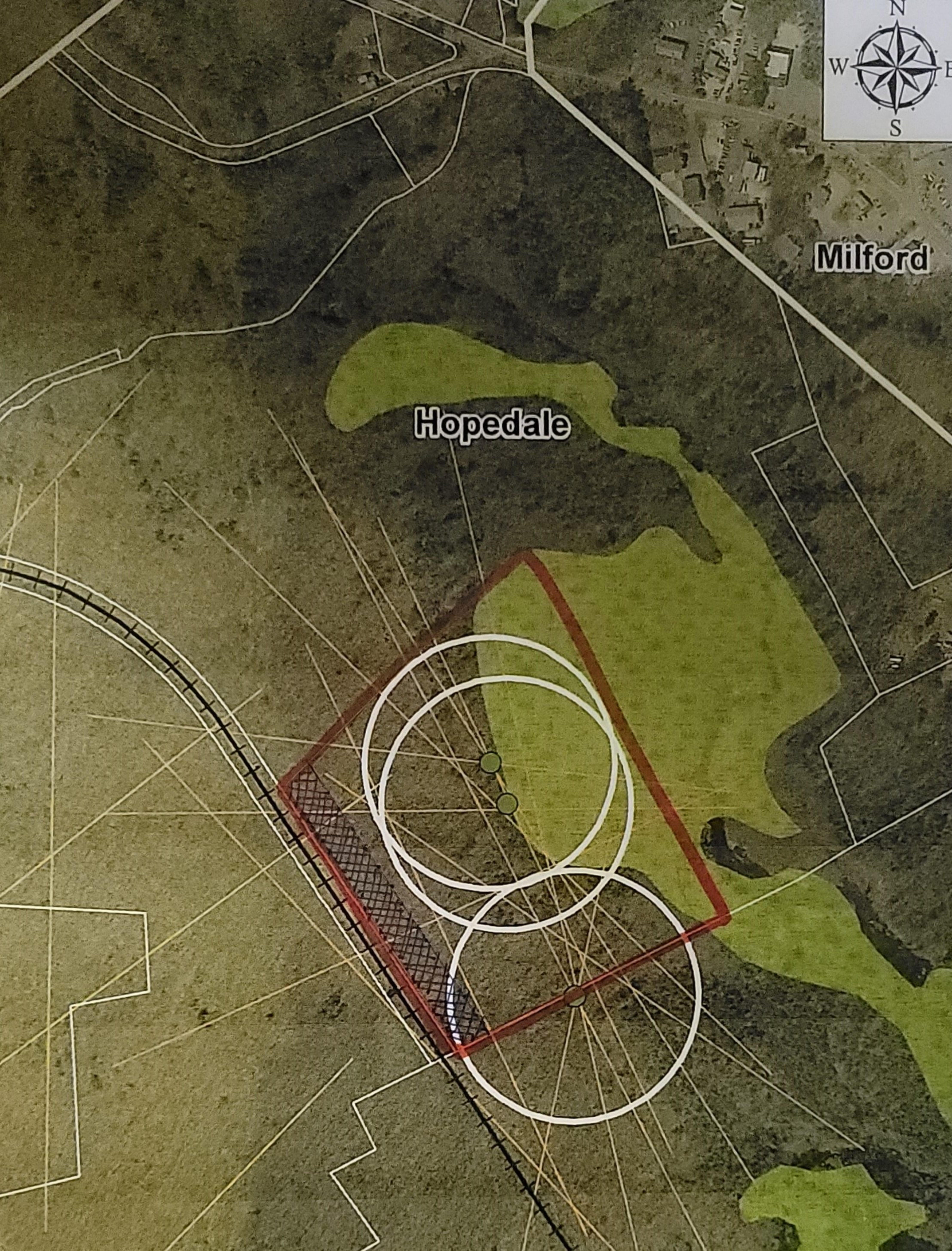


Exhibit 3

**EXHIBIT 3 TO SETTLEMENT TERM SHEET
TEMPLATE OF DEED RESTRICTION**

A. The following uses shall not be allowed on land conveyed in this deed:

1. Landfills and open dumps as defined in 310 CMR 19.006;
2. Storage of liquid petroleum products, provided that such storage, is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity;
3. Land filling of sludge or septage as defined in 310 CMR 32.05;
4. Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
5. Individual sewage disposal systems that are designed in accordance with 310 CMR 15.00;
6. Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
7. Storage of animal manure unless covered or contained in accordance with the specifications of the United States Soil Conservation Service;
8. Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) to within six (6) feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations and associated support / grading infrastructure, roads, parking, rail, or utility works, including stormwater management facilities;
9. Facilities that generate, treat, store, or dispose of hazardous waste subject to MGL 21C and 310 CMR 30.000, except the following:
 - i. Very small quantity generators as defined under 310 CMR 30.000;
 - ii. Household hazardous waste centers and events under 310 CMR 30.390;
 - iii. Waste oil retention facilities required by MGL Chapter 21, Section 52A;
 - iv. Water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters;
10. Automobile graveyards and junkyards, as defined in MGL Chapter 140B, Section 1;
11. Treatment works that are subject to 314 CMR 5.00;
12. Storage of hazardous materials, as defined in MGL Chapter 21E, unless in a free standing container within a building or above ground with adequate secondary containment adequate to contain a spill the size of the container's total storage capacity;
13. Industrial and commercial uses which discharge process waste water on-site;
14. Stockpiling and disposal of snow and ice containing deicing chemicals if brought in from

outside the parcel;

15. Storage of commercial fertilizers, as defined in MGL Chapter 128, Section 64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate;

16. The use of septic system cleaners which contain toxic or hazardous chemicals;

- B. In the event a private roadway is not feasible and a public road is required, the Defendants acknowledge their obligation to comply with Massachusetts law with respect to the construction of a public road. In the event a private roadway is contemplated to provide access to the Property said private roadway shall be designed to minimize impacts to the Mill River to the extent practicable following industry standards for stormwater management and stream crossing design, including the US Army Corps of Engineers Stream Crossing Best Management Practices. All plans for the private access roadway and for any “bridge” that will span across the Mill River shall be stamped by a professional engineer, and forwarded to an independent licensed professional engineer selected by the Board of Selectmen who may review such plans at no expense to the Owner. The plans shall be submitted to the Town of Hopedale Board of Selectmen for their review; but shall not require a Board vote to approve such plans. In the event a private roadway is not feasible and a public road is required, the Defendants acknowledge their obligation to comply with Massachusetts law with respect to the construction of a public road.
- C. The application of pesticides, including herbicides, insecticides, fungicides, and rodenticides for non-domestic or nonagricultural uses shall in accordance with state and federal standards.
- D. For the purpose of preserving groundwater quality to the greatest extent practicable, any development shall provide recharge by storm water infiltration basins or similar systems covered with natural vegetation; dry wells shall be used only where other methods are infeasible. All such storm water infiltration basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all storm water infrastructure, including all recharge areas, shall be permanently maintained in full working order by the Owner.
- E. Prior to occupancy of building, owner shall prepare a Hazardous Materials Management Plan (“HMM Plan”), the Owner shall file the HMM Plan with the Town’s Hazardous Materials Coordinator, Fire Chief, and Board of Health. The HMM Plan shall include:
- (1) Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
 - (2) Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
 - (3) Evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification, number from the Massachusetts Department of Environmental Protection.
- F. Development will be limited to enclosed buildings/structures so as to avoid outside storage. This does not apply to necessary infrastructure to support buildings / structures.

- G. Owner will not be subject to any local permitting; beyond compliance to these conditions, federal laws and regulations, and consistent with established practice the Owner will keep state and local authorities apprised of any development plans by providing notification to the Board of Selectmen and/or Town Administrator.
- H. Any of these deed restrictions may be waived by the Board of Selectmen on an individual basis at the Board of Selectmen's sole discretion following a properly posted public meeting upon a finding that enforcement of the specific restriction is not necessary to further the purposes of protecting groundwater or surface water supplies.
- I. Nothing contained in this Deed Restriction limits the enforceability of these provisions through an action to a court of competent jurisdiction, including, but not limited to the Massachusetts Superior Court and the Land Court.